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

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**IN THE MATTER OF THE
ACCUSATION AGAINST:**

OAH Case No.

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**Recycling Services Alliance, Inc.
(PR147941.001),**

DRRR Case No. 2016-003-BCR

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**Sheng Chien (Jensen) Tseng, individually
and as principal, owner, partner, director,
president, manager, and operator of
Recycling Services Alliance, Inc.,**

**ACCUSATION
[Gov. Code § 11503]**

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and

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

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

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Respondents.

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

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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, John Halligan, Branch Chief, Recycling Program Enforcement Branch, exclusively in his official capacity.

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1 **A. JURISDICTION**

2 1. The Department is responsible for administration of the Act, including but not
3 limited to, managing the California Beverage Container Recycling Fund (hereafter "Fund"),
4 adopting regulations, certifying and registering program participants, inspecting, auditing,
5 investigating, filing and prosecuting enforcement actions, and imposing discipline. (PRC §§
6 14512.7, 14530.5, 14538, 14539, 14539.5, 14540, 14552, 14553, 14560, 14580, 14591-14597.)

7 The Department may recover in restitution any money improperly or illegally paid to a certificate
8 holder, registrant, or responsible party. (PRC §§ 14591.2(c)(5) and 14591.4.) This includes
9 payments made from the Fund that are based on documents that are not prepared or maintained in
10 compliance with the Department's Act and Regulations, which are based in whole or in part on
11 false information or falsified documents, as well as claims for program payments the Department
12 cannot verify. (PRC §§ 14538, 14539, 14539.5, 14552, 14553, 14591-14597.)

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

19 3. The Act authorizes the Department to audit or investigate any action taken up to
20 five years before the onset of the audit or investigation in order to determine if there was
21 compliance with the Act and Regulations. (PRC § 14552(b)(1).) An enforcement action is timely
22 if filed within five years of the discovery of a violation of the Act or Regulations. (PRC §
23 14552(b)(2).) More generally, the Department may conduct a comprehensive inspection, audit, or
24 investigation to verify an operator's ongoing compliance with the Act and Regulations. (PRC §§
25 14552 and 14553(c); Regulations §§ 2075 and 2125; Gov. Code § 11180 et seq.) The operator that
26 is the subject of an audit or investigation is required to provide to the Department immediate
27 access to its facilities, operations, and any record deemed by the Department to be relevant to the
28 inspection, audit, or investigation. (PRC §§ 14552(c) and 14553(c).)

1 4. The Act defines "person" as "any individual, corporation, operation, or entity,
2 whether or not certified or registered" under the Act. (PRC §§ 14515.2, 14595, and 14595.4(a);
3 Regulations § 2000(a)(34).) Public Resources Code § 14595.5 establishes a violation of the Act
4 for any corporation, operation, or entity, whether or not certified or registered, for knowingly
5 receiving, storing, transporting, distributing, or otherwise facilitating or aiding in the redemption of
6 materials that are ineligible for payment of CRV, processing payments, administrative costs, or
7 handling fees.

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

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

17 **B. STATUTORY AND REGULATORY AUTHORITY**

18 7. The Act authorizes the Department to certify or register the operators of recycling
19 centers, processing facilities, dropoff and collection programs, and curbside programs. (PRC
20 §§14538, 14539, 14539.5, and 14551.5.) A certificate is assigned to a single entity or person for a
21 specific location (other than a collection program), and cannot be transferred or sold to any other
22 entity or person. (PRC §§ 14538, 14539, and 14539.5; Regulations § 2060(d) and (e).) Any
23 certification or registration granted by the Department is a privilege and not a vested right or
24 interest. (PRC §14541.5.)

25 8. The Act defines "recycling center" as an operation that is certified by the
26 Department and that accepts from consumers and pays to them the CRV for eligible beverage
27 containers. (PRC §14520.) Only recycling centers certified by the Department may pay CRV to
28 consumers, or dropoff or collection programs. (PRC § 14572(d)(1); Regulations § 2535.) The

1 recycling center must inspect each load of beverage containers for CRV eligibility before paying
2 the appropriate refund value. (PRC § 14538; Regulations § 2501.)

