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7
8 STATE OF CALIFORNIA

9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10 In the Matter of:

11
12 Francisco Pantaleon dba Best Mattress
and Furniture Buys,

13 RESPONDENT.

ACCUSATION

14 PUBLIC RESOURCES CODE
§§ 42985-42994 and CALIFORNIA
CODE OF REGULATIONS TITLE 14
§§ 18959-18964

15 AGENCY NO: 2018M-0005

16 Pursuant to the Used Mattress Recycling and Recovery Act (Pub. Resources Code
17 (PRC), § 42985 et seq.) (Act) and its implementing regulations (Cal. Code Regs. (CCR), tit. 14,
18 § 18959 et seq.) (regulations) the California Department of Resources Recycling and Recovery
19 (Department) makes and files this Accusation against Francisco Pantaleon dba Best Mattress
20 and Furniture Buys (Respondent) to seek penalties totaling \$443,385.00 for three (3) violations
21 of the Act and regulations.

22 JURISDICTION

23 1. The Department is required to oversee and enforce the Act and regulations. The
24 Act allows the Department to impose administrative civil penalties on any retailer that is in

1 violation of the Act. (PRC § 42993.1(a).) Administrative civil penalties may be imposed in
2 accordance with procedures for an informal hearing pursuant to the Administrative Procedure
3 Act at Article 10 of Chapter 4.5 (commencing with section 11445.10) of Part 1 of Division 3 of
4 Title 2 of the Government Code. (14 CCR § 18971(a).)

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

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

12 **STATUTORY AND REGULATORY AUTHORITY**

13 4. The Act created the framework for an extended producer responsibility approach
14 to the end-of-life handling of used mattresses in California. (PRC § 42985.) The extended
15 producer responsibility model shifts the end-of-life management of a product from government
16 to the manufacturers of that product. The purpose of the Act was to reduce illegal dumping,
17 increase recycling, and substantially reduce public agency costs for the end-of-life
18 management of used mattresses, (PRC § 42985(a)(1)), while also allowing California mattress
19 consumers the opportunity to drop off their used mattresses free of charge. (PRC § 42985(b).)
20 The Act accomplishes its purposes by requiring manufacturers of mattresses sold in California
21 to form a mattress recycling organization that must develop, finance, and implement a
22 convenient and cost-effective program to recover and recycle used mattresses generated in
23 the state. (PRC § 42985(a)(1).) Each mattress manufacturer, retailer, and renovator in the
24

1 state, or selling in the state, is required to register with a mattress recycling organization and
2 participate in that organization's program. (PRC § 42987(b)(1).)

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

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

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

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

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

16 c. Add the mattress recycling charge to the purchase price of each mattress
17 and remit the charge collected to the mattress recycling organization (PRC §
18 42989.1(a));

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

22 e. Offer consumers the option to have their used mattress picked up when
23 their new mattress is delivered at no cost to the consumers (PRC § 429992(a));
24

- 1 f. Provide access by the Department to the retailer's facilities and records
2 and 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 are in compliance with the Act. (PRC §
5 42993(c).)

6 **STATEMENT OF FACTS**

7 8. On or around July 30, 2018, Department Inspectors Jonathan Schmidt and Curie
8 Canuela visited the Respondent's business located at 3102 San Luis Rey Road, Oceanside,
9 California for an inspection related to the Act and regulations. During the site visit, the
10 inspectors met Francisco Pantaleon, who identified himself as the business owner. Mr.
11 Pantaleon stated he did not know about the program and provided some of the records
12 requested by the inspectors. Compliant records were obtained for mattress products sold
13 (manufacturers) and mattress take-back. The customer receipts provided were not compliant
14 with the Act and regulations. While at the business location, the inspectors issued a Notice of
15 Required Actions instructing Respondent to provide the following records within seven days:

- 16 a. Documentation of registration with an approved mattress recycling
17 organization;
18 b. Copies of two (2) customer sales receipts showing mattress sales with the
19 recycle charge clearly displayed and collected;
20 c. Documentation of a recent recycling charge remittance to a mattress
21 recycling organization; and
22 d. Information regarding the Business's use of the Department's website.

