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AUG 07 2018

CalRecycle
Legal Office

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the Matter of the
Accusation Against:

Recycling Services Alliance, Inc., a California
Corporation (PR147941.001),

Shengchien (Jensen) Tseng, individually and
as principal, owner, partner, director,
president, manager, responsible party, and
operator of Recycling Services Alliance, Inc.,

and

Maxima (Maxi) Perez, individually and as
principal, owner, partner, director, manager,
responsible party, and operator of Recycling
Services Alliance, Inc.,

Respondents.

OAH Case No.

DRRR Case No. 2016-003-BCR

FIRST AMENDED ACCUSATION
[Gov. Code § 11503]

COLLECTING RESTITUTION AND
INTEREST, ASSESSING CIVIL
PENALTIES, RECOUPLING COSTS,
REVOKE CERTIFICATION,
PROHIBITING PARTICIPATION IN
RECYCLING AND GRANT PROGRAMS,
AND PROHIBITING THE HANDLING OF
BEVERAGE CONTAINERS

[Pub. Resources Code §§ 14591.1, 14591.2,
14591.3, 14591.4, 14594.5, and 14595-14597]

1 Pursuant to the California Beverage Container Recycling and Litter Reduction Act, Public
2 Resources Code (hereafter "PRC") § 14500 et seq. (hereafter "Act"), and California Code of
3 Regulations, title 14, § 2000 et seq. (hereafter "Regulations"), the Department of Resources
4 Recycling and Recovery (hereafter "Department"), issues this Accusation by and through the
5 undersigned, Ben Shelton, Branch Chief (Acting), Recycling Program Enforcement Branch,
6 exclusively in his official capacity.

7 **A. JURISDICTION**

8 1. The Department is responsible for administration of the Act, including but not
9 limited to, managing the California Beverage Container Recycling Fund (hereafter "Fund"),
10 adopting regulations, certifying and registering program participants, inspecting, auditing,
11 investigating, filing and prosecuting enforcement actions, and imposing discipline. (PRC §§
12 14512.7, 14530.5, 14538, 14539, 14539.5, 14540, 14552, 14553, 14560, 14580, 14591-14597.)
13 The Department may recover in restitution any money improperly or illegally paid to a certificate
14 holder, registrant, or responsible party. (PRC §§ 14591.2(c)(5) and 14591.4.) This includes
15 payments made from the Fund that are based on documents that are not prepared or maintained in
16 compliance with the Department's Act and Regulations, which are based in whole or in part on
17 false information or falsified documents, where there are no documents to support a claim, as well
18 as claims for program payments the Department cannot verify. (PRC §§ 14538, 14539, 14539.5,
19 14552, 14553, 14591-14597.)

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

26 3. The Department is authorized under PRC § 14552(b)(1) to audit or investigate any
27 action taken during the five-year period before the onset of the audit or investigation to determine
28 compliance with the Act and Regulations. An enforcement action is timely if filed within five

1 years of the discovery of a violation of the Act or Regulations. (PRC § 14552(b)(2).) The
2 Department may also conduct a comprehensive inspection, audit, or investigation to verify
3 compliance with the Act and Regulations. (PRC §§ 14552(b) and (c); PRC § 14553(c); Gov. Code
4 §§ 11180 et seq.; Regulations §§ 2075 and 2125.) An operator must provide the Department with
5 immediate access to its facilities, operations, and any relevant record, that, in the Department's
6 judgment, are necessary to carry out its obligation to verify compliance with the Act and
7 Regulations. (PRC §§ 14552(c) and 14553(c).)

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

11 5. The Act defines "responsible party" to include, but not be limited to, the certificate
12 holder, registrant, officer, director, or managing employee. The Department may take disciplinary
13 action against any responsible party for directing, contributing to, participating in, or otherwise
14 influencing the operations of, a certified or registered facility or program. (PRC § 14591.2.)

15 6. Public Resources Code § 14595.5 establishes a violation of the Act for any
16 corporation, operation, or entity, whether or not certified or registered, for knowingly receiving,
17 storing, transporting, distributing, or otherwise facilitating or aiding in the redemption of materials
18 that are ineligible for payment of California Refund Value (hereafter "CRV"), processing
19 payments, administrative costs, or other program payments, such as handling fees.

20 **B. STATUTORY AND REGULATORY AUTHORITY**

21 7. The Act authorizes the Department to certify or register the operators of recycling
22 centers, processing facilities, dropoff and collection programs, and curbside programs. (PRC
23 §§14538, 14539, 14539.5, and 14551.5.) A certificate is assigned to a single entity or person for a
24 specific location (other than a collection program), and cannot be transferred or sold to any other
25 entity or person. (PRC §§ 14538, 14539, and 14539.5; Regulations § 2060(d) and (e).) Any
26 certification or registration granted by the Department is a privilege and not a vested right or
27 interest. (PRC §14541.5.)

