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 7 KATHLEEN SMITH

FILED
 ALAMEDA COUNTY

SEP 28 2018

CLERK OF THE SUPERIOR COURT
 By Erica Baker
 ERICA BAKER Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF ALAMEDA

13 KATHLEEN SMITH, on behalf of herself and all
 14 others similarly situated,

15 Plaintiff,

16 v.

17 KEURIG GREEN MOUNTAIN, INC.; and DOES
 18 1 through 100, inclusive,

19 Defendants.

Case No.

RG18922722

CLASS ACTION COMPLAINT

1 Plaintiff Kathleen Smith ("Plaintiff"), on behalf of herself and those similarly
2 situated, based on information, belief and investigation of her counsel, except for information
3 based on personal knowledge, hereby alleges:

4 **INTRODUCTION**

5 1. The problems associated with plastic waste management are increasing locally,
6 nationally and globally as the amount of plastic in the ocean, in freshwater lakes and streams, on
7 land, and in landfills continues to grow. Nearly 90% of plastic waste is not recycled, with billions
8 of tons of plastic becoming trash and litter. As consumers become increasingly aware of the
9 problems associated with plastic waste, they are increasingly susceptible to marketing claims
10 reassuring them that the plastic used to make and to package the products that they purchase is
11 recyclable. Many consumers concerned with the proliferation of plastic waste actively seek to
12 purchase products that are either compostable or recyclable to divert such waste from the ocean
13 and landfills. Seeking to take advantage of consumers' concerns, defendant Keurig Green
14 Mountain, Inc. ("Keurig") markets and sells plastic single serve coffee pods as recyclable, when
15 the pods cannot in fact be recycled.

16 2. This Complaint seeks to remedy Defendants' unlawful, unfair and deceptive
17 business practices with respect to the advertising, marketing and sales of plastic single serve pods
18 that contain coffee and that are labeled as "recyclable" (the "Products").¹ The Products are
19 advertised, marketed and sold as recyclable. However, even if consumers take the many steps
20 required to place the Products in their recycling bins, they are not in fact recyclable because most
21 municipal recycling facilities are not properly equipped to capture such small materials.
22 Furthermore, even where such facilities exist that are capable of segregating the Products from
23 the general waste stream, the Products usually still end up in landfills anyway as there is no
24 market to recycle the Products.

25 3. Despite Defendants' marketing and advertising of the Products as recyclable,
26 Defendants know that the Products typically end up in landfills. Defendants' representations that

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¹ For example, one popular Product is sold under the brand name K-Cup®.
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1 the Products are recyclable are material, false, misleading and likely to deceive members of the
2 public. These representations also violate California's legislatively declared policy against
3 misrepresenting the characteristics of goods and services.

4 4. Plaintiff purchased the Products in reliance on Defendants' false representations
5 that the Products are recyclable. Plaintiff viewed Defendants' false representations on the labels
6 and other marketing materials for the Products. If Plaintiff had known that the Products were not
7 recyclable, Plaintiff would not have purchased the Products and would have instead sought out
8 single serve pods or other coffee products that are otherwise compostable, recyclable or reusable.
9 At a minimum, she would not have paid as much as she did if she knew the Products could not be
10 recycled. Defendants thus breached their express warranty under the California Commercial
11 Code § 2313; violated the California Consumers Legal Remedies Act ("CLRA") by making
12 representations that the Products have characteristics, benefits and qualities which they do not
13 have and by advertising the Products without the intent to sell them as advertised; and violated
14 the Business and Profession Code § 17200 based on fraudulent, unlawful and unfair acts and
15 practices.

16 5. Plaintiff and the Class seek an order enjoining Defendants' acts of unfair
17 competition and other unlawful conduct, an award of damages to compensate them for
18 Defendants' acts of unfair competition, false and misleading advertising, and breaches of
19 warranty, and restitution to the individual victims of Defendants' fraudulent, unlawful and unfair
20 acts and practices.

21 **PARTIES**

22 6. Plaintiff Kathleen Smith is a resident of Lafayette, California. Plaintiff is
23 concerned about the environment and seeks out products that are compostable, recyclable or
24 reusable so that she can minimize her impact on the environment in general and on the country's
25 plastic waste problems in particular. Therefore, Plaintiff specifically selected the Products in
26 reliance on Defendants' representations that the Products are recyclable. The false
27 representations are located on the labels and other marketing materials for the Products. Had
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1 Plaintiff known that the Products are not recyclable, she would not have purchased the Products
2 or would not have paid as much as she did for the Products.

3 7. Defendant Keurig Green Mountain, Inc. is a Delaware corporation with its
4 principal place of business in Waterbury, Vermont. Defendant Keurig Green Mountain, Inc.
5 manufactures, distributes and sells the Products in California.

6 8. DOES 1 through 100 are persons or entities whose true names and capacities are
7 presently unknown to Plaintiff and members of the Class, and who therefore are sued by such
8 fictitious names. Plaintiff and members of the Class are informed and believe, and on that basis
9 allege, that each of the fictitiously named defendants perpetrated some or all of the wrongful acts
10 alleged herein and are responsible in some manner for the matters alleged herein. Plaintiffs will
11 amend this Complaint to state the true names and capacities of such fictitiously named defendants
12 when ascertained.

13 9. Defendant Keurig Green Mountain, Inc. and DOES 1-100 are collectively referred
14 to herein as "Defendants."

