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13 THE LAST BEACH CLEANUP

14  
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 STATER BROS. MARKETS, REVOLUTION  
PLASTICS HOLDINGS LLC, REVOLUTION  
23 SUSTAINABLE SOLUTIONS, LLC, and  
CALIFORNIA DEPARTMENT OF  
24 RECYCLING AND RECOVERY

25 Defendants.  
26  
27  
28

Case No. 22STCV18252

**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 recycled<sup>1</sup> 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.<sup>2</sup> Plastic  
10 pollution is so widespread that the average person ingests a credit card’s worth of plastic each  
11 week.<sup>3</sup> 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.<sup>4</sup>

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 <sup>1</sup> 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 <sup>2</sup> 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 <sup>3</sup> 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 <sup>4</sup> 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 Revolution Sustainable Solutions, LLC and Revolution  
5 Plastics Holdings LLC (collectively “Revolution”) and Stater Bros. Markets (“Stater Bros”)  
6 (collectively with Revolution, “Defendants”)<sup>5</sup> distribute and sell Plastic Bags that are not  
7 recyclable in California.

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

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

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

27 \_\_\_\_\_  
28 <sup>5</sup> The defined term “Defendants” does not include CalRecycle, who is only referred to herein by  
its actual name, CalRecycle.

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

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

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

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

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

1 environmental attributes of their Plastic Bags that the EMCA requires Defendants maintain in  
2 written form.

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

## 6 **PARTIES**

### 7 **A. Plaintiff The Last Beach Cleanup**

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

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

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

28

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

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

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

18           <sup>6</sup> *Circular Claims Fall Flat Again: 2022 Update*, Greenpeace USA (Oct 24, 2022),  
19 <https://www.greenpeace.org/usa/reports/circular-claims-fall-flat-again/>

20           <sup>7</sup> *The Real Truth About the U.S. Plastic Recycling Rate: 2021 U.S. Facts and Figures*, THE LAST  
21 BEACH CLEANUP (May 4, 2022),  
22 [https://www.lastbeachcleanup.org/files/ugd/dba7d7\\_5ae55cdb66d241239e8ae123c96ec9b8.pdf](https://www.lastbeachcleanup.org/files/ugd/dba7d7_5ae55cdb66d241239e8ae123c96ec9b8.pdf).

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

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

<sup>10</sup> 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](https://www.no-burn.org/wp-content/uploads/2021/11/All-Talk-and-No-Recycling_July-28-1.pdf).

<sup>11</sup> *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](https://www.lastbeachcleanup.org/files/ugd/dba7d7_f186aca8c80642f885125557f427ecde.pdf).

<sup>12</sup> 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).

1           •       *Breaking the Plastic Wave: Top Findings for Preventing Plastic Pollution*<sup>13</sup>

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

- 4           •       2022 U.S. Post-Consumer Plastic Recycling Survey<sup>14</sup>
- 5           •       2020 U.S. Post-Consumer Plastic Recycling Survey<sup>15</sup>
- 6           •       2020 California Consumer Plastic Recycling Survey<sup>16</sup>
- 7           •       Global Fast Food Plastic Survey<sup>17</sup>
- 8           •       Harms of Plastic Exports<sup>18</sup>
- 9           •       Companies Committed to Stopping Plastic Waste Exports<sup>19</sup>
- 10          •       County Laws on Plastic Products<sup>20</sup>
- 11          •       Fires at Plastic Recycling Facilities<sup>21</sup>

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

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17 <sup>13</sup> Simon Reddy & Winny Lau, *Breaking the Plastic Wave: Top Findings for Preventing Plastic*  
18 *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>.

19 <sup>14</sup> *2022 U.S. Post-Consumer Plastic Recycling Survey*, The Last Beach Cleanup,  
20 <https://www.lastbeachcleanup.org/2022usplasticsrecyclingsurvey> (last accessed Feb. 23, 2023).

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

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

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

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

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

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

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

1 LBC to spend additional resources on this work and to divert its resources from other work it  
2 could and would perform.

3 19. In addition to its research and surveys, LBC is also engaged in consumer education  
4 through which it seeks to limit the local and global impacts of plastic pollution by communicating  
5 its findings to the public through multimedia outlets and peer-reviewed publications. LBC also  
6 seeks to stop companies from using misleading recycling and environmental claims by educating  
7 consumers in an attempt to stop recyclability claims (like those at issue here) from misleading  
8 consumers. LBC performs its education outreach through print and television media, websites  
9 and blogs, lectures, and school outreach. LBC’s website presents a portion of its research,  
10 surveys, analyses, and articles.<sup>22</sup> LBC has had to divert resources away from other educational  
11 topics to instead educate consumers on Defendants’ misleading recyclable claims and the harm  
12 caused by Defendants’ Plastic Bags.

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

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

24 (b) Presence and quality of content collected in store drop-off bins — LBC’s investigation  
25 into store drop-off bins included surveying retail stores throughout California to determine which  
26 stores had store drop-off bins, the types and quality of plastic film contained in those bins, and  
27

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



1 whether those bins contained contamination such as non-plastic film trash, food scraps, soda, or  
2 anything else that would prevent a recycler from accepting the material contained therein or from  
3 successfully recycling that material. LBC's work involves performing regular surveys of  
4 takeback bins and speaking with store personnel regarding the absence of bins and high  
5 contamination rates. LBC created and publicly displays a Google map identifying where drop-off  
6 bins are located and the level of contamination at those bins.<sup>23</sup>

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

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

22 (e) Market value for post-consumer plastic film waste — LBC's investigation into end  
23 markets includes monitoring and evaluating the value of post-consumer plastic films and  
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25

26  
27 <sup>23</sup>See *Survey of Drop-Off Bins for Plastic Bags/Films*, accessible at  
28 [https://www.google.com/maps/d/u/1/edit?mid=1lk\\_m0YjrEnmNzm7V0KuxDLaSVKuP5tdV&ll=33.68287230031227%2C-117.75662650000001&z=10](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).

