



Department of
Resources Recycling and Recovery

Jared Blumenfeld
Secretary for
Environmental Protection

Scott Smithline
CalRecycle Director

August 28, 2019

FedEx Delivery: 776090255471
Enforcement Order: 2019M-0015

Jose Nino, Owner
Furniture and Mattress Superstore
4559 E. Kings Canyon Road
Fresno, CA 93702

RE: STIPULATED, DECISION, AND ORDER

Dear Mr. Nino,

The California Department of Resources Recycling and Recovery (the Department) has received the Stipulation, Decision, and Order 2019M-0015, which you have signed and returned. A copy of your Payment Agreement (plan) is attached and payments will be handled through the Department Accounting Office, per the plan. Receipt of all penalty payments and adherence to all other terms set forth in the Stipulation, Decision and Order will constitute full resolution of this matter.

In the future, should you have any questions or concerns about the Carpet, Mattress, or Paint Stewardship programs and requirements, please call our EPR Compliance Unit at (916) 341-6192, so that we can assist you and minimize the potential for future enforcement action.

If you have other questions concerning this Stipulation, Decision, and Order, please contact Kirby Garrett, Supervisor of the Extended Producer Reasonability Unit, by email at: Kirby.Garrett@calrecycle.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark de Bie", with a stylized flourish at the end.

Mark de Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division
California Department of Resources Recycling and Recovery

COPY

**CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
USED MATTRESS RECOVERY AND RECYCLING ACT VIOLATIONS
STIPULATION, DECISION, AND ORDER
(YOU MUST SIGN THE OTHER SIDE OF THIS PAGE IF YOU ACCEPT THIS
STIPULATION)**

Complainant, the California Department of Resources Recycling and Recovery (Department) and Respondent hereby agree that the stipulation will be a final resolution of the violations alleged below. The parties stipulate to the following facts and violations of law:

DEPARTMENT ENFORCEMENT ORDER NUMBER: 2019M-0015

RESPONDENT(S): Jose Nino, Owner
Furniture and Mattress Superstore
4559 E. Kings Canyon Road
Fresno, CA 93702

PUBLIC RESOURCES CODE (PRC) SECTION VIOLATED: §42989.1(a)

DESCRIPTION OF VIOLATIONS (Summary):

Between May 3, 2019 and July 16, 2019 (74 days), Furniture and Mattress Superstore (the Business) was in violation of the Used Mattress Recovery and Recycling Act (PRC §§ 42985-42994) (Mattress Law), specifically:

- PRC §42989.1(a) requires mattress retailers to add the mattress recycling charge to the purchase price of mattresses and remit the charge collected to the mattress recycling organization

The Department may impose an administrative civil penalty on any mattress retailer that is in violation of the Mattress Law. The amount of the administrative civil penalty shall not exceed five hundred dollars (\$500) per day, but, if the violation is intentional, knowing, or reckless, the Department may impose an administrative civil penalty of not more than five thousand dollars (\$5,000) per day. (PRC § 42993.1(a).)

DATE(S) OF VIOLATION: May 3, 2019 - July 16, 2019

STIPULATION DUE DATE: 30 DAYS FROM THE DATE OF RECEIPT

TOTAL MONETARY PENALTY: \$3,700

NUMBER OF COUNTS: 1

STATEMENT BY RESPONDENT(S):

I acknowledge that the violation(s) of the Public Resources Code and/or Title 14, California Code of Regulations (CCR) described above and on Exhibit 1 attached, have occurred and request that the California Department of Resources Recycling and Recovery resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* at the bottom of this form and voluntarily waive any and all procedural rights to contest this matter in an Administrative Hearing. I have enclosed a check or money order made payable to the California Department of Resources Recycling and Recovery in the amount of the penalty described above. I understand that if there are not sufficient funds in my bank account when the check is deposited, the Department has the discretion to determine that this agreement is null and void, and can prosecute this allegation as if no agreement has been executed.

