

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001

D. GRIGORESCU

Plaintiff

-vs.-

9199-4467 QUEBEC INC. doing business under the trade-name **EARTH RATED**, having its head office at 8500 Decare Boulevard, 7th floor, City of Montreal, Province of Quebec, H4P 2N2

Defendant

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION & TO
APPOINT THE PLAINTIFF AS REPRESENTATIVE PLAINTIFF
(Art. 574 C.C.P and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PLAINTIFF STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. The Plaintiff wishes to institute a class action on behalf of the following class, of which he is a member, namely:

- All persons residing in Canada who have purchased Earth Rated Certified Compostable Poop Bags or any other group to be determined by the Court;

Alternately (or as a subclass)

- All persons residing in Quebec who have purchased Earth Rated Certified Compostable Poop Bags or any other group to be determined by the Court;

2. Hereinafter, the Earth Rated Certified Compostable Poop Bags will be referred to as the “Earth Rated Products”;



3. The present class action concerns the Earth Rated Products which were falsely and prominently marketed, packaged, labelled, sold, and/or represented as “certified compostable”, when in reality, neither the intended contents of the bags, nor the bags themselves (regardless of the contents) are actually capable of being composted in Quebec or in the majority of cities in Canada or else are entirely valueless, since they are typically sent to the landfill alongside other plastics;
4. More specifically, while the bags themselves may be accepted in certain facilities that accept them, none of the compost facilities in the province of Quebec, accept the bags for composting and none of them accept pet litter¹ – as for the rest of Canada, municipal composting programs generally do not accept compostable plastic, pet waste and/or pet waste in compostable plastic due to health risks (such as E.Coli, parasites, bacteria, viruses and other pathogens);
5. As for the rest of the provinces and territories of Canada, there are some that accept the Earth Rated Products and some that accept the intended contents, but the majority of the composting facilities in the country do not – thus, while the bags may be made of theoretically compostable materials, there is a substantial portion of the country that, in practice, does not have the machinery or ability to actually compost

¹ Excepting Sherbrooke, Quebec, that accepts animal feces, but not compostable plastics, such as the Earth Rated Products.

them – this means that they are instead sent to the landfill where they do not get composted and then the bags and their contents rot;

6. The Defendant's marketing materials for the Earth Rated Products, including the product packaging and its website, www.earthrated.com represent that the bags are compostable and that they are compostable with domesticated animal feces in it, when in fact, it is rare to be able to compost domesticated animal feces and even where it can be done, the composition of the bags themselves most often prevents the facility from being able to compost it as their composting time is far longer than the rest of the compost pile;
7. The Defendant charges a premium based on its claims of compostability and leverages consumer demand for same;
8. By reason of its actions and omissions, the Defendant induced consumers into purchasing Earth Rated Products that do not live up to their reasonable expectations, thereby causing the Plaintiff and the members of the Class to suffer economic damages, upon which they are entitled to claim;

B) The Defendant

9. Defendant 9199-4467 Quebec Inc. doing business under the trade-name Earth Rated ("Earth Rated") is a private Canadian corporation with its head office in Montreal, Quebec. It is a wholly-owned subsidiary of non-party 9252-8595 Quebec Inc., which is a trademark ownership and usage company residing at the same head office address, that conducts business throughout Canada, including within the province of Quebec, the whole as appears more fully from copies of extracts from the *Registraire des entreprises*, produced herein *en liasse* as **Exhibit R-1**;
10. Non-party 9252-8595 Quebec Inc. is the current owner and registrant of *inter alia*, the following Canadian trade-marks:
 - POOPBAGS & Design (TMA855757), which was registered on July 22, 2013,
 - EARTH RATED (TMA855782), which was registered on July 22, 2013,
 - DOG Design (TMA953120), which was registered on October 24, 2016,
 - JUST PENNIES PER POOP (TMA953644), which was registered on October 28, 2016,
 - EARTH RATED (TMA999944), which was registered on June 28, 2018,
 - EARTH RATED & Design (TMA1236635), which was registered on May 31, 2024,