23 9. On or around August 16, 2018, due to a non-response to the Notice of Required
24 Actions by the August 6, 2018 due date, Inspector Canuela issued a First Notice of Violation

1 with the California Mattress Stewardship Law and Required Corrective Actions (First Notice).
2 The first notice was delivered by the United States Postal Service's certified mail with tracking
3 to an individual at the business address on August 20, 2018. No response was received from
4 the Business by the September 16, 2018 due date.

5 10. On or around October 4, 2018, Inspector Schmidt called Respondent and spoke
6 with employee identified as Pablo, who took a message for Francisco Pantaleon. Inspector
7 Schmidt requested a call back from Francisco Pantaleon, and informed Pablo that the call was
8 concerning the Notice of Noncompliance sent to Respondent. No call back was received from
9 Respondent.

10 11. On or around October 9, 2018, due to a non-response to the First Notice of
11 Violation, Inspector Schmidt issued a Second Notice of Violation of the California Mattress
12 Stewardship Law and Penalty for Repeat Non-Compliance (Second Notice) to the store owner,
13 Francisco Pantaleon at the business location. The second notice was delivered by the United
14 States Postal Service's certified mail with tracking to an individual at the business address on
15 October 15, 2018. The notice specified a due date of November 8, 2018 to submit the
16 requested information and records to correct the violations. Inspector Schmidt did not receive a
17 response from Respondent by the due date.

18 12. On or around December 21, 2018, Inspector Schmidt called Respondent multiple
19 times to offer a penalty avoidance opportunity to the owner. Additionally, on January 3, 2019,
20 Inspector Schmidt called Respondent again to offer a penalty avoidance opportunity. In all
21 cases, the message left was not returned.

22 13. The Department sent Respondent an Opportunity to Resolve Violations through
23 Settlement (Streamlined Penalty Letter), dated January 30, 2019, via FedEx Shipment. The
24 Streamlined Penalty Letter offered Respondent the opportunity to settle the penalties for

1 outstanding violations at reduced amount in order to avoid administrative enforcement action.
2 Respondent was given 30 days from receipt of the Streamlined Penalty Letter to take specific
3 actions to show compliance with the Act and regulations and tender the reduced penalty
4 amount. Respondent did not respond within the 30 day deadline, and, as of the date, of this
5 Accusation, remains in violation of the Act and regulations.

6 **ALLEGATIONS OF SPECIFIC VIOLATIONS**

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

13 **COUNT I: RESPONDENT FAILED TO REGISTER WITH A MATTRESS RECYCLING** 14 **ORGANIZATION IN VIOLATION OF PRC § 42987(b)(1).**

15 15. The allegations set forth in paragraphs 1 through 14 are incorporated by
16 reference as if fully set forth here.

17 16. On July 30, 2018, August 16, 2018, and October 9, 2018, the Department
18 requested Respondent provide documentation that it was registered with a mattress recycling
19 organization.

20 17. On or around July 30, 2018, Respondent stated to Department inspectors that
21 the business is not registered with a mattress recycling organization. Additionally, the business
22 location did not appear on the list of registered mattress retailers provided to the Department
23 by the Mattress Recycling Council.
24

1 18. Through the Department's monitoring of the updated lists provided by the
2 Mattress Recycling Council, the Department determined that, at the time of this Accusation,
3 Respondent has not registered with the Mattress Recycling Council.

4 **COUNT II: RESPONDENT FAILED TO ADD THE MATTRESS RECYCLING CHARGE TO**
5 **THE PURCHASE PRICE OF EACH MATTRESS SOLD TO A CONSUMER AND REMIT THE**
6 **CHARGE COLLECTED TO THE MATTRESS RECYCLING ORGANIZATION IN VIOLATION**
7 **OF PRC § 42989.1(a).**

8 19. The allegations set forth in paragraphs 1 through 18 are incorporated by
9 reference as if fully set forth here.

