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8
9 **STATE OF CALIFORNIA**
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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

12 **CVS HEALTH CORPORATION AND CVS**
PHARMACY, INC., (DL11132, DL11698,
13 **DL11968, DL12018, DL12665, DL12701,**
DL13379, DL13430, DL13719, DL13754,
14 **DL13850, DL16100, DL16299, DL17592,**
DL18273, DL18441, DL19822, DL19969,
15 **DL20805, DL21013, DL21085, DL21306,**
DL216909.001, DL217333.001,
16 **DL217334.001, DL217336.001,**
DL217341.001, DL217343.001,
17 **DL218294.001, DL21950, DL21959,**
DL23786, DL24017, DL243156.001,
18 **DL24950, DL250492.001, DL250502.001,**
DL253250.001, DL254552.001, DL26246,
19 **DL26308, DL27194, DL27231, DL27490,**
DL27670, DL28085, DL28698, DL28952,
20 **DL28995, DL29904, DL29991, DL31539,**
DL44186, DL45842, DL45933, DL46170,
21 **DL47357, DL49634, DL49637, DL49642,**
DL49643, DL49652, DL49657, DL49658,
22 **DL50694, DL52737, DL53715, DL55369,**
DL57712, DL58620, DL59534, DL60352,
23 **DL60540, DL60630, DL61200, DL61202,**
DL61203, DL61207, DL62635, DL63209,
24 **DL63212),**

OAH Case No.

DRRR Case No. 2019-002-BCR

ACCUSATION
[Gov. Code § 11503]

COLLECTING UNPAID STATUTORY
FEEES, ASSESSING CIVIL PENALTIES,
AND RECOUPING COSTS AND FEES

[Pub. Resources Code §§ 14571.6(b),
14591.1, and 14591.3]

25 **Respondents.**

26 Pursuant to the California Beverage Container Recycling and Litter Reduction Act, Public
27 Resources Code (hereafter "PRC") § 14500 et seq. (hereafter "Act"), and California Code of
28 Regulations, title 14, § 2000 et seq. (hereafter "Regulations"), the Department of Resources

1 Recycling and Recovery (hereafter "Department"), issues this Accusation by and through the
2 undersigned, Scott Smithline, Director, exclusively in his official capacity.

3 **A. Jurisdiction**

4 1. The Department is responsible for administration of the Act, including but not
5 limited to, managing the California Beverage Container Recycling Fund (PRC § 14580; hereafter
6 "Fund"), adopting regulations, certifying and registering program participants, inspecting, auditing,
7 investigating, filing and prosecuting enforcement actions, and imposing discipline. (PRC §§
8 14512.7, 14530.5, 14538, 14539, 14539.5, 14540, 14552, 14553, 14560, 14580, 14591-14597.)

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

15 3. The Department is authorized under PRC § 14552(b)(1) to audit or investigate any
16 action taken during the five-year period before the onset of the audit or investigation to determine
17 compliance with the Act and Regulations. An enforcement action is timely if filed within five
18 years of the discovery of a violation of the Act or Regulations. (PRC § 14552(b)(2).) The
19 Department may also conduct a comprehensive inspection, audit, or investigation to verify
20 compliance with the Act and Regulations. (PRC §§ 14552(b) and (c); PRC § 14553(c); Gov. Code
21 §§ 11180 et seq.; Regulations §§ 2075 and 2125.)

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

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

1 **B. Statutory And Regulatory Authority**

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

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

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

23 9. Each violation of the Act is a separate violation and each day of the violation is a
24 separate violation. (PRC § 14591.1(a)(3).)

25 10. The Act defines "dealer" as "a retail establishment which offers the sale of
26 beverages in beverage containers to consumers." (PRC §§ 14504, 14505, 14508, and 14510.)

27 11. The Act defines "convenience zone" as either the area within a one-half mile radius
28 of a supermarket or an area in a rural region designated by the Department upon petition by an

1 interested party. (PRC §§ 14509.4 and 14571.5.) A convenience zone is required to have within
2 its boundaries at least one certified recycling center that redeems all types of CRV containers.
3 (PRC § 14571.) Convenience zone recycling centers provide opportunities for consumers to
4 redeem empty beverage containers near where they are purchased.

5 12. The Department is responsible for identifying and designating convenience zones
6 on a statewide basis. (PRC § 14571.1) A convenience zone with one or more operational
7 recycling locations inside its boundaries is referred to as a served zone. A convenience zone
8 without a recycling location, and where the Department has determined that conditions for an
9 exemption have not been met, is referred to as an unserved zone. (PRC § 14571.7(b).)

