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8 STATE OF CALIFORNIA

9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10 **In the matter of:**

11 **RG Mattress Inc.,**

12
13 **RESPONDENT.**

14) **ADMINISTRATIVE DECISION FOR**
15) **ADMINISTRATIVE PENALTIES**

16) **AGENCY NO: 2019M-0007**

17 **INTRODUCTION**

18 This ADMINISTRATIVE DECISION FOR ADMINISTRATIVE PENALTIES (Administrative
19 Decision) is based on the STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR
20 ADMINISTRATIVE PENALTIES (Stipulation) signed by Gerardo Pena Gutierrez, Owner and Chief
21 Executive Officer of RG MATTRESS INC., (Respondent), on May 22, 2019.

22 The parties to the Stipulation are the DEPARTMENT OF RESOURCES RECYCLING AND
23 RECOVERY (Department) and Respondent, collectively ("the Parties"). On March 15, 2019, the
24 Department issued Respondent an Accusation that sought penalties totaling \$159,318.00 for one (1)
25 violation of the Act and regulations. The Department served the Respondent with the Accusation on
26 March 22, 2019. The Department provided Respondent fifteen (15) days from the date of receipt of the

1 Accusation to request a hearing and file a "Request for a Hearing/Notice of Defense" with the
2 Department to refute the allegations contained therein. Respondent did not file a "Request for a
3 Hearing/Notice of Defense", but, after contacting the Department via legal counsel on April 30, 2019,
4 the Department agreed to extend Respondent's deadline to file to May 21, 2019. After receiving
5 documentation from Respondent, on May 8, 2019, the Department was able to confirm that
6 Respondent had remedied the violation alleged in the Accusation.

7 In order to avoid the time, expense, and uncertainties attendant with litigation, the Parties
8 submitted a Stipulation as a final resolution of the matter. In submitting the Stipulation, the Parties
9 understand, acknowledge, and agree to the facts and terms of the Stipulation as set forth herein.

10 **LEGAL AND FACTUAL FINDINGS**

11 1. The Department is required to oversee and enforce the Used Mattress Recycling and
12 Recovery Act (Pub. Resources Code (PRC), § 42985 et seq.) (Act) and its implementing regulations
13 (Cal. Code Regs. (CCR), tit. 14, § 18959 et seq.) (regulations).

14 2. Renovator is defined by the Act as "a person who renovates used mattresses for the
15 purpose of sale, or offering for sale, in this state." (PRC § 42986(p).)

16 3. Respondent is, and at all times mentioned herein was, a renovator subject to the Act and
17 regulations because Respondent renovates used mattresses for the purpose of sale, or offering for
18 sale, in California. As a renovator, Respondent is required to comply with the Act and regulations.

19 4. The Act created the framework for an extended producer responsibility approach to the
20 end-of-life handling of used mattresses in California. (PRC § 42985.) The extended producer
21 responsibility model shifts the end-of-life management of a product from government to the
22 manufacturers of that product. The purpose of the Act was to reduce illegal dumping, increase
23 recycling, and substantially reduce public agency costs for the end-of-life management of used
24 mattresses, (PRC § 42985(a)(1)), while also allowing California mattress consumers the opportunity to
25 drop off their used mattresses free of charge. (PRC § 42985(b).) The Act accomplishes its purposes by
26 requiring manufacturers of mattresses sold in California to form a mattress recycling organization that
must develop, finance, and implement a convenient and cost-effective program to recover and recycle

1 used mattresses generated in the state. (PRC § 42985(a)(1).) Each mattress manufacturer, retailer,
2 and renovator in the state, or selling in the state, is required to register with a mattress recycling
3 organization and participate in that organization's program. (PRC § 42987(b)(1).) In addition, mattress
4 renovators, among others, are required to submit annual reports to the Department via the
5 Department's electronic reporting system. (PRC § 42991 and 14 CCR § 18966.)

6 5. To date, there is only one mattress recycling organization certified by the Department,
7 the Mattress Recycling Council. The Mattress Recycling Council has an approved plan and is currently
8 administering the only mattress recycling program under the Act.

9 6. The Department is required to oversee and enforce the Act. The Department may
10 impose an administrative civil penalty on any manufacturer, mattress recycling organization, distributor,
11 recycler, renovator, or retailer that is in violation of the Act. (PRC § 42993.1(a).)

12 7. The Act requires all renovators to do the following:

13 a. Register with the mattress recycling organization (PRC § 42987(b)(1));

14 b. Provide access by the Department to the renovator's facilities and records and
15 maintain records for three years (PRC § 42993.3(a)); and

16 g. Submit to the Department and to the mattress recycling organization annual
17 reports, due May 1 of each year, that includes information on the number of mattresses
18 received and renovated in the state during the preceding calendar year (PRC § 42991 and 14
19 CCR § 18966).