15 JURISDICTION AND VENUE

16 10. This Court has jurisdiction over all causes of action asserted herein pursuant to the
17 California Constitution, Article VI, Section 10, because this case is a cause not given by statute to
18 other trial courts. This Court also has jurisdiction over certain causes of action asserted herein
19 pursuant to Business & Professions Code §§ 17203 and 17204, which allow enforcement in any
20 Court of competent jurisdiction.

21 11. This Court has jurisdiction over Defendants because each is a corporation or other
22 entity that has sufficient minimum contacts in California, is a citizen of California, or otherwise
23 intentionally avails itself of the California market either through the distribution, sale or
24 marketing of the Products in the State of California or by having a facility located in California so
25 as to render the exercise of jurisdiction over it by the California courts consistent with traditional
26 notions of fair play and substantial justice.

27 12. Venue in the County of Alameda is proper under Business & Professions Code
28 § 17203, Code of Civil Procedure §§ 395 and 395.5, and Civil Code § 1780, because this Court is

1 a court of competent jurisdiction and the Products are sold throughout this County. Concurrently
2 with filing this Complaint, Plaintiff is filing an affidavit pursuant to Civil Code § 1780(c)
3 regarding the propriety of venue in Alameda County.

4 BACKGROUND FACTS

5 13. In the past decade humans across the globe have produced 8.3 billion metric tons
6 of plastic, most of it in disposable products that end up as trash. Of the 8.3 billion tons produced,
7 6.3 billion tons have become plastic waste and only nine percent of that has been recycled. The
8 Environmental Protection Agency estimates that Americans alone disposed of more than 33
9 million tons of plastic in 2014, most of which was not recycled. While California has a goal to
10 achieve a 75% recycling rate by 2020, California's recycling rate is actually in decline. In 2015,
11 California's recycling rate was 50%, dropping to 47% in 2015 and down to 44% in 2017.

12 14. The staggering amount of plastic waste accumulating in the environment is
13 accompanied by an array of negative side effects. For example, plastic debris is frequently
14 ingested by marine animals and other wildlife, which can be both injurious and poisonous.
15 Floating plastic is also a vector for invasive species, and plastic that gets buried in landfills can
16 leach harmful chemicals into ground water that is absorbed by humans and other animals. Plastic
17 litter on the streets and in and around our parks and beaches also degrades the quality of life for
18 residents and visitors. More recently, scientists have discovered that, as it degrades, plastic waste
19 releases large amounts of methane, a powerful greenhouse gas. Thus, plastic waste is also
20 thought to be a significant potential cause of global climate change. Consumers, including
21 Plaintiff, actively seek out products that are compostable, recyclable or reusable to prevent the
22 increase in global waste and to minimize their environmental foot print.

23 15. The Products have received extensive criticism for their contribution to the plastic
24 waste crisis. For instance, on January 7, 2015, an anonymous person posted a YouTube video
25 entitled "Kill the K-Cup," which portrays an apocalyptic scene in which giant alien monsters who
26 are themselves composed of K-Cups® invade a city and fire missile and bullet-like K-Cups® at
27 terrified citizens. The video concludes with the message "Kill The K-Cup Before It Kills Our
28 Planet," and provides statistics to drive home the point that the Products have dire consequences

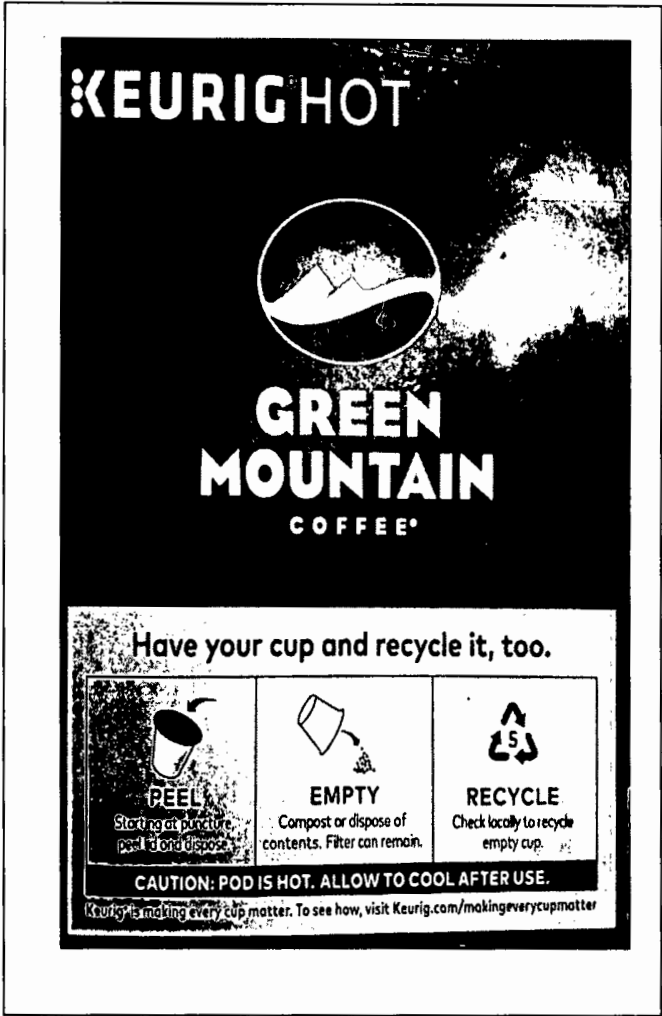
1 to the environmental health of the planet. Nearly 1 million people viewed the video, which
2 spawned the popular hashtag #KillTheKCup and the killthekcup.org website.

