

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

IN THE MATTER OF:

Recycling Services Alliance, Inc – Shengchien Tseng and Maximina Perez

Address: 6935 Power Inn Road
Sacramento, CA 95823

Type of Entity: Recycling Center

Issues: Immediate Certificate Revocation/Res Judicata/Restitution/Civil Penalties

File No.: 2016-003-BCR

OAH No.: 2019010975

Certificate Nos.: PR147941.001

PRECEDENTIAL DECISION No.: 26-01

**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 as of its decision, dated February 15, 2024, in the above-referenced action.

This designation as precedential is effective January 29, 2026.

Sacramento, California.

Dated: January 29, 2026.

As approved by Zoe Heller on January 29, 2026.

Department of Resources, Recycling & Recovery.

BEFORE THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against:

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

Agency No. 2016-003-BCR

OAH No. 2019010975

DECISION AND ORDER REGARDING CALCULATION OF RESTITUTION AND INTEREST

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

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

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

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

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

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

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

PROPOSED DECISION

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

DECISION AND ORDER

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

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

PARTIAL REJECTION OF PROPOSED DECISION

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

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

RESTITUTION AND INTEREST UNDER THE ACT

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

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

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

Section 14591.4, subdivision (a), states:

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

Section 14591.4 subdivision (b), states:

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

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

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

LEGAL ANALYSIS

Sections 14597 & 14591.4

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

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

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

Section 14539 & 14591.2

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

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

Respondents' Fraudulent Claims

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

The total of the fraudulent DR6's is \$56,676,921.72, whereas the total of the fraudulent DR7s is \$80,239,183.43. (Proposed Decision, Factual Findings, p. 17, Par. 36, pp. 27-30, Pars. 58-61.)

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

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

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

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

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

Interest

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

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

No Statutory Basis to Reduce Restitution and Interest

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

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

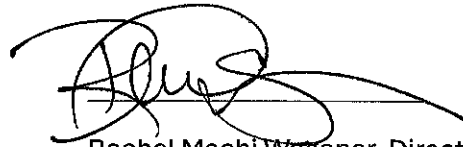
ORDER

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

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

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

Dated: 2/15/24



Rachel Machi Wagoner, Director
Department of Resources Recycling
and Recovery

**BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation against:

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

Agency No. 2016-003-BCR

OAH No. 2019010975

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 6 through June 8, June 13, and September 20, 2022, from Sacramento, California.

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

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

Respondent Maximina Perez (respondent Perez) was self-represented and failed to appear for hearing. On June 7, 2022, OAH issued a Declaration of Default and Order of Remand against respondent Perez.

Evidence was received, and the matter was held open for closing briefs. On January 13, 2023, OAH received the Department's closing brief, marked and admitted as Exhibit 27. On February 19, 2023, OAH received the appearing respondents' closing brief, marked and admitted as Exhibit J. On March 28, 2023, OAH received the Department's reply brief, marked and admitted as Exhibit 28. The record closed and the matter was submitted for decision on March 30, 2023.

ISSUES

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

FACTUAL FINDINGS

Background/Jurisdictional Matters

1. On August 7, 2018, complainant filed the First Amended Accusation in his official capacity, pursuant to the California Beverage Container Recycling and Litter Reduction Act. (Pub. Resources Code, § 14500 et seq.; Cal. Code Regs., tit. 14, § 2000 et seq.) The First Amended Accusation alleges grounds for administrative action based

upon respondents' alleged fabrication of weight tickets during the time period January 23, 2012, through December 1, 2015, resulting in fraudulent claims made against the Beverage Container Recycling Fund (Fund) totaling \$80,331,217.19. The Department seeks revocation of RSA's certificate to operate a recycling center, restitution, interest, and civil penalties. The Department has waived costs and fees. RSA and respondent Tseng filed Notices of Defense. The matter was set for evidentiary hearing pursuant to Government Code section 11500 et seq. This hearing followed.

2. RSA conducted recycling operations at three California locations during different time periods: (1) RSA's Sacramento location at 8100 Signal Court was issued certificate number PR0516 on May 1, 2010, and decertified on May 23, 2013; (2) RSA's Fremont location at 40595 Albrae Street was issued certificate number PR0515 on May 1, 2010, and decertified on April 8, 2016; and (3) RSA's Sacramento location at 6935 Power Inn Road was issued certificate number PR147941.001 on January 13, 2012, and suspended from the California Beverage Container Recycling Program (Program) on May 13, 2016.

3. Respondent Tseng was RSA's Certified Operator, President, and Chief Executive Officer (CEO) of RSA's Sacramento location at Power Inn Road, and was RSA's former CEO of the Fremont location. Respondent Perez was the Office Manager for RSA's Sacramento location at Power Inn Road, and a former employee at RSA's Fremont location. She was responsible for the day-to-day operations and management of RSA and was thus a "managing employee" pursuant to Public Resources Code section 14514 and 14591.2, subdivision (a).

California Beverage Container Recycling and Litter Reduction Act

4. The Department is responsible for administration of the California Beverage Container Recycling and Litter Reduction Act (Act), Public Resources Code section 14500 et seq. When it enacted the Act, the Legislature made findings, including the following:

(a) Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.

[¶]...[¶]

(f) The purpose of this division is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements,

to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs.

(Pub. Resources Code, § 14501, subds. (a) & (f).)

5. In accordance with the Act, when consumers purchase beverages in cans or bottles eligible for recycling under the Act, they pay an additional 5 or 10 cents to the retailer. This additional amount, called the California Refund Value (CRV), is an incentive for California consumers to recycle their eligible beverage containers. California consumers may recycle these containers at recycling centers, which refund the CRV that the consumers paid to the retailer. The recycling centers, in turn, may deliver the eligible containers they receive from California consumers to processors, which pay the recycling centers the CRV the recycling centers paid to consumers. The CRV paid by consumers is collected in the Fund. The monies paid to recycling centers for materials delivered to processors are ultimately paid from the Fund.

6. The Act defines a “recycling center” as “an operation which is certified by the department and which accepts from consumers, and pays or provides the [CRV] for, empty beverage containers intended to be recycled.” (Pub. Resources Code, § 14520.) Only recycling centers certified by the Department may pay CRV to consumers in exchange for empty beverage containers. (Pub. Resources Code, § 14572, subd. (d)(1).) The Act defines a “processor” as “any person ... certified by the department who purchases empty ... beverage containers, which have a refund value established pursuant to this division, from recycling centers in this state for recycling....” (Pub. Resources Code, § 14518.)

