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SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and WAYFAIR LLC
Page 1 OF 4

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 Wayfair LLC (Wayfair), with a place of business at 4 Copley Place, Boston, Massachusetts 02116, 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) Wayfair sells or offers for sale in California, several models of Futura Spas brand portable electric spas.

(4) Futura Spas brand 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 July 2015 to September 2021, Wayfair sold or offered for sale in California portable electric spas, that were not listed in MAEDbS as required in section 1606, did not meet the efficiency standards set forth in section 1605.3(g)(7) when tested using the appropriate test method as described in section 1604(g), and were not marked as required in section 1607.

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

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and WAYFAIR LLC
Page 2 OF 4

(6) Based on the above Recitals, CEC, through administrative adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit Wayfair 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) 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 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 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 Wayfair cooperated with CEC in the investigation by removing the non-compliant units from the California market; mediating discussions with the supplier; and providing to CEC sales data of non-compliant units. The efforts by Wayfair 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) Wayfair 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 Wayfair agree as follows:

(1) This Agreement covers the following Futura brand portable electric spa model number: SPS-52 and SKU numbers: FUTR1000, FUTR1001, and FUTR1002.

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and WAYFAIR LLC
Page 3 OF 4

(2) For selling or offering for sale in California, portable electric spas 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(g)(7), were not certified to MAEDbS as required by section 1606, and were not marked per section 1607, and, in consideration of the factors listed in paragraph I(7) and I(8) above, Wayfair shall pay as an administrative civil penalty the total sum of \$51,500.00 by electronic transfer to CEC by March 1, 2025. Banking information and instructions necessary to complete the electronic transfer shall be provided by CEC.

(3) Wayfair acknowledges the Regulations require all covered products that are sold or offered for sale in CA to be listed in MAEDbS.

(4) This Agreement shall apply to and be binding upon Wayfair 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 Wayfair 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 Wayfair 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 Wayfair 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) Wayfair 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.

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and WAYFAIR LLC
Page 4 OF 4

(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.

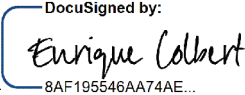
(13) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.

(14) This Agreement is effective upon signature by a representative of Wayfair 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: 2/25/25

Wayfair LLC

By: 
Name: Enrique Colbert
Title: General Counsel
Date: 2/14/2025