HARLLEE BRANCH (SBN 215842)
Chief Counsel (Acting)
JEFFREY A. DIAMOND (SBN 143018)
Senior Staff Counsel
California Department of Resources Recycling and Recovery
Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
Telephone: 916-327-0089
Fax: 916-322-8768
Email: jeff.diamond@calrecycle.ca.gov

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Legal Office

Attorneys for the California Department of Resources Recycling and Recovery

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the Matter of the Accusation Against: **BC Recycling, Inc. (PR23744.001, RC11991, RC11146, RC11149, RC11152, RC11153, RC12298, RC12895, and RC251556.001)** **and** **Adolfo Ramirez, as an individual and as Chief Executive Officer, Chief Financial Officer, and Director of BC Recycling, Inc.,** **Respondents.**	**OAH Case No.** **DRRR Case No. 2019-003-BCR** **ACCUSATION** **[Gov. Code § 11503]** **COLLECTING RESTITUTION AND INTEREST, ASSESSING CIVIL PENALTIES, RECOUPING COSTS, AND IMPOSING PROBATION** **[Pub. Resources Code §§ 14591.1, 14591.2, 14591.3, 14591.4, 14594.5, and 14595-14597]**

Pursuant to the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code (hereafter "PRC") § 14500 et seq. (hereafter "Act"), and California Code of Regulations, title 14, § 2000 et seq. (hereafter "Regulations"), the Department of Resources Recycling and Recovery (hereafter "Department"), issues this Accusation by and through the undersigned, Ken DaRosa, Director (Acting), exclusively in his official capacity.

A. Jurisdiction

1. The Department is responsible for administration of the Act, including but not limited to, managing the California Beverage Container Recycling Fund (PRC § 14580 (hereafter "Fund")), adopting regulations, certifying and registering program participants, inspecting,

auditing, investigating, filing and prosecuting enforcement actions, and imposing discipline. (PRC §§ 14512.7, 14530.5, 14538, 14539, 14539.5, 14540, 14552, 14553, 14580, and 14591-14597.)

2. The Department is authorized under PRC § 14552(b)(1) to audit or investigate any action taken during the five-year period before the onset of the audit or investigation to determine compliance with the Act and Regulations. An enforcement action is timely if filed within five years of the discovery of a violation of the Act or Regulations. (PRC § 14552(b)(2).) The Department may also conduct a comprehensive inspection, audit, or investigation to verify compliance with the Act and Regulations. (PRC §§ 14552(b) and (c); PRC § 14553(c); Gov. Code §§ 11180 et seq.; Regulations §§ 2075 and 2125.)

3. In connection with all matters relating to the business activities and subjects under its jurisdiction, Government Code §11180 et seq. authorizes the Department to inspect books and records, promulgate interrogatories, and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state. (Gov. Code §§ 11180 & 11181.)

4. A person or entity must provide the Department with immediate access to its facilities, operations, and any relevant record, that, in the Department's judgment, are necessary to carry out its obligation to verify compliance with the Act and Regulations. (PRC §§ 14552(c) and 14553(c).)

5. The Act defines “person” as “any individual, corporation, operation, or entity, whether or not certified or registered” under the Act. (PRC §§ 14515.2, 14595, and 14595.4(a); Regulations § 2000(a)(34).)

6. The Department's Regulations define "operator" as the person or entity who has ultimate responsibility for a recycling facility, processing facility, or collection program. (Regulations § 2000(a)(33).) An operator has the ultimate responsibility to insure the accuracy of all claims made on the Fund. (PRC § 14553 and Regulations § 2090(c).)

7. The Act defines "responsible party" to include, but not be limited to, the certificate

holder, registrant, officer, director, or managing employee. The Department may take disciplinary action against any responsible party for directing, contributing to, participating in, or otherwise influencing the operations of, a certified or registered facility or program. (PRC § 14591.2.)

8. The Act declares that any person participating in conduct intended to defraud the State's beverage container recycling program including, but not limited to, redemption of out-of-state and previously redeemed beverage containers, shall be held accountable for that conduct. (PRC §§ 14591, 14591.2, 14595, 14595.5, 14596, and 14597.)