RESPONDENT has freely and voluntarily entered into this Stipulation, Decision, and Order (hereinafter "Stipulation"), and understand that it has 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 written amendment, executed by each of the parties hereto.

This Stipulation constitutes the entire understanding of the parties concerning the settlement of this proceeding. There are no restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth herein or contained in separate written documents delivered or to be delivered pursuant hereto, and each party expressly acknowledges that it has not relied upon any restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly contained herein.

If necessary, this Stipulation may be executed in counterparts, each of which shall be an original, and all together shall form one agreement. In addition, for purposes of this Stipulation, facsimile signatures will be treated as originals until the applicable page(s) bearing non-facsimile signatures have been received by the parties.

The undersigned are authorized representative(s), acting on behalf of the Business

The effective date of this Stipulation, Decision, and Order, is the date the Department Director signs it.

Signature: 

Printed Name: Joe M. M...

Title: Owner

Dated: 8/20/19

Signature: _____

Printed Name: _____

Title: _____

Dated: _____

Name and Address of Business Entity: Furniture & mattress Superstore

Any DBAs: _____

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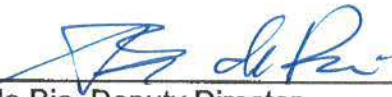
For California Department of Resources Recycling and Recovery Use Only

STATEMENT BY DIRECTOR:

The foregoing stipulation has been adopted by the California Department of Resources Recycling and Recovery as its final decision and order and is effective upon execution below by the Director of the California Department of Resources Recycling and Recovery.

IT IS SO ORDERED:

Dated: 8/20/19



Mark de Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division
California Department of Resources Recycling and Recovery

**CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
STATEMENT OF RESPONDENT'S RIGHTS**

The complainant, the California Department of Resources Recycling and Recovery, and Respondent(s), both identified by name on this document, hereby agree to this Stipulation, Decision and Order.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in the matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of each respondent named herein. However, this Stipulation, Decision, and Order can be used to prove these violations at a future hearing involving future violations.

Each Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 11400 et. seq. and 11500 et. seq., including but not limited to; the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the Department's Director, a delegate of the Department's Director, or an Administrative Law Judge present at the hearing to act as an impartial hearing officer.

It is further stipulated and agreed that each Respondent has violated the Public Resources Code and/or Title 14, California Code of Regulations as described herein.

Each Respondent agrees to the issuance of the Decision and Order and imposition by the Department of an administrative penalty in the amount specified above, and a check or money order in said amount, payable to the California Department of Resources Recycling and Recovery is submitted herewith to be held by the California Department of Resources Recycling and Recovery until the Department issues its Decision and Order.

The parties agree that in the event the Department refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Stipulation is rejected, payments tendered shall be reimbursed to each respondent. Each Respondent further stipulates and agrees that in the event the Department rejects the Stipulation and a full evidentiary hearing before the Department's Director or delegate or an Administrative Law Judge becomes necessary, the Director shall not be disqualified because of prior consideration of this Stipulation.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part is a report from the Secretary of the Treasury, dated January 1, 1861.

3. The third part is a report from the Secretary of the Interior, dated January 1, 1861.

4. The fourth part is a report from the Secretary of the Navy, dated January 1, 1861.

5. The fifth part is a report from the Secretary of the War, dated January 1, 1861.

6. The sixth part is a report from the Secretary of the State, dated January 1, 1861.

7. The seventh part is a report from the Secretary of the War, dated January 1, 1861.

8. The eighth part is a report from the Secretary of the War, dated January 1, 1861.

9. The ninth part is a report from the Secretary of the War, dated January 1, 1861.

10. The tenth part is a report from the Secretary of the War, dated January 1, 1861.

**CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
USED MATTRESS RECOVERY AND RECYCLING ACT VIOLATIONS
STIPULATION, DECISION, AND ORDER
EXHIBIT 1**

DEPARTMENT ENFORCEMENT ORDER NUMBER: 2019M-0015

RESPONDENT(S): Jose Nino, Owner
Furniture and Mattress Superstore
4559 E. Kings Canyon Road
Fresno, CA 93702

