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13 THE LAST BEACH CLEANUP

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**
17

18
19 THE LAST BEACH CLEANUP,

20 Plaintiff,

21 v.

22 GELSON'S MARKETS, CROWN POLY, INC.,
and CALIFORNIA DEPARTMENT OF
23 RECYCLING AND RECOVERY

24 Defendants.
25
26
27
28

Case No. 22STCV18216

FIRST AMENDED COMPLAINT

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

3 **INTRODUCTION**

4 1. Plastic pollution across the globe has reached crisis levels with the ever-increasing
5 production of plastic products overwhelming traditional collection and disposal methods and
6 leading to the contamination of our oceans, land, lakes, rivers, streams, and ultimately our bodies.
7 The magnitude of this issue is astounding. According to recent studies, nearly 90% of plastic
8 waste is not recycled¹ and roughly 5% of the almost 50-million tons of plastic waste U.S.
9 consumers create annually is mismanaged, ending up in the natural environment.² Plastic
10 pollution is so widespread that the average person ingests a credit card’s worth of plastic each
11 week.³ Indeed, the U.S. Department of Energy has separately reported that nearly 95% of plastic
12 goes unrecycled in the U.S., with 45 million tons per year burned or becoming trash and litter.⁴

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

21 _____
22 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)
23 <https://www.latimes.com/opinion/story/2020-02-21/plastic-waste-never-recycled-u-s>.

24 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>.

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

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

1 3. SB270 does not just impose a bag fee, however. It also bans the sale of single-use
2 plastic grocery bags altogether. And, to the extent companies wish to continue to offer reusable
3 grocery bags made from plastic film (“Plastic Bags”), SB270 requires those bags to be recyclable
4 in California. However, defendants Crown Poly, Inc. (“Crown Poly”) and Gelson’s Markets
5 (“Gelson’s”) (collectively, “Defendants”)⁵ distribute and sell Plastic Bags that are not recyclable
6 in California.

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

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

21 6. The overwhelming majority of curbside recycling programs in California refuse to
22 accept Plastic Bags. And recent efforts by Plaintiff and others have revealed that, to the extent
23 retail stores even provide plastic film “recycling” bins at their stores (very few do), those stores
24 simply send the materials they collect to landfills and incinerators. This is not speculation—
25 multiple tracking devices such as Apple AirTags placed in Plastic Bags that were deposited in
26

27 _____
28 ⁵ The defined term “Defendants” does not include CalRecycle, who is only referred to herein by
its actual name, CalRecycle.

1 plastic film recycling bins at various store locations throughout California, including Gelson’s,
2 revealed that all of the Plastic Bags that have reached their final destination were taken to
3 landfills or incinerators throughout California or shipped to Mexico.

4 7. Despite this, Defendants’ Plastic Bags prominently display the well-known
5 “chasing arrows” symbol in an effort to deceive consumers into thinking that the Plastic Bags are
6 recyclable when they are not. Indeed, the Plastic Bags also display instructions for consumers to
7 return the Plastic Bags to store collection bins for recycling—the same bins Plaintiff found are
8 ultimately sent to landfills or incinerators.

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

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

22 10. Following the EMCA and Green Guides, LBC requested that Defendants
23 substantiate the recyclability claims they make on their Plastic Bags. However, neither Defendant
24 provided documentation substantiating the recycling representations on their Plastic Bags, nor
25 provided any competent and reliable scientific evidence to substantiate that their Plastic Bags are
26 recyclable. In fact, neither Defendant provided to LBC any of the information about the
27 environmental attributes of their Plastic Bags that the EMCA requires Defendants maintain in
28 written form.

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

4 **PARTIES**

5 **A. Plaintiff The Last Beach Cleanup**

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

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

21 14. To further its mission to reduce plastics pollution and promote legitimate
22 recycling, LBC has spent thousands of hours planning and executing studies, engaging in
23 research, conducting surveys, publishing findings, working with other non-profits and non-
24 governmental organizations, and advocating for practical solutions and efforts to reduce the
25 problems associated with plastics pollution.

26 15. LBC has performed wide-ranging research related to plastic recycling and
27 pollution, including research regarding: (i) plastic waste exports; (ii) plastic recyclability; (iii)
28

1 plastic recyclability claims made by manufacturers, retailers, and other companies; (iv) plastic
2 waste and recyclability regulations; and (v) environmental harms caused by plastics.

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

- 5 • *Circular Claims Fall Flat Again: 2022 Update*⁶
- 6 • *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and
7 Figures*⁷
- 8 • *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*⁸
- 9 • *Deception by the Numbers: American Chemistry Council Claims about Chemical
10 Recycling Investments Fail to Hold up to Scrutiny*,⁹
- 11 • *All Talk and No Recycling: An Investigation of the U.S. "Chemical Recycling"
12 Industry*¹⁰
- 13 • *Fact Sheet: "Recycle" By Mail is a Major Climate Fail*¹¹
- 14 • *The Dirty Truth about Disposable Foodware: The Mismatched Costs and Benefits
15 of U.S. Food Service Disposables and What to Do About Them*¹²
- 16 • *Breaking the Plastic Wave: Top Findings for Preventing Plastic Pollution*¹³

17 ⁶ *Circular Claims Fall Flat Again: 2022 Update*, Greenpeace USA (Oct 24, 2022),

18 ⁷ *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and Figures*, THE LAST
19 BEACH CLEANUP (May 4, 2022),
20 https://www.lastbeachcleanup.org/files/ugd/dba7d7_5ae55cdb66d241239e8ae123c96ec9b8.pdf.

21 ⁸ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
22 GREENPEACE REPORTS (Feb. 18, 2020), <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>.

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

27 ¹⁰ Denise Patel, et al., *All Talk and No Recycling: An Investigation of the U.S. "Chemical
28 Recycling" Industry*, GAIA (2020), [https://www.no-burn.org/wp-content/uploads/2021/11/All-
Talk-and-No-Recycling_July-28-1.pdf](https://www.no-burn.org/wp-content/uploads/2021/11/All-Talk-and-No-Recycling_July-28-1.pdf).

¹¹ *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.

¹² 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](https://90e2bb46-39d9-49f9-a040-b0ad7c2534c7.filesusr.com/ugd/8944a4_9f6654c0bfb9406c90b42ea3a7e9a02f.pdf).

¹³ 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](https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/23/breaking-the-plastic-wave-top-findings).

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

- 3 • 2022 U.S. Post-Consumer Plastic Recycling Survey¹⁴
- 4 • 2020 U.S. Post-Consumer Plastic Recycling Survey¹⁵
- 5 • 2020 California Consumer Plastic Recycling Survey¹⁶
- 6 • Global Fast Food Plastic Survey¹⁷
- 7 • Harms of Plastic Exports¹⁸
- 8 • Companies Committed to Stopping Plastic Waste Exports¹⁹
- 9 • County Laws on Plastic Products²⁰
- 10 • Fires at Plastic Recycling Facilities²¹

11 18. LBC invested significant time and resources in conducting these surveys and
12 continues to invest additional time and resources each month to update these and other surveys to
13 ensure they are kept current. A portion of this work necessarily relates to the plastic pollution
14 Defendants caused, and continue to cause, through their unlawful and unfair acts, which requires
15 LBC to spend additional resources on this work and to divert its resources from other work it
16 could and would perform.

