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by and through the California Air Resources Board
 9

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF MICHIGAN
 12

13 PEOPLE OF THE STATE OF
 14 CALIFORNIA,
 15 Plaintiff,
 16 v.
 17 HINO MOTORS, LTD.; HINO
 18 MOTORS SALES U.S.A., INC.; AND
 19 HINO MOTORS MANUFACTURING,
 U.S.A., INC.,
 20 Defendants.

CASE NO.

21
 22 **CALIFORNIA PARTIAL CONSENT DECREE**

23 WHEREAS, Plaintiff the People of the State of California, acting by and
 24 through the California Air Resources Board (“CARB”), represented by the Office
 25 of the California Attorney General, (“Plaintiff”) filed a complaint (the “California
 26 Complaint”) in this action on January 15, 2025, against Hino Motors, Ltd.; Hino
 27 Motors Sales U.S.A., Inc.; and Hino Motors Manufacturing, U.S.A., Inc.
 28 (collectively, “Defendants”);

1 WHEREAS, in the California Complaint, CARB alleges that Defendants
2 violated certain provisions of California law (collectively, the “Claims”), including
3 without limitation California Health and Safety Code §§ 43008.6, 43016, 43106,
4 43151, 43211, 43212; Cal. Code Regs., tit. 13, §§ 1956.8, 1965, 1971.1, 2141-
5 2149, 2421, 2423; and California Vehicle Code § 27156, with regard to
6 approximately 16,000 Model Year (“MY”) 2010-2019 heavy-duty on-road and off-
7 road engines certified, manufactured, imported, distributed, introduced into
8 commerce and sold in California (collectively, the “Subject Engines”). CARB also
9 alleges these purported violations give rise to a violation of the Clean Air Act
10 enforceable by CARB pursuant to 42 U.S.C. § 7604 and 40 C.F.R. § 54.3;

11 WHEREAS, the California Complaint alleges, among other things, that the
12 certification applications for the Subject Engines were based on fabricated, altered
13 and/or omitted data, and the Subject Engines contain undisclosed and unapproved
14 Auxiliary Emission Control Devices (“AECs”), and/or unreported, unapproved
15 Running Changes and Field Fixes, some that have resulted in increased oxides of
16 nitrogen (“NOx”) emissions from the Subject Engines in excess of California
17 limits;

18 WHEREAS, Defendants and Plaintiff (collectively, the “Parties” and
19 individually, a “Party”) intend to resolve certain aspects of the Claims through the
20 entry of a concurrently lodged consent decree among the United States, Plaintiff
21 People of the State of California by and through CARB, and Defendants (the
22 “US/CARB Consent Decree”) concerning the Subject Engines, that, among other
23 things, ensures that Defendants will install Emission Modifications in Eligible
24 Vehicles, requires Defendants to implement certain corporate compliance policies
25 and practices in conjunction with its existing corporate and compliance
26 management activities, requires Defendants to make a civil penalty payment of
27 **\$82,500,000.00** to CARB, and may require separate stipulated penalty payments to
28 CARB if there is future noncompliance with requirements of the US/CARB

1 Consent Decree. These funds shall be deposited into the Air Pollution Control
2 Fund, for the purpose of enhancing CARB’s mobile source emissions control
3 program through additional certification review, in-use evaluation, real-world
4 testing, enforcement actions, and other CARB activities related to the control of air
5 pollution;

6 WHEREAS, the Parties have agreed, through this partial consent decree
7 (“California Partial Consent Decree”), to resolve the remaining aspects of the
8 Claims related to the Subject Engines without the need for litigation;

9 WHEREAS, this California Partial Consent Decree provides certain
10 injunctive and monetary relief to Plaintiff, including environmental mitigation
11 funds paid to CARB that are intended to mitigate excess emissions from the Subject
12 Engines in California;

13 WHEREAS, nothing in this California Partial Consent Decree nor
14 Defendants’ consent to its entry shall constitute an admission of any fact or law by
15 any Party, including as to any factual or legal assertion set forth in the California
16 Complaint, except for the purpose of enforcing the terms or conditions set forth
17 herein;

18 WHEREAS, the Parties recognize, and the Court by entering this California
19 Partial Consent Decree finds, that this California Partial Consent Decree has been
20 negotiated by the Parties in good faith and will avoid litigation among the Parties
21 regarding certain aspects of the Claims, and that this California Partial Consent
22 Decree is fair and reasonable, with Plaintiff alleging that it also is in the public
23 interest; and

24 WHEREAS, this California Partial Consent Decree and the US/CARB
25 Consent Decree together form an integrated resolution of the Claims, and that, as
26 set forth herein, this California Partial Consent Decree will not become effective
27 unless and until the US/CARB Consent Decree is entered or the Court grants a
28 motion entering the US/CARB Consent Decree, whichever occurs first.

1 NOW, THEREFORE, before the taking of any testimony, without the
2 adjudication of any issue of fact or law, and with the consent of the Parties, IT IS
3 HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

4 **I. JURISDICTION AND VENUE**

5 1. The Court has jurisdiction over the subject matter of this action pursuant
6 to 28 U.S.C. § 1331, and over the Parties to the extent limited by this Paragraph.
7 Venue lies in this District pursuant to 28 U.S.C. § 1391(b). The Court has
8 supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. §
9 1367. For purposes of this California Partial Consent Decree, or in any action to
10 enforce this California Partial Consent Decree, the Parties agree to and Defendants
11 consent to this Court’s jurisdiction over this California Partial Consent Decree and
12 over any action to enforce this California Partial Consent Decree, and over
13 Defendants, and consents to venue in this judicial district. Defendants reserve the
14 right to challenge and oppose any claims to jurisdiction that do not arise from the
15 Court’s jurisdiction over this California Partial Consent Decree or an action to
16 enforce this California Partial Consent Decree.

17 2. For purposes of this California Partial Consent Decree only, Defendants
18 agree that the California Complaint states claims upon which relief may be granted
19 pursuant to: California Health and Safety Code §§ 43008.6, 43016, 43106, 43151,
20 43211, 43212; Cal. Code Regs., tit. 13, §§ 1956.8, 1971.1, 2141-2149, 2421, 2423;
21 California Vehicle Code § 27156; 42 U.S.C. § 7604; and 40 C.F.R. § 54.3.

22 **II. APPLICABILITY**

23 3. The obligations of this California Partial Consent Decree apply to and are
24 binding upon Plaintiff, and upon Defendants and any successors, assigns, or other
25 entities or persons otherwise bound by law.

26 4. No transfer of ownership or operation, whether in compliance with the
27 procedures of this Paragraph or otherwise, shall relieve Defendants of their
28 obligation to ensure that the terms of this California Partial Consent Decree are

1 implemented. At least 30 Days prior to such transfer, Defendants shall provide a
2 copy of this California Partial Consent Decree to the proposed transferee and shall
3 simultaneously provide written notice of the prospective transfer, together with a
4 copy of the proposed written agreement to CARB in accordance with Section XIII
5 (Notices).

6 5. Defendants shall provide a copy of this California Partial Consent Decree
7 to the members of their respective Boards of Directors and to their respective
8 officers and executives whose duties might reasonably include compliance with, or
9 oversight over compliance with, any provision of this California Partial Consent
10 Decree. Defendants shall also ensure that any contractors retained to perform work
11 required under the material terms of this California Partial Consent Decree, agents,
12 or employees whose duties might reasonably include compliance with any
13 provision of this California Partial Consent Decree are made aware of those
14 requirements of the California Partial Consent Decree relevant to their performance.

15 6. CARB reviewed financial information submitted by Defendants and
16 determined that Defendants have a limited financial ability to pay and to fund
17 injunctive relief in this action. Defendants certify that, prior to the Date of
18 Lodging, Hino Motors, Ltd. secured a loan for and placed into an escrow or
19 depository account money dedicated to the satisfaction of near-term obligations to
20 make payments specified in Section VI (CARB Mitigation and Costs Payments) of
21 this California Partial Consent Decree within 30 Days of the Effective Date. CARB
22 considers the terms set forth in this California Partial Consent Decree, together with
23 the US/CARB Consent Decree, to be an appropriate resolution of the allegations in
24 the California Complaint.

25 7. In any action to enforce this California Partial Consent Decree,
26 Defendants shall not raise as a defense the failure by any of their respective
27 officers, directors, employees, agents, or contractors to take any actions necessary
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1 to comply with the provisions of this California Partial Consent Decree, except in
2 accordance with the provisions of Section X (Force Majeure).

3 **III. DEFINITIONS**

4 8. Terms that are defined in this California Partial Consent Decree are
5 defined for purposes of this California Partial Consent Decree only and are not
6 applicable for any other purpose. Whenever the terms set forth below are used in
7 this California Partial Consent Decree, the following definitions shall apply:

8 a. “Additional Reported OBD Noncompliances” means any and all
9 noncompliances with Cal. Code Regs., tit. 13, § 1971.1 that were disclosed by
10 Defendants to CARB that are not (1) a Pre-Approved OBD Noncompliance; (2) an
11 Unreported OBD Noncompliance; (3) an OBD Noncompliance Resulting in
12 Mandatory Recall; or (4) an OBD Noncompliance with Inspection and Maintenance
13 (Clean Truck Check).

14 b. “Air Pollution Control Fund” means the fund established by
15 California Health and Safety Code § 43015.

16 c. “Auxiliary Emission Control Device” has the meaning set forth in
17 40 C.F.R. § 86.082-02.

18 d. “Business Day” means a calendar day that does not fall on a
19 Saturday, Sunday, federal holiday, or California state holiday. In computing any
20 period of time under this California Partial Consent Decree, where the last Day
21 would fall on a Saturday, Sunday, federal holiday, or California holiday, the period
22 shall run until the close of business of the next Business Day. The time in which
23 any act provided by this California Partial Consent Decree is to be done is
24 computed by excluding the first day, and including the last, unless the last day is a
25 Saturday, Sunday, federal holiday, or California state holiday, and then it is also
26 excluded.

27 e. “California Complaint” means the complaint filed by Plaintiff the
28 People of the State of California, acting by and through CARB in this action.

1 f. “California Partial Consent Decree” means this partial consent
2 decree.

3 g. “CARB” means the California Air Resources Board and any of its
4 successor departments or agencies.

5 h. “Claims” means the allegations set forth in the California
6 Complaint.

7 i. “Date of Lodging” means the date this California Partial Consent
8 Decree is lodged with the Court.

9 j. “Day” means a calendar day unless expressly stated to be a Business
10 Day. In computing any period of time for a deadline under this California Partial
11 Consent Decree, where the last day would fall on a Saturday, Sunday, federal
12 holiday, or California or state holiday, the period runs until the close of business of
13 the next Business Day. The time in which any act provided by this California
14 Partial Consent Decree is to be done is computed by excluding the first day, and
15 including the last, unless the last day is a Saturday, Sunday, federal holiday, or
16 California state holiday, and then it is also excluded.

17 k. “Dealer” means any entity or individual authorized by Defendants
18 to sell and service Hino brand engines or vehicles in California.

19 l. “Defendants” means Hino Motors, Ltd.; Hino Motors Sales U.S.A.,
20 Inc.; and Hino Motors Manufacturing U.S.A., Inc.

21 m. “Effective Date” has the meaning set forth in Section XIV below.

22 n. “Eligible Lessee” means (1) the current lessee or lessees of an
23 Eligible Vehicle with an active lease as of the date the Eligible Vehicle receives the
24 approved Emission Modification; or (2) solely for purposes of any OBD recall, the
25 subsequent lessee or lessees of an Eligible Vehicle at the time of the OBD recall.

26 o. “Eligible Owner” means (1) the owner or owners of an Eligible
27 Vehicle on the day that the Eligible Vehicle receives or is eligible to receive the
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1 Emission Modification; or (2) solely for purposes of any OBD recall, the
2 subsequent owner or owners of an Eligible Vehicle at the time of the OBD recall.

3 p. “Eligible Vehicle” means any Subject Vehicle powered by a Subject
4 Engine that is eligible for an Emission Modification and is (1) registered with the
5 California Department of Motor Vehicles or equivalent agency or held by a Dealer
6 or unaffiliated dealer and located in the United States; and (2) operable as of the
7 date the vehicle is brought in for the Emission Modification.

8 q. “Emission Modification” means the updated hardware and revised
9 software configurations/calibrations that Defendants will be installing in Subject
10 Vehicles as part of the Emission Modification Program, defined in Paragraph
11 9(mm) of the US/CARB Consent Decree.

12 r. “Emission Modification OBD Demonstration Report” means the
13 report and all required content, as specified in Appendix A to this California Partial
14 Consent Decree.

15 s. “Engine Family” means a family of engines that is grouped together
16 for certification and compliance purposes because the engines are expected to have
17 similar emission characteristics throughout their Full Useful Life periods. Each
18 Engine Family is assigned a unique alphanumeric engine family that begins with a
19 one-digit model year date code. As used in this California Partial Consent Decree,
20 the term “Engine Family Suffix” means the portion of the alphanumeric Engine
21 Family code after the one-digit model year date code.

22 t. “EPA” means the United States Environmental Protection Agency
23 and any of its successor departments or agencies.

24 u. “Field Fix” has the meaning provided pursuant to 40 C.F.R.
25 § 86.1842-01(b) and/or 13 C.C.R. §§ 1971.1(c), and/or CARB Manufacturer’s
26 Advisory Correspondence #79-002, “Field Fixes Involving Emission-Related
27 Components,” (Jan. 31, 1979), and/or EPA Advisory Circular 2B, Field Fixes
28 Related to Emission Control-Related Components (Mar. 17, 1975), as applicable.

