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Trends in "Greenwashing" Litigation

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Speakers:

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**Camille Sippel**

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Conference Reference Materials

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# Trends in “Greenwashing” Litigation

## Panelists:

- Siobhan C. Amin, Federal Trade Commission
- Christina Tusan, HammondLaw PC
- Camille Sippel, ClientEarth
- Surya Kundu, Steptoe & Johnson LLP

## Moderator:

- Eric A. Rivas, Latham & Watkins LLP

## Siobhan C. Amin, Federal Trade Commission



Siobhan Amin is an attorney at the Federal Trade Commission, Western Region Los Angeles Office, where she focuses on consumer protection matters. Before joining the Commission, Siobhan was a litigation associate focused on complex commercial litigation and consumer class action defense.

## Christina Tusan, HammondLaw PC



Christina Tusan is a partner at HammondLaw where she oversees the firms' consumer protection and privacy class action litigation. Ms. Tusan is a nationally recognized consumer protection trial attorney who has investigated, prosecuted, and supervised the litigation of complex unfair competition cases in federal and state courts on behalf of the Federal Trade Commission, the California Attorney General, and the Los Angeles City Attorney's Office. Ms. Tusan has obtained judgments or negotiated settlements on consumer protection matters valued at over \$1 billion. Ms. Tusan has spent the last 25 years successfully investigating and litigating Unfair Competition Law (UCL) cases, False Advertising Law (FAL) cases, and Unfair or Deceptive Acts or Practices (UDAP) cases on behalf of consumers. Ms. Tusan also has expertise in successfully investigating and litigating UCL, FAL and UDAP cases across multiple industries. Examples include: health, beauty and wellness products and services; financial goods and services; mobile app products; mortgage and student loan refinance/repair services; sellers of products subject to Proposition 65 or state and federal greenwashing laws; automotive sale and repair entities; title insurance companies; for-profit colleges; broker-dealers engaged in the unlawful sale of securities; business opportunity product sellers; healthcare service providers; COVID-19 goods and service sellers; event ticket resellers; and household goods moving and storage services. Ms. Tusan is an Executive Committee member for the California Lawyer's Antitrust and Unfair Competition section as well serving on Los Angeles County Bar Association's Privacy and Cybersecurity Section's Board. Ms. Tusan obtained her J.D. from the University of Southern California where she served as an editor on the USC Law Review and received the Warren Ferguson Social Justice Writing Award. She graduated from Stanford University, cum laude, and received the Firestone Medal for Excellence in Undergraduate Research.

## Camille Sippel, ClientEarth



Camille Sippel is an attorney at ClientEarth focused on corporate accountability, specifically using corporate, finance, and consumer law to shift business decisions and the financial services industry toward alignment with climate goals. Camille conducts investigations and legal analysis related to greenwashing, emissions reductions, and the financing elements and requirements necessary to meet environmental and climate objectives. Prior to joining ClientEarth, Camille served as Assistant District Counsel for the US Army Corps of Engineers, Los Angeles District. There, Camille worked on a variety of issues related to major infrastructure projects including real estate issues, tort investigations, contract disputes, formerly used defense sites (FUDS) environmental restoration, regulatory issues such as environmental permitting, and major civil works projects. Camille earned her law degree from the University of Chicago Law School and her undergraduate degree in Economics from the University of Nebraska-Lincoln.



## Surya Kundu, Steptoe & Johnson LLP



**Surya Kundu** balances litigation with counseling to serve a diverse range of clients within the consumer products and retail industries, including leading and emerging brands, retailers and e-commerce businesses, and related suppliers, manufacturers, trade associations, and advertising/publishing entities. As a litigator, she focuses on false advertising, unfair competition, consumer protection, and products liability issues and has defended her clients in state and federal court, as well as in arbitration and against threatened NAD challenges, pre-suit demands, and government investigations. Surya also provides strategic advice and risk management counseling related to a variety of issues, including: green marketing and sustainability initiatives, products labeling and advertising, other ESG issues, compliance with FTC, FDA, and other federal and state regulations and guidelines, and keeping ahead of new legal and keeping ahead of new legal and policy developments. Surya received her B.A. from Amherst College and her J.D. from the University of Michigan. Prior to law school, Surya was a Teach For America corps member and taught elementary and middle school science in Chicago.

## Eric A. Rivas, Latham & Watkins LLP



[Eric Rivas](#) is an associate in Latham & Watkins' Global Antitrust & Competition Practice. Eric represents clients in a broad range of antitrust and complex commercial litigation, trade secrets misappropriation, bankruptcy litigation, business and commercial torts, breach of contract, and internal investigations. Eric has experience with consumer and antitrust class action litigation, as well as antitrust lawsuits and commercial disputes between rivals, and between suppliers, distributors, and retailers. He represents clients across a range of industries, including entertainment, pharmaceuticals, life sciences, advertising, fashion retail, agriculture, and technology. Eric earned his law degree from the Georgetown University Law Center and his undergraduate degree in Sociology from Loyola Marymount University. Eric has also clerked for Judge Anello, a senior district court judge in the Southern District of California.

# Environmental Claims

## Summary of the Green Guides

### General Environmental Benefit Claims

- Marketers should not make broad, unqualified general environmental benefit claims like ‘green’ or ‘eco-friendly.’ Broad claims are difficult to substantiate, if not impossible.
- Marketers should qualify general claims with specific environmental benefits. Qualifications for any claim should be clear, prominent, and specific.
  - When a marketer qualifies a general claim with a specific benefit, consumers understand the benefit to be significant. As a result, marketers shouldn’t highlight small or unimportant benefits.
  - If a qualified general claim conveys that a product has an overall environmental benefit because of a specific attribute, marketers should analyze the trade-offs resulting from the attribute to prove the claim.

Claiming “Green, made with recycled content” may be deceptive if the environmental costs of using recycled content outweigh the environmental benefits of using it.

### Carbon Offsets

- Marketers should have competent and reliable scientific evidence to support carbon offset claims. They should use appropriate accounting methods to ensure they measure emission reductions properly and don’t sell them more than once.
- Marketers should disclose whether the offset purchase pays for emission reductions that won’t occur for at least two years.
- Marketers should not advertise a carbon offset if the law already requires the activity that is the basis of the offset.

### Certifications and Seals of Approval

- Certifications and seals may be endorsements. According to the FTC’s Endorsement Guides:
  - Marketers should disclose any material connections to the certifying organization. A material connection is one that could affect the credibility of the endorsement.
  - Marketers shouldn’t use environmental certifications or seals that don’t clearly convey the basis for the certification, because the seals or certifications are likely to convey general environmental benefits.
  - To prevent deception, marketers using seals or certifications that don’t convey the basis for the certification should identify, clearly and prominently, specific environmental benefits.



- Marketers can qualify certifications based on attributes that are too numerous to disclose by saying, “Virtually all products impact the environment. For details on which attributes we evaluated, go to [a website that discusses this product].” The marketer should make sure that the website provides the referenced information, and that the information is truthful and accurate.
- A marketer with a third-party certification still must substantiate all express and implied claims.

## Compostable

- Marketers who claim a product is compostable need competent and reliable scientific evidence that all materials in the product or package will break down into — or become part of — usable compost safely and in about the same time as the materials with which it is composted.
- Marketers should qualify compostable claims if the product can’t be composted at home safely or in a timely way. Marketers also should qualify a claim that a product can be composted in a municipal or institutional facility if the facilities aren’t available to a substantial majority of consumers.

## Degradable

- Marketers may make an unqualified degradable claim only if they can prove that the “entire product or package will completely break down and return to nature within a reasonably short period of time after customary disposal.” The “reasonably short period of time” for complete decomposition of solid waste products? One year.
  - Items destined for landfills, incinerators, or recycling facilities will not degrade within a year, so unqualified biodegradable claims for them shouldn’t be made.

## Free-of

- Marketers can make a free-of claim for a product that contains some amount of a substance if:
  1. the product doesn’t have more than trace amounts or background levels of the substance;
  2. the amount of substance present doesn’t cause harm that consumers typically associate with the substance; and
  3. the substance wasn’t added to the product intentionally
- It would be deceptive to claim that a product is “free-of” a substance if it is free of one substance but includes another that poses a similar environmental risk.
- If a product doesn’t contain a substance, it may be deceptive to claim the product is “free-of” that substance if it never has been associated with that product category.

## Non-Toxic

- Marketers who claim that their product is non-toxic need competent and reliable scientific evidence that the product is safe for both people and the environment.

## Ozone-Safe and Ozone-Friendly

- It is deceptive to misrepresent that a product is ozone-friendly or safe for the ozone layer or atmosphere.

## Recyclable

- Marketers should qualify recyclable claims when recycling facilities are not available to at least 60 percent of the consumers or communities where a product is sold.
- The lower the level of access to appropriate facilities, the more a marketer should emphasize the limited availability of recycling for the product.

If recycling facilities for a product are not available to at least 60 percent of consumers or communities, a marketer can state, "This product may not be recyclable in your area." If recycling facilities for a product are available to only a few consumers, a marketer should use stronger qualifying language: "This product is recyclable only in the few communities that have appropriate recycling programs."

## Recycled Content

- Marketers should make recycled content claims only for materials that have been recovered or diverted from the waste stream during the manufacturing process or after consumer use.
- Marketers should qualify claims for products or packages made partly from recycled material – for example, "Made from 30% recycled material."
- Marketers whose products contain used, reconditioned, or re-manufactured components should qualify their recycled content claims clearly and prominently to avoid deception about the components.

## Refillable

- Marketers shouldn't make unqualified refillable claims unless they provide a way to refill the package. For example, they can provide a system to collect and refill the package or sell a product consumers can use to refill the original package.

## Made with Renewable Energy

- Marketers shouldn't make unqualified renewable energy claims based on energy derived from fossil fuels unless they purchase renewable energy certificates (RECs) to match the energy use.
- Unqualified renewable energy claims may imply that a product is made with recycled content or renewable materials. One way to minimize the risk of misunderstanding is to specify the source of renewable energy clearly and prominently (say, 'wind' or 'solar energy').
- Marketers should not make an unqualified "made with renewable energy" claim unless all, or virtually all, the significant manufacturing processes involved in making the product or package are powered with renewable energy or non-renewable energy, matched by RECs.
- Marketers who generate renewable energy – say, by using solar panels – but sell RECs for all the renewable energy they generate shouldn't claim they "use" renewable energy. Using the term "hosting" would be deceptive in this circumstance.

## Made with Renewable Materials

- Unqualified claims about renewable material may imply that a product is recyclable, made with recycled content, or biodegradable. One way to minimize that risk is to identify the material used clearly and prominently, and explain why it is renewable.
- Marketers should qualify renewable materials claims unless an item is made entirely with renewable materials, except for minor and incidental components.

"Our flooring is made from 100% bamboo, which grows at the same rate, or faster, than we use it."

"This package is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials."

## Source Reduction

- Marketers should qualify a claim that a product or package is lower in weight, volume, or toxicity clearly and prominently to avoid deception about the amount of reduction and the basis for comparison. For example, rather than saying the product generates "10 percent less waste," the marketer could say the product generates "10 percent less waste than our previous product."

To view the complete Green Guides, information for business, and legal resources related to environmental marketing, go to [business.ftc.gov](https://business.ftc.gov).



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Part VII

Federal Trade Commission

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16 CFR Part 260

Guides for the Use of Environmental Marketing Claims; Final Rule



## FEDERAL TRADE COMMISSION

## 16 CFR Part 260

## Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Adoption of Revised Guides.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) adopts revised Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”). This document summarizes the Commission’s revisions to the Guides and includes the final Guides.

DATES: Effective October 11, 2012.

**ADDRESSES:** Readers can find the Commission’s complete analysis in the Statement of Basis and Purpose (“Statement”) on the FTC’s Web site at <http://www.ftc.gov/os/fedreg/2012/10/greenguidesstatement.pdf>.

**FOR FURTHER INFORMATION CONTACT:**

Laura Koss, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 202–326–2890.

**SUPPLEMENTARY INFORMATION:** As part of its comprehensive review of its Green Guides,<sup>1</sup> the Commission reviewed public comments, public workshop transcripts, and consumer perception research.<sup>2</sup> The Commission now makes several modifications and additions to the 1998 Guides and adopts the resulting revised Guides as final.

The Commission modifies sections for the following claims: General Environmental Benefit, Compostable, Degradable, Ozone, Recyclable, and Recycled Content.<sup>3</sup> Additionally, the Commission creates the following new sections: Carbon Offsets, Certifications and Seals of Approval, Free-of, Non-toxic, Made with Renewable Energy, and Made with Renewable Materials.<sup>4</sup> Finally, the Commission makes non-substantive changes throughout the Guides to make them easier to read and use, including simplifying language and reorganizing sections to make information easier to find. Industry guides, such as these, are administrative

<sup>1</sup> The FTC issued the Green Guides in 1992, with subsequent updates in 1996 and 1998. To avoid confusion, we refer to the current Guides as the “1998 Guides.”

<sup>2</sup> In October 2010, the Commission proposed changes to the 1998 Guides. 75 FR 63552 (Oct. 15, 2010).

<sup>3</sup> The Commission additionally makes a minor change to an example in the Source Reduction section (16 CFR 260.17, Example 1) and retains the guidance on Refillable claims (16 CFR 260.14) without change.

<sup>4</sup> The final Guides do not include specific guidance for organic, natural, or sustainable claims.

interpretations of law. Therefore, they do not have the force and effect of law and are not independently enforceable.

**I. General Environmental Benefit Claims**

The final Guides caution marketers not to make unqualified general environmental benefit claims because “it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.”<sup>5</sup> A new example illustrates how marketers may make general benefit claims through the combination of images and text.<sup>6</sup>

The Guides further provide that marketers may be able to qualify general environmental benefit claims to focus consumers on the specific environmental benefits that they can substantiate.<sup>7</sup> In doing so, marketers should use clear and prominent qualifying language to convey that a general environmental claim refers only to a specific and limited environmental benefit(s). In addition, this section cautions marketers that explanations of specific attributes, even when true and substantiated, will not adequately qualify general environmental marketing claims if an advertisement’s context implies other deceptive claims.<sup>8</sup> Moreover, the Guides advise marketers not to imply that any specific benefit is significant if it is, in fact, negligible.<sup>9</sup> Finally, the Guides state that if a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit, marketers should analyze trade-offs resulting from the benefit to substantiate this claim.<sup>10</sup>

**II. Carbon Offsets**

The final Guides include a new section on carbon offsets.<sup>11</sup> This section advises marketers to have competent and reliable scientific evidence to support their carbon offset claims, including using appropriate accounting methods to ensure they are properly quantifying emission reductions and not selling those reductions more than once. Additionally, the Guides advise marketers to disclose if consumers’ offset purchases fund emission reductions that will not occur for two years or longer. Finally, the Guides caution marketers not to advertise a

<sup>5</sup> 16 CFR 260.4(b).

<sup>6</sup> 16 CFR 260.4, Example 3. The Commission has moved many of the original examples to newly-created sections (see, e.g., Certifications and Seals of Approval, Free-Of, and Non-toxic).

<sup>7</sup> 16 CFR 260.4(c).

<sup>8</sup> 16 CFR 260.4(d).

<sup>9</sup> 16 CFR 260.4(c), Example 4.

<sup>10</sup> 16 CFR 260.4(c), Example 5.

<sup>11</sup> 16 CFR 260.5.

carbon offset if the activity that forms the basis of the offset is already required by law. More detailed guidance could quickly become obsolete given the rapidly changing nature of this market and consumers’ minimal understanding of such issues. Moreover, such guidance might place the FTC in the inappropriate role of setting environmental policy.

**III. Certifications and Seals of Approval**

This new section provides that it is deceptive to misrepresent that an item or service has been endorsed or certified by an independent third party.<sup>12</sup> It also emphasizes that certifications and seals may be endorsements covered by the Commission’s Endorsement Guides.<sup>13</sup> Several examples illustrate application of the Endorsement Guides’ advice that marketers disclose a “material connection” (*i.e.*, a connection that might materially affect the weight or credibility of an endorsement).<sup>14</sup> For instance, Example 8 clarifies that marketers featuring certifications from third-party certifiers need not disclose their payment of a reasonable certification fee if that is their only connection to the certifier. In this situation, there is no need for disclosure because consumers likely expect that certifiers charge a reasonable fee for their services. As other examples demonstrate, whether a material connection exists depends on whether the ties between the marketer and certifier likely affect the weight or credibility of the certification. If, for example, an independent certifier administers an industry trade association certification program by objectively applying a voluntary consensus standard (*i.e.*, a standard that has been developed and maintained by a voluntary consensus standard body), then the connection between the industry group and the marketer would not likely be material.<sup>15</sup>

<sup>12</sup> 16 CFR 260.6(a).

<sup>13</sup> 16 CFR 260.6(b), citing 16 CFR 255.

<sup>14</sup> Examples 2, 3, 4, 8.

<sup>15</sup> Voluntary consensus standard bodies are “organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. \* \* \* A voluntary consensus standards body is defined by the following attributes: (i) Openness, (ii) balance of interest, (iii) due process, (iv) an appeals process, (v) consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus members are given an opportunity to change their votes after reviewing the comments.” Circular No. A–119 Revised, Office of Management and Budget at [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).

The final Guides also advise that an environmental certification or seal likely conveys a general environmental benefit claim when it does not clearly convey, either through its name or other means, the basis for the certification.<sup>16</sup> Because it is highly unlikely that marketers can substantiate such a claim, they should not use environmental certifications or seals that do not convey the basis for the certification. The final Guides further state that marketers should accompany such seals or certifications with clear and prominent language that effectively conveys that the certification or seal refers only to specific and limited benefits. This may be particularly challenging with certifications based on comprehensive, multi-attribute standards. Therefore, a new example illustrates one way of qualifying such certifications.<sup>17</sup>

Finally, the Guides clarify that third-party certification does not eliminate a marketer's obligation to have substantiation for all conveyed claims.<sup>18</sup>

#### IV. Compostable

The final Guides adopt the 1998 guidance on compostable claims with one clarification. The 1998 Guides stated that marketers should possess competent and reliable scientific evidence showing that "all the materials in the product or package will break down into, or otherwise become a part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and *timely manner* in an appropriate composting program or facility, or in a home compost pile or device."<sup>19</sup> The final Guides clarify that "timely manner" means "in approximately the same time as the materials with which it is composted."<sup>20</sup> The final Guides also reiterate the 1998 guidance that marketers clearly qualify compostable claims, if, for example, their product cannot be composted safely or in a timely manner at home, or if necessary large-scale facilities are not available to a substantial majority of the marketer's consumers.<sup>21</sup>

#### V. Degradable

The 1998 Guides stated that a marketer should qualify a degradable claim unless it has competent and reliable scientific evidence that the "entire product or package will completely break down and return to nature, *i.e.*, decompose into elements

found in nature within a *reasonably short period of time* after customary disposal."<sup>22</sup> The final Guides state that marketers should not make unqualified degradable claims for items destined for landfills, incinerators, or recycling facilities because complete decomposition in those specific environments will not occur within one year.<sup>23</sup> The final Guides also clarify that a marketer making an unqualified degradable claim for solid items other than those destined for landfills, incinerators, or recycling facilities should substantiate that the entire item will fully decompose within one year after customary disposal.<sup>24</sup>

#### VI. Free-Of Claims

The final Guides include a new section on claims that products or services have no, are free of, or do not contain certain substances ("free-of claims").<sup>25</sup> This new section advises that, even if true, claims that an item is free of a substance may be deceptive if: (1) The item contains substances that pose the same or similar environmental risk as the substance not present; or (2) the substance has not been associated with the product category.<sup>26</sup> This two-part analysis prevents deception resulting from two implied claims. The first prong addresses the implied claim that a product is free of negative attributes associated with that substance. Thus, a free-of claim would still be deceptive even if a product is free of a particular substance if it has another substance that causes the same or similar environmental harm. The second prong cautions that free-of claims may deceive consumers by falsely suggesting that competing products contain the substance or that the marketer has "improved" the product by removing the substance.

The final Guides also clarify that a free-of claim may, in some circumstances, be non-deceptive even though the product contains a "trace amount" of the substance. A marketer can make a claim for a product that still contains some amount of a substance only if: (1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance's presence does not cause material harm that consumers typically associate with that substance;

and (3) the substance has not been added intentionally to the product.<sup>27</sup> The first prong of this test reflects consumers' likely expectations that products advertised as "free-of" a substance contain no more than trace amounts that occur naturally in the environment or in product ingredients. The second prong clarifies that it is deceptive to make a free-of claim if the product contains any amount of the substance that causes material harm that consumers typically associate with that substance, no matter how small. The third prong recognizes that, if added intentionally, reasonable consumers would not think that a product was free of that substance, even if that intentionally-added amount is less than a typical background level amount of that substance.

#### VII. Non-Toxic Claims

The final Guides include a new section on non-toxic claims. This section includes the 1998 Guides' advice that it is deceptive to misrepresent that a product, package, or service is non-toxic.<sup>28</sup> Like the 1998 Guides, it also cautions that such claims likely convey that an item or service is non-toxic both for humans and for the environment.<sup>29</sup>

#### VIII. Ozone-Safe and Ozone-Friendly Claims

The final Guides include the 1998 Guides' advice that it is deceptive to misrepresent that a product is safe for, or "friendly" to, the ozone layer or the atmosphere.<sup>30</sup> The Commission, however, eliminates Examples 3 and 4, which both referenced ozone-depleting chemicals that the EPA now bans.

#### IX. Recyclable

The final Guides, like the 1998 Guides, advise marketers to qualify recyclable claims when recycling facilities are not available to a "substantial majority" of consumers or communities where a product is sold.<sup>31</sup> They clarify that "substantial majority," as used in this context, means at least 60 percent. They also emphasize that the lower the levels of access to appropriate facilities, the more strongly the marketer should emphasize the limited availability of recycling for the product.

<sup>16</sup> 16 CFR 260.6(d).

<sup>17</sup> 16 CFR 260.6, Example 7.

<sup>18</sup> 16 CFR 260.6(c).

<sup>19</sup> 16 CFR 260.7(c) (emphasis added) (1998 Guides).

<sup>20</sup> 16 CFR 260.7(b).

<sup>21</sup> 16 CFR 260.7(c), 260.7(d).

<sup>22</sup> 16 CFR 260.7(b) (emphasis added) (1998 Guides).

<sup>23</sup> 16 CFR 260.8(c).

<sup>24</sup> *Id.*

<sup>25</sup> 16 CFR 260.9. The 1998 Guides covered these claims only in examples. 16 CFR 260.6(c), Example 4; 16 CFR 260.7(h), Example 3.

<sup>26</sup> 16 CFR 260.9(b).

<sup>27</sup> 16 CFR 260.9(c).

<sup>28</sup> 16 CFR 260.10. The 1998 Guides did not include a non-toxic section but addressed these claims in an example in the General Environmental Benefit section.

<sup>29</sup> 16 CFR 260.10, Example 1.

<sup>30</sup> 16 CFR 260.11.

<sup>31</sup> 16 CFR 260.12(b).

## X. Recycled Content

The final Guides include minor changes to the 1998 guidance for recycled content claims.<sup>32</sup> Like the 1998 Guides, they provide that marketers should make such claims only for materials that were recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer) or after consumer use (post-consumer).<sup>33</sup> Additionally, the final Guides continue to advise marketers to qualify claims for products or packages only partially made from recycled material.<sup>34</sup> The Commission, however, slightly revises Examples 11 and 12 to recognize alternative auto recyclers.<sup>35</sup>

## XI. Renewable Energy Claims

A new section on renewable energy claims advises marketers to avoid making unqualified renewable energy claims based on energy derived from fossil fuels.<sup>36</sup> This section clarifies that marketers may make such claims if they purchase renewable energy certificates ("RECs") to match their energy use.<sup>37</sup> Additionally, based on the Commission's study, the section cautions marketers that consumers likely interpret renewable energy claims differently than marketers may intend. Accordingly, unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. The Guides suggest that one way to minimize the risk of deception is to specify the renewable energy source (e.g., wind or solar energy).<sup>38</sup>

The Guides also advise against making unqualified claims unless all, or virtually all, of the significant manufacturing processes involved in making a product are powered with renewable energy or non-renewable energy matched with RECs. Finally, the Guides adopt the proposed advice that using the term "hosting" is deceptive when a marketer generates renewable power but has sold all of the renewable attributes of that power. An example, however, clarifies that not all generation

claims by such marketers are deceptive.<sup>39</sup>

## XII. Renewable Materials Claims

The final Guides include a new section on renewable materials claims.<sup>40</sup> Similar to the renewable energy guidance, this section advises that consumers likely interpret renewable materials differently than marketers may intend. Accordingly, the final Guides advise that unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims.<sup>41</sup> The final Guides provide an example of one way marketers can minimize the likelihood of unintended implied claims, such as recyclable, degradable, and made with recycled content. Specifically, they suggest that marketers specify the material used and why the material is renewable.<sup>42</sup> Additionally, the Guides state that marketers should further qualify these claims for products containing less than 100 percent renewable materials, excluding minor, incidental components.<sup>43</sup>

## XIII. Areas Not Addressed by Final Guides

The final Guides do not address organic, sustainable, and natural claims. In the case of organic claims, the Commission wants to avoid providing advice that is duplicative or inconsistent with the USDA's National Organic Program ("NOP"), which provides a comprehensive regulatory framework governing organic claims for agricultural products. For organic claims outside the NOP's jurisdiction, and for sustainable and natural claims, the Commission lacks sufficient evidence on which to base general guidance.

## XIV. Conclusion

For a complete analysis of comments and the final guidance, please see the Statement on the FTC's Web site, available at <http://www.ftc.gov/os/fedreg/2012/10/greenguidesstatement.pdf>.

## XV. Revised Green Guides

### List of Subjects in 16 CFR Part 260

Advertising, Environmental protection, Labeling, Trade practices.

For the reasons stated above, the Federal Trade Commission revises 16 CFR part 260 to read as follows:

<sup>39</sup> 16 CFR 260.15(d), Example 5.

<sup>40</sup> 16 CFR 260.16.

<sup>41</sup> 16 CFR 260.16(b).

<sup>42</sup> *Id.*, Example 1.

<sup>43</sup> 16 CFR 260.16(c); Example 2.

## PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

Sec.	
260.1	Purpose, scope, and structure of the guides.
260.2	Interpretation and substantiation of environmental marketing claims.
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260.14	Refillable claims.
260.15	Renewable energy claims.
260.16	Renewable materials claims.
260.17	Source reduction claims.

Authority: 15 U.S.C. 41–58.

### § 260.1 Purpose, scope, and structure of the guides.

(a) These guides set forth the Federal Trade Commission's current views about environmental claims. The guides help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, can take action under the FTC Act if a marketer makes an environmental claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

(b) These guides do not preempt federal, state, or local laws. Compliance with those laws, however, will not necessarily preclude Commission law enforcement action under the FTC Act.

(c) These guides apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service to individuals. These guides also apply to business-to-business transactions.

The guides apply to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.

(d) The guides consist of general principles, specific guidance on the use of particular environmental claims, and

<sup>32</sup> 16 CFR 260.7(e) (1998 Guides).

<sup>33</sup> 16 CFR 260.13(b). The final Guides eliminate Example 2, which provided circular advice.

<sup>34</sup> 16 CFR 260.13(c).

<sup>35</sup> These examples appeared in the 1998 Guides as Examples 12 and 13. The Commission makes this change because in the auto context, a recycled content claim for reused parts is true regardless of the type of recycler who sells them.

<sup>36</sup> 16 CFR 260.15.

<sup>37</sup> 16 CFR 260.15(a).

