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THE LAST BEACH CLEANUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

THE LAST BEACH CLEANUP,

Plaintiff,

v.

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

Defendants.

Case No.

COMPLAINT

1 Plaintiff The Last Beach Cleanup (“Plaintiff” or “LBC”), based on information, belief,
2 and 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. The U.S. Environmental Protection Agency (“EPA”) reports that 91.3%
7 of U.S. plastic waste is not recycled, with billions of pounds of plastic becoming trash and
8 litter.^{1,2} According to a new study, at least 1.2 to 2.5 million tons of plastic trash each year from
9 the United States pollutes lands, rivers, lakes and oceans as litter, is illegally dumped, or is
10 shipped abroad and then not properly disposed of.³ As consumers become more aware of the
11 problems associated with plastic pollution, they are increasingly susceptible to marketing claims
12 reassuring them that the plastic used to make and package the products that they purchase are
13 recyclable. Many consumers concerned with the proliferation of plastic pollution actively seek to
14 purchase products that are either compostable or recyclable to divert such waste from the ocean,
15 their communities, landfills, and incinerators.

16 2. Seeking to take advantage of consumers’ concerns, Defendants advertise, market
17 and sell a variety products and packaging made from single-use plastics and other materials that
18 are difficult to recycle with an unqualified representation stating that they are recyclable with
19 TerraCycle, Inc. (the “Products”). TerraCycle, Inc. (“TerraCycle”) prides itself on working with
20 companies to offer free programs for consumers to recycle products that established municipal
21 recycling programs are not capable of recycling. However, there is an undisclosed catch:

22
23 ¹ EPA, *2018 Advancing Sustainable Materials Management: Facts and Figures Report – Tables*
24 *and Figures*. (https://www.epa.gov/sites/production/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf) (last accessed Feb. 14, 2021).

25 ² Tom Udall and Alan Lowenthal, *Op-Ed: More than 90% of U.S. plastic waste is never recycled.*
26 *Here’s how we can change that*, L.A. TIMES (Feb. 21, 2020, 3:01 AM),
<https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s> (last
accessed Dec. 7, 2020).

27 ³ Associated Press, *Study: 1 to 2 million tons a year of U.S. plastic trash goes astray*, L.A. TIMES
28 (Oct. 30, 2020, 11:03 AM) <https://www.latimes.com/world-nation/story/2020-10-30/study-1-to-2-million-tons-of-us-plastic-trash-goes-astray> (last accessed Dec. 7, 2020).

1 Defendants have strict participation limits that prohibit most consumers from participating in their
2 recycling programs. In other words, consumers purchase the Products with the belief that they
3 will be able to recycle the Products for free by sending the Products to TerraCycle, only to find
4 out after purchasing the Products that participation in Defendants' free recycling programs are
5 closed. While the free programs are closed to new participants, consumers are offered the option
6 of purchasing costly "Zero Waste Boxes" to return the Products to TerraCycle at a hefty price.
7 Left with no other free choices, consumers then need to discard the packaging into the trash
8 where it will ultimately end up in a landfill. Worse yet, some consumers instead discard the
9 packaging into their curbside recycling bins, thereby contaminating legitimate recycling streams
10 with unrecyclable materials and increasing costs for municipalities. Thus, Defendants'
11 unqualified representations that the products are recyclable are deceptive to a reasonable
12 consumer and violate California law.

13 3. In addition, even as to those few Products that Defendants accept in their limited
14 recycling programs, it is unclear whether the Products are actually recycled. Under both
15 California law and the Green Guides, Defendants are required to maintain records supporting the
16 validity of any environmental marketing claims. However, in response to Plaintiff's pre-suit
17 request, Defendants have not provided records substantiating that the Products collected are
18 actually recycled and manufactured into new products.

19 4. This Complaint seeks to remedy Defendants' unlawful, unfair, and deceptive
20 business practices with respect to the advertising, marketing, and sale of the Products. Because
21 most consumers cannot participate in Defendants' free recycling programs, Defendants'
22 unqualified recycling representations are false and misleading in violation of California's
23 consumer protection statutes. By advertising, marketing, or labeling hundreds of thousands (and
24 likely millions) of Products as recyclable with TerraCycle, but at best recycling only a few
25 thousand Products per year, Defendants are reaping the rewards of portraying themselves as
26 environmentally friendly without providing any meaningful benefit to the environment or to
27 consumers concerned about sustainability. Despite Defendants' marketing and advertising of the
28 Products as recyclable, most of the Products typically end up in landfills, incinerators,

1 communities, or the natural environment. Defendants' representations that the Products are
2 recyclable are material, false, misleading, and likely to deceive members of the public.

3 5. Defendants thus violated and continue to violate California's Unfair Competition
4 Law ("UCL"), Business and Profession Code § 17200, *et seq.*, based on fraudulent, unlawful and
5 unfair acts and practices, as well as the California False Advertising Law, Cal. Bus. & Prof. Code
6 § 17500, *et seq.* and the Environmental Marketing Claims Act, Cal. Bus. & Prof. Code § 17580.5.

7 6. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
8 an award of monetary damages would not redress Defendants' false, misleading, and deceptive
9 statements. Thus, Plaintiff seeks an order enjoining Defendants' acts of unfair competition and
10 other fraudulent, unlawful, and unfair acts and practices.

11 **PARTIES**

12 7. Plaintiff The Last Beach Cleanup is a non-profit, public interest organization
13 established pursuant to section 501(c)(3) of the Internal Revenue Code, and headquartered in
14 California. LBC was established in 2019 and works to reduce plastic pollution, protect public
15 spaces and wildlife from myriad harms related to plastic pollution, and ensure that consumers are
16 not misled by environmental marketing claims related to plastic. LBC has standing to bring this
17 action because Defendants' actions of misrepresenting the environmental benefits of their
18 Products by marketing and selling the Products as recyclable has frustrated LBC's mission to
19 protect the natural environment and ensure that consumers are not misled by false greenwashing
20 claims. Defendants' actions of falsely marketing, advertising and labeling their Products as
21 recyclable has caused LBC to divert resources to respond to Defendants' actions. Thus, LBC has
22 lost money or property and has suffered an injury in fact due to Defendants' actions of using
23 false, misleading, and deceptive advertising, marketing materials and labels regarding the
24 recyclability of their Products.

25 8. LBC's main purpose is to lead programs and projects to reduce plastic pollution in
26 the environment. The environmental, social and economic harms of plastic pollution are broad
27 and deep, causing: (1) misery and death to over 100 species; (2) toxins to leach into the
28 environment and our food chain; (3) vulnerability to extreme weather events because storm drains

1 are clogged with plastic; (4) costs to taxpayers for litter collection; (5) blight on our landscapes;
2 (6) spread of disease vectors such as dengue fever; and (7) harms to human health, wildlife and
3 the natural environment. LBC pursues its purpose of reducing plastic pollution in the
4 environment by performing research and surveys and leading initiatives to reduce plastic
5 pollution. For example, in an effort to reduce plastic pollution LBC advocates for installation of
6 drinking water refills stations in public spaces, better designed products and packaging, extended
7 producer responsibility, improved plastic distribution practices by companies, and targeted
8 recycling approaches. In 2019, LBC was awarded a National Geographic Grant to develop the
9 Global Cities Preventing Plastic Pollution program and the founder of LBC, Jan Dell, was named
10 a National Geographic Explorer. *See, e.g.*, <https://www.lastbeachcleanup.org/globalcities>.

11 9. LBC has engaged in a wide range of research topics related to plastic pollution and
12 has collaborated with other non-governmental organizations on publication of the research
13 results. Research topics include, but are not limited to plastic waste exports, plastic recyclability
14 and claims by product companies, plastic waste and recyclability regulations, and harms to
15 species and ecosystems. LBC distributes monthly Fact Packs on plastic waste to a large network
16 of reporters. LBC has provided research and expertise in support of the following published
17 reports: (1) Circular Claims Fall Flat, available at
18 <https://www.greenpeace.org/usa/research/report-circular-claims-fall-flat/>; (2) Deception by
19 Numbers: Claims about Chemical Recycling Don't Hold Up to Scrutiny, available at
20 <https://www.greenpeace.org/usa/research/deception-by-the-numbers/>; (3) All Talk and No
21 Recycling: An Investigation of the U.S. "Chemical Recycling" Industry, available at
22 <https://www.no-burn.org/chemical-recycling-us/>; (4) The Dirty Truth About Disposable
23 Foodware: The Mismatched Costs and Benefits of U.S. Foodservice Disposables and What to Do
24 About Them, available at [https://90e2bb46-39d9-49f9-a040-](https://90e2bb46-39d9-49f9-a040-b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf)
25 [b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf](https://90e2bb46-39d9-49f9-a040-b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf); and (5)
26 Breaking the Plastic Wave: Top Findings for Preventing Plastic Pollution, available at
27 [https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-](https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings)
28 [wave-top-findings](https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings).

1 10. LBC has also conducted a wide range of surveys related to plastic pollution,
2 including but not limited to: (1) 2020 U.S. Post Consumer Plastic Recycling Survey, available at
3 <https://www.lastbeachcleanup.org/usplasticrecyclingsurvey>; (2) 2020 California Consumer Plastic
4 Recycling Survey, available at <https://www.lastbeachcleanup.org/california>; (3) Global Fast Food
5 Plastic Survey, available at <https://www.lastbeachcleanup.org/fastfoodplastic>; (4) Harms of
6 Plastic Exports, available at <https://www.lastbeachcleanup.org/plastic-waste-exports>; (5)
7 Companies committed to Stopping Plastic Waste Exports, available at
8 <https://www.lastbeachcleanup.org/end-plastic-waste-exports>; (6) County Laws on Plastic
9 Products, available at <https://www.lastbeachcleanup.org/countrylaws>; and (7) Fires at Plastic
10 Recycling Facilities, available at <https://www.lastbeachcleanup.org/fires>.

11 11. LBC spends a significant amount of time and resources to ensure that consumers
12 are not misled by environmental marketing claims. LBC is heavily engaged in consumer
13 education and addresses the local and global impacts of plastic pollution by communicating its
14 findings through multimedia outlets and peer-reviewed publications. These include print and
15 television media, websites and blogs, lectures, and school outreach. LBC's website presents a
16 portion of its research, surveys, analyses, and articles. *See* <https://www.lastbeachcleanup.org/>.

17 12. A major LBC program is focused on identifying and analyzing companies' claims
18 that their products are recyclable. In 2018, the founder of LBC began to survey recycling
19 representations on marketing materials, advertising, and labels, including those referenced
20 TerraCycle. After conducting surveys based on the limited capacity for recycling plastic in the
21 U.S., LBC became specifically concerned about the impacts of marketing materials, advertising,
22 and labels misrepresenting the recyclability of plastic products and packaging. Accurate
23 recyclable claims and labels serve three valuable functions: (1) truthful advertising to consumers;
24 (2) prevention of harmful contamination in America's recycling system; and (3) identification of
25 products for elimination or redesign to reduce waste and plastic pollution. LBC has spent
26 hundreds of hours taking photos of products on store shelves and comparing the recyclability
27 claims to actual plastic processing capacity in the U.S.

1 13. LBC became aware of TerraCycle and the other Defendants through product
2 surveys, reviewing products on store shelves with TerraCycle logos, and through reading press
3 releases and articles about Defendants' recycling programs. LBC began purchasing available
4 Products with a TerraCycle logo on it in California. LBC has conducted in-depth research of
5 Defendants' websites, public reports, and media. Through this research LBC determined that
6 Defendants' programs mask the truth about poorly designed plastic products that contribute to
7 pollution. Rather than promote recyclable materials, TerraCycle encourages the other Defendants
8 to continue producing products made from hard-to-recycle materials and then falsely claim that
9 the materials can be recycled. However, because of the limited capacity in Defendants' programs
10 and the technical complexity and high cost of reprocessing the Products' materials, most of the
11 Products are not actually recycled. By giving the impression to the public that the Products are
12 recyclable, consumers are being misled to believe that they are "green" Products when they could
13 be purchasing products that are more environmentally friendly. After discovering Defendants'
14 false and misleading recycling claims, LBC began informing consumers of the misrepresentations
15 on Twitter. LBC's twitter account (@wastecounter) posted tweets calling on Defendants to stop
16 marketing and labeling the Products as recyclable. LBC's twitter account sent numerous tweets
17 between 2019 and 2020.

18 14. Because LBC's mission involves ensuring consumers are not misled by
19 environmental marketing claims and protecting the natural environment from plastic pollution,
20 Defendants' use of false, misleading, and deceptive claims regarding the recyclability of their
21 Products has frustrated LBC's purpose. Defendants' continued use of misleading and deceptive
22 recyclability claims serves to confuse the public about plastic products and packaging and gives
23 them a false sense that they are doing something good for the environment when they purchase
24 Defendants' Products. Defendants' frustration of LBC's purpose has forced LBC to spend staff
25 time and organizational resources investigating Defendants' use of misleading advertising,
26 marketing materials, and labels for their Products, as well as to educate the public and the media
27 that a product marketed by Defendants as recyclable is unlikely to be recycled. LBC spent at
28 least 200 hours in 2019 and at least 400 hours in 2020 to investigate Defendants' claims that the

1 Products are recyclable. These actions have caused LBC to lose money or property and it has
2 therefore suffered an injury in fact.

3 15. On December 7, 2020, LBC sent a letter to each Defendant in an attempt to resolve
4 this matter short of litigation.

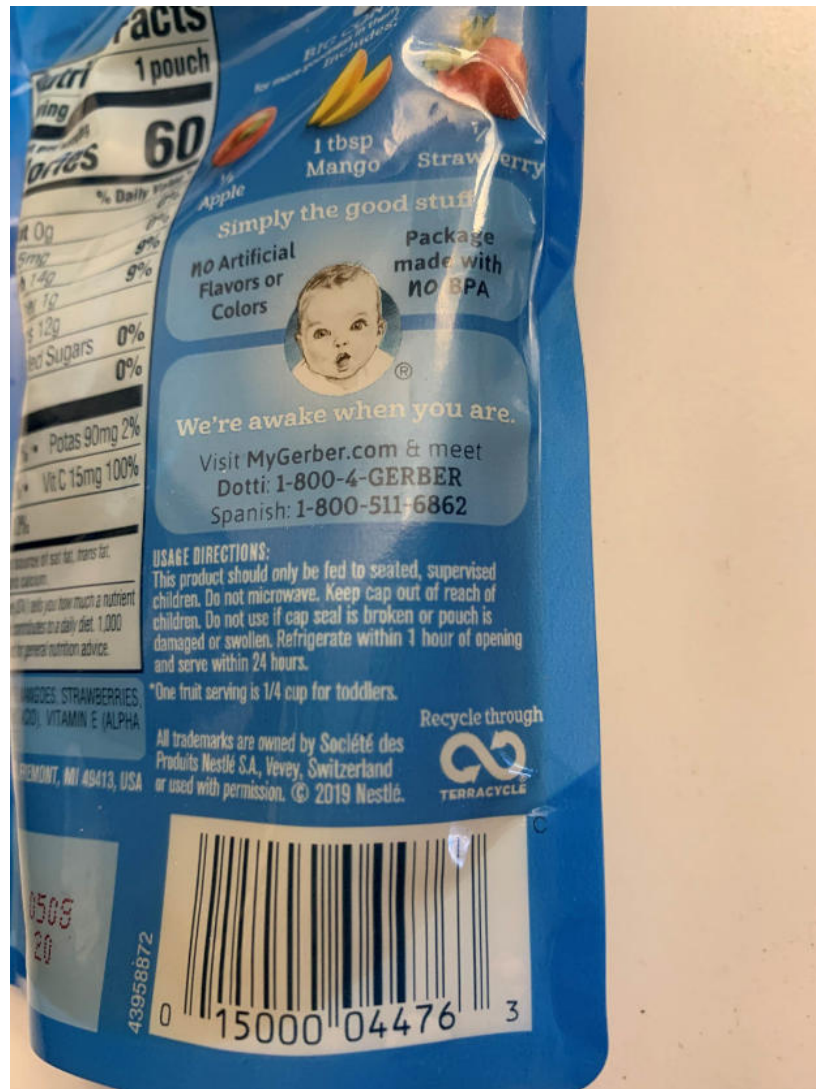
5 16. Absent relief from this Court, plastic pollution and the resulting harms to public
6 spaces and wildlife will continue to negatively impact LBC's efforts to protect these critical
7 resources. In addition, relief from this Court is necessary to further LBC's mission of ensuring
8 consumers are not misled by false environmental marketing claims.

9 17. Defendant TerraCycle, Inc. is a Delaware corporation with its principal place of
10 business in Trenton, New Jersey. Defendant TerraCycle, Inc. offers free programs to recycle the
11 Products to California consumers.

12 18. Defendant CSC Brands LP is a New Jersey corporation with its principal place of
13 business in Camden, New Jersey. Defendant CSC Brands LP manufactures, distributes, and sells
14 the Products in California. A non-exclusive example of CSC Brands LP's Products includes Late
15 July Organic Sea Salt Thin & Crispy Tortilla Chips, Net Wt. 11oz, UPC No. 8-90444-00029:



1 19. Defendant Gerber Products Company is a Michigan corporation with its principal
2 place of business in Arlington, Virginia. Defendant Gerber Products Company manufactures,
3 distributes, and sells the Products in California. A non-exclusive example of Gerber Products
4 Company's Products includes Gerber Sitter 2nd Foods Organic Banana Blueberry & Blackberry
5 Oatmeal Baby Food Pouch, 3.5oz, UPC No. 0-15000-07444-9:



25 20. Defendant Late July Snacks LLC is a Massachusetts corporation with its principal
26 place of business in Norwalk, Connecticut. Defendant Late July Snacks LLC manufactures,
27 distributes, and sells the Products in California. A non-exclusive example of Late July Snacks
28

1 LLC's Products includes Late July Organic Sea Salt Thin & Crispy Tortilla Chips, Net Wt. 11oz,
2 UPC No. 8-90444-00029.

3 21. Defendant L'Oreal USA S/D, Inc. is a Delaware corporation with its principal
4 place of business in New York, New York. Defendant L'Oreal USA S/D, Inc. manufactures,
5 distributes, and sells the Products in California. A non-exclusive example of L'Oreal USA S/D,
6 Inc.'s Products includes Garnier Fructis Active Fruit Protein Grow Strong Fortifying Hair
7 Conditioner, 33.8 fl. oz., UPC No. 6-03084-54746-3:



22. Defendant Materne North America is a New York corporation with its principal
place of business in New York, New York. Defendant Materne North America manufactures,
distributes, and sells the Products in California. A non-exclusive example of Materne North

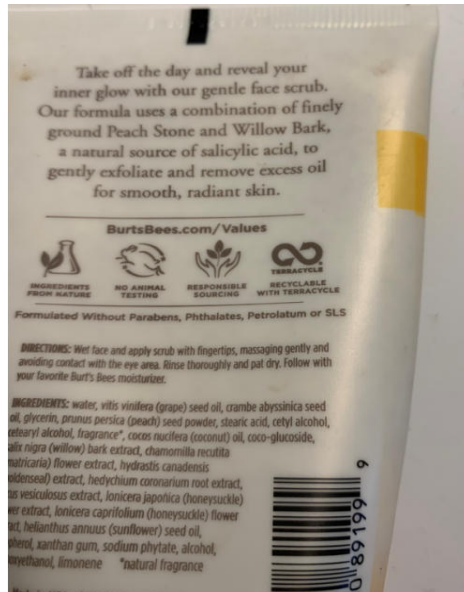
America's Products includes GoGo SqueeZ Fruit on the Go Apple Apple Applesauce Pouch, 12-3.2 oz., UPC No. 8-9000000115-8:



23. Defendant The Coca-Cola Company is a Delaware corporation with its principal place of business in Atlanta, Georgia. Defendant The Coca-Cola Company manufactures, distributes, and sells the Products in California. A non-exclusive example of The Coca-Cola Company's Products includes Honest Kids Super Fruit Punch Organic Juice Drink, 8 Ct., 6.75 fl. oz. pouches, UPC No. 6-57622-11175-3:



24. Defendant The Clorox Company is a Delaware corporation with its principal place of business in Oakland, California. Defendant The Clorox Company manufactures, distributes, and sells the Products in California. A non-exclusive example of The Clorox Company's Products includes Burt's Bees Deep Pore Scrub with Peach & Willow Bar, Net Wt., 4 oz, UPC No. 7-9285089199-9:



25. Defendant The Procter & Gamble Company is a Delaware corporation with its principal place of business in Cincinnati, Ohio. Defendant The Procter & Gamble Company manufactures, distributes, and sells the Products in California. A non-exclusive example of The Procter & Gamble Company's Products includes Febreze Unstoppables Small Spaces Air Freshener – Fresh Scent, 1 Ct., UPC No. 0-3700049706-6:



26. Defendant Tom's of Maine, Inc. is a Maine corporation with its principal place of business in Augusta, Maine. Defendant Tom's of Maine, Inc. manufactures, distributes, and sells the Products in California. A non-exclusive example of Tom's of Maine, Inc.'s Products includes Tom's of Maine Toddler Fluoride-Free Toothpaste, net Wt. 1.75 oz., UPC No. 0-77326-83377-3.

27. DOES 1 through 100 are persons or entities whose true names and capacities are presently unknown to Plaintiff, and who therefore are sued by such fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants perpetrated some or all of the wrongful acts alleged herein and are responsible in some manner for the matters alleged herein. Plaintiff will amend this Complaint to state the true names and capacities of such fictitiously named defendants when ascertained.

JURISDICTION AND VENUE

28. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10, because this case is a cause not given by statute to

1 other trial courts. This Court also has jurisdiction over certain causes of action asserted herein
2 pursuant to Business & Professions Code (“B&P”) §§ 17203 and 17204, which allow
3 enforcement in any Court of competent jurisdiction.

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

10 30. Venue in the County of Alameda is proper under B&P § 17203 and Code of Civil
11 Procedure §§ 395 and 395.5 because this Court is a court of competent jurisdiction and the
12 Products are sold throughout this County.

13 **LEGAL BACKGROUND**

14 31. In light of the significant amount of plastic that is marketed and labeled as
15 recyclable and instead ends up in landfills, incinerators, communities, and the natural
16 environment, the Legislature of the State of California has declared that “it is the public policy of
17 the state that environmental marketing claims, whether explicit or implied, should be
18 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers
19 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy
20 is based on the Legislature’s finding that “littered plastic products have caused and continue to
21 cause significant environmental harm and have burdened local governments with significant
22 environmental cleanup costs.” *Id.* § 42355.

23 32. The California Business and Professions Code § 17580.5 makes it “unlawful for
24 any person to make any untruthful, deceptive, or misleading environmental marketing claim,
25 whether explicit or implied.” Pursuant to that section, the term “environmental marketing claim”
26 includes any claim contained in the Guides for use of Environmental Marketing Claims published
27 by the FTC (the “Green Guides”). *Id.*; *see also* 16 C.F.R. § 260.1, *et seq.*
28

1 33. Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by
2 implication, that a product or package is recyclable. A product or package shall not be marketed
3 as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream
4 through an established recycling program for reuse or use in manufacturing or assembling another
5 item.” 16 C.F.R. § 260.12(a). This definition encompasses the three prongs of recyclability that
6 are commonly used in the solid waste industry: (1) accessibility of recycling programs (“through
7 an established recycling program”); (2) sortability for recovery (“collected, separated, or
8 otherwise recovered from the waste stream”); and (3) end markets (“for reuse or use in
9 manufacturing or assembling another item”).

10 34. The California Public Resources Code similarly defines recycling as “the process
11 of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise
12 become solid waste, and returning them to the economic mainstream in the form of raw material
13 for new, reused, or reconstituted products which meet the quality standards necessary to be used
14 in the marketplace.” Cal. Pub. Res. Code § 40180. This definition specifically excludes
15 “transformation.” *Id.* Transformation is defined as “incineration, pyrolysis, distillation, or
16 biological conversion other than composting.” *Id.*, § 40201. This recycling definition mirrors the
17 Green Guides: a product should not be marketed as recyclable unless it can be reused or used in
18 manufacturing or assembling another item.

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

26 36. As reflected in the Green Guides’ language and regulatory history, the FTC does
27 not consider a product to be recyclable unless it can actually be recycled. For instance, the Green
28 Guides provide that: (1) “[i]f any component significantly limits the ability to recycle the item,

1 any recyclable claim would be deceptive;” and (2) “an item that is made from recyclable material,
2 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,
3 should not be marketed as recyclable.” 16 C.F.R. §§ 260.12(a) and (d); *see also id.*, § 260.12(d),
4 Examples 2 and 6. And in promulgating the current recycling definition that encompasses
5 accessibility, sortability and end markets, the FTC clarified that “[f]or a product to be called
6 recyclable, there must be an established recycling program, municipal or private, through which
7 the product *will be* converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84,
8 24247 (May 1, 1998) (emphasis added). As the FTC has stated, “while a product may be
9 technically recyclable, if a program is not available allowing consumers to recycle the product,
10 there is no real value to consumers.” *Id.*, at 24243.

11 37. The Green Guides provide specific examples of recycling claims that the FTC
12 considers deceptive, as well as examples of ways in which marketers can qualify those claims.⁴
13 Compliance with the examples provided by the FTC qualifies as a defense to a claim under the
14 EMCA. B&P Code § 17580.5(b). Under the Green Guides, a marketer may make an unqualified
15 recyclable claim if a substantial majority of consumers or communities have access to recycling
16 facilities for that item. 16 C.F.R. § 260.12(b)(1). A “substantial majority” means at least 60
17 percent of consumers or communities where the item is sold. *Id.* Absent such evidence,
18 marketers are required to use qualifications that vary in strength depending on the degree of
19 consumer access to recycling for an item. *Id.*, § 260.12(b)(2). For instance, if recycling facilities
20 are available to slightly less than 60 percent of consumers or communities, the Green Guides
21 recommend that a marketer should qualify the recyclable claim by stating “this product may not
22 be recyclable in your area,” or “recycling facilities for this product may not exist in your area.”
23 *Id.* If recycling facilities are available only to a few consumers, the Green Guides recommend
24 that a marketer should qualify its recyclable claim by stating “this product is recyclable only in a
25 few communities that have appropriate recycling facilities.” *Id.* The Green Guides specifically
26

27 ⁴ The examples in the Green Guides are specifically provided by the FTC as its “views on how
28 reasonable consumers likely interpret certain claims.” 16 C.F.R. § 260.1(d).

1 state that it is deceptive to market a product with an unqualified recycling representation stating
2 that the product is recyclable through a takeback program if the program is not available to a
3 substantial majority of people where the products are sold. See, *e.g.*, *Id.* § 260.12(d), Example 9.

4 38. California law and the Green Guides also require that marketers substantiate
5 environmental marketing claims. California law requires marketers to maintain “in written form”
6 records supporting the validity of environmental representations. B&P § 17580(a). This
7 requirement includes records regarding whether consumer goods conform with the Green Guides’
8 use of the terms “recycled” and “recyclable.” *Id.*, § 17580(a)(5). It was the specific intent of the
9 California Legislature that the information and documentation supporting the validity of
10 environmental marketing representations “shall be fully disclosed to the public.” *Id.*, § 17580(d).
11 Likewise, the Green Guides require marketers to ensure that their claims are supported by a
12 reasonable basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined as
13 competent and reliable scientific evidence, such as “tests, analyses, research, or studies that have
14 been conducted and evaluated in an objective manner by qualified persons and are generally
15 accepted in the profession to yield accurate and reliable results.” *Id.* Such evidence should be
16 sufficient in quality and quantity. *Id.*

17 **BACKGROUND FACTS**

18 39. In the past decade humans across the globe have produced 8.3 billion metric tons
19 of plastic, most of it in disposable products and packaging that ends up as trash or pollution.⁵ Of
20 the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only
21 9% of that has been recycled.⁶ A third of the single-use plastic generated ends up in the natural
22 environment, accounting for 100 million metric tons of plastic pollution in 2016.⁷ Current
23

24 ⁵ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
25 Jul. 19, 2017, [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/Production%20use%20and%20fate%20of%20all%20plastics%20ever%20made.pdf)
26 [content/uploads/2018/05/Production use and fate of all plastics ever made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production use and fate of all plastics ever made.pdf) (last accessed
27 Dec. 7, 2020).

28 ⁶ *Id.*

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

1 estimates suggest that there are over 150 million tons of plastics in the ocean.⁸ The EPA
2 estimates that Americans alone disposed of 35.7 million tons of plastic in 2018, 91.3% of which
3 was not recycled.⁹ While California had a goal to achieve a 75% recycling rate by 2020,
4 California's recycling rate is actually in decline. According to CalRecycle, in 2014 California's
5 recycling rate was 50%, dropping to 47% in 2015 and down to 44% in 2016.¹⁰ According to the
6 California Statewide Commission on Recycling Markets and Curbside Recycling, the state's
7 recycling rate dropped to 37% in 2019.¹¹

8 40. Recent investigations into the proliferation of plastic pollution plaguing the natural
9 environment have revealed that the plastics industry has known for decades that most products
10 and packaging made from plastic would not be recycled. On September 11, 2020, National
11 Public Radio ("NPR") published an investigation illustrating the plastic industry's decades-long
12 awareness that recycling would not keep plastic products or packaging out of landfills,
13 incinerators, communities, or the natural environment.¹² In a 1974 speech, one industry insider
14 stated "there is serious doubt that [recycling plastic] can ever be made viable on an economic
15 basis."¹³ Larry Thomas, former president of the Society of the Plastic Industry (known today as
16 the Plastics Industry Association), told NPR that "if the public thinks that recycling is working,
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18 ⁸ *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR FOUNDATION
19 AND MCKINSEY & COMPANY (2016), [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf)
20 [content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf) at p.
17 (last accessed Dec. 7, 2020).

21 ⁹ EPA, *2018 Advancing Sustainable Materials Management: Facts and Figures Report – Tables*
22 *and Figures*. ([https://www.epa.gov/sites/production/files/2021-](https://www.epa.gov/sites/production/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf)
23 [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).

24 ¹⁰ *California's Statewide Recycling Rate*, CALRECYCLE, last updated Mar. 3, 2020,
25 <https://www.calrecycle.ca.gov/75percent/recyclerate> (last accessed Dec. 7, 2020).

26 ¹¹ California Statewide Commission on Recycling Markets and Curbside Recycling
27 Policy Recommendations, CALRECYCLE,
28 <https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5>
(last accessed Feb. 14, 2021).

29 ¹² Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*.
NPR.ORG (Sep. 11, 2020, 5:00 AM), [https://www.npr.org/2020/09/11/897692090/how-big-oil-](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled)
30 [misled-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled) (last accessed Dec. 7, 2020).

31 ¹³ *Id.*

1 then they are not going to be as concerned about the environment.”¹⁴ The NPR investigative
2 report details the length and expense that the plastics industry went to deceive consumers that
3 plastic was easily recyclable, despite knowledge that the cost of recycling would never be
4 economical. Similarly, a recent Canadian Broadcasting Corporation news report describes that
5 even the recycling logo was used as a marketing tool to improve the image of plastics after
6 environmental backlash in the 1980s.¹⁵ “There was never an enthusiastic belief that recycling
7 was ultimately going to work in a significant way,” yet the plastics industry spent millions on ads
8 to deceive the public as to the efficacy of recycling.¹⁶

9 41. After decades of industry deception that plastic products and packaging are
10 recyclable, consumers have recently become more aware of the problems associated with single-
11 use plastics polluting the oceans and the natural environment. The staggering amount of plastic
12 pollution accumulating in the environment is accompanied by an array of negative side effects.
13 For example, plastic debris is frequently ingested by marine animals and other wildlife, which can
14 be injurious, poisonous, and deadly.¹⁷ Floating plastic is also a vector for invasive species,¹⁸ and
15 plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed
16 by humans and other animals.¹⁹ Plastic litter on the streets and in and around our parks and
17 beaches also degrades the quality of life for residents and visitors. Scientists have also discovered

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20 ¹⁴ *Id.*

21 ¹⁵ *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23,
22 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 Dec. 7, 2020).

23 ¹⁶ *Id.*

24 ¹⁷ Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their 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 Dec. 7, 2020).

25 ¹⁸ *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017, Silver Spring, MD; https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf (last accessed Dec. 7, 2020)

26 ¹⁹ Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment 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 Dec. 7, 2020).

1 that plastic releases large amounts of methane, a powerful greenhouse gas, as it degrades.²⁰ Thus,
2 plastic pollution contributes to global climate change, which affects California in the form of
3 extreme drought, sea level rise, and more frequent and severe wildfires.²¹

4 42. There are various types of plastic resin that are used to produce consumer products
5 and packaging. PET (plastic #1) and HDPE (plastic #2) bottles and jugs are widely considered to
6 be the most recyclable forms of plastic; however, studies indicate that even products and
7 packaging made from these resins often end up in landfills, incinerators, communities, or the
8 natural environment.²² This is because materials recovery facilities (“MRF”) and plastic
9 reprocessing plants in the United States cannot collect, sort and process the sheer volume of
10 plastic that is generated by consumer product companies on an annual basis.²³ The labor and cost
11 required to collect, sort, grind, melt, and reconstitute the approximately 35.7 million tons of
12 municipal plastic waste produced in the United States every year is insurmountable. A recent
13 Greenpeace study, which was co-authored by LBC, revealed that U.S. plastic reprocessing
14 facilities can process no more than 23% of PET#1 plastic produced each year and no more than
15 13% of HDPE#2.²⁴ More alarmingly, plastics #3-7, which are widely considered to be low-value
16 plastics, are rarely, if ever recycled. The Greenpeace/LBC study revealed that MRFs can process
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19 ²⁰ Sarah-Jeanne Royer, et al., *Production of methane and ethylene from plastic in the*
20 *environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574> (last accessed Dec. 7,
20 2020).

21 ²¹ *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,
22 [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 Dec. 7, 2020)

23 ²² *Facts and Figures about Materials, Waste and Recycling*, U.S. EPA,
24 [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 Dec. 7, 2020).

25 ²³ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, N.Y. TIMES, Mar. 16,
26 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html> (last accessed
27 Dec. 7, 2020).

28 ²⁴ John Hovevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, [https://www.greenpeace.org/usa/wp-](https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf)
[content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf](https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf) (last accessed Dec. 7,
2020).

1 only a negligible percentage of plastics #3-7.²⁵ Additionally, reprocessing plastic creates a
2 significant amount 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.²⁶

5 43. 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.²⁷ 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 44. 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 were never recycled.²⁸ Instead, they were burned or entered into waterways, where they
17 were carried into the ocean.²⁹ For years, tons of plastic that U.S. consumers dutifully sorted and
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19 ²⁵ *Id.*

20 ²⁶ NAPCOR, Report on Postconsumer PET Container Recycling Activity in 2017,
21 https://napcor.com/wp-content/uploads/2018/11/NAPCOR_2017RateReport_FINAL.pdf (last
accessed Feb. 14, 2021)

22 ²⁷ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
23 [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)
[Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Dec. 7, 2020).

24 ²⁸ 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>
(last accessed Feb 24, 2021)

25 ²⁹ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
26 NPR.ORG (Mar. 13, 2019, 4:28 PM ET),
27 [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)
[go-now-that-china-doesnt-want-it](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it) (last accessed Dec. 7, 2020); see also *Discarded: Communities*
28 *on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, [https://wastetradestories.org/wp-](https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22.pdf)
[content/uploads/2019/04/Discarded-Report-April-22.pdf](https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22.pdf) (last accessed Dec. 7, 2020).

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.³⁰ That
3 year, 333,000 tons of plastic were deposited into the ocean from the Yangtze river, more than
4 double the amount for the river with the next highest amount.³¹

5 45. 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.³² 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.³³ 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.³⁴

13 46. 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.³⁵ One year after China's National Sword Policy, China's plastics imports plummeted
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19 _____
20 ³⁰ Laurent C.M. Lebreton, et al., *River plastic emissions to the world's oceans*, NAT. COMMUN.
21 Jun. 7, 2017, 8:15611, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467230/> (last accessed
22 Dec. 7, 2020).

23 ³¹ *Id.*

24 ³² *What Operation Green Fence Has Meant for Recycling*, WASTE 360,
25 <https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling> (last
26 accessed Dec. 7, 2020).

27 ³³ *Id.*

28 ³⁴ Christopher Joyce, *supra* note 29.

29 ³⁵ Liz Zarka, *Recycling's Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,
30 <https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>
31 (last accessed Dec. 7, 2020); *see also* Cheryl Katz., *Piling Up: How China's Ban on Importing*
32 *Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019, available at:
33 [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)
34 [recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling) (last accessed Dec. 7, 2020).

1 by 99 percent.³⁶ 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.³⁷ 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.³⁸ 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.³⁹ 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 47. Aware of the limited capacity for MRFs and plastic reproducers to recycle plastic
12 products and packaging and seeking to take advantage of consumers' interests in protecting the
13 environment, Defendants offer programs to recycle products that are not capable of being
14 recycled through established municipal collection. These Products are typically made from hard-
15 to-recycle materials such as flexible plastic, multi-layer laminates, plastics with unique additives,
16 and products with multiple, integrated types of plastics and non-plastics. These Products are not
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18 ³⁶ Cheryl Katz, *supra* note 35.

19 ³⁷ *Why Some Countries Are Shipping Back Plastic Waste*, BBC News,
20 <https://www.bbc.com/news/world-48444874> (last accessed February 9, 2021); *see also*
21 *International Policies Affecting Global Commodity Markets*, Cal Recycle,
22 <https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies> (last accessed February 9,
23 2021).

24 ³⁸ *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 February 24, 2021).

26 ³⁹ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their*
27 *Disposal*, open for signature Mar. 23, 1989, adopted May 5, 1992, U.N.T.S. vol. 1673,
28 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. 24, 2021).

1 recyclable because they cannot be “collected, separated, or otherwise recovered from the waste
2 stream through an established recycling program for reuse or use in manufacturing or assembling
3 another item.” 16 C.F.R. 260.12(a). According to TerraCycle’s website, TerraCycle has found
4 that “nearly everything we touch can be recycled and [we] collect typically non-recyclable items
5 through national, first-of-their-kind recycling programs.”⁴⁰ TerraCycle works with the other
6 Defendants to “take hard-to-recycle materials from our programs, such as ocean plastic, and turn
7 them into new products.”⁴¹ TerraCycle explains on its website that to recycle each Product a
8 consumer need only “choose the programs you’d like to join; start collecting in your home,
9 school, or office; download free shipping labels; and send us your waste to be recycled.”⁴² In
10 fact, prior to receiving Plaintiff’s pre-suit demand on December 7, 2020, TerraCycle claimed on
11 its website that it recycled 97% of the material collected by volume. Given that the material
12 efficiency rates for recycling PET and HDPE bottles and jugs are significantly lower than 97%,
13 and those are the easiest materials to recycle, it is hard to believe that TerraCycle was ever able to
14 recycle 97% of the hard-to-recycle material it collected. It is not surprising that TerraCycle
15 removed that claim from its website after receiving Plaintiff’s pre-suit demand.

16 48. To take advantage of consumers’ interests in reducing the environmental footprint
17 of the products they buy, Defendants portray to consumers that their Products are recyclable.
18 There are a wide range of products made from plastic and other materials that are not accepted in
19 municipal curbside or drop-off center recycling systems. Thus, to count these Products as
20 recyclable and to achieve sustainability goals, Defendants created a “mail back and recycle”
21 program. And each manufacturer Defendant markets, advertises, labels or otherwise states that
22 its Products are recyclable with TerraCycle.

23 49. Defendants’ advertisements and marketing materials and the Products’ labels fail
24 to inform consumers that Defendants have strict numerical limits that prohibit most consumers
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26 ⁴⁰ Terracycle.com, <https://www.terracycle.com/en-US/#> (last accessed February 5, 2021).

27 ⁴¹ *Id.*

28 ⁴² *Id.*

1 from participating in their recycling programs. For example, if a consumer visits TerraCycle's
2 website to recycle Febreze Aerosol containers, all of which are labeled as recyclable, the
3 consumer will discover that the recycling program is limited to 7,000 participating locations and
4 has zero available locations.⁴³ Considering that The Procter & Gamble Company likely sells
5 hundreds of thousands of Febreze Aerosol containers, if not more, the vast majority of these
6 Products cannot be recycled and are therefore not recyclable. Even the use of the term
7 "participating locations" is misleading because a "participating location" actually refers to an
8 individual or group signed up for Defendants' takeback programs. In other words, the program
9 for Febreze Aerosol containers is limited to 7,000 individuals or groups, the only potentially
10 available "location" is with TerraCycle, and once the participation limit has been met new
11 individuals or groups are put on a waiting list indefinitely.

