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Attorneys for Plaintiff
THE LAST BEACH CLEANUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

THE LAST BEACH CLEANUP,

Plaintiff,

v.

STATER BROS. MARKETS, REVOLUTION
PLASTICS HOLDINGS LLC, REVOLUTION
SUSTAINABLE SOLUTIONS, LLC, and AM
TESTING & SERVICES, INC.,

Defendants, and

CALIFORNIA DEPARTMENT OF
RESOURCES RECYCLING AND RECOVERY,

Real Party In Interest.

FILED
Superior Court of California
County of Los Angeles
06/28/2023
David W. Slayton, Executive Officer / Clerk of Court
By: C. Vargas Deputy

Case No. 22STCV18252

SECOND AMENDED COMPLAINT

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

3 **INTRODUCTION**

4 1. Plastic pollution across the globe has reached crisis levels with the ever-increasing
5 production of plastic products overwhelming traditional collection and disposal methods and
6 leading to the contamination of our oceans, land, lakes, rivers, streams, and ultimately our bodies.
7 The magnitude of this issue is astounding. According to recent studies, nearly 90% of plastic
8 waste is not recycled¹ and roughly 5% of the almost 50-million tons of plastic waste U.S.
9 consumers create annually is mismanaged, ending up in the natural environment.² Plastic
10 pollution is so widespread that the average person ingests a credit card’s worth of plastic each
11 week.³ Indeed, the U.S. Department of Energy has separately reported that nearly 95% of plastic
12 goes unrecycled in the U.S., with 45 million tons per year burned or becoming trash and litter.⁴

13 2. As a result, the last decade has seen numerous states, counties, and municipalities
14 pass laws to curb plastics pollution, such as California’s Single-Use Carryout Bag Ban
15 (“SB270”). In 2016, the California voters ratified SB270 pursuant to Proposition 67. As anyone
16 who has shopped for groceries in California in the past decade is familiar, SB270 prohibits
17 retailers from supplying free bags to customers at checkout and instead requires retailers to
18 charge consumers for the bags that they need. By implementing a mandatory purchase fee,
19 SB270 sought to change consumer behavior by incentivizing customers to bring their own bags to
20 stores when shopping to avoid having to purchase their shopping bags at checkout.

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

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

25 ³ Reuters, *You may be eating a credit card’s worth of plastic each week: study* (June 11, 2019)
26 <https://www.reuters.com/article/us-environment-plastic-idUSKCN1TD009> (last accessed Feb. 22, 2023).

27 ⁴ Milbrandt, et al., *Quantification and Evaluation of Plastic Waste in the United States*, 183 RES.,
28 CONSERVATION AND RECYCLING (August 2022),
<https://www.sciencedirect.com/science/article/abs/pii/S0921344922002087>.

1 3. SB270 does not just impose a bag fee, however. It also bans the sale of single-use
2 plastic grocery bags altogether. And, to the extent companies wish to continue to offer grocery
3 bags made from plastic film (“Plastic Bags”), SB270 requires those bags to be reusable,
4 recyclable in California, and that any recyclability labeling on the bags complies with the Federal
5 Trade Commission’s “Green Guides.” However, defendants Revolution Sustainable Solutions,
6 LLC and Revolution Plastics Holdings LLC (collectively “Revolution”), Stater Bros. Markets
7 (“Stater Bros”) and AM Testing & Services, Inc. (“AM Testing”) (collectively “Defendants”)
8 distribute, sell and certify Plastic Bags that are not recyclable in California and include labeling
9 that violates the Green Guides. The Plastic Bags produced by Revolution, sold by Stater Bros,
10 and certified by AM Testing are referred to herein as “Defendants’ Plastic Bags.”

11 4. There can be no serious question Defendants’ Plastic Bags are not recyclable in
12 California—or anywhere for that matter. Generally, for a product to be considered “recyclable,”
13 it must meet three basic criteria. *First*, consumers must have access to recycling facilities that
14 accept the product. *Second*, those recycling facilities must be able to separate the product from
15 the general waste stream and isolate it by sorting it into its own unique bale. And *third*, there
16 must be end markets willing and able to purchase the material to convert it into an entirely new
17 product or for use in a new product. These basic requirements have been codified in various
18 places, including California’s Public Resources Code and Business & Professions Code.

19 5. Defendants prominently portray and certify Defendants’ Plastic Bags as recyclable
20 despite not meeting any of these criteria. Very few California consumers have access to curbside
21 or any other recycling programs that accept Plastic Bags, numerous industry studies explain the
22 near impossibility of properly separating and isolating the Plastic Bags into marketable bales, and
23 there is no end market for Plastic Bags to be turned into a new product. As a result, the Plastic
24 Bags end up in landfills, incinerators, and the natural environment.

25 6. The overwhelming majority of curbside recycling programs in California refuse to
26 accept Plastic Bags. And recent efforts by Plaintiff and others have revealed that, to the extent
27 retail stores even provide plastic film “recycling” bins at their stores (very few do), those stores
28 simply send the materials they collect to landfills and incinerators. This is not speculation—

1 multiple tracking devices such as Apple AirTags placed in Plastic Bags that were deposited in
2 plastic film recycling bins at various store locations throughout California revealed that all of the
3 Plastic Bags that have reached their final destination were taken to landfills or incinerators
4 throughout California or shipped to Mexico.

5 7. Despite this, Defendants’ Plastic Bags prominently display the well-known
6 “chasing arrows” symbol in an effort to deceive consumers into thinking that the Plastic Bags are
7 recyclable when they are not. Indeed, Defendants’ Plastic Bags also display instructions for
8 consumers to return the Plastic Bags to store collection bins for recycling—the same bins Plaintiff
9 found are ultimately sent to landfills or incinerators. Because Defendants’ Plastic Bags are not
10 recyclable in California, and because the recycling claims on Defendants’ Plastic Bags do not
11 comply with the Green Guides, Defendants’ Plastic Bags do not satisfy the requirements of
12 SB270.

13 8. In addition to SB270, other laws and regulations such as California’s
14 Environmental Marketing Claims Act (“EMCA”) and the Green Guides seek to curb the tide of
15 plastic pollution by ensuring that consumers can trust the environmental and recyclability claims
16 that manufacturers and retailers make, which in turn allows the growing number of
17 environmentally-conscious consumers to make purchase decisions that are best for the
18 environment.

19 9. Indeed, both the EMCA and Green Guides not only identify a wide range of terms
20 and phrases that should be considered environmental claims, but also set standards for what those
21 terms mean. Cal. Bus. & Prof. Code § 17580. Both the EMCA and Green Guides also require
22 that companies asserting that their products are “green,” “environmentally friendly,”
23 “ecologically safe,” or “recyclable” have a reasonable basis to make such a claim and that those
24 companies provide substantiation for any recyclable claims to any member of the public upon
25 request. *See* Cal. Bus. & Prof. Code § 17580; 16 C.F.R. § 260.2.

26 10. Following the EMCA and Green Guides, LBC requested that Defendants
27 Revolution and Stater Bros substantiate the recyclability claims they make on Defendants’ Plastic
28 Bags. However, neither Defendant provided documentation substantiating the recycling

1 representations on Defendants' Plastic Bags, nor provided any competent and reliable scientific
2 evidence to substantiate that Defendants' Plastic Bags are recyclable. In fact, neither Defendant
3 provided to LBC any of the information about the environmental attributes of Defendants' Plastic
4 Bags that the EMCA requires those Defendants to maintain in written form.

5 11. Defendants' actions described above and herein violate multiple California laws
6 making their actions unlawful and unfair under California's Unfair Competition Law, Business
7 and Professions Code § 17200, *et seq.*

8 **PARTIES**

9 **A. Plaintiff The Last Beach Cleanup**

10 12. LBC was established in 2019 by its founder Jan Dell as a 501(c)(3) non-profit,
11 with a mission to protect public spaces, wildlife, humans, and the natural environment from the
12 myriad harms related to plastic pollution. LBC's work quickly gained recognition, with National
13 Geographic naming Ms. Dell a National Geographic Explorer the same year she founded LBC
14 and awarding LBC a National Geographic Grant to develop the Global Cities Preventing Plastic
15 Pollution program.

16 13. LBC has standing to bring this action because Defendants' actions of unlawfully
17 selling Defendants' Plastic Bags and of failing to substantiate their claims that the Plastic Bags
18 are recyclable, have frustrated LBC's mission to protect the natural environment around the
19 world, promote legitimate recycling efforts, promote sustainable business practices, and ensure
20 that consumers are not misled by unsubstantiated greenwashing claims. Defendants' unlawful
21 and unfair business practices have caused LBC to divert resources to respond to Defendants'
22 actions. Thus, LBC has lost money or property and has suffered injury in fact due to Defendants'
23 actions of unlawfully selling the Plastic Bags and of failing to substantiate their recycling claims
24 on Defendants' Plastic Bags.

25 14. To further its mission to reduce plastics pollution and promote legitimate
26 recycling, LBC has spent thousands of hours planning and executing studies, engaging in
27 research, conducting surveys, publishing findings, working with other non-profits and non-
28

1 governmental organizations, and advocating for practical solutions and efforts to reduce the
2 problems associated with plastics pollution.

3 15. LBC has performed wide-ranging research related to plastic recycling and
4 pollution, including research regarding: (i) plastic waste exports; (ii) plastic recyclability; (iii)
5 plastic recyclability claims made by manufacturers, retailers, and other companies; (iv) plastic
6 waste and recyclability regulations; and (v) environmental harms caused by plastics.

