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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIERRA CLUB,

Plaintiff,

v.

THE COCA-COLA COMPANY, BLUETRITON BRANDS, INC.

Defendants.

Case No. 21-cv-04644-JD

DEFENDANT THE COCA-COLA COMPANY'S NOTICE OF MOTION TO DISMISS AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: January 13, 2022

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

Judge: Hon. James Donato

NOTICE OF MOTION AND MOTION

TO THE PLAINTIFF AND ITS ATTORNEY OF RECORD IN THE ABOVE-CAPTIONED MATTER:

PLEASE TAKE NOTICE that on January 13, 2022 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 11 before Honorable James Donato of the Northern District of California, Defendant The Coca-Cola Company ("Coca-Cola") will and hereby does move the Court to dismiss Plaintiff's Sierra Club complaint against it, in which Plaintiff allege violations of the California Environmental Marketing Claims Act, Cal. Bus. & Prof. Code § 17580, *et seq*. and the Unfair Competition Law, *Id.* § 17200, *et seq*.

This motion is made pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds set forth in the accompanying memorandum of points and authorities.

Dated: September 27, 2021

Respectfully submitted,

/s/ Gary T. Lafayette

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STATEMENT OF ISSUES

1. Does Sierra Club have Article III standing where its alleged injury is predicated on routine advocacy activities that further its core mission to protect the environment, including by eradicating use of single-use plastic?

2. Does Sierra Club satisfy the standing requirements of California's UCL when it does not allege that it relied on the veracity of the challenged statement?

3. Would a reasonable consumer interpret "recyclable"—a term that means "can be recycled"—as a guarantee that a plastic bottle will definitely be repurposed into a new product?

PRELIMINARY STATEMENT

Minutes after the consumer plaintiffs in *Swartz v. Coca-Cola*[1] filed their complaint alleging that Dasani® Purified Water bottles are falsely labeled as "100% Recyclable," plaintiff Sierra Club—represented by the same counsel—filed a complaint of its own.[2] Like the *Swartz* plaintiffs, Sierra Club alleges that "100% Recyclable" is understood by the public to mean that Dasani bottles not only ***can*** be recycled into new plastic, but necessarily ***will*** be recycled for further use, as long as they are deposited in recycling bins. Sierra Club's complaint alleges that this is untrue for the same reasons as does the *Swartz* complaint, namely (1) municipal recycling facilities lack the capacity to process all recyclable plastic, and (2) the plastic labels and caps on the bottles are not recyclable in any event.

But unlike the plaintiffs in *Swartz*, Sierra Club does not allege that it was taken in by the supposed deception. Sierra Club does not claim to have relied on Dasani labels for information about plastic recycling, or even to have purchased Dasani water. Nevertheless, Sierra Club—a 3.8-million-member organization with "tremendous credibility and influence"—alleges that its "mission [wa]s directly frustrated" by the "100% Recyclable" statement on Dasani water bottles. Sierra Club claims that the statement impedes its efforts to protect the environment from plastic waste and educate the public about that topic. As a result, Sierra Club has allegedly "expended considerable resources to combat" the harms wrought by this single statement on a single brand of bottled water. On this basis, Sierra Club asserts claims under California's Unfair Competition Law ("UCL") and Environmental Marketing Claims Act ("ECMA"), and seeks an injunction prohibiting the use of the "100% Recyclable" statement.

Sierra Club's complaint should be dismissed, in its entirety, for three reasons.

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[1] The Court has deemed this case related to *Swartz v. The Coca-Cola Company*, 21-cv-04643.

[2] In *Swartz*, the claims against Coca-Cola have been improperly joined to the claims against the other defendants, as set forth in Coca-Cola's motion to sever that action. Here, Sierra Club's claims against BlueTriton Brands Inc. are improperly joined to the claims against Coca-Cola for the same reason. Should the Court deny this motion to dismiss, Coca-Cola will file a motion to sever the claims against the two defendants into two separate actions.