B. Statutory And Regulatory Authority

9. The Act and Regulations establish a framework whereby beverage distributors pay to the Department the California Refund Value (hereafter "CRV") for each beverage container sold or offered for sale in California. (PRC §§ 14511 and 14560(a).) Distributors in turn charge the CRV to dealers who operate retail establishments. (PRC §§ 14510 and 14560.5.) The dealers pass the CRV expense to the consumer at the time of the retail sale. (PRC § 14560.5.) Thereafter, certified recycling centers (PRC § 14520) pay to consumers CRV for empty eligible beverage containers and later submit claims for reimbursement for those payments. (PRC § 14572.) Recycling centers sell the empty beverage containers to certified processors, who pay scrap value for the material, reimburse the recycling centers for CRV paid to consumers, and pay the recycling centers a processing payment and administrative costs based on the material type and quantities of eligible material delivered to the processor. (PRC § 14573.5.) Processors then submit claims to the Department for reimbursement for payments of CRV, processing payments, and administrative costs. (PRC § 14573.)

10. The Act defines "processor" as any person certified by the Department who purchases from recycling centers or collection programs empty beverage containers which have a refund value established by the Act. Additionally, a processor must <u>inspect</u> the empty beverage containers for CRV eligibility as well as <u>cancel</u> the refund value by using a method defined by the Act and Regulations. (PRC §§ 14518 and 14539; Regulations §§ 2000(a)(4) and 2401.) The cancellation process removes the redemption value from the beverage containers. Cancellation is an essential anti-fraud tool that prevents re-redemption of the containers.

11. The Act and Regulations require all certified processors to obtain and/or create and maintain specified documentation so that the Department may validate all claims made by a processor for CRV, processing payments, and administrative costs. Processors must retain proof that the processor canceled, or had the CRV canceled, in accordance with the Act and Regulations. (PRC §§ 14539(d)(8) and (e); Regulations § 2420(d).) Any claim filed by the processor that cannot be validated, including claims based on beverage containers that were never cancelled, are invalid and are subject to recovery via restitution. (PRC § 14539(e); Regulations §§ 2420, 2425, and 2430.) All scrap transactions must be documented. (Regulations §§ 2420(g) and (h); 2425(f).)

12. All weight "shall be measured, recorded, and reported" in accordance with "Division 5 of the Business and Professions Code (Weights and Measures) and any applicable regulations thereunder." Thus, all weight tickets must include, among other accurate data, gross weight, container tare weight, net weight, and have a unique serial number. (Regulations § 2115; Business and Professions Code § 12715; *see also* §§ 12700-12729.) No manually created weight ticket is valid for the purposes of the Act and Regulations unless the supporting worksheet with the raw data, signed by the weighmaster who weighed the material, is attached thereto. (*Id.*) Misstating or mixing material types on a single weight ticket is illegal under California law. (Regulations § 2115; Business and Professions Code §§ 12713 and 12715.) Each material type must have its own weight ticket. All claims against the Fund based on illegal and invalid weight tickets are invalid and subject to restitution. (PRC § 14539(e).) Any redemption claim, or other program payment, based upon a fabricated weight ticket is fraudulent pursuant to PRC § 14597.

13. All reports, claims, and other information required pursuant to the Act or Regulations must be complete, legible, and accurate, and shall be signed, by an officer, director, managing employee, or owner of the certified recycling center, processor, distributor, beverage manufacturer, container manufacturer, or other entity. (PRC § 14553.)

14. The Act deems a claim to be fraudulent when the claim is based in whole or in part on false information or falsified documents. (PRC § 14597(b).) No person may submit or cause to be submitted a fraudulent claim. (PRC § 14597.)

15. Disciplinary action is justified where a responsible party has engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder or registrant, or where the responsible party violates the Act or Regulations. (PRC §§ 14591.2(b)(2) and 14591.2(b)(3).)

