

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 Tonusa, LLC (“Tonusa”), with a place of business at 16770 E. Johnson Drive, City of Industry, CA 91745, 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 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 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) Tonusa distributes several models of Valore brand showerheads that it sells or offers for sale in California either directly or through retailers.

(4) Tonusa showerheads are subject to the efficiency, marking and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From September 2015 through December 2016, Tonusa offered for sale through retailers or distributors in California showerhead units that were not listed in the Database, and were not marked as required in section 1607.

(6) Based on the above recitals, the Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Tonusa from continuing to sell or offer for sale, non-compliant showerheads 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 Commission.
- The cooperation, by the persons responsible for the violation, with the 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 Tonusa fully and timely cooperated with the Commission in the investigation by promptly testing, certifying, and marking the units; notifying retailers and removing the non-compliant units from the California market until the compliance requirements were met; and, by providing to the Commission sales data of the non-compliant units. The efforts by Tonusa saved the Commission time and resources in investigating the violations. Also, Tonusa supplied documentation 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) Tonusa 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 Tonusa agree as follows:

(1) This Agreement covers the following showerhead models: VS2000+, VS1205+, VS1000C+, and Felicity.

(2) For selling or offering for sale in California showerheads that were not certified to the Database as required by section 1606, and were not marked per section 1607, and, in consideration of the factors listed in paragraph I(7) and paragraph I(8) above, Tonusa shall pay as an administrative civil penalty the total sum of \$20,000. Payment shall be made in twenty-four monthly payments of \$833.33 each, as shown below:

Payment Number	Due Date	Amount
1	May 1, 2017	\$833.33
2	June 1, 2017	\$833.33
3	July 1, 2017	\$833.33
4	August 1, 2017	\$833.33
5	September 1, 2017	\$833.33
6	October 1, 2017	\$833.33
7	November 1, 2017	\$833.33
8	December 1, 2017	\$833.33
9	January 1, 2018	\$833.33
10	February 1, 2018	\$833.33
11	March 1, 2018	\$833.33
12	April 1, 2018	\$833.33
13	May 1, 2018	\$833.33
14	June 1, 2018	\$833.33
15	July 1, 2018	\$833.33
16	August 1, 2018	\$833.33
17	September 1, 2018	\$833.33
18	October 1, 2018	\$833.33
19	November 1, 2018	\$833.33
20	December 1, 2018	\$833.33
21	January 1, 2019	\$833.33
22	February 1, 2019	\$833.33
23	March 1, 2019	\$833.33
24	April 1, 2019	\$833.41

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 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Commission takes action to enforce this agreement, Tonusa shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

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

- a. Test all basic models, utilizing the appropriate test method, to confirm they meet Commission standards in the Appliance Efficiency Regulations.
- b. List each basic model in the Database, and ensure the listings are current and up to date.
- c. Add the required marking to each unit.

(4) This Agreement shall apply to and be binding upon Tonusa 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 Tonusa 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 showerhead models identified in paragraph II(1).

(6) This Agreement constitutes the entire agreement and understanding between the Commission and Tonusa 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 Tonusa 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) Tonusa 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 Tonusa 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

Tonusa Corporation

By: 
Name: Robert Oglesby
Title: Executive Director
Date: 4-24-17

By: 
Name: Dan Yu- Chan Tseng
Title: Owner
Date: 4/10/2017