

Multiple Documents

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2	Exhibit A - Complaint
3	Exhibit B1 - Civil Case Cover Sheet
4	Exhibit B2 - ADR Information
5	Exhibit B3 - Notice of Hearing
6	Exhibit B4 - Proof of Service of Summons
7	Declaration of Zach Freeze

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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 GREENPEACE, INC.,

14 Plaintiff,

15 vs.

16 WALMART INC.; DOES 1 through 25,
17 inclusive,

18 Defendants.
19
20
21

) Case No.: 3:21-cv-00754

) Judge: Hon.
Ctrm.:

) **DEFENDANT WALMART INC.’S
NOTICE OF REMOVAL**

) **DEMAND FOR JURY TRIAL**

) [Filed concurrently with Declaration of
Z. Freeze; Certification of Interested
Parties; Disclosure Statement; and Civil
Cover Sheet]

) Complaint filed: December 16, 2020
22

23 TO ALL PARTIES, THEIR ATTORNEYS OF RECORD AND THE CLERK OF
24 THE ABOVE-ENTITLED COURT:

25 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1332, 1367,
26 1441, and 1446, defendant Walmart Inc. (“Walmart”) hereby removes the above-
27 entitled case from the Superior Court of California, County of Alameda, to the United
28 States District Court for the Northern District of California.

1 As grounds for removal, Walmart states the following:

2 **I. NATURE OF REMOVED ACTION**

3 1. On December 16, 2020, Plaintiff filed its Complaint in Alameda County
4 Superior Court. That court assigned the case number RG20082964.

5 2. The Complaint names Walmart as a defendant.

6 3. The Complaint also names defendants whose true names and capacities
7 are not yet known to Plaintiff (collectively, “Doe Defendants”). The Doe Defendants
8 have not been identified, and on information and belief, have not been served. Thus,
9 their consent to removal is not required.

10 4. The Complaint alleges three counts for violations of the Unfair
11 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, based on
12 allegations of: (1) fraudulent acts and practices; (2) unlawful acts and practices; and
13 (3) unfair acts and practices.

14 5. According to the Complaint, Plaintiff is a public interest organization
15 aimed at combating plastic pollution and educating the public on various global
16 environmental issues. *See* Compl. ¶¶ 5, 6. Plaintiff pleads that Walmart’s private
17 label brand products are falsely “advertised, marketed, and sold as recyclable.” *Id.* ¶ 2.
18 The claims are largely based on allegations of Walmart’s failure to comply with the
19 Federal Trade Commission’s *Guides for the Use of Environmental Marketing Claims*
20 (“Green Guides”), 16 C.F.R. § 260.1, *et seq.* *See, e.g.,* Compl. ¶¶ 44-45, 49, 51-52, 77
21 (citing to Green Guides as a basis for allegations); *see also id.* ¶ 77 (“Defendants’
22 conduct also violates the policy of the Green Guides.... Taking advantage of
23 consumer perception in this manner violates the policy of the Green Guides.”).

24 6. Plaintiff attempted to serve Walmart with the state-court complaint by
25 mailing it on December 23, 2020. In accordance with 28 U.S.C. § 1446(a), a true and
26 correct copy of the Summons and Complaint are attached as **Exhibit A**, and copies of
27 all other processes, pleadings, and orders that were attempted to be served on
28 Defendant are attached as **Exhibit B**.

1 **II. SERVICE ON THE STATE COURT**

2 7. Pursuant to 28 U.S.C. § 1446(d), contemporaneously with the filing of
3 this Notice of Removal, written notice of such filing will be given by the undersigned
4 to Plaintiff’s counsel of record, and a copy of the Notice of Removal will be filed with
5 the Clerk of the Superior Court for the County of Alameda.

6 **III. TIMELINESS OF REMOVAL**

7 8. This removal is timely because this Notice is being filed within 30 days
8 of January 4, 2021, the date formal service by mail was, or would have been, deemed
9 complete under California law. *See* 28 U.S.C. § 1446(b)(1); Cal. Civ. Pro. § 415.40;
10 *SteppeChange LLC v. VEON Ltd.*, 354 F. Supp. 3d 1033, 1041–42 (N.D. Cal. 2018)
11 (holding “the weight of authority is overwhelming” that the removal period begins on
12 the 10th day after mailing when service is accomplished under § 415.40); Cal. Rules
13 of Ct. 1.10 (the last day for performance of any act...is extended to and includes the
14 next day that is not a holiday). Here, Plaintiff mailed the Summons and Complaint on
15 December 23, 2020, so service was deemed complete on Monday, January 4, 2021.
16 Accordingly, Walmart had until at least February 3 to remove. (Walmart believes that
17 Plaintiff’s service was incorrect and, therefore, ineffective but has removed before
18 February 3 out of an abundance of caution.)

19 **IV. VENUE**

20 9. The State Court Action was filed in Alameda County. Therefore, venue
21 for the removed action properly lies in the United States District Court for the
22 Northern District of California, pursuant to 28 U.S.C. §§ 84(a) and 1391(a).

23 **V. SUMMARY OF ALLEGATIONS AND GROUNDS FOR**
24 **REMOVAL**

25 10. Plaintiff asserts three causes of action under the UCL based on
26 allegations of noncompliance with the Green Guides. *See, e.g.*, Compl. ¶¶ 3, 23-29.
27 Plaintiff alleges that Walmart—a retailer of food, beverage, and other consumer
28

1 products—caused harm to unidentified consumers by falsely marketing and
2 advertising private label brand products and packaging as recyclable. *See id.* ¶ 44.

3 11. Aside from attorneys’ fees and costs, Plaintiff seeks the following
4 injunctive relief: (1) “enjoin[ing] Defendants from conducting their business through
5 the [] violations of law described in this Complaint,” (2) compelling Defendants to
6 “conduct corrective advertising . . . advising consumers that the Products do not have
7 the characteristics, uses, benefits, and qualities Defendants have claimed,” (3)
8 enjoining Defendants “from marketing and promotion of the Products that state or
9 imply the Products are recyclable,” and (4) compelling Defendants to “implement
10 whatever measures are necessary to remedy [] violations of law described in this
11 Complaint.” Compl., Prayer for Relief.

12 12. In filing or consenting to this Notice of Removal, Walmart does not
13 waive, and expressly preserves, its right to challenge personal jurisdiction, sufficiency
14 of process, and/or sufficiency of service of process in any federal or state court. *See*
15 *e.g. Munjy v. Destination XL Grp., Inc.*, No. 1:14-cv-1557-TLN-SKO, 2015 WL
16 1021129, at *3 (E.D. Cal. Mar. 9, 2015) (“[A] defendant does not waive jurisdictional
17 challenges by removing a case to federal court.” (citation and internal quotation marks
18 omitted)); *Carter v. Bldg. Material & Constr. Teamsters’ Union Local 216*, 928 F.
19 Supp. 997, 1000-01 (N.D. Cal. 1996) (“A petition for removal affects only the forum
20 in which the action will be heard; it does not affect personal jurisdiction.”); *see also*
21 Charles A. Wright et al., *Federal Practice and Procedure* § 3721 (4th ed. 2019) (“A
22 defendant does not waive any defense it may have to an action . . . by removing the
23 case from state to federal court. A defendant may, for example, move to dismiss for
24 lack of personal jurisdiction after removing a suit.”).

25 13. For purposes of meeting the jurisdictional requirements for removal only,
26 however, Walmart submits that removal is proper on two independent grounds.

27 14. **First**, this action is removable under 28 U.S.C. § 1441(b) because this
28 Court has original jurisdiction over this action, as there is complete diversity of

1 citizenship between Plaintiff and Walmart, and the amount in controversy exceeds
2 \$75,000.

3 15. **Second**, this action is removable under 28 U.S.C. § 1331 and 28 U.S.C.
4 § 1441 because Plaintiff’s claims present a federal question under the Green Guides
5 16 C.F.R. § 260.12, *et seq.*, and the Federal Trade Commission Act (“FTC Act”), 15
6 U.S.C. § 45, *et seq.* To the extent this Court construes any of Plaintiff’s claims as
7 arising under state law, this Court has supplemental jurisdiction under 28 U.S.C. §
8 1367(a) because those claims form part of the same case or controversy as the claims
9 over which the Court has original jurisdiction.

10 **VI. REMOVAL IS PROPER BASED ON DIVERSITY JURISDICTION**

11 16. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)
12 because this is a civil action between citizens of different states in which the amount
13 in controversy exceeds \$75,000 exclusive of interests and costs.

14 **A. Complete Diversity of Citizenship Exists.**

15 17. For diversity purposes, a corporation “shall be deemed to be a citizen of
16 every State and foreign State by which it has been incorporated and of the State or
17 foreign state where it has its principal place of business . . .” 28 U.S.C. § 1332(c)(1);
18 *see Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010).

19 18. Plaintiff alleges that it is a non-profit, public interest organization
20 headquartered in Washington, D.C. Compl. ¶ 5. Plaintiff is incorporated under
21 California law. *See* [https://www.greenpeace.org/usa/wp-](https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2007/7/greenpeace-inc-articles-of-in.pdf)
22 [content/uploads/legacy/Global/usa/report/2007/7/greenpeace-inc-articles-of-in.pdf](https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2007/7/greenpeace-inc-articles-of-in.pdf).
23 Plaintiff is therefore a citizen of California and the District of Columbia.

24 19. Walmart, at the time the Complaint was filed and at the time of this
25 Notice, is a company incorporated under Delaware law, with its principal place of
26 business in Bentonville, Arkansas. Walmart is therefore a citizen of the States of
27 Delaware and Arkansas.

1 20. The Doe defendants named in Plaintiff’s Complaint are fictitious.
2 Compl. ¶ 18. The Complaint does not set forth the identity or status of these fictitious
3 defendants, nor does it set forth any charging allegations against any fictitious
4 defendants. The citizenship of such fictitious defendants must be disregarded for the
5 purposes of determining diversity jurisdiction and cannot destroy the diversity of
6 citizenship between the parties in this action. *See* 28 U.S.C. § 1441(b)(1).

7 21. In sum, because Plaintiff is a citizen of the District of Columbia and
8 California and Walmart is a citizen of Delaware and Arkansas, the complete diversity
9 requirement of 28 U.S.C. § 1332(a) is satisfied.

10 **B. The Amount-in-Controversy Requirement is Satisfied.**

11 22. Pursuant to 28 U.S.C. § 1446(c)(2)(B), removal based on diversity
12 jurisdiction is proper if the amount in controversy exceeds \$75,000.

13 23. A removing defendant need only show that the amount in controversy
14 “more likely than not” exceeds the jurisdictional minimum of \$75,000. *Sanchez v.*
15 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *Cavada v. Inter-*
16 *Continental Hotels Group*, No. 19cv1675-GPC(BLM), 2019 WL 5677846, at *2 (S.D.
17 Cal. Nov. 1, 2019). When the amount in controversy is not specified in the complaint,
18 the court may consider the facts alleged in the complaint as well as in the notice of
19 removal. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir.
20 1997); *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1031 (N.D. Cal. 2002).

21 24. When the plaintiff seeks injunctive relief, the amount in controversy is
22 measured by the value of the object of the litigation. *Luna v. Kemira Speciality, Inc.*,
23 575 F. Supp. 2d 1166, 1172 (C.D. Cal. 2008). “[T]he amount in controversy is the
24 ‘amount at stake in the underlying litigation.’” *Gonzales v. CarMax Auto Superstores,*
25 *LLC*, 840 F.3d 644, 648 (9th Cir. 2016). “‘Amount at stake’ does not mean likely or
26 probable liability; rather it refers to possible liability.” *Id.* “This includes any result
27 of the litigation, excluding interests and costs, that ‘entails payment’ by the
28 defendant.” *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793

1 (9th Cir. 2018) (internal quotation marks omitted). Among other items, the amount in
2 controversy includes the “costs of complying with an injunction.” *Id.*

3 25. “In measuring the amount in controversy, a court must assume that the
4 allegations of the complaint are true and that a jury will return a verdict for the
5 plaintiff on all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536
6 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (citing *Kenneth Rothschild Trust v. Morgan*
7 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). Defenses that a
8 defendant may assert, however, are not considered in assessing the amount placed in
9 controversy. *See Riggins v. Riggins*, 415 F.2d 1259, 1262 (9th Cir. 1969) (“[T]he
10 possibility of such a defense being valid does not affect the jurisdiction of the district
11 court to hear and determine the controversy”); *Hernandez v. Towne Park, Ltd.*, No.
12 CV 12-02972 MMM (JCGx), 2012 WL 2373372, *10 (C.D. Cal. June 22, 2012)
13 (“[T]he fact that [defendant] may assert a limitations defense does not limit the relief
14 sought in the complaint.”); *Lara v. Trimac Transp. Svcs. (W.) Inc.*, No. CV 10-4280-
15 GHK (JCx), 2010 WL 3119366, *3 (C.D. Cal. Aug. 6, 2010) (“affirmative defenses . .
16 . may not be invoked to demonstrate that the amount in controversy is actually less
17 than the jurisdictional minimums.”).