7 16. As a sample of these efforts, a number of published reports have centered on or
8 relied upon LBC's work and expertise, including:

- 9 • *Circular Claims Fall Flat Again: 2022 Update*⁵
- 10 • *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and
11 Figures*⁶
- 12 • *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*⁷
- 13 • *Deception by the Numbers: American Chemistry Council Claims about Chemical
14 Recycling Investments Fail to Hold up to Scrutiny*,⁸
- 15 • *All Talk and No Recycling: An Investigation of the U.S. "Chemical Recycling"
16 Industry*⁹
- 17 • *Fact Sheet: "Recycle" By Mail is a Major Climate Fail*¹⁰

18 ⁵ *Circular Claims Fall Flat Again: 2022 Update*, Greenpeace USA (Oct 24, 2022),
19 <https://www.greenpeace.org/usa/reports/circular-claims-fall-flat-again/>

20 ⁶ *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and Figures*, THE LAST
21 BEACH CLEANUP (May 4, 2022),
22 https://www.lastbeachcleanup.org/files/ugd/dba7d7_5ae55cdb66d241239e8ae123c96ec9b8.pdf.

23 ⁷ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
24 GREENPEACE REPORTS (Feb. 18, 2020), [https://www.greenpeace.org/usa/wp-
25 content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf](https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf).

26 ⁸ Ivy Schlegel, *Deception by the Numbers: American Chemistry Council Claims about Chemical
27 Recycling Investments Fail to Hold up to Scrutiny*, GREENPEACE REPORTS (Sep. 9, 2020),
28 [https://www.greenpeace.org/usa/wp-content/uploads/2020/09/GP_Deception-by-the-Numbers-
3.pdf](https://www.greenpeace.org/usa/wp-content/uploads/2020/09/GP_Deception-by-the-Numbers-3.pdf).

⁹ Denise Patel, et al., *All Talk and No Recycling: An Investigation of the U.S. "Chemical
Recycling" Industry*, GAIA (2020), [https://www.no-burn.org/wp-content/uploads/2021/11/All-
Talk-and-No-Recycling_July-28-1.pdf](https://www.no-burn.org/wp-content/uploads/2021/11/All-Talk-and-No-Recycling_July-28-1.pdf).

¹⁰ *Fact Sheet: "Recycle" By Mail is a Major Climate Fail*, THE LAST BEACH CLEANUP (June 28,
2021),
https://www.lastbeachcleanup.org/files/ugd/dba7d7_f186aca8c80642f885125557f427ecde.pdf.

- 1 • *The Dirty Truth about Disposable Foodware: The Mismatched Costs and Benefits*
- 2 • *of U.S. Food Service Disposables and What to Do About Them*¹¹
- 3 • *Breaking the Plastic Wave: Top Findings for Preventing Plastic Pollution*¹²

4 17. LBC has also conducted a wide range of surveys related to plastic recycling
5 capacity and plastic pollution. These surveys include:

- 6 • 2022 U.S. Post-Consumer Plastic Recycling Survey¹³
- 7 • 2020 U.S. Post-Consumer Plastic Recycling Survey¹⁴
- 8 • 2020 California Consumer Plastic Recycling Survey¹⁵
- 9 • Global Fast Food Plastic Survey¹⁶
- 10 • Harms of Plastic Exports¹⁷
- 11 • Companies Committed to Stopping Plastic Waste Exports¹⁸
- 12 • County Laws on Plastic Products¹⁹
- 13 • Fires at Plastic Recycling Facilities²⁰

14 18. LBC invested significant time and resources in conducting these surveys and
15 continues to invest additional time and resources each month to update these and other surveys to

16 ¹¹ Ellie Moss & Rich Grousset, *The Dirty Truth about Disposable Foodware: The Mismatched*
17 *Costs and Benefits of U.S. Food Service Disposables and What to Do About Them*, OVERBROOK
18 FOUNDATION (Feb. 2020), [https://90e2bb46-39d9-49f9-a040-
b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf](https://90e2bb46-39d9-49f9-a040-b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf).

19 ¹² Simon Reddy & Winny Lau, *Breaking the Plastic Wave: Top Findings for Preventing Plastic*
20 *Pollution*, PEW (July 23, 2020), accessible at [https://www.pewtrusts.org/en/research-and-
analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings](https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings).

21 ¹³ *2022 U.S. Post-Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP,
22 <https://www.lastbeachcleanup.org/2022usplasticsrecyclingsurvey> (last accessed Feb. 23, 2023).

23 ¹⁴ *2020 U.S. Post-Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP,
24 <https://www.lastbeachcleanup.org/usplasticrecyclingsurvey> (last accessed Feb. 23, 2023).

25 ¹⁵ *2020 California Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP,
26 <https://www.lastbeachcleanup.org/california> (last accessed Feb. 23,, 2023).

27 ¹⁶ *Global Fast Food Plastic Survey Map*, THE LAST BEACH CLEANUP,
28 <https://www.lastbeachcleanup.org/nofastfoodplastic> (last accessed Feb. 23, 2023).

¹⁷ *Harms of Plastic Exports*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/plastic-waste-exports> (last accessed Feb. 23, 2023).

¹⁸ *End Plastic Waste Exports*, THE LAST BEACH CLEANUP, [https://www.lastbeachcleanup.org/end-
plastic-waste-exports](https://www.lastbeachcleanup.org/end-plastic-waste-exports) (last accessed Feb. 23, 2023).

¹⁹ *Country Laws on Plastic Products*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/countrylaws> (last accessed Feb. 23, 2023).

²⁰ *Fires at Plastic Recycling Facilities*, THE LAST BEACH CLEANUP,
<https://www.lastbeachcleanup.org/fires> (last accessed Feb. 23, 2023).

1 ensure they are kept current. A portion of this work necessarily relates to the plastic pollution
2 Defendants caused, and continue to cause, through their unlawful and unfair acts, which requires
3 LBC to spend additional resources on this work and to divert its resources from other work it
4 could and would perform.

5 19. In addition to its research and surveys, LBC is also engaged in consumer education
6 through which it seeks to limit the local and global impacts of plastic pollution by communicating
7 its findings to the public through multimedia outlets and peer-reviewed publications. LBC also
8 seeks to stop companies from using misleading recycling and environmental claims by educating
9 consumers in an attempt to stop recyclability claims (like those at issue here) from misleading
10 consumers. LBC performs its education outreach through print and television media, websites
11 and blogs, lectures, and school outreach. LBC’s website presents a portion of its research,
12 surveys, analyses, and articles.²¹ LBC has had to divert resources away from other educational
13 topics to instead educate consumers on Defendants’ misleading recyclable claims and the harm
14 caused by Defendants’ Plastic Bags.

15 20. Since its founding, one of LBC’s top priorities has been researching and
16 understanding plastic film shopping bags like the ones at issue and the “store drop-off” programs
17 through which some retailers supposedly collect used plastic film, including Plastic Bags, for
18 recycling. LBC has invested time and resources to evaluate the efficacy of these store drop-off
19 programs, including conducting an investigation to determine whether Plastic Bags deposited at
20 store-drop off bins were actually collected and sorted into marketable bales, and sold to
21 reprocessors for recycling. This work included evaluating and investigating each aspect
22 necessary for a successful recycling program, including:

23 (a) Product labeling and recycled content claims — LBC’s investigation into product
24 labeling and content claims included conducting store surveys, taking photos of products, and
25 purchasing products as examples.

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28 ²¹ See generally, <https://www.lastbeachcleanup.org/> (last accessed Feb. 23, 2023).

1 (b) Presence and quality of content collected in store drop-off bins — LBC’s investigation
2 into store drop-off bins included surveying retail stores throughout California to determine which
3 stores had store drop-off bins, the types and quality of plastic film contained in those bins, and
4 whether those bins contained contamination such as non-plastic film trash, food scraps, soda, or
5 anything else that would prevent a recycler from accepting the material contained therein or from
6 successfully recycling that material. LBC’s work involves performing regular surveys of
7 takeback bins and speaking with store personnel regarding the absence of bins and high
8 contamination rates. LBC created and publicly displays a Google map identifying where drop-off
9 bins are located and the level of contamination at those bins.²²

10 (c) Purchase and transport of materials collected at stores — LBC’s investigation into the
11 purchase and transport of the plastic film material collected at the stores was done in an effort to
12 assess the extent to which store drop-off bins contain materials that render the plastic film
13 unsuitable for recycling. LBC has physically surveyed the materials collected from the drop-off
14 bins for signs of contamination, such as whether the bins contained multiple types and colors of
15 plastic film or contamination from other waste. LBC has also spent time and money purchasing
16 tracking devices, purchasing Plastic Bags, and placing the trackers in Plastic Bags, depositing
17 those Plastic Bags in plastic film drop-off bins in California, and monitoring the trackers to
18 determine the ultimate destination of the Plastic Bags containing those devices. In every instance,
19 LBC’s work has confirmed that Plastic Bags placed in store drop-off bins are not being recycled
20 but are instead being landfilled, incinerated or shipped to Mexico.

21 (d) Reprocessing of collected plastic bag and film waste — LBC’s investigation into
22 reprocessing has included research into, and evaluation of, the bale quality requirements of film
23 reprocessors in California and throughout the country. This information in turn informs whether
24 the material collected at store drop-off bins will be accepted and purchased by those reprocessors.

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27 ²²See *Survey of Drop-Off Bins for Plastic Bags/Films*, accessible at
28 https://www.google.com/maps/d/u/1/edit?mid=1lk_m0YjrEnmNzm7V0KuxDLaSVKuP5tdV&ll=33.68287230031227%2C-117.75662650000001&z=10 (last accessed Feb. 23, 2023).

