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5  
6 Attorneys for Defendant KEURIG  
GREEN MOUNTAIN, INC.

7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 KATHLEEN SMITH, on behalf of herself  
and all others similarly situated,

12 Plaintiff,

13 v.

14 KEURIG GREEN MOUNTAIN, INC.; and  
15 DOES 1 through 100, inclusive,

16 Defendants.

Case No.

[Removal from the Superior Court of the  
State of California in and for the County  
of Alameda, Case No. RG18922722]

**NOTICE OF REMOVAL OF CLASS  
ACTION BY DEFENDANT KEURIG  
GREEN MOUNTAIN, INC.**

**[28 U.S.C. §§ 1332(d) AND 1441]**

[Filed Concurrently with  
Appendix of State  
Court Pleadings and Documents;  
Certificate of Interested  
Parties; and Civil Cover Sheet]

Complaint filed: September 28, 2018  
Trial Date: None Set

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1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO**  
2 **PLAINTIFF KATHLEEN SMITH AND HER COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C §§ 1441, 1446 and 1453,  
4 and in accordance with 28 U.S.C. §§ 1332 and 1711, defendant Keurig Green Mountain,  
5 Inc. (“Defendant” or “Keurig”) hereby removes this action—with reservation of all  
6 defenses and rights—from the Superior Court of the State of California for the County of  
7 Alameda, Case No. RG18922722, to the United States District Court for the Northern  
8 District of California. Removal is proper on the following grounds:

9 **BACKGROUND**

10 1. Plaintiff Kathleen Smith (“Plaintiff”), individually and on behalf of others  
11 similarly situated, filed a Class Action Complaint (“Complaint”) against Keurig in the  
12 Superior Court of the State of California, County of Alameda, Case No. RG18922722, on  
13 September 28, 2018. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all  
14 process, pleadings and orders served upon Defendant as of the date of this filing are  
15 attached to the concurrently-filed Appendix of State Court Pleadings and Documents  
16 (“Appendix”).

17 2. Keurig is the only named defendant in the Complaint.

18 3. Plaintiff asserts five causes of action against Keurig on behalf of herself and  
19 those similarly situated: Breach of Express Warranty (Compl., ¶¶ 41-49); violation of the  
20 California Consumer Legal Remedies Act, Cal Civ. Code § 1750 et seq. (“CLRA”)  
21 (Compl., ¶¶ 50-56); violation of the “fraudulent” prong of the California Unfair  
22 Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”) (Compl., ¶¶ 57-62);  
23 violation of the “unlawful” prong of the UCL (Compl., ¶¶ 63-71); and violation of the  
24 “unfair” prong of the UCL (Compl., ¶¶ 72-81).

25 **GROUND FOR REMOVAL: CLASS ACTION FAIRNESS ACT**

26 4. Removal is proper pursuant to 28 U.S.C. §§ 1441, 1446 and 1453 because  
27 this Court has subject matter jurisdiction over this action and all claims asserted against  
28

///

1 Defendant pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.  
2 §1332(d).

3 5. CAFA reflects Congress’ intent to have federal courts adjudicate substantial  
4 class action suits brought against out-of-state defendants. *See Std. Fire Ins. Co. v.*  
5 *Knowles*, 568 U.S. 588, 595 (2013) (observing that “CAFA’s primary objective [is] . . .  
6 ensuring ‘Federal court consideration of interstate cases of national importance’”)  
7 (citation omitted).

8 6. “Under CAFA, federal courts have original diversity jurisdiction over class  
9 actions where the aggregate amount in controversy exceeds \$5,000,000, where the  
10 putative class size exceeds 100 persons, and where, among other possibilities, ‘any  
11 member of a class of plaintiffs is a citizen of a State different from any defendant.’” *King*  
12 *v. Great Am. Chicken Corp.*, No. 18-cv-55911, 2018 U.S. App. LEXIS 25300, at \*6-7  
13 (9th Cir. Sept. 6, 2018); *see also* 28 U.S.C. §§ 1332(d)(2)(A).

14 7. This action is a civil class action over which this Court also has original  
15 jurisdiction under 28 U.S.C. § 1332(d).

16 **A. Defendant Satisfies Its Burden on Removal.**

17 8. In removing an action to federal court under CAFA, a defendant is not  
18 required to submit evidence that the jurisdictional elements are satisfied. To the contrary,  
19 a “defendant’s notice of removal need include only a plausible allegation” that the CAFA  
20 requirements are satisfied. *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct.  
21 547, 554 (2014); *see also Baretich v. Everett Fin., Inc.*, No. 18-cv-1327, 2018 WL  
22 4579857, 2018 U.S. Dist. LEXIS 164609, at \*6 (S.D. Cal. Sept. 25, 2018) (observing that  
23 “[d]efendant provided a ‘short and plain statement of the grounds for removal’ as  
24 required, and was not obligated to submit evidence in support of its notice of removal . . .  
25 there is no obligation on Defendant to submit any declarations or ‘summary-judgment  
26 type evidence’ in support of” its allegations that jurisdictional requirements under CAFA  
27 are satisfied for purposes of removal) (citation omitted).

28 ///

1           9.       Additionally, “under CAFA, the jurisdictional allegations in the complaint  
2 can be taken as a sufficient basis, on their own, to resolve questions of jurisdiction where  
3 no party challenges the allegations.” *Mondragon v. Capital One Auto Fin.*, 736 F. 3d  
4 880, 886 (9th Cir. 2013).

5           10.       Defendant satisfies its burden. Specifically, while Defendant expressly  
6 reserves all of its rights, and for purposes of meeting the jurisdictional requirements for  
7 removal only, Defendant submits that this action meets all requirements for federal  
8 jurisdiction under CAFA.

9 **B.     This Case is a Putative Class Action.**

10           11.       CAFA applies “to any class action before or after the entry of a class  
11 certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8).

12           12.       This case is a putative “class action” under CAFA because it was brought  
13 under a state statute or rule, namely California Code of Civil Procedure § 382, authorizing  
14 an action to be brought by one or more representative persons as a class action. *See* 28  
15 U.S.C. § 1332(d)(1)(B); *see also* Compl., ¶ 34 (“Plaintiff brings this suit individually and  
16 as a class action pursuant to [Cal. Code Civ. Proc.] § 382 on behalf of herself and the  
17 following Class of similarly situated individuals . . .”).

18 **C.     The Proposed Class Consists of More Than 100 Members.**

19           13.       Plaintiff asserts that she “brings this suit . . . as a class action pursuant to  
20 [Cal. Code Civ. Proc.] § 382” and seeks to represent a class of “[a]ll persons who  
21 purchased [Keurig’s] Products<sup>1</sup> for personal, family, or household purposes in California  
22 (either directly or through an agent) during the applicable period of statute of limitations.”  
23 *See* Compl., ¶ 34.

24           14.       Plaintiff asserts that she “is unable to state the precise number of potential  
25 members of the proposed class because that information is in the possession of  
26 Defendants. However, the number of class Members is so numerous that joinder would  
27

28 <sup>1</sup> The Complaint defines the “Products” as “plastic single serve pods that contain coffee and that are labeled as ‘recyclable’”, and that are “advertised, marketed, and sold” by Keurig. *See* Compl., ¶ 2.

1 be impracticable. The exact size of the Class and the identity of its members will be  
2 readily ascertainable from the business records of Defendants and Defendants’ retailers  
3 as well as Class members’ own records and evidence.” *See id.*, ¶ 35.

4 15. On information and belief, Keurig avers that the purported class contains  
5 well over 100 putative members.