The whole as appears more fully from copies of said trade-marks from the CIPO database, produced herein *en liasse* as **Exhibit R-2**;

11. Non-party 9252-8595 Quebec Inc. was the owner and applicant for the patent for ANIMAL WASTE BAG DISPENSER AND COLLECTION STATION (A01K 1/00 (2006.01)); however, the patent was deemed abandoned on November 26, 2018,

the whole as appears more fully from a copy of the patent documents from the CIPO database, produced herein as **Exhibit R-3**;

12. Earth Rated was founded in 2009 and as of April 2023, the products were used by 4.5 million people daily and can be found in over 20,000 stores in over 40 countries, the whole as appears more fully from a copy of an extract from the Defendant's website at www.earthrated.com, produced herein as **Exhibit R-4**;
13. The Defendant is either directly or indirectly responsible for manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada, including within the province of Quebec;

C) The Situation

14. Canadian consumers have been becoming increasingly concerned about the environmental performance of products. Many are looking for products and services that are less harmful to the environment. This has led to an increased demand for "green" products or services, the whole as appears more fully from a copy of an extract from the Canadian Competition Bureau website at competition-bureau.canada.ca entitled "Environmental claims and greenwashing" dated December 2, 2021, produced herein as **Exhibit R-5**;
15. This demand has led to businesses communicating environmental benefits through "environmental labelling" and the use of advertising vehicles to promote these benefits. There are a wide range of descriptors, logos, vignettes, and other representations used to describe or imply environmental claims for consumer products. This means of communicating environmental claims is often called "green marketing", the whole as appears more fully from a copy of the Government of Canada's "Environmental claims: A guide for industry and advertisers" dated June 25, 2008, produced herein as **Exhibit R-6**;
16. Any statement or symbol that refers to, or creates the general impression that it reflects, the environmental aspects of any product or service is considered an environmental claim. According to the Government of Canada, "The value of environmental claims rests on the assurance that the information provided is credible, objective, and easily identifiable and understood by consumers (Exhibit R-6);

I. The Earth Rated Products and the Defendant's Representations

17. The Defendant manufactures, imports, distributes, markets, advertises, promotes, packages, labels, and sells a variety of pet waste products under the Earth Rated brand, while holding itself out to be environmentally friendly, the whole as appears more fully from a copy of an extract from the Defendant's website at www.earthrated.com, produced herein as **Exhibit R-7**;

18. In particular and, according to the Defendant, the Earth Rated Products are made from a “blend of PBAT and vegetable starches” and are “BPI-Certified Compostable, TUV OKCompost Industrial and Home Certified”, the whole as appears more fully from a copy of an extract from the Defendant’s website at www.earthrated.com, produced herein as **Exhibit R-8**;



Certified Compostable

Shop Now

19. PBAT, or Polybutylene Adipate Terephthalate, is a type of biodegradable and compostable plastic (a thermoplastic polymer or polyester). An effective PBAT-degrading enzyme is required in order to degrade, the whole as appears more fully from a copy of an extract from the EuroPlas website at europlas.com entitled “What is PBAT plastic? Pros and cons of PBAT”, produced herein as **Exhibit R-9**;
20. The Earth Rated Products are indeed BPI certified in both size formats, under SKU² 870856000680 and SKU 870856000925, respectively, the whole as appears more fully from a copy of the Defendant’s listing under the Biodegradable Products Institute’s website at products.bpiworld.org, produced herein as **Exhibit R-10**;
21. The Earth Rated Products are available in Canada in two sizes; 120 bags (for \$16.99) and 225 bags (for \$25.99) (Exhibit R-8);
22. The Earth Rated Products can be purchased from Amazon, Walmart, PetSmart, Ren’s Pets, and Pet Valu, or else in a wide variety of pet stores across the province and across the country such as Global Pet Foods, Nature Pet Centres, Pattes et Griffes, petvalu, and a wide variety of smaller pet stores, the whole as appears more

