

1 Tina Wolfson, SBN 174806
twolfson@ahdootwolfson.com
2 Bradley K. King, SBN 274399
bking@ahdootwolfson.com
3 AHDOOT & WOLFSON, PC
10728 Lindbrook Drive
4 Los Angeles, California 90024
Telephone: (310) 474-9111
5 Facsimile: (310) 474-8585

6 Kim E. Richman*
krichman@richmanlawgroup.com
7 RICHMAN LAW GROUP
81 Prospect Street
8 Brooklyn, New York 11201
Telephone: (212) 687-8291
9 Facsimile: (212) 687-8292
* *pro hac vice* application forthcoming
10
11 *Counsel for Plaintiff Stephanie Mattero*

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

14 STEPHANIE MATTERO, on behalf of herself and
15 all others similarly situated,

16 Plaintiff,

17 v.

18 COSTCO WHOLESALE CORPORATION, a
19 Washington corporation,

20 Defendant.

Case No. 3:18-cv-2871

CLASS ACTION COMPLAINT

Demand for Jury Trial

1 Plaintiff Stephanie Mattero (“Plaintiff”), acting on behalf of herself and all others similarly
2 situated, brings this action for damages and equitable relief against Defendant Costco Wholesale
3 Corporation (“Costco”):

4 **NATURE OF THE CASE**

5 1. This is a proposed class action brought by Plaintiff, on behalf of a class of similarly
6 situated individuals, against Costco seeking redress for Costco’s unjust, unfair, and deceptive practices
7 in misrepresenting the environmental benefits of the Products in violation of California and common
8 law.

9 2. In recent years, consumers have become significantly more aware of and sensitive to the
10 toxicity and impact of household products on the environment. Consumers seek, and will pay a premium
11 for, products that are safe and responsibly made, including products that will not negatively affect the
12 environment.

13 3. As a result, demand has increased for “green” products that are naturally derived,
14 environmentally sound, and non-toxic.

15 4. Costco packages, markets, distributes, and offers for retail sale a line of “environmentally
16 responsible” cleaners under its private-label “Kirkland Signature” line. Costco sells these Products at
17 its hundreds of “members only” stores throughout the United States. The Products are also available,
18 to a lesser extent, in retail stores outside of Costco, as well as through online retailers like Amazon. The
19 Products at issue are Kirkland Signature Premium Liquid Dish Soap (“Signature Dish Soap”) and the
20 Kirkland Signature Premium Laundry Detergent (“Signature Laundry Detergent”) (collectively, the
21 “Products”).¹

22 5. Costco labels the Products as “environmentally responsible,” alongside numerous
23 additional representations and imagery touting the purported “green” properties of the Products.

24 6. The Products’ “environmentally responsible” labels are accompanied by claims that the
25 Products are made from “naturally derived ingredients,” are “Recognized for Safer Chemistry,” are
26 “safer for the planet,” and made according to a “biodegradable formula.”

27 _____
28 ¹ Discovery may reveal that additional products are similarly misrepresented, and Plaintiff reserves the
right to add them to the definition of “Products.”

1 7. Additionally, Costco fills the Products’ labels with imagery—such as icons resembling
2 recycling symbols, water drops, and leaves, and a central image of a leaf floating in pristine water—that
3 is highly suggestive of “green,” environmentally responsible products.

4 8. Thus, Costco’s representation that the Products are “environmentally responsible”—
5 especially when viewed in the context of the additional representations and suggestive label imagery—
6 creates an impression that the Products are natural, safer, and environmentally sound alternatives to
7 traditional dish soaps and detergents.

8 9. Unfortunately for consumers, this impression is not accurate. As detailed herein, the
9 Products are not “environmentally responsible” as advertised on the Products’ labels.

10 10. In fact, the Products contain unnatural, harmful, and toxic chemical ingredients,
11 including sodium hydroxide, sodium lauryl sulfate (“SLS”), lauramine oxide, and methylisothiazolinone
12 (“MI”). Reasonable consumers do not expect such ingredients to be in products labeled
13 “environmentally responsible.”²

14 11. Consumers lack the ability to test or independently ascertain the accuracy of a cleaning
15 product label, especially at the point of sale. Reasonable consumers must and do rely on the company
16 to honestly report the nature of a product’s characteristics or ingredients.

17 12. Costco intends for consumers to rely upon their dish soap and laundry detergent product
18 label representations, and reasonable consumers do in fact so rely.

19 13. As a result of its “environmentally responsible” misrepresentations, Costco was able to
20 sell the Products to potentially hundreds of thousands of consumers throughout the United States and to
21 realize sizeable profits.

22 14. Costco’s misrepresentations and omissions violate state and federal law as detailed more
23 fully below.

24
25
26 _____
27 ² The Products also contain methylchloroisothiazolinone (“MCI”) and benzisothiazolinone (“BIT”).
28 These preservatives, along with MI, are associated with contact allergic reactions and other sensitizations among a significant proportion of the population. The presence of these contact allergens belie Costco’s label representation that the Products are “mild on skin” and “gentle on skin,” further evidencing the misleading nature of the Products’ labels.

JURISDICTION AND VENUE

1
2 24. This Court has jurisdiction over this action under the Class Action Fairness Act
3 (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated
4 claims of the individual Class Members exceed the sum or value of \$5,000,000.00 exclusive of interest
5 and costs, and Members of the Proposed Class are citizens of states different from Costco.

6 25. This Court has personal jurisdiction over the parties in this case. Plaintiff is a citizen of
7 San Francisco, California. This Court may exercise jurisdiction over Defendant Costco because Costco
8 purposefully avails itself of the California consumer market, and distributes the Products to locations in
9 and throughout California, where the Products are purchased by thousands of consumers daily. Costco
10 is registered to do business in California and operates retail locations within this District. Thus, Costco
11 has established sufficient contacts in this District such that personal jurisdiction is appropriate.

