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CASE NUMBER:
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

GREENPEACE, INC.,

Plaintiff,

v.

WALMART, INC.; and DOES 1 through 100,
inclusive,

Defendants.

Case No.
COMPLAINT

1 Plaintiff Greenpeace, Inc. (“Plaintiff” or “Greenpeace”), based on information, belief, and
2 investigation of its counsel, except for information based on knowledge, hereby alleges:

3 INTRODUCTION

4 1. The problems associated with plastic pollution are increasing on a local, national,
5 and global scale. This affects the amount of plastic in the ocean, in freshwater lakes and streams,
6 on land, and in landfills. Nearly 90% of plastic waste is not recycled, with billions of tons of
7 plastic becoming trash and litter.¹ According to a new study, at least 1.2 to 2.5 million tons of
8 plastic trash from the United States was dopped on lands, rivers, lakes and oceans as litter, were
9 illegally dumped, or shipped abroad and then not properly disposed of.² As consumers become
10 increasingly aware of the problems associated with plastic pollution, they are increasingly
11 susceptible to marketing claims reassuring them that the plastic used to make and package the
12 products that they purchase are recyclable. Many consumers concerned with the proliferation of
13 plastic pollution actively seek to purchase products that are either compostable or recyclable to
14 divert such waste from the ocean, their communities, landfills, and incinerators. Seeking to take
15 advantage of consumers’ concerns, defendant Walmart, Inc. (“Defendant”)³ markets and sells a
16 variety of single-use plastic products that are labeled as recyclable, when the products are rarely,
17 if ever, recycled.

18 2. This Complaint seeks to remedy Defendants’ unlawful, unfair, and deceptive
19 business practices with respect to the advertising, marketing, and sales of plastic products or
20 plastic packaging that are: (A) made from plastics #3-7 or unidentified plastic; (B) sold under
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24 ¹ Tom Udall and Alan Lowenthal, *Op-Ed: More than 90% of U.S. plastic waste is never recycled. Here’s how we can change that*, L.A. TIMES (Feb. 21, 2020, 3:01 AM),
25 <https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s> (last
accessed Dec. 7, 2020).

26 ² Associated Press, *Study: 1 to 2 million tons a year of U.S. plastic trash goes astray*, L.A. TIMES
27 (Oct. 30, 2020, 11:03 AM) [https://www.latimes.com/world-nation/story/2020-10-30/study-1-to-2-](https://www.latimes.com/world-nation/story/2020-10-30/study-1-to-2-million-tons-of-us-plastic-trash-goes-astray)
[million-tons-of-us-plastic-trash-goes-astray](https://www.latimes.com/world-nation/story/2020-10-30/study-1-to-2-million-tons-of-us-plastic-trash-goes-astray) (last accessed Dec. 7, 2020).

28 ³ Defendant Walmart, Inc. and DOES 1-100 are collectively referred to herein as “Defendants.”

1 Defendants' own private label brands;⁴ and (C) labeled as "recyclable" (the "Products").⁵ The
2 Products are advertised, marketed, and sold as recyclable. However, the Products are not in fact
3 recyclable because consumers do not have access to recycling programs that accept the Products,
4 the Products cannot be separated or recovered from the general waste stream and sorted into the
5 correct materials bale by material recovery facilities ("MRFs"), and there are no end markets to
6 reuse the Products or to convert the Products into a material that can be reused or used in
7 manufacturing or assembling another item. Despite Defendants' marketing and advertising of the
8 Products as recyclable, most of the Products typically end up in landfills, incinerators,
9 communities, or the natural environment. Defendants' representations that the Products are
10 recyclable are material, false, misleading, and likely to deceive members of the public. These
11 representations also violate California's legislatively declared policy against misrepresenting the
12 environmental attributes of products.

13 3. Defendants thus violated and continue to violate California's Unfair Competition
14 Law ("UCL"), Business and Profession Code § 17200, *et seq.*, based on fraudulent, unlawful and
15 unfair acts and practices, as well as the California False Advertising Law, Cal. Bus. & Prof. Code
16 § 17500, *et seq.* and the Environmental Marketing Claims Act, Cal. Bus. & Prof. Code § 17580.5.

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19 ⁴ Examples of Defendants' private label brands include, but are not limited to: Great Value,
20 Allswell, Athletic Works, Bonobos, Equate, EV1, Everstart, George, Holiday Time, Mainstays,
21 Marketside, No Boundaries, Onn, Ozark Trail, Parent's Choice, Scoop, SwissTech, Time and
22 Tru, and Wonder Nation.

23 ⁵Non-exclusive examples of the Products include, but are not limited to: Great Value Organic
24 Cinnamon Applesauce Cups, 24 oz, 6 Count, Walmart #556055661, UPC No. 0-7874213534-2,
25 Product No. 136051; Great Value Diced Mangos In 100% Juice, 4 oz, 4 Count, Walmart
26 #562987172, UPC No. 0-7874215803-7, Product No. 142059; Great Value Organic Diced
27 Peaches & Pears, 16 oz., 4 Count, Walmart #562987178, UPC No. 0-7874223615-5, Product No.
28 142059; Great Value Premium Forks, 48 Count, Walmart #438491, UPC No. 0-7874211675-4,
Product No. 042499; Great Value Premium Clear Cutlery Knives, 48 Count, Walmart #438505,
UPC No. 0-7874211670-9, Product No. 042499; Great Value Premium Assorted Silver Cutlery,
36 count, Walmart #565175504; Great Value Snack Cups, 9 oz, 80 Count, Walmart #443461,
UPC No. 0-681131925532, Manufacturer No. 6386717; Great Value Everyday Party Cups, 18 oz,
20 Count, Walmart #443482, UPC No. 0-78742049090, Manufacturer No. 6386484; Great Value
Extra Virgin Olive Oil Cooking Spray, 7 oz., 3 Pack, UPC No. 0-7874206043-9, Product No.
928333; Great Value Ultimate Fresh Scent Booster, Blooming Lavender, 14.8 oz, Walmart
#575777817, UPC No. 0-7874233153-9, Product No. 03604; and Great Value Plastic Party Cups,
18 oz, 120 Count, Walmart #557007144, UPC No. 0-7874218708-2, Product No. 437462.

1 environment or public health. Examples of such Greenpeace campaigns include, but are not
2 limited to educating the public with respect to the hazards of bleached paper products, chemical
3 additives in plastic toys and household products, mercury in fish, and ozone-depleting substances
4 in refrigerators.

