

1 Bryan A. Merryman (SBN 134357)  
bmerryman@whitecase.com  
2 Catherine S. Simonsen (SBN 307325)  
catherine.simonsen@whitecase.com  
3 WHITE & CASE LLP  
555 S. Flower Street, Suite 2700  
4 Los Angeles, CA 90071-2433  
Telephone: (213) 620-7700  
5 Facsimile: (213) 452-2329

6 Attorneys for Defendant  
GERBER PRODUCTS COMPANY  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE LAST BEACH CLEANUP,  
Plaintiff,

v.

TERRACYCLE, INC.; CSC BRANDS LP;  
GERBER PRODUCTS COMPANY; LATE  
JULY SNACKS, LLC; L'OREAL USA S/D,  
INC.; MATERNE NORTH AMERICA; THE  
COCA-COLA COMPANY; THE CLOROX  
COMPANY; THE PROCTER & GAMBLE  
COMPANY; TOM'S OF MAINE, INC.; and  
DOES 1 through 100, inclusive,  
Defendants.

Case No. \_\_\_\_\_

**DEFENDANT GERBER PRODUCTS  
COMPANY'S NOTICE OF REMOVAL**

1 **NOTICE IS HEREBY GIVEN** that pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441,  
 2 and 1446, defendant Gerber Products Company (“Gerber”) hereby removes this action to this  
 3 Court from the Superior Court of the State of California for the County of Alameda. All non-  
 4 fraudulently joined defendants consent to this removal.<sup>1</sup>

5 Pursuant to 28 U.S.C. § 1446(a), Gerber hereby provides the following statement of the  
 6 grounds for removal:

### 7 **BACKGROUND**

8 1. On March 4, 2021, plaintiff The Last Beach Cleanup (“LBC”) filed a civil  
 9 complaint (“Complaint”) against defendants TerraCycle, Inc. (“TerraCycle”), CSC Brands LP  
 10 (“CSC”), Gerber, Late July Snacks, LLC (“Late July”), L’Oreal USA S/D, Inc. (“L’Oreal”),  
 11 Materne North America (“Materne”), The Coca-Cola Company (“Coca-Cola”), The Clorox  
 12 Company, The Procter & Gamble Company (“P&G”), and Tom’s of Maine, Inc. (“Tom’s”)  
 13 (collectively, “Defendants”) in Alameda County Superior Court. In accordance with 28 U.S.C.  
 14 § 1446(a), the Complaint and all other process, pleadings, and orders filed in the state court action  
 15 are attached as **Exhibit A**.

16 2. The Complaint alleges three counts for violations of the Unfair Competition Law  
 17 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.* under the “fraudulent,” “unlawful,” and  
 18 “unfair” acts and practices prongs.

19 3. The Complaint describes LBC as “a non-profit, public interest organization” that  
 20 “works to reduce plastic pollution, protect public spaces and wildlife from myriad harms related  
 21 to plastic pollution, and ensure that consumers are not misled by environmental marketing claims  
 22 related to plastic.” Compl. ¶ 7. LBC alleges that the non-TerraCycle defendants “advertise,  
 23 market and sell a variety products and packaging made from single-use plastics and other  
 24 materials that are difficult to recycle with an unqualified representation stating that they are  
 25 recyclable with TerraCycle, Inc.” *Id.* ¶ 2. TerraCycle “work[s] with companies to offer free

26 \_\_\_\_\_  
 27 <sup>1</sup> The consent of the fraudulently joined defendant, The Clorox Company, is not required. *See*  
 28 *United Computer Sys. v. AT&T Info. Sys.*, 298 F.3d 756, 762 (9th Cir. 2002) (“the rule of  
 unanimity does not apply to . . . *fraudulently joined* parties”) (emphasis in original); *see* 28 U.S.C.  
 § 1441(a) (“When a civil action is removed solely under section 1441(a), all defendants who have  
 been properly joined and served must join in or consent to the removal of the action.”).

1 programs for consumers to recycle products that established municipal recycling programs are not  
2 capable of recycling.” *Id.* LBC alleges that after TerraCycle receives the non-TerraCycle  
3 defendants’ products, “it is unclear whether the [p]roducts are actually recycled,” and avers that  
4 they instead “typically end up in landfills, incinerators, communities, or the natural environment.”  
5 *Id.* ¶¶ 3-4.

6 4. LBC largely bases its claims on allegations of Defendants’ failure to comply with  
7 the Federal Trade Commission’s *Guides for the Use of Environmental Marketing Claims* (“Green  
8 Guides”), 16 C.F.R. § 260.1, *et seq.* *See, e.g.*, Compl. ¶¶ 32-34, 36-38, 51, 53, 58, 70-71, 80-81  
9 (citing to Green Guides as a basis for allegations).

10 5. On June 18, 2021, LBC sent a notice and acknowledgment of receipt of the  
11 summons and Complaint to Gerber. *See* Ex. A at 76-77. On July 8, 2021, Gerber executed and  
12 returned the signed acknowledgment of receipt of summons, *see id.* at 79, and thus service was  
13 deemed complete on that date. *See* Cal. Civ. Proc. Code § 415.30(c) (“Service of a summons  
14 pursuant to this section is deemed complete on the date a written acknowledgment of receipt of  
15 summons is executed, if such acknowledgment thereafter is returned to the sender.”).

#### 16 **REMOVAL TO THIS COURT IS TIMELY**

17 6. Section 1446(b) provides that removal “shall be filed within 30 days after the  
18 receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting  
19 forth the claim for relief upon which such action or proceeding is based, or within 30 days after  
20 the service of summons upon the defendant if such initial pleading has then been filed in court  
21 and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C.  
22 § 1446(b)(1).

