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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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

**RUBEN GUTIERREZ, an individual; and
RG MATTRESS OUTLET**

Respondents.

AGENCY FILE NO.: IH22-003-MAT

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ISSUANCE OF
ADMINISTRATIVE DECISION**

**[PROPOSED] DECISION FOR
ADMINISTRATIVE CIVIL PENALTIES**

INTRODUCTION

Through this SETTLEMENT AGREEMENT AND STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION (“Agreement and Stipulation”), dated as of the latest date signed below (“Effective Date”), the DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (“Department”), RUBEN GUTIERREZ, an individual (“Respondent Gutierrez”), and RG MATTRESS OUTLET, an unincorporated sole proprietorship, partnership, or association (“Respondent Business” and, collectively with Respondent Gutierrez, “Respondents”), have agreed to resolve the above-captioned matter according to the terms and conditions stated herein. The Department and Respondents are referred to herein individually as “Party” and, collectively, as the “Parties.”

On February 27, 2022, the Department served on Respondents an administrative complaint (“Accusation”) seeking penalties for violations of the Used Mattress Recovery and Recycling Act (Pub. Resources Code sections 42985 *et seq.*) (“the Act”). Respondents appeared in this matter by submitting

a Request for a Hearing/Notice of Defense dated March 7, 2022, and the Department set a hearing for June 28, 2022. The Department served an amended accusation on Respondents on June 20, 2022 (the “Amended Accusation”).

The Parties submit this Agreement and Stipulation as a final resolution of this matter. In submitting this Agreement and Stipulation, the Parties understand, acknowledge, and agree to the terms set forth herein, including the stipulated factual findings, legal conclusions, and order.

LEGAL BACKGROUND

1. The Act requires the Department to oversee and enforce the Act. The Act authorizes the Department to impose administrative civil penalties on any retailer that is in violation of the Act. (Pub. Resources Code section 42993.1(a).) Pursuant to the regulations implementing the Act, the Department may impose administrative civil penalties in accordance with the procedures for an informal hearing pursuant to the California Administrative Procedure Act (Title 14, Code of California Regulations (14 CCR) section 18971(a); Gov. Code sections 11445.10 through 1145.60.)

2. The Act defines “retailer” as “a person who sells mattresses in the state or offers to a consumer a mattress in the state through any means, including, but not limited to, by remote offering, including sales outlets or catalogs, electronically through the Internet, by telephone, or through the mail.” (Pub. Resources Code section 42986(q).)

3. The Act created the framework for an “extended producer responsibility” program for the end-of-life handling of mattresses in California. (Pub. Resources Code section 42985.) The Act aims to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses, while also ensuring that consumers have convenient, no-cost options available for collection or drop-off of used mattresses. (Pub. Resources Code sections 42985(a), 42985(b), 42987.1(l), 42987.1(n), 42992.) The Act authorizes the Department to certify a mattress recycling organization (MRO) to develop, finance, and implement a convenient and cost-effective program to recover and recycle used mattresses in the state. (Pub. Resources Code sections 42985(a)(1), 42987(a)(1).) Each mattress retailer subject to the Act must register with the MRO and participate in its recycling program. (Pub. Resources Code section 42987(b)(1).)

4. The Act requires all retailers to do the following:

- a) register with the MRO (Pub. Resources Code section 42987(b)(1));
- b) not sell, offer for sale, or distribute a mattress in the state unless the retailer is in compliance with the Act and the manufacturer or renovator of the mattress is identified on the list of compliant entities maintained on the Department's website (Public Res. Code sections 42987(c), 42993(a), 42993(d));
- c) add a charge (the mattress recycling charge) to the purchase price of each mattress and remit the charge to the MRO (Public Res. Code section 42989.1(a), (b));
- d) when adding the mattress recycling charge to the purchase price of each mattress, clearly display the charge as a separate line item on the invoice, receipt, or equivalent document (Public Res. Code section 42989.1(a));
- e) offer consumers the option to have their used mattress picked up, at no additional cost, when their new mattress is delivered (Public Res. Code section 42992(a));
- f) upon request by the Department, and as necessary for the Department to determine whether the retailer is in compliance with the Act, provide the Department with access to the retailer's facilities and operations, provide relevant records, and maintain such records for at least three years (Public Res. Code section 42993.3(a), (b)); and
- g) monitor the Department's website to determine if the manufacturers or renovators of the mattresses the retailer sells are in compliance with the Act (Public Res. Code section 42993(c)).

5. There is only one certified MRO: Mattress Recycling Council, Inc. (MRC). MRC has an approved plan and administers the only mattress recycling program under the Act.

STIPULATED FACTUAL FINDINGS

6. The factual allegations stated in the Amended Accusation are hereby incorporated in their entirety as stipulated facts established as true for purposes of this Agreement and Stipulation.

