

**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 715 P Street, Sacramento, California 95814, and Align Incorporated (Align), with a place of business at 19301 East Walnut Drive North, City of Industry, California 91748, collectively referred to 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),<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 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-complying appliances from MAEDbS, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.
- (3) Align distributes and sells several models of Della brand portable air conditioners and room air conditioners and Kidzone brand battery operated kid's ride-on toys that it sells or offers for sale in California, either directly or through retailers or distributors.
- (4) Align portable air conditioners, room air conditioners, and battery operated kid's ride-on toys that contain battery chargers are subject to the testing, efficiency, marking, and certification requirements for this appliance class as described in paragraph I(1) above.
- (5) From May 2018 to October 2022, Align sold or offered for sale through retailers or distributors Della brand portable air conditioners and room air conditioners, and Kidzone brand battery operated kid's ride-on toys in California, that were not listed in MAEDbS as required in section 1606, and, Della brand portable air conditioners that did not meet the efficiency standards set forth in section 1605.3(d) when tested using the appropriate test method as described in section 1604(d).

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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, CEC, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Align from continuing to sell or offer for sale, non-compliant portable air conditioners, room air conditioners, and battery operated kid's ride-on toys 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 Align cooperated with CEC in the investigation by promptly testing and certifying the units; notifying retailers and removing the non-compliant units from the California market; and by providing to CEC sales data of non-compliant units. The efforts by Align saved CEC 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.

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

- (1) This Agreement covers the Della brand portable air conditioner and room air conditioner models, and Kidzone brand battery operated kid's ride-on toy models listed in the attachment.
- (2) For selling or offering for sale in California, non-compliant portable air conditioners, room air conditioners, and battery operated kid's ride-on toys identified in paragraph I(5), whose model numbers are identified in the attachment that did not meet the energy efficiency standards prescribed by section 1605.3(d) and were not certified to MAEDbS as required by section 1606, and, in consideration of the factors listed in paragraph I(7) and I(8) above, Align shall pay as an administrative civil penalty the total sum of \$297,000.00. Payment shall be made by electronic transfer to the California Energy Commission, in 2 monthly payments of \$148,500.00 each, as shown below:

<b>Payment Number</b>	<b>Due Date</b>	<b>Amount</b>
1	July 1, 2023	\$148,500.00
2	August 1, 2023	\$148,500.00

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 CEC takes action to enforce this Agreement, Align shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

It is agreed that if Align, 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 Align, 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 Align, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of Align's, its subsidiary's, or parent company's properties, or if any deposit account or other property of Align'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 Align, 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) Align 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. Use a new model number for any of the basic models listed in the attachment that have been redesigned to meet energy efficiency standards.
- d. Add the required marking to the unit.

(4) This Agreement shall apply to and be binding upon Align and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary 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 Align and its parent corporation, 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 time frame and appliances identified in paragraph I(5), whose model numbers are identified in the attachment.

(6) This Agreement constitutes the entire agreement and understanding between CEC and Align 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 Align 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) Align 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 Align 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.

**California Energy Commission**

By:  6/28/23  
Name: Drew Bohan  
Title: Executive Director  
Date:

**Align Incorporated**

By:   
Name: Raymond Pang  
Title: CEO  
Date: 6-22-23

**Attachment**

**Kidzone Battery Operated Ride-on Toys**

048-ATV12***	060-ROT-15***	060-ROT-22L***
060-ROT-01L***	060-ROT-15V2***	060-ROT-23L***
060-ROT-01L****	060-ROT-02****	060-ROT-03***
060-ROT-02***	060-ROT-17L***	060-ROT-25L***
060-ROT-03****	060-ROT-08V2***	060-ROT-11L***
060-ROT-04***	060-ROT-09***	060-ROT-12L***
060-ROT-06***	060-ROT-10***	060-ROT-12LP***
060-ROT-06V2***	060-ROT-08***	060-ROT-07***
060-ROT-15****		

**Della Portable Air Conditioners**

048-APAC-10
048-APAC-12
048-APAC-14
048-GM-48384
048-SPAC-10H
048-SPAC-6
048-SPAC-7
048-SPAC-8H

**Della Room Air Conditioners**

048-TL-WAC10K32	048-TL-WAC5K
048-TL-WAC12K	048-TL-WAC5K32
048-TL-WAC12K32	048-TL-WAC6K
048-TL-WAC15K	048-TL-WAC6K32
048-TL-WAC18K	048-TL-WAC8K
048-TL-W12KW	048-TL-WAC8K32
048-TL-W6KW	048-TL-WAC10K
048-TL-W8KW	048-TL-W10KW