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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12

13 KATHLEEN SMITH, on behalf of herself and all
14 others similarly situated,

15 Plaintiff,

16 v.

17 KEURIG GREEN MOUNTAIN, INC.,

18 Defendant.
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Case No. 4:18-cv-06690-HSG

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1 Plaintiff Kathleen Smith (“Plaintiff”), on behalf of herself and those similarly
2 situated, based on information, belief and investigation of her counsel, except for information
3 based on personal knowledge, hereby alleges:

4 **INTRODUCTION**

5 1. The problems associated with plastic waste management are increasing on a local,
6 national and global scale. This affects the amount of plastic in the ocean, in freshwater lakes and
7 streams, on land, and in landfills. Nearly 90% of plastic waste is not recycled, with billions of
8 tons of plastic becoming trash and litter. As consumers become increasingly aware of the
9 problems associated with plastic waste, they are increasingly susceptible to marketing claims
10 reassuring them that the plastic used to make and package the products that they purchase are
11 recyclable. Many consumers concerned with the proliferation of plastic waste actively seek to
12 purchase products that are either compostable or recyclable to divert such waste from the ocean
13 and landfills. Seeking to take advantage of consumers’ concerns, defendant Keurig Green
14 Mountain, Inc. (“Defendant”) markets and sells plastic single serve coffee pods as recyclable,
15 when the pods cannot in fact be recycled.

16 2. This Complaint seeks to remedy Defendant’s unlawful, unfair and deceptive
17 business practices with respect to the advertising, marketing and sales of plastic single serve pods
18 that contain coffee and that are labeled as “recyclable” (the “Products”).¹ The Products are
19 advertised, marketed and sold as recyclable. However, even if consumers take the many steps
20 required to place the Products in their recycling bins, they are not in fact recyclable because
21 municipal recycling facilities (“MRFs”) are not properly equipped to capture and segregate such
22 small materials, nor can they handle such materials since they are inevitably contaminated with
23 foil and food waste. Furthermore, even to the extent facilities exist that are capable of
24 segregating the Products from the general waste stream, and then cleaning any contamination in
25 the Products, the Products end up in landfills anyway as there is no market to reuse the Products

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¹ For example, one popular Product is sold under the brand name K-Cup®.

1 or convert them into a material that can be reused or used in manufacturing or assembling another
2 item.

3 3. Despite Defendant's marketing and advertising of the Products as recyclable,
4 Defendant knows that the Products typically end up in landfills. Defendant's representations that
5 the Products are recyclable are material, false, misleading and likely to deceive members of the
6 public. These representations also violate California's legislatively declared policy against
7 misrepresenting the characteristics of goods and services.

8 4. Plaintiff purchased the Products in reliance on Defendant's false representations
9 that the Products are recyclable. Plaintiff viewed Defendant's false representations on the labels
10 and other marketing materials for the Products. If Plaintiff had known that the Products were not
11 recyclable, Plaintiff would not have purchased the Products and would have instead sought out
12 single serve pods or other coffee products that are otherwise compostable, recyclable or reusable.
13 At a minimum, she would not have paid as much as she did if she knew the Products could not be
14 recycled. Defendant thus breached its express warranty under the California Commercial Code §
15 2313; violated the California Consumers Legal Remedies Act ("CLRA") by making
16 representations that the Products have characteristics, benefits and qualities which they do not
17 have and by advertising the Products without the intent to sell them as advertised; and violated
18 the Business and Profession Code § 17200 based on fraudulent, unlawful and unfair acts and
19 practices.

20 5. Plaintiff and the Class seek an order enjoining Defendant's acts of unfair
21 competition and other unlawful conduct, an award of damages to compensate them for
22 Defendant's acts of unfair competition, false and misleading advertising, and breaches of
23 warranty, and restitution to the individual victims of Defendant's fraudulent, unlawful and unfair
24 acts and practices.

25 **PARTIES**

26 6. Plaintiff Kathleen Smith is a resident of Lafayette, California. Plaintiff is
27 concerned about the environment and seeks out products that are compostable, recyclable or
28 reusable so that she can minimize her impact on the environment in general and on the country's

1 plastic waste problems in particular. Therefore, Plaintiff specifically selected the Products in
2 reliance on Defendant's representations that the Products are recyclable. The false
3 representations are located on the labels and other marketing materials for the Products. Had
4 Plaintiff known that the Products are not recyclable in Lafayette or anywhere else, she would not
5 have purchased the Products or would not have paid as much as she did for the Products.

6 7. Defendant Keurig Green Mountain, Inc. is a Delaware corporation with its
7 principal place of business in Burlington, Massachusetts. Defendant Keurig Green Mountain,
8 Inc. manufactures, distributes and sells the Products in California.

9 **JURISDICTION AND VENUE**

10 8. By removing this case to federal court, Defendant has alleged that this Court has
11 jurisdiction over the claims asserted herein individually and on behalf of the Class pursuant to 28
12 U.S.C. § 1332(d)(2). *See* Notice of Removal, filed Nov. 2, 2018 [ECF Docket No. 1] ("Notice of
13 Removal").

14 9. This Court has jurisdiction over Defendant because it is a corporation or other
15 entity that has sufficient minimum contacts in California, is a citizen of California, or otherwise
16 intentionally avails itself of the California market either through the distribution, sale or
17 marketing of the Products in the State of California or by having a facility located in California so
18 as to render the exercise of jurisdiction over it by the California courts consistent with traditional
19 notions of fair play and substantial justice.

20 10. Venue is proper pursuant to 28 U.S.C. § 1391(a) because Defendant is a resident
21 of this District pursuant to 28 U.S.C. § 1391(c), and a substantial part of the events or omissions
22 giving rise to the claim occurred in this District.