12 26. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part of
13 the events or omissions giving rise to Plaintiff’s claims occurred in this District. Specifically, Plaintiff
14 purchased the Products from a Costco retail location within this District.

INTRADISTRICT ASSIGNMENT

15
16 27. Assignment to this division is appropriate under Civil L.R. 3-2(c) and (d) because a
17 substantial part of the events or omissions that give rise to the claim – including the dissemination of
18 false and misleading information regarding the nature, quality, and/or ingredients of the Products –
19 occurred within San Francisco County.

FACTUAL ALLEGATIONS

20
21 28. Seeking to profit from consumers’ desire to purchase and use natural, environmentally
22 sound, and safer alternatives to standard dish soap and detergent offerings, Costco manufactures and/or
23 directs the manufacturing of “environmentally responsible” dish soap and detergent formulations,
24 including the Products.

25 29. Costco uniformly markets the Products as “environmentally responsible” alternatives
26 that provide environmental benefits that traditional dish soaps and detergents do not.

1 30. Costco labels and markets these formulations under its “Kirkland Signature” private
2 label, and the Products are sold in the hundreds of Costco’s retail stores throughout the country, through
3 selected third-party retailers, and over the Internet.

4 31. The packaging for the Products misrepresents that the Products are “environmentally
5 responsible” and suggest that they will benefit the environment in a variety of ways.

6 32. The term “environmentally responsible” uniformly conveys to reasonable consumers that
7 a product has certain benefits over conventional products—in particular, that a product is non-toxic to
8 plant and animal life, including humans. Reasonable consumers recognize that not all natural or
9 “naturally derived” substances are non-toxic, but they trust that when companies designate products as
10 “environmentally responsible,” the companies are doing so to convey that the products contain only
11 non-toxic, natural substances.

12 33. Thus, the Products are deceptively marketed as being uniquely positioned, in contrast to
13 Costco’s and other companies’ conventional cleaning product offerings, to provide consumers with
14 natural, environmentally sound, and safe alternatives.

15 **I. The “Environmentally Responsible” Representations**

16 34. Costco represents the Products to be “environmentally responsible,” positioning this
17 claim in the context of the additional representations and imagery suggesting that the product is naturally
18 derived, made with bio-products, safer, gentle, and provide environmental and safety benefits that
19 traditional dish soaps and detergents do not.

20 35. At some point during the relevant time period for this class action, Costco began to use
21 suggestive green colored packaging and market the Products, both Signature Dish Soap and Signature
22 Laundry Detergent, as “environmentally responsible.” Among the largest words on the front of the label
23 are “environmentally responsible,” implying that a consumer who chooses to purchase the Products is
24 acting in a manner beneficial to the environment. Examples of the “environmentally responsible”
25 product packaging and labels are reproduced below:
26
27
28





36. Costco couples its “environmentally responsible” claims with third-party seals and icon-style designs to further portray the Products as alternatives that provide environmental and other benefits that traditional dish soaps and detergents do not.

37. For example, the front labels of the “environmentally responsible” Products currently include an icon indicating participation in the EPA’s “Safer Choice” market-based incentive program.

38. The EPA’s Safer Choice program relies on hazard analysis, rather than risk analysis, to assess product safety. While popular with many stakeholders and expedient from a resource-management perspective, hazard-based ingredient standards say little about the broader sustainability—or “environmental responsibility”—of the end-use product.³

39. The front labels of the challenged Products also include several icon-style designs promoting the “environmentally responsible” Products’ alleged environmental and health benefits. A blue circle with a white raindrop and “recycling”-type circular arrow touts the Products’ “biodegradable formula.” A green circle with three white leaves states that the Products “include[] naturally derived cleaning ingredients,” with “naturally derived” written larger, and bolder, than the other words.

³ See, e.g., Charles L. Franklin, “Chasing Hazards: Toxicity, Sustainability, and the Hazard Paradox,” *Natural Resource & Environment* (ABA), Vol. 29, at 4 (Spring 2015).

1 40. All the environmental and safety representations made on the “environmentally
2 responsible” Products’ front labels are set against a placid backdrop of a green leaf floating on a pool of
3 water and are designed to lure consumers who are concerned about the use of chemicals and harmful
4 substances.

5 41. The back labels of the “environmentally responsible” Products’ packaging repeat many
6 of the same representations from the front label and add such explicit representations as “safer for the
7 planet.”

8 42. These additional claims and imagery are used by Costco to strengthen the impression
9 among consumers that the Products are “environmentally responsible,” purporting to provide
10 environmental benefits that traditional dish soaps and detergents do not.

11 43. Contrary to this impression, the Products contain harmful ingredients that are not
12 environmentally responsible or safer than traditional dish soap or detergent offerings.

13 44. For instance, the Federal Water Pollution Control Act designates sodium hydroxide as a
14 hazardous substance.⁴

15 45. The International Programme on Chemical Safety states that sodium lauryl sulfate
16 (“SLS”) is “toxic to aquatic organisms. It is strongly advised not to let the chemical enter into the
17 environment.”⁵

18 46. The U.S. National Library of Medicine’s Toxicology Data Network lists lauramine oxide
19 as “Artificial Pollution Source.”⁶

20 47. The EPA specifically lists methylisothiazolinone (“MI”), methylchloroisothiazolinone
21 (“MCI”), and benzisothiazolinone (“BIT”) as “yellow triangle” chemical ingredients—meaning that
22 they are chemicals with “hazard profile issues” and are “*not* associated with a low level of hazard
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24

25 ⁴ See 40 C.F.R. § 116.4.

26 ⁵ The International Labour Organization, International Chemical Safety Card for Sodium Lauryl Sulfate,
27 *available at* http://www.ilo.org/dyn/icsc/showcard.display?p_lang=en&p_card_id=0502&p_version=1
(last visited Apr. 3, 2018).