10 20. The Department made requests of Respondent on July 30, 2018, August 16,
11 2018, and October 9, 2018, to provide records to show that it was collecting the mattress
12 recycling charge on mattress sales and remitting the charge to the Mattress Recycling Council.
13 Respondent did not provide the requested records.

14 21. On or around July 30, 2018, Department Inspectors Schmidt and Canuela
15 conducted site inspections at the business location. At that inspection, Inspectors Schmidt and
16 Canuela were able to obtain records from the respondent that confirmed Respondent is not
17 collecting the mattress recycling charge.

18 22. As of the date of this Accusation, Respondent has not provided records to the
19 Department to show collection and remittance of the mattress recycling charge. In addition, the
20 Respondent has not remitted any mattress recycling charges to the Mattress Recycling
21 Council.

22 **COUNT III: RESPONDENT FAILED TO VISIBLY DISPLAY THE MATTRESS**
23 **RECYCLING CHARGE ON INVOICES, RECEIPTS, OR FUNCTIONALLY EQUIVALENT**
24 **BILLING DOCUMENTS IN VIOLATION OF PRC § 42989.1(b).**

25 23. The allegations set forth in paragraphs 1 through 22 are incorporated by
26 reference as if fully set forth here.

24. The Department made requests of Respondent on July 30, 2018, August 16, 2018, and October 9, 2018, to provide records supporting that it was visibly displaying the mattress recycling charge on its invoices, receipts, or functionally equivalent billing documents.

25. On or around July 30, 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, and Respondent provided customer receipts for mattress sales that did not include the mattress recycling charge.

PENALTIES TO BE ASSESSED

26. The facts set forth in paragraphs 1 through 25 are incorporated by reference as if fully set forth here.

27. Pursuant to PRC section 42993.1 and Title 14 of the CCR sections 18970 and 18971, the Department may impose administrative civil penalties for violations of the Act and regulations. The Department has authority to impose an administrative civil penalty of up to five hundred dollars (\$500) per day for each violation, 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 for each violation.

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

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

(a) The nature, circumstances, extent, and gravity of the violation(s).

- (b) The number and severity of the violation(s).
- (c) Evidence that the violation was intentional, knowing, or negligent.
- (d) The size of the violator.
- (e) History of violation(s) of the same or similar nature.
- (f) The willfulness of the violator's misconduct.
- (g) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.
- (h) Evidence of any financial gain resulting from the violation(s).
- (i) The economic effect of the penalty on the violator.
- (j) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (k) Any other factor that justice may require

COUNT I: RESPONDENT FAILED TO REGISTER WITH A MATTRESS RECYCLING ORGANIZATION IN VIOLATION OF PRC § 42987(b)(1).

30. The allegations set forth in paragraphs 1 through 29 are incorporated by reference as if fully set forth here.

31. For failing to register with a Mattress Recycling Organization in violation of PRC section 42987(B)(1), the Department seeks an administrative civil penalty in the amount of \$147,795.00. This penalty calculation is based on Respondent's violation of this count for 295 days, which is the time from November 8, 2018, until August 30, 2019, with a penalty amount of \$501.00 per day. The 295 days from November 8, 2018 until August 30, 2019, are the days since the last deadline given in the Second Notice and the date of this Accusation.

32. **The nature, circumstances, extent, and gravity of the violation. (14 CCR § 18970(a).)** Respondent has not registered with a mattress recycling organization since the Act

1 went into effect. Respondent has been told multiple times that it must register but has not
2 provided any evidence to show efforts towards registering with a mattress recycling
3 organization. Respondent continues to sell mattresses without being registered.

