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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 COMPLAINT

10 Case No.:

11 WATER AND SANITATION HEALTH, INC.,
12 a non-profit organization registered in the State
of Washington;

13 Plaintiff,

14 v.

15 RAINFOREST ALLIANCE, INC., a non-profit
organization registered in the State of New York

16 Defendant

- 1) UNLAWFUL, DECEPTIVE AND
UNFAIR BUSINESS PRACTICES;
2) NEGLIGENT MISREPRESENTATION;

JURY TRIAL DEMANDED

17
18 **INTRODUCTION**

19 This matter involves the unfair and deceptive marketing practices of Defendant,
20 Rainforest Alliance, Inc. and their partner Sustainable Agriculture Network, SAN.¹
21 Defendant is one of the world's largest sellers of environmental certification marks for
22 consumer products. It sells environmental certification marks to multinational corporations
23 that use the recognized marks for marketing their products to environmentally and socially
24 conscious consumers.

25
26 ¹ Defendant pays money to SAN every year and acknowledges, "The SAN/RA certification
27 system is jointly owned by the Sustainable Agriculture Network and Rainforest Alliance."
<http://www.rainforest-alliance.org/agriculture/standards>

1 Defendant's certification marks indicate to consumers that the labeled products are
2 farmed in an ecologically friendly and sustainable manner. In fact, some of Defendant's
3 certified farms have contributed to catastrophic environmental damage including polluted
4 rivers, "pesticide showers", and contaminating drinking water used by thousands of families
5 in impoverished areas of Guatemala. Defendant misrepresents this reality to consumers in its
6 marketing & advertising materials.
7

8 Plaintiff Water & Sanitation Health relied on Defendant's misrepresentations to its
9 detriment. Plaintiff is a non-profit organization dedicated to providing sustainable clean-water
10 systems to people in impoverished villages around the world. Plaintiff therefore avoids
11 purchasing foodstuffs and other products from companies that destroy clean-water systems in
12 impoverished villages. Before purchasing bananas, Plaintiff investigated Defendant's
13 marketing claims, and relied on the truthfulness of those claims when deciding to purchase
14 Chiquita bananas. Subsequent discoveries revealed to Plaintiff that Defendant's marketing
15 representations were false and deceptive.
16

17 **PARTIES**

- 18 1. Plaintiff Water & Sanitation Health (WASH) is a non-profit organization which helps
19 impoverished villages across the world build sustainable clean-water systems. WASH is
20 registered in the State of Washington, and maintains its principal place of business in the
21 State of Washington.
22
- 23 2. Defendant Rainforest Alliance is a non-profit corporation. Defendant, which had annual
24 revenues of more than \$46 million in 2013, is one of the world's largest environmental
25 certification marks for consumer products. Defendant maintains its principal place of
26 business in the State of New York.
27

3. Jurisdiction and Venue is proper in this Court because a substantial portion of the transactions discussed within this complaint occurred within King County, Washington. Defendant made numerous factual misrepresentations in marketing materials that were disseminated throughout King County, Washington. Defendant has benefitted financially from these misdeeds.

4. Defendant sold the right to use its environmental and socially conscious certification marks to plantations that cause significant environmental harm to ecosystems. WASH relied on Defendant's certification mark, believing the bananas it purchased were grown according to Defendant's advertising. Defendant, which knew or should have known of the Plantations' egregious environmental pollution, mislead WASH and other consumers who relied on Defendant's certification process.²
5. Defendant operated a marketing campaign that falsely advertised that 100% of Chiquita bananas are certified Rainforest Alliance. The factual truth is that Chiquita sells millions of pounds of bananas from non-corporate owned farms, many of which are not certified Rainforest Alliance plantations.

6. Defendant sells the right to use its certification marks to various banana plantations in the Municipality of Tiquisate, department of Escuintla, Guatemala, hereinafter referred to as the “Plantations.”

COMPLAINT - 3

1 **Relationship Between Defendant and Chiquita Brands International, Inc.**

- 2 7. Defendant promoted Chiquita bananas in online advertisements and licensed its
3 trademark certification seal to Chiquita Brands International, Inc. and other banana
4 companies.