First, Sierra Club lacks Article III standing, because it has not alleged that it suffered any concrete injury as a result of the "100% Recyclable" statement. To demonstrate injury, an organizational plaintiff must allege both "frustration of purpose" and "diversion of resources." That is, the organization must allege facts showing that Coca-Cola's statement impeded its ability to pursue its usual activities, and that it had to divert resources to overcome that impediment. Yet here, Sierra Club alleges only that it considers single-use plastic bottles a threat to the environment, and has directed some of its usual activities—*i.e.*, advocacy and education—to promoting environmentally sound alternatives. Such abstract tension between an organization's social goals and a defendant's activities does not give rise to standing. What is more, even if the abstract injury Sierra Club alleges were sufficient to constitute injury-in-fact, it is not attributable to the "100% Recyclable" statement on Dasani labels, but to single-use plastics generally.

Second, even if Sierra Club could clear the Article III standing hurdle, it would lack standing under the UCL, because it cannot allege that it relied to its detriment on the "100% Recyclable" statement. As another court in this District recently held in a virtually identical case, UCL standing is restricted to those who allege that they were "motivated to act or refrain from action based on the truth or falsity of a defendant's statement." An organizational plaintiff who knew all along that the statement purportedly was false cannot satisfy this requirement. This, too, compels dismissal of Sierra Club's claims.

Third, to the extent Sierra Club's claims are premised on the fanciful interpretation of "100% Recyclable" as a guarantee that Dasani water bottles will ultimately be reused in new products, they are deficient as a matter of law, because a reasonable consumer would not share this interpretation. A "recyclable" material is one that can be recycled, and Sierra Club acknowledges that the Dasani bottles are made of such a material. Accordingly, even if Sierra Club could overcome its Article III and statutory standing obstacles, its claims premised on this theory do not get out of the starting gate.[3]

[3] Although it vigorously disputes Sierra Club's vague and conclusory alternative theory—that the labels and caps attached to Dasani bottles are not made of recyclable materials—Coca-Cola recognizes that this contention is less amenable to resolution at the pleadings stage.

STATEMENT OF FACTS[4]

A. The Recyclability of Dasani Bottles

Coca-Cola sells Dasani Purified Water in bottles made of 100% polyethylene terephthalate (PET), a form of plastic. Compl. ¶ 21. As the Complaint acknowledges, PET is "widely considered" to be one of the two "'most recyclable' forms of plastic." Compl. ¶ 30. Indeed, the Greenpeace report the Complaint cites and relies upon (Compl. ¶ 30 n.5; Compl. ¶ 31 n.8) recognizes that PET "***can legitimately be claimed or labeled as recyclable***," because 100% of U.S. recycling facilities have the ability to process it.[5] In California, every PET bottle placed in a recycling bin is picked up and taken to a Materials Recovery Facility ("MRF"). As of 2017, Sierra Club alleges, there were 75 such facilities in the State, and every one (*i.e.*, 100%) of them could process PET. Compl. ¶ 29.

To provide consumers with accurate information and encourage them to place used Dasani bottles in recycling bins, Coca-Cola labels the bottles as "100% Recyclable." Compl. ¶ 23. As Sierra Club notes, other manufacturers of PET-bottled beverages do the same—a practice that does not reflect a nefarious industry "scheme," as Sierra Club alleges, but rather the widespread consensus that PET is the "most recyclable" form of plastic. Compl. ¶¶ 30, 52. Coca-Cola's labeling of the bottles is also consistent with the Federal Trade Commission's ("FTC") "Green Guides," which set forth the FTC's guidance for recycling-related claims on product labeling. The Green Guides provide that a product may be "marketed as recyclable" so long as it "***can be*** collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R. § 260.12(a) (emphasis added).

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[4] All facts are taken from Sierra Club's Complaint and the materials incorporated by reference or cited therein, which are assumed to be true for purposes of this motion. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (Courts may consider "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physical attached to the [plaintiff's] pleading" (internal quotation mark omitted)); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (courts may "treat . . . document[s] [incorporated by reference] as part of the complaint, and thus may assume that its contents are true for purpose of a motion to dismiss[.]").

[5] Greenpeace, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastic Recyclability*, https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf (last accessed Sept. 24, 2021 at 10).

