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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 Hydropool Hot Tubs (Hydropool), with a place of business at 335 Superior Boulevard, Mississauga, Ontario L5T 2L6, 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) Hydropool manufactures several models of portable electric spas that it sells or offers for sale in California either directly or through retailers or distributors.

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

(5) From August 2015 to September 2017, Hydropool sold or offered for sale through retailers or distributors portable electric spas in California that had not been tested and certified using the procedures described in sections 1603, 1606, 1608.

(6) Based on the above recitals, the Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Hydropool 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

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

12
05/23/18

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 Hydropool cooperated with the Commission in the investigation by promptly testing, certifying, and marking the units; and by providing to the Commission sales data of non-compliant units. The efforts by Hydropool saved the Commission time and resources in investigating the violations and minimized the impacts on the competitive business environment in California from the non-compliant units.

(9) Hydropool 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 Hydropool agree as follows:

(1) This Agreement covers the Hydropool products referenced in Exhibit A.


05/23/18

(2) For selling or offering for sale in California portable electric spas identified in paragraph I(5), whose models are identified in Exhibit 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, Hydropool shall pay as an administrative civil penalty the total sum of \$65,000.00 by check made payable to the California Energy Commission by July 1, 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) Hydropool 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 the Database, and ensure listing(s) are kept current and up to date.
- c. Use a new model for any of the basic models listed in Exhibit A 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 Hydropool and its principals, officers, directors, receivers, trustees, employees, successors and assignees, 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 Hydropool and its principals, directors, officers, agents, employees, shareholders, subsidiaries, parent corporations, 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 models are identified in paragraph II(1).


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


05/23/18

- (8) Hydropool 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 Hydropool 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: Drew Bohan
Title: Executive Director
Date: 5-31-14

Hydropool Hot Tubs


By: 
Name: DAN LOVE
Title: COO
Date: 5-23-2018

Exhibit A

This agreement covers the following portable electric spa models manufactured by Hydropool Hot Tubs:

2016 16FX AQUASPORT NA	Omni Glacier White Espresso	HP 300-34 Gold Alpine Mist
2016 16FX AQUATRAINER NA	2014 7000 Gold NA	HP 300-34 Gold Glacier Mist
2015 14FX AquaTrainer NA	2014 8000 Platinum NA	HP 300-34 Gold Silver Marble
2016 14IX AQUASPORT NA	2014 SERENITY 5 120V NA	HP 300-34 Gold Summer Sapphire
2016 12FX AQUASPORT NA	2015 12FX AquaPlay SE NA	2017 LZB MIRAGE NA
2017 14FX AQUATRAINER NA	2015 4000 Gold NA	SER M6000/Platinum/Alpine Mist
2016 17FX AQUATRAINER NA	2015 5000 Gold NA	2016 19DTFX AS GOLD NA
2017 17FX AQUATRAINER NA	2016 4000 GOLD NA	2012 LAZBOY IMAGINE NA
2016 14FX AQUATRAINER NA	2015 6000 Gold NA	2013 LZB Dream NA
2017 12FX AQUAPLAY NA	2015 7000 Gold NA	2013 LZB Fantasy NA
2017 12FX AQUASPORT NA	2015 8000 Platinum NA	2013 LZB Imagine NA
2017 19DTFX AQUASPORT GOLD NA	2016 12FX AQUAPLAY NA	2013 LZB Revive NA
2017 19DTFX AQUATRAIN GOLD NA	2016 LZB RECHARGE 110 VOLT NA	2014 LZB Dream NA
2016 14IX AQUATRAINER NA	2017 LZB RECHARGE 110 VOLT NA	2014 LZB Imagine NA
2016 17FX AQUASPORT NA	2017 4000 GOLD NA	2012 LAZYBOY REFRESH NA
2016 19DTFX AQUASPORT GOLD NA	2017 5000 GOLD NA	2013 LZB Refresh NA
2016 19FX AQUASPORT NA	2016 5000 GOLD NA	2013 LZB Rejoice NA
2016 19FX AQUATRAINER NA	2016 LZB REVIVE NA	2014 LZB Refresh NA
2017 19FX AQUASPORT NA	2017 5500 GOLD NA	2014 LZB Rejoice NA
2017 14FX AQUASPORT NA	2017 6000 GOLD NA	2014 LZB Relax NA
2016 14FX AQUASPORT NA	2017 7000 GOLD NA	2014 LZB Revive NA
2011 300-34" GOLD NA	2016 LZB REJOICE NA	2014 LZB Renew NA
2012 14FX AQUASPORT NA	2017 LZB REJOICE NA	2015 LZB Dream NA
2012 300-34" GOLD NA	2016 LZB REFRESH NA	2015 LZB Fantasy NA
2012 SERENITY 8000 PLAT NA	2016 5500 PLATINUM NA	2015 LZB Imagine NA
2013 1038 Titanium NA	2016 LZB RELIEVE NA	2015 LZB Revive NA
2013 4000 GOLD NA	2017 LZB REFRESH NA	2014 LZB SoulMate NA
2014 1038 Titanium NA	2016 LZB RENEW NA	2015 LZB Refresh NA
2014 4000 Gold NA	2017 LZB RENEW NA	2015 LZB Rejoice NA
2014 5000 Gold NA	2017 670 PLATINUM NA	2015 LZB Renew NA
2014 5000 Platinum NA	2017 LZB REVIVE NA	La-Z-Boy Refresh Silv/Coast NA
2014 6000 Gold NA	Calif. 1000 LT EU Spa Mocha	LZB Classic - Seduce

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05/23/18