1 (e) Market value for post-consumer plastic film waste — LBC’s investigation into end
2 markets includes monitoring and evaluating the value of post-consumer plastic films and
3 regularly contacting numerous recycling businesses to determine if there are buyers for post-
4 consumer plastic film waste.²³

5 21. LBC expended substantial time and money conducting this research, which
6 necessarily involved Defendants. Specifically, LBC visited several of Stater Bros’ stores in
7 California, purchased the Plastic Bags it sold (which are produced by Revolution and certified by
8 AM Testing), took photographs of those Plastic Bags, investigated the validity of the recycling
9 claims on the Plastic Bags, and requested that Defendants substantiate their recycling claims on
10 the Plastic Bags and provide the other information about the environmental attributes of those
11 Plastic Bags that is required by the EMCA.

12 22. LBC’s work has formed the basis of a letter that was issued from California’s
13 Statewide Commission on Recycling Markets & Curbside Recycling (the “California Recycling
14 Commission”) to Real Party In Interest California Department of Resources Recycling and
15 Recovery (“CalRecycle”) requesting enforcement of California law with respect to recyclable
16 claims on Plastic Bags in California, including Defendants’ Plastic Bags. A portion of LBC’s
17 survey work and purchase of plastic film products was used to create the Appendix of 80
18 examples that accompanied the California Recycling Commission’s letter.²⁴

19 23. The California Legislature enacted SB270 to ensure that any reusable grocery bags
20 made from plastic film in California are recyclable in the state, and that any recyclability claims
21 on reusable grocery bags comply with the Green Guides. And the Legislature enacted section
22 17580 of the EMCA to ensure that companies maintain adequate records that products marketed
23

24 ²³ These efforts have been documented by Karine Vann in *The Unfulfilled Promises of Plastic*
25 *Film Recycling* (Jan. 4, 2021), <https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/>; and Katherine Martinko in *Don’t Believe the ‘Store Drop-Off’ Label When it Comes to Plastic Packaging* (Updated June 15, 2021),
26 <https://www.treehugger.com/plastic-packaging-store-drop-off-label-5188913>.

27 ²⁴ See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:
28 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>). The Plastic Bags are identified in the accompanying Appendix on page 68.

1 as recyclable are actually recyclable and otherwise beneficial to the environment, and to ensure
2 public access to such records. Without an injunction requiring Defendants to comply with these
3 laws, LBC will continue to divert resources to investigate and counteract Defendants' violations
4 of law to ensure that Defendants' Plastic Bags do not (1) harm the integrity of the recycling
5 stream by preventing legitimately recyclable material from being recycled and (2) contaminate
6 paper bales that are exported to Indonesia and other countries where the plastic bags are polluted
7 to the environment or burned causing toxic contamination of the food supply.²⁵ In addition,
8 plastic pollution caused by Defendants' sale and certification of Defendants' Plastic Bags in
9 California and the resulting harms to California waters, coasts, communities, and marine life will
10 continue to negatively impact LBC's efforts to protect these critical resources. In fact, even well-
11 meaning California residents who are attempting to be environmentally conscious and follow the
12 recycling label will inadvertently contaminate the recycling stream by placing Defendants' Plastic
13 Bags in their recycling bins, which in turn prevents legitimately recyclable products from being
14 recycled. Thus, relief from this Court is in the public interest by protecting the environment and
15 the integrity of the recycling stream and is necessary to further LBC's mission of prohibiting
16 companies from touting the environmental benefits of their products without substantiating the
17 validity of such environmental claims.

18 **B. Defendant Stater Bros Markets**

19 24. Defendant Stater Bros is a California corporation with its principal place of
20 business in San Bernardino, CA. Stater Bros has nearly 200 stores throughout Southern
21 California where it unlawfully distributes or sells Plastic Bags that are not recyclable in
22 California. Stater Bros impedes legitimate recycling efforts, exacerbates plastics pollution, and
23 misleads the public by illegally selling the Plastic Bags and by representing to the public that the
24 Plastic Bags are recyclable when they are not.

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27 ²⁵ Jindrich Petrlik, et al., *Plastic Waste Flooding Indonesia Leads to Toxic Chemical*
28 *Contamination of the Food Chain* (December 2019), accessible at
https://www.researchgate.net/publication/338225066_Plastic_waste_flooding_Indonesia_leads_to_toxic_chemical_contamination_of_the_food_chain.

1 **C. The Revolution Defendants**

2 25. Defendant Revolution Plastics Holdings LLC maintains its principal place of
3 business in Vernon, California. Defendant Revolution Sustainable Solutions, LLC is
4 headquartered in Little Rock, Arkansas and owns the trademark for Revolution Company. Both
5 Revolution entities manufacture, distribute, or sell numerous plastic products, including
6 agricultural plastics, plastic sheeting, trash bags, stretch films, and other plastic materials. The
7 Revolution entities produced Plastic Bags that are not recyclable in California and illegally sold
8 them to Stater Bros. The Revolution entities impede legitimate recycling efforts, exacerbate
9 plastics pollution, and mislead the public by illegally selling the Plastic Bags and by representing
10 to the public that the Plastic Bags are recyclable when they are not.

11 **D. Real Party In Interest California Department of Resources Recycling and
12 Recovery**

13 26. Real Party In Interest CalRecycle is a department of the California Environmental
14 Protection Agency. California Public Resources Code § 42280 *et. seq.* identifies CalRecycle as
15 the department responsible under SB270 for receiving proof from producers of reusable grocery
16 bags “demonstrating that the reusable grocery bags produced by the producer comply with the
17 provisions of this article.” California Public Resources Code § 42281.5. *See also id.* § 42282.
18 SB270 further instructs CalRecycle to publish on its website a list of certified reusable grocery
19 bag producers and the bags they produce. *Ibid.* California Public Resources Code § 42282(f)(3)
20 mandates that the Court direct CalRecycle to remove Revolution from its list of certified reusable
21 grocery bag producers if the Court determines that Revolution is not in compliance with the
22 requirements of SB270.

23 **E. Defendant AM Testing & Services, Inc.**

24 27. Defendant AM Testing maintains its principal place of business in either Downers
25 Grove, Illinois or Punta Gorda, Florida. AM Testing certifies the Plastic Bags produced by the
26 Revolution entities and sold by Stater Bros as compliant with SB 270 even though the Plastic
27 Bags are not recyclable in California and are not labeled in compliance with the Green Guides.
28 By falsely certifying the Plastic Bags as compliant with SB 270, AM Testing is impeding

1 legitimate recycling efforts, exacerbating plastics pollution, and contributing to the public's
2 misconception as to the recyclability of the Plastic Bags.

3 **JURISDICTION AND VENUE**

4 28. This Court has jurisdiction over all causes of action asserted herein pursuant to the
5 California Constitution, Article VI, Section 10, because this case is a cause not given by statute to
6 other trial courts. This Court also has jurisdiction over certain causes of action asserted herein
7 pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204 and Cal. Pub. Res. Code § 42282(f),
8 which allow enforcement in this Court.

9 29. This Court has general personal jurisdiction over Stater Bros because it is a
10 California corporation and maintains its principal place of business in California. This Court also
11 has general personal jurisdiction over Revolution Plastics Holdings LLC as it is a California
12 corporation and maintains its principal place of business in California. This Court also has
13 specific personal jurisdiction over Stater Bros, the Revolution entities and AM Testing because
14 they do sufficient business in California, have sufficient minimum contacts in California, or
15 otherwise intentionally avail themselves of the California market through the distribution, sale,
16 marketing, use or certification of the Plastic Bags at issue in California and/or by having such
17 other contacts with California so as to render the exercise of jurisdiction over it by the California
18 courts consistent with traditional notions of fair play and substantial justice. This Court has
19 jurisdiction over Real Party In Interest CalRecycle because it is an executive agency of the State
20 of California so as to render the exercise of jurisdiction over it by the California courts consistent
21 with traditional notions of fair play and substantial justice.

22 30. Venue in the County of Los Angeles is proper under Cal. Bus. & Prof. Code §
23 17203, Code of Civil Procedure §§ 395 and 395.5 and Cal. Pub. Res. Code § 42282(f)(1) because
24 this Court is a court of competent jurisdiction, the Plastic Bags are sold throughout this County,
25 and the Court has jurisdiction over the Revolution entities.

26 31. Venue is further proper in the County of Los Angeles pursuant to C.C.P. § 401
27 because this is an action against the State, or department, officer, or other agency thereof, that
28 may be commenced in the County of Sacramento, and therefore may also be commenced in any

1 county in which the California Attorney General has an office. The California Attorney General
2 has an office in the County of Los Angeles.

3 **FACTUAL AND LEGAL BACKGROUND**

4 **A. Plastics Pollution**

5 32. In the past decade, humans across the globe have produced 8.3 billion metric tons
6 of plastic, most of it in the form of disposable products and packaging that ends up as trash or
7 pollution.²⁶ Of the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic
8 waste and only 9% has been recycled.²⁷ A third of the single-use plastic generated ends up in the
9 natural environment, accounting for 100 million metric tons of plastic pollution in 2016.²⁸
10 Current estimates suggest that there are over 150 million tons of plastics in the ocean.²⁹

11 33. Despite these well-known issues, and California's stated goal of achieving a 75%
12 recycling rate by 2020, California's recycling rate is actually in decline. According to
13 CalRecycle, in 2014 California's recycling rate was 50%, dropping to 47% in 2015 and down to
14 44% in 2016.³⁰ And according to the California Recycling Commission, the state's recycling rate
15 dropped to 37% in 2019.³¹

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19 ²⁶ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
20 Jul. 19, 2017, [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf)
21 [content/uploads/2018/05/Production use and fate of all plastics ever made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf).