28 ⁶ National Institutes of Health, U.S. National Library of Medicine. Hazardous Substances Data Bank,
Toxicology Data Network: Lauramine Oxide, *available at* <http://bit.ly/2aTjJrK> (last visited Apr. 3,
2018).

1 concern for all human health and environmental endpoints” (emphasis added).⁷ The EPA also lists MI
2 as a pesticide and describes it as “moderately to highly toxic to freshwater and estuarine/marine
3 organisms.”⁸

4 48. Despite all of this, Costco makes the “environmentally responsible” claims on the
5 Products’ packaging, enabling Costco to sell more of its cleaning Products than it would without the
6 label, and to crowd competing products from the market.

7 **II. Harmful, Unnatural Chemicals in the Products**

8 49. Contrary to Costco’s “environmentally responsible” representations, the Products
9 contain harmful ingredients that are not environmentally responsible or safer than ingredients found in
10 traditional dish soap or detergent offerings. The Products’ harmful ingredients include sodium
11 hydroxide, SLS, lauramine oxide, and MI.

12 **A. Sodium Hydroxide**

13 50. Sodium hydroxide is a highly caustic and very corrosive, manufactured substance used
14 to neutralize acids and make sodium salts. Other common names include caustic soda and lye.

15 51. At room temperature, sodium hydroxide is a white, crystalline, odorless solid that absorbs
16 moisture from the air. When dissolved in water or neutralized with acid it releases substantial heat,
17 which may be sufficient to ignite combustible materials.

18 52. Sodium hydroxide is used to manufacture soaps, rayon, paper, explosives, dyestuffs, and
19 petroleum products. It is also used in metal cleaning and processing, oxide coating, electroplating, and
20 electrolytic extracting. It is commonly present in commercial drain and oven cleaners.

21 53. Sodium hydroxide is designated as a hazardous substance under section 311(b)(2)(A) of
22 the Federal Water Pollution Control Act and further regulated by the Clean Water Act Amendments of
23 1977 and 1978.⁹

25 ⁷ U.S. Environmental Protection Agency, “Safer Chemicals Ingredients List,” *available at*
26 <http://www2.epa.gov/saferchoice/safer-ingredients> (last visited Apr. 3, 2018).

27 ⁸ U.S. Environmental Protection Agency, Reregistration Eligibility Decision (RED)—
Methylisothiazolinone. EPA738-R-98-012 (1998), *available at*
28 <http://archive.epa.gov/pesticides/reregistration/web/pdf/3092.pdf>.

⁹ 40 C.F.R. § 116.4.

1 54. A reasonable consumer would not expect a product labeled as “environmentally
2 responsible” to contain a chemical designated as a hazardous water pollutant.

3 **B. Sodium Lauryl Sulfate**

4 55. Sodium lauryl sulfate is a white- or cream-colored crystal, flake, or powder with a faint
5 odor used in general as a detergent, dispersant, and surfactant.

6 56. SLS is toxic to aquatic organisms. The International Programme on Chemical Safety
7 advises that SLS should be kept out of the environment, stating: “Do NOT let this chemical enter the
8 environment.”¹⁰

9 57. A reasonable consumer would not expect a product labeled as “environmentally
10 responsible” to contain a chemical that international authorities have advised should not even be
11 permitted to enter the environment.

12 **C. Lauramine Oxide**

13 58. Lauramine oxide is an aliphatic tertiary amine oxide that is used mostly in hair care
14 products as a foam builder and stabilizer, viscosity enhancer, emollient, conditioner, emulsifier,
15 antistatic agent, and wetting agent.

16 59. The National Oceanic and Atmospheric Administration’s CAMEO Chemicals, a
17 database of hazardous chemical datasheets, lists lauramine oxide (by its chemical name
18 Dimethyldodecylamine-N-Oxide) as highly toxic and states runoff from dilution water may be corrosive
19 and/or toxic and cause pollution.¹¹

20 60. The U.S. National Library of Medicine’s Toxicology Data Network lists lauramine oxide
21 as an “Artificial Pollution Source” and warns, “Ultimate disposal of the chemical must consider: the
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26 ¹⁰ The International Labour Org., International Chemical Safety Card for Sodium Lauryl Sulfate,
27 *available at* http://www.ilo.org/dyn/icsc/showcard.display?p_lang=en&p_card_id=0502&p_version=1
(last visited Apr. 3, 2018).

28 ¹¹ National Oceanic & Atmospheric Admin., Chemical Data Sheet, CAMEO Chemicals, *available at:*
<http://cameochemicals.noaa.gov/chemical/20239> (last visited Apr. 3, 2018).

1 material's impact on air quality; potential migration in soil or water; effects on animal, aquatic, and plant
2 life."¹²

3 61. A reasonable consumer would not expect a product labeled as "environmentally
4 responsible" to contain a chemical designated as a highly toxic pollutant.

5 **D. Methylisothiazolinone**

6 62. Methylisothiazolinone (2-methyl-4-isothiazolin-3-one, or "MI") is a powerful biocide
7 used for controlling microbial growth in water-containing solutions.

8 63. MI is produced, generally, by the controlled chlorination of
9 dimethyldithiodipropionamide ("DPAM") in solvent, followed by neutralization and extraction into
10 water.

11 64. MI is an inexpensive and widely available synthetic biocidal preservative used for
12 curbing microbial growth in water-containing solutions.

13 65. As far back as the mid-1980s, MI was recognized as a contact allergen.¹³

14 66. Approximately 10 years ago, MI's use in the United States moved from almost
15 exclusively industrial applications to household and cosmetic applications. Since then, MI's use has
16 increased steadily in household and cosmetic applications.

