BEFORE THE
DEPARTMENT OF RESOURCES, RECYCLING & RECOVERY
OF THE STATE OF CALIFORNIA

IN THE MATTER OF ACCUSATION AGAINST:

Mission Fiber – Various Respondents

Address:

Type of Entity: Revocation of Probationary Certificate

File No.: 2009-001
OAH No. 2011100370
Certificate Nos.:
PRECEDENTIAL DECISION No.: 23-13

Designation of decision as precedential under Government Code Section 11425.60

Pursuant to Government Code Section 11425.60, the Department of Resources, Recycling and Recovery hereby designates as precedential its decision, dated June 4, 2014, in the above-referenced action.

This decision is designated precedential effective September 10, 2023,

Sacramento, California.

Dated: September 10, 2023.

As approved by Rachel Machi Wagoner on September 10, 2023,

Department of Resources, Recycling & Recovery.

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF THE ACCUSATION AGAINST:

MISSION FIBER GROUP, INC., an Arizona corporation registered and doing business in California as a foreign corporation,

BENZ MISSION FIBER, LLC, an Arizona limited liability company registered and doing business in California as a foreign limited liability company,

BENZ MISSION FIBER, an entity of unknown legal structure, unregistered but doing business in California,

OGO TRADING, LLC, an Arizona limited liability company registered and doing business in California as a foreign limited liability company,

MISSION, INC., an Arizona corporation doing business in California,

DAVID SCOTT ANDERSON, aka SCOTT ANDERSON, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, and BENZ MISSION FIBER,

STEPHEN MATTHEW COLLINS, aka MATT COLLINS, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, and BENZ MISSION FIBER,

TONI D. ANDERSON, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, and BENZ MISSION FIBER,

OAH Case No. 2011100370

DOC Case No. 2009-001

DECISION

BURBANK RECYCLING, INC., a California corporation operating as a certified processor under certificate number PR0391 and as a certified recycling center under certificate number RC12333,

GEOFFREY PAUL FOLSOM, aka GEOFF FOLSOM, individually and as the principal, owner, partner, member, director, president, and operator of BURBANK RECYCLING, INC.,

and

BEN SUNG, individually and as vice president of sales and marketing, and an officer of, BURBANK RECYCLING, INC.,

Respondents.

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted by the California Department of Resources Recycling and Recovery, along with the corrections made pursuant to Gov. Code §11517(c)(2)(C), also attached hereto, as its Final Agency Decision in the above-entitled matter.

This Final Agency Decision will become effective on June 4, 2014.

IT IS SO ORDERED.

Department of Resources Recycling And Recovery
State of California

Dated: 6/4/2014

Caroll Mortensen, Director
California Department of Resources
Recycling and Recovery

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF THE ACCUSATION AGAINST:

MISSION FIBER GROUP, INC., an Arizona corporation registered and doing business in California as a foreign corporation,

BENZ MISSION FIBER, LLC, an Arizona limited liability company registered and doing business in California as a foreign limited liability company,

BENZ MISSION FIBER, an entity of unknown legal structure, unregistered but doing business in California,

OGO TRADING, LLC, an Arizona limited liability company registered and doing business in California as a foreign limited liability company,

MISSION, INC., an Arizona corporation doing business in California,

DAVID SCOTT ANDERSON, aka SCOTT ANDERSON, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, and BENZ MISSION FIBER,

STEPHEN MATTHEW COLLINS, aka MATT COLLINS, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, and BENZ MISSION FIBER,

TONI D. ANDERSON, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, and BENZ MISSION FIBER,

OAH Case No. 2011100370

DOC Case No. 2009-001

CORRECTIONS TO THE PROPOSED DECISION

[Gov. Code §11517(c)(2)(C)]

BURBANK RECYCLING, INC., a California corporation operating as a certified processor under certificate number PR0391 and as a certified recycling center under certificate number RC12333,

GEOFFREY PAUL FOLSOM, aka GEOFF FOLSOM, individually and as the principal, owner, partner, member, director, president, and operator of BURBANK RECYCLING, INC.,

and

BEN SUNG, individually and as vice president of sales and marketing, and an officer of, BURBANK RECYCLING, INC.,

Respondents.

Pursuant to Gov. Code 11517(c)(2)(C), the Department of Resources Recycling and Recovery makes the following corrections to the Proposed Decision issued in this matter on March 15, 2014 by the Honorable Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, which is adopted otherwise in its entirety as the Final Agency Decision in the above captioned matter.[1]

Corrections to the Factual Findings are as follows:

Paragraph 18, page 8, is corrected to read:

"18. The Department contends that all of the 2,013 DR6 and 87 DR7 claim forms submitted by Respondents Mission Fiber Group and BRI from August 1, 2004 through October 31, 2007, were fraudulent claims that violated the Act[2] because Respondent Mission Fiber Group included false information in the claim forms. The Department asserts that they used certification number CP0359 and address 416 North Dennison Road, Tehachapi, California, which both belonged to Tehachapi. Respondent Mission Fiber Group also was not certified by the Department to file claims for CRV and

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[1] Citations to paragraphs in the Proposed Decision are denominated as follows: Factual Findings are noted as "¶xx Facts, page xx," whereas Legal Conclusions are noted as "¶xx Law, page xx."

[2] The Act (California Beverage Container Recycling and Litter Reduction Act) is found at Public Resources Code §14500 et seq. The Department's Regulations are found in the California Code of Regulations, title 14, §2000 et seq. The Beverage Container Recycling Fund (Fund) was created pursuant to Public Resources Code §14580.

processing payments. The Department also contends that all of the CRV claims filed and submitted by Respondents Mission Fiber and BRI violated the Act because the claims were based on ineligible material, including out-of-state plastic beverage containers. Finally, the Department contends that Respondent BRI failed to inspect 589 loads of plastic beverage containers upon which Respondent Mission Fiber Group filed CRV claims between August 1, 2007 and September 30, 2007."

The basis for this correction is the supplemental count set forth in the Supplement to the First Amended Accusation, pages 1-2.

Paragraph 72, page 24, is corrected to read:

"72. A preponderance of the evidence established that from June 1, 2006 through October 31, 2007, Respondents Mission Fiber and BRI submitted 1,903 DR6 forms and 49 DR7 forms to claim CRV, processing payments and administrative fees that were based on ineligible out-of-state PET and HDPE plastic beverage containers. A preponderance of the evidence also established that from August 1, 2004 to May 31, 2006, Respondents Mission Fiber and BRI submitted 110 DR6 forms and 38 DR7 forms to claim CRV, processing payments and administrative fees on material that was ineligible due to the fact that the beverage containers had been previously redeemed and/or previously baled."

The basis for this correction is the established fact that no certified processor sells bales of sorted eligible beverage containers without first claiming CRV, processing payments, and administrative fees. CRV recovery is the primary source of income for processors. (¶17 Facts, page 8; ¶52 Facts, page 18; ¶62 Facts, page 21; ¶63 Facts, page21; ¶68 Facts, page 23; ¶4 Law, page 34; ¶12 Law, page 36; ¶22 Law, page 39; ¶27 Law, page 40; ¶36 Law, page 43.)

Paragraph 73, page 24, is corrected to read:

"73. In two counts of the First Amended Accusation the Department seeks to invalidate all of Respondents Mission Fiber Group and BRI's CRV claims from August 1, 2004 through October 31, 2007, based on ineligible out-of-state plastic beverage containers. The Department argued that Respondent Mission Fiber Group had no legitimate source of recyclable materials, other than the out-of-state beverage containers, and therefore all of the claims for CRV must have been based on ineligible out-of-state plastic containers. The evidence only established that Respondent Mission Fiber Group began purchasing out-of-state plastic containers in approximately June 2006. It was not

conclusively demonstrated by the Department that prior to June 2006, the Respondent Mission Fiber Group included ineligible out-of-state beverage containers in its CRV claims filed with the Department. The Department added a count, however, as set forth in the Supplement to the First Amended Accusation, that all claims made by Respondents, or any of them, during the period August 1, 2004 to October 31, 2007 were submitted on ineligible material. Ineligible material includes, but is not limited to, out-of-state beverage containers, previously redeemed beverage containers, previously baled beverage containers, line breakage, and rejected containers."

The basis for this correction is set forth in the supplemental count set forth in the Supplement to the First Amended Accusation, pages 1-2. Moreover, the material upon which Respondents filed claims for CRV, processing payments, and administrative fees had no redemption value, whether due to the out-of-state nature or the fact that CRV had already been claimed on the containers. In either case, the beverage containers had no CRV to claim. (¶52 Facts, page 18; ¶62 Facts, page 21; ¶4 Law, page 34.)

Paragraph 79, page 26, is corrected to read:

"79. Respondents BRI, Folsom and Sung knew or should have known that Respondent Mission Fiber Group was claiming CRV on ineligible material, including but not limited to out-of-state plastic beverage containers. Respondents Folsom and Sung have extensive experience in the recycling industry, including expertise and knowledge regarding the operation of MRFs and the production capabilities of a MRF. Respondent Folsom operated and designed MRFs in California and is very familiar with the content of MRF residue. Respondent Sung served as the quality inspector for Respondent BRI and was very familiar with Respondent BRI's suppliers and buyers and the recycled material being purchased or sold by Respondent BRI. Respondent Folsom operated a MRF in Burbank, California and was very familiar with the content of MRF residue and how much PET remained in MRF residue. Both he and Respondent Sung are very familiar with the market for recycled plastic containers and the production capabilities of recycling centers and MRFs throughout California, especially, Southern California facilities. There was no facility in California, MRF or recycling center, producing the volume of PET and HDPE plastic beverage containers that Respondent Mission Fiber Group claimed they were producing at the Long Beach Yard by manually sorting MRF

residue. There is no reasonable basis for Respondents Folsom or Sung to assert that they believed Respondent Mission Fiber Group was producing the PET and HDPE volume they claimed in their DR6 forms solely by manually sorting MRF residue at the Long Beach Yard."

The basis for this correction is the expertise and extensive experience of both Respondent Folsom and Respondent Sung regarding the recycling industry. Both Folsom and Sung are sophisticated business men operating a regulated business. Both understand and exploit the economics of the recycling industry. Accordingly, a preponderance of the evidence has established that Respondents Folsom and Sung knew or should have known that the sources of Respondent Mission Fiber Groups material had already claimed the redemption value on the beverage containers, if any had existed. (¶¶20-25 Facts, pages 9-10; ¶30 Facts, page 11; ¶42 Facts, page 15; ¶¶51-63 Facts, pages 18-21.)

Paragraph 90, page 30, is corrected to read:

"90. A preponderance of the evidence established that Respondents BRI, Folsom and Sung knew or should have known that Respondents Mission Fiber Group, Anderson and Collins were purchasing plastic beverage containers from origins outside of the State of California and claiming CRV on this ineligible material. A preponderance of the evidence also established that Respondents BRI, Folsom and Sung knew or should have known that Respondents Mission Fiber Group, Anderson, and Collins were purchasing plastic beverage containers that were otherwise ineligible for redemption of CRV, processing payments, and administrative fees."

The bases for this correction is discussed above regarding the corrections to Fact paragraphs 18, 72, 73, and 79, which are incorporated by reference.

The Department must emphasize that the findings of fact and conclusions of law found by Judge Scarlett establish far beyond a preponderance of the evidence that each Respondent, i.e., Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Stephen Matthew Collins, Burbank Recycling, Inc., Geoffrey Paul Folsom, and Ben Sung, performed a unique and essential role in their unlawful enterprise, thereby effectuating this massive fraud perpetrated against the Fund. In fidelity to the Act, Regulations, and the public policy articulated by Public Resources Code 14595, each Respondent shall be held accountable for their

individual and collective conduct.

Given the foregoing corrections, as well as the remainder of the Proposed Decision, the Order is corrected as follows:

Paragraph 4 of the Order, page 54, is corrected to read:

"4. Respondents Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Stephen Matthew Collins, Burbank Recycling, Inc., Geoffrey Paul Folsom, and Ben Sung shall immediately and permanently cease and desist from any and all direct and indirect transactions involving the purchase, sale, transfer, storage, or brokerage of beverage containers, whether or not eligible for redemption of CRV, including out-of-state containers, cancelled containers, previously redeemed containers, previously baled containers, rejected containers, and line breakage, regardless of whether the containers are loose or baled."

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THE FOREGOING CORRECTIONS TO THE PROPOSED DECISION ARE SO ORDERED.

Dated: 6/4/2014

Caroll Mortensen, Director
California Department of Resources
Recycling and Recovery

BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY[1]
STATE OF CALIFORNIA

In the Matter of First Amended Accusation Against: MISSION FIBER GROUP, INC., an Arizona corporation registered and doing business in California as a foreign corporation, BENZ MISSION FIBER, LLC, an Arizona limited liability company registered and doing business in California as a foreign limited liability company, BENZ MISSION FIBER, an entity of unknown legal structure, unregistered but doing business in California, OGO TRADING, LLC, an Arizona limited liability company registered and doing business in California as a foreign limited liability company, MISSION, INC., an Arizona Company doing business in California, DAVID SCOTT ANDERSON, aka SCOTT ANDERSON, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, AND BENZ MISSION FIBER, STEPHAN MATTHEW COLLINS, aka MATT COLLINS, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER	Case No. 2009-001 OAH No. 2011100370

[1] The State Agency name was changed from the Department of Conservation, Division of Recycling to the Department of Resources, Recycling and Recovery after the First Amended Accusation was issued.

GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, AND BENZ MISSION FIBER,

TONI ANDERSON, individually and as principal, owner, partner, member, director, officer, and operator of MISSION FIBER GROUP, INC., OGO TRADING, LLC, MISSION, INC., BENZ MISSION FIBER, LLC, AND BENZ MISSION FIBER,

BURBANK RECYCLYING, INC., a California corporation operating as a certified processor under certificate number PR0391, and as a certified recycling center under certificate number RC12333,

GEOFFREY PAUL FOLSOM, aka GEOFF FOLSOM, individually and as the principal, owner, partner, member, director, president, and operator of BURBANK RECYCLING, INC.,

And

BEN SUNG, individually and as vice president of sales and marketing, and an officer of BURBANK RECYCLING, INC.,

Respondents.

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in Los Angeles, California on October 29-31, 2012, November 1-2; 5-9; 13-15; 19-20; and 26-29, 2012.

Jeffrey Diamond and Linda Thepot, Senior Staff Counsel, represented Complainant Department of Resources Recycling and Recovery (Department or DRRR). John Purcell, Attorney at Law, represented Respondent Burbank Recycling, Inc. (Respondent BRI), Geoffrey P. Folsom (Respondent Folsom) and Ben Sung (Respondent Sung) who were present at the hearing. Respondent Stephen Matthew Collins, aka Matt Collins (Respondent

Collins) appeared in pro per and represented himself. Respondents David Scott Anderson (Respondent Anderson) and Respondent Toni Anderson (Respondent T. Anderson) did not appear at hearing and was not represented counsel.

Oral and documentary evidence was received and the record was left open until March 15, 2013, to allow the parties to file post-hearing briefs (written closing arguments). All parties timely filed their post-hearings briefs and the matter was submitted for decision on March 15, 2013.[2]

SUMMARY OF DECISION

Respondents Mission Fiber Group and BRI recycled plastic beverage containers and submitted claims for California Refund Value (CRV), processing payments and administrative fees to the Department from August 1, 2004 through October 31, 2007. In October 2007, the Department noticed a significant spike in claims filed for CRV using certification number CP0359 belonging to Tehachapi Recycling, Inc. (Tehachapi). A subsequent investigation revealed that Respondents Mission Fiber Group and BRI had filed $48,694,282.31 in claims for CRV, processing payments and administrative fees using certification number CP0359. The evidence established that Respondent Mission Fiber Group, who claimed that they were in partnership with Tehachapi Recycling, Inc., had purloined certification number CP0359 without Tehachapi Recycling, Inc.'s knowledge or authorization. Respondent Mission Fiber Group was also not certified in any capacity by the Department to file claims for CRV or processing payments. The evidence also established that Respondent Mission Fiber Group filed claims for CRV and processing payments based on ineligible out-of-state plastic beverage containers from June 1, 2006 through October 31, 2007. Accordingly, Respondent Mission Fiber Group violated the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code section 14500 et seq. (Act),[3] by filing false and fraudulent claims for CRV and processing payments based on ineligible out-of-state plastic beverage containers.

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[2] Respondents Anderson and T. Anderson filed post-hearing briefs which were received by OAH on March 19, 2013, and March 18, 2013, respectively. Respondents Anderson and T. Anderson failed to appear at hearing and the hearing proceeded against these Respondents in default. Consequently, their post-hearing briefs will not be considered. Respondent T. Anderson also filed miscellaneous letters with OAH addressed to the ALJ dated February 9, 2013, March 14, 2013, March 26, 2013 (file date undated letter), and April 5, 2013. These documents are deemed post-hearing ex parte communications which will not be considered. They are also inadmissible because Respondent T. Anderson failed to appear at hearing and the Department proceeded against her in default. The Department was deprived of the ability to call Respondent T. Anderson as a witness or to cross-examine her regarding any of these documents, which renders any consideration of these documents prejudicial to the Department.

[3] All further statutory references shall be to the Public Resources Code unless otherwise specified.

Respondent BRI, as the certified processor, submitted all of Respondent Mission Fiber Group's claims for CRV and processing payments to the Department. Respondent BRI had an exclusive purchasing agreement with Respondent Mission Fiber Group to purchase all of its recycled material. The evidence established that Respondent BRI knew or should have known that Respondent Mission Fiber Group was not authorized to file claims for CRV and processing payments and that they were not certified by the Department. Respondent BRI also knew or should have known that Respondent Mission Fiber Group was purchasing out-of-state plastic beverage containers and claiming CRV on this material. The evidence also established that Respondent BRI failed to inspect 589 loads of plastic beverage containers upon which CRV claims were submitted from August 1, 2007 through September 30, 2007. Accordingly, Respondent BRI violated the Act by submitting false and fraudulent claims for CRV, processing payments and administrative fees to the Department.

The conduct by the aforementioned Respondents, detailed hereafter, caused millions of dollars in damages to the California Beverage Container Recycling Fund (Fund)(Public Res. Code §§ 14512.7 and 14580).

FACTUAL FINDINGS

I. Jurisdiction

1. Pursuant to the Act, and California Code of Regulations, title 14, section 2000 et seq. (Regulations), on March 9, 2009, the Department issued the First Amended Accusation by and through Stephen M. Bantillo, Assistant Director for Recycling, exclusively in his official capacity. On November 13, 2012, the Department issued a "Supplement to the First Amended Accusation."

2. On May 4, 2009, Notices of Defense were filed on behalf of Respondents Mission Fiber Group, Inc., Mission, Inc., Benz Mission Fiber, LLC, OGO Trading, LLC, and Benz Mission Fiber, Anderson, Collins, BRI, Folsom and Sung. On May 1, 2009, a Notice of Defense was filed on behalf of Respondent T. Anderson. The Department filed and served on all Respondents a Third Amended Notice of Hearing on September 5, 2012.

3. Respondents Anderson and T. Anderson failed to appear at hearing and there was no appearance on their behalf by legal counsel. Proper and effective Notice of Hearing was served on both Respondents. The hearing on the First Amended Accusation proceeded against Respondents Anderson and T. Anderson as a default proceeding pursuant to Government Code section 11520.

