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11 Attorneys for Plaintiff
 12 GREENPEACE, INC.

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16
 17 GREENPEACE, INC.,
 18
 19 Plaintiff,
 20
 21 v.
 22 WALMART INC,
 23
 24 Defendant.

Case No. 3:21-CV-00754-MMC
THIRD AMENDED 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 recent study, at least 1.2 to 2.5 million tons of
 8 plastic trash from the United States were dropped on lands, rivers, lakes and oceans as litter, were
 9 illegally dumped, or were shipped abroad and then not properly disposed of.² To address
 10 increasing pressure from governmental entities, shareholders, consumers, environmental groups
 11 and other stakeholders regarding plastic pollution, manufacturers and distributors of plastic
 12 products or packaging are labeling their products as recyclable and environmentally beneficial,
 13 without maintaining any information substantiating the validity of such representations. Seeking
 14 to portray itself as environmentally minded and sustainability focused, defendant Walmart Inc.
 15 (“Defendant” or “Walmart”) manufactures or distributes a variety of single-use plastic products
 16 and packaging that are advertised or labeled as recyclable, without maintaining records that
 17 substantiate whether such products and packaging are actually recyclable.

18 2. This Complaint seeks to remedy Defendant’s unlawful and unfair business
 19 practices with respect to its failure to substantiate its recycling representations on plastic products
 20 or plastic packaging that are: (A) sold under Defendant’s own private label brands;³ (B) labeled as
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 23 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)
 24 <https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s> (last
 accessed Feb. 17, 2022).

25 ² Associated Press, *Study: 1 to 2 million tons a year of U.S. plastic trash goes astray*, L.A. TIMES
 26 (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 Feb. 17, 2022).

27 ³ Examples of Defendant’s private label brands include, but are not limited to: Great Value,
 28 Allswell, Athletic Works, Bonobos, Equate, EV1, Everstart, George, Holiday Time, Mainstays,
 Marketside, No Boundaries, Onn, Ozark Trail, Parent’s Choice, Scoop, SwissTech, Time and
 Tru, and Wonder Nation.

1 “recyclable”; and (C) either made from plastic #3-7, unidentified plastic, or packaged in a plastic
 2 shrink sleeve (the “Products”).⁴ The Products are manufactured or distributed by Defendant and
 3 advertised or labeled as recyclable. However, the Products are not in fact recyclable because
 4 people do not have access to recycling programs that accept the Products, the Products cannot be
 5 separated or recovered from the general waste stream and sorted into the correct materials bale by
 6 material recovery facilities (“MRFs”), and there are no end markets to reuse the Products or to
 7 convert the Products into a material that can be reused or used in manufacturing or assembling
 8 another item. Despite Defendant’s extensive advertising and labeling of the Products as
 9 recyclable, most of the Products typically end up in landfills, incinerators, communities, or the
 10 natural environment.

11 3. Under California’s Environmental Marketing Claims Act (the “EMCA”), anyone
 12 who manufactures or distributes a consumer good and represents in advertising or on the label
 13 that it is not harmful to, or is beneficial to, the natural environment, through the use of such terms
 14 as “environmentally safe,” “ecologically friendly,” or other like terms, must maintain written
 15 records supporting the validity of any such representation. Business & Professions Code §
 16 17580(a). The term “recyclable” is a term that represents that a product or packaging is not
 17 harmful to, or is beneficial to, the natural environment, and is therefore covered under Business &
 18 Professions Code § 17580(a). In fact, the EMCA specifically requires companies to maintain
 19 information and documentation as to whether such products or packaging conform with the
 20

21 ⁴Non-exclusive examples of the Products include, but are not limited to: Great Value Organic
 22 Cinnamon Applesauce Cups, 24 oz, 6 Count, Walmart #556055661, UPC No. 0-7874213534-2,
 23 Product No. 136051; Great Value Diced Mangos In 100% Juice, 4 oz, 4 Count, Walmart
 24 #562987172, UPC No. 0-7874215803-7, Product No. 142059; Great Value Organic Diced
 25 Peaches & Pears, 16 oz., 4 Count, Walmart #562987178, UPC No. 0-7874223615-5, Product No.
 26 142059; Great Value Premium Forks, 48 Count, Walmart #438491, UPC No. 0-7874211675-4,
 27 Product No. 042499; Great Value Premium Clear Cutlery Knives, 48 Count, Walmart #438505,
 28 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 uniform standards contained in the Federal Trade Commission Guidelines for Environmental
2 Marketing Claims (the “Green Guides”) for use of the terms “recycled” or “recyclable.” *Id.*, §
3 17580(a)(5). In addition to documents regarding whether the consumer good conforms with the
4 Green Guides, the EMCA also requires that companies maintain the following records in written
5 form supporting the validity of their recyclable representations: (1) the reasons why a company
6 believes the representation to be true; (2) any significant adverse environmental impacts directly
7 associated with the production, distribution, use, and disposal of the consumer good; (3) any
8 measures that are taken by the company to reduce the environmental impacts directly associated
9 with the production, distribution, and disposal of the consumer good; and (4) violations of any
10 federal, state, or local permits directly associated with the production or distribution of the
11 consumer good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its intent that the
12 information and documentation supporting the validity of any environmental marketing claims
13 shall be fully disclosed to the public, and information and documentation maintained pursuant to
14 Business & Professions Code § 17580 must be furnished to any member of the public upon
15 request. *Id.*, § 17580(b), (d).

16 4. The Green Guides also require marketers to ensure that their claims are supported
17 by a reasonable basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined
18 as competent and reliable scientific evidence, such as “tests, analyses, research, or studies that
19 have been conducted and evaluated in an objective manner by qualified persons and are generally
20 accepted in the profession to yield accurate and reliable results.” *Id.* “Such evidence should be
21 sufficient in quality and quantity based on standards generally accepted in the relevant scientific
22 fields, when considered in light of the entire body of relevant and reliable scientific evidence, to
23 substantiate that each of the marketing claims is true.” *Id.*

24 5. Greenpeace has requested on numerous occasions that Defendant substantiate that
25 the Products are recyclable in California or elsewhere in the United States. However, Defendant
26 has not provided any documentation in written form substantiating the recycling representations
27 on the labels of the Products. Nor has Defendant provided any competent and reliable scientific
28 evidence, such as tests, analyses, research or studies that have been conducted and evaluated in an

1 objective matter by qualified persons, to substantiate that the Products are recyclable. Defendant
2 thus violated and continues to violate California's Unfair Competition Law ("UCL"), Business
3 and Profession Code § 17200, *et seq.*, based on unlawful and unfair acts and practices because
4 Defendant sells Products advertised or labeled as recyclable but has not and cannot substantiate
5 that the Products are recyclable pursuant to the EMCA and the Green Guides.

6 6. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
7 an award of monetary damages would not prohibit Defendant's unsubstantiated recycling
8 representations. Moreover, monetary damages would not remedy Defendant's unlawful refusal to
9 provide information that is mandated by statute to be disclosed to Greenpeace upon request. If an
10 injunction is not granted, Plaintiff will suffer irreparable injury because it will continue to spend
11 money, staff time and other organizational resources to combat Defendant's unsubstantiated
12 representations that the Products are recyclable in California and to inform the public that the
13 Products are not recyclable in California. In addition, plastic pollution caused by Defendant's
14 sale of the Products in California and the resulting harms to California waters, coasts,
15 communities, and marine life will continue to negatively impact Greenpeace's efforts to protect
16 these critical resources. California residents may also unknowingly contaminate the recycling
17 stream by placing the Products in their recycling bins, preventing legitimately recyclable products
18 from being recycled. Denial of access to statutorily required information is harming Greenpeace
19 because it must continue to divert resources to investigate and communicate with Defendant and
20 the public away from its advocacy efforts to promote legitimate recycling, to protect the integrity
21 of recycling infrastructure, to foster sustainable alternatives to single-use plastic, to limit the
22 impact of plastic pollution on the environment, and to educate the public regarding the types of
23 plastic that may actually be recycled. Thus, Plaintiff seeks an order enjoining Defendant's
24 unlawful and unfair acts and practices in California, which serves the public interest by protecting
25 the environment and the integrity of the recycling stream and by preventing Defendant from
26 gaining an unfair advantage over companies that can substantiate that the products they sell are
27 recyclable.

28

LEGAL BACKGROUND

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2 7. In light of the significant amount of plastic that is advertised and labeled as
3 recyclable but instead ends up in landfills, incinerators, communities, and the natural
4 environment, the Legislature of the State of California has declared that “it is the public policy of
5 the state that environmental marketing claims, whether explicit or implied, should be
6 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers
7 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy
8 is based on the Legislature’s finding that “littered plastic products have caused and continue to
9 cause significant environmental harm and have burdened local governments with significant
10 environmental cleanup costs.” *Id.*, § 42355. On October 5, 2021, California’s Governor signed
11 Senate Bill 343 (“SB 343”), which amended Cal. Pub. Res. Code § 42355.5 to state that “the
12 Legislature further finds and declares that it is the public policy of the state that claims related to
13 the recyclability of a product or packaging be truthful in practice and accurate. Consumers
14 deserve accurate and useful information related to how to properly handle the end of life of a
15 product or packaging.” *Id.*, § 42355.5(b).

16 8. Similar to the public policy declared in the California Public Resources Code, the
17 EMCA and the Green Guides require companies to substantiate environmental marketing claims.
18 Under the EMCA, “Any person who represents in advertising or on the label or container of a
19 consumer good that the consumer good that it manufactures or distributes is not harmful to, or is
20 beneficial to, the natural environment, through use of such terms as ‘environmental choice,’
21 ‘ecologically friendly,’ ‘earth friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’
22 ‘environmentally sound,’ ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’
23 ‘green product,’ or any other like term, shall maintain in written form in its records...information
24 and documentation supporting the validity of the representation.” Business & Professions Code §
25 17580(a). The term “recyclable” is a term that represents that a product or packaging is not
26 harmful to, or is beneficial to, the natural environment, and is therefore covered under Business &
27 Professions Code § 17580(a). In fact, the EMCA specifically requires companies to maintain
28 information and documentation as to whether such products or packaging conform with the

1 uniform standards contained in the Green Guides for use of the terms “recycled” or “recyclable.”
2 *Id.*, § 17580(a)(5). In addition to documents regarding whether the consumer good conforms with
3 the Green Guides, the EMCA requires that companies maintain the following records in written
4 form supporting the validity of their recyclable representations: (1) the reasons why a company
5 believes the representation to be true; (2) any significant adverse environmental impacts directly
6 associated with the production, distribution, use, and disposal of the consumer good; (3) any
7 measures that are taken by the company to reduce the environmental impacts directly associated
8 with the production, distribution, and disposal of the consumer good; and (4) violations of any
9 federal, state, or local permits directly associated with the production or distribution of the
10 consumer good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its intent that the
11 information and documentation supporting the validity of any environmental marketing claims
12 shall be fully disclosed to the public, and information and documentation maintained pursuant to
13 Business & Professions Code § 17580 must be furnished to any member of the public upon
14 request. *Id.*, § 17580(b), (d). Further, SB 343 amended section 17580 to confirm that a person
15 who represents in advertising or on the label of container of a consumer good that the consumer
16 good is not harmful to, or is beneficial to, the natural environment “through the use of a chasing
17 arrows symbol or by otherwise directing a consumer to recycle the consumer good,” shall
18 maintain written records substantiating the validity of such representations.

