

1 LEXINGTON LAW GROUP  
Howard Hirsch, State Bar No. 213209  
2 Meredyth Merrow, State Bar No. 328337  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
4 Facsimile: (415) 759-4112  
hhirsch@lexlawgroup.com  
5 mmerrow@lexlawgroup.com

6 LAW OFFICE OF GIDEON KRACOV  
Gideon Kracov, State Bar No. 179815  
7 801 S. Grand Ave., 11th Floor  
Los Angeles, CA 90017  
8 Telephone: (213) 629-2071  
Facsimile: (213) 623-7755  
9 gk@gideonlaw.net

10 Attorneys for Plaintiff  
11 ELISA BARGETTO

12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15  
16 ELISA BARGETTO, on behalf of herself and all  
17 others similarly situated,

18 Plaintiffs,

19 v.

20 WALGREEN CO.,

21 Defendant.

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

**CLASS ACTION COMPLAINT**

1 Plaintiff Elisa Bargetto (“Plaintiff”), based on information, belief, and investigation of her  
2 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.<sup>1</sup> 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.<sup>2</sup> As consumers  
10 become increasingly aware of the problems associated with plastic pollution, they are  
11 increasingly susceptible to claims reassuring them that the plastic they purchase is recyclable. In  
12 light of the magnitude of plastic pollution in California and elsewhere, the California voters  
13 ratified SB 270 pursuant to Proposition 67, which prohibits stores from selling or distributing a  
14 reusable grocery bag made from plastic film unless the bag is “recyclable in this state.” Cal. Pub.  
15 Res. Code § 42281(b)(1)(C); *see also id.*, § 42283. SB 270 also prohibits stores from charging  
16 less than ten cents (\$0.10) per bag and specifies that all monies collected from customers may  
17 only be used for: (1) costs associated with complying with SB 270, (2) the “actual” costs of  
18 providing recycled paper bags or reusable grocery bags, and (3) costs associated with “a store’s  
19 educational materials or educational campaign encouraging the use of reusable grocery bags.”  
20 Cal. Pub. Res. Code § 42283(b)(3).

21 2. Nevertheless, defendant Walgreen Co. (“Walgreens”) sells and distributes reusable  
22 plastic grocery bags made from plastic film (the “Products”) to California consumers even though  
23 the Products are not recyclable in California. Walgreens’ sales and distribution of the Products in

24 \_\_\_\_\_  
25 <sup>1</sup> 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)  
26 <https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s> (last  
accessed Dec. 7, 2020).

27 <sup>2</sup> 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 California are therefore an unlawful business practice. And in light of the large number of  
2 Products sold by Walgreens in California, the relatively low costs of complying with SB 270 and  
3 of providing bags to customers, and the minimal amount of money Walgreens appears to be  
4 spending on promoting the use of reusable grocery bags, Walgreens is likely using the money it  
5 has collected from Plaintiff and other California consumers from sales of the Products for  
6 purposes beyond those enumerated in SB 270, which is also an unlawful business practice.

7 3. There can be no serious question that the Products are not recyclable in California  
8 (or anywhere for that matter). In the solid waste industry, it is widely understood that for a  
9 product to be considered “recyclable,” it must meet at least three criteria. First, consumers must  
10 have access to recycling facilities that accept the product to recycle it. Second, recycling facilities  
11 must be capable of sorting the product from the general waste stream into the correct material  
12 bale. Third, there must be end markets to purchase that material bale to convert the material  
13 contained in that bale into a new product. The quality of these material bales also plays a major  
14 role in whether that material will be ultimately recycled. The repurposing of material used to  
15 make one product into a new product or material fully “closes the loop” of the recycling process  
16 (hence the commonly used and widely recognized “chasing arrows” symbol for recycling).  
17 Highly contaminated material bales are not wanted by processors due to harms caused to  
18 equipment and the production of low-quality materials and products.

19 4. Because consumers do not have access to recycling programs that accept the  
20 Products, because the Products cannot be separated or recovered from the general waste stream  
21 and sorted into the correct materials bale by material recovery facilities (“MRFs”), and because  
22 there are no end markets to reuse the Products or to convert the Products into a material that can  
23 be reused or used in manufacturing or assembling another item, the Products are not recyclable.  
24 Despite Walgreens’ claims that the Products are recyclable by “Store Drop-Off,” most of the  
25 Products typically end up in landfills, incinerators, communities, or the natural environment.  
26 Accordingly, Walgreens’ sale of the Products is unlawful and its representations that the Products  
27 are recyclable are material and false.

28

1           5.       Plaintiff purchased the Products because she believed the Products as sold by  
2 Walgreens complied with the law. If Plaintiff had known that the Products were sold unlawfully  
3 in California because they are not recyclable, she would not have purchased the Products and  
4 would have instead sought reusable bags made from other materials, such as paper or cloth bags.  
5 Walgreens thus violated and continues to violate California’s Single-Use Carryout Bag Ban (“SB  
6 270”), Cal. Pub. Res. Code §§ 42281(b)(1)(C) and 42283(b)(3); the Environmental Marketing  
7 Claims Act (“EMCA”), Cal. Bus. & Prof. Code §§ 17580.5 and 17580(a); the California  
8 Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770, *et seq.*; California’s False  
9 Advertising Law, Cal. Bus. & Prof. Code § 17500; California’s Unfair Competition Law  
10 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.* based on unlawful, unfair, and deceptive acts  
11 and practices; and the express warranty provisions under the California Commercial Code § 2313.

12           6.       Plaintiff has no adequate remedy at law for the injuries currently being suffered as  
13 an award of monetary damages would not prohibit Walgreens’ unlawful sale and distribution of  
14 the Products in California. If an injunction is not granted, Plaintiff will suffer irreparable injury  
15 because she continues to desire to purchase Products from Walgreens in the future that are legally  
16 sold and recyclable but is unable to determine with confidence whether the Products are legally  
17 sold and recyclable. In addition, plastic pollution caused by Walgreens’ sale of the Products in  
18 California will continue to negatively harm California waters, coasts, communities, and marine  
19 life. California consumers may also contaminate the recycling stream by placing the Products in  
20 their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus,  
21 Plaintiff and the Class seek an order enjoining Walgreens’ acts of unlawful, unfair, and deceptive  
22 acts and practices in California, which serves the public interest by protecting the environment  
23 and the integrity of the recycling stream and by preventing Walgreens from gaining an unfair  
24 advantage over companies that lawfully sell their products. In addition, Plaintiff and the Class  
25 seek an award of damages to compensate them for Walgreens’ unlawful, unfair, and deceptive  
26 acts, and restitution to the individual victims of Walgreens’ unlawful, unfair, and deceptive  
27 practices.

28

**PARTIES**

1  
2 7. Plaintiff Elisa Bargetto is a resident of San Francisco, California. Plaintiff is  
3 concerned about the environment and seeks out products that are compostable, recyclable or  
4 reusable so that she can minimize her impact on the environment in general and on the country’s  
5 plastic waste problems in particular. Plaintiff purchased the Products from Walgreens based on a  
6 belief that Walgreens’ sale of the Products complied with its legal obligations under California  
7 law and in reliance on Walgreens’ representations that the Products are recyclable. Plaintiff  
8 purchased the Products in December 2021 at a Walgreens retail outlet located in San Francisco.  
9 The deceptive representations that the Products are recyclable are located on the front and side of  
10 the Products. Had Plaintiff known that the Products are not recyclable in San Francisco, in  
11 California or anywhere else, and therefore Walgreens’ sale of the Products were unlawful, she  
12 would not have purchased the Products or would not have paid as much as she did for the  
13 Products.

14 8. Defendant Walgreen Co. is an Illinois corporation with its principal place of  
15 business in Deerfield, Illinois. Walgreens manufactures, distributes, and sells the Products in  
16 California. Walgreens has a significant presence in California, with 586 retail locations, making  
17 California its third largest market.

**JURISDICTION AND VENUE**

18  
19 9. This Court has jurisdiction over Walgreens because it is a corporation or other  
20 entity that has sufficient minimum contacts in California, is a citizen of California, or otherwise  
21 intentionally avails itself of the California market either through the distribution, sale or  
22 marketing of the Products in the State of California or by having a facility located in California so  
23 as to render the exercise of jurisdiction over it by the California courts consistent with traditional  
24 notions of fair play and substantial justice.

25 10. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the  
26 events or omissions giving rise to the claim occurred in this District.

27 11. **Intradistrict Assignment (L.R. 3-2(c) and (d) and 3.5(b))**: This action arises in  
28 San Francisco County, in that a substantial part of the events which give rise to the claims

1 asserted herein occurred in San Francisco County. Pursuant to L.R. 3-2(c), all civil actions which  
 2 arise in San Francisco County shall be assigned to the San Francisco Division or the Oakland  
 3 Division. Concurrently with filing this Complaint, Plaintiff is filing an affidavit pursuant to Civil  
 4 Code § 1780(c) regarding the propriety of venue in San Francisco County.