17 67. The EPA lists MI as a pesticide and describes it as "moderately to highly toxic to
18 freshwater and estuarine/marine organisms."¹⁴

19 68. A reasonable consumer would not expect a product labeled as "environmentally
20 responsible" to contain a chemical designated as highly toxic to aquatic life.

21 69. In fact, none of these chemicals are the type of ingredients that reasonable consumers
22 would expect to find in products advertised as "environmentally responsible."
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24 ¹² National Institutes of Health, U.S. National Library of Medicine. Hazardous Substances Data Bank,
25 Toxicology Data Network: Lauramine Oxide, *available at* <http://bit.ly/2aTjirK> (last visited Apr. 3,
26 2018).

27 ¹³ *See, e.g.,* DeGroot, A.C., and Weyland, J.W., "Kathon CG: A Review," 18 *Journal of the American*
Academy of Dermatology 350 (1988).

28 ¹⁴ U.S. Environmental Protection Agency, Reregistration Eligibility Decision (RED)—
Methylisothiazolinone. EPA738-R-98-012 (1998), *available at*
<http://archive.epa.gov/pesticides/reregistration/web/pdf/3092.pdf>.

1 70. By including such unnatural and toxic components, Costco provides the opposite of the
2 advertised “environmentally responsible” Products.

3 71. Moreover, Costco makes no disclaimer regarding the presence of these ingredients on
4 the front label of the packaging, where Costco makes the prominent “environmentally responsible”
5 claims.

6 72. The production and use of these ingredients in the Products may result in its release to
7 the environment through various waste streams.

8 73. Because the Products contain unnatural, hazardous, and toxic ingredients, Costco’s
9 claims that the Products are “environmentally responsible” are false, misleading, and designed to
10 deceive consumers into purchasing the Products.

11 **III. The Nature of the Illegality of Costco’s Conduct**

12 74. Costco has profited enormously from its false advertising of the Products. Costco is one
13 of the largest retailers in the world and is perceived by consumers to have a commitment to higher
14 standards in product formulation. Indeed, Costco positions its own private label products—the
15 “Kirkland Signature” line—as follows: “The working rule followed by Costco buyers is that all Kirkland
16 Signature products must be equal to or better than the national brands, and must offer a savings to our
17 members.”¹⁵

18 75. The Federal Trade Commission (FTC), whose mission is, in part, “[t]o prevent business
19 practices that are anticompetitive or deceptive or unfair to consumers,” has issued marketing standards,
20 known as the “FTC Green Guides,”¹⁶ that apply to the unfair and deceptive nature of Costco’s
21 environmental marketing claims.

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25 ¹⁵ Costco, “Kirkland Signature Means Quality and Value,” *available at*
26 <http://www.costco.com/kirkland-signature.html> (last visited Apr. 3, 2018) (“The Kirkland Signature
27 label today appears on about 20 percent of the products you find in your local [Costco] warehouse—
on everything from men's dress shirts to laundry detergent, pet food to toilet paper, canned foods to
cookware, olive oil to beer, automotive products to health and beauty aids.”).

28 ¹⁶ Federal Trade Commission, *GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS*, 16 C.F.R. Part 260, *available at* <http://bit.ly/1osdMfk>.

1 76. Environmental marketing claims that violate the standards of the Green Guides are *per*
2 *se* unlawful under California’s Environmental Marketing Claims Act (“EMCA”), Cal. Bus. & Prof.
3 Code §§ 17580-17581.

4 77. The acts and omissions alleged herein are in contravention of the FTC Green Guides and
5 in violation of the EMCA in several respects. For example, Costco makes unqualified representations
6 about the “environmentally responsible” qualities of the Products, whereas the FTC Green Guides
7 advise that, to prevent deceptive claims, any “qualifications and disclosures should be clear, prominent
8 and understandable.”¹⁷

9 78. Furthermore, the FTC Green Guides advise: “To make disclosures clear and prominent,
10 marketers . . . should place disclosures in close proximity to the qualified claim.”¹⁸ Costco has not
11 placed any clear, prominent disclosures in close proximity to its unqualified “environmentally
12 responsible” claims.

13 79. Similarly, Costco makes unqualified representations that the Products offer general
14 environmental benefits, whereas the Green Guides advise “marketers should not make unqualified
15 general environmental benefit claims.”¹⁹ By way of illustration and not limitation, Costco’s
16 representations that the Products are “naturally derived” and use “safer chemistry,” and Costco’s use of
17 illustrations of a green leaf floating gently on a pristine pool of water, are all such unqualified
18 representations of general environmental benefit.²⁰

19 _____
20 ¹⁷ 16 C.F.R. § 260.3(a) (2012); *see also* 16 C.F.R. § 260.6(a) (2003) (“*Qualifications and disclosures*.
21 The Commission traditionally has held that in order to be effective, any qualifications or disclosures
22 such as those described in these guides should be sufficiently clear, prominent and understandable to
23 prevent deception.”).

24 ¹⁸ 16 C.F.R. § 260.3(a) (2012); *see also* 16 C.F.R. § 260.6(a) (2003) (“Clarity of language, relative type
25 size and proximity to the claim being qualified, and an absence of contrary claims that could undercut
26 effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear
27 and prominent.”).

28 ¹⁹ 16 C.F.R. § 260.4(b) (2012); *see also* 16 C.F.R. § 260.7(a) (2003) (“It is deceptive to misrepresent,
directly or by implication, that a product, package or service offers a general environmental benefit. . .
[E]very express and material implied claim that the general assertion conveys to reasonable consumers
about an objective quality, feature or attribute of a product or service must be substantiated. Unless this
substantiation duty can be met, broad environmental claims should either be avoided or qualified, as
necessary, to prevent deception about the specific nature of the environmental benefit being asserted.”).