19 9. The Green Guides also require marketers to ensure that their claims are supported
20 by a reasonable basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined
21 as competent and reliable scientific evidence, such as “tests, analyses, research, or studies that
22 have been conducted and evaluated in an objective manner by qualified persons and are generally
23 accepted in the profession to yield accurate and reliable results.” *Id.* “Such evidence should be
24 sufficient in quality and quantity based on standards generally accepted in the relevant scientific
25 fields, when considered in light of the entire body of relevant and reliable scientific evidence, to
26 substantiate that each of the marketing claims is true.” *Id.*

27 10. Under the Green Guides, “A product or package shall not be marketed as
28 recyclable unless it can be collected, separated, or otherwise recovered from the waste stream

1 through an established recycling program for reuse or use in manufacturing or assembling another
2 item.” 16 C.F.R. § 260.12(a). This definition encompasses the three prongs of recyclability that
3 are commonly used in the solid waste industry: (1) accessibility to recycling programs (“through
4 an established recycling program”); (2) sortation for recovery (“collected, separated, or otherwise
5 recovered from the waste stream”); and (3) end markets (“for reuse or use in manufacturing or
6 assembling another item”). The California Public Resources Code similarly defines recycling as
7 “the process of collecting, sorting, cleansing, treating, and reconstituting materials that would
8 otherwise become solid waste, and returning them to the economic mainstream in the form of raw
9 material for new, reused, or reconstituted products which meet the quality standards necessary to
10 be used in the marketplace.” Cal. Pub. Res. Code § 40180.

11 11. Defendant has published its own Recycling Playbook that defines recyclability in a
12 similar manner.⁵ The Playbook defines recyclability as a system of stages: “(1) Collection
13 (collection available for a substantial majority of consumers); (2) Sortation (packages are
14 separated and aggregated for further processing); (3) Processing (commercial processes recover
15 material); (4) End-Market (the recycled material is used in new products); and (5) Recycling Rate
16 (at least 30% recycling rate achieved for over 400 million inhabitants).” Thus, Defendant’s own
17 interpretation of recyclability requires access to recycling programs, sortation, and end markets.

18 12. As reflected in the Green Guides’ language and regulatory history, the FTC does
19 not consider a product to be recyclable unless it is actually recycled. For instance, the Green
20 Guides provide that: (1) “[i]f any component significantly limits the ability to recycle the item,
21 any recyclable claim would be deceptive;” and (2) “an item that is made from recyclable material,
22 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,
23 should not be marketed as recyclable.” 16 C.F.R. §§ 260.12(a) and (d); *see also id.* § 260.12(d),
24 Examples 2 and 6. And in promulgating the current recycling definition that encompasses

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27 ⁵ *The Recycling Playbook*, WALMART, INC., last updated Oct. 25, 2019, accessible at:
28 https://www.walmartsustainabilityhub.com/media-library/document/recycling-playbook-november-2019/_proxyDocument?id=0000016e-384f-d8af-a96e-beff25150000 (last accessed on Feb. 17, 2022).

1 accessibility, sortation, and end markets, the FTC clarified that “[f]or a product to be called
2 recyclable, there must be an established recycling program, municipal or private, through which
3 the product *will be* converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84,
4 24247 (May 1, 1998) (emphasis added). As the FTC has stated, “while a product may be
5 technically recyclable, if a program is not available allowing consumers to recycle the product,
6 there is no real value to consumers.” *Id.* at 24243.

7 PARTIES

8 13. Plaintiff Greenpeace Inc. is a non-profit, public interest organization established
9 pursuant to section 501(c)(4) of the Internal Revenue Code, and headquartered in Washington,
10 D.C. Greenpeace has worked to combat plastic pollution, to protect California coasts and marine
11 life from a myriad harms related to plastic pollution, and to ensure that companies do not falsely
12 tout the environmental benefits of their products when none exist. Greenpeace has standing to
13 bring this action because Defendant has refused to provide information to Greenpeace that is
14 subject to mandatory disclosure. Defendant’s continued refusal to provide Greenpeace with
15 access to this statutorily required substantiation is causing ongoing informational injury to
16 Greenpeace. Greenpeace also has standing to bring this action because Defendant’s conduct of
17 representing in advertising or on the label of the Products that the Products are recyclable in
18 California without being able to substantiate whether the Products are in fact recyclable in
19 California has frustrated Greenpeace’s mission to ensure that Products labeled as environmentally
20 beneficial actually benefit the environment. Defendant’s refusal to provide the information it is
21 legally obligated to provide has caused, and continues to cause, Greenpeace to spend money, staff
22 time, and other organizational resources in California in response to that frustration of purpose.
23 Greenpeace has diverted resources, and continues to divert resources, from its state and federal
24 advocacy efforts to investigate Defendant regarding its unsubstantiated claims, to contact
25 Defendant seeking substantiation, and to inform the public that Defendant’s claims are
26 unsubstantiated and therefore unreliable. Thus, Greenpeace has lost money or property as a result
27 of Defendant’s unlawful and unfair acts and continues to suffer injury in fact due to Defendant’s
28 ongoing conduct.

1 14. Greenpeace was formed in 1971 as a global, independent campaigning
2 organization that uses peaceful protest and creative communication to expose global
3 environmental problems and promote solutions that are essential to a green and peaceful future.
4 Greenpeace campaigns are science-based and centered on the core values of justice, equity, and
5 inclusion. Greenpeace pursues its mission through research, reports, surveys, policy proposals,
6 government outreach and lobbying, coalition building and allyship, advocacy, education, public
7 demonstrations and rallies, protests, litigation, and press and public outreach. Greenpeace also
8 has many supporters with whom Greenpeace communicates through blog posts, social media,
9 emails, phone calls, text messages, webinars, and dedicated supporter mobilization.

10 15. A core aspect of Greenpeace’s mission is to educate the public with respect to
11 important environmental issues, such as recycling. Nearly every Greenpeace campaign involves
12 educating the public on the causes, impacts, and alternatives to products or processes that damage
13 public health, the environment, or human rights. Examples of such Greenpeace campaigns
14 include, but are not limited to, educating the public with respect to the hazards of bleached paper
15 products, chemical additives in plastic toys and household products, mercury in fish, and ozone-
16 depleting substances in refrigerators.

17 16. As part of its many educational campaigns, for over three decades Greenpeace has
18 engaged in various efforts to expose corporate greenwashing to prevent consumer product
19 companies from representing their goods as environmentally friendly or benign without adequate
20 substantiation. Greenpeace has worked tirelessly to expose examples of corporate greenwashing
21 to protect people from products advertised as environmentally friendly when such products harm
22 the environment instead. Greenpeace has led campaigns against oil companies, electronic
23 manufacturers, and consumer good corporations and retailers for touting the environmental
24 benefits of their products when, in fact, the products manufactured and sold by such companies
25 caused significant environmental harm. Greenpeace advocates to prevent corporate greenwashing
26 and educates the public on such greenwashing so that people have the information available to
27 make informed decisions about the environmental impacts of their purchases.

28

1 17. Greenpeace has been working to prevent the proliferation of plastic pollution for
2 nearly four decades. Greenpeace has had numerous campaigns related to plastic pollution,
3 including but not limited to educating people on greenwashing statements that certain plastic was
4 biodegradable or recyclable when it was not, exposing the shipment of plastic waste to
5 developing countries, seeking to replace polyvinyl chloride plastic with less toxic alternatives,
6 exposing the health problems associated with incinerating plastic, and reducing or eliminating
7 single-use plastic packaging because of its impacts on the marine ecosystem, the climate,
8 communities, and human health.

9 18. Greenpeace's campaigns related to plastic holistically focus on the lifecycle of
10 plastic, from the harmful feedstock chemicals used to make plastic to the sheer amount of single-
11 use plastic generated and ultimately discarded. Greenpeace cares deeply about the proliferation
12 of plastic because it has witnessed the harmful effects of plastic pollution on various ecosystems
13 and human health. The goals of Greenpeace's climate and oceans campaigns call for solutions
14 that include drastically reducing the use of single-use plastic and finding alternatives to plastic
15 products and packaging, reusing plastic products when no other alternatives are available, and
16 properly recycling products if they cannot be eliminated or reused.

17 19. Greenpeace's campaigns related to plastic pollution also include educating the
18 public about false or unsubstantiated environmental marketing claims, such as informing the
19 public about the low amount of plastic that is actually recycled and instead ends up in landfills,
20 incinerators, communities, or the natural environment. Thus, while investigating the low
21 recycling rates of plastic products, Greenpeace has simultaneously analyzed recyclable
22 representations present on the labels of products sold by major retailers and manufacturers.
23 Greenpeace has spent, and continues to spend, substantial time and money engaging with retailers
24 and consumer product companies to seek substantiation regarding representations that products
25 are recyclable, to encourage them to reduce the amount of non-recyclable plastic used in their
26 products and packaging, and to discourage them from representing that products are recyclable
27 when they are not. Many of these campaign activities have been based in California, and many of
28 those California-based activities have been directed at Defendant.

1 20. A company’s size and scope affect its plastic footprint, and due to Defendant’s
2 large volume of products made from or packaged in plastic, Greenpeace determined that
3 Defendant is responsible for a substantial amount of plastic pollution. In late 2018, Greenpeace
4 began research on the plastic and recycling policies and practices of Defendant and other retailers,
5 leading to the June 2019 release of *Packaging Away the Planet*.⁶ *Packaging Away the Planet* was
6 a report published by Greenpeace, including significant input from Greenpeace’s California-based
7 staff, that evaluated the plastic footprint of major U.S. grocery retailers, including Defendant.
8 During the time period that Greenpeace was preparing the *Packaging Away the Planet* report,
9 Greenpeace spent money, staff time, and other resources organizing its supporters to raise
10 awareness of Defendant’s contribution to the proliferation of plastic pollution. For example, on
11 February 6, 2019, Greenpeace organized a “day of action” in which supporters photographed
12 Defendant’s plastic pollution in Los Angeles, California and St. Petersburg, Florida to highlight
13 the amount of single-use plastic pollution generated by Defendant. Greenpeace also created a
14 petition and paid for it to be circulated on Facebook through Facebook Ads requesting Defendant
15 to “ditch plastic packaging” and sent out numerous posts to its Twitter followers regarding
16 Defendant’s failure to reduce single-use plastic. Greenpeace spent approximately \$43,430 on the
17 advertisements, which included advertisements in California.