4. On October 25, 2012, Respondent T. Anderson filed an ex parte Motion to Dismiss the First Amended Accusation on the grounds that she did not hold an office or employment position within Respondent Mission Fiber Group, Inc., even though she admitted that she received payroll checks from Respondents Anderson and Mission Fiber

Group, Inc. On October 24, 2012, Respondent T. Anderson submitted a second letter detailing her employment occupation and community activities which she claimed took all of her time and precluded her from being involved in Respondent Mission Fiber Group's operation. She also included character references in support of her motion. On the first day of hearing, the ALJ provided Respondent T. Anderson's Motion to Dismiss to the parties. The Department opposed the motion on the grounds that Respondent T. Anderson was a "responsible party" under the Act because she accepted substantial amounts of money in salary payments from Respondents Anderson and Mission Fiber Group, Inc. The ALJ denied Respondent T. Anderson's Motion to Dismiss, determining that a factual dispute existed as to whether Respondent Anderson was a "responsible party" under the Act, and therefore she is properly named as a respondent in this case. A ruling on whether Respondent T. Anderson was a responsible party was deferred until after a full evidentiary hearing and Proposed Decision. The parties were afforded the opportunity to offer evidence at hearing and to respond in writing to Respondent T. Anderson's the motion post-hearing. The Department timely filed its written opposition to Respondent T. Anderson's Motion to Dismiss on February 4, 2013. Respondents BRI and Collins declined to take any position on the motion.

5. Jurisdiction to proceed against all Respondents was established and this hearing ensued.

II. The Parties

6. The Department is responsible for administration of the Act, including but not limited to, managing the Fund; adopting regulations (Public Res. Code § 14530.5); conducting audits and investigations (Public Res. Code § 14552); and imposing discipline (Public Res. §§ Code sections 14591-14597). The Regulations adopted by the Department are in furtherance of the Act and are set forth at California Code of Regulations, title 14, sections 2000-2985, inclusive.

7. Respondent Mission Fiber Group, Inc. was at all times relevant to the allegations in the First Amended Accusation a corporation organized under the laws of the State of Arizona and was registered in California as a foreign corporation. Respondent Mission, Inc. was at all times relevant to the allegations in the First Amended Accusation a corporation organized under the laws of the State of Arizona. On April 8, 2008, the State of Arizona administratively dissolved Respondent Mission, Inc. Respondents Benz Mission Fiber, LLC and OGO Trading, LLC, were at all times relevant to the allegations in the First Amended Accusation limited liability companies organized under the laws of the State of Arizona and registered in California as foreign limited liability companies. Respondent Benz Mission Fiber was at all times relevant to the allegations in the First Amended Accusation an entity of unknown legal structure, and was unregistered in the State of California. Respondents Mission Fiber Group, Inc., Mission, Inc., Benz Mission Fiber, LLC, OGO Trading, LLC, and Benz Mission Fiber, are hereafter collectively referred to as "Respondent Mission Fiber Group."

8. Respondent Anderson was at all times relevant to the allegations in the First Amended Accusation a principal, owner, director, and operator of Respondent Mission Fiber Group. Respondent Anderson was a "responsible party" pursuant to section 14591.2, subdivision (a), and an "operator" as defined by the Department's Regulations at section 2000, subdivision (a)(33).[4]

9. Respondent Collins was at all times relevant to the allegations in the First Amended Accusation a principal, member, director, and officer of Respondent Mission Fiber Group. Respondent Collins served as president, vice president, treasurer, and secretary for Respondent Mission Fiber Group. Respondent Collins is a "responsible party" under the Act, who actively directed, controlled, and personally participated in the day-to-day operation and management of the business affairs of Respondent Mission Fiber Group.

10. Respondent T. Anderson, the wife of Respondent Anderson, is not a "responsible party" under the Act, as will be further discussed in Factual Findings 35 and 36 below. It was not established that she an owner, principal, member, officer, director, operator or managing employee of Respondent Mission Fiber Group.

11. Respondents Mission Fiber Group, Anderson, Collins and T. Anderson have never been certified in any capacity by the Department to claim or receive CRV or processing payments for recycled materials in the State of California.

12. Respondent BRI was at all times relevant to the allegations in the First Amended Accusation a corporation organized under the laws of the State of California, as well as a certified processor under the certified processor number PRO391 and a certified recycling center under the certified recycling number RC12333. Both the processing facility and the recycling center were located at 500 South Flower Street, Burbank, California. Respondent BRI was an "operator" as defined by the Department's Regulations at section 2000, subdivision (a)(33). Respondent Folsom was at all times relevant to the allegations in the First Amended Accusation a principal, owner, partner, member, director, president, and operator of Respondent BRI. Respondent Folsom is an "operator" and "responsible party" under the Act. Respondent Sung was at all times relevant to the allegations in the First Amended Accusation the vice president of sales and marketing for Respondent BRI. As an officer of Respondent BRI, Respondent Sung is a "responsible party" who actively directed, controlled, and personally participated in the day-to-day operation and management of the business affairs of Respondent BRI.

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[4] Section 14591.2, subdivision (a), provides that a "responsible party" includes, but is not limited to, the certificate holder, registrant, officer, director, or managing employee. Section 2000, subdivision (33), of the Regulations defines "operator" as the person(s) or entity who has ultimate responsibility for a recycling facility, processing facility, dropoff or collection program, or community service program.

III. California's Beverage Container Recycling Program

13. The Act establishes a process by which certified recycling centers pay CRV to consumers for empty eligible beverage containers and later submit claims for reimbursement for those payments. Certified collection programs do not pay out CRV but may claim CRV on eligible beverage containers that they acquire by purchase, donation, collection, or by sorting the containers from waste streams. A certified recycling center or certified collection program sells the CRV eligible material to a certified processor who inspects the empty beverage containers, cancels the CRV eligibility, and sells the material to an end user. The certified processor gathers together the claims made by certified recycling centers and certified collection programs and forwards the claim forms to the Department for payment.

14. The sale of empty eligible beverage containers from a certified recycling center or certified collection program to a certified processor is evidenced by a DR6 shipping report (DR6 form), a form created by the Department to document the receipt of material by a processor and forms the basis for payments by the Department pursuant to the Act. (Cal. Code Regs., tit. 14, § 2000, subd. (a)(44).) The certified processor is responsible for preparing the DR6 except when the shipper is a certified recycling center. (Pub. Resources Code, § 14539, subd. (b)(8)(A); *see also* Cal. Code Regs., tit. 14, §§ 2420, subd. (a), and 2425, subd. (e).) In either case, the following information is set forth on the DR6 form: the company name, address, certification number, and the shipper's contact person, as well as the redemption weight and the CRV amount.

15. The certified processor who receives the shipment weighs the load, inspects the empty beverage container material in accordance with the Act and Regulations to determine if it qualifies for CRV payment, enters the received weight and weight ticket number on the DR6 form, and calculates the CRV amount and processing payment due to the shipper, as well as the administrative fees due to the processor. The certified processor is required to pay the CRV and processing payments to the certified recycling center or the certified collection program within two working days. (Pub. Resources Code § 14573.5, subd. (b).) The processor then aggregates a batch of DR6 forms to make a claim on the Fund for CRV, processing payments, and administrative fees, thereby obtaining reimbursement for the monies it previously paid out for CRV and processing payments. The form used by the processor to compile and claim those amounts is the DR7 processor invoice report (DR7 form). The DR7 form was created by the Department so that it could determine the correct payment to be made to a certified processor. (Cal. Code Regs., tit. 14, § 2000, subd. (a)(35.1).) The processor calculates the total redemption weight, total CRV amount, total processing payment, and total administrative fees based on the batch of DR6 forms submitted with the DR7 form. Both the DR6 and DR7 forms are signed under penalty of perjury.

16. The completed DR6 and DR7 forms are sent to IKON Office Solutions, Inc. (IKON) Sacramento, California. IKON is under contract with the Department to process all claims for CRV, processing payments, and administrative fees. The Department's billing cycle runs from the first day of the month to the last day of the month.

IV. Respondents Mission Fiber Group and BRI's CRV Claims and the Contentions of the Parties

17. On October 3, 2007, the Department placed a hold on all CRV claims filed by Respondent Mission Fiber Group using certification number CP0359. The Department noticed a large spike in claims for CRV and processing payments filed by Respondent Mission Fiber Group and submitted by Respondent BRI. The Department notified Respondent BRI that it would be withholding payment on all claims until a review and investigation of Respondent Mission Fiber Group's CRV claims could be concluded. From August 1, 2004 through October 31, 2007, Respondents Mission Fiber Group and BRI submitted 2,013 DR6 forms using Tehachapi certification number CP0359. The 2,013 DR6 forms were attached to 87 DR7 forms for CRV, processing payments and administrative fees for a total of $48,694,282.31. At the time the Department's hold was placed, 1,434 DR6 claims had already been paid for the period August 1, 2004 through August 16, 2007, for a total of $31,958,436.23 in CRV and processing payments. The Department had already paid Respondent BRI for 77 DR7 claims for the same period for a total of $695,685.68 in administrative fees. As a result of its investigation, the Department denied 579 DR6 claim for the period from August 16, 2007 through October 31, 2007 for total of $15,695,301.02 in CRV and processing payments. For the same period, the Department denied 10 DR7 claim for a total of $344,859.38 in administrative fees.

18. The Department contends that all of the 2,013 DR6 and 87 DR7 claim forms submitted by Respondents Mission Fiber Group and BRI from August 1, 2004 through October 31, 2007, were fraudulent claims that violated the Act because Respondent Mission Fiber Group included false information in the claim forms. The Department asserts that they used certification number CP0359 and address 416 North Dennison Road, Tehachapi, California, which both belonged to Tehachapi. Respondent Mission Fiber Group also was not certified by the Department to file claims for CRV and processing payments. The Department also contends that all of the CRV claims filed and submitted by Respondents Mission Fiber and BRI violated the Act because the claims were based on ineligible out-of-state plastic beverage containers. Finally, the Department contends that Respondent BRI failed to inspect 589 loads of plastic beverage containers upon which Respondent Mission Fiber Group filed CRV claims between August 1, 2007 and September 30, 2007.

19. Respondents Mission Fiber Group, Anderson and Collins contend that "Benz Mission Fiber" was doing business as (dba) Tehachapi and was authorized to use Tehachapi's certification number CP0359. They argue that their CRV claims were based on plastic beverage containers extracted from Material Recovery Facility (MRF) residue (material remaining after recyclable material is removed through the sorting process) obtained from MRFs throughout California. Respondents BRI, Folsom and Sung contend that they believed Respondent Mission Fiber Group was in partnership with Tehachapi and were unaware that any out-of-state plastic beverage containers were included in the claims for CRV. They also argue that they conducted their material inspections in accord with the inspection arrangement authorized by the Department for Respondent Mission Fiber Group's Long Beach facility.

V. Case Background

A. Respondents BRI, Folsom and Sung

20. Respondent Folsom started in the recycling business in 1989 as a plant supervisor and buyer with a company called Container Corporation of America, which was later purchased by Smurfit Recycling Company (Smurfit). Respondent Folsom worked with Smurfit from 1989 to 1993, becoming the general manager of their Burbank, California MRF in 1993. Initially, Smurfit only dealt in newspaper, cardboard, and office paper, but in 1993, while working at the Smurfit Burbank facility, Respondent Folsom began processing recyclable containers that were eligible for CRV. In 1995 Respondent Folsom began working for a recycling company called BLT Enterprises (BLT) in Oxnard, California as vice president of marketing. BLT operated a MRF (Del Norte Processing Center) and transfer station in Oxnard. BLT acquired Smurfit's Burbank facility in 2002, and in 2002 Respondent Folsom purchased an equity interest in BLT. In 2004 he purchased BLT's facility in Burbank, California (formerly Smurfit) and changed the name to "Burbank Recycling, Inc." Respondents Folsom and Anderson have engaged in recycling business transactions since 2002 or 2003. These transactions involved paper, cardboard and mixed paper, but expanded to recyclable containers in or about 2004.

21. Respondent Folsom has extensive experience and expertise in the recycling industry and has been involved in designing, building, and operating MRFs for over 20 years. He is familiar with the types of equipment used in MRFs, how recyclable materials are procured by MRFs, and the probable or expected production capacity of a MRF given the design, equipment, and material flow for a particular MRF. Respondent Folsom also has extensive experience and expertise in buying and marketing recyclable materials. He has extensive knowledge and experience regarding the Act, the Department's Regulations implementing the Act, and a certified processor's obligations under the Act.

22. Respondent Folsom was the sole owner of Respondent BRI and the only member of its Board of Directors. He received monetary distributions from Respondent BRI but never received any personal loans from the corporation. Respondent Folsom was the only person at Respondent BRI with signatory powers over its bank accounts. He made all of the ultimate decisions regarding the recycling operations, including the processing and submitting of CRV claims to the Department. Karen Woo was Respondent BRI's accounts manager/bookkeeper and Jonathon Aquino was responsible for preparing the DR7 forms, signing off on the DR6 forms, and handling the account payables and receivables. Although Respondent Folsom had an in-house account manager or bookkeeper, the records for the company were kept and prepared by an outside accounting firm. He received accounts receivable and accounts payable reports on a regular basis. Respondent Folsom did not make hiring and firing decisions, but delegated that authority to a human resources manager, Carmen Arroyo, who was in charge of personnel matters.

23. Respondent Folsom had the ultimate responsibility for CRV, processing payments, and administrative fees submitted to the Department by Respondent BRI.

Respondent Folsom reviewed all of the DR6 and DR7 forms, and if an anomaly was found, he would flag it and investigate, or have it investigated by his staff. Respondent Folsom was highly involved with the day-to-day operations of Respondent BRI and had video cameras at the facility to allow him to monitor the operation through the internet. He received daily reports regarding the operation of Respondent BRI's facility, including measurement reports about the tonnage and locations of materials coming into and going out of the facility.

24. Respondent Sung began working in the recycling industry in 1994. In 2003, Respondent Sung began working with BLT, which later became Respondent BRI, as the vice president of sales and marketing, responsible for marketing recycled waste paper and plastic material overseas. He was primarily in charge of the sales for Respondent BRI's waste paper and plastic scrap materials that were being produced at Respondent BRI's Sacramento, Burbank and Fremont, California facilities. Respondent Sung's duties included buying and selling recycled plastic and paper. He performed quality control inspections for materials that he purchased for buyers of Respondent BRI's materials as well as for Respondent BRI when the company purchased recycled materials from its suppliers. Respondent Sung was frequently the contact person for Respondent BRI's suppliers and customers because of his position as the sales and marketing representative. His duties did not involve preparing or submitting claims for CRV to the Department or any finance, bookkeeping, or accounting functions. Respondent Sung's compensation was a straight salary, plus bonus and he had no ownership, equity, or stock interest in Respondent BRI. Respondent Sung also had no ownership, equity, or stock interest in Respondent Mission Fiber Group.

25. Respondent Sung first met Respondent Anderson in 2004 when Respondent BRI began purchasing waste paper products from Respondent Mission Fiber Group. He later was involved in buying recycled plastic material from Respondents Anderson and Mission Fiber Group. Respondent Sung became aware of Respondent Mission Fiber Group's Long Beach Yard in 2006 and visited that facility on four or five occasions. He visited the Long Beach Yard to inspect the quality of the recycled plastic that Respondent BRI purchased from Respondent Mission Fiber Group. Typically, Respondent BRI required "loading photographs" to be taken of the product that Respondent BRI sold and purchased from Respondent Mission Fiber Group. These "loading photographs" were not the same photographs that were required by the Department for material inspections required by the Act.

26. Respondent Folsom sold Respondent BRI in 2011. He stated that he did not make money from the sale because of the enormous company debt that needed to be repaid. Respondent Folsom voluntarily resigned his processor certificate and recycling certificate to the Department in December 2011.

B. Respondents Mission Fiber Group, Anderson, Collins, and T. Anderson

27. Respondent Anderson has over 20 years of experience in the recycling industry and is very familiar with procurement, pricing, marketing practices and standards within the recycling industry. In June 2004, he was introduced to Respondent Collins by James Scott, an associate of Respondent Anderson. Respondent Collins is an attorney licensed to practice in

the State of Arizona. Respondent Anderson asked Respondent Collins to prepare documents to incorporate Mission Fiber Group, Inc. In or about June or July 2004, Respondent Collins filed the documents to incorporate Mission Fiber Group, Inc. in Arizona for the purpose of conducting a recycling business. Scott was the director and incorporator of the corporation, and Respondent Collins was the statutory agent. Respondent Anderson provided all of the initial start-up money for the corporation. Respondent Collins resided in Arizona and continued to work with his law firm in Arizona from 2004 to 2007, while performing services for Respondents Anderson and Mission Fiber Group on a part-time basis. Initially, Respondent Collins was not compensated for his services, but he believed that once Respondent Anderson started making money or a profit, he would compensate him fairly.

28. In August 2004, Respondent Mission Fiber Group began recycling Polyethylene Terephthalate - No.1 plastic beverage containers (PET) and High Density Polyethylene - No.2 plastic beverage containers (HDPE), along with mixed plastic - No. 1 through 7 plastics, to sell to certified processors.[5] In October 2004, James Scott severed ties with Respondent Anderson and Mission Fiber Group, Inc. and Respondent Anderson asked Respondent Collins to become an officer of Mission Fiber Group, Inc. Respondent Collins became the president, vice president, treasurer, and secretary for Mission Fiber Group, Inc.

29. In October or November 2004, Respondent Anderson began operating a "collection program" at a site located at 2351 W. 16th Street, in Long Beach, California (Long Beach Yard.) At the Long Beach Yard Respondent Anderson obtained MRF residue and trash from MRFs in California and manually sorted this material to remove PET, HDPE and mixed plastic. The plastic containers were then baled for sale to Respondent BRI. In the beginning, Respondent Anderson only generated a small quantity of PET and HDPE plastic beverage containers at the Long Beach Yard. Respondent Mission Fiber Group was the first collection program that Respondent BRI had dealt with. Respondent BRI typically received its recyclable materials through its curbside recycling programs, including through a contract with the City of Burbank, and its certified recycling center.

30. On January 18, 2006, Respondents Mission Fiber Group and Anderson entered into an exclusive "purchase agreement" with Respondents BRI, Folsom and Sung. The purchase agreement provided that Respondent BRI would purchase "all baled and/or loose recyclables" materials procured by "Mission Fiber Group, Inc." from "its various recycling operations throughout the United States and abroad." The purchase agreement noted that Respondents BRI and Mission Fiber Group's payment arrangements would continue based upon "the current practice prior to this agreement," indicating that there existed a payment arrangement prior to the January 2006 agreement. The payment arrangement provided that

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[5] PET plastic beverage containers are used for soft drink bottles and HDPE plastic is typically used in making bottles, milk jugs, grocery bags, agriculture pipes, and recycling bins etc. Both PET and HDPE containers will have a California Refund Value (CRV) specified on the container, if CRV is applicable. "Mixed plastic" bales include PET, HDPE, and other recyclable plastic materials, numbers 3 through 7.

Respondent BRI would receive 10 percent of the CRV claims filed by Respondent Mission Fiber Group. Thereafter, in 2006 the volume of PET and HDPE sold by Respondent Mission Fiber Group to Respondent BRI increased dramatically.