1 v. “Full Useful Life” has the meaning set forth in 40 C.F.R. § 86.1805-
2 12, and incorporated by reference in California Exhaust Emission Standards and
3 Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition
4 Engines and Cal. Code Regs., tit. 13 § 1956.8(b).

5 w. “Inspection and Maintenance Readiness Flags” means the readiness
6 status for each component/system readiness bit identified in Cal. Code Regs., tit.
7 13, § 1971.1(h)(4.1) and SAE International J1979 specifications (i.e., Service \$01,
8 Parameter Identification \$01). The readiness flags will indicate “ready” or
9 “complete” upon the respective monitor(s) determining that the component or
10 system is not malfunctioning or the monitor indicates a malfunction for the
11 component or system after the requisite number of decisions necessary for
12 determining MIL status has been fully executed, in accordance with Cal. Code
13 Regs., tit. 13, § 1971.1(h)(4.1).

14 x. “Malfunction” means a circumstance where a vehicle or engine
15 experiences a mechanical, chemical, or electrical problem, including as the result of
16 damage or accident, that (1) renders the vehicle or engine inoperable; (2) presents a
17 safety or environmental hazard if the vehicle or engine continues to be operated
18 (such as an oil leak); (3) causes an OBD event (for example, recording a pending
19 fault code or illuminating the MIL), except for the following OBD events: (a) OBD
20 events during OBD demonstration testing; and (b) false detection or MIL
21 illumination due to dynamometer simulation testing, unless such false detection or
22 MIL illumination causes a default action or default strategy that changes the
23 emission performance behavior; or (4) causes the Test Engine to no longer produce
24 emissions results representative of in-use operation of a properly maintained engine
25 in the same Engine Hardware Group at the same mileage.

26 y. “MIL” means the malfunction indicator light of the OBD system
27 outlined in Cal. Code Regs., tit. 13, § 1971.1 that illuminates to notify the vehicle
28 operator of detected malfunctions.

1 z. “Model Year” or “MY” has the meaning set forth in 40 C.F.R. §
2 86.082-2.

3 aa. “Modified Vehicle” means an Eligible Vehicle which received
4 an Emission Modification.

5 bb. “Month” means a calendar month.

6 cc. “NMHC” means “non-methane hydrocarbons,” i.e., the sum of
7 all hydrocarbon species except methane.

8 dd. “NO_x” means oxides of nitrogen, i.e., the sum of the nitric
9 oxide and nitrogen dioxide contained in a gas sample as if the nitric oxide were in
10 the form of nitrogen dioxide.

11 ee. “On-Board Diagnostic System” or “OBD System” or “OBD”
12 means all hardware, components, parts, sensors, subassemblies, software, AECs,
13 calibrations, and other elements of design that collectively constitute the system for
14 monitoring all systems and components that must be monitored pursuant to the
15 version of Cal. Code Regs., tit. 13, § 1971.1 applicable at the time of certification
16 for the particular Model Year of a Subject Engine, for the purpose of identifying
17 and detecting malfunctions of such monitored systems and components, and for
18 alerting the driver of such potential malfunctions by illuminating the MIL.

19 ff. “OBD Cluster(s)” means the groupings of the Subject Engines by
20 Model Year and Engine Family as follows numerically:

21 1. “OBD Cluster 1” means engines from the following 2010
22 through 2013 Model Year Engine Families: AHMXH07.7JVB, BHMXH07.7JVB,
23 CHMXH07.7JVB, DHMXH07.7JVB, and DHMXH07.7JVC.

24 2. “OBD Cluster 2” means engines from the following 2014
25 through 2016 Model Year Engine Families: EHMXH07.7JVB, EHMXH07.7JVC,
26 FHMXH07.7JVB, FHMXH07.7JVC, GHMXH07.7JVB, and GHMXH07.7JWU.

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1 3. “OBD Cluster 3” means engines from the following 2017
2 through 2019 Model Year Engine Families: HHMXH07.7JVB, HHMXH07.7JWU,
3 JHMXH07.7JVB, and KHMXXH07.7JVB.

4 4. “OBD Cluster 4” means engines from the following 2012
5 through 2014 Model Year Engine Families: DHMXH05.1JTP and
6 EHMXXH05.1JTP.

7 5. “OBD Cluster 5” means engines from the following 2015
8 through 2016 Model Year Engine Families: FHMXXH05.1JTP and
9 GHMXXH05.1JTP.

10 6. “OBD Cluster 6” means engines from the following 2017
11 through 2019 Model Year Engine Families: HHMXH05.1JTP, JHMXH05.1JTP,
12 and KHMXXH05.1JTP.

13 gg. “OBD Infrequent Regeneration Adjustment Factor” or “OBD
14 IRAF” means the additive or upward adjustment factor for each pollutant used to
15 account for increased emissions caused by periodic regeneration of any
16 aftertreatment device or strategies activated for monitoring faulty components of
17 the control system in order to adjust the emissions results used to determine the
18 malfunction criterion for monitors that are required to indicate a malfunction before
19 emissions exceed the applicable emission threshold.

20 hh. “OBD Interim Report” means a report containing the details
21 identified in Appendix A for each OBD cluster as described in Appendix B to this
22 California Partial Consent Decree.

23 ii. “OBD Noncompliance” means any noncompliance with any
24 requirement of Cal. Code Regs., tit. 13, § 1971.1 applicable to a Subject Engine at
25 the time it was granted an Executive Order, and includes Pre-Approved OBD
26 Noncompliances, Additional Reported OBD Noncompliances, Unreported OBD
27 Noncompliances, OBD Noncompliance Resulting in Mandatory Recall, and OBD
28 Noncompliance with Inspection and Maintenance (Clean Truck Check). CARB’s

1 evaluation for OBD Noncompliance will be done consistent with CARB’s new
2 vehicle certification procedures.

3 jj. “OBD Noncompliance Resulting in Mandatory Recall” means any
4 and all noncompliances listed in the applicable version of Cal. Code Regs., tit. 13, §
5 1971.5(d)(3) (except Cal. Code Regs., tit. 13, § 1971.5(d)(3)(A)(vii)).

6 kk. “OBD Noncompliance with Inspection and Maintenance (Clean
7 Truck Check)” means any and all noncompliances listed in the applicable version
8 of Cal. Code Regs., tit. 13, § 1971.5(b)(6)(C)(ii).

9 ll. “OBD Test Protocol” means the protocol for demonstrating OBD
10 compliance as identified in Appendix A to this California Partial Consent Decree.

11 mm. “Paragraph” means a portion of this California Partial Consent
12 Decree identified by an Arabic numeral.

13 nn. “Plaintiff” means the People of the State of California, acting by
14 and through the California Air Resources Board.

15 oo. “Pre-Approved OBD Noncompliance” means any and all OBD
16 Noncompliances described in Appendix C of this California Partial Consent Decree
17 and OBD Noncompliances present in OBD Clusters 1, 2, 4, and 5.

18 pp. “Product Engine Vehicle Evaluation” or “PEVE” means testing
19 conducted in accordance with the requirements of Cal. Code Regs., tit. 13, §
20 1971.1(l), as modified by Appendix A of this California Partial Consent Decree.

21 qq. “PEVE L3 Testing Report” means the report and all required
22 content, as specified in Appendix A to this California Partial Consent Decree.

23 rr. “Quality Assurance/Quality Control Reports” or “QA/QC
24 Reports” means records describing actions, measures, and steps taken to ensure the
25 reliability and validation of the data and testing conducted under Appendix A of
26 this California Partial Consent Decree. For OBD testing conducted pursuant to
27 Appendix A of this California Partial Consent Decree, the QA/QC Reports will
28 document compliance with 40 C.F.R. Part 1065.

1 ss. “Records” means all non-identical copies of all documents,
2 records, reports, or other information (including documents, records, or other
3 information in electronic form).

4 tt. “Running Change” means a change to a vehicle/engine or addition
5 of a model which occurs after certification but during vehicle/engine production.

6 uu. “Section” means a portion of this California Partial Consent
7 Decree identified by a Roman numeral.

8 vv. “Subject Vehicles” means any vehicles powered by a Subject
9 Engine identified in Appendix E to the California Partial Consent Decree that were
10 sold or offered for sale (or introduced or delivered for introduction into commerce)
11 in California and that are or were purported to have been covered by the Engine
12 Families listed in Appendix E of the California Partial Consent Decree.

13 ww. “Subject Engines” are the engines identified in Appendix E to
14 the California Partial Consent Decree that were sold or offered for sale (or
15 introduced or delivered for introduction into commerce) in California and that are
16 or were purported to have been covered by the Engine Families listed in Appendix
17 E of the California Partial Consent Decree.

18 xx. “Submission” means any plan, report, application, or other item
19 that is required to be submitted for approval pursuant to this California Partial
20 Consent Decree.

21 yy. “US/CARB Consent Decree Effective Date” means the date upon
22 which the US/CARB Consent Decree is entered by the Court or a motion to enter
23 the US/CARB Consent Decree is granted, whichever occurs first, as recorded on
24 the Court’s docket.

25 zz. “Unreported OBD Noncompliance” means any OBD
26 Noncompliance that was not disclosed by Defendants to CARB that is not (1) a Pre-
27 Approved OBD Noncompliance; (2) an Additional Reported OBD Noncompliance;
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1 (3) an OBD Noncompliance Resulting in Mandatory Recall; or (4) an OBD
2 Noncompliance with Inspection and Maintenance (Clean Truck Check).

3 aaa. "VIN" means vehicle identification number, as defined in 49
4 C.F.R. § 565.12.

5 **IV. INJUNCTIVE PROVISIONS**

6 9. Under Health and Safety Code § 43017 and California Civil Code §
7 3494, Defendants and Defendants' officers, agents, employees, and attorneys, and
8 all other persons in active concert or participation with any of them, who receive
9 actual notice of this California Partial Consent Decree, whether acting directly or
10 indirectly, are permanently enjoined from:

11 a. Introducing into commerce, importing, delivering, purchasing,
12 acquiring, receiving, distributing, offering for sale, selling, offering for lease,
13 leasing, offering for rent, renting, or assisting others in introducing into commerce,
14 importing, delivering, purchasing, acquiring, receiving, distributing, offering for
15 sale, selling, offering for lease, leasing, offering for rent, or renting in California
16 any Modified Vehicle that contains an undisclosed AECD, or otherwise fails to
17 comply with California Health and Safety Code §§ 43008.6, 43016, 43106, 43151,
18 43211, 43212; Cal. Code Regs., tit. 13, §§ 1956.8, 1971.1, 2141-2149, 2421, and
19 2423, allegedly giving rise to a citizen suit pursuant to 42 U.S.C. § 7604 and 40
20 C.F.R. § 54.3;

21 b. Performing undisclosed and/or unapproved Running Changes or
22 Field Fixes on any Subject Engine or otherwise violating California Vehicle Code §
23 27156;

24 c. Failing to promptly notify CARB when Defendants have reason to
25 believe that an undisclosed AECD has been included in a Modified Vehicle, at any
26 time, that was introduced into commerce, imported, delivered, purchased, acquired,
27 received, sold or offered for sale, leased or offered for lease, rented or offered for
28 rent, or distributed by Defendants in California; and

1 d. Failing to comply with any injunctive terms in the US/CARB
2 Consent Decree concerning the Subject Vehicles, but only to the extent that the
3 aforementioned injunctive terms apply to the Subject Vehicles or to Defendants.

4 10. Nothing in this California Partial Consent Decree alters the requirements
5 of federal or state law to the extent they offer greater protection to the environment.

6 **V. ON-BOARD DIAGNOSTIC DEMONSTRATION**

7 11. Except as otherwise expressly stated herein, the applicable regulatory
8 calculation methods, test procedures, protocols, processes, or procedures shall apply
9 unless an alternative approach is approved by CARB.

10 12. **OBD Demonstration Testing.** Defendants shall test select Subject
11 Engines according to the Protocol for OBD Demonstration Assessment of Emission
12 Modifications (“OBD Test Protocol”) as specified in Appendix A of this California
13 Consent Partial Decree.

14 13. **OBD Clusters.** For purposes of this California Partial Consent Decree,
15 OBD demonstration testing shall be classified in two clusters according to Engine
16 Family and Model Year, as follows:

17 a. OBD Cluster 3 as defined in Section III, Paragraph 8(ff)(3).

18 b. OBD Cluster 6 as defined in Section III, Paragraph 8(ff)(6).

19 14. **Reporting.** The reporting requirements of this California Partial Consent
20 Decree do not relieve Defendants of any reporting obligations required by the Clean
21 Air Act or implementing regulations, or by any other federal, state, or local law,
22 regulation, permit, or other requirement. Defendants shall submit the following
23 reports to CARB:

24 a. Emission Modification OBD Demonstration Report. Defendants
25 shall submit or resubmit a complete Emission Modification OBD Demonstration
26 Report as required under Paragraph 4 of Appendix A of this California Partial
27 Consent Decree, which shall include any required content and completion of any
28 required testing in accordance therewith.

1 b. PEVE L3 Testing Report. Defendants shall submit or resubmit a
2 complete PEVE L3 Testing Report as required under Paragraph 4 of Appendix A of
3 this California Partial Consent Decree, which shall include any required content and
4 completion of any required testing in accordance therewith.

