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8 similarly situated and the general public
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

12 NICOLE OZONIAN, an Individual on)
13 behalf of herself and all others similarly)
14 situated and the general public,)

15 Plaintiffs,)

16 v.)

17 JACK IN THE BOX INC. a Corporation)
18 with Headquarters in San Diego,)
19 California and DOES 1-100, inclusive,)

20 Defendants)
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CASE NO.:

(Proposed CLASS ACTION)

COMPLAINT FOR:

1. **VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§17500, et seq., and**

2. **VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§17200, et seq.**

1 COMES NOW Plaintiff, NICOLE OZONIAN (“Plaintiff,”) an Individual on behalf of
2 herself and all others similarly situated and the general public, and hereby alleges as follows:

3 Plaintiff brings this action on behalf of herself, and all others similarly situated, against
4 Defendant, JACK IN THE BOX INC., (hereinafter, “Defendant,” or “JITB”). The allegations in
5 this Complaint, stated on information and belief, have evidentiary support, or are likely to have
6 evidentiary support after a reasonable opportunity for further investigation and discovery.
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8 **NATURE OF THE ACTION**

9 1. Plaintiff files this class action lawsuit on behalf of herself and all similarly situated
10 California citizens who purchased JITB products in the State of California that are branded,
11 manufactured, distributed, marketed and/or sold by JITB.
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13 2. This matter involves false and/or misleading representations, by JITB, that its
14 packaging/labeling is “recyclable.”

15 3. The JITB representations that its packaging/labeling is “recyclable” is false and/or
16 misleading, pursuant to the plain and common definitions of the terms.
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18 4. JTIB is, or reasonably should be, aware that its statements are false and/or
19 misleading, as its packaging/labeling does not meet the criteria for statewide recyclability. JITB
20 is aware that these recyclability claims, as used by JITB, are and were false and/or misleading when
21 first disseminated by JTIB.
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23 **THE PARTIES**

24 5. Plaintiff is a citizen of the State of California, and has purchased Defendant’s
25 products in the County of San Diego regularly (and over a period of more than three years) and
26 thereby adversely altered her position in an amount equal to the amount she paid for the
27 Defendant’s products. Plaintiff and the Proposed Class would not have purchased or paid a
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1 premium for the JITB products had they known that the recyclability representations were false,
2 deceptive and/or misleading.

3 6. Defendant JITB is registered with the Secretary of State as a corporation. Its'
4 Headquarters, and designated "principal place of business," is in the City and County of San Diego,
5 California.

6 7. The true names and capacities, whether individual, corporate, associate or otherwise
7 of each of the defendants designated herein as a DOE are unknown to Plaintiff at this time, who
8 therefore sue said defendants by fictitious names, and will ask leave of this Court for permission
9 to amend this Complaint to show their names and capacities when the same have been ascertained.
10 Plaintiff is informed and believes and thereon alleges that each of the defendants designated as a
11 DOE is legally responsible in some manner for the events and happenings herein referred to, and
12 caused injuries and damages, as alleged herein.

13 8. On information and belief, Plaintiff alleges that at all times herein mentioned, each
14 of the defendants was acting as the agent, servant or employee of the other defendants and that
15 during the times and places of the incident in question, Defendant and each of their agents,
16 servants, and employees became liable to Plaintiff and class members for the reasons described in
17 the complaint herein, and thereby proximately caused Plaintiff to sustain damages as set forth
18 herein.

19 9. On information and belief, Plaintiff alleges that Defendants carried out a joint
20 scheme with a common business plan and policies in all respects pertinent hereto and that all acts
21 and omissions herein complained of were performed in knowing cooperation with each other.

22 10. On information and belief, Plaintiff alleges that the shareholders, executive officers,
23 managers, and supervisors of the Defendant directed, authorized, ratified and/or participated in the
24 actions, omissions and other conduct that gives rise to the claims asserted herein. Defendant's
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1 officers, directors, and high-level employees caused JITB Products to be sold with knowledge or
2 reckless disregard that the statements and representations concerning the JITB Products were false
3 and misleading.

