

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF THE ACCUSATION
AGAINST:

JOSE TORRES and LA POPULAR
MATTRESS AND FURNITURE
Respondents.

AGENCY NO: IH22-021-MAT

DEFAULT ADMINISTRATIVE DECISION
FOR IMPOSITION OF PENALTIES

(Public Resources Code Sections 42985-
42994 and Title 14 California Code of
Regulations Sections 18959-18964)

INTRODUCTION AND PROCEDURAL HISTORY

1. The Department of Resources Recycling and Recovery (Department) served JOSE TORRES, an individual, and LA POPULAR MATTRESS AND FURNITURE, an unincorporated sole proprietorship, partnership, or association (Respondents), an accusation in the above-captioned matter on December 15, 2022, alleging that Respondents committed multiple violations of the Used Mattress Recycling and Recovery Act (Public Resources Code (PRC) section 42985 *et seq.*) (the Accusation). Pursuant to the Act and its implementing regulations (Title 14 of the California Code of Regulations (14 CCR) section 18959 *et seq.*), the Accusation asserts that Respondents should be penalized \$13,000 for such violations.
2. Included with the Accusation was a form for requesting a hearing (Request for Hearing) to refute the Department's allegations. Respondents were provided more than 15 days from the date of service to file a Request for Hearing.
3. Because Respondents did not file a Request for Hearing or otherwise communicate to the Department that they wish to challenge the allegations against them, the Department issues this Default Administrative Decision for Imposition of Penalties (Decision) pursuant to the Act, 14 CCR section 18971, and Government Code section 11520.

STATUTORY AND REGULATORY FRAMEWORK

4. The Act created the framework for an "extended producer responsibility" program for the end-of-life handling of mattresses in California. (PRC section 42985.) The Act aims to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses, (PRC section 42985(a)(1)), while also ensuring that consumers have convenient, no-cost

options available for collection or drop-off of used mattresses. (PRC sections 42985(b), 42987.1(l), 42987.1(n), 42992.) The Act authorizes the Department to certify a mattress recycling organization (MRO) to develop, finance, and implement a convenient and cost-effective program to recover and recycle used mattresses in the state. (PRC sections 42985(a)(1), 42987(a)(1).)

5. The Act requires all mattress renovators to do the following:

- a) register with the MRO (PRC section 42987(b)(1));
- b) provide the Department access to the renovator's facilities and records and maintain records for three years (PRC section 42993.3); and
- c) submit to the Department and to the MRO an annual report, due May 1 of each year, that includes information on the number of mattresses received and renovated in the state during the preceding calendar year (PRC section 42991; 14 CCR section 18966).

6. The Act requires all mattress retailers to do the following:

- a) register with the MRO (PRC section 42987(b)(1));
- b) not sell, offer for sale, or distribute a mattress in the state unless the retailer is in compliance with the Act and the manufacturer of the mattress is identified on the list of compliant manufacturers maintained on the Department's website (PRC sections 42987(c), 42993(a), 42993(d));
- c) add a recycling charge to the purchase price of each mattress and remit the charge to the MRO (PRC section 42989.1(a), (b));
- d) when adding the recycling charge to the purchase price of each mattress, clearly display the charge as a separate line item on the corresponding receipt (PRC section 42989.1(a));
- e) offer consumers the option to have a used mattress picked up, at no additional cost, when their new mattress is delivered (PRC section 42992(a));
- f) upon request by the Department, and as necessary for the Department to determine whether the retailer is in compliance with the Act, provide the Department with access to the retailer's facilities and operations, provide relevant records, and maintain such records for at least three years (PRC section 42993.3(a), (b)); and
- g) monitor the Department's website to determine if the manufacturers or renovators of the mattresses the retailer sells are in compliance with the Act (PRC section 42993(c)).

