

Multiple Documents

Part	Description
1	Main Document
2	Exhibit A - Declaration of Roger Mattila

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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

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

19 Plaintiffs,

20 vs.

21 WALGREEN CO.,

22 Defendant.

Case No. 3:22-cv-02639-TLT

**DEFENDANT WALGREEN CO.'S
NOTICE OF MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION [Fed. R. Civ. P.
12(b)(1)] AND FOR FAILURE TO
STATE A CLAIM [Fed. R. Civ. P.
12(b)(6)]; MEMORANDUM IN
SUPPORT OF MOTION**

Date: December 6, 2022

Time: 2:00 p.m.

Judge: Trina L. Thompson

Complaint filed: April 29, 2022

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 6, 2022, at 2:00 p.m., or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, at 450 Golden Gate Avenue, Courtroom 9, on the 19th Floor, San Francisco, California, 94102, with the Honorable Trina L. Thompson presiding, Defendant Walgreen Co. will and hereby does move this Court for an order dismissing this action pursuant to Fed. R. Civ. P. 12(b)(1) because this Court lacks jurisdiction over her claims and pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that Plaintiff has failed to state a claim for relief as to every cause of action asserted in Plaintiff's Second Amended Complaint. Walgreens further requests that the Court dismiss, or stay, this action under the doctrine of primary jurisdiction.

This motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, Request for Judicial Notice, and all exhibits attached thereto, all other records, pleadings, and papers filed in this action that may properly be considered in support of this motion, and upon such other documentary and oral evidence or argument as may be presented at the hearing on this motion.

Dated: October 7, 2022

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: /s/ Cory E. Manning
Cory E. Manning
Miles E. Coleman

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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 In this putative class action, Plaintiff Elisa Bargetto alleges that Defendant Walgreen Co.
3 (“Walgreens”) unlawfully, fraudulently, and deceptively sells reusable plastic shopping bags to its
4 customers. The crux of Plaintiff’s complaint is that Walgreens has included representations on its
5 reusable plastic bags that they are recyclable, when, in actuality (according to Plaintiff), the bags
6 are not recyclable. Plaintiff bases her allegations upon her belief that in order for a product to be
7 labeled “recyclable,” the product must not simply be *capable* of being recycled, but must *actually*
8 be recycled by the end consumer, must *actually* be sorted and processed by recycling facilities,
9 must *actually* be transformed into some new raw material or item, and must *actually* have a market
10 of buyers who purchase that new raw material. Her claims fail for the reasons explained below.

11 *First*, as a threshold matter, the Court lacks jurisdiction over a question that is necessary
12 to resolve before Plaintiff can press any of her claims. All of Plaintiff’s claims rest expressly or
13 by necessary implication on Walgreens’ alleged violations of SB270 (the statewide Single-Use
14 Carryout Bag Ban). Conversely, Walgreens’ compliance with the requirements of SB270
15 (including those with respect to recyclability) would be a complete defense to each of Plaintiff’s
16 claims. Accordingly, Walgreens’ compliance (or lack thereof) with SB270 is the starting point for
17 analyzing the viability of Plaintiff’s claims.

18 SB270, however, establishes a particular process to determine whether a product complies
19 with its requirements, and it establishes a particular method and venue to challenge a product’s
20 compliance. Specifically, SB270 requires producers of reusable plastic bags to obtain
21 certifications from independent third-party entities that their products comply with SB270’s
22 requirements. When such certifications are submitted to and accepted by the relevant state
23 agency, it gives rise to an express statutory presumption that the bags comply with SB270.
24 Certified bags are presumed to be compliant unless and until the certification is challenged and
25 revoked *in a state court proceeding*. Because SB270 underlies each of Plaintiff’s claims and
26 because Walgreens’ compliance would be a complete defense to all of her claims, Plaintiff cannot
27 prosecute her claims until she first challenges the certifications (and prevails) in state court.

28 *Second*, even if the Court had jurisdiction to consider the bags’ compliance with SB270,

1 the Court should nevertheless dismiss or stay this matter under the doctrine of primary
 2 jurisdiction. The California Legislature has given authority over the regulation, certification, and
 3 enforcement of reusable plastic bags to the California Department of Resources Recycling and
 4 Recovery (“CalRecycle”), a department within the California Environmental Protection Agency,
 5 and has given exclusive authority to review those certifications to the state court.

6 The Court should defer to the upcoming, statutorily required study and regulations from
 7 CalRecycle regarding “recyclability.” The Legislature has explicitly tasked CalRecycle with
 8 conducting a recyclability study and updating California regulations to provide further
 9 information regarding whether products or packaging are “recyclable.” CalRecycle is required to
 10 complete the study and promulgate the new regulations no later than January 1, 2024. As the
 11 “recyclability” of Walgreens’ bags is the principal issue in this matter and as the relevant
 12 standards will be developed in less than a year and a half, the Court should dismiss or stay this
 13 action in deference to CalRecycle’s impending regulations.

14 *Third*, as to the substance of Plaintiff’s pleading, her novel definition of “recyclable”—
 15 which underlies her entire theory of the case and each of her claims—is unfounded. Plaintiff can
 16 point to no operative authority that requires producers, manufacturers, and sellers of reusable plastic
 17 bags to demonstrate that bags are actually being recycled by the end consumer, processed by
 18 recycling facilities, and reincarnated into new products. Relevant law only requires that a product
 19 be *capable* of being collected, sorted, or recovered from the waste stream prior to being labeled
 20 “recyclable.” As Walgreens’ reusable plastic bags are fully compliant with all relevant laws,
 21 Plaintiff’s allegations fail to state a claim for relief under any cause of action. Her other, tagalong
 22 claims likewise fail once the claims for allegedly deceptive or unlawful labeling are dismissed.

23 Walgreens requests the Court dismiss this action with prejudice.

24 BACKGROUND

25 **I. SB270 and Its Requirements**

26 On November 8, 2016, California voters approved Proposition 67, the statewide Single-
 27 Use Carryout Bag Ban, which had been introduced and passed by the Legislature as Senate Bill
 28 270 (“SB270”). The approval of SB270 effected a sea change in the regulation of the use,

1 distribution, manufacturing, labeling, and sale of carryout shopping bags in California. Among
 2 other things, SB270 mandates and governs the bag labeling that gives rise to Plaintiff’s suit.
 3 Plaintiff’s causes of action asserted in her pleading are premised—expressly or impliedly—on
 4 alleged violations of SB270. (*See, e.g.*, Second Amend. Compl. (“SAC”) ¶¶ 1–2, 34, 56.)

5 Requirements for Reusable Grocery Bags. The pertinent provisions of SB270 state that
 6 no store in California may sell or distribute so-called single-use plastic shopping bags and can
 7 only distribute reusable shopping bags that have certain physical characteristics, comply with the
 8 federal regulation found at 16 CFR § 260.12 related to assertions of recyclability, and are
 9 emblazoned with the following information:

- 10 (A) The name of the manufacturer.
 11 (B) The country where the bag was manufactured.
 12 (C) A statement that the bag is a reusable bag and designed for at least 125 uses.
 13 (D) If the bag is eligible for recycling in the state, instructions to return the
 14 bag to the store for recycling or to another appropriate recycling
 15 location. If recyclable in the state, the bag shall include the chasing
 16 arrows recycling symbol or the term “recyclable,” consistent with the
 17 Federal Trade Commission guidelines use of that term, as updated.

18 Cal. Pub. Res. Code § 42281(a)(4)(A)–(D). The phrases “eligible for recycling in the state” and
 19 “recyclable in the state” are not defined in this Code Chapter.

20 Requirements for Reusable Grocery Bags Made from Plastic Film. In addition to the
 21 foregoing requirements, which apply to *all* reusable shopping bags, SB270 imposes additional
 22 requirements on reusable bags made from *film plastic*, including the following:

- 23 (C) *It shall be recyclable in this state*, and accepted for return at stores subject
 24 to the at-store recycling program (Chapter 5.1 (commencing with Section
 25 42250)) for recycling.¹
 26 (D) It shall have, in addition to the information required to be printed on the bag
 27 or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the
 28 bag is made partly or wholly from postconsumer recycled material and
 stating the postconsumer recycled material content percentage, as applicable.

¹ The at-store recycling requirement ceased to be effective on January 1, 2020. *See* SB270 pmb1.
 (“Existing law, until 2020, requires an operator of a store . . . to establish an at-store recycling
 program[.]”); *see also* Cal. Pub. Res. Code § 42257 (noting that Chapter 5.1 of the California
 Public Resource Code was to be repealed as of January 1, 2020).

1 *Id.* § 42281(b)(1)(C)–(D) (emphasis added). The phrase “recyclable in this state” is not defined.

2 The California Legislature did not define that phrase when it initially passed SB270.
3 However, under California Public Resources Code section 42355.51—effective January 1, 2022,
4 but not operative in pertinent respects until January 1, 2024—a product or packaging bearing a
5 “recyclable” claim is considered misleading unless it “is considered recyclable in the state,”
6 which that statute defines as “a material type and form that routinely becomes feedstock used in
7 the production of new products or packaging” based on fact-finding by done by CalRecycle. Cal.
8 Pub. Res. Code § 42355.51(b)(1); *see id.* § 42355.51(d)(2). The Legislature granted CalRecycle
9 until January 1, 2024, to conduct that fact-finding and to publish a study and update the
10 regulations to provide information to the public sufficient for evaluating whether a product or
11 packaging is recyclable in the state. *Id.* § 42355.51(d)(1)–(2).

12 SB270 also imposes a certification obligation on producers of reusable film-plastic bags,
13 who must provide biennial proof to the State that an independent, third-party certification agency
14 has certified that the producer’s bags comply with SB270’s requirements. *Id.* §§ 42281.5,
15 42282. The proof of certification must include specified information, must be accompanied by a
16 certification fee, and must be updated if there are any material modifications to a previously-
17 certified bag. *Id.* §§ 42281.5, 42282.

18 CalRecycle receives the certifications and is required to publish a list on its website that
19 includes the “name, location, and appropriate contact information of certified reusable grocery
20 bag producers” and the “reusable grocery bags of producers that have provided the required
21 certification.” *Id.* § 42282(e).

22 Notably, SB270 specifies the way in which to challenge a bag’s compliance, and it
23 establishes a presumption that *certification equals compliance* unless and until determined
24 otherwise *by a state court*:

25 (f) A reusable grocery bag producer shall submit applicable certified test
26 results to the department confirming that the reusable grocery bag meets
27 the requirements of this article for each type of reusable grocery bag that
28 is manufactured, imported, sold, or distributed in the state and provided
to a store for sale or distribution.

(1) A person may object to the certification of a reusable grocery

1 bag producer pursuant to this section by filing an action for
 2 review of that certification *in the superior court of a county that*
 3 *has jurisdiction over the reusable grocery bag producer. The*
court shall determine if the reusable grocery bag producer is in
compliance with the requirements of this article.

4 (2) A reusable grocery bag producer whose certification is being
 5 objected to pursuant to paragraph (1) *shall be deemed in compliance*
with this article pending a determination by the court.

6 *Id.* § 42282(f) (emphasis added). Although any “person” may challenge a bag’s compliance with
 7 SB270’s requirements by filing a state court proceeding to “object to” the bag’s certification, *see*
 8 *id.*, the requirements of SB270 can be *enforced* only by a city, a county, or the State, *id.*

9 § 42285(a). The law makes no provision for private enforcement or for a private cause of action
 10 for violations of SB270. *Id.*

11 **II. Walgreens’ Actions**

12 Walgreens is an Illinois corporation that operates a nationwide chain of pharmacies and
 13 drug stores that also sell groceries, household goods, and sundries. (*See* SAC ¶ 8.) Walgreens
 14 operates hundreds of stores in California. (*Id.*) After the approval of SB270, and in compliance
 15 with its requirements, Walgreens stopped providing its customers with so-called single-use
 16 plastic carryout bags, and, instead, made reusable bags, including reusable film plastic bags,
 17 available to its customers for purchase at the point of sale. (*See, e.g., id.* ¶¶ 8, 32–33, 35.)

18 The reusable plastic bags sold by Walgreens at issue in this case are certified by
 19 CalRecycle as SB270 compliant. (*See* Request for Judicial Notice.) The bags were
 20 manufactured by Novolex. (*See* Decl. of Roger Mattila ¶ 16 (attached hereto as **Exhibit A**).)²

21 ² Because Mr. Mattila’s declaration is relevant to and used to support Walgreens’ argument that
 22 the Court lacks subject matter jurisdiction over this lawsuit, *see* Argument I, *infra*, the Court may
 23 properly consider it without converting this motion into a Motion for Summary Judgment. *St.*
 24 *Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) (“[A] Rule 12(b)(1) motion can attack
 25 the substance of a complaint’s jurisdictional allegations despite their formal sufficiency, and in so
 26 doing rely on affidavits or any other evidence properly before the court.”); *Safe Air for Everyone*
 27 *v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (“In resolving a factual attack on jurisdiction, the
 28 district court may review evidence beyond the complaint without converting the motion to
 dismiss into a motion for summary judgment.”); *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.
 2000) (“With a factual Rule 12(b)(1) attack . . . a court may look beyond the complaint to matters
 of public record without having to convert the motion into one for summary judgment.”).

To be clear, the relevance of Mr. Mattila’s declaration is to demonstrate the procedural and
 jurisdictional hurdle imposed by SB270, its implementing regulations, and the certification

1 As required by SB270, the bags were certified by an independent, accredited third-party
2 certification entity; the certifications were submitted to and accepted by CalRecycle; and the
3 bags have at all relevant times appeared on CalRecycle’s list of permissible bags. (*See id.* ¶¶ 17–
4 22; *see also* Request for Judicial Notice, CalRecycle SB270 Certified List, *available at*
5 <https://www2.calrecycle.ca.gov/ReusableBags/Company/Details/25> (last visited September 16,
6 2022).) The testing and certification process confirmed, among other things, that Walgreens
7 reusable film plastic bags are “recyclable in this state” and bear the correct labeling pertaining to
8 recyclability as required by SB270. (*See* Decl. of Roger Mattila ¶ 23.) The testing also confirmed
9 that Walgreens’ bags were made with a blend of high-density and low-density polyethylene
10 (“HDPE” and “LDPE,” respectively), and are recyclable throughout the United States and in
11 California specifically. (*See id.* ¶¶ 24–31.)

12 **III. The Second Amended Complaint’s Allegations and Claims**

13 Plaintiff filed her Complaint on April 29, 2022, on behalf of herself and a putative class
14 of persons who bought reusable plastic shopping bags at Walgreens locations in California. She
15 amended her Complaint once on August 31, 2022, and amended it a second time by filing the
16 SAC—the operative Complaint at the time of this filing—on September 30, 2022.