28 8. The Act defines "recycling center" as an operation that is certified by the

1 Department and that accepts from consumers and pays to them the CRV for eligible beverage
2 containers. (PRC §14520.) Only recycling centers certified by the Department may pay CRV to
3 consumers, or dropoff or collection programs. (PRC § 14572(d)(1); Regulations § 2535.) The
4 recycling center must inspect each load of beverage containers for CRV eligibility before paying
5 the appropriate refund value. (PRC § 14538; Regulations § 2501.)

6 9. The Department is authorized by the Act to pay a monthly handling fee, based on
7 the volume of redeemed containers, to certain recycling centers in order to provide an incentive for
8 the redemption of empty beverage containers. (PRC § 14585; Regulations §§ 2516-2519.)
9 Handling fee claims are made via the Handling Fee Application Form, also known as the DR14.
10 The DR14 requires the monthly redemption weight totals, calculated from the recycling center's
11 receipts and logs, for all eligible beverage container material types. The actual amount paid to the
12 recycling center for handling fees is based on the monthly weight totals and the calculus found in
13 Regulations § 2518. The DR14's data is entered on-line via the Department's Division of
14 Recycling Integrated Information System (hereafter "DORIIS").

15 10. Certified recycling centers may not pay CRV to a non-certified recycler. (PRC §§
16 14538(d)(4) and 14572(d)(1); Regulations § 2535.) It is a violation for a certified recycling center
17 to split loads in excess of the statutory weight limits, or accept during any one-day an aggregate
18 total of material in excess of the statutory weight limits, from any person not certified by the
19 Department. (Regulations § 2535(f)(1).)

20 11. The Act and Regulations require all certified recycling centers to obtain and/or
21 create and maintain specified documentation so that the Department may validate all claims made
22 by a recycling center for CRV, processing payments, administrative costs, or any other program
23 payment. The Department may recover restitution for all payments from the Fund where the
24 Department cannot verify the claim because the required documentation is not available or is not
25 prepared or maintained pursuant to the Act and Regulations. Any claim that cannot be validated
26 must be denied by the Department and recovered via restitution. (PRC § 14538(e); Regulations §§
27 2525, 2530, and 2535.) All scrap transactions must be documented independently as well as listed
28 in the daily summary. (Regulations § 2525(a), (h) and (I).)

1 12. The Act defines "processor" as any person certified by the Department who
2 purchases from recycling centers or collection programs empty beverage containers which have a
3 refund value established by the Act. Additionally, a processor must inspect the empty beverage
4 containers for CRV eligibility as well as cancel the refund value by using a method defined by the
5 Act and Regulations. (PRC §§ 14518 and 14539; Regulations §§ 2000(a)(4) and 2401.) The
6 cancellation process removes the redemption value from the beverage containers. Processors must
7 retain proof that the processor canceled, or had the CRV canceled, in accordance with the Act and
8 Regulations. (PRC §§ 14539(d)(8) and (e); Regulations § 2420(d).)

9 13. The Act and Regulations require all certified processors to obtain and/or create and
10 maintain specified documentation so that the Department may validate all claims made by a
11 processor for CRV, processing payments, and administrative costs. The Department may recover
12 restitution for all payments from the Fund where the Department cannot verify the claim because
13 the required documentation is not available or is not prepared or maintained pursuant to the Act
14 and Regulations. Any claim that cannot be validated must be denied by the Department and
15 recovered via restitution. (PRC § 14539(e); Regulations §§ 2420, 2425, and 2430.) All scrap
16 transactions must be documented. (Regulations §§ 2420(g) and (h); 2425(f).)

17 14. The Act defines "dropoff or collection program" as any person or organization
18 certified by the Department which does not pay CRV to consumers but that collects empty eligible
19 beverage containers from businesses and other collection locations, as well as from separating
20 recyclables from waste streams. (PRC §14511.7.) By law, a dropoff or collection program cannot
21 accept or collect recyclable materials which have already been separated from mixed municipal
22 waste. (Regulations §2000(a)(20).)

23 15. The Act and Regulations require all certified dropoff and collection programs to
24 obtain and/or create and maintain specified documentation so that the Department may validate all
25 claims made by the dropoff or collection program for CRV and processing payments. (PRC §§
26 14553, 14539.5(c); Regulations §§ 2085, 2090, 2530, and 2615.) Such documentation includes,
27 but is not limited to, DR6 Shipping Reports, weight tickets, and transaction logs containing the
28 information set forth in Regulations § 2615(a)(1). The Department may recover restitution for all

1 payments from the Fund where the Department cannot verify the claim because the required
2 documentation is not available or is not prepared or maintained pursuant to the Act and
3 Regulations. Any claim that cannot be validated must be denied by the Department and recovered
4 via restitution. (PRC § 14539.5(c); Regulations §§ 2615.) All scrap transactions must be
5 documented fully by the dropoff or collection program. (Regulations §§ 2085, 2090, 2530 and
6 2615)

