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8
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

11 In the matter of:

12
13 CHASSIS & TIRE REPAIR CO, INC.

14
15 RESPONDENT

16
17 TPID NO.: 1208904-01
18

STIPULATION AND DECISION ON
MOTION REQUESTING THE VACATING
OF ADMINISTRATIVE DECISION FOR
WASTE TIRE HAULER
ADMINISTRATIVE PENALTIES
PURSUANT TO GOVERNMENT CODE
SECTION 11520(C)

PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.

AGENCY NO: 2015-011178-ADC

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20 INTRODUCTION

21 The California Department of Resources Recycling and Recovery (CALRECYCLE) and
22 Chassis Tire Repair, Inc. ("Respondent") hereby stipulate to the vacation of The Administrative
23 Decision For Waste Tire Hauler Administrative Penalties Pursuant To Government Code
24 Section 11520(c) based on the facts and for the reasons set forth below.

25 BACKGROUND

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27 1. CALRECYCLE has authority to regulate and conduct enforcement actions
28 regarding Waste and Used Tire Haulers within the State of California under PRC sections

1 42950 et seq., and attendant regulations contained in Title 14 of the California Code of
2 Regulations (CCR).

3 2. California Government Code section 11506 (a) authorizes a respondent to file a
4 notice of defense or notice of participation within 15 days of the service of the accusation.

5 3. Pursuant to California Government Code section 11506(b):

6 Within the time specified the respondent may file one or more notices of defense, or, as
7 applicable, notices of participation . . . **but all of these notices shall be filed within that [15**
8 **day] period unless the agency in its discretion authorizes the filing of a later notice."**

9 (Gov. Code §11506(b). Emphasis added.)

10 4. Pursuant to California Government Code section 11506(c):

11 . . . Failure to file a notice of defense or notice of participation shall constitute a waiver
12 of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a
13 hearing.

14 (Gov. Code §11506(c).)

15 5. Pursuant to California Government Code section 11520:

16 (a) If the respondent either fails to file a notice of defense, or, as applicable, notice of
17 participation, or to appear at the hearing, the agency may take action based upon the
18 respondent's express admissions or upon other evidence and affidavits may be used as
19 evidence without any notice to respondent; and where the burden of proof is on the
20 respondent to establish that the respondent is entitled to the agency action sought, the
21 agency may act without taking evidence.

20 (b) Notwithstanding the **default** of the respondent, the agency or the administrative law
21 judge, before a proposed **decision** is issued, has discretion to grant a hearing on
22 reasonable notice to the parties. If the agency and administrative law judge make
23 conflicting orders under this subdivision, the agency's order takes precedence. The
24 administrative law judge may order the respondent, or the respondent's attorney or
25 other authorized representative, or both, to pay reasonable expenses, including
26 attorney's fees, incurred by another party as a result of the respondent's failure to
27 appear at the hearing.

24 (c) Within seven days after service on the respondent of a **decision** based on the
25 respondent's **default**, the respondent may serve a written motion requesting that the
26 **decision** be vacated and stating the grounds relied on. The agency in its discretion may
27 vacate the **decision** and grant a hearing on a showing of good cause. As used in this
28 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.

1 6. Historically, courts have preferred the preservation of due process through
2 hearings and trials.

3 7. On March 7, 2016, CALRECYCLE personally served an Administrative
4 Complaint for Waste Tire Hauler Administrative Penalties (Complaint), Agency Case No.:
5 2015-011178-ADC, seeking administrative penalties in the amount of \$47,000 on
6 RESPONDENT's Agent for Service of Process at the location filed with the California
7 Secretary of State, Rafael Barajas at 11015 Pomoring Road, Downey, California.

8 8. On April 5, 2016, CALRECYCLE personally served RESPONDENT with an
9 Administrative Decision for Waste Tire Hauler Administrative Penalties (Default Decision)
10 ordering RESPONDENT to pay an administrative penalty in the amount of \$47,000 within 30
11 days of the date of service of the Default Decision, in accordance with Government Code
12 section 11520, based on evidence in CALRECYCLE's possession, and because
13 RESPONDENT failed to file a notice of defense and request a hearing within the 15-day time
14 period prescribed by Government Code section 11506.