17 The SAC alleges that Plaintiff is an environmentally conscientious California resident
18 who, in December 2021, purchased reusable film plastic grocery bags from Walgreens because
19 she believed they “complied with the law,” and she alleges that she relied on “Walgreens’
20 representation that the Products are recyclable.” (*See* SAC ¶¶ 5, 7.) She alleges that, contrary to
21 SB270’s mandate, the bags “are not recyclable in California,” and, therefore, Walgreens is in
22 violation of the law. (*Id.* ¶¶ 1–2.) Her allegation is based on a definition of “recyclable” that is
23 not found in SB270 but, rather, is (according to her) “widely understood” in “the solid waste
24 industry.” (*Id.* ¶¶ 3–4). She alleges this definition is “codified in several different places in
25 California law” (*id.* ¶ 15) and in Federal Trade Commission regulations. (*Id.* ¶ 18.)

26 _____
27 process, which gives rise to a statutory presumption of recyclability. Walgreens is *not* relying on
28 Mr. Mattila’s declaration to establish the factual proposition that the reusable bags are, in fact,
recyclable. Accordingly, the jurisdictional issue and declaration are not intertwined with any
factual dispute, and the declaration does not convert this Motion into one for summary judgment.

1 Specifically, Plaintiff alleges that a product is “recyclable” only if at least three external,
 2 dynamic variables are present—all of which are outside the control of the retailer: (1) consumers
 3 have easy access to a recycling facility that will accept the product; (2) those facilities are
 4 capable of sorting the product into the correct “bale” of materials; and (3) there is an “end
 5 market” that has a need for and an economic motivation to purchase the materials and *actually*
 6 convert it into a new product. (*See id.* ¶¶ 3, 15, 18, 34.) Plaintiff concedes that, under her
 7 definition, almost *no* plastic is currently considered “recyclable.” (*See id.* ¶ 28 (admitting that
 8 due to market conditions and the availability of raw materials “there is essentially no market
 9 demand for most types of recycled plastic”).³

10 The SAC also contains an extensive, inflammatory, and irrelevant discussion of global
 11 plastic waste and disposal, the longevity of plastic waste in the environment, the volume of
 12 shopping bags used annually worldwide, a 2019 international convention regarding the
 13 international shipment of plastic waste, and a supposed decades-long plastic industry conspiracy
 14 to promote recycling as an environmental panacea the industry knew was not realistic or viable,
 15 but which it hoped to use to assuage environmental concerns. (*See SAC* ¶¶ 1, 23–31.)

16 Based on her allegation that reusable film plastic bags sold and distributed by Walgreens
 17 in California are not “recyclable” (as she defines that term), Plaintiff asserts six causes of action:

- 18 (1) Violation of California’s Unfair Competition Law (the “UCL”) based
 19 on allegedly *unlawful* acts (*id.* ¶¶ 54–68);
- 20 (2) Violation of the UCL based on allegedly *fraudulent* acts (*id.* ¶¶ 69–75);
- 21 (3) Violation of the UCL based on allegedly *unfair* acts (*id.* ¶¶ 76–87);
- 22 (4) Violation of California’s Consumer Legal Remedies Act (the “CLRA”)
 23 (*id.* ¶¶ 88–94);
- 24 (5) Breach of express warranty (*id.* ¶¶ 95–103); and
- (6) Unjust enrichment. (*id.* ¶¶ 104–112.)

25 She asserts these claims on behalf of herself and a putative class (*see id.* ¶¶ 45–53), and seeks

26 _____
 27 ³ If Plaintiff’s theory is correct, almost *none* of the hundreds of certified reusable bags listed
 28 online by CalRecycle are “recyclable,” and nearly *every* store in the State has been in constant
 violation of SB270 for the past six years, collectively accruing hundreds of millions of dollars in
 violations and opening the courthouse doors for thousands of lawsuits mimicking this one.

1 injunctive relief, restitution, an accounting and disgorgement, damages, punitive damages, and
 2 attorneys' fees and costs. (*See id.* pp. 37–38 (Prayer for Relief).)

3 LEGAL STANDARD

4 Lack of Subject-Matter Jurisdiction. “Federal courts are courts of limited jurisdiction.”
 5 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As such, federal courts are
 6 presumed to lack jurisdiction “unless the contrary affirmatively appears.” *Stock West, Inc. v.*
 7 *Confederated Tribes of the Colville Rsrv.*, 873 F.2d 1221, 1225 (9th Cir. 1989). In deciding a
 8 motion under Rule 12(b)(1) challenging subject matter jurisdiction, the burden of proof is on the
 9 party asserting jurisdiction, and the court will presume a lack of jurisdiction until the pleader
 10 proves otherwise. *See Kokkonen*, 511 U.S. at 377.

11 A Rule 12(b)(1) challenge may be made on the face of the pleadings or by presenting
 12 extrinsic evidence. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003);
 13 *Thornhill Publ’g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

14 Primary Jurisdiction. The primary jurisdiction doctrine applies when there is (1) a need to
 15 resolve an issue that (2) has been placed by the Legislature within the jurisdiction of a tribunal
 16 having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a
 17 comprehensive regulatory authority that (4) requires expertise or uniformity in administration.
 18 *Swearingen v. Yucatan Foods, L.P.*, 59 F. Supp. 3d 961, 963 (N.D. Cal. 2014) (quoting *Clark v.*
 19 *Time Warner*, 523 F.3d 1110, 1115 (9th Cir. 2008)). A court presented with an issue to which
 20 deference to another tribunal is due under the primary jurisdiction doctrine may either stay the
 21 case or dismiss it without prejudice. “Normally, if the court concludes that the dispute which
 22 forms the basis of the action is within the agency's primary jurisdiction, the case should be
 23 dismissed without prejudice so that the parties may pursue their administrative remedies.” *Id.* at
 24 964 (citation omitted). A stay, rather than a dismissal, is required where “further judicial
 25 proceedings are contemplated” or where prejudice—*e.g.*, the potential running of the statute of
 26 limitations during administrative proceedings—may unfairly disadvantage the parties. *See*
 27 *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 761 (9th Cir. 2015).

28 Failure to State a Claim. A motion to dismiss under Rule 12(b)(6) tests the legal

1 sufficiency of the claims asserted in the complaint. When evaluating a Rule 12(b)(6) motion, the
 2 district court must accept all material allegations in the complaint as true and construe them in
 3 the light most favorable to the nonmoving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir.
 4 1994). However, “the tenet that a court must accept as true all of the allegations contained in a
 5 complaint is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell*
 6 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

7 ARGUMENT

8 **I. The Court should dismiss Plaintiff’s claims for lack of subject matter jurisdiction.**

9 Plaintiff’s claims are premised—expressly or by necessary implication—on Walgreens’
 10 alleged violations of SB270. (See SAC ¶¶ 1–2, 34, 56, 71, 78.) Analysis of SB270 and the
 11 alleged violations is, therefore, the starting point if the Court is to consider and resolve Plaintiff’s
 12 claims. Furthermore, pursuant to the “safe harbor” doctrine (discussed in greater detail in
 13 Argument I(B), *infra*), Walgreens’ compliance with SB270 is a complete defense against
 14 Plaintiff’s three UCL claims and her CLRA claim. See *Becerra v. Gen. Motors, LLC*, 241 F.
 15 Supp. 3d 1094, 1109 (S.D. Cal. 2017); *Alvarez v. Chevron Corp.*, 2009 WL 5552497, at *6 (C.D.
 16 Cal. Sept. 30, 2009); *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tele. Co.*, 973 P.2d 527, 541
 17 (Cal. 1999). As a result, the Court cannot entertain those claims without first deciding the
 18 question of whether the reusable film plastic bags that Walgreens provided to its customers (the
 19 “reusable plastic bags”) comply with the requirements of SB270.⁴

20
 21 ⁴ Plaintiff also purports to rest her claims on Walgreens’ alleged violations of FTC regulations
 22 (the “Green Guides”) and the FTC Act. But neither the regulations nor the FTC Act provide the
 23 Court with *jurisdiction*. The Green Guides are published in the CFR, but are not themselves
 24 enforceable. See FTC The Green Guides, Statement of Basis and Purpose at 1, *available at*
 25 [https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf)
 26 [guides/greenguidesstatement.pdf](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf) (last visited Sept. 15, 2022). Indeed, not even the FTC itself
 27 enforces the Green Guides, and the fact that they are incorporated by reference into California
 28 law does not supply the Court with jurisdiction over them. *Reese v. Rank*, 1985 WL 56548, at *2
 (N.D. Cal. Mar. 19, 1985) (“The incorporation of federal law in a state statute does not confer
 federal subject matter jurisdiction; the federal law must instead be applicable by its own force.”).
 Likewise, while the FTC can sue for violations of the FTC Act, there is no private right of action
 to enforce the Act, and this Court lacks jurisdiction over any private action purporting to enforce
 it. See *Dreisbach v. Murphy*, 658 F.2d 720, 730 (9th Cir. 1981) (“The [FTC] Act rests initial
 remedial power solely in the Federal Trade Commission.”).

1 Plaintiff's other two claims likewise sit downstream from the SB270 analysis. Her
 2 "claim" of unjust enrichment is not a standalone claim, and thus is dependent on and derivative
 3 of the substantive claims, which arise from alleged violations of SB270).⁵ Likewise, California
 4 courts and other district courts within the Ninth Circuit have recognized that there is no breach of
 5 express warranty when allegedly false statements comply with or are required by laws that
 6 specifically regulate a product. *See, e.g., Cruz v. Anheuser-Busch*, 2015 WL 3561536 (C.D. Cal.
 7 June 3, 2015) (ruling that the plaintiff's claims, including one for breach of express warranty,
 8 were barred by the application of the safe harbor doctrine); *see also Kanter v. Warner-Lambert*
 9 *Co.*, 99 Cal. App. 4th 780, 795–96 (Cal. Ct. App. 2002); *see also Frere v. Medtronic, Inc.*, 2016
 10 WL 1533524, at *8 (C.D. Cal. April 6, 2016).

11 Accordingly, Plaintiff's claims cannot be decided without first deciding the question of
 12 whether the reusable plastic bags and their labeling comply with the requirements of SB270.
 13 This Court lacks jurisdiction to make that decision for two reasons, discussed below.

14 **A. Walgreens' bags comply with SB270's certification requirement and are**
 15 **therefore statutorily presumed to be compliant with SB270 unless and until**
 16 **proven otherwise in a state court proceeding.**

17 As explained above, Plaintiff cannot press her claims unless and until Walgreens'
 18 statutory presumption of compliance (as a result of the certification process) is first stripped
 19 away. The resolution of that issue—which involves challenging CalRecycle's review and
 20 acceptance of Walgreens' certification and CalRecycle's listing of Walgreens' bags as compliant
 21 with SB270—is a condition precedent to the prosecution of all of Plaintiff's claims. More
 22 importantly, it is an issue over which this Court lacks subject matter jurisdiction.

23 SB270 requires manufacturers of reusable plastic bags to obtain and provide biennially to
 24 the State certifications performed by accredited third-party agencies that have tested their bags
 25 and confirmed they comply with the requirements of SB270. *See* Cal. Pub. Res. Code
 26 §§ 42281.5, 42282. The State, in turn, receives the certifications, reviews them to ensure they
 27 adhere to statutory requirements, and publishes a list on the CalRecycle website that includes the

28 ⁵ *See Ib Melchior v. New Line Prods., Inc.*, 131 Cal. Rptr. 2d 347, 357 (Ct. App. 2003) (noting that "there is no cause of action in California for unjust enrichment").

1 manufacturer's name and contact information and lists the reusable bags that possess the
2 required certification. *Id.* § 42282(e); CalRecycle, *Reusable Grocery Bag Reporting System*,
3 available at <https://calrecycle.ca.gov/Plastics/CarryoutBags/RGBRS/> (last visited Sept. 15,
4 2022); 14 Cal. Code Regs. §§ 17988.1 to 17988.7. A manufacturer's submission of a proper
5 certification, and the State's acceptance and publication of the same, gives rise to a statutory
6 presumption that the bags are compliant with SB270 unless and until determined otherwise by a
7 court. Cal. Pub. Res. Code § 42282(f). However, the statute does not say that *any* court can make
8 this determination; the Legislature expressly and intentionally gave *the state trial court* exclusive
9 jurisdiction to determine whether a certified bag is, in fact, compliant with SB270's
10 requirements. *Id.* § 42282(f)(1).

11 The reusable plastic bags provided by Walgreens to its customers were certified by an
12 independent, accredited third-party certification entity; the certifications were submitted to and
13 accepted by CalRecycle; and the bags have at all relevant times appeared on CalRecycle's list of
14 permissible bags. Accordingly, Walgreens' bags are presumed compliant and, because the road
15 to challenging the bags' compliance runs solely through the California Superior Court, this Court
16 lacks jurisdiction to consider a challenge to the bags' compliance with SB270.

17 Nor does Plaintiff's reliance on CAFA (asserted for the first time in the SAC) allow her
18 to avoid the state courts' exclusive jurisdiction over the preliminary question of the bags'
19 compliance with SB270. For one, that question and the statutorily-mandated action to resolve it
20 are not susceptible to class treatment or an award of damages, *see id.* § 42282(f), as required by
21 CAFA. Further, CAFA cannot supply a district court with jurisdiction over claims that are
22 contingent on a preliminary requirement that must be (but has not yet been) decided in another
23 forum. *See, e.g., Fox v. Ritz-Carlton Hotel Company LLC*, 977 F.3d 1039, 1049–51 (11th Cir.
24 2020) (affirming the district court's dismissal of a claim in a putative CAFA action because the
25 plaintiff had not yet exhausted the process required by state statute before bringing suit).