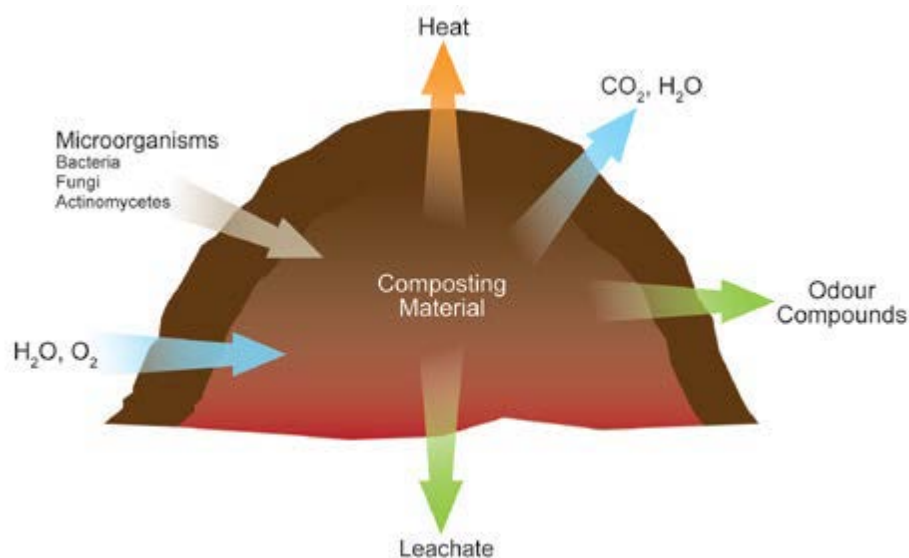
² Stock keeping unit.

fully from copies of extracts from the “Where to Buy” portion of the Defendant’s website at www.earthrated.com, produced herein *en liasse* as **Exhibit R-11**;

23. On both and every version of the Earth Rated Products, the Defendant represents that the Earth Rated Products are capable of being composted; reasonable consumers viewing the product packaging or viewing or marketing materials, such as the website, would believe that the bags are compostable and that they are compostable for their intended purpose (i.e. being pet waste bags);
24. The product packaging is quite literally a perfect example of greenwashing, with the words compostable on top of the product name and the packaging being green;
25. The claim that the Earth Rated Products are compostable is deceptive for at least two important reasons: (i) the bags themselves are not capable of being composted in the majority of composting facilities in Canada, and, even where they are capable of being composted (ii) the majority of facilities in Canada either cannot compost domesticated animal feces or cannot compost the bags when they contain domesticated animal feces, and (iii) where the Earth Rated Products can be composted when used for their intended purposes, they have no added value over a regular plastic bag, to which the composting facility would treat the same; i.e. send to the landfill after disposing of the contents;

II. Composting – Briefly Explained

26. There is a common misconception about composting and on how it works, you cannot just throw a banana peel onto your lawn and expect it to turn into compost – there is a process that must be followed;



27. Composting is a biological process in which organic matter is broken down by aerobic (oxygen-requiring) microorganisms, such as bacteria, fungi and insects, which decompose the material in a controlled environment. Organic matter is first

mixed with bulking agents (for example, wood chips) to improve aeration and then placed in windrows³, piles or vessels, the whole as appears more fully from copies of screenshots from the Government of Quebec's Recyc-Quebec website at <https://cavaouwebapp.recyc-quebec.gouv.qc.ca>, produced herein as **Exhibit R-12**;

28. Successful composting involves up to seven different steps. Throughout all of the steps, odours and other nuisance conditions (e.g., dust, litter, and vectors); surface waters, and leachate must be managed, the whole as appears more fully from a copy of an extract from Environment Canada's "Technical Document on Municipal Solid Waste Organics Processing", produced herein as **Exhibit R-13**;⁴

III. Composting and Pet Waste

29. Pet waste is considered as a contaminant at composting centres as it is a risk to health and safety of workers and can compromise the quality of the compost (Exhibit R-11);
30. A large number of composting facilities do not accept pet waste due to contamination concerns (pathogens, parasites, chemicals); many composting facilities lack the infrastructure or processes to effectively eliminate these contaminants;
31. The U.S. Federal Trade Commission has stated that compostable claims on pet waste products are "generally untrue":

"The staff notified 20 marketers that they may be deceiving consumers with the use of their unqualified "biodegradable" claim. Based on the FTC's Guides for the Use of Environmental Marketing Claims (the Green Guides), such a claim without any qualification generally means to consumers that the product will completely break down into its natural components within one year after customary disposal. Most waste bags, however, end up in landfills where no plastic biodegrades in anywhere close to one year, if it biodegrades at all.

