

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

<p>GMO FREE USA d/b/a TOXIN FREE USA, P.O. Box 458, Unionville, CT 06085,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RECREATIONAL EQUIPMENT, INC., 6750 S 228th St, Kent, WA 98032</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT 2022-CAB-005092</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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Plaintiff GMO Free USA d/b/a Toxin Free USA (“Toxin Free USA”) brings this action against Defendant Recreational Equipment, Inc. (“REI” or “Defendant”) regarding its false and deceptive marketing and sale of waterproof apparel, such as the REI Co-op Rainwall Rain Jacket – Kids’ (the “Product” or “Kids’ Rain Jacket”).¹ Despite REI’s environmental and product safety representations to the contrary, the Product contains per- and polyfluoroalkyl substances (“PFAS”). PFAS are a group of synthetic chemicals that are extremely resistant to degradation, persist indefinitely in the environment, bioaccumulate in blood, and can be harmful to humans and the environment, even at very low levels. This Complaint is on behalf of the general public of the District of Columbia, in the interest of consumers. This is not a class action, and no class certification will be sought. Toxin Free USA alleges the following based upon personal knowledge, information, belief, and the investigation of Counsel:

¹Plaintiff alleges that any REI Products that contain PFAS, *infra* ¶ 34, are within the scope of this Complaint. Plaintiff, however, chose to test the Kids’ Rain Jacket due to the fact that this Product exposes children, a group with sensitive health concerns, to PFAS. The references throughout the Complaint to the Product shall be the Kids’ Rain Jacket as exemplary but generally applicable to REI’s water-proof products that are made with PFAS. Plaintiff has standing to bring this action under both D.C. Code § 28-3905(k)(1)(C) and (k)(1)(D).

INTRODUCTION

1. This is a consumer-protection case concerning deceptive marketing representations about REI’s apparel products. The case is brought by Toxin Free USA, a nonprofit, public-interest organization dedicated to consumer protection and education. Toxin Free USA seeks no monetary damages, but an end to the deceptive marketing and advertising at issue.

2. PFAS are a group of synthetic chemicals that can provide certain marketable benefits for products, including “hydrophobicity and film-forming ability, which are thought to increase product wear, durability, and spreadability.”²

3. PFAS, however, are also known to have harmful effects on people and the environment. Consumers have grown increasingly aware of and concerned about PFAS and the presence of PFAS in their bodies, the environment, and the products they use.³

4. As a result, there is a growing consumer-advocacy movement to eliminate PFAS from various products, including apparel items.⁴

5. In fact, on October 18, 2021, underscoring the gravity of the PFAS threat, the Biden-Harris Administration announced “accelerated efforts to protect Americans from per- and polyfluoroalkyl substances (PFAS), which can cause severe health problems and persist in the environment once released, posing a serious threat across rural, suburban, and urban areas.”⁵

² Heather D. Whitehead, *et al.*, *Fluorinated Compounds in North American Cosmetics*, *Environ. Sci. Tech. Ltrs.* 2021, 8, 7, 538–544, <https://doi.org/10.1021/acs.estlett.1c00240>.

³ LastWeekTonight, *PFAS: Last Week Tonight With John Oliver (HBO)*, YouTube (Oct. 4, 2021), <https://www.youtube.com/watch?v=9W74aeuqsiU> (demonstrating consumer awareness of issue).

⁴ Elicia Mayuri Cousins, *et al.*, *Risky Business? Manufacturer and Retailer Action to Remove Per- and Polyfluorinated Chemicals From Consumer Products*, *NEW SOLUTIONS: A J. of Environ. & Occupational Health Policy*, 2019, 29(2), 242–65, <https://doi.org/10.1177/1048291119852674>.

⁵ *FACT SHEET: Biden-Harris Administration Launches Plan to Combat PFAS Pollution*, The White House, (Oct. 18, 2021), <https://bit.ly/3DZvZba>.

