

1 **COTCHETT, PITRE & MCCARTHY, LLP**
JOSEPH W. COTCHETT (SBN 36324)
2 jcotchett@cpmlegal.com
3 MARK C. MOLUMPY (SBN 168009)
mmolumpy@cpmlegal.com
4 TYSON REDENBARGER (SBN 294424)
tredenbarger@cpmlegal.com
5 VASTI S. MONTIEL (SBN 346409)
vmontiel@cpmlegal.com
6 San Francisco Airport Office Center
7 840 Malcolm Road, Suite 200
Burlingame, California 94010
8 Telephone: (650) 697-6000
9 Facsimile: (650) 697-0577

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 10/2/2023
By /s/ Ashlee Nelson
Deputy Clerk

10 *Attorneys for Plaintiff Earth Island Institute*

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN MATEO**

14 **EARTH ISLAND INSTITUTE,**
15 **Plaintiff,**
16 **vs.**
17 **CRYSTAL GEYSER WATER**
COMPANY, et. al,
18 **Defendants.**

Case No. 20-CIV-01213
FIRST AMENDED COMPLAINT FOR:
(1) VIOLATIONS OF THE CALIFORNIA'S
UNFAIR COMPETITION LAW
(2) PUBLIC NUISANCE

Assigned for all purposes to:
Hon. V. Raymond Swope

24 **REDACTED FIRST AMENDED COMPLAINT**
25 **Pursuant to the Stipulation and Protective Order Regarding Confidential Information**
26 **dated October 18, 2022.**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION.....	2
II. PARTIES	10
A. Plaintiff.....	10
B. Defendants	12
C. Doe Defendants.....	18
D. Agency, Concert of Action, and Conspiracy	19
III. JURISDICTION AND VENUE.....	19
IV. FACTUAL BACKGROUND.....	20
A. Defendants’ Misleading Use and Promotion of the Recycling Symbol.....	20
B. Defendants’ Utilize the Recycling Symbol in a Broader Campaign to Mislead Consumers and Falsely Promote the “Recyclability” of their Products	25
C. Defendants’ Use of Virgin Plastic.....	34
D. Defendants’ Decades-Long Lobbying Efforts	40
E. Defendants’ Products Are Not Recycled in California.....	46
1. Recyclability of Defendants’ PET #1 and HDPE #2 Products.....	55
2. Defendants’ Misleading Promotion of Plastics #3-7 as Recyclable	62
F. Defendants’ Misleading Instructions on Disposal Significantly and Foreseeably Increased the Amount of Plastic Pollution Entering the Environment.....	68
G. Increases in Defendants’ Plastics Entering the Environment Resulting from Defendants’ False “Recyclable” Promotion Caused Harm to Earth Island.....	71
I. Earth Island’s Injuries	80
V. CAUSES OF ACTION	82
FIRST CAUSE OF ACTION	
Violations of California Business & Professions Code §§ 17200, et Seq. Based on the Commission of Fraudulent, Unfair, and Unlawful Acts.....	82

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION
Nuisance.....87

VI. PRAYER FOR RELIEF.....89

JURY TRIAL DEMANDED.....90

1 **I. INTRODUCTION**

2 1. Earth Island Institute (“Earth Island”) is a nonprofit organization that has long
3 worked to protect oceans, coasts, and marine life from all manner of harm. Earth Island files this
4 action to hold Defendants accountable for the misinformation they have spread about the
5 recyclability of their plastic, and the damage they have wrought to the environs Earth Island works
6 to protect, as well as to Earth Island’s property interests.

7 2. There is a staggering 150 million metric tons of plastic in the marine environment.
8 Plastic is present in every single part of the ocean—from the surface of the Pacific, to the near
9 shores of Monterey Bay, to the depths of the Mariana Trench, and at each of the poles.¹ Scientists
10 estimate that between 8 and 20 million tons of plastic enter the ocean annually. **At this rate,**
11 **plastic is set to outweigh fish in the ocean by 2050.**²



25 ¹ Katie Mika et al., *Stemming the Tide of Plastic Marine Litter: A Global Action Agenda*, 5 UCLA
26 SCHOOL OF LAW PRITZKER ENV'T. L. POL'Y BRIEFS, Oct. 2013,
27 www.law.ucla.edu/centers/environmental-law/emmett-institute-on-climate-change-and-the-environment/publications/stepping-the-tide-of-plastic-marine-litter/; Above Photo Credit: NOAA.

28 ² *The New Plastic Economy: Rethinking the future of plastics*, ELLEN MACARTHUR FOUNDATION,

1 3. Plastic never goes away because it is not biodegradable. Instead, plastic in the ocean
2 breaks down into smaller and smaller pieces, known as microplastics. Because of their miniscule
3 nature, microplastics are found in every nook and cranny of ocean ecosystems. Microplastics are
4 now a common component of sand and are embedded in seagrass, which is a food source for
5 various marine life. As a result, microplastics are routinely found in the digestive systems of sea-
6 dwelling creatures.



18
19 4. Microplastics are also abundant in human water supplies. The average person
20 ingests approximately 5 grams of plastic on a weekly basis—roughly the equivalent weight of a
21 credit card.³

22 5. A significant portion of oceanic plastic pollution can be traced back to just a handful
23 of major companies, the Defendants, who use extensive plastic packaging, much of it single use, for
24
25

26 _____
26 2016, http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf.

27 ³ World Wide Fund for Nature et al., *No Plastic in Nature: Assessing Plastic Ingestion from Nature*
28 *to People*, WWF ANALYSIS, June 2019.

1 their products.⁴ Those same products infiltrate marine environments.⁵ This was made clear in
2 Break Free From Plastic’s 2019 and 2018-2022 Global Brand Audits, which reported data from
3 thousands of individuals worldwide concerning plastic pollution.

4 6. The Brand Audit participants gathered plastic waste from their selected site, recorded
5 the total volume of plastics collected, and used standardized data cards to identify the waste’s
6 composite categories: brand names, item descriptions, types of products, types of materials, layers,
7 and local recyclability. Participants were asked to include both branded and unbranded items
8 found, and to write “unknown” if brands were not clearly marked.



9
10
11
12
13
14
15
16
17
18
19 7. In total, as part of the 2019 report, 72,451 volunteers in 51 countries conducted 484
20 brand audits. These volunteers collected **476,423** pieces of plastic waste, 43% of which was
21 marked with a clear consumer brand. The brand audits were concentrated between August 1 -
22 September 30, 2019, and most took place on World Cleanup Day (Sep 21).

23 8. The 2019 audit identified the 10 companies most responsible for plastic pollution as:
24

25
26 ⁴ Break Free From Plastic, *Branded Vol. II Identifying the World’s Top Corporate Plastic Polluters*,
27 GREENPEACE.ORG, 2019, <https://www.breakfreefromplastic.org/globalbrandauditreport2019/>;
28 Above Photo Credit: [maria mendiola](#) on [Unsplash](#).

⁵ *Id.*

1 Coca-Cola, Nestlé, PepsiCo, Mondelez International, Unilever, Mars Incorporated, Procter &
2 Gamble, Colgate-Palmolive, Phillip Morris International, and Perfetti van Melle (in descending
3 order).⁶ The top three contributors—Coca-Cola, PepsiCo, and Nestlé—are linked to 14% of global
4 oceanic plastic pollution.⁷

5 9. Break Free From Plastic’s 2018-2022 audit also found that Coca-Cola, PepsiCo, and
6 Nestlé were the top three polluters between 2018 and 2022.⁸

7 10. Due to strenuous efforts by organizations such as Earth Island to educate the public
8 about the impact of plastic pollution, consumers are increasingly interested in purchasing products
9 that are either compostable or recyclable in order to divert waste from the ocean and landfills.⁹ In
10 response, Defendants market and sell their products with various environmental claims and the
11 prominent use of the “recycle symbol” on the label to maintain customer loyalty and demand for
12 products.¹⁰

13 11. However, in reality, much of the purportedly “recyclable” plastic sold to consumers
14 is not actually recycled. Rather than switch to more sustainable materials in their products, or
15 educate the public on the realities of plastic recycling, Defendants have engaged in a decades-long
16 campaign to deflect blame for the plastic pollution crisis to consumers. Defendants’ campaigns
17 spread the false narrative that the oceans, wildlife, and environment would be healthy were it not for
18 the consumers who failed to recycle their plastic.

19
20
21 ⁶ *Id.*

22 ⁷ Break Free From Plastic, *Branded: In Search of the World's Top Corporate Plastic Producers*
23 *Volume I*, GREENPEACE.ORG, 2018,
<https://www.breakfreefromplastic.org/globalbrandauditreport2018/>.

24 ⁸ Break Free From Plastic, *The Brand Audit Report 2018-2022*,
25 <https://brandaudit.breakfreefromplastic.org/wp-content/uploads/2022/11/BRANDED-brand-audit-report-2022.pdf>.

26 ⁹ Kate Gibson & Irina Ivanova, *Suit charges Keurig’s coffee pods aren’t recyclable as advertised*,
27 CBS NEWS, July 11, 2019, <https://www.cbsnews.com/news/keurig-coffee-pods-not-recyclable-as-advertised-according-to-class-action-suit/>.

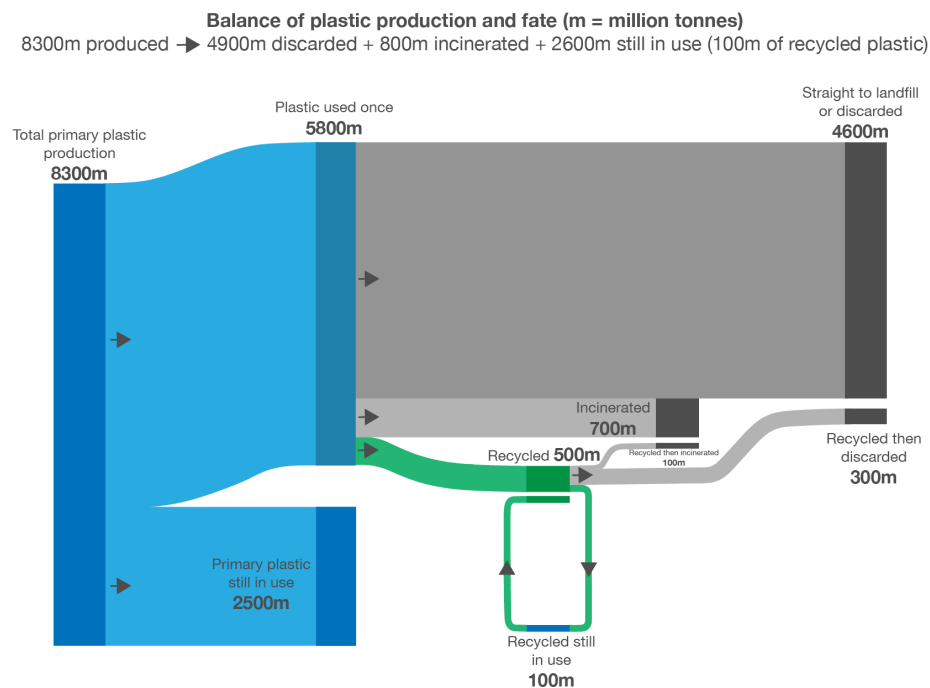
28 ¹⁰ *Id.*

1 12. As Defendants have known for decades, plastic recycling wages a losing battle to the
 2 exponential increase in plastic production each year. Recycling captures less than 10 percent of
 3 plastic produced annually. Currently, **the annual weight of plastic production globally is roughly**
 4 **the same as the entire weight of humanity.** Unless every human on earth melted down and
 5 repurposed their weight in plastic every year, every ecosystem worldwide will continue to be
 6 disrupted by plastic waste.

Global plastic production and its fate (1950-2015)



Global production of polymer resins, synthetic fibres and additives, and its journey through to its ultimate fate (still in use, recycled, incinerated or discarded).
 Figures below represent the cumulative mass of plastics over the period 1950-2015, measured in million tonnes.



Source: based on Geyer et al. (2017), Production, use, and fate of all plastics ever made. This is a visualization from OurWorldInData.org, where you find data and research on how the world is changing. Licensed under CC-BY-SA by Hannah Ritchie and Max Roser (2018).

22 13. Recycling facilities in the United States (and California) cannot process the **sheer**
 23 **volume** of Defendants’ products that are submitted to recycling facilities on an annual basis.¹¹ The
 24 labor and cost required to sort, melt, and reconstitute the approximately 33 million tons of plastic

26 ¹¹ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, The NEW YORK TIMES,
 27 Mar. 16, 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

1 produced in the United States every year is insurmountable. A recent study revealed that U.S.
2 recycling facilities can process no more than 20.9% of PET#1 plastic produced each year. PET#1
3 plastic is primarily used in water and soft drink bottles and is just one of the seven types of plastic
4 resins produced.¹² Recycling facilities can process no more than 10.3% of HDPE#2, a second resin
5 type that is primarily used in milk jugs and other larger plastic containers. U.S. recyclers can
6 process only a negligible percentage of #3–7 plastic resins, which are frequently used to produce
7 products such as yogurt containers, food pouches, and other food, beverage, personal care, and
8 consumer products packaging.¹³

9 14. Furthermore, due to the availability of cheap raw materials to make “virgin plastic,”
10 there is little market demand for recycled plastic. Using virgin plastic to package and make
11 products is cheaper than other materials because virgin plastic is derived from oil and natural gas.
12 Recognizing the market potential from plastic production, major oil and natural gas companies are
13 increasingly integrating their operations to include the production of plastic resins and products,
14 which further drives down the price of “virgin plastic.”¹⁴ As a result, recycling facilities cannot
15 afford the cost of breaking down and reconstituting recycled plastic because there are almost no
16 buyers of recycled plastic.

17 15. Historically, recycling facilities in the United States shipped plastic scrap
18 submissions to China,¹⁵ but tons were never recycled. Instead, they were burned and dumped into
19 waterways, where they were carried into the ocean.¹⁶ For years, tons of plastic that U.S. consumers

21 ¹²Circular Claims Fall Flat Again, Greenpeace, October 24, 2022,
https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf.

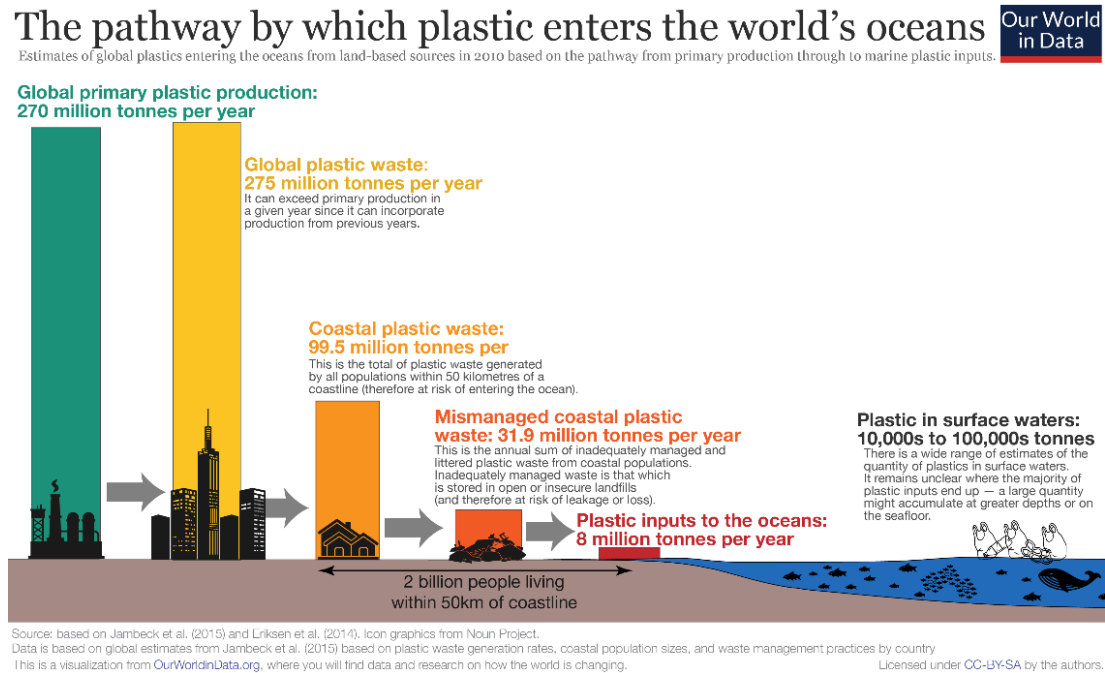
22 ¹³ *Id.*

23 ¹⁴*Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG,
<https://www.ciel.org/reports/fuelingplastics/>.

24 ¹⁵ Amanda Mei, *What China’s Ban on Plastic Scrap Means for Global Recycling: Q&A with Kate*
25 *O’neill, Author of Waste*, WILSON CENTER: NEW SECURITY BEAT, Nov. 28, 2019,
<https://www.newsecuritybeat.org/2019/11/chinas-ban-plastic-scrap-means-global-recycling-qa-kate-oneill-author-waste/>.

26 ¹⁶ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
27 NPR.ORG, Mar. 13, 2019,
28 <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash->

1 dutifully sorted and transported to recycling facilities ultimately ended up in the ocean. These
2 plastics have ended up on the beaches of California, which Earth Island has cleaned up, and on
3 Earth Island's property.



16. In a very real sense, much of the plastic that is labeled “recyclable” is false and misleading due to the inability of consumers to access facilities that will actually recycle Defendants’ products.¹⁷

17. Rather than switch to more sustainable packaging and production practices, Defendants continue to spread misinformation about the true causes and solutions to plastic pollution. By convincing consumers that the way to solve the plastic problem is through recycling, Defendants have externalized the cost of their business and distribution system—which creates mega-tons of plastic pollution—to the public.

¹⁶ [go-now-that-china-doesnt-want-it](https://www.ourworldindata.org); *Discarded: Communities on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, <https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22-pages.pdf>.

¹⁷ John Hocoavar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 18. Defendants are major food, beverage, and consumer products businesses—some of
2 them are in fact the world’s largest—and are responsible for a substantial portion of the total plastic
3 pollution currently present in California’s waterways and coasts.¹⁸



17
18 19. Defendants have created the condition of plastic pollution in California’s coasts and
19 waterways 1) by refusing to switch to more sustainable materials in order to reap higher profits
20 from cheap, virgin plastic, 2) engaging in a campaign of misinformation about the true causes of
21 plastic pollution and viable solutions for mitigating its effects, 3) and deceptively maintaining
22 consumer loyalty and demand for Defendants’ products by falsely advertising the product’s
23 recyclability. Defendants reap billions in profits, while public and nonprofit organizations such as
24 Earth Island Institute spend billions in public and charitable funds to mitigate the effect of plastic
25 pollution on humans, wildlife, oceans, and waterways.

26
27 ¹⁸ *Mouth of Los Angeles River, Long Beach, CA*, PLASTIC POLLUTION COALITION, Photo Credit: Bill
28 McDonald / Algalita Foundation, <https://www.flickr.com/photos/plasticpollution/4349812433/>.

1 20. By this action, Plaintiff seeks to ensure that the parties responsible for coastal and
2 marine plastic pollution bear the costs of its impacts, rather than Plaintiff and members of the public
3 that rely on and enjoy California’s coasts and waterways.

4 21. Earth Island has allocate significant resources to combat the effect of plastic on
5 marine wildlife and ecosystems. In recent years, Earth Island’s cost and expense of cleaning
6 California beaches, informing the public about the truth of Defendants’ recycling claims and the
7 limitations of recycling, and aiding marine life that has been choked, starved, poisoned, or
8 suffocated by plastic, has grown exponentially.

9 22. As an actual and proximate consequence of Defendants’ conduct, Earth Island was
10 forced to divert organizational resources to remediate waterways and coasts impacted by plastic
11 pollution and to counteract threats to marine wildlife from plastic in California. Earth Island has
12 also expended resources to remediate plastic pollution in and around waterways on its private
13 property in Richmond, California. Earth Island and its members have been deprived of the ability
14 to enjoy and utilize the ocean environment and have experienced harm to their aesthetic interests.

15 **II. PARTIES**

16 **A. Plaintiff**

17 22. Plaintiff **Earth Island Institute** (“Earth Island”) is a non-profit, public interest,
18 membership organization established pursuant to section 501(c)(3) of the Internal Revenue Code,
19 and headquartered in Berkeley, California. Through its fiscally-sponsored projects and
20 programmatic work, Earth Island has worked to combat plastic pollution, and protect California
21 coasts, and marine life from myriad harms.

22 23. Earth Island brings these claims in its own name and on behalf of its following
23 fiscally-sponsored projects:

- 24 a. Plastic Pollution Coalition (“PPC”) is a fiscally-sponsored project of Earth
25 Island. PPC staff are employees of Earth Island. PPC, founded in 2009, is a
26 communications and advocacy organization that collaborates with an
27 expansive global alliance of organizations, businesses, and individuals to
28

1 create a more just, equitable, regenerative world free of plastic pollution and
2 its toxic impacts.

3 b. The International Marine Mammal Project (“IMMP”) is a fiscally-sponsored
4 project of Earth Island. IMMP staff are employees of Earth Island. For more
5 than 30 years, IMMP has been one of the leading groups fighting to protect
6 dolphins, whales, and the ocean environment.

7 c. Shark Stewards is a fiscally-sponsored project of Earth Island. Shark
8 Stewards staff are employees of Earth Island. Shark Stewards’ mission is to
9 restore ocean health by saving sharks from overfishing and the shark fin
10 trade, as well as protecting critical marine habitats through the establishment
11 of marine protected areas and shark sanctuaries. As part of this effort, it
12 launched a marine debris prevention effort that regularly conducts cleanups
13 and quantifies marine debris in the San Francisco Bay area.

14 d. 1000 Fountains is a fiscally-sponsored project of Earth Island. 1000
15 Fountains staff are employees of Earth Island. 1000 Fountains is building a
16 network of one thousand drinking fountains throughout San Francisco in
17 order to provide consumers with alternatives to single-use plastic bottles.

18 24. Earth Island also brings these claims as a representative of its members that are and
19 will continue to be injured by Defendants’ conduct and the consequent harms to waterways, coasts,
20 and marine life in California.

21 25. Earth Island has standing as an organization because, through its fiscally-sponsored
22 projects and programmatic work, it has diverted significant resources to address plastic pollution in
23 California (including plastic pollution from Defendants’ products) by:

- 24 a. working to mitigate the negative impacts of plastic on marine species;
- 25 b. utilizing extensive staff time to understand the issue of plastic pollution;
- 26 c. advocating to all level of government for sensible regulations of plastic;
- 27 d. organizing plastic pollution clean-up activities;

28

- 1 e. educating the media and public about Defendants misleading claims about
2 recycling; and
3 f. educating the media and public about plastic pollution.