3 16. According to online estimates, in 2014 alone over 9.7 billion K-Cups® were
4 produced, enough to circle the globe 12.4 times. As consumer backlash for the Products have
5 increased over the years, even the inventor of single serve coffee pods, John Sylvan, has publicly
6 stated his regret for inventing the Products and expressed doubts about whether they could ever
7 be recycled.

8 17. In an attempt to counter negative publicity regarding the Products' impacts and to
9 take advantage of consumers' concerns with respect to the environmental consequences caused
10 by the Products, Defendants advertise, market and sell their Products as recyclable. More
11 specifically, the packaging of Defendants' Products state that consumers can "[h]ave [their] cup
12 and recycle it, too," in large green font. Adjacent to that statement on Defendants' packaging are
13 instructions for how to recycle, including illustrations with the terms "PEEL," "EMPTY," and
14 "RECYCLE," accompanied by the chasing arrow symbol that is commonly used and understood
15 to mean that a product is recyclable. These claims are uniform, consistent and prominently
16 displayed on each of the Products' labels. Following is a representative example of a Product
17 label:

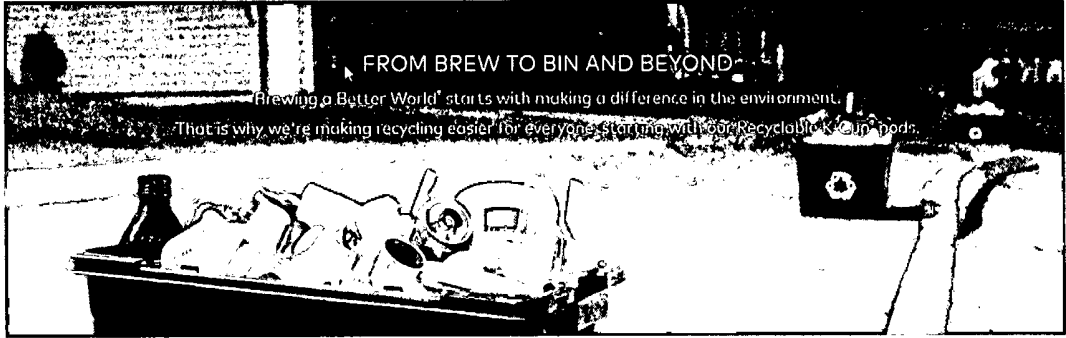
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18. Defendants' marketing, advertising and promotional materials for the Products, including Keurig's website, also uniformly represent that the Products are recyclable. For instance, Keurig's website advertises the Products as recyclable as follows:

Home > Recyclable K-Cup® Pods & Recycling Information | Keurig



Keurig Recyclable K-Cup® Pods

Today's popular varieties...with more to come!



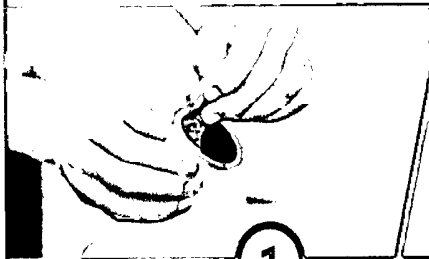
SHOP NOW



SHOP NOW

HOW TO RECYCLE YOUR K-CUP® PODS

Recycle your pods the good way.



1

PEEL

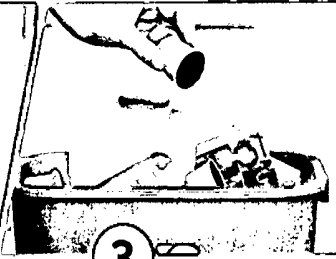
Remove the foil lid and dispose of it.



2

EMPTY

Compost or discard the pod's contents. (Filter can remain.)



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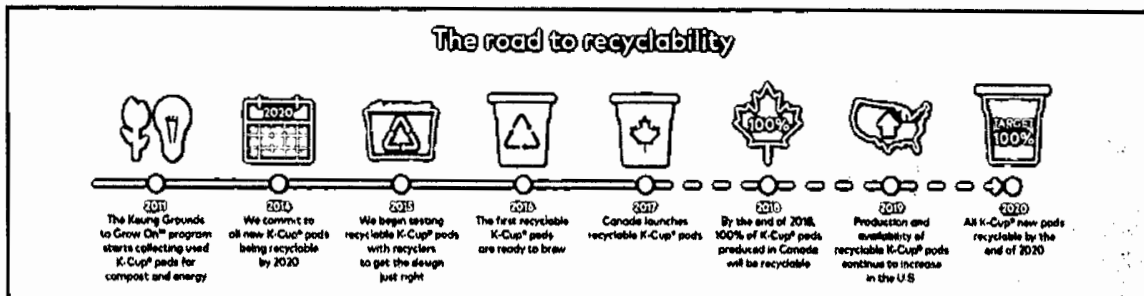
RECYCLE

Recycle the empty cup. Check locally.

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Keurig® Recyclable K-Cup® pods are here and by the end of 2020,
100% of our K-Cup® pods will be recyclable.

To learn more about recycling, or the many other ways Keurig is
making a difference in the environment, visit KeurigRecycling.com



19. The claims made by Defendants that the Products are recyclable are uniform, consistent and material. Because the claims are false and misleading, ordinary consumers, including members of the Class, are likely to be deceived by such representations.