17 19. In addition to its research and surveys, LBC is also engaged in consumer education
18 through which it seeks to limit the local and global impacts of plastic pollution by communicating

19 ¹⁴ 2022 U.S. Post-Consumer Plastic Recycling Survey, The Last Beach Cleanup, (last accessed Feb. 23, 2023).

20 ¹⁵ 2020 U.S. Post-Consumer Plastic Recycling Survey, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/usplasticrecyclingsurvey> (last accessed Feb. 23, 2023).

21 ¹⁶ 2020 California Consumer Plastic Recycling Survey, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/california> (last accessed Feb. 23,, 2023).

22 ¹⁷ Global Fast Food Plastic Survey Map, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/nofastfoodplastic> (last accessed Feb. 23, 2023).

23 ¹⁸ Harms of Plastic Exports, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/plastic-waste-exports> (last accessed Feb. 23, 2023).

24 ¹⁹ End Plastic Waste Exports, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/end-plastic-waste-exports> (last accessed Feb. 23, 2023).

25 ²⁰ Country Laws on Plastic Products, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/countrylaws> (last accessed Feb. 23, 2023).

26 ²¹ Fires at Plastic Recycling Facilities, THE LAST BEACH CLEANUP, <https://www.lastbeachcleanup.org/fires> (last accessed Feb. 23, 2023).

1 its findings to the public through multimedia outlets and peer-reviewed publications. LBC also
2 seeks to stop companies from using misleading recycling and environmental claims by educating
3 consumers in an attempt to stop recyclability claims (like those at issue here) from misleading
4 consumers. LBC performs its education outreach through print and television media, websites
5 and blogs, lectures, and school outreach. LBC’s website presents a portion of its research,
6 surveys, analyses, and articles.²² LBC has had to divert resources away from other educational
7 topics to instead educate consumers on Defendants’ misleading recyclable claims and the harm
8 caused by Defendants’ Plastic Bags.

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

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

20 (b) Presence and quality of content collected in store drop-off bins — LBC’s investigation
21 into store drop-off bins included surveying retail stores throughout California to determine which
22 stores had store drop-off bins, the types and quality of plastic film contained in those bins, and
23 whether those bins contained contamination such as non-plastic film trash, food scraps, soda, or
24 anything else that would prevent a recycler from accepting the material contained therein or from
25 successfully recycling that material. LBC’s work involves performing regular surveys of
26 takeback bins and speaking with store personnel regarding the absence of bins and high
27

28 ²² See generally, <https://www.lastbeachcleanup.org/> (last accessed Feb. 23, 2023).

1 contamination rates. LBC created and publicly displays a Google map identifying where drop-off
2 bins are located and the level of contamination at those bins.²³

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

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

18 (e) Market value for post-consumer plastic film waste — LBC’s investigation into end
19 markets includes monitoring and evaluating the value of post-consumer plastic films and
20 regularly contacting numerous recycling businesses to determine if there are buyers for post-
21 consumer plastic film waste.²⁴

22
23
24 ²³See *Survey of Drop-Off Bins for Plastic Bags/Films*, accessible at
25 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).

26 ²⁴ These efforts have been documented by Karine Vann in *The Unfulfilled Promises of Plastic*
27 *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),
28 <https://www.treehugger.com/plastic-packaging-store-drop-off-label-5188913>.

1 21. LBC expended substantial time and money conducting this research, which
2 necessarily involved Defendants. Specifically, LBC visited Gelson’s stores in California,
3 purchased the Plastic Bags it sold (which are produced by defendant Crown Poly), took
4 photographs of those Plastic Bags, investigated the validity of the recycling claims on the Plastic
5 Bags, and requested that Defendants substantiate their recycling claims on the Plastic Bags and
6 provide the other information about the environmental attributes of those Plastic Bags that is
7 required by the EMCA.

8 22. LBC’s work has formed the basis of a letter that was issued from California’s
9 Statewide Commission on Recycling Markets & Curbside Recycling (the “California Recycling
10 Commission”) to the California Department of Recycling and Recovery (“CalRecycle”)
11 requesting enforcement of California law with respect to recyclable claims on Plastic Bags in
12 California, including Defendants’ Plastic Bags. A portion of LBC’s survey work and purchase of
13 plastic film products was used to create the Appendix of 80 examples that accompanied the
14 California Recycling Commission’s letter.²⁵

15 23. The California Legislature enacted SB270 to ensure that any reusable grocery bags
16 made from plastic film in California are recyclable in the state. And the Legislature enacted
17 section 17580 of the EMCA to ensure that companies maintain adequate records that products
18 marketed as recyclable are actually recyclable and otherwise beneficial to the environment, and to
19 ensure public access to such records. Without an injunction requiring Defendants to comply with
20 these laws, LBC will continue to divert resources to investigate and counteract Defendants’
21 violations of law to ensure that Defendants’ Plastic Bags do not (1) harm the integrity of the
22 recycling stream by preventing legitimately recyclable material from being recycled and (2)
23 contaminate paper bales that are exported to Indonesia and other countries where the plastic bags
24 are polluted to the environment or burned causing toxic contamination of the food supply.²⁶ In
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26 ²⁵ See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:
<https://drive.google.com/drive/folders/1ARQy3JTjWPsjqDQ0f76SWD5qbOTEoqX9>).

27 ²⁶ Jindrich Petrlik, et al., *Plastic Waste Flooding Indonesia Leads to Toxic Chemical*
28 *Contamination of the Food Chain* (December 2019), accessible at

1 addition, plastic pollution caused by Defendants' sale of the Plastic Bags in California and the
2 resulting harms to California waters, coasts, communities, and marine life will continue to
3 negatively impact LBC's efforts to protect these critical resources. In fact, even well-meaning
4 California residents who are attempting to be environmentally conscious and follow the recycling
5 label will inadvertently contaminate the recycling stream by placing the Plastic Bags in their
6 recycling bins, which in turn prevents legitimately recyclable products from being recycled.
7 Thus, relief from this Court is in the public interest by protecting the environment and the
8 integrity of the recycling stream and is necessary to further LBC's mission of prohibiting
9 companies from touting the environmental benefits of their products without substantiating the
10 validity of such environmental claims.

11 **B. Defendant Gelson's Markets**

12 24. Defendant Gelson's is a California corporation with its principal place of business
13 in Santa Fe Springs, California. Gelson's operates stores throughout Southern California where it
14 unlawfully distributes or sells Plastic Bags that are neither recyclable in California nor certified
15 for sale under SB270. Gelson's impedes legitimate recycling efforts, exacerbates plastics
16 pollution, and misleads the public by illegally selling the Plastic Bags and by representing to the
17 public that the Plastic Bags are recyclable when they are not.

