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SAN MATEO COUNTY

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20-CIV-01213
CMP
Complaint
2263019



11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN MATEO**

13 **EARTH ISLAND INSTITUTE,**

14 **Plaintiff,**

15 **vs.**

16 **CRYSTAL GEYSER WATER COMPANY,**
17 **THE CLOROX COMPANY,**
18 **THE COCA-COLA COMPANY,**
19 **PEPSICO, INC.,**
20 **NESTLÉ USA, INC.,**
21 **MARS, INCORPORATED,**
22 **DANONE NORTH AMERICA,**
MONDELEZ INTERNATIONAL, INC.,
COLGATE-PALMOLIVE COMPANY,
THE PROCTER & GAMBLE COMPANY,
23 **and DOES 1-25, inclusive,**

24 **Defendants.**

Case No. **20 CIV 01213**

COMPLAINT FOR

- 16 (1) **VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT;**
- 17 (2) **PUBLIC NUISANCE;**
- 18 (3) **BREACH OF EXPRESS WARRANTY;**
- 19 (4) **STRICT LIABILITY—FAILURE TO WARN;**
- 20 (5) **STRICT LIABILITY—DESIGN DEFECT;**
- 21 (6) **NEGLIGENCE; and**
- 22 (7) **NEGLIGENCE—FAILURE TO WARN**

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1 **I. INTRODUCTION**

2 1. Earth Island Institute (“Earth Island”) is a group that has long worked to protect
3 oceans, coasts, and marine life from all manner of harm. Earth Island files this action to hold
4 Defendants accountable for the misinformation they have spread about the recyclability of plastic,
5 and the damage they have wrought to the environs Earth Island works to protect, as well as to Earth
6 Island’s property interests.

7 2. There is a staggering 150 million metric tons of plastic in the marine environment.
8 Plastic is present in every single part of the ocean—from the surface of the Pacific, to the near
9 shores of Monterey Bay, to the depths of the Mariana Trench and at each of the poles.¹ Scientists



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26 ¹ Katie Mika et al., *Stemming the Tide of Plastic Marine Litter: A Global Action Agenda*, 5 UCLA
27 SCHOOL OF LAW PRITZKER ENVT. L. POL’Y BRIEFS, Oct. 2013,
28 www.law.ucla.edu/centers/environmental-law/emmett-institute-on-climate-change-and-the-environment/publications/stemming-the-tide-of-plastic-marine-litter/; Above Photo Credit: NOAA.

1 estimate that between 8 and 20 million tons of plastic enter the ocean annually. **At this rate,**
2 **plastic is set to outweigh fish in the ocean by 2050.**²

3 3. Plastic never goes away because it is not biodegradable. Instead, plastic in the ocean
4 breaks down into smaller and smaller pieces, known as microplastics. Because of their miniscule
5 nature, microplastics are found in every nook and cranny of ocean ecosystems. They are now a
6 common component of sand and are embedded in seagrass, which is a food source for various
7 marine life. As a result, microplastics are routinely found in the digestive systems of sea dwelling
8 creatures.