23 7. Removal is timely because Gerber filed this Notice on August 6, 2021, within 30  
24 days of the effective date of service on it of July 8, 2021. *See Thomas v. Facebook, Inc.*, 1:18-cv-  
25 00856-LJO-BAM, 2018 U.S. Dist. LEXIS 138333, at \*7-8 (E.D. Cal. Aug. 14, 2018) (removal  
26 was timely where defendant “signed and returned the Notice and Acknowledgement of Receipt  
27 within 20 days of its mailing, pursuant to Cal. Civ. Proc. Code § 415.30, and filed and served its  
28 removal papers within 30 days of that date of formal service, pursuant to 28 U.S.C. § 1446(b)”).

1 **VENUE**

2 8. This case is properly removed to this District because the Superior Court of the  
3 State of California for the County of Alameda, where LBC commenced this action, is located  
4 within the Northern District of California. *See* 28 U.S.C. § 84(a); *see generally* 28 U.S.C.  
5 § 1441(a); 28 U.S.C. § 1446(a).

6 9. In accordance with 28 U.S.C. § 1446(d), Gerber will promptly provide written  
7 notice of removal of this action to all parties and will promptly file a copy of this Notice of  
8 Removal with the Clerk of Court for the Superior Court of the State of California for the County  
9 of Alameda. A copy of the notice to be filed in the state court action is attached as **Exhibit B**.

10 **REMOVAL IS PROPER BASED ON DIVERSITY JURISDICTION BECAUSE LBC**  
11 **FRAUDULENTLY JOINED THE CLOROX COMPANY AND THE REMAINING**  
12 **DEFENDANTS ARE DIVERSE FROM LBC AND NOT CITIZENS OF CALIFORNIA**

13 10. “[A]ny civil action brought in a State court of which the district courts of the  
14 United States have original jurisdiction, may be removed by the defendant or the  
15 defendants . . . .” 28 U.S.C. § 1441(a). The district courts of the United States have original  
16 jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of  
17 \$75,000” and “is between . . . Citizens of different States . . . .” 28 U.S.C. § 1332(a), (a)(1).

18 **The Non-Fraudulently Joined Defendants Are Diverse from LBC and Not California**  
19 **Citizens**

20 11. For diversity purposes, a corporation “shall be deemed to be a citizen of every  
21 State and foreign State by which it has been incorporated and of the State or foreign state where it  
22 has its principal place of business . . . .” 28 U.S.C. § 1332(c)(1); *see Hertz Corp. v. Friend*, 559  
23 U.S. 77, 80-81 (2010). Unincorporated associations such as limited partnerships and limited  
24 liability companies have the citizenship of each of their members for purposes of diversity  
25 jurisdiction. *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)  
26 (citing *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990)).

27 12. According to the Complaint, LBC is a non-profit, public interest organization  
28 headquartered in California. Compl. ¶ 7. LBC is therefore a citizen of California.

1           13. Defendant TerraCycle is a Delaware corporation with its principal place of  
2 business in Trenton, New Jersey. *See id.* ¶ 17. TerraCycle is therefore a citizen of Delaware and  
3 New Jersey.

4           14. Defendant CSC is a Delaware limited partnership with its principal place of  
5 business in Camden, New Jersey. CSC's sole limited partner is Campbell Soup Company, a New  
6 Jersey corporation with its principal place of business in New Jersey. CSC's sole general partner  
7 is Campbell Finance 2 Corporation, a Delaware corporation with its principal place of business in  
8 New Jersey. CSC is therefore a citizen of Delaware and New Jersey.

9           15. Defendant Gerber is a Michigan corporation with its principal place of business in  
10 Arlington, Virginia. *See Compl.* ¶ 19. Gerber is therefore a citizen of Michigan and Virginia.

11           16. On February 1, 2021, Defendant Late July Snacks, LLC merged with and into S-L  
12 Snacks National, LLC, which subsequently merged with and into Snyder's-Lance, Inc. Snyder's-  
13 Lance, Inc. is incorporated in North Carolina, has its principal place of business in North  
14 Carolina, and is a wholly-owned indirect subsidiary of Campbell Soup Company.

15           17. Defendant L'Oreal is a Delaware corporation with its principal place of business in  
16 New York, New York. *See Compl.* ¶ 21. L'Oreal is therefore a citizen of Delaware and New  
17 York.

18           18. Defendant Materne is a New York corporation with its principal place of business  
19 in New York. *See id.* ¶ 22. Materne is therefore a citizen of New York.

20           19. Defendant Coca-Cola is a Delaware corporation with its principal place of  
21 business in Atlanta, Georgia. *See id.* ¶ 23. Coca-Cola is therefore a citizen of Delaware and  
22 Georgia.

23           20. Defendant P&G is an Ohio corporation with its principal place of business in  
24 Cincinnati, Ohio. *See id.* ¶ 25. P&G is therefore a citizen of Ohio.

25           21. Defendant Tom's is a Maine corporation with its principal place of business in  
26 Kennebunk, Maine. *See id.* ¶ 26. Tom's is therefore a citizen of Maine.

27           22. LBC also names The Clorox Company as a defendant. The Clorox Company is a  
28 Delaware corporation that LBC alleges has its principal place of business in Oakland, California.

1 *Id.* ¶ 24. The only product the Complaint identifies as allegedly manufactured, distributed, and  
 2 sold by The Clorox Company with a challenged claim on its label is “Burt’s Bees Deep Pore  
 3 Scrub with Peach & Willow Bar.” *Id.* Burt’s Bees, Inc. is a separate and distinct legal entity  
 4 from The Clorox Company. *See* Declaration of Bryan A. Merryman (“Merryman Decl.”),  
 5 **Exhibit C** (excerpts from The Clorox Company’s October 30, 2007 Form 8-K filed with the U.S.  
 6 Securities and Exchange Commission), at 2; *see id.*, **Exhibit D** (excerpts from The Clorox  
 7 Company’s June 30, 2020 Form 10-K filed with the U.S. Securities and Exchange Commission),  
 8 at 2-3.<sup>2</sup> The Clorox Company does not manufacture, distribute, or sell this product. *See id.*,  
 9 **Exhibit E** (packaging of the Burt’s Bees Peach & Willow Bark Deep Pore Scrub), at 1.  
 10 Accordingly, this Court should not consider the citizenship of The Clorox Company for the  
 11 purpose of determining diversity of the parties because LBC improperly joined The Clorox  
 12 Company as a defendant in an effort to avoid federal jurisdiction.

