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ex rel. Kamala D. Harris, Attorney General
9

EXEMPT FROM FEES PURSUANT
TO GOVERNMENT CODE
SECTION 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

OCT 26 2011

ALAN CARLSON, Clerk of the Court

Michael P. ...
BY M. ...

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ORANGE

13
14 **PEOPLE OF THE STATE OF**
CALIFORNIA *ex rel.* **KAMALA D.**
15 **HARRIS, ATTORNEY GENERAL,**

16
17 Plaintiff,

18 v.

19 **ENSO PLASTICS, LLC; AQUAMANTRA,**
INC.; BALANCE WATER COMPANY
20 **LLC; DOES 1 THROUGH 9, INCLUSIVE,**

21 Defendants.
22

Case No.

30-2011
00518091

**COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES, AND OTHER RELIEF**

VERIFIED ANSWER REQUIRED
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE SECTION 446

JUDGE GEOFFREY T. GLASS
DEPT. C33

23 The People of the State of California ("the People"), by and through Kamala D. Harris,
24 Attorney General, allege on information and belief as follows:

25 1. The People bring this action against companies that are falsely or deceptively labeling
26 and/or marketing plastic beverage containers as "biodegradable" and "recyclable," in violation of
27 California law. The advertising and marketing practices of these companies are misleading to
28 California consumers and businesses, and potentially harmful to the environment.

1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction to hear the subject matter of this complaint. This Court
3 also has jurisdiction over each defendant, as the unlawful business practices alleged herein
4 occurred in California. Venue is proper in this Court because all or some of the violations of law
5 alleged herein occurred and are occurring in the County of Orange, as well as elsewhere in
6 California.

7 **PARTIES**

8 3. Plaintiff is the People of the State of California, by and through Kamala D. Harris,
9 Attorney General. The Attorney General is constitutionally designated as the chief law officer of
10 the State and has the constitutional authority to ensure that state law is adequately enforced. (Cal.
11 Const., art. V, § 13.) Under statute, the Attorney General has the power and responsibility to act
12 in the name of the People to protect the State's natural resources. (Gov. Code, §§ 12600-12612.)
13 In addition, Business and Professions Code sections 17204 and 17535 provide that actions to
14 enforce sections 17500, 17508, and 17200 may be brought by the Attorney General.

15 4. ENSO Plastics, LLC ("ENSO") is a limited liability company registered in Arizona,
16 with its principal place of business in Mesa, Arizona. ENSO is, and at all relevant times was, in
17 the business of selling or arranging for the sale, directly or indirectly, of plastic beverage
18 containers marketed and/or labeled as "biodegradable" and "recyclable." ENSO products are sold
19 in or into California.

20 5. Balance Water Company LLC ("BALANCE") is limited liability company registered
21 in Delaware, with its principal place of business in West Orange, New Jersey. BALANCE is, and
22 at all relevant times was, in the business of selling bottled water products in plastic beverage
23 containers labeled and otherwise marketed as "biodegradable" and "recyclable." These plastic
24 beverage containers are supplied, directly or indirectly, by ENSO. BALANCE bottled water
25 products are sold in California.

26 6. Aquamantra, Inc. ("AQUAMANTRA") is a California corporation with its principal
27 place of business in Dana Point, California. AQUAMANTRA is, and at all relevant times was, in
28 the business of selling bottled water products in plastic beverage containers labeled and otherwise

1 marketed as "biodegradable" and "recyclable." These beverage containers are supplied, directly
2 or indirectly, by ENSO. AQUAMANTRA bottled water products are sold in California.

3 7. The true names and capacities of defendants sued herein as DOES 1 through 9 are
4 unknown to the People. The People will amend the complaint to allege the true names, capacities
5 and facts pertaining to these defendants when they have been determined.

6 8. Whenever reference in this complaint is made to any act or transaction of a named
7 Defendant, that allegation shall mean that the named Defendant did or authorized the acts through
8 its principals, officers, directors, employees, members, agents, and representatives while they
9 were acting within the actual or ostensible scope of their authority.