23 11. **Intradistrict Assignment (L.R. 3-2(c) and (d) and 3.5(b))**: This action arises in
24 Contra Costa County, in that a substantial part of the events which give rise to the claims asserted
25 herein occurred in Contra Costa County. Pursuant to L.R. 3-2(c), all civil actions which arise in
26 Contra Costa County shall be assigned to the San Francisco Division or the Oakland Division.

BACKGROUND FACTS

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2 12. In the past decade humans across the globe have produced 8.3 billion metric tons
3 of plastic, most of it in disposable products that end up as trash. Of the 8.3 billion tons produced,
4 6.3 billion tons have become plastic waste and only 9% of that has been recycled. The
5 Environmental Protection Agency estimates that Americans alone disposed of more than 33
6 million tons of plastic in 2014, most of which was not recycled. While California has a goal to
7 achieve a 75% recycling rate by 2020, California's recycling rate is actually in decline. In 2015,
8 California's recycling rate was 50%, dropping to 47% in 2015 and down to 44% in 2017.

9 13. The staggering amount of plastic waste accumulating in the environment is
10 accompanied by an array of negative side effects. For example, plastic debris is frequently
11 ingested by marine animals and other wildlife, which can be both injurious and poisonous.
12 Floating plastic is also a vector for invasive species, and plastic that gets buried in landfills can
13 leach harmful chemicals into ground water that is absorbed by humans and other animals. Plastic
14 litter on the streets and in and around our parks and beaches also degrades the quality of life for
15 residents and visitors. More recently, scientists have discovered that plastic waste releases large
16 amounts of methane, a powerful greenhouse gas, as it degrades. Thus, plastic waste is also
17 thought to be a significant potential cause of global climate change. Consumers, including
18 Plaintiff, actively seek out products that are compostable, recyclable or reusable to prevent the
19 increase in global waste and to minimize their environmental foot print.

20 14. Single serve coffee pods have received extensive criticism for their contribution to
21 the plastic waste crisis. For instance, on January 7, 2015, an anonymous person posted a
22 YouTube video entitled "Kill the K-Cup," which portrays an apocalyptic scene in which giant
23 alien monsters who are themselves composed of K-Cups® invade a city and fire missile and
24 bullet-like K-Cups® at terrified citizens. The video concludes with the message "Kill The K-
25 Cup Before It Kills Our Planet," and provides statistics to drive home the point that single serve
26 coffee pods have dire consequences to the environmental health of the planet. Nearly 1 million
27 people viewed the video, which spawned the popular hashtag #KillTheKCup and the
28 killthekcup.org website.

1 15. According to online estimates, in 2014 alone over 9.7 billion K-Cups® were
2 produced, enough to circle the globe 12.4 times. As consumer backlash to single serve coffee
3 pods has increased over the years, even the inventor of K-Cups®, John Sylvan, has publicly
4 stated his regret for inventing them and expressed doubts about whether they could ever be
5 recycled.

6 16. The Legislature of the State of California has declared that “it is the public policy
7 of the state that environmental marketing claims, whether explicit or implied, should be
8 substantiated by competent and reliable evidence to prevent deceiving or misleading consumers
9 about the environmental impact of plastic products.” Cal. Pub. Res. Code § 42355.5. The policy
10 is based on the Legislature’s finding that “littered plastic products have caused and continue to
11 cause significant environmental harm and have burdened local governments with significant
12 environmental cleanup costs.” *Id.* § 42355(a).

13 17. The California Business and Professions Code § 17580.5 makes it “unlawful for
14 any person to make any untruthful, deceptive, or misleading environmental marketing claim,
15 whether explicit or implied.” Pursuant to that section, the term “environmental marketing claim”
16 includes any claim contained in the Guides for use of Environmental Marketing Claims published
17 by the Federal Trade Commission (the “Green Guides”). *Ibid; see also* 16 C.F.R. § 260.1, *et seq.*
18 Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a
19 product or package is recyclable. A product or package shall not be marketed as recyclable
20 unless it can be collected, separated, or otherwise recovered from the waste stream through an
21 established recycling program for reuse or use in manufacturing or assembling another item.” 16
22 C.F.R. § 260.12(a).

23 18. The Green Guides’ definition of “recyclable” is consistent with reasonable
24 consumer expectations. For instance, the dictionary defines the term “recycle” as: (1) convert
25 (waste) into reusable material, (2) return (material) to a previous stage in a cyclic process, or (3)
26 use again. Oxford Dictionary, Oxford University Press 2018. Accordingly, reasonable consumers
27 expect that products advertised, marketed, sold, labeled and/or represented as recyclable will be
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1 collected, separated or otherwise recovered from the waste stream through an established
 2 recycling program for reuse or use in manufacturing or assembling another item.

3 19. In an attempt to counter negative publicity regarding the impacts of single serve
 4 coffee pods, and to take advantage of consumers’ concerns with respect to the environmental
 5 consequences caused by such products, Defendant advertises, markets and sells the Products as
 6 recyclable. More specifically, the packaging of Defendant’s Products state that consumers can
 7 “Have your cup and recycle it, too,” in large green font. Adjacent to that statement on
 8 Defendant’s packaging are instructions for how to recycle, including illustrations with the terms
 9 “PEEL,” “EMPTY,” and “RECYCLE,” accompanied by the chasing arrow symbol that is
 10 commonly used and understood to mean that a product is recyclable. These claims are uniform,
 11 consistent and prominently displayed on each of the Products’ labels. Following is a
 12 representative example of a Product label:



1 20. Defendant's marketing, advertising and promotional materials for the Products,
2 including Defendant's website, also uniformly represent that the Products are recyclable. For
3 instance, Defendant's website advertises the Products as recyclable as follows:

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The screenshot shows the Keurig website's navigation bar with the logo and links for 'Quick Reorder', 'Register Coffee Maker', 'Support', 'Sign In', and a shopping cart. Below the navigation bar are categories: 'COFFEE, TEA & MORE', 'COFFEE MAKERS', 'ACCESSORIES', and 'GIFT GUIDE'. A search bar contains the text 'What are you looking for?'. A banner below the navigation bar reads 'FREE STANDARD DELIVERY ON ORDERS OVER \$39+ Details'. The main content area features a large image of a blue recycling bin filled with various items, with the text 'FROM BREW TO BIN AND BEYOND' and 'Brewing a Better World® starts with making a difference in the environment. That is why we're making recycling easier for everyone, starting with our Recyclable K-Cup® pods.' Below this is a section titled 'Keurig Recyclable K-Cup® Pods' with the subtext 'Today's popular varieties...with more to come!'. Two coffee pods are shown, each with a 'SHOP NOW' button underneath.