3 9. Certified recycling centers shall not pay refund values to a non-certified recycler.
4 (PRC §§ 14538(d)(4) and 14572(d)(1); Regulations § 2535.) It is a violation for a certified
5 recycling center to split loads in excess of the statutory weight limits, or accept during any one-day
6 an aggregate total of material in excess of the statutory weight limits, from any person not certified
7 by the Department. (Regulations § 2535(f)(1).)

8 10. The Act and Regulations require all certified recycling centers to obtain and/or
9 create and maintain specified documentation so that the Department may validate all claims made
10 by a recycling center for CRV, processing payments, or any other program payment. The
11 Department may recover restitution for all payments from the Fund where the Department cannot
12 verify the claim because the required documentation is not available or is not prepared or
13 maintained pursuant to the Act and Regulations. Any claim that cannot be validated must be
14 denied by the Department and recovered via restitution. (PRC § 14538(e); Regulations §§ 2525,
15 2530, and 2535.) All scrap transactions must be documented independently as well as listed in the
16 daily summary. (Regulations § 2525(a), (h) and (I).)

17 11. The Act defines "processor" as any person certified by the Department who
18 purchases from recycling centers or collection programs empty beverage containers which have a
19 refund value established by the Act. Additionally, a processor must inspect the empty beverage
20 containers for CRV eligibility as well as cancel the refund value by using a method defined by the
21 Act and Regulations. (PRC §§ 14518 and 14539; Regulations §§ 2000(a)(4) and 2401.) The
22 cancellation process removes the redemption value from the beverage containers. Cancellation
23 must be documented fully in accordance with the Act and Regulations. (PRC §§ 14539(d)(8) and
24 (e); Regulations § 2420(d).)

25 12. The Act and Regulations require all certified processors to obtain and/or create and
26 maintain specified documentation so that the Department may validate all claims made by a
27 processor for CRV, processing payments, and administrative costs. The Department may recover
28 restitution for all payments from the Fund where the Department cannot verify the claim because

1 the required documentation is not available or is not prepared or maintained pursuant to the Act
2 and Regulations. Any claim that cannot be validated must be denied by the Department and
3 recovered via restitution. (PRC § 14539(e); Regulations §§ 2420, 2425, and 2430.) All scrap
4 transactions must be documented. (Regulations §§ 2420(g) and (h); 2425(f).) Processors must
5 retain proof that the processor canceled or had the CRV canceled in accordance with the Act and
6 Regulations. (Regulations § 2420(d).)

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

13 14. The Act and Regulations require all certified dropoff and collection programs to
14 obtain and/or create and maintain specified documentation so that the Department may validate all
15 claims made by the dropoff or collection program for CRV and processing payments. (PRC §§
16 14553, 14539.5(c); Regulations §§ 2085, 2090, 2530, and 2615.) Such documentation includes,
17 but is not limited to, DR6 Shipping Reports, weight tickets, and transaction logs containing the
18 information set forth in Regulations § 2615(a)(1). The Department may recover restitution for all
19 payments from the Fund where the Department cannot verify the claim because the required
20 documentation is not available or is not prepared or maintained pursuant to the Act and
21 Regulations. Any claim that cannot be validated must be denied by the Department and recovered
22 via restitution. (PRC § 14539.5(c); Regulations §§ 2615.) All scrap transactions must be
23 documented fully by the dropoff or collection program. (Regulations §§ 2085, 2090, 2530 and
24 2615)

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

1 16. All weight "shall be measured, recorded, and reported" in accordance with
2 "Division 5 of the Business and Professions Code (Weights and Measures) and any applicable
3 regulations thereunder." Weight tickets must include, among other data, accurate gross weight,
4 container tare weight, net weight, and have a unique serial number. (Regulations § 2115; Business
5 and Professions Code § 12715; *see also* §§ 12700-12729.) No manually created weight ticket is
6 valid for the purposes of the Act and Regulations unless the supporting worksheet with the raw
7 data, and signed by the weighmaster who weighed the material, is attached thereto. (Business and
8 Professions Code § 12715; *see also* §§ 12700-12729.) Misstating or mixing material types on a
9 single weight ticket is illegal under California law. (Regulations § 2115; Business and Professions
10 Code §§ 12713 and 12715.) Each material type must have its own weight ticket. All claims
11 against the Fund based on illegal or invalid weight tickets are void and subject to restitution. (PRC
12 § 14539(e).) It is equally clear that whatever commodity the illegal weight ticket supposedly
13 represents, it cannot be deemed to represent a real load delivered to and weighed on the scale. Not
14 only is it impossible for the Department to validate claims based on illegal weight tickets, but any
15 redemption claim, or other program payment, based on such documentation is fraudulent pursuant
16 to PRC § 14597.

