

Multiple Documents

Part	Description
1	80
2	Declaration
3	Proposed Order

1 LEXINGTON LAW GROUP, LLP
Patrick Carey (Bar No. 308623)
2 Mary Haley Ousley (Bar No. 332711)
503 Divisadero Street
3 San Francisco, CA 94117
Telephone: (415) 913-7800
4 Facsimile: (415) 759-4112
pcarey@lexlawgroup.com
5 mhousley@lexlawgroup.com

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

10 Attorneys for Plaintiff
11 ELISA BARGETTO

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

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

18 Plaintiffs,

19 v.

20 WALGREEN CO.,

21 Defendant

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

22
23 **PLAINTIFF’S MOTION FOR CLASS**
24 **CERTIFICATION; MEMORANDUM OF**
25 **POINTS AND AUTHORITIES**

26 Date: June 11, 2024

27 Time: 2:00 p.m.

28 Dept. Courtroom 9, 19th Floor

Judge: Hon. Trina L. Thompson

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION 1

STATEMENT OF ISSUES TO BE DECIDED 1

MEMORANDUM OF POINTS AND AUTHORITIES 1

INTRODUCTION 1

BACKGROUND 2

I. Legal Background..... 2

 A. The Class..... 2

 B. Procedural Background and Claims..... 2

 C. Plastic Film Bags, Including Walgreens’ Bags..... 4

 D. California’s Environmental Marking Claims Act, The Green Guides, and The
 Meaning of “Recyclable.” 6

 E. The Class Representative 9

LEGAL STANDARD FOR CLASS CERTIFICATION 9

ARGUMENT 11

II. The Class Satisfies the Requirements of Rule 23(a)..... 11

 A. The Class is Sufficiently Numerous. 11

 B. The Class Meets the Commonality Requirement. 11

 C. Plaintiff’s Claims Are Typical of the Class. 12

 D. Plaintiff and Her Counsel Will Adequately Represent the Class. 13

III. The Class Satisfies Rule 23(b)(3). 14

 A. The Recyclability of Walgreens’ Bags Can Be Determined By Objective
 Standards and Common Evidence. 14

 B. The Materiality of Walgreens’ Misleading Representation And Reliance of
 Consumers Under the UCL and CLRA Claims Can Be Determined By Objective
 Standards and Common Evidence. 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Plaintiff’s Breach of Express Warranty and Unjust Enrichment Claims Are Capable of Class-Wide Resolution. 18

D. The Amount of Damages and Restitution Resulting From Walgreens’ Misleading Representation is a Common Question Which Can Be Determined By Objective Standards and Common Evidence. 19

E. Superiority..... 23

IV. In The Alternative, The Court Should Certify An Injunctive Relief Class Under Rule 23(b)(2). 24

CONCLUSION..... 24

TABLE OF AUTHORITIES

CASES

1

2

3 *Amgen Inc. v. Conn Re. Plans and Trust Funds,*

4 568 U.S. 455 (2013)..... 10

5 *Ang v. Bimbo Bakeries USA, Inc.,*

6 2018 WL 4181896 (N.D. Cal. August 31, 2018)..... 11

7 *Apple, Inc. v. Samsung Elecs. Co.,*

8 2012 WL 2571719 (N.D. Cal. June 30, 2012) 22

9 *Arizona v. ASARCO LLC,*

10 773 F.3d 1050 (9th Cir. 2014) 22

11 *Barefield v. Chevron, U.S.A., Inc.,*

12 1988 WL 188433 (N.D. Cal. Dec. 6, 1988)..... 23

13 *Bradach v. Pharmavite, LLC,*

14 735 F. App’x 251 (9th Cir. 2018) 17

15 *Bush v. Rust-Oleum Corp.,*

16 2024 WL 422080 (N.D. Cal. Feb. 5, 2024) 2, 18

17 *Californians for Disability Rights, Inc. v. California Dept. of Transp.,*

18 249 F.R.D. 334 (N.D. Cal. 2008)..... 13

19 *Chavez v. Blue Sky Natural Beverage Co.,*

20 268 F.R.D. 365 (N.D. Cal. 2010)..... 12

21 *Colgan v. Leatherman Tool Grp., Inc.,*

22 135 Cal. App. 4th 663 (2006) 19

23 *Comcast Corp. v. Behrend,*

24 569 U.S. 27 (2013)..... 10, 19

25 *Delarosa v. Boiron, Inc.,*

26 275 F.R.D. 582 (C.D. Cal. 2011) 10

27

28

1 *Ellis v. Costco Wholesale Corp.*,
 2 657 F.3d 970 (9th Cir. 2011) 10
 3 *Hadley v. Kellogg Sales Company*,
 4 324 F. Supp. 3d 1084 (N.D. Cal. 2018) 17, 21
 5 *Hanlon v. Chrysler Corp.*,
 6 150 F.3d 1011 (9th Cir. 1998) 11
 7 *Hanon v. Dataproducts Corp.*
 8 976 F.2d 497 (9th Cir. 1992) 12, 13
 9 *In re Hulu Priv. Litig.*,
 10 2014 WL 2758598 (N.D. Cal. June 17, 2014) 10
 11 *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.*,
 12 609 F. Supp. 3d 942 (N.D. Cal. 2022) 21
 13 *In re Mego Fin. Corp. Sec. Litig.*,
 14 213 F.3d 454 (9th Cir. 2000) 13
 15 *In re Nexus 6P Prod. Liab. Litig.*,
 16 293 F. Supp. 3d 888 (N.D. Cal. 2018) 18, 19
 17 *Just Film, Inc. v. Buona*,
 18 847 F.3d 1108 (9th Cir. 2017) 11, 12
 19 *Kasky v. Nike, Inc.*,
 20 27 Cal. 4th 939, 951 (2002) 17
 21 *Krommenhock v. Post Foods, LLC*,
 22 334 F.R.D. 552 (N.D. Cal. 2020) 17
 23 *Kwikset Corp. v. Superior Court*,
 24 51 Cal. 4th 310 (2011) 18
 25 *Mazza v. Am. Honda Motor Co., Inc.*,
 26 666 F.3d 581 (9th Cir. 2012) 10
 27 *O’Donovan v. Cashcall, Inc.*,
 28 278 F.R.D. 479 (N.D. Cal. 2011) 13

1 *Olean Wholesale Grocery Corp. v. Bumble Bee Foods LLC,*
 2 31 F.4th 651 (9th Cir. 2022) 10
 3 *Opperman v. Path, Inc.,*
 4 2016 WL 3844326 (N.D. Cal. July 15, 2016)..... 22, 23
 5 *Ries v. Arizona Beverages USA LLC,*
 6 287 F.R.D. 523 (N.D. Cal. 2012)..... 11, 12
 7 *Rodriguez Diaz v. Garland,*
 8 53 F.4th 1189 (9th Cir. 2022) 24
 9 *Rodriguez v. Google LLC,*
 10 2024 WL 38302 (N.D. Cal. Jan. 3, 2024)..... 23
 11 *Rodriguez v. Hayes,*
 12 591 F.3d 1105 (9th Cir. 2010) 24
 13 *Smith v. Keurig Green Mountain, Inc.,*
 14 2020 WL 5630051 (N.D. Cal., Sept. 21, 2020) 2, 14, 18, 19
 15 *Smith v. Keurig Green Mountain, Inc.,*
 16 393 F.Supp.3d 837 (2019) 4
 17 *Steroid Hormone Prod. Cases,*
 18 181 Cal. App. 4th 145 (2010) 21
 19 *Tyson Foods, Inc. v. Bouaphakeo,*
 20 577 U.S. 442 (2016)..... 14
 21 *Wal-Mart Stores, Inc. v. Dukes,*
 22 564 U.S. 338 (2011)..... 10, 11, 12
 23 *Wolin v. Jaguar Land Rover N. Am., LLC,*
 24 617 F.3d 1168 (9th Cir. 2010) 23
 25 *Zeisel v. Diamond Foods, Inc.,*
 26 2011 WL 2221113 (N.D. Cal. June 7, 2011)..... 12
 27 *Zinser v. Accufix Research Inst., Inc.,*
 28 253 F.3d 1180 (9th Cir. 2001) 10

STATUTES

16 C.F.R.

§ 260.1 3

§ 260.12 8

§ 260.12(a) 7, 8

§ 260.12(b)(1) 8

§ 260.12(b)(2) 8

§ 260.12(d) 8

§ 260.3(c) 8

Cal. Bus. & Prof. Code

§ 17200 3

§ 17580 3

§ 17580.5 3

§ 17580.5(a) 7

Cal. Civ. Code

§ 1750 3

§ 1780 22

§ 3294 23

Cal. Pub. Res. Code

§ 42280 3, 4

§ 42281(a)(4)(D) 17

California Commercial Code

§ 2313 3

Uniform Commercial Code

§ 2-313 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RULES

Fed. R. Civ. P. 23(a) 10

Fed. R. Civ. P. 23(a)(1)..... 11

Fed. R. Civ. P. 23(a)(2)..... 11

Fed. R. Civ. P. 23(a)(3)..... 12

Fed. R. Civ. P. 23(a)(4)..... 13, 14

Fed. R. Civ. P. 23(b)(2)..... 1, 10, 24

Fed. R. Civ. P. 23(b)(3)..... 1, 10, 14, 23

OTHER AUTHORITIES

63 Fed. Reg. 84, 24243 (May 1, 1998)..... 21

63 Fed. Reg. 84, 24247 (May 1, 1998)..... 8

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT on June 11, 2024, at 2:00 p.m., in the courtroom of the Honorable Trina L. Thompson , Plaintiff Elisa Bargetto (“Plaintiff”) will, and hereby does, move pursuant to Rules 23(b)(3) and/or 23(b)(2) of the Federal Rules of Civil Procedure for an order: (i) certifying the proposed Class (defined herein); and (ii) appointing Lexington Law Group, LLP as counsel for the Class. This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declaration of Patrick Carey, the other papers on file in this action, and such other submissions or arguments that may be presented before or at the hearing on this motion.

STATEMENT OF ISSUES TO BE DECIDED

Whether class certification is appropriate under Rule 23(b)(3) and/or 23(b)(2) of the Federal Rules of Civil Procedure.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

For years, retailers like Walgreens have been perpetrating a fraud on the Californian public by marketing and labeling plastic grocery or “carryout bags” as recyclable, when in fact, Walgreens own documents reveal that only a paltry percentage of these bags are actually recycled. For example, in a Walgreens’ PowerPoint presentation, with a slide titled, “██████████” Walgreens asserts that “██████████.” Declaration of Patrick Carey (“Carey Decl.”), ¶ 5, Ex. 4, at Bates No. WAG0009363. And even that percentage seems generous, as a separate Walgreens presentation claims that only “██████████” *Id.* at ¶ 6, Ex. 5, at Bates No. WAG0009271. Plaintiff brought this putative consumer class action in order to put a stop to this egregious behavior and brings this instant motion in order to certify a class of all persons who purchased these fraudulently labeled bags under Rule 23(b)(3), or in the alternative, Rule 23(b)(2).

Certification of the class is appropriate here as Plaintiff and the absent class-members’ claims turn on only a few main questions, and primarily, whether Walgreens’ plastic carryout bags are recyclable. This is true for claims based on violations of California’s Environmental Marketing Claims Act, which incorporates objective and precise definitions of “recyclable” from the Federal Trade

1 Commission’s “Green Guides” and the claims under California’s Unfair Competition Law and
 2 Consumer Legal Remedies Act. Moreover, the same is true for Plaintiff’s and the putative class’s
 3 claims for breach of express warranty and quasi-contract, which also both turn largely on the question of
 4 recyclability.

5 As a result, these types of environmental marketing claims cases are ideal for class certification
 6 as any decision on the merits will be addressed through common proof. Indeed, this case is nearly
 7 identical, both on the law and the facts, to *Smith v. Keurig Green Mountain, Inc.*, 2020 WL 5630051
 8 (N.D. Cal., Sept. 21, 2020) (*Keurig*), where another court in this District certified a similar class of
 9 individuals who had purchased—like the carryout bags here—coffee pods fraudulently labeled as
 10 recyclable. And just last month, Judge Beeler certified a class of individuals harmed by a company’s
 11 greenwashing. *See Bush v. Rust-Oleum Corp.*, 2024 WL 422080 (N.D. Cal. Feb. 5, 2024).

12 Following *Keurig*, *Bush*, the numerous other analogous cases cited throughout this Motion, and
 13 the reasoning set forth below, the Court should grant Plaintiff’s motion, certifying the class and
 14 appointing Lexington Law Group, LLP as class counsel.

15 **BACKGROUND**

16 **I. Legal Background**

17 **A. The Class**

18 Plaintiff seeks to represent a class of similarly situated individuals defined as follows:

19 All persons who purchased Walgreens’ Bags for personal, family or
 20 household purposes in California (either directly or through an agent) from
 21 April 29, 2018 through the present.¹

22 **B. Procedural Background and Claims**

23 The operative complaint is Plaintiff’s Second Amended Complaint (“SAC”), which she filed on
 24 September 30, 2022. ECF No. 28. The SAC includes five separate causes of action based on (i)

25 _____
 26 ¹ The Class specifically excludes Walgreens, Walgreens’ officers, directors and employees, any entity in
 27 which Walgreens has a controlling interest, any affiliate, legal representative, heir or assign of
 28 Walgreens, any judicial officer presiding over this action and the members of his/her immediate family
 and judicial staff, and any juror assigned to this action.

1 California’s Unfair Competition Law (“UCL”),² including under the UCL’s unlawful, unfair, and
 2 fraudulent prongs; (ii) California’s Consumer Legal Remedies Act (“CLRA”)³; (iii) breach of express
 3 warranty under California’s Commercial Code⁴; and (iv) the common-law claim of quasi-contract, or
 4 unjust enrichment.⁵

5 Plaintiff’s UCL claims under the unlawful prong are premised on (i) Walgreens’ violations of
 6 California’s ban on single-use carryout bags,⁶ (ii) Walgreens’ violations of California’s Environmental
 7 and Marketing Claims Act (“EMCA”),⁷ which incorporates and codifies the Federal Trade
 8 Commission’s (“FTC”) “Green Guides”⁸; (iii) Walgreens’ violations of the CLRA; (iv) Walgreens’
 9 violations of the Federal Trade Commission Act’s prohibition against the use of unfair methods of
 10 competition and unfair or deceptive acts or practices; and (v) Walgreens’ breach of express warranty.
 11 All of these claims turn primarily on whether Walgreens’ representations that its plastic carryout bags
 12 were recyclable were false or misleading. The SAC also seeks injunctive relief, damages—including
 13 punitive damages—restitution, costs, and fees. SAC, ¶¶ A-L (Prayer for Relief).

14 In its December 2, 2022 Order, granting in part and denying in part Walgreens’ Motion to
 15 Dismiss, the Court found that Plaintiff’s complaint “surmount[ed] the higher pleading requirements for
 16 claims based in fraud” and let all of Plaintiff’s causes of action proceed. ECF No. 52, pp. 5-10. The
 17 Court further found that, as here:

18 When a complaint alleges consumer environment[al] claims brought
 19 pursuant to the UCL and CLRA, a reasonable consumer could find a
 20 manufacturer’s representation of recyclability untruthful, deceptive, or
 21 misleading, despite the presence of disclaiming language that the product
 22 was not recyclable in all communities and the directive to ‘check locally’
 23 to determine recyclability at local municipal recycling facilities.

23 ² California Business & Professions Code (“Cal. Bus. & Prof. Code”) § 17200, *et. seq.*; SAC ¶¶ 54-87.

24 ³ California Civil Code (“Cal. Civ. Code”) § 1750 *et. seq.*; SAC ¶¶ 88-94.

25 ⁴ Uniform Commercial Code § 2-313, California Commercial Code § 2313; SAC ¶¶ 95-103.

26 ⁵ SAC ¶¶ 104-112.

27 ⁶ California Public Resources Code (“Cal. Pub. Res. Code”) § 42280 *et seq.*; SAC ¶ 56.

28 ⁷ California Bus. & Prof. Code §§ 17580.5, 17580; SAC ¶¶ 58-59, 61.

⁸ 16 C.F.R. § 260.1 *et seq.*; SAC ¶¶ 58-61.

1 *See id.* (citing *Smith v. Keurig Green Mountain, Inc.*, 393 F.Supp.3d 837 (2019)).

2 The only part of Walgreens’ Motion to Dismiss the Court granted was dismissal of Plaintiff’s
3 UCL unlawful claim premised on Walgreens’ violations of California Public Resource Code § 42280 *et*
4 *seq.*—the Single-Use Carryout Bag Ban—for lack of subject matter jurisdiction, finding Plaintiff could
5 not challenge the certification of the plastic carryout bags in Federal Court. *Id.* at 4-6.

6 **C. Plastic Film Bags, Including Walgreens’ Bags**

7 Commonly known as “checkout bags,” “carryout bags,” “grocery bags,” or even just “a bag”
8 plastic-film bags are the ubiquitous bags most everyone is familiar with seeing at the checkout counters
9 of grocery stores, pharmacies, big box stores, and numerous other retailers. They are relatively thin
10 bags, ranging a few millimeters in thickness, that are most commonly made from polyethylene, a
11 product derived from natural gas and petroleum. Declaration of Michelle Leonard (“Leonard Decl.”),⁹
12 at ¶ 15. Plastic carryout bags also come in various densities of polyethylene: low-density polyethylene
13 (“LDPE”); high-density polyethylene (“HDPE”); and medium-density polyethylene (“MDPE”), which is
14 a combination of primarily LDPE and HDPE. *Id.* Plaintiff refers to these bags throughout this Motion
15 as “Plastic Film Bags” and the specific Plastic Film Bags Walgreens sold in California during the Class
16 Period as “Walgreens’ Bags” or “Bags.”



17 Plastic Film Bags are notorious for wreaking havoc on our natural environment. *See generally*
18 SAC at ¶¶ 1, 23-28. Even Walgreens’ refers to the use of plastic bags and the pollution they cause as an
19 “██████.” Carey Decl., ¶ 6, Ex. 5 at Bates No. WAG0009268. In response to this ever-increasing
20 environmental disaster, or “██████,” numerous states, counties, and municipalities have attempted to
21 reduce the use of the bags in their communities through various ordinances and laws. For example,
22 California voters ratified Proposition 67 in 2016, known as “SB270” in order to prohibit single-use
23 carryout bags in California. And even more recently, states have begun to ban plastic film bags
24
25
26

27 ⁹ The Leonard Decl. is attached as Exhibit 1 to the Declaration of Patrick Carey. All references to the
28 “Leonard Decl.” refer to Paragraph 2, Exhibit 1 of the Carey Declaration.

1 *entirely*.¹⁰ In fact, the California Legislature recently introduced two proposed bills that would outlaw
2 Plastic Film Bags entirely.¹¹

3 Despite efforts like SB270, and numerous other environmental laws like EMCA and the Green
4 Guides, companies like Walgreens continue to flout basic recyclability requirements and label their
5 Plastic Film Bags as recyclable despite knowing such a representation is patently false. Indeed, during
6 the entirety of the Class Period, Walgreens has uniformly represented that its Bags are recyclable—
7 prominently displaying the well known “chasing arrows” symbol and failing to provide any appropriate
8 qualifying language, despite knowing that, in reality, its Bags were not actually recyclable. The minor
9 variations in the wording and fine print of Walgreens’ recyclability representations and qualifications on
10 its Bags do not render *any* such recyclable claims permissible under any of Plaintiff’s theories of
11 liability.

12 In addition to their uniform recycling representations, Walgreens has also sold Plastic Film Bags
13 of similar size, shape, and thickness throughout the Class Period. As explained below, and in Ms.
14 Leonard’s Declaration, the minor differences in thickness and size between Walgreens’ Bags do not
15 create different questions of recyclability. Leonard Decl., at ¶¶ 18-19.

16 Despite these prominent recyclability representations on Walgreens’ Bags, they are not
17 recyclable. Under California law and the Green Guides, a product is recyclable only where there is
18 access, sortability, and end markets for the recycling of such product. Walgreens itself seemingly
19 utilizes this definition of recyclability. *See* Carey Decl., ¶ 6, Ex. 5, at Bates Nos. WAG0009267,
20 WAG0009271, WAG0009272 (Plastic Bags “ ” and depicting ). Plaintiff will be able to prove
21 through common evidence that Walgreens’ Bags fail to meet each prong of the definition of
22 recyclability.
23

24 _____
25 ¹⁰ New York Environmental Conservation Law, Article 27, Title 28 (the New York State Bag Waste
26 Reduction Act).

27 ¹¹ *See* Suzanne Rust, *California’s War on plastic bag use seems to have backfired. Lawmakers are*
28 *trying again*, LA TIMES (Feb. 12, 2024) (discussing California bills to ban the “thick plastic bags offered
at the check outline”), available at <https://www.latimes.com/environment/story/2024-02-12/californias-war-on-plastic-bag-use-seems-to-have-backfired>.

1 Common evidence will show that Plastic Film Bags are not recyclable. Leonard Decl., at ¶ 9.
 2 There is no serious dispute that the overwhelming majority of curbside programs in California do not
 3 accept Plastic Film Bags for recycling. *Id.* at 26-27. And [REDACTED]
 4 [REDACTED]. Carey Decl., ¶ 6, Ex. 5, at Bates No. WAG0009267. As for
 5 Store Dropoff programs, Walgreens [REDACTED]. Carey Decl., ¶
 6 7, Ex. 6, at p. 52:12-16. To the extent Walgreens [REDACTED]
 7 [REDACTED]
 8 [REDACTED]. *See Id.* at pp. 139:15-140:25.

9 Plaintiff will also prove that, even if Californians had sufficient access to curbside or
 10 Store Dropoff programs, Plastic Film Bags will not be properly sorted by either program. Materials
 11 Recovery Facilities (“MRFs”) cannot properly sort Plastic Film Bags into the correct bale for recycling
 12 due to their thin, malleable, and lightweight nature. Leonard Decl., at ¶ 38. As Walgreens
 13 acknowledges, Plastic Bags “[REDACTED]
 14 [REDACTED].” Carey Decl., ¶ 6, Ex. 5, at Bates No. WAG0009271. And although in theory,
 15 Plastic Film Bags collected in Store Dropoff programs should be pre-sorted by consumers when they
 16 place materials in SDO bins, the reality is far different. As Walgreens [REDACTED]
 17 [REDACTED]” Carey Decl., ¶ 8, Ex.
 18 7, at Bates No. WAG0005698.

19 Finally, Plaintiff will prove that there is little to no end market for Plastic Film Bags and thus,
 20 they are highly unlikely to be reclaimed for reuse in making another product. To the extent there is an
 21 end market for plastic film, the demand is for clean, relatively uniform, and high-volume plastic film
 22 like pallet wrap, not Plastic Bags. Leonard Decl., at ¶ 45. Indeed, rather than being purchased and sent
 23 to a reclaimer for recycling, investigations have shown that the materials collected in Store Dropoff
 24 programs are not being recycled but instead end up in landfills or incinerators. *Id.* at ¶ 30.

25 **D. California’s Environmental Marking Claims Act, The Green Guides, and The**
 26 **Meaning of “Recyclable.”**

27 The crux of all of Plaintiff’s operative claims is that Walgreens misrepresents its Bags as
 28 “recyclable” when in reality, they are not. This is true under California’s EMCA, which incorporates

1 the Green Guides’ objective definition of recyclable and makes it unlawful to sell products labeled as
2 recyclable that do not meet that definition, as well as, to the extent necessary, other commonly
3 understood and accepted definitions of recyclable that reasonable consumer would rely on.

4 EMCA adopts and incorporates the FTC’s Green Guides and makes it unlawful in California to
5 violate any of the Green Guides’ provisions. Specifically, EMCA makes it “unlawful for any person to
6 make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or
7 implied.” Cal. Bus. & Prof. Code § 17580.5(a). “Environmental marketing claims” under EMCA
8 include any violation of the Green Guides, such as, 16 C.F.R. § 260.12(a), which makes it “deceptive to
9 misrepresent, directly or by implication, that a product or package is recyclable” and prohibits anyone
10 from representing a product or package as “recyclable unless it can be collected, separated, or otherwise
11 recovered from the waste stream through an established recycling program for reuse or use in
12 manufacturing or assembling another item.” 16 C.F.R. § 260.12(a)

13 The Green Guides’ three-pronged definition of recyclable, requiring collection, separating, and
14 re-use in new end products is not anomalous. Walgreens’ itself recognizes that any meaningful
15 definition of the term recyclable must include the requirements the products are actually recycled as
16 numerous Walgreens documents discuss how plastic carryout bags are only recyclable [REDACTED]
17 [REDACTED]” and others depict the need for the [REDACTED]
18 [REDACTED]. Carey Decl., ¶ 6, Ex. 5, at Bates Nos. WAG0009267,
19 WAG0009272. In fact, Walgreens [REDACTED]
20 [REDACTED]
21 [REDACTED]. *Id.* at Bates No.
22 WAG0009268. Importantly, [REDACTED]
23 [REDACTED]
24 [REDACTED]. *Id.* at Bates No. WAG0009272. In addition Plaintiff’s recyclability
25 expert, Michelle Leonard, testifies that in order for a product to be recyclable, consumers must have
26 access to facilities that will collect, separate, and sell that material for use in end markets. Leonard
27 Decl., at ¶ 10.
28

1 As reflected in this definition of “recyclable” and the Green Guides’ regulatory history, the FTC
2 does not consider a product to be recyclable unless it can actually be recycled by consumers. Indeed, the
3 Green 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, but,
5 because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be
6 marketed as recyclable.” 16 C.F.R. §§ 260.12(a) and (d); *see also id.*, § 260.12(d) Examples 2 and 6.
7 As one example, the Green Guides explain that labeling a trash bag “recyclable” without significant
8 qualification would be deceptive because although a trash bag is “technically capable of being
9 recycled,” in practice it is “not separated from trash at the landfill or incinerator for recycling, [and is]
10 highly unlikely to be used again for any purpose.” 16 C.F.R. § 260.3(c), Example 2. And in
11 promulgating the current recycling definition, the FTC clarified that “[f]or a product to be called
12 ‘recyclable,’ there must be an established recycling program, municipal or private, through which the
13 product *will be* converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84, 24247
14 (May 1, 1998) (emphasis added). “[W]hile a product may be technically recyclable, if a program is not
15 available allowing consumers to recycle the product, there is no real value to consumers.” *Id.* at 24243.

16 The Green Guides, and by extension EMCA, additionally require anyone representing their
17 products as recyclable to “qualify” that claim if less than 60% of consumers or communities in areas
18 where it will be sold do not have access to recycling facilities that can collect, separate, and sell those
19 products for use in new ones. 16 C.F.R. § 260.12(b)(1) Thus, whether a specific item is recyclable may
20 be objectively measured using specific criteria. Below this 60% threshold the Green Guides direct
21 entities to qualify or limit their recyclable claims. *Id.*, § 260.12(b)(2). Qualifications that “do not
22 adequately disclose the limited availability of recycling” facilities are *per se* deceptive. *See* 16 C.F.R. §
23 260.12, Example 4. Importantly, this 60 percent threshold does not relate to *access to collection* only.
24 The FTC and the Green Guides are clear that mere *collection* of a product in 60 percent of communities
25 does not make a product recyclable. Instead, a “substantial majority” of the population must be served
26 by “an established recycling program,” which is, a program that collects, *separates, and reuses* the
27 purportedly recyclable material. 16 C.F.R. § 260.12(a).
28

1 **E. The Class Representative**

2 Plaintiff Elisa Bargetto is domiciled in San Francisco, California. Declaration of Elisa Bargetto
 3 (“Bargetto Decl.”),¹² ¶ 2. As she is concerned about the impact her actions have on the environment,
 4 Plaintiff seeks out products that are reusable, compostable, and recyclable. *Id.* To that end, Plaintiff
 5 places significant importance on recycling products that she cannot reuse or compost and takes efforts to
 6 collect non-curbide recyclables such as contact lenses, tennis balls, and printer cartridges in an attempt
 7 to ensure those items are in fact recycled. *Id.*

8 Plaintiff has purchased Walgreens’ Bags on at least two occasions directly from Walgreens
 9 stores in California: one in San Francisco, and one in Scotts Valley. *Id.* at ¶ 5. At the time of her
 10 purchases, Plaintiff believed that Walgreens’ bags were recyclable. *Id.* If Plaintiff had known that
 11 Walgreens’ Bags were not recyclable, she would not have purchased them. *Id.* at ¶ 6. While Plaintiff
 12 often uses her own reusable shopping bags, she intends to buy Walgreens’ Bags in the future and will
 13 not know whether Walgreens recyclability representations are accurate without an injunction. *Id.*¹³

14 **LEGAL STANDARD FOR CLASS CERTIFICATION**

15 Class actions are governed by Rule 23 of the Federal Rules of Civil Procedure. To obtain class
 16 certification, Plaintiff bears the burden of showing that she has met each of the four requirements of

17
 18 _____
 19 ¹² The Bargetto Decl. is attached as Exhibit 3 to the Declaration of Patrick Carey. All references to the
 “Bargetto Decl.” refer to Paragraph 4, Exhibit 3 of the Carey Declaration.

20 ¹³ Two working days prior to this Motion’s due date, Walgreens produced what it alleges is transaction
 data of Plaintiff’s purchases in question that, according to Walgreens, shows Plaintiff did not receive a
 21 bag. Plaintiff’s counsel has significant questions regarding the accuracy of this information and how it
 was compiled as it conflicts with Plaintiff’s sworn deposition testimony and declarations, and it was
 22 provided to Plaintiff’s counsel *after* Walgreens’ 30(b)(6) deposition where Plaintiff’s questions
 concerning the data could have been explored. In any event, this is obviously a merits question and
 23 should not affect class certification, especially considering Walgreens’ dilatory tactics. Indeed, the
 Class is free to substitute one of the ████████ of purchasers of Walgreens’ Bags, should that prove
 24 necessary. *See, e.g., Fishon v. Premier Nutrition Corp.*, 2022 WL 958378, at *2 (N.D. Cal. Mar. 30,
 25 2022) (“Substitution of a new named plaintiff to address the inadequacy of a class representative, a
 routine feature of class actions, [and] lies within the district court’s discretion.”) (citation omitted); *see*
 26 *also id.* (“Indeed, courts have also expressed a preference for plaintiff’s counsel to locate a new class
 representative once the original class representative can no longer carry on their duties, rather than
 27 dismissing or decertifying a class.”).

1 Rule 23(a) and at least one subsection of Rule 23(b). *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,
2 979–80 (9th Cir. 2011). While rigorous, Rule 23 does not grant courts “license to engage in free-
3 ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but
4 only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class
5 certification are satisfied.” *Amgen Inc. v. Conn Re. Plans and Trust Funds*, 568 U.S. 455, 466 (2013).
6 “If a court concludes that the moving party has met its burden of proof, then the court has broad
7 discretion to certify the class.” *In re Hulu Priv. Litig.*, 2014 WL 2758598, *13 (N.D. Cal. June 17,
8 2014) (citing *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001)).

9 Rule 23(a) provides that a district court may certify a class if the class satisfies the requirements
10 of numerosity, commonalty, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a); *Mazza v.*
11 *Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012) (overruled on other grounds by *Olean*
12 *Wholesale Grocery Corp. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022)). If all four
13 prerequisites of Rule 23(a) are satisfied, a court must also find that Plaintiff satisfies at least one of the
14 three subsections of Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013).

15 A class is properly certified under Rule 23(b)(2) if the defendant “acted or refused to act on
16 grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory
17 relief is appropriate respecting the class as a whole” and the class representative is seeking “final
18 injunctive relief.” Fed. R. Civ. P. 23(b)(2); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345-
19 46 (2011). Rule 23(b)(2) “injunction-only” classes are appropriate where a consumer plaintiff seeks to
20 enjoin misrepresentations on consumer products since an injunction prohibiting such misrepresentations
21 will benefit plaintiff and similarly-situated class members. *See Delarosa v. Boiron, Inc.*, 275 F.R.D.
22 582, 591-92 (C.D. Cal. 2011); *accord Dukes*, 564 U.S. at 359-360.

