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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF HOUSEHOLD GOODS AND SERVICES
STATE OF CALIFORNIA**

In the Matter of the Citation Against:
**SELECT SLEEP MATTRESS
DAVID VESEY AND DONALD VESEY,
PRINCIPALS
30540 Union City Boulevard
Union City, CA 94587**
**Furniture and Bedding Manufacturer
License No. MFG-130854**

Case No. IC 2017-178
OAH No. 201910577
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about June 23, 2017, Complainant Nicholas Oliver, in his official capacity as the Bureau Chief of the Bureau of Household Goods and Services, Department of Consumer Affairs, filed Citation No. IC 2017-178 against Select Sleep Mattress, David Vesey and Donald Vesey, Principals (Respondent) before the Director of Consumer Affairs. (Citation attached as Exhibit A.)

1 2. On or about December 1, 1999, the Bureau of Household Goods and Services
2 (Bureau) issued Furniture and Bedding Manufacturer License No. MFG-130854 to Respondent.
3 The Furniture and Bedding Manufacturer License was in full force and effect at all times relevant
4 to the charges brought in Citation No. IC 2017-178 and will expire on December 31, 2019, unless
5 renewed.

6 3. On or about June 23, 2017, Respondent was served with Citation No. IC 2017-178.

7 4. On or about January 22, 2018, Respondent requested a hearing in this matter.

8 5. On, June 20, 2019, a Notice of Continued Hearing was served by mail at
9 Respondent's address of record which was and is: 30540 Union City Boulevard, Union City, CA
10 94587. The Notice of Hearing informed Respondent that an administrative hearing in this matter
11 was scheduled for August 26, 2019 at 1:00 p.m. at the Office of Administrative Hearings in
12 Oakland, California.

13 6. Service of the Citation was effective as a matter of law under the provisions of
14 Government Code section 11505(c) and/or Business and Professions Code section 124.

15 7. The matter was called for hearing at the date, time and location set forth in the Notice
16 of Continued Hearing. The assigned Administrative Law Judge found that the service of the
17 Notice of Continued Hearing on Respondent was proper. There was no appearance by or on
18 behalf of Respondent. A default was declared and on motion of counsel for Complainant, the
19 matter was remanded to the Bureau under Government Code section 11520.

20 8. Government Code section 11506(c) states, in pertinent part:

21 (c) The respondent shall be entitled to a hearing on the merits if the respondent
22 files a notice of defense . . . and the notice shall be deemed a specific denial of all
23 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
24 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
25 discretion may nevertheless grant a hearing.

26 9. California Government Code section 11520(a) states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense . . . or to appear at
28 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent

1 10. Pursuant to its authority under Government Code section 11520, the Director finds
2 Respondent is in default. The Director will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Director's offices regarding the allegations contained in Citation No. IC 2017-178,
6 finds that the charges and allegations in Citation No. IC 2017-178, are separately and severally,
7 found to be true and correct by a preponderance of the evidence.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Select Sleep Mattress, David
10 Vesey and Donald Vesey, Principals, has subjected its Furniture and Bedding Manufacturer
11 License No. MFG-130854 to citation.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The Director of Consumer Affairs is authorized to cite Respondent's Furniture and
14 Bedding Manufacturer License based upon the following violations alleged in the Citation which
15 are supported by the evidence contained in the Default Decision Evidence Packet in this case:

16 a. Business and Professions Code section 19161 (All mattresses shall be fire
17 retardant);

18 b. Business and Professions Code section 19086 (Nothing shall be placed upon labels
19 to cover the required statements); and

20 c. California Code of Regulations section 1125 (Labeling requirements); and

21 d. California Code of Regulations section 1126 (Official law label requirements).

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ORDER

IT IS SO ORDERED that Citation No. IC 2017-178, issued to Respondent Select Sleep Mattress, David Vesey and Donald Vesey, Principals, is affirmed. Respondent shall pay the total fine assessed in Citation No. IC 2017-178 within thirty (30) days of the effective date of this Order.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on _____.