7 16. The Act defines "curbside program" as a recycling program which picks up empty
8 beverage containers from individual or multiple family residences, or both, and where the empty
9 beverage containers are separated from waste materials prior to being picked up. (PRC § 14509.5.)
10 Curbside programs are operated by, or pursuant to a contract with, a city, county, or other public
11 agency. Curbside programs are prohibited from paying CRV to consumers. Often curbside
12 programs are registered and run by the waste hauling companies that have franchise agreements
13 with municipalities. Whether the CRV is retained by the waste hauling company or the
14 municipality is a question of contract, i.e., the franchise agreement.

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

19 18. All weight "shall be measured, recorded, and reported" in accordance with
20 "Division 5 of the Business and Professions Code (Weights and Measures) and any applicable
21 regulations thereunder." Thus, all weight tickets must include, among other accurate data, gross
22 weight, container tare weight, net weight, and have a unique serial number. (Regulations § 2115;
23 Business and Professions Code § 12715; *see also* §§ 12700-12729.) No manually created weight
24 ticket is valid for the purposes of the Act and Regulations unless the supporting worksheet with the
25 raw data, signed by the weighmaster who weighed the material, is attached thereto. (*Id.*)
26 Misstating or mixing material types on a single weight ticket is illegal under California law.
27 (Regulations § 2115; Business and Professions Code §§ 12713 and 12715.) Each material type
28 must have its own weight ticket. All claims against the Fund based on illegal and invalid weight

1 tickets are void and subject to restitution. (PRC § 14539(e).) Any redemption claim, or other
2 program payment, based upon a fabricated weight ticket is fraudulent pursuant to PRC § 14597.

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

7 20. Except for consumers (as defined by the Act), a person, business, or entity not
8 certified or registered by the Department may not pay, claim, or receive CRV, processing
9 payments, administrative costs, or other program payments for eligible beverage containers. (PRC
10 §§ 14511.7, 14518, 14520, 14538, 14539, 14539.5, 14572, 14573, and 14573.5; Regulations §§
11 2400 and 2535(f).)

12 21. Beverage containers sold to consumers outside the State of California are ineligible
13 for the redemption of CRV, processing payments, administrative costs, or any other program
14 payment made from the Fund. This is due to the fact that no CRV is collected from the consumer
15 at the time of an out-of-state sale. Because no money was deposited into the Fund from the sale,
16 no claim may be made upon the Fund based on an out-of-state beverage container. (PRC §§
17 14538, 14539, 14539.5, 14572, 14591, 14595, 14595.5, and 14597.) Previously redeemed
18 containers, rejected containers, line breakage, previously baled containers, and materials that have
19 never had a refund value are also ineligible for payment of CRV, processing payments,
20 administrative costs, or other program payments. (PRC §§ 14538, 14539, 14539.5, 14572, 14591,
21 14595, 14595.5, and 14597; Regulations §§ 2110, 2401, and 2501.) Any claim or payment based
22 on the material types set forth in this paragraph are not only invalid, but they are fraudulent under
23 the Act. (PRC § 14597.)

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

28 23. The Act deems a claim to be fraudulent when the claim is based in whole or in part

1 on false information or falsified documents. (PRC § 14597(b).) No person may submit or cause to
2 be submitted a fraudulent claim. (PRC § 14597.)

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

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

10 26. If the certificate holder operates more than one site, the Department may
11 simultaneously or subsequently revoke all the certificates held by the responsible party. (PRC §§
12 14591.2(c)(1), 14591.2(d)(1) and (2).)

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

16 28. The Act authorizes the Department to assess upon any person, entity, or operation
17 that redeems, attempts to redeem, or aids in the redemption of, empty beverage containers that
18 have already been redeemed, or redeems, attempts to redeem, or aids in the redemption of,
19 otherwise ineligible beverage containers, a civil penalty of up to ten thousand dollars (\$10,000) per
20 transaction, or an amount equal to three times the damage or potential damage, whichever is
21 greater, plus costs. (PRC §§ 14591.3 and 14594.5.)

22 29. The Department may issue an order that a person cease and desist from any
23 recycling activity that violates the Act or Regulations. (PRC §14591.6.)

24 **C. RELEVANT BACKGROUND ON CALIFORNIA'S BEVERAGE CONTAINER
25 RECYCLING PROGRAM**

26 30. The Act establishes a process by which certified recycling centers pay CRV to
27 consumers for empty eligible beverage containers and later submit claims for reimbursement for
28 those payments. (PRC § 14560.) A certified recycling center sells the CRV eligible material to a

1 certified processor. The certified processor inspects the empty beverage containers for redemption
2 eligibility, cancels the CRV, and then sells the material to an end user ("a location of end use").
3 The certified processor gathers together the claims made by certified recycling centers and
4 forwards the claims to the Department for payment, as described below.

