

DOCKETED

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SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION AND ADVANTAGE MANUFACTURING
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This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into between California Energy Commission (Commission), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and Advantage Manufacturing, Inc. (“Advantage”), with its principal place of business at 616 S. Santa Fe Street, Santa Ana, California 92705, collectively referred to as the “Parties.”

I. RECITALS

(1) The Commission’s Appliance Efficiency Regulations at California Code of Regulations, Title 20, Article 4, sections 1601-1608,¹ set forth the requirements to sell or offer for sale regulated appliances in California. The pertinent requirements include:

- Testing: The appliance is tested as required in section 1603, using the applicable test method set forth in section 1604.
- Efficiency and Design: The appliance meets the required efficiency and design standards set forth in sections 1605.2 or 1605.3.
- Marking: The appliance is correctly marked and labeled as required under section 1607.
- Certification: The appliance is certified to the Commission and appears in the Commission’s most recent Appliance Efficiency Database (Database) as required under section 1606.

(2) The Commission’s enforcement authority includes the issuance of administrative civil penalties under section 1609.

(3) Advantage manufactures several models of residential pool pumps (“pool pumps”) and pool pump motors (“pool motors”) that it sells or offers for sale in California either directly or through retailers.

(4) Advantage pool pumps are subject to the testing, design, marking and certification requirements for residential pool pumps as described in paragraph I(1) above.

(5) From January 2013 through October 2016, Advantage sold or offered for residential pool pumps and pool motors in California that were not listed in the Database, and failed to meet the design requirement as specified in section 1605.3(g)(5)(B):

“Residential pool pump motors with a pool pump motor capacity of 1 HP or greater which are manufactured on or after January 1, 2010, shall have the capability of operating at two or more speeds with a low speed having a rotation rate that is no more than one-half of the motor’s maximum rotation rate...”

¹ All references are to California Code of Regulations, title 20, Article 4, unless otherwise specified.

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The Commission inspected pool pump model EAP3 and pool motor model CK256Y-200L and determined they failed to meet the applicable energy design requirement to operate at a minimum of two speeds for pool pump motors with a motor capacity of one horsepower or greater.

(6) Based on the above recitals, the Commission, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Advantage from continuing to sell or offer for sale, non-compliant pool pump or motor units in California and take any other enforcement action as allowed by law.

(7) Penalties must be set at levels sufficient to deter violations. Section 1609(b)(3) and Public Resources Code section 25402.11 (a)(2) identify the following factors the Commission shall consider when determining the amount of an administrative civil penalty:

- The nature and seriousness of the violation.
- The persistence of the violation, meaning a responsible person's history of past violations of the Appliance Efficiency Regulations over the previous seven years.
- The number of violations arising from the course of conduct that is subject of the enforcement proceeding.
- The length of time over which the violation occurred.
- The willfulness of the persons responsible for the violation.
- The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.
- The number of persons responsible for the violation.
- The efforts of the persons responsible for the violation to correct the violation prior to initiation of an enforcement action by the Energy Commission.
- The cooperation, by the persons responsible for the violation, with the Energy Commission during its investigation.
- The assets, liabilities, and net worth of the persons responsible for the violation. This information will be considered to reduce the administrative civil penalty amount, should a responsible person or persons elect to provide asset, liability, and net worth documentation to the Executive Director to demonstrate that a reduction in a penalty amount is necessary to avoid an undue burden.

(8) In reaching this Agreement the Commission considered the facts of the case and applied the above factors to determine an appropriate settlement. In particular, Advantage fully cooperated with the Commission in the investigation by providing sales data of non-compliant units and by implementing measures to prevent sale of pool pump model EAP3 and pool motor model CK256Y-200L for use on residential pools. The efforts by Advantage saved the Commission time and resources in investigating the violations of the non-compliant units. Also, Advantage supplied documentation that a higher penalty would cause it financial hardship. This documentation is confidential and the Commission does not retain it in the regular course of business.

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(9) Advantage is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Commission without any admission of fact or liability. The Commission accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for adjudication.

II. TERMS AND RELEASE

In consideration of the recitals listed above which are incorporated into this section by reference, and the mutual agreements set forth below, the Commission and Advantage agree as follows:

(1) This Agreement covers the Advantage pool pump model EAP3 and pool motor model CK256Y-200L.

(2) For selling or offering for sale in California pool pump or pool motor units that did not meet the energy design standards set forth in section 1605.3, and were not certified to the Database as required by section 1606, and, in consideration of the factors listed in paragraph I(7) and Advantage's cooperation and the other facts and circumstances described in paragraph I(8) above, Advantage shall pay the total sum of three thousand dollars (\$3,000.00). Payment shall be made in six monthly payments of \$500.00 each, as shown below:

Payment Number	Due Date	Amount
1	June 1, 2017	\$500.00
2	July 1, 2017	\$500.00
3	August 1, 2017	\$500.00
4	September 1, 2017	\$500.00
5	October 1, 2017	\$500.00
6	November 1, 2017	\$500.00

Checks shall be made payable to the California Energy Commission. Payment shall be made by the applicable due date, and sent with the corresponding remittance statement to the following address:

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814-5512

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Effect of untimely payment: If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Commission takes action to enforce this agreement, in the event the Commission is successful in Court, Advantage shall pay all costs of investigating and prosecuting the action to enforce this agreement, including expert fees, reasonable attorney's fees, and costs.

It is agreed that if Advantage, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving Advantage, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against Advantage, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Advantage's, its subsidiary, or parent company's properties, or if any deposit account or other property of Advantage, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or Advantage, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(3) Advantage also agrees to comply with the Commission's Appliance Energy Efficiency Regulations in the future, including but not limited to taking each of the following actions for any and all pool pumps and pool motor units it sells or offers for sale in California:

- a. Ensure each basic model is tested using the applicable test procedure.
- b. Certify each basic model to the Database and maintain up-to-date and accurate listings.
- c. Add any required marking to each unit.
- d. Continue measures to prevent sale of single speed products for use on residential applications, such as maintaining a statement on Advantage's webpage(s) informing of this restriction, communicating this restriction for phone orders and maintaining a statement on all invoices.

(4) This Agreement shall apply to and be binding upon Advantage and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon the Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(5) In consideration of the payment specified above, the Commission hereby releases Advantage and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for violations of section 1608, (efficiency and design, marking, certification), relating to Recital paragraph I(5), above.

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(6) Nothing in this Agreement, nor the payment of any amount by Advantage, shall be construed as an admission by Advantage of any violation of Commission requirements or any state or federal law, statute or regulation. The parties enter into this Agreement to avoid litigation and without the admission or adjudication of any issue of fact or law.

(7) This Agreement constitutes the entire agreement and understanding between the Commission and Advantage concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between the Commission and Advantage concerning these claims.

(8) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties to this Agreement.

(9) Advantage further agrees that if the subject matter of this agreement comes before the Commission in an administrative adjudication, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Agreement.

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

(11) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules. Any litigation arising out of or related to this Agreement shall be filed in the Superior Court of California, County of Sacramento.

(12) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(13) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

(14) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.

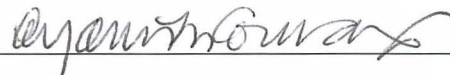
(15) This Agreement is effective upon signature by a representative of Advantage with authority to bind the company, and approval by an authorized agent of the Commission. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

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California Energy Commission

Advantage Manufacturing

By 

By 

Name: Robert P. Oglesby

Name: Lynn Courant

Title: Executive Director

Title: CEO

Date: 5-18-17

Date: 5/4/17