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13
 14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **COUNTY OF LOS ANGELES**

16
 17
 18 THE LAST BEACH CLEANUP,

19 Plaintiff,

20 v.

21 GELSON'S MARKETS,

22 Defendant.

Case No. 22STCV18216

COMPLAINT

1 Plaintiff The Last Beach Cleanup (“Plaintiff” or “LBC”), based on information, belief,
2 and investigation of its counsel, except for information based on knowledge, hereby alleges:

3 **INTRODUCTION**

4 1. The problems associated with plastic pollution are increasing on a local, national,
5 and global scale. This affects the amount of plastic in the ocean, in freshwater lakes and streams,
6 on land, and in landfills. The United States (U.S.) Department of Energy reported that 95% of
7 plastic waste in the U.S. is not recycled and 45 million tons per year were burned or became trash
8 and litter in 2019.¹ According to a recent study, at least 1.2 to 2.5 million tons of plastic trash
9 from the United States were dropped on lands, rivers, lakes and oceans as litter, were illegally
10 dumped, or were shipped abroad and then not properly disposed of.² In light of the magnitude of
11 plastic pollution in California and elsewhere, the California voters ratified SB270 pursuant to
12 Proposition 67, which prohibits stores from selling or distributing a reusable grocery bag made
13 from plastic film unless the bag is “recyclable in this state.” Cal. Pub. Res. Code §
14 42281(b)(1)(C); *see also id.*, § 42283.

15 2. Nevertheless, defendant Gelson’s Markets (“Defendant”) sells and distributes
16 reusable plastic grocery bags made from plastic film (the “Products”) to California consumers
17 even though the Products are not recyclable in California. Defendant’s sales and distribution of
18 the Products in California are therefore an unlawful business practice.

19 3. There can be no serious question that the Products are not recyclable in California
20 (or anywhere for that matter). In the solid waste industry, it is widely understood that, in order
21 for a product to be considered “recyclable,” it must meet at least three criteria. First, consumers
22 must have access to recycling facilities that accept the product to recycle it. Second, recycling
23 facilities must be capable of sorting the product from the general waste stream into the correct
24

25 ¹ Milbrandt, et al., *Quantification and Evaluation of Plastic Waste in the United States*, 183 RES.,
26 CONSERVATION AND RECYCLING (August 2022),
<https://www.sciencedirect.com/science/article/abs/pii/S0921344922002087>.

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

1 material bale. Third, there must be end markets to purchase and to convert the material contained
2 in that bale into a new product.

3 4. These basic prerequisites for recyclability have been codified in several places in
4 California law. See, e.g., Cal. Pub. Res. Code § 40180 (recycling means “the process of
5 collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become
6 solid waste, and returning them to the economic mainstream in the form of raw material for new,
7 reused or reconstituted products which meet the quality standards necessary to used in the
8 marketplace.”); Cal. Bus. & Prof. Code § 42281(a)(4)(D) and Cal. Bus. & Prof. Code § 17580.5
9 (cross-referencing Federal Trade Commissions’ Green Guides, which themselves require
10 accessibility, sortability and end markets); Cal. Pub Res. Code § 42355.51(d)(2) (product or
11 packing is only recyclable if “collected for recycling by recycling programs for jurisdictions that
12 collectively encompass at least 60 percent of the population of the state,” “sorted into defined
13 streams for recycling processes” by facilities that collectively serve at least 60 percent of the
14 California population, and “with the defined streams sent to and reclaimed at the reclaiming
15 facility.”).

16 5. Because consumers do not have access to recycling programs that accept the
17 Products, because the Products cannot be separated or recovered from the general waste stream
18 and sorted into the correct materials bale by material recovery facilities (“MRFs”), and because
19 there are no end markets to reuse the Products or to convert the Products into a material that can
20 be reused or used in manufacturing or assembling another item, the Products are not recyclable.
21 Accordingly, Defendant’s sale of the Products is unlawful.

22 6. Under California’s Environmental Marketing Claims Act (the “EMCA”), “Any
23 person who represents in advertising or on the label or container of a consumer good that the
24 consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural
25 environment, through use of such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth
26 friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’
27 ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other
28 like term, or through the use of a chasing arrows symbol or by otherwise directing a consumer to

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

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

27 8. LBC has requested that Defendant substantiate that the Products are recyclable.
28 However, Defendant has not provided any documentation in written form substantiating the

1 recycling representations on the labels of the Products. Nor has Defendant provided any
2 competent and reliable scientific evidence, such as tests, analyses, research, or studies that have
3 been conducted and evaluated in an objective manner by qualified persons, to substantiate that the
4 Products are recyclable. Defendant thus violated and continues to violate California's Unfair
5 Competition Law, Business and Professions Code § 17200, et seq., based on unlawful and unfair
6 acts and practices because Defendant sells Products advertised or labeled as recyclable but has
7 not and cannot substantiate that the Products are recyclable.

8 9. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
9 an award of monetary damages would not prohibit Defendant's unlawful sale and distribution of
10 the Products in California. If an injunction is not granted, Plaintiff will suffer irreparable injury
11 because it will continue to spend time and money countering Defendant's claims. In addition,
12 plastic pollution caused by Defendant's sale of the Products in California will continue to
13 negatively harm California waters, coasts, communities, and marine life. California consumers
14 may also contaminate the recycling stream by placing the Products in their recycling bins, thereby
15 hindering the recycling of legitimately recyclable products. Since plastic bags contaminate paper
16 bales that California exports to Indonesia and other countries with weaker environmental laws,
17 the sale of the Products in California negatively harms waters, coasts, and communities around
18 the world. Thus, Plaintiff seeks an order enjoining Defendant's acts of unlawful and unfair acts
19 and practices in California, which serves the public interest by protecting the environment and the
20 integrity of the recycling stream and by preventing Defendant from gaining an unfair advantage
21 over companies that lawfully sell their products.

22 PARTIES

23 10. Plaintiff The Last Beach Cleanup is a non-profit, public interest organization
24 established pursuant to section 501(c)(3) of the Internal Revenue Code, and headquartered in
25 California. LBC was established in 2019 and works to reduce plastic pollution, to protect public
26 spaces and wildlife from myriad harms related to plastic pollution, and to ensure that consumers
27 are not misled by environmental marketing claims related to plastic. LBC has standing to bring
28 this action because Defendant's actions of unlawfully selling the Products and of failing to

1 substantiate its claims that the Products are recyclable have frustrated LBC’s mission to protect
2 the natural environment around the world, to promote legitimate recycling efforts, to promote
3 sustainable business practices, and to ensure that consumers are not misled by unsubstantiated
4 greenwashing claims. Defendant’s unlawful and unfair business practices have caused LBC to
5 divert resources to respond to Defendant’s actions. Thus, LBC has lost money or property and
6 has suffered an injury in fact due to Defendant’s actions of unlawfully selling the Products and of
7 failing to substantiate its recycling claims on the Products.

