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SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and LIVING DIRECT, INC.
Page 1 OF 5

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 Living Direct, Inc. (Living Direct), with a place of business at 8606 Wall Street, Suite 1600, Austin, Texas 78754, 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),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-complying appliances from MAEDbS, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

(3) Living Direct manufactures several models of Avallon and EdgeStar brand refrigeration products that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) Avallon and EdgeStar brand refrigeration products are subject to the testing, marking, and certification requirements applicable to this appliance class as described in paragraph I(1) above.

(5) From January 2018 to October 2020, Living Direct sold or offered for sale in California, through retailers or distributors, automatic commercial ice makers and miscellaneous refrigeration products (non-commercial wine chillers) that previously had been listed in MAEDbS as required in section 1606, but were subsequently archived and, therefore, did not appear in the MAEDbS at the time of sale.

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

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and LIVING DIRECT, INC.
Page 2 OF 5

(6) CEC also alleges that Living Direct's sale or offering for sale the automatic commercial ice makers and miscellaneous refrigeration products (non-commercial wine chillers), during such time period, violated the Appliance Efficiency Regulations and, through administrative adjudication, CEC could impose penalties for each violation alleged, obtain injunctive relief to prohibit Living Direct from continuing to sell or offer for sale, non-compliant refrigeration products 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) Living Direct denies liability, but is willing to enter into an agreement on the terms set forth below, including a payment of \$80,000, in full settlement of this matter. Living Direct disagrees that the payment should be characterized as a penalty.

(9) CEC considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case Living Direct cooperated with CEC in the investigation by promptly notifying retailers and removing the alleged non-compliant units from the California market; providing to CEC sales data of the alleged non-compliant units; and certifying the units. Moreover, test reports submitted by Living Direct for the alleged non-compliant units indicated that they meet applicable federal efficiency standards. The efforts by Living Direct saved CEC time and resources in investigating the alleged violations and minimized the impacts on the competitive business environment in California, from the alleged non-compliant units.

SETTLEMENT AGREEMENT AND RELEASE
 CALIFORNIA ENERGY COMMISSION and LIVING DIRECT, INC.
 Page 3 OF 5

(10) Living Direct 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 administrative 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 Living Direct agree as follows:

(1) This Agreement covers the following Avallon and EdgeStar brand refrigeration product models:

Model Number	Appliance Type
ABR151SGLH	Compact Refrigerator
ABR151SGRH	Compact Refrigerator
ABR241SGLH	Compact Refrigerator
ABR241SGRH	Compact Refrigerator
AWC151DZLH	Compact Cooler
AWC151DZRH	Compact Cooler
AWC151SZLH	Compact Cooler
AWC151SZRH	Compact Cooler
AWC241DZLH	Compact Cooler
AWC241DZRH	Compact Cooler
AWC241FD	Compact Cooler
AWC241SZLH	Compact Cooler
AWC241SZRH	Compact Cooler
AWC241TDZLH	Compact Cooler

Model Number	Appliance Type
AWC241TDZRH	Compact Cooler
AWC241TSZLH	Compact Cooler
AWC241TSZRH	Compact Cooler
CBR1501SLD	Compact Refrigerator
CBR1501SSOD	Compact Refrigerator
CWB1760FD	Compact Cooler
CWB2886FD	Compact Cooler
CWB8420DZ	Compact Cooler
CWR5631FD	Compact Cooler
CWR70SZ	Compact Cooler
IB450SS	Ice Maker
IB450SSP	Ice Maker
IB650SS	Ice Maker
OIM450SS	Ice Maker

(2) For selling or offering for sale in California, the refrigeration products identified in paragraph I(5), whose model numbers are identified in paragraph II(1), that 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, Living Direct shall pay as an administrative civil penalty the total sum of \$80,000.00 by electronic transfer to CEC by May 1, 2021. Banking information and instructions necessary to complete the electronic transfer shall be provided by CEC.

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and LIVING DIRECT, INC.
Page 4 OF 5

(3) Living Direct also agrees to ensure that each of the following actions for any regulated appliances have been taken or will be taken prior to being sold or offered 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.

(4) This Agreement shall apply to and be binding upon Living Direct 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 Living Direct 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 period and 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 CEC and Living Direct 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 Living Direct 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) Living Direct 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.

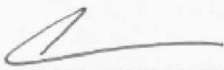
(9) Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this 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.

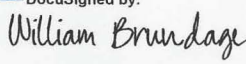
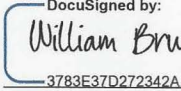
SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and LIVING DIRECT, INC.
Page 5 OF 5

- (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 Living Direct 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: 
Name: Drew Bohan
Title: Executive Director
Date: April 14, 2021

Living Direct, Inc.

DocuSigned by:

By: 
Name: William Brundage
Title: Senior Vice President
Date: April 9, 2021 | 1:08 PM EDT