

DOCKETED

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This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into between the California Energy Commission (“Commission”), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and The NOCO Company (“NOCO”), with its principal place of business at 30339 Diamond Parkway, #102, Glenwillow, Ohio 44139, 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 “Regulations”). 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 (the “Database”) as required under section 1606.

(2) The Commission’s enforcement authority includes the issuance of administrative civil penalties under section 1609 and the authority to settle without an adjudication.

(3) NOCO manufactures several models of battery chargers, that it sells or offers for sale in California either directly or through retailers.

(4) NOCO battery chargers are subject to the efficiency, marking and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From February 2013 through June 2014, NOCO sold or offered for sale battery chargers (first generation Model G1100, the “subject units”) in California that were incorrectly listed in the Database, and were not marked as required in section 1607(d)(10). The Commission also tested the subject units and they failed to meet the applicable energy efficiency standards.

(6) Based on the above allegations, the Commission, could impose penalties for each violation alleged, obtain injunctive relief to prohibit NOCO from continuing to sell or offer for sale, non-compliant battery charger units in California and take any other enforcement action as allowed by law.

(7) Penalties must be set at levels sufficient to deter violations. 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:

- The nature and seriousness of the violation.
- The persistence of the violation, meaning a responsible person’s history of past

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

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.
- 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) In reaching this Agreement the Commission considered the facts of the case and applied the above factors to determine an appropriate settlement, including the statutory goal of promoting compliance. In particular, NOCO fully and timely cooperated with the Energy Commission in the investigation by providing to the Commission sales data of non-compliant units, and by promptly updating second generation model G1100 in the Database. The efforts by NOCO saved the Commission time and resources in investigating the alleged violations of the non-compliant units.

(9) NOCO 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 NOCO agree as follows:

(1) This Agreement covers the following NOCO, battery charger: first generation model G1100.

(2) For selling or offering for sale in California battery charger units that did not meet the energy efficiency standards set forth in section 1605.3, were incorrectly certified to the Database as required by section 1606, and were not marked as required in section 1607(d)(10), and, in consideration of the factors listed in paragraph I(7) and NOCOs' cooperation and the other facts and circumstances described

in paragraph I(8) above, NOCO shall pay the total sum of \$102,063.00. Two payments of \$51,031.50 shall be made, the first due within five business days of the execution of this Agreement by the Commission, and the second payment shall be made before December 31, 2016. The checks shall be made payable to the California Energy Commission. Payments shall be made by the applicable due dates, and sent with the corresponding remittance statements to the following address:

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

(3) NOCO alleges its second generation Model G1100 is compliant and has undertaken steps to guarantee its lighting system performs as required. Without admitting liability or guilt for any alleged non-compliance, NOCO also agrees to comply with the Commission's Appliance Energy Efficiency Regulations in the future, including but not limited to taking each of the following actions for any and all battery charger units it sells or offers for sale in California:

- a. Ensure each basic model is tested to confirm compliance with energy performance standards.
- b. Certify each basic model to the Database.
- c. Add the required marking to the unit.
- d. Retest all second generation NOCO battery chargers and update all Database listings with the new test data within 120 days of the execution of this agreement.
- e. Within one (1) year of the execution date of this Agreement ensure all NOCO third generation battery chargers have updated lighting software, and information in the user manual to clearly specify when the battery is 100% charged.

(4) This Agreement shall apply to and be binding upon NOCO 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 NOCO 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 Recital paragraph I(5), above.

(6) This Agreement constitutes the entire agreement and understanding between the Commission and NOCO 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 NOCO 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) NOCO 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 NOCO with authority to bind the company, and approval by an authorized agent of the Commission. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

The NOCO Company

By: 
Name: Robert P. Oglesby
Title: Executive Director

By: 
Name: Jonathan Nook
Title: CEO

Date: 1-3-17

Date: 12-21-2016