7. The Department has adopted regulations (Regulations) to implement the Act. These Regulations are found at California Code of Regulations, title 14, section

2000 et seq. Recycling centers must comply with general accounting requirements governing reports, notices, and claims (Cal. Code Regs., tit. 14, § 2090), records maintenance (Cal. Code Regs., tit. 14, § 2085), weighing requirements (Cal. Code Regs., tit. 14, § 2115), notification requirements (Cal. Code Regs., tit. 14, § 2405), and out-of-state importation requirements. (Cal. Code Regs., tit. 14, § 2831 et seq.)

Complainant's Evidence

DEPARTMENT'S INVESTIGATION AND RSA'S IMMEDIATE SUSPENSION

8. On May 26, 2015, the Department began an audit investigation at RSA's Sacramento recycling facility located at 6935 Power Inn Road. Department Auditor Tonya Harrison conducted the audit and drafted an Investigation Report dated March 10, 2017. She testified consistent with the contents of the report.

9. The investigation began after a prior investigation into another recycling facility named Diaz Recycling, revealed suspicious weight tickets prepared by RSA. Department auditors reviewed RSA's purchasing records and processes for preparing weight tickets for recyclers, finding that RSA unlawfully altered or fabricated numerous weight tickets. RSA used the fabricated weight tickets to support shipping report claims and processor invoices for program payments from the Fund.

10. On July 7, 2015, Department auditors interviewed respondents Tseng and Perez. The interviews confirmed "reprinted" weight tickets were "corrected" and/or edited weight tickets, and "Manual Ticket/Single Pass" weight tickets were manually entered into the truck scale system. This manual process was routinely used for nearly all recycling centers that delivered to RSA.

11. On August 5, 2015, Department staff contacted Gabe Skinner, Systems Technician for Cardinal WINVRS Truck Scale Software. RSA used the WINVRS software to prepare weight tickets. Mr. Skinner told Department staff that Manual Ticket/Single Pass weight tickets are manually entered into the system and a truck cannot be on the scale to generate a manual weight ticket. He also stated edited weight tickets will display "Reprinted" on the face of the weight ticket and a system log can be extracted from the software to identify all weight ticket transactions that were deleted, voided, or edited. On October 29, 2015, the Department notified RSA to immediately cease generating manual or reprinted weight tickets.

12. On December 18, 2015, the Department denied RSA's October 2015 handling fee payments totaling \$262,049.76, encompassing 44 recycling center locations for claims based on manual or reprinted weight tickets. Respondent Perez contacted Department Supervising Auditor Alicia Davenport regarding the handling fee denials. Respondent Perez admitted she altered weight tickets and the recycling centers that delivered to RSA were aware she added weight and changed the date and time on the weight tickets.

13. On February 16, 2016, the Department denied RSA's November 2015 handling fee payments totaling \$147,613.95, encompassing 27 recycling centers for claims based on manual and reprinted weight tickets. The majority of those weight tickets indicated the document was "Reprinted" with the original weight ticket attached referencing "scale jumping" as the reason the weight ticket had been altered. The alterations resulted in added weights ranging from 80 to 920 pounds. Respondents Tseng and Perez informed the Department that the "scale jumping" was related to RSA's broken scale. Department staff thereafter met with representatives from the Department of Food and Agriculture (CDFA) and the Sacramento County

Weights and Measures offices to discuss RSA's weight ticket system. CDFR representatives informed Department staff that weighing "shall be done on a scale or other device approved, tested, and sealed in accordance with division 5 of the Business and Professions Code (Weights and Measures)." (Cal. Code Regs., tit. 14, § 2115.) CDFR informed the Department's staff that RSA's use of broken scales and its process for creating manual, edited, and/or "reprinted" weight tickets violated the Business and Professions Code and the regulations. Thus, all such weight tickets were considered invalid.

14. On February 19, 2016, by order of subpoena, respondent Perez appeared for a Department interview and made sworn statements where she admitted to editing and/or estimating weight on the weight tickets used to support shipping report claims and processor invoices. She also admitted RSA had no documentation to support any alterations to the original weight tickets.

15. On April 25, 2016, the Department filed a Notice of Informal Hearing for the immediate suspension of RSA's certificate and participation in the Program due to the fraudulent weight tickets involving Diaz Recycling. A limited review for the period November 16, 2015, through December 1, 2015, revealed fraudulent weight tickets resulted in \$650,005.38 in damages, including \$584,535.51 in refund value, \$50,856.49 in processing fees, and \$14,613.38 in administrative costs. The Department also prevented another \$409,663.74 in damages to the Fund by denying 71 handling fee claims for October and November 2015 that were based on fraudulent weight tickets.

16. On May 13, 2016, the Department issued an Order of Immediate Suspension, suspending RSA's participation in the Program. An informal hearing on the immediate suspension followed, pursuant to Public Resources Code section 14591.2, subdivision (d)(3)(A). The hearing officer issued her decision on May 24, 2016,

finding that RSA submitted claims to the Department based upon fabricated and fraudulent weight tickets as follows:

The payments made by RSA to Diaz Recycling for the DR6s relating to these seven invalid weight tickets totaled \$17,254.50 and were attached to DR7 numbers 237387 and 2337589 ... These DR7s were associated with claim numbers CLA377064 and CLA377074 ... submitted by RSA to the Department and were combined with other claims that totaled \$176,523.51 and was paid to RSA on December 2, 2015 under warrant number 06386718.

The hearing officer determined RSA violated Public Resources Code section 14591.2, subdivision (d)(3)(A)(ii), in that RSA's actions posed an immediate and significant threat to the Fund by missing or fraudulent records associated with a claim or claims totaling at least \$10,000 during the six-month period immediately preceding the order of suspension. The hearing officer concluded that the Act required the Department to file a formal accusation seeking revocation of RSA's certification but did not order payment of restitution in the amount of \$176,523.51. The Department seeks this restitution as part of the present case.