4 **33. The number and severity of the violation(s). (14 CCR § 18970(b).)**

5 Respondent is in violation with three out of seven requirements for mattress retailers under the
6 act.

7 **34. Evidence that the violation was intentional, knowing, or negligent. (14 CCR**
8 **§ 18970(c).)** Multiple notices and correspondence to Respondent and conversations with
9 Respondent and with Respondent's employees evidence that Respondent's failure to register
10 with a mattress recycling organization was intentional, knowing, and negligent. Because the
11 violation was intentional, knowing, and negligent, the Department may seek penalties of up to
12 \$5,000.00 per day for this violation.

13 **35. The size of the violator. (14 CCR § 18970(d).)** Respondent has one location in
14 California that offers mattresses for sale. Based on the Department's research, it estimates
15 that total yearly sales (mattress and furniture) are between \$110,000.00 and \$263,000.00;
16 however, it is unclear how much of these yearly sales are attributed specifically to mattresses.

17 **36. History of violation(s) of the same or similar nature. (14 CCR § 18970(e).)**
18 Respondent does not have prior history of noncompliance.

19 **37. The willfulness of the violator's misconduct. (14 CCR § 18970(f).)** Multiple
20 notices and correspondence support that Respondent was aware of the Act and its
21 requirements and willfully violated the Act.

22 **38. Whether the violator took good faith measures to comply with this chapter**
23 **and the period of time over which these measures were taken. (14 CCR § 18970(g).)**
24 Respondent did not cooperate with the Department's requests and the Respondent did not

1 provide documentation to show that Respondent took good faith measures to comply.

2 Respondent's employees reportedly took messages for the owner, but Respondent did not
3 contact the Department.

4 **39. Evidence of any financial gain resulting from the violation(s). (14 CCR §**
5 **18970(h).)** The Department does not have evidence that Respondent's failure to register with
6 the Mattress Recycling Council resulted in any financial gain.

7 **40. The economic effect of the penalty on the violator. (14 CCR § 18970(i).)** The
8 administrative penalties will likely have a significant effect on Respondent. Based on its
9 research, the Department estimates that total yearly sales (mattress and furniture) are
10 between \$110,000.00 and \$263,000.00. If the full penalty amount of \$5,000.00 per day per
11 violation for the 295 days were levied, the total penalty amount would be \$1,475,000.00, an
12 amount, particularly when combined with the other penalties, which would likely have a
13 significant financial impact on Respondent.

14 **41. The deterrent effect that the imposition of the penalty would have on both**
15 **the violator and the regulated community. (14 CCR § 18970(j).)** Because the Act is
16 relatively new and the Department is in its early stages of enforcement, this administrative
17 enforcement action will likely have a significant deterrent effect on other retailers because it will
18 show that the Department is actively enforcing the Act and that retailers will not be able to
19 continue operating without adhering to the Act's requirements.

20 **42. Any other factor that justice may require.** Despite clear evidence that
21 Respondent's violations were willful and intentional, allowing the Department to seek a
22 maximum penalty of \$5,000.00 per day (totaling \$1,475,000.00), the Department, after
23 weighing the factors above, is seeking the reduced penalty amount of \$501.00 per day for a
24 total penalty for Count I of \$147,795.00.

1 **COUNT II: RESPONDENT FAILED TO ADD THE MATTRESS RECYCLING CHARGE**
2 **TO THE PURCHASE PRICE OF EACH MATTRESS SOLD TO A CONSUMER AND REMIT**
3 **THE CHARGE COLLECTED TO THE MATTRESS RECYCLING ORGANIZATION IN**
4 **VIOLATION OF PRC § 42989.1(a).**

5 43. The allegations set forth in paragraphs 1 through 42 are incorporated by
6 reference as if fully set forth here.

