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7
8 STATE OF CALIFORNIA

9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10 **In the matter of:**

11 **Gerard Torres dba Five Points Furniture,**

12
13 **RESPONDENT.**

14 } **ADMINISTRATIVE DECISION FOR**
15 } **ADMINISTRATIVE PENALTIES**

16 } **AGENCY NO: 2019-0001 MATTRESS**

17 **INTRODUCTION**

18 This ADMINISTRATIVE DECISION FOR ADMINISTRATIVE PENALTIES (Administrative
19 Decision) is based on the STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR
20 ADMINISTRATIVE PENALTIES (Stipulation) signed by Gerard Torres, an individual doing business as
21 Five Points Furniture (Respondent), on May 20, 2019.

22 The parties to the Stipulation are the DEPARTMENT OF RESOURCES RECYCLING AND
23 RECOVERY (Department) and Respondent (collectively referred to as "the parties"). On January 15,
24 2019, the Department issued Respondent an Accusation that sought penalties totaling \$348,195.00 for
25 five (5) violations of the Act and regulations. The Department served the Respondent with the
26 Accusation on January 19, 2019. The Department provided Respondent fifteen (15) days from the date

1 of receipt of the Accusation to request a hearing and file a "Request for a Hearing/Notice of Defense"
2 with the Department to refute the allegations contained therein. Respondent filed a "Request for a
3 Hearing/Notice of Defense" on February 21, 2019 after being granted an extension by the Department.
4 A hearing was scheduled for May 22 and 23rd in Sacramento, California. On April 10, 2019, a Notice of
5 Hearing was issued.

6 On May 2, 2019, the Department filed a Request to Continue Administrative Hearing (Request)
7 requesting that the hearing be continued to a later date to allow the parties to memorialize a tentative
8 settlement agreement. Respondent stipulated to the Request, which the Hearing Officer granted on
9 May 3, 2019, thereby continuing the hearing to July 22 & 23, 2019. The Hearing Officer also ordered a
10 telephonic status conference scheduled for July 9, 2019.

11 In order to avoid the time, expense, and uncertainties attendant with litigation, the Parties
12 submitted a Stipulation as a final resolution of the matter. In submitting the Stipulation, the Parties
13 understand, acknowledge, and agree to the facts and terms of the Stipulation as set forth herein.

14 **LEGAL AND FACTUAL FINDINGS**

15 1. The Department is required to oversee and enforce the Used Mattress Recycling and
16 Recovery Act (Pub. Resources Code (PRC), § 42985 et seq.) (Act) and its implementing regulations
17 (Cal. Code Regs. (CCR), tit. 14, § 18959 et seq.) (regulations).

18 2. "Retailer" is defined by the Act as "a person who sells mattresses in the state or offers to
19 a consumer a mattress in the state through any means, including, but not limited to, by remote offering,
20 including sales outlets or catalogs, electronically through the Internet, by telephone, or through the
21 mail." (PRC § 42986(q).)

22 3. Respondent is a retailer subject to the Act and regulations because Respondent sells
23 and offers for sale mattresses in California. As a retailer, Respondent is required to comply with the Act
24 and regulations.

25 4. The Act created the framework for an extended producer responsibility approach to the
26 end-of-life handling of used mattresses in California. (PRC § 42985.) The extended producer
responsibility model shifts the end-of-life management of a product from government to the

1 manufacturers of that product. The purpose of the Act was to reduce illegal dumping, increase
2 recycling, and substantially reduce public agency costs for the end-of-life management of used
3 mattresses, (PRC § 42985(a)(1)), while also allowing California mattress consumers the opportunity to
4 drop off their used mattresses free of charge. (PRC § 42985(b).) The Act accomplishes its purposes by
5 requiring manufacturers of mattresses sold in California to form a mattress recycling organization that
6 must develop, finance, and implement a convenient and cost-effective program to recover and recycle
7 used mattresses generated in the state. (PRC § 42985(a)(1).) Each mattress manufacturer, retailer,
8 and renovator in the state, or selling in the state, is required to register with a mattress recycling
9 organization and participate in that organization's program. (PRC § 42987(b)(1).)