B. Sierra Club's Allegations

Sierra Club, a California corporation, was founded in 1892, making it "the nation's oldest grassroots environmental organization." Compl. ¶ 7. Sierra Club is "dedicated to the protection and preservation of [the] environment," including by "ending the use of single-use plastic" and "combatting false and misleading environmental claims on consumer goods (i.e. greenwashing)." Compl. ¶ 7. *Id.* Because it "enjoys tremendous credibility and influence with the public" and a "community of 3.8 million members" and other supporters, Sierra Club regularly "uses its network to pressure and advocate for change through legislation." Compl. ¶ 57. In addition, "an[] integral component of the Sierra Club's operations in furtherance of its mission is to educate the public regarding environmental issues." Compl. ¶ 58.

Although it does not claim to have ever purchased, let alone been deceived by the labeling of, Dasani bottled water, Sierra Club alleges, as the *Swartz* plaintiffs do, that the "100% Recyclable" statement is misleading to reasonable consumers. Sierra Club claims that consumers interpret this statement as an assurance not only that Dasani bottles are made of recyclable materials, but also that they are guaranteed to be "recycled into new bottles to be used again" once placed in a recycling bin. Compl. ¶ 53. As Sierra Club acknowledges, whether a given bottle is ultimately repurposed depends on a number of factors beyond Coca-Cola's control, such as (i) the relevant recycling facility's capacity; (ii) the total volume of PET waste generated in that area during that time period; (iii) "contamination and processing losses" that may occur during the recycling process; (iv) the international market for exported reusable plastic, which can itself be influenced by, *e.g.*, China's trade policies; and (v) the price of, and demand for, unused or "virgin" plastic. Compl. ¶¶ 30-32.

According to the Complaint, the "100% Recyclable" statement on Dasani bottled water "directly frustrate[s]" Sierra Club's mission of environmental education and advocacy, in two ways. Compl. ¶ 59. First, Sierra Club alleges that because a majority of single-use plastic bottles end up being placed in landfills or incinerated, the bottles are environmentally irresponsible, and therefore "directly antagonistic to the Sierra Club's express mission to 'protect the planet.'" Compl. ¶ 59. Second, Sierra Club alleges that the "100% Recyclable" statement "falsely implies that the use of

plastic bottles is sustainable." Compl. ¶ 59. This implication allegedly "undermines the Sierra Club's mission to 'educate and enlist humanity to protect' the natural environment" through "environmentally responsible choices." Compl. ¶ 59.

Although Sierra Club alleges that single-use plastic bottles harm the environment, it does not allege any concrete harm to itself, such as disruption of its usual advocacy and education activities. On the contrary, Sierra Club alleges that it has pursued those activities with vigor to reduce what it considers the harms of single-use plastic. Sierra Club has allegedly devoted "substantial volunteer and staff hours to support legislation in California that prohibits false recycling claims and supports the use of reusable bottles," namely SB 343, which regulates sustainability claims and their substantiation, and AB 962, which seeks to reduce plastic waste by creating an incentive system for bottle returns. Compl. ¶¶ 61-66. While its advocacy in support of these legislative proposals is entirely in keeping with its day-to-day activities, Sierra Club complains that these actions have somehow required it to "postpone" unspecified "other projects that could advance the Sierra Club's mission." Compl. ¶ 8. Moreover, Sierra Club alleges no facts tying any of these purported impacts on its activities to the contents of Coca-Cola's labels, as opposed to the general prevalence of single-use plastic bottles.

Sierra Club also vaguely claims to have "inform[ed] the public" about Coca-Cola's misrepresentations, but fails to allege any activities it undertook for this purpose. Sierra Club alleges that it "tweeted" at Arrowhead, a competing brand of bottled water manufactured by Coca-Cola's co-defendant BlueTriton, asking whether the label and cap on Arrowhead bottles are "really 100% recyclable?" Compl. ¶ 67. Sierra Club also emailed a link to a blog post describing the California legislation, along with other means of combating plastic pollution. Compl. ¶ 67 & n.18. This communication also made no mention of Coca-Cola or Dasani bottled water.