<sup>38</sup> 16 CFR 260.15(b).

examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. The guides are based on marketing to a general audience. However, when a marketer targets a particular segment of consumers, the Commission will examine how reasonable members of that group interpret the advertisement. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act. Nor do they illustrate the only ways to comply with the guides. Marketers can use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. All examples assume that the described claims otherwise comply with Section 5. Where particularly useful, the Guides incorporate a reminder to this effect.

#### **§ 260.2 Interpretation and substantiation of environmental marketing claims.**

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. See FTC Policy Statement on Deception, 103 FTC 174 (1983). To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims. See FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984). In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of

relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

#### **§ 260.3 General principles.**

The following general principles apply to all environmental marketing claims, including those described in §§ 260.4 through 240.16. Claims should comport with all relevant provisions of these guides.

(a) *Qualifications and disclosures.* To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type, should place disclosures in close proximity to the qualified claim, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.

(b) *Distinction between benefits of product, package, and service.* Unless it is clear from the context, an environmental marketing claim should specify whether it refers to the product, the product's packaging, a service, or just to a portion of the product, package, or service. In general, if the environmental attribute applies to all but minor, incidental components of a product or package, the marketer need not qualify the claim to identify that fact. However, there may be exceptions to this general principle. For example, if a marketer makes an unqualified recyclable claim, and the presence of the incidental component significantly limits the ability to recycle the product, the claim would be deceptive.

*Example 1:* A plastic package containing a new shower curtain is labeled "recyclable" without further elaboration. Because the context of the claim does not make clear whether it refers to the plastic package or the shower curtain, the claim is deceptive if any part of either the package or the curtain, other than minor, incidental components, cannot be recycled.

*Example 2:* A soft drink bottle is labeled "recycled." The bottle is made entirely from recycled materials, but the bottle cap is not. Because the bottle cap is a minor, incidental component of the package, the claim is not deceptive.

(c) *Overstatement of environmental attribute.* An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit. Marketers should not state or imply environmental benefits if the benefits are negligible.

*Example 1:* An area rug is labeled "50% more recycled content than before." The manufacturer increased the recycled content of its rug from 2% recycled fiber to 3%. Although the claim is technically true, it likely conveys the false impression that the

manufacturer has increased significantly the use of recycled fiber.

*Example 2:* A trash bag is labeled "recyclable" without qualification. Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists.

(d) *Comparative claims.* Comparative environmental marketing claims should be clear to avoid consumer confusion about the comparison. Marketers should have substantiation for the comparison.

*Example 1:* An advertiser notes that its glass bathroom tiles contain "20% more recycled content." Depending on the context, the claim could be a comparison either to the advertiser's immediately preceding product or to its competitors' products. The advertiser should have substantiation for both interpretations. Otherwise, the advertiser should make the basis for comparison clear, for example, by saying "20% more recycled content than our previous bathroom tiles."

*Example 2:* An advertiser claims that "our plastic diaper liner has the most recycled content." The diaper liner has more recycled content, calculated as a percentage of weight, than any other on the market, although it is still well under 100%. The claim likely conveys that the product contains a significant percentage of recycled content and has significantly more recycled content than its competitors. If the advertiser cannot substantiate these messages, the claim would be deceptive.

*Example 3:* An advertiser claims that its packaging creates "less waste than the leading national brand." The advertiser implemented the source reduction several years ago and supported the claim by calculating the relative solid waste contributions of the two packages. The advertiser should have substantiation that the comparison remains accurate.

*Example 4:* A product is advertised as "environmentally preferable." This claim likely conveys that the product is environmentally superior to other products. Because it is highly unlikely that the marketer can substantiate the messages conveyed by this statement, this claim is deceptive. The claim would not be deceptive if the marketer accompanied it with clear and prominent language limiting the environmental superiority representation to the particular attributes for which the marketer has substantiation, provided the advertisement's context does not imply other deceptive claims. For example, the claim "Environmentally preferable: contains 50% recycled content compared to 20% for the leading brand" would not be deceptive.

#### **§ 260.4 General environmental benefit claims.**

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.



(b) Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

(c) Marketers can qualify general environmental benefit claims to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit or benefits. Marketers should not imply that any specific benefit is significant if it is, in fact, negligible. If a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit(s), marketers should analyze trade-offs resulting from the benefit(s) to determine if they can substantiate this claim.

(d) Even if a marketer explains, and has substantiation for, the product's specific environmental attributes, this explanation will not adequately qualify a general environmental benefit claim if the advertisement otherwise implies deceptive claims. Therefore, marketers should ensure that the advertisement's context does not imply deceptive environmental claims.

*Example 1:* The brand name "Eco-friendly" likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim, such as "Eco-friendly: made with recycled materials," would not be deceptive if: (1) The statement "made with recycled materials" is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement's context does not imply other deceptive claims.

*Example 2:* A marketer states that its packaging is now "Greener than our previous packaging." The packaging weighs 15% less than previous packaging, but it is not recyclable nor has it been improved in any other material respect. The claim is deceptive because reasonable consumers likely would interpret "Greener" in this context to mean that other significant environmental aspects of the packaging also are improved over

previous packaging. A claim stating "Greener than our previous packaging" accompanied by clear and prominent language such as, "We've reduced the weight of our packaging by 15%," would not be deceptive, provided that reducing the packaging's weight makes the product more environmentally beneficial overall and the advertisement's context does not imply other deceptive claims.

*Example 3:* A marketer's advertisement features a picture of a laser printer in a bird's nest balancing on a tree branch, surrounded by a dense forest. In green type, the marketer states, "Buy our printer. Make a change." Although the advertisement does not expressly claim that the product has environmental benefits, the featured images, in combination with the text, likely convey that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, this advertisement is deceptive.

*Example 4:* A manufacturer's Web site states, "Eco-smart gas-powered lawn mower with improved fuel efficiency!" The manufacturer increased the fuel efficiency by 1/10 of a percent. Although the manufacturer's claim that it has improved its fuel efficiency technically is true, it likely conveys the false impression that the manufacturer has significantly increased the mower's fuel efficiency.

*Example 5:* A marketer reduces the weight of its plastic beverage bottles. The bottles' labels state: "Environmentally-friendly improvement. 25% less plastic than our previous packaging." The plastic bottles are 25 percent lighter but otherwise are no different. The advertisement conveys that the bottles are more environmentally beneficial overall because of the source reduction. To substantiate this claim, the marketer likely can analyze the impacts of the source reduction without evaluating environmental impacts throughout the packaging's life cycle. If, however, manufacturing the new bottles significantly alters environmental attributes earlier or later in the bottles' life cycle, *i.e.*, manufacturing the bottles requires more energy or a different kind of plastic, then a more comprehensive analysis may be appropriate.

#### § 260.5 Carbon offsets.

(a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.

(b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

(c) It is deceptive to claim, directly or by implication, that a carbon offset

represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.

*Example 1:* On its Web site, an online travel agency invites consumers to purchase offsets to "neutralize the carbon emissions from your flight." The proceeds from the offset sales fund future projects that will not reduce greenhouse gas emissions for two years. The claim likely conveys that the emission reductions either already have occurred or will occur in the near future. Therefore, the advertisement is deceptive. It would not be deceptive if the agency's Web site stated "Offset the carbon emissions from your flight by funding new projects that will begin reducing emissions in two years."

*Example 2:* An offset provider claims that its product "will offset your own 'dirty' driving habits." The offset is based on methane capture at a landfill facility. State law requires this facility to capture all methane emitted from the landfill. The claim is deceptive because the emission reduction would have occurred regardless of whether consumers purchased the offsets.

#### § 260.6 Certifications and seals of approval.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.

(b) A marketer's use of the name, logo, or seal of approval of a third-party certifier or organization may be an endorsement, which should meet the criteria for endorsements provided in the FTC's Endorsement Guides, 16 CFR part 255, including Definitions (§ 255.0), General Considerations (§ 255.1), Expert Endorsements (§ 255.3), Endorsements by Organizations (§ 255.4), and Disclosure of Material Connections (§ 255.5).<sup>44</sup>

(c) Third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.

(d) A marketer's use of an environmental certification or seal of approval likely conveys that the product offers a general environmental benefit (*see* § 260.4) if the certification or seal does not convey the basis for the certification or seal, either through the name or some other means. Because it is highly unlikely that marketers can substantiate general environmental benefit claims, marketers should not use environmental certifications or seals that do not convey the basis for the certification.

<sup>44</sup>The examples in this section assume that the certifiers' endorsements meet the criteria provided in the Expert Endorsements (§ 255.3) and Endorsements by Organizations (§ 255.4) sections of the Endorsement Guides.

(e) Marketers can qualify general environmental benefit claims conveyed by environmental certifications and seals of approval to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that clearly conveys that the certification or seal refers only to specific and limited benefits.

*Example 1:* An advertisement for paint features a “GreenLogo” seal and the statement “GreenLogo for Environmental Excellence.” This advertisement likely conveys that: (1) the GreenLogo seal is awarded by an independent, third-party certifier with appropriate expertise in evaluating the environmental attributes of paint; and (2) the product has far-reaching environmental benefits. If the paint manufacturer awarded the seal to its own product, and no independent, third-party certifier objectively evaluated the paint using independent standards, the claim would be deceptive. The claim would not be deceptive if the marketer accompanied the seal with clear and prominent language: (1) indicating that the marketer awarded the GreenLogo seal to its own product; and (2) clearly conveying that the award refers only to specific and limited benefits.

*Example 2:* A manufacturer advertises its product as “certified by the American Institute of Degradable Materials.” Because the advertisement does not mention that the American Institute of Degradable Materials (“AIDM”) is an industry trade association, the certification likely conveys that it was awarded by an independent certifier. To be certified, marketers must meet standards that have been developed and maintained by a voluntary consensus standard body.<sup>45</sup> An independent auditor applies these standards objectively. This advertisement likely is not deceptive if the manufacturer complies with § 260.8 of the Guides (Degradable Claims) because the certification is based on independently-developed and -maintained standards and an independent auditor applies the standards objectively.

*Example 3:* A product features a seal of approval from “The Forest Products Industry

Association,” an industry certifier with appropriate expertise in evaluating the environmental attributes of paper products. Because it is clear from the certifier’s name that the product has been certified by an industry certifier, the certification likely does not convey that it was awarded by an independent certifier. The use of the seal likely is not deceptive provided that the advertisement does not imply other deceptive claims.

*Example 4:* A marketer’s package features a seal of approval with the text “Certified Non-Toxic.” The seal is awarded by a certifier with appropriate expertise in evaluating ingredient safety and potential toxicity. It applies standards developed by a voluntary consensus standard body. Although non-industry members comprise a majority of the certifier’s board, an industry veto could override any proposed changes to the standards. This certification likely conveys that the product is certified by an independent organization. This claim would be deceptive because industry members can veto any proposed changes to the standards.

*Example 5:* A marketer’s industry sales brochure for overhead lighting features a seal with the text “EcoFriendly Building Association” to show that the marketer is a member of that organization. Although the lighting manufacturer is, in fact, a member, this association has not evaluated the environmental attributes of the marketer’s product. This advertisement would be deceptive because it likely conveys that the EcoFriendly Building Association evaluated the product through testing or other objective standards. It also is likely to convey that the lighting has far-reaching environmental benefits. The use of the seal would not be deceptive if the manufacturer accompanies it with clear and prominent qualifying language: (1) indicating that the seal refers to the company’s membership only and that the association did not evaluate the product’s environmental attributes; and (2) limiting the general environmental benefit representations, both express and implied, to the particular product attributes for which the marketer has substantiation. For example, the marketer could state: “Although we are a member of the EcoFriendly Building Association, it has not evaluated this product. Our lighting is made from 100 percent recycled metal and uses energy efficient LED technology.”

*Example 6:* A product label contains an environmental seal, either in the form of a globe icon or a globe icon with the text “EarthSmart.” EarthSmart is an independent, third-party certifier with appropriate expertise in evaluating chemical emissions of products. While the marketer meets EarthSmart’s standards for reduced chemical emissions during product usage, the product has no other specific environmental benefits. Either seal likely conveys that the product has far-reaching environmental benefits, and that EarthSmart certified the product for all of these benefits. If the marketer cannot substantiate these claims, the use of the seal would be deceptive. The seal would not be deceptive if the marketer accompanied it with clear and prominent language clearly conveying that the certification refers only to

specific and limited benefits. For example, the marketer could state next to the globe icon: “EarthSmart certifies that this product meets EarthSmart standards for reduced chemical emissions during product usage.” Alternatively, the claim would not be deceptive if the EarthSmart environmental seal itself stated: “EarthSmart Certified for reduced chemical emissions during product usage.”

*Example 7:* A one-quart bottle of window cleaner features a seal with the text “Environment Approved,” granted by an independent, third-party certifier with appropriate expertise. The certifier granted the seal after evaluating 35 environmental attributes. This seal likely conveys that the product has far-reaching environmental benefits and that Environment Approved certified the product for all of these benefits and therefore is likely deceptive. The seal would likely not be deceptive if the marketer accompanied it with clear and prominent language clearly conveying that the seal refers only to specific and limited benefits. For example, the seal could state: “Virtually all products impact the environment. For details on which attributes we evaluated, go to [a Web site that discusses this product].” The referenced Web page provides a detailed summary of the examined environmental attributes. A reference to a Web site is appropriate because the additional information provided on the Web site is not necessary to prevent the advertisement from being misleading. As always, the marketer also should ensure that the advertisement does not imply other deceptive claims, and that the certifier’s criteria are sufficiently rigorous to substantiate all material claims reasonably communicated by the certification.

*Example 8:* Great Paper Company sells photocopy paper with packaging that has a seal of approval from the No Chlorine Products Association, a non-profit third-party association. Great Paper Company paid the No Chlorine Products Association a reasonable fee for the certification. Consumers would reasonably expect that marketers have to pay for certification. Therefore, there are no material connections between Great Paper Company and the No Chlorine Products Association. The claim would not be deceptive.

#### § 260.7 Compostable Claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is compostable.

(b) A marketer claiming that an item is compostable should have competent and reliable scientific evidence that all the materials in the item will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner (i.e., in approximately the same time as the materials with which it is composted) in an appropriate composting facility, or in a home compost pile or device.

(c) A marketer should clearly and prominently qualify compostable claims

<sup>45</sup> Voluntary consensus standard bodies are “organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. \* \* \* A voluntary consensus standards body is defined by the following attributes: (i) Openness, (ii) balance of interest, (iii) due process, (iv) an appeals process, (v) consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus members are given an opportunity to change their votes after reviewing the comments.” Memorandum for Heads of Executive Departments and Agencies on Federal Participation in the Development and Use of Voluntary Consensus Assessment Activities, February 10, 1998, Circular No. A-119 Revised, Office of Management and Budget at [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).

to the extent necessary to avoid deception if:

(1) The item cannot be composted safely or in a timely manner in a home compost pile or device; or

(2) The claim misleads reasonable consumers about the environmental benefit provided when the item is disposed of in a landfill.

(d) To avoid deception about the limited availability of municipal or institutional composting facilities, a marketer should clearly and prominently qualify compostable claims if such facilities are not available to a substantial majority of consumers or communities where the item is sold.

*Example 1:* A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive, provided the manufacturer has substantiation that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If so, the extent of local municipal or institutional composting facilities is irrelevant.

*Example 2:* A garden center sells grass clipping bags labeled as "Compostable in California Municipal Yard Trimmings Composting Facilities." When the bags break down, however, they release toxins into the compost. The claim is deceptive if the presence of these toxins prevents the compost from being usable.

*Example 3:* A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should clearly and prominently disclose that the package is not suitable for home composting.

*Example 4:* Nationally marketed lawn and leaf bags state "compostable" on each bag. The bags also feature text disclosing that the bag is not designed for use in home compost piles. Yard trimmings programs in many communities compost these bags, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because it likely conveys that composting facilities are available to a substantial majority of consumers or communities. To avoid deception, the marketer should clearly and prominently indicate the limited availability of such programs. A marketer could state "Appropriate facilities may not exist in your area," or provide the approximate percentage of communities or consumers for which such programs are available.

*Example 5:* A manufacturer sells a disposable diaper that states, "This diaper can be composted if your community is one of the 50 that have composting facilities." The claim is not deceptive if composting facilities are available as claimed and the manufacturer has substantiation that the diaper can be converted safely to usable compost in solid waste composting facilities.

*Example 6:* A manufacturer markets yard trimmings bags only to consumers residing in

particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, "Compostable Yard Trimmings Bag for County Composting Programs." The claim is not deceptive. Because the bags are compostable where they are sold, a qualification is not needed to indicate the limited availability of composting facilities.

#### § 260.8 Degradable claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable. The following guidance for degradable claims also applies to biodegradable, oxo-degradable, oxo-biodegradable, and photodegradable claims.

(b) A marketer making an unqualified degradable claim should have competent and reliable scientific evidence that the entire item will completely break down and return to nature (*i.e.*, decompose into elements found in nature) within a reasonably short period of time after customary disposal.

(c) It is deceptive to make an unqualified degradable claim for items entering the solid waste stream if the items do not completely decompose within one year after customary disposal. Unqualified degradable claims for items that are customarily disposed in landfills, incinerators, and recycling facilities are deceptive because these locations do not present conditions in which complete decomposition will occur within one year.

(d) Degradable claims should be qualified clearly and prominently to the extent necessary to avoid deception about:

- (1) The product's or package's ability to degrade in the environment where it is customarily disposed; and
- (2) The rate and extent of degradation.

*Example 1:* A marketer advertises its trash bags using an unqualified "degradable" claim. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. Consumers, however, place trash bags into the solid waste stream, which customarily terminates in incineration facilities or landfills where they will not degrade within one year. The claim is, therefore, deceptive.

*Example 2:* A marketer advertises a commercial agricultural plastic mulch film with the claim "Photodegradable," and clearly and prominently qualifies the term with the phrase "Will break down into small pieces if left uncovered in sunlight." The advertiser possesses competent and reliable scientific evidence that within one year, the product will break down, after being exposed to sunlight, into sufficiently small pieces to become part of the soil. Thus, the qualified claim is not deceptive. Because the claim is

qualified to indicate the limited extent of breakdown, the advertiser need not meet the consumer expectations for an unqualified photodegradable claim, *i.e.*, that the product will not only break down, but also will decompose into elements found in nature.

*Example 3:* A marketer advertises its shampoo as "biodegradable" without qualification. The advertisement makes clear that only the shampoo, and not the bottle, is biodegradable. The marketer has competent and reliable scientific evidence demonstrating that the shampoo, which is customarily disposed in sewage systems, will break down and decompose into elements found in nature in a reasonably short period of time in the sewage system environment. Therefore, the claim is not deceptive.

*Example 4:* A plastic six-pack ring carrier is marked with a small diamond. Several state laws require that the carriers be marked with this symbol to indicate that they meet certain degradability standards if the carriers are littered. The use of the diamond by itself, in an inconspicuous location, does not constitute a degradable claim. Consumers are unlikely to interpret an inconspicuous diamond symbol, without more, as an unqualified photodegradable claim.<sup>46</sup>

*Example 5:* A fiber pot containing a plant is labeled "biodegradable." The pot is customarily buried in the soil along with the plant. Once buried, the pot fully decomposes during the growing season, allowing the roots of the plant to grow into the surrounding soil. The unqualified claim is not deceptive.

#### § 260.9 Free-of claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service is free of, or does not contain or use, a substance. Such claims should be clearly and prominently qualified to the extent necessary to avoid deception.

(b) A truthful claim that a product, package, or service is free of, or does not contain or use, a substance may nevertheless be deceptive if:

- (1) The product, package, or service contains or uses substances that pose the same or similar environmental risks as the substance that is not present; or
- (2) The substance has not been associated with the product category.

(c) Depending on the context, a free-of or does-not-contain claim is appropriate even for a product, package, or service that contains or uses a trace amount of a substance if:

- (1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level<sup>47</sup>;

<sup>46</sup>The Guides' treatment of unqualified degradable claims is intended to help prevent deception and is not intended to establish performance standards to ensure the degradability of products when littered.

<sup>47</sup>"Trace contaminant" and "background level" are imprecise terms, although allowable manufacturing "trace contaminants" may be

(2) The substance's presence does not cause material harm that consumers typically associate with that substance; and

(3) The substance has not been added intentionally to the product.

*Example 1:* A package of t-shirts is labeled "Shirts made with a chlorine-free bleaching process." The shirts, however, are bleached with a process that releases a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching. The claim overstates the product's benefits because reasonable consumers likely would interpret it to mean that the product's manufacture does not cause any of the environmental risks posed by chlorine bleaching. A substantiated claim, however, that the shirts were "bleached with a process that releases 50% less of the harmful byproducts associated with chlorine bleaching" would not be deceptive.

*Example 2:* A manufacturer advertises its insulation as "formaldehyde free." Although the manufacturer does not use formaldehyde as a binding agent to produce the insulation, tests show that the insulation still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments and that its insulation emits less formaldehyde than is typically present in outdoor environments. Further, the seller has substantiation that the trace amounts of formaldehyde emitted by the insulation do not cause material harm that consumers typically associate with formaldehyde. In this context, the trace levels of formaldehyde emissions likely are inconsequential to consumers. Therefore, the seller's free-of claim would not be deceptive.

#### § 260.10 Non-toxic claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service is non-toxic. Non-toxic claims should be clearly and prominently qualified to the extent necessary to avoid deception.

(b) A non-toxic claim likely conveys that a product, package, or service is non-toxic both for humans and for the environment generally. Therefore, marketers making non-toxic claims should have competent and reliable scientific evidence that the product, package, or service is non-toxic for humans and for the environment or should clearly and prominently qualify their claims to avoid deception.

*Example:* A marketer advertises a cleaning product as "essentially non-toxic" and "practically non-toxic." The advertisement likely conveys that the product does not pose any risk to humans or the environment, including household pets. If the cleaning product poses no risk to humans but is toxic

defined according to the product area concerned. What constitutes a trace amount or background level depends on the substance at issue, and requires a case-by-case analysis.

to the environment, the claims would be deceptive.

#### § 260.11 Ozone-safe and ozone-friendly claims.

It is deceptive to misrepresent, directly or by implication, that a product, package, or service is safe for, or friendly to, the ozone layer or the atmosphere.

*Example 1:* A product is labeled "ozone-friendly." The claim is deceptive if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in Title VI of the Clean Air Act Amendments of 1990, Public Law. 101-549, and others subsequently designated by EPA as ozone-depleting substances. These chemicals include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide, hydrobromofluorocarbons, and hydrochlorofluorocarbons (HCFCs).

*Example 2:* An aerosol air freshener is labeled "ozone-friendly." Some of the product's ingredients are volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim likely conveys that the product is safe for the atmosphere as a whole, and, therefore, is deceptive.

#### § 260.12 Recyclable claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.

(b) Marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.

(1) When recycling facilities are available to a substantial majority of consumers or communities where the item is sold, marketers can make unqualified recyclable claims. The term "substantial majority," as used in this context, means at least 60 percent.

(2) When recycling facilities are available to less than a substantial majority of consumers or communities where the item is sold, marketers should qualify all recyclable claims. Marketers may always qualify recyclable claims by stating the percentage of consumers or communities that have access to facilities that recycle the item.

Alternatively, marketers may use qualifications that vary in strength depending on facility availability. The lower the level of access to an appropriate facility is, the more strongly

the marketer should emphasize the limited availability of recycling for the product. For example, if recycling facilities are available to slightly less than a substantial majority of consumers or communities where the item is sold, a marketer may qualify a recyclable claim by stating: "This product [package] may not be recyclable in your area," or "Recycling facilities for this product [package] may not exist in your area." If recycling facilities are available only to a few consumers, marketers should use stronger clarifications. For example, a marketer in this situation may qualify its recyclable claim by stating: "This product [package] is recyclable only in the few communities that have appropriate recycling facilities."

(c) Marketers can make unqualified recyclable claims for a product or package if the entire product or package, excluding minor incidental components, is recyclable. For items that are partially made of recyclable components, marketers should clearly and prominently qualify the recyclable claim to avoid deception about which portions are recyclable.

(d) If any component significantly limits the ability to recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable material, but, because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable.<sup>48</sup>

*Example 1:* A packaged product is labeled with an unqualified claim, "recyclable." It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim likely conveys that both the product and its packaging, except for minor, incidental components, can be recycled. Unless the manufacturer has substantiation for both messages, it should clearly and prominently qualify the claim to indicate which portions are recyclable.

*Example 2:* A nationally marketed plastic yogurt container displays the Resin Identification Code (RIC)<sup>49</sup> (which consists of a design of arrows in a triangular shape containing a number in the center and an abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. This conspicuous use of the RIC constitutes a recyclable claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the manufacturer should qualify the claim to disclose the

<sup>48</sup> Batteries labeled in accordance with the Mercury-Containing and Rechargeable Battery Management Act, 42 U.S.C. 14322(b), are deemed to be in compliance with these Guides.

<sup>49</sup> The RIC, formerly known as the Society of the Plastics Industry, Inc. (SPI) code, is now covered by ASTM D 7611.



limited availability of recycling programs. If the manufacturer places the RIC, without more, in an inconspicuous location on the container (e.g., embedded in the bottom of the container), it would not constitute a recyclable claim.

*Example 3:* A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into another product or package. Any claim that the container is recyclable would be deceptive.

*Example 4:* A paperboard package is marketed nationally and labeled either "Recyclable where facilities exist" or "Recyclable B Check to see if recycling facilities exist in your area." Recycling programs for these packages are available to some consumers, but not available to a substantial majority of consumers nationwide. Both claims are deceptive because they do not adequately disclose the limited availability of recycling programs. To avoid deception, the marketer should use a clearer qualification, such as one suggested in § 260.12(b)(2).

*Example 5:* Foam polystyrene cups are advertised as "Recyclable in the few communities with facilities for foam polystyrene cups." A half-dozen major metropolitan areas have established collection sites for recycling those cups. The claim is not deceptive because it clearly discloses the limited availability of recycling programs.

*Example 6:* A package is labeled "Includes some recyclable material." The package is composed of four layers of different materials, bonded together. One of the layers is made from recyclable material, but the others are not. While programs for recycling the 25 percent of the package that consists of recyclable material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. The claim is deceptive for two reasons. First, it does not specify the portion of the product that is recyclable. Second, it does not disclose the limited availability of facilities that can process multi-layer products or materials. An appropriately qualified claim would be "25 percent of the material in this package is recyclable in the few communities that can process multi-layer products."

*Example 7:* A product container is labeled "recyclable." The marketer advertises and distributes the product only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents but are not yet available nationally. Because programs are available to a substantial majority of consumers where the product is sold, the unqualified claim is not deceptive.

*Example 8:* A manufacturer of one-time use cameras, with dealers in a substantial majority of communities, operates a take-back program that collects those cameras through all of its dealers. The manufacturer reconditions the cameras for resale and labels them "Recyclable through our dealership network." This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop-off recycling programs.

*Example 9:* A manufacturer advertises its toner cartridges for computer printers as "Recyclable. Contact your local dealer for details." Although all of the company's dealers recycle cartridges, the dealers are not located in a substantial majority of communities where cartridges are sold. Therefore, the claim is deceptive. The manufacturer should qualify its claim consistent with § 260.11(b)(2).

*Example 10:* An aluminum can is labeled "Please Recycle." This statement likely conveys that the can is recyclable. If collection sites for recycling these cans are available to a substantial majority of consumers or communities, the marketer does not need to qualify the claim.

#### § 260.13 Recycled content claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled content. Recycled content includes recycled raw material, as well as used,<sup>50</sup> reconditioned, and re-manufactured components.