26 If Plaintiff wishes to press her claims, she must first challenge the state agency's
27 performance of (and the results of) its process of promulgating, accepting, reviewing, and
28 posting certifications of compliance. She may do so, but not in this Court. Accordingly, the

1 Court should dismiss Plaintiff’s claims. *See Hernandez v. McClanahan*, 996 F. Supp. 975, 978
 2 (N.D. Cal. 1998) (dismissing state law claim because the Legislature had given exclusive
 3 jurisdiction over that claim to the state courts and, therefore, the district court lacked subject
 4 matter jurisdiction); *Luers v. Smith*, 941 F. Supp. 105, 107 (C.D. Cal. 1996) (same); *see also A.B.*
 5 *v. County of Kern*, 2020 WL 6565900, at *3–5 (E.D. Cal. Nov. 9, 2020) (collecting cases).⁶

6 **B. Because SB270 gives exclusive enforcement authority to the government, the**
 7 **Court lacks jurisdiction over this private action to enforce SB270.**

8 As noted above, Plaintiff’s claims are premised—either expressly or by necessary
 9 implication—on Walgreens’ alleged violations of SB270. That statute, however, provides no
 10 private right of action to bring a proceeding to enforce alleged violations of its requirements.
 11 Rather, SB270’s requirements can be enforced only by a city, a county, or the State, which can
 12 impose “civil penalties” on violators. *See* Cal. Pub. Res. Code § 42285. The law does not
 13 provide for a private cause of action for violations of SB270, and Plaintiff may not make an “end
 14 run” around this bar by reframing her claims as ones under the UCL and CLRA. *See id.*; *see*
 15 *also Noe v. Superior Court*, 237 Cal. App. 4th 316, 336 (2015) (“A violation of a state statute
 16 does not necessarily give rise to a private cause of action.”); *Safeco Ins. Co. of Am. v. Superior*
 17 *Court*, 216 Cal. App. 3d 1491, 1494 (1990) (issuing a writ compelling the trial court to dismiss a
 18 suit asserting a claim under the UCL because there was no implied private right of action for the
 19 alleged underlying conduct); *Maler v. Superior Court*, 220 Cal. App. 3d 1592, 1598 (1990)
 20 (same conclusion).

21 A private party’s right to sue for violations of a state statute “depends on whether the
 22 Legislature has ‘manifested an intent to create such a private cause of action’ under the statute”
 23 through the use of “‘clear, understandable, unmistakable terms,’ which strongly and directly
 24 indicate that the Legislature intended to create a private cause of action.” *Noe*, 237 Cal. App.

25
 26 ⁶ To be clear, Walgreens is not arguing that this case or Plaintiff’s claims themselves should be
 27 brought in state court or that this Court lacks jurisdiction over UCL and CLRA claims in
 28 appropriate circumstances. Rather, Walgreens is arguing that Plaintiff cannot assert those claims
 until *after* stripping away the statutory presumption of compliance with SB270, and that this
 Court lacks jurisdiction to do so.

1 4th at 336 (citations omitted). When (as here) a statute imposes a comprehensive scheme of
2 regulation and includes the imposition of “civil penalties,” it is presumed that the Legislature did
3 *not* intend to create a private right of action:

4 Particularly when regulatory statutes provide a comprehensive scheme for
5 enforcement by an administrative agency, the courts ordinarily conclude that the
6 Legislature intended the administrative remedy to be exclusive unless the
7 statutory language or legislative history clearly indicates an intent to create a
8 private right of action.” . . . This court has previously observed that the
9 Legislature’s use of the term “civil penalty,” unaccompanied by any language
10 signifying that the penalty is to be paid to the aggrieved employee, generally
11 indicates that the penalties may only be enforced by the state’s labor law
12 enforcement agencies or through a PAGA action.

13 *Id.* at 337–38 (citations and internal quotation marks omitted).

14 Following these principles, SB270 does not create a private right of action; instead, the
15 law expressly gives enforcement authority to government actors. The Legislature has given
16 exclusive enforcement authority to the State, and a private individual may not use the UCL or
17 CLRA as an “end run” around that legislative determination. *See Safeco Ins. Co.*, 216 Cal. App.
18 3d 1491; *Maler*, 220 Cal. App. 3d 1592; *see also Merrell Dow Pharms. Inc. v. Thompson*, 478
19 U.S. 804, 817 (1986) (holding “that a complaint alleging a violation of a federal statute as an
20 element of a state cause of action, when Congress has determined that there should be no private,
21 federal cause of action for the violation,” does not establish federal question jurisdiction), *quoted*
22 *in Becerra v. Gen. Motors, LLC*, 241 F. Supp. 3d 1094, 1108 (S.D. Cal. 2017); *Becerra*, 241 F.
23 Supp. 3d at 1109 (ruling that a UCL or CLRA claim is prohibited when it is based on an alleged
24 violation of some other statute that bars the action).

25 Because Plaintiff’s UCL and CLRA claims are not authorized or permitted under the
26 UCL, CLRA, or SB270, the Court lacks jurisdiction over them and should dismiss them with
27 prejudice. *See Carlson v. Coca-Cola Co.*, 483 F.2d 279 (9th Cir. 1973) (affirming the dismissal
28 of a suit alleging unfair or deceptive practices because in the absence of a private right of action
there was a lack of jurisdiction); *see also Shobar v. California*, 134 F. App’x 184 (9th Cir. 2005)
 (“We hold that the district court correctly dismissed appellants’ claim because no private cause
of action exists to enforce the state-tribal compact[.]”).

1 **II. In the alternative, this Court should stay this proceeding out of respect for the**
 2 **primary jurisdiction of the state agency and the state Superior Court.**

3 Even if the Court had jurisdiction over Plaintiff’s claims, it should defer any proceedings
 4 in this matter until CalRecycle completes the process of promulgating regulations to clarify
 5 claims of recyclability for products manufactured after January 1, 2024, and/or for the state court
 6 to evaluate the underlying issue of Walgreens’ bags’ compliance with SB270. Primary
 7 jurisdiction “is a prudential doctrine under which courts may, under appropriate circumstances,
 8 determine that the initial decision-making responsibility should be performed by the relevant
 9 agency rather than the courts.” *Syntek Semiconductor Co. v. Microchip Tech., Inc.*, 307 F.3d
 10 775, 780 (9th Cir. 2002). “[I]t is a doctrine used by the courts to allocate initial decision-making
 11 responsibility between agencies and courts where such [jurisdictional] overlaps and potential for
 12 conflicts exist.” *Id.* (alteration in original) (citation and internal quotation marks omitted)

13 The doctrine “is properly invoked when a claim is cognizable in federal court but requires
 14 resolution of an issue of first impression, or of a particularly complicated issue that Congress has
 15 committed to a regulatory agency.” *Id.* (citation omitted). Courts “considering the issue have
 16 traditionally employed such factors as (1) the need to resolve an issue that (2) has been placed by
 17 [the Legislature] within the jurisdiction of an administrative body having regulatory authority
 18 (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory
 19 authority that (4) requires expertise or uniformity in administration.” *Id.* at 781.

20 Plaintiff asks the Court to adjudicate whether Walgreens’ bags—which, pursuant to
 21 SB270’s certification process are *statutorily presumed to comply* with the Act—are, in fact,
 22 compliant with the requirements of SB270. (*See, e.g., SAC ¶¶ 2, 5, 56.*) It is clear, however, that
 23 the Legislature delegated regulation of compliance with SB270 to CalRecycle, and has explicitly
 24 delegated review of such compliance to the state Superior Courts. *See* Cal. Pub. Res. Code
 25 § 42282(e)–(f). Indeed, CalRecycle has established a process for the collection and review of
 26 certifications. *See* CalRecycle Reusable Grocery Bag Reporting System, *available at*
 27 <https://calrecycle.ca.gov/Plastics/CarryOutBags/RGBRS/> (last visited Sept. 7, 2022).

28 Further, CalRecycle is currently in the process of complying with a statutory mandate to
 evaluate recycling practices in the state and promulgate updated regulations to clarify the

1 standard for claims of recyclability for products produced on or after January 1, 2024:

2 On or before January 1, 2024, in order to provide information to the public sufficient
3 for evaluating whether a product or packaging is recyclable in the state according to
4 the criteria set forth in paragraph (2) and are of material types and forms that
5 routinely becomes feedstock used in the production of new products or packaging,
6 the department shall . . . [u]pdate the regulations promulgated pursuant to Section
7 41821.5” and “shall publish the information required pursuant to clause (i) in a form
8 the department deems appropriate for achieving the purpose of this section[.]

9 Cal. Pub. Res. Code § 42355.51(d)(1)(A).⁷ If CalRecycle’s findings and updated regulations
10 were applicable to pre-2024 products (which Walgreens does not concede) and thus relevant to
11 Plaintiff’s claims, the Court ought not rush ahead of the agency’s work.

12 Plaintiff disputes what SB270 *really* means when it requires bags be “recyclable” and
13 would have this Court determine that the definition *she* proposes is the correct one, which would
14 result in the reusable plastic bags’ certifications (and, by implication, the certifications of nearly
15 *every* other reusable plastic bag in the state, *see supra* note 3) being revoked. The Legislature
16 has expressly and exclusively placed that authority in the hands of a state agency and,
17 subsequently, a state court. Accordingly, deference to the will of the Legislature, as well as
18 principles of comity, counsel in favor of the dismissal or stay of this action. *See generally Tran*
19 *v. Sioux Honey Ass’n*, 2017 WL 5587276 (C.D. Cal. Oct. 11, 2017); *Gisvold v Merck & Co.*, 62
20 F. Supp. 3d 1198, 1203–04 (S.D. Cal. 2014).

21 **III. In the alternative, the Court should dismiss Plaintiff’s claims because they fail to**
22 **state a claim on which relief can be granted.**

23 **A. Walgreens’ challenged actions are required by and compliant with state law**
24 **and, therefore, fall with the UCL’s and CLRA’s “safe harbor” provisions.**

25 The UCL and CLRA are subject to “safe harbor” provisions that prevent their use to
26 impose liability for conduct that is permitted by other statutes. *Cel–Tech Commc’ns, Inc.*, 973
27 P.2d at 541 (“If the Legislature has . . . considered a situation and concluded no action should lie,
28 courts may not override that determination. When specific legislation provides a ‘safe harbor,’

⁷ Section 42355 Walgreens’ is discussed more fully in Section III(B)(3) below, which explains that its definition of “recyclable” is inapplicable to products (like Walgreens’ bags) that were manufactured prior to January 1, 2024.

1 plaintiff may not use the general unfair competition law to assault that harbor.”); *Von Keonig v.*
 2 *Snapple Beverage Corp.*, 713 F. Supp. 2d 1066, 1074 (E.D. Cal. 2010) (“Acts that are expressly
 3 considered lawful by the legislature are not actionable under the safe harbor rule.”). Here,
 4 Walgreens’ challenged actions—the sale and distribution of the reusable plastic bags—is
 5 permitted under SB270. And as noted, SB270 expressly states that certified bags are presumed
 6 to be compliant and may be sold and distributed unless and until proven otherwise. *See* Cal. Pub.
 7 Res. Code § 42282(f). Accordingly, until the reusable plastic bags’ certifications are modified or
 8 revoked in a state court proceeding as described in SB270, Walgreens’ sale and distribution of
 9 those certified bags cannot form the basis of a UCL or CLRA claim.

10 **B. Plaintiff has not plausibly pleaded that the reusable plastic bags are not**
 11 **“recyclable” as required by SB270 or other applicable law.**

12 All of Plaintiff’s claims are premised on the theory that Walgreens’ reusable plastic bags
 13 are not recyclable as required by SB270, as certified by CalRecycle, and as noted on the bags’
 14 labeling. That premise, however, is unsupported by her allegations, and her attempts to allege
 15 otherwise rely on easily distinguishable statutes and regulations. Accordingly, she has not
 16 plausibly alleged facts or law that could support her claims.

17 **1. California Public Resource Code section 40180 does not apply**
 18 **because it defines recycling, not recyclable.**

19 Plaintiff cites to several provisions of the California Public Resource Code in support of
 20 her arguments that the reusable plastic bags are not recyclable. The first—section 40180—
 21 defines “recycling” as “the process of collecting, sorting, cleansing, treating, and reconstituting
 22 materials that would otherwise become solid waste, and returning them to the economic
 23 mainstream in the form of raw material for new, reused, or reconstituted products which meet the
 24 quality standards necessary to be used in the marketplace.” (SAC ¶ 15 (quoting Cal. Pub. Res.
 25 Code § 40180).) The Complaint places particular emphasis on the collecting, sorting, and
 26 returning aspects of this definition. (*Id.*)

27 Notably, the foregoing definition is of “recycling” rather than “recyclable.” The former
 28 describes a *process* with various steps and an end-state outcome; the latter (which is the term

1 used by SB270) merely describes a *condition* whereby an item has the *capability* of being
 2 recycled. This distinction is notable (and renders section 40180’s definition inapplicable) in light
 3 of Plaintiff’s position that California law requires the product *actually* be returned or otherwise
 4 placed by customers into the recycling process, *actually* be sorted and processed by a recycling
 5 facility, *actually* be transformed into some new raw material or item, and *actually* have a market
 6 of buyers who purchase that new raw material or item. (*See, e.g.*, SAC ¶¶ 3, 15, 18, 34.)
 7 According to Plaintiff’s definitional sleight-of-hand, recyclability is properly defined not by
 8 *potential* but by what *actually* happens.

9 In one instance, a court in this district has concluded that a plaintiff’s allegation that
 10 *actual* recycling levels were low was sufficient to avoid dismissal of its suit alleging deceptive
 11 recycling claims. *See Smith v. Keurig Green Mountain, Inc.*, 393 F. Supp. 3d 837 (N.D. Cal.
 12 2019). But that ruling is neither binding nor very persuasive and, in any event, it is
 13 distinguishable from this case. In *Smith*, the complaint alleged that the disputed product
 14 (Keurig’s K-Cup coffee pods) were *incapable* of being recycled and were “not recyclable *at all.*”
 15 *Id.* at 847 (emphasis added); *id.* at 848 (same); *id.* at 849 (same); *id.* at 850 (“Plaintiff alleges that
 16 the Pods are not recyclable *anywhere*[.]” (emphasis added)). Not so here. In this case, Plaintiff
 17 does not allege that it is impossible to recycle reusable plastic bags. Rather, she alleges that most
 18 recyclers are not inclined to do so—at least not in high volumes—because demand for recycled
 19 bags is low. (*See, e.g.*, SAC ¶¶ 28, 37.)⁸

20 In contrast to *Smith*, better and more persuasive reasoning comes from a more recent
 21 ruling from the Southern District of New York, which expressly ruled that *recyclability* is not
 22 synonymous with actually being recycled. *See Duchimaza v. Niagara Bottling, LLC*, 2022 WL
 23 3139898 (S.D.N.Y., Aug. 5, 2022).

- 24 • In *Duchimaza*, as here, the plaintiff alleged that product labeling claiming that

25 _____
 26 ⁸ In addition, the materials incorporated into the Complaint recognize that reusable bags (like
 27 Walgreens’) made from HDPE and LDPE *can be* and often *are* recycled. (*See* SAC footnotes 12
 28 and 47.) Footnote 12, for example, cites a report by the federal EPA that specifically notes that
 plastic bags are, in fact, recycled. *See* EPA, *2018 Advancing Sustainable Materials Management:
 Facts and Figures Report* at 10, available at https://www.epa.gov/sites/default/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf.