18 21. Greenpeace’s investigation of Defendant’s recycling representations has largely
19 been based in California. Greenpeace has five staff members located in California that were
20 heavily involved in investigating Defendant, seeking substantiation that the Products are
21 recyclable, and exposing Defendant’s practice of making unsubstantiated claims about the
22 recyclability of the Products, including its Senior Oceans Campaigner (formerly the Senior
23 Plastics Campaigner), two National Mobilization Organizers, Senior National Organizer, and
24 Program Operations Specialist. Each one of these staff members spent a significant amount of
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27 ⁶ David Pinsky and James Mitchell, *Packaging Away the Planet: U.S. Grocery Retailers and the*
28 *Plastic Pollution Crisis*, GREENPEACE REPORTS, June 11, 2019,
<https://www.greenpeace.org/usa/reports/packaging-away-the-planet-2019/> (last accessed Feb. 18, 2022).

1 time in California to counter Defendant's unsubstantiated recycling representations present on the
2 labels of Products it sold in California. For example, Greenpeace's California-based staff drafted
3 a survey which was sent by Greenpeace staff from California to various companies, including
4 Defendant. That survey asked Defendant to respond to questions regarding its plastic use policies
5 and practices, including questions regarding its labeling practices with respect to the recyclability
6 of single-use plastics. Following that survey, California-based Greenpeace staff had other written
7 and verbal communications with Defendant regarding its responses to the survey. Defendant's
8 responses to the survey did not substantiate that the Products are recyclable pursuant to the
9 EMCA or the Green Guides.

10 22. For example, Greenpeace's Senior Plastics Campaigner spent scores of hours of
11 his time engaging with Defendant on plastics issues, including communications to determine
12 whether Defendant could substantiate that the Products are recyclable and to discourage
13 Defendant from labeling the Products as recyclable without substantiation. Greenpeace's Senior
14 Plastics Campaigner—who was based in Oakland, California from September 2017 to January
15 2021—was the lead author on Greenpeace's Packaging Away the Planet report, which included a
16 ranking of Defendant's plastic pollution footprint. The Senior Plastics Campaigner
17 communicated with Defendant to share the survey mentioned above, answer questions, provide
18 updates, and seek clarification on issues related to Defendant's plastic footprint and its
19 substantiation of recyclable claims. In October 2019, Greenpeace's Senior Plastics Campaigner
20 sent an email from California to Defendant explicitly discussing the issues related to Defendant's
21 unsubstantiated recycling representations and informing Defendant that its labels do not meet the
22 standards in the Green Guides. Accordingly, Greenpeace's Senior Plastics Campaigner, as well
23 as Greenpeace's other California-based staff members, diverted a significant amount of time in
24 California to engage with Defendant with respect to its unsubstantiated recycling representations
25 instead of spending their time on Greenpeace's multitude of other plastic pollution campaigns.

26 23. Greenpeace's Truth in Recyclable Labels Campaign involves the participation of
27 Greenpeace's entire plastic campaign team, including several California-based staff. That
28 campaign, which is ongoing, seeks to ensure that corporate marketing efforts aimed at

1 representing the recyclability of products and packaging to people are accurate, legal, and
2 substantiated. Greenpeace uncovered evidence of problematic marketing claims with respect to
3 recyclability in California and elsewhere in the United States involving several retailers and
4 consumer goods companies, including Defendant. Greenpeace staff in California shared
5 documentation with companies and set up conversations to discuss its findings and to ensure
6 appropriate changes were made.

7 24. For instance, in August 2019, Greenpeace hired a recycling consultant for its Truth
8 in Recyclable Labels Campaign. The contract for the consultant ran from August 8, 2019 to
9 December 31, 2019, and Greenpeace paid the consultant \$25,000 for her work. The consultant's
10 deliverables included: (1) a recycling briefing document (in PowerPoint) which describes the U.S.
11 federal regulatory approach, existing product industry programs, recycling market changes,
12 current lawsuits and the technical basis for claiming deceptive labeling; and (2) campaign briefs
13 (in PowerPoint with photos) to enable Greenpeace to engage with product and retail companies to
14 correct labeling of plastic products. For the second deliverable, Greenpeace requested that the
15 consultant identify three companies to investigate based on egregious and unsubstantiated
16 labeling practices on plastic products that are not recyclable. Defendant was subsequently
17 identified as one of the three companies to target, and the consultant and Greenpeace staff
18 (including California-based Greenpeace staff) spent a significant amount of time and resources
19 analyzing and investigating Defendant's unsubstantiated recyclability representations on the
20 labels of Products sold in California. Approximately 15% of the consultant's time was dedicated
21 to investigating Defendant.

22 25. Greenpeace spent money, staff time, and other organizational resources managing
23 the consultant. For example, Greenpeace's Oceans Campaign Director was responsible for
24 managing the consultant and dedicated at least ten hours of his time working with the consultant
25 to investigate Defendant's unsubstantiated recycling representations. Greenpeace's Oceans
26 Campaign Director and the consultant had several discussions regarding conducting research on
27 retailers and manufacturers large enough to be significant players in addressing the plastic
28 pollution crisis, including Defendant.

1 26. On October 6, 2019, as part of the work for Greenpeace under the contract, the
2 consultant visited a Walmart store located at 30491 Av. De Las Flores, Rancho Santa Margarita,
3 CA 92688. The consultant took numerous photographs of the Products, including the following:
4 Great Value Organic Cinnamon Applesauce Cups, 24 oz, 6 Count, Walmart #556055661, UPC
5 No. 0-7874213534-2, Product No. 136051; Great Value Diced Mangos In 100% Juice, 4 oz, 4
6 Count, Walmart #562987172, UPC No. 0-7874215803-7, Product No. 142059; Great Value
7 Organic Diced Peaches & Pears, 16 oz., 4 Count, Walmart #562987178, UPC No. 0-7874223615-
8 5, Product No. 142059; Great Value Premium Forks, 48 Count, Walmart #438491, UPC No. 0-
9 7874211675-4, Product No. 042499; Great Value Premium Clear Cutlery Knives, 48 Count,
10 Walmart #438505, UPC No. 0-7874211670-9, Product No. 042499; Great Value Premium
11 Assorted Silver Cutlery, 36 count, Walmart #565175504; Great Value Snack Cups, 9 oz, 80
12 Count, Walmart #443461, UPC No. 0-681131925532, Manufacturer No. 6386717; Great Value
13 Everyday Party Cups, 18 oz, 20 Count, Walmart #443482, UPC No. 0-78742049090,
14 Manufacturer No. 6386484; Great Value Extra Virgin Olive Oil Cooking Spray, 7 oz., 3 Pack,
15 UPC No. 0-7874206043-9, Product No. 928333; Great Value Ultimate Fresh Scent Booster,
16 Blooming Lavender, 14.8 oz, Walmart #575777817, UPC No. 0-7874233153-9, Product No.
17 03604; and Great Value Plastic Party Cups, 18 oz, 120 Count, Walmart #557007144, UPC No. 0-
18 7874218708-2, Product No. 437462.

19 27. On October 27, 2019, the consultant prepared a 20-page PowerPoint report for
20 Greenpeace required by her contract that included many of the photographs taken at the Walmart
21 store located in Rancho Santa Margarita, CA. The report was based on the consultant's
22 investigation in California. Greenpeace staff located in California then spent a significant amount
23 of time reviewing the report and further investigating Defendant in California.

24 28. Based on the consultant's work and the time spent by Greenpeace staff members,
25 including the staff members located in California, Greenpeace determined that Defendant
26 frustrated Greenpeace's purpose by touting the environmental benefits of the Products without
27 substantiating the validity of such environmental benefits. But for the report prepared by the
28 consultant based on unsubstantiated recyclable representations on the labels of Products sold by

1 Defendant in California and the time spent by Greenpeace staff members located in California,
2 Greenpeace would not have included Defendant in its Truth in Recyclable Labels Campaign.
3 Thus, Greenpeace diverted money, staff time, and other organizational resources to fund and
4 manage the consultant and further investigate Defendant's unsubstantiated recycling
5 representations, which would have been used for Greenpeace's other campaigns and projects,
6 including its other plastic campaigns.

7 29. Greenpeace has also published reports and surveys documenting the low recycling
8 rates of various plastic products, including a comprehensive U.S. Survey of Plastics Recyclability
9 entitled *Circular Claims Fall Flat*, published on February 18, 2020 (the "CCFF Report").⁷ The
10 CCFF Report is a thorough survey of plastic product waste collection, sortation, and reprocessing
11 in the United States to determine the legitimacy of recyclable claims and labels on single-use
12 plastic products. The survey was based on current conditions in October 2019 to January 2020
13 and U.S. Federal Trade Commission guidelines. The survey directly evaluated Defendant's
14 recyclability labels and Defendant's packaging design guides for recyclability, as well as
15 numerous other recycling guides. A portion of the CCFF Report analyzes the recyclability of
16 single-use plastic in California, which was prepared with the help of Greenpeace staff located in
17 California.

18 30. After initially spending money, staff time, and other organizational resources to
19 specifically investigate Defendant's recyclable representations in California, Greenpeace diverted
20 additional resources to inform Defendant that the Products are not recyclable and to request that
21 Defendant substantiate the validity of its recycling representations. For instance, in February
22 2020, Greenpeace's Senior Plastics Campaigner drafted and sent an email in California to
23 Defendant regarding the implications of the CCFF Report, which described the low rate of
24 recyclability for products that Defendant labeled as recyclable. From California, Greenpeace's
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27 ⁷ 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 Feb. 17, 2022).

1 Senior Plastics Campaigner then arranged for a meeting with Defendant and various other
2 retailers at an industry conference to discuss recyclable representations on plastic products and
3 afford Defendant an opportunity to substantiate its recycling representations. Greenpeace has
4 since published press releases identifying Defendant's unsubstantiated recyclable representations
5 to inform the public of such issues.

6 31. In January 2021, Greenpeace started work on the sequel to the CCFF Report with
7 the working title "Plastic Pledges Fall Flat: Companies on Dead End Recyclability Path."
8 Greenpeace hired the same consultant it worked with for its Truth in Recyclable Labels
9 Campaign, which will cost Greenpeace additional money. As part of her work for the sequel to
10 the CCFF Report, the consultant is continuing to spend time and money investigating Defendant's
11 unsubstantiated recycling representations. Had Defendant maintained in written form its records
12 substantiating its recyclability claims and provided that information to Greenpeace upon request,
13 Greenpeace would not need to spend additional money, staff time, and organizational resources
14 on the consultant to further investigate Defendant's unsubstantiated recycling representations.

15 32. Because Greenpeace's mission involves combatting plastic pollution, protecting
16 California coasts and marine life from myriad harms related to plastic pollution, and preventing
17 companies from touting the environmental benefits of their products when none exist,
18 Defendant's unsubstantiated representations that its Products are recyclable in California and
19 elsewhere in the United States has frustrated Greenpeace's purpose. Defendant's continued use
20 of unsubstantiated recyclability representations serves to confuse the public about plastic products
21 and packaging and gives them a false sense that they are doing something good for the
22 environment when they purchase Defendant's Products and then place them into their recycling
23 bins. Defendant's frustration of Greenpeace's purpose has forced Greenpeace to spend money,
24 staff time, and other organizational resources investigating Defendant's representations and
25 pressuring Defendant to substantiate the validity of the recyclable representations on the labels of
26 the Products or to stop using such representations. Greenpeace also spent, and continues to
27 spend, a significant amount of money, staff time, and other organizational resources to educate its
28 supporters, the public, and the media that a Product labeled by Defendant as recyclable is

1 unsubstantiated and therefore unlikely to be recycled in California or elsewhere in the United
2 States. Greenpeace would have used its money, staff time, and organizational resources on other
3 campaigns or projects related to plastic pollution, but the large number of Defendant's
4 unsubstantiated recycling representations in California required Greenpeace to focus its attention
5 on Defendant's actions in California. These actions have caused Greenpeace to lose money or
6 property and it has therefore suffered an injury in fact.