20 8. On November 2, 2017, the Department sent Respondent a First Notice: Failure to
21 Submit the Mattress Renovator Annual Report (First Notice). The First Notice explained that
22 Respondent must activate an account with the Department's Mattress Recovery and Recycling
23 Program (MRRP) database within 30 days and included instructions on how to do this. The First Notice
24 also provided a reminder that the 2017 calendar year renovator report would be due by May 1, 2018,
25 and that failure to meet this deadline would result in the Department pursuing enforcement actions that
26 could include penalties of up to \$5,000 per day.

1 9. On November 7, 2017, Department Inspector Kirby Garrett spoke with Mr. Gerardo Pena
2 Gutierrez, owner and chief executive officer of RG Mattress Inc. Inspector Garrett verified Respondent's
3 contact information and confirmed that Respondent had received the First Notice. Mr. Pena Gutierrez
4 stated that he is registered with the Mattress Recycling Council as a renovator and did not think the
5 reporting requirements applied to renovators. He stated that he would follow the instructions in the First
6 Notice to activate a MRRP database account. As of the date of the Accusation, Respondent had not
7 activated a MRRP account.

8 10. On December 28, 2017, The Department sent Respondent a Second Notice: Failure to
9 Submit the Mattress Renovator Annual Report – Past Due and Required Action (Second Notice). The
10 Second Notice reiterated the message of the First Notice. As of the January 12, 2018 due date,
11 Respondent had not activated a MRRP database account.

12 11. On January 30, 2018, Inspectors Steve Rogers and Curie Canuela conducted a site
13 inspection at Respondent's business location: 4466 Worth Street, Unit D, Los Angeles, CA 90063. The
14 inspectors met with the business's co-owner, Mr. Rudy Pena, who confirmed the business renovates
15 mattresses. During the inspection, Mr. Pena was provided copies of the previously issued First and
16 Second Notices, and was reminded of the necessity to activate a MRRP database account.

17 12. During the inspection, the inspectors asked Mr. Pena to provide documentation that
18 supports annual reporting; however, Mr. Pena would not provide any documentation. The inspectors
19 stated to Mr. Pena that the business was in violation for not providing requested records to support
20 annual reporting requirements. Due to the lack of records provided, the inspectors provided Mr. Pena
21 with a Notice of Required Actions while at the business location, requesting documentation showing
22 that Respondent keeps records that support the annual reporting requirements within 14 days of the
23 inspection. The inspectors told Mr. Pena that his business must still complete the required action of the
24 First and Second Notices. As of the February 16, 2018 due date Respondent had not responded or
25 provided any of the requested information.
26

1 13. On April 10, 2018, the Department issued a Notice of Noncompliance with the California
2 Mattress Stewardship Law notifying Respondent of the violations found during the January 30, 2018
3 inspection, along with a copy of the previously issued Second Notice.

4 14. On May 2, 2018, a Past Due Notice: Failure to Submit the Used Mattress Recovery &
5 Recycling Program 2017 Annual Report – Past Due and Required Action was sent to Respondent
6 because it failed to submit its 2017 calendar year renovator report, due by May 1, 2018. After multiple
7 attempts, the carrier, Golden State Overnight Delivery Service, was unable to make the delivery directly
8 to Respondent. A second attempt to deliver the Past Due Notice using U.S. Certified Mail was
9 attempted on May 7, 2018; however, USPS was unable to make the delivery directly to Respondent.

10 15. On August 9, 2018, Inspectors Rogers and Jonathan Schmidt conducted a site visit at
11 Respondent's business location. The inspectors met with the business's owner, Mr. Gerardo Pena
12 Gutierrez, and explained that the business was in violation for not reporting renovator data for the 2017
13 year by the deadline May 1, 2018. Mr. Pena Gutierrez was provided copies of the previously issued
14 Second Notice and Notice of Noncompliance from the January 30, 2018 inspection, instructions on how
15 to activate an account on the MRRP database, and a page listing the renovator data required to be
16 reported annually. During the site visit, the inspectors gave Mr. Pena Gutierrez the opportunity to
17 provide the 2017 reporting data and information to the inspectors; however, Mr. Pena Gutierrez
18 declined to provide the information. Mr. Pena Gutierrez was told that continued noncompliance could
19 result in monetary penalties.

20 16. On August 16, 2018, Inspector Rogers sent an email to Mr. Gerardo Pena Gutierrez at
21 rgmattress@yahoo.com with copies of the previously issued Second Notice and Notice of
22 Noncompliance from the January 30, 2018 inspection, MRRP Registration Instructions, Renovator
23 Reporting Form, and Mattress Stewardship Law Brochure. On the same day, Mr. Pena Gutierrez
24 confirmed that he had received the email.