6. Defendant is a retail and outdoor recreation services corporation that sells all kinds of outdoor equipment and apparel, including its own brand of products, REI Co-op,⁶ both in stores and online.

7. REI represents that, with each REI purchase a consumer makes, the customer is “choosing to steward the outdoors, support sustainable business and help the fight for life outside.”⁷

8. Through statements like the one above, and websites and marketing materials depicting healthy individuals in serene landscapes, REI represents its products as safe and sustainable.

9. In reality, the Product at issue in this Complaint—a raincoat designed for *children* to use—contains high levels of organic fluorine, also known as organofluorine, which is an indicator of PFAS, which are neither safe nor sustainable.⁸

10. PFAS are a group of synthetic chemicals known to be toxic to humans, even at very low levels.⁹ Furthermore, PFAS are considered “forever chemicals,” meaning they do not break down naturally in the environment.¹⁰ Use of PFAS in the manufacturing of outdoor apparel and other products leads to the accumulation of PFAS in soil, water, humans, and elsewhere in the environment, threatening other organisms.¹¹

⁶ Despite being a cooperative, one does not need to be a co-op member in order to purchase REI products.

⁷ *About REI*, REI Co-Op, <https://www.rei.com/about-rei> (last visited Oct. 22, 2022).

⁸ For additional context, products containing over 100 ppm of organofluorine have recently been banned by a series of legislative bills in California due to the toxic and environmentally destructive nature of these compounds. See *California Issues New PFAS Consumer Product Regulations*, Exponent (Oct. 15, 2021), <https://bit.ly/3ug4hVP>.

⁹ See Abraham Lustgarten, *et al.*, *Suppressed Study: The EPA Underestimated Dangers of Widespread Chemicals*, ProPublica (June 20, 2018), <https://www.propublica.org/article/suppressed-study-the-epa-underestimated-dangers-of-widespread-chemicals>.

¹⁰ As an illustration of how “forever” PFAS compounds are, in 1997, when a PFAS manufacturer sought “clean blood samples” to compare to PFAS-tainted samples, the only source of “clean blood” (free of PFAS contamination) was the “preserved blood of soldiers who died in the Korean War, before [PFAS] products spread worldwide.” *Poisoned Legacy*, Environ. Working Grp., (May 1, 2015) <https://www.ewg.org/research/poisoned-legacy>.

¹¹ Nat’l Inst. of Env’t Health Sciences (“NIEHS”), *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, Nat’l Insts. of Health U.S. Dept. of Health and Human Servs., <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm>

11. REI's representations mislead D.C. consumers into believing that the Product is *not* made with environmentally damaging, toxic chemicals like PFAS, when in fact, the Product *is* made with such chemicals. Thus, REI's marketing of the Product is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

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

13. The CPPA makes it a violation for "any person" to, *inter alia*:

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

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

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

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

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

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

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

14. A violation of the CPPA may occur regardless of "whether or not any consumer is in fact misled, deceived or damaged thereby." *Id.* § 28-3904.

15. The CPPA "establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the

(last visited Oct. 22, 2022); Francisca Pérez, *et al.*, *Accumulation Of Perfluoroalkyl Substances In Human Tissues*, 59 *Environ. Int'l* 354 (2013).

District of Columbia.” *Id.* § 28-3901(c). The statute “shall be *construed and applied liberally* to promote its purpose.” *Id.* (emphasis added).

16. Because Toxin Free USA is a public interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

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

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District,” and pursuant to § 28-3901(c), placing misinformation into the D.C. marketplace is a trade practice in violation of the CPPA. Accordingly, Toxin Free USA has standing to challenge REI’s misrepresentations about the Product in the District.

17. A public interest organization may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 69-72, Toxin Free USA is an organization dedicated to consumer advocacy, and Toxin Free USA has previously represented consumers in similar actions under the CPPA. Toxin Free USA thus has a sufficient nexus to consumers to adequately represent their interests.