7 33. In addition, section 17580 of the EMCA specifically requires access to information
8 substantiating the validity of environmental marketing claims. The California Legislature stated
9 its intent "that the information and documentation supporting the validity of the representation
10 maintained under this section shall be fully disclosed to the public, within the limits of all
11 applicable laws." B&P 17580(d). Defendant's refusal to provide Greenpeace with this statutorily
12 required information upon request is causing injury to Greenpeace that will continue unless and
13 until Defendant is required to provide such information to Greenpeace. Because Greenpeace
14 lacks access to accurate information from Defendant, it is hindered in its advocacy to promote
15 legitimate recycling, to protect the integrity of recycling infrastructure, to foster sustainable
16 alternatives to single-use plastic, to limit the impact of plastic pollution on the environment, and
17 to educate the public regarding the types of plastic that may actually be recycled. Consequently,
18 Greenpeace must continue to spend more time investigating and requesting information from
19 Defendant and less time pursuing its stated mission of protecting the environment from plastic
20 pollution and advocating for legislation at both the state and federal level for proper labeling
21 regarding the recyclability of plastic products. Greenpeace continues to divert resources from its
22 lobbying and advocacy efforts in order to counteract the potentially harmful effects that occur
23 when Defendant advertises and sells Products as recyclable without adequate information
24 ensuring that such Products are actually recyclable.

25 34. Greenpeace continues to spend money, staff time, and other organizational
26 resources to combat Defendant's unsubstantiated representations that the Products are recyclable.
27 Ongoing efforts expended on persuading Defendant to substantiate its recycling claims and
28 comply with its own public commitments and legal obligations comes at the expense of

1 Greenpeace's capacity to work with other corporations or advance its policy objectives.
2 Greenpeace actively engages with dozens of companies about plastic packaging via reports like
3 Shopping for Plastic⁸ and The Climate Emergency Unpacked,⁹ through direct dialogue with
4 corporate executives, and through multi-stakeholder fora such as the Ocean Plastic Leadership
5 Network. Greenpeace also plays a significant role in policy advocacy at the state, federal, and
6 global level. For instance, Greenpeace helped pass several plastic bills in California in 2021,
7 including SB 343. Greenpeace is heavily involved in federal legislation to establish a national
8 bottle deposit program, to implement the Basel Convention, to pass the Break Free From Plastic
9 Pollution Act, and to pass federal legislation modeled after California legislation regarding
10 truthful recycling labels on plastic products. Greenpeace is also campaigning for a Global Plastic
11 Treaty through the United Nations. The resources that Greenpeace has diverted, and continues to
12 divert, specifically investigating and communicating with Defendant has come at the expense of
13 spending money, staff time and other organizational resources on all these other projects and
14 campaigns. For example, had Defendant provided the information it is required to disclose under
15 the statute, Greenpeace would not have had to request that its consultant continue to investigate
16 Defendant's unsubstantiated representations for its sequel to the CCFF Report.

17 35. Greenpeace is particularly concerned with the integrity of the recycling stream.
18 The California Legislature enacted section 17580 of the EMCA to ensure that companies
19 maintain adequate records that products marketed as beneficial to the environment will actually
20 benefit the environment, and to ensure public access to such records. Without adequate
21 information regarding Defendant's recycling representations, Greenpeace will continue to divert
22 resources to investigate and communicate with Defendant to ensure that Defendant's Products do
23 not harm the integrity of the recycling stream by preventing legitimately recyclable material from
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25 ⁸ *Shopping for Plastic: The 2021 Supermarket Plastic Ranking*, GREENPEACE,
26 <https://www.greenpeace.org/usa/shopping-for-plastic-2021/> (last accessed Feb. 18, 2022).

27 ⁹ Joan O'Callaghan, Rachel Head, *The Climate Emergency Unpacked: How Consumer Goods*
28 *Companies Are Fueling Big Oil's Plastic Expansion*, GREENPEACE REPORTS, September 2021,
<https://www.greenpeace.org/usa/reports/the-climate-emergency-unpacked/> (last accessed Feb. 18,
2022)

1 being recycled. For example, due to Defendant's failure to provide substantiation required by the
2 EMCA, Greenpeace continues to advocate to Defendant to redesign its packaging, to stop using
3 single-use plastics, and to stop labeling its Products as recyclable when they do not appear to be.
4 Greenpeace would not need to continue to take such actions if Defendant complied with the law
5 in the first place.

6 36. Absent relief from this Court, Plaintiff will suffer irreparable injury because it will
7 continue to be deprived of information that it is statutorily entitled to obtain. Plaintiff will also be
8 forced to continue to spend money, staff time, and other organizational resources to combat
9 Defendant's unsubstantiated recycling representations in California and to inform the public that
10 the Products are not recyclable in California. Likewise, it will continue to divert resources from
11 its other lobbying and advocating activities to investigate and communicate with Defendant and
12 the public regarding Defendant's unlawful and unfair conduct. In addition, plastic pollution
13 caused by Defendant's sale of the Products in California and the resulting harms to California
14 waters, coasts, communities, and marine life will continue to negatively impact Greenpeace's
15 efforts to protect these critical resources. California residents may also contaminate the recycling
16 stream by unknowingly placing the Products in their recycling bins, preventing legitimately
17 recyclable products from being recycled. Thus, relief from this Court is in the public interest by
18 protecting the environment and the integrity of the recycling stream and is necessary to further
19 Greenpeace's mission of prohibiting companies from touting the environmental benefits of their
20 products without substantiating the validity of such environmental benefits.

21 37. Defendant Walmart Inc. is a Delaware corporation with its principal place of
22 business in Bentonville, Arkansas. Defendant Walmart Inc. manufactures, distributes, markets,
23 and sells the Products in California. Defendant has a significant presence in California, with 142
24 Supercenters, 71 Discount Stores, 78 Neighborhood Markets and other small formats, and 29
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1 Clubs.¹⁰ In total, Defendant has 320 locations in California, making California its third largest
2 market.

3 **JURISDICTION AND VENUE**

4 38. By removing this case to federal court, Defendant has alleged that this Court has
5 jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1332(a) and 1441. *See*
6 Notice of Removal, filed Jan. 29, 2021 [ECF Docket No. 1].

7 39. This Court has jurisdiction over Defendant because it is a corporation or other
8 entity that has sufficient minimum contacts in California, is a citizen of California, or otherwise
9 intentionally avails itself of the California market either through the distribution, sale or
10 marketing of the Products in the State of California or by having a facility located in California so
11 as to render the exercise of jurisdiction over it by the California courts consistent with traditional
12 notions of fair play and substantial justice. Because California is Defendant's third largest market
13 with approximately 320 locations, Defendant purposefully directs its activities toward California
14 and purposefully avails itself of the privileges of conducting activities in California.

15 40. In addition, the claims in this case arise out of Defendant's California-related
16 activities. Defendant markets and sells the Products in California at its 320 California locations
17 as well as its website, which sells the Products to California residents. While Defendant
18 represents in advertising or on the label of the Products that that the Products are recyclable in
19 California, Defendant has failed to substantiate that representation in California or elsewhere.
20 Greenpeace has spent significant money, staff time, and other organizational resources in
21 California to counter Defendant's unsubstantiated recyclability representations on Products sold
22 in California. Thus, Greenpeace's claim that Defendant represents in advertising or on the label
23 of the Products that that the Products are recyclable in California when, in fact, the Products are
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27 ¹⁰ *Walmart Inc. Form 10-K for Fiscal Year Ended Jan. 31, 2021*, EDGAR U.S. S.E.C. Ann. Rep.
28 <https://www.sec.gov/ix?doc=/Archives/edgar/data/104169/000010416921000033/wmt-20210131.htm#>.

1 not recyclable in California and Defendant has not substantiated that the Products are recyclable
2 in California arise out of Defendant's activities in California.

3 41. Venue in the County of Alameda is proper pursuant to 28 U.S.C. § 1391(a)
4 because Defendant is a resident of this District pursuant to 28 U.S.C. § 1391(c), and because a
5 substantial part of the events or omissions giving rise to the claim occurred in this District.

6 42. **Intradistrict Assignment (L.R. 3-2(c) and (d) and 3-5(b))**: This action arises in
7 Alameda County, in that a substantial part of the events which give rise to the claims asserted
8 herein occurred in Alameda County. Pursuant to L.R. 3-2(c), all civil actions which arise in
9 Alameda County shall be assigned to the San Francisco Division or the Oakland Division.

10 **BACKGROUND FACTS**

11 43. In the past decade humans across the globe have produced 8.3 billion metric tons
12 of plastic, most of it in disposable products and packaging that ends up as trash or pollution.¹¹ Of
13 the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only
14 9% of that has been recycled.¹² A third of the single-use plastic generated ends up in the natural
15 environment, accounting for 100 million metric tons of plastic pollution in 2016.¹³ Current
16 estimates suggest that there are over 150 million tons of plastics in the ocean.¹⁴ The
17 Environmental Protection Agency estimates that Americans alone disposed of 35.7 million tons
18 of plastic in 2018, 91.3% of which was not recycled.¹⁵ While California had a goal to achieve a
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20 ¹¹ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
21 Jul. 19, 2017, [https://plasticoceans.org/wp-
content/uploads/2018/05/Production use and fate of all plastics ever made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production%20use%20and%20fate%20of%20all%20plastics%20ever%20made.pdf) (last accessed
22 Feb. 18, 2022).

23 ¹² *Id.*

24 ¹³ *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019,
25 https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf at p. 6 (last
26 accessed Feb. 18, 2022).

27 ¹⁴ *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR
28 FOUNDATION AND MCKINSEY & COMPANY (2016), [https://plasticoceans.org/wp-
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 Feb. 18, 2022).

29 ¹⁵ EPA, *2018 Advancing Sustainable Materials Management: Facts and Figures Report –
Tables and Figures*. ([https://www.epa.gov/sites/production/files/2021-
01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf](https://www.epa.gov/sites/production/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf) (last accessed Feb. 14, 2021).