10 13. When a convenience zone has had one or more recycling locations (PRC § 14520.5)
11 which subsequently cease to operate, leaving the zone unserved, the Department will notify all
12 dealers within the zone that a recycling location is required to be established in the convenience
13 zone within 60 days. (PRC § 14571.7(a).) If a recycling location meeting the requirements of
14 Section 14571 of the Act is not established within 30 days of the initial notification, the
15 Department again notifies all dealers within the unserved zone that one or more dealers within that
16 zone must establish, or cause to be established, a recycling location. (PRC § 14571.7(a).)

17 14. Pursuant to Section 14571.6 of the Act, if a convenience zone still has no recycling
18 location after the expiration of the 60-day notice period, and where no exemption has been issued
19 under Section 14571.7(b) of the Act, all dealers within the unserved convenience zone must do one
20 of the following, i.e., either (a) or (b) below, until a recycling location is established:

- 21 (a) Submit to the Department an affidavit form provided by the Department
22 stating that all of the following standards are being met by the dealer:
- 23 (1) The dealer redeems all empty beverage container types at all open
24 cash registers or one designated location on the dealer's premises,
25 during all hours that the dealer is open for business.
 - 26 (2) The dealer has posted signs which meet the size and location
27 requirements specified in Section 14570 of the Act, and which
28 complies with Section 14570(b)(2) of the Act.
 - (3) The dealer is delivering, or having delivered, all empty beverage
containers received from the public to a certified recycling center or
processor for recycling.

1 (b) Pay to the Department for deposit in the Fund the sum of one hundred
2 dollars (\$100.00) per day until a recycling location is established or until
3 standards for redemption specified in Section 14571.6(a) of the Act have
4 been met.

5 **C. Respondents**

6 15. Respondent CVS Health Corporation (hereafter "CVS"), was at all times mentioned
7 herein a corporation organized under the laws of the State of Delaware with its Corporate
8 Headquarters located at One CVS Drive, Woonsocket, RI 02895. CVS is doing business in
9 California as Respondent CVS Pharmacy, Inc. (hereafter "CVS Pharmacy"), a corporation
10 organized under the laws of the State of Rhode Island. CVS Pharmacy operates as a subsidiary of
11 CVS. CVS operates nearly 10,000 retail locations across the United States and commands
12 approximately 26% of the retail pharmacy market in this country. CVS generated \$194.6 billion in
13 revenue during 2018.

14 16. CVS owns and operates retail stores located throughout California through its
15 subsidiary CVS Pharmacy. As of this date, the Department has registered 848 CVS Pharmacy
16 retail stores as dealers in California. As dealers, the CVS Pharmacy stores are required to comply
17 with and are subject to relevant sections of the Act.

18 17. Hereafter, the Department will refer to Respondents CVS Health Corporation and
19 CVS Pharmacy, Inc., together with their California retail stores, as "CVS Respondents." At all
20 times relevant to this Accusation, CVS Respondents were conducting the business of CVS and
21 CVS Pharmacy, including but not limited to, actively directing, controlling, and personally
22 participating in, or otherwise influencing, the day-to-day operation and management of all business
23 affairs of CVS Pharmacy dealers in California. (PRC § 14510.)

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

28 **D. Grounds For Administrative Action**

19. The statements, assertions, and allegations set forth in paragraphs 1 through 18,

1 above, are incorporated by reference.

2 20. The Department has identified eighty-one (81) CVS Respondents' dealers/stores
3 located in unserved, nonexempt convenience zones during the time relevant to this Accusation.
4 Attached to this Accusation as Exhibit 1, which is incorporated by reference, is an Excel
5 spreadsheet. The spreadsheet sets forth for each of the 81 dealers with its registration number,
6 address, affidavit return date and option, as well as the billing period, number of days invoiced but
7 not paid, and balance due to the Department.

8 21. Pursuant to Section 14571.7(a) of the Act, the Department mailed the required
9 initial and 30-day notifications to the dealers referred to in paragraph 20, above. At the end of the
10 60-day grace period allowed for establishing a recycling location in the unserved zones, the
11 Department mailed a final notice (the 60-day notice) notifying each dealer that the zone was
12 unserved, and informing the dealers of their obligation under Section 14571.6 of the Act to submit
13 an affidavit to the Department stating that they are complying with the in-store redemption
14 standards. Dealers in unserved zones who chose not to redeem in-store had the obligation to pay to
15 the Department the sum of one hundred dollars (\$100) per day in lieu of in-store redemption.
16 (PRC § 14571.6(b).) The Department included an affidavit form with the final notice. Some CVS
17 Respondents failed to submit timely affidavits, while others did not pay the Department one
18 hundred dollars (\$100) per day in lieu of redeeming in-store.

19 **E. CVS Respondents Failed To Pay To The Department The Sum Of One Hundred**
20 **Dollars Per Day For Each Of Its Eighty-One Dealers Located In Unserved**
Convenience Zones.