31. In May 2007, Respondent Collins dropped his law practice and went to work for Respondent Mission Fiber Group full-time. He continued to reside in Arizona and worked out of his home. Respondent Collins visited the Long Beach Yard on one occasion in August or September 2007. He had no ownership or equity interest or stock in Respondent Mission Fiber Group. Respondent Collins was initially paid about $1,000 per week, but his salary increased to about $5,000 per week by September 2007. He was not paid bonuses. Respondent Collins set up multiple entities for Respondent Anderson, purportedly for an array of different purposes. He admitted that many of the companies had no function, were not used at all, or were not used for the original purposes intended. Respondent Collins ultimately set up approximately 20 corporate entities on behalf of Respondent Anderson. He was named as a corporate officer for all of the various entities because Respondent Anderson did not want to hold an officer position and did not want his name on any documents associated with Respondent Mission Fiber Group. Respondent Anderson, however, distributed business cards identifying himself as the Chief Executive Officer (CEO) of Mission Fiber Group, Inc. Respondent Collins described Respondent Anderson as a very paranoid and private person.

32. Respondent Collins performed a critical role as the financial officer/manager for Respondent Mission Fiber Group. He primarily handled payroll, accounts payable and receivable, and all of the financial management duties, including managing the bank accounts and transferring funds between accounts. He had signatory authority for all of Respondent Mission Fiber Group's bank accounts and wrote all of the checks to pay bills. Respondent Collins, however, had a "signature stamp" that was used by office employees at the Long Beach Yard to write checks. Respondent Collins paid all of the suppliers, trucking companies, independent contractors, and any other account payables incurred by Respondent Mission Fiber Group. He opened multiple bank accounts for Respondent Mission Fiber Group because Respondent Anderson did not want to have more than $100,000 in any one bank account at any given time. Respondent Collins received all of the CRV and processing payments made by Respondent BRI to Respondent Mission Fiber Group. Respondents BRI and Folsom wired CRV and processing payments to Respondents Mission Fiber Group and Anderson at different banks located in the United States as designated by Respondents Anderson and Collins. Respondent Collins did not maintain an operating budget, accounting or bookkeeping records, and relied primarily on the bank statements to keep track of funds. He admitted that he had no accounting or financial experience prior to his employment with Respondent Mission Fiber Group. Respondent Collins filed corporate tax returns on behalf of Respondent Mission Fiber Group and signed all the tax returns for the different entities. The tax returns were prepared by an outside accounting firm.

33. Respondent Anderson made all of the managerial and operational decisions as the sole owner of Respondent Mission Fiber Group. He operated Respondent Mission Fiber Group as a sole proprietorship, rather than a corporation or limited liability company. Respondent Anderson was paid a salary of $1,000 to $5,000 per week beginning in late 2006

through 2007. Respondent Collins, however, disbursed funds to Respondent Anderson whenever he requested and transferred funds in and out of multiple bank accounts as directed Respondent Anderson without oversight or accountability. Respondent Anderson instructed Respondent Collins to move money from one bank account and entity to another without regard to corporate structure or accounting principles. Respondent Collins rarely used checks to transfer money between bank accounts, entities, or to Respondent Anderson. The preferred method of transferring money was through the use of wire transfers. He disbursed funds to Respondent Anderson through cash, cashier checks or money orders.

34. Although Respondent Anderson did not have signatory authority on any of Respondent Mission Fiber Group's bank accounts, he had access to Respondent Collins' signature stamp at the Long Beach Yard. Respondent Anderson and the Long Beach Yard employees used the signature stamp to write checks from Respondent Mission Fiber Group's bank accounts, at times without Respondent Collins' knowledge or approval. Respondent Anderson also gave his daughter, Chaundra Anderson, authority to write checks for funds from one of Respondent Mission Fiber Group's bank accounts. Respondent Collins was aware of this arrangement and admitted that Chaundra Anderson would write checks for funds even though she did not served as an officer and was not employed by any of Respondent Mission Fiber Group's entities.

35. Respondent T. Anderson was not a principal, owner, partner, member, director, officer, or operator for Respondent Mission Fiber Group. From at least June 2005, however, Respondent T. Anderson received a salary from Respondent Mission Fiber Group. Respondents Anderson and Collins paid Respondent T. Anderson from a few hundred dollars per week in June 2005, up to as much $14,000 per week beginning in June 2007 and continuing through February 2008. Respondent T. Anderson did not perform any work for Respondents Mission Fiber Group or Anderson. Respondent Collins admitted that Respondent T. Anderson had no position or function within Respondent Mission Fiber Group, but salary payments were by Respondent Anderson. According to Respondent Collins, Respondent Anderson used the salary payments to Respondent T. Anderson as a means of obtaining additional income from Respondent Mission Fiber Group. In January 2008, Hartford Insurance Company placed $4,500,000 in an escrow account for "business interruption coverage" for Respondent Mission Fiber Group for an insurance claim after a fire at the Long Beach Yard in October 2007. Respondents Anderson and Collins paid Respondent T. Anderson $150,000 out of this escrow account.

36. Respondent Collins testified that he set up another entity, "R.S. Anderson Family, LLC," (R.S. Anderson) at the request of Respondent Anderson. R.S. Anderson was not named as a respondent in the First Amended Accusation. Respondent Collins recalled that R.S. Anderson gave an ownership interest in "Mission Fiber Group, Inc." to Respondent T. Anderson. Although the Arizona Articles of Organization for R.S. Anderson established that Respondent T. Anderson was a "manager" of the LLC, the Articles did not show that she had an ownership interest in Respondent Mission Fiber Group. Respondent Collins' vague recollection of how R.S. Anderson was set up is not dispositive on the issue of whether Respondent T. Anderson had an ownership interests in Respondent Mission Fiber Group.

Barring an ownership interest, there is insufficient ground to conclude that Respondent T. Anderson was a "responsible party" under the Act. As stated above, Respondent T. Anderson was not actively involved in the management and operation of Respondent Mission Fiber Group. Her only connection to Respondent Mission Fiber Group was a salary paid by Respondent Anderson that was characterized as additional income for Respondent Anderson. The insurance money paid from the Hartford Insurance Company escrow account also does not establish an ownership interest by Respondent T. Anderson in Respondent Mission Fiber Group. The salary and insurance funds paid to Respondent T. Anderson were just another method by which Respondent Anderson extracted money from his corporate entities. This does not render Respondent T. Anderson a "responsible party" in this case.

37. Respondent Anderson was the sole owner of Respondent Mission Fiber Group and operated it as a sole proprietorship in every regard. He disregarded corporate formalities and commingled funds and assets of the different corporate entities, and treated these funds and assets as his own personal income. There was no clear separation between Respondent Anderson's individual interests and the interests of the corporate entities he owned. Respondent Collins had little or no experience in the recycling industry and he relied on, and trusted Respondent Anderson to make all of the decisions both operational and financially for Respondent Mission Fiber Group. However, he worked very closely with Respondent Anderson in performing his financial duties for Respondent Mission Fiber Group. Although Respondent Collins did not meet with Respondent Anderson face-to-face on many occasions, he was in constant telephone contact with him. Respondent Collins abdicated his responsibilities and duties as a corporate officer for Respondent Mission Fiber Group. Although he asserted he performed all of these responsibilities and duties at the direction and request of Respondent Anderson, Respondent Collins cannot simply ignore his fiduciary duty as a corporate officer for Respondent Mission Fiber Group. Respondent Collins played an integral role in the day-to-day management and business activities of Respondent Mission Fiber Group. He is a "responsible party" under the Act for the conduct of Respondent Mission Fiber Group, even though he was merely a conduit for Respondent Anderson.

38. In November 2010, Respondent Mission Fiber Group, more specifically, Mission Fiber Group, Inc., filed bankruptcy. Respondent Mission Fiber Group is no longer in operation.

VI. Respondents Mission Fiber Group, Anderson and Collins Purloined Tehachapi's Certification Number CP0359 to File CRV Claims

39. From August 1, 2004 through October 31, 2007, Respondent Mission Fiber Group filed, through Respondent BRI, 2,013 DR6 forms claiming CRV and processing payments using the certification number CP0359. The DR6 forms listed "Benz Mission Fiber" as the shipper and the address "416 North Dennison Road, Tehachapi, California, 93561." That certification number and address belonged to Tehachapi. The Department certified Tehachapi as a collection program on February 10, 1992, with Paul Benz Sr. as the president and certified operator of the company. Louie Visco was the vice president of Tehachapi and is Paul Benz Sr.'s uncle. Paul Benz Sr. owns Benz Sanitation, which in turn

owns Tehachapi. Paul Benz Sr. made all financial and business decisions regarding Tehachapi, although his son, Paul Benz Jr., handled most of the day-to-day operations.

40. On January 3, 2005, Teresa Alicia (Alicia), a claims analyst with IKON, contacted Respondent BRI to inquire about a DR7 form dated December 9, 2004, that included a DR6 form dated August 9, 2004, indicating that the shipper, Benz Mission Fiber, was using certification number CP0359, which was registered to Tehachapi. Alicia was alerted by an "error flag" that indicated the shipper name did not match the name registered with the Department for certification number CP0359. If the shipper name does not exactly match the name registered with the Department for the certification number, the IKON database rejects the DR6 form and issues an error message. The Department's database maintains a list of all certified participants in the recycling program, including collection programs, recycling centers, and processors. IKON's database is cross referenced with the Department's database. Respondent BRI was issued a certified processor "Participant Manual" that specified that the shipper's name and the receiver's name shown on the DR6 and DR7 forms should be the same names that appear on the certificates or registrations issued by the Department.

41. IKON protocols required Alicia to contact the certified processor, Respondent BRI, to inquire about any discrepancy in the name and certification number on the DR6 form.[6] The certified processor is responsible for the accuracy of the information contained in the DR7 and DR6 claims forms. Alicia contacted Jonathon Aquino, the contact person listed on Respondent BRI's DR7 forms. Alicia did not recall the telephone conversation with Mr. Aquino, but she confirmed that she wrote "Tehachapi Recy" on Benz Mission Fiber's DR6 form, indicating that she had been advised that Benz Mission Fiber was a dba for Tehachapi. Alicia did not contact Respondent Anderson, Benz Mission Fiber, or Tehachapi to inquire about the discrepancy in the DR6 form. If the certified processor confirms and authorizes the use of an alias or dba, the alias or dba is entered into IKON's database.

42. On January 14, 2005, Respondent Sung sent an email to David Middleton, an employee for Respondent Mission Fiber Group responsible for preparing the DR6 forms, telling him that certification number CP0359 belonged to Tehachapi and not Benz Mission Fiber. Respondent Sung told Middleton that the certification number on the DR6 forms must match the name on the certification in the Department's database. On January 19, 2005, Middleton responded to Respondent Sung stating that Respondent Anderson had said there "should be no problem" with Benz Mission Fiber using certification number CP0359 on Respondent Mission Fiber Group's DR6 forms. Respondent BRI informed IKON that Benz Mission Fiber was a dba of Tehachapi. This was consistent with Alicia's recollection of her conversation with Aquino.

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[6] Protocols for processing DR7 and DR6 forms were developed by the Department and IKON, collaboratively, when the Department originally awarded IKON the contract to process CRV claims in 1990. IKON has had the same six employees working on the Department's contract since 1990, and those employees were provided extensive training on how to process DR7 and DR6 forms.

43. Respondents BRI, Folsom and Sung did not contact Paul Benz Sr. or Tehachapi to inquire whether Respondents Mission Fiber Group and Anderson were authorized to use certification number CP0359. Respondent Folsom instructed Jonathan Aquino to verify that CP0359 was a valid certification number with the Department, but he never contacted Tehachapi or the Department to verify that Respondent Mission Fiber Group was authorized to use certification number CP0359. Respondent Folsom never contacted Paul Benz Sr. or his son regarding any aspect of the collection program at the Long Beach Yard.

44. Per IKON protocols, Alicia informed Barbara Kinney, operations manager, that "Benz Mission Fiber" was a dba for Tehachapi. Kinney entered "Benz Mission Fiber" into an "alias file" maintained in the IKON database to avoid error flags from appearing when subsequent "Benz Mission Fiber" DR6 reports are filed. Kinney was the only person authorized to make entries into the "alias file." Thereafter, the Benz Mission Fiber was accepted by IKON and the Department as the shipper name on all of the DR6 forms filed by Respondent Mission Fiber Group using Tehachapi's CP0359 certification number.

45. Paul Benz Sr. and his son were unaware that Respondents Mission Fiber Group and Anderson were using Tehachapi's certification number to file CRV claims and did not consent to such use. Paul Benz Sr. and Tehachapi were not in partnership with, or involved any joint venture or business relationship with Respondents Mission Fiber Group and Anderson regarding the Long Beach Yard operation. Respondent Anderson and Louie Visco had been involved in a prior general partnership formed on March 10, 2003, "Benz/Mission Fiber Group," but Paul Benz Sr. was not a part of this partnership. The Benz/Mission Fiber Group partnership operated until July 29, 2004, when it was dissolved. On August 9, 2005, following the repayment of an October 21, 2004 promissory note by Respondent Anderson to Visco, a Settlement and Mutual Release Agreement was executed which finalized the dissolution of the "Benz/Mission Fiber Group" partnership. The Settlement Agreement provided that the partnership dissolved effective July 29, 2004 and that Respondent Anderson agreed not to use the "Benz" name in any business that he operated.

46. On October 11, 2007, Senior Management Auditor and Supervisor of Investigations for the Department, Walt Scherer (Scherer) made a site visit to the Long Beach Yard as part of the Department's investigation into the excessive CRV claims submitted by Respondents Mission Fiber Group and BRI. Respondent Anderson told Scherer that neither Paul Benz Sr. nor Tehachapi were a partner or had any ownership interest in the Long Beach Yard operation. Respondent Anderson admitted that Respondent Mission Fiber Group did not have a business relationship with Paul Benz Sr. or Tehachapi and that they did not process any recyclable material for Tehachapi at the Long Beach Yard.

47. Respondent Folsom was introduced to Paul Benz Sr. in 2004 by Respondent Anderson. Respondent Anderson stated that Paul Benz Sr. was a major supplier and "partner" in his "business." Respondent Folsom recalled that Respondent Anderson had

worked with Paul Benz Sr. and Louie Visco and was using one of their sites to store recyclable material. These factors lead Respondent Folsom to conclude that Respondent Anderson was in a partnership or business relationship with Tehachapi and Paul Benz Sr. However, in a deposition taken under oath on September 10, 2008, in the Inland Empire Environmental Inc. (IEE) processor certificate application proceeding, Respondent Folsom admitted he did not believe a "business relationship" existed between Tehachapi and Respondent Anderson. He acknowledged that Tehachapi and Respondent Anderson/Benz Mission Fiber were in discussions regarding a business venture to open a MRF in Rosamond, California, but that business relationship never materialized. Respondent Folsom also admitted that no one at Tehachapi ever informed him that there was a connection in any way between Tehachapi and Respondent Anderson.

48. Respondent Folsom has never seen the CP0359 certificate issued to Tehachapi or any certificate issued by the Department to Respondents Mission Fiber Group, Anderson or Collins. The January 18, 2006 purchase agreement between Respondents BRI and Mission Fiber Group did not include Tehachapi or Paul Benz Sr. Respondents BRI and Folsom never paid Paul Benz Sr. or Tehachapi any of the CRV and processing payments received from the Department for Respondent Mission Fiber Group's CRV claims. Respondent Mission Fiber Group never made any payments to Paul Benz Sr. or Tehachapi for the CRV claims. There is no basis upon which Respondents BRI, Folsom and Sung can reasonably claim that they believe Respondents Mission Fiber Group and Anderson were authorized to use Tehachapi's CP035 certification number.

49. Respondents Mission Fiber Group, Anderson and Collins committed fraud when they filed 2,013 DR6 forms to claim CRV and processing payments from August 1, 2004 through October 31, 2007. The DR6 forms contained false and misleading information. The contact person on all of the DR6 forms was Respondent Anderson, and the reports were signed by a representative of Respondent Mission Fiber Group certifying under penalty of perjury that all of the information therein was true and correct to the best of their knowledge. However, Respondents Mission Fiber Group, Anderson and Collins were not certified by the Department in any capacity, and used Tehachapi certification number CP0359 without Tehachapi's knowledge or consent and without the approval of the Department.

50. Respondents BRI, Folsom and Sung submitted 87 DR7 forms with the 2,013 DR6 forms. A representative from Respondent BRI, Jonathan Aquino, signed the 2,013 DR6 forms and Respondent Folsom signed the 87 DR7 forms. Both certified under penalty of perjury that the facts represented in the DR6 and DR7 claim forms were true and correct to the best of their knowledge. Respondents BRI, Folsom and Sung knew or should have known that Respondent Mission Fiber Group's DR6 claim forms were fraudulent. Consequently, Respondents BRI, Folsom and Sung submitted fraudulent DR6 and DR7 claims for CRV, processing payments and administrative fees.

VII. Respondents Mission Fiber Group, Anderson and Collins Filed CRV Claims on Ineligible Out-of-State Plastic Beverage Containers

51. In October or November 2004, Respondent Mission Fiber Group began its operation at that the Long Beach Yard. Respondent Anderson hired Hillary Ramos (Ramos) to help set up the Long Beach Yard recycling operation, which Ramos oversaw from approximately October 2004 until mid-2005. Ramos also operated Golden West Services (GWS), which provided trucking and "transloading" services at the San Pedro Forklift yard at 2418 East Sepulveda Avenue, in Long Beach (San Pedro Forklift). Ramos told Respondent Anderson about the Long Beach Yard site.

52. Respondents Mission Fiber Group and Anderson's Long Beach Yard operation purportedly obtained bales of MRF residue or "commingled trash" from MRFs throughout California and manually sorted this material to extract recyclable plastic beverage containers. A California MRF typically obtains "single-stream" curbside recyclable material from cities and counties that includes corrugated boxes, newspapers, magazines, mixed paper, containers (aluminum, glass, plastic etc.), scrap metal, and wood and clothing in some municipalities. MRF residue refers to any trash that remains after single-streamed recyclable material is run through an automated screening process and manually sorted. A MRF typically runs its residue through automated screening lines a second time to insure that all of the recyclable plastic containers with CRV have been removed from the residue. What is left after the second screening is commonly referred to as MRF residue. Respondent Anderson claimed that the MRF residue he obtained contained fifty percent PET containers. He claimed that he obtained the MRF residue for free from friends in the industry.

53. Respondent Mission Fiber Group used 30 to 35 contract employees or workers to break apart the bales of MRF residue and manually removed plastic beverage containers. A backhoe was used to move piles of MRF residue and trash and small Caterpillar loaders scooped up the material and placed it onto metal sorting tables. The employees picked through the residue and trash to pull out plastic containers that were placed into 33 gallon plastic trash cans and taken to a baling area. The Long Beach Yard had approximately 25 vertical down-stroke balers, but not all were operational. The vertical down-stroke balers produced "light" bales, weighing 500 to 600 pounds. The Long Beach Yard did not have a horizontal side-ram baler that is capable of producing "heavy" bales, weighing 1,000 to 1,200 pounds.

54. In December 2005, Respondent Anderson hired Jim Roman, owner and operator of Roman Trucking, to work as an "in-house" trucker at the Long Beach Yard. Initially, Roman only transported containers to the scales to be weighed, but in 2006 business picked up and he started coordinating all of Respondent Mission Fiber Group's trucking operations. In early 2006, he transported bales of MRF residue obtained from MRFs in Ventura, Santa Ana, Stanton and Orange County to the Long Beach Yard. Roman recalled that there was "not much" PET in the bales of trash. The MRF residue or commingle trash was stored at the Long Beach Yard and two other locations in Blythe and Fontana, California.

