

DOCKETED

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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 Pursonic, LLC (Pursonic), with its principal place of business at 160 West 28th Street, New York, New York 10001, 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 1601-1608,¹ 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) Pursonic manufactures one model of robot vacuum that it sells or offers for sale in California either directly or through retailers or distributors.

(4) Pursonic robot vacuum contain small battery charging systems that is subject to the efficiency, marking and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From February 2013 through March 2016, Pursonic sold or offered for sale approximately 3 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 Pursonic 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:

¹ 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 Pursonic fully and timely cooperated with the Energy Commission in the investigation by notifying retailers and removing the non-compliant units from the California market and by providing to the Commission sales data of non-compliant units. The efforts by Pursonic 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) Pursonic is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with the Commission. 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 Pursonic agree as follows:

- (1) This Agreement covers the following Pursonic appliances which have been removed from the California market: Model Elite 600.
- (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 Pursonic's cooperation described in paragraph I(8) above, Pursonic shall pay the total sum of \$366.00 by check to the **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) Pursonic 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 Pursonic and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, 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 Pursonic and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for violations of section 1608, (efficiency, marking, certification), relating to the appliances identified in paragraph II(1).
- (6) This Agreement constitutes the entire agreement and understanding between the Commission and Pursonic 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 Pursonic 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) Pursonic 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.
- (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.

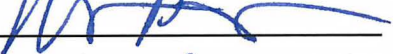
(12) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative 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.

(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 Pursonic 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

Pursonic

By: 
Name: ROBERT P. O'LEARY
Title: EXECUTIVE DIRECTOR
Date: 7/28/16

By: Nicole Rosen
Name: Nicole Rosen
Title: Account Manager
Date: July 21st, 2016