1 regularly contacting numerous recycling businesses to determine if there are buyers for post-  
2 consumer plastic film waste.<sup>24</sup>

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

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

17 23. The California Legislature enacted SB270 to ensure that any reusable grocery bags  
18 made from plastic film in California are recyclable in the state. And the Legislature enacted  
19 section 17580 of the EMCA to ensure that companies maintain adequate records that products  
20 marketed as recyclable are actually recyclable and otherwise beneficial to the environment, and to  
21 ensure public access to such records. Without an injunction requiring Defendants to comply with  
22 these laws, LBC will continue to divert resources to investigate and counteract Defendants'

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24 \_\_\_\_\_  
25 <sup>24</sup> These efforts have been documented by Karine Vann in *The Unfulfilled Promises of Plastic*  
26 *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>.

27 <sup>25</sup> See California Recycling Commission Letter to CalRecycle, Dec. 3, 2021 (available at:  
28 <https://drive.google.com/drive/folders/1ARQy3JTiWPsjqDQ0f76SWD5qbOTEoqX9>). The Plastic Bags are identified in the accompanying Appendix on page 68.

1 violations of law to ensure that Defendants' Plastic Bags do not (1) harm the integrity of the  
2 recycling stream by preventing legitimately recyclable material from being recycled and (2)  
3 contaminate paper bales that are exported to Indonesia and other countries where the plastic bags  
4 are polluted to the environment or burned causing toxic contamination of the food supply.<sup>26</sup> In  
5 addition, plastic pollution caused by Defendants' sale of the Plastic Bags in California and the  
6 resulting harms to California waters, coasts, communities, and marine life will continue to  
7 negatively impact LBC's efforts to protect these critical resources. In fact, even well-meaning  
8 California residents who are attempting to be environmentally conscious and follow the recycling  
9 label will inadvertently contaminate the recycling stream by placing the Plastic Bags in their  
10 recycling bins, which in turn prevents legitimately recyclable products from being recycled.  
11 Thus, relief from this Court is in the public interest by protecting the environment and the  
12 integrity of the recycling stream and is necessary to further LBC's mission of prohibiting  
13 companies from touting the environmental benefits of their products without substantiating the  
14 validity of such environmental claims.

15 **B. Defendant Stater Bros Markets**

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

22 **C. The Revolution Defendants**

23 25. Defendant Revolution Plastics Holdings LLC maintains its principal place of  
24 business in Vernon, California. Defendant Revolution Sustainable Solutions, LLC is

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26 <sup>26</sup> Jindrich Petrlik, et al., *Plastic Waste Flooding Indonesia Leads to Toxic Chemical*  
27 *Contamination of the Food Chain* (December 2019), accessible at  
28 [https://www.researchgate.net/publication/338225066\\_Plastic\\_waste\\_flooding\\_Indonesia\\_leads\\_to\\_toxic\\_chemical\\_contamination\\_of\\_the\\_food\\_chain](https://www.researchgate.net/publication/338225066_Plastic_waste_flooding_Indonesia_leads_to_toxic_chemical_contamination_of_the_food_chain).

1 headquartered in Little Rock, Arkansas and owns the trademark for Revolution Company. Both  
2 Revolution entities manufacture, distribute, or sell numerous plastic products, including  
3 agricultural plastics, plastic sheeting, trash bags, stretch films, and other plastic materials. The  
4 Revolution entities produced Plastic Bags that are not recyclable in California and illegally sold  
5 them to Stater Bros. The Revolution entities impede legitimate recycling efforts, exacerbate  
6 plastics pollution, and mislead the public by illegally selling the Plastic Bags and by representing  
7 to the public that the Plastic Bags are recyclable when they are not.

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

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

19 **JURISDICTION AND VENUE**

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

25 28. This Court has general personal jurisdiction over Stater Bros because it is a  
26 California corporation and maintains its principal place of business in California. This Court also  
27 has general personal jurisdiction over Revolution Plastics Holdings LLC as it is a California  
28

1 corporation and maintains its principal place of business in California. This Court also has  
2 specific personal jurisdiction over Stater Bros and the Revolution entities because they do  
3 sufficient business in California, have sufficient minimum contacts in California, or otherwise  
4 intentionally avail themselves of the California market through the distribution, sale, marketing,  
5 or use of the Plastic Bags at issue in California and/or by having such other contacts with  
6 California so as to render the exercise of jurisdiction over it by the California courts consistent  
7 with traditional notions of fair play and substantial justice. This Court has jurisdiction over  
8 Defendant CalRecycle because it is an executive agency of the State of California so as to render  
9 the exercise of jurisdiction over it by the California courts consistent with traditional notions of  
10 fair play and substantial justice.