17. On or about March 10, 2017, the Department completed its investigation. With respect to RSA's Power Inn Road recycling operations, the Department determined RSA violated the Act as follows:

- (1) RSA claimed and was paid a total of \$80,331,217.19 in program payments, including \$74,160,932.51 in refund value, \$4,316,260.96 in processing fees,

- and \$1,854,023.72 in administrative costs, for 2,727 processor invoices that were inaccurate, altered, and/or falsified.
- (2) RSA prepared 44,555 weight tickets that were altered or fabricated.
 - (3) RSA failed to retain the original weight ticket for 33,423 "reprinted" weight tickets found to have been edited.
 - (4) RSA prepared 11,312 manual weight tickets that were not weighed on a scale or other device approved, tested, and sealed in accordance with Division 5 of the Business and Professions Code (Weights and Measures).
 - (5) RSA failed to retain worksheets or any supporting documentation to support the weight of material received on 11,312 manual weight tickets.
 - (6) RSA failed to obtain the weighmaster signature and/or recycling center operator signature.
 - (7) RSA failed to obtain the certified weight tickets for scrap material received from out of state.
 - (8) RSA failed to describe the material received on a weight ticket as "scrap" for material received from out of state.
 - (9) RSA failed to notify the Division in charge of operational hours.

TESTIMONY OF DEPARTMENT AUDITOR TONYA HARRISON

18. Ms. Harrison has been an Associate Management Auditor for the Department since March 2012. Her job duties are to investigate recycling centers and processing facilities certified by the Department. She conducts fraud detection reviews,

reviews a facility's operating practices and records, and interviews operators and any witnesses. She works with the Department of Justice (DOJ) on criminal investigations. She did so in the instant case.

19. The Department received a tip from an informant who delivered to recycling centers. The informant told the Department that RSA and another recycling center were involved in a recycling fraud scheme, beginning in May 2015. Ms. Harrison's supervisor assigned the case to her and she began her investigation by conducting interviews with respondent Tseng and others as noted in her Investigation Report described above.

20. Ms. Harrison testified about her July 23, 2015, Report of Conversation between herself and respondent Perez. Ms. Harrison noted that she and Department Auditor Saihra Posas went to RSA to complete interviews with yard employees. Respondent Perez began explaining how RSA planned to purchase a new truck scale system soon, that the current truck scale broke down, and this was the reason she had to prepare so many manual weight tickets. Ms. Harrison further noted that respondent Perez failed to disclose this information during her employee interview when asked specifically about the manual weight tickets.

21. Ms. Harrison testified about her January 5, 2016, Report of Conversation between herself and respondent Perez. Ms. Harrison noted that she and Department Auditor Kim Bryant met with respondent Perez to review records for November 2015. Respondent Perez was asked about specific weight tickets after auditors noticed several weight tickets were edited using the "reprinted" weight ticket process. She responded that the original weight ticket was attached, with a reference of "scale jumping" often reflecting several hundred pounds of material added to the weight ticket. Respondent Perez told Ms. Harrison her scale broke down on Saturday,

November 14, 2015, and it was not fixed until the following Monday. The scale was “jumping” by a few hundred pounds, so she was required to adjust the weight tickets accordingly. After being asked how she was able to determine an accurate weight if the scale was “jumping,” respondent Perez had no answer.

22. Ms. Harrison testified about a third Report of Conversation she prepared on January 27, 2016. She and Supervising Auditor Alicia Davenport met with respondents Perez and Tseng to discuss the November 2015 handling fee denials. Both respondents admitted to adjusting the weights on the weight tickets due to “scale jumping,” and because their scale was broken from November 14 to November 17, 2015. When asked how they were able to determine the weight of the material if the scale was broken, respondent Tseng explained that he would have the recycler stand on the scale, use their physical body weight (that the recycler estimated himself) to determine how much the scale was off, and then use the weight difference to add to the weight ticket to obtain the weight of the material. For instance, if the recycler weighed 140 pounds, and the scale reflected only 40 pounds, then respondents would know the scale was off by 100 pounds for that transaction.

23. Ms. Harrison determined the total amount of damages by developing an “RSA Damages” spreadsheet. On a sub-spreadsheet she calculated the DR7 (known as processor invoices or shipping reports by the recycler) damages based on falsified or altered information for material not eligible for CRV, totaling approximately \$80 million. On another sub-spreadsheet she calculated the DR6 damages totaling approximately \$57 million. DR6s are shipping receipts prepared by RSA. In calculating the DR6 damages, Ms. Harrison identified the total number of weight tickets that had the indicia of being altered or created manually. The information on these weight tickets could not be verified and they were disallowed.

Testimony of Department Supervising Auditor Alicia Davenport

24. Ms. Davenport has been a Department Senior Management Auditor since April 1, 2022. Prior to her current position, she worked as a Department Staff Management Auditor overseeing Northern California Investigations sections consisting of three supervisors, investigations staff, and data analysis staff. She is also involved with criminal investigations referred by the Department.

25. Ms. Davenport explained that the instant case began when an employee at a recycling center contacted the Department's tip hotline to report a fraudulent scheme involving his employer and multiple recyclers, including RSA. Ms. Davenport interviewed the tipster and assigned the RSA case to Ms. Harrison and other staff. Ms. Davenport learned from the tipster that he retrieved material in Nevada and brought it straight to RSA's location in Sacramento for processing. This was the extent of what the tipster knew and observed. Ms. Davenport made a formal DOJ referral to their recycling fraud team. She also had Ms. Harrison take the lead with the Department's investigation. Ms. Harrison was the primary author of the Investigation Report discussed above. There were nine findings made by Ms. Harrison and her investigation team as outlined in the report.

26. Ms. Davenport considered respondents RSA, Tseng, and Perez as responsible parties. She made this determination based upon respondents Tseng and Perez's "interaction with everyone in RSA." RSA was the certificate holder, respondent Tseng was a corporate officer responsible for oversight and the actions of the company, and respondent Perez was the managing employee responsible for the operation of the company. Ms. Davenport asserted that all are responsible parties as defined in the Act.

TESTIMONY OF DONALD WILSON, CARDINAL SCALE MANUFACTURING CO.

27. Mr. Wilson is the Product Development Engineer for Cardinal Scale Manufacturing Company (Cardinal). He has been a software engineer for Cardinal for 31 years. His duties are to develop software for various weighing systems, such as truck scales. In September 2016, Mr. Wilson received from Ms. Harrison RSA's hard drive, and he was asked to retrieve any data relevant to the WINVRS Truck Scale Software, print actions, and logs. He copied the raw files to a working directory so as to not change the originals, and extracted the data for the requested date ranges into a format readable by Microsoft Excel. He explained that users of the software cannot change system files, and for each transaction there is a vehicle identification, date and time when the vehicle "weighed in" and "weighed out," and the tare and net weight of the vehicle. The system log keeps track of user logins and logouts when various operations are performed, such as editing or voiding a transaction. The system also records changes to the original weight ticket. The transaction log identifies transactions that are edited.

