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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:
SteelSeries North America Corporation
RESPONDENT

**STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE
IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE
PENALTIES**

PUBLIC RESOURCES CODE § 42300, ET SEQ.

OAH NO: 2019071106
AGENCY NO: 2019-001-RPPC

INTRODUCTION AND PROCEDURAL HISTORY

This STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES (hereinafter "Stipulation") is entered into by California Department of Resources Recycling and Recovery ("CALRECYCLE") and SteelSeries North America Corp. (hereinafter "SteelSeries" or "RESPONDENT") (collectively, the "Parties"). On June 30, 2019, CALRECYCLE issued an accusation (the "Accusation") to seek penalties in the amount of fifty thousand dollars (\$50,000) for violations of Public Resources Code (PRC) § 42300-42345 and Title 14 of the California Code of

Regulations (CCR) § 17943-17949, for calendar year 2014, for: failing to demonstrate that its product met any of the compliance options under the law, in violation of 14 CCR §§ 17944(a) and 17945.2.

This Stipulation resolves all issues raised in that matter, in exchange for payment of the penalty amount of fifty thousand dollars (\$50,000.00); of that amount, an immediate penalty payment of seventeen thousand five hundred dollars (\$17,500) and the remainder, thirty-two thousand five hundred dollars (\$32,500.00) will be held in abeyance until January 1, 2023, any remainder to be forgiven absent a default as described below.

STIPULATED STATUTORY AND REGULATORY AUTHORITY

1. PRC § 42300 et seq. and 14 CCR § 17943 et seq. provides the supporting authority for this Stipulation.
2. PRC § 42301 and 14 CCR § 17943 provide definitions that directly apply to the implementation and enforcement of the law. Key definitions used within this accusation include the following:
 - a. PRC § 42301(e) states a "manufacturer" is defined as, "the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container."
 - b. 14 CCR § 17943(k) states a "measurement period" "means the calendar year for which compliance is being determined as part of the certification or auditing process described in §§ 17945.1, 17945.2, 17945.3, 17945.5, 17947, and 17948 of this Article. For products introduced for sale in California after January 1 of the measurement period, their first measurement period shall be the remainder of that calendar year."
 - c. PRC § 42301(g), states "'Postconsumer material' means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from,

and commonly reused within, an original manufacturing and fabrication process."

- d. PRC § 42301(f), states a "rigid plastic packaging container" is defined as, "any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state."
- e. 14 CCR § 17943(ae) states "sold or offered for sale" means direct sales, retail sales, and remote sales such as through distributors, wholesalers and the internet."

3. PRC § 42310, states that "except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of following criteria:

- (a) Be made from 25 percent postconsumer material.
- (b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the Board is not required to expend state funds to conduct a survey or calculate the rate.
- (c) Be a reusable package or a refillable package.
- (d) Be a source reduced container.
- (e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years."

4. Additionally, PRC § 42310.3 provides manufacturers an alternative compliance option manufacturer can demonstrate compliance if the manufacturer consumed postconsumer material generated in the state, in the manufacturer of RPPCs or other plastic products or plastic packaging. This criteria and

requirements for meeting this alternative compliance option are outlined in the RPPC regulations (14 CCR § 17945.3(e)).

5. Pursuant to PRC § 42325, CalRecycle has authority to adopt regulations which include but are not limited to procedures for product manufacturers to certify compliance. The regulations require a submittal of a compliance certification. Within the certification, the product manufacturer claims that the RPPCs holding their products meet one of the compliance criteria, identified above, or meet the alternative compliance option, and reports specific container data and supporting information for the compliance option claimed.

6. 14 CCR § 17945.2 requires the following during compliance certification;

- "(a) Product manufacturers, upon written notification from CALRECYCLE, are required to certify to CALRECYCLE that all of the rigid plastic packaging containers holding their products sold or offered for sale in California comply with the rigid plastic packaging container requirements, pursuant to Public Resources Code Section 42310 or 42310.3. Product manufacturers shall submit the information described in Section 17945.3 in their certifications.
- (b) Container manufacturers' certifications provided to product manufacturers shall include the information described in Section 17945.4.
- (c) A product manufacturer's completed certification, including any applicable container manufacturer certifications, must be postmarked or sent electronically no later than April 1 of the calendar year immediately following the measurement period.
- (d) Prior to the end of the measurement period, a product manufacturer may request an extension for submittal of its certification of up to 30 calendar days for cause. An extension may be granted by CALRECYCLE only if the product manufacturer provides documentary evidence to justify an extension based on criteria such as corporate acquisitions,

corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon CALRECYCLE's evaluation.