²⁰ *See, e.g.*, 16 C.F.R. § 260.4 (“Example 3”) (2012) (“A marketer’s advertisement features a picture of
a laser printer in a bird’s nest balancing on a tree branch, surrounded by a dense forest. In green type,

1 80. Although the FTC Green Guides do not specifically address terms such as “naturally
2 derived” or “plant-based formula,” the FTC has made clear that the general principles of the Guides
3 apply—*i.e.*, use of such terms must not be misleading to reasonable consumers, and marketers must
4 have substantiation for such claims if they evoke environmental benefits.²¹ Costco’s use of these terms
5 is misleading and unsubstantiated, as described herein.

6 81. The FTC Green Guides make clear that where a product features a third-party seal or
7 other certification pertaining to an attribute of the product, that claim must be qualified to ensure that
8 consumer deception does not occur.²² Here, the Products feature an EPA “Recognized for Safer
9 Chemistry” seal, which implies to consumers that the certifying agency unqualifiedly supports the safety
10 profile of the Products. Costco’s failure to include qualifying language for this seal is misleading, as
11 described herein.

12 82. These additional unqualified claims and imagery provide the context in which consumers
13 view Costco’s misleading “environmentally responsible” representations, increasing the extent to which
14 consumers are deceptively misled into believing that the Products offer naturally derived,
15 environmentally sound, and relatively safer product alternatives to traditional dish soap and detergent
16 offerings.

17 83. Costco has profited enormously from false and misleading representations that the
18 Products are natural, safe, and environmentally sound. The purpose of this action is to put an end to
19 Costco’s deceptive marketing of the Products.

20 _____
21 the marketer states, ‘Buy our printer. Make a change.’ Although the advertisement does not expressly
22 claim that the product has environmental benefits, the featured images, in combination with the text,
23 likely convey that the product has far-reaching environmental benefits and may convey that the product
24 has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate
25 these claims, this advertisement is deceptive.”).

26 ²¹ See Federal Trade Commission, *THE GREEN GUIDES: STATEMENT OF BASIS AND PURPOSE*
27 at 259, available at <http://bit.ly/2bg7w63> (citing 75 Fed. Reg. 63,552, 63,585-63,586 (Oct. 15, 2010)).
28 The FTC did not propose specific guidelines regarding the term “natural” because it “lacked consumer
perception evidence indicating how consumers understand ‘natural’.” *Id.*

²² See 16 C.F.R. § 260.6(d) (2012) (“A marketer’s use of an environmental certification or seal of
approval likely conveys that the product offers a general environmental benefit . . . if the certification
or seal does not convey the basis for the certification or seal, either through the name or some other
means. . . . [M]arketers should not use environmental certifications or seals that do not convey the
basis for the certification.”).

CLASS ACTION ALLEGATIONS

1
2 84. Plaintiff brings this lawsuit individually and as a class action on behalf all others similarly
3 situated pursuant to Federal Rules of Civil Procedure (“Rule”) 23(a), (b)(2), and/or (b)(3). This action
4 satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
5 requirements of Rule 23.

6 85. The Class and alternative Sub-Class are defined as:

7 Nationwide Class:

8 All consumers who purchased the Products in the United States within any applicable
9 limitations period before the filing of this complaint until the date of class certification
10 (“the Nationwide Class”).

11 California Sub-Class:

12 All consumers who purchased the Products in California within any applicable limitations
13 period before the filing of this complaint until the date of class certification (“the California
14 Sub-Class”).

15 86. Excluded from the Class and Sub-Classes are: (1) Costco, any entity or division in which
16 Costco has a controlling interest, and its legal representatives, officers, directors, assigns, and
17 successors; (2) the Judge to whom this case is assigned and the Judge’s staff; and (3) those persons who
18 have suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves the right to
19 amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class
20 and Sub-Class should be expanded or otherwise modified.

21 87. Numerosity: Although the exact number of Class Members is uncertain and can only be
22 ascertained through appropriate discovery, the number is great enough such that joinder is impracticable.
23 The disposition of the claims of these Class Members in a single action will provide substantial benefits
24 to all parties and to the Court. The Class Members are readily identifiable from information and records
25 in Costco’s possession, custody, or control.

26 88. Typicality: The claims of the representative Plaintiff are typical in that Plaintiff, like all
27 Class Members, purchased one or more of the Products. Plaintiff, like all Class Members, has been
28 damaged by Costco’s misconduct in that, *inter alia*, she has been subjected to Costco’s deceptive
advertising of the Products. Furthermore, the factual bases of Costco’s misconduct are common to all

1 Class Members and represent a common thread of false advertising resulting in injury to all Class
2 Members.

3 89. Commonality: There are numerous questions of law and fact common to Plaintiff and
4 Class Members that predominate over any individual questions. These common legal and factual issues
5 include the following:

- 6 a. whether Costco misrepresented the Products;
- 7 b. whether Costco's conduct was unfair and/or deceptive;
- 8 c. whether Costco's conduct constitutes a breach of express warranty and/or implied
9 warranty;
- 10 d. whether Costco, through deceptive, fraudulent, and misleading labeling,
11 advertising, marketing, and sales of the Products, was enriched at the expense of Plaintiff and Class
12 members through the payment of the purchase price for the Products;
- 13 e. whether Plaintiff and the Class have sustained injury with respect to the common
14 law claims asserted, and if so, the proper measure of their injury;
- 15 f. whether Costco has violated Washington's Consumer Protection Act, RCW §§
16 19.86.010, *et seq.*;
- 17 g. whether Costco has violated California's Consumers Legal Remedies Act, Cal.
18 Civ. Code §§ 1750-1784;
- 19 h. whether Costco has violated California's Environmental Marketing Claims Act,
20 Cal. Bus. & Prof. Code §§ 17580-17581;
- 21 i. whether Costco has violated California's Unfair Competition Law, Cal. Bus. &
22 Prof. Code §§ 17200-17210;
- 23 j. whether Costco has violated California's False Advertising Law, Cal. Bus. &
24 Prof. Code §§ 17500-17536;
- 25 k. whether Costco has violated California's green advertising law, Cal. Bus. & Prof.
26 Code §§ 17580-17581; and
- 27 l. whether the Class is entitled to an award of restitution pursuant to California
28 Business and Professions Code § 17203.