STIPULATED CONCLUSIONS OF LAW

7. Respondents are, and at all relevant times were, a retailer subject to the Act because they sell and offer for sale mattresses in California. As a retailer, Respondents are required to comply with the Act and its implementing regulations

8. At all times relevant to these proceedings, each Respondent was the agent or employee of

the other Respondent, and in doing the things herein alleged acted within the course and scope of said agency or employment.

9. Respondents knowingly violated the Act as set forth in Count I (Pub. Resources Code section 42993.3(a)(1), Count II (Pub. Resources Code section 42993.3(a)(2)), Count III (Pub. Resources Code section 42989.1(a), as in effect prior to January 1, 2020), Count IV (Pub. Resources Code section 42989.1(a), as in effect January 1, 2020), and Count V (Pub. Resources Code section 42989.1(b) of the Amended Accusation.

STIPULATED ORDER

10. Effect of Settlement. The Parties stipulate to the terms and conditions stated herein as a full and complete settlement of Respondents' liability for administrative penalties based on the violations of the Act set forth as Count I, Count II, Count III, Count IV, and Count V of the Amended Accusation. This Agreement and Stipulation shall not constitute a settlement of Respondents' liability for future violations.

11. Settlement Amount. Respondents and the Department hereby waive their right to a hearing and stipulate to the issuance of an administrative decision requiring Respondents to pay a civil penalty of \$33,317, paid to the Department (the "Stipulated Penalty"), and make payments totaling \$1,653.23 to MRC (the "MRC Payments"). The Parties intend the MRC Payments to be in lieu of a portion of the administrative penalties to which the Department would otherwise have been entitled for Respondents' failure to remit recycling charges to MRC.

12. Condition Precedent for MRC Payments. Notwithstanding the foregoing, Respondents' obligation to pay MRC shall be 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 April 30, 2022, and (ii) all of Respondents' reporting obligations pursuant to the Act for all reporting periods up to and including April 2022, shall be deemed fulfilled.

13. Payment Schedules.

a) Respondents shall pay \$8,346.77 of the Stipulated Penalty to the Department according to the following schedule:

Payment Due Date	Payment Amount
August 1, 2022	\$695.56
November 1, 2022	\$695.56
February 1, 2023	\$695.56
May 1, 2023	\$695.56
August 1, 2023	\$695.56
November 1, 2023	\$695.56
February 1, 2024	\$695.56
May 1, 2024	\$695.56
August 1, 2024	\$695.56
November 1, 2024	\$695.56
February 1, 2025	\$695.56
May 1, 2025	\$695.61

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 12 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 August 1, 2022, and continuing until payments totaling \$1,653.23 have been made:

Payment Due Date	Payment Amount
August 1, 2022	\$137.77
November 1, 2022	\$137.77
February 1, 2023	\$137.77
May 1, 2023	\$137.77
August 1, 2023	\$137.77
November 1, 2023	\$137.77
February 1, 2024	\$137.77

Payment Due Date	Payment Amount
May 1, 2024	\$137.77
August 1, 2024	\$137.77
November 1, 2024	\$137.77
February 1, 2025	\$137.77
May 1, 2025	\$137.76

c) If Respondents fail to make any payment identified in subparagraph (a) or (b) by the applicable due date, Respondents shall be in default under this Agreement and Stipulation and subject to the provisions of Paragraph 17.

14. Suspension of Penalty; Discharge. If Respondents comply with the payment schedules set forth in Paragraph 13 and do not commit a total breach as set forth in Paragraph 17, Respondents' obligation to pay the remainder of the \$23,317 Stipulated Penalty shall be suspended and not become due. If, at the conclusion of the three (3)-year period beginning on the Effective Date, Respondents have not committed a total breach, the remainder of the Stipulated Penalty shall be forgiven, and all obligations pursuant to this Agreement and Stipulation shall be discharged.

15. Additional Obligations.

a) Respondents 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 13.

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 that, subject to the Department’s reasonable discretion, is 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 May 1, 2022, and August 31, 2022; and

16. Third-Party Beneficiary. MRC is an intended third-party beneficiary of this Agreement and Stipulation. The only right MRC shall have as a third-party beneficiary under this Agreement and Stipulation shall be the right to enforce it directly against Respondents with respect to the MRC Payments as provided in Paragraphs 11 through 13. Prior to taking any action to enforce its rights under this Agreement and Stipulation, MRC shall afford Respondents notice and an opportunity to cure substantially equivalent to the notice and opportunity to cure provided under Paragraph 17(a). Other than as stated in this Paragraph, this Agreement and Stipulation is intended solely for the benefit of the Parties and may not be enforced by any other person.

17. Default and Total Breach.

a) Notice and Cure. If Respondents breach any term of this Agreement and Stipulation, including, but not limited to, the obligation to comply with the Act and perform all actions set forth in Paragraphs 13 through 15, 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 this 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 this 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. 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.

18. Payments

a) Payments to the Department shall be remitted by one of the following methods:

i. By check or money order issued to the Department of Resources

Recycling and Recovery. Checks or money orders shall reference the case number, IH22-003-MAT, and be mailed to the following address or to such other person and/or place as the Department may from time to time designate in writing:

Attn: Kirby Garrett
Department of Resources Recycling and Recovery
EPR Compliance Unit MS10A-17
P.O. Box 4025
Sacramento, CA 95812

ii. By credit card using the website at www.calrecycle.ca.gov/PayOnline.