1 the products (which, in *Duchimaza*, was water bottles) are recyclable is
 2 misleading or deceptive if the products “are not in fact recycled due to the
 3 limited capacity of the nationwide recycling system, and particularly, the
 4 recycling plants in [plaintiff’s] area.” *Id.* at *2.

- 5 • In *Duchimaza*, as here, the plaintiff asserted claims for misleading or deceptive
 6 trade practices, breach of express warranty, and unjust enrichment. *Id.* at *1.
- 7 • And in *Duchimaza*, as here, the plaintiff sought support for her claims in the
 8 FTC’s Green Guides and their discussion of claims of recyclability. *Id.* at *8.

9 The court dismissed her claims completely, however, concluding that her theory of the
 10 case (namely, conflating *recyclability* with *recycled*) was contrary to the plain meaning of the
 11 relevant terms and found no support in the Green Guides. *See id.* at *8–9, 15. A portion of the
 12 *Duchimaza* court’s reasoning is instructive:

13 [T]he FAC claims that, notwithstanding that the bottles are composed of
 14 recyclable plastic, Niagara’s claim of their “100% recyclability” is actionably
 15 misleading because only a small percentage of such bottles are in fact recycled
 16 in New York.

17 That theory relies instead on a flawed reading of the Green Guides.
 18 *Duchimaza* argues that, for a statement claiming recyclability to comply with
 19 the Green Guides, the products at issue must “*in fact* be recycled.” . . . But the
 20 focus of the Green Guides is on the *availability* of recycling *facilities*, not the
 21 incidence of recycling. To that end, the Green Guides state that “[m]arketers
 22 should clearly and prominently qualify recyclable claims to the extent
 23 necessary to avoid deception about the availability of recycling programs and
 24 collection sites to consumers . . . [w]hen *recycling facilities are available* to
 25 less than a substantial majority of consumers or communities where the item
 26 is sold, marketers should qualify all recyclable claims.” 16 C.F.R.
 27 § 260.12(b)(1) (emphasis added). . . . Inasmuch as the Green Guides’ focus is
 28 explicitly on the availability and existence of recycling programs and
 collection sites, whether a recyclability claim is misleading turns not on the
 incidence of recycling, but whether a substantial majority of consumers *can*
 place such products into the recycling stream.

29 The FAC, however, does not contain any allegations to this effect. It does not
 30 allege that recycling facilities do not exist in *Duchimaza*’s community—
 31 whether defined as New York City, New York State, or some other
 32 subdivision of the state—or are available to fewer than the 60% of consumers
 33 that the Green Guides use as the minimal definition of a “substantial
 34 majority.” For this reason, the FAC’s first theory fails to state a claim.
 35 *Id.* at *9 (emphases altered). The same reasoning holds true here. There is no dispute that
 36 recycling facilities are available and accessible to the vast majority of Californians. And there is
 37 no dispute that plastic bags made of HDPE and LDPE are materials capable of being recycled

1 (and actually *are* recycled in California, albeit at lower levels that may be desirable due to low
2 demand for the end product). (*See* SAC ¶¶ 28, 37 & n.47)).

3 Plaintiff’s attempt to conflate *recyclable* and *recycled* should not be permitted to confuse
4 the analysis, and, like in *Duchimaza*, should not be allowed to masquerade as a viable claim.

5 **2. California Public Resource Code section 42370.2 does not apply**
6 **because it relates only to food service packaging.**

7 The Complaint also relies—rather tenuously—on another section of the California Public
8 Resource Code that relates to recyclability requirements for food service packaging. (*See* SAC
9 ¶ 16 (citing the California Sustainable Packaging Act, codified at Cal. Pub. Res. Code § 42370.2,
10 which allegedly “includes similar recycling standards” for food service packaging).) The
11 Complaint further alleges that CalRecycle’s recently published List of Approved Food Service
12 Packaging allegedly “does not include a single plastic item, such as reusable grocery bags made
13 from plastic film.” (*Id.*) The bags that Novolex provided to Walgreens, however, are not food
14 service packaging, so the application of this definition to this matter is inapplicable.

15 **3. California Public Resource Code section 42355.51 does not apply because**
16 **it pertains only to products manufactured after January 1, 2024.**

17 The Complaint also relies on section 42355.51, which prohibits the sale, distribution, or
18 importation of “any product or packaging for which a deceptive or misleading claim about the
19 recyclability of the product or packaging is made.” (SAC ¶ 16 (citing Cal. Pub. Res. Code
20 § 42355.51).) The statute imposes a strict standard for claims of recyclability and a more
21 exhaustive definition of “recyclable.” *See* Cal Pub. Res. Code §§ 42355.51(b)(1), (d). Notably,
22 these stricter standards and definitions do not apply to any product or packaging that is
23 manufactured before January 1, 2024. *See id.* § 42355.51(b)(2).

24 Furthermore, the absence of any similarly strict standard and definition for pre-2024
25 products (and, concurrently, the Legislature’s determination that it was necessary and advisable
26 to add this standard and definition for post-January 1, 2024 products) indicates that this
27 definition and standard does *not* apply to products that, like Walgreens’ bags, were manufactured
28

1 before January 1, 2024.⁹

2 Here, the new and stricter definition found in Section 42355.51 and applicable beginning
3 in 2024 is undoubtedly that—a *new* definition that *changes* existing law and requirements. The
4 legislative history could not be more clear. The Senate Floor Analysis of the Bill establishing this
5 new definition states that “[t]his bill *tightens* the requirements around the permissible use of the
6 ‘chasing arrows’ recycling symbol and when claims regarding recyclability can be made” and
7 would “specify *additional* criteria for recyclability, *change* the process for which recyclability of
8 material types is determined, . . . and *change* the process for which products may become eligible
9 to be labeled as recyclable.”¹⁰ The Legislature specifically decided that these changes should
10 apply only to products manufactured after January 1, 2024, and the Court should not heed
11 Plaintiff’s invitation to apply them retroactively contrary to the Legislature’s clear directive.

12 However, even if section 42355.51 applied (and, as explained above, it does not), it still
13 would not establish any liability or violation for at least two reasons. *First*, the statute concedes
14 it is not deceptive or misleading for a product to display the chasing arrows symbol if it is a
15 “consumer good that is required by any federal or California law or regulation to display a
16 chasing arrows symbol.” *Id.* § 42355.51(c)(2). Walgreens’ bags were consumer goods that were
17 required by SB270 to be labeled with certain indicia of recyclability, including the chasing
18 arrows symbol.

19 *Second*, a product is deemed recyclable if it is part of, and “in compliance with, a
20 program established pursuant to state or federal law on or after January 1, 2022, governing the
21 recyclability or disposal of that product or packaging[.]” *Id.* § 42355.51(d)(6). As noted above,
22 the bags at issue are listed on the CalRecycling website as compliant with SB270.

23 Section 42355.51, then, does not establish that Walgreens’ bags are violative of SB270 or
24 are deceptive or misleading in their labeling.

25 _____
26 ⁹ See *Div. of Occupational Safety & Control v. State Bd. of Control*, 189 Cal. App. 3d 794, 806–07
27 (1987) (applying the rule that when the Legislature sets a particular date after which its new,
28 “expanded definition” would apply, the new definition does not apply to conduct prior to that date).

¹⁰ See SB343 Senate Floor Analysis at 2 (emphasis added), available at
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB343#.

1 **4. The Environmental Marketing Claims Act, which includes a**
 2 **safe harbor that encompasses Walgreens’ conduct, does not**
 3 **provide a basis for Plaintiff’s claims.**

4 The Complaint also relies on—but does not assert a separate cause of action for the
 5 violation of—the Environmental Marketing Claims Act (“EMCA”), which “makes it ‘unlawful
 6 for any person to make any untruthful, deceptive, or misleading environmental marketing claim,
 7 whether explicit or implied.’” (SAC ¶ 14 (citing Cal. Bus. & Prof. Code § 17580.5); *see also id.*
 8 ¶¶ 5, 21.) The alleged violations of the EMCA appear to serve as a predicate action to establish
 9 the supposed violation of the UCL. (*See id.* ¶¶ 58–59, 80–81.)

10 The EMCA also declares it to be the policy of the state that environmental claims,
 11 including whether a product meets the criteria established by California Public Resource Code
 12 section 42355.51 (discussed in the preceding section), should be substantiated. The criteria and
 13 requirements of that section, however, do not take effect until January 1, 2024. *See* Argument
 14 III(B)(3), *supra*. The EMCA does not require that any substantiating materials must be
 15 submitted to the State or made available to the public upon request.

16 In addition to that date restriction, the EMCA is subject to a number of other exceptions
 17 and defenses that are relevant here. *First*, the EMCA notes that “displaying a chasing arrows
 18 symbol or otherwise directing a consumer to recycle a consumer good shall *not* be considered
 19 misleading” if “[t]he consumer good is required by any federal or California law or regulation to
 20 display a chasing arrows symbol.” *Id.* § 17580(e). Walgreens’ bags were required by SB270 to
 21 be labeled with certain indicia of recyclability, including the chasing arrows symbol.

22 *Second*, the EMCA notes that “[i]t shall be a defense to any suit or complaint brought
 23 under this section that the person’s environmental marketing claims conform to the standards or
 24 are consistent with the examples contained in the ‘Guides for the Use of Environmental
 25 Marketing Claims’ published by the Federal Trade Commission.” *Id.* § 17580.5(b)(1). As
 26 described in the next section of this memorandum, Walgreens bag labeling claims comply with
 27 the FTC Guidance, and thus there can be no liability under the ECMA.

28 **5. FTC Regulations do not provide a basis for Plaintiff’s claims.**

 The SAC relies in part on the FTC Green Guides, which state in part that a “product or

1 package should not be marketed as recyclable unless it can be collected, separated, or otherwise
 2 recovered from the waste stream through an established recycling program for reuse or use in
 3 manufacturing or assembling another item.” 16 CFR § 260.12(a). According to Plaintiff, this
 4 guidance supports her theory that a product is only “recyclable” if it is *in fact* commonly
 5 recycled. Her reliance on the Green Guides, however, is misplaced.

6 Even to the extent that the Green Guides’ guidance is incorporated by reference into
 7 California law, the Green Guides’ language on which Plaintiff relies speaks in terms of
 8 *capability*, not *actuality*. Specifically, the guidance states that a product should not be labeled as
 9 recyclable unless it “*can be*” recycled—not “often is,” “usually is,” or “actually is” recycled. *See*
 10 16 CFR § 260.12(a). Here, Plaintiff concedes it is possible to recycle reusable plastic bags. (*See*,
 11 *e.g.*, SAC ¶¶ 28, 37, & nn.12, 47.) Indeed, she admits that film plastic *is*, in fact, recycled in
 12 California (*see id.* n.47), but alleges most recyclers aren’t inclined to recycle film plastic at high
 13 volumes because demand for recycled bags is low. (*Id.* ¶¶ 28, 37.)

14 Furthermore, as explained above, the Green Guides’ focus is on the availability of
 15 *facilities*, not the incidence of recycling. *See* 16 C.F.R. § 260.12(b)(1) (“When recycling
 16 facilities are available to a substantial majority of consumers or communities where the item is
 17 sold, marketers can make unqualified recyclable claims.”); *see also supra* Section II(B)(1);
 18 *Duchimaza v. Niagara Bottling, LLC*, 2022 WL 3139898, at *9 (S.D.N.Y, Aug. 5, 2022).
 19 Accordingly, Plaintiff’s reliance on the Green Guides provides no support for her claim that
 20 Walgreens’ bag labeling is deceptive, unfair, or fraudulent.

21 **6. None of the foregoing bases (or any other bases) establish that the**
 22 **reusable plastic bags were not recyclable as claimed.**

23 Plaintiff’s quest for a definition of “recyclable” that would render the reusable plastic
 24 bags noncompliant falls short. None of the definitions discussed in the preceding subheadings
 25 establish such facts, as all of them are inapplicable or distinguishable. Furthermore, all of them
 26 suffer from an additional defect, namely that Plaintiff’s arguments and claims all try to shift the
 27 focus way from whether a bag is *recyclable* onto whether the bag is, in actuality, usually
 28 recycled. SB270 only requires the former, and the reusable plastic bags’ labeling only claims the

1 former. Using the latter standard (*i.e.*, whether an item is, in fact, usually recycled) would be
2 akin to making bag manufacturers guarantors of the end-stage recycling of their products, which
3 are contingent on, among other things, the actions of consumers.

4 In addition, there are a number of independent, intervening causes that control whether a
5 product actually is recycled and returns to the stream of commerce as new raw material. A
6 retailer cannot reasonably be held liable for an outcome several steps down the causative chain.
7 The fact that virgin plastic (per the Plaintiff) is presently cheaper than recycling plastic and,
8 therefore, there is no end-user market for recycled material, isn't Walgreens' fault. (*See* SAC
9 ¶ 28.) And market conditions, availability, and regulations of virgin plastic production could
10 change, which could give rise to a market for recycled plastic. It would be curious if Walgreens'
11 potential liability were contingent on such factors that are outside of its control.

12 In sum, the reusable plastic bags are certified as being capable of being recycled.
13 Accordingly, Walgreens has not violated SB270 and has not made any false or misleading
14 statements regarding the recyclability of its bags. Walgreens cannot, therefore, be liable under
15 the UCL or CLRA. When a claim for UCL or CLRA violations is premised on violations of
16 other statutes, the viability of the UCL cause of action depends on whether the plaintiff has
17 asserted a cognizable claim for the violation of the other statute. *See Krantz v. BT Visual*
18 *Images, LLC*, 89 Cal. App. 4th 164, 178 (2001) (the viability of a UCL claim stands or falls with
19 the antecedent substantive causes of action); *People v. Duz-Mor Diagnostic Lab., Inc.*, 68 Cal.
20 App. 4th 654, 673 (1998) (a defense to the underlying offense is a defense under the UCL); *see*
21 *also Glenn K. Jackson Inc. v. Roe*, 273 F.3d 1192, 1203 (9th Cir. 2001) (dismissing Section
22 17200 claim where underlying negligence and fraud claims were insufficient).

23 **C. Plaintiff's allegations regarding Walgreens' supposed failure to**
24 **provide substantiating documents cannot support a viable claim.**

25 A number of Plaintiff's claims rest on allegations that Walgreens supposedly failed to
26 provide her with documents to substantiate the assertions on its reusable bags as supposedly
27 required by various California laws. (*See, e.g.*, SAC ¶¶ 21, 22, 43, 59–61, 78–79, 81–82.) These
28 allegations fail to provide any basis for a claim on which relief can be granted.