11 29. Venue in the County of Los Angeles is proper under Cal. Bus. & Prof. Code §  
12 17203, Code of Civil Procedure §§ 395 and 395.5 and Cal. Pub. Res. Code § 42282(f)(1) because  
13 this Court is a court of competent jurisdiction, the Plastic Bags are sold throughout this County,  
14 and the Court has jurisdiction over the Revolution entities.

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

## 20 **FACTUAL AND LEGAL BACKGROUND**

### 21 **A. Plastics Pollution**

22 31. In the past decade, humans across the globe have produced 8.3 billion metric tons  
23 of plastic, most of it in the form of disposable products and packaging that ends up as trash or  
24 pollution.<sup>27</sup> Of the 8.3 billion metric tons produced, 6.3 billion metric tons have become plastic  
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27 <sup>27</sup> Roland Geyer, et al., *Production, use, and fate of all plastics ever made*, SCIENCE ADVANCES,  
28 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).

1 waste and only 9% has been recycled.<sup>28</sup> A third of the single-use plastic generated ends up in the  
2 natural environment, accounting for 100 million metric tons of plastic pollution in 2016.<sup>29</sup>  
3 Current estimates suggest that there are over 150 million tons of plastics in the ocean.<sup>30</sup>

4 32. Despite these well-known issues, and California’s stated goal of achieving a 75%  
5 recycling rate by 2020, California’s recycling rate is actually in decline. According to  
6 CalRecycle, in 2014 California’s recycling rate was 50%, dropping to 47% in 2015 and down to  
7 44% in 2016.<sup>31</sup> And according to the California Recycling Commission, the state’s recycling rate  
8 dropped to 37% in 2019.<sup>32</sup>

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

12 34. On September 11, 2020, National Public Radio (“NPR”) published an  
13 investigation illustrating the plastic industry’s decades-long awareness that recycling would not  
14 keep plastic products or packaging out of landfills, incinerators, communities, or the natural  
15 environment.<sup>33</sup> In a 1974 speech, one industry insider stated “there is serious doubt that  
16 [recycling plastic] can ever be made viable on an economic basis.”<sup>34</sup> Larry Thomas, former  
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18 <sup>28</sup> *Id.*

19 <sup>29</sup> *No Plastic in Nature: Accessing Plastic Ingestion From Nature to People*, WWF, June 2019,  
20 [https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic\\_ingestion\\_web\\_spreads.pdf](https://d2ouvy59p0dg6k.cloudfront.net/downloads/plastic_ingestion_web_spreads.pdf) at p. 6.

21 <sup>30</sup> *The New Plastics Economy Rethinking the Future of Plastics*, ELLEN MACARTHUR  
22 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.

23 <sup>31</sup> *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>.

24 <sup>32</sup> California Statewide Commission on Recycling Markets and Curbside Recycling Policy  
25 Recommendations, CALRECYCLE,  
<https://drive.google.com/drive/folders/17URS4dubsoX4qV0qH3KciSWZhV595o5> (last accessed  
Feb. 23, 2023).

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

28 <sup>34</sup> *Id.*

1 president of the Society of the Plastic Industry (known today as the Plastics Industry Association),  
2 told NPR that “if the public thinks that recycling is working, then they are not going to be as  
3 concerned about the environment.”<sup>35</sup> The NPR investigative report details the length and expense  
4 that the plastics industry went to deceive consumers that plastic was easily recyclable, despite  
5 knowledge that the cost of recycling would never be economical. Similarly, a Canadian  
6 Broadcasting Corporation news report describes that even the recycling logo was used as a  
7 marketing tool to improve the image of plastics after environmental backlash in the 1980s.<sup>36</sup>  
8 According to another industry insider, “[t]here was never an enthusiastic belief that recycling was  
9 ultimately going to work in a significant way,” yet the plastics industry spent millions on ads to  
10 deceive the public as to the efficacy of recycling.<sup>37</sup>

11 35. The problems associated with single-use plastics pollution in oceans and the  
12 natural environment are well-documented. The staggering amount of plastic pollution  
13 accumulating in the environment is accompanied by an array of negative side effects. For  
14 example, plastic debris is frequently ingested by marine animals and other wildlife, which can be  
15 injurious, poisonous, and deadly.<sup>38</sup> Floating plastic is also a vector for invasive species,<sup>39</sup> and  
16 plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed  
17 by humans and other animals.<sup>40</sup> Plastic litter on the streets and in and around our parks and  
18 beaches also degrades the quality of life for residents and visitors. Scientists have also discovered  
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20 <sup>35</sup> *Id.*

21 <sup>36</sup> *Recycling was a lie – a big lie – to sell more plastic, industry experts say*, CBC.CA, Sep. 23,  
22 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>.

23 <sup>37</sup> *Id.*

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

27 <sup>39</sup> *Report on Marine Debris as a Potential Pathway for Invasive Species*, NOAA, March 2017,  
28 Silver Spring, MD; [https://marinedebris.noaa.gov/sites/default/files/publications-  
files/2017\\_Invasive\\_Species\\_Topic\\_Paper.pdf](https://marinedebris.noaa.gov/sites/default/files/publications-files/2017_Invasive_Species_Topic_Paper.pdf).

<sup>40</sup> 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/>.