18 **C. Defendant Crown Poly**

19 25. Defendant Crown Poly is California corporation with its principal place of
20 business in Huntington Park, California. Crown Poly manufactures, distributes, or sells numerous
21 plastic products, including consumer trash and disposable bags, produce bags, and others. Crown
22 Poly produced Plastic Bags that are neither recyclable in California nor certified under SB270 and
23 illegally sold them to Gelson's. Crown Poly impedes legitimate recycling efforts, exacerbates
24
25
26

27 <https://www.researchgate.net/publication/338225066> Plastic waste flooding Indonesia leads to
28 [toxic chemical contamination of the food chain.](#)

1 plastics pollution, and misleads the public by illegally selling the Plastic Bags and by representing
2 to the public that the Plastic Bags are recyclable when they are not.

3 **D. Defendant California Department of Recycling and Recovery**

4 26. Defendant CalRecycle is a department of the California Environmental Protection
5 Agency. California Public Resources Code § 42280 *et. seq.* identifies CalRecycle as the
6 department responsible under SB270 for receiving proof from producers of reusable grocery bags
7 “demonstrating that the reusable grocery bags produced by the producer comply with the
8 provisions of this article.” California Public Resources Code § 42281.5. *See also id.* § 42282.
9 SB270 further instructs CalRecycle to publish on its website a list of certified reusable grocery
10 bag producers and the bags they produce. *Ibid.* California Public Resources Code § 42282(f)(3)
11 mandates that the Court direct CalRecycle to remove Crown Poly from its list of certified
12 reusable grocery bag producers if the Court determines that Crown Poly is not in compliance with
13 the requirements of SB270.

14 **JURISDICTION AND VENUE**

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

20 28. This Court has general personal jurisdiction over Defendants because they are
21 California corporations and maintain their principal places of business in California. This Court
22 also has specific personal jurisdiction over Defendants because they do sufficient business in
23 California, have sufficient minimum contacts in California, or otherwise intentionally avail
24 themselves of the California market through the distribution, sale, marketing, or use of the Plastic
25 Bags at issue in California and/or by having such other contacts with California so as to render
26 the exercise of jurisdiction over it by the California courts consistent with traditional notions of
27 fair play and substantial justice. This Court has jurisdiction over Defendant CalRecycle because
28

1 it is an executive agency of the State of California so as to render the exercise of jurisdiction over
2 it by the California courts consistent with traditional notions of fair play and substantial justice.

3 29. Venue in the County of Los Angeles is proper under Cal. Bus. & Prof. Code §
4 17203, Code of Civil Procedure §§ 395 and 395.5 and Cal. Pub. Res. Code § 42282(f)(1) because
5 this Court is a court of competent jurisdiction, the Plastic Bags are sold throughout this County,
6 and the Court has jurisdiction over defendant Crown Poly.

7 30. Venue is further proper in the County of Los Angeles pursuant to C.C.P. § 401
8 because this is an action against the State, or department, officer, or other agency thereof, that
9 may be commenced in the County of Sacramento, and therefore may also be commenced in any
10 county in which the California Attorney General has an office. The California Attorney General
11 has an office in the County of Los Angeles.

12 **FACTUAL AND LEGAL BACKGROUND**

13 **A. Plastics Pollution**

14 31. In the past decade, humans across the globe have produced 8.3 billion metric tons
15 of plastic, most of it in the form of disposable products and packaging that ends up as trash or
16 pollution.²⁷ Of the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic
17 waste and only 9% has been recycled.²⁸ A third of the single-use plastic generated ends up in the
18 natural environment, accounting for 100 million metric tons of plastic pollution in 2016.²⁹
19 Current estimates suggest that there are over 150 million tons of plastics in the ocean.³⁰

20 32. Despite these well-known issues, and California's stated goal of achieving a 75%
21 recycling rate by 2020, California's recycling rate is actually in decline. According to

22 _____
23 ²⁷ Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,
24 Jul. 19, 2017, [https://plasticoceans.org/wp-
content/uploads/2018/05/Production use and fate of all plastics ever made.pdf](https://plasticoceans.org/wp-content/uploads/2018/05/Production%20use%20and%20fate%20of%20all%20plastics%20ever%20made.pdf).

25 ²⁸ *Id.*

26 ²⁹ *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019,
27 https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf at p. 6.

28 ³⁰ *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](https://plasticoceans.org/wp-content/uploads/2018/05/EllenMacArthurFoundation_TheNewPlasticsEconomy_Pages.pdf) at p.
17.

1 CalRecycle, in 2014 California’s recycling rate was 50%, dropping to 47% in 2015 and down to
2 44% in 2016.³¹ And according to the California Recycling Commission, the state’s recycling rate
3 dropped to 37% in 2019.³²

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

7 34. On September 11, 2020, National Public Radio (“NPR”) published an
8 investigation illustrating the plastic industry’s decades-long awareness that recycling would not
9 keep plastic products or packaging out of landfills, incinerators, communities, or the natural
10 environment.³³ In a 1974 speech, one industry insider stated “there is serious doubt that
11 [recycling plastic] can ever be made viable on an economic basis.”³⁴ Larry Thomas, former
12 president of the Society of the Plastic Industry (known today as the Plastics Industry Association),
13 told NPR that “if the public thinks that recycling is working, then they are not going to be as
14 concerned about the environment.”³⁵ The NPR investigative report details the length and expense
15 that the plastics industry went to deceive consumers that plastic was easily recyclable, despite
16 knowledge that the cost of recycling would never be economical. Similarly, a Canadian
17 Broadcasting Corporation news report describes that even the recycling logo was used as a
18 marketing tool to improve the image of plastics after environmental backlash in the 1980s.³⁶

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20 ³¹ *State of Disposal and Recycling in California for Calendar Year 2018*, CALRECYCLE, Apr. 6,
21 2020, at Pg. 26, accessible at <https://www2.calrecycle.ca.gov/Publications/Details/1662>.

22 ³² California Statewide Commission on Recycling Markets and Curbside Recycling Policy
23 Recommendations, CALRECYCLE,
<https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5> (last accessed
24 Feb. 23, 2023).

25 ³³ Lara Sullivan, *How Big Oil Misled The Public Into Believing Plastic Would be Recycled*,
26 NPR.ORG (Sep. 11, 2020, 5:00 AM), [https://www.npr.org/2020/09/11/897692090/how-big-oil-](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled)
27 [misled-the-public-into-believing-plastic-would-be-recycled](https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled).

28 ³⁴ *Id.*

³⁵ *Id.*

³⁶ *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-](https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618)
[more-plastic-industry-experts-say-1.5735618](https://www.cbc.ca/documentaries/the-passionate-eye/recycling-was-a-lie-a-big-lie-to-sell-more-plastic-industry-experts-say-1.5735618).