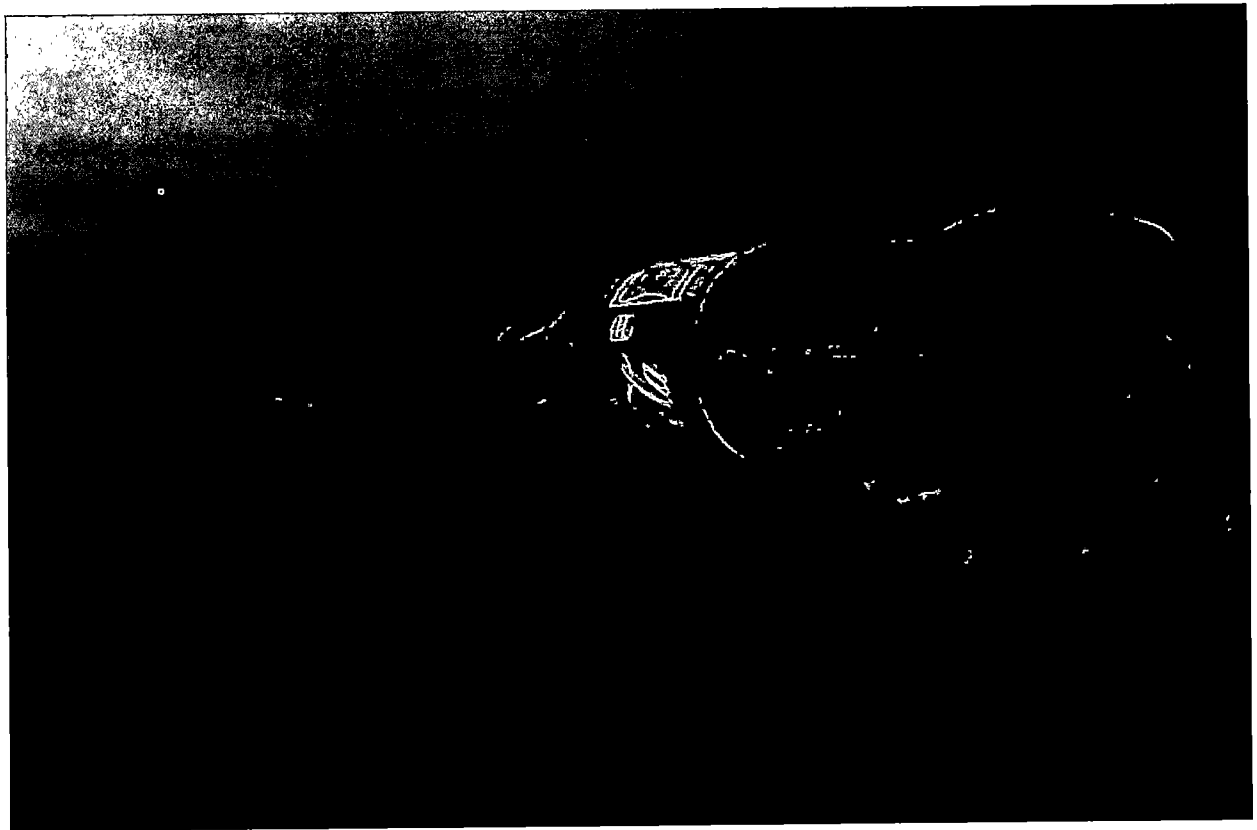


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27 ² *The New Plastic Economy: Rethinking the future of plastics*, ELLEN MACARTHUR FOUNDATION,
28 2016, http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf.

1 4. Microplastics are also abundant in human water supplies. The average person
2 ingests approximately 5 grams of plastic on a weekly basis—roughly the equivalent of a credit
3 card.³

4 5. A significant portion of oceanic plastic pollution can be traced back to just a handful
5 of major companies who use extensive plastic packaging, much of it single-use, for their products
6 (“Products”) which infiltrate marine environments.⁴ Break Free From Plastic’s 2019 Global Brand
7 Audit coordinated thousands of individuals worldwide to survey plastic accumulation in 51
8 different countries to collect data about sources of plastic pollution.

9 6. Brand audit participants gathered plastic waste from their selected site, recorded the
10 total volume of plastics collected, and used standardized data cards to identify the waste’s



25 ³ World Wide Fund for Nature et al., *No Plastic in Nature: Assessing Plastic Ingestion from Nature*
26 *to People*, WWF ANALYSIS, June 2019.

27 ⁴ Break Free From Plastic, *Branded Vol. II Identifying the World’s Top Corporate Plastic Polluters*,
28 GREENPEACE.ORG, 2019, <https://www.breakfreefromplastic.org/globalbrandauditreport2019/>;
Above Photo Credit: [maria mendiola](#) on [Unsplash](#).

1 composite categories: brand names, item descriptions, types of products, types of materials, layers,
2 and local recyclability. Participants were asked to include both branded and unbranded items
3 found, and to write “unknown” if brands were not clearly marked.

4 7. In total, 72,451 volunteers in 51 countries conducted 484 brand audits. These
5 volunteers collected **476,423** pieces of plastic waste, 43% of which was marked with a clear
6 consumer brand. The brand audits were concentrated between August 1 - September 30, 2019 and
7 most took place on World Cleanup Day (Sep 21).