5 **The Communities and the Affected Area**

- 6
7 8. Six Local communities, Ticanu, Barra Nahualate, Playa Semillero, Huitzitzil, San
8 Francisco Madre Vieja, hereinafter referred to as the “Communities”, suffer from water
9 pollution and airborne exposure to toxic chemicals that are the result of the Plantation’s
10 production practices that Defendant grants certificates.³
11
12 9. The Communities represent 1,200 families, an estimated 7,200 people, in the
13 municipality of Tiquisate in the district of Esquintla in Guatemala.
14
15 10. The Plantations’ banana operations are located in the municipality of Tiquisate,
16 department of Esquintla Guatemala. This area is hereinafter referred to as the “affected
17 area.” Some of the Plantations include Chiquita sourced bananas.⁴
18
19 11. Beginning in 2007, the Plantations committed a series of human rights and
20 environmental atrocities.

21
22

³ Water Quality and Health Assessment Report, Water And Sanitation Health, May 28, 2014.

23 ⁴ UNITED STATES BUREAU OF CITIZENSHIP AND IMMIGRATION
24 SERVICES, HUMAN RIGHTS IN GUATEMALA: SINCE THE SIGNING OF THE
25 PEACE ACCORDS (2000), “Chiquita (formerly United Fruit) relies on a de facto
26 Guatemalan subsidiary called Cobigua to supply it with bananas, and Cobigua subcontracts to
27 local plantation owners.”; MIKE GALLAGHER, *Chiquita SECRETS Revealed: Power, money &*
 control Hidden control crucial to overseas empire, CINCINNATI ENQUIRER, May 3, 1998,
 “Oct. 11, 1997 voice-mail message by Chiquita lawyer David Hills to another Chiquita
 lawyer, Joel Raymer, Mr. Hills said: “...they are asking for what Chiquita's position is on the
 stalled labor negotiations in Guatemala at our company-owned subsidiary COBIGUA.”

Human Health & Environmental Degradation

12. The Plantations grow bananas in the area surrounding the Nahualate River and Madre Vieja River, the affected area. The people of six communities in the affected area surrounding the Nahualate River and Madre Vieja River have historically depended on the rivers for their livelihoods and ground water for the provision of clean drinking water.
13. The Plantations contribute to the contamination of rivers and to the contamination of drinking water in the affected area with toxic fertilizers, pesticides, fungicides and organic matter.
14. The Plantations mix fertilizers into its irrigation system every fourteen to twenty one days and aerial fumigates its banana fields every six to eight days using toxic chemicals like dithane, paraquat (gramoxone), mocap (ethoprop).
15. Studies done by the U.S. Environmental Protection Agency state dithane contain cancer-causing elements and a survey conducted in the Philipines show elevated levels of cancer, birth defects, cerebral palsy and asthma in communities living near plantations using dithane.
16. The Plantations spread approximately 420 gallons of various fungicides over its banana trees every eight to ten days to control the spread of the fungus *sigatoka negra*.
17. The Plantations use no buffer zone for aerial fumigation bordering schools and homes. Technical Engineering studies state a 100 meter buffer zone is needed for aerial fumigation.⁵

⁵ GRAHAM MATTHEWS, PESTICIDE APPLICATION METHODS, John Wiley & Sons, (2008).

- 1 18. The Plantations' use of aerial fumigation combined with no buffer zone results in toxic
2 chemical residues visibly seen on the Communities' school's roof and playground.
3
4 19. The use of these toxic chemicals cause the children of the communities to suffer nausea,
5 dizziness, vomiting, skin rashes and other health problems.
6
7 20. Adults in the communities have reported fever, vomiting and skin rashes occurring after
8 aerial fumigation. 60 percent of those interviewed stated they have received an actual
9 'pesticide shower' during aerial fumigation with visible indication of white particulates
10 on their arms and legs.
11
12 21. Workers don't have protective gear such as facemasks or gloves to protect against
13 direct exposure to toxic chemicals.



