

DOCKETED

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (Energy Commission), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and Vigo Industries LLC (Vigo), with a place of business at 220 Mill Road, Edison, New Jersey 08817-6026, collectively referred to as the Parties.

I. RECITALS

(1) The Energy 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 Energy Commission and appears in the Energy Commission's most recent Modernized Appliance Efficiency Database System (MAEDbS) as required under section 1606. Appliances sold or offered for sale must in all relevant respects be identical to the appliances that were tested and certified, as required under sections 1602(a) and 1608(a)(3), and must not include instructions directing users how to alter the appliances' performance to function in violation of applicable efficiency standards.

(2) The Energy Commission'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) Vigo manufactures several models of showerhead panels that it sold or offered for sale in California, either directly or through retailers or distributors.

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

(5) From July 2015 to February 2018, Vigo sold or offered for sale through retailers or distributors 2301 showerhead panels in California. Some of the showerhead panels were not listed in MAEDbS as required in section 1606, did not meet the July 1, 2016 efficiency standard set forth in section 1605.3

¹ All references are to California Code of Regulations, Title 20, Article 4, unless otherwise specified.
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Table H-5 when tested using the appropriate test method as described in sections 1604(h)(2), violated the test method and 1608(a)(3), and/or were not marked as required in section 1607. Some of the showerhead panels were sold in California packaged with alternative flow restrictors that permit the showerhead panels to achieve flow rates in excess of the applicable efficiency standards, and with instructions on how to install them.

(6) Based on the above Recitals, the Energy Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Vigo from continuing to sell or offer for sale, non-compliant showerhead panels 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 Energy 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 Energy Commission considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case Vigo cooperated with the Energy Commission in the investigation by providing to the Energy Commission sales data and other information relating to the non-compliant units, and immediately ceasing their sale. Vigo also revised its instructions to retailers and product information available on the Internet. Vigo's efforts saved the Energy Commission time

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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) Vigo is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Energy Commission without any admission of fact or liability. The Energy 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 Energy Commission and Vigo agree as follows:

(1) This Agreement covers the following Vigo showerhead panel model numbers: VG08001, VG08003, VG08004, VG08005, VG08006, VG08007, VG08008, VG08009, VG08010, VG08011, VG08012, VG08013, and VG08014.

(2) For selling or offering for sale in California, showerhead panels identified in paragraph I(5), whose model numbers are identified in paragraph II(1) that did not meet the energy efficiency standards prescribed by section 1605.3 Table H-5, were not certified to MAEDbS as required by section 1606, violated the applicable test method and section 1608(a)(3) and/or were not marked per section 1607, and, in consideration of the factors listed in paragraph I(7) and I(8) above, Vigo shall pay as an administrative civil penalty the total sum of \$86,287.00. Payment shall be made by check payable to the California Energy Commission, in four quarterly payments, as shown below:

Payment Number	Due Date	Amount
1	July 31, 2019	\$21,572.00
2	November 31, 2019	\$21,572.00
3	March 31, 2020	\$21,572.00
4	July 31, 2020	\$21,571.00

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

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

- a. Ensure that all basic models, utilizing the applicable test method, are tested or have been tested to ensure conformance with the Appliance Efficiency Regulations. In addition to complying with all other applicable testing requirements Vigo 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 on how to return the device to the flow rate provided by the applicable efficiency standard.
- b. Ensure that all basic models are certified in MAEDbS, and ensure listing(s) are kept current and up to date.
- c. Use a new model number for any of the basic models described in II(1) that have been redesigned to meet energy efficiency standards, if such models will be sold or offered for sale in California in the future.
- d. Ensure that units are marked as required.
- e. Only products with the same components, design characteristics and all other features that affect energy or water consumption or energy or water efficiency as the basic models that were tested and certified in MAEDbS and include no other components, design characteristics or other features that may affect energy consumption, energy efficiency, water consumption or water efficiency.
- f. Revise advertising and supporting product documentation to eliminate instructions for altering an appliance's characteristics listed in (a) and (e) above.

(4) This Agreement shall apply to and be binding upon Vigo and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon the Energy 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 Energy Commission hereby releases Vigo and its parent corporations, 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 paragraph II(1).

(6) This Agreement constitutes the entire agreement and understanding between the Energy Commission and Vigo 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 Energy Commission and Vigo 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) Vigo further agrees that if the subject matter of this Agreement comes before the Energy Commission in an administrative adjudication, neither any member of the Energy 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 Vigo with authority to bind the company, and signature by the Executive Director of the Commission. 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: 
Name: Drew Bohan
Title: Executive Director
Date: 7-3-19

Vigo Industries LLC

By: 
Name: Lenny Valdborg
Title: CEO/Founder
Date: 06-27-2019