18. In addition, because Toxin Free USA is a nonprofit organization, it also has standing under the CPPA to act on behalf of itself and the general public and bring an action as a “tester” organization:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from

the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

19. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by Toxin Free USA on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

20. This action does not seek damages. Instead, Toxin Free USA seeks to end the unlawful conduct directed at D.C. consumers, *i.e.*, REI's false and deceptive labeling and marketing of the Product. Remedies available under the CPPA include "[a]n injunction against the use of the unlawful trade practice." *Id.* § 28-3905(k)(2)(D), (F). Toxin Free USA also seeks declaratory relief in the form of an order holding REI's conduct to be unlawful in violation of the CPPA.

FACT ALLEGATIONS

I. Defendant Makes Representations About the Safety and Sustainability of the Product.

21. On the online purchasing page for the Kids' Rain Jacket, which is available to D.C. consumers, REI states that the "Product meets the bluesign® criteria, the world's leading system for managing the environmental and human-health impacts of textile manufacturing." "[B]luesign®-approved materials conserve resources and protect the health of the environment, workers and wearer (your kid!)"¹²

22. REI also mentions its use of "bluesign®-certified fabrics" on the Product label, as seen in the picture taken by Plaintiff below:

¹² *REI Co-op Rainwall Rain Jacket—Kids'*, REI, <https://www.rei.com/product/192931/rei-co-op-rainwall-rain-jacket-kids> (last visited Oct. 22, 2022).



23. Bluesign® (stylized as bluesign) is a certifier that claims to “unite the entire textile value chain to reduce impacts on people and planet.”¹³ Currently, bluesign only restricts 140 PFAS

¹³ Bluesign, <https://www.bluesign.com/en> (last visited Oct. 22, 2022).

chemicals,¹⁴ which is a miniscule amount since there are thousands of known PFAS chemicals. While bluesign has committed to phasing out all bluesign-approved PFAS, this will not occur until July 2023 at the earliest.¹⁵

24. In addition to representations made on the Product purchasing page, REI's website also makes safety and sustainability representations in describing its "Sustainable Chemistry Program."¹⁶

25. Two of the "building blocks" of REI's Sustainable Chemistry Program are bluesign®, discussed *supra*, and the REI Restricted Substances List, which "is based on the bluesign® system and meets or exceeds global regulatory requirements. Chemical testing to the RSL requirements is used to help ensure products, particularly those containing non-bluesign® materials, are safe for our members."¹⁷

26. In further describing its "Sustainable Chemistry Program," REI explains that it "has eliminated long-chain PFAS [Durable Water Repellent] treatments from the REI Co-op brand. We use short-chain PFAS treatments where viable alternatives do not yet exist, and we continue to expand the use of non-fluorinated options."¹⁸

27. REI's Sustainable Chemistry Guide also emphasizes that "REI prohibits the use of long-chain PFAS-based water repellent finishes, including finishes that contain PFOA and PFOS. Building on this commitment, we avoid application of water repellent chemicals where they are

¹⁴ *Bluesign, ZDHC look to move away from all PFASs as soon as this year*, Chemical Watch (Apr. 27, 2022), <https://chemicalwatch.com/471229/bluesign-zdhc-look-to-move-away-from-all-pfass-as-soon-as-this-year>.

¹⁵ *Id.*

¹⁶ *See Product Impact and Circular Commerce*, REI, <https://www.rei.com/stewardship/sustainable-product-practices> (last visited Oct. 22, 2022).

¹⁷ *Id.*

¹⁸ *Id.*

not needed for a performance benefit and are exploring PFAS-free alternatives for apparel and gear.”¹⁹

28. REI’s description of its “Sustainable Chemistry Program” on its website and in its Sustainable Chemistry Guide do not disclose any of the health or environmental risks associated with short-chain PFAS.

29. Based on the representations described above, a reasonable consumer would conclude that the Product either does not contain PFAS, or that it contains only short-chain PFAS, which are “safe” for the wearer, including kids.