28. Mr. Wilson identified three examples on his data spreadsheet where and when edits were made to weight tickets, such as added weight. He testified as to transactions showing in/out times on the truck scale, gross, tare, and net weight changes, and material changes, such as aluminum to glass. Any edits were recorded as manual transactions by the software, and the weight tickets indicated any manual transactions.

TESTIMONY OF JOHN LARKIN, CDFA

29. Mr. Larkin is a Supervising Special Investigator for CDFA's Division of Measurement Standards. He has worked in this position for seven years. He supervises

six special investigators throughout California. Prior to his current position, Mr. Larkin worked as a Special Investigator in CDFA's Weighmaster Program.

30. Mr. Larkin explained that a weighmaster certificate, also known as a weight ticket, is a legal document used as a statement of weight measure or count. At the time of weighing the material, the weight is written down or printed on the computer. Weighing must be performed by a weighmaster, governed by the Business and Professions Code, beginning at section 12700. The weighmaster or deputy weighmaster must sign the certificate at the time the weight is taken. Mr. Larkin further explained that if a weighmaster certificate needs to be corrected, there must be documentation as to why the certificate was corrected. The purpose of the documentation is to determine whether the correction is authentic and completed at the time of the transaction in front of the weighmaster.

31. To make the correction to the weighmaster certificate, the weighmaster must first determine the problem, such as whether the wrong commodity is weighed, or the driver is on the scale. To correct, the driver must "come back around," reweigh, and the weighmaster must check to see if the weight is the same. If not, the weighmaster generates a new weight ticket, cancels out the old one, and attaches the new weight ticket to the old one. The weighmaster must sign the documentation explaining why the weight ticket is being corrected, and the signature must be contemporaneous with the discovery of the error.

32. Mr. Larkin opined as to when a "reprinted" weight ticket may be valid. He stated that it is valid "when it is a true representation of the original weight ticket." The exception is when the reprinted weight ticket is corrected. Such a ticket is not valid without a worksheet signed by the weighmaster. Here, there were no worksheets signed by the weighmaster. Any manual weight ticket or reprinted weight ticket

without a signed worksheet is not valid in California and cannot be used for any commercial transaction. Mr. Larkin agreed that an invalid weight ticket is equal to “no weight ticket.”

33. Regarding truck scales, Mr. Larkin opined that there are specific scales used for specific commodities. The manufacturer’s decal on the scale indicates the specific weight requirements. Truck scales do not have “sweet spots” and cannot “jump” 200 pounds or more. He opined that “the word ‘scale jumping’ tells me that the scale is not settled, something is wrong with the scale and should be taken out of service.” Broken scales, scales out of tolerance, or scales that are not sealed cannot be used. Mr. Larkin went to RSA twice and saw the truck scale when respondent Perez was there. He believed respondent Perez was RSA’s weighmaster because he was told respondent Perez was in charge. He opined that RSA’s truck scale could not weigh anything less than 400 pounds and could not weigh a person unless that person was 400 pounds or more. He also opined that if a scale is moving slightly due to winds or because a truck is moving on the scale, the truck (or wind) must come to a complete stop and the scale must stabilize prior to weighing.

TESTIMONY OF JOHN JACOB, DEPARTMENT SENIOR MANAGER AUDITOR

34. Mr. Jacob has been a Department Senior Manager Auditor for eight years. He manages two audit units, updates procedures for the branch and section, supervises the probationary review unit, and oversees the unit handling claims. Prior to his current job, Mr. Jacob was an auditor for the Office of Audits for 14 years.

35. Mr. Jacob reviewed the spreadsheets completed by Ms. Harrison and Mr. Wilson, all of the reprinted weight tickets, the systems and transaction log data, and damages worksheets. He performed a complicated analysis consisting of 12 steps,

with the purpose "to identify weight ticket reprints that are true duplicates and not edited or manual/single pass, as well as corresponding shipping reports." He concluded:

Based on the testing performed, it appears that there are 510 DR6 Shipping Reports where the associated weight ticket(s) appears to be a true duplicate and does not show up on the participant's "Transaction Log" or "SYS Log" as having been edited. The estimated value of these DR6 Shipping Reports is approximately \$667,000.

Mr. Jacob subtracted the 510 reprinted weight tickets, or DR6 Shipping Reports, from the original 44,555 fabricated weight tickets, resulting in 44,045 fraudulent DR6 Shipping Reports and 2,706 fraudulent DR7 Processor Invoices.

REVISIONS TO DAMAGES AND INTEREST AMOUNTS

36. The numbers and dollar amounts in the Department's First Amended Accusation were revised during the Department's rebuttal case. The Department alleged RSA and respondent Perez fabricated 11,312 manual weight tickets and 32,733 reprinted (edited) weight tickets, for a total of 44,045 fabricated weight tickets (510 less weight tickets than set forth in the First Amended Accusation). Based on those fabricated weight tickets, RSA submitted 44,045 fraudulent DR6 Shipping Reports and 2,706 fraudulent DR7 Processor Invoices. The revised DR6 total is \$56,676,921.72, whereas the revised DR7 total is \$80,239,183.43. Pursuant to Public Resources Code section 14597, subdivision (b), the revised total damage to the Fund is \$80,239,183.43. The revised Interest totals \$6,369,154.22.

CRIMINAL CONVICTIONS AND PLEA AGREEMENTS

37. On December 7, 2017, in the Sacramento County Superior Court, Case No. 17FE022755, RSA, respondents Tseng and Perez, and others were charged with 158 criminal counts including conspiracy, grand theft, submitting a false or forged instrument, offering a false or forged instrument, accessory after the fact, and an excessive taking special allegation. The offenses were alleged to have occurred at different times between 2012 and 2016 in the County of Sacramento.

38. On September 3, 2021, respondent Tseng signed a Plea Agreement as agent for RSA. RSA agreed to enter a guilty plea to violating Public Resources Code section 14591, subdivision (b)(1)(A) (submitting a false or fraudulent claim for payment). RSA also admitted to: (1) fabricating 44,555 weight tickets; (2) using the 44,555 fabricated weight tickets to complete 44,555 fraudulent DR6 Shipping Reports; (3) consolidating the 44,555 fraudulent DR6 Shipping Reports onto 2,727 fraudulent DR7 Processor Invoices; (4) submitting the 2,727 fraudulent DR7 Processor Invoices to the Department for claims against the Fund, including 44,555 fraudulent claims for CRV, processing payments, and administrative costs, receiving full payment from the Fund for each of the fraudulent claims; and (5) payment of \$80,331,217.19 by the California State Controller, based on the 44,555 fraudulent claims. The \$80,331,217.19 was deposited into RSA's bank account.