5 8. In addition to the many campaigns educating the public about products and
6 processes that harm public health, the environment, or human rights, for over three decades
7 Greenpeace has engaged in various efforts to expose corporate greenwashing that deceives
8 consumers into thinking their products or processes are environmentally friendly or benign.
9 Greenpeace has worked tirelessly to expose examples of corporate greenwashing to protect
10 consumers from false and misleading information related to the environmental benefits of
11 products. Greenpeace has led campaigns against oil companies, electronic manufacturers, and
12 consumer good corporations and retailers for touting the environmental benefits of their products
13 when, in fact, the products manufactured and sold by such companies caused significant
14 environmental harm. Greenpeace advocates for consumers to prevent corporate greenwashing
15 and educates the public on such greenwashing so that consumers have the information available
16 to make informed decisions about the environmental impacts of their purchases.

17 9. Greenpeace has been working to prevent the proliferation of plastic pollution for
18 nearly four decades. Greenpeace has had numerous campaigns related to plastic pollution,
19 including but not limited to educating consumers on greenwashing statements that certain plastic
20 was biodegradable or recyclable when it was not, exposing the shipment of plastic waste to
21 developing countries, seeking to replace polyvinyl chloride plastic with less toxic alternatives,
22 exposing the health problems associated with incinerating plastic, and reducing or eliminating
23 single-use plastic packaging because of its impacts on the marine ecosystem, the climate,
24 communities, and human health.

25 10. Greenpeace's campaigns related to plastic holistically focus on the lifecycle of
26 plastic, from the harmful feedstock chemicals used to make plastic to the sheer amount of single-
27 use plastic generated and ultimately discarded. Greenpeace cares deeply about the proliferation
28 of plastic because it has witnessed the harmful effects of plastic pollution on various ecosystems

1 and human health. The goals of Greenpeace’s climate and oceans campaigns call for solutions
2 that include drastically reducing the use of single-use plastic and finding alternatives to plastic
3 products and packaging, reusing plastic products when no other alternatives are available, and
4 properly recycling products if they cannot be eliminated or reused.

5 11. Greenpeace’s current campaigns related to plastic include informing the public
6 about the low amount of plastic that is capable of being recycled and instead ends up in the
7 natural environment. To these ends, Greenpeace has published reports and surveys documenting
8 the low recycling rates of various plastic products, including a comprehensive U.S. Survey of
9 Plastics Recyclability entitled *Circular Claims Fall Flat*, published on February 18, 2020 (the
10 “CCFF Report”).⁶ The CCFF Report is a thorough survey of plastic product waste collection,
11 sortation, and reprocessing in the United States to determine the legitimacy of recyclable claims
12 and labels on consumer single-use plastic products. The survey was based on current conditions
13 in October 2019 to January 2020 and U.S. Federal Trade Commission guidelines. The survey
14 directly evaluated Defendants’ packaging design guides for recyclability as well as numerous
15 other recycling guides.

16 12. While Greenpeace was investigating the low recycling rates of plastic products, it
17 was simultaneously analyzing recyclable representations present on the labels of products sold by
18 major retailers and manufacturers. In 2019, following a survey sent directly to Defendants and
19 other retailers regarding plastic pollution, Greenpeace began investigating Defendants’ recycling
20 initiatives and representations. A company’s size and scope affect its plastic footprint, and due to
21 Defendants’ large volume of products made from or packaged in plastic, Greenpeace determined
22 that Defendants are responsible for a significant amount of plastic pollution, which is highlighted
23 in the CCFF Report. Greenpeace began investigating Defendants by diverting resources to visit
24 Defendants’ stores, photograph Defendants’ products, investigate Defendants’ corporate websites,
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27 ⁶ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
28 GREENPEACE REPORTS, Feb. 18, 2020, <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf> (last accessed Dec. 7, 2020)

1 and analyze and report findings. Based on this information, Greenpeace determined that
2 Defendants' actions frustrated its mission to protect the environment by misleading consumers
3 with respect to the environmental benefits of recycling plastic.

4 13. After initially diverting resources to specifically investigate Defendants'
5 recyclable representations, Greenpeace diverted additional resources to inform Defendants of
6 their false and misleading recycling representations. In October 2019, Greenpeace sent an email
7 to Defendants explicitly discussing the issues related to Defendants' misleading recycling
8 representations and informed Defendants that their labels do not meet the standards in the Green
9 Guides. In March 2020, Greenpeace sent Defendants a follow-up email regarding the
10 implications of the CCFF Report, which described the low rate of recyclability for products that
11 Defendants labeled as recyclable. Greenpeace then arranged for a meeting with Defendants and
12 various other retailers at an industry conference to discuss recyclable representations on plastic
13 products that was canceled due to the onset of the pandemic caused by COVID-19. Greenpeace
14 has since published press releases identifying Defendants' false and misleading recyclable
15 representations to inform the public of such issues.

16 14. Greenpeace has also diverted significant time and resources organizing its
17 supporters to raise awareness of Defendants' contribution to the proliferation of plastic pollution.
18 For example, on February 6, 2019, Greenpeace organized a "day of action" in which supporters
19 photographed Defendants' plastic pollution in Los Angeles, California and St. Petersburg, Florida
20 to highlight the amount of single-use plastic pollution generated by Defendants. Greenpeace also
21 created a petition and paid for it to be circulated on Facebook through Facebook Ads requesting
22 Defendants to "ditch plastic packaging" and sent out numerous posts to its Twitter followers
23 regarding Defendants' failure to reduce single-use plastic.

24 15. Because Greenpeace's mission involves ensuring consumers are not misled by
25 environmental marketing claims and protecting the natural environment from plastic pollution,
26 Defendants' use of false, misleading, and deceptive claims regarding the recyclability of their
27 Products has frustrated Greenpeace's purpose. Defendants' continued use of misleading and
28 deceptive recyclability claims serves to confuse the public about plastic products and packaging

1 are commonly used in the solid waste industry: (1) accessibility of recycling programs (“through
2 an established recycling program”); (2) sortability for recovery (“collected, separated, or
3 otherwise recovered from the waste stream”); and (3) end markets (“for reuse or use in
4 manufacturing or assembling another item”). The California Public Resources Code similarly
5 defines recycling as “the process of collecting, sorting, cleansing, treating, and reconstituting
6 materials that would otherwise become solid waste, and returning them to the economic
7 mainstream in the form of raw material for new, reused, or reconstituted products which meet the
8 quality standards necessary to be used in the marketplace.” *Id.* § 40180.

9 25. These definitions are consistent with reasonable consumer expectations. For
10 instance, the dictionary defines the term “recycle” as: (1) convert (waste) into reusable material,
11 (2) return (material) to a previous stage in a cyclic process, or (3) use again. Oxford Dictionary,
12 Oxford University Press 2020. Accordingly, reasonable consumers expect that products
13 advertised, marketed, sold, labeled, or represented as recyclable will be collected, separated, or
14 otherwise recovered from the waste stream through an established recycling program for reuse or
15 use in manufacturing or assembling another item.

