

BEFORE THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against:

**RECYCLING SERVICES ALLIANCE, INC., SHENGCHIEN TSENG, and MAXIMINA PEREZ,
Respondents**

Agency No. 2016-003-BCR

OAH No. 2019010975

DECISION AND ORDER REGARDING CALCULATION OF RESTITUTION AND INTEREST

This matter was heard before Danette C. Brown (ALJ Brown), Administrative Law Judge, Office of Administrative Hearing (OAH), State of California by video conference on June 8, June 13, and September 20, 2022, in Sacramento, California.

Jeffrey Diamond, Senior Staff Counsel, represented Ben Shelton (complainant), Acting Branch Chief, Recycling Program Enforcement Branch, Department of Resources Recycling and Recovery (Department).

John C. Gugliotta, Attorney at Law, Law Offices of Gugliotta & Ponzini, represented respondents Recycling Services Alliance, Inc. (RSA) and Shengchien Tseng (Tseng).

Respondent Maximina Perez (Perez) was self-represented and failed to appear for hearing. On June 7, 2022, OAH issued a Declaration of Default and Order of Remand against respondent Perez. (RSA, Tseng, and Perez shall be referred to collectively as Respondents.)

ALJ Brown issued her Proposed Decision on May 2, 2023.

The Department issued a partial rejection (Rejection) of the Proposed Decision on August 8, 2023, whereby Department Director, Rachel Machi Wagoner, rejected portions of the Proposed Decision “relating to the calculation of restitution and interest, and adopts all other portions of the [proposed] decision as its own.” The Rejection noted that the Director will decide the matter upon the record, including the transcript, and without the taking of additional evidence.

A conference was held on September 12, 2023, and the Department and Respondents RSA and Tseng agreed to a briefing schedule. The Department submitted its brief on October 10, 2023. RSA and Tseng submitted their brief on November 9, 2023, and the Department submitted a Reply Brief on November 22, 2023.

PROPOSED DECISION

ALJ Brown’s Proposed Decision addressed four issues: 1) the amount of restitution owed to the Beverage Container Recycling Fund; 2) the amount of civil penalties; 3) whether respondents Perez and Tseng are personally liable for the restitution, interest, and civil penalties; and, 4) whether res judicata/collateral estoppel apply to criminal plea agreements entered into by RSA and Perez.

DECISION AND ORDER

ALJ Brown found that res judicata/collateral estoppel applied to the criminal plea agreements entered into by RSA and Perez and found Tseng and Perez personally liable for restitution, interest, and civil penalties. Respondents were ordered to pay a civil penalty in the amount of \$4.5 million.

Respondents were further ordered to pay restitution in the amount of \$176,523.51 in connection with Count 1 of the First Amended Accusation, an amount established by the evidence and not disputed at hearing. The Department sought restitution of \$80,239,183.43 and interest of \$6,369,154.22 in connection with Count 2 of the First Amended Accusation. However, ALJ Brown ordered restitution in the reduced amount of \$8 million and interest in the commensurately reduced amount of \$600,000.

PARTIAL REJECTION OF PROPOSED DECISION

On August 8, 2023, Department Director Rachel Machi Wagoner issued her Rejection. The Director rejected portions of the Proposed Decision relating to the calculation of restitution and interest only. All other portions of the Proposed Decision were adopted, including factual findings and legal analysis in connection with the issues of res judicata/claim estoppel, personal liability, and civil penalties.

Consistent with the Rejection, this Decision and Order addresses only the legal issue of calculation of restitution and interest. As discussed below, there is no statutory basis for the reduction of restitution and interest. Therefore, this Decision and Order maintains restitution in the amount of \$176,523.51 under Count 1 of the First Amended Accusation and restores restitution in the amount of \$80,239,183.43 and interest in the amount of \$6,369,154.22 under Count 2 of the First Amended Accusation.