10 5. To date, there is only one mattress recycling organization certified by the Department,
11 the Mattress Recycling Council. The Mattress Recycling Council has an approved plan and is currently
12 administering the only mattress recycling program under the Act.

13 6. The Department is required to oversee and enforce the Act. The Department may
14 impose an administrative civil penalty on any manufacturer, mattress recycling organization, distributor,
15 recycler, renovator, or retailer that is in violation of the Act. (PRC § 42993.1(a).)

16 7. The Act requires all retailers to do the following:

17 a. Register with the mattress recycling organization (PRC § 42987(b)(1));

18 b. Not sell, distribute, or offer for sale a mattress in the state unless the retailer is in
19 compliance with the Act and the manufacturer or renovator of the mattress sold by the retailer is
20 listed in compliance with the Act (PRC § 42987(c));

21 c. Add the mattress recycling charge to the purchase price of each mattress and
22 remit the charge collected to the mattress recycling organization (PRC § 42989.1(a));

23 d. When adding the mattress recycling charge to the purchase price of each
24 mattress, make the charge clearly visible as a separate line item on the invoice, receipt, or
25 equivalent document (PRC § 42989.1(b));

26 e. Offer consumers the option to have their used mattress picked up when their new
mattress is delivered at no cost to the consumers (PRC § 429992(a));

1 f. Provide access by the Department to the retailer's facilities and records and
2 maintain records for three years (PRC § 42993.3(a)); and

3 g. Monitor the Department's website to determine if the manufacturer(s) or
4 renovator(s) of the mattresses the retailer sells are in compliance with the Act. (PRC §
5 42993(c).)

6 8. In April of 2017, Department Inspector Kirby Garrett determined that Respondent's
7 business located at 119 East Wooley Road, Oxnard, California was a mattress retailer through
8 research of Google images of the business's storefront.

9 9. On April 12, 2017, Inspector Garrett conducted a site visit at the 119 East Wooley Road,
10 Oxnard, California and 1032 South Oxnard Boulevard, Oxnard, California business locations. During
11 the inspections of these locations, Inspector Garret spoke with Mr. Gerard Torres, who identified
12 himself as the owner of the businesses at both locations. Mr. Torres stated that both locations are part
13 of Five Points Furniture. Inspector Garrett was able to verify that mattresses are offered for sale and
14 sold at both locations. Records obtained at the time of these inspections showed that Respondent was
15 not in compliance with the Act and regulations. While at one of the business locations, Inspector Garrett
16 issued a Notice of Required Actions, which included, among other things, the requirement that
17 Respondent provide records to the Department to show compliance with the Act and proof of
18 registration with the Mattress Recycling Council within seven days. Respondent did not respond as
19 required by the Notice of Required Actions.

20 10. On June 9, 2017, the Department sent a Notice of Retailer Noncompliance with the
21 Mattress Stewardship Law and Required Actions (First Notice of Violation) to Respondent. The First
22 Notice of Violation requested the following records be submitted by July 10, 2017:

23 a. Documentation of registration with an approved mattress recycling organization,
24 as required by PRC section 42987(b)(1);

25 b. Copies of two (2) invoices or equivalent billing documents showing sales of
26 mattresses and/or foundations in California after January 1, 2016, but prior to the date of the
inquiry to show compliance with PRC sections 42989.1(a) and (b);

1 c. Documentation of a recent recycle charge remittance to a mattress recycling
2 organization that clearly shows: member name, member identification number, and verification
3 of remittance paid to show compliance with PRC section 42989.1(a);

4 d. Documentation or a statement from Respondent explaining what it charges to
5 pick up a used mattress from customers upon delivery of a purchased mattress to show
6 compliance with PRC section 42992;

7 e. A completed Website Monitoring Questionnaire, used to determine if Respondent
8 is monitoring the correct website to verify manufacturer or renovator compliance as required by
9 PRC section 42993(c); and

10 f. A complete listing of manufacturers and renovators of mattresses sold, or offered
11 for sale, at Respondent's business to show compliance with PRC sections 42987(c) and (d).