22 ²⁷ *Id.*

23 ²⁸ *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019,
24 https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf at p. 6.

25 ²⁹ *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR
26 FOUNDATION AND MCKINSEY & COMPANY (2016), [https://plasticoceans.org/wp-](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf)
27 [content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf) at p.
28 17.

29 ³⁰ *State of Disposal and Recycling in California for Calendar Year 2018*, CALRECYCLE, Apr. 6,
30 2020, at Pg. 26, accessible at <https://www2.calrecycle.ca.gov/Publications/Details/1662>.

31 ³¹ California Statewide Commission on Recycling Markets and Curbside Recycling Policy
32 Recommendations, CALRECYCLE,
33 <https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5> (last accessed
34 Feb. 23, 2023).

1 34. Investigations into the proliferation of plastic pollution plaguing the natural
2 environment have revealed what the plastics industry has known for decades—the majority of
3 products and packaging made from plastics is not, and never will be, recycled.

4 35. On September 11, 2020, National Public Radio (“NPR”) published an
5 investigation illustrating the plastic industry’s decades-long awareness that recycling would not
6 keep plastic products or packaging out of landfills, incinerators, communities, or the natural
7 environment.³² In a 1974 speech, one industry insider stated “there is serious doubt that
8 [recycling plastic] can ever be made viable on an economic basis.”³³ Larry Thomas, former
9 president of the Society of the Plastic Industry (known today as the Plastics Industry Association),
10 told NPR that “if the public thinks that recycling is working, then they are not going to be as
11 concerned about the environment.”³⁴ The NPR investigative report details the length and expense
12 that the plastics industry went to deceive consumers that plastic was easily recyclable, despite
13 knowledge that the cost of recycling would never be economical. Similarly, a Canadian
14 Broadcasting Corporation news report describes that even the recycling logo was used as a
15 marketing tool to improve the image of plastics after environmental backlash in the 1980s.³⁵
16 According to another industry insider, “[t]here was never an enthusiastic belief that recycling was
17 ultimately going to work in a significant way,” yet the plastics industry spent millions on ads to
18 deceive the public as to the efficacy of recycling.³⁶

19 36. The problems associated with single-use plastics pollution in oceans and the
20 natural environment are well-documented. The staggering amount of plastic pollution
21 accumulating in the environment is accompanied by an array of negative side effects. For
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23 ³² Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*,
24 NPR.ORG (Sep. 11, 2020, 5:00 AM), <https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled>.

25 ³³ *Id.*

26 ³⁴ *Id.*

27 ³⁵ *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23,
28 2020, <https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618>.

³⁶ *Id.*

1 example, plastic debris is frequently ingested by marine animals and other wildlife, which can be
2 injurious, poisonous, and deadly.³⁷ Floating plastic is also a vector for invasive species,³⁸ and
3 plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed
4 by humans and other animals.³⁹ Plastic litter on the streets and in and around our parks and
5 beaches also degrades the quality of life for residents and visitors. Scientists have also discovered
6 that plastic releases large amounts of methane, a powerful greenhouse gas, as it degrades.⁴⁰ Thus,
7 plastic pollution contributes to global climate change, which affects California in the form of
8 extreme drought, sea level rise, and more frequent and severe wildfires.⁴¹

9 37. Due to the availability of cheap raw materials to make “virgin plastic,” there is
10 essentially no market demand for most types of recycled plastic. Virgin plastic is derived from
11 oil and natural gas and has a higher quality than recycled plastic. Recognizing the market
12 potential from plastic production, major oil and natural gas companies have greatly expanded
13 their petrochemical operations to increase production of plastic resins and products, which drives
14 down the price of virgin plastic (and further contributes to climate change).⁴² As a result, using
15 virgin plastic to produce plastic products or packaging is cheaper than using recycled plastic.

18 ³⁷ Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their*
19 *occurrence and implications for aquatic organisms and food safety*, FAO Fisheries and
20 Aquaculture Technical Paper No. 615, Rome, Italy, 2017 <http://www.fao.org/3/a-i7677e.pdf>.

21 ³⁸ *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,
22 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017%20Invasive%20Species%20Topic%20Paper.pdf)
23 [files/2017 Invasive Species Topic Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017%20Invasive%20Species%20Topic%20Paper.pdf).

24 ³⁹ Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment*
25 *and to wildlife*, PHILIOS TRANS R. SOC. LOND. B. BIOL. SCI, July. 27, 2009,
26 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/>.

27 ⁴⁰ Sarah-Jeanne Rover, et al., *Production of methane and ethylene from plastic in the*
28 *environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574>.

⁴¹ *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,
[https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf)
[ca.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf).

⁴² *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
[https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf)
[Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Feb. 23, 2023).

1 Recycling facilities no longer have an incentive to collect, sort, clean and reprocess plastic waste
2 because there are almost no buyers of the resulting plastic, pellets, or other scrap materials.

3 38. Plastics are not inert like metal and glass. There are thousands of different plastics,
4 each with its own composition and characteristics.⁴³ Plastic products can have toxic additives,
5 absorb chemicals, and can cross-contaminate other materials during collection and recycling.
6 According to a 2021 report published by the Canadian Government, toxicity risks in recycled
7 plastic prohibit “the vast majority of plastic products and packaging produced” from being
8 recycled into food grade packaging.⁴⁴

9 39. And the problems are only getting worse. Historically, waste management and
10 recycling companies in the United States shipped plastic scrap to China and other countries in the
11 Asia for recycling. But millions of pounds of that exported plastic waste were never recycled.⁴⁵
12 Instead, this plastic was burned or dumped into waterways, where it was carried into the ocean.⁴⁶
13 For years, tons of plastic that U.S. consumers dutifully sorted and transported to recycling
14 facilities ultimately ended up in the ocean or the natural environment. For example, in 2015
15 China’s Yangtze River ranked highest for plastic entering the oceans.⁴⁷ That year, 333,000 tons

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19 ⁴³ *Types of Plastic: How Many Kinds of Plastics are There?* PLASTICSMAKEITPOSSIBLE.COM (last
20 updated Aug. 2, 2018), <https://www.plasticmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/>.

21 ⁴⁴ *Assessing the State of Food Grade Recycled Resin in Canada & the United States*, STINA
22 (2021) at Pg. 4, https://www.plasticmarkets.org/jsfcontent/ECCC_Food_Grade_Report_Oct_2021_jsf_1.pdf (last
23 accessed Feb. 23, 2023).

24 ⁴⁵ Kara Lavender Law, et al. *The United States’ contribution of plastic waste to land and ocean*,
25 SCI. ADV., Oct. 30, 2020, Vol. 6, no. 44, <https://advances.sciencemag.org/content/6/44/eabd0288>.

26 ⁴⁶ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
27 NPR.ORG (Mar. 13, 2019, 4:28 PM ET),
28 <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it>; see also *Discarded: Communities on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, <https://www.no-burn.org/wp-content/uploads/2022/02/Report-July-12-2019-Spreads-no-marks-1.pdf>.

⁴⁷ Laurent C.M. Lebreton, et al., *River plastic emissions to the world’s oceans*, NAT. COMMUN.
Jun. 7, 2017, 8:15611, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467230/>.

1 of plastic were deposited into the ocean from the Yangtze River, more than double the amount for
2 the river with the next highest amount.⁴⁸

3 40. In February 2013, based on the high amounts of low-value and contaminated
4 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort
5 aimed at curtailing the amount of contaminated “recyclables” and waste that was being sent to
6 China.⁴⁹ China began inspecting 70 percent of imported containers filled with “recyclables” and
7 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic
8 waste.⁵⁰ Despite manufacturers’ and recyclers’ awareness of China’s refusal to accept low-value
9 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By
10 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.⁵¹

11 41. In February 2017, in response to the continued shipment of low-value and
12 contaminated plastic waste, China announced its National Sword policy, which banned the
13 importation of certain solid waste and set strict contamination limits on recyclable material.
14 Because of the National Sword policy, to the extent they ever existed at all, end markets for
15 recycling plastic film such as the Plastic Bags have essentially vanished.⁵² One year after China’s
16 National Sword Policy, China’s plastics imports plummeted by 99 percent.⁵³ Following
17 enactment of the National Sword policy other countries in the Far East followed suit by banning
18 imports of low-value and contaminated plastics that had long been polluting their environments.⁵⁴

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20 ⁴⁸ *Id.*

21 ⁴⁹ *What Operation Green Fence Has Meant for Recycling*, WASTE 360,
22 <https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling> (last
23 accessed Feb. 23, 2023).

24 ⁵⁰ *Id.*

25 ⁵¹ Christopher Joyce, *supra* note 47.

26 ⁵² Liz Zarka, *Recycling’s Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,
27 <https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>; *see also* Cheryl Katz., *Piling Up: How China’s Ban on Importing Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019, <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling>.

28 ⁵³ Cheryl Katz, *supra* note 53.