1 90. Adequate Representation: Plaintiff will fairly and adequately protect the interests of
2 Class Members. Plaintiff has retained attorneys experienced in the prosecution of class actions,
3 including consumer and product defect class actions, and Plaintiff intends to prosecute this action
4 vigorously.

5 91. Predominance and Superiority: Plaintiff and Class Members have all suffered and will
6 continue to suffer harm and damages as a result of Costco's unlawful and wrongful conduct. A class
7 action is superior to other available methods for the fair and efficient adjudication of the controversy.
8 Absent a class action, Class Members would likely find the cost of litigating their claims prohibitively
9 high and would therefore have no effective remedy at law. Because of the relatively small size of Class
10 Members' individual claims, it is likely that few Class Members could afford to seek legal redress for
11 Costco's misconduct. Absent a class action, Class Members will continue to incur damages, and
12 Costco's misconduct will continue without remedy. Class treatment of common questions of law and
13 fact would also be a superior method to multiple individual actions or piecemeal litigation in that class
14 treatment will conserve the resources of the courts and the litigants and will promote consistency and
15 efficiency of adjudication.

16
17 **FIRST CAUSE OF ACTION**
18 **Violation of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.**
19 **(On behalf of the California Sub-Class)**

20 92. Plaintiff hereby incorporates by reference the allegations contained in the preceding
21 paragraphs of this Complaint.

22 93. Plaintiff brings this cause of action individually and on behalf of the California Sub-Class
23 against Costco.

24 94. Costco is a "person" as defined by Cal. Civ. Code § 1761(c).

25 95. Plaintiff and California Sub-Class Members are "consumers" within the meaning of Cal.
26 Civ. Code § 1761(d).

27 96. The Products constitute "products" as defined by Cal. Civ. Code § 1761(b).

28 97. Plaintiff's and California Sub-Class Members' purchases of the Products constitute
"transactions," as defined by Cal. Civ. Code § 1761(e).

1 98. Plaintiff's and California Sub-Class Members' purchases of the Products were for
2 personal, family, and household purposes as meant by Cal. Civ. Code § 1761(d).

3 99. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial portion of the
4 transactions at issue occurred in this District. (*See* Declaration of Tina Wolfson, attached hereto as
5 Exhibit 1.)

6 100. Costco deceived consumers in its marketing, advertising, and labeling of the Products.
7 Further, Costco knew or should have known that its marketing, advertising, and labeling of the Products
8 would mislead a reasonable consumer.

9 101. Costco's misrepresentations and nondisclosures violated the California Consumers Legal
10 Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA") in the following manner:

11 a. In violation of Section 1770(a)(5), Costco misrepresented that the Products had
12 characteristics, benefits, or uses that they did not have (that the Products were "environmentally
13 responsible" when in fact they were not);

14 b. In violation of Section 1770(a)(7), Costco misrepresented that the Products were
15 of a particular standard, quality, and/or grade when they were of another (that the Products were
16 "environmentally responsible" when in fact they were not); and

17 c. In violation of Section 1770(a)(9), Costco advertised the Products with an intent
18 not to sell them as advertised (advertising the Products as "environmentally responsible" when they
19 were not);

20 d. In violation of Section 1770(a)(14), Costco misrepresented that the Products
21 conferred or involved rights, remedies, or obligations that they did not have (that the Products were
22 "environmentally responsible" when in fact they were not); and

23 e. In violation of Section 1770(a)(16), Costco misrepresented that the Products were
24 supplied in accordance with previous representations when they were not (that the Products were
25 "environmentally responsible" when in fact they were not).

26 102. Costco's misrepresentations and nondisclosures regarding the Products were never
27 disclosed at the time of purchase, or at any time thereafter, and were material to Plaintiff and California
28 Sub-Class Members because a reasonable person would have considered these practices important in

1 deciding whether or not to purchase the Products and because Costco had a duty to disclose the truth
2 about the Products.

3 103. Plaintiff and California Sub-Class Members relied upon Costco's material
4 misrepresentations and nondisclosures and, had Plaintiff and California Sub-Class Members known the
5 truth about the Products, they would not have purchased the Products or would not have paid as much
6 for them.

7 104. As a direct and proximate result of Costco's material misrepresentations and
8 nondisclosures, Plaintiff and California Sub-Class Members have been irreparably harmed.

9 105. On behalf of the California Sub-Class, Plaintiff seeks injunctive relief in the form of an
10 order enjoining Costco from making such material misrepresentations and failing to disclose or actively
11 concealing its aforementioned practices. Plaintiff also seeks attorneys' fees and costs.

12 106. In accordance with Cal. Civ. Code § 1782(a), on April 5, 2018, Plaintiff's counsel served
13 Costco with notice of the CLRA violations by certified mail, return receipt requested.

14 107. Costco has failed to provide appropriate relief for its CLRA violations within 30 days of
15 receipt of Plaintiff's notification letter, therefore Plaintiff seeks compensatory and exemplary damages
16 as permitted by Cal. Civ. Code §§ 1780 and 1782(b).

17
18 **SECOND CAUSE OF ACTION**
19 **Violations of the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.***
20 **(On behalf of the California Sub-Class)**

21 108. Plaintiff hereby incorporates by reference the allegations contained in the preceding
22 paragraphs of this Complaint.

23 109. Plaintiff brings this cause of action individually and on behalf of the California Sub-Class
24 against Costco.