7 44. For failing to add the mattress recycling charge to the purchase price of each
8 mattress sold and remit it to the mattress recycling organization between November 8, 2018,
9 and August 30, 2019 in violation of PRC section 42989.1(a), the Department seeks an
10 administrative civil penalty in the amount of \$147,795.00. This penalty calculation is based on
11 Respondent's violation of this count for 295 days, which is the time from November 8, 2018
12 until August 30, 2019, with a penalty amount of \$501.00 per day. The 295 days from
13 November 8, 2018 until August 30, 2019, are the days since the last deadline given in the
14 Second Notice and the date of this Accusation.

15 45. **The nature, circumstances, extent, and gravity of the violation. (14 CCR §**
16 **18970(a).)** Respondent has not added the mattress recycling charge to the price of each
17 mattress sold and has not remitted the charge to the mattress recycling organization since the
18 Act went into effect in 2015. Respondent has not provided any evidence to show it is adding
19 the mattress recycling charge to its mattress sales and has not remitted any mattress recycling
20 charges to the Mattress Recycling Council. Despite repeated letters, phone calls, and a site
21 visit, Respondent continues to sell mattresses without collecting or remitting the mattress
22 recycling charge to a mattress recycling organization.

23 46. **The number and severity of the violation(s). (14 CCR § 18970(b).)**
24 Respondent is in violation of three out of the seven requirements of mattress retailers under
the Act.

1 **47. Evidence that the violation was intentional, knowing, or negligent. (14 CCR**
2 **§ 18970(c).)** Multiple notices and correspondence to Respondent as well as conversation with
3 Respondent and employees, support that Respondent was aware of the requirements of the
4 Act and regulations and that Respondent's violation was intentional, knowing, and negligent.
5 Because the violation was intentional, knowing, and negligent, the Department may seek
6 penalties of up to \$5,000.00 per day for this violation.

7 **48. The size of the violator. (14 CCR § 18970(d).)** Respondent has one location in
8 California that offers mattresses for sale. Based on the Department's research, it estimates
9 that total yearly sales (mattress and furniture) are between \$110,000.00 and \$263,000.00;
10 however, it is unclear how much of these yearly sales are attributed specifically to mattresses.

11 **49. History of violation(s) of the same or similar nature. (14 CCR § 18970(e).)**
12 Respondent does not have prior history of noncompliance.

13 **50. The willfulness of the violator's misconduct. (14 CCR § 18970(f).)** Multiple
14 notices and correspondence support that Respondent was aware of the Act and its
15 requirements and willfully violated the Act.

16 **51. Whether the violator took good faith measures to comply with this chapter**
17 **and the period of time over which these measures were taken. (14 CCR § 18970(g).)**

18 Respondent did not cooperate with the Department's requests and the Respondent did not
19 provide documentation to show that Respondent took good faith measures to comply.
20 Respondent's employees reportedly took messages for the owner, but Respondent did not
21 contact the Department.

22 **52. Evidence of any financial gain resulting from the violation(s). (14 CCR §**
23 **18970(h).)** The Department does not have any evidence that Respondent's failure to comply
24 with the Act and regulations resulted in any financial gain. However, by not adding the

1 mattress recycling charge or visibly displaying it, customers may have chosen to purchase
2 mattresses from Respondent rather than other compliant retailers. Furthermore, , if
3 Respondent has been collecting the charge but not remitting it, it would be receiving a financial
4 gain by keeping the mattress recycling charge rather than contributing it to the statewide
5 recycling program.

6 **53. The economic effect of the penalty on the violator. (14 CCR § 18970(i).)** The
7 administrative penalties will likely have a significant effect on Respondent. Based on its
8 research, the Department estimates that total yearly sales (mattress and furniture) are
9 between \$110,000.00 and \$263,000.00. If the full penalty amount of \$5,000.00 per day per
10 violation for the 295 days were levied, the total penalty amount would be \$1,475,000.00, an
11 amount, particularly when combined with the other penalties, which would likely have a
12 significant financial impact on Respondent.

