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Attorneys for Plaintiff
KATHLEEN SMITH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

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

DECLARATION OF HOWARD HIRSCH IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND FOR LEAVE TO AMEND COMPLAINT

Date: March 17, 2022
Time: 1:00 p.m.
Location: Courtroom 2, 4th Floor
Judge: Hon. Haywood S. Gilliam, Jr.

I, Howard Hirsch, declare:

1. I am an attorney with the Lexington Law Group ("LLG"), and I represent Plaintiffs Kathleen Smith and Mathew Downing ("Plaintiffs") in this action. I have personal knowledge of the matters set forth below and, if called upon, I could and would competently testify thereto. I am the attorney who has been principally involved in the prosecution of this litigation and the negotiations that culminated in the Stipulation of Settlement (the "Settlement Agreement" or "Settlement") which is before the Court for preliminary approval. A true and correct copy of the Settlement Agreement, signed by the parties to this case, is attached as **Exhibit 1**.

2. Contemporaneous with Plaintiff Smith's Motion for Preliminary Approval, Plaintiff Smith requests that the Court grant leave to file the Second Amended Complaint, which adds Mathew Downing as a Plaintiff and expands the case to include a putative national class (the "Class"). A true and correct copy of the Second Amended Complaint is attached hereto as **Exhibit 2**. Attached hereto as **Exhibit 3** is a redline reflecting the changes from the First Amended Complaint to the Second Amended Complaint.

3. Along with co-counsel, I negotiated the Settlement on behalf of Plaintiffs and the Class during a series of intensive settlement negotiations with counsel for Defendant Keurig Green Mountain, Inc. ("Keurig" or "Defendant") in this action. The negotiations were adversarial and conducted in good faith at arm's length, and there was no collusion involved. The Settlement resolves Plaintiffs' claims for injunctive relief and class wide damages on a national basis concerning Keurig's allegedly false and misleading labeling of its single serve coffee pods labeled as recyclable (the "Products").

4. Before commencing this action, I and others in my firm spent numerous hours and significant resources investigating and researching the facts of this case and evaluating the relevant law and facts to assess the merits of Plaintiffs' potential claims and to determine how best to serve the interests of Plaintiffs and the Class. Plaintiff Smith's Complaint alleging false recycling representations was the first of its kind at the time and was therefore extremely risky for my firm to pursue on a contingency basis.

5. Extensive discovery was completed prior to briefing on Plaintiff Smith's motion for class certification. Discovery included the production and review of hundreds of thousands of pages of documents from parties and non-parties, preparing for and defending Ms. Smith's deposition, taking Rule 30(b)(6) depositions of Keurig employees, and serving and responding to over a hundred discovery requests. In addition, Plaintiff Smith served subpoenas on over twenty-five non-parties. I conducted multiple meet and confer efforts with Keurig and filed joint discovery letters and other requests for resolution of discovery disputes before this Court. Furthermore, Plaintiffs obtained vital information from Keurig and non-parties in discovery pertaining to the legitimacy and scope of their claims, including information regarding the Products' labels and sales, and information regarding the recyclability of the Products. Likewise, Plaintiff Smith provided Keurig with discovery and data demonstrating the strength of her claims. This exchange of information ensured sophisticated and meaningful settlement negotiations, which were conducted over several years.

6. On September 9, 2020, Mathew Downing filed a class action complaint in the United States District Court of Massachusetts alleging substantially similar claims as Plaintiff Smith but on behalf of both a Massachusetts subclass and a national class. *See Downing v. Keurig Green Mountain, Inc.*, No. 1:20-cv-11673-IT, (D. Mass) (Dkt. No. 1). On December 12, 2020, Keurig filed a motion to dismiss in that case along with a motion to strike the national class allegations. On June 11, 2021, the Massachusetts District Court denied Keurig's motion to dismiss, but granted Keurig's motion to strike the nationwide class. *See Downing v. Keurig Green Mountain, Inc.*, No. 1:20-cv-11673-IT, 2021 WL 2403811 (D. Mass. June 11, 2021). Plaintiff Downing filed a petition for permission to appeal the court's ruling striking allegations on behalf of a nationwide class, and that petition remains pending in the First Circuit.

7. The parties have engaged in periodic settlement discussions throughout the pendency of this litigation, including two full-day mediation sessions. On May 11, 2021, the parties and their counsel participated in their first full-day mediation with Hon. Morton Denlow (Ret.). The parties did not settle; however, the parties made significant progress towards resolving

Plaintiffs' claim for injunctive relief. The parties and their counsel then participated in multiple conference calls with Hon. Morton Denlow. On September 21, 2021, the parties and their counsel participated in a second full-day mediation with Hon. Morton Denlow. While the parties did not fully settle the case, they made additional progress. On October 27, 2021, after further discussions with the parties and their counsel, the parties executed a settlement term sheet and requested the Court to stay all proceedings and set a deadline for the present motion.

8. The proposed Settlement prohibits Keurig from labeling, marketing, advertising, or otherwise representing that the Products are recyclable (through use of the word "Recycling" or any variation thereof or through the conspicuous use of the Chasing Arrow symbol or any variation thereof) without clearly and prominently including a revised qualifying statement, "Check Locally – Not Recycled in Many Communities." This qualifier must appear in close proximity to any representation regarding recycling and in a font size no smaller than 55% of the font size of any recyclable representation. This new qualifying language clearly puts consumers on notice that the Products are not recyclable in many communities, and it is at least 20% larger than its current qualifier to ensure that consumers actually notice and read the qualification. The labels of the Products purchased by Plaintiffs boldly proclaimed in large type, "Have your cup and recycle it, too," and had no qualifying language other than "Check locally to recycle empty cup."

9. In addition, because Keurig makes non-label recyclability representations and Keurig's labels cross-reference its website for more information about the recyclability of the Products, the Settlement also addresses the content of Keurig's website (and other forms of advertising) to ensure consumers are not misled into believing the Products are recyclable everywhere. For example, Keurig's website currently states, "Our new pods are made of polypropylene #5 plastic, which is accepted for recycling in the majority of communities across the United States," which could lead a consumer to believe that any community that accepts #5 plastic accepts the Products for recycling. To redress this, the Settlement requires Keurig to include qualifying language or context indicating that not all communities that accept #5 plastic currently accept coffee pods or other small format items. In addition, in any video content

referencing the recyclability of the Products, the revised qualifier will appear at the same time as the recycling representation in such video content in a sufficiently large font, and for a sufficient duration, as to make it capable of being read by a reasonable viewer. The Settlement also addresses Keurig's publicly available corporate responsibility and sustainability reports, requiring Keurig to use the new qualifications on any page referencing the recyclability of the Products.

10. While Plaintiffs are not required to estimate the value of the injunctive relief, one possible measure is to take the total settlement amount of $10 million and divide it over the 68-month class period, which results in a monthly benefit of $147,059 going forward. This would increase the settlement value by approximately $1,764,708 each year. Assuming Keurig complies with the Settlement for five years, it would increase the settlement value by approximately $8,823,540, and if Keurig complies with the Settlement for ten years it would increase the settlement value by approximately $17,647,080. Plaintiffs are not claiming that this added benefit changes the calculation for the amount of the settlement fund; however, Plaintiffs do believe that this additional relief to consumers should be considered in evaluating the Settlement.

11. The proposed Settlement also provides for the non-reversionary payment of ten million dollars ($10,000,000) in cash for the benefit of the Class (the "Settlement Fund").

12. Keurig charged approximately $6.40 for ten (10) single-serve coffee pods during the relevant time period.[1] While hotly disputed by Keurig, Plaintiff Smith's expert calculated national damages at $91 million during the relevant time period, and the average recovery a Class member would have recovered had Plaintiffs prevailed at trial would be approximately $0.10 per 10 pods.

13. Under the terms of the proposed Settlement, Class members who submit claim forms are eligible to receive $5.00 per household without proof of payment. For those with proof of purchase, Class members may obtain $0.35 per 10 pods purchased for a maximum of $36.00

[1] On Keurig.com, Defendant charges approximately $54 for a 96ct of the Products ($5.60 per 10 pods), $43 for a 72ct ($5.90 per 10 pods), $16 for a 24ct ($6.60 per 10 pods), and $9 for a 12ct ($7.50 per 10 pods). See, https://www.keurig.com/beverages/k-cup/c/kCup?cm_sp=k-cup-pods-_-Top-Nav-_-kcup101. Thus, on average, Keurig sells 10 pods for approximately $6.40.

per household (and a minimum of $6.00). Proof of purchase may include receipts, email orders, or shipping confirmations. Customers did not purchase pods individually but instead purchased pods in packages that typically contained dozens of pods per package; therefore, the benefit provided by the settlement with proof of purchase may be substantial for any Class members who kept records of their purchases. Thus, under the Settlement, each Class member will obtain a better recovery than the class would have obtained had Plaintiffs prevailed at trial.

14. While not included as a Settlement term, Keurig began modifying the Products in 2021 after this litigation was pending to include a more easily peelable lid to make the Products more likely to be successfully recycled, which Plaintiffs had also urged Keurig to do throughout the litigation. *See* First Amended Complaint ¶ 23 ("[W]hile Defendant instructs consumers to 'peel [the] lid and dispose,' the foil lid on the Products is extraordinarily difficult to remove as the foil sticks to the edge of the plastic cup and there is no extra tab (as one would find on a yogurt container, for instance) to use to peel off the lid."); *see also* Settlement § II.K ("Since the Action was filed, Keurig has made changes to some of the business practices at issue in the Action, including changing the design of the Challenged Products to make it easier for consumers to remove the foil lid prior to placing the remaining beverage pods in their recycling bin.").

15. In exchange for Keurig's agreement to change its business practices, including modification of the labels on the Products, and to provide $10 million for the benefit of the Class, the Settlement releases Keurig from all claims for injunctive and monetary relief arising out of Keurig's representations that the Products are recyclable.

16. Class counsel intends to request an attorney fee award not to exceed 30% of the Settlement Amount ($3,000,000), plus out-of-pocket expenses, currently estimated at $525,000. As of January 31, 2021, counsel had devoted 5,465 hours to litigating this action, for a lodestar of $2,701,200. Plaintiffs have already spent additional time finalizing the Settlement and preparing the approval papers in February and will assuredly expend significant additional attorney resources between now and the final approval hearing (and likely thereafter for class member support). Class counsel will submit support for the attorneys' fee and costs award called for by

the Settlement in connection with the hearing for final approval of the Settlement.

17. Plaintiff Smith has provided my firm with significant assistance in litigating and resolving this case. She has taken her job as a representative of the proposed class very seriously and spent more than three years prosecuting this action. She has spent many hours reviewing pleadings, responding to discovery requests, reviewing and producing documents, sitting for an all-day deposition, conferring with class counsel in person, by telephone and by email, and attending and actively participating in both mediation sessions. In addition, this case drew unwanted press attention to Plaintiff Smith. For example, the New York Times published a video that depicted Plaintiff Smith (dubbed "Grandma Coffee" in the video) as a ghoul-like cartoon figure.[2] Given the time she has spent and her diligence and commitment, I believe Plaintiff Smith is deserving of an incentive award of $5,000.

18. Although Plaintiff Downing's case has not progressed as far as Plaintiff Smith's case (hence the smaller proposed incentive award for him), Mr. Downing has assisted his counsel in investigating the case, reviewing pleadings, and consulting with his attorneys concerning case and settlement strategy. Given the time he has spent and his diligence and commitment, I believe Plaintiff Downing is deserving of an incentive award of $1,000.

19. LLG is a private law firm that has been successfully pursuing cases on behalf of consumers and public interest groups for over two decades. LLG has represented numerous parties in civil actions of various types and degrees of complexity, including many cases brought as class actions. The LLG's attorneys have substantial experience in false advertising and unfair competition matters, and with the legal and factual issues of this case in particular. The following is a representative sampling of some of the cases LLG has successfully litigated or is currently involved in:

a) *Ambrose v. The Kroger Co.*, Case No. 10-cv-04009-EMC (N.D. Cal.). Class counsel in greenwashing case involving disposable plates and bowls labeled as compostable

[2] https://www.nytimes.com/2019/12/09/opinion/recycling-myths.html

that contained perfluoroalkyl and polyfluoroalkyl substances ("PFAS") that prevented the products from being compostable. Settlement resulted in removal of "compostable" label until the products are reformulated to remove the PFAS.

b) *Southern California Gas Leak Cases*, Related Case No. BC61219 (Los Angeles County Super. Ct.). Counsel in class action involving natural gas leak in Southern California. Settlement required defendant to provide real-time warnings to those in community regarding the health impacts of chemicals present in natural gas as well as installation of benzene monitoring equipment.

c) *Brown v. Hain Celestial Group*, Case No. CV-11-03082 LB (N.D. Cal.). Class counsel in greenwashing case involving fake organic personal care products. Settlement resulted in reformulation or labeling of Jason and Avalon brand products and $7.5 million in cash to consumers, as well as $1.85 million in coupons.

d) *Zepeda v. Paypal*, Case No. C 10-25 SBA (N.D. Cal.). Co-lead counsel in class action case against Paypal, the world's largest payment processing service, alleging placement of unauthorized holds on sellers' accounts. Settlement resulted in changes to business practices and $3.2 million in cash to consumers.

e) *Golloher, et al. v. Todd Christopher International, Inc.*, Case No. CV-12-06002 (N.D. Cal.). Class counsel in case involving misrepresentation of non-organic cosmetic products as organic. Case resulted in national change to "Organix" brand name and $6.5 million in cash to consumers.

f) *Stephenson, et al. v. Neutrogena Corporation*, Case No. C 12-00426 PJH (N.D. Cal.). Class Counsel in case involving misrepresentation of cosmetic products as "natural." Case resulted in changes to business practices and $1.3 million in cash to consumers.

g) *In re WellPoint Out of Network UCR Rates Litigation*, Case No. MDL 2074 (J.P.M.L.). Interim Class Counsel in antitrust case against health insurer alleging conspiracy to artificially reduce reimbursements on "out of plan" claims by policy holders through the use of the fraudulent Ingenix database.

h) *In re Comcast Peer to Peer (P2P) Transmission Contract Litigation*, Case No. 2:08-md-01992 (E.D. Pa.). Class Counsel in class action against Comcast for alleged breach of contract and false advertising arising from interference with subscribers' use of peer to peer file sharing applications. Case resulted in changes to business practices and $16 million in cash for consumers.

i) *Foundation Aiding the Elderly, et al. v. Covenant Care, GranCare, and Ember Care*, Case Nos. RG03087211, RG03083528, and RG03087224 (Alameda County Super. Ct.). Co-counsel for plaintiffs in class and private attorney general action on behalf of residents of understaffed nursing homes. Plaintiffs' cases included false advertising claims based on defendants' failure to disclose that their nursing homes are not adequately staffed.

j) *In re Tobacco Cases II*, Case No. JCCP 4042 (San Diego County Super. Ct.). Counsel for City of San Jose in action alleging claims under Proposition 65 and Unfair Competition Law for failure to warn regarding dangers of secondhand smoke exposure.

k) *Robins v. US Airways, Inc.*, Case No. CGC-07-460373 (San Francisco County Super. Ct.). Class counsel in class action alleging breach of contract on behalf of internet customers of airline. Case resulted in changes to business practices and cash refunds for class members.

l) *Dervaes v. California Physicians' Service*, Case No. RG-06262733 (Alameda County Super. Ct.). Counsel for plaintiff in class case challenging health insurer's unilateral mid-year increase to calendar-year costs. Case resulted in changes to business practices and over $2 million in cash for consumers.

20. Attached hereto as **Exhibit 4** is a true and correct copy of LLG's firm resume. In addition, attached hereto as **Exhibit 5** is a true and correct copy of Shapiro Haber & Urmy LLP's firm resume, the firm that has been litigating this case on behalf of Mathew Downing in Massachusetts.

21. The Settlement Fund will be administered by Kroll Settlement Administration ("Kroll" or "Claims Administrator")– an independent, qualified company – which shall approve

claims submitted by affected members of the class in accordance with a clear and objective procedure and subject to verification by the parties. Attached hereto as **Exhibit 6** is a true and correct copy of the Declaration of Jeanne C. Finegan ("Finegan Decl.") describing the notice plan.

22. The Settlement also complies with the Northern District of California's "Procedural Guidance for Class Action Settlements." See below for compliance with the Guidelines:

23. Information about the Settlement

a. If a litigation class has not been certified, any differences between the settlement class and the class proposed in the operative complaint and an explanation as to why the differences are appropriate in the instant case.

Since the Class has been certified, this item is not addressed.

b. If a litigation class has been certified, any differences between the settlement class and the class certified and an explanation as to why the differences are appropriate in the instant case.

The primary difference between the class that the Court certified and the proposed settlement class is the scope of the class. The Court certified a California only class; however, the Settlement expands the class to encompass all purchasers of the Products in the United States (the "Settlement Class"). Here, it is appropriate to include and award settlement proceeds to those consumers who were exposed to the same recyclable claims and practices as Plaintiffs and the certified class throughout the United States.

c. If a litigation class has not been certified, any differences between the claims to be released and the claims in the operative complaint and an explanation as to why the differences are appropriate in the instant case.

Since the Class has been certified, this item is not addressed.

d. If a litigation class has been certified, any differences between the claims to be released and the claims in the operative complaint and an explanation as to why the differences are appropriate in the instant case.

There is no difference between the claims to be released and the claims in the Second

Amended Complaint other than the scope of the release expanding from a California class to a national class as described above.

e. The anticipated class recovery under the settlement, the potential case recovery if plaintiffs had fully prevailed on each of their claims, and an explanation of the factors bearing on the amount of the compromise.

The Settlement Fund component amounts to a total settlement value to the Settlement Class of $10 million. Plaintiffs have not calculated the value of the injunctive relief component, but Keurig has indicated that modifying the labels, advertisements, and marketing materials for the Products nationwide will be a costly process, which benefits the Settlement Class. In addition, Keurig began modifying the Products in 2021 to include a more easily peelable lid for the purpose of making the Products more recyclable, which Plaintiffs had urged Keurig to do throughout this litigation and during settlement negotiations.

Based on Plaintiffs' damages analysis, which is hotly disputed by Keurig, the average recovery a class member would recover had Plaintiffs prevailed at trial would be approximately $0.10 per 10 pods. Under the Settlement, each Settlement Class member can do better by obtaining $0.35 per 10 pods with proof of payment, up to $36.00 per household (and a minimum of $6.00). And any Settlement Class member can recover $5.00 without proof of purchase. Such a recovery, which can be obtained through a simple claims process, is in line with, if not better than, other mislabeling settlements approved in this District, including mislabeling on food and beverages. *See, e.g.*, *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588 (N.D. Cal. 2020) (final approval of $6.5 million settlement); *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094 (N.D. Cal. Feb. 20, 2015) (final approval of $5.25 million settlement); *Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531 (N.D. Cal. July 11, 2014) (final approval of $3.375 million settlement); *Zeizel v. Diamond Foods, Inc.*, No. C 10-01192 JSW, 2012 WL 4902970 (N.D. Cal. Oct. 16, 2012) (final approval of $2.6 million settlement); *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-cv-03082, 2016 U.S. Dist. LEXIS 20118 (N.D. Cal. Feb. 18, 2016) (final approval of $7.5 million cash and $1.85 million in coupons settlement).

In addition, based on sales data provided confidentially by Defendant, Plaintiff Smith's expert calculated national damages at $91 million during the relevant time period. Accordingly, the $10 million proposed settlement would amount to more than 10% of the nationwide recovery under Plaintiffs' theories and methodologies.

For an explanation of the factors bearing on the amount of the compromise, please refer to Section III.D in the Memorandum of Points of Authorities.

f. The proposed allocation plan for the settlement fund.

Settlement Class members who complete and submit a claim form will be eligible to receive a cash payment. Specifically, each Settlement Class member is eligible to obtain $5.00 back without proof of purchase. Further, each Settlement Class member can obtain up to $36.00 at $0.35 per 10 pods with proof of payment (and a minimum of $6.00).

g. If there is a claim form, an estimate of the number and/or percentage of class members who are expected to submit a claim in light of the experience of the selected claims administrator and/or counsel from other recent settlements of similar cases, the identity of the examples used for the estimate, and the reason for the selection of those examples.

There is a claim form. Based on the considerable class action experience of class counsel and review of similar consumer product class actions, I anticipate a claim rate of 1-7%. *See, e.g.*, *In re Tiktok, Inc., Consumer Privacy Litig.*, MDL No. 2948; Master Docket No. 20 C 4699, U.S. Dist. LEXIS 188949, at *38 fn. 6 (the average claims rate for classes above 2.7 million class members is less than 1.5%.) (citations omitted); *Ferrington v. McAfee, Inc.*, 2012 U.S. Dist. LEXIS 49160, at *13 (N.D. Cal. Apr. 6, 2012) ("[T]he prevailing rule of thumb with respect to consumer class actions is a [claims rate of] 3-5 percent"); *In re Toys R Us-Del,m Inc. Fair & Accurate Credit Transaction Act (FACTA) Litigation*, 295 F.R.D. 432, 468 fn. 134 (C.D. Cal. 2014) (citing authority that claim rates in consumer litigation generally range from two to 20 percent, but when direct notice is not possible for the entire class, the claim rate may be depressed); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 325 (C.D. Cal. 2016) (noting varying

claims rate due to lack of direct notice to approximately half the settlement class).[3]

In addition, Kroll's notice proposal estimates that at least 100,000 claims might be filed. Finegan Decl. ¶ 34.

h. In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designed for class recovery will revert to any defendant, the potential amount or range of amounts of any such reversion, and an explanation as to why a reversion is appropriate in the instant case.

There is no reversion.

24. Settlement Administration

The Settlement Fund will be administered by Kroll – an independent, qualified company – which shall approve claims submitted by affected members of the class in accordance with a clear and objective procedure and subject to verification by the parties. Before selecting Kroll as the Claims Administrator, I solicited bids from two potential notice administrators and engaged in negotiations for the benefit of the proposed Class. I carefully considered each bid, evaluating each administrator's assumptions, experience, and pricing. Kroll offered reasonable pricing, extensive experience in class actions, and a cost-effective publication notice program. Kroll has estimated that it will cost approximately $425,000 to fully notice and administer the Settlement in this action, and the Settlement caps the notice and administration costs at $500,000.

25. Notice

The parties have ensured that the class notice is easily understandable and have incorporated all the recommended and/or mandatory language included in the Northern District's Guidelines. Finegan Decl. ¶ 30. The notice includes: (1) contact information for class counsel to

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[3] *See also* Shannon Wheatman and Tiffaney Janowicz, "What We've Noticed: Estimating Claims – What Every Attorney Should Know." Rust Consulting (Feb. 2015), at https://www.rustconsulting.com/Portals/0/Insights/Estimating%20Claims_RustKinsella_WWN.pdf (last visited February 3, 2022) (noting 0-2% claims rate for consumer claims filing where only publication notice is provided but increasing to 3-10% when direct notice is available).

answer questions; (2) the address for a website, maintained by the Claims Administrator or class counsel, that has links to the notice, motions for approval and for attorneys' fees and any other important documents in the case; (3) instructions on how to access the case docket via PACER or in person at any of the court's locations. The notice also states the date of the final approval hearing and clearly states that the date may change without further notice to the class.

26. Opt-Outs

The notice instructs class members who wish to opt out of the settlement to send a letter, setting forth their name and information needed to be properly identified and to opt out of the settlement, to the settlement administrator and/or the person or entity designated to receive opt outs. The notice requires only the information needed to opt out of the settlement and no extraneous information. The notice clearly advises class members of the deadline, methods to opt out, and the consequences of opting out.

27. Objections

The method for objections complies with Federal Rule of Civil Procedure 23(e)(5). The notice instructs class members who wish to object to the settlement to send their written objections only to the Court. The notice makes clear that the Court can only approve or deny the settlement and cannot change the terms of the settlement. The notice clearly advises Settlement Class members of the deadline for submission of any objections. The parties have incorporated all the recommended and/or mandatory language included in the Northern District's Guidelines.

28. Attorneys' Fees

Counsel intends to request an attorneys' fees award not to exceed 30% of the Settlement Amount ($3,000,000), plus out-of-pocket expenses, currently estimated at $525,000.

As of January 31, 2021, counsel had devoted 5,465 hours to litigating this action, for a lodestar of $2,701,200. Plaintiffs have already spent additional time finalizing the Settlement and preparing the approval papers in February and will assuredly expend significant additional attorney resources between now and the final approval hearing (and likely thereafter for class member support).

Class counsel's work and success in this case merits a potential upward adjustment of up to 30% and I believe that any lodestar cross-check will support Plaintiffs' requested adjustment. Plaintiffs' theory of the case—that the Products are not recyclable based on the Federal Trade Commission's Guides for Environmental Marketing Claims and California's Environmental Marketing Claims Act—was the first of its kind, remains largely untested, and was therefore extremely risky for class counsel. Class counsel handled this case on a contingency basis and class counsel's skill and effort produced an extraordinary result against top-tier defense, including meaningful injunctive relief and a substantial cash fund. Class counsel spent an enormous amount of time litigating this case for over three years, including procuring certification of a class of purchasers, a significant victory that paved the way for the Settlement. Accordingly, depending on their lodestar at the time of the fee application, Plaintiffs intend to request attorneys' fees between 25-30% of the total settlement fund of $10 million, as well as their costs, currently estimated at $525,000. The types of expenses that Counsel seek reimbursement for are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, service of process, experts and consultant fees, mediation costs, online legal and factual research, reproduction costs, and messenger, courier and overnight mail expenses. These expenses were critical to counsel's success in not only obtaining class certification, but also in achieving this Settlement.

29. Incentive Awards

Plaintiff Smith seeks an incentive/service award in the sum of $5,000 and Plaintiff Downing seeks an incentive/service award in the sum of $1,000. For an explanation of why these amounts are justified, please refer to Section III.C in the Memorandum of Points of Authorities.

30. Cy Pres Awards

Any unclaimed settlement proceeds will be remitted under the *cy pres* doctrine to The Ocean Conservancy (75% of unclaimed funds) and Consumer Reports, Inc. (25% of unclaimed funds) for use in a manner that will provide the next best use of compensation to Settlement Class members arising out of claims that have been made by Plaintiffs in this action. The Ocean

Conservancy's mission is to protect the ocean from global challenges by creating science-based solutions for a healthy ocean and the wildlife and communities that depend on it. The Ocean Conservancy has a program titled Fighting for Trash Free Seas centered on ending the flow of plastic into the ocean. The Ocean Conservancy estimates that it has collected 341,836,857 pounds of trash, including plastic, from the ocean since 1986.[4] As this case concerns plastic pollution in part due to the labeling of plastic products as recyclable that are not in fact recycled, there is a close correlation between the Ocean Conservancy's mission and the facts that give rise to the instant action.

Consumer Reports (formerly known as Consumers Union) advocates to ensure that consumers can make informed choices and influence the marketplace. Consumer Reports stands by the principle that consumer products and services must be safe, effective, reliable, and fairly priced. It advocates for truth and transparency wherever information is hidden or unclear and it pushes companies to address and remedy issues quickly with their products and services.[5] As this case concerns consumer deception due to the labeling of products as recyclable, there is a close correlation between Consumer Reports' mission and the facts that give rise to the instant action.

31. Timeline

The parties have ensured that class members have at least thirty-five days to opt out or object to the settlement and the motion for attorney's fees and costs.

32. Class Action Fairness Act ("CAFA")

The Settlement requires the settlement administrator to provide CAFA notice in accordance with 28 U.S.C. 1715 *et seq.* to the Attorney General of the United States and the attorneys general of each State or territory in which Settlement Class Members reside.

33. Past Distributions

Class counsel's firm provides the following information about a recent class action in table

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[4] For more information about The Ocean Conservancy, visit https://oceanconservancy.org/about/.

[5] For more information about Consumer Reports, visit https://www.consumerreports.org/cro/about-us/what-we-do/advocacy/index.htm.

format as suggested in the Northern District's Guidelines:

Golloher, et al. v. Todd Christopher International, Inc., Case No. CV-12-06002 (N.D. Cal.)	
Total Settlement Fund	$6.5 million
# of Class Members	Unspecified
# Class Members Sent Notice	Publication Notice – N/A
Method of Notice	Publication
#/% of Claim Forms	68,368 claims
Average Recovery/Class Member	$25
Distribution to Each Cy Pres Recipient	Approximately $1 million
Notice and Administration Costs	$650,000
Attorneys' Fees and Costs	$1.625 million

34. Electronic Versions

Electronic versions (Microsoft Word or WordPerfect) of all proposed orders and notices are herein submitted to the presiding judge's Proposed Order (PO) email address.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 24, 2022, at San Francisco, California.

/s/ Howard Hirsch
Howard Hirsch

Exhibit 1

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KEURIG GREEN MOUNTAIN, INC.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

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

CLASS ACTION

STIPULATION OF SETTLEMENT

Judge: Hon. Haywood S. Gilliam, Jr.

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This Stipulation of Settlement is made and entered into by Plaintiff Kathleen Smith, on behalf of herself, and all others similarly situated, and Defendant Keurig Green Mountain, Inc.

I. DEFINITIONS

A. As used in this Stipulation, the following capitalized terms have the meanings specified below:

1. "Action" means the case entitled *Smith v. Keurig Green Mountain, Inc.* removed from the Alameda County Superior Court on November 2, 2018, to the United States District Court for the Northern District of California and assigned Case No. 4:18-CV-06690-HSG.

2. "Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of the definition, "control" means (a) with respect to any corporation or other entity having voting shares or the equivalent and elected directors, managers, or Persons performing similar functions: (i) the ownership or power, directly or indirectly, to vote more than fifty percent (50%) of shares or the equivalent having the power to vote in the election of such directors, managers or Persons performing similar functions, or (ii) the ability, directly or indirectly, to direct its business and affairs, and (b) with respect to any other Person: the ability, directly or indirectly, to direct its business and affairs.

3. "Approved Claim(s)" means the claims of Class Members approved by the Claim Administrator.

4. "Cash Payment" means the $10 million to be paid by Defendant to be used for payment of the following: (1) Class Members' claims; (2) notice and administration costs, including expenses related to maintaining the Cash Payment Account (such as taxes that may be owed by the Cash Payment Account), if any; (3) attorneys' fees and costs; and (4) incentive awards to Plaintiffs. The Cash Payment Account shall be administered by the Claim Administrator.

5. "Cash Payment Account" means a bank account to be selected and administered by the Claim Administrator that shall hold the Cash Payment.

6. "Cash Payment Balance" means the balance of the Cash Payment at the end of the Claim Review Period, consisting of the $10 million paid as the Cash Payment minus: (i) up to $500,000 for Claim Administrator's notice and administration costs, including expenses related to maintaining the Cash Payment (such as taxes that may be owed on the Cash Payment), if any; (ii) attorneys' fees and costs; and (iii) incentive awards to Plaintiffs.

7. "Challenged Products" shall mean any and all single serve coffee pods designed for use in Keurig® single serve coffee makers or brewing systems that are (a) labeled as recyclable; (b) sold in the United States; and (c) produced, sold, or distributed by Defendant or its Affiliates or produced by Defendant or its Affiliates for third parties, a non-exhaustive list of which is provided in Exhibit I.

8. "Claim Administrator" means the independent company agreed upon by the Parties to provide the Class and Publication Notice and administer the claims process, the Request for Exclusion process, the Settlement Website, and other responsibilities as outlined herein. The Parties agree that Kroll Business Services will be retained as the Claim Administrator.

9. "Claim Form" means the form that is substantially in the form of Exhibit F hereto.

10. "Claim Review Period" means the three-month period beginning no later than 10 days after the Effective Date.

11. "Claim Submission Period" means the period beginning on the date notice to the Class is first published, and continuing until 30 days after the date of the Final Approval Hearing. Claim Forms must be postmarked via United States First Class Mail or submitted to the Settlement Website by 11:59 p.m. Pacific time on the last day of the Claim Submission Period to be considered timely.

12. "Class" and/or "Class Members" means all Persons in the United States who purchased the Challenged Products for personal, family or household purposes within the Class Period. Specifically excluded from the Class are (a) Defendant, (b) Defendant's Affiliates, (c) the officers, directors, or employees of Defendant and its Affiliates and their immediate family

members, (d) any legal representative, heir, or assign of Defendant, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

13. "Class Counsel" means the attorneys of record for Plaintiffs in the Action.

14. "Class Notice" means the "Notice of Class Action Settlement" substantially in the same form as Exhibit E attached hereto.

15. "Class Notice Package" means the information as approved in form and content by Class Counsel and Defendant's Counsel and to be approved by the Court. Class Notice Packages will include (a) the Class Notice and (b) the Claim Form.

16. The "Class Period" is the period from June 8, 2016, to the date notice to the Class is first published.

17. "Court" means the U.S. District Court for the Northern District of California.

18. "Defendant" means Keurig Green Mountain, Inc., also referred to herein as "Keurig."

19. "Defendant's Counsel" or "Keurig's Counsel" means Creighton Magid and Kent Schmidt of Dorsey & Whitney, LLP.

20. "Distribution Plan" means a written declaration regarding the final accounting and plan of distribution prepared by the Claim Administrator, identifying (a) each claimant whose claim was approved, including the dollar amount of the payment awarded to each such claimant, and the dollar amount of any pro rata reduction required by Section III.B.5; (b) each claimant whose claim was rejected; (c) the average and median recovery per claimant and the largest and smallest amounts paid to claimants, (d) the number and value of checks not cashed, (e) the dollar amount of the Cash Payment Balance to be disbursed to the recipient(s) as provided in Section III.B.6; and (f) a final accounting of all administration fees and expenses incurred by the Claim Administrator.

21. "Downing" means Matthew Downing, plaintiff in the Massachusetts Action.

22. "Email Notice" means information as approved in form and content by Class Counsel and Defendant's Counsel and to be approved by the Court, substantially in the form of Exhibit C.

23. "Effective Date" means the date described in Section VII.A.

24. "Final Approval Hearing" means the hearing to be held by the Court to consider and determine whether the proposed settlement of the Action as contained in this Stipulation should be approved as fair, reasonable, and adequate, and whether the Final Settlement Order and Judgment approving the settlement contained in this Stipulation should be entered.

25. "Final Settlement Order and Judgment" means an order and judgment entered by the Court:

(a) Giving final approval to the terms of this Stipulation as fair, adequate, and reasonable;

(b) Providing for the orderly performance and enforcement of the terms and conditions of the Stipulation;

(c) Dismissing the Action with prejudice;

(d) Discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties; and

(e) Permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in the California Superior Courts, any other state court, any federal court, before any regulatory authority, or in any other court, tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims that would be released and discharged upon final approval of the Settlement as provided in Sections IV.A and B of this Stipulation.

(f) The actual form of the Final Settlement Order and Judgment entered by the Court will be substantially in the form attached hereto as Exhibit G.

26. "Household" means any number of Persons cohabitating and related by blood or marriage in the same dwelling unit or physical address.

27. "Massachusetts Action" means the case entitled *Downing v. Keurig Green Mountain, Inc.*, Case No. 1:20-cv-11673, filed in the United States District Court for the District of Massachusetts on September 9, 2020.

28. "Noncompliant Partner Brand" means a Partner Brand whose Challenged Products do not comply with Section III.A herein after the compliance dates set forth in said Section III.A.

29. "Noncompliant Partner Brand Products" means the Challenged Products of a Noncompliant Partner Brand.

30. "Notice Plan" or "Notice Program" means the plan for dissemination of the Publication Notice and Class Notice Package as described in Section VI developed by the Claims Administrator to notify the Class of the Settlement and to command the Class Members' attention about their rights under the Settlement.

31. "Parties" means Plaintiffs and Defendant.

32. "Partner Brand" means an entity (a) other than Defendant or an Affiliate of Defendant for whom Defendant or an Affiliate of Defendant manufactures Challenged Products but (b) that has a right to approve or disapprove package labeling for Challenged Products and that has rights to sell and/or distribute Challenged Products in one or more distribution channels.

33. "Person" means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

34. "Plaintiff" means Kathleen Smith and, subject to the Court's approval of Section V herein, "Plaintiffs" means Kathleen Smith and Matthew Downing.

35. "Preliminary Approval Order" means the "Order Granting Preliminary Approval of Class Action Settlement," substantially in the form of Exhibit A, granting preliminary approval to this Settlement consistent with Rule 23(e)(1); approving Class Notice to

the Class Members as described herein; and setting a hearing to consider final approval of the Settlement and any objections thereto.

36. "Publication Notice" means information as approved in form and content by Class Counsel and Defendant's Counsel and to be approved by the Court, substantially in the form of Exhibit B.

37. "Recycling Representation" means any representation to any third party (in any labeling, marketing, advertising or otherwise) that the Challenged Products are recyclable (through use of the word "Recycling" or any variation thereof or through the conspicuous use of the Chasing Arrow symbol or any variation thereof).

38. "Rejected Claims" means all claims of Class Members rejected by the Claims Administrator.

39. "Released Claims" means those claims released pursuant to Section IV.A and B of this Stipulation.

40. "Released Parties" means Defendant, Defendant's Affiliates, Partner Brands, Defendant's licensors, suppliers, distributors, wholesalers, and retailers, and each of their parents, affiliated and subsidiary companies and all of their agents, employees, partners, predecessors, successors, assigns, insurers, attorneys, officers, directors, managers, members, shareholders, and insurers. For the avoidance of doubt, Released Parties shall include all Persons in the stream of commerce for the labeling, marketing, sale, and/or distribution of the Challenged Products.

41. "Releasing Parties" means Plaintiffs, individually and as representatives of all those similarly situated, and all Class Members other than those Class Members who properly and timely exclude themselves through a Request for Exclusion pursuant to Section VI.D., and including any Person claiming derivative rights of such a Releasing Party as their parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee or affiliate.

42. "Request for Exclusion Deadline" means 45 days prior to the Final Approval Hearing.

43. "Request for Exclusion" means a request by a Class Member to be excluded from this Settlement made on the Request for Exclusion Form and delivered to the Claims Administrator by the Request for Exclusion Deadline in accordance with the terms of this Stipulation.

44. "Request for Exclusion Form" means the form to be used for a Request for Exclusion in the form attached as Exhibit J.

45. "Settlement Recycling Representation" means any representation made to any third party (in any labeling, marketing, advertising or otherwise) in accordance with the terms set forth in Section III.A herein.

46. "Settlement Website" means the website established by the Claim Administrator that will contain documents relevant to the settlement, including the Class Notice Package. Claim Forms may be submitted by Class Members via the Settlement Website as provided in the Class Notice Package.

47. "Stipulation of Settlement,""Stipulation" and/or "Settlement" means this Stipulation of Settlement, including its attached exhibits (which are incorporated herein by reference), duly executed by Plaintiffs, Class Counsel, Defendant and Defendant's Counsel.

48. "United States" means all of the United States of America, including all states, the District of Columbia, and its territories and possessions.

B. Capitalized terms used in this Stipulation, but not defined above, shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

II. RECITALS

A. On September 28, 2018, Plaintiff Smith filed an initial complaint in the Alameda County Superior Court. Smith alleged claims under California consumer protection statutes for injunctive and monetary relief on behalf of a class of similarly situated consumers who purchased the Challenged Products based on purported representations that such products were "recyclable" when they were allegedly not recyclable. Specifically, Plaintiff Smith's complaint alleged that

Keurig misleadingly represented the Challenged Products as recyclable in violation of: (1) the unlawful, unfair, and fraudulent prongs of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (2) the California Consumers Legal Remedies Act ("CLRA"), Cal. Civil Code §§ 1750 *et seq.*; (3) the express-warranty provisions of California's Commercial Code, Cal. Com. Code § 2313; and (4) California unjust enrichment law. Class Counsel confirm that before commencing the Action, they conducted an examination and evaluation of the relevant law and facts to assess the merits of the claims and to determine how to best serve the interests of the members of the Class.

B. On November 2, 2018, Defendant removed Plaintiff Smith's action to this Court.

C. On December 7, 2018, Defendant moved to dismiss Plaintiff Smith's complaint.

D. On December 28, 2018, Plaintiff Smith filed a First Amended Complaint to address some of the arguments raised in Defendant's initial motion to dismiss.

E. On January 28, 2019, Defendant moved to dismiss Plaintiff Smith's First Amended Complaint for lack of standing, for failure to state a claim, and on First Amendment grounds. Defendant also argued that Plaintiff Smith's class claims should be stricken. On June 28, 2019, the Court denied Defendant's motion in its entirety.

F. On September 21, 2020, the Court granted Plaintiff Smith's motion for class certification. The Court certified a class consisting of "All persons who purchased the [Challenged] Products for personal, family or household purposes in California (either directly or through an agent) from June 8, 2016 through the present." The Court's September 21, 2020, order granting class certification limited the types of damages that Plaintiff Smith and the Class could seek to recover in the Action, and specifically rejected certain of Plaintiff Smith's proposed methods for measuring damages and restitution.

G. In addition, on September 9, 2020, Downing filed a complaint in the United States District Court for the District of Massachusetts alleging violations of Massachusetts General Laws, Chapter 93A, Section 2 based on the same allegedly misleading recycling labels on the Challenged Products. Downing pled his complaint on behalf of a national class and a Massachusetts class.

H. On December 18, 2020, Defendant moved to dismiss Downing's complaint for lack of standing and for failure to state a claim. Defendant also argued that Downing's claims on behalf of a national class should be stricken, and that the case should be limited to Massachusetts purchasers of the Challenged Products. On June 11, 2021, the Court denied Defendant's motion as to standing and failure to state a claim, but granted Defendant's request to strike the claims to the extent they were asserted on behalf of a putative national class.