⁵⁴ *Why Some Countries Are Shipping Back Plastic Waste*, BBC News,
<https://www.bbc.com/news/world-48444874> (last accessed Feb. 23, 2023); *see also International*

1 In May 2019, 187 countries decided to significantly restrict international trade in plastic scrap and
2 waste to help address the improper disposal of plastic pollution, through the Basel Convention
3 Plastic Waste Amendments.⁵⁵ The Basel Convention prohibits export of mixed plastic waste to
4 countries who are not members of the Organization for Economic Co-operation and
5 Development.⁵⁶ Due to increased regulations and restrictions on importing plastic waste, waste
6 management and recycling companies can no longer sell many types of used plastic at prices that
7 cover their transportation and processing costs, providing them with no incentive to do so.

8 42. Plastic shopping bag pollution in particular is receiving widespread international
9 attention as illustrated on the cover of the June 2018 edition of National Geographic headlined
10 “Planet or Plastic?”⁵⁷ Americans throw away an estimated 100 billion plastic bags a year, and the
11 average bag takes up to 1,000 years to break down.⁵⁸ In 2018 in the United States, 4.2 million
12 tons of post-consumer plastic bag, sack, and wrap waste were generated, but only 0.42 million
13 tons were recycled.⁵⁹

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17 *Policies Affecting Global Commodity Markets*, Cal Recycle,
18 <https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies> (last accessed Feb. 23,
2023).

19 ⁵⁵ *New International Requirements For The Export And Import of Plastic Recyclables And Waste*,
20 U.S. EPA, last updated February 17, 2021, <https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#:~:text=the%20Basel%20Convention.-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste>.

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23 ⁵⁶ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, open for signature Mar. 23, 1989, adopted May 5, 1992, U.N.T.S. vol. 1673, Amendments to Annexes II, VII and IX, *Plastic Waste Amendments*, effective Jan. 1, 2021, <http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx> (last accessed Feb. 23, 2023).

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25 ⁵⁷ <https://www.nationalgeographic.com/environment/planetorplastic/>.

26 ⁵⁸ https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html

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28 ⁵⁹ J. Meert, et al., *Impact of Plastic Bag Bans on Retail Return Polyethylene Film Recycling Contamination Rates and Speciation*, *Waste Management* 135 (2021) 234-242.

1 **B. California’s Single Use Carryout Bag Ban – SB270**

2 43. In an effort to stem this tide of plastics pollution, California, as well as other states,
3 counties, and municipalities, have enacted a multitude of laws like SB270 in an attempt to limit
4 the use of plastics by businesses and consumers alike.

5 44. In general, SB270 prohibits retailers from supplying free bags to customers at
6 checkout and instead requires retailers to charge customers for the bags that they use. Cal. Pub.
7 Res. Code § 42283. By implementing a mandatory purchase fee, SB270 sought to change
8 consumer behavior by persuading customers to bring their own reusable bags to stores when
9 shopping in order to avoid having to purchase their shopping bags at checkout.

10 45. SB270 also prohibits the sale of single-use plastic grocery bags at most California
11 retail outlets. Retailers have a number of options instead of selling Plastic Bags: they could, *inter*
12 *alia*, (i) opt out of SB270 altogether by refusing to provide any bag; (ii) provide only paper bags
13 (that meet certain criteria) for a cost of \$.10 or more; or (iii) provide reusable grocery bags made
14 of other more durable materials, such as nylon or Tyvek, for a cost of at least \$.10. *Id.* § 42283.

15 46. Most pertinent to this action, SB270 also requires manufacturers and retailers
16 manufacturing, distributing, or selling Plastic Bags to ensure that those bags are recyclable in
17 California. *Id.* § 42281(b)(1)(C). And, to the extent a reusable grocery bag made of any material
18 includes a claim that the bag is recyclable, SB270 requires that the bag’s labeling must comply
19 with the Green Guides’ restrictions on recyclability claims. *Id.* §§ 42281(a)(4)(D) and (a)(6).

20 47. SB270 contains a certification requirement as well. Under the law, retailers and
21 bag manufacturers who choose to sell Plastic Bags in California are required to sell Plastic Bags
22 from certified producers. *Id.* § 42281(a). To obtain a certification, bag manufacturers submit
23 specific information enumerated under SB270 to CalRecycle. *Id.* § 42282. SB270 further
24 requires CalRecycle to maintain a list of entities who have received certification, known as the
25 Certified Reusable Grocery Bag Producers list, as well as an identification of the bags they
26 produce that have been certified to satisfy SB270. *Id.*

1 48. Under SB270, a producer of Plastic Bags must provide CalRecycle with proof of
2 certification from a third-party certification entity, submitted under penalty of perjury, that the
3 producer's Plastic Bags comply with SB270. *Id.* §§ 42281.5 and 42282. Defendant AM Testing
4 acts as the third-party certification entity for the Plastic Bags sold by Stater Bros and produced by
5 Revolution.

6 49. CalRecycle takes the position that its review of the certification information
7 submitted by bag producers under SB270 is a ministerial act in which the agency simply reviews
8 the documentation to ensure it is complete. CalRecycle does not perform any evaluation of
9 whether reusable grocery bags actually satisfy the requirements of SB270, including the
10 requirements that Plastic Bags be recyclable in California or that any reusable grocery bag with a
11 recyclability claim be labeled in accordance with the Green Guides.

12 **C. Defendants' Plastic Bags Are Not In Compliance With SB270.**

13 50. SB270 requires that manufacturers and retailers sell only recyclable Plastic Bags
14 with recyclability labels that comply with the Green Guides, and that certifiers like AM Testing
15 have certified as in compliance with SB 270. AM Testing falsely certifies Defendants' Plastic
16 Bags as satisfying these requirements of SB270.

17 **(a) Recyclability Standards and Labeling**

18 51. In general, items are only recyclable if they meet three basic criteria: *First*,
19 consumers must have access to recycling facilities that accept the product. *Second*, those
20 recycling facilities must be able to separate the product from the general waste stream and isolate
21 it by sorting it into its own unique bale. And *third*, there must be end markets willing and able to
22 purchase the material to convert it into an entirely new product or for use in a new product.
23 These three basic criteria are codified in multiple places under both California and federal law.

24 52. California law incorporates the Green Guides with respect to labeling products and
25 packaging as recyclable. *See, e.g.*, Cal. Pub. Res. Code §§ 42281(a)(4)(D) (for any reusable
26 grocery bag labeled as recyclable, the recycling label must comply with the Green Guides); Cal.
27 Bus. & Prof. Code § 17580.5(b) (environmental marketing claim is deemed compliant with
28

1 EMCA if it complies with Green Guides). Under the Green Guides, a product is only recyclable
2 if “it can be collected, separated, or otherwise recovered from the waste stream through an
3 established recycling program for reuse or use in manufacturing or assembling another item.” 16
4 C.F.R. § 260.12(a). Indeed, the Green Guides specifically preclude entities from marketing
5 products as recyclable: (1) “[i]f any component significantly limits the ability to recycle the item,
6 any recyclable claim would be deceptive;” and (2) “an item that is made from recyclable material,
7 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,
8 should not be marketed as recyclable.” 16 C.F.R. §§ 260.12(a) and (d); *see also id.* § 260.12(d),
9 Examples 2 and 6. And in promulgating the current recycling definition that encompasses
10 accessibility, sortability, and end markets, the FTC clarified that “[f]or a product to be called
11 recyclable, there must be an established recycling program, municipal or private, through which
12 the product *will be* converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84,
13 24247 (May 1, 1998) (emphasis added). As the FTC has stated, “while a product may be
14 technically recyclable, if a program is not available allowing consumers to recycle the product,
15 there is no real value to consumers.” *Id.* at 24243.

16 53. The Green Guides instruct marketers to “clearly and prominently qualify
17 recyclable claims...to avoid deception about the availability of recycling programs and collection
18 sites to consumers.” C.F.R. § 260.12(b). Marketers may only make unqualified recyclable claims
19 when recycling facilities are available to a substantial majority (at least 60 percent) of consumers
20 or communities where the item is sold. *Id.* at § 260.12(b)(1).

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

3 55. Other portions of California law make it clear that theoretical recyclability is
4 insufficient to make a product or packaging recyclable. For instance, California’s Public
5 Resources Code defines recycling is “the process of collecting, sorting, cleansing, treating, and
6 reconstituting materials that would otherwise become solid waste, and returning them to the
7 economic mainstream in the form of raw material for new, reused, or reconstituted products
8 which meet the quality standards necessary to be used in the marketplace.” Cal. Pub. Res. Code §
9 40180.

10 56. Under the Sustainable Packaging for The State of California Act of 2018 (the
11 “Sustainable Packaging Act”), food service packaging is considered recyclable only if it is
12 regularly: (1) collected, separated, and cleansed for recycling by recycling service providers; (2)
13 sorted and aggregated into defined streams for recycling processes; (3) processed and reclaimed
14 or recycled with commercial recycling services; (4) becomes feedstock that is used in the
15 production of new products; and (5) recycled in sufficient quantity, and is of sufficient quality, to
16 maintain a market value. Cal. Pub. Res. Code § 42370.2(d)(1)-(6). Indeed, under the Sustainable
17 Packaging Act, Real Party In Interest CalRecycle is responsible for ensuring purportedly
18 recyclable products meet this definition, and on July 12, 2022, CalRecycle published its List of
19 Approved Food Service Packaging—which does not include a single plastic item.⁶⁰ In yet
20 another instance, under the recently passed SB 343, the California Public Resources Code defines
21 recyclable as those items that are: (i) “collected for recycling by recycling programs for
22 jurisdictions that collectively encompass at least 60 percent of the population of the state”; (ii)
23 “sorted into defined streams for recycling processes” by facilities that collectively serve at least
24 60 percent of the California population; and (iii) those “defined streams reclaimed at a reclaiming
25 facility.” Cal. Pub. Res. Code § 42355.51(d)(2).

