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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 Aborder Products Incorporated (Aborder), with a place of business at 400 East Las Colinas Boulevard, Suite 920, Irving, Texas 75039, 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 for this Agreement 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) Aborder sells or offers for sale several models of Veken brand showerheads in California, through online retailers.

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

(5) CEC alleges that, from April 2020 to May 2024, Aborder sold or offered for sale in California certain showerheads that did not meet the efficiency standards set forth in section 1605.3(h)(5) when tested by CEC using the appropriate test method as described in section 1604(h) and were not listed correctly in MAEDbS as described in section 1608(a)(3).

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 seek to impose penalties for each violation alleged, obtain injunctive relief to prohibit Aborder from continuing to sell or offer for sale, non-compliant showerheads in California, and take any other enforcement action as allowed by law. Aborder reserves its rights to defend itself against CEC's allegations and potential actions.

(7) California Public Resources Code section 25402.11(a)(2) identifies the following factors CEC shall consider when determining the amount of an administrative civil penalty:

- The nature and seriousness of the violation.
- The number of violations.
- The persistence of the violation.
- The length of time over which the violation occurred.
- The willfulness of the violation.
- The violator's assets, liabilities, and net worth.
- The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.

(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 Aborder cooperated with CEC in the investigation by notifying retailers and removing Veken units from the California market; removing Veken models from MAEDbS; and by providing to CEC requested sales data for Veken units, all subject to a reservation of rights. The efforts and cooperation by Aborder saved CEC time and resources in investigating the alleged violations and minimized the impacts on energy consumption and the environment in California, from the allegedly non-compliant units.

(9) Aborder is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CEC without any admission of wrongdoing, violations of law or liability to CEC or to any other person, all such liability being expressly denied. 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 Aborder agree as follows:

- (1) This Agreement covers and resolves CEC's allegations relating to the following Veken showerhead models: SHC5V201, SHC5V205, FSR5V101, and VK062382US.
- (2) In consideration of settlement of the Released Claims, including specifically for selling or offering for sale in California, showerheads 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(h)(5) and were not listed correctly in MAEDbS as described in section 1608(a)(3), and, in consideration of the factors listed in paragraph I(7) and I(8) above, Aborder shall pay as an administrative civil penalty the total sum of \$360,202.00 by electronic transfer to CEC on or by December 3, 2024. Banking information and instructions necessary to complete the electronic transfer shall be provided by CEC at least two weeks prior to the date payment is due. If necessary, Aborder shall have a one business day grace period to complete the payment to CEC.
- (3) Aborder also agrees to take each of the following actions for any and all CEC-regulated showerheads it will sell or offer for sale in California:
 - a. Test all basic models, utilizing the applicable test method, to ensure conformance with applicable Appliance Efficiency Regulations. In addition to complying with all other applicable testing requirements Aborder will not package, mark, or provide products with instructions directing the user to an alternative water-use setting that deviates from the original tested configuration and would reasonably be expected to exceed the applicable efficiency standards.
 - b. 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.
 - c. Certify, or have certified on its behalf, all basic models in MAEDbS, and ensure listings are kept current and up to date.
 - d. Ensure the required marking is on the unit.
- (4) This Agreement shall apply to and be binding upon Aborder 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 Aborder 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 frame 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 Aborder 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 Aborder 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) Aborder further agrees that if the subject matter of this Agreement comes before CEC in a future administrative adjudication to enforce the terms herein, 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 any specific term herein.

(14) This Agreement is effective upon the date both parties have notice of complete execution, including signature by a representative of Aborder 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: 11/24/2024

Aborder Products Incorporated

By: 
Name: Michael Melder
Title: COO
Date: 11/11/24