- 23 22. The drinking water of the communities today has levels of nitrites, nitrates and heavy
24 metals that are ten times the maximum level recommended by the World Health
25 Organization.
26
27

- 1 23. Nitrites, nitrates and heavy metals are chemicals commonly found in pesticides,
2 fungicides and fertilizers used in the farming of bananas.
3
4 24. The Plantations have no buffer zone for aerial fumigation bordering open water sources,
5 rivers and streams.⁶
6
7 25. The Plantations have not reforested along the banks of river and streams.



Defendant's Misrepresentations

- 19 26. In web-based marketing information presented to the world at large, Defendant states
20 that: **“100 percent** of Chiquita banana plantations are Rainforest Alliance Certified™. It
21 is the only global banana company to have met the strict standards for Rainforest
22 Alliance certification for all of its farms.” Emphasis added.
23
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25

26 ⁶ Sustainable Agriculture Network, *Complete Standards for Banana Certification* (2013),
27 “Buffer zones must be established along rivers, lakes, and ravines and around springs to control sedimentation and contamination”.

- 1 27. In web-based marketing information presented to the world at large, Defendant states
2 that: “**all** of Chiquita's farms in Guatemala, Honduras, Costa Rica and Panama are
3 Rainforest Alliance Certified.” Emphasis added.
- 4 28. In a commercial video ad, Defendant states that: “**every** Chiquita banana is RainForest
5 Alliance Certified.” Emphasis added.
- 6 29. In web-based marketing information presented to the world at large, Defendant states
7 that: “Working conditions are clean and safe, workers have showers, bathrooms and
8 eating areas and their families have access to health care, education and recreational
9 facilities.”
- 10 30. In web-based marketing information presented to the world at large, Defendant states
11 that: “farmers in the certification program planted millions of trees and bushes on their
12 farms to **create natural buffers along public roads and waterways, and around**
13 **housing and offices**. The growers eliminated the use of the most dangerous pesticides
14 and implemented rigorous rules -- such as **mandatory protective gear**, showers at the
15 end of the work day and **closing areas where pesticides have been applied for 24 to**
16 **48 hours** -- for the pesticides they continue to use.” Emphasis added.
- 17 31. In web-based marketing information presented to the world at large, Defendant states
18 that: “Banana farms that are Rainforest Alliance Certified undergo **annual audits** to
19 ensure that they comply with rigorous social criteria designed to protect workers,
20 families and **nearby communities**. For example, while Rainforest Alliance certification
21 requires the phasing out of dangerous pesticides, farms must provide extensive safety
22 training, **protective gear**, and washing stations to workers handling agrochemicals
23 while they are in use to prevent workers—and their families and communities— from
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1 being exposed. Like other certified farms, Finca Santa Marta in Costa Rica provides
2 healthcare and subsidized transportation **for all employees.**” Emphasis added.

- 3 32. In web-based marketing information presented to the world at large, Defendant states
4 that: “They [Rainforest Alliance Certified farms] recycle plastic bags and other waste;
5 restore and protect land around their banana trees; **plant vegetation along waterways**
6 **to create buffer zones and reduce erosion;** eliminate the most dangerous
7 agrochemicals and tightly control the application of those they do use; reduce water
8 consumption; and **install filtration systems** to treat water used in
9 processing.” Emphasis added.
10

11 **Plaintiff Relies on Defendant’s Misrepresentations**

- 12 33. Plaintiff Water & Sanitation Health (WASH) was founded to help members of
13 impoverished communities with access to clean drinking water.
14
15 34. Plaintiff’s chief executive officer is Mr. Eric Harrison, who served two and a half years
16 as a volunteer with the United States Peace Corps.
17
18 35. During his time with the Peace Corps, Mr. Harrison worked to provide sustainable
19 drinking water to impoverished communities in Latin America.
20
21 36. Because of WASH’s mission, and also because of Mr. Harrison’s personal values,
22 WASH avoids purchasing foodstuffs or other products from companies that harm the
23 environment and drinking water of impoverished communities.
24
25 37. Because of the need to maintain credibility with donors, WASH must be extremely
26 careful to purchase only products that are consistent with its mission. Any perceived
27 insincerity on the part of WASH can turn away potential donors and sour relationships
with current donors.