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28 ⁶⁰List of Approved Food Service Packaging, CALRECYCLE, published July 12, 2022,
<https://calrecycle.ca.gov/packaging/statefoodservice/list/> (last accessed Feb. 23, 2023).

1 **(b) Defendants’ Plastic Bags Are Not Recyclable and Are Not Labeled In**
2 **Compliance With The Green Guides.**

3 57. Defendants’ Plastic Bags do not meet any of these definitions of recyclable or the
4 three main criteria that the definitions all contain, nor do they satisfy any other commonly used
5 and understood definition of recyclable. Thus, Defendants’ Plastic Bags are not recyclable in
6 California (or anywhere else), and the labeling of Defendants’ Plastic Bags violates the Green
7 Guides.

8 58. Defendants’ Plastic Bags are made of high-density polyethylene, also known as #2
9 HDPE plastic. As the California Recycling Commission concluded, only three plastic item types
10 are recyclable in California: Plastic #1 PET Bottles without shrink sleeves or other non-recyclable
11 components, Plastic #2 HDPE bottles (natural) without shrink sleeves or other non-recyclable
12 components, and Plastic #2 HDPE bottles (color) without shrink sleeves or non-recyclable
13 components.⁶¹ The California Recycling Commission therefore determined that Defendants’
14 Plastic Bags are not recyclable in California.

15 59. Defendants’ Plastic Bags are also not recyclable through store drop-off programs.
16 In fact, the recently passed SB343 makes clear that for a product to be considered recyclable
17 through a non-curbside collection program, that program must recover at least 60% of the product
18 in the program and have “sufficient commercial value to be marketed for recycling and be
19 transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted
20 and aggregated into defined streams by material type and form.” Cal. Pub. Res. Code §
21 42355.51(d)(5)(A).

22 60. Defendants’ Plastic Bags include the following unqualified recyclable
23 representations: “100% recyclable,” “We are recycling and manufacturing reUSable bags out of
24 farm products once disposed of,” “please reuse and recycle this bag,” and multiple unqualified
25 chasing arrows symbols. As there are virtually no recycling facilities available for consumers or
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27 ⁶¹ California’s Statewide Commission on Recycling Markets and Curbside Recycling Policy
28 at <https://www.calrecycle.ca.gov/markets/commission>.

1 communities where Defendants' Plastic Bags are sold, Defendants' Plastic Bags in no way meet
2 the 60 percent threshold for an unqualified recycling claim under the Green Guides.

3 61. In addition to these unqualified recyclable representations, the labels of
4 Defendants' Plastic Bags include the following qualified representations: "Recycle if Clean &
5 Dry," "Please recycle bags in participating curbside recycling programs and stores," and a
6 chasing arrows symbol with the words "Store Drop-off" in the center. There are several problems
7 with relying on consumers to return Defendants' Plastic Bags to a store for recycling. First, most
8 consumers will not see past the multiple unqualified recycling representations on Defendants'
9 Plastic Bags and will simply place Defendants' Plastic Bags in their at-home recycling bins for
10 curbside recycling collection. Indeed, the California Recycling Commission has determined that:
11 (1) flexible plastic bags are a top source of contamination in curbside recycling bins; and (2) more
12 than half of Californians think plastic bags are accepted in their curbside recycling program,
13 regardless of whether that is true.⁶² Second, very few drop-off bins are offered to California
14 consumers. In the past, California required supermarkets of a certain size to maintain a plastic
15 carryout bag collection bin, but that rule expired on January 1, 2020. *See* Cal. Pub. Res. Code §
16 42257. Consequently, many retail stores in California, including Stater Bros, no longer maintain
17 store drop-off bins for consumers to return their Plastic Bags for "recycling." Therefore, even
18 those few consumers who understand that they need to return Defendants' Plastic Bags to a store
19 for recycling, and who then make the effort to do so, will be hard-pressed to find a collection bin.
20 For example, according to BagandFilmRecycling.org, there are only five locations in the City of
21 Los Angeles that have a store drop-off bin.⁶³ Third, the few Plastic Bags that may be returned to
22 in-store collection bins are not actually recycled, often because store drop-off bins typically
23 contain a mix of plastic film and other contamination such as trash, compostable bags, color
24 plastics, and myriad other contaminants making Defendants' Plastic Bags unlikely to meet the

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26 ⁶² California Recycling Report, pp. 105-9.

27 ⁶³ <https://bagandfilmrecycling.org/> (last accessed Feb, 23, 2023) (This website is maintained by
28 the Plastic Division of the American Chemistry Council and the American Recyclable Plastic Bag Alliance, industry groups which, among other activities, lobby for preemption of bans and fees on plastic bags.)

1 quality specifications of those few plastic film recyclers that exist. As a result, Plastic Bags
2 placed in these bins are not actually recycled.

3 62. Work performed by LBC reveals this reality. As part of LBC’s research and
4 analysis of store drop-off programs, it placed tracking devices in various drop-off bins located at
5 stores throughout California. In each case to date where those trackers have reached their final
6 destination, the trackers revealed the material from that bin was taken to a landfill, an incinerator,
7 or shipped to Mexico—not a recycler.

8 63. There is also very little capacity to recycle plastic film in California or anywhere
9 else, and colored, mixed, and contaminated plastic film is not a desirable material for any
10 processor.⁶⁴ The repurposing of material used to make one product into a new product or material
11 fully “closes the loop” of the recycling process (hence the commonly used and widely recognized
12 “chasing arrows” symbol for recycling). The color and quality of the material that is collected
13 into bales plays a major role in whether that material will be ultimately recycled. For instance,
14 colored plastic film is not a desirable material by processors who seek to make clear plastic
15 pellets for the manufacturing of new products. Processors also do not want highly contaminated
16 material bales due to the harms contamination causes to equipment and the production of low-
17 quality materials and products.⁶⁵

18 64. Defendants’ Plastic Bags do not meet any of the necessary criteria to qualify as
19 “recyclable” as the highly improbable possibility that a consumer returns Defendants’ Plastic
20 Bags to one of the handful of stores offering store drop-off bins to potentially be recycled and
21 sent to a plastic film processor does not make Defendants’ Plastic Bags “recyclable in this state”
22 as required by SB270. And because Defendants’ Plastic Bags are not recyclable, Defendants
23 cannot make any recycling claims as to Defendants’ Plastic Bags without running afoul of the
24

25 ⁶⁴ The California Recycling Commission found that, based on a survey of plastic film processors
26 in California and Nevada, there is only capacity to recycle about 3% of the plastic film that is
generated as waste in California. California Recycling Report, p. 106.

27 ⁶⁵ Karine Vann, *The Unfulfilled Promises of Plastic Film Recycling* (Jan. 4, 2021),
28 [https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-
coronavirus/592503/](https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/).

1 Green Guides. At a minimum, Defendants' Plastic Bags would need to include much stronger
2 and more prominent qualifications in order to satisfy the Green Guides.

3 65. Defendants' Plastic Bags include other representations that exacerbate the
4 deceptiveness of their recycling claims. For instance, Defendants' Plastic Bags are labeled,
5 "Believe in Better Plastics," "Our goal is simple-divert plastic from going into landfills," AND
6 "give earth a second chance." These statements are intended to further consumer misperception
7 as to the recyclability of Defendants' Plastic Bags.

8 66. Indeed, based on LBC's investigation, the California Recycling Commission
9 recently determined that the use of the chasing arrows symbol, any variation of the word
10 "recyclable," or "Store Drop-Off" recycling representations on plastic bags and films runs afoul
11 of California labeling laws.⁶⁶ The California Recycling Commission found that:

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

20 67. As a result, the California Recycling Commission suggested that California's
21 existing laws be enforced to require retailers and product manufacturers to remove the word
22 "recycle," "recyclable," and/or the recycling symbol from plastic bags and plastic films. It further
23 stated that the recyclable labels used on many plastic bags and films in California are not legal
24 and contribute to consumer confusion and contamination. In addition, the California Recycling
25 Commission specifically identified the store drop-off statement as problematic because there is
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27 ⁶⁶ Letter Dated December 3, 2021 from the California Recycling Commission to Rachel Machi-
28 Wagoner, available at,
<https://drive.google.com/drive/folders/1ARQy3JTtWPsjqDQ0f76SWD5qbOTEoqX9>.

1 not a comprehensive takeback system in California. It stated: “California law (Cal. Bus. & Prof.
2 Code § 17580 and Cal. Pub. Res. Code § 42355.5) and the Green Guides (16 C.F.R. § 260.2)
3 require substantiation for recycling claims such as this,” and “it is our opinion that this claim is
4 not provable. This text should be eliminated from [plastic bags].” The California Recycling
5 Commission enumerated 80 examples of plastic bags or film that illegally contained a recycling
6 representation, and specifically identified Defendants’ Plastic Bags as one of those examples.⁶⁷

7 68. The California Attorney General has also taken note of these issues as well, and in
8 late 2022 sent letters to six plastic bag manufacturers, including Revolution, demanding that those
9 manufacturers substantiate their recyclable claims. As the Attorney General worded it:

10 Most Californians are under the impression that plastic bags are recyclable It’s a
11 logical conclusion: California has banned single-use plastics, and we see the ‘chasing
12 arrows’ symbol or 100% recyclable printed on most every bag we get from the grocery
13 store. But astonishingly, there’s a good chance that most, if not all, these bags are not
14 actually recyclable in California.