6 16. Accordingly, while Defendant denies that class treatment is permissible or  
7 appropriate, for jurisdictional purposes, the proposed class consists of more than 100  
8 members.

9 **D. Minimal Diversity Exists Because Defendant and Plaintiff (and other**  
10 **Putative Class Members) Are Not Citizens of the Same State.**

11 17. The minimum diversity of citizenship criteria under CAFA requires that the  
12 plaintiff or any member of the putative class is a citizen of a state that is different from  
13 that of any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

14 18. Plaintiff “is a resident of Lafayette, California.” *See* Compl., ¶ 6.

15 19. The putative class also necessarily includes individuals who are citizens of  
16 California. *See id.*, ¶ 34 (defining the class as “all persons who purchased the Products  
17 for personal, family, or household purposes *in California*”) (emphasis added).

18 20. Plaintiff alleges Keurig to be “a Delaware corporation, with its principal  
19 place of business in Waterbury, Vermont.” *See id.*, ¶ 7. Plaintiff is correct that Keurig  
20 is incorporated in Delaware, but mistaken as to Keurig’s principal place of business.  
21 Keurig’s principal place of business and corporate headquarters is located in, at all  
22 relevant times has been located in, Burlington, Massachusetts.

23 21. Accordingly, Keurig is and has been at all relevant times a citizen of the  
24 states of Delaware and Massachusetts. *See* 28 U.S.C. § 1332(c)(1) (“[A] corporation shall  
25 be deemed to be a citizen of any State by which it has been incorporated and of the State  
26 where it has its principal place of business.”); *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81  
27 (recognizing that a corporation’s principal place of business is where its “high level  
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1 officers direct, control, and coordinate” its operations and will “typically be found at its  
2 corporate headquarters”).

3 22. Defendant is not and has never been a citizen of the State of California.

4 23. Defendant is not aware that any Doe Defendants have been served with a  
5 copy of the Summons and Complaint or been named as parties to the state court action.  
6 The Court may disregard unidentified Doe Defendants for purposes of determining  
7 whether jurisdiction exists. *See McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th  
8 Cir. 1987).

9 24. Because the proposed class representative – to say nothing of the putative  
10 class members – is a citizen of a state different from that of Defendant, the minimum  
11 diversity requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2)(A).

12 **E. The Amount Placed in Controversy by the Class Claims Exceeds \$5 million.**

13 25. The inquiry for determining if the amount in controversy requirement is  
14 satisfied turns upon what the plaintiff puts in controversy, not what the defendant may  
15 ultimately owe. *See Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.  
16 2005).

17 26. Although Keurig denies that Plaintiff’s claims have any merit, Keurig avers,  
18 for the purposes of meeting the jurisdictional requirements for removal only, that the  
19 requested monetary recovery exceeds \$5 million.

20 27. While the Complaint does not quantify a sum certain of damages sought, it  
21 asks for various forms of relief, including injunctive relief, requesting a “corrective  
22 advertising and information campaign”, restitution, disgorgement, compensatory  
23 damages, punitive damages, and reasonable attorney’s fees and costs. (*See* Compl., p. 23  
24 (“Prayer”).)

25 28. In class actions, “where the ‘potential cost to defendants of complying with  
26 [an] injunction exceeds [the jurisdictional minimum],’ then the cost of compliance is ‘the  
27 amount in controversy for jurisdictional purposes.’” *Fefferman v. Dr Pepper Snapple*  
28

1 *Grp., Inc.*, No. 13-cv-00160, 2013 U.S. Dist. LEXIS 193961, at \*8 (S.D. Cal. Mar. 12,  
2 2013) (citation omitted).

3 29. The cost to Keurig of complying with the requested injunction would  
4 significantly exceed \$5 million. These costs include, but are not limited to, lost sales of  
5 the Products (which totaled approximately \$4.1 million during the putative class period),  
6 approximately \$9 million in lid inventory that would be rendered obsolete by the  
7 requested injunction, more than \$1 million in lost value for the plates used to print the  
8 Products' lids (which would be rendered unusable by the proposed injunction), a  
9 minimum of \$400,000 in recall costs (excluding penalties and vendor chargebacks owed  
10 to retailers, which would increase recall costs), more than \$350,000 in Product inventory  
11 that would have to be destroyed, and additional sums for the corrective advertising  
12 requested in the Complaint.

13 30. Additionally, attorneys' fees expected to be requested by the Plaintiff are  
14 included in determining the amount in controversy. *See, e.g., Fefferman*, 2013 U.S. Dist.  
15 LEXIS 193961, at \*7, \*9 – 10.

16 31. Although the amount of attorneys' fees that Plaintiff or the putative class  
17 might request is unknown at this point, it is likely to be substantial.

18 32. Even apart from attorneys' fees, the costs of compliance with the requested  
19 injunction would be, at a minimum, in excess of \$5 million. Accordingly, this action  
20 meets the jurisdictional minimum amount in controversy, and removal to this Court is  
21 proper under CAFA.

## 22 **F. TIMELINESS OF REMOVAL**

23 33. The Proof of Service of Summons indicates that the Complaint was served  
24 by mail to Keurig's Waterbury, Vermont, facility with a return acknowledgement of  
25 receipt, pursuant to Cal. Code Civ. Proc. § 415.40, on October 1, 2018. Under California  
26 law, "[s]ervice of a summons by this form of mail is deemed complete on the 10th day  
27 after such mailing." *See id.* Accordingly, service was complete on or about October 11,  
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1 2018. *See also Student A. v. Metcho*, 710 F. Supp. 267, 268 (N.D. Cal. 1989) (recognizing  
2 that “state law determines when service is made”) (citations omitted).

3 34. Because Defendant filed this notice of removal within thirty days of October  
4 11, 2018, this notice of removal is timely. This is because the notice of removal has been  
5 “filed within thirty days after receipt by the defendant, through service or otherwise, of a  
6 copy of an amended pleading, motion, order or other paper from which it may first be  
7 ascertained that the case is one which is or has become removable.” *See* 28 U.S.C. §  
8 1446(b)(3); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,  
9 347-48 (1999) (“[W]e hold that a named defendant’s time to remove is triggered by  
10 simultaneous service of the summons and complaint, or receipt of the complaint, ‘through  
11 service or otherwise,’ after and apart from service of the summons, but not by mere receipt  
12 of the complaint unattended by any formal service.”).

13 **THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

14 35. Based on the foregoing facts and allegations, this Court has original  
15 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because:

- 16 A. This is a civil action that is a class action;  
17 B. This action involves a putative class of more than 100 class  
18 members;  
19 C. The amount in controversy exceeds \$5 million, exclusive of interest  
20 and costs; and  
21 D. Plaintiff and other putative class members are citizens of a state that  
22 is different from the states in which Keurig may be deemed a citizen.

23 Accordingly, removal of this action is proper under 28 U.S.C. § 1441.

24 36. The United States District Court for the Northern District of California is the  
25 appropriate venue for removal pursuant to 28 U.S.C. § 1441(a) because it embraces the  
26 County of Alameda, where Plaintiff originally filed the Complaint. *See* 28 U.S.C. § 84(a).

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6  
7 Attorneys for Defendant KEURIG  
GREEN MOUNTAIN, INC.

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11  
12 KATHLEEN SMITH, on behalf of herself  
and all others similarly situated,

13 Plaintiff,

14 v.

15 KEURIG GREEN MOUNTAIN, INC.; and  
16 DOES 1 through 100, inclusive,

17 Defendants.

Case No.

