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CITY OF PHILADELPHIA
One Parkway Building
1515 Arch Street, 15th Floor
Philadelphia, PA 19102

Plaintiff,

v.

Bimbo Bakeries USA,
a corporation,
255 Business Center Drive
Horsham, PA 19044
wmaster@bbumail.com

and

S.C. Johnson & Son,
a corporation,
1525 Howe Street
Racine, WI 53403
Consumer-service@scj.com

Defendants.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

CIVIL DIVISION

No:

COMPLAINT – CIVIL ACTION

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Plaintiff, City of Philadelphia ("City," "Philadelphia," or "Plaintiff"), by and through the undersigned attorneys, alleges the following:

I. INTRODUCTION

1. Plastic bags are not recyclable—at least, not in the sense that consumers expect when they are told something is recyclable.

2. Each time a well-intentioned Philadelphia consumer has put a plastic bag in her municipal recycling bin, it has not been recycled—rather, unbeknownst to her, it has gone to a waste facility.

3. And Philadelphia's recycling program is no outlier. Although a small minority of consumer recycling programs nationwide are willing to collect plastic bags, for almost all of those programs, nearly all of those collected plastic bags nevertheless go to waste due to foreseeable practical and economic realities (*e.g.*, the absence of any significant end market for reprocessed plastic bag material).

4. Indeed, only a very small percentage of plastic bags (or other products made of thin and flexible "plastic film" material) have ever completed the process of recycling, which involves many steps beyond simply whether the consumer put something in a recycling bin.

5. Thus, although plastic bags may be "theoretically" or "technically recyclable," those are merely academic concepts devoid of significance for consumer behavior or the environment.

6. According to the Federal Trade Commission and the Environmental Protection Agency, for purposes of a complaint about deceptive marketing (like this one), what really matters is not what is theoretically possible, but whether recyclability marketing provides consumers with realistic expectations.

7. But when plastic bags are marketed as recyclable, that marketing does not provide consumers with realistic expectations. Because when consumers see recyclability marketing or symbols, they do not have in mind "theoretical recyclability." Rather, such marketing gives

ordinary consumers the false impression that if they make a thoughtful attempt to recycle the product, then it will most likely get made into a new product.

8. For example, most consumers think that Ziploc bags[1] and the thin and flexible plastic bags in which bakery products are sold are recyclable, because they are repeatedly told by the manufacturers of those products that their plastic bags are recyclable.

9. Largely due to manufacturers' deceptive statements to consumers that they can recycle plastic bags, plastic film is the number one contaminant causing problems for Philadelphia's municipal recycling system.

10. It is also among the greatest sources of plastic street litter and waterway pollution.

11. As of 2023, upon information and belief, there were approximately one billion plastic bags entering Philadelphia each year.

12. The City has already made clear, through the enactment of the 2019 Bag Ban, the importance of mitigating the scourge of plastic bags flooding our community. Philadelphia Municipal Code § 9-4900 *et seq*.

13. Although the Bag Ban does not extend to Ziploc bags or the plastic bags in which bakery products are sold, those bags—and the marketing of them as recyclable—still contribute greatly to the environmental and other harms that motivated the City to enact the Bag Ban.

14. Notwithstanding that reality, for years S.C. Johnson & Son ("SCJ") has sold Ziploc bags in Philadelphia, and Bimbo Bakeries USA ("Bimbo") has sold bakery products in bread bags in Philadelphia, while deceptively marketing those bags as recyclable.

[1] Throughout this Complaint, unless otherwise stated, all references to Ziploc bags are intended to refer only to Ziploc brand products made of plastic film. Unless otherwise stated, references to Ziploc bags are not intended to refer to Ziploc's less profitable and more sustainable product lines, such as its recyclable paper bags, its compostable bags, or its machine-washable Endurables product line.

15. Upon information and belief, this parallel deceptive marketing by SCJ and Bimbo (collectively "Defendants") is a coordinated campaign of deception, with both Defendants relying largely on shared labeling, symbols, and messaging about the recyclability of their products and the recyclability of plastic film products more generally.

16. For example, many of each Defendant's products have been marketed with the exact same standardized "How2Recycle" label (see Figure 1), and/or with some other form of the universally recognized symbol of recycling: the "chasing arrows" in the shape of a triangle.

Figure 1[2]

17. Philadelphia consumers understand the language and symbols in Ziploc and Bimbo marketing to mean that their plastic bags are recyclable, but that is profoundly misleading at best: Even if it is theoretically possible to recycle plastic bags under limited circumstances, technical and economic realities foreseeably make it so that no matter how hard consumers try to recycle those plastic bags, those bags will nevertheless almost always go to waste.

18. Thus, Defendants' deceptive marketing about their products' recyclability is confusing to the ordinary consumer, causing them to think that they can buy Defendants' products without contributing to plastic waste.

19. Defendants' deceptive marketing contributes to many of the harms that motivated the Philadelphia City Council to enact the Bag Ban, such as environmental harm and increased recycling and waste management costs.

20. Meanwhile, Defendants' deceptive marketing has increased their profits, enabling them to extract more money from consumers who believe in good faith that they are shopping sustainably.

[2] *Recycling Icons: How2Recycle Label*, SHUTTERSTOCK, https://www.shutterstock.com/image-vector/recycling-icons-how-recycle-label-260nw-2381285377.jpg (last accessed Aug. 13, 2025).

21. In 2024, the Philadelphia City Council enacted the City's Consumer Protection Ordinance, Phila. Code § 9-6300 *et seq.* ("CPO"), to enable the City to protect consumers from deceptive marketing such as Defendants' claims about their bags' recyclability.

22. Because Defendants' marketing would confuse the ordinary consumer into thinking their plastic bags are recyclable, Defendants have violated the CPO and the City is entitled to relief.

II. PARTIES

23. Plaintiff the City of Philadelphia (the "City" or "Philadelphia") is a municipal corporation organized under the laws of the Commonwealth of Pennsylvania.

24. The City brings this action on behalf of and in order to protect the rights of consumers in Philadelphia, under the authority conferred by the CPO § 9-6303(2), to obtain civil penalties, equitable relief, and other remedies available under the CPO in connection with the Defendants' unlawful conduct.

25. Defendant S.C. Johnson & Son, Inc. ("SCJ"), is a Wisconsin corporation with its headquarters and principal place of business in Racine, Wisconsin.

26. SCJ has owned the Ziploc brand since 1998.

27. Ziploc bags are made predominantly of a flexible type of plastic resin called low-density polyethylene ("LDPE," indicated by resin identification code #4) formed into a thin plastic film in the shape of a bag.

28. Ziploc sells those plastic bags in Philadelphia and markets them as recyclable.

29. Defendant Bimbo Bakeries USA ("Bimbo") is a Delaware corporation with its headquarters and principal place of business in Horsham, Pennsylvania.

30. Bimbo is the largest bakery company in the United States, selling products under brands such as Thomas, Sara Lee, Entenmann's, Arnold, Freihofer's, Stroehmann Pennsylvania Dutch Bakers, Nature's Harvest, Little Bites, Ball Park, Bays, Brownberry, Oroweat, Lender's

Bagels, Marinela, Bimbo, Maier's, Beefsteak, Boboli, The Cheesecake Factory at Home, Mrs. Baird's, Heiner's, Emmy's Organics, Grandma Sycamore's Home-Maid Bread, Tia Rosa, Goldminer, Wholesome Harvest, the Rustik Oven, Grade Baking, San Luis Sourdough, Alfaro's, and Tenderflake.[3]

31. Bimbo sells all or most of those brands' products in Philadelphia, packaged in plastic film bread bags, which Bimbo markets as recyclable.

32. Regarding both Ziploc bags and Bimbo's plastic film bread bags, Defendants' coordinated marketing of those products as recyclable is deceptive because, although those bags may be recyclable in theory, they are not recyclable in the realistic way that ordinary consumers reasonably expect when told something is recyclable: that it is recyclable on a meaningful scale.

III. JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction over this action pursuant to the Commonwealth of Pennsylvania Constitution.

34. This Court has personal jurisdiction over Defendants because they carry on a continuous and systematic part of their general business within Pennsylvania, have transacted substantial business with Pennsylvania entities and residents, and have caused harm in Pennsylvania as a result of the specific business activities complained of herein, either directly or through their agents. Both Defendants maintain physical presences in Pennsylvania and ship their plastic products and/or packaging into Philadelphia and throughout Pennsylvania.

35. Venue as to each Defendant is proper in this Court as the transactions and occurrences that form the basis for this Complaint occurred in Philadelphia County, Pennsylvania.

36. There is no federal court jurisdiction. This action lacks complete diversity of citizenship because Bimbo is a citizen of the Commonwealth of Pennsylvania, and because no

[3] For simplicity, unless otherwise stated this Complaint uses the term "Bimbo products" to refer to any products under Bimbo's various brands, without regard for distinctions between Bimbo's various brands.

substantial federal question is presented and Philadelphia's right to relief does not necessarily depend on resolution of a substantial question of federal law. Rather, the City's claims involve solely violations of the City's Consumer Protection Ordinance.

IV. GENERAL ALLEGATIONS

A. Overview of Plastic and Recycling

37. Plastic is a human-created, inexpensive, lightweight, adaptable, and durable material with a wide range of applications.

38. It is also toxic and does not biodegrade. Instead, it breaks down into smaller and smaller bits (known as microplastics or nanoplastics) and infiltrates and permeates the natural environment and biota.