5 c. OBD Interim Report. Defendants shall submit or resubmit a
6 complete OBD Interim Report as required under Paragraph 3 of Appendix A of this
7 California Partial Consent Decree, which shall include any required content and
8 completion of any required testing in accordance therewith.

9 d. OBD Noncompliance Report. Defendants shall submit a report that
10 summarizes any and all OBD Noncompliances for OBD Clusters 3 and 6 identified
11 by Defendants within one Month after the end of the applicable semi-annual
12 reporting period (i.e., by January 31 for the reporting period from the preceding
13 July to December and by July 31 for the reporting period from the preceding
14 January to June).

15 **15. OBD Diagnostics.** Should a Subject Vehicle that received the Emission
16 Modification be brought into one of Defendants' facilities for failure of an emission
17 inspection or Inspection and Maintenance (Clean Truck Check) test, Defendants
18 shall make OBD diagnostics testing available to all Eligible Owners and Eligible
19 Lessees at no cost if such failure was due to the Emission Modification.

20 **16. Clean Truck Check Failures.** Defendants shall submit to CARB for
21 review and approval a remedial plan in accordance with Cal. Code Regs., tit. 13, §
22 1971.5(e) to address each OBD Noncompliance for OBD Clusters 1, 2, 3, 4, 5, and
23 6 that results in a failure under the Clean Truck Check (i.e., ECU failure to
24 communicate with test equipment, inability to clear fault codes, etc.), and shall
25 recall affected Subject Vehicles in California consistent with Cal. Code Regs., tit.
26 13, § 1971.5(e) and this California Partial Consent Decree. Defendants shall not be
27 subject to the OBD recall provisions if an Eligible Vehicle fails or is otherwise not
28 able to complete the Inspection and Maintenance program, pursuant to Cal. Code

1 Regs., tit. 13, § 1971.5(e), solely because insufficient miles have been accumulated
2 on the vehicle to clear any fault codes or set the Inspection and Maintenance
3 Readiness Flags to “ready” or “complete” following application of the Emission
4 Modification. Defendants shall not be required to conduct a recall under this
5 Paragraph 16 if Defendants can demonstrate the failures are the result of improper
6 maintenance of the Subject Vehicles and/or the alteration of Subject Vehicles with
7 the use of any after-market emissions-related components, parts, or software or the
8 removal of any emissions-related components, parts, or software, and such
9 improper maintenance and/or alteration(s) are likely to substantially affect the
10 ability of the vehicle to pass the Clean Truck Check. The requirements outlined in
11 this Paragraph 16 shall continue in full force and effect after termination of the
12 California Partial Consent Decree.

13 **17. OBD Noncompliance Stipulated Penalties.** Defendants shall pay
14 stipulated penalties for certain OBD Noncompliances identified in Section VII
15 (Stipulated Penalty Payments). Determination of payment of any OBD stipulated
16 penalties, if any, will be made by CARB.

17 **18. Required Certification.** Each written report submitted by Defendants
18 under this Section V (On-Board Diagnostic Demonstration) shall be signed by an
19 official of the submitting party and include the following certification:

20 I certify under penalty of perjury that this document and all
21 attachments were prepared under my direction or supervision
22 in accordance with a system designed to assure that qualified
23 personnel properly gather and evaluate the information
24 submitted. Based on my inquiry of the person or persons who
25 manage the system, or those persons directly responsible for
26 gathering the information, the information submitted is, to the
27 best of my knowledge and belief, true, accurate, and
28 complete. I have no personal knowledge that the information
submitted is other than true, accurate, and complete. I am
aware that there are significant penalties for submitting false

1 information, including the possibility of a fine and
2 imprisonment for knowing violations.

3 19. Defendants agree that the certification required by Paragraph 18 is
4 subject to California Penal Code §§ 115, 118, and 132.

5 20. This certification requirement does not apply to emergency or similar
6 notifications where compliance would be impractical.

7 21. Whenever Defendants reasonably believe any violation of this California
8 Partial Consent Decree or any other event affecting Defendants' performance under
9 this California Partial Consent Decree may pose an immediate threat to the public
10 health or welfare or the environment, Defendants shall notify CARB by telephone
11 and email as soon as possible, but no later than 24 hours after Defendants first
12 reasonably believe the violation or event may pose an immediate threat to the
13 public health or welfare or the environment.

14 22. Any information provided pursuant to this California Partial Consent
15 Decree may be used by California in any proceeding to enforce the provisions of
16 this California Partial Consent Decree and as otherwise permitted by law.

17 **VI. CARB MITIGATION AND COSTS PAYMENT**

18 23. **CARB Mitigation Payment.** Within 30 Days of the Effective Date (as
19 described in Section XIV below), Defendants shall pay to the "California Air
20 Resources Board" the sum of **\$111,871,969.00** to be used to fund mitigation actions
21 or projects that reduce NOx emissions in California (the "CARB Mitigation
22 Payment"). This sum shall be immediately deposited into the Air Pollution Control
23 Fund for the purpose of reducing NOx emissions in California through CARB
24 mitigation programs.

25 24. **Cost Payment.** Within 30 Days of the Effective Date (as described in
26 Section XIV below), Defendants shall pay to the "California Air Resources Board"
27 the sum of **\$11,825,000.00** for costs incurred with investigation and representation
28 and costs associated with the implementation, monitoring, and enforcement of the

1 California Partial Consent Decree and its required mitigation projects, including
2 evaluation, cost recovery, testing, equipment, consultants, recall evaluation,
3 representation, staffing, and other associated costs (the “CARB Cost Payment”).
4 This sum shall be immediately deposited into the Air Pollution Control Fund for the
5 purpose of recovering and reimbursing CARB implementation costs, including for
6 mitigation project implementation.

7 25. If Defendants fail to pay the CARB Mitigation Payment to CARB
8 according to the terms of this California Partial Consent Decree, in addition to
9 stipulated penalties identified in Section VII (Stipulated Penalty Payments),
10 Defendants shall be liable for interest on such CARB Mitigation Payment, accruing
11 as of the date payment became due and continuing until payment has been made in
12 full. Interest shall be computed at a rate of 10% per annum as specified in
13 California Code of Civil Procedure § 685.010.

14 26. If Defendants fail to pay the CARB Cost Payment to CARB according to
15 the terms of this California Partial Consent Decree, in addition to stipulated
16 penalties identified in Section VII (Stipulated Penalty Payments), Defendants shall
17 be liable for interest on such CARB Cost Payment, accruing as of the date payment
18 became due and continuing until payment has been made in full. Interest shall be
19 computed at a rate of 10% per annum as specified in California Code of Civil
20 Procedure § 685.010.

21 **VII. STIPULATED PENALTY PAYMENTS**

22 27. Defendants shall be liable to CARB for stipulated penalties for violations
23 of this California Partial Consent Decree as specified in this Section, unless
24 excused under Section X (Force Majeure). A violation includes failing to perform
25 any obligation required by the terms of this California Partial Consent Decree,
26 including any work plan or schedule approved under this California Partial Consent
27 Decree, according to all applicable requirements of this California Partial Consent
28

1 Decree and within the specified time schedules established by or approved under
2 this California Partial Consent Decree.

3 28. Any stipulated penalties and any interest accrued thereon shall be
4 deposited into the Air Pollution Control Fund for the purpose of enhancing CARB's
5 mobile source emissions control program through additional certification review,
6 in-use evaluation, real-world testing, enforcement actions, costs, and other CARB
7 activities related to the control of air pollution.

8 **29. Stipulated Penalties for Late CARB Mitigation or Cost Payment.** If
9 Defendants fail to pay the CARB Mitigation or CARB Cost Payment required
10 under Section VI (Mitigation and Costs Payment) when due, then Defendants shall,
11 in addition to the CARB Mitigation Payment and CARB Cost Payment, pay
12 stipulated penalties directly to the "California Air Resources Board" as follows:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$20,000	1st through 30th Day
\$40,000	31st through 45th Day
\$80,000	46th Day and beyond

17 **30. Failure to Perform OBD Demonstration Testing.** If Defendants fail to
18 perform OBD Demonstration Testing on OBD Cluster 3 and/or OBD Cluster 6, or
19 improperly test, improperly select engines or vehicles, or fail to provide data in
20 accordance with Appendix A of this California Partial Consent Decree, Defendants
21 shall pay the following stipulated penalties to the "California Air Resources
22 Board," which shall accrue for each Day the Emission Modification OBD
23 Demonstration Report, described in Appendix A to this California Partial Consent
24 Decree, remains incomplete:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$ 10,000	1st through 14th Day
\$ 20,000	15th through 30th Day
\$ 30,000	31st Day and beyond

1 Additional Reported OBD Noncompliance, Defendants shall pay the “California
2 Air Resources Board” a stipulated penalty per OBD Cluster:

3 Penalty per Cluster

4 \$449,600.00 per OBD Noncompliance for OBD Cluster 3

5 \$171,900.00 per OBD Noncompliance for OBD Cluster 6

6 For avoidance of doubt, this Paragraph 33 does not apply to OBD Noncompliances
7 Resulting in Mandatory Recall or OBD Noncompliances with Inspection and
8 Maintenance (Clean Truck Check).

9 **34. OBD Noncompliance Resulting in Mandatory Recall.** If one or more
10 engines in OBD Cluster 3 and/or OBD Cluster 6 has an OBD Noncompliance
11 Resulting in a Mandatory Recall, for each and every OBD Noncompliance resulting
12 in a mandatory recall, as discussed in Cal. Code Regs., tit. 13, § 1971.5, Defendants
13 shall pay the “California Air Resources Board” a stipulated penalty per OBD
14 cluster:

15 Penalty per Cluster

16 \$4,496,000.00 per OBD Noncompliance for OBD Cluster 3

17 \$1,719,000.00 per OBD Noncompliance for OBD Cluster 6

18 For the avoidance of doubt, any stipulated penalty payment under this Paragraph 34
19 satisfies any obligation to conduct a recall for an OBD Noncompliance Resulting in
20 a Mandatory Recall.

21 **35. OBD Noncompliance with Inspection and Maintenance (Clean Truck**
22 **Check).** If one or more engines in OBD Cluster 3 and/or OBD Cluster 6 has an
23 OBD Noncompliance with Inspection and Maintenance (Clean Truck Check), for
24 each and every OBD Noncompliance with Inspection and Maintenance (Clean
25 Truck Check), Defendants shall pay the “California Air Resources Board” a
26 stipulated penalty per OBD cluster:

27 Penalty per Cluster

28 \$1,686,000.00 per OBD Noncompliance for OBD Cluster 3

1 \$644,625.00 per OBD Noncompliance for OBD Cluster 6

2 **36. Stipulated Penalties for Late Payment of Any OBD Noncompliance**

3 **Stipulated Penalties.** If Defendants fail to make any stipulated penalty payment in
4 relation to the Additional Reported OBD Noncompliance, Unreported OBD
5 Noncompliance, OBD Noncompliance Resulting in Mandatory Recall, or OBD
6 Noncompliance with Inspection and Maintenance (Clean Truck Check) required
7 under Paragraphs 32 through 35 of this California Partial Consent Decree when
8 due, Defendants shall pay additional stipulated penalties to the “California Air
9 Resources Board” as follows:

10	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
11	\$20,000	1st through 30th Day
12	\$40,000	31st through 45th Day
13	\$80,000	46th Day and beyond

14 **37. Stipulated Penalties for Failure to Submit a Complete Emission**

15 **Modification OBD Demonstration Report, PEVE L3 Testing Report, or OBD**

16 **Interim Report.** If Defendants fail to timely submit or resubmit a complete
17 Emission Modification OBD Demonstration Report, PEVE L3 Testing Report, or
18 OBD Interim Report as required under Paragraphs 3 or 4 of Appendix A of this
19 California Partial Consent Decree (which shall include failure to submit any
20 required content in either the Emission Modification OBD Demonstration Report,
21 PEVE L3 Testing Report, or OBD Interim Report, or to complete testing in
22 accordance therewith), Defendants shall pay the “California Air Resources Board”
23 a stipulated penalty (“OBD Report Penalty Payment”) for each Day the report(s)
24 remain incomplete or unsubmitted:

25	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
26	\$ 20,000	1st through 14th Day
27	\$ 40,000	15th through 30th Day
28	\$ 80,000	31st Day and beyond

1 38. Stipulated penalties under this Section shall begin to accrue on the Day
2 after performance is due or on the Day a violation occurs, whichever is applicable,
3 and shall continue to accrue until performance is satisfactorily completed or until
4 the violation ceases. Stipulated penalties shall accrue simultaneously per report for
5 separate violations of this California Partial Consent Decree.

6 39. CARB shall issue any demand for stipulated penalties in writing to
7 Defendants in accordance with Section XIII (Notices). The written demand for
8 payment of stipulated penalties shall specifically identify the violation.

9 40. Defendants shall pay any stipulated penalties to CARB within 30 Days of
10 receiving the written demand.

11 41. CARB may in the unreviewable exercise of its discretion, reduce or
12 waive stipulated penalties otherwise due it under this California Partial Consent
13 Decree.

14 42. Stipulated penalties shall continue to accrue as provided in Paragraph 38,
15 during any dispute resolution, but need not be paid until the following:

16 a. If the dispute is resolved by agreement of the Parties or by a
17 decision of CARB that is not appealed to the District Court, Defendants shall pay
18 accrued penalties determined to be owed, together with interest, to CARB, within
19 30 Days of the effective date of the agreement or the receipt of CARB's decision or
20 order, whichever is later.