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5 11. Plaintiff is informed and believes, and thereon alleges, that the Defendants are in
6 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
7 occurrences, and transactions alleged herein.

8 **JURISDICTION AND VENUE**

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10 12. This Court has jurisdiction over this matter in that all parties are citizens of, or do
11 business and have Headquarters within, the State of California and the amount in controversy
12 exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought
13 by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
14 according to proof at trial. Furthermore, there is no federal question at issue as the operative
15 allegations all solely involve state (and not federal) law.

16
17 13. Plaintiff is a citizen of the State of California and subject to the personal jurisdiction
18 of this Superior Court. Further, Plaintiff purchased the majority of the JITB goods within San
19 Diego County. Defendant's Headquarters is in the City and County of San Diego, California, and
20 because Defendant's conduct business in San Diego County, California and otherwise intentionally
21 avail themselves of the markets in San Diego County, the exercise of jurisdiction by this Court is
22 proper.

23 **FACTUAL BACKGROUND**

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25 14. Plaintiff has purchased JITB's goods/products regularly (and over a period of more
26 than three years) based on said false representations, and thereby adversely altered her position in
27 an amount equal to the amount she paid for the Defendant's goods/products. Plaintiff and the
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1 Proposed Class would not have purchased (or would not have paid a premium) for the JITB
2 products had they known that the recyclability claims were false, deceptive and/or misleading.

3 15. As more specifically set forth below, JITB recycling claims are widely disseminated
4 on the JITB packaging and/or website, and/or through other written and internet publications.

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6 16. At all relevant times, Plaintiff believed that she was purchasing JITB goods that
7 were packaged in recyclable materials. Plaintiff would not have continued to purchase the
8 products, or would have purchased them but at a lesser price, absent the misleading statements and
9 misrepresentations made by JITB. Please see specific examples of Defendant's false, untrue and
10 misleading representations, below.
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12 The Recycling Claims

13 17. Defendants advertise that many of its products are "recyclable," by and through a
14 variety of ways, including the use of the "chasing arrows" symbol on its labeling/packaging. For
15 example, many of Defendants "to go," or "takeaway," packaging (including both the exterior
16 packaging and the overlaying "film"), drink containers, and plastic bags, contain a "chasing
17 arrows" symbol. (Please see **Exhibits A-C**).

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19 18. The "recycling" representations (including the use of the "chasing arrows" symbol)
20 are false and/or misleading. For example, many of the products are not actually recyclable in San
21 Diego County, or any other County in California. Further, even where some of the products may
22 (on occasion) be recyclable, they are not *always* recyclable. Defendants package their products in
23 a plastic bag commonly-identified as "#2 HDPE" plastic. (See **Exhibit A**). Plastic films and bags
24 of any resin code, including #2 HDPE, are not commonly recycled in California, or anywhere else.
25 In fact, such plastics are rejected by many California counties and Recycling facilities, including
26 San Diego County. Flexible plastic bags, film, wrap, and pouches are a top form of contamination
27 in curbside recycling bins. These materials are not widely accepted in curbside bins in California,
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1 as they clog machinery at Material Recovery Facilities (MRFs) and other plastic waste processors.
2 (Please see **Exhibit D**).

3 19. Further, the JITB plastic bags directs consumers to “return to a participating location
4 for recycling www.commandpackaging.com. This indicates that Defendants are aware that plastic
5 films, wrap, and bags are not recyclable in curbside recycling. However, Defendants still claim that
6 these products are recyclable through “store drop-off” programs. This is false and/or misleading.
7 While there are *some* post-consumer collection bins located at stores in California for plastic bags
8 and film, such collection bins are no longer legally required, and as a result are decreasing to the
9 point that less than 4 percent of stores have a “drop-off” program. The Statewide Commission on
10 Recycling Markets and Curbside Recycling has called this collection program “pointless” as there
11 is no market for plastic film waste. Additionally, the website listed on the bag does not contain any
12 information about where consumers can find a participation location for recycling. Separately, even
13 if consumers manage to locate a “participating location,” these bags are unlikely to be recycled.