16 26. Defendants have published their own Recycling Playbook that defines
17 recyclability in the same manner.⁷ The Playbook defines recyclability as a system of stages: “(1)
18 Collection (collection available for a substantial majority of consumers); (2) Sortation (packages
19 are separated and aggregated for further processing); (3) Processing (commercial processes
20 recover material); (4) End-Market (the recycled material is used in new products); and (5)
21 Recycling Rate (at least 30% recycling rate achieved for over 400 million inhabitants).” Thus,
22 Defendants’ own interpretation of recyclability requires access to recycling programs, sortability,
23 and end markets.

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27 ⁷ *The Recycling Playbook*, WALMART, INC., last updated Oct. 25, 2019,
28 https://www.walmartsustainabilityhub.com/media-library/document/recycling-playbook-november-2019/_proxyDocument?id=0000016e-384f-d8af-a96e-beff25150000 (last accessed on Dec. 7, 2020).

1 27. As reflected in the Green Guides' language and regulatory history, the FTC does
2 not consider a product to be recyclable unless it can actually be recycled. For instance, the Green
3 Guides provide that: (1) "[i]f any component significantly limits the ability to recycle the item,
4 any recyclable claim would be deceptive;" and (2) "an item that is made from recyclable material,
5 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,
6 should not be marketed as recyclable." 16 C.F.R. §§ 260.12(a) and (d); *see also id.*, § 260.12(d),
7 Examples 2 and 6. And in promulgating the current recycling definition that encompasses
8 accessibility, sortability and end markets, the FTC clarified that "[f]or a product to be called
9 recyclable, there must be an established recycling program, municipal or private, through which
10 the product *will be* converted into, or used in, another product or package." *See* 63 Fed. Reg. 84,
11 24247 (May 1, 1998) (emphasis added). As the FTC has stated, "while a product may be
12 technically recyclable, if a program is not available allowing consumers to recycle the product,
13 there is no real value to consumers." *Id.*, at 24243.

14 28. The Green Guides also provide specific examples of recycling claims that the FTC
15 considers deceptive, as well as examples of ways in which marketers can qualify those claims.⁸
16 Compliance with the examples provided by the FTC qualifies as a defense to a claim under the
17 EMCA. B&P Code § 17580.5(b). Under the Green Guides, a marketer may make an unqualified
18 recyclable claim if a substantial majority of consumers or communities have access to recycling
19 facilities for that item. 16 C.F.R. § 260.12(b)(1). A "substantial majority" means at least 60
20 percent of consumers or communities where the item is sold. *Id.* Absent such evidence,
21 marketers are required to use qualifications that vary in strength depending on the degree of
22 consumer access to recycling for an item. *Id.*, § 260.12(b)(2). For instance, if recycling facilities
23 are available to slightly less than 60 percent of consumers or communities, the Green Guides
24 recommend that a marketer should qualify the recyclable claim by stating "this product may not
25 be recyclable in your area," or "recycling facilities for this product may not exist in your area."
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28 ⁸ The examples in the Green Guides are specifically provided by the FTC as its "views on how
reasonable consumers likely interpret certain claims." 16 C.F.R. § 260.1(d).

1 *Id.* If recycling facilities are available only to a few consumers, the Green Guides recommend
2 that a marketer should qualify its recyclable claim by stating “this product is recyclable only in a
3 few communities that have appropriate recycling facilities.” *Id.*

4 29. The Green Guides specifically identify qualifications that may be misleading or
5 deceptive to a reasonable consumer. For instance, a “check locally” disclaimer is presumptively
6 deceptive. *See* 16 C.F.R. § 260.12, Example 4. The FTC made this determination based on a
7 survey it conducted in which it determined that “there was no statistical difference” between a
8 consumer’s perception of an unqualified recyclable claim and a “check locally” disclaimer. *See*
9 63 Fed. Reg. 84, 24244 (May 1, 1998). Accordingly, the FTC concluded that a “check locally”
10 disclaimer is deceptive because it does not “adequately disclose the limited availability of
11 recycling programs,” and removed the disclaimer as an example of a permissible qualification.
12 *See* 16 C.F.R. § 260.12, Example 4; 63 Fed. Reg. 84, 24244 (May 1, 1998).

13 **BACKGROUND FACTS**

14 30. In the past decade humans across the globe have produced 8.3 billion metric tons
15 of plastic, most of it in disposable products and packaging that ends up as trash or pollution.⁹ Of
16 the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only
17 9% of that has been recycled.¹⁰ A third of the single-use plastic generated ends up in the natural
18 environment, accounting for 100 million metric tons of plastic pollution in 2016.¹¹ Current
19 estimates suggest that there are over 150 million tons of plastics in the ocean.¹² The
20 Environmental Protection Agency estimates that Americans alone disposed of more than 33

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22 ⁹ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
23 Jul. 19, 2017, [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf)
24 [content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf) (last accessed
25 Dec. 7, 2020).

26 ¹⁰ *Id.*

27 ¹¹ *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019,
28 https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf at p. 6 (last
accessed Dec. 7, 2020).

¹² *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR
FOUNDATION AND MCKINSEY & COMPANY (2016), [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf)
[content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf) at p.
17 (last accessed Dec. 7, 2020).

1 million tons of plastic in 2014, most of which was not recycled.¹³ While California had a goal to
2 achieve a 75% recycling rate by 2020, California's recycling rate is actually in decline.
3 According to CalRecycle, in 2014 California's recycling acceptance rate was 50%, dropping to
4 47% in 2015 and down to 44% in 2016.¹⁴

5 31. Recent investigations into the proliferation of plastic pollution plaguing the natural
6 environment have revealed that the plastics industry has known for decades that most products
7 and packaging made from plastic would not be recycled. On September 11, 2020, NPR published
8 an investigation on the plastic industry proving the industry's decades-long awareness that
9 recycling would not keep plastic products or packaging out of landfills, incinerators,
10 communities, or the natural environment.¹⁵ In a 1974 speech, one industry insider stated "there is
11 serious doubt that [recycling plastic] can ever be made viable on an economic basis."¹⁶ Larry
12 Thomas, former president of the Society of the Plastic Industry (known today as the Plastics
13 Industry Association), told NPR that "if the public thinks that recycling is working, then they are
14 not going to be as concerned about the environment."¹⁷ The NPR investigative report details the
15 length and expense that the plastics industry went to deceive consumers that plastic was easily
16 recyclable, despite knowledge that the cost of recycling would never be economical. Similarly, a
17 recent CBC news report describes that even the recycling logo was used as a marketing tool to
18 improve the image of plastics after environmental backlash in the 1980s.¹⁸ "There was never an
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21 ¹³ *Advancing Sustainable Materials Management: 2014 Fact Sheet*, U.S. EPA, Nov. 2016,
https://www.epa.gov/sites/production/files/2016-11/documents/2014_smmfactsheet_508.pdf at p.
22 2 (last accessed Dec. 7, 2020).