13 23. Because all of the non-fraudulently joined defendants are citizens of states  
 14 different from the state citizenship of LBC, and are not California citizens, complete diversity  
 15 exists, *see* 28 U.S.C. § 1332(a)(1), and removal is permitted under 28 U.S.C. § 1441(b)(2).

16 24. Diversity jurisdiction under 28 U.S.C. § 1332 requires complete diversity,  
 17 meaning the citizenship of each plaintiff must be different from the citizenship of each defendant.  
 18 *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). Nonetheless, “one  
 19 exception to the requirement for complete diversity is where a non-diverse defendant has been  
 20 ‘fraudulently joined’” as a defendant. *Salkin v. United Servs. Auto. Ass’n*, 767 F. Supp. 2d 1062,  
 21 1065 (C.D. Cal. 2011) (quoting *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir.  
 22 2009)); *see Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). “Joinder of a non-

23 \_\_\_\_\_  
 24 <sup>2</sup> The exhibits to the Merryman Declaration are subject to judicial notice under Fed. R. Evid.  
 25 201(b). The facts therein cited by Gerber are not subject to reasonable dispute because they can  
 26 be accurately and readily determined from sources whose accuracy cannot reasonably be  
 27 questioned. *See, e.g., United Guar. Mortg. Indem. Co. v. Countrywide Fin. Corp.*, Nos. CV-09-  
 28 1888-MRP (JWJx); CV-09-2732-MRP (JWJx), 2009 U.S. Dist. LEXIS 136746, at \*55 n.29 (C.D.  
 Cal. July 1, 2009) (publicly filed SEC documents can be judicially noticed); *see, e.g., Hawyuan  
 Yu v. Dr Pepper Snapple Grp., Inc.*, No. 18-cv-06664-BLF, 2020 U.S. Dist. LEXIS 185322, at \*9  
 (N.D. Cal. Oct. 6, 2020) (“[C]ourts regularly take judicial notice of product labels when those  
 product labels form the basis of the relevant causes of action.”); *see O’Toole v. Northrop  
 Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (courts routinely take “judicial notice of  
 factual information found on the world wide web.”).

1 diverse defendant is deemed fraudulent, and the defendant’s presence in the lawsuit is ignored for  
2 purposes of determining diversity, if the plaintiff fails to state a cause of action against a resident  
3 defendant, and the failure is obvious according to the settled rules of the state.” *Morris*, 236 F.3d  
4 at 1067.

5 25. A “defendant seeking removal is entitled to present the facts showing the joinder  
6 to be fraudulent.” *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (citation  
7 omitted). “[F]raudulent joinder claims may be resolved by ‘piercing the pleadings’ and  
8 considering summary judgment-type evidence such as affidavits and deposition testimony.”  
9 *Morris*, 236 F.3d at 1068 (quoting *Cavallini v. State Farm Mutual Auto Ins. Co.*, 44 F.3d 256,  
10 263 (5th Cir. 1995)).

11 26. LBC does not state a claim against The Clorox Company. “To determine whether  
12 the plaintiff has stated a cause of action against a resident defendant, the court looks to the  
13 complaint and need not ‘speculate about possible claims.’” *Saaiman v. Am. Gen. Life Ins. Co.*,  
14 No. 18-cv-596-BTM-AGS, 2019 U.S. Dist. LEXIS 70265, at \*5 (S.D. Cal. Apr. 25, 2019) (citing  
15 *Kwasniewski v. Sanofi-Aventis U.S., LLC*, 637 F. App’x 405, 406 (9th Cir. 2016)). The Clorox  
16 Company is the parent company of Burt’s Bees, Inc., the manufacturer of the only product with a  
17 challenged claim on its label identified in the Complaint that LBC alleges incorrectly is  
18 manufactured, distributed, and sold by The Clorox Company. *See* Merryman Decl. **Exhibit C**, at  
19 2; *see id.*, **Exhibit D**, at 2-3. Burt’s Bees, Inc. is an entirely separate and legally distinct company  
20 from The Clorox Company. *See id.* “‘It is a general principle of corporate law deeply ingrained  
21 in our economic and legal systems that a parent corporation (so-called because of control through  
22 ownership of another corporation’s stock) is not liable for the acts of its subsidiaries.’” *Salkin*,  
23 767 F. Supp. 2d at 1065 (quoting *United States v. Bestfoods*, 524 U.S. 51, 61 (1998)).

24 27. LBC does not allege any facts indicating The Clorox Company can be held  
25 vicariously liable as Burt’s Bees, Inc.’s parent corporation for the conduct of Burt’s Bees, Inc. in  
26 allegedly manufacturing, distributing, and selling “Burt’s Bees Deep Pore Scrub with Peach &  
27 Willow Bar” containing the challenged representations on its label. “Whether or not a plaintiff  
28 may recover on the stated claims against the resident defendants does *not* include consideration of

1 whether, with further discovery, the plaintiff may uncover a factual basis for its claims . . . .” *TPS*  
2 *Utilicom Servs. v. AT&T Corp.*, 223 F. Supp. 2d 1089, 1102 (C.D. Cal. 2002). Accordingly, LBC  
3 fails to state a claim against, and fraudulently joined, The Clorox Company. *See, e.g., Saaiman*,  
4 2019 U.S. Dist. LEXIS 70265 at \*14 (finding plaintiff fraudulently joined non-diverse defendant  
5 where plaintiff failed to state a claim against defendant); *see Goel v. Aetha Health of Cal., Inc.*,  
6 LA CV20-09706 JAK (Ex), 2021 U.S. Dist. LEXIS 99870, at \*11-14 (C.D. Cal. May 26, 2021)  
7 (same).