II. The Product Is Neither Safe Nor Sustainable, Because It Contains PFAS.

30. Contrary to REI’s representations, the Product is neither safe nor sustainable because it most likely contains PFAS, which are damaging to the environment and pose risks to human health.

31. Toxin Free USA conducted a test on a sample of REI’s Kids’ Rain Jacket and found 2,240 parts per million (ppm) of fluorine. Fluorine is an indicator that a product contains PFAS.²⁰

32. Subsequent testing revealed that all 2,240 ppm of the fluorine detected was organic fluorine; organic fluorine results identify a quantity of organofluorine compounds (*e.g.*, PFAS) and excludes the possibility that fluorine may be present from other or natural sources.²¹

¹⁹ *Sustainable Chemistry Guide & Restricted Substances List (RSL)*, REI, <https://www.rei.com/assets/pdf/rei-restricted-substances-list/live.pdf> (last visited Oct. 22, 2022).

²⁰ *See, e.g.*, Whitehead et al., *supra* note 2 (PFAS concentrations were detected by screening for total fluorine); *Testing for PFAS in food packaging*, Supply Chains Solutions Center, <https://bit.ly/3fNPHwF> (last visited Oct. 22, 2022) (recommending that companies screen for PFAS “using a total fluorine method . . . [that] measures all forms of PFAS”); Jen Dickman et al., *Packaged in Pollution: Are food chains using PFAS in packaging?*, <https://saferchemicals.org/packaged-in-pollution/> (testing for PFAS using total fluorine amounts) (last visited Oct. 22, 2022).

²¹ *See* Lara Schultes, et al., *Total Fluorine Measurements in Food Packaging: How Do Current Methods Perform?*, 6(2) Environ. Sci. Technol. Letters 73 (2019), <https://doi.org/10.1021/acs.estlett.8b00700>; Heidelore Fiedler, et al., *A Critical Review of a Recommended Analytical and Classification Approach for Organic Fluorinated Compounds with an Emphasis on Per- and Polyfluoroalkyl Substances*, 17 Integrated Env’tl. Assess. and Mgmt. 331 (2020), <https://doi.org/10.1002/ieam.4352> (explaining that PFAS are “quite mobile.”).

33. “Since the world hasn’t found a way to test which of 9,000 PFAS are in products, the best current test methods [for PFAS] look for fluorine.”²² Also, “when measuring organofluorine in the environment one can assume that it originates from an anthropogenic source.”²³

34. Toxic Free Future, a national nonprofit research and advocacy organization (not a party to this action), also tested the Kids’ Rainwall Jacket for PFAS. Based on its testing, Toxic Free Future reported that the Rainwall Jacket likely contained older, longer chain PFAS.²⁴

35. PFAS have become known as “forever chemicals” because the carbon-fluorine bonds in PFAS are extremely strong and thus are not appreciably degraded under environmental conditions. The continued use of PFAS is, by the nature of these chemicals, unsustainable, because it will necessarily lead to a greater concentration of PFAS in the environment.²⁵

36. Additionally, “[f]luorine is regarded as an environmental and industrial contaminant.”²⁶

37. The oldest kinds of PFAS developed and used in consumer products, such as PFOA and PFOS, are often referred to as “long-chain” PFAS.

38. “Human studies have found associations between PFOA and/or PFOS exposure and effects on the immune system, the cardiovascular system, human development (*e.g.*, decreased

²² Jessian Choy, *New Independent Study Confirms PFAS in Thinx, Other Products*, Sierra Club (Jun. 3, 2021), <https://www.sierraclub.org/sierra/ask-ms-green/new-independent-study-confirms-pfas-thinx-other-products>.

²³ Alina Koch, et al., *Towards a comprehensive analytical workflow for the chemical characterisation of organofluorine in consumer products and environmental samples*, 123 *TrAC Trends in Analytical Chemistry* 115423 (2020) (“[N]o single analytical method is versatile and robust enough to identify and quantify the vast number of PFASs, as well as other fluorine-containing agrochemicals or pharmaceuticals that might be present in a sample.”).