15 69. Even the plastics industry admits Defendants’ Plastic Bags are not recyclable. An
16 industry-sponsored labeling organization, How2Recycle, recently stated that the ability of the
17 store drop-off stream to alleviate the packaging industry’s end-of-life challenges with flexible
18 packaging is limited.⁶⁸ How2Recycle is an organization created by the plastics industry to
19 promote a standardized labeling system for packaging that its members may pay a fee to use.
20 How2Recycle stated:

21 Like all recycling streams, market volatility in the global commodities context is a
22 challenge. But for Store Drop-off in particular, the demand for the material, its current
23 recycling rates, and the challenges inherent in Store Drop-off collection (consumer
24 convenience, reliance on retailer participation), along with the enormous volumes of

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26 ⁶⁷ See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:
27 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>).
28 Defendants’ Plastic Bags are identified in the accompanying Appendix on page 68.

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

1 flexible packaging that are being produced, suggest that its long-term potential for all or
2 most flexible packaging is insufficient to meet recovery needs. Accordingly,
3 How2Recycle recommends that brands, packaging producers and resin manufacturers
4 critically analyze what wide-reaching collection, sortation, reprocessing and market
5 mechanisms and investments are required to scale recyclability of flexible packaging for
6 the far future.

7 70. Separately, a 2017 report on Film Recycling Investment found that only 7% of
8 retail bags that are available for recycling are returned by residents for recycling.⁶⁹ That report
9 further found that of the approximately 300 million pounds of plastic film that reprocessing
10 facilities receive a year, only 10 million pounds (approximately 3%) are able to be marketed due
11 to the poor quality of plastic film and the lack of recycling markets for such low-value plastic.

12 71. Similarly, according to the California Recycling Commission, a survey of plastic
13 film processors in California and Nevada showed that there is only capacity to recycle about 3%
14 of California's plastic film waste.⁷⁰ This is 3% of *all* plastic film waste, including agricultural
15 plastics and other film, suggesting that the capacity to recycle Plastic Bags at issue is actually
16 much less. Based on these data, even if more consumers returned plastic film for drop-off
17 recycling, there is still insufficient market demand and plastic film processing capacity to actually
18 recycle it. Due to the lack of recycling markets for plastic film, 93% of California MRFs do not
19 even accept it, and the reprocessing facilities that do accept it do not have the capacity to recycle
20 large quantities of plastic film.⁷¹ Ultimately, Defendants' Plastic Bags are not accepted by most
21 MRFs nor can they be collected, sorted, or separated from the general waste stream. And there is
22 no end market to recycle such Plastic Bags in California.

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25 _____
26 ⁶⁹ *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION
(2017), at p. 19.

27 ⁷⁰ California's Statewide Commission on Recycling Markets and Curbside Recycling submitted
June 25, 2021, at p. 106, accessible at <https://calrecycle.ca.gov/markets/commission/>.

28 ⁷¹ *Id.*

1 72. A major problem caused by Defendants selling and certifying Defendants’ Plastic
2 Bags as recyclable is contamination of legitimate recycling streams. For instance, according to
3 the Recycling Partnership, “plastic bags cause MRF operators to shut down the recycling line
4 many times a day to cut off bags that have wrapped around equipment. This maintenance shut
5 down reduces throughput for a facility, raises cost of labor to sort materials and maintain
6 equipment, increases waste coming out of the MRF, and puts workers at risk of injury when they
7 are performing maintenance.”⁷²

8 73. Defendants continue to sell, distribute and certify Defendants’ Plastic Bags in
9 California even though they are not recyclable in this state. Defendants have done so despite
10 widespread acknowledgment that end markets for plastic waste—particularly plastic film waste—
11 are, and have been, dwindling, and that the majority of plastic film labeled as recyclable in
12 California and other regions in the United States ends up in landfills, incinerators, communities,
13 and the natural environment. By selling and certifying Defendants’ Plastic Bags in California
14 even though they are not recyclable, Defendants are violating California law.

15 **D. Stater Bros and Revolution Have Not, And Cannot, Substantiate Their**
16 **Recyclable Claims.**

17 74. Working in tandem with laws like SB270, and in recognition of the ever-
18 multiplying efforts by businesses and industry groups to capitalize on consumer preferences for
19 “green” goods, States and the Federal Government have also enacted laws and regulations
20 seeking to limit and correct untruthful, deceptive, or misleading environmental marketing claims.

21 75. California, for example, enacted the EMCA, which makes it “unlawful for any
22 person to make any untruthful, deceptive, or misleading environmental marketing claim, whether
23 explicit or implied.” Cal. Bus. & Prof. Code § 17580.5. Under the EMCA, “[a]ny person who
24 represents in advertising or on the label or container of a consumer good that the consumer good
25 that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment,

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27 ⁷² Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING
28 PARTNERSHIP, Apr. 2020, [https://recyclingpartnership.org/wp-content/uploads/2020/04/The-
Recycling-Partnership_WCCI-Report_April-2020_Final.pdf](https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf) at p. 13.

1 through use of such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth friendly,’
2 ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’ ‘environmentally
3 safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other like term, or
4 through the use of a chasing arrows symbol or by otherwise directing a consumer to recycle the
5 consumer good, shall maintain in written form in its records...information and documentation
6 supporting the validity of the representation.” Cal. Bus. & Prof. Code § 17580(a).

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

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

3 78. On April 13, 2022 and January 6, 2023, respectively, LBC wrote to Stater Bros
4 and Revolution requesting that those defendants substantiate the recycling claims on Defendants’
5 Plastic Bags and provide the written records they are required to maintain under Cal. Bus. & Prof.
6 Code § 17580(a). Defendants Stater Bros and Revolution were required to provide their
7 substantiation to any member of the public upon request under the EMCA, but failed to do so.

8 79. By failing to substantiate their recyclability claims on Defendants’ Plastic Bags,
9 and by failing to provide LBC with the other materials they are required to maintain under the
10 EMCA to substantiate their recycling representations, Defendants Stater Bros and Revolution are
11 violating California law.

12 80. LBC engaged in good-faith efforts to resolve its claims alleged herein prior to
13 filing this action.

14 **FIRST CAUSE OF ACTION**

15 **Violations of California Cal. Bus. & Prof. Code § 17200, *et seq.* — Unlawful Acts**
16 **(Against Stater Bros, Revolution and AM Testing)**

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

18 82. Plaintiff suffered injury in fact and loss money or property giving it standing to
19 assert its claim under Cal. Bus. & Prof. Code § 17200, because Defendants’ unlawful sales and
20 certification of Defendants’ Plastic Bags and violations of the EMCA and Green Guides caused
21 LBC to expend or divert its resources to investigate and address Defendants’ unlawful actions.

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

24 84. Defendants violated and continue to violate California’s SB270, Cal. Pub. Res.
25 Code § 42281(b)(1)(C). SB270 prohibits bag manufacturers and retailers from selling or
26 distributing bags made from plastic film unless those bags are “recyclable in this state.” Cal. Pub.
27 Res. Code § 42281(b)(1)(C); *see also id.* § 42283. Defendants’ Plastic Bags are not recyclable in
28

1 California. As a result, Defendants Stater Bros and Revolution are violating and continue to
2 violate Cal. Pub. Res. Code § 42281(b)(1)(C).

3 85. SB270 also requires a producer to certify under penalty of perjury that its Plastic
4 Bags comply with the applicable requirements of SB270. Cal. Pub. Res. Code §§ 42281(a) and
5 42282. By certifying that Defendants' Plastic Bags are recyclable when they are not, Defendant
6 Revolution is in violation of SB270 and California law prohibiting false statements submitted
7 under penalty of perjury. *See* Cal. Penal Code § 118.

8 86. SB270 further requires that a third-party certification entity shall certify that a
9 producer's reusable grocery bags meet SB270's requirements provided in California Public
10 Resources Code section 42281. Cal. Pub. Res. Code § 42282(c). By falsely certifying that
11 Defendants' Plastic Bags are recyclable when they are not, and by certifying that Defendants'
12 Plastic Bags are labeled in compliance with the Green Guides when they are not, Defendant AM
13 Testing is in violation of SB270.

14 87. Defendants Revolution and Stater Bros' conduct separately violates Cal. Bus. &
15 Prof. Code § 17580(a), which makes it unlawful for any person to make any unsubstantiated
16 environmental marketing claim, including claims about their products being recyclable. The
17 EMCA specifically requires companies making recyclable claims on their products or packaging
18 to maintain certain information substantiating those claims. *Id.* § 17580(a)(5). In addition, the
19 EMCA requires that companies maintain, in written form, certain other records which support the
20 validity of their representations. *Id.* § 17580(a)(1)-(4). All of this information must be fully
21 disclosed to any member of the public upon request. *Id.* § 17580(b), (d).

22 88. The Green Guides also require companies making environmental claims to ensure
23 that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R. §
24 260.2.

25 89. On April 13, 2022 and January 6, 2023, respectively, LBC requested that
26 Defendants Stater Bros and Revolution substantiate their recycling claims on Defendants' Plastic
27 Bags and provide the other information required by Cal. Bus. & Prof. Code § 17580(a).
28 Defendants Stater Bros and Revolution have not provided sufficient information substantiating

1 their representations nor the written records they are required to maintain. By failing to
2 substantiate the validity of their recycling representations with respect to Defendants' Plastic
3 Bags, and by failing to produce the written records they are required to maintain, Defendants
4 Stater Bros and Revolution are violating Cal. Bus. & Prof. Code § 17580(a) and the Green
5 Guides.