23 A class may be certified under Rule 23(b)(3) if the Court finds that “questions of law or fact
24 common to class members predominate over any questions affecting only individual members, and that
25 a class action is superior to other available methods for fairly and efficiently adjudicating the
26 controversy.” Fed. R. Civ. P. 23(b)(3). Plaintiff must show that the claims of the class “depend upon a
27 common contention . . . of such a nature that it is capable of classwide resolution—which means that
28 determination of its truth or falsity will resolve an issue that is central to the validity of each one of the

1 claims in one stroke.” *Dukes*, 564 U.S. at 350. The “presence of individualized damages cannot, by
2 itself, defeat class certification under Rule 23(b)(3).” *Just Film, Inc. v. Buona*, 847 F.3d 1108, 1120 (9th
3 Cir. 2017) (quotations and citations omitted). Still, “the plaintiffs must be able to show that their
4 damages stemmed from the defendant’s actions that created the legal liability.” *Id.* (quotations and
5 citations omitted).

6 ARGUMENT

7 Certification of a class of purchasers of Walgreens’ Bags is warranted and provides the proper
8 means to enjoin Walgreens illegal and deceptive conduct and compensate purchasers of Walgreens’
9 Bags. Plaintiff’s claims are the same as those of the absent members of the class—she purchased a
10 Plastic Film Bag from Walgreens, Walgreens represented in its labeling on the Plastic Film Bag that the
11 bag was recyclable, this representation was misleading and violates EMCA and other laws. In addition,
12 the misrepresentations of recyclability on the Walgreens’ Bags inflated the value of the bags and the
13 inflated amount paid by Plaintiff and the class for bags sold in violation of California law is recoverable
14 in this action.

15 **II. The Class Satisfies the Requirements of Rule 23(a)**

16 **A. The Class is Sufficiently Numerous.**

17 A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P.
18 23(a)(1). “Courts have routinely found the numerosity requirement satisfied when the class comprises
19 40 or more members.” *See Ang v. Bimbo Bakeries USA, Inc.*, 2018 WL 4181896, at *8 (N.D. Cal.
20 August 31, 2018) (citations omitted). Here, Walgreens sold ████████ of Bags in California during the
21 Class Period easily satisfying the numerosity requirement. Carey Decl., ¶ 9, Ex. 8. Therefore, the
22 numerosity requirement has been met.

23 **B. The Class Meets the Commonality Requirement.**

24 Rule 23(a) requires some “questions of fact and law which are common to the class.” Fed. R.
25 Civ. P. 23(a)(2). Commonality does not require “a perfect identity of facts and law,” rather, “relatively
26 ‘minimal’ commonality” will suffice. *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 537 (N.D.
27 Cal. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-20 (9th Cir. 1998) (overruled on
28

1 other grounds by *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)). All questions of fact and law
2 need not be common to the class to satisfy the commonality requirement, rather, “[t]he existence of
3 shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts
4 coupled with disparate legal remedies within the class.” *Ries*, 287 F.R.D. at 537 (citations omitted). So
5 long as the claims of members of the class “stem from the same source,” the class satisfies the
6 commonality requirement. *Id.*

7 Plaintiff’s claims easily satisfy the commonality requirement. The common questions at the core
8 of this entire matter are whether Walgreens’ bags are recyclable, and whether Walgreens’ recyclability
9 representations are likely to mislead a reasonable consumer. More specifically, legal issues common to
10 all Class members include, but are not limited to, whether Walgreens’ recyclability representations on its
11 Bags are false and misleading in violation of the UCL or CLRA. Similarly, a fact common to all Class
12 members, by definition, is that each member purchased a Walgreens Bag in California and was thus
13 exposed to Walgreens’ recyclability representations. If Walgreens’ recyclability representations are
14 likely to deceive ordinary consumers and thus false and misleading in violation of the UCL or CLRA,
15 that determination applies to all Class members. Courts have routinely found commonality in similar
16 cases. *See, e.g., Zeisel v. Diamond Foods, Inc.*, 2011 WL 2221113 at *7 (N.D. Cal. June 7, 2011)
17 (commonality met where “class was exposed to the same misleading and misbranded labels”); *Chavez v.*
18 *Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 377 (N.D. Cal. 2010) (commonality met where
19 common issue was “whether the [product] packaging and marketing materials are unlawful, unfair,
20 deceptive or misleading to a reasonable consumer”). Thus, commonality is satisfied.

21 **C. Plaintiff’s Claims Are Typical of the Class.**

22 Rule 23(a) also requires that the named plaintiff’s “claims or defenses . . . are typical of the
23 claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The purpose of the typicality requirement is
24 to assure that the interest of the named representative aligns with the interests of the class.” *Hanon v.*
25 *Dataproducts Corp.* 976 F.2d 497, 508 (9th Cir. 1992) (superseded by statute on other grounds). In
26 doing so, “[t]ypicality focuses on the class representative’s claim—but not the specific facts from which
27 the claim arose—and ensures that the interest of the class representative aligns with the interests of the
28 class.” *Just Film*, 847 F.3d at 1116 (internal quotation marks omitted). “The test of typicality ‘is

1 whether other members have the same or similar injury, whether the action is based on conduct which is
2 not unique to the named plaintiffs, and whether other class members have been injured by the same
3 course of conduct.” *Hanon*, 976 F.2d at 508 (citations omitted).

4 Plaintiff’s claims here are typical of the class because her claims arise from the same course of
5 conduct that gives rise to every absent class member’s claims—Walgreens’ sale of misleadingly labeled
6 Bags. As with every member of the Class, Plaintiff purchased Bags from Walgreens that prominently
7 displayed multiple recyclability representations. Likewise, as with every member of the Class, the Bags
8 Plaintiff purchased from Walgreens were substantially similar in material, shape, and size. Given
9 Plaintiff and the Class were exposed to uniform recyclability representations on Walgreens’ Bags, they
10 share the same interests in determining whether Walgreens’ Bags were deceptively labeled. In addition,
11 Plaintiff’s harm is the same as the absent class members as she obtained bags at Walgreens locations
12 that charged for their Bags. *See* Bargetto Decl., ¶ 5.

13 Given the common recyclability misrepresentations discussed above, the ultimate success of
14 Plaintiff’s claims will depend on applying the same law to the same set of facts as every other Class
15 member. Typicality is therefore satisfied.

16 **D. Plaintiff and Her Counsel Will Adequately Represent the Class.**

17 Rule 23(a)(4) requires that the class representative and class counsel “fairly and adequately
18 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement is satisfied if: (1) the
19 proposed representative plaintiff does not have conflicts with the proposed class; and (2) the plaintiff is
20 represented by qualified and competent counsel. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
21 462 (9th Cir. 2000). Adequate representation is usually presumed in the absence of contrary evidence.
22 *Californians for Disability Rights, Inc. v. California Dept. of Transp.*, 249 F.R.D. 334, 349 (N.D. Cal.
23 2008).

24 Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has
25 no conflict with other class members. Rather, Plaintiff and the members of the Class have been injured
26 in the same manner and seek relief for the same claims, and thus their interests are coextensive. *See*
27 *O’Donovan v. Cashcall, Inc.*, 278 F.R.D. 479, 492 (N.D. Cal. 2011) (class representative fairly and
28

1 adequately represents class where “their claims are reflective of those of the putative class members’
2 and the relief they seek is identical to that sought for the Classes.”).

3 Plaintiff’s counsel will also adequately protect the interests of the Class. Counsel are well
4 qualified and experienced in certifying, litigating, settling, and administering class actions. *See* Carey
5 Decl., ¶¶ 15-16. Plaintiff’s counsel are committed to the vigorous prosecution of this action. *Id.* at ¶ 17.
6 To date, Plaintiff’s counsel have demonstrated an understanding of the issues in this case and
7 competence to conduct this litigation. Indeed, Plaintiff’s counsel represented the plaintiff and class in
8 the Keurig case this Court cited in its MTD order, a case involving misrepresentations regarding
9 recyclability where Judge Gilliam certified a class of purchasers. *See Id.* at ¶ 15. Further, Lexington
10 Law Group, LLP possesses the resources to efficiently prosecute this class action lawsuit to its final
11 conclusion. *See* Carey Decl., ¶ 17. Thus, Plaintiff and her counsel readily satisfy the adequacy
12 requirement of Rule 23(a)(4).

13 **III. The Class Satisfies Rule 23(b)(3).**

14 Rule 23(b)(3) requires the Court to determine whether “questions of law or fact common to class
15 members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3).
16 “A common question is one where the same evidence will suffice for each member to make a *prima*
17 *facie* showing or the issue is susceptible to generalized, class-wide proof.” *Tyson Foods, Inc. v.*
18 *Bouaphakeo*, 577 U.S. 442, 453 (2016) (cleaned up).



19 Plaintiff’s claims turn almost entirely on two main questions: (1) are Walgreens’ bags recyclable;
20 and (2) are Walgreens’ recyclability representations likely to mislead a reasonable consumer. Both
21 questions are common to the entire class and can be answered by common proof that predominates over
22 any individual issues. In fact, this instant case presents nearly identical questions and facts to *Keurig*,
23 where Judge Gilliam certified a class of consumers who had purchased Keurig K-Cup coffee pods in
24 reliance on those products’ misleading recyclability representations.

25 **A. The Recyclability of Walgreens’ Bags Can Be Determined By Objective Standards** 26 **and Common Evidence.**

27 The first question, whether Walgreens’ Bags are recyclable, is a common question that
28 predominates each of her claims. *See generally* Leonard Decl., at ¶ 20. Indeed, the small variations in

1 size, shape, thickness, and density of polyethylene between various plastic film bags make little
2 difference to whether they are recyclable because they all share the characteristics of being thin,
3 lightweight, post-consumer content. In fact, *it is precisely because of these common characteristics,*
4 shared by *all Walgreens Bags*, that they are not recyclable.

5 As Ms. Leonard opines, whether an item is recyclable turns on a number of factors, including,
6 *inter alia*: the size of the item, the weight of the item, and the material used to make the item. Leonard
7 Decl., at ¶ 15. These factors tend to dictate whether the item can be collected, sorted, and grouped with
8 other like materials.

9 For Walgreens' Bags, these characteristics, namely the thinness, flimsiness, and lightweight
10 nature of the bags, makes them difficult to collect, sort, and bale. *Id.* at ¶ 15. With thicker, denser, and
11 heavier products—like soda and detergent bottles—machines, and even people, at sorting and collection
12 facilities can separate the bottles from the other materials in the waste stream. Leonard Decl., at ¶ 37.
13 Similarly, aluminum cans, and various other products properties, can be segregated from other dissimilar
14 materials by people and machines. *Id.* By contrast, these same facilities tend to view plastic film bags
15 as a *contaminant*. *Id.* at ¶ 38. Rather than having machines that can properly sort and segregate Plastic
16 Film Bags, the bags often get caught in the various parts of these machines attempting to sort the other
17 materials, causing the machines to breakdown or requiring employees to halt the machines to
18 disentangle the Plastic Film Bags from the sorting equipment. *Id.* Even Walgreens recognizes and has
19 given PowerPoint presentations explaining that Plastic Film Bags “
20 ” Carey Decl., ¶ 6, Ex. 5, at Bates No.
21 WAG0009271.

22 In addition, sorting facilities must do more than simply separate items to group like with other
23 like materials. The facilities must also ensure that the items they are sorting are relatively clean and
24 contaminant free. Leonard Decl., at ¶ 46. This presents another common issue with Walgreens' Bags:
25 namely, because they are “post-consumer” products, meaning sent to recyclers *after* use by consumers,
26 the bags are often contaminated with food, beverage, or other contaminants. As Ms. Leonard explains,
27 end-users who would potentially purchase bales of the collected and sorted materials to process into
28 feed-stock for new products and materials must have clean and uncontaminated bales to purchase and

1 process. *Id.* End-users do not want to purchase a bale of Plastic Film Bags soaked in soda or covered in
2 ketchup. *Id.*

3 This post-consumer aspect of Walgreens' Bags is what sets them apart from other plastic film
4 material, like "back of house" plastic film that is actually collected, sorted, baled, and used to make new
5 products. *Id.* at ¶ 40. Back of house plastic film includes things like "pallet wrap," the thick and
6 somewhat stretchy plastic wrap that companies use to wrap other materials and items stacked on top of
7 pallets to keep those items from tipping or falling off the pallets. *Id.* Because this, and other industrial
8 plastics, are used in large quantities and comparatively easier than post-consumer Walgreens' Bags to
9 keep segregated and contaminant free, there are some markets in which people can sell this "back of
10 house" plastic film.

11 This notion that Plastic Film Bags in general [REDACTED]
12 [REDACTED] is reflected in documents from Walgreens. For example, numerous Walgreens
13 documents, including a PowerPoint with a slide titled "[REDACTED]
14 [REDACTED]. Carey Decl., ¶ 5, Ex. 4, at Bates No. WAG0009363. The "[REDACTED]"
15 according to Walgreens is that that "[REDACTED]
16 [REDACTED]." *Id.*; see also Carey Decl., ¶ 6, Ex. 5, at Bates No. WAG0009271 (noting that only "[REDACTED]
17 [REDACTED]").

18 According to bag specification documents for Walgreens' Bags, there are only minor differences
19 in size between the various Plastic Film Bags Walgreens sold in California during the Class Period:
20 Walgreens' Bags were all between 11.25 to 15.25 inches in height; between 11 to 15.75 inches in width;
21 and between roughly 2.25 to 3.75 mils in thickness. See Leonard Decl., at ¶ 18. And all of Walgreens'
22 Bags were made from common Plastic Film Bag polymers, namely HDPE and LDPE. Carey Decl., ¶
23 10, Ex. 9, at Amended Response No. 1. (Walgreens' Rog Resps.). Given these similarities, whether
24 these bags are recyclable is a common question that can be answered on a classwide basis. See Leonard
25 Decl., at ¶¶ 19-20.

1 **B. The Materiality of Walgreens’ Misleading Representation And Reliance of**
2 **Consumers Under the UCL and CLRA Claims Can Be Determined By Objective**
3 **Standards and Common Evidence.**

4 On the merits, one of the main questions confronting a trier of fact with UCL and CLRA claims
5 is whether “members of the public are likely to be deceived” by a defendant’s misrepresentations.
6 *Bradach v. Pharmavite, LLC*, 735 F. App’x 251, 254 (9th Cir. 2018) (citing *Kasky v. Nike, Inc.*, 27 Cal.
7 4th 939, 951 (2002), *as modified* (May 22, 2002)). This is an “objective test” which “renders claims
8 under the UCL . . . and CLRA *ideal for class certification* because [the claims] will not require the court
9 to investigate class members’ individual interaction with the product.” *Id.* (emphasis added).

10 Indeed, at class certification, “[t]he relevant analysis” for a plaintiff’s UCL and CLRA claims is
11 *not* “whether each class member saw and relied on each of the Challenged Statements and in what
12 combination, but instead whether the Challenged Statements were used consistently through the Class
13 Period, supporting an inference of classwide exposure, and whether the Challenged Statements would be
14 material to a reasonable consumer.” *Krommenhock v. Post Foods, LLC*, 334 F.R.D. 552, 564 (N.D. Cal.
15 2020). There is no doubt here that Walgreens represented its bags as recyclable throughout the entire
16 Class Period. In fact, Walgreens prominently displayed the chasing arrow symbol and additional
17 recyclability language on *every bag it sold*, throughout the Class Period and did so purposely in order to
18 charge a fee for its Bags. *See* Carey Decl., ¶¶ 11-14, Exs. 10-13; Cal. Pub. Res. Code § 42281(a)(4)(D).
19 Thus, “where, as here, there is evidence that the representation was consistently made on a product’s
20 label, the only question is whether it was objectively material to a reasonable consumer.”
21 *Krommenhock*, 334 F.R.D. at 565. This “materiality” does not need to be *proven* at class certification.
22 *See Hadley v. Kellogg Sales Company*, 324 F. Supp. 3d 1084 (N.D. Cal. 2018). The “truthfulness and
23 potential impact on the materiality of [the alleged misrepresentations] are questions to be resolved by the
24 jury under the reasonable consumer standard. *Krommenhock*, 334 F.R.D. at 565. “California courts
25 have explicitly rejected the view that a plaintiff must produce extrinsic evidence such as expert
26 testimony or consumer survey in order to prevail on a claim that the public is likely to be misled by a
27 representation under the FAL, CLRA, or UCL.” *Id.* (cleaned up).

28 Moreover, where the California Legislature has specifically outlawed the types of statements at
issue, materiality should be presumed as the Legislature’s actions are viewed as “recognizing the

1 materiality of the representation.” *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 329 (2011). Here,
 2 the EMCA’s prohibition against misrepresenting environmental attributes such as recycling gives rise to
 3 such a reliance. *Bush*, 2024 WL 422080, at *4 (“California’s statutory adoption of the FTC’s Green
 4 Guides – which speak to the challenged label claims at issue – means that materiality is adequately
 5 proven at this stage.”); *Keurig*, 2020 WL 5630051, at *6 (“the Court finds that the inference of reliance
 6 is appropriate in this case” based on the EMCA). In addition, and separate from Plaintiff’s EMCA
 7 claims, SB270’s requirement that retailers like Walgreens only sell Plastic Film Bags which are
 8 recyclable in California and label their Plastic Film Bags in accordance with the Green Guides
 9 represents both a Legislative and *voter* determination¹⁴ that the recyclability and representations
 10 concerning such recyclability are material.

11 Neither do the small variations in some of the wording and qualifications between a few of
 12 Walgreens’ labels create individualized issues. As Judge Gilliam found in *Keurig*, where as here,
 13 Plaintiff’s claims concern whether *any* of the labels “adequately disclose the limited availability of a
 14 recycling program” all of Walgreens’ “qualifiers are subject to [the] same standards, and whether they
 15 are sufficient (or insufficient) can be established through common proof.” *Keurig*, 2020 WL 5630051, at
 16 *7.¹⁵

17 Common questions, thus, predominate the claims at issue.

18 **C. Plaintiff’s Breach of Express Warranty and Unjust Enrichment Claims Are**
 19 **Capable of Classwide Resolution.**

20 As with Plaintiff’s UCL and CLRA claims, the breach of express warranty claim does not
 21 depend on individualized questions. The mere fact there is an affirmative misrepresentation creates “a
 22 presumption that the seller’s affirmations go to the basis of the bargain.” (citations omitted). *In re*
 23 *Nexus 6P Prod. Liab. Litig.*, 293 F. Supp. 3d 888, 915 (N.D. Cal. 2018). Because of this, it is
 24
 25

26 ¹⁴ SB 270 was ratified by California voters as Proposition 67 in 2016.

27 ¹⁵ Even assuming the Court here found at class certification that these minor differences in qualifications
 28 created different questions, subclasses of purchasers who purchased each type of representation would
 be appropriate and Plaintiff asks that the Court certify those subclasses.

1 commonplace that courts certify classes involving such claims. *See, e.g., Keurig Green Mt. Inc.*, 2020
2 WL 5630051 at *5 (citing *In re Nexus*, 293 F. Supp. 3d. at 915).

3 Similarly, Plaintiff can prove her unjust enrichment claim by showing, with common classwide
4 evidence, that Walgreens was enriched at the expense of the Class through Walgreens’ deceptive claims.
5 Whether Walgreens retained profits—and was thus unjustly enriched— by the Class members’ purchase
6 of its deceptively labeled Bags in California “raises the same legal issues as to all class members.” *See*
7 *Keurig*, 2020 WL 5630051 at *5. Thus, predominance is met as to Plaintiff’s express warranty and
8 unjust enrichment claims as well.

9 **D. The Amount of Damages and Restitution Resulting From Walgreens’ Misleading**
10 **Representation is a Common Question Which Can Be Determined By Objective**
11 **Standards and Common Evidence.**

12 Rule 23(b)’s predominance requirement further requires that a plaintiff demonstrate “damages
13 are capable of measurement on a classwide basis.” *Comcast*, 569 U.S. at 35. The methodology for
14 calculating damages must be tied to the plaintiff’s theory of liability. In other words, any “model
15 purporting to serve as evidence of damages . . . must measure only those damages attributable to [the
16 misleading statements at issue].” *Id.* “At class certification, plaintiff must present a likely method for
17 determining class damages, though it is not necessary to show that his method will work with certainty
18 at this time.” *Chavez*, 268 F.R.D. at 379 (internal citations omitted).

19 Plaintiff and the putative class here are entitled to restitution as a result of their UCL and CLRA
20 claims, as well as damages under their CLRA and breach of express warranty claims. *See Colgan v.*
21 *Leatherman Tool Grp., Inc.*, 135 Cal. App. 4th 663, 694 (2006) (express warranty). As with restitution,
22 damages here are simple to calculate. As explained below and in the Declaration of Plaintiff’s damages
23 expert, Dr. Stephen Hamilton, the unique and highly-regulated market for Plastic Film Bags in
24 California demands restitution and/or damages equal to the full amount Walgreens charged for the bags.
25 Because retailers give the bags away for free in the absence of regulations requiring them to charge, and
26 because the regulations requiring retailers to charge for the bags also require that the bags meet certain
27 criteria in order to be sold, a bag that does not meet those criteria is worth zero.
28

1 Thus, damages or restitution calculations require only basic arithmetic—the price a consumer
 2 paid for a bag multiplied by the number of bags that consumer purchased. In addition, nominal and
 3 punitive damages are available to the class here and can similarly be determined through straightforward
 4 calculations.

5 **a) Full Restitution and/or Full Damages Are An Appropriate**
 6 **Methodology in This Unique Market.**

7 As Dr. Hamilton explains, and as Walgreens’ evidence to date confirms, retailers like Walgreens
 8 only charge for bags at checkout when required to do so by law or regulation. Declaration of Dr.
 9 Stephen Hamilton (“Hamilton Decl.”)¹⁶ at ¶¶ 17-18; 44-46. Put differently, retailers historically have
 10 given carryout bags away for free at checkout. *Id.* There are numerous reasons behind this decision
 11 such as the fact that stores want to encourage consumers to purchase more products, charging for bags
 12 slows down the checkout process (which retailers are loath to do), and retailers have generally viewed
 13 checkout bags as an overhead cost, similar to heat or light in the store, that is included in the costs of the
 14 items rather than a separate additional charge. *Id.* Indeed, as anyone who has shopped at a store in
 15 California, which is not currently subject to the mandatory bag fees under SB270 may recognize, such
 16 locations continue to give carryout bags away for free. Moreover, recent studies have confirmed that
 17 stores would rather begin providing thicker and more expensive checkout bags for free because they can
 18 always include the additional higher costs of those bags in the cost of the goods they sell, rather than
 19 charge consumers for the bags. *See id.* at ¶¶ 49-50 (discussing phenomena of stores facing a ban on
 20 thinner “single-use” bags moving to more expensive and thicker bags but still providing those for free).

21 Put simply, the cost to a consumer for a checkout bag in an *unregulated* market is *zero*. *Id.* at
 22 ¶¶51-52. But, at least in California, in order to charge consumers for the bag that bag must meet a
 23 number of regulations including SB270’s and EMCA’s. This creates an all or nothing marketplace
 24 where the value to the consumer of a *compliant* bag is \$ 0.10, but where a *noncompliant* bag can have no
 25 value at all because such a bag would typically be given away for free. *Id.*

26
 27
 28 ¹⁶ The Hamilton Decl. is attached as Exhibit 2 to the Declaration of Patrick Carey. All references to the
 “Hamilton Decl.” refer to Paragraph 3, Exhibit 2 of the Carey Declaration.

1 These regulations create a market for plastic bags that make full refunds to class members
2 appropriate. Indeed, Courts in this District, and others, often find full refund methodologies satisfy Rule
3 23(b)'s requirements where, as here, a defendant's sale of the product failed to comply with applicable
4 laws. For example, in *In re JUUL Labs, Inc.*, Judge Orrick certified a class of "youth" purchasers of
5 Juul's vape products, agreeing with plaintiffs that because it was "illegal or inherently unfair to market
6 and sell the JUUL product to youth," a refund of the full purchase price of the products was an
7 appropriate damages methodology. *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.*, 609
8 F. Supp. 3d 942, 976 (N.D. Cal. 2022). Similarly, California's Court of Appeal has endorsed the use of
9 full refund models in CLRA class cases when sales of the products did not comply with applicable
10 regulations and laws. *See Steroid Hormone Prod. Cases*, 181 Cal. App. 4th 145, 156, (2010), *as*
11 *modified on denial of reh'g* (Feb. 8, 2010) (finding class would be entitled to a full refund of their
12 purchase price of the products at issue because the products were not permitted to be sold in California).

13 Underpinning the decisions in these cases, and distinguishing them from more typical "price
14 premium" false advertising cases, is what Dr. Hamilton explains as the difference between "use" or
15 "intrinsic" value and "market value." *See* Hamilton Decl. at ¶¶ 28-33. While courts in the run-of-the-
16 mill false advertising cases generally conclude that full refunds are not available because the consumer
17 got *some* value from the product, *e.g.*, calories, hydration, or enjoyment, *JUUL* and *Steroid Hormone*
18 reveal that this is not a hard-and-fast rule. *See generally, Hadley*, 324 F. Supp. 3d at 1103-15
19 (discussing differences between commonly applied price-premium model and other forms of damages
20 models in UCL and CLRA cases and certifying damages model using price-premium model).

21 The difference here, is that the "market value" for the bags is zero. Even if class members here
22 received some "use value" from the bag, like the ability to carry their purchases, the appropriate measure
23 of value is not such "use value" but the "market value" which is what the bag would cost in an
24 unregulated market—*i.e.*, zero. Hamilton Decl. at 52. In other words, the price of the bag is zero *but*
25 *for* the misrepresentation. Here, as in *JUUL* and *Steroid Hormone* full refunds are the appropriate
26 measure of restitution and/or damages. In fact, the Green Guides and the FTC recognize this distinction
27 as well. *See* 63 Fed. Reg. 84, 24243 (May 1, 1998). Under those regulations, "while a product may be
28

1 technically recyclable, if a program is not available allowing consumers to recycle the product, *there is*
2 *no real value to consumers.*” *Id.* (emphasis added).

3 As a result, this instant case presents the precise situation where class members are entitled to
4 full refunds and individualized issues of restitution or damages will not predominate.

5 **b) Nominal Damages Are Also An Appropriate Measure of Damages and**
6 **Can Readily Be Determined On a Classwide Basis.**

7 In the alternative, nominal damages are also available here in relation to the putative class’s
8 CLRA claim. Under the CLRA, consumers are entitled to, among other relief, actual damages, punitive
9 damages, and “[a]ny other relief that the court deems proper.” Cal. Civ. Code § 1780. Such “any other
10 relief” includes nominal damages. Indeed, multiple courts throughout this Circuit and District have
11 found nominal damages are appropriate in class actions. *See, e.g., Opperman v. Path, Inc.*, 2016 WL
12 3844326, at *15 (N.D. Cal. July 15, 2016) (certifying nominal damages class).

13 This is particularly true where a plaintiff has suffered a wrong, but the amount of damages are
14 unclear: “Nominal damages are not intended to compensate a plaintiff for injuries, nor to act as a
15 measure of the severity of a defendant's wrongful conduct.” *Arizona v. ASARCO LLC*, 773 F.3d 1050,
16 1058 (9th Cir. 2014). Instead, “it is precisely where the amount of damages is uncertain that nominal
17 damages may be awarded.” *Opperman*, 2016 WL 3844326, at *15 (cleaned up) (citing *Apple, Inc. v.*
18 *Samsung Elecs. Co.*, 2012 WL 2571719, at *28 (N.D. Cal. June 30, 2012).

19 As explained above, Walgreens sells its Plastic Film Bags in a unique and highly-regulated
20 market that makes more familiar measurements of damages, like price premium models, inapplicable.
21 *See supra* IV.C.(a). To the extent the Court disagrees that full refunds of the purchase price are
22 available here to harmed consumers, the portion of the purchase price paid by consumers that can be
23 assigned specifically to the recycling misrepresentation is uncertain, and thus warrants the availability of
24 nominal damages. And whether, and in what amount, nominal damages are available is a common
25 question predominating all of the claims.

26 **c) Punitive Damages Can Be Determined On A Classwide Basis.**

27 Punitive damages are also available to the class and capable of classwide resolution. In
28 California, courts may award punitive damages if a defendant acted with “oppression, fraud, or malice.”

1 Cal. Civ. Code § 3294. However, at the class certification stage, a plaintiff need not *prove* her punitive
2 damages claim, only show that punitive damages can be proven through common evidence. *See, e.g.,*
3 *Opperman*, 2016 WL 3844326, at *16 (“The question for the Court’s determination is not whether
4 Plaintiffs can demonstrate their entitlement to punitive damages now, but whether such damages can be
5 proved through evidence common to the class.”) (cleaned up).

6 As a result, Courts throughout the Ninth Circuit routinely certify damages classes premised on a
7 potential award of punitive damages. *See, e.g., id.* (noting that because California law applied to class
8 claims punitive damages were easily shown through common evidence); *Rodriguez v. Google LLC*,
9 2024 WL 38302, at *7 (N.D. Cal. Jan. 3, 2024) (same) (citation omitted); *Barefield v. Chevron, U.S.A.,*
10 *Inc.*, 1988 WL 188433, at *3 (N.D. Cal. Dec. 6, 1988) (“Because the purpose of punitive damages is not
11 to compensate the victim, but to punish and deter the defendant, any claim for such damages hinges, not
12 on facts unique to each class member, but on the defendant’s conduct toward the class as a whole.”).

13 As such, the Court should permit the Class to pursue punitive damages here as well.

14 **E. Superiority**

15 Rule 23(b)(3) also requires a court to consider whether a class action would be a superior method
16 of litigating the claims of the proposed class members by taking into account multiple factors, namely:
17 (A) the class members’ interests in individually controlling the prosecution or defense of separate
18 actions; (B) the extent and nature of any litigation concerning the controversy already begun by or
19 against class members; (C) the desirability or undesirability of concentrating the litigation of the claims
20 in the particular forum; and (D) the likely difficulties in managing a class action. *See Fed. R. Civ. P.*
21 *23(b)(3).*

22 Where, as here, “recovery on an individual basis would be dwarfed by the cost of litigating on an
23 individual basis, this factor weighs in favor of finding that the superiority requirement is satisfied
24 *Hadley*, 324 F. Supp. 3d at 1094 (citing *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175
25 (9th Cir. 2010)). In addition, Plaintiff is aware of no manageability concerns that would upset the “well-
26 settled presumption that courts should not refuse to certify a class merely on the basis of manageability
27 concerns.” *Hadley*, 324 F. Supp. 3d at 1094. Superiority is satisfied here.
28

1 **IV. In The Alternative, The Court Should Certify An Injunctive Relief Class Under Rule**
 2 **23(b)(2).**

3 To certify a class under Rule 23(b)(2), “the party opposing the class [must have] acted or refused
 4 to act on grounds that apply generally to the class, so that final injunctive relief or corresponding
 5 declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). It is
 6 sufficient “that class members complain of a pattern or practice that is generally applicable to the class
 7 as a whole.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010) (abrogation on other grounds
 8 recognized by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)). Here, the claims of each
 9 member of the Class all relate to one specific illegal labeling practice. If labels on one Bag purchased
 10 by one Class member are illegal, then the labels on all Bags purchased by all Class members are illegal.
 11 A single injunction prohibiting Walgreens from deceptively labeling its Bags as recyclable would
 12 provide relief to each member of the Class. Thus, the requirements of Rule 23(b)(2) are satisfied.

13 **CONCLUSION**

14 For all of these reasons, and others, the Court should (i) certify a class of all persons who
 15 purchased Walgreens’ Bags for personal, family or household purposes in California (either directly or
 16 through an agent) from April 29, 2018 through the present; and (ii) appoint Lexington Law Group, LLP
 17 as class counsel.

18
 19 Dated: March 12, 2024

LEXINGTON LAW GROUP, LLP

20
 21 /s/ Patrick Carey
 22 LEXINGTON LAW GROUP, LLP
 23 Patrick Carey (Bar No. 308623)
 24 Mary Haley Ousley (Bar No. 332711)
 25 503 Divisadero Street
 26 San Francisco, CA 94117
 27 Telephone: (415) 913-7800
 28 Facsimile: (415) 759-4112
 pcarey@lexlawgroup.com
 mhousley@lexlawgroup.com

Attorneys for Plaintiff
 ELISA BARGETTO

1 LEXINGTON LAW GROUP, LLP
2 Patrick Carey (Bar No. 308623)
3 Mary Haley Ousley (Bar No. 332711)
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 pcarey@lexlawgroup.com
9 mhousley@lexlawgroup.com

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

10 Attorneys for Plaintiff
11 ELISA BARGETTO

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

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

18 Plaintiffs,

19 v.

20 WALGREEN CO.,

21 Defendant

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

**DECLARATION OF PATRICK CAREY IN
SUPPORT OF PLAINTIFF'S MOTION
FOR CLASS CERTIFICATION**

Date: June 11, 2024

Time: 2:00 p.m.