According to the Green Guides, consumers generally think that unqualified "compostable claims" mean that a product will safely break down at the same rate as natural products, like leaves and grass clippings, in their home compost pile. If marketers disclose that a product will only compost in commercial or municipal facilities, consumers think that those facilities are generally available in their area. However, dog waste is generally not safe to compost at home,

³ Windrow composting is used for processing garden waste, either in open air or within large covered areas.

⁴ The full document is available here: https://www.compost.org/wp-content/uploads/2019/07/Technical_Document_MSW_Organics_Processing.pdf

and very few facilities accept this waste. Therefore, compostable claims for these products are generally untrue.”

The whole as appears more fully from a copy of the U.S. FTC Press Release entitled “FTC Staff Warns Marketers and Sellers of Dog Waste Bags That Their Biodegradable and Compostable Claims May Be Deceptive” dated February 3, 2015, produced herein as **Exhibit R-14**;

32. Of course, composting can be done at home with the proper tools; however, due to the presence of parasites, bacteria, viruses, and pathogens in pet waste, it prevents the resulting product from being usable. The U.S. EPA has stated:

“Animal waste contains two main types of pollutants that harm local waters: nutrients and pathogens. When this waste ends up in water bodies, it decomposes, releasing nutrients that cause excessive growth of algae and weeds. This makes the water murky, green, smelly, and even unusable for swimming, boating, or fishing. The pathogens, disease-causing bacteria and viruses, can also make local waters unswimmable and unfishable, and have caused severe illness in humans.

As you can see, animal waste doesn’t simply decompose.”

Likewise, and simply by way of example, the city of Salaberry-de-Valleyfield, also advises to avoid animal waste in home composting.

The whole as appears more fully from a copy of the U.S. EPA pamphlet entitled “Do You Scoop The Poop?” and from a copy of the city of Salaberry-de-Valleyfield pamphlet entitled “De la cuisine au jardin – le compostage domestique”, produced herein *en liasse* as **Exhibit R-15**;

33. Pet waste is not compatible with home composting because of the pathogens that it contains that are harmful to human health, such as salmonella and E. coli (Exhibit R-12);

IV. Composting Across Canada

34. A large number of composting facilities across Canada, and most notably, in Quebec, do not accept the Earth Rated Products and/or their intended contents, being pet waste, in their facilities due to not having the proper advanced composting technology;
35. The reasons that compostable plastic bags are refused at composting centres are:
- (i) They are still made of plastic and so, they unravel into small particles of plastic and do not decompose;

- (ii) They affect the quality of the compost since they take longer to decompose than the composting process itself;
- (iii) Because compostable plastic bags are so similar to regular plastic bags, it is difficult to distinguish what type of plastic bag it even is, so compostable plastic bags, even in the absence of the above 2 reasons, are banned from the brown bin altogether;

The whole as appears more fully from a copy of an extract from the Ville de Saguenay website at ville.saguenay.ca, produced herein as **Exhibit R-16**;

36. Operating permits for composting facilities in Canada fall under provincial jurisdiction;

37. The following is a sampling of composting centres across Canada and the materials that they accept in their facilities:

A) Quebec

38. In Quebec, composting is regulated by the *Ministère de l'Environnement et de la Lutte contre les changements climatiques* and plastic, compostable/biodegradable or not, is not accepted in composting facilities. Instead, plastic is considered as an "undesirable material" that must be removed and is sent to the landfill, the whole as appears more fully from a copy of the Eco Entreprises Quebec Status Report entitled "Biodegradable and compostable packaging in Quebec" dated April 2021, produced herein as **Exhibit R-17**;

(i) Montreal, Quebec:

39. In Montreal, the motto is "if you can eat it, you can compost it", the whole as appears more fully from copies of extracts from the Ville de Montreal website at montreal.ca, produced herein *en liasse* as **Exhibit R-18**;

