

## DOCKETED

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<b>Project Title:</b>	Settlement Agreements
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## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (Commission), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and AKDY Imports, LLC (AKDY), with a place of business at 8807 Rochester Avenue, Rancho Cucamonga, California 91730 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 1601-1609 (Appliance Efficiency Regulations),<sup>1</sup> 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 1603, using the applicable test method set forth in section 1604.
- Efficiency: The appliance meets the required efficiency 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 removal of non-complying appliances from the Database, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

(3) AKDY distributes several models of plumbing fittings, residential exhaust fans, and wine chillers that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) AKDY plumbing fittings, residential exhaust fans, and wine chillers are subject to the testing, efficiency (where applicable), marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From July 2014 to April 2017, AKDY sold or offered for sale through retailers or distributors plumbing fittings, residential exhaust fans, and wine chillers in California, that were not listed in the Database as required in section 1606, and did not meet the applicable efficiency standards set forth in section 1605.3 when tested using the appropriate test method as described in section 1604. The plumbing fittings were not marked as required in section 1607.

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<sup>1</sup> All references are to California Code of Regulations, Title 20, Article 4, unless otherwise specified.

(6) Based on the above Recitals, the Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit AKDY from continuing to sell or offer for sale, non-compliant plumbing fittings, residential exhaust fans, and wine chillers in California, and take any other enforcement action as allowed by law.

(7) Section 1609(b)(3) and California 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) Penalties must be set at levels sufficient to deter violations. In developing this Agreement the Commission considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case AKDY cooperated with the Commission in the investigation by redesigning its products; promptly testing, certifying, and marking the units; notifying retailers and removing the non-compliant units from the California market; and by providing to the Commission sales data of non-compliant units. The efforts by AKDY saved the Commission time and resources in investigating the violations and minimized the impacts on the competitive business environment, energy consumption and the environment in California from the non-compliant units. Also, AKDY demonstrated, by providing financial information, 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.

(9) AKDY is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Commission. 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 AKDY agree as follows:

(1) This Agreement covers AKDY plumbing fitting, residential exhaust fan, and wine chiller models listed in Attachment A.

These appliances have been redesigned to comply with the applicable energy efficiency standards prescribed by section 1605, certified to the Database as required by section 1606, marked as required by section 1607, and are now legal for sale in the California market.

(2) For selling or offering for sale in California, appliances identified in paragraph I(5), whose model numbers are identified in Attachment A that did not meet the applicable energy efficiency standards prescribed by section 1605.3, were not certified to the Database as required by section 1606, were not marked per section 1607, and in consideration of the factors listed in paragraph I(7) and I(8) above, AKDY shall pay as an administrative civil penalty the total sum of two hundred forty-five thousand dollars (\$245,000.00). Payment shall be made by check payable to the California Energy Commission in 18 monthly payments shown below:

Payment Number	Due Date	Amount
1	January 1, 2018	\$10,888.88
2	February 1, 2018	\$10,888.88
3	March 1, 2018	\$10,888.88
4	April 1, 2018	\$10,888.88
5	May 1, 2018	\$10,888.88
6	June 1, 2018	\$10,888.88
7	July 1, 2018	\$10,888.88
8	August 1, 2018	\$10,888.88
9	September 1, 2018	\$10,888.88

Payment Number	Due Date	Amount
10	October 1, 2018	\$16,333.33
11	November 1, 2018	\$16,333.33
12	December 1, 2018	\$16,333.33
13	January 1, 2019	\$16,333.33
14	February 1, 2019	\$16,333.33
15	March 1, 2019	\$16,333.33
16	April 1, 2019	\$16,333.33
17	May 1, 2019	\$16,333.33
18	June 1, 2019	\$16,333.44

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

Effect of untimely payment: If any payment is more than 30 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Commission takes action to enforce this agreement, AKDY shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

It is agreed that if AKDY, 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 AKDY, 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 AKDY, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of AKDY's, its subsidiary, or parent company's properties, or if any deposit account or other property of AKDY's, 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 AKDY, 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) AKDY also agrees to take each of the following actions for any and all regulated appliances it will sell or offer for sale in California:

- a. Test all basic models, utilizing the applicable test method, to ensure conformance with the Appliance Efficiency Regulations.
- b. Certify all basic models in the Database, and ensure listing(s) are kept current and up to date.
- c. Add the required marking to the unit.