7. There is only one certified MRO: Mattress Recycling Council, Inc. (MRC), which administers the only mattress recycling program under the Act.
8. Pursuant to PRC section 42993.1 and 14 CCR sections 18970 and 18971, the Department may impose an administrative civil penalty for violations of the Act. 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 up to five thousand dollars (\$5,000) per day for each violation.
9. Pursuant to 14 CCR section 18970, to determine an appropriate penalty, the Department considers the totality of the circumstances, including the factors identified in section 18970: (a) the nature, circumstances, extent, and gravity of violations; (b) the number and severity of violations; (c) evidence that the violation was intentional, knowing, or negligent; (d) the size of Respondents' business; (e) history of violations of the same or similar nature; (f) the willfulness of Respondents' misconduct; (g) whether Respondents took good faith measures to comply and the period of time over which the measures were taken; (h) evidence of any financial gain resulting from the violations; (i) the economic effect of the penalty on Respondents; (j) the deterrent effect that the imposition of the penalty would have on both Respondents and the regulated community; and (k) any other factor that justice may require.

FACTUAL FINDINGS

10. The Department adopts the allegations of the Accusation, as reproduced below, as its factual findings in this matter. By not filing a Request for Hearing, Respondents waived their right to challenge these allegations through the informal hearing procedures outlined in the Administrative Procedure Act (Gov. Code section 11445.10 *et seq.*).
11. Respondents are, and at all times mentioned herein, were, the owners and operators of a business known as "La Popular Mattress and Furniture."
12. Since at least as early as September 2011, Respondents have operated a retail mattress store at 120 S Aurora St. #A, Stockton, CA, under the name "La Popular Mattress and Furniture," "La Popular Mattress," or similar name.
13. On September 18, 2019, MRC approved Respondents' request for registration as a retailer.
14. On September 20, 2019, MRC approved Respondents' request for registration as a renovator.

15. The annual deadline for mattress renovators to report their sales for the previous calendar year is May 1, except that the deadline for the 2019 report was extended to July 1, 2020, due to the COVID emergency.
16. Despite receiving at least ten notices via email and telephone reminding them of the need to do so, Respondents did not submit an annual report for 2019 by the deadline of July 1, 2020.
17. On July 3, 2020, Respondents received written notice from the Department regarding their overdue 2019 annual report (*First Notice of Violation (2019 Annual Report)*). The notice explained that Respondents were in violation of the Act and subject to penalties that would accrue until Respondents submitted the report. It further explained that unless Respondents did so by July 15, 2020, the Department would take further actions, such as imposing penalties of up to \$5,000 per day.
18. After Respondents failed to submit their 2019 annual report by July 15, 2020, the Department sent a second notice (*Second Notice of Violation (2019 Annual Report)*). The second notice reiterated that Respondents were in violation of the Act and subject to penalties that would accrue until Respondents submitted the report. It further explained that unless Respondents did so by July 31, 2020, the Department would take further actions, such as imposing penalties of up to \$5,000 per day.
19. On September 15, 2020, the Department again notified Respondents, this time by phone, of their obligation to submit the 2019 annual report. A Department inspector explained that the report was late and offered to assist Respondent Torres in submitting the needed information. That same day, the Department inspector emailed instructions and a simplified form to Respondents to facilitate submission of the report.
20. Respondents did not submit their 2019 annual report until nearly 3 months later, on December 7, 2020. The report was 160 days late.
21. The deadline for mattress renovators to submit an annual report for their 2020 activities was May 1, 2021.
22. Despite receiving at least five notices via email reminding them of the need to do so, Respondents did not submit an annual report for 2020 before the deadline.
23. On May 4, 2021, the Department issued a written notice to Respondents regarding their overdue 2020 annual report (*First Notice of Violation (2020 Annual Report)*). Respondents received the notice on

May 8, 2021.

24. The *First Notice of Violation (2020 Annual Report)* explained that Respondents were in violation of the Act and that penalties would accrue until Respondents submitted the 2020 annual report. It further explained that unless Respondents did so by May 17, 2021, the Department would take further actions, such as imposing penalties of up to \$5,000 per day.