I. On June 25, 2021, Downing filed a Petition for Permission to Appeal pursuant to Fed. R. Civ. P. 23(f) with the United States Court of Appeals for the First Circuit regarding the district court's decision to strike claims on behalf of a putative national class, which Defendant opposed. Downing's Petition has not yet been ruled upon by the First Circuit, but the First Circuit has granted the parties' joint motion to stay the review of that petition pending final approval of this Settlement.

J. In addition to the motion practice described above, the Parties conducted an extensive amount of discovery. The Plaintiffs served five sets of requests for production of documents (collectively comprising over one hundred separate requests), three sets of interrogatories and two sets of requests for admissions. Defendant served one set of requests for admissions and requests for production of documents and two sets of interrogatories. The Parties engaged in numerous meet and confer sessions, resulting in two discovery dispute letter submissions to the Court for resolution. Plaintiffs subpoenaed over a dozen third parties including materials recovery facilities, waste management companies, lobbying firms, and industry trade associations. Hundreds of thousands of documents were produced and reviewed by the Parties, and approximately seven depositions were conducted of Plaintiff Smith, senior Keurig personnel, and third parties.

K. Since the Action was filed, Keurig has made changes to some of the business practices at issue in the Action, including changing the design of the Challenged Products to make it easier for consumers to remove the foil lid prior to placing the remaining beverage pods in their recycling bin.

L. Since the Action was filed, the Parties have engaged in periodic settlement discussions, including participating in two full days of mediation with the Honorable Morton Denlow (Ret.) of JAMS on May 11 and September 21, 2021. Although full settlement was not reached in these mediation sessions, the Parties continued their negotiations and ultimately reached an agreement in principle to resolve the Action on October 26, 2021. At the time the parties reached an agreement in principal to resolve the Action, Plaintiff had yet to serve an expert report addressing the existence or non-existence of class-wide damages.

M. Keurig has denied and continues to deny each and all of the claims and contentions alleged by Plaintiffs. Keurig has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, labels, statements, acts or omissions alleged, or that could have been alleged, in the Action, and denies that consumers suffered any harm or injury, and states that its labeling, advertising and marketing of the Challenged Products was not false or misleading.

N. Nonetheless, Keurig has concluded that further defense of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. Defendant also has taken into account the uncertainty and risks inherent in any litigation. Keurig, therefore, has determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation.

O. Class Counsel have concluded, after extensive litigation, investigation of the facts, consultation with their experts, extensive discovery, and careful consideration of the circumstances of the Action and the possible legal and factual defenses thereto, that it would be in the best interests of the Class to enter into this Stipulation to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Class herein defined. Class Counsel considers the Settlement set forth in this Stipulation to be fair, reasonable and adequate and in the best interests of the Class.

III. SETTLEMENT RELIEF

In consideration of the covenants set forth herein, the Parties agree as follows:

A. Injunctive Relief

1. Keurig and its Affiliates shall not use a Recycling Representation without clearly and prominently including the qualifying statement, "Check Locally – Not Recycled in Many Communities." This obligation shall be subject to the terms detailed in Sections III.A.2-8 below and the other terms of this Stipulation.

2. Wherever on boxes or cartons of Challenged Products a Recycling Representation shall appear, the Recycling Representation shall be followed immediately by an asterisk, which asterisk shall reference the qualifying statement, "Check Locally – Not Recycled in Many Communities." The qualifying statement shall appear in close proximity to, and in a font size no smaller than 55% of the font size of, the Recycling Representation. The requirement of a qualifying statement shall not apply to a resin identification code (whether a number, a number within "chasing arrows," a number within a triangle, or otherwise) in an inconspicuous location (such as on the bottom of a package). A representative example of the new qualifying language and font size ratio compliant with this Section on a box of the Challenged Products is attached hereto as Exhibit H.

3. Notwithstanding Sections III.A.1. and IIII.A.2. above, Keurig, its Affiliates and its Partner Brands will be permitted to use the How2Recycle tile on the Challenged Products' packaging with such standard language as How2Recycle (part of GreenBlue, a 501(c)(3) nonprofit) shall direct for all products determined by How2Recycle to qualify for a "limited recycling" How2Recycle tile (currently "Check Locally") so long as such tile appears in an inconspicuous location (such as on the bottom of a package) and so long as the total height of the tile shall not exceed 0.85 inches on paperboard packaging or 1.0 inch on corrugate packaging. Nothing in this paragraph shall preclude Keurig, its Affiliates and its Partner Brands from complying with How2Recycle's Guidelines for Use as they may be modified from time to time.

4. Notwithstanding any other term of this Settlement, Keurig, its Affiliates and their Partner Brands, licensors, licensees, packaging suppliers, distributors, customers, wholesalers and retailers may continue to sell-through all remaining stock of existing Challenged Products, and their packaging and labels, and continue to produce the existing labeled products

until they begin printing the new labels as set forth in Section III.A.5 below, and continue to sell through then existing stock of the prior label after the printing transition dates in Section III.A.5. Nothing in this Stipulation shall require the withdrawal or destruction of any existing labels or recall of Challenged Products.

5. For boxes and cartons, the new qualification language and relative font sizes will be introduced as new packaging is introduced. The transition will be rolling across stock-keeping units ("SKUs"). The first SKU graphics with the new qualification language and fonts will be transmitted to Keurig's packaging printer no later than sixty (60) days after the Effective Date; all packaging for the first SKU printed after that date will utilize the new qualification language and fonts. SKUs that comprise at least twenty-five percent (25%) of the unit sales volume of the Challenged Products, excluding Noncompliant Partner Brand Products ("Phase 1 SKUs") will have graphics with the new qualification language and fonts transmitted to the printer no later than five (5) months after the Effective Date (the "25% Conversion Date"), and all packaging for the Phase 1 SKUs printed after the 25% Conversion Date will utilize the new qualification language and fonts. SKUs that comprise at least 50% of the unit sales volume of the Challenged Products, excluding Noncompliant Partner Brand Products ("Phase 2 SKUs") will have graphics with the new qualification language and fonts transmitted to the printer no later than nine (9) months after the Effective Date (the "50% Conversion Date"), and all packaging for Phase 2 SKUs printed after the 50% Conversion Date will utilize the new qualification language and fonts. SKUs that comprise at least 80% of the unit sales volume of the Challenged Products, excluding Noncompliant Partner Brand Products ("Phase 3 SKUs") will have graphics with the new qualification language and fonts transmitted to the printer no later than twelve (12) months after the Effective Date (the "80% Conversion Date"), and all packaging for Phase 3 SKUs printed after the 80% Conversion Date will utilize the new qualification language and fonts. All SKUs, excluding Noncompliant Partner Brand Products, will have graphics with the new qualification language and fonts transmitted to the printer no later than 15 months after the Effective Date (the "Graphics Transition End Date"), and all Challenged Product packaging printed after the Graphics Transition End Date will utilize the new qualification language and

fonts.

6. Nothing in this Settlement shall obligate Keurig or its Affiliates to destroy finished goods or existing packaging inventory.

7. Recycling Representations made by Keurig and its Affiliates in electronic advertising and promotional material for the Challenged Products that are directed to consumers (including website content) will include the revised qualifier no later than 90 days after the Effective Date or, with respect to images for individual SKUs offered for sale on Keurig.com, no later than 90 days after the date on which the packaging for such SKU is first printed with the revised qualifier. Recycling Representations made by Defendant and its Affiliates and Partner Brands in printed advertising and promotional material for the Challenged Products that are directed to consumers and printed after 90 days from the Effective Date will include the revised qualifier. In all of Keurig's and its Affiliates' written or printed promotional or advertising material for the Challenged Products that are directed to consumers, as well as in-store displays for the Challenged Products, the revised qualifier shall appear in close proximity to the Recycling Representation and in either (a) 26 point font or (b) a font size no smaller than 55% of the font size of the Recycling Representation, whichever is smaller. In any video content referencing the recyclability of the Challenged Products, the revised qualifier will appear at the same time as the Recycling Representations in such video content at the bottom of the screen, in a sufficiently large font, and for a sufficient duration, as to make it capable of being read by a reasonable viewer. For clarification, Keurig, its Affiliates and its Partner Brands shall not be obligated to modify or replace existing materials or content in the hands of third parties, but any new materials supplied thereafter by Keurig or its Affiliates shall comply with the above. Nothing in this paragraph shall apply to materials not directed at consumers, such as materials directed at recycling programs, material recovery facilities, recyclers, reclaimers, governmental entities, or commercial or non-profit entities; nor shall anything in this paragraph apply to text or footnotes in internal reports, white papers, regulatory filings, investor relations materials, annual reports, or securities filings of Keurig and its Affiliates. In Keurig's and its Affiliates' publicly-available corporate responsibility and sustainability reports, generic references to "RKCs" (using the

acronym) will not require qualifiers, but on any page containing a statement referring to the Challenged Products as recyclable, the first such statement on the page will require the qualifier described above to appear on the same page, which qualifier may be referenced by a footnote, an asterisk, or a similar reference mark.

8. No later than 90 days after the Effective Date, subject to Sections III.A.4 and III.A.5 above, Keurig will not make the following statements (or any substantially similar representations) in any of its labeling, advertising, or promotional material for the Challenged Products that are directed to consumers (including but not limited to its website), in the absence of the indicated qualifying statements:

(a) "Our new pods are made of polypropylene #5 plastic, which is accepted for recycling in the majority of communities across the United States." Must include the qualifying statement set forth in Section III.A.1. above, or context indicating that not all communities that accept #5 plastic currently accept coffee pods or small format items.

(b) "Recyclable K-Cup® pods can be recycled in communities that accept #5 plastics." Must include the qualifying statement set forth in Section III.A.1. above or context indicating that not all communities that accept #5 plastic currently accept coffee pods or small format items.

Nothing in this paragraph shall apply to materials not directed at consumers, such as materials directed at recycling programs, MRFs, recyclers/reclaimers, governmental entities, or commercial or non-profit entities.

9. At any point after the expiration of 24 months from the Effective Date, Keurig may seek to modify or eliminate the qualifying language set forth in Section III.A.1. above if (a) a material change in applicable law or Federal Trade Commission guidance (such as the Green Guides), as applicable to the Challenged Products, requires a different qualifier or no longer requires (explicitly or tacitly) qualifying language similar to the agreed language in Section III.A.1. above; or (b) if Keurig can demonstrate that recycling facilities serving at least 60% of American consumers or communities where the Challenged Products are sold accept for recycling (i) the Challenged Products, (ii) polypropylene single serving coffee pods, or (iii)

polypropylene items smaller than 2 inches in two dimensions. Prior to modifying or eliminating the qualifying language set forth in Section III.A.1. above, Keurig must inform Plaintiffs through counsel of the proposed modification or elimination. Plaintiffs, through Plaintiffs' counsel, shall within thirty (30) days either approve the proposed modification or elimination or require Keurig to submit proof that the conditions in (a) or (b) above have been met in an arbitration conducted by JAMS, pursuant to JAMS Comprehensive Arbitration Rules & Procedures (including the arbitrator selection process set forth in Rule 15 thereof). In the arbitration, Plaintiffs may submit any proof that the conditions in (a) or (b) have not been met. Unless approved by Plaintiffs through Plaintiffs' counsel or otherwise agreed by the Parties, the arbitrator will determine if Keurig may modify or eliminate the qualifying language set forth in Section III.A.1. above. The arbitration proceeding shall take place no more than 90 days after Keurig has submitted its proof that the conditions in (a) or (b) above have been met. Discovery in the arbitration shall be limited to understanding the methodology and veracity of the data presented by either Party. Keurig shall be responsible for the arbitration fees (both administrative fees and arbitrator fees), but the Parties shall otherwise be responsible for their own attorneys' fees and costs.

B. Monetary Payment

Keurig primarily sells the Challenged Products to retailers, not directly to consumers, and thus has no way to identify all individual Class Members. Additionally, an individual Class Member's recovery may be too small to make traditional methods of proof economically feasible. In order to assure that Class Members have access to the proceeds of this settlement, a Cash Payment Account is proposed to be established and administered as follows:

1. Keurig shall pay, as its sole, total, and exclusive financial obligation with respect to the Settlement (other than funds expended to comply with the Injunctive Relief in Section III.A. above), a total of $10 million in cash for payment of Class Member claims, attorneys' fees and costs in accordance with Section VIII.A below, Plaintiffs' incentive awards in accordance with Section VIII.B below, and for the payment of certain notice and administration costs and expenses, on the following schedule:

(a) Not more than 5 days after the Court's order granting Preliminary Approval, Keurig shall pay $500,000 to the Cash Payment Account to cover any notice and/or administration costs of the Class Administrator.

(b) Within 30 days after the Effective Date, Keurig shall pay the remaining $9.5 million into the Cash Payment Account.

2. The Cash Payment shall be applied as follows:

(a) To reimburse or pay up to, but not to exceed, $500,000 of the total costs reasonably and actually incurred by the Claim Administrator in connection with providing notice and administering claims submitted by the Class and pay for expenses associated with maintaining the Cash Payment Account (including taxes that may be owed by the Cash Payment Account);

(b) To pay attorneys' fees and costs in accordance with Section VIII.A;

(c) To pay incentive awards to Plaintiffs in accordance with Section VIII.B;

(d) To distribute to Class Members who submit Approved Claims to the Claim Administrator; and

(e) To distribute, as applicable pursuant to Section III.B.6 below, to the Ocean Conservancy (75%) and Consumer Reports, Inc. (25%).

3. Class Members shall have the opportunity to submit a claim to the Claim Administrator during the Claim Submission Period by mail or via a web form on the Settlement Website. Class Members must fill out a Claim Form substantially in the form of Exhibit F and submit it as described in Exhibits B and F. Class Members must submit the Claim Form under penalty of perjury and must provide the following information: (1) the identity and contact information for the claimant (including mailing address and, if submitted by means of the Settlement Website, email address); (2) the Challenged Product(s) and the approximate number of pods of the Challenged Products they purchased; (3) the approximate purchase date(s); and (4) if available, proof of purchase in the form of receipt(s) or email order, or shipping confirmation(s).

4. Class Members who properly and timely submit a valid and approved Claim Form are eligible to receive a cash payment as follows:

(a) For Class Members without proof of purchase: five dollars ($5.00) per Household;

(b) For Class Members with proof of purchase:

(1) Thirty-five cents ($0.35) per ten (10) pods (rounded up to the nearest ten (10) pod increment), up to thirty-six dollars ($36.00) maximum per Household; or

(2) If the amount in (b)(1) above does not exceed six dollars ($6.00), six dollars ($6.00) minimum per Household regardless of quantity purchased.

Only one claim shall be allowed per Household (whether with or without proof). If more than one claim is submitted per Household, all such claims shall be combined and treated as a single claim for purposes of the limits set forth herein.

5. If the cash amounts to be paid for Approved Claims from the Cash Payment Account under Section III.B.4 exceed the Cash Payment Balance, the cash payments for all Approved Claims will be reduced pro rata, based on the respective dollar amounts of the Approved Claims, until the total aggregate cash payments for all Approved Claims equals the Cash Payment Balance.

6. If the amounts to be paid for Approved Claims from the Cash Payment Account under Section III.B.4 do not equal or exceed the Cash Payment Balance, seventy-five percent (75%) of the remainder shall be distributed to the Ocean Conservancy and twenty-five percent (25%) of the remainder shall be distributed to Consumers Reports, Inc. for use in a manner that each of those entities determines will provide the next best use of compensation to the Class arising out of claims that have been made by Plaintiffs in the Action and as consideration for the extinguishment of those claims.

7. The claim process will be administered by the Claim Administrator, and neither Class Counsel nor Keurig shall participate in resolution of such claims.

8. All expenses of the Claim Administrator shall be paid as provided in Section III.B.2(a).

9. The Claim Administrator shall approve or reject all claims. The determination of claims shall occur during the Claim Review Period. The decision of the Claim Administrator shall be final and binding on Plaintiffs, Keurig and all Class Members submitting Claims, and neither Plaintiffs, Keurig nor such Class Members shall have the right to challenge or appeal the Claim Administrator's decision. Nothing in this Stipulation or the claims process hereunder creates a claim by any Person against Plaintiffs, Class Counsel, Defendant, Defendant's counsel, or the Claims Administrator based on any determination of the validity or invalidity or amount of any claims, distributions, or awards made in accordance with this Stipulation, and all relief shall be solely as provided in this Stipulation and by its Claims process. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Claim Administrator.

10. Within 15 days after conclusion of the Claim Review Period, the Claim Administrator shall provide to Keurig and Class Counsel the Distribution Plan. No sooner than 20 days, but not later than 45 days after delivering the Distribution Plan, the Claim Administrator shall disburse the remaining amounts in the Cash Payment Account according to the Distribution Plan and mail or email letters to all claimants with Rejected Claims explaining the rejection. In no event shall a Class Member's claim be paid until the conclusion of the Claim Review Period.

11. If any distribution checks mailed to Class Members are returned as non-deliverable, or are not cashed within 180 days, or are otherwise not payable, such checks shall no longer be negotiable and any such funds shall be disbursed to the recipients ordered by the Court as provided in Section III.B.6. Any Class Member whose check is returned as non-deliverable, is not cashed within 180 days, or is otherwise not payable, shall not be entitled to any further payment under this Settlement. The return or failure to cash checks shall have no effect on a Class Member's release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

12. No deductions for taxes will be taken from any amounts paid to Class Members for claims at the time of distribution. Class Members are responsible for paying all taxes due on such payments. All distribution checks to Class Members shall be deemed to be paid solely in the year in which payments are actually issued. The Parties do not purport to provide legal advice on tax matters to each other or Class Members. To the extent this Stipulation, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any Person for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

13. No interest will accrue on amounts payable hereunder to Class Counsel for fees and expenses, for class representative awards, or for claim distribution amounts payable to Class Members.

IV. RELEASES

A. As of the Effective Date, and except as to such rights or claims as may be created by this Stipulation, in consideration of the settlement obligations set forth herein, all Releasing Parties, whether individual, class, representative, legal, equitable, administrative, direct or indirect, or any other type or in any other capacity, release and forever discharge all Released Parties from any and all claims, demands, rights, causes of action, suits, petitions, complaints, damages of any kind, liabilities, debts, punitive or statutory damages, penalties, losses, and issues of any kind or nature whatsoever, asserted or unasserted, known or unknown, suspected or

unsuspected (including, but not limited to, any and all claims relating to or alleging deceptive or unfair business practices, false or misleading advertising, intentional or negligent misrepresentation, negligence, concealment, omission, unfair competition, promise without intent to perform, unsuitability, unjust enrichment, and any and all claims or causes of action arising under or based upon any statute, act, ordinance, or regulation governing or applying to business practices generally), existing now or in the future, arising out of or related to (1) Recycling Representations made with respect to the Challenged Products prior to the Graphics Transition End Date and/or (2) Settlement Recycling Representations made with respect to the Challenged Products, provided, however, that this release shall not apply to claims or causes of action arising from a final determination or regulation made by a governmental entity pursuant to statute (such as California S.B. 343) that the Challenged Products, polypropylene products, or polypropylene products of the Challenged Products' dimensions (with such dimensions specified by such governmental entity) are not recyclable under such statute and are not otherwise permitted to make a qualified statement substantially similar to the Settlement Recycling Representation. For the purposes of this paragraph, a Recycling Representation shall be considered to have been "made," with respect to printed materials, as of the date of printing.

B. No Released Party that complies with the terms set forth in Section III.A herein shall be liable for another party's failure to comply with such terms, nor shall the failure of any entity to comply with the terms set forth in Section III.A herein void or limit in any way the release provided to the Released Parties that comply with such terms. A Noncompliant Partner Brand shall be solely responsible for the failure of any Noncompliant Partner Brand Products to comply with the terms set forth in Section III.A herein, and Defendant's manufacture, sale or distribution of Noncompliant Partner Brand Products shall not be deemed noncompliance with the terms set forth in Section III.A herein and shall not void or limit in any way the release otherwise provided to Defendant and the other Released Parties.

C. With respect to the Released Claims, each Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise,

which is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Class Members understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal, state or other statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

D. The Parties shall be deemed to have agreed that the release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding against any of the Released Parties based on the Released Claims.

E. As of the Effective Date, by operation of entry of judgment, the Released Parties shall be deemed to have fully released and forever discharged Plaintiffs, all other Class Members and Class Counsel from any and all claims of abuse of process, malicious prosecution, or any other claims arising out of the initiation, prosecution, or resolution of the Action, including, but not limited to, claims for attorneys' fees, costs of suit or sanctions of any kind, or any claims arising out of the allocation or distribution of any of the consideration distributed pursuant to this Stipulation of Settlement.

V. AMENDMENT AND CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

On September 21, 2020, the Court granted Plaintiff Smith's motion for class certification, which certified a class of all Persons who purchased the Challenged Products for personal, family or household purposes in California during the Class Period. For purposes of this settlement only, the Parties agree to modify the Class to include all persons or entities in the United States who purchased the Challenged Products during the Class Period (the "Modified Class"), to add Downing as a representative Plaintiff in the Action, to add Downing's counsel as additional Class Counsel in the Action, and to certification of the Modified Class. Contemporaneously with the filing of the application to the Court for a Preliminary Approval Order as set forth in Section VI-A below, and solely for purposes of settlement, Plaintiff shall file, and Keurig will not oppose, a motion to amend the First Amended Complaint to (i) add Downing as a representative Plaintiff in this Action; (ii) add Downing's counsel as proposed additional Class Counsel; and (iii) seek certification of the Modified Class. Class Counsel shall request that the Court enter an order that, among other things, certifies the Class for settlement purposes as set forth in this paragraph. Keurig contends that certification of the alleged class (other than on a settlement basis) would not be possible absent this settlement because individual issues would predominate, Plaintiffs disagree with Keurig's contention in this regard.

In the event this Stipulation of Settlement and the settlement proposed herein is not finally approved, or is terminated, canceled, or fails to become effective for any reason whatsoever, the class certified for settlement purposes and the addition of Downing as a Plaintiff in the Action and Downing's counsel as additional Class Counsel in the Action, to which the parties have stipulated solely for the purpose of the settlement of the Action, shall be null and void and the Parties will revert to their respective positions in the Action immediately prior to the execution of this Stipulation of Settlement. The approval of this Stipulation of Settlement and the settlement proposed herein is not conditioned on the addition of Downing as an additional Plaintiff in the Action or the addition of Downing's counsel as additional class counsel in the Action, and neither Downing not being added as an additional Plaintiff in the Action or Downing's counsel not being

added as additional class counsel in the Action shall prevent the Stipulation of Settlement and the settlement proposed herein from becoming final and effective if all other aspects of the Stipulation of Settlement and the settlement proposed herein are approved. Under no circumstances may this Stipulation of Settlement, nor any negotiations, proceedings, documents prepared, or statements made in connection with this Stipulation, be used as an admission or as evidence for any purpose, including without limitation, concerning the appropriateness of class certification, in these or any other actions against Defendant or any other Released Party.

VI. CLASS NOTICE AND COURT APPROVAL

A. Notice Order; Preliminary Approval

On or before February 24, 2022, the Parties shall apply to the Court for a Preliminary Approval Order substantially in the form and content of Exhibit A, conditionally certifying the Class for settlement purposes as defined in Section V, for preliminary approval of the settlement, for scheduling a final approval hearing, and for approving the contents and method of dissemination of the proposed Publication Notice and Class Notice Package. The Claim Administrator shall provide a declaration to the Court in support of Preliminary Approval attesting that the Notice Plan is the best notice that is practicable under the circumstances, including the reasons for selection of the methods of notice and computation of the expected notice reach.

B. The Notice Program

The notice program shall consist of both notice by publication and by direct email notice to all Class Members who purchased the Challenged Products during the Class Period directly from Keurig on its website (www.keurig.com). Class Counsel shall also place a link to the Settlement Website on the websites of the Lexington Law Group (www.lexlawgroup.com) and Shapiro Haber & Urmy (www.shulaw.com) for a period starting from the date the Publication Notice is published, and continuing no longer than the end of the Claim Submission Period. The cost associated with the Publication Notice, the Email Notice and Class Notice Package shall be paid from the Cash Payment Account as described in Section III.B.2(a), except those costs associated with posting and maintaining notice on Class Counsel's Internet websites. At least

fourteen (14) days prior to the Final Approval Hearing, the Claim Administrator shall provide a declaration stating that notice was provided as required herein.

1. Publication Notice

Commencing as soon as reasonably practicable after issuance of an order granting Preliminary Approval to the Settlement set forth herein, and at least 90 days before the Final Approval Hearing or some other date set by the Court, the Claim Administrator shall cause to be published the Publication Notice substantially in the form and content of Exhibit B, and pursuant to the Notice Plan described in Exhibit D, which generally describes the settlement and directs all interested parties to a detailed Class Notice available on the Settlement Website and, at the request of interested parties, by U.S. Mail.

2. Email Notice

Commencing as soon as reasonably practicable after issuance of an order granting Preliminary Approval to the Settlement set forth herein, and at least 90 days before the Final Approval Hearing or some other date set by the Court, the Claim Administrator shall send the Email Notice substantially in the form and content of Exhibit C to those Class Members who were direct purchasers from Keurig.com during the Class Period, and pursuant to the Notice Plan described in Exhibit D, which generally describes the settlement and directs all interested parties to a detailed Class Notice available on the Settlement Website and, at the request of interested parties, by U.S. Mail.

Within five (5) business days of the Court's issuance of an order granting Preliminary Approval of the Settlement, Keurig shall provide Class Counsel with the last known email addresses of all Class Members who purchased Challenged Products from Keurig.com during the Class Period. Class Counsel shall furnish the email addresses to the Claims Administrator solely for purposes of providing Email Notice pursuant to this paragraph, and neither Class Counsel nor the Claims Administrator may otherwise disseminate the email addresses or make any other use of the email addresses.

3. Class Notice Package

The Class Notice Package shall be available in electronic format on the Settlement Website and mailed as a hard copy by the Claim Administrator upon request. Each Class Notice Package shall contain a Class Notice substantially in the form of Exhibit E and the Claim Form substantially in the form of Exhibit F.

4. Notice of Deadlines and Objections

The Publication Notice, the Email Notice and the Class Notice shall inform Class Members of the dates by which they must file any objections with the Court and submit Requests for Exclusions and submit Claim Forms to the Claim Administrator.

C. Objections

Any Class Member, on his or her own, or through an attorney hired at his or her own expense, may object to the terms of the Settlement. Class Members must file any objections and related notices of intent to appear at the Final Approval Hearing with the Court no later than 45 days prior to the Final Approval Hearing (the "Objection Deadline"). All objections to the Settlement by members of the Class shall be heard by this Court, and any Class Member filing an objection must be willing to demonstrate their standing (i.e., membership in the Class) in order for their objection to be valid. To be effective, any such objection must be in writing and include the contents described below:

(a) A reference to this case, *Kathleen Smith. v. Keurig Green Mountain, Inc.*, Case No. 4:18-cv-06690-HSG (N.D. Cal.);

(b) The name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel;

(c) A written statement of all grounds for the Objection, accompanied by any legal support for such Objection;

(d) Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;

(e) A statement of his/her membership in the Class, including all information required by the Claim Form; and

(f) A detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement.

Any Class Member who fails to file with the Court a written objection by the Objection Deadline containing all of the information listed in items (a) through (f) of the previous paragraph shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Stipulation by any means, including but not limited to an appeal.

A Class Member who objects to the Settlement may also submit a Claim Form on or before the Claim Form Deadline, which shall be processed in the same way as all other Claim Forms. A Class Member shall not be entitled to an extension to the Claim Form Deadline merely because the Class Member has also submitted an Objection.

Any Party may seek Court approval, prior to the Final Approval Hearing, to take a deposition of any Class Member who submits a timely written Objection.

D. Requests for Exclusion

Class Members must file Requests for Exclusion on the Request for Exclusion Form, and any request to revoke such Request for Exclusion, with the Claim Administrator no later than the Request for Exclusion Deadline. If a Class Member submits both a Claim Form and a Request

for Exclusion, the Claim Form shall take precedence and be considered valid and binding, and the Request for Exclusion shall be deemed to have been sent by mistake and rejected. Class Members who file a Request for Exclusion from this Settlement shall not be permitted to file an Objection to this Settlement or to intervene. Copies of all Requests for Exclusion received by the Claim Administrator by the Request for Exclusion Deadline, together with copies of all written revocations of Requests for Exclusion received by the Request for Exclusion Deadline, shall be delivered to the Parties' counsel no later than 7 days after the Request for Exclusion Deadline, or at such other time as the Parties may mutually agree in writing. The Claim Administrator shall also prepare a list of the names of the persons who have filed a valid and timely Request for Exclusion, and Class Counsel shall file that list with the Court.

E. Final Approval Hearing

The Parties shall request that, after notice is given, the Court hold a Final Approval Hearing for the purpose of determining whether final approval of the settlement of the Action as set forth herein is fair, adequate, and reasonable to the Class Members and binding on all Class Members who have not excluded themselves as provided herein; ordering that the settlement relief be provided as set forth in this Stipulation; ordering the releases as set forth in this Stipulation; and entering a Final Settlement Order and Judgment dismissing the Action with prejudice substantially in the form and content of Exhibit G.

F. Parties' Duty to Defend

From the date of execution of this Stipulation, the Parties, via Class Counsel and Defendant's Counsel, shall take all reasonable steps to defend the terms of this Stipulation as fair, reasonable, and adequate, shall defend the proposed Class as meeting the requirements of Federal Rule of Civil Procedure 23 as applied to proposed settlement class, and shall defend the notice program set forth in the Stipulation as meeting the requirements of Federal Rule of Civil Procedure 23 and giving the best and most reasonable notice practicable under the circumstances.

G. Dismissal of Massachusetts Action.

Within three (3) business days of the occurrence of one of the events set forth in Section VII.A.4, Downing shall (a) file a stipulation with the United States District Court for the District of Massachusetts dismissing the Massachusetts Action with prejudice and without costs to either party, pursuant to pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), and (b) shall voluntarily dismiss his Rule 23(f) petition pending before United States Court of Appeals for the First Circuit.

VII. CONDITIONS; TERMINATION

A. This Settlement shall become final on the first date after which all of the following events and conditions have been met or have occurred (the "Effective Date"):

1. The Court has preliminarily approved this Stipulation (including all attachments), the settlement set forth herein, and the method for providing notice to the Class;

2. The Court has entered a Final Settlement Order and Judgment in the Action;

3. The Massachusetts Action has been dismissed with prejudice; and

4. One of the following has occurred:

(a) The time to appeal from such orders has expired and no appeals have been timely filed;

(b) If any such appeal has been filed, it has finally been resolved and the appeal has resulted in an affirmation of the Final Settlement Order and Judgment and such affirmance is no longer subject to further appeal or review; or

(c) The Court, following the resolution of any such appeals, has entered a further order or orders approving the Settlement of the Action on the terms set forth in this Stipulation of Settlement, and either no further appeal has been taken from such order(s) or any such appeal has resulted in affirmation of such order(s).

Court approval of the attorneys' fees and costs award sought by Class Counsel and/or the incentive awards sought for Plaintiffs, or any denial, decrease or modification thereof by the Court or on appeal, shall not prevent this Settlement from becoming final and effective if all other

aspects of the final judgment have been approved, and the remainder of the terms of this Settlement shall remain in effect.

B. If the Settlement is not made final (per the provisions of Section VII.A), this entire Stipulation shall become null and void as set forth in Section V, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this settlement, in which event the Stipulation of Settlement shall be deemed to have become final on the date of such written agreement.

VIII. COSTS, FEES, AND EXPENSES

A. Attorneys' Fees and Expenses

1. The Parties agree that any award of attorneys' fees and expenses to Class Counsel must be approved by the Court as set forth herein.

2. Class Counsel intend to make an application for an award of attorneys' fees of up to $3,000,000, which is 30% of the value of the Cash Payment, plus costs. Keurig retains the right to object to Plaintiffs' entitlement to such an award, or to the amount of award sought by Plaintiffs. The Claim Administrator shall pay the award of Class Counsels' fees and expenses from the Cash Payment Account within 30 days after the entry of the Final Settlement Order and Judgment.

3. Attorneys' fees and expenses awarded by the Court shall be payable as set forth above, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Class Counsel's obligation to make appropriate refunds or repayments to the Cash Payment Account, if and when, as a result of any appeal or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed.

4. In the event the Judgment entered pursuant to this settlement does not become final or is ultimately overturned on appeal as set forth in Section VII, Class Counsel shall immediately return in full the amount of attorneys' fees and expenses paid to them pursuant to this provision.

5. In the event the amount of the attorneys' fees requested is decreased or denied by the Court or upon appeal, such denial or decrease in the requested fees shall have no effect on this Stipulation and shall not invalidate the settlement agreed to herein.

6. Subject to Court approval, Class Counsel, in their sole discretion, shall allocate and distribute the award of attorneys' fees and expenses among counsel for the class members (including both counsel for Plaintiff Smith and for Downing) . In the event that any Class Members object to any aspect of this Stipulation of Settlement, Keurig shall under no circumstances be obligated or required to pay attorneys' fees or costs claimed by or associated such objectors (if any).

B. Class Representative Awards

Plaintiffs will apply for class representative service awards to be paid out of the Cash Payment Account to Plaintiffs in an amount not to exceed $5,000 for Plaintiff Smith and $1,000 to Downing. Such awards shall be paid within 30 days after the Effective Date or within 30 days after the issuance of an order awarding such amount, whichever is later. In the event that a Class Member appeals the award of attorneys' fees and costs, or the class representative service awards, Keurig shall not take a position contrary to this Stipulation. In the event the amount of any of the class representative awards are decreased or denied by the Court or upon appeal, such denial or decrease in the requested award shall have no effect on this Stipulation and shall not invalidate the settlement agreed to herein.

C. Claim Administration Costs and Costs of Class Notice

The costs associated with the administration of the claim process and with notifying the Class of this proposed settlement shall be paid from the Cash Payment Account as described in Section III.

IX. COVENANTS AND WARRANTIES

A. Authority to Enter Agreement

Plaintiffs and Defendant each covenant and warrant that they have the full power and authority to enter into this Stipulation of Settlement and to carry out its terms, and that they have not previously assigned, sold, or otherwise pledged or encumbered any right, title, or interest in

the claims released herein or their right, power, and authority to enter into this Stipulation of Settlement, and that that the Stipulation has been duly and validly executed and delivered by such Party and constitutes its legal, valid, and binding obligation. Any person signing this Stipulation of Settlement on behalf of any other person or entity represents and warrants that he or she has full power and authority to do so and that said other person or entity is bound hereby.

Class Counsel further represents and warrants that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of the Plaintiffs and the Class in order to effectuate the terms of this Stipulation and are also authorized to enter into appropriate modifications or amendments to this Stipulation on behalf of the Plaintiffs and the Class Members.

Plaintiffs further represent and warrant that they are entering into the Settlement on behalf of themselves individually and as representatives of the Class Members, of their own free will and without the receipt of any consideration other than what is provided in the Settlement or disclosed to, and authorized by, the Court. Plaintiffs represent and warrant that they have reviewed the terms of the Settlement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that she will not file a request to be excluded from the Class or object to the Settlement.

B. Represented by Counsel

In entering into this Stipulation of Settlement, the Parties represent that: they have relied upon the advice of attorneys of their own choice, concerning the legal consequences of this Stipulation of Settlement; the terms of this Stipulation of Settlement have been explained to them by their attorneys; and the terms of this Stipulation of Settlement are fully understood and voluntarily accepted by the Parties.

X. MISCELLANEOUS

A. Governing Law

The interpretation and construction of this Stipulation of Settlement shall be governed by the laws of the State of California.

B. Counterparts

This Stipulation of Settlement may be executed in counterparts. All counterparts so executed shall constitute one agreement binding on all of the Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart. Signatures sent by email shall be deemed original signatures and shall be binding.

C. Arms-Length Negotiations; No Drafting Party

The determination of the terms and conditions contained herein and the drafting of the provisions of this Settlement have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel and under the supervision of, and upon specific recommendations provided by, JAMS mediator the Honorable Morton Denlow (Ret.). Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Stipulation of Settlement, and the Parties agree that the drafting of this Stipulation has been a mutual undertaking.

D. Entire Agreement

All agreements, covenants, representations and warranties, express or implied, written or oral, of the Parties hereto concerning the subject matter hereof are contained in this Stipulation of Settlement and the exhibits hereto. Any and all prior or contemporaneous conversations, negotiations, drafts, terms sheets, possible or alleged agreements, covenants, representations and warranties concerning the subject matter of this Stipulation of Settlement are waived, merged herein, and superseded hereby.

E. Retained Jurisdiction

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation.

F. Cooperation

Each of the Parties hereto shall execute such additional pleadings and other documents and take such additional actions as are reasonably necessary to effectuate the purposes of this Stipulation of Settlement.

G. Amendments in Writing

This Stipulation of Settlement may only be amended in writing signed by the Parties and approved by the Court.

H. Binding Effect; Successors and Assigns

This Stipulation of Settlement shall inure to the benefit of, and shall be binding upon, the Parties hereto as well as the legal successors and assigns of the Parties hereto and each of them.

I. Construction

As used in this Stipulation of Settlement, the terms "herein" and "hereof' shall refer to this Stipulation in its entirety, including all exhibits and attachments, and not limited to any specific sections. Whenever appropriate in this Stipulation of Settlement, the singular shall be deemed to refer to the plural, and the plural to the singular, and pronouns of any gender shall be deemed to include both genders.

J. Waiver in Writing

No waiver of any right under this Stipulation of Settlement shall be valid unless in writing.

K. Computation of Time

All time periods set forth herein shall be computed in business days, if seven days or fewer, and calendar days, if eight days or more, unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal or court holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the office of the clerk of the Court inaccessible, in which event the period shall run until the end of the next day as not one of the

aforementioned days. As used in this subsection, "legal or court holiday" includes New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

L. No Admission of Liability

Each of the Parties understands and agrees that he, she, or it has entered into this Stipulation of Settlement for purpose of purchasing peace and preventing the risks and costs of any further litigation or dispute. This settlement involves disputed claims; specifically, Keurig denies any wrongdoing, and the Parties understand and agree that neither this Stipulation of Settlement, nor the fact of this settlement, may be used as evidence or admission of any wrongdoing by Keurig. The Parties further agree that, to the fullest extent permitted by law, neither this Stipulation nor the Settlement, nor any act performed nor document executed pursuant to or in furtherance of this Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action, the Massachusetts Action, or any other proceeding for any purpose whatsoever. However, the Released Parties may file the Stipulation and/or the Final Settlement Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

M. Stay Pending Court Approval.

Class Counsel and Defendant's Counsel agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of this Settlement, until

the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Settlement should fail to become effective, the Parties will return to their prior positions in the Actions as further set forth in this Agreement.

N. Protective Orders.

All orders, agreements and designations regarding the confidentiality of documents and information ("Protective Orders") remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders.

O. Notice

Any notice to the Parties required by this Stipulation of Settlement shall be given in writing by first-class U.S. Mail and e-mail to:

For Plaintiffs:

Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

Edward F. Haber
Shapiro Haber & Urmy
Seaport East
Two Seaport Lane
Boston, MA 02210
ehaber@shulaw.com

For Defendant:

Creighton R. Magid
Dorsey & Whitney LLP
1401 New York Avenue, NW, Suite 900
Washington, DC 20005
magid.chip@dorsey.com

Arthur C. Swanson
Gibson Dunn & Crutcher LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
acswanson@gibsondunn.com

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation of Settlement as of the dates set forth below.

DATED: Feb. 23, 2022

KATHLEEN SMITH

DATED: _____, 2022

MATTHEW DOWNING

DATED: _____, 2022

KEURIG GREEN MOUNTAIN, INC.

BY: ANTHONEY SHOEMAKER
Chief Legal Officer, General Counsel and Secretary

DATED: _____, 2022

LEXINGTON LAW GROUP

HOWARD HIRSCH
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

LAW OFFICE OF GIDEON KRACOV

GIDEON KRACOV
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

SHAPIRO HABER & URMY, LLP

EDWARD F. HABER
Attorneys for Plaintiffs and the Class

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation of Settlement as of the dates set forth below.

DATED: _____, 2022

KATHLEEN SMITH

DATED: 2-24-22, 2022

MATTHEW DOWNING

DATED: _____, 2022

KEURIG GREEN MOUNTAIN, INC.

BY: ANTHONEY SHOEMAKER
Chief Legal Officer, General Counsel and Secretary

DATED: _____, 2022

LEXINGTON LAW GROUP

HOWARD HIRSCH
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

LAW OFFICE OF GIDEON KRACOV

GIDEON KRACOV
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

SHAPIRO HABER & URMY, LLP

EDWARD F. HABER
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

KATHLEEN SMITH

DATED: _____, 2022

MATTHEW DOWNING

DATED: Feb. 24, 2022

KEURIG GREEN MOUNTAIN, INC.

BY: ANTHONY SHOEMAKER
Chief Legal Officer and Secretary

DATED: _____, 2022

LEXINGTON LAW GROUP

HOWARD HIRSCH
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

LAW OFFICE OF GIDEON KRACOV

GIDEON KRACOV
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

SHAPIRO HABER & URMY, LLP

EDWARD F. HABER
Attorneys for Plaintiffs and the Class

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation of Settlement as of the dates set forth below.

DATED: _____, 2022

KATHLEEN SMITH

DATED: _____, 2022

MATTHEW DOWNING

DATED: _____, 2022

KEURIG GREEN MOUNTAIN, INC.

