

## DOCKETED

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<b>Project Title:</b>	Settlement Agreements
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This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into between California Energy Commission (Commission), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and iTouchless Housewares & Products, Inc. (iTouchless), with its principal place of business at Keynote Plaza, 777 Mariners Island Boulevard, Suite 125, San Mateo, California 94404 collectively referred to as the “Parties.”

## I. RECITALS

(1) The Commission’s Appliance Efficiency Regulations at California Code of Regulations, Title 20, Article 4, sections 1601-1608,<sup>1</sup> set forth the requirements to sell or offer for sale regulated appliances in California. The pertinent requirements include:

- 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 Commission and appears in the Commission’s most recent Appliance Efficiency Database (Database) as required under section 1606.

(2) The Commission’s enforcement authority includes the removal of non-complying appliances from the Database, as set forth in section 1606, and the issuance of administrative civil penalties under section 1609.

(3) iTouchless manufactures several models of robot vacuums that it sells or offers for sale in California either directly or through retailers or distributors.

(4) iTouchless’s robot vacuums contain small battery charging systems that are subject to the efficiency, marking and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From July 2015 through March 2016, iTouchless sold or offered for sale approximately 163 robot vacuum units in California that were not listed in the Database and did not meet the small battery charger efficiency standards set forth in section 1605.3(w)(2) when tested using the appropriate test method as described in section 1604(w).

(6) Based on the above recitals, the Commission, through adjudication, could impose penalties for each violation alleged, obtain injunctive relief to prohibit iTouchless from continuing to sell or offer for sale, non-compliant robot vacuum units in California and take any other enforcement action as allowed by law. Under section 1608(f), the Commission is also entitled to reimbursement for the cost of testing non-compliant appliances.

(7) Section 1609(b)(3) and Public Resources Code section 25402.11 (a)(2) identify the following factors the Commission shall consider when determining the amount of an administrative civil penalty:

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<sup>1</sup> All references are to California Code of Regulations, title 20, Article 4, unless otherwise specified.

- 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.

(8) In developing this Agreement the Commission considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case iTouchless fully and timely cooperated with the Energy Commission in the investigation by removing the non-compliant units from the California market and by providing to the Commission a list of their retailers that sold or were selling the non-compliant units. The efforts by iTouchless saved the Commission time and resources in investigating the violations and minimized the impacts on energy consumption in California from the non-compliant units.

(9) iTouchless is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Commission. This Agreement will not be considered an admission of non-compliance or culpability of iTouchless or the iTouchless Parties. The 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 Commission and iTouchless agree as follows:

(1) This Agreement covers the following iTouchless appliance which has been removed from the California market: Model number AV002A

(2) For selling or offering for sale in California robot vacuum units containing regulated battery chargers that did not meet the energy efficiency standards prescribed by section 1605.3 and in consideration of the factors listed in paragraph I(7) and iTouchless' cooperation described in paragraph I(8) above, iTouchless shall pay the total sum of \$10,915 by cashier's check made payable to the



**California Energy Commission's Appliance Enforcement Subaccount** within seven days of the execution of this Agreement by the Commission.

Payment shall be made by check payable as described above and addressed to:

California Energy Commission  
Accounting Office, MS-2  
1516 Ninth Street  
Sacramento, California 95814-5512

(3) iTouchless also agrees to take each of the following actions for any and all robot vacuum units containing regulated battery chargers it will sell or offer for sale in California:

- a. Use new Consumer Product Model numbers.
- b. Use new model numbers.
- c. Add the required battery charger mark to the exterior product package.

(4) This Agreement shall apply to and be binding upon iTouchless and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations (collectively, the "iTouchless Parties"), and upon the 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 Commission hereby releases iTouchless, the iTouchless Parties and their respective principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims arising out of or relating to the facts set forth in the Recitals above, including without limitation claims for violations of section 1608, (efficiency, marking, certification), relating to the appliance identified in paragraph II(1).

(6) The Commission represents and warrants that the individual signing this Agreement has full authority or authorization to execute this Agreement for, and on behalf of, and to bind the Commission.

(7) This Agreement constitutes the entire agreement and understanding between the Commission and iTouchless 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 Commission and iTouchless concerning these claims.

(8) 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.

(9) iTouchless further agrees that if the subject matter of this agreement comes before the 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.

(10) 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.

(11) 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.

(12) 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.

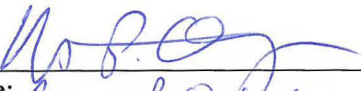
(13) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.


(14) 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.

(15) This Agreement is effective upon signature by a representative of iTouchless with authority to bind the company, and approval by an authorized agent of the Commission or, if required, the Commission at a publically noticed meeting through an order or resolution. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

**California Energy Commission**

**iTouchless**

By:   
Name: ROBERT P. OGLESBY  
Title: EXECUTIVE DIRECTOR  
Date: 7-13-16

By:   
Name: MICHAEL SIPER  
Title: COO  
Date: 7/6/2016