20. The Legislature of the State of California has declared that “it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy is based on the Legislature’s finding that “littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs.” *Id.* § 42355(a).

21. The California Business and Professions Code § 17580.5 makes it “unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied.” Pursuant to that section, the term “environmental marketing claim” includes any claim contained in the Guides for use of Environmental Marketing Claims published by the Federal Trade Commission (the “Green Guides”). *Ibid*; see also 16 C.F.R. § 260.1, *et seq.* Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an

1 established recycling program for reuse or use in manufacturing or assembling another item.” 16
2 C.F.R. § 260.12(a).

3 22. The majority of municipal recycling facilities in the United States, including
4 California, are not properly equipped to capture materials as small as the Products or to segregate
5 such small items from the general waste stream. Even in the rare instance where segregation is
6 possible, the Products still end up in landfills anyway as there is no market to recycle the
7 Products.

8 23. Defendants’ recycling instructions require consumers to go through a number of
9 time-consuming and cumbersome steps before recycling the Products, including separating the
10 foil lid and removing the pod’s contents. Unbeknownst to consumers, they are wasting their time
11 and efforts since, even when they meticulously follow Defendants’ instructions, the Products
12 cannot be collected, separated or recovered from the waste stream due to their size and, even if
13 they can be, the Products will ultimately end up in landfills anyway. Defendants’ representations
14 that the Products are recyclable are therefore per se deceptive under the Green Guides.

15 24. The Green Guides are clear: “if any component significantly limits the ability to
16 recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable
17 material, but because of its shape, size or some other attribute is not accepted in recycling
18 programs, should not be marketed as recyclable.” 16 C.F.R. § 260.12(d). Here, the small size of
19 the Products significantly limits the ability of recycling facilities to recycle them. Even where a
20 recycling facility accepts the Products from consumers, recycling facilities are not actually
21 capable of segregating the Products from the general waste stream due to their small size. The
22 Products are also not recyclable as there is no market to recycle them.

23 25. Most consumers believe that if their Products are accepted into a recycling
24 program, then those Products are recyclable. However, because the majority of recycling
25 facilities cannot segregate such small waste from the general waste stream, and because there is
26 no market to recycle the Products, the recycling facilities send the Products to landfills.
27 Defendants’ marketing of the Products as recyclable is thus a direct violation of the Green
28 Guides.

1 26. Because the Products are not recyclable, Defendants cannot make any recycling
2 claims as to the Products. However, at a minimum, Defendants are required to clearly and
3 prominently qualify recyclable claims to avoid deception about the availability of recycling
4 programs and collection sites to consumers if consumers do not have access to facilities that can
5 recycle their products. 16 C.F.R. § 260.12(b). A marketer may only make an unqualified
6 recyclable claim if a substantial majority of consumers or communities have access to recycling
7 facilities capable of recycling the items.² *Id.* § 260.12(b)(1). Because a substantial majority of
8 consumers do not have access to recycling facilities capable of recycling the Products,
9 Defendants must at a minimum qualify any recyclability claim about the Products.

10 27. According to the Green Guides, marketers may qualify recyclable claims by
11 stating the percentage of consumers or communities that have access to facilities that recycle the
12 item. 16 C.F.R. § 260.12(b)(2). In the alternative, marketers may use qualifications that vary in
13 strength depending on facility availability. *Ibid.* Thus, the strength of the qualification depends
14 on the level of access to an appropriate facility. For example, if recycling facilities are available
15 to slightly less than a substantial majority of consumers or communities where the item is sold,
16 the Green Guides recommend that a marketer should qualify the recyclable claim by stating “this
17 product may not be recyclable in your area,” or “recycling facilities for this product may not exist
18 in your area.” *Ibid.* If recycling facilities are available only to a few consumers, the Green
19 Guides recommend a marketer to qualify its recyclable claim by stating “this product is
20 recyclable only in a few communities that have appropriate recycling facilities.” *Ibid.* Under
21 these guidelines, to the extent Defendants can make any recycling claim at all for the Products,
22 Defendants must provide an unequivocally strong qualification for its recyclability claim because
23 a majority of recycling facilities are not capable of recycling the Products.

24 28. Defendants’ labeling and marketing materials for the Products state: “[c]heck
25 locally.” This statement does not comply with the Green Guides. The Green Guides specifically
26 state that this type of qualification is deceptive. In Green Guide Example 4, the qualification

27 ² A “substantial majority” means at least 60 percent. 16 C.F.R. § 260.12(b)(1).
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1 “[c]heck to see if recycling facilities exist in your area” is considered deceptive because it does
2 not adequately disclose the limited availability of recycling programs. 16 C.F.R. § 260.12,
3 Example 4. Defendants’ qualification is nearly identical to the deceptive statement identified in
4 Example 4 because it advises the consumer to check for the availability of recycling programs,
5 rather than inform the consumer of the extremely limited chance that the Products will ultimately
6 be recycled.

7 29. Not only does this qualification violate the Green Guides, it is also not likely to be
8 understood by a reasonable consumer. Plaintiff and most other consumers believe that if their
9 municipality offers recycling services, then all products marketed as “recyclable” can be recycled.
10 Thus, most consumers will place the Products in the recycling bin under the false impression that
11 the Products can be recycled, when the Products cannot in fact be recycled in their area. In
12 addition, most consumers will follow Defendants’ cumbersome recycling instructions despite the
13 fact that the Products cannot be recycled. Defendants’ labeling, advertising and marketing claims
14 that the Products are recyclable are therefore likely to deceive a reasonable consumer.