[Removal from the Superior Court of the  
State of California in and for the County  
of Alameda, Case No. RG18922722]

**APPENDIX OF STATE COURT  
PLEADINGS AND DOCUMENTS**

[Filed Concurrently with Notice of  
Removal; Certification of Interested  
Entities or Persons; and Civil Cover  
Sheet]

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1 **TO THE COURT, AND TO ALL PARTIES HEREIN AND TO THEIR**  
2 **ATTORNEYS OF RECORD:**

3 Attached hereto is the appendix of state court pleadings and documents filed  
4 concurrently with the Notice of Removal of Class Action to the United States District  
5 Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332(d) and 1441,  
6 filed by Defendant Keurig Green Mountain, Inc.

7	<u><b>Exhibit No.</b></u>	<u><b>Description</b></u>
8	A	Summons
9	B	Class Action Complaint
10	C	Civil Case Cover Sheet
11	D	Alternative Dispute Resolution (ADR) Packet
12	E	Proof of Service of Summons

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14

Respectfully submitted,

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DATED: November 2, 2018

**DORSEY & WHITNEY LLP**

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17

By: /s/ Kent J. Schmidt  
KENT J. SCHMIDT  
NAVDEEP K. SINGH  
CREIGHTON R. MAGID  
Attorneys for Defendant KEURIG  
GREEN MOUNTAIN, INC.

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# EXHIBIT A

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

KEURIG GREEN MOUNTAIN, INC.; and DOES 1 through 100 ,  
inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

KATHLEEN SMITH, on behalf of herself and all other similarly  
situated.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENDORSED  
FILED  
ALAMEDA COUNTY**

SEP 28 2018

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

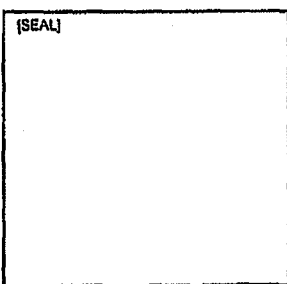
The name and address of the court is:  
(El nombre y dirección de la corte es): Alameda County Superior Court  
1225 Fallon Street  
Oakland, CA 94612

CASE NUMBER:  
(Número del Caso) **RG18922722**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Howard Hirsch, Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800

DATE: **SEP 28 2018** CHAD FINKE Clerk, by *[Signature]*, Deputy  
(Fecha) EXECUTIVE OFFICER/CLERK (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

# EXHIBIT B

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

6 Attorneys for Plaintiff  
KATHLEEN SMITH  
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**ENDORSED  
FILED  
ALAMEDA COUNTY**

SEP 28 2018

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12

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

15 Plaintiff,

16 v.

17 KEURIG GREEN MOUNTAIN, INC.; and DOES  
18 1 through 100, inclusive,

19 Defendants.  
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Case No. **RG18922722**

**CLASS ACTION COMPLAINT**



1 Plaintiff Kathleen Smith ("Plaintiff"), on behalf of herself and those similarly  
2 situated, based on information, belief and investigation of her counsel, except for information  
3 based on personal knowledge, hereby alleges:

4 **INTRODUCTION**

5 1. The problems associated with plastic waste management are increasing locally,  
6 nationally and globally as the amount of plastic in the ocean, in freshwater lakes and streams, on  
7 land, and in landfills continues to grow. Nearly 90% of plastic waste is not recycled, with billions  
8 of tons of plastic becoming trash and litter. As consumers become increasingly aware of the  
9 problems associated with plastic waste, they are increasingly susceptible to marketing claims  
10 reassuring them that the plastic used to make and to package the products that they purchase is  
11 recyclable. Many consumers concerned with the proliferation of plastic waste actively seek to  
12 purchase products that are either compostable or recyclable to divert such waste from the ocean  
13 and landfills. Seeking to take advantage of consumers' concerns, defendant Keurig Green  
14 Mountain, Inc. ("Keurig") markets and sells plastic single serve coffee pods as recyclable, when  
15 the pods cannot in fact be recycled.

16 2. This Complaint seeks to remedy Defendants' unlawful, unfair and deceptive  
17 business practices with respect to the advertising, marketing and sales of plastic single serve pods  
18 that contain coffee and that are labeled as "recyclable" (the "Products").<sup>1</sup> The Products are  
19 advertised, marketed and sold as recyclable. However, even if consumers take the many steps  
20 required to place the Products in their recycling bins, they are not in fact recyclable because most  
21 municipal recycling facilities are not properly equipped to capture such small materials.  
22 Furthermore, even where such facilities exist that are capable of segregating the Products from  
23 the general waste stream, the Products usually still end up in landfills anyway as there is no  
24 market to recycle the Products.

25 3. Despite Defendants' marketing and advertising of the Products as recyclable,  
26 Defendants know that the Products typically end up in landfills. Defendants' representations that

27 <sup>1</sup> For example, one popular Product is sold under the brand name K-Cup®.  
28

1 the Products are recyclable are material, false, misleading and likely to deceive members of the  
2 public. These representations also violate California's legislatively declared policy against  
3 misrepresenting the characteristics of goods and services.

4 4. Plaintiff purchased the Products in reliance on Defendants' false representations  
5 that the Products are recyclable. Plaintiff viewed Defendants' false representations on the labels  
6 and other marketing materials for the Products. If Plaintiff had known that the Products were not  
7 recyclable, Plaintiff would not have purchased the Products and would have instead sought out  
8 single serve pods or other coffee products that are otherwise compostable, recyclable or reusable.  
9 At a minimum, she would not have paid as much as she did if she knew the Products could not be  
10 recycled. Defendants thus breached their express warranty under the California Commercial  
11 Code § 2313; violated the California Consumers Legal Remedies Act ("CLRA") by making  
12 representations that the Products have characteristics, benefits and qualities which they do not  
13 have and by advertising the Products without the intent to sell them as advertised; and violated  
14 the Business and Profession Code § 17200 based on fraudulent, unlawful and unfair acts and  
15 practices.

16 5. Plaintiff and the Class seek an order enjoining Defendants' acts of unfair  
17 competition and other unlawful conduct, an award of damages to compensate them for  
18 Defendants' acts of unfair competition, false and misleading advertising, and breaches of  
19 warranty, and restitution to the individual victims of Defendants' fraudulent, unlawful and unfair  
20 acts and practices.

#### 21 PARTIES

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

3 7. Defendant Keurig Green Mountain, Inc. is a Delaware corporation with its  
4 principal place of business in Waterbury, Vermont. Defendant Keurig Green Mountain, Inc.  
5 manufactures, distributes and sells the Products in California.

6 8. DOES 1 through 100 are persons or entities whose true names and capacities are  
7 presently unknown to Plaintiff and members of the Class, and who therefore are sued by such  
8 fictitious names. Plaintiff and members of the Class are informed and believe, and on that basis  
9 allege, that each of the fictitiously named defendants perpetrated some or all of the wrongful acts  
10 alleged herein and are responsible in some manner for the matters alleged herein. Plaintiffs will  
11 amend this Complaint to state the true names and capacities of such fictitiously named defendants  
12 when ascertained.

13 9. Defendant Keurig Green Mountain, Inc. and DOES 1-100 are collectively referred  
14 to herein as "Defendants."

15 **JURISDICTION AND VENUE**

16 10. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
17 California Constitution, Article VI, Section 10, because this case is a cause not given by statute to  
18 other trial courts. This Court also has jurisdiction over certain causes of action asserted herein  
19 pursuant to Business & Professions Code §§ 17203 and 17204, which allow enforcement in any  
20 Court of competent jurisdiction.