BY: ANTHONEY SHOEMAKER
Chief Legal Officer, General Counsel and Secretary

DATED: February 24, 2022

LEXINGTON LAW GROUP

HOWARD HIRSCH
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

LAW OFFICE OF GIDEON KRACOV

GIDEON KRACOV
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

SHAPIRO HABER & URMY, LLP

EDWARD F. HABER
Attorneys for Plaintiffs and the Class

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation of Settlement as of the dates set forth below.

DATED: _____, 2022

KATHLEEN SMITH

DATED: _____, 2022

MATTHEW DOWNING

DATED: _____, 2022

KEURIG GREEN MOUNTAIN, INC.

BY: ANTHONEY SHOEMAKER
Chief Legal Officer, General Counsel and Secretary

DATED: _____, 2022

LEXINGTON LAW GROUP

HOWARD HIRSCH
Attorneys for Plaintiffs and the Class

DATED: 2/23, 2022

LAW OFFICE OF GIDEON KRACOV

GIDEON KRACOV
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

SHAPIRO HABER & URMY, LLP

EDWARD F. HABER
Attorneys for Plaintiffs and the Class

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation of Settlement as of the dates set forth below.

DATED: _____, 2022

KATHLEEN SMITH

DATED: _____, 2022

MATTHEW DOWNING

DATED: _____, 2022

KEURIG GREEN MOUNTAIN, INC.

BY: ANTHONEY SHOEMAKER
Chief Legal Officer, General Counsel and Secretary

DATED: _____, 2022

LEXINGTON LAW GROUP

HOWARD HIRSCH
Attorneys for Plaintiffs and the Class

DATED: _____, 2022

LAW OFFICE OF GIDEON KRACOV

GIDEON KRACOV
Attorneys for Plaintiffs and the Class

DATED: 2-24-22, 2022

SHAPIRO HABER & URMY, LLP

EDWARD F. HABER
Attorneys for Plaintiffs and the Class

DATED: Feb 24, 2022

DORSEY & WHITNEY LLP

CREIGHTON R. MAGID
Attorneys for Defendant KEURIG GREEN MOUNTAIN, INC.

LIST OF EXHIBITS

A. Order re: Preliminary Approval of Class Action Settlement

B. Publication Notice

C. Email Notice

D. Notice Plan

E. Notice of Class Action Settlement

F. Claim Form

G. Final Settlement Order and Judgment

H. Sample Product Label

I. Non-Exclusive Product List

J. Request for Exclusion Form

Exhibit A

EXHIBIT [A]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN SMITH, on behalf of herself and all others similarly situated, Plaintiffs, v. KEURIG GREEN MOUNTAIN, INC., Defendant.	Case No. 4:18-cv-06690-HSG CLASS ACTION [PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS, PROVIDING FOR NOTICE AND SCHEDULING ORDER

WHEREAS, Plaintiff Kathleen Smith; Defendant Keurig Green Mountain, Inc.; and Matthew Downing, Plaintiff in the related matter of *Downing v. Keurig Green Mountain, Inc.*, Case No. 1:20-cv-11673, venued in the United States District Court for the District of Massachusetts, have entered into a Stipulation of Settlement, filed February 24, 2022, after arms-length settlement discussions conducted in good faith with the assistance of the Honorable Morton Denlow (Ret.);

WHEREAS, the Court has received and considered the Stipulation, including the accompanying exhibits;

WHEREAS, the Parties have made an application for an order preliminarily approving the settlement of this Action, conditionally certifying the settlement class, providing for notice and scheduling order, and for its dismissal with prejudice upon the terms and conditions set forth in the Stipulation; and

WHEREAS, the Court has reviewed the Parties' application for such order, and has found good cause for same.

NOW, THEREFORE, IT IS HEREBY ORDERED:

A. The Settlement Class Is Conditionally Certified.

1. Pursuant to Federal Rule of Civil Procedure 23, the Court, subject to this Court's final approval of the Settlement, hereby amends the class previously certified by order dated September 21, 2020 and certifies the following Class for settlement purposes only:

> All Persons in the United States who purchased the Challenged Products[1] for personal, family or household purposes within the Class Period. Specifically excluded from the Class are (a) Defendant, (b) Defendant's Affiliates, (c) the officers, directors, or employees of Defendant and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Defendant, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

[1] All capitalized terms herein shall have the same meanings as set forth in the Stipulation unless otherwise specifically defined.

2. Keurig Green Mountain Inc., for settlement purposes only and subject to this Court's final approval of the Settlement, hereby consents to the addition of Matthew Downing as a Plaintiff in the Action.

3. With respect to the Class and for settlement purposes only, the Court preliminarily finds the prerequisites for a class action under Federal Rules of Civil Procedure 23(b)(2) and (b)(3) have been met, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representatives and Class Counsel; (e) that Defendant has acted on grounds that apply generally to the Class, such that final injunctive relief is appropriate respecting the Class as a whole; (f) predominance of common questions of fact and law among the Class; and (g) superiority.

4. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints the Plaintiffs Kathleen Smith and Matthew Downing, as the class representatives.

5. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court hereby appoints, subject to this Court's final approval of the Settlement and for settlement purposes only, the Lexington Law Group and Shapiro Haber & Urmy as Class Counsel.

B. The Stipulation Is Preliminarily Approved and Final Approval Schedule Set.

6. The Court hereby preliminarily approves the Stipulation and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.

7. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Stipulation, and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Stipulation.

8. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Final Approval Hearing on _____, at _____ a.m./p.m., in the Courtroom of the Honorable Haywood S. Gilliam, Jr., United States District Court for the Northern District of California,

Oakland Courthouse, Courtroom 2 - 4th Floor, 1301 Clay Street, Oakland, CA 94612, or by telephone conference or Zoom, for the following purposes:

(a) finally determining whether the Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, the Class should be certified for purposes of effectuating the settlement;

(b) determining whether the proposed settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the Court;

(c) considering the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses, as provided for under the Stipulation;

(d) considering the applications of Plaintiffs for class representative incentive awards, as provided for under the Stipulation;

(e) considering whether the Court should enter the [Proposed] Final Settlement Order and Judgment;

(f) considering whether the release of the Released Claims as set forth in the Stipulation should be provided; and

(g) ruling upon such other matters as the Court may deem just and appropriate.

9. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to Class Members.

10. The Parties may further modify the Stipulation prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided thereunder. The Court may approve the Stipulation with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

11. Any application for an award of attorneys' fees and expenses and/or class representative incentive awards must be filed with the Court and served at least forty days prior to the Final Approval Hearing.

12. All papers in support of the settlement, other than the application for an award of attorneys' fees and expenses and/or class representative incentive awards, must be filed with the Court and served at least seven days prior to the Final Approval Hearing.

C. The Court Approves the Form and Method of Class Notice.

13. The Court approves, as to form and content, the proposed Publication Notice, Email Notice and Class Notice (collectively the "Notice"), which are Exhibits C, D and F, respectively, to the Stipulation.

14. The Court finds that the distribution of Notice substantially in the manner and form set forth in the Stipulation meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

15. The Court approves the designation of the Kroll Business Services to serve as the Court-appointed Claim Administrator for the settlement. The Claim Administrator shall cause the Publication Notice to be published, disseminate the Email Notice and Class Notice, and supervise and carry out the notice procedure, the processing of claims, and other administrative functions, and shall respond to Class Member inquiries, as set forth in the Stipulation and this Order under the direction and supervision of the Court.

16. The Court directs the Claim Administrator to establish a Settlement Website, making available copies of this Order, Class Notice, Claim Forms that may be downloaded and submitted online, by mail, or by facsimile, the Stipulation and all Exhibits thereto, a toll-free hotline, and such other information as may be of assistance to Class Members or required under the Stipulation. The Class Notice shall be made available to Class Members through the Settlement Website on the date Publication Notice is first published and continuously thereafter until the end of the Claim Submission Period. Class Counsel shall also place a link to the Settlement Website on Class Counsels' Internet websites for a period starting from the date the Publication Notice is published through no longer than the end of the Claim Submission Period.

17. The Claim Administrator is ordered to commence publication of the Publication Notice at least 90 days before the Final Approval Hearing.

18. The costs of Notice, processing of claims of Class Members, creating and maintaining the Settlement Website, and all other Claim Administrator and Notice expenses shall be paid from the Cash Payment Account in accordance with the applicable provisions of the Stipulation.

D. Procedure for Class Members to Participate in the Settlement.

19. The Court approves the Parties' proposed Claim Form. Any Class Member who wishes to participate in the settlement shall complete a Claim Form in accordance with the instructions contained therein and submit it to the Claim Administrator prior to the end of the Claim Submission Period, which date will be specifically identified in the Claim Form. Such deadline may be further extended without notice to the Class by written agreement of the Parties.

20. The Claim Administrator shall have the authority to accept or reject claims in accordance with the Stipulation.

21. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class Members who do not enter an appearance will be represented by Class Counsel.

E. Procedure for Requesting Exclusion from the Class.

22. All Class Members who do not timely exclude themselves from the Class shall be bound by all determinations and judgments in the Action concerning the settlement, whether favorable or unfavorable to the Class.

23. Any person or entity falling within the definition of the Class may, upon his, her or its request, be excluded from the Class. Any such person or entity must submit a request for exclusion to the Class Action Administrator, with a copy to Class Counsel and Defendant's Counsel, postmarked or delivered no later than 30 days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class

Notice. Requests for exclusion purportedly filed on behalf of groups of persons or entities are prohibited and will be deemed to be void.

24. Any Class Member who does not send a signed request for exclusion postmarked or delivered on or before the time period described above will be deemed to be a Class Member for all purposes and will be bound by all judgments and further orders of this Court related to the Stipulation of Settlement of this Action and by the terms of the Stipulation, if finally approved by the Court. The written request for exclusion must include all information required by the Request for Exclusion Form and be signed by the potential Class Member. All persons or entities who submit valid and timely requests for exclusion in the manner set forth in the Stipulation shall have no rights under the Stipulation and shall not be bound by the Stipulation or the Final Judgment and Order.

25. A list reflecting all requests for exclusions shall be filed with the Court by the parties at or before the Final Approval Hearing.

F. Procedure for Objecting to the Settlement

26. Any Class Member who desires to object either to the settlement, application for attorneys' fees and expenses, or class representative incentive awards must timely file with the Clerk of this Court and timely serve on the Parties' counsel and the Claim Administrator by hand or first-class mail a notice of the objection(s) and the grounds for such objections, together with all papers that the Class Member desires to submit to the Court no later than 45 days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class Notice. The Court will consider such objection(s) and papers only if such papers are timely received by the Clerk of the Court and by Class Counsel and by Defendant's Counsel. All objections must: (a) reference the name of the Action, "Smith v. Keurig Green Mountain, Inc., Case No. 4:18-CV-06690," (b) include the Class Member's name, current postal address, current telephone number, and any email address; (b) demonstrate their standing (i.e. membership in the Class), including information required by the Claim Form; (c) include a written statement of all grounds for the Class Member's objection, along with any legal support

on which the objection is based or on which the person objecting intends to rely; (d) state whether the Class Member and/or the Class Member's lawyer intends to appear at the Final Approval Hearing and (e) a detailed list of any other objections submitted by the Class Member, or Class Member's counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Class Member or Class Member's counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, the Class Member shall affirmatively state so in the written materials provided in connection with the objection. Plaintiff or Defendant may seek the Court's approval, prior to the Final Approval Hearing, to take a deposition of any Class Member who submits a timely written objection.

27. Attendance at the Final Approval Hearing is not necessary; however, any Class Member wishing to be heard orally with respect to approval of the settlement, the applications for attorneys' fees and reimbursement of expenses, or the application for class representative incentive awards are required to provide written notice of their intention to appear at the Final Approval Hearing no later than 30 days prior to the date of the Final Approval Hearing, which date will be specifically identified in the Class Notice. Class Members who do not oppose the settlement, the applications for attorneys' fees and expenses, or class representative incentive awards need not take any action to indicate their approval. A Class Member's failure to submit a written objection in accordance with the procedure set forth in the Class Notice waives any right the Class Member may have to object to the settlement, attorneys' fees and expenses, or class representative incentive awards, to appear at the Final Approval Hearing, or to appeal or seek other review of the Final Judgment and Order.

IT IS SO ORDERED.

DATED: _____

_____
HONORABLE HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT COURT JUDGE

Exhibit B

EXHIBIT B

LEGAL NOTICE

IF YOU PURCHASED K CUP® SINGLE SERVE COFFEE PODS LABELED AS RECYCLABLE Between June 8, 2016 and [Date of Publication Notice], 2022, You Could Get Money from a Settlement.

What Is This Lawsuit About?

A proposed settlement has been reached in a lawsuit known as *Smith v. Keurig Green Mountain, Inc.* Case No. 4:18-CV-06690-HSG, in United States District Court for the Northern District of California (the "Action").

The Plaintiff in the lawsuit claims that K Cup® single serving coffee pods were labeled as being recyclable when they were not widely recyclable. Keurig denies any wrongdoing but has agreed to a settlement to avoid the expense of continued litigation.

Who is a Settlement Class Member?

You are a Settlement Class Member if you purchased K Cup® single serving coffee pods labeled as recyclable in the United States for personal, family or household purposes between June 8, 2016 and [Date of Publication Notice], 2022. Excluded from eligible Class Members are (a) Keurig, (b) Keurig's Affiliates, (c) the officers, directors, or employees of Keurig and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Keurig, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased K Cup® single serving coffee pods labeled as recyclable for the purpose of resale.

What does the Settlement Provide?

(1) The settlement provides $10 million to pay valid claims (along with claims administrator costs, attorney fees and costs, and class representative awards) as follows: With Proof of Purchase: You can get $3.50 per 100 pods, or $0.35 per 10 pods, up to $36.00 maximum per household, or you can get $6.00 minimum per household regardless of quantity purchased. Without Proof of Purchase: You can get $5.00 per household from the Settlement. In each case, you must submit a valid Claim Form by [**Month 00, 2022]**. The actual amount received may vary based on the total number of claims filed.

(2) Keurig also agrees to include the following qualifying statement, clearly and prominently, when it makes any recycling representation in connection with selling the pods: "Check Locally – Not Recycled in Many Communities."

What are Your Rights?

Do Nothing: If you do nothing, you stay in the Settlement, but get no money, and you give up the right to sue over the claims in this settlement.

File a Claim: You must submit a valid Claim Form by [**Month 00, 2022]** to get money from the Settlement.

Exclude Yourself: You can exclude yourself from the Settlement and keep your right to sue about the claims in this lawsuit, but you will not get any money. Exclusion requests must be received by [**Month 00, 2022]**.

Object: You remain in the Settlement, but you tell the Court why you think the Settlement should not be approved. Objections must be submitted by [**Month 00, 2022**. Details on how to object are on the website.

A Final Approval Hearing will be held on [**Month 00, 2022]** at [**00:00 x.m.]** at Courtroom __ of the United States Courthouse, 1301 Clay Street, Oakland, California, to consider approval of the Settlement, a payment up to a total of $3,000,000 for Class Counsel for attorneys' fees, plus Class Counsel's expenses, and Class Representative

incentive awards not to exceed $5,000 for Plaintiff Smith and $1,000 to Plaintiff Downing. All motions filed by Class Counsel will be available on the website. You may appear at the hearing, but you do not need to.

This is only a summary. More details about the Proposed Settlement and instructions on how to file a claim, object, or exclude yourself are available at **www.kcupsrecyclingsettlement.com** or by calling **1-000-000-0000.**

Exhibit C

EXHIBIT C

TO:
FROM:
SUBJECT: Notice of K Cup® Single Serve Coffee Pods Settlement

---

IF YOU PURCHASED K CUP® SINGLE SERVE COFFEE PODS LABELED AS RECYCLABLE Between June 8, 2016 and [Date of Publication Notice], 2022, You Could Get Money from a Settlement.

What Is This Lawsuit About?
A proposed settlement has been reached in a lawsuit known as *Smith v. Keurig Green Mountain, Inc.* Case No. 4:18-CV-06690-HSG in United States District Court for the Northern District of California.

The Plaintiff in the lawsuit claims that K Cup® single serving coffee pods were labeled as being recyclable when they were not widely recyclable. Keurig denies any wrongdoing but has agreed to a settlement to avoid the expense of continued litigation.

Who is a Settlement Class Member?
You are a Settlement Class Member if you purchased K Cup® single serving coffee pods labeled as recyclable in the United States for personal, family or household purposes between June 8, 2016 and [Date of Publication Notice], 2022. Excluded from eligible Class Members are (a) Defendant Keurig, (b) Defendant Keurig's Affiliates, (c) the officers, directors, or employees of Defendant Keurig and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Defendant Keurig, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased K Cup® single serving coffee pods labeled as recyclable for the purpose of resale.

What does the Settlement Provide?
(1) The settlement provides $10 million to pay valid claims (along with claims administrator costs, attorney fees and costs, and class representative awards) as follows: With Proof of Purchase: You can get $3.50 per 100 pods, or $0.35 per 10 pods, up to $36.00 maximum per household, or you can get $6.00 minimum per household regardless of quantity purchased. Without Proof of Purchase: You can get $5.00 per household from the Settlement. In each case, you must submit a valid Claim Form by [**Month 00, 2022]**. The actual amount received may vary based on the total number of claims filed.

(2) Keurig also agrees to include the following qualifying statement, clearly and prominently, when it makes any recycling representation in connection with selling the pods: "Check Locally – Not Recycled in Many Communities."

What are Your Rights?
Do Nothing: If you do nothing, you stay in the Settlement, but get no money, and you give up the right to sue over the claims in this settlement.

File a Claim: You must submit a valid Claim Form by [**Month 00, 2022]** to get money from the Settlement.

Exclude Yourself: You can exclude yourself from the Settlement and keep your right to sue about the claims in this lawsuit, but you will not get any money. Exclusion request must be received by [**Month 00, 2022]**.

Object: You remain in the Settlement, but you tell the Court why you think the Settlement should not be approved. Objections must be submitted by [**Month 00, 2022]**.

EXHIBIT C

A Final Approval Hearing will be held on [**Month 00, 2022]** at [**00:00 x.m.]** at Courtroom __ of the United States Courthouse, 1301 Clay Street, Oakland, California, to consider approval of the Settlement, a payment up to a total of $3,000,000 for Class Counsel for attorneys' fees , plus Class Counsel's expenses, and Class Representative incentive awards not to exceed $5,000 for Plaintiff Smith and $1,000 to Plaintiff Downing. All motions filed by Class Counsel will be available on the website. You may appear at the hearing, but you do not need to.

This is only a summary. More details about the Proposed Settlement and instructions on how to file a claim, object, or exclude yourself are available at **www.WEBSITE.com** or by calling **1-000-000-0000.**

###

Exhibit D

EXHIBIT D

Notice Plan

1. Settlement Website: A website regarding this action (www.kcupsrecyclingsettlement.com) will be established in February 2022 by the Claim Administrator to facilitate class claims and the disbursement of settlement funds. Within 30 days following entry of the Preliminary Approval Order, the following Settlement documents will be posted on the website: (1) the Publication Notice; (2) a list of frequently asked questions and answers; (3) key deadlines; (4) downloadable copies of orders of the Court and other pleadings pertaining to the settlement; (5) a downloadable copy of the Stipulation of Settlement; (6) a downloadable copy of the Class Notice and Claim Form; (7) information about how to contact the Claim Administrator via a toll-free number, via email and mail; and (8) other information required for Class Members to file a claim. The Settlement Website will be maintained until the end of the Claim Submission Period. The relevant settlement documents will also be posted on Class Counsel's websites (www.lexlawgroup.com and www.shulaw.com) until the end of the Claim Submission Period.

2. Toll-Free Telephone Support: Within 30 days following entry of the Preliminary Approval Order, a toll-free telephone support system will be established by the Claim Administrator that will provide Class Members with: (1) general information about the settlement; (2) frequently asked questions and answers, as agreed by the Parties; and (3) the ability to request a Class Notice and Claim Form. The toll-free telephone support system will also include the option to reach a live operator. The telephone support system will be maintained until 101 days after entry of Final Settlement Order and Judgment.

3. CAFA Notice: The Claim Administrator will provide notice of the terms of the Stipulation of Settlement and other information to the appropriate federal official and state official in each State within 10 days after the Stipulation of Settlement is filed with the Court for preliminary approval as required by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005) ("CAFA").

4. Published Notice: As soon as reasonably practicable following entry of the Preliminary Approval Order, and at least 90 days before the Final Approval Hearing, the Claim Administrator will provide notice of the settlement by a full-page advertisement in the national edition of People magazine. The Claim Administrator will also publish a summary notice in a California edition of USA Today once a week for four weeks, in compliance with California's Consumer Legal Remedies Act, Civil Code § 1750, et seq. The notices will direct Class Members to the Settlement Website and the toll-free telephone number referenced above. The specific language of these notices will be substantially as set forth in Exhibit C to the Stipulation of Settlement.

5. Email Notice. At least 90 days before the Final Approval Hearing or some other date set by the Court, the Claim Administrator will provide Email Notice to those Class

Members who were direct purchasers of the Challenged Products from Keurig.com during the Class Period.

6. **PR Newswire Press Release:** Within thirty (30) days following entry of the Preliminary Approval Order, the Claim Administrator will issue via PR Newswire a press release in English and Spanish targeting potential Class Members. The press release will direct Class Members to the Settlement Website and the toll-free telephone number referenced above.

7. **Internet and Mobile Media Advertisements:** Within thirty (30) days following entry of the Preliminary Approval Order, the Claim Administrator will place internet advertisements in English and Spanish targeting potential Class Members on Multiple Inventory Exchanges, Google Ads, Facebook, Instagram, and Twitter. The advertisements will continue for a period of approximately thirty (30) days. The internet and mobile advertisements will direct Class Members to the Settlement Website and the toll-free telephone number referenced above.

Exhibit E

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IF YOU PURCHASED K CUP® SINGLE SERVE COFFEE PODS LABELED AS RECYCLABLE YOU MAY BE ENTITLED TO MONEY AND OTHER BENEFITS

THIS NOTICE AFFECTS YOUR RIGHTS.

A Federal Court authorized this notice.
This is not a solicitation from a lawyer.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to get a cash payment.
EXCLUDE YOURSELF	Get no settlement benefits. Remove yourself from both the settlement and the lawsuit.
OBJECT	Write to the Court about why you don't like the settlement.
DO NOTHING	Get no cash payment. Give up your rights.

Please read this entire Class Notice carefully.

Your rights and options – **and the deadlines to exercise them** – are explained in this Notice.

WHAT IS THIS LAWSUIT ABOUT?

A proposed settlement has been reached in a class action lawsuit about the labeling and advertising of K Cup® single serving coffee pods labeled as recyclable. The plaintiffs in the lawsuit assert that the packaging and advertising for these products misled consumers to believe that the Products were widely recyclable. Defendant Keurig Green Mountain, Inc. ("Keurig") denies all the plaintiffs' allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is not an admission of wrongdoing. The court has not decided who is right and who is wrong.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

You may be a member of the Class if you purchased K Cup® single serving coffee pods labeled as recyclable in the United States for personal, family or household purposes during the time period from June 8, 2016 through the date the notice to the Class is first published. The K Cup® single serve coffee pods labeled as recyclable at issue in the litigation, are referred to as the "Challenged Products."

The following persons are excluded from the settlement class: (a) Keurig; (b) Keurig's Affiliates (as further defined in the Settlement), (c) the officers, directors, or employees of Keurig and its Affiliates and their immediate family; (d) any legal representative, heir, or assign of Keurig; (e) all federal court judges who have presided over this Action and their immediate family; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

THE SETTLEMENT BENEFITS – WHAT YOU MAY GET

INJUNCTIVE RELIEF

Keurig shall not represent that K Cup® pods are recyclable without clearly and prominently include the following qualifying statement: "Check Locally – Not Recycled in Many Communities." Keurig must also increase the font size of its qualifying statement on all labels and packaging.

CASH PAYMENTS AND COUPONS FROM THE CLAIM PROCESS

Keurig shall pay a total of $10 million in cash for payment of approved Class Member claims, certain notice and administrative costs, incentive awards to the named plaintiffs, and attorneys' fees and costs. If you purchased one or more Challenged Products, you are eligible to receive a cash payment. The amount to which you may be eligible will depend on the statements in your Claim Form. Details are provided below.

HOW YOU GET SETTLEMENT BENEFITS – SUBMITTING A CLAIM FORM

HOW CAN I RECEIVE BENEFITS UNDER THE SETTLEMENT?

You must return a Claim Form to receive a cash payment under the settlement. A copy of the Claim Form is included in this Notice Package. Claim Forms are also available at www.kcupsrecyclingsettlement.com or by calling 1-800-xxx-xxxx.

HOW MUCH WILL I RECEIVE?

Cash Payments

A. No Proof of Purchase – $5.00 per Household

If you elect to receive the cash payment and do not have any proof of purchase, such as a receipt, you may be eligible to receive $5.00 per household.

B. With Proof of Purchase – $36.00 Maximum Payment

If you elect to receive the cash payment and have proof of purchase, you are eligible to receive $3.50 per 100 pods purchased (35 cents per 10 pods). The maximum cash payment is $36.00 per household and the minimum total payment is $6.00 if you have proof of purchase for your purchases.

DO I NEED TO HAVE MY RECEIPTS TO PARTICIPATE IN THE SETTLEMENT?

You do **not** need to submit proof of purchase if you are submitting a claim for Challenged Products. However, you may be eligible to receive up to $31.00 more in cash than the $5.00 minimum if you have proof of purchase, such as receipts, email or order or shipping confirmations.

HOW DO I SEND IN A CLAIM?

The Claim Forms are simple and easy to complete.

The Claim Form requires that you provide:

- Your name, mailing address, and other contact information; AND
- The approximate number of pods that you purchased, the particular pods you purchased, and the approximate date(s) within the class period when you purchased the pods; AND
- Your signature, under penalty of perjury, confirming that the information provided is true and correct; AND
- Provide a receipt or receipts showing each Challenged Product purchase on which the claim is based, or other similar documentation that reflects an eligible purchase (i.e., email order or shipping confirmations).

Please return a Claim Form if you think that you have a claim. Returning a Claim Form is the only way to receive a payment from this settlement. No claimant or household may submit more than one Claim Form, and two or more claimants may not submit Claim Forms for the same alleged purchases or household.

The Claim Administrator may request additional information if the Claim Form is insufficient to process your claim. Failure to provide any requested documentation may result in the denial of your claim and may limit the type of remedy you receive.

WHEN IS THE CLAIM FORM DUE?

You must file your claim, so that it is postmarked or submitted online by 11:59 p.m. Pacific time, no later than [30 days after the Final Approval Hearing], 2022.

WHO DECIDES MY CLAIM?

The Claim Forms will be reviewed by an independent Claim Administrator according to criteria agreed to by the parties.

The Claim Administrator may contact you or other persons listed in your Claim Form if he or she needs additional information or otherwise wants to verify information in your Claim Form.

The Claim Administrator's determination is final. Neither you nor Keurig can appeal or contest the decision of the Claim Administrator.

WHEN WOULD I GET MY PAYMENT?

The Court will hold a hearing on _____ to decide whether to approve the settlement. If the Court approves the settlement, after that there may be appeals. It is always uncertain how long these appeals will take to resolve, but resolving them can take more than a year. If there are no appeals or other delays, you should be sent your cash payment by the Claim Administrator in approximately _____.

WHAT IF THE FUND IS TOO SMALL? TOO LARGE?

If the total amount of cash claims, certain notice and administrative costs, incentive awards to the named plaintiffs, and attorneys' fees and costs exceeds the cash balance, all approved claims for cash payments will be reduced pro rata, based on the respective dollar amounts of the approved claims, until the total aggregate of approved claims equals the cash balance.

If, after everyone sends in Claim Forms, the total of all approved claims, certain notice and administrative costs, incentive awards to the named plaintiffs, and attorneys' fees and costs are *less than* the cash balance, the unused money will be donated to the Ocean Conservancy (75%) and Consumer Reports, Inc. (25%), nonprofit foundations that will donate the funds to charitable organizations that best serve the needs of the Class. Such funds will not be returned to Keurig.

WHAT HAPPENS IF I DO NOTHING AT ALL?

You ***must*** return a Claim Form to receive any payment. If you do nothing, you will get no money from the settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Keurig or any affiliated entities about the legal issues in this case.

EXCLUDING YOURSELF FROM THE SETTLEMENT

HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Class and receive settlement benefits, you must send a written request stating that you want to be excluded from this lawsuit. In order for your exclusion request to be valid, it must: (1) contain your name, current postal address, current telephone number, any email address, and your original signature; (b) reference the name of the Action, "*Smith v. Keurig Green Mountain, Inc.*, Case No. 4:18-CV-06690-HSG;" and (c) be postmarked no later than 45 days prior to the Final Approval Hearing and mailed to:

Keurig K Cup® Pods Class Settlement
Claims Administrator
XXX
P.O. Box XXXX
XXX

If you asked to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Keurig or any affiliated entity in the future.

If you have a pending lawsuit against Keurig, speak to your lawyer immediately. You may need to exclude yourself from this lawsuit in order to continue your own lawsuit. Remember, the exclusion deadline is [45 days prior to Final Approval Hearing date].

THE LAWYERS REPRESENTING YOU

DO I HAVE LAWYERS IN THIS CASE?

The Court appointed the Lexington Law Group [and Shapiro Haber & Urmy] to represent you and other Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award them attorneys' fees and expenses. Class Counsel will make an application to the Court for an amount up to $3,000,000 in attorneys' fees, plus their out-of-pocket expenses.

One of the named plaintiffs, Kathleen Smith, will also ask the Court to award her an amount not to exceed $5,000 for her extensive time and effort acting as plaintiff and for her willingness to bring this litigation and act on behalf of consumers. One of the named plaintiffs, Matthew Downing, will ask the Court to award him an amount not to exceed $1,000 for his time and effort acting as a plaintiff and for his willingness to bring this litigation and act on behalf of consumers. These amounts, if approved by the Court, will be paid from the Claim Fund.

The costs to administer the settlement, to review Claim Forms, and notify Class Members about this settlement will be paid out of the Claim Fund. These costs shall not exceed $500,000.

OBJECTING TO THE SETTLEMENT

HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. In order for your objection to be valid, you must send a letter to the Court and the parties and it must (a) reference the name of the Action, "*Smith v. Keurig Green Mountain, Inc.*, Case No. 4:18-CV-06690-HSG (N.D. California)"; (b) your name, current postal address, current telephone number, and any email address; and if represented by counsel, the name and email address of your counsel; (c) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (d) whether you intend to appear at the Final Approval Hearing, either with or without counsel; (e) contain *a statement under penalty of perjury that you purchased Keurig K Cup® Pods labeled as "Recyclable" that are at issue in the litigation in the United States during the during the time period of June 8, 2016 through [Date of Notice], including all other information required in a Claim Form*; and (f) a detailed list of any other objections submitted by you, or your counsel, to any class actions submitted in any court in the United States in the past five (5) years. If you or your counsel have not objected to any other class action settlement in the United States in the past five (5) years, you must state so. This objection ***must be postmarked*** no later than [45 days prior to the Final Approval Hearing date]. Send your objection to:

Clerk of the Court
United States District Court
Northern District of California (Oakland Division)
1301 Clay Street
Oakland, CA 94612

WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

RELEASE OF CLASS MEMBERS' CLAIMS AND DISMISSAL OF LAWSUIT

IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you must release (give up) all claims that are subject to the Released Claims, and the case will be dismissed on the merits and with prejudice. The Released Claims include all claims that were or could have been raised based on the facts alleged in the lawsuit. A copy of the release is attached to this notice as Exhibit 1. **If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress.**

THE FINAL APPROVAL HEARING

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Judge will hold a Final Approval Hearing at ___ on _____ at the United States District Court for the Northern District of California 1301 Clay Street, Oakland, CA 94612, in Courtroom 2 on the 4th Floor (but may be held by Zoom or teleconference). At this hearing, the Judge will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Judge will consider them. The Judge will listen to Class Members who have asked to speak at the hearing. Any Class Member wishing to be heard orally with respect to approval of the settlement are required to provide written notice of their intention to appear at the Final Approval Hearing no later than [30 days prior to the date of the Final Approval Hearing.]

After the hearing, the Judge will decide whether to approve the settlement. We do not know how long this decision will take.

DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

GETTING MORE INFORMATION

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This Notice summarizes the proposed settlement. More details are in the Stipulation of Settlement. You can get a copy of the Stipulation of Settlement by writing to **K Cup® Single Serve Coffee Pod Class Settlement, Claims Administrator, XXXX** or on the internet at www.kcupsrecyclingsettlement.com.

If you have questions about how to complete a Claim Form, you can call the Claim Administrator at _____. You can also contact attorneys for the class at www.lexlawgroup.com.

PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.	
DATED: _____	/s/ Hon. Haywood S. Gilliam, Jr. BY ORDER OF THE U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

Exhibit 1 – Released Claims

[Excerpted from pages 19-21 of the Stipulation of Settlement]

RELEASES

A. As of the Effective Date, and except as to such rights or claims as may be created by this Stipulation, in consideration of the settlement obligations set forth herein, all Releasing Parties, whether individual, class, representative, legal, equitable, administrative, direct or indirect, or any other type or in any other capacity, release and forever discharge all Released Parties from any and all claims, demands, rights, causes of action, suits, petitions, complaints, damages of any kind, liabilities, debts, punitive or statutory damages, penalties, losses, and issues of any kind or nature whatsoever, asserted or unasserted, known or unknown, suspected or unsuspected (including, but not limited to, any and all claims relating to or alleging deceptive or unfair business practices, false or misleading advertising, intentional or negligent misrepresentation, negligence, concealment, omission, unfair competition, promise without intent to perform, unsuitability, unjust enrichment, and any and all claims or causes of action arising under or based upon any statute, act, ordinance, or regulation governing or applying to business practices generally), existing now or in the future, arising out of or related to (1) Recycling Representations made with respect to the Challenged Products prior to the Graphics Transition End Date and/or (2) Settlement Recycling Representations made with respect to the Challenged Products, provided, however, that this release shall not apply to claims or causes of action arising from a final determination or regulation made by a governmental entity pursuant to statute (such as California S.B. 343) that the Challenged Products, polypropylene products, or polypropylene products of the Challenged Products' dimensions (with such dimensions specified by such governmental entity) are not recyclable under such statute and are not otherwise permitted to make a qualified statement substantially similar to the Settlement Recycling Representation. For the purposes of this paragraph, a Recycling Representation shall be considered to have been "made," with respect to printed materials, as of the date of printing.

B. No Released Party that complies with the terms set forth in Section III.A herein shall be liable for another party's failure to comply with such terms, nor shall the failure of any entity to comply with the terms set forth in Section III.A herein void or limit in any way the release provided to the Released Parties that comply with such terms. A Noncompliant Partner Brand shall be solely responsible for the failure of any Noncompliant Partner Brand Products to comply with the terms set forth in Section III.A herein, and Defendant's manufacture, sale or distribution of Noncompliant Partner Brand Products shall not be deemed

noncompliance with the terms set forth in Section III.A herein and shall not void or limit in any way the release otherwise provided to Defendant and the other Released Parties.

C. With respect to the Released Claims, each Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Class Members understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal, state or other statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

D. The Parties shall be deemed to have agreed that the release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding against any of the Released Parties based on the Released Claims.

E. As of the Effective Date, by operation of entry of judgment, the Released Parties shall be deemed to have fully released and forever discharged Plaintiffs, all other Class Members and Class Counsel from any and all claims of abuse of process, malicious prosecution, or any other claims arising out of the initiation, prosecution, or resolution of the Action, including, but not limited to, claims for attorneys' fees, costs of suit or sanctions of any kind, or any claims arising out of the allocation or distribution of any of the consideration distributed pursuant to this Stipulation of Settlement.

Exhibit F

EXHIBIT F

K CUP® SINGLE SERVE COFFEE PODS LABELED AS RECYCLABLE ("Challenged Products")

CLAIM FORM

You can also submit online at www.kcupsrecyclingsettlement.com.

Use this Claim Form to claim refunds of a portion of the purchase price of one or more of the Challenged Products (up to a maximum of **$36 with proof of purchase** or **$5.00** if you do not have proof of purchase information). This Claim Form is only for claims concerning the purchase(s) of Challenged Products set out on the attached list and only for those purchases made in the United States during the time period of June 8, 2016 through the date notice to the class is first published. You cannot use this form to make a claim concerning the purchase(s) of any other products manufactured by Keurig Green Mountain, Inc. or another company. You may submit only one Claim Form per household. A "household" means any number of persons cohabitating and related by blood or marriage in the same dwelling unit or physical address. **All Claim Forms must be postmarked or submitted online by 11:59 p.m. Pacific Time [30 Days after Final Approval Hearing].** If mailing, please return this form to:

Keurig K Cup® Pods Class Settlement
Claims Administrator
XXX Claims Group
P.O. Box XXXX
XXX-XXX

1. Class Member Information:

NAME: _____ TELEPHONE OR EMAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

2. Payment Options (for more details, please consult the Class Notice, available on website):

If you have proof of purchase (in the form of receipts, email orders, or shipping confirmation(s)) for your Challenged Products purchased in the United States between June 8, 2016 through the date notice to the class is first published**, please check the box below, identify the applicable purchases as noted below, and mail this form along with your proof of purchase to the address above.**

□ Eligible for up to $36 in cash per household with proof of purchase. (Actual amount will be based on $3.50 per 100 pods purchased (35 cents per 10 pods) with a $6.00 minimum).

Purchases of Challenged Product(s):
Product(s):
Number of pods:
Purchase date(s):

If you do *not* have proof of purchase, but purchased Challenged Products in the United States between June 8, 2016 through the date notice to the class is first published**, please check the box below and mail this form to the address above:**

□ Eligible for up to $5.00 per household without receipts.

Purchases of Challenged Product(s):
Product(s):
Approximate number of pods:
Approximate purchase date(s):

3. You *must* sign below:

28 U.S.C. §1746 AFFIRMATION

I UNDERSTAND THAT THE DECISION OF THE CLAIM ADMINISTRATOR IS FINAL AND BINDING ON ME AND ON KEURIG.

I SWEAR UNDER PENALTY OF PERJURY THAT THE INFORMATION ON THIS CLAIM FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE: _____ DATE: _____

CLAIM FORMS MUST BE POSTMARKED OR SUBMITTED ONLINE BY [30 Days prior to Final Hearing].

QUESTIONS? VISIT www.kcupsrecyclingsettlement.com OR CALL 1-800-XXX-XXXX.

Exhibit G

EXHIBIT G

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN SMITH and MATTHEW DOWNING, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

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

CLASS ACTION

[PROPOSED] FINAL SETTLEMENT ORDER AND JUDGMENT

Judge: Hon. Haywood S. Gilliam, Jr.

IT IS HEREBY ADJUDGED AND DECREED THAT:

1. This Judgment incorporates by reference the definitions in the Stipulation of Settlement dated _____, 2022 ("Stipulation"), attached as Exhibit A, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation unless set forth differently herein. The terms of the Stipulation are fully incorporated in this Judgment as if set forth fully here.

2. The Court has jurisdiction over the subject matter of this action and all Parties to the action, including all Class Members who do not timely and validly exclude themselves from the Class. The list of excluded Class Members is attached as Exhibit B.

3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court hereby amends the class previously certified by order dated September 21, 2020 by certifying the following Class:

> All Persons in the United States who purchased the Challenged Products for personal, family or household purposes within the Class Period. Specifically excluded from the Class are (a) Defendant, (b) Defendant's Affiliates, (c) the officers, directors, or employees of Defendant and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Defendant, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

4. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all such persons or entities who satisfy the Class definition above, except those Class Members who timely and validly excluded themselves from the Class, are Class Members bound by this Judgment.

5. For settlement purposes only, the Court finds:

(a) Pursuant to Federal Rule of Civil Procedure 23(a), Kathleen Smith and Matthew Downing are members of the Class, their claims are typical of the Class, and they fairly and adequately protected the interests of the Class throughout the proceedings in the Action. Accordingly, the Court hereby appoints Kathleen Smith and Matthew Downing as class representatives;

(b) The Class meets all of the requirements of Federal Rules of Civil Procedure 23(b)(2) and (b)(3) for certification of the class claims alleged in the First Amended Complaint filed by Kathleen Smith, including: ((a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representatives and Class Counsel; (e) that Defendant has acted on grounds that apply generally to the Class, such that final injunctive relief is appropriate respecting the Class as a whole; (f) predominance of common questions of fact and law among the Class; and (g) superiority; and

(c) Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, Class Counsel have fairly and adequately represented the Class for purposes of entering into and implementing the settlement. Accordingly, the Court hereby appoints Class Counsel as counsel to represent Class Members.

6. Persons or entities that filed timely and valid exclusion requests are not bound by this Judgment or the terms of the Stipulation and may pursue their own individual remedies against Defendant. However, such excluded parties are not entitled to any rights or benefits provided to Class Members by the terms of the Stipulation. The list of persons and entities excluded from the Class because they filed timely and valid requests for exclusion is attached hereto as Exhibit B.

7. The Court directed that notice be given to Class members by publication and other means pursuant to the notice program proposed by the Parties in the Stipulation and approved by the Court. The Parties have demonstrated compliance with this Court's Preliminary Approval Order regarding class notice. The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class.

8. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715 and any other applicable law.

9. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds after a hearing and based upon all submissions of the Parties and other persons that the settlement proposed by the Parties is fair, reasonable, and adequate. The terms and provisions of the Stipulation are the product of arms-length negotiations conducted in good faith and with the assistance the Honorable Morton Denlow (Ret.). The Court has considered any timely and valid objections to the Settlement and finds that such objections are without merit and should be overruled. Approval of the Stipulation will result in substantial savings of time, money and effort to the Court and the Parties, and will further the interests of justice.

10. Upon the Effective Date, the named Plaintiffs and each Class Member other than those listed on Exhibit B shall be deemed to have, and by operation of this Final Settlement Order and Judgment shall have released, waived and discharged with prejudice Defendant and the other Released Parties from any and all Released Claims as set forth in Section IV of the Stipulation.

11. All Class Members who have not timely and validly submitted requests for exclusion are bound by this Judgment and by the terms of the Stipulation.

12. The Plaintiffs in the Action initiated this lawsuit, acted to protect the Class, and assisted their counsel. Their efforts have produced the Stipulation entered into in good faith that provides a fair, reasonable, adequate and certain result for the Class. Plaintiff Smith is entitled to an incentive award of $_____. Plaintiff Downing is entitled to an incentive award of $_____. Class Counsel is entitled to reasonable attorneys' fees of $_____ and reasonable expenses of $_____.

13. The Court hereby dismisses the Action with prejudice, and the Released Parties are hereby released from all further liability for the Released Claims.

14. Without affecting the finality of this Judgment, the Court reserves jurisdiction over the implementation, administration and enforcement of this Judgment and the Stipulation, and all matters ancillary thereto.

15. The Court finding that no reason exists for delay in ordering final judgment pursuant to Federal Rule of Civil Procedure 54(b), the clerk is hereby directed to enter this Judgment forthwith.

16. The Parties are hereby authorized without needing further approval from the Court to agree to and adopt such modifications and expansions of the Stipulation, including without limitation the claim review procedure, that are consistent with this Judgment and do not limit the rights of Class Members under the Stipulation.

IT IS SO ORDERED.

DATED: _____

_____
HONORABLE HAYWOOD GILLIAM, JR.
UNITED STATES DISTRICT COURT JUDGE

Exhibit H

EXHIBIT H

Representative examples of the new qualifying language and font size ratio:

Exhibit I

EXHIBIT I

Amazon Fresh
Wellsley Farms
Harris Teeter
Kirkland Signature
Kroger
Private Selection
Simple Truth
Market Basket
Bowl and Basket
Wholesome Pantry
Great Value
Executive Suite
Royal Cup
Java Roast
Shazam
Bigelow
Celestial Seasonings
Dunkin Donuts
illy
Cafe Bustelo
Folgers
Joffrey's Coffee & Tea Co.
Ethical Bean
Baileys
Gevalia
Hershey
Maxwell House
York Peppermint
Yuban
Lavazza
Seattle's Best Coffee
Starbucks
Peets
French Market
Luzianne
New England Coffee

Eight O'Clock
Lipton
Red Rose
Tazo Tea
Tim Hortons
Twinings
Barista Prima Coffeehouse
Café Escapes
Coffee People
Donut House Collection
Diedrich Coffee
The Original Donut Shop
Gloria Jean's
Green Mountain Coffee Roasters
Green Mountain Naturals
Revv
Timothy's
Tullys
Van Houtte
Motts
Snapple
Caribou
Cinnabon
Emeril's
Kahlua
Laughing Man
Krispy Kreme Doughnuts
McCafe
Newmans Own Organic
Panera
Swiss Miss Hot Cocoa

Exhibit J

EXHIBIT J

REQUEST FOR EXCLUSION FORM

Read the enclosed legal notice carefully before filling out this form.

The undersigned has read the Notice of Class Action dated [DATE], and does NOT wish to remain a member of the certified Class in the case of *Smith v. Keurig Green Mountain, Inc.*, Case No. 4:18-CV-06690-HSG, now pending before the United States District Court for the Northern District of California.

Date:
Signature:
Printed Name:
Mailing Address:
Telephone:

If you wish to exclude yourself from the Class, you must complete and return this form by first-class mail postmarked by [DATE] [45 days prior to the Final Approval Hearing].

[Name and Address of Claims Administrator]

Exhibit 2

LEXINGTON LAW GROUP
Howard Hirsch, State Bar No. 213209
Ryan Berghoff, State Bar No. 308812
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
hhirsch@lexlawgroup.com
rberghoff@lexlawgroup.com

Attorneys for Plaintiffs

[Additional counsel on signature page.]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN SMITH and MATTHEW DOWNING, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

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

CLASS ACTION

SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF:

1. California Consumer Protection Laws;
2. Massachusetts Consumer Protection Law;
3. Express warranty;
4. Unjust Enrichment;
5. Misrepresentation; and
6. Declaratory Judgment

DEMAND FOR JURY TRIAL

Plaintiffs Kathleen Smith and Matthew Downing (collectively referred to herein as "Plaintiffs"), on behalf of themselves and all those similarly situated, based on information, belief and investigation of their counsel, bring this Class Action Complaint ("Complaint") against Defendant Keurig Green Mountain, Inc. ("Defendant"), and make the following allegations based upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters as follows:

INTRODUCTION

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

2. This Complaint seeks to remedy Defendant's unlawful, unfair and deceptive business practices with respect to the advertising, marketing and sales of K Cup® single serve coffee pods that are labeled as "recyclable" (the "Products"). The Products are advertised, marketed and sold as recyclable. However, even if consumers take the many steps required to place the Products in their recycling bins, they are not in fact recyclable in many communities because municipal recycling facilities ("MRFs") are not properly equipped to capture and segregate such small materials, nor can they handle such materials since they are inevitably contaminated with foil and food waste. Furthermore, even to the extent facilities exist that are capable of segregating the Products from the general waste stream, and then cleaning any contamination in the Products, the Products often end up in landfills anyway as there are limited

markets to reuse the Products or convert them into a material that can be reused or used in manufacturing or assembling another item.

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

4. Plaintiffs purchased the Products in reliance on Defendant's false representations that the Products are recyclable. Plaintiffs viewed Defendant's false representations on the labels and other marketing materials for the Products. If Plaintiffs had known that the Products were not recyclable in many communities, Plaintiffs would not have purchased the Products and would have instead sought out single serve pods or other coffee products that are otherwise compostable, recyclable or reusable. At a minimum, Plaintiffs would not have paid as much as they did if they knew the Products could not be recycled in many communities. Defendant thus breached its express warranty regarding the recyclability of the Products; violated the California Consumers Legal Remedies Act ("CLRA") by making representations that the Products have characteristics, benefits and qualities which they do not have and by advertising the Products without the intent to sell them as advertised; and violated M.G.L. Chapter 93A and California's Business and Profession Code § 17200 based on fraudulent, unlawful and unfair acts and practices.

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

PARTIES

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

plastic waste problems in particular. Therefore, Plaintiff Smith specifically selected the Products in reliance on Defendant's representations that the Products are recyclable. The false representations are located on the labels and other marketing materials for the Products. Had Plaintiff Smith known that the Products are not recyclable in many communities she would not have purchased the Products or would not have paid as much as she did for the Products.

7. Plaintiff Matthew Downing is a resident of Marlborough, Massachusetts. In or around 2017, Mr. Downing purchased Products that were falsely labeled as recyclable based on the labels indicating that the Products were, in fact, recyclable. Had Plaintiff Downing known that the Products were not recyclable in many communities, he would not have purchased the Products or would not have paid as much as he did for the Products.

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

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the Class are citizens of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

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

11. This Court has jurisdiction over Defendant because it is a corporation or other entity that has sufficient minimum contacts in California and has specifically marketed, advertised, and made substantial sales in California, or otherwise intentionally availed itself of the California market either through the distribution, sale or marketing of the Products in the State of

California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

13. **Intra-district Assignment (L.R. 3-2(c) and (d) and 3.5(b))**: An intra-district assignment to the San Francisco/Oakland Division is appropriate because a substantial part of the events or omissions which give rise to the claims asserted herein occurred in this Division, including that Plaintiff Smith purchased the Products in Contra Costa County. Pursuant to L.R. 3-2(c), all civil actions which arise in Contra Costa County shall be assigned to the San Francisco Division or the Oakland Division.

BACKGROUND FACTS

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

15. The staggering amount of plastic waste accumulating in the environment is accompanied by an array of negative side effects. For example, plastic debris is frequently ingested by marine animals and other wildlife, which can be both injurious and poisonous. Floating plastic is also a vector for invasive species, and plastic that gets buried in landfills can leach harmful chemicals into ground water that is absorbed by humans and other animals. Plastic litter on the streets and in and around our parks and beaches also degrades the quality of life for residents and visitors. More recently, scientists have discovered that plastic waste releases large amounts of methane, a powerful greenhouse gas, as it degrades. Thus, plastic waste is also thought to be a significant potential cause of global climate change. Consumers, including

Plaintiffs, actively seek out products that are compostable, recyclable or reusable to prevent the increase in global waste and to minimize their environmental footprint.

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

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

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

19. The California Business and Professions Code § 17580.5 makes it "unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied." Pursuant to that section, the term "environmental marketing claim" includes any claim contained in the Guides for use of Environmental Marketing Claims published by the Federal Trade Commission (the "Green Guides"). *Ibid*; *see also* 16 C.F.R. § 260.1, *et seq*.

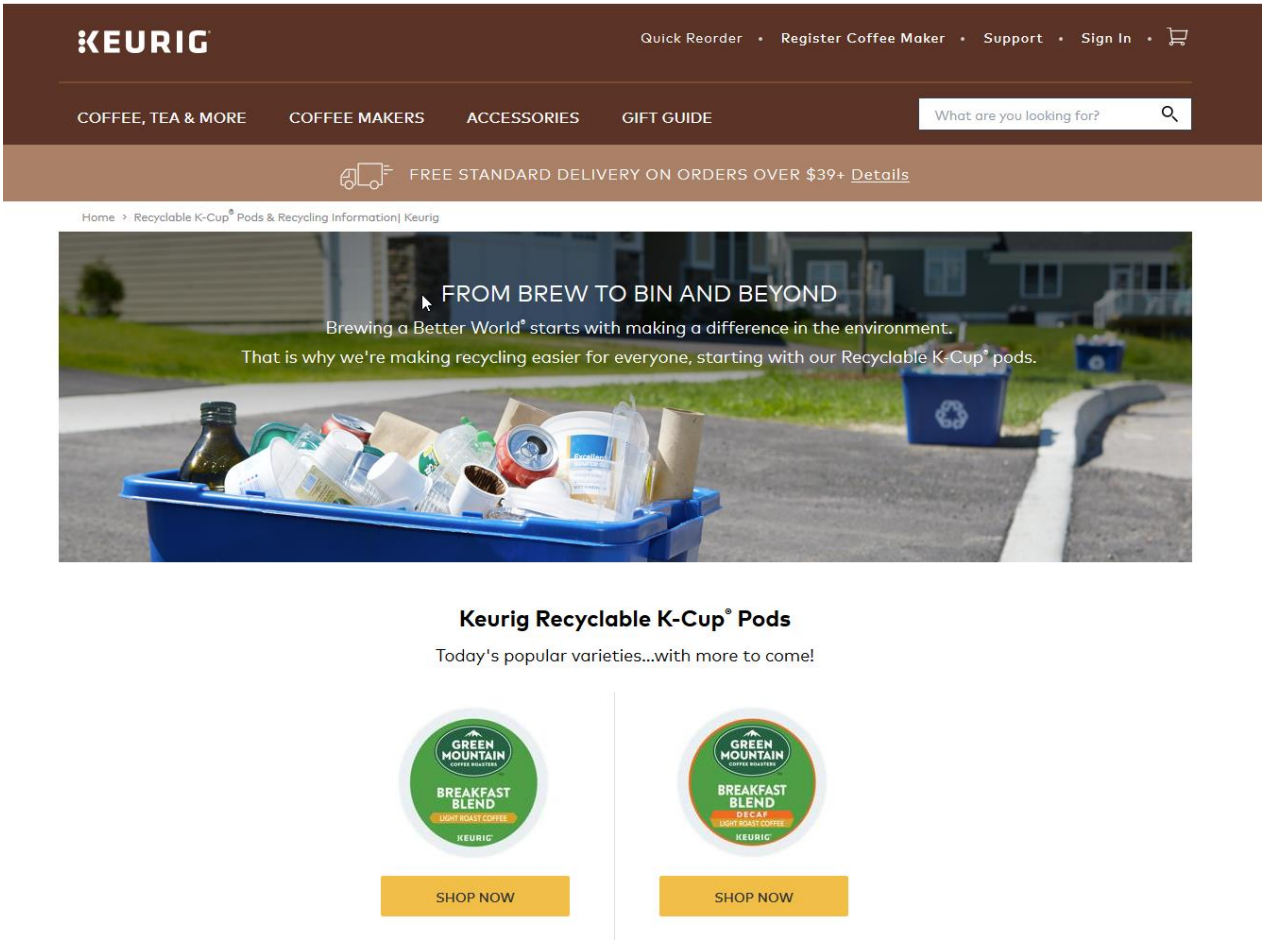
Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R. § 260.12(a).

20. The Green Guides' definition of "recyclable" is consistent with reasonable consumer expectations. For instance, the dictionary defines the term "recycle" as: (1) convert (waste) into reusable material, (2) return (material) to a previous stage in a cyclic process, or (3) use again. Oxford Dictionary, Oxford University Press 2018. Accordingly, reasonable consumers expect that products advertised, marketed, sold, labeled and/or represented as recyclable will 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.

21. In an attempt to counter negative publicity regarding the impacts of single serve coffee pods and to take advantage of consumers' concerns with respect to the environmental consequences caused by such products, Defendant advertises, markets and sells the Products as recyclable. More specifically, the packaging of Defendant's Products previously stated that consumers can "Have your cup and recycle it, too," in large green font. Adjacent to that statement on Defendant's packaging were instructions for how to recycle, including illustrations with the terms "PEEL," "EMPTY," and "RECYCLE," accompanied by the chasing arrows symbol that is commonly used and understood to mean that a product is recyclable. These claims were uniform, consistent and prominently displayed on each of the Products' labels. Following is a representative example of an earlier iteration of a Product label:

22. Recognizing the importance of front labels to consumers, Defendant designs the front panels of each Product to have a uniform look and to include the same recyclable claim. While Defendant's labels have been slightly modified over time, the representations at issue are uniform across all label iterations. Specifically, every member of each Class purchased a Product that includes a prominent "Recyclable" or "Recycle" representation along with the "chasing arrows" recycling symbol on the front label, and prominent instructions to "Peel, Empty, Recycle" on the front or side label. While the labels differ in terms of the brand or flavor of coffee, the recycling representations are consistent.

23. Defendant's marketing, advertising and promotional materials for the Products, including Defendant's website, also uniformly represent that the Products are recyclable. For instance, Defendant's website previously advertised the Products as recyclable as follows[1]:



[1] https://www.keurig.com/recyclable (as of Dec. 20, 2018). Defendant's website has been periodically updated, but has consistently and uniformly represented the Products as recyclable.

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

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

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

25. Many MRFs in the United States are not properly equipped to capture materials as small as the Products or to segregate such small items from the general waste stream. The problem of "smalls" is well-documented and well known in the recycling industry. This problem is exacerbated because the Products' already small size is further reduced when the Products are compressed into recycling bins and then compacted by recycling collection trucks prior to being delivered to MRFs. Ultimately, by the time they reach the sorting line of a typical recycling facility, the Products are likely to be crushed, compacted and mangled. Of course, Plaintiffs and

consumers have no way of discerning the precise size and shape of the Products after consumers place the Products in their recycling bins.

26. Defendant's recycling instructions require consumers to go through a number of time-consuming steps in order to recycle the Products, including waiting until the Products cool, separating the foil lid from the plastic pod, and removing the pod's contents. Worse yet, Defendant's instructions exacerbate the deceptiveness of Defendant's representations that the Products are recyclable by making it less likely that the Products will actually be recycled. For instance, while Defendant instructs consumers to "peel [the] lid and dispose," the foil lid on the Products is extraordinarily difficult to remove as the foil sticks to the edge of the plastic cup and there is no extra tab (as one would find on a yogurt container, for instance) to use to peel off the lid.[2] From a recycling standpoint, the inevitable presence of foil on the Products is contamination that renders the Products impossible or extremely difficult to recycle.

27. In addition, while Defendant instructs consumers to "Empty" the Product and "Compose or dispose of contents," Defendant also explicitly states that the paper filter attached to the inside of the Products "can remain." By instructing consumers that they can leave the filter in place, Defendant is ensuring that some coffee grounds will also remain. In fact, in many of Defendant's advertisements, the Products are placed in the recycling bin with coffee grounds clearly visible, as evidenced by the web page depicted above. And in some of Defendant's video advertisements, both the coffee grounds and foil are visible in and on the Products as they are placed in the recycling bin.[3] Thus, following Defendant's instructions inevitably leads to further contamination issues, as the Products will be placed in recycling bins with foil remnants, used coffee grounds and a paper filter inside. From a recycling standpoint, this contamination renders the Products even more difficult to recycle. The fact that MRFs typically process waste at speeds of 25 to 40 tons per hour makes it even less likely that small, compacted and contaminated single

[2] In November 2021, likely in response to the claims alleged in this case, Keurig announced that it plans to introduce an "EASY-PEEL lid" on "select items." https://www.keurig.com/recyclable (last visited Jan. 25, 2022).

[3] https://www.keurig.com/recyclable (as of Dec. 20, 2018).

serve coffee pods such as the Products will be collected, separated or otherwise recovered from the waste stream.

28. Even in the rare instance where the Products can be segregated and cleaned of any contamination, the Products still end up in landfills as there are limited markets to reuse the Products or convert them into a material that can be reused or used in manufacturing or assembling another item.

29. Worse yet, by encouraging consumers to place the Products in recycling bins, Defendant is contaminating the recycling stream with unrecyclable materials that will hinder the ability of recycling facilities to properly recycle items that are legitimately recyclable. And the contamination on the Products themselves is also likely to contaminate other materials that would otherwise be recyclable. Environmentally motivated consumers who purchase the Products in the belief that they are recyclable are thus unwittingly hindering recycling efforts. Moreover, Plaintiffs and consumers have no way of knowing whether the Products are actually segregated from the general waste stream, cleaned of contamination, or reused or converted into a material that can be reused or used in manufacturing or assembling another item.

30. Most consumers believe that if the Products are accepted into a recycling program, then those Products are recyclable. And consumers who spend the time and effort to follow Defendant's cumbersome recycling instructions do not expect that the Products will end up in a landfill. However, the Products will often end up in a landfill as they cannot be recycled by many MRFs in the United States. Defendant's representations that the Products are recyclable are therefore per se deceptive under the Green Guides and under California law.

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

a. Berkeley

b. Cal-Waste Recovery Systems (localities in Sacramento, Calaveras, Alpine and San Joaquin Counties)
c. El Dorado County
d. Eureka
e. Lake County
f. Lincoln
g. Los Angeles
h. Mission Country Disposal (Los Osos, Cayucos, Cambria and Harmony)
i. Monterey County
j. Mill Valley
k. Morro Bay
l. Paradise
m. Redding
n. Sacramento
o. San Luis Obispo County
p. South County Sanitary (Avila Beach, Shell Beach, Pismo Beach, Grover Beach, Oceano, Arroyo Grando and Nipomo)
q. Shasta County
r. Tri-CED Community Recycling (Hayward and Union City)
s. Truckee

32. By way of example, San Luis Obispo County, Lake County, the Town of Truckee, and the City of Lincoln have all stated, "Coffee Capsules [Are] Never Recyclable Curbside." These jurisdictions go on to explain, "Coffee capsule creators often tout their products as 'recyclable.' In theory, the plastic portion of a coffee capsule is (not the lid or filter). In practice, however, the cups are actually too small to be captured and recycled in recycling facilities where objects are separated based on size and density."[4]

33. The Green Guides are clear: "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." 16 C.F.R. § 260.12(d). Here, the Products are

[4] https://www.iwma.com/guide/coffee-capsules/ (last visited Dec. 19, 2018) https://lakecountyrecycles.com/guide/coffee-capsules/ (last visited Dec. 19, 2018) https://www.keeptruckeegreen.org/guide/coffee-capsules/ (last visited Dec. 19, 2018) https://www.recyclinginlincoln.com/guide/coffee-capsules/ (last visited Dec. 19, 2018).

not recyclable in many communities due to their small size, their contamination with foil, filter paper and food waste, and the lack of a market to recycle them. Defendant's marketing of the Products as recyclable is thus a direct violation of the Green Guides.

34. Because the Products are not recyclable in many communities, Defendant is required to clearly and prominently qualify recyclable claims to avoid deception about the availability of recycling programs and collection sites to consumers if consumers do not have access to facilities that can recycle their products. 16 C.F.R. § 260.12(b). A marketer may only make an unqualified recyclable claim if a substantial majority of consumers or communities have access to recycling facilities capable of recycling the items.[5] *Id.* § 260.12(b)(1). Because a substantial majority of consumers do not have access to recycling facilities capable of recycling the Products, Defendant must at a minimum qualify any recyclability claim about the Products.

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

[5] A "substantial majority" means at least 60 percent. 16 C.F.R. § 260.12(b)(1).

36. Plaintiffs and most other consumers believe that if their municipality offers recycling services, then all products marketed as "recyclable" can be recycled. Thus, most consumers will place the Products in the recycling bin under the false impression that the Products can be recycled, even though the Products cannot in fact be recycled in their area. In addition, most consumers will not follow Defendant's cumbersome recycling instructions despite the fact that the Products cannot be recycled, and Defendant's instructions are misleading and incomplete. Defendant's labeling, advertising and marketing claims that the Products are recyclable are therefore likely to deceive a reasonable consumer.

37. Defendant's labeling for the Products states: "Not recycled in all communities." This statement does not comply with the Green Guides as it indicates that the Products are recycled in most or many communities, when they are not. Defendant's qualification exacerbates the misrepresentation that the Products are recyclable by suggesting that the Products are recyclable in communities that have access to recycling facilities.

38. Defendant has buried other disclaimers about the recyclability of the Products on its website. For instance, Defendant's website has stated at some times, "[w]e recommend checking with your local municipality or waste hauler to determine if your community recycles #5 plastic." *See* Defendant's Request for Judicial Notice In Support of Motion to Dismiss, Exh. 2 [ECF No. 19]. This disclaimer is problematic since, even if a local recycling facility was willing to answer such an inquiry, and even if the response was favorable, this does not mean that the facility is capable of recycling the Products due to their size, contamination, and the lack of a market for them to be recycled. In fact, Defendant's webpage for Frequently Asked Questions ("FAQ") previously asked whether the new recyclable K-Cup® are recyclable everywhere, to which the website responds "[t]he new recyclable K-Cup® pods, which can be easily identified through our on-the-box packaging and with a #5 recycling symbol on the bottom of the pod itself, can be recycled in communities that accept #5 plastics. Polypropylene (#5) is currently accepted for recycling in approximately 61% of communities in the U.S. and 93% of communities in

Canada. Please check with your local community to confirm."[6] Defendant's FAQ is misleading for the same reason its website disclaimer is misleading: it indicates to a consumer that the Products are recyclable solely because they are made of #5 plastic, regardless of their size, contamination, and lack of market for them to be recycled, which is not the case.

39. Plaintiffs place a high priority on environmental concerns in general, and on the negative consequences regarding the proliferation of plastic waste in particular. In shopping for coffee products for their homes, Plaintiffs were particularly concerned about the recyclability of single serve pods that contain coffee. Based on the labeling and advertising of Defendant's Products, Plaintiffs believed that the Products are recyclable in all locations, including Lafayette, California, where Plaintiff Smith resides and in Marlborough, Massachusetts, where Plaintiff Downey resides. Defendant's representations that the Products are recyclable are thus material to Plaintiffs.

40. Plaintiffs purchased the Products numerous times over the last five years directly from Defendant's website believing the recycling claims both on the Products' packaging as well as the website. For instance, on October 1, 2016 and November 25, 2016, Plaintiff Smith purchased from Defendant's website Green Mountain Coffee Roasters Breakfast Blend Decaf, K-Cup Box 24 ct., labeled as recyclable. Plaintiffs purchased the Products in reliance on Defendant's representations that the Products are recyclable, when they are not in fact recyclable in many communities. Plaintiffs followed Defendant's instructions on the labeling to recycle the Products, but were not aware that the Products would likely end up in a landfill anyway. Had Plaintiffs and the other members of the Class known that the Products are not recyclable in many communities — contrary to Defendant's representations — they would not have purchased the Products or would not have paid as much as they did for the Products.

41. Plaintiffs continue to desire to purchase recyclable single serve coffee pods. Plaintiffs would purchase single serve coffee pods manufactured by Defendant in the future if Defendant's representations that the Products are recyclable are true. Plaintiffs would like to buy

[6] http://www.keurigrecycling.com/faq/ (as of Dec. 20, 2018).

recyclable single serve coffee pods from Defendant in the future, but are unable to determine with confidence, based on the labeling and other marketing materials, whether the Products are truly recyclable. Plaintiffs would not have purchased the Products, or would not have paid as much as they did for the Products, if Defendant had disclosed that the Products were not recyclable in many communities.

42. Defendant is aware that the Products are not recyclable in many communities, yet Defendant has not undertaken any effort to notify its end-use customers of the problem. Defendant's failure to disclose that the Products are not recyclable is an omission of fact that is material to Plaintiff and the other members of the Class.

43. The conduct giving rise to Plaintiffs' claims—Keurig's deceptive campaign to falsely market and label the Products as recyclable—was orchestrated in and emanated from the Commonwealth of Massachusetts. Massachusetts has a significant interest, as codified by the Massachusetts Legislature in Chapter 93A, in regulating, punishing and preventing such wrongful conduct occurring within the Commonwealth.

44. Keurig developed its corporate strategy of marketing purportedly recyclable Products in Massachusetts, primarily from its Burlington, Massachusetts headquarters. Keurig designed the Product labels at issue in this case in Massachusetts and made the representations detailed in this complaint and disseminated them from its headquarters in Burlington, Massachusetts. The deceptive conduct alleged in the complaint substantially emanated from Massachusetts.

45. Keurig's product design staff for the Products is based in Massachusetts. Keurig's "Environmental Sustainability Engineers," who appear to have been responsible for engineering the purportedly recyclable Products, are based in Burlington, Massachusetts. For example, one such former Environmental Sustainability Engineer, Ali Blandina, indicates on her LinkedIn profile that she led all "MRF [materials recovery facility] testing across North America" for Keurig, including analysis of "how items flow through [a municipal recycling facility], evaluat[ing] how successfully they are sorted, and ultimately captured for further processing of

recycling material." According to her LinkedIn profile, she performed these functions for Keurig in Burlington, Massachusetts.

46. Along the same lines, Keurig's former Director of Engineering and Technical Director, Jim Shepard, who was responsible for the "overall industrial design, technical development, and manufacturing execution of brewer systems and carafe pod systems" for Keurig, likewise performed these functions in Burlington, Massachusetts, according to his LinkedIn profile.

47. Keurig's senior marketing staff are also based in Massachusetts. For example, Brenda Armstead, Keurig's current Vice President of Brand Marketing for coffee, and its former Vice President of Consumer Insights for its coffee products, is based in Massachusetts. According to Ms. Armstead's LinkedIn profile, around the time of the launch of Keurig's purportedly recyclable Pods, she was "driving business strategies" based upon a "better understanding of [Keurig's] customers." She led the "Consumer Insights team," which she describes as "the central point of truth…for [Keurig]" as it infuses consumer "understanding into [Keurig's] innovation and product portfolio."

48. Similarly, Keurig's Senior Director of Marketing, Lindsay Firmino, was located in Massachusetts.

49. Keurig's former Chief Executive Officer, Brian P. Kelley, who stated in Keurig's Sustainability Report that "[t]he lack of recycling options for used K-Cup packs stands out front and center," of ways Keurig "can do better," and pledged that "100% of K-Cup packs will be recyclable," was based in Massachusetts.

50. Keurig's employees responsible for Keurig's corporate strategies in connection with sustainability are also based in Massachusetts. For example, Keurig's Chief Sustainability Officer from 2014 to present (and Director of Sustainability for years before that), Monique Oxender, is based in Massachusetts. She describes herself as having been responsible for "brand enhancement through pro-active identification of sustainability issues…coupled with actionable and measurable strategies for implementation." Ms. Oxender specifically identifies as one of her "[c]ore areas of expertise" issues of "product stewardship (incl. recyclability)" and "general

management of the recyclable product platform." Ms. Oxender indicates she fulfilled these responsibilities in Massachusetts.

51. Another Keurig employee, Kristina Bosch Ladd, who indicates she "manage[s] the company's…environmental footprints towards its 2020 sustainability targets," and "oversee[]s recovery and recycling programs," is based in Massachusetts.

52. These examples are not cherry-picked. A review of the LinkedIn profiles of the Keurig employees who appear to be most directly responsible for the deception Plaintiffs allege in this complaint reflects that almost all such employees were based in Massachusetts at the time of the wrongful conduct. That is, Keurig's senior staff responsible for marketing, consumer relations, and product design performed those functions in Massachusetts, making Massachusetts the locus of the fraudulent and deceptive conduct that Plaintiffs allege.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this suit on behalf of themselves and as a class action pursuant to Federal Rule of Civil Procedure Rule 23(a), on behalf of themselves and the following Class of similarly situated individuals in the United States (the "Class"):

> All persons in the United States who purchased the Products for personal, family or household purposes from June 8, 2016 to the present. Specifically excluded from the Class are (a) Defendant, (b) Defendant's Affiliates, (c) the officers, directors, or employees of Defendant and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Defendant, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

54. Plaintiff Smith brings this suit pursuant to Federal Rule of Civil Procedure Rule 23(a), on behalf of herself and the following Class of similarly situated individuals in California (the "California Subclass"):

> All persons who purchased the Products for personal, family or household purposes in California (either directly or through an agent) during the applicable statute of limitations period (the

"Class"). Specifically excluded from the California Subclass are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant. Also excluded are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

55. Plaintiffs meet all of the criteria required by Federal Rule of Civil Procedure 23(a).

56. **Numerosity**: Plaintiffs are unable to state the precise number of potential members of the Class; however, the number of Class members is so numerous that joinder would be impracticable for purposes of Rule 23(a)(1). This Court has already certified the California Subclass and Defendant has acknowledged that the California Subclass exceeds 100 individuals.

57. **Commonality**: There is a community of interest among the members of the proposed Class in that there are questions of law and fact common to the proposed Class for purposes of Rule 23(a)(2), including whether Defendant's labels, advertisements and packaging include uniform misrepresentations that misled Plaintiffs and the other members of the Class to believe the Products are recyclable when they are not. Proof of a common set of facts will establish the liability of Defendant and the right of each member of the Class to relief. This Court has already found that there is commonality for the California Subclass.

58. Class certification is appropriate under Rule 23(b)(3) because common questions of law and fact substantially predominate over any questions that may affect only individual members of the Class. This Court has already found that class certification is appropriate under Rule 23(b)(3) as to the California Subclass. These common legal and factual questions, which do not vary among Class members and which may be determined without reference to the individual circumstances of any Class member include, but are not limited to the following:

a. whether Massachusetts law can be applied nationally to claims of all Class Members;

b. whether Defendant's recycling claims constitute intentional or negligent misrepresentation;

c. whether Defendant advertises and markets the Products as recyclable;

d. whether the Products are recyclable as advertised and labeled by Defendant;

e. whether Defendant's marketing, advertising and labeling claims regarding the recyclability of the Products are likely to deceive a reasonable consumer;

f. whether Defendant knows the Products cannot be recycled in many communities;

g. whether Defendant's recycling instructions are adequate;

h. whether Defendant's representations regarding the recyclability of the Products are likely to be read and understood by a reasonable consumer;

i. whether Defendant's representations regarding the recyclability of the Products are in compliance with the Green Guides;

j. whether Defendant's claims regarding the recyclability of the Products are material to a reasonable consumer of the Products;

k. whether Defendant's conduct in advertising, marketing and labeling of the Products as recyclable constitutes a violation of California consumer protection laws;

l. whether Defendant's conduct in advertising, marketing and labeling of the Products as recyclable constitutes a violation of Massachusetts consumer protection laws;

m. whether Defendant's representations concerning the recyclability of the Products constitute express warranties with regard to the Products;

n. whether Defendant breached the express warranties it made with regard to the recyclability of the Products;

o. whether Defendant's representations regarding the recycling of the Products constitute representations that the Products have characteristics, benefits or qualities which they do not have;

p. whether Defendant advertised its Products without an intent to sell them as advertised;

q. whether Defendant has been unjustly enriched from the sale of the Products;

r. whether Plaintiffs and the Class are entitled to a declaration of their rights with respect to Defendant's labeling the Products as recyclable;

s. whether punitive damages are warranted for Defendant's conduct and, if so, an appropriate amount of such damages; and

t. whether Plaintiffs and the Class members are entitled to injunctive, equitable and monetary relief.

59. **Typicality**: Plaintiffs assert claims that are typical of the claims of the entire Class for purposes of Rule 23(a)(3). All members of the Class have been subjected to the same wrongful conduct because they have purchased Products that are labeled and sold as recyclable when they are not in fact recyclable in many communities. This Court has already held that Plaintiff Smith's claims are typical of the California Subclass.

60. **Adequacy**: Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class for purposes of Rule 23(a)(4). Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel experienced in complex litigation of this nature to represent them. Plaintiffs anticipate no difficulty in the management of this litigation as a class action. This Court has already held that Plaintiff Smith is an adequate representative of the California Subclass.

61. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief, is appropriate respecting the Class as a whole. Defendant utilizes advertising campaigns that include uniform misrepresentations that misled Plaintiffs and the other members of the Class. This Court has already found that class certification is appropriate under Rule 23(b)(2) as to the California Subclass.

62. Defendant utilizes marketing, advertisements and labeling that include uniform misrepresentations that misled Plaintiffs and the other members of the Class. Defendant's claims regarding the recyclability of the Products are one of the most prominent features of Defendant's marketing, advertising and labeling of the Products. Nonetheless, the Products are not in fact

recyclable in many communities. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

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

FIRST CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves, the Class and the General Public, Allege Violations of Massachusetts General Laws Chapter 93A §§2 and 9 Based on Unfair and Deceptive Acts and Practices)

64. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 63 of this Complaint. Plaintiffs allege this claim on behalf of the Class.

65. Pursuant to Massachusetts General Law, Part I, Title XV, Chapter 93A, §2, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

66. Defendant's principal place of business is in Massachusetts, and many of Defendant's fraudulent acts and practices took place in the Commonwealth of Massachusetts.

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

68. Plaintiffs purchased the Products in reliance on Defendant's representations that the Products are recyclable. Defendant's claims that the Products are recyclable are material, untrue and misleading. These recyclable claims are prominent on all of Defendant's marketing, advertising and labeling materials, even though Defendant is aware that the claims are false and misleading. Defendant's claims are thus likely to deceive Plaintiffs and reasonable consumers. Plaintiffs would not have purchased the Products, or would not have paid as much for the Products, but for Defendant's false representations that the Products are recyclable. Plaintiffs have thus suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

69. Additionally, Defendant violated the following General Regulations of the Massachusetts Attorney General regarding Ch. 93A:

a. 940 C.M.R. 3.02(2), which states:

> No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

b. 940 C.M.R. 3.05(1), which states:

> No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

c. 940 C.M.R. 3.16(1)-(2), which states that:

> Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction . . . .violates Chapter 93A, §2.

d. 940 C.M.R. 6.03(2), which states:

> Sellers shall not use advertisements which are untrue, misleading, deceptive, fraudulent, falsely disparaging of competitors, or insincere offers to sell.

e. 940 C.M.R. 6.04(1)-(2), which states:

> (1) Misleading Representations. It is an unfair or deceptive act for a seller to make any material representation of fact in an advertisement if the seller knows or should know that the material representation is false or misleading or has the tendency or capacity to be misleading, or if the seller does not have sufficient information upon which a reasonable belief in the truth of the material representation could be based.
>
> (2) Disclosure of Material Representations. It is an unfair or deceptive act for a seller to fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers. . . .

70. Defendant has engaged and continues to engage in violations of Chapter 93A, Section 2 because regulations promulgated by the Massachusetts Attorney General under Chapter 93A, Section 2(c) provide that any act or practice that "fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection…" 940 C.M.R. 3.16(3), violates Chapter 93A, Section 2.

71. In compliance with the provisions of M.G.L Chapter 93A, on June 18, 2020, Plaintiff Downing provided written notice to Defendant pursuant to Section 9, identifying the claimant and reasonably describing the unfair acts or practices relied upon and the injuries

suffered by Plaintiff and requested that Defendant offer an appropriate consideration or other remedy to all affected consumers. Defendant did not, within thirty days of Plaintiff Downing's demand, make a reasonable offer of relief for the unfair and deceptive acts Plaintiff Downing identified in his demand letter. Accordingly, Plaintiffs seek damages pursuant to M.G.L Chapter 93A, §2.

72. By committing the acts alleged above, Defendant has engaged in deceptive acts and practices in violation of Massachusetts General Law 93A, §2.

73. As a result of Defendant's willful and knowing violation of Chapter 93A, §2, Keurig is liable to Plaintiffs and the Class for up to three times the damages that Plaintiff and the Class incurred or the statutory minimum award of $25 per purchase of a Product, whichever is greater.

74. As a result of Defendant's failure to make a reasonable offer of settlement in response to Plaintiff Downing's written pre-suit demand for relief, Defendant is liable to Plaintiffs and the Class for up to three times the damages that Plaintiff and the Class incurred or the statutory minimum award of $25 per purchase of a Product, whichever is greater.

75. An action for injunctive relief and restitution is specifically authorized under Massachusetts General Law 93A, §9.

76. Keurig is also liable to Plaintiffs for all their costs, attorneys' fees, and interest.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

SECOND CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class, Allege Breach of Express Warranty)

77. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 73 of this Complaint. Plaintiffs allege this claim on behalf of the Class.

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

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

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

81. At the time that Defendant designed, manufactured, sold and distributed the Products, Defendant knew that the Products were not recyclable in many communities.

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

83. On July 23, 2018, Plaintiff Smith sent a pre-suit demand letter to Defendant notifying Defendant that the Products are not recyclable as warranted by Defendant. On June 18, 2020, Plaintiff Downing sent a pre-suit demand letter to Defendant notifying Defendant that the Products are not recyclable as warranted by Defendant. Defendant therefore has actual and constructive knowledge that the Products are not recyclable in many communities and were thus not sold as marketed and advertised.

84. As a direct and proximate result of Defendant's breach of express warranties, Plaintiffs and Class members have suffered damages.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

THIRD CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class, Allege Unjust Enrichment)

85. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 81 of this Complaint. Plaintiffs bring this claim on behalf of the Class.

86. Defendant has engaged in deceptive and misleading conduct regarding its recyclable claims of the Products as set forth above.

87. As a result of Defendant's conduct alleged herein, Plaintiffs conferred a benefit on Defendant by purchasing the Products.

88. Defendant accepted and retained the benefit in the amount of the sales and/or profits it earned from sales of its Products to Plaintiffs and Class members.

89. Defendant has monetarily benefitted from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiffs and Class members, under circumstances in which it would be unjust and inequitable for Defendant to be permitted to retain the benefit of its wrongful conduct.

90. Plaintiffs and the Class members are entitled to restitution and/or damages from Defendant and/or an order of this Court proportionally disgorging all profits, benefits and other compensation obtained by Defendant from its wrongful conduct. If necessary, the establishment of a constructive trust from which the Plaintiffs and Class members may seek restitution or compensation may be created.

91. Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

FOURTH CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class, Allege Misrepresentation)

92. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 88 of this Complaint. Plaintiffs bring this claim on behalf of the Class.

93. Defendant's recyclable representations on the Products have omitted material facts to the public, including Plaintiffs and Class members, about its products. Through its advertising and other means, Defendant failed to disclose that the Products are not recyclable in many communities.

94. At all relevant times Defendant was aware that its recyclable claims on the Products were deceptive and misleading, and purposefully omitted material facts regarding its recyclable claims in order to induce reliance by Plaintiffs and Class members and induced their decisions to purchase Defendant's Products. At a minimum, Defendant negligently misrepresented and omitted material facts regarding its recyclable claims on the Products.

95. Plaintiffs and the Class members reasonably and justifiably relied on Defendant's representations and omissions as set forth herein, and in reliance thereon, purchased Defendant's Products that they would not have otherwise purchased or paid the same amount for. Had Plaintiffs known all material facts regarding Defendant's recyclable claims on the Products they would have acted differently and would not have been damaged by Defendant's conduct.

96. As a direct and proximate cause of Defendant's misrepresentations and omissions, Plaintiffs and Class members were induced to purchase Defendant's Products and have suffered damages to be determined at trial in that, among other things, they have been deprived of the benefit of the bargain in that they bought products that were not what they were represented to be, and they have spent money on products that had less value than was reflected in the price they paid.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

FIFTH CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class Seek Declaratory Relief Pursuant to 28 U.S.C. § 2201)

97. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 93 of this Complaint. Plaintiffs bring this claim on behalf of the nationwide Class.