18 26. Defendant may assume a recovery rate of 100% in calculating the
19 amount in controversy when, as here, the complaint does not allege a more precise
20 calculation. *See Navarro v. Servisair, LLC*, No. C 08-02716 MHP, 2008 WL
21 3842984, at *8-9 (N.D. Cal. Aug. 14, 2008); *Korn*, 536 F. Supp. 2d at 1204–05;
22 *Alvarez v. Ltd. Express, LLC*, No. 07CV1051 IEG (NLS), 2007 WL 2317125, at *3
23 (S.D. Cal. Aug. 8, 2007); *Muniz v. Pilot Travel Centers LLC*, No. CIV. S-07-0325
24 FCD EFB, 2007 WL 1302504, at *5 (E.D. Cal. May 1, 2007) (a removing defendant
25 is not obligated to “research, state, and prove the plaintiff’s claims for damages.”
26 (quoting *McCraw v. Lyons*, 863 F. Supp. 430, 434 (W.D. Ky. 1994)). These courts
27 recognize “that imposing overly stringent requirements on a defendant to prove the
28 amount in controversy would run the risk of essentially asking defendants to prove the

1 plaintiffs' case." *Altamirano v. Shaw Indus., Inc.*, No. C-13-0939 EMC, 2013 WL
2 2950600, at *5 (N.D. Cal. June 14, 2013).

3 27. Where, as here, the complaint does not state the amount in controversy,
4 the Notice of Removal may do so. The defendant need only include "a plausible
5 allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart*
6 *Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). A removing
7 defendant may rely on "a chain of reasoning that includes assumptions" and "an
8 assumption may be reasonable if it is founded on the allegations of the complaint."
9 *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198-99 (9th Cir. 2015)). A defendant
10 is thus not obligated to support removal by producing extensive business records.
11 *Muniz*, 2007 WL 1302504, at *5 (citing *McGraw*, 863 F. Supp. 2d at 434); *see also*
12 *Jones v. Tween Brands, Inc.*, No. 2:14-CV-1631-ODW (PLAx), 2014 WL 1607636, at
13 *2 (C.D. Cal. Apr. 22, 2014) (finding defendant did not need to provide payroll data
14 to support removal because defendant "is not required to meet such a high burden");
15 *Thomas v. Aetna Health of California*, No. 1:10-cv-01906-AWI-SKO, 2011 WL
16 2173715, at *20 ("[R]equiring Defendants to forecast an exact violation rate would
17 essentially force a removing defendant to prove the plaintiff's case.").

18 28. Although Walmart concedes no liability, assuming Plaintiff's allegations
19 to be true, the claims place in controversy a sum greater than \$75,000.

20 29. The amount in controversy includes "the cost of complying with an
21 injunction." *Fritsch*, 899 F.3d at 793; *accord Chavez v. JPMorgan Chase & Co.*, 888
22 F.3d 413, 416 (9th Cir. 2018); *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d
23 644, 648-49 (9th Cir. 2016) (finding district court did not err in finding amount in
24 controversy satisfied where potential cost of complying with injunctive relief
25 considered).

26 30. Plaintiff's Complaint asserts that the products at issue in this action meet
27 the following criteria: a) products made of, or packaged in, plastic resins 3, 4, 5, 6, or
28 7, b) products sold under one of Walmart's private brands, and c) products labeled as

1 recyclable. Compl. ¶ 2. The products that Walmart sells that meet these criteria are
2 referred to as the “Subject Products.”

3 31. Here, Plaintiff seeks to enjoin Walmart from “conducting business”
4 relating to the Subject Products and for an order from the Court ordering Walmart to
5 cease the “marketing and promotion of [the Subject Products] that state or imply that
6 the [Subject] Products are recyclable.” Compl. Prayer ¶ A & C. Although Plaintiff’s
7 requested relief is unclear, the injunctive relief sought would require Walmart to incur
8 significant expenses.

9 32. The proposed injunctive relief would require Walmart to remove the
10 Subject Products from its retail store shelves in California. That would include
11 hundreds of different types of products. *See* Decl. of Zachary Freeze, at ¶¶ 5 & 7.
12 And removing the products from its stores and distribution centers serving California
13 would cause Walmart to lose the value of the products, including, among other things,
14 the wholesale cost already incurred and the retail price Walmart would receive by
15 selling them. *Id.* at ¶ 5. Based on *only* the 11 exemplar products provided in
16 Plaintiff’s complaint—which make up a small portion of the hundreds of Walmart
17 products targeted by this Complaint—Walmart would incur losses in excess of
18 \$75,000 (approximately \$81,000 in wholesale cost and \$154,000 in retail sales based
19 on the 54,000 individual units currently on hand in Walmart’s California stores and
20 distribution centers that service California stores) in order to comply with Plaintiff’s
21 requested injunctive relief. *See* Decl. of Zachary Freeze, ¶¶ 5-7. In addition, because
22 these products sold by Walmart in California have identical recyclability claims
23 elsewhere in the United States, Walmart would also lose the value of the products
24 throughout the United States. *Id.* at ¶ 5.

25 33. Sampling an additional ten products from the hundreds of products at
26 issue in this lawsuit shows an even greater loss: approximately \$321,000 in wholesale
27 cost and \$575,000 in retail sales based on the 49,000 individual units currently on
28 hand in Walmart’s California stores and distribution centers that service California

1 stores. *See* Decl. of Zachary Freeze, ¶¶ 8-9. Just the lost value of the current units on-
2 hand for a sample of ten of the products at issue in this lawsuit far exceeds \$75,000.
3 Likewise, there is also expense associated with the physical removal of the products
4 from shelves, such as return fees, communication fees, destruction fees,
5 transportation, handling, and processing, the cost of which also exceeds \$75,000. *See*
6 Decl. of Zachary Freeze, ¶¶ 10.

7 34. Plaintiff also demands that Walmart engage in a “corrective advertising
8 and information campaign advising consumers that the Products do not have the
9 characteristics, uses, benefits, and qualities Defendants have claimed.” Compl. Prayer
10 ¶ B. The amount in controversy includes any result of the litigation that “entails
11 payment” by the defendant. *Fritsch*, 899 F.3d at 793) (internal quotation marks
12 omitted). Beyond development and effectuation of the proposed information
13 campaign, Plaintiff’s proposed injunctive relief would also involve expense associated
14 with label changes, such as artwork, printing, design, and personnel; all of which also
15 exceeds \$75,000. *See* Decl. of Zachary Freeze, ¶ 11.

16 35. Walmart denies that it has any liability to Plaintiff, and denies that
17 Plaintiff is entitled to recover injunctive relief or the other relief requested in the
18 Complaint. Nevertheless, the amount in controversy is not a merits issue, but instead,
19 is measured by the nominal value of the claims asserted. *See Greene v. Harley*
20 *Davidson*, 965 F.3d 767, 774 (9th Cir. 2020). Here, these facts show that potential
21 liability more likely than not exceeds \$75,000, based on the costs of complying with
22 the requested injunctive relief.

23 **VII. REMOVAL IS ALSO PROPER BASED ON FEDERAL**
24 **QUESTION JURISDICTION**

25 36. Removal is proper pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1331
26 because Plaintiff’s claims present a federal question under the FTC’s Green Guides,
27 16 C.F.R. § 260.1, *et seq.*, and the FTC Act, 15 U.S.C. § 45, *et seq.*

1 37. The original jurisdiction of the district courts includes jurisdiction over
2 “all civil actions arising under the Constitution, laws, or treaties of the United States.”
3 28 U.S.C. § 1331.

4 38. “Whether a case ‘arises under’ federal law for purposes of § 1331” is
5 governed by the “well-pleaded complaint rule.” *Holmes Grp., Inc. v. Vornado Air*
6 *Circulation Sys., Inc.*, 535 U.S. 826, 830 (2002).

7 39. Even when state law creates the causes of action, a complaint may raise a
8 substantial question of federal law sufficient to warrant removal “if vindication of a
9 right under state law necessarily turn[s] on some construction of federal law.” *Merrell*
10 *Dow Pharm. Inc., v. Thompson*, 478 U.S. 804, 808-09 (1986) (citation omitted); *see*
11 *also Gully v. First Nat’l Bank*, 299 U.S. 109, 112 (1936) (To bring a case within
12 [§1441] a right or immunity created by the Constitution or the laws of the United
13 States must be an element, and an essential one, of the plaintiff’s cause of action.”).

14 40. “[F]ederal jurisdiction over a state law claim will lie if a federal issue is:
15 (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of
16 resolution in federal court without disrupting the federal-state balance approved by
17 Congress.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013); *see Grable & Sons Metal*
18 *Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 315 (2005). “Where all four of
19 these requirements are met . . . jurisdiction is proper because there is a ‘serious federal
20 interest in claiming the advantage thought to be inherent in a federal forum,” *Gunn*,
21 568 U.S. at 258 (quoting *Grable*, 545 U.S. at 313-14).

22 41. As set forth below, this case meets all four requirements.¹

23 42. Although Plaintiff asserts causes of action that purport to arise under
24 state law, it bases its underlying theory of liability —that Walmart’s private label
25

26
27 ¹ The substantiality inquiry as it pertains to federal question jurisdiction is distinct from the merits of
28 the case and has no bearing on the strength of Plaintiff’s underlying claims. *See Gunn*, 568 U.S. at
260 (“The substantiality inquiry under *Grable* looks . . . to the importance of the *issue* to the federal
system as a whole”; emphasis added).

1 brand products are deceptively labeled as recyclable— on alleged violations of federal
2 law, specifically the FTC Act through the Green Guides, 16 C.F.R. § 260.12.

3 43. The FTC’s Green Guides provide guidance to ensure that marketers
4 “avoid making environmental marketing claims that are unfair or deceptive under
5 Section 5 of the FTC Act, 15 U.S.C. 45.” 16 C.F.R. § 260.1. While the Green Guides
6 are not independently enforceable regulations, the FTC “can take action under the
7 FTC Act if a marketer makes an environmental claim inconsistent with the Guides.”
8 FTC Green Guides: Statement of Basis and Purpose, at 1
9 ([https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-
10 green-guides/greenguidesstatement.pdf](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf)).

11 44. Plaintiff invokes federal law and pleads that Walmart violated federal law
12 with, among others, the following allegations:

- 13 a. “The California Business and Professions Code § 17580.5 makes it
14 ‘unlawful for any person to make any untruthful, deceptive, or
15 misleading environmental marketing claim, whether explicit or implied.’
16 Pursuant to that section, the term ‘environmental marketing claim’
17 includes any claim contained in the Guides for use of Environmental
18 Marketing Claims published by the FTC (the Green Guides). *Id*; *see also*
19 16 C.F.R. § 260.1, *et seq.*” Compl. ¶ 23.
- 20 b. “Because the Products are rarely, if ever, recycled, Defendants cannot
21 make any recycling claims as to these Products. However, at a
22 minimum, Defendants are required to clearly and prominently qualify
23 recyclable claims to avoid deception about the availability of recycling
24 programs and collection sites to consumers. 16 C.F.R. § 260.12(b).”
25 Compl. ¶ 44.
- 26 c. “. . . Defendants are incorrectly implying that consumers need only check
27 locally to determine whether recycling facilities exist in their community
28

1 . . .The FTC has explicitly stated such an implication is deceptive.”
2 Compl. ¶ 45.

3 d. “Defendants’ conduct violates Section 5 of the [FTC Act], which
4 prohibits unfair methods of competition and unfair or deceptive acts or
5 practices in or [a]ffecting commerce. By misrepresenting that the
6 Products are recyclable, Defendants are violating Section 5 of the FTC
7 Act.” Compl. ¶ 66.

8 e. “Pursuant to § 17580.5, the term “environmental marketing claim”
9 includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et*
10 *seq.*” Compl. ¶ 68.

11 f. “By violating the FTC Act, Business & Professions Code § § 17500 and
12 17580.5, and the California Public Resources Code, Defendants have
13 engaged in unlawful business acts and practices which constitute unfair
14 competition within the meaning of Business & Professions Code §
15 17200.” Compl. ¶ 69.

16 45. Plaintiff’s theories of liability against Walmart, as pled in the Complaint,
17 are predicated on allegations that Walmart violated the FTC’s Green Guides by
18 marketing and advertising products as recyclable that Plaintiff claims are unable to be
19 recycled or often not recycled. *See* Compl. ¶ 68.