### 5 LEGAL BACKGROUND

6 12. The California Legislature has concluded that “littered plastic products have  
 7 caused and continue to cause significant environmental harm and have burdened local  
 8 governments with significant environmental cleanup costs.” Cal. Pub. Res. Code § 42355. In  
 9 light of this finding, SB 270—which was ratified by California voters as Proposition 67—  
 10 prohibits stores in California from selling or distributing reusable grocery bags made from plastic  
 11 film unless the bag is “recyclable in this state.” Cal. Pub. Res. Code § 42281(b)(1)(C).<sup>3</sup> SB 270  
 12 also prohibits stores from charging less than ten cents (\$0.10) per bag and specifies that all  
 13 monies collected from customers may only be used for: (1) costs associated with complying with  
 14 SB 270, (2) the “actual” costs of providing recycled paper bags or reusable grocery bags, and (3)  
 15 costs associated with “a store’s educational materials or educational campaign encouraging the  
 16 use of reusable grocery bags.” Cal. Pub. Res. Code § 42283(b)(3).

17 13. In addition, EMCA makes it “unlawful for any person to make any untruthful,  
 18 deceptive, or misleading environmental marketing claim, whether explicit or implied.” Cal. Bus.  
 19 & Prof. Code § 17580.5. Pursuant to that section, the term “environmental marketing claim”  
 20 includes any claim contained in the Guides for use of Environmental Marketing Claims published  
 21 by the FTC (the “Green Guides”). *Id.*; *see also* 16 C.F.R. § 260.1, *et seq.*

22 14. A product or packaging is only recyclable in California (or elsewhere) if it meets  
 23 three criteria. First, consumers must have access to recycling facilities that accept the product to  
 24

25 <sup>3</sup> The California Public Resources Code also required that plastic bags must be “accepted for  
 26 return at stores subject to the at-store recycling program [commencing with Section 42250] for  
 27 recycling.” Cal. Pub. Res. Code § 42281(b)(1)(C). Stores such as Walgreens were required to  
 28 “establish an at store recycling program pursuant to this chapter that provides an opportunity for a  
 customer of the store to return to the store clean plastic carryout bags.” *Id.*, § 42251. However,  
 the section requiring retail locations to maintain an at store recycling program expired on January  
 1, 2020. *Id.*, § 42257.

1 recycle it. Second, recycling facilities must be capable of sorting the product from the general  
2 waste stream into the correct material bale. Third, there must be end markets to purchase that  
3 material bale to convert the material contained in that bale into a new product. These three basic  
4 prerequisites for recyclability have been codified in several different places in California law.  
5 Under the Public Resource Code, recycling is defined as “the process of collecting, sorting,  
6 cleansing, treating, and reconstituting materials that would otherwise become solid waste, and  
7 returning them to the economic mainstream in the form of raw material for new, reused, or  
8 reconstituted products which meet the quality standards necessary to be used in the marketplace.”  
9 Cal. Pub. Res. Code § 40180. This definition identifies the three criteria required for an item to  
10 be recyclable: (1) collecting; (2) sorting; and (3) returning [reconstituted materials] to the  
11 economic mainstream in the form of raw materials for new, reused or constituted products.  
12 Similarly, the Green Guides state “[i]t is deceptive to misrepresent, directly or by implication, that  
13 a product or package is recyclable. A product or package shall not be marketed as recyclable  
14 unless it can be collected, separated, or otherwise recovered from the waste stream through an  
15 established recycling program for reuse or use in manufacturing or assembling another item.” 16  
16 C.F.R. § 260.12(a). This definition also encompasses the three prongs of recyclability:  
17 (1) accessibility of recycling programs (“through an established recycling program”);  
18 (2) sortation for recovery (“collected, separated, or otherwise recovered from the waste stream”);  
19 and (3) end markets (“for reuse or use in manufacturing or assembling another item”).

20 15. The Sustainable Packaging for The State of California Act of 2018 (the  
21 “Sustainable Packaging Act”), Cal. Pub. Res. Code § 42370.2, includes similar recycling  
22 standards for food service packaging. Under the Sustainable Packaging Act, to determine  
23 whether a food service packaging is recyclable, CalRecycle must determine whether the food  
24 service packaging: (1) is regularly collected, separated, and cleansed for recycling by recycling  
25 service providers; (2) is regularly sorted and aggregated into defined streams for recycling  
26 processes; (3) is regularly processed and reclaimed or recycled with commercial recycling  
27 services; (4) regularly becomes feedstock that is used in the production of new products; and (5)  
28 is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value. Cal.

1 Pub. Res. Code § 42370.2(d)(1)-(6). On March 4, 2022, CalRecycle published the List of  
2 Approved Food Service Packaging, which does not include a single plastic item, such as reusable  
3 grocery bags made from plastic film.<sup>4</sup>

4 16. The California Public Resources Code further states that product or packaging is  
5 only recyclable if “collected for recycling by recycling programs for jurisdictions that collectively  
6 encompass at least 60 percent of the population of the state,” “sorted into defined streams for  
7 recycling processes” by facilities that collectively serve at least 60 percent of the California  
8 population, and “with the defined streams sent to and reclaimed at a reclaiming facility.” Cal.  
9 Pub. Res. Code § 42355.51(d)(2). This latter statute was added by the recently passed SB 343.  
10 While some of that law’s restrictions do not take effect until Cal Recycle (California’s recycling  
11 agency) completes a material characterization study and promulgates associated regulations, SB  
12 343 confirms that, in order to be considered recyclable in California, a product or packaging must  
13 actually be recycled in practice for a meaningful portion of the population. And it is clear from  
14 work already performed by California’s Statewide Commission on Recycling Markets &  
15 Curbside Recycling (the “California Recycling Commission”) that the Products do not meet this  
16 standard.<sup>5</sup> In fact, the California Recycling Commission has determined that only three types of  
17 plastic are recyclable in California, and plastic film is not one of the three types of plastic  
18 identified.<sup>6</sup>

19 17. As reflected in the Green Guides’ language and regulatory history, the FTC also  
20 does not consider a product to be recyclable unless it can actually be recycled. For instance, the  
21 Green Guides provide that: (1) “[i]f any component significantly limits the ability to recycle the  
22 item, any recyclable claim would be deceptive;” and (2) “an item that is made from recyclable  
23

24 <sup>4</sup><https://www.calrecycle.ca.gov/sitefinity/status?ReturnUrl=https:%2F%2Fwww.calrecycle.ca.gov%2Fpackaging%2Fstatefoodservice%2Flist>.

25 <sup>5</sup> California’s Statewide Commission on Recycling Markets and Curbside Recycling Policy  
26 Recommendations (“California Recycling Report”), Submitted June 25, 2021, at p. 94, accessible  
at <https://www.calrecycle.ca.gov/markets/commission> (last accessed February 14, 2022).

27 <sup>6</sup> California’s Statewide Commission on Recycling Markets and Curbside Recycling Policy  
28 Recommendations (“California Recycling Report”), Submitted June 25, 2021, at p. 94, accessible  
at <https://www.calrecycle.ca.gov/markets/commission> (last accessed February 14, 2022).



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

10 18. The Green Guides also provide specific examples of recycling claims that the FTC  
11 considers deceptive, as well as examples of ways in which marketers can qualify those claims.<sup>7</sup>  
12 Compliance with the examples provided by the FTC qualifies as a defense to a claim under  
13 EMCA. B&P Code § 17580.5(b). Under the Green Guides, a marketer may make an unqualified  
14 recyclable claim if a substantial majority of consumers or communities have access to recycling  
15 facilities for that item. 16 C.F.R. § 260.12(b)(1). A “substantial majority” means at least 60  
16 percent of consumers or communities where the item is sold. *Id.* Absent such evidence,  
17 marketers are required to use qualifications that vary in strength depending on the degree of  
18 consumer access to recycling for an item. *Id.*, § 260.12(b)(2). For instance, if recycling facilities  
19 are available to slightly less than 60 percent of consumers or communities, the Green Guides  
20 recommend that a marketer should qualify the recyclable claim by stating “this product may not  
21 be recyclable in your area,” or “recycling facilities for this product may not exist in your area.”  
22 *Id.* If recycling facilities are available only to a few consumers, the Green Guides recommend  
23 that a marketer should qualify its recyclable claim by stating “this product is recyclable only in a  
24 few communities that have appropriate recycling facilities.” *Id.*

25  
26  
27 <sup>7</sup> 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           19.     The Green Guides specifically identify qualifications that may be misleading or  
2 deceptive to a reasonable consumer. In fact, the Green Guides warn about plastic film, such as  
3 trash bags: “Because trash bags ordinarily are not separated from other trash at the landfill or  
4 incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the  
5 bag is technically capable of being recycled, the claim is deceptive since it asserts an  
6 environmental benefit where no meaningful benefit exists.” 16 C.F.R. § 260.3(c), Example 2.