21 11. This Court has jurisdiction over Defendants because each is a corporation or other  
22 entity that has sufficient minimum contacts in California, is a citizen of California, or otherwise  
23 intentionally avails itself of the California market either through the distribution, sale or  
24 marketing of the Products in the State of California or by having a facility located in California so  
25 as to render the exercise of jurisdiction over it by the California courts consistent with traditional  
26 notions of fair play and substantial justice.

27 12. Venue in the County of Alameda is proper under Business & Professions Code  
28 § 17203, Code of Civil Procedure §§ 395 and 395.5, and Civil Code § 1780, because this Court is

1 a court of competent jurisdiction and the Products are sold throughout this County. Concurrently  
2 with filing this Complaint, Plaintiff is filing an affidavit pursuant to Civil Code § 1780(c)  
3 regarding the propriety of venue in Alameda County.

4 **BACKGROUND FACTS**

5 13. In the past decade humans across the globe have produced 8.3 billion metric tons  
6 of plastic, most of it in disposable products that end up as trash. Of the 8.3 billion tons produced,  
7 6.3 billion tons have become plastic waste and only nine percent of that has been recycled. The  
8 Environmental Protection Agency estimates that Americans alone disposed of more than 33  
9 million tons of plastic in 2014, most of which was not recycled. While California has a goal to  
10 achieve a 75% recycling rate by 2020, California's recycling rate is actually in decline. In 2015,  
11 California's recycling rate was 50%, dropping to 47% in 2015 and down to 44% in 2017.

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

23 15. The Products have received extensive criticism for their contribution to the plastic  
24 waste crisis. For instance, on January 7, 2015, an anonymous person posted a YouTube video  
25 entitled "Kill the K-Cup," which portrays an apocalyptic scene in which giant alien monsters who  
26 are themselves composed of K-Cups® invade a city and fire missile and bullet-like K-Cups® at  
27 terrified citizens. The video concludes with the message "Kill The K-Cup Before It Kills Our  
28 Planet," and provides statistics to drive home the point that the Products have dire consequences

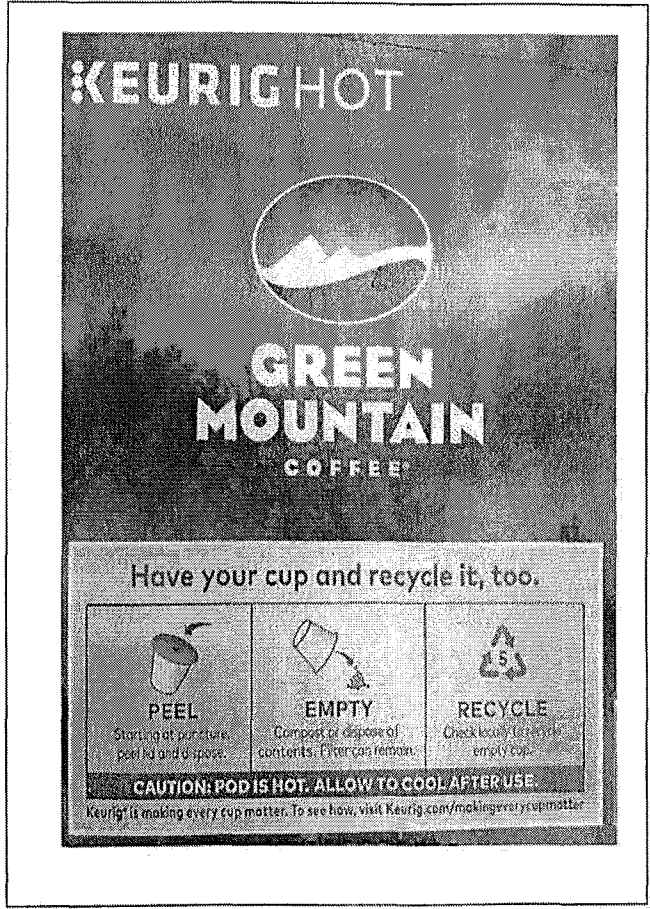
1 to the environmental health of the planet. Nearly 1 million people viewed the video, which  
2 spawned the popular hashtag #KillTheKCup and the killthekcup.org website.

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

8 17. In an attempt to counter negative publicity regarding the Products' impacts and to  
9 take advantage of consumers' concerns with respect to the environmental consequences caused  
10 by the Products, Defendants advertise, market and sell their Products as recyclable. More  
11 specifically, the packaging of Defendants' Products state that consumers can "[h]ave [their] cup  
12 and recycle it, too," in large green font. Adjacent to that statement on Defendants' packaging are  
13 instructions for how to recycle, including illustrations with the terms "PEEL," "EMPTY," and  
14 "RECYCLE," accompanied by the chasing arrow symbol that is commonly used and understood  
15 to mean that a product is recyclable. These claims are uniform, consistent and prominently  
16 displayed on each of the Products' labels. Following is a representative example of a Product  
17 label:

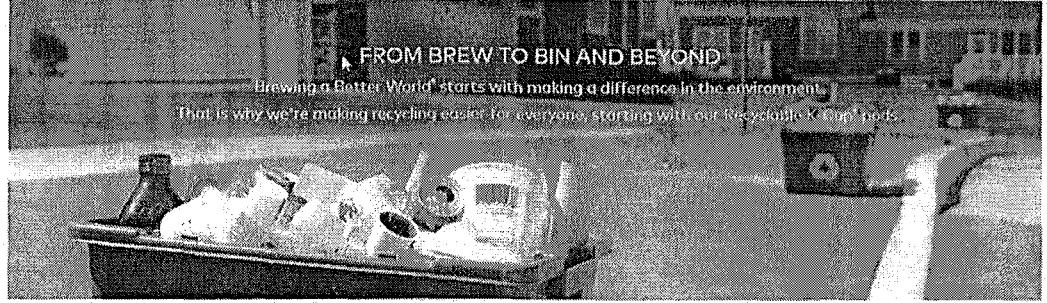
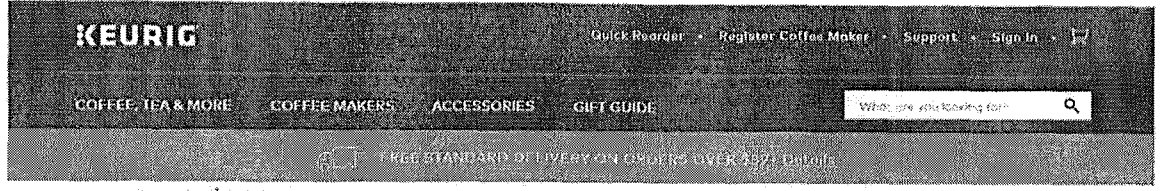
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18. Defendants' marketing, advertising and promotional materials for the Products, including Keurig's website, also uniformly represent that the Products are recyclable. For instance, Keurig's website advertises the Products as recyclable as follows:

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**Keurig Recyclable K-Cup® Pods**

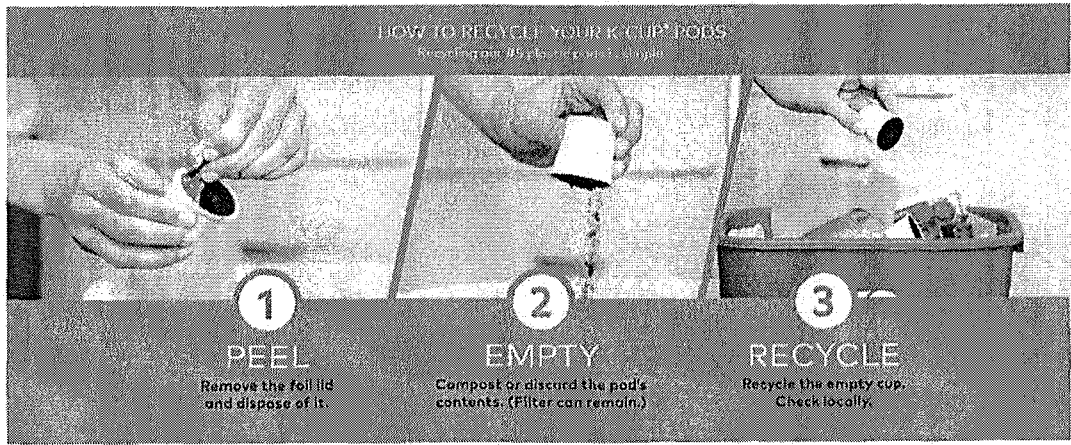
Today's popular varieties...with more to come!