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

21 18. Except for consumers (as defined by the Act), a person, business, or entity not
22 certified or registered by the Department may not pay, claim, or receive CRV, processing
23 payments, administrative costs, or other program payments for eligible beverage containers. (PRC
24 §§ 14511.7, 14518, 14520, 14538, 14539, 14539.5, 14572, 14573, and 14573.5; Regulations §§
25 2400 and 2535(f).)

26 19. Beverage containers sold to consumers outside the State of California are ineligible
27 for the redemption of CRV, processing payments, administrative costs, or any other program
28 payment made from the Fund. The reason is simple. No CRV is collected from the consumer at

1 the time of an out-of-state sale. Because no money went into the Fund from the sale, no claim may
2 be made upon the Fund based on an out-of-state beverage container. (PRC §§ 14538, 14539,
3 14539.5, 14572, 14591, 14595, 14595.5, and 14597.) Previously redeemed containers, rejected
4 containers, line breakage, previously baled containers, and materials that have never had a refund
5 value are also ineligible for payment of CRV, processing payments, administrative costs, or other
6 program payments. (PRC §§ 14538, 14539, 14539.5, 14572, 14591, 14595, 14595.5, and 14597;
7 Regulations §§ 2110, 2401, and 2501.) Any claim or payment based on the material types set forth
8 in this paragraph are not only invalid, but they are fraudulent under the Act. (PRC § 14597.)

9 20. The Act declares that any person participating in conduct intended to defraud the
10 State's beverage container recycling program including, but not limited to, redemption of
11 out-of-state and previously redeemed beverage containers, shall be held accountable for that
12 conduct. (PRC §§ 14591, 14591.2, 14595, 14595.5, 14596, and 14597.) The Act deems a claim to
13 be fraudulent when the claim is based in whole or in part on false information or falsified
14 documents. No person may submit or cause to be submitted a fraudulent claim. (PRC § 14597)

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

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

22 23. If the certificate holder operates more than one site, the Department may
23 simultaneously or subsequently revoke all the certificates held by the responsible party. (PRC §§
24 14591.2(c)(1), 14591.2(d)(1) and (2).)

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

28 25. The Act authorizes the Department to assess upon any person, entity, or operation

1 that redeems, attempts to redeem, or aids in the redemption of, empty beverage containers that
2 have already been redeemed, or redeems, attempts to redeem, or aids in the redemption of,
3 otherwise ineligible beverage containers, a civil penalty of up to ten thousand dollars (\$10,000) per
4 transaction, or an amount equal to three times the damage or potential damage, whichever is
5 greater, plus costs. (PRC §§ 14591.3 and 14594.5.)

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

8 **C. RELEVANT BACKGROUND ON CALIFORNIA'S BEVERAGE CONTAINER
9 RECYCLING PROGRAM**

10 27. The Act establishes a process by which certified recycling centers pay CRV to
11 consumers for empty eligible beverage containers and later submit claims for reimbursement for
12 those payments. (PRC § 14560.) A certified recycling center sells the CRV eligible material to a
13 certified processor. The certified processor inspects the empty beverage containers for redemption
14 eligibility, cancels the CRV, and then sells the material to an end user. The certified processor
15 gathers together the claims made by certified recycling centers and forwards the claims to the
16 Department for payment, as described below.