8 11. LBC’s main purpose is to lead programs and projects to reduce plastic pollution in
9 the environment. The environmental, social and economic harms of plastic pollution are broad
10 and deep, causing: (1) misery and death to over 100 species; (2) toxins to leach into the
11 environment and our food chain; (3) vulnerability to extreme weather events because storm drains
12 are clogged with plastic; (4) costs to taxpayers for litter collection; (5) blight on our landscapes;
13 (6) spread of disease vectors such as dengue fever; and (7) harms to human health, wildlife and
14 the natural environment. LBC pursues its purpose of reducing plastic pollution in the
15 environment by performing research and surveys and leading initiatives to reduce plastic
16 pollution. For example, in an effort to reduce plastic pollution LBC advocates for the end of
17 plastic waste exports, installation of drinking water refills stations in public spaces, better
18 designed products and packaging, and reusable products for food service. In 2019, LBC was
19 awarded a National Geographic Grant to develop the Global Cities Preventing Plastic Pollution
20 program and the founder of LBC, Jan Dell, was named a National Geographic Explorer.³

21 12. LBC has engaged in a wide range of research topics related to plastic recycling
22 and pollution and has collaborated with other non-governmental organizations on publication of
23 the research results. Research topics include, but are not limited to, plastic waste exports, plastic
24 recyclability and claims by product companies, plastic waste and recyclability regulations, and
25 harms to species and ecosystems. LBC has provided research and expertise in support of the
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28 ³ See, e.g., <https://www.lastbeachcleanup.org/globalcities>.

1 following published reports: (1) The Real Truth About the U.S. Plastic Recycling Rate,⁴ (2)
2 Circular Claims Fall Flat,⁵ (3) Deception by Numbers: Claims about Chemical Recycling Don't
3 Hold Up to Scrutiny,⁶ (4) All Talk and No Recycling: An Investigation of the U.S. "Chemical
4 Recycling" Industry,⁷ (5) Recycle by Mail is a Major Climate Fail,⁸ (6) The Dirty Truth About
5 Disposable Foodware: The Mismatched Costs and Benefits of U.S. Foodservice Disposables and
6 What to Do About Them,⁹ and (7) Breaking the Plastic Wave: Top Findings for Preventing
7 Plastic Pollution.¹⁰

8 13. LBC has also conducted a wide range of surveys related to plastic recycling
9 capacity and plastic pollution, including but not limited to: (1) 2020 U.S. Post-Consumer Plastic
10 Recycling Survey,¹¹ (2) 2020 California Consumer Plastic Recycling Survey,¹² (3) Global Fast
11
12

13 ⁴ *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and Figures*, THE LAST
14 BEACH CLEANUP (May 4, 2022),
https://www.lastbeachcleanup.org/files/ugd/dba7d7_5ae55cdb66d241239e8ae123c96ec9b8.pdf.

15 ⁵ John Hocoavar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
16 GREENPEACE REPORTS (Feb. 18, 2020), <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>.

17 ⁶ Ivy Schlegel, *Deception by the Numbers: American Chemistry Council Claims about Chemical
18 Recycling Investments Fail to Hold up to Scrutiny*, GREENPEACE REPORTS (Sep. 9, 2020),
https://www.greenpeace.org/usa/wp-content/uploads/2020/09/GP_Deception-by-the-Numbers-3.pdf.

19 ⁷ Denise Patel, et al., *all Talk and No Recycling: An Investigation of the U.S. "Chemical
20 Recycling" Industry*, GAIA (2020), [https://www.no-burn.org/wp-content/uploads/2021/11/All-
21 Talk-and-No-Recycling_July-28-1.pdf](https://www.no-burn.org/wp-content/uploads/2021/11/All-Talk-and-No-Recycling_July-28-1.pdf).

22 ⁸ *Fact Sheet: "Recycle" By Mail is a Major Climate Fail*, THE LAST BEACH CLEANUP (June 28,
23 2021),
https://www.lastbeachcleanup.org/files/ugd/dba7d7_f186aca8c80642f885125557f427ecde.pdf.

24 ⁹ Ellie Moss & Rich Grousset, *The Dirty Truth about Disposable Foodware: The Mismatched
25 Costs and Benefits of U.S. Food Service Disposables and What to Do About Them*, OVERBROOK
26 FOUNDATION (Feb. 2020), [https://90e2bb46-39d9-49f9-a040-
27 b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf](https://90e2bb46-39d9-49f9-a040-b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf).

28 ¹⁰ Simon Reddy & Winny Lau, *Breaking the Plastic Wave: Top Findings for Preventing Plastic
Pollution*, PEW (July 23, 2020), accessible at [https://www.pewtrusts.org/en/research-and-
analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings](https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings).

¹¹ *2020 U.S. Post-Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/usplasticrecyclingsurvey> (last accessed June 1, 2022).

¹² *2020 California Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/california> (last accessed June 1, 2022).

1 Food Plastic Survey,¹³ (4) Harms of Plastic Exports,¹⁴ (5) Companies Committed to Stopping
2 Plastic Waste Exports,¹⁵ (6) County Laws on Plastic Products,¹⁶ and (7) Fires at Plastic Recycling
3 Facilities.¹⁷ LBC invests significant time each month to keep those surveys and others
4 continuously updated.

5 14. LBC spends a significant amount of time and resources to ensure that consumers
6 are not misled by environmental marketing claims. LBC is heavily engaged in consumer
7 education and addresses the local and global impacts of plastic pollution by communicating its
8 findings through multimedia outlets and peer-reviewed publications. These include print and
9 television media, websites and blogs, lectures, and school outreach. LBC's website presents a
10 portion of its research, surveys, analyses, and articles.¹⁸

11 15. Since LBC was founded in 2019, a top priority effort has been to research and to
12 physically survey the validity of the "store dropoff" program promoted for the recycling of plastic
13 bag and film waste by consumers. LBC has invested time and resources to investigate each part
14 required for a successful program, including (a) product labeling and recycled content claims, (b)
15 presence and quality of content collected in store dropoff bins, (c) purchase and transport of
16 materials collected at stores, (d) reprocessing of collected plastic bag and film waste, and (e) the
17 market value for post-consumer plastic film waste. For product labeling, LBC has performed
18 extensive store surveys taking photos of products and purchasing products as examples. LBC has
19 investigated the source of material claimed as recycled content in products. For stored dropoff
20 bins, LBC has investigated retail stores throughout California to determine if (1) store dropoff

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22 ¹³ *Global Fast Food Plastic Survey Map*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/nofastfoodplastic> (last accessed June 1, 2022).