1 For one, California law is clear that a private plaintiff cannot file a suit requiring a
2 defendant to substantiate its marketing claims even when such claims are alleged as violations of
3 consumer protection laws. *Kwan v. SanMedica Int'l*, 854 F. 3d 1088, 1093–96 (9th Cir. 2017)
4 (holding that neither the UCL nor CLRA provided plaintiff “with a private cause of action to
5 enforce the substantiation provisions of California’s unfair competition or consumer protection
6 laws”); *Aloudi v. Intramedic Rsch. Grp., LLC*, 729 F. App’x 514, 516 (9th Cir. 2017) (“[P]rivate
7 litigants may not sue advertisers claiming that advertising representations lack substantiation.”).

8 Furthermore, the other statutes Plaintiff cites in support of the supposed substantiation
9 obligation likewise confirm that she has not asserted a viable claim. For example, she rests her
10 UCL claim on Walgreens’ supposed violation of the FTC Green Guides’ substantiation
11 requirement. (See SAC ¶¶ 60–61, 82.) As explained above, however, there is no private cause of
12 action for violation of the Green Guides, *see supra* note 4, nor can the UCL or CLRA fill that
13 gap by providing a cause of action for substantiation where none exists. *See Kwan*, 854 F.3d at
14 1093–96; *Aloudi*, 729 F. App’x at 516.

15 Plaintiff’s substantiation assertions fare no better in their attempt to find support in the
16 EMCA . (See SAC ¶¶ 59, 61, 81.) That statute requires substantiation, if at all, only from the
17 *producer* of the product who placed the representation on the bag, not from the retailer (such as
18 Walgreens) who subsequently sold the bag. *See* Cal. Bus. & Prof. Code § 17580(c) (“For the
19 purposes of this section, a wholesaler or retailer who does not initiate a representation by
20 advertising or by placing the representation on a package shall not be deemed to have made the
21 representation.”).

22 Nor can she find any support in the substantiation requirement in section 42355.5 of the
23 Public Resource Code. (See SAC ¶ 79.) As explained above, that chapter’s requirements
24 relating to recyclability and claims regarding the same do not take effect until 2024 (at the
25 earliest). *See* Cal. Pub. Res. Code § 42355.51(b)(2). Accordingly, the only requirement that
26 chapter imposes that’s relevant to Plaintiff’s allegations and claims is not yet effective.

27 In sum, to the extent Plaintiff’s claims are premised on alleged violations of
28 substantiation requirements, they fail to state a claim on which relief can be granted.

1 **D. Plaintiff fails to establish unjust enrichment and breach of warranty.**

2 As a general rule, there is “no cause of action in California for unjust enrichment.” *Ib*
 3 *Melchior v. New Line Prods., Inc.*, 131 Cal. Rptr. 2d 347, 357 (Ct. App. 2003). Rather, it is a
 4 theory of restitution. Because it is not a standalone claim, it cannot survive in the absence of
 5 another viable claim. As explained above, the UCL claims and the CLRA claim cannot carry the
 6 day; therefore, there is no viable claim with which the unjust enrichment claim can tagalong, and
 7 the Court should dismiss the claim.

8 Similarly, the breach of warranty claim is dependent on Plaintiff establishing that
 9 Walgreens’ bags contained a false description or representation of the goods. *See McKinnis v.*
 10 *Kellogg USA*, 2007 WL 4766060, at *5 (C.D. Cal. Sept.19, 2007) (finding plaintiffs failed to
 11 allege sufficient facts to make out a claim for breach of express warranty where the
 12 representation was true). As explained above, Plaintiff has not (and cannot) plausibly alleged
 13 that the bags’ claim of recyclability was false. Accordingly, this claim, too, should be dismissed.

14 **CONCLUSION**

15 For the foregoing reasons, the Court should dismiss, with prejudice, Plaintiff’s claims for
 16 lack of subject matter jurisdiction and/or for failure to state claims on which relief can be
 17 granted. In the alternative, the Court should stay any further proceedings in this case out of
 18 respect for the primary jurisdiction of the state Superior Court, as expressly granted by the
 19 California Legislature, to consider and resolve the allegations that for the basis for—and a
 20 complete defense against—Plaintiff’s claims.

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1 Dated: October 7, 2022

NELSON MULLINS RILEY & SCARBOROUGH, LLP

2
3 By: /s/ Cory E. Manning
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CERTIFICATE OF SERVICE

1
2 I, Cory E. Manning, hereby certify that on October 7, 2022, I caused to be electronically
3 filed the foregoing **NOTICE OF MOTION TO DISMISS FOR LACK OF SUBJECT**
4 **MATTER JURISDICTION [Fed. R. Civ. P. 12(b)(1)] AND FOR FAILURE TO STATE A**
5 **CLAIM [Fed. R. Civ. P. 12(b)(6)]; MEMORANDUM IN SUPPORT OF MOTION** on behalf
6 of Defendant Walgreen Co., true and correct copies of which will be served via the Court's
7 CM/ECF system on all parties of record.

8 /s/ Cory E. Manning

9 Cory E. Manning

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EXHIBIT A

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15 Attorneys for Defendant
16 WALGREEN CO.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 ELISA BARGETTO, on behalf of herself
20 and all others similarly situated,

21 Plaintiffs,

22 vs.

23 WALGREEN CO.,

24 Defendant.

Case No. 3:22-cv-02639-TLT

**DECLARATION OF ROGER MATTILA
IN SUPPORT OF MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION**

Complaint filed: April 29, 2022

1 I, Roger Mattila, do hereby declare:

2 1. I currently reside in Punta Gorda, Florida.

3 2. Unless otherwise stated, I have personal knowledge of the facts contained in this
4 declaration and could testify.

5 3. I am Founder and President of AM Testing & Services, Inc. (“AM Testing”)
6 and have held this position since January 2012.

7 4. AM Testing provides product testing and certification with a full spectrum of
8 services and accreditation to ISO 17025 through A2LA.

9 5. AM Testing’s certifications are accepted by government agencies such as the
10 Consumer Products Safety Commission and California’s Department of Resources Recycling
11 and Recovery (“CalRecycle”).

12 6. Our clients include plastic-film bag manufacturers.

13 7. AM Testing performs testing on the bags for numerous plastic-film bag
14 manufacturers.

15 8. One of AM Testing’s specialties is testing compliance with various state and
16 federal laws and regulations relating to plastic bags made out of high-density polyethylene
17 film (“HDPE”) and out of low-density polyethylene film (“LDPE”).

18 9. One such state law is California’s Senate Bill No. 270, Solid Waste: Single-
19 Use Carryout Bags (“SB270”).

20 10. SB270 was approved by California voters in November 2016 as part of
21 Proposition 67, California’s statewide Single-Use Carryout Bag Ban.

22 11. Public Resources Code (“PRC”) sections 42281, 42281.5, and 42282 outline
23 the certification requirements for reusable bags under SB270.

24 12. Plastic bag manufacturers and distributors who sell these types of reusable bags
25 in California must submit proof of certification of compliance with SB270 to CalRecycle
26 through the Reusable Grocery Bag Reporting System (“Reporting System”).

27 13. Once a producer or distributor submits its proof of certification through the
28 Reporting System and that proof is accepted by CalRecycle, the submitting producer’s or

1 distributor's name is posted to the list of Certified Reusable Grocery Bags and Producers (the
2 "SB 270 Certified List").

3 14. Under SB270, these reusable bags must be certified every other year.

4 15. Novolex/Hilex Poly ("Novolex") has been a client of AM Testing since before
5 2016.

6 16. As part of its relationship with Novolex, AM Testing certified as compliant
7 with SB 270, bags that I understand Novolex sold to Walgreen Co. (the "Walgreens Bags").

8 17. I had overall responsibility for AM Testing's initial SB270 certification of the
9 Walgreens Bags, which was completed on December 18, 2017. A true and correct copy of
10 that report, labeled Report #: R17410, is attached as **Exhibit A**.

11 18. I had overall responsibility for AM Testing's subsequent SB270 certifications
12 of the Walgreens Bags, which were completed on October 25, 2019, November 15, 2019, and
13 September 30, 2021. True and correct copy of these reports, labeled Report #: R19593-C,
14 Report #: R19522-B, and Report #: R21769, respectively, are attached as **Exhibits B, C, and**
15 **D**.

16 19. I was informed by Novolex that the reports attached as **Exhibits A - D** were
17 provided to CalRecycle as part of Novolex's efforts to comply with SB 270.

18 20. I was informed by Novolex that the reports attached as **Exhibits A - D** were
19 not rejected by CalRecycle.

20 21. I was not asked by Novolex or by CalRecycle to provide any follow up
21 certification services with respect to the reports attached as **Exhibits A - D**.

22 22. It is my understanding that the Walgreens Bags were approved and continue to
23 be approved as certified reusable grocery bags on the CalRecycle website's SB270 Certified
24 List, which is located at <https://www2.calrecycle.ca.gov/ReusableBags/Company/Details/25>
25 and was last visited by me on September 13, 2022.

26 23. AM Testing has certified that the Walgreens Bags meet the following
27 requirements, among others, under the Public Resources Code:
28

1 If the bag is eligible for recycling in the state, instructions to return
2 the bag to the store for recycling or to another appropriate recycling
3 location. If recyclable in the state, the bag shall include the chasing
4 arrows recycling symbol or the term “recyclable,” consistent with
the Federal Trade Commission guidelines use of that term, as
updated. [PRC §42281(a)(4)(D)]

* * * * *

5 Complies with Section 260.12 of Part 260 of Title 16 of the Code
6 of Federal Regulations [the “Federal Green Guides”] related to
7 recyclable claims if the reusable grocery bag producer makes a
claim that the reusable grocery bag is recyclable. [PRC
§42281(a)(6)]

* * * * *

8 It shall be recyclable in this state and accepted for return at stores
9 subject to the at-store recycling program (Chapter 5.1 (commencing
with Section 42250)) for recycling. [PRC §42281(B)(1)(C)]

10 24. As part of its certification process, AM Testing performed Fourier-transform
11 infrared spectroscopy (“FT-IR”) testing to identify the chemical compounds in the Walgreens
12 Bags samples provided by Novolex.

13 25. FT-IR testing was performed on the Walgreens Bags samples that were tested
14 as part of the certification process for the bags certified in **Exhibits A - D**.

15 26. Those tests showed that the Walgreens Bags were made primarily out of high-
16 density polyethylene (“HDPE”). These types of bags are made with a blend of HDPE and
17 low-density polyethylene (“LDPE”); if the majority of the blend is HDPE, then that is the
18 designation that it receives.

19 27. AM Testing is able to certify that a bag made out of HDPE and/or LDPE is
20 recyclable, because HDPE and LDPE materials are being recycled in the United States and
21 throughout the world.

22 28. It is well known in the plastics industry and elsewhere that HDPE and LDPE
23 are recyclable thermoplastic polymers.

24 29. AM Testing is further able to certify that a bag made out of HDPE and/or
25 LDPE is recyclable, because of the existence of businesses in the United States that, in fact,
26 recycle HDPE and LDPE.

27 30. As part of my responsibilities at AM Testing, I am aware of recycling centers
28 in the United States that recycle HDPE and LDPE products like the Walgreens Bags.

1 31. AM Testing is further able to certify that the Walgreens Bags are recyclable in
2 the State of California because of the existence of businesses that collect HDPE and/or LDPE
3 bags and recycle them themselves and/or sell them to recycling centers.

4 32. As part of my responsibilities at AM Testing, I am aware of businesses in
5 California that collect HDPE and/or LDPE bags and sell them to recycling centers in the
6 United States that recycle HDPE and/or LDPE products like the Walgreens Bags.

7 33. AM Testing is further able to certify that the Walgreens Bags are recyclable in
8 the State of California because of the existence of drop-off locations for these types of bags
9 throughout California.

10 34. As part of my responsibilities at AM Testing, I am aware of drop-off locations
11 in California.

12 35. The Walgreens Bags have a “How2Recycle” stamp on them.

13 36. How2Recycle provides customers with information regarding drop-off
14 facilities for these types of bags.

15 37. AM Testing has certified that the Walgreens Bags contain a certain percentage
16 of post-consumer recyclable material, as required by PRC 42281(b)(1)(A)(B) (20 percent as
17 of January 1, 2016 and 40 percent for bags made after January 1, 2020). *See **Exhibits A - D.***

18 38. AM Testing is further able to certify that the Walgreens Bags are recyclable in
19 the State of California because of the existence of a certain percentage of post-consumer
20 HDPE and/or LDPE recycled material present in those bags and that this post-consumer
21 recycled material was verified through an auditable chain of custody from consumer to
22 collection through a verified recycling center to use in the finished product.

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1 I declare under penalty of perjury (pursuant to 28 U.S.C. § 1746) that the foregoing is
2 true and correct.

3 Executed this 13th day of September, 2022 at **Punta Gorda**, Florida.

4 
5 _____
6 Roger Mattila

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Exhibit A



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

Test Report

CUSTOMER: ATTENTION: Mr. Jeff Burr

Novolex
101 East Carolina Avenue
Hartsville, SC 29550 USA

Conclusion:

<u>Tested Samples</u>	<u>Standard</u>	<u>Result</u>
Walgreens bag	Lifespan: ECP (CCD-100; ATP-001)	Pass
White bag with red Print	CONEG TPCH Heavy Elements - Section 42281(a)(1)(5)	Pass
11.25 x 15.75 x 6.75	ASTM D6988 Film Thickness - Section 42281(b)(1)(E)	Pass
	Senate Bill No. 270. SB270 Solid waste: single –use carryout bags	Incomplete See Note

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

Note: See report for details.

Sections refer to: Senate Bill No. 270. SB270 Solid waste: single –use carryout bags

The test results stated in this report relate only to the item(s) tested. This test report may not be reproduced except in full, without written approval of AM Testing & Services.
Tests identified with an asterisk (*) have been subcontracted.

This report is issued by AM Testing & Services Inc. AM Testing & Services Inc.'s responsibility is limited to proven negligence and will in no case be more than the amount of the testing fees. Except by special arrangement, samples are not retained by AM Testing & Services Inc. for more than 30 days, and are the property of AM Testing & Services Inc. The results shown on this test report refer only to the sample(s) tested unless otherwise stated, under the conditions agreed upon. Anyone relying on this report should understand all of the details of the engagement. The name, seals, marks nor insignia of AM Testing & Services Inc. may not be used in any advertising or promotional materials without the prior written approval of AM Testing & Services Inc. The test report cannot be reproduced without prior written permission of AM Testing & Services Inc.