Sierra Club asserts two causes of action. First, it alleges that Coca-Cola has violated the California Environmental Marketing Claims Act ("EMCA"), Cal. Bus. & Prof. Code § 17580 et seq., a statute that has no private right of action. Second, it claims that, by allegedly running afoul the

EMCA and FTC Green Guides, Coca-Cola has also violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq.. Compl. ¶¶ 73-74, 78-88. Sierra Club seeks an injunction to "prohibit the sale" of products that bear the "100% Recyclable" statement and to "disclose the omitted facts about their true recyclability." Compl. ¶ 90.

ARGUMENT

To avoid dismissal under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). Along the same lines, a complaint is subject to dismissal unless it contains facts sufficient to establish that the court has jurisdiction over the purported claims. *Phillips v. Apple Inc.*, No. 15-CV-04879-LHK, 2016 WL 1579693, at *3 (N.D. Cal. Apr. 19, 2016) (dismissing FAL and UCL claims for lack of standing).

"[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Ashcroft*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Accordingly, although a court must accept the concrete factual allegations in a complaint as true, it "need not accept . . . conclusory allegations" or allegations "contradicted by documents referred to in the complaint." *Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 955 (9th Cir. 2011). In addition, when a complaint sets forth multiple theories of liability, the Court may dismiss the case to the extent it is premised on any theory that is not "plausible on its face." *See, e.g., Cross v. California Dep't of Food & Agric.*, No. 18-CV-01302-DAD-JLT, 2020 WL 803847, at *3 (E.D. Cal. Feb. 18, 2020) (considering motion to dismiss claims "to the extent that they are based on" a certain theory as a Rule 12(b)(6) motion).

I. Sierra Club Lacks Organizational Standing to Sue

To establish Article III standing, an organization must show that the defendant's conduct directly caused it to suffer injury-in-fact, which is redressable by the relief sought. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). Sierra Club's Complaint fails to allege either of these requirements. Sierra Club's abstract opposition to single-use plastic bottles, and efforts to discourage

their use, do not constitute injury-in-fact. Moreover, because even those efforts were directed not at Coca-Cola but at single-use bottles generally, Sierra Club cannot even show that its grievances are fairly traceable to Coca-Cola or redressable through the injunctive relief it seeks.

A. Sierra Club Does Not Allege Injury-In-Fact

An organization that seeks to establish an injury-in-fact must demonstrate both (1) a "frustration of its organizational mission" ***and*** (2) a "diversion of its resources to combat the particular conduct in question." *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1154 (9th Cir. 2019) (alterations and internal quotation marks omitted). The first requirement considers the impact on the "organization's daily operations," as opposed to its broader policy agenda. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015). A mere "setback to the organization's abstract social interests" does not suffice. *Havens*, 455 U.S. at 379. By the same token, the second requirement demands that the organization have "diverted resources" to resolving that impact, and cannot be satisfied with allegations that the organization committed resources to its "core organizing activities or some other aspect of [its] organizational purpose." *Center for Biological Diversity v. Bernhardt*, 19-CV-05206-JST, 2020 WL 4188091, at *5 (N.D. Cal. May 18, 2020).

Sierra Club cannot establish either of these mandatory elements of standing. It alleges only that it considers single-use plastic bottles environmentally threatening and has undertaken various efforts to discourage their use. Neither of these assertions even remotely suggests that the "100% Recyclable" statement on Dasani bottled water has caused Sierra Club an injury-in-fact.

1. Sierra Club Cannot Establish Frustration of Purpose

Sierra Club alleges that the "100% Recyclable" statement on Dasani bottles has "directly frustrated" its purpose because (1) the bottles' alleged negative environmental impact is "directly antagonistic to the Sierra Club's express mission to 'protect the planet'"; and (2) the "false[] impli[cation] that the use of plastic bottles is sustainable" allegedly "undermines the Sierra Club's mission to 'educate and enlist humanity to protect' the natural environment" through "environmentally responsible choices." Compl. ¶ 59. In other words, Sierra Club considers packaging such as that used

by Dasani "antagonistic" to its broader conservation mission. But Sierra Club does not allege that the "100% Recyclable" statement on Dasani labels has impeded its ability to function as an organization.