23 ¹⁴ *Harms of Plastic Exports*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/plastic-waste-exports> (last accessed June 1, 2022).

24 ¹⁵ *End Plastic Waste Exports*, THE LAST BEACH CLEANUP, [https://www.lastbeachcleanup.org/end-](https://www.lastbeachcleanup.org/end-plastic-waste-exports)
25 [plastic-waste-exports](https://www.lastbeachcleanup.org/end-plastic-waste-exports) (last accessed June 1, 2022).

26 ¹⁶ *Country Laws on Plastic Products*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/countrylaws> (last accessed June 1, 2022).

27 ¹⁷ *Fires at Plastic Recycling Facilities*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/fires> (last accessed June 1, 2022).

28 ¹⁸ *See generally*, <https://www.lastbeachcleanup.org/> (last accessed June 1, 2022).

1 bins exist and (2) whether the bins contain clean plastic or contamination. LBC performs weekly
2 surveys of takeback bins and speaks with store personnel regarding the absence of bins and high
3 contamination rates. LBC has made and publicly posted a google map of the presence or absence
4 of store takeback bins and the level of contamination.¹⁹ For purchase and transport of materials
5 collected at stores, LBC has physically surveyed the bales of materials stacked behind stores
6 throughout California to determine if colored post-consumer plastic bags and films are included
7 in clear plastic pallet wrap bales waiting for pickup. For reprocessing of collected plastic bag and
8 film waste, LBC has researched the plastic film reprocessors in California and throughout the
9 U.S. and has documented the plastic bale quality requirements for purchasing of collected
10 materials. For end markets, LBC monitors the monthly value of post-consumer plastic films and
11 continuously contacts numerous recycling businesses to determine if there are buyers for post-
12 consumer plastic film waste.

13 16. LBC's efforts to investigate plastic bag and film recycling have been documented
14 by Waste Dive in "The Unfulfilled Promise of Plastic Film Recycling"²⁰ and Treehugger in
15 "Don't Believe the 'Store Drop-Off' Label When It Comes to Plastic Packaging."²¹

16 17. LBC has spent substantial time and money surveying California sellers of reusable
17 plastic bags in California, including Defendant. Among other actions, LBC has visited several of
18 Defendant's stores in California, purchased and taken photos of the Products, investigated the
19 validity of the recycling claims on the Products, and requested that Defendant substantiate its
20 recycling claims. LBC's work has formed the basis of a letter that was issued from California's
21 Statewide Commission on Recycling Markets & Curbside Recycling (the "California Recycling
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23 ¹⁹ See *Survey of Drop-Off Bins for Plastic Bags/Films*, accessible at
24 https://www.google.com/maps/d/u/1/edit?mid=1lk_m0YjrEnmNzm7V0KuxDLaSVKuP5tdV&ll=33.68287230031227%2C-117.75662650000001&z=10 (last accessed May 31, 2022).

25 ²⁰ Karine Vann, *The Unfulfilled Promises of Plastic Film Recycling* (Jan. 4, 2021),
26 <https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/>.

27 ²¹ Katherine Martinko, *Don't Believe the 'Store Drop-Off' Label When it Comes to Plastic*
28 *Packaging* (Updated June 15, 2021), <https://www.treehugger.com/plastic-packaging-store-drop-off-label-5188913>.

1 Commission”) to CalRecycle requesting enforcement of California law with respect to recyclable
2 claims on reusable plastic bags in California, including the Products. A portion of LBC’s survey
3 work and purchase of plastic film products was used to create the Appendix of 80 examples that
4 accompanied the California Recycling Commission’s letter.²²

5 18. LBC is particularly concerned with the integrity of the recycling stream and
6 contamination to paper bales that causes plastic pollution in other countries. The California
7 Legislature enacted SB270 to ensure that any reusable grocery bags made from plastic film in
8 California are recyclable in the state. And the Legislature enacted section 17580 of the EMCA to
9 ensure that companies maintain adequate records that products marketed as recyclable are
10 actually recyclable and otherwise beneficial to the environment, and to ensure public access to
11 such records. Without an injunction requiring Defendant to comply with these laws, LBC will
12 continue to divert resources to investigate and counteract Defendant’s violations of law to ensure
13 that Defendant’s Products do not (1) harm the integrity of the recycling stream by preventing
14 legitimately recyclable material from being recycled and (2) contaminate paper bales that are
15 exported to Indonesia and other countries where the plastic bags are polluted to the environment
16 or burned causing toxic contamination of the food supply.²³ In addition, plastic pollution caused
17 by Defendant’s sale of the Products in California and the resulting harms to California waters,
18 coasts, communities, and marine life will continue to negatively impact LBC’s efforts to protect
19 these critical resources. California residents may also contaminate the recycling stream by
20 unknowingly placing the Products in their recycling bins, preventing legitimately recyclable
21 products from being recycled. Thus, relief from this Court is in the public interest by protecting
22 the environment and the integrity of the recycling stream and is necessary to further LBC’s

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25 ²² See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:
26 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>). The
27 Products are identified in the accompanying Appendix on page 75.

28 ²³ Jindrich Petrlík, et al., *Plastic Waste Flooding Indonesia Leads to Toxic Chemical Contamination of the Food Chain* (December 2019), accessible at
https://www.researchgate.net/publication/338225066_Plastic_waste_flooding_Indonesia_leads_to_toxic_chemical_contamination_of_the_food_chain (last accessed May 31, 2022).

1 mission of prohibiting companies from touting the environmental benefits of their products
2 without substantiating the validity of such environmental benefits.

3 19. Defendant Gelson’s Markets is a California corporation with its principal place of
4 business in Santa Fe Springs, CA. Defendant manufactures, distributes, and sells the Products in
5 California.

6 **JURISDICTION AND VENUE**

7 20. This Court has jurisdiction over all causes of action asserted herein pursuant to the
8 California Constitution, Article VI, Section 10, because this case is a cause not given by statute to
9 other trial courts. This Court also has jurisdiction over certain causes of action asserted herein
10 pursuant to Business & Professions Code (“B&P”) §§ 17203 and 17204, which allow
11 enforcement in any Court of competent jurisdiction.

12 21. This Court has jurisdiction over Defendant because it is a business entity that does
13 sufficient business, has sufficient minimum contacts in California, or otherwise intentionally
14 avails itself of the California market through the distribution, sale, marketing, or use of the
15 Products in California and/or by having such other contacts with California so as to render the
16 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
17 play and substantial justice.