1 that plastic releases large amounts of methane, a powerful greenhouse gas, as it degrades.<sup>41</sup> Thus,  
2 plastic pollution contributes to global climate change, which affects California in the form of  
3 extreme drought, sea level rise, and more frequent and severe wildfires.<sup>42</sup>

4 36. Due to the availability of cheap raw materials to make “virgin plastic,” there is  
5 essentially no market demand for most types of recycled plastic. Virgin plastic is derived from  
6 oil and natural gas and has a higher quality than recycled plastic. Recognizing the market  
7 potential from plastic production, major oil and natural gas companies have greatly expanded  
8 their petrochemical operations to increase production of plastic resins and products, which drives  
9 down the price of virgin plastic (and further contributes to climate change).<sup>43</sup> As a result, using  
10 virgin plastic to produce plastic products or packaging is cheaper than using recycled plastic.  
11 Recycling facilities no longer have an incentive to collect, sort, clean and reprocess plastic waste  
12 because there are almost no buyers of the resulting plastic, pellets, or other scrap materials.

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

19  
20 <sup>41</sup> Sarah-Jeanne Royer, et al., *Production of methane and ethylene from plastic in the*  
21 *environment*, Aug. 1, 2018, PLoS ONE 13(8) e0200574,  
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200574>.

22 <sup>42</sup> *What Climate Change Means for California*, U.S. EPA, Aug. 2016, EPA 430-F-16-007,  
23 [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).

24 <sup>43</sup> *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG (Sep. 2017)  
25 [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)  
[Petrochemical-Feedstocks.pdf](https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf) (last accessed Feb. 23, 2023).

26 <sup>44</sup> *Types of Plastic: How Many Kinds of Plastics are There?* PLASTICSMAKEITPOSSIBLE.COM (last  
27 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/)  
[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/).

28 <sup>45</sup> *Assessing the State of Food Grade Recycled Resin in Canada & the United States*, STINA  
(2021) at Pg. 4,



1           38.     And the problems are only getting worse. Historically, waste management and  
2 recycling companies in the United States shipped plastic scrap to China and other countries in the  
3 Asia for recycling. But millions of pounds of that exported plastic waste were never recycled.<sup>46</sup>  
4 Instead, this plastic was burned or dumped into waterways, where it was carried into the ocean.<sup>47</sup>  
5 For years, tons of plastic that U.S. consumers dutifully sorted and transported to recycling  
6 facilities ultimately ended up in the ocean or the natural environment. For example, in 2015  
7 China’s Yangtze River ranked highest for plastic entering the oceans.<sup>48</sup> That year, 333,000 tons  
8 of plastic were deposited into the ocean from the Yangtze River, more than double the amount for  
9 the river with the next highest amount.<sup>49</sup>

10           39.     In February 2013, based on the high amounts of low-value and contaminated  
11 plastics shipped there, China enacted Operation Green Fence, an aggressive inspection effort  
12 aimed at curtailing the amount of contaminated “recyclables” and waste that was being sent to  
13 China.<sup>50</sup> China began inspecting 70 percent of imported containers filled with “recyclables” and  
14 started cracking down on shippers and recyclers for shipping low-value and contaminated plastic  
15 waste.<sup>51</sup> Despite manufacturers’ and recyclers’ awareness of China’s refusal to accept low-value

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18 [https://www.plasticsmarkets.org/jsfcontent/ECCC Food Grade Report Oct 2021 jsf 1.pdf](https://www.plasticsmarkets.org/jsfcontent/ECCC_Food_Grade_Report_Oct_2021_jsf_1.pdf) (last  
19 accessed Feb. 23, 2023).

20 <sup>46</sup> 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>.

21 <sup>47</sup> Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn’t Want it?*,  
NPR.ORG (Mar. 13, 2019, 4:28 PM ET),  
22 [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)  
23 [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)  
24 [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).

25 <sup>48</sup> 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/>.

26 <sup>49</sup> *Id.*

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

<sup>51</sup> *Id.*

1 and contaminated plastic, the U.S. continued to export most of its plastic waste to China. By  
2 2016, the U.S. was exporting almost 700,000 tons a year of plastic waste to China.<sup>52</sup>

3 40. In February 2017, in response to the continued shipment of low-value and  
4 contaminated plastic waste, China announced its National Sword policy, which banned the  
5 importation of certain solid waste and set strict contamination limits on recyclable material.  
6 Because of the National Sword policy, to the extent they ever existed at all, end markets for  
7 recycling plastic film such as the Plastic Bags have essentially vanished.<sup>53</sup> One year after China's  
8 National Sword Policy, China's plastics imports plummeted by 99 percent.<sup>54</sup> Following  
9 enactment of the National Sword policy other countries in the Far East followed suit by banning  
10 imports of low-value and contaminated plastics that had long been polluting their environments.<sup>55</sup>  
11 In May 2019, 187 countries decided to significantly restrict international trade in plastic scrap and  
12 waste to help address the improper disposal of plastic pollution, through the Basel Convention  
13 Plastic Waste Amendments.<sup>56</sup> The Basel Convention prohibits export of mixed plastic waste to  
14 countries who are not members of the Organization for Economic Co-operation and  
15  
16  
17

18 <sup>52</sup> Christopher Joyce, *supra* note 47.

19 <sup>53</sup> Liz Zarka, *Recycling's Sword of Damocles*, EAST BAY EXPRESS, Mar. 21, 2019,  
20 <https://m.eastbayexpress.com/oakland/recyclings-sword-of-damocles/Content?oid=26354842>; see  
21 also Cheryl Katz., *Piling Up: How China's Ban on Importing Waste Has Stalled Global  
22 Recycling*, YALE ENVIRONMENT 360, Mar. 7, 2019, [https://e360.yale.edu/features/piling-up-how-  
23 chinas-ban-on-importing-waste-has-stalled-global-recycling](https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling).