39. Plastic materials release microplastics into the environment not just when they are littered in our waterways and streets, but also when they are disposed into waste facilities and even to some extent through the process of recycling.

40. There are several types of plastics, distinguished by the type of plastic resin of which they are composed.

41. In 1988, the Society of the Plastics Industry established a "Resin Identification Code" ("RIC") that formally divided up plastics into seven categories based on their resin types, including low-density polyethylene ("LDPE," indicated by RIC #4).

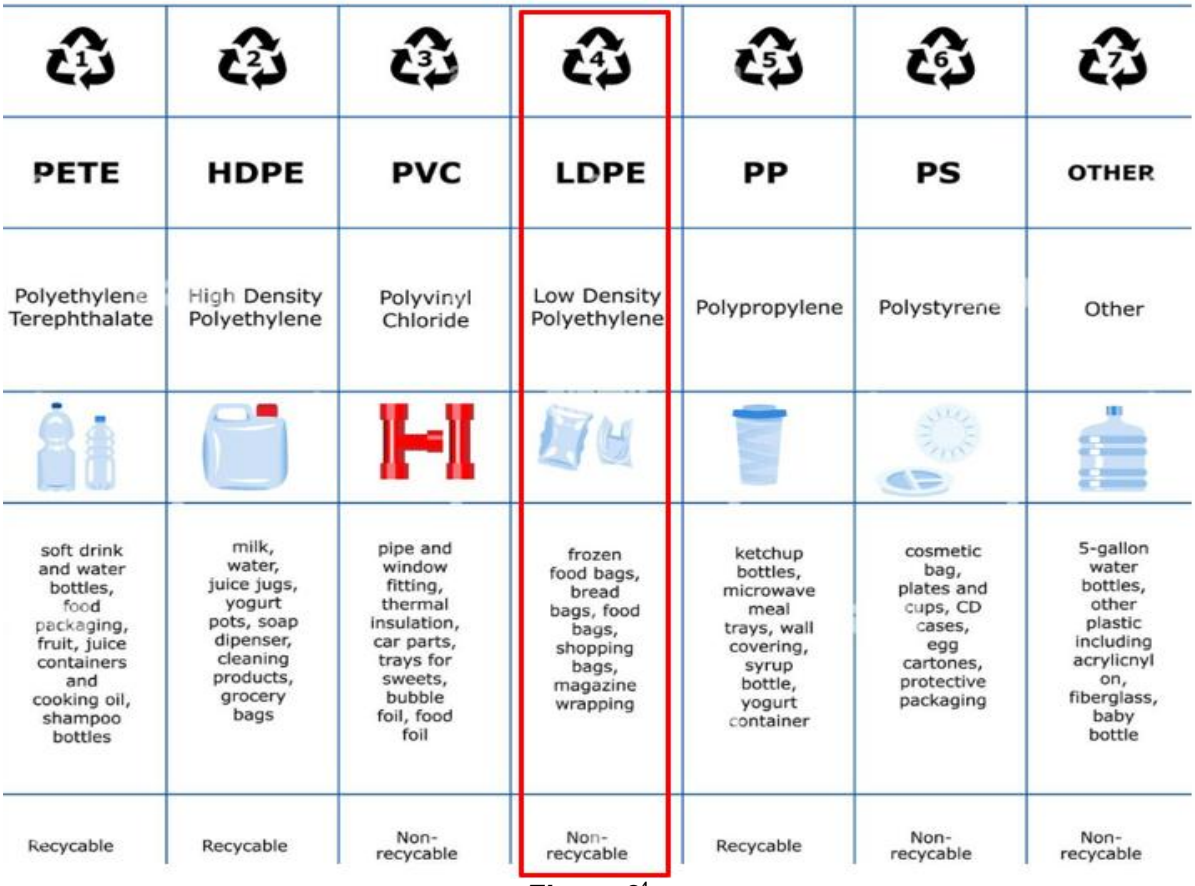

Figure 2[4]

42. The RIC symbols for each type of plastic prominently and misleadingly use the universally recognized sign of recyclability—the "chasing arrows."

Figure 3[5]

[4] Anna Fominykh, *Plastic Resin Identification Codes*, ALAMY (Feb. 17, 2020), https://www.alamy.com/table-of-plastic-resin-identification-codes-sheet-of-different-plastic-materials-garbage-waste-sorting-recycling-signs-reduce-reuse-recycle-image346545369.html (red annotation added).

[5] Aaron Sarah, *The Problem with the Chasing Arrows Symbol*, LORAX EPI (Mar. 8, 2023), https://www.loraxcompliance.com/blog/env/2023/03/08/The_problem_with_the_chasing_arrows_symbol.html.

43. That iconic, universally recognized symbol of recycling—designed by a student for a contest sponsored by the Container Corporation of America—is based on M.C. Escher's Mobius loop, suggesting that recycling can process material over and over again, infinitely.

44. Starting in 1970, the chasing arrows were used on products made of materials of various sorts to communicate that those products are recyclable. For example, throughout the 55 years since the chasing arrows were created, whenever they have appeared on paper or aluminum products the chasing arrows have always signified that those products are recyclable.

45. However, when those same chasing arrows appear around a number for a RIC on a plastic product, those familiar chasing arrows supposedly no longer communicate recyclability. Instead, consumer products companies insist that RICs (with their chasing arrows) are supposed to indicate only what type of resin the product is made of; whether the product may be recyclable is an entirely separate question.

46. But that is not what consumers understand when they see the chasing arrows on a plastic product—regardless of whether those chasing arrows appear around a number as part of a RIC, alongside some qualifying language, or in any other context.

B. Consumers' Beliefs and Misunderstandings About Recycling

47. The strength of data showing consumers' hopes for recycling—but also their misunderstandings of and confusions about recycling—is staggering.

48. Among U.S. consumers, 80% say that recycling is the bare minimum they want to do for the environment.

49. But only 8% of Americans understand that a RIC (which may appear on almost any plastic product or packaging) does not guarantee a product is recyclable, and 97% of Americans think that when they see chasing arrows on a product in any context, that means the product is definitely or at least probably recyclable.

50. As one survey respondent explained, everyone remembers "learning about chasing arrows in recycling in elementary school[.] . . . [T]here's some symbols in life that we know. That a red light means stop, and a recycling symbol means go, that it can go into their recycling bin."[6]

51. Indeed, 91% of U.S. consumers think that if a product is recyclable in any sense (*i.e.*, "technically recyclable"), then that means they can recycle it by putting it in their curbside municipal recycling bin, and 85% say that if they put something recyclable in their curbside bin, they are somewhat or very confident that it will in fact be recycled into a new product.

52. And most consumers mistakenly believe that if a plastic product is recyclable then their recycling system can reprocess that material over and over again—infinitely—and that whether the material will ever go to waste lies in the hands of consumers and whether they properly dispose of products during each cycle.

53. Consumers hold these beliefs strongly: Nationwide, 82% of survey respondents feel that it is dishonest to use the chasing arrows on a product (or to otherwise say that it is recyclable) merely because it is technically recyclable, when as a practical matter it cannot be made into something new.

54. It is ironic, therefore, that more than half of RIC symbols (complete with their chasing arrows) are for resins that are not recyclable almost anywhere in the United States.

55. Most significantly for purposes of this Complaint, plastics indicated by RIC #4 (LDPE)—the resin type most often used for making plastic bags—is not recyclable almost anywhere in the United States.

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[6] Fed. Trade Comm'n, *Talking Trash at the FTC: Recyclable Claims and the Green Guides* 35–36 (May 23, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Talking-Trash-at-the-FTC-Recyclable-Claims-and-the-Green-Guides.pdf ("*Talking Trash Transcript*") (survey respondent quote recounted by Sarah Dearman, Chief Innovation Officer for The Recycling Partnership).

56. Indeed, all plastic bags made of any type of resin (even resins that, unlike LDPE, are recyclable in many circumstances) are nevertheless still not recyclable because their thin and flexible physical form makes it technically difficult and economically unrealistic to recycle them into anything new.

57. Recycling is one of the key tools for mitigating the harmful environmental effects of the mass production of single-use plastics, like the Defendants' plastic bags, which are designed to be disposed.

58. Even Bimbo acknowledges on its sustainability webpage (under the heading "Zero Waste") that "[w]e know the negative impacts non-recyclable packaging, like plastic, has on our environment."[7]

59. But of the more than 10 billion metric tons of plastic that humans have created over the past approximately 70 years, only approximately 9% has been recycled—that leaves more than 9 billion metric tons of plastic in landfills and incinerators, as well as streets and waterways.

60. As SCJ's CEO Fisk Johnson observed just last year when testifying before the U.S. Senate Committee on the Environment and Public Works, this low recycling rate is not because consumers do not make the effort to recycle. Rather, "too much of what people try to recycle ends up in landfills."[8]

61. And the statistics are even worse for plastic film. As SCJ's Senior Director of Global Sustainability, Pamela Oksiuta, recognized at the Plastics Recycling Conference in 2018, only 4% of the plastic film materials humans create—and only 0.2% of the Ziploc bags SCJ creates—are successfully reprocessed through a recycling system for use in something new.

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[7] *Baked for Nature*, BIMBO BAKERIES USA, https://www.bimbobakeriesusa.com/baked-for-nature (last visited Aug. 13, 2025).

[8] Written Testimony of H. Fisk Johnson Before the U.S. Senate Comm. on Env't and Pub. Works, *Examining Extended Producer Responsibility Policies for Consumer Packaging* 3 (Mar. 6, 2024), https://www.epw.senate.gov/public/_cache/files/6/7/674d5482-2451-4617-a6fb-66644c4ef151/48C701DE07D10C0DEC725EBA740F2802.03-06-2024-johnson-testimony.pdf ("Johnson Testimony").