8 8. The audit identified the 10 companies most responsible for plastic pollution as:
9 Coca-Cola, Nestle, PepsiCo, Mondelez International, Unilever, Mars Incorporated, Procter &
10 Gamble, Colgate-Palmolive, Phillip Morris International, and Perfetti van Melle (in descending
11 order).⁵ The top three contributors—Coca-Cola, PepsiCo, and Nestle—are linked to 14% of global
12 oceanic plastic pollution.⁶

13 9. Due to strenuous efforts by organizations such as Earth Island to educate the public
14 about the impact of plastic pollution, consumers are increasingly interested in purchasing Products
15 that are either compostable or recyclable in order to divert waste from the ocean and landfills.⁷ In
16 response, Defendants market and sell their Products with the “recycle symbol” on the label to
17 maintain customer loyalty and demand for Products.⁸

18 10. And rather than switch to more sustainable materials in their Products, Defendants
19 have engaged in a decades-long campaign to deflect blame for the plastic pollution crisis to
20 consumers. Defendants’ campaigns spread the false narrative that the oceans, wildlife, and
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22 ⁵ *Id.*

23 ⁶ Break Free From Plastic, *Branded: In Search of the World's Top Corporate Plastic Producers*
24 *Volume I*, GREENPEACE.ORG; 2018, <https://www.breakfreefromplastic.org/globalbrandauditreport2018/>.

25 ⁷ Kate Gibson & Irina Ivanova, *Suit charges Keurig's coffee pods aren't recyclable as advertised*,
26 CBS NEWS, July 11, 2019, <https://www.cbsnews.com/news/keurig-coffee-pods-not-recyclable-as-advertised-according-to-class-action-suit/>.

27 ⁸ *Id.*

1 environment would be healthy were it not for the consumers who failed to recycle their plastic. In
 2 reality, much of the purportedly “recyclable” plastic submitted to recycling facilities by consumers
 3 is not actually recyclable.

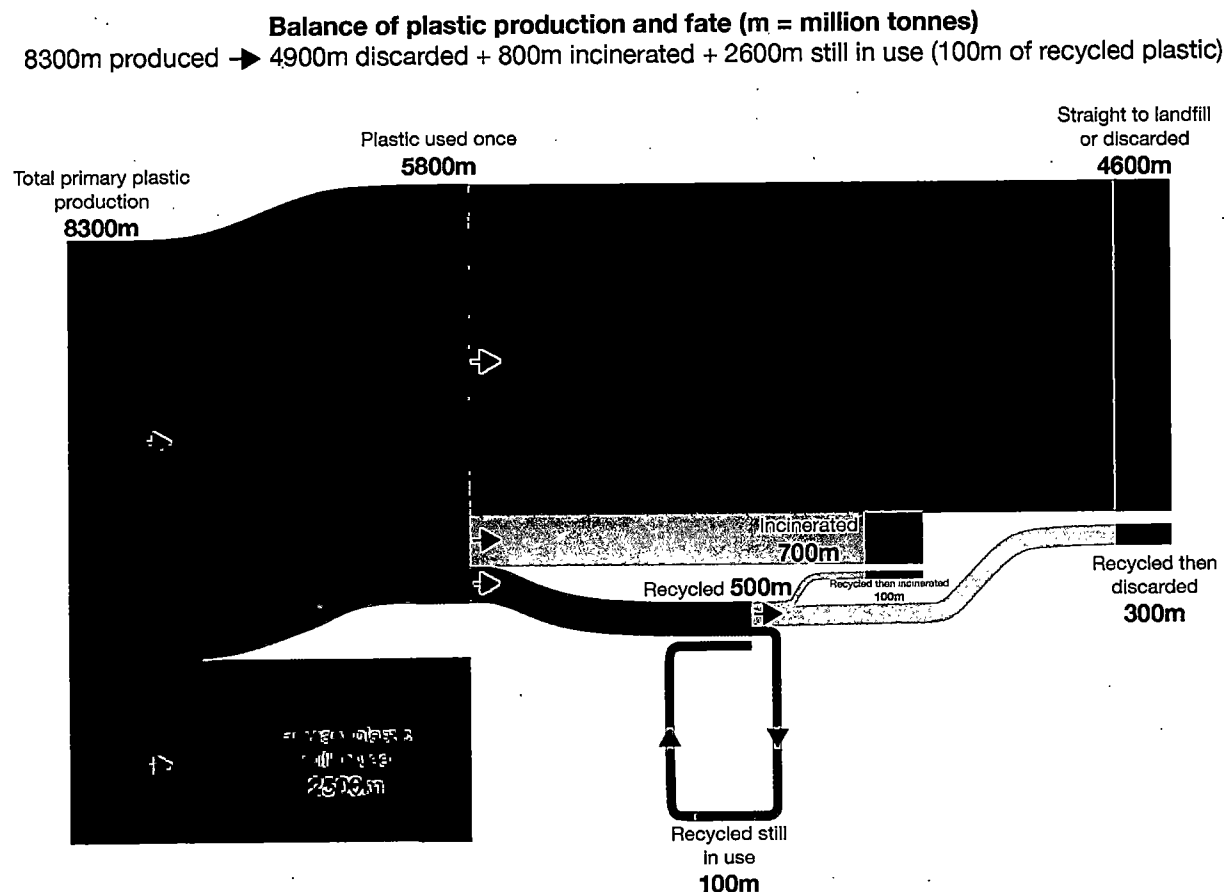
4 11. As Defendants have known for decades, plastic recycling wages a losing battle to the
 5 exponential increase in plastic production each year. Recycling captures less than 10 percent of
 6 plastic produced annually. Currently, **the annual weight of plastic production globally is roughly**
 7 **the same as the entire weight of humanity.** Unless every human on earth melted down and
 8 repurposed their weight in plastic every year, every ecosystem worldwide will continue to be
 9 disrupted by humans’ plastic waste.

