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*Proposed Counsel to the Debtors and
Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

FORT WORTH DIVISION

In re:	) Chapter 11
	)
TOMMY'S FORT WORTH, LLC, <i>et al.</i> , ¹	) Case No. 24-90000-11
	)
Debtors.	) (Joint Administration Requested)
	)

DECLARATION OF MONICA S. BLACKER IN SUPPORT OF FIRST DAY MOTIONS

I, Monica S. Blacker, hereby declare under penalty of perjury:

1. I am the Chief Restructuring Officer (“CRO”) of Debtor Tommy’s Fort Worth, LLC and sixteen (16) of its affiliated Debtors: Tommy’s Fort Worth, LLC; Tommy’s Lewisville, LLC; Tommy’s Holding Company, LLC; Tommy’s Grand Rapids, LLC; Tommy’s Castaic, LLC; High Country Watersports, LLC; Walloon Lake Village Marina, LLC; MKB Florida Holdings,

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Tommy’s Fort Worth, LLC (3473); Tommy’s Holding Company, LLC (2662); Tommy’s Grand Rapids, LLC (9224); Tommy’s Castaic, LLC (7501); Tommy’s Lewisville, LLC (4750); High Country Watersports, LLC (6160); Walloon Lake Village Marina, LLC (0277); MKB Florida Holdings, LLC (5698); Tommy’s Detroit, LLC (5242); Tommy’s California Fresno, LLC (8597); Tommy’s Phoenix, LLC (3036); Tommy’s Las Vegas, LLC (7721); Tommy’s Chattanooga, LLC (0839); Tommy’s California Ventura, LLC (5149); Tommy’s Rancho Cordova, LLC (1070); Tommy’s Stockton, LLC (1338); and Tommy’s Knoxville, LLC (8052).

LLC; Tommy's Detroit, LLC; Tommy's California Fresno, LLC; Tommy's Phoenix, LLC; Tommy's Las Vegas, LLC; Tommy's Chattanooga, LLC; Tommy's California Ventura, LLC; Tommy's Rancho Cordova, LLC; Tommy's Stockton, LLC; and Tommy's Knoxville, LLC (collectively, the "**Debtors**" or "**Tommy's**" or the "**Company**") in the above-captioned chapter 11 cases (the "**Cases**").

2. In addition to my role as CRO of the Debtors, I am a Partner with Force 10 Partners ("**Force 10**"), where I provide broad restructuring, crisis management, and financial advisory services across a wide spectrum of distressed situations. Force 10 and I specialize in corporate restructurings, acquisitions/sales and due diligence, implementation and/or monitoring of bankruptcy plans and settlements, and have worked with a number of companies across a range of retail, manufacturing industries, automotive, real estate, finance, service, healthcare and both public and private, through out-of-court and in-court reorganizations and liquidations. Prior to becoming a partner at Force 10, I was a practicing lawyer in several BigLaw law firms for over 20 years. During my time as a lawyer and as a partner at Force 10 partners, I have served as counsel for Debtors, unsecured creditors' committees, secured lenders and other parties in interest. In these cases, I have been responsible for the management of corporations, significant asset sales, as well as complex litigation. Members of Force 10 have been appointed as CROs, receivers in the Federal District Courts, as well as state courts in California, Oregon, and Delaware. In addition, I have been retained as an independent director in numerous distressed matters by acting boards of directors.

3. I was hired by the Debtors on May 18, 2024. Based on the limited time available to both myself and my support team, we have begun to develop an understanding and familiarity with the business and are developing a familiarity of the financial condition of the Debtors. As CRO, I

am authorized to make this declaration (this “**Declaration**”) on behalf of the Debtors. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors’ employees, agents, attorneys, and advisors, the accuracy and completeness of which information I relied upon to provide this Declaration.

4. I submit this Declaration to assist the Court and parties in interest in understanding the circumstances that led to the commencement of these Cases and in support of: (a) the Debtors’ voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) filed on May 20, 2024 (the “Petition Date”) in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “**Court**”); and (b) the relief that the Debtors have requested from the Court pursuant to the motions and pleadings (collectively, the “**First Day Pleadings**”).

5. Contemporaneously herewith, the Debtors have filed the following First Day Pleadings:

- a. Motion of Debtors for Entry of an Order Authorizing and Directing the Joint Administration of Debtors’ Chapter 11 Cases 24-90000-11, 24-90001-11, 24-90002-11, 24-90003-11, 24-90004-11, 24-90005-11, 24-90006-11, 24-90007-11, 24-90008-11, 24-90009-11, 24-90010-11, 24-90011-11, 24-90012-11, 24-90013-11, 24-90014-11, 24-90015-11, and 24-41734 [Docket No. 3; Filed 5/21/24] (the “**Joint Administration Motion**”);
- b. Debtors’ Emergency Application for Entry of an Order (A) Authorizing the Retention and Appointment of Omni Agent Solutions, Inc. as Claims, Noticing, and Solicitation Agent, Effective as of the Petition Date and (B) Granting Related Relief [Docket No. 6; Filed 5/21/24] (the “**Claim’s Agent Application**”);
- c. Emergency Motion of Debtors for Entry of an Order Authorizing the Filing of a Consolidated Mailing Matrix and Consolidated List of Top Thirty Largest Unsecured Creditors [Docket No. 7; Filed 5/21/24]; (the “**Consolidated Creditor Motion**”);
- d. Debtors’ Emergency Motion for Entry of an Order Extending Time for Filing Schedules of Assets and Liabilities and Statement of Financial Affairs [Docket No.11; Filed 5/22/24] (“**Extension Motion**”);

- e. Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing Continued Use of Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, and (II) Authorizing Continuation of Existing Deposit Practices [Docket No. 13; Filed 5/22/24] (the "**Cash Management Motion**");
- f. Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, (IV) Setting a Second Interim Hearing, (V) Setting a Final Hearing; and (VI) Granting Related Relief [Docket No. 12; Filed 5/22/24] (the "**Cash Collateral Motion**"); and
- g. Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Pay Certain Prepetition Debt [Docket No. 14; Filed 5/22/24] ("**Motion to Pay Prepetition Debt**").

6. As discussed in further detail below, these Chapter 11 Cases were necessitated by the culmination of challenges related to the Debtors' growth strategies, followed by unexpected changes in consumer behavior, the fraudulent and misleading actions of the Debtors' longtime business partners, discovery of a former member of management's failure to properly account, and the receiver's actions and inactions, all of which has had a devastating effect on the Company, the Company's value, and most importantly, the Company's loyal customers. These culminated in the Debtors' chapter 11 filing and the Debtors' determination, in an exercise of their sound business judgment, to pursue a postpetition sale of all of the Debtors' businesses and dealerships. The Debtors seek the relief set forth in the First Day Pleadings to minimize the disruption to and adverse effects the receivership has had on the Debtors' business operations and to maximize the value of the Debtors' business, assets, and estates so the Debtors can sell substantially all of their assets for the highest possible value through these Cases.

7. I am familiar with each of the First Day Pleadings. Absent the relief requested in the First Day Pleadings, I believe that the Debtors would suffer immediate and irreparable harm that would jeopardize their ability to continue their business operations and consummate a value-

maximizing sale transaction. I further believe that the relief sought in the First Day Pleadings is critical to the Debtors' efforts to transition into chapter 11 efficiently and minimize disruptions to their business operations, thereby permitting the Debtors to preserve and maximize value while pursuing a section 363 sale and chapter 11 plan process. Finally, I believe that the First Day Pleadings reflect the thorough and targeted analyses of the Debtors' management team and their professional advisors, and capture relief that is critical to the success of these proceedings.

8. This Declaration is divided into three parts. Part I describes the Debtors' businesses, organizational structure, and prepetition indebtedness. Part II describes the circumstances leading to the commencement of these Chapter 11 Cases. Part III summarizes the First Day Pleadings, and explains why the relief requested in those pleadings is appropriate under the circumstances and necessary to avoid immediate and irreparable harm to the estates, as applicable

9. References to the Bankruptcy Code, the chapter 11 process, and related legal matters are based on my understanding of such matters in reliance on the explanation provided by, and the advice of, counsel or from my personal experience in other restructurings. If called upon to testify, I would testify competently to the facts set forth in this First Day Declaration.

PART I: THE DEBTORS, THEIR OPERATIONS, AND THEIR REVENUE STREAMS

10. Tommy's is a high-octane water-sports-enthusiast brand known as "Tommy's Boats" that began in 2012 in Colorado. Today, Tommy's Boats is the largest Ski & Wake dealer globally. Currently consisting of fourteen (14) dealerships plus five (5) additional on-water rental programs operating in Texas, Colorado, Michigan, Arizona, California, Florida, Nevada, and Tennessee. Tommy's supplies a full suite of boat repair services, boat rental services, on-the-water fueling and docking services, retail sales of super-premium ski and wake boats, luxury cruisers, fishing boats, pontoons, flightboards, and retail goods & apparel at Tommy's Pro Shops. Tommy's

is and always has been dedicated to bringing the absolute best products and services to its loyal customers.

11. The Debtors' business—water sports and boats—is seasonal, with spring boat shows bringing deposits and April through June being the busiest three-month season of the year in the boating industry. For example, at the Novi boat show the weekend of March 15-17, 2024, Tommy's had peak success securing nineteen (19) deposits for new luxury boats, in addition to generating \$1.4 million in revenue from servicing boats and general boat sales.

12. The Debtors' business generates revenue from four primary revenue streams, and the average percentage of total revenue in 2023 (\$190,246,504) generated from each stream is set forth below:

Boat Sales	Service/Repair	Pro Shop	Waterfront (rentals & fueling)
84%	12%	3%	2%
\$158,987,459	\$23,540,142	\$4,765,651	\$2,953,252

The average percentage of gross margin from May through August generated from each stream is set forth below:

Boat Sales	Service/Repair	Pro Shop	Waterfront (rentals & fueling)
68%	18%	6%	7%

13. Boat sales make up approximately 82 percent of the Debtors' annual revenue. The majority of Debtors' sales are brand-new luxury watercraft from two original equipment manufacturers (OEM) and three brands: Tahoe, Malibu, and Axis. Axis is a Malibu-manufactured brand intended to be more entry market than luxury market. As of the Petition Date, the Debtors' inventory for brand new luxury watercraft is \$68 million (cost) and 658 units. The Debtors historically have been and continue to be the largest dealer nationally for OEM Malibu Boats. The

Debtors also sell pre-owned watercraft, however pre-owned watercraft sales make up less eighteen (18) percent of the Debtors' annual revenue.

14. Year to date, the Debtors' boat sales have cashiered \$42.3m in Sales Revenue at an estimated 17 gross margin.

15. Service and repair work accounts for 18 percent of the Debtors' margin annually. Each of the fourteen (14) Tommy's dealerships do service work for its customer base. Services range from simple winterizing and summerizing and oil changes to engine replacements, center console replacements, and exterior Gel/Paint repairs.

16. Year to date, the Debtors' boat service have cashiered \$7.6 million in Service Revenue at 34.4% gross margin.

17. As set forth in more detail in Part II, below, had the Receiver (defined in Part II) provided authorization to purchase service parts during the month of May 2024, the Debtors would have continued on this trend and had a very good chance of achieving their May Service Revenue Budget of \$2.8 million. In many states, May is the kickoff to the summer boating season and Tommy's had an excellent opportunity to bring in large service revenue numbers to match prior years' May Service Revenue and gross margins. The Receiver refused to approve funding for service parts during the receivership period (April 22, 2024 through May 20, 2024), and the Debtors were locked out of three (3) stores that had fully functioning service departments and good customer confidence moving into the peak boating season.

18. The Debtors bring these First Day Motions seeking to capture the expected Memorial Day boating revenues historical to the Debtors' seasonal business. The below table sets forth the 2021 through 2023 Memorial Day week revenues by revenue line:

	Boat Sales	Service	ProShop	Waterfront	Total Sales
2021	2,799,365.57	164,006.04	\$ 124,630.59	\$ 46,661.54	3,136,684.74
2022	2,038,449.88	339,501.43	\$ 148,096.96	\$ 64,022.91	2,592,093.18
2023	3,608,332.00	249,500.04	\$ 125,324.35	\$ 55,967.56	4,041,146.95
	8,446,147.45	753,007.51	398,051.90	166,652.01	9,769,924.87

19. Since the Receiver shuttered the Debtors' Service revenue stream, the Debtors have had seventeen (17) Servicepersons resigned, reducing the overall availability of Servicepersons to service the Debtors' customers' boats. However, the Debtors believe that with their current staff of Servicepersons, if this Court were to grant them the ability to use \$73,267.80 of cash collateral, the Debtors would cashier approximately \$200,000 in open work (meaning in-process or the work is complete, but the customer needs to pick up their boat and pay for service) and an additional \$370,000 in service sales for a total of approximately \$570,000 in revenue. Most of the estimated \$570,000 in Service work is on customers' boats that are currently at the Debtors' service bays awaiting service work. Every day that gets closer to the end of the month reduces the potential for May revenue, pushing back-logged work into June as a result of timing. Had the Receiver approved the Debtors' May 7, 2024 request to purchase parts, the Debtors estimate the May Service Revenue to have been at least an additional \$1.1 million, with May Service Revenue more than \$2.5 million.

20. The Debtors filed these Cases to maximize the value of their assets and estates for the benefit of their creditors by reopening the Debtors' Service Department and potentially increasing service revenue by at least 50 percent.