15 30. Plaintiff places a high priority on environmental concerns in general, and on the
16 negative consequences regarding the proliferation of plastic waste in particular. In shopping for
17 coffee products for her home, Plaintiff was particularly concerned about the recyclability of
18 single serve pods that contain coffee. Based on the labeling and advertising of Defendants’
19 Products, Plaintiff believed that the Products are recyclable in all locations, including Lafayette,
20 California, where Plaintiff resides. Defendants’ representations that the Products are recyclable
21 are thus material to Plaintiff.

22 31. Plaintiff purchased the Products numerous times over the course of the past couple
23 years directly from Keurig’s website believing the recycling claims both on the Product’s
24 packaging as well as the website. Plaintiff purchased the Products in reliance on Defendants’
25 representations that the Products are recyclable, when they are not in fact recyclable. To the
26 contrary, the Products cannot be recycled. Defendants know that the Products end up in landfills,
27 but Defendants fail to clearly make that qualification, leading Plaintiff and other members of the
28 Class to believe that the Products are generally recyclable. Had Plaintiff and the other members

1 of the Class known that the Products are not recyclable — contrary to Defendants’
2 representations — they would not have purchased the Products or would not have paid as much
3 as they did for the Products.

4 32. Plaintiff continues to desire to purchase recyclable single serve coffee pods.
5 Plaintiff would purchase single serve coffee pods manufactured by Defendants in the future if
6 Defendants’ representations that the Products were recyclable were true. Plaintiff would like to
7 buy recyclable single serve coffee pods from Defendants in the future, but is unable to determine
8 with confidence, based on the labeling and other marketing materials, whether the Products are
9 truly recyclable. Plaintiff would not have purchased the Products, or would not have paid as
10 much as she did for the Products, if Defendants had disclosed that the Products were not
11 recyclable.

12 33. Defendants are aware that the Products are not recyclable, yet Defendants have not
13 undertaken any effort to notify their end use customers of the problem. Defendants’ failure to
14 disclose that the Products are not recyclable is an omission of fact that is material to Plaintiff and
15 the other members of the Class.

16 **CLASS ACTION ALLEGATIONS**

17 34. Plaintiff brings this suit individually and as a class action pursuant to C.C.P § 382,
18 on behalf of herself and the following Class of similarly situated individuals:

19 All persons who purchased the Products for personal, family or
20 household purposes in California (either directly or through an
21 agent) during the applicable statute of limitations period (the
22 “Class”). Specifically excluded from the Class are Defendants; the
23 officers, directors or employees of Defendants; any entity in which
24 Defendants have a controlling interest; and any affiliate, legal
25 representative, heir or assign of Defendants. Also excluded are any
26 judicial officer presiding over this action and the members of
27 his/her immediate family and judicial staff, and any juror assigned
28 to this action.

1 35. Plaintiff is unable to state the precise number of potential members of the proposed
2 Class because that information is in the possession of Defendants. However, the number of Class
3 members is so numerous that joinder would be impracticable. The exact size of the proposed
4 Class and the identity of its members will be readily ascertainable from the business records of
5 Defendants and Defendants' retailers as well as Class members' own records and evidence.
6 Thus, joinder of such persons in a single action or bringing all members of the Class before the
7 Court is impracticable. The disposition of the claims of the members of the Class in this class
8 action will substantially benefit both the parties and the Court.

9 36. There is a community of interest among the members of the proposed Class in that
10 there are questions of law and fact common to the proposed Class that predominate over
11 questions affecting only individual members. Proof of a common set of facts will establish the
12 liability of Defendants and the right of each member of the Class to relief. These common legal
13 and factual questions, which do not vary among Class members and which may be determined
14 without reference to the individual circumstances of any Class member include, but are not
15 limited to the following:

- 16 a. whether Defendants advertise and market the Products by representing that the
17 Products are recyclable;
- 18 b. whether the Products are recyclable as advertised and labeled by Defendants;
- 19 c. whether Defendants' marketing, advertising and labeling claims regarding the
20 recyclability of the Products are likely to deceive a reasonable consumer;
- 21 d. whether Defendants know the Products cannot be recycled;
- 22 e. whether Defendants' representations regarding the recyclability of the Products
23 are likely to be read and understood by a reasonable consumer;
- 24 f. whether Defendants' representations regarding the recyclability of the Products
25 are in compliance with the Green Guides;
- 26 g. whether Defendants' claims regarding the recyclability of the Products would
27 be material to a reasonable consumer of the Products;
- 28 h. whether Defendants' conduct in advertising, marketing and labeling of the

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- Products constitutes a violation of California consumer protection laws;
- i. whether Defendants' representations concerning the Products constitute express warranties with regard to the Products;
- j. whether Defendants breached the express warranties they have made with regard to the Products;
- k. whether Defendants' representations regarding recycling constitute representations that the Products have characteristics, benefits or qualities which they do not have;
- l. whether Defendants' advertised their Products without an intent to sell them as advertised;
- m. whether punitive damages are warranted for Defendants' conduct and, if so, an appropriate amount of such damages; and
- n. whether Plaintiff and the Class members are entitled to injunctive and other equitable relief and to monetary relief.