10 STATEMENT OF THE CASE

11 9. Defendants ENSO, BALANCE and AQUAMANTRA illegally sell, or participate in
12 arranging for the sale of, plastic beverage containers in or into California that are labeled,
13 advertised or otherwise marketed as 100% or completely "biodegradable." Defendants claim that
14 these plastic containers completely biodegrade, leaving only natural remains, and that this process
15 completes itself within one to five years, and can take place in a landfill, compost, or other
16 environment, including by the side of the road. These claims are false, deceptive, and misleading
17 to consumers because the plastic bottles will not biodegrade as claimed, either in a landfill or any
18 other environment. Furthermore, California law restricts use of the claim "biodegradable" on the
19 labeling of plastic beverage containers, as the Legislature determined that this claim is inherently
20 misleading to consumers in reference to a disposable plastic food or beverage container.

21 10. Defendants also claim that these bottles are recyclable. ENSO states that the bottles
22 are made by adding a specially formulated microbial additive to standard polyethylene
23 terephthalate ("PET") plastic, and that the additive will not contaminate the existing curbside and
24 commercial PET recycling stream. Items containing degradable additives, however, are
25 considered contaminants by postconsumer plastic recyclers and, where possible, such items are
26 culled out from recyclable plastics. The claim of recyclability on these bottles is deceptive and
27 misleading to consumers.

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1 implied.” For the purpose of this section, ‘environmental marketing claim’ shall include any
2 claim contained in the ‘Guides for the Use of Environmental Marketing Claims’ published by the
3 Federal Trade Commission [Guides].”

4 16. The Guides specify that use of the claim “biodegradable” should be “substantiated by
5 competent and reliable scientific evidence that the entire product or package will completely
6 break down and return to nature, *i.e.*, decompose into elements found in nature within a
7 reasonably short period of time after customary disposal.” (16 C.F.R. Part 260, § 260.7, subd. (b)
8 (2009).)

9 17. For use of the claim “compostable,” the Guides require that the claim “be
10 substantiated by competent and reliable scientific evidence that all the materials in the product or
11 package will break down into, or otherwise become part of, usable compost (e.g., soil-
12 conditioning material, mulch) in a safe and timely manner in an appropriate composting program
13 or facility, or in a home compost pile or device.” (16 C.F.R. Part 260, § 260.7, subd. (c) (2009).)

14 18. The Guides do not allow the claim “recyclable” to be used on a product or package
15 “unless it can be collected, separated or otherwise recovered from the solid waste stream for
16 reuse, or in the manufacture or assembly of another package or product, through an established
17 recycling program.” (16 C.F.R. Part 260, § 260.7, subd. (d) (2009).) The Guides further provide
18 that: “a product or package that is made from recyclable material, but, because of its shape, size
19 or some other attribute, is not accepted in recycling programs for such material, should not be
20 marketed as recyclable.” (*Ibid.*)

21 19. Each violation of section 17580.5 is a misdemeanor that carries a potential
22 imprisonment not to exceed six months or a fine not to exceed \$2,500. (Bus. & Prof. Code, §
23 17581.) Alternatively, a civil penalty may be assessed under section 17536, in an amount not to
24 exceed \$2,500 for each violation.

25 **C. Untrue or Misleading Advertising Claims**

26 20. Business and Professions Code section 17508, subdivision (a), makes it unlawful to
27 make any false or misleading advertising claim, including claims that “(1) purport to be based on
28 factual, objective, or clinical evidence, (2) compare the product’s effectiveness or safety to that of

1 other brands or products, or (3) purport to be based on any fact.”

2 21. Business and Professions Code section 17500 provides that it is unlawful to “make or
3 disseminate or cause to be made or disseminated before the public in this state . . . any
4 statement . . . which is untrue or misleading, and which is known, or which by the exercise of
5 reasonable care should be known, to be untrue or misleading,” for the purpose of inducing the
6 public to enter into an obligation relating to goods or services.

