

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Malibu Boats, LLC (MALIBU), with its principal location at 5075 Kimberly Way, Loudon, Tennessee 37774 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) Regulation. CARB adopted the "*Spark-Ignition Marine Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2440-2447) (SIME Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from these off-road engines.
- (3) Regulatory Provisions. Manufacturers of new spark-ignition marine engines that are manufactured for sale, sold, offered for sale, introduced, delivered, or imported for introduction into commerce into California are required to certify these engines and obtain an Executive Order (EO) from CARB. The engines must meet the emission and evaporative emission standards, contain an on-board engine malfunction detection system, and the manufacturer must also properly label, meet defects warranty requirements, report, and meet the testing and recall requirements. (Cal. Code Regs., tit. 13, §§ 2440-2447.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand seven hundred and twenty-five dollars (\$40,725.00 USD) for each strict liability violation of the SIME Regulation, respectively, for each noncompliant spark-ignition marine engine. (Health & Saf. Code, § 43016, 43154; Cal. Code Regs., tit.13, § 2440 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, MALIBU was organized under the laws of Delaware as a Corporation, "doing business as" MALIBU, and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) VES-2022-C00608, which was issued on April 11, 2022. CARB alleges MALIBU violated the SIME Regulation by manufacturing for sale, selling, offering for sale, introducing, importing, or delivering for introduction into commerce in California, new spark-ignition marine engines that failed to comply with the Regulation's requirements. Specifically, MALIBU failed to: Obtain an EO (Cal. Code Regs., tit.

13, § 2440(a)(2)); meet the emission standards (Cal. Code Regs., tit. 13, § 2442); meet the Consumer/Environmental labeling requirements (Cal. Code Regs., tit. 13, § 2443.1, 2443.2, 2443.3), resulting in 107 violations, as outlined in NOV VES-2022-C00608. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against MALIBU for each, and every vessel involved in the violations and each day.

- (7) Acknowledgment. MALIBU admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, MALIBU has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against MALIBU for the alleged violations referred to above in the Legal Background and Case Background, and MALIBU's agreement to complete all terms and conditions set forth below, CARB and MALIBU agree as follows:

- (9) Settlement Amount. MALIBU shall pay a civil penalty of two hundred forty-eight thousand, two hundred fifty dollars (\$248,250.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled Placer County Community Based SEP Phase 2 in the amount of two hundred forty-eight thousand, two hundred fifty dollars (\$248,250.00 USD), consistent with CARB's SEP Policy, for a total settlement of four hundred ninety-six thousand, five hundred dollars (\$496,500.00 USD). MALIBU shall make all payments within 30 calendar days from the date CARB notifies MALIBU of the full execution of the Settlement Agreement in accordance with the payment schedule in Paragraph 10 (Payment Schedule).
- (10) Payment Schedule.

Payment Due Date:	In the Amount of and Payable To:
30 Days from Notification	\$248,250 California Air Resources Board
30 Days from Notification	\$248,250 SEP Administrator

- (11) Civil Penalty Payment Method. MALIBU shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. MALIBU is responsible for all

payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to MALIBU in accordance with Paragraph 16 (Notices).

- (12) SEP Payment Method(s). MALIBU shall fund the SEP by wire transfer or check, payable to the SEP implementer/recipient, Placer County Air Pollution Control District, using instructions provided separately by CARB in a Payment Transmittal Form. MALIBU is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to MALIBU in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. MALIBU has agreed that by funding the SEP entitled Placer County Community Based SEP Phase 2, MALIBU will not receive any direct or indirect financial benefit, and that whenever MALIBU publicizes or refers to the SEP or the results of the SEP, MALIBU will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, MALIBU assigns any and all rights against the SEP implementer to CARB.
- (15) Documents. MALIBU shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and SEP, and a copy of the Payment Transmittal Forms to the address or email in Paragraph 16 (Notices).
- (16) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Vehicle, Parts, and Consumer Products Enforcement Branch
Vehicle Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to MALIBU:
Ritchie Anderson
5075 Kimberly Way
Loudon, Tennessee 37774
ritchiera@malibuboats.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, MALIBU shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. MALIBU agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 37 paragraphs.
- (20) Binding Effect. This Settlement Agreement binds MALIBU, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (23) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (24) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

- (25) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (26) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (27) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (28) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the civil penalty and SEP payments, and all other undertakings above, CARB hereby releases MALIBU and its principals, officers, receivers, trustees, successors and assignees, subsidiary, and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (33) Per Unit Penalty. The per unit or per vessel penalty in this case is a maximum of forty thousand, seven hundred twenty-five dollars (\$40,725.00 USD) per action under Health and Safety Code sections 43016 and 43154, for violations of the SIME Regulation. (Cal. Code Regs., tit.13, §§ 2440 et seq.) The penalty of \$496,500 over an unspecified number of days of violation is for 107 noncompliant spark-ignition marine engines. The per unit penalty in this case is approximately \$4,640 per noncompliant unit.
- (34) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the SI Marine engines did not meet the regulatory requirements, all emissions from it were excess and illegal.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by MALIBU or confidential settlement communications.
- (37) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against MALIBU with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other

- provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against MALIBU with respect to:
- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by MALIBU to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, MALIBU shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of MALIBU or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against MALIBU, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. MALIBU is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; MALIBU's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that MALIBU's compliance with any aspect of this Settlement Agreement will

result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: August 31, 2022

Malibu Boats, LLC

Signature: /S/

Name: Ritchie Anderson

Title: Chief Operating Officer

Date: August 22, 2022