²⁴ Erika Schreder & Matthew Goldberg, *Toxic Convenience: The hidden costs of forever chemicals in stain- and water-resistant products*, Toxic Free Future, (Jan. 2022), <https://toxicfreefuture.org/wp-content/uploads/2022/08/toxic-convenience.pdf>.

²⁵ Zhanyun Wang, et al., *A Never-Ending Story of Per- and Polyfluoroalkyl Substances (PFASs)?*, 51 *Environ. Sci. Technol.* 2508, 2508 (2017), <https://doi.org/10.1021/acs.est.6b04806>.

²⁶ Elżbieta Bombik, et al., *The influence of environmental pollution with fluorine compounds on the level of fluoride in soil, feed and eggs of laying hens in Central Pomerania, Poland*, 192 *Environ Monit Assess* 178 (2020), <https://doi.org/10.1007/s10661-020-8143-3>.

birth weight), and cancer.” PFOA and PFOS have also been associated with “suppression of vaccine response (decreased serum antibody concentrations) in children.”²⁷

39. Long-chain PFAS have been “banned in the European Union and phased out by major U.S. manufacturers,” largely due to their health risks.²⁸

40. As a result of widespread concern regarding the environmental and health impacts of long-chain PFAS and greater regulation of these substances, many manufacturers have switched to using PFAS with fewer carbons, commonly referred to as “short-chain” PFAS.

41. While companies, such as REI, may present newer, short-chain PFAS as a safer alternative to long-chain PFAS, more and more research indicates that the human health risks of short-chain PFAS have been gravely underestimated.²⁹

42. In fact, the U.S. Environmental Protection Agency recently released a drinking water health advisory for GenX, a short-chain PFAS, based on animal toxicity studies that have linked GenX with “health effects on the liver, the kidney, the immune system, and developmental effects, as well as cancer.”³⁰

43. Part of the reason why certifiers like bluesign allow PFAS in the first place is due to pressure from outdoor apparel brands who claim that non-toxic alternatives are not as effective water repellants.³¹

44. PFAS are by no means, however, the only way for brands to create high-quality, water repellent products. For instance, outdoor brand Páramo uses a PFAS-free applicant called

²⁷ 87 Fed. Reg. 36848 at 36849 (Jun. 21, 2022).

²⁸ *Supra* note 24.

²⁹ *See, e.g., FDA Studies: ‘Short-chain’ PFAS Chemicals More Toxic Than Previously Thought*, Environ. Working Grp., (Mar. 9, 2020), <https://www.ewg.org/news-insights/news/fda-studies-short-chain-pfas-chemicals-more-toxic-previously-thought>.

³⁰ *Supra* note 27.

³¹ *Ruth Alden Wicker, Where to Find PFAS-Free Hiking and Outdoor Clothing and Gear*, Ecocult (June 27, 2022), <https://ecocult.com/pfas-free-outdoor-clothing-hiking-gear/>.

Nikwax on all its products. Consumers can purchase Nikwax and add it to products if they notice some of the water repellent qualities degrading.³²

IV. Defendant's Representations Mislead Reasonable Consumers.

45. Reasonable consumers encountering REI's representations emphasizing safety and sustainability do not expect the Product to contain unsafe, unsustainable chemicals.

46. Reasonable consumers would consider both long- and short-chain PFAS to be unsafe.

47. Reasonable consumers would also consider PFAS, which are non-biodegradable "forever chemicals," to be environmentally unsustainable.