- (e) If CALRECYCLE receives a certification that, upon review, does not include all of the information required by this Article, CALRECYCLE will notify the product manufacturer and state what additional information or documentation is required. The product manufacturer will then have 30 calendar days after receipt of the notice to provide the required information or documentation. One 30-calendar day extension may be granted for cause by CALRECYCLE upon request.
- (f) At any time, CALRECYCLE may request information from a product manufacturer outside of any notice of incomplete certification. In such cases, CALRECYCLE shall mail a written request, and the product manufacturer shall have 60 calendar days following the date of receipt of the request to supply the information."

7. 14 CCR § 17945.3(a) requires that a product manufacturer include in its certification the information listed in subsections (b) through (d), and if applicable, subsection (e).

- a. 14 CCR § 17945.3(b) requires information necessary to identify and contact the product manufacturer, a statement regarding whether products were sold in California along with whether products were approved for a waiver or qualified statutory exemptions, and finally, a requirement that all corporate entities providing certification must identify the individual submitting the certification and be signed under the following statement, "I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete."
- b. 14 CCR § 17945.3(c) requires the product manufacturer to provide

detail about products sold in RPPCs, including specific details regarding the physical characteristics of the packaging containers and sales data.

- c. In addition to data reporting requirements in this section, 14 CCR § 17945.3(d) requires that manufacturers identify their chosen method of compliance options previously noted under PRC §§ 42310, 42310.3 and 14 CCR §§ 17944 and 17944.1 and submit information specific to the container compliance option(s) claimed.
8. 14 CCR § 17945.4(a) requires that container manufacturers provide, to the product manufacturer, information including contact information for the entity that manufactures the packaging in addition to any information they might have regarding the type of container (jar, bottle, clamshell, etc.) weight, percentage of postconsumer content, and/or any reduction in the RPPC weight. Subsection (b) requires this information to be submitted under penalty of perjury.
9. 14 CCR § 17945.5(a) requires that a product manufacturer use the compliance option formulas listed in subsections (b) through (f) to calculate its claim of compliance.
10. Pursuant to PRC § 42322 and 14 CCR § 17949, CalRecycle is authorized to impose fines and penalties on manufacturers who violate any provision of the RPPC law.
11. 14 CCR § 17949(e) states, "When product manufacturers do not comply with the rigid plastic packaging container requirements in Sections 17945.3 and 17945.5, CALRECYCLE will calculate penalties using the data from the approved compliance certifications and the following formulas" (penalty formulas as listed in 1 through 5 of 14 CCR § 17949(e)).
12. Pursuant to PRC § 42322 and 14 CCR § 17949, CalRecycle has authority to impose fifty thousand dollars (\$50,000) penalty for each violation; total annual fines and penalties assessed cannot exceed one hundred thousand dollars (\$100,000), on a manufacturer which violates provisions of the RPPC law within a calendar year.

GROUND'S FOR ADMINISTRATIVE ACTION

THE ACCUSATION ALLEGES THAT STEELSERIES FAILED TO SUBMIT THE REQUIRED COMPLIANCE CERTIFICATION ON TIME FOR THE RPPC PROGRAM FOR CALENDAR YEAR 2016 IN VIOLATION OF PRC §§ 42300-42345 AND 14 CCR§ 17945.2.

13. Paragraphs 1 through 12 are incorporated by reference as if fully set forth here.
14. During the relevant Compliance Certification measurement period, from calendar year January 1, 2016, through December 31, 2016, RESPONDENT was a product manufacturer that was selling products packaged within RPPCs in California, as indicated above.
15. RESPONDENT submitted a 2016 Compliance Certification on March 31, 2017.
16. The submittal included a cover letter with sample pictures and data tables, a signed CalRecycle model template for Product Manufacturer Compliance Certification and signed CalRecycle model templates for Container Manufacturer Certification. Additionally, RESPONDENT explained in writing that it manually corrected erroneously reported postconsumer material by one of its container manufacturers. In its cover letter, RESPONDENT made statements that it would no longer use RPPCs, but did not provide evidence supporting a change in packaging.
17. RESPONDENT has provided evidence to CALRECYCLE to demonstrate that, following the Compliance Certification measurement period, it has transitioned out of RPPCs into alternative non-RPPC packaging and, as of January 1, 2020, certifies that it no longer sell products in California in RPPC packaging.

