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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

**GARY EUGENE BANAS, an individual;
and WORLDWIDE PLATINUM
CORPORATION dba VALLEY
MATTRESS,**

Respondent.

AGENCY FILE NO.: IH21-003-MAT

**DECISION FOR ADMINISTRATIVE
CIVIL PENALTIES**

The California Department of Resources Recycling and Recovery (“Department”) files this Decision for Administrative Civil Penalties (“Decision”) pursuant to a settlement agreement between the Department and GARY EUGENE BANAS, an individual (“Respondent Banas”), and WORLDWIDE PLATINUM CORPORATION, a California corporation doing business as Valley Mattress (“Respondent Corporation” and, collectively with Respondent Banas, “Respondents”). The Department files this Decision pursuant to its authority to impose administrative civil penalties on retailers who violate the Used Mattress Recovery and Recycling Act (the “Act,” Pub. Resources Code sections 42985 *et seq.*) and its authority to issue a decision by settlement pursuant to Government Code section 11415.60. (Pub. Resources Code sections 42993.1 and 42993.2; *see also* Title 14 of the California Code of Regulations (“14 CCR”) sections 18970 and 18971.)

PROCEDURAL HISTORY

On February 11, 2021, the Department served on Respondents an administrative complaint seeking penalties for violations of the Act. Respondents exercised their right to a hearing, and the Department set a hearing for June 23, 2021.

To avoid the burden and uncertainty of proceeding to hearing, the Department and Respondents negotiated an agreement, the Settlement Agreement and Stipulation for Issuance of Administrative Decision, with an effective date of June 18, 2021 (“Agreement and Stipulation”). The Agreement and Stipulation provides for a portion of the penalties imposed against Respondents to be suspended and ultimately forgiven, provided that Respondents comply with its obligations under the Act and the Agreement and Stipulation. Through the Agreement and Stipulation, Respondents consented to the Department’s issuance of this Decision, which adopts the factual findings, legal conclusions, and penalties set forth therein.

FACTUAL FINDINGS

1. As the owners and operators of a mattress store doing business as Valley Mattress at 2180 Wible Road, Bakersfield, CA, the Respondent are, and at all relevant times were, a retailer subject to the Act.

2. On or around December 30, 2016, Respondents registered as a retailer with Mattress Recycling Council (“MRC”), the entity serving as the stewardship organization pursuant to the Act.

3. On or around March 13, 2018, Department inspectors Curie Canuela (Inspector Canuela) and Phyllis Gargas (Inspector Gargas) conducted an inspection of Respondents’ business and spoke with Respondent Banas, who identified himself as the business owner. The inspectors verified that Respondents offered for sale and sold mattresses. Although Respondents produced receipts showing that they were collecting recycling charges as required under the Act, Respondents did not provide all the records that the inspectors requested for purposes of determining Respondents’ compliance with the Act. While at Respondents’ business location, the inspectors issued a “Notice of Required Actions.” The Notice of Required Actions explained that Respondents were required to provide documentation of a recent recycling charge remittance

to MRC.

4. The Notice of Required Actions required Respondents' response within seven days, by March 20, 2018.

5. On or around April 4, 2018, after Respondents failed to respond to the Notice of Required Actions, Inspector Canuela issued a notice of violation ("First Notice of Violation"). The First Notice of Violation stated that Respondents were in violation of the Act and that, upon further inspection, Respondents must provide records demonstrating that Respondents no longer are in violation of the Act. The First Notice of Violation was delivered to Respondent Banas on April 6, 2018.

6. On or around February 7, 2019, MRC notified the Department's Extended Producer Responsibility Compliance Unit that Respondents had stopped submitting reports and remitting the recycle charges as required under the Act, had been sent to collections, and were ignoring all efforts by the collection agency.

7. On or around February 13, 2019, Department inspectors Kirby Garrett (Inspector Garrett) and Jennifer Berjikian (Inspector Berjikian) conducted another inspection of Respondents' business. The inspectors met with Felipe Perez (Perez), who identified himself as the manager. Although Respondents produced receipts showing that they were collecting recycling charges as required under the Act, Respondents did not provide all the requested records required to determine compliance. While at the business, the inspectors provided Perez with another Notice of Required Actions, which explained that Respondents were required to provide the following records within seven days:

- a) documentation of a recent recycling charge remittance to an MRO;
- b) a complete list of manufacturers and renovators that supply the mattresses and foundations offered for sale at the business; and
- c) a completed website monitoring questionnaire.