Home > Recyclable K-Cup® Pods & Recycling Information | Keurig

FROM BREW TO BIN AND BEYOND
Brewing a Better World® starts with making a difference in the environment.
That is why we're making recycling easier for everyone, starting with our Recyclable K-Cup® pods.

Keurig Recyclable K-Cup® Pods
Today's popular varieties...with more to come!

GREEN MOUNTAIN COFFEE ROASTERS
BREAKFAST BLEND
LIGHT ROAST COFFEE
KEURIG

GREEN MOUNTAIN COFFEE ROASTERS
BREAKFAST BLEND
DECAF
LIGHT ROAST COFFEE
KEURIG

SHOP NOW

SHOP NOW

HOW TO RECYCLE YOUR K-CUP® PODS
Recycling our #5 plastic pods is simple

1 PEEL
Remove the foil lid and dispose of it.

2 EMPTY
Compost or discard the pod's contents. (Filter can remain.)

3 RECYCLE
Recycle the empty cup. Check locally.

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Keurig® Recyclable K-Cup® pods are here and **by the end of 2020,**
100% of our K-Cup® pods will be recyclable.

To learn more about recycling, or the many other ways Keurig is making a difference in the environment, visit KeurigRecycling.com



21. The claims made by Defendant that the Products are recyclable are uniform, consistent and material. Because the claims are false and misleading, ordinary consumers, including members of the Class, are likely to be deceived by such representations.

22. MRFs in the United States, including those in California (and including in particular the facility that handles recycling in Lafayette, California), are not properly equipped to capture materials as small as the Products or to segregate such small items from the general waste stream. The problem of “smalls” is well-documented and well known in the recycling industry. This problem is exacerbated because the Products’ already small size is further reduced when the Products are compressed into recycling bins and then compacted by recycling collection trucks prior to being delivered to MRFs. Ultimately, by the time they reach the sorting line of a typical recycling facility, the Products are likely to be crushed, compacted and mangled. Of course Plaintiff and consumers have no way of discerning the precise size and shape of the Products after consumers place the Products in their recycling bins.

23. Defendant’s recycling instructions require consumers to go through a number of time-consuming steps in order to recycle the Products, including waiting until the Products cool, separating the foil lid from the plastic pod, and removing the pod’s contents. Worse yet, Defendant’s instructions exacerbate the deceptiveness of Defendant’s representations that the Products are recyclable by ensuring that the Products will not be recycled. For instance, while

1 Defendant instructs consumers to “peel [the] lid and dispose,” the foil lid on the Products is
2 extraordinarily difficult to remove as the foil sticks to the edge of the plastic cup and there is no
3 extra tab (as one would find on a yogurt container, for instance) to use to peel off the lid. From a
4 recycling standpoint, the inevitable presence of foil on the Products is contamination that renders
5 the Products impossible or extremely difficult to recycle.

6 24. In addition, while Defendant instructs consumers to “Empty” the Product and
7 “Compose or dispose of contents,” Defendant also explicitly states that the paper filter attached to
8 the inside of the Products “can remain.” By instructing consumers that they can leave the filter in
9 place, Defendant is ensuring that some coffee grounds will also remain. In fact, in many of
10 Defendant’s advertisements, the Products are placed in the recycling bin with coffee grounds
11 clearly visible, as evidenced by the web page depicted above. And in some of Defendant’s video
12 advertisements, both the coffee grounds and foil are visible in and on the Products as they are
13 placed in the recycling bin.² Thus, following Defendant’s instructions inevitably leads to further
14 contamination issues, as the Products will be placed in recycling bins with foil remnants, used
15 coffee grounds and a paper filter inside. From a recycling standpoint, this contamination renders
16 the Products impossible or extremely difficult to recycle. The fact that MRFs typically process
17 waste at speeds of 25 to 40 tons per hour makes it even less likely that small, compacted and
18 contaminated single serve coffee pods such as the Products will be collected, separated or
19 otherwise recovered from the waste stream.

20 25. Even in the rare instance where the Products can be segregated and cleaned of any
21 contamination, the Products still end up in landfills as there is no market to reuse the Products or
22 convert them into a material that can be reused or used in manufacturing or assembling another
23 item.

24 26. Worse yet, by encouraging consumers to place the Products in recycling bins,
25 Defendant is contaminating the recycling stream with unrecyclable materials that will hinder the
26 ability of recycling facilities to properly recycle items that are legitimately recyclable. And the

27 ² <https://www.keurig.com/recyclable> (last visited Dec. 20, 2018).

1 contamination on the Products themselves is also likely to contaminate other materials that would
2 otherwise be recyclable. Environmentally motivated consumers who purchase the Products in the
3 belief that they are recyclable are thus unwittingly hindering recycling efforts. Moreover,
4 Plaintiff and consumers have no way of knowing whether the Products are actually segregated
5 from the general waste stream, cleaned of contamination, or reused or converted into a material
6 that can be reused or used in manufacturing or assembling another item.

7 27. Most consumers believe that if their Products are accepted into a recycling
8 program, then those Products are recyclable. And consumers who spend the time and effort to
9 follow Defendant's cumbersome recycling instructions do not expect that the Products will end
10 up in a landfill. However, the Products will end up in a landfill as they cannot be recycled by
11 MRFs in the United States, including those in California (and including in particular the facility
12 that handles recycling in Lafayette, California). Defendant's representations that the Products are
13 recyclable are therefore per se deceptive under the Green Guides and under California law.