Such abstract allegations of "antagonism" between a defendant's activities and an organization's core principles do not establish frustration of purpose. Sierra Club, of all parties, should know this. As the Supreme Court held long ago, "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem," does not give rise to standing. *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972). Accordingly, Sierra Club cannot claim that Coca-Cola frustrated its purpose simply by "offend[ing] the priorities and principles of the organization." *Jimenez v. Tsai*, No. 5:16-CV-04434-EJD, 2017 WL 2423186, at *11 (N.D. Cal. June 5, 2017); *see also Havens*, 455 U.S. at 379. Were it otherwise, Sierra Club would have standing to sue not only Coca-Cola, but every company or individual whose activities it considered environmentally irresponsible.

Rather, to show frustration of purpose, Sierra Club must allege that Coca-Cola's activities affected not just the environment but ***Sierra Club itself***, causing "inhibition of the organization's daily operations." *Food & Water Watch*, 808 F.3d at 919 (alterations omitted); *see also Know Your IX v. DeVos*, No. CV RDB-20-01224, 2020 WL 6150935, at *7 (D. Md. Oct. 20, 2020) (dismissing for lack of standing where the organization failed to allege that the conduct "directly impaired [its] ability to operate and function"). Sierra Club alleges nothing of the sort. Not only does the Complaint allege no facts suggesting impairment to Sierra Club's "ability to operate and function," but it affirms that Sierra Club retains "tremendous credibility and influence with the public" as well as a politically influential "network." Compl. ¶ 57. Thus, whatever its purported impact on the environment, the Dasani labeling has left Sierra Club's "ability to operate and function" fully intact.

Nor can Sierra Club premise frustration of purpose on its own "pure issue-advocacy" relating to single-use bottles. *Center for Law & Educ. v. Dep't of Educ.*, 396 F.3d 1152, 1161-62 (D.C. Cir. 2005) (citing *Havens*, 455 U.S. at 379). After all, if a court "were to allow a party whose organizational mission is to engage in policy advocacy to claim injury on the basis of a need to engage in that exact

activity, *any* advocacy group could find standing to challenge laws when there are changes in policy." *Know Your IX*, 2020 WL 6150935, at *6. Accordingly, "resource reallocations motivated by the dictates of preference, however sincere, are not cognizable organizational injuries." *Id.* at *7 (quoting *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 239 (4th Cir. 2020)); *see also Women's Student Union v. U.S. Dep't of Ed.*, No. 21-CV-01626-EMC, 2021 WL 3932000, at *6 (N.D. Cal. Sept. 2, 2021) (applying *Know Your IX* and *CASA de Maryland* to reject organizational standing). Having suffered no injury to its organizational activities, Sierra Club cannot manufacture one by choosing to oppose single-use plastic.

2. Sierra Club Cannot Establish Diversion of Resources

For similar reasons, Sierra Club also cannot establish "diversion of resources," the second mandatory requirement for an organization asserting Article III standing. Sierra Club alleges that it committed resources to opposing single-use plastic, and opposing the labeling of such plastic as "recyclable," at the expense of unspecified "other projects." Compl. ¶ 8. But as Sierra Club's own allegations show, it committed those resources to promote its conservationist goals, not to address a tangible organizational injury wrought by Dasani labels. Sierra Club's pursuit of its own policy priorities does not give it standing to sue Coca-Cola.

An organization cannot merely "expend[] resources toward [its] core organizing activities or some other aspect of [its] organizational purpose," and claim diversion of resources. *Center for Biological Diversity*, 2020 WL 4188091, at *5. Were it otherwise, an organization could attain standing just by "going about its business as usual," and then asking its policy foes to pick up the tab. *Am. Diabetes Ass'n*, 938 F.3d at 1155 (staff attorney time to handle an intake call was merely "going about its business as usual" since staff attorneys already "dedicate a portion of their time" to taking calls); *see Friends of the Earth v. Sanderson Farms Inc.*, 992 F.3d 939, 942 (9th Cir. 2021) ("[O]rganizations divert resources when they alter their resource allocation . . . but not when they go about their business as usual." (alterations and internal quotation marks omitted)).