98. An actual controversy has arisen and now exists between Plaintiffs and the putative Classes and between Plaintiffs and Defendant, concerning the misleading and deceptive nature of Defendant's recyclable claims. Plaintiffs and Class members contend that Defendant's recyclable claims are deceptive and misleading because the Products cannot be recycled in many communities. Plaintiffs contend Defendant's recyclable representations are inconsistent with reasonable consumers' understanding of such representations. Defendant contends that it can promulgate deceptive, confusing, and misleading recycling claims to suit its market and profit drive objectives. Defendant contends that its use of its recycling claims is not deceptive or misleading to reasonable consumers.

99. Accordingly, Plaintiffs are entitled to seek a judicial determination of whether Defendant's claims are deceptive and misleading to reasonable consumers.

100. A judicial determination of the rights and responsibilities of the parties over Defendant's recyclable claims is necessary and appropriate at this time so that the rights of the Plaintiffs and the Class may be determined with certainty for the purposes of resolving this action and so that the Parties and the marketplace will have a consistent understanding of what recyclable claims mean.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

SIXTH CAUSE OF ACTION

(Plaintiff Smith, on Behalf of Herself and the California Subclass, Alleges Breach of Express Warranty)

101. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 97 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

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

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

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

105. At the time that Defendant designed, manufactured, sold and distributed the Products, Defendant knew that the Products were not recyclable in many communities.

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

107. On July 23, 2018, Plaintiff Smith sent a pre-suit demand letter to Defendant notifying Defendant that the Products are not recyclable. Defendant therefore has actual and

constructive knowledge that the Products are not recyclable in many communities and were thus not sold as marketed and advertised.

108. As a direct and proximate result of Defendant's breach of express warranties, Plaintiff Smith and California Subclass members have suffered damages.

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

SEVENTH CAUSE OF ACTION

(Plaintiff Smith, on Behalf of Herself and the California Subclass, Alleges Violations of the California Consumers Legal Remedies Act)

109. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 105 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

110. Plaintiff Smith and the other California Subclass members purchased the Products for personal, family or household purposes.

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

a. In violation of Section 1770(a)(5) of the CLRA, Defendant's acts and practices constitute representations that the Products have characteristics, uses or benefits which they do not;

b. In violation of Section 1770(a)(7) of the CLRA, Defendant's acts and practices constitute representations that the Products are of a particular quality, which they are not; and

c. In violation of Section 1770(a)(9) of the CLRA, Defendant's acts and practices constitute the advertisement of the Products without the intent to sell them as advertised.

112. By reason of the foregoing, Plaintiff Smith and the other California Subclass members have suffered damages.

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

114. In compliance with the provisions of California Civil Code § 1782, on July 23, 2018, Plaintiff Smith provided written notice to Defendant of her intention to seek damages under California Civil Code § 1750, *et seq.*, and requested that Defendant offer an appropriate consideration or other remedy to all affected consumers. As of the date of this complaint, Defendant has not done so. Accordingly, Plaintiff Smith seeks damages pursuant to California Civil Code §§ 1780(a)(1) and 1781(a).

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

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

EIGHTH CAUSE OF ACTION

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

116. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 112 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

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

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

119. Plaintiff Smith purchased the Products in reliance on Defendant's representations that the Products are recyclable. Defendant's claims that the Products are recyclable are material,

untrue and misleading. These recyclable claims are prominent on all of Defendant's marketing, advertising and labeling materials, even though Defendant is aware that the claims are false and misleading. Defendant's claims are thus likely to deceive Plaintiff Smith and reasonable consumers. Plaintiff Smith would not have purchased the Products, or would not have paid as much for the Products, but for Defendant's false representations that the Products are recyclable. Plaintiff Smith has thus suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

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

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

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

NINTH CAUSE OF ACTION

(Plaintiff Smith on Behalf of Herself, the California Subclass and the General Public, Alleges Violations of California Business & Professions Code § 17200, *et seq*. Based on Commission of Unlawful Acts)

122. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 118 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

123. The violation of any law constitutes an unlawful business practice under Business & Professions Code § 17200.

124. As detailed more fully in the preceding paragraphs, the acts and practices alleged herein were intended to or did result in the sale of the Products in violation of the CLRA, California Civil Code §1750, *et seq*., and specifically California Civil Code § 1770(a)(5), § 1770(a)(7) and § 1770(a)(9).

125. Defendant's conduct also violates Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair or

deceptive acts or practices in or affecting commerce. By misrepresenting that the Products are recyclable, Defendant is violating Section 5 of the FTC Act.

126. Defendant's conduct also violates California Business & Professions Code § 17500, which prohibits knowingly making, by means of any advertising device or otherwise, any untrue or misleading statement with the intent to sell a product or to induce the public to purchase a product. By misrepresenting that the Products are recyclable, Defendant is violating Business & Professions Code § 17500.

127. Defendant's conduct also violates California Business & Professions Code § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive or misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq*. Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall 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." 16 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above, Defendant is violating Business & Professions Code § 17580.5.

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

129. By violating the CLRA, the FTC Act, Business & Professions Code §§ 17500 and 17580.5, and California Commercial Code § 2313, Defendant has engaged in unlawful business acts and practices which constitute unfair competition within the meaning of Business & Professions Code § 17200. Plaintiff Smith would not have purchased the Products, or would not have paid as much for Products, but for Defendant's unlawful business practices. Plaintiff Smith

has thus suffered injuries in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

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

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

TENTH CAUSE OF ACTION

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

131. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 127 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

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

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

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

135. Defendant's conduct also violates the policy of the Green Guides. The Green Guides mandate that "[a] product or package shall 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." 16 C.F.R. § 260.12(a). It further states that "[a]n 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." 16 C.F.R. § 260.12(d). As explained above, the Products cannot be recycled. Nonetheless, some recycling facilities may accept the Products even though they must eventually send the Products to a landfill. It is unfair for Defendant to make a recyclable claim based on the fact that some recycling facilities may accept the Products, despite the recycling facilities' inability to actually recycle the Products. Moreover, consumers believe that products are recyclable when they are accepted by a recycling program, even if the recycling facilities end up sending the products to a landfill. Taking advantage of consumer perception of recycling programs violates the policy of the Green Guides.

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

137. Although Defendant knows that the Products are not likely to be ultimately recycled, Defendant failed to disclose that fact to Plaintiff Smith and the California Subclass.

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

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

140. Plaintiff Smith would not have purchased the Products, or would not have paid as much for Products, but for Defendant's unfair business practices. Plaintiff Smith has thus suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

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

ELEVENTH CAUSE OF ACTION

(Plaintiff Smith, on Behalf of Herself and the California Class, Alleges Quasi-Contract Claim for Unjust Enrichment)

141. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 137 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

142. Plaintiff Smith and the California Subclass members conferred benefits on Defendant by purchasing the Products.

143. Defendant has knowledge of such benefits.

144. Defendant voluntarily accepted and retained the benefits conferred.

145. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs' and the Class members' purchases of the Products.

146. Retention of that money under these circumstances is unjust and inequitable because Defendant falsely and misleadingly represented through its labeling, advertising and marketing materials that the Products are recyclable when the Products are not in fact recyclable in many communities.

147. These misrepresentations and omissions caused injuries to Plaintiff Smith and the California Subclass members because they would not have purchased the Products, or would not have paid as much for the Products, had they known that the Products are not recyclable in many communities.

148. Because Defendant's retention of the non-gratuitous benefits conferred to it by Plaintiff Smith and the California Subclass members is unjust and inequitable, Defendant ought to pay restitution to Plaintiff Smith and the California Subclass members for its unjust enrichment.

149. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff Smith and the California Subclass members are entitled to restitution or disgorgement in an amount to be proved at trial.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief against Defendant as follows:

A. That the Court declare this a class action on behalf of the Class and California Subclass;

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

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

D. That the Court order Defendant to cease and refrain from marketing and promotion of the Products that state or imply that the Products are recyclable to the extent they are not;

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

F. That the Court order Defendant to notify each and every Class and California Subclass member of the pendency of the claims in this action in order to give such individuals an

opportunity to obtain restitution and damages from Defendant;

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

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

I. That the Court award damages to Plaintiffs, the Class, and the California Subclass to compensate them for the conduct alleged in this Complaint;

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

K. That the Court award treble damages pursuant to Massachusetts General Laws, Chapter 93A §9;

L. That the Court grant Plaintiffs their reasonable attorneys' fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780(d), Massachusetts General Laws, Chapter 93A §§ 9 and 11, the common fund doctrine, or any other appropriate legal theory; and

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

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: February __, 2022

Respectfully submitted,

LEXINGTON LAW GROUP

/s/ Howard Hirsch

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Exhibit 3

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Attorneys for ~~Plaintiff~~Plaintiffs, ~~KATHLEEN SMITH~~
[Additional counsel on signature page.]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN SMITH and MATTHEW DOWNING, on behalf of ~~herself~~themselves and all others similarly situated,

~~Plaintiff~~Plaintiffs,

v.

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

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

~~FIRST~~CLASS ACTION

SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF:

1. California Consumer Protection Laws;
2. Massachusetts Consumer Protection Law;
3. Express warranty;
4. Unjust Enrichment;
5. Misrepresentation; and
6. Declaratory Judgment

DEMAND FOR JURY TRIAL

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PlaintiffPlaintiffs Kathleen Smith ("Plaintiffand Matthew Downing (collectively referred to herein as "Plaintiffs"), on behalf of herselfthemselves and all those similarly situated, based on information, belief and investigation of hertheir counsel, except for information bring this Class Action Complaint ("Complaint") against Defendant Keurig Green Mountain, Inc. ("Defendant"), and make the following allegations based on personalupon knowledge, hereby alleges: as to themselves and their own acts, and upon information and belief as to all other matters as follows:

INTRODUCTION

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

2. This Complaint seeks to remedy Defendant's unlawful, unfair and deceptive business practices with respect to the advertising, marketing and sales of plasticK Cup® single serve coffee pods that contain coffee and that are labeled as "recyclable" (the "Products").[1] The Products are advertised, marketed and sold as recyclable. However, even if consumers take the many steps required to place the Products in their recycling bins, they are not in fact recyclable in many communities because municipal recycling facilities ("MRFs") are not properly equipped to capture and segregate such small materials, nor can they handle such materials since they are inevitably contaminated with foil and food waste. Furthermore, even to the extent facilities exist

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

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that are capable of segregating the Products from the general waste stream, and then cleaning any contamination in the Products, the Products often end up in landfills anyway as there ~~is no market~~are limited markets to reuse the Products or convert them into a material that can be reused or used in manufacturing or assembling another item.

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

4. ~~Plaintiff~~Plaintiffs purchased the Products in reliance on Defendant's false representations that the Products are recyclable. ~~Plaintiff~~Plaintiffs viewed Defendant's false representations on the labels and other marketing materials for the Products. If ~~Plaintiff~~Plaintiffs had known that the Products were not recyclable~~, Plaintiff~~ in many communities, Plaintiffs would not have purchased the Products and would have instead sought out single serve pods or other coffee products that are otherwise compostable, recyclable or reusable. At a minimum, ~~she~~Plaintiffs would not have paid as much as ~~she~~they did if ~~she~~they knew the Products could not be recycled~~.~~ in many communities. Defendant thus breached its express warranty ~~under~~regarding the ~~California Commercial Code § 2313~~recyclability of the Products; violated the California Consumers Legal Remedies Act ("CLRA") by making representations that the Products have characteristics, benefits and qualities which they do not have and by advertising the Products without the intent to sell them as advertised; and violated ~~the~~M.G.L. Chapter 93A and California's Business and Profession Code § 17200 based on fraudulent, unlawful and unfair acts and practices.

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

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PARTIES

6. Plaintiff Kathleen Smith is a resident of Lafayette, California. Plaintiff Smith is concerned about the environment and seeks out products that are compostable, recyclable or reusable so that she can minimize her impact on the environment in general and on the country's plastic waste problems in particular. Therefore, Plaintiff Smith specifically selected the Products in reliance on Defendant's representations that the Products are recyclable. The false representations are located on the labels and other marketing materials for the Products. Had Plaintiff Smith known that the Products are not recyclable in ~~Lafayette or anywhere else,~~many communities she would not have purchased the Products or would not have paid as much as she did for the Products.

7. Plaintiff Matthew Downing is a resident of Marlborough, Massachusetts. In or around 2017, Mr. Downing purchased Products that were falsely labeled as recyclable based on the labels indicating that the Products were, in fact, recyclable. Had Plaintiff Downing known that the Products were not recyclable in many communities, he would not have purchased the Products or would not have paid as much as he did for the Products.

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

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the Class are citizens of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

~~8.~~10. By removing this case to federal court, Defendant has alleged that this Court has jurisdiction over the claims asserted herein individually and on behalf of the Class pursuant to 28

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U.S.C. § 1332(d)(2). *See* Notice of Removal, filed Nov. 2, 2018 [ECF Docket No. 1] ("Notice of Removal").

~~9.~~11. This Court has jurisdiction over Defendant because it is a corporation or other entity that has sufficient minimum contacts in California~~, is a citizen of~~ and has specifically marketed, advertised, and made substantial sales in California, or otherwise intentionally ~~avails~~availed itself of the California market either through the distribution, sale or marketing of the Products in the State of California ~~or by having a facility located in California~~ so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

~~10.~~12. Venue is proper pursuant to 28 U.S.C. § 1391(a) because ~~Defendant is a resident of this District pursuant to 28 U.S.C. § 1391(c), and~~ a substantial part of the events or omissions giving rise to the claim occurred in this District.

~~11.~~13. ~~**Intradistrict**~~**Intra-district Assignment (L.R. 3-2(c) and (d) and 3.5(b))**: ~~This action arises in Contra Costa County, in that~~ An intra-district assignment to the San Francisco/Oakland Division is appropriate because a substantial part of the events or omissions which give rise to the claims asserted herein occurred in this Division, including that Plaintiff Smith purchased the Products in Contra Costa County. Pursuant to L.R. 3-2(c), all civil actions which arise in Contra Costa County shall be assigned to the San Francisco Division or the Oakland Division.

BACKGROUND FACTS

~~12.~~14. In the past decade, humans across the globe have produced 8.3 billion metric tons of plastic, most of it in disposable products that end up as trash. Of the 8.3 billion tons produced, 6.3 billion tons have become plastic waste and only 9% of that has been recycled. The Environmental Protection Agency estimates that Americans alone disposed of more than 33 million tons of plastic in 2014, most of which was not recycled. While California ~~has~~set a goal to

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achieve a 75% recycling rate by 2020, California's recycling rate is actually in decline. In 2015, California's recycling rate was 50%, dropping to 47% in 2015 and down to 44% in 2017.

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

~~14.~~16. Single serve coffee pods have received extensive criticism for their contribution to the plastic waste crisis. For instance, on January 7, 2015, an anonymous person posted a YouTube video entitled "Kill the K-Cup," which portrays an apocalyptic scene in which giant alien monsters who are ~~themselves~~ composed of K-Cups® invade a city and fire missile and bullet-like K-Cups® at terrified citizens. The video concludes with the message "Kill The K-Cup Before It Kills Our Planet," and provides statistics to drive home the point that single serve coffee pods have dire consequences to the environmental health of the planet. Nearly 1 million people viewed the video, which spawned the popular hashtag #KillTheKCup and the killthekcup.org website.

~~15.~~17. According to online estimates, in 2014 alone, over 9.7 billion K-Cups® were produced, enough to circle the globe 12.4 times. As consumer backlash to single serve coffee pods has increased over the years, even the inventor of K-Cups®, John Sylvan, has publicly stated his regret for inventing them and expressed doubts about whether they could ever be recycled.

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~~16.~~18. The Legislature of the State of California has declared that "it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products." Cal. Pub. Res. Code § 42355.5. The policy is based on the Legislature's finding that "littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs." *Id.* § 42355(a).

~~17.~~19. The California Business and Professions Code § 17580.5 makes it "unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied." Pursuant to that section, the term "environmental marketing claim" includes any claim contained in the Guides for use of Environmental Marketing Claims published by the Federal Trade Commission (the "Green Guides"). *Ibid*; *see also* 16 C.F.R. § 260.1, *et seq.* Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall 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." 16 C.F.R. § 260.12(a).

~~18.~~20. The Green Guides' definition of "recyclable" is consistent with reasonable consumer expectations. For instance, the dictionary defines the term "recycle" as: (1) convert (waste) into reusable material, (2) return (material) to a previous stage in a cyclic process, or (3) use again. Oxford Dictionary, Oxford University Press 2018. Accordingly, reasonable consumers expect that products advertised, marketed, sold, labeled and/or represented as recyclable will 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.

~~19.~~21. In an attempt to counter negative publicity regarding the impacts of single serve coffee pods~~,~~ and to take advantage of consumers' concerns with respect to the environmental consequences caused by such products, Defendant advertises, markets and sells the Products as recyclable. More specifically, the packaging of Defendant's Products ~~state~~previously stated that

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consumers can "Have your cup and recycle it, too," in large green font. Adjacent to that statement on Defendant's packaging ~~are~~were instructions for how to recycle, including illustrations with the terms "PEEL," "EMPTY," and "RECYCLE," accompanied by the chasing ~~arrow~~arrows symbol that is commonly used and understood to mean that a product is recyclable. These claims ~~are~~were uniform, consistent and prominently displayed on each of the Products' labels. Following is a representative example of an earlier iteration of a Product label:

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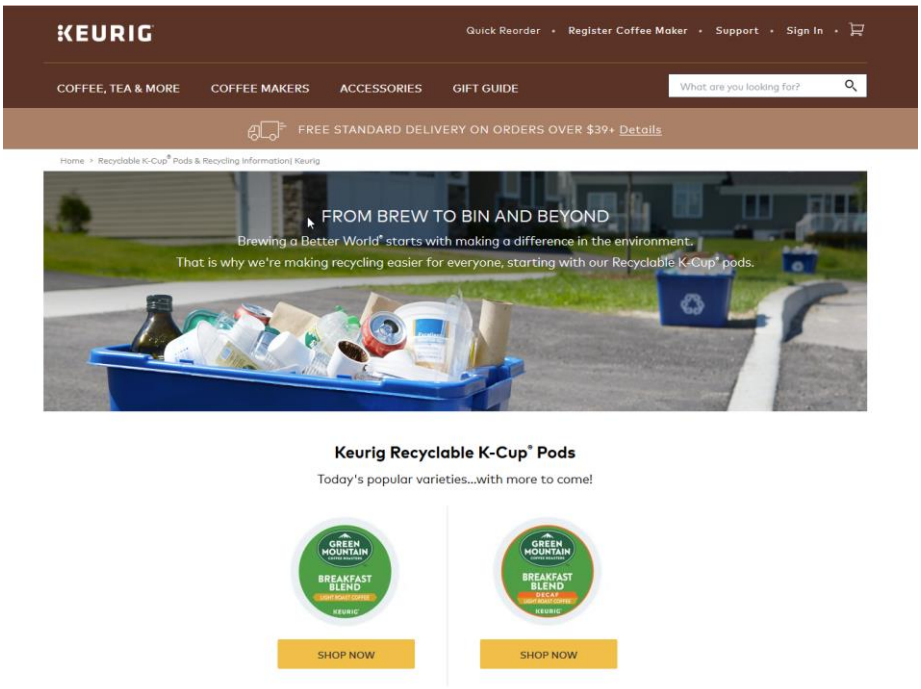

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22. Recognizing the importance of front labels to consumers, Defendant designs the front panels of each Product to have a uniform look and to include the same recyclable claim. While Defendant's labels have been slightly modified over time, the representations at issue are uniform across all label iterations. Specifically, every member of each Class purchased a Product that includes a prominent "Recyclable" or "Recycle" representation along with the "chasing arrows" recycling symbol on the front label, and prominent instructions to "Peel, Empty, Recycle" on the front or side label. While the labels differ in terms of the brand or flavor of coffee, the recycling representations are consistent.

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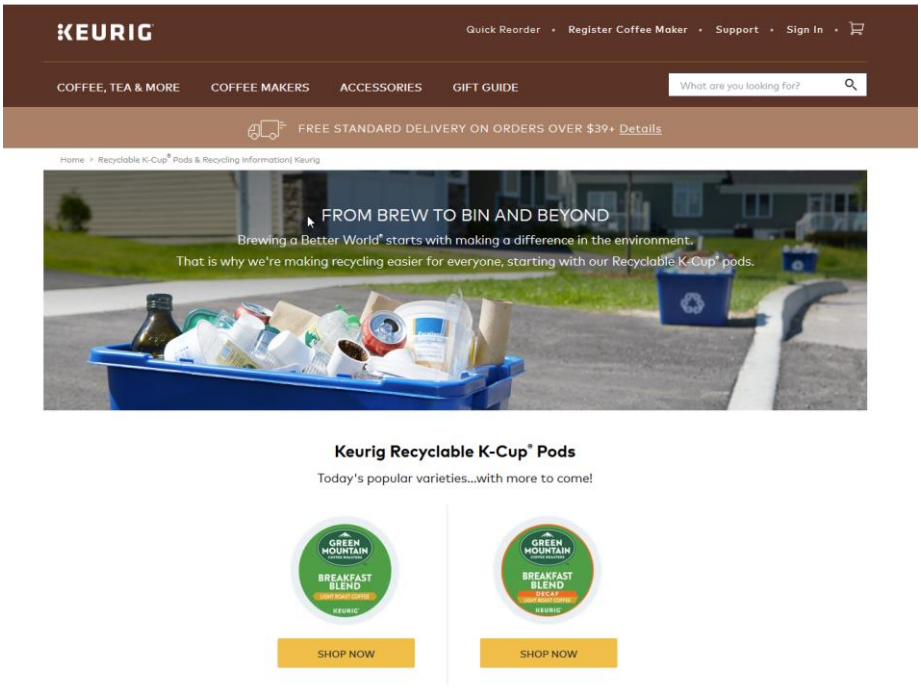
~~20.~~23. Defendant's marketing, advertising and promotional materials for the Products, including Defendant's website, also uniformly represent that the Products are recyclable. For instance, Defendant's website ~~advertises~~previously advertised the Products as recyclable as follows[2]:



[2] https://www.keurig.com/recyclable (as of Dec. 20, 2018). Defendant's website has been periodically updated, but has consistently and uniformly represented the Products as recyclable.

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

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

~~21.~~24. The claims made by Defendant that the Products are recyclable are uniform, consistent and material. Because the claims are false and misleading, ordinary consumers, including members of the Class, are likely to be deceived by such representations.

~~22.~~25. Many MRFs in the United States~~, including those in California (and including in particular the facility that handles recycling in Lafayette, California),~~ are not properly equipped to capture materials as small as the Products or to segregate such small items from the general waste stream. The problem of "smalls" is well-documented and well known in the recycling industry. This problem is exacerbated because the Products' already small size is further reduced when the Products are compressed into recycling bins and then compacted by recycling collection trucks prior to being delivered to MRFs. Ultimately, by the time they reach the sorting line of a typical

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recycling facility, the Products are likely to be crushed, compacted and mangled. Of course ~~Plaintiff~~, Plaintiffs and consumers have no way of discerning the precise size and shape of the Products after consumers place the Products in their recycling bins.

~~23.~~26. Defendant's recycling instructions require consumers to go through a number of time-consuming steps in order to recycle the Products, including waiting until the Products cool, separating the foil lid from the plastic pod, and removing the pod's contents. Worse yet, Defendant's instructions exacerbate the deceptiveness of Defendant's representations that the Products are recyclable by ~~ensuring~~making it less likely that the Products will ~~not~~actually be recycled. For instance, while Defendant instructs consumers to "peel [the] lid and dispose," the foil lid on the Products is extraordinarily difficult to remove as the foil sticks to the edge of the plastic cup and there is no extra tab (as one would find on a yogurt container, for instance) to use to peel off the lid.[3] From a recycling standpoint, the inevitable presence of foil on the Products is contamination that renders the Products impossible or extremely difficult to recycle.

~~24.~~27. In addition, while Defendant instructs consumers to "Empty" the Product and "Compose or dispose of contents," Defendant also explicitly states that the paper filter attached to the inside of the Products "can remain." By instructing consumers that they can leave the filter in place, Defendant is ensuring that some coffee grounds will also remain. In fact, in many of Defendant's advertisements, the Products are placed in the recycling bin with coffee grounds clearly visible, as evidenced by the web page depicted above. And in some of Defendant's video advertisements, both the coffee grounds and foil are visible in and on the Products as they are placed in the recycling bin.[4] Thus, following Defendant's instructions inevitably leads to further contamination issues, as the Products will be placed in recycling bins with foil remnants, used coffee grounds and a paper filter inside. From a recycling standpoint, this contamination renders the Products ~~impossible or extremely~~even more difficult to recycle. The fact that MRFs typically

[3] In November 2021, likely in response to the claims alleged in this case, Keurig announced that it plans to introduce an "EASY-PEEL lid" on "select items." https://www.keurig.com/recyclable (last visited Jan. 25, 2022).

[4] https://www.keurig.com/recyclable (~~last visited~~as of Dec. 20, 2018).

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process waste at speeds of 25 to 40 tons per hour makes it even less likely that small, compacted and contaminated single serve coffee pods such as the Products will be collected, separated or otherwise recovered from the waste stream.

~~25.~~28. Even in the rare instance where the Products can be segregated and cleaned of any contamination, the Products still end up in landfills as there ~~is no market~~are limited markets to reuse the Products or convert them into a material that can be reused or used in manufacturing or assembling another item.

~~26.~~29. Worse yet, by encouraging consumers to place the Products in recycling bins, Defendant is contaminating the recycling stream with unrecyclable materials that will hinder the ability of recycling facilities to properly recycle items that are legitimately recyclable. And the contamination on the Products themselves is also likely to contaminate other materials that would otherwise be recyclable. Environmentally motivated consumers who purchase the Products in the belief that they are recyclable are thus unwittingly hindering recycling efforts. Moreover, ~~Plaintiff~~Plaintiffs and consumers have no way of knowing whether the Products are actually segregated from the general waste stream, cleaned of contamination, or reused or converted into a material that can be reused or used in manufacturing or assembling another item.

~~27.~~30. Most consumers believe that if ~~their~~the Products are accepted into a recycling program, then those Products are recyclable. And consumers who spend the time and effort to follow Defendant's cumbersome recycling instructions do not expect that the Products will end up in a landfill. However, the Products will often end up in a landfill as they cannot be recycled by many MRFs in the United States~~, including those in California (and including in particular the facility that handles recycling in Lafayette, California).~~. Defendant's representations that the Products are recyclable are therefore per se deceptive under the Green Guides and under California law.

~~28.~~31. Many recycling facilities ~~in California and elsewhere~~ have refuted Defendant's recycling claims or otherwise instructed consumers to place single serve coffee pods, including those labeled as recyclable like the Products, in the trash. For instance, the following California

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localities or waste management companies have explicitly stated that single serve coffee pods, including those labeled as recyclable like the Products, should be placed in the trash:

a. Berkeley
b. Cal-Waste Recovery Systems (localities in Sacramento, Calaveras, Alpine and San Joaquin Counties)
c. El Dorado County
d. Eureka
e. Lake County
f. Lincoln
g. Los Angeles
h. Mission Country Disposal (Los Osos, Cayucos, Cambria and Harmony)
i. Monterey County
j. Mill Valley
k. Morro Bay
l. Paradise
m. Redding
n. Sacramento
o. San Luis Obispo County
p. South County Sanitary (Avila Beach, Shell Beach, Pismo Beach, Grover Beach, Oceano, Arroyo Grando and Nipomo)
q. Shasta County
r. Tri-CED Community Recycling (Hayward and Union City)
s. Truckee

~~29.~~32. By way of example, San Luis Obispo County, Lake County, the Town of Truckee, and the City of Lincoln have all stated, "Coffee Capsules [Are] Never Recyclable Curbside." These jurisdictions go on to explain, "Coffee capsule creators often tout their products as 'recyclable.' In theory, the plastic portion of a coffee capsule is (not the lid or filter). In practice, however, the cups are actually too small to be captured and recycled in recycling facilities where objects are separated based on size and density."[5]

[5] https://www.iwma.com/guide/coffee-capsules/ (last visited Dec. 19, 2018) https://lakecountyrecycles.com/guide/coffee-capsules/ (last visited Dec. 19, 2018) https://www.keeptruckeegreen.org/guide/coffee-capsules/ (last visited Dec. 19, 2018) https://www.recyclinginlincoln.com/guide/coffee-capsules/ (last visited Dec. 19, 2018).

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~~30.~~33. The Green Guides are clear: "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." 16 C.F.R. § 260.12(d). Here, the Products are not recyclable in many communities due to their small size, their contamination with foil, filter paper and food waste, and the lack of a market to recycle them. Defendant's marketing of the Products as recyclable is thus a direct violation of the Green Guides.

~~31.~~34. Because the Products are not recyclable~~, Defendant cannot make any recycling claims as to the Products. However, at a minimum~~ in many communities, Defendant is required to clearly and prominently qualify recyclable claims to avoid deception about the availability of recycling programs and collection sites to consumers if consumers do not have access to facilities that can recycle their products. 16 C.F.R. § 260.12(b). A marketer may only make an unqualified recyclable claim if a substantial majority of consumers or communities have access to recycling facilities capable of recycling the items.[6] *Id.* § 260.12(b)(1). Because a substantial majority of consumers do not have access to recycling facilities capable of recycling the Products, Defendant must at a minimum qualify any recyclability claim about the Products.

~~32.~~35. According to the Green Guides, marketers may qualify recyclable claims by stating the percentage of consumers or communities that have access to facilities that recycle the item. 16 C.F.R. § 260.12(b)(2). In the alternative, marketers may use qualifications that vary in strength depending on facility availability. *Ibid.* Thus, the strength of the qualification depends on the level of access to an appropriate facility. For example, if recycling facilities are available to slightly less than a substantial majority of consumers or communities where the item is sold, the Green Guides recommend that a marketer should qualify the recyclable claim by stating "this product may not be recyclable in your area," or "recycling facilities for this product may not exist in your area." *Ibid.* If recycling facilities are available only to a few consumers, the Green Guides recommend a marketer to qualify its recyclable claim by stating "this product is

[6] A "substantial majority" means at least 60 percent. 16 C.F.R. § 260.12(b)(1).

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recyclable only in a few communities that have appropriate recycling facilities." *Ibid.* Under these guidelines, to the extent Defendant can make any recycling claim at all for the Products, Defendant must provide an unequivocally strong qualification for its recyclability claim because few~~, if any,~~ consumers have access to recycling facilities capable of recycling the Products.

~~33. Defendant's labeling for the Products states: "Check locally to recycle empty cup." This statement does not comply with the Green Guides. The Green Guides specifically state that this type of qualification is deceptive. In Green Guide Example 4, the qualification "[c]heck to see if recycling facilities exist in your area" is considered deceptive because it does not adequately disclose the limited availability of recycling programs. 16 C.F.R. § 260.12, Example 4. Defendant's qualification is nearly identical to the deceptive statement identified in Example 4 because it advises the consumer to check for the availability of recycling programs, rather than inform the consumer of the extremely limited chance that the Products will ultimately be recycled. In fact, Defendant's qualification exacerbates the misrepresentation that the Products are recyclable by suggesting that the Products are recyclable everywhere, and that a consumer need only check locally to find out how to recycle the Products.~~

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

~~35.~~36. ~~Not only does this qualification violate the Green Guides, but it is also not likely to be understood by a reasonable consumer.[7] Plaintiff~~Plaintiffs and most other consumers believe that if their municipality offers recycling services, then all products marketed as "recyclable" can be recycled. Thus, most consumers will place the Products in the recycling bin under the false impression that the Products can be recycled, ~~when~~even though the Products cannot in fact be recycled in their area. In addition, most consumers will not follow Defendant's cumbersome recycling instructions despite the fact that the Products cannot be recycled, and Defendant's

~~[7] The examples in the Green Guides are specifically provided by the Federal Trade Commission as its "views on how reasonable consumers likely interpret certain claims." 16 C.F.R. § 260.1(d).~~

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instructions are misleading and incomplete. Defendant's labeling, advertising and marketing claims that the Products are recyclable are therefore likely to deceive a reasonable consumer.

37. Defendant's labeling for the Products states: "Not recycled in all communities." This statement does not comply with the Green Guides as it indicates that the Products are recycled in most or many communities, when they are not. Defendant's qualification exacerbates the misrepresentation that the Products are recyclable by suggesting that the Products are recyclable in communities that have access to recycling facilities.

~~36.~~38. Defendant has buried other disclaimers about the recyclability of the Products on its website. For instance, Defendant's website has stated at some times, "[w]e recommend checking with your local municipality or waste hauler to determine if your community recycles #5 plastic." *See* Defendant's Request for Judicial Notice In Support of Motion to Dismiss, Exh. 2 [ECF No. 19]. This disclaimer is problematic since, even if a local recycling facility was willing to answer such an inquiry, and even if the response was favorable, this does not mean that the facility is capable of recycling the Products due to their size, contamination, and the lack of a market for them to be recycled. In fact, Defendant's webpage for Frequently Asked Questions ("FAQ") ~~asks~~previously asked whether the new recyclable K-Cup® are recyclable everywhere, to which the website responds "[t]he new recyclable K-Cup® pods, which can be easily identified through our on-the-box packaging and with a #5 recycling symbol on the bottom of the pod itself, can be recycled in communities that accept #5 plastics. Polypropylene (#5) is currently accepted for recycling in approximately 61% of communities in the U.S. and 93% of communities in Canada. Please check with your local community to confirm."[8] Defendant's FAQ is misleading for the same reason its website disclaimer is misleading: it indicates to a consumer that the Products are recyclable solely because they are made of #5 plastic, regardless of their size, contamination, and lack of market for them to be recycled, which is not the case.

~~37.~~39. ~~Plaintiff places~~Plaintiffs place a high priority on environmental concerns in general, and on the negative consequences regarding the proliferation of plastic waste in

[8] http://www.keurigrecycling.com/faq/ (~~last visited~~as of Dec. 20, 2018).

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particular. In shopping for coffee products for ~~her home, Plaintiff was~~their homes, Plaintiffs were particularly concerned about the recyclability of single serve pods that contain coffee. Based on the labeling and advertising of Defendant's Products, ~~Plaintiff~~Plaintiffs believed that the Products are recyclable in all locations, including Lafayette, California, where Plaintiff ~~resides.~~Smith resides and in Marlborough, Massachusetts, where Plaintiff Downey resides. Defendant's representations that the Products are recyclable are thus material to ~~Plaintiff~~Plaintiffs.

~~38.~~40. ~~Plaintiff~~Plaintiffs purchased the Products numerous times over the ~~course of the past couple~~last five years directly from Defendant's website believing the recycling claims both on the Products' packaging as well as the website. For instance, on October 1, 2016 and November 25, 2016, Plaintiff Smith purchased from Defendant's website Green Mountain Coffee Roasters Breakfast Blend Decaf, K-Cup Box 24 ct., labeled as recyclable. ~~Plaintiff~~Plaintiffs purchased the Products in reliance on Defendant's representations that the Products are recyclable, when they are not in fact recyclable in ~~Lafayette, California or anywhere else. Plaintiff~~many communities. Plaintiffs followed Defendant's instructions on the labeling to recycle the Products, but ~~was~~were not aware that the Products would likely end up in a landfill anyway. Had ~~Plaintiff~~Plaintiffs and the other members of the Class known that the Products are not recyclable in many communities — contrary to Defendant's representations — they would not have purchased the Products or would not have paid as much as they did for the Products.

~~39.~~41. ~~Plaintiff continues~~Plaintiffs continue to desire to purchase recyclable single serve coffee pods. ~~Plaintiff~~Plaintiffs would purchase single serve coffee pods manufactured by Defendant in the future if Defendant's representations that the Products are recyclable are true. ~~Plaintiff~~Plaintiffs would like to buy recyclable single serve coffee pods from Defendant in the future, but ~~is~~are unable to determine with confidence, based on the labeling and other marketing materials, whether the Products are truly recyclable. ~~Plaintiff~~Plaintiffs would not have purchased the Products, or would not have paid as much as ~~she~~they did for the Products, if Defendant had disclosed that the Products were not recyclable in many communities.

~~40.~~42. Defendant is aware that the Products are not recyclable in many communities, yet Defendant has not undertaken any effort to notify its end-~~-~~use customers of the problem.

~~Document Prepared on Recycled Paper~~

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Defendant's failure to disclose that the Products are not recyclable is an omission of fact that is material to Plaintiff and the other members of the Class.

43. The conduct giving rise to Plaintiffs' claims—Keurig's deceptive campaign to falsely market and label the Products as recyclable—was orchestrated in and emanated from the Commonwealth of Massachusetts. Massachusetts has a significant interest, as codified by the Massachusetts Legislature in Chapter 93A, in regulating, punishing and preventing such wrongful conduct occurring within the Commonwealth.

44. Keurig developed its corporate strategy of marketing purportedly recyclable Products in Massachusetts, primarily from its Burlington, Massachusetts headquarters. Keurig designed the Product labels at issue in this case in Massachusetts and made the representations detailed in this complaint and disseminated them from its headquarters in Burlington, Massachusetts. The deceptive conduct alleged in the complaint substantially emanated from Massachusetts.

45. Keurig's product design staff for the Products is based in Massachusetts. Keurig's "Environmental Sustainability Engineers," who appear to have been responsible for engineering the purportedly recyclable Products, are based in Burlington, Massachusetts. For example, one such former Environmental Sustainability Engineer, Ali Blandina, indicates on her LinkedIn profile that she led all "MRF [materials recovery facility] testing across North America" for Keurig, including analysis of "how items flow through [a municipal recycling facility], evaluat[ing] how successfully they are sorted, and ultimately captured for further processing of recycling material." According to her LinkedIn profile, she performed these functions for Keurig in Burlington, Massachusetts.

46. Along the same lines, Keurig's former Director of Engineering and Technical Director, Jim Shepard, who was responsible for the "overall industrial design, technical development, and manufacturing execution of brewer systems and carafe pod systems" for Keurig, likewise performed these functions in Burlington, Massachusetts, according to his LinkedIn profile.

47. Keurig's senior marketing staff are also based in Massachusetts. For example,

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Brenda Armstead, Keurig's current Vice President of Brand Marketing for coffee, and its former Vice President of Consumer Insights for its coffee products, is based in Massachusetts. According to Ms. Armstead's LinkedIn profile, around the time of the launch of Keurig's purportedly recyclable Pods, she was "driving business strategies" based upon a "better understanding of [Keurig's] customers." She led the "Consumer Insights team," which she describes as "the central point of truth…for [Keurig]" as it infuses consumer "understanding into [Keurig's] innovation and product portfolio."

48. Similarly, Keurig's Senior Director of Marketing, Lindsay Firmino, was located in Massachusetts.

49. Keurig's former Chief Executive Officer, Brian P. Kelley, who stated in Keurig's Sustainability Report that "[t]he lack of recycling options for used K-Cup packs stands out front and center," of ways Keurig "can do better," and pledged that "100% of K-Cup packs will be recyclable," was based in Massachusetts.

50. Keurig's employees responsible for Keurig's corporate strategies in connection with sustainability are also based in Massachusetts. For example, Keurig's Chief Sustainability Officer from 2014 to present (and Director of Sustainability for years before that), Monique Oxender, is based in Massachusetts. She describes herself as having been responsible for "brand enhancement through pro-active identification of sustainability issues…coupled with actionable and measurable strategies for implementation." Ms. Oxender specifically identifies as one of her "[c]ore areas of expertise" issues of "product stewardship (incl. recyclability)" and "general management of the recyclable product platform." Ms. Oxender indicates she fulfilled these responsibilities in Massachusetts.

51. Another Keurig employee, Kristina Bosch Ladd, who indicates she "manage[s] the company's…environmental footprints towards its 2020 sustainability targets," and "oversee[]s recovery and recycling programs," is based in Massachusetts.

52. These examples are not cherry-picked. A review of the LinkedIn profiles of the Keurig employees who appear to be most directly responsible for the deception Plaintiffs allege in this complaint reflects that almost all such employees were based in Massachusetts at the time

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of the wrongful conduct. That is, Keurig's senior staff responsible for marketing, consumer relations, and product design performed those functions in Massachusetts, making Massachusetts the locus of the fraudulent and deceptive conduct that Plaintiffs allege.

CLASS ACTION ALLEGATIONS

53. ~~Plaintiff brings~~Plaintiffs bring this suit ~~individually~~on behalf of themselves and as a class action pursuant to Federal Rule of Civil Procedure Rule 23~~,~~(a), on behalf of themselves and the following Class of similarly situated individuals in the United States (the "Class"):

> All persons in the United States who purchased the Products for personal, family or household purposes from June 8, 2016 to the present. Specifically excluded from the Class are (a) Defendant, (b) Defendant's Affiliates, (c) the officers, directors, or employees of Defendant and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Defendant, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

~~41.~~54. Plaintiff Smith brings this suit pursuant to Federal Rule of Civil Procedure Rule 23(a), on behalf of herself and the following Class of similarly situated individuals~~:~~ in California (the "California Subclass"):

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

~~Plaintiff is~~

55. Plaintiffs meet all of the criteria required by Federal Rule of Civil Procedure 23(a).

~~42.~~56. **Numerosity**: Plaintiffs are unable to state the precise number of potential members of the ~~proposed Class because that information is in the possession of Defendant. However~~Class; however, the number of Class members is so numerous that joinder would be impracticable for

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purposes of Rule 23(a)(1). ~~The exact size of the proposed Class and~~ This Court has already certified the California Subclass and Defendant has acknowledged that the ~~identity of its members will be readily ascertainable from the business records of Defendant and Defendant's retailers as well as Class members' own records and evidence. In its Notice of Removal, Defendant avers that the proposed Class may have well over~~California Subclass exceeds 100 ~~members. *See* Notice of Removal ¶ 15. Thus, joinder of such persons in a single action or bringing all members of the Class before the Court is impracticable. The disposition of the claims of the members of the Class in this class action will substantially benefit both the parties and the Court.~~individuals.