4 26. Absent relief from this Court, plastic pollution and the resulting harms to
5 California's waterways, coasts, and marine life will continue negatively to impact Earth Island's
6 efforts to protect these critical resources.

7 27. Earth Island also has standing as a property owner of 5.6 acres in Richmond,
8 California, which includes two waterways connected to the San Francisco Bay, which are adversely
9 impacted by plastic pollution. In particular, Earth Island has found Defendants' plastic pollution on
10 its property, including but not limited to, plastic products sold by Coca-Cola, Nestlé, PepsiCo, and
11 Crystal Geysler.

12 28. Earth Island has representative standing on behalf of its members because numerous
13 members are deprived of the ability to enjoy and utilize the ocean environment as a result of marine
14 plastic pollution, and/or experience harm to their aesthetic interests from marine plastic pollution.
15 As detailed above, protecting oceans, coasts, and marine life from myriad harms are all central to
16 Earth Island's purpose. Participation by individual members is not necessary for the determination
17 of the claims alleged or for the relief requested.

18 **B. Defendants**

19 29. Defendants are major food, beverage, and consumer products businesses, and are
20 responsible for a substantial portion of the total plastic pollution currently present in California
21 waterways and coasts.

22 30. When reference in this complaint is made to an act or omission of the Defendants,
23 unless specifically attributed or otherwise stated, such references should be interpreted to mean that
24 the officers, directors, agents, employees, or representatives of the Defendants committed or
25 authorized such an act or omission, or failed to adequately supervise or properly control or direct
26 their employees while engaged in the management, direction, operation or control of the affairs of
27 Defendants, and did so while acting within the scope of their employment or agency.

28

1 31. Defendant **Crystal Geyser Water Company** (“Crystal Geyser”) is a company
2 incorporated in California and has its principal place of business in Calistoga, California. Crystal
3 Geyser is a privately-owned subsidiary of Japanese multinational corporation Otsuka Holdings Co.
4 Ltd. Crystal Geyser produces bottled sparkling and mineral water, and it produces tea products
5 under the Tejava brand.

6 32. Crystal Geyser controls company-wide packaging and marketing decisions. Crystal
7 Geyser, through its employees and/or agents, manages, directs, conducts and/or controls operations
8 relating to the process by which Crystal Geyser products are packaged, marketed, and/or sold to
9 consumers. Crystal Geyser’s management, direction, conduct and/or control is exercised through a
10 variety of means, including through its employees’ and/or agents’ implementation of policies,
11 procedures, and programs relating to product packaging and marketing.

12 33. As a result of its management, direction, conduct, and/or control of operations
13 relating to company-wide packaging and marketing decisions, Defendant Crystal Geyser is
14 responsible for its past and current production and promotion of Crystal Geyser products in single-
15 use plastic packaging.

16 34. Crystal Geyser directs and has directed substantial business to California. A
17 substantial portion of Crystal Geyser products are or have been packaged, transported, traded,
18 distributed, marketed, promoted, sold, and/or consumed in California, from which Crystal Geyser
19 derives and has derived substantial revenue.

20 35. Defendant **The Clorox Company (“Clorox”)** is a multinational company, with its
21 principal place of business in Oakland, California. Clorox is a leading producer of household
22 cleaning, personal care, packaged food, and hygiene products, and produces a wide variety of
23 products under a number of popular brands, including Burt’s Bees, Formula 409, Glad, Hidden
24 Valley, Liquid-Plumr, Pine-Sol, and Kingsford charcoal.

25 36. Clorox controls company-wide packaging and marketing decisions. Clorox, through
26 its employees and/or agents, manages, directs, conducts and/or controls operations relating to the
27 process by which Clorox and affiliated products are packaged, marketed, and/or sold to consumers.
28

1 Clorox’s management, direction, conduct and/or control is exercised through a variety of means,
2 including through its employees’ and/or agents’ implementation of policies, procedures, and
3 programs relating to product packaging and marketing.

4 37. As a result of its management, direction, conduct, and/or control of operations
5 relating to company-wide packaging and marketing decisions, Defendant Clorox is responsible for
6 its past and current production and promotion of Clorox and affiliated products in plastic packaging.

7 38. Clorox directs and has directed substantial business to California. A substantial
8 portion of Clorox products are or have been packaged, transported, traded, distributed, marketed,
9 promoted, sold, and/or consumed in California, from which Clorox derives and has derived
10 substantial revenue.

11 39. Defendant **The Coca-Cola Company** (“Coca-Cola”) is a multinational company
12 incorporated in Delaware, with its principal place of business in Atlanta, Georgia. In North
13 America, Coca-Cola is an integrated manufacturer, bottler, distributor, retailer, and marketer of
14 nonalcoholic beverages. Outside of North America, Coca-Cola operates a franchised distribution
15 system. Coca-Cola controls company-wide packaging and marketing decisions. Coca-Cola, through
16 its employees and/or agents, manages, directs, conducts and/or controls operations relating to its
17 subsidiaries’ and franchisees’ participation in the process by which Coca-Cola products are
18 packaged, marketed, and/or sold to consumers. Coca-Cola’s management, direction, conduct and/or
19 control is exercised through a variety of means, including through its employees’ and/or agents’
20 implementation of policies, procedures, and programs relating to product packaging and marketing.

21 40. As a result of its management, direction, conduct, and/or control of operations
22 relating to company-wide packaging and marketing decisions, Defendant Coca-Cola is responsible
23 for its subsidiaries’ and franchisees’ past and current production and promotion of Coca-Cola
24 products in single-use plastic packaging.

25 41. Coca-Cola directs and has directed substantial business to California. A substantial
26 portion of Coca-Cola’s products are or have been packaged, transported, traded, distributed,
27 marketed, promoted, sold, and/or consumed in California, from which Coca-Cola derives and has
28

1 derived substantial revenue.

2 42. Defendant **PepsiCo, Inc.** (“PepsiCo”) is a multinational company incorporated in
3 New York, with its principal place of business in Harrison, New York. Based on net revenue,
4 PepsiCo is the second-largest food and business beverage business in the world, and the largest in
5 North America. Bottling and distribution of PepsiCo products are conducted by PepsiCo as well as
6 licensees.

7 43. PepsiCo controls company-wide packaging and marketing decisions. PepsiCo,
8 through its employees and/or agents, manages, directs, conducts and/or controls operations relating
9 to its subsidiaries’ and licensees’ participation in the process by which PepsiCo products are
10 packaged, marketed, and/or sold to consumers. PepsiCo’s management, direction, conduct and/or
11 control is exercised through a variety of means, including through its employees’ and/or agents’
12 implementation of policies, procedures, and programs relating to product packaging and marketing.

13 44. As a result of its management, direction, conduct, and/or control of operations
14 relating to company-wide packaging and marketing decisions, Defendant PepsiCo is responsible for
15 its subsidiaries’ and franchisees’ past and current production and promotion of PepsiCo products in
16 single-use plastic packaging.

17 45. PepsiCo directs and has directed substantial business to California. A substantial
18 portion of PepsiCo’s products are or have been packaged, transported, traded, distributed, marketed,
19 promoted, sold, and/or consumed in California, from which PepsiCo derives and has derived
20 substantial revenue.

21 46. Defendant **Nestlé USA, Inc.** (“Nestlé USA”) is a subsidiary of the Swiss
22 multinational corporation Nestlé and has its principal place of business in Arlington, VA. Nestlé is
23 the world’s largest food and beverage company, and Nestlé USA produces a wide variety of food
24 and beverage products under a number of popular brands, including Starbucks, Nespresso, and
25 Gerber.

26 47. Nestlé USA controls company-wide packaging and marketing decisions. Nestlé
27 USA, through its employees and/or agents, manages, directs, conducts and/or controls operations
28

1 relating to the process by which Nestlé USA and affiliated products are packaged, marketed, and/or
2 sold to consumers. Nestlé USA’s management, direction, conduct and/or control is exercised
3 through a variety of means, including through its employees’ and/or agents’ implementation of
4 policies, procedures, and programs relating to product packaging and marketing.

5 48. As a result of its management, direction, conduct, and/or control of operations
6 relating to company-wide packaging and marketing decisions, Defendant Nestlé USA is responsible
7 for its past and current production and promotion of Nestlé USA and affiliated products in single-
8 use plastic packaging.

9 49. Nestlé USA directs and has directed substantial business to California. A substantial
10 portion of Nestlé USA products are or have been packaged, transported, traded, distributed,
11 marketed, promoted, sold, and/or consumed in California, from which Nestlé USA derives and has
12 derived substantial revenue.

13 50. Defendant **The Procter & Gamble Company** (“Procter & Gamble”) is a
14 multinational company incorporated in Ohio, with its principal place of business in Cincinnati, OH.
15 Procter & Gamble is a leading producer of personal health, personal care, and hygiene products, and
16 Procter & Gamble produces a wide variety of products under a number of popular brands, including
17 Tide, Tampax, Old Spice, Dawn, Gillette, Crest, Oral B, and Olay.

18 51. Procter & Gamble controls company-wide packaging and marketing decisions.
19 Procter & Gamble, through its employees and/or agents, manages, directs, conducts and/or controls
20 operations relating to the process by which Procter & Gamble and affiliated products are packaged,
21 marketed, and/or sold to consumers. Procter & Gamble’s management, direction, conduct and/or
22 control is exercised through a variety of means, including through its employees’ and/or agents’
23 implementation of policies, procedures, and programs relating to product packaging and marketing.

24 52. As a result of its management, direction, conduct, and/or control of operations
25 relating to company-wide packaging and marketing decisions, Defendant Procter & Gamble is
26 responsible for its past and current production and promotion of Procter & Gamble and affiliated
27 products in plastic packaging.

28

1 53. Procter & Gamble directs and has directed substantial business to California. A
2 substantial portion of Procter & Gamble products are or have been packaged, transported, traded,
3 distributed, marketed, promoted, sold, and/or consumed in California, from which Procter &
4 Gamble derives and has derived substantial revenue.

5 54. Defendant **Colgate-Palmolive Company** (“Colgate-Palmolive”) is a multinational
6 company incorporated in New York, with its principal place of business in New York, NY.
7 Colgate-Palmolive is a leading producer of household, healthcare, and personal care products, and
8 Colgate-Palmolive produces a wide variety of products under a number of popular brands, including
9 Colgate, Palmolive, Speed Stick, and Tom’s of Maine.

10 55. Colgate-Palmolive controls company-wide packaging and marketing decisions.
11 Colgate-Palmolive, through its employees and/or agents, manages, directs, conducts and/or controls
12 operations relating to the process by which Colgate-Palmolive and affiliated products are packaged,
13 marketed, and/or sold to consumers. Colgate Palmolive’s management, direction, conduct and/or
14 control is exercised through a variety of means, including through its employees’ and/or agents’
15 implementation of policies, procedures, and programs relating to product packaging and marketing.

16 56. As a result of its management, direction, conduct, and/or control of operations
17 relating to company-wide packaging and marketing decisions, Defendant Colgate-Palmolive is
18 responsible for its past and current production and promotion of Colgate-Palmolive and affiliated
19 products in plastic packaging.

20 57. Defendant Colgate-Palmolive directs and has directed substantial business to
21 California. A substantial portion of Colgate-Palmolive products are or have been packaged,
22 transported, traded, distributed, marketed, promoted, sold, and/or consumed in California, from
23 which Colgate-Palmolive derives and has derived substantial revenue.

24 58. Defendant **Danone North America** is the collective name of U.S.-based subsidiaries
25 of the French multinational corporation Danone S.A., and has its principal place of business in
26 Broomfield, Colorado. “Danone North America” refers to Danone S.A.’s U.S.-based subsidiaries,
27 including the following: Creamer Nation, LLC, Danone Waters of America, Inc., Danone US, LLC,
28

1 Earthbound Farm, LLC, Earthbound Holdings I, LLC, Earthbound Holdings II, LLC, Earthbound
2 Holdings III, LLC, Earthbound Packaging Partners, LLC, Harmless Harvest, Inc., Natural Selection
3 Foods Manufacturing, LLC, Nutricia North America, Inc., and Silk Operating Company, LLC.
4 Danone North America is one of the fifteen largest food and beverage companies in the United
5 States and produces a wide variety of food and beverage products under a number of popular
6 brands, including Dannon, Activia, Oikos, and Wallaby Organics.

7 59. Danone North America controls company-wide packaging and marketing decisions.
8 Danone North America, through its employees and/or agents, manages, directs, conducts and/or
9 controls operations relating to the process by which Danone North America and affiliated products
10 are packaged, marketed, and/or sold to consumers. Danone North America's management,
11 direction, conduct and/or control is exercised through a variety of means, including through its
12 employees' and/or agents' implementation of policies, procedures, and programs relating to product
13 packaging and marketing.

14 60. As a result of its management, direction, conduct, and/or control of operations
15 relating to company-wide packaging and marketing decisions, Defendant Danone North America is
16 responsible for its past and current production and promotion of Danone North America and
17 affiliated products in single-use plastic packaging.

18 61. Danone North America directs and has directed substantial business to California. A
19 substantial portion of Danone North America products are or have been packaged, transported,
20 traded, distributed, marketed, promoted, sold, and/or consumed in California, from which Danone
21 North America derives and has derived substantial revenue.

22 **C. Doe Defendants**

23 62. Various other individuals and entities participated in the violations of law alleged
24 herein and performed acts and made statements in furtherance thereof. The true names and
25 capacities of these individuals and entities, Does 1 through 25, inclusive, whether corporate,
26 associate, or otherwise, are unknown to Plaintiff at this time. Plaintiff, therefore, sues these
27 Defendants, Does 1 through 25, by such fictitious names.

28

1 63. Plaintiff further alleges that each of these Defendants, Does 1-25 is responsible for
2 the acts and occurrences set forth herein. Plaintiff is informed and believes that discovery will
3 reveal additional information concerning the identities of these Defendants, Does 1-25, and each of
4 their acts and statements made in furtherance of the violations of law alleged herein.

5 64. Plaintiff will seek to amend this complaint to show their true names and capacities,
6 and the manner in which each of these Defendants, Does 1-25, is responsible for the damages
7 sustained by Plaintiff, when such information is ascertained.

8 **D. Agency, Concert of Action, and Conspiracy**

9 65. At all times herein mentioned, Defendants, and each of them, were the agents, alter
10 egos, employees, partners, aiders and abettors, co-conspirators and/or joint venturers of each of the
11 other Defendants named herein and were at all times operating and acting within the purpose and
12 scope of said agency, service, employment, partnership, enterprise conspiracy, alter ego and/or joint
13 venture. Each Defendant has, by their conduct, ratified and approved the acts of each of the
14 remaining Defendants. Each Defendant has aided and abetted, encouraged, and conspired with the
15 other Defendants in breaching their obligations to Plaintiffs, as alleged herein. In taking action to
16 aid and abet and substantially assist the commission of the alleged wrongful conduct and other
17 wrongdoings complained of herein, each of the Defendants acted with an awareness of their primary
18 wrongdoing and realized that their conduct would substantially assist the accomplishment of the
19 wrongful conduct, wrongful goals, and wrongdoing. Many of the acts alleged herein took place at
20 meetings of plastic industry associations, marketing associations, and private communications
21 among and between each Defendant.

22 **III. JURISDICTION AND VENUE**

23 66. This court's personal jurisdiction over Defendants named herein is proper because
24 each Defendant maintains substantial contacts with California by and through its business
25 operations in this state, as described herein, and because Plaintiff's injuries described herein arose
26 out of and relate to those operations and occurred in California.

27 67. Earth Island has been harmed by Defendants' torts in California; the organization has
28

1 had to allocate larger and larger shares of its budget and resources to plastic pollution mitigation in
2 California, a direct result of Defendants' injurious conduct.

3 68. The Superior Court of California for San Mateo County is a court of general
4 jurisdiction and therefore has subject matter jurisdiction over this action.

5 69. Venue is proper in San Mateo County pursuant to Code of Civil Procedure section
6 395.5 because Defendants are corporations and/or associations, and because a substantial portion of
7 the injuries giving rise to Defendants' liability occurred in San Mateo County.

8 70. In San Mateo, Earth Island staff members have organized beach clean-ups for years
9 and have worked with the San Mateo County Unified School District and other community leaders
10 to clean beaches from Pacifica to Half Moon Bay. Earth Island has partnered with the Surfrider
11 Foundation San Mateo chapter to give talks and host educational events about plastic pollution at
12 businesses located on Half Moon Bay. Earth Island participates in the Pacific Beach Coalition,
13 which organizes Ecofest, a Linda Mar beach event that includes speakers, music, eco booths, hands-
14 on activities, and environmental and public safety resources.

15 **IV. FACTUAL BACKGROUND**

16 **A. Defendants' Misleading Use and Promotion of the Recycling Symbol**

17 71. In 1969 and early 1970, national attention toward environmental issues surged
18 culminating in the first Earth Day. In response, then Chicago-based Container Corporation of
19 America (CCA), a large producer of recycled paperboard, sponsored a contest for art and design
20 students at high schools and colleges across the country.¹⁹

21 72. CCA asked students, "for the love of the earth," to present designs that symbolize the
22 recycling process. In September 1970, CCA awarded the top prize of \$2,500 to a senior at the
23 University of Southern California in Los Angeles—Gary Anderson.²⁰

24 73. The winning symbol was a three-chasing-arrows Mobius loop, with the arrows
25

26 ¹⁹ Jones, Penny & Powell, Jerry, *Gary Anderson has been found!* Reprinted from Resource
27 Recycling North America's Recycling and Composting Journal, May 1999,
<https://discardstudies.com/wp-content/uploads/2012/07/garyandersonfound.pdf>.















28 ²⁰ *Id.*

1 twisting and turning among themselves (chasing arrows symbol or “universal recycle symbol”).
2 Because of the symbol’s simplicity and clarity, it became used worldwide.²¹

3 74. CCA applied to the U.S. Patent and Trademark Office for registration of the symbol
4 as a trademark. But registration for the symbol—now becoming popular due to CCA’s promotion
5 of it—was challenged. The corporation dropped its application rather than fight for the trademark,
6 and the Anderson design fell into the public domain.²²

7 75. In 1988, the Society of Plastic Industry (SPI) developed the Resin Identification
8 Code (RIC) system.²³ The RIC system classifies plastic types by numbers one through seven
9 displayed within the chasing-arrows symbol. The plastics industry adopted this symbol as a
10 method for waste facilities to properly sort plastics when state legislatures were discussing bans on
11 plastic containers. Most consumers see the chasing arrows and assume a product can be
12 recycled.²⁴

PLASTIC RESIN IDENTIFICATION CODES

						
PETE	HDPE	PVC	LDPE	PP	PS	OTHER
						
Polyethylene Terephthalate	High Density Polyethylene	Polyvinyl Chloride	Low Density Polyethylene	Polypropylene	Polystyrene	Other

23 ²¹ *Id.*

24 ²² *Id.*

25 ²³ Bradley, Athena Lee, *Plastics Codes and Recycling*, NorthEast Recycling Council (NERC), July
26 29, 2014 <https://nerc.org/news-and-updates/blog/nerc-blog/2014/07/29/plastics-codes-and-recycling>.

27 ²⁴ Senator Allen, Ben, *SB 343 – Truth in Labeling for Recycling Materials*, SENATOR BEN ALLEN,
28 *Fact Sheet*, As Amended August 31, 2021, <https://resource-recycling.com/resourcerecycling/wp-content/uploads/2021/09/SB-343-Truth-in-Recycleable-Labeling-Factsheet-090121.pdf>.

1 76. SPI created the numbers to develop consistency in plastics manufacturing and
2 recycled plastics reprocessing.²⁵ The numbers 1 through 6 currently represent that the package is
3 made of one of six specific types of plastic: 1 means polyethylene terephthalate (PET or PETE), 2
4 means high-density polyethylene (HDPE), 3 means polyvinyl chloride (PVC), 4 means low-density
5 polyethylene (LDPE), 5 means polypropylene (PP), and 6 means polystyrene (PS). Number 7 is
6 all-encompassing but mainly consists of Polycarbonate (PC). Because many plastics fall into this
7 category, there is no standardized protocol for this number when it comes to recycling.²⁶

8 77. Consequently, today there are numerous variations of the recycle symbol and the use
9 is not regulated. Moreover, the symbol does not necessarily indicate that the material is based on a
10 recycle or is recyclable.²⁷

11 78. The universal recycling symbol is a powerful tool in terms of public relations and
12 customer acceptance. However, there is a broad range of recycling labels. As a result, the
13 diversity and complexity, especially if several symbols are used simultaneously, leads to confusion
14 among consumers.²⁸

15 79. Consumers widely misinterpret RICs to mean recyclable and, thus, the consumer will
16 “wish-cycle.” Many well-meaning and hopeful consumers place any plastic item with an RIC in
17 their recycling bin, regardless of whether they are accepted at a Recycling Facility or if the product
18 will be recycled. Instead of more plastic being recycled, this approach slows down the sorting
19 process, drives up recycling costs, results in higher rates of contamination, and ultimately leads to
20 more waste in landfills, incinerators, and natural environments. Consumers’ recycling wishes, in
21

22 ²⁵ Cramer, Kelly, *Why the “recycling numbers” don’t mean quite what you think they mean*,
23 How2Recycle, April 16, 2016, <https://how2recycle.info/news/2016/recycling-numbers>.

24 ²⁶ POLYPRO, PLASTIC NUMBERS: WHAT DO THEY MEAN? Polypro Industrial Recycling,
August 24, 2017, <https://polyprorecycling.com/plastic-numbers/>

25 ²⁷ Shamsuyeva, Madina & Endres, Hans-Josef, *Plastics in the context of the circular economy and*
26 *sustainable plastics recycling: Comprehensive review on research development, standardization*
27 *and market, Composites*, Part C: Open Access, Volume 6, 2021, 100168, ISSN 2666-6820,
<https://www.sciencedirect.com/science/article/pii/S2666682021000633>

28 ²⁸ *Id.*

1 other words, are being turned into garbage.²⁹

2 80. A 2019 report from the Consumer Brands Association found that a total of 92
3 percent of Americans did not understand the Resin labels, 68 percent said they assumed that any
4 product with symbols for all seven codes would be recyclable, while 24 percent said that they did
5 not know the meaning of the symbols at all.³⁰

6 81. Defendants and affiliated representatives have taken advantage of consumer
7 confusion to promote their products through “greenwashing” unrecyclable products, often
8 imprinting them with the “chasing-arrows” recycling symbol.³¹ They then continue to support
9 plastic lobbying efforts.

10 82. Consumers rely heavily on information they find on a product label. Seventy-eight
11 percent of consumers look at recycling information on a product, and 82 percent of those
12 consumers trust what they read. Of the 78 percent who look at labels, 63 percent reported being
13 confused about whether an item is recyclable or not.³² This is because Defendants advertise their
14 plastic products as “recyclable” when in fact they are not recycled in a way that provides a
15 consumer any reasonable certainty about the end-life of the product.

16 83. Defendants and other affiliated representatives of the plastic industry have marketed
17 consumer products as having an environmental benefit, such as being recyclable, since the 1980s.³³

18
19 _____
20 ²⁹ Petsko, Emily, *Recycling Myth of the Month: Those numbered symbols on single-use plastics do*
21 *not mean ‘you can recycle me’* Oceana, March 11, 2020, [https://oceana.org/blog/recycling-myth-](https://oceana.org/blog/recycling-myth-month-those-numbered-symbols-single-use-plastics-do-not-mean-you-can-recycle-me/)
22 [month-those-numbered-symbols-single-use-plastics-do-not-mean-you-can-recycle-me/](https://oceana.org/blog/recycling-myth-month-those-numbered-symbols-single-use-plastics-do-not-mean-you-can-recycle-me/)

21 ³⁰ *Reduce. Reuse. Confuse.* Consumer Brands Association.

22 [https://consumerbrandsassociation.org/wp-](https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf)
23 [content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf](https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf)

23 ³¹ Senator Allen, Ben, *SB 343 – Truth in Labeling for Recycling Materials, SENATOR BEN ALLEN,*
24 *Fact Sheet*, As Amended August 31, 2021, [https://resource-recycling.com/resourcerecycling/wp-](https://resource-recycling.com/resourcerecycling/wp-content/uploads/2021/09/SB-343-Truth-in-Recycleable-Labeling-Factsheet-090121.pdf)
25 [content/uploads/2021/09/SB-343-Truth-in-Recycleable-Labeling-Factsheet-090121.pdf](https://resource-recycling.com/resourcerecycling/wp-content/uploads/2021/09/SB-343-Truth-in-Recycleable-Labeling-Factsheet-090121.pdf).

25 ³² The Recycling Partnership, *Consumer Research on Recycling Behavior and Attitudes Regarding*
26 *On-Pack Labeling* (Mar. 10, 2023), [https://recyclingpartnership.org/consumer-research-on-](https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/)
27 [recycling-behavior-and-attitudes-regarding-on-pack-labeling/](https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/)

27 ³³ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability,*
28 *Greenpeace Reports*, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 84. Defendants and affiliated representatives understand that this type of advertising can
2 change consumer perceptions of the environmental impact of companies, products, and services.
3 Importantly, Defendants know that green advertising—portraying a company or brand as
4 environmentally friendly—improves consumers’ corporate and brand attitudes and drives purchase
5 intention.³⁴

6 85. For consumers, advertising generally involves low-effort rather than high-effort
7 mental processing, as consumers process it while they are performing other tasks, such as scrolling
8 social media or watching television. In the case of green advertising, instead of focusing on the
9 accuracy of the green claims, consumers often make assumptions and focus their attention on
10 certain cues such as nature images, green colors, or product packaging. These cues trigger positive
11 emotional responses and motivate consumers to perceive any product having these features as
12 environmentally friendly.³⁵



13
14
15
16
17
18
19
20 86. Greenwashing works for Defendants because being seen as ethical drives
21 profitability. For example, a report by McKinsey found that Gen Z (people born roughly between
22
23
24

³⁴ Hartmann, Patrick, Marcos Aitor, Castro, Juan, & Apaolaza, Vanessa, *Perspectives: Advertising and climate change – Part of the problem or part of the solution?* International Journal of Advertising 2023, VOL. 42, NO. 2, October 24, 2022, (internal citations omitted), <https://www.tandfonline.com/doi/epdf/10.1080/02650487.2022.2140963?needAccess=true&role=button>.

³⁵ *Id.*

1 1996 and 2010) are more likely to spend money on companies and brands seen to be ethical.³⁶
2 Another, Nielson’s Global Corporate Sustainability Report found that 66% of consumers would
3 spend more on a product if it comes from a “sustainable” brand, and this percentage increases to
4 73% among millennials.³⁷

5 87. A recent study by the Recyclability Partnership revealed that 82 percent of
6 consumers say, “it is dishonest to put a label on a product saying it is recyclable if it won’t really
7 be recycled.” Consumers do not believe “recyclable” claims are valid if they are theoretical only.
8 If a product can expect to be leaked from the system or to end up in a landfill, then consumers
9 overwhelmingly report they would feel deceived about the “recyclable” claim. Seventy-one
10 percent of consumers said, “they would feel disappointed, deceived, upset, angry and/or lied to if
11 products were marked as recyclable when they could not be made into new things.”³⁸

12 88. Therefore, Defendants have a financial incentive to promote their products as
13 socially conscious while downplaying the truth about plastic recycling.

14 **B. Defendants’ Utilize the Recycling Symbol in a Broader Campaign to Mislead**
15 **Consumers and Falsely Promote the “Recyclability” of their Products**

16 89. Among the Defendants’ greenwashing tactics, claims about recycling or recyclable
17 plastic are some of the most common but these claims also come with little proof of how they
18 address the plastic crisis.³⁹ Additionally, claims about the use of “recycled” plastic to create the
19 product can mislead consumers about whether the product itself is recyclable. As explained in
20

21 ³⁶ Marsh, Jane, *What Is Greenwashing in Marketing?* EARTH.ORG, February 23, 2022,
22 [https://earth.org/what-is-greenwashing-in-
23 marketing/#:~:text=Greenwashing%20in%20marketing%20refers%20to,works%20to%20avoid%20being%20duped.](https://earth.org/what-is-greenwashing-in-marketing/#:~:text=Greenwashing%20in%20marketing%20refers%20to,works%20to%20avoid%20being%20duped.)

24 ³⁷ *Id.*

25 ³⁸ The Recycling Partnership, *Consumer Research on Recycling Behavior and Attitudes Regarding*
26 *On-Pack Labeling* (Mar. 10, 2023), [https://recyclingpartnership.org/consumer-research-on-
recycling-behavior-and-attitudes-regarding-on-pack-labeling/](https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/)

27 ³⁹ *Brands exposed for ‘misleading and mendacious’ packaging claims*, Changing Markets
28 Foundation, June 30, 2022, [https://changingmarkets.org/wp-
content/uploads/2022/06/Greenwash.com-packaging-press-release.pdf](https://changingmarkets.org/wp-content/uploads/2022/06/Greenwash.com-packaging-press-release.pdf)

1 connection with the example products identified below, Defendants falsely and misleadingly
2 promote their products as made from recycled material and/or recyclable when features or
3 attributes of the products make those recyclability statements untrue.



17 90. In an effort to downplay their contribution to plastic pollution,⁴⁰ **Coca-Cola**
18 launched a bottle made from 100% recycled material in an effort to reduce the company's use of
19 new plastic by 20%.⁴¹ However, the bottle cap and label are not made out of recycled materials.⁴²
20 Worse yet, when they are not recycled together, the bottle cap is often too small to be recycled

22 _____
23 ⁴⁰ The Coca-Cola Company has been named the world's worst plastic polluters for the fourth year
24 in a row in the Break Free From Plastic 2021 Brand Audit Report,
<https://brandaudit.breakfreefromplastic.org/wp-content/uploads/2022/11/BRAND-AUDIT-REPORT-2021.pdf>.

25 ⁴¹ Murphy Marcos, Coral, *Coca-Cola launches new bottles made out of 100% recycled materials, aims to reduce plastic use by 20%*. USA TODAY, February 9, 2021,
26 <https://www.usatoday.com/story/money/2021/02/09/coca-cola-introduces-100-percent-recycled-plastic-bottles/4292305001/>.

27 ⁴² *Id.*

28

1 alone and will end up in landfill or the environment.⁴³

2 91. Furthermore, Coca-Cola’s greenwashing attempts fail to reveal that plastic loses
3 strength and durability through the recycling process, resulting in recycled products diminishing in
4 value. On average, recycled plastic brings half the revenue of virgin plastic.⁴⁴ This, combined
5 with the price tag associated with an energy-intensive recycling process, has led to virgin plastic
6 production eclipsing recycling in cost-effectiveness.⁴⁵

7 92. Regardless of the durability of recycled plastic, Coca-Cola uses the universal
8 recycling symbol prominently on its single-use plastic bottles, including but not limited to on
9 Coca-Cola, Golden Peak, Dasani Water, and Odwalla Juice plastic bottles. Coca-Cola also
10 advertises on its website that it has set a goal “to make our packaging 100 percent recyclable by
11 2025.”

12 93. In 2017, to “lead in sustainability innovation,” **Procter & Gamble** announced the
13 launch a shampoo bottle made from up to 25% recycled beach plastic.⁴⁶

14 94. Additionally, the bottle (which is just one example) features non-recyclable plastics.
15 One design has part of the bottle dyed blue while one design features a black container. According
16 to the Association of Plastic Recyclers (APR), a U.S.-based international non-profit focused
17 exclusively on improving recycling for plastics, dark HDPE creates problems in sorting and the
18 physics behind polymer identification.⁴⁷ This is because the NIR (near-infrared) sorting
19

20 ⁴³ Petsko, Emily, *Why You Should Always Leave the Cap on a Plastic Bottle Before You Recycle It*,
21 Mental Floss, March 4, 2019, <https://www.mentalfloss.com/article/575847/leave-cap-on-plastic-bottle-before-recycling>

22 ⁴⁴ *Recycling of Plastics*, The University of Cambridge: The ImpEE Project, 2005, <http://www-g.eng.cam.ac.uk/impee/topics/RecyclePlastics/files/Recycling%20Plastic%20v3%20PDF.pdf>.

23 ⁴⁵ Sarah Kramer, *The One Thing That Makes Recycling Plastic Work Is Falling Apart*, BUSINESS
24 INSIDER, Apr. 5, 2016, www.businessinsider.com/low-oil-prices-hurt-plastics-recycling-2016-4.

25 ⁴⁶ *P&G unveils first shampoo bottle made with 25% recycled beach plastic*. COSMETICS
26 BUSINESS, January 19, 2017,
[https://www.cosmeticsbusiness.com/news/article_page/PG_unveils_first_shampoo_bottle_made_wi
th_25_recycled_beach_plastic/124796](https://www.cosmeticsbusiness.com/news/article_page/PG_unveils_first_shampoo_bottle_made_with_25_recycled_beach_plastic/124796).

27 ⁴⁷ HDPE (High Density Polyethylene, Resin Identification Code #2), APR Design® Guidance,
28 Association of Plastic Recyclers, <https://plasticsrecycling.org/hdpe-design-guidance>.

1 technology used in Material Recovery Facilities (MRFs) is not capable of identifying many dark-
2 colored polymers since the colorant absorbs NIR energy.⁴⁸ Further, even if an item may meet APR
3 Guidance for NIR optical sorting, it may still not be considered recyclable in communities that
4 have chosen in the past to not collect black plastics.⁴⁹ Moreover, multi-colored plastics, plastics
5 with caps made from different resins, and plastics that need to be cleaned are not recycled in many
6 instances.⁵⁰ Therefore, Procter & Gamble’s claims about recycling and their products are
7 misleading.



18 95. In addition to shampoo bottles, Defendant Procter & Gamble uses the universal
19 recycling symbol prominently and in an inconspicuous location on various products packaged in
20 plastic including but not limited to Tide Laundry Detergent, Secret Deodorant, and Febreze Fabric
21 Spray. Procter & Gamble also advertises on its website that “100% of our packaging will be
22 recyclable or reusable” and that “as of 2018, 86% of P&G packages are considered recyclable.”

24 ⁴⁸ *Id.*

25 ⁴⁹ *Id.*

26 ⁵⁰ Plastics For Change, *Which Plastics Can Be Recycled?* May 20, 2021,
27 <https://www.plasticsforchange.org/blog/which-plastic-can-be-recycled>; Everyday Recycler, *Can you
28 Recycle Bottle Caps? Learn How to Recycle Lids and Caps*, <https://everydayrecycler.com/can-you-recycle-bottle-caps/>.

1 96. Defendant **Colgate**, in one example, prominently displays the “universal recycle
2 symbol” on their toothpaste with the statement “Recyclable Tube” on the front of the container.



3
4
5
6
7
8
9
10
11
12
13
14 97. The backside features the “universal recycle symbol” beside an RIC #2 chasing
15 arrows symbol which also features an asterisk notifying the consumer that “[y]our community may
16 not yet accept tubes for recycling. Check locally.”



1 98. In addition to toothpaste, Defendant Colgate uses the universal recycling symbol
2 prominently on various products packaged in plastic, including but not limited to Hello Deodorant,
3 Fabuloso Soap, Murphy’s Oil Soap, Ajax Cleaning Spray, and Toms of Maine Deodorant. Colgate
4 also advertises on its website that it is “committed to delivering 100 percent recyclable packaging
5 in our Personal Care, Home Care and Hill’s Pet Nutrition categories by 2020 and 100 percent
6 recyclable packaging in all categories by 2025.

7 99. **Crystal Geyser** promotes their Tejava Tea Pods as “Eco-Friendly” despite the white
8 cup being composed of Polypropylene #5.⁵¹ When answering consumer questions concerning how
9 to find out where to recycle the pods, Crystal Geyser’s advice is to “[p]lease take them to any
10 location where #5 recyclable plastic is accepted. Call your local recycle center or waste
11 management company for closest location.”⁵² However, according to a recent study: “Most types
12 of plastic packaging are economically impossible to recycle now and will remain so in the
13 foreseeable future.”⁵³ Moreover, plastic resins #3-7 “have negligible-to-**negative value and are**
14 **effectively a** category of products that municipal recycling programs may collect, but do not
15 actually recycle. Plastic #3-7 waste collected in municipal systems across the country is being sent
16 **to landfills or incinerated.**”⁵⁴

17
18
19
20
21
22
23
24 ⁵¹ See Crystal Geyser Bates Number CGW 00095.

25 ⁵² See Crystal Geyser Bates Number CGW 00095.

26 ⁵³ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

27 ⁵⁴ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
28 Greenpeace Reports, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 100. Additionally, pods are often too small for sorting systems at recycling plants to pick
2 up.⁵⁵ Recycling centers can be overwhelmed with mountains of trash, so sifting through a
3 mound of garbage for tiny capsules is not efficient.⁵⁶ In this sense, Crystal Geysers’s Tejava Tea
4 Pods are analogous to the recyclability issues with Keurig Cups.⁵⁷



13 101. The Green Guides state that “if any component significantly limits the ability to
14 recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable
15 material, but because of its shape, size or some other attribute is not accepted in recycling
16 programs, **should not be marketed as recyclable.**” 16 C.F.R. § 260.12(d). Furthermore,
17 California’s Environmental Marketing Claims Act (“EMCA”), Cal. Bus. & Prof. Code §§ 17580.5
18 and 17580(a) makes it unlawful for any person to make any untruthful, deceptive, or misleading
19 environmental marketing claim. Pursuant to § 17580.5, the term “environmental marketing claim”

21 _____
22 ⁵⁵ See Napa Recycling & Waste Services, *Coffee Pods & Capsules*, “While plastic coffee capsules
23 are often touted as “recyclable,” the cups are actually too small to be captured and recycled in
24 recycling facilities where objects are separated based on size and density.”
25 <https://naparecycling.com/guide/coffee-capsules/>.

26 ⁵⁶ Brown, Dalvin, *K-cups and coffee capsules: Is your quick java fix killing the environment?*, USA
27 TODAY, March 13, 2019, <https://www.usatoday.com/story/tech/2019/03/13/heres-why-your-used-k-cups-coffee-pods-arent-usually-recycled/3067283002/>.

28 ⁵⁷ Millar A. Sheila, Walker Jean-Cyril, Anushka N. Rahman, *Keurig Agrees to Pay \$10 Million to Settle Class Action Over Charges of Misleading Recyclable Claims*, The National Law Review, March 1, 2022, Volume XIII, Number 228, <https://www.natlawreview.com/article/keurig-agrees-to-pay-10-million-to-settle-class-action-over-charges-misleading>.

1 includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.* Crystal Geyser
2 promotes the recyclability of Tejava Tea Pods while not addressing that the composition of their
3 “Eco-Friendly” product has a national recycling rate of 3%.⁵⁸ By labeling these products as
4 recyclable, Crystal Geyser is violating California law and making environmental marketing claims
5 that are false, misleading, and deceptive.

6 102. Defendant Crystal Geyser also uses the universal recycling symbol prominently on
7 its single-use plastic bottles and Tejava Tea Pods products. Single-use plastic bottles face
8 recycling impossibilities due to the use of plastic sheathing and caps that are made from different
9 resins. Nevertheless, Crystal Geyser advertises on its website that its “bottles are made from 100%
10 recyclable PET” (polyethylene terephthalate).

11 103. Defendant **Danone North America** uses the universal recycling symbol prominently
12 and in an inconspicuous location on various food products packaged in single-use plastic, including
13 but not limited to International Delight Creamer, Oikos Yogurt and Silk Milk, and Wallaby
14 Organic Yogurt.



15
16
17
18
19
20
21 104. Defendant **Nestlé USA** uses the universal recycling symbol prominently and in an
22 inconspicuous location on various food products packaged in single-use plastic, including but not

23
24 ⁵⁸ Advancing Sustainable Materials Management: 2018 Tables and Figures, *Table 8. Plastics in*
25 *products in MSW, 2018*, United States Environmental Protection Agency, December 2020,
26 [https://www.epa.gov/sites/default/files/2021-](https://www.epa.gov/sites/default/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf)
27 [01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf). See also CA Recycling
28 Commission AB1583: Recyclability Screening Survey noting a 1% collection rate for #5 PP or #6
PS Beverage Pods in California stating that “Pods are too small to be separated in MRFs.”
[https://docs.google.com/spreadsheets/d/1YqzG21E-](https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372)
[6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372](https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372).

1 limited to Starbucks K-cups, Nesquik, Coffeemate Creamer, and Toll House Cookie Dough. Nestlé
2 USA also advertises on its website that it aims “to make 100% of our packaging recyclable or
3 reusable by 2025.”



105. Defendant **PepsiCo** uses the universal recycling symbol prominently and in an
13 inconspicuous location on its single-use plastic products, including but not limited to Aquafina
14 Water, Lipton Iced Tea, Mountain Dew, and Sambra Hummus. PepsiCo also advertises on its
15 website that it “strive[s] to design 100 percent of our packaging to be recyclable, compostable or
16 biodegradable” by 2025.



1 106. Defendant **Clorox** uses the universal recycling symbol prominently and in an
2 inconspicuous location on its single-use plastic products, including but not limited to Burts Bees
3 Capstick, Clorox Bleach, Formula 409 Cleaner, Hidden Valley Ranch, Liquid-Plumr, and Pine-Sol.



4
5
6
7
8
9
10
11
12
13
14 107. As detailed above, Defendants affirmatively promote their products as being
15 recyclable. The claims by Defendants that the products are recyclable are uniform, consistent, and
16 material; however, the claims are misleading or false. Because the claims are false and misleading,
17 ordinary consumers are likely to be deceived by such representations.⁵⁹

18 **C. Defendants’ Use of Virgin Plastic**

19 108. Defendants publicly tout their commitments to the environment and “recycling”
20 while downplaying that they opt to use cheap virgin plastic in their supply chain rather than
21 recycled plastic. That conduct is a prototype example of Greenwashing. For example, in 2019 it
22 was reported that 91% of the plastic packaging Coca-Cola uses annually is made from virgin
23
24
25

26
27 ⁵⁹ Kate Gibson & Irina Ivanova, *Suit charges Keurig’s coffee pods aren’t recyclable as advertised*,
28 CBS NEWS, July 11, 2019, <https://www.cbsnews.com/news/keurig-coffee-pods-not-recyclable-as-advertised-according-to-class-action-suit/>.

1 plastic.⁶⁰ This number has recently increased to 94%⁶¹ despite Coca-Cola’s public commitment to
2 reduce their use of virgin plastic.⁶² This fact is conveniently left out of promotional materials
3 about Coca-Cola’s sustainability efforts or information about its “recyclable” plastic bottles.
4 Similarly, Nestlé has only managed a 10.5% reduction in virgin plastics since 2018 despite more
5 optimistic “pledges.”⁶³

6 109. Defendants use plastic instead of more sustainable alternatives because virgin
7 plastic is cheaper, and Defendants can make higher profits. Defendants collectively produce more
8 than 6 million tons of plastic waste every year. Coca-Cola, PepsiCo, and Nestlé are the top three
9 global users of plastic packaging.⁶⁴ Nationally, these three companies were specifically identified
10 as the most responsible for oceanic plastic pollution in no less than 70 cleanups spanning the
11 United States.⁶⁵ According to its own data, Coca-Cola alone produces 3 million tons of plastic
12 waste every year.⁶⁶

13 110. The US generates three times more garbage than the global average and recycles far
14 less of it than other high-income countries. This, combined with the ever-growing production of
15 single-use plastics, has resulted in a huge plastic pollution crisis.⁶⁷

16
17 ⁶⁰ Leila Abboud, *Can we break our addiction to plastic? The future of packaging*, Financial Times, Oct. 30, 2019, <https://www.ft.com/content/27cf9734-faa7-11e9-98fd-4d6c20050229>.

18 ⁶¹ *Global Commitment 2022*, The Ellen MacArthur Foundation, <https://ellenmacarthurfoundation.org/global-commitment-2022/overview>

19 ⁶² *Sustainable Packaging Design*, The Coca-Cola Company, [https://www.coca-](https://www.coca-colacompany.com/sustainability/packaging-sustainability/design)
20 [colacompany.com/sustainability/packaging-sustainability/design](https://www.coca-colacompany.com/sustainability/packaging-sustainability/design).

21 ⁶³ *Waste Reduction*, Nestlé, <https://www.nestle.com/sustainability/waste-reduction>.

22 ⁶⁴ Lorraine Chow, *10 Worst Plastic Polluting Companies Found by Global Cleanups*, EcoWatch, Oct.
23 9, 2018, www.ecowatch.com/worst-plastic-polluting-companies-2611144880.html.

24 ⁶⁵ *Id.*

25 ⁶⁶ Reed, Betsy, *Coca-Cola admits it produces 3m tonnes of plastic packaging a year*. The Guardian,
26 March 14, 2019, [https://www.theguardian.com/business/2019/mar/14/coca-cola-admits-it-produces-](https://www.theguardian.com/business/2019/mar/14/coca-cola-admits-it-produces-3m-tonnes-of-plastic-packaging-a-year)
27 [3m-tonnes-of-plastic-packaging-a-year](https://www.theguardian.com/business/2019/mar/14/coca-cola-admits-it-produces-3m-tonnes-of-plastic-packaging-a-year).

28 ⁶⁷ Delemare Tangpuori, Alice, Harding-Rolls, George, Urbancic, Nusa, Purita Banegas Zallio, Ximena, & The Changing Markets Foundation, *Talking trash: the corporate playbook of false solutions to the plastic crisis*, The Changing Markets Foundation, September 2020, http://changingmarkets.org/wp-content/uploads/2021/01/TalkingTrash_FullVersion.pdf.

1 111. The sheer volume of plastic in Defendants’ products is astounding, and their refusal
2 to limit plastics in their products or use more sustainable materials and methods is a direct cause of
3 the millions of tons of plastics that end up in the world’s oceans and waterways each year.
4 Meanwhile, plastic recyclers cannot compete with the virgin plastic market due to the
5 comparatively lower cost of virgin plastic. Most types of recycled plastic resin are essentially
6 worthless in the buyer’s market.⁶⁸

7 112. In 2012, the U.S. produced 48.1 million metric tons of plastic materials and resins,
8 which accounted for 17% of global production.⁶⁹ This placed it as the second largest producer by
9 region behind all of Asia combined.⁷⁰ According to American Chemistry Council data, California
10 has the second-highest number of plastic resin manufacturing establishments; in 2012 it was home
11 to 97 establishments, just behind Texas with 102.⁷¹ Resin manufacturers and distributors with
12 locations in California include companies like United Polymers, TMC Plastics, SK Chemicals
13 America, Asuka-Platech, Mitsui Chemicals America, and Plastic Innovations.⁷²

14 113. A particular problem arises when a material promoted as recyclable is theoretically
15 recyclable but, in practice, not able to be recycled. This is an important theme as companies move
16 towards targets to make 100% of their products recyclable, reusable or compostable.⁷³ An
17 example is Coca-Cola’s recent “World Without Waste” campaign promoted as a sustainable
18

19 ⁶⁸ Sharon Lerner, *Waste Only: How the Plastics Industry is Fighting to Keep Polluting the World*,
20 THE INTERCEPT, July 20, 2019, <https://theintercept.com/2019/07/20/plastics-industry-plastic-recycling/>.

21 ⁶⁹ *Plastic Resins in the United States*. American Chemistry Council, 2013,
22 <https://www.packaginggraphics.net/plasticResinInformation/Plastics-Report.pdf>

23 ⁷⁰ *Id.*

24 ⁷¹ *Id.*

25 ⁷² *Plastic Resin Suppliers*, THOMASNET, www.thomasnet.com/products/plastic-resins-3757-1.html

26 ⁷³ Delemare Tanguori, Alice, Harding-Rolls, George, Urbancic, Nusa, Purita Banegas Zallio,
27 Ximena, & The Changing Markets Foundation, *Talking trash: the corporate playbook of false*
28 *solutions to the plastic crisis*, The Changing Markets Foundation, September 2020,
http://changingmarkets.org/wp-content/uploads/2021/01/TalkingTrash_FullVersion.pdf

1 packaging initiative. As part of that initiative, Coca-Cola’s goal is to make 100% of their
2 packaging recyclable globally by 2025 and use at least 50% recycled material in their packaging by
3 2030.⁷⁴

4 114. In addition to Coca-Cola, many of the Defendants, who sell billions of PET bottles
5 each year, are among the signatories to the New Plastics Economy Global Commitment and have
6 made public commitments to increasing their usage of recycled PET (RPET) in their packaging.
7 For example, Nestlé aims to have 35 percent recycled content in its PET water bottles by 2023.
8 PepsiCo plans to use 25 percent recycled plastic content by 2023.⁷⁵

9 115. However, according to a recent study by The Recycling Partnership, the average
10 yield from recycled bottles to resin is only 67%. Therefore, the demand for recycled plastic will
11 require 1.6 billion pounds **more** PET bottles in the domestic recycling stream each year, equivalent
12 to a 27 percent point **growth** in the overall U.S. PET recycling rate. This additional supply would
13 actually increase the use of plastic and require every person in the US to recycle 100 additional
14 PET bottles each year.⁷⁶ As a result, Defendants’ “sustainability” goals are premised on the use of
15 more plastic, not less.

16 116. Additionally, the realities of recycling make these goals even less realistic. The
17 discrepancy between the collection rate and the utilization rate began to increase in 2007. At this
18 time the rate of PET collection increased without a corresponding increase in the rate of clean flake
19 production from the collected PET. The most important factor related to this shift is deteriorating
20 bale quality and resultant low yields for PET reclaimers. Since 2015 the discrepancy between the
21

22 ⁷⁴ 2021 WORLD WITHOUT WASTE REPORT, The Coca-Cola Company, June 2022,
23 [https://www.coca-colacompany.com/reports/world-withoutwaste2021#:~:text=The
24 %20Coca%E2%80%91Cola%20Company%27s%20World%20Without%20Waste%20program%20is,50%25%20recycled%20material%20in%20our%20packaging%20by%202030.](https://www.coca-colacompany.com/reports/world-withoutwaste2021#:~:text=The%20Coca%E2%80%91Cola%20Company%27s%20World%20Without%20Waste%20program%20is,50%25%20recycled%20material%20in%20our%20packaging%20by%202030.)

25 ⁷⁵ Kersten-Johnston, Stephanie, *The Bridge to Circularity. Putting the New Plastics Economy into
26 Practice in the U.S.* The Recycling Partnership, October 2019. Bates Number
DANONE_EII_00001668.

27 ⁷⁶ Kersten-Johnston, Stephanie, *The Bridge to Circularity. Putting the New Plastics Economy into
28 Practice in the U.S.* The Recycling Partnership, October 2019. Bates Number
DANONE_EII_00001669.

1 gross and net recycling rates has held fairly steady. Any yield loss can be related to the prevalence
2 of smaller, lighter containers, which require more processing and thus generate higher associated
3 loss per pound of material, as well as ongoing design for recyclability issues creating a greater
4 percentage of less marketable, harder-to-process PET. Design for recyclability concerns include
5 full-wrap, shrink sleeve labels that are difficult to remove or separate from PET, or that block auto
6 sortation function; barrier layers added to PET to preserve product integrity and extend shelf-life;
7 and metal integrated into PET packages, whether in closures, closure rings, can tops, or pump
8 springs.⁷⁷

9 117. In 2019, the total amount, by weight, of post-consumer PET bottles collected for
10 recycling in the United States and sold to recycling markets was 1,777 million pounds. This total
11 represents a drop of about 39 million pounds in the weight of bottles collected for recycling
12 compared with that of 2018.⁷⁸

13 118. The decline in PET collection is attributable largely to a lack of curbside material.
14 Between 2010 and 2018, US reclaimer collection and processing of curbside PET bales grew
15 steadily. However, by the end of 2019, approximately 60 curbside programs were permanently
16 suspended or canceled after a global recycling market disruption that began in 2018.⁷⁹

17 119. While the market for RPET and virgin PET are distinct, it is clear that the pricing of
18 RPET is influenced by virgin PET.⁸⁰ The heightened accessibility of oil and natural gas in the
19 United States, coupled with the integration of oil and gas companies with plastic production, has
20 also deeply undercut the price of recycled plastic. It is cheaper for Defendants to buy virgin
21
22

23 ⁷⁷ National Association for PET Container Resources (NAPCOR), 2019 PET Recycling Report,
24 TCCC-EII_00000393.

25 ⁷⁸ National Association for PET Container Resources (NAPCOR), 2019 PET Recycling Report,
26 TCCC-EII_00000387.

27 ⁷⁹ National Association for PET Container Resources (NAPCOR), 2019 PET Recycling Report,
28 TCCC-EII_00000387.

⁸⁰ NAPCOR; The Association of Plastic Recyclers: Report on Postconsumer, PET Container
Recycling Activity in 2017. TCCC-EII_00000346.

1 materials than to employ recycled plastics.⁸¹ The growing output of new cheap plastic further
2 undermines the industry’s argument that recycling can resolve the plastic waste crisis.

3 120. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 121. [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 122. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 123. The immense, immediate, and unsustainable demand created by the “commitment
20 goals” will encounter a supply system that, in its current form, is fundamentally constrained. For
21
22

23 _____
24 ⁸¹ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
Greenpeace Reports, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

25 ⁸² TCCC-EII_00000315.

26 ⁸³ TCCC-EII_00000315.

27 ⁸⁴ CGW03003

28 ⁸⁵ CGW03005

1 example, according to its own statistics, Coca-Cola's plastic bottle collection rate is only 57%.⁸⁶
2 Thus, the scale of the gap between the current supply and projected demand for recycled PET
3 illustrates the urgency in working to increase the available supply of post-consumer resin coming
4 through U.S. recycling system, while improving the quality of the material.⁸⁷

5 124. Defendants also have a wide range of options for eliminating or reducing the
6 amount of plastic in their products. These options include but are not limited to, switching to
7 materials that are biodegradable or compostable (e.g., natural polymers and other natural
8 materials), using materials that are more readily recycled or reused (e.g., glass and aluminum),
9 redesigning the products to use less packaging, and implementing closed-loop systems (e.g., bottle
10 deposit systems). However, Defendants refuse to implement these more sustainable options
11 because virgin plastic is cheap, and therefore results in lower overhead and higher profits.

12 125. At the same time, while publicly committing to recycling initiatives, Defendants
13 have been missing similar goals for decades while undermining sustainability reforms through
14 lobbying groups and trade associations.⁸⁸

15 **D. Defendants' Decades-Long Lobbying Efforts**

16 126. Although Coca-Cola has committed to the World Without Waste campaign, over the
17 last 30 years, Coca-Cola has broken, delayed, or shifted the goalposts on a number of its targets.⁸⁹
18 In 1990, Coca-Cola announced that it would start selling some of its soda in bottles made from
19 about 25 percent recycled plastic but covertly phased out the bottles in 1994. The company briefly
20

21 ⁸⁶ 2021 WORLD WITHOUT WASTE REPORT, The Coca-Cola Company, June 2022,
22 [https://www.coca-colacompany.com/content/dam/company/us/en/reports/pdf/coca-cola-world-
without-waste-report-2021.pdf](https://www.coca-colacompany.com/content/dam/company/us/en/reports/pdf/coca-cola-world-without-waste-report-2021.pdf).

23 ⁸⁷ Kersten-Johnston, Stephanie, *The Bridge to Circularity. Putting the New Plastics Economy into*
24 *Practice in the U.S.* The Recycling Partnership, October 2019. Bates Number
DANONE_EII_00001671.

25 ⁸⁸ Chapman, Ben, *Big plastic polluters accused of 'hypocrisy' over pledges to reduce waste while*
26 *lobbying to block reforms*, Independent, September 17, 2020,
27 [https://www.independent.co.uk/news/business/plastic-waste-pollution-coca-cola-pepsi-nestle-
sustainability-b455891.html](https://www.independent.co.uk/news/business/plastic-waste-pollution-coca-cola-pepsi-nestle-sustainability-b455891.html).

28 ⁸⁹ *Id.*

1 met a second goal to use an average of 10 percent recycled content in 2005 before backsliding a
2 year later.⁹⁰

3 127. In 2008, Nestlé set a goal to double the U.S. recycling rate for PET, the clear plastic
4 used for water and soda bottles, to 60 percent in a decade. Yet by 2018, the PET recycling rate
5 was practically unchanged at 29 percent.⁹¹

6 128. Similarly, in 1990, PepsiCo introduced a bottle made from 25 percent recycled
7 content, but by the end of the decade, the company had no recycled plastic in its bottles. It did
8 meet a more modest goal to include 10 percent recycled content in its bottles in 2005. However,
9 the company failed to deliver on a third pledge to increase the industry-wide container recycling
10 rate to 50 percent by 2018.⁹²

11 129. Procter & Gamble also has a history of changing the goalposts on its voluntary
12 commitments. For example, in 2010, the company made a specific commitment to replace 25% of
13 its petroleum-based materials with sustainably sourced renewable materials by 2020. However, the
14 company did not report progress towards the target.⁹³ Additionally, in its 2015 sustainability
15 report, the wording of the commitment was changed to a much less demanding one: “create
16 technologies by 2020 to substitute top petroleum-derived raw materials with renewable materials
17 as cost and scale permit.” In 2018, Procter & Gamble claimed it had achieved this goal, but there
18 has been no further mention of the original pledge.⁹⁴

19 130. Defendants and affiliated representatives have engaged in a decades-long campaign
20

21 ⁹⁰ Donovan-Smith, Orion, *Companies’ New Pledges to Boost Recycling Face Old Pitfalls*,
22 Frontline, March 31, 2020, <https://www.pbs.org/wgbh/frontline/article/companies-new-pledges-to-boost-recycling-face-old-pitfalls/#:~:text=In%20the%20past%3A%20In%201990%2C%20Coke%20announced%20that,cont ent%20in%202005%20before%20backsliding%20a%20year%20later.>

23 ⁹¹ *Id.*

24 ⁹² *Id.*

25 ⁹³ Delemare Tangpuori, Alice, Harding-Rolls, George, Urbancic, Nusa, Purita Banegas Zallio,
26 Ximena, & The Changing Markets Foundation, *Talking trash: the corporate playbook of false solutions to the plastic crisis*, The Changing Markets Foundation, September 2020,
27 http://changingmarkets.org/wp-content/uploads/2021/01/TalkingTrash_FullVersion.pdf.

28 ⁹⁴ *Id.*

1 to deflect blame for the plastic pollution crisis by convincing the public that recycling and litter
2 prevention are the true solutions to plastic pollution. This effort can be traced back to the Keep
3 America Beautiful Campaign, which started in the 1950s and remains active today and includes
4 partners such as PLASTICS, Coca-Cola, PepsiCo, and Nestlé USA, among others.

5 131. Perhaps the most notable ad from this campaign aired in 1971 and featured a Native
6 American man (played by an Italian-American actor) canoeing down a heavily polluted waterway
7 and telling the audience that “people start pollution [and] people can stop it.”⁹⁵

8 132. More recently, the Ad Council and Keep America Beautiful produced the “I Want to
9 Be Recycled” campaign, which features a lonely plastic bottle rolling through beautiful American
10 landscapes and various communities until a consumer finally picks it up and puts the bottle in a
11 blue recycling bin.⁹⁶

12 133. Although these campaigns appear to support the environment on their face, they
13 obscure the real problem, which is the role that Defendants play in the plastic problem. These
14 public relations strategies have shifted the public focus to consumer recycling behavior and have
15 thwarted legislation that would increase corporate responsibility for waste management.⁹⁷

16 134. For example, in 1953, Vermont passed legislation called the Beverage Container
17 Law, which outlawed the sale of beverages in non-refillable containers. Single-use packaging had
18 just been developed and manufacturers were motivated to oppose the law because of the much
19 higher profit margins associated with selling plastic containers along with their products, rather
20 than having to be in charge of recycling or cleaning and reusing them. Keep America Beautiful
21 was founded that year and began working to frustrate such legislation. Vermont lawmakers
22 allowed the law to lapse after four years, and the single-use container industry was able to expand
23

24 _____
25 ⁹⁵ Matt Wilkins, *More Recycling Won't Solve Plastic Pollution*, *Scientific American*, July 6, 2018,
<https://blogs.scientificamerican.com/observations/more-recycling-wont-solve-plastic-pollution/>.

26 ⁹⁶ *I want to be Recycled*, Keep America Beautiful, <https://kab.org/campaigns/i-want-to-be-recycled/>;
<https://www.youtube.com/watch?v=ZHqHgJ3PqUs>.

27 ⁹⁷ Matt Wilkins, *More Recycling Won't Solve Plastic Pollution*, *Scientific American*, July 6, 2018,
28 <https://blogs.scientificamerican.com/observations/more-recycling-wont-solve-plastic-pollution/>.

1 unfettered, for almost 20 years.⁹⁸

2 135. In 1971 Oregon reacted to a growing trash problem by becoming the first U.S. state
3 to pass a “bottle bill,” requiring a five-cent deposit on beverage containers that is refunded upon
4 the container’s return. Bottle bills provide a strong incentive for container reuse and recycling; the
5 10 states with bottle deposit laws have around 60 percent container recovery rates compared to 24
6 percent in states without them. Keep America Beautiful and other lobbying groups have publicly
7 opposed or marketed against bottle deposit legislation for decades, as it threatens their bottom line.
8 Between 1989 and 1994 the beverage industry spent \$14 million to defeat the National Bottle
9 Bill.⁹⁹

10 136. The greatest success of Keep America Beautiful has been to shift the onus of plastic
11 pollution mitigation onto the public while simultaneously becoming a trusted name in the
12 environmental movement. This psychological misdirect has built public support for a legal
13 framework that punishes individual litterers with hefty fines or jail time, while simultaneously
14 blocking the enactment of laws that place responsibility on plastic manufacturers for the numerous
15 environmental, economic, and health hazards imposed by their products.¹⁰⁰

16 137. More recently, researchers with the Changing Markets Foundation found that Coca-
17 Cola has committed to 10 voluntary initiatives to solve plastic waste while at the same time being a
18 member of at least seven trade associations that lobbied against deposit return systems or other
19 actions to regulate single-use plastic.¹⁰¹ Additionally, PepsiCo and its associations such as the
20 American Beverage Association (ABA) and International Bottled Water Association (IBWA) have
21 been fierce opponents of bottle bills.¹⁰²

23 ⁹⁸ *Id.*

24 ⁹⁹ *Id.*

25 ¹⁰⁰ *Id.*

26 ¹⁰¹ *Ground-breaking report reveals hypocrisy of world’s biggest plastic polluters*, Changing
27 Markets Foundation, September 17, 2020, [http://changingmarkets.org/wp-](http://changingmarkets.org/wp-content/uploads/2020/09/Talking-Trash-FINAL.pdf)
28 [content/uploads/2020/09/Talking-Trash-FINAL.pdf](http://changingmarkets.org/wp-content/uploads/2020/09/Talking-Trash-FINAL.pdf).

¹⁰² Delemare Tangpuori, Alice, Harding-Rolls, George, Urbancic, Nusa, Purita Banegas Zallio,
Ximena, & The Changing Markets Foundation, *Talking Trash: the Corporate Playbook of False*

1 138. Recent investigations into the proliferation of plastic pollution plaguing the natural
2 environment have revealed that the plastics industry has known for decades that most products and
3 packaging made from plastic would not be recycled. On September 11, 2020, National Public
4 Radio (“NPR”) published an investigation illustrating the plastic industry’s decades-long
5 awareness that recycling would not keep plastic products or packaging out of landfills,
6 incinerators, communities, or the natural environment.¹⁰³ In a 1974 speech, one industry insider
7 stated “there is serious doubt that [recycling plastic] can ever be made viable on an economic
8 basis.”¹⁰⁴ Larry Thomas, former president of the Society of the Plastic Industry (known today as
9 the Plastics Industry Association), told NPR that “if the public thinks that recycling is working,
10 then they are not going to be as concerned about the environment.”¹⁰⁵ The NPR investigative
11 report details the length and expense that the plastics industry went to deceive consumers that
12 plastic was easily recyclable, despite the knowledge that the cost of recycling would never be
13 economical.

14 139. Similarly, a recent Canadian Broadcasting Corporation news report describes that
15 even the recycling logo was used as a marketing tool to improve the image of plastics after
16 environmental backlash in the 1980s.¹⁰⁶ According to Lewis Freeman, a former vice president of
17 the Society of the Plastics Industry, many in the industry had doubts about recycling from the start.
18 “There was never an enthusiastic belief that recycling was ultimately going to work in a significant
19 way.” Yet the plastic industry spent millions on ads selling plastics and recycling to consumers.¹⁰⁷

21 *Solutions to the Plastic Crisis*, The Changing Markets Foundation, September 2020,
22 http://changingmarkets.org/wp-content/uploads/2021/01/TalkingTrash_FullVersion.pdf.

23 ¹⁰³ Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*.
24 NPR.ORG September 11, 2020, 5:00 AM, <https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled>

25 ¹⁰⁴ *Id.*

26 ¹⁰⁵ *Id.*

27 ¹⁰⁶ *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, September.
28 23, 2020, <https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618>.

¹⁰⁷ *Id.*

1 140. Defendants have received extensive criticism for their contribution to the plastic
2 waste crisis. For instance, Defendants Coca-Cola, Pepsi, and Nestlé have been repeatedly
3 mentioned in recent news coverage as the top three brands found during beach cleanups around the
4 world. At the April 2019 conference of the Plastic Industry Association, Garry Kohl of PepsiCo
5 said to his fellow members: “All we hear is ‘you’ve got to get rid of plastics.’”¹⁰⁸ John Caturano
6 of Nestlé Waters North America said at a conference in March 2019: “The water bottle has, in
7 some way, become the mink coat or the pack of cigarettes.”¹⁰⁹ “It’s socially not very acceptable to
8 the young folks, and that scares me.”¹¹⁰

9 141. In the face of mounting scientific evidence about the harms of plastic, Defendants
10 and other affiliated representatives of the plastic industry continued to misleadingly promote and
11 market plastic to consumers in vast quantities. A significant aspect of this effort is labeling and
12 Greenwash advertising of plastic packaging as recyclable.

13 142. In response to the mounting confusion around labeling, the Environmental Protection
14 Agency (EPA) asked the Federal Trade Commission (F.T.C.) to substitute the arrows logo on
15 plastics with solid triangles, a decision that the agency believes could help clear up confusion
16 around labeling. The goal is to relieve recycling facilities of the burden of dealing with plastic
17 items that they cannot process.¹¹¹

18 143. In a letter to the F.T.C., Jennie Romer, a deputy assistant administrator at the EPA,
19 wrote that consumers have long treated the chasing-arrows logo as an indication that an item can
20 be recycled. But when it comes to plastics that can be “deceptive and misleading,” Ms. Romer
21 wrote, manufacturers often pair the iconic logo with a resin identification code, with numbers from

22 _____
23 ¹⁰⁸ Sharon Lerner, *Waste Only: How the Plastics Industry is Fighting to Keep Polluting the World*,
24 THE INTERCEPT, July 20, 2019, <https://theintercept.com/2019/07/20/plastics-industry-plastic-recycling/>.

25 ¹⁰⁹ Tik Root, *Inside the long war to protect plastic*, PRI THE CENTER FOR PUBLIC INTEGRITY, May
26 16, 2019, <https://www.pri.org/stories/2019-05-16/inside-long-war-protect-plastic>.

27 ¹¹⁰ *Id.*

28 ¹¹¹ Che, Chang, *His Recycling Symbol Is Everywhere. The E.P.A. Says It Shouldn't Be*, The New York
Times, April 7, 2023, <https://www.nytimes.com/2023/08/07/climate/chasing-arrows-recycling-symbol-epa.html>.

1 1 to 7 that indicate the type of plastic in the product. “Not all resin codes can be recycled currently
2 in the United States,” she wrote. Many plastics, especially those numbered from 3 to 7, “are not
3 financially viable to recycle.”¹¹²

4 **E. Defendants’ Products Are Not Recycled in California**

5 144. Of all plastic labeled as recyclable, less than 10% of these items are actually recycled
6 back into plastic products—the 90% plus remaining ends up in landfills, incinerators, or as
7 pollution in the environment.¹¹³ Thus, 6.3 billion metric tons of the total 8.3 billion metric tons,
8 approximately 76% of plastic ever produced, has ended up as waste.¹¹⁴

9 145. Under the Green Guides marketers are required to use qualifications that vary in
10 strength depending on the degree of consumer access to recycling for an item. 16 C.F.R. §
11 260.12(b)(1). For instance, if recycling facilities are available to less than 60 percent of consumers
12 or communities, the Green Guides state that a marketer should qualify the recyclable claim by
13 stating “this product may not be recyclable in your area,” or “recycling facilities for this product
14 may not exist in your area.” *Id.* If recycling facilities are available only to a few consumers, the
15 Green Guides recommend that a marketer should qualify their recyclable claim by stating “this
16 product is recyclable only in a few communities that have appropriate recycling facilities.” *Id.*
17 Here, Defendants fail to include the qualification or the qualification is not sufficient in
18 comparison to the degree of consumer access to recycling for their products sold in California.

19 146. For example, MRFs in the San Francisco Bay Area did not accept toothpaste tubes
20 for recycling.¹¹⁵ And Recology of San Mateo County informs residents to “[p]lease put toothpaste
21

22 ¹¹² *Id.*

23 ¹¹³ Michelle Sigler, *The Effects of Plastic Pollution On Aquatic Wildlife: Current Situations and*
24 *Future Solutions*, 225(11) WATER, AIR, AND SOIL POLLUTION 2184. doi: 10.1007/s11270-014-
2184-6.

25 ¹¹⁴ Geyer Roland et al., *Production, Use, and Fate of All Plastics Ever Made*, 3(7) SCIENCE
26 ADVANCES 1, July 19, 2017, <https://advances.sciencemag.org/content/3/7/e1700782/tab-pdf>.

27 ¹¹⁵ See East Bay Sanitary Company, INC. *What Belongs in Recycling*, [https://ebsan.com/residential-](https://ebsan.com/residential-recycling/)
28 [recycling/](https://ebsan.com/residential-recycling/), Recyclemore West Contra Costa Integrated Waste Management Authority, *Curbside*
[recycling](https://recyclemore.com/what-to-do/curbside/), <https://recyclemore.com/what-to-do/curbside/>,

1 tube in the garbage.”¹¹⁶ Moreover, most MRFs instruct that plastic recyclables must be **empty,**
2 **clean, and dry.**¹¹⁷

3 147. Colgate sells toothpaste in California which prominently displays the “universal
4 recycle symbol” and the statement “Recyclable Tube” on the front side of the container. However,
5 Colgate provides no instructions to consumers on the packaged cardboard or tube on how to empty,
6 clean, and dry toothpaste. Therefore, Colgate’s marketing of its toothpaste as recyclable is false,
7 misleading, and deceptive. Procter & Gamble similarly marks its toothpaste, including Crest, with
8 misleading and unqualified recycling claims in places in California where toothpaste tubes are not
9 recyclable.

10 148. Curbside residential recycling has effectively been mandatory in California since
11 1989, when the California Integrated Waste Management Act (AB 939) made all California cities
12 and counties implement solid waste diversion plans, which required curbside recycling collection
13 to achieve.¹¹⁸ Yet less than 15 percent of single-use plastic is recycled. Despite robust curbside
14 recycling programs and decades of public education efforts, most single-use items are used once
15 and then landfilled, incinerated, or dumped into the environment.¹¹⁹

16 149. This dismal recycling rate is due to many factors, most notably a severe drop in the
17 market for recycled material and the low cost of virgin petroleum.¹²⁰

18 150. Recycling, by itself, cannot prevent the veritable deluge of plastic produced,
19 disseminated, and dumped into the ocean each year. Recycling involves a multistep process that

20 _____
21 ¹¹⁶ Recology, San Mateo County, *What Goes Where?* “Please put toothpaste tube in the garbage,”
<https://www.recology.com/recology-san-mateo-county/what-goes-where-residential/>.

22 ¹¹⁷ See East Bay Sanitary Company, INC. *What Belongs in Recycling*, <https://ebsan.com/residential-recycling/>.

23 ¹¹⁸ *Circular Claims Fall Flat Again*, Greenpeace, October 24, 2022,
24 https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf.

25 ¹¹⁹ Senator Ben Allen, *SB 343 – Truth in Labeling for Recycling Materials*, SENATOR BEN
26 ALLEN, *Fact Sheet*, As Amended August 31, 2021, <https://resource-recycling.com/resourcerecycling/wp-content/uploads/2021/09/SB-343-Truth-in-Recycleable-Labeling-Factsheet-090121.pdf>.

27 ¹²⁰ Allen (D), et al, *SB 343, THIRD READING*, SENATE RULES COMMITTEE, May 20, 2021,
28 https://calmatters.org/wp-content/uploads/2021/07/202120220SB343_Senate-Floor-Analyses.pdf

1 requires ample financial resources, careful planning, and coordination.¹²¹ The first step in the
2 process is to collect recyclable material via a garbage collection service, provided the consumer
3 can identify and separate their recyclable waste from non-recyclables beforehand.¹²²

4 151. Once recyclables are collected by a government-sponsored garbage collection
5 program, they are sent to a recycling facility where plastics are further separated by type, color,
6 and other characteristics to ensure that the facility can use them.¹²³ Because recycling centers
7 often specialize in the type of plastic they recycle, a portion of collected plastics are sent back for
8 re-sorting followed by yet another distribution to alternative facilities.¹²⁴



9
10
11
12
13
14
15
16
17
18
19
20
21 152. Once properly sorted, items are washed to get rid of non-plastic components such as
22
23

24 ¹²¹ *Recycling of Plastics*, THE UNIVERSITY OF CAMBRIDGE: THE IMPEE PROJECT, 2005, <http://www-g.eng.cam.ac.uk/impee/topics/RecyclePlastics/files/Recycling%20Plastic%20v3%20PDF.pdf>
25

26 ¹²² *How is Plastic Recycled: Step by Step*, GREENTUMBLE, May 24, 2018, <https://greentumble.com/how-is-plastic-recycled-step-by-step/>.

27 ¹²³ *Id.*

28 ¹²⁴ *Id.*

1 labels and leftover food particles.¹²⁵ After this, the cleaned plastic is cut into smaller pieces, to
2 make it easier to work with, and is then tested for qualities like density, thickness, melting point,
3 and color.¹²⁶ Density is tested by submerging particles in water to determine whether they float or
4 sink; thickness, or “air classification” testing involves placing pieces in a “wind tunnel” and
5



17 observing whether they rise or fall.¹²⁷ When all of this has been completed, the plastic is finally
18 ready for compounding, which is the step that melts the pieces into plastic pellets to be later re-
19 melted and combined with other pellets to create finished products.¹²⁸
20

21 153. The collection process itself is time-intensive and costly.¹²⁹ Moreover, the entire
22 process is highly sensitive to error, especially during the sorting stages. If incompatible polymers
23

24 ¹²⁵ *Id.*

25 ¹²⁶ *Id.*

26 ¹²⁷ *Id.*

27 ¹²⁸ *Id.*

28 ¹²⁹ *Recycling of Plastics*, THE UNIVERSITY OF CAMBRIDGE: THE IMPEE PROJECT, 2005, <http://www-g.eng.cam.ac.uk/impee/topics/RecyclePlastics/files/Recycling%20Plastic%20v3%20PDF.pdf>.

1 are accidentally mixed together, the batch becomes “contaminated” and is unusable. For example,
2 “PET and PVC have many problems with cross contamination as the two polymers appear very
3 similar to the naked eye and share the same specific gravity . . . just one PVC bottle in a batch of
4 10,000 can ruin the entire melt.”¹³⁰ Furthermore, Defendants regularly used partial or full body
5 shrink sleeve labels on PET and HDPE bottles and jugs to improve shelf appeal.¹³¹ These sleeves
6 prevent proper sorting and harm the operations of PET bottle recyclers and processors.¹³²

7 154. Even if all steps in the recycling process are carried out successfully, the dim truth is
8 that most plastic items can actually only be recycled once. For the more durable plastics such as
9 bottle caps, they may be recycled twice, at most.¹³³

10 155. Because the U.S. has not been able to foot the bill for all of its needed recycling
11 operations, it has historically exported much of its garbage to developing countries such as
12 China.¹³⁴ Many of these countries have high mismanagement rates where, due to a lack of
13 environmental regulation, plastic is routinely burned or dumped in landfills or waterways without
14 any pollution control.¹³⁵ Those waterways ultimately deposit tons of plastic into the oceans.

15 156. In 2015 China’s Yangtze River ranked highest for plastic entering the oceans. That
16 year, 333,000 tons of plastic were deposited into the ocean from the Yangtze River, more than
17 double the amount for the river with the next highest amount—115,000 tons from the Ganges.¹³⁶

18 _____
19 ¹³⁰ *Id.*

20 ¹³¹ John Hovevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

21 ¹³² *Id.*

22 ¹³³ Hannah Ritchie & Max Roser, *Plastic Pollution*, OURWORLDINDATA.ORG, September 2018,
<https://ourworldindata.org/plastic-pollution#how-much-of-ocean-plastics-come-from-land-and-marine-sources>.

23 ¹³⁴ Irina Ivanova, *American Cities Confront a ‘Slow-Moving Recycling Crisis*, CBS NEWS, Mar. 20,
24 2019, www.cbsnews.com/news/recycling-after-chinas-plastic-ban-american-cities-face-recycling-crisis/.

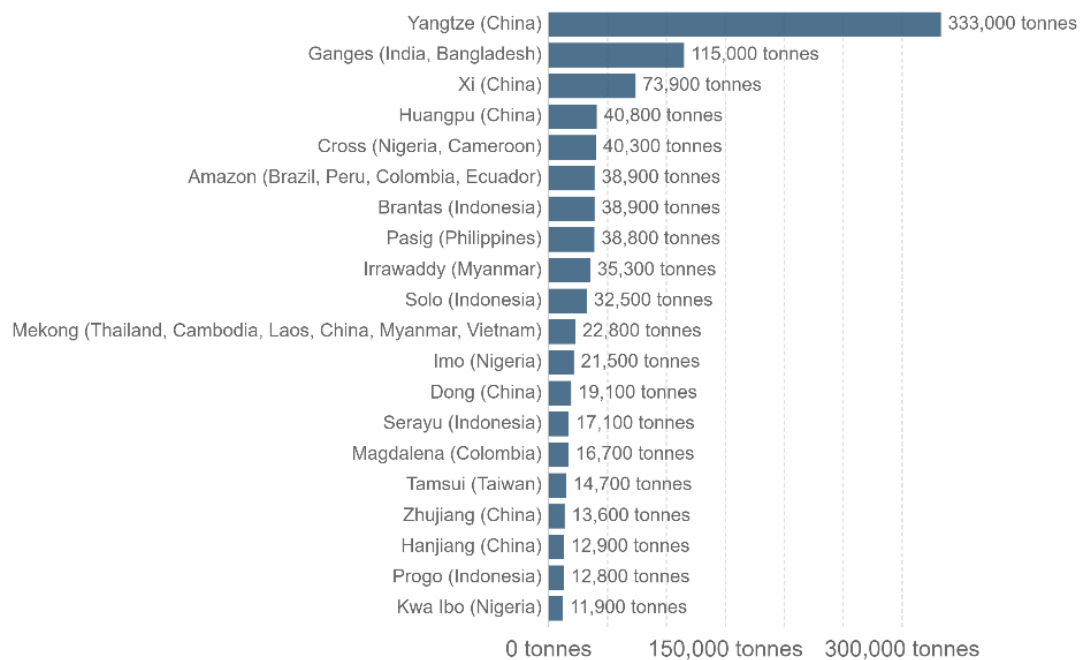
25 ¹³⁵ Jan Dell, *157,000 Shipping Containers of U.S. Plastic Waste Exported to Countries with Poor*
26 *Waste Management in 2018*, PLASTIC POLLUTION COALITION, Mar. 6, 2019,
27 www.plasticpollutioncoalition.org/pft/2019/3/6/157000-shipping-containers-of-us-plastic-waste-exported-to-countries-with-poor-waste-management-in-2018.

28 ¹³⁶ Hannah Ritchie & Max Roser, *Plastic Pollution*, OURWORLDINDATA.ORG, September 2018,

1 157. In the 1990's China likely had sufficient low-wage laborers to sort the recyclable
 2 materials from the nonrecyclable. But as plastic production ballooned, China's laborers could not
 3 handle the mountains of plastic sent to it from developed nations. By 2016, the U.S. was exporting
 4 almost 700,000 tons a year to China alone. Overall, China imported 7 million tons from around
 5 the world.¹³⁷

Plastic ocean input from top 20 rivers, 2015

Plastic input to the ocean from the top 20 polluting rivers across the world. Shown is the given river, its location, and estimated annual input of plastic to the oceans in tonnes.



Source: Lebreton et al. (2017)

CC BY

158. In the past, most of California's plastic was sent to China.¹³⁸ In 2018, China's National Sword Policy banned the import of most plastics and other materials due to declines in the

<https://ourworldindata.org/plastic-pollution#how-much-of-ocean-plastics-come-from-land-and-marine-sources> (citing Lebreton, L. C. et al., *River plastic emissions to the world's oceans*, 8 NATURE COMMUNICATIONS, 15611 (2017)).

¹³⁷ *Id.*

¹³⁸ Ghayour-Kelly, Zahra, *Plastic Packaging and the Associated Environmental Challenges. A Case for a California Plastic Packaging Framework*, University of San Francisco, Master's Projects and Capstones. 973, December 11, 2019, <https://repository.usfca.edu/cgi/viewcontent.cgi?article=2150&context=capstone>.

1 demand for and value of collected plastic material.¹³⁹ However, while China has limited the
2 import of plastic recycling, other Southeast Asian countries are filling the recycling market gap.
3 Yet, it is uncertain what the actual recycling rate is once items are imported to other countries and
4 what their quality is for recycled plastic. Experts estimate that 20 to 70% of plastic intended for
5 recycling overseas is unusable and is ultimately discarded.¹⁴⁰

6 159. California recycling operations leader Martin Bourque actually tracked some of the
7 plastic scrap shipped from the Ecology Center in Berkeley.¹⁴¹ In 2016, Bourque buried a GPS
8 transponder in one of his Ecology Center paper and plastic bales. He followed the transponder's
9 electronic signals to a town in China and then contacted local residents to document what
10 happened to it. Locals reported that the materials they couldn't recycle were dumped into a local
11 canyon.¹⁴²

12 160. The most common mode of international export of recyclable materials from
13 California is via seaborne container vessels.¹⁴³ These vessels backhaul recyclable materials to
14 countries in Asia and other parts of the world after delivering goods to American markets. Based
15 on the 2019 data from the World Institute for Strategic Economic Research (WISERTrade), 14.4
16 million tons of recyclable materials were exported from California ports to international markets.
17 Recyclable materials exports of Plastics #1 and #2 continued to decrease from about 197 thousand
18 tons in 2018 to about 108 thousand tons in 2019.¹⁴⁴ Recyclable materials exports of Mixed

19
20 ¹³⁹ John Hocevar, Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability, GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

21 ¹⁴⁰ Cho, Renee, *Recycling in the U.S. Is Broken. How Do We Fix It?*, Columbia Climate School, March 13, 2020, <https://news.climate.columbia.edu/2020/03/13/fix-recycling-america/>.

22 ¹⁴¹ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn't Want it?*, NPR.ORG, Mar. 13, 2019, <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it>.

23 ¹⁴² *Id.*

24 ¹⁴³ *State of Disposal and Recycling and Exports in California for Calendar Year 2019 (DRRR-2020-1697)*, California Department of Resources Recycling and Recovery (CalRecycle), February 12, 2021, <https://www2.calrecycle.ca.gov/Publications/Details/1697>.

25 ¹⁴⁴ *Id.*

1 Plastics #3 through 7 decreased from almost 200 thousand tons in 2018 to less than 63 thousand
2 tons in 2019.¹⁴⁵

3 161. Consequently, uncertainty about shifting export markets and declining scrap prices
4 has had a significant impact on California’s recycling. Historically, California’s model of
5 collecting, sorting, and exporting meant one-half to two-thirds of Californians’ curbside recycling
6 material was exported abroad. Today, those recyclables that used to generate money have no
7 market.¹⁴⁶

8 162. Pursuant to the long-standing guidance from the F.T.C., a baseline for recyclability is
9 a prerequisite that “recycling facilities are available to a substantial majority of consumers or
10 communities where the item is sold,” which the F.T.C. defines as at least 60%.¹⁴⁷ However, the
11 way plastics are recycled is complex and varies by jurisdiction, making the 60% determination
12 difficult. Moreover, what can be recycled in one area of the state, may not be recyclable in
13 another.¹⁴⁸

14 163. For example, the Central Los Angeles (L.A.) Recycling Center, which collects for
15 the cities within L.A. County, does not take plastics #3, #4, #6, or #7.¹⁴⁹ The Southland Disposal
16 Center, which collects for the cities of Glendale, Burbank, Pasadena, and unincorporated L.A.,¹⁵⁰
17 accepts plastics #1, #2 and #5 to be recycled, and accepts #3, #4, #6 and #7, but does not guarantee
18 that these will be recycled.¹⁵¹ Sacramento stopped accepting plastics #4-7 due to lack of value and

19
20 ¹⁴⁵ *Id.*

21 ¹⁴⁶ Allen (D), et al, SB 343, THIRD READING, SENATE RULES COMMITTEE, May 20, 2021,
https://calmatters.org/wp-content/uploads/2021/07/202120220SB343_Senate-Floor-Analyses.pdf

22 ¹⁴⁷ *California’s Statewide Commission on Recycling Markets and Curbside Recycling*, Policy
23 Recommendations, California Department of Resources Recycling and Recovery (CalRecycle), July
1, 2021, <https://calrecycle.ca.gov/markets/commission/>

24 ¹⁴⁸ Allen (D), et al, SB 343, THIRD READING, SENATE RULES COMMITTEE, May 20, 2021,
https://calmatters.org/wp-content/uploads/2021/07/202120220SB343_Senate-Floor-Analyses.pdf

25 ¹⁴⁹ *WHAT GOES IN EACH BIN?* LA Sanitation & Environment (LASAN), [LA Sanitation](http://lacitysan.org)
[\(\[lacitysan.org\]\(http://lacitysan.org\)\)](http://lacitysan.org).

26 ¹⁵⁰ *Service Areas*, Southland Disposal, <https://www.southlanddisposal.com/serviceareas>.

27 ¹⁵¹ *Recycling Information Guide*, Southland Disposal,
28 https://www.southlanddisposal.com/files/ugd/225c95_d2396bb0556c4559a437e757054bd284.pdf

1 difficulty in recycling.¹⁵² Meanwhile, the Zarc Recycling Center, which collects for businesses in
2 the San Francisco Bay Area, only accepts plastics that are within the scope of the CRV, California
3 Buy Back Program (commonly #1, and 2 plastics), and Styrofoam Plastic (commonly #6 plastic),
4 but does not take plastics #3, 4, 5, or 7.¹⁵³

5 164. The Our Planet Recycling, San Francisco, which collects for the city of San
6 Francisco, only accepts plastics that are within the scope of the CRV, California Buy Back
7 Program (commonly #1, and 2 plastics), but does not accept plastics #3 -7.¹⁵⁴ The City of Palo
8 Alto accepts all types of plastic with or without a number but does not accept expanded
9 polystyrene a.k.a. STYROFOAM.¹⁵⁵ The collected items are then sent to GreenWaste, Palo Alto's
10 material recovery facility in San Jose, where the items are combined with tossed goods from other
11 communities, separated by type, and baled. The materials are then marketed to brokers, who ship
12 them off to various destinations around the world.¹⁵⁶ These jurisdictional variances make
13 recycling in California a complicated process that is only exasperated by the lack of infrastructure,
14 contamination in the recycling process, and dwindling end markets for recycled materials.

15 165. Despite the reality that the vast majority of plastic is not being recycled, Defendants
16 – with full knowledge – affirmatively, and uniformly, promote their products as recyclable. Those
17 promotions are misleading and false in California because each plastic product has varying rates of
18

19 _____
20 ¹⁵² John Hocesvar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
Greenpeace Reports, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

21 ¹⁵³ *CRV Redemption*, Zarc Recycling, <http://zarcrecycling.com/crv.html>.

22 ¹⁵⁴ Our Planet Recycling S.F. San Francisco's Neighborhood Recycling Center,
<https://ourplanetsf.com/>.

23 ¹⁵⁵ *Curbside Collection Services*, City of Palo Alto,
24 <https://www.cityofpaloalto.org/Departments/Public-Works/Zero-Waste/What-Goes-Where/Curbside-Collection-Services#section-2>.

25 ¹⁵⁶ Sheyner, Gennady, *Where do your recyclables go? Palo Alto struggles to track their destination*
26 *as material heads abroad*, Palo Alto Weekly, January 28, 2022,
<https://www.paloaltoonline.com/news/2022/01/28/where-do-your-recyclables-go-palo-alto-struggles-to-track-their-destination-as-material-heads-abroad#:~:text=When%20the%20City%20Council%20signed%20its%20most%20recent,places%20with%20poor%20environmental%20or%20human%20rights%20records.>
27
28

1 acceptance and recyclability. For instance, products made with Resin code #5 including Danone's
2 Yogurt products and Colgate's and Procter and Gamble's deodorants are not accepted in
3 Sacramento nor San Francisco for recycling. Overall, these products have a 17% acceptance rate
4 at the 76 MRFs surveyed by the California Department of Resources Recycling and Recovery
5 ("CalRecycle").¹⁵⁷

6 166. Because recycling companies can no longer sell used plastic at prices that cover their
7 processing costs, they are asking municipalities to pay significantly more for recycling services.¹⁵⁸
8 Without buyers of recyclables, municipalities must allocate diminishing budgets to pay for local
9 recycling programs, or end recycling programs altogether. For example, San Diego generated 4
10 million dollars in revenue from recycling in the fiscal year 2017. The revenue dropped to 3 million
11 dollars in 2018 due to the city reimbursing haulers and processors one million dollars for recycling
12 processing.¹⁵⁹ As a result, many jurisdictions have raised their curbside collection rates to help
13 offset rising processing costs. Others have new cost-sharing agreements with local haulers or have
14 allowed haulers to charge customer contamination fees.¹⁶⁰

15 1. Recyclability of Defendants' PET #1 and HDPE #2 Products

16 167. In 2015, there were an estimated 161 MRFs statewide.¹⁶¹ However, according to a
17 recent report by CalRecycle entitled Statewide Commission on Recycling Markets and Curbside
18
19
20

21 ¹⁵⁷ CA Recycling Commission AB1583: Recyclability Screening Survey, *Plastic*, December 10,
22 2020, [https://docs.google.com/spreadsheets/d/1YqzG21E-
6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372](https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372).

23 ¹⁵⁸ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, THE NEW YORK TIMES,
24 Mar. 16, 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

25 ¹⁵⁹ *2018 California Exports of Recyclable Materials (DRRR-2019-1657)*, California Department of
26 Resources Recycling and Recovery (CalRecycle), September 16, 2019,
27 <https://www2.calrecycle.ca.gov/Publications/Details/1657>.

28 ¹⁶⁰*Id.*

¹⁶¹ Allen (D), et al, SB 343, THIRD READING, SENATE RULES COMMITTEE, May 20, 2021,
https://calmatters.org/wp-content/uploads/2021/07/202120220SB343_Senate-Floor-Analyses.pdf

1 Recycling, that number had decreased significantly to 76 MRFs as of October 2020.¹⁶²

2 168. [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 169. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 170. Therefore, due to the shrinking availability of MRFs and deposit programs in
22 California, recycling facilities cannot process the sheer volume of Defendants' products on an

23 _____
24 ¹⁶²California's Statewide Commission on Recycling Markets and Curbside Recycling, Policy
25 Recommendations, California Department of Resources Recycling and Recovery (CalRecycle), July
26 1, 2021, <https://calrecycle.ca.gov/markets/commission/>

26 ¹⁶³ National Association for PET Container Resources (NAPCOR), 2019 PET Recycling Report,
TCCC-EII_00000388.

27 [REDACTED]
28 [REDACTED]

1 annual basis.¹⁶⁶

2 171. Additionally, reprocessing plastic creates a significant amount of plastic waste that
3 must be landfilled or incinerated. According to the National Association for PET Container
4 Resources (“NAPCOR”), processing “easy-to-recycle” PET bottles results in a substantial 28%
5 material loss.¹⁶⁷

6 172. The strain on local recycling and waste systems is compounded as most consumers
7 lack a clear understanding of what is acceptable.¹⁶⁸ For instance, in California, since rigid plastic
8 bottles and containers are required to display the RIC code inside of a triangle or a chasing arrows
9 symbol, consumers often assume this code means a package is automatically recyclable, but that is
10 not the case. According to CalRecycle, only plastics with the code #1 for polyethylene
11 terephthalate (PET), used in water and soda bottles, and #2 high-density polyethylene (HDPE),
12 used in milk jugs and shampoo bottles, are potentially suitable for common recycling. The rest of
13 the resin types #3-7 are generally not recycled. Most of the products made from these materials
14 end up being sent to landfills or incinerated.¹⁶⁹

15 173. As a result, while consumers dutifully fill their blue bins with plastic items that they
16 believe are recyclable, these items are contaminating the recycling stream, making it more costly to
17 sort and clean the truly recyclable material.¹⁷⁰

18 174. Additionally, even though PET #1 and HDPE #2 bottles and containers have
19

20 _____
21 ¹⁶⁶ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, The New York Times, Mar. 16, 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

22 ¹⁶⁷ NAPCOR, Report on Postconsumer PET Container Recycling Activity in 2017,
23 https://napcor.com/wp-content/uploads/2018/11/NAPCOR_2017RateReport_FINAL_rev.pdf

24 ¹⁶⁸ Senator Allen, Ben, *SB 343 – Truth in Labeling for Recycling Materials*, SENATOR BEN
25 ALLEN, *Fact Sheet*, As Amended August 31, 2021, [https://resource-
recycling.com/resourcerecycling/wp-content/uploads/2021/09/SB-343-Truth-in-Recycleable-
Labeling-Factsheet-090121.pdf](https://resource-recycling.com/resourcerecycling/wp-content/uploads/2021/09/SB-343-Truth-in-Recycleable-Labeling-Factsheet-090121.pdf).

26 ¹⁶⁹ Allen (D), et al, *SB 343, THIRD READING*, SENATE RULES COMMITTEE, May 20, 2021,
27 https://calmatters.org/wp-content/uploads/2021/07/202120220SB343_Senate-Floor-Analyses.pdf

28 ¹⁷⁰ John Hocoever, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, Greenpeace Reports, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 recyclability potential, there are thousands of different plastics, each with their own composition
2 and characteristics. Different plastics have different melting points, dyes, and colorants. Different
3 types of chemical additives give plastics specific characteristics, such as flexibility or rigidity. For
4 instance, PET#1 bottles are made by blow-molding and cannot be recycled with PET#1 cups, trays,
5 or clamshells, which are made by thermoforming and are a different PET#1 material. A
6 representative of a major Californian recycling company was quoted stating, “There’s just so many
7 types of plastic. We can’t recycle them all. We can’t manage them all. You can’t recycle your
8 way out of the larger plastic problem.”¹⁷¹

9 175. As an example, Defendant Clorox uses and promotes the recycle symbol on its
10 product Clorox ColorLoad Non-Chlorine Bleach which is produced in a tanned colored bottle.
11 Clorox also uses and promotes the recycle symbol on its product Clorox Disinfecting Bleach with
12 CLOROMAX which is produced in a white bottle. Therefore, the differing characteristics for
13 these products impact their recyclability potential.

14 176. PET #1 Thermoforms (clamshells) have a 30% acceptability rate at California MRFs
15 and a 15-25% recyclability rate.¹⁷² [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 177. A similar recyclability issue occurs with clear and colored PET#1 bottles. For
22 example, green PET#1 bottles cannot be recycled with clear PET#1 bottles. Colored PET#1
23 bottles have negligible market demand and are a serious source of contamination in PET#1 bottle

24
25 ¹⁷¹ *Circular Claims Fall Flat Again*, Greenpeace, October 24, 2022,
https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf.

26 ¹⁷² *Id.*

27 ¹⁷³ National Association for PET Container Resources (NAPCOR), 2019 PET Recycling Report,
28 TCCC-EII_00000395-396.

1 bales. A 2019 study by the Plastic Recycling Corporation of California (PRCC) determined that
2 colored PET #1 bottles cause valuable clear PET bottles to be disposed of. The PRCC stated:
3 “During the bale analysis, project leaders saw colored PET was one of the areas where a lot of
4 clear PET loss was occurring. That’s because colored PET makes up a high percentage of what’s
5 removed from the bales, so more clear PET escapes with colored PET than with other
6 contaminants.”¹⁷⁴ Defendants Coca-Cola and PepsiCo use colored PET bottles for their products
7 including PepsiCo’s brands of Mountain Dew and Canada Dry Ginger Ale and Coca-Cola’s Sprite.

8 178. Moreover, although PET #1 and HDPE #2 bottles and containers have recyclability
9 potential in California, Defendants increasingly use partial and full-body shrink sleeves and labels
10 that are inconsistent with California’s recycling and processing infrastructure. Some designs are
11 known to prevent proper sortation of the bottles in MRFs and are negatively impacting the
12 economic viability of MRFs and plastic reprocessors.¹⁷⁵ Additionally, experts report that shrink
13 sleeve labels can also bleed ink into wash water and stain flakes, reducing the quality of the
14 recycled plastic.¹⁷⁶

15 179. Defendant Danone uses full-body sleeves on its products. For example, Danone’s
16 yogurt product containers including brands such as Activia, Light + Fit, and Oikos often include a
17 label indicating that the container is not recyclable *unless the label is removed*.

18 180. Likewise, Defendant Procter & Gamble uses full body sleeves on its product brands
19 including Old Spice and its line of products such as body wash, and Olay and its line of products
20 such as body wash and full body moisturizers. These plastic containers also often contain a label
21 indicating that the container is not recyclable *unless the label is removed*.

22 181. Polyethylene terephthalate glycol (PETG) and polyvinyl chloride (PVC) are
23

24 ¹⁷⁴ *Id.*

25 ¹⁷⁵ *California’s Statewide Commission on Recycling Markets and Curbside Recycling*, Policy
26 Recommendations, California Department of Resources Recycling and Recovery (CalRecycle), July
1, 2021, <https://calrecycle.ca.gov/markets/commission/>

27 ¹⁷⁶ John Hocesvar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
28 Greenpeace Reports, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 commonly used shrink sleeves known to prevent proper sortation of the bottles in MRFs and harm
2 the operations of PET bottle recyclers/re-processors. [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 182. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 183. According to the APR, full bottle sleeve labels cover a large amount of the bottle
16 surface with a polymer that is not the same as the bottle body. Because of this, a sleeve label
17 designed without considering sorting may cause an automatic sorter to direct PET and/or HDPE
18 bottles to another material stream where it is lost in the process. Furthermore, some incompatible
19 sleeve materials that cannot be separated from bottles in the float-sink tank can contaminate the
20 recycled product produced. Shrink sleeve labels that are designed for automatic sorting and sink in
21 water are preferred, with the exception of PVC and PLA, where even small residual amounts that
22 make it through the float-sink process will destroy the recycled PET/HDPE in the extrusion

23
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 process.¹⁸¹

2 184. The APR also has guidelines for ink labels noting how some label inks bleed color in
3 the reclamation process, discoloring the HDPE in contact with them and possibly diminishing its
4 value for recycling. Since most recycled HDPE is colored, the impact of bleeding inks may not be
5 significant. However, if inks redeposit on natural HDPE flake, this discoloring may diminish its
6 value for recycling.¹⁸²

7 185. According to How2Recycle, a not-for-profit created to provide clear instructions to
8 consumers about packaging recyclability, good packaging design means no separation is required
9 at all.¹⁸³ The packages that are best designed for recyclability are those that are made of one
10 material only.¹⁸⁴ Furthermore, How2Recycle does not provide special instructions to the consumer
11 if it would be “unreasonable” to ask the consumer to take special action to prepare any packaging
12 for recycling. Unreasonable actions include: the use of tools, such as scissors, actions that require
13 special dexterity, actions that require notable use of force, actions that require special patience or
14 length of time, actions that require any consumer ingenuity (such as finding another package to
15 nest the package inside), and actions that may put the safety of the consumer at risk.¹⁸⁵

16 186. Additionally, effective as of July 31, 2021, How2Recycle ceased providing special
17 instruction to consumers regarding the removal of full body shrink sleeve labels on plastic
18 containers that do not have full-length perforation; removal of high coverage pressure-sensitive or
19 other types of labels on plastic containers that are not very easy to remove; and removal of
20

21
22 ¹⁸¹ PET (Polyethylene Terephthalate, Resin Identification Code #1), PET Labels, Association of
23 Plastic Recyclers, <https://plasticsrecycling.org/pet-design-guidance>; HDPE (High Density
24 Polyethylene, Resin Identification Code #2), HDPE Labels, Inks & Adhesives, Association of
25 Plastic Recyclers, <https://plasticsrecycling.org/hdpe-design-guidance>.

26 ¹⁸² *Id.*

27 ¹⁸³ *Are we expecting too much from consumers to prep a package for recycling?* How to Recycle,
28 July 30, 2021, <https://how2recycle.info/news/2021/are-we-expecting-too-much-from-consumers-to-prep-a-package-for-recycling>.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

1 pressure-sensitive non-PE labels on PE film that are not very easy to remove.¹⁸⁶

2 187. A 2017 report by the PRCC determined that the factors impacting bale quality
3 included “full wrap labels and non-compatible barrier bottles that are challenging to sort and
4 separate in collection and processing and contaminant material such as paper and other plastic
5 types (PLA, PVC, polystyrene) in the bales.”¹⁸⁷

6 188. Defendants promote the recyclability of their PET #1 and HDPE #2 bottles and
7 containers while using partial and/or full-body shrink sleeves and labels that are inconsistent with
8 California’s recycling and processing infrastructure.

9 189. Defendants are aware that the shrink sleeves they use prohibit proper sortation and
10 prevent recycling of the plastic bottles because they place instructions on the bottles telling
11 consumers to remove the shrink sleeves. Nevertheless, Defendants, including Coca-Cola, PepsiCo,
12 Nestlé, Crystal Geyser, Danone, Procter & Gamble, and Clorox, continue to employ these types of
13 shrink sleeves. This is in violation of F.T.C. Green Guides 16 CFR 260.12 (d) which states: “If
14 any component significantly limits the ability to recycle the item, any recyclable claim would be
15 deceptive. An item that is made from recyclable material, but, because of its shape, size, or some
16 other attribute, is not accepted in recycling programs, should not be marketed as recyclable.” The
17 F.T.C. Green Guides do not allow companies to instruct consumers to remove an integral part of
18 the product packaging to make it recyclable.¹⁸⁸

19 **2. Defendants’ Misleading Promotion of Plastics #3-7 as Recyclable**

20 190. In 2018, mixed plastics #3-7 exports declined by 50 percent due to import
21 restrictions taking effect in multiple countries. Exports to China, Hong Kong, and Vietnam
22 declined by 93 percent, 77 percent, and 39 percent respectively. Imports to Malaysia and Thailand
23

24 _____
¹⁸⁶ *Id.*

25 ¹⁸⁷ *California’s Statewide Commission on Recycling Markets and Curbside Recycling*, Policy
26 Recommendations, California Department of Resources Recycling and Recovery (CalRecycle), July
27 1, 2021, <https://calrecycle.ca.gov/markets/commission/>.

28 ¹⁸⁸ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
Greenpeace Reports, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 increased by 100 percent and 191 percent for the year, with Malaysia importing 40 percent of all
2 mixed plastics. In June 2018, Thailand began an indefinite ban on scrap plastics.¹⁸⁹

3 191. Mixed plastics #3-7 remain very difficult for MRFs to sell as demand and scrap
4 values continue to decline. The mixed plastics #3-7 scrap value remained negative in Q1 of
5 2019.¹⁹⁰

6 192. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Moreover, no Western US processing capacity exists
10 for PVC #3 containers.¹⁹³

11 193. [REDACTED]

12 [REDACTED] As with PVC #3, no Western US
13 processing capacity exists for LDPE #4 containers.¹⁹⁵

14 194. [REDACTED]

15 [REDACTED] While PP #5 bottles, jars and tubs are
16 accepted by 75% of California's MRFs, there is limited information on the number that separate
17

18 ¹⁸⁹ *Id.*

19 ¹⁹⁰ 2018 California Exports of Recyclable Materials (DRRR-2019-1657), California Department of
20 Resources Recycling and Recovery (CalRecycle), September 16, 2019,
<https://www2.calrecycle.ca.gov/Publications/Details/1657>.

21 ¹⁹¹ PEP-EI-00000455, PEP-EI-00000457.

22 ¹⁹² *Danone Policy on the Use of PVC, Internal Document*, January 21, 2019.
DANONE_EII_00001456.

23 ¹⁹³ CA Recycling Commission AB1583: Recyclability Screening Survey, *Plastic*, December 10,
24 2020, [https://docs.google.com/spreadsheets/d/1YqzG21E-
6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372](https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372).

25 ¹⁹⁴ CA Recycling Commission AB1583: Recyclability Screening Survey, *Plastic*, December 10,
26 2020, [https://docs.google.com/spreadsheets/d/1YqzG21E-
6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372](https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372).

27 ¹⁹⁵ PEP-EI-00000465.

28 ¹⁹⁶ PEP-EI-00000466.

1 PP#5 into single bale type. Quality specifications from buyers require optically sorted material.
2 There is also no West Coast processor of PP #5. The closest US processor is in Alabama and has
3 intermittent market demand.¹⁹⁷

4 195. In 2019, 151,187,103 PS #6 containers were sold in California while only
5 33,942,047 were recycled representing a recycling rate of 22 percent.¹⁹⁸ [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 196. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] Danone's product Danone Creamy Yogurt
18 is currently still comprised of PS #6. As of 2021, 14% of all Danone products were made from PS

19
20
21
22
23
24
25
26
27
28

¹⁹⁷ CA Recycling Commission AB1583: Recyclability Screening Survey, *Plastic*, December 10, 2020, <https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372>.

¹⁹⁸ PEP-EI-00000467.

[REDACTED]

1 rigid plastics, according to the Ellen MacArthur Foundation.²⁰²

2 197. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 198. In a fact sheet titled “The Hard Facts About Plastic,” ReThink Waste, a public
6 agency that operates the Shoreway MRF in San Carlos, California, sums up the reality of the mixed
7 plastics #3-7 market stating, “[t]here is currently no market for the material when it is
8 deconstructed.” The fact sheet also notes that, since China implemented the National Sword
9 Policy, the flow of recyclable materials was diverted to secondary markets in different East and
10 South Asian countries. This drastic shift caused a market collapse for plastic #3-7, so there is no
11 way to ensure the proper recycling of those materials at this time.

12 199. Currently, ReThink Waste, which collects for the cities of Belmont, Burlingame,
13 East Palo Alto, Foster City, Menlo Park, Redwood City, and San Mateo, the towns of Atherton and
14 Hillsborough, the County of San Mateo, and the West Bay Sanitary District,²⁰⁴ sorts out plastics
15 #1-2, and then any plastics #3-7 **are directed to the Transfer Station and sent to the landfill.**²⁰⁵

16 200. Defendants’ products #3-7 cannot be recycled in Belmont, Burlingame, East Palo
17 Alto, Foster City, Menlo Park, Redwood City, San Mateo, the towns of Atherton and Hillsborough,
18 the County of San Mateo, and the West Bay Sanitary District in California. Therefore, any
19 affirmative claims and promotion of recyclability by Defendants to consumers in these cities are
20 unlawful, unfair, fraudulent, and misleading.

21 201. Even if Defendants’ products #3-7 are accepted for recycling by MRFs, it is difficult

22

23 ²⁰² Ellen MacArthur Foundation; <https://ellenmacarthurfoundation.org/global-commitment-2021/signatory-reports/ppu/danone-sa>.

24 ²⁰³ CA Recycling Commission AB1583: Recyclability Screening Survey, *Plastic*, December 10,
25 2020, <https://docs.google.com/spreadsheets/d/1YqzG21E-6308t4wmUvowcQnzPwURZfjY/edit#gid=286584372>.

26 ²⁰⁴ *Shoreway Environmental Center*, South Bay Recycling, <http://www.sbrecycling.net/>.

27 ²⁰⁵ *The Hard Facts About Plastic*, Rethink Waste, South Bayside Waste Management Authority,
28 <https://rethinkwaste.org/wp-content/uploads/2019/10/The-Hard-Facts-About-Plastic.pdf>.

1 to determine whether these products are actually getting recycled. For instance, The City of Palo
2 Alto has recently discovered that, even though all plastic items are accepted for recycling, things
3 get murky as soon as recycled goods leave town.²⁰⁶ In Palo Alto, the city's hauler, GreenWaste
4 Recovery, brings local recyclable materials to its material-recovery facility in San Jose, where
5 items are combined with tossed goods from other communities, separated by type and baled. The
6 materials are then marketed to brokers, who ship them off to various destinations around the
7 world.²⁰⁷ The City required GreenWaste of Palo Alto (GWPA), under the existing collection
8 contract, to report on the disposition of recyclable materials as well as to gather information on the
9 environmental and social implications associated with the processing of Palo Alto's recyclable
10 materials.²⁰⁸

11 202. As a result of GWPA's reporting, Palo Alto recently learned that the marketing of
12 recyclable materials is commonly conducted through brokers that orchestrate the processing of
13 materials internationally. This leaves unknowns and raises questions about whether the
14 international processing facilities are recycling the materials and if the processing and disposal are
15 causing environmental or social issues.²⁰⁹ Despite the lack of information, most of the recyclable
16 materials continue to get exported, much of it to destinations unknown. GWPA reported that about
17 61% of the 164,651 tons that GWPA recovered from local plastic material in 2021 went abroad,
18 while 39% went to domestic markets.²¹⁰ However, the GWPA reports are generalized and do not
19

20 ²⁰⁶ Sheyner, Gennady, *Where do your recyclables go? Palo Alto struggles to track their destination*
21 *as material heads abroad*, Palo Alto Weekly, January 28, 2022,
22 <https://www.paloaltoonline.com/news/2022/01/28/where-do-your-recyclables-go-palo-alto-struggles-to-track-their-destination-as-material-heads-abroad#:~:text=When%20the%20City%20Council%20signed%20its%20most%20recent,places%20with%20poor%20environmental%20or%20human%20rights%20records.>
23

24 ²⁰⁷ *Id.*

25 ²⁰⁸ *Informational Report on the GreenWaste of Palo Alto Certificate of End Use & Traceability*
26 *Report and Update on Council Direction Regarding Recyclable Materials*, City of Palo Alto, City
27 Council Staff Report, January 24, 2022,
28 <https://www.paloaltoonline.com/news/reports/1643335286.pdf>

²⁰⁹ *Id.*

²¹⁰ *Id.*

1 explain which shipments go to which facilities within those countries. Therefore, it is impossible
2 to definitively determine whether the materials are being recycled.²¹¹

3 203. The City of Palo Alto’s report demonstrates how unstructured the recycling market
4 can be. As the report notes “[b]rokers only have limited information about the ports to which
5 commodities are intended to ship. Once at the ports, materials are sent to various plants, making
6 the full life-cycle of commodities extremely difficult to track.”²¹² “Furthermore, with the current
7 state of the markets, recyclables brokers are not in a position to place requirements on customers.”
8 The report also notes how the “information on commodity markets, pricing, buyers and other
9 information pertaining to commodity sales transactions constitute confidential and proprietary
10 corporate Trade Secrets.” For these reasons, the report provides that “it has been quite a challenge
11 to try to determine additional information regarding the final disposition of recovered
12 recyclables.”²¹³

13 204. According to How2Recycle’s Guidelines for Use “[m]aterials that do not have an
14 end market cannot be considered recyclable.”²¹⁴ Due to the complexities of the recycling markets,
15 Defendants cannot guarantee or state with certainty that their plastic products made from resins #3-
16 7 have an end market. Therefore, the Defendants’ affirmative claims and promotions of
17 recyclability for their plastic products made from resins #3-7 are fraudulent and misleading.

18 205. Moreover, Defendants knew and understood that consumers in California have no
19 access to recycling programs that could accept more than a mere fraction of Defendants’ products.
20 Defendants knew that, given the extremely limited capacity of recycling in California, no
21 reasonable understanding of their recycling claims could comport with either the Green Guides nor
22 with California law.

23 206. Defendants also knew and understood that there is no end market to reuse these
24

25 ²¹¹ *Id.*

26 ²¹² *Id.*

27 ²¹³ *Id.*

28 ²¹⁴ *Guidelines for Use*. How2Recycle. February 2020 to July 2020. Bates Number
PGEearth00000104.

1 “recyclable” products. This is because Defendants themselves rely overwhelmingly on virgin
2 plastic to produce their products, and therefore they understand the economic infeasibility to do
3 otherwise.

4 **F. Defendants’ Misleading Instructions on Disposal Significantly and Foreseeably**
5 **Increased the Amount of Plastic Pollution Entering the Environment**

6 207. Defendants knew and understood that their “recyclable” promotions were
7 misleading. Defendants knew that consumers would reasonably understand “recyclable” to mean
8 that Defendants’ products could be disposed of with recycling in California. Defendants also knew
9 this to be misleading.

10 208. Consumers are increasingly sensitive to and preferential towards plastic packaging
11 purporting to be sustainable and not harmful to the planet. In fact, 91 percent of U.S. consumers
12 consider the amount of plastic used in a product when deciding to consume.²¹⁵ Sixty percent of
13 consumers went out of their way in 2021 to purchase products with “environmentally friendly”
14 packaging and 57 percent said they made significant changes in their lifestyle to lessen their
15 environmental impact.²¹⁶

16 209. Defendants are keenly aware of this fact, as evidenced by their profit-driven efforts
17 to market their plastics as “recyclable.” Defendants also have “sustainability” teams and divisions
18 purporting to be responsible for managing the environmental impact of their business.²¹⁷ Showing
19 cognizance of consumer demands, these sustainability departments are aware of the amount of
20 plastic products that are entering the environment and the maneuvering required to dispel

21 _____
22 ²¹⁵ Rue, Melissa, *Ninety-one Percent of U.S. Consumers Consider the Amount of Plastic Used in a*
23 *Product when Making Purchase Decisions*, BUSINESS WIRE (Sept. 29, 2022),
[https://www.businesswire.com/news/home/20220929005296/en/Ninety-one-Percent-of-U.S.-](https://www.businesswire.com/news/home/20220929005296/en/Ninety-one-Percent-of-U.S.-Consumers-Consider-the-Amount-of-Plastic-Used-in-a-Product-When-Making-Purchase-Decisions)
[Consumers-Consider-the-Amount-of-Plastic-Used-in-a-Product-When-Making-Purchase-Decisions.](https://www.businesswire.com/news/home/20220929005296/en/Ninety-one-Percent-of-U.S.-Consumers-Consider-the-Amount-of-Plastic-Used-in-a-Product-When-Making-Purchase-Decisions)

24 ²¹⁶ Camner, Mark, *Consumers Want Sustainability in Packaging But Recycling Isn’t the Only*
25 *Option*, TRIPLE PUNDIT (Nov. 28, 2022), [https://www.triplepundit.com/story/2022/consumers-](https://www.triplepundit.com/story/2022/consumers-packaging-recycling/760956)
[packaging-recycling/760956.](https://www.triplepundit.com/story/2022/consumers-packaging-recycling/760956)

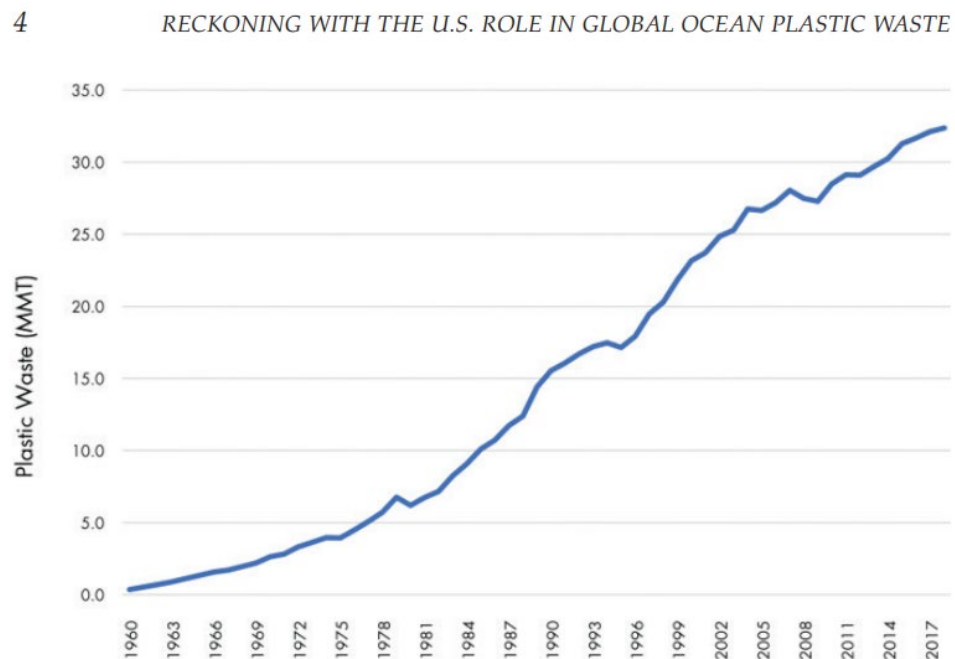
26 ²¹⁷ See, e.g., The Coca-Cola Company, *Sustainability*, [https://www.coca-](https://www.coca-colacompany.com/sustainability)
27 [colacompany.com/sustainability](https://www.coca-colacompany.com/sustainability); Danone *Sustainability* [https://www.danone.com/investor-](https://www.danone.com/investor-relations/sustainability.html)
[relations/sustainability.html](https://www.danone.com/investor-relations/sustainability.html); Colgate, *Sustainability*, [https://www.colgatepalmolive.com/en-](https://www.colgatepalmolive.com/en-us/sustainability)
28 [us/sustainability](https://www.colgatepalmolive.com/en-us/sustainability); PepsiCo, *Sustainability Action Center*, [https://sustainabilityaction.pepsico.com/.](https://sustainabilityaction.pepsico.com/)

1 customers' concerns about plastic recycling.

2 210. As a result of Defendants' misleading promotions, consumers purchased more of
3 Defendants' plastics than they otherwise would have.

4 211. More consumption of Defendants' products results in more plastic pollution. This is
5 because there is a direct, causal linkage between plastics production, waste generation and
6 ultimately pollution, including ocean and waterway pollution.²¹⁸

7 212. Specifically, the amount of pollution produced has consistently outpaced the ability
8 to prevent it over the decades. Plastic containers and packaging, like Defendants' products at issue
9 here, comprise the greatest share of the plastic waste stream.²¹⁹ These products commonly leak
10 into the environment from the waste management systems.



12
13
14
15
16
17
18
19
20
21
22 **FIGURE S.1** U.S. annual plastic solid waste generation from 1960 to 2018 in
23 million metric tons. SOURCE: U.S. EPA (2020a).

24
25
26 ²¹⁸ See THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, RECKONING WITH
THE U.S. ROLE IN GLOBAL OCEAN PLASTIC WASTE 3 (The Nat'l Acad. Press, 2022).

27 ²¹⁹ THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, RECKONING WITH THE
28 U.S. ROLE IN GLOBAL OCEAN PLASTIC WASTE 58 (The Nat'l Acad. Press, 2022).

1 213. Because China introduced a ban on importing plastics intended to be recycled from
2 the United States, states like California have been left to manage their own plastic waste
3 domestically. This has resulted in more plastics entering landfills and therefore more possibility
4 for domestic leakage. The United States is believed to leak 1.13 to 2.24 million metric tons of
5 plastic annually.²²⁰

6 214. Most waste entering the environment comes from leakage from the waste
7 management system. This occurs when plastic waste is designated to be received for collection,
8 transportation, and processing at a facility, but where the plastic waste instead “leaks” into the
9 environment at some stage in that process. Leaks are so significant that less than 10 percent of
10 plastics generated annually are ever recycled in the United States.²²¹

11 215. Studies conducted in the San Francisco Bay region have for decades shown most of
12 the waste on the coastline to be plastic waste.²²² Plastic reaches the coastline from the ocean
13 through different hydrodynamic processes after leakage from the waste management system and
14 having traveled to the ocean by a river or stormwater flow.²²³

15 216. Properties, like the one owned by Plaintiff, are the recipients of plastic waste brought
16 by leakage. This waste comes in many forms of varying degrees of size and shape, from
17 recognizable objects to fibers, fragments, pellets, films and foams.

18 217. Plastic leakage from the waste management system is predictable because there is a
19 disconnect between how plastics are formulated and designed and how their end-of-life is planned
20 and managed. Relative to available resources and capacity, the large volume of plastics introduced
21

22 ²²⁰ *Id.* at 5.

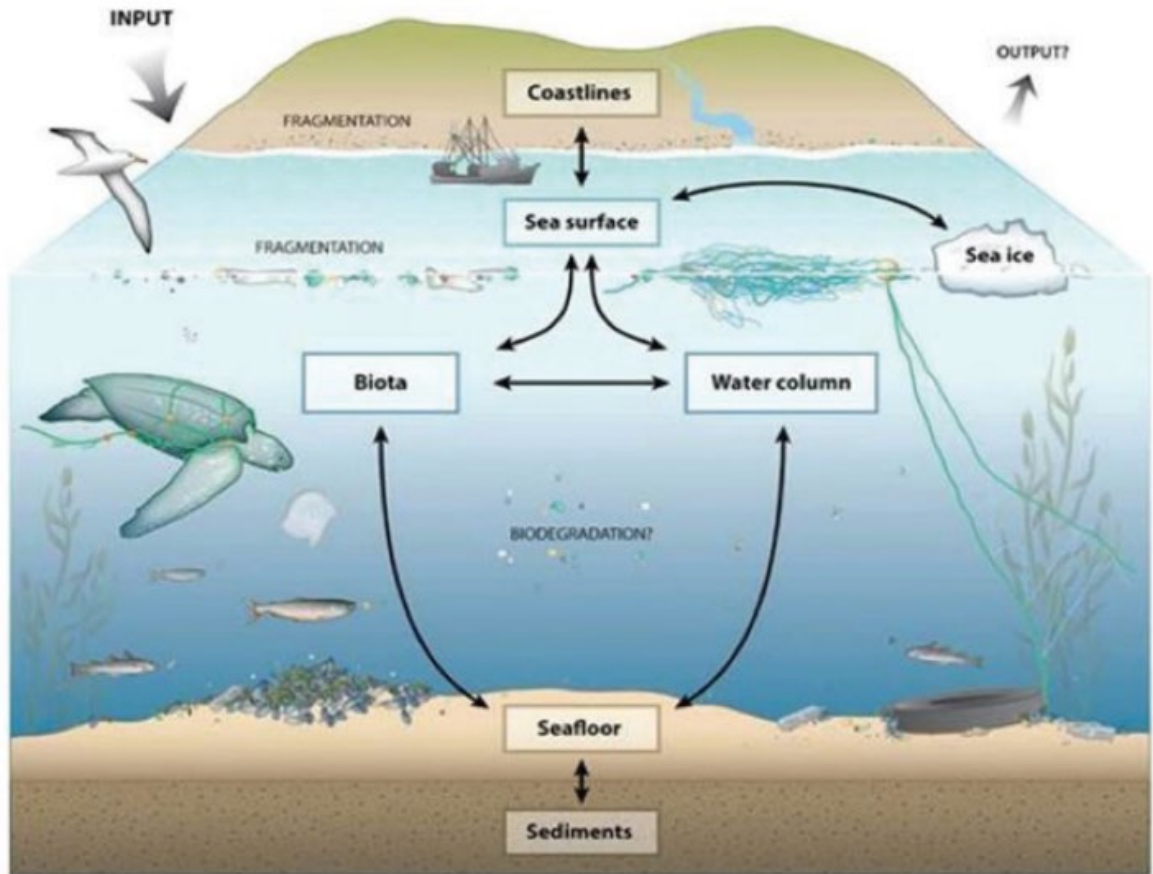
23 ²²¹ U.S. EPA, *National Overview: Facts and Figures on Materials, Wastes and Recycling*,
24 <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials#recycling>.

25 ²²² Singh, Maanvi, 'Everywhere we looked': trillions of microplastics found in San Francisco bay,
26 *The Guardian*, October 04, 2019, <https://www.theguardian.com/environment/2019/oct/04/san-francisco-microplastics-study-bay>.

27 ²²³ *What are The Facts? Ocean Plastic Explained*, The Ocean Clean-Up,
28 <https://theoceancleanup.com/ocean-plastic/>.

1 by companies such as Defendants make leakage unavoidable, and therefore entirely foreseeable
2 and even inevitable.

3 218. Additionally, Defendants instructions on the disposal of their products is misleading
4 and inaccurate and leads to Defendants' products becoming pollution.



21 **G. Increases in Defendants' Plastics Entering the Environment Resulting from**
22 **Defendants' False "Recyclable" Promotion Caused Harm to Earth Island**

23 219. The quantity of plastic in the ocean is untenable. Scientists estimate that between 8
24 and 20 million tons of plastic enter the ocean annually. At this rate, plastic is set to outweigh fish
25 in the ocean by 2050.²²⁴ Plastic chokes the ocean and threatens the survival of marine species,

26 _____
27 ²²⁴ *The New Plastic Economy: Rethinking the future of plastics*, ELLEN MACARTHUR FOUNDATION,
28 2016, http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf; Katie Mika et al.,
Stemming the Tide of Plastic Marine Litter: A Global Action Agenda, 5 UCLA SCHOOL OF LAW

1 many critically endangered.

2 220. The predominance of tiny plastic particles in the ocean is related to plastic's inability
3 to biodegrade. Plastic splits into smaller and smaller pieces in the presence of sunlight, wind, and
4 wave action, but retains its plastic composition. This leads to the development of microscopic
5 particles known as microplastics, which are particularly damaging to the environment.²²⁵ Plastic
6 remains a destructive and ever-present fixture in ocean ecosystems; it may get smaller, but it never
7 goes away.²²⁶

8 221. The permanence of all manufactured plastic has led to a highly observable decline in
9 the health of the ocean. Ocean ecosystems have been drastically altered, creating a phenomenon
10 unheard of prior to the invention of plastic.

11 222. Creatures most notably affected by plastic pollution include fish, seabirds, marine
12 mammals, and reptiles.²²⁷ A UN fact sheet accompanying the 2017 Ocean Conference
13 approximates that up to 1 million seabirds perish each year due to problems resulting from plastic
14 waste and some studies warn that as much as 99% of all seabirds will have swallowed plastic by
15 2050.²²⁸

16 223. One of the most common ways in which plastic impairs marine life is through
17 ingestion; marine inhabitants often confuse plastic for food or swallow prey that has previously
18

19 _____
20 PRITZKER ENVT. L. POL'Y BRIEFS, Oct. 2013, www.law.ucla.edu/centers/environmental-law/emmett-institute-on-climate-change-and-the-environment/publications/stemming-the-tide-of-plastic-marine-litter/.

21 ²²⁵ Dr. Jenna Jambeck et al., *Marine Plastics*, SMITHSONIAN INSTITUTION, Apr. 2018,
22 ocean.si.edu/conservation/pollution/marine-plastics.

23 ²²⁶ Claire Le Guern, *When The Mermaids Cry: The Great Plastic Tide*, COASTALCARE.ORG, Jan. 31,
2020, <https://coastalcare.org/2009/11/plastic-pollution/>.

24 ²²⁷ *Marine Debris: Understanding, Preventing and Mitigating the Significant Adverse Impacts on
25 Marine and Coastal Biodiversity*, 2016 Technical Series No.83. SECRETARIAT OF THE CONVENTION
ON BIOLOGICAL DIVERSITY, Montreal, 78 pages, <https://www.cbd.int/doc/publications/cbd-ts-83-en.pdf>.

26 ²²⁸ *Factsheet: Marine Pollution*, THE UNITED NATIONS OCEAN CONFERENCE 2017,
27 https://sustainabledevelopment.un.org/content/documents/Ocean_Factsheet_Pollution.pdf.

28

1 consumed it.²²⁹ As a result, plastic particles mangle digestive systems and accumulate in the
2 stomachs of marine creatures. This leads to eventual starvation as false messages of fullness
3 inhibit feeding behaviors.²³⁰ A 2019 study examined 50 individual organisms from 10 different
4 marine mammal species that had washed up on British shore and determined that all had consumed
5 plastic, and the likely cause of death was starvation.²³¹



6
7
8
9
10
11
12
13
14
15
16
17
18
19
20 224. Another danger presented by plastic is its tendency to strangle creatures who come in
21 contact with it.²³² All too often, marine organisms become entangled in plastic and are unable to

22
23 ²²⁹ Simon Reddy, *Plastic Pollution Affects Sea Life Throughout the Ocean*, THE PEW CHARITABLE
24 TRUSTS, Sept. 24 2018, www.pewtrusts.org/en/research-and-analysis/articles/2018/09/24/plastic-pollution-affects-sea-life-throughout-the-ocean.

²³⁰ *Id.*

25 ²³¹ S. E. Nelms et al., *Microplastics in Marine Mammals Stranded around the British Coast: Ubiquitous but Transitory*, 9 SCIENTIFIC REPORTS 1075, www.nature.com/articles/s41598-018-37428-3; Above Photo Credit: U.S. Fish and Wildlife Service / Dan Clark.

26
27 ²³² *Trash Pollution*, OCEANHEALTHINDEX.ORG,
28 www.oceanhealthindex.org/methodology/components/trash-pollution.

1 break free from it, resulting in drowning and suffocation.²³³ An estimated 80% of entanglement
2 cases result in “direct harm or death.”²³⁴ NOAA lists “entanglement in marine debris” as one of
3 the biggest threats to endangered loggerhead sea turtles.²³⁵



17
18 225. Sperm whales, frequently mistake plastic debris for squid, their primary food source,
19 and have been found washed up on California beaches with as much as 400 pounds of debris—
20 mostly plastic—inside their stomachs.²³⁶ In 2014, a sei whale—which are endangered—perished
21 after it ingested a plastic shard from a DVD cover.²³⁷ The plastic shard had lacerated its stomach,

22
23 ²³³ *Id.*
24 ²³⁴ Sarah Gall & Richard Thompson, *The Impact of Debris on Marine Life*, 92 MARINE POLLUTION
25 BULLETIN 170, (March 2015), www.sciencedirect.com/science/article/pii/S0025326X14008571.
26 ²³⁵ *Loggerhead Turtle*, NOAA FISHERIES, www.fisheries.noaa.gov/species/loggerhead-turtle.
27 ²³⁶ Isabelle Groc, *How a DVD Case Killed a Whale*, NATIONAL GEOGRAPHIC, Apr. 29, 2016,
28 <https://www.nationalgeographic.com/news/2015/1/150107-sea-trash-whales-dolphins-marine-mammals/>.
²³⁷ *Id.*

1 preventing feeding and thereby leading to starvation.²³⁸ These cases illustrate just a sampling of
2 the many struggling populations further impeded by plastic pollution.²³⁹

3 226. Plastic alters the chemical composition of the ocean when it breaks apart into smaller
4 pieces.²⁴⁰ It releases toxic chemicals into the surrounding water, changing the water's chemical
5 makeup.²⁴¹ Potential pollutants released through this process include bisphenol A and PS
6 oligomer, two known hormone disruptors.²⁴² Plastic particles also act as magnets for toxins to
7 attach themselves to.²⁴³ In particular, pollutants such as polychlorinated biphenyls (PCBs) and
8 polycyclic aromatic hydrocarbons (PAHs) are frequently observed in the presence of five mass-
9 produced types of plastic found in the ocean.²⁴⁴

10 227. Ocean-dwelling species face barriers to reproduction due to the presence of
11 endocrine-disrupting chemicals like PCBs and BPA associated with plastics.²⁴⁵ Orca whales and
12 other dolphins have been observed struggling to calve due to such chemicals hijacking their
13 biological functions,²⁴⁶ and seals are similarly subject to reproductive abnormalities including

14 ²³⁸ *Id.*

15 ²³⁹ Simon Reddy, *Plastic Pollution Affects Sea Life Throughout the Ocean*, THE PEW CHARITABLE
16 TRUSTS, Sept. 24 2018, www.pewtrusts.org/en/research-and-analysis/articles/2018/09/24/plastic-pollution-affects-sea-life-throughout-the-ocean.

17 ²⁴⁰ *Plastics in Oceans Decompose, Release Hazardous Chemicals, Surprising New Study Says*.
18 AMERICAN CHEMICAL SOCIETY, Aug. 16, 2009,
19 www.acs.org/content/acs/en/pressroom/newsreleases/2009/august/plastics-in-oceans-decompose-release-hazardous-chemicals-surprising-new-study-says.html.

20 ²⁴¹ *Id.*

21 ²⁴² *Id.*

22 ²⁴³ C.M. Rochman et al., *Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris*, 47 ENVIRONMENTAL SCIENCE AND TECHNOLOGY 1646–1654, DOI:10.1021/es303700s.

23 ²⁴⁴ *Id.*

24 ²⁴⁵ Emma L. Teuten et al, *Transport and Release of Chemicals from Plastics to the Environment and to Wildlife*, 364 PHILOS. TRANS. R. SOC. LOND. B. BIOL. SCI. 2027 (July 27, 2009),
25 www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/.

26 ²⁴⁶ Paul D. Jepson et al, *PCB Pollution Continues to Impact Populations of Orcas and Other Dolphins in European Waters*, 6 SCIENTIFIC REPORTS 18754 (Jan. 14, 2016),
27 www.ncbi.nlm.nih.gov/pmc/articles/PMC4725908/.

1 spontaneous abortion.²⁴⁷ In male polar bears, PCBs inhibit fertility and can impact population
2 growth.²⁴⁸ Polystyrene—found in food and beverage containers—has been linked to “interference
3 with energy uptake and allocation, reproduction, and offspring performance” in oysters.²⁴⁹

4 228. Noxious chemicals within plastic’s chemical makeup such as DDT have been shown
5 to “cause cancers, weaken the immune system, and make animals more susceptible to diseases and
6 other infections.”²⁵⁰

7 229. Plastic’s pervasiveness within marine ecosystems also negatively impacts human
8 bodies.²⁵¹ According to recent research, microplastics are abundant in human water supplies. On
9 average, a single person ingests up to 1,769 particles of plastic per week from water alone.²⁵² The
10 report concludes that, due to the presence of microplastics in human food and water sources, an
11 individual can ingest approximately 5g of plastic every week—the mass of a credit card.²⁵³

12 230. Plastic pollution threatens tourism, recreation, and fishing industries. Public
13 utilization of the ocean and recreational activities therein are hindered by the consequences of
14 unchecked plastic pollution. Once pristine waters are now cluttered with swathes of drifting plastic
15 trash, making activities such as swimming, diving, and water sports less enjoyable. Beaches
16 previously sought after by tourists are now cautioned against by media outlets. For instance, Bali’s

17
18
19 ²⁴⁷ Mats Olsson et al, *Seals and Seal Protection: A Presentation of a Swedish Research Project*,
20 21(8) AMBIO 494 (Dec. 1992), www.jstor.org/stable/4314002.

21 ²⁴⁸ Viola Pavlova et al, *Allee Effect in Polar Bears: a Potential Consequence of Polychlorinated
22 Biphenyl Contamination*, PROCEEDINGS OF THE ROYAL SOC’Y B: BIO. SCIENCES, (Nov. 30, 2016),
23 royalsocietypublishing.org/doi/full/10.1098/rspb.2016.1883.

24 ²⁴⁹ Rossana Sussarellu et al, *Oyster Reproduction Is Affected by Exposure to Polystyrene
25 Microplastics*, 113(9) PROC. NATL. ACAD. SCI. U.S.A. 2430 (Mar. 1, 2016),
26 www.ncbi.nlm.nih.gov/pmc/articles/PMC4780615/.

27 ²⁵⁰ *Trash Pollution*, OCEANHEALTHINDEX.ORG,
28 www.oceanhealthindex.org/methodology/components/trash-pollution.

²⁵¹ David Azoulay et al., *Plastic & Health: the Hidden Costs of a Plastic Planet*, Center for
International Environmental Law, CIEL.ORG, Feb. 2019, www.ciel.org/plasticandhealth/.

²⁵² Wide Fund for Nature et al., *No Plastic in Nature: Assessing Plastic Ingestion from Nature to
People*, WWF ANALYSIS, June 2019.

²⁵³ *Id.*

1 once world renowned coasts have been overtaken by plastic pollution in recent years.²⁵⁴

2 231. California waterways have also experienced significant harm. The photo below
3 shows plastic pollution in the Los Angeles River in Long Beach, California.²⁵⁵



18
19 232. When global losses from all industries afflicted by marine pollution are accounted
20 for, the total adds to approximately \$13 billion annually—including the cost of cumbersome
21 cleanup endeavors imposed on governments and nonprofit institutions such as Earth Island.²⁵⁶

22
23
24
25 ²⁵⁴ *Bali's Battle against Plastic Pollution*, BBC NEWS, Mar. 7, 2018, www.bbc.com/news/world-asia-43312464.

26 ²⁵⁵ *Mouth of Los Angeles River, Long Beach, CA*, PLASTIC POLLUTION COALITION, Photo Credit:
Bill McDonald / Algalita Foundation, <https://www.flickr.com/photos/plasticpollution/4349811821/>.

27 ²⁵⁶ Elizabeth Matsangou, *Counting the Cost of Plastic Pollution*, WORLD FINANCE, July 2, 2018,
28 www.worldfinance.com/markets/counting-the-cost-of-plastic-pollution.

1 **H. Defendants' Promotions Violate California Public Policy and the Federal Trade**
2 **Commission Green Guides**

3 233. The Legislature of the State of California has declared that “it is a public policy of
4 the state that environmental marketing claims, whether explicit or implied, should be substantiated
5 by competent and reliable evidence to prevent deceiving or misleading consumers about the
6 environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy is based on
7 the Legislature’s finding that “littered plastic products have caused and continue to cause
8 significant environmental harm and have burdened local governments with significant
9 environmental cleanup costs.” *Id.* at 42355(a).

10 234. The California Business and Professions Code § 17580.5 makes it “unlawful for any
11 person to make any untruthful, deceptive, or misleading environmental marketing claim, whether
12 explicit or implied.” Pursuant to that section, the term “environmental marketing claim” includes
13 any claim contained in the Guides for use of Environmental Marketing Claims (the “Green
14 Guides”).

15 235. Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by
16 implication, that a product or package is recyclable. A product or package shall not be marketed as
17 recyclable unless it can be collected, separated, or otherwise recovered from the waste stream
18 through an established recycling program for reuse or use in manufacturing or assembling another
19 item.”

20 236. The Green Guides further state that “if any component significantly limits the ability
21 to recycle the item, any recyclable claim would be deceptive. An item that is made from
22 recyclable material, but because of its shape, size or some other attribute is not accepted in
23 recycling programs, should not be marketed as recyclable.” Studies have proven that consumers
24 do not have reasonable access to facilities that will process plastic resins #3-7, which constitute
25 many of Defendants’ products.²⁵⁷ Additionally, studies have shown that although many facilities

26
27 ²⁵⁷ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
28 GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 will process plastic resins #1-2, these facilities have limited capacity and can only recycle a
2 fraction of the total volume they receive of plastic resins #1-2.²⁵⁸ Yet Defendants continue to label
3 these products as recyclable with the universal recycle symbol. Because the claims are false and
4 misleading, ordinary consumers are likely to be deceived by such representations.²⁵⁹

5 237. Finally, the Green Guides recognize that access to recycling facilities is one critical
6 element in whether or not an item is recyclable. As such, the Green Guides provide that marketers
7 may qualify recyclable claims by stating the percentage of consumers or communities that have
8 access to facilities that actually recycle the item. U.S. recycling facilities do not have the capacity
9 to process the sheer volume of plastic waste produced annually, and therefore do not actually
10 recycle much of the items submitted to them by consumers. Consumers do not have reasonable
11 access to recycling facilities that will actually recycle Defendants' products.

12 238. Under California law, Defendants must clearly and prominently qualify recyclable
13 claims to avoid deception about the availability of recycling programs and collection sites to
14 consumers if consumers do not have access to facilities that can recycle the products.

15 239. In order to counter negative publicity regarding the impacts of Defendants' products,
16 and to take advantage of consumers' concerns with respect to the environmental consequences
17 caused by such products, Defendants advertise, market, and sell the products as recyclable. More
18 specifically, Defendant's products contain the universal recycle symbol to indicate to consumers
19 that their products are recyclable.

20 240. Defendants' marketing, advertising, promotional material and instructions for how to
21 dispose of their products, including on their websites, uniformly represent that their products are
22 recyclable.

23 241. However, Defendants are aware that many of their products are not actually
24 recyclable and yet have not undertaken any effort to notify consumers of the problem. Defendants'

25 _____
26 ²⁵⁸ *Id.*

27 ²⁵⁹ Kate Gibson & Irina Ivanova, *Suit charges Keurig's coffee pods aren't recyclable as advertised*,
28 CBS NEWS, July 11, 2019, <https://www.cbsnews.com/news/keurig-coffee-pods-not-recyclable-as-advertised-according-to-class-action-suit/>.

1 failure to disclose that products are not recyclable is an omission of fact that is material to
2 consumers' buying habits and Defendants exploit customers through their deceptive claims of
3 recyclability.²⁶⁰

4 **I. Earth Island's Injuries**

5 242. The exponential rise in marine plastic pollution in California is devastating to marine
6 life and the environment. These injuries derive from the increase in plastic pollution in California
7 waterways and coasts.

8 243. Plastic permeates marine ecosystems. In California, microplastics have been
9 discovered at every stratum of the Monterey Bay National Marine Sanctuary, accumulating at
10 depths as great as 3,281 feet.²⁶¹ New research has revealed that there is a greater abundance of
11 microplastics in Monterey Bay (16 parts per cubic meter) than there is in the Great Pacific Garbage
12 Patch (12 parts per cubic meter).²⁶² Plastic is also abundant in California's freshwater ecosystems,
13 including in Lake Tahoe.

14 244. The sum of the research reveals that there are relatively few components of marine
15 ecosystems that are unaffected by plastic pollution. Because plastic pollution impacts waterways,
16 coasts, and oceans everywhere, the public's ability to use and enjoy these resources is negatively
17 affected.

18 245. The public bears significant costs associated with the impacts of marine plastic
19 pollution. Annual global losses from all industries afflicted by marine plastic pollution reach an
20 estimated \$13 billion.

21 246. In 2015, an Earth Island project initiated and fiscally sponsored a marine debris
22 campaign called the Aquatic Park Stewardship program to engage the community and youth in
23 plastic reduction and prevent marine debris pollution. The program has partnered with local
24

25 ²⁶⁰ *Id.*

26 ²⁶¹ C. Anela Choy et al, *The Vertical Distribution and Biological Transport of Marine*
27 *Microplastics across the Epipelagic and Mesopelagic Water Column*, 9 SCIENTIFIC REPORTS 7843
Jan. 14, 2020, www.nature.com/articles/s41598-019-44117-2.

28 ²⁶² *Id.*

1 schools in the San Francisco Unified School District, bringing youth to the San Francisco Bay,
2 conducting beach surveys, and clean-ups and cataloging data using the NOAA Marine Debris
3 Shoreline Survey methodology.

4 247. To maintain the Aquatic Park Stewardship Program, Earth Island spends about
5 \$4,000.00 in labor, \$575.00 in materials and equipment, \$457.00 in administrative fees, and about
6 \$1,500 in venue fees for training events and tables for outreach.



7
8
9
10
11
12
13
14
15
16
17
18
19
20 248. For organizing beach clean-ups Earth Island spends about \$475.00 for materials and
21 equipment including gloves, buckets, beach pickers, and transect tapes. Earth Island also spends
22 an average of \$450.00 for printing poster boards, handouts, and educational materials. Earth Island
23 diverts an additional \$1,500 of its own resources to printing brochures related to the marine debris
24 campaign.

25 249. Earth Island participates in the Message in a Bottle plastic art (and education) show
26 at the Palace of Fine Arts San Francisco, reaching approximately 3,000 people each year. In 2018
27 Earth Island partnered with the International Ocean Film Festival in Bay Area schools to air
28

1 documentaries concerning plastic pollution.

2 250. In San Mateo, Earth Island has organized and fiscally sponsored beach clean-ups for
3 years and has worked with the San Mateo County Unified School District and other community
4 leaders to clean beaches from Pacifica down to Half Moon Bay. Earth Island has partnered with
5 the Surfrider Foundation to give talks and host educational events at businesses located on Half
6 Moon Bay. Earth Island participates in the Pacific Beach Coalition, which organizes Ecofest, a
7 Linda Mar beach event that includes speakers, music, eco booths, hands-on activities, and
8 environmental and public safety resources.

9 251. During these beach and other pollution clean-ups in California, plastic sold by each
10 of the Defendants (Crystal Geysir Water Company, The Clorox Company, The Coca-Cola
11 Company, PepsiCo, Inc., Nestlé USA, Inc., Danone North America, Colgate-Palmolive Company,
12 The Procter & Gamble Company) has been found polluting the environment.

13 252. Earth Island diverts resources to counter-act and educate the public concerning
14 Defendants' misleading statements and the truths about recycling.

15 253. Earth Island is diverting more and more organizational resources to remediate
16 California coasts and waterways impacted by plastic pollution, and to counteract threats to marine
17 wildlife from plastic. Earth Island also expends resources on remediating waterways on its private
18 property that are impacted by plastic pollution.

19 **V. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **Violations of California Business & Professions Code §§ 17200, et Seq.**

22 **Based on the Commission of Fraudulent, Unfair, and Unlawful Acts**

23 254. Plaintiff incorporates by reference each and every allegation contained above.

24 255. Under California Cal. Bus. & Prof. Code § 17200, any business act or practice that is
25 unethical, oppressive, unscrupulous, or substantially injurious to consumers, or that violates a
26 legislatively declared policy, constitutes an unfair business act or practice.

27 256. Under Cal. Bus. & Prof. Code § 17200, any business act or practice that is likely to
28

1 deceive members of the public constitutes a fraudulent business act or practice.

2 257. Under Cal. Bus. & Prof. Code § 17200, any business act or practice that violates any
3 law—federal, state, or local— constitutes an unlawful business act or practice.

4 258. Defendants have engaged and continue to engage in conduct that is likely to deceive
5 members of the public. This conduct includes, but is not limited to, representing that their Products
6 are recyclable in California when they are not.

7 259. Defendants’ conduct violates the policy of the Environmental Marketing Claims Act
8 (“EMCA”) and the Green Guides. The Green Guides mandate that “[a] product or package shall
9 not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the
10 waste stream through an established recycling program for reuse or use in manufacturing or
11 assembling another item.” 16 C.F.R. § 260.12(a). It further states that “[a]n item that is made from
12 recyclable material, but because of its shape, size or some other attribute is not accepted in
13 recycling programs, should not be marketed as recyclable.” 16 C.F.R. § 260.12(d).

14 260. EMCA states that “it is unlawful for any person to make any untruthful, deceptive, or
15 misleading environmental marketing claim, whether explicit or implied. For the purpose of this
16 section, environmental marketing claims shall include any claims contained in the Guides for the
17 use of Environmental Marketing Claims published by the Federal Trade Commission.” Cal. Bus. &
18 Prof. Code § 17580.5. As explained above, Defendants’ products cannot be recycled and/or are not
19 recycled in California, and it is therefore unfair for Defendants to make a recyclable claim. Taking
20 advantage of consumer perception of recycling violates the policy of the Green Guides and EMCA.

21 261. Defendants’ conduct violates the EMCA, which makes it unlawful for any person to
22 make any unsubstantiated environmental marketing claim. Pursuant to the EMCA, “Any person
23 who represents in advertising or on the label or container of a consumer good that the consumer
24 good that it manufactures or distributes is not harmful to, or is beneficial to, the natural
25 environment, through use of such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth
26 friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’
27 ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other like
28

1 term, shall maintain in written form in its records...information and documentation supporting the
2 validity of the representation.” Cal. Bus. & Prof. Code § 17580(a).

3 262. The term “recyclable” is a term that represents that a product or packaging is not
4 harmful to, or is beneficial to, the natural environment, and is therefore covered under Cal. Bus. &
5 Prof. Code § 17580(a). In fact, the EMCA specifically requires companies to maintain information
6 and documentation as to whether such products or packaging conform with the uniform standards
7 contained in the Green Guides for use of the terms “recycled” or “recyclable.” *Id.*, § 17580(a)(5).

8 263. In addition to documents regarding whether the consumer good conforms with the
9 Green Guides, the EMCA requires that companies maintain the following records in written form
10 supporting the validity of their recyclable representations: (1) the reasons why a company believes
11 the representation to be true; (2) any significant adverse environmental impacts directly associated
12 with the production, distribution, use, and disposal of the consumer good; (3) any measures that are
13 taken by the company to reduce the environmental impacts directly associated with the production,
14 distribution, and disposal of the consumer good; and (4) violations of any federal, state, or local
15 permits directly associated with the production or distribution of the consumer good. *Id.*, §
16 17580(a)(1)-(4). 17580(b), (d). Further, SB 343 amended section 17580 to confirm that a person
17 who represents in advertising or on the label of a container of a consumer good that the consumer
18 good is not harmful to, or is beneficial to, the natural environment “through the use of a chasing
19 arrows symbol or by otherwise directing a consumer to recycle the consumer good,” shall maintain
20 written records substantiating the validity of such representations.

21 264. The Green Guides also require marketers to ensure that their claims are supported by
22 a reasonable basis prior to making the claim. 16 C.F.R. § 260.2. A reasonable basis is defined as
23 competent and reliable scientific evidence, such as “tests, analyses, research, or studies that have
24 been conducted and evaluated in an objective manner by qualified persons and are generally
25 accepted in the profession to yield accurate and reliable results.” *Id.* “Such evidence should be
26 sufficient in quality and quantity based on standards generally accepted in the relevant scientific
27 fields, when considered in light of the entire body of relevant and reliable scientific evidence, to
28

1 substantiate that each of the marketing claims is true.” *Id.*

2 265. The California Legislature declared its intent that the information and documentation
3 supporting the validity of any environmental marketing claims shall be fully disclosed to the public,
4 and information and documentation maintained pursuant to Cal. Bus. & Prof. Code § 17580 must be
5 furnished to any member of the public upon request. *Id.*, §17580(b), (d). It is unfair for Defendants
6 to represent that the products are recyclable without substantiation, violating the California
7 Legislature’s intent that information and documentation supporting the validity of environmental
8 marketing claims shall be fully disclosed to the public. It is also unfair for Defendants to withhold
9 information it is mandated to disclose pursuant to statute.

10 266. Under the Green Guides, “[a] product or package shall not be marketed as recyclable
11 unless it can be collected, separated, or otherwise recovered from the waste stream through an
12 established recycling program for reuse or use in manufacturing or assembling another item.” 16
13 C.F.R. § 260.12(a). Here, the Defendants’ products are not recyclable because people do not have
14 access to recycling programs that accept the products, the products cannot be separated or recovered
15 from the general waste stream and sorted into the correct materials bale by MRFs, and there are no
16 end markets to reuse the products or to convert the products into a material that can be reused or
17 used in manufacturing or assembling another item.

18 267. Defendants gain an unlawful and unfair advantage over competitors, whose
19 advertising and labeling must comply with the EMCA, the Green Guides, and the legislatively
20 declared policy of Cal. Pub. Res. Code § 42355.5. By committing the acts alleged above,
21 Defendant has engaged in fraudulent, unfair, and unlawful business acts and practices that constitute
22 unfair competition within the meaning of California Business & Professions Code § 17200.

23 268. Plaintiff has no adequate remedy at law for the injuries currently being suffered as an
24 award of monetary damages would not prohibit Defendants’ unsubstantiated recycling
25 representations. Moreover, monetary damages would not remedy Defendants’ unlawful refusal to
26 provide information that is mandated by statute to be disclosed to Plaintiff. If an injunction is not
27 granted, Plaintiff will suffer irreparable injury because it will continue to spend money, staff time,
28

1 and other organizational resources to combat Defendants' unsubstantiated representations that the
2 products are recyclable in California and to inform the public that the products are not recyclable in
3 California.

4 269. In addition, plastic pollution caused by Defendants' sale of the products in California
5 and the resulting harm to California waters, coasts, communities, and marine life will continue to
6 negatively impact Plaintiff's efforts to protect these critical resources. California residents may also
7 contaminate the recycling stream by unknowingly placing the products in their recycling bins
8 (based on Defendants' incorrect disposal information), preventing legitimately recyclable products
9 from being recycled. Denial of access to statutorily required information is harming Plaintiff
10 because it must continue to divert resources to combat wrongful Defendants' conduct. Accordingly,
11 an injunction requiring Defendant to substantiate its recycling representations or prohibiting
12 Defendants' unsubstantiated recycling representations will serve the public interest by protecting
13 the environment and the integrity of the recycling stream and by preventing Defendants from
14 gaining an unfair advantage over companies that can substantiate that the products they sell are
15 recyclable.

16 270. Defendants manufacture or distribute their products, and each represents in
17 advertisements or on the labels of the products that the products are recyclable. Defendants'
18 representations that the products are recyclable are prominent on all of Defendants' marketing,
19 advertising, and labeling materials for the products in California. Because part of Earth Island's
20 mission involves preventing companies from touting the environmental benefits of their products
21 without substantiating the validity of such environmental benefits, Earth Island spent and continues
22 to spend, money, staff time, and other organizational resources investigating and combatting the
23 effects of Defendants' unsubstantiated recycling representations. But for Defendants'
24 unsubstantiated recycling representations in California and elsewhere in the United States, Earth
25 Island would use that money, staff time, and organizational resources for its other advocacy efforts
26 and its other plastic campaigns. Earth Island has thus suffered, and continues to suffer, injury in
27 fact and lost money or property as a direct result of Defendants' unsubstantiated recycling
28

1 representations occurring in California.

2 271. An action for injunctive relief is specifically authorized under California Business &
3 Professions Code § 17203.

4 **SECOND CAUSE OF ACTION**

5 **Nuisance**

6 272. Plaintiff incorporates by reference each and every allegation contained above.

7 273. Defendants by their affirmative acts and omissions have created, contributed to,
8 and/or assisted in creating conditions that constitute a nuisance by causing plastic pollution in
9 California waterways and coasts, and its associated harms described above.

10 274. The conditions created by the Defendants substantially and negatively affect the
11 interests of the public at large. Marine plastic pollution impacts, described above, are: (1) indecent
12 and offensive to the senses of the ordinary person; and (2) obstruct and threaten to obstruct the free
13 use of natural resources held in the public trust, so as to interfere with the comfortable enjoyment of
14 life and property.

15 275. Marine and aquatic plastic pollution impacts a substantial number of residents and
16 citizens living in Plaintiff's community, and they are reasonably annoyed and disturbed by marine
17 and aquatic plastic pollution.

18 276. The harm from marine plastic pollution outweighs the benefit of Defendants'
19 products because:

- 20 a. The interference with the public's right to use and enjoy the ocean and marine
21 life is expected to become so regular as to be permanent;
- 22 b. The harm is the destruction and loss of use and enjoyment of ocean and marine
23 life;
- 24 c. The burden on the public to mitigate and prevent the interference is significant
25 and severe;
- 26 d. The social benefit of plastic packaging associated with Defendants' products is
27 outweighed by the availability of alternative products; and
28

1 e. It was practical for Defendants, in light of their knowledge, to develop
2 alternatives and/or prevent marine and aquatic plastic pollution.



13 277. In addition to the above, Plaintiff has suffered a private nuisance. Earth Island owns
14 private property in Richmond, California, which has been negatively affected by Defendants'
15 plastic.

16 278. Defendants, by acting as described herein, created plastic pollution that was harmful
17 to health; was indecent or offensive to the senses; and was an obstruction to the free use Plaintiff's
18 property, such that it interfered with the comfortable enjoyment of life or property and obstructed
19 the use and created a hazard on Plaintiff's property.

20 279. Defendants' conduct was intentional and unreasonable, and at minimum reckless, the
21 as the pollution that Defendants have created and permitted to exist is hazardous.

22 280. Defendants' conduct and the resulting plastic pollution has substantially interfered
23 with Plaintiff's use and enjoyment of its land.

24 281. An ordinary person would reasonably be annoyed or disturbed by Defendants'
25 conduct.

26 282. Plaintiff did not consent to Defendants' conduct and Plaintiff was harmed, as alleged
27 herein.

28

1 283. Moreover, as explained in detail in this Complaint, Defendants' conduct was a
2 substantial factor in causing Plaintiff's harm, and the seriousness of the harm outweighs the public
3 benefit.

4 284. Plaintiff has also suffered special injuries (which are different in kind) by diverting
5 organizational resources to prevent and mitigate the harms from marine plastic pollution and to
6 clean up plastic pollution in waterways on its own private property.

7 285. As a direct and proximate result of Defendants' conduct, Plaintiff and its members
8 have been harmed. Defendants knew or should have known that their conduct would create a
9 continuing problem with long-lasting negative effects on the rights of the public.

10 286. Defendants' actions are a direct and legal cause of the public nuisance described
11 above.

12 287. Defendants' acts and omissions are indivisible causes of Plaintiff's injuries and
13 damages as alleged herein.

14 288. Plaintiff is entitled to recover damages and other appropriate relief for the foregoing
15 public nuisance.

16 289. Wherefore, Plaintiff prays for the relief as set forth below.

17 **VI. PRAYER FOR RELIEF**

18
19 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
20 as follows:

- 21 1. Compensatory damages in an amount according to proof;
- 22 2. Order requiring the Defendants to disburse the funds and resources necessary to
23 remediate the harm they have caused;
- 24 3. Equitable relief, including:
 - 25 a. abatement of the unlawful and unfair conduct and nuisance described herein;
 - 26 b. that Defendants refrain from marketing and promotion of products that state or
27 imply that the products are recyclable when in fact they are not recyclable

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

according to the Green Guides and California law; and

c. corrective advertising by Defendants to inform consumers that the products do not have the characteristics, uses, benefits, and quality Defendants have claimed.

4. Reasonable attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5 or under California Civil Code § 1780;

5. Costs of suit; and

6. For such and other relief as the court may deem proper.

JURY TRIAL DEMANDED

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

Dated: October 2, 2023

COTCHETT, PITRE & MCCARTHY, LLP

/s/ Tyson Redenbarger

JOSEPH W. COTCHETT
MARK C. MOLUMPY
TYSON REDENBARGER
VASTI MONTEIL

Attorneys for Plaintiff Earth Island Institute