18 22. Venue in the County of Los Angeles is proper under B&P § 17203 and Code of
19 Civil Procedure §§ 395 and 395.5 because this Court is a court of competent jurisdiction and the
20 Products are sold throughout this County.

21 **LEGAL BACKGROUND**

22 23. The California Legislature has concluded that “littered plastic products have
23 caused and continue to cause significant environmental harm and have burdened local
24 governments with significant environmental cleanup costs.” Cal. Pub. Res. Code § 42355. In
25 light of this finding, SB270—which was ratified by California voters as Proposition 67—
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1 prohibits stores in California from selling or distributing reusable grocery bags made from plastic
2 film unless the bag is “recyclable in this state.” Cal. Pub. Res. Code § 42281(b)(1)(C).²⁴

3 24. A product or packaging is only recyclable in California (or elsewhere) if it meets
4 three criteria. First, consumers must have access to recycling facilities that accept the product to
5 recycle it. Second, recycling facilities must be capable of sorting the product from the general
6 waste stream into the correct material bale. Third, there must be end markets to purchase that
7 material bale to convert the material contained in that bale into a new product. These three basic
8 prerequisites for recyclability have been codified in several different places in California law.
9 Under the Public Resources Code, recycling is defined as “the process of collecting, sorting,
10 cleansing, treating, and reconstituting materials that would otherwise become solid waste, and
11 returning them to the economic mainstream in the form of raw material for new, reused, or
12 reconstituted products which meet the quality standards necessary to be used in the marketplace.”
13 Cal. Pub. Res. Code § 40180. This definition identifies the three criteria required for an item to
14 be recyclable: (1) collecting; (2) sorting; and (3) returning [reconstituted materials] to the
15 economic mainstream in the form of raw materials for new, reused or constituted products.
16 Similarly, the Green Guides state “[i]t is deceptive to misrepresent, directly or by implication, that
17 a 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). This definition also encompasses the three prongs of recyclability:
21 (1) accessibility of recycling programs (“through an established recycling program”);
22 (2) sortation for recovery (“collected, separated, or otherwise recovered from the waste stream”);
23 and (3) end markets (“for reuse or use in manufacturing or assembling another item”).

24 _____
25 ²⁴ The California Public Resources Code also required that plastic bags must be “accepted for
26 return at stores subject to the at-store recycling program [commencing with Section 42250] for
27 recycling.” Cal. Pub. Res. Code § 42281(b)(1)(C). Stores such as Defendant were required to
28 “establish an at store recycling program pursuant to this chapter that provides an opportunity for a
customer of the store to return to the store clean plastic carryout bags.” *Id.*, § 42251. However,
the section requiring retail locations to maintain an at store recycling program expired on January
1, 2020. *Id.*, § 42257.

1 25. The Sustainable Packaging for The State of California Act of 2018 (the
2 “Sustainable Packaging Act”), Cal. Pub. Res. Code § 42370.2, includes similar recycling
3 standards for food service packaging. Under the Sustainable Packaging Act, to determine
4 whether food service packaging is recyclable, CalRecycle must determine whether the food
5 service packaging: (1) is regularly collected, separated, and cleansed for recycling by recycling
6 service providers; (2) is regularly sorted and aggregated into defined streams for recycling
7 processes; (3) is regularly processed and reclaimed or recycled with commercial recycling
8 services; (4) regularly becomes feedstock that is used in the production of new products; and (5)
9 is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value. Cal.
10 Pub. Res. Code § 42370.2(d)(1)-(6). On April 29, 2022, CalRecycle published the List of
11 Approved Food Service Packaging, which does not include a single plastic item, such as reusable
12 grocery bags made from plastic film.²⁵

13 26. The California Public Resources Code further states that product or packaging is
14 only recyclable if “collected for recycling by recycling programs for jurisdictions that collectively
15 encompass at least 60 percent of the population of the state,” “sorted into defined streams for
16 recycling processes” by facilities that collectively serve at least 60 percent of the California
17 population, and “with the defined streams sent to and reclaimed at a reclaiming facility.” Cal.
18 Pub. Res. Code § 42355.51(d)(2). This latter statute was added by the recently passed SB 343.
19 While some of that law’s restrictions do not take effect until CalRecycle (California’s recycling
20 agency) completes a material characterization study and promulgates associated regulations, SB
21 343 confirms that, in order to be considered recyclable in California, a product or packaging must
22 actually be recycled in practice for a meaningful portion of the population. And it is clear from
23 work already performed by the California Recycling Commission that the Products do not meet
24 this standard.²⁶ In fact, the California Recycling Commission has determined that only three

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26 ²⁵List of Approved Food Service Packaging, CALRECYCLE, published Apr. 29, 2022,
<https://calrecycle.ca.gov/packaging/statefoodservice/list/> (last accessed May 31, 2022).

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

1 types of plastic are recyclable in California, and plastic film is not one of the three types of plastic
2 identified.²⁷

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

16 28. The Legislature of the State of California has also declared that “it is the public
17 policy of the state that environmental marketing claims, whether explicit or implied, should be
18 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers
19 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. Under
20 EMCA, “Any person who represents in advertising or on the label or container of a consumer
21 good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial
22 to, the natural environment, through use of such terms as ‘environmental choice,’ ‘ecologically
23 friendly,’ ‘earth friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally
24 sound,’ ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any
25 other like term, or through the use of a chasing arrows symbol or by otherwise directing a

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

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

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

27 **BACKGROUND FACTS**

1 30. In the past decade humans across the globe have produced 8.3 billion metric tons
2 of plastic, most of it in disposable products and packaging that ends up as trash or pollution.²⁸ Of
3 the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only
4 9% of that has been recycled.²⁹ A third of the single-use plastic generated ends up in the natural
5 environment, accounting for 100 million metric tons of plastic pollution in 2016.³⁰ Current
6 estimates suggest that there are over 150 million tons of plastics in the ocean.³¹

7 31. While California had a goal to achieve a 75% recycling rate by 2020, California’s
8 recycling rate is actually in decline. According to CalRecycle, in 2014 California’s recycling rate
9 was 50%, dropping to 47% in 2015 and down to 44% in 2016.³² And according to the California
10 Recycling Commission, the state’s recycling rate dropped to 37% in 2019.³³

11 32. Plastic shopping bag pollution in particular is receiving widespread international
12 attention as illustrated on the cover of the June 2018 edition of National Geographic headlined
13 “Planet or Plastic?”³⁴ Americans throw away an estimated 100 billion plastic bags a year, and the
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17 ²⁸ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
18 Jul. 19, 2017, [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf)
19 [content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf) (last accessed
20 Dec. 7, 2020).

21 ²⁹ *Id.*

22 ³⁰ *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019,
23 https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf at p. 6 (last
24 accessed Dec. 7, 2020).