7           20.     The Legislature of the State of California has also declared that “it is the public  
8 policy of the state that environmental marketing claims, whether explicit or implied, should be  
9 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers  
10 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. Under  
11 EMCA, “Any person who represents in advertising or on the label or container of a consumer  
12 good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial  
13 to, the natural environment, through use of such terms as ‘environmental choice,’ ‘ecologically  
14 friendly,’ ‘earth friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally  
15 sound,’ ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any  
16 other like term, or through the use of a chasing arrows symbol or by otherwise directing a  
17 consumer to recycle the consumer good, shall maintain in written form in its  
18 records...information and documentation supporting the validity of the representation.” Cal. Bus.  
19 & Prof. Code § 17580(a). EMCA specifically requires companies to maintain information and  
20 documentation as to whether such products or packaging: (1) conforms with the uniform  
21 standards contained in the Green Guides for use of the terms “recycled” or “recyclable”; and (2)  
22 meets all the criteria for statewide recyclability pursuant to SB 343. *Id.*, §§ 17580(a)(5) and  
23 (a)(6). In addition, EMCA requires that companies maintain the following records in written  
24 form supporting the validity of their recyclable representations: (1) the reasons why a company  
25 believes the representation to be true; (2) any significant adverse environmental impacts directly  
26 associated with the production, distribution, use, and disposal of the consumer good; (3) any  
27 measures that are taken by the company to reduce the environmental impacts directly associated  
28 with the production, distribution, and disposal of the consumer good; and (4) violations of any

1 federal, state, or local permits directly associated with the production or distribution of the  
 2 consumer good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its intent that the  
 3 information and documentation supporting the validity of any environmental marketing claims  
 4 shall be fully disclosed to the public, and information and documentation maintained pursuant to  
 5 Cal. Bus. & Prof. Code § 17580 must be furnished to any member of the public upon request. *Id.*,  
 6 § 17580(b), (d).

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

### 15 **BACKGROUND FACTS**

16 22. In the past decade humans across the globe have produced 8.3 billion metric tons  
 17 of plastic, most of it in disposable products and packaging that ends up as trash or pollution.<sup>8</sup> Of  
 18 the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only  
 19 9% of that has been recycled.<sup>9</sup> A third of the single-use plastic generated ends up in the natural  
 20 environment, accounting for 100 million metric tons of plastic pollution in 2016.<sup>10</sup> Current  
 21  
 22  
 23

24 <sup>8</sup> Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,  
 25 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  
 Dec. 7, 2020).

26 <sup>9</sup> *Id.*

27 <sup>10</sup> *No Plastic in Nature: Assessing Plastic Ingestion From Nature to People*, WWF, June 2019,  
 28 [https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic\\_ingestion\\_web\\_spreads.pdf](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.<sup>11</sup> The  
 2 Environmental Protection Agency estimates that Americans alone disposed of 35.7 million tons  
 3 of plastic in 2018, 91.3% of which was not recycled.<sup>12</sup>

4 23. While California had a goal to achieve a 75% recycling rate by 2020, California's  
 5 recycling rate is actually in decline. According to CalRecycle, in 2014 California's recycling rate  
 6 was 50%, dropping to 47% in 2015 and down to 44% in 2016.<sup>13</sup> And according to the California  
 7 Recycling Commission, the state's recycling rate dropped to 37% in 2019.<sup>14</sup>

8 24. Plastic shopping bag pollution in particular is receiving widespread international  
 9 attention as illustrated on the cover of the June 2018 edition of National Geographic headlined  
 10 "Planet or Plastic?"<sup>15</sup> Americans throw away an estimated 100 billion plastic bags a year, and the  
 11 average bag takes up to 1,000 years to break down.<sup>16</sup> In 2018 in the United States, 4.2 million  
 12 tons of post-consumer plastic bag, sack, and wrap waste were generated, but only 0.42 million  
 13 tons were recycled.<sup>17</sup>

14 25. Recent investigations into the proliferation of plastic pollution plaguing the natural  
 15 environment have revealed that the plastics industry has known for decades that most products  
 16 and packaging made from plastic would not be recycled. On September 11, 2020, National

17 \_\_\_\_\_  
 18 <sup>11</sup> *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR  
 19 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 Dec. 7, 2020).

20 <sup>12</sup> 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).

21 <sup>13</sup> *California's Statewide Recycling Rate*, CALRECYCLE, last updated Mar. 3, 2020,  
 22 <https://www.calrecycle.ca.gov/75percent/recyclerate> (last accessed Dec. 7, 2020).

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

25 <sup>15</sup> <https://www.nationalgeographic.com/environment/planetorplastic/>.

26 <sup>16</sup> [https://www.biologicaldiversity.org/programs/population\\_and\\_sustainability/sustainability/  
 plastic\\_bag\\_facts.html](https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html)

27 <sup>17</sup> J. Meert, et al., Impact of Plastic Bag Bans on Retail Return Polyethylene Film Recycling  
 28 Contamination Rates and Speciation, *Waste Management* 135 (2021) 234-242.

1 Public Radio (“NPR”) published an investigation illustrating the plastic industry’s decades-long  
 2 awareness that recycling would not keep plastic products or packaging out of landfills,  
 3 incinerators, communities, or the natural environment.<sup>18</sup> In a 1974 speech, one industry insider  
 4 stated “there is serious doubt that [recycling plastic] can ever be made viable on an economic  
 5 basis.”<sup>19</sup> Larry Thomas, former president of the Society of the Plastic Industry (known today as  
 6 the Plastics Industry Association), told NPR that “if the public thinks that recycling is working,  
 7 then they are not going to be as concerned about the environment.”<sup>20</sup> The NPR investigative  
 8 report details the length and expense that the plastics industry went to deceive consumers that  
 9 plastic was easily recyclable, despite knowledge that the cost of recycling would never be  
 10 economical. Similarly, a recent Canadian Broadcasting Corporation news report describes that  
 11 even the recycling logo was used as a marketing tool to improve the image of plastics after  
 12 environmental backlash in the 1980s.<sup>21</sup> “There was never an enthusiastic belief that recycling  
 13 was ultimately going to work in a significant way,” yet the plastics industry spent millions on ads  
 14 to deceive the public as to the efficacy of recycling.<sup>22</sup>

15 26. Consumers have recently become even more concerned about the problems  
 16 associated with single-use plastics polluting the oceans and the natural environment. The  
 17 staggering amount of plastic pollution accumulating in the environment is accompanied by an  
 18 array of negative side effects. For example, plastic debris is frequently ingested by marine  
 19 animals and other wildlife, which can be injurious, poisonous, and deadly.<sup>23</sup> Floating plastic is

20 \_\_\_\_\_  
 21 <sup>18</sup> Lara Sullivan, *How Big Oil Mised 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-mised-the-public-into-believing-plastic-would-be-recycled)  
 22 [mised-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oil-mised-the-public-into-believing-plastic-would-be-recycled) (last accessed Dec. 7, 2020).

23 <sup>19</sup> *Id.*

24 <sup>20</sup> *Id.*

25 <sup>21</sup> *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-](https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618)  
 26 [more-plastic-industry-experts-say-1.5735618](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).

27 <sup>22</sup> *Id.*

28 <sup>23</sup> 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).

1 also a vector for invasive species,<sup>24</sup> and plastic that gets buried in landfills can leach harmful  
2 chemicals into ground water that is absorbed by humans and other animals.<sup>25</sup> Plastic litter on the  
3 streets and in and around our parks and beaches also degrades the quality of life for residents and  
4 visitors. Scientists have also discovered that plastic releases large amounts of methane, a  
5 powerful greenhouse gas, as it degrades.<sup>26</sup> Thus, plastic pollution contributes to global climate  
6 change, which affects California in the form of extreme drought, sea level rise, and more frequent  
7 and severe wildfires.<sup>27</sup>

8 27. Due to the availability of cheap raw materials to make “virgin plastic,” there is  
9 essentially no market demand for most types of recycled plastic. Virgin plastic is derived from  
10 oil and natural gas and has a higher quality than recycled plastic. Recognizing the market  
11 potential from plastic production, major oil and natural gas companies have greatly expanded  
12 their petrochemical operations to increase production of plastic resins and products, which drives  
13 down the price of virgin plastic.<sup>28</sup> As a result, using virgin plastic to produce plastic products or  
14 packaging is cheaper than using recycled plastic. Recycling facilities no longer have an incentive  
15 to collect, sort, clean and reprocess plastic waste because there are almost no buyers of the  
16 resulting plastic, pellets, or other scrap materials.

17  
18  
19 <sup>24</sup> *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,  
20 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-  
files/2017\\_Invasive\\_Species\\_Topic\\_Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf) (last accessed Dec. 7, 2020).

21 <sup>25</sup> Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment  
22 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).

23 <sup>26</sup> Sarah-Jeanne Rover, et al., *Production of methane and ethylene from plastic in the  
24 environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,  
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574> (last accessed Dec. 7,  
2020).

25 <sup>27</sup> *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,  
26 [https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-  
ca.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf) (last accessed Dec. 7, 2020).

27 <sup>28</sup> *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)  
28 [https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-  
Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Dec. 7, 2020).