(b) It is deceptive to represent, directly or by implication, that an item contains recycled content unless it is composed of materials that have been recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). If the source of recycled content includes pre-consumer material, the advertiser should have substantiation that the pre-consumer material would otherwise have entered the waste stream. Recycled content claims may—but do not have to—distinguish between pre-consumer and post-consumer materials. Where a marketer distinguishes between pre-consumer and post-consumer materials, it should have substantiation for any express or implied claim about the percentage of pre-consumer or post-consumer content in an item.

(c) Marketers can make unqualified claims of recycled content if the entire product or package, excluding minor, incidental components, is made from recycled material. For items that are partially made of recycled material, the marketer should clearly and prominently qualify the claim to avoid deception about the amount or percentage, by weight, of recycled content in the finished product or package.

(d) For products that contain used, reconditioned, or re-manufactured components, the marketer should clearly and prominently qualify the recycled content claim to avoid deception about the nature of such

<sup>50</sup> The term "used" refers to parts that are not new and that have not undergone any remanufacturing or reconditioning.

components. No such qualification is necessary where it is clear to reasonable consumers from context that a product's recycled content consists of used, reconditioned, or re-manufactured components.

*Example 1:* A manufacturer collects spilled raw material and scraps from the original manufacturing process. After a minimal amount of reprocessing, the manufacturer combines the spills and scraps with virgin material for use in production of the same product. A recycled content claim is deceptive since the spills and scraps are normally reused by industry within the original manufacturing process and would not normally have entered the waste stream.

*Example 2:* Fifty percent of a greeting card's fiber weight is composed from paper that was diverted from the waste stream. Of this material, 30% is post-consumer and 20% is pre-consumer. It would not be deceptive if the marketer claimed that the card either "contains 50% recycled fiber" or "contains 50% total recycled fiber, including 30% post-consumer fiber."

*Example 3:* A paperboard package with 20% recycled fiber by weight is labeled "20% post-consumer recycled fiber." The recycled content was composed of overrun newspaper stock never sold to customers. Because the newspapers never reached consumers, the claim is deceptive.

*Example 4:* A product in a multi-component package, such as a paperboard box in a shrink-wrapped plastic cover, indicates that it has recycled packaging. The paperboard box is made entirely of recycled material, but the plastic cover is not. The claim is deceptive because, without qualification, it suggests that both components are recycled. A claim limited to the paperboard box would not be deceptive.

*Example 5:* A manufacturer makes a package from laminated layers of foil, plastic, and paper, although the layers are indistinguishable to consumers. The label claims that "one of the three layers of this package is made of recycled plastic." The plastic layer is made entirely of recycled plastic. The claim is not deceptive, provided the recycled plastic layer constitutes a significant component of the entire package.

*Example 6:* A frozen dinner package is composed of a plastic tray inside a cardboard box. It states "package made from 30% recycled material." Each packaging component is one-half the weight of the total package. The box is 20% recycled content by weight, while the plastic tray is 40% recycled content by weight. The claim is not deceptive, since the average amount of recycled material is 30%.

*Example 7:* A manufacturer labels a paper greeting card "50% recycled fiber." The manufacturer purchases paper stock from several sources, and the amount of recycled fiber in the stock provided by each source varies. If the 50% figure is based on the annual weighted average of recycled material purchased from the sources after accounting for fiber loss during the papermaking production process, the claim is not deceptive.

*Example 8:* A packaged food product is labeled with a three-chasing-arrows symbol

(a Möbius loop) without explanation. By itself, the symbol likely conveys that the packaging is both recyclable and made entirely from recycled material. Unless the marketer has substantiation for both messages, the claim should be qualified. The claim may need to be further qualified, to the extent necessary, to disclose the limited availability of recycling programs and/or the percentage of recycled content used to make the package.

*Example 9:* In an office supply catalog, a manufacturer advertises its printer toner cartridges “65% recycled.” The cartridges contain 25% recycled raw materials and 40% reconditioned parts. The claim is deceptive because reasonable consumers likely would not know or expect that a cartridge’s recycled content consists of reconditioned parts. It would not be deceptive if the manufacturer claimed “65% recycled content; including 40% from reconditioned parts.”

*Example 10:* A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified “Recycled” label. This claim is deceptive because reasonable consumers likely would believe that the helmet is made of recycled raw materials, when it is, in fact, a used item. An acceptable claim would bear a disclosure clearly and prominently stating that the helmet is used.

*Example 11:* An automotive dealer, automobile recycler, or other qualified entity recovers a serviceable engine from a wrecked vehicle. Without repairing, rebuilding, re-manufacturing, or in any way altering the engine or its components, the dealer attaches a “Recycled” label to the engine, and offers it for sale in its used auto parts store. In this situation, an unqualified recycled content claim likely is not deceptive because reasonable consumers in the automotive context likely would understand that the engine is used and has not undergone any rebuilding.

*Example 12:* An automobile parts dealer, automobile recycler, or other qualified entity purchases a transmission that has been recovered from a salvaged or end-of-life vehicle. Eighty-five percent of the transmission, by weight, was rebuilt and 15% constitutes new materials. After rebuilding<sup>51</sup> the transmission in accordance with industry practices, the dealer packages it for resale in a box labeled “Rebuilt Transmission,” or “Rebuilt Transmission (85% recycled content from rebuilt parts),” or “Recycled Transmission (85% recycled content from rebuilt parts).” Given consumer perception in the automotive context, these claims are not deceptive.

#### **§ 260.14 Refillable claims.**

It is deceptive to misrepresent, directly or by implication, that a

<sup>51</sup> The term “rebuilding” means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the transmission in sound working condition.

package is refillable. A marketer should not make an unqualified refillable claim unless the marketer provides the means for refilling the package. The marketer may either provide a system for the collection and refill of the package, or offer for sale a product that consumers can purchase to refill the original package.

*Example 1:* A container is labeled “refillable three times.” The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least three times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means to return the container to the manufacturer for refill.

*Example 2:* A small bottle of fabric softener states that it is in a “handy refillable container.” In the same market area, the manufacturer also sells a large-sized bottle that consumers use to refill the smaller bottles. The claim is not deceptive because there is a reasonable means for the consumer to refill the smaller container.

#### **§ 260.15 Renewable energy claims.**

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable energy or that a service uses renewable energy. A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, unless the marketer has matched such non-renewable energy use with renewable energy certificates.

(b) Research suggests that reasonable consumers may interpret renewable energy claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. For instance, marketers may minimize the risk of deception by specifying the source of the renewable energy (e.g., wind or solar energy).

(c) It is deceptive to make an unqualified “made with renewable energy” claim unless all, or virtually all, of the significant manufacturing processes involved in making the product or package are powered with renewable energy or non-renewable energy matched by renewable energy certificates. When this is not the case, marketers should clearly and prominently specify the percentage of renewable energy that powered the significant manufacturing processes involved in making the product or package.

(d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.

*Example 1:* A marketer advertises its clothing line as “made with wind power.” The marketer buys wind energy for 50% of the energy it uses to make the clothing in its line. The marketer’s claim is deceptive because reasonable consumers likely interpret the claim to mean that the power was composed entirely of renewable energy. If the marketer stated, “We purchase wind energy for half of our manufacturing facilities,” the claim would not be deceptive.

*Example 2:* A company purchases renewable energy from a portfolio of sources that includes a mix of solar, wind, and other renewable energy sources in combinations and proportions that vary over time. The company uses renewable energy from that portfolio to power all of the significant manufacturing processes involved in making its product. The company advertises its product as “made with renewable energy.” The claim would not be deceptive if the marketer clearly and prominently disclosed all renewable energy sources. Alternatively, the claim would not be deceptive if the marketer clearly and prominently stated, “made from a mix of renewable energy sources,” and specified the renewable source that makes up the greatest percentage of the portfolio. The company may calculate which renewable energy source makes up the greatest percentage of the portfolio on an annual basis.

*Example 3:* An automobile company uses 100% non-renewable energy to produce its cars. The company purchases renewable energy certificates to match the non-renewable energy that powers all of the significant manufacturing processes for the seats, but no other parts, of its cars. If the company states, “The seats of our cars are made with renewable energy,” the claim would not be deceptive, as long as the company clearly and prominently qualifies the claim such as by specifying the renewable energy source.

*Example 4:* A company uses 100% non-renewable energy to manufacture all parts of its product, but powers the assembly process entirely with renewable energy. If the marketer advertised its product as “assembled using renewable energy,” the claim would not be deceptive.

*Example 5:* A toy manufacturer places solar panels on the roof of its plant to generate power, and advertises that its plant is “100% solar-powered.” The manufacturer, however, sells renewable energy certificates based on the renewable attributes of all the power it generates. Even if the manufacturer uses the electricity generated by the solar panels, it has, by selling renewable energy certificates, transferred the right to characterize that electricity as renewable. The manufacturer’s claim is therefore deceptive. It also would be deceptive for this manufacturer to advertise that it “hosts” a renewable power facility because reasonable consumers likely interpret this claim to mean

that the manufacturer uses renewable energy. It would not be deceptive, however, for the manufacturer to advertise, "We generate renewable energy, but sell all of it to others."

**§ 260.16 Renewable materials claims.**

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable materials.

(b) Research suggests that reasonable consumers may interpret renewable materials claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims. For example, marketers may minimize the risk of unintended implied claims by identifying the material used and explaining why the material is renewable.

(c) Marketers should also qualify any "made with renewable materials" claim (excluding minor, incidental components) is made entirely with renewable materials.

*Example 1:* A marketer makes the unqualified claim that its flooring is "made

with renewable materials." Reasonable consumers likely interpret this claim to mean that the flooring also is made with recycled content, recyclable, and biodegradable.

Unless the marketer has substantiation for these implied claims, the unqualified "made with renewable materials" claim is deceptive. The marketer could qualify the claim by stating, clearly and prominently, "Our flooring is made from 100 percent bamboo, which grows at the same rate, or faster, than we use it." The marketer still is responsible for substantiating all remaining express and reasonably implied claims.

*Example 2:* A marketer's packaging states that "Our packaging is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials." By identifying the material used and explaining why the material is renewable, the marketer has minimized the risk of unintended claims that the product is made with recycled content, recyclable, and biodegradable. The marketer has adequately qualified the amount of renewable materials in the product.

**§ 260.17 Source reduction claims.**

It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume, or toxicity.

Marketers should clearly and prominently qualify source reduction claims to the extent necessary to avoid deception about the amount of the source reduction and the basis for any comparison.

*Example:* An advertiser claims that disposal of its product generates "10% less waste." The marketer does not accompany this claim with a general environmental benefit claim. Because this claim could be a comparison to the advertiser's immediately preceding product or to its competitors' products, the advertiser should have substantiation for both interpretations. Otherwise, the advertiser should clarify which comparison it intends and have substantiation for that comparison. A claim of "10% less waste than our previous product" would not be deceptive if the advertiser has substantiation that shows that the current product's disposal contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the product.

By direction of the Commission.

**Donald S. Clark**

*Secretary.*

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11  
12 Attorneys for Plaintiff, the  
13 PEOPLE OF THE STATE OF CALIFORNIA

[NO FEE - Govt. Code § 6103]

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF SANTA BARBARA, ANACAPA DIVISION**

16  
17 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

18 Plaintiff,

19 v.

20 SUNSEEKER ENTERPRISES, INC., dba  
21 SUN FIREDEFENSE; JAMES MOSELEY,  
an individual; and DOES 1 through 10,  
22 inclusive,

23 Defendants.

Case No. 19CV04083

**COMPLAINT FOR PERMANENT  
INJUNCTION, CIVIL PENALTIES,  
RESTITUTION, AND OTHER  
EQUITABLE RELIEF**

[VERIFIED ANSWER REQUIRED  
PURSUANT TO CODE OF CIVIL  
PROCEDURE SECTION 446]

24  
25  
26  
27  
28  
**COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**

1 Plaintiff, the People of the State of California, appearing through their attorneys, Joyce E.  
2 Dudley, District Attorney of Santa Barbara County, and Michael N. Feuer, City Attorney for the  
3 City of Los Angeles, alleges the following on information and belief:

4 **INTRODUCTION**

5 1. California has recently been hit with devastating, destructive wildfires, including  
6 fires that rapidly spread throughout the wildlands-urban interface. These fires are deadly—in  
7 the past two years, they have killed almost 150 people and injured dozens more. These fires are  
8 widespread—in the past two years, over 17,000 separate fires burned nearly 3.2 million acres.  
9 These fires are also costly—the past two years have cost Californians billions of dollars.

10 2. The number of acres burned in California annually is on the rise, largely due to  
11 climate change. These fires can be so severe that, like hurricanes and other awe-inspiring  
12 natural disasters, they are named: Woolsey, Thomas, Skirball, Mendocino, Front, Camp, and  
13 others.

14 3. Given this prominent danger, it is critical that California consumers have truthful,  
15 accurate, and scientifically-validated information about products purporting to prevent and  
16 protect from fires. Lives, homes, and public safety depend on it. If consumers falsely believe  
17 that their homes are protected from wildfires when in fact their homes are not, those consumers  
18 could delay evacuation, placing their lives, their families' lives, and the lives of firefighters and  
19 other first responders at great risk.

20 4. This civil law enforcement action involves a falsely advertised and fraudulent fire  
21 protection product and related application services. Defendants Sunseeker Enterprises, Inc., dba  
22 Sun FireDefense, and James Moseley (collectively, "Defendants") have advertised—including  
23 through online, television, and print media—and sold a coating that they claim to have designed  
24 to be sprayed on homes and that purportedly protects those homes from fire.

25 5. In response to an administrative subpoena issued by the Santa Barbara District  
26 Attorney's Office, Defendants produced a sample of their SPF 3000 Clear Spray ("SPF 3000"  
27 and/or "SFD 3000"). The Santa Barbara District Attorney's Office and the Los Angeles City  
28 Attorney's Office then engaged an expert to test this sample. This testing indicates that SPF

1 3000 does not protect as advertised, if it even protects at all. SPF 3000 is also corrosive,  
2 volatile, and toxic—Defendants’ claim that the product is a “clear, non-toxic, spray-solution”  
3 (and related claims that the product is safe for humans and animals) are false; SPF 3000  
4 contains ingredients which, under California law, are presumptively hazardous to human health  
5 and the environment, and it is highly likely to corrode and damage homes and property.

6 **PARTIES**

7 6. Plaintiff, the People of the State of California (the “People”), is the sovereign power  
8 of the State of California (Gov. Code § 100), authorized to enforce Business and Professions  
9 Code section 17200 et seq. (“Unfair Competition Law” or “UCL”) and Business and Professions  
10 Code section 17500 et seq. (“False Advertising Law” or “FAL”) in civil law enforcement  
11 actions. The People have an interest in ensuring that the individuals and entities doing business  
12 in this state comply with all applicable laws. The People act here by and through Joyce E.  
13 Dudley, District Attorney of Santa Barbara County, and Michael N. Feuer, Los Angeles City  
14 Attorney, under the authority granted to them by Business and Professions Code sections 17535,  
15 17536, 17204, and 17206.

16 7. Defendant Sunseeker Enterprises, Inc., dba Sun FireDefense (“Sun Fire”), is a  
17 California corporation, headquartered and with its principal place of business in Marina Del  
18 Rey, California. At all relevant times, Sun Fire has transacted business in California, including  
19 Los Angeles City and County and Santa Barbara County.

20 8. Defendant James Moseley (“Moseley”) is an individual and a resident of Los  
21 Angeles County. At all relevant times, Moseley has transacted business in California, including  
22 in Los Angeles City and County and Santa Barbara County. Moseley is, and at all relevant times  
23 was, the Chief Executive Officer, Chief Financial Officer, and Secretary of Sun Fire. Moseley  
24 is, and at all relevant times was, an owner of Sun Fire.

25 9. Defendants sued herein as Does 1 through 10, inclusive, are presently unknown  
26 to the People, who therefore sue these unknown Defendants by such fictitious names. When the  
27 true names and capacities of any unknown Defendants have been ascertained, the People will  
28 ask leave of the Court to amend this Complaint and to insert in lieu of such fictitious names the



1 true names and capacities of any fictitiously named Defendants. The People are informed and  
2 believe that Does 1 through 10 participated in, and are responsible for, the wrongful conduct  
3 alleged in this Complaint.

4 10. Each Defendant is a “person” within the meaning of Business and Professions  
5 Code sections 17506 and 17201.

6 11. Whenever this Complaint refers to “Defendants,” it includes any and all  
7 Defendants named in paragraphs 7 through 9 of this Complaint.

8 12. At all relevant times, some or all Defendants acted as the agent of the others, and  
9 all Defendants acted within the scope of their agency if acting as an agent of another.

10 13. At all relevant times, Defendants together comprised an “organization of  
11 persons” within the meaning of Business and Professions Code section 17201, in that they  
12 associated together for the common purpose of engaging in a course of unlawful, unfair, and  
13 fraudulent business acts and practices as alleged herein.

14 14. At all relevant times, each Defendant acted individually and jointly with every  
15 other Defendant in committing the acts alleged to have been committed by “Defendants” in this  
16 Complaint.

17 15. At all relevant times, each Defendant acted: (a) as a principal; (b) under express  
18 or implied agency; and/or (c) with actual or ostensible authority to perform the acts alleged in  
19 this Complaint on behalf of every other Defendant.

20 16. At all relevant times, each Defendant knew or realized, or should have known or  
21 realized, that the other Defendants were engaging in or planned to engage in the violations of  
22 law alleged in this Complaint. Knowing or realizing that the other Defendants were engaging in  
23 such unlawful conduct, each Defendant nevertheless facilitated the commission of those  
24 unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the  
25 commission of the unlawful acts, and thereby aided and abetted, the other Defendants in the  
26 unlawful conduct.

27 17. Defendants have engaged in a conspiracy, common enterprise, and common  
28 course of conduct, the purpose of which was and is to engage in the violations of law alleged in

1 this Complaint. The conspiracy, common enterprise, and common course of conduct continue  
2 to the present.

3 **JURISDICTION AND VENUE**

4 18. This Court has subject matter jurisdiction over this matter pursuant to Business  
5 and Professions Code sections 17500, 17535, 17536, 17203, 17204, and 17206.

6 19. This Court has personal jurisdiction over each of the Defendants pursuant to  
7 California Constitution, Article VI, section 10, and California Code of Civil Procedure section  
8 410.10 in that each Defendant that is a corporation is incorporated in California and/or does  
9 substantial business in California; individual Defendants reside in California; all of the  
10 Defendants have purposely availed themselves of the benefits of doing business in this state;  
11 and Defendants' violations of law alleged herein occurred, in whole or in part, in this state.

12 20. The violations of law alleged in this Complaint occurred in Los Angeles City and  
13 County, Santa Barbara County, and throughout the State of California. Venue for this matter  
14 properly lies within Santa Barbara County because the violations of law alleged in this  
15 Complaint occurred, in whole or in part, in Santa Barbara County.

16 **STATUTORY BACKGROUND**

17 **A. The Unfair Competition Law**

18 21. California Business and Professions Code, section 17200 provides that “unfair  
19 competition shall mean and include unlawful, unfair or fraudulent business practice.”

20 22. Section 17203 of the Business and Professions Code provides that “(a)ny person  
21 performing or proposing to perform an act of unfair competition within this state may be  
22 enjoined in any court of competent jurisdiction.” Section 17203 also permits recovery of any  
23 “interest in money or property, real or personal” acquired by a violation of the Unfair  
24 Competition Law.

25 23. Section 17206, subdivision (a), provides that any person violating Section 17200  
26 “shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for  
27 each violation, which shall be assessed and recovered in a civil action brought in the name of  
28 the people of the State of California . . . by any district attorney . . . [or] by any city attorney of a

1 city having a population in excess of 750,000.”

2 24. Under Section 17205, these remedies and penalties are “cumulative to each other  
3 and to the remedies or penalties available under all other laws of this state.”

4 **B. The False Advertising Law**

5 25. California Business and Professions Code, section 17500 provides that it is  
6 unlawful for any person “with the intent directly or indirectly to dispose of real or personal  
7 property . . . to make or disseminate or cause to be made . . . any statement, concerning that real  
8 or personal property . . . which is untrue or misleading, and which is known, or which by the  
9 exercise of reasonable care should be known, to be untrue or misleading.”

10 26. Section 17535 authorizes “any district attorney” or “any city attorney” to seek an  
11 injunction to prevent such untrue or misleading statements and to provide restitution for victims  
12 of such statements.

13 27. Section 17536 provides that any person violating section 17500 “shall be liable  
14 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,  
15 which shall be assessed and recovered in a civil action brought in the name of the people of the  
16 State of California . . . by any district attorney . . . or city attorney.” These civil penalties are  
17 cumulative to those obtained under Section 17200.

18 **C. California Greenwashing Law**

19 28. Business and Professions Code, section 17580.5 makes it “unlawful for any  
20 person to make any untruthful, deceptive, or misleading environmental marketing claim,  
21 whether explicit or implied.” The law provides that “[f]or the purpose of this section,  
22 ‘environmental marketing claim’ shall include any claim contained in the ‘Guides for the Use of  
23 Environmental Marketing Claims’ published by the Federal Trade Commission [hereinafter  
24 “Guides”].”

25 29. The Guides specify that it “is deceptive to misrepresent, directly or by  
26 implication, that a product . . . or service is non-toxic,” and “[n]on-toxic claims should be  
27 clearly and prominently qualified to the extent necessary to avoid deception.” The Guides  
28 further specify that a “non-toxic claim likely conveys that a product . . . or service is non-toxic

1 both for humans and for the environment generally,” and thus “marketers making non-toxic  
2 claims should have competent and reliable scientific evidence that the product, package, or  
3 service is non-toxic for humans and for the environment” and “should clearly and prominently  
4 qualify their claims to avoid deception.” (16 C.F.R. Part 260, § 260.10, subd. (a), (b) (2009).)

5 30. The Guides also specify that it “is deceptive to misrepresent, directly or by  
6 implication, that a product, package, or service has been endorsed or certified by an independent  
7 third party,” and any “marketer’s use of the name, logo, or seal of approval of a third-party  
8 certifier or organization” should “meet the criteria for endorsements provided in the FTC’s  
9 Endorsement Guides.” (16 C.F.R. Part 260, § 260.6, subd. (a), (b) (2009).)

10 31. The FTC’s Endorsement Guides define an “endorsement” as “any advertising  
11 message (including . . . depictions of the name, signature, likeness or other identifying personal  
12 characteristics of . . . the name or seal of an organization) that consumers are likely to believe  
13 reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring  
14 advertiser.” (16 C.F.R. Part 255, § 255.0 (2009).) “Endorsements by organizations, especially  
15 expert ones, are viewed as representing the judgment of a group,” and thus “an organization’s  
16 endorsement must be reached by a process sufficient to ensure that the endorsement fairly  
17 reflects the collective judgment of the organization.” (16 C.F.R. Part 255, § 255.4 (2009).)

18 32. The Guides also state that “[t]hird-party certification does not eliminate a  
19 marketer’s obligation to ensure that it has substantiation for all claims reasonably communicated  
20 by the certification.” (16 C.F.R. Part 260, § 260.6, subd. (c) (2009).)

21 33. The Guides further state that “[i]t is deceptive to misrepresent, directly or by  
22 implication, that a product, package, or service is free of, or does not contain or use, a substance.  
23 Such claims should be clearly and prominently qualified to the extent necessary to avoid  
24 deception.” (16 C.F.R. Part 260, § 260.9, subd. (a) (2009).) Additionally, “[i]t is deceptive to  
25 misrepresent, directly or by implication, that a product, package, or service offers a general  
26 environmental benefit.” (16 C.F.R. Part 260, § 260.4, subd. (a) (2009).)

27 34. For each violation of section 17580.5, a civil penalty may be assessed under  
28 section 17536 in an amount not to exceed \$2,500 for each violation. As noted above, penalties

1 under section 17536 are cumulative to other remedies.

2 **DEFENDANTS' BUSINESS PRACTICES**

3 35. Defendants manufacture, market, and distribute products that they claim will  
4 protect the homes of California consumers from fires of all types, including wildfires.  
5 Defendants market these products in areas that have been ravaged by wildfires with increasing  
6 frequency over the past several years—areas where consumers have grown increasingly  
7 desperate to protect their homes from destruction like that seen in the Woolsey, Thomas,  
8 Skirball, Mendocino, Front, Camp, and other fires resulting in the National Disaster declared in  
9 August 2018. Defendants use direct-to-consumer sales and online vendors, including  
10 Defendants' own website, [www.sunfiredefense.com](http://www.sunfiredefense.com).

11 36. In their marketing campaigns and advertisements—which prey on those residing  
12 in the wildlands-urban interface throughout Los Angeles, Santa Barbara, and other wildfire  
13 areas of California—Defendants have published false and misleading advertisements  
14 concerning SPF 3000, thereby deceiving California consumers, including Los Angeles and  
15 Santa Barbara homeowners.

16 37. As outlined in further detail below, Defendants' false and misleading  
17 advertisements concern SPF 3000's alleged effectiveness, the time period during which they  
18 claim a home will be protected following application of the product, the types of surfaces on  
19 which the product will work, the product's ingredients, and NASA's role in developing the  
20 product.

21 38. Defendants lack substantiation to support advertising claims that their SPF 3000  
22 product can withstand the temperatures advertised by the Defendants.

23 39. Defendants inaccurately describe the chemical composition of SPF 3000; they  
24 fail to substantiate whether SPF 3000 adheres to finished wood, stucco, and other housing  
25 materials other than unfinished wood; they fail to disclose SPF 3000's corrosive properties; they  
26 fail to provide application instructions for subcontractors or homeowners; and they fail to  
27 disclose the presence of flammable, volatile organic compounds in SPF 3000 that could require  
28 safety precautions during application.

1 40. Victims of Defendants’ unfair, fraudulent, and unlawful acts are left with  
2 dangerous and false expectations that their homes have been reinforced to withstand wildfires.  
3 Homeowners’ false expectations could lead to disaster: loss of life, injury, and damage to  
4 homes and property. Such false expectations could delay or supplant implementation of  
5 measures that might actually help prevent or limit the spread of fire, or, worst of all, based on a  
6 false sense of confidence in the SPF 3000 product, even delay evacuation, placing the lives of  
7 homeowners, their families, and responding firefighters and other first responders at risk.

8 41. Defendants also falsely claim that their products are non-toxic and safe for  
9 humans and animals in violation of California’s greenwashing statutes. This is critical because,  
10 while the danger due to fire is dependent on external factors, i.e., a wildfire, the harm to human  
11 health and the environment from these toxic chemicals—not to mention damage to homes and  
12 property—will occur immediately as a result of application of Defendants’ product.

13 42. Defendants also use the logos of the National Fire Protection Association, the  
14 Discovery Channel, the National Fallen Fire Fighters Foundation, and the Los Angeles Times  
15 on their website and in marketing and promotional materials. Defendants have not provided  
16 documentation substantiating endorsements from these third-party organizations, nor have they  
17 published qualifying language clarifying whether these organizations stand by Defendants’ false  
18 claims regarding the environmentally safe and non-toxic nature of Defendants’ products.

19 **FIRST CAUSE OF ACTION:**

20 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

21 **(UNTRUE OR MISLEADING REPRESENTATIONS)**

22 **(Against All Defendants)**

23 43. The People restate and incorporate herein each and every allegation set forth in  
24 paragraphs 1–42 above as though fully alleged herein.

