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7
8 STATE OF CALIFORNIA

9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10	In the matter of:)	ADMINISTRATIVE DECISION FOR
)	ADMINISTRATIVE PENALTIES
11)	
12	The Furniture Warehouse, Inc.,)	PUBLIC RESOURCES CODE
)	§§ 42985-42994 and CALIFORNIA CODE OF
13	RESPONDENT.)	REGULATIONS TITLE 14 §§ 18959-18964
)	
14)	AGENCY NO: 2018M-0008
15)	
16)	

17 INTRODUCTION

18 On April 12, 2019, pursuant to the Used Mattress Recycling and Recovery Act (Pub. Resources
19 Code (PRC), § 42985 et seq.) (Act) and its implementing regulations (Cal. Code Regs. (CCR), tit. 14, §
20 18959 et seq.) (regulations) the California Department of Resources Recycling and Recovery
21 (Department) issued an Accusation against The Furniture Warehouse, Inc. (Respondent) to seek
22 penalties totaling \$310,620.00 for four (4) violations of the Act and regulations.

23 Service of the Accusation on Respondent was completed on April 18, 2019. Respondent was
24 provided 15 days for the date of service to request a hearing and file a "Notice of Defense/Request for
25 Hearing" with the Department to refute the allegations contained therein.

1 Respondent did not file a "Notice of Defense/Request for Hearing" with the Department. This
2 matter shall be determined as a default pursuant to 14 CCR section 18971 and Government Code
3 section 11520. The Department takes action against Respondent based upon evidence and affidavits
4 that may be used without any notice to Respondent.

5 JURISDICTION

6 1. The Department is required to oversee and enforce the Act and regulations. The Act
7 allows the Department to impose administrative civil penalties on any retailer that is in violation of the
8 Act. (PRC § 42993.1(a).) Administrative civil penalties may be imposed in accordance with procedures
9 for an informal hearing pursuant to the Administrative Procedure Act at Article 10 of Chapter 4.5
10 (commencing with section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code. (14
11 CCR § 18971(a).)

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

16 3. Respondent is, and at all times mentioned herein was, a retailer subject to the Act and
17 regulations because Respondent sells and offers for sale mattresses in California. As a retailer,
18 Respondent is required to comply with the Act and regulations.

19 STATUTORY AND REGULATORY AUTHORITY

20 4. The Act created the framework for an extended producer responsibility approach to the
21 end-of-life handling of used mattresses in California. (PRC § 42985.) The extended producer
22 responsibility model shifts the end-of-life management of a product from government to the
23 manufacturers of that product. The purpose of the Act was to reduce illegal dumping, increase
24 recycling, and substantially reduce public agency costs for the end-of-life management of used
25 mattresses, (PRC § 42985(a)(1)), while also allowing California mattress consumers the opportunity to
26 drop off their used mattresses free of charge. (PRC § 42985(b).) The Act accomplishes its purposes by
requiring manufacturers of mattresses sold in California to form a mattress recycling organization that

1 must develop, finance, and implement a convenient and cost-effective program to recover and recycle
2 used mattresses generated in the state. (PRC § 42985(a)(1).) Each mattress manufacturer, retailer,
3 and renovator in the state, or selling in the state, is required to register with a mattress recycling
4 organization and participate in that organization's program. (PRC § 42987(b)(1).)

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

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

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

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

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

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

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

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

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

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

1 **STATEMENT OF FACTS**

2 8. On or around August 1, 2018, Department Inspectors Jonathan Schmidt and Curie
3 Canuela visited Respondent at its business location located at 995 Bay Boulevard, Suite 102, Chula
4 Vista, CA 91911 for an inspection. During the visit, the inspectors met with Manny Maciel, the store
5 manager. While at the business location, the inspectors issued a Notice of Required Actions instructing
6 Respondent to provide the following records within seven days:

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

9 b. Copies of two (2) invoices or equivalent billing documents showing sales of
10 mattresses and/or foundations in California after January 12018 but prior to the date of the
11 inspection to show compliance with PRC sections 42989.1(a) and (b);

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

15 d. Documentation or a statement from Respondent explaining if the business offers
16 no-charge pick up of used mattress from customers upon delivery of a purchased mattress to
17 show compliance with PRC section 42992;

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

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

23 9. On or around August 9, 2018, Inspector Canuela was contacted by email and then
24 spoke by phone with Respondent's accountant, Robinson Devadhason. Robinson Devadhason
25 requested a five-day extension to the Notice of Required Action's due date, which Inspector Canuela
26 granted.