1           28.     Historically, recycling facilities in the United States shipped plastic scrap to China  
2 and other countries in the Far East for recycling. But millions of pounds of that exported plastic  
3 waste was never recycled.<sup>29</sup> Instead, this plastic was burned or dumped into waterways, where it  
4 was carried into the ocean.<sup>30</sup> For years, tons of plastic that U.S. consumers dutifully sorted and  
5 transported to recycling facilities ultimately ended up in the ocean or the natural environment.  
6 For example, in 2015 China’s Yangtze River ranked highest for plastic entering the oceans.<sup>31</sup>  
7 That year, 333,000 tons of plastic were deposited into the ocean from the Yangtze River, more  
8 than double the amount for the river with the next highest amount.<sup>32</sup>

9           29.     In February 2013, based on the high amounts of low-value and contaminated  
10 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort  
11 aimed at curtailing the amount of contaminated “recyclables” and waste that was being sent to  
12 China.<sup>33</sup> China began inspecting 70 percent of imported containers filled with “recyclables” and  
13 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic  
14 waste.<sup>34</sup> Despite manufacturers’ and recyclers’ awareness of China’s refusal to accept low-value  
15 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By  
16 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.<sup>35</sup>

17 \_\_\_\_\_  
18 <sup>29</sup> Kara Lavender Law, et al. *The United States’ contribution of plastic waste to land and ocean*,  
19 SCI. ADV., Oct. 30, 2020, Vol. 6, no. 44. <https://advances.sciencemag.org/content/6/44/eabd0288>  
(last accessed Feb 24, 2021).

20 <sup>30</sup> Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,  
21 NPR.ORG (Mar. 13, 2019, 4:28 PM ET),  
22 <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 on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, <https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22.pdf> (last accessed Dec. 7, 2020).

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

25 <sup>32</sup> *Id.*

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

<sup>34</sup> *Id.*

<sup>35</sup> Christopher Joyce, *supra* note 27.

1           30.     In February 2017, in response to the continued shipment of low-value and  
 2 contaminated plastic waste, China announced its National Sword policy, which banned the  
 3 importation of certain solid waste and set strict contamination limits on recyclable material.  
 4 Because of the National Sword policy, to the extent they ever existed at all, end markets for  
 5 plastic film such as the Products have essentially vanished.<sup>36</sup> One year after China's National  
 6 Sword Policy, China's plastics imports plummeted by 99 percent.<sup>37</sup> Following enactment of the  
 7 National Sword Policy other countries in the Far East followed suit by banning imports of low-  
 8 value and contaminated plastics that had long been polluting their environments.<sup>38</sup> In May 2019,  
 9 187 countries decided to significantly restrict international trade in plastic scrap and waste to help  
 10 address the improper disposal of plastic pollution, through the Basel Convention Plastic Waste  
 11 Amendments.<sup>39</sup> The Basel Convention prohibits export of mixed plastic waste to countries who  
 12 are not members of the Organization for Economic Co-operation and Development.<sup>40</sup> Due to  
 13 increased regulations and restrictions on importing plastic waste, recycling companies can no  
 14

15 <sup>36</sup> Liz Zarka, *Recycling's Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,  
 16 <https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>  
 17 (last accessed Dec. 7, 2020); *see also* Cheryl Katz., *Piling Up: How China's Ban on Importing*  
 18 *Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019,  
 19 [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)  
 20 [recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling) (last accessed Dec. 7, 2020).

21 <sup>37</sup> Cheryl Katz, *supra* note 40.

22 <sup>38</sup> *Why Some Countries Are Shipping Back Plastic Waste*, BBC News,  
 23 <https://www.bbc.com/news/world-48444874> (last accessed February 9, 2021); *see also*  
 24 *International Policies Affecting Global Commodity Markets*, Cal Recycle,  
 25 <https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies> (last accessed February 9,  
 26 2021).

27 <sup>39</sup> *New International Requirements For The Export And Import of Plastic Recyclables And Waste*,  
 28 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).

29 <sup>40</sup> *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their 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. 24, 2021).



1 longer sell many types of used plastic at prices that cover their transportation and processing  
 2 costs, providing them with no incentive to do so.

3 31. Walgreens continues to sell the Products as recyclable in California and elsewhere  
 4 in the United States. Walgreens has done so despite widespread acknowledgment that end  
 5 markets for plastic waste, and in particular plastic film, have been shrinking and that the majority  
 6 of plastic film labeled as recyclable in California and other regions in the United States ends up in  
 7 landfills, incinerators, communities, and the natural environment.

8 32. Below is an example of a Product sold by Walgreens in California:



25 33. Under SB 270, the Products may not be sold unless they are “recyclable in this  
 26 state.” Cal. Pub. Res. Code § 42281(b)(1)(C); *see also id.*, § 42283. Here, because the Products  
 27 do not meet the three criteria for recyclability (i.e., access, sortation, and end markets) the  
 28 Products may not be sold in California.

1           34.     According to their labeling, the Products are comprised of high-density  
2 polyethylene film (#2 plastic). As the California Recycling Commission recently concluded, only  
3 three plastic item types are recyclable in California: Plastic #1 PET Bottles without shrink sleeves  
4 or other non-recyclable components, Plastic #2 HDPE bottles (natural) without shrink sleeves or  
5 other non-recyclable components, and Plastic #2 HDPE bottles (color) without shrink sleeves or  
6 non-recyclable components.<sup>41</sup> The California Recycling Commission therefore determined that  
7 the Products are not recyclable in California for curbside recycling.

8           35.     Under EMCA and Green Guides, an unqualified recyclable representation may be  
9 made only when a substantial majority of consumers have access to recycling facilities that are  
10 recycling a product through curbside recycling. *Id.*, § 260.12(b)(1). When recycling facilities are  
11 available to less than a substantial majority of consumers or communities where the item is sold,  
12 marketers should qualify all recyclable claims. *Id.*, § 260.12(b)(2). The Products' labels make  
13 several unqualified recycling representations, including: (1) a triangular chasing arrows symbol  
14 with the number "2" in the center; (2) "Reduce, Reuse, Recycle" (with each word prefaced by a  
15 bullet point); and (3) "Thank you for reusing and recycling this bag." Here, few, if any,  
16 consumers have access to recycling facilities that accept the Products for curbside recycling; to  
17 the extent any facilities accept the Products for curbside recycling, the Products cannot be sorted  
18 into the correct material bale; and even the few Products that may be collected and sorted are not  
19 reused or used in manufacturing or assembling another item. Due to high contamination rates,  
20 MRFs consider plastic film to be a contaminant and either landfill plastic film or send it to energy  
21 recovery facilities.<sup>42</sup> Most MRFs do not want plastic film in recycling streams because of  
22 operations challenges, and, as a result, only 11% of United States residents can include films in  
23 curbside bins.<sup>43</sup> Plastic film that is recovered from MRFs have approximately only 16% of the  
24

25 \_\_\_\_\_  
26 <sup>41</sup> California's Statewide Commission on Recycling Markets and Curbside Recycling Policy  
27 Recommendations ("California Recycling Report"), Submitted June 25, 2021, at p. 94, accessible  
28 at <https://www.calrecycle.ca.gov/markets/commission> (last accessed February 14, 2022).

<sup>42</sup> J. Meert, *supra* note 17.

<sup>43</sup> *Id.*

1 value of retail plastic film because of contamination.<sup>44</sup> Because the Products are not recyclable  
2 through curbside recycling, Walgreens' unqualified recycling representations are unlawful, false,  
3 and misleading.

4 36. Notably, the labels of the Products themselves include the phrase "Store Drop-  
5 Off" inside a chasing arrows symbol, thereby implicitly acknowledging that curbside recycling is  
6 not an option. However, there are several problems with reliance on the "Store Drop-Off"  
7 language. First, most consumers will not see past the multiple unqualified recycling  
8 representations on the Products and will simply place the Products in their blue bins for curbside  
9 recycling collection. Indeed, the California Recycling Commission has determined that: (1)  
10 flexible plastic bags are a top source of contamination in curbside recycling bins; and (2) more  
11 than half of Californians think plastic bags are accepted in their curbside recycling program,  
12 regardless of whether that is true.<sup>45</sup> Second, very few drop-off bins are offered by Walgreens to  
13 California consumers, and very few are available generally. In the past, California required  
14 supermarkets of a certain size to maintain a plastic carryout bag collection bin, but that rule  
15 expired on January 1, 2020. *See* Cal. Pub. Res. Code § 42257. Consequently, many retail stores  
16 in California, including Walgreens' stores, no longer accept plastic bags for drop-off recycling.  
17 Therefore, even those few consumers who understand that they need to return the Products to a  
18 store for recycling, and who then make the effort to do so, will be hard-pressed to find a  
19 collection bin. According to PlasticFilmRecycling.org, which is supported by the Plastic  
20 Division of the American Chemistry Council, there are only two locations in all of San Francisco,  
21 California that have a store drop-off bin, neither of which is a Walgreens.<sup>46</sup> Third, it is unclear  
22 whether the few Products that may be returned to in-store collection bins are actually recycled,  
23 particularly since plastic bags collected in a store bin are likely to be contaminated (both when  
24 dropped off in the bin, and from other materials deposited in the bin) and are unlikely to meet the  
25

---

26 <sup>44</sup> *Id.*

27 <sup>45</sup> California Recycling Report, pp. 105-9.

28 <sup>46</sup> <https://bagandfilmrecycling.org/> (last visited April 28, 2022).

1 quality specifications of those few plastic film recyclers that exist. There is very little capacity to  
2 recycle plastic film in California or anywhere else, and contaminated plastic film is not a  
3 desirable material for any processor.<sup>47</sup> The limited opportunity for a consumer to return a Product  
4 to a store for potential recycling by a plastic film processor does not make the Product “recyclable  
5 in this state” as required by SB 270. Nor does the “Store Drop-Off” language make the  
6 recyclable claims on the Products any less deceptive, misleading, or unlawful.