5 31. The sale of empty eligible beverage containers from a certified recycling center to a
6 certified processor is evidenced by a DR6 Shipping Report (hereafter "DR6"), a form promulgated
7 by the Department to document the receipt of material by a processor. A DR6 forms the basis for
8 payments by the Department pursuant to the Act. (Regulations § 2000(a)(44).) The certified
9 processor is responsible for preparing the DR6 except when the shipper is a certified recycling
10 center. (PRC § 14539(d)(8)(A); Regulations §§ 2420(a) and 2425(e).) The following information
11 is set forth on the DR6: the company name, address, certification number, and the shipper's
12 contact person, as well as the material type, redemption weight, and the CRV amount.

13 32. The certified processor that receives the shipment weighs the load, inspects the
14 empty beverage container material in accordance with the Act and Regulations to determine if it
15 qualifies for CRV payment, enters the received weight and weight ticket number on the DR6, and
16 calculates the CRV, processing payment, as well as the administrative costs. The certified
17 processor is required to pay the foregoing amounts within two working days. (PRC § 14573.5(b).)
18 The processor then aggregates a batch of DR6 forms to make a claim on the Fund for CRV,
19 processing payments, and administrative costs, thereby obtaining reimbursement for the monies it
20 paid out previously. The form used by the processor to compile and claim the reimbursement is
21 the DR7 Processor Invoice Report (hereafter "DR7"). The DR7 form was promulgated by the
22 Department so that it could determine the correct payment to be made to a certified processor.
23 (Regulations § 2000(a)(35.1).) The processor calculates the total redemption weight, total CRV
24 amount, total processing payment, and total administrative costs based on the batch of DR6 forms
25 submitted with the DR7. Both the DR6 and DR7 forms are signed under penalty of perjury. The
26 processor signs both forms. The recycling center only signs the DR6.

27 33. The general procedure of sales of eligible beverage containers from a certified
28 recycling center to a certified processor, as discussed above, also applies to sales by a certified

1 dropoff or collection program to a certified processor. The major difference is that a certified
2 dropoff or collection program may not pay CRV to consumers but may claim CRV on eligible
3 beverage containers that they acquire by purchase, donation, collection, or by sorting the containers
4 from municipal waste streams. Collection programs are not paid administrative costs that are
5 available to a certified recycling center. (PRC § 14573.6.)

6 34. Beverage containers and other recyclables picked up by municipal curbside
7 programs are sorted by mechanical equipment at a facility known as a Material Recovery Facility,
8 or MRF. MRFs, operated by processors, receive material from multiple curbside programs at the
9 same time. Each municipality delivering curbside material to a MRF will conduct a Waste
10 Characterization Study to determine the amount, by commodity type, of CRV beverage containers
11 in their waste stream. With that data the processor can apportion the CRV resulting from the
12 combined waste streams.

13 35. Pursuant to PRC § 14553(b), all DR7 and DR6 claim form data are entered on-line
14 via DORIIS. Paper forms are no longer used. Each certified operator has a unique identifier and
15 password. The electronic data are submitted under penalty of perjury. The Department's billing
16 cycle runs from the first day of the month to the last day of the month.

17 **D. RESPONDENTS**

18 36. Respondent Recycling Services Alliance, Inc. (hereafter "RSA"), was at all times
19 mentioned herein a corporation organized under the laws of the State of California and located at
20 6935 Power Inn Road, Sacramento, California. The Department certified RSA as the operator of a
21 processor facility under certificate number PR147941.001, as defined by Regulations §
22 2000(a)(33). RSA is a responsible party within the meaning of the Act. In the process of
23 conducting its business, RSA, actively participated in conduct intended to defraud the Fund.

24 37. Respondent Shengchien (Jensen) Tseng (hereafter "Jensen"), individually and as
25 principal, owner, partner, member, director, officer, manager, and operator of RSA, was at all
26 times mentioned herein, responsible for directing, contributing to, participating in, or otherwise
27 influencing the operations of RSA. At all times relevant to this First Amended Accusation, Jensen
28 was a responsible party within the meaning of the Act, conducting the business of RSA, including

1 but not limited to, actively directing, controlling, and personally participating in, or otherwise
2 influencing, the day-to-day operation and management of all business affairs of RSA. (PRC §
3 14591.2(a) and Regulations § 2000(a)(33).) In the process of conducting such business, Jensen
4 actively and intentionally participated in conduct intended to defraud the Fund.