RESTITUTION AND INTEREST UNDER THE ACT

The California Beverage Container Recycling and Litter Reduction Act (Act) is designed to create and maintain a marketplace for the recycling of beverage containers. (Pub. Res. Code Section 14501(f).) It provides detailed recordkeeping and reporting requirements for beverage container “processors” such as Respondents (see Pub. Res. Code Section 14518.), as well as detailed requirements for the Act’s administration and enforcement. (Pub. Res. Code Sections 14530—14556, 14590—14599.) Throughout the Act are woven provisions authorizing the Department to obtain restitution for monies paid out on fraudulent or otherwise illegal claims.

Public Resources Code Section 14597, subdivision (b), prohibits the submission of fraudulent claims to the Department and authorizes it to “take action for full restitution for a fraudulent claim, pursuant to Section 14591.4.” It defines a “fraudulent claim” as “a claim based in whole or in part on false information or falsified documents.”

Section 14591.2, subdivision (c), paragraph (5) authorizes the department to take disciplinary action against responsible party for “collection of amounts in restitution of any money improperly paid to the certificate holder or registrant from the fund.”

Section 14591.4, subdivision (a), states:

“In addition to any other remedies, penalties, and disciplinary actions provided by this division or otherwise, the department may seek restitution of any money illegally paid to any person from the fund, plus interest at the rate earned on the Pooled Money Investment Account of the total amount.”

Section 14591.4 subdivision (b), states:

“A certificate holder is liable to the department for restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2 for payments made by the department to the certificate holder that are based on improperly prepared or maintained documents, as specified in ... paragraph (8) of subdivision (b) of Section 14539.”

Section 14539, subdivision (d)(8), requires processors to prepare and maintain documents including shipping reports, processor invoice reports, and weight tickets. (PRC section 14539, subd. (d)(8)(A), (d)(8)(B) & (d)(8)(I).)

Finally, Section 14539 subdivision (e), provides that The Department “may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, payments made by the department to the processor pursuant to Section 14573 that are based on the documents specified in paragraph (8) of subdivision (d), that are not prepared or maintained in compliance with the department’s regulations, and that do not allow the department to verify claims from program payments.”

LEGAL ANALYSIS

Sections 14597 & 14591.4

Section 14597 provides that the Department “may take action for full restitution for a fraudulent claim”.

“Fraudulent claim” is expressly defined by section 14597: “a fraudulent claim is a claim based in whole *or in part* on false information or falsified documents...” (emphasis added). (PRC section 14597(b).) “Restitution” is not expressly defined, but section 14591.4 clarifies that the Department is entitled to restitution “of any money illegally paid”.

Section 14597 is clear- a claim that includes any number of falsified documents is a fraudulent claim. As it is the entire claim that is fraudulent, and therefore illegal, the whole payment made in connection with that claim is also illegal.

Section 14539 & 14591.2

Section 14539 subdivision (e), provides that the Department “may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, payments made by the department to the processor pursuant to Section 14573.5 that are based on the documents specified in paragraph (8), that are not prepared or maintained in compliance with the department’s regulations, and that do not allow the department to verify claims from program payments.”

Section 14539 makes clear that the Department may recover, in restitution, payments based upon inaccurate or fraudulent documents.

Respondents' Fraudulent Claims

Here, Respondent's claims were based, at least in part, upon falsified documents. Each claim filed by Respondents in connection with Count 2 was comprised of three types of documents: 1) a fabricated weight ticket; 2) a DR6 Shipping Report based on a fabricated weight ticket; and, 3) a DR7 Processor Invoice. Each DR6 was a claim, and each DR7 amalgamated multiple DR6 claims for payments purposes. (Proposed Decision, Factual Findings, pp. 17-18, Pars. 36 and 38, p. 27-28, Par. 58, and p. 31, Par. 67; see also Dept. Exhibits 25 and 25.)