16. The Department may recover in restitution any money improperly or illegally paid to a certificate holder, registrant, or responsible party. (PRC §§ 14591.2(c)(5) and 14591.4.) This includes payments made from the Fund that are based on documents that are not prepared or maintained in compliance with the Department's Act and Regulations, which are based in whole or in part on false information or falsified documents, where there are no documents to support a claim, as well as claims for program payments the Department cannot verify. (PRC §§ 14538, 14539, 14539.5, 14552, 14553, 14591-14597.)

17. The Act authorizes the Department to collect interest, levy statutory penalties, recover costs and fees related to audits and investigations, and to revoke certificates. (PRC §§ 14591.1, 14591.2, 14591.3, 14591.4, 14594.5, 14596, and 14597.)

18. Each violation of the Act is a separate violation and each day of the violation is a separate violation. (PRC § 14591.1(a)(3)) Thus, each invalid, illegal, or fraudulent claim, is a separate violation of the Act. (PRC §§ 14591.1, 14591.2, 14595.5, and 14597.)

C. Respondents

19. Respondent BC Recycling, Inc. (hereafter "BC"), was a sole proprietorship owned by Respondent Adolfo Ramirez prior to October 6, 2015. On and after October 6, 2015, BC was a corporation organized under the laws of the State of California. BC is located at 1043 East Houston Avenue, Visalia, California. The Department certified BC as the operator of a processor facility under certificate number PR23744.001 and a recycling center under certificate number RC11991. (Regulations § 2000(a)(33).) Because both facilities are located at the same site, BC is known as a dual-certified entity. (Regulations § 2105.) Additionally, BC is the operator of seven other certified recycling centers in California:

RC11146 - 1595 E. Barsley Avenue, Tulare
RC11149 - 1357 South K Street, Tulare
RC11152 - 3535 West Walnut Avenue, Visalia

RC11153 - 400 East Tulare Avenue, Visalia
RC12298 - 5201 West Goshen Avenue, Visalia
RC12895 - 1148 Park Blvd., Orange Cove
RC251556.001 - 250 East Antelope, Woodlake

(Regulations § 2000(a)(33).) BC is a responsible party within the meaning of the Act. (PRC § 14591.2(a).) In the process of conducting its business, BC, actively engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder, which resulted in defrauding the Fund.

20. Respondent Adolfo Ramirez (hereafter "Ramirez"), as an individual owner and as Chief Executive Officer, Chief Financial Officer, and Director of BC Recycling, Inc., was at all times mentioned herein, responsible for directing, contributing to, participating in, or otherwise influencing the operations of BC. At all times relevant to this Accusation, Ramirez was a responsible party within the meaning of the Act, conducting the business of BC, including but not limited to, actively directing, controlling, and personally participating in, or otherwise influencing, the day-to-day operation and management of all business affairs of BC. (PRC § 14591.2(a) and Regulations § 2000(a)(33).) In the process of conducting such business, Ramirez actively engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder, which resulted in defrauding the Fund.

21. Hereafter, the Department will refer to Respondents BC Recycling, Inc. and Adolfo Ramirez as "BC Respondents."

22. For the purposes of this Accusation, Respondents BC Recycling, Inc. and Adolfo Ramirez have joint and several liability as they are each a responsible party within the meaning of the Act. (PRC § 14591.2(a).) BC Respondents jointly and actively directed, controlled, and participated in the day-to-day operation and management of BC. In the process of conducting such business, BC Respondents actively engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder, which resulted in defrauding the Fund.

23. BC Respondents were subject to and required to comply with the Act and the Regulations at all times relevant to this Accusation.

24. This Accusation is timely as it has been filed within five years after the Department discovered the violations of the Act and the Regulations alleged herein. (PRC §14552(b)(2).) This action is subject to the formal hearing procedures of the California Administrative Procedure Act. (Gov. Code §11500 et seq.; PRC §14591.2.)

D. Grounds For Administrative Action

25. The statements, assertions, and allegations set forth in paragraphs 1 through 24, above, are incorporated by reference.

26. The Department conducted an audit of BC for the period of September 1, 2014 through August 31, 2016, inclusive. The last day of field work was August 30, 2018.

