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Clerk of the Superior Court
By R. Jay Domina
DEPUTY CLERK

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

13 **EARTH ISLAND INSTITUTE,**

14 **Plaintiff,**

15 **vs.**

16 **CRYSTAL GEYSER WATER COMPANY,**
17 **THE CLOROX COMPANY,**
18 **THE COCA-COLA COMPANY,**
19 **PEPSICO, INC.,**
20 **NESTLÉ USA, INC.,**
21 **MARS, INCORPORATED,**
22 **DANONE NORTH AMERICA,**
23 **MONDELEZ INTERNATIONAL, INC.,**
24 **COLGATE-PALMOLIVE COMPANY,**
25 **THE PROCTER & GAMBLE COMPANY,**
26 **and DOES 1-25, inclusive,**

27 **Defendants.**

Case No. **20CV01218**

COMPLAINT FOR

- (1) VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT;
- (2) PUBLIC NUISANCE;
- (3) BREACH OF EXPRESS WARRANTY;
- (4) STRICT LIABILITY—FAILURE TO WARN;
- (5) STRICT LIABILITY—DESIGN DEFECT;
- (6) NEGLIGENCE; and
- (7) NEGLIGENCE—FAILURE TO WARN

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1 **I. INTRODUCTION**

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



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26 ¹ Katie Mika et al., *Stemming the Tide of Plastic Marine Litter: A Global Action Agenda*, 5 UCLA
27 SCHOOL OF LAW PRITZKER ENVT. L. POL’Y BRIEFS, Oct. 2013,
28 www.law.ucla.edu/centers/environmental-law/emmett-institute-on-climate-change-and-the-environment/publications/stemming-the-tide-of-plastic-marine-litter/; Above Photo Credit: NOAA.

1 estimate that between 8 and 20 million tons of plastic enter the ocean annually. **At this rate,**
2 **plastic is set to outweigh fish in the ocean by 2050.**²

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



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27 ² *The New Plastic Economy: Rethinking the future of plastics*, ELLEN MACARTHUR FOUNDATION,
2016, http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf.

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

4 5. A significant portion of oceanic plastic pollution can be traced back to just a handful
5 of major companies who use extensive plastic packaging, much of it single-use, for their products
6 (“Products”) which infiltrate marine environments.⁴ Break Free From Plastic’s 2019 Global Brand
7 Audit coordinated thousands of individuals worldwide to survey plastic accumulation in 51
8 different countries to collect data about sources of plastic pollution.

9 6. Brand audit participants gathered plastic waste from their selected site, recorded the
10 total volume of plastics collected, and used standardized data cards to identify the waste’s



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

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

1 composite categories: brand names, item descriptions, types of products, types of materials, layers,
2 and local recyclability. Participants were asked to include both branded and unbranded items
3 found, and to write “unknown” if brands were not clearly marked.

4 7. In total, 72,451 volunteers in 51 countries conducted 484 brand audits. These
5 volunteers collected **476,423** pieces of plastic waste, 43% of which was marked with a clear
6 consumer brand. The brand audits were concentrated between August 1 - September 30, 2019 and
7 most took place on World Cleanup Day (Sep 21).

8 8. The audit identified the 10 companies most responsible for plastic pollution as:
9 Coca-Cola, Nestle, PepsiCo, Mondelez International, Unilever, Mars Incorporated, Procter &
10 Gamble, Colgate-Palmolive, Phillip Morris International, and Perfetti van Melle (in descending
11 order).⁵ The top three contributors—Coca-Cola, PepsiCo, and Nestle—are linked to 14% of global
12 oceanic plastic pollution.⁶

13 9. Due to strenuous efforts by organizations such as Earth Island to educate the public
14 about the impact of plastic pollution, consumers are increasingly interested in purchasing Products
15 that are either compostable or recyclable in order to divert waste from the ocean and landfills.⁷ In
16 response, Defendants market and sell their Products with the “recycle symbol” on the label to
17 maintain customer loyalty and demand for Products.⁸

18 10. And rather than switch to more sustainable materials in their Products, Defendants
19 have engaged in a decades-long campaign to deflect blame for the plastic pollution crisis to
20 consumers. Defendants’ campaigns spread the false narrative that the oceans, wildlife, and
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22 ⁵ *Id.*

23 ⁶ Break Free From Plastic, *Branded: In Search of the World's Top Corporate Plastic Producers*
24 *Volume I*, GREENPEACE.ORG, 2018,
<https://www.breakfreefromplastic.org/globalbrandauditreport2018/>.

25 ⁷ Kate Gibson & Irina Ivanova, *Suit charges Keurig’s coffee pods aren’t recyclable as advertised*,
26 CBS NEWS, July 11, 2019, <https://www.cbsnews.com/news/keurig-coffee-pods-not-recyclable-as-advertised-according-to-class-action-suit/>.

27 ⁸ *Id.*

1 environment would be healthy were it not for the consumers who failed to recycle their plastic. In
2 reality, much of the purportedly “recyclable” plastic submitted to recycling facilities by consumers
3 is not actually recyclable.

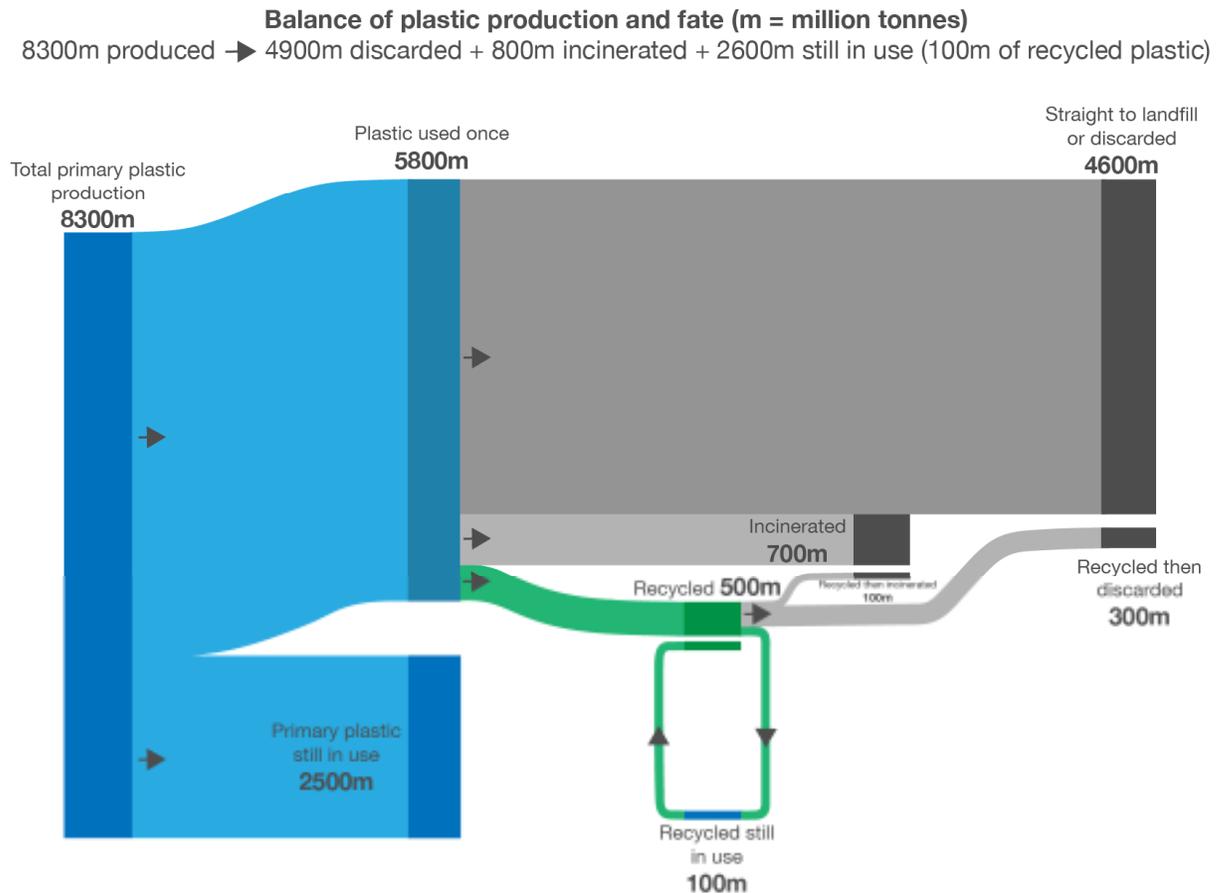
4 11. As Defendants have known for decades, plastic recycling wages a losing battle to the
5 exponential increase in plastic production each year. Recycling captures less than 10 percent of
6 plastic produced annually. Currently, **the annual weight of plastic production globally is roughly**
7 **the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

10 Global plastic production and its fate (1950-2015)



11 Global production of polymer resins, synthetic fibres and additives, and its journey through to its ultimate
12 fate (still in use, recycled, incinerated or discarded).

13 Figures below represent the cumulative mass of plastics over the period 1950-2015, measured in million tonnes.



16 Source: based on Geyer et al. (2017). Production, use, and fate of all plastics ever made.

17 This is a visualization from [OurWorldInData.org](https://ourworldindata.org), where you find data and research on how the world is changing. Licensed under [CC-BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) by Hannah Ritchie and Max Roser (2018).

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1 12. Recycling facilities in the United States cannot process the **sheer volume** of
2 Defendants’ Products that are submitted to recycling facilities on an annual basis.⁹ The labor and
3 cost required to sort, melt, and reconstitute the approximately 33 million tons of plastic produced in
4 the United States every year is insurmountable. A recent study revealed that U.S. recycling facilities
5 can process no more than 23% of PET#1 plastic produced each year. PET#1 plastic is primarily
6 used in water and soft drink bottles, and is just one of the seven types of plastic resins produced.¹⁰
7 Recycling facilities can process no more than 13% of HDPE#2, a second resin type that is primarily
8 used in milk jugs and other larger plastic containers. U.S. recyclers can process only a negligible
9 percentage of #3–7 plastic resins, which are frequently used to produce products such as yogurt
10 containers, food pouches, and other food, beverage, and consumer products packaging.¹¹

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

19 14. Historically, recycling facilities in the United States shipped plastic scrap
20 submissions to China.¹³ But tons were never recycled. Instead, they were burned and dumped into

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22 ⁹ 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>.

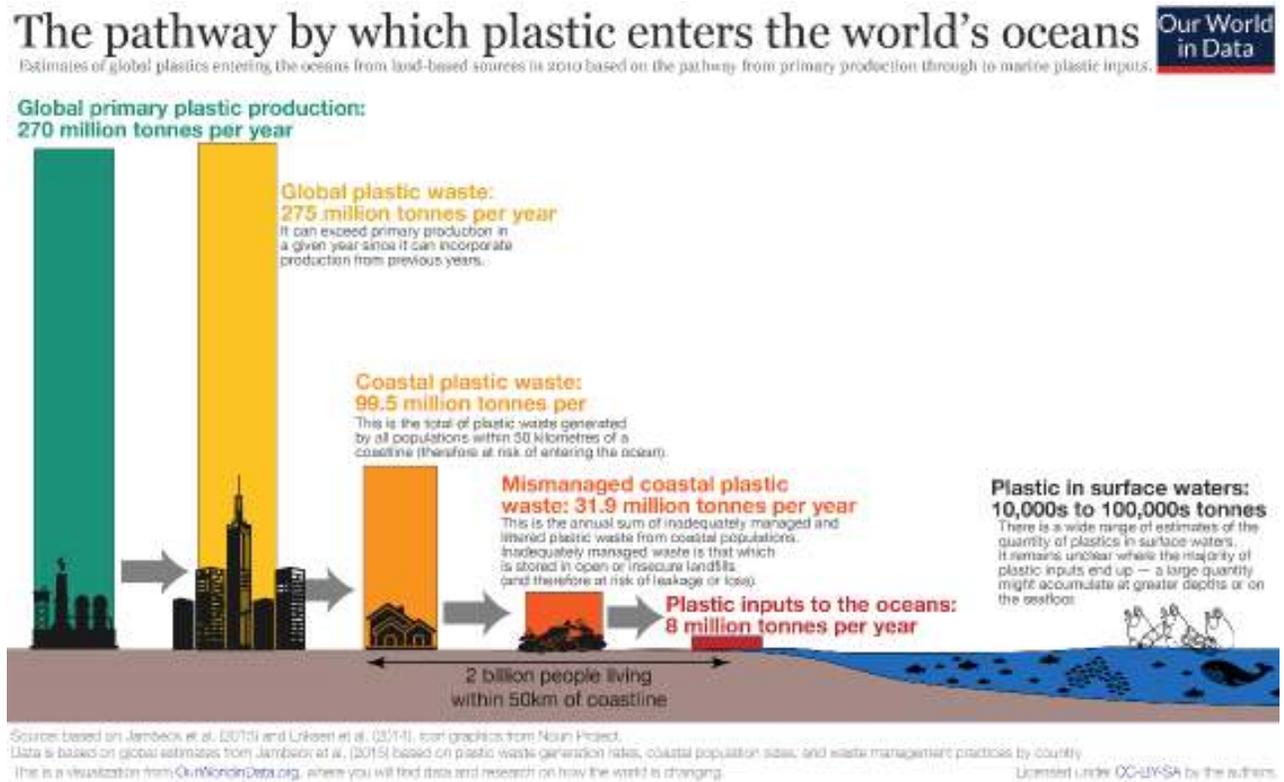
23 ¹⁰ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

24 ¹¹ *Id.*

25 ¹² *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG, <https://www.ciel.org/reports/fuelingplastics/>.