Dept. Courtroom 9, 19th Floor

Judge: Hon. Trina L. Thompson

1 I, Patrick Carey, declare as follows:

2 1. I am a partner at Lexington Law Group, LLP (“LLG”) and counsel for Plaintiff Elisa
3 Bargetto (“Plaintiff”) in this action against Defendant Walgreen Co. (“Walgreens”). I have personal
4 knowledge of the matters set forth in this declaration and, if called as a witness, I could and would
5 testify competently thereto.

6 2. A true and correct copy of the Declaration of Michelle Leonard is attached hereto as
7 **Exhibit 1.**

8 3. A true and correct copy of the Declaration of Stephen Hamilton is attached hereto as
9 **Exhibit 2.**

10 4. A true and correct copy of the Declaration of Elisa Bargetto is attached hereto as **Exhibit**
11 **3.**

12 5. A true and correct copy of PowerPoint presentation, which was produced by Walgreens
13 in discovery, is attached hereto as **Exhibit 4.**

14 6. A true and correct copy of a PowerPoint presentation, which was produced by Walgreens
15 in discovery, is attached hereto as **Exhibit 5.**

16 7. A true and correct copy of excerpted pages from the transcript of the deposition of
17 Walgreens’ Rule 30(b)(6) witness, Mr. Kyle Tunison, is attached hereto as **Exhibit 6.** Mr. Tunison was
18 designated by Walgreens as its designee to testify pursuant to Fed. R. Civ. P. 30(b)(6) on all topics.

19 8. A true and correct copy of a March 10, 2020 message thread between Walgreens
20 employees, which was produced by Walgreens in discovery, is attached hereto as **Exhibit 7.**

21 9. A true and correct copy of an excerpted page from an excel spreadsheet depicting
22 Walgreens’ Bag sales in California, which was produced by Walgreens in discovery, is attached hereto
23 as **Exhibit 8.**

24 10. A true and correct copy of Walgreens’ Amended Objections and Responses to Plaintiff
25 Elisa Bargetto’s First Set of Interrogatories, dated January 30, 2024, is attached hereto as **Exhibit 9.**

26 11. A true and correct copy of excerpted pages from the Declaration of Roger Mattila in
27 Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed October 7, 2022 (ECF No.
28 33-1), is attached hereto as **Exhibit 10.**

1 12. A true and correct copy of excerpted pages from a Walgreens Bag specification, dated
2 March 28, 2022, which was produced by IPS Industries Inc. in response to a subpoena issued by
3 Plaintiff in this case, is attached hereto as **Exhibit 11**.

4 13. A true and correct copy of excerpted pages from a Walgreens Bag specification, dated
5 September 17, 2023, which was produced by CalRecycle pursuant to a California Public Records Act
6 Request, is attached hereto as **Exhibit 12**.

7 14. A true and correct copy of excerpted pages from Walgreens Bag specification, dated
8 September 17, 2023, which was produced by CalRecycle pursuant to a California Public Records Act
9 Request, is attached hereto as **Exhibit 13**.

10 15. LLG is a private law firm that has been successfully prosecuting consumer and
11 environmental cases for over twenty years.¹ LLG exclusively represents plaintiffs in complex public
12 interest civil litigation, including many cases brought as class actions. The attorneys of LLG have
13 substantial experience in false advertising and unfair competition matters. The following is a
14 representative sampling of some of the cases LLG has successfully litigated or is currently involved in:

- 15 a. *Smith v. Keurig Green Mountain, Inc.*, 4:18-cv-06690-HSG (N.D. Cal.).
16 Appointed Class Counsel in case involving misrepresentation of Keurig coffee pods as “recyclable”;
- 17 b. *Lopez v. Apple, Inc.*, 4:19-cv-04577-JSW (N.D. Cal.) and *Kumandan v. Google*
18 *LLC and Alphabet Inc.*, 5:19-cv-04286-BLF (N.D. Cal.): Counsel for plaintiffs in class cases alleging
19 that devices with Siri and Google Assistant record customers without their consent;
- 20 c. *Freeman v. Indochino Apparel, Inc., et al.*, 4:19-cv-04539-YGR (N.D. Cal.);
21 Counsel for plaintiff in class case alleging that clothing is falsely advertised as being on sale when, in
22 fact, the sale price is actually the regular price of the clothing;
- 23 d. *Keats v. Benjamin Moore & Co.*, 4:18-cv-02050-YGR (N.D. Cal.): Counsel for
24 plaintiff in class case alleging false advertising as to the amount of volatile organic compounds in
25 Benjamin Moore & Co.’s Natura Paints;
- 26 e. *Southern California Gas Leak Cases*, JCCP No. 4861 (Los Angeles County
27

28 ¹ Attached hereto as **Exhibit 14** is a true and correct copy of LLG’s firm resume.

1 Super. Ct.): Counsel for Proposition 65 Plaintiffs and assigned to Discovery Committee in consolidated
2 cases alleging that a blowout from a broken and aging gas injection well exposed communities to toxic
3 pollutants;

4 f. *Golloher v. Todd Christopher International, Inc. d/b/a Vogue International*, Case
5 No. 3:12-cv-06002 RS (N.D. Cal.): Appointed Class Counsel in case involving misrepresentation of
6 cosmetic products as organic;

7 g. *Stephenson, et al. v. Neutrogena Corporation*, Case No. 4:12-cv-00426 PJH (N.D.
8 Cal.): Appointed Class Counsel in case involving misrepresentation of cosmetic products as “natural”;

9 h. *Brown v. The Hain Celestial Group, Inc.*, Case No. 3:11-cv-03082-LB (N.D.
10 Cal.): Appointed Class Counsel in case involving misrepresentation of cosmetic products as organic;

11 i. *Zepeda, et al. v. Paypal, Inc., et al.*, 4:10-cv-02500-SBA (N.D. Cal. 2010):
12 Counsel for plaintiffs in case involving PayPal’s improper “hold” on plaintiffs’ funds in their own
13 PayPal accounts;

14 j. *In re WellPoint Out of Network UCR Rates Litigation*, Case No. MDL 09-2074
15 PSG (C.D. Cal.): Appointed co-lead and interim Class Counsel in antitrust case against health insurer
16 alleging conspiracy to artificially reduce reimbursements on “out of plan” claims by policy holders;

17 k. *In re Comcast Peer-to-Peer (P2P) Transmission Contract Litigation*, Case No.
18 2:08-md-01992 (E.D. Pa.): Appointed Class Counsel in class action against Comcast for alleged breach
19 of contract and false advertising arising from throttling subscribers’ internet speed;

20 l. *Gardner v. Chase Bank USA, N.A.*, Case No. SCV 242322 (Sonoma County
21 Super. Ct.): Counsel for plaintiff in class case alleging violations of state and federal fair debt collection
22 laws in connection with outstanding consumer credit card debt;

23 m. *Robins v. US Airways, Inc.*, Case No. CGC-07-460373 (San Francisco County
24 Super. Ct.): Appointed Class Counsel in class action alleging breach of contract on behalf of airline
25 customers;

26 n. *Dervaes v. California Physicians’ Service*, Case No. RG-06262733 (Alameda
27 County Super. Ct.): Appointed Class Counsel for plaintiff in class case challenging health insurer’s
28 unilateral mid-year increase to calendar-year costs;

1 o. *Lombardi v. Stompssoft, Inc.*, Case No. 04CC08816 (Orange County Super. Ct.):
2 Counsel for plaintiff in class action alleging claims for false advertising of computer software; and

3 p. *Foundation Aiding the Elderly, et al. v. Covenant Care, GranCare, and Ember*
4 *Care*, Case Nos. RG03087211, RG03083528, and RG03087224 (Alameda County Super. Ct.): Co-
5 counsel for plaintiffs in class and private attorney general action on behalf of residents of understaffed
6 nursing homes.

7 16. LLG has accomplished extraordinary results for our clients including injunctions
8 prohibiting unfair business practices and the recovery of millions of dollars for consumers. For
9 example, LLG filed a class action against Keurig for deceptively representing its coffee pods as
10 recyclable that resulted in: (i) requiring Keurig to revise the recyclability labels and marketing of its
11 coffee pods to clarify that they are not recyclable in many communities, and (ii) to create a \$10 million
12 fund for the benefit of consumers who purchased the coffee pods believing they were recyclable. As a
13 further example, LLG filed a class action against Comcast for breach of contract and false advertising
14 that resulted in a \$16 million refund for Comcast subscribers. In addition, LLG successfully litigated the
15 first cases filed under the California Organic Products Act (“COPA”), now known as the California
16 Organic Food and Farming Act (“COFFA”) which prohibits selling cosmetics as organic unless they
17 contain at least 70% organically produced ingredients. One case filed under COPA resulted in labeling
18 changes for Jason and Avalon Organics brands and nearly \$10 million for the benefit of consumers who
19 purchased the products believing that they were organic. In that case, the court stated that LLG has
20 “extensive experience in litigating consumer class actions” and its attorneys “have proven more than
21 proficient in the applicable law. *See Brown v. Hain Celestial Group, Inc.*, C 11-03082 LB, 2014 WL
22 6483216, at *14 (N.D. Cal. Nov. 14, 2014). In another class action filed under COPA, the maker of the
23 Organix line of personal care products agreed to change the name of the products nationally to eliminate
24 any suggestion that they are organic and to create a \$6.5 million fund for the benefit of its customers.

25 17. LLG has significant resources to devote to the vigorous prosecution of this case. In
26 addition, LLG is working with the Law Office of Gideon Kracov. For over a decade, Mr. Kracov served
27 as General Counsel of the California Waste and Recycling Association, a trade organization including
28 the region’s leading recycling and waste management companies. Mr. Kracov has significant

1 experience in the recycling industry and its regulatory framework.
2

3

4 I declare under penalty of perjury that the foregoing is true and correct to the best
5 of my knowledge and understanding. Executed on March 12, 2024, in San Francisco, California.

6

/s/ Patrick Carey
Patrick Carey

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit 1

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

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

Plaintiff,

v.

WALGREEN CO.,

Defendant.

Case No. 3:22-cv-02639-TLT
Assigned to Hon. Trina L. Thompson

**DECLARATION OF MICHELLE
LEONARD**

**EXPERT DECLARATION OF MICHELLE LEONARD IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Table of Contents

I. Qualifications..... 3

II. Scope of Work and Summary of Conclusions..... 4

III. The Meaning of “Recyclable” 5

IV. Plastic Film Bags and Walgreens’ Bags 7

V. Whether Walgreens’ Bags Are Recyclable Can Be Shown By Common Proof. 10

 A. Prong One – Whether There Is Sufficient Access to Recycling Facilities that
 Accept Walgreens’ Bags for Recycling Is A Common Question..... 10

 1. Californians Lack Access to Plastic-Film Bag Recycling Through
 Curbside Programs..... 12

 2. Californians Lack Access to Plastic Film Bag Recycling Through Store
 Dropoff Programs. 13

VI. Prong Two – Whether Walgreens’ Bags Are “Sortable” Is A Common Question. 15

 A. Plastic Film Bags Create Numerous Sorting Challenges..... 16

VII. Prong Three – Whether Sufficient End Markets Exist To Qualify Walgreens’ Bags as
 “Recyclable” Is A Common Question. 18

VIII. Conclusion 20

I. Qualifications

1. I am a Senior Vice President of SCS Engineers (“SCS”) and its National Expert in Solid Waste Planning & Recycling and Sustainable Materials Management. I have nearly 35 years of experience in sustainable materials management, including environmental consulting and project management with an emphasis on solid waste planning and facilities. I have assisted public and private sector clients in the preparation of solid waste management plans; designed and implemented waste reduction, recycling, and reuse programs; and evaluated existing programs to identify opportunities to reduce, reuse, and recycle solid waste. I have prepared plans and permits for transfer stations, material recovery facilities, and drop-off and buy-back centers. As part of these projects, I have completed environmental impact assessments, facility permit applications, odor and dust control plans, waste diversion compliance reporting, and other support documents. I am intimately familiar with all aspects of the recycling business and with the management and operation of material recovery facilities.

2. I am a member of the Solid Waste Association of North America (“SWANA”), including International Board Past President; Past Director of SWANA’s Recycling and Special Waste Technical Division; and serve on the Board of Directors of SWANA’s Southern California Founding Chapter (2009 to present). I am also a Past Director of the Southern California Waste Management Forum and Past President of the Women’s Environmental Council.

3. I received a Bachelor of Science degree in Conservation of Natural Resources from the University of California, Berkeley in 1980. I am SWANA certified in Managing Construction and Demolition Materials. I have published a number of articles regarding recycling in professional publications such as Waste Advantage Magazine, Recycling Today, Resource Recycling, and American Public Works Association. I have presented numerous times on waste management issues at professional conferences, seminars, and webinars, including those for SWANA, Southern California

Waste Management Forum, California Resource Recovery Association, National Recycling Coalition, and others.

4. A more detailed list of my qualifications and experience may be found in my curriculum vitae, attached as **Exhibit A**.

5. I am being compensated for my services in this matter at my standard rate of \$310 per hour, which is not contingent on my opinions or the outcome of this litigation.

II. Scope of Work and Summary of Conclusions

6. I understand that this case involves the labeling and sale in California of plastic-film grocery bags¹ by Walgreen Co. (“Walgreens”), and that Plaintiff seeks to certify a class of consumers who purchased these plastic-film grocery bags (“Walgreens’ Bags” or “Bags”) in California between April 29, 2018 and the present. I also understand that Plaintiff alleges that Walgreens has represented that its Bags are “recyclable” when, in reality, they are extremely unlikely to be recycled under any commonly understood definition of that term.

7. I was retained by Plaintiff’s counsel to conduct a preliminary evaluation as to the extent to which Walgreens’ Bags are recyclable, and to analyze whether this issue can be proven based on common evidence as to all of the Bags Walgreens sold in California between April 29, 2018 and the present (the “Class Period”)

8. In evaluating these issues, I have analyzed data and documents produced to date during discovery, although I have been informed that the discovery process is not yet complete. In particular, I have reviewed bag specifications for Walgreens’ Bags, Walgreens’ responses to Plaintiff’s Interrogatories, and a PowerPoint presentation produced by Walgreens. I have also reviewed academic

¹ Referred to herein as “Plastic Film Bags” or “Plastic Film Bag”.

research and government reports on various topics. A true and correct list of the materials I have relied upon is attached hereto as **Exhibit B**.

9. Based on my experience, expertise, familiarity with the issues raised in this case, and my review of the materials identified above, I have concluded that: (1) there are well-established and objective means for assessing whether Walgreens' Bags are recyclable; and (2) the recyclability of Walgreens' Bags can be determined based on common evidence across all California purchasers. Indeed, my preliminary determination based on my industry knowledge and discovery to date is that Walgreens' Bags are decidedly not recyclable.

III. The Meaning of "Recyclable"

10. For a product to be "recyclable," it must meet at least three criteria. *First*, consumers must have access to recycling facilities that accept the product for recycling. *Second*, recycling facilities must be capable of sorting the product into the correct, market-ready material bale. And *third*, there must be end markets to purchase that material bale to convert the material contained in that bale into a new product. The repurposing of material used to make one product into a new product or material fully "closes the loop" of the recycling process, hence the commonly used and widely recognized "chasing arrow" symbol used by companies to designate their products as "recyclable."

11. This three-part definition is commonly understood and known throughout the solid waste industry. In fact, this definition is embodied in California law,² and is utilized by the plastic recycling industry.³ Moreover, internal Walgreens documents [REDACTED]

[REDACTED]. For example, Walgreens' internal

² See Cal Pub. Res. Code § 42355.51(d)(2).

³ See Association of Plastic Recyclers definition of recyclable, available at <https://plasticsrecycling.org/recycling-definitions>.

[REDACTED]

[REDACTED].⁴

12. It is also my understanding, based on my review of the Federal Trade Commission (“FTC”) Guides for the Use of Environmental Marketing Claims (“Green Guides”), that the FTC has a similar interpretation of what it means for a product to be considered “recyclable.”⁵ Under the Green Guides, “A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.”⁶ According to the Green Guides, “if any component [of a product] significantly limits the ability to recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable material, but, because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable.”⁷

13. As to the first part of the Green Guides’ definition, whether an item “can be collected separated, or otherwise recovered from the waste stream through an established recycling program,” the Green Guides’ establish thresholds for community access to recycling facilities that will accept an item for recycling. Under the Green Guides, for a marketer of a product to make an unqualified claim as to recycling, at least 60% of consumers or communities must have access to facilities that can recycle the product.⁸ If recycling facilities are available to less than 60% of consumers or communities, a marketer must qualify any recycling claim it is asserting by stating: “This product may not be recyclable in your area.” If recycling facilities for a product are available to only a few consumers, a marketer must qualify

⁴ WAG0009271-WAG0009273.

⁵ 16 CFR § 260.12(a).

⁶ *Ibid.*

⁷ 16 CFR § 260.12(d).

⁸ 16 CFR §§ 260.12(b) – (d).

its recycling claims with even stronger qualifying language, such as: “This product is recyclable only in a few communities that have appropriate recycling programs.” Thus, the Green Guides recognize that recyclability can be assessed for a particular product or item by reference to objective thresholds that do not require an individualized analysis of the recycling capabilities of every individual community or recycling facility.

14. This three-pronged definition of recyclability – access, sortability, and end markets – is a well-established and objective definition that can be used to determine whether Walgreens’ Bags are recyclable. Indeed, as explained in detail below, and given the uniform nature of the Bags Walgreens sold throughout California, whether Walgreens’ Bags meet these objective criteria can be determined by common proof.

IV. Plastic Film Bags and Walgreens’ Bags

15. Whether Plastic Film Bags as a category are recyclable is a common question. The recyclability of an item turns on several factors, including the shape and size of the item and the material used to make the item. Generally, Plastic Film Bags are relatively thin, ranging from a few millimeters in thickness and are most commonly made from polyethylene, a product derived from natural gas and petroleum. Plastic Film Bags come in various densities of polyethylene: low-density polyethylene (“LDPE”); high-density polyethylene (“HDPE”); and medium-density polyethylene (“MDPE”), which is a combination of primarily LDPE and HDPE. Nevertheless, small variations in size, shape, thickness, and density of polyethylene between various Plastic Film Bags make little difference to whether they are recyclable. This is because the characteristics of Plastic Film Bags (i.e. they are thin, flimsy, and light weight) make them difficult to collect, sort, and bale.

16. Based on my review of Walgreens’ responses to Plaintiff’s Interrogatories as well as third-party specifications for Walgreens’ Bags that were either submitted in discovery in this matter or

are publicly available, there are no material differences between various Bags Walgreens has sold or distributed in California throughout the Class Period from a recyclability standpoint. Walgreens' Bags are made of substantially the same material and have substantially the same physical characteristics.

17. For example, from approximately 2016 to 2022, Walgreens sold or distributed Bags in California that were made from MDPE.⁹ From late 2021 through March 17, 2023, Walgreens sold or distributed Bags in California that were made from LDPE.¹⁰ From a recyclability standpoint, and the purposes of my analysis, the type of polyethylene film that comprise Walgreens' Bags is not a determining characteristic. In other words, whether MDPE and LDPE bags are recyclable can be answered through the same common evidence and the fact that they are different forms of polyethylene will not affect my analysis.

18. It is also my understanding that all of Walgreens' Bags Plaintiff has been able to identify in this matter have substantially the same physical characteristics as well. Based on the third-party bag specification documents for Walgreens' Bags from 2017 through 2023, Walgreens' Bags have the following physical characteristics:

- **December 18, 2017 Bag Specifications:**¹¹
 - (Height x Width): 11.25 x 15.75 (in)
 - Average thickness: 3.75 mils

⁹ Defendant Walgreen Co.'s Amended Objections and Responses to Plaintiff Elisa Bargetto's First Set of Interrogatories, Amended Response to Rog. No. 1.

¹⁰ Defendant Walgreen Co.'s Amended Objections and Responses to Plaintiff Elisa Bargetto's First Set of Interrogatories, Amended Response to Rog. No. 1. There appears to be a discrepancy between Walgreens' identification of the material used to make this latter set of Bags (LDPE), and the resin identification code pictured on the March 28, 2022 Bag Specifications referenced in footnote 15 below. The photographs of that bag show that the resin identification code identifies the material as "2" which is HDPE.

¹¹ Declaration of Roger Mattila In Support of Motion To Dismiss For Lack of Subject Matter Jurisdiction (filed April 29, 2022) at pgs. 13-14.

- **October 25, 2019 Bag Specifications:**¹²
 - (Height x Width): 11.25 x 15.75 (in)
 - Average thickness: 66.04 Micron – converted to 2.6 mils
- **November 15, 2019 Bag Specifications:**¹³
 - (Height x Width): 15 x 11.00
 - Average thickness: 2.6338 mils
- **September 30, 2021 Bag Specifications:**¹⁴
 - (Height x Width): 14.75 x 11.00(in)
 - Average thickness: 2.2797 mils
- **March 28, 2022 Bag Specifications:**¹⁵
 - (Height x Width): 15.25 x 11.75 (in)
 - Average thickness: 2.516 mils
- **September 17, 2023 Bag Specifications:**¹⁶
 - (Height x Width): 15.00 x 11.75(in)
 - Average thickness: 2.624 mils
- **September 17, 2023 Bag Specifications:**¹⁷
 - (Height x Width): 15.00 x 11.25(in)
 - Average thickness: 2.274 mils

19. For purposes of determining recyclability, the small variations in the size and thickness of Walgreens' Bags will not affect my analysis. Indeed, as discussed above, the question of whether all

¹² Declaration of Roger Mattila In Support of Motion To Dismiss For Lack of Subject Matter Jurisdiction (filed April 29, 2022) at pgs. 23, 24.

¹³ Declaration of Roger Mattila In Support of Motion To Dismiss For Lack of Subject Matter Jurisdiction (filed April 29, 2022) at pgs. 37-38.

¹⁴ Declaration of Roger Mattila In Support of Motion To Dismiss For Lack of Subject Matter Jurisdiction (filed April 29, 2022) at pgs. 49-50.

¹⁵ IPS – 000955, IPS – 000956.

¹⁶ Report #: R230287 r1, at pgs. 7-8.

¹⁷ Report #: R230296 r1, at pgs. 7-8.

Plastic Film Bags are recyclable is a question that could be answered on common proof as all Plastic Film Bags have the same general physical characteristics that limit their recyclability.

V. Whether Walgreens' Bags Are Recyclable Can Be Shown By Common Proof.

20. Under either the Green Guides' definition of recyclable, or the commonly understood definition of recyclable that I have provided above, whether Walgreens' Bags meets these definitions is a common question that can be answered by common proof. In fact, given that there are no material differences between the various Bags Walgreens sold throughout the Class Period there do not appear to be any individualized questions as to recyclability. Moreover, Walgreens [REDACTED]

[REDACTED]”¹⁸

21. Once again, the definitions of recycling I am applying consist of three basic prongs: (1) access to collection; (2) sortability; and (3) end market purchasers. I address each of these prongs in relation to Walgreens' Bags below and demonstrate that whether Walgreens' Bags meet any of these three elements can be decided by common proof.

A. Prong One – Whether There Is Sufficient Access to Recycling Facilities that Accept Walgreens' Bags for Recycling Is A Common Question.

22. In determining “access,” the main question concerning recyclability is whether consumers have access to recycling facilities that will accept the product the consumer wishes to recycle.

23. Generally speaking, at least in most populated areas, access to recycling consists of “curbside recycling programs.” These programs involve either companies such as Recology in San Francisco or Republic Services in areas of Los Angeles County, or local public entities such as the City of Sacramento, that collect items for recycling. Residents in areas with curbside programs place

¹⁸ WAG0009271.

specified products that the curbside program accepts for recycling in a designated recycling bin and then place that bin at their curb on a designated day for collection. This generally takes place weekly.

Following collection of items in curbside recycling programs, the items are transported to a material recovery facility (“MRF”). Similar to curbside recycling programs, MRFs can be owned and operated by private or public entities, including by the same entities that collect the material in the first instance. Generally, once items are transported to a MRF, a MRF will sort the items by material type (e.g., glass or cardboard), and then place items of the same material into bales. These bales can then be sold to end buyers for recycling.

24. In addition, as the reader is likely familiar with, there have been various efforts over the years to collect certain types of products for recycling that curbside programs refuse to collect. One of the primary examples of these efforts are store drop off bins (“SDO bins”) that numerous grocery stores, pharmacies, and other retail stores were required to, or volunteered to, place at their locations in order to collect Plastic Film Bags, like Walgreens’ Bags, for recycling.¹⁹ As described in more detail below, the SDO bins were initially provided as a way for consumers to recycle Plastic Film Bags since very few, if any, curbside programs accepted Plastic Film Bags. However, as described more below, the SDO bins have proved to be an utter failure.

25. Regardless of the method of collection, I understand that for purposes of Class Certification the main question I am opining on is whether I will be able to determine, via common proof on a class-wide basis, if a sufficient number of Californians have access to Plastic Film Bag

¹⁹ I understand that until January 1, 2020, California law required certain stores to provide bins for Plastic Film Bag collection and recycling. Cal. Pub. Res. Code § 42250 *et seq.* According to California’s Statewide Commission on Recycling Markets and Curbside Recycling, “Store dropoff bins are no longer legally required in California [and] have largely disappeared, most likely due to the lack of value and buyers for the contaminated, mixed post-consumer waste.” California’s Statewide Commission on Recycling Markets and Curbside Recycling, Policy Recommendations at p. 106 (June 25, 2021), available at <https://calrecycle.ca.gov/recyclingcommission/>.

recycling programs. This question can be readily resolved on class-wide evidence. Indeed, the Green Guides’ definition and other definitions of “recyclable” provide objective criteria, namely percentages, for determining whether there is access to recycling for any given product to consider it recyclable — for example, at least 60% of consumers or communities where an item is sold (pursuant to the Green Guides)²⁰, and at least 60% of the California population (pursuant to SB 343)²¹ must have access to recycling facilities or programs that accept a given product for recycling if that item is to be considered recyclable.

1. Californians Lack Access to Plastic-Film Bag Recycling Through Curbside Programs.

26. Whether Californians have *access* to Plastic Film Bag recycling via curbside programs can be answered by common evidence. Indeed, it is well-known in the industry that the overwhelming majority of curbside recycling programs and MRFs in California do not accept Plastic Film Bags, like Walgreens’ Bags, for recycling. Moreover, Walgreens [REDACTED]

[REDACTED]²²

27. Publicly available reports and studies confirm that the majority of curbside recycling programs and MRFs in California do not accept Plastic Film Bags for recycling. For example, the California Department of Resources Recycling and Recovery (“CalRecycle”), a state agency, recently published the preliminary findings of its “material characterization study,” a study it is conducting to determine what types of products are recyclable in California, *i.e.*, what products “are collected, sorted, sold, or transferred by solid waste facilities” in California.²³ According to CalRecycle’s preliminary

²⁰ 16 CFR §§ 260.12(b)(1).

²¹ Cal. Pub. Res. Code § 42355.51(d)(2)(A).

²² WAG0009267.

²³ CalRecycle, SB 343 Material Characterization Study Preliminary Findings at p. 3 (Dec. 2023), available at <https://www2.calrecycle.ca.gov/Publications/Details/1729>.

findings, only 30% of the California population has access to curbside recycling programs that accept the Plastic Film Bags at issue in this case.²⁴ Similarly, A 2022 industry study on consumer access to recycling for film and flexible packaging in California confirmed that “MRF’s are not a viable pathway for film recycling in [California] today.”²⁵

28. To the extent necessary, I will additionally be able to complete my own review of curbside programs in California to determine if Californians have sufficient access to recyclers of Plastic Film Bags through curbside programs. Such information will be available online or simply through calling the various MRFs, municipal coordinators, and collectors.

2. Californians Lack Access to Plastic Film Bag Recycling Through Store Dropoff Programs.

29. Whether Californians have *access* to Plastic Film Bag recycling via SDO programs can similarly be answered by common evidence.

30. There is a relative dearth of reliable public information on the prevalence of SDO programs in California. For example, one online directory intended to assist consumers in locating SDO bins was recently taken offline as the company who managed the directory was “no longer able to secure sufficient support to continue to provide a vetted Directory and respond to inquiries.”²⁶ And there is similarly a lack of publicly available information on whether these SDO programs actually succeed in collecting Plastic Film Bags. However, anecdotally, various news agencies have recently investigated

²⁴ CalRecycle, SB 343 Material Characterization Study Preliminary Findings at p. 13 (Dec. 2023), available at <https://www2.calrecycle.ca.gov/Publications/Details/1729>.

²⁵ GreenBlue/SPC California Regional Film & Bag Study, Resource Recycling Systems (Nov. 15, 2022), available at <https://sustainablepackaging.org/wp-content/uploads/2022/11/CA-Regional-LDPE-Study-Final-11.07.22-1.pdf>. GreenBlue is a parent organization to the Sustainable Packaging Coalition (“SPC”) and How2Recycle, a program which administers the Store Drop-Off label which is currently on Walgreens’ Bags.

²⁶ <https://bagandfilmrecycling.org/view/whattorecycle>.

what happens with the Plastic Film Bags placed in SDO bins and found that, at least in the vast majority of instances, the contents of the bins is not recycled, but instead ends up in landfills.²⁷ Specific to California, one of the news agencies reported that out of the 3 trackers it placed in SDO bins located in California, two last pinged at landfills, and one never pinged outside of the store.²⁸ The other news agency reported that three trackers placed in California store drop-off bins last pinged at landfills, and another last pinged next to a garbage dump.²⁹

31. As a result, even if there were sufficient SDO bins throughout the state for Californians to access, that would still fail to confirm the bags are “recyclable” under our three prong definition because mere access to collection, and then dumping into the trash or burning in an incinerator, clearly does not make something recyclable.

32. The point here, however, is that, to the extent necessary, data collection, whether through surveys, studies, subpoenas, or the like could be used to determine how many stores actually provide SDO programs and whether those SDO programs accomplish the goal of collecting Plastic Film Bags that is then sorted and sold for processing.

²⁷ Matt Gutman, et al., We put dozens of trackers in plastic bags for recycling. Many were trashed, ABC News (May 23, 2023), <https://abcnews.go.com/US/put-dozens-trackers-plastic-bags-recycling-trashed/story?id=99509422>; Bloomberg, *Don't Trust Plastic Snack Wrappers With Recycling Instructions* (September 29, 2023), <https://www.bloomberg.com/news/features/2023-09-29/us-store-drop-off-plastic-recycling-often-ends-up-in-landfills>.

²⁸ ABC 10 News San Diego, Team 10 Investigation: *Are your recyclable plastic bags ending up in landfills?* (May 23, 2023), <https://www.10news.com/news/team-10/team-10-investigation-are-plastic-bags-getting-recycled>.

²⁹ Bloomberg, *Don't Trust Plastic Snack Wrappers With Recycling Instructions* (September 29, 2023), <https://www.bloomberg.com/news/features/2023-09-29/us-store-drop-off-plastic-recycling-often-ends-up-in-landfills>.

VI. Prong Two – Whether Walgreens’ Bags Are “Sortable” Is A Common Question.

33. The second prong of the recyclable definitions concerns “sortability.” Whether a product is sortable at MRFs for recycling purposes involves determining whether the particular product at issue can be “sorted,” that is, separated from the general recycling stream and grouped with other like products. To use the industry terms, the sorting facilities must be capable of isolating and collecting the Plastic Film Bags from the general recycling stream and package the Plastic Film Bags into their own “bale,” which can be sold and shipped to someone for re-manufacturing into another item. In internal documents Walgreens [REDACTED]

[REDACTED]³⁰

34. Just as someone purchasing virgin plastic, wheat, or mined aluminum wouldn’t want those commodities to be contaminated, someone purchasing used aluminum cans or other potentially recyclable products from a sorting facility would not want foreign materials like plastics, glass, or other metals such as tin mixed in with the aluminum cans. Such contamination would significantly complicate, or even completely ruin, the purchaser’s ability to melt the cans down or otherwise process them into recycled aluminum that could be used to manufacture new products. Indeed, these cans would have to be clean, free of food residue and other waste as well.

35. The same is true for plastics. MRFs or other processing facilities must be able to segregate the various plastics based on numerous factors such as polymer type, color, size, and level of contamination, which can include food, drink, other refuse, and even the labels and the glues used to attach the labels, to certain products.