40. "Unacceptable materials" include "packaging made of certified compostable plastic, PLA, corn starch or biodegradable plastic" and "pet droppings" (Exhibit R-18);

41. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Montreal is false and misleading;

(ii) Granby, Quebec:

42. In Granby, domestic animal waste is indeed accepted in the composting facilities; however, the Earth Rated Products are not – "Matières acceptées"... "Litière et excréments d'animaux domestiques (en vrac ou dans des sacs de papier)" – while the "Matières refuses" includes "Toute matière de plastique, compostable ou non, y compris la vaisselle et les ustensiles jetables en plastique compostable ou biodegradable", the whole as appears more fully from copies of extracts from the

MRC de La Haute-Yamaska website at www.genedejeter.com, produced herein *en liasse* as **Exhibit R-19**;

LES SACS COMPOSTABLES ET LES SACS DE PLASTIQUE SONT INTERDITS.

43. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Granby is false and misleading;

(iii) Saguenay, Quebec:

44. In Saguenay, Quebec, all plastic bags, including those certified as compostable are refused in the composting facilities. As for animal excrement, that is refused as well, the whole as appears more fully from copies of extracts from the Ville de Saguenay website at ville.saguenay.ca and from a copy of the Ville de Saguenay “Aide-mémoire sur le tri des matières | Compost, recyclage, déchet et écocentre”, produced herein *en liasse* as **Exhibit R-20** (see also Exhibit R-16);

45. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Saguenay is false and misleading;

(iv) Sherbrooke, Quebec

46. In Sherbrooke, Quebec, only paper bags are accepted for composting and all plastic bags, including those certified as compostable are refused. As for animal excrement, that is accepted, but not if contained in the Earth Rated Products, which are not accepted, thereby completely obviating their value, the whole as appears more fully from a copy of an extract from the Sherbrooke website at www.sherbrooke.ca, produced herein as **Exhibit R-21**;

47. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Sherbrooke is false and misleading;

(v) Salaberry-de-Valleyfield, Quebec

48. In Salaberry-de-Valleyfield, Quebec, only paper bags are accepted for composting and all plastic bags, including those certified as compostable are refused. As for animal excrement, that is accepted, but not if contained in the Earth Rated Products, which are not accepted, thereby completely obviating their value, the whole as appears more fully from a copy of an extract from the Salaberry-de-Valleyfield website at www.ville.valleyfield.qc.ca, produced herein as **Exhibit R-22**;

49. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Salaberry-de-Valleyfield is false and misleading;

(vi) Montérégie, Quebec

50. In Montérégie, Quebec, only paper bags are accepted for composting and all plastic bags, including those certified as compostable are refused. As for animal excrement, that is accepted, but not if contained in the Earth Rated Products, which are not accepted, thereby completely obviating their value, the whole as appears more fully from a copy of an extract from the Compo-Haute-Richelieu website at www.compo.qc.ca and from a copy of the “Liste des matières acceptées et refuses”, produced herein *en liasse* as **Exhibit R-23**;

51. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Montérégie is false and misleading;

B) Manitoba

(i) Winnipeg, Manitoba

52. In Winnipeg, Manitoba, the Earth Rated Products are accepted at composting facilities; however, animal waste/litter is not, the whole as appears more fully from a copy of The Winnipeg Compost Guide, produced herein as **Exhibit R-24**;

53. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Winnipeg is false and misleading;

C) British Columbia

54. In British Columbia, no plastics of any kind are accepted for composting, the whole as appears more fully from a copy of the Government of British Columbia’s poster entitled “What goes in the bin”, produced herein as **Exhibit R-25**;

55. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in British Columbia is false and misleading;

(i) Vancouver, British Columbia

56. Likewise, in Vancouver, British Columbia, pet waste and pet waste bags and plastic bags of any kind, including plastic bags labelled as compostable or biodegradable are not accepted, the whole as appears more fully from a copy of an extract from the city of Vancouver website at vancouver.ca, produced herein as **Exhibit R-26**;