26 ¹³ Amanda Mei, *What China’s Ban on Plastic Scrap Means for Global Recycling: Q&A with Kate O’neill, Author of Waste*, WILSON CENTER: NEW SECURITY BEAT, Nov. 28, 2019,

1 waterways, where they are carried into the ocean.¹⁴ For years, tons of plastic that U.S. consumers
2 dutifully sorted and transported to recycling facilities ultimately ended up in the ocean.



15. 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.¹⁵

<https://www.newsecuritybeat.org/2019/11/chinas-ban-plastic-scrap-means-global-recycling-gate-oneill-author-waste/>.

¹⁴ 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>; *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>.

¹⁵ John Hovevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

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

6 17. Defendants are major food, beverage, and consumer products businesses—some of
7 them are in fact the world's largest—and are responsible for a substantial portion of the total plastic
8 pollution currently present in California's waterways and coasts.¹⁶

9 18. Defendants have created the condition of plastic pollution in California's coasts and
10 waterways 1) by refusing to switch to more sustainable materials in order to reap higher profits



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27 ¹⁶ *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 from cheap, virgin plastic, 2) engaging in a campaign of misinformation about the true causes of
2 plastic pollution and viable solutions for mitigating its effects, 3) and deceptively maintaining
3 consumer loyalty and demand for Defendants' Products by falsely advertising the Products'
4 recyclability. Defendants reap billions in profits, while public and nonprofit organizations such as
5 Earth Island Institute spend billions in public and charitable funds to mitigate the effect of plastic
6 pollution on humans, wildlife, oceans, and waterways.

7 19. By this action, Plaintiff seeks to ensure that the parties responsible for marine plastic
8 pollution bear the costs of its impacts, rather than Plaintiff and members of the public that rely on
9 and enjoy California's coasts and waterways.

10 20. Earth Island has had to allocate significant resources to combatting the effect of
11 plastic on marine wildlife and ecosystems. **In recent years the cost and expense of cleaning
12 California beaches, informing the public about plastic and the limitations of recycling, and
13 aiding marine life that has been choked, starved, poisoned, or suffocated by plastic, has grown
14 exponentially.**

15 21. As an actual and proximate consequence of Defendants' conduct, Earth Island was
16 forced to divert organizational resources to remediate waterways and coasts impacted by plastic
17 pollution, and to counteract threats to marine wildlife from plastic in California. Earth Island has
18 also expended resources to remediate waterways on its private property in Richmond, California
19 that are impacted by plastic pollution. Earth Island and its members have been deprived of the
20 ability to enjoy and utilize the ocean environment and have experienced harm to their aesthetic
21 interests.

22 **II. PARTIES**

23 **A. Plaintiff**

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

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

- 5 a. Plastic Pollution Coalition (“PPC”) is a fiscally-sponsored project of Earth
6 Island. PPC staff are employees of Earth Island. PPC, founded in 2009, is a
7 growing global alliance of more than 1,000 organizations, businesses, and
8 thought leaders in 75 countries working toward a world free of plastic
9 pollution and its toxic impacts on humans, animals, waterways, oceans, and
10 the environment.
- 11 b. The International Marine Mammal Project (“IMMP”) is a fiscally-sponsored
12 project of Earth Island. IMMP staff are employees of Earth Island. For more
13 than 30 years, IMMP has been one of the leading groups fighting to protect
14 dolphins, whales, and the ocean environment.
- 15 c. Shark Stewards is a fiscally-sponsored project of Earth Island. Shark
16 Stewards staff are employees of Earth Island. Shark Stewards’ mission is to
17 restore ocean health by saving sharks from overfishing and the shark fin
18 trade, and protecting critical marine habitats through the establishment of
19 marine protected areas and shark sanctuaries. As part of this effort, it
20 launched a marine debris prevention effort that regularly conducts cleanups
21 and quantifies marine debris in the San Francisco Bay area.
- 22 d. 1000 Fountains is a fiscally-sponsored project of Earth Island. 1000
23 Fountains staff are employees of Earth Island. 1000 Fountains is building a
24 network of one thousand drinking fountains throughout San Francisco in
25 order to provide consumers with alternatives to single-use plastic bottles.

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

4 25. Earth Island has standing as an organization because, through its fiscally-sponsored
5 projects and programmatic work, it has diverted resources to address plastic pollution in California
6 by, among other things:

- 7 a. working to mitigate the negative impacts of plastic on marine species;
- 8 b. utilizing extensive staff time to understand the issue of plastic pollution;
- 9 c. advocating to all level of government for sensible regulations of plastic;
- 10 d. organizing plastic pollution clean-up activities;
- 11 e. educating the media and public about plastic pollution.

12 Absent relief from this Court, plastic pollution and the resulting harms to California waterways,
13 coasts, and marine life will continue negatively to impact Earth Island’s efforts to protect these
14 critical resources.

15 26. Earth Island also has standing as a property owner of 5.6 acres in Richmond,
16 California, that includes two waterways connected to the San Francisco Bay, which are adversely
17 impacted by plastic pollution.

18 27. Earth Island has representative standing on behalf of its members because numerous
19 members are deprived of the ability to enjoy and utilize the ocean environment as a result of marine
20 plastic pollution, and/or experience harm to their aesthetic interests from marine plastic pollution.
21 As detailed above, protecting oceans, coasts, and marine life from myriad harms are all central to
22 Earth Island’s purpose. Participation by individual members is not necessary for determination of
23 the claims alleged or for the relief requested.

24 **B. Defendants**

25 28. Defendants are major food, beverage, and consumer products businesses, and are
26 responsible for a substantial portion of the total plastic pollution currently present in California
27 waterways and coasts.

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

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

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

18 32. As a result of its management, direction, conduct, and/or control of operations
19 relating to company-wide packaging and marketing decisions, Defendant Crystal Geyser is
20 responsible for its past and current production and promotion of Crystal Geyser products in single-
21 use plastic packaging.

22 33. Crystal Geyser directs and has directed substantial business to California. A
23 substantial portion of Crystal Geyser products are or have been packaged, transported, traded,
24 distributed, marketed, promoted, sold, and/or consumed in California, from which Crystal Geyser
25 derives and has derived substantial revenue.

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

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

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

13 37. Clorox directs and has directed substantial business to California. A substantial
14 portion of Clorox products are or have been packaged, transported, traded, distributed, marketed,
15 promoted, sold, and/or consumed in California, from which Clorox derives and has derived
16 substantial revenue.

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

1 39. As a result of its management, direction, conduct, and/or control of operations
2 relating to company-wide packaging and marketing decisions, Defendant Coca-Cola is responsible
3 for its subsidiaries' and franchisees' past and current production and promotion of Coca-Cola
4 products in single-use plastic packaging.

5 40. Coca-Cola directs and has directed substantial business to California. A substantial
6 portion of Coca-Cola's products are or have been packaged, transported, traded, distributed,
7 marketed, promoted, sold, and/or consumed in California, from which Coca-Cola derives and has
8 derived substantial revenue.

9 41. Defendant **PepsiCo, Inc.** ("PepsiCo") is a multinational company incorporated in
10 New York, with its principal place of business in Harrison, New York. Based on net revenue,
11 PepsiCo is the second largest food and business beverage business in the world, and the largest in
12 North America. Bottling and distribution of PepsiCo products is conducted by PepsiCo as well as
13 licensees.

14 42. PepsiCo controls company-wide packaging and marketing decisions. PepsiCo,
15 through its employees and/or agents, manages directs, conducts and/or controls operations relating
16 to its subsidiaries' and licensees' participation in the process by which PepsiCo products are
17 packaged, marketed, and/or sold to consumers. PepsiCo's management, direction, conduct and/or
18 control is exercised through a variety of means, including through its employees' and/or agents'
19 implementation of policies, procedures, and programs relating to product packaging and marketing.

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

24 44. PepsiCo directs and has directed substantial business to California. A substantial
25 portion of PepsiCo's products are or have been packaged, transported, traded, distributed, marketed,
26 promoted, sold, and/or consumed in California, from which PepsiCo derives and has derived
27 substantial revenue.

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1 45. Defendant **Nestlé USA, Inc.** (“Nestlé USA”) is a subsidiary of the Swiss
2 multinational corporation Nestlé and has its principal place of business in Arlington, VA. Nestlé is
3 the world’s largest food and beverage company, and Nestlé USA produces a wide variety of food
4 and beverage products under a number of popular brands, including Starbucks, Nespresso, and
5 Gerber.

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

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

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

20 49. Defendant **Mondelez International, Inc.** (“Mondelez International”) is a
21 multinational company incorporated in Virginia, with its principal place of business in Deerfield,
22 Illinois. Mondelez International is a leading producer of confectionary, food, and beverages, and
23 produces a wide variety of products under a number of popular brands, including Nabisco, Oreo,
24 and Ritz.

25 50. Mondelez International controls company-wide packaging and marketing decisions.
26 Mondelez International, through its employees and/or agents, manages directs, conducts and/or
27 controls operations relating to the process by which Mondelez International and affiliated products
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1 are packaged, marketed, and/or sold to consumers. Mondelez International's management,
2 direction, conduct and/or control is exercised through a variety of means, including through its
3 employees' and/or agents' implementation of policies, procedures, and programs relating to product
4 packaging and marketing.

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

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

13 53. 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, Oral B, and Olay.

18 54. 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 55. 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.

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1 56. 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 57. Defendant **Mars, Incorporated** (“Mars”) and its affiliates, is a privately-owned
6 multinational company incorporated in Delaware, with its principal place of business in McLean,
7 Virginia. Mars is a leading producer of confectionary, pet food, and other food products, and Mars
8 produces a wide variety of products under a number of popular brands, including M&M’s, Mars,
9 Skittles, Whiskas, and Uncle Ben’s.

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

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

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

24 61. Defendant **Colgate-Palmolive Company** (“Colgate-Palmolive”) is a multinational
25 company incorporated in New York, with its principal place of business in New York, NY.
26 Colgate-Palmolive is a leading producer of household, healthcare, and personal care products, and
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1 Colgate-Palmolive produces a wide variety of products under a number of popular brands, including
2 Colgate, Palmolive, Speed Stick, and Tom's of Maine.

3 62. Colgate-Palmolive controls company-wide packaging and marketing decisions.
4 Colgate-Palmolive, through its employees and/or agents, manages directs, conducts and/or controls
5 operations relating to the process by which Colgate-Palmolive and affiliated products are packaged,
6 marketed, and/or sold to consumers. Colgate Palmolive's management, direction, conduct and/or
7 control is exercised through a variety of means, including through its employees' and/or agents'
8 implementation of policies, procedures, and programs relating to product packaging and marketing.

9 63. As a result of its management, direction, conduct, and/or control of operations
10 relating to company-wide packaging and marketing decisions, Defendant Colgate-Palmolive is
11 responsible for its past and current production and promotion of Colgate-Palmolive and affiliated
12 products in plastic packaging.

13 64. Defendant Colgate-Palmolive directs and has directed substantial business to
14 California. A substantial portion of Colgate-Palmolive products are or have been packaged,
15 transported, traded, distributed, marketed, promoted, sold, and/or consumed in California, from
16 which Colgate-Palmolive derives and has derived substantial revenue.