36. Determining whether Plastic Film Bags like Walgreens’ Bags are sortable, can be answered through common proof. Indeed, this question turns largely on whether MRFs or other sorting

³⁰ WAG0009267.

facilities in California are capable of harvesting the Plastic Film Bags from the recycling stream. As with the access element, determining this can be proven through contacting the 142 registered MRFs or sorting facilities in California and lack of sortation can even be proven by showing that plastic film bales containing Plastic Film Bags are either not available for purchase on the market, or are scarcely available. In other words, if there are limited-to-no plastic film bales containing Plastic Film Bags available for purchase on the market, that would indicate that Plastic Film Bags are not being sorted, baled, and sold.

A. Plastic Film Bags Create Numerous Sorting Challenges.

37. Even if a specific portion of the California population has access to facilities that accept Plastic Film Bags for recycling, the facilities must also be capable of sorting the Plastic Film Bags into the bales of the same or similar materials in order to be sold and shipped to a recycler for use in re-manufacturing into another item. For relatively large, solid containers like soda bottles made of #1 plastic (PET) or detergent bottles made of #2 plastic (HDPE), MRFs are typically able to achieve a recovery rate of 85% to 90% or higher, meaning the MRFs can harvest these products from the recycling stream and package into bales for selling.³¹ Similarly, MRFs can segregate aluminum cans and other products from other dissimilar materials using mechanical and other methods.

38. This is far from true with Plastic Film Bags, however. According to CalRecycle's preliminary findings for its material characterization study, 0% of surveyed jurisdictions sort Plastic Film Bags in California.³² Plastic Film Bags, including Walgreens' Bags, are thin, malleable, and lightweight. As a result, instead of MRFs being able to collect and isolate Plastic Film Bags from the

³¹ The Recycling Partnership, State of Recycling at p. 19 (2024), available at <https://recyclingpartnership.org/residential-recycling-report/>.

³² CalRecycle, SB 343 Preliminary Findings Report Informational Session at powerpoint slide 39 (Feb. 13, 2024), available at <https://www2.calrecycle.ca.gov/Docs/Web/127287>.

recycling stream, those bags often become tangled in sorting equipment, causing the equipment to malfunction (preventing it from sorting other materials properly), and requiring employees to shut down the recycling line to cut away bags that have become tangled. Indeed, many MRFs consider Plastic Film Bags to be *contaminants* in the recycling stream due to these problems.³³ In other words, because Plastic Film Bags get caught in equipment, or otherwise mixed in with more economically valuable recyclables, they tend to harm MRFs and other sorting facilities rather than providing those facilities with a product they can harvest and sell.

39. Another problem with sorting Plastic Film Bags is that they are difficult to clean and often covered in contaminants that negate any potential value the bags may have on the recyclable market. As one can easily imagine, a Plastic Film Bag is difficult to clean, and recyclers, that would potentially purchase *clean* plastic film, cannot purchase post-consumer Plastic Film Bags covered in food, soda, dirt, or other contaminants.

40. In fact, this is the main difference between “back of house” plastic film and Plastic Film Bags like Walgreens’ Bags. “Back of house” plastic film, essentially “industrial strength” Saran Wrap or “pallet wrap” is the thick plastic film used to hold products stacked on pallets together or to wrap certain items to protect them in transit. This thicker plastic film is much easier to isolate and store separately from contaminants and other garbage due to its size (both its thickness and commonly used length) and the fact that it has relatively limited uses and locations where it is used. These factors allow people to much more easily collect it at commercial facilities like warehouses and package it in bales for sale. Many publicly available statistics on the “recycling” of Plastic Film Bags, improperly lump this

³³ The Recycling Partnership, *West Coast Contamination Initiative Research Report* at p. 11 (2019), available at https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf.

back of house plastic film into the numbers when in reality, any plastic film currently being sorted and sold to end-market recyclers is made up of the easier-to-sort “back of house” plastic film.³⁴

41. Like CalRecycle has already done, and to the extent necessary, I would be able to complete studies to determine whether MRFs and SDO bins are used to recover effectively Plastic Film Bags and Walgreens’ Bags from the waste stream and sorted into material bales in California.

42. In addition, one simple class-wide fact I expect to establish is that there are almost no, or at least very few, Plastic Film Bag material bales available on the market for purchase. If Plastic Film Bags were in fact being recovered and separated from waste streams, one would expect to be able to find such bales available.

VII. Prong Three – Whether Sufficient End Markets Exist To Qualify Walgreens’ Bags as “Recyclable” Is A Common Question.

43. The final or third prong of the recyclable definitions concerns “end markets.” Access and sortability are of little importance if there is no one to purchase the Plastic Film Bags in order to complete the recycling loop and use the Plastic Film Bags as a feedstock material in a new product.

44. Whether end markets exist, *i.e.*, whether there is someone willing to purchase Walgreens’ Bags and use them to create a new product is a question that can be readily answered as to the product category as a whole with common proof. Indeed, my experience in the solid waste industry informs me there is little-to-no end market for bales of the Plastic Film Bags at issue.

45. This is due to a number of reasons such as cost inefficiencies and contamination. For instance, from an end market standpoint, since recycling facilities sell processed plastics to reclaimers by weight, the small size and light weight of the Plastic Film Bags in relation to the total volume of the curbside stream gives MRFs almost no incentive to target and sort them. Even within the subcategory of

³⁴ GreenBlue/SPC California Regional Film & Bag Study, Resource Recycling Systems (Nov. 15, 2022), available at <https://sustainablepackaging.org/wp-content/uploads/2022/11/CA-Regional-LDPE-Study-Final-11.07.22-1.pdf>.

plastic film such as the Plastic Film Bags, there are important differences between Plastic Film Bags on the one hand and other types of plastic film such as clean, back-of-store or warehouse pallet wrap and agricultural tarps (*i.e.*, post-commercial plastic film) on the other hand. This “back of house” or post-commercial plastic film does have a few end markets due to its size and lack of contamination. However, Plastic Film Bags used by consumers (*i.e.*, post-consumer plastic film) are small, thin, and highly likely to be contaminated with other waste materials. Simply put, there are limited end markets for recycling plastic film generally, and, to the extent those markets exist, the demand is for relatively uniform, clean, segregated and high volume plastic film like pallet wrap and not for contaminated, lower volume plastic film like the Plastic Film Bags.

46. Contamination of materials that would otherwise be recyclable also prevents them from being baled and sold to reclaimers for recycling. Recycling facilities must ensure that the items they sort are relatively clean and free of contaminants as reclaimers must have clean and uncontaminated bales to purchase and process. Because Plastic Film Bags are “post-consumer” products, they are often contaminated with food, liquids, or other materials once deposited in blue bins or SDO bins. Based on publicly available data from the plastics recycling industry, reclaimers are not likely to purchase plastic film bales contaminated with these materials. According to The Association of Plastic Recycler’s model bale specifications, which are industry developed guidelines for the recycling market, contaminants such as food waste and liquids are not allowed at any level in bales of plastic film generated by retailers.³⁵ Similarly, Trex, a company that turns plastic film into composite decking material and lumber, specifies that “[p]lastics must be clean, dry and free of food and organic residue.”³⁶

³⁵ Association of Plastic Recyclers, Model Bale Specifications: PE Retail Mix Film, available at <https://plasticsrecycling.org/images/Markets/APR-BaleSpec-PE-RetailMixFilm.pdf>.

³⁶ NexTrex, Acceptable Items List, at https://nextrex.com/jsfapp/cdocs/w493_q2_sp21_0_trex-recycling-posterpdf.pdf.

47. Facts like these, and others, will help to demonstrate that Plastic Film Bags, as a product category, have little to no end market. Using publicly available information and proprietary industry data, it is possible to assess the extent to which end markets exist for plastic film bales and the likelihood that any items contained therein like the Plastic Film Bags will actually be reclaimed for reuse in making another product. Whether such a market exists can be answered as to the product category as a whole and will not turn on individual factors.

48. In sum, assessing whether the Plastic Film Bags are recyclable in California can be accomplished using widely recognized tools that do not require an individualized inquiry into the particularities of every single community, recycling facility or plastics reclaimer. In fact, the common evidence already gathered in this case is sufficient for me to conclude that Plastic Film Bags fail all three prongs of the recyclability definition.

VIII. Conclusion

49. As set forth in detail above, it is my opinion that there are widely accepted and feasible methodologies for proving that Walgreens' Bags are not recyclable on a classwide basis. By applying the commonly understood and objective three-pronged definition of "recyclable" to California-wide information concerning Plastic Film Bags, I will be able to demonstrate, across the entirety of the proposed class, that Walgreens' Bags are not recyclable.

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

Executed on March 12, 2024, at Pasadena, California.

A handwritten signature in black ink, appearing to read "Michelle P. Leonard". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michelle P. Leonard

Exhibit A

MICHELLE P. LEONARD

Education

BS – Environmental Studies (with honors), University of California, Berkeley, 1980

Professional Affiliations

Solid Waste Association of North America (SWANA), International Board Past President; Recycling and Special Waste Technical Division Past Director; Southern California Founding Chapter, Board of Directors (2009 to Present)
Past Director, Southern California Waste Management Forum
Past President, Women’s Environmental Council



Professional Experience

Ms. Leonard has 35 years of experience in environmental consulting and project management, with an emphasis in solid waste management planning and facilities. She has assisted public and private sector clients in the preparation of solid waste management plans; designed and implemented waste reduction, recycling, and reuse programs; and evaluated existing programs to identify opportunities to reduce, reuse, and recycle solid waste. She has a strong working knowledge of solid waste management regulations and practices, and has presented numerous successful projects to city, county, and state regulators.

Notable projects that Ms. Leonard has been involved in are described below.

Iowa Department of Natural Resources, Sustainable Materials Management Visioning Project, Project Director. The Iowa Department of Natural Resources (DNR) contracted with SCS to prepare the SMM Vision for Iowa as a continuation of the work that began in 2019. The project focused the discussion on specific materials identified by stakeholders as materials that are presently disposed but could be used more sustainably throughout their lifecycle to minimize waste and associated environmental impacts. The project included research, meetings, input and discussions of stakeholders representing a diverse cross-section of the State, including local and state government, industry, academics, solid waste and recycling, and non-profit organizations and agencies. The project report provides a summary of discussions held, priorities identified and strategies developed to assist the State investigate a path to envision a more sustainable, productive system to manage the States’ resources for their highest and best use, to achieve the strongest economic viability of our manufacturing industries, and to protect public health and the environment.

Keurig Green Mountain Class Action Lawsuit, US District Court, Northern District of California, Expert Report. Ms. Leonard providing expert analysis of the case involving the labeling and sale in California of Keurig Green Mountain, Inc.’s single-service coffee pods labeled as recyclable. She was retained by the Plaintiff’s counsel to evaluate the extent to which the products are recyclable. As part of the evaluation, Ms. Leonard analyzed data and documents regarding the recyclability of the products. She also conducted an extensive survey of Material Recovery Facilities (MRFs) in California to determine the ability of these facilities to accept and correctly sort the materials and divert them from landfills.

Yakima County Solid Waste and Moderate Risk Waste Management Plan, Yakima, WA. Project Director for the 2022 update of the County Solid Waste and MRW Plan. The Plan Update has been prepared to meet the requirements of all applicable federal, state and local regulations and

guidelines, particularly chapter 70.A.205.045 RCW, the State Solid Waste Management Plan, and associated State Guidelines, and other local, state or federal policies, regulations or goals that affect solid waste management. The Plan Update is an integrated, long-term strategy for waste and materials management. The strategy incorporates policies and programs that address the different segments of the waste stream and the different management approaches that must be taken to accomplish the County's goals and objectives. In addition to waste handling systems, the Plan Update will also include tools to accomplish its implementation. The plan has been updated to incorporate new requirements, including the Contamination Reduction and Outreach Plan

City of Odessa, TX Solid Waste Master Plan. Project Director for the City's first solid waste plan.

The City needed to develop a Solid Waste Management Master Plan due to unexpected population growth, resulting in an increased competition for human resources. The City wanted to ensure that long-term goals were fiscally and operationally sustainable. Emphasis of needs were stressed at a comprehensive financial review to implement a cost control model and plan. As part of the Master Planning process, SCS conducted an online survey of residents and businesses as to their concerns about the existing waste management system and desire to increase landfill diversion.

County of Los Angeles Department of Public Works (LACDPW), Smart Business Recycling Program and Commercial, Institutional Recycling Program, Los Angeles, CA. As Project Director, Ms. Leonard directs SCS's involvement with the LACDPW to meet requirements of the California Integrated Waste Management Act (IWMA) of 1989, Assembly Bill (AB) 341 Mandatory Commercial Recycling (MCR), AB 1826 Mandatory Commercial Organics (MCO), and SB 1383, the Short-Lived Climate Pollutants Act. The goal of the Program is to help businesses reduce waste and preserve landfill capacities. Objectives include assisting the LACDPW to achieve recycling and diversion while complying with state requirements. The contract includes a wide variety of types of work, ranging from complex site visits to reporting, graphic design, and procurement of promotional items.

SCS is also assisting the County to implement its Road Map to a Sustainable Waste Management Future, which establishes diversion strategies for the region, County operations, and the County unincorporated communities. As part of this project, SCS is providing Business Technical Assistance, including commercial recycling audits, recommendations for program enhancements, and assisting with recycling program implementation at County facilities, and at large waste generators. To date, SCS has prepared a Zero Waste Event Guide, evaluated operations at six County facilities, developed an awards program for facilities that are achieving high levels of diversion, and identified and procured outreach materials and recycling containers for distribution to County facilities and other businesses.

Analysis of California's Bulky Item Collection of Mattresses and Box Springs. Project Manager for the preparation of a survey and study to understand methods that are being used to collect mattresses and box springs, specifically municipal solid waste programs that pick-up the units as part of their municipal bulky item collection program. This information will assist the Mattress Recycling Council (MRC) to provide resources to residents on how they can recycle their mattresses and box springs. MRC is also interested to learn if there is a connection between the lack of collection programs and illegal dumping of mattresses and box springs. The data from this study will be used to enhance education and outreach, and identify gaps in the program.

Technology Assessment, Permitting, and Market Analysis, NOWON. Project Director. SCS has assisted NOWON for over five years with the evaluation, analysis, and permitting of a new technology to convert organics and other MSW streams into a biomass for landfill diversion, energy production, and composting enhancements. The technology, developed in Spain, will process 7 tons per hour of material, and is suitable for development in conjunction with MRFs, landfills, and other industrial uses.

City of Pasadena, Zero Waste Strategic Plan, Pasadena, CA. As Project Manager, Ms. Leonard evaluated existing programs, determined the objectives, performed a waste characterization study, identified options to address the objectives, developed guiding principles, screened options for implementation, and was solely responsible for selecting the most suitable option. The project also involved the stakeholder engagement process, which included workshops and outreach efforts.

City of Santa Monica, Zero Waste Strategic Operations Plan (ZWSP), Santa Monica, CA. As Project Manager, Ms. Leonard was responsible for preparing a strategic operations plan that evaluated current conditions, and recommended policies, programs, and infrastructure to reach the City's goal of zero waste by 2030. The project included planning of a zero waste ordinance, guiding principles, waste characterization and generation projections, and review and recommendation of suitable options. The ZWSP also evaluated the impacts on the City's rate structure, and mechanisms to finance the program

Iowa Hub and Spoke Recycling Study. Project Director. The Iowa Department of Natural Resources contracted with SCS to inventory existing recycling operations within rural Iowa, and assess the feasibility of creating rural partnerships with a hub-and-spoke type of system. The study included identifying existing rural recycling services, service providers, and recycling gaps, and providing strategies to fill recycling gaps, within the structure of a regional hub-and-spoke recycling system. SCS prepared a report which summarized our research and provided recommendations for implementing this type of recycling system as a means of increasing rural recycling participation, while maintaining and improving rural recycling efficiencies and economics.

Exhibit B

Exhibit B

Bates-Numbered Documents

IPS – 000951 – IPS – 000959

WAG0009267 – WAG0009276

Pleadings and Legal Documents

California Public Resources Code § 42355.51(d)(2)

Declaration of Roger Mattila in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed October 7, 2022

Defendant Walgreen Co.'s Amended Objections and Responses to Plaintiff Elisa Bargetto's First Set of Interrogatories, dated January 30, 2024

Green Guides; 16 CFR § 260.12(a)-(d)

Second Amended Complaint, filed September 30, 2022

Non Bates-Numbered Documents

AM Testing Report #: R230287 r1, dated September 17, 2023

AM Testing Report #: R230296 r1, dated September 17, 2023

CalRecycle, SB 343 Material Characterization Study Preliminary Findings, dated December 2023, available at <https://www2.calrecycle.ca.gov/Publications/Details/1729>.

California's Statewide Commission on Recycling Markets and Curbside Recycling, Policy Recommendations, submitted June 25, 2021, available at <https://calrecycle.ca.gov/recyclingcommission>.

CalRecycle, SB 343 Preliminary Findings Report Informational Session, dated Feb. 13, 2024, available at <https://www2.calrecycle.ca.gov/Docs/Web/127287>.

GreenBlue/SPC California Regional Film & Bag Study, Resource Recycling Systems, dated Nov. 15, 2022, available at <https://sustainablepackaging.org/wp-content/uploads/2022/11/CA-Regional-LDPE-Study-Final-11.07.22-1.pdf>.

The Recycling Partnership, State of Recycling, dated 2024, available at, <https://recyclingpartnership.org/residential-recycling-report/>.

The Recycling Partnership, West Coast Contamination Initiative Research Report, dated 2019, available at https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf.

Websites

ABC News, <https://abcnews.go.com/US/put-dozens-trackers-plastic-bags-recycling-trashed/story?id=99509422>.

ABC 10 News, San Diego, <https://www.10news.com/news/team-10/team-10-investigation-are-plastic-bags-getting-recycled>.

Bloomberg, <https://www.bloomberg.com/news/features/2023-09-29/us-store-drop-off-plastic-recycling-often-ends-up-in-landfills>.

Association of Plastic Recyclers, <https://plasticsrecycling.org/recycling-definitions>.

Association of Plastic Recyclers, <https://plasticsrecycling.org/images/Markets/APR-BaleSpec-PE-RetailMixFilm.pdf>.

Drop-off Directory, <https://bagandfilmrecycling.org/view/whattorecycle>.

NexTrex, https://nextrex.com/jsfapp/cdocs/w493_q2_sp21_0_trex-recycling-posterpdf.pdf.

Exhibit 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

WALGREEN CO.,

Defendant.

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

Hon. Trina L. Thompson

**EXPERT DECLARATION OF STEPHEN F. HAMILTON, Ph.D. IN SUPPORT
OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

TABLE OF CONTENTS

I. QUALIFICATIONS 1

II. SCOPE OF ANALYSIS 4

III. SUMMARY OF PRINCIPAL CONCLUSIONS 6

IV. ECONOMIC DAMAGE FRAMEWORK..... 11

 A. CLASS ACTION DAMAGES CORRESPOND WITH VALUE IN EXCHANGE (MARKET VALUE) AS OPPOSED TO VALUE IN USE (INTRINSIC VALUE, OR CONSUMER WILLINGNESS TO PAY)..... 11

 B. RETAILERS HAVE A PROFIT MOTIVE TO PROVIDE PLASTIC CARRYOUT BAGS FOR FREE, AND IN FACT PRICE PLASTIC CARRYOUT BAGS FOR FREE ABSENT REGULATIONS THAT REQUIRE POSITIVE PLASTIC BAG PRICES TO CONSUMERS. 17

 C. THE ECONOMIC VALUE OF A PLASTIC CARRYOUT BAG THAT DOES NOT MEET CALIFORNIA REGULATIONS IS ZERO 19

V. CALCULATING CLASS-WIDE MONETARY RELIEF IN THE PRESENT MATTER IS STRAIGHTFORWARD 21

 A. FULL DAMAGES AND/OR RESTITUTION CAN BE CALCULATED USING STRAIGHTFORWARD METHODS 22

 1. *Full restitution or damages is a reliable measure consumer overcharge* 23

VI. CONCLUSION 24

I. QUALIFICATIONS

1. I am Professor of Economics at California Polytechnic State University, San Luis Obispo (“Cal Poly”). I received my Ph.D. in Agricultural and Resource Economics from the University of California, Berkeley in 1996 and currently hold a position as professor of economics at California Polytechnic San Luis Obispo (“Cal Poly”), where I teach graduate and undergraduate courses in environmental and resource economics, microeconomics, and industrial organization. I have held positions as a professor at Kansas State University, the University of Arizona, the University of Central Florida, Toulouse School of Economics, and Cal Poly. I was selected as Chair of the Department of Economics at Cal Poly in 2005 and served in that capacity over the period 2005-2017, and I served as Director of Graduate Studies over the period 2016-2019.

2. I have published extensively in academic and professional journals on the application of statistical methods, industrial organization, wholesale and retail market pricing, international trade, environmental and resource economics, and public policy. During my academic career, I have served on panels of the U.S. Department of the Interior Science Advisory Board and have been awarded grants for research by the Texas Comptroller, California Air Resources Board, U.S. Department of Agriculture, U.S. Department of the Interior, and private foundations. I have secured over \$4 million in Federal grants to fund my research. I have published over 70 articles, proceedings and book chapters and have won numerous awards for my teaching and scholarship.

3. I have been recognized internationally for my research and consulting related to retail market practices, consumer products, environmental and land use regulation, energy and water markets, and antitrust issues. My academic and professional honors include receiving the

Early Career Award, the *Atlas Award*, the *Quality of Research Discovery Award*, and the *Distinguished Scholarship Award*. I have provided plenary and keynote addresses at international research conferences, presented scholarly work at over 30 national and international conferences, and delivered invited seminars at over 25 different universities.

4. My published research in retail markets includes more than two dozen peer reviewed articles in which I have conducted econometric analyses of consumer demand using models that measure the effect of individual product attributes on prices using retail scanner data. These studies are part of a broader academic research program that is focused on consumer purchasing behavior and retail pricing outcomes in categories with extensive product differentiation, such as yogurt, breakfast cereal, soft drinks, ice cream, snacks, beer, and personal care products. I have extensive experience utilizing retail point of sale and household panel data to examine the role of product attributes and labeling claims in determining consumer demand and market prices for individual products in highly differentiated product categories. I have designed consumer surveys, collected survey data, and developed economic analyses to calculate the economic value of individual product attributes using survey-based statistical techniques.

5. In my published academic work, I have examined economic incentives for firms to engage in fraudulent labeling. I have analyzed incentives for firms to engage in fraudulent labeling of conventional products as “green” products (e.g., “environmentally friendly” or “natural”). I have estimated consumer willingness to pay premiums for “organic” and “local food” attributes in fresh produce markets and the effect of product variety on retail pricing and category demand. I have quantified consumer willingness-to-pay premiums for various attributes in food products using consumer survey data, and I have calculated demand impacts and price

premia for labeling attributes that appear in the marketing mix on consumer packaged goods using retail point-of-sale (POS) “scanner” data.

6. I have also published articles on waste and recycling markets and have presented my research on recycling and waste management at major international conferences. I have designed market incentives to increase the efficiency of collective waste management systems and to increase local recycling rates, and I have won awards for my research on reducing food waste. In May 2019, I provided the keynote address for TRANSFORuM: Industry Pioneers & Visionaries at Waste Expo, the world’s largest conference on waste management and reduction.

7. In addition to my work in academia, I have over twenty-five years of consulting experience. My consulting engagements have included the measurement of economic damages in complex litigation, including consumer product cases involving deceptive pricing allegations, as well as comparative price advertising. I have produced expert reports in over thirty class action cases involving consumer damages for misleading product representations and have provided testimony on economic damages for consumer fraud and false advertising allegations on products sold in various retail industries (*e.g.*, food, vitamins, coffee, apparel, electronics, and personal care products, among others). As part of my consulting work, I have used regression models to measure consumer overcharges for mislabeled “organic,” “GMO-free,” “natural,” “sustainable,” “recyclable,” “compostable,” and “hypoallergenic” product attributes, among others. My consulting engagements have also included market analyses of regulated industries, economic feasibility studies, environmental and land use regulation, groundwater basin management, and portfolio investment modeling.

8. A more detailed list of my qualifications, experience, professional activities, and publications can be found in my curriculum vitae, attached as **Exhibit A**. A true and correct list of my testimony over the last four years is attached as **Exhibit B**.

II. SCOPE OF ANALYSIS

9. I understand that this case is a consumer class action matter against Defendant Walgreen Co. (“Walgreens”) regarding deceptive and misleading statements on Plastic Carryout Bags made from plastic-film (“Plastic Carryout Bags”) that are labeled as “recyclable.” I am aware that California voters ratified a ban on single-use Plastic Carryout Bags (SB 270), which prohibits certain stores from selling or distributing a reusable grocery bag made from plastic film unless the bag meets a number of requirements including that it complies with the Green Guides’ labeling requirements for recyclability.

10. Plaintiff alleges that the Plastic Carryout Bags sold by Walgreens (the “Challenged Products”)¹ are not labeled in compliance with the Green Guides, and as such, Walgreens’ claim that such products are “recyclable” violates the California Environmental Marketing Claims Act and are false and misleading under California’s unfair competition law.² Plaintiff also alleges that Walgreens’ recyclability claims on the Challenged Products are a breach of warranty that resulted in economic damages.³ Plaintiff further alleges that Walgreens

¹ I use the term “Challenged Products” herein to refer specifically to the plastic-film Plastic Carryout Bags Walgreens’ sold throughout the Class Period while using the term “Plastic Carryout Bag” to refer to plastic-film Plastic Carryout Bags in general.

² Second Amended Complaint, at p.17, ¶ 6.

³ Second Amended Complaint, at p.36, ¶103.

has been unjustly enriched in retaining the revenues derived from Plaintiff's and the Class members' purchases of the Challenged Products.⁴

11. I understand that Plaintiff seeks to certify a Class of all persons in California (the "Class") who purchased the Challenged Products from April 29, 2018 through the present (the "Class Period"). I acknowledge that the Court, in deciding whether to certify this case as a class action, will evaluate whether the impact and damages suffered by Class members can be demonstrated using evidence common to the Class. As an economist, I have been retained by Plaintiff's counsel to analyze this issue.

12. My opinions are based on my professional training and experience as an academic economist, which is supported by my review and analysis of information produced in this litigation as well as public information.

13. I am not a recycling material expert and offer no opinion on whether it is possible to recycle the Challenged Products, nor do I offer a legal opinion on whether the representations made by Walgreens on its Plastic Carryout Bags are unqualified under California law. Such investigation is beyond the scope of work described in this Declaration. For the purposes of this Declaration, I accept Plaintiffs' theory of liability that Walgreens marketing of the Challenged Products as "recyclable" was misleading, and that the claims made on the Challenged Products violated California law.

14. To support my analysis, I have reviewed academic articles concerning regulated markets, surveyed existing U.S. and global regulations on Plastic Carryout Bags like the Challenged Products at issue as well as other single-use and reusable Carryout, and examined the

⁴ Second Amended Complaint, at p.37, ¶108.

pricing of Plastic Carryout Bags within both regulated and unregulated markets. A list of the materials that I reviewed or relied upon in the course of my work is attached hereto as Exhibit C.

15. The rate charged for my time spent on this matter is \$500 per hour. My compensation does not depend on the substance of my opinions nor on the outcome of this matter.

III. SUMMARY OF PRINCIPAL CONCLUSIONS

16. My analysis has led me to arrive at the following professional opinion: There are widely accepted and feasible methodologies for calculating the forms of monetary relief alleged in this case using sales data on the Challenged Products and Plastic Carryout Bags available from Walgreens.⁵

17. Historically, retailers, pharmacies, and drug stores have given away Plastic Carryout Bags to consumers for free at checkout. (Sharp et al., 2010; Ohtomo and Ohnuma, 2014; Taylor and Villas-Boas, 2016; Taylor 2017; Homonoff et al., 2018, 2022; Heidbreder 2019).⁶ Moreover, in several cases where local governments have imposed bans on single-use

⁵ I understand that discovery is ongoing in this matter. I have not yet been provided with the necessary sales data to conduct damage analysis.

⁶ Sharp, A., Høj, S. and Wheeler, M., 2010. Proscription and its impact on anti-consumption behaviour and attitudes: the case of plastic bags. *Journal of Consumer Behaviour*, 9(6), pp.470-484; Ohtomo, S. and Ohnuma, S., 2014. Psychological interventional approach for reduce resource consumption: Reducing plastic bag usage at supermarkets. *Resources, Conservation and Recycling*, 84, pp.57-65; Taylor, R.L. and Villas-Boas, S.B., 2016. Bans vs. fees: Disposable carryout bag policies and bag usage. *Applied Economic Perspectives and Policy*, 38(2), pp.351-372; Taylor, R.L., 2017. *It's Not Easy Being Green: Lessons from Disposable Carryout Bag Regulations*. University of California, Berkeley; Homonoff, T.A., 2018. Can small incentives have large effects? The impact of taxes versus bonuses on disposable bag use. *American Economic Journal: Economic Policy*, 10(4), pp.177-210; Heidbreder, L.M., Bablok, I., Drews, S. and Menzel, C., 2019. Tackling the plastic problem: A review on perceptions, behaviors, and interventions. *Science of the Total Environment*, 668, pp.1077-1093; Homonoff, T., Kao, L.S., Selman, J. and Seybolt, C., 2022. Skipping the bag: the intended and unintended consequences of disposable bag regulation. *Journal of Policy Analysis and Management*, 41(1), pp.226-251.

Plastic Carryout Bags by prohibiting Plastic Carryout Bags less than 2.25 mm thick, retailers that previously offered these thinner single-use Plastic Carryout Bags for free continued to do so, simply by offering consumers free Plastic Carryout Bags with thickness just over the 2.25 mm threshold required by the bans. Precisely such an outcome has been documented in the literature on Plastic Carryout Bag regulations by local governments in Honolulu, Hawaii (Soloman, 2016),⁷ Barrington, Rhode Island (Wagner, 2017),⁸ and Chicago, Illinois (Homonoff et al., 2022).⁹

18. Indeed, it was not until California regulations on Plastic Carryout Bags were put in place that *required* companies to charge for those bags that Defendant began selling the Challenged Products to customers for a positive market price. Under California regulations, companies providing Plastic Carryout Bags must meet all of the regulatory requirements, including being labeled as recyclable in compliance with the Green Guides, to be allowed to sell these plastic Plastic Carryout Bags to consumers, and that stores must charge at least 10 cents per bag.¹⁰ In other words, the only reason the Challenged Products have market value (i.e., a non-zero price) is because charging a positive price to consumers is mandated by California law by a

⁷ Soloman, M., 2016. *One year after the ban, plastic bags still an issue on Oahu*. Hawaii Public Radio, Aug 4, 2016, accessed February 19, 2024 at: <http://hawaiipublicradio.org/post/one-year-after-ban-plastic-bags-still-issue-oahu>.

⁸ Wagner, T.P., 2017. Reducing single-use plastic shopping bags in the USA. *Waste Management*, 70, pp.3-12.

⁹ Homonoff, T., Kao, L.S., Selman, J. and Seybolt, C., 2022. Skipping the bag: the intended and unintended consequences of disposable bag regulation. *Journal of Policy Analysis and Management*, 41(1), pp.226-251.

¹⁰ CalRecycle, Single-Use Carryout Bag ban (SB 270), accessed February 19, 2024: <https://calrecycle.ca.gov/plastics/carryoutbags/>

price floor at 10 cents per bag. Absent such regulations, Defendant likely would have continued offering Plastic Carryout Bags to consumers for free.¹¹

19. Economic damages are defined by the difference between the price paid by Class members and the economic value of what the purchaser received from the purchase. I follow standard and widely accepted practice in the economics profession of measuring economic values in terms of market prices, which calculates damages from consumer overcharge as the difference between the price paid for the Challenged Products and the market value of the Challenged Products but-for the misrepresentation. Because Walgreens misrepresented the Challenged Products as “recyclable” when they were not, and specifically because Walgreen’s bags fail to comply with the Green Guides’ labeling requirements for recyclability, economic damages can be measured by comparing the difference in economic value between the Challenged Products and the price of Plastic Carryout Bags in an unregulated market.¹²

20. To qualify to receive the minimum \$0.10 per bag price that stores must charge for Plastic Carryout Bags in California, the Challenged Products must meet a number of requirements, including the Green Guides’ labeling requirements for recyclability as well as other criteria required by SB 270. Absent the recycling misrepresentation, the Plastic Carryout Bags sold to customers by Walgreens do not qualify to receive the regulated minimum price that requires them to be recyclable. The economic value of the Challenged Products but-for the

¹¹ I expect evidence from Walgreens own sales data on single-use, Plastic Carryout Bags to reveal that providing 2.25 mm reusable plastic bags to consumers for free is exactly what Walgreens did in response to local government bag bans in Hawaii, Rhode Island, and Illinois, where I understand Walgreens is headquartered. However, I have not yet received data to verify this claim.

