

SETTLEMENT AGREEMENT AND RELEASE

This Agreement is dated as of the 3rd day of Nov., 2012, and is entered into by and between Yamaha Motor Corporation, USA ("Yamaha USA") and Yamaha Motor Company, Ltd. ("Yamaha Japan"), on the one hand, and the People of the State of California, ex rel. the California Air Resources Board ("CARB"), and its Executive Officer, James Goldstene ("Goldstene"), on the other hand.

RECITALS

WHEREAS, on or about July 28, 2009, Yamaha USA filed an action in San Diego County Superior Court against CARB and James Goldstene, in his capacity as CARB's Executive Officer and in his individual capacity, captioned *Yamaha Motor Corporation, USA v. Goldstene, The California Air Resources Board*, San Diego Superior Court Case Number 37-2009-00094919-CU-MC-CTL, which was transferred to the Orange County Superior Court on or about September 17, 2010 and coordinated with the CARB Action (as defined below) under Orange County Superior Court Case Number 30-2010-00430546-CU-MC-CXC (the "Yamaha Action"). The Yamaha Action sought declaratory and injunctive relief against CARB and Goldstene arising from alleged violations of CARB policies, the California Administrative Procedure Act, and the California and United States Constitutions; and

WHEREAS, on or about October 8, 2009, CARB filed an action in Orange County Superior Court against Yamaha USA and Yamaha Japan, captioned *The People of the State of California ex rel. The California Air Resources Board v. Yamaha Motor Company, Ltd., Yamaha Motor Corporation, USA*, Orange County Superior Court Case Number 30-2009-00309935-CU-TT-CXC (the "CARB Action"). The Fourth Amended Complaint in the CARB Action alleged violations of California Health and Safety Code sections 43151-43153 and 43016 and sought statutory penalties against Yamaha USA and Yamaha Japan in connection with the alleged importation, delivery, sale and labeling of 2007 Model Year Rhino off-road vehicles; and

WHEREAS, the Parties deny the material allegations asserted against them in the CARB Action and the Yamaha Action; and

WHEREAS, the Parties now desire fully and finally to settle the CARB Action, the Yamaha Action, and all disputes and Released Claims (as defined below) between them pertaining to the 2007 Model Year Rhinos, acknowledging that settlement is in the best interests of the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

DEFINITIONS

"**Agreement**" means this Settlement Agreement, including the Exhibits attached hereto.

"**CARB**" means the People of the State of California ex rel. California Air Resources Board, the California Air Resources Board, and any of its predecessors, successors, assigns, entities,

divisions, branches, districts, agencies, and affiliates, and their current and former employees, officers, branch and division chiefs, supervisors, Board Members, attorneys, agents, and representatives.

"Court" means the Honorable Nancy Wieben Stock of the Superior Court of California for the County of Orange, or any successor judge to Judge Stock.

"Goldstene" means James Goldstene, the Executive Officer of CARB, in both his official and individual capacity.

"Released Claims" means any and all claims, counterclaims, cross-claims, defenses, affirmative defenses, causes of action of any type (whether common law, statutory, regulatory, administrative, in tort, contract, legal, equitable, or otherwise, and whether or not reduced to judgment, liquidated, un-liquidated, fixed, contingent, matured, unmatured, disputed, or undisputed), demands, disputes, damages, costs, losses, detriments, interest, expenses, penalties, fines, fees, attorneys' fees, actions, debts, controversies, suits and choses in action, whether known or unknown, or stated or unstated, relating to, arising out of, in connection with, based upon, or otherwise stemming from any of the facts, circumstances, acts, omissions, allegations, or purported violations of law raised in, alleged in, referred to, or described in the CARB Action or in the Yamaha Action, including the prosecution or defense of those actions.

"Party" means CARB, Goldstene, Yamaha USA, and/or Yamaha Japan, individually.

"Parties" means CARB, Goldstene, Yamaha USA, and Yamaha Japan, and each of them, collectively.

"Yamaha USA" means Yamaha Motor Corporation, U.S.A. and its present, past, and/or future predecessors, parent companies, subsidiaries, divisions, successors, assigns, related entities and/or affiliates, and current and former officers, directors, shareholders, employees, attorneys, agents, and representatives.