SHOP NOW



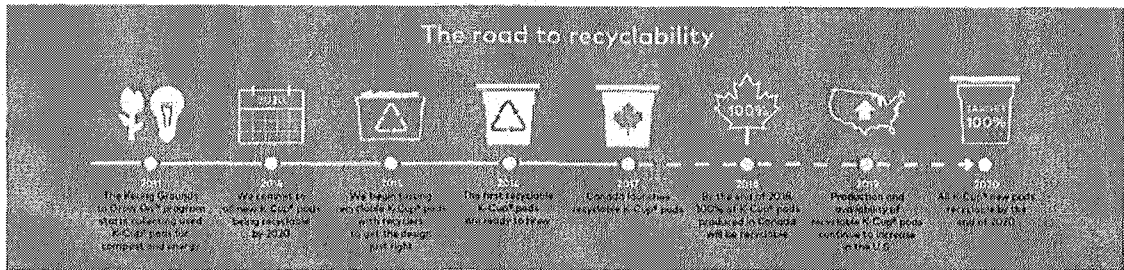
SHOP NOW



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

To learn more about recycling, or the many other ways Keurig is  
making a difference in the environment, visit [KeurigRecycling.com](http://KeurigRecycling.com)



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

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

21. The California Business and Professions Code § 17580.5 makes it “unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied.” Pursuant to that section, the term “environmental marketing claim” includes any claim contained in the Guides for use of Environmental Marketing Claims published by the Federal Trade Commission (the “Green Guides”). *Ibid*; see also 16 C.F.R. § 260.1, *et seq.* Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an



1 established recycling program for reuse or use in manufacturing or assembling another item.” 16  
2 C.F.R. § 260.12(a).

3 22. The majority of municipal recycling facilities in the United States, including  
4 California, are not properly equipped to capture materials as small as the Products or to segregate  
5 such small items from the general waste stream. Even in the rare instance where segregation is  
6 possible, the Products still end up in landfills anyway as there is no market to recycle the  
7 Products.

8 23. Defendants’ recycling instructions require consumers to go through a number of  
9 time-consuming and cumbersome steps before recycling the Products, including separating the  
10 foil lid and removing the pod’s contents. Unbeknownst to consumers, they are wasting their time  
11 and efforts since, even when they meticulously follow Defendants’ instructions, the Products  
12 cannot be collected, separated or recovered from the waste stream due to their size and, even if  
13 they can be, the Products will ultimately end up in landfills anyway. Defendants’ representations  
14 that the Products are recyclable are therefore per se deceptive under the Green Guides.

15 24. The Green Guides are clear: “if any component significantly limits the ability to  
16 recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable  
17 material, but because of its shape, size or some other attribute is not accepted in recycling  
18 programs, should not be marketed as recyclable.” 16 C.F.R. § 260.12(d). Here, the small size of  
19 the Products significantly limits the ability of recycling facilities to recycle them. Even where a  
20 recycling facility accepts the Products from consumers, recycling facilities are not actually  
21 capable of segregating the Products from the general waste stream due to their small size. The  
22 Products are also not recyclable as there is no market to recycle them.

23 25. Most consumers believe that if their Products are accepted into a recycling  
24 program, then those Products are recyclable. However, because the majority of recycling  
25 facilities cannot segregate such small waste from the general waste stream, and because there is  
26 no market to recycle the Products, the recycling facilities send the Products to landfills.  
27 Defendants’ marketing of the Products as recyclable is thus a direct violation of the Green  
28 Guides.

1           26.     Because the Products are not recyclable, Defendants cannot make any recycling  
2 claims as to the Products. However, at a minimum, Defendants are required to clearly and  
3 prominently qualify recyclable claims to avoid deception about the availability of recycling  
4 programs and collection sites to consumers if consumers do not have access to facilities that can  
5 recycle their products. 16 C.F.R. § 260.12(b). A marketer may only make an unqualified  
6 recyclable claim if a substantial majority of consumers or communities have access to recycling  
7 facilities capable of recycling the items.<sup>2</sup> *Id.* § 260.12(b)(1). Because a substantial majority of  
8 consumers do not have access to recycling facilities capable of recycling the Products,  
9 Defendants must at a minimum qualify any recyclability claim about the Products.

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

24           28.     Defendants’ labeling and marketing materials for the Products state: “[c]heck  
25 locally.” This statement does not comply with the Green Guides. The Green Guides specifically  
26 state that this type of qualification is deceptive. In Green Guide Example 4, the qualification

27           <sup>2</sup> A “substantial majority” means at least 60 percent. 16 C.F.R. § 260.12(b)(1).  
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1 “[c]heck to see if recycling facilities exist in your area” is considered deceptive because it does  
2 not adequately disclose the limited availability of recycling programs. 16 C.F.R. § 260.12,  
3 Example 4. Defendants’ qualification is nearly identical to the deceptive statement identified in  
4 Example 4 because it advises the consumer to check for the availability of recycling programs,  
5 rather than inform the consumer of the extremely limited chance that the Products will ultimately  
6 be recycled.

7 29. Not only does this qualification violate the Green Guides, it is also not likely to be  
8 understood by a reasonable consumer. Plaintiff and most other consumers believe that if their  
9 municipality offers recycling services, then all products marketed as “recyclable” can be recycled.  
10 Thus, most consumers will place the Products in the recycling bin under the false impression that  
11 the Products can be recycled, when the Products cannot in fact be recycled in their area. In  
12 addition, most consumers will follow Defendants’ cumbersome recycling instructions despite the  
13 fact that the Products cannot be recycled. Defendants’ labeling, advertising and marketing claims  
14 that the Products are recyclable are therefore likely to deceive a reasonable consumer.

15 30. Plaintiff places a high priority on environmental concerns in general, and on the  
16 negative consequences regarding the proliferation of plastic waste in particular. In shopping for  
17 coffee products for her home, Plaintiff was particularly concerned about the recyclability of  
18 single serve pods that contain coffee. Based on the labeling and advertising of Defendants’  
19 Products, Plaintiff believed that the Products are recyclable in all locations, including Lafayette,  
20 California, where Plaintiff resides. Defendants’ representations that the Products are recyclable  
21 are thus material to Plaintiff.