14 28. Many recycling facilities in California and elsewhere have refuted Defendant's
15 recycling claims or otherwise instructed consumers to place single serve coffee pods, including
16 those labeled as recyclable like the Products, in the trash. For instance, the following California
17 localities or waste management companies have explicitly stated that single serve coffee pods,
18 including those labeled as recyclable like the Products, should be placed in the trash:

- 19 a. Berkeley
- 20 b. Cal-Waste Recovery Systems (localities in Sacramento, Calaveras, Alpine and San
Joaquin Counties)
- 21 c. El Dorado County
- 22 d. Eureka
- 23 e. Lake County
- 24 f. Lincoln
- 25 g. Los Angeles
- 26 h. Mission Country Disposal (Los Osos, Cayucos, Cambria and Harmony)
- 27 i. Monterey County
- 28 j. Mill Valley
- k. Morro Bay
- l. Paradise
- m. Redding

- 1 n. Sacramento
- 2 o. San Luis Obispo County
- 3 p. South County Sanitary (Avila Beach, Shell Beach, Pismo Beach, Grover Beach,
Oceano, Arroyo Grando and Nipomo)
- 4 q. Shasta County
- 5 r. Tri-CED Community Recycling (Hayward and Union City)
- 6 s. Truckee

7 29. By way of example, San Luis Obispo County, Lake County, the Town of Truckee,
8 and the City of Lincoln have all stated, “Coffee Capsules [Are] Never Recyclable Curbside.”
9 These jurisdictions go on to explain, “Coffee capsule creators often tout their products as
10 ‘recyclable.’ In theory, the plastic portion of a coffee capsule is (not the lid or filter). In practice,
11 however, the cups are actually too small to be captured and recycled in recycling facilities where
objects are separated based on size and density.”³

12 30. The Green Guides are clear: “if any component significantly limits the ability to
13 recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable
14 material, but because of its shape, size or some other attribute is not accepted in recycling
15 programs, should not be marketed as recyclable.” 16 C.F.R. § 260.12(d). Here, the Products are
16 not recyclable due to their small size, their contamination with foil, filter paper and food waste,
17 and the lack of a market to recycle them. Defendant’s marketing of the Products as recyclable is
18 thus a direct violation of the Green Guides.

19 31. Because the Products are not recyclable, Defendant cannot make any recycling
20 claims as to the Products. However, at a minimum, Defendant is required to clearly and
21 prominently qualify recyclable claims to avoid deception about the availability of recycling
22 programs and collection sites to consumers if consumers do not have access to facilities that can
23 recycle their products. 16 C.F.R. § 260.12(b). A marketer may only make an unqualified
24 recyclable claim if a substantial majority of consumers or communities have access to recycling

25 ³ <https://www.iwma.com/guide/coffee-capsules/> (last visited Dec. 19, 2018)
26 <https://lakecountyrecycles.com/guide/coffee-capsules/> (last visited Dec. 19, 2018)
27 <https://www.keeptruckeegreen.org/guide/coffee-capsules/> (last visited Dec. 19, 2018)
28 <https://www.recyclinginlincoln.com/guide/coffee-capsules/> (last visited Dec. 19, 2018).

1 facilities capable of recycling the items.⁴ *Id.* § 260.12(b)(1). Because a substantial majority of
2 consumers do not have access to recycling facilities capable of recycling the Products, Defendant
3 must at a minimum qualify any recyclability claim about the Products.

4 32. According to the Green Guides, marketers may qualify recyclable claims by
5 stating the percentage of consumers or communities that have access to facilities that recycle the
6 item. 16 C.F.R. § 260.12(b)(2). In the alternative, marketers may use qualifications that vary in
7 strength depending on facility availability. *Ibid.* Thus, the strength of the qualification depends
8 on the level of access to an appropriate facility. For example, if recycling facilities are available
9 to slightly less than a substantial majority of consumers or communities where the item is sold,
10 the Green Guides recommend that a marketer should qualify the recyclable claim by stating “this
11 product may not be recyclable in your area,” or “recycling facilities for this product may not exist
12 in your area.” *Ibid.* If recycling facilities are available only to a few consumers, the Green
13 Guides recommend a marketer to qualify its recyclable claim by stating “this product is
14 recyclable only in a few communities that have appropriate recycling facilities.” *Ibid.* Under
15 these guidelines, to the extent Defendant can make any recycling claim at all for the Products,
16 Defendant must provide an unequivocally strong qualification for its recyclability claim because
17 few, if any, consumers have access to recycling facilities capable of recycling the Products.

18 33. Defendant’s labeling for the Products states: “Check locally to recycle empty cup.”
19 This statement does not comply with the Green Guides. The Green Guides specifically state that
20 this type of qualification is deceptive. In Green Guide Example 4, the qualification “[c]heck to
21 see if recycling facilities exist in your area” is considered deceptive because it does not
22 adequately disclose the limited availability of recycling programs. 16 C.F.R. § 260.12, Example
23 4. Defendant’s qualification is nearly identical to the deceptive statement identified in Example 4
24 because it advises the consumer to check for the availability of recycling programs, rather than
25 inform the consumer of the extremely limited chance that the Products will ultimately be
26 recycled. In fact, Defendant’s qualification exacerbates the misrepresentation that the Products

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28 ⁴ A “substantial majority” means at least 60 percent. 16 C.F.R. § 260.12(b)(1).

1 are recyclable by suggesting that the Products are recyclable everywhere, and that a consumer
2 need only check locally to find out how to recycle the Products.

3 34. Worse yet, even if a consumer followed Defendant's directive to "[c]heck locally,"
4 many recycling facilities (which are often operated by private companies) are unwilling to answer
5 detailed consumer inquiries about their recycling capabilities.