It is so ORDERED December 20, 2019


FOR THE DIRECTOR OF CONSUMER AFFAIRS
BUREAU OF HOUSEHOLD GOODS AND
SERVICES

91147291.DOCX
DOJ Matter ID:OK2018900200
Attachment: Exhibit A: Citation

Exhibit A

Citation No. IC 2017-178

(SELECT SLEEP MATTRESS; DAVID VESEY)



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
**BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION**
4244 SOUTH MARKET COURT SUITE D SACRAMENTO CA 95834-1243
Ph.: 916-999-2041 FAX: 916-921-7279 web: www.bearhfti.ca.gov



CITATION AND FINE

No.: IC 2017-178

License Number: MFG-130854
Expiration Date: December 31, 2017

To: SELECT SLEEP MATTRESS
ATTN: DAVID VESEY
30540 UNION CITY BLVD
UNION CITY CA 94587-1518

Approximate Dates of Occurrences: May 04, 2017; May 11, 2017; May 22, 2017; May 23, 2017

This Citation is being issued by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau) in accordance with the Business and Professions Code §125.9 and California Code of Regulations Title 16, §2771, for violation(s), which were found during the inspection.

This Citation details each violation charged and orders of abatement, where applicable. If you choose to contest this Citation or Order(s) of Abatement, a written notification, using the attached Acknowledgement Receipt Form, must be received within the allowed timeframe, as described on the Statement to Cited Person. Otherwise, this Citation shall become a Final Order of the Bureau on July 24, 2017. You must comply immediately with the Order(s) of Abatement and pay the \$5,500.00 fine.

Payment of the fine is to be made payable to BEARHFTI by cashier's check and or money order. Please include the Citation number and license number, if applicable, on the payment. **DO NOT SEND CASH.**

Mail To: DEPARTMENT OF CONSUMER AFFAIRS (BEARHFTI)
ATTN: ARTHUR WAUTIER
4244 SOUTH MARKET COURT, SUITE D
SACRAMENTO, CA 95834-1243

FAILURE TO RESPOND TO THIS CITATION MAY RESULT IN DISCIPLINARY ACTION.

If you have any questions regarding this matter, please contact Arthur Wautier, Bureau Representative, at arthur.wautier@dca.ca.gov or 916 999-2065.

June 23, 2017
Date


Dale Chasse, Deputy Chief

If you do not request a review or hearing, payment of the fine does not constitute an admission of the violation alleged. Issuance of a Citation is subject to public disclosure. When a fine is paid to satisfy an assessment, based on the finding of the violation, payment of the fine may be publicly disclosed in forums such as the Bureau's website and newsletters and represented as satisfactory resolution of the matter.

Section(s)

Violated:

§ 19161 Article 7, Chapter 3, Division 8, of the Business and Professions Code
§ 19086 Article 5, Chapter 3, Division 8, of the Business and Professions Code
§ 1125 Article 2, Division 3, Title 4 of the California Code of Regulations
§ 1126 Article 2, Division 3, Title 4 of the California Code of Regulations

Description of

Violation:

On May 04, 2017, CR-73217: a Bureau inspector picked up 3 mattresses for laboratory testing. Product procurement form provided to business. Dreamer E/TOP \$232.00; R/R bed \$651.00; Prelude T/TOP \$175.00; total \$1,061.00. SR 28480.

On May 11, 2017, CR-73220: The inspector returned the 3 mattresses picked up on May 04, 2017, because they had incorrect registry numbers on the labels. The owner is now aware of the problem and will replace all product labels that have incorrect registry numbers. The Bureau Inspector picked up 3 mattresses with different prototype ID numbers. No citation was issued.

On May 22, 2017, the lab completed analysis 0085-2017 on Twin mattress (2) R/R bed; PTID 632312; model TT11. Results: Fail 16CFR 1633; Fail label format.

On May 23, 2017, the lab mailed to you a letter titled "LABORATORY TEST RESULT NOTIFICATION AND PRODUCT NON-REIMBURSEMENT", informing you of the flammability failure and label discrepancies.

Order of

Abatement:

Immediately Cease and Desist from Manufacturing, Importing, Wholesaling, or Retailing, the above mentioned item for sale to California consumers - until you have shown to the Bureau's satisfaction you are compliant:

- With all laws and regulations set forth in the Home Furnishings and Insulation Act;
- With all regulations set forth in Part 1633 of Title 16 of the Code of Federal Regulations, titled "Standard for the Flammability (Open Flame) of Mattress Sets".