12 11. The records requested in the letter are those typically requested and obtained during
13 inspections in order to assess compliance with the Act and regulations. Respondent did not respond or
14 provide any of the requested information by the due date.

15 12. On July 28, 2017, the Department sent Respondent a Violation of the California Mattress
16 Stewardship Law and Penalty for Non-Submittal of Request for Compliance Documentation (Second
17 Notice of Violation), which requested Respondent submit the same records requested in the First
18 Notice of Violation by August 29, 2017. Respondent did not respond.

19 13. On September 12, 2017, Inspector Garrett called Respondent and spoke with Mr.
20 Torres. Mr. Torres stated that he had received the Second Notice of Violation. While on the phone,
21 Inspector Garrett explained to Mr. Torres how to register with the Mattress Recycling Council. Mr.
22 Torres stated that he would provide the records requested in the Second Notice of Violation by
23 September 19, 2017. Respondent did not provide the requested records.

24 14. On August 29, 2018, Department Inspector Steve Rogers performed site inspections at
25 both Oxnard, California business locations. At the time, Inspector Rogers was able to obtain the
26 following records and information:

1 a. A statement from Mr. Torres that Five Points Furniture does not collect the
2 mattress recycling charge from customers at its business locations. Copies of two recent
3 mattress sales receipts provided by Mr. Torres did not display the mattress recycling charge.

4 b. A statement from Mr. Torres that Five Points Furniture does not offer no-charge
5 pick up of a used mattress at the time of delivery of a new mattress.

6 c. A statement from Mr. Torres that Five Points Furniture does not monitor the
7 Department's website to verify the manufacturers and renovators of the mattresses sold by Five
8 Points Mattress are in compliance with the Act and regulations.¹

9 d. During the August 29, 2018 inspections, Respondent stated to Department
10 Inspector Rogers that the business was not registered with the Mattress Recycling Council.
11 Additionally, neither business location appeared on the list of registered mattress retailers as
12 provided to the Department by the Mattress Recycling Council. At the time the Accusation was
13 filed, the Respondent had not registered with the Mattress Recycling Council.

14 15. On September 20, 2018, the inspection reports from the August 29, 2018, inspections
15 were mailed to Respondent in a letter of Violation of the California Mattress Stewardship Law and
16 Penalty for Repeat Non-Compliance. An amended version, with minor clarifying amendments, of the
17 same was mailed to Respondent on October 2, 2018. Both notices were mailed registered mail, return
18 receipt. Respondent responded to neither.

19 16. The Department sent Respondent an Opportunity to Resolve Violations Through
20 Settlement (Streamlined Penalty Letter), dated November 20, 2018, via FedEx Shipment, which was
21 received and signed for on November 30, 2018. The Streamlined Penalty Letter offered Respondent
22 the opportunity to settle the penalties for outstanding violations at a reduced amount in order to avoid
23 administrative enforcement action. Respondent was given 30 days from receipt of the Streamlined
24

25
26 ¹ At the time of the inspection, Inspector Rogers observed that the mattress products offered for sale at both
business locations are produced by manufacturers and renovators that are compliant with the Act and regulations.

1 Penalty Letter to take specific actions to show compliance with the Act and Regulations and tender the
2 reduced penalty amount. Respondent did not respond within the 30 day deadline.

3 **CONCLUSIONS OF LAW**

4 17. Respondent knowingly violated the Act and regulations, as set forth in the Accusation
5 and summarized here.

6 18. Respondent intentionally, knowingly, or recklessly failed to register with a mattress
7 recycling organization, as required by PRC section 42987(b)(1).

8 19. Respondent intentionally, knowingly, or recklessly sold, distributed, or offered for sale a
9 mattress in the state while out of compliance with the Act in violation of PRC section 426987(c).

10 20. Respondent intentionally, knowingly, or recklessly failed to add the mattress recycling
11 charge to the purchase price of each mattress sold to a consumer and remit the charge collected to the
12 mattress recycling organization in violation of PRC section 42989.1(a).