¹² Ultimately, there are only two dispensation channels for a plastic Plastic Carryout Bag: (i) recycle; or (ii) dispose as waste. Reuse of a Plastic Carryout Bag does not alter this material balance.

misrepresentation, thus, is zero, because Walgreens would otherwise have offered the bags to customers for free. Put differently, because the Challenged Products must have certain statutorily required attributes to be sold, a Challenged Product only has value if it contains all of the attributes required by the law. Absent those attributes, the Challenged Products have no economic value because Plastic Carryout Bags would be given away for free but-for the misrepresentation (i.e., in a market setting where the Challenged Products did not violate California law).

21. Moreover, the price of the Challenged Products is set by statute. Monetary relief from consumer overcharge therefore amounts to full recovery of net sales revenue paid by consumers for the Challenged Products in California.

22. The full recovery of net sales revenue paid by consumers in California is an appropriate measure of consumer overcharge in light of collective decision-making. SB 270, represents both a legislative and voter determination that Californians prefer to pay at least \$0.10 per bag for regulatorily-compliant, recyclable Plastic Carryout Bags than to continue receiving single-use Plastic Carryout Bags for free. Full recovery of consumer expenditures for Walgreens bags over the Class Period is a reasonable remedy for consumer overcharge, and it also represents common damages incurred by the Class: All consumers paid a price for the Challenged Products that did not qualify for the market price under California regulations, and the but-for market price of a non-qualifying Plastic Carryout Bags is zero.

23. I have confirmed that Walgreens does in fact maintain such sales data of the Challenged Products for all of its stores in California, and that this data exists at the store level, meaning Walgreens' data shows how many Challenged Products each of its stores sold throughout the Class Period.

24. In addition, while I understand that the evidence to date suggests Walgreens never charges for a Plastic Carryout Bag unless required to do so, that it has not unequivocally admitted this fact. In the off chance that Walgreens offers yet to be produced information that the but-for market price charged for a Plastic Carryout Bag is something other than zero, reliable methods exist to ascertain whether the market price charged by Walgreens for a Plastic Carryout Bag in an unregulated market is statistically different from zero in the but-for world.

25. To conduct such econometric analysis, I will need Walgreens sales data from Plastic Carryout Bags in both regulated and unregulated states to calculate the market price of Walgreens Plastic Carryout Bags but-for the misrepresentation. In the event such analysis reveals that Walgreens charges consumers a Plastic Carryout Bags price that is statistically different from zero in the market data, the methodology for calculating economic damages remains exactly the same, except that I will deduct the (non-zero) but-for price of a Plastic Carryout Bags from the net sales of Challenged Products to arrive at a measure of monetary relief from consumer overcharge.

26. Although I have not yet been provided with the data necessary to conduct such an examination, it is possible to reliably calculate class-wide damages once these data have been provided to me by measuring the overcharge on the Challenged Products and applying this overcharge amount to the net retail sales of the Challenged Products over the Proposed Class Period.

27. The factual foundation, analytical methods and techniques for arriving at this conclusion are set forth in the following sections of this Declaration.

IV. ECONOMIC DAMAGE FRAMEWORK

28. The economic damage model is framed by a comparison of the amount paid by consumers for the Challenged Products relative to the value received. Specifically, economic damages are quantified as the difference between the amount paid for the Challenged Products (e.g., \$0.10 per bag) and the economic value the purchaser received from the purchase but-for the misrepresentation (e.g., the market value of an unregulated Plastic Carryout Bag). Because the price paid and the economic value received for the Challenged Products fundamentally rely on market values, I begin this Declaration by articulating the difference between market value and intrinsic value of economic goods such as plastic bags. I then discuss the economic value of a non-recyclable Plastic Carryout Bag and provide a reliable methodology for calculating economic damages as the difference between the price paid for the Challenged Products and the economic value of the Plastic Carryout Bags that Class members received.

29. As detailed below, the economics literature is clear that the value of Plastic Carryout Bags in an unregulated market is zero. It follows that the difference between the price paid and the value received for the Challenged Products amounts to the full amount of net sales of the Challenged Products as a monetary remedy for Class wide consumer damages.¹³

A. Class Action damages correspond with value in exchange (market value) as opposed to value in use (intrinsic value, or consumer willingness to pay)

30. The economic damage methodology I propose herein for calculating economic damages follows the standard approach of measuring economic damages as the difference between the price paid and the value the purchaser received from the purchase. I understand that

¹³ I understand that disgorgement is a legal remedy for unjust enrichment; however, full disgorgement of net sales on the Challenged Products also corresponds with consumer damages in this matter.

the price paid by consumers for the Products will be provided to me from Defendant's own sales data,¹⁴ which focuses my discussion below on reliable methods that can be used to recover the market value of the Challenged Products but-for the misrepresentation. To clarify the market value that purchasers received from their purchase, which relies on economic methodology to calculate the market price but-for the misrepresentation, it is helpful to begin by distinguishing between value in use (intrinsic value, or consumer willingness to pay, "WTP") and value in exchange (the market price).

31. The distinction between value in use (consumer WTP) and value in exchange (the market price) was first articulated by Adam Smith (1776) in a passage describing what has become known as the diamond-water paradox:

*The word VALUE, it is to be observed, has two different meanings... one may be called "value in use;" the other, "value in exchange." The things which have the greatest value in use have frequently little or no value in exchange; on the contrary, those which have the greatest value in exchange have frequently little or no value in use. Nothing is more useful than water: but it will purchase scarcely anything; scarcely anything can be had in exchange for it. A diamond, on the contrary, has scarcely any use-value; but a very great quantity of other goods may frequently be had in exchange for it.*¹⁵

¹⁴ I have not yet been provided with the necessary sales data to conduct damage analysis.

¹⁵ Smith, A., 1776. "Of the Origin and Use of Money". *An Inquiry into the Nature and Causes of the Wealth of Nations*, p.29.

32. The resolution to the “diamond-water paradox”, which was first articulated by Alfred Marshall in the 19th Century,¹⁶ provides the conceptual underpinning of economic analysis to this day. In short, the reason that water has a lower economic value than diamonds, as reflected in market prices, is that diamonds are relatively scarce in supply, while water is relatively abundant in supply. Whereas value in use is determined solely by consumer demand for the economic good, value in exchange is determined by the intersection of demand and supply in a market. For this reason, the accurate measurement of economic value must jointly consider market forces of both supply and demand, something Alfred Marshall described as the simultaneous working of “the upper and under blade of a pair of scissors that cuts a piece of paper.”¹⁷

33. These concepts are at the cornerstone of reliable economic damage methodology. Specifically, value in use refers to consumer willingness to pay (WTP), whereas the market prices consumers pay at the point of sale reflect the combined forces of both supply and demand in the marketplace. It makes no difference for economic damages whether an individual consumer values the good more than she had to pay for it. Just because a consumer values a product highly (e.g., drinking water) does not mean they have to pay a high price for it in the market.

34. Similarly, Plastic Carryout Bags can potentially have value in use to consumers that exceeds the price they paid for it, but yet have little value or no in exchange. In the present matter, plastic is abundantly supplied in the marketplace and the economic value of a Plastic

¹⁶ Marshall, A., 2009. *Principles of economics: unabridged eighth edition*. Cosimo, Inc., Ch. 3. Reprinted from the original volume, Marshall, A., 1890, *Principles of Economics: An introductory volume*.

¹⁷ *Id.*, p.248.

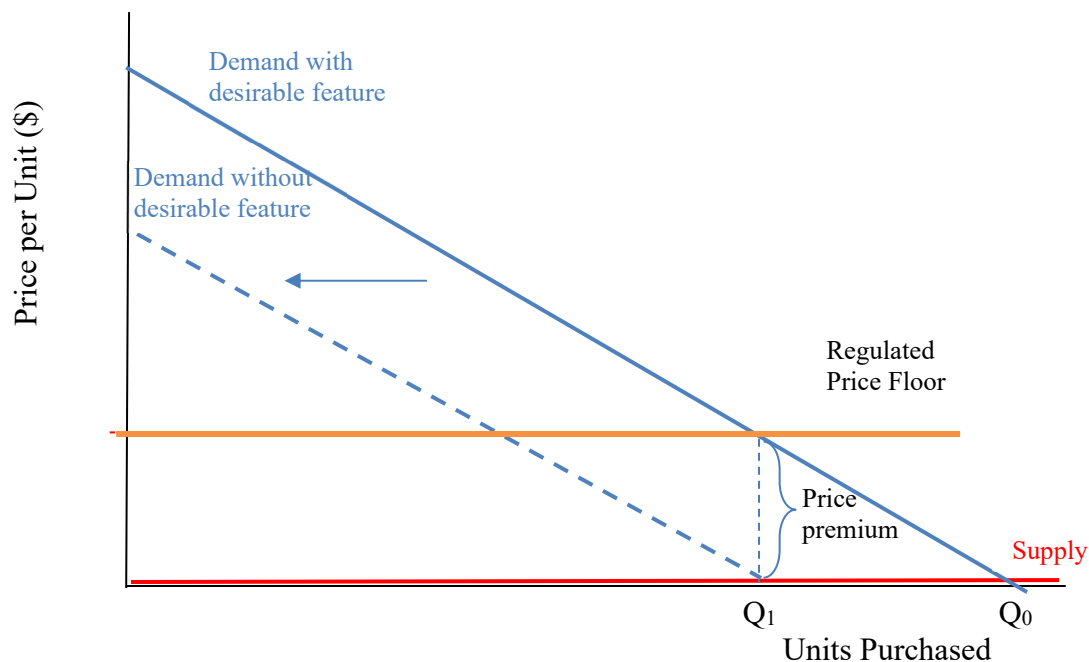
Carryout Bags in an unregulated market is zero, because Plastic Carryout Bags in an unregulated market are given away to consumers for free.

35. The goal of economic analysis in calculating Class-wide damages is to consider the Challenged Products but-for the misrepresented attribute, and then mark its value to market. For the case of consumer overcharge, the difference between the price paid for the Challenged Products and the value the purchaser received from the purchase emerges in the form of a price premium on the misrepresentation.

36. The concept of a price premium has a natural interpretation for Class Action litigation: If deceptive and misleading statements that appear on a product label result in a price premium at the point of sale (POS), then everyone in the marketplace paid more for the Challenged Products than they would have paid absent the misrepresentation (by the amount of the price premium). It makes no difference if a consumer liked the product, was deceived by the label, or would have bought it anyways: All consumers were equally harmed by the price premium at the POS.

37. To understand the mechanics of market pricing under California regulations on Plastic Carryout Bags, consider the Figure below. The Figure depicts the case of a market with a regulated price floor, which I understand to be defined by the requirement that stores must charge at least 10 cents per bag for the Challenged Products.

38. Absent plastic bag regulation, the supply of Plastic Carryout Bags is represented by a horizontal line at a price of zero. It does not matter how many bags consumers demand in the market; Plastic Carryout Bags are given away for free in the unregulated marketplace.



39. Now consider the outcome under California regulation that requires stores to charge a price of 10 cents or more per bag for the Challenged Products. There are two cases to consider: (i) a binding price floor; and (ii) a non-binding price floor. In the case of a non-binding price floor (not shown in the Figure), the intersection of supply and demand occurs above the level of the price floor, and the prevailing market price, which occurs at the intersection of supply and demand, is the same market price that would emerge in the market absent the price floor. The Figure above shows the relevant case for the Challenged products, which is the case where the regulation creates a binding price floor.

40. In the case of a binding price floor, the price charged for Plastic Carryout Bags in the market aligns with the minimum price of \$0.10 per bag set by California regulation. The quantity of bags demanded by consumers decreases from Q_0 in the unregulated case to Q_1 under the regulation, which occurs where market demand intersects with the regulated price floor.

41. Now consider the economic value the purchaser received from the purchase. Absent the misrepresented “recyclability” claim on the Challenged Products, consumer demand for Plastic Carryout Bags that do not meet California’s recycling standard is lower, as shown in the Figure as the demand curve without the desirable feature. If the Challenged Products met the regulatory standard of the price floor, then the market price would remain at the level of the price floor, and market demand in the but-for world would decrease to where demand without desirable features crosses the regulated price floor. There would be no price premium in this case, only a loss of sales for Walgreens, as consumers who value recycling would choose to shop elsewhere. However, Plaintiff alleges that the Challenged Products are not labeled in compliance with the Green Guides, and as such, do not qualify for sale in California at the regulated price.¹⁸

42. In the case where the Challenged Products do not qualify to receive the regulated minimum price under California law, then the economic value of the purchase received by the purchaser occurs at the intersection of supply and demand that would otherwise emerge for Plastic Carryout Bags in an unregulated market. As I discuss below, the market value of a Plastic Carryout Bag, absent regulation, is zero. The resulting price premium, as shown in the Figure, is the difference between the regulated price floor and the unregulated market price for a Plastic Carryout Bag, which is zero.

43. For this reason, economic damages in the present matter are the difference in the economic value of the misrepresented product—a Plastic Carryout Bag that qualifies for sale under California law—and the economic value of the product received—a Plastic Carryout Bag that doesn’t comply with California law. While Plastic Carryout Bags potentially have *intrinsic*

¹⁸ Second Amended Complaint, at p.17, ¶ 6.

value to consumers as a way to carry their items, if such bags do not meet the proper regulatory requirements, they have no economic value in the marketplace. As I demonstrate below, it follows that consumer damages from purchases of the Challenged Products coincide with full recovery of consumer revenue paid for Plastic Carryout Bags that fail to meet the California the requirements of California law.

B. Retailers have a profit motive to provide Plastic Carryout Bags for free, and in fact price Plastic Carryout Bags for free absent regulations that require positive plastic bag prices to consumers.

44. Reliable evidence on the economics of plastic bag policy in California is evident from the literature that examines the outcomes of local government policies that imposed bans on disposable Plastic Carryout Bags prior to the Statewide ban in California.¹⁹ The literature examining the economic outcomes of local bans on plastic bags indicates that retailers have a salient and quantifiable profit motive to provide Plastic Carryout Bags to consumers for free.

45. A summary from the economics literature on the economic effect of bag bans on retailer sales and profits indicates the following:

- Taylor (2020) examines the impact on disposable bag policies and finds that bag policies cause a 3 percent increase in checkout duration.²⁰ Moreover, she finds that consumers are highly sensitive to slowdowns in checkout lines, with each 1-minute increase in average checkout duration being associated with a 1.2 percent decrease in the likelihood that customers continue shopping at the store in subsequent weeks.

¹⁹ San Francisco was the first U.S. city to completely ban plastic Plastic Carryout Bags in 2007.

²⁰ Taylor, R.L., 2020. A mixed bag: The hidden time costs of regulating consumer behavior. *Journal of the Association of Environmental and Resource Economists*, 7(2), pp.345-378.

- Taylor (2022) considers the impact of banning Plastic Carryout Bags in California and finds that bag bans shifted consumer shopping behavior between food-at-home (FAH) and food-away-from-home (FAFH) sales.²¹ Notably, she finds that bag bans in California bans caused a persistent 1.8 percent decrease in FAH sales and a corresponding 1.9 percent increase in weekly household FAFH expenditures.

The outcomes that Taylor (2020, 2022) documents under recent bans on Plastic Carryout Bags in the U.S. is precisely the effect predicted by the figure above by the decrease in demand from Q_0 to Q_1 under the regulation.

46. Based on my research on the U.S. retail sector, competing retailers set prices to prevent the loss of store traffic to rivals.²² For the case of Plastic Carryout Bags provided to customers for free at checkout counters, the cost of providing such bags for free is small relative to the expected loss of store traffic from selling Plastic Carryout Bags at positive prices.

47. Because the value of store traffic to retailers is large, while the cost of providing free Plastic Carryout Bags to consumers is small, virtually all retailers provide shoppers with free, Plastic Carryout Bags absent regulations requiring them to charge bag fees. Indeed, the use of free, Plastic Carryout Bags to pack and transport consumer purchased goods has been an entrenched

²¹ Taylor, R.L., 2022. It's in the bag? The effect of plastic carryout bag bans on where and what people purchase to eat. *American Journal of Agricultural Economics*, 104(5), pp.1563-1584.

²² Hamilton, S.F., Liaukonyte, J. and Richards, T.J., 2020. Pricing strategies of food retailers. *Annual Review of Resource Economics*, 12, pp.87-110; Richards, T.J., Hamilton, S.F. and Yonezawa, K., 2018. Retail market power in a shopping basket model of supermarket competition. *Journal of Retailing*, 94(3), pp.328-342; Richards, T.J. and Hamilton, S.F., 2006. Rivalry in price and variety among supermarket retailers. *American Journal of Agricultural Economics*, 88(3), pp.710-726.

part of shopping behavior since the early 1980s.²³ Instead of charging positive prices for Plastic Carryout Bags, stores roll-up the price of those bags into the overall price of goods sold to consumers in their shopping baskets.²⁴ Put differently, the cost of Plastic Carryout Bags is included in the cost of the goods sold by retailers, resulting in a retail environment in which consumers become habituated to receiving for Plastic Carryout Bags for free.²⁵

C. The economic value of a Plastic Carryout Bag that does not meet California regulations is zero

48. Absent regulations that require retailers to charge customers for Plastic Carryout Bags, the conventional practice by U.S. retailers is to give plastic bags away for free. Indeed, there is direct evidence of this fact from the economics literature on plastic bag bans that documents the experience of such policies in Hawaii, Rhode Island, and Illinois.

49. In 2015, Honolulu County, Hawaii banned single-use plastic bags while allowing the sale of so-called “reusable” plastic bags that were at least 2.5 mm thick. Following the ban, rather than move away from Plastic Carryout Bags entirely, retail stores subject to the regulation

²³ Sharp, A., Høj, S. and Wheeler, M., 2010. Proscription and its impact on anti-consumption behaviour and attitudes: the case of plastic bags. *Journal of Consumer Behaviour*, 9(6), pp.470-484; Ohtomo, S. and Ohnuma, S., 2014. Psychological interventional approach for reduce resource consumption: Reducing plastic bag usage at supermarkets. *Resources, Conservation and Recycling*, 84, pp.57-65; Heidbreder, L.M., Bablok, I., Drews, S. and Menzel, C., 2019. Tackling the plastic problem: A review on perceptions, behaviors, and interventions. *Science of the Total Environment*, 668, pp.1077-1093.

²⁴ Chetty, R., Looney, A. and Kroft, K., 2009. Salience and taxation: Theory and evidence. *American economic review*, 99(4), pp.1145-1177; *It's Not Easy Being Green: Lessons from Disposable Carryout Bag Regulations*. University of California, Berkeley; Taylor, R.L. and Villas-Boas, S.B., 2016; Taylor, R.L., 2017. Bans vs. fees: Disposable carryout bag policies and bag usage. *Applied Economic Perspectives and Policy*, 38(2), pp.351-372; Homonoff, T.A., 2018. Can small incentives have large effects? The impact of taxes versus bonuses on disposable bag use. *American Economic Journal: Economic Policy*, 10(4), pp.177-210; Taylor, R.L., 2019. Bag leakage: The effect of disposable carryout bag regulations on unregulated bags. *Journal of Environmental Economics and Management*, 93, pp.254-271.

²⁵ A consequence of consumers becoming habituated to receiving Plastic Carryout Bags for free is that, following a ban, they forget to bring re-useable bags with them into the store.

(which included grocery and drug stores) began distributing 2.5 mm thick plastic bags imprinted with the “reusable” label to consumers for free.²⁶ In other words, stores that previously offered single-use Plastic Carryout Bags to customers for free continued to offer thicker, “reusable” Plastic Carryout Bags but still refused to charge anything for these thicker bags, despite the fact that the thicker bags cost more for the retailers to purchase and provide to consumers.

50. A similar experience occurred following a ban on Plastic Carryout Bags in Rhode Island as well as in Illinois, where I understand Walgreens is headquartered. In 2015, the city of Chicago passed an ordinance banning all single-use Plastic Carryout Bags less than 2.25 mm thick. As was the case in Hawaii, retailers moved to providing the thicker and more expensive Plastic Carryout Bags while continuing to provide the Plastic Carryout Bags for free to customers, despite the additional costs to the retailers.²⁷

51. Based on my review of the economics literature, I conclude that Defendant would provide Plastic Carryout Bags to consumers for free absent regulations requiring retailers to charge customers for them. In fact, my understanding from discovery to date is that that Walgreens would give Plastic Carryout Bags away for free in California absent regulations that require a minimum charge of \$0.10 per bag. This conclusion is also based on my 30 years of experience as an economist conducting research on retail pricing. Moreover, this fact can be reliably tested using data held by the Defendant by demonstrating that Walgreens: (i) gives away

²⁶ Wagner, T.P., 2017. Reducing single-use plastic shopping bags in the USA. *Waste Management*, 70, pp.3-12.

²⁷ Homonoff, T., Kao, L.S., Selman, J. and Seybolt, C., 2022. Skipping the bag: the intended and unintended consequences of disposable bag regulation. *Journal of Policy Analysis and Management*, 41(1), pp.226-251.

Plastic Carryout Bags for free in areas not subject to single-use plastic bag regulations; and (ii) charges a price per bag equal to the regulated price in U.S. states that mandate bag charges.²⁸

52. The economic value of a reusable Plastic Carryout Bag that does not meet California's regulatory requirements is thus, zero. The reason is that a Plastic Carryout Bag that does not qualify for the \$0.10 price under California regulation would otherwise be given away to consumers for free but-for the regulation.

V. CALCULATING CLASS-WIDE MONETARY RELIEF IN THE PRESENT MATTER IS STRAIGHTFORWARD

53. I understand that the Court will assess whether a methodology exists that can be used to reliably calculate monetary relief for the Class that does not involve individualized questions. In my opinion, feasible and formulaic methods exist to reliably calculate both restitution and class-wide damages, and the appropriate data will be available to Plaintiff to do so. As detailed in this section, calculating economic damages from the overcharge to consumers involves a straightforward method here. Depending on the nature of the documents and data ultimately made available to me, the method I will use to calculate either type of monetary relief will proceed in four steps, as described below.²⁹

54. **Step 1:** I understand that only the Challenged Products sold in California are covered by the Proposed Class in this litigation. As a result, monetary relief is calculated based on sales attributed to consumers at Walgreens' California stores.

²⁸ I understand that discussions are ongoing for Walgreens to stipulate this fact.

²⁹ Note that some of these steps may be unnecessary or revised based on the nature of the sales data received; however, any alteration will still ensure that the measure of monetary relief is applied only to the Products sold in California during the Proposed Class Period.

55. **Step 2:** I understand that the Proposed Class period begins in or around April 29, 2018 and continues to the present day. As a result, I will adjust the data to ensure that only sales within the Proposed Class Period are included in the analysis. Should the court find a different class period applies, I will adjust my analysis accordingly.

56. **Step 3:** Finally, I will apply the damage and/or restitution methodologies described below to the total sales of the Challenged Products during the Class Period.

A. Full Damages and/or Restitution can be calculated using straightforward methods

57. It is straightforward to calculate the amount consumers were overcharged for their purchases of the Challenged Products. The methodological framework for calculating consumer damages is based on the premise that the amount consumers were overcharged for misrepresented Plastic Carryout Bags is the difference between the price paid at the point of sale for a qualifying Plastic Carryout Bag and the market value of a non-qualifying Plastic Carryout Bags that is not permitted to receive the regulated price in California. In other words, the full price.

58. As discussed above, the market value of an accurately represented, non-recyclable Plastic Carryout Bag is zero. Plastic Carryout Bags are routinely provided by retailers for free in areas without plastic bag regulations. This is because the cost of the Plastic Carryout Bags are built into the pricing of the goods sold in the stores and charging for Plastic Carryout Bags can negatively affect a store's sales.

59. Given that the recyclable claim on the Challenged Products was misrepresented to consumers, the Plastic Carryout Bags sold by Defendant do not qualify for sale at the regulated price. Therefore, Defendant is not entitled to receive the regulated price of \$0.10 (or more) per bag for Plastic Carryout Bags in California, and instead provided Plastic Carryout Bags to

consumers that otherwise would have traded at a market price of \$0.00 per bag (i.e., be given away for free).

1. *Full restitution or damages is a reliable measure consumer overcharge*

60. Consumer overcharge for the Challenged Products amounts to the entire sales price for a Plastic Carryout Bags that does not qualify to receive the regulated price under California law. Absent price regulations in California that impose a price floor of \$0.10 (or more) per bag, the price of a Plastic Carryout Bags but-for the misrepresentation, therefore, is zero.

61. I understand that Walgreens maintains store-level sales data of the Challenged Products. This will permit me to calculate the total net sales of the Challenged Products that the Class is entitled to.

62. To the extent that Walgreen's data reveals that Defendant charges prices for Plastic Carryout Bags in non-regulated regions that are statistically significantly different from zero, then my methodology for calculating monetary relief from consumer overcharge remains the same, except that I will deduct for the but-for market price of a Plastic Carryout Bags that Defendant otherwise would have charged Class members. The market price Defendant would have charged consumers for Plastic Carryout Bags but-for the regulation is a reliable measure of the value received by the purchaser from the purchase.

63. Evidence on a positive but-for price of a Plastic Carryout Bag absent the misrepresentation would be indicated either by verifying in the market data that the price charged to California consumers for Plastic Carryout Bags prior to plastic regulation was positive, or by comparing Plastic Carryout Bags prices charged by Defendant across regulated and non-regulated regions in the U.S. to show that the difference in market value between a regulated

Plastic Carryout Bags and a non-regulated Plastic Carryout Bags is statistically indistinguishable from the regulated price.

64. I understand that other retailers in the market may also make inflated claims regarding the recyclability of their Plastic Carryout Bags. This outcome does not affect the calculation of economic damages, because competing brands in the marketplace are subject to the same California regulation as Walgreens and face the same competitive pressure as Walgreens to give away Plastic Carryout Bags for free.

65. I have not yet conducted a preliminary calculation of damages because I have not yet been provided with the full sales data from Walgreens to conduct such an approach. However, I understand that such data exist and are maintained by Walgreens, and that access to these data can be made available to me for use in damage analysis supporting this litigation. Once these data are provided to me, I will be able to reliably calculate damages from consumer overcharge.

VI. CONCLUSION

66. Based on the analysis presented in this Declaration, I conclude that there are widely accepted and feasible methodologies for calculating the forms of monetary relief alleged in this case, given data available from Walgreens and third parties.

67. My opinion is based upon the documents, data, and the information that is currently available to me. I reserve the right to update or alter my opinions if new information subsequently becomes available to me. Tables, figures, and various demonstrative aids may include not only those appearing in this Declaration, but other illustrations based upon the information cited herein.

68. I declare under penalty of the perjury under the laws of California that the foregoing is true and correct. Executed on March 12, 2024.



Stephen F. Hamilton, Ph.D.

Exhibit A

Curriculum Vitae

STEPHEN F. HAMILTON
Curriculum Vitae

Work Address: Department of Economics
Orfalea College of Business
California Polytechnic State University
San Luis Obispo, CA 93407
Voice: 805-756-2555
E-mail: shamulto@calpoly.edu

EDUCATION

Ph.D., Agricultural and Resource Economics, University of California at Berkeley, 1996.
M.S., Agricultural and Resource Economics, University of California at Berkeley, 1994.
B.A., Environmental Studies (with distinction) and Economics, *magna cum laude*, University of California, Santa Barbara, 1991.

PROFESSIONAL EXPERIENCE

2019 to date Professor of Economics, Cal Poly San Luis Obispo
2016 to 2019 Professor and Director of Graduate Studies, Department of Economics, Cal Poly San Luis Obispo
2005 to 2017 Professor and Chair of Economics, Cal Poly San Luis Obispo
2011 Visiting Researcher, Institut National de la Recherche Agronomique (INRA) and Toulouse School of Economics (TSE)
2004 to 2005 Associate Professor, Cal Poly San Luis Obispo
2001 to 2004 Director of Graduate Studies, University of Central Florida
Associate Professor, University of Central Florida
1999 to 2001 Associate Professor, University of Arizona
1996 to 1999 Assistant Professor, Kansas State University

HONORS AND AWARDS

Distinguished Scholarship Award, California Polytechnic, 2021.
Quality of Research Discovery Award, European Association of Agricultural Economists, 2020.
Keynote Address, TRANSFORuM: Industry Pioneers & Visionaries, Waste Expo, 2019.
Scientific Committee, Industrial Organization in the Food Industry workshop, TSE, 2018-19.
Atlas Award, Research with Social Impact, Elsevier-Science Direct, 2018.
Keynote Address, 3rd GAEL Conference, Product Differentiation and Innovation, Grenoble France, June 2013.
Outstanding Doctoral Dissertation Award, (Advisee: William Allender), American Agricultural and Applied Economics Association, 2014.
Invited Participant, NBER Summer Workshops on Environmental Economics, 2004-present.
Fellow, Rural Development Research Consortium.
Early Career Award for Outstanding Research, Gamma Sigma Delta, 1999.
Faculty of the Semester Award for Instruction, Kansas State University, 1998.
Outstanding Graduate Student Instructor Award, University of California at Berkeley, 1994.

EDITORIAL BOARDS

Editor, *Journal of Public Policy & Marketing*, special issue on Analytics Insights, 2019-2021.
Editorial Board, *Journal of Environmental Economics and Management*, 2008-2015.
Editorial Council, *Journal of Agricultural and Resource Economics*, 2009-2012.
Associate Editor, *Journal of Industrial Organization Education*, 2005-2009.
Associate Editor, *Journal of Agricultural & Food Industrial Organization*, 2003-2007.
Associate Editor, *American Journal of Agricultural Economics*, 2001-2005.

FIELDS OF INTEREST

Agricultural Economics	Natural Resource Economics
Industrial Organization and Antitrust Analysis	Environmental Economics
Law and Economics	Public Economics
Policy and Regulation	International Trade

MEMBERSHIP IN PROFESSIONAL SOCIETIES

American Agricultural Economics Association
American Economic Association
Association of Environmental and Resource Economics
Australian Agricultural Economics Association
European Association of Agricultural Economics
International Water Resource Consortium

PUBLICATIONS

Articles in Refereed Journals

“Spatial Procurement of Farm products and the Supply of Processed Foods: Application to the Tomato Processing Industry,” (with Aric Shafran and Ethan Ligon), *Review of Industrial Organization*, 2024, pp. 1-23 (**lead article**)

“Food Banks and Food Retailing,” (with John Lowrey and Timothy Richards), *Manufacturing and Service Operations Management*, 25(2), March-April 2023, pp. 792-810.

“Food Banks and Retail Markups,” (with John Lowrey and Timothy Richards), *European Review of Agricultural Economics*, 49 (5), December 2022, pp. 1027-1055.

“Inventory Management and Loss in Beer Retailing,” (with Timothy Richards), *Agribusiness: An International Journal*, 38(3), Summer 2022, pp. 461-485 (**lead article**).

“Farm Labor Productivity and the Impact of Mechanization,” (with Aric Shafran, Katya Vasilaky, and Timothy Richards), *American Journal of Agricultural Economics*, 104(4), August 2022, pp. 1435-1459.

“The Future of Marketing Analytics and Public Policy,” (with Brennan Davis and Dhruv Grewal), *Journal of Public Policy and Marketing*, 40(4), October 2021, pp. 447–452.

“Differentiation by Certification: Quantity Effects on Tropical Timber Production,” (with Jackie Doremus and Matt Cole), *Journal of Environmental Economics and Management*, 107, May 2021, Article 102423.

“Joint Oligopsony-Oligopoly Power in Food Processing Industries: Application to the US Broiler Industry.” (with David Sunding), *American Journal of Agricultural Economics*, 103(4), August 2021, pp. 1398-1413.

“Retail Price Discrimination and Food Waste,” (with Timothy Richards), *European Review of Agricultural Economics*, 47(5), December 2020, pp. 1861–1896.

“Pricing Strategies of Food Retailers,” (with Jura Liaukonyte and Timothy Richards), *Annual Review of Resource Economics*, 12 (2020), pp. 87-110.

“Spatial and Temporal Variation of Offshore Wind Power and its Value along the Central California Coast,” (with Yi-Hui Wang, Ryan Walter, Crow White, Matt Kehrli, Patrick Soper, and Ben Ruttenberg), *Environmental Research Communications*, 1(12), October 2019.

“Agricultural Policy and Household Food Waste,” (with Timothy Richards), *American Journal of Agricultural Economics*, 101(2), March 2019, pp. 600-614.