21. In addition to increased revenue from the (currently shuttered) Service Department, the Debtors filed these Cases to capture the Memorial Day Week historical and expected revenue from the Debtors' Waterfront Department. Waterfront offers boat rentals, slip rentals, docking services, and fueling services. The Debtors have two sources of paying for fueling and for their

boat delivery, Waterfront docking, and fueling services, (a) WEX Cards and (b) Blarney Castle f/k/a Derrer & Sons Oil Co.

22. WEX Cards are fuel finance cards that function like credit cards with a line of credit of \$38,500. The WEX Cards the Debtors use for all of their dealerships totto deliver boats purchased to their customers are not in the Debtors' names, but rather in their non-debtor affiliate name, MKB Holdings, LLC. All of the Debtors use the WEX Cards for fueling. The amount due on the WEX Cards as of the Petition Date is \$36,678.65, which leaves nearly no availability for fuel charges. Debtors are seeking authority to use \$36,678.65 of cash collateral to pay their WEX Cards charges, which will immediately give the Debtors \$38,500 in availability for fueling needs over the Memorial Day Week. *See Exhibit A.*

23. The amount due to Blarney Castle f/k/a Derrer & Sons Oil Co. as of the Petition Date is \$8,476.92. Debtors are seeking authority to use \$8,476.92 to allow their Waterfront locations to obtain fuel for their Waterfront docking and slip rentals over the Memorial Day Week. *See Exhibit B.*

PART II: EVENTS LEADING TO THE COMMENCEMENT OF BANKRUPTCY

A. MALIBU BOATS

24. For twelve (12) years, Malibu Boats (“**Malibu**”) was the Debtors' OEM, and Tommy's is the largest national dealer for Malibu boats in the recreational power boat space, accounting for approximately 33 percent of Malibu's power boat sales. Malibu advertises itself as a leading designer, manufacturer, and marketer of a diverse range of recreational power boats, including performance boats, under the brands of Malibu and Axis. The Malibu brand purports to include the latest innovations in performance, comfort and convenience, and retails for between \$80,000 and \$300,000 per boat. The Axis brand purports to provide a more affordably priced, entry-level performance boat which retails between \$80,000 and \$175,000 per boat.

25. Malibu is a public company and asserts that it maintains the number one market share position in the United States in the performance sport boat category through its Malibu and Axis brands.

26. The majority of Malibu's sales are made pursuant to floor plan financing programs in which Malibu participates on behalf of its dealers through a contingent repurchase agreement with the dealership's lender. Under such an arrangement, a dealer essentially establishes a line of credit with a lender for the purchase of dealer boat inventory from Malibu. When a dealer purchases and takes delivery of a boat pursuant to a floor plan financing arrangement, it draws against its line of credit and its lender pays the invoice cost of the boat directly to Malibu. This amounts to a sale for Malibu ("**Sale**").

27. For the first 11 years of the Debtors' relationship with Malibu, it was a true partnership with countless examples of Tommy's doing anything and everything asked of it to help Malibu protect and grow its market share while Malibu helped Tommy's growth. The first 11 years of the relationship were based on good faith and fair dealing between the parties.

28. During the COVID-19 pandemic, domestic retail demand for recreational powerboats increased to the highest levels seen by the industry in decades, as customers turned to boating as a form of outdoor socially-distanced recreation. Retail registration activity in the recreational powerboat market, however, began declining in the second half of the 2021 calendar year because of inventory shortages due to the strong sales activity during the pandemic and supply chain disruptions that began impacting production levels. During calendar year 2022, retail registration activity continued to decline at a lower year-over-year rate than the second half of year 2021, and by 2023 the industry demand was 50% of what it was in 2021.

29. Malibu acknowledges in public disclosures that the majority of its dealers have floor plan financing arrangements with lenders in order for the dealer to purchase Malibu boats. The majority of Malibu Sales are financed under floor plan financing arrangements pursuant to which Malibu receives payment for the Sale within a few days of shipping a boat to a dealer.

30. Malibu publicly represents that it provides its dealer's floor plan lender with a repurchase agreement to support the loan facility (and the dealer) whereby Malibu agrees to repurchase products repossessed by a dealer's floor plan lender if a dealer defaults on its debt obligations to the lender, and the boat is returned to Malibu, subject to certain limitations. A repurchase agreement for boats in connection with a floor plan financing arrangement is customary in the industry.

Floor Plan Financing

Our North American dealers often purchase boats through floor plan financing programs with third-party floor plan financing providers. During fiscal year 2023, approximately 75% of our North American shipments were made pursuant to floor plan financing programs which our dealers participate in. These programs allow dealers across our brands to establish lines of credit with third-party lenders to purchase inventory. Under these programs, a dealer draws on the floor plan facility upon the purchase of our boats and the lender pays the invoice price of the boats. As is typical in our industry, we have entered into repurchase agreements with certain floor plan financing providers to our dealers. Under the terms of these arrangements, in the event a lender repossesses a boat from a dealer that has defaulted on its floor financing arrangement and is able to deliver the repossessed boat to us, we are obligated to repurchase the boat from the lender. Our obligation to repurchase such repossessed products for the unpaid balance of our original invoice price for the boat is subject to reduction or limitation based on the age and condition of the boat at the time of repurchase, and in certain cases by an aggregate cap on repurchase obligations associated with a particular floor financing program.

31. And like the majority of Malibu's dealers, Tommy's has such a floor plan financing arrangement that historically included a repurchase agreement for boats provided by Malibu to Tommy's.

32. Tommy's currently has its floor plan financing with M&T Bank ("M&T").

33. Malibu and M&T representatives discussed a repurchase agreement at or about the time that Tommy's was moving its floor plan loan facility from Fifth Third Bank to M&T Bank in May 2023.

B. MALIBU FORCED TOMMY'S TO INCREASE FLOORPLAN FROM \$50M INVENTORY TO \$160M INVENTORY, FORCED TOMMY'S TO OVERSTOCK HIGH-PRICED MODELS, AND FAILED TO PAY INCENTIVES, REBATES, AND INTEREST COVERAGE AS REQUIRED BY THE DEALERSHIP AGREEMENTS

34. Beginning in late 2022, Malibu first began a campaign designed to coerce Tommy's to increase its available floor plan financing from \$30 million (drawn on a \$50 million facility with a \$10 million overlimit) to \$160 million. Malibu did so by representing to Tommy's that Tommy's was required to have a minimum of 25 weeks of inventory in stock at the turn of the model year based on Malibu's market analysis. At the time, Tommy's was only into its Fifth Third Bank floor plan approximately \$30 million, leaving \$30 million of purchasing and financing capacity.

35. As part of its Dealership Agreements with Malibu, Tommy's was entitled to earn incentives related to sales of Malibu products. The incentives include interest reimbursement, rebates, and discounts. In the 2022 fiscal year, Tommy's earned significant incentives for which Tommy's has demanded payment, but payment has been refused by Malibu. Instead of meeting its obligation to pay these incentives to Tommy's, Malibu withheld these incentives and used promises of additional incentives to be earned while exerting additional financial pressure on Tommy's to increase its floor plan financing capacity.

36. Facing severe financial pressure, Tommy's ultimately succumbed to Malibu's demands and increased its existing floor plan capacity from \$60 million to \$85 million with Fifth Third Bank and then to \$110 million with a \$20 million overlimit with M&T Bank.

37. All the while, Malibu represented publicly and to Tommy's lender, M&T Bank, that Malibu would support the increased floor plan with a repurchase agreement that would have protected both M&T and Tommy's in the event Tommy's defaulted on its loan obligations. Pursuant to the repurchase agreement, Malibu would be forced to repurchase Tommy's Malibu inventory, just as Malibu had done for the benefit of Tommy's and Fifth Third Bank (and all prior lenders) on Tommy's previous floor plan facilities for the last 11 years. A repurchase agreement

(which results in virtually no adverse financial impact to Malibu) also protects Malibu's ability to control its boats in the market.

C. FAILURE TO OBTAIN REPURCHASE AGREEMENT

38. However, despite a repurchase agreement to protect a floor plan lender (here, M&T Bank) being not only customary in the industry, but historically the course of business between the Debtors and Malibu, Malibu ultimately reneged on its promise to execute a repurchase agreement for the benefit of M&T Bank and Tommy's. For the last 11 years, Malibu has always provided Tommy's floor plan lender with a repurchase agreement.

39. Yet after (a) inducing Tommy's to expand its floor plan capacity and inventory from \$60 million to \$130 million, (b) forcefully pumping its highest-priced inventory onto Tommy's without consideration of Tommy's requests for a model mix that Tommy's could actually sell (i.e., the requested model mix of 65/35 Malibu/Axis that was consistent with Malibu policy), (c) making it impossible for Tommy's to hit sales targets, (d) burying Tommy's in interest—interest that Malibu promised to pay as an incentive to Tommy taking delivery of the next model year early, Malibu not only refused to sign the repurchase agreement, but Malibu also reneged on its promise to reimburse Tommy's for the carry interest, refused to pay over earned incentives and rebates, and then attempted to terminate Tommy's Dealership Agreements. Repurchase agreements are absolutely critical and customary at the time the floor plan financing agreement is entered into. The reason is that the OEM requires the dealer to carry excess inventory on its showroom floor, and if there is an issue with sales or demand, then the OEM steps in to relieve the dealer and protect itself, its dealer, and the floor plan financier, here M&T Bank.

40. For example, if there is \$100 million of Malibu inventory on floorplan and there is a default, then Malibu pays the floor plan financier (M&T Bank) up to 100 percent of the principal balance of the remaining inventory cost, so long as the boat has been on the floorplan for less than

12 months. Here, M&T failed to obtain, and Malibu refused to provide, the repurchase agreement – an agreement that is *between M&T and Malibu* and to which Tommy’s is not a party.

41. The resulting effect of the failure to obtain a repurchase agreement is that the M&T debt skyrocketed to the full financed amount of the Malibu inventory, instead of where it should have been on April 1, 2024, which the Debtors assert should be \$40 million instead of the approximately \$105 million M&T currently asserts against the Debtors.

42. On April 10, 2024, the Debtors filed suit against Malibu in the US District Court for the Eastern District of Tennessee, Northern Division in Case No. 24-00166, *Tommy’s Castaic, LLC, et al. v. Malibu Boats, Inc.* See *Exhibit C*. The Debtors intend to continue to pursue this litigation as an asset of their estate that will lead to a substantially higher recovery to creditors.

43. As of the Petition Date, the Debtors assert that Malibu owed the Debtors more than \$12 million in 2022 through 2024 rebates, incentives, and carry interest:

TYPE of Rebate	DUE
2022 COOP ²	\$364,750
2023 BCP ³	\$666,250
2023 COOP	\$414,000
2023 QCP ⁴	\$505,500
2023 MSB ⁵	\$432,000
2024 OPI ⁶	\$258,500
2024 Interest ⁷	\$508,429
2024 YESE and BSP Discounts with no order ⁸	\$1,506,950
Interest on 2023s since MBUU stopped covering ⁹	\$5,302,285
Est 2024 COOP	\$400,000
Spring into Summer Upfront Stock	\$2,625,000
TOTAL DUE TO TOMMY’S FROM MALIBU	\$12,983,664

² 2022 COOP means advertising dollars spent of Malibu’s behalf that are owed back

³ 2023 BCP means Boat Confirmation Payout

⁴ 2023 QCP means Quarterly Confirmation Payout

⁵ 2023 MSB means Market Share Bonus

⁶ 2024 OPI means Order Performance Incentive

⁷ 2024 Interest means interest recapture that should have been paid by Malibu

⁸ 2024 YESE and BSP Discounts with no order means Year end sales event and Boat Show program discount to be applied to future orders

⁹ Interest on 2023s since MBUU stopped covering means interest that should have been paid by Malibu that was not paid.

D. DISCOVERY OF UNPAID SALES TAXES

44. A third-party auditor employed by the Debtors discovered in November 2023 that approximately \$3 million in sales taxes had not been paid on boat sales. In response, Tommy's controller at the time is no longer with the Company. Unfortunately, due to decreasing demand, decreasing sales, and increasing pressure from Malibu to expand, purchase dealerships in California (Sacramento and Stockton), and financial drain from Malibu refusing to honor its commitment to pay carry interest (averaging approximately \$1 million/month), Tommy's was only able to pay a portion of the past-due sales taxes.

45. As of the Petition Date, approximately \$4.8 million in sales taxes remains outstanding. Although there was a repayment plan in place prior to Receivership, the Receiver defaulted on the payment plan.

E. RECEIVERSHIP

46. Under the M&T Bank Floor Purchase Agreement, termination of a dealership agreement and/or failure to have a valid dealership agreement is an Event of Default. On March 22, 2024, Malibu improperly terminated the Debtors' Dealership Agreements without cause, which in turn caused M&T Bank to call a Default, which the Debtors were unable to cure.

47. On April 1, 2024, M&T Bank applied for a receivership, to which the Debtors consented, believing a receiver (the "**Receiver**") and M&T Bank would try to work with Malibu to not only reinstate the Dealership Agreements, but also to finally enter into the repurchase agreement, thus allowing the more than \$110 million of Malibu and other inventory on the showrooms of the Debtors' 14 dealerships to be marketed and sold at the highest and best price.

48. On or about April 22, 2024, the Receiver was appointed.

49. Instead of working together to obtain the highest value for the more than \$110 million of Malibu and other inventory that the Debtors have, M&T and the Receiver valued the

inventory at \$41 million at fire sale liquidation, began to shutter the Debtors' Service Department (which generates 18% of the Debtors' total gross margin), and refused to pay required Receivership obligations in the currently known aggregate amount of \$1,268,582, including \$150,000 in sales commission and \$566,109 in sales taxes.