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

18. The Accusation alleges that RESPONDENT's certification did not demonstrate compliance with the law. CALRECYCLE maintains that

RESPONDENT did not report that it met any of the compliance options (CCR § 17945.3(d)) and RPPCs reported in the self-certification did not meet the container compliance requirements (PRC § 42310(a)-(e), CCR §§ 17944(a) and 17945.2 for the 2016 Compliance Certification measurement period.

19. RESPONDENT disputes the claims in the Accusation and maintains that no violation occurred.
20. The Parties wish to avoid the inconvenience and expense of litigating this matter and have agreed to settle the claims in the Accusation on the following terms.

STIPULATED PENALTY AND SETTLEMENT TERMS

21. RESPONDENT stipulates to an administrative penalty against the RESPONDENT and in favor of CALRECYCLE in the sum of fifty thousand dollars (\$50,000.00). Payments shall be satisfied in the following manner:
 - (a) RESPONDENT shall pay a penalty of seventeen thousand five hundred dollars (\$17,500) to CALRECYCLE by no later than April 1, 2020.
 - (b) All payment shall be made and mailed to Department of Resources Recycling and Recovery (CALRECYCLE), Attention: Fady Mina, Fiscal Services Branch, at 1001 I Street, PO Box 4025, MS 19A, Sacramento, CA 95812-4025.
 - i. If any payment by the RESPONDENT is not mailed to CALRECYCLE by the due date, and if the RESPONDENT fails to cure the missed payment(s) within twenty (20) days of said missed payment RESPONDENT shall be found in full default.
 - (d) The penalty of thirty-two thousand five hundred dollars (\$32,500.00) of the overall fifty thousand dollars (\$50,000.00) shall be stayed and held in abeyance until January 1, 2023. The stayed penalty shall be deemed terminated and shall not be paid by the RESPONDENT to CALRECYCLE absent a default as described herein.
22. RESPONDENT shall notify CALRECYCLE prior to selling any products,

contained in RPPCs, into California until January 1, 2023. The notification shall include a description of the product, as described under 14 CCR § 17945.3(c), and identify how the product is compliant, as described under 14 CCR § 17945.3(d).

- i. Default: Failure to notify CALRECYCLE of the sale of a product that does not meet one of the compliance options under 14 CCR § 17945.3(d), will result in a default and payment of five thousand dollars (\$5,000.00) per product.
- ii. Default: Sale of a product that does not meet one of the compliance options enumerated under 14 CCR § 17945.3(d), or failure by RESPONDENT to certify that the identified product is compliant under one of the options enumerated under 14 CCR § 17945.3(d) shall result in a complete default resulting in the full payment of all remaining funds held in abeyance.

23. RESPONDENT is designating a SteelSeries employee, Patrick Wachendorf, Chief Operating Officer, Steel Series North America Corp., (404) 447-6302, 650 W. Randolph Street, Suite 2E, Chicago, IL 60661, to be the single point of contact with CALRECYCLE through January 1, 2023. The point of contact shall be responsible for all communications with CALRECYCLE in regard to implementing the RPPC law, including but not limited to technical assistance, pre-certification notifications and responses, compliance certification, and discussion and questions regarding what qualifies as an RPPC. The point of contact shall respond to CALRECYCLE's requests for information in compliance with this stipulation and the RPPC law within 15 business days of any request for information or clarification by CALRECYCLE. If the above point of contact or that individual's information changes, the RESPONDENT shall notify CALRECYCLE within 15 days of the change.

- (a) If CALRECYCLE notifies the RESPONDENT of failure to maintain accurate single point of contact information with CALRECYCLE and the RESPONDENT fails to cure the missing information within twenty (20) days, the RESPONDENT shall be found in full default.

24. Default: If RESPONDENT defaults under any of the terms of the Stipulation,

CALRECYCLE shall send a Notice of Default to the RESPONDENT; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which the RESPONDENT is in default and the abeyance amount owed.

RESPONDENT shall have 30 days from the date of the issuance of the Notice of Default to provide evidence refuting CALRECYCLE's claim of default. After a review of the evidence provided by the RESPONDENT, CALRECYCLE shall make a determination and, if appropriate shall issue a Supplemental Decision regarding any remaining penalty due.

25. This stipulation does not otherwise limit CALRECYCLE's authority to otherwise enforce PRC § 42301 and 14 CCR § 17943 including levying penalties for violations of the RPPC law, following the process described in the statute and regulations.

Dated: March 6, 2020

Original signed by:

MARK de BIE

Deputy Director, WPCMD

Department of Resources Recycling and Recovery (CalRecycle)

and

Original signed by:

PAT WACHENDORF

Chief Operating Officer SteelSeries North America Corp.

Dated: February 4, 2020