8 28. Moreover, other than the Burt’s Bees, Inc. product, LBC does not allege The  
9 Clorox Company manufactures, distributes, or sells any products containing a representation  
10 related to recycling through TerraCycle.

11 29. Because LBC fraudulently joined The Clorox Company as a defendant in order to  
12 defeat diversity jurisdiction and avoid federal court subject matter jurisdiction over this action,  
13 this Court should ignore The Clorox Company’s citizenship in determining whether diversity  
14 jurisdiction exists and whether “any of the parties in interest properly joined and served as  
15 defendants is a citizen of the State in which [the] action [wa]s brought.” 28 U.S.C. § 1441(b)(2).  
16 *See TPS Utilicom Servs.*, 223 F. Supp. 2d at 1104 (disregarding fraudulently joined defendants’  
17 citizenship and determining federal diversity jurisdiction existed based on citizenship of  
18 remaining parties); *see Salkin*, 767 F. Supp. 2d at 1069 (finding federal diversity jurisdiction  
19 where plaintiff fraudulently joined a non-diverse parent corporation).

20 **The Amount in Controversy Exceeds \$75,000**

21 30. Removal based on diversity jurisdiction is proper if the amount in controversy  
22 exceeds \$75,000. 28 U.S.C. § 1446(c)(2)(B). “[T]he amount in controversy is the ‘amount at  
23 stake in the underlying litigation.’ ‘Amount at stake’ does not mean likely or probable liability;  
24 rather it refers to possible liability.” *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th  
25 Cir. 2020) (quoting *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir.  
26 2016)). Where a plaintiff seeks injunctive relief, the amount in controversy is “measured by the value  
27 of the object of the litigation.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 347  
28 (1977); *Luna v. Kemira Speciality, Inc.*, 575 F. Supp. 2d 1166, 1172 (C.D. Cal. 2008). “[A]



1 defendant's notice of removal need include only a plausible allegation that the amount in  
2 controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v.*  
3 *Owens*, 574 U.S. 81, 89 (2014).

4 31. Where, as here, a plaintiff seeks to enjoin defendants, the amount in controversy  
5 includes "the cost of complying with an injunction." *Fritsch v. Swift Transportation Co. of*  
6 *Arizona, LLC*, 899 F.3d 785, 793 (9th Cir. 2018); *see Gonzales v. CarMax Auto Superstores,*  
7 *LLC*, 840 F.3d 644, 648-49 (9th Cir. 2016).

8 32. LBC requests this Court "preliminarily and permanently enjoin Defendants from  
9 conducting their business" through the purported "unlawful, unfair, or fraudulent business acts or  
10 practices, untrue or misleading advertising, and other violations of law" LBC alleges in the  
11 Complaint. Compl. Prayer ¶ A. "This conduct includes, but is not limited to, representing that  
12 the Products are recyclable." Compl. ¶¶ 61, 78. Accordingly, at a minimum, LBC's requested  
13 relief would require the non-TerraCycle defendants, including Gerber, to remove or revise the  
14 claims on their product packaging that LBC challenges in this action. *See id.* ¶ 19. In addition,  
15 LBC seeks an order requiring the non-TerraCycle defendants to "conduct a corrective advertising  
16 and information campaign advising consumers that the Products do not have the characteristics,  
17 uses, benefits, and qualities Defendants have claimed." Compl. Prayer ¶ B.

18 33. LBC thus seeks an order requiring the non-TerraCycle defendants to remove or  
19 revise the challenged claims on each of the non-TerraCycle defendants' labels, including  
20 requiring them to remove existing products from store shelves, remove existing labels with the  
21 challenged claims from the products containing them, and replace the labels with allegedly non-  
22 violating language. If a court required such changes, each non-TerraCycle defendant would incur  
23 expenses well in excess of \$75,000. This is in addition to the enormous cost of LBC's requested  
24 corrective advertising campaigns by each non-TerraCycle defendant. *See, e.g., Gonzales v.*  
25 *CarMax Auto Superstores, LLC*, 840 F.3d 644, 648-49 (9th Cir. 2016) (the district court properly  
26 considered the potential cost of complying with injunctive relief when determining whether the  
27 amount in controversy had been satisfied for diversity jurisdiction).

28

1           34. Defendants' potential liability exceeds the amount in controversy considering the  
2 amount it would cost them to comply with the injunctive relief LBC seeks.

3           **IN THE ALTERNATIVE, REMOVAL IS PROPER BASED ON DIVERSITY**  
4           **JURISDICTION BECAUSE LBC MISJOINED THE CLOROX COMPANY**

5           35. In the alternative, if this Court were to find that LBC did not fraudulently join The  
6 Clorox Company, and that the Court does not have federal question subject matter jurisdiction  
7 over this action (*see infra*, pages 15-18) diversity jurisdiction exists because LBC *misjoined* The  
8 Clorox Company as a defendant in this action. Like fraudulent joinder, a court need not consider  
9 the citizenship of misjoined defendants when determining federal diversity jurisdiction. *See*  
10 *Sutton v. Davol, Inc.*, 251 F.R.D. 500, 505 (E.D. Cal. 2008) (severing and remanding misjoined  
11 defendants pursuant to Fed. R. Civ. P. 21 to preserve the removing defendants' right to removal).  
12 Misjoinder "is a logical extension of the established precedent that a plaintiff may not  
13 fraudulently join a defendant to defeat diversity jurisdiction in federal court." *Greene v. Wyeth*,  
14 344 F. Supp. 2d 674, 684-85 (D. Nev. 2004); *see also Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d  
15 1353, 1360 (11th Cir. 1996), *abrogated on other grounds, Cohen v. Office Depot*, 204 F.3d 1069  
16 (11th Cir. 2000); *Wells Fargo Bank, N.A. v. Am. Gen. Life Ins. Co.*, 670 F. Supp. 2d 555, 562  
17 (N.D. Tex. 2009) (concluding misjoinder "is a basis for disregarding the citizenship of the  
18 misjoined party"); *Smith v. Nationwide Mut. Ins. Co.*, 286 F. Supp. 2d 777, 780 (S.D. Miss. 2003)  
19 (noting courts do not consider the citizenship of misjoined parties); *but see Hampton v. Holper*,  
20 319 F. Supp. 3d 1204, 1210-12 (D. Nev. 2018) (noting while "[t]he Ninth Circuit has neither  
21 adopted nor rejected *Tapscott*," most of the districts in the Ninth Circuit have not applied the  
22 doctrine) (collecting cases).