25 44. Beginning on or about November 2015, if not earlier, and continuing to the  
26 present, Defendants, and each of them, with each other or with other unknown persons, have  
27 engaged in and continue to engage in, aided and abetted and continue to aid and abet, and  
28 conspired to and continue to conspire to violate Business and Professions Code section 17500



1 by making or disseminating untrue or misleading statements, or causing untrue or misleading  
2 statements to be made, in the City and County of Los Angeles and in Santa Barbara County,  
3 with the intent to induce the purchase of a fire prevention product and related application  
4 services when they knew or by the exercise of reasonable care should have known the  
5 statements were untrue or misleading. Defendants’ untrue or misleading representations  
6 include, but are not limited to, the following:

- 7           A. SPF 3000 “provides protection against heat and embers up to 3000 degrees  
8 Fahrenheit” and “is effective for 5+ years after a single application.” This  
9 claim is untrue or misleading because the product has never been evaluated  
10 under an appropriate, recognized exterior weathering test to substantiate such  
11 claims.
- 12           B. “SPF 3000 offers Class A fire protection to cedar shake shingles, open-air  
13 roof systems, decking, and structural lumber” and is “Class A Rated.” This  
14 claim is untrue or misleading because ASTM E2768-11 testing, which  
15 Defendants offer as substantiation for these claims, only serves to apply the  
16 rating to the specific materials tested—in Defendants’ case, untreated or bare  
17 structural lumber—and not cedar shake shingles, open air roof systems, or  
18 decking. This claim is also untrue or misleading because structural lumber is  
19 not commonly used as a building exterior or roofing material in the  
20 construction of domestic homes.
- 21           C. SPF 3000 consists, in part, of a “silicon-based ceramic formula . . . which  
22 creates a self-extinguishing reaction when hit by flame.” This claim is untrue  
23 or misleading based on the actual content of SPF 3000.
- 24           D. SPF 3000 is “non-toxic to humans or animals”, “Simple & Safe”, and a  
25 “clear, non-toxic, spray solution.” This claim is untrue or misleading  
26 because SPF 3000 contains corrosive and flammable substances and because  
27 it contains volatile organic compounds that are presumed hazardous for the  
28 characteristic of toxicity under California law. (California Code of

1 Regulations, Div. 4.5, Ch. 11, Art. 5, Appendix X.)

2 E. SPF 3000 was developed “through collaboration with NASA and the U.S.  
3 Forest Service.” Defendants have not substantiated the existence of any such  
4 relationship between Defendants, Defendants’ product, and NASA.

5 45. Defendants knew, or by the exercise of reasonable care should have known at the  
6 time of making the statements or causing the statements to be made, that the statements set forth  
7 herein were untrue or misleading.

8 46. These violations render each Defendant liable to the People for civil remedies of  
9 up to \$2,500 for each violation under Business and Professions Code section 17536, and  
10 provide the basis for other remedies.

11 47. Defendants’ conduct was in continuing violation of the False Advertising Law,  
12 beginning at a time unknown to the People but on or about November 2015, if not earlier, and  
13 continuing to the present.

14 **SECOND CAUSE OF ACTION:**

15 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17580.5**

16 **(Untrue, Deceptive or Misleading Environmental Marketing Claims)**

17 **(Against All Defendants)**

18 48. The People restate and incorporate herein each and every allegation set forth in  
19 paragraphs 1–47 above, as though fully alleged herein.

20 49. Beginning on or about November 2015, if not earlier, and continuing to the  
21 present, Defendants, and each of them, with each other or with other unknown persons, have  
22 engaged in and continue to engage in, aided and abetted and continue to aid and abet, and  
23 conspired to and continue to conspire to violate Business and Professions Code section 17580.5  
24 by making untruthful, deceptive, or misleading environmental marketing claims in the City and  
25 County of Los Angeles and in Santa Barbara County. Defendants’ untrue or misleading  
26 representations include, but are not limited to, the following:

27 A. The representation that SPF 3000 is “non-toxic to humans or animals”,  
28 “Simple & Safe”, and a “clear, non-toxic, spray solution.” This marketing

1 claim is untruthful, deceptive, or misleading because SPF 3000 contains  
2 corrosive materials and other volatile, abrasive, and/or toxic substances, and  
3 because it contains volatile organic compounds that are presumed hazardous  
4 for the characteristic of toxicity under California law. (California Code of  
5 Regulations, Div. 4.5, Ch. 11, Art. 5, Appendix X.)

6 B. The use of various logos on Defendants' website and other promotional  
7 materials or advertisements. Defendants have not offered substantiation  
8 proving that it had endorsement relationships with the third-party  
9 organizations whose logos it displayed in its advertising or related qualifying  
10 statements.

11 C. Statements on Defendants' website and marketing materials claiming that  
12 "SPF 3000 is Non-toxic, non-combustible, [and] non-carcinogenic," and  
13 similar statements claiming that "[o]ur products are non-toxic, [and] non-  
14 carcinogenic[.]"

15 D. Statements on Defendants' website and marketing materials claiming, in  
16 reference to SPF 3000, that "[n]o components are believed to be hazardous or  
17 listed in the NIOSH Recommendations for Occupational Safety and Health  
18 Standards, 1988, or are listed as hazardous by SARA, CERCLA, or RCRA,"  
19 and "[n]o OSHA PEL's are established for any of the other ingredients."

20 E. Statements on Defendants' website and marketing materials claiming that  
21 "SPF 3000 . . . sprays help lower energy consumption, increase energy  
22 efficiency, improve agriculture, scale up enzymatic transformations, and  
23 protect what matters most."

24 F. Statements on Defendants' website and marketing materials claiming that  
25 "[t]he best eco-friendly fire protection materials help us ensure the best  
26 future for our planet and its people."

27 50. These violations render each Defendant liable to the People for civil remedies of  
28 up to \$2,500 for each violation under Business and Professions Code section 17536, and

1 provide the basis for other remedies.

2 51. Defendants' conduct was in continuing violation of Business and Professions  
3 Code section 17580.5, beginning at a time unknown to the People but on or about November  
4 2015, if not earlier, and continuing to the present.

5 **THIRD CAUSE OF ACTION:**

6 **VIOLATION OF BUSINESS AND PROFESSIONS CODE 17200**

7 **(UNFAIR COMPETITION)**

8 **(Against All Defendants)**

9 52. The People restate and incorporate herein each and every allegation set forth in  
10 paragraphs 1 through 51 above, as though fully alleged herein.

11 53. Beginning on or about November 2015, if not earlier, and continuing to the  
12 present, Defendants, and each of them, with each other or other unknown persons, have engaged  
13 in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to  
14 and continue to conspire to engage in acts or practices that constitute unfair competition as  
15 defined by Business and Professions Code section 17200. Such acts or practices include, but are  
16 not limited to, the following:

- 17 A. Violating Business and Professions Code, section 17200, because  
18 Defendants' business acts and practices, as described herein and as more  
19 particularly alleged in paragraphs 35 through 51, as well as similar conduct,  
20 are *unlawful* under section 17200;
- 21 B. Violating Business and Professions Code, section 17200, because  
22 Defendants' business acts and practices, as described herein and as more  
23 particularly alleged in paragraphs 35 through 51 as well as similar conduct,  
24 are *unfair* under section 17200;
- 25 C. Violating Business and Professions Code, section 17200, because  
26 Defendants' business acts and practices, as described herein and as more  
27 particularly alleged in paragraphs 35 through 51, as well as similar conduct,  
28 are *fraudulent* under section 17200;

- 1 D. Violating Business and Professions Code, section 17200, because  
2 Defendants' actions as described in paragraphs 35 through 51, as well as  
3 similar conduct, are unfair, deceptive, untrue, or misleading advertising  
4 under section 17200;
- 5 E. Violating Business and Professions Code, section 17500, by making or  
6 disseminating, or causing to be made or disseminated, statements before the  
7 public that Defendants knew were untrue and misleading and which were  
8 and are known by Defendants to be untrue and misleading, as described in  
9 paragraphs 35 through 51; and
- 10 F. Violating Business and Professions Code, section 17580.5, by making  
11 untruthful, deceptive, or misleading environmental marketing claims as  
12 described herein and as more particularly alleged in paragraphs 48 through  
13 51.

14 54. By committing the acts alleged above, at all times material to this complaint,  
15 each Defendant has engaged in unlawful business practices that constitute unfair competition  
16 within the meaning of Business and Professions Code, section 17200.

17 55. By committing the acts alleged above, Defendants are liable to the People for  
18 civil penalties of up to \$2,500 for each violation.

19 56. Defendants' unlawful, unfair, and fraudulent business acts or practices, as  
20 described above, present a continuing threat to members of the public.

21 57. Defendants' conduct was in continuing violation of the Unfair Competition Law,  
22 beginning at a time unknown to the People but on or about November 2015, if not earlier, and  
23 continuing to the present.

24 **PRAYER FOR RELIEF**

25 Wherefore, the People pray for judgment as follows:

26 58. That pursuant to Business and Professions Code sections 17203 and 17204 and  
27 the equitable powers of the Court, Defendants, and their successors, agents, representatives,  
28 employees, and all persons who act in concert with Defendants be permanently enjoined from

1 engaging in unfair competition as defined in Business and Professions Code section 17200 et  
2 seq., including, but not limited to, the acts and practices alleged in this Complaint.

3 59. That pursuant to Business and Professions Code section 17206, Defendants be  
4 assessed a civil penalty of \$2,500 for each violation of Business and Professions Code section  
5 17200 et seq. that they committed, caused, aided and abetted or conspired to commit, as proved  
6 at trial, but in an amount not less than \$5,000,000.00.

7 60. That pursuant to Business and Professions Code section 17535, Defendants, their  
8 successors, agents, representatives, employees, and all persons who act in concert with  
9 Defendants be permanently enjoined from making any untrue or misleading statements in  
10 violation of Business and Professions Code section 17500 et seq., including but not limited to,  
11 the untrue or misleading statements alleged in the Complaint.

12 61. That pursuant to Business and Professions Code section 17536, Defendants be  
13 assessed a civil penalty of \$2,500 for each violation of Business and Professions Code sections  
14 17500 et seq. and 17580.5 that they committed, caused, aided and abetted, or conspired to  
15 commit, as proved at trial, but in an amount not less than \$5,000,000.00.

16 62. That Defendants be ordered to make direct restitution of any money or other  
17 property that may have been acquired by the violations of Business and Professions Code  
18 section 17200 et seq. and 17500 et seq.

19 63. That the People recover the costs of this action.

20 64. Such other relief that the Court deems just and proper.

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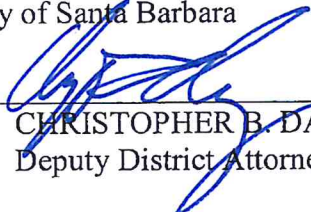
28 ///




1 Dated: August 5, 2019

2 Respectfully Submitted,

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5 County of Santa Barbara

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12 *Attorneys for Plaintiff and the Proposed Class*

13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15

16 MAYANNA BERRIN, an individual  
 17 on her own behalf and on behalf of all  
 18 others similarly situated,

19 Plaintiff,  
 20

21 v.

22 DELTA AIR LINES INC., a Delaware  
 23 Corporation,  
 24

25 Defendant.  
 26

Case No.:

**CLASS ACTION COMPLAINT**

1 Plaintiff Mayanna Berrin (“Plaintiff”), by and through her attorneys,  
2 makes the following allegations pursuant to the investigation of her counsel and  
3 based upon information and belief—except as to allegations specifically  
4 pertaining to herself and her counsel, which are based on personal knowledge—  
5 against Defendant Delta Air Lines, Inc. (“Defendant” or “Delta”).

6 **NATURE OF THE ACTION**

7 1. This is a class action lawsuit, brought on behalf of a putative  
8 nationwide class, or alternatively a putative class of California residents, who  
9 have purchased Defendant’s flights, against Defendant for grossly  
10 misrepresenting the total environmental impact of its business operations in its  
11 advertisements, corporate announcements, and promotional materials and  
12 thereby attaining underserved market share and extracting higher prices from  
13 consumers.

14 2. Defendant is one of the major commercial airlines in America and  
15 operates flights worldwide.

16 3. Since March 2020, Defendant has repeatedly touted itself as “the  
17 world’s first carbon-neutral airline” across various channels including  
18 advertisements, press releases, LinkedIn posts, podcasts, and in-flight napkins.

19 4. Reasonable consumers reviewing these representations would  
20 believe that when taking account of all of Defendant’s carbon emissions and  
21 related green investments, Defendant has not been responsible for releasing any  
22 net additional carbon into the atmosphere since March 2020.

23 5. Defendant has represented that its airline is “carbon-neutral”  
24 because of carbon offsetting via participation in the voluntary carbon offset  
25 market. The voluntary carbon offset market is a loose arrangement of companies  
26 and NGOs that facilitate investment in green projects such as renewable energy  
27 and prevention of deforestation. In exchange for their investment in these  
28 projects, companies receive “carbon offsets” in the form of credits that purport to

1 verify the amount of carbon that was not released due to the company’s  
2 investments in the offset market. Defendant’s claim of carbon neutrality  
3 therefore hinges on an underlying set of representations—that since March 2020  
4 Defendant’s investments in the voluntary carbon offset market have entirely  
5 offset the CO2 emissions from Defendant’s global airline operations, such that  
6 Defendant has not been responsible for releasing additional carbon into the  
7 atmosphere during that time.

8 6. Plaintiff has since discovered that any such representations are  
9 manifestly and provably false. As explained below, foundational issues with the  
10 voluntary carbon offset market make the purchase of said offsets cannot make a  
11 company “carbon neutral.” Even the primary offset vendors offer offsets replete  
12 with the following:

- 13 a. inaccurate accounting;
- 14 b. non-additional effects on worldwide carbon levels due to the  
15 vendors crediting offsets for projects that would have occurred with  
16 or without offset market investment;
- 17 c. non-immediate speculative emissions reductions that will at best  
18 occur over decades, despite crediting purchasers with the sum of  
19 those projected offsets; and
- 20 d. impermanent projects subject to disease, natural disasters, and  
21 human intervention

22 7. These issues are specific to offsets purchased by and relied upon by  
23 Defendant. both scientists and government regulators have specifically identified  
24 Defendant as one of many companies who have grossly misstated the actual  
25 carbon reduction produced by their carbon offset portfolio. At the same time,  
26 Defendant’s operation of a commercial airline causes significant carbon dioxide  
27 (“CO2”) to be released into the atmosphere.

28 8. Accordingly, Defendant’s claims of “carbon neutrality” are false

1 and misleading; the operation of Defendant's airline is not carbon neutral, and  
2 consumers would not have purchased tickets on Defendant's flights, or paid  
3 substantially less for them, had they known the claim of carbon neutrality was  
4 false.

5 9. Plaintiff and the putative class were wronged by these actions.  
6 There is a significant market premium for green services, and specifically  
7 services that do not contribute to climate change. Since March 2020, Plaintiff  
8 purchased Delta flights at a market premium due to her belief that by flying Delta  
9 she engaged in more ecologically conscious air travel and participated in a global  
10 transition away from carbon emissions. During this entire period, Defendant still  
11 produced massive amounts of CO<sub>2</sub>, and its reliance on the voluntary carbon  
12 offset market in no way prevents its "carbon-neutral" representations from being  
13 false and misleading. Plaintiff would not have purchased Defendant's services,  
14 or at the very least would have paid substantially less for those services, if she  
15 understood at the time of purchase that Defendant's carbon neutral  
16 representations were false.

17 10. Plaintiff is a purchaser of Defendant's flights who asserts claims on  
18 behalf of herself and similarly situated purchasers of Defendant's flights for (i)  
19 violation of California's Consumers Legal Remedies Act ("CLRA"), Cal. Civil  
20 Code §§ 1750, *et seq.*, (ii) violation of California's False Advertising, Business  
21 and Professions Code § 17500, *et seq.* ("FAL"), and (iii) Unlawful, unfair, and  
22 fraudulent trade practices in violation of California's Business and Professions  
23 Code § 17200.

### 24 **PARTIES**

25 11. Plaintiff Mayanna Berrin is, and at all times alleged in this Class  
26 Action Complaint was, an individual and a resident and therefore citizen of  
27 Glendale, California. Plaintiff Mayanna Berrin makes her permanent home in  
28 Glendale and intends to remain in Glendale.

1           12. Defendant Delta Air Lines, Inc. is a corporation incorporated under  
2 the laws of the state of Delaware, with its principal place of business in Atlanta,  
3 Georgia. Defendant markets, sells, and operates flights worldwide and  
4 throughout the United States, including the state of California. Defendant  
5 operated, marketed, and sold flights during the class period.

6           13. Plaintiff has purchased flights on the Defendant's airline multiple  
7 times since March 2020, flying round-trip on Delta on May 6, 2021, November  
8 19, 2021, October 10, 2022, and November 29, 2022.

9           14. Prior to her purchase of the flights, Plaintiff had viewed  
10 advertisements, LinkedIn posts, and business reporting in which Defendant was  
11 touted as a carbon neutral airline. Plaintiff relied on Defendant's representations  
12 that Defendant was a carbon neutral business. Plaintiff saw these representations  
13 prior to, and at the time of purchase, and understood them as representations and  
14 warranties that the flight she had purchased was with a carbon neutral business.

15           15. Plaintiff understood "carbon neutral" to mean that since March 2020  
16 Defendant has removed or offset all the carbon it has emitted on a global basis.  
17 Plaintiff relied on these representations and warranties in deciding to purchase  
18 her flights with Defendant, rather than some other airline. Accordingly, those  
19 representations and warranties were part of the basis of the bargain, in that she  
20 would not have purchased said flights on the same terms had they known those  
21 representations were not true.

22           16. In making her purchase, Plaintiff paid a substantial price premium  
23 due to the false and misleading carbon neutral claim. Had Plaintiff known that  
24 the carbon neutral claim was false and misleading, Plaintiff would not have paid  
25 a market premium to purchase the flight with Defendant. Plaintiff did not  
26 receive the benefit of the bargain because the flight she purchased was not, in  
27 fact, the product of a carbon neutral business.

28 ///

1 **JURISDICTION AND VENUE**

2 17. This Court has subject matter jurisdiction over this action pursuant  
3 to the Class Action Fairness Act, 28 U.S.C. Section 1332(d)(2)(A) because: (i)  
4 there are 100 or more class members; (ii) there is an aggregate amount in  
5 controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii)  
6 Plaintiff and Defendant are citizens of different states.

7 18. This Court has supplemental jurisdiction over any state law claims  
8 pursuant to 28 U.S.C. Section 1367.

9 19. The injuries, damages and/or harm upon which this action is based  
10 occurred or arose out of activities engaged in by Defendant within, affecting, and  
11 emanating from, the State of California. Defendant regularly conducts and/or  
12 solicits business in, engages in other persistent courses of conduct in, and/or  
13 derives substantial revenue from services provided to persons in the State of  
14 California. Defendant has engaged, and continues to engage, in substantial and  
15 continuous business practices in the State of California.

16 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)  
17 because a substantial part of the events or omissions giving rise to the claims  
18 occurred in the State of California, including within this District.

19 21. In accordance with California Civil Code Section 1780(d), Plaintiff  
20 concurrently files herewith a declaration establishing that, at various times  
21 throughout the class period, she purchased one or more flights with Delta Air  
22 Lines, Inc. while located in California.

23 22. Plaintiff accordingly alleges that jurisdiction and venue are proper  
24 in this Court.

25 **SUBSTANTIVE ALLEGATIONS**

26 **A. Environmental Impact is a Compelling Consideration for**  
27 **Consumers**

28 23. The changing climate is widely appreciated as the crisis of our

1 times. “Human activities, principally through emissions of greenhouse gasses  
2 (GHG), have unequivocally caused global warming, with global surface  
3 temperature reaching 1.1°C above 1850-1900 in 2011-2020.”<sup>1</sup> “Observed  
4 warming is human-caused, with warming from greenhouse gasses, dominated by  
5 CO<sub>2</sub> and methane (CH<sub>4</sub>).”<sup>2</sup>

6 24. Given the current omnipresence of climate change issues, interest in  
7 environmentally friendly (“green”) consumption is at an all-time high. For many  
8 consumers, the environmental impact of a company’s supply chain and  
9 operations has a significant impact on their purchasing decisions. As the  
10 Supreme Court of California has observed, “[t]o some consumers, processes and  
11 places of origin matter. Whether a particular food is kosher or halal may be of  
12 enormous consequence to an observant Jew or Muslim. Whether a wine is from  
13 a particular locale may matter to the oenophile who values subtle regional  
14 differences. Whether a diamond is conflict free may matter to the fiancée who  
15 wishes not to think of supporting bloodshed and human rights violations each  
16 time she looks at the ring on her finger. And whether food was harvested or a  
17 product manufactured by union workers may matter to still others.” *Kwikset*  
18 *Corp. v. Superior Ct.*, 51 Cal. 4th 310, 328–29, 246 P.3d 877, 889–90 (2011).

19 25. The same is true of a company’s environmental footprint. “87% of  
20 consumers will have a more positive image of a company that supports social or  
21 environmental issues. 88% will be more loyal to a company that supports social  
22 or environmental issues. 87% would buy a product with a social and  
23 environmental benefit if given the opportunity.”<sup>3</sup> At the same time, “[i]n spite of  
24 consumers’ willingness to contribute to a greener and more circular economy in

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25 <sup>1</sup> HOESUNG LEE ET AL., SYNTHESIS REPORT OF THE IPCC SIXTH ASSESSMENT REPORT 6  
26 (STEVEN K ROSE ET AL. EDS., 2022).

27 <sup>2</sup> *Id.*

28 <sup>3</sup> Adam Butler, *Do Customers Really Care About Your Environmental Impact?*, FORBES (Nov. 21, 2018, 8:00 AM), <https://www.forbes.com/sites/forbesnycouncil/2018/11/21/do-customers-really-care-about-your-environmental-impact/>



1 their everyday lives, their active and effective role in this green transition is  
2 hampered by” “a lack of trust in the credibility of environmental claims and the  
3 proliferation of misleading commercial practices related to the environmental  
4 sustainability of products.”<sup>4</sup>

5 26. In the interest of maintaining consumer loyalty and maintaining  
6 market position, companies have rolled out various environmental initiatives to  
7 encourage consumers to continue to purchase their goods and services. These  
8 initiatives have led to accusations of “greenwashing”—referring to when  
9 environmentally harmful goods and services are rebranded as more ecologically  
10 conscious than they actually are in fact. Greenwashing is difficult for consumers  
11 to identify, as by definition, the inherent information asymmetry between  
12 corporations and individual consumers means that “[c]onsumers cannot verify  
13 green attributes directly and must rely on such signals as eco-labels to  
14 authenticate claims.”<sup>5</sup>

15 27. These efforts are effective at changing consumer perceptions. In  
16 one study, “[o]ver half (57%) of consumers (in the control condition) believed  
17 that greenwashed claims were a reliable source of information about a company's  
18 eco-practices. Consumers were also much more likely to agree that greenwashing  
19 energy companies had strong green credentials, compared to energy companies  
20 depicted in a non-greenwashed advertisement.”<sup>6</sup>

### 21 **B. A Brief Primer on the Voluntary Carbon Offset Market**

22 28. “Carbon offsets have become a popular tool in global efforts to  
23 mitigate climate change. These programs work by offering regulated polluters

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24 <sup>4</sup> EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
25 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN  
CLAIMS DIRECTIVE) 2 (2023).

26 <sup>5</sup> Lucy Atkinson & Sonny Rosenthal, *Signaling the Green Sell: The Influence of Eco-Label*  
27 *Source, Argument Specificity, and Product Involvement on Consumer Trust*, JOURNAL OF  
ADVERTISING, Feb. 2014, at 33, 33-45.

28 <sup>6</sup> *Protecting consumers from Greenwashing*, THE BEHAVIOURAL INSIGHTS TEAM BLOG, (Jun.  
23, 2022), <https://www.bi.team/blogs/there-is-a-growing-epidemic-of-climate-anxiety/>

1 the opportunity to increase their own emissions if they subsidize equivalent  
2 emission reductions in unregulated markets.”<sup>7</sup>

3 29. “The most common offsets are based on avoiding the release of  
4 additional carbon dioxide into the atmosphere, for example by preventing  
5 deforestation or supporting renewable energy projects. The other, much more  
6 expensive, option is to fund programs that actually remove CO<sub>2</sub> by planting  
7 forests or employing machines that capture greenhouse gas from the air and store  
8 them away.”<sup>8</sup>

9 30. “Offset logic goes like this: If it is cheaper for a company to buy an  
10 offset that cuts emissions somewhere else instead of in their own operations, then  
11 offsets are cost effective.”<sup>9</sup> “With each investment, the corporations rack up  
12 “credits” for the forests they save or restore, tokens representing a set amount of  
13 carbon dioxide ostensibly kept out of the atmosphere by storing it safely in the  
14 trees.”<sup>10</sup>

15 31. “On its face, the exchange seems like a win-win: Huge sums of  
16 money are funneled into environmental projects, mostly in poor countries with  
17 less ability to pursue large-scale forest protection on their own,” while companies  
18 “can say they’re zeroing out their carbon footprints by offsetting whatever  
19 emissions they can’t eliminate from their own operations with CO<sub>2</sub> reductions  
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21 <sup>7</sup> RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 1 (GRANTHAM RSCH. INST.  
22 ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

23 <sup>8</sup> Jess Shankleman & Akshat Rathi, *Net Zero Is Hard Work, So Companies Are Going ‘Carbon  
24 Neutral’*, BLOOMBERG (Jul. 19, 2021, 3:50 AM),  
<https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-companies-carbon-responsible#xj4y7vzkg>

25 <sup>9</sup> Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN  
26 SCH. (Nov. 2, 2022), <https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions>

27 <sup>10</sup> Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon  
28 Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),  
<https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

1 elsewhere on the planet.”<sup>11</sup>

2 32. “The last decade has seen billions of carbon offsets issued to project  
3 developers around the world, providing opportunities for regulatory compliance  
4 at lower cost.”<sup>12</sup> Interest in projects that prevent deforestation has risen “[i]n  
5 recent years, [as] a long list of Fortune 500 companies has begun purchasing  
6 credits from forest projects.”<sup>13</sup> “The market for [prevented deforestation carbon  
7 offset credits] credits is estimated in the hundreds of millions of dollars, a  
8 number growing year upon year as a cottage industry to sell, trade and  
9 authenticate forest credits has taken shape.”<sup>14</sup>

10 33. Offset programs all promote themselves as nominally certified.  
11 Certification and verification is essential—“when offset programs support  
12 projects that would have been developed anyway, they not only waste the limited  
13 resources available to mitigate climate change but also contribute to climate  
14 change by increasing global emissions.”<sup>15</sup> Unfortunately, the voluntary carbon  
15 offset market is self-regulated, leading to “multiple, competing ‘certification’  
16 standards and a dizzying array of organizations or companies that act as  
17 middlemen, authenticating supposed greenhouse gas reductions and connecting  
18 credit buyers and sellers.”<sup>16</sup> Lack of standardization is not the only barrier to  
19 verification, as the market is also plagued by structural inabilities to track  
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21 <sup>11</sup> *Id.*

22 <sup>12</sup> RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH.  
INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

23 <sup>13</sup> Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*  
24 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),  
<https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

25 <sup>14</sup> *Id.*

26 <sup>15</sup> RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH.  
INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

27 <sup>16</sup> Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*  
28 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),  
<https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

1 genuine progress and poor mathematical modeling. For instance, in the context  
 2 of prevented deforestation, “[m]easuring activity on the ground in far-flung  
 3 rainforests can be incredibly difficult.”<sup>17</sup> And in an analysis of the “world’s  
 4 largest carbon offset program,” which primarily arranges for the purchase of  
 5 renewable energy offsets, researchers estimated “that at least 52% of approved  
 6 carbon offsets were allocated to projects that would very likely have been built  
 7 anyway”—“a substantial misallocation of resources.”<sup>18</sup>

8 34. There are also inherent conflicts of interest in the standard offset  
 9 verification process. According to ecologist Dan Nepstad, the president of the  
 10 Earth Innovation Institute, “the carbon project developer” “hires the auditors. So  
 11 the auditors are working for the company that would benefit, really, from a good  
 12 result.”<sup>19</sup> That means “it’s up to companies to do their own due diligence to  
 13 know that the credits they’re buying are legitimate.”<sup>20</sup>

14 **C. Companies Purchase Carbon Offsets to Claim Carbon**  
 15 **Neutrality, and Said Representations are Effective on**  
 16 **Consumers**

17 35. Certain companies have also announced they are “carbon neutral” or  
 18 working towards becoming “net-zero.” Climate-related claims that goods,  
 19 services, or entities are “carbon neutral” or “100% CO<sub>2</sub> compensated” are often  
 20 predicated on the company having “offset” its carbon emissions by purchasing  
 21 “carbon credits” “generated outside the company’s value chain, for example  
 22 from forestry or renewable energy projects.”<sup>21</sup> The basic premise of carbon

23 <sup>17</sup> *Id.*

24 <sup>18</sup> RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH.  
 INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

25 <sup>19</sup> Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*  
*Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),  
 26 <https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259>

27 <sup>20</sup> *Id.*

28 <sup>21</sup> EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN  
 CLAIMS DIRECTIVE) 31 (2023).