1 According to another industry insider, “[t]here was never an enthusiastic belief that recycling was
2 ultimately going to work in a significant way,” yet the plastics industry spent millions on ads to
3 deceive the public as to the efficacy of recycling.³⁷

4 35. The problems associated with single-use plastics pollution in oceans and the
5 natural environment are well-documented. The staggering amount of plastic pollution
6 accumulating in the environment is accompanied by an array of negative side effects. For
7 example, plastic debris is frequently ingested by marine animals and other wildlife, which can be
8 injurious, poisonous, and deadly.³⁸ Floating plastic is also a vector for invasive species,³⁹ and
9 plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed
10 by humans and other animals.⁴⁰ Plastic litter on the streets and in and around our parks and
11 beaches also degrades the quality of life for residents and visitors. Scientists have also discovered
12 that plastic releases large amounts of methane, a powerful greenhouse gas, as it degrades.⁴¹ Thus,
13 plastic pollution contributes to global climate change, which affects California in the form of
14 extreme drought, sea level rise, and more frequent and severe wildfires.⁴²

15 36. Due to the availability of cheap raw materials to make “virgin plastic,” there is
16 essentially no market demand for most types of recycled plastic. Virgin plastic is derived from
17 oil and natural gas and has a higher quality than recycled plastic. Recognizing the market
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19 ³⁷ *Id.*

20 ³⁸ Amy Lusher, et al., *Microplastics in Fisheries and Aquaculture: Status of knowledge on their*
21 *occurrence and implications for aquatic organisms and food safety*, FAO Fisheries and
22 Aquaculture Technical Paper No. 615, Rome, Italy, 2017 <http://www.fao.org/3/a-i7677e.pdf>.

22 ³⁹ *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,
23 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf)
24 [files/2017_Invasive_Species_Topic_Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf).

24 ⁴⁰ Emma L. Teuten, et al., *Transport and release of chemicals from plastics to the environment*
25 *and to wildlife*, PHILIOS TRANS R. SOC. LOND. B. BIOL. SCI, July. 27, 2009,
26 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2873017/>.

25 ⁴¹ Sarah-Jeanne Rover, et al., *Production of methane and ethylene from plastic in the*
26 *environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,
27 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574>.

27 ⁴² *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,
28 [https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf)
[ca.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf).

1 potential from plastic production, major oil and natural gas companies have greatly expanded
2 their petrochemical operations to increase production of plastic resins and products, which drives
3 down the price of virgin plastic (and further contributes to climate change).⁴³ As a result, using
4 virgin plastic to produce plastic products or packaging is cheaper than using recycled plastic.
5 Recycling facilities no longer have an incentive to collect, sort, clean and reprocess plastic waste
6 because there are almost no buyers of the resulting plastic, pellets, or other scrap materials.

7 37. Plastics are not inert like metal and glass. There are thousands of different plastics,
8 each with its own composition and characteristics.⁴⁴ Plastic products can have toxic additives,
9 absorb chemicals, and can cross-contaminate other materials during collection and recycling.
10 According to a 2021 report published by the Canadian Government, toxicity risks in recycled
11 plastic prohibit “the vast majority of plastic products and packaging produced” from being
12 recycled into food grade packaging.⁴⁵

13 38. And the problems are only getting worse. Historically, waste management and
14 recycling companies in the United States shipped plastic scrap to China and other countries in the
15 Asia for recycling. But millions of pounds of that exported plastic waste were never recycled.⁴⁶
16 Instead, this plastic was burned or dumped into waterways, where it was carried into the ocean.⁴⁷

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18 ⁴³ *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)
19 [https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf)
20 [Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Feb. 23, 2023).

21 ⁴⁴ *Types of Plastic: How Many Kinds of Plastics are There?* PLASTICSMAKEITPOSSIBLE.COM (last
22 updated Aug. 2, 2018), [https://www.plasticmakeitpossible.com/about-plastics/types-of-](https://www.plasticmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/)
23 [plastics/professor-plastics-how-many-types-of-plastics-are-there/](https://www.plasticmakeitpossible.com/about-plastics/types-of-plastics/professor-plastics-how-many-types-of-plastics-are-there/).

24 ⁴⁵ *Assessing the State of Food Grade Recycled Resin in Canada & the United States*, STINA
25 (2021) at Pg. 4,
26 https://www.plasticmarkets.org/jsfcontent/ECCC_Food_Grade_Report_Oct_2021_jsf_1.pdf (last
27 accessed Feb. 23, 2023).

28 ⁴⁶ 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>.

⁴⁷ 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-](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it)
[go-now-that-china-doesnt-want-it](https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it); see also *Discarded: Communities on the Frontlines of the*
Global Plastic Crisis, GAIA, Apr. 2019, [https://www.no-burn.org/wp-](https://www.no-burn.org/wp-content/uploads/2022/02/Report-July-12-2019-Spreads-no-marks-1.pdf)
[content/uploads/2022/02/Report-July-12-2019-Spreads-no-marks-1.pdf](https://www.no-burn.org/wp-content/uploads/2022/02/Report-July-12-2019-Spreads-no-marks-1.pdf).

1 For years, tons of plastic that U.S. consumers dutifully sorted and transported to recycling
2 facilities ultimately ended up in the ocean or the natural environment. For example, in 2015
3 China’s Yangtze River ranked highest for plastic entering the oceans.⁴⁸ That year, 333,000 tons
4 of plastic were deposited into the ocean from the Yangtze River, more than double the amount for
5 the river with the next highest amount.⁴⁹

6 39. In February 2013, based on the high amounts of low-value and contaminated
7 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort
8 aimed at curtailing the amount of contaminated “recyclables” and waste that was being sent to
9 China.⁵⁰ China began inspecting 70 percent of imported containers filled with “recyclables” and
10 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic
11 waste.⁵¹ Despite manufacturers’ and recyclers’ awareness of China’s refusal to accept low-value
12 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By
13 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.⁵²

14 40. In February 2017, in response to the continued shipment of low-value and
15 contaminated plastic waste, China announced its National Sword policy, which banned the
16 importation of certain solid waste and set strict contamination limits on recyclable material.
17 Because of the National Sword policy, to the extent they ever existed at all, end markets for
18 recycling plastic film such as the Plastic Bags have essentially vanished.⁵³ One year after China’s
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21 ⁴⁸ Laurent C.M. Lebreton, et al., *River plastic emissions to the world’s oceans*, NAT. COMMUN.
22 Jun. 7, 2017, 8:15611, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467230/>.

23 ⁴⁹ *Id.*

24 ⁵⁰ *What Operation Green Fence Has Meant for Recycling*, WASTE 360,
25 <https://www.waste360.com/business/what-operation-green-fence-has-meant-recycling> (last
26 accessed Feb. 23, 2023).

27 ⁵¹ *Id.*

28 ⁵² Christopher Joyce, *supra* note 47.

⁵³ 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>.