D) Newfoundland and Labrador

57. Newfoundland and Labrador do not offer compost services for anything other than residential yard waste, the whole as appears more fully from a copy of the CBC News article entitled “St. John’s has no plans to introduce organic waste collection any time soon, says mayor” dated October 22, 2024, produced herein as **Exhibit R-27**;

58. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Newfoundland and Labrador is false and misleading;

E) Alberta

(i) Calgary, Alberta

59. The city of Calgary does accept the Earth Rated Products, including when their contents are pet waste, the whole as appears more fully from a copy of an extract from the Calgary website at www.calgary.ca, produced herein as **Exhibit R-28**;

60. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Calgary is not false and misleading;

(ii) Edmonton, Alberta

61. The city of Edmonton does not process pet waste bags and plastic bags of any kind, including plastic bags labelled as compostable as they do not break down in their process. Their machinery does not distinguish between compostable or not and so they are disposed of as garbage, the whole as appears more fully from a copy of an extract from the city of Edmonton website at www.gov.edmonton.ab.ca, produced herein as **Exhibit R-29**;

62. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Edmonton is false and misleading;

(iii) Lethbridge, Alberta

63. The city of Lethbridge does not process plastic bags of any kind, including plastic bags labelled as compostable into their “green cart program”. It also does not accept pet waste, the whole as appears more fully from a copy of an extract from the city of Lethbridge website at www.lethbridge.ca, produced herein as **Exhibit R-30**;

64. Thus, the claim that the Earth Rated Products, when used for their intended purposes, are compostable in Lethbridge is false and misleading

F) Ontario

(i) Ottawa, Ontario

65. In the city of Ottawa, only paper bags are accepted for composting and all plastic bags, including those certified as compostable are refused. As for animal waste, that is accepted, but not if contained in the Earth Rated Products, which are not accepted, thereby making them completely valueless or of negative value, the whole as appears more fully from copies of extracts from the city of Ottawa website at ottawa.ca, produced herein *en liasse* as **Exhibit R-31**;

66. The Ottawa website (Exhibit R-31) specifies as follows:

“How are organics in the plastic bags processed?”

The organic waste facility has been retrofitted to rip open the plastic bags and separate the organic waste for composting. The plastic bags are then sent to landfill. The paper and compostable bags will begin to break down, along with the food and organic waste, while the material decomposes in the composting tunnels. Any paper and compostable bags that do not break down are screened from the compost. Smaller screened pieces may be recirculated through the process, bigger screened pieces are sent to landfill.

Can compostable or biodegradable bags be used to bag organic waste?

Plastic bags of any kind can be used to bag organic waste in the green bin. However, there is no need to purchase bags for this purpose. You can reuse common ones around your home. Compostable or biodegradable bags have no added benefit because they don't break down fast enough during processing. Like all other plastic bags, they are separated from the organic waste and sent to the landfill.”

(ii) Toronto, Ontario

67. Toronto does accept the Earth Rated Products for composting; however, it accepts all plastic, making the purchase of the Earth Rated Products entirely superfluous. The Toronto website states “Compostable plastic bags are not necessary” and that “Any type of bag (i.e. conventional or compostable plastic) can be used since bags are removed from organics during pre-processing”, the whole as appears more fully from copies of extracts from the city of Toronto website at www.toronto.ca, produced herein *en liasse* as **Exhibit R-32**;

G) Nova Scotia

(i) Halifax, Nova Scotia

68. In Halifax, pet waste and pet waste bags and plastic bags of any kind, including plastic bags labelled as compostable or biodegradable are not accepted.

“Plastic of any kind is not acceptable for green cart. In some cases “biodegradable” or “compostable” plastics may break down in a laboratory setting but have not been proven in a municipal compost system.”