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

25 29. The certified processor that receives the shipment weighs the load, inspects the
26 empty beverage container material in accordance with the Act and Regulations to determine if it
27 qualifies for CRV payment, enters the received weight and weight ticket number on the DR6, and
28 calculates the CRV amount and processing payment, if any, due to the shipper, as well as the

1 administrative costs due to the processor. The certified processor is required to pay the CRV and
2 processing payments to the certified recycling center within two working days. (PRC §
3 14573.5(b).) The processor then aggregates a batch of DR6 forms to make a claim on the Fund for
4 CRV, processing payments, and administrative costs, thereby obtaining reimbursement for the
5 monies it paid out previously for CRV and processing payments. The form used by the processor
6 to compile and claim those amounts is the DR7 Processor Invoice Report (hereafter "DR7"). The
7 DR7 form was promulgated by the Department so that it could determine the correct payment to be
8 made to a certified processor. (Regulations § 2000(a)(35.1).) The processor calculates the total
9 redemption weight, total CRV amount, total processing payment, and total administrative costs
10 based on the batch of DR6 forms submitted with the DR7. Both the DR6 and DR7 forms are
11 signed under penalty of perjury.

12 30. The general procedure of sales of eligible beverage containers from a certified
13 recycling center to a certified processor, as discussed above, also applies to sales by a certified
14 dropoff or collection program to a certified processor. The major difference is that a certified
15 dropoff or collection program may not pay out CRV to consumers but may claim CRV on eligible
16 beverage containers that they acquire by purchase, donation, collection, or by sorting the containers
17 from municipal waste streams. Collection programs are not paid administrative costs that are
18 available to a certified recycling center. (PRC § 14573.6.)

19 31. Pursuant to PRC § 14553(b), all claims are entered on-line via the Department's
20 electronic claims submission procedure known as the Division of Recycling Integrated Information
21 System ("DORIIS"). The Department's billing cycle runs from the first day of the month to the last
22 day of the month.

23 **D. RESPONDENTS**

24 32. Respondent Recycling Services Alliance, Inc. (hereafter "RSA"), was at all times
25 mentioned herein a corporation organized under the laws of the State of California and located at
26 6935 Power Inn Road, Sacramento, California. The Department certified Respondent Recycling
27 Services Alliance, Inc., as the operator of a processor facility under certificate number
28 PR147941.001, as defined by Regulations § 2000(a)(33).

1 33. Respondent Sheng Chien (Jensen) Tseng (hereafter "Jensen"), individually and as
2 principal, owner, partner, member, director, president, manager, and operator of Recycling
3 Services Alliance, Inc., was at all times mentioned herein, responsible for directing, contributing
4 to, participating in, or otherwise influencing the operations of Respondent Recycling Services
5 Alliance, Inc., pursuant to PRC § 14591.2(a).

6 34. Respondent Maximina (Maxi) Perez (hereafter "Perez"), individually and as
7 principal, owner, partner, member, director, manager, and operator of Recycling Services Alliance,
8 Inc., was at all times mentioned herein, responsible for directing, contributing to, participating in,
9 or otherwise influencing the operations of Respondent Recycling Services Alliance, Inc., pursuant
10 to PRC § 14591.2(a).

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

16 36. For the purposes of this Accusation, Respondents have joint and several liability as
17 they are responsible parties within the meaning of the Act. (PRC § 14591.2(a).) Respondents
18 jointly and actively directed, controlled, and participated in the day-to-day operation and
19 management of Respondent Recycling Services Alliance, Inc. (PR147941.001). In the process of
20 conducting such business, Respondents engaged in conduct intended to defraud the Fund.

21 37. Respondents were subject to and required to comply with the Act and the
22 Regulations at all times relevant to this Accusation.

23 38. This Accusation has been filed within twenty (20) days after an Order of Immediate
24 Suspension was served on Respondents. (PRC § 14591.2(d)(3)(C).) Furthermore, this action is
25 timely as it has been filed within five years after the Department discovered the violations of the
26 Act and the Regulations alleged herein. (PRC §14552(b)(2).) This action is subject to the formal
27 hearing procedures of the California Administrative Procedure Act. (Gov. Code §11500 et seq.;
28 PRC §14591.2.)

1 **E. GROUNDS FOR ADMINISTRATIVE ACTION AGAINST RESPONDENTS**

2 39. The allegations set forth in paragraphs 1 through 38, above, are incorporated by
3 reference.