48. Here, Toxin Free USA facilitated testing and found over 100 ppm of organic fluorine in an REI Product meant for children, which indicates the presence of PFAS in the Product.³³

49. Further, another organization detected longer-chain PFAS (sometimes referred to as "older PFAS") in the REI Product, as seen in the data chart below.³⁴


³² *Id.*

³³ As previously explained in *supra* note 8, this type of analysis is a legitimate way to screen a product for PFAS and has thus been adopted by governments. In fact, a recent California law specifically banning PFAS in apparel defines the presence of PFAS as being "100 ppm or more of total organic fluorine." In 2027, this definition will be changed to 50 ppm of organic fluorine. See Cheryl Hogue, *California bans cosmetics and apparel with PFAS*, C&EN, (Sept. 30, 2022), <https://cen.acs.org/environment/persistent-pollutants/California-bans-cosmetics-apparel-PFAS/100/web/2022/09>.

³⁴ *Supra* note 24.

Table 1: PFAS in Outdoor Apparel

● = older PFAS detected ▲ = newer PFAS detected

Retailer	Product	PFAS Detected
All Items Labeled Stain- or Water-Resistant		
	REI Rainwall Jacket, Kids	● ▲

50. REI continuing to use long-chain PFAS despite explicitly representing that it had phased them out is misleading.

51. REI’s implication that short-chain PFAS are a safe alternative to long-chain PFAS when both types of PFAS pose risks to human health and the environment is misleading to reasonable DC consumers.

52. Additionally, REI’s omission of the material fact that short-chain PFAS pose risks to human health and the environment is misleading to reasonable DC consumers.

53. Thus, Defendant’s conduct in marketing the Product as being made sustainably and being safe for the wearer deceived and/or was likely to deceive the public. D.C. consumers have been, and continue to be, deceived into believing that the Product is safe and sustainable, when in fact, the Product contains “forever chemicals” known to be harmful to humans and to accumulate in the environment.

54. D.C. consumers cannot discover the true nature of the Product from reading Defendant's websites or marketing materials. Ordinary consumers do not have the ability to test apparel items for short or long-chain PFAS, nor do they have sufficient knowledge regarding the risks posed by short-chain PFAS.

55. Defendant is deceptively and misleadingly concealing material facts about the Product, namely, that the Product contains PFAS,³⁵ and that both long- and short-chain PFAS pose risks to human health.

56. REI knew what representations it made in marketing the Product. REI also knew how the Product was sourced and produced. REI thus knew, or should have known, the facts demonstrating that the Product was falsely represented to consumers, including D.C. consumers.

57. REI also knew that by representing “short-chain” PFAS as an alternative to “long-chain” PFAS, consumers would be led to believe that “short-chain” PFAS are somehow safer and more sustainable than “long-chain” PFAS when in reality, “short-chain” PFAS pose a similar risk to human health and the environment as “long-chain” PFAS.

58. In making the false, misleading, and deceptive representations and omissions at issue, Defendant also knew and intended that consumers would choose to buy, and would pay more for, products represented to be “safe” and “sustainable,” furthering Defendant’s private interest of increasing sales of their products and decreasing the sales of their competitors’ products that are truthfully marketed.

59. D.C. Consumers are at risk of real, immediate, and continuing harm if the Product continues to be sold with the misleading representations.

V. Defendant’s Representations Are Material to Consumers.

60. Consumers care about whether or not the products they use contain toxic or harmful chemicals.

³⁵ Not only does REI admit to using “short-chain” PFAS, but the report in *supra* note 24 found “long-chain” PFAS in the Product as well. Also, Toxin Free USA conducted its own PFAS screening test on the Product.

61. In a survey of more than 1000 consumers, nearly all participants (98%) indicated they were interested in knowing about the presence of harmful chemicals in everyday products.³⁶

62. Also, “two-thirds (68%) of Americans are willing to pay more for sustainable products.” With 79% of U.S. consumers saying sustainability is at least “somewhat important” when shopping for apparel items.³⁷

63. Market trends show that indicators like willingness to pay more for sustainable products and the importance of purchasing sustainable apparel items have increased in recent years, particularly with younger consumers.³⁸

64. In addition to consumer and industry trends, the Federal Trade Commission (“FTC”) has released “Green Guides” that “caution marketers not to make unqualified general environmental benefit claims because ‘it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.’”³⁹

JURISDICTION AND VENUE

65. This Court has personal jurisdiction over the parties in this case. Toxin Free USA consents to this Court having personal jurisdiction over the organization.