“Coordination for Collective Rents: An Experimental Analysis,” (with Olivier Bonroy, Alexis Garapin and Diogo M. Souza Monteiro), *American Journal of Agricultural Economics*, 101(1), January 2019, pp. 89-108. (**Recipient of EAAE’s Quality of Research Discovery Award.**)

“Retail Market Power in a Shopping Basket Model of Supermarket Competition,” (with Timothy Richards and Koichi Yonezawa), *Journal of Retailing* 94(3), September 2018, pp. 328-342.

“Food Waste and the Sharing Economy,” (with Timothy Richards), *Food Policy* 75, February 2018, pp. 109-123. (**Recipient of Elsevier’s Atlas Award.**)

“Market Competition and the Health Composition of Manufactured Food,” (with Vincent Réquillart), *Health Economics*, 26(12), December 2017, pp. 1637-1643.

“Slotting Allowances and Product Variety in Oligopoly Retail Markets,” (with Robert Innes). *Economics Letters*, 158, September 2017, pp. 34-36.

“Retail Intermediation and Local Foods,” (with Timothy J. Richards, Elliot Rabinovich, and Miguel Gomez), *American Journal of Agricultural Economics*, 99(3), April 2017, pp. 637-659.

“Variety and the Cost of Search in Supermarket Retailing,” (with Timothy J. Richards and Koichi Yonezawa), *Review of Industrial Organization*, 50(3), May 2017, pp. 263-285 (**lead article**).

“Attribute Search in Online Retailing,” (with Timothy J. Richards and Janine Empen), *American Journal of Agricultural Economics* 99(1), January 2017, pp. 225-242.

“Measuring the Welfare Losses from Urban Water Supply Disruptions,” (with Steven Buck, Max Auffhammer and David Sunding), *Journal of the Association of Environmental and Resource Economists* 3(3), September 2016, pp. 743-778.

“Search and Price Dispersion in Online Grocery Markets.” (with Timothy J. Richards and William Allender), *International Journal of Industrial Organization* 47, July 2016, pp. 255-281.

“Optimal Recycling Policy for Used Lubricating Oil: The Case of California’s Used Oil Management Policy,” (with David Sunding), *Environmental and Resource Economics* 62(1), September 2015, pp. 3-17 (*lead article*).

“Oligopoly Intermediation, Relative Rivalry, and Market Conduct,” (with Philippe Bontems and Jason Lepore), *International Journal of Industrial Organization* 40, May 2015, pp. 49-59.

“Variety Pass-Through: An Examination of the Ready-to-eat Breakfast Cereal Market,” (with Timothy J. Richards), *Review of Economics and Statistics* 97(1), March 2015, pp. 166-180.

“How Do Supermarkets Price Beer During Periods of Peak Demand? Evidence from Game Weeks of the German Bundesliga,” (with Janine Empen). *Southern Economic Journal* 81(3), January 2015, pp. 679-696.

“Potential Economic Impacts of Environmental Flows Following a Possible Listing of Endangered Texas Freshwater Mussels,” (with Brad Wolaver, Cassandra Cook, David Sunding, Bridget Scanlon, Michael Young, Xianli Xu, and Robert Reedy). *Journal of the American Water Resources Association* 50(5), October 2014, pp. 1081-1101.

“Social Networks and New Product Choice: Peer Effects in an Incentive-Compatible Choice-Based Conjoint Experiment,” (with Timothy J. Richards and William Allender), *American Journal of Agricultural Economics* 96(2), March 2014, pp. 489-516.

“Environmental Policy with Collective Waste Disposal,” (with Thomas Sproul, David Sunding and David Zilberman), *Journal of Environmental Economics and Management* 66(2), September 2013, pp. 337-346.

“How Do Supermarkets Respond to Brand-Level Demand Shocks? Evidence from the German Beer Market,” (with Janine Empen), *American Journal of Agricultural Economics (Proceedings)* 95(5), October 2013, pp. 1223-1229.

“Slotting Allowances and Variety Provision in Supermarket Retailing,” (with Robert Innes), *American Journal of Agricultural Economics (Proceedings)* 95(5), October 2013, pp. 1216-1222.

“How Does Advertising Affect Market Demand? The Case of Generic Advertising,” (with Kyle W. Stiegert and Timothy J. Richards), *Economic Inquiry* 51(2), April 2013, pp. 1183-1195.

“Rivalry in Price and Location by Differentiated Product Manufacturers,” (with Timothy J. Richards and William J. Allender), *American Journal of Agricultural Economics* 95(3), April 2013, pp. 650-668.

“Network Externalities in Supermarket Retailing,” (with Timothy J. Richards), *European Review of Agricultural Economics* 40(1), February 2013, pp. 1-22 (*lead article*).

“Emissions Standards and Environmental Quality Standards with Stochastic Environmental Services,” (with Till Requate), *Journal of Environmental Economics and Management* 64(3), November 2012, pp. 377-389.

“Obesity and Hyperbolic Discounting: An Experimental Analysis,” (with Timothy J. Richards), *Journal of Agricultural and Resource Economics* 37(2), August 2012, pp. 181-198.

“Commodity Price Inflation, Retail Pass-Through and Market Power,” (with Timothy J. Richards and William J. Allender), *International Journal of Industrial Organization* 30(1), January 2012, pp. 50-57.

“Spatial Competition in Private Labels,” (with Tim Richards and Paul Patterson), *Journal of Agricultural and Resource Economics* 35(2), August 2010, pp. 183-208.

“Second-Best Tax Policy and Natural Resource Management in Growing Economies,” (with Steve Cassou, Arantza Gorostiaga and Maria Jose Guitierrez), *International Tax and Public Finance* 17(6), December 2010, pp. 607-26.

“SO₂ policy and input substitution under spatial monopoly,” (with Shelby Gerking), *Resource and Energy Economics* 32(3), August 2010, pp. 327-340.

“Variety Competition in Retail Markets,” (with Timothy J. Richards), *Management Science* 55(8), August 2009, pp. 1368-76.

“Excise Taxes with Multi-Product Transactions,” *American Economic Review* 99(1), March 2009, pp. 458-71.

“Vertical Restraints and Horizontal Control,” (with Robert Innes), *RAND Journal of Economics* 40(1), Spring 2009, pp. 120-43.

“Informative Advertising in Concentrated, Differentiated Markets,” *International Journal of Industrial Organization* 27(1), January 2009, pp. 60-69.

“Unintended Consequences: The Spillover Effects of Common Property Regulations,” (with Gordon Rausser, Marty Kovach, and Ryan Stifter), *Marine Policy* 33(1), January 2009, pp. 24-39.

“Marketable Permits, Low-Sulfur Coal, and the Behavior of Railroads” (with Shelby Gerking), *American Journal of Agricultural Economics* 90(4), November 2008, pp. 933-50.

“Fast Food, Addiction and Market Power,” (with Timothy J. Richards and Paul M. Patterson), *Journal of Agricultural and Resource Economics* 32(3), December 2007, pp. 425-47.

“Green Markets, Eco-Certification, and Equilibrium Fraud” (with David Zilberman), *Journal of Environmental Economics and Management* 52(3), November 2006, pp. 627-44.

“Rivalry in Price and Variety among Supermarket Retailers,” (with Tim Richards), *American Journal of Agricultural Economics* 88(3), August 2006, pp. 710-27.

“Naked Slotting Fees for Vertical Control in Multi-Product Retail Markets,” (with Robert Innes), *International Journal of Industrial Organization* 24(2), March 2006, pp 308-18.

“The Transition from Dirty to Clean Industries: Optimal Fiscal Policy in a Two Sector Model of Endogenous Growth,” (with Steven Cassou), *Journal of Environmental Economics and Management* 48(3), November 2004, pp. 1050-77.

“Vertical Structure and Strategic Environmental Trade Policy,” (with Till Requate), *Journal of Environmental Economics and Management* 47(2), March 2004, pp. 260-69.

“Slotting Allowances as a Facilitating Practice by Food Processors in Wholesale Grocery Markets: Profitability and Welfare Effects,” *American Journal of Agricultural Economics* 85(4), November 2003, pp. 797-813 (**lead article**).

“Public Goods and the Value of Product Quality Regulations: The Case of Food Safety,” (with David Sunding, and David Zilberman), *Journal of Public Economics* 87(3-4), March 2003, pp. 799-817.

“An Empirical Test of the Rent-Shifting Hypothesis: The Case of State Trading Enterprises,” (with Kyle Stiegert), *Journal of International Economics* 58(1), October 2002, pp. 135-57.

“Strategic Environmental Policy and International Trade in Asymmetric Oligopoly Markets,” (with Yann Duval), *International Tax and Public Finance* 9(3), May 2002, pp. 259-71.

“Product Liability, Entry Incentives and Market Structure,” (with David Sunding), *International Review of Law and Economics* 20(2), June 2000, pp. 269-83.

“Vertical Coordination, Antitrust Law, and International Trade,” (with Kyle Stiegert), *Journal of Law & Economics* 43(1), April 2000, pp. 143-56.

“Does Market Timing Contribute to the Cattle Cycle,” (with Terry Kastens), *American Journal of Agricultural Economics* 82(1), February 2000, pp. 82-96.

“The Comparative Incidence of Specific and Ad Valorem Taxation in Noncompetitive Environments,” *Economics Letters* 63(2), May 1999, pp. 235-38.

“Tax Incidence under Oligopoly: A Comparison of Policy Approaches,” *Journal of Public Economics* 71(2), February 1999, pp. 233-46.

“Demand Shifts and Market Structure in Free-Entry Oligopoly Equilibria,” *International Journal of Industrial Organization* 17(2), February 1999, pp. 259-75.

“Returns to Public Investments in Agriculture with Imperfect Downstream Competition,” (with David Sunding), *American Journal of Agricultural Economics* 80(4), November 1998, 830-38.

“Taxation, Fines, and Producer Liability Rules: Efficiency and Market Structure Implications,” *Southern Economic Journal* 65(1), July 1998, pp. 140-50.

“Subsidies in Oligopoly Markets: A Welfare Comparison between Symmetric and Asymmetric Costs,” (with Rickard Sandin), *Public Finance Review* 25(6), November 1997, pp. 660-68.

“The Effect of Farm Supply Shifts on Concentration and Market Power in the Food Processing Sector,” (with David Sunding), *American Journal of Agricultural Economics* 79(2), May 1997, pp. 524-31.

Articles Submitted to Refereed Journals

“Fair Pricing and Farm Supply,” (with Benjamin Ouvrard), March 2024.

“Optimal Deterrence of Environmental Accidents Under Oligopoly,” (with Harrison Ridland and David Sunding), December 2023.

“Sequential Pricing in Platform Markets: Implications for Antitrust,” (with Philippe Bontems and Jason Lepore), November 2023.

Working Papers

“Fair Pricing and Horizontal Control,” (with Benjamin Ouvrard).

“Can Consumer Boycotts Backfire When Retailers Mediate Sales? The Case of Microbead Toothpaste,” (with Jackie Doremus and Timothy Richards).

Work in Progress

“Environmental Policy through Permitting and Licensing,” (with Cyrus Ramezani and David Sunding).

“Vertical Integration in Oligopoly Supply Chains,” (with David Zilberman).

“Capacity-Setting Games in Differentiated Product Oligopoly,” (with Jason Lepore).

“Product Quality Choices with Umbrella Brands,” (with Robert Innes and Vincent Requillart).

Other Research Publications

“Food Waste: Farms, Distributors, Retailers, and Households,” (with Tim Richards and Brian Roe), in C. Barrett and D. Just (Eds.), *Handbook of Agricultural Economics*, Vol. 6, North-Holland: Elsevier, June 2022, pp. 4653-4703.

“Economic Impact of Offshore Wind Farm Development on the Central Coast,” (with Chris Almacen, Cyrus Ramezani, and Ben Stephan), February 2021.

“Economic and Fiscal Impacts of the Morro Bay Offshore (MBO) Wind Farm,” May 2018.

“Keys to Estimating Damages in Deceptive Pricing cases,” (with Dan Werner), *Law360*, Lexis-Nexis, September 22, 2017: <https://www.law360.com/articles/966658/>

“Economic and fiscal impacts of the Topaz Solar Farm,” (with Mark Berkman), *The Battle Group*, March 2011.

“Economic Benefits of Expanded Groundwater Storage in the Central and West Coast Basins of Southern Los Angeles County,” (with David Sunding and Newsha Ajami), in Angelos Findikakis and Kuniaki Sato (eds.) *IAHR Monograph on Groundwater Management Practices*, Leiden, Netherlands: CRC Press/Balkema, Taylor & Francis Group, 2011, pp. 157-77.

“Economic Impacts of Residential Water Shortages in California,” (with David Sunding). April 2010.

“Backwards Linkages and Strategic Firm Behavior: An Application to International Trade,” (with Kyle Stiegert), in G. Galizzi and L. Venturini (Eds.), *Vertical Relationships and Coordination in the Food System*, Heidelberg: Physica-Verlag, 1999, pp. 113-28.

Hamilton, Stephen F. Book Review of Perloff’s *Microeconomics*, in the *American Journal of Agricultural Economics*, November 1999, 81(4), pp. 225-26.

PRESENTATIONS

Selected Conference Presentations

“Optimal Deterrence for Environmental Damage under Asymmetric Information,” American Agricultural Economics Association Annual Meeting, August 2022.

“Food Banks and Retail Margins,” American Agricultural Economics Association Annual Meeting, August 2021.

“Food Banks and Food Waste,” Allied Social Science Association Annual Meeting, January 2020.

“Retail Price Discrimination and Food Waste,” 10th Conference on Industrial Organization and the Food Industry, June 2019.

“Keeping Food out of Landfills,” *Keynote Address, TRANSFORuM: Industry Pioneers & Visionaries*, Waste Expo, May 2019.

“Retail Price Discrimination and Food Waste,” 17th Annual International Industrial Organization Conference, April 2019.

“Food Waste in Upstream and Downstream Markets of the Food System.” American Agricultural Economics Association Annual Meeting, August 2018.

“Food Waste and the Sharing Economy.” American Agricultural Economics Association Annual Meeting, August 2018.

“Food Waste and the Sharing Economy.” Allied Social Science Association Annual Meeting, January 2018.

“Retail Market Power in a Shopping basket Model of Supermarket Competition.” American Agricultural Economics Association Annual Meeting, August 2017.

“Pricing Complementary Products.” American Agricultural Economics Association Annual Meeting, August 2016.

“Online Attribute Search and Retail Prices.” American Agricultural Economics Association Annual Meeting, July 2015.

“Investment Incentives and Environmental Permit Uncertainty.” Western Economic Association International 89th Annual Conference, June 2014.

“Environmental Policy with Collective Waste Disposal,” 29th Annual Conference of the European Association of Environmental and resource Economists, Toulouse France, June 2013.

“Oligopoly Intermediation, Strategic Pre-Commitment and the Mode of Competition,” *Keynote Address*, 3rd GAEL Conference, Product Differentiation and Innovation, Grenoble France, June 2013.

“How do Supermarkets Respond to Brand-Level Demand Shocks? Evidence from the German Beer Market.” Allied Social Science Association Annual Meeting, January 2013.

“Slotting Allowances and Variety Provision in Supermarket Retailing.” Allied Social Science Association Annual Meeting, January 2013.

“Social Networks and New Product Choice.” American Agricultural Economics Association Annual Meeting, August 2012.

“Oligopoly Intermediation, Strategic Pre-Commitment and the Mode of Competition.” Western Economic Association International 87th Annual Conference, June 2012.

“Slotting Allowances and Product Variety in Supermarket Retailing.” Industrial Organization and the Food Processing Industry, INRA-IDEI, Toulouse, France, June 2012.

“Emissions Standards and Ambient Environmental Quality Standards in Stochastic Receiving Media.” Allied Social Science Association Annual Meeting, January 2011.

“Slotting Allowances and Product Variety in Supermarket Retailing.” American Agricultural Economics Association Annual Meeting, July 2010.

“Long-Run Contracts, Conjunctive Use, and Imported Water Demand.” Berkeley Water Consortium, University of California at Berkeley, November 2009.

“How Does Advertising Affect Market Demand? The Case of Generic Advertising.” American Agricultural Economics Association Annual Meeting, July 2009.

“Advertising and Market Power.” Western Economic Association International 83rd Annual Conference, June 2008.

“Comparative Statics Effects for Supermarket Oligopoly with Applications to Sales Taxes and Slotting Allowances.” American Agricultural Economics Association Annual Meeting, July 2007.

“Can Manufacturers of National Brands Control Retail Prices of Private Labels?” American Agricultural Economics Association Annual Meeting, July 2006.

“Retail Competition in Prices and Varieties.” American Agricultural Economics Association Annual Meeting, July 2005.

“From Green Markets to Black Markets: Environmental Regulations and the Emergence of Illicit Activities.” Food System Research Group, University of Wisconsin, Madison, WI, June 2005.

“Variety Competition in Retail Food Markets.” Industrial Organization and the Food Processing Industry, INRA-IDEI, Toulouse, France, June 2004.

“Advertising in Differentiated Markets.” Food System Research Group, University of Wisconsin, Madison, WI, June 2003.

“Retailer Contracting.” American Agricultural Economics Association Annual Meeting, July 2002.

“Vertical Structure and Strategic Environmental Trade Policy.” World Congress of Environmental and Natural Resource Economists, Monterey, CA, June 2002.

“Facilitating Practices by Food Processors in the Retail Grocery Market: Channel Profitability and Farm Surplus Effects of Off-Invoice Fees.” American Agricultural Economics Association Annual Meeting, August 2001.

“The Transition from Dirty to Clean Industries: Optimal Fiscal Policy in a Two-Sector Model of Endogenous Growth,” International Dimension of Environmental Policy Conference, Dutch Science Foundation/EURESCO, Kerkrade, Holland, October 2000.

“Pollution Abatement Regulation, Property Rights, and the Political Economy,” Western Economic Association International 75th Annual Conference, June 2000.

“Trade, Environmental Externalities, and Taxes in Unions, Federations, and Free Trade Areas,” American Agricultural Economics Association Annual Meeting, August 1999.

“Taxation, Fines, and Producer Liability Rules: Efficiency and Market Structure Implications,” American Agricultural Economics Association Annual Meeting, August 1998.

“Asymmetric Pricing and a Test for Market Power in the International Durum Wheat Market,” American Agricultural Economics Association Annual Meeting, August 1998.

“Beating the Cattle Cycle,” Cattle Profitability Conference, Kansas State University, August 1997.

“Returns to Public Investments in Agriculture with Imperfect Downstream Competition,” American Agricultural Economics Association Annual Meeting, August 1997.

“Backwards Vertical Contracts and the Strategic Trade Implications of Antitrust,” American Agricultural Economics Association Annual Meeting, August 1997.

“Vertical Coordination and Export Promotion in International Wheat Markets,” American Agricultural Economics Association Annual Meeting, August 1997.

“Product Liability, Entry Incentives and Market Structure,” Western Economic Association International 72nd Annual Conference, July 1997.

“Backwards Linkages and Strategic Firm Behavior: An International Trade Application,” Vertical Relationships and Coordination in the Food System Conference, Italy, June 1997.

“The Effect of Farm Supply Shifts on Concentration and Market Power in the Food Processing Sector,” American Agricultural Economics Association Annual Meeting, August 1996.

Other Invited Presentations

California Polytechnic (2), Cornell University, Economic Research Service (ERS), Grenoble Applied Economics Lab (GAEL), Iowa State University, Kansas State University, Northeastern University, Oregon State University, Politecnico di Milano, Purdue University (2), Stockholm School of Economics, Toulouse School of Economics (3), University of Arizona (3), University of the Basque Country, University of California at Berkeley (5), University of California Davis (3), University of California Merced (2), University of California Santa Barbara (3), University of Central Florida (2), University of Heidelberg, University of Kiel, University of Maryland, University of Massachusetts, University of Nebraska (2), University of South Florida, University of Wisconsin (3).

RESEARCH AND INSTRUCTION GRANTS

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA \$650,000 (proposed), “Controlled Environment Agriculture: Firm Adoption, Consumer Perception, and Trade Implications,” (with Craig Carter, Timothy J. Richards and Kelsey Vourazeris), 2024-2027.

Principal Investigator, Vistra Corp., \$58,974, “Economic Impact of Vistra’s Battery Energy Storage Systems (BESS) in California,” 2022.

Principal Investigator, REACH dba the Hourglass Project, \$74,998, “Economic Impact of Offshore Wind Power Development on the Central Coast,” (with Cyrus Ramezani), 2020-2021.

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA 2019-05808, \$498,223, “Food Banks, Food Retailing and Food Security,” (with Craig Gundersen and Timothy J. Richards), 2020-2022.

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA 2018-08525, \$499,973, “Immigration Reform and Labor Shortages,” (with Jennifer Ifft, Timothy J. Richards, Aric Shafran and Kathryn Vasilaky), 2019-2021.

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA 2018-08126, \$498,434, “Big Data and Food Loss Mitigation in the Supply Chain,” (with Miguel Gomes and Timothy J. Richards), 2019-2021.

Principal Investigator, Trident Winds, LLC, \$25,309, “Economic Impact Analysis of the Proposed Morro Bay Offshore (MBO) Wind Farm,” 2017-2018.

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA 2016-09921, \$498,438, “Commercial Peer-to-peer Mutualization Systems (CPMS) to Eliminate Food Waste,” (with Elliot Rabinovich and Timothy J. Richards), 2017-2018.

Principal Investigator, Department of the Interior - Bureau of Ocean Energy Management, \$749,999, "Scenarios for Replacing Conventional Energy with Offshore Renewable Energy along the Central California Coast," (with Benjamin Ruttenberg, Crow White, Ryan Walter, and Susan Zaleski), 2016-2019.

Principal Investigator, Texas Comptroller, \$247,306, "An Evaluation of Potential Economic Impacts Resulting from Flows for Freshwater Mussels: An Update Using Best Available Science and Modeling," (with Brad Wolaver, Brian Perkins, and Sam Vaughn), 2016-2017.

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA 2015-07543, \$482,831, "Online Retailing and Local Food," (with Miguel I. Gomez, Elliot Rabinovich, and Timothy J. Richards), 2016-2017.

Principal Investigator, California Air Resources Board, \$249,983, "The Impact of AB32 on the Competitiveness of California Food Processing Industries," (with Ethan Ligon and Sofia Berto Villas-Boas), 2013-2014.

Principal Investigator, Element Power Solar Company, \$25,000, "Economic Impact Analysis of the Proposed California Flats Solar Project," 2012-2013.

Principal Investigator, Agriculture and Food Research Initiative, USDA-NIFA 2011-02763, \$387,365, "Consumer Search and Retail Pass Through: Implications for Food Price Inflation," (with Timothy J. Richards), 2011-2013.

Principal Investigator, Agriculture and Food Research Initiative, USDA-CREES 2010-65400-20441, \$309,377, "Farm-Retail Price Transmission in Multi-Product Retail Environments," (with Timothy J. Richards), 2010-2011.

Principal Investigator, Agriculture and Food Research Initiative, USDA-CREES 2010-65400-20487, \$268,068, "Equilibrium Price and Design of New Food Products in a Social Network," (with Timothy J. Richards), 2010-2011.

Principal Investigator, University of Wisconsin Madison P685510 (USDA Prime 2006-34101-18999), \$35,839, "Pricing Relationships in the Food Retail Sector," 2006-2008.

Principal Investigator, University of Wisconsin Madison P685661 (USDA Prime 2005-34101-15664), \$16,489, "Price and Advertising Relationships in the Food Retail Sector," 2005-2006.

Principal Investigator, U.S. Department of Agriculture, National Research Initiative Competitive Grants program, \$180,697, "Competitive Interactions Among U.S. Retailers: A New Approach," (with Timothy J. Richards and Paul Patterson), 2005-2006.

Principal Investigator, University of Wisconsin Madison P622753 (USDA Prime 2004-34101-14559), \$28,434, "Variety Competition in Retail Grocery Markets," 2004-05.

Principal Investigator, University of Wisconsin Madison P540503 (USDA Prime 2001-34101-10526), \$44,632, “Advertising Agreements in a Market with Differentiated Products and Imperfect Competition,” 2002-2004.

Principal Investigator, University of Wisconsin Madison P540433 (USDA Prime 2001-34101-10526), \$28,978, “Retailer Contracting,” 2002-2003.

Principal Investigator, U.S. Department of Agriculture, National Research Initiative Competitive Grants program, \$98,130, “Empirical Tests of STE Leadership Behavior in International Grain Markets,” with Kyle W. Stiegert, 2001-2003.

Principal Investigator, California Tree Fruit Agreement, \$11,129, “Evaluating a Grading System: California Soft Fruit,” June 2000-2001.

SERVICE CONTRIBUTIONS

National Committees and Leadership

Galbraith Award Committee, American Agricultural Economics Association, 2017-present.

Publication of Enduring Quality Award Committee, American Agricultural Economics Association, 2018-present.

Annual Award Committee, American Agricultural Economics Association, 2015-2019.

Trust Committee, American Agricultural Economics Association, 2016-2018.

Chair, Quality of Research Discovery Award Committee, American Agricultural Economics Association, 2013-2016.

Outstanding Published Research Committee, Western Agricultural Economics Association, 2015.

Reviewer, selected paper program, American Agricultural Economics Association annual meeting, 2005.

Best Article Award Committee, American Agricultural Economics Association, 2001-05.

Outstanding Masters Thesis Award Committee, American Agricultural Economics Association, 2001-04, 2013-2015.

Topic Leader for selected paper sessions in Environmental Economics, American Agricultural Economics Association annual meeting, August 1999.

Panel Member, Sustainable Management Panel, Tallgrass Prairie National Preserve (Strong City, KS), U.S. Department of the Interior, National Park Service, 1998.

Co-Chair, Western Agricultural Economic Association annual meeting, 1997.

Ad Hoc Reviewer: *Agricultural and Resource Economic Review*, *Agribusiness: An International Journal*, *American Journal of Agricultural Economics*, *American Economic Review*, *American Economic Journal –Policy*, *Applied Economic Perspectives and Policy*, *B.E. Journal of Economic Analysis and Policy*, *B.E. Journal of Theoretical Economics*, *Canadian Journal of Economics*, *Contemporary Economic Policy*, *Economic Geography*, *Economic Inquiry*, *Economic Theory Bulletin*, *Economics Bulletin*, *Economics Letters*, *Environmental & Resource Economics*, *European Economic Review*, *European Review of Agricultural Economics*, *Food Policy*, *Games and Economic Behavior*, *International Economic Review*, *International Journal of Economics and Business*, *International Journal of Industrial Organization*, *International Tax*

and Public Finance, Journal of Agricultural and Applied Economics, Journal of Agricultural & Food Industrial Organization, Journal of Agricultural and Resource Economics, Journal of the Association of Environmental and Resource Economists, Journal of Cleaner Production, Journal of Economic Education, Journal of Economics, Journal of Economics & Management Strategy, Journal of Environmental Economics and Management, Journal of Food Products Marketing, Journal of Industry, Competition and Trade, Journal of the Political Economy, Journal of Public Economic Theory, Journal of Public Economics, Journal of Public Policy and Marketing, Journal of Regulatory Economics, Journal of Retailing, Journal of Retailing and Consumer Services, Journal of Wine Economics, PLOS One, Nature, Proceedings of the National Academy of Science, Public Finance Review, Managerial and Decision Economics, Management Science, RAND Journal of Economics, Resource and Energy Economics, Review of Economic Studies, Review of Industrial Organization, Sustainability.

University and College

Chair, Faculty Council, Orfalea College of Business, Cal Poly, 2023-present
 Distinguished Scholarship Committee, Cal Poly, 2022-present
 Faculty Council, Orfalea College of Business, Cal Poly, 2022-2023
 Chair, Graduate Program Committee, Orfalea College of Business, Cal Poly, 2021-2023
 Dean Search Committee, Orfalea College of Business, Cal Poly, 2020-21
 Graduate Program Committee, Orfalea College of Business, Cal Poly, 2020-21
 Faculty Affairs Committee, Orfalea College of Business, Cal Poly, 2007-2009, 2016-2009.
 Chair, Dean Search Committee, Orfalea College of Business, Cal Poly, 2014-2015
 Graduate Programs Committee, Orfalea College of Business, Cal Poly, 2004-05.
 Research Incentive Award Committee, College of Business, UCF, 2003-04.
 Promotion and Tenure Committee, College of Business, UCF, 2001-04.
 Conference Organizer, New Perspectives in Environmental Economics, UCF, November 2001.
 Faculty Advisor, UA Cycling Club, 2000-01.
 KSU National Wheat Research Center Proposal Committee, 1998-99.
 College of Agriculture Honors Advisory Committee, 1997-99.
 KCARE Water Quality Committee, 1996-99.
 KCARE Water Management Committee, 1996-99.

Department

Chair, Faculty Search Committee, Economics Department, Cal Poly, 2023-2024.
 Curriculum Committee, Economics Department, Cal Poly, 2004-present.
 Assessment Committee, Economics Department, Cal Poly, 2007-present.
 Faculty Search Committee, Economics Department, Cal Poly, 2021-22.
 Director of Graduate Studies, Economics Department, Poly, 2016-2019.
 Faculty Search Committee, Economics Department, Cal Poly, 2015-2016.
 Faculty Search Committee, Economics Department, Cal Poly, 2013-2014.
 Faculty Search Committee, Economics Department, Cal Poly, 2007-2008.
 Chair, Faculty Search Committee, Economics Department, Cal Poly, 2006-2007.
 Faculty Search Committee, Economics Department, Cal Poly, 2005-2006.
 Faculty Search Committee, Economics Department, Cal Poly, 2004-05.
 Director of Graduate Studies, Economics Department, UCF, 2001-04.
 Ph.D. Program Committee, Economics Department, UCF, 2002-04.

Graduate Committee, Economics Department, UCF, 2001-04.
Chair, Faculty Search Committee, Economics Department, UCF, 2002-03.
Seminar Committee, Economics Department, UCF, 2001-02.
Faculty Search Committee, Economics Department, UCF, 2001-02.
Graduate Committee, UA, 2000-01.
Seminar Committee, Co-Chair, UA, 1999-2000.
Graduate Committee, 1998-99.
General Preliminary Examination Committee, 1998-99.
Natural Resources Preliminary Examination Committee, 1998-99
Research Alliance, Farmland Industries, Inc., 1998-99.
Senior Advisor, Agricultural Economics / Agribusiness Club, 1998-99.
Agricultural Economics Graduate Program Committee, 1998-99.
Junior Advisor, Agricultural Economics / Agribusiness Club, 1997-98.
Seminar Committee, 1997-98.
Office of Local Government Extension Assistant Search Committee, 1997.
Seminar Committee Co-Chair, 1996-97.

INDUSTRY CONSULTING AND LITIGATION EXPERIENCE

Consulting experience (1994 – present) in the measurement of economic damages, complex litigation, antitrust, market analysis of regulated industries, economic feasibility studies, environmental and land use regulation, forensic economics, groundwater basin management, and portfolio investment modeling.

Exhibit B

Testimony Provided 2020-2024

STEPHEN F. HAMILTON
Testimony 2020-2024

Lenore Miley v. Belkin International Inc., No. 20STCV00033 (Cal Sup, Los Angeles)

- Expert Report
- Deposition (January 2024)

Michael Alderete v. Quinn Company, No. 19CVP-0310 (Cal Sup, San Luis Obispo)

- Expert Report
- Deposition

Goodwin v. Whole Foods Market Inc., No. 21STCV40456 (Cal Sup, Los Angeles)

- Expert Report
- Deposition

In the Matter of the Application of the Cities of Hays Kansas and Russell, Kansas for Approval to Transfer Water from Edwards County, Kansas Pursuant to the Kansas Water Transfer Act, OAH No. 23AG0003 AG (Office of Administrative Hearings, State of Kansas)

- Expert Report
- Trial Testimony

David Torres v. Estate of Ali Salmanzadeh et al., No. 1:20-cvp-0084 Consolidated (Cal Sup, San Luis Obispo)

- Expert Report
- Deposition
- Trial Testimony

Martin Weifield et al. v. Coastal Christian School, No. 1:17-cv-0640 (Cal Sup, San Luis Obispo)

- Expert Report
- Deposition

Josephine Loguidice and Emilie Norman v. Gerber Life Insurance Co., No. 7:20-cv-03254-KMK, (S.D. New York)

- Expert Declaration for Rebuttal of Class Certification
- Deposition

Metrolink Train Accident Cases (Consolidated), No. BC607964 (Cal Sup, L. A.)