23 ¹⁴ *California's Statewide Recycling Rate*, CALRECYCLE, last updated Mar. 3, 2020,
<https://www.calrecycle.ca.gov/75percent/recyclerate> (last accessed Dec. 7, 2020).

24 ¹⁵ Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*,
NPR.ORG (Sep. 11, 2020, 5:00 AM), [https://www.npr.org/2020/09/11/897692090/how-big-oil-](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled)
25 [misled-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled) (last accessed Dec. 7, 2020).

26 ¹⁶ *Id.*

27 ¹⁷ *Id.*

28 ¹⁸ *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23,
2020, [https://www.cbc.ca/documentaries/the-passionate-eve/recycling-was-a-lie-a-big-lie-to-sell-](https://www.cbc.ca/documentaries/the-passionate-eve/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618)
[more-plastic-industry-experts-say-1.5735618](https://www.cbc.ca/documentaries/the-passionate-eve/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618) (last accessed Dec. 7, 2020).

1 enthusiastic belief that recycling was ultimately going to work in a significant way,” yet the
2 plastics industry spent millions on ads to deceive the public as to the efficacy of recycling.¹⁹

3 32. After decades of deception from the plastics industry that plastic products and
4 packaging are recyclable, consumers have recently become more aware of the problems
5 associated with single-use plastic as plastic polluting the oceans and the natural environment have
6 become unavoidable. The staggering amount of plastic pollution accumulating in the
7 environment is accompanied by an array of negative side effects. For example, plastic debris is
8 frequently ingested by marine animals and other wildlife, which can be injurious, poisonous, and
9 deadly.²⁰ Floating plastic is also a vector for invasive species,²¹ and plastic that gets buried in
10 landfills can leach harmful chemicals into ground water that is absorbed by humans and other
11 animals.²² Plastic litter on the streets and in and around our parks and beaches also degrades the
12 quality of life for residents and visitors. Scientists have also discovered that plastic releases large
13 amounts of methane, a powerful greenhouse gas, as it degrades.²³ Thus, plastic pollution
14 contributes to global climate change, which affects California in the form of extreme drought, sea
15 level rise, and more frequent and severe wildfires.²⁴

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18 ¹⁹ *Id.*

19 ²⁰ Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their
20 occurrence and implications for aquatic organisms and food safety*, FAO Fisheries and
21 Aquaculture Technical Paper No. 615, Rome, Italy, 2017 <http://www.fao.org/3/a-i7677e.pdf> (last
22 accessed Dec. 7, 2020).

23 ²¹ *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,
24 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-
25 files/2017_Invasive_Species_Topic_Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf) (last accessed Dec. 7, 2020)

26 ²² Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment
27 and to wildlife*, PHILIOS TRANS R. SOC. LOND. B. BIOL. SCI, July, 27, 2009,
28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/> (last accessed Dec. 7, 2020).

²³ Sarah-Jeanne Royer, et al., *Production of methane and ethylene from plastic in the
environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574> (last accessed Dec. 7,
2020).

²⁴ *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,
[https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-
ca.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf) (last accessed Dec. 7, 2020)

1 33. There are various types of plastic resin that are used to produce single-use plastic
2 products and packaging. All rigid plastic bottles and containers sold in California are required to
3 include a molded label code that indicates the resin used to produce the plastic bottle or container.
4 Cal. Pub. Res. Code § 18015. The code generally consists of a number placed inside a triangle to
5 reflect the resin used to make the bottle or container. *Id.* This code is referred to as a Resin
6 Identification Code (“RIC”) and can be used to identify seven types of plastic.

7 34. PET (plastic #1) and HDPE (plastic #2) are widely considered to be the most
8 recyclable forms of plastic; however, studies indicate that even products and packaging made
9 from these resins often end up in landfills, incinerators, communities, or the natural
10 environment.²⁵ This is because MRFs in the United States cannot process the sheer volume of
11 single-use plastic that is submitted to recycling facilities on an annual basis.²⁶ The labor and cost
12 required to sort, melt, and reconstitute the approximately 33 million tons of single-use plastic
13 produced in the United States every year is insurmountable. A recent study by Greenpeace
14 revealed that U.S. recycling facilities can process no more than 23% of PET#1 plastic produced
15 each year and no more than 13% of HDPE#2.²⁷ More alarmingly, plastics #3-7, which are widely
16 considered to be low-value plastics, are rarely, if ever recycled. The Greenpeace study revealed
17 that MRFs can process only a negligible percentage of plastics #3-7.²⁸

18 35. Due to the availability of cheap raw materials to make “virgin plastic,” there is no
19 market demand for most types of recycled plastic. Using virgin plastic to package and make
20 products is cheaper than other materials because virgin plastic is derived from oil and natural gas.
21 Recognizing the market potential from plastic production, major oil and natural gas companies
22 are increasingly integrating their operations to include production of plastic resins and products,
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24 ²⁵ *Facts and Figures about Materials, Waste and Recycling*, U.S. EPA,
25 <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data> (last accessed Dec. 7, 2020).

26 ²⁶ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, N.Y. TIMES, Mar. 16,
27 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html> (last accessed
28 Dec. 7, 2020).

²⁷ John Hocevar, *supra* note 6.

²⁸ *Id.*

1 which further drives down the price of “virgin plastic.”²⁹ As a result, recycling facilities cannot
2 afford the cost of breaking down and reconstituting recycled plastic because there are almost no
3 buyers of the resulting plastic, pellets, or scrap materials.

4 36. Historically, recycling facilities in the United States shipped plastic scrap to China
5 for recycling. But tons of that shipped plastic waste were never recycled. Instead, they were
6 burned or entered into waterways, where they were carried into the ocean.³⁰ For years, tons of
7 plastic that U.S. consumers dutifully sorted and transported to recycling facilities ultimately
8 ended up in the ocean or the natural environment. For example, in 2015 China’s Yangtze river
9 ranked highest for plastic entering the oceans.³¹ That year, 333,000 tons of plastic were deposited
10 into the ocean from the Yangtze river, more than double the amount for the river with the next
11 highest amount.³²

12 37. In February 2013, based on the high amounts of low-value and contaminated
13 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort
14 aimed at curtailing the amount of contaminated recyclables and waste that was being sent to
15 China.³³ China began inspecting 70 percent of imported containers filled with recyclables and
16 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic
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19 ²⁹ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
20 [https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf)
21 [Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Dec. 7, 2020).

22 ³⁰ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn't Want it?*,
23 NPR.ORG (Mar. 13, 2019, 4:28 PM ET),
24 [https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it)
25 [go-now-that-china-doesnt-want-it](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it) (last accessed Dec. 7, 2020); *see also Discarded: Communities*
26 *on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, [https://wastetradestories.org/wp-](https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22.pdf)
27 [content/uploads/2019/04/Discarded-Report-April-22.pdf](https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22.pdf) (last accessed Dec. 7, 2020).