23           36. Under Rule 20 of the Federal Rules of Civil Procedure, a plaintiff may join  
24 multiple defendants in the same action only where "(A) any right to relief is asserted against them  
25 jointly, severally, or in the alternative with respect to or arising out of the same transaction,  
26 occurrence, or series of transactions or occurrences; and (B) any question of law or fact common  
27 to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2); *see also Sutton*, 251 F.R.D. at  
28

1 504 (noting California’s joinder rule, Cal. Civ. Proc. Code § 379(a)(1), and Rule 20(a)(1) of the  
2 Federal Rules of Civil Procedure are “virtually identical”).

3 37. Here, LBC does not assert any right to relief against The Clorox Company  
4 “jointly” or “severally” with, “or in the alternative” to, any right to relief against any other non-  
5 TerraCycle defendant. Fed. R. Civ. P. 20(a)(2). Accordingly, LBC improperly joined its claims  
6 against The Clorox Company with its claims against each of the other non-TerraCycle  
7 defendants. *See, e.g., Robbins v. Gerber Products Co., et al.*, No. CV 21-1457 JVS (PDx), ECF  
8 No. 38 at 2 (C.D. Cal. June 16, 2021) (holding “joinder is improper under the first clause in Rule  
9 20(a)(2)(A), which requires that any right to relief against the joined defendants be asserted  
10 ‘jointly, severally, or in the alternative.’ [Plaintiff] does not dispute Defendants’ assertion that he  
11 does not ‘assert any right of relief against Defendants jointly or severally.’ . . . Nor is there any  
12 indication that the claims are asserted against Defendants in the alternative; [Plaintiff] does not  
13 assert a right to recover from either Gerber or Nurture.”).

14 38. In addition, LBC’s claims against The Clorox Company do not “aris[e] out of the  
15 same transaction, occurrence, or series of transactions or occurrences,” as those out of which  
16 LBC’s claims against each of CSC, Late July, L’Oreal, Materne, Coca-Cola, Gerber, P&G, and  
17 Tom’s, respectively, arise. *See* Fed. R. Civ. P. 20(a)(2). Rather, the Complaint alleges factually  
18 distinct conduct separately (purportedly) attributable to each of the non-TerraCycle defendants.  
19 *See* Compl. ¶¶ 17-26.

20 39. According to the Complaint, each non-TerraCycle defendant “advertise[s],  
21 market[s] and sell[s] . . . products and packaging made from single-use plastics and other  
22 materials that are difficult to recycle with an unqualified representation stating that they are  
23 recyclable with TerraCycle, Inc.” *Id.* ¶ 2. LBC also alleges that each defendant’s program with  
24 TerraCycle has “strict participation limits that prohibit most consumers from participating in [its]  
25 recycling programs,” *id.*, and that “it is unclear whether the Products [collected through each  
26 defendant’s program with TerraCycle] are actually recycled,” *id.* ¶ 3, but rather, “typically end up  
27 in landfills, incinerators, communities, or the natural environment,” *id.* ¶ 4. Specifically, LBC  
28

1 alleges the following products contain “unqualified” recyclable claims in violation of the FTC’s  
2 Green Guides, which serves as a basis for its causes of action:

- 3 a. “Late July Organic Sea Salt Thin & Crispy Tortilla Chips, Net Wt. 11oz, UPC No.  
4 8-90444-00029,” containing the TerraCycle logo and the language, “This bag is  
5 recyclable through TerraCycle. Visit [www.terracycle.com](http://www.terracycle.com) to learn how.” *Id.* ¶ 18.
- 6 b. “Gerber Sitter 2nd Foods Organic Banana Blueberry & Blackberry Oatmeal Baby  
7 Food Pouch, 3.5oz, UPC No. 0-15000-07444-9,” containing the TerraCycle logo  
8 and the language, “Recycle through TerraCycle.” *Id.* ¶ 19.
- 9 c. L’Oreal’s “Garnier Fructis Active Fruit Protein Grow Strong Fortifying Hair  
10 Conditioner, 33.8 fl. oz., UPC No. 6-03084-54746-3,” containing the TerraCycle  
11 logo and the language, “Garnier Cares: Help TerraCycle and Garnier keep beauty  
12 products out of landfills! Join a Beauty Brigade at [garnierUSA.com/green](http://garnierUSA.com/green) to  
13 create a greener future.” *Id.* ¶ 21.
- 14 d. Materne’s “GoGo SqueeZ Fruit on the Go Apple Apple Applesauce Pouch, 12-3.2  
15 oz., UPC No. 8-9000000115-8,” containing the TerraCycle logo and the language,  
16 “GoGo squeeZ pouches are recyclable through TerraCycle. Collect used pouches  
17 and help your favorite cause. Learn more at [www.gogosqueez.com/terracycle](http://www.gogosqueez.com/terracycle).”  
18 *Id.* ¶ 22.
- 19 e. Coca-Cola’s “Honest Kids Super Fruit Punch Organic Juice Drink, 8 Ct., 6.75 fl.  
20 oz. pouches, UPC No. 6-57622-11175-3,” containing the TerraCycle logo and the  
21 language, “Recycle your drink through TerraCycle and turn it into something new,  
22 like backpacks and bike racks. Find out more at [honesttea.com](http://honesttea.com).” *Id.* ¶ 23.
- 23 f. “Burt’s Bees Deep Pore Scrub with Peach & Willow Bar, Net Wt., 4 oz, UPC No.  
24 7-9285089199-9,” containing the TerraCycle logo and the language, “Recyclable  
25 with TerraCycle.” *Id.* ¶ 24.
- 26 g. P&G’s “Febreze Unstoppables Small Spaces Air Freshener – Fresh Scent, 1 Ct.,  
27 UPC No. 0-3700049706-6,” containing the TerraCycle logo and the language,  
28 “Recycle at/Recycler au TerraCycle.com.” *Id.* ¶ 25.

