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9 UNITED STATES DISTRICT COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 LISABETH HANSCOM, on behalf of herself
14 and those similarly situated,

15 Plaintiff,

16 v.

17 REYNOLDS CONSUMER PRODUCTS INC.
18 and REYNOLDS CONSUMER PRODUCTS
19 LLC,

20 Defendants.

Case No.: 3:2021-cv-03434

**SECOND AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Lisabeth Hanscom, by and through her counsel, brings this Second Amended
2 Class Action Complaint (“Complaint”) against Defendants Reynolds Consumer Products Inc.
3 and Reynolds Consumer Products LLC (“Defendants”). The following allegations are based
4 upon information and belief, including the investigation of Plaintiff’s counsel, unless stated
5 otherwise.

6 **INTRODUCTION**

7 1. This Complaint seeks to remedy Defendants’ unlawful, unfair, and deceptive
8 business practices with respect to the advertising, marketing, and sale of Hefty brand Recycling
9 Bags (the “Products”).

10 2. Plastic waste is an increasingly dire international problem. Nearly 90% of plastic
11 waste is not recycled. Much of the unrecycled plastic waste ends up in the ocean. Indeed, over
12 12 million tons of plastic enters the ocean each year.¹ As consumers have become increasingly
13 aware of the problems associated with pollution, many consumers actively seek to purchase
14 Products that are either compostable or recyclable to divert such waste from waterways, oceans,
15 their communities, landfills, and incinerators.

16 3. Seeking to take advantage of consumers’ demands for such Products, Defendants
17 market plastic trash bags under the Hefty trademark as “Recycling” bags. They explain on the
18 back of the label that “Hefty Recycling Bags are Perfect For All Your Recycling Needs” and are
19 “Designed to Handle All Types of Recyclables.” The website also confirms that the Products
20 are “designed to handle your heaviest recycling jobs” and “these transparent bags make it easy
21 to sort your recyclables and avoid the landfill.” Reasonable consumers understand this to mean
22 that the Products are suitable for disposing of recyclable waste and are recyclable. In truth, the
23 bags contaminate the recyclable waste stream, decrease the recyclability of otherwise recyclable
24 materials, and are not recyclable because they are made from low-density polyethylene plastic
25 (“LDPE” or “No. 4 plastic”).

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28 ¹ Nick Young, *How does plastic end up the ocean?*, <https://www.greenpeace.org/new-zealand/story/how-does-plastic-end-up-in-the-ocean/> (last accessed January 20, 2021).

1 a box of Hefty brand Recycling Bags.

2 8. Defendant Reynolds Consumer Products Inc. is a publicly traded corporation
3 organized and existing under the laws of the state of Delaware, having its principal place of
4 business in Lake Forest, IL. Defendant Reynolds Consumer Products Inc. is the parent company
5 of Reynolds Consumer Products LLC.

6 9. Defendant Reynolds Consumer Products LLC is a company organized and
7 existing under the laws of the state of Delaware, having its principal place of business in Lake
8 Forest, IL. Defendant Reynolds Consumer Products LLC is a wholly owned subsidiary of
9 Reynolds Consumer Products Inc. and owns the Hefty trademark.

10 **JURISDICTION AND VENUE**

11 10. This Court has subject matter jurisdiction over this action pursuant to the Class
12 Action Fairness Act, 28 U.S.C. Section 1332(d)(2)(A) because: (i) there are 100 or more Class
13 Members, and (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive
14 of interest and costs.

15 11. This Court has supplemental jurisdiction over any state law claims pursuant to 28
16 U.S.C. Section 1367.

17 12. The injuries, damages and/or harm upon which this action is based occurred or
18 arose out of activities engaged in by Defendants within, affecting, and emanating from the State
19 of California. Defendants regularly conduct and/or solicit business in, engage in other persistent
20 courses of conduct in, and/or derive substantial revenue from products provided to persons in
21 the State of California. Defendants have engaged, and continue to engage, in substantial and
22 continuous business practices in the State of California.

23 13. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b)(2) because
24 a substantial part of the events or omissions giving rise to the claims occurred in the state of
25 California, including within this District.

26 14. In accordance with California Civil Code Section 1780(d), Plaintiff concurrently
27 files herewith a declaration establishing that she purchased the Products in Alameda County,
28 California. (*See Exhibit A.*)

1 15. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

2 **SUBSTANTIVE ALLEGATIONS**

3 **(1) Defendants' False Representations Regarding the Products Suitability for**
4 **Recycling and Recyclability.**

5 16. Defendants manufacture, market, and sell Hefty Recycling Bags in 13 and 30
6 gallon sizes. Defendants also offer multiple color SKUs, including transparent blue or clear. The
7 Products are made of low-density polyethylene or No. 4 plastic.

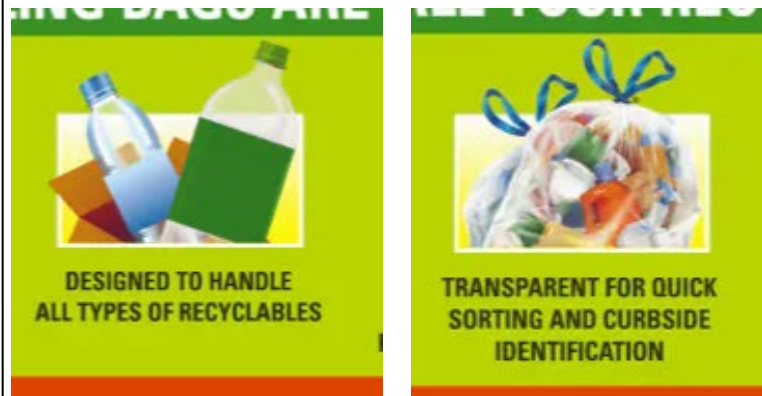
8 17. Defendants place the prominent representation "RECYCLING" on the front
9 label of the Products with a green background and white font. Next to the representation,
10 Defendants include images of the Products filled with recyclable waste:



1 18. The back of the package includes language such as “HEFTY RECYCLING
2 BAGS ARE PERFECT FOR ALL YOUR RECYCLING NEEDS”:



15 19. A zoomed in shot of the back label shows that Defendants also include the
16 representations “DESIGNED TO HANDLE ALL TYPES OF RECYCLABLES” and
17 “TRANSPARENT FOR QUICK SORTING AND CURBSIDE IDENTIFICATION”:



1 20. Defendants’ website provides additional misrepresentations about the suitability
2 of the Products for recycling stating that they “[r]educe your environmental impact” and are
3 “designed to handle your heaviest recycling jobs.” Defendants’ add, “[t]hese transparent bags
4 make it easy to sort your recyclables and avoid the landfill”:

HEFTY® RECYCLING BAGS

Reduce your environmental impact with Hefty® Recycling bags designed to handle your heaviest recycling jobs. Available in 13 and 30 gallon sizes and ideal for daily use or seasonal cleaning, these transparent bags make it easy to sort your recyclables and avoid the landfill.