28 ³¹ Laurent C.M. Lebreton, et al., *River plastic emissions to the world's oceans*, NAT. COMMUN.
Jun. 7, 2017, 8:15611, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467230/> (last accessed
Dec. 7, 2020).

³² *Id.*

³³ *What Operation Green Fence Has Meant for Recycling*, WASTE 360,
<https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling> (last
accessed Dec. 7, 2020).

1 waste.³⁴ Despite manufacturers' and recyclers' awareness of China's refusal to accept low-value
2 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By
3 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.³⁵

4 38. In February 2017, in response to the continued shipment of low-value and
5 contaminated plastic waste, China announced its National Sword policy, which banned the
6 importation of certain solid waste and set strict contamination limits on recyclable material.
7 Because of the National Sword policy, end markets for recycling plastics #3-7 have essentially
8 vanished.³⁶ One year after China's National Sword Policy, China's plastics imports plummeted
9 by 99 percent.³⁷ Recycling companies can no longer sell used plastic at prices that cover their
10 processing cost, providing them with no incentive to do so.

11 39. The writing has been on the wall that China would refuse to accept low-value and
12 contaminated plastic waste since 2013. Nonetheless, aware of consumers' interests in protecting
13 the environment, Defendants have increased their labeling of Products as recyclable. Defendants
14 have done so despite widespread acknowledgment that end markets for plastic waste have been
15 shrinking and that the majority of plastic labeled as recyclable ends up in landfills, incinerators,
16 communities, and the natural environment. Defendants have announced that they are working
17 with their suppliers to achieve 100% recyclable, reusable, or industrially compostable packaging
18 in all of their private brand products by 2025.³⁸ By seeking to label many of their private brand
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20 ³⁴ *Id.*

21 ³⁵ Christopher Joyce, *supra* note 30.

22 ³⁶ Liz Zarka, *Recycling's Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,
23 <https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>
24 (last accessed Dec. 7, 2020); *see also* Cheryl Katz., *Piling Up: How China's Ban on Importing*
25 *Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019, *available at*:
[https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling)
26 [recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling) (last accessed Dec. 7, 2020).

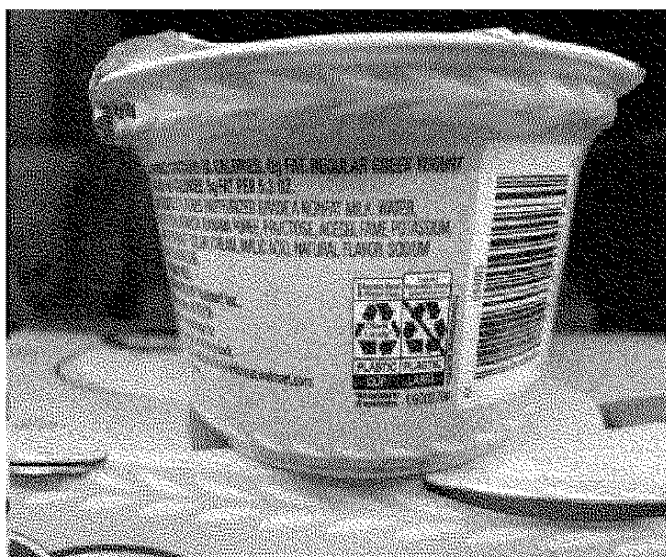
27 ³⁷ Cheryl Kats, *supra* note 36.

28 ³⁸ *Environmental Highlights*, WALMART, INC.,
<https://corporate.walmart.com/esgreport/environmental#our-environmental-goals>, (last accessed
Dec. 7, 2020); *see also* *Walmart Announces New Plastics Packaging Waste Reduction*
Commitments, WALMART, INC., [https://corporate.walmart.com/newsroom/2019/02/26/walmart-](https://corporate.walmart.com/newsroom/2019/02/26/walmart-announces-new-plastic-packaging-waste-reduction-commitments)
[announces-new-plastic-packaging-waste-reduction-commitments](https://corporate.walmart.com/newsroom/2019/02/26/walmart-announces-new-plastic-packaging-waste-reduction-commitments), (last accessed Dec. 7, 2020)

1 products as recyclable, and by announcing their initiatives to label their Products as recyclable to
 2 consumers, Defendants are actively participating and controlling the false, misleading, and
 3 deceptive practices alleged herein.

4 40. In their haste to lure customers to environmentally friendly products and
 5 packaging, Defendants are making environmental marketing claims that are false, misleading, and
 6 deceptive. The claims made by Defendants that the Products are recyclable are consistent and are
 7 material to a reasonable consumer. Because the claims are false and misleading, ordinary
 8 consumers are likely to be deceived by such representations.

9 41. Below are examples of recyclable representations on the labels of Products made
 10 from plastics #3-7:



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1 42. Products made from plastics #3-7 are not recyclable because such Products are
2 rarely, if ever, recycled. The inability for MRFs in the United States to recycle plastics #3-7 is
3 well documented.³⁹ According to survey data, less than 5% of polypropylene (“PP” or plastic #5)
4 tubs are reprocessed into recyclable material.⁴⁰ The majority of MRFs in the United States group
5 plastics #3-7 into bales of mixed plastic because such plastics have little value, especially when
6 compared to plastics #1 and #2. Thus, MRFs do not sort individual materials, such as PP or
7 polystyrene (“PS” or plastic #6), into separate bales. And since the value of plastics #3-7 is so
8 low, there is no end market to reuse such plastic or convert such plastic into reusable material that
9 can be used to manufacture or assemble other goods. Ultimately, the majority of plastics #3-7 are
10 sent to the landfill. For example, ReThink Waste, a public agency that operates the Shoreway
11 MRF in San Carlos, California stated that “plastics #3-7 are all versions of hard plastic that are
12 very difficult to recycle,” because “there is currently no market for the material when it is
13 deconstructed.”⁴¹ The Shoreway MRF continues to accept plastics #3-7 but states that the
14 collected material is sent to the landfill.⁴²

15 43. Although MRFs may still accept plastics #3-7, the reality is that the Products are
16 not recycled. One reason MRFs accept items even though they are not recyclable is due to
17 pressure from local authorities to meet solid waste diversion goals. This phenomenon has been
18 recognized by the FTC. In promulgating the most recent version of the Green Guides, the FTC
19 stated (under the heading “Packages Collected for Public Policy Reasons but Not Recycled”),
20 “The Commission agrees that unqualified recyclable claims for categories of products that

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22 ³⁹ John Hocevar, *supra* note 6; *America’s ‘recycled’ plastic waste is clogging landfills, survey*
23 *finds*, THE GUARDIAN, Feb. 18, 2020, [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds)
24 [news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds](https://www.theguardian.com/us-news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds) (last
25 accessed Dec. 7, 2020); *Americans’ plastic recycling is dumped into landfills, investigation*
26 *shows*, THE GUARDIAN, Jun. 21, 2019, [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills)
27 [news/2019/jun/21/us-](https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills)
28 [plastic-recycling-landfills](https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills) (last accessed Dec. 7, 2020); Gwynn Guilford, *A lot of US plastic isn’t*
actually being recycling since China put up its Green Fence, QUARTZ, Sep. 16, 2013,
<https://qz.com/122003/plastic-recycling-china-green-fence/> (last accessed Dec. 7, 2020).