1 h. “Tom’s of Maine Toddler Fluoride-Free Toothpaste, net Wt. 1.75 oz., UPC No. 0-  
2 77326-83377-3,” containing the TerraCycle logo and the language, “Goodness =  
3 Less in Landfills Recycle Tom’s of Maine and other packaging through the  
4 TerraCycle collection program and earn rewards for your favorite nonprofit or  
5 school! Visit tomsofmaine.com/terracycle to learn how.” *Id.* ¶ 26.

6 40. As the Complaint makes clear, each non-TerraCycle defendant’s product label  
7 identified in the Complaint contains a different claim. For example, some contain the word  
8 “recycle” (*id.* ¶¶ 19, 23, 25, 26), while others contain the word “recyclable” (*id.* ¶¶ 18, 22, 24).  
9 One challenged claim does not contain either (or any other derivative of “recycle”). *Id.* ¶ 21.  
10 Some link to a company-specific website (*id.* ¶¶ 18, 21, 22, 25, 26), while others contain no link  
11 (*id.* ¶¶ 19, 24). Thus, determining whether each non-TerraCycle defendant’s allegedly  
12 “unqualified representation[] that the Products are recyclable [are] per se deceptive under the  
13 Green Guides and violate[] California law” requires individualized analysis as to each non-  
14 TerraCycle defendant’s claim. *Id.* ¶ 53. Accordingly, LBC’s claims against The Clorox  
15 Company do not arise out of the same transaction, occurrence, or series of transactions or  
16 occurrences as LBC’s claims against the other non-TerraCycle defendants. *See, e.g., Pac.*  
17 *Century Int’l Ltd. v. Doe*, No. C-11-02533- (DMR), 2011 U.S. Dist. LEXIS 73837, at \*13 (N.D.  
18 Cal. July 8, 2011) (where the “only commonality” between defendants is they allegedly  
19 “committed the exact same violation of the law in exactly the same way,” plaintiff failed to  
20 demonstrate it had any right to relief against defendants “arising out of the same transaction,  
21 occurrence, or series of transactions or occurrences”).

22 41. Even if each non-TerraCycle defendant made the exact same claim on its products’  
23 labels as every other, and each non-TerraCycle defendant’s products were (allegedly) not  
24 “actually recycled” for the same reasons, that still would not meet Rule 20(a)(2)’s “same  
25 transaction, occurrence, or series of transactions or occurrences” requirement. “The fact that  
26 Plaintiffs’ legal theories are similar is insufficient to join their claims. *See Justo v. IndyMac*  
27 *Bancorp Inc.*, No. SACV 09-1116 JVS (AGRx), 2010 U.S. Dist. LEXIS 22831, at \*30 (C.D. Cal.  
28 Feb. 19, 2010). LBC alleges, at most, *parallel conduct*, not the same facts or a logical

1 relationship with respect to each non-TerraCycle defendant. *See, e.g., San Francisco Tech., Inc.*  
2 *v. Glad Prods. Co.*, No. 10-CV-00966 JF (PVT), 2010 U.S. Dist. LEXIS 83681, at \*16-17 (N.D.  
3 Cal. July 19, 2010) (severing claims where plaintiff alleged only that each defendant violated the  
4 same law in a similar manner); *Ramos v. Playtex Prods., Inc.*, No. 08 CV 2703; No. 08 CV 2828;  
5 No. 08 CV 3352, 2008 U.S. Dist. LEXIS 75957, at \*8–10 (N.D. Ill. Aug. 27, 2008) (holding  
6 plaintiff failed to satisfy Rule 20’s logical relationship test because plaintiff’s “allegations  
7 suggest[ed] merely that each defendant manufactured, marketed, and sold similar products and  
8 engaged in similar, as opposed to related, conduct”); *Waterfall Homeowners Ass’n v. Viega, Inc.*,  
9 283 F.R.D. 571, 584-86 (D. Nev. 2012) (holding severance warranted where plaintiff “simply  
10 alleged” a case against each defendant that shared “a ‘fact pattern’ but no facts”) (citation  
11 omitted).

12 42. Accordingly, LBC has misjoined the non-TerraCycle defendants in the same  
13 action—and specifically as to this Court’s jurisdiction, LBC has misjoined The Clorox Company  
14 with the other non-TerraCycle defendants. Accordingly, the Court should ignore The Clorox  
15 Company’s alleged California citizenship in determining whether federal diversity jurisdiction  
16 exists, and instead sever LBC’s claims against The Clorox Company and TerraCycle, from its  
17 claims against the other non-TerraCycle defendants and TerraCycle. *See, e.g., Sutton*, 251 F.R.D.  
18 at 505; *see also In re Stryker Rejuvenate & ABG II Hip Implant Prods. Liab. Litig.*, No. 13-2441  
19 (DWF/FLN); 2013 U.S. Dist. LEXIS 175153, at \*11-12 (D. Minn. Dec. 12, 2013) (severing and  
20 remanding claims against misjoined defendants because the claims did not both involve common  
21 questions of law or fact and assert joint, several, or alternative liability arising out of the same  
22 transaction, occurrence, or series of transactions or occurrences); *cf. United States v. Maranghi*,  
23 718 F. Supp. 1450, 1453 (N.D. Cal. 1989) (“Defendants like Parviz, Biradelli, and Beitashour  
24 occupied the ‘spokes’ of the enterprise. They may not be joined at trial simply because  
25 conspiracies of which they were a member included members common to all. . . . And there is  
26 almost no evidence that the spokes had any contact with or knowledge of each other at the  
27 ‘rim.’”) (internal citation omitted).