- Arm & Hammer™ patented odor neutralizer*
- Transparent clear or blue option for easy sorting
- Designed to handle all types of recyclables

BUY NOW

Sizes Available

- 13 gal
- 30 gal

Colors Available

- Clear transparent
- Blue transparent

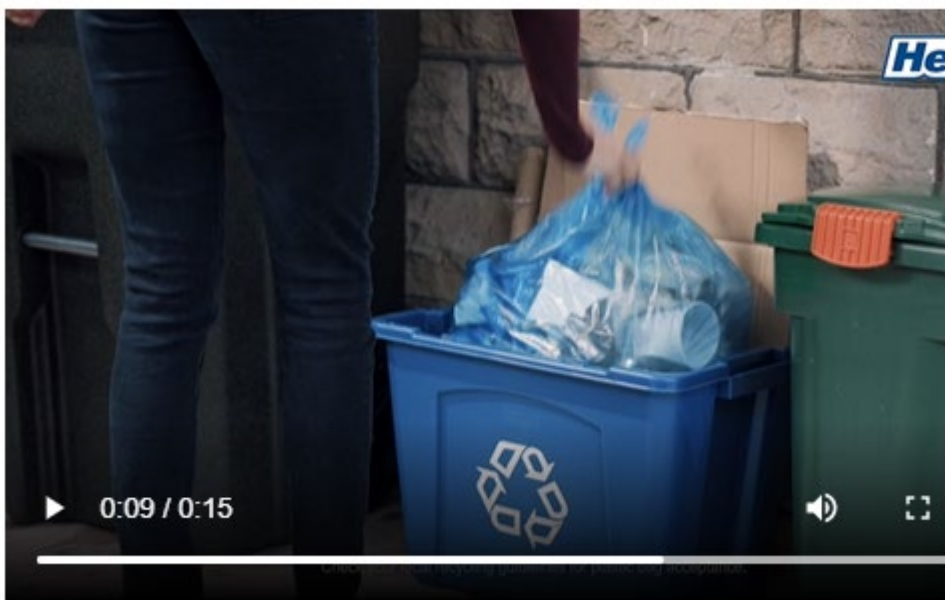
<https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags>

18 21. Defendants sell the Products on Amazon.com and on its website with images
19 showing how to use the Product:



13 <https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags>

14 22. Defendants also sell the products along with video advertisement showing that
15 the bags are appropriate for putting in the recycling bin with other recyclable waste:



27 <https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags>

28 **(2) LDPE Bags Are Not Recyclable and Instead Are a Harmful Contaminant**

1 23. Recycling is “the process of collecting, sorting, cleansing, treating, and
2 reconstituting materials that would otherwise become solid waste, and returning them to the
3 economic mainstream in the form of raw material for new, reused, or reconstituted products
4 which meet the quality standards necessary to be used in the marketplace.” Cal. Pub. Res. Code
5 § 40180. Thus, “recyclable” products must, if discarded into a recycling bin, be: (i) accepted for
6 collection by a recycling facility; and (ii) processed for reuse or use in manufacturing another
7 item.

8 24. In the United States, after plastics are discarded into a recycling bin, they are sent
9 to a MRF where the plastics are sorted by resin type. Plastics numbered #3-7 are batched
10 together to form mixed bales which require further processing. However, “the economics [of
11 processing those bales] have proven insurmountable.”³ Prior to 2018, MRFs in the United States
12 exported #3-7 mixed bails, primarily, to China. However, on January 1, 2018, China enacted the
13 National Sword policy which limits plastic waste imports. There is, however, minimal demand,
14 value, and processing capacity for them in the United States. Thus, mixed plastic #3-7 bales
15 which were “previously exported to China now have negligible to negative value across the
16 country and ‘cannot be effectively or efficiently recycled in the US.’”⁴ As a result, the majority
17 of LDPE or No. 4 plastic sent to recycling facilities is incinerated, which releases large
18 quantities of greenhouse gases and toxic air emissions.

19 25. Not only are LDPE plastics, such as the Products, unrecyclable, but in many
20 cases they contaminate the waste stream and decrease the recyclability of otherwise recyclable
21 items. Contaminants are any plastic materials that MRFs do not accept or decrease the
22 recyclability of other items. Because the Products are made of LDPE film they are especially
23 problematic. Plastic films risk clogging and breaking down machinery used to sort recyclable
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26 ³ *Circular Claims Fall Flat*, Greenpeace, at 10, [https://www.greenpeace.org/usa/wp-](https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf)
27 [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) (last visited Apr. 27,
2021).

28 ⁴ *Id* at 11.

1 products. As a result, many MRFs do not accept plastic bags at all.

2 26. A high presence of contamination, including unrecyclable films such as LDPE,
3 in the recycling stream, makes otherwise recyclable plastic materials unrecyclable because
4 purchasers of recyclable materials value bales of plastic by the percentage of unrecyclable
5 contaminant present in the bales. If contamination exceeds a certain level, the bale must be
6 incinerated or sent to a landfill. Therefore, not only is LDPE not recyclable, it may also prevent
7 recycling of otherwise recyclable materials.

8 27. Accordingly, Defendants' use of LDPE plastic means their Products are not
9 recyclable and the labels claims regarding recyclability are therefore false.

10 28. Defendants further represent and mislead consumers into believing that the
11 Products are useful and beneficial for recycling purposes, including as containers for recyclable
12 materials during collection, transport and sorting. But the use of the Products as containers for
13 recyclables is both unnecessary and counterproductive.

14 29. As a general rule, recyclables should be clean and dry and should be placed
15 directly in a collection bin. Because the Products are made of LDPE film, and for the other
16 reasons discussed above, the Products are not beneficial to either the collection or transport
17 processes, which are not currently designed to work with such bags. Even worse, the Products
18 add work, expense, and waste to the sorting and recycling processes at recycling facilities, as
19 they must be separated from recyclable materials and then disposed of. Most MRFs do not
20 bother with this process due to the hazard of opening plastic bags that may contain "broken
21 glass, syringes" and simply throw bagged recyclables directly into trash.⁵ Use of the Products
22 thereby decreases the efficiency of and increases the cost of recycling programs, and ultimately
23 adds to the problems of plastic accumulation and plastic contamination in the environment
24 (problems that recycling programs are intended to ameliorate). In sum, the Products are not

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27 ⁵ See, e.g., Angela Hill, *Bay Area recycling tips: Can I recycle that or not?*, The Mercury News,
28 <https://www.mercurynews.com/2016/03/08/bay-area-recycling-tips-can-i-recycle-that-or-not/>
(last visited May 6, 2021).

