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Clerk of the Superior Court
By C. Miranda ,Deputy Clerk

1 Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com

2 Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com

3 **SULLIVAN & YAECKEL LAW GROUP, APC**
4 2330 Third Avenue
5 San Diego, California 92101
6 (619) 702-6760 * (619) 702-6761 FAX

7 Attorneys for Plaintiff JEFFREY HEAVEY, an Individual on behalf of himself and all others
8 similarly situated and the general public

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 JEFFREY HEAVEY, an Individual on) CASE NO.: 25CU014781C
12 behalf of himself and all others similarly)
13 situated and the general public,) (Proposed CLASS ACTION)

14 Plaintiffs,

) **CLASS ACTION COMPLAINT FOR:**

15 v.,

) **1. VIOLATION OF CALIFORNIA**
) **BUSINESS & PROFESSIONS CODE**
) **§17500, et seq., and**

16 WINCUP, INC., a Delaware Corporation,)
17 and DOES 1-100, inclusive,)

) **2. VIOLATION OF CALIFORNIA**
) **BUSINESS & PROFESSIONS CODE**
) **§17200, et seq.**

18 Defendants
19 _____)
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1 COMES NOW Plaintiff, JEFFREY HEAVEY, ("Plaintiff,") an Individual on behalf of
2 himself and all others similarly situated and the general public, and hereby alleges as follows:

3 Plaintiff brings this action on behalf of himself, and all others similarly situated, against
4 Defendants, WINCUP, INC. (hereinafter, "Defendants," or "WINCUP"). The allegations in this
5 Complaint, stated on information and belief, have evidentiary support, or are likely to have
6 evidentiary support after a reasonable opportunity for further investigation and discovery.
7

8 Specifically, this action involves "Greenwashing," wherein Defendants falsely advertise their
9 expanded polystyrene (EPS) foam products as "Recyclable," a term defined under California law.
10 Defendants' advertisements are false, deceptive and/or misleading, as EPS foam products are not
11 presently recyclable, and were not recyclable at any time within the operative Limitations Period.
12 Notably, EPS foam products are not legally allowed to be sold in the State of California. Given the
13 false, deceptive and/or misleading advertising constituting unlawful, unfair and/or fraudulent
14 business acts or practices, and the resultant damage, Defendants' are liable as set forth below.
15

16 **NATURE OF THE ACTION**
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18 1. Plaintiff files this class action lawsuit on behalf of himself and all similarly situated
19 California citizens who purchased EPS foam products manufactured, distributed, marketed and/or
20 sold by WINCUP, in the State of California, within the operative Limitations Period. The proposed
21 Class does not, and will not, include any individual who is not a citizen of, or a purchase made
22 outside of, the State of California.
23

24 2. This matter involves false, deceptive and/or misleading representations, by WINCUP,
25 that its EPS foam products are "recyclable."

26 3. The WINCUP representations that its EPS foam products are "recyclable" are false,
27 deceptive and/or misleading, pursuant to the plain and common definitions of the terms.
28

1 9. On information and belief, Plaintiff alleges that at all times herein mentioned, each
2 of the Defendants was acting as the agent, servant or employee of the other Defendants and that
3 during the times and places of the incident in question, Defendants and each of their agents, servants,
4 and employees became liable to Plaintiff and class members for the reasons described in the
5 complaint herein, and thereby proximately caused Plaintiff to sustain damages as set forth herein.
6

7 10. On information and belief, Plaintiff alleges that Defendants carried out a joint
8 scheme with a common business plan and policies in all respects pertinent hereto and that all acts
9 and omissions herein complained of were performed in knowing cooperation with each other.
10