37. Defendants utilize marketing, advertisements and labeling that include uniform misrepresentations that misled Plaintiff and the other members of the Class. Defendants' claims regarding the recyclability of the Products are one of the most prominent features of Defendants' marketing, advertising and labeling of the Products. Nonetheless, the Products are not in fact recyclable. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

38. Plaintiff asserts claims that are typical of the claims of the entire Class. Plaintiff and all members of the Class have been subjected to the same wrongful conduct because they have purchased the Products that are labeled and sold as single serve coffee pods that are recyclable, when they are not in fact recyclable.

39. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel

1 experienced in complex litigation of this nature to represent her. Plaintiff anticipates no difficulty
2 in the management of this litigation as a class action.

3 40. Proceeding as a class action provides substantial benefits to both the parties and
4 the Court because this is the most efficient method for the fair and efficient adjudication of the
5 controversy. Class members have suffered and will suffer irreparable harm and damages as a
6 result of Defendants' wrongful conduct. Because of the nature of the individual Class members'
7 claims, few, if any, could or would otherwise afford to seek legal redress against Defendants for
8 the wrongs complained of herein, and a representative class action is therefore appropriate, the
9 superior method of proceeding, and essential to the interests of justice insofar as the resolution of
10 Class members' claims are concerned. Absent a representative class action, members of the Class
11 would continue to suffer losses for which they would have no remedy, and Defendants would
12 unjustly retain the proceeds of their ill-gotten gains. Even if separate actions could be brought by
13 individual members of the Class, the resulting multiplicity of lawsuits would cause undue
14 hardship, burden and expense for the Court and the litigants, as well as create a risk of
15 inconsistent rulings which might be dispositive of the interests of the other members of the Class
16 who are not parties to the adjudications or may substantially impede their ability to protect their
17 interests.

18 FIRST CAUSE OF ACTION

19 **(Plaintiff, on Behalf of Herself and the Class, Alleges Breach of Express Warranty)**

20 41. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 40 of
21 this Complaint.

22 42. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or
23 promise made by the seller to the buyer which relates to the goods and becomes part of the basis
24 of the bargain creates an express warranty that the goods shall conform to the promise.

25 43. As detailed above, Defendants marketed and sold the Products as recyclable.
26 Defendants' representations that the Products are recyclable constitute affirmations of fact made
27 with regard to the Products as well as descriptions of the Products.

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1 44. Defendants' representations regarding the recyclability of the Products are
2 uniformly made in the Products' advertising, internet sites and other marketing materials, and on
3 the Products' labeling and packaging materials, and are thus part of the basis of the bargain
4 between Defendants and purchasers of the Products.

5 45. California has codified and adopted the provisions of the Uniform Commercial
6 Code governing the express warranty of merchantability (Cal. Com. Code § 2313).

7 46. At the time that Defendants designed, manufactured, sold and distributed the
8 Products, Defendants knew that the Products were not recyclable.

9 47. As set forth in the paragraphs above, the Products are not recyclable and thus do
10 not conform to Defendants' express representations to the contrary. Defendants have thus
11 breached their express warranties concerning the Products.

12 48. On July 23, 2018, Plaintiff sent a pre-suit demand letter to Defendants notifying
13 Defendants that the Products are not recyclable. Defendants therefore have actual and
14 constructive knowledge that the Products are not recyclable and were thus not sold as marketed
15 and advertised.

16 49. As a direct and proximate result of Defendants' breach of express warranties,
17 Plaintiff and Class members have suffered damages.

18 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

19 **SECOND CAUSE OF ACTION**

20 **(Plaintiff, on Behalf of Herself and the Class, Alleges Violations of the**
21 **California Consumers Legal Remedies Act – Injunctive Relief and Damages)**

22 50. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 49 of
23 this Complaint.

24 51. Plaintiff and the Class members purchased the Products for personal, family or
25 household purposes.

26 52. The acts and practices of Defendants as described above were intended to deceive
27 Plaintiff and the Class members as described herein and have resulted and will result in damages
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1 to Plaintiff and the Class members. These actions violated and continue to violate the CLRA in at
2 least the following respects:

3 a. In violation of Section 1770(a)(5) of the CLRA, Defendants' acts and
4 practices constitute representations that the Products have characteristics, uses or benefits
5 which they do not;

6 b. In violation of Section 1770(a)(7) of the CLRA, Defendants' acts and
7 practices constitute representations that the Products are of a particular quality, which they
8 are not; and

9 c. In violation of Section 1770(a)(9) of the CLRA, Defendants' acts and
10 practices constitute the advertisement of the Products without the intent to sell them as
11 advertised.

12 53. By reason of the foregoing, Plaintiff and the Class members have suffered
13 damages.

14 54. By committing the acts alleged above, Defendants violated the CLRA.

15 55. In compliance with the provisions of California Civil Code § 1782, on July 23,
16 2018, Plaintiff provided written notice to Defendants of her intention to seek damages under
17 California Civil Code § 1750, *et seq.*, and requested that Defendants offer an appropriate
18 consideration or other remedy to all affected consumers. As of the date of this complaint,
19 Defendants have not done so. Accordingly, Plaintiff seeks damages pursuant to California Civil
20 Code §§ 1780(a)(1) and 1781(a).