22 31. Plaintiff purchased the Products numerous times over the course of the past couple  
23 years directly from Keurig’s website believing the recycling claims both on the Product’s  
24 packaging as well as the website. Plaintiff purchased the Products in reliance on Defendants’  
25 representations that the Products are recyclable, when they are not in fact recyclable. To the  
26 contrary, the Products cannot be recycled. Defendants know that the Products end up in landfills,  
27 but Defendants fail to clearly make that qualification, leading Plaintiff and other members of the  
28 Class to believe that the Products are generally recyclable. Had Plaintiff and the other members

1 of the Class known that the Products are not recyclable — contrary to Defendants’  
 2 representations — they would not have purchased the Products or would not have paid as much  
 3 as they did for the Products.

4 32. Plaintiff continues to desire to purchase recyclable single serve coffee pods.  
 5 Plaintiff would purchase single serve coffee pods manufactured by Defendants in the future if  
 6 Defendants’ representations that the Products were recyclable were true. Plaintiff would like to  
 7 buy recyclable single serve coffee pods from Defendants in the future, but is unable to determine  
 8 with confidence, based on the labeling and other marketing materials, whether the Products are  
 9 truly recyclable. Plaintiff would not have purchased the Products, or would not have paid as  
 10 much as she did for the Products, if Defendants had disclosed that the Products were not  
 11 recyclable.

12 33. Defendants are aware that the Products are not recyclable, yet Defendants have not  
 13 undertaken any effort to notify their end use customers of the problem. Defendants’ failure to  
 14 disclose that the Products are not recyclable is an omission of fact that is material to Plaintiff and  
 15 the other members of the Class.

#### 16 CLASS ACTION ALLEGATIONS

17 34. Plaintiff brings this suit individually and as a class action pursuant to C.C.P § 382,  
 18 on behalf of herself and the following Class of similarly situated individuals:

19 All persons who purchased the Products for personal, family or  
 20 household purposes in California (either directly or through an  
 21 agent) during the applicable statute of limitations period (the  
 22 “Class”). Specifically excluded from the Class are Defendants; the  
 23 officers, directors or employees of Defendants; any entity in which  
 24 Defendants have a controlling interest; and any affiliate, legal  
 25 representative, heir or assign of Defendants. Also excluded are any  
 26 judicial officer presiding over this action and the members of  
 27 his/her immediate family and judicial staff, and any juror assigned  
 28 to this action.

1           35. Plaintiff is unable to state the precise number of potential members of the proposed  
2 Class because that information is in the possession of Defendants. However, the number of Class  
3 members is so numerous that joinder would be impracticable. The exact size of the proposed  
4 Class and the identity of its members will be readily ascertainable from the business records of  
5 Defendants and Defendants' retailers as well as Class members' own records and evidence.  
6 Thus, joinder of such persons in a single action or bringing all members of the Class before the  
7 Court is impracticable. The disposition of the claims of the members of the Class in this class  
8 action will substantially benefit both the parties and the Court.

9           36. There is a community of interest among the members of the proposed Class in that  
10 there are questions of law and fact common to the proposed Class that predominate over  
11 questions affecting only individual members. Proof of a common set of facts will establish the  
12 liability of Defendants and the right of each member of the Class to relief. These common legal  
13 and factual questions, which do not vary among Class members and which may be determined  
14 without reference to the individual circumstances of any Class member include, but are not  
15 limited to the following:

- 16           a. whether Defendants advertise and market the Products by representing that the  
17           Products are recyclable;
- 18           b. whether the Products are recyclable as advertised and labeled by Defendants;
- 19           c. whether Defendants' marketing, advertising and labeling claims regarding the  
20           recyclability of the Products are likely to deceive a reasonable consumer;
- 21           d. whether Defendants know the Products cannot be recycled;
- 22           e. whether Defendants' representations regarding the recyclability of the Products  
23           are likely to be read and understood by a reasonable consumer;
- 24           f. whether Defendants' representations regarding the recyclability of the Products  
25           are in compliance with the Green Guides;
- 26           g. whether Defendants' claims regarding the recyclability of the Products would  
27           be material to a reasonable consumer of the Products;
- 28           h. whether Defendants' conduct in advertising, marketing and labeling of the

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- Products constitutes a violation of California consumer protection laws;
- i. whether Defendants' representations concerning the Products constitute express warranties with regard to the Products;
  - j. whether Defendants breached the express warranties they have made with regard to the Products;
  - k. whether Defendants' representations regarding recycling constitute representations that the Products have characteristics, benefits or qualities which they do not have;
  - l. whether Defendants' advertised their Products without an intent to sell them as advertised;
  - m. whether punitive damages are warranted for Defendants' conduct and, if so, an appropriate amount of such damages; and
  - n. whether Plaintiff and the Class members are entitled to injunctive and other equitable relief and to monetary relief.

37. Defendants utilize marketing, advertisements and labeling that include uniform misrepresentations that misled Plaintiff and the other members of the Class. Defendants' claims regarding the recyclability of the Products are one of the most prominent features of Defendants' marketing, advertising and labeling of the Products. Nonetheless, the Products are not in fact recyclable. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

38. Plaintiff asserts claims that are typical of the claims of the entire Class. Plaintiff and all members of the Class have been subjected to the same wrongful conduct because they have purchased the Products that are labeled and sold as single serve coffee pods that are recyclable, when they are not in fact recyclable.

39. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel

1 experienced in complex litigation of this nature to represent her. Plaintiff anticipates no difficulty  
2 in the management of this litigation as a class action.

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

18 **FIRST CAUSE OF ACTION**

19 **(Plaintiff, on Behalf of Herself and the Class, Alleges Breach of Express Warranty)**

20 41. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 40 of  
21 this Complaint.

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

25 43. As detailed above, Defendants marketed and sold the Products as recyclable.  
26 Defendants' representations that the Products are recyclable constitute affirmations of fact made  
27 with regard to the Products as well as descriptions of the Products.

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1 44. Defendants' representations regarding the recyclability of the Products are  
2 uniformly made in the Products' advertising, internet sites and other marketing materials, and on  
3 the Products' labeling and packaging materials, and are thus part of the basis of the bargain  
4 between Defendants and purchasers of the Products.

5 45. California has codified and adopted the provisions of the Uniform Commercial  
6 Code governing the express warranty of merchantability (Cal. Com. Code § 2313).

7 46. At the time that Defendants designed, manufactured, sold and distributed the  
8 Products, Defendants knew that the Products were not recyclable.

9 47. As set forth in the paragraphs above, the Products are not recyclable and thus do  
10 not conform to Defendants' express representations to the contrary. Defendants have thus  
11 breached their express warranties concerning the Products.

12 48. On July 23, 2018, Plaintiff sent a pre-suit demand letter to Defendants notifying  
13 Defendants that the Products are not recyclable. Defendants therefore have actual and  
14 constructive knowledge that the Products are not recyclable and were thus not sold as marketed  
15 and advertised.

16 49. As a direct and proximate result of Defendants' breach of express warranties,  
17 Plaintiff and Class members have suffered damages.

18 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

19 **SECOND CAUSE OF ACTION**

20 **(Plaintiff, on Behalf of Herself and the Class, Alleges Violations of the**  
21 **California Consumers Legal Remedies Act – Injunctive Relief and Damages)**

22 50. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 49 of  
23 this Complaint.

24 51. Plaintiff and the Class members purchased the Products for personal, family or  
25 household purposes.

26 52. The acts and practices of Defendants as described above were intended to deceive  
27 Plaintiff and the Class members as described herein and have resulted and will result in damages  
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1 to Plaintiff and the Class members. These actions violated and continue to violate the CLRA in at  
2 least the following respects:

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

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

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

12 53. By reason of the foregoing, Plaintiff and the Class members have suffered  
13 damages.