"Yamaha Japan" means Yamaha Motor Company, Ltd. and its present, past, and/or future predecessors, parent companies, subsidiaries, divisions, successors, assigns, related entities and/or affiliates, and current and former officers, directors, shareholders, employees, attorneys, agents, and representatives.

AGREEMENT

1. **Incorporation of Recitals; Definitions:** The recitals and definitions stated above are incorporated into this Agreement and made a part of this Agreement as if fully set forth herein. Capitalized terms shall throughout have the meaning given unless undefined.

2. **Condition Precedent To This Agreement:** The terms and conditions of this Agreement are subject to the following condition precedent:

- a. Each Party shall execute a counterpart copy of this Agreement.

3. **California Air Pollution Control Fund Payment:** On or before thirty (30) business days after the execution of this Agreement by the Parties, Yamaha USA shall pay to the Air Pollution Control Fund of the State of California the sum of one million nine hundred fifty thousand dollars and zero cents (\$1,950,000.00) pursuant to the provisions of California Health and Safety Code section 43154. This sum shall be made payable by Yamaha USA by check to the Air Pollution Control Fund of the State of California and delivered to the following address:

Alexander Wang
Senior Staff Counsel
Air Resources Board
1001 I Street
Sacramento, California 95814

4. **Suspended Payment:** An additional payment of two hundred fifty five thousand dollars and zero cents (\$255,000.00) is suspended for a period of three (3) years from the date this Agreement is executed by the Parties. Payment of this suspended amount shall be triggered by the receipt by CARB of documentation establishing that, after the date the Parties execute this Agreement, Yamaha USA or Yamaha Japan engaged in transactional conduct as to any on- or off-road motor vehicle prior to the receipt by Yamaha USA or Yamaha Japan of a signed Executive Order from CARB. The suspended payment set forth in this Section shall be in addition to (and not in lieu of) any and all other fines, penalties, damages, costs, fees, claims and remedies of CARB for any such violations. The suspended payment set forth in this Section, if triggered, is due no later than thirty (30) business days after CARB notifies Yamaha USA in writing that it has obtained documentation establishing that Yamaha USA or Yamaha Japan engaged in transactional conduct in violation of California Health and Safety Code §§ 43151-43153, in which notice CARB shall provide a copy of such documentation to Yamaha USA. However, if Yamaha USA or Yamaha Japan disputes that it engaged in such conduct, Yamaha USA or Yamaha Japan may seek Court intervention within this thirty (30) business day period to make a finding as to whether Yamaha USA or Yamaha Japan engaged in such conduct. In the event Yamaha USA or Yamaha Japan seeks such Court intervention, the suspended payment shall not be triggered until after the dispute is resolved by the Court. The suspended payment set forth in this Section shall be paid by Yamaha USA by check to the Air Pollution Control Fund of the State of California and delivered to the following address:

Alexander Wang
Senior Staff Counsel
Air Resources Board
1001 I Street
Sacramento, California 95814

5. **Dismissal:** Within five (5) business days of the payment set forth above in Section 3 of this Agreement, Yamaha USA shall file with the Court a Request for Dismissal with Prejudice of the Yamaha Action, and CARB shall file with the Court a Request for Dismissal with Prejudice of the CARB Action. However, the Court shall retain jurisdiction for the interpretation and enforcement of this Agreement.

6. **CARB Documentation Regarding 2007 Model Year Rhinos:** Within five (5) business days of the execution of this Agreement by all Parties, CARB shall issue a document to Yamaha USA in the form attached as Exhibit A to this Agreement confirming that the two 2007 Model Year Rhino engine families met the relevant LSI regulatory standards as of January 5, 2007. CARB shall timely post the document on the section of CARB's website that provides information regarding certified 2007 model year off-road large spark ignition engines (presently at http://www.arb.ca.gov/msprog/offroad/cert/cert_results.php?order=0).

7. **Release of Claims Against Yamaha USA and Yamaha Japan:** In consideration for the promises and payments set forth herein, CARB and Goldstene, and each of them, hereby release and forever discharge Yamaha USA, Yamaha Japan, and their respective customers, ultimate purchasers, dealers and distributors of 2007 Model Year Rhinos, and each of them, from any and all Released Claims.