7 22. In an action by the Attorney General, persons violating these provisions are subject to
8 injunctive relief and to a civil penalty not to exceed \$2,500 for each violation of section 17500
9 and 17508, except that if the same act is a violation of both sections 17500 and 17508, a civil
10 penalty is assessed for that violation once. (Bus. & Prof. Code, §§ 17508, subd. (g), 17535, and
11 17536, subd. (a).) Otherwise, “the remedies or penalties are cumulative to each other and to the
12 remedies or penalties available under all other laws of this state.” (*Id.*, § 17534.5.)

13 23. Section 17535 of the Business and Professions Code provides that any person,
14 corporation, firm, partnership, etc. “which violates or proposes to violate this chapter may be
15 enjoined by any court of competent jurisdiction.”

16 **D. The Unfair Competition Act**

17 24. Business and Professions Code section 17200 provides that “unfair competition shall
18 mean and include any unlawful, unfair or fraudulent business practice.” Unlawful acts under the
19 statute include any act that is unlawful that is conducted as part of business activity, and includes
20 violations of state laws and regulations.

21 25. Section 17203 of the Business and Professions Code provides that “(a)ny person
22 performing or proposing to perform an act of unfair competition within this state may be enjoined
23 in any court of competent jurisdiction.”

24 26. Business and Professions Code section 17206, subdivision (a), provides that any
25 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five
26 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil
27 action brought in the name of the people of the State of California by the Attorney General. . . .”
28 Under section 17205, these penalties are “cumulative to each other and to the remedies or

1 penalties available under all other laws of this state.”

2 **DEFENDANTS’ BUSINESS PRACTICES**

3 27. ENSO claims to have developed a resin, or resin component, that contains microbial
4 agents that will render a standard PET plastic bottle into a “biodegradable” plastic bottle. ENSO
5 states and/or implies on its website, in its product brochure, and in other marketing materials that
6 plastic bottles made from this resin will break down, fragment, biodegrade, or decompose in a
7 landfill or other environment.

8 28. ENSO markets and sells its resin to plastic bottle manufacturers and beverage
9 companies for the purpose of enabling such companies to manufacture or obtain “biodegradable”
10 plastic bottles. ENSO sells or otherwise provides this resin, directly or indirectly, to BALANCE
11 and AQUAMANTRA, as well as other companies selling beverages in “biodegradable” plastic
12 bottles in California. ENSO knowingly participates, directly or indirectly, in arranging for the
13 sale of plastic bottles in or into California that are labeled, or intended for labeling as,
14 “biodegradable,” in violation of California law.

15 29. ENSO has made and continues to make false, deceptive, and/or misleading statements
16 regarding the biodegradability of plastic bottles made with the resin it sells, without competent
17 and reliable evidence to substantiate those statements. Such statements include, but are not
18 limited to:

- 19 a. The statement in ENSO’s product brochure and on its website that ENSO plastic
20 bottles are “truly biodegradable.”
- 21 b. The statement on ENSO’s website that “ENSO bottles are plastic containers that
22 biodegrade in anaerobic (landfill) environments, breaking down through microbial
23 action into biogases and inert humus leaving behind no harmful materials.”
- 24 c. ENSO’s statement in its product brochure that “ENSO bottles biodegrade through
25 natural microbial digestion in both aerobic (compost) and anaerobic (landfill)
26 environments.”
- 27 d. The statement in the ENSO product brochure and on the ENSO website that “Once
28 placed in an active microbial environment, ENSO bottles naturally biodegrade into

- 1 biogases and inert humus.”
- 2 e. ENSO’s statement on its website that “Biodegradation of ENSO bottles will occur
- 3 anywhere there is an active microbial environment. Sitting on the dirt next to the road
- 4 will subject the bottle to an active microbial environment.”
- 5 f. ENSO’s claim on its website that “Our scientific data supports that ENSO bottles will
- 6 not contaminate PET recycle streams as the material used does not impact the PET
- 7 polymer in any way.”
- 8 g. ENSO’s claim in its product brochure and on its website that “ENSO bottles are
- 9 recyclable with traditional PET [plastic].”