25 110. As alleged more fully above, Costco has falsely advertised the Products by falsely
26 claiming that the Products are unqualifiedly environmentally sound and are safe.

27 111. Plaintiff and California Sub-Class Members have suffered injury in fact and have lost
28 money or property as a result of Costco's violations of California's False Advertising Law, Cal. Bus. &
Prof. Code § 17500, *et seq.* ("FAL").

1 112. Pursuant to California Business and Professions Code §§ 17203 and 17535, Plaintiff and
2 California Sub-Class Members seek an order of this Court that includes, but is not limited to, an order
3 requiring Costco to remove and/or refrain from making representations on the Products’ packaging
4 representing that the Products provide an unqualified level of “environmentally responsible” qualities.

5 **THIRD CAUSE OF ACTION**
6 **Violations of the California Environmental Marketing Claims Act,**
7 **Cal. Bus. & Prof. Code § 17580, *et seq.***
8 **(On behalf of the California Sub-Class)**

9 113. Plaintiff hereby incorporates by reference the allegations contained in the preceding
10 paragraphs of this Complaint.

11 114. Plaintiff brings this cause of action individually and on behalf of the California Sub-Class
12 against Costco.

13 115. As alleged more fully above, Costco has falsely advertised the Products by falsely
14 claiming that the Products unqualifiedly provide environmental benefits, are safe, and are made with
15 natural ingredients.

16 116. Plaintiff and California Sub-Class Members have suffered injury in fact and have lost
17 money or property as a result of Costco’s violations of California’s Environmental Marketing Claims
18 Act, Cal. Bus. & Prof. Code § 17580, *et seq.* (“EMCA”).

19 117. In particular, Costco has violated and continues to violate California Business and
20 Professions Code § 17580.5, which makes it “unlawful for any person to make any untruthful, deceptive,
21 or misleading environmental marketing claim, whether explicit or implied” and which defines an
22 environmental marketing claim to include “any claim contained in the [the FTC’s Green Guides].”
23 Pursuant to California Business and Professions Code §§ 17203 and 17535, Plaintiff and California Sub-
24 Class Members seek an order of this Court that includes, but is not limited to, an order requiring Costco
25 to remove and/or refrain from making representations on the Products’ packaging representing that the
26 Products provide an unqualified level of “environmentally responsible” qualities.
27
28

FOURTH CAUSE OF ACTION
Violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.
(On behalf of the California Sub-Class)

118. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

119. Plaintiff brings this cause of action individually and on behalf of the California Sub-Class against Costco.

120. California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”) prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

121. Costco knew or should have known that it was deceptively advertising the Products.

122. In failing to disclose its deceptive practices, Costco knowingly, intentionally, and/or negligently concealed material facts and breached its duty not to do so.

123. Costco was under a duty to Plaintiff and California Sub-Class Members to disclose its deceptive advertising practices because Costco was in a superior position to know the true state of facts about its representations on the Products’ labeling, and Costco failed to disclose the deceptive nature of the Products’ labeling to Plaintiff and California Sub-Class Members.

124. The facts concealed by Costco to Plaintiff and California Sub-Class Members are material in that reasonable persons would have considered them to be important in deciding whether to purchase the Products. Had Plaintiff and California Sub-Class Members known the true nature of the Products, they would not have purchased the Products or would have paid less for them.

125. Costco has violated and continues to violate the UCL’s prohibition against engaging in “unlawful” business acts or practices, by, among other things, violating the CLRA, EMCA, and FAL.

126. Costco’s acts, omissions, and conduct also violate the unfair prong of the UCL because Costco’s acts, omissions, and conduct, as alleged herein, offended public policy and constitutes immoral, unethical, oppressive, and unscrupulous activities that caused substantial injury, including to Plaintiff and California Sub-Class Members. The gravity of Costco’s conduct outweighs any potential

1 benefits attributable to such conduct and there were reasonably available alternatives to further Costco's
2 legitimate business interests, other than Costco's conduct described herein.

3 127. By failing to disclose its deceptive advertising practices, Costco engaged in a fraudulent
4 business practice that is likely to deceive a reasonable consumer.

5 128. As a direct and proximate result of Costco's unfair and deceptive practices, Plaintiff and
6 California Sub-Class Members have suffered and will continue to suffer actual damages.

7 129. Costco has been unjustly enriched and should be required to make restitution to Plaintiff
8 and the California Sub-Class pursuant to §§ 17203 and 17204 of the UCL.

9
10 **FIFTH CAUSE OF ACTION**
11 **Breach of Express Warranty**
12 **(On behalf of the Nationwide Class)**

13 130. Plaintiff hereby incorporates by reference the allegations contained in the preceding
14 paragraphs of this Complaint.

15 131. Plaintiff brings this cause of action individually and on behalf of the National Class
16 against Costco.

17 132. Costco's representations that the Products are "environmentally responsible" constitutes
18 an affirmation of fact made with regard to the Products.

19 133. Costco's representations that the Products are "environmentally responsible," Costco's
20 website promoting the Products, and Costco's advertising and promotions for the Products are part of
21 the basis of the bargain between Costco, on the one hand, and Plaintiff and Class Members, the
22 purchasers of the Products, on the other hand.

23 134. As set forth above, Costco's statements concerning the Products are false.

24 135. All conditions precedent to Costco's liability under the above-referenced contract have
25 been performed by Plaintiff and the other Class members.

26 136. Costco breached its express warranties about the Products because, as alleged above, the
27 Products are not "environmentally responsible." Costco therefore breached the applicable state statutes.

28 137. As a result of Costco's breaches of express warranty, Plaintiff and Class Members were
damaged in amounts to be proven at trial.

1 138. Within a reasonable time after she knew or should have known of such breaches,
2 Plaintiff, on behalf of herself and Class Members, placed Costco on notice thereof. Specifically, on
3 April 5, 2018, notice and demand letter were sent to Costco via certified mail that provided notice of
4 Costco's breaches of express warranty.