~~43.~~57. **Commonality**: There is a community of interest among the members of the proposed Class in that there are questions of law and fact common to the proposed Class for purposes of Rule 23(a)(2), including whether Defendant's labels, advertisements and packaging include uniform misrepresentations that misled ~~Plaintiff~~Plaintiffs and the other members of the Class to believe the Products are recyclable when they are not. Proof of a common set of facts will establish the liability of Defendant and the right of each member of the Class to relief. This Court has already found that there is commonality for the California Subclass.

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

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

~~46. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief, is appropriate respecting the Class as a whole. Defendant utilizes advertising~~

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~~campaigns that include uniform misrepresentations that misled~~ ~~Plaintiff and the other members of the Class.~~

~~47.~~58. Class certification is appropriate under Rule 23(b)(3) because common questions of law and fact substantially predominate over any questions that may affect only individual members of the Class. This Court has already found that class certification is appropriate under Rule 23(b)(3) as to the California Subclass. These common legal and factual questions, which do not vary among Class members and which may be determined without reference to the individual circumstances of any Class member include, but are not limited to the following:

a. whether Massachusetts law can be applied nationally to claims of all Class Members;

b. whether Defendant's recycling claims constitute intentional or negligent misrepresentation;

~~a.~~c. whether Defendant advertises and markets the Products ~~by representing that the Products are~~as recyclable;

~~b.~~d. whether the Products are recyclable as advertised and labeled by Defendant;

~~c.~~e. whether Defendant's marketing, advertising and labeling claims regarding the recyclability of the Products are likely to deceive a reasonable consumer;

~~d.~~f. whether Defendant knows the Products cannot be recycled in many communities;

~~e.~~g. whether Defendant's recycling instructions are adequate;

~~f.~~h. whether Defendant's representations regarding the recyclability of the Products are likely to be read and understood by a reasonable consumer;

~~g.~~i. whether Defendant's representations regarding the recyclability of the Products are in compliance with the Green Guides;

~~h.~~j. whether Defendant's claims regarding the recyclability of the Products ~~would be~~are material to a reasonable consumer of the Products;

~~i.~~k. whether Defendant's conduct in advertising, marketing and labeling of the Products as recyclable constitutes a violation of California consumer protection

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laws;

l. whether Defendant's conduct in advertising, marketing and labeling of the Products as recyclable constitutes a violation of Massachusetts consumer protection laws;

~~j.~~m. whether Defendant's representations concerning the recyclability of the Products constitute express warranties with regard to the Products;

~~k.~~n. whether Defendant breached the express warranties it made with regard to the recyclability of the Products;

~~l.~~o. whether Defendant's representations regarding the recycling of the Products constitute representations that the Products have characteristics, benefits or qualities which they do not have;

~~m.~~p. whether Defendant advertised its Products without an intent to sell them as advertised;

~~n.~~q. whether Defendant has been unjustly enriched from the sale of the Products;

r. whether Plaintiffs and the Class are entitled to a declaration of their rights with respect to Defendant's labeling the Products as recyclable;

~~o.~~s. whether punitive damages are warranted for Defendant's conduct and, if so, an appropriate amount of such damages; and

~~p.~~t. whether ~~Plaintiff~~Plaintiffs and the Class members are entitled to injunctive, equitable and monetary relief.

59. **Typicality**: Plaintiffs assert claims that are typical of the claims of the entire Class for purposes of Rule 23(a)(3). All members of the Class have been subjected to the same wrongful conduct because they have purchased Products that are labeled and sold as recyclable when they are not in fact recyclable in many communities. This Court has already held that Plaintiff Smith's claims are typical of the California Subclass.

60. **Adequacy**: Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class for purposes of Rule 23(a)(4). Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous

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prosecution of this action and have retained counsel experienced in complex litigation of this nature to represent them. Plaintiffs anticipate no difficulty in the management of this litigation as a class action. This Court has already held that Plaintiff Smith is an adequate representative of the California Subclass.

61. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief, is appropriate respecting the Class as a whole. Defendant utilizes advertising campaigns that include uniform misrepresentations that misled Plaintiffs and the other members of the Class. This Court has already found that class certification is appropriate under Rule 23(b)(2) as to the California Subclass.

~~48.~~62. Defendant utilizes marketing, advertisements and labeling that include uniform misrepresentations that misled ~~Plaintiff~~Plaintiffs and the other members of the Class. Defendant's claims regarding the recyclability of the Products are one of the most prominent features of Defendant's marketing, advertising and labeling of the Products. Nonetheless, the Products are not in fact recyclable~~.~~ in many communities. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

~~49.~~63. Proceeding as a class action provides substantial benefits to both the parties and the Court because this is the most efficient method for the fair and efficient adjudication of the controversy. Class members have suffered and will suffer irreparable harm and damages as a result of Defendant's wrongful conduct. Because of the nature of the individual Class members' claims, few, if any, could or would otherwise afford to seek legal redress against Defendant for the wrongs complained of herein, and a representative class action is therefore appropriate, the superior method of proceeding, and essential to the interests of justice insofar as the resolution of Class members' claims are concerned. Absent a representative class action, members of ~~the~~each Class would continue to suffer losses for which they would have no remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by individual members of the Class, the resulting multiplicity of lawsuits would cause

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undue hardship, burden and expense for the Court and the litigants, as well as create a risk of inconsistent rulings which might be dispositive of the interests of the other members ~~of~~ the Class who are not parties to the adjudications or may substantially impede their ability to protect their interests.

FIRST CAUSE OF ACTION

(~~Plaintiff~~Plaintiffs, on Behalf of ~~Herself~~Themselves, the Class and the ~~Class, Alleges Breach of Express Warranty)~~General Public,
~~Plaintiff realleges~~**Allege Violations of Massachusetts General Laws Chapter 93A §§2 and** ~~incorporates~~**9**
Based on Unfair and Deceptive Acts and Practices)

~~50.~~64. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through ~~49~~63 of this Complaint. Plaintiffs allege this claim on behalf of the Class.

65. Pursuant to Massachusetts General Law, Part I, Title XV, Chapter 93A, §2, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

66. Defendant's principal place of business is in Massachusetts, and many of Defendant's fraudulent acts and practices took place in the Commonwealth of Massachusetts.

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

68. Plaintiffs purchased the Products in reliance on Defendant's representations that the Products are recyclable. Defendant's claims that the Products are recyclable are material, untrue and misleading. These recyclable claims are prominent on all of Defendant's marketing, advertising and labeling materials, even though Defendant is aware that the claims are false and misleading. Defendant's claims are thus likely to deceive Plaintiffs and reasonable consumers. Plaintiffs would not have purchased the Products, or would not have paid as much for the Products, but for Defendant's false representations that the Products are recyclable. Plaintiffs have thus suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

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69. Additionally, Defendant violated the following General Regulations of the Massachusetts Attorney General regarding Ch. 93A:

a. 940 C.M.R. 3.02(2), which states:

> No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

b. 940 C.M.R. 3.05(1), which states:

> No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

c. 940 C.M.R. 3.16(1)-(2), which states that:

> Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction . . . .violates Chapter 93A, §2.

d. 940 C.M.R. 6.03(2), which states:

> Sellers shall not use advertisements which are untrue, misleading, deceptive, fraudulent, falsely disparaging of competitors, or insincere offers to sell.

e. 940 C.M.R. 6.04(1)-(2), which states:

> (1) Misleading Representations. It is an unfair or deceptive act for a seller to make any material representation of fact in an advertisement if the seller knows or should know that the material representation is false or misleading or has the tendency or capacity to be misleading, or if the seller does not have sufficient information upon which a

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> reasonable belief in the truth of the material representation could be based.
>
> (2) Disclosure of Material Representations. It is an unfair or deceptive act for a seller to fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers. . . .

70. Defendant has engaged and continues to engage in violations of Chapter 93A, Section 2 because regulations promulgated by the Massachusetts Attorney General under Chapter 93A, Section 2(c) provide that any act or practice that "fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection…" 940 C.M.R. 3.16(3), violates Chapter 93A, Section 2.

71. In compliance with the provisions of M.G.L Chapter 93A, on June 18, 2020, Plaintiff Downing provided written notice to Defendant pursuant to Section 9, identifying the claimant and reasonably describing the unfair acts or practices relied upon and the injuries suffered by Plaintiff and requested that Defendant offer an appropriate consideration or other remedy to all affected consumers. Defendant did not, within thirty days of Plaintiff Downing's demand, make a reasonable offer of relief for the unfair and deceptive acts Plaintiff Downing identified in his demand letter. Accordingly, Plaintiffs seek damages pursuant to M.G.L Chapter 93A, §2.

72. By committing the acts alleged above, Defendant has engaged in deceptive acts and practices in violation of Massachusetts General Law 93A, §2.

73. As a result of Defendant's willful and knowing violation of Chapter 93A, §2, Keurig is liable to Plaintiffs and the Class for up to three times the damages that Plaintiff and the Class incurred or the statutory minimum award of $25 per purchase of a Product, whichever is greater.

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74. As a result of Defendant's failure to make a reasonable offer of settlement in response to Plaintiff Downing's written pre-suit demand for relief, Defendant is liable to Plaintiffs and the Class for up to three times the damages that Plaintiff and the Class incurred or the statutory minimum award of $25 per purchase of a Product, whichever is greater.

75. An action for injunctive relief and restitution is specifically authorized under Massachusetts General Law 93A, §9.

76. Keurig is also liable to Plaintiffs for all their costs, attorneys' fees, and interest.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

SECOND CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class, Allege Breach of Express Warranty)

77. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 73 of this Complaint. Plaintiffs allege this claim on behalf of the Class.

~~51.~~78. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the promise.

~~52.~~79. As detailed above, Defendant marketed and sold the Products as recyclable. Defendant's representations that the Products are recyclable constitute affirmations of fact made with regard to the Products as well as descriptions of the Products.

~~53.~~80. Defendant's representations regarding the recyclability of the Products are uniformly made in the Products' advertising, internet sites and other marketing materials, and on the Products' labeling and packaging materials, and are thus part of the basis of the bargain between Defendant and purchasers of the Products.

~~54.~~1. ~~California has codified and adopted the provisions of the Uniform Commercial Code governing express warranties (Cal. Com. Code § 2313).~~

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

81. At the time that Defendant designed, manufactured, sold and distributed the Products, Defendant knew that the Products were not recyclable in many communities.

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~~56.~~82. As set forth in the paragraphs above, the Products are not recyclable in many communities and thus do not conform to Defendant's express representations to the contrary. Defendant has thus breached its express warranties concerning the Products.

~~57.~~83. On July 23, 2018, Plaintiff Smith sent a pre-suit demand letter to Defendant notifying Defendant that the Products are not recyclable~~.~~ as warranted by Defendant. On June 18, 2020, Plaintiff Downing sent a pre-suit demand letter to Defendant notifying Defendant that the Products are not recyclable as warranted by Defendant. Defendant therefore has actual and constructive knowledge that the Products are not recyclable in many communities and were thus not sold as marketed and advertised.

~~58.~~84. As a direct and proximate result of Defendant's breach of express warranties, ~~Plaintiff~~Plaintiffs and Class members have suffered damages.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

THIRD CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class, Allege Unjust Enrichment)

85. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 81 of this Complaint. Plaintiffs bring this claim on behalf of the Class.

86. Defendant has engaged in deceptive and misleading conduct regarding its recyclable claims of the Products as set forth above.

87. As a result of Defendant's conduct alleged herein, Plaintiffs conferred a benefit on Defendant by purchasing the Products.

88. Defendant accepted and retained the benefit in the amount of the sales and/or profits it earned from sales of its Products to Plaintiffs and Class members.

89. Defendant has monetarily benefitted from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiffs and Class members, under circumstances in which it would be unjust and inequitable for Defendant to be permitted to retain the benefit of its wrongful conduct.

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90. Plaintiffs and the Class members are entitled to restitution and/or damages from Defendant and/or an order of this Court proportionally disgorging all profits, benefits and other compensation obtained by Defendant from its wrongful conduct. If necessary, the establishment of a constructive trust from which the Plaintiffs and Class members may seek restitution or compensation may be created.

91. Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

FOURTH CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class, Allege Misrepresentation)

92. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 88 of this Complaint. Plaintiffs bring this claim on behalf of the Class.

93. Defendant's recyclable representations on the Products have omitted material facts to the public, including Plaintiffs and Class members, about its products. Through its advertising and other means, Defendant failed to disclose that the Products are not recyclable in many communities.

94. At all relevant times Defendant was aware that its recyclable claims on the Products were deceptive and misleading, and purposefully omitted material facts regarding its recyclable claims in order to induce reliance by Plaintiffs and Class members and induced their decisions to purchase Defendant's Products. At a minimum, Defendant negligently misrepresented and omitted material facts regarding its recyclable claims on the Products.

95. Plaintiffs and the Class members reasonably and justifiably relied on Defendant's representations and omissions as set forth herein, and in reliance thereon, purchased Defendant's Products that they would not have otherwise purchased or paid the same amount for. Had Plaintiffs known all material facts regarding Defendant's recyclable claims on the Products they would have acted differently and would not have been damaged by Defendant's conduct.

96. As a direct and proximate cause of Defendant's misrepresentations and omissions, Plaintiffs and Class members were induced to purchase Defendant's Products and have suffered damages to be determined at trial in that, among other things, they have been deprived of the benefit of the bargain in that they bought products that were not what they were represented to be,

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and they have spent money on products that had less value than was reflected in the price they paid.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

FIFTH CAUSE OF ACTION

(Plaintiffs, on Behalf of Themselves and the Class Seek Declaratory Relief Pursuant to 28 U.S.C. § 2201)

97. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 93 of this Complaint. Plaintiffs bring this claim on behalf of the nationwide Class.

98. An actual controversy has arisen and now exists between Plaintiffs and the putative Classes and between Plaintiffs and Defendant, concerning the misleading and deceptive nature of Defendant's recyclable claims. Plaintiffs and Class members contend that Defendant's recyclable claims are deceptive and misleading because the Products cannot be recycled in many communities. Plaintiffs contend Defendant's recyclable representations are inconsistent with reasonable consumers' understanding of such representations. Defendant contends that it can promulgate deceptive, confusing, and misleading recycling claims to suit its market and profit drive objectives. Defendant contends that its use of its recycling claims is not deceptive or misleading to reasonable consumers.

99. Accordingly, Plaintiffs are entitled to seek a judicial determination of whether Defendant's claims are deceptive and misleading to reasonable consumers.

100. A judicial determination of the rights and responsibilities of the parties over Defendant's recyclable claims is necessary and appropriate at this time so that the rights of the Plaintiffs and the Class may be determined with certainty for the purposes of resolving this action and so that the Parties and the marketplace will have a consistent understanding of what recyclable claims mean.

Wherefore, Plaintiffs pray for judgment against Defendant, as set forth hereafter.

SIXTH CAUSE OF ACTION

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(Plaintiff Smith, on Behalf of Herself and the California Subclass, Alleges Breach of Express Warranty)

101. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through 97 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

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

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

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

105. At the time that Defendant designed, manufactured, sold and distributed the Products, Defendant knew that the Products were not recyclable in many communities.

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

107. On July 23, 2018, Plaintiff Smith sent a pre-suit demand letter to Defendant notifying Defendant that the Products are not recyclable. Defendant therefore has actual and constructive knowledge that the Products are not recyclable in many communities and were thus not sold as marketed and advertised.

108. As a direct and proximate result of Defendant's breach of express warranties, Plaintiff Smith and California Subclass members have suffered damages.

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

~~**SECOND CAUSE OF ACTION**~~

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SEVENTH CAUSE OF ACTION

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

~~59.~~ Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through ~~58~~105 of this Complaint.

109. Plaintiff Smith brings this claim on behalf of the California Subclass.

~~60.~~110. Plaintiff Smith and the ~~Class~~other California Subclass members purchased the Products for personal, family or household purposes.

~~61.~~111. The acts and practices of Defendant as described above were intended to deceive Plaintiff Smith and the ~~Class~~other California Subclass members as described herein and have resulted and will result in damages to Plaintiff Smith and the ~~Class~~other California Subclass members. These actions violated and continue to violate the CLRA in at least the following respects:

a. In violation of Section 1770(a)(5) of the CLRA, Defendant's acts and practices constitute representations that the Products have characteristics, uses or benefits which they do not;

b. In violation of Section 1770(a)(7) of the CLRA, Defendant's acts and practices constitute representations that the Products are of a particular quality, which they are not; and

c. In violation of Section 1770(a)(9) of the CLRA, Defendant's acts and practices constitute the advertisement of the Products without the intent to sell them as advertised.

~~62.~~112. By reason of the foregoing, Plaintiff Smith and the ~~Class~~other California Subclass members have suffered damages.

~~63.~~113. By committing the acts alleged above, Defendant violated the CLRA.

~~64.~~114. In compliance with the provisions of California Civil Code § 1782, on July 23, 2018, Plaintiff Smith provided written notice to Defendant of her intention to seek damages under

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California Civil Code § 1750, *et seq.*, and requested that Defendant offer an appropriate consideration or other remedy to all affected consumers. As of the date of this complaint, Defendant has not done so. Accordingly, Plaintiff Smith seeks damages pursuant to California Civil Code §§ 1780(a)(1) and 1781(a).

~~65.~~115. Pursuant to California Civil Code § 1780(a)(2) Plaintiff Smith and the ~~Class~~California Subclass members are entitled to an order enjoining the above-described wrongful acts and practices of Defendant, providing actual and punitive damages and restitution to Plaintiff Smith and the ~~Class~~other California Subclass members, and ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and proper by the Court under California Civil Code § 1780.

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

~~THIRD CAUSE OF ACTION~~

EIGHTH CAUSE OF ACTION

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

~~66.~~116. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through ~~65~~112 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

~~67.~~117. Under Business & Professions Code § 17200, any business act or practice that is likely to deceive members of the public constitutes a fraudulent business act or practice.

~~68.~~118. Defendant has engaged and continues to engage in conduct that is likely to deceive members of the public. This conduct includes, but is not limited to, representing that the Products are recyclable.

~~69.~~119. Plaintiff Smith purchased the Products in reliance on Defendant's representations that the Products are recyclable. Defendant's claims that the Products are recyclable are material, untrue and misleading. These recyclable claims are prominent on all of Defendant's marketing, advertising and labeling materials, even though Defendant is aware that the claims are false and

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misleading. Defendant's claims are thus likely to deceive ~~both~~ Plaintiff Smith and ~~a~~ reasonable ~~consumer~~consumers. Plaintiff Smith would not have purchased the Products, or would not have paid as much for the Products, but for Defendant's false representations that the Products are recyclable. Plaintiff Smith has thus suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

~~70.~~120. By committing the acts alleged above, Defendant has engaged in fraudulent business acts and practices, which constitute unfair competition within the meaning of Business & Professions Code § 17200.

~~71.~~121. An action for injunctive relief and restitution is specifically authorized under Business & Professions Code § 17203.

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

~~**FOURTH CAUSE OF ACTION**~~

NINTH CAUSE OF ACTION

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

~~72.~~122. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through ~~71~~118 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

~~73.~~123. The violation of any law constitutes an unlawful business practice under Business & Professions Code § 17200.

~~74.~~124. As detailed more fully in the preceding paragraphs, the acts and practices alleged herein were intended to or did result in the sale of the Products in violation of the CLRA, California Civil Code §1750, *et seq*., and specifically California Civil Code § 1770(a)(5), § 1770(a)(7) and § 1770(a)(9).

~~75.~~125. Defendant's conduct also violates Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair or

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deceptive acts or practices in or ~~effecting~~affecting commerce. By misrepresenting that the Products are recyclable, Defendant is violating Section 5 of the FTC Act.

~~76.~~126. Defendant's conduct also violates California Business & Professions Code § 17500, which prohibits knowingly making, by means of any advertising device or otherwise, any untrue or misleading statement with the intent to sell a product or to induce the public to purchase a product. By misrepresenting that the Products are recyclable, Defendant is violating Business & Professions Code § 17500.

~~77.~~127. Defendant's conduct also violates California Business & Professions Code § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive or misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.* Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall 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." 16 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above, Defendant is violating Business & Professions Code § 17580.5.

~~78.~~128. Defendant's conduct is also a breach of warranty. Defendant's representations that the Products are recyclable constitute affirmations of fact made with regard to the Products, as well as descriptions of the Products, that are part of the basis of the bargain between Defendant and purchasers of the Products. Because those representations are material, false and misleading, Defendant has breached its express warranty as to the Products and has violated California Commercial Code § 2313.

~~79.~~129. By violating the CLRA, the FTC Act, Business & Professions Code §§ 17500 and 17580.5, and California Commercial Code § 2313, Defendant has engaged in unlawful business acts and practices which constitute unfair competition within the meaning of Business & Professions Code § 17200. Plaintiff Smith would not have purchased the Products, or would not have paid as much for Products, but for Defendant's unlawful business practices. Plaintiff Smith

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has thus suffered ~~injury~~injuries in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

~~80.~~130. An action for injunctive relief and restitution is specifically authorized under Business & Professions Code § 17203.

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

~~**FIFTH CAUSE OF ACTION**~~

TENTH CAUSE OF ACTION

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

~~81.~~131. Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through ~~80~~127 of this Complaint. Plaintiff Smith brings this claim on behalf of the California Subclass.

~~82.~~132. Under California Business & Professions Code § 17200, any business act or practice that is unethical, oppressive, unscrupulous or substantially injurious to consumers, or that violates a legislatively declared policy, constitutes an unfair business act or practice.

~~83.~~133. Defendant has engaged and continues to engage in conduct which is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers. This conduct includes, but is not limited to, advertising and marketing the Products as recyclable in many communities when they are not. By taking advantage of consumers concerned about the environmental impacts of plastic waste, Defendant's conduct, as described herein, far outweighs the utility, if any, of such conduct.

~~84.~~134. Defendant has engaged and continues to engage in conduct that violates the legislatively declared policy of the CLRA against misrepresenting the characteristics, uses, benefits and quality of goods for sale. Defendant has further engaged, and continues to engage, in conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5 against deceiving or misleading consumers about the environmental impact of plastic products.

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~~85.~~135. Defendant's conduct also violates the policy of the Green Guides. The Green Guides mandate that "[a] product or package shall 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." 16 C.F.R. § 260.12(a). It further states that "[a]n 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." 16 C.F.R. § 260.12(d). As explained above, the Products cannot be recycled. Nonetheless, some recycling facilities may accept the Products even though they must eventually send the Products to a landfill. It is unfair for Defendant to make a recyclable claim based on the fact that some recycling facilities may accept the Products, despite the recycling facilities' inability to actually recycle the Products. Moreover, consumers believe that products are recyclable when they are accepted by a recycling program, even if the recycling facilities end up sending the products to a landfill. Taking advantage of consumer perception of recycling programs violates the policy of the Green Guides.

~~86.~~136. Defendant's conduct, including failing to disclose that the Products will likely end up in landfills and not be recycled, is substantially injurious to consumers. Such conduct has caused and continues to cause substantial injury to consumers because consumers would not have purchased the Products but for Defendant's representations that the Products are recyclable. Consumers are concerned about environmental issues in general and plastic waste in particular and Defendant's representations are therefore material to such consumers. Misleading consumers — and instructing them to follow cumbersome instructions in order to recycle the Products even though the Products will end up in a landfill despite those efforts — causes injury to such consumers that is not outweighed by any countervailing benefits to consumers or competition. Indeed, no benefit to consumers or competition results from Defendant's conduct. Defendant gains an unfair advantage over its competitors, whose advertising must comply with the CLRA, Cal. Pub. Res. Code § 42355.5, the FTC Act, Cal. Business & Professions Code § 17508, and the Green Guides. Since consumers reasonably rely on Defendant's representations

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of the Products and injury results from ordinary use of the Products, consumers could not have reasonably avoided such injury.

~~87.~~137. Although Defendant knows that the Products are not likely to be ultimately recycled, Defendant failed to disclose that fact to Plaintiff Smith and the ~~Class~~California Subclass.

~~88.~~138. By committing the acts alleged above, Defendant has engaged in unfair business acts and practices which constitute unfair competition within the meaning of California Business & Professions Code § 17200.

~~89.~~139. An action for injunctive relief and restitution is specifically authorized under California Business & Professions Code § 17203.

~~90.~~140. Plaintiff Smith would not have purchased the Products, or would not have paid as much for Products, but for Defendant's unfair business practices. Plaintiff Smith has thus suffered injury in fact and lost money or property as a direct result of Defendant's misrepresentations and material omissions.

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

~~**SIXTH CAUSE OF ACTION**~~

ELEVENTH CAUSE OF ACTION

(Plaintiff Smith, on Behalf of Herself and the California Class, Alleges Quasi-Contract Claim for Unjust Enrichment)

~~91.~~ Plaintiff Smith realleges and incorporates herein by reference Paragraphs 1 through ~~90~~137 of this Complaint.

141. Plaintiff Smith brings this claim on behalf of the California Subclass.

~~92.~~142. Plaintiff Smith and the ~~Class~~California Subclass members conferred benefits on Defendant by purchasing the Products.

~~93.~~143. Defendant has knowledge of such benefits.

~~94.~~144. Defendant voluntarily accepted and retained the benefits conferred.

~~95.~~145. Defendant has been unjustly enriched in retaining the revenues derived from ~~Plaintiff's~~Plaintiffs' and the Class members' purchases of the Products.

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~~96.~~146. Retention of that money under these circumstances is unjust and inequitable because Defendant falsely and misleadingly represented through its labeling, advertising and marketing materials that the Products are recyclable~~,~~ when the Products are not in fact recyclable in many communities.

~~97.~~147. These misrepresentations and omissions caused injuries to Plaintiff Smith and the ~~Class~~California Subclass members because they would not have purchased the Products, or would not have paid as much for the Products, had they known that the Products are not recyclable in many communities.

~~98.~~148. Because Defendant's retention of the non-gratuitous benefits conferred to it by Plaintiff Smith and the ~~Class~~California Subclass members is unjust and inequitable, Defendant ought to pay restitution to Plaintiff Smith and the ~~Class~~California Subclass members for its unjust enrichment.

~~99.~~149. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff Smith and the ~~Class~~California Subclass members are entitled to restitution or disgorgement in an amount to be proved at trial.

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

PRAYER FOR RELIEF

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

A. That the Court declare this a class action on behalf of the Class and California Subclass;

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

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

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D. That the Court order Defendant to cease and refrain from marketing and promotion of the Products that state or imply that the Products are recyclable to the extent they are not;

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

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

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

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

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

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

K. That the Court award treble damages pursuant to Massachusetts General Laws, Chapter 93A §9;

L. That the Court grant ~~Plaintiff her~~Plaintiffs their reasonable attorneys' fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780(d), Massachusetts General Laws, Chapter 93A §§ 9 and 11, the common fund doctrine, or any other appropriate legal theory; and

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

JURY DEMAND

~~Plaintiff demands~~Plaintiffs demand a trial by jury on all causes of action so triable.

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Dated: ~~December 28, 2018~~February __, 2022

Respectfully submitted,

LEXINGTON LAW GROUP

/s/ Howard Hirsch

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Exhibit 4

LEXINGTON LAW GROUP

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MISSION STATEMENT

The Lexington Law Group is a public interest law firm specializing in consumer protection, antitrust and environmental litigation. We bring creativity and tenacity to plaintiff's public interest litigation in a manner that yields superb results for our clients and the general public. Our cases have resulted in the recovery of millions of dollars for the benefit of consumers and the removal of toxic chemicals from thousands of everyday products.

Our firm is made up of committed people who are passionate about our work. We represent aggrieved individuals, non-profit organizations, and public entities. We are dedicated to our clients and the public interest goals that we set for each case. Our exceptional grasp of complex legal issues enables us to obtain extraordinary results for our clients.

We are aggressive litigators who fight for our clients at every turn, yet we are also professional in our approach and treat all parties with respect. Our goal is to hold corporations accountable and to use the law to forge creative solutions to difficult problems for the benefit of our clients and society.

CASES AND RESULTS

The following is a representative list of some of our successes:

- Paypal Arbitrary Hold and Reserve Account Practices: Co-Lead Counsel in class action case against Paypal, the world's largest payment processing service, alleging placement of unauthorized holds on sellers' accounts. Settlement required Paypal to remedy deficiencies in account hold practices, provide class members with a means of resolving the hold disputes as well as millions of dollars in interest paid to Class Members for unauthorized holds. (*Zepeda, et al. v. Paypal, Inc., et al.,* CV 02500-SBA)

- Out-of-Network UCR Rates Litigation: Named interim Class Counsel in antitrust case against WellPoint alleging conspiracy to artificially reduce reimbursements on "out of network" claims by policy holders through the use of the fraudulent Ingenix database. (*In re WellPoint Out of Network UCR Rates Litigation*, Case No. MDL 09-2074 PSG).

- Fake Organic Cosmetic Products Litigation: Class counsel in cases involving misrepresentation of non-organic cosmetic products as organic. (*Brown, et al. v. Hain Celestial Group*, CV-11-03082 LB (N.D. Cal); *Golloher, et al. v. Todd Christopher International*, RG 12 653621 (Alameda Sup. Ct.)). Cases resulted in multi-million dollar class recoveries and agreements to stop violations of the California Organic Products Act, including by requiring the companies to reformulate their products to meet organic standards or to stop labeling their products as organic.

- Fake "Naturals" Cosmetic Litigation: Class counsel in case involving false and misleading representations that certain Neutrogena cosmetic products are natural. (*Stephenson, et al. v. Neutrogena Corp.*, C 12-00426 JCS).

- Non-Zero VOC Paint Litigation: Counsel for plaintiff in consolidated cases involving false and misleading representations that certain paints manufactured by Benjamin Moore & Co., Inc. contained zero volatile organic compounds, when the products did in fact contain such compounds. (*Keats v. Benjamin Moore & Co.*, 4:18-cv-02050-YGR).

- Lead in Jewelry: Environmental enforcement action co-litigated with the California Attorney General that has thus far resulted in commitments by hundreds of major retailers, importers and manufacturers of costume jewelry to significantly reduce the levels of lead in their jewelry. This case also lead directly to California's landmark lead in jewelry statute, which was itself a precursor to passage of the federal Consumer Product Safety Improvement Act. (*State of California v. Burlington Coat Factory, et al.*).

- Peer-to-Peer (P2P) Interference: Named Class Counsel in class action against Comcast for alleged breach of contract and false advertising arising from interference with subscribers' use of peer-to-peer file sharing applications. Obtained $16 million settlement for the class. (*In re: Comcast Peer-to-Peer (P2P) Transmission Contract Litigation*).

- Blue Shield Mid-Year Cost Increases: Named Class Counsel in class action alleging breach of contract and false advertising case challenging health insurer Blue Shield of California's mid-year unilateral increase to deductibles and other calendar year costs. Obtained $2.7 million settlement for the class. (*Dervaes v. Blue Shield of California*).

- Chase Bank Debt Collection Practices: Named Class Counsel in class action against Chase Bank alleging violations of Federal Debt Collection Practices Act and California's Rosenthal Fair Debt Collection Practices Act in connection with Chase's credit card collection activities. (*Gardner v. Chase Bank USA, N.A.*).

- Greenwashing of Consumer Products: Counsel for non-profit group in private attorney general action resulting in Consent Judgments entered against more than 30 manufacturers and re-sellers requiring compliance with California's marketing and labeling requirements for cosmetic products. Examples of brands which have agreed to Court-ordered compliance with these requirements include Alterna, Aubrey, Beauty Without Cruelty, Blum Naturals, Boots, Curls, Derma E, Episencial, Kiss My Face, Morrocco Method, Nature's Baby, Organic Root Stimulator, Out of Africa, Pacifica, Palmer's, Parnevu, Peter Lamas, Pure & Basic, Shea Moisture, Simply Organic, Suki and Tints of Nature. (*Center for Environmental Health v. Advantage Research et al.).*

- False Advertising of Anti-Aging Products: Successfully prosecuted consumer protection action against maker of multi-million dollar "snake oil" product line falsely advertised as anti-aging cancer cure. (*Center for Environmental Health v. Almon Glenn Braswell*).

- Lead in Diaper Rash Ointment: Class action and private attorney general case that forced more than twenty-five major manufacturers and retailers of diaper rash ointment to reformulate their products to eliminate actionable levels of lead. Defendants included Bristol-Myers Squibb Co., Johnson & Johnson Consumer Companies, Inc., Pfizer, Inc., Schering-Plough HealthCare Products, Inc., and Warner-Lambert Company. (*Center for Environmental Health v. Bristol-Myers Squibb Co., et al., and Kenneth Johnson et al. v. Bristol-Myers Squibb Co., et al.*).

- US Airways Lap Child Litigation: Recovered refunds in a successful consumer class action case alleging that US Airways charged for "lap-children" in breach of its contract of carriage. (*Robins v. US Airways, Inc.*).

- Microsoft Technical Support Litigation: Class action consumer case against Microsoft forcing Microsoft to abandon its unilateral decision to discontinue free technical support for Office 2000 software products. (*Jones v. Microsoft Corporation*).

- Automobile Credit Truth-In-Lending Violations: Plaintiffs' Liaison Counsel in a large multi-party coordinated proceeding against hundreds of automobile dealerships alleging violations of the Truth in Lending Act that resulted in injunctions requiring disclosure of previously undisclosed lease and finance terms in automobile advertising. (*In Re Automobile Advertising Cases*).

- Nursing Home Staffing Litigation: Class action and private attorney general lawsuits against dozens of skilled nursing facilities that resulted in agreements to increase minimum staffing levels as required by California law. (*Foundation Aiding the Elderly v. Covenant Care, et al.*).

- Health Risks From Kava Kava: Represented class of consumers of Kava Kava dietary supplements against more than thirty-five defendants in case about failure to disclose the risk of liver disease from the products. (*In Re: Kava Kava Litigation*).

- Second Hand Smoke: Represented the City of San Jose and a private plaintiff in suit against major tobacco companies regarding failure to warn about second hand smoke in violation of California law. (*In Re Tobacco Cases II*).

- Tobacco Advertising: Represented non-profit group in case against outdoor advertising company defendants alleging violations of California's STAKE Act, which prohibits tobacco advertising within 1,000 feet of public schools, that resulted in the removal of hundreds of tobacco billboards located near schools in California. (*Center For Environmental Health v. Eller Media Corporation, et al.*).

ATTORNEY BACKGROUND AND EXPERIENCE

Eric S. Somers specializes in complex consumer, antitrust and environmental public interest litigation. Mr. Somers recently represented a class of consumers in a case against a major paint manufacturer alleging a manufacturing defect that resulted in nationwide relief for aggrieved consumers. He represented a group of plaintiffs in a case against major inkjet printer manufacturers regarding false and misleading print speed representations and he was plaintiff's counsel in a successful class action case alleging violations of the Fair Debt Collection Practices Act against Chase Bank. Mr. Somers was also Liaison Counsel in a complex coordinated proceeding alleging violations of the Truth In Lending Act by California automobile dealers that resulted in industry wide changes in advertising practices.

Mr. Somers also has significant experience enforcing California's landmark Right-to-Know law, Proposition 65, against Fortune 500 companies in the tobacco, pharmaceutical, chemical, cosmetics, water quality, costume jewelry and retail industries. These cases have led to reformulation of thousands of products designed for children to eliminate toxic chemicals such as lead, arsenic, toluene, di-n-butyl phthalate (DBP) and di-2-ethylhexyl phthalate (DEHP). Examples of consumer products that have been reformulated include children's playsets (arsenic treated wood), water filters (lead and arsenic) and children's jewelry (lead). Many of these private enforcement actions have been co-litigated with the California Attorney General and other public enforcement agencies.

Mr. Somers founded the Lexington Law Group in 1996 and is a principal of the firm. Mr. Somers received his law degree from Hastings College of the Law and received a B.A. from

Tulane University. While attending law school, Mr. Somers externed for the Honorable John P. Vukasin, Jr., United States District Court, Northern District of California.

Mark N. Todzo has devoted his practice of law to the representation of plaintiffs in antitrust, consumer and environmental protection litigation for over fifteen years. In that time, he has represented aggrieved individuals, nonprofit organizations and public entities in litigation that has curbed abusive and illegal corporate practices. Mr. Todzo's varied work has, among other things, helped to remove toxic chemicals from the environment, increased staffing in nursing homes, reformed deceptive advertising practices and recovered millions of dollars for the benefit of consumers. Mr. Todzo has argued cases in state and federal trial courts as well as courts of appeal and the California Supreme Court.

Mr. Todzo has served as class counsel in numerous class action lawsuits as well as liaison counsel in complex coordinated actions. He was lead counsel in a MDL case against Comcast on behalf of a class of subscribers who were blocked from using peer-to-peer file sharing programs. Mr. Todzo also represented classes of individuals in a variety of different cases, including an antitrust class action against Blue Shield seeking to recover increased health care payments for out of network charges.

Mr. Todzo joined the Lexington Law Group in 1998 and is a principal of the firm. Mr. Todzo received his law degree from Hastings College of the Law in 1993 and received a A.B. from Duke University in 1986.

Howard Hirsch has devoted his career to representing plaintiffs in public interest litigation to enforce consumer protections, conserve natural resources, and protect human health from toxic chemicals. After obtaining two years of training and experience at complex litigation with a large commercial law firm, Mr. Hirsch spent five years as a staff attorney at a national, non-profit environmental group representing individuals and other non-profits in citizen suits against polluters under the Clean Water Act, Clean Air Act, and other federal statutes. In that capacity, Mr. Hirsch helped secure the largest penalty ever assessed against a Pennsylvania polluter in a citizens' suit to date.

Mr. Hirsch joined the Lexington Law Group in 2003 and is a principal of the firm. Since joining LLG, Mr. Hirsch's practice has included significant experience litigating class actions against, among others, technology companies, airlines, and health care providers and insurers as well as enforcing California's Proposition 65. These cases have resulted in changes to deceptive business practices, substantial monetary recoveries for the benefit of consumers, and in significant reductions in human exposures to toxic chemicals. Mr. Hirsch has also volunteered his legal services to the homeless community of San Francisco and currently serves as a volunteer arbiter for the San Francisco Department of Human Services resolving disputes between homeless shelters and their residents.

Mr. Hirsch graduated from the University of California Berkeley Boalt Hall School of Law in 1996 and from Boston College in 1993.

Joe Mann joined the Lexington Law Group as an associate in September 2012. His practice includes representing plaintiffs in public interest litigation involving consumer rights, corporate accountability, and removing toxic chemicals from consumer products. Prior to joining the Lexington Law Group, Mr. Mann worked as a litigation attorney for the National Environmental Law Center, a non-profit organization specializing in the enforcement of federal environmental laws against the nation's most egregious polluters. His practice focused on citizen enforcement suits under the Clean Water Act, the Clean Air Act, and the Endangered Species Act. He also brought several successful challenges against the federal government itself,

striking down insufficiently protective rules promulgated by the U.S. Environmental Protection Agency.

Before joining NELC, Mr. Mann spent a year as the Law Clerk to U.S. District Court Judge Irma E. Gonzalez in the Southern District of California. Mr. Mann earned his J.D. degree from New York University School of Law in 1999, where he served as Editor-in-Chief of the NYU Environmental Law Journal. He received his undergraduate degree from Northwestern University in 1991.

Ryan Berghoff joined the Lexington Law Group as an associate in May 2017. Mr. Berghoff earned his JD from the University of California Los Angeles School of Law (UCLA) in 2015, where he obtained membership in the Order of the Coif by graduating in the top ten percent of his class. While at UCLA, Mr. Berghoff was executive editor of the Journal of Environmental Law and Policy and participated in the National Environmental Law Moot Court Competition, California State Bar Environmental Negotiations Competition, and UCLA Environmental Law Clinic.

Prior to joining Lexington Law Group, Mr. Berghoff worked as a Legal Fellow for the Center for Food Safety, a national nonprofit public interest and environmental advocacy organization specializing in the use of legal actions to curb harmful food production technologies. His practice areas included equitable water allocation in the State of California, the California Environmental Quality Act, and enforcement of federal statutes including the Federal Insecticide, Fungicide, and Rodenticide Act, the National Environmental Policy Act, and the Endangered Species Act. Mr. Berghoff is dedicated to protecting human health and the environment through advocacy and litigation. His current practice includes representing plaintiffs in public interest litigation involving consumer rights, including class actions predicated on California's Unfair Competition Law and enforcement of Proposition 65.

Meredyth Merrow joined the Lexington Law Group as an associate in October 2019. Ms. Merrow earned her J.D. from the University of California, Hastings College of the Law in 2019, with a concentration in Environmental Law, and received her B.A. from Gettysburg College in 2011. While at Hastings, Ms. Merrow was an executive editor of the Hastings Environmental Law Journal, participated in the Hastings Environmental Law Clinic, and received awards for her work in Legal Research and Writing, International Human Rights Law, International Environmental Law, and Biodiversity Law. Ms. Merrow published two law review articles on the topics of environmental justice and biodiversity offsetting, in May 2018 and November 2019, respectively.

Prior to joining Lexington Law Group, Ms. Merrow worked as a summer law clerk for the Hon. Teri Jackson, at a San Francisco land use firm, and as a spring fellow at San Francisco Baykeeper. Ms. Merrow is passionate about, and dedicated to, the protection of the environment, with a focus on environmental justice.