13 **54. The deterrent effect that the imposition of the penalty would have on both**
14 **the violator and the regulated community. (14 CCR § 18970(j).)** Because the Act is
15 relatively new and the Department is in its early stages of enforcement, administrative
16 enforcement action will likely have a significant deterrent effect on other retailers because it will
17 show that the Department is actively enforcing the Act and that retailers will not be able to
18 continue operating without adhering to the Act's requirements.

19 **55. Any other factor that justice may require.** Despite clear evidence that
20 Respondent's violations were willful and intentional, allowing the Department to seek a
21 maximum penalty of \$5,000.00 per day (totaling \$1,475,000.00), the Department, after
22 weighing the factors above, is seeking the reduced penalty amount of \$501.00 per day for a
23 total penalty for Count II of \$147,795.00.

1 **COUNT III: RESPONDENT FAILED TO VISIBLY DISPLAY THE MATTRESS RECYCLING**
2 **CHARGE ON INVOICES, RECEIPTS, OR FUNCTIONALLY EQUIVALENT BILLING**
3 **DOCUMENTS IN VIOLATION OF PRC § 42989.1(b).**

4 56. The allegations set forth in paragraphs 1 through 72 are incorporated by
5 reference as if fully set for here.

6 57. For failing to visibly display the mattress recycling charge on Respondent's
7 invoices, receipts, or functionally equivalent billing documents between November 8, 2018 and
8 August 30, 2019 in violation of PRC section 42898.1 (b), the Department seeks an
9 administrative civil penalty in the amount of \$147,795.00. This penalty calculation is based on
10 Respondent's violation of this count for 295 days, which is the time from November 8, 2018
11 until August 30, 2019, with a penalty amount of \$501.00 per day. The 295 days from
12 November 8, 2018 until August 30, 2019, are the days since the last deadline given in the
13 Second Notice and the date of this Accusation.

14 58. **The nature, circumstances, extent, and gravity of the violation. (14 CCR §**
15 **18970(a).)** As discussed under Count II, because Respondent has not added the mattress
16 recycling charge to the price of each mattress sold, Respondent has similarly likely not been
17 visibly displaying the mattress recycling charge on its billing documents. Respondent has not
18 provided any documents to show that it is compliant with this requirement. The purpose of
19 displaying the mattress recycling charge on retailer billing documents is to make consumers
20 aware that they are paying for the end of life costs of mattresses when they purchase a new
21 one.

22 59. **The number and severity of the violation(s). (14 CCR § 18970(b).)**
23 Respondent is in violation of three out of the seven violations possible for a mattress recycler
24 under the act.

1 60. **Evidence that the violation was intentional, knowing, or negligent. (14 CCR**
2 **§ 18970(c).)** Multiple notices and correspondence to Respondent as well as conversation with
3 Respondent and employees, support that Respondent was aware of the requirements of the
4 Act and regulations and that Respondent's violation was intentional, knowing, and negligent.
5 Because the violation was intentional, knowing, and negligent, the Department may seek
6 penalties of up to \$5,000.00 per day for this violation.

7 61. **The size of the violator. (14 CCR § 18970(d).)** Respondent has one location in
8 California that offers mattresses for sale. Based on the Department's research, it estimates
9 that total yearly sales (mattress and furniture) are between \$110,000.00 and \$263,000.00;
10 however, it is unclear how much of these yearly sales are attributed specifically to mattresses.

11 62. **History of violation(s) of the same or similar nature. (14 CCR § 18970(e).)**
12 Respondent does not have prior history of noncompliance.

13 63. **The willfulness of the violator's misconduct. (14 CCR § 18970(f).)** Multiple
14 notices and correspondence support that Respondent was aware of the Act and its
15 requirements and willfully violated the Act.

16 64. **Whether the violator took good faith measures to comply with this chapter**
17 **and the period of time over which these measures were taken. (14 CCR § 18970(g).)**
18 Respondent did not cooperate with the Department's requests and the Respondent did not
19 provide documentation to show that Respondent took any good faith measures to comply.
20 Respondent's employees took messages for the owner, but Respondent did not contact the
21 Department.