55. Respondent Folsom testified that Respondent Anderson told him that Respondent Mission Fiber Group received "good deals" on MRF residue with high content of No. 1 through 7 mixed plastic in exchange for him also taking a "very dirty stream" of material, described as "commercial dry material," from the MRFs. Respondent Anderson purportedly intended to market this "commercial dry material" overseas for a "bio waste-to-energy" facility. Respondent Anderson told Respondent Folsom that he would take commercial dry material at a very low discount or for free, in exchange for good deals on the bales of mixed plastics. On his visits to the Long Beach Yard, Respondent Folsom observed bales of mixed plastics, primarily No. 1 through 7, being broken apart manually by approximately 35 employees and the plastic containers were removed and baled. He saw about 25 or 30 down stroke balers in operation at the Long Beach Yard and testified that there was one horizontal baler, although not in operation.

56. From approximately June 2006 through October 2007, Respondent Mission Fiber Group significantly increased the volume of PET and HDPE beverage containers it was selling to Respondent BRI. During this same period, Respondent Mission Fiber Group's CRV claims based on PET also increased significantly. For example, prior to June 2006, Respondent Mission Fiber Group had never filed CRV claims on more than 365,680 pounds of PET beverage containers, which it claimed in April 2006. Prior to April 2006, Respondent Mission Fiber Group never claimed CRV on more than 227,104 pounds of PET in one month. Starting in June 2006, however, their CRV claims for PET containers increased drastically. In June 2006, they claimed CRV based on 415,560 pounds of PET containers. Thereafter, Respondent Mission Fiber CRV claims based on PET containers continued to rise significantly, reaching 849,400 pounds in November 2006 and 1,027,300 pounds in December 2006. From January 2007 through October 2007, Respondent Mission Fiber Group filed CRV claims on more than 1,000,000 pounds of PET containers every month, claiming CRV on about 5,000,000 pounds per month for May through July 2007, and reaching an astronomical volume in August and September 2007, when they claimed CRV on more than 11,000,000 pounds of PET in each month.

57. In October 2007, the Department noticed the significant increase in Respondents Mission Fiber Group and BRI's CRV claims using certification number CP0359. On October 11 and 12, 2007, investigator Scherer visited Respondent Mission Fiber Group's Long Beach Yard to inspect the operation. Scherer saw a very large pile of trash, maybe 20 feet high covering about one quarter of an acre of land. The Long Beach Yard was full of loose trash, bales of MRF residue and bales of mixed plastic. During the site visit Respondent Anderson told Scherer that he obtained bales of "residue" and mixed plastics from MRFs throughout California and manually sorted this material at the Long Beach Yard to extract recyclable containers. He claimed that the MRF residue contained 50 percent PET plastic containers and that the mixed plastic bales had a high content of PET and HDPE. Investigator Scherer believed that the Long Beach Yard operation was a sham. He saw bales of mixed plastic broken apart and strategically placed in the Long Beach Yard next to huge piles of MRF residue/trash to form the appearance that a legitimate sorting and recovery operation for plastic beverage containers, when in fact it was not. Scherer opined

that MRF residue contained far fewer PET and HDPE plastic containers than the 50 percent PET claimed by Respondent Anderson.

58. The evidence established that typically, California MRF residue contained less than two percent PET beverage containers, far less than the 50 percent claimed by Respondents Mission Fiber Group and Anderson. The Integrated Waste Management Board (IWMB) published a study in June 2006 after analyzing municipal waste streams in California, that concluded California MRF residue contained approximately one percent of PET beverage containers.

59. Several experts also confirmed Scherer's opinion and the IWMB's study. Stephan Allan Young (Young) testified as the Department's expert on recycling industry practices, including the capabilities of recycling equipment in a California MRF and the composition of waste streams sorted at those MRFs. Young is the Chairman of the Board of Cedarwood-Young Company, dba Allan Company (Allan Company), and has over 49 years of experience in the recycling industry. He credibly testified that California MRF residue contained no more than two percent PET plastic beverage containers. John Willis (Willis), former President of CP Manufacturing, designed MRFs and manufactured recycling equipment used in those facilities. Willis credibly testified that MRF residue typically contain less than two percent PET containers and that California MRFs utilized extremely efficient sorting processes to remove recyclable material from curbside single-stream waste material. Vahe Manoukian (Manoukian) is the buyer and quality inspector for Plastic Recycling Corporation of California (PRCC), a non-profit organization that buys and sells PET containers in California. Manoukian credibly testified that MRF residue typically contained less than one percent PET containers. Manoukian is familiar with the production capabilities of the certified processors that supplied PET containers to PRCC. Respondents Mission Fiber Group and Anderson's claim that MRF residue contained 50 percent of PET beverage containers is simply unsupported by the evidence, and was a claim fabricated to explain how they were producing such high volumes of PET beverage containers.

60. To further emphasize the impossibility of the Long Beach Yard producing the monthly volume of PET containers claimed in the DR6 claim forms, a comparison of the monthly production levels of California MRFs is illuminating. Remarkably, Respondent Mission Group Fiber's Long Beach Yard manual sorting operation produced more PET per month from MRF residue than a mechanized California MRF could produce in one month sorting single-stream curbside recyclable waste, which typically has a far greater content of PET than MRF residue. The evidence established that a large California MRF produces about 264,000 to 352,000 pounds of PET beverage containers per month, and a small MRF produces about 88,000 to 176,000 pounds of PET per month. Respondent Folsom operated a small MRF and he admitted that his facility only produced about two to four containers loads of PET beverage containers per month, based on 44,000 pounds per load. David Langer, Respondents own expert witness, admitted that a med-sized MRF he operated at San Carlos, California produced between two to three container loads or 88,000 to 132,000 pounds of PET beverage containers per month. Respondent Mission Fiber Group's claim that they produced over 1,000,000 pounds of PET for 11 straight months, including over 11,000,000

pounds per month in August and September 2007, is astonishing when compared to the monthly production levels of California's MRFs.

61. Steven Allan Young and his affiliated companies operated seven California MRFs that processed between 175,000 to 180,000 tons of curb-side single-streamed waste per month, or 2,100,000 to 2,160,000 tons of material per year. Young's seven MRFs generated about 13,800,000 pounds of MRF residue per month, which he estimated contained approximately 276,000 pounds of PET containers based on MRF residue containing two percent PET. According to Young, Respondent Mission Fiber Group would have had to sort through about 275,000 tons of MRF residue to produce the 11,000,000 pounds of PET beverage containers it claimed CRV on in August and September 2007. All of California's MRFs could not produce 275,000 tons of MRF residue in one month.

62. Respondent Anderson also claimed that Respondent Mission Fiber Group's high volume of CRV based on PET and HDPE beverage containers was plausible because he was able to obtain bales of mixed plastic containing a high content of PET and HDPE. The evidence established that California MRFs did not sell or discard bales of PET, HDPE or mixed plastic before first claiming the CRV on this material. It would be financially prohibitive for a California MRF to do so after incurring the costs of obtaining and sorting the waste material at the MRF. CRV recovery is the primary source of income for California MRFs. Manoukian was unaware of any California certified processor that would sell bales of PET, HDPE or mixed plastic before claiming CRV on the material. If Respondent Mission Fiber Group obtained bales of mixed plastic with a high content of PET or HDPE containers, CRV would already have been redeemed those bales of plastic if obtained in California, making them ineligible for CRV claims. Investigator Scherer opined that the bales of mixed plastic sorted at the Long Beach Yard did not originate from California, which explained why those bales contained higher than normal contents of PET and HDPE plastic beverage containers.

63. Respondent Mission Fiber Group's DR6 claim forms also included CRV claims for heavy bales of PET beverage containers. The evidence established that the Long Beach Yard was incapable of producing heavy bales of plastic containers. In March 2007, Manoukian visited the Long Beach Yard to inspect plastic beverage containers that PRCC had purchased from Respondent BRI. PRCC purchased a few light bales of PET containers weighing 300 to 500 pounds from Respondent BRI, but most of the bales purchased were heavy bales of PET weighing 1,000 to 1,200 pounds. Manoukian observed that the workers were baling the plastic containers with vertical down stroke balers that were incapable of producing heavy bales. He did not believe the heavy bales of PET PRCC purchased from Respondent BRI were produced at the Long Beach Yard. Following his April 6, 2007, visit to the Long Beach Yard, Respondent Sung also observed that the Long Beach Yard produced only light bales of plastic containers. He admitted at hearing that he believed the heavy bales of PET plastic containers that Respondent BRI purchased from Respondent Mission Fiber Group were obtained from sources other than the Long Beach Yard. Thus, the heavy bales of PET included in Respondent Mission Fiber Group's DR6 forms were necessarily produced somewhere other than the Long Beach Yard.

64. The evidence established that Respondent Mission Fiber Group's Long Beach Yard operation was incapable of producing the heavy bales PET and HDPE claimed in their DR6 forms in 2006 and 2007. The Department's investigation revealed that Respondent Anderson was purchasing out-of-state bales PET, HDPE and mix plastic and transporting this material to San Pedro Forklift. In mid-2006, Respondents Anderson and Collins set-up OGO Trading, L.L.C. (OGO Trading) and began to purchase PET, HDPE and mixed plastic from throughout the United States. Eddie Murphy was hired as an independent contractor by Respondent Anderson to purchase the plastic containers on behalf of Respondent Mission Fiber Group through OGO Trading. He purchased large quantities of out-of-state baled PET, HDPE and mixed plastic for Respondent Mission Fiber Group from mid-2006 through October 2007 shipped those plastic containers to San Pedro Forklift.

65. From about June 2006 to the end of 2007, Ramos and GWS to provided transloading services for Respondent Mission Fiber Group at San Pedro Forklift.[7] Ramos transloaded bales of PET, HDPE and mixed plastic that were shipped to San Pedro Forklift that had been purchased by Murphy and OGO Trading on behalf of Respondent Mission Fiber Group from throughout the United States. Ramos transloaded the bales into outbound containers and arranged to have them transported to the Port of Long Beach, the Long Beach Yard, Respondent BRI's facility in Burbank and domestic "end-users" within California. Initially, GWS transloaded just a few loads of plastic containers per week, but later the transloading services increased to 80 to 100 container loads plastic beverage containers per week.

66. Initially, Respondent Anderson provided the booking orders to Ramos for the loads of plastics containers shipped to San Pedro Forklift. Later, Murphy and Leo Hernandez, who also worked for Respondents Mission Fiber Group and Anderson, provided the booking information to Ramos. Respondents Anderson and Collins were the primary contact for Murphy at Respondent Mission Fiber Group. Ramos and GWS processed the bills of lading for the loads of plastic containers delivered to San Pedro Forklift. The bills of lading described the type of commodity transported or loaded, the quantity, the weight, and the origin/destination of the load. Ramos invoiced OGO Trading for the transloading and transportation services and Respondent Collins paid those invoices on behalf of Respondent Mission Fiber Group. Respondents Anderson and Collins paid Murphy a substantial amount of money for providing these services as an independent contractor on behalf of Respondent Mission Fiber Group. Murphy was paid approximately $5,000 to $6,000 per week for his services.

67. From mid-2006 until October 2007, approximately 90 percent of the container loads of PET, HDPE and mix plastic bales shipped to San Pedro Forklift originated from locations outside of the State of California. Schneider National, Inc. (Schneider Trucking)

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[7] "Transloading" services involve taking cargo out of an inbound truck or container and reloading that cargo into another outbound truck or container.

shipped the majority of the loads of plastic containers to San Pedro Forklift from October 2006 through October 2007. Schneider Trucking delivered 1,543 loads of plastic containers to San Pedro Forklift that had been purchased by Murphy and OGO Trading on behalf of Respondent Mission Fiber Group from sources outside of California. Schneider Trucking delivered both heavy bales and light bales of PET, HDPE and mixed plastic to San Pedro Forklift, but 70 percent of the deliveries were heavy bales of PET containers. Schneider Trucking submitted their bills of lading to Respondents Mission Fiber Group and Collins for payment. Trucking records provided by Ramos showed that from April 5, 2007 through October 17, 2007, Respondent Mission Fiber Group shipped 1,084 container loads of plastic beverage containers to San Pedro Forklift, of which 982 loads originated from locations outside of California.[8]

68. The remaining ten percent of the container loads of plastic shipped to San Pedro Forklift originated from New West Transportation/New West Commodities (NWT) in Fontana, California. Respondent Mission Fiber Group, using GWS, transported plastic beverage containers from NWT to San Pedro Forklift and the Long Beach Yard. Investigator Scherer interviewed Richard McClarnan, the owner of NWT, who stated that NWT purchased plastic beverage containers from the throughout the United States and sold them to a company called LA Waste Industries, who in turn sold the containers to OGO Trading. McClarnan identified Eddie Murphy as the buyer for OGO Trading. Marcella Vela and Teresa Villalobos, Respondent Mission Fiber Group office staff at the Long Beach Yard, told investigator Scherer that plastic beverage containers were transported by Respondent Mission Fiber Group from NWT to the San Pedro Forklift Yard. The overwhelming majority of the container loads of plastic containers shipped to San Pedro Forklift by Respondent Mission Fiber Group originated from outside of California.

69. Hillary Ramos and GWS's trucking records, including bills of lading, weight tickets, container numbers, and container seal numbers, showed that Respondent Mission Fiber Group transported the bales of plastic beverage containers from San Pedro Forklift to the Port of Long Beach, the Long Beach Yard, Respondent BRI's facility and to domestic end-users, primarily "AE WAY" and "Guangyi." Trucking records provided by Jim Roman also showed that Respondent Mission Fiber Group transported bales of plastic from San Pedro Forklift to the Long Beach Yard. Roman also received heavy bales of plastic containers that were delivered to the Long Beach Yard from locations outside the State of California. He frequently diverted these loads from the Long Beach Yard to San Pedro Forklift. Roman observed out-of-state truckers delivering plastic containers to San Pedro Forklift on behalf of Respondent Mission Fiber Group.

70. Department investigators cross-referenced trucking records for outbound loads of plastic containers from San Pedro Forklift to Respondents Mission Fiber Group and BRI's

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[8] Ramos and GWS' records were by no means complete, but the Department used bills of lading, invoices, and weight tickets to gain this information. Some of these 1084 loads are duplicative of the 1543 loads delivered by Schneider Trucking to the San Pedro Forklift Yard.

CRV claim forms for the period from July 2007 through October 2007. The Department was able to link 585 container loads of plastic beverage containers that were shipped out of San Pedro Forklift to CRV claims submitted to the Department by Respondents Mission Fiber and BRI. Department investigators also conducted a two-month audit of Respondents Mission Fiber and BRI's CRV claims from August 1, 2007, through September 30, 2007, to verify whether loads of out-of-state plastic beverage containers transported from San Pedro Forklift were included in Respondents Mission Fiber and BRI's CRV claim forms. The Department's audit revealed that from August 1, 2007 through September 30, 2007, Respondents Mission Fiber filed 671 DR6 forms, attached to ten DR7 forms submitted by BRI. Of the 671 DR6 claim forms, 560 or 83 percent were linked to shipments of plastic beverage containers transported out of San Pedro Forklift.

71. Respondent Mission Fiber Group's significant increases in CRV claims based on PET and HDPE from June 2006 through October 2007 correlated directly with its purchases of large quantities of out-of-state bales of PET, HDPE and mixed plastic during the same period. Respondent Mission Fiber Group sold out-of-state bales of PET and HDPE plastic containers to Respondent BRI, on which CRV claims were submitted on this ineligible material. Heavy bales of PET were transported to the Port of Long Beach for export by KNR, NWT, Pamar and ECT trucking companies, out-of-state bales of mix plastic were transported to the Long Beach Yard by Roman Trucking and GWS, and bales of HDPE were transported to Respondent BRI's facility and to domestic end-users.

72. A preponderance of the evidence established that from June 1, 2006 through October 31, 2007, Respondents Mission Fiber and BRI submitted 1,903 DR6 forms and 49 DR7 forms to claim CRV, processing payments and administrative fees that were based on ineligible out-of-state PET and HDPE plastic beverage containers.

73. The Department seeks to invalidate all of Respondents Mission Fiber Group and BRI's CRV claims from August 1, 2004 through October 31, 2007, based on ineligible out-of-state plastic beverage containers. The Department argued that Respondent Mission Fiber Group had no legitimate source of recyclable materials, other than the out-of-state beverage containers, and therefore all of the claims for CRV must have been based on ineligible out-of-state plastic containers. The evidence only established that Respondent Mission Fiber Group began purchasing out-of-state plastic containers in approximately June 2006. It was not conclusively demonstrated by the Department that prior to June 2006, the Respondent Mission Fiber Group included ineligible out-of-state beverage containers in its CRV claims filed with the Department.

A. Respondents Mission Fiber Group, Anderson, and Collins Intentionally Fabricated, Concealed and Destroyed Information and Documents Related to the Ineligible Out-Of-State Plastic Beverage Containers

74. Respondents Anderson and Mission Fiber Group attempted to conceal any connection between San Pedro Forklift and Respondent Mission Fiber Group's Long Beach Yard operation. Towards the end of October 2007, Respondent Anderson instructed Ramos

to change the name on invoices GWS was billing to OGO Trading for delivery services out of San Pedro Forklift from "OGO Trading" to "Caracus Plastics." He instructed Ramos not to place San Pedro Forklift or GWS on any invoices for loads of plastic containers transported out of San Pedro Forklift. Shipping documents for loads of beverage containers transported from San Pedro Forklift to "AE WAY" and "Guangyi" by Respondent Mission Fiber Group were altered to indicate that the origin of the loads was "Burbank Recycling," and not San Pedro Forklift. Towards the end of 2007, Respondent Anderson asked Ramos to fabricate documents by removing the name "Burbank Recycling" from "export booking" documents for container loads of plastic materials that had been transported from San Pedro Forklift to the Port of Long Beach. Ramos declined to make the changes requested by Respondent Anderson.

75. Respondent Anderson instructed Jim Roman and other truckers to change the names of the trucking companies and the Department of Transportation (DOT) numbers on trucks that were transporting plastic beverage containers out of the Long Beach Yard. Respondent Anderson told Roman to avoid having his truckers seen transporting container loads to and from San Pedro Forklift, to go to that yard only at night, and to make sure the drivers were not being followed when entering San Pedro Forklift. Roman made deliveries between San Pedro Forklift and the Long Beach Yard only at night.

76. Respondent Anderson instructed Roman to change trucking manifests to reflect that San Pedro Forklift was not a destination or origin in any of the trucking records. He also instructed Roman to create trucking manifests to show Tehachapi, California as a destination or origin even though Roman's truckers had never been to Tehachapi. Roman kept a notebook that tracked all of the Roman Trucking manifests. Respondent Anderson told Roman to remove any references to San Pedro Forklift in the notebook and to give the notebook to him or destroy it. Respondent Anderson instructed his employees to fabricate or create documents and told Roman not to speak to or turn over any documents to investigator Scherer regarding the Long Beach Yard operation.

77. Respondent Anderson, who Respondent Collins described as paranoid and a very private person, avoided having his name placed on any documents involving Respondent Mission Fiber Group. At some point after the Department initiated its investigation into Respondents Mission Fiber Group and BRI's CRV claims, Respondent Anderson told Respondent Collins that "it would be nice if some documents were lost." Respondent Collins testified that he did not know which documents Respondent Anderson was referring to, but it was clear the documents were related to the Department's investigation. Respondents Mission Fiber Group, Anderson and Collins's intentionally concealed the San Pedro Forklift operation and destroyed trucking records that linked plastic beverage containers at San Pedro Forklift to Respondent Mission Fiber Group's DR6 forms.