11 11. On information and belief, Plaintiff alleges that the shareholders, executive officers,
12 managers, and supervisors of Defendants directed, authorized, ratified and/or participated in the
13 actions, omissions and other conduct that gives rise to the claims asserted herein. Defendants'
14 officers, directors, and high-level employees caused WINCUP products to be sold with knowledge
15 or reckless disregard that the statements and representations concerning the WINCUP products were
16 false, deceptive and/or misleading. Plaintiff is informed and believes, and thereon alleges, that the
17 Defendants are in some manner intentionally, negligently, or otherwise responsible for the acts,
18 omissions, occurrences, and transactions alleged herein. Given the above, Defendants' advertising
19 constitutes unlawful, unfair and/or fraudulent business acts or practices, and Defendants' are liable
20 as set forth below.
21

22 **JURISDICTION AND VENUE**
23

24 12. This Court has jurisdiction over this matter in that all parties and proposed Class
25 Members are citizens of, or do business and have Headquarters within, the State of California and
26 the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages
27 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and
28

1 will be established according to proof at trial. Furthermore, there is no federal question at issue as
2 the operative allegations all solely involve state (and not federal) law.

3 13. Plaintiff is a citizen of the State of California and subject to the personal jurisdiction
4 of this Superior Court. Further, Plaintiff purchased the majority of the WINCUP goods within San
5 Diego County. Defendants' conduct business in San Diego County, California and otherwise
6 intentionally avail themselves of the markets in San Diego County, therefore the exercise of
7 jurisdiction by this Court is proper.
8

9 **FACTUAL BACKGROUND**

10 14. Plaintiff has purchased WINCUP's EPS foam goods/products (including cups, bowls,
11 lids) regularly, based on his reliance (*prior to* purchase) of said false, deceptive and/or misleading
12 representations, and thereby adversely altered his position in an amount equal to the amount he paid
13 for the Defendants' goods/products. Select receipts of said purchases are attached hereto, as **Exhibit**
14 **A.**
15

16 15. As more specifically set forth below, WINCUP recycling claims are widely
17 disseminated on the WINCUP packaging/labeling, and through other written publications.
18

19 16. At all relevant times, Plaintiff believed that he was purchasing WINCUP goods that
20 were made of recyclable materials, based on his prior reliance on Defendants' representations.
21 Plaintiff would not have continued to purchase the products, or would have purchased them but at
22 a lesser price, absent the misleading statements and misrepresentations made by WINCUP. Please
23 see specific examples of Defendants' false, untrue and misleading representations, below.
24

25 **The Recycling Claims**

26 17. Defendants advertise that many of its products are "Recyclable," by and through a
27 variety of ways, including the use of the "chasing arrows" symbol on its labeling/packaging. For
28 example, many of Defendants' EPS foam products are packaged in a cardboard box, which contain

1 a “chasing arrows” symbol, the text “contents recyclable” and the text “recyclable”. Plaintiff’s
2 purchases from Defendants (including Defendants’ cups, bowls, and lids) contained these “chasing
3 arrows” symbols and “contents recyclable” text.

4
5 18. The “chasing arrows” symbol (first introduced in 1970) is statutorily defined to mean
6 than an item is recyclable. Under California law, an item may not be labeled “recyclable” unless 60
7 percent of consumers or communities have access to recycling facilities that will actually recycle,
8 not simply accept and ultimately discard, the product. EPS foam does not currently meet this
9 threshold, and has not met the threshold at any time within the operative Limitations Period.

10
11 19. EPS foam is a type of plastic made of the #6 resin polystyrene. EPS foam is
12 lightweight, crumbles easily, and quickly spreads in the environment. EPS foam is one of the most
13 common forms of plastic that pollutes California waterways and beaches.

14
15 20. It is not economically viable to recycle EPS foam. The recycling service providers
16 do not accept or sort EPS foam, or have the markets to sell them, which precludes the recycling
17 options. Further, EPS foam products often contain food or beverage residue, rendering them
18 contaminated, and thus destined for landfill. Additionally, EPS foam products are not legally allowed
19 to be sold in the State of California. Finally, there are no recycling facilities in California which
20 actually recycle EPS foam.