25 ³¹ *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR
26 FOUNDATION AND MCKINSEY & COMPANY (2016), [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/ElleMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf)
27 [content/uploads/2018/05/ElleMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/ElleMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf) at p.
28 17 (last accessed Dec. 7, 2020).

³² *State of Disposal and Recycling in California for Calendar Year 2018*, CALRECYCLE, Apr. 6,
2020 at Pg. 26, accessible at <https://www2.calrecycle.ca.gov/Publications/Details/1662> (last
accessed May 31, 2022).

³³ California Statewide Commission on Recycling Markets and Curbside Recycling Policy
Recommendations, CALRECYCLE,
<https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5>
(last accessed Feb. 14, 2021).

³⁴ <https://www.nationalgeographic.com/environment/planetorplastic/>.

1 average bag takes up to 1,000 years to break down.³⁵ In 2018 in the United States, 4.2 million
2 tons of post-consumer plastic bag, sack, and wrap waste were generated, but only 0.42 million
3 tons were recycled.³⁶

4 33. Recent investigations into the proliferation of plastic pollution plaguing the natural
5 environment have revealed that the plastics industry has known for decades that most products
6 and packaging made from plastic would not be recycled. On September 11, 2020, National
7 Public Radio (“NPR”) published an investigation illustrating the plastic industry’s decades-long
8 awareness that recycling would not keep plastic products or packaging out of landfills,
9 incinerators, communities, or the natural environment.³⁷ In a 1974 speech, one industry insider
10 stated “there is serious doubt that [recycling plastic] can ever be made viable on an economic
11 basis.”³⁸ Larry Thomas, former president of the Society of the Plastic Industry (known today as
12 the Plastics Industry Association), told NPR that “if the public thinks that recycling is working,
13 then they are not going to be as concerned about the environment.”³⁹ The NPR investigative
14 report details the length and expense that the plastics industry went to deceive consumers that
15 plastic was easily recyclable, despite knowledge that the cost of recycling would never be
16 economical. Similarly, a recent Canadian Broadcasting Corporation news report describes that
17 even the recycling logo was used as a marketing tool to improve the image of plastics after
18 environmental backlash in the 1980s.⁴⁰ “There was never an enthusiastic belief that recycling

21 ³⁵ [https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/
22 plastic_bag_facts.html](https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html)

23 ³⁶ J. Meert, et al., Impact of Plastic Bag Bans on Retail Return Polyethylene Film Recycling
Contamination Rates and Speciation, *Waste Management* 135 (2021) 234-242.

24 ³⁷ Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*.
NPR.ORG (Sep. 11, 2020, 5:00 AM), [https://www.npr.org/2020/09/11/897692090/how-big-oil-
25 misled-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled) (last accessed Dec. 7, 2020).

26 ³⁸ *Id.*

27 ³⁹ *Id.*

28 ⁴⁰ *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23,
2020, [https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-
more-plastic-industry-experts-say-1.5735618](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 was ultimately going to work in a significant way,” yet the plastics industry spent millions on ads
2 to deceive the public as to the efficacy of recycling.⁴¹

3 34. The problems associated with single-use plastics pollution in oceans and the
4 natural environment are well-documented. The staggering amount of plastic pollution
5 accumulating in the environment is accompanied by an array of negative side effects. For
6 example, plastic debris is frequently ingested by marine animals and other wildlife, which can be
7 injurious, poisonous, and deadly.⁴² Floating plastic is also a vector for invasive species,⁴³ and
8 plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed
9 by humans and other animals.⁴⁴ Plastic litter on the streets and in and around our parks and
10 beaches also degrades the quality of life for residents and visitors. Scientists have also discovered
11 that plastic releases large amounts of methane, a powerful greenhouse gas, as it degrades.⁴⁵ Thus,
12 plastic pollution contributes to global climate change, which affects California in the form of
13 extreme drought, sea level rise, and more frequent and severe wildfires.⁴⁶

14 35. Due to the availability of cheap raw materials to make “virgin plastic,” there is
15 essentially no market demand for most types of recycled plastic. Virgin plastic is derived from
16 oil and natural gas and has a higher quality than recycled plastic. Recognizing the market
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18 ⁴¹ *Id.*

19 ⁴² 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 ⁴³ *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_Invasive_Species_Topic_Paper.pdf)
25 [files/2017_Invasive_Species_Topic_Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf) (last accessed Dec. 7, 2020).

26 ⁴⁴ 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).

⁴⁵ 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).

⁴⁶ *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 potential from plastic production, major oil and natural gas companies have greatly expanded
2 their petrochemical operations to increase production of plastic resins and products, which drives
3 down the price of virgin plastic.⁴⁷ As a result, using virgin plastic to produce plastic products or
4 packaging is cheaper than using recycled plastic. Recycling facilities no longer have an incentive
5 to collect, sort, clean and reprocess plastic waste because there are almost no buyers of the
6 resulting plastic, pellets, or other scrap materials.

7 36. Plastics are not inert like metal and glass. There are thousands of different plastics,
8 each with its own composition and characteristics.⁴⁸ Plastic products can have toxic additives,
9 absorb chemicals, and can be cross-contaminated during collection and recycling. According to a
10 2021 report published by the Canadian Government, toxicity risks in recycled plastic prohibit
11 “the vast majority of plastic products and packaging produced” from being recycled into food
12 grade packaging.⁴⁹

13 37. Historically, waste management and recycling companies in the United States
14 shipped plastic scrap to China and other countries in the Far East for recycling. But millions of
15 pounds of that exported plastic waste was never recycled.⁵⁰ Instead, this plastic was burned or
16 dumped into waterways, where it was carried into the ocean.⁵¹ For years, tons of plastic that U.S.

17 _____
18 ⁴⁷ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
19 [https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf)
20 [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 ⁴⁸ *Types of Plastic: How Many Kinds of Plastics are There?* PLASTICSMAKEITPOSSIBLE.COM (last
22 updated Aug. 2, 2018), [https://www.plasticmakeitpossible.com/about-plastics/types-of-](https://www.plasticmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/)
23 [plastics/professor-plastics-how-many-types-of-plastics-are-there/](https://www.plasticmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/) (last accessed May 31, 2022).

24 ⁴⁹ *Assessing the State of Food Grade Recycled Resin in Canada & the United States*, STINA
25 (2021) at Pg. 4,
26 https://www.plasticmarkets.org/jsfcontent/ECCC_Food_Grade_Report_Oct_2021_jsf_1.pdf (last
27 accessed May 31, 2022).