10 30. BALANCE sells beverage containers in or into California that are labeled

11 “biodegradable,” in violation of California law. BALANCE also has stated or implied on its

12 website that the beverage containers it sells will break down, fragment, biodegrade, or decompose

13 in a landfill or other environment.

14 31. BALANCE has made and continues to make false, deceptive, and/or misleading

15 advertising and marketing claims with respect to its “biodegradable” beverage containers, without

16 competent and reliable evidence to substantiate those claims. Such claims include, but are not

17 limited to:

- 18 a. The statement on BALANCE beverage container labels that “This bottle is
- 19 completely biodegradable (having only natural remains).”
- 20 b. The statement on BALANCE beverage container labels that “This bottle will break
- 21 down in a typical landfill or compost environment in less than 5 years.”
- 22 c. Statements made on the BALANCE website claiming that BALANCE beverage
- 23 containers will completely biodegrade in a landfill or other any other environment.
- 24 d. The statement on BALANCE beverage container labels claiming: “100%
- 25 BIODEGRADABLE RECYCLABLE.”

26 32. AQUAMANTRA sells beverage containers in California that are labeled

27 “biodegradable,” in violation of California law. AQUAMANTRA states on its beverage

28 container labels that the containers are “compostable,” without showing that they meet the

1 statutorily-mandated ASTM standard specification. AQUAMANTRA also has stated or implied
2 on its website that the beverage containers it sells will break down, fragment, biodegrade, or
3 decompose in a landfill or other environment.

4 33. AQUAMANTRA has made and continues to make false, deceptive, or misleading
5 advertising and marketing claims with respect to its "biodegradable" beverage containers, without
6 competent and reliable evidence to substantiate those claims, including, but not limited to:

- 7 a. The statement on AQUAMANTRA beverage container labels that "OUR BOTTLES
8 ARE MADE OF 100% BIODEGRADABLE & RECYCLABLE PLASTIC."
9 b. The statement on the front of the hang tag on AQUAMANTRA beverage containers,
10 "RECYCLABLE AND COMPOSTABLE NEW PLASTIC BOTTLE."
11 c. The statement on AQUAMANTRA beverage container labels that "If it should happen
12 to end up in a landfill, the ocean or even the outdoors, our ENSO bottles will
13 biodegrade and transform into biogas and inert biomass, a process that only takes 1-5
14 years."
15 d. The claim on the hang tag on AQUAMANTRA beverage containers that the
16 containers "can be composted and will break down in around 240 days."
17 e. Statements on the AQUAMANTRA website that AQUAMANTRA beverage
18 containers will completely biodegrade in a landfill or other any other environment.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATIONS OF PUBLIC RESOURCES CODE SECTION 42359.6**

21 **(Sale of Plastic Beverage Containers Labeled "Biodegradable" or "Compostable")**

22 34. The People incorporate paragraphs 1 – 33, as if fully stated herein.

23 35. ENSO is a "person" within the meaning of Public Resources Code, section 40170.

24 Within the past three years, ENSO has violated section 42359.6 of the Public Resources Code by
25 selling, or arranging for the sale, directly or indirectly, of plastic beverage containers in or into
26 California that are labeled, or intended to be labeled, as "biodegradable." ENSO has violated
27 section 42359.6 also by stating or implying on the ENSO website, in the ENSO company
28 brochure and/or in other marketing materials, that the beverage containers made with the resin it

1 sells will break down, fragment, biodegrade, or decompose in a landfill or other environment.

2 36. BALANCE is a "person" within the meaning of Public Resources Code, section
3 40170. Within the past three years, BALANCE has violated section 42359.6 of the Public
4 Resources Code by selling beverage containers in or into California that are labeled
5 "biodegradable." BALANCE also has stated or implied on its website that the beverage
6 containers it sells will break down, fragment, biodegrade, or decompose in a landfill or other
7 environment.

8 37. AQUAMANTRA is a "person" within the meaning of Public Resources Code,
9 section 40170. Within the past three years, AQUAMANTRA has violated section 42359.6 of the
10 Public Resources Code by selling beverage containers in California that are labeled
11 "biodegradable." AQUAMANTRA also has stated or implied on its website that the beverage
12 containers it sells will break down, fragment, biodegrade, or decompose in a landfill or other
13 environment.