28

1           43. For the reasons stated in paragraphs 30-34, the amount in controversy, even  
2 excluding LBC's claims against The Clorox Company and TerraCycle, exceeds \$75,000.

3           **REMOVAL IS ALSO PROPER BASED ON FEDERAL QUESTION JURISDICTION**

4           44. Under 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all  
5 civil actions arising under the Constitution, laws, or treaties of the United States.” Whether a case  
6 “arises under” federal law is to be determined based on the content in a “well-pleaded complaint.”  
7 *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 9-10 (1983).

8           45. A “longstanding . . . variety of federal ‘arising under’ jurisdiction” is when state-  
9 law claims “implicate significant federal issues.” *Grable & Sons Metal Prods., Inc. v. Darue*  
10 *Eng’g & Mfg.*, 545 U.S. 308, 312 (2005). The Supreme Court has recognized this category of  
11 federal-question jurisdiction “for nearly 100 years.” *Id.*; see *Franchise Tax Bd.*, 463 U.S. at 9  
12 (observing the Court has “often held that a case ‘arose under’ federal law where the vindication of  
13 a right under state law necessarily turned on some construction of federal law”).

14           46. In determining whether claims arise under federal law, courts consider whether a  
15 federal issue is: (1) “necessarily raised,” (2) “actually disputed,” (3) “substantial,” and (4)  
16 “capable of resolution in federal court without disrupting the federal-state balance approved by  
17 Congress.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013); see *Grable*, 545 U.S. at 314.

18           47. LBC asserts three causes of action, all purportedly under California’s UCL.  
19 However, LBC premises its allegations on Defendants’ alleged violations of federal law,  
20 specifically the FTC Act through the Green Guides, 16 C.F.R. § 260.12. On the face of the  
21 Complaint, LBC’s claims implicate substantial federal questions and necessarily turn on  
22 interpretation of the FTC’s Green Guides, 16 C.F.R. § 260.1, *et seq.*, and the FTC Act, 15 U.S.C.  
23 § 45, *et seq.*, and accordingly arise under federal law.

24           48. In particular, LBC makes the following allegations in the Complaint, thereby  
25 invoking federal law:

- 26           a. “The California Business and Professions Code § 17580.5 makes it ‘unlawful for  
27 any person to make any untruthful, deceptive, or misleading environmental  
28 marketing claim, whether explicit or implied.’ Pursuant to that section, the term

1 'environmental marketing claim' includes any claim contained in the Guides for  
2 use of Environmental Marketing Claims published by the FTC (the 'Green  
3 Guides'). *Id.*; *see also* 16 C.F.R. § 260.1, *et seq.*" Compl. ¶ 32.

4 b. "Because Defendants can only collect Products from a tiny fraction of consumers,  
5 Defendants' unqualified representations that the Products are recyclable are per se  
6 deceptive under the Green Guides and violates California law. *See* 16 C.F.R.  
7 §§ 260.12(b); 260.12(d) Example 9." *Id.* ¶ 53.

8 c. "In addition, Defendants are required to maintain written records substantiating the  
9 validity of environmental marketing representations, including whether consumers  
10 goods conform with the Green Guides' use of the terms 'recycled' and  
11 'recyclable.' B&P § 17580(a); *see also* 16 C.F.R. § 260.2." *Id.* ¶ 58.

12 d. "Defendants' conduct violates Section 5 of the Federal Trade Commission Act  
13 ('FTC Act'), 15 U.S.C. § 45, which prohibits unfair methods of competition and  
14 unfair or deceptive acts or practices in or effecting commerce. By misrepresenting  
15 that the Products are recyclable, Defendants are violating Section 5 of the FTC  
16 Act." *Id.* ¶ 68.

17 e. "Defendants' conduct also violates B&P § 17580.5, which makes it unlawful for  
18 any person to make any untruthful, deceptive, or misleading environmental  
19 marketing claim. Pursuant to § 17580.5, the term 'environmental marketing  
20 claim' includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et*  
21 *seq.* Under the Green Guides, '[i]t is deceptive to misrepresent, directly or by  
22 implication, that a product or package is recyclable. A product or package shall  
23 not be marketed as recyclable unless it can be collected, separated, or otherwise  
24 recovered from the waste stream through an established recycling program for  
25 reuse or use in manufacturing or assembling another item.' 16 C.F.R. § 260.12(a)." *Id.* ¶ 70.

26  
27 f. "Defendants' failure to substantiate their claims that the Products are recyclable is  
28 also a violation of both California law and the Green Guides. California law



1 requires Defendants to maintain written records substantiating the validity of  
2 environmental marketing representations, including whether consumers goods  
3 conform with the Green Guides' use of the terms 'recycled' and 'recyclable.'  
4 B&P § 17580(a). Likewise, the Green Guides require that marketers ensure that  
5 their claims are supported by a reasonable basis prior to making the claim. 16  
6 C.F.R. § 260.2." *Id.* ¶ 71.

7 g. "By violating the FTC Act and B&P §§ 17500, 17580 and 17580.5, Defendants  
8 have engaged in unlawful business acts and practices which constitute unfair  
9 competition within the meaning of B&P § 17200." *Id.* ¶ 72.

10 h. "Defendants' conduct also violates the policy of the Green Guides. The Green  
11 Guides mandate that '[a] product or package shall not be marketed as recyclable  
12 unless it can be collected, separated, or otherwise recovered from the waste stream  
13 through an established recycling program for reuse or use in manufacturing or  
14 assembling another item.' 16 C.F.R. § 260.12(a). It further states that '[a]n item  
15 that is made from recyclable material, but because of its shape, size or some other  
16 attribute is not accepted in recycling programs, should not be marketed as  
17 recyclable.' 16 C.F.R. § 260.12(d). As explained above, the Products are rarely  
18 recycled because very few consumers have access to Defendants' recycling  
19 takeback programs. Taking advantage of consumer perception in this manner  
20 violates the policy of the Green Guides." *Id.* ¶ 80.

