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**STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

**In the matter
of:**

Oreck, LLC

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.**

AGENCY NO: 2024-002-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 Royal Appliance Mfg. Co. (ROYAL). ORECK, LLC was selected to demonstrate compliance under the Rigid Plastic Packaging Container (RPPC) Program, by providing RPPC Compliance Certification (Compliance Certification or Certification) for the 2019 Measurement Period. Following receipt of ORECK's submission, staff determined that ORECK, LLC was noncompliant and potentially subject to penalties for violations of Public Resources Code (PRC) sections 42300 et seq. and Chapter 4 of Division 7 of Title 14 of the California Code of Regulations (CCR) section 17943 et seq. CALRECYCLE sent a Notice of Violation and all parties are seeking to settle its violations, without adjudication via the administrative hearing process. With that being stated, ORECK, LLC is no longer a company and ROYAL is responsible for ORECK branded products and the matters set forth in this Stipulation and agreement. This Stipulation resolves all issues raised regarding the alleged

noncompliant 2019 RPPC Compliance Certification and One Hundred Thousand Dollars (\$100,000) total penalty, in exchange for an immediate payment of Forty Thousand Dollars (\$40,000.00) payable within 30 calendar days of execution of this Stipulation with the remaining Penalty of Sixty Thousand Dollars (\$60,000.00) in Abeyance which may be forgiven if ROYAL submits a 2025 Compliance Certification demonstrating that ORECK branded products are compliant with all of the requirements under PRC section 42300 et seq. and CCR section 17943 et seq. Failure to achieve the described requirements would require payment of the Penalty in Abeyance as described herein.

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. Additionally, CCR Section 17943(q) “Postconsumer Material (PCM)” includes a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle.” However, per subsection (3) of this definition, “Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.”
- e. 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.”

- f. 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.”
- g. “Source Reduced Container” is defined in CCR Section 17943(af), in part, as “[a] rigid plastic packaging container whose container weight per unit or per number of product uses has been reduced by 10 percent...” however under subsection (2) of that definition “[a] rigid plastic packaging container is not a source reduced container for the purposes of this Article if the reduction was achieved by ... [s]ubstituting a different material type for a material that previously constituted the principle material of the container.”

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. 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 manufacture of a RPPC or other plastic products or plastic packaging in an amount equivalent to, or exceeds the postconsumer material that the rigid plastic container is otherwise required to contain. 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 the 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 PRC section 42310, or meet the alternative compliance option, and reports specific container data and supporting information for the compliance option claimed.

6. Pursuant to CCR section 17945.2 Compliance Certifications Requires the following:

- “(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), specifically:

- 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 details 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. 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)).

GROUND FOR ADMINISTRATIVE ACTION

11. 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), within a calendar year, on a manufacturer who violates provisions of the RPPC law.

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

12. During the relevant Compliance Certification measurement period, from calendar year January 1, 2019, through December 31, 2019, ORECK was a product manufacturer that was selling products packaged within RPPCs in California.

13. ORECK was selected for Pre-Certification and was sent a 2018 *Pre-Certification Notice* on or about January 26, 2018. ORECK provided the information required in its May 1, 2018, response.

14. On or about March 26, 2019, CALRECYCLE sent ORECK a 2019 *Compliance Certification Notice* via USPS certified mail. The certified mail return receipt was received, and USPS recorded the date of delivery as April 1, 2019.

15. ORECK submitted a 2019 Compliance Certification on June 1, 2020, after two 30-calendar-day extensions due to COVID-19. The two extensions were approved by CALRECYCLE. ORECK reported 6,389 products sold in RPPC containers during the measurement period.

16. CALRECYCLE identified the following violations based on ORECK's submission. ORECK failed to submit a complete Compliance Certification specifically the following requirements were not met:

- a. A statement of compliance (CCR section 17945.3(b)(2))
- b. Complete container information (CCR section 17945.3(c))
- c. Complete compliance calculations (CCR section 17945.3(d))

17. ORECK did not demonstrate that its packaging met any of the compliance options during the measurement period and is therefore in violation of the rigid plastic packaging container requirements PRC Section 42310 and CCR Sections 17944, 17945.2, 17945.3, 17945.4 and 17945.5.

STIPULATED PENALTY AND SETTLEMENT TERMS

18. ROYAL stipulates to paying a penalty of One Hundred Thousand Dollars (\$100,000.00). Forty Thousand Dollars (\$40,000.00) payable within thirty (30)-calendar-days of execution of this Stipulation, with a Penalty in Abeyance of Sixty Thousand Dollars (\$60,000.00) for three years which will either be forgiven, or will become due as described under the following conditions:

- a. All payments shall be made and mailed to the 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. Within the memo field the following shall be included "Agency No: 2024-002-RPPC". ROYAL will maintain the receipt as evidence of compliance.
- b. If any payment from ROYAL is not received by CALRECYCLE's accounting department by the due date, ROYAL may be found in full Default.