50. On Sunday, May 19, 2024, the Debtors were informed that the Receiver had negotiated with Malibu and the Debtors' competitors to remove ten (10) Malibu boats from the Debtors' dealerships to competitors' dealerships. The Debtors filed these Cases to protect their estates, the value of their assets and operations, and to operate their businesses until a sale of substantially all of their assets at the highest and best price can be obtained through the orderly chapter 11 process.

PART III: FIRST DAY PLEADINGS

51. Contemporaneously with the filing of their chapter 11 petitions, the Debtors seek approval of the First Day Pleadings and related orders (the "Proposed Orders"). The Debtors respectfully request that the Court enter each of the Proposed Orders as they are critical to the Debtors' successful reorganization in these Cases.

52. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtors to operate with minimum interruptions and disruptions to customers and employees; and (b) constitutes a critical element in the Debtors' ability to successfully maximize value for the benefit of their estates.

A. THE JOINT ADMINISTRATION MOTION

53. Pursuant to the Joint Administration Motion, the Debtors seek the joint administration of their seventeen (17) chapter 11 cases (the "**Cases**") for procedural purposes only.

Many of the motions, hearings, and other matters involved in the Cases will affect all of the Debtors. Therefore, I believe that the joint administration of these Cases will avoid the unnecessary time and expense of duplicative motions, applications, and orders, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates. Accordingly, I believe the Court should approve the joint administration of these Cases.

B. THE CLAIMS AND NOTICING AGENT APPLICATION

54. Pursuant to the Claims and Noticing Agent Application, the Debtors request entry of an order authorizing the appointment of Omni Agent Solutions, Inc. (“**Omni**”) as the claims, noticing, and solicitation agent for the Debtors in these Cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in these Cases.

55. The Debtors’ selection of Omni to act as the Claims, Noticing and Solicitation Agent is appropriate under the circumstances and in the best interests of their estates. Although the Debtors have not yet filed their schedules of assets and liabilities and statements of financial affairs, they anticipate there will be hundreds of parties due to the number of customers and employees associated with the Debtors. By appointing Omni as the Claims, Noticing, and Administrative Agent in these Chapter 11 Cases, the distribution of notices will be expedited and the Clerk will be relieved of the administrative burden of noticing and is in the best interest of the Debtors’ estates and their creditors.

56. Accordingly, on behalf of the Debtors, I respectfully submit that the Claims and Noticing Agent Application should be approved.

57. The Consolidated Creditor Motion

58. Pursuant to the Consolidated Creditor Motion, the Debtors request entry of an order authorizing the Debtors to file one consolidated list of their thirty (30) largest unsecured creditors for all Debtors.

59. The Debtors are comprised of seventeen (17) affiliated companies that maintain their books and records on a consolidated basis with one accounts payable system. There are hundreds of creditors and other parties in interest in these Cases, and there may be potential for confusion and/or overlap regarding creditor obligations. Given the circumstances, the Debtors submit that it is appropriate for them to file one consolidated mailing matrix and one consolidated list of their thirty largest unsecured creditors. If the Debtors were not granted the relief requested herein, the Debtors would have to manually build each accounts payable sub-ledger for each entity. This process would be burdensome and time-consuming with no meaningful benefit. The consolidated list of creditors will provide good and sufficient notice to all creditors and parties in interest in an efficient manner. Accordingly, on behalf of the Debtors, I respectfully submit that the Consolidated Creditor Motion should be approved.

C. THE SCHEDULES EXTENSION MOTION

60. Pursuant to the Schedules Extension Motion, the Debtors seek entry of an order extending the deadline to file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “**Schedules and Statements**”) by an additional twenty-one (21) days, from the date such Schedules and Statements are otherwise required to be filed, for a total of thirty-two (35) days from the Petition Date.

61. I believe cause exists to extend the deadline for filing the Schedules and Statements. As detailed herein, the Debtors have had limited time to prepare to file these Cases. Given the amount of work required to complete the Schedules and Statements, and the competing demands

on the Debtors' Employees and professionals to continue to maximize the Debtors' business operations during the initial phase of these Cases and to provide continued support to the Debtors' efforts to execute a transition strategy, the Debtors likely will not be able to properly and accurately complete the Schedules and Statement within the initial fourteen-day period prescribed by Bankruptcy Rule 1007(c). To completely and accurately file Schedules and Statements, the Debtors must collect, review, and analyze a substantial amount of information.

62. The Debtors are working expeditiously to prepare and file their Schedules and Statements and intend to have them filed as soon as possible. However, given the amount of information required to adequately prepare such Schedules and Statements, in an abundance of caution, the Debtors respectfully request an extension of twenty-one (21) days, making the updated due date June 24, 2024.

D. THE CASH COLLATERAL MOTION

63. Pursuant to the Cash Collateral Motion the Debtors seek entry of an Interim Order (i) authorizing the Debtors to use the Cash Collateral of M&T Bank ("**M&T**"), (ii) granting the M&T adequate protection upon the terms set forth in the Interim Order and in any final orders, (iii) modifying the automatic stay, and (iv) scheduling a second interim and final hearing on the Motion and approving the form and manner of notice thereof, and granting such other and further relief as the Court deems just and appropriate.

64. On May 18, 2023, the Debtors, as borrowers, entered into that certain *Loan Agreement (Floor Plan Financing)* (as amended, restated, modified, or supplemented from time to time, the "**Floor Plan Agreement**") with M&T. Pursuant to the Prepetition Floor Plan Agreement, and the associated *Variable Rate Demand Note (with Variable Rate Rider)* (the "**Prepetition Demand Note**") and *Revolving Line Note (with Variable Rate Rider)* (the "**Prepetition Revolving Note**", together with the Prepetition Demand Note, the "**Notes**" and

together with the Floor Plan Agreement, the “**Floor Plan Loan Documents**”), M&T extended to the Debtors floor plan financing, in addition to a revolving line, in the aggregate amount of \$115,000,000.

65. Under the Floor Plan Agreement, M&T, pursuant to the Prepetition Demand Note, provided the Debtors with financing in the maximum aggregate amount of up to \$110,000,000. Availability under the Prepetition Demand Note is allocated among certain percentages of the Debtors’ inventory; specifically, new, used, and marine inventory.

66. Pursuant to the Prepetition Demand Note, interest is set at Daily Simple SOFR, although in the event of default, and at M&T’s discretion, interest may be set at the Base Rate, without waiving M&T’s right to institute the Default Rate. Payment by the Debtors to M&T is to be remitted upon the sale of any item of Floor Loan Collateral (as defined herein) that consists of marine inventory upon Debtors’ immediate receipt of the proceeds, or within 10-days from the date of the sale of such marine inventory. Currently, the Prepetition Demand Note is accruing interest at the Default Rate.

67. Additionally, M&T, pursuant to Prepetition Revolving Note, provided the Debtors with revolving availability in the maximum aggregate amount of up to \$5,000,000. The Prepetition Revolving Note is a discretionary facility, with M&T, at its discretion, able to modify, restrict, suspend or terminate the facility at any time and for any reason. Similar to the Prepetition Demand Note, interest on the Prepetition Revolving Note is set at Daily Simple SOFR, although in the event of default, and at M&T’s discretion, interest may be set at the Base Rate, without waiving M&T’s right to institute the Default Rate.

68. The obligations under the Notes (the “**Floor Plan Loan Obligations**”) are secured by a first priority lien on substantially all of the Debtors’ personal property and fixtures including,

without limitation, the Debtors' accounts (including receivables), deposit and security accounts, all cash and cash equivalents, investment property, goods, equipment, inventory, general intangibles, chattel paper, instruments, payment intangibles, books and records related to the foregoing, in addition to all substitutions, accessions, products and proceeds of any kind related to the foregoing (the "**Floor Loan Plan Collateral**").

69. As of the Petition Date, the Debtors estimate that, in the aggregate, approximately \$105,687,454 in Floor Plan Loan Obligations are outstanding.

70. The Debtors have determined that absent the use of Cash Collateral, the Debtors will be unable to operate their businesses during the Cases, irreparably harming the Debtors' estates and creditors. The denial of the use of Cash Collateral would directly result in the interruption of business operations. Further, the Debtors' business operations would immediately suffer the loss of key employees and vendors because the Debtors would be unable to demonstrate financial stability. Therefore, the Debtors' immediate access to Cash Collateral is necessary to preserve and maximize the value for the benefit of all parties in interest, including customers and employees.

71. In exchange for the use of Cash Collateral, the Debtors have agreed, and the Interim Order provides, adequate protection in the form of, among other things, adequate protection liens, superpriority claims, and adequate protection payments to protect M&T against any diminution in the value of interest interests in the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral, and the imposition of the automatic stay.

72. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to

operate their businesses and thus preserve and maintain the value of the Debtors' estates. Without access to such liquidity, the Debtors will face irreparable harm.

73. M&T has not yet consented to the Debtors' use of Cash Collateral on the terms set forth in the Interim Order. The Debtors will continue to negotiate with the M&T in an attempt to achieve consent prior to the First Day Hearing. Notwithstanding consent from M&T, the proposed adequate protection included in the Interim Order provides the appropriate level of adequate protection in the form of, among other things, the Replacement Liens, the Superpriority Administrative Claim, adequate protection payments, including fees and expenses, and reporting requirements. The Debtors submit that the proposed adequate protection is appropriate and sufficient to protect M&T from any diminution in value of the Floor Plan Loan Collateral.

74. The Cash Collateral will be used for funding business operations and allowing the Debtors to transition into the Cases. Immediate access to this liquidity will permit the Debtors to fund necessary payroll, pay postpetition vendors, and otherwise continue business in the ordinary course on one of the busiest weekends in the boating industry. As detailed herein, one reason underlying the filing of these Cases is to stabilize operations. If Cash Collateral is not available, the Debtors will be unable to make payroll, and thus will dissipate value to the detriment of M&T and other stakeholders, including employees. If the limited amount of Cash Collateral is not made available on an interim basis, the Debtors will be irreparably harmed by the loss of revenues and reputational damage during this most important weekend. Thus, the use of Cash Collateral will protect M&T's security interests by preserving the value of the Floor Plan Collateral throughout the Cases.

75. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Collateral Motion should be approved.

E. THE CASH MANAGEMENT MOTION

76. Pursuant to the Cash Management Motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system including maintenance of existing bank accounts, checks, and business forms, (ii) if necessary, granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described herein, and (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of Bankruptcy Code § 345(b).

77. In the ordinary course of business, the Debtors utilize the Cash Management System to collect and disburse funds generated by the Debtors’ operations. To lessen the disruption caused by the bankruptcy filings and maximize the value of their estates in these Cases, it is vital for the Debtors to maintain their system of managing cash in the early phase of these Cases. The Debtors significantly pared down their system of managing cash and their bank accounts prior to the Petition Date. During the first week(s) of these Cases, the Debtors will need to use their existing bank accounts to collect funds and pay their ordinary operating expenses, including payroll. As of the Petition Date, the Debtors maintain thirty (30) bank accounts having recently closed approximately ten (10) bank accounts (the “Bank Accounts”)¹⁰. The Debtors maintain seventeen (17) accounts at Lake Michigan Credit Union (“LMCU”), two (2) accounts at M&T Bank, one (1) account at Mercantile Bank, two (2) accounts at US Bank, one (1) account at

¹⁰ Attachment 1 included after the Cash Management Motion contains a chart listing each of the bank accounts and column four (4) lists the amounts in each of those accounts.

4Front Credit Union, one (1) account at First Bank (“1st Bank”), and six (6) accounts at Bank of America (“BOA”). The majority of the funds and transactions made by the Debtors occur in the two Bank Accounts at M&T Bank, both are general checking accounts, but the one ending in (-1578) gets swept daily into the account ending in (-1511). The Debtors use both accounts to receive payments from customers and pay ordinary operating expenses (the “Working Capital Accounts” or “M&T Accounts”).

78. In addition to the Bank Accounts, the Debtors, in their pro shops, utilize Worldpay Credit Card Machines (the “WCC Machines”). These WCC Machines allow the Debtors’ customers to use credit cards in the Pro Shops. Currently, a fee of \$681.74 needs to be paid for the Lewisville Pro Shop. Until this \$681.74 is paid, none of Debtors’ Pro Shops are able to take purchases from customers using credit cards. I submit that the ability to continue to use the WCC Machines in the ordinary course of the Debtors’ business is critical, especially with the Memorial Day Weekend rush occurring. If this amount is not paid, the Debtors will not be able to use their credit card machines and will undoubtedly lose numerous sales because many customers use credit cards exclusively to pay for items and services provided by the Pro Shops. I believe that requiring the customers to pay the Pro Shops only using check or cash is not a practical alternative and will lead to most, if not all, not purchasing the item or service.

79. The Debtors, therefore, request that the Court authorize them to continue to use the existing Cash Management System, and to transfer funds into, out of, and through the Cash Management System as the Debtors did prepetition including, without limitation, any prepetition cash management agreements, bank account terms and conditions, or treasury services agreements.

80. The Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors’ ability to conduct their

businesses during the Cases and their goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements; and all of the Debtor Bank Accounts, to the best of Debtors' knowledge, are held at financially stable institutions insured in the United States by the Federal Deposit Insurance Corporation ("FDIC"). For the aforementioned reasons, maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and all interested parties. Accordingly, the Debtors request that this Court allow them to maintain and continue to use the Cash Management System, including their existing Debtor Bank Accounts.

81. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

F. MOTION TO PAY PREPETITION DEBT

82. Pursuant to the Motion to Pay Prepetition Debt, the Debtors request authority to make four (4) pre-petition payments. Specifically, Debtors are requesting the authority to make payments on (1) the balance of \$36,678.65 on their WEX fuel cards (the "**WEX Card**"); (2) outstanding wages in the amount of \$8,930.16 to one former employee based in California; (3) credit card processing fees to Worldpay in the amount of \$682; and (4) an insurance payment in the amount of \$148,984.60.

83. Debtors seek authority to make a payment on the WEX Card. The WEX Card is the primary means for the Debtors to purchase fuel, necessary for a large portion of the Debtors'

business.¹¹ Paying off this debt will open up credit to use the card during the upcoming Memorial Day Week, which is anticipated to generate significant revenue for the Debtors.

84. Debtors seek authority to make a payment in the amount of \$8,930.16 to a California-based Boat Sales Associate, whose last paycheck was due May 21, 2024. Of this amount, the associate earned approximately \$7,000 through commissions, all of which is under the wage priority cap. The associate was employed by Debtor Tommy's Rancho Cordova LLC. Under California law, there is a fine of \$115 per day for nonpayment of an employee's wages. Fines will continue to accrue until the final wage payment is made.

85. Debtors seek authority to make payment on credit card processing fees to the Debtors' credit card processor, Worldpay, in the amount of \$682. Without payment of the credit card processing fees, the Debtors cannot operate their credit card processing machines to accept payments. Because the credit card processing services are connected among all the Debtors, delinquency in any credit card processing fees affects all of the Debtors. Payment of the credit card processing fees is necessary for the Debtors to continue their businesses in the ordinary course.

86. Lastly, Debtors seek authority to make an insurance payment in the amount of \$148,984.60. The purpose of the insurance is blanket liability coverage for Debtor Walloon Lake Village Marina, LLC. While in receivership, prior to the Petition Date, the receiver authorized this insurance payment though the payment never cleared. Payment for this insurance coverage is necessary to protect Debtor Walloon Lake Village Marina, LLC while it operates in the ordinary course.

¹¹ The WEX Card is in the name of non-debtor MKB Holdings, LLC. Although not a debt held directly by the Debtors, the fuel purchased on the card results in proceeds that go directly toward the Debtors' businesses.

87. I submit that payment of the pre-petition debts is an exercise of sound business judgment, as the Debtors' satisfaction of the pre-petition debt is necessary to avoid the obstacles to a smooth transition through these Cases and additional expenses such as interest, fees, and penalties. Without these payment, significant disruptions of the Debtors' operations of the types described above threaten to irreparably impair the Debtors' ability to maximize the value of the Debtors' estates for the benefit of creditors.

88. Accordingly, on behalf of the Debtors, I respectfully submit that the Motion to Pay Prepetition Debt should be approved.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 23, 2024

Dallas, Texas

/s/ Monica S. Blacker

Monica S. Blacker

Proposed Chief Restructuring Officer

Tommy's Fort Worth, LLC; Tommy's Fort Worth, LLC; Tommy's Lewisville, LLC; Tommy's Holding Company, LLC; Tommy's Grand Rapids, LLC; Tommy's Castaic, LLC; High Country Watersports, LLC; Walloon Lake Village Marina, LLC; MKB Florida Holdings, LLC; Tommy's Detroit, LLC; Tommy's California Fresno, LLC; Tommy's Phoenix, LLC; Tommy's Las Vegas, LLC; Tommy's Chattanooga, LLC; Tommy's California Ventura, LLC; Tommy's Rancho Cordova, LLC; Tommy's Stockton, LLC; and Tommy's Knoxville, LLC



REPORT FOR:
MKB Holdings LLC
0496-00-820709-4
MAR-24-2024 TO APR-23-2024

Financial Summary

ACCOUNT NUMBER	FLEET NAME
0496-00-820709-4	MKB Holdings LLC

DEPARTMENT	DESCRIPTION	UNITS	COST OR FEE	TOTAL FEES	FUEL \$	SERVICE \$	OTHER \$	TRANS FEE	NET \$	TOTAL FEES & PURCHASES
Castiac	Unleaded Plus	81.43	4.984	0.00	401.65	0.00	0.00	0.00	401.65	
	Unleaded Regular	112.84	5.179	0.00	587.27	0.00	0.00	0.00	587.27	
	Monthly Card Charge	2.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	988.92	0.00	0.00	0.00	988.92	988.92
	YTD			0.00	4465.53	0.00	0.00	0.00	4465.53	4465.53
Chattanooga	Regular Diesel #2	21.81	3.898	0.00	85.02	0.00	0.00	0.00	85.02	
	Unleaded Regular	158.05	3.200	0.00	504.37	0.00	0.00	0.00	504.37	
	Monthly Card Charge	5.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	589.39	0.00	0.00	0.00	589.39	589.39
	YTD			0.00	1774.28	0.00	0.00	0.00	1774.28	1774.28
Colorado	Unleaded Plus	58.84	3.389	0.00	199.33	0.00	0.00	0.00	199.33	
	Unleaded Regular	89.49	3.019	0.00	270.03	0.00	0.00	0.00	270.03	
	Unleaded Super	21.81	3.639	0.00	79.35	0.00	0.00	0.00	79.35	
	Monthly Card Charge	9.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	548.71	0.00	0.00	0.00	548.71	548.71
YTD			0.00	1566.18	0.00	0.00	0.00	1566.18	1566.18	
Detroit	Regular Diesel #2	25.23	4.698	0.00	118.53	0.00	0.00	0.00	118.53	
	Unleaded Plus	124.68	4.248	0.00	531.13	0.00	0.00	0.00	531.13	
	Unleaded Regular	797.58	3.670	0.00	2935.82	0.00	0.00	0.00	2935.82	
	Unleaded Super	54.87	4.798	0.00	263.31	0.00	0.00	0.00	263.31	
	Monthly Card Charge	7.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
PERIOD			0.00	3848.79	0.00	0.00	0.00	3848.79	3848.79	
YTD			0.00	7583.71	0.00	0.00	0.00	7583.71	7583.71	
FT Worth	Diesel #1	55.10	3.899	0.00	215.29	0.00	0.00	0.00	215.29	
	Mid/Plus 2	28.92	3.699	0.00	106.99	0.00	0.00	0.00	106.99	
	Premium Diesel #2	27.34	3.998	0.00	109.33	0.00	0.00	0.00	109.33	
	Regular Diesel #2	126.53	3.775	0.00	476.82	0.00	0.00	0.00	476.82	
	Unleaded Ethanol (10% blend)	71.54	2.995	0.00	214.42	0.00	0.00	0.00	214.42	
	Unleaded Plus	24.84	3.559	0.00	88.40	0.00	0.00	0.00	88.40	
	Unleaded Regular	333.85	3.316	0.00	1108.27	0.00	0.00	0.00	1108.27	
	Unleaded Super	158.14	3.979	0.00	624.68	0.00	0.00	0.00	624.68	
	Monthly Card Charge	9.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	2944.20	0.00	0.00	0.00	2944.20	2944.20
YTD			0.00	9004.28	0.00	21.85	2.50	9028.63	9028.63	
Florida	Unleaded Ethanol (10% blend)	22.25	3.458	0.00	76.95	0.00	0.00	0.00	76.95	
	Unleaded Plus	76.13	3.994	0.00	303.48	0.00	0.00	0.00	303.48	
	Unleaded Regular	955.59	3.565	0.00	3407.57	0.00	0.00	0.00	3407.57	
	Unleaded Super	9.53	4.199	0.00	40.02	0.00	0.00	0.00	40.02	
	Monthly Card Charge	14.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
PERIOD			0.00	3828.02	0.00	0.00	0.00	3828.02	3828.02	
YTD			0.00	14033.59	0.00	0.00	0.00	14033.59	14033.59	
Gen 3	Regular Diesel #2	29.81	3.989	0.00	118.90	0.00	0.00	0.00	118.90	
	Monthly Card Charge	2.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	



PARENT ACCOUNT:
MKB Holdings LLC

REPORT FOR:
MKB Holdings LLC
0496-00-820709-4
MAR-24-2024 TO APR-23-2024

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Financial Summary

ACCOUNT NUMBER	FLEET NAME
0496-00-820709-4	MKB Holdings LLC

DEPARTMENT	DESCRIPTION	UNITS	COST OR FEE	TOTAL FEES	FUEL \$	SERVICE \$	OTHER \$	TRANS FEE	NET \$	TOTAL FEES & PURCHASES
Stockton	Regular Diesel #2	23.77	5.259	0.00	125.00	0.00	0.00	0.00	125.00	
	Unleaded Regular	173.99	5.376	0.00	931.11	0.00	0.00	0.00	931.11	
	Unleaded Super	86.87	5.958	0.00	517.65	0.00	0.00	0.00	517.65	
	Monthly Card Charge	2.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	1573.76	0.00	0.00	0.00	1573.76	1573.76
	YTD			0.00	5611.84	0.00	0.00	0.00	5611.84	5611.84
Ventura	Regular Diesel #2	16.75	5.359	0.00	89.76	0.00	0.00	0.00	89.76	
	Unleaded Plus	56.00	5.599	0.00	313.45	0.00	0.00	0.00	313.45	
	Unleaded Regular	573.87	5.508	0.00	3083.00	0.00	0.00	0.00	3083.00	
	Monthly Card Charge	5.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	3486.21	0.00	0.00	0.00	3486.21	3486.21
	YTD			0.00	11174.69	28.00	0.00	0.00	11202.69	11202.69
WL Retail	Monthly Card Charge	1.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	0.00	0.00	0.00	0.00	0.00	0.00
	YTD			0.00	0.00	0.00	0.00	0.00	0.00	0.00
WLF	Regular Diesel #2	25.77	4.098	0.00	105.64	0.00	0.00	0.00	105.64	
	Unleaded Regular	70.04	3.632	0.00	254.02	0.00	0.00	0.00	254.02	
	Monthly Card Charge	2.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	359.66	0.00	0.00	0.00	359.66	359.66
	YTD			0.00	1365.89	0.00	0.00	0.00	1365.89	1365.89
Walloon	Regular Diesel #2	15.01	4.099	0.00	61.52	0.00	0.00	0.00	61.52	
	Unleaded Regular	753.65	3.606	0.00	2715.01	0.00	0.00	0.00	2715.01	
	Monthly Card Charge	9.00	2.000	0.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			0.00	2776.53	0.00	0.00	0.00	2776.53	2776.53
	YTD			0.00	4975.32	0.00	0.00	0.00	4975.32	4975.32
Unassigned	XOM Enterprise Tribrand Rebate	1072.30	0.050	-53.62	0.00	0.00	0.00	0.00	0.00	
	PERIOD			-53.62	0.00	0.00	0.00	0.00	0.00	-53.62
	YTD			-139.26	0.00	0.00	0.00	0.00	0.00	-139.26
ACCOUNT TOTALS	Diesel #1	203.61	11.376	0.00	768.65	0.00	0.00	0.00	768.65	
	Mid/Plus 2	28.92	3.699	0.00	106.99	0.00	0.00	0.00	106.99	
	Other Fuel (Non-Taxable)	46.73	5.628	0.00	261.93	0.00	0.00	0.00	261.93	
	Premium Diesel #2	82.31	7.992	0.00	332.23	0.00	0.00	1.25	333.48	
	Regular Diesel #2	1241.32	46.633	0.00	4590.93	0.00	0.00	0.00	4590.93	
	Unleaded Ethanol (10% blend)	93.79	6.453	0.00	291.37	0.00	0.00	0.00	291.37	
	Unleaded Plus	523.19	31.486	0.00	2417.08	0.00	0.00	0.00	2417.08	
	Unleaded Regular	6179.37	64.419	0.00	24243.40	0.00	0.00	0.00	24243.40	
	Unleaded Super	553.77	31.199	0.00	2437.99	0.00	0.00	0.00	2437.99	
	Coupon 1	1.00	-0.370	0.00	0.00	0.00	-0.37	0.00	-0.37	
	Diesel Exhaust Fluid	5.08	4.189	0.00	0.00	0.00	21.27	0.00	21.27	
	General Merchandise	13.22	3.499	0.00	0.00	0.00	46.25	0.00	46.25	
	Monthly Card Charge	102.00	38.000	0.00	0.00	0.00	0.00	0.00	0.00	
	XOM Enterprise Tribrand Rebate	1072.30	0.050	-53.62	0.00	0.00	0.00	0.00	0.00	



PARENT ACCOUNT:
MKB Holdings LLC

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Financial Summary

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0496-00-820709-4	MKB Holdings LLC

DEPARTMENT	DESCRIPTION	UNITS	COST OR FEE	TOTAL FEES	FUEL \$	SERVICE \$	OTHER \$	TRANS FEE	NET \$	TOTAL FEES & PURCHASES
ACCOUNT TOTALS	Truck Stop Transaction Fee	1.00	1.250	1.25	0.00	0.00	0.00	0.00	0.00	
	Returned Payment Item	1.00	26000.000	26000.00	0.00	0.00	0.00	0.00	0.00	
	Reactivation Fee	1.00	50.000	50.00	0.00	0.00	0.00	0.00	0.00	
	Paper Delivery Fee	1.00	10.000	10.00	0.00	0.00	0.00	0.00	0.00	
	PERIOD			26007.63	35450.57	0.00	67.15	1.25	35518.97	61526.60
	YTD			-139.26	99106.62	28.00	162.84	5.00	99302.46	99163.20
ACCOUNTS RECEIVABLE SUMMARY - Invoice 96565703 PREVIOUS BALANCE26944.09 PAYMENTS-55000.00 PURCHASES35517.72 DEBITS26061.25 CREDITS-53.62 ANCILLARIES0.00 FINANCE CHARGE3209.21 AMOUNT DUE36678.65										

Shipping Location
ETOSKEY BULK PLAT
Order Date
04/02/2024
Deliv Date
04/02/2024

***Derrer & Sons Oil Co.**
126 West State Street
Mancelona, MI 49656

Invoice Number
m603432
Bill Date
04/02/2024
Due/Draft Date
04/02/2024

Phone: 231-587-9179 Fax: 231-587-8083

Bill To
WALLOON VILLAGE MARINA 146 MONROE CENTER SUITE 530 GRAND RAPIDS, MI 49503

Ship To
PE-SERVCENTER

PO#/Cust	Lic Number	Manifest	Contact/Notes	Driver/Carrier	Terms
PO#:	#####0277	m603432		Carl	NET 30
Account#:					
8245					

Product	Item	UOM	PAC	Description	QTY Ordered	QTY Delivered	Price/Amt	Product Ext
03		Gallons	<u>595</u>	LEAD FREE RECREATION GAS 90 OCTANE	595.4	595.4	4.09498	2,438.15
				Prepaid Sales Tax Gas			0.163000	97.05
				Federal Excise Tax Gasoline			0.184000	109.55
				RETAIL ROAD TAX GAS			0.298500	177.73

REC GAS - 1000

Remit To:
*Derrer & Sons Oil Co. 126 West State Street Mancelona, MI 49656

Total Product Ordered :	595.400
Total Product Delivered :	595.400

Contact of file:

lkowalke@gettommys.com;gm:

Product Total :	2,438.15
Tax Total :	384.33

Total Invoice to Remit: 2,822.48

Subject to correction of clerical errors!