Exhibit 5

Shapiro Haber & Urmy LLP

With over 30 years of experience litigating, trying, and winning multi-million dollar cases across the country, Shapiro Haber & Urmy LLP ("Shapiro Haber & Urmy"), a Boston-based boutique litigation firm, has long been a national leader in the field of complex, high-stakes litigation. Each of our attorneys has the educational background, expertise, and creativity to litigate against the largest, most prominent law firms in the country – and win. Unlike many other law firms in which only a few, if any, of the lawyers have actually tried a case to conclusion, our lawyers have successfully tried dozens of cases to verdict and have obtained outstanding results for our clients when efforts to reach a negotiated settlement have failed. As a result, we approach each case – large or small – with the expectation that it may be tried, and with the rigor and attention to detail that excellent trial preparation requires.

Partners Edward Haber and Michelle Blauner, and Counsel Thomas Urmy, Jr. were named Massachusetts Super Lawyers in every year from 2006 through 2020. Counsel Thomas Shapiro was named a Massachusetts Super Lawyer in every year from 2006 through 2017. Attorneys Haber, Shapiro and Urmy were recognized as Top Rated Litigators by *The American Lawyer* in 2016 and attorney Blauner was recognized as one of the top 50 women lawyers in Massachusetts in from 2011 to 2013. Partner Ian McLoughlin was named a Massachusetts Rising Star from 2009 through 2015, and a Massachusetts Super Lawyer from 2016 through 2020. Associate Adam Stewart was named a Massachusetts Rising Star in 2011 through 2018, and a Massachusetts Super Lawyer in 2019 and 2020. Associate Patrick Vallely was named a Massachusetts Rising Star in 2013 through 2020. The firm has consistently been awarded the "AV" rating by Martindale-Hubbell, which is given only to firms that have earned a very high measure of professional esteem and have adhered to the highest ethical standards in the legal profession.

The firm's commitment to success in high-stakes, high-profile litigation is matched by its commitment to providing access to quality legal representation on a pro bono or reduced-fee basis to low-wage individuals who otherwise might not be able to afford legal help. Our attorneys have represented low-wage workers in the fields of hospitality, janitorial services, and retail, in actions seeking to recover unpaid wages ranging from hundreds to tens of thousands of dollars. In each of these smaller cases we incur large fees and expenses, often far in excess of the wages sought to be recovered. We believe our duty as members of the bar is to represent those who otherwise would not have any means to obtain relief in court, and we welcome that responsibility. Reflecting this commitment, in 2011 the firm received the Law Firm Award from the Political Asylum/Immigration Representation Project for its pro bono work in representing asylum seekers.

LEGAL PROFESSIONALS

PARTNERS

Edward F. Haber, Partner

- 1966, B.A., Cornell University
- 1969, J.D. *cum laude*, Harvard Law School

Michelle H. Blauner, Partner

- 1983, B.A. *with highest distinction*, Cornell University
- 1986, J.D. *cum laude*, Harvard Law School

Ian J. McLoughlin, Partner

- 1997, B.A. *cum laude*, Gonzaga University
- 2000, J.D. *magna cum laude*, Boston University School of Law

ASSOCIATES

Patrick J. Vallely, Associate

- 2002, B.A. *magna cum laude*, University of Dayton
- 2005, J.D. *with honors*, University of Chicago Law School

COUNSEL

Thomas V. Urmy, Jr., Counsel

- 1960, B.A. *cum laude*, Amherst College
- 1964, L.L.B., Yale Law School

Thomas G. Shapiro, Counsel

- 1965, B.A. *magna cum laude*, Harvard College
- 1969, J.D. *cum laude*, Harvard Law School

JUDICAL RECOGNITION

- "Given their representation of the lead plaintiffs to date… Shapiro Haber & Urmy LLP, with substantial experience with securities class action litigation, [is] adequate to serve as class counsel." *In re AVEO Pharm., Inc. Sec. Litig.*, 2017 U.S. Dist. LEXIS 188560, at *15 (D. Mass. Nov. 14, 2017).

- Shapiro Haber & Urmy litigated "with considerable skill and experience" and demonstrated "excellent lawyering." *Kenney v. State St. Corp.,* (D. Mass. Nov. 9, 2014).

- Shapiro Haber & Urmy is "highly skilled" and has "significant class action experience." *Arnett v. Bank of Am., N.A.*, 2014 U.S. Dist. LEXIS 130903, at *38 (D. Or. Sep. 18, 2014).

- "Shapiro Haber & Urmy is an eleven-lawyer firm with a national reputation for litigating a variety of national class actions." *Davis v. Footbridge Eng'g Servs., LLC*, 2011 U.S. Dist. LEXIS 93645, at *8 (D. Mass. Aug. 22, 2011).

- "I think that [Shapiro Haber & Urmy] has done an excellent job on this and makes my job much, much easier." *Olmeda v. AM Broadband, LLC*, (D. Mass. Oct. 14, 2009).

- "[Shapiro Haber & Urmy's] skillful and zealous representation over a six-year period enabled the settling classes to obtain a favorable and certain cash recovery….The high quality of representation provided… is evident from the extensive record of this case...." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litig.*, 246 F.R.D. 156 (S.D.N.Y. 2007).

- Shapiro Haber & Urmy "has broad-based experience in complex litigation, including experience in securities fraud class actions in this district and others." *Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 267 (D. Mass. 2005).

- "I am satisfied that [Shapiro Haber & Urmy] will prosecute this action vigorously and will protect the interests of the absent class members." *McLaughlin v. Liberty Mutual Ins. Co.*, 224 F.R.D. 304, 310 (D. Mass. 2004).

- Shapiro Haber & Urmy is "highly qualified both generally, and in the specific context of private class actions under the Federal securities laws." *Coopersmith, et al. v. Lehman Brothers, Inc.*, 344 F. Supp. 2d 783, 784 (D. Mass. 2004).

- Shapiro Haber & Urmy is "highly qualified to act as lead counsel for the Class" and "has extensive experience in prosecuting class actions, including as lead counsel." *US Trust Co. of NY v. Albert* (S.D.N.Y. 1995).

- Shapiro Haber & Urmy "comes with a wealth of experience and skill in prosecuting class actions." *US West, Inc. v. Macallister* (D. Colo. 1992).

QUALIFIICATIONS AND EXPERIENCE

CONSUMER LITIGATION

- In *Lee v. Conagra Brands, Inc.*, No. 1:17-cv-11042-RGS, Shapiro Haber & Urmy represents a class of consumers under the Massachusetts consumer protection act relating to Conagra's deceptive marketing of Wesson Oil as "100% Natural" when the oil in fact contained genetically modified organisms. After the district court dismissed the complaint, Shapiro Haber & Urmy successfully appealed and obtained an important decision from the Court of Appeals for the First Circuit, which reversed the dismissal. *Lee v. Conagra Brands, Inc.*, 958 F.3d 70 (1st Cir. 2020). The First Circuit held that claims relating to "natural" advertising are not preempted by federal law and also clarified the applicable pleading standard for injury and damages under the Massachusetts statute.

- In *Magliacane v. City of Gardner*, 1785-CV0-2005 (Mass. Super. Ct.), Shapiro Haber & Urmy represents Janice Magliacane who brought a class action against the City of Gardner relating to the City's sales and delivery of corrosive water to its residents that has led to corrosion of copper heating coils in residents' hot water heaters. On appeal from the trial court's dismissal of the case, the Supreme Judicial Court ruled for the first time that a class action could be brought under the Massachusetts Torts Claim Act and that the statute does not require that each individual class member provide written notice of their claim. The SJC also held for the first time that fraudulent concealment tolls the presentment requirement under the MTCA. *Magliacane v. City of Gardner*, 483 Mass. 842 (2020).

- In *Starr v. VSL Pharmaceuticals, Inc.*, No. 8:19-cv-02713-TDC (D. Md.), Shapiro Haber & Urmy represents consumers in twelve states asserting violations of the federal RICO statute, various state consumer protection acts and common law relating to the defendants' deceptive marketing of the medical probiotic food VSL#3. Plaintiffs claim that the defendants defrauded consumers into believing a new formulation of VSL#3 sold after May 2016 was the same as the original clinically tested formulation of VSL#3 sold prior to that time when it was not. Shapiro Haber & Urmy brings the claim on behalf of proposed nationwide and statewide classes of consumers who purchased VSL#3. Shapiro Haber & Urmy successfully defeated defendants' motion to dismiss on December 28, 2000. *Starr v. VSL Pharm., Inc.*, 2020 U.S. Dist. LEXIS 242774 (D. Md. 2020).

- In *Burkhart v. Genworth Financial, Inc.*, C.A. No. 2018-0691-JRS (Del. Ch.), Shapiro Haber & Urmy represents a putative class of more than one million long-term care ("LTC") insurance policy holders, who have brought suit against Genworth Life Insurance Company ("GLIC") for fraudulent conveying more than $1 billion in assets to its affiliates when it terminated a capital support agreement without consideration. Plaintiffs allege that GLIC intended to defraud its LTC policy holders when it terminated the capital support agreement, and that the GLIC was insolvent or undercapitalized at the time of the transaction because GLIC was left with insufficient assets to pay its expected liabilities under the policies. Shapiro Haber & Urmy successfully argued to the Delaware Chancery Court, that Plaintiffs, who had not yet made claims under their policies, had standing to sue for fraudulent conveyance. *Burkhart v. Genworth Fin., Inc.*, No. 2018-0691-JRS, 2020 Del. Ch. LEXIS 44, at *1 (Ch. Jan. 31, 2020).

- Shapiro Haber & Urmy, is liaison counsel and a member of the executive committee in *In re Evenflo Co., Inc. Marketing, Sales Practices and Product Liability Litigation.*, MDL No. 1:20-md-02938-DJC (D.Mass.). Shapiro Haber & Haber represents consumers and proposed classes in various states who sued the maker of the popular Evenflo Big Kid booster car seat, for allegedly selling the car seat with misleading advertising and safety claims, placing children weighing less than 40 pounds in grave danger during a car crash.

- In *Levine v. Volvo Cars of North America, LLC*, No. 2:18-cv-03760-CCC-JBC (D.N.J.), Shapiro Haber & Urmy represent Frederick Scott Levine and Douglas W. Murphy in bringing claims against Volvo for consumer deception and breach of warranty relating to Volvo's deceptive marketing of its XC90 vehicles as being compatible with Android Auto. Shapiro Haber & Urmy represent a proposed nationwide class of purchasers and lessees of 2016 and certain 2017 XC90s that were deceptively marketed.

- In *Munsell v. Colgate Palmolive Co*, No. 1:19-cv-12512-NMG (D. Mass.), Shapiro Haber & Urmy asserts claims on behalf of Massachusetts and Rhode Island consumers under the Massachusetts and Rhode Island consumer protection acts relating to Colgate and Tom's of Maine's deceptive marketing of Tom's of Maine toothpaste and deodorant products as "natural" when those products in fact contain artificial, synthetic or chemically processed ingredients. Shapiro Haber & Urmy defeated the defendants' motion to dismiss and continues to litigate the case on behalf of the proposed classes. *Munsell v. Colgate-Palmolive Co.*, 2020 U.S. Dist. LEXIS 88745 (D. Mass. May 20, 2020).

- In *Ridenti v. Google LLC*, No. 1:20-cv-10517-NMG (D. Mass.), Shapiro Haber & Urmy represents two Massachusetts children in bringing claims against Google for the unfair and unlawful collection of children's personal information through the YouTube platform. The cutting-edge claims align with increasing interest in children's privacy on the internet, as reflected by state and federal regulation, including the Children's Online Privacy Protection Act. The *Ridenti* case could serve as important case defining the scope of consumer protection law to provide a remedy for unfair practices by online service providers concerning their interaction with young children.

- Shapiro Haber & Urmy serves as liaison counsel in *Duncan et al. v. Nissan North America*, Inc., 1:16-CV-12120-DJC (D. Mass.) in which they represent consumers in Oregon, Colorado, Texas, Massachusetts, North Carolina, New York, Florida, Maryland and New Jersey in connection with their purchase or lease of certain Nissan model vehicles manufactured, sold and warranted by Nissan that allegedly have a defective Timing Chain System. The case was recently settled and the Court has granted preliminary approval to the settlement, which provides consumers with various forms of relief, including an extension of the warranty coverage on their vehicles.

- In *Carriuolo v. General Motors, LLC*, Case No. 14-cv-61429 (S.D. Fl.) Shapiro Haber & Urmy represented a class of Florida purchasers and lessees of Cadillac CTS vehicles. The case concerned General Motors' misrepresentations that certain Cadillac CTS vehicles had obtained federal safety ratings that they had not in fact obtained. Shapiro Haber & Urmy successfully moved for certification of a class of Florida purchasers of the vehicles, which was affirmed on an interlocutory appeal by the United States Court of Appeals for the Eleventh Circuit. *Carriuolo v. GM Co.*, 823 F.3d 977 (11th Cir. 2016). That landmark

decision construed Florida law and Rule 23 to reject common defense arguments against class certification, paving the way for future consumer actions under Florida's consumer protection law. After the Court of Appeals affirmed the class certification order, Shapiro Haber & Urmy procured a class settlement that provided $1,000 cash to each class member, plus a $1,000 voucher towards the future purchase of a vehicle.

- In *Crane v. Sexy Hair Concepts, LLC*, No. 17-10300-FDS (D. Mass.), Shapiro Haber & Urmy represents a nationwide class of consumers who purchased Sexy Hair shampoos and conditioners that were deceptively marketed as being free of sulfates and salts. Shapiro Haber & Urmy defeated an attempt at dismissal of the plaintiffs' claims, resulting in a decision that affirmed important principles of consumer protection law under the Massachusetts consumer protection statute. *Crane v. Sexy Hair Concepts, LLC*, 2017 U.S. Dist. LEXIS 220112 (D. Mass. Oct. 10, 2017). After Shapiro Haber & Urmy obtained that favorable decision, the case settled for $2.33 million.

- In *Aspinall v. Philip Morris Cos.*, Civ. Action. No. 98-6002-H (Mass. Super. Ct.), Shapiro Haber & Urmy represented plaintiffs in a class action against Philip Morris. The suit was brought under the Massachusetts Consumer Protection Act, M.G.L. c. 93A, and sought to recover damages from defendants on behalf of all persons who purchased Marlboro Light cigarettes in the Commonwealth of Massachusetts. The case alleged that by using words such as "Light" and "Lowered Tar and Nicotine" on the packaging of Marlboro Lights, defendants falsely represented to purchasers that the cigarettes contained and delivered lower levels of tar and nicotine to human smokers than did regular cigarettes. In October of 2001, the Superior Court certified the case as a class action. Shapiro Haber & Urmy successfully argued against defendants' appeal from the class certification decision, which was affirmed by the Supreme Judicial Court in August of 2004, *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381 (2004). The firm also successfully prevailed, before both the Superior Court and the Supreme Judicial Court, against Philip Morris' argument that a consumer's claims under c. 93A were preempted by federal law and the actions of the Federal Trade Commission. *Aspinall v. Philip Morris Companies, Inc.*, 453 Mass. 431 (2009). On February 19, 2016, after a five-week trial, the Court found that Philip Morris violated c. 93A, and awarded statutory damages plus prejudgment interest, totaling $15 million.

- In *Perlow v. ABC Financial Services, Inc.*, 1684-CV-03611-BLS2 (Mass. Super. Ct.), Shapiro Haber & Urmy represented Matthew Perlow who brought a class action against ABC Financial and Seas & Associates LLC alleging that certain debt collection letters sent to him and others did not contain the information required by Massachusetts debt collection law. Following over two years of litigation, Shapiro Haber & Urmy obtained a settlement of $1.8 million for the benefit of the class. The settlement resulted in monetary recovery for tens of thousands of consumers as well as sizable cy pres awards to the National Consumer Law Center and Massachusetts IOLTA.

- Shapiro Haber & Urmy represented putative classes of plaintiffs in litigation throughout the United States charging Bank of America with breach of contract and breach of the covenant of good faith and fair dealing in connection with the purchase of hazard and flood insurance in excess of the coverage amounts required by the

mortgage agreements. In two of those cases, *Kolbe v. Bank of America*, 695 F.3d 111 (1st Cir. 2012), *en banc review granted*, and *Lass v. Bank of America*, 695 F.3d 129 (1st Cir. 2012), the Court of Appeals for the First Circuit reversed the district court's orders dismissing the claims. Shapiro Haber & Urmy successfully settled the case for $30 million.

- Shapiro Haber & Urmy represented a class of consumers in litigation in federal and state court in Florida against Homeward Residential, Inc. for breach of the covenant of good faith and fair dealing, and unfair business practices associated with its force-placed hazard insurance practices. Shapiro Haber & Urmy defeated Homeward's efforts to dismiss the case. *Martorella v. Deutsche Bank Nat'l Trust Co.*, 2013 WL 1137514 (S.D. Fla. Mar. 18, 2013). The parties settled the case for a refund of 12.5% of the force-placed insurance premiums, which was approved by the state court and is being administered.

- Shapiro Haber & Urmy represented Massachusetts consumers who sued U-Haul for attempted price fixing in violation of M.G.L. c. 93A. In reversing the dismissal of the case, the United States Court of Appeals for the First Circuit, recognized for the first time that attempted price fixing, which harms consumers, can violate Massachusetts consumer protection laws. *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

- Shapiro Haber and Urmy represented a class of Massachusetts consumers who sued Southwestern Bell (doing business as Cellular One) for breach of contract and violations of M.G.L. c. 93A by overcharging consumers. After the district court decertified the class, Shapiro Haber & Urmy successfully appealed the ruling to the United States Court of Appeals for the First Circuit, which reversed. *Smilow v. Sw. Bell Mobile Sys.*, 323 F.3d 32, 34 (1st Cir. 2003). The case, thereafter, was successfully settled. Shapiro Haber & Urmy also represented consumers and businessowners by prosecuting consumer class action suits against:

  - Seven Massachusetts automobile insurance companies for nonpayment of interest on arbitration awards;
  - Shell Vacation homes in connection with the sale of time shares;
  - Starbucks for misrepresentation and overcharges in the sale of coffee;
  - Earth Friendly products for misrepresenting its products as "100% Natural" or "All Natural";
  - Building Products of Canada for selling defective roofing shingles;
  - Various health maintenance organizations for failure to pay claims of non-participating medical service providers for medical services in a timely fashion;
  - Zions First National Bank for charging and collecting excessive overdraft fees;
  - Re$ubmitIt, LLC for unauthorized fees charged for insufficient funds checks;

- U-Haul for attempted price-fixing in violation of the Massachusetts consumer protection statute;
- Wozo, LLC for deceptive internet marketing;
- American Medical Security, Inc. for unfair insurance practices;
- NVIDIA for the sale of defective products in violation of state consumer protection statutes;
- Lenovo for the sale of defective products in violation of state consumer protection statutes;
- TJX Companies, Inc. and Princeton Review related to the theft of personal and financial information of customers;
- E.I. DuPont De Nemours & Company for the potential of serious health hazards resulting from the manufacturing, sales and advertising of "Teflon"; and
- Gillette for engaging in deceptive marketing practices with respect to its M3P razor and blades.

CONSUMER LITIGATION APPEALS

Attorneys in our firm had principal responsibility for the brief, and presented the oral argument, in the following appeals in consumer class actions.

- *Lee v. Conagra Brands, Inc.*, 958 F.3d 70 (1st Cir. 2020)
- *Magliacane v. Gardner,* 483 Mass. 842 (2020)
- *Carriuolo v. GM Co.*, 823 F.3d 977 (11th Cir. 2016)
- *Kolbe v. BAC Home Loans Servicing, LP*, 695 F.3d 111 (1st Cir. 2012), *vacated by Kolbe v. BAC Home Loans Servicing, LP,* 738 F.3d 432 (1st Cir. 2013) (*en banc*)
- *Downing v. Globe Direct LLC*, 682 F.3d 18 (1st Cir. 2012)
- *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012)
- *Aspinall v. Philip Morris, Inc.*, 453 Mass. 431 (2009)
- *Good v. Altria Group, Inc.*, 501 F.3d 29 (1st Cir. 2007), *aff'd* 129 S. Ct. 528 (2008)
- *Aspinall v. Philip Morris Cos., Inc.*, 442 Mass. 381 (2004)
- *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32 (1st Cir. 2003)
- *Roberts v. Enterprise Rent-A-Car Co. of Boston, Inc.*, 438 Mass. 187 (2002)

SECURITIES AND DERIVATIVE LITIGATION

- In *Fisher v. United States*, No. 13-608C (Ct. Fed. Cl.), and *Reid v. United States*, No. 14-152C (Ct. Fed. Cl.), Shapiro Haber & Urmy represents shareholders of Fannie Mae and Freddie Mac in bringing derivative claims against the United States arising from the government's takings of assets from both companies during the financial crisis. Shapiro Haber & Urmy successfully defended against a motion to dismiss filed by the government challenging the shareholders' claims based on jurisdictional and standing arguments. The resulting decision addressed important, previously unresolved questions concerning shareholders' standing to bring claims against the United States notwithstanding the government's role as conservator for the companies. *Fisher v. United States*, 2020 U.S. Claims LEXIS 962 (Ct. Cl. May 8, 2020); Reid v. United States, 2020 U.S. Claims LEXIS 963 (Ct. Cl. May 8, 2020).

- In *In re Fitbit, Inc. Stockholder Derivative Litigation*, No. 2017-0402-JRS (Del. Ch. Ct.), Shapiro Haber & Urmy represents shareholders in a derivative lawsuit on behalf of Fitbit, Inc. arising from stock transactions in which Fitbit's officers and directors entered while in possession of material nonpublic information about the company. Shapiro Haber & Urmy defeated a motion to dismiss filed by the defendants, resulting in an important decision in the Delaware Court of Chancery affirming the adequacy of the shareholders' substantive allegatations and allegations of demand futility, which built upon important information obtained through a books and records request. *In re Fitbit, Inc. S'holder Deriv. Litig.,* 2018 Del. Ch. LEXIS 571 (Ch. Ct. Dec. 14, 2018). Shapiro Haber & Urmy was then able to leverage that favorable decision to obtain a settlement on behalf of Fitbit.

- Shapiro Haber & Urmy is liaison counsel in an action brought on behalf of the Federal Home Loan Bank of Boston (the "Bank") in the Massachusetts Superior Court, arising from the sale to the Bank by numerous financial institutions of over $5.9 billion in Private Label Mortgage-Backed Securities, by means of offering documents which Plaintiffs allege were materially false and misleading. *Fed. Home Loan Bank of Boston v. Ally Fin., et. al.*, 1184CV01533-BLS1 (Mass. Super. Ct.). The Bank has sought rescission and damages under M.G.L. c. 110A, M.G.L. c. 93, and applicable common law. The Bank has resolved its claims against many of the financial institution defendants, but the claims against certain Credit Suisse entities remain pending and are expected to go to trial in 2021.

- In *Kimson Chemical, Inc. v. Luckin Coffee, Inc.*, Index No. 651939/2020 (Part 49) (N.Y. Supreme Court), Shapiro Haber & Urmy is counsel in a putative class action brought by Kimson Chemical, Inc., under the Securities Act of 1933 against Luckin Coffee Inc., certain officers and directors of Luckin, and underwriters relating to allegedly negligently prepared and materially false and misleading Registration Statements and Prospectuses in connection with Luckin Coffee's IPO in 2019 and Secondary Offering in 2020.

- In *Raudonis v. RealtyShares, Inc.*, 1:20-cv-10107-PBS (D. Mass.), Shapiro Haber & Urmy is lead counsel in a class action against RealtyShares, Inc., RS Lending, Inc., Navjot Athwal, Edward Forst and IIRR Management Services, LLC, on behalf of all persons who (1) purchased debt securities offered or sold by RealtyShares or RS Lending relating to loans to Franchise Growth, LLC and/or associated entities for property acquisition and construction (the "Franchise Growth Class"); or (2) who purchased debt securities offered or sold by RealtyShares or RS Lending relating to loans to Ingersoll Financial, LLC for property acquisition and repair of properties across the United States, known as the Nationwide SFR Packages. The action brings claims under federal and state securities laws and the common law relating to alleged misrepresentations made in connection with the debt securities at issue.

- Shapiro Haber & Urmy served as liaison counsel in *Godinez v. Alere, Inc. et al.*, 1:16-cv-10766-PBS (D. Mass.) that was brought on behalf of investors in Alere common stock relating to alleged misstatements concerning the company's INRatio product line. The case resulted in a $20 million settlement for the benefit of the class.

- Shapiro Haber & Urmy served as liaison counsel in *In re Aveo Pharmaceuticals, Inc. Sec. Litig*., 1:13-cv-11157-DJC (D. Mass.) that was brought on behalf of investors in Aveo common stock relating to alleged misstatements concerning the company's lead drug candidate, tivozanib, and regulatory communications with the United States Food and Drug Administration. The lawsuit resulted in a settlement that produced a $15 million cash payment and warrants to purchase 2 million shares of Aveo common stock at a certain strike price for the benefit of the class.

- In *In re Amicas, Inc. Shareholder Litig.,* 10-cv-0174-BLS2 (Mass. Super. Ct.), Shapiro Haber & Urmy served as liaison counsel in a shareholder action that sought to enjoin the acquisition of Amicas, Inc. by Thoma Bravo, LLC. Among other things, Plaintiffs alleged that the defendants had concealed from shareholders a superior offer to acquire Amicas from Merge Healthcare, inc. The Court enjoined the shareholder vote on Thoma Bravo's acquisition of Amicas, and Amicas was subsequently acquired by Merge Healthcare at a share price that resulted in a $26 million increase in shareholder value. The Court ruled that Plaintiffs and their attorneys had substantially assisted in obtaining the $26 million in additional value for the company's shareholders.

- Shapiro Haber & Urmy was the court-appointed co-chairman of the Plaintiffs' Executive Committee in *In re Merrill Lynch Analyst Reports Sec. Litig.*, 02-MDL-1484 (S.D.N.Y.). The firm was also court-appointed lead counsel in two of the Merrill Lynch securities analyst cases: *InfoSpace Analyst Reports Sec. Litig.*, and *Internet Capital Group Analyst Reports Sec. Litig*. The Court approved a settlement in the amount of $125 million.

- Shapiro Haber & Urmy was at the forefront of shareholder litigation addressing the nationwide epidemic of improperly backdated stock options. The firm was lead counsel or part of the leadership team in derivative actions in both state and federal courts concerning the improper backdating (or other manipulation) of stock options granted to officers, directors, and executives of the following corporations: Affiliated Computer Services, Inc.; Cablevision Systems Corp.; Linear Technology Corp.; Maxim Integrated Products; Staples, Inc.; and UnitedHealth Group, Inc. The United Health derivative action settled for over $700 million in cash and re-priced or surrendered options – the largest derivative action options settlement on record. Other notable settlements included Maxim (approximately $38 million in cash and re-priced and surrendered options); Affiliated Computer Services (approximately $40 million in cash and re-priced and surrendered options); Cablevision (approximately $34 million in cash and other consideration); Staples (approximately $8.2 million in cash and re-priced options); Linear ($4.5 million in cash and re-priced options as well as corporate governance changes).

- Shapiro Haber & Urmy was one of the court-appointed lead counsel in the consolidated derivative action brought on behalf of the HealthSouth Corporation against its former CEO, Richard Scrushy, its other former officers and directors, and others. This action coordinated derivative actions brought on behalf of HealthSouth in the Delaware Chancery Court, the Federal District Court in Alabama, and the state court in Birmingham, Alabama. The legal team, on which Shapiro Haber & Urmy served as one of the lead counsel, obtained the following recoveries for HealthSouth: (i) summary judgment in the Delaware Chancery Court for over $17 million, *In re HealthSouth Corp. S'holders Litig.*, 845 A.2d 1096 (Del. Ch. 2003), aff'd, 847 A.2d 1121 (Del. 2004); (ii) summary judgment in the Circuit Court of Jefferson County, Alabama for over $47 million, see Tucker v. Scrushy, 2006 WL 37028 (Ala. Cir. Ct. Jan. 3, 2006), aff'd, 2006 WL 2458818 (Ala. Aug. 25, 2006); (iii) a settlement of the derivative claims against some of the officers and directors of HealthSouth for $100 million; (iv) a $133 million settlement of the derivative claims against HealthSouth's former investment advisor, uBS; and (v) a $2.8 billion dollar judgment against Mr. Scrushy after a bench trial in the Circuit Court of Jefferson County, Alabama.
- Shapiro Haber & Urmy was lead counsel in two analyst conflict of interest cases against Credit Suisse First Boston on behalf of the shareholders of Winstar Communications, Inc. and Razorfish, Inc., both of which produced multi-million dollar recoveries. *Ahearn v. Credit Suisse First Boston (Winstar)* (D. Mass.); *Swack v. Credit Suisse First Boston (Razorfish)* (D. Mass.).

- Shapiro Haber & Urmy was on the executive committee prosecuting a securities class action alleging fraud against the former officers and auditors of now bankrupt Winstar Communications, Inc. The lawsuit also alleged that Lucent Technologies participated in the fraud. The case against the former officers settled for $18.125 million and the case against Lucent settled for $12 million. The case against the auditors settled shortly before trial in June 2013 for $10 million. *In re Winstar Commc'ns Inc. Sec. Litig.* (S.D.N.Y.).

- Shapiro Haber & Urmy was co-lead counsel in a class action alleging fraud against former officers and auditors of Actrade Financial Technologies. A settlement for $5,250,000 recently received final approval in the Southern District of New York. *In re Actrade Fin. Techs., Inc. Sec. Litig.* (S.D.N.Y.).

- Shapiro Haber & Urmy represented a class of persons who had sold businesses to Waste Management, Inc. for common stock of Waste Management. The case arose from Waste Management's restatement of its financial statements. Shapiro Haber & Urmy obtained summary judgment against Waste Management as to liability for a majority of the class members. Shapiro Haber & Urmy also successfully defended defendant's appeal of the class certification order, *Mowbray v. Waste Management Holdings, Inc.*, 208 F.3d 288 (2000). The case was subsequently settled for a combination of cash and stock with a total value of $25 million.

- Shapiro Haber & Urmy represented the Commonwealth of Massachusetts Pension Reserves Investment Trust ("PRIT") in a securities fraud action against Bear Stearns & Co., Inc. in the United States District Court for the Southern District of California. The case arose out of the sale of $81 million in subordinated debentures issued by Weintraub Entertainment Group ("WEG"), a start-up film company. In February 1987, PRIT bought $5 million in bonds from Bear Stearns, the placement agent for the issuer. WEG declared bankruptcy in 1990, and the bondholders lost virtually their entire investment. A class action was filed in San Diego against Bear Stearns and others. PRIT also filed suit in 1991, and in 1993 our action was consolidated with the class action for discovery and trial. The case was tried to a jury in San Diego in the summer of 1998. Shapiro Haber & Urmy partner Thomas V. Urmy was PRIT's trial counsel. After a four-week trial, the jury found that Bear Stearns had committed securities fraud and entered a $6.57 million verdict in favor of PRIT, representing 100% of the damages sought by PRIT at the trial. The case was subsequently settled while on appeal to the Ninth Circuit. *Pension Reserves Inv. Trust v. Bear Stearns & Co.* (S.D. Cal.).

- Shapiro Haber & Urmy represented shareholders of three ING Principal Protection Funds who brought suit alleging that the advisory fees charged are excessive and violate Section 36(b) of the Investment Company Act of 1940. The action was settled for payment by the defendants to the ING Principal Protection Funds of significant funds and a substantial reduction in investment advisory fees to be charged, which resulted in millions of dollars of future savings to the funds and their shareholders. *Price v. ING Funds Distributors, LLC* (D. Mass.).

- Shapiro Haber & Urmy was liaison counsel prosecuting a class action, pending in the United States District Court for the District of Massachusetts, alleging that State Street Bank and Trust Company breached its custodial agreements and other duties to its custodial clients in connection with a multi-million scheme to defraud committed by their investment advisor. *Handal v. State Street Corp.* (D. Mass.).

- Shapiro Haber & Urmy represented a Massachusetts bank in litigation against Merrill Lynch involving the sale of auction rate securities. *Cooperative Bank v. Merrill Lynch Pierce Fenner & Smith, Inc.* (S.D.N.Y. *remanded to* D. Mass.).

- Shapiro Haber & Urmy was one of plaintiffs' counsel in shareholder derivative litigation against Cendant Corporation, which arose from one of the largest financial frauds in American history. The case was settled for $54 million. *In Re Cendant Corp. Deriv. Action Litig*. (D.N.J.).

- Shapiro Haber & Urmy represented the Trustee of UNIFI Communications, Inc., in a breach of fiduciary duty lawsuit against its former directors, alleging that they grossly mismanaged UNIFI in the period leading up to its bankruptcy, causing UNIFI's insolvency to deepen. Shapiro Haber & Urmy recovered $3.95 million for UNIFI and its creditors. *Ferrari v. Ranalli* (D. Mass.).

- Shapiro Haber & Urmy represented shareholders of EcoScience Corp. in a breach of fiduciary duty lawsuit against its former directors, arising out of the merger between EcoScience and Agro Power Development, Inc. The case, brought in the Delaware Chancery Court, charged that the merger was accomplished by means of a false proxy statement, and resulted in the payment of an unfair price to EcoScience shareholders. Shapiro Haber & Urmy recovered $2 million for EcoScience's shareholders. *Smalley v. DeGiglio* (Del. Ch.).

- Shapiro Haber & Urmy represented shareholders in a class action alleging securities violations in connection with a secondary offering of Digital Equipment Corp. securities. After dismissal by the District Court, partner Thomas Shapiro successfully argued the appeal to the First Circuit in *Shaw v. Digital Equipment Corp.*, 83 F.3d 1194 (1st Cir. 1996). The case was thereafter settled for $5.2 million.

- Shapiro Haber & Urmy has recovered substantial settlements for defrauded shareholders by prosecuting securities class action suits on behalf of shareholders of, *inter alia*: Bank of New England Corp. ($6.5 million); Bank of New England Corp. bondholders ($8.4 million); Biopure Corp. ($10 million); Centennial Tech., Inc. (stock and cash with a value of approximately $20 million); Inso Corp. ($12 million); Kendall Square Research Corp. (cash, stock and warrants, with a total value of approximately $17 million); Kurzweil Applied Intelligence, Inc. ($9.625 million); Lotus Dev. Corp. ($7.5 million); MicroCom, Inc. ($6 million); Molten Metal Tech., Inc. ($11.85 million); Monarch Capital Corp. ($5 million); Open Environment Corp. ($6 million); Pegasystems, Inc. ($5.25 million); Picturetel Corp. ($12 million); Presstek, Inc. ($20 million); Minoco Oil and Gas Drilling Limited Partnerships ($15 million).

SECURITIES LITIGATION TRIALS

Attorneys in the firm have conducted the following jury trials in securities cases. Attorneys in the firm have also conducted numerous civil and criminal jury trials in non-securities matters.

- Mr. Urmy obtained a favorable jury verdict on behalf of the PRIT Fund in a case tried in the United States District Court for the Southern District of California.

- Messrs. Shapiro and Haber were chief trial counsel in a securities class action entitled *Fulco v. Continental Cablevision,* C.A. No. 89-1342-Y, in a three-week jury trial before Judge Young in the United States District Court in Boston. The case was brought on behalf of the limited partners in four partnerships that owned and operated cable television systems. The jury returned a verdict for the plaintiffs for approximately $4.5 million.

- Mr. Shapiro was chief trial counsel in a securities fraud class action against Polaroid Corporation in federal court in Boston, which resulted in a jury verdict with an estimated value of $30 million. A panel of the Court of Appeals for the First Circuit found error in the jury instructions and remanded the case for a new trial. Polaroid then petitioned for and received *en banc* reconsideration. Sitting *en banc*, the First Circuit reversed the judgment. *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990).

- Mr. Shapiro represented a business owner in a suit against a public company in Massachusetts that acquired his business in exchange for $11 million in company stock. The suit alleged that the stock price was artificially inflated as a result of false financial statements. Mr. Shapiro conducted the bench trial in 2009 against lawyers from three of the largest firms in Boston.

- Mr. Shapiro represented a customer in an NASD arbitration trial against Oppenheimer & Co. and the broker, and recovered out of pocket losses, unrealized investment gains per a model portfolio theory, interest on the damages, and an award of attorneys' fees.

- Mr. Haber and Ms. Blauner represented one partner in a suit against another partner for breach of fiduciary duty. The case was tried to a jury in the federal court in Boston, which returned a verdict in favor of our client in the full amount of the damages sought. The verdict was affirmed on appeal. *Wartski v. Bedford*, 926 F.2d 11 (1st Cir. 1991).

- Mr. Shapiro was co-trial counsel for a defendant in a jury-waived trial on an indictment for fraud in the sale of securities, filing false financial statements, and conspiracy. Mr. Shapiro was also on the brief in the appeal from that conviction. *United States v. Lieberman*, 608 F.2d 889 (1st Cir. 1979).

SECURITIES LITIGATION APPEALS

Attorneys at Shapiro Haber & Urmy had principal responsibility for the brief, and presented the oral argument, in the following appeals in securities cases.

- *In re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1 (1st Cir. 2005)
- *Lentell v. Merrill Lynch & Co., Inc.*, 396 F.3d 161 (2d Cir. 2005)
- *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001)
- *Mowbray v. Waste Mgmt.*, 203 F.3d 288 (1st Cir. 2000)
- *Wells v. Monarch Capital Corp.*, 129 F.3d 1253 (Table) (1st Cir. 1997)
- *Alpha Group Consultants Ltd. v. Bear Stearns*, 119 F.3d 5 (Table) (9th Cir. 1997)
- *Glassman v. Computervision, Inc.*, 90 F.3d 617 (1st Cir 1996)
- *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194 (1st Cir. 1996)
- *Wartski v. Bedford*, 926 F.2d 11 (1st Cir. 1991)
- *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990)
- *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22 (1st Cir. 1987)
- *Frishman v. Maginn*, 75 Mass. App. Ct. 103 (2009)
- *Wolf v. Prudential-Bache Sec., Inc.*, 41 Mass. App. Ct. 474 (1996)
- *Kessler v. Sinclair, 37 Mass. App. Ct. 573 (1994)*

ANTITRUST LITIGATION

- Shapiro Haber & Urmy played a leading role as a member of the Plaintiffs' Steering Committee in *In re Plasma Derivative Protein Therapies Antitrust Litig.*, C.A. No. 09-cv-07666 (N.D. Ill.), successfully defeating three lengthy and substantial motions to dismiss in that case. This was a complex, nationwide putative class action against manufacturers of plasma protein derivative therapies, which are proteins used to treat seriously ill patients across the United States. The action, filed on behalf of all direct purchasers of plasma-derivative protein therapies, alleged that plasma manufacturers agreed to restrict supply and therefore increase prices. In deciding to appoint the firm to its leadership position, the Court highlighted Shapiro Haber & Urmy's extensive experience litigating complex class actions. The case recently settled for $128 million.

- Shapiro Haber & Urmy represented several of the nation's largest bedding manufacturers and licensers as plaintiffs in *In re Polyurethane Foam Antitrust Litig.*, C.A. No. 10-md-02196 (N.D. Ohio). Plaintiffs alleged that Defendants and their co-conspirators contracted, combined, or conspired to fix, raise, maintain, and/or stabilize prices and allocate customers for polyurethane foam in the United States.

- Shapiro Haber & Urmy was part of the Executive Committee in *In Re: Nexium (Esomeprazole) Antitrust Litig.*, C.A. No. 12-md-02409 (D. Mass.), representing a putative class of consumers and third-party payors who purchased or paid for Nexium products. Plaintiffs allege that Defendants conspired and entered into anticompetitive agreements designed to shield Defendant AstraZeneca and its brand name drug, Nexium, from competition with generic, lower priced versions of the drug.

- Shapiro Haber & Urmy assisted in the representation of a certified class of dairy farmers in the Northeastern United States who allege that the defendants unlawfully monopolized and fixed the prices that they paid dairy farmers for their milk, and unlawfully allocated markets. The defendants included Dairy Farmers of America, Inc., Dairy Marketing Services, LLC, and Dean Foods Company. The Court approved a settlement between Plaintiffs and Defendant Dean Foods Company that provided for $30 million in settlement funds. The case is *Allen v. Dairy Farmers of America, Inc., et al.*,C.A. No. 09-cv-230 (D. Vt.).

- In *In re: Automotive Parts Antitrust Litig.*, Master File No. 12-md-02311 (E.D. Mich.), Shapiro Haber & Urmy represented a putative class of indirect purchasers of various auto parts. The action alleges that Defendants fixed and maintained the prices at which such parts were sold.

- In *In re Optical Disk Drive Products Antitrust Litig.*, C.A. No. 10-md-2143 (N.D. Cal.), Shapiro Haber & Urmy represented purchasers of optical disc drives, as well as products containing optical disc drives, including DVD players, computers, and other electronic devices. The action alleges that Defendants and their co-conspirators fixed and maintained an artificial price at which optical disc drives, as well as products containing optical disc drives, were sold in the United States.

- Shapiro Haber & Urmy was appointed Vice Chair of the Executive Committee representing the class of direct purchasers in *In re Marine Products Antitrust Litig.*, C.A. No. 10-cv-2319 (C.D. Cal.) (continuing as *Ace Marine Rigging & Supply, Inc. v. Virginia Harbor Services, Inc., et al.*, C.A. No. 11-cv-00436 (C.D. Cal) and *Board of Commissions of the Port of New Orleans v. Virginia Harbor Services, Inc., et al.*, C.A. No. 11-cv-004367 (C.D. Cal)). The firm represented a class of direct purchasers of several products used in the marine industry to protect vessels, docks, and piers. The class action alleged that manufacturers of these marine products collaborated to rig bids and divide the market in order to avoid competition and maximize profits.

