

DOCKETED

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (CEC), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and RGM Distribution, Incorporated (RGM), with a place of business at 1530e McDonald Avenue, Brooklyn, New York 11230, collectively referred to individually as a "Party" and collectively as the "Parties."

I. RECITALS

(1) CEC'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 section 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 CEC and appears in CEC's most recent Modernized Appliance Efficiency Database System (MAEDbS) as required under section 1606.

(2) CEC's enforcement authority includes the removal of non-compliant appliances from MAEDbS, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

(3) RGM distributes several models of plumbing fittings and plumbing fixtures that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) RGM's plumbing fittings and plumbing fixtures are subject to the testing, efficiency, marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From July 2016 to July 2019, RGM sold or offered for sale through retailers or distributors plumbing fittings and plumbing fixtures in California, that were not listed in MAEDbS as required in section 1606, did not meet the efficiency standards set forth in section 1605 when tested using the appropriate test method as described in section 1604, and/or were not marked as required in section 1607.

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

(6) Based on the above Recitals, CEC, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit RGM from continuing to sell or offer for sale, non-compliant plumbing fittings and plumbing fixtures 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 CEC 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 CEC.
- The cooperation, by the persons responsible for the violation, with CEC 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 CEC considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case RGM cooperated with CEC in the investigation by removing the non-compliant units from the California market and by providing to CEC sales data of non-compliant units. The efforts by RGM saved CEC time and resources in investigating the violations and minimized the impacts on the competitive business environment and energy consumption and the environment in California, from the non-compliant units.

(9) RGM is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CEC without any admission of fact or liability. CEC 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, CEC and RGM agree as follows:

- (1) This Agreement covers the model numbers listed in Attachment A.
- (2) For selling or offering for sale in California, plumbing fittings and plumbing fixtures identified in paragraph I(5), whose model numbers are identified in Attachment A, that did not meet the energy efficiency standards prescribed by section 1605, were not certified to MAEDbS as required by section 1606, and/or were not marked per section 1607 and, in consideration of the factors listed in paragraph I(7) and I(8) above, RGM shall pay to settle this matter the total sum of eighty-one thousand six hundred sixty-seven dollars (\$81,667) by check made payable to the California Energy Commission by February 1, 2020. 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) RGM 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, to ensure conformance with the Appliance Efficiency Regulations.
 - b. Certify all basic models in MAEDbS, and ensure listings are kept current and up to date.
 - c. Add the required marking to the unit.
 - d. RGM will not package, mark, or provide products with instructions directing the user to an alternative water-use setting that would exceed the applicable efficiency standards. Instructions related to the maintenance of the product, including changing or cleaning showerhead components, shall direct the user how to return the device to the flow rate provided by the applicable efficiency standard.

(4) This Agreement shall apply to and be binding upon RGM and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiaries and parent corporations, and upon CEC 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, CEC hereby releases RGM and its parent corporations, principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors, successors, and assignees from any and all claims for violations of the Appliance Efficiency Regulations, including but not limited to, 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 CEC and RGM 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 CEC and RGM 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) RGM further agrees that if the subject matter of this Agreement comes before CEC in an administrative adjudication, neither any member of CEC, 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 RGM with authority to bind the company, and signature by the Executive Director of CEC. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement, which may be signed in counterparts.

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CALIFORNIA ENERGY COMMISSION AND RGM DISTRIBUTION, INC.
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California Energy Commission

By: 
Name: Drew Bohan
Title: Executive Director
Date: 12-30-19

RGM Distribution, Incorporated

By: 
Name: ROBERT GAVARTIN
Title: CEO/PRESIDENT
Date: 12/26/2019

Attachment A

American Standard aerator and showerhead				
066070-0020A	T353.502.002			
Avanity lavatory faucets				
FWS1501BN	FWS1501MG			
BioBidet water closet				
IB-835				
Blanco kitchen faucets				
403773	441197	441404	442025	442029
442041	442206			
Brizo lavatory faucets and showerheads				
65005LF-BN	65030LF-PC	65035LF-GL	65035LF-PN	65036LF-PC
65050LF-PC	65061LF-PN	65080LF-BL	65080LF-BN	65080LF-PC
65085LF-BN	65088LF-BL	65175LF-BL	65175LF-PC	65305LF-PCLHP
65305LF-RBLHP	65330LF-BN	65330LF-BZ	65330LF-PC	65330LF-PN
65330LF-RB	65335LF-GLLHP	65335LF-PNLHP	65336LF-PN	65337LF-NKLHP
65337LF-PCLHP	65340LF-PC	65345LF-BN	65345LF-PC	65350LF-PC
65351LF-PC	65360LF-PCLHP	65361LF-RBLHP	65375LF-BL	65375LF-GL
65375LF-PC	65380LF-BLLHP	65380LF-PCLHP	65430LF-BN	65430LF-BZ
65430LF-PC	65485LF-PNCOLHP	65675LF-BL	65675LF-BN	65675LF-PC
65830LF-PN	65875LF-BL	65975LF-BNBL	65985LF-BN	65985LF-PNCO
81330-BZ-2.5	81375-BL-2.5	81375-BN-2.5	81398-GL-2.5	81398-NK-2.5
83341-PC-2.5	86201-GL-2.5	86275-BL-2.5	86275-BN-2.5	86275-GL-2.5
86275-NK-2.5	86280-BN-2.5	RP31682PN	RP42431BN-2.5	RP52090PC-2.5
T60210-RB-2.5	T60280-PC-2.5	T65735LF-PC	T65735LF-PN	T65798LF-PN
T65851LF-PN				