7 37. Indeed, the California Recycling Commission recently determined that the use of  
8 the chasing arrows symbol, any variation of the word “recyclable,” or “Store Drop-Off” recycling  
9 representations on plastic bags and films runs afoul of California labeling laws. The California  
10 Recycling Commission found:

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

19 38. The California Recycling Commission requested that California’s existing laws be  
20 enforced by requiring retailers and product manufacturers to remove the word “recycle,  
21 “recyclable,” and/or the recycling symbol from plastic bags and plastic films. It further stated  
22 that the recyclable labels used on many plastic bags and films in California are not legal and  
23 contribute to consumer confusion and contamination. In addition, the California Recycling  
24 Commission specifically identified the “Store Drop-Off” statement as problematic because there  
25

---

26 <sup>47</sup> The California Recycling Commission found that, based on a survey of plastic film processors  
27 in California and Nevada, there is only capacity to recycle about 3% of the plastic film that is  
28 generated as waste in California. California Recycling Report, p. 106.

1 is not a comprehensive takeback system in California. The California Recycling Commission  
2 stated, “California law (Cal. Bus. & Prof. Code § 17580 and Cal. Pub. Res. Code § 42355.5) and  
3 the Green Guides (16 C.F.R. § 260.2) require substantiation for recycling claims such as this,”  
4 and “it is our opinion that this claim is not provable. This text should be eliminated from [plastic  
5 bags].” The California Recycling Commission enumerated 80 examples of plastic bags or film  
6 that illegally contained a recycling representation, and specifically identified the Products as one  
7 of those examples.<sup>48</sup>

8 39. An industry-sponsored labeling organization, How2Recycle, recently stated that  
9 the ability of the Store Drop-Off stream to alleviate the packaging industry’s end-of-life  
10 challenges with flexible packaging is limited.<sup>49</sup> How2Recycle is an organization created by  
11 industry to promote a standardized labeling system for packaging that its members may pay a fee  
12 to use. How2Recycle stated:

13 Like all recycling streams, market volatility in the global commodities context is a  
14 challenge. But for Store Drop-off in particular, the demand for the material, its current  
15 recycling rates, and the challenges inherent in Store Drop-off collection (consumer  
16 convenience, reliance on retailer participation), along with the enormous volumes of  
17 flexible packaging that are being produced, suggest that its long-term potential for all or  
18 most flexible packaging is insufficient to meet recovery needs. Accordingly,  
19 How2Recycle recommends that brands, packaging producers and resin manufacturers  
20 critically analyze what wide-reaching collection, sortation, reprocessing and market  
21 mechanisms and investments are required to scale recyclability of flexible packaging for  
22 the far future.

23  
24  
25  
26 <sup>48</sup> See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:  
27 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>). The  
28 Products are identified in the accompanying Appendix on page 75.

<sup>49</sup> <https://how2recycle.info/news/2020/report-the-future-of-store-drop-off-recyclability>.

1           40.     A 2017 report on Film Recycling Investment found that only 7% of retail bags that  
2 are available for recycling are returned by residents for recycling.<sup>50</sup> That report further found that  
3 of the approximately 300 million pounds of plastic film that reprocessing facilities receive a year,  
4 only 10 million pounds (approximately 3%) are able to be marketed due to the poor quality of  
5 plastic film and the lack of recycling markets for such low-value plastic. Due to the lack of  
6 recycling markets for plastic film, 93% of California MRFs do not even accept it, and the  
7 reprocessing facilities that do accept it do not have the capacity to recycle large quantities of  
8 plastic film.<sup>51</sup> Based on these data, even if more consumers returned plastic bag film for drop-off  
9 recycling, MRFs do not have the capacity to sort and recycle it. Thus, the representation that  
10 these Products are recyclable if dropped off fails to communicate the limited availability of both  
11 drop-off sites and programs that can actually recycle the Products. Ultimately, the Products are  
12 not accepted by most MRFs nor can they be collected, sorted, or separated from the general waste  
13 stream. And there is no end market to recycle such Products in California.

14           41.     A major problem caused by selling the Products as recyclable is contamination of  
15 legitimate recycling streams. For instance, according to the Recycling Partnership, “plastic bags  
16 cause MRF operators to shut down the recycling line many times a day to cut off bags that have  
17 wrapped around equipment. This maintenance shut down reduces throughput for a facility, raises  
18 cost of labor to sort materials and maintain equipment, increases waste coming out of the MRF,  
19 and puts workers at risk of injury when they are performing maintenance.”<sup>52</sup>

20           42.     To the extent a store makes reusable grocery bags available for sale, SB 270 also  
21 prohibits stores from charging less than ten cents (\$0.10) per bag and specifies that all monies  
22 collected from customers may only be used for: (1) costs associated with complying with SB 270,  
23 (2) the “actual” costs of providing recycled paper bags or reusable grocery bags, and (3) costs  
24

25 <sup>50</sup> *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION  
(2017), at p. 19.

26 <sup>51</sup> *Id.*

27 <sup>52</sup> 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 associated with “a store’s educational materials or educational campaign encouraging the use of  
2 reusable grocery bags.” Cal. Pub. Res. Code § 42283(b)(3). In light of the large number of  
3 Products sold by Walgreens in California, the relatively low costs of complying with SB 270 and  
4 of providing bags to customers, and the minimal amount of money Walgreens appears to be  
5 spending on promoting the use of reusable grocery bags, Walgreens is likely using the money it  
6 has collected from Plaintiff and other California consumers from sales of the Products for  
7 purposes beyond those enumerated in SB 270.

8 43. On February 18, 2022, pursuant to California law, Plaintiff requested that  
9 Walgreens substantiate the recycling claims on the Products and provide the other information  
10 required by Cal. Bus. & Prof. Code § 17580(a). Walgreens is required to provide its  
11 substantiation to any member of the public upon request. Cal. Bus. & Prof. Code § 17580(b).  
12 Walgreens has not provided any documentation substantiating its representations.

13 44. By labeling the Products as recyclable, Walgreens is violating California law and  
14 making environmental marketing claims that are false, misleading, and deceptive. Because the  
15 Products are not recyclable, Walgreens may not sell them in California. Moreover, by  
16 representing that the Products are recyclable, ordinary consumers are likely to be deceived by  
17 such representations. Consumers purchase the Products from Walgreens based on the belief that  
18 Walgreens has a legal right to sell the Products and that the Products are recyclable. These  
19 consumers have no way of knowing whether the Products are actually segregated from the  
20 general waste stream, cleaned of contamination, or reused or converted into a material that can be  
21 reused or used in manufacturing or assembling another item. These consumers place a high  
22 priority on environmental concerns in general, and on the negative consequences regarding the  
23 proliferation of plastic pollution in particular. Based on the labeling and sale of Walgreens’  
24 Products, reasonable consumers believe that the Products are legal and recyclable. Walgreens’  
25 representations that the Products are recyclable are thus material to reasonable consumers.  
26  
27  
28

**CLASS ACTION ALLEGATIONS**

1  
2 45. Plaintiff brings this suit individually and as a class action pursuant to Federal Rule  
3 of Civil Procedure Rule 23, on behalf of herself and the following Class of similarly situated  
4 individuals:

5 All persons who purchased the Products for personal, family or  
6 household purposes in California (either directly or through an  
7 agent) during the applicable statute of limitations period (the  
8 “Class”). Specifically excluded from the Class are Walgreens; the  
9 officers, directors or employees of Walgreens; any entity in which  
10 Walgreens has a controlling interest; and any affiliate, legal  
11 representative, heir or assign of Walgreens. Also excluded are any  
12 judicial officer presiding over this action and the members of  
13 his/her immediate family and judicial staff, and any juror assigned  
14 to this action.

15 46. Plaintiff is unable to state the precise number of potential members of the proposed  
16 Class because that information is in the possession of Walgreens. However, the number of Class  
17 members is so numerous that joinder would be impracticable for purposes of Rule 23(a)(1). The  
18 exact size of the proposed Class and the identity of its members will be readily ascertainable from  
19 the business records of Walgreens and as well as Class members’ own records and evidence. The  
20 disposition of the claims of the members of the Class in this class action will substantially benefit  
21 both the parties and the Court.

22 47. There is a community of interest among the members of the proposed Class in that  
23 there are questions of law and fact common to the proposed Class for purposes of Rule 23(a)(2),  
24 including whether Walgreens sale of the Products are unlawful and whether Walgreens’ labels  
25 include uniform misrepresentations that misled Plaintiff and the other members of the Class to  
26 believe the Products are recyclable when they are not. Proof of a common set of facts will  
27 establish the liability of Walgreens and the right of each member of the Class to relief.  
28



1           48. Plaintiff asserts claims that are typical of the claims of the entire Class for  
2 purposes of Rule 23(a)(3). Plaintiff and all members of the Class have been subjected to the same  
3 wrongful conduct because they have purchased the Products that are unlawfully sold in California  
4 and that are labeled as recyclable, when they are not.

