

DOCKETED

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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 Whirlpool Corporation (Whirlpool), with a place of business at 2000 North M-63, Benton Harbor, Michigan 40222, 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:

- 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) Whirlpool manufactures, distributes and/or sells several models of Whirlpool, KitchenAid, Maytag, and Jenn-Air residential exhaust fans in California, either directly or through retailers or distributors.

(4) Whirlpool residential exhaust fans are subject to the testing, marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From January 1, 2014 to February 8, 2017, Whirlpool sold or offered for sale through retailers or distributors residential exhaust fans in California that were not listed in the Database as required in section 1606. The model numbers of those fans are identified in Attachment A

(6) Based on the above recitals, the Commission, through adjudication, could have sought: penalties for each violation alleged, and/or to obtain injunctive relief to prohibit Whirlpool from continuing to sell or offer for sale, non-compliant residential exhaust fans in California and take any other enforcement

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

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 Whirlpool cooperated with the Commission in the investigation by promptly testing, certifying, and marking the units. The efforts by Whirlpool saved the Commission time and resources in investigating the violations and minimized the impacts on the business environment in California from the non-compliant units.

(9) Whirlpool 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 liability. The Commission accepts this Agreement as a resolution and complete 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 Whirlpool agree as follows:

(1) This Agreement covers the Whirlpool residential exhaust fans listed in Attachment A.

These appliances have been certified to the Database as required by section 1606, and are now legal for sale in the California market.

(2) For selling or offering for sale in California residential exhaust fans identified in paragraph I(5), whose model numbers are identified in Attachment A that were not certified to the Database as required by section 1606. and in consideration of the factors listed in paragraph I(7) and I(8) above, Whirlpool shall pay as an administrative civil penalty the total sum of \$160,000 by check made payable to the California Energy Commission by April 30, 2018. 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) Whirlpool also agrees to take each of the following actions for any and all regulated appliance it will sell or offer for sale in California:

- a. Test all basic models, utilizing the applicable test method, in accordance 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 Whirlpool 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 Whirlpool and its principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for violations of section 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 Whirlpool 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 Whirlpool 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) Whirlpool 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.

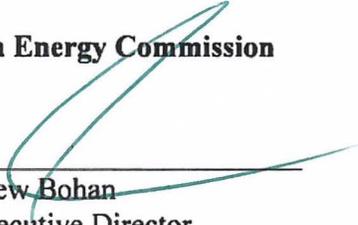
(12) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement.

(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 Whirlpool 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.

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CALIFORNIA ENERGY COMMISSION AND WHIRLPOOL CORPORATION
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California Energy Commission

By: 
Name: Drew Bohan
Title: Executive Director
Date: 3-23-18

Whirlpool Corporation

By: 
Name: Kyle De Jong
Title: Assistant General Counsel
Date: 3/22/18

Attachment A

This agreement covers the following Whirlpool manufactured residential exhaust fan model numbers. Model numbers that include asterisks (*) represent base models or model families which include a series of models and model numbers.

GXI6536DXS	JID4436ES	KVWB406DSS	UXT4130AD*
GXU7130DXS	JXD7836BS	KVWB600D*	UXT4136AD*
GXW6530DXS	JXI5036WS	KVWB606D*	UXT4230AD*
GXW6536DXS	JXI8536DS	KVWB606D*	UXT4230AY*
GXW7230DAS	JXI8736DS	KXD4630YSS	UXT4236AD*
GXW7330DXS	JXI8742DS	KXD4636YSS	UXT5230BD*
GXW7336DXS	JXI8936DS	KXU4236YSS	UXT5236BDS
IH1400DW	JXU9130WP	KXU8030YSS	UXW6530BSS
IH3402DS	JXU9136WP	KXU8036YSS	UXW6536BSS
IH6302YS	JXW8036WS	KXW8736YSS	UXW7230BSS
IHI6530BS	JXW8530DS	KXW8748YSS	WVI75UC6DS
IHI75UC6FS	JXW8536DS	KXW9736YSS	WVW51UC0FS
IHW2530BS	JXW8736DS	KXW9748YSS	WVW51UC6FS
IHW51UC0FS	JXW9030WP	UXD8630DYS	WVW53UC0FS
IHW53UC0FS	JXW9036WP	UXD8636DYS	WVW53UC6FS
IHW61UC0FS	JXW9048WP	UXI1200DYS	WVW57UC0FS
IHW6530BS	KVIB602DSS	UXI6536BSS	WVW57UC6FS
IHW7302YS	KVIB606DB*	UXT2030AD*	WVW75UC0DS
IXL5430DS	KVWB400DSS	UXT3030AD*	WVW75UC6DS