21 i. "Defendants' failure to substantiate their claims that the Products are recyclable  
22 also violates the policies set forth in California law and the Green Guides.  
23 California law requires Defendants to maintain written records substantiating the  
24 validity of environmental marketing representations. B&P § 17580(a). Likewise,  
25 the Green Guides require that marketers ensure that their claims are supported by a  
26 reasonable basis prior to making the claim. 16 C.F.R. § 260.2. Defendants'  
27 failure to provide any substantiation for their representations is unfair based on the  
28 requirements in the Green Guides and clearly violates the Legislative declared

1 policy in California that information and documentation supporting the validity of  
2 environmental representations ‘shall be fully disclosed to the public.’ B&P §  
3 17580(d).” *Id.* ¶ 81.

4 49. LBC’s state-law claims thus explicitly invoke and turn on substantial questions of  
5 federal law, justifying “resort to the experience, solicitude, and hope of uniformity that a federal  
6 forum offers on federal issues.” *Grable*, 545 U.S. at 312. For example, LBC alleges Defendants’  
7 product packaging includes “unqualified representations that the Products are recyclable,” which  
8 is “per se deceptive under the Green Guides and violates California law.” Compl. ¶ 53. Given  
9 these allegations, LBC’s claims necessarily require judicial interpretation of federal law and  
10 require a court to determine whether Defendants’ representations are deceptive under the FTC  
11 Act through the FTC’s Green Guides.

12 50. A federal forum is therefore necessary to ensure uniform application of the FTC  
13 Act and Green Guides. *See Grable*, 545 U.S. at 312. LBC’s strategy to evade federal court  
14 invites state courts to reach differing interpretations of the FTC’s regulation and guidance  
15 regarding environmental marketing claims “that are unfair or deceptive under Section 5 of the  
16 FTC Act, 15 U.S.C. 45.” 16 C.F.R. § 260.1. Removal of this action is therefore proper under  
17 federal question jurisdiction. *See e.g., EIJ, Inc. v. United Parcel Serv., Inc.*, 233 F. App’x 600,  
18 601-02 (9th Cir. 2007).

#### 19 **NON-WAIVER**

20 51. By submitting this Notice of Removal, Gerber does not waive any objections or  
21 defenses, including but not limited to personal jurisdiction defenses, and does not admit any of  
22 the allegations in the Complaint.

#### 23 **CONCLUSION**

24 WHEREFORE, Gerber respectfully requests this case proceed in this Court as an action  
25 properly removed from the Superior Court of the State of California for the County of Alameda.

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: August 6, 2021

WHITE & CASE LLP

By:           /s/ Bryan A. Merryman            
      Bryan A. Merryman

Attorneys for Defendant  
GERBER PRODUCTS COMPANY

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 South Flower Street, Suite 2700, Los Angeles, CA 90071-2433. I am employed by a member of the Bar of this Court at whose direction the service was made.

On **Friday, August 06, 2021** I served the foregoing document(s) described as:

**DEFENDANT GERBER PRODUCTS COMPANY’S NOTICE OF REMOVAL** on the person(s) below, as follows:

**(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted the document(s) electronically to the person(s) at the e-mail address(es) listed below. The transmission was reported as complete and without error.

**(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing at White & Case LLP, Los Angeles, California, following our ordinary business practices. I am readily familiar with White & Case LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

<p>Howard Hirsch                  Ryan Berghoff                  Meredyth Merrow                  LEXINGTON LAW GROUP                  503 Divisadero Street                  San Francisco, CA 94117                  Telephone: (415) 913-7800                  Facsimile: (415) 759-4112  <a href="mailto:hhirsch@lexlawgroup.com">hhirsch@lexlawgroup.com</a>  <a href="mailto:rberghoff@lexlawgroup.com">rberghoff@lexlawgroup.com</a>  <a href="mailto:mmerrow@lexlawgroup.com">mmerrow@lexlawgroup.com</a></p>	<p>Counsel for Plaintiff                  The Last Beach Cleanup</p>
<p>Gideon Kracov                  LAW OFFICE OF GIDEON KRACOV                  801 S. Grand Ave., 11<sup>th</sup> Floor                  Los Angeles, CA 90017                  Telephone: (213) 629-2071                  Facsimile: (213) 623-7755  <a href="mailto:gk@gideonlaw.net">gk@gideonlaw.net</a></p>	<p>Counsel for Plaintiff                  The Last Beach Cleanup</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing at White & Case LLP, Los Angeles, California, following our ordinary business practices. I am readily familiar with White & Case LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

The Corporation Trust Company 1209 N. Orange Street Wilmington, DE 19801-1120	Agent for service of process for CSC Brands LP
The Corporation Trust Company 1209 N. Orange Street Wilmington, DE 19801-1120	Agent for service of process for Terracycle, Inc.
Michel Larroche 20 W. 22 <sup>nd</sup> Street Floor 12 New York, NY 10010-5843	Agent for Defendant Materne North America
Kenneth A. Keene 128 State Street #3 August, ME 04330-5630	Agent for Defendant Tom's of Maine
David Taylor 1 Procter and Gamble Plaza Cincinnati, OH 45202-3315	Agent for Defendant Procter and Gamble
Robert Howard 505 Montgomery Street Suite 2000 San Francisco, CA 94111	Agent for Defendant The Clorox Company
Stephanie Rinderknech 10 Hudson Yards New York, NY 10001-2157	Agent for Defendant L'Oreal USA, Inc.
James Quincey 1 Coca Cola Plaza, NW Atlanta, GA 30313-2420	Agent for Defendant The Coca-Cola Company

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Executed **Friday, August 06, 2021**, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

*/s/ Karen Hao*

---

Karen Hao