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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

Pure Fishing, Inc.

RESPONDENT

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

PUBLIC RESOURCES CODE

SECTION 42300, ET SEQ.

OAH NO: 2020080273

AGENCY NO: 2023-002-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 the Parties, California Department of Resources Recycling and Recovery (CALRECYCLE) and Pure Fishing, Inc. (PURE FISHING). PURE FISHING was selected to demonstrate compliance under the Rigid Plastic Packaging Container (RPPC) Program, by providing Plastic Packaging Compliance Certification (Compliance Certification or Certification) for the 2019 Measurement Period. Following receipt of PURE FISHING’s submission, staff determined that PURE FISHING was noncompliant and potentially subject to

penalties for violations of Public Resources Code (PRC) sections 42300 through 42345 and Title 14 of the California Code of Regulations (CCR) sections 17944(a) and 17945.2. CALRECYCLE sent a Notice of Violation, and subsequently, served an Accusation, on or about May 24, 2022. PURE FISHING is seeking to settle its violations, without adjudication via the administrative hearing process. This Stipulation resolves all issues raised regarding the alleged 2019 RPPC noncompliance, in exchange for PURE FISHING paying a Penalty of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) payable within 30 calendar days of execution of this Stipulation and Penalty in Abeyance of Twenty Seven Thousand Five Hundred Dollars (\$27,500.00), and agreeing to recertify during the 2025 RPPC Compliance Certification Measurement Period, as described below.

STIPULATED STATUTORY AND REGULATORY AUTHORITY

1. PRC section 42300 et seq. and CCR section 17943 et seq. provides the supporting authority for this Stipulation.
2. PRC section 42301 and CCR section 17943 provide definitions that directly apply to the implementation and enforcement of the law. Key definitions used within this Stipulation include the following:
 - a. PRC section 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. CCR section 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 sections 17945.1, 17945.2, 17945.3, 17945.5, 17947, and 17948.1 of this Article. For products introduced for sale in California after January 1 of a measurement period, their first measurement period shall be the remainder of that calendar year.”
 - c. PRC section 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 section 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. CCR section 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 section 42310, states that “[e]xcept 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 the 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 section 42310.3 provides manufacturers an alternative compliance option. A manufacturer can demonstrate compliance if the manufacturer consumed postconsumer material generated in the state in the manufacturer of a RPPC or other

plastic products or plastic packaging. This criteria and requirements for meeting this alternative compliance option are outlined in the RPPC regulations (CCR section 17945.3(e)).

5. Pursuant to PRC section 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. CCR section 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. CCR section 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. CCR section 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 for statutory exemptions, and 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. CCR section 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, CCR section 17945.3(d) requires that manufacturers identify their chosen method of compliance (options previously noted under PRC sections 42310, 42310.3 and CCR sections 17944 and 17944.1) and submit information specific to the container compliance option(s) claimed.
8. CCR section 17945.4(a) requires that container manufacturers provide, to the product manufacturer, information including contact information for the entity that manufactured the packaging in addition to information 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. CCR section 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 section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and penalties on manufacturers who violate any provision of the RPPC law.
11. CCR section 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 CCR section 17949(e)).
12. Pursuant to PRC section 42322 and CCR section 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 who violates provisions of the RPPC law within a calendar year.

GROUNDS FOR ADMINISTRATIVE ACTION

13. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and civil penalties on manufacturers who violate any provision of the RPPC law, up to a maximum of One Hundred Thousand Dollars (\$100,000.00).

VIOLATION 1

14. PURE FISHING's certification did not fully demonstrate compliance with the law. (PRC section 42310(a) through (e), CCR sections 17944(a) and 17945.2).