10 Global plastic production and its fate (1950-2015)

Our World
in Data

11 Global production of polymer resins, synthetic fibres and additives, and its journey through to its ultimate
 12 fate (still in use, recycled, incinerated or discarded).

Figures below represent the cumulative mass of plastics over the period 1950-2015, measured in million tonnes.



25 Source: based on Geyer et al. (2017). Production, use, and fate of all plastics ever made.
 26 This is a visualization from OurWorldInData.org, where you find data and research on how the world is changing. Licensed under CC-BY-SA by Hannah Ritchie and Max Roser (2018).

1 12. Recycling facilities in the United States cannot process the **sheer volume** of
2 Defendants' Products that are submitted to recycling facilities on an annual basis.⁹ The labor and
3 cost required to sort, melt, and reconstitute the approximately 33 million tons of plastic produced in
4 the United States every year is insurmountable. A recent study revealed that U.S. recycling facilities
5 can process no more than 23% of PET#1 plastic produced each year. PET#1 plastic is primarily
6 used in water and soft drink bottles, and is just one of the seven types of plastic resins produced.¹⁰
7 Recycling facilities can process no more than 13% of HDPE#2, a second resin type that is primarily
8 used in milk jugs and other larger plastic containers. U.S. recyclers can process only a negligible
9 percentage of #3–7 plastic resins, which are frequently used to produce products such as yogurt
10 containers, food pouches, and other food, beverage, and consumer products packaging.¹¹

11 13. Furthermore, due to the availability of cheap raw materials to make “virgin plastic,”
12 there is no market demand for recycled plastic. Using virgin plastic to package and make Products
13 is cheaper than other materials, because virgin plastic is derived from oil and natural gas.
14 Recognizing the market potential from plastic production, major oil and natural gas companies are
15 increasingly integrating their operations to include production of plastic resins and products, which
16 further drives down the price of “virgin plastic.”¹² As a result, recycling facilities cannot afford the
17 cost of breaking down and reconstituting recycled plastic because there are almost no buyers of the
18 recycled plastic.

19 14. Historically, recycling facilities in the United States shipped plastic scrap
20 submissions to China.¹³ But tons were never recycled. Instead, they were burned and dumped into
21

22 ⁹ Michael Corkery, *As Costs Skyrocket, More U.S. Cities Stop Recycling*, THE NEW YORK TIMES,
Mar. 16, 2019, <https://www.nytimes.com/2019/03/16/business/local-recycling-costs.html>.

23 ¹⁰ John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
24 GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

25 ¹¹ *Id.*

26 ¹² *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks*. CIEL.ORG,
<https://www.ciel.org/reports/fuelingplastics/>.

27 ¹³ Amanda Mei, *What China's Ban on Plastic Scrap Means for Global Recycling: Q&A with Kate*
28 *O'neill, Author of Waste*, WILSON CENTER: NEW SECURITY BEAT, Nov. 28, 2019,

1 waterways, where they are carried into the ocean.¹⁴ For years, tons of plastic that U.S. consumers
2 dutifully sorted and transported to recycling facilities ultimately ended up in the ocean.

3 The pathway by which plastic enters the world's oceans

Our World
in Data

4 Estimates of global plastics entering the oceans from land-based sources in 2010 based on the pathway from primary production through to marine plastic inputs.

