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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 Crescent Metal Products, Incorporated (Cres Cor), with a place of business at 5925 Heisley Road, Mentor, Ohio 44060, 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) Cres Cor manufactures several models of commercial cooking and commercial refrigeration equipment that it sells or offers for sale in California, either directly or through retailers or distributors.

(4) Cres Cor hot food cabinets, commercial convection ovens, and commercial refrigerators 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 June 2022, Cres Cor sold or offered for sale in California through retailers or distributors commercial hot food cabinets, commercial convection ovens, and commercial refrigerators, that were not listed in MAEDbS as required in section 1606, and commercial hot food holding cabinets that did not meet the efficiency standards set forth in section 1605.3(r)(2) when tested using the appropriate test method as described in section 1604(r).

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

(6) Based on the above Recitals, CEC, through administrative adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Cres Cor from continuing to sell or offer for sale, non-compliant hot food cabinets, commercial convection ovens, and commercial refrigerators 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 Cres Cor cooperated with CEC in the investigation by notifying retailers and removing the non-compliant units from the California market; self-reporting efficiency failures; promptly testing and certifying the compliant units; and by providing to CEC sales data of non-compliant units. The efforts by Cres Cor 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) Cres Cor is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CEC. Nothing in this Agreement shall be construed as an admission of liability by Cres Cor or a prohibition on Cres Cor's right to disclaim or dispute liability in any future proceeding. 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 Cres Cor agree as follows:

(1) This Agreement covers the Cres Cor commercial hot food cabinets, commercial convection ovens, and commercial refrigerators listed in the attachment.

(2) For selling or offering for sale in California, commercial hot food cabinets, commercial convection ovens, and commercial refrigerators 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, 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, Cres Cor shall pay as an administrative civil penalty the total sum of \$150,000.00 by electronic transfer to CEC by August 1, 2023. Banking information and instructions necessary to complete the electronic transfer shall be provided by CEC.

(3) Cres Cor 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 Cres Cor 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 Cres Cor 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 the attachment.
- (6) This Agreement constitutes the entire agreement and understanding between CEC and Cres Cor 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 Cres Cor 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) Cres Cor 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 Cres Cor 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: 8/26/2023

Crescent Metal Products, Incorporated

By:  _____

Name: Greg Baggott

Title: President

Date: August 11, 2023

Attachment

Hot Food Holding Cabinets

1000HHSS2DE	EB150XX	H137UA12D208	H138WS1834D
1000HHSSSPLITDE	EB150XXWS	H137UA12DM	H33912135C
1200HHSS2DEM	EB64	H137UA9D	H339128C
1200HHSS2PDXS	EB96	H137WSUA12DM	H339135CBK
121PH1818D	EB96240	H137WSUA5D	H3391813C
121PHD1818DDS	H135SUA11	H137WSUA6D	H339188C
121PHUA11D	H135SUA6	H1381834D	H339214C
1301836D	H135WSUA11	H1381834D240	H339264AC
130D1836DM	H137PSUA12D	H138NPS1816CLA	H339SBS1210C
131UA11DM	H137PWSUA12D	H138NPS1832CLA	H339SS12188C
131UA9D	H137S1332D	H138NPS36CLCMQRL	H339SS128C
500HHSSDE	H137S27D1LTB	H138NPSCC3MC	H339UA8C
750HHSSDE	H137SUA12D	H138NPSCCLCMC5QRL	H339X12188C
CCB120A	H137SUA12D240	H138NS1810CLA15A	H339X128C
CCB150	H137SUA5D	H138NSCC3MC5Q	HCUA11
CCB150240	H137SUA6D240	H138PS1834D	
EB120	H137SUA6DM	H138PWS1834D	
EB150A	H137SUA9D	H138S1834D	

Commercial Convection Ovens

CO151F1818DE2401	CO151XWUA5DX1201	RO151FW1332DE2403
CO151FUA12DE2401	RO151F1332DE2403	RO151FW1332DE8K2081
CO151FWUA12DE2081	RO151F1332DE8K2401	RO151FWUA18DE2083
CO151H189DX1201	RO151F1332DEM8K2081S	RO151FWUA18DE8K2401
CO151H189DXSTK2081S	RO151FPWUA18DX8K2401	RO151H1316DE2083
CO151HUA3501201	RO151FUA18DE8K2401	RR1332DE8K2081
CO151HUA6DX2081	RO151FUA18DX2403	RR1332WDX8K2083
CO151XUA5DX1201		

Commercial Refrigerators

KCUA11	R171SUA10E	R171SUA10E240	R171SUA20E
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