14 38. AQUAMANTRA has violated section 42359.6 of the Public Resources Code by
15 selling beverage containers in California labeled "compostable" without showing that the
16 containers meet the statutorily-mandated ASTM standard specification for a "compostable" label
17 on a beverage container.

18 **SECOND CAUSE OF ACTION**

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

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

21 39. The People incorporate paragraphs 1 - 38, as if fully stated herein.

22 40. ENSO has violated and continues to violate Business and Professions Code section
23 17580.5 by making untrue, deceptive, or misleading environmental marketing claims. Such
24 claims include, but are not limited to:

- 25 a. Statements on ENSO's website and in its product brochure that plastic bottles made
26 from the resin it sells are "biodegradable," without having competent and reliable
27 scientific evidence that the entire bottle will completely break down and return to
28 nature, *i.e.*, decompose into elements found in nature, within a reasonably short

1 period of time after customary disposal.

- 2 b. ENSO's statement in its product brochure and on its website that "ENSO bottles are
3 recyclable with traditional PET [plastic]," even though manufacturers of products
4 made from recycled PET plastic state that they do not accept degradable bottles or
5 any anything containing a degradable additive.

6 41. BALANCE has violated and continues to violate Business and Professions Code
7 section 17580.5 by making untrue, deceptive, or misleading environmental marketing claims.

8 Such claims include, but are not limited to:

- 9 a. The statement on BALANCE beverage container labels that "This bottle is
10 completely biodegradable (leaving only natural remains)," made without having
11 competent and reliable scientific evidence that the entire container will completely
12 break down and return to nature, *i.e.*, decompose into elements found in nature,
13 within a reasonably short period of time after customary disposal.
- 14 b. The statement on BALANCE beverage container labels that "This bottle will break
15 down in a typical landfill or compost environment in less than 5 years," made without
16 having competent and reliable scientific evidence that the entire container will
17 completely break down and return to nature, *i.e.*, decompose into elements found in
18 nature, within the stated timeframe or within a reasonably short period of time after
19 customary disposal.
- 20 c. The statement on BALANCE beverage container labels claiming that the containers
21 are "100% RECYCLABLE."

22 42. AQUAMANTRA has violated and continues to violate Business and Professions
23 Code section 17580.5 by making untrue, deceptive, or misleading environmental marketing
24 claims. Such claims include, but are not limited to:

- 25 a. The statement on AQUAMANTRA beverage container labels that "OUR BOTTLES
26 ARE MADE OF 100% BIODEGRADABLE PLASTIC," made without having
27 competent and reliable scientific evidence that the entire container will completely
28 break down and return to nature, *i.e.*, decompose into elements found in nature, within

1 a reasonably short period of time after customary disposal.

- 2 b. The statement on AQUAMANTRA beverage container labels that AQUAMANTRA
3 bottles "will biodegrade and transform into biogas and inert biomass, a process that
4 only takes 1-5 years," made without having competent and reliable scientific evidence
5 that the entire container will completely break down and return to nature, *i.e.*,
6 decompose into elements found in nature, within the stated timeframe or within a
7 reasonably short period of time after customary disposal.
- 8 c. The statement on the hang tag on AQUAMANTRA beverage containers that the
9 containers are "COMPOSTABLE," and that they "can be composted and will break
10 down in around 240 days," made without having competent and reliable scientific
11 evidence that all the materials in the container will break down into, or otherwise
12 become part of, usable compost in a safe and timely manner in an appropriate
13 composting program or facility, or in a home compost pile or device.
- 14 d. The statement on the hang tag on AQUAMANTRA beverage containers claiming that
15 the containers are "100% RECYCLABLE."