14 20. Separately, Defendants also sell products which do not contain a plastic resin code.
15 As an example, the JITB “to go” (or, “take out”) cups contain the “chasing arrows” symbol.
16 However, there is no plastic resin code listed on the cups. (See **Exhibit C**). The plastic resin code
17 indicates the type of plastic resin used in order to facilitate sorting by the Recycling facility.
18 Recycling facilities sort plastic containers by the type of resin so that the properties of the
19 individual resin can be maintained, and manufacturers can reuse the material in the highest value
20 end-use possible. Many Recycling facilities in California will not accept, or sort, un-numbered
21 plastics, instead sending these products to a landfill.

22 21. Defendants package several of their food items in take-out containers that are
23 labeled with the chasing arrows symbol and #5 plastic resin code. The bottom of these containers
24 are solid black in color. (See **Exhibit B**). Plastic #5 is only very rarely recycled in California. While
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1 #5 Plastics may be accepted in *some* curbside recycling programs, they are not commonly sorted,
2 sold, or recycled as there is no market demand for #5 plastics. Further, black plastic is very difficult
3 to recycle as optical sorters cannot detect black items and therefore cannot easily sort them.
4 Additionally, black plastic does not melt well with other plastics. Many cities and counties
5 therefore instruct residents to place black plastics in the garbage.
6

7 22. California law requires that, in order for a plastic to be recyclable, there must be
8 market demand and it must maintain value. Under California law, “[i]t is deceptive to misrepresent,
9 directly or by implication, that a product or packaging is recyclable. A product of package shall not
10 be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the
11 waste stream through an established recycling program for reuse or use in manufacturing or
12 assembling another item.” Defendants representations are false and/or misleading, as there is no
13 current established recycling program for reuse or use in manufacturing or assembling another item.
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15 23. Whether consumers place these plastics products in their curbside recycling bin, or
16 locate a store drop-off collection site, it is highly unlikely that any of JITB plastic packaging will
17 actually be recycled by anyone, or any Recycling facility. Thus, the JITB representations are false
18 and/or misleading.
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20 **PRIVATE ATTORNEYS GENERAL ALLEGATIONS**

21 24. Plaintiffs assert claims on behalf of class members pursuant to California Business
22 & Professions Code § 17200, et seq. The purpose of such claims is to obtain injunctive orders
23 regarding the false labeling, deceptive marketing and consistent pattern and practice of falsely
24 promoting natural claims and the disgorgement of all profits and/or restoration of monies
25 wrongfully obtained through the Defendant’s pattern of unfair and deceptive business practices as
26 alleged herein. This private attorneys general action is necessary and appropriate because
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1 Defendants have engaged in wrongful acts described herein as part of the regular practice of its
2 business.

3 **CLASS ACTION ALLEGATIONS**

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5 25. Plaintiff brings this action on her own behalf and on behalf of all other persons
6 similarly situated pursuant to California law.

7 26. Plaintiff seeks to represent the following Class (hereinafter collectively the “Class”):

8 All citizens of the state of California who purchased JITB goods/products in the
9 state of California within the time period from April 23, 2020, through the present
10 (the “Class”).

11 Excluded from the Class are JITB, as well as its officers, employees, agents or affiliates,
12 and any judge who presides over this action, as well as all past and present employees, officers and
13 directors of JITB. Plaintiff reserves the right to expand, limit, modify, or amend this class
14 definition, including the addition of one or more subclasses, in connection with her motion for class
15 certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new facts
16 obtained during discovery.

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18 27. The Class is made up of thousands of persons throughout California, the joinder
19 of whom is impracticable, and the disposition of their claims in a Class Action will benefit the
20 parties and the Court. The Class is sufficiently numerous because, based on information and belief,
21 thousands to hundreds of thousands of units of the JITB Products have been sold in the State of
22 California during the time period from April 23, 2020, through the present (the “Class Period”).