(4) This Agreement shall apply to and be binding upon AKDY 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 AKDY and its principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for violations of sections 1604, 1605.3, 1606, 1607 and 1608 (efficiency, marking, certification), relating to the appliances identified in paragraph I(5), whose model numbers are identified in Attachment A.

(6) This Agreement constitutes the entire agreement and understanding between the Commission and AKDY 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 AKDY concerning these claims.

(7) 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.

(8) AKDY 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

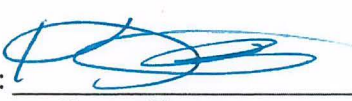
(13) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.

(14) This Agreement is effective upon signature by a representative of AKDY with authority to bind the company, and approval by an authorized agent of the Commission or, if required, the Commission at a publically noticed meeting through an order or resolution. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

**California Energy Commission**

By:   
Name: Drew Bohan  
Title: Executive Director  
Date: 1-9-19

**AKDY IMPORTS, LLC**

By:   
Name: Kenny Chen  
Title: CIO  
Date: 12/21/2017

Attachment A

The following AKDY Brand Shower Head model numbers

SH0015	SH0017	SH0023	SH0030	SH0051	SH0092	SH0113	SH0124	SH0005
SH0003	SH0018	SH0024	SH0032	SH0058	SH0093	SH0114	SH0126	SH0104
SH0004	SH0019	SH0025	SH0035	SH0061	SH0094	SH0115	SH0127	SH0105
SH0013	SH0021	SH0027	SH0041	SH0065	SH0111	SH0117	SH0128	SH0109
SH0014	SH0022	SH0028	SH0043	SH0068	SH0112	SH0123	SH0001	SH0110

The following AKDY Brand Shower Panel model numbers

SP0011	SP0017	SP0023	SP0031	SP0037	SP0045	SP0052	SP0060
SP0012	SP0018	SP0024	SP0032	SP0039	SP0048	SP0055	SP0061
SP0013	SP0021	SP0027	SP0035	SP0040	SP0049	SP0058	SP0062
SP0015	SP0022	SP0030	SP0036	SP0042	SP0051	SP0059	

The following AKDY Brand Residential Exhaust Fan model numbers

RH0037	RH0084	RH0145	RH0063	RH0290	RH0219	RH0005	RH0060	RH0305
RH0039	RH0085	RH0211	RH0124	RH0291	RH0159	RH0007	RH0061	RH0306
RH0041	RH0181	RH0015	RH0125	RH0077	RH0160	RH0008	RH0239	RH0157
RH0038	RH0034	RH0016	RH0187	RH0080	RH0167	RH0009	RH0240	RH0158
RH0036	RH0035	RH0017	RH0243	RH0081	RH0168	RH0010	RH0293	RH0165
RH0040	RH0155	RH0018	RH0244	RH0082	RH0173	RH0012	RH0294	RH0166
RH0153	RH0156	RH0020	RH0245	RH0083	RH0174	RH0013	RH0295	RH0169
RH0152	RH0163	RH0022	RH0231	RH0109	RH0175	RH0126	RH0296	RH0170
RH0151	RH0164	RH0023	RH0282	RH0110	RH0176	RH0127	RH0297	RH0161
RH0250	RH0171	RH0024	RH0283	RH0111	RH0216	RH0046- RH0207	RH0298	RH0162
RH0235	RH0172	RH0025	RH0284	RH0112	RH0217	RH0051- RH0208	RH0299	
RH0026	RH0220	RH0054	RH0285	RH0179	RH0222	RH0052- RH0209	RH0300	
RH0067	RH0221	RH0205	RH0286	RH0180	RH0223	RH0138- 212-213	RH0301	
RH0068	RH0014	RH0206	RH0287	RH0183	RH0001	RH0204 -RH0210	RH0302	
RH0069	RH0142	RH0252	RH0288	RH0184	RH0002	RH0056	RH0303	
RH0070	RH0144	RH0058	RH0289	RH0218	RH0003	RH0057	RH0304	

The following AKDY Brand Wine Cooler model numbers

WC0030	WC0032	WC0034	WC0038	WC0042
WC0031	WC0033	WC0036	WC0040	WC0044