14 54. By committing the acts alleged above, Defendants violated the CLRA.

15 55. In compliance with the provisions of California Civil Code § 1782, on July 23,  
16 2018, Plaintiff provided written notice to Defendants of her intention to seek damages under  
17 California Civil Code § 1750, *et seq.*, and requested that Defendants offer an appropriate  
18 consideration or other remedy to all affected consumers. As of the date of this complaint,  
19 Defendants have not done so. Accordingly, Plaintiff seeks damages pursuant to California Civil  
20 Code §§ 1780(a)(1) and 1781(a).

21 56. Plaintiff and the Class members are entitled to, pursuant to California Civil Code  
22 § 1780(a)(2), an order enjoining the above-described wrongful acts and practices of Defendants,  
23 providing actual and punitive damages and restitution to Plaintiff and the Class members, and  
24 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and  
25 proper by the Court under California Civil Code § 1780.

26 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.  
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**THIRD CAUSE OF ACTION**

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

57. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 56 of this Complaint.

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

59. Defendants have engaged and continue to engage in conduct that is likely to deceive members of the public. This conduct includes, but is not limited to, representing that the Products are recyclable.

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

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

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

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

**FOURTH CAUSE OF ACTION**

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

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63. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 62 of this Complaint.

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

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

66. Defendants' conduct also violates Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or effecting commerce. By misrepresenting that the Products are recyclable, Defendants are violating Section 5 of the FTC Act.

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

68. Defendants' conduct also violates California Business & Professions Code § 17580.5, which makes it unlawful for any person to make any untruthful, deceptive or misleading environmental marketing claim. Pursuant to § 17580.5, the term "environmental marketing claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.* Under the Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an

1 established recycling program for reuse or use in manufacturing or assembling another item.” 16  
2 C.F.R. § 260.12(a). By misrepresenting that the Products are recyclable as described above,  
3 Defendants are violating Business & Professions Code § 17580.5.

4 69. Defendants’ conduct is also a breach of warranty. Defendants’ representations that  
5 the Products are recyclable constitute affirmations of fact made with regard to the Products, as  
6 well as descriptions of the Products, that are part of the basis of the bargain between Defendants  
7 and purchasers of the Products. Because those representations are material, false and misleading,  
8 Defendants have breached their express warranty as to the Products and have violated California  
9 Commercial Code § 2313.

10 70. By violating the CLRA, the FTC Act, Business & Professions Code §§ 17500 and  
11 17580.5, and California Commercial Code § 2313, Defendants have engaged in unlawful business  
12 acts and practices which constitute unfair competition within the meaning of Business &  
13 Professions Code § 17200. Plaintiff would not have purchased the Products, or would not have  
14 paid as much for Products, but for Defendants’ unlawful business practices. Plaintiff has thus  
15 suffered injury in fact and lost money or property as a direct result of Defendants’  
16 misrepresentations and material omissions.

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

19 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

20 **FIFTH CAUSE OF ACTION**

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

24 72. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 71 of  
25 this Complaint.

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

1           74. Defendants have engaged and continue to engage in conduct which is immoral,  
2 unethical, oppressive, unscrupulous and substantially injurious to consumers. This conduct  
3 includes, but is not limited to, advertising and marketing the Products as recyclable when they are  
4 not. By taking advantage of consumers concerned about the environmental impacts of plastic  
5 waste, Defendants' conduct, as described herein, far outweighs the utility, if any, of such conduct.

6           75. Defendants have engaged and continue to engage in conduct that violates the  
7 legislatively declared policy of the CLRA against misrepresenting the characteristics, uses,  
8 benefits and quality of goods for sale. Defendants have further engaged, and continue to engage,  
9 in conduct that violates the legislatively declared policy of Cal. Pub. Res. Code § 42355.5 against  
10 deceiving or misleading consumers about the environmental impact of plastic products.

11           76. Defendants' conduct also violates the policy of the Green Guides. The Green  
12 Guides mandate that "[a] product or package shall not be marketed as recyclable unless it can be  
13 collected, separated, or otherwise recovered from the waste stream through an established  
14 recycling program for reuse or use in manufacturing or assembling another item." 16 C.F.R.  
15 § 260.12(a). It further states that "[a]n item that is made from recyclable material, but because of  
16 its shape, size or some other attribute is not accepted in recycling programs, should not be  
17 marketed as recyclable." 16 C.F.R. § 260.12(d). As explained above, the Products cannot be  
18 separated from the waste stream due to their size. Nonetheless, some recycling facilities accept  
19 the Products even though they must eventually send the Products to a landfill because they cannot  
20 separate such materials and because there is no market to recycle the Products. It is unfair for  
21 Defendants to make a recyclable claim based on the fact that some recycling facilities will accept  
22 the Products, despite the recycling facilities' inability to actually recycle the Products. Moreover,  
23 consumers believe that products are recyclable when they are accepted by a recycling program,  
24 even if the recycling facilities end up sending the products to a landfill. Taking advantage of  
25 consumer perception of recycling programs violates the policy of the Green Guides.

26           77. Defendants' conduct, including failing to disclose that the Products will end up in  
27 landfills and not be recycled, is substantially injurious to consumers. Such conduct has and  
28 continues to cause substantial injury to consumers because consumers would not have purchased

1 the Products but for Defendants' representations that the Products are recyclable. Consumers are  
 2 concerned about environmental issues in general and plastic waste in particular and Defendants'  
 3 representations are therefore material to such consumers. Misleading consumers — and  
 4 instructing them to follow cumbersome instructions in order to recycle the Products even though  
 5 the Products will end up in a landfill despite those efforts — causes injury to such consumers that  
 6 is not outweighed by any countervailing benefits to consumers or competition. Indeed, no benefit  
 7 to consumers or competition results from Defendants' conduct. Defendants gain an unfair  
 8 advantage over their competitors, whose advertising must comply with the CLRA, Cal. Pub. Res.  
 9 Code § 42355.5, the Federal Trade Commission Act ("FTC Act"), Cal. Business & Professions  
 10 Code § 17508, and the Green Guides. Since consumers reasonably rely on Defendants'  
 11 representations of the Products and injury results from ordinary use of the Products, consumers  
 12 could not have reasonably avoided such injury.

13 78. Although Defendants know that the Products are not ultimately recycled,  
 14 Defendants failed to disclose that fact to Plaintiff and the Class.

15 79. By committing the acts alleged above, Defendants have engaged in unfair business  
 16 acts and practices which constitute unfair competition within the meaning of California Business  
 17 & Professions Code § 17200.