13 21. Respondent intentionally, knowingly, or recklessly failed to visibly display the mattress
14 recycling charge on invoices, receipts, or functionally equivalent billing documents in violation of PRC
15 section 42989.1(b).

16 22. Respondent intentionally, knowingly, or recklessly failed to offer consumers the option of
17 free pick-up of a used mattresses at the time of delivery in violation of PRC section 42992.

18 **ORDER**

19 23. The Department approves of and adopts the terms of the Stipulation, and hereby orders
20 Respondent to comply with the following terms:

21 24. Pursuant to the terms and conditions of the Stipulation, and subject to the limitations
22 hereunder, Respondent stipulates to an administrative penalty against Respondent and in favor of the
23 Department in the sum of \$43,000 for the violations set forth in the Stipulation and alleged in the
24 Accusation. Payment of the penalty shall be satisfied in the following manner:

25 (a) Respondent shall pay \$6,000 to the Department in accordance with the following:

26 (i) Respondent shall make a single, lump sum payment to the Department of \$6,000, due
on the 30th day after the effective date of the Stipulation.

1 (ii) If any payment by Respondent is not mailed to the Department by the due date, and if
2 Respondent fails to cure the missed payment within twenty (20) days of said missed
3 payment, Respondent shall be found in partial default of the Stipulation. The partial
4 default amount due shall be calculated to include the amount owed from the missing
5 payment, plus a 10% late penalty and interest.

6 (iii) All payments shall be made to the Department, at the following address, or to such other
7 person and/or place as the Department of its agent may from time to time designate in
8 writing. Payments must reference the Agency No. 2019-0001 MATTRESS:

9 Department of Resources Recycling and Recovery
10 1001 I Street
11 P.O. Box 2711
12 Sacramento, CA 95814
13 Attention: Accounting MS 19A

14 (b) The remainder of the penalty, \$37,000, shall be held in abeyance (abeyance amount) for
15 a period of three (3) years. The abeyance amount, in full or in part, shall become
16 immediately due and payable if the Department makes a determination that Respondent
17 partially defaulted on the terms of the Stipulation or is noncompliant with the Act or
18 regulations in any manner whatsoever, as provided in paragraph 27. The abeyance
19 amount shall cease to be due following three (3) years after the issuance of the
20 corresponding Decision.

21 25. Within 30 days of the effective date of the Stipulation, Respondent shall submit to the
22 Department:

- 23 (a) Two (2) copies of invoices, receipts, or functionally equivalent billing documents that
24 visibly display the mattress recycling charge; and
25 (b) Documentation to show that the Respondent remitted the charge collected to the
26 mattress recycling organization; and
(c) Documentation or a statement from Respondent explaining how the Business is in
compliance with the Retailer Used Mattress take-back (free pick-up of used mattresses)
requirement; and

1 (d) Submission of all required and compliant documentation to the Mattress Recycling
2 Council that the Mattress Recycling Council has requested.

3 26. The Respondent hereby waives his right to a hearing on this matter.

4 27. Default: The Parties agree the following shall apply to a default of the Stipulation: If
5 Respondent defaults under any of the terms of the Stipulation, the default shall be a partial default. The
6 Department shall send a Notice of Default to Respondent; said Notice of Default shall state the
7 paragraphs or provisions of this Stipulation of which Respondent is in default and the abeyance amount
8 owed. Respondent shall have thirty (30) days from the date of the issuance of the Notice of Default to
9 provide evidence refusing the Department's claim of default. After a review of the evidence provided by
10 the Respondent, the Department shall make a determination regarding the default and, if appropriate,
11 shall issue a Supplemental Decision regarding any remaining penalties due, in accordance with the
12 penalties described within the Stipulation. Respondent may appeal the Department's determination and
13 subsequent Supplemental Decision within thirty (30) days of the issuance of the Supplemental
14 Decision. Any such appeal shall be heard by the Department's Director, or agent designated by the
15 Director.

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17 This Administrative Decision shall become effective as of the date signed below.

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20 Dated: 5/29/2019



21 MARK DE BIE
22 Deputy Director
23 DEPARTMENT OF RESOURCES RECYCLING
24 AND RECOVERY (CALRECYCLE)
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