62. And plastic waste is not the only environmental harm that comes with single-use plastic bags like Ziplocs or Bimbo's bread bags—the process of manufacturing those products also involves significant greenhouse gas emissions and water contamination.

63. Companies like SCJ and Bimbo are deliberately tricking consumers into thinking that they can buy Ziploc's or Bimbo's plastic bags without contributing to plastic waste or other related environmental harms because those products can (at least in theory) be recycled.

64. But consumers do not realize that mere "theoretical" or "technical" recyclability and actual recycling outcomes are very different: Although plastic bags are theoretically recyclable, they are rarely actually recycled because there is no end market for recycled plastic bags.

C. Regulators Are Concerned About This Deception

65. The Federal Trade Commission publishes guidance to avoid deception in environmental marketing claims. That guidance is commonly referred to as the "Green Guides." 16 C.F.R. Part 260 ("Green Guides").

66. The Green Guides section on "Recyclable Claims" opens with the following core principle: "It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item." Green Guides § 260.12(a).

67. That same section later 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." Green Guides § 260.12(d).

68. The Green Guides also state that "[m]arketers should not state or imply environmental benefits if the benefits are negligible." Green Guides § 260.3(c). Applying that general principle to the example of a plastic film trash bag, the Green Guides state that "[e]ven if

the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists." Green Guides § 260.3(c), Example 2.

69. Courts have therefore interpreted the Green Guides as advising that it would be deceptive to advertise as recyclable a product that is technically recyclable, but which will in practice rarely be reprocessed into material that is recycled into a new product.

70. And regarding what counts as a claim of recyclability, the Green Guides make clear that even just prominent recycling-related symbols—like the chasing arrows around a RIC number—may suffice. Green Guides § 260.12, Example 2.

71. The Green Guides were last updated in 2012.

72. In 2023, four U.S. Senators on the Committee on Environment and Public Works wrote to the FTC arguing that the Green Guides were out of date relative to the realities of the constantly evolving market, and urged the FTC to coordinate with the U.S. Environmental Protection Agency (EPA) to revise the Green Guides so as to reflect the realities of consumer understanding and recycling markets and thereby bolster consumer confidence.

73. One of the foremost concerns motivating the four Senators was their observation that recyclability labeling often is not reflective of a package's recyclability in reality—because a product that is "recyclable" under ideal circumstances might not be recyclable under real circumstances for any number of reasons, including market forces.

74. The FTC initiated a process to revise the 2012 Green Guides, and the comment period closed on April 24, 2023.

75. The EPA's influential comment—which urges the FTC to elevate the Green Guides from mere guidance to the status of a compulsory rule—emphasizes above all that the Green Guides should expressly condemn the use of the chasing arrows symbol in contexts (like RICs) where chasing arrows would mislead ordinary consumers into believing the product is recyclable:

> Categorizing plastics by resin identification code coupled with chasing arrow symbols does not accurately represent recyclability as many plastics (especially 3-

> 7) [(which includes RIC #4, for LDPE, which is used to make plastic film)] do not have end markets and are not financially viable to recycle. . . .
>
> EPA recommends that the FTC address confusion created by the chasing arrows symbol and the resin identification codes by revising the Green Guides . . . . EPA believes the use of the RIC with the chasing arrows symbol constitutes a misrepresentation and violation of claims prohibited under Section 5 of the FTC Act – "A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions." Consumers generally understand the chasing arrows triangle to represent a universal recycling symbol and interpret it to mean that the product is recyclable, and its use with the resin identification codes influences consumer decisions on how they dispose of plastic products.[9]

76. The EPA explains that recommendation based on the consumer data referenced earlier indicating that only 8% of Americans understand that the presence of any RIC on a product or packaging does not necessarily mean the material is recyclable.

77. Additionally, the EPA comment "strongly encourages the FTC to clarify that products and packaging may only be marketed as recyclable if they have a strong end market."[10] The EPA underscored the importance of strong end markets by further reiterating the point several times throughout its written comment, as well as through remarks that a representative of the EPA made before a panel hosted by the FTC to discuss the Green Guides' provisions on deceptive marketing about recyclability.

78. At that same event, the Director of the How2Recycle program—which facilitates the coordination of Defendants' campaigns of deception by designing their shared recyclability labeling—explained that How2Recycle recognizes that end markets are key to the real outcomes consumers expect when they see an assertion of recyclability, observing that "end markets" are "so important, because even if things can theoretically be recycled, we need to also understand that they are being recycled at scale."[11]

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[9] U.S. Env't Prot. Agency, *Comment Letter on the Green Guides Review (Matter No. P954501) Submitted to the Federal Trade Commission* at 4, 15–16 (Apr. 20, 2023), https://s3.documentcloud.org/documents/23789593/epa-comments-to-ftc.pdf.

[10] *Id.* at 3.

[11] *Talking Trash Transcript, supra* note 6, at 34–35 (Karen Hagerman, Director of How2Recycle).

D. Throughout the Process of Recycling, Technical and Economic Realities Make Plastic Bags Non-Recyclable

79. The process of recycling involves the following key steps: (1) product design and marketing, (2) consumer use and disposal, (3) collection and reprocessing, and (4) end markets for manufacturing with reprocessed material.

80. Factors at each stage of this process contribute to the reality that, no matter how hard the consumer tries to properly dispose of plastic bags, those bags almost invariably end up as waste.

81. However—as the EPA, the Director of How2Recycle, and several other speakers at the FTC's event agreed—in order to understand a product's recyclability, the key is not whether it has recyclability labeling or even whether consumers have access to collection services that accept the material in question. Rather, what really matters is the end of the process: whether there exist significant end markets of buyers willing to buy the reprocessed material to use it in manufacturing something new.

82. This is because recycling is a business. If there are no buyers, then there is no business. A bottleneck at the end of the process constrains the potential of the entire process.

83. In the words of the Association of Plastics Recyclers' Chief Policy Officer, Kate Bailey, whether end markets exist to use some reprocessed material "is really important because recycling is about manufacturing . . . . [I]t's about making a specific product."[12]

84. That is why facilities that reprocess recyclable materials—known as Material Recovery Facilities ("MRFs")—understand their work as reprocessing materials into marketable resin "commodity types" to be sold to end market buyers, rather than simply as recycling materials as an economically disinterested, environmental public service.

[12] *Id.* at 5.

85. Significant end markets for a reprocessed plastic resin exist only where the price and quality of that reprocessed material make it sufficiently competitive relative to alternative materials (*e.g.*, virgin plastic) to induce significant demand among manufacturers seeking to use that material to manufacture something new.

86. And the ultimate price and quality of material reprocessed for recycling is largely determined by product design—*i.e.*, what is the material, what is its form, and how is it going to be used—which influences each of the stages downstream in the recycling process.

1. Step 1: Product Design and Marketing

87. Generally speaking Ziploc bags—which are intended for storage and transportation of a wide range of items, including foods of various sorts—are made out of thin and flexible sheets of plastic film fused together along three edges to form a bag, with an opening along the fourth edge that can be sealed by means of a plastic zip-closure near the open edges of the plastic film sheets.

Figure 4[13]

Figure 5[14]

88. The plastic film used for Ziploc bags is typically or always made out of LDPE (RIC #4), which is the resin most commonly used for the formation of thin and flexible plastic materials.

[13] David MacNeal, *The Surprisingly Complex Design of the Ziploc Bag*, WIRED (Apr. 28, 2015), https://www.wired.com/2015/04/surprisingly-complex-design-ziploc-bag/.
[14] *Ziploc Sandwich Bags*, TARGET, https://www.target.com/p/ziploc-sandwich-bags/-/A-15357022?preselect=14730761#lnk=sametab (last accessed Aug. 13, 2025).

89. The zip closure is typically made of polypropylene (RIC #5), which is a more rigid type of plastic commonly used for a range of purposes.

90. Similarly, the bread bags used by Bimbo to package its brands' various bakery products are formed out of thin and flexible plastic film—either sheets of plastic film fused together, or a sheath of plastic film typically shaped like a cylinder with one open end that may be opened and closed with a hard plastic tie or clip.

91. The plastic film used to package Bimbo's bakery products is always or almost always made of LDPE (RIC #4).

Figure 6[15]

92. Closely related to product design are considerations of marketing. Product marketing includes information about the recyclability of the product or packaging.

93. Although consumers get information about and develop their opinions regarding consumer products from a variety of sources, it is information on products' packaging that has the greatest impact on ordinary consumers' understanding of products' recyclability.

94. For example, some products (or their packaging) are imprinted with a RIC (complete with chasing arrows), which ordinary consumers overwhelmingly interpret as meaning the product is recyclable via curbside recycling.

95. Both Ziploc and Bimbo products have used RICs or other forms of chasing arrows on their packaging in reference to their plastic film bags.

[15] *Our History*, BIMBO BAKERIES, https://bimbobakeriesusa.com/our-history (last visited Aug. 13, 2025).

96. Additionally, in recent years, some consumer products brands have adopted a "How2Recycle" ("H2R") label.

97. H2R labels were originally designed and promoted by GreenBlue—the non-profit arm of a consumer products association called the Sustainable Packaging Coalition ("SPC").

98. Bimbo is a member of SPC, and although SCJ is not currently listed as a member of SPC, SCJ actively participates in SPC programming and thought development, such as recently by sponsoring H2R's 2024 Summit in Chicago and hosting a half-dozen tours of SCJ facilities in connection with that H2R Summit.