28 ⁵⁰ Kara Lavender Law, et al. *The United States’ contribution of plastic waste to land and ocean*,
SCI. ADV., Oct. 30, 2020, Vol. 6, no. 44, <https://advances.sciencemag.org/content/6/44/eabd0288>
(last accessed Feb 24, 2021).

⁵¹ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
NPR.ORG (Mar. 13, 2019, 4:28 PM ET),
[https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it)
[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://www.no-burn.org/wp->

1 consumers dutifully sorted and transported to recycling facilities ultimately ended up in the ocean
2 or the natural environment. For example, in 2015 China’s Yangtze River ranked highest for
3 plastic entering the oceans.⁵² That year, 333,000 tons of plastic were deposited into the ocean
4 from the Yangtze River, more than double the amount for the river with the next highest
5 amount.⁵³

6 38. In February 2013, based on the high amounts of low-value and contaminated
7 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort
8 aimed at curtailing the amount of contaminated “recyclables” and waste that was being sent to
9 China.⁵⁴ China began inspecting 70 percent of imported containers filled with “recyclables” and
10 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic
11 waste.⁵⁵ Despite manufacturers’ and recyclers’ awareness of China’s refusal to accept low-value
12 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By
13 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.⁵⁶

14 39. In February 2017, in response to the continued shipment of low-value and
15 contaminated plastic waste, China announced its National Sword policy, which banned the
16 importation of certain solid waste and set strict contamination limits on recyclable material.
17 Because of the National Sword policy, to the extent they ever existed at all, end markets for
18 plastic film such as the Products have essentially vanished.⁵⁷ One year after China’s National

19 _____
20 <content/uploads/2022/02/Report-July-12-2019-Spreads-no-marks-1.pdf> (last accessed May 31,
21 2022).

22 ⁵² Laurent C.M. Lebreton, et al., *River plastic emissions to the world’s oceans*, NAT. COMMUN.
23 Jun. 7, 2017, 8:15611, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467230/> (last accessed
24 Dec. 7, 2020).

25 ⁵³ *Id.*

26 ⁵⁴ *What Operation Green Fence Has Meant for Recycling*, WASTE 360,
27 <https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling> (last
28 accessed Dec. 7, 2020).

⁵⁵ *Id.*

⁵⁶ Christopher Joyce, *supra* note 27.

⁵⁷ Liz Zarka, *Recycling’s Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,
<https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>

1 Sword Policy, China's plastics imports plummeted by 99 percent.⁵⁸ Following enactment of the
2 National Sword policy other countries in the Far East followed suit by banning imports of low-
3 value and contaminated plastics that had long been polluting their environments.⁵⁹ In May 2019,
4 187 countries decided to significantly restrict international trade in plastic scrap and waste to help
5 address the improper disposal of plastic pollution, through the Basel Convention Plastic Waste
6 Amendments.⁶⁰ The Basel Convention prohibits export of mixed plastic waste to countries who
7 are not members of the Organization for Economic Co-operation and Development.⁶¹ Due to
8 increased regulations and restrictions on importing plastic waste, waste management and
9 recycling companies can no longer sell many types of used plastic at prices that cover their
10 transportation and processing costs, providing them with no incentive to do so.

11 40. Defendant continues to sell and distribute the Products in California even though
12 they are not recyclable in this state (or anywhere else for that matter). Defendant has done so
13 despite widespread acknowledgment that end markets for plastic waste, and in particular plastic
14 film, have been shrinking and that the majority of plastic film labeled as recyclable in California

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16 (last accessed Dec. 7, 2020); see also Cheryl Katz., *Piling Up: How China's Ban on Importing*
17 *Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019,
[https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling)
18 [recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling) (last accessed Dec. 7, 2020).

19 ⁵⁸ Cheryl Katz, *supra* note 40.

20 ⁵⁹ *Why Some Countries Are Shipping Back Plastic Waste*, BBC News,
<https://www.bbc.com/news/world-48444874> (last accessed February 9, 2021); see also
21 *International Policies Affecting Global Commodity Markets*, Cal Recycle,
<https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies> (last accessed February 9,
2021).

22 ⁶⁰ *New International Requirements For The Export And Import of Plastic Recyclables And Waste*,
U.S. EPA, last updated February 17, 2021, [https://www.epa.gov/hwgenerators/new-international-](https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#:~:text=the%20Basel%20Convention,-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste)
23 [requirements-export-and-import-plastic-recyclables-and-](https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#:~:text=the%20Basel%20Convention,-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste)
24 [waste#:~:text=the%20Basel%20Convention,-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste](https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#:~:text=the%20Basel%20Convention,-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste) (last accessed
25 February 24, 2021).

26 ⁶¹ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their*
Disposal, open for signature Mar. 23, 1989, adopted May 5, 1992, U.N.T.S. vol. 1673,
27 Amendments to Annexes II, VII and IX, *Plastic Waste Amendments*, effective Jan. 1, 2021,
[http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/842](http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx)
28 [6/Default.aspx](http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx) (last accessed Feb. 24, 2021).

1 and other regions in the United States ends up in landfills, incinerators, communities, and the
2 natural environment.

3 41. Under SB270, the Products may not be sold unless they are “recyclable in this
4 state.” Cal. Pub. Res. Code § 42281(b)(1)(C); *see also id.*, § 42283. Because the Products are not
5 recyclable, the Products may not be sold in California.

6 42. According to their labeling, the Products are comprised of either high-density
7 polyethylene film (#2 HDPE plastic) or low-density polyethylene film (#4 LDPE plastic). As the
8 California Recycling Commission recently concluded, only three plastic item types are recyclable
9 in California: Plastic #1 PET Bottles without shrink sleeves or other non-recyclable components,
10 Plastic #2 HDPE bottles (natural) without shrink sleeves or other non-recyclable components, and
11 Plastic #2 HDPE bottles (color) without shrink sleeves or non-recyclable components.⁶² The
12 California Recycling Commission therefore determined that the Products are not recyclable in
13 California for curbside recycling.

14 43. Notably, in addition to several unqualified recyclable representations, the labels of
15 the Products themselves include a request that the consumer “return [the Products] to a
16 participating store for recycling” or a statement that, “This bag is recyclable in your supermarket
17 bin.” There are several problems with relying on consumers to return the Products to a store for
18 recycling. First, most consumers will not see past the multiple unqualified recycling
19 representations on the Products and will simply place the Products in their recycling bins for
20 curbside recycling collection. Indeed, the California Recycling Commission has determined that:
21 (1) flexible plastic bags are a top source of contamination in curbside recycling bins; and (2) more
22 than half of Californians think plastic bags are accepted in their curbside recycling program,
23 regardless of whether that is true.⁶³ Second, very few drop-off bins are offered by Defendant to
24 California consumers, and very few are available generally. In the past, California required
25

26 ⁶² California’s Statewide Commission on Recycling Markets and Curbside Recycling Policy
27 Recommendations (“California Recycling Report”), Submitted June 25, 2021, at p. 94, accessible
28 at <https://www.calrecycle.ca.gov/markets/commission> (last accessed February 14, 2022).