1 offsets is that a company will invest money into a project with ostensibly positive  
2 environmental impact and in return they will receive “carbon offset credits” that  
3 estimate the project’s carbon-reducing impact. Though the “methodologies  
4 underpinning offsets vary widely and are not always transparent, accurate, or  
5 consistent,”<sup>22</sup> in theory, a company will only claim to be carbon neutral when  
6 they have accrued enough carbon credits in a year to fully “offset” the carbon  
7 emissions produced by their annual business operations. In the words of Delta’s  
8 Managing Director of Sustainability, Amelia DeLuca, being carbon neutral  
9 means that “for everything we emit, we take an action, though in our space  
10 mostly avoiding deforestation, to neutralize those emissions.”<sup>23</sup>

11 36. Carbon neutral representations are similarly effective on consumers,  
12 especially for goods and services that consumers identify as otherwise  
13 environmentally harmful. A 2015 study found that “the presence of a carbon-  
14 neutral label in an advertisement, regardless of the type of product, leads to more  
15 favorable perceptions of company environmental concern” while the presence of  
16 the carbon neutral label leads to “more pronounced increase[s]’ in consumer  
17 perceptions of company environmental concern” when the product in question is  
18 “environmentally harmful” than when it is “environmentally neutral.”<sup>24</sup>

19 37. This is further corroborated by a March 2022 report documenting “a  
20 simulated market study” which “revealed that 87% of Americans value carbon-  
21 neutral labeled products over similar ‘unlabeled’ products” and “that this value is  
22 driven by better brand perceptions and feeling better when buying the product.”  
23 This value was not merely reputational; “[p]eople placed a considerable

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25 <sup>22</sup> *Id.*

26 <sup>23</sup> Brands Unbridled, *Delta Air Lines: Taking Climate Commitments to New Heights*,  
STORYHORSE, (Nov. 1, 2021), <https://storyhorsebranding.com/perspective/delta-airlines-taking-climate-commitments-to-new-heights/>

27 <sup>24</sup> Amy Stokes & Anna M. Turri, *Consumer Perceptions of Carbon Labeling in Print*  
28 *Advertising: Hype or Effective Communication Strategy?*, JOURNAL OF MARKETING  
COMMUNICATIONS, 2015, at 300, 300-315.

1 monetary value on carbon-neutral products.” In particular, an experiment found  
2 “that consumers consistently reported they were willing to pay more for [carbon-  
3 neutral] labeled products compared to equivalent products in a shopping  
4 scenario. The [carbon-neutral] label held substantial appeal across  
5 demographics, skewing slightly towards women. Carbon neutral products were  
6 similarly appealing across income, post-high school education levels, race, and  
7 age.”<sup>25</sup>

8 38. At the same time, consumers have reason to be concerned about  
9 aviation emissions. “Over the past two decades, CO2 emissions from aviation  
10 have increased rapidly.” “Although the energy intensity of commercial  
11 passenger aviation has declined, due to improvements in the operational and  
12 technical efficiency measures adopted by airlines, this has been more than offset  
13 by the CO2 emissions resulting from the rapid growth in passenger numbers.”<sup>26</sup>

14 **D. Delta Claims Carbon Neutrality, Predicated on Carbon**  
15 **Offsets, in Order to Encourage Consumers to Fly Delta**

16 39. In February 2020, Delta CEO Ed Bastian announced that Delta was  
17 going “fully carbon neutral” as of March 1, 2020.<sup>27</sup> In order to achieve this goal,  
18 Bastian stated Delta was committing to using carbon removal and transitioning to  
19 sustainable fuels, committing “a billion dollars over this decade, or close to \$100  
20 million dollars a year.”<sup>28</sup> On the question of carbon offsets, Bastian said “carbon  
21 offsets are “not the solution, there are not enough to go around...carbon offsets  
22 have a lot of efficacy issues, and quite honestly in some places they do more

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23 <sup>25</sup> Graham Gephart, *Understanding How Consumers Value Climate Neutral Certification*,  
24 CLIMATE NEUTRAL (Mar. 30, 2022), <https://www.climateneutral.org/blog/understanding-how-consumers-value-climate-neutral-certification>

25 <sup>26</sup> SEAN HEALY, SCOPING VOLUNTARY CORPORATE CLIMATE ACTION IN THE EUROPEAN  
26 AVIATION SECTOR 8 (ÖKO-INSTITUT ET AL. EDS., 2022).

27 <sup>27</sup> Jessica Bursztynsky, *Delta Airlines CEO Announces the Carrier will go ‘Fully Carbon*  
*Neutral’ Next Month*, CNBC (Feb. 14, 2020, 7:27 AM),  
28 <https://www.cnbc.com/2020/02/14/delta-air-lines-ceo-carrier-will-go-fully-carbon-neutral-next-month.html>

<sup>28</sup> *Id.*



1 harm than they do good, or pay people to not do harm, that is not really helping  
2 our planet.”<sup>29</sup>

3 40. Since March 2020, Defendant has marketed itself across various  
4 platforms as “the world’s first carbon neutral airline.”

5 41. A September 2021 video advertisement states that Delta is  
6 “committed to becoming the world’s first carbon neutral airline on a global  
7 basis.”<sup>30</sup> As reported by Adweek, Delta’s Managing Director of Sustainability,  
8 Amelia DeLuca, stated that Delta’s intention for the advertisement was to  
9 communicate that “[w]hen you book with Delta, you can feel confident that we  
10 will offset the carbon emitted from your flight with us.”<sup>31</sup> The airline broadcast  
11 the campaign widely, “with placements airing on NBCUniversal properties and  
12 digitally in The New York Times, Lonely Planet and HuffPost Black Voices”  
13 along with audio and video content “appearing on Pandora, Spotify, Stitcher and  
14 YouTube,” complemented with “targeted digital ads” “on social platforms  
15 including Facebook, Instagram, Reddit and Twitter.”<sup>32</sup> Molly Battin, Delta’s  
16 Senior Vice President of Marketing, herself acknowledged that the purpose of the  
17 campaign was to raise awareness of Delta’s carbon neutral status after  
18 ““proprietary research show[ed] that [Delta] customers [weren’t] aware’ of  
19 Delta’s carbon neutral status,” and that the media plan aimed to establish Delta  
20 “as an industry leader for sustainable change.”<sup>33</sup>

21 42. A September 28, 2021 LinkedIn Post by DeLuca (simultaneously  
22 posted to Delta’s corporate website, and remaining there as of the date of filing)  
23 went on to state that Defendant “became the first carbon neutral airline on a  
24

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25 <sup>29</sup> *Id.*

26 <sup>30</sup> Kathryn Lundstrom, *Delta’s New Ad Campaign Takes Aim at Travel-Related Climate Guilt*,  
ADWEEK (Sep. 13, 2021), <https://www.adweek.com/brand-marketing/delta-travel-related-climate-guilt-carbon-neutral/>

27 <sup>31</sup> *Id.*

28 <sup>32</sup> *Id.*

<sup>33</sup> *Id.*

1 global basis” in 2020, a commitment “from March 2020 onward, balancing our  
2 emissions with investments to remove carbon across our global operations.”<sup>34</sup>  
3 DeLuca repeated these representations in a November 1, 2021 episode of the  
4 podcast Brands Unbridled, again advertising Delta as “the first carbon neutral  
5 airline in the world” such that “since March 1st, 2020 onward, until today and  
6 going forward, we are a carbon neutral airline.”<sup>35</sup> DeLuca went on, stating that  
7 “for everything we emit, we take an action, though in our space mostly avoiding  
8 deforestation, to neutralize those emissions.” And a November 4, 2021 LinkedIn  
9 post stated that “[i]n March 2020, Delta became the first carbon neutral airline  
10 globally.”<sup>36</sup>

11 43. During this time, Delta also printed and put into circulation an in-  
12 flight napkin, a photo of which is below, representing that Delta was “Carbon  
13 Neutral Since March 2020.”



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24 <sup>34</sup> Amelia DeLuca, *An Update on Our Path to Net Zero*, DELTA NEWS HUB (Sep. 28, 2021,  
12:00 PM), <https://news.delta.com/update-our-path-net-zero>

25 <sup>35</sup> Brands Unbridled, *Delta Air Lines: Taking Climate Commitments to New Heights*,  
26 STORYHORSE, (Nov. 1, 2021), <https://storyhorsebranding.com/perspective/delta-airlines-taking-climate-commitments-to-new-heights/>

27 <sup>36</sup> Delta Air Lines Inc., *An Update on Our Path to Net Zero*, DELTA NEWS HUB (Nov. 4, 2021,  
28 12:45 PM), <https://news.delta.com/delta-joins-first-movers-coalition-drive-breakthrough-technologies-and-sustainable-fuels>



1           44. Defendant also made specific representations as to the nature,  
2 impact, and structure of its carbon offset portfolio. An April 22, 2021 “Earth  
3 Day” post on Delta’s website claimed that as part of Delta’s “commitment to  
4 carbon neutrality,” Delta was intending to purchase “more than \$30 million for  
5 portfolio [sic] of verified offsets to mitigate 13 million metric tons of Delta’s  
6 2020 emissions.”<sup>37</sup> Those investments ended up including “protecting half a  
7 million acres in an Indonesian peat swamp forest and a Cambodian wildlife  
8 sanctuary.”<sup>38</sup>

9           45. These representations were clearly made with the intent to  
10 encourage air travel on Delta. Delta’s September 2021 video advertisement that  
11 mentions its carbon neutrality is premised around encouraging consumers to see  
12 the world *and* save the world, and in September 2022, Delta’s newly appointed  
13 Sustainability Officer reiterated that the purpose of Delta’s carbon neutral  
14 representations was to convince consumers that they do not “have to choose  
15 between seeing the world and saving the world.”<sup>39</sup>

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19 <sup>37</sup> Delta Air Lines Inc., *Delta Spotlights Ambitious Carbon Neutrality Plan on Path to Zero-*  
20 *impact Aviation this Earth Month*, DELTA NEWS HUB (Apr. 22, 2021, 11:30 AM),  
21 [https://news.delta.com/delta-spotlights-ambitious-carbon-neutrality-plan-path-zero-impact-](https://news.delta.com/delta-spotlights-ambitious-carbon-neutrality-plan-path-zero-impact-aviation-earth-month)

22 <sup>38</sup> Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*  
23 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),  
[https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)

24 <sup>39</sup> Philba Wahba, *Delta’s Sustainability Chief Says People Don’t Have to Choose Between*  
25 *Flying and Protecting the Environment*, FORTUNE (Sep. 23, 2022, 5:47 AM),  
[https://fortune.com/2022/09/23/delta-sustainability-chief-climate-change-esg-dont-choose-](https://fortune.com/2022/09/23/delta-sustainability-chief-climate-change-esg-dont-choose-between-flying-protecting-environment/?_ptid=%7Bkpdx%7DAAAAvBfj3ejzgQoKY2ZRajJmTTN6ahIQbGhneDlqanZpbzR5cmh1ZxoMRVg1M0IEU01IUVNQiUxODA4N2RnMGMwLTAwMDAzMjAydDhlYTJpNWZwcWMyNGNqaDBvKhhzaG93T2ZmZXJUSVdTTIZWNk9RUEIxNDIwAToMT1RYVj1lWNkRMVVl5Qg1PVFYySzMVEMEpGTTTRRUhJ2LYIA8BZ6M2U3bDRpcXNaCzQ3LjE1NS42My40YgNkd2NordrwogZwBHgM)  
26 [between-flying-protecting-](https://fortune.com/2022/09/23/delta-sustainability-chief-climate-change-esg-dont-choose-between-flying-protecting-environment/?_ptid=%7Bkpdx%7DAAAAvBfj3ejzgQoKY2ZRajJmTTN6ahIQbGhneDlqanZpbzR5cmh1ZxoMRVg1M0IEU01IUVNQiUxODA4N2RnMGMwLTAwMDAzMjAydDhlYTJpNWZwcWMyNGNqaDBvKhhzaG93T2ZmZXJUSVdTTIZWNk9RUEIxNDIwAToMT1RYVj1lWNkRMVVl5Qg1PVFYySzMVEMEpGTTTRRUhJ2LYIA8BZ6M2U3bDRpcXNaCzQ3LjE1NS42My40YgNkd2NordrwogZwBHgM)  
27 [environment/?\\_ptid=%7Bkpdx%7DAAAAvBfj3ejzgQoKY2ZRajJmTTN6ahIQbGhneDlqanZ](https://fortune.com/2022/09/23/delta-sustainability-chief-climate-change-esg-dont-choose-between-flying-protecting-environment/?_ptid=%7Bkpdx%7DAAAAvBfj3ejzgQoKY2ZRajJmTTN6ahIQbGhneDlqanZpbzR5cmh1ZxoMRVg1M0IEU01IUVNQiUxODA4N2RnMGMwLTAwMDAzMjAydDhlYTJpNWZwcWMyNGNqaDBvKhhzaG93T2ZmZXJUSVdTTIZWNk9RUEIxNDIwAToMT1RYVj1lWNkRMVVl5Qg1PVFYySzMVEMEpGTTTRRUhJ2LYIA8BZ6M2U3bDRpcXNaCzQ3LjE1NS42My40YgNkd2NordrwogZwBHgM)  
28 [pbzR5cmh1ZxoMRVg1M0IEU01IUVNQiUxODA4N2RnMGMwLTAwMDAzMjAydDhlYTJpNWZwcWMyNGNqaDBvKhhzaG93T2ZmZXJUSVdTTIZWNk9RUEIxNDIwAToMT1RYVj1lWNkRMVVl5Qg1PVFYySzMVEMEpGTTTRRUhJ2LYIA8BZ6M2U3bDRpcXNaCzQ3LjE1NS42My40YgNkd2NordrwogZwBHgM](https://fortune.com/2022/09/23/delta-sustainability-chief-climate-change-esg-dont-choose-between-flying-protecting-environment/?_ptid=%7Bkpdx%7DAAAAvBfj3ejzgQoKY2ZRajJmTTN6ahIQbGhneDlqanZpbzR5cmh1ZxoMRVg1M0IEU01IUVNQiUxODA4N2RnMGMwLTAwMDAzMjAydDhlYTJpNWZwcWMyNGNqaDBvKhhzaG93T2ZmZXJUSVdTTIZWNk9RUEIxNDIwAToMT1RYVj1lWNkRMVVl5Qg1PVFYySzMVEMEpGTTTRRUhJ2LYIA8BZ6M2U3bDRpcXNaCzQ3LjE1NS42My40YgNkd2NordrwogZwBHgM)

1                   **E. Defendant’s Claims of Carbon Neutrality are False and**  
 2                   **Misleading**

3           46. Delta’s representations of carbon neutrality are provably false and  
 4 misleading. Rather than achieving carbon neutrality through sustainable fuels  
 5 and carbon removals, as initially promised, Delta has instead premised their  
 6 carbon neutrality on the purchase of carbon offsets from the voluntary carbon  
 7 market. Nearly all offsets issued by the voluntary carbon offset market  
 8 overpromise and underdeliver on their total carbon impact due to endemic  
 9 methodological errors and fraudulent accounting on behalf of offset vendors,  
 10 resulting “in offset credits of low environmental integrity and credibility that  
 11 mislead consumers when they are relied upon in explicit environmental  
 12 claims.”<sup>40</sup> “The methodologies underpinning offsets vary widely and are not  
 13 always transparent, accurate, or consistent” leading to “significant risks of  
 14 overestimations and double counting of avoided or reduced emissions.”<sup>41</sup> The  
 15 primary issues with the carbon offset market are the offsets’ lack of verifiability,  
 16 additionality, immediacy, and durability.<sup>42</sup>

17           47. Any one of these issues can mean that “a proposed offset won’t  
 18 actually reduce emissions much, if at all.” And it is only “when companies have  
 19 achieved all the reductions they possibly can, and balanced the rest with carbon  
 20 removals, would they achieve ‘carbon-neutrality.’”<sup>43</sup> This is because “if it would  
 21 be preferable to simply avoid (not offset) the emissions in a scenario where the

22 \_\_\_\_\_  
 23 <sup>40</sup> EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
 24 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN  
 25 CLAIMS DIRECTIVE) 31 (2023).

26 <sup>41</sup> *Id.*

27 <sup>42</sup> Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN  
 28 SCH. (Nov. 2, 2022), <https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions>

<sup>43</sup> Jess Shankleman & Akshat Rathi, *Net Zero Is Hard Work, So Companies Are Going ‘Carbon Neutral’*, BLOOMBERG (Jul. 19, 2021, 3:50 AM), <https://www.bloomberg.com/news/articles/2021-07-19/offsets-can-play-a-role-to-make-companies-carbon-responsible#xj4y7vzkg>

1 world followed an efficient and equitable approach to eliminating emissions, the  
2 act of offsetting cannot make up for this forgone opportunity. Instead, the act of  
3 offsetting merely sets the world on a slightly less worse path, but one that still  
4 deviates from what is optimal.”<sup>44</sup> This is particularly true when “carbon credits  
5 are sold by companies to ‘compensate’ for an activity where optimal mitigation  
6 pathways require consumer behavioral change,” such as “aviation, where  
7 identified pathways refer to the need for demand management, or limits on  
8 flying.”<sup>45</sup> And the risks of miscalculation are greater in the aviation sector, as  
9 “[a]viation emissions are especially impactful, since their total net effect is  
10 enhanced through a variety of non-CO2 radiative forcing processes that occur at  
11 high altitudes.”<sup>46</sup>

12 48. The offset industry is replete with well-documented problems,  
13 explained further below. Regardless of those granular details, it is simply  
14 indisputable that issues with the offset market have been well-documented and  
15 publicized. “In the EU, a 2021 study revealed that 85 percent of offsets failed to  
16 reduce emissions. In response, EU member states decided offsets would not  
17 count toward European climate goals after 2021.”<sup>47</sup> “In 2019, a study similarly  
18 found that 82 per cent of California’s offset credits do not provide climate  
19 benefits.”<sup>48</sup> Yet despite all of these concerns, Delta has been specifically  
20 identified as a company that relies on dubious offsets that fall victim to all of  
21 these issues, rendering its claims of carbon neutrality false and misleading and  
22 particularly injurious in light of Delta’s massive CO2 footprint as a major  
23

24 \_\_\_\_\_  
25 <sup>44</sup> DERIK BROEKHOFF, EXPERT REPORT 5 (STOCKHOLM ENV’T INST. ET AL. EDs., 2022).

26 <sup>45</sup> *Id.* at 6.

27 <sup>46</sup> *Id.*

28 <sup>47</sup> Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW SCIENTIST (Dec. 22, 2022), <https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/>

<sup>48</sup> *Id.*

1 worldwide airline.<sup>49</sup>

2 i. Delta’s Purportedly “Verified” Offsets Are Predicated on  
3 Misleading and Unverifiable Accounting of Carbon Impact

4 49. The first reason it is false and misleading for Delta to represent it is  
5 carbon neutral on the basis of its offsets portfolio is that Delta’s offsets are  
6 predicated on misleading and unverifiable accounting of the offset’s carbon  
7 impact, due to the voluntary carbon market’s “tendency to inflate” carbon  
8 impacts, resulting “in phantom carbon credits.”<sup>50</sup> Accurate accounting is  
9 essential for carbon neutrality claims to be true, as “[if a company’s] calculations  
10 are not perfect, you’re doing harm,” due to the fact that the offsets need to  
11 meaningfully cancel out “[t]he consequences of adding carbon dioxide to the  
12 atmosphere,” which “extend centuries, if not millennia, into the future.”<sup>51</sup>

13 50. Verification is important for all kinds of offsets. Whether they are  
14 in the form of avoided deforestation, avoided emissions, or green technology  
15 investments, a company “must be able to verify that emissions actually fall. If  
16 you’re going to plant trees, you have to verify that they were actually planted and  
17 that they will survive for decades to come. If you fund efficient, low-emission  
18 cook stoves for the rural poor in the developing world, you have to verify that  
19 they are actually delivered, kept in working condition, and used.”<sup>52</sup>

20 51. Yet the voluntary carbon market is replete with dubious projections

21 \_\_\_\_\_  
22 <sup>49</sup> Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon  
23 Neutral’*, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-  
24 offsets-renewable-energy/#xj4y7vzkg](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)

25 <sup>50</sup> Patrick Greenfield, *Carbon Offsets Used by Major Airlines Based on Flawed System, Warn  
26 Experts*, THE GUARDIAN (May 4, 2021),  
27 [https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-  
28 airlines-based-on-flawed-system-warn-experts](https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-airlines-based-on-flawed-system-warn-experts)

29 <sup>51</sup> Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW  
30 SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-  
31 offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

32 <sup>52</sup> Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN  
33 SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-  
34 offsets-actually-cut-emissions](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions)

1 misleadingly packaged as guarantees. “Research into Verra, the world’s leading  
2 carbon standard for the rapidly growing \$2bn (£1.6bn) voluntary offsets market,  
3 has found that, based on analysis of a significant percentage of the projects, more  
4 than 90% of their rainforest offset credits – among the most commonly used by  
5 companies – are likely to be ‘phantom credits’ and do not represent genuine  
6 carbon reductions.”<sup>53</sup>

7 52. “Phantom credits” result from inaccurate projections. The three  
8 major voluntary carbon credit vendors from whom Defendant purchases offsets  
9 have repeatedly engaged in fraudulent projections that grossly overstate their  
10 guarantee of carbon reduction. One major problem is severe errors in how  
11 vendors project future offsetting. Researchers have found that in the context of  
12 avoided deforestation offsets, “in all projects that established crediting baselines  
13 using historical trends,” “the crediting baselines significantly overstate  
14 deforestation in comparison to the counterfactual estimates based on synthetic  
15 controls.”<sup>54</sup> In other words, offset vendors’ routine erroneous reliance on  
16 historical data leads to the consistent overestimation of the total risks to existing  
17 forests, leading to significant overinflation of the estimated carbon reduction  
18 from the corresponding offsets. Investigations have further revealed that all three  
19 major voluntary carbon markets have engaged in fraudulently double and triple  
20 counting of projects, crediting several companies with the entire carbon offset  
21 from the same plot of land.<sup>55</sup><sup>56</sup>

22 \_\_\_\_\_  
23 <sup>53</sup> Patrick Greenfield, *Revealed: More Than 90% of Rainforest Carbon Offsets by Biggest  
24 Provider are Worthless, Analysis Shows*, THE GUARDIAN (Jan. 18, 2023),  
[https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-  
biggest-provider-worthless-verra-aoe](https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe)

25 <sup>54</sup> THALES A. P. WEST ET AL., *OVERSTATED CARBON EMISSION REDUCTIONS FROM VOLUNTARY  
26 REDD+ PROJECTS IN THE BRAZILIAN AMAZON 3* (ERIC F. LAMBIN ED., NAT’L ACAD. OF SCI.,  
2020).

27 <sup>55</sup> EUROPEAN COMM’N, *DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
28 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN  
CLAIMS DIRECTIVE)* (2023).

<sup>56</sup> DERIK BROEKHOFF, *EXPERT REPORT* (STOCKHOLM ENV’T INST. ET AL. EDS., 2022).

1           53. These issues are specific to Delta’s offset portfolio. Delta’s offset  
2 portfolio is primarily composed of green technology investment offsets,<sup>57</sup> with an  
3 additional substantial investment in prevented deforestation.<sup>58</sup> For instance, in  
4 2021, Delta’s offsets portfolio was 50% renewable energy offsets, 44%  
5 agricultural forestry and other land use offsets, and 6% renewable offsets.<sup>59</sup> Yet  
6 these are precisely the kinds of offsets that are most likely to be the product of  
7 inaccurate baselining and double counting.

8           54. As noted above, a review of the world’s largest carbon offset  
9 project, the green technology offsets project CDM, (whose green technology  
10 investment offsets are present in Delta’s offset portfolio) revealed that there were  
11 serious issues with the project’s baseline assumptions, undermining the likely  
12 value of more than half of the offsets sold by the project.<sup>60</sup> The issue with CDM  
13 projects is that the offsets were routinely “awarded to projects that would have  
14 been developed without the subsidy” generated by the sales of the offsets, such  
15 that the offsets “did not represent emissions savings.”<sup>61</sup> In fact, CDM’s offset  
16 allocation “compare[d] unfavorably with a lottery, indicating that there is  
17 substantial room for improvement in the design and implementation of the  
18 project selection mechanism.”<sup>62</sup> This is no mere inefficiency; “having a process  
19 that accurately screens out projects that do not require subsidies is essential to  
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21 <sup>57</sup> Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon*  
22 *Neutral’*, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)  
[https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)

23 <sup>58</sup> Josh Lederman, *Corporations are Turning to Forest Credits in the Race to go ‘Carbon*  
24 *Neutral.’ Advocates Worry About ‘Greenwashing.’*, NBC NEWS (Jan. 18, 2023, 12:58 PM),  
[https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)  
[neutral-advocat-rcna7259](https://www.nbcnews.com/news/world/corporations-are-turning-forest-credits-race-go-carbon-neutral-advocat-rcna7259)

25 <sup>59</sup> *US Airline Buys 12 Million mt of Carbon Offsets for \$137 Million*, QUANTUM COMMODITY  
26 INTEL. (May 9, 2022), [https://www.qcintel.com/carbon/article/us-airline-buys-12-million-mt-](https://www.qcintel.com/carbon/article/us-airline-buys-12-million-mt-of-carbon-offsets-for-137-million-5848.html)  
[of-carbon-offsets-for-137-million-5848.html](https://www.qcintel.com/carbon/article/us-airline-buys-12-million-mt-of-carbon-offsets-for-137-million-5848.html)

27 <sup>60</sup> RAPHAEL CALEL ET AL., *DO CARBON OFFSETS OFFSET CARBON?* 21 (GRANTHAM RSCH.  
INST. ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

28 <sup>61</sup> *Id.*

<sup>62</sup> *Id.*



1 safeguarding the integrity of offset programs.”<sup>63</sup> Inaccurate projections lead to  
2 the misallocation of scarce climate change mitigation resources and the rubber  
3 stamping of net increase in global emissions. Researchers found that rather than  
4 mitigate climate change, CDM’s misallocation of carbon offset funds “may have  
5 increased global carbon dioxide emissions by 6.1 billion tonnes, equivalent to  
6 running 20 one-gigawatt coal power plants for their entire 50-year lifespan.”<sup>64</sup>

7 55. The same is true for deforestation projects. Delta’s 2021  
8 agricultural, forestry and other land use offsets were all verified by the carbon  
9 offset vendor Verra. Yet as noted above, recent reporting revealed that 90% of  
10 rainforest offsets provided by Verra during this period were predicated on poor  
11 baseline assumptions, and in fact had zero climate impact.<sup>65</sup>

12 ii. Delta’s Offsets are Non-Additional and Therefore Have Little  
13 to no Climate Impact

14 56. The second reason it is false and misleading for Delta to represent  
15 itself as carbon neutral on the basis of its offset portfolio is that Defendant has  
16 almost exclusively relied on carbon offsets that are “non-additional.” A project  
17 is “non-additional” when it credits carbon offsets for reductions that would have  
18 occurred regardless of the involvement of the voluntary carbon market. Carbon  
19 reductions “are additional if they would not have occurred in the absence of a  
20 market for offset credits. If the reductions would have happened anyway – i.e.,  
21 without any prospect for project owners to sell carbon offset credits – then they  
22 are not additional.