27. The audit scope was limited to reviewing BC's reported quantities, record keeping procedures, and records supporting claims made against the Fund during the relevant period. It did not encompass any liabilities or credits that may have existed at the time as a result of other transactions.

28. The audit revealed that BC was not in compliance with the requirements of the Act and Regulations. Specifically, BC Respondents filed claims against the Fund based on beverage containers that had never been cancelled. Claims made by a certified processor on beverage containers are not valid unless the containers are cancelled by the processor pursuant to the Act and Regulations. (PRC §§ 14518, 14539(d)(7) and (d)(8); Regulations §§ 2000(a)(4), 2110, and 2420(d).)

29. For the period of September 1, 2014 through February 28, 2015, inclusive, BC Respondents failed to cancel 1,128,274.4 pounds of PET beverage containers sold to Recycling Services Alliance, Inc. (hereafter "RSA"). BC Respondents claimed **$1,353,868.52** in CRV, processing payments, and administrative costs based on the uncancelled beverage containers.

30. The audit of BC also established that BC Respondents failed to weigh and inspect all loads of beverage containers it received from BC's own off-site recycling centers. Claims made by a certified processor on beverage containers that have not been weighed or inspected are not valid for any purpose. (PRC § 14539(d); Regulations §§ 2401, 2420(b), and 2430(a).)

31. For the period of September 1, 2014 through August 31, 2016, inclusive, BC

Respondents failed to weigh and inspect 1,482 loads of beverage containers received from BC's own off-site recycling centers.

32. The results of the audit were communicated to Roy Ortiz and Respondent Adolfo Ramirez at an exit conference held on August 30, 2018, and again via a Draft Audit Report dated October 16, 2018. In a letter dated November 13, 2018, BC Respondents replied to the audit results by submitting comments and documents to the Department for consideration.

33. After a review of the comments and documents submitted by BC Respondents, the Department concluded that no viable defense was presented by BC Respondents to the Final Audit Report. Indeed, among the documents provided to the Department by BC Respondents were two fabricated weight tickets issued by RSA that BC Respondents used to claim CRV, processing payments, and administrative costs from the Fund.

34. The total amount due set forth in the Final Audit Report was $1,674,731.00. That amount included $1,353,869.00 in disallowed processor invoice payments, $296,400.00 in civil penalties, and $24,462.00 in interest. Interest was calculated at a daily rate through August 30, 2018, on the disallowed processor invoices. As of the date of this Accusation, BC Respondents have failed to pay to the Department the foregoing amounts.

E. Count One: BC Respondents Filed Claims For CRV, Processing Payments, And Administrative Costs Based On Beverage Containers They Failed To Cancel.

35. The statements, assertions, and allegations set forth in paragraphs 1 through 34, above, are incorporated by reference.

36. Claims made by a certified processor on beverage containers are not valid unless the containers are cancelled by the processor pursuant to the Act and Regulations. (PRC §§ 14518, 14539(d)(7) and (d)(8); Regulations §§ 2000(a)(4), 2110, and 2420(d).) A certified processor has the absolute duty to cancel all beverage containers to render them unfit for re-redemption. (PRC § 14539(d)(7).) Indeed, cancellation is a paramount duty of all processors to prevent the reintroduction of the beverage containers back into the recycling program. Cancellation, like inspection, is a first-line defense against fraud. Notwithstanding this paramount duty, BC Respondents failed to cancel certain PET beverage containers during the time period of

September 1, 2014 through February 28, 2015.