4 40. The Department has conducted a limited review of RSA's program records for the
5 period of November 16, 2015 to December 1, 2015. That review disclosed that RSA fabricated at
6 least 68 weight tickets that were used to support 18 Processor Invoices claiming program payments
7 from the Fund. The actual damages to the Fund for this limited review period totals **\$650,005.38**,
8 including **\$584,535.51** in CRV, **\$50,856.49** in Processing Payments, and **\$14,613.38** in
9 Administrative Costs. Additionally, the Department has prevented another **\$409,663.74** in
10 damages by denying 71 Handling Fee claims for the months of October and November 2015 based
11 upon fraudulent weight tickets.

12 41. Respondents fabricated the 68 or more weight tickets in a number of ways. First,
13 Respondents failed to keep original copies of weight tickets that were later edited or reprinted.
14 Second, Respondents also manually created weight tickets upon which claims were based without
15 maintaining the signed worksheets required by the Business and Professions Code. Third,
16 Respondents used a broken truck scale in violation of the Act and Regulations, not to mention the
17 Business and Professions Code. Finally, claims for CRV, processing payments, administrative
18 costs, and handling fees have been made by Respondents based on ineligible material, including
19 but not limited to, material that never existed. All of the foregoing claims are fraudulent pursuant
20 to Public Resources Code § 14597. The facts of this matter also evidence a pattern of deceit, fraud,
21 or intentional misconduct in carrying out the duties and responsibilities of a certificate holder.

22 **F. COUNT ONE: The Immediate Suspension of Respondent RSA Based On \$176,523.51**
23 **in Damages to the Fund.**

24 42. The allegations set forth in paragraphs 1 through 41, above, are incorporated by
25 reference.

26 43. On May 11 and 13, 2016, the Department conducted an informal hearing pursuant
27 to a Notice of Immediate Suspension served on Respondent Recycling Services Alliance, Inc.
28 (PR147941.001), based on the facts set forth in Paragraphs 40 and 41, above. Documentary and

1 sworn testimony was taken and a transcription of the proceedings was made by court reporter. The
2 Hearing Officer found, pursuant to PRC § 14591.2(d)(3)(A)(ii), that RSA has "[m]issing or
3 fraudulent records associated with a claim or claims totaling at least ten thousand dollars
4 (\$10,000.00) during the six-month period immediately preceding the order of suspension." The
5 Hearing Officer issued an Order of Immediate Suspension that was filed and served on RSA on
6 May 13, 2016. On May 24, 2016, the Hearing Officer issued a written decision supporting the
7 Order. A copy of the Hearing Officer's Decision and Order is attached as Exhibit 1 and is
8 incorporated by reference.

9 44. The Hearing Officer based her conclusion on the examination of seven reprinted
10 weight tickets, out of more than 68 weight tickets presented by the Department, issued by RSA on
11 November 16, 2015 to Diaz Recycling. The Hearing Officer concluded, as discussed below, that
12 the seven weight tickets were invalid as well as fraudulent. Those fraudulent weight tickets were
13 then used to support seven DR6 Shipping Report claims that totaled **\$17,254.50**. But that is not
14 the end of the story. The Hearing Officer then found that the seven weight tickets and seven DR6
15 Shipping Reports were attached to two DR7 Processor Invoices claiming CRV, processing
16 payments, and administrative costs from the Fund. The total of the two DR7 claims totaled
17 **\$176,523.51**. The Hearing Officer held that

18 "Section 14597(a) of the Act states that "No person shall falsify documents pursuant
19 to the Act or Regulations. The very act of falsification of documents is in itself
20 evidence of intent to defraud the Fund. And Section 14597(b) provides that no
21 person shall submit, or cause to be submitted, a fraudulent claim pursuant to the
22 Act. For purposes of this Act a fraudulent claim is one that is based in whole or in
23 part on false information or falsified documents. **Therefore, the entire**
24 **\$176,523.51 payment to RSA is fraudulent because it was based in whole or in**
25 **part upon fraudulent documents.**" [Emphasis added]