Shipping Location
ETOSKEY BULK PLAT
Order Date
04/29/2024
Deliv Date
04/29/2024

***Derrer & Sons Oil Co.**
126 West State Street
Mancelona, MI 49656

Invoice Number
m603486
Bill Date
04/29/2024
Due/Draft Date
04/29/2024

Phone: 231-587-9179 **Fax:** 231-587-8083

Bill To
WALLOON VILLAGE MARINA 146 MONROE CENTER SUITE 530 GRAND RAPIDS, MI 49503

Ship To
PE-SERVCENTER

PO#/Cust	Lic Number	Manifest	Contact/Notes	Driver/Carrier	Terms
PO#:	#####0277	m603486		Carl	NET 30
Account#:					
8245					

Product	Item	UOM	PAC	Description	QTY Ordered	QTY Delivered	Price/Amt	Product Ext
03		Gallons	<u>695</u>	LEAD FREE RECREATION GAS 90 OCTANE	695.4	695.4	4.09498	2,847.65
				Prepaid Sales Tax Gas			0.163000	113.35
				Federal Excise Tax Gasoline			0.184000	127.95
				RETAIL ROAD TAX GAS			0.298500	207.58

REC GAS - 1000

Remit To:
*Derrer & Sons Oil Co. 126 West State Street Mancelona, MI 49656

Total Product Ordered :	695.400
Total Product Delivered :	695.400

Contact of file:

lkowalke@gettommys.com;kati

Product Total :	2,847.65
Tax Total :	448.88

Total Invoice to Remit: 3,296.53

Subject to correction of clerical errors!

Shipping Location
ETOSKEY BULK PLAT
Order Date
04/17/2024
Deliv Date
04/17/2024

***Derrer & Sons Oil Co.**
126 West State Street
Mancelona, MI 49656

Invoice Number
m603469
Bill Date
04/17/2024
Due/Draft Date
04/17/2024

Phone: 231-587-9179

Fax: 231-587-8083

Bill To
WALLOON VILLAGE MARINA 146 MONROE CENTER SUITE 530 GRAND RAPIDS, MI 49503

Ship To
PE-SERVCENTER

PO#/Cust	Lic Number	Manifest	Contact/Notes	Driver/Carrier	Terms
PO#:	#####0277	m603469		Carl	NET 30
Account#:					
8245					

Product	Item	UOM	PAC	Description	QTY Ordered	QTY Delivered	Price/Amt	Product Ext
03		Gallons	<u>497</u>	LEAD FREE RECREATION	497.4	497.4	4.09498	2,036.84
				GAS 90 OCTANE				
				Prepaid Sales Tax Gas			0.163000	81.08
				Federal Excise Tax Gasoline			0.184000	91.52
				RETAIL ROAD TAX GAS			0.298500	148.47

REC GAS - 1000

Remit To:
*Derrer & Sons Oil Co. 126 West State Street Mancelona, MI 49656

Total Product Ordered :	497.400
Total Product Delivered :	497.400

Contact of file:

lkowalke@gettommys.com;kati

Product Total :	2,036.84
Tax Total :	321.07

Total Invoice to Remit: 2,357.91

Subject to correction of clerical errors!

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

Tommy's Castaic, LLC,	)	
Tommy's California Ventura, LLC,	)	
Larsons Marine	)	
d/b/a Tommy's Stockton,	)	
Larsons Marine	)	
d/b/a Tommy's Sacramento,	)	
High Country Watersports, LLC	)	
d/b/a Tommy's Colorado,	)	
MKB Florida Holdings, LLC	)	
d/b/a Tommy's Florida,	)	
Tommy's Phoenix, LLC,	)	
Tommy's Las Vegas, LLC,	)	
Tommy's Knoxville, LLC,	)	
Walloon Lake Village Marina, LLC	)	
d/b/a Tommy's Michigan,	)	Case No.:
Tommy's Chattanooga, LLC,	)	
Tommy's Fort Worth, LLC,	)	
Tommy's Lewisville, LLC,	)	
Tommy's Detroit, LLC,	)	
Tommy's Grand Rapids, LLC,	)	
	)	
<i>Plaintiffs,</i>	)	
vs.	)	
	)	
Malibu Boats, Inc., and	)	
Malibu Boats, LLC,	)	
	)	
<i>Defendants.</i>	)	

VERIFIED COMPLAINT

Plaintiffs file this complaint against Defendants Malibu Boats, Inc. and Malibu Boats, LLC ("Malibu") and state as follows:

SUMMARY OF ACTION

1. This is an action to hold Malibu accountable for the intentional and fraudulent scheme on the part of its CEO, Jack Springer, to artificially inflate the stock value and market

share of Malibu, a publicly traded company and which resulted in significant damage to Tommy's, one of Malibu's largest boat dealership networks. Malibu, a manufacturer of recreational powerboats, engaged in an elaborate scheme to over manufacture and pump nearly \$100 million of its highest priced, highest margin, slow moving boat inventory into fifteen (15) Tommy's dealerships (collectively, "Tommy's") in order to artificially inflate Malibu's sales performance, artificially claim increased market share in the industry and artificially inflate its stock value during an obvious and known downturn in the recreational power boat industry. Beginning in late 2022, Malibu began suggesting (which subsequently turned into demand and inducement) that Tommy's increase its existing floor plan credit facility from \$50 million to \$160 million in order to make room for "25 weeks of inventory at the turn of the next model year" and to regain market share during 2023-2024 model years. With 2022 incentives earned and unpaid, Malibu dangled incentives for 2023 and 2024 and stood firm on its own alleged market analysis in causing Tommy's to increase its floor plan facility. Ultimately, Tommy's (in reliance on Malibu's representations and promises) first increased its floor plan from \$50 million to \$85 million and then to \$110 million with a \$20 million over limit in order to satisfy what was nothing more than Springer's/Malibu's goal of artificially inflating Malibu's numbers by dumping inventory on Tommy's. Immediately upon Tommy's increasing its floor plan capacity (at a time when Tommy's was only approximately \$30 million into the \$50 million facility), Malibu began pumping an unreasonable inventory into Tommy's, and it did so with a model mix of boats that heavily skewed toward the highest priced, highest margin, slow moving Malibu boats versus the more modestly priced, lower margin and faster moving Axis boats that Tommy's requested. After getting everything it demanded from Tommy's and reporting outstanding sales performance and increased market share during a drastic downturn in the industry, Malibu refused to pay millions of dollars

in incentives earned, forced Tommy's into default with its floor plan lender and ultimately claimed to have terminated all of Tommy's dealerships on March 22, 2024. Worst of all, Malibu waited until just prior to the peak sales season to terminate Tommy's dealerships with zero regard for Tommy's customers, hundreds of employees across the country and numerous vendors who rely upon Tommy's (i.e. not to mention with approx. \$110 million worth of boats in inventory across the country which Tommy's needs manufacturer support in order to sell in a commercially reasonable retail manner). Malibu's actions were nothing short of punitive. As a result of Malibu's scheme, Tommy's has been damaged. This scheme was disclosed to Tommy's directly by three (3) significant Malibu stakeholders. "Jack refused to turn off the spigot" and intended to "pump" Tommy's full of inventory for the sales and market share.

2. Two of Tommy's Texas dealerships have Dealership Agreements with terms ending June 30, 2025. Malibu pretextually claims to have terminated those Dealership Agreements while being in material breach itself.

3. Tommy's has been a dealer for Malibu for 12 years and continues to operate as a dealer for Malibu to this day. The majority of Tommy's dealerships across the country (i.e. with the exception of two in Texas) enter into annual Dealership Agreements (i.e. the term of which is one year—from July 1 to the following June 30). Historically, the Dealership Agreements have always lapsed/expired by their terms, with Tommy's and Malibu executing new agreements in the fall after the boating season concludes. This course of performance and course of dealing continued with the parties' respective Dealership Agreements for the 2022-2023 year.

4. Malibu claims to have terminated its relationships with Tommy's, at least in part, because of Tommy's default with its floor plan lender, M&T Bank, and its lack of floor plan capacity. To the contrary, Tommy's floor plan facility was adequate to run very profitable

dealerships had Malibu not utilized Tommy's floor plan to pump Tommy's full of the highest priced, highest margin and slow-moving Malibu boats for the sole purpose of artificially inflating Malibu's sales numbers and market share for 2023. Further, any purported issues Tommy's had with M&T Bank were caused by Malibu's own breach of the Dealership Agreements and bad faith/unfair dealing (i.e. in addition to the conduct above, Malibu reneged on its representation that it would provide M&T with a repurchase agreement which is customary in the industry, and has been the practice with all Tommy's prior lenders). Malibu is responsible for the issues Tommy's is now having with M&T and upon which Malibu attempts to rely in order to terminate the Dealership Agreements.

5. Tommy's is entitled to significant money damages, including direct, indirect, consequential, and punitive damages because of Malibu's breaches of contract and wrongful conduct.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff **Tommy's Castaic, LLC** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Tommy's Castaic, LLC.

7. Plaintiff **Tommy's California Ventura, LLC** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Tommy's California Ventura, LLC.

8. Plaintiff **High Country Watersports, LLC**, d/b/a Tommy's Colorado, is a Colorado limited liability company. Matthew Allen Borisch Trust is the sole member of High Country Watersports, LLC.

9. Plaintiff **Larson Marine d/b/a Tommy's Stockton** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Larson Marine.

10. Plaintiff **MKB Florida Holdings, LLC**, d/b/a Tommy's Florida, is a Michigan limited liability company. Matthew Allen Borisch Trust and Kara Ann Borisch Trust are members of MKB Florida Holdings, LLC.

11. Plaintiff **Tommy's Phoenix, LLC** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Tommy's Phoenix, LLC.

12. Plaintiff **Tommy's Las Vegas, LLC** is a Michigan limited liability company that maintains its principal place of business in Grand Rapids, MI. Matthew Allen Borisch is the sole member of Tommy's Las Vegas, LLC.

13. Plaintiff **Tommy's Knoxville, LLC** is a Michigan limited liability company that maintains its principal place of business in Grand Rapids, MI. Matthew Allen Borisch is the sole member of Tommy's Knoxville, LLC.

14. Plaintiff **Walloon Lake Village Marina, LLC**, d/b/a Tommy's Michigan, is a Michigan limited liability company. Matthew Allen Borisch Trust is the sole member of Walloon Lake Village Marina, LLC.

15. Plaintiff **Larson Marine d/b/a Tommy's Sacramento**, is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Larson Marine.

16. Plaintiff **Tommy's Chattanooga, LLC** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Tommy's Chattanooga, LLC.

17. Plaintiff **Tommy's Fort Worth, LLC** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Tommy's Fort Worth, LLC.

18. Plaintiff **Tommy's Lewisville, LLC** is a Michigan limited liability company. Matthew Allen Borisch is the sole member of Tommy's Lewisville, LLC.

19. Plaintiff **Tommy's Detroit, LLC** is a Michigan limited liability company. Tommy's Holding Company LLC is the sole member of Tommy's Detroit LLC. Matthew Allen Borisch is the sole member of Tommy's Holding Company LLC.

20. Plaintiff **Tommy's Grand Rapids, LLC** is a Michigan limited liability company. Matthew A. Borisch Trust is the sole member of Tommy's Grand Rapids, MI.

21. Matthew Allen Borisch is a Michigan resident.

22. Matthew Allen Borisch is the trustee of the Matthew Allen Borisch Trust.

23. Kara Ann Borisch is a Michigan resident.

24. Kara Ann Borisch is the trustee of the Kara Ann Borisch Trust.

25. Tommy's Holding Company LLC is a Michigan limited liability company that maintains its principal place of business in Grand Rapids, MI.