21
22 21. EPS foam does not currently meet, and has never met, California’s recyclability
23 requirements. Pursuant to California law, “(a) product or package shall not be marketed as recyclable
24 unless it can be collected, separated, or otherwise recovered from the waste stream through an
25 established recycling program for reuse or use in manufacturing or assembling another item.” In
26 order to make a recyclable claim, 60 percent of consumers or communities must have access to
27 facilities that will actually recycle the product. However, there are no facilities in California, which
28 can, or do, actually recycle EPS foam. As a result, 0% of California households have access to an

1 established recycling program which can recycle EPS foam. Pursuant to California Law, even if an
2 item is technically capable of being recycled, but is highly unlikely to be recycled, the recyclable
3 claim is deceptive, since it asserts an environmental benefit where no benefit exists.

4 22. WINCUP has known, or reasonably should have known, that its EPS foam products
5 are not, and never have been, recyclable. Yet WINCUP falsely claims that their EPS foam products
6 are recyclable. Further, WINCUP engages in marketing campaigns designed to encourage the
7 consumption of WINCUP's EPS foam products, by falsely reassuring consumers that recycling is
8 an effective solution. This is false, deceptive and/or misleading, because (in part) EPS foam products
9 are **not** potentially recyclable, and are not actually recycled in California. Damage has resulted from
10 the continued dissemination of WINCUP's false representations. For example, out of 240 Smart &
11 Final stores in the State of California, 192 stores currently sell WINCUP foam products. As of
12 January 1, 2025 producers of EPS foam are required to demonstrate a recycling rate of no less than
13 25% or the sale of EPS is prohibited pursuant to California Public Resources Code § 42057.
14 WINCUP has not demonstrated a recycling rate of no less than 25% of EPS foam, therefore the sale
15 of their EPS foam products is prohibited in the State of California.

16 23. The "recycling" representations (including the use of the "chasing arrows" symbol
17 on WINCUP's EPS foam products are false, deceptive and/or misleading. WINCUP's recyclability
18 representations indicate to consumers that their EPS foam products are recyclable, via the use of the
19 "chasing arrows" symbol, and the text "Contents Recyclable" placed directly on the product
20 packaging. California law requires that, in order for an item to be recyclable, there must be an
21 established recycling program that will actually recycle the item, there must be market demand for
22 the item, and the item must maintain value. Defendants' representations are false, deceptive and/or
23 misleading, as there is no current established recycling program for reuse or use in manufacturing,
24 or assembling another item. There are no EPS foam processing or recycling facilities in the State
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1 of California. There is no current market value for recycled EPS foam. Further, the sale of EPS foam
2 is prohibited in the State of California as EPS foam is not recycled at a rate above 25%.

3 24. Given the above, WINCUP's EPS foam products are either sent to a landfill or
4 dumped into California's landscapes and waterways. In 2022 alone, it is estimated that between
5 121,324 and 179,756 tons of plastic waste were dumped on California lands. Plastic waste that is
6 dumped at landfills contributes to plastic pollution of the environment. As plastic waste degrades
7 in landfills, microplastics are released into the surrounding environment, including the air, soil,
8 groundwater, and surface water. Thus, the WINCUP representations are false, deceptive and/or
9 misleading.
10

11 **PRIVATE ATTORNEYS GENERAL ALLEGATIONS**
12

13 25. Plaintiff asserts claims on behalf of class members pursuant to California Business
14 & Professions Code § 17200, et seq. The purpose of such claims is to obtain injunctive orders
15 regarding the false labeling, deceptive marketing and consistent pattern and practice of falsely
16 promoting natural claims, and the disgorgement of all profits and/or restoration of monies wrongfully
17 obtained through the Defendants' pattern of unfair and deceptive business practices as alleged herein.
18 This private attorneys general action is necessary and appropriate because Defendants have engaged
19 in wrongful acts described herein as part of the regular practice of its business.
20

21 **CLASS ACTION ALLEGATIONS**
22

23 26. Plaintiff brings this class action lawsuit on behalf of himself and all similarly situated
24 California citizens who purchased EPS foam products manufactured, distributed, marketed and/or
25 sold by WINCUP, in the State of California, within the operative Limitations Period. The proposed
26 Class does not, and will not, include any individual who is not a citizen of, or a purchase made
27 outside of, the State of California.
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1 27. Plaintiff seeks to represent a Class (or Classes) to be specifically identified within a
2 future Motion for Class Certification. Excluded from the Class will be WINCUP, as well as its
3 officers, employees, agents or affiliates, and any judge who presides over this action, as well as all
4 past and present employees, officers and directors of WINCUP. Plaintiff reserves the right to expand,
5 limit, modify, or amend his class definition, including the addition of one or more subclasses, in
6 connection with his motion for class certification, or at any other time, based upon, *inter alia*,
7 changing circumstances and/or new facts obtained during discovery.

9 28. The Class is made up of tens (if not hundreds) of thousands of California citizens who
10 purchased the WINCUP products in the State of California, the joinder of whom is impracticable,
11 and the disposition of their claims in a Class Action will benefit the parties and the Court. The Class
12 is sufficiently numerous because, based on information and belief, thousands to hundreds of
13 thousands of units of the WINCUP products have been sold in the State of California, to California
14 citizens, within the operative Limitations Period.

16 29. There is a well-defined community of interest in this litigation and the Class is easily
17 ascertainable:

19 a. Numerosity: The members of the Classes are so numerous that any form of
20 joinder of all members would be unfeasible and impractical. On information and
21 belief, Plaintiff believes the size of the Classes exceeds One Hundred Thousand
22 (100,000) members.

23 b. Typicality: Plaintiff is qualified to and will fairly and adequately protect the
24 interests of each member of the Classes with whom he has a well-defined community
25 of interest and the claims (or defenses, if any), are typical of all members of the
26 Classes.

28 c. Adequacy: Plaintiff does not have a conflict with the Classes and is qualified to

1 and will fairly and adequately protect the interests of each member of the Classes
2 with whom she has a well- defined community of interest and typicality of claims.
3 Plaintiff acknowledges that he has an obligation to the Court to make known any
4 relationship, conflict, or difference with any putative class member. Plaintiff's
5 attorneys and proposed class counsel are well versed in the rules governing class
6 action and complex litigation regarding discovery, certification, and settlement, and
7 have been previously designated, by California state courts, as "Class Counsel" on
8 at least 50 prior occasions.
9

10 d. Superiority: The nature of this action makes the use of class action adjudication
11 superior to other methods. Class action will achieve economies of time, effort, and
12 expense as compared with separate lawsuits, and will avoid inconsistent outcomes
13 because the same issues can be adjudicated in the same manner and at the same time
14 for the entire class.
15

16 30. Common questions of law and fact exist, that predominate over questions that may
17 affect individual class members. Common questions of law and fact include, but are not limited to,
18 the following:
19

- 20 a. Whether Defendants' conduct is a fraudulent business act or practice within
21 the meaning of Business and Professions Code section 17200, et seq.;
- 22 b. Whether Defendants' advertising is untrue or misleading within the meaning
23 of Business and Professions Code section 17500, et seq.;
- 24 c. Whether Defendants made false, deceptive, and/or misleading
25 representations in the advertising and/or packaging of the WINCUP Products;
- 26 d. Whether Defendants knew or should have known that the recyclability claims
27 and representations were false, deceptive and/or misleading;
28

- e. Whether Defendants represented that the WINCUP Products have characteristics, benefits, uses, or quantities which they do not have;
- f. Whether Defendants' representations regarding the WINCUP Products are false, deceptive and/or misleading;
- g. Whether the Defendants breached warranties regarding the WINCUP Products;
- h. Whether the Defendants committed statutory and common law fraud; and
- i. Whether Defendants' conduct as alleged herein constitutes an unlawful, and/or fraudulent business act or practice within the meaning of Business and Professions Code section 17200, et seq.

31. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained competent and experienced counsel in class action and other complex litigation.

32. Plaintiff and the Class have suffered injury in fact, and have lost money, as a result of Defendant's misrepresentations. Plaintiff purchased the WINCUP products with the prior belief that they were manufactured with recyclable materials. Plaintiff relied on Defendants' labeling and marketing and would not have purchased the WINCUP Products or paid a premium for them if he had known that they did not have the characteristics, benefits, or qualities as represented vis-à-vis the claims.

33. The Defendants' misrepresentations regarding the Claims were material insofar as consumers relate to recyclable and sustainability policies, and tend to be willing to pay a price premium for beverages that employ such policies and/or practices. Defendants are aware of consumer preference for such products, and have implemented a strategic false and/or misleading

1 advertising and marketing campaign, intended to deceive consumers into thinking that the WINCUP
2 employs such policies and practices.

3 34. A class action is superior to other available methods for fair and efficient adjudication
4 of this controversy. The expense and burden of individual litigation would make it impracticable or
5 impossible for class members to prosecute their claims individually.
6

7 35. The trial and litigation of Plaintiff's claims are manageable. Individual litigation of
8 the legal and factual issues raised by Defendants' conduct would increase delay and expense to all
9 parties and the court system. The class action device presents far fewer management difficulties and
10 provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
11 supervision by a single court.
12

13 36. Defendants have acted on grounds generally applicable to the Class as a whole,
14 thereby making final injunctive relief and/or corresponding declaratory relief appropriate with
15 respect to the Class as a whole. The prosecution of separate actions by individual class members
16 would create the risk of inconsistent or varying adjudications with respect to individual members of
17 the Class that would establish incompatible standards of conduct for the Defendants.
18

19 37. Absent a class action, Defendants are likely to retain the benefits of its wrongdoing.
20 Because of the small size of the individual class members' claims, few, if any, class members could
21 afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the
22 class members will continue to suffer losses and Defendants will be allowed to continue these
23 violations of law and to retain the proceeds of its ill-gotten gains.
24

25 38. Were it not for this class action, most class members would find the cost associated
26 with litigating claims extremely prohibitive, which would result in no remedy.
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1 39. This class action would serve to preserve judicial resources, the respective parties'
2 resources, and present fewer issues with the overall management of claims, while at the same time
3 ensuring a consistent result as to each class member.

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5 **FIRST CAUSE OF ACTION**
6 **Violations of California Business & Professions Code §§17500, et seq.**
7 **by Plaintiff and the Proposed Class against Defendants**

8 40. Plaintiff hereby incorporates by reference the allegations contained in all preceding
9 paragraphs of this complaint.

10 41. Pursuant to California law, it is "unlawful for any person to make or disseminate or
11 cause to be made or disseminated before the public in this state, ... in any advertising device ... or
12 in any other manner or means whatever, including over the Internet, any statement, concerning ...
13 personal property or services, professional or otherwise, or performance or disposition thereof, which
14 is untrue or misleading and which is known, or which by the exercise of reasonable care should be
15 known, to be untrue or misleading."

16 42. Defendants committed acts of untrue and/or misleading advertising by making the
17 Claims regarding the WINCUP products, as those claims are untrue and/or misleading.

18 43. Because Defendants have been made aware of the lack of recyclability aspect to its
19 product packaging/labeling, Defendants knew or should have known through the exercise of
20 reasonable care, that the WINCUP claims were untrue and/or misleading to Plaintiff and the class
21 members.
22

23 44. Defendants' actions in violation of § 17500 were untrue and/or misleading such that
24 the Plaintiff, the Proposed Class and the general public are and were likely to be deceived by the
25 untrue and/or misleading statements.
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1 45. Plaintiff and the Proposed Class Members lost money or property as a result of
2 Defendants' false advertising violations, because they would not have purchased, or would not have
3 paid a premium, for the WINCUP Products if they had not been deceived by the Claims.

4 **SECOND CAUSE OF ACTION**
5 **For Violation Cal. Bus. & Prof. Code § 17200, et seq. by Plaintiff**
6 **and Proposed Class against Defendants**

7 46. Plaintiff hereby incorporates by reference the allegations contained in all preceding
8 paragraphs of this complaint.

9 47. Plaintiff is a direct victim of Defendants' illegal and/or unfair business acts and
10 practices referenced in this complaint, has lost money as a result of such practices, and brings this
11 action both in his individual capacity and on behalf of California citizen consumers who share a
12 common or general interest in the damages as a result of the illegal and/or unfair practices.

13 48. The approximately 100,000 member class is ascertainable via their experience as
14 California citizens who purchased WINCUP products within the State of California at some point
15 within the operative Limitations Period. Class members share a community of interest and an injury-
16 in-fact as Defendants have violated California laws, thereby depriving class members of money
17 earned. Based on the facts set forth above, it would be impracticable to proceed in individual actions.

18 49. Plaintiff suffered an injury-in-fact pursuant to Business & Professions Code section
19 17204, and lost money as a result of Defendants' illegal and/or unfair, deceptive, untrue and/or
20 misleading practices.

21 50. Plaintiff brings this action on behalf of an ascertainable class who share a community
22 of interest pursuant to Business & Professions Code section 17203 and Code of Civil Procedure
23 section 382 and who share a common or general interest in the damages as a result of the illegal
24 and/or unfair practices, in that those individuals on whose behalf the action is brought have also lost
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1 money as a result of Defendants' practices, as set forth above, and that it would be impracticable to
2 proceed as an individual plaintiff action.

3 51. Business & Professions Code section 17200 *et seq.* prohibits any unlawful, unfair,
4 or fraudulent business act or practice.

5 52. Plaintiff's allegations herein are based upon Defendants' institutional business acts
6 and practices.

7 53. Defendants' acts and practices, as described herein above, are unlawful and/or unfair
8 and/or fraudulent, in that (among other facts) they violate California law and are unfair, deceptive,
9 untrue and/or misleading.

10 54. As a direct result of Defendants' unlawful and unfair business acts and practices,
11 Plaintiff and all other class members have been damaged in an amount to be proven. Accordingly,
12 Plaintiff prays for restitution and injunctive damages in an amount to be proven.

13 55. Plaintiff is informed and believes, and on that basis alleges, that Defendants' business
14 practices, alleged above, are continuing in nature and are widespread.

15 56. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction
16 against Defendants to enjoin them from continuing to engage in the illegal conduct alleged herein.
17 On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages. Separately,
18 Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently
19 unaware of the precise amount of these expenses and fees, and prays for leave of court to amend this
20 complaint when the amounts are more fully known. Finally, Plaintiff also seeks an order requiring
21 Defendants to correct, destroy and/or change all false and/or misleading labeling and website terms
22 relating to the Claims at issue. Plaintiff will pray for leave to amend this complaint when the specific
23 products and mis-representations are particularized following discovery.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- a. For an order certifying the Class;
- b. For an order certifying Plaintiff as the representative of the Class and Plaintiff's attorneys as Class Counsel;
- c. For an order declaring the Defendants' conduct violates the statutes and laws referenced herein;
- d. For an order to correct, destroy, and change all false, deceptive, untrue, unlawful and/or misleading labeling relating to the Claims;
- e. For an order finding in favor of Plaintiff, the Class on all counts asserted herein;
- f. For prejudgment interest on all amounts awarded;
- g. For an order of restitution, disgorgement of profits, and all other forms of equitable monetary relief;
- h. For injunctive relief as plead or as the Court may deem proper; and
- i. For an order awarding Plaintiff, and the Class, their reasonable attorneys' fees and expenses and costs of suit.

Dated: March 21, 2025

SULLIVAN & YAECKEL LAW GROUP, APC



Ryan T. Kuhn, Esq.
Eric K. Yaeckel, Esq.
Attorneys for Plaintiff JEFFREY HEAVEY, an
Individual on behalf of himself and all others similarly
situated, and the general public