21 b. If the dispute is appealed to the District Court and CARB prevails in
22 whole or in part, Defendants shall pay all accrued penalties determined by the Court
23 to be owed, together with interest as provided in Paragraph 44, within 60 Days of
24 receiving the Court's decision or order, except as provided in Paragraph 42(c),
25 below.

26 c. If any Party appeals the District Court's decision and CARB
27 prevails in whole or in part, Defendants shall pay all accrued penalties determined
28

1 to be owing, together with interest, within 15 Days of receiving the final appellate
2 court decision.

3 43. Upon the Effective Date, the stipulated penalty provisions of this
4 California Partial Consent Decree shall be retroactively enforceable with regard to
5 any and all violations of requirements of this California Partial Consent Decree that
6 have occurred from the Date of Lodging to the Effective Date, provided that
7 stipulated penalties that may have accrued prior to the Effective Date may not be
8 collected unless and until this California Partial Consent Decree is entered by the
9 Court. Defendants shall pay stipulated penalties owing to CARB in the manner set
10 forth and with the confirmation notices required by Section VIII (Payment
11 Requirements), except that the transmittal letter shall state that the payment is for
12 stipulated penalties and shall state for which violation(s) the penalties are being
13 paid.

14 44. If Defendants fail to pay stipulated penalties according to the terms of
15 this California Partial Consent Decree, Defendants shall be liable for interest on
16 such penalties, accruing as of the date payment became due and continuing until
17 payment has been made in full. Interest shall be computed at a rate of 10% per
18 annum as specified in California Code of Civil Procedure § 685.010. Nothing in
19 this Paragraph shall be construed to limit CARB from seeking any remedy
20 otherwise provided by law for Defendants' failure to pay any stipulated penalties.

21 45. The payment of penalties and interest, if any, shall not alter in any way
22 Defendants' obligation to complete the performance of the requirements of this
23 California Partial Consent Decree.

24 46. Stipulated penalties are not CARB's exclusive remedy for violations of
25 this California Partial Consent Decree, including violations of this California Partial
26 Consent Decree that are also violations of law. Subject to the provisions of Section
27 XII (Effect of Settlement/Reservation of Rights), CARB expressly reserves the
28 right to seek any other relief CARB deems appropriate for Defendants' violation of

1 this California Partial Consent Decree or applicable law, including but not limited
2 to an action against Defendants for statutory penalties, additional administrative or
3 injunctive relief, mitigation or offset measures, and/or contempt. However, the
4 amount of any statutory penalty assessed for a violation of this California Partial
5 Consent Decree shall be reduced by an amount equal to the amount of any
6 stipulated penalty assessed and paid pursuant to this California Partial Consent
7 Decree to CARB.

8 **VIII. PAYMENT REQUIREMENTS**

9 47. Payments required to be made to the “California Air Resources Board”
10 under this California Partial Consent Decree shall be issued by check, credit card,
11 wire transfer, or portal using instructions provided separately by CARB in a
12 Payment Transmittal Form. Defendants are responsible for all payment processing
13 fees. Payments shall be accompanied by a Payment Transmittal Form, which
14 CARB will provide to the addressees listed in Section XIII (Notices) no later than
15 14 Days after the Effective Date to ensure proper application. At the time payment
16 is made, Defendants shall provide CARB with proof of payment including a copy
17 of the Payment Transmittal Form to the CARB email address provided in Section
18 XIII (Notices), Paragraph 84.

19 48. Should payment instructions change, CARB will provide notice to
20 Defendants in accordance with Section XIII (Notices).

21 49. Except as otherwise provided by this California Partial Consent Decree,
22 all funds paid to the “California Air Resources Board” in this California Partial
23 Consent Decree, shall be deposited into the Air Pollution Control Fund, for the
24 purpose of enhancing CARB’s mobile source emissions control program through
25 additional certification review, mitigation, in-use evaluation, real-world testing,
26 costs, enforcement actions, and other CARB activities related to the control of air
27 pollution.

28

1 50. Defendants' requirement to make any payment to CARB under this
2 California Partial Consent Decree will be extended by each Day of CARB's delay
3 in providing the Payment Transmittal Form with requisite payment instructions.

4 51. For purposes of the identification requirement in section 162(f)(2)(A)(ii)
5 of the Internal Revenue Code, and 26 C.F.R. § 1.162-21(b)(2), performance by
6 Defendants of Section II (Applicability), Paragraph 5; Section V (On-Board
7 Diagnostic Demonstration), Paragraphs 11-21; Section VI (CARB Mitigation and
8 Costs Payment), Paragraph 23; Section IX (Additional Compliance Requirements),
9 Paragraphs 52-54; Section XIII (Notices), Paragraphs 84-85, and related
10 appendices, is restitution, remediation, or required to come into compliance with
11 law.

12 **IX. ADDITIONAL COMPLIANCE REQUIREMENTS**

13 52. **Continued Compliance.** Except as otherwise stated in this California
14 Partial Consent Decree, during the regulatory useful life of the Subject Engines, the
15 Subject Engines remain subject to, and Defendants shall comply with: (1) all EPA
16 and CARB requirements for in-use testing under 40 C.F.R. Part 86, Subpart S, and
17 Cal. Code Regs., tit. 13, §§ 2110–2140; (2) OBD requirements pursuant to Cal.
18 Code Regs., tit. 13, § 1971.5 (OBD enforcement provisions); (3) federal defect
19 reporting requirements under 40 C.F.R. Part 1068, Subpart F; and (4) California
20 Emissions Warranty and Information Reporting requirements under Cal. Code
21 Regs., tit. 13, §§ 2141–2146. CARB reserves all rights and authorities to impose
22 consequences if Defendants fail to comply with these testing and reporting
23 requirements, including if such testing demonstrates that the Subject Engines
24 exceed any applicable emission limit, subject to Section XII (Effect of Settlement
25 /Reservation of Rights) and applicable provisions of the US/CARB Consent
26 Decree.

1 53. Except as otherwise expressly stated herein, the applicable regulatory
2 requirements (i.e., administrative processes such as vehicle recall) shall apply
3 unless an alternative approach is approved by CARB.

4 54. Except for any replacement engines—as defined in 40 C.F.R.
5 § 1068.240—Defendants shall not sell or cause to be sold, resell or cause to be
6 resold, or lease or cause to be leased, any Subject Engine in Defendants’
7 possession, or obtained by Defendants as a trade-in or lease termination until:

8 a. Defendants perform any Emission Modification on any such Subject
9 Engine for which it is eligible; and

10 b. Defendants execute all emission-related service actions and repairs
11 required to bring the engine into compliance with this California Partial Consent
12 Decree, apply any and all other recalls concerning the Subject Engine, and execute
13 any other required service actions.

14 **X. FORCE MAJEURE**

15 55. “Force majeure,” for purposes of this California Partial Consent Decree,
16 means any event arising from causes beyond the control of Defendants, or any
17 entity controlled by Defendants, that delays or prevents the performance of any
18 obligation under this California Partial Consent Decree despite Defendants’ best
19 efforts to fulfill the obligation. Given the need to protect public health and welfare
20 and the environment, the requirement that Defendants exercise “best efforts to
21 fulfill the obligation” includes using best efforts to anticipate any potential force
22 majeure and best efforts to address the effects of any potential force majeure – as it
23 is occurring and following the potential force majeure – such that any delay or non-
24 performance is, and any adverse effects of the delay or non-performance are,
25 minimized to the greatest extent possible. “Force majeure” does not include
26 financial inability to perform any obligation under this California Partial Consent
27 Decree.
28

1 56. If any event occurs for which Defendants will or may assert a claim of
2 force majeure, Defendants shall provide initial notice to California by electronic
3 mail transmitted to the email addresses set forth in Section XIII (Notices). The
4 deadline for the initial notice is seven Days after Defendants first knew or should
5 have known that the event would likely delay or prevent performance. Defendants
6 shall be deemed to know of any circumstance of which any contractor of,
7 subcontractor of, or entity controlled by Defendants knew or should have known.

8 57. If Defendants seek to assert a claim of force majeure concerning the
9 event, within seven Days after the initial notice under Paragraph 56, Defendants
10 shall submit a further notice to Plaintiff by electronic mail transmitted to the email
11 addresses set forth Section XIII (Notices). That further notice shall include: (i) an
12 explanation and description of the event and its effect on Defendants' completion of
13 the requirements of the California Partial Consent Decree; (ii) a description and
14 schedule of all actions taken or to be taken to prevent or minimize the delay and/or
15 other adverse effects of the event; (iii) if applicable, the proposed extension of time
16 for Defendants to complete the requirements of the California Partial Consent
17 Decree; (iv) Defendants' rationale for attributing such delay to a force majeure; (v)
18 a statement as to whether, in the opinion of Defendants, such event may cause or
19 contribute to an endangerment to public health or welfare or the environment; and
20 (vi) all available proof supporting the claim that the delay was attributable to a
21 force majeure.

22 58. Failure to submit a timely or complete notice or claim under Paragraphs
23 56 or 57 regarding an event precludes Defendants from asserting any claim of force
24 majeure regarding that event.

25 59. If CARB agrees that the delay or anticipated delay is attributable to a
26 force majeure event, the time for performance of the obligations under this
27 California Partial Consent Decree that is affected by the force majeure event will be
28 extended by Plaintiff for such time as is necessary to complete those obligations.

1 An extension of the time for performance of the obligations affected by the force
2 majeure event shall not, of itself, extend the time for performance of any other
3 obligation. Plaintiff will notify Defendants in writing of the length of the
4 extension, if any, for performance of the obligations affected by the force majeure
5 event.

6 60. If Plaintiff does not agree that the delay or anticipated delay has been or
7 will be caused by a force majeure event, Plaintiff will notify Defendants in writing
8 of that decision.

9 61. If Defendants elect to invoke the dispute resolution procedures set forth
10 in Section XI (Dispute Resolution), they shall do so no later than 15 Days after
11 receipt of Plaintiff's notice. In any such proceeding, Defendants have the burden of
12 proving that they are entitled to relief under Paragraph 55, that their proposed
13 excuse or extension was or will be warranted under the circumstances, and that they
14 complied with the requirements of Paragraphs 56–57. If Defendants carry this
15 burden, the delay or non-performance at issue shall be deemed not to be a violation
16 by Defendants of the affected obligation of this California Partial Consent Decree
17 identified to Plaintiff and the Court.

18 **XI. DISPUTE RESOLUTION**

19 62. Unless otherwise expressly provided for in this California Partial Consent
20 Decree, the dispute resolution procedures of this Section shall be the exclusive
21 mechanism to resolve disputes arising between Plaintiff and Defendants under or
22 with respect to this California Partial Consent Decree. Defendants' failure to seek
23 resolution of a dispute under this Section concerning an issue of which they had
24 notice and an opportunity to dispute under this Section prior to an action by
25 Plaintiff to enforce any obligation of Defendants arising under this California
26 Partial Consent Decree precludes Defendants from raising any such issue as a
27 defense to any such enforcement action.

28

1 **63. Informal Dispute Resolution.** Any dispute subject to dispute resolution
2 under this California Partial Consent Decree shall first be the subject of informal
3 negotiations. The dispute shall be considered to have arisen when Defendants send
4 Plaintiff a written Notice of Dispute by email and mail in accordance with Section
5 XIII (Notices). Such Notice of Dispute shall state clearly the matter in dispute.
6 The period of informal negotiations shall not exceed 30 Days from the date
7 Defendants sent their Notice of Dispute, unless that period is modified by a written
8 agreement of the Parties. If Plaintiff and Defendants cannot resolve a dispute by
9 informal negotiations, then the position advanced by Plaintiff shall be considered
10 binding unless, within 30 Days after the conclusion of the informal negotiation
11 period, Defendants invoke formal dispute resolution procedures as set forth below.

12 **64. Formal Dispute Resolution.** Defendants shall invoke formal dispute
13 resolution procedures, within the time period provided in the preceding Paragraph,
14 by sending Plaintiff a written Statement of Position regarding the matter in dispute
15 by email and mail, in accordance with Section XIII (Notices). The Statement of
16 Position shall include, but need not be limited to, any factual data, analysis, or
17 opinion supporting Defendants' position and any supporting documentation relied
18 upon by Defendants.

19 **65.** Plaintiff will send Defendants its Statement of Position by email and mail
20 within 45 Days of receipt of Defendants' Statement of Position, in accordance with
21 Section XIII (Notices). Plaintiff's Statement of Position shall include, but need not
22 be limited to, any factual data, analysis, or opinion supporting that position and any
23 supporting documentation relied upon by Plaintiff. Plaintiff's Statement of Position
24 is binding on Defendants, unless Defendants file a motion for judicial review of the
25 dispute in accordance with the following Paragraph.

26 **66. Judicial Dispute Resolution.** Defendants may seek judicial review of
27 the dispute by filing with the Court and serving on Plaintiff a motion requesting
28 judicial resolution of the dispute. The motion must be filed within 30 Days of

1 receipt of Plaintiff's Statement of Position pursuant to the preceding Paragraph.
2 The motion may not raise any issue that Defendants did not raise in informal
3 dispute resolution pursuant to Paragraph 63 unless the issue was first raised by
4 Plaintiff's Statement of Position. The motion shall contain a written statement of
5 Defendants' position on the matter in dispute, including any supporting factual
6 data, analysis, opinion, or documentation, and shall set forth the relief requested
7 and any schedule within which the dispute must be resolved for orderly
8 implementation of the California Partial Consent Decree.