Here, everything that Sierra Club purports to identify as "diversion of resources" is in fact just "business as usual." Sierra Club complains that, because of Coca-Cola's labeling, it has had to lobby for state legislation promoting reuse of plastics and regulating on-label claims about sustainability. But Sierra Club did not pursue such actions because of the "100% Recyclable" statement on Dasani bottled water. These activities are just what Sierra Club does. The organization is "dedicated to the protection and preservation of the environment, including . . . [by] ending the use of single-use plastics and combatting false and misleading environmental claims on consumer goods." Compl. ¶ 7. To that end, among other things, it "uses its network to pressure and advocate for change through legislation and strategic lawsuits." Compl. ¶ 57. Sierra Club's pursuit of its regular organizational mission does not give it standing to sue Coca-Cola.

Sierra Club also claims to have committed resources to "inform[ing] the public" about Coca-Cola's labeling. Compl. ¶ 67. These informative efforts, according to the Complaint, included (1) a "tweet" at Arrowhead, a competing brand of bottled water, regarding the recyclability of its bottles; and (2) an email to Los Angeles members linking to a blog post about single-use plastics. Compl. ¶¶ 68-69. Neither of these was directed to, or even referenced, Coca-Cola or its products, and neither could have required appreciable "resources." But in any event, these activities, too, were "business as usual." Sierra Club acknowledges that an "integral component" of its operations is "educat[ing] the public regarding environmental issues." Compl. ¶ 58. It cannot claim "diversion of resources" for having done just that.

B. Sierra Club Cannot Show that Its Injury Is Fairly Traceable to Dasani Labels or Can Be Redressed by an Injunction Against the "100% Recyclable" Statement

Even if its grievances with single-use plastic constituted injury-in-fact, Sierra Club could not show that this purported injury was traceable to Coca-Cola's conduct or redressable by the relief requested. To establish traceability, a plaintiff must allege a "causal connection between the injury and the conduct complained of" and show the injury is "not the result of the independent action of some third party not before the court." *Bennett v. Spear*, 520 U.S. 154, 167 (1997)). To show redressability, a plaintiff "must show that the relief [sought] is both (1) substantially likely to redress

their injuries; and (2) within the district court's power to award." *Juliana v. United States*, 947 F.3d 1159, 1170 (9th Cir. 2020). "Redress need not be guaranteed, but it must be more than merely speculative." *Id.* (internal quotation marks omitted). Where, as here, "the requested relief is simply to stop the ongoing misconduct, the [traceability and redressability] inquiries are nearly identical." *Id.* at 1183 n. 8.

Neither requirement is satisfied here. Even if Sierra Club's voluntary advocacy and education activities somehow generated an injury, Sierra Club does not and cannot allege that those activities were prompted by ***Coca-Cola's conduct***, as opposed to single-use plastics in general. None of the alleged activities, not even Sierra Club's "tweet" about bottled water, was directed to or even mentioned Coca-Cola. Thus, Sierra Club flunks the traceability prong of Article III standing. *See Clean Air Council v. United States*, 362 F. Supp. 3d 237, 249 (E.D. Pa. 2019) (plaintiffs challenging rollback of environmental regulations "fail the traceability prong because the actions they challenge . . . are, at most, indirect factors in the calculus of rising greenhouse emissions).

For similar reasons, Sierra Club cannot satisfy the redressability prong either. Sierra Club's theory of redressability hinges on the contention that if only Coca-Cola is enjoined from making the "100% Recyclable" statement on Dasani bottles, Sierra Club will no longer have to concern itself with the environmental consequences of plastic waste. That is nonsense. As Sierra Club's Complaint acknowledges, the United States generates large quantities of plastic waste, only a tiny fraction of which is attributable to Dasani bottled water. All of the activities Sierra Club complains of having undertaken were directed at the overall environmental impact of plastic waste. The removal of the "100% Recyclable" statement from Dasani bottled water will not meaningfully reduce that impact. Accordingly, the injunction Sierra Club seeks will do nothing to redress its purported injuries.

II. Sierra Club Lacks Standing to Bring a UCL Claim

Even if Sierra Club could establish Article III standing (it cannot), it lacks standing under the UCL, because it does not and cannot allege that it actually relied on the statement to its detriment. As a court of this District recently reaffirmed, a nonprofit organization may not premise UCL standing on

its efforts to prevent or remediate the deception of others. Only those who were deceived by the challenged statement, and lost money or property as a result, have standing under the statute.