⁴⁰ John Hocevar, *supra* note 6.

⁴¹ *Id.* at p. 8.

⁴² *Id.*

1 municipal recycling programs collect, but do not actually recycle, may be deceptive. To make a
2 non-deceptive unqualified claim, a marketer should substantiate that a substantial majority of
3 consumers or communities have access to facilities that will actually recycle, not accept and
4 ultimately discard, the product. As part of this analysis, a marketer should not assume that
5 consumers or communities have access to a particular recycling program merely because the
6 program will accept a product.”⁴³ Thus, although the Products may be accepted for recycling by
7 some curbside programs, MRFs do not collect, sort, and separate such low-value plastics because
8 there is no end market to reuse such items or convert them into reusable material

9 44. Because the Products are rarely, if ever, recycled, Defendants cannot make any
10 recycling claims as to these Products. However, at a minimum, Defendants are required to
11 clearly and prominently qualify recyclable claims to avoid deception about the availability of
12 recycling programs and collection sites to consumers. 16 C.F.R. § 260.12(b). Under the Green
13 Guides, marketers may qualify recyclable claims by stating the percentage of consumers or
14 communities that have access to facilities that recycle the item. *Id.* § 260.12(b)(2). In the
15 alternative, marketers may use qualifications that vary in strength depending on facility
16 availability. *Id.* Thus, the strength of the qualification depends on the level of access to an
17 appropriate facility capable of actually recycling the Product. A marketer may only make an
18 unqualified recyclable claim if a substantial majority of consumers or communities have access to
19 recycling facilities capable of recycling the items.⁴⁴ *Id.* § 260.12(b)(1). Because few, if any,
20 consumers have access to recycling facilities capable of recycling the Products, Defendants must
21 provide an unequivocally strong qualification for any recyclability claim regarding such Products.

22 45. Here, Defendants provided no qualifications for some of the Products. For other
23 Products, Defendants provided the same two fine print qualifications for each Product: “check
24 locally” and “not recycled in all communities.” As an initial matter, the fine print is

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26 ⁴³ FED. TRADE COMM’N, *The Green Guides Statement of Basis and Purpose*, (2012) *available at*:
27 <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf> (referenced in 77 Fed. Reg. 197, 62122 (Oct. 11, 2012)), at pp. 174-175.

28 ⁴⁴ A “substantial majority” means at least 60 percent. 16 C.F.R. § 260.12(b)(1).

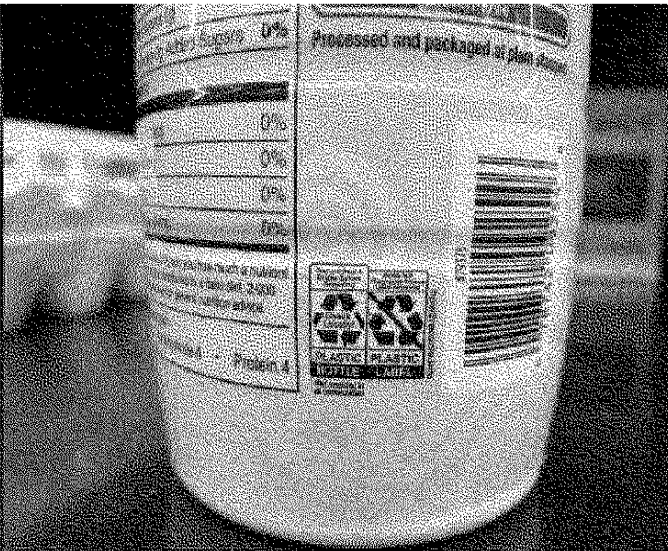
1 approximately 2-point font, making it difficult for consumers to notice, yet alone read. In
2 addition, as stated above, a “check locally” disclaimer is per se deceptive under the Green Guides.
3 *Id.*, § 260.12(d), Example 4. Moreover, the “not recycled in all communities” qualification does
4 not satisfy the safe harbor examples in the Green Guides because it does not inform consumers of
5 the limited availability of recycling programs for the Products. *Id.* A reasonable consumer is
6 likely to believe that if their community has a recycling program, then the Products are likely
7 recyclable in their community. By including the language “check locally” and “not recycled in
8 all communities” together, Defendants are incorrectly implying that consumers need only check
9 locally to determine whether recycling facilities exist in their community, not whether the
10 recycling facilities in their community actually recycle the Products. The FTC has explicitly
11 stated such an implication is deceptive. *See* 63 Fed. Reg. 84, 24244 (May 1, 1998); 16 C.F.R. §
12 260.12(b)(2). Worse yet, even if a consumer followed Defendants’ directive to check locally to
13 determine whether a facility actually recycled the Products, many recycling facilities (which are
14 often operated by private companies) have no duty to provide such information and are unwilling
15 to answer detailed consumer inquiries about their recycling capabilities. In sum, Defendants’
16 recyclable representations on the Products are false, misleading, and deceptive to reasonable
17 consumers.

18 46. Defendants also sell Products that do not contain a RIC and are therefore made
19 from unidentified plastic. Nonetheless, Defendants also state that these Products are recyclable.
20 Below is an example of a false, misleading, and deceptive label on a Product sold by Defendants
21 that is made from an unidentified plastic:



1 47. Here, the unidentified plastic contains the fine print qualifications “check locally”
 2 and “not recycled in all communities.” These fine print qualifications are deceptive because even
 3 if a consumer understood the qualifications to mean that they are required to check with their
 4 local recycling facilities to determine whether the Products can be recycled, it is impossible for
 5 them to take such actions because there is no way for a consumer to determine what type of
 6 plastic resin the Products are made from. And even if a MRF was willing to answer a consumer’s
 7 questions, a consumer would not be able to ask whether an unidentified plastic material is
 8 recyclable. Without a RIC, a MRF could not accept the Product for recycling nor could it
 9 properly collect, sort, or segregate such Products from the waste stream. And since a MRF could
 10 not accept or sort the Product, there is no end market for unidentified plastics. In sum,
 11 representations that unidentified plastic Products are recyclable and that consumers need only
 12 “check locally” to determine whether the Products are recyclable are deceptive.