23 57. Additionality is essential for the quality of carbon offset credits – if  
24 their associated GHG reductions are not additional, then purchasing offset credits

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25 <sup>63</sup> *Id.*

26 <sup>64</sup> *Id.*

27 <sup>65</sup> Patrick Greenfield, *Revealed: More Than 90% of Rainforest Carbon Offsets by Biggest*  
28 *Provider are Worthless, Analysis Shows*, THE GUARDIAN (Jan. 18, 2023),  
[https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-  
biggest-provider-worthless-verra-aoe](https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe)

1 in lieu of reducing your own emissions will make climate change worse.”<sup>66</sup>  
2 Accordingly, any project that is non-additional is a carbon offset in name only,  
3 such that any claim of carbon neutrality that is even fractionally predicated on  
4 non-additional carbon projects is definitively false. Yet according to one study,  
5 “at least 52% of approved carbon offsets were allocated to projects that would  
6 very likely have been built anyway.” “In addition to wasting scarce resources,”  
7 the sale of non-additional offsets “to regulated polluters” has likely “substantially  
8 increased global carbon dioxide emissions.”<sup>67</sup>

9 58. In practice, only “4% of offsets actually remove CO<sub>2</sub> from the  
10 atmosphere.”<sup>68</sup> This is particularly concerning in light of the fact that even  
11 though carbon offsetting is not inherently mutually exclusive to initiatives that  
12 aim to directly reduce a company’s emissions, e.g. reducing energy consumption  
13 or transitioning to low-or-no-carbon fuel sources, carbon offsetting often replaces  
14 direct emissions reductions because it is typically more cost effective for  
15 companies to engage in carbon offsetting than it would be for them to  
16 meaningfully decrease the carbon footprint and overall environmental impact of  
17 their products/services. In practice, the low price of carbon offsets often deters  
18 companies from pursuing “emissions reductions in their own operations and  
19 value chains,” despite adequate contributions to global climate change mitigation  
20 targets necessarily requiring the “effective reductions of emissions across”  
21 “operations and value chains” instead of reliance on offsets.<sup>69</sup> This makes non-

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22 <sup>66</sup> *What Makes a High-Quality Carbon Offset?: Additionality*, CARBON OFFSET GUIDE,  
23 <https://www.offsetguide.org/high-quality-offsets/additionality/> (May 19, 2023, 2:17 PM).

24 <sup>67</sup> RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 1 (GRANTHAM RSCH. INST.  
ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

25 <sup>68</sup> Akshat Rathi & Ben Elgin, *What Are Carbon Offsets and How Many Really Work?*,  
BLOOMBERG (Jun. 14, 2022),

26 <https://www.bloomberg.com/news/articles/2022-06-14/what-are-carbon-offsets-and-how-many-really-work-quicktake>

27 <sup>69</sup> EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
28 SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN CLAIMS DIRECTIVE) 31 (2023).



1 additional offsets particularly pernicious for global climate goals; not only do  
2 they profoundly underperform other green efforts, but they provide companies a  
3 discounted means of claiming they are making a difference when they are in fact  
4 doing very little.

5 59. Yet Delta has been identified as having almost exclusively relied on  
6 non-additional offsets, with an offset portfolio consisting of “half renewables,  
7 mostly wind and solar projects in India.”<sup>70</sup> “Selling offsets for small sums as a  
8 way to support the economics of renewables doesn’t provide any real benefit if  
9 it’s already cheaper than building new coal or gas power plants.” “The issue is  
10 timing: many renewable offsets came into being just as solar and wind power  
11 established herself as the cheapest source of energy in most countries.”<sup>71</sup> “An  
12 expert review of Delta’s largest single source of renewable offsets, the Los  
13 Cocos II wind farm in the Dominican Republic, determined that it almost  
14 certainly didn’t need additional support.”<sup>72</sup> And as revealed by an analysis of the  
15 very wind projects in India from which Delta has heavily purchased offsets, “at  
16 least 52% of approved carbon offsets were allocated to projects that would very  
17 likely have been built anyway.”<sup>73</sup>

18 60. Similar additionality concerns are present with avoided  
19 deforestation projects. A 2021 study “found that California’s offsets programs  
20 systematically over-credits the carbon-absorbing potential of its offset properties  
21 by nearly a third.” Further satellite analysis confirmed that “no additional carbon  
22 is actually being sequestered in these forests than would have been without the  
23  
24

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25 <sup>70</sup> Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon*  
26 *Neutral’*, BLOOMBERG (Nov. 21, 2022), [https://www.bloomberg.com/graphics/2022-carbon-](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)  
[offsets-renewable-energy/#xj4y7vzkg](https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg)

27 <sup>71</sup> *Id.*

28 <sup>72</sup> *Id.*

<sup>73</sup> RAPHAEL CALEL ET AL., DO CARBON OFFSETS OFFSET CARBON? 30 (GRANTHAM RSCH. INST.  
ON CLIMATE CHANGE AND THE ENV’T ET AL. EDS., 2021).

1 program.”<sup>74</sup>

2 iii. Delta’s Offsets do not Provide Immediate Offsetting,  
3 Misleadingly Claiming Carbon Offsets From Future Decades  
4 of Projected Offsets Against Current Emissions

5 61. Carbon offsets also need to be immediate. In the same way there’s a  
6 time value to money, there is a time value to carbon: “Your flight today dumps  
7 carbon dioxide into the atmosphere right now, worsening climate change from  
8 this day forth. Saplings planted today won’t grow large enough to offset today’s  
9 emissions for decades, nor will investments in speculative technologies like  
10 nuclear fusion or direct air capture, even if they eventually become viable.”<sup>75</sup>

11 The same is true for green technology investments; projections of decades of  
12 fossil fuel replacement from a wind farm are a woefully imprecise means of  
13 calculating the actual impact of technologies that may well become obsolete in  
14 the intervening years. Consumers also expect that carbon neutral claims are  
15 based on immediate carbon reductions. The very premise of claiming carbon  
16 neutrality in a calendar year is that the year’s omissions were offset that year.

17 62. Nevertheless, Defendant’s offsets are by definition not-immediate,  
18 despite Delta having repeatedly represented that the company is already “carbon  
19 neutral.”

20 63. Defendant claims its purchase of offsets meant that its corporate  
21 operations were “carbon-neutral” over a calendar year when the offsets in  
22 question in fact project future carbon reduction. In reality, the company invested  
23 in various green projects, calculated future years of future carbon reductions or  
24 non-release from those projects, and then credited all of the years of future  
25 reductions from the single year’s offset investments against a single

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26 <sup>74</sup> Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW  
27 SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-  
offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

28 <sup>75</sup> Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN  
SCH. (Nov. 2, 2022), [https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-  
offsets-actually-cut-emissions](https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-<br/>offsets-actually-cut-emissions)

1 contemporary year of emissions. Therefore, Defendant’s representations that  
2 they were “carbon-neutral” in a calendar year due to their purchase of offsets  
3 from the voluntary carbon market are in fact false—Defendant had simply  
4 invested in projects that, assuming nothing goes wrong, will altogether take all of  
5 those future years to offset Defendant’s most recent year of carbon emissions.  
6 “Regardless of quality, all [carbon offset] projects have long timelines and may  
7 take years to scale, which make determining their future effects (and dollar  
8 value) an act of educated guesswork.”<sup>76</sup> That means that “[n]o matter how  
9 rigorously vetted a program might be,” offsets programs are “never literally  
10 negating the emissions,” “even when companies that support [carbon offsetting]  
11 projects claim to make your purchase carbon neutral today.”<sup>77</sup>

12 iv. Delta’s Offsets are Impermanent and Therefore Offer no  
13 Guarantee of Future Performance, Despite Delta’s Carbon  
14 Neutral Claims Relying on Said Future Performance

15 64. Offsets also need to permanently sequester carbon in order to  
16 meaningfully combat climate change. “Carbon dioxide emissions stay in the  
17 atmosphere for a century or more, so you must offset an equivalent amount of  
18 emissions for at least that long. Trees planted today are more likely to succumb  
19 to wildfire, disease, pests, or extreme weather as the world warms, and do not  
20 provide durable carbon storage.”<sup>78</sup> “To counterbalance fossil fuel emissions,  
21 therefore, carbon credits must be associated with mitigation that is similarly  
22 permanent. If mitigation is ‘reversed’ (i.e., carbon stored as a result of a  
23 mitigation activity is subsequently emitted, so that no net reduction or removal  
24 occurs), then it no longer contributes to staying within a global carbon budget,

25 <sup>76</sup> Katie Okamoto, *Don’t Be Fooled by ‘Carbon Neutral’ Shipping*, WIRECUTTER (Nov. 21,  
26 2022), <https://www.nytimes.com/wirecutter/blog/what-is-carbon-neutral-shipping/>

27 <sup>77</sup> *Id.*

28 <sup>78</sup> Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN  
SCH. (Nov. 2, 2022), <https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions>

1 and no longer serves a counterbalancing function. This is primarily a concern  
2 with mitigation activities that result in enhanced carbon storage in biospheric  
3 reservoirs (including trees, shrubs, soils, and other biological stores of  
4 carbon).”<sup>79</sup>

5 65. This comes from the inherent problem with crediting companies  
6 with the environmental impacts of decades-long projections—“[i]t’s impossible  
7 to prove a counterfactual.”<sup>80</sup> For instance, in the context of prevented  
8 deforestation, “[r]ather than just valuing what forests are actually there, which  
9 are actively providing a carbon sink or store right now, [carbon offset vendors]  
10 have to surmise which forests would still be here versus which ones are the  
11 bonus forests that were spared from the theoretical ax.”<sup>81</sup>

12 66. “Already, there are examples of forests associated with carbon  
13 crediting projects being destroyed by catastrophic fires, including projects funded  
14 by BP and Microsoft affected by the increasingly prevalent wildfires in the  
15 American West (Hodgson 2021). Such impacts are leading credit buyers to re-  
16 evaluate the risks of such projects. While some carbon offset programs, such as  
17 the Gold Standard, maintain insurance mechanisms to address carbon losses  
18 (essentially, ‘buffer reserves’ of credits that are issued but not circulated), there  
19 are questions about whether they are sufficiently robust and it is doubtful that  
20 such mechanisms can be effective over indefinite time periods.” For Gold  
21 Standard offsets, “the obligation to compensate for ‘reversals’ (i.e., carbon  
22 losses) may extend for as little as 20 years – far short of what is needed to fully  
23 counterbalance carbon emissions.”<sup>82</sup> Ultimately, “[t]he fragility of biospheric

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25 <sup>79</sup> DERIK BROEKHOFF, EXPERT REPORT 7-8 (STOCKHOLM ENV’T INST. ET AL. EDS., 2022).

26 <sup>80</sup> Patrick Greenfield, *Carbon Offsets Used by Major Airlines Based on Flawed System, Warn*  
27 *Experts*, THE GUARDIAN (May 4, 2021),  
<https://www.theguardian.com/environment/2021/may/04/carbon-offsets-used-by-major-airlines-based-on-flawed-system-warn-experts>

28 <sup>81</sup> *Id.* 2

<sup>82</sup> DERIK BROEKHOFF, EXPERT REPORT 9 (STOCKHOLM ENV’T INST. ET AL. EDS., 2022).

1 carbon reservoirs has led some scientists to object to any use of NCS to offset  
2 fossil carbon emissions.”

3 67. According to a report by the European Union, carbon offsets sold by  
4 the three major carbon offset vendors have in fact routinely credited companies  
5 with decades of projected increase in carbon offsetting from projects that  
6 subsequently severely underperformed or in some cases were destroyed  
7 altogether. Offset vendors claim they insure against catastrophic future events by  
8 siloing offsets as insurance, but one study found that “one single disease, on a  
9 single tree species called tanoak, would be enough to completely wipe out the  
10 credits set aside for all disease-and insect-related mortality.”<sup>83</sup>

11 **F. Delta Knew or Should Have Known These Statements Were**  
12 **False**

13 68. Accordingly, any claim that Defendant is a carbon neutral company  
14 is false and misleading, and Defendant either knew or should have known as  
15 such--Defendant’s operations produce significant amounts of carbon into the  
16 atmosphere, and its purchase of fraudulently accounted and dubiously designed  
17 carbon offsets in no way make their operation produce no additional carbon year  
18 over year. Despite the carbon offset market’s claims of verification, its ultimate  
19 reliance on “ambitious and dynamic crediting baselines that depart from business  
20 as usual” has produced inaccurate and misleading accounting. At the same time,  
21 the offsets herself “lack additionality”, are non-immediate, and fundamentally  
22 fail to guarantee a permanent impact, all of which render the claim that those  
23 offsets make Delta “carbon neutral” provably false and misleading.<sup>84</sup>

24 69. It is simply inaccurate to say that offset purchasers are unaware of

25 \_\_\_\_\_  
26 <sup>83</sup> Lois Parshley, *California’s Carbon Offsetting May Actually be Increasing Emissions*, NEW  
27 SCIENTIST (Dec. 22, 2022), [https://www.newscientist.com/article/2352926-californias-carbon-](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)  
28 [offsetting-may-actually-be-increasing-emissions/](https://www.newscientist.com/article/2352926-californias-carbon-offsetting-may-actually-be-increasing-emissions/)

<sup>84</sup> EUROPEAN COMM’N, DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
SUBSTANTIATION AND COMMUNICATION OF EXPLICIT ENVIRONMENTAL CLAIMS (GREEN  
CLAIMS DIRECTIVE) 31 (2023).

1 problems with the voluntary carbon offset market. Much the opposite is true—  
2 there are voluminous pages of industry-wide writing acknowledging the legal  
3 risks of continuing to engage in these misrepresentations. “41% of corporate  
4 sustainability officers don’t use carbon offsets because they don’t trust them,”  
5 and another “43% are seeking to have them rated or validated” to prevent  
6 misleading the public.<sup>85</sup> At the same time, market leaders in transportation  
7 including Lyft and JetBlue have halted their offset programs and retracted carbon  
8 neutral claims out of concerns that the offset market is faulty and therefore  
9 carbon neutral claims are actionably false.<sup>86</sup> And Credit Suisse, “an early  
10 purchaser of renewable offsets, now says it’s among the companies shifting  
11 towards buying more rigorous removals.”<sup>87</sup> Even Walmart, the world’s largest  
12 company by revenue, has made “a zero emissions commitment that does not rely  
13 on carbon offsets.”<sup>88</sup>

14 70. Delta’s own current CEO Ed Bastian himself acknowledged the  
15 severe problems with offsets when Delta first announced its intention to go “fully  
16 carbon neutral” as of March 1, 2020.<sup>89</sup> On the question of carbon offsets,  
17 Bastian said “carbon offsets are “not the solution, there are not enough to go  
18 around...carbon offsets have a lot of efficacy issues, and quite honestly in some  
19 places they do more harm than they do good, or pay people to not do harm, that

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20 <sup>85</sup> AiDASH INC., CARBON OFFSETTING IN 2023: A CHIEF SUSTAINABILITY OFFICER’S GUIDE TO  
21 THE MARKET 4 (2023).

22 <sup>86</sup> Justine Calma, *JetBlue No Longer Plans to Offset Emissions from Domestic Flights*, THE  
23 VERGE (Dec. 9, 2022), <https://www.theverge.com/2022/12/9/23501665/jetblue-carbon-offsets-sustainable-aviation-fuel>

24 <sup>87</sup> Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies ‘Carbon  
25 Neutral’*, BLOOMBERG (Nov. 21, 2022), <https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg>

26 <sup>88</sup> Betsy Vereckey, *How to Choose Carbon Offsets that Actually Cut Emissions*, MIT SLOAN  
27 SCH. (Nov. 2, 2022), <https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions>

28 <sup>89</sup> Jessica Bursztynsky, *Delta Airlines CEO Announces the Carrier will go ‘Fully Carbon  
Neutral’ Next Month*, CNBC (Feb. 14, 2020, 7:27 AM),  
<https://www.cnbc.com/2020/02/14/delta-air-lines-ceo-carrier-will-go-fully-carbon-neutral-next-month.html>

1 is not really helping our planet.”<sup>90</sup>

2 **CLASS ALLEGATIONS**

3 71. In addition to their individual claims, Plaintiff bring this action  
4 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

5 72. Plaintiff bring this class action lawsuit on behalf of a proposed class  
6 of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal  
7 Rules of Civil Procedure, defined as follows:

8 73. “The Class”: All natural persons who, between March 6, 2020 and  
9 the present, purchased a Delta Airlines flight while located in California.

10 74. This action has been brought and may properly be maintained as a  
11 class  
12 action against Defendant because there is a well-defined community of interest in  
13 the litigation and the proposed class is easily ascertainable.

14 75. Numerosity: Plaintiff does not know the exact size of the Class, but  
15 estimates that the Class is composed of more than 5,000 persons. The persons in  
16 the Class are so numerous that the joinder of all such persons is impracticable  
17 and the disposition of their claims in a class action rather than in individual  
18 actions will benefit the parties and the courts.

19 76. Common Questions Predominate: This action involves common  
20 questions of law and fact to the Class because each class member’s claim derives  
21 from the deceptive, unlawful and/or unfair statements and omissions that led  
22 consumers to believe that Delta Airlines was a carbon neutral airline.

23 77. The common questions of law and fact predominate over individual  
24 questions, as proof of a common or single set of facts will establish the right of  
25 each member of the Class to recover. The questions of law and fact common to  
26 the Class are:

- 27 • whether Defendant operated a carbon neutral airline;

28 <sup>90</sup> *Id.*



- 1 • whether Defendant purchased carbon offsets that fully offset its annual
- 2 year of emissions;
- 3 • whether Defendant unfairly, unlawfully and/or deceptively
- 4 misrepresented that it is a carbon neutral airline; that it has fully offset its
- 5 emissions on an annual basis since March 2020;
- 6 • whether the use of the term “carbon neutral” in Defendant’s marketing
- 7 violated Federal and/or California state law;
- 8 • whether the advertising of Delta Airlines flights as being carbon neutral
- 9 caused them to command a premium in the market as compared with
- 10 similar services that do not make such a claim;
- 11 • whether Defendant’s advertising and marketing regarding carbon
- 12 neutrality was likely to deceive the class members and/or was unfair;
- 13 • whether a carbon neutrality claim on flight advertising is material to a
- 14 reasonable consumer;
- 15 • whether Defendant engaged in the alleged conduct knowingly,
- 16 recklessly, or negligently;

17 78. Typicality: Plaintiff’s claims are typical of the claims of other  
18 members of the Class because, among other things, all such claims arise out of  
19 the same unlawful course of conduct in which Defendant engaged. Plaintiff and  
20 those similarly situated purchased Defendant’s flights based on Defendant’s  
21 misrepresentations and omissions that they are a carbon neutral airline that has  
22 fully offset all of its emissions since March 2020. Thus, they and the class  
23 members sustained the same injuries and damages arising out of Defendant’s  
24 conduct in violation of the law. The injuries and damages of each class member  
25 were caused directly by Defendant’s wrongful conduct in violation of law as  
26 alleged.

27 79. Adequacy of Representation: Plaintiff will fairly and adequately  
28 protect the interests of all class members because it is in their best interests to



1 prosecute the claims alleged herein to obtain full compensation due to them for  
2 the unfair and illegal conduct of which they complain. Plaintiff also has no  
3 interests that are in conflict with, or antagonistic to, the interests of class  
4 members. Plaintiff has retained highly competent and experienced class action  
5 attorneys to represent their interests and those of the classes. By prevailing on  
6 her own claims, Plaintiff will establish Defendant's liability to all class members.  
7 Plaintiff and her counsel have the necessary financial resources to adequately and  
8 vigorously litigate this class action, and Plaintiff and counsel are aware of their  
9 fiduciary responsibilities to the class members and are determined to diligently  
10 discharge those duties by vigorously seeking the maximum possible recovery for  
11 class members.

12 80. Superiority: There is no plain, speedy, or adequate remedy other  
13 than by maintenance of this class action. The prosecution of individual remedies  
14 by members of the classes will tend to establish inconsistent standards of conduct  
15 for Defendant and result in the impairment of class members' rights and the  
16 disposition of their interests through actions to which they were not parties. Class  
17 action treatment will permit a large number of similarly situated persons to  
18 prosecute their common claims in a single forum simultaneously, efficiently, and  
19 without the unnecessary duplication of effort and expense that numerous  
20 individual actions would engender. Furthermore, as the damages suffered by  
21 each individual member of the classes may be relatively small, the expenses and  
22 burden of individual litigation would make it difficult or impossible for  
23 individual members of the class to redress the wrongs done to them, while an  
24 important public interest will be served by addressing the matter as a class  
25 action.

26 81. Plaintiff is unaware of any difficulties that are likely to be  
27 encountered in the management of this action that would preclude its  
28 maintenance as a class action.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (THE**  
**“CLRA”), CALIFORNIA**  
**CIVIL CODE § 1750, *et seq.*)**  
**(On Behalf of Plaintiff and the Class)**

1  
2  
3  
4  
5  
6       82. Plaintiff realleges and incorporate by reference all paragraphs  
7 alleged herein.

8       83. Defendant’s actions, representations and conduct have violated, and  
9 continue to violate the CLRA, because they extend to transactions that are  
10 intended to result, or which have resulted, in the sale or lease of goods or  
11 services to consumers.

12       84. Plaintiff and other class members are “consumers” as that term is  
13 defined by the CLRA in California Civil Code § 1761(d).

14       85. The flights that Plaintiff (and other similarly situated class  
15 members) purchased from Defendant constitute “services” within the meaning of  
16 California Civil Code § 1761(b).

17       86. Defendant’s acts and practices, set forth in this Class Action  
18 Complaint, led customers to falsely believe that Defendant operated a carbon  
19 neutral airline since March 2020; and that Defendant purchased carbon offsets  
20 that meant it did not release any net additional carbon into the atmosphere on an  
21 annualized basis since March 2020. By engaging in the actions, representations  
22 and conduct set forth in this Class Action Complaint, Defendant has violated,  
23 and continue to violate, § 1770(a)(2), § 1770(a)(3), § 1770(a)(4), § 1770(a)(5)§,  
24 1770(a)(7), and §1770(a)(9) of the CLRA. In violation of California Civil Code §  
25 1770(a)(2), Defendant’s acts and practices constitute improper representations  
26 regarding the source, sponsorship, approval, or certification of the services they  
27 sold. In violation of California Civil Code § 1770(a)(3), Defendant’s acts and  
28 practices constitute improper representations regarding the affiliation,

1 connection, or association with, or certification by, another. In violation of  
2 California Civil Code § 1770(a)(4), Defendant's acts and practices constitute  
3 deceptive representations or designations of geographic origin in connection with  
4 goods or services. In violation of California Civil Code § 1770(a)(5),  
5 Defendant's acts and practices constitute improper representations that the  
6 services they sell have sponsorship, approval, characteristics, ingredients, uses,  
7 benefits, or quantities, which they do not have. In violation of California Civil  
8 Code § 1770(a)(7), Defendant's acts and practices constitute improper  
9 representations that the goods they sell are of a particular standard, quality, or  
10 grade, when they are of another. In violation of California Civil Code §  
11 1770(a)(9), Defendant has advertised goods or services with intent not to sell  
12 them as advertised.

13 87. Plaintiff requests that this Court enjoin Defendant from continuing  
14 to employ the unlawful methods, acts and practices alleged herein pursuant to  
15 California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging  
16 in these types of practices in the future, Plaintiff and the other members of the  
17 Class will continue to suffer harm.

18 88. CIVIL CODE § 1782 NOTICE. Plaintiff notices and demand that  
19 within thirty (30) days from that date of the filing of this Complaint, Defendant  
20 correct, repair, replace or otherwise rectify the unlawful, unfair, false and or  
21 deceptive practices complained of herein.

22 89. Should the violations herein alleged not be corrected or rectified as  
23 required by Civil Code § 1782 within 30 days with respect to all Class Members,  
24 Plaintiff will seek to amend this Class Action Complaint to seek, on behalf of  
25 each Class Member, actual damages of at least \$1,000, punitive damages, an  
26 award of \$5,000 for each Class Member who is a disabled person or senior  
27 citizen, and restitution of any ill-gotten gains due to Defendant's acts and  
28 practices.



1 used, and continues to use, to their significant financial gain, also constitute  
2 unlawful competition and provides an unlawful advantage over Defendant's  
3 competitors as well as injury to the general public.

4 95. As a direct and proximate result of such actions, Plaintiff and the  
5 other class members have suffered, and continue to suffer, injury in fact and have  
6 lost money and/or property as a result of such false, deceptive and misleading  
7 advertising in an amount which will be proven at trial, but which is in excess of  
8 the jurisdictional minimum of this Court.

9 96. Plaintiff seeks on behalf of herself and those similarly situated, a  
10 declaration that the above-described practices constitute false, misleading and  
11 deceptive advertising.

12 97. Plaintiff seeks on behalf of herself and those similarly situated, full  
13 restitution of monies, as necessary and according to proof, to restore any and all  
14 monies acquired by Defendant from Plaintiff, the general public, or those  
15 similarly situated by means of the false, misleading and deceptive advertising  
16 and marketing practices complained of herein, plus interest thereon. Pursuant to  
17 Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations  
18 in this paragraph only hypothetically and as an alternative to any contrary  
19 allegations in their other causes of action, in the event that such causes of action  
20 do not succeed. Plaintiff and the Class may be unable to obtain monetary,  
21 declaratory and/or injunctive relief directly under other causes of action and will  
22 lack an adequate remedy at law, if the Court requires them to show classwide  
23 reliance and materiality beyond the objective reasonable consumer standard  
24 applied under the FAL, because Plaintiff may not be able to establish each Class  
25 member's individualized understanding of Defendant's misleading  
26 representations as described in this Complaint, but the FAL does not require  
27 individualize proof of deception or injury by absent Class members. *See, e.g.,*  
28 *Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012)

1 (“restitutionary relief under the UCL and FAL ‘is available without  
2 individualized proof of deception, reliance, and injury.’”). In addition, Plaintiff  
3 and the Class may be unable to obtain such relief under other causes of action  
4 and will lack an adequate remedy at law, if Plaintiff are unable to demonstrate  
5 the requisite *mens rea* (intent, reckless, and/or negligence), because the FAL  
6 imposes no such *mens rea* requirement and liability exists even if Defendant  
7 acted in good faith.