20 46. The federal question presented by Plaintiff’s claims therefore is “(1)
21 necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution
22 in federal court without disrupting the federal-state balance approved by Congress.”
23 *Gunn*, 568 U.S. at 258.

24 47. First, a federal question is “necessarily raised” by Plaintiff’s claims
25 because they are based on, and so require construction of, federal regulations. *See*
26 *Gunn*, 568 U.S. at 259 (holding federal question was “necessary” to plaintiff’s
27 malpractice case because he would have to prove he would have prevailed under
28 federal patent law); *Grable*, 545 U.S. at 314-15 (finding federal-question jurisdiction

1 proper where plaintiff premised his superior title claim on a failure by the IRS to give
2 adequate notice, as defined by federal law); *Independent Living Center of S. Cal., Inc.*
3 *v. Kent*, 909 F.3d 272, 278–79 (9th Cir. 2018) (holding jurisdiction proper because to
4 prevail, appellants would necessarily have to show violation of federal law); *cf. City of*
5 *Oakland v. BP PLC*, 969 F.3d 895, 906 (9th Cir. 2020) (holding jurisdiction was not
6 proper because claim did not “require[] an interpretation of a federal statute”).
7 Although a plaintiff may attempt to artfully plead its claims to avoid federal
8 jurisdiction, jurisdiction exists where a court must interpret federal law to determine if
9 the plaintiff is entitled to the relief sought. *See Smith v. Kansas City Title & Trust*
10 *Co.*, 255 U.S. 180, (1921) (holding that a state-law claim could give rise to federal-
11 question jurisdiction so long as it “appears from the [complaint] that the right to relief
12 depends upon the construction or application of [federal law]”).

13 48. Here, for example, Plaintiff asserts that Walmart’s “conduct [] violates
14 the policy of the Green Guides. The Green Guides mandate that ‘[a] product or
15 package shall not be marketed as recyclable unless it can be collected, separated, or
16 otherwise recovered from the waste stream through an established recycling program
17 for reuse or use in manufacturing or assembling another item.’ 16 C.F.R. § 260.12(a).
18 It further states that ‘[a]n item that is made from recyclable material but because its
19 shape, size, or some other attribute is not accepted in recycling programs, should not
20 be marketed as recyclable.’ 16 C.F.R. § 260.12(d).” Plaintiff further asserts that
21 because consumers believe that Walmart’s products are recyclable, Walmart is
22 “[t]aking advantage of consumer perception” which “violates the policy of the Green
23 Guides.” Compl. ¶ 77.

24 49. Plaintiff’s UCL claims require the Court to interpret the definition of
25 recyclability under the Green Guides. The Court must analyze whether Walmart is in
26 compliance with federal guidance as it relates to the recyclability claims in its private
27 label brand products. Thus, Plaintiff’s causes of action “necessarily turn[] on some
28 construction of federal law” in order to determine if Walmart is in fact deceptively

1 marketing products as recyclable. *Alcoa Power Generating, Inc.*, 853 F.3d at 146. In
2 sum, the Complaint necessarily raises federal issues—namely, whether Walmart is in
3 violation of FTC’s Green Guides and the FTC Act by improperly marketing products
4 as recyclable that do not meet the requirements of 16 C.F.R. § 260.12.

5 50. Second, federal issues are “actually disputed” because the dispute
6 between the parties largely hinges on whether Walmart deceptively marketed its
7 products as recyclable under the FTC’s Green Guides. Thus, this federal issue is the
8 “central point of dispute.” *Gunn*, 568 U.S. at 259.

9 51. Third, the federal issues presented by Plaintiff’s claims are “substantial.”
10 “The substantiality inquiry under *Grable* looks . . . to the importance of the issue to
11 the federal system as a whole.” *Gunn*, 568 U.S. at 260. Among other things, the Court
12 must assess whether the federal government has a “strong interest” in the federal issue
13 at stake and whether allowing state courts to resolve the issue will “undermine the
14 development of a uniform body of [federal] law.” *Id.* at 260-62 (internal quotation and
15 citation omitted). As the Supreme Court explained in *Grable*, “[t]he doctrine captures
16 the commonsense notion that a federal court ought to be able to hear claims
17 recognized under state law that nonetheless turn on substantial questions of federal
18 law, and thus justify resort to the experience, solicitude, and hope of uniformity that a
19 federal forum offers on federal issues.” 545 U.S. at 312. *See also Independent Living*
20 *Center*, 909 F.3d at 279 (holding jurisdiction proper where “ubiquitous” issue of
21 Medicare requirements had broad “importance . . . to the federal system as a whole.”)

22 52. Here, Plaintiff seeks to use a California state court to hold Walmart
23 responsible for plastic pollution that affects the entire country and indeed the entire
24 world. As acknowledged in Plaintiff’s complaint, plastic pollution “affects the
25 amount of plastic in the ocean, in freshwater lakes and streams, on land, and in
26 landfills.” Compl. ¶ 1. As a result, plastic pollution is not a “local” matter that can be
27 addressed by the laws of a single state. Plaintiff’s Complaint concerns a social
28 challenge for which no single, country, state, or company can be blamed.

1 Furthermore, because plastic pollution is an interstate and national problem, its
2 resolution, if possible at all through litigation, should be addressed in a more uniform
3 way at the federal level.

4 53. Plaintiff's claims also raise a substantial federal issue because this action
5 may have a significant impact on retailers across the nation who market their products
6 as recyclable. The analysis and interpretation of FTC's Green Guides regarding
7 recyclability claims in this case may set precedent because the FTC has not yet
8 litigated this issue itself.²

9 54. Plaintiff's attempt to enforce the FTC Green Guides and FTC Act raises a
10 substantial federal question even though there is no private federal right of action for
11 enforcing them. The lack of a federal right of action is relevant to but not dispositive
12 of the jurisdictional issue. *Grable*, 545 U.S. at 309; *Independent Living Center*, 909
13 F.3d 272 at 279; *see also Nicodemus v. Union Pac. Corp.*, 440 F.3d 1227, 1236–37
14 (10th Cir. 2006) (holding state law claims based on dispute over the scope of rights
15 under federal land-grant statute satisfied *Grable* despite the lack of a private right of
16 action); *Ranck v. Mt. Hood Cable Regulatory Comm'n*, No. 3:16-cv-02409-AA,
17 2017 WL 1752954, at *4-5 (D. Or. May 2, 2017) (holding state-law claims based on
18 violations of Cable Communications Policy Act raised substantial federal questions
19 and satisfy *Grable* even though no private right of action exists under Act).

20 55. Fourth, the federal issue also is capable of resolution in federal court
21 “without disrupting the federal-state balance approved by Congress.” *Gunn*, 568 U.S.
22 at 258. Federal courts hear actions brought by the FTC alleging violations of the FTC
23 Act, not state courts. Litigating such cases in state court, in fact, would run the risk
24 that multiple state courts might interpret or apply federal requirements inconsistently.

25 ² On information and belief, the only formal FTC enforcement actions concerning recyclability
26 claims under the Green Guides have resulted in federal administrative consent orders or stipulated
27 judgments negotiated by the agency and parties before the commencement of litigation. *See, e.g., In*
28 *the Matter of N.E.W. Plastics Corp.*, C-4449, Decision and Order (FTC, April 3, 2014)
(administrative consent order); *FTC v. AJM Packaging Corporation*, Stipulated Order for Permanent
Injunction and Civil Penalty Judgment, 1:13-cv-01510-BAH (D.D.C., Oct. 1, 2013) (stipulated order
entered into by federal district court due to violation of a previous administrative consent order).

1 Federal jurisdiction is therefore “consistent with congressional judgment about the
2 sound division of labor between state and federal courts governing the application of §
3 1331.” *PNC Bank, N.A.*, 189 F. App’x at 104 n.3.

4 56. In summary, removal is appropriate because Plaintiff’s “state-law
5 claim[s] necessarily raise a stated federal issue, actually disputed and substantial,
6 which a federal forum may entertain without disturbing any congressionally approved
7 balance of federal and state judicial responsibilities.” *Grable*, 545 U.S. at 314; *see*
8 *also Commc’ns Mgmt. Servs. v. Qwest Corp.*, 726 F. App’x 538, 540 (9th Cir. 2018)
9 (holding unjust-enrichment claim alleging defendants failed to timely file a rate
10 required by the FCC “necessarily raised a stated federal issue which [was] both
11 actually disputed and substantial”); *EIJ, Inc. v. United Parcel Serv., Inc.*, 233 F.
12 App’x 600, 601–02 (9th Cir. 2007) (breach of contract claim based in part on
13 allegation that the plaintiff had received improper notice of an air carrier’s liability
14 limitation “[was] within the district court’s ‘arising under’ federal law jurisdiction”).

15 **VIII. CONCLUSION**

16 57. Pursuant to 28 U.S.C. § 1446(b)(2)(A), Walmart is the only defendant
17 that has been served and consents to removal.

18 58. The Doe Defendants have not been identified, and on information and
19 belief, have not been served. Thus, their consent to removal is not required.

20 59. If any question arises as to propriety of removal to this Court, Walmart
21 requests the opportunity to present a brief oral argument of its position that this case
22 has been properly removed.

23 60. Walmart reserves the right to amend or further supplement this Notice.
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EXHIBIT A

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WALMART, INC.; and DOES 1 through 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

GREENPEACE, INC.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED BY FAX
ALAMEDA COUNTY

December 16, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregues una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos eventos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612

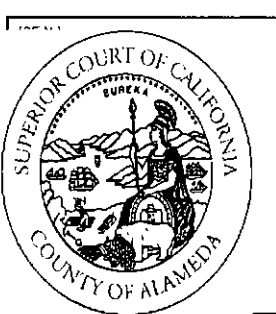
CASE NUMBER:
(Número del Caso):
RG20082964

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Howard Hirsch, Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. (415) 913-7800

DATE:
(Fecha) **December 16, 2020**

Clerk, by *Cheryl Clark* Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form Pt
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (form Pt



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

To: 15102671547

Page: 02 of 36

2020-12-16 17:07:54 GMT

From: Lexington Law Group

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LEXINGTON LAW GROUP
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Attorneys for Plaintiff
GREENPEACE, INC.

FILED BY FAX

ALAMEDA COUNTY

December 16, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

RG20082964

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

GREENPEACE, INC.,

Plaintiff,

v.

WALMART, INC.; and DOES 1 through 100,
inclusive,

Defendants.

Case No.

COMPLAINT

1 Plaintiff Greenpeace, Inc. (“Plaintiff” or “Greenpeace”), based on information, belief, and
2 investigation of its counsel, except for information based on knowledge, hereby alleges:

3 INTRODUCTION

4 1. The problems associated with plastic pollution are increasing on a local, national,
5 and global scale. This affects the amount of plastic in the ocean, in freshwater lakes and streams,
6 on land, and in landfills. Nearly 90% of plastic waste is not recycled, with billions of tons of
7 plastic becoming trash and litter.¹ According to a new study, at least 1.2 to 2.5 million tons of
8 plastic trash from the United States was dopped on lands, rivers, lakes and oceans as litter, were
9 illegally dumped, or shipped abroad and then not properly disposed of.² As consumers become
10 increasingly aware of the problems associated with plastic pollution, they are increasingly
11 susceptible to marketing claims reassuring them that the plastic used to make and package the
12 products that they purchase are recyclable. Many consumers concerned with the proliferation of
13 plastic pollution actively seek to purchase products that are either compostable or recyclable to
14 divert such waste from the ocean, their communities, landfills, and incinerators. Seeking to take
15 advantage of consumers’ concerns, defendant Walmart, Inc. (“Defendant”)³ markets and sells a
16 variety of single-use plastic products that are labeled as recyclable, when the products are rarely,
17 if ever, recycled.

18 2. This Complaint seeks to remedy Defendants’ unlawful, unfair, and deceptive
19 business practices with respect to the advertising, marketing, and sales of plastic products or
20 plastic packaging that are: (A) made from plastics #3-7 or unidentified plastic; (B) sold under
21
22
23

24 ¹ Tom Udall and Alan Lowenthal, *Op-Ed: More than 90% of U.S. plastic waste is never recycled. Here’s how we can change that*, L.A. TIMES (Feb. 21, 2020, 3:01 AM),
25 <https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s> (last
accessed Dec. 7, 2020).

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

28 ³ Defendant Walmart, Inc. and DOES 1-100 are collectively referred to herein as “Defendants.”