37. According to BC Respondents, Alpha Recycling Resource Services Alliance (hereafter "Alpha"), located in North Hollywood, California, cancelled the subject PET beverage containers on their behalf. That contention is problematic for BC Respondents. First, Alpha was never authorized to cancel on behalf of BC Respondents. (PRC § 14539(d)(7); Regulations § 2110.) Second, BC Respondents have no documentation from Alpha that proves cancellation. (PRC § 14539(d)(8)(C); Regulations § 2420(d).) Third, BC Respondents did not ship their material to Alpha. Instead, BC Respondents sold and shipped their PET beverage containers to RSA, located in Sacramento, California. Therefore, no entity other than RSA could have cancelled those loads on behalf of BC Respondents. Fourth, RSA was never authorized to cancel on behalf of BC. (PRC § 14539(d)(7); Regulations § 2110.) Fifth, BC Respondents have no documentation from RSA that proves cancellation. (PRC § 14539(d)(8)(C); Regulations § 2420(d).) Sixth, neither Alpha nor RSA were a "place of end use," i.e., a bona fide end user. (PRC § 14539(d)(7); Regulations §§ 2000(a)(4)(F) and 2420(d).) Therefore, any loads of beverage containers BC Respondents sold and shipped to RSA, or Alpha, did not meet the requirements in the Act or Regulations for cancelled materials. (PRC § 14539(d)(7); Regulations §§ 2000(a)(4) and 2420(d).)

38. Proof that a claim for CRV, processing payments, and administrative costs is valid necessarily includes proof that the subject containers had been cancelled pursuant to the Act and Regulations. In this matter the Department cannot validate the cancellation of the beverage containers sold by BC Respondents to RSA. Due to the lack of cancellation, the Department cannot validate the claims made by BC Respondents on 1,128,274.4 pounds of PET, for the period of September 1, 2014 through February 28, 2015, inclusive. Accordingly, BC Respondents have no legal claim to the **$1,353,868.52** in CRV, processing payments, and administrative costs paid from the Fund based on the uncancelled beverage containers they sold to RSA. Those claims are invalid and subject to restitution. (PRC § 14539(e).)

39. The claims that BC Respondents made on the 1,128,274.4 pounds of PET are also fraudulent pursuant to PRC § 14597. The submission of a Processor Invoice (DR7), setting forth

the monetary claim against the Fund, certifies compliance with all of the processor's duties and obligations relevant to the claim, including but not limited to, inspection and cancellation of the subject beverage containers. Here, BC Respondents attested to cancellation when in fact no cancellation had ever occurred. Thus, the claims submitted by BC Respondents on 1,128,274.4 pounds of PET are fraudulent because they "were based in whole or in part on false information." (PRC § 14597(b).)

F. Count Two: BC Respondents Failed To Weigh And Inspect 1,482 Loads Of Beverage Containers Received From BC's Own Off-Site Recycling Centers.

40. The statements, assertions, and allegations set forth in paragraphs 1 through 39, above, are incorporated by reference.

41. During the on-site audit Department staff were told by BC Respondents' operations manager, Roy Ortiz, that BC Recycling employees <u>never</u> weighed or inspected any beverage containers received from BC's own off-site recycling centers.

42. For the period of September 1, 2014 through August 31, 2016, BC Respondents failed to weigh and inspect 1,482 loads of beverage containers received from BC's own off-site recycling centers.

43. The failure to weigh and inspect all incoming material, other than material from a dual-certified site, violates the Act and Regulations. (PRC § 14539(d); Regulations §§ 2401, 2420(b), and 2430(a).)

44. Claims made by a certified processor on beverage containers that have not been weighed or inspected are not valid, and if already paid, are subject to restitution. (PRC § 14539(d)(1), (d)(2), (d)(5), (d)(6), and (e); Regulations §§ 2401, 2420(b), and 2430(a).)

G. Count Three: BC Respondents Filed Claims For CRV, Processing Payments, And Administrative Costs Using Fabricated Weight Tickets.

45. The statements, assertions, and allegations set forth in paragraphs 1 through 44, above, are incorporated by reference.

46. Among the documents provided to the Department by BC Respondents were two fabricated weight tickets issued by RSA, located in Sacramento, California. One of the RSA

weight tickets had been "reprinted" while another had been manually created. Neither weight ticket is valid under California law because RSA failed to create and maintain the documentation required by Bus. & Prof. Code §§ 12700-12729. (*See also* Regulations § 2115.) Accordingly, BC Respondents were prohibited by law from using the two invalid weight tickets to support any financial transaction, including claims made against the Fund.