17 65. Defendant **Danone North America** is the collective name of U.S.-based subsidiaries
18 of the French multinational corporation Danone S.A., and has its principal place of business in
19 Broomfield, Colorado. "Danone North America" refers to Danone S.A.'s U.S.-based subsidiaries,
20 including the following: Creamer Nation, LLC, Danone Waters of America, Inc., Danone US, LLC,
21 Earthbound Farm, LLC, Earthbound Holdings I, LLC, Earthbound Holdings II, LLC, Earthbound
22 Holdings III, LLC, Earthbound Packaging Partners, LLC, Harmless Harvest, Inc., Natural Selection
23 Foods Manufacturing, LLC, Nutricia North America, Inc., and Silk Operating Company, LLC.
24 Danone North America is one of the fifteen largest food and beverage companies in the United
25 States and produces a wide variety of food and beverage products under a number of popular
26 brands, including Dannon, Activia, Oikos, and Wallaby Organics.

1 66. Danone North America controls company-wide packaging and marketing decisions.
2 Danone North America, through its employees and/or agents, manages directs, conducts and/or
3 controls operations relating to the process by which Danone North America and affiliated products
4 are packaged, marketed, and/or sold to consumers. Danone North America's management,
5 direction, conduct and/or control is exercised through a variety of means, including through its
6 employees' and/or agents' implementation of policies, procedures, and programs relating to product
7 packaging and marketing.

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

12 68. Danone North America directs and has directed substantial business to California. A
13 substantial portion of Danone North America products are or have been packaged, transported,
14 traded, distributed, marketed, promoted, sold, and/or consumed in California, from which Danone
15 North America derives and has derived substantial revenue.

16 **C. Doe Defendants**

17 69. Various other individuals and entities participated in the violations of law alleged
18 herein and performed acts and made statements in furtherance thereof. The true names and
19 capacities of these individuals and entities, Does 1 through 25, inclusive, whether corporate,
20 associate, or otherwise, are unknown to Plaintiff at this time. Plaintiff, therefore, sues these
21 defendants, Does 1 through 25, by such fictitious names.

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

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

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

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

18 **III. JURISDICTION AND VENUE**

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

23 74. Earth Island has been harmed by Defendants' torts in California; the organization has
24 had to allocate larger and larger shares of its budget and resources to plastic pollution mitigation in
25 California, a direct result of Defendants' injurious conduct.

26 75. The Superior Court of California for San Mateo County is a court of general
27 jurisdiction and therefore has subject matter jurisdiction over this action.

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1 76. Venue is proper in San Mateo County pursuant to Code of Civil Procedure section
2 395.5 because Defendants are corporations and/or associations, and because a substantial portion of
3 the injuries giving rise to Defendants' liability occurred in San Mateo County.

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

11 **IV. FACTUAL BACKGROUND**

12 **A. Defendants created the condition of plastic pollution, which is extraordinarily harmful**
13 **to humans, animals, and the environment.**

14 78. Each of the Defendants have created the harms alleged herein.

15 79. The quantity of plastic in the ocean is untenable. Scientists estimate that between 8
16 and 20 million tons of plastic enter the ocean annually. At this rate, plastic is set to outweigh fish in
17 the ocean by 2050.¹⁷ Plastic chokes the ocean and threatens the survival of marine species, many
18 critically endangered.

19 80. The predominance of tiny plastic particles in the ocean is related to plastic's inability
20 to biodegrade. Plastic splits into smaller and smaller pieces in the presence of sunlight, wind, and
21 wave action, but retains its plastic composition. This leads to the development of microscopic
22 particles known as microplastics, which are particularly damaging to the environment.¹⁸ Plastic

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24 ¹⁷ *The New Plastic Economy: Rethinking the future of plastics*, ELLEN MACARTHUR FOUNDATION,
25 2016, http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf; Katie Mika et al.,
26 *Stemming the Tide of Plastic Marine Litter: A Global Action Agenda*, 5 UCLA SCHOOL OF LAW
27 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/.

28 ¹⁸ Dr. Jenna Jambeck et al., *Marine Plastics*, SMITHSONIAN INSTITUTION, Apr. 2018,

1 remains a destructive and ever-present fixture in ocean ecosystems; it may get smaller, but it never
2 goes away.¹⁹

3 81. The permanence of all manufactured plastic has led to a highly observable decline in
4 the health of the ocean. Ocean ecosystems have been drastically altered, creating phenomenon
5 unheard of prior to the invention of plastic.

6 82. Creatures most notably affected by plastic pollution include fish, seabirds, marine
7 mammals, and reptiles.²⁰ A UN fact sheet accompanying the 2017 Ocean Conference approximates
8 that up to 1 million seabirds perish each year due to problems resulting from plastic waste and some
9 studies warn that as much as 99% of all seabirds will have swallowed plastic by 2050.²¹

10 83. One of the most common ways in which plastic impairs marine life is through
11 ingestion; marine inhabitants often confuse plastic for food or swallow prey that has previously
12 consumed it.²² As a result, plastic particles mangle digestive systems and accumulate in the
13 stomachs of marine creatures. This leads to eventual starvation as false messages of fullness inhibit
14 feeding behaviors.²³ A 2019 study examined 50 individual organisms from 10 different marine

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18 ocean.si.edu/conservation/pollution/marine-plastics.

19 ¹⁹ Claire Le Guern, *When The Mermaids Cry: The Great Plastic Tide*, COASTALCARE.ORG, Jan. 31,
20 2020, <https://coastalcare.org/2009/11/plastic-pollution/>.

21 ²⁰ *Marine Debris: Understanding, Preventing and Mitigating the Significant Adverse Impacts on*
22 *Marine and Coastal Biodiversity*, 2016 Technical Series No.83. SECRETARIAT OF THE CONVENTION
23 ON BIOLOGICAL DIVERSITY, Montreal, 78 pages, [https://www.cbd.int/doc/publications/cbd-ts-83-](https://www.cbd.int/doc/publications/cbd-ts-83-en.pdf)
[en.pdf](https://www.cbd.int/doc/publications/cbd-ts-83-en.pdf).

24 ²¹ *Factsheet: Marine Pollution*, THE UNITED NATIONS OCEAN CONFERENCE 2017,
25 https://sustainabledevelopment.un.org/content/documents/Ocean_Factsheet_Pollution.pdf.

26 ²² Simon Reddy, *Plastic Pollution Affects Sea Life Throughout the Ocean*, THE PEW CHARITABLE
27 TRUSTS, Sept. 24 2018, [www.pewtrusts.org/en/research-and-analysis/articles/2018/09/24/plastic-](http://www.pewtrusts.org/en/research-and-analysis/articles/2018/09/24/plastic-pollution-affects-sea-life-throughout-the-ocean)
[pollution-affects-sea-life-throughout-the-ocean](http://www.pewtrusts.org/en/research-and-analysis/articles/2018/09/24/plastic-pollution-affects-sea-life-throughout-the-ocean).

28 ²³ *Id.*

1 mammal species that had washed up on British shores and determined that all had consumed plastic,
2 and the likely cause of death was starvation.²⁴

3 84. Another danger presented by plastic is its tendency to strangle creatures who come in
4 contact with it.²⁵ All too often, marine organisms become entangled in plastic and are unable to
5 break free from it, resulting in drowning and suffocation.²⁶ An estimated 80% of entanglement



23 _____
24 ²⁴ S. E. Nelms et al., *Microplastics in Marine Mammals Stranded around the British Coast:*
25 *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 ²⁵ *Trash Pollution*, OCEANHEALTHINDEX.ORG,
27 www.oceanhealthindex.org/methodology/components/trash-pollution.

28 ²⁶ *Id.*

1 cases result in “direct harm or death.”²⁷ NOAA lists “entanglement in marine debris” as one of the
2 biggest threats to endangered loggerhead sea turtles.²⁸

3 85. Sperm whales, frequently mistake plastic debris for squid, their primary food source,
4 and have been found washed up on California beaches with as much as 400 pounds of debris—
5 mostly plastic—inside their stomachs.²⁹ In 2014, a sei whale—which are endangered—perished
6 after it ingested a plastic shard from a DVD cover.³⁰ The plastic shard had lacerated its stomach,



22 ²⁷ Sarah Gall & Richard Thompson, *The Impact of Debris on Marine Life*, 92 MARINE POLLUTION
23 BULLETIN 170, (March 2015), www.sciencedirect.com/science/article/pii/S0025326X14008571.

24 ²⁸ *Loggerhead Turtle*, NOAA FISHERIES, www.fisheries.noaa.gov/species/loggerhead-turtle.

25 ²⁹ Isabelle Groc, *How a DVD Case Killed a Whale*, NATIONAL GEOGRAPHIC, Apr. 29, 2016,
26 <https://www.nationalgeographic.com/news/2015/1/150107-sea-trash-whales-dolphins-marine-mammals/>.

27 ³⁰ *Id.*

1 preventing feeding and thereby leading to starvation.³¹ These cases illustrate just a sampling of the
2 many struggling populations further impeded by plastic pollution.³²

3 86. Plastic alters the chemical composition of the ocean when it breaks apart into smaller
4 pieces.³³ It releases toxic chemicals into the surrounding water, changing the water's chemical
5 makeup.³⁴ Potential pollutants released through this process include bisphenol A and PS oligomer,
6 two known hormone disruptors.³⁵ Plastic particles also act as magnets for toxins to attach
7 themselves to.³⁶ In particular, pollutants such as polychlorinated biphenyls (PCBs) and polycyclic
8 aromatic hydrocarbons (PAHs) are frequently observed in the presence of five mass produced types
9 of plastic found in the ocean.³⁷

10 87. Ocean dwelling species face barriers to reproduction due to the presence of
11 endocrine-disrupting chemicals like PCBs and BPA associated with plastics.³⁸ Orca whales and
12 other dolphins have been observed struggling to calve due to such chemicals hijacking their

13
14 ³¹ *Id.*

15 ³² 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 ³³ *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 ³⁴ *Id.*

21 ³⁵ *Id.*

22 ³⁶ C.M. Rochman et al., *Long-Term Field Measurement of Sorption of Organic Contaminants to*
23 *Five Types of Plastic Pellets: Implications for Plastic Marine Debris*, 47 ENVIRONMENTAL SCIENCE
24 AND TECHNOLOGY 1646–1654, DOI:10.1021/es303700s.

25 ³⁷ *Id.*

26 ³⁸ Emma L. Teuten et al, *Transport and Release of Chemicals from Plastics to the Environment and*
27 *to Wildlife*, 364 PHILOS. TRANS. R. SOC. LOND. B. BIOL. SCI. 2027 (July 27, 2009),
www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/.

1 biological functions,³⁹ and seals are similarly subject to reproductive abnormalities including
2 spontaneous abortion.⁴⁰ In male polar bears, PCBs inhibit fertility and can impact population
3 growth.⁴¹ Polystyrene—found in food and beverage containers—has been linked to “interference
4 with energy uptake and allocation, reproduction, and offspring performance” in oysters.⁴²

5 88. Noxious chemicals within plastic’s chemical makeup such as DDT have been shown
6 to “cause cancers, weaken the immune system and make animals more susceptible to diseases and
7 other infections.”⁴³

8 89. Plastic’s pervasiveness within marine ecosystems also negatively impacts human
9 bodies.⁴⁴ According to recent research, microplastics are abundant in human water supplies. On
10 average, a single person ingests up to 1,769 particles of plastic per week from water alone.⁴⁵ The
11 report concludes that, due to the presence of microplastics in human food and water sources, an
12 individual can ingest approximately 5g of plastic on a weekly basis—the mass of a credit card.⁴⁶

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14 ³⁹ Paul D. Jepson et al, *PCB Pollution Continues to Impact Populations of Orcas and Other*
15 *Dolphins in European Waters*, 6 SCIENTIFIC REPORTS 18754 (Jan. 14, 2016),
www.ncbi.nlm.nih.gov/pmc/articles/PMC4725908/.

16 ⁴⁰ Mats Olsson et al, *Seals and Seal Protection: A Presentation of a Swedish Research Project*,
17 21(8) AMBIO 494 (Dec. 1992), www.jstor.org/stable/4314002.

18 ⁴¹ Viola Pavlova et al, *Allee Effect in Polar Bears: a Potential Consequence of Polychlorinated*
19 *Biphenyl Contamination*, PROCEEDINGS OF THE ROYAL SOC’Y B: BIO. SCIENCES, (Nov. 30, 2016),
royalsocietypublishing.org/doi/full/10.1098/rspb.2016.1883.