5           49. Plaintiff will fairly and adequately represent and protect the interests of the other  
6 members of the Class for purposes of Rule 23(a)(4). Plaintiff has no interests antagonistic to  
7 those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this  
8 action and has retained counsel experienced in complex litigation of this nature to represent her.  
9 Plaintiff anticipates no difficulty in the management of this litigation as a class action.

10           50. Class certification is appropriate under Rule 23(b)(2) because Walgreens has acted  
11 on grounds that apply generally to the Class, so that final injunctive relief or corresponding  
12 declaratory relief, is appropriate respecting the Class as a whole.

13           51. Class certification is appropriate under Rule 23(b)(3) because common questions  
14 of law and fact substantially predominate over any questions that may affect only individual  
15 members of the Class. These common legal and factual questions, which do not vary among  
16 Class members and which may be determined without reference to the individual circumstances  
17 of any Class member include, but are not limited to the following:

- 18           a. whether Walgreens sells the Products in California;
- 19           b. whether the Products are recyclable in California;
- 20           c. whether Walgreens' sale of the Products in California is unlawful;
- 21           d. whether Walgreens is illegally retaining the funds it collects from California  
22 consumers who purchase the Products instead of using those funds for the  
23 purposes enumerated in SB 270;
- 24           e. whether Walgreens has substantiation that the Products are recyclable;
- 25           f. whether Walgreens' labeling claims regarding the recyclability of the Products  
26 are likely to deceive a reasonable consumer;
- 27           g. whether Walgreens knows the Products cannot be recycled;
- 28           h. whether Walgreens' "Store Drop-Off" qualification complies with California

- 1 law;
- 2 i. whether Walgreens’ representations regarding the recyclability of the Products
- 3 are likely to be read and understood by a reasonable consumer;
- 4 j. whether Walgreens’ representations regarding the recyclability of the Products
- 5 are in compliance with the Green Guides;
- 6 k. whether Walgreens’ claims regarding the recyclability of the Products would
- 7 be material to a reasonable consumer of the Products;
- 8 l. whether Walgreens’ conduct in labeling of the Products constitutes a violation
- 9 of California consumer protection laws;
- 10 m. whether Walgreens’ representations concerning the Products constitute express
- 11 warranties with regard to the Products;
- 12 n. whether Walgreens breached the express warranties it made with regard to the
- 13 Products;
- 14 o. whether Walgreens’ representations regarding recycling constitute
- 15 representations that the Products have characteristics, benefits or qualities
- 16 which they do not have;
- 17 p. whether Walgreens has been unjustly enriched from the sale of the Products;
- 18 q. whether punitive damages are warranted for Walgreens’ conduct and, if so, an
- 19 appropriate amount of such damages; and
- 20 r. whether Plaintiff and the Class members are entitled to injunctive, equitable
- 21 and monetary relief.

22 52. Walgreens sells the Products at all of its California locations, even though the

23 Products may not be sold in California. In addition, Walgreens utilizes labeling that includes

24 uniform misrepresentations that misled Plaintiff and the other members of the Class. Walgreens

25 claims regarding the recyclability of the Products are one of the most prominent features of

26 Walgreens’ labeling of the Products. Nonetheless, the Products are not in fact recyclable. Thus,

27 there is a well-defined community of interest in the questions of law and fact involved in this

28 action and affecting the parties.

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

16 **FIRST CAUSE OF ACTION**

17 **(Plaintiff, on Behalf of Herself And The Class, Alleges Violations of California Cal. Bus. &**  
18 **Prof. Code § 17200, et seq.**  
19 **Based on Commission of Unlawful Acts)**

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

21 55. The violation of any law constitutes an unlawful business practice under Cal. Bus.  
22 & Prof. Code § 17200.

23 56. Walgreens' conduct violates California's SB 270, Cal. Pub. Res. Code §  
24 42281(b)(1)(C). SB 270 prohibits stores from selling or distributing a reusable grocery bag made  
25 from plastic film unless the bag is "recyclable in this state." Cal. Pub. Res. Code §  
26 42281(b)(1)(C); *see also id.*, § 42283. The Products are not recyclable in California or anywhere  
27 else. By selling the Products in California even though the Products are not recyclable in  
28 California, Walgreens is violating Cal. Pub. Res. Code § 42281(b)(1)(C).

1           57. In addition, SB 270 prohibits stores from charging less than ten cents (\$0.10) per  
2 bag and specifies that all monies collected from customers may only be used for: (1) costs  
3 associated with complying with SB 270, (2) the “actual” costs of providing recycled paper bags  
4 or reusable grocery bags, and (3) costs associated with “a store’s educational materials or  
5 educational campaign encouraging the use of reusable grocery bags.” Cal. Pub. Res. Code §  
6 42283(b)(3). Walgreens is likely using the money it has collected from Plaintiff and other  
7 California consumers from sales of the Products for purposes beyond those enumerated in SB  
8 270. Accordingly, Walgreens is violating Cal. Pub. Res. Code § 42283(b)(3).

9           58. Walgreens’ conduct also violates California Cal. Bus. & Prof. Code § 17500,  
10 which prohibits knowingly making, by means of any advertising device or otherwise, any untrue  
11 or misleading statement with the intent to sell a product or to induce the public to purchase a  
12 product. By misrepresenting that the Products are recyclable, Walgreens is violating Cal. Bus. &  
13 Prof. Code § 17500.

14           59. Walgreens’ conduct also violates EMCA, Cal. Bus. & Prof. Code § 17580.5,  
15 which makes it unlawful for any person to make any untruthful, deceptive, or misleading  
16 environmental marketing claim. Pursuant to § 17580.5, the term “environmental marketing  
17 claim” includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.* Under the  
18 Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a product or  
19 package is recyclable. A product or package shall not be marketed as recyclable unless it can be  
20 collected, separated, or otherwise recovered from the waste stream through an established  
21 recycling program for reuse or use in manufacturing or assembling another item.” 16 C.F.R. §  
22 260.12(a). By misrepresenting that the Products are recyclable as described above, Walgreens is  
23 violating Cal. Bus. & Prof. Code § 17580.5.

24           60. Walgreens conduct further violates EMCA, Cal. Bus. & Prof. Code § 17580(a),  
25 which makes it unlawful for any person to make any unsubstantiated environmental marketing  
26 claim. Pursuant to Cal. Bus. & Prof. Code § 17580(a), “Any person who represents in advertising  
27 or on the label or container of a consumer good that the consumer good that it manufactures or  
28 distributes is not harmful to, or is beneficial to, the natural environment, through use of such

1 terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth friendly,’ ‘environmentally  
2 friendly,’ ‘ecologically sound,’ ‘environmentally sound,’ ‘environmentally safe,’ ‘ecologically  
3 safe,’ ‘environmentally lite,’ ‘green product,’ or any other like term, or through the use of a  
4 chasing arrows symbol or by otherwise directing a consumer to recycle the consumer good, shall  
5 maintain in written form in its records...information and documentation supporting the validity of  
6 the representation.” Cal. Bus. & Prof. Code § 17580(a). EMCA specifically requires companies  
7 to maintain information and documentation as to whether such products or packaging: (1)  
8 conforms with the uniform standards contained in the Green Guides for use of the terms  
9 “recycled” or “recyclable”; and (2) meets all the criteria for statewide recyclability pursuant to SB  
10 343. *Id.*, §§ 17580(a)(5) and (a)(6). In addition, EMCA requires that companies maintain the  
11 following records in written form supporting the validity of their recyclable representations: (1)  
12 the reasons why a company believes the representation to be true; (2) any significant adverse  
13 environmental impacts directly associated with the production, distribution, use, and disposal of  
14 the consumer good; (3) any measures that are taken by the company to reduce the environmental  
15 impacts directly associated with the production, distribution, and disposal of the consumer good;  
16 and (4) violations of any federal, state, or local permits directly associated with the production or  
17 distribution of the consumer good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its  
18 intent that the information and documentation supporting the validity of any environmental  
19 marketing claims shall be fully disclosed to the public, and information and documentation  
20 maintained pursuant to Cal. Bus. & Prof. Code § 17580 must be furnished to any member of the  
21 public upon request. *Id.*, § 17580(b), (d).

22           61. The Green Guides also require marketers to ensure that their claims are supported  
23 by a reasonable basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined  
24 as competent and reliable scientific evidence, such as “tests, analyses, research, or studies that  
25 have been conducted and evaluated in an objective manner by qualified persons and are generally  
26 accepted in the profession to yield accurate and reliable results.” *Id.* “Such evidence should be  
27 sufficient in quality and quantity based on standards generally accepted in the relevant scientific  
28

1 fields, when considered in light of the entire body of relevant and reliable scientific evidence, to  
2 substantiate that each of the marketing claims is true.” *Id.*

3 62. On February 18, 2022, pursuant to California law, Plaintiff requested that  
4 Walgreens substantiate the recycling claims on the Products and provide the other information  
5 required by Cal. Bus. & Prof. Code § 17580(a). Walgreens is required to provide its  
6 substantiation to any member of the public upon request. Cal. Bus. & Prof. Code § 17580(b).  
7 Walgreens has not provided any documentation substantiating its representations. By failing to  
8 substantiate the validity of its recycling representations with respect to the Products, Walgreens is  
9 violating Cal. Bus. & Prof. Code § 17580(a) and the Green Guides.