1 Defendants' own private label brands;⁴ and (C) labeled as "recyclable" (the "Products").⁵ The
2 Products are advertised, marketed, and sold as recyclable. However, the Products are not in fact
3 recyclable because consumers do not have access to recycling programs that accept the Products,
4 the Products cannot be separated or recovered from the general waste stream and sorted into the
5 correct materials bale by material recovery facilities ("MRFs"), and there are no end markets to
6 reuse the Products or to convert the Products into a material that can be reused or used in
7 manufacturing or assembling another item. Despite Defendants' marketing and advertising of the
8 Products as recyclable, most of the Products typically end up in landfills, incinerators,
9 communities, or the natural environment. Defendants' representations that the Products are
10 recyclable are material, false, misleading, and likely to deceive members of the public. These
11 representations also violate California's legislatively declared policy against misrepresenting the
12 environmental attributes of products.

13 3. Defendants thus violated and continue to violate California's Unfair Competition
14 Law ("UCL"), Business and Profession Code § 17200, *et seq.*, based on fraudulent, unlawful and
15 unfair acts and practices, as well as the California False Advertising Law, Cal. Bus. & Prof. Code
16 § 17500, *et seq.* and the Environmental Marketing Claims Act, Cal. Bus. & Prof. Code § 17580.5.

17
18
19 ⁴ Examples of Defendants' private label brands include, but are not limited to: Great Value,
20 Allswell, Atheletic Works, Bonobos, Equate, EV1, Everstart, George, Holiday Time, Mainstays,
21 Marketside, No Boundaries, Onn, Ozark Trail, Parent's Choice, Scoop, SwissTech, Time and
22 Tru, and Wonder Nation.

23 ⁵Non-exclusive examples of the Products include, but are not limited to: Great Value Organic
24 Cinnamon Applesauce Cups, 24 oz, 6 Count, Walmart #556055661, UPC No. 0-7874213534-2,
25 Product No. 136051; Great Value Diced Mangos In 100% Juice, 4 oz, 4 Count, Walmart
26 #562987172, UPC No. 0-7874215803-7, Product No. 142059; Great Value Organic Diced
27 Peaches & Pears, 16 oz., 4 Count, Walmart #562987178, UPC No. 0-7874223615-5, Product No.
28 142059; Great Value Premium Forks, 48 Count, Walmart #438491, UPC No. 0-7874211675-4,
Product No. 042499; Great Value Premium Clear Cutlery Knives, 48 Count, Walmart #438505,
UPC No. 0-7874211670-9, Product No. 042499; Great Value Premium Assorted Silver Cutlery,
36 count, Walmart #565175504; Great Value Snack Cups, 9 oz, 80 Count, Walmart #443461,
UPC No. 0-681131925532, Manufacturer No. 6386717; Great Value Everyday Party Cups, 18 oz,
20 Count, Walmart #443482, UPC No. 0-78742049090, Manufacturer No. 6386484; Great Value
Extra Virgin Olive Oil Cooking Spray, 7 oz., 3 Pack, UPC No. 0-7874206043-9, Product No.
928333; Great Value Ultimate Fresh Scent Booster, Blooming Lavender, 14.8 oz, Walmart
#575777817, UPC No. 0-7874233153-9, Product No. 03604; and Great Value Plastic Party Cups,
18 oz, 120 Count, Walmart #557007144, UPC No. 0-7874218708-2, Product No. 437462.

1 environment or public health. Examples of such Greenpeace campaigns include, but are not
2 limited to educating the public with respect to the hazards of bleached paper products, chemical
3 additives in plastic toys and household products, mercury in fish, and ozone-depleting substances
4 in refrigerators.

5 8. In addition to the many campaigns educating the public about products and
6 processes that harm public health, the environment, or human rights, for over three decades
7 Greenpeace has engaged in various efforts to expose corporate greenwashing that deceives
8 consumers into thinking their products or processes are environmentally friendly or benign.
9 Greenpeace has worked tirelessly to expose examples of corporate greenwashing to protect
10 consumers from false and misleading information related to the environmental benefits of
11 products. Greenpeace has led campaigns against oil companies, electronic manufacturers, and
12 consumer good corporations and retailers for touting the environmental benefits of their products
13 when, in fact, the products manufactured and sold by such companies caused significant
14 environmental harm. Greenpeace advocates for consumers to prevent corporate greenwashing
15 and educates the public on such greenwashing so that consumers have the information available
16 to make informed decisions about the environmental impacts of their purchases.

17 9. Greenpeace has been working to prevent the proliferation of plastic pollution for
18 nearly four decades. Greenpeace has had numerous campaigns related to plastic pollution,
19 including but not limited to educating consumers on greenwashing statements that certain plastic
20 was biodegradable or recyclable when it was not, exposing the shipment of plastic waste to
21 developing countries, seeking to replace polyvinyl chloride plastic with less toxic alternatives,
22 exposing the health problems associated with incinerating plastic, and reducing or eliminating
23 single-use plastic packaging because of its impacts on the marine ecosystem, the climate,
24 communities, and human health.

25 10. Greenpeace's campaigns related to plastic holistically focus on the lifecycle of
26 plastic, from the harmful feedstock chemicals used to make plastic to the sheer amount of single-
27 use plastic generated and ultimately discarded. Greenpeace cares deeply about the proliferation
28 of plastic because it has witnessed the harmful effects of plastic pollution on various ecosystems

1 and human health. The goals of Greenpeace's climate and oceans campaigns call for solutions
2 that include drastically reducing the use of single-use plastic and finding alternatives to plastic
3 products and packaging, reusing plastic products when no other alternatives are available, and
4 properly recycling products if they cannot be eliminated or reused.

5 11. Greenpeace's current campaigns related to plastic include informing the public
6 about the low amount of plastic that is capable of being recycled and instead ends up in the
7 natural environment. To these ends, Greenpeace has published reports and surveys documenting
8 the low recycling rates of various plastic products, including a comprehensive U.S. Survey of
9 Plastics Recyclability entitled *Circular Claims Fall Flat*, published on February 18, 2020 (the
10 "CCFF Report").⁶ The CCFF Report is a thorough survey of plastic product waste collection,
11 sortation, and reprocessing in the United States to determine the legitimacy of recyclable claims
12 and labels on consumer single-use plastic products. The survey was based on current conditions
13 in October 2019 to January 2020 and U.S. Federal Trade Commission guidelines. The survey
14 directly evaluated Defendants' packaging design guides for recyclability as well as numerous
15 other recycling guides.

16 12. While Greenpeace was investigating the low recycling rates of plastic products, it
17 was simultaneously analyzing recyclable representations present on the labels of products sold by
18 major retailers and manufacturers. In 2019, following a survey sent directly to Defendants and
19 other retailers regarding plastic pollution, Greenpeace began investigating Defendants' recycling
20 initiatives and representations. A company's size and scope affect its plastic footprint, and due to
21 Defendants' large volume of products made from or packaged in plastic, Greenpeace determined
22 that Defendants are responsible for a significant amount of plastic pollution, which is highlighted
23 in the CCFF Report. Greenpeace began investigating Defendants by diverting resources to visit
24 Defendants' stores, photograph Defendants' products, investigate Defendants' corporate websites,
25

26 _____
27 ⁶ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
28 GREENPEACE REPORTS, Feb. 18, 2020, <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf> (last accessed Dec. 7, 2020)

1 and analyze and report findings. Based on this information, Greenpeace determined that
2 Defendants' actions frustrated its mission to protect the environment by misleading consumers
3 with respect to the environmental benefits of recycling plastic.

4 13. After initially diverting resources to specifically investigate Defendants'
5 recyclable representations, Greenpeace diverted additional resources to inform Defendants of
6 their false and misleading recycling representations. In October 2019, Greenpeace sent an email
7 to Defendants explicitly discussing the issues related to Defendants' misleading recycling
8 representations and informed Defendants that their labels do not meet the standards in the Green
9 Guides. In March 2020, Greenpeace sent Defendants a follow-up email regarding the
10 implications of the CCFF Report, which described the low rate of recyclability for products that
11 Defendants labeled as recyclable. Greenpeace then arranged for a meeting with Defendants and
12 various other retailers at an industry conference to discuss recyclable representations on plastic
13 products that was canceled due to the onset of the pandemic caused by COVID-19. Greenpeace
14 has since published press releases identifying Defendants' false and misleading recyclable
15 representations to inform the public of such issues.

16 14. Greenpeace has also diverted significant time and resources organizing its
17 supporters to raise awareness of Defendants' contribution to the proliferation of plastic pollution.
18 For example, on February 6, 2019, Greenpeace organized a "day of action" in which supporters
19 photographed Defendants' plastic pollution in Los Angeles, California and St. Petersburg, Florida
20 to highlight the amount of single-use plastic pollution generated by Defendants. Greenpeace also
21 created a petition and paid for it to be circulated on Facebook through Facebook Ads requesting
22 Defendants to "ditch plastic packaging" and sent out numerous posts to its Twitter followers
23 regarding Defendants' failure to reduce single-use plastic.

24 15. Because Greenpeace's mission involves ensuring consumers are not misled by
25 environmental marketing claims and protecting the natural environment from plastic pollution,
26 Defendants' use of false, misleading, and deceptive claims regarding the recyclability of their
27 Products has frustrated Greenpeace's purpose. Defendants' continued use of misleading and
28 deceptive recyclability claims serves to confuse the public about plastic products and packaging

1 and give them a false sense that they are doing something good for the environment when they
2 purchase Defendants' Products and then place them into the recycling bin. Defendants'
3 frustration of Greenpeace's purpose has forced Greenpeace to spend staff time and organizational
4 resources pressuring Defendants to stop using misleading labels on their single-use plastic
5 packaging, as well as to educate its supporters, the public, and the media that a product labeled by
6 Defendants as recyclable is actually unlikely to be recycled. These actions have caused
7 Greenpeace to lose money or property and it has therefore suffered an injury in fact.

8 16. Absent relief from this Court, plastic pollution and the resulting harms to
9 California waters, coasts, communities, and marine life will continue to negatively impact
10 Greenpeace's efforts to protect these critical resources. In addition, relief from this Court is
11 necessary to further Greenpeace's mission of ensuring consumers are not misled by false
12 environmental marketing claims.

13 17. Defendant Walmart, Inc. is a Delaware corporation with its principal place of
14 business in Bentonville, Arkansas. Defendant Walmart, Inc. manufactures, distributes, and sells
15 the Products in California.

16 18. DOES 1 through 100 are persons or entities whose true names and capacities are
17 presently unknown to Plaintiff and members of the Class, and who therefore are sued by such
18 fictitious names. Plaintiff and members of the Class are informed and believe, and on that basis
19 allege, that each of the fictitiously named defendants perpetrated some or all of the wrongful acts
20 alleged herein and are responsible in some manner for the matters alleged herein. Plaintiff will
21 amend this Complaint to state the true names and capacities of such fictitiously named defendants
22 when ascertained.

23 **JURISDICTION AND VENUE**

24 19. This Court has jurisdiction over all causes of action asserted herein pursuant to the
25 California Constitution, Article VI, Section 10, because this case is a cause not given by statute to
26 other trial courts. This Court also has jurisdiction over certain causes of action asserted herein
27 pursuant to Business & Professions Code §§ 17203 and 17204, which allow enforcement in any
28 Court of competent jurisdiction.

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

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

16 26. Defendants have published their own Recycling Playbook that defines
17 recyclability in the same manner.⁷ The Playbook defines recyclability as a system of stages: “(1)
18 Collection (collection available for a substantial majority of consumers); (2) Sortation (packages
19 are separated and aggregated for further processing); (3) Processing (commercial processes
20 recover material); (4) End-Market (the recycled material is used in new products); and (5)
21 Recycling Rate (at least 30% recycling rate achieved for over 400 million inhabitants).” Thus,
22 Defendants’ own interpretation of recyclability requires access to recycling programs, sortability,
23 and end markets.

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25
26 ⁷ *The Recycling Playbook*, WALMART, INC., last updated Oct. 25, 2019,
27 [https://www.walmartsustainabilityhub.com/media-library/document/recycling-playbook-
28 november-2019/proxyDocument?id=0000016e-384f-d8af-a96e-beff25150000](https://www.walmartsustainabilityhub.com/media-library/document/recycling-playbook-november-2019/proxyDocument?id=0000016e-384f-d8af-a96e-beff25150000) (last accessed on
Dec. 7, 2020).