Citation Fines:

Total Fines:

\$2,500.00	§ 19161 All mattresses shall be fire retardant.
\$1,000.00	§ 19086 Nothing shall be placed upon labels to cover the required statements
\$1,000.00	§ 1125 Labeling Requirements
\$1,000.00	§ 1126 Official Law Label Requirements

Total Fines:

\$5,500.00



CITATION ASSESSMENT

DATE: June 23, 2017

OWNER: David Vesey

LICENSE NUMBER: MFG-130854

BUSINESS NAME: Select Sleep Mattress
& ADDRESS: 30540 Union City Blvd. Union City CA 94587

CITATION: IC 2017-178

Citation Fee Due : \$5500.00

TOTAL DUE: \$5500.00

Payment of the fine is required by July 24, 2017. Remit a cashier's check or money order made payable to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, along with this form.

DO NOT SEND CASH

RETURN THIS FORM WITH YOUR PAYMENT AND MAIL TO:

**DEPT. OF CONSUMER AFFAIRS (BEARHFTI)
ATTN: ARTHUR WAUTIER
4244 SOUTH MARKET COURT, SUITE D
SACRAMENTO, CA 95834-1243**



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
**BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
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 4244 SOUTH MARKET COURT SUITE D SACRAMENTO CA 95834-1243.
 Ph.: 916-999-2041 FAX: 916-921-7279 web: www.bearhfti.ca.gov



REMITTANCE FORM

June 23, 2017

Citation Number: IC 2017-178
 License Number: MFG-130854

I hereby acknowledge receipt of the above-referenced Citation and notification of my rights to contest the Citation pursuant to Business and Professions Code Section 19208 and 19209, and Title 4, Article 15.5 of the California Code of Regulations Section 1383.

On (date) _____, I sent a check or money order in the full amount of \$5500.00 as payment of the Citation and fine and/or other fees due.

Mail To:

**DEPT. OF CONSUMER AFFAIRS (BEARHFTD)
 ATTN: ARTHUR WAUTIER
 4244 SOUTH MARKET COURT, SUITE D
 SACRAMENTO, CA 95834-1243**

CONTEST CITATION

_____ Initial if: I hereby contest the citation and request a Citation Review Conference. I understand that I am not waiving my right to a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code of Regulations. A CRC request must be made within ten (10) days of the issuance of a citation.

_____ Initial if: I request a Formal Administrative Procedures Act Hearing (APA) pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code of Regulations. An APA hearing request must be made within thirty (30) days of the issuance of a citation.

You may fax requests to (916) 921-7279 or mail requests to the payment address above. A self-addressed envelope is included for your convenience.

 Name

 Signature

 Date

 Title

 Telephone Number

 Email Address



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DECLARATION OF SERVICE

In the Matter of: David Vesey / MFG-130854 / Select Sleep Mattress / IC 2017-178

I, the undersigned, declare that I am over eighteen (18) years of age and not a party to the within entitled action. I am employed in the County of Sacramento, and my business address is Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, 4244 South Market Court, Suite D, Sacramento, CA 95834-1243.

On June 23, 2017, I served the foregoing document described as

Citation IC 2017-178

on the interested party or parties to this action by placing both an original and a true copy thereof enclosed in sealed envelopes addressed as set forth below:

Certified Mail No.: 7015 0640 0003 7024 2409

SELECT SLEEP MATTRESS
ATTN: DAVID VESEY
30540 UNION CITY BLVD
UNION CITY CA 94587-1518

On the service date, the envelopes were placed in a designated location for collection by staff and for mailing, both by regular and certified mail, with the U.S. Postal Service in accordance with ordinary business practices.

I am readily familiar with our Department's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. Under that practice, it would be collected by the Department's mailroom staff from our Sacramento office and be deposited with the U.S. Postal Service on that same day with certified mail and first class mail postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.

I declare under fine of perjury under the laws of the State of California that the foregoing is true and correct.
Executed this 23rd day of June, 2017.



Arthur Wautier, Bureau Representative