15 9. On April 12, 2016, CALRECYCLE attorney Heather L. Hunt received the Motion
16 Requesting the Vacating of Administrative Decision (sic) For Waste Tire Hauler Penalties
17 Pursuant to Government Code Section 11520(c) (Motion to Vacate) and accompanying
18 Declaration of Cathy Pham Zotti (Declaration) via email. Heather L. Hunt received the same
19 Motion to Vacate via personal delivery on April 13, 2016.

20 10. In her Declaration, Ms. Zotti, attested that the default taken by CALRECYCLE
21 was a "... result of mistake, inadvertence, surprise, and excusable neglect ..." (Dec. Cathy
22 Pham Zotti, Para. 4.) She further explained that the reason for the mistake, inadvertence,
23 surprise, and excusable neglect was because she was out of town on the date the Complaint
24 was served and that "when [she] returned to town and work, [she] inadvertently overlooked
25 and did not see the Complaint in this matter as [she received numerous emails and
26 correspondences during [her] absence from the office." (Dec. Cathy Pham Zotti, Para. 3.) At
27 no time did Ms. Zotti state that the resulting default was due to intentional or negligent acts of
28 her client.

STIPULATION

Based on the foregoing law and facts, because courts favor hearings and because the resulting Default Decision was due solely to the actions of Ms. Zotti, the parties hereby stipulate to the following:

1. RESPONDENT will serve a Notice of Defense on CALRECYCLE within 15 days of signing this stipulation. CALRECYCLE agrees to accept electronic service of the Notice of Defense via CALRECYCLE's attorney's electronic mail address:
heather.hunt@calrecycle.ca.gov.

2. RESPONDENT agrees to accept service of this Stipulation And Decision On Motion Requesting The Vacating Of Administrative Decision For Waste Tire Hauler Administrative Penalties Pursuant To Government Code Section 11520(C) via attorney Cathy Zotti's electronic mail address: cathyzottlawyer@yahoo.com.

3. Upon filing the Notice of Defense, CALRECYCLE's Default Decision shall be vacated and CALRECYCLE shall assign a Hearing Officer and a hearing date.

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1 4. If RESPONDENT fails to file a notice of defense within 15 days of signing this
2 stipulation, the Default Decision will stand and RESPONDENT shall pay CALRECYCLE the
3 penalty due of \$47,000.00, within 30 days of the date of service of the Decision On Motion
4 Requesting The Vacating Of Administrative Decision For Waste Tire Hauler Administrative
5 Penalties Pursuant To Government Code Section 11520(C).
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8 Dated: 7/15/16


MARK DE BIE
Deputy Director
DEPARTMENT OF RESOURCES, RECYCLING AND
RECOVERY (CALRECYCLE)

11 Dated: 7-14-16


HEATHER L. HUNT
Attorney for
DEPARTMENT OF RESOURCES RECYCLING AND
RECOVERY (CALRECYCLE)

16 Dated: 7/14/16


CATHY PHAM ZOTTI
Attorney for
CHASSIS TIRE REPAIR CO, INC.

1 **DECISION ON MOTION TO VACATE**

2 Based on foregoing law and facts, because courts favor granting hearings and because
3 the resulting Default Decision was due solely to the actions of Ms. Zotti acting as attorney for
4 RESPONDENT, CALRECYCLE hereby orders RESPONDENT:

5 1. RESPONDENT shall serve a Notice of Defense on CALRECYCLE within 15
6 days of signing this stipulation.

7 2. Upon filing the Notice of Defense, CALRECYCLE's Default Decision shall be
8 vacated and CALRECYCLE shall assign a Hearing Officer and a hearing date.

9 3. If RESPONDENT fails to file a notice of defense within 15 days of signing this
10 stipulation, the Default Decision shall stand and RESPONDENT shall pay CALRECYCLE the
11 penalty due of \$47,000.00, within 30 days of the date of service of the Decision On Motion
12 Requesting The Vacating Of Administrative Decision For Waste Tire Hauler Administrative
13 Penalties Pursuant To Government Code Section 11520(C).

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15 This Decision shall become effective as of the date signed below.

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18 Dated: _____

7/15/16



19 MARK DE BIE
20 Deputy Director
21 DEPARTMENT OF RESOURCES, RECYCLING AND
22 RECOVERY (CALRECYCLE)
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