78. Finally, in October 2007, days after the initial visits by the Department's investigators to the Long Beach Yard pursuant to its investigation of Respondent Mission Fiber Group, a suspicious fire was started at the Long Beach Yard. The pile of MRF residue/trash was set ablaze in the Long Beach Yard and Respondents Mission Fiber Group

and Anderson filed insurance loss claims with Harford insurance Company. Although the origin of the fire was not established at hearing, Hartford Insurance Company filed an action to recover monies paid to Respondents Mission Fiber Group and Anderson based on insurance fraud. The mysterious fired appeared to be yet another attempt by Respondents Anderson and Mission Fiber Group to conceal or destroy evidence that they were purchased out-of-state plastic beverage containers and filed fraudulent CRV claims on this ineligible material. Respondent Anderson had also stored bales of MRF residue and trash at the Blythe location without a permit, and ultimately the Integrated Waste Management Board had to clean the site up at a cost of about $990,000.

B. Respondents BRI, Folsom, and Sung Knew or Should Have Known That Respondent Mission Fiber Group was Claiming CRV on Ineligible Out-of-State Containers

79. Respondents BRI, Folsom and Sung knew or should have known that Respondent Mission Fiber Group was claiming CRV on ineligible out-of-state plastic beverage containers. Respondents Folsom and Sung have extensive experience in the recycling industry, including expertise and knowledge regarding the operation of MRFs and the production capabilities of a MRF. Respondent Folsom operated and designed MRFs in California and is very familiar with the content of MRF residue. Respondent Sung served as the quality inspector for Respondent BRI and was very familiar with Respondent BRI's suppliers and buyers and the recycled material being purchased or sold by Respondent BRI. Respondent Folsom operated a MRF in Burbank, California and was very familiar with the content of MRF residue and how much PET remained in MRF residue. Both he and Respondent Sung are very familiar with the market for recycled plastic containers and the production capabilities of recycling centers and MRFs throughout California, especially, Southern California facilities. There was no facility in California, MRF or recycling center, producing the volume of PET and HDPE plastic beverage containers that Respondent Mission Fiber Group claimed they were producing at the Long Beach Yard by manually sorting MRF residue. There is no reasonable basis for Respondents Folsom or Sung to assert that they believed Respondent Mission Fiber Group was producing the PET and HDPE volume they claimed in their DR6 forms solely by manually sorting MRF residue at the Long Beach Yard.

80. Respondents BRI and Mission Fiber Group's recycling businesses and operations were inextricably connected as was evidenced by their January 2006 exclusive purchase agreement to purchase all of Respondent Mission Fiber Group's recyclable plastic containers obtained from throughout the United States. Based on this agreement, Respondent BRI received 10 percent of all the CRV paid to Respondent Mission Fiber Group by the Department, which was a financial incentive for Respondents BRI and Folsom to facilitate or be complicit in Respondent Mission Fiber Group's fraudulent recycling scheme. Respondents Folsom and Sung referred to Respondent Mission Fiber Group's Long Beach Yard as Respondent BRI's "Long Beach Warehouse," suggesting to buyers and suppliers that the two entities were very closely related.

81. The evidence also established that Respondent Folsom contacted the Department on behalf of Respondent Mission Fiber Group, under the pretext of inquiring on behalf of "Tehachapi" and its recycling collection program. On February 8, 2007, Respondent Folsom placed a telephone call to Joanne Healy (Healy), a Recycling Specialist II in the Department's certification section, seeking authorization to expand Tehachapi's collection program using certification number CP0359 to the Long Beach Yard. Respondent Folsom informed Healy that he was purchasing recycled material from "Tehachapi," his client, and that Tehachapi's business had increased which made it necessary for them expand to Long Beach. Respondent Folsom told Healy that Tehachapi would be operating out of the Long Beach Yard. Ms. Healy advised Respondent Folsom that if "Tehachapi" intended to change the terms of the certification number CP0359, they would need to reapply to the Department and have any changes reflected in the new certification number. She also suggested that the Long Beach location would be a separate geographic location and that it would be wise for Tehachapi to apply for a different certification number for the Long Beach location.

82. On April 4, 2007, Respondent Folsom again contacted the Department regarding his business relationship with Respondent Mission Fiber Group. He sent an e-mail to Lee Beatty which was copied to Respondents Anderson and Sung and Karen Woo at the BRI facility. Respondent Folsom requested authorization to "cancel" baled PET and HDPE beverage containers at the "Benz Mission Fiber" locations in Tehachapi, California and the Long Beach Yard.[9] Respondent Folsom sought special permission from the Department to allow cancellation at the Long Beach Yard purportedly because the high volume of plastic containers he was purchasing from Respondent Mission Fiber Group was overwhelming his facility. Respondent Folsom told Beatty that he could reduce his transportation cost by taking possession of the plastic containers at the Long Beach Yard, conducting the inspections and cancelling CRV eligibility at that location. He advised Beatty that he had made several trips to the Long Beach Yard and was very familiar with "Benz Mission Fiber's" process, and that he had "several conversations with the D.O.C. ....related to the documented procedures at Benz Mission fiber's Long Beach processing facility." Respondent Folsom assured Beatty that he was "very confident the subject CP Company is following the rules and guidelines established by D.O.C."

83. Folsom's communications to the Department showed that Respondent BRI's recycling operation was intricately entwined with Respondent Mission Fiber Group's Long Beach Yard operation. More importantly, Respondent Folsom misrepresented to the Department that "Tehachapi" was seeking to expand its collection program to the Long

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[9] The certified processor or recycling center typically cancels CRV eligibility at the MRF or location where the plastic beverage containers are collected and processed. A certified processor is required to inspect the beverage containers it includes in the DR7 and DR6 claim forms to insure the containers are eligible for CRV payment. The CRV eligibility on the beverage containers is cancelled after the material is inspected. Cancellation of CRV eligibility is accomplished by shredding the containers, exporting the containers out of the country, selling them to an end user, or baling the recyclable material.

Beach Yard, when in fact he knew that Respondents Mission Fiber and Anderson had no business relationship with Tehachapi. He also knew that the Long Beach Yard had already been in full operation since October or November 2004, and still misrepresented to the Department that "Tehachapi" was looking to expand to Long Beach in April 2007. Respondent Folsom's communications regarding Tehachapi and "Benz Mission Fiber" deliberately misrepresented that "Tehachapi" was one of his clients even though he had no direct contact or business relationship with Tehachapi or its owners regarding the Long Beach Yard operation. The communications showed that Respondents BRI and Folsom worked in lock step with Respondents Mission Fiber Group and Anderson in perpetuating the fraudulent recycling scheme set up at the Long Beach Yard.

84. Respondents Folsom and Sung were also on notice as early as February 2007 that Respondents Mission Fiber Group and Anderson were purchasing out-of-state plastic beverage containers. Both Respondents Folsom and Sung visited the Long Beach Yard on multiple occasions and was very familiar with the operation. On February 19, 2007, Respondent Sung visited the Long Beach Yard to inspect the bales of plastic because he had been alerted that 50 percent of the PET bottles purchased from Respondent Mission Fiber Group did not have the California CRV labels attached. After inspecting the bales at the Long Beach Yard, he observed that bottles with California CRV labels were in almost all of the bales, but that there were plastic bottles without California CRV labels in all the bales as well.

85. In March or April 2007, Vahe Manoukian was alerted that Respondent Mission Fiber Group was purchasing bales of out-of-state PET beverage containers. One of PRCC's suppliers, EDCO Disposal, informed him that they sold a load of PET containers to OGO Trading at a "very attractive price" above market value. Manoukian asked to meet the buyer from OGO Trading and was introduced to Eddie Murphy. [10] In April 2007, Manoukian informed Respondents Folsom and Sung that he believed the plastic beverage containers PRCC had purchased from Respondent BRI were obtained from outside of California by Respondent Mission Fiber Group. He advised them that one of his suppliers, Ming's Recycling, had shipping information from a trucking company that showed Respondent Mission Fiber Group had purchased plastic containers from Washington State and shipped them to San Pedro Forklift. In April 2007, PRCC also notified the Department that Manoukian suspected Respondent Mission Fiber Group was purchasing out of state plastic beverage containers and possibly claiming CRV on the material. Manoukian raised this issue with Respondents Folsom and Sung on at least three occasions from April to September 2007.

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[10] Manoukian and PRCC attempted transact a PET beverage container sale with Murphy and OGO Trading but the deal fell through. Manoukian noticed that the proposed purchase order for the deal specified that the PET beverage containers were to be delivered to San Pedro Forklift in Long Beach, California. He became suspicious because the PET containers were to be delivered to San Pedro Forklift instead of a port for export or to an end user. Manoukian was concerned that transporting the plastic containers to storage yard could result in CRV claims being filed this material for a second time.

86. On April 6, 2007, Respondent Sung visited the Long Beach Yard to inspect the operation because of the rumors that Respondent Mission Fiber Group was purchasing out-of-state plastic beverage containers. Shortly after Respondent Sung's site visit, Manoukian met with Respondents Anderson and Folsom at the Long Beach Yard to discuss the "rumors" that Respondent Mission Fiber Group was purchasing out-of-state plastic beverage containers. Respondent Anderson denied that he was purchasing any out-of-state plastic beverage containers and later e-mailed Respondent Folsom to assure him that Respondent Mission Fiber Group was not purchasing out-of-state plastic containers.

87. Respondent Folsom accepted Respondent Anderson's assurance that he was not purchasing out-of state plastic containers and conducted no further investigation into the matter. Respondent Folsom never received any documentation from Respondents Anderson and Mission Fiber that would allow Respondent BRI or the Department to validate or trace the source or origin of the plastic containers produced by Respondent Mission Fiber Group at the Long Beach Yard. Respondent Folsom testified that he did not request Respondent Anderson to disclose his suppliers because he believed the identity of his suppliers was proprietary information. He stated that on April 17, 2007, Department inspectors Gene Inderkum and Stuart Hall obtained Respondent Mission Fiber Group's supplier list. At that time, according to Respondent Folsom, they told him that Respondent Anderson's suppliers were proprietary information, and that he did not have to disclose his supplier list. Inderkum, however, credibly testified that he did not advise Respondent Folsom that a certified processor was not required to know the origin of materials included in CRV claims submitted to the Department.

88. Respondents BRI, Folsom and Sung cannot credibly claim that they had no knowledge that Respondent Mission Fiber Group was purchasing out-of-state PET and HDPE beverage containers and claiming CRV on that ineligible material. Although Respondent Folsom testified that he was not aware of San Pedro Forklift and that Respondent BRI never transported loads of plastic beverage containers to or from San Pedro Forklift, Jim Roman credibly testified that he received trucking orders from Respondent BRI to transport loads of HDPE beverage containers to and from San Pedro Forklift to Respondent BRI's facility. Roman personally observed Respondent BRI's truck drivers transporting PET and HDPE plastic containers to and from San Pedro Forklift and Respondent BRI's facility. On November 26, 2007, Eddie Murphy contacted Respondent Folsom by e-mail seeking assistance to obtain payment from Respondent Anderson for the truckers and suppliers that he dealt with on behalf of Respondent Mission Fiber Group/OGO Trading, Inc. to purchase out-of- state PET beverage containers and ship them to San Pedro Forklift. Murphy stated that he knew Respondents Folsom and Anderson were "friends" and in a "partnership" and that Respondent BRI's "bookings" were connected to the PET beverage containers he had purchased for Respondent Mission Fiber Group. Murphy asked Respondent Folsom in the e-mail: "Do I need to say anymore or go into specifics," suggesting that Murphy believed Respondents BRI and Folsom was aware of these out-of-state purchases by Respondent Mission Fiber Group and was the ultimately buyer for these plastic containers.

89. Finally, Respondent Folsom has a prior history of submitting claims for CRV on out-of-state beverage containers. In March 1995, Respondent Folsom, as the General Manager of Pacific Recycling, was cited for submitting claims for CRV on ineligible out of state aluminum cans. Pacific Recycling was assessed $249,700 in civil penalties ($5,000 per violation) by the Department. The parties entered into a stipulation and settlement agreement in which Pacific Recycling agreed to pay $150,000 in civil penalties for the violations.

90. A preponderance of the evidence established that Respondents BRI, Folsom and Sung knew or should have known that Respondents Mission Fiber Group, Anderson and Collins were purchasing plastic beverage containers from origins outside of the State of California and claiming CRV on this ineligible material.

VIII. Respondents BRI, Folsom and Sung Failed to Inspect Loads of Plastic Beverage Containers

91. On January 29, 2009, the Department issued a Final Administrative Decision against Respondent Folsom and Inland Empire Environmental, Inc. (IEE) in which the Department denied Respondent Folsom's application for a processor certification. Respondent Folsom was the owner and operator of IEE. One of the grounds upon which the Department denied the application was that Respondent Folsom had failed to inspect 589 loads of plastic beverage containers that were the basis for CRV, processing payments, and administrative fees claims submitted by Respondents Folsom and BRI. The Department alleged this violation in the First Amended Accusation. The Department moved to preclude Respondent Folsom from relitigating this issue based on the grounds of res judicata. On October 12, 2012, the Department's motion to preclude Respondent Folsom relitigating this issue based on res judicata was granted, based on the January 29, 2006 Final Administrative Decision in the IEE matter.

92. At hearing, Respondents BRI, Folsom and Sung submitted a written Motion for Reconsideration of the October 12, 2012 Order. The Department was given an opportunity to respond, but rather than filing a written response to the motion for reconsideration, the Department addressed the allegation on the merits at hearing. Respondents' Motion for Reconsideration of the October 12, 2012 order is denied. Notwithstanding said denial, however, there was sufficient evidence to establish that Respondents BRI, Folsom and Sung failed to inspect 589 loads of plastic beverage containers on which CRV claims were filed from August 1, 2007 through September 30, 2007.

93. Prior to April 2007, Respondent BRI did not physically inspect any loads of plastic beverage containers that were purchased from Respondent Mission Fiber Group. Respondent BRI simply relied upon photographs taken by employees of Respondent Mission Fiber Group at the Long Beach Yard. Those photographs were then e-mailed to Respondent BRI at their Burbank, California facility. Respondent Mission Fiber Group's employees took photographs of the plastic containers as they were delivered and dumped at the Long Beach Yard. Pictures were taken of the plastic containers in the Yard, both baled and unbaled, and

prior to the bales being loaded and transported. The photographs taken by Respondent Mission Fiber Group's employees did not have any documentation or description that would allow Respondent BRI to distinguish or relate those bales to any particular container shipment or sale. The photographs were taken daily but did not have dates that identified when the materials were actually received or shipped by Respondent Mission Fiber Group. Respondent Folsom believed that Respondent BRI was in compliance with the Department's inspection requirements by performing the inspections in this manner prior to Respondent BRI's inspectors being assigned to the Long Beach Yard.

94. On April 4, 2007, Respondent Folsom contacted the Department to request authorization to take possession of, and cancel CRV eligibility on, plastic beverage containers purchased from Respondent Mission Fiber Group at the Long Beach Yard instead of its Burbank facility. Respondent Folsom's request implied that Respondent BRI had not been taking possession of plastic beverage containers from Respondent Mission Fiber Group at the Long Beach Yard prior to April 4, 2007, when in fact Respondent BRI had already been taking possession of plastic containers purchased from Respondent Mission Fiber Group at the Long Beach Yard prior to that date. On April 17, 2007, Department inspectors Gene Inderkum and Stuart Hall toured the Long Beach Yard with Respondents Anderson and Folsom to determine whether Respondent Folsom's request to cancel CRV eligibility at the Long Beach Yard could be approved. Inderkum and Hall discussed the Department's regulations that pertained to Respondent BRI taking possession of and cancelling beverage containers at the Long Beach Yard. They explained that Respondent BRI would be required to inspect the material as it was being delivered to the Long Beach Yard before cancelling the CRV on the material. Inderkum and Hall explained to Respondents Anderson and Folsom that they needed to submit an application to the Department for authorization to cancel CRV at the Long Beach Yard that included these requirements.

95. On April 25, 2007, Hall sent an e-mail to Respondent Folsom that confirmed that Respondent BRI's proposed method for cancelling CRV eligibility on material at Respondent Mission Fiber Group's Long Beach Yard was "acceptable." Hall recapped the proposed method for cancelling materials, including the inspection requirements Respondent BRI would have to implement at the Long Beach Yard. The Department required Respondent BRI, among other things: (1) to have an "on-site inspector to monitor process, inspect material for eligibility, and control shipping receipts;" (2) contract for shipping to end-user and take physical possession of the reported material; (3) prepare and submit DR6 reports to the Department; (4) maintain supporting documentation (outgoing weight tickets, bills of lading, on-board bills of lading, payment invoices); and (5) to continue to monitor inbound and outbound material through photographs and forward pictures to the Department by e-mail.

96. The Department authorized Respondent BRI to take possession of plastic beverage containers and cancel CRV eligibility at the Long Beach Yard. Respondent Folsom asserted that Inderkum and Hall, through their site visit on April 17, 2007, determined that Respondent Mission Fiber Group's collection program was in compliance with the Act and the Department's Regulations. However, Hall and Inderkum did not advise Respondents

Folsom or Anderson that the Long Beach Yard operation complied with the Act. Their site visit related solely to whether Respondent BRI's request to cancel CRV eligibility at the Long Beach Yard could be approved and how inspection protocols would be implemented at the Long Beach Yard. There were no discussions regarding the validity of Respondent Anderson's recycling operation at the Long Beach Yard.

97. Between April 15, 2007 and November 1, 2007, Respondent BRI placed three different on-site inspectors at the Long Beach Yard. The BRI inspectors attempted to inspect inbound and outbound loads of plastic containers at the Long Beach Yard during the inspector's eight-hour day shift. They took photographs of the loads of containers and entered the loads inspected into an inspector's log book. However, loads of plastic containers were received into, and transported out of the Long Beach Yard at night and these loads were not inspected by Respondent BRI's inspectors. Loads of plastic containers purchased by Respondent BRI from Respondent Mission Fiber Group were transported from San Pedro Forklift at night and were not inspected by the BRI inspectors. Respondent BRI did not have inspectors assigned to the San Pedro Forklift.

98. One of Respondent BRI's inspectors indicated that he could not complete inspections because Respondent Mission Fiber Group's employees were uncooperative. The inspector stated that he could not confirm whether the bales of plastic shipped from the Long Beach Yard were produced there or somewhere else. In August 2007, an inspector quit because he got into a fight with one of Respondent Mission Fiber Group's employees. As a result, from August 17, 2007, through August 27, 2007, Respondent BRI did not have an inspector assigned to the Long Beach Yard. Luis Vasquez, a BRI inspector who was hired and assigned to the Long Beach Yard in September 2007, stated that there had not been an inspector at the Long Beach Yard for at least two weeks prior to his date of hire. In October 2007, Scherer interviewed Vasquez, who was located in an office with windows that were covered by newspaper which prevented him from seeing activity in the yard. Vasquez photographed inbound and outbound loads of plastic containers and recorded the outbound loads that were being purchased by Respondent BRI in an inspection log that he faxed to Respondent BRI.

99. Respondent BRI provided the Department with all of the inspections logs in their possession. The Department audited Respondent BRI's inspection logs for the period from of August 1, 2007 through September 30, 2007. The auditors compared the container numbers recorded on Respondent BRI's inspection logs to the container numbers recorded on the weight tickets included in Respondent Mission Fiber Group's DR6 forms for the same period to determine if the loads had been inspected by Respondent BRI. The audit revealed that from August 1, 2007, through September 30, 2007, Respondent BRI claimed CRV on 589 loads of plastic beverage containers purchased from Respondent Mission Fiber Group that did not appear in the inspection logs, and thus, were deemed not to have been inspected.