21 56. Plaintiff and the Class members are entitled to, pursuant to California Civil Code
22 § 1780(a)(2), an order enjoining the above-described wrongful acts and practices of Defendants,
23 providing actual and punitive damages and restitution to Plaintiff and the Class members, and
24 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and
25 proper by the Court under California Civil Code § 1780.

26 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.
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1 **THIRD CAUSE OF ACTION**

2 **(Plaintiff, on Behalf of Herself, the Class and the General Public,**
3 **Alleges Violations of California Business & Professions Code § 17200,**
4 ***et seq.* Based on Fraudulent Acts and Practices)**

5 57. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 56 of
6 this Complaint.

7 58. Under Business & Professions Code § 17200, any business act or practice that is
8 likely to deceive members of the public constitutes a fraudulent business act or practice.

9 59. Defendants have engaged and continue to engage in conduct that is likely to
10 deceive members of the public. This conduct includes, but is not limited to, representing that the
11 Products are recyclable.

12 60. Plaintiff purchased the Products in reliance on Defendants' representations that the
13 Products are recyclable. Defendants' claims that the Products are recyclable are material, untrue
14 and misleading. These recyclable claims are prominent on all of Defendants' marketing,
15 advertising and labeling materials, even though Defendants are aware that the claims are false and
16 misleading. Defendants' claims are thus likely to deceive both Plaintiff and a reasonable
17 consumer. Plaintiff would not have purchased the Products, or would not have paid as much for
18 the Products, but for Defendants' false representations that the Products are recyclable. Plaintiff
19 has thus suffered injury in fact and lost money or property as a direct result of Defendants'
20 misrepresentations and material omissions.

21 61. By committing the acts alleged above, Defendants have engaged in fraudulent
22 business acts and practices, which constitute unfair competition within the meaning of Business
23 & Professions Code § 17200.

24 62. An action for injunctive relief and restitution is specifically authorized under
25 Business & Professions Code § 17203.

26 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.
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1 **FOURTH CAUSE OF ACTION**

2 **(Plaintiff, on Behalf of Herself, the Class and the General Public,**
3 **Alleges Violations of California Business & Professions Code § 17200, et seq.**
4 **Based on Commission of Unlawful Acts)**

5 63. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 62 of
6 this Complaint.

7 64. The violation of any law constitutes an unlawful business practice under Business
8 & Professions Code § 17200.

9 65. As detailed more fully in the preceding paragraphs, the acts and practices alleged
10 herein were intended to or did result in the sale of the Products in violation of the CLRA,
11 California Civil Code §1750, et seq., and specifically California Civil Code § 1770(a)(5),
12 § 1770(a)(7) and § 1770(a)(9).

13 66. Defendants' conduct also violates Section 5 of the FTC Act, 15 U.S.C. § 45, which
14 prohibits unfair methods of competition and unfair or deceptive acts or practices in or effecting
15 commerce. By misrepresenting that the Products are recyclable, Defendants are violating Section
16 5 of the FTC Act.

17 67. Defendants' conduct also violates California Business & Professions Code
18 § 17500, which prohibits knowingly making, by means of any advertising device or otherwise,
19 any untrue or misleading statement with the intent to sell a product or to induce the public to
20 purchase a product. By misrepresenting that the Products are recyclable, Defendants are violating
21 Business & Professions Code § 17500.

22 68. Defendants' conduct also violates California Business & Professions Code
23 § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive or
24 misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental
25 marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, et seq.
26 Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a
27 product or package is recyclable. A product or package shall not be marketed as recyclable
28 unless it can be collected, separated, or otherwise recovered from the waste stream through an

1 established recycling program for reuse or use in manufacturing or assembling another item.” 16
2 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above,
3 Defendants are violating Business & Professions Code § 17580.5.

4 69. Defendants’ conduct is also a breach of warranty. Defendants’ representations that
5 the Products are recyclable constitute affirmations of fact made with regard to the Products, as
6 well as descriptions of the Products, that are part of the basis of the bargain between Defendants
7 and purchasers of the Products. Because those representations are material, false and misleading,
8 Defendants have breached their express warranty as to the Products and have violated California
9 Commercial Code § 2313.

10 70. By violating the CLRA, the FTC Act, Business & Professions Code §§ 17500 and
11 17580.5, and California Commercial Code § 2313, Defendants have engaged in unlawful business
12 acts and practices which constitute unfair competition within the meaning of Business &
13 Professions Code § 17200. Plaintiff would not have purchased the Products, or would not have
14 paid as much for Products, but for Defendants’ unlawful business practices. Plaintiff has thus
15 suffered injury in fact and lost money or property as a direct result of Defendants’
16 misrepresentations and material omissions.

17 71. An action for injunctive relief and restitution is specifically authorized under
18 Business & Professions Code § 17203.

19 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

20 **FIFTH CAUSE OF ACTION**

21 **(Plaintiff, on Behalf of Herself, the Class and the General Public,**
22 **Alleges Violations of California Business & Professions Code § 17200, et seq.**
23 **Based on Unfair Acts and Practices)**

24 72. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 71 of
25 this Complaint.

26 73. Under California Business & Professions Code § 17200, any business act or
27 practice that is unethical, oppressive, unscrupulous or substantially injurious to consumers, or that
28 violates a legislatively declared policy, constitutes an unfair business act or practice.

