



Enforcement Order: 2020M-008
Delivery Tracking #: 551451408

December 8, 2020

Guadalupe J. Escalera
United Mattress Factory
3923 E Belmont Avenue
Fresno, CA 93702

RE: STIPULATED, DECISION, AND ORDER

Dear Mr. Escalera,

The California Department of Resources Recycling and Recovery (the Department) has received the Stipulation, Decision, and Order (Order) which you have signed and returned. As presented in the Order, you have provided the 2019 Renovator Annual Report and the reduced penalty payment of \$675.00. This will constitute resolution of this matter.

If you have questions concerning the Mattress Stewardship program or this Stipulation, Decision, and Order, please contact the Extended Producer Responsibility Compliance Unit, by email at: mattressenforcement@calrecycle.ca.gov.

Sincerely,

Mark de Bie

Digitally signed by Mark de
Bie
Date: 2020.12.08 12:08:19
-08'00'

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

cc Ledi Nevarrette (bizlegal@comcast.net)

(Exhibit 1A)

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

***YOU MUST SIGN AND RETURN PAGE 2 OF EXHIBIT 1A 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: 2020M-008

RESPONDENTS: Guadalupe J. Escalera
United Mattress Factory
3923 E Belmont Avenue
Fresno, California, 93702

PUBLIC RESOURCES CODE (PRC) SECTION VIOLATED 42991(a)

DESCRIPTION OF VIOLATIONS (Summary):

Between July 2, 2020 and July 28, 2020 (27 days), United Mattress Factory (the Business) was in violation of the Used Mattress Recovery and Recycling Act (PRC 42985-42994) (Mattress Law), specifically:

PRC 42991(a) requires mattress renovators to provide an Annual Report to the Department by May 1, every year. Due to COVID-19, the Department notified the Business that the 2019 Annual Report due date was extended to July 1, 2020.

The Annual Report shall include the following:

- (1) Quantitative information on the number of mattresses received and recycled or renovated in the state during the preceding calendar year.
- (2) Other information deemed necessary by the department that is reasonably related to compliance with this chapter and that can be reasonably compiled.

The Department may impose an administrative civil penalty on any mattress renovator 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).)

DATES OF VIOLATION: July 2, 2020 – July 28, 2020 (inclusive)

STIPULATION DUE DATE: 30 days from the day this Order is issued.

TOTAL MONETARY PENALTY: \$675

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 1C attached, have occurred and request that the California Department of Resources Recycling and Recovery (Department) resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* (Exhibit 1B) and voluntarily waive any and all procedural rights to contest this matter in an Administrative Hearing. I have submitted my penalty payment to the California Department of Resources Recycling and Recovery in the amount of the penalty described in Exhibit 1C. I understand that if there are not sufficient funds in my bank account when the penalty payment is processed, 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 and Exhibits 1B and 1C, constitute 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 and all together shall form one agreement. In addition, for purposes of this Stipulation, facsimile signatures will be treated as originals.

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: J GUADALUPE ESCALERAS
Title: OWNER Dated: 12/04/2020

Signature _____ Printed Name: _____
Title: _____ Dated: _____

Name and Address of Business Entity:
2923 E BELMONT AVE., FRESNO CA 93702

Any DBAs: J GUADALUPE ESCALERA (DBA) UNITED MATTRESS FACTURE

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 Deputy Director, WPCMD, of the California Department of Resources Recycling and Recovery.

IT IS SO ORDERED:

Dated: 12/8/20

Mark de Bie Digitally signed by Mark de Bie
Date: 2020.12.08 12:09:19 -08'00'

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

(Exhibit 1B)

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

The complainant, the California Department of Resources Recycling and Recovery, and Respondents, identified by name in Exhibit 1A, 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 in Exhibits 1A and 1C.

Each Respondent agrees to the issuance of the Decision and Order and imposition by the Department of an administrative penalty in the amount specified in Exhibit 1A, and full payment of said penalty amount is submitted by the Respondent 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.