1 27. As reflected in the Green Guides' language and regulatory history, the FTC does
2 not consider a product to be recyclable unless it can actually be recycled. For instance, the Green
3 Guides provide that: (1) "[i]f any component significantly limits the ability to recycle the item,
4 any recyclable claim would be deceptive;" and (2) "an item that is made from recyclable material,
5 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,
6 should not be marketed as recyclable." 16 C.F.R. §§ 260.12(a) and (d); *see also id.*, § 260.12(d),
7 Examples 2 and 6. And in promulgating the current recycling definition that encompasses
8 accessibility, sortability and end markets, the FTC clarified that "[f]or a product to be called
9 recyclable, there must be an established recycling program, municipal or private, through which
10 the product *will be* converted into, or used in, another product or package." *See* 63 Fed. Reg. 84,
11 24247 (May 1, 1998) (emphasis added). As the FTC has stated, "while a product may be
12 technically recyclable, if a program is not available allowing consumers to recycle the product,
13 there is no real value to consumers." *Id.*, at 24243.

14 28. The Green Guides also provide specific examples of recycling claims that the FTC
15 considers deceptive, as well as examples of ways in which marketers can qualify those claims.⁸
16 Compliance with the examples provided by the FTC qualifies as a defense to a claim under the
17 EMCA. B&P Code § 17580.5(b). Under the Green Guides, a marketer may make an unqualified
18 recyclable claim if a substantial majority of consumers or communities have access to recycling
19 facilities for that item. 16 C.F.R. § 260.12(b)(1). A "substantial majority" means at least 60
20 percent of consumers or communities where the item is sold. *Id.* Absent such evidence,
21 marketers are required to use qualifications that vary in strength depending on the degree of
22 consumer access to recycling for an item. *Id.*, § 260.12(b)(2). For instance, if recycling facilities
23 are available to slightly less than 60 percent of consumers or communities, the Green Guides
24 recommend that a marketer should qualify the recyclable claim by stating "this product may not
25 be recyclable in your area," or "recycling facilities for this product may not exist in your area."

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27
28 ⁸ The examples in the Green Guides are specifically provided by the FTC as its "views on how reasonable consumers likely interpret certain claims." 16 C.F.R. § 260.1(d).

1 *Id.* If recycling facilities are available only to a few consumers, the Green Guides recommend
 2 that a marketer should qualify its recyclable claim by stating “this product is recyclable only in a
 3 few communities that have appropriate recycling facilities.” *Id.*

4 29. The Green Guides specifically identify qualifications that may be misleading or
 5 deceptive to a reasonable consumer. For instance, a “check locally” disclaimer is presumptively
 6 deceptive. *See* 16 C.F.R. § 260.12, Example 4. The FTC made this determination based on a
 7 survey it conducted in which it determined that “there was no statistical difference” between a
 8 consumer’s perception of an unqualified recyclable claim and a “check locally” disclaimer. *See*
 9 63 Fed. Reg. 84, 24244 (May 1, 1998). Accordingly, the FTC concluded that a “check locally”
 10 disclaimer is deceptive because it does not “adequately disclose the limited availability of
 11 recycling programs,” and removed the disclaimer as an example of a permissible qualification.
 12 *See* 16 C.F.R. § 260.12, Example 4; 63 Fed. Reg. 84, 24244 (May 1, 1998).

13 **BACKGROUND FACTS**

14 30. In the past decade humans across the globe have produced 8.3 billion metric tons
 15 of plastic, most of it in disposable products and packaging that ends up as trash or pollution.⁹ Of
 16 the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only
 17 9% of that has been recycled.¹⁰ A third of the single-use plastic generated ends up in the natural
 18 environment, accounting for 100 million metric tons of plastic pollution in 2016.¹¹ Current
 19 estimates suggest that there are over 150 million tons of plastics in the ocean.¹² The
 20 Environmental Protection Agency estimates that Americans alone disposed of more than 33

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 22 ⁹ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
 23 Jul. 19, 2017, [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/Production%20use%20and%20fate%20of%20all%20plastics%20ever%20made.pdf)
 24 [content/uploads/2018/05/Production use and fate of all plastics ever made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production%20use%20and%20fate%20of%20all%20plastics%20ever%20made.pdf) (last accessed
 25 Dec. 7, 2020).

26 ¹⁰ *Id.*

27 ¹¹ *No Plastic in Nature: Assessing Plastic Ingestion From Nature to People*, WWF, June 2019,
 28 [https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic ingestion web spreads.pdf](https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic%20ingestion%20web%20spreads.pdf) at p. 6 (last
 accessed Dec. 7, 2020).

¹² *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR
 FOUNDATION AND MCKINSEY & COMPANY (2016), [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation%20TheNewPlasticsEconomy%20Pages.pdf)
[content/uploads/2018/05/EllenMacArthurFoundation TheNewPlasticsEconomy Pages.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation%20TheNewPlasticsEconomy%20Pages.pdf) at p.
 17 (last accessed Dec. 7, 2020).

1 million tons of plastic in 2014, most of which was not recycled.¹³ While California had a goal to
 2 achieve a 75% recycling rate by 2020, California's recycling rate is actually in decline.
 3 According to CalRecycle, in 2014 California's recycling acceptance rate was 50%, dropping to
 4 47% in 2015 and down to 44% in 2016.¹⁴

5 31. Recent investigations into the proliferation of plastic pollution plaguing the natural
 6 environment have revealed that the plastics industry has known for decades that most products
 7 and packaging made from plastic would not be recycled. On September 11, 2020, NPR published
 8 an investigation on the plastic industry proving the industry's decades-long awareness that
 9 recycling would not keep plastic products or packaging out of landfills, incinerators,
 10 communities, or the natural environment.¹⁵ In a 1974 speech, one industry insider stated "there is
 11 serious doubt that [recycling plastic] can ever be made viable on an economic basis."¹⁶ Larry
 12 Thomas, former president of the Society of the Plastic Industry (known today as the Plastics
 13 Industry Association), told NPR that "if the public thinks that recycling is working, then they are
 14 not going to be as concerned about the environment."¹⁷ The NPR investigative report details the
 15 length and expense that the plastics industry went to deceive consumers that plastic was easily
 16 recyclable, despite knowledge that the cost of recycling would never be economical. Similarly, a
 17 recent CBC news report describes that even the recycling logo was used as a marketing tool to
 18 improve the image of plastics after environmental backlash in the 1980s.¹⁸ "There was never an
 19
 20

21 ¹³ *Advancing Sustainable Materials Management: 2014 Fact Sheet*, U.S. EPA, Nov. 2016,
https://www.epa.gov/sites/production/files/2016-11/documents/2014_smmfactsheet_508.pdf at p.
 22 2 (last accessed Dec. 7, 2020).

23 ¹⁴ *California's Statewide Recycling Rate*, CALRECYCLE, last updated Mar. 3, 2020,
<https://www.calrecycle.ca.gov/75percent/recyclerate> (last accessed Dec. 7, 2020).

24 ¹⁵ Lara Sullivan, *How Big Oil Mised The Public Into Believing Plastic Would be Recycled*,
 NPR.ORG (Sep. 11, 2020, 5:00 AM), [https://www.npr.org/2020/09/11/897692090/how-big-oil-](https://www.npr.org/2020/09/11/897692090/how-big-oil-mised-the-public-into-believing-plastic-would-be-recycled)
 25 [mised-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oil-mised-the-public-into-believing-plastic-would-be-recycled) (last accessed Dec. 7, 2020).

26 ¹⁶ *Id.*

27 ¹⁷ *Id.*

28 ¹⁸ *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23,
 2020, [https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-](https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618)
[more-plastic-industry-experts-say-1.5735618](https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618) (last accessed Dec. 7, 2020).

1 enthusiastic belief that recycling was ultimately going to work in a significant way,” yet the
2 plastics industry spent millions on ads to deceive the public as to the efficacy of recycling.¹⁹

3 32. After decades of deception from the plastics industry that plastic products and
4 packaging are recyclable, consumers have recently become more aware of the problems
5 associated with single-use plastic as plastic polluting the oceans and the natural environment have
6 become unavoidable. The staggering amount of plastic pollution accumulating in the
7 environment is accompanied by an array of negative side effects. For example, plastic debris is
8 frequently ingested by marine animals and other wildlife, which can be injurious, poisonous, and
9 deadly.²⁰ Floating plastic is also a vector for invasive species,²¹ and plastic that gets buried in
10 landfills can leach harmful chemicals into ground water that is absorbed by humans and other
11 animals.²² Plastic litter on the streets and in and around our parks and beaches also degrades the
12 quality of life for residents and visitors. Scientists have also discovered that plastic releases large
13 amounts of methane, a powerful greenhouse gas, as it degrades.²³ Thus, plastic pollution
14 contributes to global climate change, which affects California in the form of extreme drought, sea
15 level rise, and more frequent and severe wildfires.²⁴

16
17
18 ¹⁹ *Id.*

19 ²⁰ Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their*
20 *occurrence and implications for aquatic organisms and food safety*, FAO Fisheries and
21 *Aquaculture Technical Paper No. 615*, Rome, Italy, 2017 <http://www.fao.org/3/a-i7677e.pdf> (last
22 accessed Dec. 7, 2020).

23 ²¹ *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,
24 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017%20Invasive%20Species%20Topic%20Paper.pdf)
25 [files/2017 Invasive Species Topic Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017%20Invasive%20Species%20Topic%20Paper.pdf) (last accessed Dec. 7, 2020)

26 ²² Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment*
27 *and to wildlife*, PHILIOS TRANS R. SOC. LOND. B. BIOL. SCI, July. 27, 2009,
28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/> (last accessed Dec. 7, 2020).

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

²⁴ *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,
[https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf)
[ca.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf) (last accessed Dec. 7, 2020)

1 33. There are various types of plastic resin that are used to produce single-use plastic
2 products and packaging. All rigid plastic bottles and containers sold in California are required to
3 include a molded label code that indicates the resin used to produce the plastic bottle or container.
4 Cal. Pub. Res. Code § 18015. The code generally consists of a number placed inside a triangle to
5 reflect the resin used to make the bottle or container. *Id.* This code is referred to as a Resin
6 Identification Code (“RIC”) and can be used to identify seven types of plastic.

7 34. PET (plastic #1) and HDPE (plastic #2) are widely considered to be the most
8 recyclable forms of plastic; however, studies indicate that even products and packaging made
9 from these resins often end up in landfills, incinerators, communities, or the natural
10 environment.²⁵ This is because MRFs in the United States cannot process the sheer volume of
11 single-use plastic that is submitted to recycling facilities on an annual basis.²⁶ The labor and cost
12 required to sort, melt, and reconstitute the approximately 33 million tons of single-use plastic
13 produced in the United States every year is insurmountable. A recent study by Greenpeace
14 revealed that U.S. recycling facilities can process no more than 23% of PET#1 plastic produced
15 each year and no more than 13% of HDPE#2.²⁷ More alarmingly, plastics #3-7, which are widely
16 considered to be low-value plastics, are rarely, if ever recycled. The Greenpeace study revealed
17 that MRFs can process only a negligible percentage of plastics #3-7.²⁸

18 35. Due to the availability of cheap raw materials to make “virgin plastic,” there is no
19 market demand for most types of recycled plastic. Using virgin plastic to package and make
20 products is cheaper than other materials because virgin plastic is derived from oil and natural gas.
21 Recognizing the market potential from plastic production, major oil and natural gas companies
22 are increasingly integrating their operations to include production of plastic resins and products,
23

24 ²⁵ *Facts and Figures about Materials, Waste and Recycling*, U.S. EPA,
25 <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data> (last accessed Dec. 7, 2020).

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

²⁷ John Hocevar, *supra* note 6.

²⁸ *Id.*

1 which further drives down the price of “virgin plastic.”²⁹ As a result, recycling facilities cannot
 2 afford the cost of breaking down and reconstituting recycled plastic because there are almost no
 3 buyers of the resulting plastic, pellets, or scrap materials.

4 36. Historically, recycling facilities in the United States shipped plastic scrap to China
 5 for recycling. But tons of that shipped plastic waste were never recycled. Instead, they were
 6 burned or entered into waterways, where they were carried into the ocean.³⁰ For years, tons of
 7 plastic that U.S. consumers dutifully sorted and transported to recycling facilities ultimately
 8 ended up in the ocean or the natural environment. For example, in 2015 China’s Yangtze river
 9 ranked highest for plastic entering the oceans.³¹ That year, 333,000 tons of plastic were deposited
 10 into the ocean from the Yangtze river, more than double the amount for the river with the next
 11 highest amount.³²

12 37. In February 2013, based on the high amounts of low-value and contaminated
 13 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort
 14 aimed at curtailing the amount of contaminated recyclables and waste that was being sent to
 15 China.³³ China began inspecting 70 percent of imported containers filled with recyclables and
 16 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic
 17
 18

19 ²⁹ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
 20 [https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-
 Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Dec. 7, 2020).

21 ³⁰ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
 22 NPR.ORG (Mar. 13, 2019, 4:28 PM ET),
 23 [https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-
 go-now-that-china-doesnt-want-it](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it) (last accessed Dec. 7, 2020); see also *Discarded: Communities
 on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, [https://wastetradestories.org/wp-
 content/uploads/2019/04/Discarded-Report-April-22.pdf](https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22.pdf) (last accessed Dec. 7, 2020).