California Faucets showerheads				
1106-62.20-LSG	1506-D-60.20-ORB	9120.04.20-PC	9120.431.20-SN	9120.504.25-PN
HS-22.20-SN	HS-323.25-PC	HS-403.20-PC	HS-403.25-PC	HS-413.20-SN
HS-504.20-PC	HS-504.20-SN	HS-553.25-SN	HS-563.20-PC	HS-62.20-BTB
HS-62.25-PC	HS-62.25-SB	HS-62.25-SN	HS-72.20-SN	HS-72.25-MBLK
HS-72.25-PC	SH-05.25-PC	SH-05.25-SN	SH-083.20-SN	SH-083.25-PC
SH-083.25-SN	SH-106.20-SN	SH-108.20-PC	SH-112.20-PC	SH-162-12.25-BTB
SH-162-12.25-PC	SH-162-6.25-BTB	SH-171.20-PN	SH-171.25-MBLK	SH-172.20-SN
SH-177-8.25-MBLK	SH-303.20-PC	SH-323.25-PN	SH-431.20-PC	SH-504.20-SN
SH-514.25-SN	SH-551.25-PC	TO-77R.72.20-SN		

Cambridge lavatory faucet				
TFBN				

Danze showerheads and aerators				
D462025BR	D465005PNV	D492100BN	D500011BNT	DA500062N
DA523026NBN	DA523269N	DA523269NBN	DA523294N	DA523294NBN
DA523425N	DA523441N	DA523441NBN	DA613080NBN	DA613084NBN

Delta Faucet showerheads				
1348	75152	52159-CZ25	52652-PK	75009WH
75555PB	RP18508	RP34355	RP34355SS	RP37018RB
RP38613	RP40372SS	RP52140	RP52140RB	RP52149
RP52216	RP52657	RP53345BB	RP62283PN	RP62955BL
T14251-PN	T14251-SP	T14253	T14253-CZ	T14401-SST20
T14401-T2O	T17251-SP	T17253	T17253-CZ	T17T297
T17T297-SS	T17T299-BL			

Dreamline showerhead panel				
SHCM-2050				

Elkay lavatory faucet				
LK2000CR				

Franke aerator				
4089SN				

Fresca showerhead panels, lavatory faucets, and water closets				
FSP8001BG	FSP8001BS	FSP8002BG	FSP8004SL	FSP8006BG
FSP8006BS	FSP8007BS	FSP8009BS	FSP8011BS	FSP8012BS
FFT3071BN	FFT3071CH	FFT3072BN	FFT3072CH	FFT3076BN
FFT3076CH	FFT3111BN	FFT3111CH	FFT3112BN	FFT3112CH
FFT3811CH	FFT9131CH	FFT9151BN	FFT9151CH	FFT9152BN
FFT9152CH	FFT9161BN	FFT9161CH	FFT9162CH	FTL2133
FTL2222	FTL2309	FTL2336	FTL2346	FTL2351
FTL2377				

Hansgrohe showerheads				
27146001	27390401	27466001	27474001	27874001
28427001	28445001	28477001	28548001	28557401

LaToscana showerheads and lavatory faucet				
78CR136	78PW136	87CR136	89OK211	

Moen aerators and showerheads				
131380ORB	134742CSL	140392W	153977CSL	52136GBM25
6370BN	S6310WR	S6320	S6320BN	S6320ORB
S6345BN	T2132BN	T2182ORB	T2192BN	T2312
T3112ORB	T3293BN	T3692BN	T5502NL	T8341
T8342	TS2712	TS2713	TS3713	

Pulse showerheads				
1011-III-BN	1011-III-CH	1011-III-ORB	1021-SSB	1049B-BN
1055-SSB				

Toto water closets and showerheads				
CST405F#12	CST744S#01	CST744SL#11	MS853113#01	MS853113#11
MS853113S#01	MS854114#01	MS854114S#01	MS854114SL#01	MS854114SL#03
ST743S#01	ST743S#11	ST743S#12	ST743SB#01	ST743SD#01
ST743SDB#01	ST743SR#01	ST743SR#51	ST744E#01	ST784S#01
TB960S#CP	THP4064R#CP	TMU1LN12#CP	TS200AL65#BN	TS300FL41#BN
TS301FL41#BN	TS301FL55#CP	TS624A#CP		