(Exhibit 1C)

DETAILS OF RESPONDENT'S NONCOMPLIANCE WITH THE USED MATTRESS
RECOVERY AND RECYCLING ACT

DEPARTMENT ENFORCEMENT ORDER NUMBER: 2020M-008

RESPONDENTS: Guadalupe J. Escalera
United Mattress Factory
3923 E Belmont Avenue
Fresno, California, 93702

PUBLIC RESOURCES CODE (PRC) SECTION VIOLATED: 42991(a)

The Used Mattress Recovery and Recycling Act (PRC 42985-42994) (Mattress Law) requires mattress renovators to register with a mattress recycling organization and submit an annual report to the Department of Resources Recycling and Recovery's (Department) by the due date, to include:

- (1) Quantitative information on the number of mattresses received and recycled or renovated in the state during the preceding calendar year.
- (2) Other information deemed necessary by the department that is reasonably related to compliance with this chapter and that can be reasonably compiled.

COMPLIANCE BACKGROUND:

On May 28, 2019, the Business provided their 2018 Annual Report to the Department.

On July 1, 2020, the Business' 2019 Annual Report was due. Between February 5, 2020 and June 30, 2020 nine (9) email communications were sent to the Business owner, Jose Guadalupe Escalera (unitedmattressfactory2018@gmail.com) providing information on annual reporting and the annual reporting due date.

On July 2, 2020, the Department issued a *Failure to Submit the Used Mattress Recovery and Recycling Program 2019 Annual Report* **Past Due and Required Actions** (First Notice of Violation) to the Business, addressed to the owner, Jose Guadalupe Escalera. The First Notice of Violation was sent using General Logistics Systems (GLS). On July 6, 2020, the First Notice of Violation was delivered at the Business by GLS and signed for by 'T.Awades'.

On July 16, 2020, the Department issued a *Failure to Submit the Used Mattress Recovery and Recycling Program 2019 Annual Report* – **Past Due and Required Actions** (Second Notice of Violation) to the Business, addressed to the owner, Jose Guadalupe Escalera. On July 20, the Second Notice of Violation was delivered via GLS and signed for by 'J.Escalator'.

On July 29, 2020, Inspector Garrett called the Business at (559) 473-8621, which rang with no answer. Jose Escalera returned the phone call minutes later and asked Inspector Garrett to call his bookkeeper Ledi at (559) 840-3347 (Business & Legal Solutions) who he said was handling matters associated with annual reporting. The Inspector agreed to make this call but explained to Mr. Escalera that he is responsible to ensure the Annual Report for the Business is provided to the Department on time to avoid penalties.

On July 29, 2020, Inspector Garrett called Business & Legal Solutions at (559) 840-3347 and spoke with Aura Ledi Navarrette. Inspector Garrett told her that United Mattress Factory was past due in providing the 2019 calendar year Annual Report and would need to provide this immediately to avoid additional late penalties.

On July 29, 2020, Inspector Berjikian sent an email to the attention of Aura Ledi Navarrette at bizlegal@comcast.net that contained an annual report template to assist Business & Legal Solutions in providing the Annual Report for United Mattress Factory.

On July 29, 2020, the Business submitted the completed Annual Report via email. The 2019 Annual Report was submitted by Ana Maria Hurtado (bizlegal@comcast.net) of Business & Legal Solutions.

The table below lists the violation and penalties being assessed to the Business. The penalty amounts listed are for the days the Business was in violation. This begins on the date after the due date of the Annual Report (from and including July 2, 2020) and continues to the day prior to the date the report was submitted to the Department (to and including July 28, 2020).

Summary of Settlement Offer for Violations and Penalties

PRC Section	Violation	Violation or Penalty Calculation Start Date	Violation or Penalty Calculation End Date	Total Days in Violation	Reduced Daily Penalty	Total Reduced Penalty
42991(a)	Submission of the required Annual Report to the Department after the due date.	July 2, 2020	July 28, 2020	27	\$25	\$675
					Total Reduced Penalty:	\$675

TOTAL MONETARY PENALTY: \$675

NUMBER OF COUNTS: 1

Attachments enclosed