1 National Sword Policy, China’s plastics imports plummeted by 99 percent.⁵⁴ Following
2 enactment of the National Sword policy other countries in the Far East followed suit by banning
3 imports of low-value and contaminated plastics that had long been polluting their environments.⁵⁵
4 In May 2019, 187 countries decided to significantly restrict international trade in plastic scrap and
5 waste to help address the improper disposal of plastic pollution, through the Basel Convention
6 Plastic Waste Amendments.⁵⁶ The Basel Convention prohibits export of mixed plastic waste to
7 countries who are not members of the Organization for Economic Co-operation and
8 Development.⁵⁷ Due to increased regulations and restrictions on importing plastic waste, waste
9 management and recycling companies can no longer sell many types of used plastic at prices that
10 cover their transportation and processing costs, providing them with no incentive to do so.

11 41. Plastic shopping bag pollution in particular is receiving widespread international
12 attention as illustrated on the cover of the June 2018 edition of National Geographic headlined
13 “Planet or Plastic?”⁵⁸ Americans throw away an estimated 100 billion plastic bags a year, and the
14 average bag takes up to 1,000 years to break down.⁵⁹ In 2018 in the United States, 4.2 million
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17 ⁵⁴ Cheryl Katz, *supra* note 53.

18 ⁵⁵ *Why Some Countries Are Shipping Back Plastic Waste*, BBC News,
19 <https://www.bbc.com/news/world-48444874> (last accessed Feb. 23, 2023); *see also International Policies Affecting Global Commodity Markets*, Cal Recycle,
20 <https://www.calrecycle.ca.gov/markets/nationalsword/globalpolicies> (last accessed Feb. 23,
21 2023).

22 ⁵⁶ *New International Requirements For The Export And Import of Plastic Recyclables And Waste*,
23 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>.

24 ⁵⁷ *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,
25 Amendments to Annexes II, VII and IX, *Plastic Waste Amendments*, effective Jan. 1, 2021,
26 <http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx> (last accessed Feb. 23, 2023).

27 ⁵⁸ <https://www.nationalgeographic.com/environment/planetorplastic/>.

28 ⁵⁹ https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html

1 tons of post-consumer plastic bag, sack, and wrap waste were generated, but only 0.42 million
2 tons were recycled.⁶⁰

3 **B. California’s Single Use Carryout Bag Ban – SB270**

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

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

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

17 45. Most pertinent to this action, SB270 also requires manufacturers and retailers
18 manufacturing, distributing, or selling Plastic Bags to ensure that those bags are recyclable in
19 California. *Id.* § 42281(b)(1)(C).

20 46. SB270 contains a certification requirement as well. Under the law, retailers and
21 bag manufacturers who choose to sell Plastic Bags in California are required to sell Plastic Bags
22 from certified producers. *Id.* § 42281(a). To obtain a certification, bag manufacturers submit
23 specific information enumerated under SB270 to CalRecycle. *Id.* § 42282. SB270 further
24 requires CalRecycle to maintain a list of entities who have received certification, known as the
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28 ⁶⁰ 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.

1 Certified Reusable Grocery Bag Producers list, as well as an identification of the bags they
2 produce that have been certified to satisfy SB270. *Id.*

3 47. CalRecycle takes the position that its review of the certification information
4 submitted by bag producers under SB270 is a ministerial act in which the agency simply reviews
5 the documentation to ensure it is complete. CalRecycle does not perform any evaluation of
6 whether reusable grocery bags actually satisfy the requirements of SB270, including the
7 requirement that Plastic Bags be recyclable in California.

8 **C. Defendants’ Plastic Bags Are Not Recyclable In California.**

9 48. Despite the fact that SB270 requires that manufacturers and retailers like
10 Defendants sell only recyclable Plastic Bags, Defendants’ Plastic Bags are anything but.
11 Defendants’ Plastic Bags are made of low-density polyethylene, also known as #4 LDPE plastic.
12 The Plastic Bags do not meet any legal or commonly understood definition of recyclable.

13 **(a) Recyclability**

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

20 50. California law incorporates the Green Guides with respect to labeling products and
21 packaging as recyclable. *See, e.g.*, Cal. Pub. Res. Code § 42281(a)(4)(D) (for any reusable
22 grocery bag labeled as recyclable, the recycling label must comply with the Green Guides); Cal.
23 Bus. & Prof. Code § 17580.5(b) (environmental marketing claim is deemed compliant with
24 EMCA if it complies with Green Guides). Under the Green Guides, a product is only recyclable
25 if “it can be collected, separated, or otherwise recovered from the waste stream through an
26 established recycling program for reuse or use in manufacturing or assembling another item.” 16
27 C.F.R. § 260.12(a). Indeed, the Green Guides specifically preclude entities from marketing
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1 products as recyclable: (1) “[i]f any component significantly limits the ability to recycle the item,
2 any recyclable claim would be deceptive;” and (2) “an item that is made from recyclable material,
3 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,
4 should not be marketed as recyclable.” 16 C.F.R. §§ 260.12(a) and (d); *see also id.* § 260.12(d),
5 Examples 2 and 6. And in promulgating the current recycling definition that encompasses
6 accessibility, sortability, and end markets, the FTC clarified that “[f]or a product to be called
7 recyclable, there must be an established recycling program, municipal or private, through which
8 the product *will be* converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84,
9 24247 (May 1, 1998) (emphasis added). As the FTC has stated, “while a product may be
10 technically recyclable, if a program is not available allowing consumers to recycle the product,
11 there is no real value to consumers.” *Id.* at 24243.

12 51. The Green Guides instruct marketers to “clearly and prominently qualify
13 recyclable claims...to avoid deception about the availability of recycling programs and collection
14 sites to consumers.” C.F.R. § 260.12(b). Marketers may only make unqualified recyclable claims
15 when recycling facilities are available to a substantial majority (at least 60 percent) of consumers
16 or communities where the item is sold. *Id.* at § 260.12(b)(1). As there are virtually no recycling
17 facilities available for consumers or communities where Defendants’ Plastic Bags are sold, Plastic
18 Bags in no way meet this 60 percent threshold.

19 52. The Green Guides specifically identify qualifications that may be misleading or
20 deceptive to a reasonable consumer. In fact, the Green Guides warn about plastic film, such as
21 trash bags: “Because trash bags ordinarily are not separated from other trash at the landfill or
22 incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the
23 bag is technically capable of being recycled, the claim is deceptive since it asserts an
24 environmental benefit where no meaningful benefit exists.” 16 C.F.R. § 260.3(c), Example 2.

1 53. Other portions of California law make it clear that theoretical recyclability is
2 insufficient to make a product or packaging recyclable. For instance, California’s Public
3 Resources Code defines recycling is “the process of collecting, sorting, cleansing, treating, and
4 reconstituting materials that would otherwise become solid waste, and returning them to the
5 economic mainstream in the form of raw material for new, reused, or reconstituted products
6 which meet the quality standards necessary to be used in the marketplace.” Cal. Pub. Res. Code §
7 40180.