1 10. After not receiving a response to the Notice of Required Action by the extended due date
2 of August 14, 2018, on or around August 23, 2018, Inspector Canuela issued a Notice of Non-
3 Compliance with the California Mattress Stewardship Law and Required Corrective Actions (First
4 Notice). According to United State Postal Service Certified Mail records, the First Notice was delivered
5 to Respondent on August 27, 2018. No response was received from Respondent by the First Notice's
6 30-day deadline.

7 11. On or around August 30, 2018, Respondent registered as a retailer with the Mattress
8 Recycling Council.

9 12. On or around October 4, 2018, Inspector Schmidt called Respondent and spoke with
10 employee, Joeo Garcia, who took a message for store manager, Manny Maciel, to return Inspector
11 Schmidt's call about Respondent's continued noncompliance with the Act and regulations. Joeo Garcia
12 stated that Manny Maciel would receive the message on October 8, 2018.

13 13. After not receiving a return call, on or around October 9, 2018, Inspector Schmidt issued
14 a Second Notice of Violation of the California Mattress Stewardship Law and Penalty for Repeat Non-
15 Compliance (Second Notice) to owner, Omar Ibarra. The Second Notice specified a due date of
16 November 8, 2018, to submit the requested information and records in order to correct the violations.

17 14. After receiving no response from Respondent, on or around December 4, 2018,
18 Inspector Schmidt called Respondent and spoke to an employee. Inspector Schmidt left his contact
19 information and a message for owner, Omar Ibarra, to return his call because the Department would
20 soon issue penalties. Inspector Schmidt did not receive a return call.

21 15. The Department sent Respondent an Opportunity to Resolve Violations Through
22 Settlement (Streamlined Penalty Letter), dated January 3, 2019, via FedEx Shipment, which was
23 received and signed for on January 9, 2019. The Streamlined Penalty Letter offered Respondent the
24 opportunity to settle the penalties for outstanding violations at a reduced amount in order to avoid
25 administrative enforcement action. Respondent was given 30 days from receipt of the Streamlined
26 Penalty Letter to take specific actions to show compliance with the Act and Regulations and tender the

1 reduced penalty amount. Respondent did not respond within the 30 day deadline, and, as of the date of
2 this Accusation, remains in violation of the Act and regulations.

3 **VIOLATIONS AND ASSESMENT OF PENALTIES**

4 16. Pursuant to PRC section 42993.1 and Title 14 of the CCR sections 18970 and 18971,
5 the Department is authorized to impose administrative civil penalties for violations of the Act and
6 regulations. The Department has authority to impose administrative civil penalties of up to five hundred
7 dollars (\$500) per day for each violation, but, if the violation is intentional, knowing, or reckless, the
8 Department may impose an administrative civil penalty of not more than five thousand dollars (\$5,000)
9 per day.

10 17. Pursuant to PRC section 42993.1 and Title 14 of the CCR sections 18970 and 18971,
11 the Department is authorized to impose fines and administrative civil penalties on retailers who violate
12 any provision of the Act and regulations.

13 18. Pursuant to Title 14 of the CCR section 18970, in assessing the amount of the penalty to
14 impose for each violation, the Department must consider the totality of the circumstances, which may
15 include the following:

- 16 (a) The nature, circumstances, extent, and gravity of the violation(s).
- 17 (b) The number and severity of the violation(s).
- 18 (c) Evidence that the violation was intentional, knowing, or negligent.
- 19 (d) The size of the violator.
- 20 (e) History of violation(s) of the same or similar nature.
- 21 (f) The willfulness of the violator's misconduct.
- 22 (g) Whether the violator took good faith measures to comply with this chapter and the period
23 of time over which these measures were taken.
- 24 (h) Evidence of any financial gain resulting from the violation(s).
- 25 (i) The economic effect of the penalty on the violator.
- 26 (j) The deterrent effect that the imposition of the penalty would have on both the violator
and the regulated community.

1 (k) Any other factor that justice may require.

2 **COUNT I: RESPONDENT INTENTIONALLY, KNOWINGLY, OR RECKLESSLY SOLD,**
3 **DISTRIBUTED, OR OFFERED FOR SALE A MATTRESS IN THE STATE WHILE OUT OF**
4 **COMPLIANCE WITH THE ACT IN VIOLATION OF PRC § 42987(c).**

5 19. The Department made requests on August 1, 2018, August 23, 2018, and October 9,
6 2018, for Respondent to provide documentation supporting that it is in compliance with the Act and
7 regulations.