39. RSA agreed to pay a fine of \$1 million and pay restitution to the Department in the amount of \$33 million. The Plea Agreement further stated:

The Office of the Attorney General agrees not to pursue criminal restitution or the criminal fine against [respondent Tseng] personally. However, this agreement has no impact

on [the Department's] ability to pursue other administrative or civil actions or remedies.

40. In a separate Plea Agreement dated September 3, 2021, respondent Perez pled guilty to five counts of violation of Public Resources Code section 14591, subdivision (b)(1)(A) (submitting a false or fraudulent claim for payment); five counts of violating Penal Code section 115, subdivision (a) (forging/falsifying public records or documents), two counts of violating Penal Code section 132 (offering forged or fraudulently altered document during investigation), two counts of violating Penal Code section 134 (preparing false documentary evidence), and one count of violating Penal Code section 118 (perjury). Imposition of sentence was suspended, and respondent Perez was placed on two years' formal probation with terms and conditions, including serving 364 days in jail (ankle monitor permissible) and paying restitution to the Department in an amount to be determined by the court following a restitution hearing.

Respondents' Evidence

RESPONDENT TSENG'S TESTIMONY

41. Respondent Tseng is from Taiwan. He received his Bachelor of Arts degree in Educational Media and Library Science from the University of Taipei in 1991. In 1994, he moved to the United States for graduate study at the University of Maryland, College Park. He completed his Master of Business Administration degree in Internet Technology in 1996 and began working for a developer of a Chinese website in Sunnyvale, California. He worked there for two years, then began working for Yahoo as an Associate Product Manager for Chinese products. In 2002, he worked for Yahoo in China for two years, came back to the United States, and left Yahoo in 2009. In 2010,

he enrolled in the masters program at the University of East West Medicine in Sunnyvale to study acupuncture.

42. Respondent Tseng asserted he "never got involved in recycling and never redeemed containers for recycling" as former CEO of RSA in Fremont and as President of RSA in Sacramento at the Power Inn Road location. He was not sure whether he was listed as the CEO. When he invested in RSA in Sacramento at the Power Inn Road location as a 51 percent shareholder, respondent Perez, who was working at the Fremont location, transferred to the Sacramento location in Fall 2011 after respondent purchased a lot to expand the RSA facility. Respondent Perez's job was to manage the office and day-to-day operations. Respondent Tseng's role was to participate in general decisions "as far as layout." For the first few weeks respondent Tseng was at the RSA Sacramento office every week. After the first two months, everything was normal after operating on power generators the first few weeks. He then began visiting once a month. He testified that he was able to do the job when he was at home in Cupertino or at school in Sunnyvale, taking orders, checking the purchase log in the shared drive to see how many pounds were purchased on a given day, checking inventory, and completing the payroll for the employees.

43. Respondent Tseng asserted he did not need to look at weight tickets or DR6s or DR7s because he looked at the purchase reports from the shared drive. The business ran without incident. He completed his acupuncture degree in fall 2013 and is currently a California-licensed acupuncturist.

44. Respondent Tseng recalled he and respondent Perez were interviewed by Ms. Davenport on July 7, 2014. He asserted it was respondent Perez that answered most of the questions. He informed Ms. Davenport that he reviewed purchase reports but was not responsible for all reports because he was "not able to verify everything."

He admitted he was the electronic signatory on all bank accounts. He asserted he was paid \$3,000 per paycheck and that RSA "did not receive millions from the State of California."

45. Respondent Tseng provided RSA's tax returns for the years 2012 through 2015. The gross revenue for RSA in 2012 was about \$10 million. RSA "already prepaid to recycling centers as our costs," as well as paid expenses related to processing. The net revenue that year was \$165,000. This revenue stayed within the company as retained earnings. He paid personal taxes on his share of the 51 percent ownership. In 2013 the gross revenue was approximately \$15 million, in 2014 it was approximately \$17 million, and in 2015 it was approximately \$11 million.

46. Respondent Tseng testified having no knowledge of any problems with manual or reprinted weight tickets. Respondent Perez was the operations manager, and he had no knowledge respondent Perez was doing anything illegal from 2012 through 2015. Respondent had no training in weights and measures nor in processing claims. He relied on respondent Perez's expertise. He thought respondent Perez was the weighmaster because she signed the application on behalf of the corporation. Respondent Tseng asserted he had no involvement in weighing anything at RSA because it was not part of his job function.

47. For three or four days in November 2015, the scale broke down. Respondent Perez was not at the plant, but another RSA employee "Andrea" was weighing on the scale and did not know what to do. The Department's auditors were onsite. Andrea told respondent Tseng she "put people on the scale to measure the weight," doing "whatever she could to verify and match weights." When asked why respondent Perez or Andrea put "scale jumping" on the weight tickets, respondent Tseng told Ms. Davenport that "they told me they put people on the scale to

calibrate.” Respondent Tseng asserted he was not there and unaware of what respondent Perez or Andrea did.

48. Respondent Tseng asserted that although he was charged criminally, the case against him was dismissed. As RSA’s corporate representative, he signed the plea agreement on behalf of the corporation.

49. Respondent Tseng now knows, in general, the obligations of a certified processor. He must check and inspect the material, pay recycling centers, and cancel materials. He did not previously have such knowledge when he was the President and major shareholder of RSA. He also did not read the Department’s statutes or regulations governing recycling activities. He conceded he did not call the Department for assistance or training. He would have contacted the Department if he thought there were any issues to be addressed.

50. To date, RSA is “open but not in operation.” RSA’s assets were sold in 2017. Respondent Tseng’s initial investment in RSA was \$10,000, and over time his investment grew to \$500,000. When the Department suspended RSA’s certificate, “that was the beginning of the end of the company.” The Fremont location shut down at the same time. All shareholders lost their investments. RSA paid back its line of credit. If respondent Tseng did not pay it back, the bank would have gone after him personally. He stated, “we paid back the loan.” Respondent Tseng did not profit from the sale of RSA’s assets. He has a 27 percent interest in Alpha Recycling LLC but does not know what his interest is worth. There is no money in his original brokerage account which contained the proceeds of sale of his stock options in Yahoo. He owns two houses. He lives in the primary residence he purchased in 1999. His other home is a rental, from which he receives \$3,000 in rent. After taxes, his net income is \$2,200. He does not know the current value of his rental home. In 2020, he worked part-time as an

acupuncture assistant. He does not receive W-2 income. His joint tax return in 2020 showed \$24,000 in W-2 income from his wife.