25. On May 4, 2021, the Department emailed Respondent Torres a Spanish-language form for him to use to submit the 2020 annual report. In a phone call with a Department inspector on May 10, 2021, Respondent Torres acknowledged receiving the Spanish-language form and stated that he would submit the annual report the next day.

26. On May 18, 2021, after Respondents failed to submit their 2020 annual report by the deadline stated in the *First Notice of Violation (2020 Annual Report)*, the Department sent a second notice (*Second Notice of Violation (2020 Annual Report)*). The second notice reiterated that Respondents were in violation of the Act and subject to penalties that would continue to accrue until Respondents submitted the 2020 annual report. It further explained that unless Respondents did so by May 31, 2021, the Department would take further actions, such as imposing penalties of up to \$5,000 per day.

27. Respondents submitted their 2020 annual report on May 28, 2021, 25 days late.

28. On November 23, 2021, a Department inspector visited the Store to conduct an inspection. During the visit, the inspector spoke with Respondent Torres and requested various records, including copies of recent receipts and documentation demonstrating the number of mattresses Respondents renovated.

29. The receipts that Respondent Torres provided showed that Respondents were not collecting the recycling charge as a separate line item clearly displayed on receipts. Accordingly, the Department inspector explained to Respondent Torres that Respondents were in violation of the Act.

30. Respondent Torres did not provide records regarding the volume of Respondents' mattress renovation business, claiming that such records were maintained in a different location. The Department inspector explained to Respondent Torres that Respondents were in violation of the Act for failing to provide records.

31. On November 29, 2021, the Department sent Respondents a Notice of Violation (*First Notice of Violation (Charge Collection and Records)*) to Respondent Torres' email address. The notice stated that

Respondents were in violation of the Act because they failed to provide records upon request, including records regarding the volume of mattresses renovated, and were not collecting the recycling charge properly. The notice explained that Respondents were subject to penalties of up to \$5,000 per day until they corrected such violations.

32. The *First Notice of Violation (Charge Collection and Records)* explained that Respondents were required to correct their practice of not collecting the recycling charge as a separate line item clearly displayed on receipts. It also demanded that Respondents provide receipts for mattress sales occurring after the inspection date and logbooks documenting the volume of mattresses renovated in 2021 as of the date of the notice.

33. The *First Notice of Violation (Charge Collection and Records)* set a response deadline of December 30, 2021 (30 days from the date of the notice). Respondents did not respond or provide any of the requested records.

34. On January 6, 2022, the Department sent a notice to Respondents regarding violations of the Act (*Second Notice of Violation (Charge Collection and Records)*). A hard copy was sent to the Store and received by Respondents on January 11, 2022. The notice was also sent to Respondent Torres by email.

35. The *Second Notice of Violation (Charge Collection and Records)* noted the same violations and demanded the same records as did the first notice, except that it required Respondents to provide receipts for all mattress sales in December 2021.

36. The *Second Notice of Violation (Charge Collection and Records)* set a response deadline of February 5, 2022. Respondents did not respond or provide any of the requested records.

37. On February 9, 2022, the Department sent Respondents another notice (*Notice of Continued Violation*), again explaining that Respondents were in violation of the Act and that penalties of up to \$5,000 per day were accruing. The notice was sent to the Store and by email to Respondent Torres. It was received at the Store on February 11, 2022.

38. The Notice of Continued Violation reiterated the demands for records set forth in the Second Notice of Violation (Charge Collection and Records) and set a response deadline of February 16, 2022. Respondents did not respond or provide any of the requested records.

LEGAL CONCLUSIONS

39. Respondents are a retailer and a renovator subject to the Act's requirements because they

renovate, sell, and offer for sale mattresses in California.

40. Respondents intentionally, knowingly, or recklessly violated the Act as set forth in the Accusation and below.

41. In consideration of the totality of the circumstances, including the regulatory factors listed in 14 CCR section 18970, a penalty of \$13,000 is appropriate, as further detailed below.

COUNT I

RESPONDENTS FAILED TO PROVIDE THE DEPARTMENT WITH RELEVANT RECORDS, IN VIOLATION OF PRC SECTION 42993.3(a)(2).