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24 28. There is a well-defined community of interest in this litigation and the Class is
25 easily ascertainable:

- 26 a. Numerosity: The members of the Classes are so numerous that any form of
27 joinder of all members would be unfeasible and impractical. On information and
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belief, Plaintiff believes the size of the Classes exceeds One Hundred Thousand (100,000) members.

b. Typicality: Plaintiff is qualified to and will fairly and adequately protects the interests of each member of the Classes with whom she has a well-defined community of interest and the claims (or defenses, if any), are typical of all members of the Classes.

c. Adequacy: Plaintiff does not have a conflict with the Classes and is qualified to and will fairly and adequately protect the interests of each member of the Classes with whom she has a well- defined community of interest and typicality of claims. Plaintiff acknowledges that she has an obligation to the Court to make known any relationship, conflict, or difference with any putative class member. Plaintiff’s attorneys and proposed class counsel are well versed in the rules governing class action and complex litigation regarding discovery, certification, and settlement, and have been previously designated, by California state courts, as “Class Counsel” on at least 50 prior occasions.

d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. Class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

29. Common questions of law and fact exist, that predominate over questions that may affect individual class members. Common questions of law and fact include, but are not limited to, the following:

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- a. Whether Defendant’s conduct is a fraudulent business act or practice within the meaning of Business and Professions Code section 17200, et seq.;
- b. Whether Defendant’s advertising is untrue or misleading within the meaning of Business and Professions Code section 17500, et seq.;
- c. Whether Defendant made false and misleading representations in the advertising and/or packaging of the JITB Products;
- d. Whether Defendant knew or should have known that the recyclability claims and representations were false and/or misleading;
- e. Whether Defendant represented that the JITB Products have characteristics, benefits, uses, or quantities which they do not have;
- f. Whether Defendant’s representations regarding the JITB Products are false and/or misleading;
- g. Whether the Defendant breached warranties regarding the JITB Products;
- h. Whether the Defendant committed statutory and common law fraud; and
- i. Whether Defendant’s conduct as alleged herein constitutes an unfair and/or unlawful business act or practice within the meaning of Business and Professions Code section 17200, et seq.

30. Plaintiff’s claims are typical of the claims of the Class, and Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained competent and experienced counsel in class action and other complex litigation.

31. Plaintiff and the Class have suffered injury in fact, and have lost money, as a result of Defendant’s misrepresentations. Plaintiff purchased the JITB products under the belief that they were packaged with recyclable materials. Plaintiff relied on Defendant’s labeling, marketing and website and would not have purchased the JITB Products or paid a premium for them if she had

1 known that they did not have the characteristics, benefits, or qualities as represented vis-à-vis the
2 claims.

3 32. The Defendant's misrepresentations regarding the Claims were material insofar as
4 consumers relate to recyclable policies, and tend to be willing to pay a price premium for foods that
5 employ such policies and/or practices. The Defendant is aware of consumer preference for such
6 products, and has implemented a strategic false advertising and marketing campaign intended to
7 deceive consumers into thinking that the JITB employs such policies and practices.
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9 33. A class action is superior to other available methods for fair and efficient
10 adjudication of this controversy. The expense and burden of individual litigation would make it
11 impracticable or impossible for class members to prosecute their claims individually.
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13 34. The trial and litigation of Plaintiff's claims are manageable. Individual litigation of
14 the legal and factual issues raised by Defendant's conduct would increase delay and expense to all
15 parties and the court system. The class action device presents far fewer management difficulties
16 and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
17 supervision by a single court.
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19 35. Defendant has acted on grounds generally applicable to the Class as a whole, thereby
20 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to
21 the Class as a whole. The prosecution of separate actions by individual class members would create
22 the risk of inconsistent or varying adjudications with respect to individual members of the Class
23 that would establish incompatible standards of conduct for the Defendant.
24

25 36. Absent a class action, Defendant is likely to retain the benefits of their wrongdoing.
26 Because of the small size of the individual class members' claims, few, if any, class members could
27 afford to seek legal redress for the wrongs complained of herein. Absent a representative action,
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1 the class members will continue to suffer losses and Defendant will be allowed to continue these
2 violations of law and to retain the proceeds of their ill-gotten gains.