1 75% recycling rate by 2020, California’s recycling rate is actually in decline. According to
 2 CalRecycle, in 2014 California’s recycling rate was 50%, dropping to 47% in 2015 and down to
 3 44% in 2016.¹⁶ According to the California Statewide Commission on Recycling Markets and
 4 Curbside Recycling, the state’s recycling rate dropped to 37% in 2019.¹⁷

5 44. 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, National
 8 Public Radio (“NPR”) published an investigation illustrating the plastic industry’s decades-long
 9 awareness that recycling would not keep plastic products or packaging out of landfills,
 10 incinerators, communities, or the natural environment.¹⁸ In a 1974 speech, one industry insider
 11 stated “there is serious doubt that [recycling plastic] can ever be made viable on an economic
 12 basis.”¹⁹ Larry Thomas, former president of the Society of the Plastic Industry (known today as
 13 the Plastics Industry Association), told NPR that “if the public thinks that recycling is working,
 14 then they are not going to be as concerned about the environment.”²⁰ The NPR investigative
 15 report details the length and expense that the plastics industry went to deceive the public that
 16 plastic was easily recyclable, despite knowledge that the cost of recycling would never be
 17 economical. Similarly, a recent Canadian Broadcasting Corporation news report describes that
 18 even the recycling logo was used as a marketing tool to improve the image of plastics after
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 22 ¹⁶ *California’s Statewide Recycling Rate*, CALRECYCLE, last updated Mar. 3, 2020,
<https://www.calrecycle.ca.gov/75percent/recyclerate> (last accessed Feb. 18, 2022).

23 ¹⁷ California Statewide Commission on Recycling Markets and Curbside Recycling Policy
 24 Recommendations, CALRECYCLE,
<https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5>
 (last accessed Feb. 18, 2022).

25 ¹⁸ Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*.
 26 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)
[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 Feb. 18, 2022).

27 ¹⁹ *Id.*

28 ²⁰ *Id.*

1 environmental backlash in the 1980s.²¹ “There was never an enthusiastic belief that recycling
2 was ultimately going to work in a significant way,” yet the plastics industry spent millions on ads
3 to deceive the public as to the efficacy of recycling.²²

4 45. After decades of industry disinformation that plastic products and packaging are
5 recyclable, individuals have recently become even more aware of the problems associated with
6 single-use plastics polluting the oceans and the natural environment. The staggering amount of
7 plastic pollution accumulating in the environment is accompanied by an array of negative side
8 effects. For example, plastic debris is frequently ingested by marine animals and other wildlife,
9 which can be injurious, poisonous, and deadly.²³ Floating plastic is also a vector for invasive
10 species,²⁴ and plastic that gets buried in landfills can leach harmful chemicals into ground water
11 that is absorbed by humans and other animals.²⁵ Plastic litter on the streets and in and around our
12 parks and beaches also degrades the quality of life for residents and visitors. Scientists have also
13 discovered that plastic releases large amounts of methane, a powerful greenhouse gas, as it

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21 ²¹ *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-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618> (last accessed Feb. 18, 2022).

22 ²² *Id.*

23 ²³ Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their*
24 *occurrence and implications for aquatic organisms and food safety*, FAO Fisheries and
Aquaculture Technical Paper No. 615, Rome, Italy, 2017 <http://www.fao.org/3/a-i7677e.pdf> (last
accessed Feb. 18, 2022).

25 ²⁴ *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,
26 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf)
[files/2017_Invasive_Species_Topic_Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf) (last accessed Feb. 18, 2022)

27 ²⁵ Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment*
28 *and to wildlife*, PHILIOS TRANS R. SOC. LOND. B. BIOL. SCI, July. 27, 2009,
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/> (last accessed Feb. 18, 2022).

1 degrades.²⁶ Thus, plastic pollution contributes to global climate change, which affects California
 2 in the form of extreme drought, sea level rise, and more frequent and severe wildfires.²⁷

3 46. There are various types of plastic resin that are used to produce single-use plastic
 4 products and packaging. All rigid plastic bottles and containers sold in California are required to
 5 include a molded label code that indicates the resin used to produce the plastic bottle or container.
 6 Cal. Pub. Res. Code § 18015. The code generally consists of a number placed inside a triangle to
 7 reflect the resin used to make the bottle or container. *Id.*

8 47. PET (plastic #1) and HDPE (plastic #2) are widely considered to be the most
 9 recyclable forms of plastic; however, studies indicate that even products and packaging made
 10 from these resins often end up in landfills, incinerators, communities, or the natural
 11 environment.²⁸ This is because MRFs and plastic reprocessing plants in the United States cannot
 12 collect, sort, and process the sheer volume of plastic that is generated by consumer product
 13 companies on an annual basis.²⁹ The labor and cost required to collect, sort, grind, melt, and
 14 reconstitute the approximately 35 million tons of single-use plastic produced in the United States
 15 every year is insurmountable. A recent Greenpeace study revealed that U.S. plastic reprocessing
 16 facilities can process no more than 23% of PET#1 plastic produced each year and no more than
 17 13% of HDPE#2.³⁰ More alarmingly, plastics #3-7, which are widely considered to be low-value
 18 plastics, are rarely, if ever recycled. The Greenpeace study revealed that MRFs can process only
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 21 ²⁶ Sarah-Jeanne Royer, et al., *Production of methane and ethylene from plastic in the*
 22 *environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574> (last accessed Feb. 18,
 2022).

23 ²⁷ *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,
 24 [https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf)
[ca.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf) (last accessed Feb. 18, 2022)

25 ²⁸ *Facts and Figures about Materials, Waste and Recycling*, U.S. EPA,
 26 [https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-](https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data)
[specific-data](https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data) (last accessed Feb. 18, 2022).

27 ²⁹ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, N.Y. TIMES, Mar. 16,
 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html> (last accessed
 28 Feb. 18, 2022).

³⁰ John Hocevar, *supra* note 7.

1 a negligible percentage of plastics #3-7.³¹ Additionally, reprocessing plastic creates a significant
 2 amount of plastic waste that must be landfilled or incinerated. According to the National
 3 Association for PET Container Resources (“NAPCOR”), processing “easy-to-recycle” PET
 4 bottles results in 28% material loss.³²

5 48. Due to the availability of cheap raw materials to make “virgin plastic,” there is
 6 essentially no market demand for most types of recycled plastic. Virgin plastic is derived from
 7 oil and natural gas and has a higher quality than recycled plastic. Recognizing the market
 8 potential from plastic production, major oil and natural gas companies have greatly expanded
 9 their petrochemical operations to increase production of plastic resins and products, which drives
 10 down the price of virgin plastic.³³ As a result, using virgin plastic to produce plastic products or
 11 packaging is cheaper than using recycled plastic. Recycling facilities no longer have an incentive
 12 to collect, sort, clean and reprocess waste plastic because there are almost no buyers of the
 13 resulting plastic, pellets, or scrap materials.

14 49. Historically, recycling facilities in the United States shipped plastic scrap to China
 15 and other countries in the Far East for recycling. But millions of pounds of that exported plastic
 16 waste was never recycled.³⁴ Instead, this plastic was burned or dumped into waterways, where it
 17 was carried into the ocean.³⁵ For years, tons of plastic that U.S. consumers dutifully sorted and

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 19 ³¹ *Id.*

20 ³² NAPCOR, Report on Postconsumer PET Container Recycling Activity in 2017,
https://napcor.com/wp-content/uploads/2018/11/NAPCOR_2017RateReport_FINAL_rev.pdf
 (last accessed Feb. 18, 2022).

21 ³³ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
[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)
 22 [Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Feb. 18, 2022).

23 ³⁴ Kara Lavender Law, et al. *The United States’ contribution of plastic waste to land and ocean*,
 SCI. ADV., Oct. 30, 2020, Vol. 6, no. 44. <https://advances.sciencemag.org/content/6/44/eabd0288>
 24 (last accessed Feb. 18, 2022).

25 ³⁵ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
 NPR.ORG (Mar. 13, 2019, 4:28 PM ET),
[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)
 26 [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 Feb. 18, 2022); *see also Report: “Communities*
 27 *on the Frontlines of the Global Plastic Crisis”*, Waste360, Apr. 25, 2019,
<https://www.waste360.com/business/report-communities-frontlines-global-plastic-crisis> (last
 28 accessed Feb. 18, 2022).

1 transported to recycling facilities ultimately ended up in the ocean or the natural environment.
 2 For example, in 2015 China's Yangtze River ranked highest for plastic entering the oceans.³⁶
 3 That year, 333,000 tons of plastic were deposited into the ocean from the Yangtze River, more
 4 than double the amount for the river with the next highest amount.³⁷

5 50. In February 2013, based on the high amounts of low-value and contaminated
 6 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort
 7 aimed at curtailing the amount of contaminated "recyclables" and waste that was being sent to
 8 China.³⁸ China began inspecting 70 percent of imported containers filled with "recyclables" and
 9 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic
 10 waste.³⁹ Despite manufacturers' and recyclers' awareness of China's refusal to accept low-value
 11 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By
 12 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.⁴⁰

13 51. In February 2017, in response to the continued shipment of low-value and
 14 contaminated plastic waste, China announced its National Sword policy, which banned the
 15 importation of certain solid waste and set strict contamination limits on recyclable material.
 16 Because of the National Sword policy, end markets for recycling plastics #3-7 have essentially
 17 vanished.⁴¹ One year after China's National Sword Policy, China's plastics imports plummeted

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 20 ³⁶ 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
 Feb. 18, 2022).

21 ³⁷ *Id.*

22 ³⁸ *What Operation Green Fence Has Meant for Recycling*, WASTE 360,
 23 <https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling> (last
 accessed Feb. 18, 2022).

24 ³⁹ *Id.*

25 ⁴⁰ Christopher Joyce, *supra* note 35.

26 ⁴¹ Liz Zarka, *Recycling's Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,
 27 <https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>
 (last accessed Feb. 18, 2022); *see also* Cheryl Katz., *Piling Up: How China's Ban on Importing*
 28 *Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019,
[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)
[recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling) (last accessed Feb. 18, 2022).

1 by 99 percent.⁴² Following enactment of the National Sword Policy other countries in the Far
 2 East followed suit by banning imports of low-value and contaminated plastics that had long been
 3 polluting their environments.⁴³ In May 2019, 187 countries decided to significantly restrict
 4 international trade in plastic scrap and waste to help address the improper disposal of plastic
 5 pollution, which are known as the Basel Convention Plastic Waste Amendments.⁴⁴ The Basel
 6 Convention Plastic Waste Amendments prohibit export of mixed plastic waste to countries who
 7 are not members of the Organization for Economic Co-operation and Development.⁴⁵ Due to
 8 increased regulations and restrictions on importing plastic waste, recycling companies can no
 9 longer sell many types of used plastic at prices that cover their transportation and processing
 10 costs, providing them with no incentive to do so.

11 52. 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 peoples' interests in protecting the
 13 environment, Defendant has increased its advertising and labeling of Products as recyclable in
 14 California and elsewhere in the United States. Defendant has done so despite widespread
 15 acknowledgment that end markets for plastic waste have been shrinking and that the majority of
 16 plastic labeled as recyclable in California and other regions in the United States ends up in
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18 ⁴² Cheryl Katz, *supra* note 41.

19 ⁴³ *Why Some Countries Are Shipping Back Plastic Waste*, BBC News,
 20 <https://www.bbc.com/news/world-48444874> (last accessed Feb. 18, 2022); *see also International*
 21 *Policies Affecting Global Commodity Markets*, Cal Recycle,
 22 <https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies> (last accessed Feb. 18,
 23 2022).

24 ⁴⁴ *New International Requirements For The Export And Import of Plastic Recyclables And Waste*,
 25 U.S. EPA, last updated February 17, 2021, <https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#:~:text=the%20Basel%20Convention.-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste> (last accessed
 26 Feb. 18, 2022).