⁶³ California Recycling Report, pp. 105-9.

1 supermarkets of a certain size to maintain a plastic carryout bag collection bin, but that rule
2 expired on January 1, 2020. *See* Cal. Pub. Res. Code § 42257. Consequently, many retail stores
3 in California, including many of Defendant’s stores, no longer accept plastic bags for drop-off
4 recycling. Therefore, even those few consumers who understand that they need to return the
5 Products to a store for recycling, and who then make the effort to do so, will be hard-pressed to
6 find a collection bin. For example, according to BagandFilmRecycling.org, there are two
7 locations in the City of Los Angeles that have a store drop-off bin.⁶⁴ Third, it is unclear whether
8 the few Products that may be returned to in-store collection bins are actually recycled, particularly
9 since plastic bags collected in a store bin are likely to be colored and contaminated (both when
10 dropped off in the bin, and from other materials deposited in the bin) and are unlikely to meet the
11 quality specifications of those few plastic film recyclers that exist. There is very little capacity to
12 recycle plastic film in California or anywhere else, and colored, contaminated plastic film is not a
13 desirable material for any processor.⁶⁵ The limited opportunity for a consumer to return a Product
14 to a store for potential recycling by a plastic film processor does not make the Product “recyclable
15 in this state” as required by SB270.

16 44. Based on LBC’s investigation, the California Recycling Commission recently
17 determined that the use of the chasing arrows symbol, any variation of the word “recyclable,” or
18 “Store Drop-Off” recycling representations on plastic bags and films runs afoul of California
19 labeling laws.⁶⁶ The California Recycling Commission found:

20 Flexible plastic bags and film are a major source of contamination in curbside recycling
21 bins. The flexible plastic materials are harming curbside recycling systems by clogging

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23 ⁶⁴ <https://bagandfilmrecycling.org/> (last accessed May 31, 2022) (This website is maintained by
24 the Plastic Division of the American Chemistry Council and the American Recyclable Plastic Bag
Alliance, industry groups which, among other activities, lobby for preemption of bans and fees on
plastic bags.)

25 ⁶⁵ The California Recycling Commission found that, based on a survey of plastic film processors
26 in California and Nevada, there is only capacity to recycle about 3% of the plastic film that is
generated as waste in California. California Recycling Report, p. 106.

27 ⁶⁶ Letter Dated December 3, 2021 from the Commission to Rachel Machi-Wagoner, available at,
28 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>, (last
accessed Feb. 18, 2022).

1 machinery in material recovery facilities (MRFs) and fiber processors. There is not a
2 comprehensive store takeback system for plastic bags or film in California. In MRFs, the
3 plastic bags and film contaminate paper and cardboard bales and lower the quality and
4 material value of the paper bales. Flexible plastic bags and films that depict the word
5 ‘recycle’ or the chasing arrows recycling symbol cause consumer confusion and
6 contribute to contamination.

7 45. The California Recycling Commission requested that California’s existing laws be
8 enforced by requiring retailers and product manufacturers to remove the word “recycle,
9 “recyclable,” and/or the recycling symbol from plastic bags and plastic films. It further stated
10 that the recyclable labels used on many plastic bags and films in California are not legal and
11 contribute to consumer confusion and contamination. In addition, the California Recycling
12 Commission specifically identified the “Store Drop-Off” statement as problematic because there
13 is not a comprehensive takeback system in California. The California Recycling Commission
14 stated, “California law (Cal. Bus. & Prof. Code § 17580 and Cal. Pub. Res. Code § 42355.5) and
15 the Green Guides (16 C.F.R. § 260.2) require substantiation for recycling claims such as this,”
16 and “it is our opinion that this claim is not provable. This text should be eliminated from [plastic
17 bags].” The California Recycling Commission enumerated 80 examples of plastic bags or film
18 that illegally contained a recycling representation, and specifically identified the Products as one
19 of those examples.⁶⁷

20 46. An industry-sponsored labeling organization, How2Recycle, recently stated that
21 the ability of the Store Drop-Off stream to alleviate the packaging industry’s end-of-life
22 challenges with flexible packaging is limited.⁶⁸ How2Recycle is an organization created by
23 industry to promote a standardized labeling system for packaging that its members may pay a fee
24 to use. How2Recycle stated:

25 _____
26 ⁶⁷ See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:
27 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>). The
28 Products are identified in the accompanying Appendix on page 75.

⁶⁸ *REPORT: The Future of Store Drop-Off Recyclability*, HOW2RECYCLE (August 10, 2020),
<https://how2recycle.info/news/2020/report-the-future-of-store-drop-off-recyclability>.

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

11 47. A 2017 report on Film Recycling Investment found that only 7% of retail bags that
12 are available for recycling are returned by residents for recycling.⁶⁹ That report further found that
13 of the approximately 300 million pounds of plastic film that reprocessing facilities receive a year,
14 only 10 million pounds (approximately 3%) are able to be marketed due to the poor quality of
15 plastic film and the lack of recycling markets for such low-value plastic. According to the
16 California Recycling Commission, a survey of plastic film processors in California and nearby
17 Nevada showed that there is only capacity to recycle about 3% of California's plastic film
18 waste.⁷⁰ Based on these data, even if more consumers returned plastic film for drop-off recycling,
19 there is not market demand or plastic film processing capacity to recycle it. Due to the lack of
20 recycling markets for plastic film, 93% of California MRFs do not even accept it, and the
21 reprocessing facilities that do accept it do not have the capacity to recycle large quantities of
22 plastic film.⁷¹ Ultimately, the Products are not accepted by most MRFs nor can they be collected,
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25 ⁶⁹ *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION
(2017), at p. 19.

26 ⁷⁰ California's Statewide Commission on Recycling Markets and Curbside Recycling, submitted
27 June 25, 2021, at p. 106, accessible at <https://calrecycle.ca.gov/markets/commission/> (last
28 accessed May 31, 2022).

⁷¹ *Id.*

1 sorted, or separated from the general waste stream. And there is no end market to recycle such
2 Products in California.