8 98. Plaintiff seeks on behalf of herself and those similarly situated, an  
9 injunction to prohibit Defendant from continuing to engage in the false,  
10 misleading and deceptive advertising and marketing practices complained of  
11 herein. Such misconduct by Defendant, unless and until enjoined and restrained  
12 by order of this Court, will continue to cause injury in fact to the general public  
13 and the loss of money and property in that Defendant will continue to violate the  
14 laws of California, unless specifically ordered to comply with the same. This  
15 expectation of future violations will require current and future consumers to  
16 repeatedly and continuously seek legal redress in order to recover monies paid to  
17 Defendant to which it is not entitled. Plaintiff, those similarly situated, and/or  
18 other consumers nationwide have no other adequate remedy at law to ensure  
19 future compliance with the California Business and Professions Code alleged to  
20 have been violated herein.

21  
22 **THIRD CAUSE OF ACTION**  
23 **UNLAWFUL, UNFAIR, AND FRAUDULENT TRADE PRACTICES IN**  
24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.***  
**(On Behalf of Plaintiff and the Class)**

25 99. Plaintiff realleges and incorporates by reference all paragraphs  
26 alleged herein.

27 100. Since March 2020, and at all times mentioned herein, Defendant  
28 engaged, and continues to engage, in unlawful, unfair, and fraudulent trade

1 practices in California by engaging in the unlawful, unfair, and fraudulent  
2 business practices outlined in this complaint.

3 101. In particular, Defendant has engaged, and continues to engage, in  
4 unlawful practices by, without limitation, violating the following state and  
5 federal laws: (i) the CLRA as described herein; and (ii) the FAL as described  
6 herein.

7 102. In particular, Defendant has engaged, and continues to engage, in  
8 unfair and fraudulent practices by, without limitation, the following: (i)  
9 misrepresenting that Delta Airlines operated a carbon neutral airline since March  
10 2020; and (ii) misrepresenting that Defendant purchased carbon offsets such that  
11 it did not release any net additional carbon into the atmosphere on an annualized  
12 basis since March 2020, and (iii) failing to inform Plaintiff, and those similarly  
13 situated, that the representations stated in (i) and (ii) above are false.

14 103. Plaintiff and those similarly situated relied to their detriment on  
15 Defendant's unlawful, unfair, and fraudulent business practices. Had Plaintiff  
16 and those similarly situated been adequately informed and not deceived by  
17 Defendant, they would have acted differently by, without limitation: (i) declining  
18 to purchase Delta flights, or (ii) paying less for Delta flights.

19 104. Defendant's acts and omissions are likely to deceive the general  
20 public.

21 105. Defendant engaged in these deceptive and unlawful practices to  
22 increase its profits. Accordingly, Defendant has engaged in unlawful trade  
23 practices, as defined and prohibited by section 17200, et seq. of the California  
24 Business and Professions Code.

25 106. These practices, which Defendant used for its significant financial  
26 gain, also constitute unlawful competition and provide an unlawful advantage  
27 over Defendant's competitors as well as injury to the general public.

28 107. As a direct and proximate result of such actions, Plaintiff and the



1 other class members have suffered and continue to suffer injury in fact and have  
2 lost money and/or property in an amount which will be proven at trial, but which  
3 is in excess of the jurisdictional minimum of this Court. Among other things,  
4 Plaintiff and the class members lost the price premium they paid for the Delta  
5 flights based on Defendant's false "carbon neutral" representations.

6 108. As a direct and proximate result of such actions, Defendant enjoyed,  
7 and continues to enjoy, significant financial gain in an amount which will be  
8 proven at trial, but which is in excess of the jurisdictional minimum of this  
9 Court.

10 109. Plaintiff seeks, on behalf of herself and those similarly situated,  
11 equitable relief, including the restitution for the premium and/or full price that  
12 they or others paid to Defendant as a result of Defendant's conduct. Pursuant to  
13 Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations  
14 in this paragraph only hypothetically and as an alternative to any contrary  
15 allegations in their other causes of action, in the event that such causes of action  
16 do not succeed.

17 110. Plaintiff and the Class may be unable to obtain monetary,  
18 declaratory and/or injunctive relief directly under other causes of action and will  
19 lack an adequate remedy of law, if the Court requires them to show classwide  
20 reliance and materiality beyond the objective reasonable consumer standard  
21 applied under the UCL, because Plaintiff may not be able to establish each Class  
22 member's individualized understanding of Defendant's misleading  
23 representations as described in this Complaint, but the UCL does not require  
24 individualized proof of deception or injury by absent class members. *See, e.g.,*  
25 *Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for  
26 purposes of CLRA claim, among class members for whom website  
27 representations may have been materially deficient but requiring certification of  
28 UCL claim for entire class). In addition, Plaintiff and the Class may be unable to



1 obtain such relief under other causes of action and will lack an adequate remedy  
2 at law, if Plaintiff are unable to demonstrate the requisite *mens rea* (intent,  
3 reckless, and/or negligence), because the UCL imposes no such *mens rea*  
4 requirement and liability exists even if Defendant acted in good faith.

5 111. Plaintiff seeks on behalf of herself and those similarly situated, a  
6 declaration that the above-described trade practices are fraudulent, unfair, and/or  
7 unlawful.

8 112. Plaintiff seek on behalf of herself and those similarly situated, an  
9 injunction to prohibit Defendant from continuing to engage in the deceptive  
10 and/or unlawful trade practices complained of herein. Such misconduct by  
11 Defendant, unless and until enjoined and restrained by order of this Court, will  
12 continue to cause injury in fact to the general public and the loss of money and  
13 property in that Defendant will continue to violate the laws of California, unless  
14 specifically ordered to comply with the same. This expectation of future  
15 violations will require current and future consumers to repeatedly and  
16 continuously seek legal redress in order to recover monies paid to Defendant to  
17 which they were not entitled. Plaintiff and those similarly situated have no other  
18 adequate remedy at law to ensure future compliance with the California Business  
19 and Professions Code alleged to have been violated herein.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of herself and those similarly situated,  
22 respectfully request that the Court enter judgment against Defendant as follows:

23 A. Certification of the proposed Class, including appointment of  
24 Plaintiff's counsel as class counsel;

25 B. An award of compensatory damages, including statutory damage  
26 where available, to Plaintiff and the Class Members against Defendant for  
27 all damages sustained as a result of Defendant's wrongdoing, in an amount  
28

1 to be proven at trial, including both pre-and post-judgment interest  
2 thereon;

3 C. An order for full restitution;

4 D. An order requiring Defendant to disgorge revenues and profits  
5 wrongfully obtained;

6 E. An order temporarily and permanently enjoining Defendant from  
7 continuing the unlawful, deceptive, fraudulent, and unfair business  
8 practices alleged in this Complaint;

9 F. For reasonable attorneys' fees and the costs of suit incurred; and

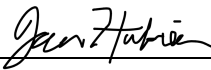
10 G. For such further relief as this Court may deem just and proper.

11 **JURY TRIAL DEMANDED**

12 Plaintiff hereby demands a trial by jury.

13  
14 Dated: May 30, 2023

Respectfully submitted,

15  
16 

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27 *Attorneys for Plaintiff and the Proposed Class*

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<p>CLIENT EARTH, 23901 Calabasas Rd., Suite 1010, Calabasas CA 91302; U.S. PIRG EDUCATION FUND, 1543 Wazee Street, Suite 460, Denver, CO 80202; and ENVIRONMENT AMERICA RESEARCH &amp; POLICY CENTER, 600 Pennsylvania Ave SE, Suite 400, Washington, DC 20003,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WASHINGTON GAS LIGHT COMPANY, 6801 Industrial Road, Springfield, VA 22151</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. _____</p> <p><b><u>COMPLAINT</u></b></p> <p><b><u>DEMAND FOR JURY TRIAL</u></b></p>
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On behalf of the general public and D.C. consumers, Plaintiffs U.S. PIRG Education Fund, Environment America Research & Policy Center, and ClientEarth (collectively, “Plaintiffs”), by and through their counsel, bring this action against Defendant Washington Gas Light Company (“Washington Gas” or “Defendant”) concerning its false and deceptive marketing of their natural gas products and services as “clean” and sustainable. Plaintiffs allege the following based upon information, belief, and the investigation of their counsel:

**INTRODUCTION**

1. Dramatic changes to the Earth’s climate have caused concern among the citizens of the District of Columbia and the country.
2. Consumers within the District and across the country believe that climate change poses an existential threat, and that climate change is directly caused by human activities.

3. Specifically, consumers believe that humans' use of fossil fuels for energy and the release of methane and carbon dioxide into the air are among the principal causes of climate change.

4. Because of these beliefs, consumers are reevaluating their choices and the effects of their actions on the environment.

5. Consumers, as Washington Gas knows, are willing to seek out services or products that cause less of an adverse impact on the environment, and support companies that purport to share their values, including a commitment to reducing impact on the environment.<sup>1</sup>

6. In particular, there is a growing desire among consumers to reduce their reliance on harmful fossil fuels, and to find opportunities that allow them to fulfil their energy needs while using fuel generated through means they consider less harmful to the environment.<sup>2</sup> In the District of Columbia, consumers have long had the opportunity to choose their energy providers, creating an incentive for providers to use advertising to capture this growing market of climate-conscious consumers.<sup>3</sup>

7. Capitalizing on this mounting consumer demand, Washington Gas advertises natural gas as a “clean,” sustainable, and “carbon neutral” alternative to traditional fossil fuels.

8. However, natural gas is *not* a “clean” source of energy. It is a fossil fuel comprised primarily of methane, a powerful greenhouse gas that has a greater negative effect on climate

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<sup>1</sup> See, e.g., *The Sustainability Imperative: New Insights on Consumer Perception*, Nielsen, (Oct. 2015), [https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/Global20Sustainability20Report\\_October202015.pdf](https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/Global20Sustainability20Report_October202015.pdf) (consumer survey finding that the majority of consumers seek to support sustainable business practices with their purchases and are more likely to buy products “from a company known for being environmentally friendly.”).

<sup>2</sup> See, e.g., David Roberts *Utilities Have a Problem: The Public Wants 100% Renewable Energy, and Quick*, Vox, (Oct. 11, 2018, 9:19 AM) [www.vox.com/energy-and-environment/2018/9/14/17853884/utilities-renewable-energy-100-percent-public-opinion](http://www.vox.com/energy-and-environment/2018/9/14/17853884/utilities-renewable-energy-100-percent-public-opinion) (stating that 70% of consumers desire electricity made without fossil fuels).

<sup>3</sup> *DC Power Connect: Your Energy. Your Choice.*, DC Power Connect, <https://dcpowerconnect.com> (last visited Jul. 25, 2022).

change than carbon dioxide: over 80 times greater over a 20-year period, and 29 times greater over a 100-year period.<sup>4</sup>

9. Washington Gas also claims to be “low carbon” and that its natural gas services promote “carbon neutrality.”

10. But, as of 2018, Washington Gas’s use of “Low-Carbon Gas” was *0%* and it only indicated a projected supply of *2%* of low carbon gas by 2025.<sup>5</sup> While “low carbon gas” is an illusive and misleading term in itself, as discussed *infra*, this fact shows that Washington Gas is not bothering to ensure its own commitments are met.

11. By deceiving consumers about the nature and quality of the products it produces and sells, and about the nature of its underlying business practices and plans, Washington Gas is able to capture the growing market of consumers in D.C. and elsewhere who are concerned about climate change and seek to support clean energy.

12. Washington Gas’s false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*

13. Because Washington Gas’s marketing and advertising tends to mislead and is materially deceptive about the true nature and quality of its products and business, Plaintiffs bring this deceptive advertising case on behalf of themselves and D.C. consumers and seek relief, including declaratory relief and an injunction, to halt Washington Gas’s false marketing and advertising practices.

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<sup>4</sup> Rajendra Pachauri, et al., *Climate Change 2014: Synthesis Report*, Intergovernmental Panel on Climate Change, 87 (2015), [https://archive.ipcc.ch/pdf/assessment-report/ar5/syr/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](https://archive.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf).

<sup>5</sup> Washington Gas, *Climate Business Plan for Washington, D.C.* (Mar. 16, 2020), <https://washingtongasdcclimatebusinessplan.com/wp-content/uploads/2020/04/Climate-Business-Plan-March-16-2020-FOR-WEB.pdf>.

## STATUTORY FRAMEWORK

14. This action is brought under the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.*

15. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

16. A violation occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

17. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). It “shall be construed and applied liberally to promote its purpose.” *Id.*

18. Because Plaintiffs are public-interest organizations, they may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

*Id.* § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

19. A public-interest organization may act on behalf of consumers, *i.e.*, the general public of the District of Columbia and consumers targeted by a defendant’s marketing, so long as the organization has a “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 22-29, each Plaintiff’s mission includes educating the public, including consumers in the District of Columbia, and engaging in advocacy and litigation related to environmental threats from natural gas and other fossil fuels. Plaintiffs thus have a sufficient nexus to D.C. consumers to adequately represent their interests.

20. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by Plaintiffs on behalf of the general public, *i.e.*, D.C. consumers who purchase natural gas and may be targeted by Defendant’s marketing claims. No class certification will be requested.

21. This action does not seek damages. Instead, Plaintiffs seek to end the unlawful conduct directed at D.C. consumers. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” *Id.* § 28-3905(k)(2)(D). Plaintiffs also seek declaratory relief in the form of an order holding Washington Gas’s conduct to be unlawful.

### **PARTIES**

22. Plaintiff ClientEarth is a 501(c)(3) non-profit, public-interest organization based in Calabasas, California, who performs work throughout the United States and abroad. ClientEarth’s mission is to use the power of the law to bring about systemic change that protects all life on Earth. ClientEarth seeks to educate consumers, investors, policymakers, and the greater public on the

systemic changes necessary to fight climate change, specifically, transitioning away from fossil fuels. ClientEarth also seeks to aid in the implementation of these systemic changes through litigation, policy work, and direct communication and advocacy to consumers and the public.

23. ClientEarth's work has included filings with the Securities and Exchange Commission ("SEC") that encourage climate change-related public disclosures<sup>6</sup> and collaboration on research regarding the links between climate change and financial and systemic risks.<sup>7</sup> ClientEarth also advocates for<sup>8</sup> and connects with consumers and the general public via various social media platforms and email about the ways in which they are impacted by climate change and the continued use of fossil fuels,<sup>9</sup> and how consumers can make environmentally-friendly choices<sup>10</sup> and understand complex climate issues.<sup>11</sup>

24. Plaintiff U.S. PIRG Education Fund is a 501(c)(3) non-profit, public-interest organization focused on using independent research to educate consumers on issues that affect their lives and to serve as counterweights to the influence of powerful special interests that threaten the health, safety, or well-being of the public. U.S. PIRG Education Fund has offices in Denver, Colorado and Washington, D.C.

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<sup>6</sup> *SEC Request for Public Input: Climate Change Disclosures*, ClientEarth, <https://www.clientearth.org/latest/documents/sec-request-for-public-input-climate-change-disclosures/> (last visited July 25, 2022); ClientEarth, *Comment in Response to SEC Proposed Rule: The Enhancement and Standardization of ClimateRelated Disclosures for Investors*, SEC, <https://www.sec.gov/comments/s7-10-22/s71022-20132081-302562.pdf> (last visited Jul. 25, 2022).

<sup>7</sup> Sarah Barker, *et al*, *Fiduciary Duties and Climate Change in the United States*, Commonwealth Climate and Law Initiative, (Oct. 2021) <https://ccli.ubc.ca/wp-content/uploads/2021/12/Fiduciary-duties-and-climate-change-in-the-United-States.pdf>.

<sup>8</sup> *Report: More investment needed to secure renewable energy future*, ClientEarth, (Jun. 5, 2018), <https://www.clientearth.org/latest/latest-updates/news/report-more-investment-needed-to-secure-renewable-energy-future/>

<sup>9</sup> *Fossil fuels and climate change: the facts*, ClientEarth, (Feb. 18, 2022), <https://www.clientearth.org/latest/latest-updates/stories/fossil-fuels-and-climate-change-the-facts/>; ClientEarth, LinkedIn, <https://bit.ly/3J5JbPs> (last visited July 25, 2022).

<sup>10</sup> *Could you go plastic-free for Lent?*, ClientEarth, (Feb. 14, 2018), <https://www.clientearth.org/latest/latest-updates/news/could-you-go-plastic-free-for-lent/>.

<sup>11</sup> *The verdict from the COP26 climate summit*, ClientEarth, (Nov. 16, 2021), <https://www.clientearth.org/latest/latest-updates/news/the-verdict-from-the-cop26-climate-summit/>



25. Through its Climate Solutions plan, U.S. PIRG Education Fund focuses on ending the nation's reliance on fossil fuels. U.S. PIRG Education Fund's activism on this issue, which includes reports detailing the risks of natural gas<sup>12</sup> and ways forward on truly renewable energy<sup>13</sup> reaches thousands of people nationwide and supports a grassroots effort for ending government subsidies of environmentally harmful energy sources.

26. U.S. PIRG Education Fund educates and organizes consumers on issues relating to climate impact and natural gas in particular.<sup>14</sup> For example, in February 2022, U.S. PIRG Education Fund organized a consumer petition calling on major retailers to implement better transparency in the marketing of gas stoves, with the goal of informing consumers and the public of the harms associated with natural gas.<sup>15</sup>

27. Plaintiff Environment America Research & Policy Center is a 501(c)(3) non-profit, public-interest organization that promotes climate solutions on clean energy, clean air, and clean water. Environment America Research & Policy Center has offices in Denver, Colorado and Washington, D.C. Environment America educates consumers and the public through research reports, news conferences, op-eds, and door-to-door canvassing.

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<sup>12</sup> E.g., Tony Dutzik, *et al.*, *Methane Gas Leaks*, U.S. PIRG (June 2022), <https://uspargedfund.org/feature/ncf/methane-gas-leaks>.

<sup>13</sup> E.g., Brynn Furey, *et al.*, *Electric Buildings Empowering homes and businesses for our health and environment*, U.S. PIRG (April 2021), <https://uspargedfund.org/sites/pirg/files/reports/National%20Electric%20Buildings%20Web.pdf>; *In The Market For A New Stove? Consider Induction*, U.S. PIRG, (May 18, 2022), <https://uspargedfund.org/resources/usf/market-new-stove-consider-induction>.

<sup>14</sup> Jonathan Sundby, *et al.*, *Electric Buildings: How to repower where we live, work and learn with clean energy*, U.S. PIRG (Dec. 2019), [https://uspig.org/sites/pirg/files/reports/US\\_EL\\_Bldgs\\_scrn.pdf](https://uspig.org/sites/pirg/files/reports/US_EL_Bldgs_scrn.pdf); *Healthier Holiday: Minimizing the health risks of cooking with gas*, U.S. PIRG, <https://uspig.org/reports/usf/healthier-holiday> (last visited July 25, 2022); and *Ten Ways Your Community Can Go All-Electric*, U.S. PIRG, (Feb. 24, 2022), <https://uspargedfund.org/resources/usf/ten-ways-your-community-can-go-all-electric>.

<sup>15</sup> Erin Skibbens, *U.S. PIRG Education Fund Urges Best Buy To Protect Consumer Health By Promoting Cleaner Cooking*, U.S. PIRG (Feb. 17, 2022), <https://uspig.org/news/usf/us-pirg-education-fund-urges-best-buy-protect-consumer-health-promoting-cleaner-cooking>.

28. Environment America’s work has included educating consumers on the climate and health impacts of natural gas<sup>16</sup> and authoring guides on how consumers can transition to clean energy homes.<sup>17</sup> Environment America’s “100% Renewable” campaign educates consumers on how to move away from fossil fuels like natural gas and onto truly renewable energy sources.<sup>18</sup>

29. Defendant Washington Gas Light Company is a privately held company headquartered in Washington D.C. It is a subsidiary of WGL Holdings, Inc., which was acquired by the Canadian energy company AltaGas Ltd. in 2018. Defendant was and is, at all relevant times, engaged in commercial transactions throughout the District of Columbia.

30. Defendant Washington Gas Light Company markets and sells its products and services in the District of Columbia and throughout the United States.

31. Upon information and belief, Washington Gas has caused harm to the general public of the District of Columbia.

32. Plaintiffs are acting on behalf of themselves and for the benefit of the general public and D.C. consumers as a private attorney general pursuant to D.C. Code § 28-3905(k)(1). Plaintiffs are public-interest organizations pursuant to D.C. Code § 28-3901(a)(15).

### **FACT ALLEGATIONS**

33. Plaintiffs bring this suit for injunctive and declaratory relief under the CPPA against Washington Gas, based on misrepresentations and omissions committed by the company regarding its products and business practices, which Washington Gas represents as “clean” and sustainable.

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<sup>16</sup> E.g. Dutzik, *supra* note 12.; Eve Lukens-Day, *Are gas stoves bad for the climate?*, Environment America, (Feb. 9, 2022), <https://environmentamerica.org/blogs/environment-america-blog/amc/are-gas-stoves-bad-climate>.

<sup>17</sup> E.g., *Ten Ways Your Community Can Go All-Electric*, *supra* note 14.

<sup>18</sup> Our Campaigns, *100% Renewable*, Environment America, <https://environmentamerica.center.org/feature/amc/100-renewable-0> (last visited Jul. 25, 2022).

34. Defendant’s marketing is false and deceptive because the use, production, and supply of natural gas—and of the gas supplied by Defendant in particular—is neither “clean” nor sustainable.

35. Defendant knows that consumers increasingly and consciously seek out products and services from environmentally responsible companies.

36. Accordingly, Washington Gas cultivates an image of creating responsible energy solutions for consumers who wish to avoid harm to our planet in order to motivate climate-concerned consumers to continue to purchase their products and services.

**I. Washington Gas Portrays Its Natural Gas Business as “Clean” and Sustainable.**

37. Washington Gas operates as both a utility and supplier of natural gas in Washington D.C. As Defendant’s parent company states: “[p]roviding natural gas service is the foundation of WGL.”<sup>19</sup>

38. At the same time, Washington Gas purports to be an environmentally conscious company that is committed to providing “clean” and sustainable energy.

39. As part of its efforts to keep consumers from switching to electricity,<sup>20</sup> Washington Gas makes these statements direct to consumers, including prominently on the monthly bills that the company sends to each consumer. In the lower-left corner of its bills, Washington Gas includes a colorful picture of flowers, with text describing natural gas as “clean” and as a “smart choice for the environment”:

Natural gas is a clean, efficient, and reliable energy. Converting an all electric home to natural gas is the equivalent of planting 2.75 acres of trees or driving 26,520

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<sup>19</sup> *Customer Solutions: Natural Gas*, Washington Gas Light, <https://sustainability.wglholdings.com/customer-solutions/natural-gas/> (last visited Jul. 26, 2022).

<sup>20</sup> *See, e.g., Full Fuel Cycle*, Washington Gas, <https://www.washingtongas.com/safety-education/education/full-fuel-cycle> (last visited Jul. 26, 2022).

fewer miles each year. In addition, natural gas cost 1/3 less than electric, which makes it a smart decision for the environment and your wallet.



Page 1 of 2

### Gas Bill

Because you pay by Auto Pay Plan you do not have to do anything. Your next payment of [REDACTED] is due to be collected on May 2, 2022

Thanks for being a valuable customer of Washington Gas. Your next meter reading date is May 5, 2022.

Account number: [REDACTED]

Bill date: April 8, 2022

Period: Mar 5, 2022-Apr 6, 2022 (33 days)

Service address: [REDACTED]

### Questions?

[washingtongas.com](http://washingtongas.com)

844-WASHGAS (844-927-4427)  
Mon: 8am-8pm, Tue-Fri: 8am-6pm, Sat: 8am-12pm

Washington Gas Customer Care  
6801 Industrial Road  
Springfield VA 22151-4294

### Did you know?

Natural gas is a clean, efficient, and reliable energy. Converting an all electric home to natural gas is the equivalent of planting 2.75 acres of trees or driving 26,520 fewer miles each year. In addition, natural gas cost 1/3 less than electric, which makes it a smart decision for the environment and your wallet.

Natural Gas. *Efficient by Nature*



**Need to change your information?**  
If you've changed your mailing address or other personal details call us on 844-WASHGAS

40. Washington Gas echoes these claims on its website, where its “About Natural Gas” page includes a “Facts About Natural Gas” box, telling consumers that natural gas is the “*cleanest* fossil fuel on the market today.”<sup>21</sup>

<sup>21</sup> *About Natural Gas*, Washington Gas, <https://www.washingtongas.com/safety-education/education/about-natural-gas> (emphasis added) (last visited Jul. 26, 2022).

41. In its “Natural Gas 101” handbook, which it makes available under the “Customer Resources” section of its website,<sup>22</sup> Washington Gas tells consumers that natural gas is “clean energy.”<sup>23</sup>

42. For consumers who are seriously invested in choosing clean energy, Washington Gas’s website invites consumers to “[v]isit our sustainability site,”<sup>24</sup> linking to a website that offers additional assurances of this kind, explicitly representing that “[n]atural gas is a clean and efficient way for heating, cooling and powering our built environment.”<sup>25</sup>

43. This “sustainability site” prominently touts a “science-based plan to meet DC’s climate goals.”<sup>26</sup>



APRIL 21, 2020

## OUR SCIENCE-BASED PLAN TO MEET DC'S CLIMATE GOALS

Washington Gas Climate Business Plan cuts emissions in half by 2032; carbon neutral by 2050.

[Read the Plan](#) | [Analysis Behind the Plan](#)

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<sup>22</sup> *Customer Resources*, Washington Gas, <https://www.washingtongas.com/my-account/account-services-support/customer-resources> (last visited Jul. 26, 2022).

<sup>23</sup> *Natural Gas 101*, Washington Gas, <https://washingtongas.dcatalog.com/v/Natural-Gas-101/> (last visited Jul. 26, 2022).

<sup>24</sup> *Sustainability at WGL*, Washington Gas, <https://www.washingtongas.com/media-center/sustainability-at-wgl> (last visited Jul. 26, 2022).

<sup>25</sup> *Customer Solutions: Natural Gas*, supra note 19.

<sup>26</sup> *WGL Sustainability*, Washington Gas Light, <https://sustainability.wglholdings.com> (last visited Jul. 26, 2022).

44. Similarly, in its “Climate Business Plan,” Washington Gas advertises that the use of natural gas is a “key driver” of greenhouse gas reductions in the District.<sup>27</sup>

45. On its “Sustainability at WGL” webpage, the company makes further representations regarding its general commitment to the environment noting that “our commitment to Sustainability is part of who we are” and “At WGL, we strive to be responsible stewards of the environment . . . .”<sup>28</sup>

Our commitment to Sustainability is part of who we are. At WGL, we strive to be responsible stewards of the environment, be active members of the communities we serve and provide affordable, reliable, modern and clean energy solutions to customers.

46. As part of this narrative, Washington Gas also implies that its natural gas is a carbon-neutral alternative.

47. For example, Washington Gas advertises that natural gas provides a “low carbon” energy that “can help the District reach its carbon neutral status” while spending less than it would “relying solely on electrification to get there.”<sup>29</sup>

48. Washington Gas advertises that its current production practices are “low carbon,” noting that “Today natural gas provides low carbon energy to fuel highly efficient thermal applications . . . .”<sup>30</sup>

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<sup>27</sup> *Climate Business Plan*, *supra* note 5.

<sup>28</sup> *Sustainability at WGL*, *supra* note 24.

<sup>29</sup> WGL, *Learn about the WGL Climate Business Plan - July 2020*, YouTube (May 21, 2021), <https://www.youtube.com/watch?v=uLxXLTD2WaY>.

<sup>30</sup> *Climate Business Plan*, *supra* note 5.

## II. Natural Gas Is Not an Unqualifiedly “Clean” or Sustainable Form of Energy.

49. Contrary to Defendant’s representations, its natural gas products and services are not “clean” nor sustainable, as its business practices impede the adoption of truly sustainable energy alternatives such as renewables.