The total of the fraudulent DR6's is \$56,676,921.72, whereas the total of the fraudulent DR7s is \$80,239,183.43. (Proposed Decision, Factual Findings, p. 17, Par. 36, pp. 27-30, Pars. 58-61.) Respondents fabricated 44,045 weight tickets which they used to support 44,045 fraudulent DR6s. Those DR6s were attached to 2,706 DR7s claiming a total of \$80,239,183.43. (Proposed Decision, Factual Findings, p. 17, Par. 36, pp. 27-30, Pars. 58-61.)

As each DR7 invoice was based, in part, upon fabricated weight tickets, each DR7 is considered fraudulent in its entirety. (Pub. Res. Code section 14597.) Likewise, the Department's payments in connection with these fraudulent claims were illegal, *in their entirety*. Therefore, the Department is authorized to recover the full value of those illegal payments, or \$80,239,183.43.

Section 14591.2 further clarifies that the Department may collect amounts in restitution of "any money improperly paid". Had the Department discovered Respondents' falsifications prior to the claims being paid, it would have been authorized to deny them outright and in their entirety. (PRC Section 14553(d)(2).) Since Respondents' fraud had not yet been discovered, the claims were paid. But since those payments were based upon fraudulent documents, they were improper. Payments made in connection with fraudulent claims are "money improperly paid to the certificate holder" and the Department is plainly authorized to recover them. (PRC section 14591.2(c)(5).)

Finally, section 14539 provides that the Department may recover payments made to a processor that are based upon improperly prepared documents, and that do not allow the Department to verify claims for program payments. (PRC section 14539(e).) As each of Respondents' claims were shown to be based on falsified weight tickets, those claims are not only unverified, they are conclusively fraudulent. As such, the payments made in connection with these claims may be recovered in their full amounts.

The plain language of sections 14597 and 14539, as well as their related statutes, clearly authorize the Department to recover the full value of monies paid in connection with fraudulent claims. Therefore, respondents must pay restitution in the amount of the 2,706 DR7s, or \$80,239,183.43.

Interest

Section 14591.4, subdivision (a), provides that in addition to restitution, the Department is entitled to recover "interest at the rate earned on the Pooled Money Investment Account of the total amount." Therefore, Respondents shall be ordered to pay interest on the total restitution award of

\$80,239,183.43 in the amount of \$6,369,154.22 at the rate earned on the Pooled Money Investment Account.

No Statutory Basis to Reduce Restitution and Interest

In her Proposed Decision, ALJ Brown reduces the amount of restitution for Count 2 from \$80,239,183.43 to \$8,000,000, with a commensurate reduction in interest. (Proposed Decision, pp.27-28, Par. 60-61.) ALJ Brown opined it would be “excessive and unfair” to assess the entirety of the \$80,239,183.43 considering the criminal restitution order against RSA and Tseng’s financial condition. (Ibid.) However, ALJ Brown does not cite any statutory authority or other legal basis for the reduction.

As discussed above, the Act’s restitution statutes provide a broad basis for the recovery of monies paid out on fraudulent or otherwise illegal claims. The statutory scheme provided by the Act, however, provides no basis for the reduction of restitution. Rather, full restitution may be sought at the discretion of the Department. ALJ Brown’s reductions based on fairness and financial condition have no basis in the Act—therefore, they must be rejected.

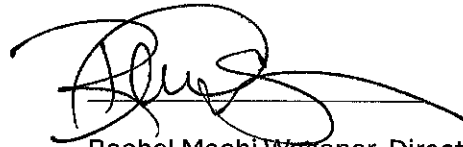
ORDER

Respondents RSA, Tseng, and Perez are hereby ordered to pay restitution to the Department in the amount of \$176,523.51 under Count 1 of the First Amended Accusation, jointly and severally.

Respondents RSA, Tseng, and Perez are hereby ordered to pay restitution to the Department in the amount of \$80,239,183.43 under Count 2 of the First Amended Accusation, jointly and severally.

Respondents RSA, Tseng, and Perez shall pay interest in the amount of \$6,369,154.22 under Count 2 of the First Amended Accusation, jointly and severally.

Dated: 2/15/24



Rachel Machi Wagoner, Director
Department of Resources Recycling
and Recovery