47. The following chart illustrates the damage to the Fund caused by BC Respondents' use of the two fabricated weight tickets.

Weight Ticket	Material	Net Weight (in lbs)	CRV ($1.16 lb)	Processing Payment (0.05802)	Admin Cost (0.025)	Total Payment
# 212121	PET	42,640	$ 49,462.40	$ 2,473.97	$ 1,236.56	$ 53,172.93
# 211383	PET	42,600	$ 49,416.00	$ 2,471.65	$ 1,235.40	$ 53,123.05
		85,240	**$ 98,878.40**	**$ 4,945.62**	**$ 2,471.96**	**$ 106,295.98**

48. The Act requires all weighing and weight tickets to be in compliance with Business and Professions Code. (Regulations § 2115; Bus. & Prof. Code §§ 12700-12729.). The Department has established by investigation that RSA's reprinted and manual weight tickets were fabricated. In each case weight was added to the original weight ticket. Besides the obvious fraud issue, the weight tickets were also invalid because RSA failed to comply with the requirements of the Business and Professions Code when issuing a corrected weight ticket ("reprinted") or a manually generated weight ticket.

49. RSA failed to comply with one or more of the following, thus invalidating their reprinted and manually generated weight tickets:

(a) A weight ticket must be issued at the time of weighing and be signed by the weighmaster who actually weighed the load (with an exception that does not apply in this matter). The weighmaster's printed first and last name and signature must be legible. (Business and Professions Code §§ 12712, 12714, 12714.5, 12715, and 12721.)

(b) A correction certificate (a corrected weight ticket) must be issued if a weight ticket is found to contain an error. (Business and Professions Code § 12716.5.)

(c) The word "INCORRECT" is required to be written across the face of the <u>original</u> ticket that must be corrected. (Business and Professions Code § 12716.5.)

(d) The weighmaster must write the original weight ticket number and the reason for the correction on the correction certificate. (Business and Professions Code § 12716.5.)

(e) All weight tickets, including correction tickets, must be consecutively numbered, i.e., have a unique serial number. Duplicate or reprinted weight tickets are not allowed. (Business and Professions Code § 12714.5.)

(f) The original weight ticket must be maintained on premises with all associated documentation, including worksheets, when a correction certificate is issued. (Business and Professions Code §§ 12712 and 12716.)

(g) No manually created weight ticket is valid for the purposes of the Act and Regulations unless the supporting worksheet with the raw weight data, signed by the weighmaster who weighed the material and the truck driver who delivered it, is attached thereto. If the worksheet is not attached then the weight ticket is invalid. (Business and Professions Code §§ 12712 and 12716.)

(h) Misstating or mixing material types on a single weight ticket is illegal under California law. Each material type must have its own weight ticket. (Business and Professions Code §§ 12713 and 12715.)

(i) Broken or unsealed scales may not to be used under any circumstances. (Business and Professions Code § 12717.)

(j) Weight tickets and worksheets must be kept for four (4) years under the Business and Professions code, and for five (5) years under the Act. (Business and Professions Code §§ 12716; Regulations § 2085(b).)

50. It is irrelevant whether BC Respondents knew that the RSA weight tickets were fabricated. The claims based on those weight tickets are not only invalid but also fraudulent. (PRC §§ 14539(d)(8), 14553(a) and (d), 14591.2(b)(3), and 14597(b).) Accordingly, BC Respondents have no legal claim to the **$106,295.98** in CRV, processing payments, and administrative costs paid from the Fund based on the fabricated weight tickets.

51. There is an additional issue here. During the time relevant to this Accusation, all reprinted and manual weight tickets issued by RSA were fabricated. Notably, Respondents received copies of all of the RSA weight tickets associated with the beverage containers they sold to RSA. (Regulations §§ 2420(b), (d), and (e).) Had BC Respondents inspected each weight ticket they would have identified the irregularity in the documents. With that knowledge they would have been in the position to cease filing fraudulent claims as well as to notify the Department that RSA was issuing invalid weight tickets. To the contrary, BC Respondents failed to take the simplest steps to prevent this fraud. Such failure by BC Respondents constituted

"dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder." (PRC § 14591.2(b)(2).)

