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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
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11 SIERRA CLUB,
12 Plaintiff,
13 v.
14 THE COCA-COLA COMPANY and
BLUETRITON BRANDS, INC.,
15 Defendants.
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Case No.: _____

**COMPLAINT FOR UNFAIR BUSINESS
PRACTICES AND VIOLATION OF THE
ENVIRONMENTAL MARKETING
CLAIMS ACT**

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2 Plaintiff Sierra Club, by and through its counsel, brings this Complaint against
3 Defendants The Coca-Cola Company and BlueTriton Brands, Inc. (formerly known as Nestle
4 Waters North America, Inc.). The following allegations are based upon information and belief,
5 including the investigation of Plaintiff’s counsel, unless stated otherwise.

6 **INTRODUCTION**

7 1. This Complaint seeks to remedy Defendants’ unlawful, unfair, and deceptive
8 business practices with respect to the advertising, marketing, and sale of water bottled in single-
9 use plastic bottles labeled as “100% Recyclable.”

10 2. Americans consume water from disposable plastic bottles at a rate of more than
11 70 million bottles each day.¹ Defendants produce more than 100 billion single-use plastic bottles
12 every year – or 3,400 a second.² Over 60 million plastic bottles end up in landfills or incinerators
13 each day.³ Incineration of plastic releases large quantities of greenhouse gases and toxic air
14 emissions. Over 12 million tons of plastic enters the ocean each year.⁴ As consumers have
15 become increasingly aware of the problems associated with plastic pollution, many consumers
16 actively seek to purchase products that are either compostable or recyclable to divert such waste
17 from waterways, oceans, their communities, landfills, and incinerators.

18 3. The plastic waste problem was exacerbated in 2018 when China implemented a
19 plastic recycling import ban on most plastic waste exported from the United States, which it
20 deemed the “National Sword” policy. The National Sword policy has permanently changed how
21 the United States processes recycling. Up until 2018, China was the primary export market for
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23 ¹ Pat Franklin, *Down the Drain*, <https://www.container-recycling.org/assets/pdfs/media/2006-5-WMW-DownDrain.pdf> (last accessed January 20, 2021).

24 ² Sandra Laville and Matthew Taylor, *A million bottles a minute: world’s plastic binge ‘as
25 dangerous as climate change’* (June 28, 2017),
[https://www.theguardian.com/environment/2017/jun/28/a-million-a-minute-worlds-plastic-
26 bottle-binge-as-dangerous-as-climate-change](https://www.theguardian.com/environment/2017/jun/28/a-million-a-minute-worlds-plastic-bottle-binge-as-dangerous-as-climate-change) (last accessed January 20, 2021)

27 ³ *Id.*

28 ⁴ Nick Young, *How does plastic end up the ocean?*, [https://www.greenpeace.org/new-
zealand/story/how-does-plastic-end-up-in-the-ocean/](https://www.greenpeace.org/new-zealand/story/how-does-plastic-end-up-in-the-ocean/) (last accessed January 20, 2021).

1 plastic waste. In the wake of National Sword, municipalities have been forced to find new ways
2 to manage plastic recycling. In most cases, they have been forced to burn or incinerate plastics
3 because there is no longer a foreign market for the overwhelming majority of plastic sent for
4 recycling.

5 4. In the wake of National Sword, environmental organizations such as the Sierra
6 Club and Greenpeace sought to inform the public that reusable bottles are the only truly
7 sustainable choice. Concerned about the growing salience of this message and seeking to
8 reassure the public about the sustainability of single-use plastics—Defendants and other plastic
9 bottlers countered with the “Every Bottle Back” initiative. Central to this marketing campaign is
10 the claim “100% Recyclable,” which Defendants affix to their single-use plastic water bottles.
11 However, the plastic bottles are not “100% Recyclable” because: (i) the polypropylene (“PP”)
12 bottle caps and the biaxially oriented polypropylene (“BOPP”) plastic labels on the bottles are
13 not recyclable and cannot be processed into usable material; (ii) at least 28% of the polyethylene
14 terephthalate (“PET”) bottles and high-density polyethylene (“HDPE”) bottle caps sent to
15 recycling centers are lost in processing or are contaminated and thus end up in landfills or are
16 burned; and (iii) domestic recycling facilities only have the capacity to process approximately
17 22.5% of the PET and HDPE consumed in the United States.

18 5. Defendants’ continued use of misleading and deceptive recyclability claims on
19 their products serves to defraud the public about plastic water bottles. It falsely informs
20 consumers that they are making an environmentally responsible choice when they purchase and
21 dispose of Defendants’ plastic water bottles in a municipal recycling bin. In truth, Defendants’
22 single-use plastics are damaging the environment even when consumers properly dispose of the
23 bottles in a recycling bin. If consumers knew the truth, they could make more informed
24 decisions about consuming products that are truly sustainable. Defendants’ representations that
25 the Products are recyclable are material, false, misleading, and likely to deceive members of the
26 public. These representations also violate California’s legislatively declared policy against
27 misrepresenting the environmental attributes of products.

28 6. This action seeks an injunction precluding the sale of the plastic bottled water

1 within a reasonable time after entry of judgment, unless the products’ packaging and marketing
2 are modified to remove the “100% Recyclable” misrepresentation and to disclose the omitted
3 facts about their true recyclability. If an injunction is not granted, Plaintiff will suffer irreparable
4 injury because it will continue to spend money, staff time and other organizational resources to
5 combat Defendants’ false and misleading representations in California and to inform the public
6 that the Products are not recyclable in California. In addition, plastic pollution caused by
7 Defendants’ sale of the Products in California and the resulting harms to California waters,
8 coasts, communities, and marine life will continue to negatively impact Plaintiff’s efforts to
9 protect these critical resources.

10 PARTIES

11 7. Plaintiff Sierra Club (“Plaintiff” or the “Sierra Club”) was founded in 1892 and is
12 the nation’s oldest grassroots environmental organization. The Sierra Club is incorporated in
13 California, and has its headquarters in Oakland, California. It has more than 784,000 members
14 nationwide. The Sierra Club’s mission is “[t]o explore, enjoy and protect the wild places of the
15 earth; to practice and promote the responsible use of the earth’s ecosystems and resources; to
16 educate and enlist humanity to protect and restore the quality of the natural and human
17 environment; and to use all lawful means to carry out those objectives.” Consistent with its
18 mission, the Sierra Club is dedicated to the protection and preservation of environment,
19 including but not limited to, ending the use of single-use plastics and combatting false and
20 misleading environmental claims on consumer goods (i.e. greenwashing).

21 8. The Sierra Club has standing to bring this action because Defendants’
22 misrepresentations regarding the environmental benefits of their Products by marketing and
23 selling the Products as recyclable in California have frustrated the Sierra Club’s organizational
24 mission to “protect the wild places of the earth” and to “educate and enlist humanity to protect
25 ... the natural and human environment.” Well before this litigation was initiated, the Sierra Club
26 expended money, staff time, and diverted organizational resources in California in response to
27 that frustration of purpose (described in greater detail *infra*). The Sierra Club’s diversion of
28 resources to respond to Defendants’ misrepresentations regarding the recyclability of the

1 Products has caused the Sierra Club to postpone other projects that could advance the Sierra
2 Club’s mission. Thus, the Sierra Club has lost money or property and has suffered an injury in
3 fact due to Defendants’ actions of using false, misleading and deceptive labels regarding the
4 recyclability of its Products in California.

5 9. Defendant The Coca-Cola Company (“Coca-Cola”) is a corporation organized
6 and existing under the laws of the state of Delaware, having its principal place of business in
7 Atlanta, Georgia.

8 10. Defendant BlueTriton Brands, Inc. (“Nestle”) is a corporation organized and
9 existing under the laws of the state of Delaware, having its principal place of business in
10 Stamford, Connecticut. BlueTriton Brands, Inc. is the successor entity to Nestle Waters North
11 America, Inc.

12 11. The Parties identified in paragraphs 9-10 of this Complaint are collectively
13 referred to hereafter as “Defendants.”

14 **JURISDICTION AND VENUE**

15 12. This Court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. § 1332(a). The aggregate amount in controversy exceeds \$75,000, exclusive of interest
17 and costs; and there is complete diversity of citizenship between Plaintiff and Defendants.

18 13. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
19 and Professions Code, section 17200, *et seq.* Plaintiff and Defendants are “persons” within the
20 meaning of the California Business and Professions Code, section 17201.

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

27 15. The claims in this case arise out of Defendants’ California-related activities.
28 Defendants market and sell the Products in California to California consumers. While the

1 Products are marketed and sold in California by Defendants, the Products are not 100%
2 recyclable in California. The Sierra Club has spent significant money, staff time, and other
3 organizational resources in California to counter Defendants’ false and misleading recyclability
4 representations. Thus, the conduct alleged herein arises out of Defendants’ activities in
5 California.

6 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
7 substantial part of the events or omissions giving rise to the claims occurred in the state of
8 California, including within this District.

9 17. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

10 **SUBSTANTIVE ALLEGATIONS**

11 **(1) Defendants and the Products at Issue**

12 18. Coca-Cola manufacturers, markets, and sells beverages, including bottled water,
13 in the United States under several brand names, including Dasani.

14 19. Nestle manufacturers, markets, and sells beverages, including bottled water, in the
15 United States under several brand names, including Arrowhead, Poland Springs, Ozarka, and
16 Deer Park.

17 20. The following brands of bottled water are referred to herein as the “Products”:
18 Dasani, Arrowhead, Poland Springs, Ozarka, and Deer Park.

19 21. Each of the Products have three basic plastic components: the bottle, the bottle
20 cap, and the label that is wrapped around the bottle. The bottles are made of polyethylene
21 terephthalate (PET, #1 plastic). The Products’ bottle caps are made of polypropylene (PP, # 5
22 plastic) or high-density polyethylene (HDPE, #2 plastic). The Products’ labels are made from
23 biaxially oriented polypropylene (BOPP), a form of PP.

24 22. Throughout the class period, Defendants have consistently marketed on the
25 Products’ packages that they are “100% Recyclable” as shown in the following images.

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24. Arrowhead:



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25. Poland Springs:



26. Ozarka:



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3 27. Deer Park:



17 **(2) Defendants’ Representations that the Products Are “100% Recyclable” Are**
18 **False**

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

26 29. In California, after plastic bottles, such as the Products, are discarded into a
27 recycling bin, the bottles are sent to a Materials Recovery Facility (“MRF”). There are
28 approximately 365 MRFs in the United States (75 of which operate in California). A typical

1 MRF first sorts the plastic bottles based on color and, sometimes, size. At this point, the plastic
2 bottles, bottle caps and labels are comingled. Once sorted, the comingled plastic is typically next
3 shredded into smaller pieces and sent to a wash station. During the washing phase, the comingled
4 shredded plastic is separated via a sink float separation tank, where the PET plastic, which is
5 denser than water, sinks and the HDPE and PP plastics, which are less dense than water, float.
6 Finally, the separated shredded plastic is then processed into “clean flake” material or plastic
7 resin for use in manufacturing or assembling another item.

8 30. PET and HDPE are widely considered to be the “most recyclable” forms of
9 plastic. However, the most recent available data, which was published in a study by Greenpeace,
10 indicates that as of 2017, United States domestic MRFs only have the capacity to process into
11 plastic resin approximately: (i) 22.5% of the total post-consumer PET plastic waste generated;
12 and (ii) 12% of the total post-consumer HDPE plastic waste generated.⁵ Additionally, due to
13 contamination and processing losses, not all PET and HDPE material that is processed by MRFs
14 is actually converted into “clean flake” for reuse.⁶ About a third of the collected PET and HDPE
15 material processed by MRFs is not converted into “clean flake,” and is instead, landfilled or
16 incinerated.⁷ Accordingly, the Products’ PET bottles and HDPE bottle caps are not “100%
17 Recyclable” because: (i) the United States lacks the capacity to process 77.5% of all PET and
18 88% of all HDPE plastic waste generated; and (ii) of the plastic that is processed by MRFs, only
19 about 70% of the PET and HDPE is converted into clean flakes for reuse.

20 31. PP and BOPP plastics, which are the material used to make the Products’ bottle
21 caps and film labels, respectively, are widely considered to be the least recyclable plastics. These
22 plastics are typically collected by MRFs for #3-7 mixed bails which require further processing.

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24 ⁵ Greenpeace, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastic Recyclability*,
25 <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf> (last accessed December 18, 2020); at Section 7.2.2.

26 ⁶ Jan Dell, *Six Times More Plastic Waste is Burned in U.S. than is Recycled* (April 30, 2020),
27 <https://www.plasticpollutioncoalition.org/blog/2019/4/29/six-times-more-plastic-waste-is-burned-in-us-than-is-recycled> (last accessed June 10, 2021).

28 ⁷ *Id.*

1 However, “the economics [of processing those bails] have proven insurmountable.”⁸ Prior to
2 2018, MRFs in the United States exported #3-7 mixed bails, primarily, to China. However, on
3 January 1, 2018, China enacted the National Sword policy which limits plastic waste imports.
4 There is, however, minimal demand, value, and processing capacity for them in the United
5 States. Thus, mixed plastic #3-7 bales which were “previously exported to China now have
6 negligible to negative value across the country and ‘cannot be effectively or efficiently recycled
7 in the US.’”⁹ As a result, the majority of PP and BOPP sent to recycling facilities is incinerated,
8 which releases large quantities of greenhouse gases and toxic air emissions. This is especially
9 true of the Products’ BOPP labels which are completely unrecyclable because they are made of
10 plastic film, which is difficult to sort and process and is typically treated as trash.

11 32. Further, due to the availability of cheap raw materials to make “virgin plastic,”
12 there is very little market demand for recycled PP and BOPP plastic. Using virgin plastic to
13 package and make products is cheaper than other materials because virgin plastic is derived from
14 oil and natural gas. Indeed, recognizing the market potential from plastic production, major oil
15 and natural gas companies are increasingly integrating their operations to include production of
16 plastic resins and products, which further drives down the price of “virgin plastic.” As a result,
17 recycling facilities cannot afford the cost of breaking down and reconstituting recycled PP and
18 BOPP plastic because there are almost no buyers of the resulting plastic, pellets, or scrap
19 materials. Thus, the Products’ PP bottle caps and BOPP labels are not “100% Recyclable”
20 because those materials are not processed into reusable material, and are instead, sent to
21 incinerators or landfills.

22 33. Even when plastic bottle lids are made of HDPE (#2) plastic instead of PP (#5), a
23 significant portion of them are lost during the sorting process because they fall through disk
24 screens during the initial sorting process at the MRF. As a result, most caps are not recyclable
25 regardless of whether they are made from No. 2 or No. 5 plastic because they are too small to be
26 efficiently sorted and processed.

27 ⁸ *Supra*, note 5, at Section 4.

28 ⁹ *Id.*

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

3 34. The State of California has declared that “it is the public policy of the state that
4 environmental marketing claims, whether explicit or implied, should be substantiated by
5 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
7 on 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.* § 42355.

10 35. Additionally, the California Business and Professions Code § 17580.5 makes it
11 “unlawful for any person to make any untruthful, deceptive, or misleading environmental
12 marketing claim, whether explicit or implied.” Pursuant to that section, the term “environmental
13 marketing claim” includes any claim contained in the Guides for Use of Environmental
14 Marketing Claims published by the Federal Trade Commission (the “Green Guides”). *Id.*; *see*
15 *also* 16 C.F.R. § 260.1, *et seq.* As detailed below, Defendants’ marketing of the Products as
16 “100% Recyclable” violates several provisions of the FTC’s Green Guides.

17 36. First, Defendants’ marketing of the Products as “100% Recyclable” violates the
18 Green Guides provisions prohibiting the labeling of products as recyclable unless the products
19 can actually be converted into reusable material. Section 260.12(a) of the Green Guides provides
20 that it is “deceptive to misrepresent, directly or by implication, that a product or package is
21 recyclable. A product or package should not be marketed as recyclable unless it can be collected,
22 separated, or otherwise recovered from the waste stream through an established recycling
23 program for reuse or use in manufacturing or assembling another item.” The Green Guides
24 further explain that “[m]arketers should clearly and prominently qualify recyclable claims to the
25 extent necessary to avoid deception about the availability of recycling programs and collection
26 sites to consumers.” 16 C.F.R. § 260.12(b). “If recycling facilities are available to less than a
27 substantial majority of consumers or communities where the item is sold, marketers should
28 qualify all recyclable claims.” 16 C.F.R. § 260.12(b)(1). Further “[i]f any component

1 significantly limits the ability to recycle the item, any recyclable claim would be deceptive.” 16
2 C.F.R. § 260.12(d). And in promulgating the current recycling definition, the FTC clarified that
3 “[f]or a product to be called recyclable, there must be an established recycling program,
4 municipal or private, through which the product will be converted into, or used in, another
5 product or package.” See 63 Fed. Reg. 84, 11 24247 (May 1, 1998) (emphasis added). As the
6 FTC has stated, “while a product may be technically recyclable, if a program is not available
7 allowing consumers to recycle the product, there is no real value to consumers.” *Id.*, at 24243.

8 37. In promulgating the most recent version of the Green Guides, the FTC stated
9 (under the heading “Packages Collected for Public Policy Reasons but Not Recycled”), “[t]he
10 Commission agrees that unqualified recyclable claims for categories of products that municipal
11 recycling programs collect, but do not actually recycle, may be deceptive. To make a non-
12 deceptive unqualified claim, a marketer should substantiate that a substantial majority of
13 consumers or communities have access to facilities that will actually recycle, not accept and
14 ultimately discard, the product. As part of this analysis, a marketer should not assume that
15 consumers or communities have access to a particular recycling program merely because the
16 program will accept a product.” The California Public Resources Code similarly defines
17 recycling as “the process of collecting, sorting, cleansing, treating, and reconstituting materials
18 that would otherwise become solid waste, and returning them to the economic mainstream in the
19 form of raw material for new, reused, or reconstituted products which meet the quality standards
20 necessary to be used in the marketplace.” *Id.* § 40180.

21 38. Defendants’ marketing of the Products as “100% Recyclable” violates these
22 provisions of the Green Guides because it is false that 100% of the Products can be collected,
23 separated, or otherwise recovered from the waste stream through an established recycling
24 program for reuse or use in manufacturing or assembling another item. Although the Products
25 may be accepted for recycling by some curbside programs, MRFs do not have the capacity to: (i)
26 process the Products’ PP bottle caps and BOPP labels into reusable material because there is no
27 end market to do so; (ii) convert all plastic bottle material processed into reusable material
28 because 28% of the material is contaminated or lost during processing and must be landfilled or

1 incinerated; and (iii) process all plastic bottles used in the United States into reusable material
2 such that over 75% of PET and HDPE plastics consumed must be landfilled or incinerated;

3 39. Defendants' marketing of the Products as "100% Recyclable" also violates the
4 Green Guide provisions regarding products that cannot be recycled in their entirety. Section
5 260.12(c) of the Green Guides provides that "Marketers can make unqualified recyclable claims
6 for a product or package if the entire product or package, excluding minor incidental
7 components, is recyclable. For items that are partially made of recyclable components, marketers
8 should clearly and prominently qualify the recyclable claim to avoid deception about which
9 portions are recyclable." Similarly, Section 260.3(b) of the Green Guides requires an
10 environmental marketing claim to "specify whether it refers to the product, the product's
11 packaging, a service, or just to a portion of the product, package, or service." 16 C.F.R. §
12 260.3(b). Defendants' "100% Recyclable" representation violates this standard of the Green
13 Guides because it fails to specify whether it refers to the bottles, the bottle caps, or the label. The
14 caps and the labels are not an incidental component, and even if they were, the fact that they are
15 not recyclable makes the claim "100% Recyclable" false and misleading.

16 40. Further, the Green Guides require marketers to support their claim with a
17 reasonable basis before they make the claims. 16 CFR § 260.2 ("Marketers must ensure that all
18 reasonable interpretations of their claims are truthful, not misleading, and supported by a
19 reasonable basis before they make the claims."). "[A] firm's failure to possess and rely upon a
20 reasonable basis for objective claims constitutes an unfair and deceptive act or practice in
21 violation of Section 5 of the Federal Trade Commission Act." *See* FTC Policy Statement
22 Regarding Advertising Substantiation, 104 FTC 839 (1984) (cited by 16 CFR §
23 260.2). Defendants do not possess information sufficient to support their claims that the Products
24 are "100% Recyclable."

25 **(4) Consumer Demand for "100% Recyclable" Products and Defendants' Use of**
26 **Coordinated Marketing Campaigns, including the "Every Bottle Back Initiative," to**
27 **Defraud the Public**

28 41. Recent investigations into the proliferation of plastic pollution have revealed that

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

13 42. Beverage manufacturers, including Defendants, have supported these efforts for
14 years. For example, until recently, Coca-Cola was a major financial supporter of the Plastics
15 Industry Association (PLASTICS). PLASTICS is a trade association that has lobbied against
16 bans on single-use plastic, arguing that the problem of plastic waste is “behavioral rather than [a]
17 material issue” because single-use plastics are 100% Recyclable. Though PLASTICS keeps its
18 membership rolls secret, major companies have been outed over the years for their support of the
19 organization.

20 43. In 2018, after the implementation of National Sword, environmental organizations
21 such as the Sierra Club and Greenpeace began applying greater pressure to the plastics industry
22 through public information campaigns. The central message was that the recycling system is
23 broken and that reuse was the only truly sustainable option. For example, a January 19, 2018
24 press release on the Greenpeace website titled *Greenpeace slams Coca-Cola plastic*

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26 ¹⁰ Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*,
27 NPR.ORG (Sep. 11, 2020, 5:00 a.m.), [https://www.npr.org/2020/09/11/897692090/how-big-](https://www.npr.org/2020/09/11/897692090/how-big-oilmisled-the-public-into-believing-plastic-would-be-recycled)
28 [oil-misled-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oilmisled-the-public-into-believing-plastic-would-be-recycled) (last accessed Dec. 7, 2020).

¹¹ *Id.*

¹² *Id.*

1 *announcement as ‘dodging the main issue’* stated:

2 Greenpeace is urging Coca Cola to make firm commitments to cut its plastic production
3 by investing in alternatives to single-use plastic bottles, including committing to expand
4 its use of new delivery methods such as Freestyle dispensers and self-serve water stations
5 with reusable containers.¹³

6 44. On July 23, 2019, in response to pressure from the Sierra Club and similar
7 organizations, Coca-Cola started a marketing counter-offensive. It began by announcing its “plan
8 to end their memberships with the Plastics Industry Association.”¹⁴

9 45. On October 29, 2019—three months after breaking ties with the PLASTICS
10 lobby—Coca-Cola, and the American Beverage Association launched the “Every Bottle Back”
11 initiative to once again attempt to convince the public that single-use plastics are not bad for the
12 environment. The stated purpose of this initiative is to support what the members call the
13 “circular plastics economy,” which perpetuates the fiction that plastic bottles are “100%
14 Recyclable” and are part of a sustainable, circular plastics economy. However, this media
15 strategy is nothing but a retooled version of their original media strategy. Instead of supporting
16 plastic trade groups, Defendants have found a more palatable way to achieve the same goal of
17 deceiving the public about the sustainability of single-use plastics. The “Every Bottle Back”
18 campaign uses same rhetoric championed by PLASTIC trade groups—i.e. that the problem of
19 plastic waste is largely behavioral and can be solved through public education that plastic bottles
20 are 100% Recyclable.

21 46. Defendants’ strategy has remained unchanged: to convince the public that plastic
22 bottles are 100% Recyclable, all while increasing profits selling the world new plastic. This is
23 confirmed by a recent brand audit by Break Free From Plastic, a non-governmental organization
24 that advocates against the use of single-use plastics. For the past three years, Break Free From

24 ¹³ Perry Wheeler, *Greenpeace slams Coca-Cola plastic announcement as ‘dodging the main
25 issue’*, Greenpeace (Jan. 19, 2018), <https://www.greenpeace.org/usa/news/greenpeace-slams-coca-cola-plastic-announcement-as-dodging-the-main-issue/> (last visited Apr. 7, 2021).

26 ¹⁴ Perry Wheeler, *Industry giants Coca-Cola and PepsiCo ditching pro-plastics lobbying
27 association*, Greenpeace (Jul. 23, 2019), <https://www.greenpeace.org/usa/news/industry-giants-coca-cola-and-pepsico-ditching-pro-plastics-lobbying-association/#:~:text=Washington%2C%20DC%20%E2%80%93%20As%20pressure%20mounts,advocated%20against%20plastic%20bans%20nationwide> (last visited Apr. 7, 2021).

1 Plastic has ranked PepsiCo, Coca-Cola, and Nestle as the top plastic polluters in the world. In its
2 2020 audit, Break Free From Plastic reported “[d]espite clever marketing tactics and lofty
3 ‘sustainability’ goals, the same companies continue to make our list of Top Global Polluters year
4 after year.”

5 47. To make matters worse, during the COVID-19 crisis, as the demand for
6 petroleum-derived fuels has dramatically decreased, the petrochemical industry has tried to make
7 up for lost revenue by increasing sales of plastic. Environmental organizations have recognized
8 that “the struggling fossil fuel industry sees plastic production as a lifeline for maintaining its
9 profits as demand in the electric and transportation sector drops.”¹⁵ In turn, the plastic industry
10 began a public relations campaign claiming that using reusable products would increase the risk
11 of contracting the virus and that consumers should instead use single-use plastics.

12 48. Defendants have been more than willing to oblige in perpetuating the falsehood
13 that their single-use plastic bottles are 100% Recyclable. The “Every Bottle Back” website
14 includes the following representation:

15
16 **OUR NEW INITIATIVE:**
17 **TOGETHER, WE’RE COMMITTED**
18 **TO GETTING *EVERY BOTTLE***
19 ***BACK***

20 Our plastic bottles are made to be remade. We are carefully designing
21 them to be 100% recyclable – even the caps. Our goal is for every bottle to
22 become a new bottle, and not end up in oceans, rivers, beaches and
23 landfills. And that means we are using less new plastic.

24 **We are making**
25 **100%**
26 **recyclable plastic bottles.**
27 **And we want them back.**

28 <https://www.innovationnaturally.org/plastic/>

24 ¹⁵ Hillary Larson, *The Deep Injustice of Plastic Pollution* (July 30, 2020),
25 <https://www.sierraclub.org/articles/2020/07/deep-injustice-plastic-pollution> (last accessed June
26 10, 2021).

1
2 **MORE EFFICIENT RECYCLING MEANS**
3 **LESS NEW PLASTIC IN OUR**
4 **ENVIRONMENT.**
5
6

7
8 We're making 100% recyclable plastic bottles, and that's a critical first step. But it only
9 helps the environment if we get them back so they don't end up in oceans, rivers and
10 beaches. So we're working hard to support strong recovery and recycling systems across
11 the country.

12 <https://www.innovationnaturally.org/recycling/>

13 49. The misrepresentation that plastic bottles are “100% Recyclable” is repeated
14 throughout the website with language such as “[w]e’ve made our plastic bottles to be 100%
15 recyclable, including the caps.”

16 50. To lend credibility to the initiative, the ABA and its partners provided over a 100
17 million dollars in funding to The Recycling Partnership and Closed Loop Partners. The website
18 also references support from the World Wildlife Fund’s corporation activation hub, Resource:
19 Plastic.

20 51. The most important part of the “Every Bottle Back” initiative is the coordinated
21 use of the “100% Recyclable” claim. As the website explains, the major feature of the campaign
22 is a “public awareness campaign to help consumers understand the value of 100% recyclable
23 bottles” and the use of “a new voluntary on-pack message to promote the recyclability of our
24 plastic bottles and caps.” The American Beverage Association website further elaborates that the
25 beverage makers are “[w]ork[ing] together to leverage our packaging to remind consumers that
26 our bottles are 100% recyclable and can be remade into new bottles. Beverage companies will
27 begin introducing voluntary messaging on packages in late 2020.”

28 52. All Defendants have adopted the voluntary “100% Recyclable” language as a part

1 of a coordinated scheme to defraud the public and have benefited from the “Every Bottle Back”
2 public awareness campaign designed to do the same.

3 53. Defendants market the Products as “100% Recyclable” to capitalize on consumer
4 demand for “green” products. In particular, Defendants intend for reasonable consumers to
5 believe, and reasonable consumers do believe, that the Products will be recycled in their entirety
6 if the consumer disposes of the empty bottles in a recycling bin. Further, Defendants intend for
7 consumers to believe, and reasonable consumers do believe, that because the Products are “100%
8 Recyclable,” the bottles are specially designed to be environmentally superior to competitors’
9 products that do not contain the same representation. Finally, Defendants intend for consumers to
10 believe, and reasonable consumers do believe, that because the Products are part of a circular
11 plastics economy in which all bottles are recycled into new bottles to be used again.

12 54. Defendants’ coordinated and illegal marketing campaign has been extremely
13 successful. Defendants collectively sell a large percentage of the bottled water sold in the United
14 States. The Products are sold in grocery stores, gas stations, and big box stores throughout
15 California and the country. Because of the big potential for sales, Defendants have no incentive
16 to stop claiming that the Products are “100% Recyclable” or change their disclaimers to
17 discourage sales.

18 55. Because consumers are led to believe the bottles are “100% Recyclable,” and
19 therefore purchase them because they are a “green” product, Defendants are able to charge a
20 premium for the Products. If consumers knew that the Products were not “100% Recyclable,” the
21 product would not command a premium price based on that representation, fewer consumers
22 would purchase them, and consumers would not pay the premium attributable to that
23 representation.

24 **(5) Defendants’ Misrepresentations Frustrate the Sierra Club’s Mission And Force**
25 **It To Divert Resources**

26 56. The Sierra Club’s mission is to “[t]o explore, enjoy and protect the wild places of
27 the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; to
28 educate and enlist humanity to protect and restore the quality of the natural and human

1 environment; and to use all lawful means to carry out those objectives.”

2 57. The Sierra Club achieves its mission by mobilizing a community of 3.8 million
3 members, supporters, and grassroots volunteers to bring attention to practices by governments
4 and major companies that threaten the planet. The Sierra Club rallies its volunteers through the
5 use of petitions, protests, and other events. Additionally, the Sierra Club uses its network to
6 pressure and advocate for change through legislation and strategic lawsuits. The Sierra Club’s
7 efforts have secured protection for hundreds of parks and monuments and led to the passage of
8 landmark legislation such as the Clean Air Act and the Endangered Species Act. The Sierra Club
9 has tremendous credibility and influence with the public as the oldest conservation organization
10 in the country.

11 58. Another integral component of the Sierra Club’s operations in furtherance of its
12 mission is to educate the public regarding environmental issues. It achieves this through hosting
13 movie screenings, events, and publishing newsletters and magazines such as *Sierra*, the national
14 magazine of the Sierra Club. The Sierra Club believes that if the public is properly informed, it
15 will act responsibly to protect the planet.

16 59. The Sierra Club’s mission is directly frustrated by Defendants’ manufacture, sale,
17 and false marketing of single-use plastic bottles as “100% Recyclable” for at least two reasons.
18 First, the manufacture and use of single-use plastic bottles is detrimental to the environment
19 because the overwhelming majority of those bottles end up in landfills or are incinerated. This
20 negatively impacts humans, animals and ecosystems and is directly antagonistic to the Sierra
21 Club’s express mission to “protect the planet.” Second, the claim that the single-use bottles are
22 “100% Recyclable” undermines the Sierra Club’s mission to “educate and enlist humanity to
23 protect” the natural environment because it falsely implies that the use of plastic bottles is
24 sustainable. If the public is not properly educated and informed about the consequences of their
25 actions—that plastic bottles are not “100% Recyclable” and that a substantial portion of the
26 bottles are not recycled, and instead, ends up in rivers, waterways and landfills—they cannot
27 make environmentally responsible choices.

28

1 60. The Sierra Club has expended considerable resources to combat Defendants’
2 misrepresentations. In particular, during the past two years, the Sierra Club has diverted
3 substantial volunteer and staff hours to support legislation in California that prohibits false
4 recycling claims and supports the use of reusable bottles, including SB 343 and AB 962.

5 61. SB 343, the Truth in Labeling for Recyclable Materials law, addresses the
6 mislabeling of products as recyclable. The measure expands on the “Truth in Environmental
7 Advertising” law that prohibits the use of the word “recyclable” on unrecyclable products or any
8 other suggestion that a material is recyclable unless the material is actually recyclable in most
9 California communities and is routinely sold to make new products. The bill declares that it is
10 the “public policy of the state that claims related to the recyclability of a plastic product be
11 truthful.” Pub. Resources Code, § 42355.5 (proposed amendment).¹⁶ It further requires that
12 companies keep evidence supporting the validity of any “use of a chasing arrows symbol” or
13 claim that otherwise “direct[s] a consumer to recycle a consumer good” including documentation
14 regarding “[t]he reasons the person believes the representation to be true;” “[a]ny significant
15 adverse environmental impacts directly associated with the production, distribution, use, and
16 disposal of the consumer good;” “[a]ny measures that are taken by the person to reduce the
17 environmental impacts directly associated with the production, distribution, and disposal of the
18 consumer good;” “[v]iolation of any federal, state, or local permits directly associated with the
19 production or distribution of the consumer good;” “[w]hether, if applicable the consumer good
20 conforms with the uniform standards contained in the Federal Trade Commission Guidelines for
21 Environmental Marketing Claims for the use of the term ‘recycled,’ ‘recyclable,’ ‘biodegradable,’
22 ‘photodegradable,’ or ‘ozone friendly.’” and “[i]f he person uses the term ‘recyclable,’ uses a
23 chasing arrows symbol, or otherwise directs consumers to recycle the consumer good, whether
24 the consumer good meets all of the criteria for statewide recyclability pursuant to Section
25 42355.51 of the Public Resources Code.” Bus. & Prof. Code § 17580 (proposed amendment).

26 _____
27 ¹⁶ Proposed Text of SB 343 available at:
28 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB343 (last
visited May 26, 2021).

1 The bill further empowers the state of California to create a list of the “types and forms of plastic
2 products and packaging for which a claim of recyclability, including the use of a chasing arrows
3 symbol, may be made.” Pub. Resources Code, § 42355.51(d) (proposed amendment).

4 62. SB 343 directly combats Defendants’ “100% Recyclable” claim because it places
5 greater restrictions on the types and forms of plastic products and packaging for which a claim of
6 recyclability can be made unless it is truly recyclable. Although California has already made it
7 clear that deceptive environmental claims are against public policy, this bill specifically targets
8 false recyclability claims, such as Defendants’ “100% Recyclable” claim, by expressly stating
9 that it is against the public policy of the state of California to make false “claims related to the
10 recyclability of a plastic product.” Pub. Resources Code, § 42355.5 (proposed amendment).
11 Additionally, it requires Defendants to, *inter alia*, keep detailed records relating to its
12 recyclability claims.

13 63. In or around March 2021, the Sierra Club internally designated the SB 343 as
14 high-priority because of its importance in achieving the Sierra Club’s mission and to counteract
15 false recycling claims such as “100% Recyclable” that appear on the Products. The Sierra Club
16 has since drafted and submitted a letter of formal support of the legislation and advocated in
17 favor of the bill at legislative hearings.

18 64. AB 962, the California Beverage Container Recycling and Litter Reduction Act,
19 would provide for increased bottle deposits and a system for processing and washing reusable
20 bottles. The purpose of this bill is to reduce waste generated from single-use bottles such as those
21 made by Defendants by creating an alternate system of reusable bottles.¹⁷ The Sierra Club’s
22 response to Defendant’s deceptive practices has been, in part, to educate the public that reusable
23 containers are the only truly sustainable way to consume water. This law provides a convenient
24 and viable system for reusing bottles.

25 _____
26 ¹⁷ Proposed Text of AB 962 available at:
27 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB962 (last
28 visited May 26, 2021).

1 65. AB 962 directly combats Defendants’ false “100% Recyclable” claim by offering
2 an alternative to single-use bottles. AB 962 creates a new system so that manufacturers of water
3 bottles can offer truly sustainable and convenient bottled water to the public and addresses the
4 root cause of the problem, i.e. that plastic water bottles cannot be fully recycled into new
5 materials.

6 66. In or around March 2021, the Sierra Club internally designated the AB 962 as
7 high-priority because of its importance in achieving the Sierra Club’s mission and to counteract
8 false recycling claims such as “100% Recyclable” that appear on the Products. The Sierra Club
9 has since drafted and submitted a letter of formal support of the legislation and advocated in
10 favor of the bill at legislative hearings.

11 67. In addition, to the Sierra Club’s lobbying efforts, on June 1, 2021, the Sierra Club
12 California Zero Waste Committee tweeted the following on its twitter account:

13 Is this @ArrowheadWater bottle including its cap and label really 100% recyclable?
14 Would they be recycled?
15 @SierraClubCA supports SB343 Truth in Labeling for Recyclable Material
@BenAllenCA @Laurafriedman43 @LorenaAD80

16 The tweet included a picture of the Arrowhead label with the “100% Recyclable” claim. This
17 tweet was intended to inform the public regarding Defendants’ false claims.

18 68. On June 2, 2021, the official Twitter account of Arrowhead (@ArrowheadWater)
19 responded, “While not every recycling center has the same capabilities, our cap and label are
20 100% recyclable. That’s why we ask our consumers to replace the cap and leave the label on
21 when dropping our bottles in the recycling bin!”

22 69. On June 6, 2021, the Sierra Club Angeles Chapter, in direct response to
23 Defendants’ claims drafted and published an article on its website explaining to the public and its
24 members the importance of passing SB 343 due to false claims such as “100% Recyclable” that
25 appear on the Products.¹⁸ The article specifically used photos of Defendants’ Products as

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27 ¹⁸ Simone Kufhal, *Truth in Recycling*, Sierra Club Angeles Chapter Website (June 7, 2021),
28 https://angeles.sierraclub.org/news_conservation/blog/2021/06/truth_in_recycling (last accessed
June 10, 2021).

1 examples of the false advertising that SB 343 is designed to combat.

2 70. On June 15, 2021, the Sierra Club further disseminated the June 6, 2021 article to
3 over five hundred club members and activists using an email alert.

4 71. The Sierra Club will continue to advocate on behalf of the environment and to
5 inform consumers about greenwashing and Defendants' false claims so that consumers can make
6 informed purchasing decisions. If Defendants' misconduct described herein is not enjoined, the
7 Sierra Club will be forced to continue to divert resources to inform the public about the false
8 claims on Defendants' labels which frustrate the mission of the Sierra Club.

9 **CAUSES OF ACTION**

10 72. Plaintiff does not plead, and hereby disclaim, any causes of action under any
11 regulations promulgated by the FTC. Plaintiff relies on these regulations only to the extent such
12 regulations have been separately enacted as state law or regulations or provide a predicate basis
13 of liability under the state and common laws cited in the following causes of action.

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

15 **“Greenwashing” Under the Environmental Marketing Claims Act, Cal. Bus. & Prof. Code**
16 **§ 17580, *et seq.***

17 73. Plaintiff realleges and incorporate by reference the paragraphs of this Complaint
18 as if set forth herein.

19 74. Defendants' representations and omissions complained of herein constitute
20 advertising that the Products are not harmful to, or are beneficial to, the natural environment,
21 through the use the phrase “100% Recyclable.” On information and belief, in violation of Cal.
22 Bus. & Prof. Code §17580(a), Defendants have not maintained in written form in their records
23 information and documentation supporting the validity of the representation, including but not
24 limited to, any significant adverse environmental impacts directly associated with the production,
25 distribution, use, and disposal of the Products.

26 75. Further, in violation of Cal. Bus. & Prof. Code §17580.5(a), Defendants'
27 representations and omissions complained of herein constitute untruthful, deceptive, or
28 misleading environmental marketing claims, explicit or implied, including claims referenced in

1 the Green Guides published by the FTC.

2 76. Plaintiff seeks a declaration that the above-described practices are fraudulent
3 and/or unlawful.

4 77. Plaintiff, on behalf of itself, its members, and the general public, seeks an
5 injunction to prohibit the sale of the Products within a reasonable time after entry of judgment,
6 unless packaging and marketing is modified to remove the misrepresentation “100% Recyclable”
7 and to disclose the omitted facts about the true recyclability of the Products. Such misconduct by
8 Defendants, unless and until enjoined and restrained by order of this Court, will continue to
9 cause injury in fact to Plaintiff and the general public and the loss of money and property in that
10 Defendants will continue to violate the laws of California, unless specifically ordered to comply
11 with the same. This expectation of future violations will require Plaintiff to repeatedly and
12 continuously seek legal redress in order to remediate its injury (i.e. diverted resources). Plaintiff
13 and the general public have no other adequate remedy at law to ensure future compliance with
14 the California Business and Professions Code alleged to have been violated herein.

15 **PLAINTIFF’S SECOND CAUSE OF ACTION**

16 **Unfair, Unlawful and Deceptive Trade Practices,**

17 **Business and Professions Code § 17200, et seq.**

18 78. Plaintiff realleges and incorporate by reference the paragraphs of this Complaint
19 as if set forth herein.

20 79. Within four (4) years preceding the filing of this Complaint, and at all times
21 mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful and
22 deceptive trade practices in California by engaging in the unfair, deceptive and unlawful business
23 practices outlined in this Complaint.

24 80. In particular, Defendants have engaged, and continue to engage, in deceptive
25 practices by, without limitation, the following:

- 26 a. deceptively representing that the Products are “100% Recyclable;” and
- 27 b. failing to disclose that the Products are not “100% Recyclable.”

28 81. Defendants’ claims that the Products are 100% recyclable are material, untrue,

1 and misleading. These recyclable claims are prominent on all of the Products’ marketing,
2 advertising, and labeling materials, even though Defendants are aware that the claims are false
3 and misleading. Defendants’ claims are thus likely to deceive a reasonable consumer.

4 82. Further, Defendants have engaged, and continue to engage, in unfair practices by,
5 without limitation, advertising and marketing the Products as “100% Recyclable” when they are
6 not, which is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
7 consumers and environment. By taking advantage of consumers concerned about the
8 environmental impacts of plastic pollution, Defendants’ conduct, as described herein, far
9 outweighs the utility, if any, of such conduct.

10 83. Additionally, Defendants have engaged, and continue to engage, in unlawful
11 practices by, without limitation, the following:

- 12 a. violating the Federal Trade Commission Green Guides regulations,
13 including, without limitation, 16 C.F.R. sections 260.3(b), 260.3(c),
14 260.12(b), 260.12(c), 260.12(d), 260.16(c), 260.1, and 260.2, as described
15 herein; and
16 b. violating the Environmental Marketing Claims Act, Cal. Bus. & Prof.
17 Code § 17580, *et seq.*, as described herein.

18 84. Consumers rely to their detriment on Defendants’ unfair, deceptive and unlawful
19 business practices. Had the consumers been adequately informed and not deceived by
20 Defendants, they would have acted differently by not purchasing (or paying less for) the
21 Products.

22 85. Defendants’ acts and omissions are likely to deceive the general public.

23 86. Defendants engaged in these unfair practices to increase their profits.

24 Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by
25 section 17200, *et seq.* of the California Business and Professions Code.

26 87. The aforementioned practices, which Defendants have used to their significant
27 financial gain, also constitute unlawful competition and provide an unlawful advantage over
28 Defendants’ competitors as well as injury to the general public.

1 88. As a direct and proximate result of such actions Plaintiff has suffered and
2 continues to suffer injury in fact and has lost money and/or property as a result of such deceptive
3 and/or unlawful trade practices and unfair competition in an amount which will be proven at
4 trial, but which is in excess of the jurisdictional minimum of this Court. In particular, the Sierra
5 Club has diverted significant resources to combat Defendants' misleading and false recycling
6 claims (i.e. greenwashing) described in greater detail herein.

7 89. Plaintiff seeks a declaration that the above-described trade practices are fraudulent
8 and/or unlawful.

9 90. Plaintiff seeks an injunction to prohibit the sale of the Products within a
10 reasonable time after entry of judgment, unless the Product's packaging and marketing is
11 modified to remove the misrepresentation "100% Recyclable" and to disclose the omitted facts
12 about their true recyclability. Such misconduct by Defendants, unless and until enjoined and
13 restrained by order of this Court, will continue to cause injury in fact to Plaintiff and the general
14 public and the loss of money and property in that Defendants will continue to violate the laws of
15 California, unless specifically ordered to comply with the same. This expectation of future
16 violations will require Plaintiff to repeatedly and continuously seek legal redress in order to
17 remediate its injury (i.e., diverted resources). Plaintiff, its members, and the general public have
18 no other adequate remedy at law to ensure future compliance with the California Business and
19 Professions Code alleged to have been violated herein.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff Sierra Club respectfully requests that the Court enter judgement
22 against Defendants as follows:

- 23 A. An order temporarily and permanently enjoining Defendants from continuing the
24 unlawful, deceptive, fraudulent, and unfair business practices alleged in this
25 Complaint;
- 26 B. For reasonable attorneys' fees and the costs of suit incurred; and
- 27 C. For such further relief as this Court may deem just and proper.
- 28

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: June 16, 2021

GUTRIDE SAFIER LLP

/s/ Marie A. McCrary /s/
Marie McCrary, Esq.
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Attorneys for Plaintiff

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