13 48. Some of Defendants’ Products are packaged in a shrink sleeve that prevent the
 14 Products from being recyclable. Below is an example of a recyclable representation on a Product
 15 packaged in a shrink sleeve:



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 25 49. These Products are not recyclable because the plastic shrink sleeve cannot be
 26 recycled. The Green Guides are clear: “if any component significantly limits the ability to
 27 recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable
 28 material, but because of its shape, size or some other attribute is not accepted in recycling

1 programs, should not be marketed as recyclable.” 16 C.F.R. § 260.12(d). Here, these Products
2 contain a plastic shrink sleeve that is not recyclable and that is difficult and dangerous to remove.
3 The shrink sleeves are wrapped tightly around the Products, thereby requiring consumers to use a
4 knife or sharp object to cut the shrink sleeve free from the Products. Due to the difficulty in
5 removing the shrink sleeves, most consumers are unwilling to remove the shrink sleeves from the
6 Products prior to placing the Products in their recycling bins. And if consumers do not cut the
7 shrink sleeve from the Products, recycling programs will not accept the Products for recycling,
8 and therefore the Products will not be sorted nor are end markets available. Most consumers
9 believe that if their municipality offers recycling services, then all products marketed as
10 “recyclable” can be recycled. Thus, most consumers will place the Products in the recycling bin
11 without removing the shrink sleeve under the false impression that the Products can be recycled,
12 when the Products cannot in fact be recycled with the plastic shrink sleeve. Representing that
13 Products packaged in a shrink sleeve are recyclable is therefore deceptive to reasonable
14 consumers.

15 50. Lastly, Defendants sell numerous Products packaged in plastic film that contain a
16 store drop-off representation despite the limited availability of such programs. Below is an
17 example of a recyclable representation on such a Product:



1 51. These Products cannot be recycled by established recycling programs. Rather, the
2 packaging must be dropped off at participating stores. This is because plastic bags and film
3 cannot be separated for recycling. The Green Guides specifically warn about plastic trash bags:
4 “Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for
5 recycling, they are highly unlikely to be used again for any purpose. Even if the bag is
6 technically capable of being recycled, the claim is deceptive since it asserts an environmental
7 benefit where no meaningful benefit exists.” 16 C.F.R. § 260.3(c), Example 2. Although the fine
8 print representations on these Products communicate that the Products must be “dropped off” to
9 be recyclable, many of Defendants’ stores do not accept the Products for recycling. In the past,
10 California required supermarkets of a certain size to maintain a plastic carryout bag collection
11 bin, but that rule expired on January 1, 2020. *See* California Public Resources Code § 42257.
12 Consequently, many retail stores in California, including Defendants’ stores, no longer accept
13 plastic bags for drop-off recycling. For instance, according to an informal survey, 6 of 8 of
14 Defendants’ stores in South Orange County do not have takeback bins to recycle plastic film.
15 According to Defendants’ own data, they only provide access to in-store plastic bag and film
16 recycling bins in approximately half of their stores (Defendants maintain roughly 5,353 retail
17 stores nationwide, but only provide drop-off locations at approximately 2,900 locations).⁴⁵

18 52. In addition, a 2017 report on Film Recycling Investment found that only 7% of
19 retail bags that are available for recycling are returned by residents for recycling.⁴⁶ That report
20 further found that of the approximately 300 million pounds of plastic film that MRFs receive a
21 year, only 10 million pounds (approximately 3%) are able to be marketed due to the poor quality
22 of plastic film and the lack of recycling markets for such low-value plastic. Due to the lack of
23 recycling markets for plastic film, 93% of California MRFs do not even accept it, and the MRFs
24 that do accept it do not have the capacity to recycle large quantities of plastic film. Based on

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26 ⁴⁵ *2020 Environmental, Social and Governance Report*, WALMART, INC.,
[https://cdn.corporate.walmart.com/90/0b/2271_5fd34947927eed86a72c788e/walmart-esg-report-
27 2020.pdf](https://cdn.corporate.walmart.com/90/0b/2271_5fd34947927eed86a72c788e/walmart-esg-report-2020.pdf), (last accessed Dec. 7, 2020).

28 ⁴⁶ *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION
(2017), at p. 19.

1 these data, even if more consumers returned plastic bag film for drop-off recycling, California
2 MRFs do not have the capacity to sort and recycle it. Thus, the representation that these Products
3 are recyclable if dropped off fails to communicate the limited availability of both drop-off sites
4 and programs capable of actually recycling the Products in violation of the Green Guides.
5 Ultimately, Products packaged in plastic film are not accepted by most MRFs nor can they be
6 collected, sorted, or separated from the general waste stream. Consequently, there is no end
7 market to recycle such Products.

8 53. One of the major problems associated with mislabeling Products as recyclable is
9 that this can lead to contaminating the recycling stream with unrecyclable materials that will
10 hinder the ability of recycling facilities to process items that are legitimately recyclable. For
11 instance, according to the Recycling Partnership, “plastic bags cause MRF operators to shut down
12 the recycling line many times a day to cut off bags that have wrapped around equipment. This
13 maintenance shut down reduces throughput for a facility, raises cost of labor to sort materials and
14 maintain equipment, increases waste coming out of the MRF, and puts workers at risk of injury
15 when they are performing maintenance.”⁴⁷ By encouraging consumers to place the Products in
16 recycling bins, Defendants are contaminating the recycling stream with unrecyclable materials
17 that prevents legitimately recyclable materials from being recycled. Environmentally motivated
18 consumers who purchase the Products in the belief that they are recyclable are thus unwittingly
19 hindering recycling efforts.

20 54. Many environmentally motivated consumers purchase the Products from
21 Defendants based on the belief that the Products will be recycled. These consumers have no way
22 of knowing whether the Products are actually segregated from the general waste stream, cleaned
23 of contamination, or reused or converted into a material that can be reused or used in
24 manufacturing or assembling another item. These consumers place a high priority on
25 environmental concerns in general, and on the negative consequences regarding the proliferation

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27 ⁴⁷ Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING
28 PARTNERSHIP, Apr. 2020, [https://recyclingpartnership.org/wp-content/uploads/2020/04/The-
Recycling-Partnership_WCCI-Report_April-2020_Final.pdf](https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf) at p. 13 (last accessed Dec. 7, 2020).

1 of plastic pollution in particular. Based on the labeling and advertising of Defendants' Products,
2 reasonable consumers believe that the Products are recyclable. Defendants' representations that
3 the Products are recyclable are thus material to reasonable consumers.