100. Respondent Folsom testified that the plastic containers included in Respondent Mission Fiber Group's CRV claims had been inspected in accordance with procedures approved by the Department on April 25, 2007. He asserted that the Department did not

require maintenance of inspection logs and that he did not know why Respondent BRI's inspectors completed inspection logs. Respondent Folsom asserted that they were only required to take photographs of the loads of plastic beverage containers at the Long Beach and submit those photographs to the Department. Respondent Folsom's testimony is not credible. The inspector's logs were entitled "Burbank Recycling Inc. Materials Inspection Sheet" and were produced by Respondents BRI and Folsom in response to a Department subpoena. Respondent BRI inspectors completed the inspection sheets/logs to document both incoming and outgoing loads of plastic purchased by Respondent BRI at the Long Beach Yard. Respondent Folsom also previously testified under oath to the Department that every load inspected by a Respondent BRI inspector was logged into an inspector's log book. Consequently, Respondent BRI's inspection sheets/logs are dispositive of whether loads of plastic beverage containers were inspected by Respondent BRI at the Long Beach Yard.

101. Even if Respondent Folsom's assertion that a photograph was all that was required to perform a valid inspection, Respondent BRI failed to comply with the photograph requirement. On July 27, 2007, Karen Woo, a BRI employee, sent an e-mail to Respondent Mission Fiber Group stating that Respondent BRI had not been sending photographs to the Department's auditor everyday as required "for a while." She stated that Respondent BRI had not received any photographs for a while and requested that Respondent Mission Fiber Group forward the photos on a daily basis. Significantly, Woo requested that Respondent Mission Fiber Group "fax over our inspector's daily inspection log," stating that "without the log, we lose track of his work." Denise D'Angelo, an employee for Respondent Mission Fiber Group at the Long Beach Yard, testified that in August 2007, she sent pictures of bales of plastic beverage containers to Respondent BRI after inspectors had taken the photographs. Significantly, D'Angelo admitted that sometimes pictures were not being taken, "and I would have to make pictures," meaning she "would cut and paste from other ones," referring to other photographs. D'Angelo also admitted that sometimes pictures would be taken of the "same bales" when she did not "have enough pictures" to provide to Respondent BRI for inspection photos. When asked whether someone at Respondent BRI asked her to make pictures in this manner, D'Angelo replied: "I don't know who asked me to do it. I just remembered in order to get paid, we needed pictures."

102. Finally, even though Respondents BRI, Folsom and sung correctly argue that inspections logs are not specifically required by the Act and its Regulations, the evidence established that inspection logs were maintained by Respondent BRI inspectors. Therefore, the Department may use the inspection logs to show the frequency or thoroughness of the inspections performed or not performed by those inspectors. Respondent BRI performed inspections at the Long Beach Yard sporadically and inadequately at best, and in many cases not at all.

103. The preponderance of the evidence established that Respondents BRI, Folsom and Sung failed to inspect 589 loads of plastic beverage containers that were included in Respondents Mission Fiber Group and BRI's CRV claim forms.

LEGAL CONCLUSIONS

I. Applicable Law

1. The Act authorizes the Department to certify the operators of recycling centers, processing facilities, and collection programs. (Pub. Resources Code §§ 14538, 14539, and 14539.5.) The Department may take disciplinary action against any party responsible for directing, contributing to, participating in, or otherwise influencing the operations of, a certified or registered facility or program. (Pub. Resources Code § 14591.2, subd. (a).) A "responsible party" includes, but is not limited to, the certificate holder, registrant, officer, director, or managing employee. *(Id.)*

2. Section 14591.2, subdivision (b), provides that the Department may take disciplinary action if the responsible party: (1) engaged in fraud or deceit to obtain a certificate or registration; (2) engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder or registrant; (3) violated the Act or any regulation adopted pursuant to the Act, including, but not limited to, any requirements concerning auditing, reporting, standards of operation, or being open for business; and (4) is convicted of any crime of moral turpitude or fraud, any crime involving dishonesty, or any crime substantially related to the qualifications, functions, or duties of a certificate holder.

3. Section 14591.2, subdivision (c), provides that the Department may take the following disciplinary actions for violations of the Act: (1) revocation of the certificate or registration; (2) suspension of the certificate or registration; (3) imposition on the certificate or registration of any condition that the Department determines would further the goals of the Act; (4) issuance of a probationary certificate or registration with conditions determined by the Department; (5) collection of amounts in restitution of any money improperly paid to the certificate holder or registrant from the fund; and (6) imposition of civil penalties pursuant to Section 14591.1.

4. Section 14595 provides that:

> The Legislature finds and declares that the redemption of beverage container material imported from out of state, previously redeemed containers, rejected containers, and line breakage presents a significant threat to the integrity of the beverage container recycling program and fund. It is therefore the intent of the Legislature that no refund value or other recycling program payments be paid to any person for this material. It is further the intent of the Legislature that any person participating in conduct intended to defraud the state's beverage container recycling program shall be held accountable for that conduct.

5. Section 14597 provides that:

(a) No person shall falsify documents required pursuant to this division or pursuant to regulations adopted by the Department. The falsification of these documents is evidence of intent to defraud and, for purposes of subdivision (b) of Section 14591.1, constitutes intentional misconduct. The Department may also take disciplinary action pursuant to Section 14591.2 against a person who engages in falsification including, but not limited to, revocation of any certificate or registration.

(b) No person shall submit, or cause to be submitted, a fraudulent claim pursuant to this division. For purposes of this subdivision, a fraudulent claim is a claim based in whole or in part on false information or falsified documents. Any person who submits a fraudulent claim is subject to the assessment of penalties pursuant to subdivision (b) of Section 14591.1. The Department may take action for full restitution for a fraudulent claim, pursuant to Section 14591.4, and may also take disciplinary action pursuant to Section 14591.2 including, but not limited to, revocation of any certificate or registration.

6. "Person" means any individual, corporation, operation, or entity, whether or not certified or registered pursuant the Act (Pub. Resources Code § 14595.4, subd. (a)), and/or a "an individual, corporation, operation, or other entity, regardless of its form," that is subject to the Act (Cal. Code of Regs, tit. 14, § 2000, subd. (a)(34)).

7. "'Processor' means any person, including a scrap dealer, certified by the Department who purchases empty aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, or any other beverage containers, including any one or more of those beverage containers, which have a refund value established pursuant to this division, from recycling centers in this state for recycling, or, if the container is not recyclable, not for recycling, and who cancels, or who certifies to the Department in a form prescribed by the department the cancellation of, the refund value of these empty beverage containers by processing empty beverage containers, in any manner which the department may prescribe. However, the Department shall not take any action regulating scrap dealers or recycling centers who are processors or recycling centers unless authorized by and pursuant to the goals of this division." (Pub. Resources Code § 14518.)

8. "'Dropoff or collection program'" means any person, association, nonprofit corporation, church, club, or other organization certified by the Department, and that accepts or collects empty beverage containers from consumers with the intention to recycle them, or any waste reduction facility that separates beverage containers from the waste stream with the intent to recycle them. 'Dropoff or collection program' does not include a certified recycling center or curbside program." (Pub. Resources Code § 14511.7.) A dropoff or collection program does not mean a program which accepts or collects recyclable materials which have already been separated from mixed municipal waste. (Cal. Code of Regs., tit. 14, § 2000, subd. (a)(20).)

II. Grounds for Administrative Action Against Respondents Mission Fiber Group, Anderson, Collins and T. Anderson

A. Respondents Mission Fiber Group, Anderson and Collins Filed Fraudulent Claims for CRV and Processing Payments

9. Cause exists to take administrative action against Respondents Mission Fiber Group, Anderson, and Collins pursuant to Sections 14591.2 and 14597 in that they fraudulently filed 2,013 DR6 claim forms for CRV and processing payments which contained false information, by reason of Factual Findings 7-9, 11, 13-16, 17, 27-37 and 39-50.

10. Cause exists to take administrative action against Respondents Mission Fiber Group, Anderson, and Collins pursuant to Sections 14591.2, 14511.7, 14539.5 and 14573.5 in that they filed 2,013 DR6 claim forms for CRV and processing payments even though they were not certified in any capacity by the Department to file claims for CRV under the Act, by reason of Factual Findings 7-9, 11, 13-16, 17, 27-37 and 39-50.

11. Cause does not exist to take administrative action against Respondent T. Anderson because it was not established that she was a "responsible party" under the Act, by reason of Factual Findings 4, 7-10, and 27-37.

12. From August 1, 2004, through October 31, 2007, Respondents Mission Fiber, Anderson, and Collins filed 2,013 DR6 forms for CRV and processing payments using the dba "Benz Mission Fiber," certification number CP0359 and address 416 North Dennison Road, Tehachapi, California. This information was false because the certification number and address belonged to Tehachapi. "Benz Mission Fiber" was not a dba of Tehachapi, and neither Tehachapi nor the Department authorized Respondents Mission Fiber Group, Anderson and Collins to use CP0359 to file claims for CRV and processing payments. Respondents Mission Fiber Group ("Benz Mission Fiber"), Anderson and Collins were not certified in any capacity by the Department. Section 14597 prohibits any "person" from falsifying documents related to the submission of claims for CRV under the Act, including DR6 claim forms. (Pub. Resources Code § 14597, subd. (a).) Falsification of documents is evidence of the intent to defraud. (*Id.*) A fraudulent claim for CRV is a claim based in whole or in part upon false information or falsified documents. (Pub. Resources Code § 14597, subd. (b).) Respondents Mission Fiber Group, Anderson and Collins filed 2,013 DR6 forms totaling $47,653,737.25 in claims for CRV and processing payments. The Department paid Respondent Mission Fiber Group, through Respondent BRI, $31,958,436.23 for CRV and processing payments for claims filed from August 1, 2004 through August 16, 2007. The Department denied DR6 claims for CRV and processing payments for claims totaling $15,695,301.02 that were filed from August 16, 2007 through October 31, 2007. Consequently, Respondents Mission Fiber Group, Anderson, and Collins fraudulently filed and received claims for CRV and processing payments.

13. Respondent Mission Fiber Group asserts that "Benz Mission Fiber" was a dba of Tehachapi which allowed them to use certification number CP0359. Respondent Collins also argued that because Respondents Mission Fiber, Anderson and Collins were not certified by the Department in any capacity, the Department may not take administrative action against these Respondents. Respondents also claimed that because the IKON approved the use of "Benz Mission Fiber" as a dba of Tehachapi in January 2005, Respondent Mission Fiber Group was not prohibited from filing CRV claims using certification number CP0359.

14. Although Respondent Anderson claimed that "Benz Mission Fiber" was a dba of Tehachapi, Tehachapi did not have an ownership or equity interest in Respondent Mission Fiber Group or any business relationship with Respondent Anderson regarding the Long Beach Yard operation. Respondent Anderson falsely represented to Respondent BRI that "Benz Mission Fiber" was a dba of Tehachapi and that Tehachapi had approved Respondent Mission Fiber Group's use of CP0359. This information was patently false and a fraudulent misrepresentation. Respondent BRI conveyed the false representation to IKON who then allowed "Benz Mission Fiber" to use of CP0359 as a dba of Tehachapi. Respondents Mission Fiber Group and Anderson's fraudulent misrepresentation does not provide a basis for Respondent Mission Fiber Group to purloin the use of CP0359 without the Department's legitimate authorization.

15. Respondents Mission Fiber Group, Anderson and Collins asserted that because they were not certified in any capacity by the Department, they are not subject to administrative action under the Act. Respondents' argument is without merit. As stated above, Section 14597 prohibits any person, including noncertified entities, from falsifying documents in filing claims for CRV under the Act. (Pub. Resources Code § 14597, subd. (a).) Respondent Mission Fiber Group's DR6 forms contained false information. The DR6 forms were signed under penalty of perjury by Respondent Mission Fiber Group's representative certifying that the information in the reports was true and correct, to the best of their knowledge. The DR6 forms notified Respondent Mission Fiber Group that violations of the Act or its Regulations could result in civil penalties of up to $5,000 per violation and that the submission of false information with the intent to defraud was a crime punishable by substantial fines. All of the 2,013 DR6 forms filed by Respondents Mission Fiber Group, Anderson and Collins contained information that they knew was false. Respondents are therefore subject to administrative action by the Department for filing fraudulent claims regardless of whether they were certified by the Department.

16. Finally, Respondents Mission Fiber Group, Anderson, and Collins were not certified by the Department in any capacity to file claims for CRV and processing payments in the State of California. They operated as a collection program out of the Long Beach Yard which required certification by the Department. (Pub. Resources Code § 14511.7.) A noncertified entity is prohibited from receiving CRV and processing payments from a certified processor, here Respondent BRI. (Pub. Resources Code §§ 14539, subd. (d)(4) and 14573.5.) Accordingly, Respondents Mission Fiber Group, Anderson, and Collins are

subject to administrative action by the Department for filing 2,013 DR6 forms as a noncertified entity in violation of Sections 14511.7 and 14539 subdivision (d)(4).

B. Respondents Mission Fiber Group, Anderson and Collins Claimed and Received CRV and Processing Payments Based on Ineligible Out-of-State Beverage Containers

17. Cause exists to take administrative action against Respondents Mission Fiber, Anderson, and Collins pursuant to Sections 14591.2, 14539.5, subdivision (b), 14595, 14595.5, subdivision (a), and14597, in that they filed 1,903 fraudulent DR6 forms to claim and receive CRV and processing payments on ineligible out-of-state PET and HDPE plastic beverage containers, by reason of Factual Findings 7-9, 11, 13-16, 17, 27-37, and 51-90.

18. From June 1, 2006 through October 31, 2007, Respondents Mission Fiber Group, Anderson and Collins filed claims for CRV and processing payments that were based on ineligible out-of-state plastic beverage containers that had been purchased by Respondents Mission Fiber Group, Anderson and Collins and then sold to Respondent BRI. Respondents defend that all of the PET and HDPE plastic beverage containers that were included in their DR6 forms were produced at its Long Beach Yard by sorting MRF residue obtained from MRFs in California. This assertion was unsupported by the evidence.

19. Section 14595.5, subdivision (a)(1)(A), provides that no shall person claim or receive CRV or processing payments on any beverage container that the person knew, or should have known, was imported from out of state. Section 14595.5, subdivision (a)(2)(C), further provides no person shall, with intent to defraud, bring an out-of-state container or other ineligible material to the marketplace for redemption. The Act also prohibits receiving, storing, transporting, distributing, or otherwise facilitating or aiding in the redemption of out-of-state containers, or other ineligible materials. (Pub. Resources Code §14595.5, subdivision (a)(2)(D).) Beverages containers sold to consumers outside the State of California are classified as "out-of-state" containers. Out-of-state containers are ineligible for CRV, processing payments, and administrative fees. (Pub. Resources Code §§ 14538, subd, (d)(6); 14539, subd. (d)(6); 14539.5, subd. (b); and 14572, subd. (d)(2).)

20. "A certified dropoff or collection program shall not receive any refund value or processing payment on an empty beverage container that the certified dropoff or collection program knew, or should have known, was received from a noncertified recycler, on any beverage container that the certified dropoff or collection program knew or should have known came from out of this state, or any other beverage container or other product that does not have a refund value established pursuant to Section 14560." (Pub. Resources Code § 14539.5, subd. (b).)

21. From June 2006 to October 2007, Respondents Mission Fiber Group, Anderson and Collins purchased bales of out-of-state PET and HDPE plastic beverage containers that were shipped to San Pedro Forklift and sold to Respondent BRI. The out-of-state beverage containers were transloaded and transported from San Pedro Forklift to the

Long Beach Yard, Respondent BRI's facility, domestic end-users, and the Port of Long Beach for export. Respondent Mission Fiber Group filed claims for CRV and processing payments on these out-of-state plastic beverage containers, which were submitted to the Department by Respondent BRI.

22. Respondent Mission Fiber Group's Long Beach Yard was incapable of producing the volume of PET and HDPE beverage containers that it claimed in its DR6 claim forms from June 1, 2006 through October 31, 2007. Its claim that it obtained bales of MRF residue that contained 50 percent of PET and HDPE beverage containers was not supported by the evidence. Several witnesses including investigator Scherer, experts Stephan Allan Young and John Willis, and Vahe Manoukian credibly testified that California MRF residue contains less than two percent of PET and HDPE beverage containers, not the 50 percent claimed by Respondent Mission Fiber Group. Respondent Anderson claimed that his MRF residue contained a high content of PET, HDPE and mix plastics. However, California MRFs meticulously remove plastic beverage containers with CRV using automated sorting and screening equipment to maximize CRV recovery before discarding the MRF residue at the end of the sort line. CRV represents significant income to the MRFs and no California MRF would discard or sell bales of PET, HDPE, mix plastic or MRF residue before first claiming CRV on the plastic containers. Consequently, Respondent Mission Fiber Group's claim that the MRF residue it processed contained 50 percent of PET and HDPE beverage containers is not credible.

23. The Long Beach Yard operation purportedly produced significantly higher volumes of PET from MRF residue than any other California mechanized MRF, reaching a high of over 11,000,000 pounds of PET per month in August and September 2007. These volumes of PET were impossible to attain manually sorting MRF residue. California MRFs process single-stream curbside waste from counties and municipalities and obtain plastic beverage containers from recycling centers. California's mechanized MRFs could not produce the quantities of PET beverage containers included in Respondent Mission Fiber Group's CRV claims. A small MRF typically produces only about 88,000 pounds of PET beverage containers per month, a mid-size MRF produces about 88,000 to 176,000 pounds of PET per month, and a large MRF produces about 264,000 to 352,000 pounds of PET per month.

24. By contrast, Respondent Mission Fiber Group's Long Beach Yard operation, sorting MRF residue manually, purportedly produced from over 400,000 pounds of PET per month in June 2006 to a high of over 11,000,000 pounds of PET per month in August and September 2007. They produced over 1,000,000 pounds of PET per month from December 2006 through October 2007. Producing these extremely high volumes of PET plastic beverage containers from MRF residue/trash is simply beyond belief. Moreover, to produce 11,000,000 pounds of PET beverage containers in one month as Respondent Mission Fiber Group claimed, the Long Beach Yard would have had to sort through over 275,000 tons of MRF residue. All of California's MRFs could not produce that much MRF residue in one month. Respondent Mission Fiber Group's Long Beach Yard operation could not have

produced the volumes of PET included in its CRV claims from June 2006 through October 2007.

25. A preponderance of the evidence established from June 1, 2006 to October 31, 2007, Respondents Mission Fiber Group, Anderson and Collins filed 1903 DR6 forms to claim CRV and processing payments that were based on ineligible out-of-state PET and HDPE beverages containers. Respondent BRI submitted these CRV claims to the Department using 49 DR7 forms. Respondent Mission Fiber Group's significant increases in claims for CRV and processing payments was directly correlated with its purchases of out-of-state plastic beverage containers. The Long Beach Yard was incapable of producing the volumes of PET and HDPE beverage containers included in Respondent Mission Fiber Group's CRV claims. Respondents Mission Fiber Group, Anderson and Collins intentionally destroyed, fabricated, and failed to produce records and documentation regarding the out-of-state beverage containers and its San Pedro Forklift operation. Their intentional efforts to conceal information from the Department regarding the out-of-state plastic beverage containers were attempts to thwart the Department's investigation and to defraud the Fund.