42. At the inspection on November 23, 2021, and through the *First Notice of Violation (Charge Collection and Records)* (dated November 29, 2021), the *Second Notice of Violation (Charge Collection and Records)* (dated January 6, 2022), and the *Notice of Continued Violation* (dated February 9, 2022), the Department requested that Respondents provide various records necessary for the Department to assess Respondents' compliance with the Act. In each instance, Respondents failed to provide any records.

43. Respondents' failure to provide records upon request violated PRC section 42993.3(a)(2). This violation persisted throughout all times relevant herein, including through the date of this Accusation.

44. In light of the factors listed in 14 CCR section 18970, a penalty of \$8,500 for Respondents' continuous violation of PRC section 42993.3 is appropriate. Although this violation began no later than November 23, 2021, and persisted at least through the date of the Accusation (more than 300 days), the Department penalizes Respondents based on their continuous violation of the Act for at least 68 days, with a per-day penalty of \$125. The minimum basis of 68 days equals the sum of the periods during which the Department's written notices demanded that Respondents provide records so the Department could assess their compliance with the Act:

Notice	Date of Notice	Response Deadline	Duration (Days)
<i>First Notice of Violation (Charge Collection and Records)</i>	November 29, 2021	November 16, 2021	31
<i>Second Notice of Violation (Charge Collection and Records)</i>	January 6, 2022	February 5, 2022	30
<i>Notice of Continued Violation (Charge Collection and Records)</i>	February 9, 2022	February 16, 2022	7
		Total	68

COUNT II

RESPONDENTS FAILED TO COLLECT RECYCLING CHARGES AND DISPLAY THE CHARGES ON RECEIPTS, IN VIOLATION OF PRC SECTION 42989.1(a).

45. Since at least as early as September 2011, Respondents have sold or offered to sell mattresses.

46. For all mattress sales since at least as early as September 23, 2021, Respondents have not added the recycling charge to the price of new mattresses and shown the charge as a line item on receipts. Each such sale has constituted a violation of PRC section 42989.1(a).

47. In light of the factors listed in 14 CCR section 18970, a total penalty of \$4,500 is appropriate for Respondents' violation of PRC section 42989.1(a). Although Respondents began violating section 42989.1 since at least as early as September 23, 2021, and continued to violate it at least through the date of the Accusation, the Department penalizes Respondents \$150 per day for 30 days within the period covered by the *Second Notice of Violation (Charge Collection and Records)* and the *Notice of Continued Violation (Charge Collection and Records)*, each of which demanded sales receipts so that the Department could assess Respondents' compliance with PRC section 42989.1(a) for at least that many days. Although the notices identified a 31-day period (December 1 through December 31, 2021), the original Accusation asserted a 30-day penalty, which the Department reasserts here for consistency.

48. Even if there was insufficient evidence to establish violations of PRC section 42989.1, Respondents would have caused such insufficiency by intentionally not providing the Department records relevant to those violations, as Described in Count I. A \$4,500 penalty is therefore appropriate either as a penalty for Respondents' intentional violation of PRC section 42989.1(a) or as an additional penalty for

the intentional violation of section 42993.3(a)(2) set forth in Count I.

ORDER

Good cause appearing, the Department acts in accordance with Government Code section 11520, subdivision (a), and orders as follows:

Respondents JOSE TORRES and LA POPULAR MATTRESS AND FURNITURE are hereby ordered to pay an administrative penalty of \$13,000 to the Department within 30 (thirty) days of the date of this Decision.

RESPONDENTS' RIGHT TO FILE WRITTEN MOTION

Pursuant to government code section 11520, subdivision (c), Respondents have the right to serve the Department with a written motion requesting that the decision be vacated and stating the grounds relied on:

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

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

This Decision shall become effective on the date signed below.

Dated: June 3, 2023

MINDY MCINTYRE

Chief Deputy Director

Department of Resources Recycling and Recovery