99. Both Ziploc and Bimbo use H2R labels on all or many of their products.

100. There are many types of H2R labels. The below are some examples, with annotations in red to identify H2R labels used for plastic film products and packaging like bags.

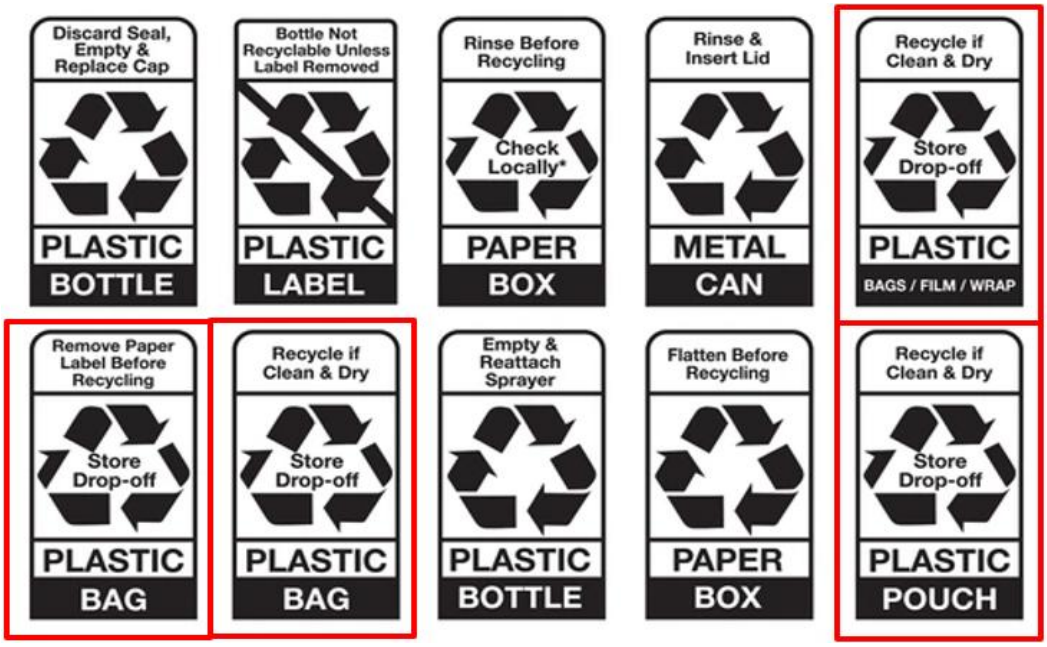

Figure 7[16]

101. Like all RICs, all H2R labels use the chasing arrows symbol, regardless of the differences in recyclability among products.

[16] *Recycling Icons: How2Recycle Label*, SHUTTERSTOCK, https://www.shutterstock.com/image-vector/recycling-icons-how-recycle-label-260nw-2381285377.jpg (last accessed Aug. 13, 2025).

102. Some products also or alternatively use other recyclability labeling, such as a label for the availability of recycling via TerraCycle—a program for which consumers would have to make an account and mail-in their plastic bags—or other non-standardized language or symbols suggestive of recycling.

103. Although the design of Ziploc and Bimbo bags make those products non-recyclable, SCJ and Bimbo nevertheless misleadingly market those bags as recyclable.

2. Step 2: Consumer Use and Disposal

104. For most consumers, when they buy a plastic product or a product in plastic packaging, they will try to recycle that plastic if they understand it to be recyclable.

105. Most consumers will spend some time looking all over a product or packaging—beyond just its label—to find any indication of recyclability upon which they can rely in order to properly dispose of the product in a sustainable way.

106. For most consumers, upon finding any indicia of recyclability—even if only a RIC (complete with the familiar chasing arrows) imprinted on the bottom of the product—they will interpret that as indicating the material is recyclable and that they can recycle it by putting it in a municipal curbside bin.

107. But when it comes to Defendants' deceptively marketed plastic bags, that ordinary consumer understanding is false because (as explained in the section immediately below) the matter and form of those bags makes them impossible to recycle through municipal systems' MRFs.

108. Additionally, even a plastic product or packaging that is actually recyclable cannot be recycled if it has been contaminated by food or other residue to such an extent that it is not economically practicable to separate out the desired resin from the contamination.

109. Where that is the case—as may be true of any plastic that, like Defendants' bags, are designed to contain food—even a theoretically recyclable material will be diverted to waste.

3. Step 3: Collection and Reprocessing

110. After consumers place their apparently recyclable plastic materials in a recycling bin, the next step is for the materials to be collected and transported to a facility or facilities capable of sorting and reprocessing those materials.

111. Most consumers are aware only of one type of recycling collection service: municipal recycling collection, which is typically a curb-side service.

112. For almost all municipal recycling programs, residents are expected to put recyclable materials in a bin on the curb on certain days prescribed by the municipality, and sanitation workers drive by with a truck to collect the materials that have been placed in the recycling bin on the curbside and to transport those materials to a MRF.

113. That is how Philadelphia's municipal recycling program operates—once a week, sanitation workers collect the materials that have been put in recycling bins on the curb and take those materials to a MRF with which the City has a contract.

114. At the MRF, the materials collected from recycling bins are sorted into categories, the most fundamental of which being materials that the MRF can recycle and materials that the MRF cannot recycle.

115. Materials the MRF cannot recycle are diverted to waste (*i.e.*, a landfill or incinerator).

116. Regarding materials the MRF can recycle, those materials are further sorted based on the more specific material out of which they are made: For example, recyclable plastics must be separated from paper, cardboard, aluminum, or glass.

117. Even within the category of plastics, MRFs have to sort based on resin type.

118. For almost all municipal recycling programs—including in Philadelphia—the only plastics that can be reprocessed are plastics made of resins indicated by RICs #1, #2, or #5.[17]

119. Similarly, for almost all municipal recycling programs—including in Philadelphia—plastics made of resins indicated by RICs #3, #4, #6, or #7 are not acceptable as recyclable.

120. To the extent any products or packaging (*e.g.*, plastic bags) made of those resins are included in the curbside recycling bin for pickup, the MRF must remove them (to be diverted to waste) during the sorting process. That costs time and money.

121. That almost all municipalities cannot accept those types of plastics for recycling is no coincidence: It is effectively dictated nationwide by the lack of end markets for those materials. So, even if municipalities were to reprocess those plastics, they nevertheless would not be recycled into a new product. Indeed, there would be nowhere for those reprocessed plastics to go, other than to a landfill or incinerator.

122. Additionally, some plastic products involve multiple types of resin, none of which can be recycled without first separating each from the other.

123. For example, although Ziploc bags are made primarily of LDPE plastic film, they also use polypropylene for the zip-closure. Thus, even if plastic film were recyclable more generally, the polypropylene would have to be cut out and removed prior to reprocessing the LDPE for recycling. Otherwise, the polypropylene would count as a contaminant in the reprocessed LDPE resin (and vice versa).

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[17] Although some municipal recycling programs permit or even instruct residents to put any type of plastic in their bins for curbside recycling, that is not because all plastics are recyclable in those municipalities. As elsewhere, the lack of end markets makes it impossible to economically recycle plastic film at scale. Rather, as Adam Riddell—the Manager of the Environmental Management Office in the Department of Environmental Services for Arlington County, VA—has explained with respect to Arlington's recycling program, although the municipality collects all plastics and passes them along to MRFs, it is understood that entities downstream engage in a practice called "breaking the bale" whereby they buy a bale of mixed plastic and literally break it open to sort out all the plastic film and other undesirable plastics because they can save money by doing that additional sorting on their own if it means they can buy the mixed bale at a cheaper price than buying a bale of only desirable plastic. *Talking Trash Transcript*, *supra* note 6, at 12. Ultimately, the plastic film and other undesirable plastics collected in those systems still end up as waste, even if the municipality instructs consumers to put them in the municipal curbside bin. *Id.*

124. Similarly, the hard plastic clips and/or ties that hold Bimbo's bread bags closed would count as contamination for purposes of any effort to recycle the LDPE that makes up the bulk of Bimbo's bread bags.

125. Furthermore, sorting is not just about grouping plastics by resin type: Even among theoretically recyclable resins, MRFs still have to sort out materials that are non-recyclable for some reason apart from resin.

126. For example, the form of a product might render it non-recyclable, as with plastic bags, which municipal programs do not accept (regardless of resin) because their thin and flexible form makes them technically difficult and expensive to recycle considering that they frequently jam ordinary recycling machinery.

127. According to the National Waste & Recycling Association's Chief Operating Officer & Senior Vice President of Regulatory Affairs, Anne Germain, when plastic bags jam recycling machinery—which happens "multiple times a day"—"the entire plant has to be shut down [so workers can climb] on the machine with machetes and [] cut down those plastic bags to get them off," which significantly slows down and increases the costs of recycling.[18]

128. Stating the obvious, Germain observes: "[T]hat's a huge problem."[19]

129. The problem is even more pernicious because plastic film is an extraordinarily common contaminant in municipal recycling streams, both in Philadelphia and elsewhere.

130. To reprocess plastic bags, it is necessary to use special machinery designed to process plastic film in a particular way, which requires additional capital and operating costs that few in the recycling industry are willing to take on given the unrealistic economics of making a profit through plastic bag recycling at scale.

[18] *Id.* at 9.
[19] *Id.*

131. After all the sorting, professionals at the MRF create "bales" (essentially, large compressed cubes) of recyclables made of a given material (*e.g.*, bales of plastic objects made of a given resin type).