8 20. On or around August 1, 2018, Department Inspectors Schmidt and Canuela conducted a
9 site inspection at Respondent's business location. At that inspection, the inspectors observed mattress
10 program products being offered for sale. Despite multiple requests to see records to demonstrate
11 compliance with the Act and regulations, Respondent did not provide any records.

12 21. For intentionally, knowingly, or recklessly selling, distributing, or offering for sale a
13 mattress in the state while out of compliance with the Act between November 8, 2018 and April 12,
14 2019 in violation of PRC section 42987(c), the Department seeks an administrative civil penalty in the
15 amount of \$77,655.00. This penalty calculation is based on Respondent's violation of this count for 155
16 days, which is the time from November 8, 2018 until April 12, 2019, with a penalty amount of \$501.00
17 per day. The 155 days from November 8, 2018 until April 12, 2019, are the days since the last deadline
18 given in the Second Notice and the date of the Accusation.

19 **COUNT II: RESPONDENT INTENTIONALLY, KNOWINGLY, OR RECKLESSLY FAILED TO ADD**
20 **THE MATTRESS RECYCLING CHARGE TO THE PURCHASE PRICE OF EACH MATTRESS SOLD**
21 **TO A CONSUMER AND REMIT THE CHARGE COLLECTED TO THE MATTRESS RECYCLING**
22 **ORGANIZATION IN VIOLATION OF PRC § 42989.1(a).**

23 22. The Department made requests on August 1, 2018, August 23, 2018, and October 9,
24 2018, for Respondent to provide documentation showing that it adds the mattress recycling charge to
25 the purchase price of each mattress and remits the charge to the Mattress Recycling Council.

26 23. On or around August 1, 2018, Department Inspectors Schmidt and Canuela conducted a
site inspection at Respondent's business location. At that inspection, the inspectors observed mattress
program products being offered for sale. Despite multiple requests to see records to demonstrate
compliance with this requirement, Respondent did not provide any records.

1 24. On or around April 10, 2019, the Department checked with the Mattress Recycling
2 Council and found that Respondent had not remitted any mattress recycling charges to the Mattress
3 Recycling Council.

4 25. For intentionally, knowingly, or recklessly failing to add the mattress recycling charge to
5 the purchase price of each mattress sold and remit it to the mattress recycling organization between
6 November 8, 2018 and April 12, 2019 in violation of PRC section 42989.1(a), the Department seeks an
7 administrative civil penalty in the amount of \$77,655.00. This penalty calculation is based on
8 Respondent's violation of this count for 155 days, which is the time from November 8, 2018 until April
9 12, 2019, with a penalty amount of \$501.00 per day. The 155 days from November 8, 2018 until April
10 12, 2019, are the days since the last deadline given in the Second Notice and the date of the
11 Accusation.

12 **COUNT III: RESPONDENT INTENTIONALLY, KNOWINGLY, OR RECKLESSLY FAILED TO**
13 **VISIBLY DISPLAY THE MATTRESS RECYCLING CHARGE ON INVOICES, RECEIPTS, OR**
14 **FUNCTIONALLY EQUIVALENT BILLING DOCUMENTS IN VIOLATION OF PRC § 42989.1(b).**

15 26. The Department made requests on August 1, 2018, August 23, 2018, and October 9,
16 2018, for Respondent to provide documentation showing that it visibly displays the mattress recycling
17 charge on its invoices, receipts, or functionally equivalent billing documents.

18 27. On or around August 1, 2018, Department Inspectors Schmidt and Canuela conducted a
19 site inspection at Respondent's business location. At that inspection, the inspectors observed mattress
20 program products being offered for sale. Despite multiple requests to see records to demonstrate
21 compliance with this requirement, Respondent did not provide any records.

22 28. On or around April 10, 2019, the Department checked with the Mattress Recycling
23 Council and found that Respondent had not remitted any mattress recycling charges to the Mattress
24 Recycling Council.