1 38. WASH therefore avoids purchasing foodstuffs and other products from companies that
2 destroy clean-water systems in impoverished villages.

3 39. In 2008, WASH adopted a corporate policy mandating that it review all foodstuffs and
4 other products which it purchased from Central America, with the purpose that WASH
5 avoid providing funds to companies that contaminate the water and otherwise degrade
6 the environment in the area.

7
8 40. WASH purchased bananas bearing Defendant's and/or Defendant's partner's label
9 on numerous occasions.

10 41. When deciding whether to purchase these bananas, WASH searched Defendant's web
11 site for information about Defendant's certification. WASH viewed Defendant's web
12 site on at least three separate occasions to learn about Defendant's environmental and
13 local social responsibility record.

14
15 42. WASH relied upon Defendant's advertising representations described in paragraphs 26
16 through 32, when it decided to purchase Defendant's partner's bananas.

17 43. But for the representations of fact on Defendant's web site described in paragraphs 38
18 through 46, WASH never would have purchased bananas bearing Defendant's and/or
19 Defendant's partner's label.

20
21 44. WASH later learned that these representations were false, and that Defendant's certified
22 plantations in fact pollutes and otherwise destroys the drinking water of communities.

23 45. WASH therefore unwittingly provided moneys to a company that acts contrary to
24 WASH's expressed mission of providing clean drinking water to members of
25 impoverished communities.
26
27

Defendant's Representations Prove to be False

46. In late 2013 and again in 2014, WASH visited the communities and conducted their own research. They found that the communities' drinking water had been contaminated by chemicals used in large scale, mono-culture banana production. WASH further found that Rainforest Alliance certified plantations in the area was a large contributor to the water contamination.
47. WASH agents verified Defendant's role in the communities. Defendant's logo was seen on more than 6 different plantations near and/or bordering the communities. Trucks bearing Defendant's partner's logo enter and leave the banana fields of the communities. The entrance to numerous plantations bears the Defendant's partner's name.
48. WASH learned of the facts alleged in paragraphs 4 through 25 while investigating the area around Tiquisate, Guatemala. Before launching the investigation, WASH was unaware of the facts alleged in paragraphs 4 through 25.
49. WASH was unaware of the facts alleged in paragraphs 4 through 25 when it made the decision to purchase Defendant's partner's bananas. Had WASH known of the facts alleged in paragraphs 4 through 25, WASH never would have purchased the bananas.
50. Because of WASH's good-faith reliance on Defendant's advertising misrepresentations, WASH unwittingly provided moneys to a company that acts contrary to WASH's expressed mission of providing clean drinking water to members of impoverished communities.

Attempts To Resolve Issue Amicably

51. In May 2014 WASH contacted Defendant in a good-faith effort to resolve Defendant's misrepresentations without involving this court.

- 1 52. WASH spent over three months answering questions and providing evidence including
2 photographs of the affected area and the Communities to Defendant.
- 3 53. In response to WASH's communication, in August 2014 Defendant removed 70% of the
4 advertising listed in this complaint from its website.
- 5 54. In August 2014 Defendant's in-house counsel, Molly Stark, communicated to WASH
6 that only about 15% of Chiquita bananas sold to consumers are certified by Defendant.
- 7 55. In August 2014 Defendant audited the farms in the affected area but did not report
8 violations and the farms in the affected area retained certification.
- 9 56. Defendant's in-house counsel, Molly Stark, stated to WASH that the audit reporter, Luis
10 Diego Verdesia M., did not personally visit or tour any of the banana plantations in
11 Guatemala.