9 67. Plaintiff shall respond to Defendants' motion within the time period
10 allowed by the Local Rules of this Court. Defendants may file a reply
11 memorandum, to the extent permitted by the Local Rules.

12 **68. Standard of Review: Disputes Concerning Matters Accorded Record**
13 **Review.** Except as otherwise provided in this California Partial Consent Decree, in
14 any dispute brought pursuant to Paragraph 66 that pertains to: (a) the adequacy or
15 appropriateness of plans or procedures to implement plans, schedules, or any other
16 item that requires approval by Plaintiff under this California Partial Consent
17 Decree; (b) the adequacy of the performance of work undertaken pursuant to this
18 California Partial Consent Decree; and/or (c) all other disputes that are accorded
19 review on the administrative record under applicable principles of administrative
20 law, Defendants shall have the burden of demonstrating, based on the
21 administrative record, that the position of Plaintiff is arbitrary and capricious or
22 otherwise not in accordance with law based on the administrative record. For
23 purposes of this Paragraph, Plaintiff will maintain an administrative record of the
24 dispute, which will contain all statements of position, including supporting
25 documentation, submitted pursuant to this Section. Prior to the filing of any
26 motion, the Parties may submit additional materials to be part of the administrative
27 record pursuant to applicable principles of administrative law.
28

1 **69. Standard of Review: Other Disputes.** Except as otherwise provided in
2 this California Partial Consent Decree, in any other dispute brought pursuant to
3 Paragraph 66, Defendants shall bear the burden of demonstrating that their position
4 complies with this California Partial Consent Decree.

5 70. In any disputes brought under this Section, it is hereby expressly
6 acknowledged and agreed that this California Partial Consent Decree was jointly
7 drafted in good faith by Plaintiff and Defendants. Accordingly, the Parties hereby
8 agree that any and all rules of construction to the effect that ambiguity is construed
9 against the drafting party shall be inapplicable in any dispute concerning the terms,
10 meaning, or interpretation of this California Partial Consent Decree.

11 71. The invocation of dispute resolution procedures under this Section shall
12 not, by itself, extend, postpone, or affect in any way any obligation of Defendants
13 under this California Partial Consent Decree, unless and until final resolution of the
14 dispute so provides. Stipulated penalties with respect to the disputed matter shall
15 continue to accrue from the first Day of noncompliance, but payment shall be
16 stayed pending resolution of the dispute as provided in Paragraph 42. If Defendants
17 do not prevail on the disputed issue, stipulated penalties shall be assessed and paid
18 as provided in Section VIII (Payment Requirements).

19 **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

20 72. Upon the Effective Date, and subject to the reservations in Paragraph 76,
21 Defendants' satisfaction of the requirements in this California Partial Consent
22 Decree shall resolve, settle, and release:

23 a. CARB's civil claims for the violations alleged in the California
24 Complaint pursuant to the California Health and Safety Code, California Vehicle
25 Code, and California Code of Regulations pled by CARB (not otherwise resolved
26 by the US/CARB Consent Decree) against Defendants, any successors, assigns, or
27 other entities or persons otherwise bound by law, and any present or former
28 directors, officers, or employees of Defendants or any successors, assigns, or other

1 entities or persons otherwise bound by law provided that such persons were acting
2 within the scope of their employment; and

3 b. all claims for costs and attorneys' fees as alleged in the California
4 Complaint.

5 c. In addition, upon the Effective Date and subject to the reservations
6 in Paragraph 76, this California Partial Consent Decree, along with the US/CARB
7 Consent Decree, shall resolve and settle California's claims alleged by CARB in the
8 California Complaint for costs of litigation pursuant to 42 U.S.C. § 7604(d).

9 73. To the extent that any claims released herein are duplicative of claims to
10 be released, settled, or resolved by Plaintiff under the US/CARB Consent Decree,
11 such claims are not released unless or until the Court enters or grants a motion to
12 enter the US/CARB Consent Decree.

13 74. Neither this California Partial Consent Decree nor Defendants' consent to
14 its entry constitutes an admission by Defendants of violations alleged in the
15 California Complaint or any other allegations asserted by Plaintiff related to the
16 Subject Vehicles. Defendants reserve all defenses, and all rights and remedies,
17 legal and equitable, available to them in any action by a non-party pertaining to the
18 Clean Air Act, or any other federal, state or local statute, rule or regulation.

19 75. The amount in Section VI (CARB Mitigation and Costs Payment) is
20 based on an analysis of the financial information submitted by Defendants, which
21 demonstrated that Defendants have a limited ability to pay a civil penalty.
22 Defendants hereby certify that the financial information provided is true, accurate,
23 and complete and that there has been no material change in Defendants' financial
24 condition between the time the financial information was submitted and the date of
25 Defendants' execution of this California Partial Consent Decree. Notwithstanding
26 any other provision of this California Partial Consent Decree, CARB reserves the
27 right to reinstitute or reopen this action, or to commence a new action seeking relief
28 other than as provided in this California Partial Consent Decree, if the financial

1 information Defendants provided is false, or in any material respect inaccurate or
2 incomplete. This right is in addition to any other rights and causes of action, civil or
3 criminal, that CARB may have under law or equity in such event.

4 76. Plaintiff reserves, and this California Partial Consent Decree is without
5 prejudice to, all claims, rights, and remedies against Defendants with respect to all
6 matters not expressly resolved in Paragraph 72. Notwithstanding any other
7 provision of this California Partial Consent Decree, Plaintiff reserves all claims,
8 rights, and remedies against Defendants with respect to:

9 a. Enforcement of the terms of this California Partial Consent Decree;

10 b. Except as specifically provided in Paragraph 72, civil penalties or
11 further injunctive relief, including prohibitory and mandatory injunctive provisions
12 intended to enjoin, prevent, and deter future misconduct, and/or incentivize its
13 detection, disclosure, and/or prosecution; or to enjoin false advertising, the making
14 of false or misleading statements or omissions, the engagement in any unfair or
15 fraudulent business practices as prohibited by California Business and Professions
16 Code §§ 17200, *et seq.*, violation of environmental laws, violation of consumer
17 protection laws, or the use or employment of any practice that constitutes unfair
18 competition;

19 c. All rights reserved by CARB under the US/CARB Consent Decree,
20 except as provided under this California Partial Consent Decree, including
21 Paragraph 72 of this California Partial Consent Decree;

22 d. Any criminal liability;

23 e. Any part of any claims for the violations of securities laws or the
24 California False Claims Act, California Government Code §§ 12650 *et seq.*;

25 f. Any and all claims for relief to consumers, including claims for
26 restitution, refunds, rescission, damages, or disgorgement;

27 g. Any other claims of any officer or agency of the State of California
28 other than CARB;

1 h. Any and all claims of the California Attorney General; and

2 i. Any claims held by individual consumers.

3 77. This California Partial Consent Decree, including the release set forth in
4 Paragraph 72, does not modify, abrogate, or otherwise limit the injunctive,
5 administrative, and other relief to be provided by Defendants under, nor any
6 obligation of any party or person under, the US/CARB Consent Decree.

7 78. By entering into this California Partial Consent Decree, Plaintiff is not
8 enforcing the laws of other countries, including the emissions laws or regulations of
9 any jurisdiction outside the United States. Nothing in this California Partial
10 Consent Decree is intended to apply to, or affect, Defendants' obligations under the
11 laws or regulations of any jurisdiction outside California. At the same time, the
12 laws and regulations of other countries shall not affect Defendants' obligations
13 under this California Partial Consent Decree.

14 79. This California Partial Consent Decree shall not be construed to limit the
15 rights of Plaintiff to obtain penalties or injunctive relief, except as specifically
16 provided in Paragraph 72. Plaintiff further reserves all legal and equitable remedies
17 to address any imminent and substantial endangerment to public health or welfare
18 or the environment arising at any of Defendants' facilities, or posed by the Subject
19 Vehicles, whether related to the violations addressed in this California Partial
20 Consent Decree or otherwise.

21 80. In any subsequent judicial proceeding initiated by Plaintiff for injunctive
22 relief, civil penalties, or other appropriate relief relating to Defendants' violations,
23 Defendants shall not assert, and may not maintain, any defense or claim based upon
24 the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim
25 preclusion, claim-splitting, or other defenses based upon any contention that the
26 claims raised by Plaintiff in the subsequent proceeding were or should have been
27 brought in the instant case, except with respect to the claims that have been
28 specifically released pursuant to Paragraph 72.

1 81. This California Partial Consent Decree is not a permit, or a modification
2 of any permit, under any federal, State, or local laws or regulations. Defendants are
3 responsible for achieving and maintaining complete compliance with all applicable
4 federal, State, and local laws, regulations, and permits, and Defendants' compliance
5 with this California Partial Consent Decree shall be no defense to any action
6 commenced pursuant to any such laws, regulations, or permits, except as set forth
7 herein. Plaintiff does not, by its consent to the entry of this California Partial
8 Consent Decree, warrant or aver in any manner that Defendants' compliance with
9 any aspect of this California Partial Consent Decree will result in compliance with
10 provisions of the Clean Air Act, or with any other provisions of United States,
11 State, or local laws, regulations, or permits.

12 82. This California Partial Consent Decree does not limit or affect the rights
13 of Defendants or Plaintiff against any third parties not party to this California
14 Partial Consent Decree, nor does it limit the rights of third parties not party to this
15 California Partial Consent Decree against Defendants, except as otherwise provided
16 by law.

17 83. This California Partial Consent Decree shall not be construed to create
18 rights in, or grant any cause of action to, any third party not a party to this
19 California Partial Consent Decree. No such third party shall be entitled to enforce
20 any aspect of this California Partial Consent Decree or claim any legal or equitable
21 injury for a violation of this California Partial Consent Decree.

22 **XIII. NOTICES**

23 84. Unless otherwise specified in this California Partial Consent Decree,
24 whenever any notification or other communication is required by this California
25 Partial Consent Decree, or whenever any communication is required in any action
26 or proceeding related to or bearing upon this California Partial Consent Decree or
27 the rights or obligations under this California Partial Consent Decree, it shall be
28 made in writing (except that if any attachment is voluminous, it shall be provided

1 on a disk, hard drive, or other equivalent successor technology), and shall be
2 addressed as follows:

3 All Notices shall be provided at the email or mail addresses below, as
4 applicable:

5 As to CARB by email:

HinoCD@arb.ca.gov

7 As to CARB by mail:

8 Chief Counsel
9 California Air Resources Board
10 Legal Office
11 1001 I Street
12 Sacramento, California 95814

12 All information should be submitted to CARB and the Office of the
13 California Attorney General electronically without paper copies, where possible.

14 As to the Office of the California Attorney General (on behalf of CARB) by
15 email:

16 Myung.Park@doj.ca.gov
17 Mike.Cayaban@doj.ca.gov
18 Ryan.Hoffman@doj.ca.gov
19 Josh.Caplan@doj.ca.gov
20 Corey.Moffat@doj.ca.gov

20 As to the Office of the California Attorney General (on behalf of CARB) by
21 mail:

22 Ryan R. Hoffman
23 Deputy Attorney General
24 Natural Resources Law Section
25 California Department of Justice
26 455 Golden Gate Avenue, Suite 11000
27 San Francisco, CA 94102

26 As to Defendants by mail:

27 Lanny Breuer
28 Noam Kutler

1 Jack Mizerak
2 Covington & Burling LLP
3 850 10th Street Northwest
4 Washington, DC 20001
5 Telephone: (202) 662-6000

6 As to Defendants by email:

7 lbreuer@cov.com
8 nkutler@cov.com
9 jmizerak@cov.com
10 123388@hino.co.jp
11 MKulick@HMMUSA.COM
12 SChacko@hino.com

13 85. Any Party may, by written notice to the other Parties, change its
14 designated notice recipient or notice address provided above.

15 **XIV. EFFECTIVE DATE**

16 86. The Effective Date of this California Partial Consent Decree shall be
17 deemed to be the US/CARB Consent Decree Effective Date.

18 **XV. RETENTION OF JURISDICTION**

19 87. The Court shall retain jurisdiction over this case until termination of this
20 California Partial Consent Decree, for the purpose of resolving disputes arising
21 under this California Partial Consent Decree, entering orders modifying this
22 California Partial Consent Decree, or effectuating or enforcing compliance with the
23 terms of this California Partial Consent Decree. The Court shall retain jurisdiction
24 over this case for the provisions of this California Partial Consent Decree that
25 remain after termination.

26 **XVI. SIGNATORIES/SERVICE**

27 88. Each undersigned representative of Defendants and Plaintiff certifies that
28 he or she is fully authorized to enter into the terms and conditions of this California
Partial Consent Decree and to execute and legally bind the Party he or she
represents to this document. The Office of the California Attorney General (in its

1 capacity as legal counsel to CARB) and CARB represent that they have the
2 authority to execute this California Partial Consent Decree on behalf of Plaintiff
3 and that, upon entry, this California Partial Consent Decree is a binding obligation
4 enforceable against Plaintiff under applicable law.