8. **Release of Claims Against CARB and Goldstene:** In consideration for the promises and obligations set forth herein, Yamaha USA and Yamaha Japan hereby release and forever discharge CARB and Goldstene, and each of them, from any and all Released Claims.

9. **Civil Code § 1542 Waiver:** Each of the Parties to this Agreement hereby agrees that this Agreement shall operate as a general release as to the Released Claims. Each of the Parties to this Agreement acknowledges it has been informed and is aware of the provisions of California Civil Code Section 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Each Party waives any right that said Party may have under Section 1542 of the California Civil Code with respect to the Released Claims only, to the full extent that it may lawfully waive all such rights and benefits. In connection with such waiver and relinquishment, each of the Parties acknowledges that it is aware that it or its attorneys, consultants or accountants may hereafter discover claims, damages or facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement or the other Parties hereto, and that it is said Party's intention hereby fully, finally and forever to settle and release all of the Released Claims, except as otherwise expressly provided in this Agreement.

10. **Applicability.** Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement releases any claims, rights, duties and powers of CARB to enforce any statute or regulation, or to seek any fines, penalties, damages, costs, fees or injunctive or declaratory relief, with respect to any engine, vehicle or motor vehicular product manufactured, imported, sold or distributed by Yamaha USA or Yamaha Japan other than the 2007 Model Year Rhinos.

11. **Non-Admission.** The settlement of the CARB Action, the Yamaha Action and the Released Claims between the Parties is voluntary and does not constitute an admission of any violation of any law, constitution or regulation, or of any negligence, tort, breach of contract or any other basis for liability by any of the Parties, or of any admission of the existence of any facts upon which any such liability could be based. All Parties hereto acknowledge and agree that this Agreement does not constitute an admission of liability or wrongdoing of any nature whatsoever by any Party. Further, this Agreement shall not be used for any purpose whatsoever except as may be necessary to enforce the terms and conditions of this Agreement. This Agreement was negotiated at arm's length with the assistance of the Court, and represents a fair, reasonable, and good faith compromise of disputed claims, disputed liabilities, and disputed issues.

12. **Advice of Counsel.** Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult with counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

13. **Governing Law.** This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of California, without regard to the principles of the conflicts of laws thereof. Any action to enforce the terms of this Agreement shall be brought before the Court.

14. **Entire Agreement.** The Parties acknowledge that this Agreement, including, without limitation, the attached exhibit, contains the entire understanding between the Parties and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No express or implied warranties, covenants or representations have been made concerning the subject matter of this Agreement unless expressly stated herein. Any prior written or oral negotiations and drafts not contained in this Agreement have no force or effect whatsoever. The Parties each acknowledge that in executing this Agreement, the Parties have not and do not rely on any statements, inducements, promises, or representations made by any other Party or their agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement, except those specifically set forth in this Agreement.

15. **Severability.** If any non-material provision of this Agreement is held to be illegal or invalid by any court of competent jurisdiction, then such provision shall be severed and deleted, and neither such provision nor its severance and deletion shall affect the validity of the remaining provisions.

16. **Counterparts.** This Agreement may be executed in two or more separate counterparts, and/or by facsimile or email, each of which, when executed, shall be an original, and all of which together shall constitute one and the same Agreement, notwithstanding that all Parties may not have executed the same counterpart. Each Party may execute a separate signature page, which may be appended to form one or more duplicate originals of this Agreement.

17. **Authority.** Each of the signatories hereto represents and warrants that he, she, or it is fully authorized to enter into this Agreement on behalf of the person or entity for which they execute the Agreement, and has obtained all of the necessary approvals and authorities to do so.

18. **Amendment/Modification.** This Agreement may not be superseded, modified or amended orally; and no modification, waiver or amendment shall be valid unless in writing and signed by the Party against whom the same is sought to be enforced.

19. **No Construction Against Drafter.** This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party (including, without limitation, under California Civil Code section 1654 or otherwise) because the Party drafted or caused the Party's legal representative to draft any of these provisions. This Agreement shall be construed without reference to the identity of the Party or Parties preparing the same, it being expressly understood and agreed that the Parties participated equally, or had equal opportunity to participate, in the drafting thereof.

20. **Waiver.** The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.