16 **THIRD CAUSE OF ACTION**

17 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE 17508**

18 **(False or Misleading Advertising Claims Based on Factual, Objective or Clinical Evidence)**

- 19 43. The People incorporate paragraphs 1 - 42, as if fully stated herein.
- 20 44. ENSO has violated and continues to violate Business and Professions Code section
21 17508 by making false or misleading advertising claims that purport to be based on factual,
22 objective, or clinical evidence, or on any fact. Such claims include, but are not limited to, any or
23 all of the statements referenced in Paragraphs 27 through 29.
- 24 45. BALANCE has violated and continues to violate Business and Professions Code
25 section 17508 by making false or misleading advertising claims that purport to be based on
26 factual, objective, or clinical evidence, or on any fact. Such claims include, but are not limited to,
27 any or all of the statements referenced in Paragraphs 30 and 31.
- 28 46. AQUAMANTRA has violated and continues to violate Business and Professions

1 Code section 17508 by making false or misleading advertising claims that purport to be based on
2 factual, objective, or clinical evidence, or on any fact. Such claims include, but are not limited to,
3 any or all of the statements referenced in Paragraphs 32 and 33.

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE 17500 et seq.**

6 **(Untrue and/or Misleading Statements)**

7 47. The People incorporate paragraphs 1 - 46, as if fully stated herein.

8 48. ENSO has violated and continues to violate Business and Professions Code section
9 17500 by making or disseminating untrue or misleading statements, and/or by causing untrue or
10 misleading statements to be made or disseminated in California, which statements ENSO knew or
11 should have known were untrue or misleading, with the intent to induce members of the public to
12 purchase, directly or indirectly, ENSO products. Such statements include, but are not limited to,
13 any or all of the statements referenced in Paragraphs 27 through 29.

14 49. BALANCE has violated and continues to violate Business and Professions Code
15 section 17500 by making or disseminating untrue or misleading statements, or by causing untrue
16 or misleading statements to be made or disseminated in California, which statements BALANCE
17 knew or should have known were untrue or misleading, with the intent to induce members of the
18 public to purchase BALANCE products. Such statements include, but are not limited to, any or
19 all of the statements referenced in Paragraphs 30 and 31.

20 50. AQUAMANTRA has violated and continues to violate Business and Professions
21 Code section 17500 by making or disseminating untrue or misleading statements in California,
22 which AQUAMANTRA knew or should have known were untrue or misleading, with the intent
23 to induce members of the public to purchase AQUAMANTRA products. Such statements
24 include, but are not limited to, any or all of the statements referenced in Paragraphs 32 and 33.

25 **FIFTH CAUSE OF ACTION**

26 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

27 **(Unlawful, Unfair and/or Deceptive Business Practices)**

28 51. The People incorporate paragraphs 1 - 50, as if fully stated herein.

1 52. Within the previous four years, ENSO has engaged in unfair and/or unlawful business
2 practices constituting unfair competition within the meaning of Business and Professions Code
3 section 17200. Such unfair competition includes, but is not limited to, one or more of the
4 following acts or practices:

- 5 a. ENSO has violated, and continues to violate, Public Resources Code section 42359.6,
6 as alleged in the First Cause of Action, Paragraph 35.
- 7 b. ENSO has violated, and continues to violate, Business and Professions Code section
8 17580.5, as alleged in the Second Cause of Action, Paragraph 40.
- 9 c. ENSO has violated, and continues to violate, Business and Professions Code section
10 17508, as alleged in the Third Cause of Action, Paragraph 44.
- 11 d. ENSO has violated, and continues to violate, Business and Professions Code section
12 17500, as alleged in the Fourth Cause of Action, Paragraph 48.

13 53. Within the previous four years, BALANCE has engaged in unfair and/or unlawful
14 business practices constituting unfair competition within the meaning of Business and Professions
15 Code section 17200. Such unfair competition includes, but is not limited to, one or more of the
16 following acts or practices:

- 17 a. BALANCE has violated, and continues to violate, Public Resources Code section
18 42359.6, as alleged in the First Cause of Action, Paragraph 36.
- 19 b. BALANCE has violated, and continues to violate, Business and Professions Code
20 section 17580.5, as alleged in the Second Cause of Action, Paragraph 41.
- 21 c. BALANCE has violated, and continues to violate, Business and Professions Code
22 section 17508, as alleged in the Third Cause of Action, Paragraph 45.
- 23 d. BALANCE has violated, and continues to violate, Business and Professions Code
24 section 17500, as alleged in the Fourth Cause of Action, Paragraph 49.