26 The factual and legal underpinning of the Hearing Officer's conclusions follow.

27 45. Regulations § 2115(b) requires all weighing done in connection with the Act and
28 Regulations to be done on a scale or other device that is approved, tested, and sealed in accordance
with the Business and Professions Code. For each of the seven reprinted weight tickets issued by
RSA on November 16, 2015 to Diaz Recycling an original weight ticket had first been printed.
The original weight tickets contain the handwritten notations "VOID," "Incorrect," "Scale

1 Problem," and "Scale Jumping." The reprinted tickets were issued the next day, November 17,
2 2015, and contains no notations. Even if the reprinted tickets were issued to correct a genuine
3 error on the original ticket, they are invalid on their face because they do not comply with the
4 Business and Professions Code § 12716.5. Section 12716.5 provides a specific procedure to be
5 used when errors to the weight ticket are discovered after the weight ticket has been issued.

6 46. First, a correction ticket must be issued. The correction ticket must be
7 consecutively numbered, i.e., have a unique serial number. (Business and Professions Code §
8 12714.5.) In this case, each of the reprinted Diaz tickets examined had the same transaction/serial
9 number as the corresponding original tickets.

10 47. Second, the word "INCORRECT" is required to be written across the face of the
11 original ticket and the original weight ticket number and reason for the correction recorded on the
12 correction certificate. In this case the original weight tickets contain the word INCORRECT as
13 required; however, the reason for the correction is recorded on the original weight ticket, not the
14 corrected one. Furthermore, there is no reference on the reprinted ticket to the original ticket
15 containing the error.

16 48. Third, the reprinted weight ticket contains the same date and time as the original
17 weight ticket which should not be the case if it were reweighed on the subsequent day when the
18 scale was repaired and resealed.

19 49. Fourth, representatives from California Department of Food and Agriculture,
20 Division of Weights and Measures, confirmed that RSA's manual and reprinted weight ticket
21 process was in violation of the Business and Professions Code and that broken scales are not to be
22 used under any circumstances. Moreover, scales do not "jump." The scale software and computer
23 will not print a weight ticket unless the scale is stable. Movement of the scale platform locks out
24 the system and no weight ticket will be printed. Therefore, using "scale jumping" as an excuse for
25 adding weight to a reprinted weight ticket is conclusive evidence of intent to defraud the Fund. All
26 claims against the Fund based in whole or in part on such weight tickets are fraudulent pursuant to
27 PRC § 14597.

28 50. Not only were the RSA weight tickets invalid because of the failure to comply with

1 the Business and Professions Code, in all instances except one, 200 pounds was added to the tare
2 weight on the reprinted ticket resulting in an increased net weight and higher payment to RSA. If
3 the original weight ticket was voided due to the problems with the scale and the material was
4 reweighed the next day, it is highly unlikely that for all seven of these loads the weight would have
5 increased by the exact same 200 pounds. This is a major indicator that these weight tickets were
6 fabricated and/or the weight recorded was fraudulent. That this increased weight was due to
7 fabrication and fraud was confirmed by RSA's operational manager, Ms. Perez, during a telephone
8 conversation with Ms. Davenport on December 21, 2015. During that telephone call Ms. Perez
9 admitted that she added weight and changed the date and time on the weight tickets.

10 51. This evidence is an uncontroverted confession that, on a regular basis, Ms. Perez
11 fraudulently altered weight tickets by adding weight and changing the dates and times of
12 shipments. Also uncontroverted is the fact that RSA submitted claims for payment to the
13 Department based upon those fabricated and fraudulent weight tickets. As noted above, the
14 payments made by RSA to Diaz Recycling for the DR6s relating to those seven fraudulent weight
15 tickets totaled **\$17,254.50** and were attached to DR7 numbers 237387 and 237389. These DR7s
16 were associated with claim numbers CLA377064 and CLA377074 submitted by RSA to the
17 Department and were combined with other claims that totaled **\$176,523.51** and was paid to RSA
18 on December 2, 2015 under warrant number 06386718.