21. **Costs/Fees.** Except as otherwise expressly provided for herein, each Party shall bear its own costs and fees, including without limitation all attorneys' fees, associated with the CARB Action, the Yamaha Action and the drafting of this Agreement.

22. **Captions.** The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.

23. **No Precedential Value.** The Parties to this Agreement agree and acknowledge that this Agreement carries no precedential value and should not be relied upon by any Party or person for any purpose whatsoever except as may be necessary to enforce the terms and conditions of this Agreement

24. **Notice.** To the extent that it is required under this Agreement or otherwise, notice shall be (a) given in writing, (b) sent electronically or via U.S. mail or similarly reliable commercial carrier (such as Federal Express or UPS), and (c) directed to the following:

For Yamaha Motor Corporation, USA:

Yamaha Motor Corporation, USA.
Attn: Michael Grbic
6555 Katella Avenue
Cypress, CA 90630

For Yamaha Motor Company, LTD.:

Yamaha Motor Company, Ltd. c/o Yamaha
Motor Corporation, USA
Attn: Michael Grbic
6555 Katella Avenue
Cypress, CA 90630

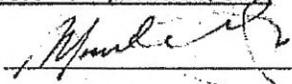
For California Air Resources Board:

California Air Resources Board
Attn: Ellen Peter, Chief Counsel
1001 I Street
Po Box 2815
Sacramento, CA 95814

IN WITNESS WHEREOF, intending to be legally bound hereby, the Parties have executed this Agreement as of the day and year written above.

THE UNDERSIGNED HAVE READ THE TERMS OF THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE, AND FULLY UNDERSTAND AND AGREE TO ALL OF THE TERMS.

Yamaha Motor Corporation, USA

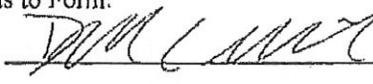
By: 

Title: *V.P. & General Counsel*

Yamaha Motor Corporation USA

Date: *11/3/2012*

Approved as to Form:

By: 

Donna L. Wilson, BuckleySandler LLP

Date: *11/7/12*

Yamaha Motor Company, LTD.

By: Mori Mochizuki

Title: Senior Manager

Yamaha Motor Company, LTD.

Date: 11-5-2012

Approved as to Form:

By: Donna L. Wilson

Donna L. Wilson, BuckleySandler LLP

Date: 11/7/12

California Air Resources Board

By: _____

Title:

California Air Resources Board

Date:

Approved as to form:

By: _____

Title: Kathleen Kenealy, Senior Assistant Attorney General

Date:

Yamaha Motor Company, LTD.

By: _____

Title:

Yamaha Motor Company, LTD.

Date:

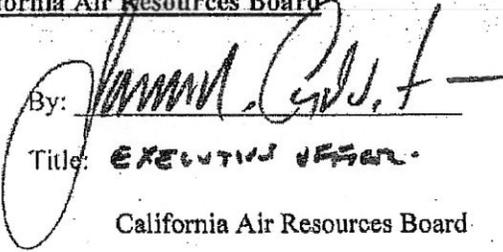
Approved as to Form:

By: _____

Donna L. Wilson, BuckleySandler LLP

Date:

California Air Resources Board

By:  _____

Title: EXECUTIVE DIRECTOR

California Air Resources Board

Date: 10-12-12

Approved as to form:

By: _____

Title: Kathleen Kenealy, Senior Assistant Attorney General

Date:

Yamaha Motor Company, LTD.

By: _____

Title:

Yamaha Motor Company, LTD.

Date: _____

Approved as to Form:

By: _____

Donna L. Wilson, BuckleySandler LLP

Date:

California Air Resources Board

By: _____

Title:

California Air Resources Board

Date:

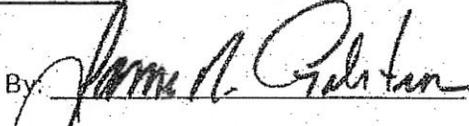
Approved as to form:

By: Kathleen Kenealy

Title: Kathleen Kenealy, Senior Assistant Attorney General

Date: 10-10-12

James Goldstene

By: 
Title: Executive Officer, California Air Resources Board
Date: 10-12-12

Approved as to form:

By: _____

Title: Kathleen Kenealy, Senior Assistant Attorney General

Date:

James Goldstene

By: _____

Title: Executive Officer, California Air Resources Board

Date:

Approved as to form:

By: Kathleen Kenealy

Title: Kathleen Kenealy, Senior Assistant Attorney General

Date: 10-10-12

EXHIBIT "A"



Air Resources Board



Mary D. Nichols, Chairman

1001 I Street • P.O. Box 2815

Sacramento, California 95812 • www.arb.ca.gov

Matthew Rodriguez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

November 9, 2012

Yamaha Motor Corporation, USA
Attn: Michael Grbic
6555 Katella Avenue
Cypress, CA 90630

Yamaha Motor Company, Ltd.
c/o Yamaha Motor Corporation, USA
Attn: Michael Grbic
6555 Katella Avenue
Cypress, CA 90630

Re: 2007 Model Year Rhino Engine Families
7YMXB.421GCA and 7YMXB.660GCC

To Whom it May Concern:

In consideration of the promises and obligations set forth in the Settlement Agreement between CARB and Yamaha Motor Corporation, USA and Yamaha Motor Company, Ltd. executed on November 7, 2012, CARB states as follows regarding the compliance status of 2007 model year Rhinos sold in the State of California.

Pursuant to the authority vested in the California Air Resources Board, this letter will confirm that CARB reviewed the applications submitted by Yamaha under the relevant Large Spark Ignition Engine ("LSI") regulations for the 2007 model year Rhino engine families 7YMXB.421GCA and 7YMXB.460GCC, and that those applications were complete and met all relevant LSI regulatory standards as of January 5, 2007.

The specifications for the 7YMXB.421GCA engine family are as follows:

MODEL YEAR	ENGINE FAMILY NAME	ENGINE DISPLACEMENT (liters)	FUEL TYPE
2007	7YMXB.421GCA	0.421	Gasoline

DURABILITY HOURS	SPECIAL FEATURES & EMISSION CONTROL SYSTEMS	TYPICAL EQUIPMENT USAGE
1000	Oxidation Catalytic Converter	Tandem Seat Off-Road Vehicle
ENGINE MODELS (rated power in kilowatt, kW)	YXR450F (19.5 kW)	

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

The following are the hydrocarbon plus oxides of nitrogen (HC+NOx) and carbon monoxide (CO) exhaust certification emission standards (Title 13, California Code of Regulations, (13 CCR) Section 2433(b)(1)) and certification emission levels for this engine family in grams per kilowatt-hour (g/kW-hr).

(g/kW-hr)	HC+NOx	CO
Standards	12.0	549
Certification Levels	11.3	232

The specifications for the 7YMXB.660GCC engine family is as follows:

MODEL YEAR	ENGINE FAMILY NAME	ENGINE DISPLACEMENT (liters)	FUEL TYPE
2007	7YMXB.660GCC	0.660	Gasoline

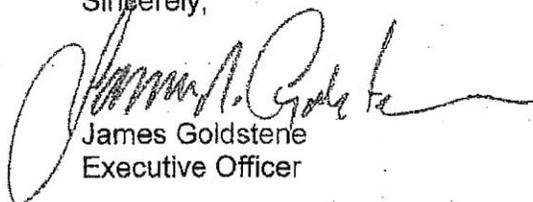
DURABILITY HOURS	SPECIAL FEATURES & EMISSION CONTROL SYSTEMS	TYPICAL EQUIPMENT USAGE
1000	Engine Modification	Tandem Seat Off-Road Vehicle
ENGINE MODELS (rated power in kilowatt, kW)	YXR660F (30.0kW)	

The following are the hydrocarbon plus oxides of nitrogen (HC+NOx) and carbon monoxide (CO) exhaust certification emission standards (Title 13, California Code of Regulations, (13 CCR) Section 2433(b)(1)) and certification emission levels for this engine family in grams per kilowatt-hour (g/kW-hr).

(g/kW-hr)	HC+NOx	CO
Standards	12.0	549
Certification Levels	11.7	318

Accordingly, CARB deems the 2007 model year Rhinos as described in the applications to be in compliance with the relevant LSI regulatory standards as of January 5, 2007.

Sincerely,



James Goldstene
Executive Officer