5 89. This California Partial Consent Decree may be signed in counterparts,
6 and its validity shall not be challenged on that basis. For purposes of this California
7 Partial Consent Decree, a signature page that is transmitted electronically (e.g., by
8 facsimile or emailed “PDF”) shall have the same effect as an original.

9 **XVII. INTEGRATION**

10 90. This California Partial Consent Decree with the Appendices constitutes
11 the final, complete, and exclusive agreement and understanding among the Parties
12 with respect to the settlement embodied in this California Partial Consent Decree
13 and supersedes all prior agreements and understandings, whether oral or written,
14 concerning the settlement embodied herein, with the exception of the US/CARB
15 Consent Decree. The Parties acknowledge that there are no documents,
16 representations, inducements, agreements, understandings or promises that
17 constitute any part of this California Partial Consent Decree or the settlement it
18 represents other than those expressly contained or referenced in this California
19 Partial Consent Decree. The following Appendices are incorporated by reference:

- 20 a. Appendix A: OBD Test Protocol
21 b. Appendix B: OBD Clusters
22 c. Appendix C: Preapproved OBD Noncompliances
23 d. Appendix D: Additional Reported OBD Noncompliances Template
24 e. Appendix E: Subject Engines

25 **XVIII. MODIFICATION**

26 91. The terms of this California Partial Consent Decree may be modified
27 only by a subsequent written agreement signed by the Parties. Where the
28 modification constitutes a material change to this California Partial Consent Decree,

1 it shall be effective only upon approval by the Court. Plaintiff will file any non-
2 material modifications with the Court. The correction of scrivener's errors will be
3 considered non-material modifications.

4 **XIX. TERMINATION**

5 92. With the exception of the injunctive provisions listed in Section IV
6 (Injunctive Provisions), termination of this California Partial Consent Decree shall
7 occur no earlier than: (a) 5 years after Defendants' submission of the CARB
8 Mitigation Payment required under Section VI (CARB Mitigation and Costs
9 Payment); (b) Defendants' submission of any and all stipulated penalty payments
10 required under Section VII (Stipulated Penalty Payments); (c) Defendants'
11 completion of all requirements under the US/CARB Consent Decree; (d)
12 Defendants' compliance with all OBD requirements under Section V (On-Board
13 Diagnostic Demonstration), including demonstration testing and submission of the
14 Emission Modification OBD Demonstration Report, PEVE L3 Testing Report, and
15 OBD Interim Reports; and (e) Defendants' completion of all repairs, modifications,
16 or recalls to remedy all Inspection and Maintenance (Clean Truck Check) OBD
17 Noncompliances identified within 5 years of the Date of Lodging as required in
18 Paragraph 16. If those requirements are satisfied, this California Partial Consent
19 Decree may be terminated, notwithstanding specified requirements that shall
20 continue after termination.

21 93. The injunctive provisions listed in Section IV (Injunctive Provisions) of
22 this California Partial Consent Decree shall terminate upon termination of the
23 US/CARB Consent Decree pursuant to Section XIX (Termination) of that
24 document.

25 **XX. FINAL JUDGMENT**

26 94. Upon approval and entry of this California Partial Consent Decree by the
27 Court, this California Partial Consent Decree shall constitute a final judgment of the
28 Court as to Plaintiff and Defendants with respect to the Claims alleged in the

1 California Complaint regarding the Subject Vehicles. The Court finds that there is
2 no just reason for delay and therefore enters this judgment as a final judgment
3 under Fed. R. Civ. P. 54 and 58.

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5 Dated and entered this ____ day of _____, 2025.

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UNITED STATES DISTRICT JUDGE

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1 FOR THE PEOPLE OF THE STATE OF CALIFORNIA BY AND THROUGH
2 THE CALIFORNIA AIR RESOURCES BOARD:

3
4 Date: January 13, 2025


5 MYUNG J. PARK
6 Supervising Deputy Attorney General
7 RYAN R. HOFFMAN
8 JOSHUA M. CAPLAN
9 COREY M. MOFFAT
10 Deputy Attorneys General
11 California Department of Justice
12 Office of the Attorney General
13 455 Golden Gate Avenue, Suite 11000
14 San Francisco, CA 94102
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1 FOR THE CALIFORNIA AIR RESOURCES BOARD:

2

3 Date: January 13, 2025

4



LIANE RANDOLPH
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

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STEVEN S. CLIFF, PH.D.
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

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ELLEN M. PETER
Chief Counsel
ABIGAIL D. MAY
Deputy Counsel
SHANNON DILLEY
Assistant Chief Counsel
IAN CECERE
Senior Attorney
ALLISON SWEENEY
Attorney

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Legal Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

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FOR HINO MOTORS, LTD.:

January 15, 2025
Date



SATOSHI OGISO
President & Chief Executive Officer

1 FOR HINO MOTORS MANUFACTURING U.S.A., INC.:

2
3 January 15, 2025

4 Date


5 DAVEY JUNG
6 President & Chief Executive Officer
7
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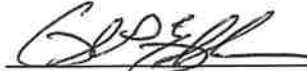
1 FOR HINO MOTORS SALES U.S.A., INC.:

2

3

4 January 15, 2025

5 **Date**



6 **GLENN ELLIS**

7 **President & Chief Executive Officer**

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1 COUNSEL FOR HINO MOTORS, LTD.,
2 HINO MOTORS MANUFACTURING U.S.A., INC., AND
3 HINO MOTORS SALES U.S.A., INC.:



4 January 15, 2025

5 Date

6 LANNY BREUER
7 MARK FINUCANE
8 NOAM KUTLER
9 JOHN MIZERAK
10 Covington & Burling LLP
11 850 10th Street Northwest
12 Washington, DC 20001
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16 nkutler@cov.com
17 jmizerak@cov.com

28

APPENDIX A

Protocol For On-Board Diagnostic (OBD) Demonstration Assessment of Emission Modification (“OBD Test Protocol”)

1. OBD Test Engines and Vehicles.
 - a. OBD Demonstration Engines (“Test Engines”). For each of OBD Clusters 3 and 6, Defendants shall acquire a representative high mileage engine(s) or use representative high mileage engine(s) in Defendants’ possession.
 - b. OBD Production Engine/Vehicle Evaluation (PEVE) Vehicles (“Test Vehicles”). For each of OBD Clusters 3 and 6, and for testing conducted in accordance with Paragraph¹ 2.b. (“PEVE Testing”), Defendants shall acquire production vehicles. The OBD PEVE Vehicles may be obtained from an appropriate source, including individual consumers who advertised their vehicles for sale or from Dealers.
 - c. Criteria for OBD Demonstration Engines and OBD PEVE Vehicles.
 - i. In selecting the Test Engine(s), the Defendants shall include only engines that meet the criteria set forth at 13 C.C.R. § 1971.5(c)(2)(C)(i)a. through h., except for 1971.5(c)(2)(C)(i)c., for which engines with mileage of at least 50 percent of the certified full useful life mileage are acceptable.
 - ii. Defendants shall ensure that the Test Engines and Test Vehicles do not meet any of the As-Received Testing Vehicle Rejection Criteria set forth at 40 C.F.R. Part 86, Subpart S, Appendix II.
 - iii. Nothing in this OBD Test Protocol precludes Defendants from testing or on-road driving of an engine or vehicle to ensure that it is in good working order prior to commencing testing under this OBD Test Protocol.
 - iv. Defendants shall obtain all reasonably available records that are related to emission repairs for the Test Engine or Test Vehicle from internal systems and databases, including records of warranty repairs and customer-paid repairs, tester logs, and electronic control unit (ECU) data.
 - v. Prior to selection of a Test Engine or Test Vehicle, Defendants shall make all repairs necessary to ensure proper functioning. Defendants shall not replace a part that is properly functioning if such part has been approved under a California Air Resources Board (CARB) Executive Order or is made by Defendants or Defendants’ suppliers. Defendants shall provide a written description of the repairs (including part replacements), and the reason for the repairs, in the Emission Modification OBD Demonstration Report, as defined in Paragraph 4.a.vi.

¹ Any reference to “Paragraph” means the paragraphs in this Appendix A, OBD Test Protocol, unless otherwise stated.

- vi. After selection of a Test Engine or Test Vehicle, Defendants shall make all repairs necessary to ensure proper functioning or choose to use a Secondary Test Engine or Secondary Test Vehicle in lieu of making repairs, as described in Paragraph 1.d.ii. Unless the Test Engine or Test Vehicle Malfunctions, Defendants shall not replace a part. Defendants shall provide a written description of the repairs (including part replacements) and the reason for the repairs, and the justification and any relevant data, in the Emission Modification OBD Demonstration Report.
 - vii. For part replacements performed under Paragraphs 1.c.v. or 1.c.vi., Defendant shall use a deteriorated part that has no less than half the mileage of the vehicle or replaced part at the time of the repair, except that the requirement to use deteriorated parts shall not apply to parts like seals, gaskets, screws, or clamps (installation materials).
 - viii. At any time, Defendants shall conduct any routine maintenance indicated by the applicable service or owner's manual to ensure proper functioning of a Test Engine or Test Vehicle, provided that Defendants provide a written description of the maintenance and the reason for the maintenance in the Emission Modification OBD Demonstration Report.
- d. Secondary Test Engines or Secondary Test Vehicles.
- i. Nothing in this OBD Test Protocol prohibits Defendants from obtaining additional Secondary Test Engines or Secondary Test Vehicles as needed. Defendants specifically reserve the ability to obtain additional OBD Demonstration Engines and OBD PEVE Vehicles for testing in Paragraphs 2.a. and 2.b. for any OBD Cluster. If Defendants cannot obtain additional Secondary Test Engines or Secondary Test Vehicles, Defendants shall notify CARB, providing proof of inability to procure Secondary Test Engines or Secondary Test Vehicles, and CARB shall extend the time to submit the Emission Modification OBD Demonstration Report described in Paragraph 4. to allow for procurement provided sufficient proof supports Defendants' claim.
 - ii. Upon a Malfunction of a Test Engine or Test Vehicle during or outside of testing under this OBD Test Protocol, Defendants shall follow the procedure below:
 - 1. First, Defendants shall stop any testing of the engine or vehicle and determine the reason for the Malfunction.
 - 2. Second, Defendants may elect to repair the engine or vehicle consistent with Paragraphs 1.c.vi. and 1.c.vii. and continue testing, or restart testing using a Secondary Test Engine or Secondary Test Vehicle with the following caveats:
 - a. If Defendants elect to repair the engine or vehicle, the repairs shall be reported to CARB in accordance with Paragraphs 4.a.i.1. and 4.a.vi. of this OBD Test Protocol.

- b. If Defendants elect to switch to a Secondary Test Engine or Secondary Test Vehicle:
 - i. If Defendants retain any test results generated prior to switching to the Secondary Test Engine or Secondary Test Vehicle, Defendants shall provide an engineering justification in writing explaining why the retained test results are not impacted by the Malfunction.
 - ii. Defendants may retain test results from an OBD Demonstration Engine in lieu of restarting and conducting all OBD demonstration testing required under Paragraph 2.a. on a Secondary OBD Demonstration Engine if and only if the following conditions are met with respect to the OBD Demonstration Engine that Malfunctioned and the Secondary OBD Demonstration Engine: (1) Defendant performs SCR efficiency and EGR low flow monitoring demonstrations on both engines, (2) the calibration set is the same on both engines, (3) both engines are the same Model and Model Year, and (4) the engine aging meets the requirements of Paragraphs 1.a. and 1.c.i.
 - 3. Defendants shall collect all data required (for each Test Engine and Test Vehicle), for each test, and document the Malfunction, including an explanation of the reason for the Malfunction and its impact on the test results, in accordance with the requirements of Paragraphs 4.a.i.2. and 4.a.vii. of this OBD Test Protocol.
 - e. Emission Modification Installation.
 - i. Prior to the commencement of OBD Demonstration testing as set forth in Paragraph 2. below, for each Test Engine and Test Vehicle undergoing such testing, if the engine or vehicle has not received the Emission Modification, then Defendants shall modify the Test Engine or Test Vehicle as follows:
 - 1. Defendants shall reflash the affected control units, altering their software calibrations to the Emission Modification, and implement any hardware changes that are included in the Emission Modification.
 - 2. Defendants shall not make any further hardware or software changes once the testing of the Emission Modification specified in Paragraph 2. begins. This does not preclude Defendants from repairing vehicles that experience a Malfunction as described in Paragraph 1.d.ii. after the Emission Modification is installed, carrying out repairs or scheduled

maintenance as permitted by Paragraphs 1.c.v. through 1.c.viii., or modifying a Test Engine or Test Vehicle in connection with testing conducted under Paragraph 2.

3. Nothing in this Paragraph 1.e. shall prevent Defendants from modifying an OBD Demonstration Engine or OBD PEVE Vehicle consistent with this OBD Test Protocol in order to conduct an OBD demonstration required under this OBD Test Protocol and return the engine or vehicle to normal operating conditions after the OBD demonstration, as permitted by 13 C.C.R. § 1971.1 or this OBD Test Protocol.

2. OBD Demonstration.

a. OBD Durability Demonstration Engine Testing.