10 63. Walgreens’ conduct also violates Section 5 of the Federal Trade Commission Act  
11 (“FTC Act”), 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair or  
12 deceptive acts or practices in or effecting commerce. By misrepresenting that the Products are  
13 recyclable, Walgreens is violating Section 5 of the FTC Act.

14 64. Walgreens’ conduct is also a breach of warranty. Walgreens’ representations that  
15 the Products are recyclable constitute affirmations of fact made with regard to the Products, as  
16 well as descriptions of the Products, that are part of the basis of the bargain between Walgreens  
17 and purchasers of the Products. Because those representations are material, false and misleading,  
18 Walgreens has breached its express warranty as to the Products and has violated California  
19 Commercial Code § 2313.

20 65. As detailed more fully elsewhere herein, Walgreens’ acts and practices were  
21 intended to and did result in the sale of the Products in violation of the CLRA, California Civil  
22 Code §1750, *et seq.*, and specifically California Civil Code §§ 1770(a)(5), § 1770(a)(7) and §  
23 1770(a)(9).

24 66. By violating the laws enumerated above, Walgreens has engaged in unlawful  
25 business acts and practices which constitute unfair competition within the meaning of Cal. Bus. &  
26 Prof. Code § 17200.

27 67. Plaintiff has no adequate remedy at law for the injuries currently being suffered as  
28 an award of monetary damages would not prohibit Walgreens’ unlawful sale and distribution of

1 the Products in California. If an injunction is not granted, Plaintiff will suffer irreparable injury  
2 because she continues to desire to purchase Products from Walgreens in the future that are legally  
3 sold and recyclable but is unable to determine with confidence whether the Products are legally  
4 sold and recyclable. In addition, plastic pollution caused by Walgreens' sale of the Products in  
5 California will continue to negatively harm California waters, coasts, communities, and marine  
6 life. California consumers may also contaminate the recycling stream by placing the Products in  
7 their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus,  
8 Plaintiff and the Class seek an order enjoining Walgreens' acts of unlawful, unfair, and deceptive  
9 acts and practices in California, which serves the public interest by protecting the environment  
10 and the integrity of the recycling stream and by preventing Walgreens from gaining an unfair  
11 advantage over companies that lawfully sell their products as recyclable. In addition, Plaintiff  
12 and the Class seek restitution to the individual victims of Walgreens' unlawful, unfair, and  
13 deceptive practices.

14         68. Plaintiff purchased the Products because she believed the Products as sold by  
15 Walgreens complied with the law. If Plaintiff had known that the Products were illegal in  
16 California because they are not recyclable in California, she would not have purchased the  
17 Products and would have instead sought reusable bags made from other materials, such as paper  
18 or cloth bags. Plaintiff purchased the Products from Walgreens based on a belief that Walgreens'  
19 sale of the Products complied with its legal obligations under California law and in reliance on  
20 Walgreens' representations that the Products are recyclable. Walgreens' claims that the Products  
21 are recyclable are material, untrue, and misleading. These recyclable claims are uniform and  
22 prominent on the Products.

23         69. An action for injunctive relief and restitution is specifically authorized under Cal.  
24 Bus. & Prof. Code § 17203.

25         Wherefore, Plaintiff prays for judgment against Walgreens, as set forth hereafter.  
26  
27  
28

**SECOND CAUSE OF ACTION**

**(Plaintiff, on Behalf of Herself And The Class, Alleges Violations of California Cal. Bus. & Prof. Code § 17200, et seq. Based on Fraudulent Acts and Practices)**

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

71. Under Cal. Bus. & Prof. Code § 17200, any business act or practice that is likely to deceive members of the public constitutes a fraudulent business act or practice.

72. Walgreens has engaged and continues to engage in conduct that is likely to deceive members of the public. This conduct includes, but is not limited to, representing that the Products are recyclable in California, when they are not.

73. Plaintiff has no adequate remedy at law for the injuries currently being suffered as an award of monetary damages would not prohibit Walgreens' unlawful sale and distribution of the Products in California. If an injunction is not granted, Plaintiff will suffer irreparable injury because she continues to desire to purchase Products from Walgreens in the future that are legally sold and recyclable but is unable to determine with confidence whether the Products are legally sold and recyclable. In addition, plastic pollution caused by Walgreens' sale of the Products in California will continue to negatively harm California waters, coasts, communities, and marine life. California consumers may also contaminate the recycling stream by placing the Products in their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus, Plaintiff and the Class seek an order enjoining Walgreens' acts of unlawful, unfair, and deceptive acts and practices in California, which serves the public interest by protecting the environment and the integrity of the recycling stream and by preventing Walgreens from gaining an unfair advantage over companies that lawfully sell their products as recyclable. In addition, Plaintiff and the Class seek restitution to the individual victims of Walgreens' unlawful, unfair, and deceptive practices.

74. Plaintiff purchased the Products because she believed the Products as sold by Walgreens complied with the law. If Plaintiff had known that the Products were illegal in California because they are not recyclable in California, she would not have purchased the



1 Products and would have instead sought reusable bags made from other materials, such as paper  
2 or cloth bags. Plaintiff purchased the Products from Walgreens based on a belief that Walgreens'  
3 sale of the Products complied with its legal obligations under California law and in reliance on  
4 Walgreens' representations that the Products are recyclable. Walgreens' claims that the Products  
5 are recyclable are material, untrue, and misleading. These recyclable claims are uniform and  
6 prominent on the Products.

7 75. By committing the acts alleged above, Walgreens has engaged in fraudulent  
8 business acts and practices, which constitute unfair competition within the meaning of Cal. Bus.  
9 & Prof. Code § 17200.

10 76. An action for injunctive relief and restitution is specifically authorized under Cal.  
11 Bus. & Prof. Code § 17203.

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

13 **THIRD CAUSE OF ACTION**

14 **(Plaintiff, on Behalf of Herself And The Class, Alleges Violations of California Cal. Bus. &**  
15 **Prof. Code § 17200, et seq.**  
16 **Based on Unfair Acts and Practices)**

17 77. Plaintiff incorporates by reference the allegations set forth above.

18 78. Under California Cal. Bus. & Prof. Code § 17200, any business act or practice that  
19 is unethical, oppressive, unscrupulous, or substantially injurious to consumers, or that violates a  
20 legislatively declared policy, constitutes an unfair business act or practice.

21 79. Walgreens has engaged and continues to engage in conduct which is immoral,  
22 unethical, oppressive, unscrupulous, and substantially injurious to consumers. This conduct  
23 includes, but is not limited to, unlawfully selling the Products, representing that the Products are  
24 recyclable in California when they are not, and failing to substantiate the environmental benefits  
25 of the Products. By illegally selling the Products, and by taking advantage of consumers  
26 concerned about the environmental impacts of plastic pollution, Walgreens' conduct far  
27 outweighs the utility, if any, of such conduct.

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

16           81. Walgreens’ conduct also violates the policy of EMCA and the Green Guides. The  
17 Green Guides mandate that “[a] product or package shall not be marketed as recyclable unless it  
18 can be collected, separated, or otherwise recovered from the waste stream through an established  
19 recycling program for reuse or use in manufacturing or assembling another item.” 16 C.F.R. §  
20 260.12(a). It further states that “[a]n item that is made from recyclable material, but because of  
21 its shape, size or some other attribute is not accepted in recycling programs, should not be  
22 marketed as recyclable.” 16 C.F.R. § 260.12(d). EMCA states that “it is unlawful for any person  
23 to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit  
24 or implied. For the purpose of this section, environmental marketing claims shall include any  
25 claims contained in the Guides for the use of Environmental Marketing Claims published by the  
26 Federal Trade Commission.” Cal. Bus. & Prof. Code § 17580.5. As explained above, the  
27 Products cannot be recycled, and it is therefore unfair for Walgreens to make a recyclable claim.  
28

1 Taking advantage of consumer perception of recycling violates the policy of the Green Guides  
2 and EMCA.

3 82. Walgreens' conduct also violates the policy of substantiation policy of EMCA.  
4 Under EMCA, "Any person who represents in advertising or on the label or container of a  
5 consumer good that the consumer good that it manufactures or distributes is not harmful to, or is  
6 beneficial to, the natural environment, through use of such terms as 'environmental choice,'  
7 'ecologically friendly,' 'earth friendly,' 'environmentally friendly,' 'ecologically sound,'  
8 'environmentally sound,' 'environmentally safe,' 'ecologically safe,' 'environmentally lite,'  
9 'green product,' or any other like term, or through the use of a chasing arrows symbol or by  
10 otherwise directing a consumer to recycle the consumer good, shall maintain in written form in its  
11 records...information and documentation supporting the validity of the representation." Cal. Bus.  
12 & Prof. Code § 17580(a). The California Legislature declared its intent that the information and  
13 documentation supporting the validity of any environmental marketing claims shall be fully  
14 disclosed to the public, and information and documentation maintained pursuant to Cal. Bus. &  
15 Prof. Code § 17580 must be furnished to any member of the public upon request. *Id.*, § 17580(b),  
16 (d). Plaintiff requested substantiation on February 18, 2022, which Walgreens has not provided.  
17 It is unfair for Walgreens to withhold information it is mandated to disclose pursuant to statute.