(click "Pay Miscellaneous Fees and Fines"). Respondents will be charged the service fee required by the Department's credit card processing vendor (currently 2.3 percent of the transaction or \$1.00, whichever is greater). The service fee is retained by the vendor and is not paid to the Department. When remitting payment, Respondents shall choose "Mattress EPR Penalty" as the "Payment Type" and enter the case number, IH22-003-MAT, as the "Invoice or Penalty Number."

b) Payments to MRC shall be remitted to Mattress Recycling Council by one of the following methods.

- i. Check or money order, by mail to:
Mattress Recycling Council
P.O. Box 223594
Chantilly, VA 20153-3594
- ii. ACH (Automated Clearing House) payment using account information as may be provided by MRC.

19. Notices. All notices and other communications pursuant to this Agreement and Stipulation (each, a “Notice”) must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Paragraph 19. All Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail. A Notice shall be deemed effective upon delivery.

Notice to the Department: Attn: Kirby Garrett
 Department of Resources Recycling & Recovery
 EPR Compliance Unit
 P.O. Box 4025, MS10A-17
 Sacramento, CA 95812-4025

With copy to:
Attn: Daniel Zlatnik
Department of Resources Recycling & Recovery
P.O. Box 4025, MS24B
Sacramento, CA 95812-4025

Notice to Respondents: Attn: Ruben Gutierrez
 218 East Avenue 41
 Los Angeles, CA 90041

With copy to:
Law Office of Gilbert Varela
6086 York Boulevard
Los Angeles, CA 90042

ADDITIONAL TERMS AND CONDITIONS

20. Nothing in this Agreement and Stipulation shall be construed as a waiver of, or any restriction whatsoever on, the Department’s right to enforce the Act with respect to any violation of the Act or its implementing regulations occurring on or after February 28, 2022.

21. No covenant, promise, term, condition, breach, or default of or under this Agreement and Stipulation shall be deemed to have been waived except as expressly stated in writing by the

Department, and no such waiver by the Department shall be deemed a waiver of any other covenant, promise, term, condition, breach, or default.

22. Respondents freely and voluntarily enter into this Agreement and Stipulation and have been afforded the opportunity to consult with counsel prior to doing so.

23. This Agreement and Stipulation may not be amended except by a writing executed by each Party. Each Party agrees to execute and deliver any and all documents and to take any and all actions as necessary to consummate this Agreement and Stipulation and carry out its terms and provisions.

24. The terms of this Agreement and Stipulation and any administrative decisions implementing it (“Administrative Decisions”) shall be binding upon the Parties and their representatives, successors, heirs, and assigns.

25. This Agreement and Stipulation and any Administrative Decision constitute the entire understanding of the Parties concerning the settlement of this proceeding and supersede any prior agreements, promises, understandings, and representations related to the subject matter hereof. Each party expressly acknowledges that it has not relied upon or been induced to enter into this Agreement and Stipulation by any such agreements, promises, understandings, or representations.

26. This Agreement and Stipulation is the product of mutual negotiation and preparation and, accordingly, shall not be deemed to have been prepared or drafted by either Party.

27. Paragraph and section headings used in this Agreement and Stipulation are for organizational purposes only and shall not be considered relevant to interpreting any provision herein.

28. This Agreement and Stipulation shall not have, or be construed to have, any precedential effect with respect to any proceeding to which Respondents are not a party.

29. This Agreement and Stipulation is subject to the California Public Records Act (Gov. Code section 6250 *et seq.*).

30. If any portion of this Agreement and Stipulation is found to be unlawful or unenforceable, the remainder shall remain in full force and effect.

31. Each Party shall bear its own attorneys’ fees, expenses, and costs in relation to this matter.



32. This Agreement and Stipulation shall be governed by the laws of the State of California.

33. The Parties may execute this Agreement and Stipulation simultaneously or in any number of counterparts, each of which shall be deemed an original and equally admissible in evidence, but all of which together shall constitute one and the same Agreement and Stipulation. Copies of signatures have the same validity and effect as original signatures.

IT IS SO STIPULATED AND AGREED:

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

By
Mark De Bie
Deputy Director

Dated:

**RUBEN GUTIERREZ and RG MATTRESS
OUTLET**

By:
Ruben Gutierrez

Dated:

DECISION FOR ADMINISTRATIVE CIVIL PENALTIES

The Department adopts the foregoing Stipulated Factual Findings, Stipulated Conclusions of Law, and Stipulated Order as a decision of the Department. The Department files this decision pursuant to its authority to impose administrative civil penalties on retailers who violate 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* 14 CCR sections 18970 and 18971.)

IT IS SO ORDERED

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

Dated:

By

DOUGLAS C. JENSEN
Attorney IV
Hearing Officer