24 <sup>54</sup> Cheryl Katz, *supra* note 53.

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

29 <sup>56</sup> *New International Requirements For The Export And Import of Plastic Recyclables And Waste*,  
30 U.S. EPA, last updated February 17, 2021, [https://www.epa.gov/hwgenerators/new-international-  
31 requirements-export-and-import-plastic-recyclables-and-  
32 waste#:~:text=the%20Basel%20Convention.-.What%20are%20the%20Basel%20plastic%20scrap%20and%20waste%20amendments%3F,mos  
33 t%20plastic%20scrap%20and%20waste.&text=Prior%20notice%20and%20consent%20is%20req  
34 uired%20for%20Basel%20Y48,hazardous%20plastic%20scrap%20and%20waste](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).

1 Development.<sup>57</sup> Due to increased regulations and restrictions on importing plastic waste, waste  
2 management and recycling companies can no longer sell many types of used plastic at prices that  
3 cover their transportation and processing costs, providing them with no incentive to do so.

4 41. Plastic shopping bag pollution in particular is receiving widespread international  
5 attention as illustrated on the cover of the June 2018 edition of National Geographic headlined  
6 “Planet or Plastic?”<sup>58</sup> Americans throw away an estimated 100 billion plastic bags a year, and the  
7 average bag takes up to 1,000 years to break down.<sup>59</sup> In 2018 in the United States, 4.2 million  
8 tons of post-consumer plastic bag, sack, and wrap waste were generated, but only 0.42 million  
9 tons were recycled.<sup>60</sup>

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

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

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

19 44. SB270 also prohibits the sale of single-use plastic grocery bags at most California  
20 retail outlets. Retailers have a number of options instead of selling Plastic Bags: they could, *inter*  
21 *alia*, (i) opt out of SB270 altogether by refusing to provide any bag; (ii) provide only paper bags

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22  
23 <sup>57</sup> *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their*  
24 *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,  
<http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/Overview/tabid/8426/Default.aspx> (last accessed Feb. 23, 2023).

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

27 <sup>59</sup> [https://www.biologicaldiversity.org/programs/population\\_and\\_sustainability/sustainability/plastic\\_bag\\_facts.html](https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html)

28 <sup>60</sup> 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 (that meet certain criteria) for a cost of \$.10 or more; or (iii) provide reusable grocery bags made  
2 of other more durable materials, such as nylon or Tyvek, for a cost of at least \$.10. *Id.* § 42283.

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

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

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

18 **C. Defendants' Plastic Bags Are Not Recyclable In California.**

19 48. Despite the fact that SB270 requires that manufacturers and retailers like  
20 Defendants sell only recyclable Plastic Bags, Defendants' Plastic Bags are anything but.  
21 Defendants' Plastic Bags are made of high-density polyethylene, also known as #2 HDPE plastic.  
22 The Plastic Bags do not meet any legal or commonly understood definition of recyclable.

23 **(a) Recyclability**

24 49. In general, items are only recyclable if they meet three basic criteria: *First*,  
25 consumers must have access to recycling facilities that accept the product. *Second*, those  
26 recycling facilities must be able to separate the product from the general waste stream and isolate  
27 it by sorting it into its own unique bale. And *third*, there must be end markets willing and able to  
28

1 purchase the material to convert it into an entirely new product or for use in a new product.

2 These three basic criteria are codified in multiple places under both California and federal law.

3 50. California law incorporates the Green Guides with respect to labeling products and  
4 packaging as recyclable. *See, e.g.*, Cal. Pub. Res. Code §§ 42281(a)(4)(D) (for any reusable  
5 grocery bag labeled as recyclable, the recycling label must comply with the Green Guides); Cal.  
6 Bus. & Prof. Code § 17580.5(b) (environmental marketing claim is deemed compliant with  
7 EMCA if it complies with Green Guides). Under the Green Guides, a product is only recyclable  
8 if “it can be collected, separated, or otherwise recovered from the waste stream through an  
9 established recycling program for reuse or use in manufacturing or assembling another item.” 16  
10 C.F.R. § 260.12(a). Indeed, the Green Guides specifically preclude entities from marketing  
11 products as recyclable: (1) “[i]f any component significantly limits the ability to recycle the item,  
12 any recyclable claim would be deceptive;” and (2) “an item that is made from recyclable material,  
13 but, because of its shape, size, or some other attribute, is not accepted in recycling programs,  
14 should not be marketed as recyclable.” 16 C.F.R. §§ 260.12(a) and (d); *see also id.* § 260.12(d),  
15 Examples 2 and 6. And in promulgating the current recycling definition that encompasses  
16 accessibility, sortability, and end markets, the FTC clarified that “[f]or a product to be called  
17 recyclable, there must be an established recycling program, municipal or private, through which  
18 the product *will be* converted into, or used in, another product or package.” *See* 63 Fed. Reg. 84,  
19 24247 (May 1, 1998) (emphasis added). As the FTC has stated, “while a product may be  
20 technically recyclable, if a program is not available allowing consumers to recycle the product,  
21 there is no real value to consumers.” *Id.* at 24243.