132. To have any chance of reaching end markets, bales of plastic resin must first be reprocessed into "nurdles" (small pellets) that may be used in manufacturing a new product.

133. Reprocessing bales of plastic into nurdles requires various mechanical and chemical processes—*e.g.*, cleaning, drying, shredding, further separation (by both aquatic buoyancy and wind-tunnel tests), and finally compounding (which is a combination of smashing and melting).

134. If the bales (or, downstream, the reprocessed resin nurdles) contain anything other than the particular resin desired—*e.g.*, any other resin types, food waste, oils, dirt, water, or anything else—they are considered contaminated.

135. End market buyers will tolerate only a minimal amount of contamination, because they are manufacturers and must take into account how much it will cost them to use the material to make something new (and whether doing so would be less profitable than using alternative materials, like virgin resin).

136. The average contamination level of collected recyclables in the United States is high—more than 20% nationwide. The same is true in Philadelphia.

137. Thus, professionals in the recycling industry have a daunting and expensive task: sorting and reprocessing materials so that the ultimate reprocessed commodity will not exceed buyers' contamination thresholds.

138. Significantly, relative to other products, Ziploc and Bimbo plastic bags are likely to have high contamination levels due to their product design (plastic film) and intended use (*e.g.*, storing food items).

139. Because of these technical realities—on top of economic realities, discussed more immediately below—although plastic bags may be theoretically recyclable, they are not recyclable on any significant scale.

4. Step 4: End Markets for Manufacturing with Reprocessed Material

140. If recycling professionals successfully convert plastic of a given resin type into nurdles of marketable quality and quantity, they then seek to sell those nurdles ultimately into the hands of some entity that will use the reprocessed material to manufacture a new product.

141. The price for which nurdles of a given resin type may be sold to end market buyers varies based on a range of factors, including not just what type of resin is being sold and how much, but also the contamination level, the relative availability and price of virgin plastic or other comparable materials, and consumer demand for products made of that type of recycled resin.

142. Recycling occurs only if the reprocessed nurdles reach a manufacturer and actually get used as the material for manufacturing a new product.

143. But—and this is the key problem with plastic recycling—there is and never has been any significant end market to buy most types of reprocessed plastic, including post-consumer reprocessed plastic film.

144. In the words of SCJ's Senior Director of Global Sustainability, Pamela Oksiuta, there currently is no significant end market for reprocessed plastic film because "it is perceived as inefficient and unprofitable."[20]

145. This well-established economic reality is the result of two reasons: reprocessed plastic film is typically (1) too low-quality and (2) too expensive to attract end market demand on any significant scale.

[20] Deanna Toto, *Plastics Recycling 2018: Committing to Recycling*, WASTE TODAY (Feb. 28, 2018), https://www.wastetodaymagazine.com/news/plastics-recycling-2018-brand-commitments/.

146. Regarding the first reason, the unique physical and chemical structure of plastic film made of low-density polyethylene makes it extraordinarily vulnerable to degradation in the course of being used by consumers and reprocessed through the recycling system. Thus, post-consumer reprocessed LDPE will typically be lower-quality than virgin LDPE.

147. As a result, in the rare contexts when a post-consumer plastic bag is reprocessed for recycling, the resulting commodity (nurdles of LDPE) typically is not marketed for reuse in another plastic film product, which would be difficult when using degraded reprocessed LDPE.

148. Rather, reprocessed plastic film typically is marketed for more limited uses—most often, as a composite material used under limited circumstances in construction for decking.

149. Considering that the possible uses of reprocessed plastic film are more limited than the uses of the virgin equivalent, even when plastic film does get reprocessed into material that is used in something new, that occurrence is not really "recycling"—rather, it is "downcycling."

150. Because reprocessed plastic film is less valuable than virgin material, the former is unlikely to reach any buyer and to get used in the manufacture of a new product.

151. The second reason there is no end market for reprocessed plastic film is that, even if it were as useful as its virgin counterpart, it is more expensive due to costs in collection, sorting, cleaning, shredding, separating, smashing, melting, packaging, marketing, distribution, etc.

152. Even Fisk Johnson, the CEO of SCJ, recognized in recent testimony before the U.S. Senate Committee on the Environment and Public Works that companies know "the cost of recycled plastic is significantly higher than virgin plastic" so companies are incentivized to buy virgin plastic to avoid a "competitive disadvantage."[21]

153. As a result, only a small minority of manufacturers are willing to buy reprocessed post-consumer plastic film (which is typically lower quality and more expensive) rather than virgin LDPE (which is typically higher quality and less expensive).

[21] Johnson Testimony, *supra* note 8, at p. 2.

154. So, even if it travels through most of the cycle, reprocessed plastic film might not reach a purchaser, and therefore might go to waste before completing even one cycle of recycling.

155. And even supposing that reprocessed plastic film does make it into a recycled-content product, it is exceedingly unlikely that it might complete that loop ever again. Contrary to consumer understandings and expectations, although in theory some plastic products might get recycled more than once under rare circumstances, it is not the case that any plastic product (especially a plastic bag) can be recycled very many times, because each cycle causes the material to degrade.

156. This reality that plastic film will rarely be recycled once, and almost never more than once, is both foreseeable and foreseen by product manufacturers like SCJ and Bimbo in light of the economic reality that there is no meaningful end market for reprocessed plastic film.

E. Private Collection Programs Do Not Make Plastic Bags Recyclable

157. Regarding some materials not accepted as recyclable through municipal programs, private entities have developed collection systems that invite consumers to go out of their way to donate the specified material to the appropriate program so that the material can be reprocessed and eventually remarketed at a profit.

158. For example, there are private collection programs for the recovery of valuable materials such as smartphones, lithium batteries, junk cars, and some types of valuable metals.

159. There are not many private collection programs for low-value materials, because private industry recognizes that doing so is unprofitable. However, there are private collection programs for at least one low-value material: plastic bags.

160. Although there are private collection programs for plastic bags, the absence of any significant end market for that material has made it so that the infrastructure necessary for reprocessing it on a significant scale does not exist.

161. Consequently, the vast majority of plastic bags deposited into those programs are foreseeably diverted to waste.

162. As a result, it is not the case that a substantial portion of consumers in Philadelphia (or anywhere else) have access to an established recycling program for plastic bags. Rather, all they have access to are drop-off boxes masquerading as recycling collection systems, but which actually function as trash cans in disguise.

163. Thus, there is no real possibility that a significant percentage of Ziplocs or Bimbo bread bags will complete even one cycle of recycling, regardless of the supposed availability of store drop-off or other private collection programs.

1. Private Store Drop-Off Programs, H2R Labeling, and Other Consumer-Facing Facades of Plastic Bag Recycling

164. For decades, some stores have offered in-store drop-off boxes for the collection of plastic bags. The idea is that consumers can go to those stores to drop off their used plastic bags, following which the collected bags are supposedly transported to facilities for recycling.

165. For more than a decade, consumer products companies have used various forms of marketing to tell consumers that they can recycle their plastic bags by dropping them off in an appropriate store drop-off box.

166. Some products just use language—sometimes accompanied by images—to instruct consumers to dispose of used bags at drop-off locations, without specifying more.

167. Some products, however, use H2R labels on their plastic bag packaging (such as the H2R label on Defendants' products), which are standardized labels combining language and images to instruct consumers to dispose of their plastic film in store drop-off boxes.

168. The H2R label for plastic bags prominently uses the familiar chasing arrows—suggesting not just recyclability, but infinite circularity, as in the mobius loop—around the phrase "Store Drop-off." The label also includes the phrase "Recycle if Clean & Dry," as well as the URL for the H2R website.

169. Starting in 2007, a website called bagandfilmrecycling.org started offering a nationwide directory of the locations of store drop-off boxes for recycling plastic bags.

170. At some point after H2R was established in 2013, the H2R website started providing a link to bagandfilmrecycling.org, so consumers could rely on that site's directory in order to find store drop-off boxes for recycling plastic bags.

171. Although the H2R label does not tell consumers where to find store drop-off locations, if a consumer were determined to recycle her plastic bags and happened to type the H2R URL into a web browser and correctly navigate through several web pages, the consumer would (at least historically, until late 2023) eventually find a link to bagandfilmrecycling.org, where she would find the directory of drop-off locations.

172. Still, store drop-off recycling is not what consumers think of when they see the chasing arrows symbol, and even if at times it has been possible for curious consumers to find a list of drop-off locations, those locations still are not convenient for recycling: Almost all consumers would have to get in a car to reach a drop-off location, and would have to carry with them all the used plastic film that they had for some time been compiling at home.

173. SCJ's Senior Director of Global Sustainability agrees: "We believe there is a better option than store take-back. It is not a very convenient option for consumers."[22]

174. And even if some consumers are aware of—and able and willing to resort to—that inconvenient option, relying on the drop-off system is an act of blind faith: As the Director of H2R has acknowledged, consumers have no independent ability to know what happens to their materials after collection.

175. Because consumer products companies are better positioned than consumers to understand where plastic film collected in drop-off boxes will most likely end up, consumers have no choice but to trust what they are told through companies' product labels and websites.

[22] Toto, *supra* note 20.

176. Although store drop-off programs and H2R labels are the most prominent consumer-facing facades of private programs for plastic bag recycling, another private collection program for plastic bags does exist: TerraCycle.

177. Through TerraCycle, some consumers may, under some circumstances, use the postal system to mail certain very specific types of plastic bags to TerraCycle, which supposedly would reprocess those bags so they could be recycled into something new.