8 54. Under the Sustainable Packaging for The State of California Act of 2018 (the
9 “Sustainable Packaging Act”), food service packaging is considered recyclable only if it is
10 regularly: (1) collected, separated, and cleansed for recycling by recycling service providers; (2)
11 sorted and aggregated into defined streams for recycling processes; (3) processed and reclaimed
12 or recycled with commercial recycling services; (4) becomes feedstock that is used in the
13 production of new products; and (5) recycled in sufficient quantity, and is of sufficient quality, to
14 maintain a market value. Cal. Pub. Res. Code § 42370.2(d)(1)-(6). Indeed, under the Sustainable
15 Packaging Act, Defendant CalRecycle is responsible for ensuring purportedly recyclable products
16 meet this definition, and on July 12, 2022, CalRecycle published its List of Approved Food
17 Service Packaging—which does not include a single plastic item.⁶¹ In yet another instance, under
18 the recently passed SB 343, the California Public Resources Code defines recyclable as those
19 items that are: (i) “collected for recycling by recycling programs for jurisdictions that collectively
20 encompass at least 60 percent of the population of the state”; (ii) “sorted into defined streams for
21 recycling processes” by facilities that collectively serve at least 60 percent of the California
22 population; and (iii) those “defined streams reclaimed at a reclaiming facility.” Cal. Pub. Res.
23 Code § 42355.51(d)(2).

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28 ⁶¹List of Approved Food Service Packaging, CALRECYCLE, published July 12, 2022,
<https://calrecycle.ca.gov/packaging/statefoodservice/list/> (last accessed Feb. 23, 2023).

1 **(b) Defendants’ Plastic Bags Are Not Recyclable.**

2 55. Defendants’ Plastic Bags do not meet any of these definitions of recyclable or the
3 three main criteria that the definitions all contain.

4 56. As the California Recycling Commission concluded, only three plastic item types
5 are recyclable in California: Plastic #1 PET Bottles without shrink sleeves or other non-recyclable
6 components, Plastic #2 HDPE bottles (natural) without shrink sleeves or other non-recyclable
7 components, and Plastic #2 HDPE bottles (color) without shrink sleeves or non-recyclable
8 components.⁶² The California Recycling Commission therefore determined that Defendants’
9 Plastic Bags are not recyclable in California.

10 57. Defendants’ Plastic Bags are also not recyclable through store drop-off programs.
11 In fact, the recently passed SB343 makes clear that for a product to be considered recyclable
12 through a non-curbside collection program, that program must recover at least 60% of the product
13 in the program and have “sufficient commercial value to be marketed for recycling and be
14 transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted
15 and aggregated into defined streams by material type and form.” Cal. Pub. Res. Code §
16 42355.51(d)(5)(A).

17 58. In addition to several unqualified recyclable representations, the labels of
18 Defendants’ Plastic Bags themselves include a statement that, “This bag is recyclable in your
19 supermarket bin.” There are several problems with relying on consumers to return Defendants’
20 Plastic Bags to a store for recycling. First, most consumers will not see past the multiple
21 unqualified recycling representations on Defendants’ Plastic Bags and will simply place
22 Defendants’ Plastic Bags in their at-home recycling bins for curbside recycling collection.
23 Indeed, the California Recycling Commission has determined that: (1) flexible plastic bags are a
24 top source of contamination in curbside recycling bins; and (2) more than half of Californians
25 think plastic bags are accepted in their curbside recycling program, regardless of whether that is

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27 ⁶² California’s Statewide Commission on Recycling Markets and Curbside Recycling Policy
28 at <https://www.calrecycle.ca.gov/markets/commission>.

1 true.⁶³ Second, very few drop-off bins are offered to California consumers. In the past,
2 California required supermarkets of a certain size to maintain a plastic carryout bag collection
3 bin, but that rule expired on January 1, 2020. *See* Cal. Pub. Res. Code § 42257. Consequently,
4 many retail stores in California no longer maintain store drop-off bins for consumers to return
5 their Plastic Bags for “recycling.” Therefore, even those few consumers who understand that
6 they need to return Defendants’ Plastic Bags to a store for recycling, and who then make the
7 effort to do so, will be hard-pressed to find a collection bin. For example, according to
8 BagandFilmRecycling.org, there are only five locations in the City of Los Angeles that have a
9 store drop-off bin.⁶⁴ Third, the few Plastic Bags that may be returned to in-store collection bins
10 are not actually recycled, often because store drop-off bins typically contain a mix of plastic film
11 and other contamination such as trash, compostable bags, color plastics, and myriad other
12 contaminants making Defendants’ Plastic Bags unlikely to meet the quality specifications of
13 those few plastic film recyclers that exist. As a result, Plastic Bags placed in these bins are not
14 actually recycled.

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

20 60. There is also very little capacity to recycle plastic film in California or anywhere
21 else, and colored, mixed, and contaminated plastic film is not a desirable material for any
22 processor.⁶⁵ The repurposing of material used to make one product into a new product or material

23 _____
24 ⁶³ California Recycling Report, pp. 105-9.

25 ⁶⁴ <https://bagandfilmrecycling.org/> (last accessed Feb, 23, 2023) (This website is maintained by
26 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.)

27 ⁶⁵ The California Recycling Commission found that, based on a survey of plastic film processors
28 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.

1 fully “closes the loop” of the recycling process (hence the commonly used and widely recognized
2 “chasing arrows” symbol for recycling). The color and quality of the material that is collected
3 into bales plays a major role in whether that material will be ultimately recycled. For instance,
4 colored plastic film is not a desirable material by processors who seek to make clear plastic
5 pellets for the manufacturing of new products. Processors also do not want highly contaminated
6 material bales due to the harms contamination causes to equipment and the production of low-
7 quality materials and products.⁶⁶

8 61. Defendants’ Plastic Bags do not meet any of the necessary criteria to qualify as
9 “recyclable” as the highly improbable possibility that a consumer returns Defendants’ Plastic
10 Bags to one of the handful of stores offering store drop-off bins to potentially be recycled and
11 sent to a plastic film processor does not make Plastic Bags “recyclable in this state” as required
12 by SB270.

13 62. Indeed, based on LBC’s investigation, the California Recycling Commission
14 recently determined that the use of the chasing arrows symbol, any variation of the word
15 “recyclable,” or “Store Drop-Off” recycling representations on plastic bags and films runs afoul
16 of California labeling laws.⁶⁷ The California Recycling Commission found that:

17 Flexible plastic bags and film are a major source of contamination in curbside recycling
18 bins. The flexible plastic materials are harming curbside recycling systems by clogging
19 machinery in material recovery facilities (MRFs) and fiber processors. There is not a
20 comprehensive store takeback system for plastic bags or film in California. In MRFs, the
21 plastic bags and film contaminate paper and cardboard bales and lower the quality and
22 material value of the paper bales. Flexible plastic bags and films that depict the word
23
24

25 ⁶⁶ Karine Vann, *The Unfulfilled Promises of Plastic Film Recycling* (Jan. 4, 2021),
26 [https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-
coronavirus/592503/](https://www.wastedive.com/news/plastic-film-bag-takeback-chemical-recycling-coronavirus/592503/).

27 ⁶⁷ Letter Dated December 3, 2021 from the California Recycling Commission to Rachel Machi-
28 Wagoner, available at,
<https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>.