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

26 ³² *Id.*

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

1 waste.³⁴ Despite manufacturers' and recyclers' awareness of China's refusal to accept low-value
 2 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By
 3 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.³⁵

4 38. In February 2017, in response to the continued shipment of low-value and
 5 contaminated plastic waste, China announced its National Sword policy, which banned the
 6 importation of certain solid waste and set strict contamination limits on recyclable material.
 7 Because of the National Sword policy, end markets for recycling plastics #3-7 have essentially
 8 vanished.³⁶ One year after China's National Sword Policy, China's plastics imports plummeted
 9 by 99 percent.³⁷ Recycling companies can no longer sell used plastic at prices that cover their
 10 processing cost, providing them with no incentive to do so.

11 39. The writing has been on the wall that China would refuse to accept low-value and
 12 contaminated plastic waste since 2013. Nonetheless, aware of consumers' interests in protecting
 13 the environment, Defendants have increased their labeling of Products as recyclable. Defendants
 14 have done so despite widespread acknowledgment that end markets for plastic waste have been
 15 shrinking and that the majority of plastic labeled as recyclable ends up in landfills, incinerators,
 16 communities, and the natural environment. Defendants have announced that they are working
 17 with their suppliers to achieve 100% recyclable, reusable, or industrially compostable packaging
 18 in all of their private brand products by 2025.³⁸ By seeking to label many of their private brand
 19

20 ³⁴ *Id.*

21 ³⁵ Christopher Joyce, *supra* note 30.

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

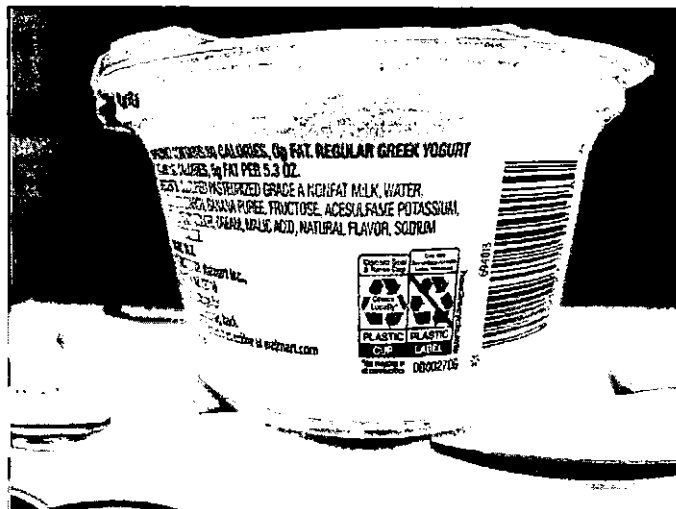
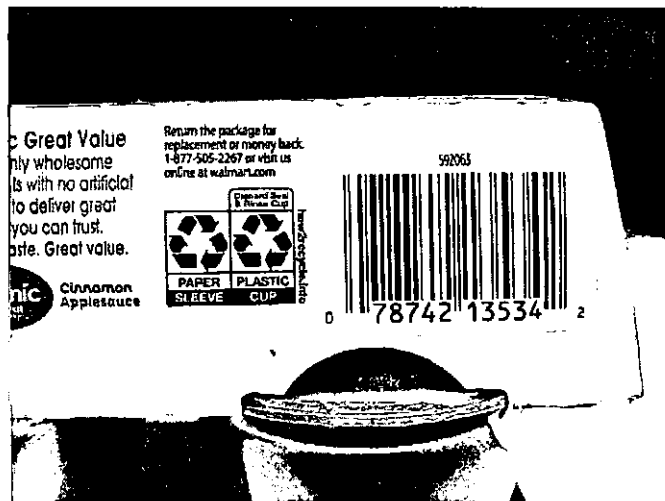
26 ³⁷ Cheryl Kats, *supra* note 36.

27 ³⁸ *Environmental Highlights*, WALMART, INC.,
 28 <https://corporate.walmart.com/esgreport/environmental#our-environmental-goals>, (last accessed
 Dec. 7, 2020); *see also* *Walmart Announces New Plastics Packaging Waste Reduction*
Commitments, WALMART, INC., [https://corporate.walmart.com/newsroom/2019/02/26/walmart-](https://corporate.walmart.com/newsroom/2019/02/26/walmart-announces-new-plastic-packaging-waste-reduction-commitments)
[announces-new-plastic-packaging-waste-reduction-commitments](https://corporate.walmart.com/newsroom/2019/02/26/walmart-announces-new-plastic-packaging-waste-reduction-commitments). (last accessed Dec. 7, 2020)

1 products as recyclable, and by announcing their initiatives to label their Products as recyclable to
2 consumers, Defendants are actively participating and controlling the false, misleading, and
3 deceptive practices alleged herein.

4 40. In their haste to lure customers to environmentally friendly products and
5 packaging, Defendants are making environmental marketing claims that are false, misleading, and
6 deceptive. The claims made by Defendants that the Products are recyclable are consistent and are
7 material to a reasonable consumer. Because the claims are false and misleading, ordinary
8 consumers are likely to be deceived by such representations.

9 41. Below are examples of recyclable representations on the labels of Products made
10 from plastics #3-7:



1 42. Products made from plastics #3-7 are not recyclable because such Products are
 2 rarely, if ever, recycled. The inability for MRFs in the United States to recycle plastics #3-7 is
 3 well documented.³⁹ According to survey data, less than 5% of polypropylene (“PP” or plastic #5)
 4 tubs are reprocessed into recyclable material.⁴⁰ The majority of MRFs in the United States group
 5 plastics #3-7 into bales of mixed plastic because such plastics have little value, especially when
 6 compared to plastics #1 and #2. Thus, MRFs do not sort individual materials, such as PP or
 7 polystyrene (“PS” or plastic #6), into separate bales. And since the value of plastics #3-7 is so
 8 low, there is no end market to reuse such plastic or convert such plastic into reusable material that
 9 can be used to manufacture or assemble other goods. Ultimately, the majority of plastics #3-7 are
 10 sent to the landfill. For example, ReThink Waste, a public agency that operates the Shoreway
 11 MRF in San Carlos, California stated that “plastics #3-7 are all versions of hard plastic that are
 12 very difficult to recycle,” because “there is currently no market for the material when it is
 13 deconstructed.”⁴¹ The Shoreway MRF continues to accept plastics #3-7 but states that the
 14 collected material is sent to the landfill.⁴²

15 43. Although MRFs may still accept plastics #3-7, the reality is that the Products are
 16 not recycled. One reason MRFs accept items even though they are not recyclable is due to
 17 pressure from local authorities to meet solid waste diversion goals. This phenomenon has been
 18 recognized by the FTC. In promulgating the most recent version of the Green Guides, the FTC
 19 stated (under the heading “Packages Collected for Public Policy Reasons but Not Recycled”),
 20 “The Commission agrees that unqualified recyclable claims for categories of products that
 21

22 ³⁹ John Hocevar, *supra* note 6; *America's 'recycled' plastic waste is clogging landfills, survey*
 23 *finds*, THE GUARDIAN, Feb. 18, 2020, [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds)
 24 [news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds](https://www.theguardian.com/us-news/2020/feb/18/americas-recycled-plastic-waste-is-clogging-landfills-survey-finds) (last
 25 accessed Dec. 7, 2020); *Americans' plastic recycling is dumped into landfills, investigation*
 26 *shows*, THE GUARDIAN, Jun. 21, 2019, [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills)
[news/2019/jun/21/us-](https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills)
[plastic-recycling-landfills](https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills) (last accessed Dec. 7, 2020); Gwynn Guilford, *A lot of US plastic isn't*
actually being recycling since China put up its Green Fence, QUARTZ, Sep. 16, 2013,
<https://qz.com/122003/plastic-recycling-china-green-fence/> (last accessed Dec. 7, 2020).

⁴⁰ John Hocevar, *supra* note 6.

⁴¹ *Id.* at p. 8.

⁴² *Id.*

1 municipal recycling programs collect, but do not actually recycle, may be deceptive. To make a
 2 non-deceptive unqualified claim, a marketer should substantiate that a substantial majority of
 3 consumers or communities have access to facilities that will actually recycle, not accept and
 4 ultimately discard, the product. As part of this analysis, a marketer should not assume that
 5 consumers or communities have access to a particular recycling program merely because the
 6 program will accept a product.”⁴³ Thus, although the Products may be accepted for recycling by
 7 some curbside programs, MRFs do not collect, sort, and separate such low-value plastics because
 8 there is no end market to reuse such items or convert them into reusable material

9 44. Because the Products are rarely, if ever, recycled, Defendants cannot make any
 10 recycling claims as to these Products. However, at a minimum, Defendants are required to
 11 clearly and prominently qualify recyclable claims to avoid deception about the availability of
 12 recycling programs and collection sites to consumers. 16 C.F.R. § 260.12(b). Under the Green
 13 Guides, marketers may qualify recyclable claims by stating the percentage of consumers or
 14 communities that have access to facilities that recycle the item. *Id.* § 260.12(b)(2). In the
 15 alternative, marketers may use qualifications that vary in strength depending on facility
 16 availability. *Id.* Thus, the strength of the qualification depends on the level of access to an
 17 appropriate facility capable of actually recycling the Product. A marketer may only make an
 18 unqualified recyclable claim if a substantial majority of consumers or communities have access to
 19 recycling facilities capable of recycling the items.⁴⁴ *Id.* § 260.12(b)(1). Because few, if any,
 20 consumers have access to recycling facilities capable of recycling the Products, Defendants must
 21 provide an unequivocally strong qualification for any recyclability claim regarding such Products.

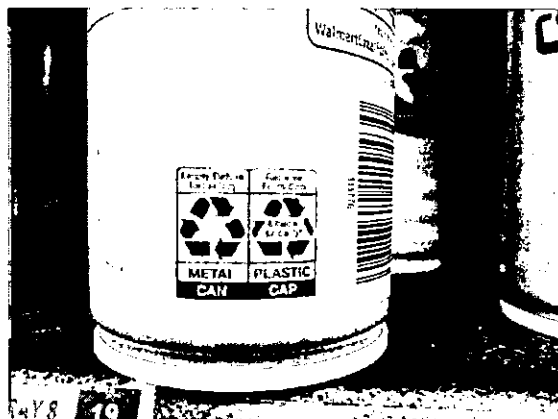
22 45. Here, Defendants provided no qualifications for some of the Products. For other
 23 Products, Defendants provided the same two fine print qualifications for each Product: “check
 24 locally” and “not recycled in all communities.” As an initial matter, the fine print is

25 _____
 26 ⁴³ FED. TRADE COMM’N, *The Green Guides Statement of Basis and Purpose*, (2012) *available at:*
 27 [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)
 28 [guides/greenguidesstatement.pdf](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf) (referenced in 77 Fed. Reg. 197, 62122 (Oct. 11, 2012)), at pp.
 174-175.

⁴⁴ A “substantial majority” means at least 60 percent. 16 C.F.R. § 260.12(b)(1).

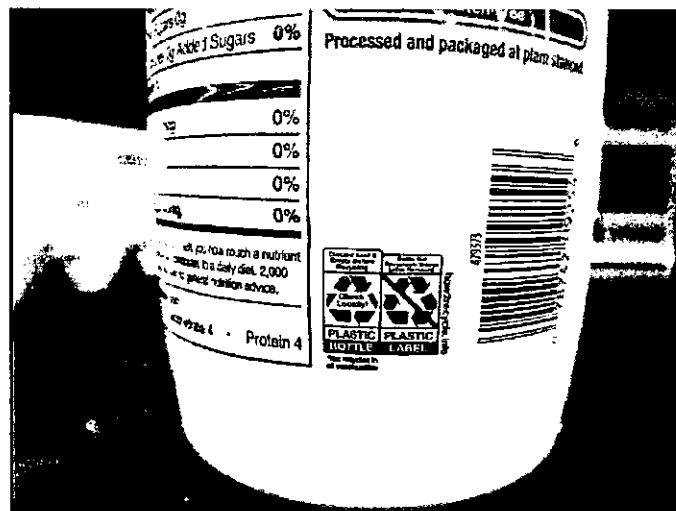
1 approximately 2-point font, making it difficult for consumers to notice, yet alone read. In
 2 addition, as stated above, a “check locally” disclaimer is per se deceptive under the Green Guides.
 3 *Id.*, § 260.12(d), Example 4. Moreover, the “not recycled in all communities” qualification does
 4 not satisfy the safe harbor examples in the Green Guides because it does not inform consumers of
 5 the limited availability of recycling programs for the Products. *Id.* A reasonable consumer is
 6 likely to believe that if their community has a recycling program, then the Products are likely
 7 recyclable in their community. By including the language “check locally” and “not recycled in
 8 all communities” together, Defendants are incorrectly implying that consumers need only check
 9 locally to determine whether recycling facilities exist in their community, not whether the
 10 recycling facilities in their community actually recycle the Products. The FTC has explicitly
 11 stated such an implication is deceptive. *See* 63 Fed. Reg. 84, 24244 (May 1, 1998); 16 C.F.R. §
 12 260.12(b)(2). Worse yet, even if a consumer followed Defendants’ directive to check locally to
 13 determine whether a facility actually recycled the Products, many recycling facilities (which are
 14 often operated by private companies) have no duty to provide such information and are unwilling
 15 to answer detailed consumer inquiries about their recycling capabilities. In sum, Defendants’
 16 recyclable representations on the Products are false, misleading, and deceptive to reasonable
 17 consumers.