1 suitable for recycling and are actually harmful, not beneficial to the overall recycling process.

2 30. At a minimum, Defendants’ marketing of the Products as suitable and beneficial
3 for recycling purposes is an unfair practice under the UCL, as it undermines both state and local
4 policies of reducing the amount of plastic in landfills and the amount of pollution from plastic in
5 the environment. The manufacture and use of unnecessary LDPE plastic bags—which cannot be
6 recycled and that complicate and contaminate the collection and recycling of truly recyclable
7 materials—undermines the public policies that recycling programs, and consumers who recycle,
8 seek to achieve.

9 **(3) Defendants’ Marketing of the Products Violates California Public Policy and**
10 **the Federal Trade Commission Green Guides**

11 31. The State of California has declared that “it is the public policy of the state that
12 environmental marketing claims, whether explicit or implied, should be substantiated by
13 competent and reliable evidence to prevent deceiving or misleading consumers about the
14 environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy is based
15 on the Legislature’s finding that “littered plastic products have caused and continue to cause
16 significant environmental harm and have burdened local governments with significant
17 environmental cleanup costs.” *Id.* § 42355.

18 32. Additionally, California Business and Professions Code § 17580.5 makes it
19 “unlawful for any person to make any untruthful, deceptive, or misleading environmental
20 marketing claim, whether explicit or implied.” Pursuant to that section, the term “environmental
21 marketing claim” includes any claim contained in the Guides for Use of Environmental
22 Marketing Claims published by the Federal Trade Commission (the “Green Guides”). Cal. Bus.
23 & Prof. Code § 17580.5; *see also* 16 C.F.R. § 260.1, *et seq.* As detailed below, Defendants’
24 marketing of the Products as “Recycling” bags violates several provisions of the FTC’s Green
25 Guides.

26 33. First, Defendants’ marketing of the Products as “Recycling” bags violates the
27 Green Guides provisions prohibiting the labeling of products as recyclable unless the products
28 can actually be converted into reusable material. Section 260.12(a) of the Green Guides

1 provides that it is “deceptive to misrepresent, directly or *by implication*, that a product or
2 package is recyclable. A product or package should not be marketed as recyclable unless it can
3 be collected, separated, or otherwise recovered from the waste stream through an established
4 recycling program for reuse or use in manufacturing or assembling another item.” (Emphasis
5 added.) Defendants’ use of the words “Recycling” bags with images of the bags placed in
6 recycling bins implies that the Products are recyclable. The Green Guides further explain that
7 “[m]arketers should *clearly and prominently* qualify recyclable claims to the extent necessary
8 to avoid deception about the availability of recycling programs and collection sites to
9 consumers.” 16 C.F.R. § 260.12(b) (emphasis added). And in promulgating the current
10 recycling definition, the FTC clarified that “[f]or a product to be called recyclable, there must be
11 an established recycling program, municipal or private, through which the product will be
12 converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84, 11 24247 (May 1,
13 1998). As the FTC has stated, “while a product may be technically recyclable, if a program is
14 not available allowing consumers to recycle the product, there is no real value to consumers.”
15 *Id.*, at 24243.

16 34. Although Defendants state that the Product is “DEVELOPED FOR USE IN
17 MUNICIPAL RECYCLING PROGRAMS WHERE APPLICABLE” on the back of the box in
18 a small and inconspicuous font, the statement fails to qualify the fact that the Products are made
19 from LDPE and that LDPE bags are not recyclable nor are they suitable for recycling. In the
20 absence of clarifying language, reasonable consumers understand this to mean that the Product
21 is designed for recycling wherever municipal recycling is available, which is false. Therefore,
22 the representation is neither a clear nor prominent disclaimer as required by the Green Guides.

23 35. Defendants’ marketing of the Products as “Recycling” bags violates these
24 provisions of the Green Guides because Defendants falsely imply that their product is suitable
25 for recycling and is recyclable even though the Products cannot be collected, separated, or
26 otherwise recovered from the waste stream through an established recycling program for reuse
27 or use in manufacturing or assembling another item. Although the Products may be accepted for
28 recycling by some curbside programs, LDPE waste is ultimately incinerated or sent to landfills.

1 36. Further, the Green Guides require marketers to support their environmental claim
2 with a reasonable basis before they make the claims. 16 CFR § 260.2 (“Marketers must ensure
3 that all reasonable interpretations of their claims are truthful, not misleading, and supported by a
4 reasonable basis before they make the claims.”). “[A] firm’s failure to possess and rely upon a
5 reasonable basis for objective claims constitutes an unfair and deceptive act or practice in
6 violation of Section 5 of the Federal Trade Commission Act.” *See* FTC Policy Statement
7 Regarding Advertising Substantiation, 104 FTC 839 (1984) (cited by 16 CFR §
8 260.2). Defendants do not possess information sufficient to support their claims that the
9 Products are “Recycling” bags.

10 **(4) Defendants Misleadingly Market the Products to Increase Profits and Gain a**
11 **Competitive Edge.**

12 37. Defendants market the Products as “Recycling” bags to capitalize on consumer
13 demand for “green” products. In particular, Defendants intend for reasonable consumers to
14 believe, and reasonable consumers do believe, that the Products are suitable for disposing of
15 recyclable items and do not contaminate the recycling waste stream. Further, Defendants intend
16 for consumers to believe, and reasonable consumers do believe, that because the Products are
17 “Recycling” bags, they are recyclable. Finally, Defendants intend for consumers to believe, and
18 reasonable consumers do believe, that because the Products are “Recycling” bags, they are
19 specially designed to be environmentally superior to competitors’ products that do not contain
20 the same representation.

21 38. Defendants’ illegal marketing campaign has been extremely successful.
22 Defendants are among the largest sellers of trash bags nationally. The Products are sold in
23 grocery stores, drug stores, and big box stores throughout California and the country. Because
24 of the big potential for sales, Defendants have no incentive to stop claiming that the Products
25 are “Recycling” bags or change their disclaimers to discourage sales.

26 39. Because consumers are led to believe the Products are “Recycling” bags and,
27 therefore, purchase them because they are a “green” product, Defendants are able to charge a
28 premium for the Products. If consumers knew that the Products were not suitable for recycling,

1 contaminated the recyclable waste stream, and were not recyclable, the product would not
2 command a premium price based on that representation, fewer consumers would purchase them,
3 and Plaintiff would not pay the premium attributable to that representation.

4 **(5) Plaintiff Hanscom's Experience**

5 40. On or around September 15, 2020, Plaintiff Hanscom purchased a box of Hefty
6 brand Recycling Bags for approximately \$8.99 from the Safeway near her home. She read the
7 claim "Recycling" bags on the Products and purchased them because she believed that the bags
8 were suitable for disposing of her recyclables and that the bags themselves were recyclable.
9 Shortly after purchasing and using the Products, she learned from her roommate that the
10 Products were not recyclable and not suitable for disposing of recyclable waste and she
11 immediately stopped using them. Had Plaintiff Hanscom known that the Recycling Bags were
12 not suitable for recycling and not recyclable, she would not have purchased them, or at a
13 minimum, she would not have paid a premium for them.

14 41. Plaintiff Hanscom continues to desire to purchase from Defendants trash bags
15 that are suitable for recycling and are recyclable because it is her belief that such a
16 product would be cleaner and more convenient than directly disposing of her recyclable waste
17 into her curbside recycling bin. However, Plaintiff is unable to determine at the point of
18 purchase if the Products are made from recyclable materials and compatible with municipal
19 recycling programs. Plaintiff understands that the design and composition of the Products may
20 change over time. But as long as Defendants may use the phrase "Recycling" bags to describe
21 products that are unsuitable for recycling and are not recyclable, then when presented with
22 Defendants' packaging, Plaintiff continues to have no way of determining whether the
23 representation "Recycling" bags is in fact true. Thus, Plaintiff is likely to be repeatedly
24 presented with false or misleading information when shopping and she will be unable to make
25 informed decisions about whether to purchase Defendants' Products and will be unable to
26 evaluate the different prices between Defendants' Products and competitors' Products. Plaintiff
27 is further likely to be repeatedly misled by Defendants' conduct, unless and until Defendants are
28 compelled to ensure that their trash bags marketed as "Recycling" bags are suitable for

1 recycling and are recyclable.

2 **CLASS ALLEGATIONS**

3 42. In addition to her individual claims, Plaintiff brings this action pursuant to Rule
4 23 of the Federal Rules of Civil Procedure.

5 43. Plaintiff brings this class action lawsuit on behalf of a proposed class of similarly
6 situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure,
7 defined as follows:

8 All persons who, between May 7, 2017 and the present, purchased Hefty brand
9 Recycling Bags in California.

10 Excluded from this Class are Defendants, their parents, subsidiaries, affiliates, officers
11 and directors, and those who purchased Hefty brand Recycling Bags for the purpose of
12 resale.

13 44. This action has been brought and may properly be maintained as a class action
14 against Defendants because there is a well-defined community of interest in the litigation and
15 the proposed class is easily ascertainable.

16 45. Numerosity: Plaintiff does not know the exact size of the Class, but she estimates
17 that it is composed of more than 5,000 persons. The persons in the Class are so numerous that
18 the joinder of all such persons is impracticable and the disposition of their claims in a class
19 action rather than in individual actions will benefit the parties and the courts.

20 46. Common Questions Predominate: This action involves common questions of law
21 and fact to the potential classes because each Class Member's claim derives from the same
22 deceptive, unlawful and/or unfair statements and omissions. The common questions of law and
23 fact predominate over individual questions, as proof of a common or single set of facts will
24 establish the right of each member of the Class to recover. The questions of law and fact
25 common to the Class include, but are not limited to, the following:

- 26 a) Whether the Products are "Recycling" bags suitable for disposing of
27 recyclable waste;
28 b) Whether the Products are recyclable;
c) Whether Defendants unfairly, unlawfully and/or deceptively failed to

1 inform class members that the Products are made from materials (i.e.,
2 LDPE aka No. 4 plastic) that are not recyclable;

- 3 d) Whether Defendants' advertising and marketing regarding the Products
4 sold to class members was likely to deceive class members or was unfair;
5 e) Whether Defendants engaged in the alleged conduct knowingly,
6 recklessly, or negligently;
7 f) The amount of the premium lost by class members as a result of such
8 wrongdoing;
9 g) Whether class members are entitled to injunctive and other equitable
10 relief and, if so, what is the nature of such relief; and
11 h) Whether class members are entitled to payment of actual, incidental,
12 consequential, exemplary and/or statutory damages plus interest thereon,
13 and if so, what is the nature of such relief.

14 47. Typicality: Plaintiff's claims are typical of the claims of other members of the
15 Class because, among other things, all such claims arise out of the same wrongful course of
16 conduct in which the Defendants engaged in violation of law as described herein. Plaintiff and
17 Class Members purchased one or more boxes of Products. In addition, Defendants' conduct that
18 gave rise to the claims of Plaintiff and Class Members (i.e., marketing, sales and advertising of
19 the Products as suitable for recycling and/or recyclable) is the same for Plaintiff and all
20 members of the Class. Plaintiff's claims, like the claims of the Class, arise out of the same
21 common course of conduct by Defendants and are based on the same legal and remedial
22 theories.

23 48. Adequacy of Representation: Plaintiff will fairly and adequately protect the
24 interests of all Class Members because it is in her best interests to prosecute the claims alleged
25 herein to obtain full compensation due to her for the unfair and illegal conduct of which she
26 complains. Plaintiff also has no interests that are in conflict with, or antagonistic to, the interests
27 of Class Members. Plaintiff has retained highly competent and experienced class action
28 attorneys to represent her interests and those of the classes. By prevailing on her own claims,

1 Plaintiff will establish Defendants liability to all Class Members. Plaintiff and her counsel have
2 the necessary financial resources to adequately and vigorously litigate this class action, and
3 Plaintiff and counsel are aware of their fiduciary responsibilities to the Class Members and are
4 determined to diligently discharge those duties by vigorously seeking the maximum possible
5 recovery for Class Members.

6 49. Superiority: There is no plain, speedy, or adequate remedy other than by
7 maintenance of this class action. The prosecution of individual remedies by members of the
8 classes will tend to establish inconsistent standards of conduct for Defendants and result in the
9 impairment of Class Members' rights and the disposition of their interests through actions to
10 which they were not parties. Class action treatment will permit a large number of similarly
11 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
12 and without the unnecessary duplication of effort and expense that numerous individual actions
13 would engender. Furthermore, as the damages suffered by each individual member of the class
14 may be relatively small, the expenses and burden of individual litigation would make it difficult
15 or impossible for individual members of the class to redress the wrongs done to them, while an
16 important public interest will be served by addressing the matter as a class action.

17 50. Plaintiff is unaware of any difficulties that are likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.

19 **CAUSES OF ACTION**

20 51. Plaintiff does not plead, and hereby disclaims, any causes of action under any
21 regulations promulgated by the FTC. Plaintiff relies on these regulations only to the extent such
22 regulations have been separately enacted as state law or regulations or provide a predicate basis
23 of liability under the state and common laws cited in the following causes of action.

24 **PLAINTIFF'S FIRST CAUSE OF ACTION**

25 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)**

26 **On Behalf of Herself and the Class**

27 52. Plaintiff realleges and incorporates the paragraphs of this Complaint as if set
28 forth herein.

1 53. This cause of action is brought pursuant to the California Consumers Legal
2 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

3 54. Defendants’ actions, representations and conduct have violated, and continue to
4 violate the CLRA, because they extend to transactions that are intended to result, or which have
5 resulted, in the sale or lease of goods or services to consumers.

6 55. Plaintiff and other class members are “consumers” as that term is defined by the
7 CLRA in California Civil Code § 1761(d).

8 56. The Products that Plaintiff (and others similarly situated class members)
9 purchased from Defendants were and are “goods” within the meaning of California Civil Code
10 § 1761(a).

11 57. By engaging in the actions, representations and conduct set forth in this
12 Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(5),
13 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
14 § 1770(a)(2), Defendants’ acts and practices constitute improper representations regarding the
15 source, sponsorship, approval, or certification of the goods they sold. In violation of California
16 Civil Code § 1770(a)(5), Defendants’ acts and practices constitute improper representations that
17 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
18 quantities, which they do not have. In violation of California Civil Code § 1770(a)(7),
19 Defendants’ acts and practices constitute improper representations that the goods they sell are of
20 a particular standard, quality, or grade, when they are of another. In violation of California Civil
21 Code § 1770(a)(8), Defendants have disparaged the goods, services, or business of another by
22 false or misleading representation of fact. In violation of California Civil Code § 1770(a)(9),
23 Defendants have advertised goods or services with intent not to sell them as advertised.
24 Specifically, in violation of §§ 1770(a)(2), (a)(5), (a)(7), and (a)(9), Defendants’ acts and
25 practices led customers to falsely believe that the Products are (1) suitable for disposing of
26 recyclable waste and (2) that they are recyclable, when they are not. In violation of section
27 1770(a)(8), Defendants falsely or deceptively market and advertise that, unlike products not
28 specifically denominated as “Recycling” bags, the Products are suitable for recycling and are

1 recyclable.

2 58. Plaintiff requests that this Court enjoin Defendants from continuing to employ
3 the unlawful methods, acts and practices alleged herein pursuant to California Civil Code
4 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
5 future, Plaintiff and the other members of the Class will continue to suffer harm.

6 59. CLRA § 1782 NOTICE. On May 11, 2021, Plaintiff provided Defendants with
7 notice and demand that within thirty (30) days from that date, Defendants correct, repair,
8 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of
9 herein. (*See* Exhibit B.) Defendants failed to respond to Plaintiff's letter or to take any of the
10 requested actions within thirty days. Plaintiff seeks, pursuant to California Civil Code §
11 1780(a), on behalf of herself and those similarly situated members of the Class, actual damages,
12 punitive damages and restitution of any ill-gotten gains due to Defendants' acts and practices.
13 With regard to the amount of damages and restitution, Plaintiff seeks to recover for herself and
14 the Class a full refund of the price paid for the Products, or in the alternative, the price premium
15 paid for the Products, i.e., difference between the price consumers paid for the Products and the
16 price that they would have paid but for Defendants' misrepresentation. This premium can be
17 determined by using econometric or statistical techniques such as hedonic regression or conjoint
18 analysis.

19 60. Plaintiff also requests that this Court award them costs and reasonable attorneys'
20 fees pursuant to California Civil Code § 1780(d).

21 **PLAINTIFF'S SECOND CAUSE OF ACTION**

22 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**

23 **On Behalf of Herself and the Class**

24 61. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint
25 as if set forth herein.

26 62. Beginning at an exact date unknown to Plaintiff, but within three (3) years
27 preceding the filing of the Complaint, Defendants made untrue, false, deceptive and/or
28 misleading statements in connection with the advertising and marketing of the Products.

1 63. Defendants made representations and statements (by omission and commission)
2 that led reasonable customers to believe the Products are (1) suitable for disposing of recyclable
3 waste and (2) that they are recyclable when they are not. Defendants deceptively failed to
4 inform Plaintiff, and those similarly situated, that the Products contaminate the recycling waste
5 stream, decrease the recyclability of their otherwise recyclable items, and are not recyclable.

6 64. Plaintiff and those similarly situated relied to their detriment on Defendants'
7 false, misleading and deceptive advertising and marketing practices, including each of the
8 misrepresentations and omissions set forth above. Had Plaintiff and those similarly situated
9 been adequately informed and not intentionally deceived by Defendants, they would have acted
10 differently by, without limitation, refraining from purchasing the Products or paying less for
11 them.

12 65. Defendants' acts and omissions are likely to deceive reasonable consumers and
13 the general public.

14 66. Defendants engaged in these false, misleading and deceptive advertising and
15 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
16 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
17 Professions Code.

18 67. The aforementioned practices, which Defendants have used, and continue to use,
19 to their significant financial gain, also constitute unlawful competition and provide an unlawful
20 advantage over Defendants' competitors as well as injury to the general public.

21 68. As a direct and proximate result of such actions, Plaintiff and the other members
22 of the Class have suffered, and continue to suffer, injury in fact and have lost money and/or
23 property as a result of such false, deceptive and misleading advertising in an amount which will
24 be proven at trial, but which is in excess of the jurisdictional minimum of this Court. In
25 particular, Plaintiff, and those similarly situated, paid a price premium for the Products, i.e., the
26 difference between the price consumers paid for the Products and the price that they would have
27 paid but for Defendants' misrepresentation. This premium can be determined by using
28 econometric or statistical techniques such as hedonic regression or conjoint analysis.

1 Alternatively, Plaintiff and those similarly situated will seek a full refund of the price paid upon
2 proof that the sale of the Products was unlawful.

3 69. Plaintiff seeks equitable relief, including restitution, with respect to her FAL
4 claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following
5 allegations in this paragraph only hypothetically and as an alternative to any contrary
6 allegations in her causes of action 1, 3 and 4, in the event that such causes of action will not
7 succeed. Plaintiff and the Class may be unable to obtain monetary, declaratory and/or injunctive
8 relief directly under causes of action 1, 3 and 4 and will lack an adequate remedy at law, if the
9 Court requires her to show classwide reliance and materiality beyond the objective reasonable
10 consumer standard applied under the FAL, because Plaintiff may not be able to establish each
11 Class member's individualized understanding of Defendant's misleading representations as
12 described in paragraphs 17-22 of this Complaint, but the FAL does not require individualize
13 proof of deception or injury by absent class members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*,
14 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief under the UCL and FAL 'is
15 available without individualized proof of deception, reliance, and injury.'"). In addition,
16 Plaintiff and the Class may be unable to obtain such relief under causes of action 3 and 4 and
17 will lack an adequate remedy at law, if Plaintiff is unable to demonstrate the requisite mens rea
18 (intent, reckless, and/or negligence), because the FAL imposes no such mens rea requirement
19 and liability exists even if Defendant acted in good faith.

20 70. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
21 described practices constitute false, misleading and deceptive advertising.

22 71. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the
23 sale of the Products within a reasonable time after entry of judgment, unless packaging and
24 marketing is modified to disclose the omitted facts about the recyclability of the Products. Such
25 misconduct by Defendants, unless and until enjoined and restrained by order of this Court, will
26 continue to cause injury in fact to the general public and the loss of money and property in that
27 the Defendants will continue to violate the laws of California, unless specifically ordered to
28 comply with the same. This expectation of future violations will require current and future

1 consumers to repeatedly and continuously seek legal redress in order to recover monies paid to
2 Defendants to which Defendants are not entitled. Plaintiff, those similarly situated and/or other
3 consumers nationwide have no other adequate remedy at law to ensure future compliance with
4 the California Business and Professions Code alleged to have been violated herein.

5 **PLAINTIFF'S THIRD CAUSE OF ACTION**

6 **(Fraud, Deceit and/or Misrepresentation)**

7 **On Behalf of Herself and the Class**

8 72. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint
9 as if set forth herein.

10 73. Defendants fraudulently and deceptively led Plaintiff to believe that the Products
11 were "Recycling" bags when the bags are not suitable for disposing of recyclable waste and are
12 not recyclable. Defendants deceptively failed to inform Plaintiff, and those similarly situated,
13 that the Products contaminate the recycling waste stream, decrease the recyclability of their
14 otherwise recyclable items, and are not recyclable.

15 74. These misrepresentations and omissions were material at the time they were
16 made. They concerned material facts that were essential to the analysis undertaken by Plaintiff
17 as to whether to purchase the Products.

18 75. Defendants made identical misrepresentations and omissions to members of the
19 Class regarding the Products.

20 76. Plaintiff and those similarly situated relied to their detriment on Defendants'
21 fraudulent misrepresentations and omissions. Had Plaintiff and those similarly situated been
22 adequately informed and not intentionally deceived by Defendants, they would have acted
23 differently by, without limitation, not purchasing (or paying less for) the Products.

24 77. Defendants had a duty to inform class members at the time of their purchases
25 that the Products were not suitable for disposing of recyclable waste and are made from
26 materials that are not recyclable. Defendants omitted to provide this information to class
27 members. Class members relied to their detriment on Defendants' omissions. These omissions
28 were material to the decisions of the class members to purchase the Products. In making these

1 omissions, Defendants breached their duty to class members. Defendants also gained financially
2 from, and as a result of, their breach.

3 78. By and through such fraud, deceit, misrepresentations and/or omissions,
4 Defendants intended to induce Plaintiff, and those similarly situated, to alter their position to
5 their detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff, and
6 those similarly situated, to, without limitation, pay a premium to purchase the Products.

7 79. As a direct and proximate result of Defendants' misrepresentations and
8 omissions, Plaintiff, and those similarly situated, have suffered damages. In particular, Plaintiff
9 seeks to recover on behalf of herself and those similarly situated the price premium paid for the
10 Products, i.e., the difference between the price consumers paid for the Products and the price
11 that they would have paid but for Defendants' misrepresentation. This premium can be
12 determined by using econometric or statistical techniques such as hedonic regression or conjoint
13 analysis.

14 80. Defendants' conduct as described herein was willful and malicious and was
15 designed to maximize Defendants' profits even though Defendants knew that it would cause
16 loss and harm to Plaintiff and those similarly situated.

17 **PLAINTIFF'S FOURTH CAUSE OF ACTION**

18 **(Negligent Misrepresentation)**

19 **On Behalf of Herself and the Class**

20 81. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint
21 as if set forth herein.

22 82. Defendants provided false and misleading information regarding the Products,
23 representing that the wipes are "Recycling" bags when the Products are not suitable for
24 recycling waste and are not recyclable. Defendants deceptively failed to inform Plaintiff, and
25 those similarly situated, that the Products contaminate the recycling waste stream, decrease the
26 recyclability of their otherwise recyclable items, and are not recyclable.

27 83. These representations were material at the time they were made. They concerned
28 material facts that were essential to the analysis undertaken by Plaintiff as to whether to

1 purchase the Products.

2 84. Defendants made identical misrepresentations and omissions to members of the
3 Class regarding the Products.

4 85. Defendants should have known their representations to be false and had no
5 reasonable grounds for believing them to be true when they were made.

6 86. By and through such negligent misrepresentations, Defendants intended to
7 induce Plaintiff and those similarly situated to alter their position to their detriment. Specifically,
8 Defendants negligently induced Plaintiff, and those similarly situated to, without limitation, to
9 purchase the Products.

10 87. Plaintiff and those similarly situated relied to their detriment on Defendants'
11 negligent misrepresentations. Had Plaintiff and those similarly situated been adequately
12 informed and not intentionally deceived by Defendants, they would have acted differently by,
13 without limitation, not purchasing (or paying less for) the Products.

14 88. Plaintiff and those similarly situated have suffered damages. In particular,
15 Plaintiff seeks to recover on behalf of herself and those similarly situated the price premium
16 paid for the Products, i.e., the difference between the price consumers paid for the Products and
17 the price that they would have paid but for Defendants' misrepresentation. This premium can be
18 determined by using econometric or statistical techniques such as hedonic regression or conjoint
19 analysis.

20 **PLAINTIFF'S FIFTH CAUSE OF ACTION**

21 **(Unfair, Unlawful and Deceptive Trade Practices,**

22 **Business and Professions Code § 17200, *et seq.*)**

23 **On Behalf of Herself and the Class**

24 89. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint
25 as if set forth herein.

26 90. Within four (4) years preceding the filing of this Complaint, and at all times
27 mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful and
28 deceptive trade practices in California by engaging in the conduct outlined in this Complaint.

1 91. Defendants have engaged, and continue to engage, in unfair practices as
2 described herein, in violation of the Unfair Competition Law, California Business & Professions
3 Code §§ 17200 et seq. (the “UCL”), by, without limitation:

- 4 a. deceptively representing to Plaintiff, and those similarly situated, the Products
5 are “Recycling” bags;
- 6 b. failing to inform Plaintiff, and those similarly situated, that the Products are not
7 suitable for disposing of recyclable waste because they are a contaminant and
8 decrease the recyclability of otherwise recyclable items;
- 9 c. failing to inform Plaintiff, and those similarly situated, that the Products are
10 made with materials that are not recyclable;
- 11 d. contravening and undermining state policies expressed in California Public
12 Resource Code sections 42355 (“[u]se of the term ‘degradable,’ ‘biodegradable,’
13 ‘decomposable,’ or other like terms on plastic products is inherently misleading
14 unless the claim includes a thorough disclaimer providing necessary qualifying
15 details, including, but not limited to, the environments and timeframes in which
16 the claimed action will take place”) and 42355.5 (it is “the public policy of
17 [California] that environmental marketing claims, whether explicit or implied,
18 should be substantiated by competent and reliable evidence to prevent deceiving
19 or misleading consumers about the environmental impact of plastic products”);
20 and
- 21 a. contravening and undermining state and local policies in favor of recycling,
22 recycling programs, and reducing the amount of plastic in landfills and the
23 amount of pollution from plastic in the environment.

24 92. Defendants have engaged, and continue to engage, in unlawful practices as
25 described herein, in violation of the UCL, by, without limitation, violating the following laws:

- 26 a. the Federal Trade Commission Green Guides regulations, including, without
27 limitation, 16 C.F.R. §§ 260.2, 260.12(a), and 260.12(b) as described herein;
- 28 b. the Environmental Marketing Claims Act, including, without limitation, Cal. Bus.

1 & Prof. Code § 17580(a) (Defendants have not maintained in written form in
2 their records information and documentation supporting the validity of their
3 representation) and §17580.5(a) (Defendants’ representations and omissions
4 complained of herein constitute untruthful, deceptive, or misleading
5 environmental marketing claims) as described herein (collectively,
6 “Greenwashing”);

- 7 c. the CLRA as described herein; and
- 8 d. the FAL as described herein.

9 93. Defendants have engaged, and continue to engage, in fraudulent practices as
10 described herein, in violation of the UCL, by, without limitation:

- 11 a. deceptively representing to Plaintiff, and those similarly situated, the Products
12 are “Recycling” bags;
- 13 b. failing to inform Plaintiff, and those similarly situated, that the Products are not
14 suitable for disposing of recyclable waste because they are a contaminant and
15 decrease the recyclability of otherwise recyclable items; and
- 16 c. failing to inform Plaintiff, and those similarly situated, that the Products are
17 made with materials that are not recyclable.

18 94. Plaintiff and those similarly situated relied to their detriment on Defendants’
19 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated
20 been adequately informed and not deceived by Defendants, they would have acted differently
21 by not purchasing (or paying less for) the Product

22 95. Defendants’ acts and omissions are likely to deceive reasonable consumers and
23 the general public.

24 96. Defendants engaged in these unfair practices to increase their profits.
25 Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by
26 section 17200, *et seq.* of the California Business and Professions Code.

27 97. The aforementioned practices, which Defendants have used to their significant
28 financial gain, also constitute unlawful competition and provide an unlawful advantage over

1 Defendants' competitors as well as injury to the general public.

2 98. As a direct and proximate result of such actions, Plaintiff and the other members
3 of the Class have suffered and continue to suffer injury in fact and have lost money and/or
4 property as a result of such deceptive and/or unlawful trade practices and unfair competition in
5 an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of
6 this Court. In particular, Plaintiff and those similarly situated paid a price premium for the
7 Products, i.e., the difference between the price consumers paid for the Products and the price
8 that they would have paid but for Defendants' misrepresentation. This premium can be
9 determined by using econometric or statistical techniques such as hedonic regression or conjoint
10 analysis. Alternatively, Plaintiff and those similarly situated will seek a full refund of the price
11 paid upon proof that the sale of the Products was unlawful.

12 99. Plaintiff seeks, on behalf of those similarly situated, equitable relief, including
13 restitution for the premium and/or the full price that she and others paid to Defendants as result
14 of Defendants' conduct. Plaintiff and the Class lack an adequate remedy at law to obtain such
15 relief with respect to her "unfairness" claims in this UCL cause of action, because there is no
16 cause of action at law for "unfair" conduct. Plaintiff and the Class similarly lack an adequate
17 remedy at law to obtain such relief with respect to her "unlawfulness" claims in this UCL cause
18 of action because the FTC Green Guides and Environmental Claims Marketing Act do not
19 provide a direct cause of action, so Plaintiff and the Class must allege those violations as
20 predicate acts under the UCL to obtain relief.

21 100. Plaintiff also seeks equitable relief, including restitution, with respect to her UCL
22 unlawfulness claims for violations of the CLRA, FAL and her UCL deceptiveness claims.
23 Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations in
24 this paragraph only hypothetically and as an alternative to any contrary allegations in her causes
25 of action 1, 3 and 4, in the event that such causes of action will not succeed. Plaintiff and the
26 Class may be unable to obtain monetary, declaratory and/or injunctive relief directly under
27 causes of action 1, 3 and 4 and will lack an adequate remedy of law, if the Court requires her to
28 show classwide reliance and materiality beyond the objective reasonable consumer standard

1 applied under the UCL, because Plaintiff may not be able to establish each Class member's
2 individualized understanding of Defendants' misleading representations as described in
3 paragraphs 17-22 of this Complaint, but the UCL does not require individualize proof of
4 deception or injury by absent class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013,
5 1020, 1023-25 (distinguishing, for purposes of CLRA claim, among class members for whom
6 website representations may have been materially deficient, but requiring certification of UCL
7 claim for entire class). In addition, Plaintiff and the Class may be unable to obtain such relief
8 under causes of action 3 and 4 and will lack an adequate remedy at law, if Plaintiff is unable to
9 demonstrate the requisite mens rea (intent, reckless, and/or negligence), because the UCL
10 imposes no such mens rea requirement and liability exists even if Defendants acted in good
11 faith.

12 101. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
13 described trade practices are fraudulent and/or unlawful.

14 102. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the
15 sale of the Products within a reasonable time after entry of judgment, unless packaging and
16 marketing is modified to remove the implication that the Products are recyclable and disclose
17 the omitted facts about the recyclability of the Products. Such misconduct by Defendants, unless
18 and until enjoined and restrained by order of this Court, will continue to cause injury in fact to
19 the general public and the loss of money and property in that Defendants will continue to violate
20 the laws of California, unless specifically ordered to comply with the same. This expectation of
21 future violations will require current and future consumers to repeatedly and continuously seek
22 legal redress in order to recover monies paid to Defendants to which Defendants were not
23 entitled. Plaintiff, those similarly situated and/or other consumers nationwide have no other
24 adequate remedy at law to ensure future compliance with the California Business and
25 Professions Code alleged to have been violated herein.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, on behalf of herself and those similarly situated, respectfully
28 request that the Court enter judgement against Defendants as follows:

- 1 A. Certification of the proposed Class, including appointment of Plaintiff’s counsel
2 as class counsel;
- 3 B. An order temporarily and permanently enjoining Defendants from continuing the
4 unlawful, deceptive, fraudulent, and unfair business practices alleged in this
5 Complaint;
- 6 C. An award of compensatory damages in an amount to be determined at trial;
- 7 D. An award of statutory damages in an amount to be determined at trial;
- 8 E. An award of punitive damages in an amount to be determined at trial;
- 9 F. An award of treble damages;
- 10 G. An award of restitution in an amount to be determined at trial;
- 11 H. An order requiring Defendants to pay both pre- and post-judgment interest on
12 any amounts awarded;
- 13 I. For reasonable attorney’s fees and the costs of suit incurred; and
- 14 J. For such further relief as this Court may deem just and proper.

15 **JURY TRIAL DEMANDED**

16 Plaintiff hereby demands a trial by jury.

17 Dated: May 11, 2022

GUTRIDE SAFIER LLP

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19 

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22 _____
23 Seth A. Safier, Esq.
24 Marie McCrary, Esq.
25 100 Pine Street, Suite 1250
26 San Francisco, CA 94111

27 Attorneys for Plaintiff

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EXHIBIT A

I, Lisabeth Hanscom, declare:

1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2015.5 and California Civil Code section 1780(d).

3. I purchased a box of Hefty Recycling Bags in Alameda County, California on or around September 15, 2020.

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

Executed this 6th day of May 2021, in Oakland, California.

DocuSigned by:

728E2CD7C1EC4CD...

Lisabeth Hanscom

Exhibit B

GUTRIDE SAFIER LLP Attorneys at Law

May 10, 2021

**VIA CERTIFIED MAIL;
RETURN RECEIPT REQUESTED**

Reynolds Consumer Products Inc.
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Reynolds Consumer Products LLC
c/o Corporation Service Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: On-Going Violations of California Law

Dear Sirs and Madams:

I write on behalf of my client, Lisabeth Hanscom, and a proposed class of similarly situated persons she will seek to represent, to advise you that Reynolds Consumer Products Inc. and Reynolds Consumer Products LLC, their parents, franchisees, operating entities, and subsidiaries (collectively, “Defendants”) have violated, and continue to violate, California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17500 *et seq.*; the False Advertising Law, Cal. Bus. & Prof. Code § 17200 *et seq.*; the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 *et seq.*; the Environmental Marketing Claims Act, Cal. Bus. & Prof. Code § 17580(a); 16 C.F.R. § 260 *et seq.* (the “Green Guides”); Cal Civ. Code §§ 1709-1710 (misrepresentation); and California common law in connection with the marketing, advertisement, and sale of Hefty Recycling Bags (the “Products” or “Bags”). I ask that Defendants remedy these violations and those described more fully in the Complaint served with this letter within thirty (30) days.

Ms. Hanscom purchased Hefty Recycling Bags from the Safeway at 6310 College Ave. in Oakland, CA on or around September 15, 2020. Ms. Hanscom saw the claim “Recycling” bags on the Products’ label and purchased them because she believed that they were suitable for disposing of recyclable waste and were themselves recyclable. Recycling is important to Ms. Hanscom and she makes an effort to recycle her waste at home whenever possible. She filled the Products with recyclable waste and placed the filled Bags in her recycling bin for curbside pickup, believing they would be recycled. Shortly after purchasing and using the Products, Ms. Hanscom learned that they are made from low-density polyethylene (LDPE, aka Plastic No. 4)

Reynolds Consumer Products

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film that is not recyclable and, as a result, the Bags contaminate the recyclable waste stream and decrease the recyclability of otherwise recyclable materials. If Ms. Hanscom had known the truth about the Products, she would not have purchased them or, at a minimum, she would have paid less for them and not used them for her recyclable waste.

Defendants compound their “Recycling” misrepresentation with additional claims on the Products and on their website such as “Perfect For All Your Recycling Needs;” “Designed to Handle All Types of Recyclables;” “designed to handle your heaviest recycling jobs;” and “these transparent bags make it easy to sort your recyclables and avoid the landfill.” Defendants also use images of the Products being placed in recycling bins in their advertising that cause reasonable consumers to incorrectly believe that the Bags are suitable for recycling and are recyclable. Although some recycling facilities accept LDPE plastic, it cannot actually be recycled. Products made from LDPE plastic are typically separated and baled with mixed plastics. There is virtually no domestic market for mixed plastic and, over the last few years, the export market for mixed plastic bales has also completely disappeared. As a result, mixed plastics are either burned or sent to landfills.¹ Not only are LDPE plastics, such as the Products, unrecyclable, they also contaminate the waste stream and decrease the recyclability of otherwise recyclable items. Because the Products are made of LDPE film they are especially problematic. Plastic films frequently harm the machinery used to sort plastic waste. As a result, many municipal recycling facilities do not accept plastic bags at all. Indeed, if a consumer uses an LDPE bag to contain their recyclable waste, recycling facilities are typically forced to throw away the bag and the otherwise recyclable items that it contains.² Defendants’ claims and omissions that the Products are “Recycling” bags have misled tens of thousands of consumers into paying a premium for a Product that is neither suitable for recycling nor recyclable.

Defendants’ sale and marking of the Products as “Recycling” bags while omitting that the Products are unsuitable for disposing of recyclable plastic waste and are unrecyclable violates the following provisions of California Civil Code section 1770(a):

- misrepresenting the source, sponsorship, approval, or certification of goods or services;
- misrepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which she or she

¹ *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, Greenpeace, p. 4, available at <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf> (last visited Apr. 23, 2021).

² Angela Hill, *Bay Area recycling tips: Can I recycle that or not?*, The Mercury News, <https://www.mercurynews.com/2016/03/08/bay-area-recycling-tips-can-i-recycle-that-or-not/> (last visited May 6, 2021).

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does not have;

- misrepresenting that the goods or services that it sells are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they were not;
- disparaging the goods, services, or business of another by false or misleading representation of fact; and/or
- advertising goods or services with intent not to sell them as advertised.

Plaintiff demands that Defendants, within thirty (30) days, do each of the following:

- Identify (or make reasonable efforts to identify) all consumers similarly situated—i.e., all purchasers of the Products;
- Notify all consumers so identified that upon their request, Defendants will provide to them a full cash refund for the Product(s) they purchased;
- Give any such requested remedy to the consumers in a reasonable amount of time; and
- Immediately cease from engaging, or if immediate cessation is impossible or unreasonably expensive under the circumstances, then cease from engaging within a reasonable time, in the above-complained of methods, act, or practices or print a conspicuous disclaimer regarding the recyclability and/or unrecyclable plastic content of the Products on the label.

If Defendants fail to comply with this request within thirty (30) days, it may be liable for the following monetary amounts under the Consumers Legal Remedies Act:

- Actual damages suffered;
- Punitive damages;
- Costs and attorneys' fees related to suit; and
- Penalties of up to \$5,000.00 for each incident where senior citizens have suffered substantial physical, emotional or economic damage resulting from Defendants' conduct.

A failure to act within thirty (30) days will be considered to be a denial of this claim and my client will act accordingly. I hope, however, that Defendants correct these deficiencies immediately so that expensive litigation is not necessary.

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Please call me at (415) 336-6545 to further discuss this matter. Otherwise, we look forward to Defendants immediately changing their practices and compensating the above-identified individuals.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Seth A. Safier", with a long horizontal flourish extending to the right.

Seth A. Safier, Esq.

Enclosure

Complaint
Document preservation letter