

**STATE OF CALIFORNIA**

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

**IN THE MATTER OF THE ACCUSATION AGAINST:**

**DILA FURNITURE INC.,**

**Respondent.**

**AGENCY NO: IH24-005-MAT**

**DEFAULT ADMINISTRATIVE DECISION FOR IMPOSITION OF PENALTIES**

**(Public Resources Code Sections 42985-42994 and Title 14 California Code of Regulations Sections 18959-18971)**

**INTRODUCTION AND PROCEDURAL HISTORY**

1. The Department of Resources Recycling and Recovery (Department) served **DILA FURNITURE INC** (Respondent) an accusation in the above-captioned matter on April 24, 2024 (the Accusation), alleging that Respondent committed multiple violations of the Used Mattress Recovery and Recycling Act (Public Resources Code (PRC) section 42985 *et seq.*) (the Act). 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 Respondent should be penalized \$29,505 for such violations.
2. Included with the Accusation was a form for requesting a hearing (Request for Hearing) to refute the Department's allegations. Respondent was provided more than 15 days from the date of service to file a Request for Hearing.
3. Because Respondent did not file a Request for Hearing or otherwise communicate to the Department that it wished to challenge the allegations against it, the Department issues this Default Administrative Decision for Imposition of Penalties (Decision) pursuant to the Act, 14 CCR section 18971, and Government Code (Gov. Code) section 11520.

**STATUTORY AND REGULATORY AUTHORITY**

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 retailers in California 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 mattress recycling charge to the purchase price of each mattress, clearly display the charge as a separate line item on the invoice, receipt, or equivalent document (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 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)).

6. There is only one certified MRO: Mattress Recycling Council, Inc. (MRC), which administers the only mattress recycling program under the Act.

7. Pursuant to PRC section 42989, MRC establishes the amount of the recycling charge. The current recycling charge is \$10.50.

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.

## **FACTUAL FINDINGS**

9. The Department adopts the allegations of the Accusation, reproduced in part below, as its factual findings in this matter. By not filing a Request for Hearing, Respondent waived its right to challenge these allegations through the informal hearing procedures outlined in the Administrative Procedure Act (Gov. Code section 11445.10 *et seq.*).

10. Respondent operates a mattress retail business under the name “Dila Furniture,” with a retail store located at 1140 W Hammer Lane, Stockton, California 95209 (the Store).

11. Respondent has operated the Store since at least as early as April 2016.

12. On February 1, 2023, Department inspectors Kirby Garrett and Brenley Noori visited the Store to conduct an inspection. During the visit, the inspectors met with Kenny Nguyen (Mr. Nguyen), who identified himself as a sales associate.

13. During the inspection, Mr. Nguyen admitted that Respondent was not registered with MRC.

14. During the inspection, the Department inspectors were given access to sales receipts, which showed that Respondent was not adding the recycling charge to the price of new mattresses and including it as a line item on receipts.

15. On February 9, 2023, the Department sent Respondent a Notice of Violation (First Notice of Violation), and Respondent received the notice the next day.

16. The First Notice of Violation explained that Respondent was violating the Act and identified the legal requirements at issue, including registration with MRC and collection and remittance of recycling charges.

17. The First Notice of Violation explained that Respondent’s violations of the Act were subject to penalties of up to \$5,000 per day and would continue accruing unless Respondent ceased violating the Act.

18. The First Notice of Violation demanded that Respondent provide to the Department various records necessary for the Department to monitor Respondent’s compliance with the Act. Among other records, the notice instructed Respondent to provide copies of three sales receipts showing recent mattress sales, and documentation of remittance of recycling charges to MRC.

19. On March 16, 2023, the Department sent Respondent another notice regarding violations of the Act (Second Notice of Violation). Respondent received the notice on March 17, 2023.

20. The Second Notice of Violation again notified Respondent that it was subject to penalties of up to \$5,000 per day, identified five provisions of the Act that Respondent was violating, and demanded that Respondent cease violating the Act and provide

records demonstrating that it had done so, including all receipts for mattress sales from February 1, 2023, through March 15, 2023 (43 days).

21. The Second Notice of Violation instructed Respondent to respond by April 15, 2023.

22. Respondent did not respond to the Second Notice of Violation or provide any records.

23. On May 31, 2023, Department inspectors Brenley Noori and Donovan Rose visited the Store to conduct another inspection. During the visit, the inspectors spoke with Danielle Gutierrez, who identified himself as a sales associate.

24. During the inspection, Mr. Gutierrez refused to provide records to the inspectors, such as receipts showing whether Respondent was collecting the recycling charge.

25. At the conclusion of the inspection, the inspectors informed Mr. Gutierrez that Respondent was still violating the Act. The inspectors left a notice (Notice of Required Actions) with Gutierrez and instructed him to provide it to the Owner.