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

20 81. Plaintiff would not have purchased the Products, or would not have paid as much  
 21 for Products, but for Defendants' unfair business practices. Plaintiff has thus suffered injury in  
 22 fact and lost money or property as a direct result of Defendants' misrepresentations and material  
 23 omissions.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

26 A. That the Court declare this a class action;

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- 1           B.     That the Court preliminarily and permanently enjoin Defendants from conducting  
2 their business through the unlawful, unfair or fraudulent business acts or practices, untrue and  
3 misleading advertising, and other violations of law described in this Complaint;
- 4           C.     That the Court order Defendants to conduct a corrective advertising and  
5 information campaign advising consumers that the Products do not have the characteristics, uses,  
6 benefits and quality Defendants have claimed;
- 7           D.     That the Court order Defendants to cease and refrain from marketing and  
8 promotion of the Products that state or imply that the Products are recyclable;
- 9           E.     That the Court order Defendants to implement whatever measures are necessary to  
10 remedy the unlawful, unfair or fraudulent business acts or practices, untrue and misleading  
11 advertising and other violations of law described in this Complaint;
- 12          F.     That the Court order Defendants to notify each and every Class member of the  
13 pendency of the claims in this action in order to give such individuals an opportunity to obtain  
14 restitution and damages from Defendants;
- 15          G.     That the Court order Defendants to pay restitution to restore all Class members all  
16 funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair or  
17 fraudulent business act or practice, untrue or misleading advertising, plus pre- and post-judgment  
18 interest thereon;
- 19          H.     That the Court order Defendants to disgorge all monies wrongfully obtained and  
20 all revenues and profits derived by Defendants as a result of their acts or practices as alleged in  
21 this Complaint;
- 22          I.     That the Court award damages to Plaintiff and the Class to compensate them for  
23 the conduct alleged in this Complaint;
- 24          J.     That the Court award punitive damages pursuant to California Civil Code  
25 § 1780(a)(4);
- 26          K.     That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit  
27 pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780(d), the  
28 common fund doctrine, or any other appropriate legal theory; and


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

Dated: September 28, 2018

Respectfully submitted,

LEXINGTON LAW GROUP



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



# EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Howard Hirsch (SBN 213209)</b> Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 TELEPHONE NO.: (415) 913-7800 FAX NO.: (415) 759-4112 ATTORNEY FOR (Name): <b>Center for Environmental Health</b>		CM-010 FOR COURT USE ONLY  <b>ENDORSED FILED ALAMEDA COUNTY</b>  SEP 28 2018  CLERK OF THE SUPERIOR COURT By: ERICA BAKER, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Alameda</b> STREET ADDRESS: <b>1225 Fallon Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Oakland, California 94612</b> BRANCH NAME: <b>Rene C. Davidson Courthouse</b>		CASE NUMBER: <b>AG18922722</b>  JUDGE: DEPT:
CASE NAME: <b>Kathleen Smith v. Keurig Green Mountain, Inc., et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

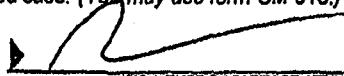
1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (16)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input checked="" type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): **Five**
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **September 28, 2018**  
**Howard Hirsch**

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-010 [Rev. July 1, 2007]

**CIVIL CASE COVER SHEET**

Page 1 of 2  
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;  
 Cal. Standards of Judicial Administration, std. 3.10  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

American LegalNet, Inc.  
[www.FormsWorld.com](http://www.FormsWorld.com)

# EXHIBIT D



## Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

**QUESTIONS?** Call (510) 891-6055. Email [adrprogram@alameda.courts.ca.gov](mailto:adrprogram@alameda.courts.ca.gov)  
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

### What Are The Advantages Of Using ADR?

- **Faster** –Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

### What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

### What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
  - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
  - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

#### **Mediation Service Programs In Alameda County**

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

##### **SEEDS Community Resolution Center**

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: [www.seedscrc.org](http://www.seedscrc.org)

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

##### **Center for Community Dispute Settlement**

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: [www.trivalleymediation.com](http://www.trivalleymediation.com)

CCDS provides services in the Tri-Valley area for all of Alameda County.

##### *For Victim/Offender Restorative Justice Services*

##### **Catholic Charities of the East Bay: Oakland**

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: [www.cceb.org](http://www.cceb.org)

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY          CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY  STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: \_\_\_\_\_ An Initial Case Management Conference is scheduled for:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Department: \_\_\_\_\_

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- Court mediation       Judicial arbitration  
 Private mediation       Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:


- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_       \_\_\_\_\_  
 (TYPE OR PRINT NAME)      (SIGNATURE OF PLAINTIFF)

Date: \_\_\_\_\_

\_\_\_\_\_       \_\_\_\_\_  
 (TYPE OR PRINT NAME)      (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
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Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶ \_\_\_\_\_

(SIGNATURE OF DEFENDANT)

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶ \_\_\_\_\_

(SIGNATURE OF ATTORNEY FOR DEFENDANT)

# EXHIBIT E



POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Howard Hirsch (SBN 213209) Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 TELEPHONE NO.: (415) 913-7800 FAX NO. (Optional): (415) 759-4112 E-MAIL ADDRESS (Optional): hhirsch@lexlawgroup.com ATTORNEY FOR (Name): Center for Environmental Health	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse	
PLAINTIFF/PETITIONER: Kathleen Smith DEFENDANT/RESPONDENT: Keurig Green Mountain, Inc., et al.	CASE NUMBER: RG 18922722
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a.  summons
  - b.  complaint
  - c.  Alternative Dispute Resolution (ADR) package
  - d.  Civil Case Cover Sheet (served in complex cases only)
  - e.  cross-complaint
  - f.  other (specify documents): please see Additional Page.
3. a. Party served (specify name of party as shown on documents served):  
Keurig Green Mountain, Inc.
- b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:  
33 Coffee Lane, Waterbury, VT 05676
5. I served the party (check proper box)
  - a.  by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): \_\_\_\_\_ (2) at (time): \_\_\_\_\_
  - b.  by substituted service. On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): \_\_\_\_\_
    - (1)  (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2)  (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3)  (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4)  I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or  a declaration of mailing is attached.
    - (5)  I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Kathleen Smith	CASE NUMBER: RG 18922722
DEFENDANT/RESPONDENT: Keurig Green Mountain, Inc., et al.	

5. c.  by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): October 1, 2018 (2) from (city): San Francisco, CA
- (3)  with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d.  by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a.  as an individual defendant.
- b.  as the person sued under the fictitious name of (specify):
- c.  as occupant.
- d.  On behalf of (specify): Keurig Green Mountain, Inc.  
under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers
- a. Name: Nick Redfield
- b. Address: 503 Divisadero Street, San Francisco, CA 94117
- c. Telephone number: (415) 913-7800
- d. The fee for service was: \$
- e. I am:
- (1)  not a registered California process server.
- (2)  exempt from registration under Business and Professions Code section 22350(b).
- (3)  a registered California process server:
- (i)  owner  employee  independent contractor.
- (ii) Registration No.:
- (iii) County:

8.  I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9.  I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: October 1, 2018

Nick Redfield  
\_\_\_\_\_  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
\_\_\_\_\_  
(SIGNATURE)

SHORT TITLE: Center for Environmental Health v. — Keurig Green Mountain, Inc., et al.	CASE NUMBER: RG 18-922722
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1 Affidavit Regarding Proper Venue Pursuant to Cal. Civil Code § 1780 (d)

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26 *(Required for verified pleading)* The items on this page stated on information and belief are *(specify item numbers, not line numbers)*:

27 This page may be used with any Judicial Council form or any other paper filed with the court. Page 3

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4 Facsimile: (415) 759-4112  
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5 rberghoff@lexlawgroup.com

6 Attorneys for Plaintiff  
KATHLEEN SMITH  
7  
8  
9

**ENDORSED  
FILED  
ALAMEDA COUNTY**  
SEP 28 2018  
CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12

13  
14 KATHLEEN SMITH, on behalf of herself and all  
others similarly situated,

15 Plaintiff,

16 v.

17 KEURIG GREEN MOUNTAIN, INC.; and DOES  
18 1 through 100, inclusive,

19 Defendants.  
20

Case No. **RG18922722**

**AFFIDAVIT REGARDING PROPER  
VENUE PURSUANT TO CAL. CIVIL  
CODE § 1780(d)**



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Argues Keurig Misrepresents that Single-Serve Coffee Pods Are Recyclable](#)

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