### A. The Production and Use of Natural Gas is Harmful to the Environment.

50. Natural gas is not “clean.” It is a fossil fuel comprised primarily of methane, a greenhouse gas that has a greater potential of negatively affecting climate change than carbon dioxide over a 20-year period.<sup>31</sup>

51. The extraction, transportation, and use of natural gas releases methane into the atmosphere and the combustion of natural gas to produce energy releases carbon dioxide into the atmosphere.

52. The use of natural gas is not what reasonable consumers would consider “clean,” even if, when burned, it releases less carbon dioxide than coal—especially because it releases far more emissions than alternatives like renewable energy sources would.

53. In fact, according to the EPA, natural gas combustion in residential and commercial sectors (where Defendants operate) accounts for over 7% of the United States’ *total* greenhouse gas emissions.<sup>32</sup>

54. Furthermore, the demand for natural gas has led to the proliferation of horizontal drilling and hydraulic fracturing (commonly known as fracking) across the country. Well-publicized scientific studies show that fracking and horizontal drilling leads to pollution of the environment and groundwater and causes health and safety risks for humans.

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<sup>31</sup> See Pachauri, et al., *supra* note 4.

<sup>32</sup> *Inventory of United States Greenhouse Gas Emissions and Sinks 1990-2015*, United States Environmental Protection Agency (May 2021), [https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=wEy8wQuGrWS8Ef\\_hSLXHy1kYwKs4.ZaU](https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf?VersionId=wEy8wQuGrWS8Ef_hSLXHy1kYwKs4.ZaU).

55. For example, a study on fracking in Michigan found that the harmful environmental repercussions of this practice are “significant” and “include increased erosion and sedimentation, increased risk of aquatic contamination from chemical spills or equipment runoff, habitat fragmentation, and reduction of surface waters . . . .”<sup>33</sup> Reasonable consumers, therefore, do not associate fracking and horizontal drilling with clean energy.

56. The environmental threats that stem from the use of natural gas extend beyond the harms associated with extraction. Methane and other pollutants are released into the atmosphere when gas is transmitted, when it leaks, and when it is burned in homes and buildings.

57. Methane is also leaking from appliances in homes that use natural gas at a much higher rate than previously known. Research released by Stanford University in January 2022 found that gas stoves leak significant amounts of methane, even when turned off.<sup>34</sup> Methane gas leaks from stoves alone cause climate damage equivalent to that of about 500,000 gasoline-powered cars, according to the Stanford study.

58. Finally, when natural gas is burned to heat or cool homes or commercial buildings, to heat water, or to cook, carbon dioxide, carbon monoxide, nitrogen dioxide, particulate matter, and formaldehyde are all released.<sup>35</sup> This contributes to climate change and health harming indoor and outdoor air pollution.<sup>36</sup>

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<sup>33</sup>*Environmental Impacts of Natural Gas*, Union of Concerned Scientists, (Jun. 19, 2014), <https://www.ucsusa.org/resources/environmental-impacts-natural-gas>.

<sup>34</sup> Eric D. Lebel, et al., *Methane and NOx Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, *Environ. Sci. Technol.* 2022, 56, 4, 2529–2539, <https://pubs.acs.org/doi/10.1021/acs.est.1c04707>.

<sup>35</sup>*Natural gas and the environment*, U.S. Energy Information Administration, (Dec. 8, 2021), <https://www.eia.gov/energyexplained/natural-gas/natural-gas-and-the-environment.php>; Air quality and health, *Around 3 billion people cook and heat their homes using polluting fuels*, World Health Organization, <https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts/types-of-pollutants> (last visited Jul. 26, 2022).

<sup>36</sup> Brady Seals, et al., *Gas Stoves: Health and Air Quality Impacts and Solutions*, RMI, (2020), <https://rmi.org/insight/gas-stoves-pollution-health>.



**B. Natural Gas Is Not a Clean Fuel, And Its Use Must be Curtailed to Meet Sustainable Climate Targets.**

59. Washington Gas’s portrayal of its natural gas products and services as a “key driver” of lowering GHG emissions in the District, and its statement that “converting an all electric home to natural gas” reduces emissions, are false and misleading.

60. The front page of the “Sustainability” website to which Washington Gas directs consumers<sup>37</sup> touts “a science-based plan to meet DC’s climate goals.”<sup>38</sup> But the DC government has directly disavowed this plan, criticizing it as inconsistent with the District’s goals.

61. Importantly, though the Clean Energy DC plan prioritizes “[e]lectrification where possible and switching to lower-carbon fuels otherwise,”<sup>39</sup> Defendant’s plan is not focused on electrification or implementation of renewable energy like wind and solar, but instead on renewable natural gas (“RNG”), hydrogen, emerging technologies and offsets. The D.C. Department of Energy and Environment has criticized this plan as representing “business as usual” and as being inconsistent with the District’s goals of moving toward clean energy, noting that the plan is out of step with the recommendations of scientific authorities like the Intergovernmental Panel on Climate Change, which universally emphasize the importance of electrification to decarbonization.<sup>40</sup>

62. Further, Washington Gas’s proposed plan to address climate change and the District’s environmental goals is “Fuel Neutral Decarbonization.”<sup>41</sup> RNG represents the largest percentage of planned emissions reductions over time in Washington Gas’s plan, and Washington

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<sup>37</sup> *Sustainability at WGL*, *supra* note 24.

<sup>38</sup> *WGL Sustainability*, *supra* note 26.

<sup>39</sup> *Clean Energy Dc: The District Of Columbia Climate And Energy Action Plan*, D.C. Dep’t of Energy & Environ. (“DOEE”), (Aug. 2018), [https://doee.dc.gov/sites/default/files/dc/sites/ddoc/page\\_content/attachments/Clean%20Energy%20DC%20-%20Full%20Report\\_0.pdf](https://doee.dc.gov/sites/default/files/dc/sites/ddoc/page_content/attachments/Clean%20Energy%20DC%20-%20Full%20Report_0.pdf).

<sup>40</sup> *Comments by the Department of Energy and Environment on behalf of the District of Columbia Government Concerning AltaGas Ltd.’s Climate Business Plan*, DOEE., Formal Case No. 1142 (June 26, 2020).

<sup>41</sup> *Climate Business Plan*, *supra* note 5.

Gas refers to RNG as a “zero carbon fuel.” However, according to the World Resources Institute (“WRI”), “[RNG] production and use may not always lead to large GHG emissions reductions,” and “[i]n some contexts, RNG could lead to a net increase in methane emissions.”<sup>42</sup>

63. Numerous studies and projections have demonstrated that if countries around the world, including the United States, want to achieve carbon neutrality and mitigate their greenhouse gas emissions, natural gas use must be significantly curtailed, and alternative renewable energy sources adopted in its place.

64. For example, a 2020 study by Princeton University on the mechanisms through which the United States could reach net zero by 2050 found that—in any of its projected scenarios—natural gas production would have to decline by 25-85%.<sup>43</sup>

65. The study also indicated that in residential buildings, where Washington Gas does a significant portion of its business,<sup>44</sup> “the use of natural gas . . . [must be] nearly fully replaced by electricity by 2050 across the net-zero transitions”<sup>45</sup>.

66. These findings mirror those found in global studies such as the International Energy Agency’s (the “IEA”) *Net Zero by 2050* roadmap.

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<sup>42</sup>Rebecca Gasper, *The Production And Use Of Renewable Natural Gas As A Climate Strategy In The United States*, WRI, (Apr. 2018), [production-use-renewable-natural-gas-climate-strategy-united-states.pdf](https://www.wri.org/publications/production-use-renewable-natural-gas-climate-strategy-united-states) (wri.org).

<sup>43</sup>Eric Larson *et al.*, *Net Zero America: Potential Pathways, Infrastructure, and Impacts*, Princeton University, (Dec. 15, 2020), [https://environmenthalfcentury.princeton.edu/sites/g/files/toruqf331/files/2020-12/Princeton\\_NZA\\_Interim\\_Report\\_15\\_Dec\\_2020\\_FINAL.pdf](https://environmenthalfcentury.princeton.edu/sites/g/files/toruqf331/files/2020-12/Princeton_NZA_Interim_Report_15_Dec_2020_FINAL.pdf).

<sup>44</sup>See *e.g.*, *Washington Gas Light: Form 10-K*, SEC, (Fiscal Year 2020), <http://www.wglholdings.com/static-files/2aed29da-796f-4acc-ae06-68925f011a2d>, (“Washington Gas’ business is weather-sensitive and seasonal because the majority of its business is derived from residential and small commercial customers who use natural gas for space heating”).

<sup>45</sup>*Net Zero America*, *supra* note 43.

67. The IEA noted that to achieve net zero goals, a comprehensive switch from all fossil fuels (including natural gas) must be made. According to the roadmap, by 2050 “[i]nstead of fossil fuels, the energy sector [must be] based largely on renewable energy.”<sup>46</sup>

68. Specifically, in household settings, the IEA projected that natural gas use for heating in commercial and residential buildings would need to drop by 98%.<sup>47</sup>

69. This robust body of scientific research on the necessity of moving to renewable energy sources and the need to lessen reliance on natural gas counters the narrative advanced by Washington Gas that its natural gas products and services are a necessary and sustainable form of energy.

70. In fact, as these reports point out, the use of natural gas is antithetical to reaching sustainability goals across the globe.

### **C. Washington Gas’s Natural Gas in Particular is Not Clean**

71. In addition to generally mischaracterizing natural gas as clean, Washington Gas’s own natural gas products and production are decidedly not “low carbon.” Washington Gas admits that as of 2018, its low-carbon gas supply was *0%* and it only has plans to use 2% low-carbon gas by 2025.<sup>48</sup> Washington Gas’s disclosure of this fact demonstrates just how misleading their “sustainability” statements to consumers are. Low-carbon gas is not what Washington Gas has to offer, nor do they have a plan to offer it in the near future.

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<sup>46</sup> *Net Zero by 2050: A Roadmap for the Global Energy Sector*, International Energy Agency, (Jun. 2021), [https://iea.blob.core.windows.net/assets/405543d2-054d-4cbd-9b89-d174831643a4/NetZeroby2050-ARoadmapfortheGlobalEnergySector\\_CORR.pdf](https://iea.blob.core.windows.net/assets/405543d2-054d-4cbd-9b89-d174831643a4/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf).

<sup>47</sup> *Id.*

<sup>48</sup> *Climate Business Plan*, *supra* note 5.

72. Even the term “low-carbon gas” can be misleading, as it encompasses gas produced from biogas, biomass, and hydrogen. Biomass, for example, produces a variety of harmful air pollutants when burned.<sup>49</sup>

73. Further, methane sold by Washington Gas accounts for 23% of the District’s total greenhouse gas emissions.<sup>50</sup> Because gas leaks are approximately double official estimates, emissions from the gas sector are likely much higher.<sup>51</sup>

74. Washington Gas is one of only two utilities that has gas lines in Washington D.C.<sup>52</sup> and a 2014 study found that Washington D.C. had nearly 6,000 pipeline leaks across 1,500 road miles of the city.<sup>53</sup> A gas leak study commissioned by the DC government in 2021 identified 3,346 locations with methane at concentrations higher than ambient background levels.<sup>54</sup> A 2022 study by environmental groups found 389 gas leaks in neighborhoods across the city in just 25 hours of testing.<sup>55</sup> All of these leaks release methane into the atmosphere and increase the climate and environmental impact of the use of natural gas.<sup>56</sup>

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<sup>49</sup> International Agency for Research on Cancer (IARC) Scientific Publication No. 161: *Air Pollution and Cancer* (e-Book), edited by Kurt Straif, Aaron Cohen, and Jonathan Samet, (Oct. 7, 2013), see Chapter 4: Combustion Emissions, <https://www.iarc.who.int/news-events/iarc-scientific-publication-no-161-air-pollution-and-cancer-as-an-e-book/>.

<sup>50</sup> Greenhouse Gas Inventories, DOEE, <https://doee.dc.gov/service/greenhouse-gas-inventories> (last visited Jul. 26, 2022).

<sup>51</sup> Ramón A. Alvarez, *Assessment of methane emissions from the U.S. oil and gas supply chain*, 361 *Science* 6398, 186-188 (Jun. 21, 2018), <https://www.science.org/doi/10.1126/science.aar7204>

<sup>52</sup> *Third Party Suppliers*, Office of the People’s Counsel, (June 22, 2021), <https://opc-dc.gov/consumer-assistance/utilities/third-party-suppliers-tps>

<sup>53</sup> Robert B. Jackson, Adrian Down, Nathan G. Phillips, Robert C. Ackley, Charles W. Cook, Desiree L. Plata, and Kaiguang Zhao, *Natural Gas Pipeline Leaks Across Washington, DC*, 48 *Environ. Sci. Technol.* 2051, 2051 (2014), DOI: 10.1021/es404474x.

<sup>54</sup> Bob Ackley, *2021 Fugitive Methane Emission Survey of the District of Columbia*, DOEE, (Oct. 31, 2021), <https://edocket.dcpsc.org/apis/api/Filing/download?attachId=143587&guidFileName=d93076fd-4fbd-4537-9947-27db2f19f967.pdf>.

<sup>55</sup> *Neighborhood Researchers Find Hundreds of Methane Gas Leaks Across DC*, Sierra Club, (Feb. 23, 2022), <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u6902/Methane-Leaks-Across-DC.pdf>

<sup>56</sup> Benjamin Storrow, *Methane Leaks Erase Some of the Climate Benefits of Natural Gas*, *Scientific American* (May 5, 2020), <https://www.scientificamerican.com/article/methane-leaks-erase-some-of-the-climate-benefits-of-natural-gas/>.

### III. Washington Gas's Representations are Material and Misleading to Consumers.

75. Defendant's false and misleading representations about the degree to which its natural gas business is "clean" and sustainable are material to consumers.

76. Consumers care deeply about environmental issues and are more likely to purchase products and services that they perceive as environmentally friendly.<sup>57</sup>

77. A 2019 study conducted by Coleman Parkes Research on behalf of Accenture surveyed 1,500 consumers in seventeen cities throughout the United States. Forty-seven percent of consumers surveyed expressed a desire to conduct business with retailers that were environmentally conscious.<sup>58</sup>

78. The desire for sustainable products and services is especially pronounced among younger consumers; a study from the International Trademark Association from 2018 found that 89 percent of internet users ages 18 to 23 felt that brands should aim to do good in the world.<sup>59</sup>

79. Washington Gas's business practices fall far short of what consumers would expect from a sustainable company providing "clean" fuel. Its advertising strategies mislead consumers into believing that Washington Gas prioritizes environmental health, capturing a growing class of consumers who wish to support environmentally sustainable companies.

80. Moreover, federal guidance and consumer research show that Defendant's sustainability representations suggest to consumers that its products are made and sourced in accordance with high environmental standards.

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<sup>57</sup> *The Sustainability Imperative*, *supra* note 1.

<sup>58</sup> Lucy Koch, *Sustainability Is Factoring into 2019 Holiday Purchases*, eMarketer (Oct. 14, 2019), [https://www.emarketer.com/content/sustainability-is-factoring-into-2019-holiday-purchases?\\_ga=2.170357734.731468461.1617378067-462530432.1615825431](https://www.emarketer.com/content/sustainability-is-factoring-into-2019-holiday-purchases?_ga=2.170357734.731468461.1617378067-462530432.1615825431).

<sup>59</sup> *Id.*

81. The Federal Trade Commission (“FTC”) has determined that unqualified general environmental benefit/sustainability claims “imply certain specific environmental benefits.”<sup>60</sup> For example, the FTC has admonished companies not to use unqualified claims such as “sustainable” due to its determination that “it is highly unlikely that they can substantiate all reasonable interpretations of these claims.”<sup>61</sup>

82. Indeed, as demonstrated *supra* Section II, Defendant is unable to substantiate its claim that it is a sustainable company dedicated to providing “clean” or “low carbon” fuel, thereby misleading the many consumers who attempt to make purchasing decisions in line with their desire to be more environmentally conscious.

83. Lastly, as evidenced in Section II.B, *supra*, scientific and policy determinations across the globe have shown that achieving sustainability and net zero goals in the energy sector will require a significant reduction in natural gas use and a concerted transition to alternative renewable sources.

84. Thus, Defendant’s portrayal of its natural gas products and services as clean and sustainable, and as aiding in the clean energy transition, is inherently misleading given that natural gas use will need to be significantly reduced to achieve meaningful greenhouse gas emission reductions and sustainability goals.

### **JURISDICTION AND VENUE**

85. This Court has personal jurisdiction over the parties in this case. Plaintiffs, by filing this Complaint, consent to this Court having personal jurisdiction over them. Plaintiffs U.S. PIRG Education Fund and Environment America Research & Policy Center maintain offices and many

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<sup>60</sup> *FTC Sends Warning Letters to Companies Regarding Diamond Ad Disclosures*, Federal Trade Commission (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad>; *see also* FTC Green Guides, 16 C.F.R. § 260.4(b) (2012).

<sup>61</sup> *Id.*

staff members in the District.

86. This Court has personal jurisdiction over Defendant Washington Gas pursuant to D.C. Code § 13-423. Defendant has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Washington Gas is headquartered in Washington D.C. and is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of its products and services in this District.

87. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(D), and (k)(2).

### **CAUSE OF ACTION**

#### ***Violations of The District of Columbia Consumer Protection Procedures Act***

88. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), Plaintiffs bring this Count against Washington Gas on behalf of the general public, *i.e.*, D.C. consumers who purchase natural gas and may be targeted by Defendant's marketing claims, for Washington Gas's violation of the CPPA, D.C. Code § 28-3901, *et seq.*

89. Plaintiffs incorporate by reference all the allegations in the preceding paragraphs of this Complaint.

90. Washington Gas represents itself as a sustainable and clean company while significantly contributing to greenhouse gas emissions and the environmental harms that accompany natural gas production and use.

91. Defendant's advertising misrepresents, tends to mislead, and omits facts regarding the characteristics, standard, quality, and grade of their business practices and the products and

services they sell.

92. Washington Gas's products, services, and business practices lack the characteristics, benefits, standards, qualities, or grades that Defendant states and implies in its advertisements.

93. Defendant knowingly did not sell its products and services as advertised.

94. The facts, as alleged above, demonstrate that Washington Gas has violated the CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Washington Gas has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead; . . .
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; . . . [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

95. The CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

96. Plaintiffs need not show proof of deception to succeed on its CPPA claim; nevertheless, upon information and belief, consumers were, in fact, deceived.



97. Plaintiffs have sufficient nexus to the consumers of and Washington Gas's products and services to adequately represent those interests.

98. Because Defendant misrepresents the characteristics and benefits of the products it provides; misrepresents the standard, quality, and grade of the products; and advertises its products and services without the intent to provide them as advertised, Washington Gas's marketing of their services violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

99. Washington Gas is a "person" within the meaning of D.C. Code § 28-3901(a)(1), a merchant under § 28-3901(a)(3), and provides "goods and services" within the meaning of § 28-3901(a)(7).

100. Any consumer has the right to bring an action for redress of Washington Gas's unlawful behavior, *see* D.C. Code § 28-3905(k)(1)(A), and the statute does not limit consumer plaintiffs according to whether they purchased the product at issue. Nevertheless, as alleged in this Complaint, the natural gas products and services are marketed and provided in the District, and consumers within the District have obtained these products under the misrepresentations made by Defendant. Therefore, a variety of purchasing and non-purchasing consumers could bring an action against Washington Gas based on the misrepresentations and omissions listed in this Complaint.

101. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice."

102. The only limitation on this power of a public interest organization to act on behalf of consumers is that the public interest organization must have "sufficient nexus to the interests

involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 22-28, Plaintiffs aim to advocate for and educate the general population, including consumers in the District of Columbia, in the arenas of environmental health, climate change, and pollution. In addition, Plaintiffs have retained the undersigned competent counsel, who have significant experience in litigating under the CPPA, to pursue this action.

103. Via § 28-3905(k)(1)(D)(i), the CPPA allows for public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions, “beyond” the limits of constitutional standing under Article III. *See Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 184-86 (D.C. 2021).

104. Plaintiffs are each a “person” within the meaning of D.C. Code § 28-3901(a)(1) and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

### **PRAYER FOR RELIEF**

*Wherefore*, Plaintiffs pray for judgment against Defendant Washington Gas, and requests the following relief:

- A. a declaration that Washington Gas’s conduct is in violation of the CPPA;
  - B. an order enjoining Washington Gas’s conduct found to be in violation of the CPPA;
- and
- C. an order granting Plaintiffs costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

### **JURY TRIAL DEMANDED**

Plaintiffs hereby demands a trial by jury.

DATED: July 28, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kim E. Richman". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

---

Kim E. Richman (Bar No. 1022978)

**Richman Law & Policy**

1 Bridge Street, Ste. 83

Irvington, NY 10533

Telephone: (212) 687-8291

Facsimile: (212) 687-8292

[krichman@richmanlawpolicy.com](mailto:krichman@richmanlawpolicy.com)

*Attorneys for Plaintiffs*

# Superior Court of the District of Columbia

## CIVIL DIVISION- CIVIL ACTIONS BRANCH

CLIENT EARTH, U.S. PIRG EDUCATION  
 FUND, & ENVIRONMENT AMERICA  
 RESEARCH & POLICY CENTER, \_\_\_\_\_

### INFORMATION SHEET

Case Number: \_\_\_\_\_

vs

Date: July 28, 2022

WASHINGTON GAS LIGHT COMPANY \_\_\_\_\_

One of the defendants is being sued  
 in their official capacity.

Name: <i>(Please Print)</i> <span style="float: right;">Kim E. Richman</span>	Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff
Firm Name: <span style="float: right;">Richman Law &amp; Policy</span>	<input type="checkbox"/> Self (Pro Se)
Telephone No.: <span style="float: right;">Six digit Unified Bar No.:</span> (212) 687-8291 <span style="float: right;">1022978</span>	<input type="checkbox"/> Other: _____

TYPE OF CASE:  Non-Jury       6 Person Jury       12 Person Jury  
 Demand: \$ \_\_\_\_\_ Other: \_\_\_\_\_

**PENDING CASE(S) RELATED TO THE ACTION BEING FILED**

Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_ Calendar #: \_\_\_\_\_

Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_ Calendar#: \_\_\_\_\_

**NATURE OF SUIT: (Check One Box Only)**

**A. CONTRACTS**

**COLLECTION CASES**

- |                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 01 Breach of Contract<br><input type="checkbox"/> 02 Breach of Warranty<br><input type="checkbox"/> 06 Negotiable Instrument<br><input type="checkbox"/> 07 Personal Property<br><input type="checkbox"/> 13 Employment Discrimination<br><input type="checkbox"/> 15 Special Education Fees | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent<br><input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent<br><input type="checkbox"/> 27 Insurance/Subrogation<br><input type="checkbox"/> 07 Insurance/Subrogation<br><input type="checkbox"/> 28 Motion to Confirm Arbitration<br>Award (Collection Cases Only) | <input type="checkbox"/> 16 Under \$25,000 Consent Denied<br><input type="checkbox"/> 18 OVER \$25,000 Consent Denied<br><input type="checkbox"/> 26 Insurance/Subrogation<br><input type="checkbox"/> Over \$25,000 Consent Denied<br><input type="checkbox"/> 34 Insurance/Subrogation<br><input type="checkbox"/> Under \$25,000 Consent Denied |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**B. PROPERTY TORTS**

- |                                                                                                                                                     |                                                                                                            |                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------------|
| <input type="checkbox"/> 01 Automobile<br><input type="checkbox"/> 02 Conversion<br><input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | <input type="checkbox"/> 03 Destruction of Private Property<br><input type="checkbox"/> 04 Property Damage | <input type="checkbox"/> 05 Trespass |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------------|

**C. PERSONAL TORTS**

- |                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 01 Abuse of Process<br><input type="checkbox"/> 02 Alienation of Affection<br><input type="checkbox"/> 03 Assault and Battery<br><input type="checkbox"/> 04 Automobile- Personal Injury<br><input checked="" type="checkbox"/> 05 Deceit (Misrepresentation)<br><input type="checkbox"/> 06 False Accusation<br><input type="checkbox"/> 07 False Arrest<br><input type="checkbox"/> 08 Fraud | <input type="checkbox"/> 10 Invasion of Privacy<br><input type="checkbox"/> 11 Libel and Slander<br><input type="checkbox"/> 12 Malicious Interference<br><input type="checkbox"/> 13 Malicious Prosecution<br><input type="checkbox"/> 14 Malpractice Legal<br><input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death)<br><input type="checkbox"/> 16 Negligence- (Not Automobile,<br>Not Malpractice) | <input type="checkbox"/> 17 Personal Injury- (Not Automobile,<br>Not Malpractice)<br><input type="checkbox"/> 18 Wrongful Death (Not Malpractice)<br><input type="checkbox"/> 19 Wrongful Eviction<br><input type="checkbox"/> 20 Friendly Suit<br><input type="checkbox"/> 21 Asbestos<br><input type="checkbox"/> 22 Toxic/Mass Torts<br><input type="checkbox"/> 23 Tobacco<br><input type="checkbox"/> 24 Lead Paint |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

SEE REVERSE SIDE AND CHECK HERE IF USED

# Information Sheet, Continued

## C. OTHERS

- |                                                                         |                                                                                                             |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 01 Accounting                                  | <input type="checkbox"/> 17 Merit Personnel Act (OEA)                                                       |
| <input type="checkbox"/> 02 Att. Before Judgment                        | (D.C. Code Title 1, Chapter 6)                                                                              |
| <input type="checkbox"/> 05 Ejectment                                   | <input type="checkbox"/> 18 Product Liability                                                               |
| <input type="checkbox"/> 09 Special Writ/Warrants<br>(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,<br>Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication                        | <input type="checkbox"/> 29 Merit Personnel Act (OHR)                                                       |
| <input type="checkbox"/> 11 Writ of Replevin                            | <input type="checkbox"/> 31 Housing Code Regulations                                                        |
| <input type="checkbox"/> 12 Enforce Mechanics Lien                      | <input type="checkbox"/> 32 Qui Tam                                                                         |
| <input type="checkbox"/> 16 Declaratory Judgment                        | <input type="checkbox"/> 33 Whistleblower                                                                   |

## II.

- |                                                                            |                                                                                     |                                                                      |
|----------------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| <input type="checkbox"/> 03 Change of Name                                 | <input type="checkbox"/> 15 Libel of Information                                    | <input type="checkbox"/> 21 Petition for Subpoena<br>[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic                      | <input type="checkbox"/> 19 Enter Administrative Order as<br>Judgment [ D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien                   |
| <input type="checkbox"/> 08 Foreign Judgment/International                 | 2-1802.03 (h) or 32-151 9 (a)]                                                      | <input type="checkbox"/> 23 Rule 27(a)(1)<br>(Perpetuate Testimony)  |
| <input type="checkbox"/> 13 Correction of Birth Certificate                | <input type="checkbox"/> 20 Master Meter (D.C. Code §                               | <input type="checkbox"/> 24 Petition for Structured Settlement       |
| <input type="checkbox"/> 14 Correction of Marriage<br>Certificate          | 42-3301, et seq.)                                                                   | <input type="checkbox"/> 25 Petition for Liquidation                 |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle)  |                                                                                     |                                                                      |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) |                                                                                     |                                                                      |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other)    |                                                                                     |                                                                      |

## D. REAL PROPERTY

- |                                                                      |                                                                          |
|----------------------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> 09 Real Property-Real Estate                | <input type="checkbox"/> 08 Quiet Title                                  |
| <input type="checkbox"/> 12 Specific Performance                     | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted           |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain)            | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied            |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale       | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) |                                                                          |



Attorney's Signature

7/28/22

Date