

DOCKETED

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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 Quality Leisure Products Corporation ("Quality Leisure Products"), with a place of business at 7612 N. 74th Ave. Glendale, AZ 85303, 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"),¹ set forth the requirements to sell or offer for sale regulated appliances in California. The pertinent requirements include:

- 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 1606, and the issuance of administrative civil penalties under section 1609.

(3) Quality Leisure Products manufactures several models of Tuff Spa brand portable electric spas that it sells or offers for sale in California either directly or through retailers or distributors.

(4) Quality Leisure Products portable electric spas are subject to the efficiency, marking and certification requirements for this appliance class as described in paragraph I(1) above.

(5) In 2015 and 2016, Quality Leisure Products sold or offered for sale through retailers or distributors approximately 10 units of portable electric spas in California that were listed in the Database but did not meet the portable electric spa standards set forth in section 1605.3(g)(6) when tested using the appropriate test method as described in section 1604(g)(2).

(6) Based on the above recitals, the Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Quality Leisure Products from continuing to sell or offer for sale, non-compliant portable electric spas 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:

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

- 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.

(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 Quality Leisure Products cooperated with the Energy Commission in the investigation by updating its spa manufacturing process for the California market and by providing to the Commission sales data of non-compliant units. The efforts by Quality Leisure Products saved the Commission time and resources in investigating the violations and minimized the impacts on energy consumption and the environment in California from the non-compliant units.

(9) Quality Leisure Products 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 Quality Leisure Products agree as follows:

- (1) This Agreement covers the following Quality Leisure Products appliance which have been updated for the California market: Tuff Spa TS350 (portable electric spa)
- (2) For selling or offering for sale in California portable electric spa that did not meet the energy efficiency standards prescribed by section 1605.3 and were certified to the Database as required by section 1606 but certifications contained unrepresentative data, and, in consideration of the factors listed in paragraph I(7) and Quality Leisure Products cooperation described in paragraph I(8) above, Quality Leisure Products shall pay as an administrative civil penalty the total sum of \$25,633.38 by check

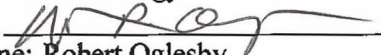
payable to the California Energy Commission by December 16, 2016. Payment shall be made by the applicable due date, and sent with the corresponding remittance statement to the following address:

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

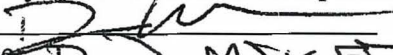
- (3) Quality Leisure Products also agrees to take each of the following actions for any and all portable electric spas it will sell or offer for sale in California:
- a. Retest all models to ensure that they meet Commission standards in the Appliance Efficiency Regulations.
 - b. Update all models in the Database to ensure representative certifications.
 - c. Use a new model number for the covered models described in II(1).
 - d. Update its product label, for spas manufactured for outside California sale, to include the phrase: "Not for sale in California."
- (4) This Agreement shall apply to and be binding upon Quality Leisure Products 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 Quality Leisure Products and its principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for penalties pursuant to section 1609 for violations of sections 1605.3(g)(6), 1608(a)(2)(c)(3) and 1608(a)(2)(c)(4) relating to the appliances identified in paragraph I(5), whose model numbers are identified in paragraph II(1).
- (6) This Agreement constitutes the entire agreement and understanding between the Commission and Quality Leisure Products 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 Quality Leisure Products 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) Quality Leisure Products further agrees that if the subject matter of this agreement comes before the Commission in an administrative adjudication, neither any member of the Energy 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 Quality Leisure Products 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: Robert Oglesby
Title: Executive Director
Date: 12-15-16

Quality Leisure Products Corporation

By: 
Name: David M. K. A.
Title: President
Date: 12/11/16