AM Testing & Services

1405 Centre Circle Drive • Downers Grove, IL 60515 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

Technical Report

Sample ID: Walgreens reusable bag

Sample No.

- 1)substrate, white plastic
- 2)coating, ink

Item 1: Lifespan: ECP (CCD-100; ATP-001)

Item 2: CONEG TPCH Heavy Elements - Section 42281(a)(1)(5)

Item 3: ASTM D6988 Film Thickness - Section 42281(b)(1)(E)

Item 4: Senate Bill No. 270. SB270 Solid waste: single –use carryout bags

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Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

Item 1: Results for testing according to Senate Bill No. 270. SB270 Reusable Utility Bags are listed below

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
Item	Citation	Standard	P	F	N/A
1	42281(a)(1)	Has a handle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281(a)(1)	Designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(a)(2)	Has a volume capacity of at least 15 liters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(a)(3)	Is machine washable or made from a material that can be cleaned and disinfected	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(a)(4)(A)	The name of manufacturer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(a)(4)(B)	The country Where The Bag Was Manufactured	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	42281(a)(4)(C)	A statement that the bag is a reusable bag and designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	42281(a)(4)(D)	If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term "recyclable," consistent with the Federal Trade Commission guidelines use of that term, as updated.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	42281(a)(5)	Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	42281(a)(6)	Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable grocery bag	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Report #: R17410
Date: 12/18/2017

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
Item	Citation	Standard	P	F	N/A
		producer makes a claim that the reusable grocery bag is recyclable.			
Section 42281(b) Requirements					
Item	Citation	Standard	P	F	N/A
1	42281(b)(1)(A)	Made from minimum of 20% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	Not verified		
2	42281(b)(1)(C)	It shall be recyclable in this state, and accepted for return at stores subject to the at-store recycling program (Chapter 5.1 (commencing with Section 42250)) for recycling.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(b)(1)(D)	It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(b)(1)(E)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(b)(1)(E)	And be at least 2.25 mils thick, per ASTM D6988-13	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(b)(2)	A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, is not required to meet the requirements of subparagraph (A) or (B) of paragraph (1), but shall be labeled in accordance with the applicable State law regarding compostable plastics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section 42281.5 Requirements					
Item	Citation	Standard	P	F	N/A
1	42281.5	On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282.	Not verified		

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Report #: R17410
Date: 12/18/2017

2	42281.5 (a)	Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.	Not verified
2.5	42281.5 (b)	Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.	Not verified
3	42281.5 (c)	How the postconsumer recycled material is obtained.	Not verified
3.5	42281.5 (d)	Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.	Not verified

Item 2: Results for testing according to ATP-001 Sections 5.3 and 5.5 [modified] are listed below

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	11.25 x 15.75 x 7.25 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test					
Test Method				ATP-001 Dynamic Test	Walk Test
Requirements				Weight Added (lbs)	22
				Cycles	1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (300)	11.25 x 21.25x6.75	11.25 x 21.25 x 6.75	0		Pass
2 (300)	11.25 x 21.25 x 6.75	11.25 x 21.25 x 6.75	0		Pass
3 (300)	11.25 x 21.25 x 6.75	11.25 x 21.25 x 6.75	0		Pass
4 (300)	11.25 x 21.25 x 6.75	11.25 x 21.25 x 6.75	0		Pass
5 (300)	11.25 x 21.25 x 6.75	11.25 x 21.25 x 6.75	0		Pass

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Cert. No. 3180.01
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Report #: R17410
Date: 12/18/2017

Item 3: Results for film thickness testing according to ASTM D6988-13 are below

Measurement No.	Thickness Measured (mils)
1	4.3
2	5.1
3	5.1
4	4.3
5	4.7
6	2.4
7	2.4
8	4.3
9	2.4
10	2.4
Total	37.4
Average of 10	3.75
Limit Thickness (mils)	≥ 2.25
Result	Pass

Notes:

Item 4: Results for California Toxics in Packaging Prevention Act are listed below

California Toxics in Packaging Prevention Act – Total Heavy Metals (CONEG – TPCH)							
Digestion Method:	EPA Method 3052: Total Digestion for all elements						
Analysis Method:	EPA Method 6010C: ICP OES for Pb, Cd, Hg						
Analysis Method:	1,5-diphenylcarbazine colorimetric determination: UV-vis for Hexavalent Chromium						
Analyte	Lead (Pb)	Cadmium (Cd)	Chromium	Mercury (Hg)	Component Total	Total	Pass/Fail
Limit (mg/kg)	Total Allowed: <100 mg/kg						
Sample No.	Results (mg/kg)						
1	BDL	BDL	BDL	BDL	BDL	BDL	Pass
2	BDL	BDL	BDL	BDL	BDL	BDL	Pass

*Failed Item

BDL = <1.0ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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Report #: R17410
Date: 12/18/2017

SAMPLE PHOTOS:



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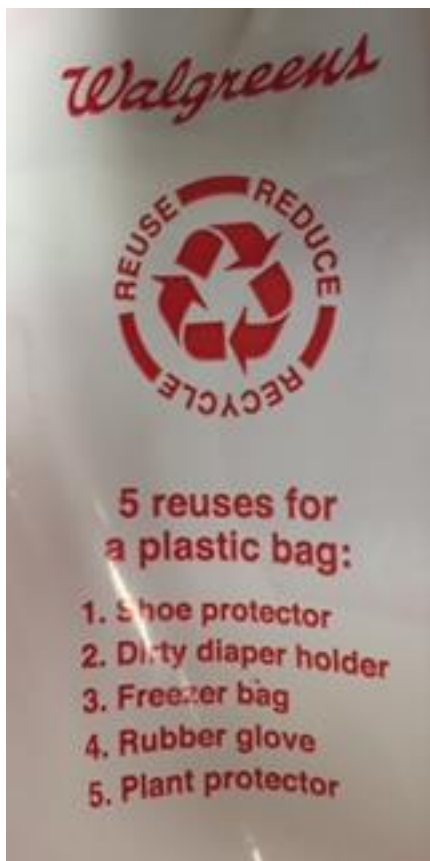
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Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

This reusable bag was designed and manufactured in the United States, by Hlex Poly, a NOVOLEX Brand. This reusable and recycled design has been tested to carry 22lbs over 1750 during 125 reuses (EcoLogo ATP-001 / ECP C.D-100). This design will hold 15 liters, is 2.25 mils thick (ASTM D6988) and can be cleaned and disinfected after each use. Your reusable bag doesn't contain lead, cadmium, or any other heavy metal in toxic amounts and passes TPOK/CONEG—toxins in packaging standards. This reusable bag contains 20% post-consumer and 20% post-industrial material.



*** END OF REPORT ***

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Exhibit B



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R19593-C
Date: 10/25/2019
Valid Until: 10/25/2021

Test Report

CUSTOMER: ATTENTION: Mr. Jeff Burr

Novolex
101 East Carolina Avenue
Hartsville, SC 29550 USA

Conclusion:

<u>Tested Samples</u>	<u>Standard</u>	<u>Result</u>
Walgreens Bag	Senate Bill No. 270. SB270 Reusable Grocery Bags	Pass
White bag w inseparable ink	Lifespan: ECP (CCD-100; ATP-001)	Pass
11.5 x 6.5 x 21	ASTM D6988 Film Thickness	Pass
Item # 1029676	CONEG TPCH Heavy Elements	Pass
	ASTM D1709 Dart	Completed
	ASTM D882 Tensile Strength	Completed
	ASTM D882 Elongation	Completed
	ASTM D1922 Pendulum	Completed
	Multiple Dimensions	Completed
	California Prop. 65 – Lead and Cadmium	Complies ¹
	California Prop. 65 - Phthalates	Complies ¹
	Formaldehyde Qualification	Pass

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

The test results stated in this report relate only to the item(s) tested. This test report may not be reproduced except in full, without written approval of AM Testing & Services.

Tests identified with an asterisk (*) have been subcontracted.

Note 1: Based on safe levels established by products of a similar nature.

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Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R19593-C
Date: 10/25/2019
Valid Until: 10/25/2021

Technical Report

Sample ID: Walgreens Bag, White bag w inseparable ink, 11.5 x 6.5 x 21, Item # 1029676

Sample No.

- 1) Substrate, white plastic bag
- 2) Coating, red ink

Item 1: Senate Bill No. 270. SB270 Reusable Utility Bags

Item 2: Lifespan: ECP (CCD-100; ATP-001)

Item 3: ASTM D6988 Film Thickness

Item 4: CONEG TPCH Heavy Elements

Item 5: ASTM D1709 Dart

Item 6: ASTM D882 Tensile Strength

Item 7: ASTM D882 Elongation

Item 8: ASTM D1922 Pendulum

Item 9: Multiple Dimensions

Item 10: California Prop. 65 – Lead and Cadmium

Item 11: California Prop. 65 - Phthalates

Item 12: Formaldehyde Qualification

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Cert. No. 3180.01
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Report #: R19593-C
Date: 10/25/2019
Valid Until: 10/25/2021

Item 1: Results for testing according to Senate Bill No. 270. SB270 Reusable Utility Bags are listed below

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
This section is Required for <u>"ALL"</u> Reusable Grocery Bags					
Item	Citation	Standard	P	F	N/A
1	42281(a)(1)	Has a handle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281(a)(1)	Designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(a)(2)	Has a volume capacity of at least 15 liters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(a)(3)	Is machine washable or made from a material that can be cleaned and disinfected	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(a)(4)(A)	The name of manufacturer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(a)(4)(B)	The country Where The Bag Was Manufactured	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	42281(a)(4)(C)	A statement that the bag is a reusable bag and designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	42281(a)(4)(D)	If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term "recyclable," consistent with the Federal Trade Commission guidelines use of that term, as updated.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	42281(a)(5)	Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	42281(a)(6)	Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Report #: R19593-C
Date: 10/25/2019
Valid Until: 10/25/2021

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
This section is Required for "ALL" Reusable Grocery Bags					
Item	Citation	Standard	P	F	N/A
		recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.			
Section 42281(b) Requirements					
This Section is Required for Reusable Grocery Bags Made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281(b)(1)(A)	Made from minimum of 20% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1A	42281(b)(1)(B)	Made from minimum of 40% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	42281(b)(1)(C)	It shall be recyclable in this state, and accepted for return at stores subject to the at-store recycling program (Chapter 5.1 (commencing with Section 42250)) for recycling.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(b)(1)(D)	It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(b)(1)(E)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(b)(1)(E)	And be at least 2.25 mils thick, per ASTM D6988-13	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(b)(2)	A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, is not required to meet the requirements of subparagraph (A) or (B) of paragraph (1), but shall be labeled in accordance with the applicable State law regarding compostable plastics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Report #: R19593-C
Date: 10/25/2019
Valid Until: 10/25/2021

Section 42281.(c) Requirements					
This Section is Required for "ALL" Reusable Grocery Bags "NOT" made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281(c)(1)	It shall be sewn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	42281(c)(2)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	42281(c)(3)	It shall have a minimum fabric weight of at least 80 grams per square meter	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Section 42281.5 Requirements					
This section is Required for Reusable Grocery Bags Made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281.5	On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281.5 (a)	Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5	42281.5 (b)	Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281.5 (c)	How the postconsumer recycled material is obtained.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	42281.5 (d)	Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Report #: R19593-C
Date: 10/25/2019
Valid Until: 10/25/2021

Item 2: Results for testing according to ATP-001 Sections 5.3 and 5.5 [modified] are listed below

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	11.25 x 15.75 x 6.75 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test				
Test Method				ATP-001 Dynamic Test
Requirements		Weight Added (lbs)		22
		Cycles		1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Results
1 (300)	11.25 x 15.75 x 6.75	11.25 x 15.75 x 6.75	0	Pass
2 (300)	11.25 x 15.75 x 6.75	11.25 x 15.75 x 6.75	0	Pass
3 (300)	11.25 x 15.75 x 6.75	11.25 x 15.75 x 6.75	0	Pass
4 (300)	11.25 x 15.75 x 6.75	11.25 x 15.75 x 6.75	0	Pass
5 (300)	11.25 x 15.75 x 6.75	11.25 x 15.75 x 6.75	0	Pass

Test Method				SB-270 Dynamic Test	Walk Test
Requirements		Weight Added (lbs.)		22	22
		Cycles		125	125 cycles over 175 feet
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (125)	11.25 x 15.75 x 6.75	11.25 x 15.75 x 6.75	0	0	Pass

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Item 3: ASTM D6988 Thickness of Plastic

Caliper (Micron)	Bag "A"
Average	66.04
Minimum	61.46
Maximum	75.69

Item 4: Results for California Toxics in Packaging Prevention Act are listed below

California Toxics in Packaging Prevention Act – Total Heavy Metals (CONEG – TPCH)							
Digestion Method:	EPA Method 3052: Total Digestion for all elements						
Analysis Method:	EPA Method 6010C: ICP OES for Pb, Cd, Hg						
Analysis Method:	1,5-diphenylcarbazide colorimetric determination: UV-vis for Hexavalent Chromium						
Analyte	Lead (Pb)	Cadmium (Cd)	Chromium	Mercury (Hg)	Component Total	Total	Pass/Fail
Limit (mg/kg)	Total Allowed: <100 mg/kg						
Sample No.	Results (mg/kg)						
1	BDL	BDL	BDL	BDL	BDL	BDL	Pass
2	BDL	BDL	BDL	BDL	BDL	BDL	Pass

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

Item 5: ASTM D1709 Impact Resistance of Plastic Film by the Free-Falling Dart

Property	Test Method	Units
Dart Drop Impact Test	ASTM D1709-15	Grams
Average		144.5
Minimum		132.0
Maximum		152.0

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Item 6: ASTM D882 Tensile Properties of Plastic (Tensile Strength)

Property	Test Method	Units		Bag "A"
Tensile Strength	ASTM D882	lbs/in ²		
Average			MD	3357.69
Minimum				2569.23
Maximum				3850.00
Average			CD	2692.31
Minimum				2184.62
Maximum				3057.69

Item 7: ASTM D882 Tensile Properties of Plastic (Elongation %)

Property	Test Method	Units		Bag "A"
Elongation	ASTM D882	%		
Average			MD	548.55
Minimum				474.12
Maximum				610.66
Average			CD	615.78
Minimum				529.26
Maximum				666.56

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Item 8: ASTM D1922 Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum

Property	Test Method	Units		Bag "A"
Tear Strength	ASTM D1922	Gram Force		
Average			MD	200.0
Minimum				160.0
Maximum				336.0
Average			CD	1080.0
Minimum				976.0
Maximum				1232.0

Item 9: Dimensional Measurements

Property	Test Method	Units		Bag "A"
Length (Handle to Base)	Laboratory Measurement	Inches		21.75
Face Width	Laboratory Measurement	Inches		11.50
Wicket Length	Laboratory Measurement	Inches	Left	11.10
			Right	11.00
Gusset	Laboratory Measurement	Inches	Left	14.90
			Right	15.20

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Report #: R19593-C
Date: 10/25/2019
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Item 10: Results for California Prop.65, Total Lead and Cadmium
Test Method: CPSC-CH-E1003-09.1, CPSC-CH-E1002-08.3 & CPSC-CH-E1001-08.3
Analytical Method: Inductively Coupled Plasma-Optical Emission Spectrometry

California Prop. 65: Total Lead and Cadmium		
Analyte	Lead (Pb)	Cadmium (Cd)
Limit (mg/kg)	40	25
Sample No.	Results (mg/kg)	
1	BDL	BDL
2	BDL	BDL

BDL = <10ppm

ppm = parts per million = mg/kg = milligrams per kilogram

This data is for informational purposes only.