1 'recycle' or the chasing arrows recycling symbol cause consumer confusion and
2 contribute to contamination.

3 63. As a result, the California Recycling Commission suggested that California's
4 existing laws be enforced to require retailers and product manufacturers to remove the word
5 "recycle, "recyclable," and/or the recycling symbol from plastic bags and plastic films. It further
6 stated that the recyclable labels used on many plastic bags and films in California are not legal
7 and contribute to consumer confusion and contamination. In addition, the California Recycling
8 Commission specifically identified the store drop-off statement as problematic because there is
9 not a comprehensive takeback system in California. It stated: "California law (Cal. Bus. & Prof.
10 Code § 17580 and Cal. Pub. Res. Code § 42355.5) and the Green Guides (16 C.F.R. § 260.2)
11 require substantiation for recycling claims such as this," and "it is our opinion that this claim is
12 not provable. This text should be eliminated from [plastic bags]." The California Recycling
13 Commission enumerated 80 examples of plastic bags or film that illegally contained a recycling
14 representation, and specifically identified Defendants' Plastic Bags as one of those examples.⁶⁸

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

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

23 65. Even the plastics industry admits Defendants' Plastic Bags are not recyclable. An
24 industry-sponsored labeling organization, How2Recycle, recently stated that the ability of the
25 store drop-off stream to alleviate the packaging industry's end-of-life challenges with flexible
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27 ⁶⁸ See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:
28 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>).
Defendants' Plastic Bags are identified in the accompanying Appendix on page 68.

1 packaging is limited.⁶⁹ How2Recycle is an organization created by the plastics industry to
2 promote a standardized labeling system for packaging that its members may pay a fee to use.

3 How2Recycle stated:

4 Like all recycling streams, market volatility in the global commodities context is a
5 challenge. But for Store Drop-off in particular, the demand for the material, its current
6 recycling rates, and the challenges inherent in Store Drop-off collection (consumer
7 convenience, reliance on retailer participation), along with the enormous volumes of
8 flexible packaging that are being produced, suggest that its long-term potential for all or
9 most flexible packaging is insufficient to meet recovery needs. Accordingly,
10 How2Recycle recommends that brands, packaging producers and resin manufacturers
11 critically analyze what wide-reaching collection, sortation, reprocessing and market
12 mechanisms and investments are required to scale recyclability of flexible packaging for
13 the far future.

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

19 67. Similarly, according to the California Recycling Commission, a survey of plastic
20 film processors in California and Nevada showed that there is only capacity to recycle about 3%
21 of California's plastic film waste.⁷¹ This is 3% of *all* plastic film waste, including agricultural
22 plastics and other film, suggesting that the capacity to recycle the Plastic Bags at issue is actually
23 much less. Based on these data, even if more consumers returned plastic film for drop-off

24 _____
25 ⁶⁹ *REPORT: The Future of Store Drop-Off Recyclability*, HOW2RECYCLE (August 10, 2020),
26 <https://how2recycle.info/news/2020/report-the-future-of-store-drop-off-recyclability>.

27 ⁷⁰ *Film Recycling Investment Report*, prepared by RSE USA, THE CLOSED LOOP FOUNDATION
28 (2017), at p. 19.

⁷¹ 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/>.

1 recycling, there is still insufficient market demand and plastic film processing capacity to actually
2 recycle it. Due to the lack of recycling markets for plastic film, 93% of California MRFs do not
3 even accept it, and the reprocessing facilities that do accept it do not have the capacity to recycle
4 large quantities of plastic film.⁷² Ultimately, Defendants’ Plastic Bags are not accepted by most
5 MRFs nor can they be collected, sorted, or separated from the general waste stream. And there is
6 no end market to recycle such Plastic Bags in California.

7 68. A major problem caused by Defendants selling of their Plastic Bags as recyclable
8 is contamination of legitimate recycling streams. For instance, according to the Recycling
9 Partnership, “plastic bags cause MRF operators to shut down the recycling line many times a day
10 to cut off bags that have wrapped around equipment. This maintenance shut down reduces
11 throughput for a facility, raises cost of labor to sort materials and maintain equipment, increases
12 waste coming out of the MRF, and puts workers at risk of injury when they are performing
13 maintenance.”⁷³

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

21 **D. Defendants’ Plastic Bags Are Not Certified Plastic Bags.**

22 70. Under SB270, manufacturers and stores are only permitted to sell or distribute
23 Plastic Bags if those bags have been certified for sale pursuant to SB270’s certification process.
24 Cal. Pub. Res. Code § 42281 *et. seq.* As described above, bag manufacturers submit specific
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26 ⁷² *Id.*

27 ⁷³ Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING
28 PARTNERSHIP, Apr. 2020, [https://recyclingpartnership.org/wp-content/uploads/2020/04/The-
Recycling-Partnership_WCCI-Report_April-2020_Final.pdf](https://recyclingpartnership.org/wp-content/uploads/2020/04/The-Recycling-Partnership_WCCI-Report_April-2020_Final.pdf) at p. 13.

1 information enumerated under SB270 to CalRecycle, and CalRecycle in turns either approves or
2 rejects the certification. *Id.* § 42282. If a company’s bag meets the certification requirements,
3 CalRecycle lists that bag on its website on its list of certified bag producers.

4 71. Crown Poly’s certification of the Plastic Bags at issue in this case has not been
5 deemed complete by CalRecycle, but Crown Poly has nonetheless sold its Plastic Bags in
6 California, including to Gelson’s, and which Gelson’s in turn sold to unsuspecting consumers in
7 California. In fact, while CalRecycle still lists Crown Poly as a certified bag producer on
8 CalRecycle’s website, not a single Crown Poly Plastic Bag is certified for sale.

9 **E. Defendants Have Not, And Cannot, Substantiate Their Recyclable Claims.**

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

14 73. California, for example, enacted the EMCA, which makes it “unlawful for any
15 person to make any untruthful, deceptive, or misleading environmental marketing claim, whether
16 explicit or implied.” Cal. Bus. & Prof. Code § 17580.5. Under the EMCA, “[a]ny person who
17 represents in advertising or on the label or container of a consumer good that the consumer good
18 that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment,
19 through use of such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth friendly,’
20 ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’ ‘environmentally
21 safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other like term, or
22 through the use of a chasing arrows symbol or by otherwise directing a consumer to recycle the
23 consumer good, shall maintain in written form in its records...information and documentation
24 supporting the validity of the representation.” Cal. Bus. & Prof. Code § 17580(a).