5 **Global primary plastic production:**
270 million tonnes per year

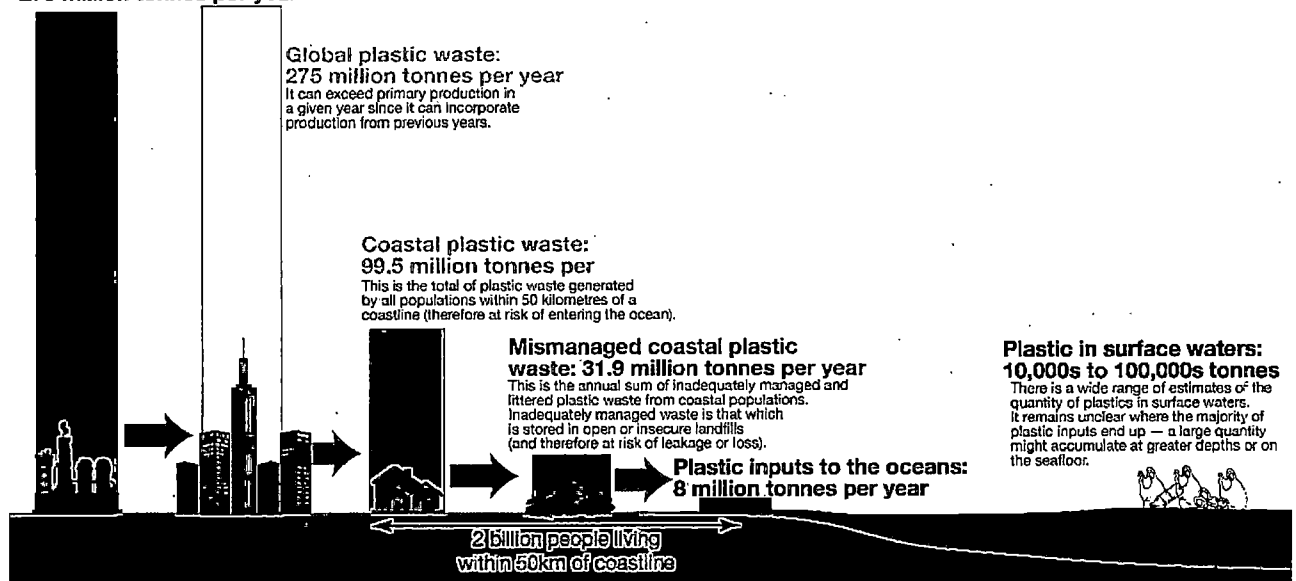
6 **Global plastic waste:**
275 million tonnes per year
It can exceed primary production in
a given year since it can incorporate
production from previous years.

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9 **Coastal plastic waste:**
99.5 million tonnes per year
This is the total of plastic waste generated
by all populations within 50 kilometres of a
coastline (therefore at risk of entering the ocean).

10
11 **Mismanaged coastal plastic
waste: 31.9 million tonnes per year**
This is the annual sum of inadequately managed and
littered plastic waste from coastal populations.
Inadequately managed waste is that which
is stored in open or insecure landfills
(and therefore at risk of leakage or loss).

12
13 **Plastic inputs to the oceans:**
8 million tonnes per year

14 **Plastic in surface waters:**
10,000s to 100,000s tonnes
There is a wide range of estimates of the
quantity of plastics in surface waters.
It remains unclear where the majority of
plastic inputs end up — a large quantity
might accumulate at greater depths or on
the seafloor.



15 Source: based on Jambeck et al. (2015) and Lriksen et al. (2014). Icon graphics from Noun Project.

16 Data is based on global estimates from Jambeck et al. (2015) based on plastic waste generation rates, coastal population sizes, and waste management practices by country.

17 This is a visualization from OurWorldinData.org, where you will find data and research on how the world is changing.

Licensed under CC-BY-SA by the authors.

18 15. In a very real sense, much of the plastic that is labeled “recyclable” is false and
19 misleading due to the inability of consumers to access facilities that will actually recycle
20 Defendants’ Products.¹⁵

21 <https://www.newsecuritybeat.org/2019/11/chinas-ban-plastic-scrap-means-global-recycling-qate-oneill-author-waste/>.