Analysis

ISSUE AND CLAIM PRECLUSION

51. Complainant asserts that RSA and respondent Perez's factual admissions in the plea agreements are dispositive in this case and bind all respondents in this matter. The "criminal [pleas] constitute a final judgment on the merits and the claims and/or issues in the criminal matter are the same as in this administrative enforcement action." In addition, respondent Tseng "has an identity and community of interest with RSA and [had] adequate legal representation by RSA in the criminal case (in fact, [he] was in control of it)." Respondents disagree, citing *Pease v. Pease* (1988) 201 Cal.App.3d 29, 32-34 (sound public policies favoring full presentation of issues prevent application of collateral estoppel; plea bargain may reflect nothing more than a compromise; due process right to hearing outweighs any countervailing need to limit litigation or conserve judicial resources).

52. The factual and legal issues raised in the criminal cases against RSA and respondent Perez are identical to the issues in the instant case. The prior criminal proceedings resulted in final judgment, and respondent Tseng, although not a party to the criminal action, was in privity with RSA in the criminal action, acted as agent for RSA, and was the President and CEO of RSA. To conclude that respondent Tseng was in no way involved in the prior criminal proceeding because he did not plead guilty to anything and the criminal action was dismissed against him, ignores the strong and persuasive evidence that he was a primary actor in the fraud that took place despite his assertions that he was not responsible for the actions of respondent Perez.

Respondent Tseng's role in RSA was intertwined with that of respondent Perez's, and his efforts to distance himself from the criminal case and respondent Perez's unlawful actions are disingenuous and irresponsible.

53. As set forth in *Samara v. Matar* (2018) 5 Cal.5th 322, 326-327 (citations omitted):

Claim and issue preclusion have different requirements and effects. Claim preclusion prevents relitigation of entire causes of action. Claim preclusion applies only when a second suit involves (1) the same cause of action (2) between the same parties [or their privies] (3) after a final judgment on the merits in the first suit. Issue preclusion, by contrast prevents "relitigation of previously decided issues" rather than causes of action as a whole. It applies only "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party."

54. All elements of claim and issue preclusion against all respondents have been established. The criminal pleas constituted a final judgement on the merits and the claims and/or issues in the criminal matter are the same as in the instant case. The criminal cases were "actually litigated," in that RSA and respondent Perez had a "full and fair opportunity to litigate [the particular issues] in a prior proceeding" and are prevented from relitigating them here. (*Columbo v. Kinkle, Rodger & Spriggs* (2019) 35 Cal.App.5th 407, 409.) The factual admissions set forth in RSA's plea agreement

constitute an admission of every material fact at issue in the First Amended Accusation. Those facts are dispositive and bind all respondents.

RESPONSIBLE PARTIES/PERSONAL LIABILITY

55. The evidence established that respondent Perez was RSA's Operations Manager and weighmaster. Respondent Tseng was RSA's President and CEO. Respondent Tseng asserted he was ignorant of respondent Perez's fraud scheme, was not involved in RSA's operations, the Department "overstated" his role at RSA, and he did not influence the operations of the company. Thus, he asserts did not violate the Act and is not personally liable for any of the monetary penalties in this case. However:

The rule of respondeat superior is familiar and simply stated: an employer is vicariously liable for the torts of its employees committed within the scope of the employment. [Citations omitted.] Equally well established ... is the principle that an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts. [Citations omitted.]

(Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, 298.)

56. Respondent Tseng's employer role was significant. He was the principal and respondent Perez was the employee acting in her employer's interests. They both profited from RSA's recycling operations, even when the scale was broken. Respondent Tseng had crucial job duties as the President and CEO of RSA. He had influence on RSA's operations and failed to exercise due diligence, enabling respondent Perez to

defraud the Fund. Based on the evidence, respondents cannot deny they are responsible parties. They are bound by the Department's disciplinary statute set forth under Public Resources Code section 14591.2, subdivisions (a) and (c).

57. Moreover, respondents Perez and Tseng are personally responsible for damages to the Fund here. As set forth in *Michaelis v. Benavides* (1998) 61 Cal.App.4th 681, 686:

Directors or officers of a corporation do not incur personal liability for torts of the corporation merely by reason of their official position, unless they participate in the wrong or authorize or direct that it be done. They may be liable, under the rules of tort and agency for tortious acts committed on behalf of the corporation.

Similarly, as explained in *Frances R. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 508, to hold a director liable in his personal capacity, the plaintiff must show that although the director knew or reasonably should have known that some activity under his control could injure plaintiff, he negligently failed to take appropriate action to avoid the harm.

As set forth above, respondent Tseng is bound by the factual bases in the plea agreement, and by his own admission at hearing, that he began the business and built the recycling facility. He performed his job whether he was in Sacramento, or at home or school. He checked the purchase log to see how many pounds were purchased on a given day, checked inventory, and ran the payroll. He was actively engaged in the business and should have exercised diligence as a fiduciary in ensuring the weight tickets complied with the law. His ignorance of the recycling business or the law

governing weights and measures or weight tickets is inexcusable. He reasonably should have known that respondent Perez's activities caused damage to the Fund and failed to take appropriate action. His testimony that he lacked knowledge of the fraud or was not involved in RSA's operations was not credible. Personal liability lies with respondents Perez and Tseng.