5 38. Respondent Maximina (Maxi) Perez (hereafter "Perez"), individually and as
6 principal, owner, partner, member, director, officer, manager, and operator of RSA, was at all
7 times mentioned herein, responsible for directing, contributing to, participating in, or otherwise
8 influencing the operations of RSA. At all times relevant to this First Amended Accusation, Perez
9 was a responsible party within the meaning of the Act, conducting the business of RSA, including
10 but not limited to, actively directing, controlling, and personally participating in, or otherwise
11 influencing, the day-to-day operation and management of all business affairs of RSA. (PRC §
12 14591.2(a) and Regulations § 2000(a)(33).) In the process of conducting such business, Perez
13 actively and intentionally participated in conduct intended to defraud the Fund.

14 39. Hereafter, the Department will refer to Respondents Recycling Services Alliance,
15 Inc., Shengchien (Jensen) Tseng, and Maximina (Maxi) Perez, together with their operators,
16 owners, officers, directors, subsidiaries, divisions, subdivisions, agents, representatives, managers,
17 and employees, including the above-referenced entities, conducting business under Departmental
18 certificate PR147941.001, as "RSA Respondents."

19 40. For the purposes of this First Amended Accusation, RSA Respondents have joint
20 and several liability as they are each a responsible party within the meaning of the Act. (PRC §
21 14591.2(a).) RSA Respondents jointly and actively directed, controlled, and participated in the
22 day-to-day operation and management of RSA. In the process of conducting such business, RSA
23 Respondents actively and intentionally engaged in an illegal enterprise with the goal to defraud the
24 Fund.

25 41. RSA Respondents were subject to and required to comply with the Act and the
26 Regulations at all times relevant to this First Amended Accusation.

27 42. The original Accusation was filed within twenty (20) days after an Order of
28 Immediate Suspension was served on the RSA Respondents. (PRC § 14591.2(d)(3)(C).)

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

5 **E. GROUNDS FOR ADMINISTRATIVE ACTION**

6 43. The statements, assertions, and allegations set forth in paragraphs 1 through 42,
7 above, are incorporated by reference.

8 44. The Department conducted a limited review of RSA's program records for the
9 period of November 16, 2015 to December 1, 2015. That review disclosed that RSA fabricated 68
10 weight tickets that were used to support 68 DR6 Shipping Reports and 18 DR7s claiming program
11 payments from the Fund. The Department moved to immediately suspend RSA's certification
12 based on the limited review findings, as discussed in more detail in Count One, below.

13 45. Due to the results of the limited review, the Department undertook an extensive
14 investigation into the claims filed by the RSA Respondents during the time period of January 23,
15 2012 through December 1, 2015, inclusive. During this period the RSA Respondents filed 2,727
16 DR7 Processor Invoices based on 44,555 DR6 Shipping Reports. The DR6 Shipping Reports were
17 "supported" by 44,555 weight tickets.

18 46. As in Paragraph 44, above, the 44,555 weight tickets used by the RSA Respondents
19 were fabricated. Of the total number of weight tickets, 11,312 referenced the indicia of "Manual
20 Ticket / Single Pass." The remaining 33,243 weight tickets referenced the indicia of "Reprinted."
21 The details are discussed in Count Two, below.

22 47. The Department's conclusion that the RSA Respondents fabricated weight tickets is
23 supported by California law, as follows:

24 (a) The Act requires all weighing and weight tickets to be in compliance with
25 Business and Professions Code. (Regulations § 2115; Business and
Professions Code §§ 12700-12729.).

26 (b) A weight ticket must be issued at the time of weighing and be signed by the
27 weighmaster who actually weighed the load (with an exception that does not
28 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.)

- (c) 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.)
- (d) The word "INCORRECT" is required to be written across the face of the original ticket that must be corrected. (Business and Professions Code § 12716.5.)
- (e) 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.)
- (f) 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.)
- (g) 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.)
- (h) 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.)
- (i) 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.)
- (j) Broken or unsealed scales may not to be used under any circumstances. (Business and Professions Code § 12717.)
- (k) 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).)

48. The Department found that all 44,555 weight tickets had one or more of the following defects. Any one of these violations of California law is sufficient to invalidate a weight ticket.

- (a) RSA Respondents manually created weight tickets upon which claims were based without creating and maintaining worksheets signed by the weighmaster and truck driver. Consequently, there were no worksheets attached to the manually created weight tickets.
- (b) RSA Respondents failed to keep original copies of weight tickets that were later “corrected,” i.e., reprinted/edited weight tickets.
- (c) RSA Respondents failed to properly annotate the original weight ticket and the associated correction certificate.

1 (d) RSA Respondents used illegal annotations such as "Void," "Scale Problem,"
2 or "Scale Jumping."

3 (e) The "correction tickets" issued by the RSA Respondents were not
4 consecutively numbered. Reprinted or edited weight tickets had the same
5 serial number as the original weight ticket.

6 (f) RSA Respondents changed dates, times, gross weight, tare weight, or
7 commodity type without a lawful basis and without creating the required
8 documentation.

9 (g) RSA Respondents used a broken, inaccurate, and/or unsealed truck scale.