Initial Penalty Payment

- c. ROYAL shall make an initial payment for penalties in the amount Forty Thousand Dollars (\$40,000.00) within thirty (30)-calendar-days of execution of this Stipulation.
- d. If ROYAL fails to pay the Forty Thousand Dollars (\$40,000.00) due within thirty (30)-calendar-days of the execution of this Stipulation, CALRECYCLE will follow the procedures described in the Default section below. If ROYAL does not make its payment within thirty (30) days, ROYAL will exclusively be held in default and assumes liability for all monetary penalties including the abeyance amount of Sixty Thousand Dollars (\$60,000.00) under this Stipulation, immediately due as described in the Default section below.

2025 Compliance Certification

- e. ROYAL must submit by April 1, 2026, a 2025 Compliance Certification for ORECK branded products demonstrating its compliance, and that all products sold in California in 2025 meet one of the compliance options proscribed under PRC section 42310.
 - i. If ROYAL fails to submit the 2025 Compliance Certification to CALRECYCLE, ROYAL shall be found in default and payment of Sixty Thousand Dollars (\$60,000.00) of the Penalty in Abeyance shall be made to CALRECYCLE within thirty (30)-calendar-days of CALRECYCLE's Notice of Default

- f. CALRECYCLE will provide a review of the 2025 Compliance Certification submission. Should CALRECYCLE find the 2025 Compliance Certification does not meet the requirements in statute and regulations, and CALRECYCLE determines the submission incomplete as proscribed under PRC section 42310 CALRECYCLE will provide a written notice of deficiencies with a Notice of Default and a Notice of Incomplete Submission.
 - i. If ROYAL fails to submit a complete 2025 Compliance Certification to CALRECYCLE, ROYAL may be found in default and payment of Sixty Thousand Dollars (\$60,000.00) of the Penalty in Abeyance shall be made to CALRECYCLE within thirty (30)-calendar-days of CALRECYCLE's Notice of Default.

- g. Based on CALRECYCLE's review of the 2025 Compliance Certification submission, should ROYAL demonstrate through the 2025 Compliance Certification that its regulated packaging is fully compliant with the requirements of PCR section 42300 et seq and CCR section 17943 et seq as of December 31, 2025, CALRECYCLE will forgive the Sixty Thousand Dollars (\$60,000.00) of the Penalty in Abeyance.
 - i. Should CALRECYCLE find ROYAL has not demonstrated compliance through the 2025 Compliance Certification, payment of Sixty Thousand Dollars (\$60,000.00) of the Penalty in Abeyance shall be made to CALRECYCLE within thirty (30)-calendar-days of CALRECYCLE's Notice of Default.

- h. ROYAL agrees to be liable for any part of the Penalty in Abeyance which was not previously forgiven by CALRECYCLE or paid by ROYAL. The Penalty in Abeyance shall be stayed and held in abeyance until January 1, 2027, or CALRECYCLE issues a Notice of Default.
 - i. If ROYAL fails to notify CALRECYCLE regarding changes to contact information, CALRECYCLE may issue a finding of Default, and CALRECYCLE may demand payment of some, or all, of the Penalty in Abeyance that was not previously forgiven or paid.

- ii. Otherwise, the stayed penalty held in abeyance shall be deemed terminated on January 1, 2027, and shall not be paid by ROYAL to CALRECYCLE unless CALRECYCLE previously issued a Notice of Default as described in the Default section below.

19. ROYAL is designating Travis Martin, Director of Quality & Product Safety to be the single point of contact for communication between ROYAL and CALRECYCLE through January 1, 2027. ROYAL shall confirm the contact email and phone number for Mr. Martin within 30 days of the execution of this agreement. 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 and compliance certification notifications and responses, 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 Compliance 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, ROYAL shall notify CALRECYCLE within thirty (30) business-days of the change.

Default

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

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

Miscellaneous

22. This Stipulation shall serve as CALRECYCLE's Pre-Certification and Compliance Certification Notifications required by CCR sections 17945.1(b)(1) and (d)(2).

23. If ROYAL 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 ROYAL, 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 ROYAL retains all rights to contest such enforcement.

24. ROYAL acknowledges that on June 30, 2022, California's Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54, Allen, Chapter 75, Statutes of 2022) was enacted. This statute addresses single-use packaging and plastic food service ware. Implementing regulations for California Plastic Pollution Prevention and

Packaging Producer Responsibility Act are in the formal rulemaking process. ROYAL will sign-up for the listserv to follow the rulemaking. ROYAL understands that California's Plastic Pollution Prevention and Packaging Producer Responsibility Act, by year 2032, will require producers of covered plastic material to source reduce by 25% and reach a recycling rate of 65% for covered plastic material, and requires 100% of covered material to be recyclable or compostable.

25. 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

26. 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

27. Waiver of Right to Administrative Hearing: ROYAL 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

28. 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: _____

Mindy McIntyre
Chief Deputy Director
Department of Resources Recycling and
Recovery (CalRecycle)

Dated: _____

Travis Martin
Director of Quality & Product Safety
Royal Appliance Mfg. Co.