PUBLIC RESOURCES CODE (PRC) SECTION VIOLATED: §42989.1(a)

The Used Mattress Recovery and Recycling Act (PRC §§ 42985-42994) (Mattress Law) requires mattress retailers to register with a mattress recycling organization, collect the mattress recycling charge, visibly display the charge on billing documents, remit the charge to a mattress recycling organization, offer consumers free pick up of used mattresses at the time they deliver a new mattress, monitor the Department of Resources Recycling and Recovery's (Department) website to make sure they are selling mattresses of compliant manufacturers and renovators, and not sell mattresses in California while in violation of any of these mattress retailer requirements.

DESCRIPTION OF VIOLATIONS (detail):

On April 12, 2016, contact by the Department with the Business commenced when the Business was visited by inspector Kirby Garrett for a Mattress Law inspection. The inspector met Jose Nino, who identified himself as the owner. The violations observed by the inspector included:

- The Business was not registered with the Mattress Recycling Council
- The Business was not collecting the recycle charge nor displaying it on sales receipts
- The Business was not remitting recycle charges
- The Business was not monitoring the Department's website.

On or around May 17, 2016, the Department sent a Notice of Retailer Noncompliance with the California Mattress Stewardship Law (***First Notice of Violation***) to the Business (Attachment A). The ***First Notice of Violation*** communicated that upon future inspections, the Business must be able to demonstrate that it has supporting documentation to show that violations have been corrected.

On September 6, 2018, a second site visit was performed by inspector Rob Hammerstad. The inspector met Jose Nino, who identified himself as the owner. As the Business was found to be in violation of the Mattress Stewardship Law, the inspector left a ***Notice of Required Actions*** (Attachment B) that identified the following repeat violations:

- The Business was not registered with the Mattress Recycling Council
- The Business was not collecting the recycle charge nor displaying it on sales receipts
- The Business was not remitting recycle charges
- The Business was not monitoring the Department's website.

On September 17, 2018, due to continued noncompliance and failure to respond to the **Notice of Required Actions** by the September 13, 2019 due date, the Department sent a Violation of the California Mattress Stewardship Law and Penalty for Repeat Non-Compliance (**Second Notice of Violation**) to the Business (Attachment C).

On October 24, 2018, after receiving no response from the Business to the **Second Notice of Violation** by the October 17, 2019 due date, Department inspectors Kirby Garrett and Jonathan Schmidt conducted a compliance verification visit at the Business. Upon arrival, the inspectors met Jose Nino and were able to obtain one compliant customer sales receipt and a completed website monitoring questionnaire. Mr. Nino explained that he was working with the Mattress Recycling Council to complete his registration and make remittance payments.

On November 6, 2018, the Mattress Recycling Council informed the Department that the registration of the Business was approved on October 24, 2018 and had been given a due date of January 31, 2019 to submit all outstanding reports.

On March 22, 2019, the Mattress Recycling Council informed the Department that the Business had been granted an extension to March 26, 2019 to submit all reports.

On April 25, 2019, the Mattress Recycling Council informed the Department that the Business had submitted reports from April 2016 to December 2017, but that no payments had been received from the Business.

On April 25, 2019, after failure of the Business to come into compliance with the Mattress Stewardship Law, the Department called the Business and informed Mr. Nino that he had 72 hours to provide the Department with proof of remittance to the Mattress Recycling Council.

On May 1, 2019, inspector Hammerstad spoke with Mr. Nino by phone. Mr. Nino stated that he has been in contact with the Mattress Recycling Council and has agreed to send a remittance payment via USPS mail in the form of a check. Mr. Nino stated that this check would be sent on May 3, 2019.

On May 17, 2019, the Mattress Recycling Council informed the Department that Mr. Nino contacted them and stated that he mailed a new check on May 14, 2019, in lieu of the check that was stated to have been mailed on May 3, 2019.