- Expert Declaration
- Deposition

Autumn La Macchia, Laci La Macchia v. Ramiro Guzman Rojas et al., No. 21-cv-001324, (Cal Sup, Monterey)

- Expert Report
- Deposition
- Trial Testimony

David Moore D/B/A Moore Family Farms, et al. v. C.H. Robinson Worldwide, Inc., No. 20-cv-252 PJS/HB, (District of Minnesota)

- Expert Report
- Deposition

In Re. KIND LLC “Healthy and All Natural” Litigation, No. 15-MD-02645-WHP, (S.D. New York)

- Expert Declaration for Class Certification
- Deposition for Class Certification
- Expert Declaration for Damages
- Deposition for Damages

Kathleen Smith et al. v. Keurig Green Mountain, Inc., No. 18-CV-06690-HSG, (N.D. Cal.)

- Expert Declaration for Class Certification
- Expert Declaration for Damages

In Re. FieldTurf Artificial Turf Marketing and Sales Practices Litigation, No. 17-2779-MAS-TJB, (Dist. New Jersey)

- Expert Declaration
- Deposition

Chris Goldie, Steven Goldie and Shasta Teekat v. Reynolds Resorts Partners, LLC, No. 30-2017-00951303-CU-BT-CJC, (Cal Sup, Orange)

- Expert Report
- Deposition
- Trial Testimony

Richard Best Transfer, Inc. v. Mahlenium Insurance Services, Inc., No. 18 CE CG 02797, (Cal Sup, Fresno)

- Expert Declaration
- Deposition

Jijun Yin v. Aguiar, SCWC-15-0000325, (Hawaii Sup)

- Mediation Brief

T.N. Cattle Co., Inc. v. National Audubon Society, 2:19-AT-00085 (E.D. Cal.)

- Mediation Brief

Kara Flick v. Francisco Javier Reyes et al., No. 17-cv-03850 (Cal Sup, Santa Barbara)

- Expert Report
- Deposition
- Trial Testimony

Caltech Corp. v. Zoetis, Inc. and Nutrius, LLC, No.: VCU273468 (Cal Sup, Tulare)

- Expert Report
- Deposition

Exhibit C

Materials Received and/or Relied Upon

Legal Documents and Pleadings

Second Amended Complaint, filed September 30, 2022.

Articles, Books, and Reports

- Chetty, R., Looney, A. and Kroft, K., 2009. Salience and taxation: Theory and evidence. *American economic review*, 99(4), pp.1145-1177.
- Hamilton, S.F., Liaukonyte, J. and Richards, T.J., 2020. Pricing strategies of food retailers. *Annual Review of Resource Economics*, 12, pp.87-110.
- Heidbreder, L.M., Bablok, I., Drews, S. and Menzel, C., 2019. Tackling the plastic problem: A review on perceptions, behaviors, and interventions. *Science of the Total Environment*, 668, pp.1077-1093.
- Homonoff, T.A., 2018. Can small incentives have large effects? The impact of taxes versus bonuses on disposable bag use. *American Economic Journal: Economic Policy*, 10(4), pp.177-210.
- Homonoff, T., Kao, L.S., Selman, J. and Seybolt, C., 2022. Skipping the bag: the intended and unintended consequences of disposable bag regulation. *Journal of Policy Analysis and Management*, 41(1), pp.226-251.
- Marshall, A., 2009. *Principles of economics: unabridged eighth edition*. Cosimo, Inc., Ch. 3. Reprinted from the original volume, Marshall, A., 1890, *Principles of Economics: An introductory volume*.
- Ohtomo, S. and Ohnuma, S., 2014. Psychological interventional approach for reduce resource consumption: Reducing plastic bag usage at supermarkets. *Resources, Conservation and Recycling*, 84, pp.57-65.
- Richards, T.J., Hamilton, S.F. and Yonezawa, K., 2018. Retail market power in a shopping basket model of supermarket competition. *Journal of Retailing*, 94(3), pp.328-342.
- Richards, T.J. and Hamilton, S.F., 2006. Rivalry in price and variety among supermarket retailers. *American Journal of Agricultural Economics*, 88(3), pp.710-726.
- Sharp, A., Høj, S. and Wheeler, M., 2010. Proscription and its impact on anti-consumption behaviour and attitudes: the case of plastic bags. *Journal of Consumer Behaviour*, 9(6), pp.470-484.
- Smith, A., 1776. "Of the Origin and Use of Money". *An Inquiry into the Nature and Causes of the Wealth of Nations*, p.29.
- Soloman, M., 2016. *One year after the ban, plastic bags still an issue on Oahu*. Hawaii Public Radio, Aug 4, 2016, accessed February 19, 2024 at: <http://hawaiipublicradio.org/post/one-year-after-ban-plastic-bags-still-issue-oahu>.

Taylor, R.L. and Villas-Boas, S.B., 2016. Bans vs. fees: Disposable carryout bag policies and bag usage. *Applied Economic Perspectives and Policy*, 38(2), pp.351-372.

Taylor, R.L., 2017. *It's Not Easy Being Green: Lessons from Disposable Carryout Bag Regulations*. University of California, Berkeley.

Taylor, R.L., 2019. Bag leakage: The effect of disposable carryout bag regulations on unregulated bags. *Journal of Environmental Economics and Management*, 93, pp.254-271.

Taylor, R.L., 2020. A mixed bag: The hidden time costs of regulating consumer behavior. *Journal of the Association of Environmental and Resource Economists*, 7(2), pp.345-378.

Taylor, R.L., 2022. It's in the bag? The effect of plastic carryout bag bans on where and what people purchase to eat. *American Journal of Agricultural Economics*, 104(5), pp.1563-1584.

Wagner, T.P., 2017. Reducing single-use plastic shopping bags in the USA. *Waste Management*, 70, pp.3-12.

Websites

CalRecycle, Single-Use Carryout Bag ban (SB 270), accessed February 19, 2024:
<https://calrecycle.ca.gov/plastics/carryoutbags/>

Exhibit 3

1 LEXINGTON LAW GROUP, LLP
2 Patrick Carey (Bar No. 308623)
3 Mary Haley Ousley (Bar No. 332711)
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 pcarey@lexlawgroup.com
9 mhousley@lexlawgroup.com

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

10 Attorneys for Plaintiff
11 ELISA BARGETTO

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

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

18 Plaintiffs,

19 v.

20 WALGREEN CO.,

21 Defendant

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

18 **DECLARATION OF ELISA BARGETTO**
19 **IN SUPPORT OF PLAINTIFF'S MOTION**
20 **FOR CLASS CERTIFICATION**

21 Date: June 11, 2024

22 Time: 2:00 p.m.

23 Dept. Courtroom 9, 19th Floor

24 Judge: Hon. Trina L. Thompson

1 I, Elisa Bargetto, declare as follows:

2 1. I am the Plaintiff in this action. I have personal knowledge of the matters set forth in this
3 declaration and, if called as a witness, I could and would testify competently thereto.

4 2. I am a domiciled in San Francisco, California and I am concerned about the impact my
5 actions and purchases have on the environment. In an effort to minimize my environmental impact, I
6 seek out products that are reusable, compostable, and recyclable. To the extent I cannot reuse or
7 compost products, it is extremely important to me that I be able to recycle them. For instance, in the
8 past I have recycled items such as contact lenses, tennis balls, and printer cartridges.

9 3. I have been a customer of Walgreen Co. (referred to herein as “Walgreens”) for as long
10 as I can remember. I have purchased plastic carryout bags from Walgreens’ stores in California
11 numerous times throughout my life.

12 4. I am aware that California law currently requires plastic carryout bags that are sold here
13 in California to be recyclable. I am aware that Walgreens sells plastic carryout bags in California that
14 are labeled as recyclable (“Walgreens’ Bags” or the “Bags”). Although I cannot specifically recall when
15 I saw the recyclable labeling on Walgreens’ Bags for the first time, I generally recall seeing recyclable
16 labeling on Walgreens’ Bags and plastic bags from other retailers prior to the purchase of the
17 Walgreens’ Bags at issue in this case.

18 5. I specifically recall purchasing Walgreens’ Bags on two separate occasions in December
19 of 2021: one in San Francisco, California and one in Scotts Valley, California. At the time of those
20 purchases, based on my knowledge of the law banning single-use carryout bags and requiring plastic
21 bags to be recyclable, and because Walgreens offered plastic carryout bags for sale, I believed that those
22 Bags were recyclable. I also believed that these Bags were recyclable based on my prior purchases of
23 plastic bags from Walgreens and other retailers that included the chasing arrows symbol and other
24 representations regarding recycling. Because of this labeling, I believed that Walgreens’ Bags would be
25 collected, separated, and recovered from the general waste stream for reuse or use in manufacturing or
26 assembling another item.

27 6. I have since learned that contrary to California law and labeling on the Bags, Walgreens’
28 Bags are not recyclable. Had I known then that Walgreens’ Bags were not recyclable, I would not have

1 purchased them. Although I often use my own reusable shopping bags, there are times when I forget
2 them or make unplanned visits to Walgreens and therefore intend to buy Walgreens' Bags in the future
3 if they are truly recyclable. I will not know whether Walgreens' recyclability representations are true
4 without a court order requiring Walgreens to comply with its obligations under the law.

5 7. Because my damages are relatively small, I never could have brought this case as an
6 individual action since the costs of pursuing the case would have dwarfed the size of any potential
7 recovery. When I retained my attorneys and authorized the filing of the Complaint, First Amended
8 Complaint, and Second Amended Complaint, I understood that I would be representing not only myself
9 but also a class of consumers like myself. I take this responsibility seriously. I am fully committed to
10 the vigorous prosecution of this action on behalf of consumers like myself. I am aware of no potential
11 or actual conflicts between my interests and those of the absent class members.

12 8. I have performed a number of tasks to oversee the work of my attorneys and to protect
13 the rights of absent class members. Among other things, my participation in this lawsuit has included:
14 (a) retaining my attorneys; (b) providing them information necessary to draft the Complaint, First
15 Amended Complaint, and Second Amended Complaint, including the Plastic Bag I purchased, the
16 location and date of the purchase and the reasons I selected the Plastic Bag; (c) reviewing the draft
17 Complaint, First Amended Complaint, and Second Amended Complaint before they were filed; (d)
18 assisting my attorneys in responding to written discovery propounded by Walgreens, including gathering
19 and producing responsive documents and reviewing and approving responses to interrogatories and
20 document requests; (f) monitoring the litigation, which included routine communications with my
21 attorneys, as well as the review of documents and correspondence they sent me; (g) preparing for and
22 being deposed by Walgreens; and (h) understanding and agreeing to each of the responsibilities of a
23 named plaintiff and putative class representative. I have not received any compensation whatsoever for
24 my time and efforts on behalf of absent class members.

25 ///

26 ///

27 ///

28 ///

1 I declare under penalty of perjury that the foregoing is true and correct to the best
2 of my knowledge and understanding. Executed on March 11, 2024, in San Francisco, California.

3
4 

5
6 Elisa Bargetto

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**DOCUMENTS REDACTED IN
THEIR ENTIRETY SUBJECT TO
MOTION TO SEAL**

Exhibits 4-8

Exhibit 9

1 NELSON MULLINS RILEY & SCARBOROUGH, LLP
2 Cory E. Manning (State Bar No. 213120)
3 cory.manning@nelsonmullins.com
4 1320 Main St., 17th Floor
5 Columbia, SC 29201
6 Telephone: 803.255.5524
7 Facsimile: 803.256.7500

8 Miles E. Coleman (admitted *Pro Hac Vice*)
9 miles.coleman@nelsonmullins.com
10 2 W. Washington St., 4th Floor
11 Greenville, SC 29601
12 Telephone: 864.373.2352
13 Facsimile: 864.373.2925

14 *Attorneys for Defendant Walgreen Co.*

15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

WALGREEN CO.,

Defendant.

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

**DEFENDANT WALGREEN CO.'S
AMENDED OBJECTIONS AND
RESPONSES TO PLAINTIFF ELISA
BARGETTO'S FIRST SET OF
INTERROGATORIES**

Judge: Trina L. Thompson

Initial Complaint filed: April 29, 2022

1 **PROPOUNDING PARTY: Plaintiff Elisa Bargetto**

2 **RESPONDING PARTY: Defendant Walgreen Co.**

3 **SET NO.: One**

4 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Civil Local Rule
5 33 (the “Rules”), Defendant Walgreen Co. (“Walgreens” or “Defendant”) submits the following
6 amended responses and objections to Plaintiff’s First Set of Interrogatories (“Interrogatories”).
7 The responses and objections set forth herein are based upon the information presently available
8 to Defendant, and Defendant expressly reserves the right to modify, supplement, or amend its
9 responses and/or objections.

10 **GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES**

11 Defendant incorporates by reference as if fully set forth herein the Objections to the Definitions
12 and Instructions set forth in its Objections and Responses to Plaintiff Elisa Bargetto’s First Set
13 of Interrogatories served on August 2, 2023.

14 **RESPONSES TO FIRST SET OF INTERROGATORIES**

15 **INTERROGATORY NO. 1:** For each PLASTIC BAG with a different form of labeling sold
16 or offered for sale by YOU in California during the TIME PERIOD, identify the producer of
17 the PLASTIC BAG, the time period during which the PLASTIC BAG was sold or offered for
18 sale by YOU in California, the Bates number corresponding to the label of the PLASTIC
19 BAG, the PLASTIC BAG identification number, and the type of resin used to make the
20 PLASTIC BAG.

21 **AMENDED RESPONSE:** Walgreens incorporates its preliminary
22 statement and general objections as if fully set forth in this answer. In addition,
23 Walgreens objects to the use of the term “identification number,” which is not
24 defined and which is vague and ambiguous. Walgreens objects on relevance
25 grounds and to the premise of this Interrogatory as it purports to impose duties
26 on Walgreens that do not exist nor existed during the Agreed Date Scope.
27 Subject to and without waiving these objections, Walgreens states the following:

26 From approximately 2016 to 2022, Walgreens sold or distributed in its
27 California retail stores reusable, recyclable plastic shopping bags manufactured
28 by Novolex of plastic film made from medium density polyethylene (“MDPE”),
which is a combination of primarily high-density polyethylene (“HDPE”) and
low density polyethylene (“LDPE”). Walgreens reserves the right to supplement

1 this Response to identify any correlating documents after such time as any such
2 documents are produced in this proceeding.

3 From late 2021 through the end of the Agreed Date Scope, Walgreens sold
4 or distributed in its California retail stores reusable, recyclable plastic shopping
5 bags manufactured by IPS Industries, Inc. of plastic film made from Low Density
6 Polyethylene (“LDPE”). Walgreens did not track the time period during which
7 each iteration or version of PLASTIC BAG with a different form of labeling
8 were sold or offered for sale in CA. Walgreens identifies the following examples
9 of documents that provide the labels, bag identification and resin information.

10 *See*WAG0008258; WAG0008294; WAG0000859; WAG0000861;
11 WAG0000863; WAG0000865; WAG0000867; WAG0000869; WAG0000871;
12 WAG0000873; WAG0000875; WAG0000879; WAG0000881; WAG0000883;
13 WAG0000885; WAG0000887; WAG0000889; WAG0000891; WAG0000893;
14 WAG0000895; WAG0000897; WAG0001433; WAG0001445; WAG0001468;
15 WAG0001476; WAG0001477; WAG0001478; WAG0001558; WAG0001560;
16 WAG0001562; WAG0001564; WAG0001566; WAG0001568; WAG0001570;
17 WAG0001572; WAG0001574; WAG0001576; WAG0001588; WAG0001589;
18 WAG0001590; WAG0001594; WAG0001608; WAG0001829; WAG0002057;
19 WAG0002074; WAG0002142; WAG0002191; WAG0002192; WAG0002444;
20 WAG0002486; WAG0002487; WAG0002488; WAG0002897; WAG0002904;
21 WAG0003037; WAG0003039; WAG0003041; WAG0003043; WAG0003045;
22 WAG0003047; WAG0003049; WAG0003051; WAG0003053; WAG0003055;
23 WAG0003059; WAG0003061; WAG0003063; WAG0003065; WAG0003067;
24 WAG0003069; WAG0003071; WAG0003073; WAG0003075; WAG0003080;
25 WAG0003082; WAG0003084; WAG0003086; WAG0003088; WAG0003090;
26 WAG0003092; WAG0003094; WAG0003096; WAG0003098; WAG0003868;
27 WAG0003870; WAG0003872; WAG0003874; WAG0003876; WAG0003878;
28 WAG0003880; WAG0003882; WAG0003884; WAG0003886; WAG0003893;
WAG0003895; WAG0003897; WAG0003899; WAG0003901; WAG0003903;
WAG0003905; WAG0003907; WAG0003909; WAG0003922; WAG0003924;
WAG0003926; WAG0003928; WAG0003930; WAG0003932; WAG0003934;
WAG0003936; WAG0003938; WAG0003940; WAG0005161; WAG0005163;
WAG0005165; WAG0005167; WAG0005169; WAG0005171; WAG0005173;
WAG0005175; WAG0005177; WAG0005179; WAG0005245; WAG0005418;
WAG0005420; WAG0005422; WAG0005424; WAG0005426; WAG0005428;
WAG0005430; WAG0005432; WAG0005434; WAG0005436; WAG0005706;
WAG0005718; WAG0005719; WAG0005730; WAG0005743; WAG0005753;
WAG0006966; WAG0007189; WAG0007472; WAG0007577; WAG0007632;
WAG0007675; WAG0007749; WAG0007853; WAG0007864; WAG0007877;
WAG0007886; WAG0007941; WAG0007963; WAG0008023; WAG0008027;
WAG0008037; WAG0008075; WAG0008086; WAG0008099; WAG0008107;
WAG0008108; WAG0008227; WAG0008239; WAG0008240; WAG0008242;
WAG0008243; WAG0008245.

26 Walgreens reserves the right to supplement this Response to identify any
27 correlating documents after such time as any such documents are produced in
28 this proceeding.

1 **INTERROGATORY NO. 2:** Identify by store location and date of operation each store
2 drop-off collection bin for the recycling of PLASTIC BAGS that YOU have had in any of
3 YOUR California retail locations during the TIME PERIOD.

4 **AMENDED RESPONSE:** Walgreens incorporates its preliminary statement
5 and general objections as if fully set forth in this answer. Walgreens further
6 objects to this Interrogatory because it appears to seek information at the
7 collection bin level and it requests disclosure of information for “each store drop-
8 off collection bin” at each store location unlimited in chronological scope and is,
9 therefore, overly broad, unduly burdensome, and not proportionate to the needs
10 of the case. Subject to and without waiving these objections, Walgreens states
11 that Walgreens objects on relevance grounds and to the premise of this
12 Interrogatory as it purports to impose duties on Walgreens that do not exist nor
13 existed during the Agreed Date Scope. Because of the lack of any such
14 requirement or duty, Walgreens did not track by store location and date of
15 operation each store drop-off collection bin for the recycling of PLASTIC BAGS
16 that it had in any of its California retail locations during the Agreed Date Scope.
17 Walgreens further states that all but 43 of its 529 retail locations in California
18 (roughly 92%) are located within 10 miles of drop off bins that accepted
19 PLASTIC BAGS for recycling. *See* WAG0008396.

14 **INTERROGATORY NO. 3:** Identify each DOCUMENT that YOU contend demonstrates
15 YOUR compliance with California Business and Professions Code § 17580(a).

16 **AMENDED RESPONSE:** Walgreens incorporates its preliminary
17 statement and general objections as if fully set forth in this answer. Walgreens
18 further objects to this Interrogatory because it seeks identification of “each
19 DOCUMENT” unlimited in chronological scope and is, therefore, overly broad,
20 unduly burdensome, and not proportionate to the needs of the case. Subject to
21 and without waiving these objections, Walgreens identifies the following
22 examples of documents from the Agreed Date Scope sufficient to demonstrate
23 its compliance with California Business and Professions Code § 17580(a):
24 WAG0008258 – WAG0008612. *See also* WAG0005730; WAG0005706;
25 WAG0005753; WAG0005743; WAG0005718; WAG0005719;
26 WAG00005787.

23 **INTERROGATORY NO. 4:** If YOUR response to Request for Admission No. 2 served by
24 Plaintiff is anything other than an unqualified admission, state all facts upon which YOU
25 base YOUR response, identify all PERSONS who have knowledge of those facts, and
26 identify all DOCUMENTS and other tangible things that support or undermine YOUR
27 response.
28

1 **AMENDED RESPONSE:** Walgreens incorporates its preliminary
2 statement and general objections as if fully set forth in this answer. Walgreens
3 further objects to this Interrogatory because it seeks “all documents” and “all
4 persons” unlimited in chronological scope and is, therefore, overly broad,
5 unduly burdensome, and not proportionate to the needs of the case. Walgreens
6 objects to this Interrogatory on the basis that the term “established recycling
7 program” found in Request for Admission No. 2 is undefined, vague, and
8 ambiguous. Walgreens objects to this Interrogatory on the basis that it is not
9 possible for Walgreens or any entity to know whether each PLASTIC BAG it
10 sold in California during the Agreed Date Scope was collected, separated or
11 otherwise recovered from the waste stream for reuse or use in assembling
12 another item in California. Subject to and without waiving these objections,
13 Walgreens identifies the following examples of documents from the Agreed
14 Date Scope sufficient to show that the types of reusable plastic grocery bags
15 sold by Walgreens in the State of California were actually collected, separated,
16 or otherwise recovered from the waste stream for reuse or use in manufacturing
17 or assembling another item: WAG0000168; WAG0000448; WAG0000450;
18 WAG0000454; WAG0000463; WAG0000496; WAG0000502; WAG0000617;
19 WAG0000620; WAG0000622; WAG0007275; WAG0000928; WAG0001018;
20 WAG0001030; WAG0001119; WAG0001293; WAG0001341; WAG0001448;
21 WAG0001464; WAG0001466; WAG0001504; WAG0001515; WAG0001545;
22 WAG0001791; WAG0001809; WAG0001819; WAG0001822; WAG0001824;
23 WAG0002075; WAG0002078; WAG0002079; WAG0002082; WAG0002110;
24 WAG0002145; WAG0002185; WAG0002358; WAG0002434; WAG0002436;
25 WAG0002445; WAG0002463; WAG0002489; WAG0002498; WAG0002509;
26 WAG0002511; WAG0002513; WAG0002515; WAG0002886; WAG0002889;
27 WAG0002976; WAG0003100; WAG0003117; WAG0003143; WAG0003176;
28 WAG0003919; WAG0004125; WAG0004135; WAG0004155; WAG0004249;
WAG0004606; WAG0004724; WAG0005065; WAG0005202; WAG0005244;
WAG0005359; WAG0005382; WAG0005383; WAG0005384; WAG0005415;
WAG0005441; WAG0005449; WAG0005451; WAG0005691; WAG0005718;
WAG0005787; WAG0006769; WAG0006780; WAG0006789; WAG0006798;
WAG0006966; WAG0006977; WAG0007002; WAG0007005; WAG0007006;
WAG0007156; WAG0007189; WAG0007419; WAG0007423; WAG0007632;
WAG0007675; WAG0007851; WAG0007853; WAG0007864; WAG0007877;
WAG0007886; WAG0008107; WAG0008108; WAG0008294; WAG0008396;
WAG0008613; WAG0008623; WAG0008640. Walgreens further states that
the following individuals have knowledge of the relevant facts: William Dolak,
Amber Durkin, Fernando Fernandez, Noman Rauf, and Sarah Monroe.

24 **INTERROGATORY NO. 5:** If YOUR response to Request for Admission No. 3 served by
25 Plaintiff is anything other than an unqualified admission, state all facts upon which YOU
26 base YOUR response, identify all PERSONS who have knowledge of those facts, and
27 identify all DOCUMENTS and other tangible things that support or undermine YOUR
28 response.

1 **AMENDED RESPONSE:** Walgreens incorporates its preliminary statement
2 and general objections as if fully set forth in this answer. Walgreens further
3 objects to this Interrogatory because it seeks “all documents” and “all persons”
4 unlimited in chronological scope and is, therefore, overly broad, unduly
5 burdensome, and not proportionate to the needs of the case. Walgreens objects
6 to this request on the basis that the term “established recycling program” found
7 in Request for Admission No. 3 is undefined, vague, and ambiguous. Walgreens
8 objects to this Interrogatory on the basis that it is not possible for Walgreens or
9 any entity to know whether each PLASTIC BAG it sold in California during the
10 Agreed Date Scope was collected, separated or otherwise recovered from the
11 waste stream for reuse or use in assembling another item in California.
12 Walgreens objects on grounds that this Interrogatory is substantively duplicative
13 of Interrogatory No. 4. Subject to and without waiving these objections,
14 Walgreens directs Plaintiffs to its response to Interrogatory No. 4.

9 Dated: January 30, 2024

NELSON MULLINS RILEY & SCARBOROUGH, LLP

11 By: /s/ Cory E. Manning

Cory E. Manning (State Bar No. 213120)

cory.manning@nelsonmullins.com

1320 Main St., 17th Floor

Columbia, SC 29201

Telephone: 803.255.5524

Facsimile: 803.256.7500

Miles E. Coleman (admitted *Pro Hac Vice*)

miles.coleman@nelsonmullins.com

2 W. Washington St., 4th Floor

Greenville, SC 29601

Telephone: 864.373.2352

Facsimile: 864.373.2925

Attorneys for Defendant Walgreen Co.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

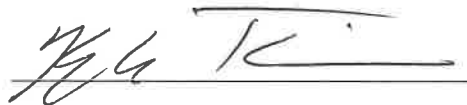
VERIFICATION

I, Kyle Tunison, am an authorized representative of Defendant Walgreens and am duly authorized to make this verification. I have read Defendant's Answers and Objections to Plaintiff's First Set of Interrogatories and know the contents thereof. The facts contained within this document are true and complete to the best of my knowledge, information, and belief.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30 day of January, 2024.

WALGREEN CO.

A handwritten signature in black ink, appearing to read 'K. Tunison', is written over a horizontal line.

CERTIFICATE OF SERVICE

1
2 This is to certify that I have this day served the foregoing DEFENDANT’S
3 RESPONSES TO PLAINTIFF’S FIRST SET OF INTERROGATORIES by sending it by
4 email and first-class mail to the following counsel of record:

5 Patrick Carey
6 Mary-Haley Ousley
7 LEXINGTON LAW GROUP
8 503 Divisadero Street
9 San Francisco, CA 94117
10 Telephone: (415) 913-7800
11 Facsimile: (415) 759-4112
12 pcarey@lexlawgroup.com
13 mhousley@lexlawgroup.com

14 Gideon Kracov
15 LAW OFFICE OF GIDEON KRACOV
16 801 S. Grand Ave., 11th Floor
17 Los Angeles, CA 90017
18 Telephone: (213) 629-2071
19 Facsimile: (213) 623-7755
20 gk@gideonlaw.net

21 *Attorneys for Plaintiff*

22 Dated: January 30, 2024

NELSON MULLINS RILEY & SCARBOROUGH, LLP

23 By: /s/ Cory E. Manning
24 Cory E. Manning

25 *Attorney for Defendant Walgreen Co.*

Exhibit 10



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

Test Report

CUSTOMER: ATTENTION: Mr. Jeff Burr

Novolex
101 East Carolina Avenue
Hartsville, SC 29550 USA

Conclusion:

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

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

Note: See report for details.
Sections refer to: Senate Bill No. 270. SB270 Solid waste: single –use carryout bags

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

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

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

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

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

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

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

Notes:

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

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

*Failed Item

BDL = <1.0ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

SAMPLE PHOTOS:



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

AM Testing & Services

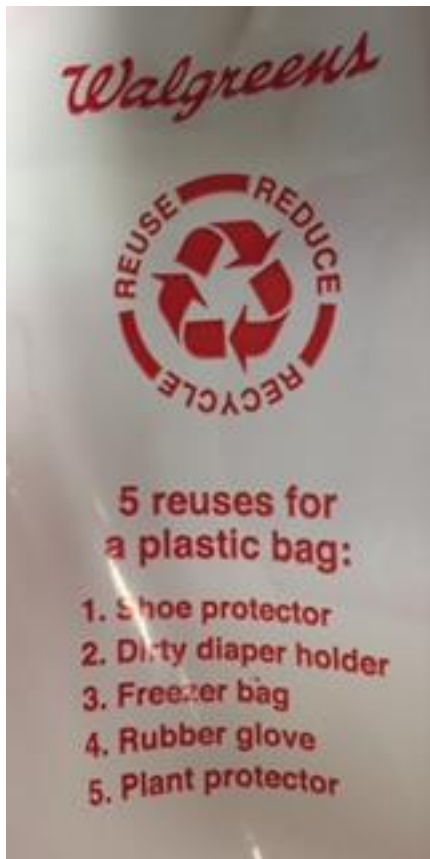
1405 Centre Circle Drive • Downers Grove, IL 60515 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R17410
Date: 12/18/2017

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



*** END OF REPORT ***

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

Test Report

CUSTOMER: ATTENTION: Mr. Jeff Burr

Novolex
101 East Carolina Avenue
Hartsville, SC 29550 USA

Conclusion:

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

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

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

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

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

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

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

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

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

Item 3: ASTM D6988 Thickness of Plastic

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

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

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

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

SAMPLE PHOTOS:



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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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



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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

Test Report

CUSTOMER: ATTENTION: Mr. Jeff Burr

Novolex
101 East Carolina Avenue
Hartsville, SC 29550 USA

Conclusion:

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

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

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

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

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

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

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

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

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

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

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

SAMPLE PHOTOS:



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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

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

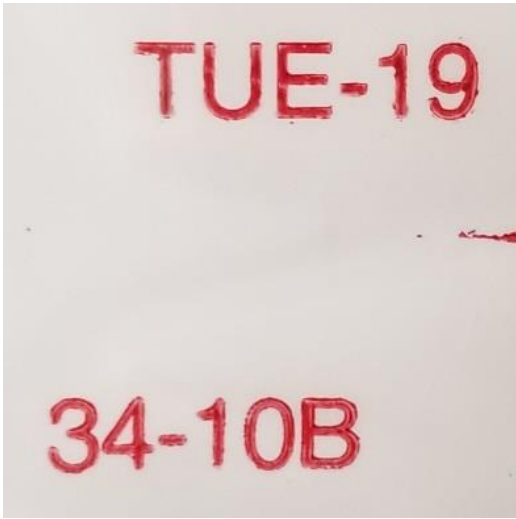
WARNING: To avoid danger of suffocation, keep this plastic bag away from babies and children.
QuikMate® QuikMate-EZ® Patent info at: bagpatents.info

• REDUCE
• REUSE
• RECYCLE

Made in USA
E570

HILEX™

NS7850



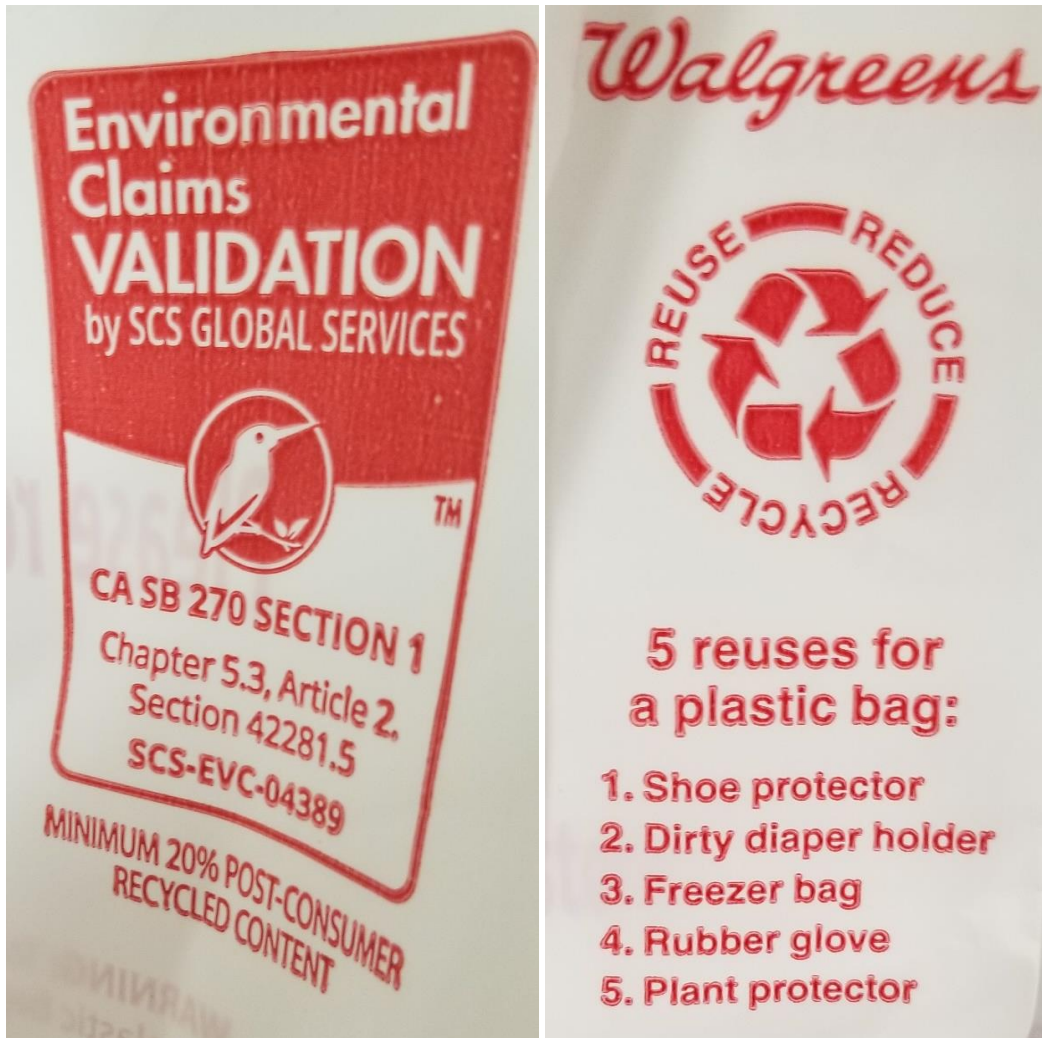
This report is issued by AM Testing & Services Inc. AM Testing & Services Inc.'s responsibility is limited to proven negligence and will in no case be more than the amount of the testing fees. Except by special arrangement, samples are not retained by AM Testing & Services Inc. for more than 30 days,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