52. Lastly, the beverage containers sold by BC Respondents to RSA were used by RSA to further its illegal enterprise. RSA re-redeemed the beverage containers and collected CRV for a second time. Knowingly or unknowingly, BC Respondents assisted RSA with its unlawful endeavor. (PRC § 14595.5(a)(2)(D).)

H. Statutory Remedies To Be Imposed.

53. The statements, assertions, and allegations set forth in paragraphs 1 through 52, above, are incorporated by reference.

54. Pursuant to its statutory authority, the Department imposes the following disciplinary action against the Respondents BC Recycling and Adolfo Ramirez, joint and severally, based upon sufficient evidence of violations of the enumerated statutes and regulations, as set forth above.

(a) **Disallowed Claims**

Pursuant to PRC §§ 14539(e) and 14591.2(c)(5), all claims based on beverage containers that were never cancelled are disallowed in their entirety.

(b) **Restitution**

Pursuant to PRC §§ 14539(e), 14591.2(c)(5), and 14591.4, the Department orders immediate restitution in the amount of One Million Three Hundred Fifty-Three Thousand Eight Hundred Sixty-Eight Dollars and Fifty-Two Cents (**$1,353,868.52**) for the program payments based on loads not cancelled and on claims based on invalid, illegal, and/or fraudulent documents.

(c) **Interest**

Pursuant to PRC § 14591.4, the Department orders payment of interest on the restitution of **$1,353,868.52**. The interest is calculated at the rate earned on the Pooled Money Investment Account, pursuant to PRC §

14591.4, beginning on the date the claim was submitted and continuing until the restitution and interest ordered herein is paid in full. As of October 1, 2019, interest owed to the Department totals Forty-Seven Thousand Eight Hundred Dollars and Sixty-One Cents **($47,800.61)**. Interest accruing after that date will be established at trial.

(d) **Civil Penalties**

Pursuant to PRC §§ 14591.1 and 14591.2(c)(6), the Department assesses civil penalties for the **2996** violations of the Act and Regulations, as enumerated in this Accusation (Count One - 30 violations; Count Two - 2964 violations; Count Three - 2 violations). Each violation of the Act or Regulations constitutes an independent basis upon which to sustain a penalty. (PRC §§ 14591.1(a)(3) and (b).) For each violation the Department imposes a civil penalty as follows: Count One - Five Hundred Dollars (**$500.00**) per violation; Count Two - One Hundred Dollars (**$100.00**) per violation; and Count Three - Five Thousand Dollars (**$5,000.00**) per violation. Accordingly, the Department orders penalties totaling Three Hundred Twenty-One Thousand Four Hundred Dollars and no Cents **($321,400.00)**.

(e) **Costs and Fees**

Pursuant to PRC § 14591.3, the Department orders the payment of all costs and fees, including but not limited to attorneys' and expert witness fees, and the costs of audit, investigation, and hearing, in the amount set forth below, as well as additional amounts to be determined at trial, including costs and fees associated with litigation subsequent to the date of this Accusation. As of the date of this Accusation, the costs and fees incurred by the Department total Thirty Thousand Two Hundred Twenty-One Dollars and Five Cents **($30,221.05)**, as follows:

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(I) Senior Management Auditor - $5,262.60

(ii) Associate Management Auditor - $4,176.35

(iii) Staff Services Management Auditor - $12,382.10

(iv) Attorney IV - $8,400.00

(f) **Probation**

Pursuant to PRC § 14591.2(c)(1), the Department designates certificates PR23744.001, RC11991, RC11146, RC11149, RC11152, RC11153, RC12298, RC12895, and RC251556.001 probationary for the period of five (5) years from the date of the issuance of a Final Agency Decision in this matter.

55. The total amount due to the Department under this Accusation is **$1,753,290.18**.

56. In addition to the disciplinary actions taken in paragraph 54, above, the Department seeks such other and further relief as is just and proper.

Dated: 21 July 2020

Ken DaRosa, Director (Acting)
Department of Resources Recycling and Recovery