6 35. Not only does this qualification violate the Green Guides, but it is also not likely to
7 be understood by a reasonable consumer.⁵ Plaintiff and most other consumers believe that if their
8 municipality offers recycling services, then all products marketed as "recyclable" can be recycled.
9 Thus, most consumers will place the Products in the recycling bin under the false impression that
10 the Products can be recycled, when the Products cannot in fact be recycled in their area. In
11 addition, most consumers will follow Defendant's cumbersome recycling instructions despite the
12 fact that the Products cannot be recycled and Defendant's instructions are misleading and
13 incomplete. Defendant's labeling, advertising and marketing claims that the Products are
14 recyclable are therefore likely to deceive a reasonable consumer.

15 36. Defendant has buried other disclaimers about the recyclability of the Products on
16 its website. For instance, Defendant's website has stated at some times, "[w]e recommend
17 checking with your local municipality or waste hauler to determine if your community recycles
18 #5 plastic." *See* Defendant's Request for Judicial Notice In Support of Motion to Dismiss, Exh. 2
19 [ECF No. 19]. This disclaimer is problematic since, even if a local recycling facility was willing
20 to answer such an inquiry, and even if the response was favorable, this does not mean that the
21 facility is capable of recycling the Products due to their size, contamination, and the lack of a
22 market for them to be recycled. In fact, Defendant's webpage for Frequently Asked Questions
23 ("FAQ") asks whether the new recyclable K-Cup® are recyclable everywhere, to which the
24 website responds "[t]he new recyclable K-Cup® pods, which can be easily identified through our
25 on-the-box packaging and with a #5 recycling symbol on the bottom of the pod itself, can be

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27 ⁵ The examples in the Green Guides are specifically provided by the Federal Trade Commission
28 as its "views on how reasonable consumers likely interpret certain claims." 16 C.F.R. § 260.1(d).

1 recycled in communities that accept #5 plastics. Polypropylene (#5) is currently accepted for
2 recycling in approximately 61% of communities in the U.S. and 93% of communities in Canada.
3 Please check with your local community to confirm.”⁶ Defendant’s FAQ is misleading for the
4 same reason its website disclaimer is misleading: it indicates to a consumer that the Products are
5 recyclable solely because they are made of #5 plastic, regardless of their size, contamination, and
6 lack of market for them to be recycled, which is not the case.

7 37. Plaintiff places a high priority on environmental concerns in general, and on the
8 negative consequences regarding the proliferation of plastic waste in particular. In shopping for
9 coffee products for her home, Plaintiff was particularly concerned about the recyclability of
10 single serve pods that contain coffee. Based on the labeling and advertising of Defendant’s
11 Products, Plaintiff believed that the Products are recyclable in all locations, including Lafayette,
12 California, where Plaintiff resides. Defendant’s representations that the Products are recyclable
13 are thus material to Plaintiff.

14 38. Plaintiff purchased the Products numerous times over the course of the past couple
15 years directly from Defendant’s website believing the recycling claims both on the Products’
16 packaging as well as the website. For instance, on October 1, 2016 and November 25, 2016,
17 Plaintiff purchased from Defendant’s website Green Mountain Coffee Roasters Breakfast Blend
18 Decaf, K-Cup Box 24 ct., labeled as recyclable. Plaintiff purchased the Products in reliance on
19 Defendant’s representations that the Products are recyclable, when they are not in fact recyclable
20 in Lafayette, California or anywhere else. Plaintiff followed Defendant’s instructions on the
21 labeling to recycle the Products, but was not aware that the Products would end up in a landfill
22 anyway. Had Plaintiff and the other members of the Class known that the Products are not
23 recyclable — contrary to Defendant’s representations — they would not have purchased the
24 Products or would not have paid as much as they did for the Products.

25 39. Plaintiff continues to desire to purchase recyclable single serve coffee pods.
26 Plaintiff would purchase single serve coffee pods manufactured by Defendant in the future if

27 ⁶ <http://www.keurigrecycling.com/faq/> (last visited Dec. 20, 2018).

1 Defendant's representations that the Products are recyclable are true. Plaintiff would like to buy
2 recyclable single serve coffee pods from Defendant in the future, but is unable to determine with
3 confidence, based on the labeling and other marketing materials, whether the Products are truly
4 recyclable. Plaintiff would not have purchased the Products, or would not have paid as much as
5 she did for the Products, if Defendant had disclosed that the Products were not recyclable.

6 40. Defendant is aware that the Products are not recyclable, yet Defendant has not
7 undertaken any effort to notify its end use customers of the problem. Defendant's failure to
8 disclose that the Products are not recyclable is an omission of fact that is material to Plaintiff and
9 the other members of the Class.

10 **CLASS ACTION ALLEGATIONS**

11 41. Plaintiff brings this suit individually and as a class action pursuant to Federal Rule
12 of Civil Procedure Rule 23, on behalf of herself and the following Class of similarly situated
13 individuals:

14 All persons who purchased the Products for personal, family or
15 household purposes in California (either directly or through an
16 agent) during the applicable statute of limitations period (the
17 "Class"). Specifically excluded from the Class are Defendant; the
18 officers, directors or employees of Defendant; any entity in which
19 Defendant has a controlling interest; and any affiliate, legal
20 representative, heir or assign of Defendant. Also excluded are any
21 judicial officer presiding over this action and the members of
22 his/her immediate family and judicial staff, and any juror assigned
23 to this action.

24 42. Plaintiff is unable to state the precise number of potential members of the proposed
25 Class because that information is in the possession of Defendant. However, the number of Class
26 members is so numerous that joinder would be impracticable for purposes of Rule 23(a)(1). The
27 exact size of the proposed Class and the identity of its members will be readily ascertainable from
28 the business records of Defendant and Defendant's retailers as well as Class members' own

1 records and evidence. In its Notice of Removal, Defendant avers that the proposed Class may
2 have well over 100 members. *See* Notice of Removal ¶ 15. Thus, joinder of such persons in a
3 single action or bringing all members of the Class before the Court is impracticable. The
4 disposition of the claims of the members of the Class in this class action will substantially benefit
5 both the parties and the Court.

6 43. There is a community of interest among the members of the proposed Class in that
7 there are questions of law and fact common to the proposed Class for purposes of Rule 23(a)(2),
8 including whether Defendant's labels, advertisements and packaging include uniform
9 misrepresentations that misled Plaintiff and the other members of the Class to believe the
10 Products are recyclable when they are not. Proof of a common set of facts will establish the
11 liability of Defendant and the right of each member of the Class to relief.

12 44. Plaintiff asserts claims that are typical of the claims of the entire Class for
13 purposes of Rule 23(a)(3). Plaintiff and all members of the Class have been subjected to the same
14 wrongful conduct because they have purchased the Products that are labeled and sold as single
15 serve coffee pods that are recyclable, when they are not in fact recyclable.

16 45. Plaintiff will fairly and adequately represent and protect the interests of the other
17 members of the Class for purposes of Rule 23(a)(4). Plaintiff has no interests antagonistic to
18 those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this
19 action and has retained counsel experienced in complex litigation of this nature to represent her.
20 Plaintiff anticipates no difficulty in the management of this litigation as a class action.

21 46. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted
22 on grounds that apply generally to the Class, so that final injunctive relief or corresponding
23 declaratory relief, is appropriate respecting the Class as a whole. Defendant utilizes advertising
24 campaigns that include uniform misrepresentations that misled Plaintiff and the other members of
25 the Class.

26 47. Class certification is appropriate under Rule 23(b)(3) because common questions
27 of law and fact substantially predominate over any questions that may affect only individual
28 members of the Class. These common legal and factual questions, which do not vary among

1 Class members and which may be determined without reference to the individual circumstances
2 of any Class member include, but are not limited to the following:

- 3 a. whether Defendant advertises and markets the Products by representing that
4 the Products are recyclable;
- 5 b. whether the Products are recyclable as advertised and labeled by Defendant;
- 6 c. whether Defendant's marketing, advertising and labeling claims regarding the
7 recyclability of the Products are likely to deceive a reasonable consumer;
- 8 d. whether Defendant knows the Products cannot be recycled;
- 9 e. whether Defendant's recycling instructions are adequate;
- 10 f. whether Defendant's representations regarding the recyclability of the Products
11 are likely to be read and understood by a reasonable consumer;
- 12 g. whether Defendant's representations regarding the recyclability of the Products
13 are in compliance with the Green Guides;
- 14 h. whether Defendant's claims regarding the recyclability of the Products would
15 be material to a reasonable consumer of the Products;
- 16 i. whether Defendant's conduct in advertising, marketing and labeling of the
17 Products constitutes a violation of California consumer protection laws;
- 18 j. whether Defendant's representations concerning the Products constitute
19 express warranties with regard to the Products;
- 20 k. whether Defendant breached the express warranties it made with regard to the
21 Products;
- 22 l. whether Defendant's representations regarding recycling constitute
23 representations that the Products have characteristics, benefits or qualities
24 which they do not have;
- 25 m. whether Defendant advertised its Products without an intent to sell them as
26 advertised;
- 27 n. whether Defendant has been unjustly enriched from the sale of the Products;
- 28 o. whether punitive damages are warranted for Defendant's conduct and, if so, an

1 appropriate amount of such damages; and

2 p. whether Plaintiff and the Class members are entitled to injunctive, equitable
3 and monetary relief.

4 48. Defendant utilizes marketing, advertisements and labeling that include uniform
5 misrepresentations that misled Plaintiff and the other members of the Class. Defendant's claims
6 regarding the recyclability of the Products are one of the most prominent features of Defendant's
7 marketing, advertising and labeling of the Products. Nonetheless, the Products are not in fact
8 recyclable. Thus, there is a well-defined community of interest in the questions of law and fact
9 involved in this action and affecting the parties.

10 49. Proceeding as a class action provides substantial benefits to both the parties and
11 the Court because this is the most efficient method for the fair and efficient adjudication of the
12 controversy. Class members have suffered and will suffer irreparable harm and damages as a
13 result of Defendant's wrongful conduct. Because of the nature of the individual Class members'
14 claims, few, if any, could or would otherwise afford to seek legal redress against Defendant for
15 the wrongs complained of herein, and a representative class action is therefore appropriate, the
16 superior method of proceeding, and essential to the interests of justice insofar as the resolution of
17 Class members' claims are concerned. Absent a representative class action, members of the Class
18 would continue to suffer losses for which they would have no remedy, and Defendant would
19 unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by
20 individual members of the Class, the resulting multiplicity of lawsuits would cause undue
21 hardship, burden and expense for the Court and the litigants, as well as create a risk of
22 inconsistent rulings which might be dispositive of the interests of the other members of the Class
23 who are not parties to the adjudications or may substantially impede their ability to protect their
24 interests.

25 **FIRST CAUSE OF ACTION**

26 **(Plaintiff, on Behalf of Herself and the Class, Alleges Breach of Express Warranty)**

27 50. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 49 of
28 this Complaint.

1 51. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or
2 promise made by the seller to the buyer which relates to the goods and becomes part of the basis
3 of the bargain creates an express warranty that the goods shall conform to the promise.

4 52. As detailed above, Defendant marketed and sold the Products as recyclable.
5 Defendant's representations that the Products are recyclable constitute affirmations of fact made
6 with regard to the Products as well as descriptions of the Products.

7 53. Defendant's representations regarding the recyclability of the Products are
8 uniformly made in the Products' advertising, internet sites and other marketing materials, and on
9 the Products' labeling and packaging materials, and are thus part of the basis of the bargain
10 between Defendant and purchasers of the Products.

11 54. California has codified and adopted the provisions of the Uniform Commercial
12 Code governing express warranties (Cal. Com. Code § 2313).

13 55. At the time that Defendant designed, manufactured, sold and distributed the
14 Products, Defendant knew that the Products were not recyclable.

15 56. As set forth in the paragraphs above, the Products are not recyclable and thus do
16 not conform to Defendant's express representations to the contrary. Defendant has thus breached
17 its express warranties concerning the Products.

18 57. On July 23, 2018, Plaintiff sent a pre-suit demand letter to Defendant notifying
19 Defendant that the Products are not recyclable. Defendant therefore has actual and constructive
20 knowledge that the Products are not recyclable and were thus not sold as marketed and
21 advertised.

22 58. As a direct and proximate result of Defendant's breach of express warranties,
23 Plaintiff and Class members have suffered damages.

24 Wherefore, Plaintiff prays for judgment against Defendant, as set forth hereafter.
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SECOND CAUSE OF ACTION

(Plaintiff, on Behalf of Herself and the Class, Alleges Violations of the California Consumers Legal Remedies Act – Injunctive Relief and Damages)

59. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 58 of this Complaint.

60. Plaintiff and the Class members purchased the Products for personal, family or household purposes.

61. The acts and practices of Defendant as described above were intended to deceive Plaintiff and the Class members as described herein and have resulted and will result in damages to Plaintiff and the Class members. These actions violated and continue to violate the CLRA in at least the following respects:

- a. In violation of Section 1770(a)(5) of the CLRA, Defendant’s acts and practices constitute representations that the Products have characteristics, uses or benefits which they do not;
- b. In violation of Section 1770(a)(7) of the CLRA, Defendant’s acts and practices constitute representations that the Products are of a particular quality, which they are not; and
- c. In violation of Section 1770(a)(9) of the CLRA, Defendant’s acts and practices constitute the advertisement of the Products without the intent to sell them as advertised.

62. By reason of the foregoing, Plaintiff and the Class members have suffered damages.

63. By committing the acts alleged above, Defendant violated the CLRA.

64. In compliance with the provisions of California Civil Code § 1782, on July 23, 2018, Plaintiff provided written notice to Defendant of her intention to seek damages under California Civil Code § 1750, *et seq.*, and requested that Defendant offer an appropriate consideration or other remedy to all affected consumers. As of the date of this complaint,

1 Defendant has not done so. Accordingly, Plaintiff seeks damages pursuant to California Civil
2 Code §§ 1780(a)(1) and 1781(a).

3 65. Pursuant to California Civil Code § 1780(a)(2) Plaintiff and the Class members are
4 entitled to an order enjoining the above-described wrongful acts and practices of Defendant,
5 providing actual and punitive damages and restitution to Plaintiff and the Class members, and
6 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and
7 proper by the Court under California Civil Code § 1780.

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

9 **THIRD CAUSE OF ACTION**

10 **(Plaintiff, on Behalf of Herself, the Class and the General Public,**
11 **Alleges Violations of California Business & Professions Code § 17200,**
12 ***et seq.* Based on Fraudulent Acts and Practices)**

13 66. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 65 of
14 this Complaint.

15 67. Under Business & Professions Code § 17200, any business act or practice that is
16 likely to deceive members of the public constitutes a fraudulent business act or practice.

17 68. Defendant has engaged and continues to engage in conduct that is likely to deceive
18 members of the public. This conduct includes, but is not limited to, representing that the Products
19 are recyclable.

20 69. Plaintiff purchased the Products in reliance on Defendant's representations that the
21 Products are recyclable. Defendant's claims that the Products are recyclable are material, untrue
22 and misleading. These recyclable claims are prominent on all of Defendant's marketing,
23 advertising and labeling materials, even though Defendant is aware that the claims are false and
24 misleading. Defendant's claims are thus likely to deceive both Plaintiff and a reasonable
25 consumer. Plaintiff would not have purchased the Products, or would not have paid as much for
26 the Products, but for Defendant's false representations that the Products are recyclable. Plaintiff
27 has thus suffered injury in fact and lost money or property as a direct result of Defendant's
28 misrepresentations and material omissions.

1 77. Defendant’s conduct also violates California Business & Professions Code
2 § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive or
3 misleading environmental marketing claim. Pursuant to § 17580.5, the term “environmental
4 marketing claim” includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.*
5 Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a
6 product or package is recyclable. A product or package shall not be marketed as recyclable
7 unless it can be collected, separated, or otherwise recovered from the waste stream through an
8 established recycling program for reuse or use in manufacturing or assembling another item.” 16
9 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above,
10 Defendant is violating Business & Professions Code § 17580.5.

11 78. Defendant’s conduct is also a breach of warranty. Defendant’s representations that
12 the Products are recyclable constitute affirmations of fact made with regard to the Products, as
13 well as descriptions of the Products, that are part of the basis of the bargain between Defendant
14 and purchasers of the Products. Because those representations are material, false and misleading,
15 Defendant has breached its express warranty as to the Products and has violated California
16 Commercial Code § 2313.

17 79. By violating the CLRA, the FTC Act, Business & Professions Code §§ 17500 and
18 17580.5, and California Commercial Code § 2313, Defendant has engaged in unlawful business
19 acts and practices which constitute unfair competition within the meaning of Business &
20 Professions Code § 17200. Plaintiff would not have purchased the Products, or would not have
21 paid as much for Products, but for Defendant’s unlawful business practices. Plaintiff has thus
22 suffered injury in fact and lost money or property as a direct result of Defendant’s
23 misrepresentations and material omissions.

24 80. An action for injunctive relief and restitution is specifically authorized under
25 Business & Professions Code § 17203.