26. The Department seeks to invalidate all of Respondent Mission Fiber Group's DR6 claim forms from August 1, 2004 through October 31, 2007, based the inclusion of ineligible out-of-state plastic containers in these CRV claims. The evidence, however, only showed that Respondent Mission Fiber Group obtained out-of-state plastic beverage containers from June 1, 2006 through October 31, 2007. Thus, the CRV claims filed by Respondent Mission Fiber Group from August 1, 2004 through May 31, 2006, cannot be invalidated based on ineligible out-of-state containers. These DR6 claim forms, however, are still invalid because they were fraudulently filed using Tehachapi's CP0359 certification number by noncertified entities, Respondents Mission Fiber Group, Anderson and Collins.

III. Grounds For Discipline and Administrative Action Against Respondents BRI, Folsom, and Sung

A. Respondents BRI, Folsom and Sung Submitted Fraudulent DR7 and DR6 Forms to Claim CRV, Processing Payments, and Administrative Fees

27. Cause exists to discipline the certificates of, and take administrative action against, Respondents BRI, Folsom and Sung pursuant to Sections 14591.2, 14539, 14597, and 14553 in that they submitted 2,013 DR6 forms containing false information, on behalf of Respondent Mission Fiber Group, attached to 87 DR7 forms to claim CRV, processing payments and administrative fees containing which constituted the submission of fraudulent claims for CRV, by reason of Factual Findings 7-17, 20-26, 29-30, and 39-50.

28. Certified processors play an important role in implementing the redemption policies under the Act. It is the responsibility of the certified processor to know the clients from whom they are purchasing recyclable materials and also to know the origins of the recyclable materials upon which DR6 and DR7 CRV claims

are based. The Department requires a certified processor to submit accurate reports, claims, and other information required by the Act. These documents must be "complete, legible, and accurate" and signed by an "officer, director, managing employee, or owner" of the certified processor. (Pub. Resources Code § 14553, subd. (a).) The certified processor must inspect the recyclable material upon which DR6 and DR7 forms are based to prevent the submission of false or fraudulent CRV claims. (Pub. Resources Code §§ 14518 and 14539; Cal. Code of Regs., tit. 14, §§ 2000, subd. (a)(4) and 2401.) A processor is required prepare or maintain DR6 shipping reports, DR7 processor invoice reports, cancellation verification documents, and weight tickets. (Pub. Resources Code § 14539, subd. (d)(8).)

29. The Act prohibits the falsification of documents used in filing claims for CRV, processing payments and administrative fees, and deems the falsification of such documents evidence of the intent to defraud. (Pub. Resources Code § 14597, subd. (a).) The Act also prohibits any person form submitting, or causing to be submitted, a fraudulent claim from the Fund. (Pub. Resources Code § 14597, subd. (a).) A fraudulent claim is any claim based in whole or in part on false information. (Pub. Resources Code § 14597, subd. (b).)

30. From August 1, 2004 and October 31, 2007, Respondents BRI, Folsom, and Sung submitted 87 DR7 forms with Respondent Mission Fiber Group's 2,013 DR6 forms to claim CRV, processing payments, and administrative fees. The Department paid Respondent BRI $695,685.68 in administrative fees for claims submitted from August 1, 2004 through August 16, 2007, and denied claims for $344,859.38 in administrative fees for claims submitted from August 16, 2007 through October 31, 2007. The Department argues that Respondents BRI, Folsom and Sung knew or should have known that the DR6 and DR7 claim forms contained false information. Respondents BRI, Folsom and Sung contend that they had no knowledge that Respondent Mission Fiber Group was not in partnership with Tehachapi and was not authorized to use certification number CP0359 or that "Benz Mission Fiber" was a noncertified entity. They argue that Respondent BRI did not intentionally submit fraudulent claims for CRV and that the Department inappropriately applies a "strict liability" standard in holding Respondents BRI, Folsom and Sung liable for Respondent Mission Fiber Group's conduct.

31. As determined in Factual Findings 39 through 50 and Legal Conclusions 1 through 16, Respondent Mission Fiber Group fraudulently filed 2,013 DR6 claim forms that contained false information. Section 14597 prohibits falsification of documents submitted to the Department for CRV claims. Falsification of a document, including information in DR6 and DR7 forms, is evidence of intent to defraud, and for section 14591.1, subdivision (b), constitutes intentional misconduct. (Pub. Resources Code § 14597, subd. (a).) The provision prohibits any person from submitting or causing to be submitted a fraudulent claim for CRV under the Act. A fraudulent claim under the Act is a claim that is based in whole or in part on false information or documentation. (Pub. Resources Code § 14597, subd. (b).) Respondents BRI, Folsom and Sung incorrectly assert that specific intent to defraud is

required for a violation under section 14597. The Department must only show that a claim form included false information or that a document submitted to the Department was falsified. Respondents BRI, Folsom and Sung inappropriately argue that section 14591, which pertains to criminal prosecutions for violations of the Act, requires specific intent to defraud for a criminal violation to be established. The Department is not pursuing a criminal violation under section 14591 in this proceeding. Sections 14591.2 and 14597, which are at issue in this case and pertain to civil and administrative disciplinary actions, do not require a specific intent to defraud.

32. Respondents BRI, Folsom and Sung are liable under the Act if they knew or should have known that Respondent Mission Fiber Group was not authorized to use certification number CP0359 and that Respondents Mission Fiber Group and Anderson were not certified by the Department to file CRV claims. As a certified processor, Respondent BRI is required to insure that the information contained in the DR6 forms it submits is accurate and correct. (Pub. Resources Code § 14553.) Respondent Folsom certified under penalty of perjury that the information in the DR6 and DR7 claim forms were true and correct, to the best of his knowledge. The evidence established that Respondents BRI, Folsom and Sung failed to exercise due diligence to insure that the DR6 and DR7 claim forms that were submitted to the Department were true and correct.

33. In January 2005 IKON notified Respondent BRI that "Benz Mission Fiber" was using certification number CP0359 and that the certification number was registered to Tehachapi. IKON inquired whether "Benz Mission Fiber" was authorized to use CP0359. Respondent BRI simply contacted Respondent Anderson to confirm that "Benz Mission Fiber" had approval to use Tehachapi's certification number. Respondent Anderson told Respondent BRI's representative that there was no problem using CP0359. Based solely on Respondent Anderson's assurances, Respondent BRI informed IKON that "Benz Mission Fiber" was authorized to use Tehachapi's certification number and IKON placed "Benz Mission Fiber" into the database as a dba for Tehachapi. Respondent BRI did not contact Tehachapi or its owners to confirm that Respondent Mission Fiber Group had approval to use CP0359.

34. Respondent Folsom knew that Respondents Mission Fiber Group and Anderson were not authorized to use Tehachapi's certification number CP0359. There was no credible evidence to support Respondent Anderson's claim that "Benz Mission Fiber" was a dba of Tehachapi or that Tehachapi authorized his use of CP0359. Respondent Folsom's assertion that he believed a partnership existed between Respondents Mission Fiber Group and Anderson and Tehachapi is not persuasive. Respondents Anderson, Folsom and Collins admitted that they were aware that Tehachapi had no business relationship, ownership interest, or partnership with Respondents Mission Fiber Group and Anderson in the Long Beach Yard operation. Respondent Folsom did not include Tehachapi or its owner Paul Benz Sr. in the January 18, 2006 purchase agreement between Respondents Mission Fiber Group and BRI. Neither Tehachapi nor its owners were ever paid any of the CRV and processing payments received by Respondent Mission Fiber Group. Moreover, Respondent

Folsom never directed any communications regarding Respondent Mission Fiber Group's Long Beach Yard operation to Tehachapi or any of its owners.

35. Respondents BRI and Folsom argued that the Department should not be allowed to allege a violation for the inappropriate or fraudulent use of CP0359 because the Department had known that Respondents Mission Fiber Group and Anderson were using Tehachapi's CP0359 since at least January 2005, and continued to approve the CRV claims. IKON and the Department, however, relied on Respondent BRI's representation, as the certified processor, that "Benz Mission Fiber" was a dba for Tehachapi. Although IKON should have contacted Tehachapi as a part of its protocols to inquire whether Respondent Mission Fiber Group was authorized to use Tehachapi's certification number, under the Act, the certified processor is responsible for the accuracy of the information contained in any DR6 or DR7 claim forms it submits to the Department. IKON's protocols, approved by Department, only required that IKON contact the certified processor to clear up any errors appearing in the DR6 or DR7 claim forms. Respondents BRI and Folsom may not avoid their responsibility by asserting that the Department "approved" Respondent Mission Fiber Group's use of CP0359 on the basis of a misrepresentation by Respondent BRI.

36. There is no credible evidence upon which Respondents BRI and Folsom can claim that they believed Respondent Mission Fiber Group was authorized to use Tehachapi's certification number CP0359 to operate the Long Beach Yard. Consequently, Respondents BRI, Folsom and Sung knew or should have known that Respondent Mission Fiber Group's 2,013 DR6 forms, submitted with its 87 DR7 forms from August 9, 2004 through October 31, 2007, contained false information, and thus constituted the submission of fraudulent claims for CRV, processing payments, and administrative fees under the Act. Accordingly, Respondents BRI, Folsom and Sung are subject to discipline for submitting fraudulent claims for CRV, processing payments and administrative fees to the Department.

B. Respondents BRI, Folsom and Sung Submitted Claims For and Paid CRV and Processing Payments to a Noncertified Entity

37. Cause exists to discipline the certificates of, and take administrative action against Respondents BRI and Folsom pursuant to Sections 14591.2, 14511.7, 14539, 14539.5 and 14573.5, in that Respondents submitted 2,013 DR6 forms on behalf of Respondent Mission Fiber Group, attached to 87 processor invoices, even though Respondent Mission Fiber Group, Anderson, and Collins were not certified in any capacity by the Department to file claims for CRV from the Fund, by reason of Factual Findings 7-17, 20-26, 29-30, and 39-50, and Legal Conclusions 1-16.

38. The evidence is uncontroverted that Respondents Mission Fiber Group, Anderson and Collins were never certified in any capacity by the Department. A certified processor is prohibited from paying CRV and processing payments to a noncertified entity. (Pub. Resources Code § 14539, subd. (d)(4).)

C. Respondents BRI, Folsom and Sung Submitted Claims for, and Received CRV, Processing Payments, and Administrative Fees on Ineligible Out-of-State Beverage Containers

39. Cause exists to discipline the certificates of, and take administrative action against, Respondents BRI, Folsom, and Sung pursuant to Sections 14591.2, 14539, 14539.5, 14595, 14595.5, and 14597, in that they submitted fraudulent DR6 and DR7 claim forms from June 1, 2006 through October 31, 2007, to claim and receive CRV, processing payments, and administrative fees that were based on ineligible out-of-state PET and HDPE plastic beverage containers, by reason of Factual Findings 7-17, 20-26, 29-30, 51-73, and 79-90, and Legal Conclusions 1-8 and 17-26.

40. A certified processor "shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the processor knew, or should have known, were coming into the state from out of the state." (Pub. Resources Code § 14539, subd. (d)(5).) Section 14539, subdivision (d)(6), further provides that "[a processor shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the processor knew, or should have known, were received from noncertified recyclers or on beverage containers that the processor knew, or should have known, come from out of the state." No person shall pay, claim, or receive any refund value, processing payment, or administrative fee for beverage containers that the person knew, or should have known, was imported from out of state. (Pub. Resources Code § 14595.5, subd. (a)(1)(A).) No person shall, with the intent to defraud, bring an out-of-state container to the marketplace for redemption. (Pub. Resources Code § 14595.5, subd. (a)(2)(C).)

41. The Department contends that Respondents BRI, Folsom and Sung, as the certified processor, knew or should have known that Respondent Mission Fiber Group was claiming CRV and processing payments on ineligible out-of-state beverage containers. Respondent Folsom signed the DR7 forms certifying that the information contained in Respondent Mission Fiber Group's DR6 forms were true and correct to the best of his knowledge. Respondents BRI, Folsom and Sung contend that they had no knowledge Respondent Mission Fiber Group was purchasing out-of-state plastic beverage containers and that they reasonably believed that the Long Beach Yard operation was capable of producing the volume of PET and HDPE beverage containers claimed in Respondent Mission Fiber Group's DR6 forms. This contention is contrary to the evidence.

42. Respondents Folsom and Sung have extensive experience and expertise in the recycling business. Respondent Folsom has designed and operated multiple recycling facilities, including operating several recycling centers and MRFs. Respondent Sung has been involved with purchasing and marketing recycled materials both for import and export, and has extensive experience assessing recyclables to assure quality control for the materials. They were both acutely aware of the production capabilities of Respondent Mission Fiber Group's Long Beach Yard and the MRFs in California. Respondents Folsom and Sung

visited the Long Beach Yard on multiple occasions in 2006 and 2007 and both were familiar with Respondents Mission Fiber Group's Long Beach Yard operation. Respondents Folsom, Anderson, Collins and Sung frequently referred to the Long Beach Yard as Respondent BRI's "Long Beach Warehouse" when dealing with suppliers and buyers.

43. In spite of Respondent Folsom and Sung's experience and expertise they both ignored the reality of the Long Beach Yard operation, and incredibly claimed that Respondent Mission Fiber Group produced the volume of PET and HDPE claimed in their DR6 forms in 2006 and 2007. The evidence established that California MRF residue contained less than two percent of PET plastic beverage containers and that Respondent Anderson's claim that he obtained MRF residue containing 50 percent of PET was not credible. Respondent Folsom admitted that that his own MRF's residue contained no more than five percent of PET beverage containers. Respondent Mission Fiber Group's Long Beach Yard operation was producing PET beverage containers far in excess of the PET volume being produced by any California MRF.

44. The only logical explanation for Respondent Mission Fiber Group's significant increase in CRV claims for PET and HDPE beverage containers was that they claimed CRV on plastic beverage containers that were purchase from origins outside of California. The evidence established that from June 1, 2006 through October 31, 2007, Respondent Mission Fiber Group purchased bales of out-of-state PET, HDPE, and mix plastic, shipped this material to San Pedro Forklift and sold it to Respondent BRI. Not so coincidentally, in January 2006 Respondent BRI entered into an exclusive purchasing agreement with Respondent Mission Fiber Group to purchase of all of Respondent Mission Fiber Group's recyclable materials from throughout the United States, including PET and HDPE plastic beverage containers. Shortly thereafter in June 2006, Respondent Mission Fiber Group began purchasing large quantities of out-of-state plastic beverage containers. Respondent Mission Fiber Group's significant increase in CRV claims directly correlated with their out-of-state purchases of plastic beverage containers.

45. Respondents BRI, Folsom and Sung's claim that they were not aware that Respondent Mission Fiber Group obtained out-of-state plastic containers or of San Pedro Forklift is simply not credible. Respondent Folsom closely monitored the activities at his Burbank facility and was aware of all recycled materials that were processed by that facility on a daily basis. It is implausible that he would not have known that bales of out-of-state plastic beverage containers were being purchased by Respondent Mission Fiber Group, shipped to San Pedro Forklift and later transported to Respondent BRI's facility. In November 2007, Eddie Murphy contacted Respondent Folsom and sought assistance to obtain payment from Respondent Anderson for all of the out-of-state PET beverage containers that had been purchased by Respondent Mission Fiber Group and sold to Respondent BRI. This correspondence showed that Respondent Folsom was aware that Respondents Mission Fiber Group and Anderson were purchasing out-of-state PET beverage containers through OGO Trading and that Murphy shipped the containers to San Pedro Forklift.

46. The evidence also established that Respondents BRI and Mission Fiber Group's recycling operations were intricately related. In February and April 2007, Respondent Folsom contacted the Department on behalf of Respondent Mission Fiber Group and to facilitate Respondent BRI's purchases of plastic beverage containers with CRV eligibility from Respondent Mission Fiber Group. On February 8, 2007, he placed a telephone call to Joanne Healy to inquire whether "Tehachapi" could expand its operation from Tehachapi, California to Long Beach Yard citing "Tehachapi's" need to expand because their business had increased. Respondent Folsom misrepresented that he had a business relationship with "Tehachapi" when in fact he had no relationship with, or had ever contacted, the owners of Tehachapi regarding an expansion to Long Beach.

47. On April 4, 2007, Respondent Folsom e-mailed Lee Beatty at the Department requesting an authorization to cancel CRV eligibility for baled PET and HDPE beverage containers purchased from "Benz Mission Fiber" at their locations in Tehachapi, California and the Long Beach Yard. He stated the reason he needed to cancel CRV eligibility at the two other locations was that the large quantity of PET and HDPE plastic containers Respondent BRI was purchasing from "Benz Mission Fiber" was overwhelming his facility. Respondent Folsom falsely stated that Respondent BRI was buying materials from a facility in Tehachapi, California, when in fact he was aware that Respondent Anderson had been operating out of the Long Beach Yard from at least November 2004. Respondent Folsom had never purchased or received any plastic containers form Tehachapi's facility in Tehachapi, California. Respondent Folsom also represented to the Department that he was very confident that "Benz Mission Fiber's" Long Beach Yard operation was in compliance Department's rules and guidelines regulations, in essence validating the Long Beach Yard operation. Respondent Folsom's false statements to the Department facilitated the processing of ineligible out-of-state plastic beverage containers by Respondent Mission fiber Group.

48. Most significantly, Respondents Folsom and Sung were on notice that Respondent Mission Fiber Group was purchasing out-of-state plastic beverage containers as early as February 2007. Respondent Sung was concerned that Respondent Mission Fiber Group was selling bales of plastic containers containing out-of-state containers and went to the Long Beach Yard in February 2007 to inspect the bales of plastic containers. His inspection revealed that the bales contained both plastic bottles with the California CRV labels and some plastic containers without the labels. Vahn Manoukian of PRCC notified Respondents BRI, Folsom and Sung in April or March 2007 that he believed Respondent Mission Fiber Group, through OGO Trading, was purchasing PET beverage containers from out of state and shipping them to San Pedro Fork Lift. Instead of thoroughly investigating Manoukian's claims by verifying the origins of the PET beverage containers they were purchasing from Respondent Mission Fiber Group, Respondent BRI merely relied upon Respondent Anderson's claim that he was not purchasing and claiming CRV on plastic containers that originated outside of California. Moreover, Respondent BRI failed to implement adequate inspection protocols at the Long Beach Yard to prevent ineligible plastic containers from being processed or that would have allowed the Department to verify the origin of the plastic beverage containers included in Respondent Mission Fiber Group's DR6

forms. Respondent Folsom's request to the Department to cancel CRV eligibility at the Long Beach Yard occurred at the time that he had notice that out-of-state plastic containers were being purchased by Respondents Mission Fiber Group, Anderson and Collins.

49. Minimally, Respondents BRI, Folsom and Sung knew or should have known that Respondent Mission Fiber Group was claiming CRV on ineligible out-of-state beverage containers. The exclusive purchase agreement between the companies provided a financial incentive for Respondents BRI, Folsom and Sung to facilitate or further Respondent Mission Fiber Group's fraudulent scheme to claim CRV on out-of-state beverage containers. Respondent BRI and Folsom received an administrative fee on all of the CRV claims filed by Respondent Mission Fiber Group and was paid an additional 10 percent fee on all of Respondent Mission Fiber Group's CRV claims. Respondent Folsom intentionally misrepresented facts and information to the Department on behalf of Respondent Mission Fiber Group to expand and validate Respondent Mission Fiber Group's Long Beach Yard operation. Respondent Folsom was previously cited by the Department in March 1995 for claiming CRV on out-of-state aluminum beverage containers, and thus has a history of engaging in this type of activity. (*See* Evid. Code § 1101, subd. (b).)