18 83. Walgreens' conduct also violates the substantiation policy of the Green Guides.  
19 The Green Guides require marketers to ensure that their claims are supported by a reasonable  
20 basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined as competent  
21 and reliable scientific evidence, such as "tests, analyses, research, or studies that have been  
22 conducted and evaluated in an objective manner by qualified persons and are generally accepted  
23 in the profession to yield accurate and reliable results." *Id.* "Such evidence should be sufficient  
24 in quality and quantity based on standards generally accepted in the relevant scientific fields,  
25 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.* It is unfair for Walgreens to represent  
27 that the Products are recyclable without a reasonable basis.  
28

1           84. It is also unfair for Walgreens to represent that the Products are recyclable via  
2 store drop-off, without actually requiring its retail stores to maintain a store drop-off bin.

3           85. By committing the acts alleged above, Walgreens has engaged in unfair business  
4 acts and practices which constitute unfair competition within the meaning of California Cal. Bus.  
5 & Prof. Code § 17200.

6           86. Plaintiff has no adequate remedy at law for the injuries currently being suffered as  
7 an award of monetary damages would not prohibit Walgreens' unlawful sale and distribution of  
8 the Products in California. If an injunction is not granted, Plaintiff will suffer irreparable injury  
9 because she continues to desire to purchase Products from Walgreens in the future that are legally  
10 sold and recyclable but is unable to determine with confidence whether the Products are legally  
11 sold and recyclable. In addition, plastic pollution caused by Walgreens' sale of the Products in  
12 California will continue to negatively harm California waters, coasts, communities, and marine  
13 life. California consumers may also contaminate the recycling stream by placing the Products in  
14 their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus,  
15 Plaintiff and the Class seek an order enjoining Walgreens' acts of unlawful, unfair, and deceptive  
16 acts and practices in California, which serves the public interest by protecting the environment  
17 and the integrity of the recycling stream and by preventing Walgreens from gaining an unfair  
18 advantage over companies that lawfully sell their products as recyclable. In addition, Plaintiff  
19 and the Class seek restitution to the individual victims of Walgreens' unlawful, unfair, and  
20 deceptive practices.

21           87. Plaintiff purchased the Products because she believed the Products as sold by  
22 Walgreens complied with the law. If Plaintiff had known that the Products were illegal in  
23 California because they are not recyclable in California, she would not have purchased the  
24 Products and would have instead sought reusable bags made from other materials, such as paper  
25 or cloth bags. Plaintiff purchased the Products from Walgreens based on a belief that Walgreens'  
26 sale of the Products complied with its legal obligations under California law and in reliance on  
27 Walgreens' representations that the Products are recyclable. Walgreens' claims that the Products  
28

1 are recyclable are material, untrue, and misleading. These recyclable claims are uniform and  
2 prominent on the Products.

3 88. An action for injunctive relief and restitution is specifically authorized under  
4 California Cal. Bus. & Prof. Code § 17203.

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

6 **FOURTH CAUSE OF ACTION**

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

9 89. Plaintiff incorporates by reference the allegations set forth above.

10 90. Plaintiff and the Class members purchased the Products for personal, family or  
11 household purposes.

12 91. The acts and practices of Walgreens as described above were intended to deceive  
13 Plaintiff and the Class members as described herein and have resulted and will result in damages  
14 to Plaintiff and the Class members. These actions violated and continue to violate the CLRA in at  
15 least the following respects:

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

19 b. In violation of Section 1770(a)(7) of the CLRA, Walgreens' acts and  
20 practices constitute representations that the Products are of a particular quality, which they  
21 are not.

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

25 92. By reason of the foregoing, Plaintiff and the Class members have suffered  
26 damages.

27 93. By committing the acts alleged above, Walgreens violated the CLRA.  
28

1 94. In compliance with the provisions of California Civil Code § 1782, on February  
2 18, 2022, Plaintiff provided written notice to Walgreens of her intention to seek damages under  
3 California Civil Code § 1750, *et seq.*, and requested that Walgreens offer an appropriate  
4 consideration or other remedy to all affected consumers. As of the date of this complaint,  
5 Walgreens has not done so. Accordingly, Plaintiff seeks damages pursuant to California Civil  
6 Code §§ 1780(a)(1) and 1781(a).

7 95. Pursuant to California Civil Code § 1780(a)(2) Plaintiff and the Class members are  
8 entitled to an order enjoining the above-described wrongful acts and practices of Walgreens,  
9 providing actual and punitive damages and restitution to Plaintiff and the Class members, and  
10 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and  
11 proper by the Court under California Civil Code § 1780.

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

13 **FIFTH CAUSE OF ACTION**

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

15 96. Plaintiff incorporates by reference the allegations set forth above.

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

19 98. As detailed above, Walgreens sold the Products as recyclable. Walgreens'  
20 representations that the Products are recyclable constitute affirmations of fact made with regard to  
21 the Products as well as descriptions of the Products.

22 99. Walgreens' representations regarding the recyclability of the Products are  
23 uniformly made on the Products and are thus part of the basis of the bargain between Walgreens  
24 and purchasers of the Products.

25 100. California has codified and adopted the provisions of the Uniform Commercial  
26 Code governing express warranties (Cal. Com. Code § 2313).

27 101. At the time that Walgreens designed, manufactured, sold and distributed the  
28 Products, Walgreens knew that the Products were not recyclable.

1 102. As set forth in the paragraphs above, the Products are not recyclable and thus do  
2 not conform to Walgreens' express representations to the contrary. Walgreens has thus breached  
3 its express warranties concerning the Products.

4 103. On February 18, 2022, Plaintiff sent a pre-suit demand letter to Walgreens  
5 notifying Walgreens that the Products are not recyclable. Walgreens therefore has actual and  
6 constructive knowledge that the Products are not recyclable and were thus not sold as labeled.

7 104. As a direct and proximate result of Walgreens' breach of express warranties,  
8 Plaintiff and Class members have suffered damages.

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

10 **SIXTH CAUSE OF ACTION**

11 **(Plaintiff, on Behalf of Herself and the Class, Alleges Quasi-Contract (Unjust Enrichment))**

12 105. Plaintiff incorporates by reference the allegations set forth above.

13 106. Plaintiff and the Class members conferred benefits on Walgreens by purchasing  
14 the Products.

15 107. Walgreens has knowledge of such benefits.

16 108. Walgreens voluntarily accepted and retained the benefits conferred.

17 109. Walgreens has been unjustly enriched in retaining the revenues derived from  
18 Plaintiff's and the Class members' purchases of the Products.

19 110. Retention of that money under these circumstances is unjust and inequitable  
20 because Walgreens' sale of the Products were unlawful and Walgreens' misleadingly represented  
21 through its labeling that the Products are recyclable, when the Products are not in fact recyclable.

22 111. These misrepresentations caused injuries to Plaintiff and the Class members  
23 because they would not have purchased the Products, or would not have paid as much for the  
24 Products, had they known that the sale of the Products are unlawful and that the Products are not  
25 recyclable.

26 112. Because Walgreens' retention of the non-gratuitous benefits conferred to it by  
27 Plaintiff and the Class members is unjust and inequitable, Walgreens ought to pay restitution to  
28 Plaintiff and the Class members for its unjust enrichment.

1 113. As a direct and proximate result of Walgreens' unjust enrichment, Plaintiff and the  
2 Class members are entitled to restitution or disgorgement in an amount to be proved at trial.

3 Wherefore, Plaintiff prays for judgment against Walgreens, as set forth hereafter

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff has no adequate remedy at law and prays for judgment and relief  
6 against Walgreens as follows:

7 A. That the Court preliminarily and permanently enjoin Walgreens from conducting  
8 its business through the unlawful, unfair, or fraudulent business acts or practices, and other  
9 violations of law described in this Complaint;

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

13 C. That the Court order Walgreens to cease and refrain from selling the Products in  
14 California unless they are recyclable;

15 D. That the Court order Walgreens to comply with its obligations to substantiate that  
16 the Products are recyclable;

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

20 F. That the Court order Walgreens to notify each and every Class member of the  
21 pendency of the claims in this action in order to give such individuals an opportunity to obtain  
22 restitution and damages from Walgreens;

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

27 H. That the Court order Walgreens to account for and to disgorge all money  
28 wrongfully obtained and all revenues and profits derived by Walgreens as a result of its acts or



1 practices as alleged in this Complaint;

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

4 J. That the Court award punitive damages pursuant to California Civil Code  
5 § 1780(a)(4);

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

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

10 **JURY DEMAND**

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

12  
13 Dated: April 29, 2022

Respectfully submitted,

14 LEXINGTON LAW GROUP

15  
16 /s/ Howard Hirsch

17 Howard Hirsch (State Bar No. 213209)  
18 Meredyth Merrow (State Bar No. 328337)  
19 LEXINGTON LAW GROUP  
20 503 Divisadero Street  
21 San Francisco, CA 94117  
22 Telephone: (415) 913-7800  
23 Facsimile: (415) 759-4112  
24 hhirsch@lexlawgroup.com  
25 rbergoff@lexlawgroup.com  
26 mmerrow@lexlawgroup.com

27 Attorneys for Plaintiff  
28 Elisa Bargetto