ERISA LITIGATION

- Shapiro Haber & Urmy was lead counsel prosecuting an ERISA class action, pending in the United States District Court for the District of Massachusetts, on behalf of the participants in State Street Corporation's Salary Savings Plan against State Street Corp. and the administrators of the Plan. Plaintiff alleges that State Street breached its fiduciary duties to the Plan participants by continuing to offer State Street stock as an investment option under the Plan, when the stock was overvalued and no longer a prudent investment alternative, and that defendants made material misrepresentations about the company's foreign exchange trading revenue in communications with Plan participants who had invested in State Street stock. The case settled for $10 million. *Kenney v. State Street Corp*. (D. Mass.).

- Shapiro Haber & Urmy also was as liaison counsel prosecuting an ERISA class action in the United State District Court for the District of Massachusetts on behalf of a plan administrator of the a 401(k) Plan, against Massachusetts Mutual Life Insurance Company arising out of MassMutual's receipt of revenue sharing payments from the mutual funds on its platform as kickbacks and/or a "pay to play" scheme in connection with the placing, retaining and adding the mutual funds on the menu of available funds in its 401(a) and 401(k) programs. The case settled for $10 million. *Golden Star, Inc. v. Mass Mutual Life Insurance Co.*, C.A. No. 11-cv-30235 (D. Mass.).

- Shapiro Haber & Urmy represented former employees of Stone & Webster, Inc. to recover damages suffered by the company's retirement plans for breach of fiduciary duty under ERISA by certain former officers and directors of Stone & Webster who were fiduciaries of the plans when they continued to offer Stone & Webster stock as an investment option in the period before Stone & Webster filed for bankruptcy. The action settled for $8 million. *Stein v. Smith* (D. Mass.)

- Shapiro Haber & Urmy LLP's litigated a class action under ERISA relating to Aetna's Life Insurance Company's improper denial of health insurance benefits in refusing to cover medical expenses incurred from the non-hospital use of a continuous passive motion machine prescribed by the plaintiff's and class members' health care professionals to treat knee injuries. In settlement, Shapiro Haber & Urmy obtained 56%of the amount of each claim for benefits for members of the settlement class. *Jaggard v. Aetna Life Ins. Co.* (D. Mass.).

- Shapiro Haber & Urmy LLP litigated a class action under ERISA against Digital Equipment Corporation and John Hancock Life Insurance Company arising out of Digital's decision to refund surplus life insurance premiums to current company employees but not to former company employees. Shapiro Haber & Urmy represented a class of former Digital Equipment employees who were participants in the life insurance plan, and who maintained that Digital Equipment had discriminated against its former employees who had paid excessive premiums under the life insurance plan. Shapiro Haber & Urmy LLP successfully settled obtained a multimillion dollar settlement for the class. Michniewich v. Digital Equipment Corp. (D. Mass.).

WHISTLE-BLOWER ACTIONS

Shapiro Haber & Urmy has handled a number of whistleblower cases over the years, including under the federal False Claims Act and pursuant to the Securities and Exchange Commission's ("SEC") recently promulgated regulations under the Dodd-Frank Act. For example, the firm served as counsel to a whistle-blower alleging that Raytheon had violated the federal False Claims Act. In addition, the firm currently represents whistle-blowers in three separate matters brought pursuant to the SEC's new whistle-blower program. In each of those cases, the firm is assisting the whistle-blower in providing information to the SEC about possible violations of the federal securities laws by the whistle-blowers' former employers.

WAGE AND HOUR LITIGATION

Shapiro Haber & Urmy represents Pepperidge Farm distributors in three cases originally filed in Massachusetts, California, and Illinois, in which the distributors allege that Pepperidge Farm treated them as employees while classifying them as independent contractors, thus depriving them of important benefits owed by law to employees. The cases are *Sayward v. Pepperidge Farm, Inc.*, No. 1:13-cv-12770-GAO (D. Mass.); *Alfred v. Pepperidge Farm, Inc.*, No. 2:14-cv-7086-JAK (C.D. Cal.); and *Mulhern v. Pepperidge Farm, Inc.*, No. 1:16-cv-02119 (N.D. Ill.). After obtaining certification of the California class over Pepperidge Farm's opposition, see *Alfred v. Pepperidge Farm, Inc.*, 322 F.R.D. 519 (C.D. Cal. 2017), Shapiro Haber & Urmy settled the three cases on a class-wide basis for more than $22.5 million.

Shapiro Haber & Urmy has successfully represented plaintiff employees in many wage and hour individual and class actions for employee misclassification and in actions seeking to recover overtime pay owed to them under both state and federal law. Such cases have been successfully prosecuted in federal and state courts in Massachusetts and other states, recovering millions of dollars in damages from employers such as Electronic Arts; Sony Computer Entertainment America, Inc.; Arbella Insurance Company; Liberty Mutual Insurance Company; Continental Insurance Company; USAA; Ames Department Stores, Inc.; Argenbright, Inc.; Abercrombie & Fitch; Lane Bryant, Inc.; Express; United Parcel Service; Footbridge, AM Broadband LLC; and CVS.

ATTORNEY BIOGRAPHIES

Partners:

Edward F. Haber

Mr. Haber graduated from Cornell University in 1966 and from Harvard Law School (*cum laude*) in 1969. Upon graduation from Harvard Law School, he taught at the Boston College Law School during the 1969-1970 academic year. Mr. Mr. Haber has an AV rating from Martindale-Hubbell for decades, and has been named a Massachusetts Super Lawyer every year from 2006 through 2020. He has also been named to the national list of Super Lawyers in the Corporate Counsel Edition for securities litigation, and was recognized as a Top Rated Litigator by *The American Lawyer* in 2016. Mr. Haber is a member of the Bars of the Commonwealth of Massachusetts, the Supreme Court of the United States, the United States Courts of Appeals for the First and Seventh Circuits, and the United States District Court for the District of Massachusetts.

Michelle H. Blauner

Ms. Blauner is a 1983 graduate of Cornell University (with highest distinction) and a 1986 graduate of Harvard Law School (*cum laude*), where she was managing editor of the *Harvard Civil Rights-Civil Liberties Law Review*. Ms. Blauner is one of the leading class action litigators in Massachusetts and has been named a Massachusetts Super Lawyer in the field of Class Actions/Mass Tort in every year from 2006 through 2020. She has also been recognized as one of the top 50 Woman Massachusetts Super Lawyers. Upon graduation she became an associate at the Boston law firm of Foley, Hoag & Elliot. In 1988 she joined the firm as an associate, and she became a partner in 1993. Ms. Blauner is a member of the Bars of the Commonwealth of Massachusetts, the United States District Courts for the Districts of Massachusetts and Colorado, and the United States Court of Appeals for the First Circuit and the Seven Circuit.

Ian J. McLoughlin

Mr. McLoughlin is a 1997 graduate of Gonzaga University (*cum laude*) and a 2000 graduate of Boston University School of Law (*magna cum laude*). He was named a Massachusetts Super Lawyer Rising Star from 2009 to 2015, and a Massachusetts Super Lawyer from 2016 to the present, in the fields of class actions and business litigation. He was a litigation associate at the Boston law firm of Foley Hoag LLP from 2000 to 2007 and joined Shapiro Haber & Urmy in 2008. He became a partner in 2012. He worked as Senior Enforcement Counsel at FINRA in 2017 and 2018, and returned to Shapiro Haber & Urmy in 2019. He is a member of the Bars of the Commonwealth of Massachusetts, the United States Court of Appeals for the First Circuit, and the United States District Courts for the Districts of Massachusetts and Colorado.

Associates:

Adam M. Stewart

Mr. Stewart is a 2001 graduate of Northeastern University (*magna cum laude*) and a 2004 graduate of Suffolk University Law School (*magna cum laude*). He has been named a Massachusetts Super Lawyer Rising Star from 2011 through 2018, and a Massachusetts Super Lawyer in 2019 and 2020. He was a law clerk to the Justices of the Massachusetts Superior Court from 2004 to 2005 and joined Shapiro Haber & Urmy in 2005. He is a member of the Bars of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, and the United States Court of Appeals for the First Circuit.

Patrick J. Vallely

Mr. Vallely is a 2002 graduate of the University of Dayton (*magna cum laude*) and a 2005 graduate of The University of Chicago Law School (*with honors*), where he was Editor in Chief of the *Chicago Journal of International Law*. He was named a Massachusetts Super Lawyer Rising Star from 2013 through 2020. He was a litigation associate at the Boston law firm of Foley Hoag from 2005 to 2012, and joined Shapiro Haber & Urmy in 2012. He is a member of the Bars of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts.

Counsel:

Thomas G. Shapiro

Mr. Shapiro graduated from Harvard College (*magna cum laude*) in 1965 and from Harvard Law School (*cum laude*) in 1969. Mr. Shapiro is well known for his expertise and experience in securities litigation. He has an AV rating from Martindale-Hubbell and has been named a Massachusetts Super Lawyer numerous times, most recently in 2017. He has also been named to the national list of Super Lawyers in the Corporate Counsel Edition for securities litigation, and was recognized as a Top Rated Litigator by *The American Lawyer* in 2016. He is a member of the Bars of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit, and the Supreme Court of the United States.

Thomas V. Urmy, Jr.

Mr. Urmy graduated from Amherst College (*cum laude*) in 1960 and from Yale Law School in 1964. He has an AV rating from Martindale-Hubbell and has been named a Massachusetts Super Lawyer numerous times, most recently in 2019. In 2016, he was also recognized as a Top Rated Litigator by *The American Lawyer*. Mr. Urmy is a member of the Bars of the Commonwealth of Massachusetts, the United States District Courts for the District of Massachusetts and the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Third, Ninth, and District of Columbia Circuits, and the United States Supreme Court.

Exhibit 6

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN SMITH and MATTHEW DOWNING, on behalf of themselves and all others similarly situated, Plaintiffs, v. KEURIG GREEN MOUNTAIN, INC., Defendant.	Case No. 4:18-cv-06690-HSG CLASS ACTION **DECLARATION OF JEANNE C. FINEGAN CONCERNING PROPOSED NOTICE TO CLASS MEMBERS**

1. I am Managing Director and Head of Kroll Notice Media Solutions ("Kroll Media") an affiliate company of Kroll Settlement Administration ("Kroll"). This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. Pursuant to the Settlement Agreement that will be filed with the Court, Kroll has been engaged by the parties to this litigation to develop and implement a proposed legal notice and claims administration program as part of the parties' proposed class action settlement.

3. Accordingly, my team and I have crafted a highly targeted Notice Plan, which employs best-in-class tools and technology to reach at least 70% of Class Members nationwide,

on average over 2 times, through publication media notice through print, online display, search, social impressions and a press release with cross-device targeting on desktop, tablet and mobile, a settlement website and a toll-free number, as well as direct email notice to Class Members who purchased the products at issue directly from Defendant.

4. This Declaration describes my experience in designing and implementing notices and notice programs, as well as my credentials to opine on the overall adequacy of the proposed notice effort. This Declaration will also describe the proposed notice program and explain how this comprehensive proposed program is consistent with other best practicable court-approved notice programs and the requirements of Fed. Civ. P. 23(c)(2)(B) and the Federal Judicial Center ("FJC") guidelines[1] for Best Practicable Due Process notice.

I. QUALIFICATIONS

5. I have more than 30 years of relevant communications and advertising experience. I am a member of the Board of Directors for the Alliance for Audited Media ("AAM"). I am the only Notice Expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided testimony before Congress on issues of notice. I have lectured, published and been cited extensively on various aspects of legal noticing, product recall, and crisis communications, and I have served the Consumer Product Safety Commission ("CPSC") as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns. More recently, I have been extensively involved as a contributing author for *"Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions"* published by Duke University School of Law.

6. I have served as an expert with day-to-day operational responsibilities and direct responsibilities for the design and implementation of hundreds of class action notice programs, some of which are the largest and most complex programs ever implemented in both the United

[1] Notice Checklist and Plain Language Guide (2010) ("Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide").

States and Canada. My work includes a wide range of class actions and regulatory and consumer matters, the subject matters of which have included product liability, construction defect, antitrust, asbestos, medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.

7. Additionally, I have been at the forefront of modern notice, including plain language as noted in a RAND study[2], and importantly, I was the first Notice Expert to integrate digital media and social media into court approved legal notice programs. My recent work includes:

- *Yahoo! Inc. Customer Data Security Breach Litigation,* No. 5:16-MD-02752 (N.D. Cal. 2020).
- *In re: The Bank of New York Mellon ADR FX Litigation, No. 16-CV-00212-JPO-JLC (S.D.N.Y. 2019)*
- *Simerlein et al., v. Toyota Motor Corporation, No. 3:17-cv-01091-VAB (D. Conn. 2019).*
- *Fitzhenry- Russell et al. v. Keurig Dr. Pepper Inc., No. 17-cv-00564-NC (N.D. Cal. 2019).*
- *Pettit et al., v. Procter & Gamble Co., No. 15-cv-02150-RS (N.D. Cal. 2019).*
- *In re: The Bank of New York Mellon ADR FX Litigation, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019).*
- *Chapman v. Tristar Products, No. 1:16-cv-1114, JSG (N.D. Ohio 2018)*
- *Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co., No. 90-cv-00181- KLK (D. Colo. 2017).*
- *Warner v. Toyota Motor Sales, U.S.A. Inc., No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017).*

8. As further reference, in evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example, in:

a) ***Simerlein et al., v. Toyota Motor Corporation,*** No. 3:17-cv-01091-VAB (D. Conn. 2019). In the Ruling and Order on Motion for Preliminarily Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

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[2] Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN, RAND (2000).

"In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8."

b) ***Carter v. Forjas Taurus S.S., Taurus International Manufacturing, Inc.,*** No. 1:13-CV-24583 PAS (S.D. Fla. 2016). In her Final Order and Judgment Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. …There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers… Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. …The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."

Additionally, in the January 20, 2016, ***Carter v. Forjas Taurus S.S., Taurus International Manufacturing, Inc.,*** No. 1:13-CV-24583 PAS (S.D. Fla. 2016), transcript of Class Notice Hearing, p. 5, Judge Seitz, noted:

"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."

9. Additionally, I have published extensively on various aspects of legal noticing, including the following publications and articles:

(a) Author, "Every Advertiser is Affected by Digital Ad Fraud and Legal Notice is Not Immune," (December 14, 2021), Kroll Blog.

(b) Tweet Chat: Contributing Panelist *#Law360SocialChat*, A live Tweet workshop concerning the benefits and pitfalls of social media, Lexttalk.com, November 7, 2019.

(c) Author, "Top Class Settlement Admin Factors to Consider in 2020," Law360, New York, (October 31, 2019, 5:44 PM ET).

(d) Co-Author, Digital Ad Fraud, Impact on Class Action Settlements, SlideShare, October 2018. https://bit.ly/2SHqB5D.

(e) Author, "Creating a Class Notice Program that Satisfies Due Process," Law360.com, New York (February 13, 2018, 12:58 PM ET).

(f) Author, "3 Considerations for Class Action Notice Brand Safety," Law360.com, New York (October 2, 2017, 12:24 PM ET).

(g) Author, "What Would Class Action Reform Mean for Notice?" Law360.com, New York, (April 13, 2017, 11:50 AM ET).

(h) Author, "Bots Can Silently Steal your Due Process Notice," Wisconsin Law Journal, April 2017.

(i) Author, “Don’t Turn a Blind Eye to Bots. Ad Fraud and Bots are a Reality of the Digital Environment,” LinkedIn article, March 6, 2017.

(j) Co-Author, “Modern Notice Requirements Through the Lens of Eisen and Mullane” – Bloomberg BNA Class Action Litigation Report, 17 CLASS 1077 (October 14, 2016).

(k) Author, “Think All Internet Impressions are the Same? Think Again,” Law360.com, New York (March 16, 2016).

(l) Author, “Why Class Members Should See An Online Ad More Than Once,” Law360.com, New York (December 3, 2015).

(m) Author, ‘Being 'Media-Relevant' — What It Means and Why It Matters,” Law360.com, New York (September 11, 2013, 2:50 PM ET).

(n) Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, November 2011.

(o) Quoted Expert, “Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist,” Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

(p) Co-Author, with Hon. Dickran Tevrizian, “Expert Opinion: It’s More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape,” BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

(q) Co-Author, with Hon. Dickran Tevrizian, “Your Insight: It’s More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape, TXLR, Vol. 26, No. 21, May 26, 2011.

(r) Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April 9, 2010, Vol. 11, No. 7 p. 343.

(s) Quoted: Technology Trends Pose Novel Notification Issues for Class Litigators, BNA Electronic Commerce and Law Report, 15, ECLR 109, January 27, 2010. Author, Legal Notice: R U ready 2 adapt? BNA Class Action Litigation Report, Vol. 10, No. 14, July 24, 2009, pp. 702-703.

(t) Author, On Demand Media Could Change the Future of Best Practicable Notice, BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

(u) Quoted in, Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty, Warranty Week, February 28, 2007, available at www.warrantyweek.com/archive/ww20070228.html.

(v) Co-Author, Approaches to Notice in State Court Class Actions, For The Defense, Vol. 45, No. 11, November, 2003.

(w) Author, The Web Offers Near, Real-Time Cost Efficient Notice, American Bankruptcy Institute Journal, Vol. XXII, No. 5, 2003.

(x) Author, Determining Adequate Notice in Rule 23 Actions, For The Defense, Vol. 44, No. 9, September, 2002.

(y) Co-Author, The Electronic Nature of Legal Noticing, American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

(z) Author, Three Important Mantras for CEO's and Risk Managers in 2002, International Risk Management Institute, irmi.com/, January 2002.

(aa) Co-Author, Used the Bat Signal Lately, The National Law Journal, Special Litigation Section, February 19, 2001.

(bb) Author, How Much is Enough Notice, Dispute Resolution Alert, Vol. 1, No. 6, March 2001.

(cc) Author, High-Profile Product Recalls Need More Than the Bat Signal, International Risk Management Institute, irmi.com/, July 2001.

(dd) Author, The Great Debate - How Much is Enough Legal Notice? American Bar Association -- Class Actions and Derivatives Suits Newsletter, Winter 1999.

(ee) Author, What are the best practicable methods to give notice? Georgetown University Law Center Mass Tort Litigation Institute, CLE White Paper: Dispelling the communications myth -- A notice disseminated is a notice communicated, November 1, 2001.

10. In addition, I have lectured or presented extensively on various aspects of legal noticing. A sample list includes the following:

a) Webinar Rule 23 Changes: Are You Ready for the Digital Wild, Wild West?" CLE broadcast October 23, 2018.

b) American Bar Association Faculty Panelist, 4th Annual Western Regional CLE Class Actions: "Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape," San Francisco, CA, June 2017.

c) Miami Law Class Action & Complex Litigation Forum, Faculty Panelist, "Settlement and Resolution of Class Actions." Miami, FL, December 2, 2016.

d) The Knowledge Group, Faculty Panelist, "Class Action Settlements: Hot Topics 2016 and Beyond," Live Webcast, www.theknowledgegroup.org/, October 2016.

e) American Bar Association National Symposium, Faculty Panelist, "Ethical Considerations in Settling Class Actions," New Orleans, LA, March 2016.

f) SF Banking Attorney Association, Speaker, "How a Class Action Notice can Make or Break your Client's Settlement," San Francisco, CA, May 2015.

g) Perrin Class Action Conference, Faculty Panelist, "Being Media Relevant, What it Means and Why It Maters – The Social Media Evolution: Trends Challenges and Opportunities," Chicago, IL, May 2015

h) Bridgeport Continuing Ed. Faculty Panelist, "Media Relevant in the Class Notice Context," April 2014.

i) CASD 5th Annual Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.

j) i) Law Seminars International, Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable… What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media," Chicago, IL, October 2011.

k) CLE International, Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California, May 2011.

l) Consumer Attorneys of San Diego (CASD), Faculty Panelist, "21st Century Class Notice and Outreach," 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.

m) Consumer Attorneys of San Diego (CASD), Faculty Panelist, "The Future of Notice," 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2009.

n) American Bar Association, Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice in the United States and Internationally – Meeting the Best Practicable Standard."

o) American Bar Association, Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.

p) Faculty Panelist, Women Lawyers Association of Los Angeles (WLALA) CLE Presentation, "The Anatomy of a Class Action." Los Angeles, CA, February 2008.

q) Faculty Panelist, Practicing Law Institute (PLI) CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures, "Evolving Notice Standards in the Internet Age." New York/Boston (simulcast) March 2006; Chicago, April 2006; and San Francisco, May 2006.

r) Expert Panelist, U.S. Consumer Product Safety Commission. I was the only legal notice expert invited to participate as an expert to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As an expert panelist, I discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

s) Expert Speaker, American Bar Association. Presentation: "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits, Chicago, August 6, 2001.

11. A comprehensive description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs is attached as **Exhibit 1**.

12. The proposed notice program for this settlement is designed to inform Class Members of the proposed class action settlement between Plaintiffs and Defendant. Pursuant to the Settlement Agreement, §1 paragraph 12, the Settlement Class is defined as:

> All Persons in the United States who purchased the Challenged Products for personal, family or household purposes within the Class Period. Specifically excluded from the Class are (a) Defendant, (b) Defendant's Affiliates, (c) the officers, directors, or employees of Defendant and its Affiliates and their immediate family members, (d) any legal representative, heir, or assign of Defendant, (e) all federal court judges who have presided over this Action and their immediate family members; (f) the Hon. Morton Denlow (Ret.) and his immediate family members; (g) all persons who submit a valid and timely Request for Exclusion from the Class; and (h) those who purchased the Challenged Products for the purpose of resale.

13. The proposed notice program includes the following components:

- Direct email notice to Class Members who purchased the products at issue directly from Defendant through its website;
- Online display banner advertising specifically targeted to reach Class Members;
- Keyword search targeting Class Members;
- Social media through Facebook, Instagram and Twitter;
- Publication of the Summary Notice in one generally circulated magazine;
- A press release across PR Newswire's US1 Newslines;
- An informational website will be established on which the notices and other important Court documents will be posted;
- A toll-free information line will be established by which Class Members can call 24/7 for more information about the Settlement, including, but not limited to, requesting copies of the Long Form Notice.

II. METHODOLOGY FOR PUBLICATION/INTERNET NOTICE

14. To appropriately design and target the publication component of the notice program, described in detail below, Kroll Media utilized a methodology accepted by the advertising industry and embraced by the courts.

15. Accordingly, we are guided by well-established principles of communication and utilize best-in-class nationally syndicated media research data provided by MRI-Simmons

Research,[3] ("MRI") and online measurement currency comScore,[4] among others, to provide media consumption habits and audience delivery verification of the potentially affected population. Based on this research, our cutting-edge approach to notice focuses on the quality of media exposure, engagement, and appropriate media environment.

16. These data resources are used by advertising agencies nationwide as the basis to select the most appropriate media to reach specific target audiences. The resulting key findings are instrumental in our selection of media channels and outlets for determining the estimated net audience reached through this legal notice program. Specifically, this research identifies which media channels are favored by the target audience (*i.e.*, the Class Members), including browsing behaviors on the Internet, social media channels that are used, and which magazines Class Members are reading.

17. By utilizing these media research tools, we can create target audience characteristics or segments, and then select the most appropriate media and communication methods to best reach them. This media research technology allows us to fuse data and accurately report to the Court the percentage of the target audience that will be reached by the notice component and how many times the target audience will have the opportunity to see the message. In advertising, this is commonly referred to as a "Reach and Frequency" analysis, where "Reach" refers to the estimated percentage of the unduplicated audience exposed to the campaign, and "Frequency" refers to how many times, on average, the target audience had the opportunity to see the message. The calculations are used by advertising and communications firms worldwide and have become a critical element to help provide the basis for determining adequacy of notice in class actions.

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[3] MRI's *Survey of the American Consumer*® is the industry standard for magazine audience ratings in the U.S. and is used in the majority of media and marketing agencies in the country. MRI provides comprehensive reports on demographic, lifestyle, product usage and media exposure.

[4] comScore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data.

III. TARGET AUDIENCE MEDIA USE AND KEY INSIGHTS

18. According to MRI, over 74% of single serve pod/K-Cup users are 35 years and older and over 67% have a college education or higher. Of this target, almost 92% have gone online in the last 30 days, with nearly 86% using their smartphone to access the Internet. Additionally, over 84% use social media with almost 69% reporting that they have visited Facebook in the last 30 days.

IV. PUBLICATION ELEMENTS – ONLINE DISPLAY, SEARCH AND SOCIAL MEDIA

19. This campaign will employ a programmatic approach[5] across multi-channel and inventory sources including a collection of premium quality partner web properties. Display ads will be targeted to Keurig and K-Cup purchasers using shopper data. Display ads will also be targeted to content that is likely to be relevant to adults 35 years and older and adults with a college education or higher. Over 50 million online display, search and social media impressions will be served across an allow list[6] of pre-vetted websites, multiple exchanges, and the social media platforms Facebook, Instagram and Twitter.

20. Keyword search targeting will be employed to show advertisements to users in their Google search results. A list of search topics including Keurig settlement, coffee pod class action, Keurig pod coupons, Keurig pods, K-Cup sale, where to buy K-Cup pods, among others, will be applied.

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[5] Programmatic refers to computerized media buying of advertising inventory. The mechanics of programmatically serving an online ad are as follows: A user visits a website and the browser sends a request to the publisher's web server asking for the page's content (*i.e.*, HTML). An invocation code placed on the page loads an external static ad tracker code. The ad tracker makes a request to the ad server querying for an ad markup (also called creative tag) to be loaded into the ad slot. The ad server responds with the ad markup code (before it's returned, the ad server executes all targeting/campaign matching logic). Finally, the publisher's web server returns the information rendering the page's content with specifically targeted ads to that user.

[6] An allow list is a custom list of acceptable websites where ad content may be served. Creating a whitelist helps to mitigate ad fraud, ensure ads will be served in relevant digital environments to the target audience and helps to ensure that ads will not appear next to offensive or objectionable content.

21. On Facebook and Instagram, we will target those who like or follow Keurig pages, adults 35 years and older with a college education or higher and coffee lover pages and groups.

22. On Twitter we will target those who have Tweeted about Keurig or have engaged with @Keurig. Further, the social media campaign will include retargeting to users who visit the Settlement website.

V. PRINT PUBLICATION NOTICE

23. A one-third black and white ad will be published once in *People Magazine*. *People* reports a circulation of 3,418,000 with over 31,860,000 readers.

VI. PRESS RELEASE

24. A news release will be distributed over PR Newswire's US1 Newslines. PR Newswire delivers to thousands of print and broadcast newsrooms nationwide, as well as websites, databases and online services including featured placement in news sections of leading portals.

VII. OFFICIAL SETTLEMENT WEBSITE

25. An informational website will be established and maintained by Kroll. All of the aforementioned methods of notice will direct class members to this website. The website will serve as a landing page for the banner advertising, where Class Members may get information about the Settlement along with other information which includes information about the class action, their rights, the Long Form Notice, answers to frequently asked questions, contact information that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiffs' Counsel, and related information, including the Settlement Agreement, Court Orders, and Plaintiff's Motion for Approval of Fees, Expenses, and Class Representative incentive compensation.

VIII. TOLL FREE INFORMATION LINE

26. Additionally, Kroll will establish and maintain a 24-hour toll-free Interactive Voice Response ("IVR") telephone line, where callers may obtain information about the class action, including, but not limited to, requesting copies of the Long Form Notice.

IX. DIRECT NOTICE

27. I understand from the Parties that there is no available, comprehensive list of individuals who purchased the Keurig products at issue. However, I understand that Defendant has a list of individuals who purchased the products directly from Defendant on its internet website. Notice will be directly sent via electronic mail to these individuals.

X. CLRA NOTICE

28. Pursuant to the Settlement Agreement, § 4, ¶ 85d, and compliant with California's CLRA, Civil Code § 1750, *et seq.*, summary notice will be published in a California edition of *USA Today* once a week for four weeks.

XI. CAFA NOTICE

29. Pursuant to the Settlement Agreement, §1, ¶ 22, Kroll Settlement Administration will mail notice of the proposed Settlement under CAFA, 28 U.S.C. §1715(b), to appropriate state and federal government officials.

XII. DESIGN OF CLASS NOTICES

30. Kroll's administrative team has reviewed the Class Notice forms to ensure compliance with the guidelines outlined on the Federal Judicial Center's Class Action Notice website. Specifically, Kroll reviewed the Class Notice forms to evaluate compliance with the following requirements:

- The nature of the action
- The definition of the certified class
- The class claims, issues, and defenses
- The method by which one may exclude oneself (*i.e.*, opt out)
- The timing and manner for requesting exclusion (*i.e.*, opting out)
- The timing and manner for objection
- The binding effect of the Class judgment on the Class Members
- The manner by which to contact Class Counsel, and
- The manner by which to obtain copies of relevant documents.

31. The Summary Notice is designed to capture the Class members' attention with clear, concise, plain language. It directs readers to the Settlement Website for more information. The plain language text provides important information regarding the subject of the litigation, the Class definition, and the legal rights available to Class members. The Notice also refers recipients to the Settlement Website and the toll-free telephone number, where Class members can request or obtain copies of the Long Form Notice along with more information about the Settlement.

32. The Long Form Notice will be available at the Settlement Website or by calling the toll-free telephone number. The Long Form Notice provides substantial information, including all specific instructions Class members need to follow to properly exercise their rights, and background on the issues in the case. It is designed to encourage readership and understanding in a well-organized and reader-friendly format.

XII. CONCLUSION

33. In my opinion, the outreach efforts described above reflect a particularly appropriate, highly targeted, and contemporary way to employ notice to this class. Through a multi-media channel approach to notice, which employs print, online display, search, social media and a press release, an estimated 70 percent of targeted Class Members will be reached by the media program, on average, over 2 times. In my opinion, the efforts to be used in this proposed notice program are of the highest modern communication standards, are reasonably calculated to provide notice, and are consistent with best practicable court-approved notice programs in similar matters and the Federal Judicial Center's guidelines concerning appropriate reach.

34. Based on our experience with past, similar matters, we anticipate that it may be reasonable to assume that at least 100,000 claims might be filed.

I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on February 23, 2022 in Tigard, Oregon.

Jeanne C. Finegan

JEANNE C. FINEGAN

Exhibit 1

KROLL NOTICE MEDIA

JEANNE C. FINEGAN, APR

Jeanne Finegan, APR, is the Managing Director and Head of Kroll Notice Media. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM) and was named by *Diversity Journal* as one of the "Top 100 Women Worth Watching." She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, *"Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions."* And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA),and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,[1]) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

1 Deborah R. Hensler et al., CLASS ACTION DILEMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

KROLL NOTICE MEDIA

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

***In re Purdue Pharma L.P.*,** No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I)Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

> *"The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times."*

In Re: PG&E Corporation Case No . 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:*

> *…the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 … Ms. Finegan has really impressed me today…*

Yahoo! Inc. Customer Data Security Breach Litigation, Case No. 5:16-MD-02752 (ND Cal 2010). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

> *"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."*

Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation, Case No. 19-MD-2887 (U.S. District Court, District Kansas 2021). *In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:*

> *"I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time."*

In re: The Bank of New York Mellon ADR FX Litigation, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:

> *"The dissemination of notice constituted the best notice practicable under the circumstances."*

Simerlein et al., v. Toyota Motor Corporation, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminarily Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

> *"In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8."*

KROLL NOTICE MEDIA

Fitzhenry- Russell et al., v. Keurig Dr. Pepper Inc., Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

> *"…the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254 claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler's efforts to ensure that notice was adequately provided to the Class."*

Pettit et al., v. Procter & Gamble Co., Case No. 15-cv-02150-RS ND Cal**.** In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

> *"The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. …the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements."*

Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

> *"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. …There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers… Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. …The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."*
>
> Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:
>
> *"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."*

Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co., *No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination***.** In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

> *The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, … and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. …Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.*

In re: Domestic Drywall Antitrust Litigation, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

> *"The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons… and complies fully with the requirements of the Federal rule of Civil Procedure."*

KROLL NOTICE MEDIA

Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017). In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

> *Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. …the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).*

Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

> *Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.*

Foster v. L-3 Communications *EOTech*, Inc. et al (6:15-cv-03519), Missouri Western District Court.

> *In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."*

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

> … *The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.*

Brody v. Merck & Co., Inc., et al, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

> *Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.*

Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (NYSD) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

> *"The notice plan was the best practicable under the circumstances. … [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."*

In Re: TracFone Unlimited Service Plan Litigation, *No. C-13-3440 EMC (ND Ca).* In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

> *"…[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result...*

KROLL NOTICE MEDIA

In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

> *It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.*

DeHoyos, et al., v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

> *[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. … This program was vigorous and specifically structured to reach the African American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.*

In Re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

> *The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order… constituted the best practicable notice to Class Members under the circumstances of the Actions.*

Bezdek v. Vibram USA and Vibram FiveFingers LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

> *…[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. …I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).*

Gemelas v. The Dannon Company Inc., No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

> *In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. … The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.*

Pashmova v. New Balance Athletic Shoes, Inc., 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

> *The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement … met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

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Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

> *The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

McDonough et al., v. Toys 'R' Us et al, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

> *The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.*

In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

> *The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.*

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

> *[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.*

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

> *The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.… Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.*

In re Polyurethane Foam Antitrust Litigation, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

> *The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.*

Rojas v Career Education Corporation, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virgina M. Kendall stated:

> *The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.*

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***Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix)**, No. C 1206002 N.D CA*. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

> *The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

> *The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. … The proposed notice program was properly designed, recommended, and implemented … and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. … The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.*

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

> *The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

> [A]*ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. … By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).*

In Re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. *See* www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

> *The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement … constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.*

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

> *The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages*

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have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator … has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'… The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.

Fishbein v. All Market Inc., (d/b/a **Vita Coco**) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

"The Court finds that the dissemination of Class Notice pursuant to the Notice Program…constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation … and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In Re: Johns-Manville Corp. **(Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)**, No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . The results simply speak for themselves.

Pigford v. Glickman and U.S. Department of Agriculture**,** No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television

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stations. . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

In Re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement…[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

…well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

In Re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class … was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. … The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[*T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. …[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.*

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Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

> *The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.*

In Re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

> *[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).*

In Re: American Cyanamid, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

> *The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.*

In Re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

> *…constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.*

In Re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

> *The notice program required by the Preliminary Order has been fully carried out… [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.*

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.)

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"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1).")

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.)

"The Court finds that the notices … constitute the best practicable notice...The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.)

"[T]he Court finds that the notice plan…meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.)

"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice."

In Re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.)

"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement."

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara)

"Notice provided was the best practicable under the circumstances."

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles)

"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.)

"[T]he plan for notice to the Settlement Class … constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class … and satisfies the requirements of California law and federal due process of law."

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court

"I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate."

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

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Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.).

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles).

This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.).

Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska).

Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass).

The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id).

Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

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Garria Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.).
The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara).
This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc, No. CV–97-C-629-W (N.D. Ala.)
Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill)
Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber Rate Payers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.).
The advertising and media notice program, found to be “more than adequate” by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson’s Back Pay Litig., No. 97-0159-S-BLW (D.Id.).
Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.)
Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

***In re: Diet Drugs* (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig**., Nos. 1203, 99-20593.
Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court’s Memorandum and Pretrial Order 1415, approving the settlement.

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

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In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.)

"The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3."

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County).

The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat'l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.

KROLL NOTICE MEDIA

INTERNATIONAL EXPERIENCE

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201

Bell v. Canadian Imperial Bank of Commerce*, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).*

In re: Canadian Air Cargo Shipping Class Actions *(Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.*

In re: Canadian Air Cargo Shipping Class Actions (*Québec Superior Court).*

Fischer v. IG Investment Management LTD*., No. 06-CV-307599CP (Ontario Superior Court of Justice).*

In Re Nortel I & II Securities Litigation*, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).*

Frohlinger v. Nortel Networks Corporation *et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).*

Association de Protection des Épargnants et Investissuers du Québec v. Corporation Nortel Networks*, No.: 500-06-0002316-017 (Superior Court of Québec).*

Jeffery v. Nortel Networks Corporation *et al., Court File No.: S015159 (Supreme Court of British Columbia).*

Gallardi v. Nortel Networks Corporation*, No. 05-CV-285606CP (Ontario Superior Court).*

Skarstedt v. Corporation Nortel Networks*, No. 500-06-000277-059 (Superior Court of Québec).*

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).
The Notice program included publication in 11 different countries and eight different languages.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. TracFone Wireless, Inc*.,* Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

BANKRUPTCY EXPERIENCE

KROLL NOTICE MEDIA

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures fr Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1,* the Honorable Dennis Montali stated:

> *…the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 … Ms. Finegan has really impressed me today…*

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201.

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.)

> ***"****due and proper notice [was] provided, and … no other or further notice need be provided."*

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011).

> The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al, No. 09-50026 (Bankr. S.D.N.Y.)

> This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007)

> *"Adequate notice of the Motion and of the hearing on the Motion was given."*

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.)

> Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.)

> Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.)

> Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.)

> Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.)

KROLL NOTICE MEDIA

Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.)
Ms. Finegan designed an implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.)
Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.)
Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.)
Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y)
Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.)
Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y).

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

MASS TORT EXPERIENCE AND PRODUCT RECALL

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019).

In re Purdue Pharma L.P.**,** No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 2021.

KROLL NOTICE MEDIA

Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

***Gulf Coast Claims Facility Notice Campaign*.** Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

ARTICLES/ SOCIAL MEDIA

Interview, "How Marketers Achieve Greater ROI Through Digital Assurance," Alliance for Audited Media ("AAM"), white paper, January 2021.

Tweet Chat: Contributing Panelist *#Law360SocialChat*, A live Tweet workshop concerning the benefits and pit-falls of social media, Lexttalk.com, November 7, 2019.

Author, "Top Class Settlement Admin Factors to Consider in 2020" Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "*Don't Turn a Blind Eye to Bots*. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane"* – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).

KROLL NOTICE MEDIA

Author, “Think All Internet Impressions Are The Same? Think Again” – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, “Why Class Members Should See an Online Ad More Than Once” – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, ‘Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, “Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist,” Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – “Expert Opinion: It’s More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape,” BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," TXLR, Vol. 26, No. 21, May 26, 2011.

Quoted Expert, “Analysis of the FJC’s 2010 Judges’ Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond,” BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, “Communication Technology Trends Pose Novel Notification Issues for Class Litigators,” BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, “Legal Notice: R U ready 2 adapt?” BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, “On Demand Media Could Change the Future of Best Practicable Notice,” BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, “Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty,” Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, “Approaches to Notice in State Court Class Actions,” For The Defense, Vol. 45, No. 11, November, 2003.

Citation, “Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior,” U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, “The Web Offers Near, Real-Time Cost Efficient Notice,” American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, “Determining Adequate Notice in Rule 23 Actions,” For The Defense, Vol. 44, No. 9 September, 2002.

Author, “Legal Notice, What You Need to Know and Why,” Monograph, July 2002.

KROLL NOTICE MEDIA

Co-Author, “The Electronic Nature of Legal Noticing,” The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, “Three Important Mantras for CEO’s and Risk Managers,” - International Risk Management Institute, irmi.com, January 2002.

Co-Author, “Used the Bat Signal Lately,” The National Law Journal, Special Litigation Section, February 19, 2001.

Author, “How Much is Enough Notice,” Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, “Monitoring the Internet Buzz,” The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, “High-Profile Product Recalls Need More Than the Bat Signal,” - International Risk Management Institute, irmi.com, July 2001.

Co-Author, “Do You Know What 100 Million People are Buzzing About Today?” Risk and Insurance Management, March 2001.

Quoted Article, “Keep Up with Class Action,” Kentucky Courier Journal, March 13, 2000.

Author, “The Great Debate - How Much is Enough Legal Notice?” American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

SPEAKER/EXPERT PANELIST/PRESENTER

Chief Litigation Counsel Association (CLCA)	Speaker, “Four Factors Impacting the Cost of Your Class Action Settlement and Notice,” Houston TX, May 1, 2019
CLE Webinar	“Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?” October 23, 2018, https://bit.ly/2RIRvZq
American Bar Assn.	Faculty Panelist, 4th Annual Western Regional CLE Class Actions, “Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape” San Francisco, CA June, 2018.
Miami Law Class Action & Complex Litigation Forum	Faculty Panelist, “ Settlement and Resolution of Class Actions,” Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, “Class Action Settlements: Hot Topics 2016 and Beyond,” Live Webcast, www.theknowledgegroup.org, October 2016.
ABA National Symposium	Faculty Panelist, “Ethical Considerations in Settling Class Actions,” New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, “How a Class Action Notice can Make or Break your Client’s Settlement,” San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, “Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities,” Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar “Media Relevant in the Class Notice Context.” July, 2014.

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Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5th Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable… What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. ***Voted by attendees as one of the best presentations given.***
CASD 4th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, "21st Century Class Notice and Outreach." 3nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

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Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com.
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org.

BACKGROUND

Ms. Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (GCG) and Poorman-Douglas Corp., (EPIQ). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

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Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing $50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

APR Accredited. Universal Board of Accreditation Public Relations Society of America

- **Member of the Public Relations Society of America**
- **Member Canadian Public Relations Society**

Board of Directors - Alliance for Audited Media
Alliance for Audited Media (“AAM”) is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

SOCIAL MEDIA

LinkedIn: *www.linkedin.com/in/jeanne-finegan-apr-7112341b*