3 48. The repurposing of material used to make one product into a new product or
4 material fully “closes the loop” of the recycling process (hence the commonly used and widely
5 recognized “chasing arrows” symbol for recycling). The color and quality of these material bales
6 plays a major role in whether that material will be ultimately recycled. For instance, colored
7 plastic film is not wanted by processors who seek to make clear plastic pellets for manufacturing
8 of new products and highly contaminated material bales are not wanted by processors due to
9 harms caused to equipment and the production of low-quality materials and products.⁷²

10 49. A major problem caused by selling the Products as recyclable is contamination of
11 legitimate recycling streams. For instance, according to the Recycling Partnership, “plastic bags
12 cause MRF operators to shut down the recycling line many times a day to cut off bags that have
13 wrapped around equipment. This maintenance shut down reduces throughput for a facility, raises
14 cost of labor to sort materials and maintain equipment, increases waste coming out of the MRF,
15 and puts workers at risk of injury when they are performing maintenance.”⁷³

16 50. On April 13, 2022, pursuant to California law, Plaintiff requested that Defendant
17 substantiate the recycling claims on the Products and provide the other information required by
18 Cal. Bus. & Prof. Code § 17580(a). Defendant is required to provide its substantiation to any
19 member of the public upon request. Cal. Bus. & Prof. Code § 17580(b). Defendant has not
20 provided any documentation substantiating its representations.

21 51. LBC has engaged in good-faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.

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25 ⁷² Karine Vann, *The Unfulfilled Promises of Plastic Film Recycling* (Jan. 4, 2021),
26 [https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-
coronavirus/592503/](https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/).

27 ⁷³ 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).

1 343. *Id.*, §§ 17580(a)(5) and (a)(6). In addition, EMCA requires that companies maintain the
2 following records in written form supporting the validity of their recyclable representations: (1)
3 the reasons why a company believes the representation to be true; (2) any significant adverse
4 environmental impacts directly associated with the production, distribution, use, and disposal of
5 the consumer good; (3) any measures that are taken by the company to reduce the environmental
6 impacts directly associated with the production, distribution, and disposal of the consumer good;
7 and (4) violations of any federal, state, or local permits directly associated with the production or
8 distribution of the consumer good. *Id.*, § 17580(a)(1)-(4). The California Legislature declared its
9 intent that the information and documentation supporting the validity of any environmental
10 marketing claims shall be fully disclosed to the public, and information and documentation
11 maintained pursuant to Cal. Bus. & Prof. Code § 17580 must be furnished to any member of the
12 public upon request. *Id.*, § 17580(b), (d).

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

21 58. On April 13, 2022, pursuant to California law, Plaintiff requested that Defendant
22 substantiate the recycling claims on the Products and provide the other information required by
23 Cal. Bus. & Prof. Code § 17580(a). Defendant is required to provide its substantiation to any
24 member of the public upon request. Cal. Bus. & Prof. Code § 17580(b). Defendant has not
25 provided any documentation substantiating its representations. By failing to substantiate the
26 validity of its recycling representations with respect to the Products, Defendant is violating Cal.
27 Bus. & Prof. Code § 17580(a) and the Green Guides.

28

1 environmental benefits of the Products. By illegally selling the Products, and by failing to
2 substantiate that the Products are recyclable, Defendant's conduct far outweighs the utility, if any,
3 of such conduct.

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

19 66. Defendant's conduct also violates the substantiation policy of EMCA. Under
20 EMCA, "Any person who represents in advertising or on the label or container of a consumer
21 good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial
22 to, the natural environment, through use of such terms as 'environmental choice,' 'ecologically
23 friendly,' 'earth friendly,' 'environmentally friendly,' 'ecologically sound,' 'environmentally
24 sound,' 'environmentally safe,' 'ecologically safe,' 'environmentally lite,' 'green product,' or any
25 other like term, or through the use of a chasing arrows symbol or by otherwise directing a
26 consumer to recycle the consumer good, shall maintain in written form in its
27 records...information and documentation supporting the validity of the representation." Cal. Bus.
28 & Prof. Code § 17580(a). The California Legislature declared its intent that the information and

1 documentation supporting the validity of any environmental marketing claims shall be fully
2 disclosed to the public, and information and documentation maintained pursuant to Cal. Bus. &
3 Prof. Code § 17580 must be furnished to any member of the public upon request. *Id.*, § 17580(b),
4 (d). Plaintiff requested substantiation on April 13, 2022, which Defendant has not provided. It is
5 unfair for Defendant to withhold information it is mandated to disclose pursuant to statute.

6 67. Defendant's conduct also violates the substantiation policy of the Green Guides.
7 The Green Guides require marketers to ensure that their claims are supported by a reasonable
8 basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined as competent
9 and reliable scientific evidence, such as "tests, analyses, research, or studies that have been
10 conducted and evaluated in an objective manner by qualified persons and are generally accepted
11 in the profession to yield accurate and reliable results." *Id.* "Such evidence should be sufficient
12 in quality and quantity based on standards generally accepted in the relevant scientific fields,
13 when considered in light of the entire body of relevant and reliable scientific evidence, to
14 substantiate that each of the marketing claims is true." *Id.* It is unfair for Defendant to represent
15 that the Products are recyclable without a reasonable basis.

16 68. It is also unfair for Defendant to represent that the Products are recyclable via store
17 drop-off, without actually requiring its retail stores to maintain any store drop-off bins.

18 69. By committing the acts alleged above, Defendant has engaged in unfair business
19 acts and practices which constitute unfair competition within the meaning of Cal. Bus. & Prof.
20 Code § 17200.

21 70. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
22 an award of monetary damages would not prohibit Defendant's unlawful sale and distribution of
23 the Products in California. If an injunction is not granted, Plaintiff will suffer irreparable injury
24 because it will continue to spend money and resources informing the public that Defendant's
25 Products are not recyclable. In addition, plastic pollution caused by Defendant's sale of the
26 Products in California will continue to negatively harm California waters, coasts, communities,
27 and marine life. California consumers may also contaminate the recycling stream by placing the
28 Products in their recycling bins, thereby hindering the recycling of legitimately recyclable

1 products. Thus, Plaintiff seeks an order enjoining Defendant's acts of unlawful and unfair
2 business practices in California, which serves the public interest by protecting the environment
3 and the integrity of the recycling stream and by preventing Defendant from gaining an unfair
4 advantage over companies that lawfully sell their products as recyclable.

5 71. An action for injunctive relief is specifically authorized under California Cal. Bus.
6 & Prof. Code § 17203.

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

8 **PRAYER FOR RELIEF**

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

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

14 B. That the Court order Defendant to cease and refrain from selling the Products in
15 California unless they are recyclable;

16 C. That the Court order Defendant to comply with its obligations to substantiate that
17 the Products are recyclable;

18 D. That the Court order Defendant to implement whatever measures are necessary to
19 remedy the unlawful and unfair business acts or practices described in this Complaint;

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

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

24 **JURY DEMAND**

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

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Dated: June 3, 2022

Respectfully submitted,

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