27 ⁴⁵ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their*
 28 *Disposal*, open for signature Mar. 23, 1989, adopted May 5, 1992, U.N.T.S. vol. 1673,
 Amendments to Annexes II, VII and IX, *Plastic Waste Amendments*, effective Jan. 1, 2021,
<http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx> (last accessed Feb. 18, 2022).

1 landfills, incinerators, communities, and the natural environment. Defendant has announced that
2 it is working with its suppliers to achieve 100% recyclable, reusable, or industrially compostable
3 packaging for all its private brand products by 2025.⁴⁶

4 53. In an effort to portray itself as part of the solution to the plastic waste crisis,
5 Defendant is making unsubstantiated representations regarding the recyclability of its Products.

6 54. Below are examples of unsubstantiated recyclable representations on the labels of
7 Products made from plastics #3-7 sold by Defendant in California:



26 ⁴⁶ *Environmental Highlights: Waste*, WALMART, INC.,
27 <https://corporate.walmart.com/esgreport2020/environmental#waste> (last accessed Feb. 18, 2022);
28 see also *Walmart Announces New Plastics Packaging Waste Reduction Commitments*,
WALMART, INC., <https://corporate.walmart.com/newsroom/2019/02/26/walmart-announces-new-plastic-packaging-waste-reduction-commitments>. (last accessed Feb. 18, 2022).

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55. Products made from plastics #3-7 are not recyclable in California because such Products are rarely, if ever, recycled. The inability for MRFs in California and elsewhere in the United States to recycle plastics #3-7 is well documented.⁴⁷ According to survey data, less than

⁴⁷ John Hocevar, *supra* note 7; *America's 'recycled' plastic waste is clogging landfills, survey finds*, THE GUARDIAN, Feb. 18, 2020, <https://www.theguardian.com/us-news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds> (last accessed Feb. 18, 2022); *Americans' plastic recycling is dumped into landfills, investigation shows*, THE GUARDIAN, Jun. 21, 2019, <https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills> (last accessed Feb. 18, 2022); 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 Feb. 18, 2022).

1 5% of polypropylene (“PP” or plastic #5) tubs are reprocessed into recyclable material.⁴⁸ To the
 2 extent they sort them at all, the majority of MRFs in California and elsewhere in the United States
 3 group plastics #3-7 into bales of mixed plastic because such plastics have little value, especially
 4 when compared to plastics #1 and #2. Thus, MRFs do not sort individual materials, such as PP or
 5 polystyrene (“PS” or plastic #6), into separate bales. And since the value of plastics #3-7 is so
 6 low, there is no end market to reuse such plastic or convert such plastic into reusable material that
 7 can be used to manufacture or assemble other goods. Ultimately, the majority of plastics #3-7 in
 8 California and elsewhere in the United States are sent to landfills. For example, ReThink Waste,
 9 a public agency that operates the Shoreway MRF in San Carlos, California stated that “plastics
 10 #3-7 are all versions of hard plastic that are very difficult to recycle,” because “there is currently
 11 no market for the material when it is deconstructed.”⁴⁹ The Shoreway MRF continues to accept
 12 plastics #3-7 but states that the collected material is sent to a landfill.⁵⁰

13 56. The California Legislature recently convened a Statewide Commission on
 14 Recycling Markets and Curbside Recycling (the “Commission”), which is an independent
 15 commission chartered by California law to improve curbside recycling and consists of
 16 representative of public agencies, private solid waste enterprises, and environmental
 17 organizations. The Commission published a report concluding that only three plastic item types
 18 meet the definition of recyclability in California: Plastic #1 PET Bottles without shrink sleeves or
 19 other non-recyclable components, Plastic #2 HDPE bottles (natural) without shrink sleeves or
 20 other non-recyclable components, and Plastic #2 HDPE bottles (color) without shrink sleeves or
 21 non-recyclable components.⁵¹ No products or packaging made from plastic #3-7 are included in
 22 California’s list of recyclable items.

23 57. Although California MRFs may still accept plastics #3-7, the reality is that the
 24 Products are not recycled in California. One reason MRFs accept items even though they are not

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 26 ⁴⁸John Hocevar, *supra* note 7.

27 ⁴⁹ *Id.* at p. 8.

28 ⁵⁰ *Id.*

⁵¹ *Id.* at 97.

1 recyclable is due to pressure from local authorities to meet solid waste diversion goals. This
2 phenomenon has been recognized by the FTC. In promulgating the most recent version of the
3 Green Guides, the FTC stated (under the heading “Packages Collected for Public Policy Reasons
4 but Not Recycled”), “The Commission agrees that unqualified recyclable claims for categories of
5 products that municipal recycling programs collect, but do not actually recycle, may be deceptive.
6 To make a non-deceptive unqualified claim, a marketer should substantiate that a substantial
7 majority of consumers or communities have access to facilities that will actually recycle, not
8 accept and ultimately discard, the product. As part of this analysis, a marketer should not assume
9 that consumers or communities have access to a particular recycling program merely because the
10 program will accept a product.”⁵² Thus, although some of the Products may be accepted for
11 recycling by some curbside programs in California, MRFs do not collect, sort, and separate such
12 low-value plastics because there is no end market to reuse such items or convert them into
13 reusable material.

14 58. In light of significant evidence that Products made from plastic #3-7 are not
15 recyclable in California or elsewhere in the United States, it is unsurprising that Defendant has
16 not been able to substantiate the validity of its recycling representations on Products made from
17 plastic #3-7.

18 59. Defendant also sells Products that do not contain a RIC and are therefore made
19 from unidentified plastic. Nonetheless, Defendant also states that these Products are recyclable.
20 Below is an example of an unsubstantiated recycling label on a Product sold by Defendant in
21 California that is made from an unidentified plastic:

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27 ⁵² FED. TRADE COMM’N, The Green Guides Statement of Basis and Purpose, (2012) available at:
28 <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.

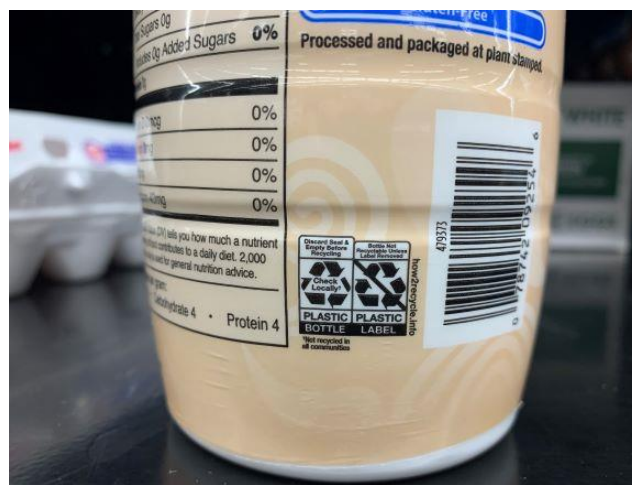
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60. Because these Products do not contain an RIC, it is impossible to determine what type of plastic resin the Products are made from or whether the plastic is recyclable. Under the California Public Resource Code, “all rigid plastic bottles and rigid plastic containers sold in the state shall be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container,” and if the containers or bottles have basecups of a different material it “shall be coded by their basic material.” Cal. Pub. Res. Code § 18015. Regardless of what type

1 of plastic these Products are made from, Defendant must substantiate the validity of its recycling
2 representations on Products made from unidentified plastic.

3 61. Some of Defendant's Products are packaged in a shrink sleeve that prevent the
4 Products from being recyclable in California and elsewhere in the United States. Below is an
5 example of an unsubstantiated recyclable representation on a Product packaged in a shrink sleeve
6 sold by Defendant in California:



1 62. These Products are not recyclable in California and elsewhere in the United States
2 because the plastic shrink sleeve cannot be recycled. The Green Guides are clear: “if any
3 component significantly limits the ability to recycle the item, any recyclable claim would be
4 deceptive. An item that is made from recyclable material, but because of its shape, size or some
5 other attribute is not accepted in recycling programs, should not be marketed as recyclable.” 16
6 C.F.R. § 260.12(d). Here, these Products are packaged in a shrink sleeve that is not recyclable
7 and that is difficult and dangerous to remove. The shrink sleeves are wrapped tightly around the
8 Products, thereby requiring people to use a knife or sharp object to cut the shrink sleeve free from
9 the Products. Due to the difficulty in removing the shrink sleeves, most people are unwilling to
10 remove the shrink sleeves from the Products prior to placing the Products in their recycling bins.
11 Furthermore, most California residents believe that if their municipality offers recycling services,
12 then all products marketed as “recyclable” can be recycled. Thus, most people will place the
13 Products in the recycling bin without removing the shrink sleeve under the false impression that
14 the Products can be recycled, when the Products cannot in fact be recycled with the plastic shrink
15 sleeve. This is problematic because few, if any, recycling programs in California and elsewhere
16 in the United States accept Products with shrink sleeves for recycling, Products with shrink
17 sleeves cannot be sorted because they are made from mixed materials, and shrink sleeves
18 contaminate the recycling stream and may damage recycling machinery. Due to these issues,
19 there is no end market for Products with shrink sleeves and most of these Products end up in
20 landfills, incinerators, communities, or the natural environment. In sum, Defendant must
21 substantiate the validity of its recycling representations on Products packaged in a shrink sleeve.

22 63. Lastly, Defendant sells numerous Products packaged in plastic film that contain a
23 store drop-off representation despite the limited availability of such programs in California and
24 elsewhere in the United States. Below is an example of an unsubstantiated recyclable
25 representation on such a Product sold by Defendant in California:
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64. These Products cannot be recycled by established recycling programs. Rather, the packaging must be dropped off at participating stores. This is because plastic bags and film cannot be separated for recycling. The Green Guides specifically warn about plastic trash bags: “Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists.” 16 C.F.R. § 260.3(c), Example 2. Although the fine

1 print representations on these Products communicate that the Products must be “dropped off” to
 2 be recyclable, many of Defendant’s stores in California do not accept the Products for recycling.
 3 In the past, California required supermarkets of a certain size to maintain a plastic carryout bag
 4 collection bin, but that rule expired on January 1, 2020. *See* California Public Resources Code §
 5 42257. Consequently, many retail stores in California, including Defendant’s stores, no longer
 6 accept plastic bags for drop-off recycling. For instance, according to an informal survey, 0 of 8
 7 of Defendant’s stores in South Orange County, California have takeback bins to recycle plastic
 8 film. According to Defendant’s own data, it only provides access to in-store plastic bag and film
 9 recycling bins in approximately half of its stores (Defendant maintains roughly 5,353 retail stores
 10 nationwide, but only provides drop-off locations at approximately 2,900 locations).⁵³

11 65. On December 3, 2021, the Commission, sent a letter to Rachel Machi-Wagoner,
 12 the Director of the California Department of Resources Recycling and Recovery
 13 (“CalRecycle”).⁵⁴ The letter states:

14 Flexible plastic bags and film are a major source of contamination in curbside
 15 recycling bins. The flexible plastic materials are harming curbside recycling
 16 systems by clogging machinery in material recovery facilities (MRFs) and fiber
 17 processors. There is not a comprehensive store takeback system for plastic bags or
 18 film in California. In MRFs, the plastic bags and film contaminate paper and
 cardboard bales and lower the quality and material value of the paper bales.
 Flexible plastic bags and films that depict the word “recycle” or the chasing
 arrows recycling symbol cause consumer confusion and contribute to
 contamination.