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

15. During the relevant Compliance Certification measurement period, from calendar year January 1, 2019 through December 31, 2019, PURE FISHING was a product manufacturer who was selling products packaged within RPPCs in California, as indicated above.
16. PURE FISHING submitted a 2019 Compliance Certification on April 1, 2020. The submittal included a CALRECYCLE Source Reduction (Reduced Container Weight) model template with a signed signatory page and product and container data table. Pure Fishing failed to submit a complete Compliance Certification because it did not include the following necessary elements:
- a. A statement of compliance (CCR section 17945.3(b)(2))
 - b. Complete container information (CCR section 17945.3(c))
 - c. Names of the associated container manufacturers (CCR section 17945.3(c)(7)).
17. CALRECYCLE sent a *Notice of Incomplete 2019 Compliance Certification Submission* (*Notice of Incomplete*) letter to PURE FISHING on July 28, 2020. CALRECYCLE provided PURE FISHING 30 days to submit the required information.
18. On July 6, 2020, CALRECYCLE Staff, Celia Croy, called Greg Miller, Senior VP Global Manufacturing, of PURE FISHING to follow up on the *Notice of Incomplete* and explain

what was missing from their container compliance certification submission, based on their indicated compliance option.

19. In response to the *Notice of Incomplete*, PURE FISHING submitted a revised 2019 Compliance Certification via email on August 25, 2020. This submission included a CALRECYCLE Source Reduction (Reduced Container Weight) model template with signed signatory page and product and container data table.
20. Based on the email, verbal communications, and the self-certified data from PURE FISHING, CALRECYCLE staff found that the PURE FISHING failed to meet any compliance option(s) for the products held within RPPCs during the 2019 measurement period.
21. CALRECYCLE provided PURE FISHING with a draft Accusation, dated May 23, 2022, alleging PURE FISHING's submission was incomplete, in violation of CCR section 17945.3(a), and did not demonstrate compliance, in violation of PRC section 42310, with a penalty calculation and demand.

STIPULATED PENALTY AND SETTLEMENT TERMS

22. Without admitting to the alleged violations and to resolve all allegations pertaining to the 2019 Compliance Certification, PURE FISHING stipulates to paying a Penalty of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) payable within 30 calendar days of execution of this Stipulation, a Penalty in Abeyance of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00), and agreeing to recertify during the 2025 Compliance Certification Measurement Period. Payments shall be satisfied in the following manner:

- (a) All payments shall be made and mailed to Department of Resources Recycling and Recovery (CALRECYCLE), Fiscal Services Branch, at 1001 I Street, PO Box 4025, MS 19A, Sacramento, CA 95812-4025, by certified mail. PURE FISHING will maintain the receipt as evidence of compliance.

- i. If any payment from PURE FISHING is not mailed to CALRECYCLE by the due date, PURE FISHING shall be found in full Default.

Initial Penalty Payment

- (b) PURE FISHING shall make an initial payment for penalties in the amount

Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) within thirty (30) calendar days of execution of this Stipulation.

(c) PURE FISHING fails to pay the Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) due within thirty (30) calendar days of the execution of this Stipulation, CALRECYCLE will follow the Default procedures described below.

(i) If PURE FISHING does not make its payment within thirty (30) days, PURE FISHING will exclusively be held in default and assumes liability for all monetary penalties including the abeyance amount Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) under this Stipulation, immediately due as described above; PURE FISHING will continue to be obligated to demonstrate compliance per the 2025 Compliance Certification elements of this stipulation.

2025 Compliance Certification

(d) PURE FISHING agrees to participate in the 2025 Compliance Certification. Upon notification by CALRECYCLE, PURE FISHING shall follow CALRECYCLE's instructions regarding submittal of the 2025 Compliance Certification, as set forth in PRC section 42300 et seq. and CCR section 17945.2 et seq., and demonstrate that PURE FISHING's products individually or collectively meet one of the compliance options described under the law. Failure to demonstrate compliance with the requirements in the program's statutes and regulations will result in payment of the Penalty in Abeyance, as described in the following subsection of this agreement.