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

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

7           53.     Other portions of California law make it clear that theoretical recyclability is  
8 insufficient to make a product or packaging recyclable. For instance, California’s Public  
9 Resources Code defines recycling is “the process of collecting, sorting, cleansing, treating, and  
10 reconstituting materials that would otherwise become solid waste, and returning them to the  
11 economic mainstream in the form of raw material for new, reused, or reconstituted products  
12 which meet the quality standards necessary to be used in the marketplace.” Cal. Pub. Res. Code §  
13 40180.

14           54.     Under the Sustainable Packaging for The State of California Act of 2018 (the  
15 “Sustainable Packaging Act”), food service packaging is considered recyclable only if it is  
16 regularly: (1) collected, separated, and cleansed for recycling by recycling service providers; (2)  
17 sorted and aggregated into defined streams for recycling processes; (3) processed and reclaimed  
18 or recycled with commercial recycling services; (4) becomes feedstock that is used in the  
19 production of new products; and (5) recycled in sufficient quantity, and is of sufficient quality, to  
20 maintain a market value. Cal. Pub. Res. Code § 42370.2(d)(1)-(6). Indeed, under the Sustainable  
21 Packaging Act, Defendant CalRecycle is responsible for ensuring purportedly recyclable products  
22 meet this definition, and on July 12, 2022, CalRecycle published its List of Approved Food  
23 Service Packaging—which does not include a single plastic item.<sup>61</sup> In yet another instance, under  
24 the recently passed SB 343, the California Public Resources Code defines recyclable as those  
25 items that are: (i) “collected for recycling by recycling programs for jurisdictions that collectively  
26

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

1 encompass at least 60 percent of the population of the state”; (ii) “sorted into defined streams for  
2 recycling processes” by facilities that collectively serve at least 60 percent of the California  
3 population; and (iii) those “defined streams reclaimed at a reclaiming facility.” Cal. Pub. Res.  
4 Code § 42355.51(d)(2).

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

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

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

14 57. Defendants’ Plastic Bags are also not recyclable through store drop-off programs.  
15 In fact, the recently passed SB343 makes clear that for a product to be considered recyclable  
16 through a non-curbside collection program, that program must recover at least 60% of the product  
17 in the program and have “sufficient commercial value to be marketed for recycling and be  
18 transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted  
19 and aggregated into defined streams by material type and form.” Cal. Pub. Res. Code §  
20 42355.51(d)(5)(A).

21 58. In addition to several unqualified recyclable representations, the labels of  
22 Defendants’ Plastic Bags themselves include a request that the consumer “Recycle if Clean &  
23 Dry,” “Please recycle this bag,” and “Please recycle bags in participating curbside recycling  
24 programs and stores.” There are several problems with relying on consumers to return  
25 Defendants’ Plastic Bags to a store for recycling. First, most consumers will not see past the  
26

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

1 multiple unqualified recycling representations on Defendants’ Plastic Bags and will simply place  
2 Defendants’ Plastic Bags in their at-home recycling bins for curbside recycling collection.  
3 Indeed, the California Recycling Commission has determined that: (1) flexible plastic bags are a  
4 top source of contamination in curbside recycling bins; and (2) more than half of Californians  
5 think plastic bags are accepted in their curbside recycling program, regardless of whether that is  
6 true.<sup>63</sup> Second, very few drop-off bins are offered to California consumers. In the past,  
7 California required supermarkets of a certain size to maintain a plastic carryout bag collection  
8 bin, but that rule expired on January 1, 2020. *See* Cal. Pub. Res. Code § 42257. Consequently,  
9 many retail stores in California, including Stater Bros, no longer maintain store drop-off bins for  
10 consumers to return their Plastic Bags for “recycling.” Therefore, even those few consumers  
11 who understand that they need to return Defendants’ Plastic Bags to a store for recycling, and  
12 who then make the effort to do so, will be hard-pressed to find a collection bin. For example,  
13 according to BagandFilmRecycling.org, there are only five locations in the City of Los Angeles  
14 that have a store drop-off bin.<sup>64</sup> Third, the few Plastic Bags that may be returned to in-store  
15 collection bins are not actually recycled, often because store drop-off bins typically contain a mix  
16 of plastic film and other contamination such as trash, compostable bags, color plastics, and  
17 myriad other contaminants making Defendants’ Plastic Bags unlikely to meet the quality  
18 specifications of those few plastic film recyclers that exist. As a result, Plastic Bags placed in  
19 these bins are not actually recycled.

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

25 \_\_\_\_\_  
26 <sup>63</sup> California Recycling Report, pp. 105-9.

27 <sup>64</sup> <https://bagandfilmrecycling.org/> (last accessed Feb, 23, 2023) (This website is maintained by  
28 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.)



1           60.     There is also very little capacity to recycle plastic film in California or anywhere  
2 else, and colored, mixed, and contaminated plastic film is not a desirable material for any  
3 processor.<sup>65</sup> The repurposing of material used to make one product into a new product or material  
4 fully “closes the loop” of the recycling process (hence the commonly used and widely recognized  
5 “chasing arrows” symbol for recycling). The color and quality of the material that is collected  
6 into bales plays a major role in whether that material will be ultimately recycled. For instance,  
7 colored plastic film is not a desirable material by processors who seek to make clear plastic  
8 pellets for the manufacturing of new products. Processors also do not want highly contaminated  
9 material bales due to the harms contamination causes to equipment and the production of low-  
10 quality materials and products.<sup>66</sup>

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

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

20           Flexible plastic bags and film are a major source of contamination in curbside recycling  
21 bins. The flexible plastic materials are harming curbside recycling systems by clogging  
22

23 \_\_\_\_\_  
24 <sup>65</sup> 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.

25 <sup>66</sup> 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 <sup>67</sup> Letter Dated December 3, 2021 from the California Recycling Commission to Rachel Machi-  
28 Wagoner, available at,  
<https://drive.google.com/drive/folders/1ARQy3JTtWPsjqDQ0f76SWD5qbOTEoqX9>.

1 machinery in material recovery facilities (MRFs) and fiber processors. There is not a  
2 comprehensive store takeback system for plastic bags or film in California. In MRFs, the  
3 plastic bags and film contaminate paper and cardboard bales and lower the quality and  
4 material value of the paper bales. Flexible plastic bags and films that depict the word  
5 ‘recycle’ or the chasing arrows recycling symbol cause consumer confusion and  
6 contribute to contamination.

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

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

22 Most Californians are under the impression that plastic bags are recyclable . . . . It’s a  
23 logical conclusion: California has banned single-use plastics, and we see the ‘chasing  
24 arrows’ symbol or 100% recyclable printed on most every bag we get from the grocery  
25

26  
27 <sup>68</sup> 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 store. But astonishingly, there's a good chance that most, if not all, these bags are not  
2 actually recyclable in California.

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

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

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

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

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

1           67.     Similarly, according to the California Recycling Commission, a survey of plastic  
2 film processors in California and Nevada showed that there is only capacity to recycle about 3%  
3 of California’s plastic film waste.<sup>71</sup> This is 3% of *all* plastic film waste, including agricultural  
4 plastics and other film, suggesting that the capacity to recycle the Plastic Bags at issue is actually  
5 much less. Based on these data, even if more consumers returned plastic film for drop-off  
6 recycling, there is still insufficient market demand and plastic film processing capacity to actually  
7 recycle it. Due to the lack of recycling markets for plastic film, 93% of California MRFs do not  
8 even accept it, and the reprocessing facilities that do accept it do not have the capacity to recycle  
9 large quantities of plastic film.<sup>72</sup> Ultimately, Defendants’ Plastic Bags are not accepted by most  
10 MRFs nor can they be collected, sorted, or separated from the general waste stream. And there is  
11 no end market to recycle such Plastic Bags in California.

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

19           69.     Defendants continue to sell and distribute their Plastic Bags in California even  
20 though they are not recyclable in this state. Defendants have done so despite widespread  
21 acknowledgment that end markets for plastic waste—particularly plastic film waste—are, and  
22 have been, dwindling, and that the majority of plastic film labeled as recyclable in California and  
23 other regions in the United States ends up in landfills, incinerators, communities, and the natural  
24

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25 <sup>71</sup> 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/>.

26 <sup>72</sup> *Id.*

27 <sup>73</sup> Asami Tanimoto, *West Coast Contamination Initiative Research Report*, THE RECYCLING  
PARTNERSHIP, Apr. 2020, [https://recyclingpartnership.org/wp-content/uploads/2020/04/The-  
28 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 environment. By selling their Plastic Bags in California even though they are not recyclable,  
2 Defendants are violating California law.

3 **D. Defendants Have Not, And Cannot, Substantiate Their Recyclable Claims.**

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

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

19 72. The EMCA specifically requires companies making recyclable claims to maintain  
20 information and documentation as to whether such products or packaging: (1) conforms with the  
21 uniform standards contained in the Green Guides for use of the terms “recycled” or “recyclable”;  
22 and (2) meets all the criteria for statewide recyclability pursuant to SB 343. *Id.* § 17580(a)(5). In  
23 addition, the EMCA requires that companies maintain the following records in written form  
24 supporting the validity of their recyclable representations: (1) the reasons why a company  
25 believes the representation to be true; (2) any significant adverse environmental impacts directly  
26 associated with the production, distribution, use, and disposal of the consumer good; (3) any  
27 measures that are taken by the company to reduce the environmental impacts directly associated  
28

1 with the production, distribution, and disposal of the consumer good; and (4) violations of any  
2 federal, state, or local permits directly associated with the production or distribution of the  
3 consumer good. *Id.* § 17580(a)(1)-(4). The EMCA further requires companies provide all of this  
4 information and documentation supporting the validity their environmental marketing and  
5 recyclable claims to any member of the public upon request. *Id.* § 17580(b), (d).

6 73. The Green Guides similarly require companies making environmental claims to  
7 ensure that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R.  
8 § 260.2. A reasonable basis is defined as competent and reliable scientific evidence, such as  
9 “tests, analyses, research, or studies that have been conducted and evaluated in an objective  
10 manner by qualified persons and are generally accepted in the profession to yield accurate and  
11 reliable results.” *Id.* The Green Guides further require that “[s]uch evidence should be sufficient  
12 in quality and quantity based on standards generally accepted in the relevant scientific fields,  
13 when considered in light of the entire body of relevant and reliable scientific evidence, to  
14 substantiate that each of the marketing claims is true.” *Id.*

15 74. On April 13, 2022 and January 6, 2023, respectively, LBC wrote to Stater Bros  
16 and Revolution requesting Defendants substantiate the recycling claims on their Plastic Bags and  
17 provide the written records they are required to maintain under Cal. Bus. & Prof. Code §  
18 17580(a). Defendants were required to provide their substantiation to any member of the public  
19 upon request under the EMCA, but failed to do so.