25 54. Within the previous four years, AQUAMANTRA has engaged in unfair and/or
26 unlawful business practices constituting unfair competition within the meaning of Business and
27 Professions Code section 17200. Such unfair competition includes, but is not limited to, one or
28 more of the following acts or practices:

- 1 a. AQUAMANTRA has violated, and continues to violate, Public Resources Code
2 section 42359.6, as alleged in the First Cause of Action, Paragraphs 37 and 38.
- 3 b. AQUAMANTRA has violated, and continues to violate, Business and Professions
4 Code section 17580.5, as alleged in the Second Cause of Action, Paragraph 42.
- 5 c. AQUAMANTRA has violated, and continues to violate, Business and Professions
6 Code section 17508, as alleged in the Third Cause of Action, Paragraph 46.
- 7 d. AQUAMANTRA has violated, and continues to violate, Business and Professions
8 Code section 17500, as alleged in the Fourth Cause of Action, Paragraph 50.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the People pray for the following relief:

- 11 1. That Defendants, their successors, agents, representatives, employees, assigns, and
12 all persons who act in concert with Defendants be enjoined from selling in or into California any
13 beverage containers labeled or otherwise marketed as "biodegradable;"
- 14 2. That Defendants, their successors, agents, representatives, employees, assigns, and all
15 persons who act in concert with Defendants be enjoined from selling in or into California any
16 beverage containers labeled or otherwise marketed as "compostable," unless and until the
17 beverage container meets the applicable ASTM standard specification for a "compostable" claim,
18 as provided in Public Resources Code section 42359.5;
- 19 3. That Defendants, their successors, agents, representatives, employees, assigns, and all
20 persons who act in concert with Defendants be enjoined from making any untrue or misleading
21 statements in violation of Business and Professions Code section 17500, including, but not
22 limited to, the untrue or misleading statements alleged in this complaint, under the authority of
23 Business and Professions Code section 17535;
- 24 4. That the Court make such orders or judgments as may be necessary to restore to any
25 person in interest any money or property, real or personal, which may have been acquired by
26 means of any practice which violates section 17500 of the Business and Professions Code, under
27 the authority of Business and Professions Code section 17535;
- 28 5. That Defendants, their successors, agents, representatives, employees, assigns, and all

1 persons who act in concert with Defendants be enjoined from engaging in unfair competition as
2 defined in Business and Professions Code section 17200, including, but not limited to, the acts
3 and practices alleged in this complaint, under the authority of Business and Professions Code
4 section 17203;

5 6. That the Court make such orders or judgments as may be necessary to restore to any
6 person in interest any money or property, real or personal, which may have been acquired by
7 means of any practice which constitutes unfair competition, under the authority of Business and
8 Professions Code section 17203;

9 7. That the Court assess a civil penalty against each Defendant for each violation of
10 Public Resources Code section 42359.6 for which Defendants are found liable, in the maximum
11 amount allowable pursuant to Public Resources Code section 42359.8, subdivision (a);

12 8. That the Court assess a civil penalty of \$2,500 against each Defendant for each
13 violation of Business and Professions Code section 17500 or 17508, in an amount according to
14 proof, pursuant to Business and Professions Code section 17536;

15 9. That the Court assess a penalty of \$2,500 against each Defendant for each violation
16 of Business and Professions Code section 17580.5, in an amount according to proof, pursuant to
17 Business and Professions Code section 17581;

18 10. That the Court assess a civil penalty of \$2,500 against each Defendant for each
19 violation of Business and Professions Code section 17200, in an amount according to proof,
20 under the authority of Business and Professions Code section 17206;

21 11. That Plaintiff shall recover its costs of suit, including its costs of investigation, as
22 allowed by law and according to proof; and

23 12. For such other and further relief as the Court deems just, proper, and equitable.

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Dated: October 26, 2011

Respectfully Submitted,

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