22
23 ¹⁴ Christopher Joyce, *Where Will Your Plastic Trash Go Now that China Doesn't Want it?*,
NPR.ORG, Mar. 13, 2019,

24 <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it>; *Discarded: Communities on the Frontlines of the Global Plastic Crisis*, GAIA, Apr. 2019, <https://wastetradestories.org/wp-content/uploads/2019/04/Discarded-Report-April-22-pages.pdf>.

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27 ¹⁵ John Hovevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*,
GREENPEACE REPORTS, Feb. 18, 2020, www.greenpeace.org/usa/plastic_recycling.

1 16. Rather than switch to more sustainable packaging and production practices,
2 Defendants continue to spread misinformation about the true causes and solutions to plastic
3 pollution. By convincing consumers that the way to solve the plastic problem is through recycling,
4 Defendants have externalized the cost of their business' Product sales and distribution system—
5 which creates mega-tons of plastic pollution—to the public.

6 17. Defendants are major food, beverage, and consumer products businesses—some of
7 them are in fact the world's largest—and are responsible for a substantial portion of the total plastic
8 pollution currently present in California's waterways and coasts.¹⁶

9 18. Defendants have created the condition of plastic pollution in California's coasts and
10 waterways 1) by refusing to switch to more sustainable materials in order to reap higher profits



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27 ¹⁶ *Mouth of Los Angeles River, Long Beach, CA*, PLASTIC POLLUTION COALITION, Photo Credit: Bill
28 McDonald / Algalita Foundation, <https://www.flickr.com/photos/plasticpollution/4349812433/>.

1 from cheap, virgin plastic, 2) engaging in a campaign of misinformation about the true causes of
2 plastic pollution and viable solutions for mitigating its effects, 3) and deceptively maintaining
3 consumer loyalty and demand for Defendants' Products by falsely advertising the Products'
4 recyclability. Defendants reap billions in profits, while public and nonprofit organizations such as
5 Earth Island Institute spend billions in public and charitable funds to mitigate the effect of plastic
6 pollution on humans, wildlife, oceans, and waterways.

7 19. By this action, Plaintiff seeks to ensure that the parties responsible for marine plastic
8 pollution bear the costs of its impacts, rather than Plaintiff and members of the public that rely on
9 and enjoy California's coasts and waterways.

10 20. Earth Island has had to allocate significant resources to combatting the effect of
11 plastic on marine wildlife and ecosystems. **In recent years the cost and expense of cleaning**
12 **California beaches, informing the public about plastic and the limitations of recycling, and**
13 **aiding marine life that has been choked, starved, poisoned, or suffocated by plastic, has grown**
14 **exponentially.**

15 21. As an actual and proximate consequence of Defendants' conduct, Earth Island was
16 forced to divert organizational resources to remediate waterways and coasts impacted by plastic
17 pollution, and to counteract threats to marine wildlife from plastic in California. Earth Island has
18 also expended resources to remediate waterways on its private property in Richmond, California
19 that are impacted by plastic pollution. Earth Island and its members have been deprived of the
20 ability to enjoy and utilize the ocean environment and have experienced harm to their aesthetic
21 interests.

22 **II. PARTIES**

23 **A. Plaintiff**

24 22. Plaintiff **Earth Island Institute** ("Earth Island") is a non-profit, public interest,
25 membership organization established pursuant to section 501(c)(3) of the Internal Revenue Code,
26 and headquartered in Berkeley, California. Through its fiscally-sponsored projects and
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28

1 programmatic work, Earth Island has worked to combat plastic pollution, and protect California
2 coasts, and marine life from myriad harms.

3 23. Earth Island brings these claims in its own name and on behalf of its following
4 fiscally-sponsored projects:

- 5 a. Plastic Pollution Coalition (“PPC”) is a fiscally-sponsored project of Earth
6 Island. PPC staff are employees of Earth Island. PPC, founded in 2009, is a
7 growing global alliance of more than 1,000 organizations, businesses, and
8 thought leaders in 75 countries working toward a world free of plastic
9 pollution and its toxic impacts on humans, animals, waterways, oceans, and
10 the environment.
- 11 b. The International Marine Mammal Project (“IMMP”) is a fiscally-sponsored
12 project of Earth Island. IMMP staff are employees of Earth Island. For more
13 than 30 years, IMMP has been one of the leading groups fighting to protect
14 dolphins, whales, and the ocean environment.
- 15 c. Shark Stewards is a fiscally-sponsored project of Earth Island. Shark
16 Stewards staff are employees of Earth Island. Shark Stewards’ mission is to
17 restore ocean health by saving sharks from overfishing and the shark fin
18 trade, and protecting critical marine habitats through the establishment of
19 marine protected areas and shark sanctuaries. As part of this effort, it
20 launched a marine debris prevention effort that regularly conducts cleanups
21 and quantifies marine debris in the San Francisco Bay area.
- 22 d. 1000 Fountains is a fiscally-sponsored project of Earth Island. 1000
23 Fountains staff are employees of Earth Island. 1000 Fountains is building a
24 network of one thousand drinking fountains throughout San Francisco in
25 order to provide consumers with alternatives to single-use plastic bottles.
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1 24. Earth Island also brings these claims as a representative of its members that are and
2 will continue to be injured by Defendants' conduct and the consequent harms to waterways, coasts,
3 and marine life in California.

4 25. Earth Island has standing as an organization because, through its fiscally-sponsored
5 projects and programmatic work, it has diverted resources to address plastic pollution in California
6 by, among other things:

- 7 a. working to mitigate the negative impacts of plastic on marine species;
- 8 b. utilizing extensive staff time to understand the issue of plastic pollution;
- 9 c. advocating to all level of government for sensible regulations of plastic;
- 10 d. organizing plastic pollution clean-up activities;
- 11 e. educating the media and public about plastic pollution.

12 Absent relief from this Court, plastic pollution and the resulting harms to California waterways,
13 coasts, and marine life will continue negatively to impact Earth Island's efforts to protect these
14 critical resources.

15 26. Earth Island also has standing as a property owner of 5.6 acres in Richmond,
16 California, that includes two waterways connected to the San Francisco Bay, which are adversely
17 impacted by plastic pollution.

18 27. Earth Island has representative standing on behalf of its members because numerous
19 members are deprived of the ability to enjoy and utilize the ocean environment as a result of marine
20 plastic pollution, and/or experience harm to their aesthetic interests from marine plastic pollution.
21 As detailed above, protecting oceans, coasts, and marine life from myriad harms are all central to
22 Earth Island's purpose. Participation by individual members is not necessary for determination of
23 the claims alleged or for the relief requested.

24 **B. Defendants**

25 28. Defendants are major food, beverage, and consumer products businesses, and are
26 responsible for a substantial portion of the total plastic pollution currently present in California
27 waterways and coasts.

28

1 29. When reference in this complaint is made to an act or omission of the Defendants,
2 unless specifically attributed or otherwise stated, such references should be interpreted to mean that
3 the officers, directors, agents, employees, or representatives of the Defendants committed or
4 authorized such an act or omission, or failed to adequately supervise or properly control or direct
5 their employees while engaged in the management, direction, operation or control of the affairs of
6 Defendants, and did so while acting within the scope of their employment or agency.

7 30. Defendant Crystal Geysers Water Company ("Crystal Geysers") is a company
8 incorporated in California and has its principal place of business in Calistoga, California. Crystal
9 Geysers is a privately-owned subsidiary of Japanese multinational corporation Otsuka Holdings Co.
10 Ltd. Crystal Geysers produces bottled sparkling and mineral water, and it produces tea products
11 under the Tejava brand.

12 31. Crystal Geysers controls company-wide packaging and marketing decisions. Crystal
13 Geysers, through its employees and/or agents, manages directs, conducts and/or controls operations
14 relating to the process by which Crystal Geysers products are packaged, marketed, and/or sold to
15 consumers. Crystal Geysers's management, direction, conduct and/or control is exercised through a
16 variety of means, including through its employees' and/or agents' implementation of policies,
17 procedures, and programs relating to product packaging and marketing.

18 32. As a result of its management, direction, conduct, and/or control of operations
19 relating to company-wide packaging and marketing decisions, Defendant Crystal Geysers is
20 responsible for its past and current production and promotion of Crystal Geysers products in single-
21 use plastic packaging.

22 33. Crystal Geysers directs and has directed substantial business to California. A
23 substantial portion of Crystal Geysers products are or have been packaged, transported, traded,
24 distributed, marketed, promoted, sold, and/or consumed in California, from which Crystal Geysers
25 derives and has derived substantial revenue.

26 34. Defendant The Clorox Company ("Clorox") is multinational company, with its
27 principal place of business in Oakland, California. Clorox is a leading producer of household
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