50. Respondents BRI and Mission Fiber Group's recycling operations were so intricately entwined that it is inconceivable that Respondents BRI, Folsom and Sung would not have known about Respondent Mission Fiber Group's scheme to defraud the Fund by claiming CRV on out-of-state plastic beverage containers. To the contrary, the preponderance of the evidence established that Respondents BRI, Folsom and Sung in deed had knowledge of and facilitated Respondent Mission Fiber Group's false and fraudulent CRV claims.

D. Respondent BRI Failed to Inspect 589 Loads of Beverage Containers Upon Which CRV, Processing Payments, and Administrative Fees Were Claimed

51. A processor must inspect empty beverage containers for CRV eligibility and cancel the refund value by using methods for cancellation of CRV approved by the Department. (Pub. Resources Code §§ 14518 and 14539; Cal. Code of Regs., tit. 14, §§ 2000, subd. (a)(4) and 2401.) Section 14539, subdivision (d)(7), provides that "[a] processor shall take the actions necessary and approved by the Department to cancel containers to render them unfit for redemption." California Code of Regulations, title 14, section 2401, subdivision (a) provides:

> Certified processors shall inspect each load of containers, subject to the Act, delivered to the processor, for which refund value is claimed, to determine whether the load is eligible for any refund value and, if so, to determine whether the load is segregated or commingled, as follows:
>
> (1) For any load delivered to a processor from a dropoff or collection program, community service program, curbside

> program or recycling center, each processor taking delivery of the material shall visually inspect each load of material by monitoring the unloading and/or conveyor process to determine eligibility and whether the load is segregated or commingled. ...." (Cal. Code of Regs., tit. 14, § 2401and, if so, to determine whether the load is segregated or commingled.

52. Cause exist to discipline the certificate of, or to take administrative action against, Respondents BRI, Folsom and Sung pursuant Sections 14591.2, 14518 and 14539, in that Respondents failed to inspect 589 loads of plastic beverage containers upon which CRV, processing payments, and administrative fees were claimed from August 1, 2007 through September 30, 2007, by reason of Factual Findings 7-17, 20-26, 29-30, and 91-103.

IV. Respondents Anderson and Folsom are Individually Liable Under the Alter Ego Doctrine

53. The Department contends that Respondents Anderson, Collins and Folsom are alter egos of their respective companies and therefore are individually liable for any restitution, interests and civil penalties and restitution imposed against Respondents in this case. The evidence established that Respondents Anderson and Folsom are alter egos of their respective corporations, and therefore are individually liable for the actions of the corporate entities. Respondent Collins did not possess the required ownership interests in the corporate entities to render him an alter ego of Respondents Mission Fiber Group. (Factual Findings 7-12, 17, 20-103.)

54. A corporate identity may be disregarded and the "corporate veil" pierced where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation and the individuals that run it. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Ca1.App.4th 523, 538-539.) When the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation. (*Id.* at p. 538.) The alter ego doctrine prevents individuals or corporations from using the corporate structure for the purpose of committing fraud or other misdeeds. (*Id.*) Where there is a unity of interest between the shareholder and the corporation such that no separate identity exists between them, and where it would sanction fraud and lead to an inequitable result to honor the corporate existence, then the corporate veil will be ignored. (*See, e.g., Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal. App. 2d 825, 836-838.) Specifically, a corporate form may be disregarded where it has been used to circumvent a statute or otherwise evade the law. (*H.A.S. Loan Service, Inc. v. McColgan* (1943) 21 Cal. 2d 518, 523; *Say & Say, Inc. v. Ebershoff* (1993) 20 Cal. App. 4th 1759, 1767-69.)

55. Two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owners such that the separate personalities of the corporation and the shareholder do not in

reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Ca1.App.4th 523, 538-539.) Among the factors examined are commingling of funds or assets, identical ownership, use of the same offices and employees, whether the use of one was a mere shell or conduit for the affairs of the other, disregarding corporate formalities, and identical directors and officers. (*Id.*) "No one characteristic governs, but the courts must look at all of the circumstances to determine whether the doctrine should be applied." *(See Sonora, supra,* at p. 539.)

56. The two conditions that must exist to pierce the "corporate veil" and hold Respondent Anderson individually liable for the fraud committed by Respondent Mission Fiber Group have been satisfied. Respondent Anderson possessed all of the ownership and equity interest in Respondent Mission Fiber Group. He operated Respondent Mission Fiber Group as a sole proprietorship and made all of the managerial and operational decisions unilaterally. Although he was not named as an officer in any of the entities, Respondent Anderson held himself out as the CEO of Respondent Mission Fiber Group. He was the primary person responsible the managerial and operational decisions for Respondent Mission Fiber Group's recycling operation and the resulting fraud committed against the Fund. Respondent Anderson, through Respondent Collins, created multiple corporate entities, many of which were either never used or used for a purpose different than originally intended. This will make it extremely difficult, if not impossible, to audit Respondent Mission Fiber Group's books in an attempt identify and recover any monetary damages. Respondent Anderson controlled all of the assets of Respondent Mission Fiber Group and commingled funds and assets of different entities, disregarding corporate formalities or financial distinctions between individual entities. He freely took monies from Respondent Mission Fiber Group's multiple bank accounts, treating those accounts as if they were his own personal checking accounts.

57. Respondent Mission Fiber Group is no longer viable as a corporate entity due to Respondent Anderson filing bankruptcy as to Respondent Mission Fiber Group, Inc. It is highly unlikely that the Department would be able to recover any restitution or civil penalties from this corporate entity. Respondents Anderson and Collins used Respondent Mission Fiber Group to perpetrate a fraud on the Fund. There is no possibility of recovering from the corporate entity in this case and there would be an inequitable result if Respondent Anderson is not held individually liable for the actions of Respondent Mission Fiber Group. There is such a unity of interest between Respondent Anderson and Respondent Mission Fiber Group that there exists no individuality or separateness between him and the corporate entities in this case. The corporate entities are deemed to be insolvent due to the bankruptcy filing, and to adhere to the separate existence of the corporate entity would perpetrate an inequitable result that sanctions a fraud and injustice to the Fund. (*See Sonora, supra,* at p. 539; *Associated Vendors, supra,* 210 Cal. App. 2d at pp. 836-838.)

58. Respondent Folsom, like Respondent Anderson, was the sole owner of Respondent BRI and, by Respondent Folsom's own admission, operated the corporation as a sole proprietorship. He was the only member of the Board of Directors for Respondent BRI

and made all of the operational and financial decisions for the corporation. Respondent Folsom was the only person at Respondent BRI with signatory authority over the corporation's bank account. He had the ultimate responsibility for processing claims for CRV, processing payments, and administrative fees by Respondent BRI. Respondent Folsom reviewed and signed all of the all 87 of the DR7 forms that were used to submit the 2,013 fraudulent DR6 forms filed by Respondent Mission Fiber Group. Respondent BRI, the corporate entity, was used by Respondent Folsom to perpetrate a fraud against the Fund and violate the Act. Respondent Folsom was complicit in Respondents Mission Fiber Group and Anderson's scheme to defraud the Fund in that he made material misrepresentations to the Department regarding the Respondent Mission Fiber Group and he personally profited from the fraudulent CRV claims filed by Respondent Mission Fiber Group. There is a unity of interest between Respondent Folsom and Respondent BRI such that there is no separate personality between for him and the corporation. (*See Sonora, supra,* at pp. 538-539; *Associated Vendors, supra,* at pp. 836-838.)

59. Respondent Folsom testified that he sold Respondent BRI in 2011 and he no longer has any ownership interest in the corporation. Respondent BRI's processor and recycling certificates were surrendered to the Department and the company is no longer operating as a recycling corporation. Consequently, if Respondent Folsom is not individually held responsible for the actions of Respondent BRI, the fraud to the Fund by Respondents BRI and Folsom would be sanctioned and lead to an injustice and inequitable result. (*See Sonora, supra,* at p. 539; *Associated Vendors, supra,* 210 Cal. App. 2d at 836-838.)

60. Respondent Collins, as corporate officer for Respondent Mission Fiber Group, handled all of the administrative and financial management for Respondent Mission Fiber Group. Respondent Collins is clearly a responsible party under the Act. He received all of the funds paid to Respondent Mission Fiber Group by the Department from the Fund, distributed those funds into bank accounts, paid payroll and bills for Respondent Mission Fiber Group's various entities, and distributed monies from the different bank accounts pursuant to instructions from Respondent Anderson. Respondent Collins, however, had no ownership or equity interest in Respondent Mission Fiber Group and had little authority to make decisions regarding management or operational decisions that impacted Respondent Mission Fiber Group's recycling business. Respondent Collins received a salary but did not receive bonuses or other disbursements from Respondent Mission Fiber Group based upon the amount of income Respondent Mission Group generated. Consequently, the first prong of the alter ego doctrine, unity of interest and ownership in the corporate entity, has not been satisfied as to Respondent Collins. Both of requirements, unity of interest and ownership and an inequitable result, must be present to pierce the "corporate veil." (*Associated Vendors, supra,* at 837.)

V. Restitution and Civil Penalties

61. Section 14591.1, subdivision (a)(1), provides that the Department may assess a civil penalty upon a person who violates the Act in an amount greater than one thousand

dollars ($1,000). Each violation of the Act is a separate violation and each day of the violation is a separate violation. (Pub. Resources Code § 14591.1, subd. (a)(3).) Any person who intentionally or negligently violates the Act may be assessed a civil penalty of up to five thousand dollars ($5,000) for each separate violation, or for continuing violations, for each day that violation occurs. (Pub. Resources Code § 14591.1, subd. (b).) Any person who violates the Act by an action not subject to subdivision (b) may be assessed a civil penalty of up to one thousand dollars ($1,000) for each separate violation, or for continuing violations, for each day that violation occurs. (Pub. Resources Code § 14591.1, subd. (c).) "No person may be liable for a civil penalty imposed under subdivision (b) and for a civil penalty imposed under subdivision (c) for the same act or failure to act." (Pub. Resources Code § 14591.1, subd. (d).) In determining the amount of penalties to be imposed, the Department shall take into consideration "the nature, circumstances, extent and gravity of the violation, the costs associated with bringing the action and, with respect to the violator, the ability to pay, the degree of culpability, compliance history, and any other matters that justice may require." (Pub. Resources Code § 14591.1, subd. (e).)

62. Section 14591.4, subdivision (a), provides that, in addition to any other remedies, penalties, and disciplinary actions provided by the Act or otherwise, the Department may seek restitution of any money illegally paid to any person from the fund, plus interest. Section 14591.4, subdivision (b) provides that a certificate holder is liable to the Department for restitution for payments made by the Department to the certificate holder that are based on improperly prepared or maintained documents. "Notwithstanding subdivisions (b) and (c) of Section 14591.1, if the Department collects amounts in full restitution for money paid, the Department may impose a penalty of not more than one hundred dollars ($100) for each separate violation, or for continuing violations, for each day that violation occurs." (Pub. Resources Code § 14591.4, subd. (d).)

63. Respondents Mission Fiber Group, BRI, Anderson and Folsom are jointly and severally liable for restitution in the total amount of $32,654,212.91. This amount includes $27,827,427.32 in CRV, $4,131,008.91 in processing payments, and $695,685.68 in administrative fees received by Respondents Mission Fiber Group and BRI for the period from August 1, 2004 through August 16, 2007. Respondents Anderson and Folsom were the sole owners of their respective companies and they managed and operated their respective companies unilaterally. They were also the primary individuals that profited from the income generated by the scheme to defraud the Fund. Consequently, the order of restitution is restricted to Respondents Anderson and Folsom and their respective companies. Pursuant to section 14591.4, the Department is entitled to payment of interest on the $32,654,121.91 in restitution in an amount to be determined and calculated at the rate earned on the Pooled Money Investment Account.

64. The Department seeks civil penalties in the amount of $44,075,000 based on Respondents collectively committing 8,815 violations of the Act. The Department's civil penalty estimations are based on each violation of the Act constituting an independent basis for upon which to assess a civil penalty. The Department seeks 2,100 violations for filing and submitting false and fraudulent DR6 and DR7 claim forms; 2,013 violations for a

noncertified entity filing claims for CRV; 2,013 violations for certified processor paying CRV and processing payments to a noncertified; 2,100 violations for filing and submitting claims for CRV, processing payments and administrative fees based on ineligible out-of-state beverage containers; and 589 violations for failing to inspect loads of beverage containers upon which CRV claims were submitted. The Department seeks a $5,000 civil penalty for each separate violation committed.

65. Respondents Mission Fiber Group, Anderson, Collins, BRI, Folsom, and Sung fraudulently filed and submitted 2,013 DR6 and 87 DR7 claim forms to the Department for CRV, processing payments and administrative fees. This conduct represented 2,100 separate violations of the Act. Respondents Mission Fiber Group, BRI, Anderson and Folsom are collectively assessed a civil penalty of $3,000 for each violation for a total civil penalty assessment of $6,300,000. The full $5,000 per violation civil penalty is not assessed because neither the Department, nor its representative IKON, contacted Tehachapi to inquire whether Respondent Mission Fiber Group was authorized to use certification number CP0359 when it became apparent that "Benz Mission Fiber" did not match the name registered to CP0359 in the Department's database. Although the Act and the Department's protocols mandate that the certified processor is responsible for the accuracy of information in the DR6 and DR7 claim forms submitted to the Department, a telephone call to Tehachapi and its owner would have been a prudent course of action and could have minimized the loss to the Fund perpetrated by Respondents' fraudulent scheme. Respondents Mission Fiber Group, BRI, Anderson and Folsom are jointly and severally liable for the $6,300,000 in civil penalties. Respondent Collins, as a corporate officer and responsible party, is assessed a civil penalty in the amount $100 for each violation for a total civil penalty of $210,000. The evidence established that Respondent Sung had no responsibility for filing or submitting CRV claims on behalf of Respondent BRI. Therefore, Respondent Sung is not assessed a civil penalty for these violations.

66. Respondents Mission Fiber Group, Anderson, Collins, BRI, Folsom, and Sung filed and submitted 2,013 DR6 claim forms for CRV and processing payments for a noncertified entity, in violation of sections 14511.7, 14539, 14539.5, and 14573.5. This conduct constituted 2,013 separate violations of the Act. The Department seeks to assess 2,013 separate violations based on BRI "submitting" the DR6 claim forms for a noncertified entity. For purposes of assessing civil penalties, only 2,013 violations will be assessed for the joint conduct of Respondents Mission Fiber and BRI "filing and submitting" 2,013 DR6 claim forms for a noncertified entity. Respondents Mission Fiber Group, BRI, Anderson and Folsom are collectively assessed a civil penalty of $1,500 for each violation for a total civil penalty assessment of $3,019,500. Respondents Mission Fiber Group, BRI, Anderson and Folsom are jointly and severally liable for the $3,019,500 in civil penalties. Respondent Collins is assessed a civil penalty in the amount $50 for each violation for a total civil penalty of $100,650. Respondent Sung is not assessed a civil penalty for this violation.

67. Respondents Mission Fiber Group, Anderson, Collins, BRI, Folsom, and Sung filed and submitted 1,903 DR6 forms and 49 DR7 forms for CRV, processing payments and administrative fees based on ineligible out-of-state plastic beverage containers from June 1,

2006 through October 31, 2007, in violation of sections 14539.5 subdivision (b), 14595, 14595.5, subdivision (a), and 14597. This conduct constituted 1,952 separate violations of the Act. Respondents Mission Fiber Group, BRI, Anderson and Folsom are collectively assessed a civil penalty of $4,000 for each violation for a total civil penalty assessment of $7,808,000. Respondents Mission Fiber Group, BRI, Anderson and Folsom are jointly and severally liable for the $7,808,000 in civil penalties. Respondent Collins is assessed a civil penalty in the amount $250 for each violation for a total civil penalty of $488,000. Respondent Sung is assessed a civil penalty in the amount $250 for each violation for a total civil penalty of $488,000.

68. Respondents BRI, Folsom and Sung failed to inspect 589 loads of plastic beverage containers upon which CRV claims were filed from August 1, 2007 through September 30, 2007, in violation of sections 14518 and 14539. This conduct constituted 589 separate violations of the Act. Respondents BRI, Folsom and Sung are collectively assessed a civil penalty of $500 for each violation for a total civil penalty assessment of $294,500. Respondents BRI, Folsom and Sung are jointly and severally liable for the $294,500 in civil penalties.

69. The above civil penalty assessments have taken into consideration the nature, circumstances, extent and gravity of the violations committed by Respondents pursuant to section 14591.1, subdivision (e). With respect to the allocation of the civil penalties and the variances in the individual amounts assessed, consideration was given to the degree of culpability afforded to each Respondent. There was insufficient evidence to make a determination as to each Respondent's ability or inability to pay the civil penalty assessed. The Department may consider review the civil penalty assessment, pursuant to section 14591.1, subdivision (e), to determine the final amount of civil penalty for each Respondent based on a review of the Respondents' inability or ability to pay the civil penalty ordered.

70. If the Department recovers in full the amount of restitution ordered, the Department shall recalculate the civil penalties pursuant to section 14591.4, subdivision (d), which prohibits the Department form recovering civil penalties in excess of $100 per separate violation where restitution is paid in full by the Respondents.

71. The Department withdrew its request for an award of its costs and fees in this matter.

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ORDER

1. All claims for CRV, processing payments and administrative fees filed and submitted from August 1, 2004 through October 31, 2007, using certification number CP0359, by Respondents Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Stephen Matthew Collins, Burbank Recycling, Inc., Geoffrey Paul Folsom, and Ben Sung, including paid and unpaid claims, are disallowed in their entirety.

2. All certificates held by Respondents Burbank Recycling, Inc., Geoffrey Paul Folsom and Ben Sung, including certified processor certificate number PRO391 and certified recycling certificate number RC12333, are hereby revoked.

3. Respondents Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Stephen Matthew Collins, Burbank Recycling, Inc., Geoffrey Paul Folsom, and Ben Sung shall immediately and permanently cease and desist from any and all direct and indirect participation in California's beverage container recycling program and grant programs.

4. Respondents Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Stephen Matthew Collins, Burbank Recycling, Inc., Geoffrey Paul Folsom, and Ben Sung shall immediately and permanently cease and desist from any and all direct and indirect transactions involving the purchase, sale, transfer, or storage of cancelled CRV beverage containers.

5. Respondents Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Burbank Recycling, Inc. and Geoffrey Paul Folsom are jointly and severally liable for restitution in the total amount of $32,654,212.91, plus applicable interests, by reason of Legal Conclusion 63.

6. Respondents Mission Fiber Group, Inc., Benz Mission Fiber, LLC, Benz Mission Fiber, OGO Trading, LLC, Mission Inc., David Scott Anderson, Burbank Recycling, Inc. and Geoffrey Paul Folsom are jointly and severally liable for the $17,127,500 in civil penalties, by reason of Legal Conclusions 65 through 67.

7. Respondents Burbank Recycling, Inc., Geoffrey Paul Folsom, and Ben Sung are jointly severally liable for $294,500 in civil penalties, by reason of Legal Conclusion 68.

8. Respondent Stephen Matthew Collins is individually liable for $798,650 in civil penalties, by reason of Legal Conclusion 65 through 67.

9. Respondent Ben Sung is individually liable for $488,000 in civil penalties, by reason of Legal Conclusion 67.

10. The Department's First Amended Accusation against Respondent Toni Anderson is dismissed.

DATED: March 15, 2014

MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings