

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

SHANA GUDGEL, on Behalf of  
Herself and All Others Similarly  
Situated,

Plaintiff,

vs.

REYNOLDS CONSUMER  
PRODUCTS, INC. & REYNOLDS  
CONSUMER PRODUCTS, LLC,

Defendants.

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CASE: 22-CV-01149-PGB-DCI

AMENDED CLASS ACTION  
COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, Shana Gudgel (“Plaintiff”), by and through her attorneys, brings this action on behalf of herself and all others similarly situated against Reynolds Consumer Products, Inc. & Reynolds Consumer Products, LLC (“Defendants” or “Reynolds”). Plaintiff hereby alleges, on information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2)(A), as the amount in controversy exceeds \$5 million, exclusive of interests and costs; it is a class action of over 100 members; and the Plaintiff is a citizen of a state different from at least one Defendant.

2. This Court has personal jurisdiction over Defendants. Defendants have sufficient minimum contacts with the state of Florida and purposefully availed itself, and continues to avail itself, of the jurisdiction of this Florida through the privilege of conducting its business ventures in the state of Florida, thus rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice.

3. Venue is proper in this district under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district, as Defendants do business throughout this district, and Plaintiff made her purchase of Defendants' Hefty Recycling Trash Bags in Titusville, Florida from a Walmart in this district and her purchased Hefty Recycle Trash Bags was delivered to, and used, in this district.

### **THE PARTIES**

4. Plaintiff, Shana Gudgel is a natural person and a citizen of Brevard County, Florida, residing in Titusville. Plaintiff purchased the Hefty Recycling Trash Bags from a local Walmart. Prior to her purchase, Plaintiff saw and reviewed Defendants' advertising claims on the packaging and labeling itself, and she made her purchase of the trash bags in reliance thereon. Plaintiff specifically relied upon representations made by Defendant that its Hefty Recycling bags were suitable for recycling. Plaintiff did not receive the promised benefits or receive the full value of her purchase.

5. Defendant Reynolds Consumer Products, Inc. is a publicly traded corporation organized and existing under the laws of the state of Delaware, with its principal place of business located in Lake Forest, Illinois. It is the parent company of Defendant Reynolds Consumer Products, LLC.

6. Defendant Reynolds Consumer Products, LLC is a company organized and existing under the laws of the state of Delaware, with its principal place of business located in Lake Forest, Illinois. It is a wholly-owned subsidiary of Reynolds Consumer Products, Inc., and owns the “Hefty” trademark.

7. Plaintiff reserves the right to amend this Complaint to add different or additional defendants, including without limitation any officer, director, employee, supplier, or distributor of Defendants who has knowingly and willfully aided, abetted, or conspired in the false and deceptive conduct alleged herein.

### **FACTUAL ALLEGATIONS**

8. The Hefty "Recycling" bags are sold in 13- and 30-gallon sizes (the “Products”). Both sizes are sold in packaging depicted below. The illustration depicts the front of a typical box of Hefty Recycling Bags.



9. Defendants place the prominent representation "RECYCLING" on the front label of the Hefty "Recycling" trash bags with a green background and white font. Next to the representation, Defendants include images of the Hefty "Recycling" trash bags filled with recyclable waste.

10. The back of the package (pictured above) states: "HEFTY RECYCLING BAGS ARE PERFECT FOR ALL YOUR RECYCLING NEEDS."

11. The back label also states: "DESIGNED TO HANDLE ALL TYPES OF RECYCLABLES" and "TRANSPARENT FOR QUICK SORTING AND CURBSIDE IDENTIFICATION." A graphic of a blue recycling truck is included, with the "chasing arrows" recycling symbol prominently displayed on its side.

12. Defendants' website provided additional representations about the suitability of the Hefty "Recycling" trash bags for recycling, stating that they "[r]educe your environmental impact" and are "designed to handle your heaviest recycling jobs." Defendants add, "[t]hese transparent bags 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

13. Defendants sold the Hefty "Recycling" trash bags on their website with images demonstrating how to use the bags:





14. Defendants also sold the Hefty "Recycling" trash bags to consumers along with a video advertisement showing that the bags should be put in the recycle bin with other recyclables.

15. Under Florida Statute 403.703 "Recyclable material" means those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste and "Recycling" means any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products. Such raw materials or intermediate or final products include, but are not limited to, crude oil, fuels, and fuel substitutes.

16. Despite Defendants' representations, the Hefty "Recycling" trash bags are not recyclable at Florida solid waste disposal facilities and are not suitable for the disposal of recyclable products at solid waste disposal facilities.

17. Hefty "Recycling" trash bags are made from low-density polyethylene and are not recyclable at Florida's solid waste disposal facilities.

18. When Hefty "Recycling" trash bags are delivered by waste haulers to a Florida solid waste disposal facility the bags and all of the otherwise recyclable items contained within them are not delivered to a recycling facility but are treated as regular solid waste materials.

19. Florida's waste disposal facilities do not recycle either Hefty "Recycling" trash bags or the recyclable materials contained in them.

20. The otherwise recyclable items (like cardboard, glass, aluminum, etc.) placed into Hefty "Recycling" trash bags by Florida consumers who are trying to recycle those items ultimately end up in landfills or incinerators and are not recycled.

### **FACTS COMMON TO ALL CLASS MEMBERS**

21. Less than 10 percent of American plastic waste is recycled.<sup>1</sup> In all, the United States contributed up to 2.24 million metric tons into the environment in 2016, and of that, more than half—1.5 million metric tons—was along coastlines, meaning it had a high probability of slipping into the oceans. Although the U.S. accounted for just 4 percent of the global population in 2016, it generated 17 percent of all plastic waste.<sup>2</sup>

22. The staggering amount of plastic waste accumulating in the environment is accompanied by an array of negative side effects. For example, plastic debris is frequently ingested by marine animals and other wildlife, which can be both

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<sup>1</sup> <https://www.nationalgeographic.com/environment/article/us-plastic-pollution>

<sup>2</sup> *Id.*



injurious and poisonous. Floating plastic is also a vector for invasive species, and plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed by humans and other animals. Plastic litter on the streets and in and around our parks and beaches also degrades the quality of life for residents and visitors. More recently, scientists have discovered that plastic waste releases large amounts of methane, a powerful greenhouse gas, as it degrades. Thus, plastic waste is also thought to be a significant potential cause of global climate change. Consumers, including Plaintiff, actively seek out products that are recyclable to prevent the increase in global waste and to minimize their environmental footprint.

23. Pursuant to that Federal Trade Commission, the term “environmental marketing claim” includes any claim contained in the Guides for use of Environmental Marketing Claims published by the Federal Trade Commission (the “Green Guides”). See also 16 C.F.R. § 260.1, et seq. Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.” 16 C.F.R. § 260.12(a).

24. The Green Guides’ definition of “recyclable” is consistent with reasonable consumer expectations. For instance, the dictionary defines the term “recycle” as: (1) convert (waste) into reusable material, (2) return (material) to a previous stage in a cyclic process, or (3) use again. Oxford Dictionary, Oxford University Press 2018. Accordingly, reasonable consumers expect that products advertised, marketed, sold, labeled and/or represented as recyclable will be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.

25. In an attempt to take advantage of consumers’ concerns with respect to the environmental consequences caused by such products, Defendants advertise,

market and sell the Products as for “Recycling.” As shown above, these claims are uniform, consistent and prominently displayed on each of the Products’ labels.

26. Like most plastic bags, the Products are made of low-density polyurethane, thus they do not differ in any significant way from the millions of other plastic bags that people receive at grocery stores and other retail outlets.

27. Despite prominently claiming to be for “Recycling”, many municipalities do not accept plastic bags—such as the Products—for recycling. As a result, they cannot be recycled.

28. Environmentally motivated consumers who purchase the Products in the belief that they are recyclable are thus unwittingly hindering recycling efforts. Moreover, Plaintiff and consumers have no way of knowing whether the Products are actually segregated from the general waste stream, cleaned of contamination, or reused or converted into a material that can be reused or used in manufacturing or assembling another item.

29. Most consumers believe that their Products are recyclable based on Defendants’ representations. However, the Products will end up in a landfill as they cannot be recycled by MRFs in the United States. Defendants’ representations that the Products are recyclable are therefore per se deceptive under the Green Guides. Rather than accurately advertise its Products through its labeling, Defendants prey on consumers’ desire for environmentally friendly products to drive substantial profits.

30. All reasonable consumers, including Plaintiff, read and relied on Defendants’ “Recycling” representations when purchasing the Products. Defendants’ “Recycling” representation was material to Plaintiff’s and Class Members’ decision to purchase the Products.

31. Defendants’ marketing efforts are made in order to – and do in fact – induce consumers to purchase the Products at a premium because consumers believe they are getting products that are for “Recycling.”

32. As shown throughout this Complaint, however, Defendants' Products are not for "Recycling" products. Defendants' representations and omissions are false and misleading. Defendants intended for Plaintiff and Class Members to be deceived or misled by their misrepresentations and omissions. Defendants' deceptive and misleading practices proximately caused harm to Plaintiff and the Class.

33. Plaintiff and Class Members would not have purchased the Products or would have not paid as much for the Products, had they known the truth about the mislabeled and falsely advertised Products.

### **FED. R. CIV. P. 9(b) ALLEGATIONS**

34. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." To the extent necessary, as detailed in the paragraphs above and below, Plaintiff has satisfied the requirements of Rule 9(b) by establishing the following elements with sufficient particularity.

35. **WHO:** Defendants, Reynolds Consumer Products, Inc. and Reynolds Consumer Products, LLC, made material misrepresentations and/or omissions of fact in its labeling and marketing of the Products by representing that the Products are for "Recycling" and/or failing to inform consumers that most municipalities do not accept plastic bags for recycling.

36. **WHAT:** Defendants' conduct here was and continues to be fraudulent because it has the effect of deceiving consumers into believing that the Products are for "Recycling." Defendants omitted from Plaintiff and Class Members that the Products are not for "Recycling" because they are not recyclable at MFRs and are not suitable for the disposal of recyclable products at MFRs. Defendants knew or should have known this information is material to all reasonable consumers and impacts consumers' purchasing decisions. Yet, Defendants have and continue to represent that the Products are for "Recycling" when they are not, and have

omitted from the Products' labeling the fact they are not recyclable at MFRs and are not suitable for the disposal of recyclable products at MFRs.

37. **WHEN:** Defendants made material misrepresentations and/or omissions detailed herein, including that the Products are for "Recycling" continuously throughout the applicable Class period(s).

38. **WHERE:** Defendants' material misrepresentations and omissions, that the Products are for "Recycling", were located on the very center of the front label of the Products in bold lettering surrounded by a bubble that contrasts with the background of the packaging, which instantly catches the eye of all reasonable consumers, including Plaintiff, at the point of sale in every transaction. The Products are sold in Defendants' brick and mortar stores and online stores.

39. **HOW:** Defendants made written misrepresentations right on the front label of the Products that the Products were for "Recycling" even though they are not recyclable at MFRs and are not suitable for the disposal of recyclable products at MFRs. As such, Defendants' "Recycling" representations are false and misleading. Moreover, Defendants omitted from the Products' labeling the fact that there they are not recyclable at MFRs and are not suitable for the disposal of recyclable products at MFRs. And as discussed in detail throughout this Complaint, Plaintiff and Class Members read and relied on Defendants' "Recycling" representations and omissions before purchasing the Products.

40. **WHY:** Defendants misrepresented their Products as being for "Recycling" and omitted from the Products' labeling the fact that they are not recyclable at MFRs and are not suitable for the disposal of recyclable products at MFRs for the express purpose of inducing Plaintiff and Class Members to purchase the Products at a substantial price premium. As such, Defendants profited by selling the misrepresented Products to at least thousands of consumers throughout the nation.

### **CLASS ACTION ALLEGATIONS**

41. **Class Definition:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3). Specifically, the Classes are defined as:

National Class: All persons in the United States who purchased the Products during the fullest period of law.

In the alternative, Plaintiff brings this action on behalf of the following State Sub-Class:

Florida Sub-Class: All persons in the State of Florida who purchased the Products during the fullest period of law.

42. Plaintiff reserves the right to amend the Class definitions if further investigation and discovery indicates that the Class definitions should be narrowed, expanded, or otherwise modified.

43. **Numerosity and Ascertainability:** Plaintiff does not know the exact number of members of the putative classes. Due to Plaintiff's initial investigation, however, Plaintiff is informed and believes that the total number of Class members is at least in the tens of thousands, and that members of the Class are numerous and geographically dispersed throughout Florida and the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery, including Defendants' records, either manually or through computerized searches.

44. **Typicality and Adequacy:** Plaintiff's claims are typical of those of the proposed Class, and Plaintiff will fairly and adequately represent and protect the

interests of the proposed Class. Plaintiff does not have any interests that are antagonistic to those of the proposed Class. Plaintiff has retained counsel competent and experienced in the prosecution of this type of litigation.

45. **Commonality:** The questions of law and fact common to the Class members, some of which are set out below, predominate over any questions affecting only individual Class members:

- a. whether Defendant committed the conduct alleged herein;
- b. whether Defendants' conduct constitutes the violations of laws alleged herein;
- c. whether Defendants' labeling, sale and advertising set herein are unlawful, untrue, or are misleading, or reasonably likely to deceive;
- d. whether the Hefty Recycle Trash Bags are adulterated and/or misbranded under the Florida Health & Safety Code or federal law;
- e. whether Defendant knew or should have known that the representations were false or misleading;
- f. whether Defendant knowingly concealed or misrepresented material facts for the purpose of inducing consumers into spending money on the Hefty Recycle Trash Bags;
- g. whether Defendants' representations, concealments and non-disclosures concerning the Hefty Recycle Trash Bags are likely to deceive the consumer;

h. whether Defendants' representations, concealments and non-disclosures concerning the Hefty Recycle Trash Bags violate FDUTPA and/or the common law;

i. whether Defendant should be permanently enjoined from making the claims at issue; and

j. whether Plaintiff and the Class are entitled to restitution and damages.

**46. Predominance and Superiority:** Common questions, some of which are set out above, predominate over any questions affecting only individual Class members. A class action is the superior method for the fair and just adjudication of this controversy. The expense and burden of individual suits makes it impossible and impracticable for members of the proposed Class to prosecute their claims individually and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- a. given the complexity of issues involved in this action and the expense of litigating the claims, few, if any, Class members could afford to seek legal redress individually for the wrongs that Defendant committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;
- b. when Defendants' liability has been adjudicated, claims of all Class members can be determined by the Court;
- c. this action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort and expense, and ensure uniformity of decisions; and
- d. without a class action, many Class members would continue to suffer injury, and Defendants' violations of law will continue without redress while Defendant continues to reap and retain the substantial proceeds of their wrongful conduct.

47. **Manageability:** The trial and litigation of Plaintiff's and the proposed Class claims are manageable. Defendant has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief and declaratory relief with respect to the Class as a whole.

## COUNT I

### **For Violations of Florida's Deceptive and Unfair Trade Practices Act,**

**Fla. Stat. 501.201 et seq.**



48. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1-20 above as if fully set forth herein.

49. Plaintiff brings this claim on her own behalf and on behalf of each member of the Florida Class.

50. Defendant violated and continues to violate Florida's Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of their business.

51. The material misstatements and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public into believing that Hefty Recycle Trash Bags were suitable for recycling.

52. Plaintiff and Class members relied upon these advertisements in deciding to purchase the Hefty Recycle Trash Bags product. Plaintiff's reliance was reasonable because of Defendants' reputation as a reliable company.

53. Had Plaintiff known that the Hefty Recycle Trash Bags product was not as advertised, she would not have purchased the product. As a result of Defendants' deceptive and unfair acts, Plaintiff and Class members have been damaged.

54. Defendants' conduct offends established public policy, and is immoral, unethical, oppressive, and unscrupulous to consumers.

55. Plaintiff and Class members are entitled to damages in an amount to be proven at trial.

56. Defendant should also be ordered to cease its deceptive advertising and should be made to engage in a corrective advertising campaign to inform consumers that its Hefty Recycle Trash Bags are not suitable for recycling.

## **COUNT II**

### **For False and Misleading Advertising,**

#### **Fla. Stat. § 817.41**

57. Plaintiff re-alleges and incorporates by reference the allegations of in the above-referenced paragraphs 1-20 of the Complaint as if fully set forth herein.

58. Plaintiff brings this claim on her own behalf and on behalf of each member of the Florida Class.

59. On their website, in print advertisements, and in other forms of advertisements, Defendants made numerous misrepresentations of material fact regarding the quality of the Hefty Recycle Trash Bags product.

60. Defendants knew that these statements were false.

61. Defendants intended for consumers to rely on its false statements for the purpose of selling the Hefty Recycle Trash Bags product.

62. Plaintiff and Class members did in fact rely upon these statements. Reliance was reasonable and justified because of Defendants' reputation as a reliable company.

63. As a result of Defendants' misrepresentations, Plaintiff and Class members suffered damages in the amount paid for the Hefty Recycle Trash Bags.

64. Plaintiff and Class members are entitled to damages and injunctive relief as set forth above.

### **COUNT III**

#### **Fraud**

#### **(On Behalf of the Nationwide Class)**

65. Plaintiff repeats and realleges the allegations in the previous paragraphs as if fully set forth herein. Plaintiff brings this cause of action on behalf of themselves and the Nationwide Class. As alleged herein, Defendants knowingly made material misrepresentations and omissions regarding the Products on the Products' labeling and packaging in the Products' advertisements, and/or on its website, specifically the "Recycling" representations and omissions alleged more fully herein.

66. Defendants made these material "Recycling" representations and omissions in order to induce Plaintiff and putative Nationwide Class Members to purchase the Products.

67. Defendants knew the "Recycling" representations and omissions regarding the Products were false and misleading but nevertheless made such representations through the marketing, advertising and on the Products' labeling.

68. In reliance on these “Recycling” representations and omissions, Plaintiff and putative Nationwide Class Members were induced to, and did, pay monies to purchase the Products.

69. Had Plaintiff and the Nationwide Class known the truth about the Products, they would not have purchased the Products.

70. As a proximate result of the fraudulent conduct of Defendants, Plaintiff and the putative Nationwide Class paid monies to Defendants, through their regular retail sales channels, to which Defendants are not entitled, and have been damaged in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated members of the Classes, pray for relief and judgment, including entry of an order:

A. Declaring that this action is properly maintained as a class action, certifying the proposed Class(es), appointing Plaintiff as Class Representative and appointing Plaintiff’s counsel as Class Counsel;

B. Directing that Defendants bear the costs of any notice sent to the Class(es);

C. Declaring that Defendants must disgorge, for the benefit of the Class(es), all or part of the ill-gotten profits they received from the sale of the Products, or order Defendants to make full restitution to Plaintiff and the members of the Class(es);

D. Awarding restitution and other appropriate equitable relief;

E. Granting an injunction against Defendants to enjoin them from conducting their business through the unlawful, unfair and fraudulent acts or practices set forth herein;

F. Granting an Order requiring Defendants to fully and appropriately recall the Products and/or to remove the claims on its website and elsewhere, including the “Recyclable” representations regarding the Products;

G. Ordering a jury trial and damages according to proof;

H. Enjoining Defendants from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

I. Awarding attorneys’ fees and litigation costs to Plaintiff and members of the Class(es);

J. Awarding civil penalties, prejudgment interest and punitive damages as permitted by law; and

K. Ordering such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: September 20, 2022

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