25 17. On August 21, 2018, Inspector Rogers replied via email to Mr. Pena Gutierrez asking for
26 an update on his business's progress on activating an account on the MRRP website and reporting the

1 business's 2017 data. On the same day, Mr. Pena Gutierrez responded that he would contact Inspector
2 Rogers by August 24, 2018. Respondent did not provide a further response.

3 18. Additionally, Respondent was contacted by the Department by way of seven email
4 notices to rgmattress@yahoo.com, between February 1, 2018 and April 30, 2018. The emails
5 communicated the annual reporting obligation and May 1, 2018 due date to submit renovator data for
6 the 2017 year.

7 19. The Department sent Respondent an Opportunity to Resolve Violations Through
8 Settlement (Streamlined Penalty Letter), dated January 3, 2019, via FedEx Shipment, which was
9 received and signed for on January 9, 2019. The Streamlined Penalty Letter offered Respondent the
10 opportunity to settle the penalties for outstanding violations at a reduced amount in order to avoid
11 administrative enforcement action. Respondent was given 30 days from receipt of the Streamlined
12 Penalty Letter to take specific actions to show compliance with the Act and Regulations and tender the
13 reduced penalty amount. Respondent did not respond within the 30 day deadline.

14 **CONCLUSIONS OF LAW**

15 20. Respondent knowingly violated the Act and regulations, as set forth in the Accusation,
16 by failing to submit its renovator annual reporting information in violation of PRC section 42293.3 and
17 14 CCR section 18966.

18 **ORDER**

19 The Department approves and adopts the terms of the Stipulation, and hereby orders
20 Respondent to comply with the following terms:

21 21. Pursuant to the terms and conditions of the Stipulation, and subject to the limitations
22 hereunder, Respondent stipulates to an administrative penalty against Respondent and in favor of the
23 Department in the sum of \$12,300.00 for the violation set forth in the Stipulation and alleged in the
24 Accusation. Payment of the penalty shall be satisfied in the following manner:

- 25 (a) Respondent shall pay \$1,000.00 to the Department in accordance with the following:
26 (i) Respondent shall make a single, lump sum payment to the Department of \$1,000.00,
due by the 30th day after the effective date of the Stipulation.

1 (ii) If any payment by Respondent is not mailed to the Department by the due date, and if
2 Respondent fails to cure the missed payment within twenty (20) days of said missed
3 payment, Respondent shall be found in partial default of the Stipulation. The partial
4 default amount due shall be calculated to include the amount owed from the missing
5 payment, plus a 10% late penalty and interest.

6 (iii) All payments shall be made to the Department of Resources Recycling and Recovery, at
7 the following address, or to such other person and/or place as the Department of its
8 agent may from time to time designate in writing. Payments must reference the case
9 number 2019M-0007:

10 Department of Resources Recycling and Recovery
11 1001 I Street
12 P.O. Box 2711
Sacramento, CA 95814
Attention: Accounting MS 19A

13 (b) The remainder of the penalty, \$11,300.00, shall be held in abeyance (abeyance amount)
14 for a period of two (2) years. The abeyance amount, in full or in part, shall become
15 immediately due and payable if the Department makes a determination that Respondent
16 partially defaulted on the terms of the Stipulation or is noncompliant with the Act or
17 Regulations in any manner whatsoever, as provided in paragraph 23. The abeyance
18 amount shall cease to be due following two (2) years after the issuance of the
19 corresponding Decision.

20 22. The Respondent hereby waives his right to a hearing on this matter.

21 23. Default: The Parties agree the following shall apply to a default of the Stipulation: If
22 Respondent defaults under any of the terms of the Stipulation, the default shall be a partial default. The
23 Department shall send a Notice of Default to Respondent; said Notice of Default shall state the
24 paragraphs or provisions of the Stipulation of which Respondent is in default and the abeyance amount
25 owed. Respondent shall have thirty (30) days from the date of the issuance of the Notice of Default to
26 provide evidence refusing the Department's claim of default. After a review of the evidence provided by
the Respondent, the Department shall make a determination regarding the default and, if appropriate,

1 shall issue a Supplemental Decision regarding any remaining penalties due, in accordance with the
2 penalties described within the Stipulation. Respondent may appeal the Department's determination and
3 subsequent Supplemental Decision within thirty (30) days of the issuance of the Supplemental
4 Decision. Any such appeal shall be heard by the Department's Director, or agent designated by the
5 Director.

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7 This Administrative Decision shall become effective as of the date signed below.

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Dated: 5/24/2019



MARK DE BIE
Deputy Director
DEPARTMENT OF RESOURCES RECYCLING
AND RECOVERY (CALRECYCLE)