26. Defendant **Malibu Boats, LLC** is a Delaware limited liability company with its principal place of business in Loudon, TN. Malibu Boats, LLC's members are as follows:

a. Malibu Boats, Inc., a Delaware C-Corp trading on the NASDAQ under the ticket MBUU, with its principal place of business located in Tennessee, owns 97.205%;

b. Horizon Holdings, LLC, a California limited liability company with its principal place of business located in California, which is owned by two members—Philip S. Estes and James M. Shoring, both of whom are residents of and are domiciled in California—owns 2.139%;

c. Dan Gasper, who is a resident of and is domiciled in California, owns 0.253%;

d. Mark Lanigan, who is a resident of and is domiciled in Utah, owns 0.117%;

e. Malibu Holdings L.P., an Ohio limited partnership, is wholly owned by Horizon Holdings, LLC—which, with the residency pled in (b) above, makes it a resident of California—owns 0.091%;

f. Michael Hooks, who is a resident of and is domiciled in California, owns 0.058%;

g. Scott Davenport, who is a resident of and is domiciled in Texas, owns 0.047%;

h. Brad Ditchfield, who is a resident of and is domiciled in Tennessee, owns 0.038%;

i. Jack Springer, who is a resident of and is domiciled in Texas, and who is Malibu's current CEO, owns 0.023%;

j. Wayne Wilson, who is a resident of and is domiciled in Tennessee, and who was Malibu's current CFO, owns 0.017%; and

k. Ritchie Anderson, who is a resident of and is domiciled in Tennessee, owns 0.011%.

27. Defendant **Malibu Boats, Inc.** is a Delaware corporation that was incorporated in Delaware and has its principal place of business in Tennessee.

28. Complete diversity exists between Plaintiffs and Malibu because they are citizens of different states.

29. This court has subject matter jurisdiction over this action under 28 U.S.C. §1332. There is complete diversity between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest, costs and attorneys' fees, and Plaintiffs seek equitable relief.

30. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Malibu is subject to this Court's personal jurisdiction by virtue of its regular and systemic conduct of business in this District. Also, the parties consented to litigate disputes related to the Dealership Agreements in this venue.

COMMON ALLEGATIONS

31. Tommy's is the largest national dealer for Malibu boats in the recreational power boat space.

32. Tommy's has 15 dealerships across the country and accounts for 33% of Malibu power boat sales.

33. Malibu entered into Dealership Agreements with each of Tommy's dealerships. Copies of the most recent Dealership Agreements between each of the Tommy's dealers and Malibu are in the custody, control and/or possession of Malibu.

34. The term of these Dealership Agreements, with the exception of those in Texas, ran from July 1 to June 30.

35. All of the Dealership Agreements specifically provide that Malibu will provide each dealer with a new agreement, or otherwise provide notice of non-renewal or termination of the previous agreement, reasonably in advance of the existing agreement's expiration.

Malibu's Business Model

36. Malibu touts itself as a leading designer, manufacturer, and marketer of a diverse range of recreational power boats, including performance boats, under the brands of Malibu and Axis.

37. The Malibu brand purports to include the latest innovations in performance, comfort and convenience, and retails for between \$80,000 and \$300,000 per boat. The Axis brand purports to provide a more affordably priced, entry-level performance boat which retails between \$80,000 and \$175,000 per boat.

38. Malibu boasts that it maintains the number one market share position in the United States in the performance sport boat category through its Malibu and Axis brands.

39. The majority of Malibu's sales are made pursuant to floor plan financing programs in which Malibu participates on behalf of its dealers through a contingent repurchase agreement with the dealership's lender.

40. Under such an arrangement, a dealer essentially establishes a line of credit with a lender for the purchase of dealer boat inventory from Malibu.

41. When a dealer purchases and takes delivery of a boat pursuant to a floor plan financing arrangement, it draws against its line of credit and its lender pays the invoice cost of the boat directly to Malibu. This amounts to a sale for Malibu ("Sale").

42. Tommy's began its relationship with Malibu 12 years ago.

43. For the first 11 years, it was a true partnership with countless examples of Tommy's doing anything and everything asked of it to help Malibu protect and grow its market share through the good times, and the bad, in the industry, but the first 11 years was based on good faith and fair dealing between the parties.

44. By 2023, Sales to Tommy's represented approximately 10.7% of Malibu's consolidated net sales for its fiscal year ending June 30, 2023.

45. During the COVID-19 pandemic, domestic retail demand for recreational powerboats increased to the highest levels seen by the industry in decades, as customers turned to boating as a form of outdoor socially distanced recreation.

46. Retail registration activity in the recreational powerboat market, however, began declining in the second half of the calendar year 2021 because of limited available inventory due to the strong sales activity during the pandemic and supply chain disruptions that began impacting production levels.

47. During calendar year 2022, retail registration activity continued to decline at a lower year over year rate than the second half of counter year 2021, and by 2023 the industry demand was 50% of what it was in 2023.

48. Malibu has a large fixed cost base that affects its profitability when manufacturing is limited.

49. Malibu's profitability (i.e. its stock price) depends in large part on its ability to spread its fixed costs over a sufficiently large number of products manufactured and sold, and if Malibu makes a decision to reduce production, then its gross profit margins are negatively affected.

50. Consequently, decreased demand, or need to reduce production, directly affects Malibu's ability to absorb fixed costs and materially impacts its financial condition (i.e. its stock price).

51. Malibu acknowledges that the majority of its dealers have floor plan financing arrangements with lenders in order for the dealer to purchase Malibu boats.

52. Those arrangements indirectly provide liquidity to Malibu by immediately financing dealer purchases of Malibu's products, thereby minimizing the use of Malibu's working capital in the form of accounts receivable.

53. The majority of Malibu Sales are financed under similar arrangements pursuant to which Malibu receives payment for the Sale within a few days of shipping a boat to a dealer.

54. Malibu represents that it provides its dealer's floor plan lender with a repurchase agreement to support the loan facility (and the dealer) whereby Malibu agrees to repurchase products repossessed by a dealer's floor plan lender if a dealer defaults on its debt obligations to the lender, and the boat is returned to Malibu, subject to certain limitations.

55. A repurchase agreement for boats in connection with a floor plan financing arrangement is customary in the industry.

56. And like the majority of Malibu's dealerships, Tommy's has such a floor plan financing arrangement that historically included a repurchase agreement for boats provided by Malibu to Tommy's.

57. Tommy's has its floor plan financing with M&T Bank.

58. Upon information and belief, Malibu and M&T representatives discussed a repurchase agreement at or about the time that Tommy's was moving its floor plan loan facility from 5/3 Bank to M&T Bank.

Malibu's Scheme

59. In 2023, with national sales forecasted to be approximately 50% of 2022 sales, Springer and Malibu contrived a scheme to artificially boost Malibu's Sales and profitability by shifting the anticipated loss onto the backs of its dealers, including Tommy's dealerships.

60. In late 2022, Malibu first began a campaign designed to coerce Tommy's to increase its available floor plan financing from \$50 million to \$160 million. Malibu did so by representing to Tommy's that it should have 25 weeks of inventory in stock at the turn of the model year based on Malibu's market analysis.

61. At the time, Tommy's was only into its floor plan approximately \$30 million, leaving \$20 million of purchasing and financing capacity.

62. As part of its Dealership Agreements with Malibu, Tommy's was entitled to earn incentives related to sales of Malibu products. The incentives include interest reimbursement, rebates and discounts.

63. In the 2022 fiscal year, Tommy's had earned significant incentives for which Tommy's has demanded payment, but payment has been refused. Instead of meeting its obligation to pay these incentives to Tommy's, Malibu withheld these incentives and used promises of additional incentives to be earned as additional financial pressure on Tommy's to increase its floor plan financing capacity.

64. Facing severe financial pressure, Tommy's ultimately succumbed to Malibu's campaign and increased its existing floor plan capacity from \$50 million to \$85 million with Fifth Third Bank and then to \$110 million with a \$20 million overlimit with M&T Bank.

65. Malibu represented publicly and to Tommy's lender, M&T Bank, that Malibu would support the increased floor plan with a repurchase agreement which would have protected both M&T and Tommy's in the event Tommy's defaulted on its loan obligations: Malibu would repurchase Tommy's inventory, just as Malibu had done for the benefit of Tommy's and Fifth Third Bank (and all prior lenders) on Tommy's previous floor plan facilities. A repurchase agreement (which results in virtually no adverse financial impact to Malibu) also protects Malibu's ability to control its boats in the market.

66. However, despite a repurchase agreement to protect a floor plan lender being customary in the industry, Malibu ultimately reneged on its promise to execute a repurchase

agreement for the benefit of M&T Bank and Tommy's. To date, Malibu has yet to execute a repurchase agreement with M&T Bank and Tommy's.

67. Malibu has always provided Tommy's floor plan lender with a repurchase agreement over the past eleven years.

68. Having induced Tommy's to expand its floor plan capacity to \$130 million, Malibu immediately began to pump its inventory onto Tommy's without consideration of Tommy's requests for a model mix Tommy's could actually sell (i.e., the requested model mix of 65/35 Malibu/Axis that was consistent with Malibu policy).

69. Moreover, the inventory that Malibu forced upon Tommy's was the highest priced, highest margin Malibu brand boats which benefits only Malibu, not Tommy's. It was the Axis brand boats that Tommy's needed and Malibu refused to deliver.

70. The Malibu brand boats have higher margins for Malibu. They also tie up substantially more of Tommy's floor plan and cost Tommy's substantially more in interest to carry due to the slow pace at which they are sold. In other words, Malibu's pumping Tommy's full of Malibu brand boats made it impossible for Tommy's to hit sales targets and buried Tommy's in interest which Malibu promised to pay as an incentive to take delivery of the next model year early. Malibu reneged on its promise to reimburse Tommy's for the carry interest.

71. In early February 2024, neither Tommy's, nor Malibu believed that the Dealership Agreements were expired or terminated. Rather, Malibu continued to treat Tommy's like a dealer under the same terms and conditions as set forth in the Dealership Agreements.

72. Historically, notwithstanding the expiration of the majority of Dealership Agreements on June 30, 2023, Malibu continued to treat Tommy's dealerships as active

dealerships. For example, the parties customarily renewed the Dealership Agreements several months after the original Dealership Agreements expired. During that interim period, the parties continued to conduct themselves as if the Dealership Agreements were still in place (i.e. Tommy's would order and sell boats from Malibu, represent Malibu at boat shows, etc.)

73. This 11-year course of dealing continued into early 2024. In February of 2024, Tommy's represented Malibu at the boat show in Miami, Florida at Malibu's request.

74. While at the Miami boat show, Matthew Borisch, principal for all Tommy's dealerships, was pulled aside by three (3) Malibu stakeholders to discuss Tommy's Dealership Agreements with Malibu.

75. The stakeholders disclosed to Mr. Borisch their understanding of what Malibu and its former CEO, Jack Springer, had done to Tommy's (i.e. "intentionally pumping Tommy's full of inventory" in order to artificially inflate Malibu sales and market share when "most manufacturers are 70% too heavy on inventory and he knows that.")

76. They also reported that "Jack would not turn the spigot off" (i.e. meaning he would not cut back on manufacturing) despite what the market was showing.

77. They reported that Wayne, the former CFO, left on "bad terms" and they were "nervous."

78. They also asked Tommy's to "hold on" as "Jack is not going to last."

79. The very next week, Malibu announced that Springer would be "stepping down" as CEO and Michael Hooks, current Board Chair, would be stepping in as the interim CEO.

80. Notwithstanding its knowledge of Mr. Springer's conduct, Malibu represented to the public that "[w]hile retail activity at our dealers trended lower during fiscal year 2023, given

low inventory levels at the beginning of the fiscal year, we continued to experience strong wholesale demand throughout the first three quarters of fiscal year 2023.”

81. The only “demand” that was present was Malibu’s demand that Tommy’s get to 25 weeks of inventory (despite the lack of customer demand) and that Tommy’s accept the model mix of boats heavily skewed toward the Malibu brand (as opposed to the Axis brand that Tommy’s had ordered and Malibu agreed to deliver).

After intentionally over-producing boats and pumping excess inventory onto Tommy’s, Malibu purports to terminate its business relationship with Tommy’s.

82. On Wednesday March 20, 2024, Mr. Borisch met with Malibu’s Chairman /Interim CEO, Michael Hooks, and had a very productive, positive meeting about the future of the 12-year business relationship between Tommy’s and Malibu. Mr. Borisch left the meeting believing the relationship would now be going back to how it had been for the prior 11 years.

83. Two days later, on Friday March 22, 2024, Tommy’s received a letter from Malibu purporting to terminate Malibu’s business relationship with all of Tommy’s dealerships.

84. For reasons unknown, outgoing CEO, Mr. Springer, signed the notice of termination rather than Mr. Hooks.

85. In light of the positive meeting that took place with Mr. Hooks just two days prior, Mr. Borisch called Mr. Hooks to confirm that the letter signed by Mr. Springer was in fact the final word from Malibu and that Mr. Hooks endorsed Mr. Springer’s decision.

86. Mr. Hooks confirmed that he, in fact, endorsed Mr. Springer’s decision and that it was the final word from Malibu.

87. Despite the negative forecast for boat sales in 2023 and a general sales decline in the industry, Malibu boasted positive sales performance and increased market share during that same time period.

88. Malibu was able to do so because of its scheme to “keep the spigot on” and achieve Sales by dumping its excess inventory into Tommy’s (without a repurchase agreement in place) after demanding that Tommy’s increase its floor plan capacity. By forcing the excess supply onto Tommy’s without worry of repurchase obligations, Malibu was able to represent to the public that it had achieved Sales and increased its market share above and beyond its competitors in the industry. Malibu was consequently able to manipulate investors into believing that Malibu outperformed the industry, and its stock was unaffected by an industry-wide decline.