Penalty in Abeyance

(e) PURE FISHING agrees to be liable for Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00), which shall be stayed and held in abeyance until 2026 or CALRECYLCE issues a Notice of Violation for PURE FISHING's 2025 Compliance Certification, prior to January 1, 2027 and PURE FISHING is found to be in violation after exercising its rights under law, if any, or otherwise settles such violation with CALRECYCLE;

(i) If PURE FISHING fails to submit a 2025 Compliance Certification, the Default procedures will result, as described below, and CALRECYCLE will demand payment of all of the penalty held in abeyance.

(ii) If PURE FISHING fails to notify CALRECYCLE regarding changes to contact information and PURE FISHING fails to cure as provided herein, CALRECYCLE may issue a finding of Default, and CALRECYCLE may demand payment of some, or all, of the Penalty in Abeyance.

(iii) If PURE FISHING submits a 2025 Compliance Certification and is found noncompliant, PURE FISHING will pay the full Penalty in Abeyance upon final resolution of a Notice of Violation from CALRECYCLE issued prior to January 1, 2027, provided that PURE FISHING is found to be in violation after exercising its rights under law, if any, or otherwise settles such violation with CALRECYCLE.

(iv) Otherwise, the stayed penalty held in abeyance shall be deemed terminated on January 1, 2027 and shall not be paid by PURE FISHING to CALRECYCLE unless CALRECYCLE previously issued a Notice of Default as described below.

(g) PURE FISHING is designating Greg Miller, Senior Vice President, Global Manufacturing, who can be reached via email at Greg.Miller@Pure.Fishing.com, or by telephone at (803) 451-3514, to be the single point of contact for CALRECYCLE through January 1, 2027. 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, their Pre-Certification or Certification and the RPPC law within thirty (30) business days of any request for information or clarification by CALRECYCLE. If the above point of contact or that individual's information changes, PURE FISHING shall notify CALRECYCLE within thirty (30) business days of the change.

23. With respect to any Notice of Default regarding PURE FISHING's failure to maintain an accurate single point of contact, PURE FISHING shall have thirty (30) business days from the date of the issuance of the Notice of Default to cure that default, by providing that information to CALRECYCLE via certified mail communication.

Default

24. If CALRECYCLE believes that PURE FISHING has defaulted under any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to PURE FISHING; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which PURE FISHING is believed to be in default.

25. After issuing a Notice of Default and reviewing any evidence or information provided by PURE FISHING, CALRECYCLE shall issue a Supplemental Decision with its determination as to whether there has been a Default by PURE FISHING and if so, the penalty which is due.

26. If PURE FISHING fails to demonstrate compliance in the 2025 Compliance Certification Measurement Period, or any future RPPC Program Compliance Certification CALRECYCLE reserves the authority to pursue a separate enforcement action against PURE FISHING, seeking additional penalties for violations with the RPPC law, following the process described in statute and regulations, not limited in any manner by this Stipulation and PURE FISHING retains all rights to contest such enforcement.

27. Attorney's Fees and Costs: Except as otherwise provided herein, each party shall bear all attorneys' fees and costs arising from each Party's own counsel in connection with the matters set forth herein.

28. Interpretation: This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

29. Waiver of Right to Administrative Hearing: PURE FISHING acknowledges that it understands that it is entitled to an Administrative Hearing on the merits of this matter, pursuant to PRC section 42322 and *Government Code Section 11506* and has procedural

rights under *Government Code Sections 11507.5 11507.6, and 11507.7*, and is voluntarily waiving these rights as to the 2019 Compliance Certification and the right to contest the compliance of the 2019 Compliance Certification in an Administrative Hearing as part of this Settlement.

30. Waiver of Right to Petition or Appeal: The Parties hereby waive their rights pertaining to the 2019 Compliance Certification, if any, to petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level court.

Dated: _____

Rachel Machi Wagoner
Director
Department of Resources Recycling and
Recovery (CalRecycle)

Dated: _____

Greg Miller
Senior Vice President, Global Manufacturing
Pure Fishing, Inc.