5 139. Wherefore Plaintiff, on behalf of the Class, prays for relief as set forth herein.

6 **SIXTH CAUSE OF ACTION**
7 **Violation of the Washington Consumer Protection Act**
8 **RCW §§ 19.86.010, *et seq.***
9 **(On behalf of the Nationwide Class)**

10 140. Plaintiff hereby incorporates by reference the allegations contained in the preceding
11 paragraphs of this Complaint.

12 141. Washington's Consumer Protection Act, RCW §§ 19.86.010, *et seq.* ("WCPA"), protects
13 both consumers and competitors by promoting fair competition in commercial markets for goods and
14 services. To achieve that goal, the WCPA prohibits any person from using "unfair methods of
15 competition or unfair or deceptive acts or practices in the conduct of any trade or commerce. . . ." RCW
16 § 19.86.020. An unfair or deceptive business practice is one that is likely to deceive a substantial portion
17 of the public or otherwise affect public interest.

18 142. Costco knew or should have known that it was deceptively advertising the Products.

19 143. In failing to disclose its deceptive practices, Costco knowingly, intentionally, and/or
20 negligently concealed material facts and breached its duty not to do so.

21 144. Costco was under a duty to Plaintiff and Class Members to disclose its deceptive
22 advertising practices because Costco was in a superior position to know the true state of facts about its
23 representations on the Products' labeling, and Costco failed to disclose the deceptive nature of the
24 Products' labeling to Plaintiff and Class Members.

25 145. Costco's unfair acts or practices occurred in its trade or business and has injured a
26 substantial portion of the public. Costco's general course of conduct is injurious to the
27 public interest, and such acts are ongoing and/or have a substantial likelihood of being repeated
28 inasmuch as the Costco continues to deceptively label the Products. As a direct and proximate result of
Costco's unfair acts, Plaintiffs and National Class members have suffered actual injuries.

1 146. Costco is headquartered in Washington; its strategies, decision-making, and commercial
2 transactions originate in Washington; most of its key operations and employees reside, work, and make
3 company decisions (including advertising and labeling decisions) in Washington; and Costco and many
4 of its employees are part of the people of the State of Washington. The conduct that Plaintiff challenges
5 directly affects the people of the State of Washington, as well as consumers nationwide.

6 147. As a result of Costco's conduct, Plaintiffs and Class members have suffered and will
7 continue to suffer actual damages.

8 148. Accordingly, Plaintiff, individually and on behalf of the National Class, seeks to recover
9 actual damages and treble damages (where applicable), together with the costs of bringing this suit,
10 including reasonable attorneys' fees.

11 149. With respect to injunctive relief, Plaintiff, individually and on behalf of the National
12 Class, seeks an Order enjoining Costco from further violations of the WCPA and to cease making such
13 material misrepresentations and failing to disclose or actively concealing its aforementioned practices.

14 **RELIEF REQUESTED**

15 Plaintiff, on behalf of herself and all others similarly situated, requests the Court enter judgment
16 against Costco, and accordingly requests the following:

- 17 A. An order certifying the proposed Class and designating Plaintiff as named representatives
18 of the Class and designating the undersigned as Class Counsel;
- 19 B. A declaration that Costco is financially responsible for notifying all Class Members about
20 their deceptive advertising practices;
- 21 C. An order enjoining Costco from further deceptive advertising practices regarding the
22 Products;
- 23 D. An award to Plaintiff and Class Members of compensatory, actual, exemplary, and
24 statutory damages, including interest, in an amount to be proven at trial;
- 25 E. A declaration that Costco must disgorge, for the benefit of Plaintiff and Class Members,
26 all or part of the ill-gotten profits it received from its sale of the Products, or make full
27 restitution to Plaintiff and Class Members;
- 28 F. An award of attorneys' fees and costs pursuant to all applicable laws;

- 1 G. An award of pre-judgment and post-judgment interest, as provided by law;
- 2 H. Leave to amend the Complaint to conform to the evidence produced at trial; and
- 3 I. Such other relief as may be appropriate under the circumstances.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury as
6 to all matters so triable.

7
8 Dated: May 16, 2018

/s/ Tina Wolfson
Tina Wolfson, SBN 174806
twolfson@ahdootwolfson.com
Bradley K. King, SBN 274399
bking@ahdootwolfson.com
AHDoot & WOLFSON, PC
10728 Lindbrook Drive
Los Angeles, California 90024
Telephone: (310) 474-9111
Facsimile: (310) 474-8585

14 Kim E. Richman*
krichman@richmanlawgroup.com
RICHMAN LAW GROUP
81 Prospect Street
Brooklyn, New York 11201
Telephone: (212) 687-8291
Facsimile: (212) 687-8292
* *pro hac vice* application forthcoming

19 *Counsel for Plaintiff Stephanie Mattero*

EXHIBIT 1

DECLARATION OF TINA WOLFSON

I, Tina Wolfson, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Stephanie Mattero (“Plaintiff”) in the above-captioned action. I am admitted to practice law in California and before this Court, and I am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiff suffered injuries as a result of acts by Defendant Costco Wholesale Corporation (“Defendant”) in this District, including Plaintiff’s purchase of the subject cleaning products from Defendant’s retail location in this District. Defendant operates retail locations in this District and is registered to do business in California.

3. Plaintiff is a resident of San Francisco, California, in San Francisco County.

4. Defendant is a Washington corporation registered to do business in California with its principal place of business located at 999 Lake Drive, Issaquah, Washington 98027.

I declare under penalty of perjury under the laws of the United States and the State of California this 16th day of May, 2018 in Los Angeles, California that the foregoing is true and correct.

/s/ Tina Wolfson
Tina Wolfson