Item 11: Results for California Prop. 65, Phthalates
Test Method: CPSC-CH-C1001-09.3 & CPSC-CH-C1001-09.4
Analytical Method: Gas Chromatography with Mass Spectrometry

California Prop. 65: Phthalates							
Phthalate	DEHP	DBP	BBP	DINP	DIDP	DnHP	BPA
Limit (mg/kg)	1000	1000	1000	1000	1000	1000	-
Sample No.	Results (mg/kg)						
1	ND	ND	ND	ND	ND	ND	BRL
2	ND	ND	ND	ND	ND	ND	BRL

ND = <100 mg/kg for phthalates

BRL = < 10 mg/kg for BPA

ppm = parts per million = mg/kg = milligrams per kilogram

This data is for informational purposes only.

Item 12: Results for Colorimetric Method for Formaldehyde Qualification Acetyl-Acetone Method

Formaldehyde Qualification		Formaldehyde Limits **
Analyte	Formaldehyde	< 20 ppm for Children under 3
Limit (mg/kg)	FYI	< 75 ppm for aged 3 and up
Sample No.	Results (mg/kg)	
1	10 PPM	

BDL = <1.0ppm

ppm = parts per million = mg/kg = milligrams per kilogram

** We highly advise you to seek specific Formaldehyde limits on Plastic Reusable Bags

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SAMPLE PHOTOS:



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***** END OF REPORT *****

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Exhibit C



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R19522-B
Date: 11/15/2019
Valid Until: 11/15/2021

Test Report

CUSTOMER: ATTENTION: Mr. Jeff Burr

Novolex
101 East Carolina Avenue
Hartsville, SC 29550 USA

Conclusion:

<u>Tested Samples</u>	<u>Standard</u>	<u>Result</u>
Walgreens Reusable Bag – 40% PCR (See Bag Type Next Page)	Senate Bill No. 270. SB270 Reusable Grocery Bags	Pass
	Lifespan: ECP (CCD-100; ATP-001)	Pass
	ASTM D6988 Film Thickness	Pass
	CONEG TPCH Heavy Elements	Pass

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

The test results stated in this report relate only to the item(s) tested. This test report may not be reproduced except in full, without written approval of AM Testing & Services. Tests identified with an asterisk (*) have been subcontracted.

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Report #: R19522-B
Date: 11/15/2019
Valid Until: 11/15/2021

Bag Type Identification / Specification

Bag Name: **Walgreens 2.25 mil Reusable Bag 40% PCR**
 Bag Identification: **Item 1030579 - Recycling Symbol #2, E570 Plant Code, Test Report XXXXX**
 Material Type: Plastic Film
 Plastic Film Type: MDPE

Name of Manufacturer: Hilex Poly, a Novolex Brand
 Manufacturer Location: Jerome, ID

BAG STYLE: T-Shirt bag
 BAG SIZE: 11.5x6.5x21
 GUAGE: 2.25
 PACKED: 500 bags per case
 WICKETS: 20 wickets of 25 bags

Sample ID: Plastic Film Color
 Colorant Manufacturer: ColorTech
 Colorant Product Number: 11520-169/19
 Colorant name: White

Ink Printed on the Finished Bag
 Ink Manufacture: Flint Group
 Ink Product Number: Red 186
 Ink Name: Red 186 / Black
 Printed: 1 color; 1 Side

PCR Used in this Bag Formulation
 PCR Manufacture: Wisconsin Film & Bag, a Division of Novolex
 PCR Manufacture Model / Specification: Full Hot Wet Wash
 Color: Clear
 PCR Content %: 40%

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Report #: R19522-B
Date: 11/15/2019
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Technical Report

Sample ID: Walgreens Reusable Bag – 40% PCR

Sample No.

- 1) Substrate, white plastic bag
- 2) Coating, red ink

Item 1: Senate Bill No. 270. SB270 Reusable Grocery Bags

Item 2: Lifespan: ECP (CCD-100; ATP-001)

Item 3: ASTM D6988 Film Thickness

Item 4: CONEG TPCH Heavy Elements

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Item 1: Results for testing according to Senate Bill No. 270. SB270 Reusable Grocery Bags are listed below

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
This section is Required for "ALL" Reusable Grocery Bags					
Item	Citation	Standard	P	F	N/A
1	42281(a)(1)	Has a handle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281(a)(1)	Designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(a)(2)	Has a volume capacity of at least 15 liters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(a)(3)	Is machine washable or made from a material that can be cleaned and disinfected	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(a)(4)(A)	The name of manufacturer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(a)(4)(B)	The country Where The Bag Was Manufactured	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	42281(a)(4)(C)	A statement that the bag is a reusable bag and designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	42281(a)(4)(D)	If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term "recyclable," consistent with the Federal Trade Commission guidelines use of that term, as updated.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	42281(a)(5)	Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	42281(a)(6)	Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
This section is Required for "ALL" Reusable Grocery Bags					
Item	Citation	Standard	P	F	N/A
		recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.			
Section 42281(b) Requirements					
This Section is Required for Reusable Grocery Bags Made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1a	42281(b)(1)(A)	Made from minimum of 20% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1b	42281(b)(1)(B)	Made from minimum of 40% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281(b)(1)(C)	It shall be recyclable in this state, and accepted for return at stores subject to the at-store recycling program (Chapter 5.1 (commencing with Section 42250)) for recycling.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(b)(1)(D)	It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(b)(1)(E)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(b)(1)(E)	And be at least 2.25 mils thick, per ASTM D6988-13	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(b)(2)	A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, is not required to meet the requirements of subparagraph (A) or (B) of paragraph (1), but shall be labeled in accordance with the applicable State law regarding compostable plastics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Section 42281.(c) Requirements					
This Section is Required for "ALL" Reusable Grocery Bags "NOT" made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281(c)(1)	It shall be sewn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	42281(c)(2)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	42281(c)(3)	It shall have a minimum fabric weight of at least 80 grams per square meter	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Section 42281.5 Requirements					
This section is Required for Reusable Grocery Bags Made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281.5	On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281.5 (a)	Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5	42281.5 (b)	Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281.5 (c)	How the postconsumer recycled material is obtained.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	42281.5 (d)	Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Date: 11/15/2019
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Item 2: Results for testing according to ATP-001 Sections 5.3 and 5.5 [modified] are listed below

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	15.00 x 11.00 x 6.75 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test				
Test Method				ATP-001 Dynamic Test
Requirements		Weight Added (lbs)		22
		Cycles		1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Results
1 (300)	21.00 x 11.00 x 6.75	21.00 x 11.00 x 6.75	0	Pass
2 (300)	21.00 x 11.00 x 6.75	21.00 x 11.00 x 6.75	0	Pass
3 (300)	21.00 x 11.00 x 6.75	21.00 x 11.00 x 6.75	0	Pass
4 (300)	21.00 x 11.00 x 6.75	21.00 x 11.00 x 6.75	0	Pass
5 (300)	21.00 x 11.00 x 6.75	21.00 x 11.00 x 6.75	0	Pass

Test Method				SB-270 Dynamic Test	Walk Test
Requirements		Weight Added (lbs.)		22	22
		Cycles		125	125 cycles over 175 feet
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (125)	21.00 x 11.00 x 6.75	21.00 x 11.00 x 6.75	0	0	Pass

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Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R19522-B
Date: 11/15/2019
Valid Until: 11/15/2021

Item 3: Results for film thickness testing according to ASTM D6988-13 are below
TUE-19 / 34-10B

Measurement No.	Thickness Measured (mils)
1	2.598
2	2.520
3	2.717
4	2.362
5	2.362
6	3.386
7	2.598
8	3.110
9	2.283
10	2.402
Total	26.338
Average of 10	2.6338
Limit Thickness (mils)	≥ 2.25
Result	Pass

Item 4: Results for California Toxics in Packaging Prevention Act are listed below

California Toxics in Packaging Prevention Act – Total Heavy Metals (CONEG – TPCH)							
Digestion Method:	EPA Method 3052: Total Digestion for all elements						
Analysis Method:	EPA Method 6010C: ICP OES for Pb, Cd, Hg						
Analysis Method:	1,5-diphenylcarbazide colorimetric determination: UV-vis for Hexavalent Chromium						
Analyte	Lead (Pb)	Cadmium (Cd)	Hexavalent Chromium (CrVI)	Mercury (Hg)	Component Total	Total	Pass/Fail
Limit (mg/kg)	Total Allowed: <100 mg/kg						
Sample No.	Results (mg/kg)						
1	BDL	BDL	BDL	BDL	BDL	BDL	Pass
2	BDL	BDL	BDL	BDL	BDL	BDL	Pass

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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Cert. No. 3180.01
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Report #: R19522-B
Date: 11/15/2019
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SAMPLE PHOTOS:



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Cert. No. 3180.01
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Report #: R19522-B
Date: 11/15/2019
Valid Until: 11/15/2021

This reusable bag was designed and manufactured in the United States, by Hilex Poly, a NOVOLEX Brand. This reusable and recyclable bag design has been tested to carry 22lbs over 175ft during 125 reuses (Ecologo ATP-001 / ECP CCD-100). This design will hold 15 liters; is 2.25 mils thick (ASTM D6988) and can be cleaned and disinfected after each use. Your reusable bag doesn't contain lead, cadmium, or any other heavy metal in toxic amounts and passes TPCH/CONEG—toxins in packaging standards. This reusable bag contains 40% post-consumer material.

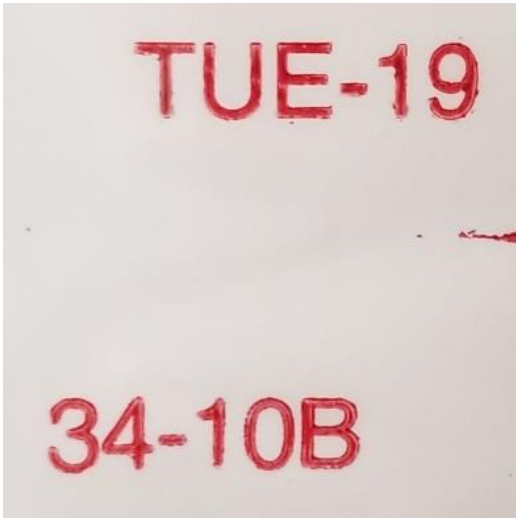
WARNING: To avoid danger of suffocation, keep this plastic bag away from babies and children.
QuikMate® QuikMate-EZ® Patent info at: bagpatents.info

• REDUCE
• REUSE
• RECYCLE

Made in USA
E570

HILEX™

NS7850



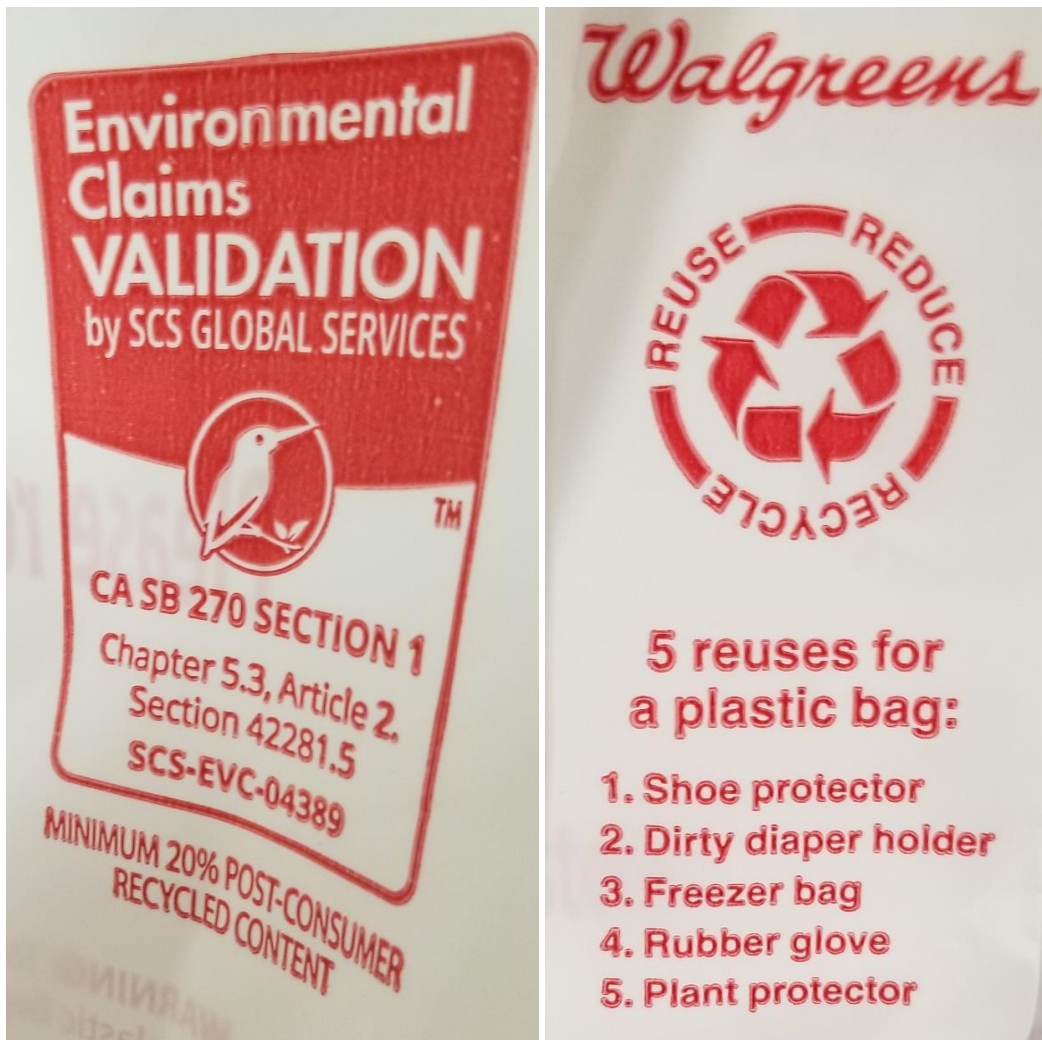
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*** END OF REPORT ***

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Exhibit D



Cert. No. 3180.01
 ISO/IEC 17025:2005

Report #: R21769
 Date: 09/30/2021
 PCR Valid Until: 09/30/2022
 Physical & Mechanical Valid Until: 09/30/2023

Test Report

CUSTOMER: ATTENTION: Jeff Burr

Novolex
 3436 Toringdon Way, Suite 100
 Charlotte, NC 28277 USA

Conclusion:

<u>Tested Samples</u>	<u>Standard</u>	<u>Result</u>
Walgreens 2.25 mil Reusable Bag 40% PCR (See Bag Details below)	Senate Bill No. 270. SB270 Reusable Grocery Bags	Pass
	Lifespan: ECP (CCD-100; ATP-001)	Pass
	ASTM D6988 Film Thickness	Pass
	CONEG TPCH Heavy Elements	Pass

SIGNED FOR THE COMPANY BY:

William M. Baumann
 Laboratory Director

The test results stated in this report relate only to the item(s) tested.
 Tests identified with an asterisk (*) have been subcontracted.