10 49. The fraudulent conduct summarized in Paragraph 48 extends to both counts
11 articulated below.

12 **F. COUNT ONE: The Immediate Suspension of Respondent RSA Due To \$176,523.51 in
13 Damages to the Fund.**

14 50. The statements, assertions, and allegations set forth in paragraphs 1 through 49,
15 above, are incorporated by reference.

16 51. On May 11 and 13, 2016, the Department conducted an informal hearing pursuant
17 to a Notice of Immediate Suspension served on Respondent Recycling Services Alliance, Inc.
18 (PR147941.001), based on the facts set forth in Paragraphs 44 through 48, above. Documentary
19 and sworn testimony was taken and a transcription of the proceedings was made by a court
20 reporter. The Hearing Officer found, pursuant to PRC § 14591.2(d)(3)(A)(ii), that RSA has
21 "[m]issing or fraudulent records associated with a claim or claims totaling at least ten thousand
22 dollars (\$10,000.00) during the six-month period immediately preceding the order of suspension."
23 The Hearing Officer issued an Order of Immediate Suspension that was filed and served on RSA
24 on May 13, 2016. On May 24, 2016, the Hearing Officer issued a written decision supporting the
25 Order. A copy of the Hearing Officer's Decision and Order is attached as Exhibit 1 and is
26 incorporated by reference.

27 52. The Hearing Officer based her conclusion on the examination of seven reprinted
28 weight tickets, out of more than 68 weight tickets presented by the Department at the hearing,
29 issued by the RSA Respondents on November 16, 2015 to Diaz Recycling. The Hearing Officer
30 concluded, as discussed below, that the seven weight tickets were invalid as well as fraudulent.
31 Those fraudulent weight tickets were then used to support two DR6 Shipping Report claims that

1 totaled **\$14,143.30**. But that is not the end of the story. The Hearing Officer then found that the
2 fraudulent weight tickets and fraudulent DR6 Shipping Reports were attached to two DR7
3 Processor Invoices claiming CRV, processing payments, and administrative costs from the Fund.
4 The two DR7 claims totaled **\$102,765.77** and were paid as part of a warrant issued to RSA in the
5 amount of **\$176,523.51**. The Hearing Officer held that

6 "Section 14597(a) of the Act states that "No person shall falsify documents pursuant
7 to the Act or Regulations. The very act of falsification of documents is in itself
8 evidence of intent to defraud the Fund. And Section 14597(b) provides that no
9 person shall submit, or cause to be submitted, a fraudulent claim pursuant to the
10 Act. For purposes of this Act a fraudulent claim is one that is based in whole or in
11 part on false information or falsified documents. **Therefore, the entire**
12 **\$176,523.51 payment to RSA is fraudulent because it was based in whole or in**
13 **part upon fraudulent documents.**"" [Emphasis added]

14 53. For each of the seven reprinted weight tickets issued by RSA on November 16,
15 2015 to Diaz Recycling, an original weight ticket had first been printed. The original weight
16 tickets contain the handwritten notations "Void," "Incorrect," "Scale Problem," and "Scale
17 Jumping." The reprinted tickets were issued the next day, November 17, 2015, and contain no
18 annotations. Even if the reprinted tickets were issued to correct a genuine error on the original
19 ticket, they are invalid on their face because they do not comply with Business and Professions
20 Code.

21 54. First, each of the reprinted Diaz tickets examined had the same transaction/serial
22 number as the corresponding original tickets. To the contrary, Business and Professions Code §
23 12714.5 requires each correction ticket be consecutively numbered.

24 55. Second, the original weight tickets contain the word INCORRECT as required, but
25 the correction certificate does not contain the original weight ticket number or the reason for the
26 correction. (Business and Professions Code § 12716.5.)

27 56. Third, the reprinted weight ticket listed the same date and time as the original
28 weight ticket which would not be the case if the loads were reweighed on the subsequent day when
the scale was repaired and resealed.

29 57. Fourth, representatives from California Department of Food and Agriculture,
30 Division of Weights and Measures, confirmed that RSA's manual and reprinted weight ticket

1 process was in violation of the Business and Professions Code and that broken, inaccurate, or
2 unsealed scales are not to be used under any circumstances. Moreover, scales do not "jump." The
3 scale software and computer will not print a weight ticket unless the scale is stable. Movement of
4 the scale platform locks out the system and no weight ticket will be printed. Therefore, using
5 "Void," "Scale Problem," or "Scale Jumping" as an excuse for adding weight to a reprinted weight
6 ticket is conclusive evidence of intent to defraud the Fund.