19 The Commission requested that California’s existing laws be enforced by requiring retailers and
 20 product manufacturers to remove the word “recycle,” “recyclable,” and or the recycling symbol
 21 from plastic bags and plastic films. The Commission further stated that the recyclable labels used
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 25 ⁵³ 2020 *Environmental, Social and Governance Report*, WALMART, INC.,
https://corporate.walmart.com/media-library/document/2020-environmental-social-and-governance-report/_proxyDocument?id=0000017a-85af-d7dc-ad7a-bfaf6cd70000 (last accessed
 26 Feb. 18, 2022).

27 ⁵⁴ Letter Dated December 3, 2021 from the Commission to Rachel Machi-Wagoner, available at,
<https://drive.google.com/drive/folders/1ARQy3JTtWPsjqDQ0f76SWD5qbOTEoqX9>, (last
 28 accessed Feb. 18, 2022).

1 on many plastic bags and films in California are not legal and contributing to consumer confusion
2 and contamination.

3 66. The Commission specifically identified the “Store Dropoff” statement as
4 problematic because there is not a comprehensive takeback system in California. The
5 Commission stated that “California law (Cal. Bus. & Prof. Code § 17580 and Cal. Pub. Res. Code
6 § 42355.5) and the Green Guides (16 C.F.R. § 260.2) require substantiation for recycling claims
7 such as this” and “it is our opinion that this claim is not provable. This text should be eliminated
8 from the bag.” The Commission enumerated 80 examples of plastic bags or film that illegally
9 contained a recycling representation, and specifically identified five of Defendant’s Products,
10 including an example nearly identical to the plastic packaging on the Product photographed
11 above.

12 67. In addition, a 2017 report on Film Recycling Investment found that only 7% of
13 retail bags that are available for recycling are returned by residents for recycling.⁵⁵ That report
14 further found that of the approximately 300 million pounds of plastic film that reprocessing
15 facilities receive a year, only 10 million pounds (approximately 3%) are able to be marketed due
16 to the poor quality of plastic film and the lack of recycling markets for such low-value plastic.
17 Due to the lack of recycling markets for plastic film, 93% of California MRFs do not even accept
18 it, and the reprocessing facilities that do accept it do not have the capacity to recycle large
19 quantities of plastic film. Based on these data, even if more people returned plastic bag film for
20 drop-off recycling, California MRFs do not have the capacity to sort and recycle it. Ultimately,
21 Products packaged in plastic film are not accepted by most MRFs nor can they be collected,
22 sorted, or separated from the general waste stream. Consequently, there is no end market to
23 recycle such Products in California and it is not surprising that Defendant has been unable to
24 substantiate the validity of its recycling representations on Products packaged in plastic film.

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28 ⁵⁵ *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION
(2017), at p. 19.

1 68. One of the major problems associated with making unsubstantiated recycling
2 representations on the labels of the Products is that this can lead to contaminating the recycling
3 stream with unrecyclable materials that will hinder the ability of recycling facilities to process
4 items that are legitimately recyclable. For instance, according to the Recycling Partnership,
5 “plastic bags cause MRF operators to shut down the recycling line many times a day to cut off
6 bags that have wrapped around equipment. This maintenance shut down reduces throughput for a
7 facility, raises cost of labor to sort materials and maintain equipment, increases waste coming out
8 of the MRF, and puts workers at risk of injury when they are performing maintenance.”⁵⁶ By
9 making unsubstantiated recycling representations that encourage California residents to place the
10 Products in their recycling bins, Defendant is contaminating the recycling stream with
11 unrecyclable materials that prevents legitimately recyclable materials from being recycled.
12 Environmentally motivated people who purchase the Products in the belief that they are
13 recyclable are thus unwittingly hindering recycling efforts.

14 69. Greenpeace’s mission is to protect the natural environment and expose
15 environmental harms to the public. Given that many people actively seek to purchase recyclable
16 products because they are environmentally conscientious, Defendant’s unsubstantiated recyclable
17 representations on the labels of the Products have frustrated Greenpeace’s mission. Greenpeace
18 has spent, and continues to spend, money, staff time, and other organizational resources, in
19 response to this frustration of purpose by evaluating the problems associated with the
20 proliferation of plastic pollution, investigating Defendant’s unsubstantiated recyclable
21 representations in California, publishing reports on Defendant’s recyclable label initiative,
22 requesting that Defendant substantiate its recycling representations, and informing its supporters
23 and the public in California with respect to Defendant’s unsubstantiated recycling labels. Most of
24 this work is conducted in California by Greenpeace’s California-based staff.

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27 ⁵⁶ 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 Feb. 18,
2022).

1 70. Plaintiff seeks an order requiring Defendant to substantiate its recycling
2 representations or an order enjoining Defendant from making unsubstantiated representations
3 regarding the recyclability of its Products in California. If an injunction is not granted, Plaintiff
4 will suffer irreparable injury because it will continue to spend money, staff time and other
5 organizational resources to combat Defendant's unsubstantiated representations that the Products
6 are recyclable in California and to inform the public that the Products are not recyclable in
7 California. For example, Greenpeace has hired a consultant to prepare the sequel to the CCFF
8 Report, and part of her job involves further investigation of Defendant's unsubstantiated recycling
9 representations which would be unnecessary if Defendant provided the information it is mandated
10 to disclose pursuant to statute. In addition, Greenpeace will continue to divert resources from its
11 lobbying and advocacy activities to investigate Defendant's unsubstantiated recycling
12 representations and to inform the public that the representations on Defendant's Products are not
13 substantiated and therefore unlikely to be recycled. Thus, Plaintiff has no adequate remedy at law
14 for the injuries currently being suffered as an award of monetary damages would not prohibit
15 Defendant's unsubstantiated recycling statements in California nor would it allow Greenpeace to
16 obtain the information that Defendant is withholding. In addition, plastic pollution caused by
17 Defendant's sale of the Products in California and the resulting harms to California waters,
18 coasts, communities, and marine life will continue to negatively impact Greenpeace's efforts to
19 protect these critical resources. California residents may also contaminate the recycling stream
20 by unknowingly placing the Products in their recycling bins, preventing legitimately recyclable
21 products from being recycled. Accordingly, an injunction requiring Defendant to substantiate its
22 recycling representations or prohibiting Defendant's unsubstantiated recycling representations
23 will serve the public interest.

FIRST CAUSE OF ACTION

**(Plaintiff Alleges Violations of California Business & Professions Code § 17200, et seq.
Based on Commission of Unlawful Acts)**

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27 71. Plaintiff incorporates by reference the allegations set forth above.
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1 72. The violation of any law constitutes an unlawful business practice under Business
2 & Professions Code § 17200.

3 73. Defendant’s conduct violates the EMCA, which makes it unlawful for any person
4 to make any unsubstantiated environmental marketing claim. Pursuant to the EMCA, “Any
5 person who represents in advertising or on the label or container of a consumer good that the
6 consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural
7 environment, through use of such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth
8 friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’
9 ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other
10 like term, shall maintain in written form in its records...information and documentation
11 supporting the validity of the representation.” Business & Professions Code § 17580(a). The
12 term “recyclable” is a term that represents that a product or packaging is not harmful to, or is
13 beneficial to, the natural environment, and is therefore covered under Business & Professions
14 Code § 17580(a). In fact, the EMCA specifically requires companies to maintain information and
15 documentation as to whether such products or packaging conform with the uniform standards
16 contained in the Green Guides for use of the terms “recycled” or “recyclable.” *Id.*, § 17580(a)(5).
17 In addition to documents regarding whether the consumer good conforms with the Green Guides,
18 the EMCA requires that companies maintain the following records in written form supporting the
19 validity of their recyclable representations: (1) the reasons why a company believes the
20 representation to be true; (2) any significant adverse environmental impacts directly associated
21 with the production, distribution, use, and disposal of the consumer good; (3) any measures that
22 are taken by the company to reduce the environmental impacts directly associated with the
23 production, distribution, and disposal of the consumer good; and (4) violations of any federal,
24 state, or local permits directly associated with the production or distribution of the consumer
25 good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its intent that the information
26 and documentation supporting the validity of any environmental marketing claims shall be fully
27 disclosed to the public, and information and documentation maintained pursuant to Business &
28 Professions Code § 17580 must be furnished to any member of the public upon request. *Id.*, §

1 17580(b), (d). Further, SB 343 amended section 17580 to confirm that a person who represents in
2 advertising or on the label of container of a consumer good that the consumer good is not harmful
3 to, or is beneficial to, the natural environment “through the use of a chasing arrows symbol or by
4 otherwise directing a consumer to recycle the consumer good,” shall maintain written records
5 substantiating the validity of such representations.

6 74. The Green Guides also require marketers to ensure that their claims are supported
7 by a reasonable basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined
8 as competent and reliable scientific evidence, such as “tests, analyses, research, or studies that
9 have been conducted and evaluated in an objective manner by qualified persons and are generally
10 accepted in the profession to yield accurate and reliable results.” *Id.* “Such evidence should be
11 sufficient in quality and quantity based on standards generally accepted in the relevant scientific
12 fields, when considered in light of the entire body of relevant and reliable scientific evidence, to
13 substantiate that each of the marketing claims is true.” *Id.*

14 75. Under the Green Guides, “A product or package shall not be marketed as
15 recyclable unless it can be collected, separated, or otherwise recovered from the waste stream
16 through an established recycling program for reuse or use in manufacturing or assembling another
17 item.” 16 C.F.R. § 260.12(a). Here, the Products are not recyclable because people do not have
18 access to recycling programs that accept the Products, the Products cannot be separated or
19 recovered from the general waste stream and sorted into the correct materials bale by MRFs, and
20 there are no end markets to reuse the Products or to convert the Products into a material that can
21 be reused or used in manufacturing or assembling another item. Greenpeace has requested on
22 numerous occasions that Defendant substantiate that the Products are recyclable in California or
23 elsewhere in the United States, as required by law. Greenpeace sent Defendant a pre-suit demand
24 on August 18, 2020, informing Defendant that its Products are not recyclable and requesting that
25 Defendant contact Plaintiff to discuss resolution of the matter short of litigation. At no point has
26 Defendant provided written records supporting the validity of its recycling representations on the
27 labels of the Products.

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1 76. By failing to substantiate the validity of its recycling representations with respect
2 to the Products under the EMCA and the Green Guides, Defendant has engaged in unlawful
3 business acts and practices which constitute unfair competition within the meaning of Business &
4 Professions Code § 17200.