26 Wherefore, Plaintiff prays for judgment against Defendant, as set forth hereafter.
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FIFTH CAUSE OF ACTION

**(Plaintiff, on Behalf of Herself, the Class and the General Public,
Alleges Violations of California Business & Professions Code § 17200, *et seq.*
Based on Unfair Acts and Practices)**

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4 81. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 80 of
5 this Complaint.

6 82. Under California Business & Professions Code § 17200, any business act or
7 practice that is unethical, oppressive, unscrupulous or substantially injurious to consumers, or that
8 violates a legislatively declared policy, constitutes an unfair business act or practice.

9 83. Defendant has engaged and continues to engage in conduct which is immoral,
10 unethical, oppressive, unscrupulous and substantially injurious to consumers. This conduct
11 includes, but is not limited to, advertising and marketing the Products as recyclable when they are
12 not. By taking advantage of consumers concerned about the environmental impacts of plastic
13 waste, Defendant’s conduct, as described herein, far outweighs the utility, if any, of such conduct.

14 84. Defendant has engaged and continues to engage in conduct that violates the
15 legislatively declared policy of the CLRA against misrepresenting the characteristics, uses,
16 benefits and quality of goods for sale. Defendant has further engaged, and continues to engage, in
17 conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5 against
18 deceiving or misleading consumers about the environmental impact of plastic products.

19 85. Defendant’s conduct also violates the policy of the Green Guides. The Green
20 Guides mandate that “[a] product or package shall not be marketed as recyclable unless it can be
21 collected, separated, or otherwise recovered from the waste stream through an established
22 recycling program for reuse or use in manufacturing or assembling another item.” 16 C.F.R.
23 § 260.12(a). It further states that “[a]n item that is made from recyclable material, but because of
24 its shape, size or some other attribute is not accepted in recycling programs, should not be
25 marketed as recyclable.” 16 C.F.R. § 260.12(d). As explained above, the Products cannot be
26 recycled. Nonetheless, some recycling facilities may accept the Products even though they must
27 eventually send the Products to a landfill. It is unfair for Defendant to make a recyclable claim
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1 based on the fact that some recycling facilities may accept the Products, despite the recycling
2 facilities' inability to actually recycle the Products. Moreover, consumers believe that products
3 are recyclable when they are accepted by a recycling program, even if the recycling facilities end
4 up sending the products to a landfill. Taking advantage of consumer perception of recycling
5 programs violates the policy of the Green Guides.

6 86. Defendant's conduct, including failing to disclose that the Products will end up in
7 landfills and not be recycled, is substantially injurious to consumers. Such conduct has caused
8 and continues to cause substantial injury to consumers because consumers would not have
9 purchased the Products but for Defendant's representations that the Products are
10 recyclable. Consumers are concerned about environmental issues in general and plastic waste in
11 particular and Defendant's representations are therefore material to such consumers. Misleading
12 consumers — and instructing them to follow cumbersome instructions in order to recycle the
13 Products even though the Products will end up in a landfill despite those efforts — causes injury
14 to such consumers that is not outweighed by any countervailing benefits to consumers or
15 competition. Indeed, no benefit to consumers or competition results from Defendant's conduct.
16 Defendant gains an unfair advantage over its competitors, whose advertising must comply with
17 the CLRA, Cal. Pub. Res. Code § 42355.5, the FTC Act, Cal. Business & Professions Code §
18 17508, and the Green Guides. Since consumers reasonably rely on Defendant's representations
19 of the Products and injury results from ordinary use of the Products, consumers could not have
20 reasonably avoided such injury.

21 87. Although Defendant knows that the Products are not ultimately recycled,
22 Defendant failed to disclose that fact to Plaintiff and the Class.

23 88. By committing the acts alleged above, Defendant has engaged in unfair business
24 acts and practices which constitute unfair competition within the meaning of California Business
25 & Professions Code § 17200.

26 89. An action for injunctive relief and restitution is specifically authorized under
27 California Business & Professions Code § 17203.

28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief against Defendant as follows:

A. That the Court declare this a class action;

B. That the Court preliminarily and permanently enjoin Defendant from conducting its business through the unlawful, unfair or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;

C. That the Court order Defendant to conduct a corrective advertising and information campaign advising consumers that the Products do not have the characteristics, uses, benefits and quality Defendant has claimed;

D. That the Court order Defendant to cease and refrain from marketing and promotion of the Products that state or imply that the Products are recyclable;

E. That the Court order Defendant to implement whatever measures are necessary to remedy the unlawful, unfair or fraudulent business acts or practices, untrue and misleading advertising and other violations of law described in this Complaint;

F. That the Court order Defendant to notify each and every Class member of the pendency of the claims in this action in order to give such individuals an opportunity to obtain restitution and damages from Defendant;

G. That the Court order Defendant to pay restitution to restore all Class members all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair or fraudulent business act or practice, untrue or misleading advertising, plus pre- and post-judgment interest thereon;

H. That the Court order Defendant to disgorge all money wrongfully obtained and all revenues and profits derived by Defendant as a result of its acts or practices as alleged in this Complaint;

I. That the Court award damages to Plaintiff and the Class to compensate them for the conduct alleged in this Complaint;

J. That the Court award punitive damages pursuant to California Civil Code § 1780(a)(4);

1 K. That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit
2 pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780(d), the
3 common fund doctrine, or any other appropriate legal theory; and

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

5 **JURY DEMAND**

6 Plaintiff demands a trial by jury on all causes of action so triable.

7
8 Dated: December 28, 2018

Respectfully submitted,

9 LEXINGTON LAW GROUP

10
11 /s/ Howard Hirsch

12 Howard Hirsch (State Bar No. 213209)

13 Ryan Berghoff (State Bar No. 308812)

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CERTIFICATE OF SERVICE

I, Howard Hirsch, an attorney, hereby certify that on December 28, 2018, I caused a complete and accurate copy of the foregoing document to be served via this Court’s ECM/ECF notification system, which will serve electronically to all participants in this case.

/s/ Howard Hirsch