12 **Damage to the Public Interest**

- 13 57. Defendant's research has established that members of the public prefer to purchase
14 bananas and other foodstuffs from corporations which practice sound environmental
15 policies. 71 percent of US consumers consider the environment when they shop, and
16 nearly half (45 percent) of consumers actively seek out environmental information about
17 the products they buy.⁷
- 18 58. Defendant's research has also established that members of the public are willing to pay
19 more money for bananas and other food stuffs which are produced in an
20 environmentally sustainable manner. 92 percent of global consumers would buy a
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27 ⁷ RainForest Alliance, Marketing the Frog, <http://www.rainforest-alliance.org/marketing/why>

product with social and/or environmental benefit if given the opportunity, and 67 percent have actually done so within the previous 12 months.⁸

59. By representing that its banana certification means that bananas are grown and harvested in an environmentally sustainable manner, Defendant induces purchases from consumers who would otherwise avoid purchasing bananas from Defendant's partner. In the United States, 44 percent of those surveyed recognize the Rainforest Alliance Certified™ green frog seal, 31 percent understand what the certification means and 26 percent indicated they are more likely to buy a product that carries the Rainforest Alliance Certified seal.⁹

60. By representing that its partner's bananas are grown and harvested in an environmentally sustainable manner, Defendant's partner commands a higher price for the bananas than it would otherwise be able to command.

61. Because Defendant's advertising misrepresentations induce consumers to purchase bananas that they would otherwise forego purchasing, and because the same misrepresentations cause consumers to pay more for Defendant's partner's bananas than they would otherwise pay, the misrepresentations harm the public interest.

FIRST CAUSE OF ACTION

Violations of the Washington State Consumer Protection Act

62. Plaintiff hereby incorporates paragraphs 1 through 61 as though fully alleged herein.

63. Defendant's misrepresentations constitute unfair or deceptive acts or practices, as defined by the Washington State Consumer Protection Act. Because the unfair or deceptive acts or practices occurred in trade and commerce, had an effect on the public

⁸ Id.

⁹ Id.

1 interest, and caused injury to Plaintiff's business or property, Defendant is liable to
2 Plaintiff for violations of the Consumer Protection Act.

3 64. Defendant's misrepresentations constitute *per se* violations of the Consumer Protection
4 Act.

5 65. Plaintiff seeks an injunction forbidding Defendant from engaging in the unfair or
6 deceptive practices described in this complaint.

7 66. Plaintiff seeks damages to compensate it for the harm caused by Defendant's
8 misrepresentations. Plaintiff further seeks treble damages and attorney fees, as allowed
9 by statute.
10

11 **SECOND CAUSE OF ACTION**

12 **Negligent Misrepresentations**

13 67. Plaintiff hereby incorporates paragraphs 1 through 61 as though fully alleged herein.
14

15 68. By representing that its certification leads consumers to believe that bananas are grown
16 and harvested in an environmentally sustainable manner, Defendant negligently
17 misrepresented and concealed the true facts surrounding its certification.

18 69. Defendant benefited from these negligent misrepresentations and concealments because
19 consumers either purchased bananas that they would have otherwise foregone
20 purchasing, or they purchased bananas at an artificially inflated price. Plaintiff was one
21 such consumer.
22

23 70. Plaintiff seeks damages for the economic harm that it has suffered as a direct and
24 proximate result of Defendant's negligent misrepresentations.
25
26
27

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff asks this Court to enter judgment against Defendant and to award
3 damages as follows:

- 4 • For economic, compensatory and general damages on behalf of Plaintiff;
- 5 • For restitution;
- 6 • For disgorgement of all ill-gotten gains described in this complaint;
- 7 • For treble damages under the Washington State Consumer Protection Act and other
- 8 statutes, as applicable;
- 9 • For civil penalties under the Washington State Consumer Protection Act and other
- 10 statutes, as applicable;
- 11 • For declaratory and injunctive relief;
- 12 • For reasonable attorney fees and reimbursement of all costs incurred in the
- 13 prosecution of this action; and
- 14 • For all other relief that this Court deems just and appropriate.
- 15
- 16

17 **JURY DEMAND**

18 Plaintiff hereby demands that this case be tried before a jury.

19

20 RESPECTFULLY SUBMITTED this __th day of December, 2014.

21 Respectfully submitted,

22 **Eric J. Harrison**

23 By: _____

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