5 77. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
6 an award of monetary damages would not prohibit Defendant's unsubstantiated recycling
7 representations. Moreover, monetary damages would not remedy Defendant's unlawful refusal to
8 provide information that is mandated by statute to be disclosed to Plaintiff. If an injunction is not
9 granted, Plaintiff will suffer irreparable injury because it will continue to spend money, staff time
10 and other organizational resources to combat Defendant's unsubstantiated representations that the
11 Products are recyclable in California and to inform the public that the Products are not recyclable
12 in California. In addition, plastic pollution caused by Defendant's sale of the Products in
13 California and the resulting harms to California waters, coasts, communities, and marine life will
14 continue to negatively impact Greenpeace's efforts to protect these critical resources. California
15 residents may also contaminate the recycling stream by unknowingly placing the Products in their
16 recycling bins, preventing legitimately recyclable products from being recycled. Denial of access
17 to statutorily required information is harming Greenpeace because it must continue to divert
18 resources to investigate and communicate with Defendant and the public away from its advocacy
19 efforts to promote legitimate recycling, to protect the integrity of recycling infrastructure, to
20 foster sustainable alternatives to single-use plastic, to limit the impact of plastic pollution on the
21 environment, and to educate the public regarding the types of plastic that may actually be
22 recycled. Accordingly, an injunction requiring Defendant to substantiate its recycling
23 representations or prohibiting Defendant's unsubstantiated recycling representations will serve
24 the public interest by protecting the environment and the integrity of the recycling stream and by
25 preventing Defendant from gaining an unfair advantage over companies that can substantiate that
26 the products they sell are recyclable.

27 78. Defendant manufactures or distributes the Products and represents in
28 advertisements or on the labels of the Products that the Products are recyclable. Defendant's

1 representations that the Products are recyclable are prominent on all of Defendant's marketing,
2 advertising, and labeling materials for the Products in California. Because part of Greenpeace's
3 mission involves preventing companies from touting the environmental benefits of their products
4 without substantiating the validity of such environmental benefits, Greenpeace spent, and
5 continues to spend, money, staff time, and other organizational resources investigating
6 Defendant's unsubstantiated recycling representations requesting that Defendant substantiate the
7 validity of such representations, and informing the public that the representations on Defendant's
8 Products are not substantiated and unlikely to be recycled. But for Defendant's unsubstantiated
9 recycling representations in California and elsewhere in the United States, Greenpeace would use
10 that money, staff time, and organizational resources for its other lobbying and advocacy efforts
11 and its other plastic campaigns. Greenpeace has thus suffered, and continues to suffer, injury in
12 fact and lost money or property as a direct result of Defendant's unsubstantiated recycling
13 representations occurring in California.

14 79. An action for injunctive relief is specifically authorized under Business &
15 Professions Code § 17203.

16 Wherefore, Plaintiff prays for judgment against Defendant, as set forth hereafter.

17 **SECOND CAUSE OF ACTION**

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

20 80. Plaintiff incorporates by reference the allegations set forth above.

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

24 82. Defendant has engaged and continues to engage in conduct which is immoral,
25 unethical, oppressive, unscrupulous, and substantially injurious to consumers. This conduct
26 includes, but is not limited to, advertising and labeling the Products as recyclable in California
27 without substantiation. By advertising and labeling the Products as recyclable without
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1 substantiating whether the Products are actually recyclable, Defendant's conduct, as described
2 herein, far outweighs the utility, if any, of such conduct.

3 83. Defendant has engaged and continues to engage in conduct that violates the
4 legislatively declared policy of Cal. Pub. Res. Code § 42355.5. Under the California Public
5 Resources Code, the Legislature of the State of California has declared that "it is the public policy
6 of the state that environmental marketing claims, whether explicit or implied, should be
7 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers
8 about the environmental impact of plastic products." Cal. Pub. Res. Code § 42355.5. The Code
9 further states that "the Legislature further finds and declares that it is the public policy of the state
10 that claims related to the recyclability of a product or packaging be truthful in practice and
11 accurate. Consumers deserve accurate and useful information related to how to properly handle
12 the end of life of a product or packaging." *Id.*, 42355.5(b). These policies are based on the
13 Legislature's finding that "littered plastic products have caused and continue to cause significant
14 environmental harm and have burdened local governments with significant environmental
15 cleanup costs." *Id.*, § 42355. It is unfair for Defendant to represent that the Products are
16 recyclable without substantiation, in direct violation of the California Legislature's declared
17 public policy.

18 84. Defendant's conduct also violates the policy of the EMCA. Under the EMCA,
19 anyone who manufactures or distributes a consumer good and represents in advertising or on the
20 label that it is not harmful to, or is beneficial to, the natural environment, through the use of such
21 terms as "environmentally safe," "ecologically friendly," or other like terms, must maintain
22 written records supporting the validity of any such representation. Business & Professions Code
23 § 17580(a). The term "recyclable" is a term that represents that a product or packaging is not
24 harmful to, or is beneficial to, the natural environment, and is therefore covered under Business &
25 Professions Code § 17580(a). In fact, the EMCA specifically requires companies to maintain
26 information and documentation as to whether such products or packaging conform with the
27 uniform standards contained in the Green Guides for use of the terms "recycled" or "recyclable."
28 *Id.*, § 17580(a)(5). In addition to documents regarding whether the consumer good conforms with

1 the Green Guides, the EMCA requires that companies maintain the following records in written
2 form supporting the validity of their recyclable representations: (1) the reasons why a company
3 believes the representation to be true; (2) any significant adverse environmental impacts directly
4 associated with the production, distribution, use, and disposal of the consumer good; (3) any
5 measures that are taken by the company to reduce the environmental impacts directly associated
6 with the production, distribution, and disposal of the consumer good; and (4) violations of any
7 federal, state, or local permits directly associated with the production or distribution of the
8 consumer good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its intent that the
9 information and documentation supporting the validity of any environmental marketing claims
10 shall be fully disclosed to the public, and information and documentation maintained pursuant to
11 Business & Professions Code § 17580 must be furnished to any member of the public upon
12 request. *Id.*, § 17580(b), (d). It is unfair for Defendant to represent that the Products are
13 recyclable without substantiation, violating the California Legislature’s intent that information
14 and documentation supporting the validity of environmental marketing claims shall be fully
15 disclosed to the public. It is also unfair for Defendant to withhold information it is mandated to
16 disclose pursuant to statute.

17 85. Defendant’s conduct also violates the policy of the Green Guides. The Green
18 Guides require marketers to ensure that their claims are supported by a reasonable basis prior to
19 making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined as competent and reliable
20 scientific evidence, such as “tests, analyses, research, or studies that have been conducted and
21 evaluated in an objective manner by qualified persons and are generally accepted in the
22 profession to yield accurate and reliable results.” *Id.* “Such evidence should be sufficient in
23 quality and quantity based on standards generally accepted in the relevant scientific fields, when
24 considered in light of the entire body of relevant and reliable scientific evidence, to substantiate
25 that each of the marketing claims is true.” *Id.* It is unfair for Defendant to represent that the
26 Products are recyclable without a reasonable basis.

27 86. Defendant gains an unfair advantage over its competitors, whose advertising and
28 labeling must comply with the EMCA, the Green Guides, and the legislatively declared policy of

1 Cal. Pub. Res. Code § 42355.5. By committing the acts alleged above, Defendant has engaged in
2 unfair business acts and practices which constitute unfair competition within the meaning of
3 California Business & Professions Code § 17200.

4 87. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
5 an award of monetary damages would not prohibit Defendant's unsubstantiated recycling
6 representations. Moreover, monetary damages would not remedy Defendant's unlawful refusal to
7 provide information that is mandated by statute to be disclosed to Plaintiff. If an injunction is not
8 granted, Plaintiff will suffer irreparable injury because it will continue to spend money, staff time
9 and other organizational resources to combat Defendant's unsubstantiated representations that the
10 Products are recyclable in California and to inform the public that the Products are not recyclable
11 in California. In addition, plastic pollution caused by Defendant's sale of the Products in
12 California and the resulting harms to California waters, coasts, communities, and marine life will
13 continue to negatively impact Greenpeace's efforts to protect these critical resources. California
14 residents may also contaminate the recycling stream by unknowingly placing the Products in their
15 recycling bins, preventing legitimately recyclable products from being recycled. Denial of access
16 to statutorily required information is harming Greenpeace because it must continue to divert
17 resources to investigate and communicate with Defendant and the public away from its advocacy
18 efforts to promote legitimate recycling, to protect the integrity of recycling infrastructure, to
19 foster sustainable alternatives to single-use plastic, to limit the impact of plastic pollution on the
20 environment, and to educate the public regarding the types of plastic that may actually be
21 recycled. Accordingly, an injunction requiring Defendant to substantiate its recycling
22 representations or prohibiting Defendant's unsubstantiated recycling representations will serve
23 the public interest by protecting the environment and the integrity of the recycling stream and by
24 preventing Defendant from gaining an unfair advantage over companies that can substantiate that
25 the products they sell are recyclable.

26 88. Defendant manufactures or distributes the Products and represents in
27 advertisements or on the labels of the Products that the Products are recyclable. Defendant's
28 representations that the Products are recyclable are prominent on all of Defendant's marketing,

1 advertising, and labeling materials for the Products in California. Because part of Greenpeace's
2 mission involves preventing companies from touting the environmental benefits of their products
3 without substantiating the validity of such environmental benefits, Greenpeace spent, and
4 continues to spend, money, staff time, and other organizational resources investigating
5 Defendant's unsubstantiated recycling representations requesting that Defendant substantiate the
6 validity of such representations, and informing the public that the representations on Defendant's
7 Products are not substantiated and unlikely to be recycled. But for Defendant's unsubstantiated
8 recycling representations in California and elsewhere in the United States, Greenpeace would use
9 that money, staff time, and organizational resources for its other lobbying and advocacy efforts
10 and its other plastic campaigns. Greenpeace has thus suffered, and continues to suffer, injury in
11 fact and lost money or property as a direct result of Defendant's unsubstantiated recycling
12 representations occurring in California

13 89. An action for injunctive relief is specifically authorized under California Business
14 & Professions Code § 17203.

15 Wherefore, Plaintiff prays for judgment against Defendant, as set forth hereafter.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff has no adequate remedy at law and prays for judgment and relief
18 against Defendant as follows:

19 A. That the Court preliminarily and permanently enjoin Defendant from conducting
20 its business through the unlawful or unfair business acts or practices, and other violations of law,
21 described in this Complaint;

22 B. That the Court order Defendant to substantiate the validity of the recycling
23 representations in advertising or on the labels of the Products;

24 C. That the Court enjoin Defendant from making unsubstantiated recycling
25 representations in advertising or on the labels of the Products;

26 D. That the Court order Defendant to implement whatever measures are necessary to
27 remedy the unlawful or unfair business acts or practices, and other violations of law described, in
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1 this Complaint;

2 E. That the Court grant Plaintiff its reasonable attorneys' fees and costs of suit
3 pursuant to California Code of Civil Procedure § 1021.5, the common fund doctrine, or any other
4 appropriate legal theory; and

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

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7 Dated: February 18, 2022

Respectfully submitted,

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LEXINGTON LAW GROUP

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10

/s/ Howard Hirsch

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Attorneys for Plaintiff
GREENPEACE, INC.

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