21 22. The statements, assertions, and allegations set forth in paragraphs 1 through 21,
22 above, are incorporated by reference.

23 23. CVS Respondents were out of compliance with Section 14571.6(b) of the Act by
24 failing to pay to the Department the sum of one hundred dollars (\$100) per day for each of the CVS
25 Respondents' dealer locations identified in paragraph 20 above that were, or continue to be,
26 situated in unserved convenience zones and failed, or continue to fail, to redeem in-store.

27 24. As of October 31, 2019, CVS Respondents had **18,290** days of nonpayment of one
28 hundred dollars (\$100) per day to the Department for all of the dealer locations identified in

1 paragraph 20 above, owing a total of One Million Eight Hundred Twenty-Nine Thousand Dollars
2 and No Cents (**\$1,829,000.00**) to the Department.

3 25. CVS Respondents' failure to make required statutory payments to the Department in
4 accordance with Section 14571.6(b) of the Act is a continuing violation. To the extent that CVS
5 Respondents still have dealers in unserved zones that fail to redeem in-store, payment of one
6 hundred dollars (\$100) per day for each such dealer must be made to the Department until the
7 standards set forth in Section 14571.6(a) of the Act are met. (PRC § 14571.6(b).)

8 **F. Statutory Remedies To Be Imposed.**

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

11 27. The Department imposes upon Respondent CVS Health Corporation and
12 Respondent CVS Pharmacy, Inc., joint and severally, an Order for Unpaid Statutory Convenience
13 Zone Fees, Civil Penalties, and Costs and Fees, as follows:

14 (a) **Unpaid Statutory Convenience Zone Fees**

15 Pursuant to PRC § 14571.6, the CVS Respondents will immediately pay to
16 the Department the amount of One Million Eight Hundred Twenty-Nine
17 Thousand Dollars and No Cents (**\$1,829,000.00**), representing the statutory
18 convenience zone fees due and owing to the Department, calculated through
19 October 31, 2019. (b) The Department further demands payment of one
20 hundred dollars (\$100) per day for every noncompliant dealer location,
21 beginning November 1, 2019, until such time a final agency decision is
22 adopted.

23 (b) **Civil Penalties**

24 Pursuant to PRC § 14591.1 of the Act, the Department demands payment of
25 civil penalties in the amount of One Million Eight Hundred Twenty-Nine
26 Thousand Dollars and No Cents (**\$1,829,000.00**), calculated at one hundred
27 dollars (\$100) per day for each of the **18,290** days the identified dealers have
28 failed to comply with the law. (b) The Department further demands

1 payment of one hundred dollars (\$100) per day civil penalty for every
2 noncompliant dealer location, beginning November 1, 2019, until such time
3 a final agency decision is adopted.

4 **(c) Costs and Fees**

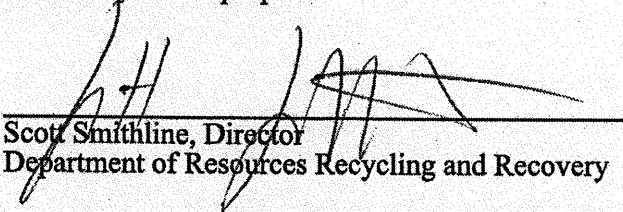
5 Pursuant to PRC § 14591.3, the Department orders the payment of all costs
6 and fees, including but not limited to attorneys' and expert witness fees, and
7 the cost of investigation and hearing, in the amount set forth below, as well
8 as additional amounts to be determined at trial, including costs and fees
9 associated with litigation subsequent to the date of this Accusation. As of
10 the date of this Accusation, the costs and fees incurred by the Department
11 total Eleven Thousand Seven Hundred Ninety-Three Dollars and Sixty-
12 Three Cents (\$11,793.63), as follows:

- 13 (i) Recycling Program Manager I - \$190.20
- 14 (ii) Recycling Specialist III Supervisor - \$87.78
- 15 (iii) Recycling Specialist III (Tech) - \$43.89
- 16 (iv) Recycling Specialist II - \$2,788.73
- 17 (v) Staff Services Manager I - \$87.78
- 18 (vi) Associate Government Program Analyst - \$195.25
- 19 (vii) Attorney IV - \$8,400.00

20 28. The total amount due to the Department under this Accusation is Three Million Six
21 Hundred Sixty-Nine Thousand Seven Hundred Ninety-Three Dollars and Sixty-Three Cents
22 (\$3,669,793.63).

23 29. In addition to the disciplinary actions taken in paragraph 27, above, the Department
24 seeks such other and further relief as is just and proper.

25 Dated: 12-5-19

26 
27 Scott Smithline, Director
28 Department of Resources Recycling and Recovery