8. On or around February 22, 2019, due to Respondents' failure to respond to the Notice of Required Actions, the Department issued a notice of violation ("Second Notice of Violation"). The Second Notice of Violation requested the same records as specified in the

February 13, 2019, Notice of Required Actions and set a response deadline of March 25, 2019. The Second Notice of Violation was delivered to Perez on February 27, 2019. Respondents did not respond.

9. On or around March 28, 2019, Inspector Berjikian twice called Respondents' business location to confirm that Respondents had reviewed the notices they received, to discuss Respondents' violations of the Act, and to reiterate the need to provide the requested records. Respondents did not return Inspector Berjikian's calls.

10. On or around April 2, 2019, Inspector Garrett called Respondent's business location to confirm that Respondents had reviewed the notices they received, to discuss Respondents' violation of the Act, and to reiterate the need to provide the requested records. Respondents did not return Inspector Garrett's call.

11. On or around April 9, 2019, the Department sent a letter offering Respondents an opportunity to resolve their violations of the Act ("Settlement Offer Letter"). The Department sent the Settlement Offer Letter via FedEx to Respondent Banas at Respondents' business location and to Respondent Corporation's registered agent for service of process. The letter was delivered at Respondents' business location on April 15, 2019, and signed for by Respondent Banas. The Department was unable to confirm delivery to Respondent Corporation's registered agent. Respondents did not respond to the Settlement Offer Letter, which stated a due date of thirty (30) days after delivery.

12. Between at least as early as March 25, 2019, and February 11, 2021, Respondents made sales of mattresses and collected recycling charges in connection with those sales, but remitted to MRC none of the recycling charges it had collected.

CONCLUSIONS OF LAW

13. Respondents knowingly violated Public Resources Code section 42993.3 by failing to respond to or otherwise comply with the Department's records requests, which the Department validly issued on or around March 13, 2018, April 4, 2018, February 13, 2019, and February 22, 2019, pursuant to its authority under Public Resources Code section 42993.3.

14. Respondents knowingly violated Public Resources Code section 42989.1(a) by

not remitting to MRC the recycling charges that it had collected from consumers in connection with sales of new mattresses.

15. Respondents knowingly violated Public Resources Code section 42987(c) by selling mattresses and offering mattresses for sale while not complying with the Act's requirements, as outlined above.

ORDER

Pursuant to its authority to impose penalties under Public Resources Code sections 42993.1 and 42993.2 and its authority to issue a decision by settlement pursuant to Government Code section 11415.60(a), the Department issues the following order ("Order"), which reproduces the relevant substance of the Agreement and Stipulation:

16. Respondents, having waived their right to a hearing, are liable to the Department for administrative civil penalties in the amount of the ninety-four thousand, one hundred ninety-eight dollars (\$94,198) (the "Stipulated Penalty"), as described in the Agreement and Stipulation.

17. Pursuant to the Agreement and Stipulation, Respondents have agreed to make payments totaling seventeen thousand, nine hundred thirty-four dollars (\$17,934) to MRC (the "MRC Payments"). Respondents' failure to comply with this or any other obligation set forth in the Agreement and Stipulation shall constitute a default under that agreement and a violation of this Order.

18. Notwithstanding the foregoing, Respondents' obligation to pay MRC is conditioned on MRC's written acknowledgment and agreement that (i) the MRC Payments constitute the entire amount owed to MRC in connection with all mattress sales through February 11, 2021, and (ii) all of Respondents' reporting obligations pursuant to the Act for all reporting periods up to and including February 11, 2021, shall be deemed fulfilled.

19. Payment Schedules.

a) Respondents shall pay the first forty-five thousand, one hundred dollars (\$45,100) of the Stipulated Penalty to the Department according to the following schedule:

Payment Due Date	Payment Amount
July 15, 2021	\$13,600
October 15, 2021	\$4,500
January 15, 2022	\$4,500
April 15, 2022	\$4,500
July 15, 2022	\$4,500
October 15, 2022	\$4,500
January 15, 2023	\$4,500
April 15, 2023	\$4,500

b) Respondents shall remit the MRC Payments to MRC according to the following schedule, provided that, in the event that the condition stated in Paragraph 18 of this Order is not satisfied until after one or more of the specified due dates have passed, the payment schedule shall be modified such that the affected payments become due on a quarterly basis beginning September 15, 2023, and continuing until all payments have been made:

Payment Due Date	Payment Amount
September 15, 2021	\$2,241.75
December 15, 2021	\$2,241.75
March 15, 2022	\$2,241.75
June 15, 2022	\$2,241.75
September 15, 2022	\$2,241.75
December 15, 2022	\$2,241.75
March 15, 2023	\$2,241.75
June 15, 2023	\$2,241.75

c) If Respondents fail to make any payment identified in subparagraph (a) or (b) by the applicable due date, Respondents shall be in violation of this Order and in default under the Agreement and Stipulation.

