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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SWARTZ, CRISTINA SALGADO,
and, MARCELO MUTO on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

THE COCA-COLA COMPANY,
BLUETRITON BRANDS, INC., and
NIAGARA BOTTLING, LLC,

Defendants.

Case No.: _____

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT;
FALSE ADVERTISING; FRAUD,
DECEIT, AND/OR
MISREPRESENTATION; NEGLIGENT
MISREPRESENTATION; VIOLATION
OF THE ENVIRONMENTAL
MARKETING CLAIMS ACT; AND
UNFAIR BUSINESS PRACTICES**

JURY TRIAL DEMANDED

1 Plaintiffs Marcelo Muto, Cristina Salgado, and David Swartz by and through their
2 counsel, bring this Class Action Complaint against Defendants The Coca-Cola Company,
3 BlueTriton Brands, Inc. (formerly known as Nestle Waters North America, Inc.), and Niagara
4 Bottling, LLC on behalf of themselves and similarly situated persons. The following allegations
5 are based upon information and belief, including the investigation of Plaintiffs' counsel, unless
6 stated otherwise.

7 **INTRODUCTION**

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

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

19 3. The plastic waste problem was exacerbated in 2018 when China implemented a
20 plastic recycling import ban on most plastic waste exported from the United States, which it
21 deemed the "National Sword" policy. The National Sword policy has permanently changed how
22 the United States processes recycling. Up until 2018, China was the primary export market for

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24 ¹ Pat Franklin, *Down the Drain*, <https://www.container-recycling.org/assets/pdfs/media/2006-5-WMW-DownDrain.pdf> (last accessed January 20, 2021).

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

28 ³ *Id.*

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

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

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

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

28 6. This action seeks: (i) an injunction precluding the sale of the plastic bottled water

1 within a reasonable time after entry of judgment, unless the products’ packaging and marketing
2 are modified to remove the “100% Recyclable” misrepresentation and to disclose the omitted
3 facts about their true recyclability; and (ii) to require Defendants to pay restitution to purchasers
4 of the products, namely the price premium they paid for them, i.e., the difference between the
5 price consumers paid for the products and the price that they would have paid but for
6 Defendants’ misrepresentations, in an amount to be proven at trial using econometric or
7 statistical techniques such as hedonic regression or conjoint analysis.

8 **PARTIES**

9 7. Plaintiff Marcelo Muto is, and at all times alleged in this Class Action Complaint
10 was, an individual and a resident of Indio, California.

11 8. Plaintiff Cristina Salgado is, and at all times alleged in this Class Action
12 Complaint was, an individual and a resident of Los Angeles, California.

13 9. Plaintiff David Swartz is, and at all times alleged in this Class Action Complaint
14 was, an individual and a resident of Oakland, California.

15 10. Plaintiffs Muto, Salgado, and Swartz are referred to collectively herein as the
16 “Plaintiffs.”

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

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

24 13. Defendant Niagara Bottling, LLC (“Niagara”) is a corporation organized and
25 existing under the laws of the state of Delaware, having its principal place of business in Ontario,
26 California.

27 14. The Parties identified in paragraphs 11-13 of this Class Action Complaint are
28 collectively referred to hereafter as “Defendants.”

JURISDICTION AND VENUE

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2 15. This Court has jurisdiction over the subject matter of this action pursuant to 28
3 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of
4 interest and costs; and at least one Plaintiff is a citizen of a different state than at least one
5 Defendant.

6 16. This action is brought by Plaintiffs pursuant, *inter alia*, to the California Business
7 and Professions Code, section 17200, *et seq.* Plaintiffs and Defendants are “persons” within the
8 meaning of the California Business and Professions Code, section 17201.

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

15 18. The claims in this case arise out of Defendants’ California-related activities.
16 Defendants market and sell the Products in California to California consumers. While the
17 Products are marketed and sold in California by Defendants, the Products are not 100%
18 recyclable in California.

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

22 20. In accordance with California Civil Code Section 1780(c), Plaintiffs concurrently
23 file herewith declarations establishing that, on many occasions since November 2020, they
24 purchased the Products in Merced County, Riverside County, and Los Angeles County.
25 (Plaintiffs’ declarations are attached hereto as Exhibit A.)

26 21. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

27 **SUBSTANTIVE ALLEGATIONS**

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

1 22. Coca-Cola manufacturers, markets, and sells beverages, including bottled water,
2 in the United States under several brand names, including Dasani.

3 23. Nestle manufacturers, markets, and sells beverages, including bottled water, in the
4 United States under several brand names, including Arrowhead, Poland Springs, Ozarka, and
5 Deer Park.

6 24. Niagara manufacturers, markets, and sells beverages, including bottled water, in
7 the United States under several brand names, including Niagara, Costco Kirkland, Save Mart
8 Sunny Select, and Save Mart Market Essentials.

9 25. The following brands of bottled water are referred to herein as the “Products”:
10 Dasani, Arrowhead, Poland Springs, Ozarka, Deer Park, Niagara, Costco Kirkland, Save Mart
11 Sunny Select, and Save Mart Market Essentials.

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

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

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20 28. Dasani:



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2 29. Arrowhead:



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18 30. Poland Springs:



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31. Ozarka:



32. Deer Park:



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33. Niagara:



34. Costco Kirkland:



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35. Save Mart Sunny Select:



36. Save Mart Market Essentials:



(2) Defendants' Representations that the Products Are "100% Recyclable" Are

1 **False**

2 37. Recycling is “the process of collecting, sorting, cleansing, treating, and
3 reconstituting materials that would otherwise become solid waste, and returning them to the
4 economic mainstream in the form of raw material for new, reused, or reconstituted products
5 which meet the quality standards necessary to be used in the marketplace.” Cal. Pub. Res. Code §
6 40180. Thus, “recyclable” products must, if discarded into a recycling bin, be: (i) accepted for
7 collection by a recycling facility; and (ii) processed for reuse or use in manufacturing another
8 item.

9 38. In California, after plastic bottles, such as the Products, are discarded into a
10 recycling bin, the bottles are sent to a Materials Recovery Facility (“MRF”). There are
11 approximately 365 MRFs in the United States (75 of which operate in California). A typical
12 MRF first sorts the plastic bottles based on color and, sometimes, size. At this point, the plastic
13 bottles, bottle caps and labels are comingled. Once sorted, the comingled plastic is typically next
14 shredded into smaller pieces and sent to a wash station. During the washing phase, the comingled
15 shredded plastic is separated via a sink float separation tank, where the PET plastic, which is
16 denser than water, sinks and the HDPE and PP plastics, which are less dense than water, float.
17 Finally, the separated shredded plastic is then processed into “clean flake” material or plastic
18 resin for use in manufacturing or assembling another item.

19 39. PET and HDPE are widely considered to be the “most recyclable” forms of
20 plastic. However, the most recent available data, which was published in a study by Greenpeace,
21 indicates that as of 2017, United States domestic MRFs only have the capacity to process into
22 plastic resin approximately: (i) 22.5% of the total post-consumer PET plastic waste generated;
23 and (ii) 12% of the total post-consumer HDPE plastic waste generated.⁵ Additionally, due to
24 contamination and processing losses, not all PET and HDPE material that is processed by MRFs

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

1 is actually converted into “clean flake” for reuse.⁶ About a third of the collected PET and HDPE
2 material processed by MRFs is not converted into “clean flake,” and is instead, landfilled or
3 incinerated.⁷ Accordingly, the Products’ PET bottles and HDPE bottle caps are not “100%
4 Recyclable” because: (i) the United States lacks the capacity to process 77.5% of all PET and
5 88% of all HDPE plastic waste generated; and (ii) of the plastic that is processed by MRFs, only
6 about 70% of the PET and HDPE is converted into clean flakes for reuse.

7 40. PP and BOPP plastics, which are the material used to make the Products’ bottle
8 caps and film labels, respectively, are widely considered to be the least recyclable plastics. These
9 plastics are typically collected by MRFs for #3-7 mixed bails which require further processing.
10 However, “the economics [of processing those bails] have proven insurmountable.”⁸ Prior to
11 2018, MRFs in the United States exported #3-7 mixed bails, primarily, to China. However, on
12 January 1, 2018, China enacted the National Sword policy which limits plastic waste imports.
13 There is, however, minimal demand, value, and processing capacity for them in the United
14 States. Thus, mixed plastic #3-7 bales which were “previously exported to China now have
15 negligible to negative value across the country and ‘cannot be effectively or efficiently recycled
16 in the US.’”⁹ As a result, the majority of PP and BOPP sent to recycling facilities is incinerated,
17 which releases large quantities of greenhouse gases and toxic air emissions. This is especially
18 true of the Products’ BOPP labels which are completely unrecyclable because they are made of
19 plastic film, which is difficult to sort and process and is typically treated as trash.

20 41. Further, due to the availability of cheap raw materials to make “virgin plastic,”
21 there is very little market demand for recycled PP and BOPP plastic. Using virgin plastic to
22 package and make products is cheaper than other materials because virgin plastic is derived from
23 oil and natural gas. Indeed, recognizing the market potential from plastic production, major oil

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

28 ⁷ *Id.*

⁸ *Supra*, note 5, at Section 4.

⁹ *Id.*

1 and natural gas companies are increasingly integrating their operations to include production of
2 plastic resins and products, which further drives down the price of “virgin plastic.” As a result,
3 recycling facilities cannot afford the cost of breaking down and reconstituting recycled PP and
4 BOPP plastic because there are almost no buyers of the resulting plastic, pellets, or scrap
5 materials. Thus, the Products’ PP bottle caps and BOPP labels are not “100% Recyclable”
6 because those materials are not processed into reusable material, and are instead, sent to
7 incinerators or landfills.

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

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

15 43. The State of California has declared that “it is the public policy of the state that
16 environmental marketing claims, whether explicit or implied, should be substantiated by
17 competent and reliable evidence to prevent deceiving or misleading consumers about the
18 environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy is based
19 on the Legislature’s finding that “littered plastic products have caused and continue to cause
20 significant environmental harm and have burdened local governments with significant
21 environmental cleanup costs.” *Id.* § 42355.

22 44. Additionally, the California Business and Professions Code § 17580.5 makes it
23 “unlawful for any person to make any untruthful, deceptive, or misleading environmental
24 marketing claim, whether explicit or implied.” Pursuant to that section, the term “environmental
25 marketing claim” includes any claim contained in the Guides for Use of Environmental
26 Marketing Claims published by the Federal Trade Commission (the “Green Guides”). *Id.*; *see*
27 *also* 16 C.F.R. § 260.1, *et seq.* As detailed below, Defendants’ marketing of the Products as
28 “100% Recyclable” violates several provisions of the FTC’s Green Guides.

1 45. First, Defendants’ marketing of the Products as “100% Recyclable” violates the
2 Green Guides provisions prohibiting the labeling of products as recyclable unless the products
3 can actually be converted into reusable material. Section 260.12(a) of the Green Guides provides
4 that it is “deceptive to misrepresent, directly or by implication, that a product or package is
5 recyclable. A product or package should not be marketed as recyclable unless it can be collected,
6 separated, or otherwise recovered from the waste stream through an established recycling
7 program for reuse or use in manufacturing or assembling another item.” The Green Guides
8 further explain that “[m]arketers should clearly and prominently qualify recyclable claims to the
9 extent necessary to avoid deception about the availability of recycling programs and collection
10 sites to consumers.” 16 C.F.R. § 260.12(b). “If recycling facilities are available to less than a
11 substantial majority of consumers or communities where the item is sold, marketers should
12 qualify all recyclable claims.” 16 C.F.R. § 260.12(b)(1). Further “[i]f any component
13 significantly limits the ability to recycle the item, any recyclable claim would be deceptive.” 16
14 C.F.R. § 260.12(d). And in promulgating the current recycling definition, the FTC clarified that
15 “[f]or a product to be called recyclable, there must be an established recycling program,
16 municipal or private, through which the product will be converted into, or used in, another
17 product or package.” *See* 63 Fed. Reg. 84, 11 24247 (May 1, 1998) (emphasis added). As the
18 FTC has stated, “while a product may be technically recyclable, if a program is not available
19 allowing consumers to recycle the product, there is no real value to consumers.” *Id.* at 24243.

20 46. In promulgating the most recent version of the Green Guides, the FTC stated
21 (under the heading “Packages Collected for Public Policy Reasons but Not Recycled”), “[t]he
22 Commission agrees that unqualified recyclable claims for categories of products that municipal
23 recycling programs collect, but do not actually recycle, may be deceptive. To make a non-
24 deceptive unqualified claim, a marketer should substantiate that a substantial majority of
25 consumers or communities have access to facilities that will actually recycle, not accept and
26 ultimately discard, the product. As part of this analysis, a marketer should not assume that
27 consumers or communities have access to a particular recycling program merely because the
28 program will accept a product.” The California Public Resources Code similarly defines

1 recycling as “the process of collecting, sorting, cleansing, treating, and reconstituting materials
2 that would otherwise become solid waste, and returning them to the economic mainstream in the
3 form of raw material for new, reused, or reconstituted products which meet the quality standards
4 necessary to be used in the marketplace.” *Id.* § 40180.

5 47. Defendants’ marketing of the Products as “100% Recyclable” violates these
6 provisions of the Green Guides because it is false that 100% of the Products can be collected,
7 separated, or otherwise recovered from the waste stream through an established recycling
8 program for reuse or use in manufacturing or assembling another item. Although the Products
9 may be accepted for recycling by some curbside programs, MRFs do not have the capacity to: (i)
10 process the Products’ PP bottle caps and BOPP labels into reusable material because there is no
11 end market to do so; (ii) convert all plastic bottle material processed into reusable material
12 because 28% of the material is contaminated or lost during processing and must be landfilled or
13 incinerated; and (iii) process all plastic bottles used in the United States into reusable material
14 such that over 75% of PET and HDPE plastics consumed must be landfilled or incinerated;

15 48. Defendants’ marketing of the Products as “100% Recyclable” also violates the
16 Green Guide provisions regarding products that cannot be recycled in their entirety. Section
17 260.12(c) of the Green Guides provides that “Marketers can make unqualified recyclable claims
18 for a product or package if the entire product or package, excluding minor incidental
19 components, is recyclable. For items that are partially made of recyclable components, marketers
20 should clearly and prominently qualify the recyclable claim to avoid deception about which
21 portions are recyclable.” Similarly, Section 260.3(b) of the Green Guides requires an
22 environmental marketing claim to “specify whether it refers to the product, the product’s
23 packaging, a service, or just to a portion of the product, package, or service.” 16 C.F.R. §
24 260.3(b). Defendants’ “100% Recyclable” representation violates this standard of the Green
25 Guides because it fails to specify whether it refers to the bottles, the bottle caps, or the label. The
26 caps and the labels are not an incidental component, and even if they were, the fact that they are
27 not recyclable makes the claim “100% Recyclable” false and misleading.

28 49. Further, the Green Guides require marketers to support their claim with a

1 reasonable basis before they make the claims. 16 CFR § 260.2 (“Marketers must ensure that all
2 reasonable interpretations of their claims are truthful, not misleading, and supported by a
3 reasonable basis before they make the claims.”). “[A] firm’s failure to possess and rely upon a
4 reasonable basis for objective claims constitutes an unfair and deceptive act or practice in
5 violation of Section 5 of the Federal Trade Commission Act.” See FTC Policy Statement
6 Regarding Advertising Substantiation, 104 FTC 839 (1984) (cited by 16 CFR §
7 260.2). Defendants do not possess information sufficient to support their claims that the Products
8 are “100% Recyclable.”

9 **(4) Consumer Demand for “100% Recyclable” Products and Defendants’ Use of**
10 **Coordinated Marketing Campaigns, including the “Every Bottle Back Initiative,” to**
11 **Defraud the Public**

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

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

¹¹ *Id.*

¹² *Id.*

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

8 52. In 2018, after the implementation of National Sword, environmental organizations
 9 such as the Sierra Club and Greenpeace began applying greater pressure to the plastics industry
 10 through public information campaigns. The central message was that the recycling system is
 11 broken and that reuse was the only truly sustainable option. For example, a January 19, 2018
 12 press release on the Greenpeace website titled *Greenpeace slams Coca-Cola plastic*
 13 *announcement as ‘dodging the main issue’* stated:

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

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

20 54. On October 29, 2019—three months after breaking ties with the PLASTICS
 21 lobby—Coca-Cola, and the American Beverage Association launched the “Every Bottle Back”
 22 initiative to once again attempt to convince the public that single-use plastics are not bad for the
 23 environment. The stated purpose of this initiative is to support what the members call the

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

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

1 “circular plastics economy,” which perpetuates the fiction that plastic bottles are “100%
2 Recyclable” and are part of a sustainable, circular plastics economy. However, this media
3 strategy is nothing but a retooled version of their original media strategy. Instead of supporting
4 plastic trade groups, Defendants have found a more palatable way to achieve the same goal of
5 deceiving the public about the sustainability of single-use plastics. The “Every Bottle Back”
6 campaign uses same rhetoric championed by PLASTIC trade groups—i.e. that the problem of
7 plastic waste is largely behavioral and can be solved through public education that plastic bottles
8 are 100% Recyclable.

9 55. Defendants’ strategy has remained unchanged: to convince the public that plastic
10 bottles are 100% Recyclable, all while increasing profits selling the world new plastic. This is
11 confirmed by a recent brand audit by Break Free From Plastic, a non-governmental organization
12 that advocates against the use of single-use plastics. For the past three years, Break Free From
13 Plastic has ranked PepsiCo, Coca-Cola, and Nestle as the top plastic polluters in the world. In its
14 2020 audit, Break Free From Plastic reported “[d]espite clever marketing tactics and lofty
15 ‘sustainability’ goals, the same companies continue to make our list of Top Global Polluters year
16 after year.”

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

24 _____
25 ¹⁵ Hillary Larson, *The Deep Injustice of Plastic Pollution* (July 30, 2020),
26 <https://www.sierraclub.org/articles/2020/07/deep-injustice-plastic-pollution> (last accessed June
27 10, 2021).

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

4
5
6 **OUR NEW INITIATIVE:**
7 **TOGETHER, WE’RE COMMITTED**
8 **TO GETTING *EVERY BOTTLE***
9 ***BACK***

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

14 **We are making**

15 **100%**

16 **recyclable plastic bottles.**
17 **And we want them back.**

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

19 **MORE EFFICIENT RECYCLING MEANS**
20 **LESS NEW PLASTIC IN OUR**
21 **ENVIRONMENT.**

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

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

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

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

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

13 61. All Defendants have adopted the voluntary “100% Recyclable” language as a part
14 of a coordinated scheme to defraud the public and have benefited from the “Every Bottle Back”
15 public awareness campaign designed to do the same.

16 62. Defendants market the Products as “100% Recyclable” to capitalize on consumer
17 demand for “green” products. In particular, Defendants intend for reasonable consumers to
18 believe, and reasonable consumers do believe, that the Products will be recycled in their entirety
19 if the consumer disposes of the empty bottles in a recycling bin. Further, Defendants intend for
20 consumers to believe, and reasonable consumers do believe, that because the Products are “100%
21 Recyclable,” the bottles are specially designed to be environmentally superior to competitors’
22 products that do not contain the same representation. Finally, Defendants intend for consumers to
23 believe, and reasonable consumers do believe, that because the Products are part of a circular
24 plastics economy in which all bottles are recycled into new bottles to be used again.

25 63. Defendants’ coordinated and illegal marketing campaign has been extremely
26 successful. Defendants collectively sell a large percentage of the bottled water sold in the United
27 States. The Products are sold in grocery stores, gas stations, and big box stores throughout
28 California and the country. Because of the big potential for sales, Defendants have no incentive

1 to stop claiming that the Products are “100% Recyclable” or change their disclaimers to
2 discourage sales.

3 64. Because consumers are led to believe the bottles are “100% Recyclable,” and
4 therefore purchase them because they are a “green” product, Defendants are able to charge a
5 premium for the Products. If consumers knew that the Products were not “100% Recyclable,” the
6 product would not command a premium price based on that representation, fewer consumers
7 would purchase them, and Plaintiffs would not pay the premium attributable to that
8 representation.

9 PLAINTIFFS’ EXPERIENCES

10 65. Plaintiff Muto purchased three 24-packs of Dasani water bottles from Costco in
11 La Quinta, CA on or around April 15, 2021. He saw the claim “100% Recyclable” on the
12 Products and he purchased them, in part, because he believed that the entirety of the bottles,
13 including the labels and caps, could and would be recycled if he disposed of them in a recycling
14 bin. He did in fact dispose of the bottles in a recycling bin. Had he known that the Products were
15 not “100% Recyclable,” he would not have purchased them, or at a minimum, he would have
16 paid less for them.

17 66. Plaintiff Salgado purchased a 24-pack of 16.9-ounce Niagara water bottles from
18 Numero Uno Market in Los Angeles, CA in or around April 15, 2020. Plaintiff Salgado also
19 purchased an 8-pack of 12-ounce Dasani water bottles from the Target store near her home on or
20 around April 20, 2021. Plaintiff Salgado saw the claim “100% Recyclable” on the Products and
21 purchased them, in part, because she believed that the entirety of the bottles, including the labels
22 and caps, could and would be recycled if she disposed of them in a recycling bin. She did in fact
23 dispose of the bottles in a recycling bin. Had she known that the Products were not “100%
24 Recyclable,” she would not have purchased them, or at a minimum, she would have paid less for
25 them.

26 67. Plaintiff Swartz purchased a bottle of Arrowhead water from a gas station in
27 Merced County in or around November 2020. Plaintiff Swartz saw the claim “100% Recyclable”
28 on the Product and purchased it, in part, because he believed that the claim meant that the

1 entirety of the bottle, including the label and cap, could and would be recycled if he disposed of
2 it in a recycling bin. He did in fact dispose of the bottle in a recycling bin. Had he known that the
3 Product was not “100% Recyclable,” he would not have purchased it, or at a minimum, he would
4 have paid less for it.

5 68. Plaintiffs are unaware of the composition of each of the parts of the plastic bottles
6 they purchased, and rely on the label that states that the products are “100% Recyclable” when
7 analyzing the Products’ recyclability. Because Plaintiffs do not know the composition of bottles
8 now or in the future, and cannot determine whether the Products will ultimately be recycled,
9 Plaintiffs will be unable to rely on Defendants’ labels when shopping for bottled water in the
10 future absent an injunction that prohibits Defendants from falsely labeling their products as
11 “100% Recyclable.”

12 69. Plaintiffs continue to desire to purchase water in bottles that are “100%
13 Recyclable” from Defendants. Plaintiffs are unable to determine if the Products are “100%
14 Recyclable” prior to their purchase. Plaintiffs understand that the design and composition of the
15 Products may change over time. But as long as Defendants may use the phrase “100%
16 Recyclable” to describe plastic water bottles that are not “100% Recyclable,” then when
17 presented with Defendants’ packaging, Plaintiffs continue to have no way of determining
18 whether the representation “100% Recyclable” is in fact true. Thus, Plaintiffs are likely to be
19 repeatedly presented with false or misleading information when shopping and they will be
20 unable to make informed decisions about whether to purchase Defendants’ Products and will be
21 unable to evaluate the different prices between Defendants’ bottled water and their competitors’
22 bottled water. Plaintiffs are further likely to be repeatedly misled by Defendants’ conduct, unless
23 and until Defendants are compelled to ensure that their bottled water marketed as “100%
24 Recyclable” is in fact 100% recyclable.

25 **CLASS ALLEGATIONS**

26 70. Plaintiffs bring this action against Defendants on behalf of themselves and all
27 others similarly situated, as a class action pursuant to section 382 of the California Code of Civil
28 Procedure and section 1781 of the California Civil Code. Plaintiffs seek to represent a group of

1 similarly situated persons, defined as follows:

2 All persons who, between June 16, 2017 and the present, purchased the
3 Products in California.

4 71. This action has been brought and may properly be maintained as a class action
5 against Defendants pursuant to the provisions of California Code of Civil Procedure section 382
6 because there is a well-defined community of interest in the litigation and the proposed class is
7 easily ascertainable.

8 72. Numerosity: Plaintiffs do not know the exact size of the class, but it is estimated
9 that it is composed of more than 100 persons. The persons in the class are so numerous that the
10 joinder of all such persons is impracticable and the disposition of their claims in a class action
11 rather than in individual actions will benefit the parties and the courts.

12 73. Common Questions Predominate: This action involves common questions of law
13 and fact to the potential class because each class member's claim derives from the deceptive,
14 unlawful and/or unfair statements and omissions that led Defendants' customers to believe that
15 the Products are "100% Recyclable." The common questions of law and fact predominate over
16 individual questions, as proof of a common or single set of facts will establish the right of each
17 member of the class to recover. Among the questions of law and fact common to the class are:

- 18 a) Whether Defendants' Products are "100% Recyclable;"
19 b) Whether Defendants unfairly, unlawfully and/or deceptively represented
20 that the Products are "100% Recyclable" and/or failed to inform class
21 members that the Products are not "100% Recyclable;"
22 c) Whether Defendants' advertising and marketing regarding the Products
23 sold to class members was likely to deceive class members or was unfair;
24 d) Whether Defendants engaged in the alleged conduct knowingly, recklessly,
25 or negligently;
26 e) The amount of the premium lost by class members as a result of such
27 wrongdoing;
28 f) Whether class members are entitled to injunctive and other equitable relief

1 and, if so, what is the nature of such relief; and

2 g) Whether class members are entitled to payment of actual, incidental,
3 consequential, exemplary and/or statutory damages plus interest thereon,
4 and if so, what is the nature of such relief.

5 74. Typicality: Plaintiffs' claims are typical of the class because each of them
6 purchased the Products on one or more occasions during the last four years, in reliance on
7 Defendants' misrepresentations and omissions that the Products are "100% Recyclable." Thus,
8 Plaintiffs and class members sustained the same injuries and damages arising out of Defendants'
9 conduct in violation of the law. The injuries and damages of each class member were caused
10 directly by Defendants' wrongful conduct in violation of law as alleged.

11 75. Adequacy: Plaintiffs will fairly and adequately protect the interests of all class
12 members because it is in their best interests to prosecute the claims alleged herein to obtain full
13 compensation due to them for the unfair and illegal conduct of which they complain. Plaintiffs
14 also have no interests that are in conflict with or antagonistic to the interests of class members.
15 Plaintiffs have retained highly competent and experienced class action attorneys to represent
16 their interests and the interests of the class. By prevailing on their own claim, Plaintiffs will
17 establish Defendants' liability to all class members. Plaintiffs and their counsel have the
18 necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs
19 and counsel are aware of their fiduciary responsibilities to the class members and are determined
20 to diligently discharge those duties by vigorously seeking the maximum possible recovery for
21 class members.

22 76. Superiority: There is no plain, speedy, or adequate remedy other than by
23 maintenance of this class action. The prosecution of individual remedies by members of the class
24 will tend to establish inconsistent standards of conduct for the Defendants and result in the
25 impairment of class members' rights and the disposition of their interests through actions to
26 which they were not parties. Class action treatment will permit a large number of similarly
27 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
28 and without the unnecessary duplication of effort and expense that numerous individual actions

1 would engender. Furthermore, as the damages suffered by each individual member of the class
2 may be relatively small, the expenses and burden of individual litigation would make it difficult
3 or impossible for individual members of the class to redress the wrongs done to them, while an
4 important public interest will be served by addressing the matter as a class action.

5 77. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
6 management of this action that would preclude its maintenance as a class action.

7 **CAUSES OF ACTION**

8 78. Plaintiffs do not plead, and hereby disclaim, any causes of action under any
9 regulations promulgated by the FTC. Plaintiffs rely on these regulations only to the extent such
10 regulations have been separately enacted as state law or regulations or provide a predicate basis
11 of liability under the state and common laws cited in the following causes of action.

12 **PLAINTIFFS' FIRST CAUSE OF ACTION**

13 **Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.***

14 **(On Behalf of Plaintiffs and the Class)**

15 79. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint
16 as if set forth herein.

17 80. This cause of action is brought pursuant to the California Consumers Legal
18 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

19 81. Defendants’ actions, representations and conduct have violated, and continue to
20 violate the CLRA, because they extend to transactions that are intended to result, or which have
21 resulted, in the sale or lease of goods or services to consumers.

22 82. Plaintiffs and other class members are “consumers” as that term is defined by the
23 CLRA in California Civil Code § 1761(d).

24 83. The Products that Plaintiffs (and others similarly situated class members)
25 purchased from Defendants were “goods” within the meaning of California Civil Code §
26 1761(a).

27 84. By engaging in the actions, representations and conduct set forth in this Class
28 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(5), § 1770(a)(7),

1 § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code §1770(a)(5),
2 Defendants' acts and practices constitute improper representations that the goods they sell have
3 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities, which they do not
4 have. In violation of California Civil Code §1770(a)(7), Defendants' acts and practices constitute
5 improper representations that the goods they sell are of a particular standard, quality, or grade,
6 when they are of another. In violation of California Civil Code §1770(a)(8), Defendants have
7 disparaged the goods, services, or business of another by false or misleading representation of
8 fact. In violation of California Civil Code §1770(a)(9), Defendants have advertised goods or
9 services with intent not to sell them as advertised. Specifically, in violation of sections 1770
10 (a)(2), (a)(5), (a)(7) and (a)(9), Defendants' acts and practices led customers to falsely believe
11 that their Products are "100% Recyclable." In violation of section 1770(a)(8), Defendants falsely
12 or deceptively market and advertise that, unlike products not specifically denominated as "100%
13 Recyclable," the Products are "100% Recyclable," when in fact, they are not "100%
14 Recyclable."

15 85. Plaintiffs request that this Court enjoin Defendants from continuing to employ the
16 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
17 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
18 future, Plaintiffs and the other members of the class will continue to suffer harm.

19 86. CLRA § 1782 NOTICE. **Irrespective of any representations to the contrary in**
20 **this Class Action Complaint, Plaintiffs specifically disclaim, at this time, any request for**
21 **damages under any provision of the CLRA.** Plaintiffs, however, hereby provide Defendants
22 with notice and demand that within thirty (30) days from that date, Defendants correct, repair,
23 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of
24 herein. Defendants' failure to do so will result in Plaintiffs amending this Class Action
25 Complaint to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of themselves and
26 those similarly situated class members, compensatory damages, punitive damages and restitution
27 of any ill-gotten gains due to Defendants' acts and practices. In particular, Plaintiffs will seek to
28 recover on behalf of themselves and those similarly situated, the price premium paid for the

1 Products, i.e., the difference between the price consumers paid for the Products and the price that
2 they would have paid but for Defendants’ misrepresentation. This premium can be determined
3 by using econometric or statistical techniques such as hedonic regression or conjoint analysis.

4 87. Plaintiffs also request that this Court award them costs and reasonable attorneys’
5 fees pursuant to California Civil Code § 1780(d).

6 **PLAINTIFFS’ SECOND CAUSE OF ACTION**

7 **False Advertising, Business and Professions Code § 17500, *et seq.* (“FAL”)**

8 **(On Behalf of Plaintiffs and the Class)**

9 88. Plaintiffs reallege and incorporate by reference the paragraphs of this Class
10 Action Complaint as if set forth herein.

11 89. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
12 preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive
13 and/or misleading statements in connection with the advertising and marketing of the Products.

14 90. Defendants made representations and statements (by omission and commission)
15 that led reasonable customers to believe that they were purchasing products that were “100%
16 Recyclable.” Defendants deceptively failed to inform Plaintiffs, and those similarly situated, that
17 the Products are not “100% Recyclable.”

18 91. Plaintiffs and those similarly situated relied to their detriment on Defendants’
19 false, misleading and deceptive advertising and marketing practices, including each of the
20 misrepresentations and omissions set forth above. Had Plaintiffs and those similarly situated
21 been adequately informed and not intentionally deceived by Defendants, they would have acted
22 differently by, without limitation, refraining from purchasing the Products or paying less for
23 them.

24 92. Defendants’ acts and omissions are likely to deceive the general public.

25 93. Defendants engaged in these false, misleading and deceptive advertising and
26 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
27 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
28 Professions Code.

1 94. The aforementioned practices, which Defendants have used, and continue to use,
2 to their significant financial gain, also constitute unlawful competition and provide an unlawful
3 advantage over Defendants’ competitors as well as injury to the general public.

4 95. As a direct and proximate result of such actions, Plaintiffs and the other members
5 of the class have suffered, and continue to suffer, injury in fact and have lost money and/or
6 property as a result of such false, deceptive and misleading advertising in an amount which will
7 be proven at trial, but which is in excess of the jurisdictional minimum of this Court. In
8 particular, Plaintiffs, and those similarly situated, paid a price premium for the Products, i.e., the
9 difference between the price consumers paid for the Products and the price that they would have
10 paid but for Defendants’ misrepresentation. This premium can be determined by using
11 econometric or statistical techniques such as hedonic regression or conjoint analysis.

12 96. Plaintiffs seek, on behalf of those similarly situated, restitution of the difference
13 between what Defendants acquired from Plaintiffs, the general public, or those similarly situated,
14 and what would have been acquired in absence of the false, misleading and deceptive advertising
15 and marketing practices complained of herein, which amount will be proven at trial, plus interest
16 thereon.

17 97. Plaintiffs seek, on behalf of those similarly situated, a declaration that the above-
18 described practices constitute false, misleading and deceptive advertising.

19 98. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit the
20 sale of the Products within a reasonable time after entry of judgment, unless the Products’
21 packaging and marketing is modified to remove the misrepresentation “100% Recyclable” and to
22 disclose the omitted facts about their true recyclability. Such misconduct by Defendants, unless
23 and until enjoined and restrained by order of this Court, will continue to cause injury in fact to
24 the general public and the loss of money and property in that Defendants will continue to violate
25 the laws of California, unless specifically ordered to comply with the same. This expectation of
26 future violations will require current and future consumers to repeatedly and continuously seek
27 legal redress in order to recover monies paid to Defendants to which Defendants are not entitled.
28 Plaintiffs, those similarly situated and/or other consumers nationwide have no other adequate

1 remedy at law to ensure future compliance with the California Business and Professions Code
2 alleged to have been violated herein.

3 **PLAINTIFFS' THIRD CAUSE OF ACTION**

4 **Fraud, Deceit and/or Misrepresentation**

5 **(On Behalf of Plaintiffs and the Class)**

6 99. Plaintiffs reallege and incorporate by reference the paragraphs of this Class
7 Action Complaint as if set forth herein.

8 100. For the last three years, Defendants have fraudulently and deceptively led
9 Plaintiffs to believe that the Products are "100% Recyclable." Defendants also failed to inform
10 Plaintiffs that the Products are not "100% Recyclable," that approximately 30% of PET plastic
11 recycled is lost due to contamination during the recycling process, that it is economically
12 infeasible to recycle the bottle caps and plastic film labels, and that the bottle caps and plastic
13 film labels must be disposed or incinerated.

14 101. These misrepresentations and omissions were material at the time they were
15 made. They concerned material facts that were essential to the analysis undertaken by Plaintiffs
16 as to whether to purchase the Products.

17 102. Defendants made identical misrepresentations and omissions to members of the
18 class regarding the Products.

19 103. Plaintiffs and those similarly situated relied to their detriment on Defendants'
20 fraudulent misrepresentations and omissions. Had Plaintiffs and those similarly situated been
21 adequately informed and not intentionally deceived by Defendants, they would have acted
22 differently by, without limitation, not purchasing (or paying less for) the Products.

23 104. Defendants had a duty to inform class members at the time of their purchases that
24 the Products were not "100% Recyclable," that approximately 30% of PET plastic recycled is
25 lost due to contamination during the recycling process, that it is economically infeasible to
26 recycle the bottle caps and plastic film labels, and that the bottle caps and plastic film labels must
27 be disposed or incinerated. Defendants failed to provide this information to class members. Class
28 members relied to their detriment on Defendants' omissions. These omissions were material to

1 the decisions of the class members to purchase the Products. In making these omissions,
2 Defendants breached their duty to class members. Defendants also gained financially from, and
3 as a result of, their breach.

4 105. By and through such fraud, deceit, misrepresentations and/or omissions,
5 Defendants intended to induce Plaintiffs, and those similarly situated, to alter their position to
6 their detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiffs, and
7 those similarly situated, to, without limitation, pay a premium to purchase the Products.

8 106. As a direct and proximate result of Defendants' misrepresentations and omissions,
9 Plaintiffs, and those similarly situated, have suffered damages. In particular, Plaintiffs seek to
10 recover on behalf of themselves and those similarly situated the price premium paid for the
11 Products, i.e., the difference between the price consumers paid for the Products and the price that
12 they would have paid but for Defendants' misrepresentation. This premium can be determined
13 by using econometric or statistical techniques such as hedonic regression or conjoint analysis.

14 107. Defendants' conduct as described herein was willful and malicious and was
15 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
16 and harm to Plaintiffs and those similarly situated.

17 **PLAINTIFFS' FOURTH CAUSE OF ACTION**

18 **Negligent Misrepresentation**

19 **(On Behalf of Plaintiffs and the Class)**

20 108. Plaintiffs reallege and incorporate by reference the paragraphs of this Class
21 Action Complaint as if set forth herein.

22 109. For the last three years, Defendants provided false and misleading information
23 regarding the Products, representing that they were "100% Recyclable."

24 110. These representations were material at the time they were made. They concerned
25 material facts that were essential to the analysis undertaken by Plaintiffs as to whether to
26 purchase the Products.

27 111. Defendants made identical misrepresentations and omissions to members of the
28 class regarding the Products.

1 112. Defendants should have known their representations to be false and had no
2 reasonable grounds for believing them to be true when they were made.

3 113. By and through such negligent misrepresentations, Defendants intended to induce
4 Plaintiffs and those similarly situated to alter their position to their detriment. Specifically,
5 Defendants negligently induced Plaintiffs, and those similarly situated to, without limitation, to
6 purchase the Products.

7 114. Plaintiffs and those similarly situated relied to their detriment on Defendants’
8 negligent misrepresentations. Had Plaintiffs and those similarly situated been adequately
9 informed and not intentionally deceived by Defendants, they would have acted differently by,
10 without limitation, not purchasing (or paying less for) the Products.

11 115. Plaintiffs and those similarly situated have suffered damages. In particular,
12 Plaintiffs seek to recover on behalf of themselves and those similarly situated the price premium
13 paid for the Products, i.e., the difference between the price consumers paid for the Products and
14 the price that they would have paid but for Defendants’ misrepresentation. This premium can be
15 determined by using econometric or statistical techniques such as hedonic regression or conjoint
16 analysis.

17 **PLAINTIFFS’ FIFTH CAUSE OF ACTION**

18 **“Greenwashing” Under the Environmental Marketing Claims Act, Cal. Bus. &**

19 **Prof. Code § 17580, *et seq.***

20 **(On Behalf of Plaintiffs and the Class)**

21 116. Plaintiffs reallege and incorporate by reference the paragraphs of this Class
22 Action Complaint as if set forth herein.

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

1 distribution, use, and disposal of the Products.

2 118. Further, in violation of Cal. Bus. & Prof. Code §17580.5(a), Defendants'
3 representations and omissions complained of herein constitute untruthful, deceptive, or
4 misleading environmental marketing claims, explicit or implied, including claims referenced in
5 the Green Guides published by the FTC.

6 119. Plaintiffs seek on behalf of themselves, the general public, and those similarly
7 situated to Plaintiffs, a declaration that the above-described practices are fraudulent and/or
8 unlawful.

9 120. Plaintiffs seek on behalf of themselves, the general public, and those similarly
10 situated to Plaintiffs, an injunction to prohibit the sale of the Products within a reasonable time
11 after entry of judgment, unless packaging and marketing is modified to remove the
12 misrepresentation “100% Recyclable” and to disclose the omitted facts about the true
13 recyclability of the Products. Such misconduct by Defendants, unless and until enjoined and
14 restrained by order of this Court, will continue to cause injury in fact to the general public and
15 the loss of money and property in that Defendants will continue to violate the laws of California,
16 unless specifically ordered to comply with the same. This expectation of future violations will
17 require current and future consumers to repeatedly and continuously seek legal redress in order
18 to recover monies paid to Defendants to which Defendants were not entitled. Plaintiffs, and those
19 similarly situated and/or other consumers, have no other adequate remedy at law to ensure future
20 compliance with the California Business and Professions Code alleged to have been violated
21 herein.

22 **PLAINTIFFS’ SIXTH CAUSE OF ACTION**

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

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

25 **(On Behalf of Plaintiffs and the Class)**

26 121. Plaintiffs reallege and incorporate by reference the paragraphs of this Class
27 Action Complaint as if set forth herein.

28 122. Within four (4) years preceding the filing of this Class Action Complaint, and at

1 all times mentioned herein, Defendants have engaged, and continue to engage, in unfair,
2 unlawful and deceptive trade practices in California by engaging in the unfair, deceptive and
3 unlawful business practices outlined in this Class Action Complaint.

4 123. In particular, Defendants have engaged, and continue to engage, in deceptive
5 practices by, without limitation, the following:

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

8 124. Defendants’ claims that the Products are 100% recyclable are material, untrue,
9 and misleading. These recyclable claims are prominent on all of the Products’ marketing,
10 advertising, and labeling materials, even though Defendants are aware that the claims are false
11 and misleading. Defendants’ claims are thus likely to deceive reasonable consumers.

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

18 126. Additionally, Defendants have engaged, and continue to engage, in unlawful
19 practices by, without limitation, the following:

- 20 a. violating the Federal Trade Commission Green Guides regulations,
21 including, without limitation, 16 C.F.R. sections 260.3(b), 260.3(c),
22 260.12(b), 260.12(c), 260.12(d), 260.16(c), 260.1, and 260.2, as described
23 herein; and
- 24 b. violating the Environmental Marketing Claims Act, Cal. Bus. & Prof.
25 Code § 17580, *et seq.*, as described herein.
- 26 c. violating the CLRA as described herein; and
- 27 d. violating the FAL as described herein.

28 127. Plaintiffs and those similarly situated relied to their detriment on Defendants’

1 unfair, deceptive and unlawful business practices. Had Plaintiffs and those similarly situated
2 been adequately informed and not deceived by Defendants, they would have acted differently by
3 not purchasing (or paying less for) the Products.

4 128. Defendants' acts and omissions are likely to deceive the general public.

5 129. Defendants engaged in these unfair practices to increase their profits.

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

8 130. The aforementioned practices, which Defendants have used to their significant
9 financial gain, also constitute unlawful competition and provide an unlawful advantage over
10 Defendants' competitors as well as injury to the general public.

11 131. As a direct and proximate result of such actions, Plaintiffs, and other members of
12 the class, have suffered and continue to suffer injury in fact and have lost money and/or property
13 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
14 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
15 In particular, Plaintiffs and those similarly situated paid a price premium for the Products, i.e.,
16 the difference between the price consumers paid for the Products and the price that they would
17 have paid but for Defendants' misrepresentation. This premium can be determined by using
18 econometric or statistical techniques such as hedonic regression or conjoint analysis.

19 132. Plaintiffs seek on behalf of themselves and those similarly situated, a declaration
20 that the above-described trade practices are fraudulent and/or unlawful.

21 133. Plaintiffs seek on behalf of themselves and those similarly situated, an injunction
22 to prohibit the sale of the Products within a reasonable time after entry of judgment, unless the
23 Products' packaging and marketing is modified to remove the misrepresentation "100%
24 Recyclable" and to disclose the omitted facts about their true recyclability. Plaintiffs have no
25 adequate remedy at law for the injuries currently being suffered as an award of monetary
26 damages would not prohibit Defendants' unlawful acts. Such misconduct by Defendants, unless
27 and until enjoined and restrained by order of this Court, will continue to cause injury in fact to
28 the general public and the loss of money and property in that Defendants will continue to violate

1 the laws of California, unless specifically ordered to comply with the same. This expectation of
2 future violations will require current and future consumers to repeatedly and continuously seek
3 legal redress in order to recover monies paid to Defendants to which they were not entitled.
4 Plaintiffs have no other adequate remedy at law to ensure future compliance with the California
5 Business and Professions Code alleged to have been violated herein.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly situated,
8 respectfully request that the Court enter judgement against Defendants as follows:

- 9 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel
10 as class counsel;
- 11 B. An order temporarily and permanently enjoining Defendants from continuing the
12 unlawful, deceptive, fraudulent, and unfair business practices alleged in this
13 Complaint;
- 14 C. An award of compensatory damages in an amount to be determined at trial, except
15 as to those causes of action where compensatory damages are not available as a
16 matter of law;
- 17 D. An award of statutory damages in an amount to be determined at trial, except as to
18 those causes of action where statutory damages are not available as a matter of
19 law;
- 20 E. An award of punitive damages in an amount to be determined at trial, except as to
21 those causes of action where punitive damages are not available as a matter of
22 law;
- 23 F. An award of treble damages, except as to those causes of action where treble
24 damages are not available as a matter of law;
- 25 G. An award of restitution in an amount to be determined at trial; and
- 26 H. An order requiring Defendants to pay both pre- and post-judgment interest on any
27 amounts awarded.
- 28 H. For reasonable attorneys' fees and the costs of suit incurred;

1 I. For such further relief as this Court may deem just and proper.

2 **JURY TRIAL DEMANDED**

3 Plaintiffs hereby demand a trial by jury.

4 Dated: June 16, 2021

GUTRIDE SAFIER LLP

5 /s/Marie A. McCrary/s/

6 Marie A. McCrary, Esq.

7 Seth A. Safier, Esq.

8 100 Pine Street, Suite 1250

9 San Francisco, California 94111

10 Attorneys for Plaintiffs

Exhibit A

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EXHIBIT A

I, Marcelo Muto, declare:

1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2015.5 and California Civil Code section 1780(d).

3. I purchased 3 24-packs of Dasani water bottles in Riverside County, California. My most recent date of purchase was approximately on or around April 15, 2021.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 28th day of April 2021, in Indio, California.

DocuSigned by:
Marcelo Muto
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Marcelo Muto

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EXHIBIT A

I, Cristina Salgado, declare:

1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2015.5 and California Civil Code section 1780(d).

3. I purchased a 24-pack of Niagara water bottles in Los Angeles County, California. My most recent date of purchase was approximately on or around April 10, 2021.

4. I purchased an 8-pack of Dasani water bottles in Los Angeles County, California. My most recent date of purchase was approximately on or around April 20, 2021.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 28th day of April 2021, in Los Angeles, California.

DocuSigned by:
Cristina Salgado
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Cristina Salgado

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EXHIBIT A

I, David Swartz, declare:

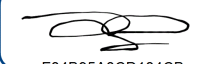
1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2015.5 and California Civil Code section 1780(d).

3. I purchased a 20-ounce bottle of Arrowhead water in Merced County, California. My most recent date of purchase was approximately on or around November 15, 2020.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 13th day of May 2021, in Oakland, California.

DocuSigned by:

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David Swartz