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Report #: R21769
Date: 09/30/2021
PCR Valid Until: 09/30/2022
Physical & Mechanical Valid Until: 09/30/2023

Bag Type Identification / Specification

Bag Name: Walgreens 2.25 mil Reusable Bag 40% PCR
Bag Identification: **Item 1031123 - Recycling Symbol #2, E570 Plant Code, Test Report 21769**
Material Type: Plastic Film
Plastic Film Type: MDPE

Name of Manufacturer: Hilex Poly, a Novolex Brand
Manufacturer Location: Jerome, Idaho

BAG STYLE: T-shirt bag
BAG SIZE: 11.5x6.5x21
GUAGE: 2.25 mil
PACKED: 500 bags/case
WICKETS: 20 wickets of 25 bags

Plastic Film Color
Sample ID: Colorant Manufacturer: ColorTech
Colorant Product Number: 11520-169/19
Colorant name: White

Ink Printed on the Finished Bag
Ink Manufacture: Flint Group
Ink Product Number: RED 186
Ink Name: RED 186
Printed: 1 color; 1 side

PCR Used in this Bag Formulation
PCR Manufacture: **Wisconsin Film & Bag, a Division of Novolex, EFS Plastics, Jerome**
IH PCR Reclaim
PCR Manufacture Model / Specification: Full Hot Wet Wash
Color: Clear
PCR Content %: 40%

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Date: 09/30/2021
PCR Valid Until: 09/30/2022
Physical & Mechanical Valid Until: 09/30/2023

Technical Report

Sample ID: Walgreens 2.25 mil Reusable Bag 40% PCR

Sample No.

- 1) Substrate, plastic bag
- 2) Coating, red ink

Item 1: Senate Bill No. 270. SB270 Reusable Grocery Bags

Item 2: Lifespan: ECP (CCD-100; ATP-001)

Item 3: ASTM D6988 Film Thickness

Item 4: CONEG TPCH Heavy Elements

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Report #: R21769
Date: 09/30/2021
PCR Valid Until: 09/30/2022
Physical & Mechanical Valid Until: 09/30/2023

Item 1: Results for testing according to Senate Bill No. 270. SB270 Reusable Grocery Bags are listed below

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
This section is Required for "ALL" Reusable Grocery Bags					
Item	Citation	Standard	P	F	N/A
1	42281(a)(1)	Has a handle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281(a)(1)	Designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(a)(2)	Has a volume capacity of at least 15 liters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(a)(3)	Is machine washable or made from a material that can be cleaned and disinfected	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(a)(4)(A)	The name of manufacturer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	42281(a)(4)(B)	The country Where The Bag Was Manufactured	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	42281(a)(4)(C)	A statement that the bag is a reusable bag and designed for at least 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	42281(a)(4)(D)	If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term "recyclable," consistent with the Federal Trade Commission guidelines use of that term, as updated.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	42281(a)(5)	Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Date: 09/30/2021
PCR Valid Until: 09/30/2022
Physical & Mechanical Valid Until: 09/30/2023

P = Pass		F = Fail		N/A = Not Applicable	
Section 42281(a) Requirements					
This section is Required for "ALL" Reusable Grocery Bags					
Item	Citation	Standard	P	F	N/A
10	42281(a)(6)	Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section 42281(b) Requirements					
This Section is Required for Reusable Grocery Bags Made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281(b)(1)(A)	Made from minimum of 20% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1A	42281(b)(1)(B)	Made from minimum of 40% post-consumer recycled material (not applicable to compostable plastics that meet composability standards of ASTM D6400 – see 42281(b)(2))	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281(b)(1)(C)	It shall be recyclable in this state, and accepted for return at stores subject to the at-store recycling program (Chapter 5.1 (commencing with Section 42250)) for recycling.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281(b)(1)(D)	It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	42281(b)(1)(E)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	42281(b)(1)(E)	And be at least 2.25 mils thick, per ASTM D6988-13	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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6	42281(b)(2)	A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, is not required to meet the requirements of subparagraph (A) or (B) of paragraph (1), but shall be labeled in accordance with the applicable State law regarding compostable plastics.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Section 42281.(c) Requirements					
This Section is Required for "ALL" Reusable Grocery Bags "NOT" made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281(c)(1)	It shall be sewn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	42281(c)(2)	It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	42281(c)(3)	It shall have a minimum fabric weight of at least 80 grams per square meter	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Section 42281.5 Requirements					
This section is Required for Reusable Grocery Bags Made from "Plastic film"					
Item	Citation	Standard	P	F	N/A
1	42281.5	On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	42281.5 (a)	Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5	42281.5 (b)	Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	42281.5 (c)	How the postconsumer recycled material is obtained.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	42281.5 (d)	Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Report #: R21769
Date: 09/30/2021
PCR Valid Until: 09/30/2022
Physical & Mechanical Valid Until: 09/30/2023

Item 2: Results for testing according to ATP-001 Sections 5.3 and 5.5 [modified] are listed below

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	14.75 x 11.00 x 7.00 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test				
Test Method				ATP-001 Dynamic Test
Requirements		Weight Added (lbs.)		22
		Cycles		1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Results
1 (300)	21.00 x 11.00 x 7.00	21.00 x 11.00 x 7.00	0	Pass
2 (300)	21.00 x 11.00 x 7.00	21.00 x 11.00 x 7.00	0	Pass
3 (300)	21.00 x 11.00 x 7.00	21.00 x 11.00 x 7.00	0	Pass
4 (300)	21.00 x 11.00 x 7.00	21.00 x 11.00 x 7.00	0	Pass
5 (300)	21.00 x 11.00 x 7.00	21.00 x 11.00 x 7.00	0	Pass

Test Method				SB-270 Dynamic Test	Walk Test
Requirements		Weight Added (lbs.)		22	22
		Cycles		125	125 cycles over 175 feet
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (125)	21.00 x 11.00 x 7.00	21.00 x 11.00 x 7.00	0	0	Pass

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Report #: R21769
Date: 09/30/2021
PCR Valid Until: 09/30/2022
Physical & Mechanical Valid Until: 09/30/2023

Item 3: Results for film thickness testing according to ASTM D6988-13 are below

Measurement No.	Thickness Measured (mils)
1	2.677
2	2.638
3	2.874
4	2.323
5	2.205
6	2.402
7	2.441
8	2.835
9	2.835
10	2.402
Total	22.797
Average of 10	2.2797
Limit Thickness (mils)	≥ 2.25
Result	Pass

Item 4: Results for California Toxics in Packaging Prevention Act are listed below

California Toxics in Packaging Prevention Act – Total Heavy Metals (CONEG – TPCH)							
Digestion Method:	EPA Method 3052: Total Digestion for all elements						
Analysis Method:	EPA Method 6010C: ICP OES for Pb, Cd, Hg						
Analysis Method:	1,5-diphenylcarbazide colorimetric determination: UV-vis for Hexavalent Chromium						
Analyte	Lead (Pb)	Cadmium (Cd)	Chromium	Mercury (Hg)	Component Total	Total	Pass/Fail
Limit (mg/kg)	Total Allowed: <100 mg/kg						
Sample No.	Results (mg/kg)						
1	BDL	BDL	BDL	BDL	BDL	BDL	Pass
2	BDL	BDL	BDL	BDL	BDL	BDL	Pass

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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Physical & Mechanical Valid Until: 09/30/2023

SAMPLE PHOTOS:



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Report #: R21769
Date: 09/30/2021
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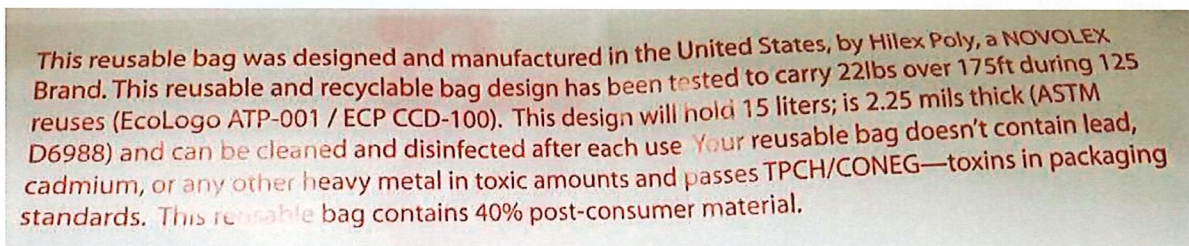
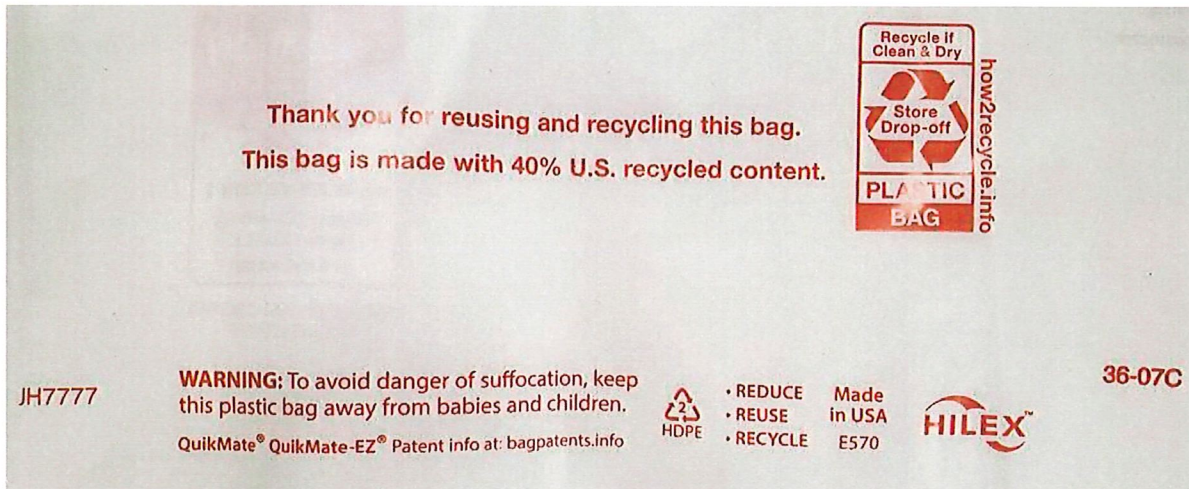
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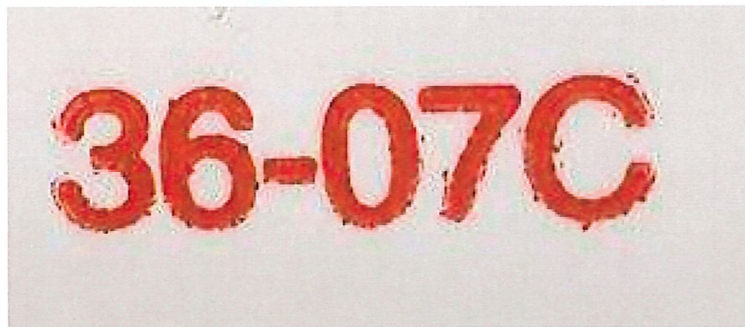
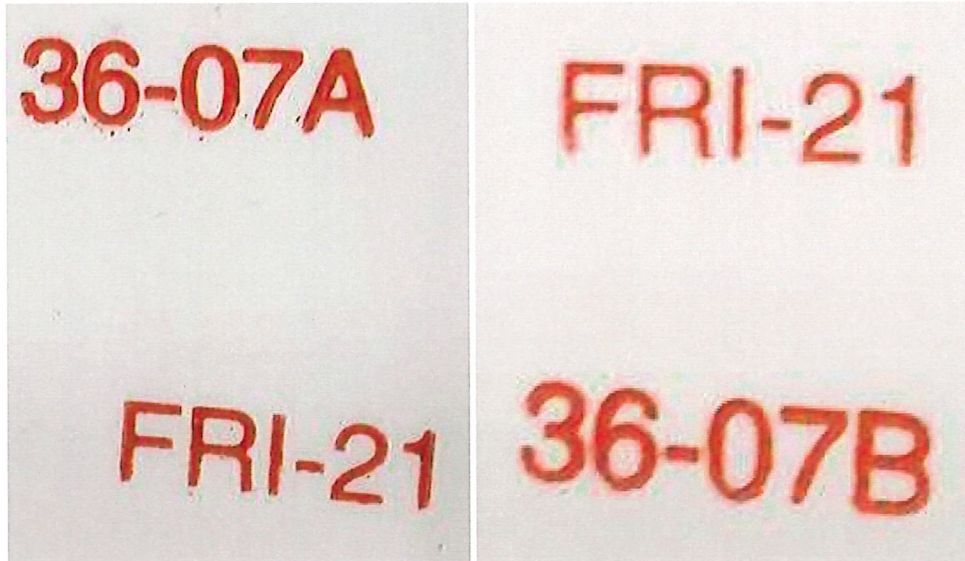
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General Information

Case Name	Bargetto v. Walgreen Co.
Court	U.S. District Court for the Northern District of California
Date Filed	Fri Apr 29 00:00:00 EDT 2022
Judge(s)	Trina Thompson
Federal Nature of Suit	Contract: Product Liability [195]
Docket Number	3:22-cv-02639
Parties	Elisa Bargetto; Walgreen Co.