On July 2, 2019, the Mattress Recycling Council informed the Department that the Business has submitted reports through December 2018 but that they have never received a remittance payment. The Mattress Recycling Council also stated that the Business is going through their delinquency procedure.

As of the preparation of this report, no evidence of remittance payments to the MRC have been received from the Business. For purposes of calculating penalties, a penalty start date of May 3, 2019 has been determined appropriate as this was the date Mr. Nino committed to sending the first remittance payment to the MRC, which was never received.

The table below lists the outstanding violations and penalties being assessed to the Business. The penalty amounts listed are for the days the Business was in violation from the date the Business committed to mail their first payment (May 3, 2019), through the date of the Opportunity to Resolve Violations Through Settlement.

Table 1
Summary of Violations and Penalties

PRC Section	Violation	Violation Start Date	Violation or Penalty Calc End Date	Total Days in Violation	SPP Daily Penalty	SPP Penalty Assessed
§42989.1(a)	Failure to collect the mattress recycling charge and remit it to a mattress recycling organization	5/3/2019	7/16/2019	74	\$50	\$3,700
					Total SPP Penalty:	\$3,700

TOTAL MONETARY PENALTY: \$3,700

NUMBER OF COUNTS: 1

Attachments enclosed.



Department of
Resources Recycling and Recovery

COPY

Jared Blumenfeld
Secretary for
Environmental Protection
Scott Smithline
CalRecycle Director

FedEx Delivery: 776016330688
Enforcement Order #: 2019M-0015

August 19, 2019

Jose Nino, Owner
Furniture and Mattress Superstore
4559 E. Kings Canyon Road
Fresno, CA 93702

Subject: Payment Plan Agreement

The business addressed above has expressed interest in a payment plan to fulfill the penalty obligations presented in the Stipulation, Decision and Order received by the business on July 24, 2019. If agreeable, sign and return this agreement to the Department of Resources Recycling and Recovery (Department) by August 23, 2019. Any counter proposal would need to be presented to the Department, prior to that date.

Provide the signed agreement on page 2 by fax to: **(916) 319-7267** or by email to:
mattressenforcement@calrecycle.ca.gov

All payments (cash or money order) must reference the Enforcement Order #, above, and are payable to the *Department of Resources Recycling and Recovery*.

Send payments to: Department of Resources Recycling and Recovery
1001 'I' Street
P.O. Box 2711
Sacramento, CA 95814
Attention: Accounting MS19A

Alternatively, payments may be made by credit card at: www.CalRecycle.ca.gov/PayOnline

Sincerely,

A handwritten signature in blue ink, appearing to read "Kirby Garrett", is written over a horizontal line.

Kirby Garrett, Senior Environmental Scientist, Supervisor
Extended Producer Responsibility Compliance Unit
P.O. Box 4025, MS10A-17, Sacramento, CA 95812

Over

Payment Agreement for Penalties Assessed per Enforcement Order # 2019M-0015

Jose Nino, Owner
Furniture and Mattress Superstore
4559 E. Kings Canyon Road
Fresno, CA 93702

PAYMENT AGREEMENT

The balance of my account as of August 15, 2019 is \$3,700.

I agree to pay the Department of Resources Recycling and Recovery (Department or 'CalRecycle') an initial payment of \$300, due September 1, 2019. This will be followed by minimum payments of \$200 due the 1st of each month thereafter until the full debt is paid in full. If I make minimum payments, it will take 18 months to complete the payment plan.

If payments are not received by the Department within 10 days of the agreed payment date, I understand I will be in violation of this agreement and the Enforcement Order/Decision and the entire remaining balance will become immediately due. The Department will initiate collection actions in accordance with section 8776.6 of the State Administrative Manual. If payments are not received, collection action may include: Offset procedures facilitated by the Franchise Tax Board, small claims court judgment, or debt collection facilitated by the State Attorney General's Office.

Signature

Date

Name (print)

Phone Number

Mailing Address (If different from above):