20. Respondents' obligation to pay the remainder of the Stipulated Penalty shall be suspended, and such remainder shall not become due, provided that Respondents do not commit a total breach, as set forth in the Agreement and Stipulation and this Order. If, at the conclusion of the three (3)-year period beginning on the effective date of the Agreement and Stipulation, Respondents have not committed a total breach, the remainder of the Stipulated Penalty shall be forgiven, and all obligations pursuant to the Agreement and Stipulation shall be discharged.

21. Additional Obligations.

a) Respondent shall not in any manner whatsoever violate the Act or any regulations implementing the Act. This obligation includes, without limitation, the obligation under the Act to submit sales reports and remit recycling charges to MRC with respect to all sales on a monthly basis. Respondents specifically understand that their obligation under the Act to submit sales reports and recycling charges to MRC is in addition to, not in lieu of, their obligation to adhere to the payment schedules in Paragraph 19 of this Order.

b) Within ninety (90) days of the Effective Date, Respondents shall submit to the Department:

i. Copies of all invoices, receipts, or functionally equivalent billing documents for mattress sales for the first whole calendar month following the calendar month of the Effective Date;

ii. documentation, subject to the Department's reasonable discretion, sufficient to show that Respondents have fulfilled its obligation under the Act to submit sales reporting and remit recycling charges to MRC with respect to all sales between February 12, 2021, and July 31, 2021; and

iii. a complete list of all manufacturers and renovators of mattresses sold, or offered for sale, by Respondents.

22. Third-Party Beneficiary. MRC is an intended third-party beneficiary of the

Agreement and Stipulation and shall have the rights set forth therein.

23. Default and Total Breach.

a) Notice and Cure. If Respondents breach any term of the Agreement and Stipulation, including, but not limited to, the obligation to comply with the Act and perform all actions set forth in Paragraphs 19 through 21 of this Order, Respondents shall be in default, and the Department shall send a notice (“Notice of Default”) to Respondents identifying the provisions that Respondents have violated. The Notice of Default shall set forth the specific actions, including the payments required, if any, that Respondents must take to cure the default. Respondents shall have thirty (30) days (“Cure Period”) from the date of receipt of the Notice of Default to cure the default or otherwise provide evidence refuting the Department’s assertion that Respondents breached the Agreement and Stipulation. If, upon conclusion of the Cure Period, the Department determines that Respondents remain in default, Respondents shall have committed a total breach of the Agreement and Stipulation.

b) Effect of Total Breach; Supplemental Decision. In the event of a total breach, all unpaid portions of the Stipulated Penalty and MRC Payments shall become immediately due and payable to the Department and MRC, respectively. The Department shall issue a decision (“Supplemental Decision”) setting forth the basis for its determination that Respondents have committed a total breach and its calculation of the amount due. Within thirty (30) days of receipt of the issuance of the Supplemental Decision, Respondents shall have the right to request the Department to reconsider the Supplemental Decision, and any such request shall be reviewed by the Department’s director or an agent designated by the director, who shall affirm or modify the Supplemental Decision. In accordance with Department regulations (14 CCR section 18971(a)) and the California Administrative Procedure Act (Gov. Code sections 11445.10 through 1145.60), an informal hearing may be held concerning such a request if, in the sole discretion of the Department’s director or designated agent, such a hearing is necessary. Pursuant to the Agreement and Stipulation, Respondents have acknowledged and agreed that their failure to exercise the right to request reconsideration of the Supplemental Decision shall constitute a waiver of any right that Respondents otherwise may have to object to, seek

reconsideration of, or otherwise challenge the Supplemental Decision, including any right to seek judicial review.

IT IS SO ORDERED:

**DEPARTMENT OF RESOURCES
RECYCLING AND RECOVERY
(CALRECYCLE)**

Dated: _____

By: _____

DOUGLAS C. JENSEN
Attorney IV
Hearing Officer