- i. Demonstration of OBD Monitors for OBD Cluster 3 and 6. For an OBD Demonstration Engine in each of OBD Clusters 3 and 6, Defendants shall conduct a full OBD demonstration as set forth at 13 C.C.R. § 1971.1(i)(3), using the test methods (demonstration test sequence, failed part, and Infrequent Regeneration Adjustment Factor (IRAF)) set forth at 13 C.C.R. § 1971.1(i)(4), and apply the evaluation criteria set forth at 13 C.C.R. § 1971.1(i)(5) in accordance with the regulations and standards applicable to the Engine Family at the time the Engine Family was certified. CARB shall not prohibit Defendants from using test methods as previously approved for the respective Model Year Engine Family. The allowance in 13 C.C.R. § 1971.1(i)(4.4) to use internal calibration sign-off test procedures in lieu of official test procedures shall not apply.
- ii. Default Action Monitor Demonstration. For any monitor with a default action demonstrated under Paragraphs 2.a.i., Defendants may satisfy the demonstration requirement by showing that emissions remain below the applicable OBD threshold with a best performing unacceptable (“BPU”) component and the default emission control strategy disabled through computer modifications.
- iii. Specific Alternative or Modified Monitor Demonstration Proposals. If Defendants seek to use a specific alternative or modified OBD demonstration procedure described in 13 C.C.R. § 1971.1 that may be used with Executive Officer approval, Defendants shall submit, pursuant to Paragraph 3.a.iv, a proposal describing the specific alternative or modified demonstration procedure in detail for CARB approval for each OBD Cluster for which Defendants seek to use a specific alternative or modified demonstration procedure.
- iv. Defendants may perform OBD testing under Paragraphs 2.a.i. on two OBD Demonstration Engines within an OBD Cluster simultaneously if and only if the following conditions are met with respect to both of the OBD Demonstration Engines: (1) Defendants perform selective catalytic reduction (SCR) efficiency and exhaust gas recirculation (EGR) low

flow monitoring demonstrations on both engines, (2) the calibration set is the same on both engines, (3) both engines belong to the same Engine Family, and (4) the engine aging meets the requirements of Paragraphs 1.a. and 1.c.i.

b. Production Engine/Vehicle Evaluation Testing.

- i. PEVE L1 Testing OBD Clusters 3 and 6. Defendants shall conduct, for each Engine Family in each of OBD Clusters 3 and 6, PEVE 13 C.C.R. § 1971.1(1)(1) testing on one OBD PEVE Vehicle in accordance with the regulations and standards applicable to the Engine Family at the time the Engine Family was certified. Defendants may alternatively conduct testing on one OBD PEVE Vehicle for each calibration if the same calibration is used for more than one Engine Family.
- ii. PEVE L2 Testing OBD Clusters 3 and 6. For each of OBD Clusters 3 and 6, Defendants shall conduct PEVE 13 C.C.R. § 1971.1(1)(2) testing on a Test Vehicle in accordance with the regulations and standards applicable to the Engine Family at the time the Engine Family was certified.
- iii. PEVE L3 Testing OBD Clusters 3 and 6. Defendants shall collect and report in-use monitoring performance data as required by 13 C.C.R. § 1971.1(1)(3) (i.e., verification and reporting of in-use monitoring performance) from a minimum of 10 vehicles per monitoring performance group from each OBD Cluster 3 and 6, within 18 months of approval of the Remedial Plan in accordance with the regulations and standards applicable to the Engine Family at the time the Engine Family was certified. Vehicles shall be selected, for the purposes of this Paragraph only, with a minimum general denominator of 100 or a maximum of 365 Days of service after implementation of the fix.

3. OBD Interim Report.

- a. Contents and Submission Timing. Within 60 Days of approval of the Remedial Plan, for both OBD Cluster 3 and OBD Cluster 6, Defendants shall submit to CARB a written report (the “OBD Interim Report”) for review and approval that contains the following:
 - i. A list of proposed OBD Demonstration Engines, including engine and aftertreatment mileage, Model Years, Engine Families, the engine HP rating, and the engine torque rating.
 - ii. A list of proposed OBD PEVE Vehicles, including VINs, odometer readings, Model Years, Engine Families, the engine horsepower (HP) rating, and the engine torque rating to be used for purposes of PEVE Testing as required under Paragraphs 2.b.i. and 2.b.ii.
 - iii. For each OBD Cluster a list of diagnostics, demonstration test sequences, failed parts, and OBD IRAF determination method Defendants propose for testing required under Paragraph 2.a.
 - iv. For each OBD Cluster for which Defendants seek to use a specific alternative or

- modified OBD demonstration procedure other than the test methods specified in Paragraph 2.a.i., a proposal describing the procedure for each OBD Cluster, as well as a justification for the need to use an alternative or modified OBD demonstration procedure.
- v. For each OBD Cluster a list of diagnostics and the method used to induce a malfunction for each diagnostic for testing required under Paragraph 2.b.ii.
 - vi. Any testing data supporting Defendants' proposal that CARB may need to evaluate the proposal.
- b. Certification. Defendants shall include a certification, in accordance with Section V (OBD Demonstration), Paragraph 18 of the California Partial Consent Decree, with respect to all information contained in the OBD Interim Report.
 - c. Consultation. Defendants shall make themselves available, upon request by CARB, within 10 Business Days after Defendants submit the OBD Interim Report, to provide information that CARB needs to evaluate the OBD Interim Report.
 - d. Response. Defendants' OBD Interim Report shall be deemed approved unless otherwise notified in writing by CARB within 60 Business Days of CARB's receipt of the OBD Interim Report. Any approval, approval in part, disapproval, or failure to make a determination shall follow Paragraphs 5.a.i.1.-5.a.i.4.
4. OBD Demonstration Data Collection and Dissemination.
- a. Testing Data. Defendants shall complete all testing required under Paragraphs 2.a., 2.b.i., and 2.b.ii. of this OBD Test Protocol and submit all testing results to CARB in a single submission as a report (the "Emission Modification OBD Demonstration Report") for each OBD Cluster within 18 months of approval of the Remedial Plan, however in no event shall the deadline to submit the Emission Modification OBD Demonstration Report be less than 3 months following CARB's approval of the OBD Interim Report. If a test is not required for a specific OBD Cluster under this OBD Test Protocol, the corresponding data collection and dissemination requirement does not apply. Each Emission Modification OBD Demonstration Report shall include the following information, with the underlined Paragraph and Subparagraph "titles" serving as section and subsection headings for the Report:
 - i. Executive Summary. The Emission Modification OBD Demonstration Report shall include an executive summary that:
 - 1. Test Engine or Test Vehicle Repairs. Provides a description of any repairs of any Test Engine, Test Vehicle, Secondary Test Engine, or Secondary Test Vehicle pursuant to Paragraphs 1.c. and 1.d.ii.2. of this OBD Test Protocol.
 - 2. Test Engine or Test Vehicle Malfunctions. Provides a description of any Malfunction of any Test Engine, Test Vehicle, Secondary Test Engine, or Secondary Test Vehicle pursuant to Paragraph 1.d.ii. of this OBD Test Protocol and describes the reason for the Malfunction, if known.
 - 3. Aborted/Invalidated Tests. Lists all tests performed under this OBD Test Protocol that were aborted and/or invalidated for any reason and provides a description of the reason the test was aborted and/or deemed

invalid (e.g., equipment problems). The data for any aborted or invalidated test shall be provided together with the data from any completed tests, in the relevant “section” of the Emission Modification OBD Demonstration Report below.

4. Certification. Includes a certification, in accordance with Section V (OBD Demonstration), Paragraph 18 of the California Partial Consent Decree, with respect to all information contained in the Emission Modification OBD Demonstration Report that: explicitly states that the OBD Test Protocol was followed; the OBD Interim Report under Paragraph 3 was complete and accurate and any conditions specified in CARB’s approval of the OBD Interim Report were followed; and that the laboratory quality assurance/quality control (QA/QC) reports referenced in Paragraph 4.a.viii. were in effect at the time of testing and were followed.
- ii. Demonstration of OBD Monitors. For each demonstration of OBD monitors conducted under Paragraph 2.a.i. Defendants shall provide to CARB: (1) a written description of any OBD Noncompliance, concerns, or other nonconformities with the applicable version of 13 C.C.R. § 1971.1; (2) all test data collected as set forth at 13 C.C.R. § 1971.1(i)(4.3); (3) a Flat File of each dynamometer test that includes engine identification information, a test identification number, and average emissions results per test cycle and weighted emissions results; (4) documentation of the specific hardware used in the testing; (5) specification of demonstration method used (i.e., on-road or dynamometer test cycle) and, if CARB approved an alternate procedure under Paragraph 3.a.iv., the date of the approval; (6) all demonstration test results; and (7) any relevant associated data.
- iii. PEVE L1 Testing. For Production Engine/Vehicle Evaluation 13 C.C.R. § 1971.1(l)(1) testing conducted under Paragraph 2.b.i., Defendants shall provide: (1) a written report of the problem(s) identified consistent with 13 C.C.R. § 1971.1(l)(1.5.1)(B); and (2) a report of the results and the test log file, consistent with 13 C.C.R. § 1971.1(l)(1.5.1).
- iv. PEVE L2 Testing. For Production Engine/Vehicle Evaluation 13 C.C.R. § 1971.1(l)(2) testing conducted under Paragraph 2.b.ii., Defendants shall provide: (1) a written description of the results of all testing conducted pursuant to section 13 C.C.R. § 1971.1(l)(2), including the method used to induce a malfunction in each diagnostic, the Malfunction Indicator Light (MIL) illumination status, and the confirmed fault code(s) stored, and any OBD Noncompliances, concerns, or other nonconformities with the applicable version of 13 C.C.R. § 1971.1; and (2) a list of diagnostics that were previously demonstrated under Paragraph 2.a.i.
- v. Log Sheets. For all data provided pursuant to Paragraphs 4.a.ii. (Demonstration of OBD Monitors), 4.a.iii. (PEVE L1 Testing), and 4.a.iv. (PEVE L2 Testing), Defendants shall submit a log sheet listing the unique Software Calibration Identification Numbers (CAL ID) and Software Calibration Verification Numbers (CVN) for the Emission Modification

Configuration; for the OBD Demonstration Engine or OBD PEVE Vehicle, the Model Year, Model, and VIN (if applicable); a test identification number; and the date, time, drive cycle, and mileage (both for the beginning and for the ending of the test). Such log sheets and data sets shall also include data for any tests that were invalidated for any reason.

- vi. Test Engine or Test Vehicle Repairs. Any records related to any repairs of any Test Engine, Test Vehicle, Secondary Test Engine, or Secondary Test Vehicle pursuant to Paragraphs 1.c. and 1.d.ii.2. of this OBD Test Protocol. Records prior to Defendants' acquisition of the engine or vehicle in accordance with Paragraphs 1.a. or 1.b. may be drawn from internal Defendants' systems and databases pursuant to Paragraph 1.c.iv.
 - vii. Test Engine or Test Vehicle Malfunctions. Any records related to any Malfunction of any Test Engine, Test Vehicle, Secondary Test Engine, or Secondary Test Vehicle, and to the determination of the reason for the Malfunction pursuant to Paragraph 1.d.ii. of this OBD Test Protocol, if known. This excludes malfunctions implanted as part of an OBD demonstration pursuant to Paragraph 2.a.i. or a malfunction implanted as part of a PEVE test under Paragraph 2.b.ii.
 - viii. Laboratory QA/QC Reports. The QA/QC report(s) for any dynamometer laboratory conducting testing pursuant to this OBD Test Protocol that covers the relevant period of dynamometer testing shall be maintained and furnished and shall constitute part of the administrative record of this case, pursuant to Section XII (Dispute Resolution) of this California Partial Consent Decree.
- b. PEVE L3 Testing OBD Clusters. Defendants shall collect all PEVE section 1971.1(1)(3) in-use monitoring performance data as required under Paragraphs 2.b.iii. and submit it to CARB in a single submission ("PEVE L3 Testing Report"), for each OBD Cluster within 18 months of approval of the Remedial Plan. The PEVE L3 Testing Report shall include: (1) a report that includes a summary of any problems identified in the data pursuant to 13 C.C.R. § 1971.1(1)(3.4); and (2) all of the in-use performance tracking data reported through SAE J1979 (i.e., all numerators, denominators, the general denominator, and the ignition cycle counter), the engine model year, the Engine Family, the engine serial number, the engine HP rating, the engine torque rating, the date the data were collected, the chassis odometer reading, the vehicle/chassis VIN, the monitoring performance group, the engine control module (ECM) CAL ID, and the distance traveled and be in the standardized format detailed in Attachment D of ARB Mail-Out #MSC 09-22 consistent with 13 C.C.R. § 1971.1(1)(3.4).

5. CARB Review and Approval of OBD Interim Report.

- a. Agency Review of Testing Data. CARB shall review the OBD Interim Report to determine whether the provided information and proposed criteria pursuant to Paragraphs 3.a and 3.b. are acceptable to begin the OBD Demonstration Testing pursuant to Paragraph 2., according to the following criteria and timeline:
 - i. Process for Review and Approval. CARB shall have 60 Business Days, beginning at 12:01 am Pacific Time on the first Business Day after receipt of the

OBD Interim Report, to approve or disapprove the OBD Interim Report, subject to Section XII (Dispute Resolution) of the California Partial Consent Decree.