20 75. By failing to substantiate their recyclability claims on their Plastic Bags, and by  
21 failing to provide LBC with the other materials Defendants are required to maintain under the  
22 EMCA to substantiate their recycling representations, Defendants are violating California law.

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

### 25 **FIRST CAUSE OF ACTION**

#### 26 **Violations of California Cal. Bus. & Prof. Code § 17200, *et seq.* — Unlawful Acts** 27 **(Against Stater Bros and Revolution)**

28 77. Plaintiff incorporates by reference the allegations set forth above.

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

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

7           80. Defendants violated and continue to violate California’s SB270, Cal. Pub. Res.  
8 Code § 42281(b)(1)(C). SB270 prohibits bag manufacturers and retailers from selling or  
9 distributing bags made from plastic film unless those bags are “recyclable in this state.” Cal. Pub.  
10 Res. Code § 42281(b)(1)(C); *see also id.* § 42283. Defendants’ Plastic Bags are not recyclable in  
11 California. As a result, Defendants are violating and continue to violate Cal. Pub. Res. Code §  
12 42281(b)(1)(C).

13           81. Defendants’ conduct separately violates Cal. Bus. & Prof. Code § 17580(a), which  
14 makes it unlawful for any person to make any unsubstantiated environmental marketing claim,  
15 including claims about their products being recyclable. The EMCA specifically requires  
16 companies making recyclable claims on their products or packaging to maintain certain  
17 information substantiating those claims. *Id.* § 17580(a)(5). In addition, the EMCA requires that  
18 companies maintain, in written form, certain other records which support the validity of their  
19 representations. *Id.* § 17580(a)(1)-(4). All of this information must be fully disclosed to any  
20 member of the public upon request. *Id.* § 17580(b), (d).

21           82. The Green Guides also require companies making environmental claims to ensure  
22 that their claims are supported by a reasonable basis prior to making the claim. 16 C.F.R. §  
23 260.2.

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

1 representations with respect to their Plastic Bags, and by failing to produce the written records  
2 they are required to maintain, Defendants are violating Cal. Bus. & Prof. Code § 17580(a) and the  
3 Green Guides.

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

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

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

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

23 **SECOND CAUSE OF ACTION**

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

26 87. Plaintiff incorporates by reference the allegations set forth above.

27 88. Plaintiff suffered injury in fact and lost money and property, giving it standing to  
28 assert its claim under Cal. Bus. & Prof. Code § 17200, because Defendants' unfair acts involving



1 their unlawful sales of their Plastic Bags and violations of the EMCA and Green Guides caused  
2 LBC to expend or divert its resources to investigate and address Defendants' unfair actions.

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

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

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

27 92. Defendants' conduct also violates the substantiation policy of the EMCA. As  
28 described above and throughout, the EMCA makes it the policy of California that companies

1 should disclose the information and documentation supporting the validity of any environmental  
2 marketing claims that those companies make, along with other certain written records, to any  
3 member of the public upon request. *Id.* § 17580(b), (d).

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

11 94. Defendants' conduct also violates the substantiation policy of the Green Guides.  
12 The Green Guides mandate that companies have a reasonable basis to make environmental claims  
13 about their products. It is a violation of the Green Guides' policy concerning substantiation for a  
14 company to make the types of recyclable claims Defendants make on their Plastic Bags without  
15 having information to substantiate that claim. As a result it is unfair for Defendants to represent  
16 that their Plastic Bags are recyclable without a reasonable basis.

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

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

23 97. Plaintiff has no adequate remedy at law for the injuries currently being suffered as  
24 result of Defendants unfair acts as an award of monetary damages would not prohibit Defendants'  
25 unfair practices. If an injunction is not granted, Plaintiff will suffer irreparable injury because it  
26 will be forced to continue to spend time and resources as a result of Defendants' unfair business  
27 practices. In addition, plastic pollution caused by Defendants' sale of Plastic Bags in California  
28 will continue to negatively harm California and global waters, coasts, communities, and marine

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

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

9 **THIRD CAUSE OF ACTION**

10 **Challenge to Revolution’s Certification Under Cal. Pub. Res. Code § 42282(f)(1)**  
11 **(Against Revolution and CalRecycle Only)**

12 99. Plaintiff incorporates by reference the allegations set forth above.

13 100. Cal. Pub. Res. Code § 42282(f)(1) gives any person the right to challenge a bag  
14 producer’s certification by “filing an action for review of that certification in the superior court.”

15 101. Revolution’s Plastic Bags are not recyclable in this state. As a result, Revolution’s  
16 certification should be revoked.

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

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

25 104. As a result, LBC exercises its right under Cal. Pub. Res. Code § 42282(f)(1) to  
26 challenge Revolution’s certification and seek to have CalRecycle remove Revolution from  
27 CalRecycle’s list of Certified Reusable Grocery Bag Producers.  
28

1 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

19  
20 Dated: February 23, 2022

Respectfully submitted,

21 LEXINGTON LAW GROUP

22  
23 /s/ Howard Hirsch

24 Howard Hirsch (State Bar No. 213209)

25 Patrick Carey (State Bar No. 308623)

26 Meredyth Merrow (State Bar No. 328337)

27 Mary Haley Ousley (State Bar No. 332711)

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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. Stater Bros. Markets  
Case No. 22STCV18252**

<b>ADDRESS</b>	<b>PARTY</b>
<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>
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