3 37. Were it not for this class action, most class members would find the cost associated
4 with litigating claims extremely prohibitive, which would result in no remedy.

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6 38. This class action would serve to preserve judicial resources, the respective parties'
7 resources, and present fewer issues with the overall management of claims, while at the same time
8 ensuring a consistent result as to each class member.

9
10 **FIRST CAUSE OF ACTION**
11 **Violations of California Business & Professions Code §§17500, et seq.**
12 **By Plaintiff and the Proposed Class against Defendants**

13 39. Plaintiff hereby incorporates by reference the allegations contained in all preceding
14 paragraphs of this complaint.

15 40. Pursuant to Cal. Bus. & Prof. Code §§ 17500, et seq., it is "unlawful for any person
16 to make or disseminate or cause to be made or disseminated before the public in this state, ... in any
17 advertising device ... or in any other manner or means whatever, including over the Internet, any
18 statement, concerning ... personal property or services, professional or otherwise, or performance
19 or disposition thereof, which is untrue or misleading and which is known, or which by the exercise
20 of reasonable care should be known, to be untrue or misleading."

21 41. Defendant committed acts of false advertising, as defined by §17500, by making the
22 Claims regarding the JITB products because those claims are untrue and/or misleading.

23 42. Because the Defendant has been made aware of the lack of recyclability aspect to
24 its product packaging/labeling, Defendant knew or should have known through the exercise of
25 reasonable care, that the JITB claims were false, untrue and/or misleading to Plaintiff and the class
26 members.
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1 Procedure section 382 and who share a common or general interest in the damages as a result of
2 the illegal and/or unfair practices, in that those individuals on whose behalf the action is brought
3 have also lost money as a result of Defendant's practices, as set forth above, and that it would be
4 impracticable to proceed as an individual plaintiff action.

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6 50. Business & Professions Code section 17200 *et seq.* prohibits any unlawful, unfair,
7 or fraudulent business act or practice.

8 51. Plaintiff's allegations herein are based upon Defendant's institutional business acts
9 and practices.

10 52. Defendant's acts and practices, as described herein above, are unlawful and unfair,
11 in that they violate California law.

12 53. As a direct result of Defendant's unlawful and unfair business acts and practices,
13 Plaintiff and all other class members have been damaged in an amount to be proven. Accordingly,
14 Plaintiff prays for restitution and injunctive damages in an amount to be proven.

15 54. Plaintiff is informed and believes, and on that basis alleges, that Defendant's
16 unlawful and unfair business practices, alleged above, are continuing in nature and are widespread.

17 55. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction
18 against Defendant to enjoin it from continuing to engage in the illegal conduct alleged herein. On
19 behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.

20 56. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees.
21 Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays for leave
22 of court to amend this complaint when the amounts are more fully known.

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26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
28 judgment against Defendant, as follows:

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- a. For an order certifying the Class;
- b. For an order certifying Plaintiff as the representative of the Class and Plaintiff's attorneys as Class Counsel;
- c. For an order declaring the Defendant's conduct violates the statutes and laws referenced herein;
- d. For an order to correct, destroy, and change all false and/or misleading labeling and website terms relating to the Claims;
- e. For an order finding in favor of Plaintiff, the Class on all counts asserted herein;
- f. For prejudgment interest on all amounts awarded;
- g. For an order of restitution, disgorgement of profits, and all other forms of equitable monetary relief;
- h. For injunctive relief as pleaded or as the Court may deem proper; and
- i. For an order awarding Plaintiff, and the Class, their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiff respectfully demands a trial by jury of all issues.

Dated: April 25, 2024

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