7 58. Not only were the RSA weight tickets invalid because of the failure to comply with
8 the Business and Professions Code, in all instances except one, the RSA Respondents increased the
9 net weight by 200 pounds, which resulted in a higher payment to them. They did this by either
10 increasing the gross weight or decreasing the tare weight. That is problematic, however, for the
11 RSA Respondents. If the original weight ticket was voided due to the problems with the scale and
12 the material was reweighed after the scale was repaired, it is highly unlikely that for all seven of
13 these loads the weight would have increased by exactly 200 pounds. This establishes the fact that
14 these weight tickets were fabricated and that the weight recorded was fraudulent. Moreover, the
15 fraud was confirmed by RSA's operational manager, Respondent Perez, during a telephone
16 conversation with the Department on December 21, 2015. During that telephone call Respondent
17 Perez admitted that she frequently added weight to the RSA weight tickets. She also admitted
18 changing dates and times on "reprinted" weight tickets.

19 59. The foregoing statement by Respondent Perez is an uncontested confession that,
20 on a regular basis, she fraudulently altered weight tickets. Also uncontested is the fact that the
21 RSA Respondents submitted claims for payment to the Department based upon those fabricated
22 and fraudulent weight tickets. As noted above, the payments made to the RSA Respondents based
23 on the fabricated documents totaled **\$176,523.51**, which was paid to RSA on December 2, 2015
24 under warrant number 06386718.

25 60. Pursuant to PRC § 14597(a), the very act of falsification of documents is in itself
26 evidence of intent to defraud the Fund. In this matter, the fraudulent weight tickets taint all claims
27 to which they are attached. The malignancy of the fraud condemns every DR6 Shipping Report
28 claim and every DR7 Processor Invoice claim based in whole or in part on those malevolent

1 documents. Accordingly, and consistent with the conclusions made by the Hearing Officer, the
2 entire **\$176,523.51** payment made to RSA on December 2, 2015, is fraudulent and must be
3 recovered via restitution. (PRC §§ 14539(e) and 14591.4.)¹

4 61. Finally, the intentional conduct of Respondents set forth above not only constitutes
5 fraud, but also evidences dishonesty, incompetence, and at a minimum, negligence by a certified
6 operator. (PRC §§14591.2, 14595, and 14597.)

7 **G. COUNT TWO: RSA Respondents Filed Additional Invalid and Fraudulent
8 Claims for CRV, Processing Payments, and Administrative Costs
Causing \$80,331,217.19 in Damages to the Fund.**

9 62. The statements, assertions, and allegations set forth in paragraphs 1 through 61,
10 above, are incorporated by reference.

11 63. During the time period of January 23, 2012 through December 1, 2015, inclusive,
12 RSA Respondents filed 2,727 DR7 Processor Invoices based on 44,555 DR6 Shipping Reports.
13 The DR6 Shipping Reports were "supported" by 44,555 weight tickets. Of the total number of
14 weight tickets, 11,312 referenced the indicia of "Manual Ticket / Single Pass." The remaining
15 33,243 weight tickets referenced the indicia of "Reprinted."

16 64. As in Count One above, the 44,555 weight tickets used by the RSA Respondents
17 were fabricated and for the identical reasons, as well as others. As in Count One, all of the claims
18 made by the RSA Respondents during the time period of January 23, 2012 through December 1,
19 2015, inclusive, are invalid because they are based upon the fabricated weight tickets. To reiterate,
20 all claims against the Fund based on invalid weight tickets are void and subject to restitution.
21 (PRC § 14539(e).) Moreover, all of the 2,727 DR7 Processor Invoices, 44,555 DR6 Shipping
22 Reports, and 44,555 weight tickets are fraudulent pursuant to Public Resources Code § 14597.

23 65. The excuses used by the RSA Respondents to "correct" the original weight tickets
24 do not and cannot denote a lawful reason to correct a weight ticket. It is clear from the evidence in
25 this matter that the RSA Respondents added weight to the 44,555 weight tickets as pretext, as part
26

27
28 ¹ The actual damages to the Fund caused by RSA Respondents' use of fraudulent weight tickets during the limited
review period of November 16, 2015 to December 1, 2015, totals **\$650,005.38**, including **\$584,535.51** in CRV,
\$50,856.49 in Processing Payments, and **\$14,613.38** in Administrative Costs.

1 of an illegal enterprise, i.e., an scheme to conceal the importation and redemption of CRV on out-
2 of-state material.

3 66. The amount of CRV, processing payments, and administrative costs associated with
4 the 44,555 DR6 Shipping Reports and fabricated weight tickets totals \$57,343,889.45.

5 67. The amount paid to RSA Respondents based on the 2,727 DR7 Processor Invoices
6 was **\$74,160.932.51** in CRV, **\$4,316,260.96** in processing payments, and **\$1,854,023.72** in
7 administration costs. Accordingly, the total amount paid to the RSA Respondents based on
8 fabricated weight tickets and fraudulent documents was **\$80,331,217.19**.