178. Not all consumers may submit plastic bags to TerraCycle's product programs—rather, consumers must first create an account with TerraCycle before TerraCycle product programs will accept their bags.

179. Furthermore, not all plastic bags are recyclable through TerraCycle's product programs—rather, each TerraCycle product program only accepts plastic bags related to designated products from a finite list of companies that typically have to pay to be part of the TerraCycle program.

180. TerraCycle does not have any product program to accept any Ziploc bags.[23]

181. Products that are affiliated with a TerraCycle product program (like some Bimbo products) are permitted to use TerraCycle's standardized label—one that, like the chasing arrows of the RIC, uses a mobius-loop-inspired symbol representing infinite circularity.

Figure 8[24]

[23] Beyond TerraCycle's programs for particular products or brands, TerraCycle also sells "Zero Waste Boxes" for certain categories of products, including one for "Plastic Packaging," which encompasses Ziplocs. A consumer could order an empty TerraCycle box for "Plastic Packaging," put Ziploc bags in it, and mail it back to TerraCycle. But to do so is not cheap: The consumer would have to pay TerraCycle between $105 and $251 to accept just one box. *Shop our Zero Waste Boxes*, TERRACYCLE, https://shop.terracycle.com/en-US/products/plastic-packaging-zero-waste-boxes (last visited May 6, 2025). TerraCycle also offers an "All-in-One" Zero Waste Box—in which consumers could also deposit other types of products, beyond plastic packaging—but for the even greater price of between $241 and $581 per box. *Shop our Zero Waste Boxes*, TERRACYCLE, https://shop.terracycle.com/en-US/products/no-separation-zero-waste-boxes (last visited Aug. 13, 2025). Even many of the most environmentally conscious consumers likely find these recycling options prohibitively expensive. Thus, TerraCycle's Zero Waste Boxes are not an accessible or realistic means of recycling for the vast majority of Philadelphians.

[24] TERRACYCLE, https://www.terracycle.com/en-US/ (last visited Aug. 13, 2025).

182. However, many or most of Bimbo's products affiliated with TerraCycle do not even include any TerraCycle label or references, but instead still use only a RIC and/or H2R label.

183. And even regarding those Bimbo products that do use a TerraCycle label, that label is typically hidden among other images and information—including a RIC, complete with the familiar chasing arrows—and does not even explain to consumers how to recycle via TerraCycle.

Figure 9[25]

Figure 10[26]

184. So, even if an ordinary consumer were able to find the TerraCycle label (alongside the familiar chasing arrows) on the bread bag of a Bimbo product, she would most likely and reasonably (but nevertheless erroneously) interpret that label as meaning she can recycle the bread bag via curbside recycling (which would result in the bag going to waste).

185. Furthermore, even if a consumer somehow were to know how to recycle via TerraCycle and were to set up an account with TerraCycle, the task of mailing Bimbo's bags in to TerraCycle is not as simple as it seems: Even among Bimbo products that TerraCycle may accept, not all products can be mailed in together—rather, if a consumer has collected bags from Thomas, Marinela, and Entenmann's Little Bites products, for example, she would have to send three separate packages to TerraCycle, each containing only the products from one of those brands.

[25] Original image captured by attorneys on Feb. 25, 2025 (red annotation added). On file upon request.
[26] *Arnold's Bread*, OPEN FOOD FACTS, https://world.openfoodfacts.org/product/0073410957561/arnold-s-leto-bread (last accessed Aug. 18, 2025).

Failure to do so would count as non-compliance with TerraCycle's Bimbo product programs' requirements, and would likely result in all or most of the bags going to waste.

186. The H2R label and labels for other private programs that Defendants use to market their products mislead consumers into believing they can buy those products without contributing to plastic waste so long as they try to recycle the plastic bags. In reality, however, notwithstanding consumers' best intentions and efforts, most of those plastic bags end up going to waste.

187. When the FTC recently invited knowledgeable persons representing diverse entities and perspectives related to the recycling industry to speak in a series of panels on deceptive recyclability marketing, many speakers agreed that although plastic bags may be technically recyclable, they are not recyclable in the more meaningful sense that consumers understand when they are told something is recyclable: that if the consumer makes a thoughtful effort to dispose of it correctly, it will not be sent to waste.

188. Ironically, the Director of H2R summarized this point succinctly: "[T]heoretically anything can for the most part be recycled into something new with the right technology. However, that's why . . . end markets . . . [are] so important, because even if things can be theoretically recycled, we need to also understand that they are being recycled at scale, that there's an end market that exists for them."[27]

189. And this consideration of end markets—which function as a foreseeable bottleneck on any recycling stream—is key not just because it is an economic reality affecting the industry, but also because consumers' understanding of recycling and expectations when they put something in the recycling stream presuppose the existence of those end markets.

190. As a speaker on one of the FTC's panels explained:

> If you're making the claim that it's recyclable, then make sure that . . . [i]f the consumer puts it in the bin, it has a route, it's like being dropped in the little river and it's going to get there, it's going to flow along, not that it's going to be sorted out and just it's going to be [sic] one more stop on the way to the landfill. . . . I think

[27] *Talking Trash Transcript, supra* note 6, at 35.

> where the rubber hits the road is plastic packaging of all kinds now, bags of every kind, film, number four . . . that's where people are deeply confused and where marketing labels are taking advantage of that confusion to hit people's feel-good button and basically continue to directly or indirectly promote wish-cycling and promoting wish-cycling takes consumer's focus off of the need to actually reduce plastic production if we're ever going to get a handle on the plastic pollution problem.[28]

191. Noting that plastic film is the number one contaminant causing problems at MRFs, another speaker rhetorically asked the obvious: "Is this [store drop-off labeling] confusing consumers? Are they putting this in the blue [curbside recycling] bin because of these store drop-off programs?" "Are these programs more than just [a] collection hoax?"[29]

192. The lack of significant end markets for reprocessed plastic film, and the related lack of infrastructure to reprocess significant amounts of plastic film, explain the inevitable and foreseeable reality that even when consumers have gone to great lengths to deposit plastic bags in the appropriate private collection system, most often those plastic bags have been sent to waste and have not been recycled into something new.

2. Private Plastic Bag Recycling Programs Have Been Exposed as a Hoax to Deceive Consumers

193. In 2023, multiple news teams separately investigated plastic bag store drop-off programs, and each released findings showing that even if consumers drop off plastic bags in appropriate store drop-off boxes, almost all of them are sent to waste.

194. For example, an ABC News team superglued small tracking devices inside bundles of LDPE plastic bags and dropped off those bundles of bags at forty-six store drop-off locations throughout the United States (including four in Philadelphia).

195. None of the bundles dropped off at stores in Philadelphia ever reached an appropriate reprocessing facility.

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[28] *Id.* at 51 (Raissa Lerner, Deputy Attorney General, California OAG, Environmental Section).
[29] *Id.* at 54–55 (Peter Blair, Policy Director, Just Zero).

196. Nationwide, less than 10% of plastic bags tracked by the investigation ended up at a reprocessing facility that has the technical capacity to reprocess plastic bags.

197. And even regarding the bags that made it to appropriate facilities, whether those bags actually got reprocessed and sold to end markets for use in something new is unknown—and, indeed, unlikely given the economic realities described above that make plastic film recycling systems impractical and unprofitable.

198. A similar investigation conducted by Bloomberg Green used trackers to follow plastic bags dropped off at 30 locations, and found only four of those trackers ended up at recycling facilities.

199. Whether any of those facilities have the capacity to process plastic film is unknown.

200. In late 2023, shortly after the ABC and Bloomberg news teams released their findings, the then-existing directory of drop-off locations—bagandfilmrecycling.org, recommended on H2R labels and elsewhere—was abruptly taken off-line.

201. The CEO of the company that ran the bagandfilmrecycling.org directory has since explained that plastic film recycling is "more of an illusion" than reality, "because there is an imbalance in supply and demand[.]"[30]

202. When asked why she took down the directory, she explained it had become clear the directory was not reliable, and that "[c]ontinuing to offer a resource without real commitment from the industry . . . without any integrity[,] . . . I just couldn't be a part of it anymore[.]"[31]

203. From late 2023 until October 2024, there did not exist any reliable directory of locations where consumers could find drop-off boxes (even if only trash cans in disguise).

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[30] Evan Simon, *Plastic Recycling Directory Ends, Citing Lack of 'Real Commitment from Industry'*, ABC NEWS (Dec. 4, 2023), https://abcnews.go.com/US/national-plastic-recycling-directory-investigated-abc-news-offline/story?id=105282660 (quoting Nina Bellucci Butler, CEO of Stina Inc.).
[31] *Id.*

204. Still, SCJ and Bimbo continued to market their plastic bags as recyclable, including with labels that would lead their consumers to the discredited bagandfilmrecycling.org directory, where consumers would find an effectively abandoned domain.

205. Even if consumers were to visit the H2R website and correctly navigate through a series of webpages to find info on the location of plastic bag drop-off boxes, for some time consumers would find a link to the discredited and abandoned bagandfilmrecycling.org domain.

206. Shortly before the end of 2023, the H2R webpage on this topic changed so as only to provide a list of stores that "may have drop-off points available."

207. In fact, many did not have drop-off points at all, and whether any of the listed drop-off points would actually lead to recycling rather than waste could not be confirmed (even by H2R).

208. In October 2024, after approximately one year of leaving consumers with no way to find drop-off locations, the H2R website was slightly revised so as to direct consumers (at least, those who visited the website) to a new directory offered by NexTrex.