1 74. Defendants have engaged and continue to engage in conduct which is immoral,
2 unethical, oppressive, unscrupulous and substantially injurious to consumers. This conduct
3 includes, but is not limited to, advertising and marketing the Products as recyclable when they are
4 not. By taking advantage of consumers concerned about the environmental impacts of plastic
5 waste, Defendants' conduct, as described herein, far outweighs the utility, if any, of such conduct.

6 75. Defendants have engaged and continue to engage in conduct that violates the
7 legislatively declared policy of the CLRA against misrepresenting the characteristics, uses,
8 benefits and quality of goods for sale. Defendants have further engaged, and continue to engage,
9 in conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5 against
10 deceiving or misleading consumers about the environmental impact of plastic products.

11 76. Defendants' conduct also violates the policy of the Green Guides. The Green
12 Guides mandate that "[a] product or package shall not be marketed as recyclable unless it can be
13 collected, separated, or otherwise recovered from the waste stream through an established
14 recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R.
15 § 260.12(a). It further states that "[a]n item that is made from recyclable material, but because of
16 its shape, size or some other attribute is not accepted in recycling programs, should not be
17 marketed as recyclable." 16 C.F.R. § 260.12(d). As explained above, the Products cannot be
18 separated from the waste stream due to their size. Nonetheless, some recycling facilities accept
19 the Products even though they must eventually send the Products to a landfill because they cannot
20 separate such materials and because there is no market to recycle the Products. It is unfair for
21 Defendants to make a recyclable claim based on the fact that some recycling facilities will accept
22 the Products, despite the recycling facilities' inability to actually recycle the Products. Moreover,
23 consumers believe that products are recyclable when they are accepted by a recycling program,
24 even if the recycling facilities end up sending the products to a landfill. Taking advantage of
25 consumer perception of recycling programs violates the policy of the Green Guides.

26 77. Defendants' conduct, including failing to disclose that the Products will end up in
27 landfills and not be recycled, is substantially injurious to consumers. Such conduct has and
28 continues to cause substantial injury to consumers because consumers would not have purchased

1 the Products but for Defendants' representations that the Products are recyclable. Consumers are
2 concerned about environmental issues in general and plastic waste in particular and Defendants'
3 representations are therefore material to such consumers. Misleading consumers — and
4 instructing them to follow cumbersome instructions in order to recycle the Products even though
5 the Products will end up in a landfill despite those efforts — causes injury to such consumers that
6 is not outweighed by any countervailing benefits to consumers or competition. Indeed, no benefit
7 to consumers or competition results from Defendants' conduct. Defendants gain an unfair
8 advantage over their competitors, whose advertising must comply with the CLRA, Cal. Pub. Res.
9 Code § 42355.5, the Federal Trade Commission Act ("FTC Act"), Cal. Business & Professions
10 Code § 17508, and the Green Guides. Since consumers reasonably rely on Defendants'
11 representations of the Products and injury results from ordinary use of the Products, consumers
12 could not have reasonably avoided such injury.

13 78. Although Defendants know that the Products are not ultimately recycled,
14 Defendants failed to disclose that fact to Plaintiff and the Class.

15 79. By committing the acts alleged above, Defendants have engaged in unfair business
16 acts and practices which constitute unfair competition within the meaning of California Business
17 & Professions Code § 17200.

18 80. An action for injunctive relief and restitution is specifically authorized under
19 California Business & Professions Code § 17203.

20 81. Plaintiff would not have purchased the Products, or would not have paid as much
21 for Products, but for Defendants' unfair business practices. Plaintiff has thus suffered injury in
22 fact and lost money or property as a direct result of Defendants' misrepresentations and material
23 omissions.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

26 A. That the Court declare this a class action;

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1 B. That the Court preliminarily and permanently enjoin Defendants from conducting
2 their business through the unlawful, unfair or fraudulent business acts or practices, untrue and
3 misleading advertising, and other violations of law described in this Complaint;

4 C. That the Court order Defendants to conduct a corrective advertising and
5 information campaign advising consumers that the Products do not have the characteristics, uses,
6 benefits and quality Defendants have claimed;

7 D. That the Court order Defendants to cease and refrain from marketing and
8 promotion of the Products that state or imply that the Products are recyclable;

9 E. That the Court order Defendants to implement whatever measures are necessary to
10 remedy the unlawful, unfair or fraudulent business acts or practices, untrue and misleading
11 advertising and other violations of law described in this Complaint;

12 F. That the Court order Defendants to notify each and every Class member of the
13 pendency of the claims in this action in order to give such individuals an opportunity to obtain
14 restitution and damages from Defendants;

15 G. That the Court order Defendants to pay restitution to restore all Class members all
16 funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair or
17 fraudulent business act or practice, untrue or misleading advertising, plus pre- and post-judgment
18 interest thereon;

19 H. That the Court order Defendants to disgorge all monies wrongfully obtained and
20 all revenues and profits derived by Defendants as a result of their acts or practices as alleged in
21 this Complaint;

22 I. That the Court award damages to Plaintiff and the Class to compensate them for
23 the conduct alleged in this Complaint;

24 J. That the Court award punitive damages pursuant to California Civil Code
25 § 1780(a)(4);

26 K. That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit
27 pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780(d), the
28 common fund doctrine, or any other appropriate legal theory; and

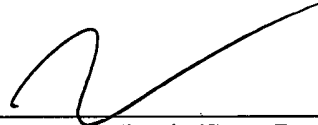
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L. That the Court grant such other and further relief as may be just and proper.

Dated: September 28, 2018

Respectfully submitted,

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