19 52. Pursuant to PRC § 14597(a), the very act of falsification of documents is in itself
20 evidence of intent to defraud the Fund. In this matter, the fraudulent weight tickets taint all claims
21 to which they are attached. The malignancy of the fraud condemns every DR6 Shipping Report
22 claim and DR7 Processor Invoice claim based in whole or in part on those malevolent documents.
23 Accordingly, and consistent with the conclusions made by the Hearing Officer, the entire
24 **\$176,523.51** payment made to RSA on December 2, 2015, is fraudulent and must be recovered via
25 restitution.

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

1 **G. COUNT TWO: Respondents Filed Fraudulent Claims for CRV, Processing**
2 **Payments, and Administrative Costs Causing \$650,005.38 in**
3 **Damages to the Fund.**

4 54. The allegations set forth in paragraphs 1 through 53, above, are incorporated by
5 reference.

6 55. Although the Hearing Officer only needed to utilize the seven weight tickets issued
7 to Diaz Recycling for the purposes of ordering the immediate suspension of RSA, the Fund has
8 been damaged considerably more than \$176,523.51. Count One, above, is only a subset of the total
9 damages for the limited period of November 16, 2015 to December 1, 2015. For the same reasons
10 articulated by the Hearing Officer in her Decision and Order of Immediate Suspension, the 68 or
11 more fraudulent weight tickets tainted all 68 DR6 Shipping Reports submitted by RSA during the
12 foregoing period. Similarly, the fraudulent weight tickets and fraudulent DR6s tainted all 18 DR7
13 Processor Invoices submitted by RSA during that time period.

14 56. The actual damages to the Fund for this limited review period of November 16,
15 2015 to December 1, 2015, totals **\$650,005.38**, including **\$584,535.51** in CRV, **\$50,856.49** in
16 Processing Payments, and **\$14,613.38** in Administrative Costs.

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

18 57. The allegations set forth in paragraphs 1 through 56, above, are incorporated by
19 reference.

20 58. Pursuant to its statutory authority, the Department imposes the following
21 disciplinary action against Respondents Recycling Services Alliance, Inc. (PR147941.001), Sheng
22 Chien (Jensen) Tseng, and Maximina (Maxi) Perez, joint and severally, based upon sufficient
23 evidence of violations of the enumerated statutes and regulations as set forth above.

24 (a) All claims against the Fund submitted by Respondents that were unsupported by
25 complete, accurate, and lawful documentation, or such claims submitted by their officers,
26 members, directors, agents, representatives, managers, or employees, including but not limited to
27 those claims paid and unpaid, known and unknown, are disallowed in their entirety.

28 (b) Pursuant to PRC § 14591.2(c)(1), the Department immediately revokes
certification PR147941.001.

1 (c) The Department imposes upon Respondents, joint and severally, an Order for
2 Restitution, Interest, Civil Penalties, and Costs and Fees, as follows.

3 (1) **Restitution** - Pursuant to PRC §§ 14539(e), 14591.2(c)(5), and 14591.4,
4 the Department orders immediate restitution in the amount of Six Hundred Fifty Thousand Five
5 Dollars and Thirty-Eight Cents (**\$650,005.38**) against Respondents for the program payments paid
6 to them based on invalid, illegal, or fraudulent submission of claims.

7 (2) **Interest** - Pursuant to PRC § 14591.4, the Department orders payment
8 of interest on the **\$650,005.38** against Respondents. The interest is calculated at the rate earned on
9 the Pooled Money Investment Account, pursuant to PRC § 14591.4, beginning on the date the
10 claim was submitted and continuing until Respondents make payment in full of the restitution and
11 interest ordered herein. The actual amount of interest will be determined at hearing and according
12 to proof.

13 (3) **Civil Penalties** - Pursuant to PRC §§ 14591.1 and 14591.2(c)(6), the
14 Department assesses civil penalties for the 154 violations of the Act as enumerated in this
15 Accusation against Respondents. Each violation of the Act constitutes an independent basis upon
16 which to sustain a penalty. (PRC §§ 14591.1(a)(3) and (b).)