18 46. Defendants also sell Products that do not contain a RIC and are therefore made
 19 from unidentified plastic. Nonetheless, Defendants also state that these Products are recyclable.
 20 Below is an example of a false, misleading, and deceptive label on a Product sold by Defendants
 21 that is made from an unidentified plastic:



1 47. Here, the unidentified plastic contains the fine print qualifications “check locally”
 2 and “not recycled in all communities.” These fine print qualifications are deceptive because even
 3 if a consumer understood the qualifications to mean that they are required to check with their
 4 local recycling facilities to determine whether the Products can be recycled, it is impossible for
 5 them to take such actions because there is no way for a consumer to determine what type of
 6 plastic resin the Products are made from. And even if a MRF was willing to answer a consumer’s
 7 questions, a consumer would not be able to ask whether an unidentified plastic material is
 8 recyclable. Without a RIC, a MRF could not accept the Product for recycling nor could it
 9 properly collect, sort, or segregate such Products from the waste stream. And since a MRF could
 10 not accept or sort the Product, there is no end market for unidentified plastics. In sum,
 11 representations that unidentified plastic Products are recyclable and that consumers need only
 12 “check locally” to determine whether the Products are recyclable are deceptive.

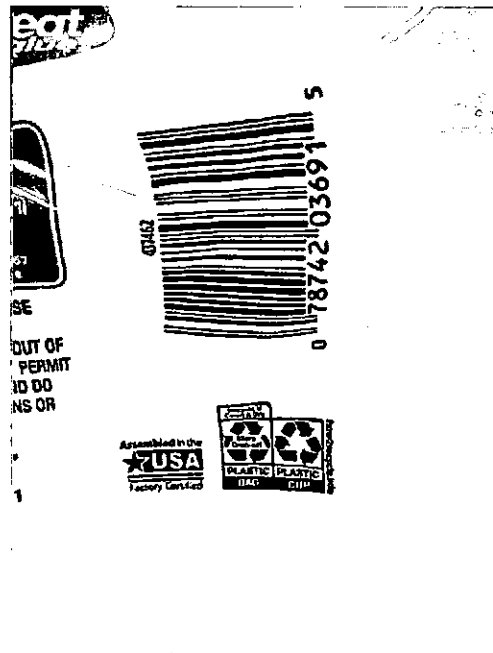
13 48. Some of Defendants’ Products are packaged in a shrink sleeve that prevent the
 14 Products from being recyclable. Below is an example of a recyclable representation on a Product
 15 packaged in a shrink sleeve:



25 49. These Products are not recyclable because the plastic shrink sleeve cannot be
 26 recycled. The Green Guides are clear: “if any component significantly limits the ability to
 27 recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable
 28 material, but because of its shape, size or some other attribute is not accepted in recycling

1 programs, should not be marketed as recyclable.” 16 C.F.R. § 260.12(d). Here, these Products
 2 contain a plastic shrink sleeve that is not recyclable and that is difficult and dangerous to remove.
 3 The shrink sleeves are wrapped tightly around the Products, thereby requiring consumers to use a
 4 knife or sharp object to cut the shrink sleeve free from the Products. Due to the difficulty in
 5 removing the shrink sleeves, most consumers are unwilling to remove the shrink sleeves from the
 6 Products prior to placing the Products in their recycling bins. And if consumers do not cut the
 7 shrink sleeve from the Products, recycling programs will not accept the Products for recycling,
 8 and therefore the Products will not be sorted nor are end markets available. Most consumers
 9 believe that if their municipality offers recycling services, then all products marketed as
 10 “recyclable” can be recycled. Thus, most consumers will place the Products in the recycling bin
 11 without removing the shrink sleeve under the false impression that the Products can be recycled,
 12 when the Products cannot in fact be recycled with the plastic shrink sleeve. Representing that
 13 Products packaged in a shrink sleeve are recyclable is therefore deceptive to reasonable
 14 consumers.

15 50. Lastly, Defendants sell numerous Products packaged in plastic film that contain a
 16 store drop-off representation despite the limited availability of such programs. Below is an
 17 example of a recyclable representation on such a Product:



1 51. These Products cannot be recycled by established recycling programs. Rather, the
2 packaging must be dropped off at participating stores. This is because plastic bags and film
3 cannot be separated for recycling. The Green Guides specifically warn about plastic trash bags:
4 “Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for
5 recycling, they are highly unlikely to be used again for any purpose. Even if the bag is
6 technically capable of being recycled, the claim is deceptive since it asserts an environmental
7 benefit where no meaningful benefit exists.” 16 C.F.R. § 260.3(c), Example 2. Although the fine
8 print representations on these Products communicate that the Products must be “dropped off” to
9 be recyclable, many of Defendants’ stores do not accept the Products for recycling. In the past,
10 California required supermarkets of a certain size to maintain a plastic carryout bag collection
11 bin, but that rule expired on January 1, 2020. See California Public Resources Code § 42257.
12 Consequently, many retail stores in California, including Defendants’ stores, no longer accept
13 plastic bags for drop-off recycling. For instance, according to an informal survey, 6 of 8 of
14 Defendants’ stores in South Orange County do not have takeback bins to recycle plastic film.
15 According to Defendants’ own data, they only provide access to in-store plastic bag and film
16 recycling bins in approximately half of their stores (Defendants maintain roughly 5,353 retail
17 stores nationwide, but only provide drop-off locations at approximately 2,900 locations).⁴⁵

18 52. In addition, a 2017 report on Film Recycling Investment found that only 7% of
19 retail bags that are available for recycling are returned by residents for recycling.⁴⁶ That report
20 further found that of the approximately 300 million pounds of plastic film that MRFs receive a
21 year, only 10 million pounds (approximately 3%) are able to be marketed due to the poor quality
22 of plastic film and the lack of recycling markets for such low-value plastic. Due to the lack of
23 recycling markets for plastic film, 93% of California MRFs do not even accept it, and the MRFs
24 that do accept it do not have the capacity to recycle large quantities of plastic film. Based on

25 _____
26 ⁴⁵ *2020 Environmental, Social and Governance Report*, WALMART, INC.,
27 <https://cdn.corporate.walmart.com/90/0b/22715fd34947927eed86a72c788e/walmart-esg-report-2020.pdf>, (last accessed Dec. 7, 2020).

28 ⁴⁶ *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION (2017), at p. 19.

1 these data, even if more consumers returned plastic bag film for drop-off recycling, California
2 MRFs do not have the capacity to sort and recycle it. Thus, the representation that these Products
3 are recyclable if dropped off fails to communicate the limited availability of both drop-off sites
4 and programs capable of actually recycling the Products in violation of the Green Guides.
5 Ultimately, Products packaged in plastic film are not accepted by most MRFs nor can they be
6 collected, sorted, or separated from the general waste stream. Consequently, there is no end
7 market to recycle such Products.

8 53. One of the major problems associated with mislabeling Products as recyclable is
9 that this can lead to contaminating the recycling stream with unrecyclable materials that will
10 hinder the ability of recycling facilities to process items that are legitimately recyclable. For
11 instance, according to the Recycling Partnership, “plastic bags cause MRF operators to shut down
12 the recycling line many times a day to cut off bags that have wrapped around equipment. This
13 maintenance shut down reduces throughput for a facility, raises cost of labor to sort materials and
14 maintain equipment, increases waste coming out of the MRF, and puts workers at risk of injury
15 when they are performing maintenance.”⁴⁷ By encouraging consumers to place the Products in
16 recycling bins, Defendants are contaminating the recycling stream with unrecyclable materials
17 that prevents legitimately recyclable materials from being recycled. Environmentally motivated
18 consumers who purchase the Products in the belief that they are recyclable are thus unwittingly
19 hindering recycling efforts.

20 54. Many environmentally motivated consumers purchase the Products from
21 Defendants based on the belief that the Products will be recycled. These consumers have no way
22 of knowing whether the Products are actually segregated from the general waste stream, cleaned
23 of contamination, or reused or converted into a material that can be reused or used in
24 manufacturing or assembling another item. These consumers place a high priority on
25 environmental concerns in general, and on the negative consequences regarding the proliferation
26

27 ⁴⁷ Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING
28 PARTNERSHIP, Apr. 2020, [https://recyclingpartnership.org/wp-content/uploads/2020/04/The-
Recycling-Partnership-WCCI-Report-April-2020-Final.pdf](https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership-WCCI-Report-April-2020-Final.pdf) at p. 13 (last accessed Dec. 7, 2020).

1 of plastic pollution in particular. Based on the labeling and advertising of Defendants' Products,
2 reasonable consumers believe that the Products are recyclable. Defendants' representations that
3 the Products are recyclable are thus material to reasonable consumers.

4 55. Greenpeace's mission is to protect the natural environment and expose
5 environmental harms to the public. Given that many consumers actively seek to purchase
6 recyclable products because they are environmentally conscious and reasonable consumers
7 believe that Products labeled as recyclable will likely be recycled, Defendants' false, misleading,
8 and deceptive recyclable claims on the Products have frustrated Greenpeace's mission.
9 Greenpeace has diverted significant resources and staff time in response to this frustration of
10 purpose by evaluating the problems associated with the proliferation of plastic pollution,
11 investigating Defendants' recyclable representations, publishing a report on Defendants'
12 recyclable label initiative, communicating with Defendants, and informing its supporters and the
13 public with respect to Defendants' false, misleading, and deceptive recycling labels.

14 56. Defendants are aware that the Products are not recyclable, including under their
15 own definition of recyclability, yet Defendants have not undertaken any effort to notify their
16 customers of the problem. Defendants' failure to disclose that the Products are not recyclable is
17 an omission of fact that is material to reasonable consumers.

18 FIRST CAUSE OF ACTION

19 **(Plaintiff Alleges Violations of California Business & Professions Code § 17200, 20 *et seq.* Based on Fraudulent Acts and Practices)**

21 57. Plaintiff incorporates by reference the allegations set forth above.

22 58. Under Business & Professions Code § 17200, any business act or practice that is
23 likely to deceive members of the public constitutes a fraudulent business act or practice.

24 59. Defendants have engaged and continue to engage in conduct that is likely to
25 deceive members of the public. This conduct includes, but is not limited to, representing that the
26 Products are recyclable.

1 65. The violation of any law constitutes an unlawful business practice under Business
2 & Professions Code § 17200.

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

7 67. Defendants' conduct also violates California Business & Professions Code
8 § 17500, which prohibits knowingly making, by means of any advertising device or otherwise,
9 any untrue or misleading statement with the intent to sell a product or to induce the public to
10 purchase a product. By misrepresenting that the Products are recyclable, Defendants are violating
11 Business & Professions Code § 17500.

12 68. Defendants' conduct also violates California Business & Professions Code
13 § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive, or
14 misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental
15 marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.*
16 Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a
17 product or package is recyclable. A product or package shall not be marketed as recyclable
18 unless it can be collected, separated, or otherwise recovered from the waste stream through an
19 established recycling program for reuse or use in manufacturing or assembling another item." 16
20 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above,
21 Defendants are violating Business & Professions Code § 17580.5.

22 69. By violating the FTC Act, Business & Professions Code §§ 17500 and 17580.5,
23 and the California Public Resources Code, Defendants have engaged in unlawful business acts
24 and practices which constitute unfair competition within the meaning of Business & Professions
25 Code § 17200.