25 74. The EMCA specifically requires companies making recyclable claims to maintain
26 information and documentation as to whether such products or packaging: (1) conforms with the
27 uniform standards contained in the Green Guides for use of the terms “recycled” or “recyclable”;

28

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

12 75. The Green Guides similarly require companies making environmental claims to
13 ensure that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R.
14 § 260.2. A reasonable basis is defined as competent and reliable scientific evidence, such as
15 “tests, analyses, research, or studies that have been conducted and evaluated in an objective
16 manner by qualified persons and are generally accepted in the profession to yield accurate and
17 reliable results.” *Id.* The Green Guides further require that “[s]uch evidence should be sufficient
18 in quality and quantity based on standards generally accepted in the relevant scientific fields,
19 when considered in light of the entire body of relevant and reliable scientific evidence, to
20 substantiate that each of the marketing claims is true.” *Id.*

21 76. On April 13, 2022 and January 6, 2023, respectively, LBC wrote to Gelson’s and
22 Crown Poly requesting Defendants substantiate the recycling claims on their Plastic Bags and
23 provide the written records they are required to maintain under Cal. Bus. & Prof. Code §
24 17580(a). Defendants were required to provide their substantiation to any member of the public
25 upon request under the EMCA, but failed to do so.

26 77. By failing to substantiate their recyclability claims on their Plastic Bags, and by
27 failing to provide LBC with the other materials Defendants are required to maintain under the
28 EMCA to substantiate their recycling representations, Defendants are violating California law.

1 84. The Green Guides also require companies making environmental claims to ensure
2 that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R. §
3 260.2.

4 85. On April 13, 2022 and January 6, 2023, respectively, LBC requested that
5 Defendants Gelson's and Crown Poly substantiate their recycling claims on their Plastic Bags and
6 provide the other information required by Cal. Bus. & Prof. Code § 17580(a). Defendants have
7 not provided sufficient information substantiating their representations nor the written records
8 they are required to maintain. By failing to substantiate the validity of their recycling
9 representations with respect to their Plastic Bags, and by failing to produce the written records
10 they are required to maintain, Defendants are violating Cal. Bus. & Prof. Code § 17580(a) and the
11 Green Guides.

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

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

28

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

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

4 **SECOND CAUSE OF ACTION**

5 **Violations of California Cal. Bus. & Prof. Code § 17200, et seq. — Unfair Acts**
6 **(Against Gelson’s and Crown Poly)**

7 89. Plaintiff incorporates by reference the allegations set forth above.

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

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

15 92. Defendants have engaged and continue to engage in conduct which is immoral,
16 unethical, oppressive, unscrupulous, and substantially injurious to consumers. This conduct
17 includes, but is not limited to, unlawfully selling their Plastic Bags, failing to substantiate the
18 environmental benefits of their Plastic Bags, and failing to maintain or disclose the written
19 records they are required to maintain. Defendants are committing unfair business practices under
20 Cal. Bus. & Prof. Code § 17200 through these actions.

21 93. Defendants have separately committed unfair acts by engaging and continuing to
22 engage in conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5.
23 Under the California Public Resources Code, the Legislature has declared that “it is the public
24 policy of the state that environmental marketing claims, whether explicit or implied, should be
25 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers
26 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The Code
27 further states that “the Legislature further finds and declares that it is the public policy of the state
28 that claims related to the recyclability of a product or packaging be truthful in practice and

1 accurate. Consumers deserve accurate and useful information related to how to properly handle
2 the end of life of a product or packaging.” *Id.* § 42355.5(b). These policies are based on the
3 Legislature’s finding that “littered plastic products have caused and continue to cause significant
4 environmental harm and have burdened local governments with significant environmental
5 cleanup costs.” *Id.* § 42355. It is unfair for Defendants to represent that their Plastic Bags are
6 recyclable without substantiation, in direct violation of the California Legislature’s declared
7 public policy.

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

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

20 96. Defendants’ conduct also violates the substantiation policy of the Green Guides.
21 The Green Guides mandate that companies have a reasonable basis to make environmental claims
22 about their products. It is a violation of the Green Guides’ policy concerning substantiation for a
23 company to make the types of recyclable claims Defendants make on their Plastic Bags without
24 having information to substantiate that claim. As a result it is unfair for Defendants to represent
25 that their Plastic Bags are recyclable without a reasonable basis.

26 97. It is also unfair for Defendants to represent that their Plastic Bags are recyclable
27 via store drop-off, because Defendants do not maintain store drop-off bin locations, and in any
28 event, do not actually foster or effectuate recycling.

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Challenge to Crown Poly's Certification Under Cal. Pub. Res. Code § 42282(f)(1)** 20 **(Against Crown Poly and CalRecycle Only)**

21 101. Plaintiff incorporates by reference the allegations set forth above.

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

24 103. Crown Poly's Plastic Bags are not recyclable in this state. As a result, Crown
25 Poly's certification should be revoked and Crown Poly removed from the list of certified bag
26 producers entirely.

27 104. Cal. Pub. Res. Code § 42282(f)(1) does not contain any exhaustion requirements
28 but instead expressly gives the Superior Court jurisdiction over a certification dispute to conduct

1 a *de novo* review and “determine if the reusable grocery bag producer is in compliance with the
2 requirements of this article.” Cal. Pub. Res. Code § 42282(f)(1).

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

7 106. As a result, LBC exercises its right under Cal. Pub. Res. Code § 42282(f)(1) to
8 challenge Crown Poly’s certification and to have CalRecycle remove Crown Poly from
9 CalRecycle’s list of certified reusable grocery bag producers.

10 **PRAYER FOR RELIEF**

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

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

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

18 C. That the Court order Defendants to comply with their obligations to substantiate
19 that their Plastic Bags are recyclable;

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

22 E. That the Court issue an order requiring CalRecycle to withdraw Crown Poly’s
23 Certification under SB270;

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

27 G. That the Court grant such other and further relief as may be just and proper.
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Dated: February 23, 2022

Respectfully submitted,

LEXINGTON LAW GROUP

/s/ Howard Hirsch
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Attorneys for Plaintiff
The Last Beach Cleanup

PROOF OF SERVICE

I, Sam Litt, 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 slitt@lexlawgroup.com.

On February 23, 2023 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:

FIRST 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 FACSIMILE: I caused all pages of the document(s) listed above to be transmitted via facsimile to the fax number(s) as indicated and said transmission was reported as complete and without error.

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

See attached service list.

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 February 23, 2023 at San Francisco, California.



Sam Litt

SERVICE LIST

**The Last Beach Cleanup v. Gelson's Markets
Case No. 22STCV18216**

ADDRESS	PARTY
<p>Howard Hirsch Meredyth Merrow Mary-Haley Ousley LEXINGTON LAW GROUP 503 Divisadero Street San Francisco, CA 94117 hhirsch@lexlawgroup.com mmerrow@lexlawgroup.com mhousley@lexlawgroup.com apearson@lexlawgroup.com</p> <p>Gideon Kracov LAW OFFICE OF GIDEON KRACOV 801 S. Grand Ave., 11th Floor Los Angeles, CA 90017 gk@gideonlaw.net</p>	<p><i>Plaintiff</i> The Last Beach Cleanup</p>
<p>Ann M. Grottveit Savannah Gosselin KAHN, SOARES & CONWAY, LLP 1415 L Street, Suite 400 Sacramento, CA 95814 agrottveit@ksacsacramento.com sgosselin@ksacsacramento.com lsimms@ksacsacramento.com</p>	<p><i>Defendant</i> Gelson's Markets</p>