17 (i) For each violation of the Act or Regulations set forth above, the
18 Department imposes a civil penalty in the amount of Five Thousand Dollars (\$5,000.00). (PRC
19 §14591.1(b).) Accordingly, the Department orders penalties against Respondents in the amount of
20 Seven Hundred Seventy Thousand Dollars (**\$770,000.00**).

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

24 (4) **Costs and Fees** - Pursuant to PRC § 14591.3, the Department orders
25 Respondents to pay all costs and fees, including but not limited to attorneys' and expert witness
26 fees, and the cost of investigation and hearing, in the amount set forth below, as well as those
27 amounts to be determined at trial.

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

Respondents, and any entities they own or control, 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 - All

Respondents, and any entities they own or control, 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, cancelled or not, and whether or not California Refund Value was paid or is being claimed on the materials.

59. In addition to the disciplinary actions taken in paragraph 58, above, the Department seeks such other and further relief as is just and proper.

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Dated: May 31, 2016



John Halligan
Branch Chief, Recycling Program Enforcement Branch
Department of Resources Recycling and Recovery



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

PROOF OF SERVICE

I, Donnet McFarlane, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On June 1st, 2016, at 1:57 a.m./p.m., I served the Department's Accusation, Notice of Defense, Statement to Respondent, Request for Discovery, Government Code Sections 11507.5, 11507.6, and 11507.7, and OAH hearing information re: In the Matter of the Accusation Against Recycling Services Alliance, Inc. (PR147941.001), Sheng Chien (Jensen) Tseng, and Maximina (Maxi) Perez, Respondents (DRRR Case No. 2016-003-BCR) on on

Shengchien (Jensen) Tseng
Recycling Services Alliance, Inc.
6935 Power Inn Road
Sacramento, CA 95828

by:

By Personal Delivery - I caused such document(s), in a sealed envelope, to be delivered by hand to the individual(s) at the above address(es).

U.S. Mail, Certified with Return Receipt - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.

X Registered First Class U.S. Mail - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service - #RE57443416145

Electronic Mail - Sent to email addresses listed above.

FAX - Sent to fax numbers listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 1st day of June, 2016.

(Signature)



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

PROOF OF SERVICE

I, Tonya Harrison, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On June 1, 2016, at 1:35 a.m./p.m., I served the Department's Accusation, Notice of Defense, Statement to Respondent, Request for Discovery, Government Code Sections 11507.5, 11507.6, and 11507.7, and OAH hearing information re: In the Matter of the Accusation Against Recycling Services Alliance, Inc. (PR147941.001), Sheng Chien (Jensen) Tseng, and Maximina (Maxi) Perez, Respondents (DRRR Case No. 2016-003-BCR) on

Shengchien (Jensen) Tseng
Recycling Services Alliance, Inc.
6935 Power Inn Road
Sacramento, CA 95828

by:

[X] By Personal Delivery - I caused such document(s), in a sealed envelope, to be delivered by hand to the individual(s) at the above address(es).

[] U.S. Mail, Certified with Return Receipt - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.

[] First Class U.S. Mail - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service

[] Electronic Mail - Sent to email addresses listed above.

[] FAX - Sent to fax numbers listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 1st day of June, 2016.

[Signature]
(Signature)



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

PROOF OF SERVICE

I, Kimberly Bryant, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On 6/2/16, at 8:45 a.m./p.m., I served the Department's Accusation, Notice of Defense, Statement to Respondent, Request for Discovery, Government Code Sections 11507.5, 11507.6, and 11507.7, and OAH hearing information re: In the Matter of the Accusation Against Recycling Services Alliance, Inc. (PR147941.001), Sheng Chien (Jensen) Tseng, and Maximina (Maxi) Perez, Respondents (DRRR Case No. 2016-003-BCR) on

Maximina (Maxi) Perez
Recycling Services Alliance, Inc.
6935 Power Inn Road
Sacramento, CA 95828

by:

- X By Personal Delivery - I caused such document(s), in a sealed envelope, to be delivered by hand to the individual(s) at the above address(es).
U.S. Mail, Certified with Return Receipt - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.
First Class U.S. Mail - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service
Electronic Mail - Sent to email addresses listed above.
FAX - Sent to fax numbers listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 2nd day of June, 2016.

Kim Bryant
(Signature)