22 65. **Evidence of any financial gain resulting from the violation(s). (14 CCR §**
23 **18970(h).)** The Department does not have any evidence that Respondent's failure to comply
24 with the Act and regulations resulted in any financial gain. However, by not adding the

1 mattress recycling charge or visibly displaying it, customers may have chosen to purchase
2 mattresses from Respondent rather than other compliant retailers.

3 **66. The economic effect of the penalty on the violator. (14 CCR § 18970(i).)** The
4 administrative penalties will likely have a significant effect on Respondent. Based on its
5 research, the Department estimates that total yearly sales (mattress and furniture) are
6 between \$110,000.00 and \$263,000.00. If the full penalty amount of \$5,000.00 per day for the
7 295 days were levied, the total penalty amount would be \$1,475,000.00, an amount,
8 particularly when combined with the other penalties, which would likely have a significant
9 financial impact on Respondent.

10 **67. The deterrent effect that the imposition of the penalty would have on both**
11 **the violator and the regulated community. (14 CCR § 18970(j).)** Because the Act is
12 relatively new and the Department is in its early stages of enforcement, administrative
13 enforcement action will likely have a significant deterrent effect on other retailers because it will
14 show that the Department is actively enforcing the Act and that retailers will not be able to
15 continue operating without adhering to the Act's requirements.

16 **68. Any other factor that justice may require.** Despite clear evidence that
17 Respondent's violations were willful and intentional allowing the Department to seek a
18 maximum penalty of \$5,000.00 per day (totaling \$1,475,000.00), the Department, after
19 weighing the factors above, is seeking the reduced penalty amount of \$501.00 per day for a
20 total penalty for Count III of \$147,795.00.

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1 69. **Based on the information above the Department hereby seeks**
2 **administrative penalties, for the violations stated herein, in the total sum of \$443,385.00,**
3 **to be levied against the Respondent, Francisco Pantaleon, dba Best Mattress and**
4 **Furniture Buys.**

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6 Dated: August 30, 2019.

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8 KATHLEEN NITTA
9 Attorney, Legal Office
10 Department of Resources Recycling and Recovery
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ATTORNEY OR PARTY WITHOUT ATTORNEY: Kathleen Nitta Department of Resources Recycling and Recovery 1001 I Street, 24th Floor, Legal Office Sacramento, CA 95814 TELEPHONE NO.: (916) 341-6554 EMAIL ADDRESS: Yvette.Cox@CalRecycle.ca.gov ATTORNEY FOR: Plaintiff	FOR COURT USE ONLY
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY, COUNTY OF SACRAMENTO STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: Department of Resources Recycling & Recovery (CalRecycle) DEFENDANT: Francisco Pantaleon	CASE NUMBER: 2018M-0005
PROOF OF SERVICE	Ref. No. or File No.:

1. I am over 18 years of age and not a party to this action.
2. Received by Serves R Us on at to be served on **Francisco Pantaleon, 3102 San Luis Rey Road, Oceanside, CA 92058.**
3. **INDIVIDUALLY/PERSONALLY** served by delivering a true copy of the **Best Mattress and Furniture Buys Accusation for Service** with the date and hour of service endorsed thereon by me, to: **Francisco Pantaleon** at the address of: **3102 San Luis Rey Road, Oceanside, CA 92058**, and informed said person of the contents therein, in compliance with state statutes.
4. Date and Time of service: 9/16/2019 at 5:12 pm
5. I am an independent contractor of a registered California process server.
6. My name, address, telephone number, and, if applicable, county of registration and number are:
 Name: Greg Garrett
 Firm: Serves R Us
 Address: 915 L Street # C123, Sacramento, CA 95814
 Telephone number: (916) 691-4109
 Registration Number: 2404
 County: San Diego County
 The fee for the service was: \$80.00
7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

9/17/19

Greg Garrett

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


 (SIGNATURE OF PERSON WHO SERVED THE PAPERS)