1. Approval. If CARB approves the OBD Interim Report in accordance with the requirements of this OBD Test Protocol, CARB shall timely notify Defendants by letter titled: “Notice of Approval of OBD Interim Report: [corresponding OBD Cluster],” after which Defendants shall then proceed with the OBD Demonstration Testing pursuant to Paragraph 2. as described by the OBD Interim Report.
2. Approval In Part. If CARB approves part of a proposed OBD Interim Report and disapproves the remainder, CARB shall timely notify Defendants by letter titled: “Notice of Partial Approval/Partial Disapproval of OBD Interim Report: [corresponding OBD Cluster].” CARB shall identify each specific basis for disapproval in writing. Within 45 Business Days, or such other time as the parties agree to in writing, of receipt of CARB’s written identification of the specific bases for the disapproval, Defendants may submit one revised proposed OBD Interim Report that must resolve all of CARB’s bases for disapproval. CARB shall either approve or disapprove each complete revision within 45 Business Days of receipt of the revised proposed OBD Interim Report. If a resubmitted Submission is disapproved, in whole or in part, CARB shall either again require Defendants to correct any deficiencies in accordance with Paragraphs 5.a.i.2., or 5.a.i.3.; or CARB itself/themselves shall correct any deficiencies, and Defendants shall implement the Submission as modified by CARB, subject to Defendants’ right to invoke dispute resolution and the right of CARB to seek stipulated penalties. CARB shall then issue either a “Final Notice of Disapproval of Remainder of OBD Interim Report: [corresponding OBD Cluster],” that identifies the specific bases for the disapproval, or a “Notice of Approval of Remainder of OBD Interim Report: [corresponding OBD Cluster].” If CARB issues a Final Notice of Disapproval of Remainder, Defendants may invoke dispute resolution under Section XII (Dispute Resolution) of the California Partial Consent Decree.
3. Disapproval. If CARB disapproves in whole a proposed OBD Interim Report in accordance with the requirements of this OBD Test Protocol, CARB shall timely notify Defendants by letter titled: “Notice of Disapproval of OBD Interim Report: [corresponding OBD Cluster],” that identifies each specific basis for disapproval. Within 45 Business Days, or such other time as the parties agree to in writing, of receipt of CARB’s letter(s), Defendants may submit one revised proposed OBD Interim Report that must resolve all of CARB’s bases for disapproval. CARB shall either approve or disapprove such revision within 45 Business Days of receipt of the revised OBD Interim Report. If a resubmitted Submission is disapproved, in whole or in part, CARB shall either again require Defendants to correct any deficiencies in accordance with this

Paragraph 5.a.i.3. or Paragraph 5.a.i.2.; or CARB itself/themselves shall correct any deficiencies, and Defendants shall implement the Submission as modified by CARB, subject to Defendants' right to invoke dispute resolution and the right of CARB to seek stipulated penalties. CARB shall then issue either a "Final Notice of Disapproval of OBD Interim Report: [corresponding OBD Cluster]," that identifies the specific bases for the disapproval, or a "Notice of Approval of OBD Interim Report: [corresponding OBD Cluster]." If CARB issues a Final Notice of Disapproval, Defendants may invoke dispute resolution under Section XII (Dispute Resolution) of the California Partial Consent Decree.

4. Failure to Make a Determination. If CARB fails to make a determination on an OBD Interim Report within 60 Business Days of receipt of the OBD Interim Report (as of 12:01 am Pacific Time on the 61st Day after receipt of the OBD Interim Report), the OBD Interim Report is deemed approved in accordance with Paragraph 5.a.i.1., above, regardless of whether CARB has issued or will issue a "Notice of Approval of OBD Interim Report: [corresponding OBD Cluster]." Defendants shall proceed with the OBD Demonstration Testing pursuant to Paragraph 2. as described by the OBD Interim Report after the passage of this 60th Day.

6. Confirmatory Testing.

- a. Within 90 days of submission of the Emission Modification OBD Demonstration Report, CARB may provide notice of intent to perform confirmatory testing pursuant to 13 C.C.R. § 1971.1(i)(6). If such a notice is made, Defendants shall provide access to the Test Engine that Defendants used to conduct testing pursuant to Paragraph 2.a. and other equipment necessary for CARB to duplicate Defendants' testing.
- b. In the event that the Test Engine experiences a Malfunction during CARB testing, Defendants may procure a replacement engine that satisfies the criteria in Paragraph 1.c.

APPENDIX B**On-Board Diagnostic (OBD) Clusters**

MY	Engine Family	Cluster
2010	AHMXH07.7JVB	Cluster 1
2011	BHMXH07.7JVB	
2012	CHMXH07.7JVB	
2013	DHMXH07.7JVB	
2013	DHMXH07.7JVC	
2014	EHMXH07.7JVB	Cluster 2
2014	EHMXH07.7JVC	
2015	FHMXH07.7JVB	
2015	FHMXH07.7JVC	
2016	GHMXH07.7JVB	
2016	GHMXH07.7JWU	Cluster 3
2017	HHMXH07.7JVB	
2017	HHMXH07.7JWU	
2018	JHMXH07.7JVB	
2019	KHMXH07.7JVB	
2013	DHMXH05.1JTP	Cluster 4
2014	EHMXH05.1JTP	Cluster 5
2015	FHMXH05.1JTP	
2016	GHMXH05.1JTP	
2017	HHMXH05.1JTP	Cluster 6
2018	JHMXH05.1JTP	
2019	KHMXH05.1JTP	

APPENDIX C

Pre-Approved On-Board Diagnostic (OBD) Noncompliances

OBD Cluster	Engine Family	Model Year	Name of OBD Noncompliance
3	HHMXH07.7JVB HHMXH07.7JWU	2017	1) Exhaust Gas Sensor Monitor In-Use-Monitor Performance Ratio (IUMPR) 2) Non-Methane Hydrocarbon (NMHC) Converting Catalyst Conversion Efficiency Monitor Threshold Part Aging 3) Selective Catalytic Reduction (SCR) System Conversion Efficiency Monitor Threshold Part Aging 4) Downstream Oxides of Nitrogen (NOx) Sensor Monitoring Capability 5) Fuel Rail Pressure Sensor Rationality Monitoring 6) Diesel Particulate Filter (DPF) Differential Pressure Sensor Rationality Monitoring 7) Diesel Exhaust Fluid (DEF) Quality Temperature Sensor Monitoring 8) Data Stream Reporting 9) Test Results Reporting 10) Cold Start Emission Reduction Strategy (CSERS) System Level Monitor
	JHMXH07.7JVB	2018	1) Exhaust Gas Sensor Monitor IUMPR 2) NMHC Converting Catalyst Conversion Efficiency Monitor Threshold Part Aging 3) SCR System Conversion Efficiency Monitor Threshold Part Aging 4) Downstream NOx Sensor Monitoring Capability 5) Misfire Monitoring 6) Exhaust Gas Recirculation (EGR) High Flow Monitoring 7) Ammonia Slip Catalyst Monitoring 8) Upstream NOx Sensor Monitoring 9) DPF Differential Pressure Sensor Rationality Monitoring 10) DEF Quality Temperature Sensor Monitoring 11) Mass Air Flow (MAF) Sensor Rationality Monitoring 12) Test Results Reporting 13) DEF Quality Sensor Rationality Monitoring 14) CSERS System Level Monitor
	KHMXH07.7JVB	2019	1) Downstream NOx Sensor Monitoring Capability 2) Misfire Monitoring 3) SCR System Conversion Efficiency Monitoring 4) MAF Sensor Rationality Monitoring 5) CSERS System Level Monitor

6	HHMXH05.1JTP	2017	<ol style="list-style-type: none"> 1) Exhaust Gas Sensor Monitor IUMPR 2) NMHC Converting Catalyst Conversion Efficiency Monitor Threshold Part Aging 3) SCR System Conversion Efficiency Monitor Threshold Part Aging 4) Downstream NOx Sensor Monitoring Capability 5) Fuel Rail Pressure Sensor Rationality Monitoring 6) DPF Differential Pressure Sensor Rationality Monitoring 7) DEF Quality Temperature Sensor Monitoring 8) Data Stream Reporting 9) Test Results Reporting
	JHMXH05.1JTP	2018	<ol style="list-style-type: none"> 1) Exhaust Gas Sensor Monitor IUMPR 2) NMHC Converting Catalyst Conversion Efficiency Monitor Threshold Part Aging 3) SCR System Conversion Efficiency Monitor Threshold Part Aging 4) Downstream NOx Sensor Monitoring Capability 5) Misfire Monitoring 6) EGR High Flow Monitoring 7) Ammonia Slip Catalyst Monitoring 8) DPF Differential Pressure Sensor Rationality Monitoring 9) DEF Quality Temperature Sensor Monitoring 10) MAF Sensor Rationality Monitoring 11) Test Results Reporting 12) DEF Quality Sensor Rationality Monitoring
	KHMXH05.1JTP	2019	<ol style="list-style-type: none"> 1) Downstream NOx Sensor Monitoring Capability 2) SCR System Conversion Efficiency Monitoring 3) MAF Sensor Rationality Monitoring

APPENDIX D

Additional Reported On-Board Diagnostic (OBD) Noncompliances Template

Hino to fill out this form and submit to CARB for each Additional Reported OBD Noncompliance following or concurrently with submittal of the Emission Modification OBD Demonstration Report or PEVE L3 Testing Report.

OBD Cluster	Engine Family	Model Year	Name of OBD Noncompliance
3			
6			

APPENDIX E
Subject Engines

<u>On-road</u>		
<u>MY</u>	<u>Engine Model</u>	<u>Engine Family</u>
2010	J08E-VC	AHMXH07.7JVC
2010	J08E-VB	AHMXH07.7JVB
2011	J08E-VC	BHMXXH07.7JVC
2011	J08E-VB	BHMXXH07.7JVB
2012	J05E-TP	CHMXH05.1JTP
2012	J08E-VC	CHMXH07.7JVC
2012	J08E-VB	CHMXH07.7JVB
2013	J05E-TP J05E-UG	DHMXH05.1JTP
2013	J08E-VC	DHMXH07.7JVC
2013	J08E-VB	DHMXH07.7JVB
2014	J05E-TP J05E-UG	EHMXH05.1JTP
2014	J08E-VC	EHMXH07.7JVC
2014	J08E-VB	EHMXH07.7JVB
2015	J05E-TP J05E-UG	FHMXH05.1JTP
2015	J08E-VC	FHMXH07.7JVC
2015	J08E-VB	FHMXH07.7JVB
2016	J05E-TP J05E-UG	GHMXH05.1JTP
2016	J08E-VB	GHMXH07.7JVB
2016	J08E-WU	GHMXH07.7JWU
2017	J05E-TP J05E-UG	HHMXH05.1JTP
2017	J08E-VB	HHMXH07.7JVB
2017	J08E-WU	HHMXH07.7JWU
2018	J05E-TP J05E-UG	JHMXH05.1JTP
2018	J08E-WU J08E-VB	JHMXH07.7JVB
2019	J05E-TP J05E-UG	KHMXH05.1JTP

2019	J08E-WU J08E-VB	KHMXH07.7JVB
2019	A09C-VD A09C-VE A09C-VF	KHMXH08.9AVF

<u>Off-road</u>		
<u>MY</u>	<u>Engine Model</u>	<u>Engine Family</u>
2011	AA-J05E-TK AA-J08E-UV	BHMXL07.7JUV
2011	AA-P11C-VC	BHMXL10.5PVC
2011	AA-E13C-VV AB-E13C-VV AC-E13C-VV	BHMXL12.9EVV
2012	AA-J05E-TJ	CHMXL05.1JTJ
2012	AA-J08E-UV AA-J05E-TK	CHMXL07.7JUV
2012	AA-P11C-VC	CHMXL10.5PVC
2012	AA-E13C-VV AB-E13C-VV AC-E13C-VV	CHMXL12.9EVV
2013	AA-J05E-TJ	DHMXL05.1JTJ
2013	AA-J08E-UV AA-J05E-TK	DHMXL07.7JUV
2013	AA-P11C-VC	DHMXL10.5PVC
2013	AA-E13C-VV AB-E13C-VV AC-E13C-VV	DHMXL12.9EVV
2014	AA-J05E-TJ	EHMXL05.1JTJ

2014	AA-J05E-UM AA-J05E-UN AA-J08E-VV	EHMXL07.7JVV
2015	AA-J05E-UM AA-J05E-UN AA-J08E-VV AB-J08E-VV	FHMXL07.7JVV
2015	AA-P11C-VN	FHMXL10.5PVN
2016	AA-J05E-UM AA-J05E-UN AA-J08E-VV AB-J08E-VV AC-J08E-VV	GHMXL07.7JVV
2016	AA-P11C-VN	GHMXL10.5PVN
2017	AA-J05E-UM AB-J05E-UM AA-J05E-UN AA-J08E-VV AC-J08E-VV AA-J08E-WV	HHMXL07.7JVV
2017	AA-P11C-VN	HHMXL10.5PVN

2018	AA-J05E-UM AB-J05E-UM AA-J05E-UM AA-J05E-UN AA-J08E-VV AC-J08E-VV	JHMXL07.7JVV
2018	AA-P11C-VN	JHMXL10.5PVN
2019	AA-J08E-WV	KHMXL07.7JVV
2019	AC-J05E-VA	KHMXL05.1JVA
2019	AA-J05E-UM AB-J05E-UM AA-J05E-UN AA-J08E-VV AC-J08E-VV	KHMXL07.7JVV

2019	AA-J08E-YD AB-J08E-YD AA-J05E-VB AA-J05E-VA AB-J05E-VA	KHMXL07.7JYD
2019	AA-P11C-VN	KHMXL10.5PVN
2019	AA-E13C-YM	KHMXL12.9EYM