89. Upon information and belief, subsequent to terminating its business relationship with Tommy’s, Malibu has also wasted no time in negotiating with competing dealers to take over Tommy’s sales territories.

90. At the time Malibu purported to terminate its business relationship with Tommy’s, Malibu owed incentives to Tommy’s related to the sale of Malibu products for model years 2022-2024. Those amounts have not been paid to date and thus, Malibu was in material breach of its contracts with Tommy’s when it purported to terminate Tommy’s.

91. Malibu’s abrupt purported termination of its business relationship with Tommy’s causes severe disruption to the supply of products to Tommy’s and destroys the parties’ ability to cooperate in the outstanding sales of Malibu boats to Tommy’s customers. This disruption is catastrophic to Tommy’s, its relationship with its customers, and its goodwill and reputation in the powerboat industry.

92. April begins the busiest three-month season of the year in the boating industry, and the industry standard is for boat manufacturers to have agreements in place with dealerships to sell their products during this entire cycle to maximize sales. When Malibu purported to terminate its relationship with Tommy's just prior to the start of the peak boat sales season, they left Tommy's with no alternative boat suppliers and the inability to locate a replacement supplier until the peak sales season ends. In other words, Malibu's scheme worked like a charm. Malibu was able to dupe the market and destroy its largest potential competitor (from a dealership standpoint) in the process and with zero regard for the customers, employees and vendors who rely upon Tommy's dealerships.

COUNT I – BREACH OF CONTRACT
(Tommy's Lewisville and Tommy's Fort Worth against Malibu)

93. Plaintiffs incorporate by reference its allegations in the foregoing paragraphs as though fully restated herein.

94. Tommy's Lewisville has a written Dealership Agreement with Malibu that runs from July 1, 2022, through June 30, 2025.

95. Tommy's Fort Worth has a written Dealership Agreement with Malibu that runs from July 1, 2022, through June 30, 2025.

96. Tommy's has, in all material respects, complied with and substantially performed the terms and provisions of the Dealership Agreements.

97. Malibu has materially breached the Dealership Agreements by, among other things, pretextually terminating the Dealership Agreements, holding conversations with other boat dealerships to take Tommy's territories under the Dealership Agreements, fraudulently inducing

the conditions under which Malibu purports to terminate the Dealership Agreements, and failing to pay amounts owed for the incentives and rebates earned by Tommy's dealerships in 2022-2024.

98. Malibu's fraudulent inducement of the conditions under which Malibu purports to terminate the Dealership Agreements constitutes a breach of the duty of good faith and fair dealing it owes Tommy's under the Dealership Agreements.

99. As a direct and proximate result of Malibu's breaches of the Dealership Agreements, Tommy's has suffered, and continues to suffer, damages and injury to its businesses, including but not limited to, (1) increasing its floorplan financing agreement with M&T bank, (2) taking delivery of the high-end Malibu brand boats, (3) investing and representing Malibu at the February 2024 boat show, (4) losing its exclusive sales territory, (5) breaching sales agreements with its customers for sales of Malibu boats already entered, and (6) losing profits on the inventory of Malibu boats Tommy's expected to sell during the Dealership Agreement period, and (7) substantial incidental and consequential damages such as the loss of Tommy's business value and goodwill. The amount of such damages shall be proven at trial. In addition, Malibu has acted fraudulently and egregiously to such a degree that Tommy's is entitled to an award of punitive damages.

COUNT II - BREACH OF CONTRACT
(All Plaintiffs (except Tommy's Lewisville and Tommy's Forth Worth) against Malibu)

100. Plaintiffs incorporate by reference its allegations in the foregoing paragraphs as though fully restated herein.

101. Tommy's had written Dealership Agreements with Malibu that ran from July 1, 2022, through June 30, 2023.

102. Though the Dealership Agreements term had run, Tommy's and Malibu continued to act as though the Dealership Agreements were still effective.

103. For the preceding decade, Tommy's and Malibu continued to abide by the terms of their previously expired Dealership Agreements until the new Dealership Agreements were signed.

104. As such, neither Tommy's nor Malibu believed that the Dealership Agreements were expired or terminated.

105. Tommy's has, in all material respects, complied with and substantially performed the terms and provisions of the Dealership Agreements.

106. Malibu has materially breached the Dealership Agreements by, among other things, failing to provide Tommy's with a new dealership agreement or notice of non-renewal or termination within a reasonable time before the expiration of the Dealership Agreements, pretextually terminating the Dealership Agreements, holding conversations with other boat dealerships to take Tommy's territories under the Dealership Agreements, fraudulently inducing the conditions under which Malibu purports to terminate the Dealership Agreements, and refusing to pay amounts owed for the incentives (i.e. interest reimbursement, discounts and rebates) earned by Tommy's dealerships for in 2022-2024.

107. Malibu's fraudulent inducement of the conditions under which Malibu purports to terminate the Dealership Agreements constitutes a breach of the duty of good faith and fair dealing it owes Tommy's under the Dealership Agreements.

108. As a direct and proximate result of Malibu's breaches of the Dealership Agreements, Tommy's has suffered, and continues to suffer, damages and injury to its businesses,

including but not limited to, (1) increasing its floorplan financing agreement with M&T bank, (2) taking delivery of the high-end Malibu brand boats, (3) investment made in numerous boat shows representing Malibu for the upcoming season, (4) losing its exclusive sales territory for Malibu boats, (5) breaching sales agreements with its customers for sales of Malibu boats already entered, (6) losing profits on the inventory of Malibu boats Tommy's expected to sell during the Dealership Agreement period, and (7) substantial incidental and consequential damages such as Tommy's loss of business value and goodwill. The amount of such damages shall be proven at trial.

109. In addition, Malibu has acted fraudulently and egregiously to such a degree that Tommy's is entitled to an award of punitive damages.

COUNT III – BREACH OF CONTRACT
(Plaintiffs against Malibu)

110. Tommy's incorporates by reference its allegations in the foregoing paragraphs as though fully restated herein.

111. Tommy's had written Dealership Agreements with Malibu that ran from July 1, 2022, through June 30, 2023.

112. The Dealership Agreements are binding contracts between Tommy's dealerships, respectively on the one hand, and Malibu, on the other hand.

113. Malibu has materially breached its obligations under the parties' contracts by failing to pay amounts owed for the incentives earned by Tommy's in 2022-2024.

114. As a direct and proximate result of Malibu's breaches of the Dealership Agreements, Tommy's has suffered, and continues to suffer money damages in the amount to be determined at trial.

115. In addition, Malibu has acted fraudulently and egregiously to such a degree that Tommy's is entitled to an award of punitive damages.

COUNT IV – QUANTUM MERUIT (IN THE ALTERNATIVE TO COUNT II)
(All Plaintiffs (except Tommy's Lewisville and Tommy's Forth Worth) against Malibu)

116. Tommy's incorporates by reference its allegations in the foregoing paragraphs as though fully restated herein.

117. If the Court finds that there is not an existing contract between the parties, Tommy's rendered measurable services to Malibu by increasing its floor plan lending capabilities, taking on more inventory of high-end Malibu boats that cannot easily be sold for profit, and operating its business with Malibu as though Dealership Agreements were in place, as the parties had done for over a decade.

118. Malibu knowingly induced Tommy's actions and received the benefit of Tommy's increased ability to receive shipment of Malibu's inventory, making Malibu's sales numbers look better than they truly were.

119. Malibu knew, or should have known, that Tommy's reasonably expected to be compensated for these activities by executing new Dealership Agreements and repurchase agreements with Malibu, as Malibu had previously represented to Tommy's that it would do.

120. Moreover, Tommy's earned incentives (i.e. interest reimbursement, discounts and rebates) under the 2022-2024 model year Malibu Dealership Performance Program which Malibu created and offered to its dealers, but yet refuses to pay Tommy's those incentives.

121. Despite knowledge of all these expected benefits, Malibu never executed Dealership Agreements or repurchase agreements with Tommy's and has not paid Tommy's its incentives (i.e. interest reimbursement, discounts and rebates) for 2022-2024.

122. To the extent the contracts at issue are found invalid or unenforceable, Tommy's is entitled to receive new Dealership Agreements, repurchase agreements, and the agreed-to dealer incentives for 2022-2024.

**COUNT V – UNJUST ENRICHMENT (IN THE ALTERNATIVE TO COUNT II)
(All Plaintiffs (except Tommy's Lewisville and Tommy's Forth Worth) against Malibu)**

123. Tommy's incorporates by reference its allegations in the foregoing paragraphs as though fully restated herein.

124. If the Court finds that there is not an existing contract between the parties, Malibu received a material benefit from Tommy's for which Tommy's is entitled to recover.

125. In reliance upon Malibu's promises of incentives to Tommy's, new Dealership Agreements with Tommy's dealerships, and repurchase agreements with Tommy's lender, Tommy's provided valuable services to Malibu's benefit by attending boat shows on its behalf, increasing its floor plan debt to receive more Malibu boats, and agreeing to take more high-end boats into its inventory to its own detriment.

126. Malibu knew that Tommy's expected compensation for these acts, as many conversations between the parties show that Tommy's expected to receive its 2022-2024 incentives (i.e. interest reimbursement, discounts and rebates) and to receive new Dealership Agreements and repurchase agreements with its lender, as Malibu had promised.

127. To the extent the contracts at issue are found invalid or unenforceable, Tommy's is entitled to receive new Dealership Agreements, a repurchase agreement between Malibu and Tommy's lender and the agreed-to dealer incentives (i.e. interest reimbursement, discounts and rebates) for 2022-2024.

**COUNT VI – PROMISSORY ESTOPPEL (IN THE ALTERNATIVE TO COUNT II)
(All Plaintiffs (except Tommy's Lewisville and Tommy's Forth Worth) against Malibu)**

128. Tommy's incorporates by reference its allegations in the foregoing paragraphs as though fully restated herein.

129. In connection with Tommy's increasing its floor plan capacity, Malibu promised that it would support Tommy's, and would enter into a repurchase agreement with Tommy's lender, and, in the event of Tommy's default with its lender, Malibu would buy back practically all of the inventory on Tommy's lot.

130. Additionally, Malibu promised Tommy's that, if Tommy's continued to meet certain thresholds given by Malibu, like taking on inventory shipments of 65% Malibu boats and 35% Axis boats, despite the operational difficulties this would force on Tommy's, that Malibu would enter into new Dealership Agreements with Tommy's and Tommy's would earn additional substantial incentives (i.e. interest reimbursement, discounts and rebates).

131. These promises were enforceable as Malibu made its promises unequivocal and set clear standards for what Tommy's must do in order to receive a repurchase agreement or new Dealership Agreements.

132. Tommy's relied on these promises to its detriment when it increased its floor plan capacity with M&T and continued to use up more of that floor plan credit in reliance on Malibu's promises.

133. Tommy's also received shipment of more Malibu boats as inventory to its detriment, which further exhausted Tommy's floor plan capacity, in reliance on Malibu's promise that it would execute new Dealership Agreements with Tommy's.

134. Tommy's has been harmed by Malibu's misrepresentations, and in reliance upon Malibu's misrepresentations, Tommy's now has taken delivery of a large inventory of high-end Malibu boats that cannot easily be sold and which have eaten up virtually all of Tommy's increased floor plan capacity causing it to become further indebted to its lender and buried in interest carrying costs.

135. Tommy's has taken and agreed to fulfill custom customer orders and warranty claims nationwide that cannot be completed unless the relationship with Malibu is maintained through the 2024 season.

136. Tommy's is entitled to recover its damages incurred when it acted to its own detriment in reliance on Malibu's false promises of new Dealership Agreements, repurchase agreements with Tommy's lender, and dealer incentives (i.e. interest reimbursement, discounts and rebates) together with all incidental and consequential damages. The amount of such damages shall be proven at trial.

137. In addition, Malibu has acted fraudulently and egregiously to such a degree that Tommy's is entitled to an award of punitive damages.

COUNT VII – INTENTIONAL MISREPRESENTATION/FRAUD

138. Tommy's incorporates by reference its allegations in the foregoing paragraphs as though fully restated herein.

139. Malibu represented that it would execute new Dealership Agreements and repurchase agreements with and/or for the benefit of Tommy's and its lender.

140. Malibu represented that it would take care of Tommy's, that Tommy's could get Axis brand boats on a 65/35 split, and that new Dealership Agreements would be forthcoming to formalize the continued relationships.

141. Malibu never intended to execute new Dealership Agreements with Tommy's for the 2024 season, nor did it intend to deliver the requested model mix offered to Tommy's.

142. Malibu knowingly made the false representations about the new Dealership Agreements to induce Tommy's to increase its floor plan capacity and to continue taking excess inventory to make Malibu's financial position look more favorable.

143. Because the 2023 season Dealership Agreements had expired, Tommy's relied on Malibu's representations that they would sign new Dealership Agreements and continued expanding its inventory as Malibu requested and increased its floor financing obligations with M&T Bank.

144. Because the two parties had often signed new Dealership Agreements past the expiration of the prior-year's Dealership Agreements, Tommy's reliance on Malibu's claims that it would execute new Dealership Agreements was reasonable.

145. As a direct and proximate result of Malibu's intentional misrepresentations to Tommy's about its intention to sign new Dealership Agreements, Tommy's has suffered, and continues to suffer, damages and injury to its businesses and its value, including but not limited to, (1) additional costs to service its debt under its floor plan lending agreement, (2) additional

high-end Malibu inventory that it cannot easily sell, (3) loss of the exclusive right to sell Malibu boats within certain territories, (4) and breaching Malibu boat order agreements with its customers. The amount of such damages shall be proven at trial.