6 90. By violating the laws enumerated above, Defendants have engaged in unlawful
7 business acts and practices which constitute unfair competition within the meaning of Cal. Bus. &
8 Prof. Code § 17200.

9 91. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
10 result of Defendants' unlawful acts as an award of monetary damages would not prohibit
11 Defendants' unlawful sale, distribution and certification of Defendants' Plastic Bags in
12 California. If an injunction is not granted, Plaintiff will suffer irreparable injury because it will be
13 forced to continue to spend time and resources as a result of Defendants' unlawful actions. In
14 addition, plastic pollution caused by Defendants' sale and certification of Defendants' Plastic
15 Bags in California will continue to negatively harm California and global waters, coasts,
16 communities, and marine life. California consumers will also inadvertently contaminate the
17 recycling stream by placing Defendants' Plastic Bags in their recycling bins, thereby hindering
18 the recycling of legitimately recyclable products. Thus, Plaintiff seeks an order enjoining
19 Defendants' unlawful acts and practices in California, which serves the public interest by
20 protecting the environment and the integrity of the recycling stream and by preventing
21 Defendants from gaining an unfair advantage over companies that lawfully sell their products as
22 recyclable.

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

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

26 **SECOND CAUSE OF ACTION**

27 **Violations of California Cal. Bus. & Prof. Code § 17200, et seq. — Unfair Acts**
28 **(Against Stater Bros, Revolution and AM Testing)**

1 93. Plaintiff incorporates by reference the allegations set forth above.

2 94. Plaintiff suffered injury in fact and lost money and property, giving it standing to
3 assert its claim under Cal. Bus. & Prof. Code § 17200, because Defendants’ unfair acts involving
4 their unlawful sales and certification of Defendants’ Plastic Bags and violations of the EMCA and
5 Green Guides caused LBC to expend or divert its resources to investigate and address
6 Defendants’ unfair actions.

7 95. Under Cal. Bus. & Prof. Code § 17200, any business act or practice that is
8 unethical, oppressive, unscrupulous, or substantially injurious to consumers, or that violates a
9 legislatively declared policy, constitutes an unfair business act or practice.

10 96. Defendants Stater Bros and Revolution have engaged and continue to engage in
11 conduct which is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
12 consumers. This conduct includes, but is not limited to, unlawfully selling Defendants’ Plastic
13 Bags, failing to substantiate the environmental benefits of Defendants’ Plastic Bags, and failing to
14 maintain or disclose the written records they are required to maintain. Defendants Stater Bros
15 and Revolution are committing unfair business practices under Cal. Bus. & Prof. Code § 17200
16 through these actions.

17 97. Defendant AM Testing has engaged and continue to engage in conduct which is
18 immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers. This
19 conduct includes, but is not limited to, unlawfully and fraudulently certifying Defendants’ Plastic
20 Bags as recyclable in this state and as being labeled in compliance with the Green Guides. By
21 falsely certifying Defendants’ Plastic Bags as compliant with SB270 when they are not,
22 Defendant AM Testing is committing unfair business practices under Cal. Bus. & Prof. Code §
23 17200 through these actions

24 98. Defendants have separately committed unfair acts by engaging and continuing to
25 engage in conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5.
26 Under the California Public Resources Code, the Legislature has declared that “it is the public
27 policy of the state that environmental marketing claims, whether explicit or implied, should be
28 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers

1 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The Code
2 further states that “the Legislature further finds and declares that it is the public policy of the state
3 that claims related to the recyclability of a product or packaging be truthful in practice and
4 accurate. Consumers deserve accurate and useful information related to how to properly handle
5 the end of life of a product or packaging.” *Id.* § 42355.5(b). These policies are based on the
6 Legislature’s finding that “littered plastic products have caused and continue to cause significant
7 environmental harm and have burdened local governments with significant environmental
8 cleanup costs.” *Id.* § 42355. It is unfair for Defendants to represent and to certify Defendants’
9 Plastic Bags as recyclable without substantiation, in direct violation of the California
10 Legislature’s declared public policy.

11 99. Defendants Stater Bros and Revolution’s conduct also violates the substantiation
12 policy of the EMCA. As described above and throughout, the EMCA makes it the policy of
13 California that companies should disclose the information and documentation supporting the
14 validity of any environmental marketing claims that those companies make, along with other
15 certain written records, to any member of the public upon request. *Id.* § 17580(b), (d).

16 100. On April 13, 2022 and January 6 2023, respectively, LBC requested that
17 Defendants Stater Bros and Revolution substantiate their recycling claims on Defendants’ Plastic
18 Bags and provide the other information required by Cal. Bus. & Prof. Code § 17580(a).
19 Defendants Stater Bros and Revolution have not provided sufficient information substantiating
20 their representations nor the written records they are required to maintain. Defendants Stater Bros
21 and Revolution’s failure to substantiate the validity of their recycling representations with respect
22 to Defendants’ Plastic Bags, and their failure to produce the written records they are required to
23 maintain, violates the policy of this state and amounts to unfair business practices.

24 101. Defendants Stater Bros and Revolution’s conduct also violates the substantiation
25 policy of the Green Guides. The Green Guides mandate that companies have a reasonable basis
26 to make environmental claims about their products. It is a violation of the Green Guides’ policy
27 concerning substantiation for a company to make the types of recyclable claims Defendants Stater
28 Bros and Revolution make on Defendants’ Plastic Bags without having information to

1 substantiate that claim. As a result it is unfair for Defendants Stater Bros and Revolution to
2 represent that Defendants' Plastic Bags are recyclable without a reasonable basis.

3 102. It is also unfair for Defendants Stater Bros and Revolution to represent that
4 Defendants' Plastic Bags are recyclable via store drop-off, because Defendants Stater Bros and
5 Revolution do not maintain store drop-off bin locations, and in any event, do not actually foster or
6 effectuate recycling.

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

10 104. Plaintiff has no adequate remedy at law for the injuries currently being suffered as
11 result of Defendants' unfair acts as an award of monetary damages would not prohibit
12 Defendants' unfair practices. If an injunction is not granted, Plaintiff will suffer irreparable
13 injury because it will be forced to continue to spend time and resources as a result of Defendants'
14 unfair business practices. In addition, plastic pollution caused by Defendants' sale and
15 certification of Defendants' Plastic Bags in California will continue to negatively harm California
16 and global waters, coasts, communities, and marine life. California consumers will also
17 contaminate the recycling stream by placing Defendants' Plastic Bags in their recycling bins,
18 thereby hindering the recycling of legitimately recyclable products. Thus, Plaintiff seeks an order
19 enjoining Defendants' unlawful acts and practices in California, which serves the public interest
20 by protecting the environment and the integrity of the recycling stream and by preventing
21 Defendants from gaining an unfair advantage over companies that lawfully sell their products as
22 recyclable.

23 105. An action for injunctive relief is specifically authorized under California Cal. Bus.
24 & Prof. Code § 17203.

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1 **THIRD CAUSE OF ACTION**

2 **Challenge to Revolution’s Certification Under Cal. Pub. Res. Code § 42282(f)(1)**
3 **(Against Revolution, AM Testing and CalRecycle Only)**

4 106. Plaintiff incorporates by reference the allegations set forth above.

5 107. Cal. Pub. Res. Code § 42282(f)(1) gives any person the right to challenge a bag
6 producer’s certification by “filing an action for review of that certification in the superior court.”

7 108. Defendants’ Plastic Bags are not recyclable in this state. As a result, Revolution’s
8 certification under SB270, which is based on the false certification by AM Testing, should be
9 revoked.

10 109. Cal. Pub. Res. Code § 42282(f)(1) does not contain any exhaustion requirements
11 but instead expressly gives the Superior Court jurisdiction over a certification dispute to conduct
12 a *de novo* review and “determine if the reusable grocery bag producer is in compliance with the
13 requirements of this article.” Cal. Pub. Res. Code § 42282(f)(1).

14 110. Cal. Pub. Res. Code § 42282(f)(3) further requires that the Superior Court, “direct
15 [CalRecycle] to remove the reusable grocery bag producer from . . . its list” of certified
16 producers should the Superior Court determine that the producer is not in compliance. Cal. Pub.
17 Res. Code § 42282(f)(3).

18 111. As a result, LBC exercises its right under Cal. Pub. Res. Code § 42282(f)(1) to
19 challenge Revolution’s certification, which is based on AM Testing’s false certification, and seek
20 to have CalRecycle remove Revolution from CalRecycle’s list of Certified Reusable Grocery Bag
21 Producers.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff has no adequate remedy at law and prays for judgment and relief
24 against Defendants as follows:

25 A. That the Court issue an injunction preventing Defendants from conducting their
26 businesses through the unlawful and unfair business acts or practices, and other violations of law
27 described in this Amended Complaint;

1 B. That the Court order Defendants to cease and refrain from selling and certifying
2 Defendants' Plastic Bags in California unless they are recyclable;

3 C. That the Court order Defendants Stater Bros and Revolution to comply with their
4 obligations to substantiate that Defendants' Plastic Bags are recyclable;

5 D. That the Court order Defendants to implement whatever measures are necessary to
6 remedy the unlawful and unfair business acts or practices described in this Amended Complaint;

7 E. That the Court issue an order requiring CalRecycle to withdraw Revolution's
8 Certification under SB270;

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

12 G. That the Court grant such other and further relief as may be just and proper.

13
14 Dated: June 28, 2023

Respectfully submitted,

15 LEXINGTON LAW GROUP

16
17 /s/ Howard Hirsch

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The Last Beach Cleanup