9 68. As in Count One, the facts in Count Two evidence a pattern and practice of deceit,
10 fraud, negligence, or intentional misconduct in carrying out the duties and responsibilities of a
11 certificate holder. (PRC §§14591.2, 14595, and 14597.)

12 **H. STATUTORY DISCIPLINE TO BE IMPOSED.**

13 69. The statements, assertions, and allegations set forth in paragraphs 1 through 68,
14 above, are incorporated by reference.

15 70. Pursuant to its statutory authority, the Department imposes the following
16 disciplinary action against the Respondents Recycling Services Alliance, Inc. (PR147941.001),
17 Shengchien (Jensen) Tseng, and Maximina (Maxi) Perez, joint and severally, based upon sufficient
18 evidence of violations of the enumerated statutes and regulations, as set forth above.

19 (a) Pursuant to PRC § 14591.2(c)(1), the Department immediately revokes
20 certification PR147941.001.

21 (b) All claims against the Fund submitted by Respondents Recycling Services
22 Alliance, Inc. (PR147941.001), Shengchien (Jensen) Tseng, and/or Maximina (Maxi) Perez that
23 were unsupported by complete, accurate, and lawful documentation, or such claims submitted by
24 their officers, members, directors, agents, representatives, managers, or employees, including but
25 not limited to those claims paid and unpaid, known and unknown, are disallowed in their entirety.

26 (c) The Department imposes upon Respondents Recycling Services Alliance, Inc.
27 (PR147941.001), Shengchien (Jensen) Tseng, and Maximina (Maxi) Perez, joint and severally, an
28 Order for Restitution, Interest, Civil Penalties, and Costs and Fees, as follows:

5 (2) **Interest** - Pursuant to PRC § 14591.4, the Department orders payment
6 of interest on the restitution of **\$80,331,217.19**. This interest is calculated at the rate earned on the
7 Pooled Money Investment Account, pursuant to PRC § 14591.4, beginning on the date the claim
8 was submitted and continuing until the restitution and interest ordered herein is paid in full. As of
9 June 30, 2018, interest owed to the Department totals **\$1,488,331.35**. Interest accruing after the
10 date of this First Amended Accusation will be established at trial.

15 (i) For each violation of the Act or Regulations set forth above, the
16 Department imposes a civil penalty in the amount of Five Thousand Dollars (\$5,000.00). (PRC
17 §14591.1(b).) Accordingly, the Department orders penalties totaling Four Hundred Fifty Nine
18 Million One Hundred Eighty-Five Thousand Dollars and no Cents (**\$459,185,000.00**).

19 (ii) If the Department receives restitution in full for all monies paid
20 from the Fund, including interest, the Department will recalculate the civil penalties pursuant to
21 PRC§ 14591.4(d).

22 (4) **Costs and Fees** - Pursuant to PRC § 14591.3, the Department orders the
23 payment of all costs and fees, including but not limited to attorneys' and expert witness fees, and
24 the cost of investigation and hearing, in the amount set forth below, as well as additional amounts
25 to be determined at trial, including costs and fees associated with litigation subsequent to the date
26 of this First Amended Accusation. As of the date of this First Amended Accusation, the costs and
27 fees incurred by the Department are **\$312,945.67**, as follows:

(i) Senior Management Auditor - \$4,813.55

- (ii) Staff Management Auditor - \$58,171.37
- (iii) Associate Management Auditor - \$182,455.72
- (iv) Staff Services Management Auditor - \$6,950.69
- (v) Office Technician - \$6,203.93
- (vi) Program Technician - \$12,350.41
- (vii) Attorney IV - \$42,000.00

(5) Prohibition Against Participation in Department's Programs -

Recycling Services Alliance, Inc., Shengchien (Jensen) Tseng, and Maximina (Maxi) Perez, either individually or collectively, as well as any entities they own, control, or for which they are a responsible party pursuant to PRC § 14591.2(a), shall immediately and permanently cease and desist from any and all direct or indirect participation in California's beverage container recycling programs and grant programs subject to the jurisdiction of the Department.

(6) Prohibition Against Handling Beverage Containers - Recycling

Services Alliance, Inc., Shengchien (Jensen) Tseng, and Maximina (Maxi) Perez, either individually or collectively, as well as any entities they own, control, or for which they are a responsible party pursuant to PRC § 14591.2(a), shall immediately and permanently cease and desist from any and all direct or indirect transactions involving the purchase, sale, transfer, or storage of beverage containers, paid for or donated, cancelled or not, and whether or not California Refund Value was paid or is being claimed on the materials.

71. The total amount due to the Department under this First Amended Accusation is **\$541,317,494.21**.

72. In addition to the disciplinary actions taken in paragraph 70, above, the Department seeks such other and further relief as is just and proper.

Dated: 8/7/18

Be Shet

Ben Shelton
Branch Chief (Acting), Recycling Program Enforcement Branch
Department of Resources Recycling and Recovery