UNDISPUTED VIOLATIONS

58. With respect to RSA's Power Inn Road recycling operations, the Department determined, and respondents did not dispute, that RSA, through the actions of respondents Tseng and Perez, violated the Act as follows:

- (1) RSA claimed and was paid a total of \$80,239,183.43 in program payments, for 2,706 processor invoices that were inaccurate, altered, and/or falsified, in violation of Public Resources Code section 14597, subdivisions (a) and (b), and California Code of Regulations, title 14, section 2090, subdivision (c).
- (2) RSA prepared 44,045 weight tickets that were altered or fabricated in violation of Public Resources Code section 14597, subdivision (a), and California Code of Regulations, title 14, section 2090, subdivision (c).
- (3) RSA failed to retain the original weight ticket for 32,733 "reprinted" weight tickets found to have been edited, in violation of California Code of Regulations, title 14, sections 2085, subdivision (b), and 2420, subdivision (b).
- (4) RSA prepared 11,312 manual weight tickets that were not weighed on a scale or other device approved, tested, and sealed in accordance with Division 5 of the Business and Professions Code (Weights and Measures), in

- violation of California Code of Regulations, title 14, section 2115, subdivision (b).
- (5) RSA failed to retain worksheets or any supporting documentation to support the weight of material received on 11,312 manual weight tickets California Code of Regulations, title 14, sections 2115, subdivision (b), and 2090, subdivision (c).
- (6) RSA failed to obtain the weighmaster signature and/or recycling center operator signature, in violation of California Code of Regulations, title 14, sections 2115, subdivision (b), and 2090, subdivision (c).
- (7) RSA failed to obtain the certified weight tickets for scrap material received from out of state, in violation of California Code of Regulations, title 14, section 2831, subdivision (b)(3).
- (8) RSA failed to describe the material received on a weight ticket as "scrap" for material received from out of state, in violation of California Code of Regulations, title 14, section 2831, subdivision (b)(3).
- (9) RSA failed to notify the Division in charge of operational hours, in violation of California Code of Regulations, title 14, section 2405, subdivision (a)(10).

RESTITUTION AMOUNTS

59. Count 1 of the First Amended Accusation seeks restitution in the amount of \$176,523.51, constituting a fraudulent payment made to RSA on December 2, 2015, as found by the hearing officer following the informal hearing on the Order of Immediate Suspension. The restitution amount of \$176,523.51 was established by the evidence, and respondent Tseng did not dispute this amount at hearing. Although

neither party addressed this specific restitution amount in their closing arguments, respondents Tseng and Perez, as responsible parties pursuant to Public Resources Code section 14591.2, and persons illegally paid from the Fund pursuant to Public Resources Code section 14591.4, are jointly and severally liable for payment of this restitution. One need not be the certificate holder, corporate officer, or managing employee to be subject to administrative discipline under Public Resources Code section 14591.2, subdivision (a). The language of that section is expansive as to who is a responsible party by use of the words "not limited to." Further, nothing in the language of Public Resources Code section 14592.1, subdivision (c)(5), limits the collection of restitution to just the certificate holder or to, for example, individuals fabricating weight tickets, like respondent Perez. The same analysis applies to subdivision (c)(6).

60. Count 2 of the First Amended Accusation seeks restitution in the amount of \$80,239,183.43, and interest of \$6,369,154.22, based upon the revised damage numbers established by the evidence during the Department's rebuttal case. Under the terms of the plea agreement, signed by respondent Tseng on behalf of RSA, RSA shall pay restitution to the Department in the amount of \$33 million. The plea agreement had no impact on the Department's ability to pursue "other administrative or civil actions or remedies." Respondent Perez's plea agreement terms require her to pay restitution to the Department "in an amount to be determined by the Court following a restitution hearing." There was no evidence presented at hearing that such a restitution hearing has taken place.

61. Given that RSA has agreed to pay \$33 million in restitution to the Department, it would be excessive and unfair to assess the entirety of the \$80,239,183.43 in restitution against respondents Tseng and Perez, jointly and

severally. Considering respondent Tseng's financial evidence, restitution in the substantially reduced amount of \$8 million shall be assessed jointly and severally against respondents Tseng and Perez.

CIVIL PENALTY AMOUNT

62. In assessing civil penalties, by law 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 & 14591.2, subd. (e).) The Department has requested civil penalties against respondents in the amount of \$453,980,000.

63. The Department has assessed civil penalties at \$5,000 per violation pursuant to Public Resources Code section 14591.1, subdivision (b), which provides that a person who "intentionally or negligently violates this division" may be assessed a civil penalty up to \$10,000 "for each separate violation, or for continuing violations, for each day that violation occurs." The revised number of violations is 90,796, based on 44,045 fabricated weight tickets, 44,045 fraudulent DR6 Shipping Reports, and 2,706 fraudulent DR7 Processor Invoices.

64. The nature and circumstances, and extent and gravity of the violations were serious. Respondents committed a pattern and practice of fraud by fabricating weight tickets and deceiving the Department by claiming a "scale jumping" problem. Respondent Tseng's explanation regarding the truck scale is evidence of dishonesty, incompetence, negligence, and fraud. The Department has waived its costs associated with bringing this action, which began well before the First Amended Accusation was

issued on August 7, 2018. Respondent Tseng presented evidence showing a very limited ability to pay the almost \$454 million in civil penalties.

65. Pursuant to Public Resources Code sections 14591.1 and 14591.2, when all of the evidence is considered in light of the nature, circumstances, extent, and gravity of respondents' violations, a total civil penalty in the substantially reduced amount of \$4.5 million is a just and proper assessment for the conduct alleged and proven by a preponderance of the evidence.

INTEREST AMOUNT

66. The Department has requested \$6,369,154.22 in interest. This too will be reduced, commensurate with respondent Tseng's financial evidence, to the amount of \$600,000.

RESPONDENTS' REQUEST FOR ATTORNEY'S FEES AND COSTS

67. Respondents RSA and Tseng have requested the Department be ordered to pay attorney's fees and costs pursuant to Public Resources Code section 14591.3. The Department asserts that the request must be rejected due to respondents' failure to establish factually or legally that the Department's case is "clearly frivolous or lacking in merit." (*Ibid.*) The evidence established, in pertinent part, that respondents submitted \$80,239,183.43 in fraudulent claims based on 44,045 fabricated weight tickets. There was no evidence presented to establish that the Department's case was clearly frivolous or lacking in merit.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The objective of a disciplinary proceeding is to protect the public. Disciplinary proceedings are not conducted for the purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires complainant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, complainant need only prove it is more likely than not that respondent committed the violations alleged. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.) The Department has the burden of establishing the disciplinary charges in this matter by a preponderance of the evidence.

Applicable Statutes

REDEMPTION OF BEVERAGE CONTAINER MATERIAL

3. Public Resources Code section 14595 states:

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.

CERTIFICATION OF PROCESSORS

4. Public Resources Code section 14539, subdivision (a)(1), states that the Department "shall certify processors pursuant to this section." Subdivision (e) states in pertinent part, that the Department may recover restitution for any payments by the Department to the processor based on documents "not prepared or maintained in compliance with the Department's regulations, and that do not allow the department to verify claims for program payments." The documents, specified in subdivision (d)(8), include: (1) shipping reports prepared by the processor or obtained from recycling centers; (2) processor invoice reports; (3) cancellation verification documents; (4) documents authorizing recycling centers to cancel empty beverage containers; (5) processor-to-processor transaction receipts; (6) rejected container receipts; and (7) weight tickets.