12 50. Defendants' statements that the Products are recyclable with TerraCycle constitute
13 unqualified recycling representations. As an initial matter, a reasonable consumer examining the
14 Products' advertising, marketing materials or labels will not realize that "with TerraCycle" or
15 other similar phrases means that, in order to recycle the Products, the consumer will need to sign
16 up for a program that in turn requires that individual to take numerous, cumbersome steps to send
17 the Products by mail to TerraCycle for recycling. Furthermore, if a consumer makes this
18 discovery, Defendants inform consumers that the Products will be recycled if they follow the
19 instructions to mail back the Products but fails to disclose the limited availability and capacity in
20 Defendants' programs. *See, e.g.*, 16 C.F.R. §§ 260.12(b); 260.12(d) Example 9.

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23 ⁴³ The fact that Defendants place people on a waitlist when a program is full does not lessen the
24 deceptiveness of Defendants' recycling representations since placing people on a waitlist until a
25 spot opens up does not increase access to recycling of the Products. Further, consumers purchase
26 the Products with the belief that they will be able to recycle the Products immediately by sending
27 the packaging back to TerraCycle, and people are not willing to save waste for an unknown and
28 unspecified duration in the hopes they will later be accepted to Defendants' recycling programs.
In addition, TerraCycle has a program where consumers can pay for their Products to be recycled,
but such a payment program is not disclosed to consumers and thus consumers have no
reasonable expectation that they will be required to pay for the Product to be recycled when they
purchase it.

1 51. In response to Plaintiff's pre-suit demand, some of the Defendants made marginal
2 increases to their participation limits, but none of those increases have been sufficient to make
3 recyclability available to most purchasers of the Products nor anywhere close to the 60 percent
4 standard in the Green Guides. *See* 16 C.F.R. § 260.12(b)(1). Defendants have also been
5 unwilling to commit to maintaining those participation increases, and may well reduce the
6 participation limits again in the future. Consumers purchase the Products with the belief that they
7 will be able to recycle the Products, only to find out later that participation in Defendants'
8 recycling programs are full and that they will need to either pay for a "Zero Waste Box" to return
9 it to TerraCycle or discard the packaging into the trash where it will ultimately end up in a
10 landfill. Worse yet, some consumers discard the packaging into their recycling bins, thereby
11 contaminating legitimate recycling streams with unrecyclable materials and increasing costs for
12 municipalities.

13 52. In their haste to lure customers interested in environmentally friendly products and
14 packaging, Defendants are making environmental marketing claims that are false, misleading, and
15 deceptive. The claims made by Defendants that the Products are recyclable are consistent and are
16 material to a reasonable consumer. Because the claims are false and misleading, ordinary
17 consumers are likely to be deceived by such representations. Defendants are also aware of the
18 economic benefits of marketing their Products as recyclable. TerraCycle's 2019 earnings report
19 states:

20 Many of these clients have told us (as they renew those programs) that they have
21 experienced increased customer loyalty, higher revenue and/or greater market
22 share that they attribute to their TerraCycle programs. Our experience has led us
to conclude that some consumers patronize brands that enable recyclability of
products and packaging that were not previously recyclable.⁴⁴

23 Defendants are therefore reaping the rewards of portraying themselves as environmentally
24 friendly by marketing the Products as recyclable while offering no corresponding benefit to the
25 environment or to consumers concerned about sustainability.

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28 ⁴⁴ U.S. S.E.C. Ann. Rep. Form 1-K, TerraCycle US Inc. (Dec. 31, 2019).

1 53. Pursuant to the Green Guides, “it is deceptive to misrepresent, directly or by
2 implication, that product or package is recyclable,” unless it “can be collected, separated, or
3 otherwise recovered from the waste stream through an established recycling program for reuse or
4 use in manufacturing or assembling another item.” 16 C.F.R. 260.12(a). Because Defendants can
5 only collect Products from a tiny fraction of consumers, Defendants’ unqualified representations
6 that the Products are recyclable are per se deceptive under the Green Guides and violates
7 California law. *See* 16 C.F.R. §§ 260.12(b); 260.12(d) Example 9.

8 54. Defendants’ claim that the Products are recyclable can also lead to contaminating
9 the recycling stream with unrecyclable materials that will hinder the ability of municipal
10 recycling facilities to safely and cost-effectively process items that are legitimately recyclable.
11 For instance, according to the Recycling Partnership, “plastic bags cause MRF operators to shut
12 down the recycling line many times a day to cut off bags that have wrapped around equipment.
13 This maintenance shut down reduces throughput for a facility, raises cost of labor to sort
14 materials and maintain equipment, increases waste coming out of the MRF, and puts workers at
15 risk of injury when they are performing maintenance.”⁴⁵ By marketing the Products as
16 recyclable, while limiting participation in takeback programs, Defendants are increasing the
17 likelihood that consumers will toss their non-recyclable Products into recycling bins. Thus,
18 Defendants are contaminating the recycling stream with unrecyclable materials that prevents
19 legitimately recyclable materials from being recycled. Environmentally motivated consumers
20 who purchase the Products in the belief that they are recyclable may be thus unwittingly
21 hindering recycling efforts and driving up recycling costs in their municipalities.

22 55. Environmentally motivated consumers purchase the Products from Defendants
23 based on the belief that the Products will be recycled. At the time of purchase, these consumers
24 have no way of knowing that Defendants’ programs are full. Thus, it is only after purchasing the
25 Products with the expectation that the Products will be recycled that consumers learn that

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27 ⁴⁵ Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING
28 PARTNERSHIP, Apr. 2020, [https://recyclingpartnership.org/wp-content/uploads/2020/04/The-
Recycling-Partnership_WCCI-Report_April-2020_Final.pdf](https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf) at p. 13 (last accessed Dec. 7, 2020).

1 Defendants cannot recycle their Products because their recycling program is full. Even as to the
2 Products that Defendants accept, consumers have no way of knowing whether the Products are
3 actually reused or converted into a material that can be reused or used in manufacturing or
4 assembling another item. These consumers place a high priority on environmental concerns in
5 general, and on the negative consequences regarding the proliferation of plastic pollution in
6 particular. Based on the labeling and advertising of Defendants' Products, reasonable consumers
7 believe that the Products can and will be recycled. Defendants' representations that the Products
8 are recyclable are thus material to reasonable consumers.

9 56. LBC's mission is to protect the natural environment from plastic pollution and
10 expose environmental harms caused by plastic pollution to the public. Given that many
11 consumers actively seek to purchase recyclable products because they are environmentally
12 conscious, and that reasonable consumers believe that Products marketed as recyclable will
13 actually be recycled, Defendants' false, misleading, and deceptive recyclable claims on the
14 Products have frustrated LBC's mission. LBC has diverted significant resources and staff time in
15 response to this frustration of purpose by evaluating the problems associated with the
16 proliferation of plastic pollution, investigating Defendants' recyclable representations, and
17 informing the public and the media with respect to Defendants' false, misleading, and deceptive
18 recycling claims.