26. The Notice of Required Actions again demanded that Respondent cease violating the Act and produce various records demonstrating that it had done so. The required records included documentation showing registration with MRC, copies of all mattress receipts for May 1 through May 30, 2023, and documentation showing recent remittance of recycling charges to MRC.

27. The Notice of Required Actions instructed Respondent to provide the requested records within seven days of the inspection.

28. Respondent did not respond to the Notice of Required Actions or provide any records.

29. On June 22, 2023, the Department sent Respondent another notice (Notice of Continued Violation), which Respondent received on June 23, 2023. The notice again identified multiple violations of the Act, including Respondent's failure to provide records upon request, failure to register with MRC, failure to collect the recycling charge as a line item on receipts, and failure to remit recycling charges to MRC.

30. The Notice of Continued Violation reiterated that Respondent remained in violation of the Act and was subject to penalties of up to \$5,000 per day that would continue to accrue until Respondent demonstrated compliance with the Act.

31. The Notice of Continued Violation again demanded that Respondent cease violating the Act and produce various records demonstrating that it had done so. The required records included documentation showing registration with MRC, copies of all receipts for mattress sales from May 1 through June 22, 2023 (53 days), and documentation showing recent remittance of recycling charges to MRC.

32. Respondent did not respond to the Notice of Continued Violation or provide any records.

## **LEGAL CONCLUSIONS**

### **COUNT I**

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

33. Respondent's failure to provide records upon request violated PRC section 42993.3(a)(2) and was intentional, knowing, or reckless.

34. In light of the factors listed in 14 CCR section 18970, a penalty of \$3,570 for Respondent's continuous violation of PRC section 42993.3(a)(2) is appropriate. The Department penalizes Respondent based on its continuous violation of the Act for 51 days, with a per-day penalty of \$70. The basis of 51 days equals the sum of the response periods (the number of days from the notice date to the response due date) for the Department's demands for records in the Second Notice of Violation, Notice of Required Actions, and Notice of Continued Violation.

### **COUNT II**

#### **RESPONDENT FAILED TO REGISTER WITH MRC, IN VIOLATION OF PRC SECTION 42987(b)(1)**

35. Respondent has never registered with MRC despite offering mattresses for sale since at least as early as April 2016.

36. Respondent has continuously violated PRC section 42987(b)(1) since at least as early as April 2016, and the violation has been, and continues to be, intentional, knowing, or reckless.

37. In light of the factors listed in 14 CCR section 18970, a penalty of \$7,695 for Respondent's continuous violation of PRC section 42987(b)(1) is appropriate. The Department penalizes Respondent based on its continuous violation of the Act for 81 days, with a per-day penalty of \$95. The basis of 81 days equals the sum of the response periods (the number of days from the notice date to the response due date) for the Department's demands for records in the First Notice of Violation, Second Notice of Violation, Notice of Required Actions, and Notice of Continued Violation.

### **COUNT III**

#### **RESPONDENT FAILED TO COLLECT AND REMIT RECYCLING CHARGES, IN VIOLATION OF PRC SECTION 42989.1**

38. Since at least as early as April 2016, Respondent has sold or offered to sell mattresses but has never collected recycling charges and displayed the charges on receipts. Respondent, therefore, has violated PRC section 42989.1(a) with each mattress it has sold since April 2016.

39. Even if Respondent has ever collected recycle charges, it has never remitted them to MRC, and thus would have violated, and would be continuing to violate, PRC section 42989.1(b) in any event.

40. Respondent's violations of PRC section 42989.1 have been, and continue to be, intentional, knowing, or reckless.

41. In light of the factors listed in 14 CCR section 18970, a penalty of \$18,240 for Respondent's violations of PRC section 42989.1 is appropriate. The Department penalizes Respondent based on its violation of the Act on at least 96 days, with a per-day penalty of \$190. The basis of 96 days equals the total number of days for which Respondent failed to provide sales receipts, as they were required to do in response to the Second Notice of Violation and the Notice of Continued Violation, so that the Department could assess Respondent's compliance on each of those days (43 days and 53 days, respectively).

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## **ORDER**

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

Respondent DILA FURNITURE is hereby ordered to pay an administrative penalty of \$29,505 to the Department within 30 (thirty) calendar days of the date of this Decision.

## **RESPONDENT'S RIGHT TO FILE WRITTEN MOTION**

Pursuant to Government Code section 11520, subdivision (c), Respondent has the right to serve the Department with a written motion requesting that the Decision be vacated and stating the grounds relied on. Government Code section 11520, subdivision (c), states:

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: May 29, 2024

  
Signature - Mindy McIntyre

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MINDY MCINTYRE

Chief Deputy Director

Department of Resources Recycling and Recovery