209. The NexTrex directory is affiliated with a company called Trex, which makes decks for houses using a composite material made of recycled plastic film.

210. The Trex website says that Trex is the largest end user of post-consumer recycled plastic film in the United States.

211. But even Trex's Senior Director of Material Management, David Heglas, acknowledges that, "[j]ust because a package has that label on it, doesn't mean it will be recycled. The material may be recyclable, but there's no demand for it." Heglas further explained that "[t]here's pressure on companies to put recycling labels on everything," but that, considering the lack of end markets, "[a]ll the claims the companies are making are just greenwashing." In conclusion, Heglas acknowledged that plastic bag "[r]ecycling's failed."[32]

[32] K. Oanh Ha, *Don't Trust Plastic Snack Wrappers with Recycling Instructions*, BLOOMBERG GREEN (Sept. 29, 2023), https://www.bloomberg.com/news/features/2023-09-29/us-store-drop-off-plastic-recycling-often-ends-up-in-landfills.

212. Similarly, representatives of H2R have acknowledged that plastic film end markets cannot accommodate all the plastic film that is marketed as recyclable using the H2R label: "Store Drop-Off is the only recycling option for flexible packaging at scale," but "the ability of the Store Drop-off stream to alleviate the packaging industry's end-of-life challenges with flexible packaging will be likely limited long term."[33]

213. TerraCycle's less well-known mail-in recycling program has likewise suffered scandal. In 2021, TerraCycle settled a lawsuit alleging that the company had been deceiving consumers. The suit was based on the fact (which TerraCycle admitted) that TerraCycle's programs for product categories had limited capacities (which TerraCycle labeling did not make clear), and that TerraCycle was not actually recycling all of the covered materials that consumers properly mailed in—rather, TerraCycle would send many of those materials to waste.

214. Under the settlement, TerraCycle committed to increased transparency about recycling outcomes starting in 2023, and today claims that all eligible materials sent to TerraCycle are in fact recycled—at least, so long as those materials are sent to TerraCycle in an appropriate way and otherwise satisfy TerraCycle's standards.

215. Although TerraCycle's mail-in collection program may result in better recycling outcomes than the store drop-off programs recommended by Defendants' H2R labels, Bimbo's confusing use of the TerraCycle label (alongside the familiar chasing arrows) causes ordinary consumers to dispose of Bimbo's bags in ways that cannot result in those bags being recycled.

F. Defendants' Deceptive Conduct

216. Defendants are engaged in a coordinated campaign of parallel deceptive marketing about the recyclability of their plastic bags, and the recyclability of plastic film generally.

217. Defendants' campaign of deception involves not only their common use of some identical labels, symbols, and language, but more generally their common course of conduct and

[33] *Id.*

strategy involving unfair and/or deceptive acts and practices pursued by both Defendants in a similar manner over the course of a series of transactions and occurrences toward a common goal: misleading consumers to believe they can buy plastic bags without contributing to plastic waste, so that consumers will buy more of their products and pay more for them.

1. SCJ Deceptively Markets Ziploc Bags as Recyclable in Philadelphia

218. At all times relevant to this litigation, Ziploc bags have been sold in Philadelphia and marketed as recyclable. SCJ's deceptive marketing of Ziploc bags occurs through language, symbols, and other images on the packaging in which Ziploc bags are sold to consumers, as well as on the internet and through other channels designed to reach consumers.

219. SCJ started using a H2R label on at least some Ziploc products in 2013.

220. At least as early as 2014, SCJ was marketing Ziplocs as recyclable with a large graphic (covering the perforated side of the package, which consumers use to access the bags) depicting a green landscape, children on a playground, and the following exclamation in large, bold text: "**Ziploc brand bags can be recycled!**" Below that, the graphic told consumers (in fine print) that they could recycle Ziploc bags by taking them "to drop off bins at participating retailers in the United States."

Figure 11[34]

221. More recently, in 2024 almost all plastic Ziploc bags were packaged in boxes with one or another version of the misleading label appearing on the right side of this page (see Figure 11). That label describes Ziploc bags as recyclable—indeed, it uses that language three times.

222. Although the label acknowledges (in fine print) that Ziploc bags "may not be recyclable in your area," that admission appears in a footnote immediately after the URL for a

[34] *Ziploc Seal Top Bags, Freezer, Quart*, RALEYS, https://www.raleys.com/product/60679945/ziploc-seal-top-bags-freezer-quart (last accessed Aug. 13, 2025).

store drop-off locator website, suggesting that if "your area" has a drop-off location, then Ziploc bags are recyclable in your area.

223. Additionally, the store drop-off locator URL on Ziploc packaging is bagandfilmrecycling.org—the site that was discredited by investigations and taken down in 2023.

224. Along with the deceptive recyclability language and images in that graphic, as of 2024 most or all Ziploc packaging additionally included a deceptive H2R label marketing the product as recyclable, complete with the universally recognized symbol of recyclability: the chasing arrows.

225. Upon information and belief, SCJ has used variations of these symbols, words, and labels of recyclability on the packaging of all or almost all of its plastic Ziploc bags sold in Philadelphia for at least the past six years through the present.

226. Ziploc's Frequently Asked Questions webpage describes Ziploc's plastic film bags as "recyclable in some areas. Please check locally for plastic film recycling options near you."[35]

227. Significantly (and confusingly), however, when Ziploc's separate sustainability webpage lists Ziploc's recyclable products—including its recyclable paper bags and its recyclable plastic machine washable storage containers called "Endurables" (which are not plastic film products)—that list makes no mention of Ziploc's plastic film bags. Similarly, although the Frequently Asked Questions section appearing on that separate sustainability webpage answers the question "How do you recycle Endurables and Paper Bags?," that page notably omits any mention of recycling Ziploc's most high-selling product: its plastic film bags.[36]

228. SCJ's separate website also markets Ziplocs as recyclable. The sustainability section of SCJ's site has five "hubs" about plastic waste, each containing subpages with dozens of articles and videos, including ones touting SCJ as a "champion" of plastic film recycling.

[35] *Frequently Asked Questions*, ZIPLOC, https://ziploc.com/en-us/faq (last visited Aug. 13, 2025).
[36] *Sustainability*, ZIPLOC, https://ziploc.com/en-us/sustainability (last visited Aug. 13, 2025).

229. Among SCJ's articles on plastic film recycling, several highlight a pilot project for curbside collection of plastic film (which is propped up by SCJ funding) in a few small municipalities, in an effort to make people think plastic bag recycling is feasible on a greater scale.

230. One of those articles opens with the following line: "Did you know there are 18,000-plus stores around the United States that accept plastic film for recycling? That means items like . . . Ziploc® brand bags don't need to end up in landfills."[37]

231. Ironically, SCJ has a long history of criticizing drop-off programs (like those recommended on Ziploc's label) as inaccessible for consumers, such as through the comments of SCJ's Senior Director of Global Sustainability at the Plastics Recycling Conference in 2018.

232. Additionally, just last year SCJ acknowledged in an Instagram post that plastic film is not recyclable and that attempts to recycle it actually undermine plastic recycling efforts.

Figure 12[38]

[37] *How Do You Increase Plastic Film Recycling? Make It Easier!*, S.C. JOHNSON (Apr. 5, 2021), https://www.scjohnson.com/en/stories/sustainable-world/plastic-reuse-and-recycling/2021/how-do-you-increase-plastic-film-recycling-make-it-easier.

[38] S.C. Johnson (@scj), INSTAGRAM (Jan. 3, 2024), https://www.instagram.com/p/C1ps2daggD0/.

2. Bimbo Deceptively Markets Its Bread Bag Packaging as Recyclable in Philadelphia

233. At all times relevant to this litigation, Bimbo products in bread bags have been sold in Philadelphia and marketed as recyclable. Bimbo's deceptive marketing of bread bags occurs through language, symbols, and other images on the packaging in which Bimbo products are sold, as well as on the internet and through other channels designed to reach consumers.

234. Historically, all or almost all Bimbo products in plastic film packaging used the RIC #4 symbol (complete with the chasing arrows) imprinted on the packaging, near the opening-end of the plastic bread bag, such that consumers would be likely to see that symbol when opening or closing the bag.

235. In recent years, Bimbo has transitioned the packaging of many of its products so as to also or alternatively use an H2R label (identical to that on Ziploc packaging) instructing consumers to dispose of their plastic bread bags into store drop-off boxes.

236. Also in recent years, Bimbo started additionally or alternatively using TerraCycle labels on some of its bread bags, with those TerraCycle labels appearing alongside a RIC complete with chasing arrows. As explained above, that labeling is confusing for ordinary consumers because it does not explain how to recycle via TerraCycle (which is not intuitive), and the presence of a RIC with chasing arrows causes ordinary consumers reasonably (but erroneously) to believe that they can recycle Bimbo's bread bags via municipal curbside recycling.

237. Bimbo's webpage titled "Our History" highlights its partnership with TerraCycle and says that "all packaging would be sustainable by 2025" because TerraCycle makes it possible to recycle Bimbo's bread, bun, bagel, and English muffin plastic bag packaging.

238. However, not "all" of Bimbo's products fall under those headings, and still today some Bimbo products are packaged in materials that are not accepted by any of TerraCycle's Bimbo product programs.

239. Bimbo's website also has a page outlining its sustainability goals and achievements, organized around three core headings.