CORRECTION CERTIFICATES

5. Business and Professions Code section 12716.5 states:

A certificate on which a weight, measure, or count error is discovered after issuance shall be corrected by issuing a

correction certificate to all parties who were issued the original certificate.

The word "INCORRECT" shall be written across the face of the original certificate. The original certificate number and reason for the correction shall be recorded on the correction certificate.

FALSIFICATION OF DOCUMENTS AND FRAUDULENT CLAIMS

6. Public Resources Code section 14597, subdivision (a), provides, in pertinent part:

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.

Subdivision (b) states:

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.

CIVIL PENALTIES

7. Public Resources Code section 14591.1, subdivision (a)(1), provides, in pertinent part, that the Department “may assess a civil penalty upon a person who violates this division in an amount greater than [\$5,000].” Subdivision (a)(3) states: “[e]ach violation of this division is a separate violation and each day of the violation is a separate violation.” Subdivision (b) states: “[a]ny person who intentionally or negligently violates this division may be assessed a civil penalty ... up to [\$10,000] for each separate violation, or for continuing violations, for each day that violation occurs.”

DISCIPLINARY ACTION AGAINST RESPONSIBLE PARTY

8. Public Resources Code section 14591.2, subdivision (a), provides that the Department may take disciplinary action against a responsible party for “directing, contributing to, participating in, or otherwise influencing the operations of a certified or registered facility or program.” A responsible party includes: “the certificate holder, registrant, officer, director, or managing employee.”

Subdivision (b)(2) allows the Department to take disciplinary action where the responsible party “engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder or registrant.”

Subdivision (b)(4) allows the Department to take disciplinary action where the responsible party "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." A crime or act "shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare."

Subdivision (c) allows the Department to take disciplinary action, in part, by (1) immediately revoking or suspending the certificate or registration, (2) collecting restitution improperly paid to the certificate holder or registrant, and (3) imposing civil penalties pursuant to section 14591.1.

RESTITUTION

9. Public Resources Code section 14591.4, subdivision (a), provides that the Department may seek restitution "illegally paid to any person from the fund, plus interest at the rate earned on the Pooled Money Investment Account of the total amount." Subdivision (b) provides, in pertinent part, that a certificate holder is liable for restitution "for payments made by the Department to the certificate holder that are based on improperly prepared or maintained documents." Subdivision (d) provides, in pertinent part, that if the Department "collects amounts in full restitution for money paid, [it] may impose a penalty of not more than [\$100] for each separate violation, or for continuing violations, for each day that violation occurs."

10. A "person" is defined as "any individual, corporation, operation, or entity, whether or not certified or registered pursuant to this division." (Pub. Resources Code, § 14515.2.)

Cause for Discipline

COUNT 1: RESTITUTION OF \$176,523.51 PER IMMEDIATE SUSPENSION

11. Cause exists to discipline all respondents by collecting restitution improperly paid to respondents on December 2, 2015, in the amount of \$176,523.51, pursuant to Public Resources Code sections 14591.2, subdivisions (a), (b)(2), and (c)(5), and 14591.4, subdivision (a), as set forth in the Factual Findings and Legal Conclusions as a whole.

COUNT 2: IMMEDIATE REVOCATION, RESTITUTION, INTEREST, CIVIL PENALTIES

12. Cause exists to immediately revoke respondent RSA's recycling certificate, pursuant to Public Resources Code section 14591.2, subdivision (c)(1), in that respondents RSA, Tseng, and Perez falsified and submitted fraudulent claims, based on 44,045 fabricated weight tickets in violation of section 14597, subdivisions (a) and (b), as set forth in the Factual Findings and Legal Conclusions as a whole.

13. Cause exists to discipline all respondents by collecting restitution in the amount of \$8 million, pursuant to Public Resources Code sections 14539, subdivision (e), 14591.2, subdivision (c)(5), and 14591.4, as set forth in the Factual Findings and Legal Conclusions as a whole.

14. Cause exists to discipline all respondents by imposing interest in the amount of \$600,000, pursuant to Public Resources Code section 14591.4, as set forth in the Factual Findings and Legal Conclusions as a whole.

15. Cause exists to discipline all respondents by imposing civil penalties in the amount of \$4.5 million, pursuant to Public Resources Code sections 14591.1, and 14591.2, subdivision (c)(6), as set forth in the Factual Findings and Legal Conclusions as a whole.

Respondents RSA and Tseng's Request for Attorney's Fees and Costs

16. Public Resources Code section 14591.3 provides, in pertinent part that respondents may claim from the Department "any costs and fees incurred in defending or responding to any action brought by the [D]epartment" where respondents prevail, upon a finding that the Department's action was clearly frivolous or lacking in significant merit. As set forth in the Factual Findings and Legal Conclusions as a whole, cause exists to impose the above discipline against all respondents in this matter. There are no findings that the Department's case was "clearly frivolous or lacking in significant merit." The preponderance of the evidence established to the contrary. Respondents' request must be denied.

ORDER

1. Certificate No. PR147941.001, issued to respondent Recycling Services Alliance, Inc., is immediately REVOKED.

2. Respondents Recycling Services Alliance, Inc., Shengchien Tseng, and Maximina Perez, shall pay restitution to the Department in the amount of \$176,523.51 under Count 1 of the First Amended Accusation, jointly and severally.

3. Respondents Recycling Services Alliance, Inc., Shengchien Tseng, and Maximina Perez, shall pay restitution to the Department in the amount of \$8 million under Count 2 of the First Amended Accusation, jointly and severally.

4. Respondents Recycling Services Alliance, Inc., Shengchien Tseng, and Maximina Perez, shall pay interest in the amount of \$600,000 under Count 2 of the First Amended Accusation, jointly and severally.

5. Respondents Recycling Services Alliance, Inc., Shengchien Tseng, and Maximina Perez, shall pay civil penalties in the amount of \$4.5 million under Count 2 of the First Amended Accusation, jointly and severally.

6. Respondents Recycling Services Alliance, Inc., Shengchien Tseng's request for attorney's fees and costs are DENIED.

DATE: May 2, 2023

Danette C. Brown

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings