Electronically Received 03/15/2024 04:48 PM

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THE LAST BEACH CLEANUP

FILED
Superior Court of California
County of Los Angeles
03/15/2024
David W. Slayton, Executive Officer / Clerk of Court
By: A. Soni Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE LAST BEACH CLEANUP,

Plaintiff,

v.

STATER BROS. MARKETS, REVOLUTION PLASTICS HOLDINGS LLC, REVOLUTION SUSTAINABLE SOLUTIONS, LLC, and AM TESTING & SERVICES, INC.,

Defendants, and

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY,

Real Party In Interest.

Case No. 22STCV18252

THIRD AMENDED COMPLAINT

DOCUMENT PREPARED ON RECYCLED PAPER

Plaintiff The Last Beach Cleanup ("Plaintiff" or "LBC"), based on information, belief, and investigation of its counsel, except for information based on knowledge, hereby alleges:

INTRODUCTION

1. Plastic pollution across the globe has reached crisis levels with the ever-increasing production of plastic products overwhelming traditional collection and disposal methods and leading to the contamination of our oceans, land, lakes, rivers, streams, and ultimately our bodies. The magnitude of this issue is astounding. According to recent studies, nearly 90% of plastic waste is not recycled[1] and roughly 5% of the almost 50-million tons of plastic waste U.S. consumers create annually is mismanaged, ending up in the natural environment.[2] Plastic pollution is so widespread that the average person ingests a credit card's worth of plastic each week.[3] Indeed, the U.S. Department of Energy has separately reported that nearly 95% of plastic goes unrecycled in the U.S., with 45 million tons per year burned or becoming trash and litter.[4]

2. As a result, the last decade has seen numerous states, counties, and municipalities pass laws to curb plastics pollution, such as California's Single-Use Carryout Bag Ban ("SB270"). In 2016, the California voters ratified SB270 pursuant to Proposition 67. As anyone who has shopped for groceries in California in the past decade is familiar, SB270 prohibits retailers from supplying free bags to customers at checkout and instead requires retailers to charge consumers for the bags that they need. By implementing a mandatory purchase fee, SB270 sought to change consumer behavior by incentivizing customers to bring their own bags to stores when shopping to avoid having to purchase their shopping bags at checkout.

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[1] Tom Udall and Alan Lowenthal, *Op-Ed: More than 90% of U.S. plastic waste is never recycled. Here's how we can change that*, L.A. TIMES (Feb. 21, 2020, 3:01 AM) https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s.

[2] Associated Press, *Study: 1 to 2 million tons a year of U.S. plastic trash goes astray*, L.A. TIMES (Oct. 30, 2020, 11:03 AM) https://www.latimes.com/world-nation/story/2020-10-30/study-1-to-2-million-tons-of-us-plastic-trash-goes-astray.

[3] Reuters, *You may be eating a credit card's worth of plastic each week: study* (June 11, 2019) https://www.reuters.com/article/us-environment-plastic-idUSKCN1TD009 (last accessed Feb. 22, 2023).

[4] Milbrandt, et al., *Quantification and Evaluation of Plastic Waste in the United States*, 183 RES., CONSERVATION AND RECYCLING (August 2022), https://www.sciencedirect.com/science/article/abs/pii/S0921344922002087.

3. SB270 does not just impose a bag fee, however. It also bans the sale of single-use plastic grocery bags altogether. And, to the extent companies wish to continue to offer grocery bags made from plastic film ("Plastic Bags"), SB270 requires those bags to be reusable, recyclable in California, and that any recyclability labeling on the bags complies with the Federal Trade Commission's "Green Guides." However, defendants Revolution Sustainable Solutions, LLC and Revolution Plastics Holdings LLC (collectively "Revolution"), Stater Bros. Markets ("Stater Bros") and AM Testing & Services, Inc. ("AM Testing") (collectively "Defendants") distribute, sell and certify Plastic Bags that are not recyclable in California and include labeling that violates the Green Guides. The Plastic Bags produced by Revolution, sold by Stater Bros, and certified by AM Testing are referred to herein as "Defendants' Plastic Bags."

4. There can be no serious question Defendants' Plastic Bags are not recyclable in California—or anywhere for that matter. Generally, for a product to be considered "recyclable," it must meet three basic criteria. *First*, consumers must have access to recycling facilities that accept the product. *Second*, those recycling facilities must be able to separate the product from the general waste stream and isolate it by sorting it into its own unique bale. And *third*, there must be end markets willing and able to purchase the material to convert it into an entirely new product or for use in a new product. These basic requirements have been codified in various places, including California's Public Resources Code and Business & Professions Code.

5. Defendants prominently portray and certify Defendants' Plastic Bags as recyclable despite not meeting any of these criteria. Very few California consumers have access to curbside or any other recycling programs that accept Plastic Bags, numerous industry studies explain the near impossibility of properly separating and isolating the Plastic Bags into marketable bales, and there is no end market for Plastic Bags to be turned into a new product. As a result, the Plastic Bags end up in landfills, incinerators, and the natural environment.

6. The overwhelming majority of curbside recycling programs in California refuse to accept Plastic Bags. And recent efforts by Plaintiff and others have revealed that, to the extent retail stores even provide plastic film "recycling" bins at their stores (very few do), those stores simply send the materials they collect to landfills and incinerators. This is not speculation—

multiple tracking devices such as Apple AirTags placed in Plastic Bags that were deposited in plastic film recycling bins at various store locations throughout California revealed that all of the Plastic Bags that have reached their final destination were taken to landfills or incinerators throughout California or shipped to Mexico.

7. Despite this, Defendants' Plastic Bags prominently display the well-known "chasing arrows" symbol in an effort to deceive consumers into thinking that the Plastic Bags are recyclable when they are not. Indeed, Defendants' Plastic Bags also display instructions for consumers to return the Plastic Bags to store collection bins for recycling—the same bins Plaintiff found are ultimately sent to landfills or incinerators. Because Defendants' Plastic Bags are not recyclable in California, and because the recycling claims on Defendants' Plastic Bags do not comply with the Green Guides, Defendants' Plastic Bags do not satisfy the requirements of SB270.

8. In addition to SB270, other laws and regulations such as California's Environmental Marketing Claims Act ("EMCA") and the Green Guides seek to curb the tide of plastic pollution by ensuring that consumers can trust the environmental and recyclability claims that manufacturers and retailers make, which in turn allows the growing number of environmentally-conscious consumers to make purchase decisions that are best for the environment.

9. Indeed, both the EMCA and Green Guides not only identify a wide range of terms and phrases that should be considered environmental claims, but also set standards for what those terms mean. Cal. Bus. & Prof. Code § 17580. Both the EMCA and Green Guides also require that companies asserting that their products are "green," "environmentally friendly," "ecologically safe," or "recyclable" have a reasonable basis to make such a claim and that those companies provide substantiation for any recyclable claims to any member of the public upon request. *See* Cal. Bus. & Prof. Code § 17580; 16 C.F.R. § 260.2.

10. Following the EMCA and Green Guides, LBC requested that Defendants Revolution and Stater Bros substantiate the recyclability claims they make on Defendants' Plastic Bags. However, Defendant Stater Bros has not provided any such substantiation documentation,

and Defendant Revolution has not provided sufficient documentation substantiating the recycling representations on Defendants' Plastic Bags, nor provided any competent and reliable scientific evidence to substantiate that Defendants' Plastic Bags are recyclable. In fact, neither Defendant provided to LBC any of the information about the environmental attributes of Defendants' Plastic Bags that the EMCA requires those Defendants to maintain in written form.

11. Defendants' actions described above and herein violate multiple California laws making their actions unlawful and unfair under California's Unfair Competition Law, Business and Professions Code § 17200, *et seq*.

PARTIES

A. Plaintiff The Last Beach Cleanup

12. LBC was established in 2019 by its founder Jan Dell as a 501(c)(3) non-profit, with a mission to protect public spaces, wildlife, humans, and the natural environment from the myriad harms related to plastic pollution. LBC's work quickly gained recognition, with National Geographic naming Ms. Dell a National Geographic Explorer the same year she founded LBC and awarding LBC a National Geographic Grant to develop the Global Cities Preventing Plastic Pollution program.

13. LBC has standing to bring this action because Defendants' actions of unlawfully selling Defendants' Plastic Bags and of failing to substantiate their claims that the Plastic Bags are recyclable, have frustrated LBC's mission to protect the natural environment around the world, promote legitimate recycling efforts, promote sustainable business practices, and ensure that consumers are not misled by unsubstantiated greenwashing claims. Defendants' unlawful and unfair business practices have caused LBC to divert resources to respond to Defendants' actions. Thus, LBC has lost money or property and has suffered injury in fact due to Defendants' actions of unlawfully selling the Plastic Bags and of failing to substantiate their recycling claims on Defendants' Plastic Bags.

14. To further its mission to reduce plastics pollution and promote legitimate recycling, LBC has spent thousands of hours planning and executing studies, engaging in

research, conducting surveys, publishing findings, working with other non-profits and non-governmental organizations, and advocating for practical solutions and efforts to reduce the problems associated with plastics pollution.

15. LBC has performed wide-ranging research related to plastic recycling and pollution, including research regarding: (i) plastic waste exports; (ii) plastic recyclability; (iii) plastic recyclability claims made by manufacturers, retailers, and other companies; (iv) plastic waste and recyclability regulations; and (v) environmental harms caused by plastics.

16. As a sample of these efforts, a number of published reports have centered on or relied upon LBC's work and expertise, including:

- *Circular Claims Fall Flat Again: 2022 Update*[5]
- *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and Figures*[6]
- *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability* [7]
- *Deception by the Numbers: American Chemistry Council Claims about Chemical Recycling Investments Fail to Hold up to Scrutiny*,[8]
- *All Talk and No Recycling: An Investigation of the U.S. "Chemical Recycling" Industry*[9]
- *Fact Sheet: "Recycle" By Mail is a Major Climate Fail* [10]

[5] *Circular Claims Fall Flat Again: 2022 Update,* Greenpeace USA (Oct 24, 2022), https://www.greenpeace.org/usa/reports/circular-claims-fall-flat-again/

[6] *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and Figures*, THE LAST BEACH CLEANUP (May 4, 2022), https://www.lastbeachcleanup.org/_files/ugd/dba7d7_5ae55cdb66d241239e8ae123c96ec9b8.pdf.

[7] John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, GREENPEACE REPORTS (Feb. 18, 2020), https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf.

[8] Ivy Schlegel, *Deception by the Numbers: American Chemistry Council Claims about Chemical Recycling Investments Fail to Hold up to Scrutiny*, GREENPEACE REPORTS (Sep. 9, 2020), https://www.greenpeace.org/usa/wp-content/uploads/2020/09/GP_Deception-by-the-Numbers-3.pdf.

[9] Denise Patel, et al., *All Talk and No Recycling: An Investigation of the U.S. "Chemical Recycling" Industry*, GAIA (2020), https://www.no-burn.org/wp-content/uploads/2021/11/All-Talk-and-No-Recycling_July-28-1.pdf.

[10] *Fact Sheet: "Recycle" By Mail is a Major Climate Fail*, THE LAST BEACH CLEANUP (June 28, 2021), https://www.lastbeachcleanup.org/_files/ugd/dba7d7_f186aca8c80642f885125557f427ecde.pdf.

- *The Dirty Truth about Disposable Foodware: The Mismatched Costs and Benefits of U.S. Food Service Disposables and What to Do About Them*[11]
- *Breaking the Plastic Wave: Top Findings for Preventing Plastic Pollution*[12]

17. LBC has also conducted a wide range of surveys related to plastic recycling capacity and plastic pollution. These surveys include:

- 2022 U.S. Post-Consumer Plastic Recycling Survey[13]
- 2020 U.S. Post-Consumer Plastic Recycling Survey[14]
- 2020 California Consumer Plastic Recycling Survey[15]
- Global Fast Food Plastic Survey[16]
- Harms of Plastic Exports[17]
- Companies Committed to Stopping Plastic Waste Exports[18]
- County Laws on Plastic Products[19]
- Fires at Plastic Recycling Facilities[20]

18. LBC invested significant time and resources in conducting these surveys and continues to invest additional time and resources each month to update these and other surveys to

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[11] Ellie Moss & Rich Grousset, *The Dirty Truth about Disposable Foodware: The Mismatched Costs and Benefits of U.S. Food Service Disposables and What to Do About Them*, OVERBROOK FOUNDATION (Feb. 2020), https://90e2bb46-39d9-49f9-a040-b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf.

[12] Simon Reddy & Winny Lau, *Breaking the Plastic Wave: Top Findings for Preventing Plastic Pollution*, PEW (July 23, 2020), accessible at https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings.

[13] *2022 U.S. Post-Consumer Plastic Recycling Survey*, The Last Beach Cleanup, https://www.lastbeachcleanup.org/2022usplasticsrecyclingsurvey (last accessed Feb. 23, 2023).

[14] *2020 U.S. Post-Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/usplasticrecyclingsurvey (last accessed Feb. 23, 2023).

[15] *2020 California Consumer Plastic Recycling Survey*, THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/california (last accessed Feb. 23,, 2023).

[16] *Global Fast Food Plastic Survey Map*, THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/nofastfoodplastic (last accessed Feb. 23, 2023).

[17] *Harms of Plastic Exports,* THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/plastic-waste-exports (last accessed Feb. 23, 2023).

[18] *End Plastic Waste Exports*, THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/end-plastic-waste-exports (last accessed Feb. 23, 2023).

[19] *Country Laws on Plastic Products*, THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/countrylaws (last accessed Feb. 23, 2023).

[20] *Fires at Plastic Recycling Facilities,* THE LAST BEACH CLEANUP, https://www.lastbeachcleanup.org/fires (last accessed Feb. 23, 2023).

ensure they are kept current. A portion of this work necessarily relates to the plastic pollution Defendants caused, and continue to cause, through their unlawful and unfair acts, which requires LBC to spend additional resources on this work and to divert its resources from other work it could and would perform.

19. In addition to its research and surveys, LBC is also engaged in consumer education through which it seeks to limit the local and global impacts of plastic pollution by communicating its findings to the public through multimedia outlets and peer-reviewed publications. LBC also seeks to stop companies from using misleading recycling and environmental claims by educating consumers in an attempt to stop recyclability claims (like those at issue here) from misleading consumers. LBC performs its education outreach through print and television media, websites and blogs, lectures, and school outreach. LBC's website presents a portion of its research, surveys, analyses, and articles.[21] LBC has had to divert resources away from other educational topics to instead educate consumers on Defendants' misleading recyclable claims and the harm caused by Defendants' Plastic Bags.

20. Since its founding, one of LBC's top priorities has been researching and understanding plastic film shopping bags like the ones at issue and the "store drop-off" programs through which some retailers supposedly collect used plastic film, including Plastic Bags, for recycling. LBC has invested time and resources to evaluate the efficacy of these store drop-off programs, including conducting an investigation to determine whether Plastic Bags deposited at store-drop off bins were actually collected and sorted into marketable bales, and sold to reprocessors for recycling. This work included evaluating and investigating each aspect necessary for a successful recycling program, including:

(a) Product labeling and recycled content claims — LBC's investigation into product labeling and content claims included conducting store surveys, taking photos of products, and purchasing products as examples.

[21] *See generally,* https://www.lastbeachcleanup.org/ (last accessed Feb. 23, 2023).

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(b) Presence and quality of content collected in store drop-off bins — LBC's investigation into store drop-off bins included surveying retail stores throughout California to determine which stores had store drop-off bins, the types and quality of plastic film contained in those bins, and whether those bins contained contamination such as non-plastic film trash, food scraps, soda, or anything else that would prevent a recycler from accepting the material contained therein or from successfully recycling that material. LBC's work involves performing regular surveys of takeback bins and speaking with store personnel regarding the absence of bins and high contamination rates. LBC created and publicly displays a Google map identifying where drop-off bins are located and the level of contamination at those bins.[22]

(c) Purchase and transport of materials collected at stores — LBC's investigation into the purchase and transport of the plastic film material collected at the stores was done in an effort to assess the extent to which store drop-off bins contain materials that render the plastic film unsuitable for recycling. LBC has physically surveyed the materials collected from the drop-off bins for signs of contamination, such as whether the bins contained multiple types and colors of plastic film or contamination from other waste. LBC has also spent time and money purchasing tracking devices, purchasing Plastic Bags, and placing the trackers in Plastic Bags, depositing those Plastic Bags in plastic film drop-off bins in California, and monitoring the trackers to determine the ultimate destination of the Plastic Bags containing those devices. In every instance, LBC's work has confirmed that Plastic Bags placed in store drop-off bins are not being recycled but are instead being landfilled, incinerated or shipped to Mexico.

(d) Reprocessing of collected plastic bag and film waste — LBC's investigation into reprocessing has included research into, and evaluation of, the bale quality requirements of film reprocessors in California and throughout the country. This information in turn informs whether the material collected at store drop-off bins will be accepted and purchased by those reprocessors.

[22] *See Survey of Drop-Off Bins for Plastic Bags/Films*, accessible at https://www.google.com/maps/d/u/1/edit?mid=1lk_m0YjrEnmNzm7V0KuxDLaSVKuP5tdV&ll=33.68287230031227%2C-117.75662650000001&z=10 (last accessed Feb. 23, 2023).

(e) Market value for post-consumer plastic film waste — LBC's investigation into end markets includes monitoring and evaluating the value of post-consumer plastic films and regularly contacting numerous recycling businesses to determine if there are buyers for post-consumer plastic film waste.[23]

21. LBC expended substantial time and money conducting this research, which necessarily involved Defendants. Specifically, LBC visited several of Stater Bros' stores in California, purchased the Plastic Bags it sold (which are produced by Revolution and certified by AM Testing), took photographs of those Plastic Bags, investigated the validity of the recycling claims on the Plastic Bags, and requested that Defendants substantiate their recycling claims on the Plastic Bags and provide the other information about the environmental attributes of those Plastic Bags that is required by the EMCA.

22. LBC's work has formed the basis of a letter that was issued from California's Statewide Commission on Recycling Markets & Curbside Recycling (the "California Recycling Commission") to Real Party In Interest California Department of Resources Recycling and Recovery ("CalRecycle") requesting enforcement of California law with respect to recyclable claims on Plastic Bags in California, including Defendants' Plastic Bags. A portion of LBC's survey work and purchase of plastic film products was used to create the Appendix of 80 examples that accompanied the California Recycling Commission's letter.[24]

23. The California Legislature enacted SB270 to ensure that any reusable grocery bags made from plastic film in California are recyclable in the state, and that any recyclability claims on reusable grocery bags comply with the Green Guides. And the Legislature enacted section 17580 of the EMCA to ensure that companies maintain adequate records that products marketed

[23] These efforts have been documented by Karine Vann in *The Unfulfilled Promises of Plastic Film Recycling* (Jan. 4, 2021), https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/; and Katherine Martinko in *Don't Believe the 'Store Drop-Off' Label When it Comes to Plastic Packaging* (Updated June 15, 2021), https://www.treehugger.com/plastic-packaging-store-drop-off-label-5188913.

[24] *See* California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at: https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9). The Plastic Bags are identified in the accompanying Appendix on page 68.

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as recyclable are actually recyclable and otherwise beneficial to the environment, and to ensure public access to such records. Without an injunction requiring Defendants to comply with these laws, LBC will continue to divert resources to investigate and counteract Defendants' violations of law to ensure that Defendants' Plastic Bags do not (1) harm the integrity of the recycling stream by preventing legitimately recyclable material from being recycled and (2) contaminate paper bales that are exported to Indonesia and other countries where the plastic bags are polluted to the environment or burned causing toxic contamination of the food supply.[25] In addition, plastic pollution caused by Defendants' sale and certification of Defendants' Plastic Bags in California and the resulting harms to California waters, coasts, communities, and marine life will continue to negatively impact LBC's efforts to protect these critical resources. In fact, even well-meaning California residents who are attempting to be environmentally conscious and follow the recycling label will inadvertently contaminate the recycling stream by placing Defendants' Plastic Bags in their recycling bins, which in turn prevents legitimately recyclable products from being recycled. Thus, relief from this Court is in the public interest by protecting the environment and the integrity of the recycling stream and is necessary to further LBC's mission of prohibiting companies from touting the environmental benefits of their products without substantiating the validity of such environmental claims.

B. Defendant Stater Bros Markets

24. Defendant Stater Bros is a California corporation with its principal place of business in San Bernardino, CA. Stater Bros has nearly 200 stores throughout Southern California where it unlawfully distributes or sells Plastic Bags that are not recyclable in California. Stater Bros impedes legitimate recycling efforts, exacerbates plastics pollution, and misleads the public by illegally selling the Plastic Bags and by representing to the public that the Plastic Bags are recyclable when they are not.

[25] Jindrich Petrlik, et al., *Plastic Waste Flooding Indonesia Leads to Toxic Chemical Contamination of the Food Chain* (December 2019), accessible at https://www.researchgate.net/publication/338225066_Plastic_waste_flooding_Indonesia_leads_to_toxic_chemical_contamination_of_the_food_chain.

C. The Revolution Defendants

25. Defendant Revolution Plastics Holdings LLC maintains its principal place of business in Vernon, California. Defendant Revolution Sustainable Solutions, LLC is headquartered in Little Rock, Arkansas and owns the trademark for Revolution Company. Both Revolution entities manufacture, distribute, or sell numerous plastic products, including agricultural plastics, plastic sheeting, trash bags, stretch films, and other plastic materials. The Revolution entities produced Plastic Bags that are not recyclable in California and illegally sold them to Stater Bros. The Revolution entities impede legitimate recycling efforts, exacerbate plastics pollution, and mislead the public by illegally selling the Plastic Bags and by representing to the public that the Plastic Bags are recyclable when they are not.

D. Real Party In Interest California Department of Resources Recycling and Recovery

26. Real Party In Interest CalRecycle is a department of the California Environmental Protection Agency. California Public Resources Code § 42280 *et. seq*. identifies CalRecycle as the department responsible under SB270 for receiving proof from producers of reusable grocery bags "demonstrating that the reusable grocery bags produced by the producer comply with the provisions of this article." California Public Resources Code § 42281.5. *See also id.* § 42282. SB270 further instructs CalRecycle to publish on its website a list of certified reusable grocery bag producers and the bags they produce. *Ibid.* California Public Resources Code § 42282(f)(3) mandates that the Court direct CalRecycle to remove Revolution from its list of certified reusable grocery bag producers if the Court determines that Revolution is not in compliance with the requirements of SB270.

E. Defendant AM Testing & Services, Inc.

27. Defendant AM Testing maintains its principal place of business in either Downers Grove, Illinois or Punta Gorda, Florida. AM Testing certifies the Plastic Bags produced by the Revolution entities and sold by Stater Bros as compliant with SB 270 even though the Plastic Bags are not recyclable in California and are not labeled in compliance with the Green Guides. By falsely certifying the Plastic Bags as compliant with SB 270, AM Testing is impeding

legitimate recycling efforts, exacerbating plastics pollution, and contributing to the public's misconception as to the recyclability of the Plastic Bags.

JURISDICTION AND VENUE

28. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10, because this case is a cause not given by statute to other trial courts. This Court also has jurisdiction over certain causes of action asserted herein pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204 and Cal. Pub. Res. Code § 42282(f), which allow enforcement in this Court.

29. This Court has general personal jurisdiction over Stater Bros because it is a California corporation and maintains its principal place of business in California. This Court also has general personal jurisdiction over Revolution Plastics Holdings LLC as it is a California corporation and maintains its principal place of business in California. This Court also has specific personal jurisdiction over Stater Bros, the Revolution entities and AM Testing because they do sufficient business in California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market through the distribution, sale, marketing, use or certification of the Plastic Bags at issue in California and/or by having such other contacts with California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice. This Court has jurisdiction over Real Party In Interest CalRecycle because it is an executive agency of the State of California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

30. Venue in the County of Los Angeles is proper under Cal. Bus. & Prof. Code § 17203, Code of Civil Procedure §§ 395 and 395.5 and Cal. Pub. Res. Code § 42282(f)(1) because this Court is a court of competent jurisdiction, the Plastic Bags are sold throughout this County, and the Court has jurisdiction over the Revolution entities.

31. Venue is further proper in the County of Los Angeles pursuant to C.C.P. § 401 because this is an action against the State, or department, officer, or other agency thereof, that may be commenced in the County of Sacramento, and therefore may also be commenced in any

county in which the California Attorney General has an office. The California Attorney General has an office in the County of Los Angeles.

FACTUAL AND LEGAL BACKGROUND

A. Plastics Pollution

32. In the past decade, humans across the globe have produced 8.3 billion metric tons of plastic, most of it in the form of disposable products and packaging that ends up as trash or pollution.[26] Of the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic waste and only 9% has been recycled.[27] A third of the single-use plastic generated ends up in the natural environment, accounting for 100 million metric tons of plastic pollution in 2016.[28] Current estimates suggest that there are over 150 million tons of plastics in the ocean.[29]

33. Despite these well-known issues, and California's stated goal of achieving a 75% recycling rate by 2020, California's recycling rate is actually in decline. According to CalRecycle, in 2014 California's recycling rate was 50%, dropping to 47% in 2015 and down to 44% in 2016.[30] And according to the California Recycling Commission, the state's recycling rate dropped to 37% in 2019.[31]

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[26] Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES, Jul. 19, 2017, https://plasticoceans.org/wp-content/uploads/2018/05/Production_use_and_fate_of_all_plastics_ever_made.pdf.

[27] *Id*.

[28] *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019, https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf at p. 6.

[29] *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR FOUNDATION AND MCKINSEY & COMPANY (2016), https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf at p. 17.

[30] *State of Disposal and Recycling in California for Calendar Year 2018,* CALRECYCLE, Apr. 6, 2020, at Pg. 26, accessible at https://www2.calrecycle.ca.gov/Publications/Details/1662.

[31] California Statewide Commission on Recycling Markets and Curbside Recycling Policy Recommendations, CALRECYCLE, https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5(last accessed Feb. 23, 2023).

34. Investigations into the proliferation of plastic pollution plaguing the natural environment have revealed what the plastics industry has known for decades—the majority of products and packaging made from plastics is not, and never will be, recycled.

35. On September 11, 2020, National Public Radio ("NPR") published an investigation illustrating the plastic industry's decades-long awareness that recycling would not keep plastic products or packaging out of landfills, incinerators, communities, or the natural environment.[32] In a 1974 speech, one industry insider stated "there is serious doubt that [recycling plastic] can ever be made viable on an economic basis."[33] Larry Thomas, former president of the Society of the Plastic Industry (known today as the Plastics Industry Association), told NPR that "if the public thinks that recycling is working, then they are not going to be as concerned about the environment."[34] The NPR investigative report details the length and expense that the plastics industry went to deceive consumers that plastic was easily recyclable, despite knowledge that the cost of recycling would never be economical. Similarly, a Canadian Broadcasting Corporation news report describes that even the recycling logo was used as a marketing tool to improve the image of plastics after environmental backlash in the 1980s.[35] According to another industry insider, "[t]here was never an enthusiastic belief that recycling was ultimately going to work in a significant way," yet the plastics industry spent millions on ads to deceive the public as to the efficacy of recycling.[36]

36. The problems associated with single-use plastics pollution in oceans and the natural environment are well-documented. The staggering amount of plastic pollution accumulating in the environment is accompanied by an array of negative side effects. For

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[32] Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*. NPR.ORG (Sep. 11, 2020, 5:00 AM), https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled.

[33] *Id*.

[34] *Id*.

[35] *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23, 2020, https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618.

[36] *Id*.

example, plastic debris is frequently ingested by marine animals and other wildlife, which can be injurious, poisonous, and deadly.[37] Floating plastic is also a vector for invasive species,[38] and plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed by humans and other animals.[39] Plastic litter on the streets and in and around our parks and beaches also degrades the quality of life for residents and visitors. Scientists have also discovered that plastic releases large amounts of methane, a powerful greenhouse gas, as it degrades.[40] Thus, plastic pollution contributes to global climate change, which affects California in the form of extreme drought, sea level rise, and more frequent and severe wildfires.[41]

37. Due to the availability of cheap raw materials to make "virgin plastic," there is essentially no market demand for most types of recycled plastic. Virgin plastic is derived from oil and natural gas and has a higher quality than recycled plastic. Recognizing the market potential from plastic production, major oil and natural gas companies have greatly expanded their petrochemical operations to increase production of plastic resins and products, which drives down the price of virgin plastic (and further contributes to climate change).[42] As a result, using virgin plastic to produce plastic products or packaging is cheaper than using recycled plastic.

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[37] Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their occurrence and implications for aquatic organisms and food safety*, FAO Fisheries and Aquaculture Technical Paper No. 615, Rome, Italy, 2017 http://www.fao.org/3/a-i7677e.pdf.

[38] *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017, Silver Spring, MD; https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf.

[39] Emma L. Teuten, et *al., Transport and release of chemicals from plastics to the environment and to wildlife*, PHILIOS TRANS R. SOC. LOND. B. BIOL. SCI, July. 27, 2009, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/.

[40] Sarah-Jeanne Royer, et al., *Production of methane and ethylene from plastic in the environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574, https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574.

[41] *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007, https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf.

[42] *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017) https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf (last accessed Feb. 23, 2023).

Recycling facilities no longer have an incentive to collect, sort, clean and reprocess plastic waste because there are almost no buyers of the resulting plastic, pellets, or other scrap materials.

38. Plastics are not inert like metal and glass. There are thousands of different plastics, each with its own composition and characteristics.[43] Plastic products can have toxic additives, absorb chemicals, and can cross-contaminate other materials during collection and recycling. According to a 2021 report published by the Canadian Government, toxicity risks in recycled plastic prohibit "the vast majority of plastic products and packaging produced" from being recycled into food grade packaging.[44]

39. And the problems are only getting worse. Historically, waste management and recycling companies in the United States shipped plastic scrap to China and other countries in the Asia for recycling. But millions of pounds of that exported plastic waste were never recycled.[45] Instead, this plastic was burned or dumped into waterways, where it was carried into the ocean.[46] For years, tons of plastic that U.S. consumers dutifully sorted and transported to recycling facilities ultimately ended up in the ocean or the natural environment. For example, in 2015 China's Yangtze River ranked highest for plastic entering the oceans.[47] That year, 333,000 tons

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[43] *Types of Plastic: How Many Kinds of Plastics are There?* PLASTICSMAKEITPOSSIBLE.COM (last updated Aug. 2, 2018), https://www.plasticsmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/.

[44] *Accessing the State of Food Grade Recycled Resin in Canada & the United States*, STINA (2021) at Pg. 4, https://www.plasticsmarkets.org/jsfcontent/ECCC_Food_Grade_Report_Oct_2021_jsf_1.pdf (last accessed Feb. 23, 2023).

[45] Kara Lavender Law, et al. *The United States' contribution of plastic waste to land and ocean*, SCI. ADV., Oct. 30, 2020, Vol. 6, no. 44, https://advances.sciencemag.org/content/6/44/eabd0288.

[46] Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn't Want it?*, NPR.ORG (Mar. 13, 2019, 4:28 PM ET), https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it; *see also Discarded: Communities on the Frontlines of the Global Plastic Crisis,* GAIA, Apr. 2019, https://www.no-burn.org/wp-content/uploads/2022/02/Report-July-12-2019-Spreads-no-marks-1.pdf.

[47] Laurent C.M. Lebreton, et al., *River plastic emissions to the world's oceans*, NAT. COMMUN. Jun. 7, 2017, 8:15611, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467230/.

of plastic were deposited into the ocean from the Yangtze River, more than double the amount for the river with the next highest amount.[48]

40. In February 2013, based on the high amounts of low-value and contaminated plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort aimed at curtailing the amount of contaminated "recyclables" and waste that was being sent to China.[49] China began inspecting 70 percent of imported containers filled with "recyclables" and started cracking down on shippers and recyclers for shipping low-value and contaminated plastic waste.[50] Despite manufacturers' and recyclers' awareness of China's refusal to accept low-value and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.[51]

41. In February 2017, in response to the continued shipment of low-value and contaminated plastic waste, China announced its National Sword policy, which banned the importation of certain solid waste and set strict contamination limits on recyclable material. Because of the National Sword policy, to the extent they ever existed at all, end markets for recycling plastic film such as the Plastic Bags have essentially vanished.[52] One year after China's National Sword Policy, China's plastics imports plummeted by 99 percent.[53] Following enactment of the National Sword policy other countries in the Far East followed suit by banning imports of low-value and contaminated plastics that had long been polluting their environments.[54]

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[48] *Id.*

[49] *What Operation Green Fence Has Meant for Recycling*, WASTE 360, https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling (last accessed Feb. 23, 2023).

[50] *Id.*

[51] Christopher Joyce, *supra* note 47.

[52] Liz Zarka, *Recycling's Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019, https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842; *see also* Cheryl Katz., *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019, https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling.

[53] Cheryl Katz, *supra* note 53.

[54] *Why Some Countries Are Shipping Back Plastic Waste*, BBC News, https://www.bbc.com/news/world-48444874 (last accessed Feb. 23, 2023); *see also International*

In May 2019, 187 countries decided to significantly restrict international trade in plastic scrap and waste to help address the improper disposal of plastic pollution, through the Basel Convention Plastic Waste Amendments.[55] The Basel Convention prohibits export of mixed plastic waste to countries who are not members of the Organization for Economic Co-operation and Development.[56] Due to increased regulations and restrictions on importing plastic waste, waste management and recycling companies can no longer sell many types of used plastic at prices that cover their transportation and processing costs, providing them with no incentive to do so.

42. Plastic shopping bag pollution in particular is receiving widespread international attention as illustrated on the cover of the June 2018 edition of National Geographic headlined "Planet or Plastic?"[57] Americans throw away an estimated 100 billion plastic bags a year, and the average bag takes up to 1,000 years to break down.[58] In 2018 in the United States, 4.2 million tons of post-consumer plastic bag, sack, and wrap waste were generated, but only 0.42 million tons were recycled.[59]

Policies Affecting Global Commodity Markets, Cal Recycle, https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies (last accessed Feb. 23, 2023).

[55] *New International Requirements For The Export And Import of Plastic Recyclables And Waste,* U.S. EPA, last updated February 17, 2021, https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#:~:text=the%20Basel%20Convention.-,What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,most%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20required%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste.

[56] *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, open for signature Mar. 23, 1989, adopted May 5, 1992, U.N.T.S. vol. 1673, Amendments to Annexes II, VII and IX, *Plastic Waste Amendments*, effective Jan. 1, 2021, http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx (last accessed Feb. 23, 2023).

[57] https://www.nationalgeographic.com/environment/planetorplastic/.

[58] https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html

[59] J. Meert, et al., Impact of Plastic Bag Bans on Retail Return Polyethylene Film Recycling Contamination Rates and Speciation, Waste Management 135 (2021) 234-242.

B. California's Single Use Carryout Bag Ban – SB270

43. In an effort to stem this tide of plastics pollution, California, as well as other states, counties, and municipalities, have enacted a multitude of laws like SB270 in an attempt to limit the use of plastics by businesses and consumers alike.

44. In general, SB270 prohibits retailers from supplying free bags to customers at checkout and instead requires retailers to charge customers for the bags that they use. Cal. Pub. Res. Code § 42283. By implementing a mandatory purchase fee, SB270 sought to change consumer behavior by persuading customers to bring their own reusable bags to stores when shopping in order to avoid having to purchase their shopping bags at checkout.

45. SB270 also prohibits the sale of single-use plastic grocery bags at most California retail outlets. Retailers have a number of options instead of selling Plastic Bags: they could, *inter alia*, (i) opt out of SB270 altogether by refusing to provide any bag; (ii) provide only paper bags (that meet certain criteria) for a cost of $.10 or more; or (iii) provide reusable grocery bags made of other more durable materials, such as nylon or Tyvek, for a cost of at least $.10. *Id*. § 42283.

46. Most pertinent to this action, SB270 also requires manufacturers and retailers manufacturing, distributing, or selling Plastic Bags to ensure that those bags are recyclable in California. *Id*. § 42281(b)(1)(C). And, to the extent a reusable grocery bag made of any material includes a claim that the bag is recyclable, SB270 requires that the bag's labeling must comply with the Green Guides' restrictions on recyclability claims. *Id.* §§ 42281(a)(4)(D) and (a)(6).

47. SB270 contains a certification requirement as well. Under the law, retailers and bag manufacturers who choose to sell Plastic Bags in California are required to sell Plastic Bags from certified producers. *Id*. § 42281(a). To obtain a certification, bag manufacturers submit specific information enumerated under SB270 to CalRecycle. *Id*. § 42282. SB270 further requires CalRecycle to maintain a list of entities who have received certification, known as the Certified Reusable Grocery Bag Producers list, as well as an identification of the bags they produce that have been certified to satisfy SB270. *Id*.

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48. Under SB270, a producer of Plastic Bags must provide CalRecycle with proof of certification from a third-party certification entity, submitted under penalty of perjury, that the producer's Plastic Bags comply with SB270. *Id*. §§ 42281.5 and 42282. Defendant AM Testing acts as the third-party certification entity for the Plastic Bags sold by Stater Bros and produced by Revolution.

49. CalRecycle takes the position that its review of the certification information submitted by bag producers under SB270 is a ministerial act in which the agency simply reviews the documentation to ensure it is complete. CalRecycle does not perform any evaluation of whether reusable grocery bags actually satisfy the requirements of SB270, including the requirements that Plastic Bags be recyclable in California or that any reusable grocery bag with a recyclability claim be labeled in accordance with the Green Guides.

C. Defendants' Plastic Bags Are Not In Compliance With SB270.

50. SB270 requires that manufacturers and retailers sell only recyclable Plastic Bags with recyclability labels that comply with the Green Guides, and that certifiers like AM Testing have certified as in compliance with SB 270. AM Testing falsely certifies Defendants' Plastic Bags as satisfying these requirements of SB270.

(a) Recyclability Standards and Labeling

51. In general, items are only recyclable if they meet three basic criteria: *First*, consumers must have access to recycling facilities that accept the product. *Second*, those recycling facilities must be able to separate the product from the general waste stream and isolate it by sorting it into its own unique bale. And *third*, there must be end markets willing and able to purchase the material to convert it into an entirely new product or for use in a new product. These three basic criteria are codified in multiple places under both California and federal law.

52. California law incorporates the Green Guides with respect to labeling products and packaging as recyclable. *See, e.g.,* Cal. Pub. Res. Code §§ 42281(a)(4)(D) (for any reusable grocery bag labeled as recyclable, the recycling label must comply with the Green Guides); Cal. Bus. & Prof. Code § 17580.5(b) (environmental marketing claim is deemed compliant with

EMCA if it complies with Green Guides). Under the Green Guides, a product is only recyclable if "it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R. § 260.12(a). Indeed, the Green Guides specifically preclude entities from marketing products as recyclable: (1) "[i]f any component significantly limits the ability to recycle the item, any recyclable claim would be deceptive;" and (2) "an item that is made from recyclable material, but, because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable." 16 C.F.R. §§ 260.12(a) and (d); *see also id.* § 260.12(d), Examples 2 and 6. And in promulgating the current recycling definition that encompasses accessibility, sortability, and end markets, the FTC clarified that "[f]or a product to be called recyclable, there must be an established recycling program, municipal or private, through which the product *will be* converted into, or used in, another product or package." *See* 63 Fed. Reg. 84, 24247 (May 1, 1998) (emphasis added). As the FTC has stated, "while a product may be technically recyclable, if a program is not available allowing consumers to recycle the product, there is no real value to consumers." *Id*. at 24243.

53. The Green Guides instruct marketers to "clearly and prominently qualify recyclable claims…to avoid deception about the availability of recycling programs and collection sites to consumers." C.F.R. § 260.12(b). Marketers may only make unqualified recyclable claims when recycling facilities are available to a substantial majority (at least 60 percent) of consumers or communities where the item is sold. *Id*. at § 260.12(b)(1).

54. The Green Guides specifically identify qualifications that may be misleading or deceptive to a reasonable consumer. In fact, the Green Guides warn about plastic film, such as trash bags: "Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the

bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists." 16 C.F.R. § 260.3(c), Example 2.

55. Other portions of California law make it clear that theoretical recyclability is insufficient to make a product or packaging recyclable. For instance, California's Public Resources Code defines recycling is "the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace." Cal. Pub. Res. Code § 40180.

56. Under the Sustainable Packaging for The State of California Act of 2018 (the "Sustainable Packaging Act"), food service packaging is considered recyclable only if it is regularly: (1) collected, separated, and cleansed for recycling by recycling service providers; (2) sorted and aggregated into defined streams for recycling processes; (3) processed and reclaimed or recycled with commercial recycling services; (4) becomes feedstock that is used in the production of new products; and (5) recycled in sufficient quantity, and is of sufficient quality, to maintain a market value. Cal. Pub. Res. Code § 42370.2(d)(1)-(6). Indeed, under the Sustainable Packaging Act, Real Party In Interest CalRecycle is responsible for ensuring purportedly recyclable products meet this definition, and on July 12, 2022, CalRecycle published its List of Approved Food Service Packaging—*which does not include a single plastic item*.[60] In yet another instance, under the recently passed SB 343, the California Public Resources Code defines recyclable as those items that are: (i) "collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state"; (ii) "sorted into defined streams for recycling processes" by facilities that collectively serve at least 60 percent of the California population; and (iii) those "defined streams reclaimed at a reclaiming facility." Cal. Pub. Res. Code § 42355.51(d)(2).

[60] *List of Approved Food Service Packaging,* CALRECYCLE, published July 12, 2022, https://calrecycle.ca.gov/packaging/statefoodservice/list/ (last accessed Feb. 23, 2023).

(b) Defendants' Plastic Bags Are Not Recyclable and Are Not Labeled In Compliance With The Green Guides.

57. Defendants' Plastic Bags do not meet any of these definitions of recyclable or the three main criteria that the definitions all contain, nor do they satisfy any other commonly used and understood definition of recyclable. Thus, Defendants' Plastic Bags are not recyclable in California (or anywhere else), and the labeling of Defendants' Plastic Bags violates the Green Guides.

58. Defendants' Plastic Bags are made of high-density polyethylene, also known as #2 HDPE plastic. As the California Recycling Commission concluded, only three plastic item types are recyclable in California: Plastic #1 PET Bottles without shrink sleeves or other non-recyclable components, Plastic #2 HDPE bottles (natural) without shrink sleeves or other non-recyclable components, and Plastic #2 HDPE bottles (color) without shrink sleeves or non-recyclable components.[61] The California Recycling Commission therefore determined that Defendants' Plastic Bags are not recyclable in California.

59. Defendants' Plastic Bags are also not recyclable through store drop-off programs. In fact, the recently passed SB343 makes clear that for a product to be considered recyclable through a non-curbside collection program, that program must recover at least 60% of the product in the program and have "sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form." Cal. Pub. Res. Code § 42355.51(d)(5)(A).

60. Defendants' Plastic Bags include the following unqualified recyclable representations: "100% recyclable," "We are recycling and manufacturing reUSAble bags out of farm products once disposed of," "please reuse and recycle this bag," and multiple unqualified chasing arrows symbols. As there are virtually no recycling facilities available for consumers or

[61] California's Statewide Commission on Recycling Markets and Curbside Recycling Policy Recommendations ("California Recycling Report"), Submitted June 25, 2021, at p. 94, accessible at https://www.calrecycle.ca.gov/markets/commission.

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communities where Defendants' Plastic Bags are sold, Defendants' Plastic Bags in no way meet the 60 percent threshold for an unqualified recycling claim under the Green Guides.

61. In addition to these unqualified recyclable representations, the labels of Defendants' Plastic Bags include the following qualified representations: "Recycle if Clean & Dry," "Please recycle bags in participating curbside recycling programs and stores," and a chasing arrows symbol with the words "Store Drop-off" in the center. There are several problems with relying on consumers to return Defendants' Plastic Bags to a store for recycling. First, most consumers will not see past the multiple unqualified recycling representations on Defendants' Plastic Bags and will simply place Defendants' Plastic Bags in their at-home recycling bins for curbside recycling collection. Indeed, the California Recycling Commission has determined that: (1) flexible plastic bags are a top source of contamination in curbside recycling bins; and (2) more than half of Californians think plastic bags are accepted in their curbside recycling program, regardless of whether that is true.[62] Second, very few drop-off bins are offered to California consumers. In the past, California required supermarkets of a certain size to maintain a plastic carryout bag collection bin, but that rule expired on January 1, 2020. *See* Cal. Pub. Res. Code § 42257. Consequently, many retail stores in California, including Stater Bros, no longer maintain store drop-off bins for consumers to return their Plastic Bags for "recycling." Therefore, even those few consumers who understand that they need to return Defendants' Plastic Bags to a store for recycling, and who then make the effort to do so, will be hard-pressed to find a collection bin. For example, according to BagandFilmRecycling.org, there are only five locations in the City of Los Angeles that have a store drop-off bin.[63] Third, the few Plastic Bags that may be returned to in-store collection bins are not actually recycled, often because store drop-off bins typically contain a mix of plastic film and other contamination such as trash, compostable bags, color plastics, and myriad other contaminants making Defendants' Plastic Bags unlikely to meet the

[62] California Recycling Report, pp. 105-9.

[63] https://bagandfilmrecycling.org/ (last accessed Feb, 23, 2023) (This website is maintained by the Plastic Division of the American Chemistry Council and the American Recyclable Plastic Bag Alliance, industry groups which, among other activities, lobby for preemption of bans and fees on plastic bags.)

quality specifications of those few plastic film recyclers that exist. As a result, Plastic Bags placed in these bins are not actually recycled.

62. Work performed by LBC reveals this reality. As part of LBC's research and analysis of store drop-off programs, it placed tracking devices in various drop-off bins located at stores throughout California. In each case to date where those trackers have reached their final destination, the trackers revealed the material from that bin was taken to a landfill, an incinerator, or shipped to Mexico—not a recycler.

63. There is also very little capacity to recycle plastic film in California or anywhere else, and colored, mixed, and contaminated plastic film is not a desirable material for any processor.[64] The repurposing of material used to make one product into a new product or material fully "closes the loop" of the recycling process (hence the commonly used and widely recognized "chasing arrows" symbol for recycling). The color and quality of the material that is collected into bales plays a major role in whether that material will be ultimately recycled. For instance, colored plastic film is not a desirable material by processors who seek to make clear plastic pellets for the manufacturing of new products. Processors also do not want highly contaminated material bales due to the harms contamination causes to equipment and the production of low-quality materials and products.[65]

64. Defendants' Plastic Bags do not meet any of the necessary criteria to qualify as "recyclable" as the highly improbable possibility that a consumer returns Defendants' Plastic Bags to one of the handful of stores offering store drop-off bins to potentially be recycled and sent to a plastic film processor does not make Defendants' Plastic Bags "recyclable in this state" as required by SB270. And because Defendants' Plastic Bags are not recyclable, Defendants cannot make any recycling claims as to Defendants' Plastic Bags without running afoul of the

[64] The California Recycling Commission found that, based on a survey of plastic film processors in California and Nevada, there is only capacity to recycle about 3% of the plastic film that is generated as waste in California. California Recycling Report, p. 106.

[65] Karine Vann, *The Unfulfilled Promises of Plastic Film Recycling* (Jan. 4, 2021), https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/.

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Green Guides. At a minimum, Defendants' Plastic Bags would need to include much stronger and more prominent qualifications in order to satisfy the Green Guides.

65. Defendants' Plastic Bags include other representations that exacerbate the deceptiveness of their recycling claims. For instance, Defendants' Plastic Bags are labeled, "Believe in Better Plastics," "Our goal is simple-divert plastic from going into landfills," and "give earth a second chance." These statements are intended to further consumer misperception as to the recyclability of Defendants' Plastic Bags.

66. Indeed, based on LBC's investigation, the California Recycling Commission recently determined that the use of the chasing arrows symbol, any variation of the word "recyclable," or "Store Drop-Off" recycling representations on plastic bags and films runs afoul of California labeling laws.[66] The California Recycling Commission found that:

> Flexible plastic bags and film are a major source of contamination in curbside recycling bins. The flexible plastic materials are harming curbside recycling systems by clogging machinery in material recovery facilities (MRFs) and fiber processors. There is not a comprehensive store takeback system for plastic bags or film in California. In MRFs, the plastic bags and film contaminate paper and cardboard bales and lower the quality and material value of the paper bales. Flexible plastic bags and films that depict the word 'recycle' or the chasing arrows recycling symbol cause consumer confusion and contribute to contamination.

67. As a result, the California Recycling Commission suggested that California's existing laws be enforced to require retailers and product manufacturers to remove the word "recycle, "recyclable," and/or the recycling symbol from plastic bags and plastic films. It further stated that the recyclable labels used on many plastic bags and films in California are not legal and contribute to consumer confusion and contamination. In addition, the California Recycling Commission specifically identified the store drop-off statement as problematic because there is

[66] Letter Dated December 3, 2021 from the California Recycling Commission to Rachel Machi-Wagoner, available at, https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9.

not a comprehensive takeback system in California. It stated: "California law (Cal. Bus. & Prof. Code § 17580 and Cal. Pub. Res. Code § 42355.5) and the Green Guides (16 C.F.R. § 260.2) require substantiation for recycling claims such as this," and "it is our opinion that this claim is not provable. This text should be eliminated from [plastic bags]." The California Recycling Commission enumerated 80 examples of plastic bags or film that illegally contained a recycling representation, and specifically identified Defendants' Plastic Bags as one of those examples.[67]

68. The California Attorney General has also taken note of these issues as well, and in late 2022 sent letters to six plastic bag manufacturers, including Revolution, demanding that those manufacturers substantiate their recyclable claims. As the Attorney General worded it:

> Most Californians are under the impression that plastic bags are recyclable . . . . It's a logical conclusion: California has banned single-use plastics, and we see the 'chasing arrows' symbol or 100% recyclable printed on most every bag we get from the grocery store. But astonishingly, there's a good chance that most, if not all, these bags are not actually recyclable in California.

69. Even the plastics industry admits Defendants' Plastic Bags are not recyclable. An industry-sponsored labeling organization, How2Recycle, recently stated that the ability of the store drop-off stream to alleviate the packaging industry's end-of-life challenges with flexible packaging is limited.[68] How2Recycle is an organization created by the plastics industry to promote a standardized labeling system for packaging that its members may pay a fee to use. How2Recycle stated:

> Like all recycling streams, market volatility in the global commodities context is a challenge. But for Store Drop-off in particular, the demand for the material, its current recycling rates, and the challenges inherent in Store Drop-off collection (consumer convenience, reliance on retailer participation), along with the enormous volumes of

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[67] *See* California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at: https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9). Defendants' Plastic Bags are identified in the accompanying Appendix on page 68.

[68] *REPORT: The Future of Store Drop-Off Recyclability,* HOW2RECYCLE (August 10, 2020), https://how2recycle.info/news/2020/report-the-future-of-store-drop-off-recyclability.

flexible packaging that are being produced, suggest that its long-term potential for all or most flexible packaging is insufficient to meet recovery needs. Accordingly, How2Recycle recommends that brands, packaging producers and resin manufacturers critically analyze what wide-reaching collection, sortation, reprocessing and market mechanisms and investments are required to scale recyclability of flexible packaging for the far future.

70. Separately, a 2017 report on Film Recycling Investment found that only 7% of retail bags that are available for recycling are returned by residents for recycling.[69] That report further found that of the approximately 300 million pounds of plastic film that reprocessing facilities receive a year, only 10 million pounds (approximately 3%) are able to be marketed due to the poor quality of plastic film and the lack of recycling markets for such low-value plastic.

71. Similarly, according to the California Recycling Commission, a survey of plastic film processors in California and Nevada showed that there is only capacity to recycle about 3% of California's plastic film waste.[70] This is 3% of *all* plastic film waste, including agricultural plastics and other film, suggesting that the capacity to recycle Plastic Bags at issue is actually much less. Based on these data, even if more consumers returned plastic film for drop-off recycling, there is still insufficient market demand and plastic film processing capacity to actually recycle it. Due to the lack of recycling markets for plastic film, 93% of California MRFs do not even accept it, and the reprocessing facilities that do accept it do not have the capacity to recycle large quantities of plastic film.[71] Ultimately, Defendants' Plastic Bags are not accepted by most MRFs nor can they be collected, sorted, or separated from the general waste stream. And there is no end market to recycle such Plastic Bags in California.

[69] *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION (2017), at p. 19.

[70] California's Statewide Commission on Recycling Markets and Curbside Recycling submitted June 25, 2021, at p. 106, accessible at https://calrecycle.ca.gov/markets/commission/.

[71] *Id*.

72. A major problem caused by Defendants selling and certifying Defendants' Plastic Bags as recyclable is contamination of legitimate recycling streams. For instance, according to the Recycling Partnership, "plastic bags cause MRF operators to shut down the recycling line many times a day to cut off bags that have wrapped around equipment. This maintenance shut down reduces throughput for a facility, raises cost of labor to sort materials and maintain equipment, increases waste coming out of the MRF, and puts workers at risk of injury when they are performing maintenance."[72]

73. Defendants continue to sell, distribute and certify Defendants' Plastic Bags in California even though they are not recyclable in this state. Defendants have done so despite widespread acknowledgment that end markets for plastic waste—particularly plastic film waste—are, and have been, dwindling, and that the majority of plastic film labeled as recyclable in California and other regions in the United States ends up in landfills, incinerators, communities, and the natural environment. By selling and certifying Defendants' Plastic Bags in California even though they are not recyclable, Defendants are violating California law.

D. Stater Bros' and Revolution's Plastic Bags Are Not In Compliance with EMCA or the Green Guides, and They Have Not, And Cannot, Substantiate Their Recyclable Claims.

74. Working in tandem with laws like SB270, and in recognition of the ever-multiplying efforts by businesses and industry groups to capitalize on consumer preferences for "green" goods, States and the Federal Government have also enacted laws and regulations seeking to limit and correct untruthful, deceptive, or misleading environmental marketing claims.

75. California, for example, enacted the EMCA, which makes it "unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied." Cal. Bus. & Prof. Code § 17580.5. Pursuant to that section, the term "environmental marketing claim" includes any claim contained in the Green Guides. *Id.*; *see also* 16 C.F.R. § 260.1, *et seq.* Under the Green Guides, "[i]t is deceptive to misrepresent, directly or

[72] Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING PARTNERSHIP, Apr. 2020, https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf at p. 13.

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by implication, that a product or package is recyclable." 16 C.F.R. § 260.12(a). By misrepresenting that their Plastic Bags are recyclable, Defendants Stater Bros and Revolution are violating California law.

76. In addition, under the EMCA, "[a]ny person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through use of such terms as 'environmental choice,' 'ecologically friendly,' 'earth friendly,' 'environmentally friendly,' 'ecologically sound,' 'environmentally sound,' 'environmentally safe,' 'ecologically safe,' 'environmentally lite,' 'green product,' or any other like term, or through the use of a chasing arrows symbol or by otherwise directing a consumer to recycle the consumer good, shall maintain in written form in its records…information and documentation supporting the validity of the representation." Cal. Bus. & Prof. Code § 17580(a).

77. The EMCA specifically requires companies making recyclable claims to maintain information and documentation as to whether such products or packaging: (1) conforms with the uniform standards contained in the Green Guides for use of the terms "recycled" or "recyclable"; and (2) meets all the criteria for statewide recyclability pursuant to SB 343. *Id*. § 17580(a)(5). In addition, the EMCA requires that companies maintain the following records in written form supporting the validity of their recyclable representations: (1) the reasons why a company believes the representation to be true; (2) any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good; (3) any measures that are taken by the company to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good; and (4) violations of any federal, state, or local permits directly associated with the production or distribution of the consumer good. *Id*. § 17580(a)(1)-(4). The EMCA further requires companies provide all of this information and documentation supporting the validity their environmental marketing and recyclable claims to any member of the public upon request. *Id*. § 17580(b), (d).

78. The Green Guides similarly require companies making environmental claims to ensure that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R.

§ 260.2. A reasonable basis is defined as competent and reliable scientific evidence, such as "tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results." *Id*. The Green Guides further require that "[s]uch evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true." *Id*.

79. On April 13, 2022 and January 6, 2023, respectively, LBC wrote to Stater Bros and Revolution requesting that those defendants substantiate the recycling claims on Defendants' Plastic Bags and provide the written records they are required to maintain under Cal. Bus. & Prof. Code § 17580(a). Defendants Stater Bros and Revolution were required to provide their substantiation to any member of the public upon request under the EMCA, but Defendant Stater Bros failed to provide any substantiation, while Defendant Revolution failed to provide sufficient substantiation..

80. By failing to substantiate their recyclability claims on Defendants' Plastic Bags, and by failing to provide LBC with the other materials they are required to maintain under the EMCA to substantiate their recycling representations, Defendants Stater Bros and Revolution are violating California law.

81. LBC engaged in good-faith efforts to resolve its claims alleged herein prior to filing this action.

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FIRST CAUSE OF ACTION[73]

Violations of California Cal. Bus. & Prof. Code § 17200, *et seq*. — Unlawful Acts (Against Stater Bros, Revolution and AM Testing)

82. Plaintiff incorporates by reference the allegations set forth above.

83. Plaintiff suffered injury in fact and loss money or property giving it standing to assert its claim under Cal. Bus. & Prof. Code § 17200, because Defendants' unlawful sales and certification of Defendants' Plastic Bags caused LBC to expend or divert its resources to investigate and address Defendants' unlawful actions.

84. The violation of any law constitutes an unlawful business practice under Cal. Bus. & Prof. Code § 17200.

85. Defendants violated and continue to violate California's SB270, Cal. Pub. Res. Code § 42281(b)(1)(C). SB270 prohibits bag manufacturers and retailers from selling or distributing bags made from plastic film unless those bags are "recyclable in this state." Cal. Pub. Res. Code § 42281(b)(1)(C); *see also id.* § 42283. Defendants' Plastic Bags are not recyclable in California. As a result, Defendants Stater Bros and Revolution are violating and continue to violate Cal. Pub. Res. Code § 42281(b)(1)(C).

86. SB270 also requires a producer to certify under penalty of perjury that its Plastic Bags comply with the applicable requirements of SB270. Cal. Pub. Res. Code §§ 42281(a) and 42282. By certifying that Defendants' Plastic Bags are recyclable when they are not, Defendant Revolution is in violation of SB270 and California law prohibiting false statements submitted under penalty of perjury. *See* Cal. Penal Code § 118.

[73] In its December 8, 2023 ruling on Defendants' demurrers (the "Ruling"), with regards to Plaintiff's UCL unlawful claim predicated on SB 270, the Court determined that: (i) Plaintiff cannot allege that Stater Bros and Revolution are in violation of Pub. Res. Code § 42281 until Plaintiff's certification challenge is resolved (Ruling, at pp. 13, 19); (ii) Plaintiff's SB 270 claims against Stater Bros and Revolution are premature pending CalRecycle's study under SB 343 (*Id.* at pp. 15, 21); and (iii) Plaintiff's claim predicated on SB 270's "recyclable in the state" requirement under Pub. Res. Code § 42281(b)(1)(C) against AM Testing is premature pending CalRecycle's study under SB 343 (*Id.* at 22). Plaintiff has re-pleaded those claims here in order to preserve them for appeal.

87. SB270 further requires that a third-party certification entity shall certify that a producer's reusable grocery bags meet SB270's requirements provided in California Public Resources Code section 42281. Cal. Pub. Res. Code § 42282(c). By falsely certifying that Defendants' Plastic Bags are recyclable when they are not, Defendant AM Testing is in violation of SB270.

88. By violating the laws enumerated above, Defendants have engaged in unlawful business acts and practices which constitute unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200.

89. Plaintiff has no adequate remedy at law for the injuries currently being suffered as result of Defendants' unlawful acts as an award of monetary damages would not prohibit Defendants' unlawful sale, distribution of Defendants' Plastic Bags in California. If an injunction is not granted, Plaintiff will suffer irreparable injury because it will be forced to continue to spend time and resources as a result of Defendants' unlawful actions. In addition, plastic pollution caused by Defendants' sale of Defendants' Plastic Bags in California will continue to negatively harm California and global waters, coasts, communities, and marine life. California consumers will also inadvertently contaminate the recycling stream by placing Defendants' Plastic Bags in their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus, Plaintiff seeks an order enjoining Defendants' unlawful acts and practices in California, which serves the public interest by protecting the environment and the integrity of the recycling stream and by preventing Defendants from gaining an unfair advantage over companies that lawfully sell their products as recyclable.

90. An action for injunctive relief is specifically authorized under Cal. Bus. & Prof. Code § 17203.

Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

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SECOND CAUSE OF ACTION

Violations of California Cal. Bus. & Prof. Code § 17200, *et seq*. — Unlawful Acts (Against Stater Bros, Revolution, and AM Testing)

91. Plaintiff incorporates by reference the allegations set forth above.

92. Plaintiff suffered injury in fact and loss money or property giving it standing to assert its claim under Cal. Bus. & Prof. Code § 17200, because Defendants' unlawful sales and certification of Defendants' Plastic Bags and violations of the EMCA and Green Guides caused LBC to expend or divert its resources to investigate and address Defendants' unlawful actions.

93. The violation of any law constitutes an unlawful business practice under Cal. Bus. & Prof. Code § 17200.

94. SB270 requires that a third-party certification entity shall certify that a producer's reusable grocery bags meet SB270's requirements provided in California Public Resources Code section 42281. Cal. Pub. Res. Code § 42282(c). By falsely certifying that Defendants' Plastic Bags are labeled in compliance with the Green Guides when they are not, Defendant AM Testing is in violation of SB270.

95. Defendants Revolution and Stater Bros' conduct also violates EMCA, Cal. Bus. & Prof. Code § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq*. Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above, Defendants Revolution and Stater Bros are violating Cal. Bus. & Prof. Code § 17580.5.

96. Defendants Revolution and Stater Bros' conduct separately violates Cal. Bus. & Prof. Code § 17580(a), which makes it unlawful for any person to make any unsubstantiated

environmental marketing claim, including claims about their products being recyclable. The EMCA specifically requires companies making recyclable claims on their products or packaging to maintain certain information substantiating those claims. *Id*. § 17580(a)(5). In addition, the EMCA requires that companies maintain, in written form, certain other records which support the validity of their representations. *Id*. § 17580(a)(1)-(4). All of this information must be fully disclosed to any member of the public upon request. *Id*. § 17580(b), (d).

97. The Green Guides also require companies making environmental claims to ensure that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R. § 260.2.

98. On April 13, 2022 and January 6, 2023, respectively, LBC requested that Defendants Stater Bros and Revolution substantiate their recycling claims on Defendants' Plastic Bags and provide the other information required by Cal. Bus. & Prof. Code § 17580(a). Defendants Stater Bros and Revolution have not provided sufficient information substantiating their representations nor the written records they are required to maintain. By failing to substantiate the validity of their recycling representations with respect to Defendants' Plastic Bags, and by failing to produce the written records they are required to maintain, Defendants Stater Bros and Revolution are violating Cal. Bus. & Prof. Code § 17580(a) and the Green Guides.

99. By violating the laws enumerated above, Defendants have engaged in unlawful business acts and practices which constitute unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200.

100. Plaintiff has no adequate remedy at law for the injuries currently being suffered as result of Defendants' unlawful acts as an award of monetary damages would not prohibit Defendants' unlawful sale, distribution and certification of Defendants' Plastic Bags in California. If an injunction is not granted, Plaintiff will suffer irreparable injury because it will be forced to continue to spend time and resources as a result of Defendants' unlawful actions. In addition, plastic pollution caused by Defendants' sale and certification of Defendants' Plastic Bags in California will continue to negatively harm California and global waters, coasts,

communities, and marine life. California consumers will also inadvertently contaminate the recycling stream by placing Defendants' Plastic Bags in their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus, Plaintiff seeks an order enjoining Defendants' unlawful acts and practices in California, which serves the public interest by protecting the environment and the integrity of the recycling stream and by preventing Defendants from gaining an unfair advantage over companies that lawfully sell their products as recyclable.

101. An action for injunctive relief is specifically authorized under Cal. Bus. & Prof. Code § 17203.

Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

THIRD CAUSE OF ACTION

Violations of California Cal. Bus. & Prof. Code § 17200, et seq. — Unfair Acts (Against Stater Bros, Revolution and AM Testing)

102. Plaintiff incorporates by reference the allegations set forth above.

103. Plaintiff suffered injury in fact and lost money and property, giving it standing to assert its claim under Cal. Bus. & Prof. Code § 17200, because Defendants' unfair acts involving their unlawful sales and certification of Defendants' Plastic Bags and violations of the EMCA and Green Guides caused LBC to expend or divert its resources to investigate and address Defendants' unfair actions.

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

105. Defendants Stater Bros and Revolution have engaged and continue to engage in conduct which is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers. This conduct includes, but is not limited to, unlawfully selling Defendants' Plastic Bags, failing to substantiate the environmental benefits of Defendants' Plastic Bags, and failing to maintain or disclose the written records they are required to maintain. Defendants Stater Bros

and Revolution are committing unfair business practices under Cal. Bus. & Prof. Code § 17200 through these actions.

106. Defendant AM Testing has engaged and continue to engage in conduct which is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers. This conduct includes, but is not limited to, unlawfully and fraudulently certifying Defendants' Plastic Bags as recyclable in this state and as being labeled in compliance with the Green Guides. By falsely certifying Defendants' Plastic Bags as compliant with SB270 when they are not, Defendant AM Testing is committing unfair business practices under Cal. Bus. & Prof. Code § 17200 through these actions

107. Defendants have separately committed unfair acts by engaging and continuing to engage in conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5. Under the California Public Resources Code, the Legislature has declared that "it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products." Cal. Pub. Res. Code § 42355.5. The Code further states that "the Legislature further finds and declares that it is the public policy of the state that claims related to the recyclability of a product or packaging be truthful in practice and accurate. Consumers deserve accurate and useful information related to how to properly handle the end of life of a product or packaging." *Id*. § 42355.5(b). These policies are based on the Legislature's finding that "littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs." *Id*. § 42355. It is unfair for Defendants to represent and to certify Defendants' Plastic Bags as recyclable without substantiation, in direct violation of the California Legislature's declared public policy.

108. Defendants Stater Bros and Revolution's conduct also violates the policy of the EMCA and the Green Guides. The Green Guides mandate that "[a] product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or

assembling another item." 16 C.F.R. § 260.12(a). It further states that "[a]n item that is made from recyclable material, but because of its shape, size or some other attribute is not accepted in recycling programs, should not be marketed as recyclable." 16 C.F.R. § 260.12(d). The EMCA states that "it is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. For the purpose of this section, environmental marketing claims shall include any claims contained in the Guides for the use of Environmental Marketing Claims published by the Federal Trade Commission." Cal. Bus. & Prof. Code § 17580.5. As explained above, Defendants' Plastic Bags cannot be recycled, and it is therefore unfair for Defendants Stater Bros and Revolution to make a recyclable claim. Taking advantage of consumer perception of recycling violates the policy of the Green Guides and EMCA.

109. Defendants Stater Bros and Revolution's conduct also violates the substantiation policy of the EMCA. As described above and throughout, the EMCA makes it the policy of California that companies should disclose the information and documentation supporting the validity of any environmental marketing claims that those companies make, along with other certain written records, to any member of the public upon request. *Id*. § 17580(b), (d).

110. On April 13, 2022 and January 6 2023, respectively, LBC requested that Defendants Stater Bros and Revolution substantiate their recycling claims on Defendants' Plastic Bags and provide the other information required by Cal. Bus. & Prof. Code § 17580(a). Defendants Stater Bros and Revolution have not provided sufficient information substantiating their representations nor the written records they are required to maintain. Defendants Stater Bros and Revolution's failure to substantiate the validity of their recycling representations with respect to Defendants' Plastic Bags, and their failure to produce the written records they are required to maintain, violates the policy of this state and amounts to unfair business practices.

111. Defendants Stater Bros and Revolution's conduct also violates the substantiation policy of the Green Guides. The Green Guides mandate that companies have a reasonable basis to make environmental claims about their products. It is a violation of the Green Guides' policy concerning substantiation for a company to make the types of recyclable claims Defendants Stater

Bros and Revolution make on Defendants' Plastic Bags without having information to substantiate that claim. As a result it is unfair for Defendants Stater Bros and Revolution to represent that Defendants' Plastic Bags are recyclable without a reasonable basis.

112. It is also unfair for Defendants Stater Bros and Revolution to represent that Defendants' Plastic Bags are recyclable via store drop-off, because Defendants Stater Bros and Revolution do not maintain store drop-off bin locations, and in any event, do not actually foster or effectuate recycling.

113. By committing the acts alleged above, Defendants have engaged in unfair business acts and practices which constitute unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200.

114. Plaintiff has no adequate remedy at law for the injuries currently being suffered as result of Defendants' unfair acts as an award of monetary damages would not prohibit Defendants' unfair practices. If an injunction is not granted, Plaintiff will suffer irreparable injury because it will be forced to continue to spend time and resources as a result of Defendants' unfair business practices. In addition, plastic pollution caused by Defendants' sale and certification of Defendants' Plastic Bags in California will continue to negatively harm California and global waters, coasts, communities, and marine life. California consumers will also contaminate the recycling stream by placing Defendants' Plastic Bags in their recycling bins, thereby hindering the recycling of legitimately recyclable products. Thus, Plaintiff seeks an order enjoining Defendants' unlawful acts and practices in California, which serves the public interest by protecting the environment and the integrity of the recycling stream and by preventing Defendants from gaining an unfair advantage over companies that lawfully sell their products as recyclable.

115. An action for injunctive relief is specifically authorized under California Cal. Bus. & Prof. Code § 17203.

FOURTH CAUSE OF ACTION

Challenge to Revolution's Certification Under Cal. Pub. Res. Code § 42282(f)(1) (Against Revolution, AM Testing[74] and CalRecycle Only)

116. Plaintiff incorporates by reference the allegations set forth above.

117. Cal. Pub. Res. Code § 42282(f)(1) gives any person the right to challenge a bag producer's certification by "filing an action for review of that certification in the superior court."

118. Defendants' Plastic Bags are not recyclable in this state. As a result, Revolution's certification under SB270, which is based on the false certification by AM Testing, should be revoked.

119. Cal. Pub. Res. Code § 42282(f)(1) does not contain any exhaustion requirements but instead expressly gives the Superior Court jurisdiction over a certification dispute to conduct a *de novo* review and "determine if the reusable grocery bag producer is in compliance with the requirements of this article." Cal. Pub. Res. Code § 42282(f)(1).

120. Cal. Pub. Res. Code § 42282(f)(3) further requires that the Superior Court, "direct [CalRecycle] to remove the reusable grocery bag producer from . . . its list" of certified producers should the Superior Court determine that the producer is not in compliance. Cal. Pub. Res. Code § 42282(f)(3).

121. As a result, LBC exercises its right under Cal. Pub. Res. Code § 42282(f)(1) to challenge Revolution's certification, which is based on AM Testing's false certification, and seek to have CalRecycle remove Revolution from CalRecycle's list of Certified Reusable Grocery Bag Producers.

[74] In its Ruling, with regards to Plaintiff's certification challenge, the Court sustained AM Testing's demurrer as to this Cause of Action (Ruling, pp. 22-23). Plaintiff has not amended its claim here as to AM Testing, but has re-pleaded it in order to preserve it for appeal.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff has no adequate remedy at law and prays for judgment and relief against Defendants as follows:

A. That the Court issue an injunction preventing Defendants from conducting their businesses through the unlawful and unfair business acts or practices, and other violations of law described in this Amended Complaint;

B. That the Court order Defendants to cease and refrain from selling and certifying Defendants' Plastic Bags in California unless they are recyclable;

C. That the Court order Defendants Stater Bros and Revolution to comply with their obligations to substantiate that Defendants' Plastic Bags are recyclable;

D. That the Court order Defendants to implement whatever measures are necessary to remedy the unlawful and unfair business acts or practices described in this Amended Complaint;

E. That the Court issue an order requiring CalRecycle to withdraw Revolution's Certification under SB270;

F. That the Court grant Plaintiff its reasonable attorneys' fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, the common fund doctrine, or any other appropriate legal theory; and

G. That the Court grant such other and further relief as may be just and proper.

Dated: March 15, 2024

Respectfully submitted,

LEXINGTON LAW GROUP, LLP

/s/ Patrick Carey
Patrick Carey
Mary Haley Ousley
Attorneys for Plaintiff
The Last Beach Cleanup

PROOF OF SERVICE

I, Lilian Macancela, declare:

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is lmacancela@lexlawgroup.com.

On March 15, 2024, I served the following document(s) on all interested parties in this action by placing a true copy thereof in the manner and at the addresses indicated below:

THIRD AMENDED COMPLAINT

☐ **BY MAIL**: I am readily familiar with the firm's practice for collecting and processing mail with the United States Postal Service ("USPS"). Under that practice, mail would be deposited with USPS that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. On this date, I placed sealed envelopes containing the above mentioned documents for collection and mailing following my firm's ordinary business practices.

☒ **BY CASE ANYWHERE**: I transmitted a PDF version of the document(s) listed above via Case Anywhere Website, the online e-service provider designated in this case to the following parties:

Please see attached service list

☐ **BY ELECTRONIC MAIL**: I transmitted a PDF version of the document(s) listed above via email to the email address(es) indicated on the attached service list [or noted above] on the date executed.

☐ **BY PERSONAL DELIVERY**: I placed all pages of the document(s) listed above in a sealed envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by hand to the addressee(s) as indicated.

☐ **BY OVERNIGHT DELIVERY**: I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served below.

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

Executed on March 15, 2024 at San Francisco, California.



Lilian Macancela

SERVICE LIST
The Last Beach Cleanup v. Stater Bros. Markets
Case No. 22STCV18252

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