GUTRIDE SAFIER LLP
MARIE A. MCCRARY (Bar No. 262670)
marie@gutridesafier.com
SETH A. SAFIER (Bar No. 197427)
seth@gutridesafier.com
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 639-9090
Facsimile: (415) 449-6469

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB,

Plaintiff,

v.

THE COCA-COLA COMPANY and BLUETRITON BRANDS, INC.,

Defendants.

Case No.: _____

COMPLAINT FOR UNFAIR BUSINESS PRACTICES AND VIOLATION OF THE ENVIRONMENTAL MARKETING CLAIMS ACT

Plaintiff Sierra Club, by and through its counsel, brings this Complaint against Defendants The Coca-Cola Company and BlueTriton Brands, Inc. (formerly known as Nestle Waters North America, Inc.). The following allegations are based upon information and belief, including the investigation of Plaintiff's counsel, unless stated otherwise.

INTRODUCTION

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

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

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

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

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

[3] *Id.*

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

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

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

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

6. This action seeks an injunction precluding the sale of the plastic bottled water

within a reasonable time after entry of judgment, unless the products' packaging and marketing are modified to remove the "100% Recyclable" misrepresentation and to disclose the omitted facts about their true recyclability. If an injunction is not granted, Plaintiff will suffer irreparable injury because it will continue to spend money, staff time and other organizational resources to combat Defendants' false and misleading representations in California and to inform the public that the Products are not recyclable in California. In addition, plastic pollution caused by Defendants' sale of the Products in California and the resulting harms to California waters, coasts, communities, and marine life will continue to negatively impact Plaintiff's efforts to protect these critical resources.

PARTIES

7. Plaintiff Sierra Club ("Plaintiff" or the "Sierra Club ") was founded in 1892 and is the nation's oldest grassroots environmental organization. The Sierra Club is incorporated in California, and has its headquarters in Oakland, California. It has more than 784,000 members nationwide. The Sierra Club's mission is "[t]o explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives." Consistent with its mission, the Sierra Club is dedicated to the protection and preservation of environment, including but not limited to, ending the use of single-use plastics and combatting false and misleading environmental claims on consumer goods (i.e. greenwashing).

8. The Sierra Club has standing to bring this action because Defendants' misrepresentations regarding the environmental benefits of their Products by marketing and selling the Products as recyclable in California have frustrated the Sierra Club's organizational mission to "protect the wild places of the earth" and to "educate and enlist humanity to protect … the natural and human environment." Well before this litigation was initiated, the Sierra Club expended money, staff time, and diverted organizational resources in California in response to that frustration of purpose (described in greater detail *infra*). The Sierra Club's diversion of resources to respond to Defendants' misrepresentations regarding the recyclability of the

Products has caused the Sierra Club to postpone other projects that could advance the Sierra Club's mission. Thus, the Sierra Club has lost money or property and has suffered an injury in fact due to Defendants' actions of using false, misleading and deceptive labels regarding the recyclability of its Products in California.

9. Defendant The Coca-Cola Company ("Coca-Cola") is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business in Atlanta, Georgia.

10. Defendant BlueTriton Brands, Inc. ("Nestle") is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business in Stamford, Connecticut. BlueTriton Brands, Inc. is the successor entity to Nestle Waters North America, Inc.

11. The Parties identified in paragraphs 9-10 of this Complaint are collectively referred to hereafter as "Defendants."

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a). The aggregate amount in controversy exceeds $75,000, exclusive of interest and costs; and there is complete diversity of citizenship between Plaintiff and Defendants.

13. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business and Professions Code, section 17200, *et seq.* Plaintiff and Defendants are "persons" within the meaning of the California Business and Professions Code, section 17201.

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

15. The claims in this case arise out of Defendants' California-related activities. Defendants market and sell the Products in California to California consumers. While the

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