146. In addition, Malibu has acted maliciously, intentionally, fraudulently or recklessly with regard to the misrepresentations made to Tommy's, and Tommy's is entitled to an award of punitive damages.

COUNT VIII – NEGLIGENT MISREPRESENTATION

147. Tommy's incorporates by reference its allegations in the foregoing paragraphs as though fully restated herein.

148. In the ordinary course of business between the parties, as had been conducted for the previous 12 years, Malibu made statements to Tommy's that indicated that Malibu intended to take care of Tommy's for its cooperation (i.e. increasing its floor plan capacity and taking delivery of the boats that Malibu "needed" Tommy's to take).

149. These representations included, among other things, that Malibu would enter into new Dealership Agreements with Tommy's, would enter into floor plan repurchase agreements with Tommy's lender, M&T, and that Tommy's would earn substantial incentives.

150. Additionally, Malibu gave Tommy's information about its Dealer Performance Program and the incentives that would be available to Tommy's for the 2023-2024 season, but yet intentionally interfered with Tommy's ability to earn those incentives (i.e. interest reimbursement, discounts and rebates) along with failure to pay 2022 incentives (i.e. interest reimbursement, discounts and rebates) already earned.

151. Despite Tommy's agreeing to receive a 65/35 split of Malibu and Axis boats, and increasing its floor plan capacity, Malibu never executed new Dealership Agreements with Tommy's or repurchase agreements with Tommy's lender, M&T; Malibu also failed to deliver a model mix per its own policy and pursuant to Tommy's orders and Malibu's commitment.

152. Additionally, although Malibu represented to Tommy's that Tommy's exclusive right to sell Malibu boats in a specific territory would not be terminated, Malibu later terminated this agreement, putting customer orders at risk and destroying Tommy's business with the abrupt termination just prior to the boating season.

153. As a direct and proximate result of Malibu's negligent misrepresentations to Tommy's about its intention to sign new Dealership Agreements, Tommy's has suffered, and continues to suffer, damages and injury to its businesses and its value, including but not limited to, (1) additional costs to service its debt under its floor plan lending agreement, (2) additional high-end Malibu inventory that it cannot easily sell, (3) loss of the exclusive right to sell Malibu boats within certain territories, (4) and breaching Malibu boat order agreements with its customers. The amount of such damages shall be proven at trial.

154. In addition, Malibu has acted maliciously, fraudulently or recklessly with regard to the misrepresentations made to Tommy's, and Tommy's is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant:

A. An award of actual money damages, including direct, indirect, incidental, and consequential damages, to Tommy's based on the various theories of breach of

contract, quasi-contract, promissory estoppel, intentional misrepresentation, and negligent misrepresentation as set forth above, as well as Malibu's other wrongful conduct;

B. An award of punitive damages to Tommy's based on Malibu's misconduct, which is intentional, malicious, fraudulent and/or reckless, and based on Malibu's fraudulent and egregious conduct related to its breach of contract(s) set forth herein; and

C. Award Plaintiffs all other relief deemed just and proper.

**THIS IS THE PLAINTIFFS' FIRST APPLICATION
FOR EXTRAORDINARY RELIEF IN THIS MATTER**

Respectfully submitted,

BAKER DONELSON

By: /s/ Scott D. Carey

Scott D. Carey
1600 West End Avenue, Suite 2000
Nashville, Tennessee 37203
Telephone: (615) 726-5600
Facsimile: (615) 744-5613
scarey@bakerdonelson.com

Nicholas W. Diegel
265 Brookview Centre Way, Suite 600
Knoxville, TN 37919
Telephone: (865) 549-7000
Facsimile: (865) 525-8569
ndiegel@bakerdonelson.com

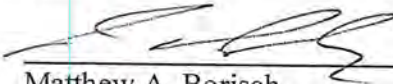
Floyd E. Gates, Jr. (*PHV forthcoming*)
Christopher J. Zdarsky (*PHV forthcoming*)
BODMAN PLC
99 Monroe Ave. NW, Suite 300
Grand Rapids, MI 49503
(616) 205-4330

Dated: April 10, 2024

VERIFICATION

I, Matthew A. Borisch, am authorized to verify the foregoing Verified Complaint on behalf of the Plaintiffs. I verify it based upon personal knowledge, Plaintiffs' books and records, or matters made known to me. For those matters stated upon information and belief, I believe them to be true after reasonable inquiry. I declare under penalties of perjury that the foregoing is true and correct.

By:


Matthew A. Borisch

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee 

TOMMY'S CASTAIC, LLC, et al.

Plaintiff(s)

v.

MALIBU BOATS, INC., and
MALIBU BOATS, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

MALIBU BOATS, INC.
Serve Registered Agent: Jack Springer
5075 Kimberly Way
Loudon, TN 37774-6469

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott D. Carey and Nicholas W. Diegel
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC
265 Brookview Centre Way, Suite 600
Knoxville, TN 37919
(865) 549-7000

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee 

TOMMY'S CASTAIC, LLC, et al.

Plaintiff(s)

v.

MALIBU BOATS, INC., and
MALIBU BOATS, LLC

Defendant(s)

Civil Action No.

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Scott D. Carey and Nicholas W. Diegel
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC
265 Brookview Centre Way, Suite 600
Knoxville, TN 37919
(865) 549-7000

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

I. (a) PLAINTIFFS

TOMMY'S CASTAIC, LLC, (see attached)

(b) County of Residence of First Listed Plaintiff Kent County, MI
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott D. Carey and Nicholas W. Diegel, BAKER DONELSON,
265 Brookview Centre Way, Suite 600, Knoxville, TN 37919
(865) 549-7000

DEFENDANTS

MALIBU BOATS, INC. and MALIBU BOATS, LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☒ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT

☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☒ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS

PERSONAL INJURY

☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY

☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY

☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR

☐ 710 Fair Labor Standards Act
☐ 720 Labor/Management Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Employee Retirement Income Security Act

IMMIGRATION

☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

BANKRUPTCY

☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

☐ 820 Copyrights
☐ 830 Patent
☐ 835 Patent - Abbreviated New Drug Application
☐ 840 Trademark
☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY

☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES

☐ 375 False Claims Act
☐ 376 Qui Tam (31 USC 3729(a))
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 485 Telephone Consumer Protection Act
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/Exchange
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:
Breach of Dealership Agreements

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
over \$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
4/10/2024

SIGNATURE OF ATTORNEY OF RECORD
/s/ Nicholas W. Diegel

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING FEE _____ JUDGE _____ MAG. JUDGE _____

Case 24-cv-00166 Document 1-3 Filed 04/10/24 Page 1 of 2 PageID #: 34

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

ATTACHMENT TO CIVIL COVER SHEET

Tommy's Castaic, LLC,
Tommy's California Ventura, LLC,
Larson Marine d/b/a Tommy's Stockton,
Larson Marine d/b/a Tommy's Sacramento,
High Country Watersports, LLC d/b/a Tommy's Colorado,
MKB Florida Holdings, LLC d/b/a Tommy's Florida,
Tommy's Phoenix, LLC,
Tommy's Las Vegas, LLC,
Tommy's Knoxville, LLC,
Walloon Lake Village Marina, LLC d/b/a Tommy's Michigan,
Tommy's Chattanooga, LLC,
Tommy's Fort Worth, LLC,
Tommy's Lewisville, LLC,
Tommy's Detroit, LLC,
Tommy's Grand Rapids, LLC,

P ,

Tommy's Rancho Cordova LLC

~~NOT APPROVED~~

Wage				Taxes		Employee		Employer		Deductions Employee		Employer	
				W/H: Fed=H;State=CA-H-0		Employee #: 1131		Hire Date: 12/25/2022 Employee ID: 679106					
Type	Hours	Rate	Current	Type	Current	YTD	Current	YTD	Type	Current	YTD	Current	YTD
Employee				CA-ETT	\$0.00	\$0.00	\$0.00	\$7.00	Accident Insurance - Mutual of Omaha 2024	\$4.51	\$49.61	\$0.00	\$0.00
Salary	56.00	0.00	\$807.70	CA-SDI	\$83.74	\$324.39	\$0.00	\$0.00					
Commis sion	0.00	6,898.55	\$6,898.55	CA-UI	\$0.00	\$0.00	\$0.00	\$238.00	Employee Basic Life Insurance	\$0.00	\$0.00	\$1.73	\$19.03
Expense - 1099 Reporta ble	0.00	752.25	\$752.25	Federal	\$1,292.20	\$3,321.26	\$0.00	\$0.00	Life Insurance - Self	\$4.15	\$45.65	\$0.00	\$0.00
Reimbur sement - Non Taxable	0.00	79.93	\$79.93	FUTA	\$0.00	\$0.00	\$0.00	\$42.00	Medical	\$90.96	\$1,000.56	\$90.96	\$1,000.56
				Medicare	\$110.38	\$427.56	\$110.38	\$427.56	Short Term Disability Insurance - Mutual of Omaha	\$6.39	\$70.29	\$0.00	\$0.00
				Social Security	\$472.00	\$1,828.20	\$472.00	\$1,828.20	Vision	\$2.43	\$24.30	\$0.00	\$0.00
				State-CA	\$514.33	\$1,199.03	\$0.00	\$0.00	Voluntary Long Term Disability	\$2.31	\$25.41	\$0.00	\$0.00
				Total	\$2,472.65	\$7,100.44	\$582.38	\$2,542.76	Total	\$110.75	\$1,215.82	\$92.69	\$1,019.59
Total	56.00		\$8,538.43										
Regular Hours Detail													
Hour Type	Hours												
Regular	56.00												
Hours Total	56.00												
Gross YTD: \$32,255.25 Net: \$5,955.03													

Tommy's Rancho Cordova LLC

NOT APPROVED

Wage	Taxes	Employee	Employer	Deductions	Employee	Employer
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Grand Totals

Gross YTD: \$32,255.25			Type	Current	YTD	Current	YTD	Type	Current	YTD	Current	YTD
Type	Hours	Current	CA-ETT	\$0.00	\$0.00	\$0.00	\$7.00	Accident Insurance - Mutual of Omaha 2024	\$4.51	\$49.61	\$0.00	\$0.00
Employee			CA-SDI	\$83.74	\$324.39	\$0.00	\$0.00	Employee Basic Life Insurance	\$0.00	\$0.00	\$1.73	\$19.03
Salary	0.00	\$807.70	CA-UI	\$0.00	\$0.00	\$0.00	\$238.00	Life Insurance - Self	\$4.15	\$45.65	\$0.00	\$0.00
Commission	0.00	\$6,898.55	Federal	\$1,292.20	\$3,321.26	\$0.00	\$0.00	Medical	\$90.96	\$1,000.56	\$90.96	\$1,000.56
Expense - 1099 Reportable	0.00	\$752.25	FUTA	\$0.00	\$0.00	\$0.00	\$42.00	Short Term Disability Insurance - Mutual of Omaha	\$6.39	\$70.29	\$0.00	\$0.00
Reimbursement - Non Taxable	0.00	\$79.93	Medicare	\$110.38	\$427.56	\$110.38	\$427.56	Vision	\$2.43	\$24.30	\$0.00	\$0.00
Total		\$8,538.43	Social Security	\$472.00	\$1,828.20	\$472.00	\$1,828.20	Voluntary Long Term Disability	\$2.31	\$25.41	\$0.00	\$0.00
Net: \$5,955.03			State-CA	\$514.33	\$1,199.03	\$0.00	\$0.00	Total	\$110.75	\$1,215.82	\$92.69	\$1,019.59
			Total	\$2,472.65	\$7,100.44	\$582.38	\$2,542.76					

FW: Outstanding Balance Due for TOMMYS LEWISVILLE

Ben Bogucki <Ben@simplifiedinvestments.com>

Tue 5/21/2024 11:39 AM

To:Denielle Hoffman <dhoffman@simplifiedinvestments.com>;Wesley Duncan <wesley@simplifiedinvestments.com>

This is for the Worldpay account which is CC processing for Pro Shop sales

Thanks,

Ben

From: PaymentResolution@servicingteam.com <PaymentResolution@servicingteam.com>

Sent: Tuesday, May 21, 2024 11:01 AM

To: Ben Bogucki <Ben@simplifiedinvestments.com>

Subject: Outstanding Balance Due for TOMMYS LEWISVILLE


TOMMYS LEWISVILLE
Federal Tax ID: XXXXX4750
375 OAKRIDGE BLVD
LEWISVILLE, TX 75057

Attn: Accounts Payable

Our records indicate there are unsatisfied balances remaining on your merchant payment processing account. As a result, we have placed a hold on the deposit of processing funds to your account. Please contact Merchant Services to discuss the outstanding amounts owed on your account.

Your current outstanding account balance is \$681.74. For more details, call us at (866) 301-8687.

Please make it a priority to contact us as soon as possible to avoid interruption to your service.

Phone: (866) 301-8687 (Monday thru Friday 8am - 5pm EST)

Email: [PaymentResolution@servicingteam.com]PaymentResolution@servicingteam.com

Mail Payments to:

Worldpay Payment Resolution

PO BOX 639726, Cincinnati, OH 45263-9726

(Check payable to "Worldpay" & include your Federal Tax ID in the check memo)

Your success is important to us and we would like to help you resolve this matter and minimize any resulting disruption to your payment processing account.

Regards,

Merchant Services Leadership
(866) 301-8687

A30001-0

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