In 2004, Proposition 64 dramatically narrowed the standing provision of the UCL, such that claims can now be brought only by a person who has "suffered injury in fact and has lost money or property as a result of the unfair competition." Cal. Bus. & Prof. Code § 17204; *see Kwikset Corp. v. Superior Court*, 246 P.3d 877, 884–85 (Cal. 2011). The phrase "as a result of" in § 17204 means "caused by," and "requires a showing of a causal connection or reliance on the alleged misrepresentation." *Kwikset*, 246 P.3d at 887. In cases such as this, where the challenged conduct involves false advertising or misrepresentations to consumers, the plaintiff "must demonstrate actual reliance on the allegedly deceptive or misleading statements." *Id.* at 888. To establish "reliance," a plaintiff must show it was "motivated to act or refrain from action based on the truth or falsity of a defendant's statement, not merely the fact it was made." *Id.* at 888 n. 10. This requirement is the same under the UCL's "fraud," "unlawful" and "unfair" prongs. *See Greenpeace Inc. v. Walmart Inc.*, No. 21-CV-00754-MMC, 2021 WL 4267536, at *1 (N.D. Cal. Sept. 20, 2021); *In re iPhone Application Litig.*, 6 F. Supp. 3d 1004, 1013 (N.D. Cal. 2013).

In *Greenpeace Inc. v. Walmart Inc.*, the court dismissed a UCL claim brought by another environmental organization alleging that designating products as "recyclable" misled consumers to believe the products are guaranteed to be recycled. 2021 WL 4267536, at *1. The Court held that because the complaint alleged that the action taken by the organization was "in response to its belief that the challenged statements were false," it failed to allege reliance. *Id.* at *2. The same logic applies with equal force here. Sierra Club does not allege that it engaged in any activity on a belief that the "100% Recyclable" statement was true. It alleged lobbying and public education activities were in response to its view that the statement is false. Thus, Sierra Club fails to allege reliance.

Sierra Club may attempt to argue it has UCL standing because Coca-Cola's statement frustrated its mission and caused it to divert resources in response. But this theory flouts the reason for amending the UCL, as it would allow an end run of the requirement that "a private action under

that law be brought *exclusively* by a 'person who has suffered injury in fact and has lost money or property as a result of the unfair competition.'" *Amalgamated Transit Union, Loc. 1756, AFL-CIO v. Superior Ct.*, 209 P.3d 937, 943 (Cal. 2009) (quoting Cal. Bus. & Prof. Code § 17204); *see Greenpeace*, 2021 WL 4267536, at *2 (rejecting diversion of resources as basis for UCL standing). The standing requirement was amended "to eliminate standing for those who have not engaged in any business dealings with would-be defendants." *Kwikset*, 246 P.3d at 881. No matter how Sierra Club fashions its injury, at its core it is derivative of alleged an injury to consumers. The UCL requires those consumers be the ones that bring suit, not Sierra Club.

III. Sierra Club's Interpretation of "Recyclable" Is Implausible

Apart from its lack of standing, Sierra Club's claims are deficient for the same reason as those asserted in *Swartz v. Coca-Cola*: they rely upon an implausible interpretation of "100% Recyclable." The word "recyclable" means only that a product ***can be*** recycled. No reasonable consumer would interpret it as a guarantee that the product ***will be*** recycled and reused. Courts routinely dismiss claims premised on unreasonable interpretations of product labels, and this Court should do so here.

To state a claim for false advertising under the UCL, a plaintiff must allege that the defendant's labeling or advertising is misleading from the "vantage point of a reasonable consumer." *Reid v. Johnson & Johnson*, 780 F.3d 952, 958 (9th Cir. 2015); *see also Jou v. Kimberly-Clark Corp.*, No. C-13-03075 JSC, 2013 WL 6491158, at *5 (N.D. Cal. Dec. 10, 2013) (applying "reasonable consumer" standard to EMCA claim). Failure to allege a "plausible misunderstanding" of the disputed statement is grounds for dismissal at the pleading stage. *Becerra v. Dr. Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1229 (9th Cir. 2019). In *Becerra*, the Ninth Circuit affirmed the district court's dismissal of a complaint alleging that a product's branding as a "diet" soft drink misled consumers into believing that the beverage would "assist in weight loss or healthy weight management." *Id.* at 1229. The court ruled that reasonable consumers understand "diet" in that context to refer only to calorie content, and that the plaintiffs had accordingly failed plausibly to allege that the "diet" label is misleading. *Id.*; *see also Carrea v. Dreyer's Grand Ice Cream, Inc.*, 475 F. App'x 113, 115 (9th Cir. 2012) (deeming it