25 29. For intentionally, knowingly, or recklessly failing to visibly display the mattress recycling
26 charge on Respondent's invoices, receipts, or functionally equivalent billing documents between
November 8, 2018 and April 12, 2019 in violation of PRC section 42989.1(b), the Department seeks an
administrative civil penalty in the amount of \$77,655.00. This penalty calculation is based on

1 Respondent's violation of this count for 155 days, which is the time from November 8, 2018 until April
2 12, 2019, with a penalty amount of \$501.00 per day. The 155 days from November 8, 2018 until April
3 12, 2019, are the days since the last deadline given in the Second Notice and the date of the
4 Accusation.

5 **COUNT IV: RESPONDENT INTENTIONALLY, KNOWINGLY, OR RECKLESSLY FAILED TO**
6 **PROVIDE THE DEPARTMENT WITH RELEVANT RECORDS IN VIOLATION OF PRC § 42993.3**
7 **AND 14 CCR § 18969.**

8 30. The Department made requests on August 1, 2018, August 23, 2018, and October 9,
9 2018, for Respondent to provide documentation showing that it is compliance with the Act and
10 regulations.

11 31. On or around August 1, 2018, Department Inspectors Schmidt and Canuela conducted a
12 site inspection at Respondent's business location. At that inspection, the inspectors observed mattress
13 program products being offered for sale. Despite multiple requests to see records to demonstrate
14 compliance with the Act and regulations, Respondent did not provide any records

15 32. For intentionally, knowingly, or recklessly failing to provide to the Department with
16 relevant records between November 8, 2018 and April 12, 2019 in violation of PRC section 42993.3
17 and 12 CCR section 18969, the Department seeks an administrative civil penalty in the amount of
18 \$77,655.00. This penalty calculation is based on Respondent's violation of this count for 155 days,
19 which is the time from November 8, 2018 until April 12, 2019, with a penalty amount of \$501.00 per
20 day. The 155 days from November 8, 2018 until April 12, 2019, are the days since the last deadline
21 given in the Second Notice and the date of the Accusation.

22 **LEGAL CONCLUSIONS**

23 33. Respondent intentionally, knowingly, and recklessly sold, distributed, or offered for sale
24 a mattress in the State while out of compliance with the Act in violation of PRC section 429687(c).

25 34. Respondent intentionally, knowingly, and recklessly failed to add the mattress recycling
26 charge to the purchase price of each mattress sold to a consumer and remit the charge collected to the
mattress recycling organization in violation of PRC section 42989.1(a).

1 35. Respondent intentionally, knowingly, and recklessly failed to visibly display the mattress
2 recycling charge on invoices, receipts, or functionally equivalent billing documents in violation of PRC
3 section 42989.1(b).

4 36. Respondent intentionally, knowingly, and recklessly failed to provide the Department
5 with relevant records in violation of PRC section 42993.3 and 14 CCR section 18969.

6 **ORDER**

7 Good cause appearing, the Department's motion to take action in accordance with the
8 provisions of Government Code section 11520, subdivision (a) is granted.

9 **THE FOLLOWING ORDER is hereby made:**

10 **Respondent, The Furniture Warehouse, is hereby ordered to pay an administrative**
11 **penalty of \$310,620.00 to the Department within 30 (thirty) days of the date of this Decision.**

12
13 **RESPONDENT'S RIGHT TO FILE WRITTEN MOTION**


14 Pursuant to Government Code section 11520(c), Respondent has the right to serve the
15 Department with a written motion requesting that this Decision be vacated and stating the ground relied
16 on:

17 Within seven days after service on the respondent of a decision based on the
18 respondent's default, the respondent may serve a written motion requesting that the
19 decision be vacated and stating the grounds relied on. The agency in its discretion
20 may vacate the decision and grant a hearing on a showing of good cause. As used in this
21 subdivision, good cause includes, but is not limited to, any of the following:

- 22 (1) Failure of the person to receive notice served pursuant to Section 11505.
 - 23 (2) Mistake, inadvertence, surprise, or excusable neglect.
- (Gov. Code § 11520(c).)

24 This Decision shall become effective on the date signed below.

25 Dated: 5/23/2019

26 

MARK DE BIE
Deputy Director
Department of Resources Recycling and Recovery

PLAINTIFF: Department of Resources Recycling and Recovery
(CalRecycle)
DEFENDANT: Omar Ibarra

CASE NUMBER:
2018-0008

9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6/4/2019

John Huneycutt

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

A handwritten signature in cursive script, appearing to read "John Huneycutt", written in black ink. The signature is positioned above a horizontal line.

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)