

1 Patrick L. Oot (*pro hac vice* granted)
SHOOK, HARDY & BACON L.L.P.
2 1800 K Street, N.W., Suite 1000
Washington, DC 20006
3 Tel: 202.783.8400 | Fax: 202.783.4211
oot@shb.com

4
5 Eva M. Weiler (SBN: 233942)
SHOOK, HARDY & BACON L.L.P.
Jamboree Center
6 5 Park Plaza, Suite 1600
Irvine, California 92614-2546
7 Tel: 949.475.1600 | Fax: 949.475.0016
eweiler@shb.com

8
9 M. Kevin Underhill (SBN: 208211)
Steve Vieux (SBN: 315133)
SHOOK, HARDY & BACON L.L.P.
10 555 Mission Street, Suite 2300
San Francisco, California 94105
11 Tel: 415.544.1900 | Fax: 415.391.0281
kunderhill@shb.com
12 svieux@shb.com

13 Attorneys for Defendant Walmart Inc.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

16 GREENPEACE, INC.,

17 Plaintiff,

18 vs.

19 WALMART INC.,

20 Defendant.

Case No.: 3:21-cv-00754 MMC

Judge: Hon. Maxine M. Chesney
Courtroom: 7

**WALMART INC.’S NOTICE OF MOTION
AND MOTION TO DISMISS THE
SECOND AMENDED COMPLAINT**

Date: Dec. 17, 2021
Time: 9:00 a.m.

Complaint filed Dec. 16, 2020
First Am. Compl. filed Mar. 29, 2021
Second Am. Compl. filed Oct. 15, 2021

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION 2

FACTS ALLEGED..... 3

LEGAL STANDARD..... 7

ARGUMENT 8

I. Greenpeace Still Does Not Allege Facts Showing It “Lost Money or Property as a Result of” the Alleged Misconduct, No Matter How It Characterizes Its Claims..... 8

 A. The challenged conduct still consists of alleged misrepresentations to consumers, and Greenpeace cannot base a claim on third-party reliance..... 9

 B. Greenpeace does not allege it “lost money or property as a result of” any other unlawful or unfair practices. 10

 1. Greenpeace does not allege it lost money due to a failure to substantiate..... 11

 2. The UCL does not allow “organizational standing.” 13

 3. Greenpeace has not adequately alleged organizational standing..... 17

II. Both of Greenpeace’s UCL Causes of Action Would Fail for Other Reasons as Well.... 20

 A. “Recyclability” claims are not subject to the substantiation requirement under current law. 20

 B. Private parties cannot enforce substantiation requirements in any event, at least under the circumstances here..... 21

 C. Greenpeace does not allege facts showing it is unlawful or unfair to label the products as “recyclable,” with or without substantiation..... 22

III. Greenpeace Still Alleges No Facts Showing It Is Entitled to Injunctive Relief, the Only Form of Relief It Seeks..... 23

CONCLUSION..... 25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Am. Diabetes Assoc. v. United States Dept. of the Army</i> , 938 F.3d 1147 (9th Cir. 2019)	17
<i>Amalgamated Transit Union, Loc. 1756, AFL–CIO v. Superior Ct.</i> , 46 Cal. 4th 993 (2009)	8, 13, 14, 15, 16
<i>Animal Legal Def. Fund v. LT Napa Partners LLC</i> , 234 Cal. App. 4th 1270 (2015)	14
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	7
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	7
<i>California Med. Assoc. v. Aetna Health of Cal.</i> , 491 P.3d 1045 (Cal. July 28, 2021)	17
<i>California Med. Assoc. v. Aetna Health of Cal., Inc.</i> , 63 Cal. App. 5th 660 (2021)	15, 17
<i>Californians for Disability Rts. v. Mervyn’s LLC</i> , 39 Cal. 4th 223 (2006)	8, 14
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983)	23
<i>Daro v. Superior Court</i> , 151 Cal. App. 4th 1079 (2007)	12
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 547 U.S. 388 (2006)	23
<i>El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.</i> , 959 F.2d 742 (9th Cir. 1992)	18
<i>Ely Holdings Ltd. v. O’Keeffe’s, Inc.</i> , No. 18-cv-06721-JCS, 2019 WL 3779197 (N.D. Cal. Aug. 12, 2019)	10
<i>Freeman v. ABC Legal Servs., Inc.</i> , 877 F. Supp. 2d 919 (N.D. Cal. 2012)	23, 24
<i>Friends of the Earth v. Sanderson Farms, Inc.</i> , 992 F.3d 939 (9th Cir. 2021)	17, 18, 19
<i>Greenpeace, Inc. v. Walmart Inc.</i> ,	

1	<i>Hall v. Time Inc.</i> , 158 Cal. App. 4th 847 (2008)	14, 15
2	<i>Huynh v. Quora, Inc.</i> , No. 5:18-CV-07597-BLF, 2020 WL 7495097 (N.D. Cal. Dec. 21, 2020)	23
3	<i>In Defense of Animals v. Sanderson Farms, Inc.</i> , No. 20-cv-05293-RS, 2021 4243391 (N.D. Cal. Sept. 17, 2021)	18, 19
4	<i>Jiles v. US Bank NA</i> , No. CV 12-10397-SJO, 2013 WL 12134143 (C.D. Cal. Feb. 11, 2013)	10
5	<i>Johns v. Bayer Corp.</i> , No. 09-CV-1935-AJB-DHB, 2013 WL 1498965 (S.D. Cal. Apr. 10, 2013)	21
6	<i>Kearns v. Ford Motor Co.</i> , 567 F.3d 1120 (9th Cir. 2009)	7, 9
7	<i>Kwikset Corp. v. Superior Ct.</i> , 51 Cal. 4th 310 (2011)	8, 14, 15
8	<i>La Asociación de Trabajadores de Lake Forest v. City of Lake Forest</i> , 624 F.3d 1083 (9th Cir. 2010)	18
9	<i>Law Offices of Mathew Higbee v. Expungement Assistance Servs.</i> , 214 Cal. App. 4th 544 (2013)	13
10	<i>LegalForce RAPC Worldwide P.C. v. DeMassa</i> , No. 18-cv-00043-MMC, 2020 WL 4747909 (N.D. Cal. Aug. 17, 2020)	10
11	<i>Mayron v. Google LLC</i> , 54 Cal. App. 5th 566, 574 (2020)	11, 12
12	<i>Mier v. CVS Pharmacy, Inc.</i> , No. SACV 2001979-DOC-ADS, 2021 WL 1559367 (C.D. Cal. Mar. 22, 2021)	21
13	<i>Nat'l Council Against Health Fraud Inc. v. King Bio Pharms. Inc.</i> , 107 Cal. App. 4th 1336 (2003)	21
14	<i>Nguyen v. Endologix, Inc.</i> , 962 F.3d 405 (9th Cir. 2020)	7
15	<i>Sonner v. Premier Nutrition Corp.</i> , 971 F.3d 834 (9th Cir. 2020)	23
16	<i>Stop Youth Addiction, Inc. v. Lucky Stores, Inc.</i> , 17 Cal. 4th 553 (1998)	8
17	<i>Swearingen v. Pacific Foods of Oregon, Inc.</i> , No. 13-cv-04157-JD, 2014 WL 3767052 (N.D. Cal. July 31, 2014)	9
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

Statutes

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15 U.S.C. § 456

Cal. Bus. & Prof. Code § 175006

Cal. Bus. & Prof. Code § 1750821

Cal. Bus. & Prof. Code § 17508.520

Cal. Bus. & Prof. Code § 1758020

Cal. Bus. & Prof. Code § 17580.56

Cal. Bus. & Prof. Code § 1720324

Cal. Bus. & Prof. Code § 172048, 10

Cal. Code Civ. Proc. § 38215, 16

Cal. Pub. Res. Code § 42355.520

Rules

Fed. R. Civ. P. 8(a)7

Fed. R. Civ. P. 9(b)7, 10

Fed. R. Civ. P. 12(b)(6).....1

Other Authorities

16 C.F.R. § 260.1 *et seq.*.....5

16 C.F.R. § 260.12(a).....5, 22

16 C.F.R. § 260.12(b)(1).....6, 22

1995 Cal. Legis. Serv. Ch. 64220

Sen. Committee Report on S.B. 426 (Mar. 27, 1995) (attached as Ex. A)20

2021 Cal. Legis. Serv. Ch. 50720

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.