20 ⁴² Rossana Sussarellu et al, *Oyster Reproduction Is Affected by Exposure to Polystyrene*
21 *Microplastics*, 113(9) PROC. NATL. ACAD. SCI. U.S.A. 2430 (Mar. 1, 2016),
22 www.ncbi.nlm.nih.gov/pmc/articles/PMC4780615/.

23 ⁴³ *Trash Pollution*, OCEANHEALTHINDEX.ORG,
www.oceanhealthindex.org/methodology/components/trash-pollution.

24 ⁴⁴ David Azoulay et al., *Plastic & Health: the Hidden Costs of a Plastic Planet*, Center for
25 *International Environmental Law*, CIEL.ORG, Feb. 2019, www.ciel.org/plasticandhealth/.

26 ⁴⁵ Wide Fund for Nature et al., *No Plastic in Nature: Assessing Plastic Ingestion from Nature to*
27 *People*, WWF ANALYSIS, June 2019.

28 ⁴⁶ *Id.*

1 90. Plastic pollution threatens tourism, recreation, and fishing industries. Public
2 utilization of the ocean and recreational activities therein are hindered by the consequences of
3 unchecked plastic pollution. Once pristine waters are now cluttered with swathes of drifting plastic
4 trash, making activities such as swimming, diving, and water sports less enjoyable. Beaches
5 previously sought after by tourists are now cautioned against by media outlets. For instance, Bali’s
6 once world renowned coasts have been overtaken by plastic pollution in recent years.⁴⁷



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22 91. California waterways have also experienced harm. The above photo shows plastic
23 pollution in the Los Angeles River in Long Beach, California.⁴⁸

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25 ⁴⁷ *Bali’s Battle against Plastic Pollution*, BBC NEWS, Mar. 7, 2018, [www.bbc.com/news/world-](http://www.bbc.com/news/world-asia-43312464)
26 [asia-43312464](http://www.bbc.com/news/world-asia-43312464).

27 ⁴⁸ *Mouth of Los Angeles River, Long Beach, CA*, PLASTIC POLLUTION COALITION, Photo Credit: Bill
28 McDonald / Algalita Foundation, <https://www.flickr.com/photos/plasticpollution/4349811821/>.

1 92. When global losses from all industries afflicted by marine pollution are accounted
2 for, the total adds to approximately \$13 billion annually—including the cost of cumbersome
3 cleanup endeavors imposed on governments and nonprofit institutions such as Earth Island.⁴⁹

4 **B. As Defendants have known for decades, recycling by itself cannot prevent plastic**
5 **pollution from damaging oceans, waterways, and coasts.**

6 93. Of all plastic labeled as recyclable, less than 10% of these items are actually recycled
7 back into plastic products—the 90% plus remaining ends up in landfills, incinerators, or as pollution
8 in the environment.⁵⁰ Thus, 6.3 billion metric tons of the total 8.3 billion metric tons,
9 **approximately 76% of plastic ever produced, has ended up as waste.**⁵¹

10 94. Recycling, by itself, cannot prevent the veritable deluge of plastic produced,
11 disseminated, and dumped into the ocean each year. Recycling involves a multistep process that
12 requires ample financial resources, careful planning, and coordination.⁵² The first step in the process
13 is to collect recyclable material via a garbage collection service, provided the consumer is able to
14 identify and separate recyclable trash from non-recyclables beforehand.⁵³

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20 ⁴⁹ Elizabeth Matsangou, *Counting the Cost of Plastic Pollution*, WORLD FINANCE, July 2, 2018, www.worldfinance.com/markets/counting-the-cost-of-plastic-pollution.

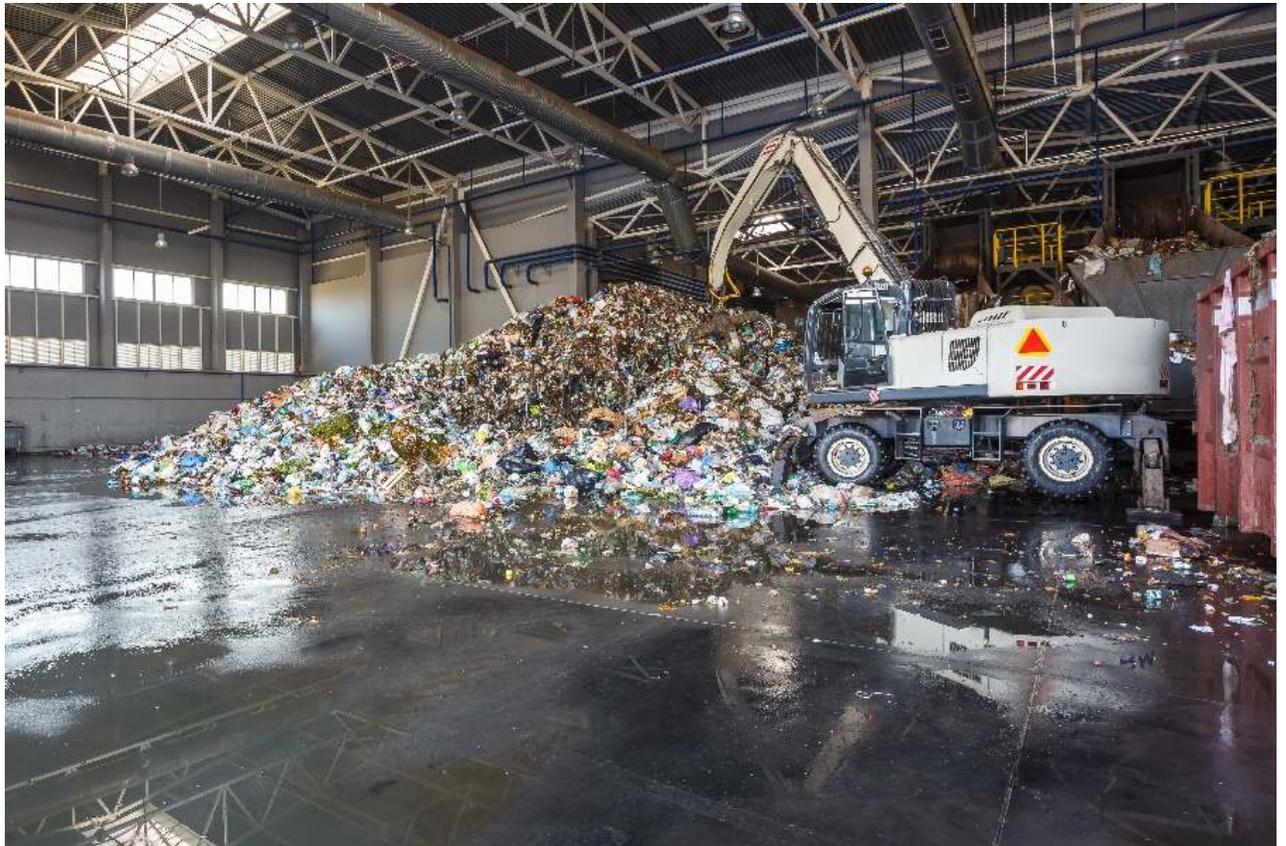
21 ⁵⁰ Michelle Sigler, *The Effects of Plastic Pollution On Aquatic Wildlife: Current Situations and*
22 *Future Solutions*, 225(11) WATER, AIR, AND SOIL POLLUTION 2184. doi: 10.1007/s11270-014-
23 2184-6.

24 ⁵¹ Geyer Roland et al., *Production, Use, and Fate of All Plastics Ever Made*, 3(7) SCIENCE
25 ADVANCES 1, July 19, 2017, <https://advances.sciencemag.org/content/3/7/e1700782/tab-pdf>.

26 ⁵² *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](http://www-g.eng.cam.ac.uk/impee/topics/RecyclePlastics/files/Recycling%20Plastic%20v3%20PDF.pdf)

27 ⁵³ *How is Plastic Recycled: Step by Step*, GREENTUMBLE, May 24, 2018,
28 <https://greentumble.com/how-is-plastic-recycled-step-by-step/>.

1 95. Once recyclables are collected by a government sponsored garbage collection
2 program, they are sent to a recycling facility where plastics are further separated by type, color, and
3 other characteristics to ensure that the facility can use them.⁵⁴ Because recycling centers often
4 specialize in the type of plastic they recycle, a portion of collected plastics are sent back for
5 resorting followed by yet another distribution to alternative facilities.⁵⁵



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20 96. Once properly sorted, items are washed to get rid of nonplastic components such as
21 labels and leftover food particles.⁵⁶ After this, the cleaned plastic is cut into smaller pieces, to make
22 it easier to work with, and is then tested for qualities like density, thickness, melting point, and
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25 ⁵⁴ *Id.*

26 ⁵⁵ *Id.*

27 ⁵⁶ *Id.*

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1 color.⁵⁷ Density is tested by submerging particles in water to determine whether they float or sink;
2 thickness, or “air classification” testing involves placing pieces in a “wind tunnel” and observing
3 whether they rise or fall.⁵⁸ When all of this has been completed, the plastic is finally ready for
4 compounding, which is the step that melts the pieces into plastic pellets to be later re-melted and
5 combined with other pellets to create finished products.⁵⁹

6 97. The collection process itself is additionally time-intensive and costly.⁶⁰ Moreover,
7 the entire process is highly sensitive to error, especially during the sorting stages. If incompatible
8 polymers are accidentally mixed together, the batch becomes “contaminated” and is unusable. For
9 example, “PET and PVC have many problems with cross contamination as the two polymers appear
10 very similar to the naked eye and share the same specific gravity...just one PVC bottle in a batch of
11 10,000 can ruin the entire melt.”⁶¹ Furthermore, Defendants have used full body shrink sleeve labels
12 on PET and HDPE bottles and jugs to improve shelf appeal.⁶² These sleeves prevent proper sorting
13 and harm the operations of PET bottle recyclers and processors.⁶³

14 98. Even if all steps in the recycling process are carried out successfully, the dim truth is
15 that most plastic items can actually only be recycled once. For the more durable materials such as
16 bottle caps, they may be recycled twice, at most.⁶⁴

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18 ⁵⁷ *Id.*

19 ⁵⁸ *How is Plastic Recycled: Step by Step*, GREENTUMBLE, May 24, 2018,
20 <https://greentumble.com/how-is-plastic-recycled-step-by-step/>.

21 ⁵⁹ *Id.*

22 ⁶⁰ *Recycling of Plastics*, THE UNIVERSITY OF CAMBRIDGE: THE IMPEE PROJECT, 2005, [http://www-g.
23 eng.cam.ac.uk/impee/topics/RecyclePlastics/files/Recycling%20Plastic%20v3%20PDF.pdf](http://www-g.eng.cam.ac.uk/impee/topics/RecyclePlastics/files/Recycling%20Plastic%20v3%20PDF.pdf).

24 ⁶¹ *Id.*

25 ⁶² John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

26 ⁶³ *Id.*

27 ⁶⁴ Hannah Ritchie & Max Roser, *Plastic Pollution*, OURWORLDINDATA.ORG, September 2018,
28 <https://ourworldindata.org/plastic-pollution#how-much-of-ocean-plastics-come-from-land-and->

1 99. Furthermore, there must be a sufficient demand for use of recycled plastic to support
2 the cost of doing the recycling. Because plastic loses strength and durability through the recycling
3 process, recycled products diminish in value. On average, recycled plastic brings half the revenue
4 of virgin plastic.⁶⁵ This, combined with the price tag associated with an energy-intensive recycling
5 process, has led to virgin plastic production eclipsing recycling in cost effectiveness.⁶⁶

6 100. According to a recent study: “Most types of plastic packaging are economically
7 impossible to recycle now and will remain so in the foreseeable future.”⁶⁷ Plastic resins #3-7 “have
8 negligible-to-negative value and are effectively a category of products that municipal recycling
9 programs may collect, but do not actually recycle. Plastic #3-7 waste collected in municipal
10 systems across the country is being sent to landfills or incinerated.”⁶⁸

11 101. With regard to resins #1 and #2, recycling facilities simply do not have capacity to
12 process the sheer volume of plastic generated each year. The capacity of all U.S. based recycling
13 facilities is only 22.5% of the PET#1 plastic waste generated.⁶⁹ The domestic processing capacity
14 for HDPE#2 plastic waste is only 12% of the waste generated.⁷⁰

15 102. The heightened accessibility of oil and natural gas in the United States, coupled with
16 the integration of oil and gas companies with plastic production, has also deeply undercut the price
17 of recycled plastic. It is cheaper for Defendants to buy virgin materials than to employ recycled
18

19 _____
20 marine-sources.

21 ⁶⁵ *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>.

22 ⁶⁶ Sarah Kramer, *The One Thing That Makes Recycling Plastic Work Is Falling Apart*, BUSINESS
23 INSIDER, Apr. 5, 2016, www.businessinsider.com/low-oil-prices-hurt-plastics-recycling-2016-4.

24 ⁶⁷ 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 ⁶⁸ *Id.*

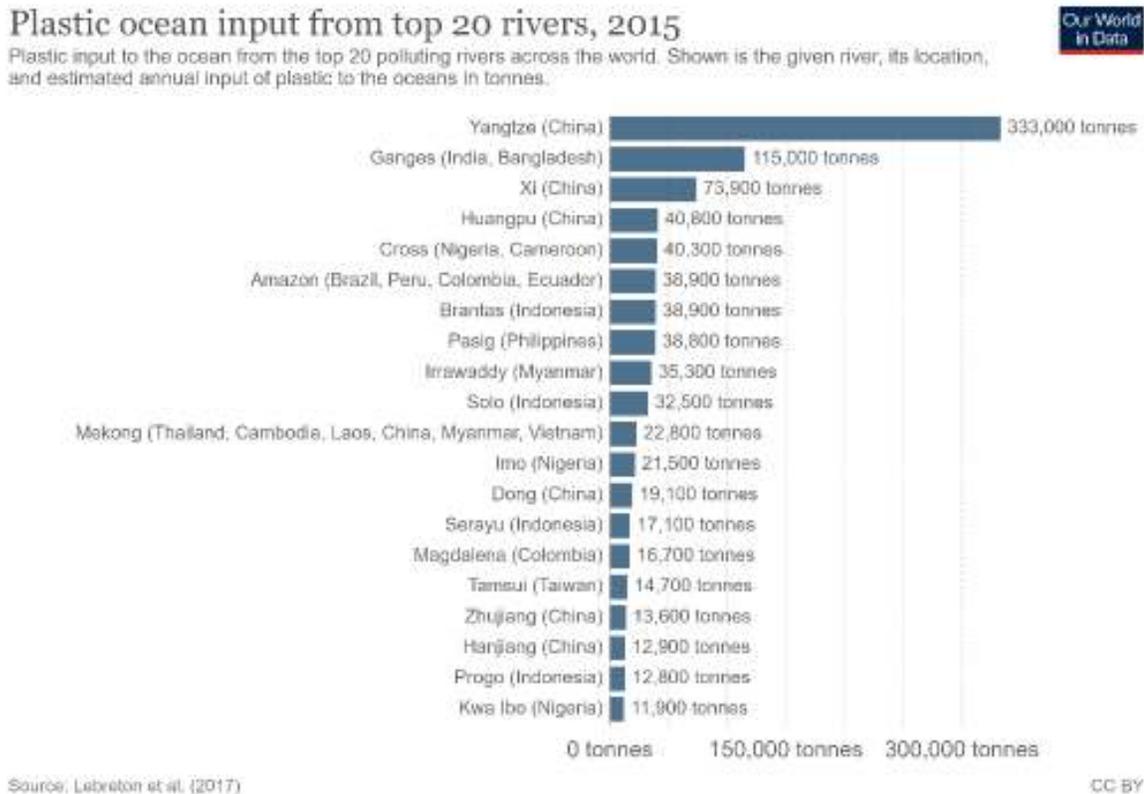
26 ⁶⁹ *Id.*

27 ⁷⁰ *Id.*

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1 plastics.⁷¹ The growing output of new cheap plastic further undermines the industry’s argument that
2 recycling can resolve the plastic waste crisis.

3 103. Because the U.S. has not been able to foot the bill for all of its needed recycling
4 operations, it has historically exported much of its garbage to developing countries such as China.⁷²
5 Many of these countries have high mismanagement rates⁷³ where, due to a lack of environmental
6 regulation, plastic is routinely burned or dumped in landfills or waterways without any pollution
7 control. Those waterways ultimately deposit tons of plastic into the oceans. In 2015 China’s
8 Yangtze river ranked highest for plastic entering the oceans. That year, 333,000 tons of plastic were



21
22 ⁷¹ *Id.*

23
24 ⁷² Irina Ivanova, *American Cities Confront a ‘Slow-Moving Recycling Crisis*, CBS NEWS, Mar. 20,
25 2019, www.cbsnews.com/news/recycling-after-chinas-plastic-ban-american-cities-face-recycling-crisis/.

26 ⁷³ Jan Dell, *157,000 Shipping Containers of U.S. Plastic Waste Exported to Countries with Poor*
27 *Waste Management in 2018*, PLASTIC POLLUTION COALITION, Mar. 6, 2019,
28 www.plasticpollutioncoalition.org/pft/2019/3/6/157000-shipping-containers-of-us-plastic-waste-exported-to-countries-with-poor-waste-management-in-2018.

1 deposited into the ocean from the Yangtze river, more than double the amount for the river with the
2 next highest amount—115,000 tons from the Ganges.⁷⁴

3 104. Asia’s plastic scavengers brave filth and disease to root through piles of discarded
4 plastic scraps that can be sold to buyers for cash. But these scavengers tend to focus on higher-
5 value items—like plastic caps—instead of plastic bags, which recycling buyers pay little to
6 purchase. According to Ocean Conservancy, a worker spending 10 hours gathering plastic bags
7 would only earn 50 cents. If that worker devoted that day to picking up only plastic bottles, she
8 could earn up to \$3.70. That means that scavengers skip over much of the waste, which can later
9 end up in the sea.⁷⁵

10 105. California recycling operations leader Martin Bourque actually tracked some of the
11 plastic scrap shipped from the Ecology Center in Berkeley.⁷⁶ In 2016, Bourque buried a GPS
12 transponder in one of his Ecology Center paper and plastic bales. He followed the transponder’s
13 electronic signals to a town in China and then contacted local residents to document what happened
14 to it. Locals reported that the materials they couldn’t recycle were dumped into a local canyon.⁷⁷

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21 ⁷⁴ Hannah Ritchie & Max Roser, *Plastic Pollution*, OURWORLDINDATA.ORG, September 2018,
22 [https://ourworldindata.org/plastic-pollution#how-much-of-ocean-plastics-come-from-land-and-](https://ourworldindata.org/plastic-pollution#how-much-of-ocean-plastics-come-from-land-and-marine-sources)
[marine-sources](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)).

23 ⁷⁵ Patrick Winn, *5 countries spew more plastic into the oceans than the rest of the world together*,
24 PRI GLOBAL POST, Jan. 12, 2016, [https://www.pri.org/stories/2016-01-12/5-countries-spew-more-](https://www.pri.org/stories/2016-01-12/5-countries-spew-more-plastic-oceans-rest-world-together)
[plastic-oceans-rest-world-together](https://www.pri.org/stories/2016-01-12/5-countries-spew-more-plastic-oceans-rest-world-together).

25 ⁷⁶ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,
26 NPR.ORG, Mar. 13, 2019,
27 [https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it)
[go-now-that-china-doesnt-want-it](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it).

28 ⁷⁷ *Id.*



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15 106. In the 1990's China likely had sufficient low-wage laborers to sort the
16 recyclable materials from the nonrecyclable. But as plastic production ballooned, even
17 China's laborers could not handle the mountains of plastic sent to it from developed nations.
18 By 2016, the U.S. was exporting almost 700,000 tons a year to China alone. Overall, China
19 imported 7 million tons from around the world.⁷⁸

20 107. In response to this growing plastic pollution crisis, China recently announced that it
21 would no longer accept plastic waste from the United States due to the difficulty in recycling the
22 plastic safely. Additional countries are now following suit, effectively shutting down the market for
23 plastic waste abroad.

24 108. Because recycling companies can no longer sell used plastic at prices that cover their
25 processing costs, they are asking municipalities to pay significantly more for recycling services.⁷⁹

26 _____
27 ⁷⁸ *Id.*

28 ⁷⁹Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, The NEW YORK TIMES,

1 Without buyers of recyclables, municipalities must allocate diminishing budgets to pay for local
2 recycling programs, or end recycling programs altogether.

3 109. Across the United States, communities from Douglas County, Oregon to Hancock,
4 Maine, and Kingsport, Tennessee have curtailed collections or halted their recycling programs
5 entirely.⁸⁰ Some municipalities, like Minneapolis, stopped accepting certain plastics, and others,
6 like Phenix City, Alabama, have stopped accepting plastics altogether.⁸¹ Places like Deltona,
7 Florida suspended curbside pickup. Others, like Philadelphia, are now burning the bulk of their
8 recyclables at a waste-to-energy plant, raising concerns about air pollution.⁸² Residents in
9 municipalities like these now must travel to collection points in sometimes distant locations if they
10 want to recycle. Some are inevitably tossing their recyclables in the trash instead.⁸³

11 110. Without good alternatives, many municipalities are burning their plastic recyclables.
12 More than six times the amount of plastic is being burned rather than recycled.⁸⁴ The incineration
13 process releases cancer-causing pollutants into the air and creates toxic ash, which also needs to be
14 disposed of somewhere. Poor people are stuck with the worst consequences of the plastics
15 crisis. Eight out of 10 incinerators in the U.S. are in communities that are either poorer or have
16 fewer white people than the rest of the country, and residents living near them are exposed to the
17 toxic air pollution produced by burning plastic.⁸⁵

18
19 Mar. 16, 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

20 ⁸⁰Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*,
21 YALE ENVIRONMENT 360, Mar. 7, 2019, [https://e360.yale.edu/features/piling-up-how-chinas-ban-
22 on-importing-waste-has-stalled-global-recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling); Michael Corkery, *As Costs Skyrocket, More U.S.
23 Cities Stop Recycling*, THE NEW YORK TIMES, Mar. 16, 2019,
24 <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

25 ⁸¹ *Id.*

26 ⁸² *Id.*

27 ⁸³ *Id.*

28 ⁸⁴ Sharon Lerner, *Waste Only: How the Plastics Industry is Fighting to Keep Polluting the World*,
THE INTERCEPT, July 20, 2019, [https://theintercept.com/2019/07/20/plastics-industry-plastic-
recycling/](https://theintercept.com/2019/07/20/plastics-industry-plastic-recycling/).

⁸⁵ *Id.*

1 111. Many consumers are led to believe by Defendants that if a product is labeled
2 recyclable and brought to a recycling facility in accordance with the facility's guidelines, then the
3 product is recycled.⁸⁶ But, as described above, this is not the truth.

4 **C. Defendants refuse to adopt more sustainable alternatives in order reap higher profits**
5 **resulting from using virgin plastic.**

6 112. Businesses involved in the production, distribution, and utilization of plastic are at
7 the heart of the pollution problem. Defendants use plastic to package and make their Products
8 instead of more sustainable alternatives in order to take advantage of the cheaper virgin plastic
9 market and make higher profits. Coca-Cola, PepsiCo, and Nestle are the top three global users of
10 plastic packaging.⁸⁷ Nationally, these three companies were specifically pinned as the most
11 responsible for oceanic plastic pollution in no less than 70 cleanups spanning the United States.⁸⁸
12 Upon information and belief, Defendants collectively produce more than 6 million tons of plastic
13 waste every year. According to its own data, Coca-Cola alone produces 3 million tons of plastic
14 waste every year.

15 113. Defendants have a wide range of options for eliminating or reducing the amount of
16 plastic in their Products. These options include, but are not limited to, switching to materials that
17 are biodegradable or compostable (e.g., natural polymers and other natural materials), using
18 materials that are more readily recycled or reused (e.g., glass and aluminum), redesigning the
19 Products to use less packaging, and implementing closed loop systems (e.g., bottle deposit systems).

20 114. But Defendants refuse to implement these more sustainable options because the
21 virgin plastic is cheap, and therefore results in lower overhead and higher profits. Defendants' vast
22 consumption of virgin plastic has also created a highly profitable business for oil and gas companies
23 that produce the plastics.

24
25 ⁸⁶ *PTF Misconceptions*, ECOLOGY CENTER, <https://ecologycenter.org/plastics/ptf/report9/>.

26 ⁸⁷ Lorraine Chow, *10 Worst Plastic Polluting Companies Found by Global Cleanups*, ECOWATCH,
27 Oct. 9, 2018, www.ecowatch.com/worst-plastic-polluting-companies-2611144880.html.

28 ⁸⁸ *Id.*

1 115. Recently discovered presence of natural gas in the United States has made plastic
2 feedstocks more readily available and affordable.⁸⁹ In an effort to pave the way for continual
3 expansion in plastic production, fossil fuel companies have begun investing in cracking facilities.⁹⁰
4 These facilities break, or “crack” fossil fuels into polymers that are used in the creation of plastics.
5 ExxonMobil and Shell are among the Big Oil actors financing cracking facilities; in the last decade,
6 over \$180 billion has been invested in approximately 318 different ventures globally.⁹¹

7 116. In 2012, the U.S. produced 48.1 million metric tons of plastic materials and resins,
8 which accounted for 17% of global production.⁹² This placed it as the second largest producer by
9 region behind all of Asia combined.⁹³ According to American Chemistry Council data, California
10 has the second highest number of plastic resin establishments; in 2012 it was home to 97
11 establishments, just behind Texas with 102.⁹⁴ Resin manufacturers and distributors with locations in
12 California include companies like United Polymers, TMC Plastics, SK Chemicals America, Asuka-
13 Platech, Mitsui Chemicals America, Amco Polymers, and Plastic Innovations.⁹⁵

14 117. Meanwhile, plastic recyclers cannot compete on the plastic market due to the
15 comparatively lower cost of virgin plastic. Most types of recycled plastic resin are essentially
16 worthless in the buyer’s market.⁹⁶

17 _____
18 ⁸⁹ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG,
<https://www.ciel.org/reports/fuelingplastics/>.

19 ⁹⁰ Matthew Taylor, *\$180bn Investment in Plastic Factories Feeds Global Packaging Binge*, THE
20 GUARDIAN, Dec. 26, 2017, [www.theguardian.com/environment/2017/dec/26/180bn-investment-in-
plastic-factories-feeds-global-packaging-binge](http://www.theguardian.com/environment/2017/dec/26/180bn-investment-in-plastic-factories-feeds-global-packaging-binge).

21 ⁹¹ *Id.*

22
23 ⁹² *Plastic Resins in the United States*. AMERICAN CHEMISTRY COUNCIL, 2013,
<https://www.packaginggraphics.net/plasticResinInformation/Plastics-Report.pdf>.

24 ⁹³ *Id.*

25 ⁹⁴ *Id.*

26
27 ⁹⁵ Plastic Resin Suppliers, THOMASNET, www.thomasnet.com/products/plastic-resins-3757-1.html.

28 ⁹⁶ Sharon Lerner, *Waste Only: How the Plastics Industry is Fighting to Keep Polluting the World*,

1 118. 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 **D. Defendants' decades-long campaign of misinformation about their Products'**
5 **recyclability puts the blame of plastic pollution on consumers and public entities.**

6 119. Defendants and affiliated representatives have engaged in a decades-long campaign
7 to deflect blame for the plastic pollution crisis by convincing the public that recycling and litter
8 prevention are the true solutions to plastic pollution. This effort can be traced back to the Keep
9 America Beautiful Campaign, which started in the 1950s and remains active today, and includes
10 partners such as PLASTICS, Coca-Cola, PepsiCo, and Nestlé USA, among others.

11 120. Perhaps the most notable ad from this campaign aired in 1971 and featured a Native
12 American man (played by an Italian American actor) canoeing down a heavily polluted waterway
13 and telling the audience that "people start pollution [and] people can stop it."⁹⁷

14 121. More recently, the Ad Council and Keep America Beautiful produced the "I Want to
15 Be Recycled" campaign, which features a lonely plastic bottle rolling through beautiful American
16 landscapes and various communities until a consumer finally picks it up and puts the bottle in a blue
17 recycling bin.⁹⁸

18 122. Although these campaigns appear to support the environment on their face, they
19 obscure the real problem, which is the role that Defendants play in the plastic problem. These
20 public relations strategies have shifted the public focus to consumer recycling behavior and have
21 thwarted legislation that would increase corporate responsibility for waste management.⁹⁹

22 _____
23 THE INTERCEPT, July 20, 2019, <https://theintercept.com/2019/07/20/plastics-industry-plastic-recycling/>.

24 ⁹⁷ Matt Wilkins, *More Recycling Won't Solve Plastic Pollution*, SCIENTIFIC AMERICAN, July 6,
25 2018, <https://blogs.scientificamerican.com/observations/more-recycling-wont-solve-plastic-pollution/>.

26 ⁹⁸ *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 _____
28 ⁹⁹ Matt Wilkins, *More Recycling Won't Solve Plastic Pollution*, SCIENTIFIC AMERICAN, July 6,

1 123. For example, in 1953, Vermont passed legislation called the Beverage Container
2 Law, which outlawed the sale of beverages in non-refillable containers. Single-use packaging had
3 just been developed and manufacturers were motivated to oppose the law because of the much
4 higher profit margins associated with selling plastic containers along with their products, rather than
5 having to be in charge of recycling or cleaning and reusing them. Keep America Beautiful was
6 founded that year and began working to frustrate such legislation. Vermont lawmakers allowed the
7 law to lapse after four years, and the single-use container industry was able to expand unfettered,
8 for almost 20 years.¹⁰⁰



25 2018, <https://blogs.scientificamerican.com/observations/more-recycling-wont-solve-plastic-pollution/>.

26 ¹⁰⁰ Matt Wilkins, *More Recycling Won't Solve Plastic Pollution*, SCIENTIFIC AMERICAN, July 6,
27 2018, <https://blogs.scientificamerican.com/observations/more-recycling-wont-solve-plastic-pollution/>.

1 124. In 1971 Oregon reacted to a growing trash problem by becoming the first U.S. state
2 to pass a “bottle bill,” requiring a five-cent deposit on beverage containers that is refunded upon the
3 container’s return.¹⁰¹ Bottle bills provide a strong incentive for container reuse and recycling; the
4 10 states with bottle deposit laws have around 60 percent container recovery rates compared to 24
5 percent in states without them.¹⁰² Keep America Beautiful and other lobbying groups have publicly
6 opposed or marketed against bottle deposit legislation for decades, as it threatens their bottom line.
7 Between 1989 and 1994 the beverage industry spent \$14 million to defeat the National Bottle
8 Bill.¹⁰³

9 125. The greatest success of Keep America Beautiful has been to shift the onus of plastic
10 pollution mitigation onto the public while simultaneously becoming a trusted name in the
11 environmental movement.¹⁰⁴ This psychological misdirect has built public support for a legal
12 framework that punishes individual litterers with hefty fines or jail time, while simultaneously
13 blocking the enactment of laws that place responsibility on plastic manufacturers for the numerous
14 environmental, economic and health hazards imposed by their products.¹⁰⁵

15 126. In the face of mounting scientific evidence about the harms of plastic, Defendants
16 and other affiliated representatives of the plastic industry continued to promote and market plastic
17 to consumers in vast quantities. A significant aspect of this effort is labeling and advertising of
18 plastic packaging as recyclable.

19 127. Defendants have received extensive criticism for their contribution to the plastic
20 waste crisis. For instance, Defendants Coca-Cola, Pepsi, and Nestlé have been repeatedly
21 mentioned in recent news coverage as the top three brands found during beach cleanups around the
22

23 ¹⁰¹ *Id.*

24 ¹⁰² *Id.*

25 ¹⁰³ *Id.*

26 ¹⁰⁴ *Id.*

27 ¹⁰⁵ *Id.*

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1 world. At the April 2019 conference of the Plastic Industry Association, Garry Kohl of PepsiCo
2 said to his fellow members: “All we hear is ‘you’ve got to get rid of plastics.’”¹⁰⁶ John Caturano of
3 Nestlé Waters North America said at a conference in March 2019: “The water bottle has, in some
4 way, become the mink coat or the pack of cigarettes.”¹⁰⁷ “It’s socially not very acceptable to the
5 young folks, and that scares me.”¹⁰⁸

6 128. In an attempt to counter negative publicity regarding the environmental impacts of
7 Defendants’ products and to take advantage of consumers’ concerns with respect to these impacts,
8 Defendants advertise, market, and sell their Products as “recyclable.” For example, Nestlé has
9 pledged to make all its packaging “recyclable or reusable” by 2025.¹⁰⁹

10 129. Starbucks intensely promoted its “recyclable lid,” which the company predicted will
11 eliminate a billion straws.¹¹⁰ But because the lids are made from polypropylene (also known as
12 No. 5 plastic), and there is very little market for recycled polypropylene, that estimate has no basis
13 in reality.¹¹¹ Only five percent of polypropylene was recycled in 2015—and that was before China
14 decided to stop buying U.S. plastic waste. The vast majority of Starbuck’s one billion new
15 “recyclable” lids will end up in landfills, trash heaps, incinerators, and the oceans.¹¹²

16 130. Furthermore, Defendants tout their “recyclable” consumer Products to the public but
17 fail to mention that they opt to use cheap virgin plastic in their supply chain rather than recycled

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19 ¹⁰⁶ 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/>.

21 ¹⁰⁷ Tik Root, *Inside the long war to protect plastic*, PRI THE CENTER FOR PUBLIC INTEGRITY, May
22 16, 2019, <https://www.pri.org/stories/2019-05-16/inside-long-war-protect-plastic>.

23 ¹⁰⁸ *Id.*

24 ¹⁰⁹ *Id.*

25 ¹¹⁰ Sharon Lerner, *Waste Only: How the Plastics Industry is Fighting to Keep Polluting the World*,
26 THE INTERCEPT, July 20, 2019, <https://theintercept.com/2019/07/20/plastics-industry-plastic-recycling/>.

27 ¹¹¹ *Id.*

28 ¹¹² *Id.*

1 132. A survey revealed that 7 out of 10 people believed the symbol means “recyclable.”¹¹⁵
2 Many even believe the symbol indicates the container is composed of recycled material. Actually,
3 the only information provided by the symbol is the number inside the arrows, which indicates the
4 general class of resin used to make the container. According to a recent study, plastic resins #3-7
5 “have negligible-to-negative value and are effectively a category of products that municipal
6 recycling programs may collect, but do not actually recycle. Plastic #3-7 waste collected in
7 municipal systems across the country is being sent to landfills or incinerated.”¹¹⁶

8 133. The recycling symbol is misleading. Nevertheless, the Defendants use it to gain
9 consumer loyalty.¹¹⁷ The following are representative examples of the recycling claims made by
10 Defendants:

11 134. Defendant Colgate-Palmolive uses the universal recycling symbol on various
12 products packaged in plastic, including but not limited to Palmolive Dish Soap, Murphy Oil Soap,
13 and Softsoap Hand Soap. Colgate-Palmolive also advertises on its website that it is “committed to
14 delivering 100 percent recyclable packaging in our Personal Care, Home Care and Hill’s Pet
15 Nutrition categories by 2020 and 100 percent recyclable packaging in all categories by 2025.”

16 135. Defendant Crystal Geyser uses the universal recycling symbol on its single-use
17 plastic bottles. Crystal Geyser also advertises on its website that its “bottles are made from 100%
18 recyclable PET (polyethylene terephthalate).”

19 136. Defendant Danone North America uses the universal recycling symbol on various
20 food products packaged in single-use plastic, including but not limited to Activia Probiotic Yogurts
21 and Drinks, Dannon Yogurt, and Wallaby Organic Yogurt.

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25 ¹¹⁵ *PTF Misconceptions*, ECOLOGY CENTER, <https://ecologycenter.org/plastics/ptf/report9/>.

26 ¹¹⁶ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

27 ¹¹⁷ *Id.*

1 137. Defendant Mars uses the universal recycling symbol on various food products
2 packaged in single-use plastic. Mars also advertises on its website that it “plan[s] to use 100
3 percent recyclable packaging by 2025.”

4 138. Defendant Mondelez International uses the universal recycling symbol on various
5 food products packaged in single-use plastic.

6 139. Defendant Nestlé USA uses the universal recycling symbol on various food products
7 packaged in single-use plastic, including but not limited to Coffee Mate Milk Creamers, Nestlé Pure
8 Life Water, Poland Spring Water, and Gerber Puffs. Nestlé USA also advertises on its website that
9 it aims “to make 100% of our packaging recyclable or reusable by 2025.”

10 140. Defendant Coca-Cola uses the universal recycling symbol on its single-use plastic
11 bottles. Coca-Cola also advertises on its website that it has set a goal “to make our packaging 100
12 percent recyclable by 2025.”

13 141. Defendant Procter & Gamble uses the universal recycling symbol on various
14 products packaged in plastic, including but not limited to Tide Laundry Detergent and Dawn Dish
15 Soap. Procter & Gamble also advertises on its website that “100% of our packaging will be
16 recyclable or reusable” and that “as of 2018, 86% of P&G packages are considered recyclable.”

17 142. Defendant PepsiCo uses the universal recycling symbol on its single-use plastic
18 bottles. PepsiCo also advertises on its website that it “strive[s] to design 100 percent of our
19 packaging to be recyclable, compostable or biodegradable” by 2025.

20 143. The claims by Defendants that the Products are recyclable are uniform, consistent,
21 and material. Because the claims are false and misleading, ordinary consumers are likely to be
22 deceived by such representations.¹¹⁸

23 144. The Legislature of the State of California has declared that “it is a public policy of
24 the state that environmental marketing claims, whether explicit or implied, should be substantiated
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26 _____
27 ¹¹⁸ 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 by competent and reliable evidence to prevent deceiving or misleading consumers about the
2 environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy is based on
3 the Legislature’s finding that “littered plastic products have caused and continue to cause significant
4 environmental harm and have burdened local governments with significant environmental cleanup
5 costs.” *Id.* At 42355(a).

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

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

16 147. The Green Guides further state that “if any component significantly limits the ability
17 to recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable
18 material, but because of its shape, size or some other attribute is not accepted in recycling programs,
19 should not be marketed as recyclable.” Studies have proven that consumers do not have reasonable
20 access to facilities that will actually process plastic resins #3-7, which constitute many of
21 Defendants’ Products.¹¹⁹ Additionally, studies have shown that although many facilities will
22 process plastic resins #1-2, these facilities have limited capacity and can only recycle a fraction of
23 the total volume they receive of plastic resins #1-2.¹²⁰ Yet Defendants continue to label these
24 Products as recyclable with the universal recycle symbol.

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26 ¹¹⁹ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

27 ¹²⁰ *Id.*

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

8 149. Under California law, Defendants must clearly and prominently qualify recyclable
9 claims to avoid deception about the availability of recycling programs and collection sites to
10 consumers if consumers do not have access to facilities that can recycle the Products.

11 150. In order to counter negative publicity regarding the impacts of Defendants' Products,
12 and to take advantage of consumers' concerns with respect to the environmental consequences
13 caused by such Products, Defendants advertise, market, and sell the Products as recyclable. More
14 specifically, Defendant's Products contain the universal recycle symbol to indicate to consumers
15 that their Products are recyclable.

16 151. Defendants' marketing, advertising, and promotional material for their Products,
17 including their websites, uniformly represent that their Products are recyclable.

18 152. Defendants are aware that many of their Products are not actually recyclable and,
19 yet, have not undertaken any effort to notify consumers of the problem. Defendants' failure to
20 disclose that Products are not recyclable is an omission of fact that is material to consumers' buying
21 habits and Defendants exploit customers through their deceptive claims of recyclability.¹²¹

22 **E. Earth Island Institute, its members, and the public have and will continue to incur**
23 **significant harm to economic, property, recreational, and aesthetic interests.**

24 153. The exponential rise in marine plastic pollution is devastating to marine life. These
25 injuries derive from the increase of plastic pollution in California waterways and coasts.

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¹²¹ *Id.*

1 154. Plastic permeates marine ecosystems. In California, microplastics have been
2 discovered at every stratum of the Monterey Bay National Marine Sanctuary, accumulating at
3 depths as great as 3,281 feet.¹²² New research has revealed that there is a greater abundance of
4 microplastics in Monterey Bay (16 parts per cubic meter) than there is in the Great Pacific Garbage
5 Patch (12 parts per cubic meter).¹²³ Plastic is also abundant in California's freshwater ecosystems,
6 including in Lake Tahoe.

7 155. In 2015, an Earth Island project initiated a marine debris campaign called the
8 Aquatic Park Stewardship program to engage community and youth in plastic reduction and prevent
9 marine debris pollution. The program has partnered with local schools in the San Francisco Unified
10 School District, bringing youth to the San Francisco Bay, conducting beach surveys and clean ups
11 and cataloguing data using the NOAA Marine Debris Shoreline Survey methodology.

12 156. Earth Island participates in the Message in a Bottle plastic art (and education) show
13 at the Palace of Fine Arts San Francisco, reaching approximately 3000 people each year. In 2018
14 Earth Island partnered with the International Ocean Film Festival in Bay Area schools to air
15 documentaries concerning plastic pollution.

16 157. In San Mateo, Earth Island has organized beach clean ups for years and has worked
17 with the San Mateo County Unified School District and other community leaders to clean beaches
18 from Pacifica down to Half Moon Bay. Earth Island has partnered with the Surfrider Foundation to
19 give talks and host educational events at businesses located on Half Moon Bay. Earth Island
20 participates in the Pacific Beach Coalition, which organizes Ecofest, a Linda Mar beach event that
21 includes speakers, music, eco booths, hands on activities, environmental and public safety
22 resources.

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26 ¹²² 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
28 Jan. 14, 2020, www.nature.com/articles/s41598-019-44117-2.

¹²³ *Id.*

1 158. The sum of the research reveals that there are relatively few components of marine
2 ecosystems that are unaffected by plastic pollution. Because plastic pollution impacts waterways,
3 coasts, and oceans everywhere, the public’s ability to use and enjoy these resources is negatively
4 affected.



18 159. 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.

21 160. Earth Island is diverting more and more organizational resources to remediating
22 California coasts and waterways impacted by plastic pollution, and to counteracting threats to
23 marine wildlife from plastic. Earth Island also expends resources on remediating waterways on its
24 private property that are impacted by plastic pollution.

25 **V. CAUSE OF ACTION: VIOLATIONS OF CAL. CIV. CODE §§ 1750 et seq..**

26 161. Plaintiff incorporates by reference each and every allegation contained above.

1 162. Plaintiff and its members purchased Defendants' Products for personal, family, or
2 household purposes.

3 163. The acts and practices of Defendants as described above were intended to deceive
4 Plaintiff and its members as described herein and have resulted in harm to Plaintiff and its members.

5 164. The actions violated and continue to violate the California Consumer Legal
6 Remedies Act (CLRA) in at least the following aspects:

7 a. In violation of Section 1770(a)(5) of the CLRA, Defendants' acts and practices
8 constitute representations that the Products have characteristics, uses or benefits,
9 which they do not.

10 b. In violation of Section 1770(a)(7) of the CLRA, Defendants' acts and practices
11 constitute representations that the Products are of a particular quality, which they are
12 not; and

13 c. In violation of Section 1770(a)(9) of the CLRA, Defendants' acts and practices
14 constitute the advertisement of Products without the intent to sell them as advertised.

15 165. By committing the acts alleged above, Defendants have violated the CLRA.

16 166. Pursuant to California Civil Code § 1780(a)(2) Plaintiff and its members are entitled
17 to an order enjoining the above-described wrongful acts and practices of Defendants, and ordering
18 the payment of costs and attorneys' fees and any other relief deemed appropriate and proper by the
19 Court under California Civil Code § 1780.

20 167. Wherefore, Plaintiff prays for the relief as set forth below.

21 **VI. CAUSE OF ACTION: PUBLIC NUISANCE**

22 168. Plaintiff incorporates by reference each and every allegation contained above.

23 169. Defendants by their affirmative acts and omissions have created, contributed to,
24 and/or assisted in creating conditions which constitute a nuisance by causing plastic pollution in
25 California waterways and coasts, and its associated harms described above.

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

4 171. Marine plastic pollution impacts a substantial number of residents and citizens living
5 in Plaintiff's community, and they are reasonably annoyed and disturbed by marine plastic
6 pollution.



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21 172. The harm from marine plastic pollution outweighs the benefit of Defendants'
22 Products because:

- 23 a. The interference with the public's right to use and enjoy the ocean and marine
24 life is expected to become so regular as to be permanent;
- 25 b. The harm is the destruction and loss of use and enjoyment of ocean and marine
26 life;

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- 1 c. The burden on the public to mitigate and prevent the interference is significant
2 and severe;
- 3 d. The social benefit of plastic packaging associated with Defendants' Products is
4 outweighed by the availability of alternative products; and
- 5 e. It was practical for Defendants, in light of their knowledge, to develop
6 alternatives and/or prevent marine plastic pollution.

7 173. In addition to the above, Plaintiff has suffered special injuries different in kind by
8 diverting organizational resources to prevent and mitigate the harms from marine plastic pollution,
9 and to clean up plastic pollution in waterways on its own private property.

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

13 175. Defendants' actions are a direct and legal cause of the public nuisance described
14 above.

15 176. Defendants' acts and omissions are indivisible causes of Plaintiff's injuries and
16 damages as alleged herein.

17 177. Plaintiff is entitled to recover damages and other appropriate relief for the foregoing
18 public nuisance.

19 178. Wherefore, Plaintiff prays for the relief as set forth below.

20 **VII. CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY**

21 179. Plaintiff incorporates by reference each and every allegation contained above.

22 180. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or
23 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of
24 the bargain creates an express warranty that the goods shall conform to the promise.

25 181. Defendants marketed and sold the Products as recyclable. Defendants'
26 representations that the Products are recyclable constitute affirmations of fact made with regard to
27 the Products as well as descriptions of the Products. Defendants' representations about the
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1 recyclability of the Products are made uniformly in the Products' advertising, internet sites and
2 other marketing materials, and on the Products' labeling and packaging materials, and are thus part
3 of the basis of the bargain between Defendants and purchasers of the Products.

4 182. California has codified and adopted the provisions of the Uniform Commercial Code
5 governing express warranties (Cal. Com. Code § 2313).

6 183. At the time that Defendants designed, manufactured, sold and distributed the
7 Products, Defendants knew that the Products were not recyclable. The Products are not recyclable
8 and thus do not conform to Defendants' express representations to the contrary. Defendants have
9 thus breached their express warranties concerning the Products. As a direct and proximate result of
10 Defendants' breach of express warranties, Plaintiff has suffered injuries and damages as described
11 above. Plaintiff's injuries and damages were foreseeable at the time that Defendants made
12 representations that the Products are recyclable.

13 184. Wherefore, Plaintiff prays for the relief as set forth below.

14 **VIII. CAUSE OF ACTION: STRICT LIABILITY—FAILURE TO WARN**

15 185. Plaintiff incorporates by reference each and every allegation contained above.

16 186. Defendants packaged, distributed, merchandised, advertised, promoted and/or sold
17 the Products in plastic packaging, or otherwise placed the Products into the stream of commerce.

18 187. Defendants heavily marketed, promoted, and advertised the Products in plastic
19 packaging, which were sold by their respective affiliates and subsidiaries. Defendants received
20 direct financial benefit from their affiliates' and subsidiaries' sales of the Products. Defendants'
21 role as a promoter and marketer was integral to their respective businesses and a necessary factor in
22 bringing plastic packaged products, especially single-use plastic, to the consumer market, such that
23 Defendants had control over, and a substantial ability to influence, the manufacturing and
24 distribution processes of their affiliates and subsidiaries.

25 188. Throughout the times at issue, Defendants knew or should have known, based on
26 information available to them from their affiliates and/or from the scientific community, that plastic
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1 packaging, whether used as intended or misused in a foreseeable manner, inevitably causes the toxic
2 and devastating ocean and marine life impacts described above.

3 189. Throughout the times at issue, plastic packaging incorporated into Defendants'
4 Products presented and still present a substantial risk of injury to Plaintiff through the ocean and
5 marine life impacts described above, whether the Products are used as intended or misused in a
6 reasonably foreseeable manner.

7 190. Throughout the time at issue, the ordinary consumer would not recognize that the use
8 or foreseeable misuse of the Products causes global and localized harm to waterways, coasts, oceans
9 and marine life, including those effects described herein.

10 191. Throughout the times at issue, Defendants individually and in concert widely
11 disseminated marketing materials, refuted the generally accepted scientific knowledge at the time,
12 and developed public relations campaigns that prevented reasonable consumers from recognizing
13 the risk that plastic packaging would cause grave harm to waterways, coasts, and marine life, thus
14 undermining and rendering ineffective any warnings that Defendants may have also disseminated.

15 192. Defendants failed to adequately warn customers, consumers, and the general public
16 of known and foreseeable risks to waterways, coasts, oceans, and marine life and the consequences
17 that inevitably flow from the normal, intended use and foreseeable misuse of plastic packaging
18 incorporated into Defendants' Products.

19 193. As a direct and proximate result of the defects previously described, plastic
20 packaging from the Products caused and will continue to cause Plaintiff to sustain injuries and
21 damages set forth in this Complaint, including economic loss, damage to natural resources held in
22 the public trust, deprivation of the right to enjoy and utilize the ocean environment, harm to
23 aesthetic interests, and the creation and maintenance of a nuisance that interferes with the rights of
24 Plaintiff, its members, and all those that enjoy and use the waterways, ocean and coasts.

25 194. Plaintiff has devoted considerable resources to remediate waterways, oceans, and
26 coasts impacted by plastic pollution, and to counteract threats to marine wildlife from plastic.
27 Plaintiff has also expended resources on remediating waterways on its private property that are
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1 impacted by plastic pollution. Additionally, Plaintiff and its members have been deprived of the
2 ability to enjoy and utilize the ocean environment, and experienced harm to their aesthetic interests.

3 195. Defendants' acts and omissions as alleged herein are indivisible causes of Plaintiff's
4 injuries and damages as alleged herein. Plaintiff is entitled to recover damages and other
5 appropriate relief for the foregoing negligent failure to warn.

6 196. Wherefore, Plaintiff prays for the relief as set forth below.

7 **IX. CAUSE OF ACTION: STRICT LIABILITY—DESIGN DEFECT**

8 197. Plaintiff incorporates by reference each and every allegation contained above.

9 198. Defendants packaged, distributed, merchandised, advertised, promoted and/or sold
10 the Products in plastic packaging, or otherwise placed their products into the stream of commerce.

11 199. Defendants heavily marketed, promoted, and advertised the Products in plastic
12 packaging, which were sold by their respective affiliates and subsidiaries. Defendants received
13 direct financial benefit from their affiliates' and subsidiaries' sales of the Products. Defendants'
14 role as a promoter and marketer was integral to their respective businesses and a necessary factor in
15 bringing plastic packaged products, especially single-use plastic, to the consumer market, such that
16 Defendants had control over, and a substantial ability to influence, the manufacturing and
17 distribution processes of their affiliates and subsidiaries.

18 200. Throughout the time at issue, Defendants' Products have not performed as safely as
19 an ordinary customer would expect them to because the plastic packaging in the Products has
20 numerous global and local impacts on waterways, coasts, oceans, and marine life. In particular,
21 ordinary consumers did not expect that:

- 22 a. More than 90 percent of plastic packaging is not and cannot be recycled, and
23 inevitably becomes waste;
- 24 b. Plastic is now found throughout the ocean and in most marine life;
- 25 c. The majority of the plastic in the oceans is from plastic packaging, much of it
26 single-use;

- 1 d. Plastic will never biodegrade, and instead breaks down into smaller and smaller
2 pieces called microplastics;
- 3 e. For these reasons and others, the unmitigated use of plastic packaging presents
4 significant threats to marine environments and marine life, and those that enjoy
5 and utilize these resources.

6 201. Throughout the times at issue, Defendants individually and in concert widely
7 disseminated marketing materials, refuted the generally accepted scientific knowledge at the time,
8 and developed public relations campaigns that prevented reasonable consumers from forming an
9 expectation that plastic packaging would cause grave harm to waterways, coasts, oceans, and
10 marine life, including those described herein.

11 202. Additionally, and in the alternative, Defendants' Products are defective because the
12 risks they pose to consumers and to the public, including and especially to Plaintiff, outweigh their
13 benefits.

- 14 a. The gravity of the potential harms caused by plastic packaging is extreme. Plastic
15 pollution and its attendant harms to waterways, coasts, oceans, and marine life are
16 guaranteed to occur following the use or foreseeable misuse of the Products because
17 plastic is inherently toxic and permanent, and inevitably enters marine environments.
18 Furthermore, the harm from plastic already in the ocean will continue for decades
19 even if all plastic production ceased today.
- 20 b. The social benefit of placing single-use and other types of plastic packaging into the
21 stream of commerce is vastly outweighed by the availability of alternative packaging
22 options that could have been placed into the stream of commerce that would not have
23 caused the harms described herein. Defendants knew of the external costs of using
24 plastic packaging for the Products and placing them into the stream of commerce.
25 Rather than striving to mitigate those externalities, Defendants acted affirmatively to
26 obscure them from public consciousness.

- 1 c. Defendants' campaign of disinformation regarding single-use and other types of
2 plastic packaging and recycling and the impacts of plastic on waterways, coasts,
3 oceans, and marine life prevented customers, consumers, and the general public from
4 taking steps to mitigate the inevitable consequences of consuming the Products.
- 5 d. The cost to society of each ton of marine plastic pollution increases as total global
6 marine plastic pollution increases so that unchecked use and consumption of single-
7 use and other types of plastic packaging is more harmful and costly than moderated
8 use and consumption.
- 9 e. It was practical for Defendants, in light of their extensive knowledge of the hazards
10 of placing single-use and other types of plastic packaging into the stream of
11 commerce, to pursue and adopt known, practical, and available alternative
12 technologies and business practices that would have mitigated their contribution to
13 marine plastic pollution, and mitigated the harms associated with the use and
14 consumption of the Products.

15 203. Consumers used the plastic packaging incorporated into Defendants' Products in a
16 manner for which it was intended to be used or misused in a manner foreseeable to Defendants. As
17 a result, marine plastic pollution and its associated global and local consequences increased.

18 204. As a direct and proximate result of the defects in the Products described herein,
19 Plaintiff sustained and will continue to sustain the injuries and damages set forth in this Complaint.

20 205. Defendants' acts and omissions as alleged herein are indivisible causes of Plaintiff's
21 injuries and damages as alleged herein. Plaintiff is entitled to recover damages and other
22 appropriate relief for the foregoing design defects.

23 206. Wherefore, Plaintiff prays for relief as set forth below.

24 **X. CAUSE OF ACTION: NEGLIGENCE**

25 207. Plaintiff incorporates by reference each and every allegation contained above.

26 208. Defendants knew or should have known of the adverse impacts to waterways, coasts,
27 oceans, and marine life caused by the normal use and operation of the plastic packaging
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1 incorporated into the Products.

2 209. Defendants had a duty to use due care in developing, designing, testing, inspecting
3 and distributing the plastic packaging incorporated into the Products. The duty obligated
4 Defendants to, *inter alia*, prevent defective products from entering the stream of commerce, and
5 prevent reasonably foreseeable harm that could have resulted from the ordinary use or reasonably
6 foreseeable misuse of the Products.

7 210. Defendants breached their duty of care by, *inter alia*:

- 8 a. Allowing the Products to enter the stream of commerce, despite knowing them to be
9 defective due to their inevitable propensity to cause marine plastic pollution and its
10 associated harms;
- 11 b. Failing to act on the information and warnings they received from their affiliates and
12 the international scientific community that the unabated use of plastic packaging
13 would result in material dangers to the public, including Plaintiff;
- 14 c. Failing to take actions, including but not limited to, pursuing and adopting known,
15 practical, and available technologies and business practices that would have
16 mitigated their contribution to marine plastic pollution; shifting to non-plastic
17 packaging; researching and/or offering technologies to mitigate marine plastic
18 pollution in conjunction with sale and distribution of their products; and pursuing
19 other available alternatives that would have prevented or mitigated the injures to
20 Plaintiff caused by marine plastic pollution that Defendants knew or should have
21 foreseen would inevitably result from the use of Defendants' products;
- 22 d. Engaging in a campaign of disinformation regarding plastic packaging and recycling
23 and the impacts of plastic on oceans and marine life that prevented customers,
24 consumers, and the general public from taking steps to mitigate the inevitable
25 consequences of consuming the Products.

26 211. Defendants' individual and collective acts and omissions were actual, substantial
27 causes of marine plastic pollution and its associated harms, including Plaintiff's injuries and
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1 damages described herein, because the conditions in the ocean environment that caused Plaintiff's
2 injuries would not have happened, or would not have been as widespread, but for Defendants'
3 introduction of the Products into the stream of commerce.

4 212. Defendants' individual and collective acts and omissions were proximate causes of
5 increased marine plastic pollution and its associated harms, including Plaintiff's injuries and
6 damages set forth herein. No other act, omission, or natural phenomenon intervened in the chain of
7 causation between Defendants' conduct and Plaintiff's injuries and damages, or superseded
8 Defendants' breach of their duties substantially in causing Plaintiff's injuries and damages.

9 213. As a direct and proximate result of Defendants' acts and omissions, Plaintiff
10 sustained and will continue to sustain injuries and damages as set forth herein.

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

13 215. Plaintiff is entitled to recover damages and other appropriate relief for the foregoing
14 negligent conduct.

15 216. Wherefore, Plaintiff prays for relief as set forth below.

16 **XI. CAUSE OF ACTION: NEGLIGENCE—FAILURE TO WARN**

17 217. Plaintiff incorporates by reference each and every allegation contained above.

18 218. Defendants knew or should have known, based on information available to them
19 from their affiliates and and/or from the scientific community, of the adverse impacts to waterways,
20 oceans, coasts, and marine life caused by the normal use and operation of the plastic packaging
21 incorporated into the Products.

22 219. Defendants knew or should have known, based on information available to them
23 from their affiliates and/or from the scientific community, that the impacts described above
24 rendered the plastic packaging incorporated into the Products dangerous, or likely to be dangerous,
25 when used as intended or misused in a reasonably foreseeable manner.

1 220. Throughout the times at issue, Defendants failed to adequately warn consumers or
2 any other party of the impacts to waterways, oceans, coasts, and marine life that inevitably flow
3 from the use or foreseeable misuse of the Products.

4 221. Throughout the times at issue, Defendants individually and in concert widely
5 disseminated marketing materials, refuted the generally accepted scientific knowledge at the time,
6 and developed public relations campaigns that prevented reasonable consumers from recognizing
7 the risk that plastic packaging would cause grave harm to waterways, coasts, oceans, and marine
8 life, thus undermining and rendering ineffective any warnings that Defendants may have also
9 disseminated.

10 222. Given the grave dangers presented by the impacts that inevitably flow from the
11 normal and foreseeable misuse of plastic packaging, a reasonable manufacturer, distributor, retailer,
12 seller, or other participant responsible for introducing plastic packaging into the stream of
13 commerce, would have warned of those known, inevitable impacts to waterways, coasts, oceans,
14 and marine life.

15 223. Defendants' conduct was a direct and proximate cause of Plaintiff's injuries and a
16 substantial factor in the harms suffered by Plaintiff as described in this Complaint.

17 224. Defendants' acts and omissions as alleged herein are indivisible causes of Plaintiff's
18 injuries and damages as alleged herein.

19 225. Plaintiff is entitled to recover damages and other appropriate relief for the foregoing
20 negligent failure to warn.

21 226. Wherefore, Plaintiff prays for the relief as set forth below.

22 **XII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
24 as follows:

- 25 1. Compensatory damages in an amount according to proof;
26 2. Order requiring the Defendants to disburse the funds and resources necessary to
27 remediate the harm they have caused;

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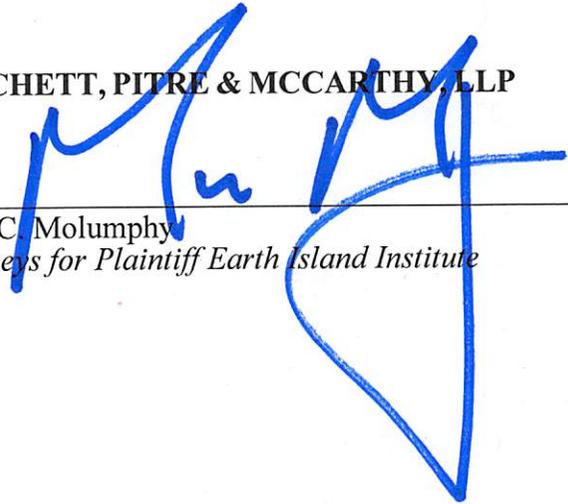
- 3. Equitable relief, including:
 - a. abatement of the nuisance described herein;
 - b. that Defendants refrain from marketing and promotion of Products that state or imply that the Products are recyclable when in fact they are not recyclable according to the Green Guides; and
 - c. corrective advertising 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: February 26, 2020

COTCHETT, PITRE & MCCARTHY, LLP



Mark C. Molumphy
Attorneys for Plaintiff Earth Island Institute