66. This Court has personal jurisdiction over Defendant REI because it has purposefully directed its conduct to the District and availed itself to the benefits and protections of District of Columbia law.

67. Defendant aims marketing at consumers within the District. The Product can be, and is, purchased in the District by D.C. consumers. Defendant’s sustainability report is accessible

³⁶ Sabrina Hartmann, *et al.*, *Interested Consumers’ Awareness of Harmful Chemicals in Everyday Products*, 29 *Environ. Sci. Eur.* 1, 4 (2017), <https://enveurope.springeropen.com/articles/10.1186/s12302-017-0127-8>.

³⁷ *Interest in Sustainability Surges for Consumer Products*, Computer Generated Solutions Inc., <https://www.cgsinc.com/en/resources/interest-sustainability-surges-consumer-products> (last visited July 20, 2022).

³⁸ *Id.*

³⁹ FTC Green Guides, 16 C.F.R. § 260.4(b) (2012).

in the District. REI also has a flagship store located in the District, located at 201 M Street NE, Washington, DC 20002.

68. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

PARTIES

69. Toxin Free USA, also known as GMO Free USA, is a 501(c)(3) non-profit organization whose mission is to harness independent science and agroecology concepts to advocate for clean and healthy food and ecological systems. Toxin Free USA educates consumers about the potential hazards of synthetic ingredients, pesticides and biocides, and genetically engineered organisms.

70. In 2020, GMO Free USA expanded its public education mission beyond GMOs and GMO-related pesticides, establishing Toxin Free USA as a complementary arm to the existing organization on the basis that it is impossible to have clean food and a clean environment without addressing the many toxins beyond GMOs and pesticides, such as PFAS chemicals, that have become pervasive in our food system and environment.

71. Toxin Free USA performs its work and advocates for consumers throughout the United States, including in the District of Columbia.

72. Toxin Free USA's website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

73. On June 9, 2022, Toxin Free USA purchased REI's "Co-op Rainwall Rain Jacket—Kids" through the Internet and the Product was delivered within the District of Columbia.

74. On June 29, 2022, testing commissioned by Toxin Free USA through a third-party lab revealed the presence of fluorine in the REI Product.

75. On June 30, 2022, testing commissioned by Toxin Free USA through a third-party lab revealed the presence of organic fluorine in the REI Product.

76. Defendant REI is incorporated and headquartered in Washington State.

77. Defendant markets and sells the Product in stores and online throughout the United States, including in the District of Columbia, where it has a flagship store.

78. Through its misrepresentations, Defendant has caused harm to the general public of the District of Columbia.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

79. Toxin Free USA incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

80. Toxin Free USA is a nonprofit, public-interest organization that brings these claims on behalf of the general public of D.C. consumers. *See* D.C. Code §§ 28-3905(k)(1)(D).

81. Through § 28-3905(k)(1)(D), the CPPA explicitly allows for public-interest standing and allows a public-interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

82. Through § 28-3905(k)(1)(C), the CPPA explicitly allows nonprofit organizations acting on behalf of the general public to establish “tester” standing.

83. Defendant is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

84. As alleged in this Complaint, Defendant has falsely and deceptively represented that the Product was safe and sustainable when, in reality, the Product contained PFAS, which are neither safe nor sustainable, and which a reasonable consumer would not consider safe or sustainable.

85. Thus, Defendant has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

86. Toxin Free USA hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff Toxin Free USA prays for judgment against Defendant and requests the following relief:

- A. A declaration that Defendant’s conduct is in violation of the CPPA;
- B. An order enjoining Defendant’s conduct found to be in violation of the CPPA; and
- C. An order granting Plaintiff costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

DATED: October 31, 2022

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