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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

Hape International, 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.

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 Hape International, Inc. (Hape).

Both parties to this matter have freely and voluntarily entered into this Stipulation, Decision, and Order (hereinafter Stipulation), and have been afforded the opportunity to consult with counsel prior to entering into this Stipulation. It is expressly understood and agreed that no representations or promises of any kind, other than as contained herein, have been made by any party to induce any other

party to enter into this Stipulation, and that said Stipulation may not be altered, amended, modified, or otherwise changed except by a writing executed by each of the parties hereto.

Hape was selected to demonstrate compliance under the Rigid Plastic Packaging Container (RPPC) Program, by providing Rigid Plastic Packaging Container Compliance Certification (Compliance Certification or Certification) for the 2019 Measurement Period. Following receipt of Hape's submission, staff determined that Hape 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. The Department sent a Notice of Violation, but no accusation was prepared or filed by the Department; having received the Notice from the Department, both Parties are seeking to settle this matter, without adjudication via the administrative hearing process. This Stipulation resolves all issues raised regarding the alleged noncompliant 2019 RPPC Compliance Certification, in exchange for Hape paying a Penalty of fifteen thousand dollars (\$15,000) payable within thirty (30) calendar days.

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 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 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)).

GROUNDINGS FOR ADMINISTRATIVE ACTION

12. 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 \$100,000.
13. Hape's certification did demonstrate noncompliance with the law. (PRC section 42310(a) through (e), CCR sections 17944 and 17945.2).

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

14. Hape received proper notice from CALRECYCLE that it had been selected for 2019 RPPC Compliance Certification.
15. Hape was, at all times, from January 1, 2019 through December 31, 2019, a manufacturer selling into California products contained in RPPCs.
16. Hape submitted a petition for waiver, on or about June 20, 2019, identifying eight products sold in RPPC packaging as "newly introduced" and exempt from certification in 2019.
17. Hape submitted its 2019 Compliance Certification, on March 23, 2020, before the due date. It elected to use the Source Reduction (Reduced Container Weight) compliance method. Hape's RPPCs did not meet any compliance options for the 2019 measurement period.
18. Following the Department's receipt and review of Hape's 2019 Compliance Certification, the Department communicated with Hape regarding its noncompliance.
19. In late 2022 and early 2023, Hape provided evidence to the Department that it made large changes to its packaging designs and that nearly all of its new product packaging was converted to non-RPPC packaging.

STIPULATED PENALTY AND SETTLEMENT TERMS

20. Hape stipulates to an administrative penalty against Hape and in favor of CALRECYCLE in the sum of fifteen thousand dollars (\$15,000). Payment of the penalty shall be satisfied in the following manner:
- (a) Hape stipulates to paying a Penalty of fifteen thousand dollars (\$15,000) payable within thirty (30) calendar days of Execution of this Stipulation.
 - (b) 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.
 - (c) Hape is designating Darlene Fariday, who can be reached via email at darlene@Hapetoys.com, or by telephone at (800) 661-84142, to be the point of contact for CALRECYCLE for payment of this matter.

Default

21. If CALRECYCLE believes that Hape has defaulted under any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to Hape; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which Hape is believed to be in default.
22. After issuing a Notice of Default and reviewing any evidence or information provided by Hape, CALRECYCLE shall issue a Supplemental Decision with its determination as to whether there has been a Default by Hape and if so, the penalty which is due.
23. Attorney's Fees and Costs: Except as otherwise provided herein, each party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
24. 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.
25. Waiver of Right to Administrative Hearing: Hape 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 and the right to contest this matter in an Administrative Hearing as part of this Settlement.

26. Waiver of Right to Petition or Appeal: The Parties hereby waive their rights, 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: _____

MARK de BIE
Deputy Director, WPCMD
Department of Resources Recycling and
Recovery (CalRecycle)

Dated: _____

Cindy Huo
Operations Manager
Hape International, Inc.