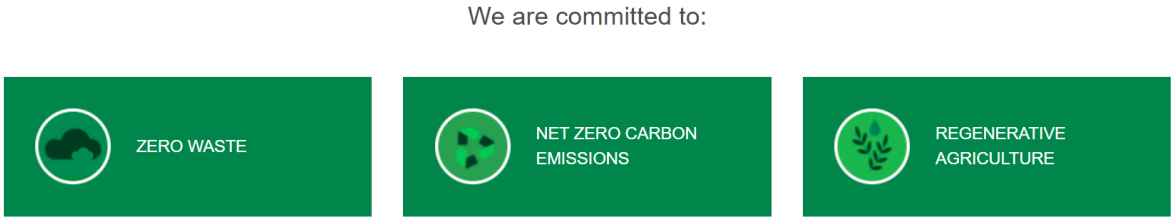

Figure 13[39]

240. Under the first heading—"Zero Waste"—Bimbo acknowledges that "[w]e know the negative impacts non-recyclable packaging, like plastic, has on our environment."[40]

241. But on that same page, Bimbo promotes many of its products as being recyclable by means of Bimbo's partnership with TerraCycle.

242. Additionally, all or almost all of Bimbo's brands have their own sustainability webpages, most or all of which make misleading claims about the recyclability of their plastic film packaging.

243. Bimbo also uses deceptive marketing in other contexts to suggest to consumers that Bimbo is seriously committed to plastic recycling, including marketing specifically targeting Philadelphia consumers. For example, Bimbo sponsors Philadelphia's professional soccer team—The Union—and in 2018 Bimbo grabbed media attention by having the Union's players wear special jerseys made of recycled plastic for their uniform on Earth Day (which, ironically, were therefore single-use plastic uniforms).

[39] *Baked for Nature*, BIMBO BAKERIES USA, https://www.bimbobakeriesusa.com/baked-for-nature (last visited Aug. 13, 2025).
[40] *Id*.

V. CAUSE OF ACTION

A. Violations of The Consumer Protection Ordinance

244. Plaintiff incorporates the allegations in all prior paragraphs in this Complaint as if fully set forth herein.

245. The CPO provides that "[i]t is unlawful for any person to engage in unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce directly or indirectly impacting one or more individuals in the City." Phil. Code § 9-6302(1).

246. The CPO defines "person" as "[n]atural persons, corporations, . . . and any other legal entities." Phil. Code § 9-6301(1)(a).

247. Each of the Defendants is a corporation and therefore qualifies as a person within the meaning of the CPO.

248. The CPO defines "unfair methods of competition or unfair or deceptive acts or practices" as "[a]ny one or more of" twenty-two possible qualifying acts, including the following:

> (.5) Representing that goods or services have . . . characteristics . . . [or] benefits . . . that they do not have[;] . . .
>
> (.7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; . . .
>
> (.20) The use, in any statement,[41] of exaggeration, innuendo, or ambiguity as to a material fact, or the failure to state a material fact, if such use of, or failure to state, a material fact deceives or tends to deceive; . . .
>
> Phil. Code § 9-6301(1)(d).

249. In addition to the aforementioned qualifying acts, the CPO also includes in the same list a broad residual category defined as follows: "Engaging in any other fraudulent or

[41] The CPO defines the term "[s]tatement" as "[a]ny oral, written, digital, or electronic statement, visual description or other representation or omission of any kind made in connection with trade or commerce." Phil. Code § 9-6301(1)(b). SCJ's and Bimbo's language and symbols on packaging, websites, social media, and elsewhere constitute "statements" within the meaning of the CPO.

deceptive conduct which creates a likelihood of confusion or of misunderstanding." Phil. Code § 9-6301(1)(d)(.22).

250. SCJ's and Bimbo's recycling-related language and symbols on packaging, on the internet, and elsewhere regarding their plastic bags is unfair and/or deceptive within the meaning of the CPO.

251. The phrase "[t]rade or commerce" is defined as "[t]he advertising, offering for sale, lease, rental, or distribution, or the sale, lease, rental, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated." Phil. Code § 9-6301(1)(c).

252. Defendants' deceptive and unfair marketing regarding the recyclability of their products that they sell in Philadelphia counts as acts or practices in the conduct of trade or commerce within the meaning of the CPO.

253. Defendants' deceptive acts or practices in the conduct of trade or commerce has involved and continues to involve marketing displayed in Philadelphia that reached many Philadelphians, and therefore affected directly or indirectly persons in this City.

254. The CPO equips the City with a public right of action to enforce the CPO's prohibitions: "The City, through the Law Department, may file an action in the name of the City in any court of competent jurisdiction against any person or persons alleged to have violated this Chapter, seeking relief under this Chapter, including restitution for persons aggrieved by the violation." Phil. Code § 9-6303(2).

255. Remedies available upon proof of a violation of the CPO include the following:

(1) Injunctive relief and such other equitable relief, as appropriate.

(2) *Civil penalties.* Each violation of this Chapter shall be punishable by a civil penalty of $2,000.

(3) *Compensatory damages and restitution.* In any action filed by the City, a violator of this Chapter shall be liable to any person aggrieved by the violation for actual damages caused and restitution of all monies, property, or other

things of value, or proceeds thereof, received directly or indirectly as a result of such violation.

(4) *Attorney's fees and costs.* In any action filed under this Chapter in which the City prevails, the City shall be entitled to reimbursement for attorney's fees and costs, including the cost of an investigation.

Phil. Code § 9-6304.

256. For purposes of identifying a violation and calculating statutory or other damages, the CPO provides as follows:

> Each individual statement, description, or other representation or omission that constitutes an unfair method of competition or unfair or deceptive act or practice shall give rise to a distinct and independent violation of this Chapter. Violations shall be further multiplied by one of the following, whichever is greater: (a) the number of days on which an individual statement, description or other representation or omission that constitutes an unfair method of competition or unfair or deceptive act or practice is distributed, broadcast, posted, published, or otherwise exposed to the public, or (b) the number of Philadelphia consumers reached by such statement, description or other representation or omission.

Phil. Code § 9-6302(3).

257. For each of Defendants' products sold in Philadelphia that provide consumers with information about their plastic bags by means of any language, symbols, or other indicia of recyclability—including any chasing arrows or comparable triangular symbols, even if those chasing arrows or triangular symbols appear around a number in the context of a RIC—that language, symbol, or other indicia of recyclability constitutes an unfair and/or deceptive recyclability claim, and a distinct and independent violation of the CPO.

258. Additionally, or alternatively, each of Defendants' products sold in Philadelphia with labeling or other marketing recommending the consumer dispose of their plastic bags via private recycling programs—whether that labeling or other marketing appears in the form of an H2R label, symbols or language indicative of TerraCycle, or something else—constitutes an unfair and/or deceptive recyclability claim, and a distinct and independent violation of the CPO.

259. Each of those statements on each product sold here reached one or more Philadelphia consumers.

260. Additionally, each of Defendants' distinct statements, descriptions, or representations or omissions on their own, their subsidiaries', their brands', or other entities' webpages, social media posts, blog entries, or other online contexts regarding the recyclability of Defendants' plastic bags constitutes an unfair and/or deceptive recyclability claim, and a distinct and independent violation of the CPO.

261. Each of those distinct statements, descriptions, or representations or omissions in online contexts reached consumers in Philadelphia, and each was available for consumers to access on the internet for some number of days.

262. The CPO has a limitations period of six years, and may be enforced retroactively. Phil. Code §§ 9-6306, 9-6307.

263. Even prior to the enactment of the CPO, Defendants were on notice that their deceptive marketing was unlawful because that marketing violates the broad prohibitions under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq*.

264. Defendants have sold plastic film products or products in plastic film packaging in Philadelphia while marketing those products in one or another unfair or deceptive way with respect to the recyclability of that plastic film for all of the past six years.

265. Defendants continue to sell their plastic film products or products in plastic film packaging in Philadelphia while marketing those products in unfair or deceptive ways with respect to the recyclability of that plastic film.

266. Accordingly, the City brings this action against SCJ and Bimbo for their unfair and/or deceptive marketing in violation of the CPO.

VI. PRAYER FOR RELIEF

Wherefore, the City demands judgment on the Cause of Action against Defendants, jointly and severally, awarding the City any and all remedies provided for under the CPO, including:

i. A declaratory judgment finding the Defendants' marketing related to the recyclability of their plastic film products or packaging to be unlawful as an unfair and/or deceptive violation of the CPO;

ii. An injunction ordering the Defendants to revise their marketing related to the recyclability of their plastic film products or packaging in ways that will eliminate the unfair and/or deceptive character of their marketing and affirmatively cure the public misunderstandings that have been caused by their unfair and/or deceptive marketing;

iii. Civil penalties, consistent with the CPO, for each of Defendants' violations of the CPO's prohibition on unfair or deceptive acts and practices affecting Philadelphia consumers at any time in the past six years and continuing through the entry of judgment in this Action;

iv. Compensatory damages in an amount sufficient to fairly and completely compensate all damages, costs, and losses for the injuries sustained by the City and/or its consumers as a direct or indirect consequence of Defendants' unfair and/or deceptive conduct;

v. Restitution of all losses of monies, property, or other things of value sustained by the City and/or its consumers as a direct or indirect consequence of the Defendants' unfair and/or deceptive conduct;

vi. Disgorgement of the Defendants' proceeds received directly or indirectly as a result of Defendants' unfair and/or deceptive conduct;

vii. Punitive damages;

viii. Interest, costs, delay damages, and attorneys' fees (including costs related to the investigation); and

ix. Such other and further relief as this Court deems just and proper.

Dated: September 24, 2025

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