19 57. Defendants are aware that the vast majority of the Products are not recyclable, yet
20 Defendants have not undertaken any effort to notify their customers of the problem. Defendants'
21 failure to disclose that the Products are not recyclable is an omission of fact that is material to
22 reasonable consumers.

23 58. In addition, Defendants are required to maintain written records substantiating the
24 validity of environmental marketing representations, including whether consumers goods
25 conform with the Green Guides' use of the terms "recycled" and "recyclable." B&P § 17580(a);
26 *see also* 16 C.F.R. § 260.2. The California Legislature intended that such documentation would
27 be fully disclosed to the public. *Id.*, § 17580(d). However, since Plaintiff served its pre-suit
28 demand, Defendants have not provided any documents substantiating their claims that the

1 Products are recyclable (and certainly not the 97% material volume previously claimed on
2 TerraCycle's website). Defendants' failure to substantiate their claims are a violation of both
3 California law and the Green Guides.

4 **FIRST CAUSE OF ACTION**

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

7 59. Plaintiff incorporates by reference the allegations set forth above.

8 60. Under B&P § 17200, any business act or practice that is likely to deceive members
9 of the public constitutes a fraudulent business act or practice.

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

13 62. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
14 an award of monetary damages would not redress Defendants' false, misleading, and deceptive
15 statements.

16 63. Defendants' claims that the Products are recyclable are material, untrue, and
17 misleading. These recyclable claims are prominent on all of Defendants' marketing, advertising,
18 and labeling materials, even though Defendants are aware that the claims are false and
19 misleading. Defendants' claims are thus likely to deceive a reasonable consumer. LBC
20 investigated Defendants' recyclable representations because part of LBC's mission is to ensure
21 that consumers are not misled by environmental marketing claims. In furtherance of this mission
22 and as part of LBC's investigation, LBC diverted resources from other programs in order to
23 specifically investigate Defendants' representations that the Products are recyclable. In
24 particular, LBC utilized extensive staff time and expended substantial resources to understand the
25 issue of plastic pollution and investigate Defendants' role in the proliferation of plastic waste.
26 LBC would not have diverted such resources but for Defendants' false representations that the
27 Products are recyclable. LBC has thus suffered injury in fact and lost money or property as a
28 direct result of Defendants' misrepresentations and material omissions.

64. By committing the acts alleged above, Defendants have engaged in fraudulent business acts and practices, which constitute unfair competition within the meaning of B&P § 17200.

65. An action for injunctive relief is specifically authorized under B&P § 17203.

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

SECOND CAUSE OF ACTION

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

66. Plaintiff incorporates by reference the allegations set forth above.

67. The violation of any law constitutes an unlawful business practice under B&P § 17200.

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

69. Defendants' conduct also violates B&P § 17500, which prohibits knowingly making, by means of any advertising device or otherwise, any untrue or misleading statement with the intent to sell a product or to induce the public to purchase a product. By misrepresenting that the Products are recyclable, Defendants are violating B&P § 17500.

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

71. Defendants' failure to substantiate their claims that the Products are recyclable is also a violation of both California law and the Green Guides. California law requires Defendants to maintain written records substantiating the validity of environmental marketing representations, including whether consumers goods conform with the Green Guides' use of the terms "recycled" and "recyclable." B&P § 17580(a). Likewise, the Green Guides require that marketers ensure that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R. § 260.2.

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

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

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

75. An action for injunctive relief is specifically authorized under B&P § 17203.

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

THIRD CAUSE OF ACTION

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

76. Plaintiff incorporates by reference the allegations set forth above.

1 77. Under B&P § 17200, any business act or practice that is unethical, oppressive,
2 unscrupulous, or substantially injurious to consumers, or that violates a legislatively declared
3 policy, constitutes an unfair business act or practice.

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

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

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

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

1 California that information and documentation supporting the validity of environmental
2 representations “shall be fully disclosed to the public.” B&P § 17580(d).

3 82. Defendants’ conduct, including failing to disclose that the Products are not
4 recyclable and that the majority of the Products will end up in landfills, incinerators,
5 communities, and the natural environment, is substantially injurious to consumers. Such conduct
6 has caused and continues to cause substantial injury to consumers because consumers would not
7 have purchased the Products but for Defendants’ representations that the Products are
8 recyclable. Consumers are concerned about environmental issues in general and plastic pollution
9 in particular and Defendants’ representations are therefore material to such
10 consumers. Misleading consumers causes injury to such consumers that is not outweighed by any
11 countervailing benefits to consumers or competition. Indeed, no benefit to consumers or
12 competition results from Defendants’ conduct. Defendants gain an unfair advantage over their
13 competitors, whose advertising must comply with Cal. Pub. Res. Code § 42355.5, the FTC Act,
14 B&P § 17508, and the Green Guides. Since consumers reasonably rely on Defendants’
15 representations of the Products and injury results from ordinary use of the Products, consumers
16 could not have reasonably avoided such injury.

17 83. Although Defendants know that the Products are not recyclable and that many of
18 the Products will not be recycled, Defendants failed to disclose those facts to their customers.

19 84. By committing the acts alleged above, Defendants have engaged in unfair business
20 acts and practices which constitute unfair competition within the meaning of B&P § 17200.

21 85. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
22 an award of monetary damages would not redress Defendants’ unfair business acts and practices.

23 86. An action for injunctive relief is specifically authorized under B&P § 17203.

24 87. LBC investigated Defendants’ recyclable representations because part of LBC’s
25 mission is to ensure that consumers are not misled by environmental marketing claims. In
26 furtherance of this mission and as part of LBC’s investigation, LBC diverted resources from other
27 programs in order to specifically investigate Defendants’ representations that the Products are
28 recyclable. In particular, LBC utilized extensive staff time and expended substantial resources to

1 understand the issue of plastic pollution and investigate Defendants' role in the proliferation of
2 plastic waste. LBC would not have diverted such resources but for Defendants' false
3 representations that the Products are recyclable. LBC has thus suffered injury in fact and lost
4 money or property as a direct result of Defendants' misrepresentations and material omissions.

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff has no adequate remedy at law and prays for judgment and relief
8 against Defendants as follows:

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

12 B. That the Court order Defendants to conduct a corrective advertising and
13 information campaign advising consumers that the Products do not have the characteristics, uses,
14 benefits, and qualities Defendants have claimed;

15 C. That the Court order Defendants to cease and refrain from marketing and
16 promotion of the Products that state or imply that the Products are recyclable;

17 D. That the Court order Defendants to maintain records in written form substantiating
18 the extent to which the Products are recyclable and enjoin Defendants from making
19 environmental marketing claims with respect to the recyclability of the Products without
20 sufficient substantiation.

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

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

27 G. That the Court grant such other and further relief as may be just and proper.
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JURY DEMAND

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

Dated: March 4, 2021

Respectfully submitted,

LEXINGTON LAW GROUP



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