4 55. Greenpeace's mission is to protect the natural environment and expose
5 environmental harms to the public. Given that many consumers actively seek to purchase
6 recyclable products because they are environmentally conscious and reasonable consumers
7 believe that Products labeled as recyclable will likely be recycled, Defendants' false, misleading,
8 and deceptive recyclable claims on the Products have frustrated Greenpeace's mission.
9 Greenpeace has diverted significant resources and staff time in response to this frustration of
10 purpose by evaluating the problems associated with the proliferation of plastic pollution,
11 investigating Defendants' recyclable representations, publishing a report on Defendants'
12 recyclable label initiative, communicating with Defendants, and informing its supporters and the
13 public with respect to Defendants' false, misleading, and deceptive recycling labels.

14 56. Defendants are aware that the Products are not recyclable, including under their
15 own definition of recyclability, yet Defendants have not undertaken any effort to notify their
16 customers of the problem. Defendants' failure to disclose that the Products are not recyclable is
17 an omission of fact that is material to reasonable consumers.

18 **FIRST CAUSE OF ACTION**

19 **(Plaintiff Alleges Violations of California Business & Professions Code § 17200, 20 *et seq.* Based on Fraudulent Acts and Practices)**

21 57. Plaintiff incorporates by reference the allegations set forth above.

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

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

1 65. The violation of any law constitutes an unlawful business practice under Business
2 & Professions Code § 17200.

3 66. Defendants' conduct violates Section 5 of the Federal Trade Commission Act
4 ("FTC Act"), 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair or
5 deceptive acts or practices in or effecting commerce. By misrepresenting that the Products are
6 recyclable, Defendants are violating Section 5 of the FTC Act.

7 67. Defendants' conduct also violates California Business & Professions Code
8 § 17500, which prohibits knowingly making, by means of any advertising device or otherwise,
9 any untrue or misleading statement with the intent to sell a product or to induce the public to
10 purchase a product. By misrepresenting that the Products are recyclable, Defendants are violating
11 Business & Professions Code § 17500.

12 68. Defendants' conduct also violates California Business & Professions Code
13 § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive, or
14 misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental
15 marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.*
16 Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a
17 product or package is recyclable. A product or package shall not be marketed as recyclable
18 unless it can be collected, separated, or otherwise recovered from the waste stream through an
19 established recycling program for reuse or use in manufacturing or assembling another item." 16
20 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above,
21 Defendants are violating Business & Professions Code § 17580.5.

22 69. By violating the FTC Act, Business & Professions Code §§ 17500 and 17580.5,
23 and the California Public Resources Code, Defendants have engaged in unlawful business acts
24 and practices which constitute unfair competition within the meaning of Business & Professions
25 Code § 17200.

26 70. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
27 an award of monetary damages would not prohibit Defendants' unlawful acts.

28

1 76. Defendants have engaged and continue to engage in conduct that violates the
2 legislatively declared policy of Cal. Pub. Res. Code § 42355.5 against deceiving or misleading
3 consumers about the environmental impact of plastic products.

4 77. Defendants' conduct also violates the policy of the Green Guides. The Green
5 Guides mandate that "[a] product or package shall not be marketed as recyclable unless it can be
6 collected, separated, or otherwise recovered from the waste stream through an established
7 recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R.
8 § 260.12(a). It further states that "[a]n item that is made from recyclable material, but because of
9 its shape, size or some other attribute is not accepted in recycling programs, should not be
10 marketed as recyclable." 16 C.F.R. § 260.12(d). As explained above, the Products cannot be
11 recycled or are rarely, if ever, recycled. Nonetheless, some recycling facilities may accept the
12 Products even though they send the Products to a landfill. The FTC has recognized that facilities
13 may accept Products for recycling even though they end up in a landfill because of pressure from
14 local authorities to meet solid waste diversion goals.⁴⁸ It is unfair for Defendants to make a
15 recyclable claim based on the fact that some recycling facilities may accept the Products, despite
16 the recycling facilities' inability to actually recycle the Products. Moreover, consumers believe
17 that products are recyclable when they are accepted by a recycling program, even if the recycling
18 facilities end up sending the products to a landfill. It is also unfair for Defendants to represent
19 that some Products are recyclable via store drop-off, without actually requiring a significant
20 amount of their retail stores to maintain a store drop-off bin. Taking advantage of consumer
21 perception in this manner violates the policy of the Green Guides.

22 78. Defendants' conduct, including failing to disclose that the Products will end up in
23 landfills, incinerators, communities, and the natural environment and not be recycled, is
24 substantially injurious to consumers. Such conduct has caused and continues to cause substantial
25 injury to consumers because consumers would not have purchased the Products but for
26 Defendants' representations that the Products are recyclable. Consumers are concerned about

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28 ⁴⁸ FED. TRADE COMM'N, *supra* note 43.

1 environmental issues in general and plastic pollution in particular and Defendants' representations
2 are therefore material to such consumers. Misleading consumers causes injury to such consumers
3 that is not outweighed by any countervailing benefits to consumers or competition. Indeed, no
4 benefit to consumers or competition results from Defendants' conduct. Defendants gain an unfair
5 advantage over their competitors, whose advertising must comply with Cal. Pub. Res. Code §
6 42355.5, the FTC Act, Cal. Business & Professions Code § 17508, and the Green Guides. Since
7 consumers reasonably rely on Defendants' representations of the Products and injury results from
8 ordinary use of the Products, consumers could not have reasonably avoided such injury.

9 79. Although Defendants know that the Products are not ultimately recycled,
10 Defendants failed to disclose that fact to their customers.

11 80. By committing the acts alleged above, Defendants have engaged in unfair business
12 acts and practices which constitute unfair competition within the meaning of California Business
13 & Professions Code § 17200.

14 81. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
15 an award of monetary damages would not prohibit Defendants' unfair business acts and practices.

16 82. An action for injunctive relief is specifically authorized under California Business
17 & Professions Code § 17203.

18 83. Greenpeace investigated Defendants' recyclable representations because part of
19 Greenpeace's mission is to ensure that consumers are not misled by environmental marketing
20 claims. In furtherance of this mission and as part of Greenpeace's investigation, Greenpeace
21 diverted resources from other programs in order to specifically investigate Defendants'
22 representations that the Products are recyclable. In particular, Greenpeace utilized extensive staff
23 time and expended substantial resources to understand the issue of plastic pollution and
24 investigate Defendants' role in the proliferation of plastic waste. Greenpeace would not have
25 diverted such resources but for Defendants' false representations that the Products are recyclable.
26 Greenpeace has thus suffered injury in fact and lost money or property as a direct result of
27 Defendants' misrepresentations and material omissions.

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

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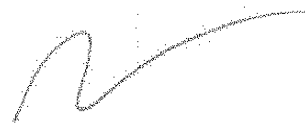
JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: December 14, 2020

Respectfully submitted,

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