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

28

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

4 77. Defendants' conduct also violates the policy of the Green Guides. The Green
5 Guides mandate that "[a] product or package shall not be marketed as recyclable unless it can be
6 collected, separated, or otherwise recovered from the waste stream through an established
7 recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R.
8 § 260.12(a). It further states that "[a]n item that is made from recyclable material, but because of
9 its shape, size or some other attribute is not accepted in recycling programs, should not be
10 marketed as recyclable." 16 C.F.R. § 260.12(d). As explained above, the Products cannot be
11 recycled or are rarely, if ever, recycled. Nonetheless, some recycling facilities may accept the
12 Products even though they send the Products to a landfill. The FTC has recognized that facilities
13 may accept Products for recycling even though they end up in a landfill because of pressure from
14 local authorities to meet solid waste diversion goals.⁴⁸ It is unfair for Defendants to make a
15 recyclable claim based on the fact that some recycling facilities may accept the Products, despite
16 the recycling facilities' inability to actually recycle the Products. Moreover, consumers believe
17 that products are recyclable when they are accepted by a recycling program, even if the recycling
18 facilities end up sending the products to a landfill. It is also unfair for Defendants to represent
19 that some Products are recyclable via store drop-off, without actually requiring a significant
20 amount of their retail stores to maintain a store drop-off bin. Taking advantage of consumer
21 perception in this manner violates the policy of the Green Guides.

22 78. Defendants' conduct, including failing to disclose that the Products will end up in
23 landfills, incinerators, communities, and the natural environment and not be recycled, is
24 substantially injurious to consumers. Such conduct has caused and continues to cause substantial
25 injury to consumers because consumers would not have purchased the Products but for
26 Defendants' representations that the Products are recyclable. Consumers are concerned about

27
28 ⁴⁸ FED. TRADE COMM'N, *supra* note 43.

1 environmental issues in general and plastic pollution in particular and Defendants' representations
2 are therefore material to such consumers. Misleading consumers causes injury to such consumers
3 that is not outweighed by any countervailing benefits to consumers or competition. Indeed, no
4 benefit to consumers or competition results from Defendants' conduct. Defendants gain an unfair
5 advantage over their competitors, whose advertising must comply with Cal. Pub. Res. Code §
6 42355.5, the FTC Act, Cal. Business & Professions Code § 17508, and the Green Guides. Since
7 consumers reasonably rely on Defendants' representations of the Products and injury results from
8 ordinary use of the Products, consumers could not have reasonably avoided such injury.

9 79. Although Defendants know that the Products are not ultimately recycled,
10 Defendants failed to disclose that fact to their customers.

11 80. By committing the acts alleged above, Defendants have engaged in unfair business
12 acts and practices which constitute unfair competition within the meaning of California Business
13 & Professions Code § 17200.

14 81. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
15 an award of monetary damages would not prohibit Defendants' unfair business acts and practices.

16 82. An action for injunctive relief is specifically authorized under California Business
17 & Professions Code § 17203.

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

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

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff has no adequate remedy at law and prays for judgment and relief
3 against Defendants as follows:

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

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

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

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

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

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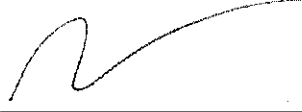
JURY DEMAND

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

Dated: December 14, 2020

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch (State Bar No. 213209)
Ryan Berghoff (State Bar No. 308812)
Meredyth Merrow (State Bar No. 328337)
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Attorneys for Plaintiff
GREENPEACE, INC.

EXHIBIT B1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Howard Hirsch (SBN 213209) Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 TELEPHONE NO.: (415) 913-7800 FAX NO.: (415) 759-4112 ATTORNEY FOR (Name): Greenpeace, Inc.		FOR COURT USE ONLY FILED BY FAX ALAMEDA COUNTY December 16, 2020 CLERK OF THE SUPERIOR COURT By Cheryl Clark, Deputy CASE NUMBER: RG20082964	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME: Rene C. Davidson Courthouse		CASE NUMBER: JUDGE: DEPT:	
CASE NAME: Greenpeace, Inc. v. Walmart, Inc.		CASE NUMBER:	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input checked="" type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Three; Cal. Business & Professions Code § 17200
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 14, 2020
Howard Hirsch

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT B2



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
 - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
 - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____ An Initial Case Management Conference is scheduled for:

Date: _____ Time: _____ Department: _____

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- Court mediation Judicial arbitration
 Private mediation Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF)

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

PLAINTIFF/PETITIONER:	CASE NUMBER.:
DEFENDANT/RESPONDENT:	

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT)

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR DEFENDANT)

EXHIBIT B3

Lexington Law Group
Attn: Hirsch, Howard
503 Divisadero Street
San Francisco, CA 94117

Walmart, Inc.

**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

<p>Greenpeace, Inc. Plaintiff/Petitioner(s) vs.</p>	<p>No. <u>RG20082964</u> NOTICE OF HEARING</p>
<p>Walmart, Inc. Defendant/Respondent(s) (Abbreviated Title)</p>	

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 02/10/2021 TIME: 09:00 AM DEPARTMENT: 21
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:
DATE: 03/10/2021 TIME: 09:00 AM DEPARTMENT: 21
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 21 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6937. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 21.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.


All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 21.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 21 by e-mail at Dept21@alameda.courts.ca.gov or by phone at (510) 267-6937.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 01/06/2021

Chad Finke Executive Officer / Clerk of the Superior Court

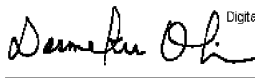
By  ^{Digital}

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 01/07/2021.

By  ^{Digital}

Deputy Clerk

EXHIBIT B4

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Howard Hirsch (SBN 213209) Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 TELEPHONE NO.: (415) 913-7800 FAX NO. (Optional): (415) 759-4112 E-MAIL ADDRESS (Optional): hhirsch@lexlawgroup.com ATTORNEY FOR (Name): Greenpeace, Inc.	<small>FOR COURT USE ONLY</small> FILED BY FAX ALAMEDA COUNTY January 06, 2021 CLERK OF THE SUPERIOR COURT By Shabra Iyamu, Deputy CASE NUMBER: RG20082964
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NUMBER: RG 20-082964
PLAINTIFF/PETITIONER: Greenpeace, Inc. DEFENDANT/RESPONDENT: Walmart, Inc.	Ref. No. or File No.:
PROOF OF SERVICE OF SUMMONS	

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents):
3. a. Party served (specify name of party as shown on documents served):
Walmart, Inc.
- b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
C T Corporation System, 702 SW 8th Street, Bentonville, AR 72716
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): _____ (2) at (time): _____
 - b. **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): _____
 - (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: Greenpeace, Inc.	CASE NUMBER: RG 20-082964
DEFENDANT/RESPONDENT: Walmart, Inc.	

5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): December 23, 2020 (2) from (city): San Francisco, CA
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. **by other means** (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify):
- c. as occupant.
- d. On behalf of (specify): Walmart, Inc.

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: Alexis Pearson
- b. Address: 503 Divisadero Street, San Francisco, CA 94117
- c. Telephone number: (415) 913-7800
- d. The fee for service was: \$
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) a registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.:
- (iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: January 5, 2021

Alexis Pearson
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

1 Eva M. Weiler (SBN: 233942)
Kevin Underhill (SBN: 208211)
2 Steve Vieux (SBN: 315133)
SHOOK, HARDY & BACON L.L.P.
3 Jamboree Center
5 Park Plaza, Suite 1600
4 Irvine, California 92614-2546
Telephone: 949-475-1500
5 Facsimile: 949-475-0016
eweiler@shb.com
6 kunderhill@shb.com
svieux@shb.com

7 Attorneys for Defendant
8 WALMART INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 GREENPEACE, INC.,

13 Plaintiff,

14 vs.

15 WALMART, INC.; DOES 1 through 25,
16 inclusive,

17 Defendants.

) Case No.: 3:21-cv-00754

) Judge: Hon.

) Ctrm.:

) **DECLARATION OF ZACHARY
FREEZE IN SUPPORT OF NOTICE
OF REMOVAL BY DEFENDANT
WALMART INC.**

) [Filed concurrently with Notice of
Removal; Civil Cover Sheet; and
Corporate Disclosure Statement]

) Complaint filed: December 16, 2020

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22 I, Zachary Freeze, declare as follows:

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24 1. The statements made in this declaration are correct based upon my
25 personal knowledge. Figures contained in this declaration are based upon my review
26 and analysis of Walmart Inc. (“Walmart”) records kept in the ordinary course of
27 business, made in a timely manner by those persons with knowledge, and as part of
28 Walmart’s regular practice. I am over the age of 18 and would competently testify to

1 the matters in this declaration if called to do so. Data in this declaration is current as
2 of the time the declaration was prepared.

3 2. I am the Senior Director of Sustainability Strategic Initiatives at
4 Walmart. I have held this position for over four years. I manage the team that is
5 responsible for, among other things, developing and implementing Walmart’s
6 sustainable packaging goals.

7 3. Walmart operates 280 stores in California. Those stores are serviced by
8 multiple Walmart distribution centers that hold products before they are distributed to
9 stores.

10 4. I have reviewed the Complaint. I understand Plaintiff asserts the
11 products at issue are those a) made of, or packaged in, plastic resins 3, 4, 5, 6, or 7, b)
12 sold under one of Walmart’s private brands, and c) labeled as recyclable. The
13 products Walmart sells that meet these criteria are referred to in this declaration as the
14 “Subject Products.” I further understand Plaintiff has specifically identified eleven
15 products in the Complaint as non-exclusive examples of the Subject Products. Those
16 eleven products are referred to in this declaration as the “Footnote 5 Products.”

17 5. I understand the Complaint asks the Court to prohibit Walmart from
18 selling the Subject Products. If the Court were to enter such an order, Walmart would
19 lose the value of the Subject Products it has in stock. For each of the Subject Products
20 currently in stock, the lost value would include, among other things, the wholesale
21 cost Walmart has already incurred and the retail price Walmart would receive. The
22 Subject Products are sold by Walmart with identical recyclability claims elsewhere in
23 the United States. Therefore, an order that prohibits Walmart from selling the Subject
24 Products in California would necessarily cause Walmart to lose the value of the
25 Subject Products throughout the United States.

26 6. There are over 54,000 individual units of the Footnote 5 Products on
27 hand in Walmart stores in California and the Walmart distribution centers that supply
28 California stores. The total wholesale cost of these California on-hand Footnote 5

1 Products is over \$81,000. The total retail price of these California on-hand Footnote 5
2 Products is over \$154,000.

3 7. The Subject Products consist of hundreds of products.

4 8. Of the hundreds of Subject Products, I identified a sample of ten
5 products. The sampled products are referred to in this declaration as the “Sampled
6 Products.” The Sampled Products do not include the Footnote 5 Products. The
7 Sampled Products are:

8 a. Equate Infant Gas Relief Drops | UPC 68113176943

9 b. Equate Antacid 160 count / 2 pack | UPC 68113136216

10 c. Equate Diaper Rash Ointment 16 ounce | UPC 68113103117

11 d. Equate Nighttime Mucus Relief 6 ounce | UPC 68113127530

12 e. Great Value Ultra Strong Toilet Paper 18 pack | UPC 7874221070

13 f. Great Value Slider Bags / Freezer / Quart 75 count | UPC
14 07874234962

15 g. Great Value Ultra Paper Towels 12 pack | UPC 7874221085

16 h. Great Value Wet Mop Wipes 12 count | UPC 07874215563

17 i. Equate Beauty Lavender Bubble Bath | UPC 68113135383

18 j. Great Value Frozen Pancakes 24 count | UPC 7874212187

19 9. There are over 49,000 individual units of the Sampled Products on hand
20 in Walmart stores in California and the Walmart distribution centers that supply
21 California stores. The total wholesale cost of these California on-hand Sampled
22 Products is over \$321,000. The total retail price of these California on-hand Sampled
23 Products is over \$575,000.

24 10. There is also expense associated with removing the Subject Products
25 from Walmart stores that includes, among other things, return fees, communication
26 fees, destruction fees, transportation, handling, and processing. The expense to
27 physically remove the Subject Products from Walmart’s 280 stores in California
28 exceeds \$75,000. This amount is in addition to the value of the products themselves.

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11. There is also expense associated with changing the labeling on private brand products sold in Walmart stores that includes, among other things, artwork design, printing, and personnel costs. The expense to change the recyclability labeling on the Subject Products exceeds \$75,000. This amount is in addition to the value of the products themselves.

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

Executed on 1/28/2021 | 11:39 CST in Bentonville, Arkansas.

Zachary Freeze

ZACHARY FREEZE

General Information

Case Name	Greenpeace, Inc. v. Walmart, Inc.
Court	U.S. District Court for the Northern District of California
Date Filed	Fri Jan 29 00:00:00 EST 2021
Judge(s)	MAXINE M. CHESNEY
Federal Nature of Suit	Statutes: Other Statutory Actions [890]
Docket Number	3:21-cv-00754
Status	Closed
Parties	Greenpeace, Inc.; Walmart Inc.