AM Testing & Services



Cert. No. 3180.01
ISO/IEC 17025:2005

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



*** END OF REPORT ***

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

Test Report

CUSTOMER:

ATTENTION: Jeff Burr

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

Conclusion:

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

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

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

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

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

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

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

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

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

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

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

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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

SAMPLE PHOTOS:



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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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



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

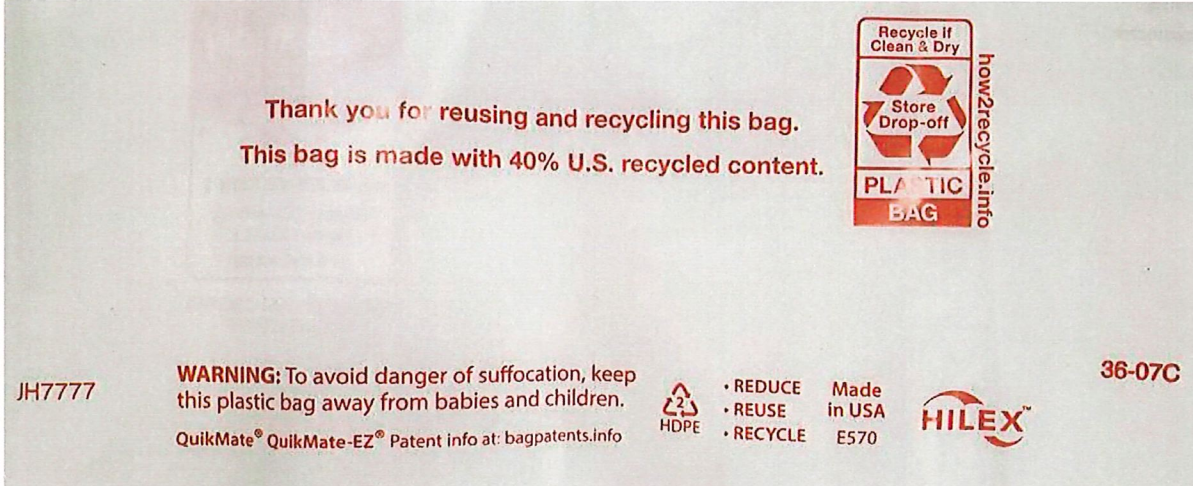
AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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



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

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

AM Testing & Services

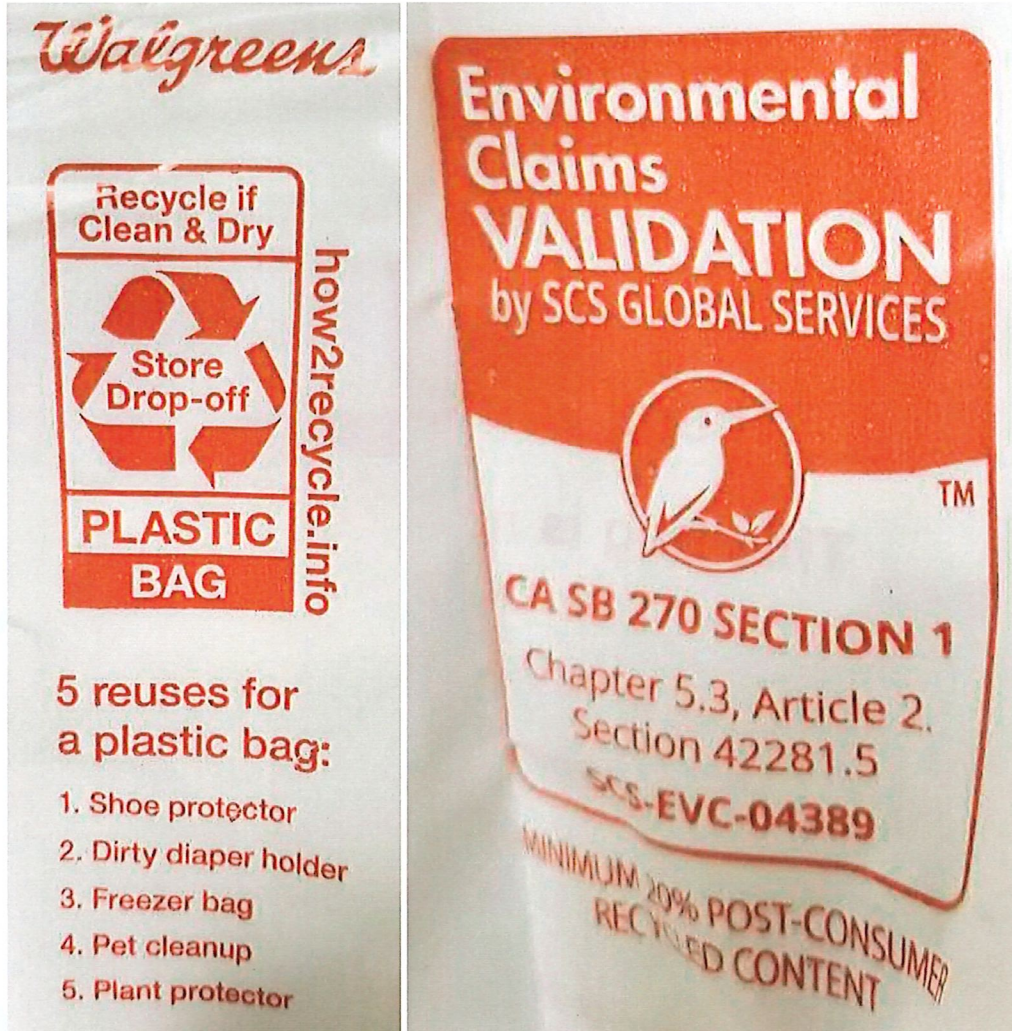
1405 Centre Circle Drive • Downers Grove, IL 60515 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R21769
Date: 09/30/2021
PCR Valid Until: 09/30/2022

Physical & Mechanical Valid Until: 09/30/2023



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

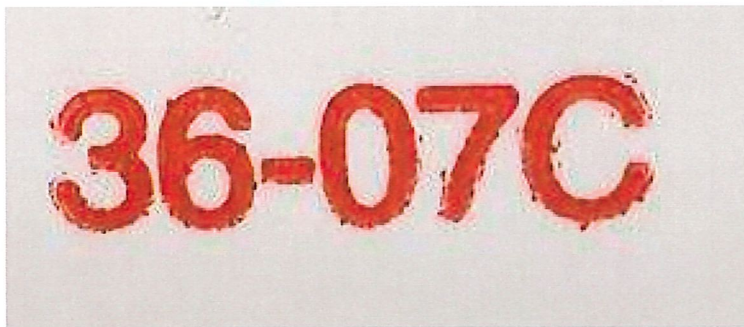
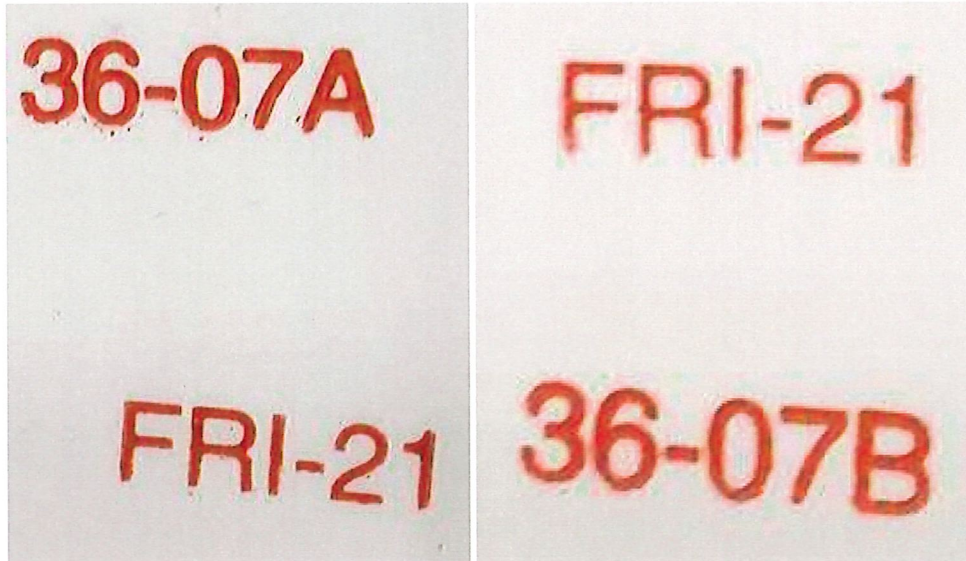
AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

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



*** END OF REPORT ***

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

AM Testing & Services

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

Exhibit 11



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

Technical Report

Sample ID: 11-10266 Walgreens T-Shirt Bag

Sample No.

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

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

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

Item 3: ASTM D6988 Film Thickness

Item 4: CONEG TPCH Heavy Elements

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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

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

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

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

AM Testing & Services

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

Page 4 of 11

IPS - 000952



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

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

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

AM Testing & Services

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

Page 5 of 11

IPS - 000953



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

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

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

AM Testing & Services

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

Page 6 of 11

IPS - 000954



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

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

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	15.25 x 11.75 x 6.50 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test				
Test Method				ATP-001 Dynamic Test
Requirements		Weight Added (lbs.)		22
		Cycles		1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Results
1 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
2 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
3 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
4 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
5 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass

Test Method				SB-270 Dynamic Test	Walk Test
Requirements		Weight Added (lbs.)		22	22
		Cycles		125	125 cycles over 175 feet
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (125)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	0	Pass

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

AM Testing & Services

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

Page 7 of 11

IPS - 000955



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

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

Measurement No.	Thickness Measured (mils)
1	2.402
2	2.441
3	2.402
4	2.638
5	2.717
6	2.402
7	2.402
8	2.480
9	2.638
10	2.638
Total	25.16
Average of 10	2.516
Limit Thickness (mils)	≥ 2.25
Result	Pass

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

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

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

¹ Hexavalent Chromium measured by Spectrophotometer

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

AM Testing & Services

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

Page 8 of 11

IPS - 000956



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024

SAMPLE PHOTOS:



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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024



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

AM Testing & Services

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



Cert. No. 3180.01
ISO/IEC 17025:2005

Report #: R22114
Date: 03/28/2022
PCR Valid Until: 03/28/2023
Physical & Mechanical Valid Until: 03/28/2024



*** END OF REPORT ***

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

AM Testing & Services

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

Exhibit 12



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025

Test Report

CUSTOMER:

ATTENTION: Mr. Brandon Clay

IPS Industries, Inc
12641 166th Street
Cerritos, CA 90703 USA

Conclusion:

<u>Tested Samples</u>	<u>Standard</u>	<u>Result</u>
1110266A Walgreens T-Shirt Bag	Senate Bill No. 270. SB270 Reusable Grocery Bags	Pass
(See Bag Details below - Original ID 11-10266)	Lifespan: ECP (CCD-100; ATP-001)	Pass
	ASTM D6988 Film Thickness	Pass
	CONEG TPCH Heavy Elements	Pass
	CalRecycle SB279 Section 17988.3(b)(1)(D) Data	Pass

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

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

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025

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

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	15.00 x 11.75 x 6.50 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test				
Test Method				ATP-001 Dynamic Test
Requirements		Weight Added (lbs.)		22
		Cycles		1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Results
1 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
2 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
3 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
4 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass
5 (300)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	Pass

Test Method				SB-270 Dynamic Test	Walk Test
Requirements		Weight Added (lbs.)		22	22
		Cycles		125	125 cycles over 175 feet
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (125)	21.00 x 11.75 x 6.50	21.00 x 11.75 x 6.50	0	0	Pass

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025

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

Measurement No.	Thickness Measured (mils)
1	2.52
2	2.68
3	2.68
4	2.48
5	2.56
6	2.56
7	2.72
8	2.72
9	2.72
10	2.60
Total	26.24
Average of 10	2.624
Limit Thickness (mils)	≥ 2.25
Result	Pass

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

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

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025

SAMPLE PHOTOS:



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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025



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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025



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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230287 r1

Date: 09/17/2023

PCR Valid Until: 05/16/2024

Physical & Mechanical Valid Until: 05/16/2025



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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com

Exhibit 13



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230296 r1

Date: 09/17/2023

PCR Valid Until: 05/17/2024

Physical & Mechanical Valid Until: 05/17/2025

Test Report

CUSTOMER:

ATTENTION: Mr. Brandon Clay

IPS Industries, Inc
12641 166th Street
Cerritos, CA 90703 USA

Conclusion:

<u>Tested Samples</u>	<u>Standard</u>	<u>Result</u>
1110266B Walgreens Reusable T-Shirt Bag (See Bag Details below – Original ID 11-10266)	Senate Bill No. 270. SB270 Reusable Grocery Bags Lifespan: ECP (CCD-100; ATP-001)	Pass
	ASTM D6988 Film Thickness	Pass
	CONEG TPCH Heavy Elements	Pass
	CalRecycle SB279 Section 17988.3(b)(1)(D) Data	Pass

SIGNED FOR THE COMPANY BY:

William M. Baumann
Laboratory Director

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

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230296 r1

Date: 09/17/2023

PCR Valid Until: 05/17/2024

Physical & Mechanical Valid Until: 05/17/2025

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

ATP-001 Section 5.3 – Capacity Test				
Bag No.	Measurements H x W x T (Only Capacity Area)	Capacity (Liters)	Limit (Liters)	Results
1	15.00 x 11.25 x 6.50 (in)	> 15.0	≥ 15.0	Pass

ATP-001 Section 5.5 – [Modified] Dynamic Test				
Test Method				ATP-001 Dynamic Test
Requirements		Weight Added (lbs.)		22
		Cycles		1500 (5 Sets of 300)
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Results
1 (300)	21.00 x 11.25 x 6.50	21.00 x 11.25 x 6.50	0	Pass
2 (300)	21.00 x 11.25 x 6.50	21.00 x 11.25 x 6.50	0	Pass
3 (300)	21.00 x 11.25 x 6.50	21.00 x 11.25 x 6.50	0	Pass
4 (300)	21.00 x 11.25 x 6.50	21.00 x 11.25 x 6.50	0	Pass
5 (300)	21.00 x 11.25 x 6.50	21.00 x 11.25 x 6.50	0	Pass

Test Method				SB-270 Dynamic Test	Walk Test
Requirements		Weight Added (lbs.)		22	22
		Cycles		125	125 cycles over 175 feet
Bag Cycle No.	Before Cycle Bag Size (in.): Height (H) X Width (W) X Thickness (T)	After Cycle Bag Size (in.): H x W x T	% of Difference	Defects	Results
1 (125)	21.00 x 11.25 x 6.50	21.00 x 11.25 x 6.50	0	0	Pass

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230296 r1

Date: 09/17/2023

PCR Valid Until: 05/17/2024

Physical & Mechanical Valid Until: 05/17/2025

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

Measurement No.	Thickness Measured (mils)
1	2.32
2	2.28
3	2.05
4	2.32
5	2.28
6	2.05
7	2.28
8	2.44
9	2.32
10	2.40
Total	22.74
Average of 10	2.274
Limit Thickness (mils)	≥ 2.25
Result	Pass

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

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

*Failed Item

BDL = <10ppm

mg/kg = milligrams per kilogram

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230296 r1

Date: 09/17/2023

PCR Valid Until: 05/17/2024

Physical & Mechanical Valid Until: 05/17/2025

SAMPLE PHOTOS:



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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230296 r1

Date: 09/17/2023

PCR Valid Until: 05/17/2024

Physical & Mechanical Valid Until: 05/17/2025



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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com



Cert. No. 3180.01
ISO/IEC 17025:2017



Cert. No. RC23101
ISO/IEC 17065:2012

Report #: R230296 r1

Date: 09/17/2023

PCR Valid Until: 05/17/2024

Physical & Mechanical Valid Until: 05/17/2025



*** END OF REPORT ***

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

AM Testing & Services

24451 Sandhill Blvd • Punta Gorda, FL 33983 • Telephone: 708-907-5252 • AMTestinginc.com

Exhibit 14



503 DIVISADERO STREET, SAN FRANCISCO, CALIFORNIA 94117-2212
TELEPHONE (415) 913-7800 FACSIMILE (415) 759-4112

MISSION STATEMENT

The Lexington Law Group is a public interest law firm specializing in consumer protection, antitrust and environmental litigation. We bring creativity and tenacity to plaintiff's public interest litigation in a manner that yields superb results for our clients and the general public. Our cases have resulted in the recovery of millions of dollars for the benefit of consumers and the removal of toxic chemicals from thousands of everyday products.

Our firm is made up of committed people who are passionate about our work. We represent aggrieved individuals, non-profit organizations, and public entities. We are dedicated to our clients and the public interest goals that we set for each case. Our exceptional grasp of complex legal issues enables us to obtain extraordinary results for our clients.

We are aggressive litigators who fight for our clients at every turn, yet we are also professional in our approach and treat all parties with respect. Our goal is to hold corporations accountable and to use the law to forge creative solutions to difficult problems for the benefit of our clients and society.

CASES AND RESULTS

The following is a representative list of some of our successes:

- **Recyclability Misrepresentations**: Class counsel in a case involving misrepresentations of Keurig coffee pods as recyclable. (*Smith v. Keurig Green Mountain, Inc.*, 4:18-cv-06690-HSG (N.D. Cal)). Settlement required Keurig to revise the recyclability labels on and marketing of its coffee pods to clarify that they are not recyclable in many communities, and created a \$10 million fund for the benefit of consumers who purchased the coffee pods believing they were recyclable.
- **Environmental Exposures in Environmental Justice Communities**: Lead counsel in cases involving exposures to toxic chemicals resulting from emissions from industrial facilities among residents in low-income communities of color. One such case (*Center for Environmental Health v. Quemetco, et al.*) resulted in a robust warning program and measures to reduce any ongoing exposures to arsenic and lead from a battery recycling plant.
- **Paypal Arbitrary Hold and Reserve Account Practices**: Co-Lead Counsel in class action case against Paypal, the world's largest payment processing service, alleging placement of unauthorized holds on sellers' accounts. Settlement required Paypal to remedy deficiencies in account hold practices, provide class members with a means of resolving the hold disputes as well as millions of dollars in interest paid to Class Members for unauthorized holds. (*Zepeda, et al. v. Paypal, Inc., et al.*, CV 02500-SBA)

- Fake Organic Cosmetic Products Litigation: Class counsel in cases involving misrepresentation of non-organic cosmetic products as organic. (*Brown, et al. v. Hain Celestial Group*, CV-11-03082 LB (N.D. Cal); *Golloher, et al. v. Todd Christopher International*, RG 12 653621 (Alameda Sup. Ct.)). Cases resulted in multi-million dollar class recoveries and agreements to stop violations of the California Organic Products Act, including by requiring the companies to reformulate their products to meet organic standards or to stop labeling their products as organic.
- Fake “Naturals” Cosmetic Litigation: Class counsel in case involving false and misleading representations that certain Neutrogena cosmetic products are natural. (*Stephenson, et al. v. Neutrogena Corp.*, C 12-00426 JCS).
- Non-Zero VOC Paint Litigation: Counsel for plaintiff in consolidated cases involving false and misleading representations that certain paints manufactured by Benjamin Moore & Co., Inc. contained zero volatile organic compounds, when the products did in fact contain such compounds. (*Keats v. Benjamin Moore & Co.*, 4:18-cv-02050-YGR).
- Lead in Jewelry: Environmental enforcement action co-litigated with the California Attorney General that has thus far resulted in commitments by hundreds of major retailers, importers and manufacturers of costume jewelry to significantly reduce the levels of lead in their jewelry. This case also led directly to California’s landmark lead in jewelry statute, which was itself a precursor to passage of the federal Consumer Product Safety Improvement Act. (*State of California v. Burlington Coat Factory, et al.*).
- Peer-to-Peer (P2P) Interference: Named Class Counsel in class action against Comcast for alleged breach of contract and false advertising arising from interference with subscribers’ use of peer-to-peer file sharing applications. Obtained \$16 million settlement for the class. (*In re: Comcast Peer-to-Peer (P2P) Transmission Contract Litigation*).
- Blue Shield Mid-Year Cost Increases: Named Class Counsel in class action alleging breach of contract and false advertising case challenging health insurer Blue Shield of California’s mid-year unilateral increase to deductibles and other calendar year costs. Obtained \$2.7 million settlement for the class. (*Dervaes v. Blue Shield of California*).
- Chase Bank Debt Collection Practices: Named Class Counsel in class action against Chase Bank alleging violations of Federal Debt Collection Practices Act and California’s Rosenthal Fair Debt Collection Practices Act in connection with Chase’s credit card collection activities. (*Gardner v. Chase Bank USA, N.A.*).
- Greenwashing of Consumer Products: Counsel for non-profit group in private attorney general action resulting in Consent Judgments entered against more than 30 manufacturers and re-sellers requiring compliance with California’s marketing and labeling requirements for cosmetic products. Examples of brands which have agreed to Court-ordered compliance with these requirements include Alterna, Aubrey, Beauty Without Cruelty, Blum Naturals, Boots, Curls, Derma E, Episencial, Kiss My Face, Morrocco Method, Nature’s Baby, Organic Root Stimulator, Out of Africa, Pacifica, Palmer’s, Parnevu, Peter Lamas, Pure & Basic, Shea Moisture, Simply Organic, Suki and Tints of Nature. (*Center for Environmental Health v. Advantage Research et al.*).
- False Advertising of Anti-Aging Products: Successfully prosecuted consumer protection action against maker of multi-million dollar “snake oil” product line falsely advertised as anti-aging cancer cure. (*Center for Environmental Health v. Almon Glenn Braswell*).
- Lead in Diaper Rash Ointment: Class action and private attorney general case that forced more than twenty-five major manufacturers and retailers of diaper rash ointment to reformulate their products to eliminate actionable levels of lead. Defendants included Bristol-

Myers Squibb Co., Johnson & Johnson Consumer Companies, Inc., Pfizer, Inc., Schering-Plough HealthCare Products, Inc., and Warner-Lambert Company. (*Center for Environmental Health v. Bristol-Myers Squibb Co., et al., and Kenneth Johnson et al. v. Bristol-Myers Squibb Co., et al.*).

- US Airways Lap Child Litigation: Recovered refunds in a successful consumer class action case alleging that US Airways charged for “lap-children” in breach of its contract of carriage. (*Robins v. US Airways, Inc.*).
- Microsoft Technical Support Litigation: Class action consumer case against Microsoft forcing Microsoft to abandon its unilateral decision to discontinue free technical support for Office 2000 software products. (*Jones v. Microsoft Corporation*).
- Automobile Credit Truth-In-Lending Violations: Plaintiffs’ Liaison Counsel in a large multi-party coordinated proceeding against hundreds of automobile dealerships alleging violations of the Truth in Lending Act that resulted in injunctions requiring disclosure of previously undisclosed lease and finance terms in automobile advertising. (*In Re Automobile Advertising Cases*).
- Nursing Home Staffing Litigation: Class action and private attorney general lawsuits against dozens of skilled nursing facilities that resulted in agreements to increase minimum staffing levels as required by California law. (*Foundation Aiding the Elderly v. Covenant Care, et al.*).
- Health Risks From Kava Kava: Represented class of consumers of Kava Kava dietary supplements against more than thirty-five defendants in case about failure to disclose the risk of liver disease from the products. (*In Re: Kava Kava Litigation*).
- Second Hand Smoke: Represented the City of San Jose and a private plaintiff in suit against major tobacco companies regarding failure to warn about second hand smoke in violation of California law. (*In Re Tobacco Cases II*).
- Tobacco Advertising: Represented non-profit group in case against outdoor advertising company defendants alleging violations of California’s STAKE Act, which prohibits tobacco advertising within 1,000 feet of public schools, that resulted in the removal of hundreds of tobacco billboards located near schools in California. (*Center For Environmental Health v. Eller Media Corporation, et al.*).

ATTORNEY BACKGROUND AND EXPERIENCE

Mark N. Todzo has devoted his practice of law to the representation of plaintiffs in antitrust, consumer and environmental protection litigation for over thirty years. In that time, he has represented aggrieved individuals, nonprofit organizations and public entities in litigation that has curbed abusive and illegal corporate practices. Mr. Todzo’s varied work has, among other things, helped to remove toxic chemicals from the environment, increased staffing in nursing homes, reformed deceptive advertising practices and recovered millions of dollars for the benefit of consumers. Mr. Todzo has argued cases in state and federal trial courts as well as courts of appeal and the California Supreme Court.

Mr. Todzo has served as class counsel in numerous class action lawsuits as well as liaison counsel in complex coordinated actions. He was lead counsel in a MDL case against Comcast on behalf of a class of subscribers who were blocked from using peer-to-peer file sharing programs and in a number of cases involving greenwashing by consumer product companies.

Mr. Todzo also represented classes of individuals in a variety of different cases, including an antitrust class action against Blue Shield seeking to recover increased health care payments for out of network charges.

Mr. Todzo joined the Lexington Law Group in 1998 and is a principal of the firm. Mr. Todzo received his law degree from Hastings College of the Law (now UC Law San Francisco) in 1993 and received an A.B. from Duke University in 1986.

Lucas Williams joined the Lexington Law Group as a partner in January of 2023. Mr. Williams earned his J.D. from Golden Gate University School of Law in 2008 and was admitted to the California bar in 2009. He specializes in litigation concerning environmental justice, toxic exposures, and corporate greenwashing.

Prior to re-joining the Lexington Law Group, Mr. Lucas worked as a fellow at Golden Gate University's Environmental Law and Justice, where he represented communities of color in cases addressing pollution. On completion of his fellowship, Lucas joined the Lexington Law Group as an associate in 2012. Lucas returned to Golden Gate University School of Law as a Professor and Staff Attorney at the Environmental Law and Justice Clinic in 2020. At ELJC, Lucas represented communities of color in cases enforcing environmental laws including CEQA and the Clean Air Act. During this time, Lucas also founded his own environmental justice and consumer protection firm, Williams Environmental Law.

Patrick Carey joined the Lexington Law Group as a partner in January 2023. Mr. Carey earned his J.D. from Berkeley Law in 2015 and was admitted to the California bar in 2016. He also received his undergraduate degree from University of California Berkeley in 2009. Mr. Carey began his work with Lexington Law Group during his undergraduate studies.

Prior to re-joining the Lexington Law Group, Mr. Carey gained invaluable legal experience externing for the Honorable Joseph C. Spero in the Northern District of California and as a summer associate and later as an associate at Covington and Burling. At Covington, Mr. Carey represented clients in the technology, sports and entertainment, financial services, and consumer products sectors, among others in government investigations and complex commercial litigation and class action matters spanning a variety of subject areas such as contract, privacy, consumer protection, fraud, unfair competition, antitrust, and intellectual property. Mr. Carey also briefly worked at Pillsbury, Winthrop, Shaw, and Pittman handling a wide variety of matters before he was presented with the opportunity to return to the Lexington Law Group.

Joe Mann joined the Lexington Law Group as an associate in September 2012. His practice includes representing plaintiffs in public interest litigation involving consumer rights, corporate accountability, and removing toxic chemicals from consumer products. Prior to joining the Lexington Law Group, Mr. Mann worked as a litigation attorney for the National Environmental Law Center, a non-profit organization specializing in the enforcement of federal environmental laws against the nation's most egregious polluters. His practice focused on citizen enforcement suits under the Clean Water Act, the Clean Air Act, and the Endangered Species Act. He also brought several successful challenges against the federal government itself, striking down insufficiently protective rules promulgated by the U.S. Environmental Protection Agency.

Before joining NELC, Mr. Mann spent a year as the Law Clerk to U.S. District Court Judge Irma E. Gonzalez in the Southern District of California. Mr. Mann earned his J.D. degree from New York University School of Law in 1999, where he served as Editor-in-Chief of the NYU Environmental Law Journal. He received his undergraduate degree from Northwestern University in 1991.

Meredyth Merrow joined the Lexington Law Group as an associate in October 2019. Ms. Merrow earned her J.D. from the University of California, Hastings College of the Law (Hastings) in 2019, with a concentration in Environmental Law, and received her B.A. from Gettysburg College in 2011. While at Hastings, Ms. Merrow was an executive editor of the Hastings Environmental Law Journal, participated in the Hastings Environmental Law Clinic, and received awards for her work in Legal Research and Writing, International Human Rights Law, International Environmental Law, and Biodiversity Law. Ms. Merrow published two law review articles on the topics of environmental justice and biodiversity offsetting, in May 2018 and November 2019, respectively.

Prior to joining Lexington Law Group, Ms. Merrow worked as a summer law clerk for the Hon. Teri Jackson, at a San Francisco land use firm, and as a spring fellow at San Francisco Baykeeper. Ms. Merrow is passionate about, and dedicated to, the protection of the environment, with a focus on environmental justice.

Mary Haley Ousley joined the Lexington Law Group as an associate in May 2022. Mr. Ousley earned her J.D. from Hastings College of the Law (now UC Law San Francisco) in 2020, with a concentration in environmental law, and received her B.A. from UC Santa Cruz in 2014. While at Hastings, Ms. Ousley was an executive production editor of the Hastings Environmental Law Journal and published a law review article on the judiciary's response to climate change in April 2019. Ms. Ousley also participated in the Hastings Environmental Law Clinic as a legal extern for Save the Redwoods League.

Prior to joining Lexington Law Group, Ms. Ousley was an associate at Atchison, Barisone & Condotti, where she served as a Deputy City Attorney for the City of Santa Cruz and advised other public agency clients on a variety of matters.

1 LEXINGTON LAW GROUP, LLP
2 Patrick Carey (Bar No. 308623)
3 Mary Haley Ousley (Bar No. 332711)
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 pcarey@lexlawgroup.com
9 mhousley@lexlawgroup.com

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

10 Attorneys for Plaintiff
11 ELISA BARGETTO

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

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

18 Plaintiffs,

19 v.

20 WALGREEN CO.,

21 Defendant

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

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION**

Date: June 11, 2024

Time: 2:00 p.m.

Dept. Courtroom 9, 19th Floor

Judge: Hon. Trina L. Thompson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This Court, having heard Plaintiff’s Motion for Class Certification on June 11, 2024, and having read and considered the papers filed and arguments made, hereby **ORDERS** as follows:

1. Plaintiff’s Motion for Class Certification pursuant to Rule 23(a), Rule 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure is GRANTED. The Court hereby certifies the following class:

All persons who purchased Walgreens’ Bags for personal, family or household purposes in California (either directly or through an agent) from April 29, 2018 through the present.¹

2. Lexington Law Group, LLP is appointed as Class Counsel.

DATED: _____

The Honorable Trina L. Thompson
United States District Court Judge

¹ Excluded from the class are Walgreens, Walgreens’ officers, directors and employees, any entity in which Walgreens has a controlling interest, any affiliate, legal representative, heir or assign of Walgreens, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.