"implausible that a reasonable consumer would interpret 'Original Sundae Cone,' 'Original Vanilla,' and 'Classic,' to imply that Drumstick is more wholesome or nutritious than competing products," and affirming dismissal of consumer fraud claim on that basis).

Here too, Sierra Club's theory of deception flunks the basic "plausibility" test. The definition of "recyclable" is "capable of being recycled." *Recyclable*, Oxford English Dictionary (3d ed. 2009). The Greenpeace report that Sierra Club cites embraces this definition, acknowledging that Dasani bottles are made of the "most recyclable plastic" available. Yet Sierra Club insists that consumers understood "100% Recyclable" as an assurance that their Dasani bottles were guaranteed to be "recycled into new bottles to be used again" once placed in a recycling bin. Compl. ¶ 53. That interpretation ignores common English usage. Sierra Club cannot clear the plausibility threshold by interpreting words in a manner contrary to their "common definition and understanding." *Cheslow v. Ghirardelli Chocolate Co.*, 445 F. Supp. 3d 8, 17 (N.D. Cal. 2020) (dismissing claim premised on interpretation of "white" on a confectionery product as guaranteeing "white chocolate."). Indeed, courts routinely reject interpretations, such as the one Sierra Club advances here, that ignore the everyday "fact[s] of life." *See Red v. Kraft Foods, Inc.*, 2012 WL 5504011, at *3 (C.D. Cal. Oct. 25, 2012) (dismissing a consumer claim targeting the "Made with Real Vegetables" label on box of crackers, on the grounds that reasonable consumers know "the fact of life that a cracker is not composed of primarily fresh vegetables"); *Jessani v. Monini N.A.*, 744 Fed. App'x 18, 19 (2d Cir. Dec. 3, 2018) (affirming dismissal of a claim relating to truffle-flavored olive oil, on the grounds that reasonable consumers would not expect a "mass produced, modestly priced olive oil" to be made with real truffles).

The FTC "Green Guides," which Sierra Club also cites, are of no help to it on this issue. The FTC, like everyone else, defines a "recyclable" item as one that "***can be*** collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R. § 260.12(a) (emphasis added). The Green Guides also provide that an "unqualified recyclable claim[]" may be used on a product label so long

as the appropriate recycling facilities are "available to a substantial majority of" Americans, defined to be at least 60%. *Id.* § 260.12(b)(1). As Sierra Club does not dispute, PET recycling facilities are available to all Americans, and every recycling facility in California can process PET. The Green Guides thus support dismissal, not survival, of Sierra Club's complaint.[6]

CONCLUSION

Sierra Club's complaint should be dismissed for lack of Article III and UCL standing. If the Court rules that Sierra Club clears both standing hurdles, then the complaint should be dismissed to the extent it is premised on the implausible allegation that the "100% Recyclable" statement on Dasani bottled water leads consumers to believe that all such bottles will necessarily be repurposed for future use.

[6] The notion that "recyclable" means "will be recycled" is also inconsistent with California law. The California Beverage Container Recycling and Litter Reduction Act, Cal. Pub. Res. Code, § 14500 et seq., for instance, requires beverage manufacturers, including Coca-Cola, to affix a "Redemption Value" statement to each container it sells. The statute's stated purpose is "to encourage large-scale recycling of used beverage containers through a program of financial incentives." *Californians Against Waste v. Dep't of Conservation*, 104 Cal. App. 4th 317, 319 (Cal. Ct. App. 2002) (citing Cal. Pub. Res. Code § 14501). There is no requirement, in that statute or elsewhere, that every single beverage container actually be recycled in order for the statement to appear.

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