The whole as appears more fully from copies of extracts from the Halifax website at www.halifax.ca, produced herein *en liasse* as **Exhibit R-33**;

H) Summary of Composting in Canada

69. From the sample of provinces outlined above, the Earth Rated Products, in the vast majority of cases are destined for the landfill either: (i) because no plastics, compostable or not, are accepted at the composting facilities, (ii) plastics are accepted, but mechanically opened and destined for the landfill so that their contents can be composted making their purchase unnecessary (non-“compostable” bags can be used in exactly the same manner making their purchase unnecessary), (iii) the facilities do not accept pet waste, or (iv) the facilities do not accept pet waste in sealed bags;
70. Surely, there are certain facilities that can process the Earth Rated Products and their contents, such as Calgary, Alberta, but they are few and far between and, for the most part, accept any plastic, making the purchase of the Earth Rated Products, at at least double the price of comparables, unnecessary;

V. The National Standard of Canada on Environmental Claims – ISO 14020 Series

71. The CAN/CSA-ISO 14020 series of standards are Canadian National Standards that establishes requirements for environmental claims on products. It is based on the International Standard ISO, which was developed to provide a framework for environmental labeling and declarations and to harmonize the use of environmental claims and declarations across the world (Exhibit R-6); the whole as appears more fully from a copy of an extract from the Intertek inform website at www.intertekinform.com, produced herein as **Exhibit R-34**;
72. The standards outline principles for effective environmental communication for making credible claims, including transparency, accuracy and consistency. Transparency means that claims must be understandable to allow persons to make informed decisions, accuracy means that they should not be misleading representations, and consistency (though not really relevant here) means standardization for meaningful comparison (Exhibit R-34);
73. These international standards, principles and specific requirements were not complied with by the Defendant in the promotion of its Earth Rated Products and raise concerns, *inter alia*, under the *Competition Act*, RSC 1985, c C-34 and the *Consumer Packaging and Labelling Act*, RSC 1985, c C-38, including, but not limited to the follow ways:
- (i) It claimed that its Earth Rated Products were compostable, when they were not actually capable of being composted;
 - (ii) It claimed that its Earth Rated Products, when used for their primary intended purposes (i.e. to collect pet waste), were compostable when no facility in Quebec, and a majority of facilities across Canada either do not accept pet waste or do not accept plastic, whether compostable or not;

- (iii) The compostability claims were false and misleading in a material respect as the word “compostable” implies that the Earth Rated Products are capable of being composted, when in the majority of cases, they are not accepted at composting facilities or are accepted but then thrown in the landfill;

74. In addition to the standard s. 52 *Competition Act* claim, s. 74.01 provides that it is a deceptive marketing practice to make a representation to the public (i) of a product’s benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test (b.1), (ii) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology (b.2);

75. The fact is, the Earth Rated Products are not capable of being composted; they are rarely accepted in composting facilities and, when they are, they are considered as contaminants and the vast majority of them throw them into the landfill;

VI. The Overpayment/ Price Premium

76. To give an example of the price discrepancy between the Earth Rated Certified Compostable Poop Bags and Earth Rated regular poop bags, the Earth Rated Certified Compostable ones have a suggested retail price of \$16.99 (120 bags), whereas the Earth Rated regular poop bags have a suggested retail price of \$8.99 (120 bags). Similarly, the Earth Rated “Easy-Tie Handle Poop Bags” are priced at \$7.99 (120 bags), the whole as appears more fully from copies of extracts from the Defendant’s website at www.earthrated.com, produced herein *en l’assise* as **Exhibit R-35**;

77. That means that the Earth Rated Compostable Poop Bags are just over 14 cents per bag, while the regular bags are 7.5 cents per bag;

78. Meanwhile, other “compostable” pet waste bags are also priced less, though their claims would be equally misleading. For example, Dog Waste Solutions offers “Compostable Header Pick-Up Bags - Case of 2000” for \$129.98 though it is on sale for \$99.99 – that means that the cost per bag is just under 5 cents, the whole as appears more fully from a copy an on extract from the Dog Waste Solutions website at dogwastesolutions.ca, produced herein as **Exhibit R-36**;

79. But most importantly, in facilities that do accept the Earth Rated Products, they also most often accept most any plastic bag, making their purchase, and, at a premium, entirely useless. Though, most facilities do not even accept them;

80. The Defendant represents that the Earth Rated Products are compostable and certified as such and charges a price premium for them based on this representation;

VII. The U.S. Litigation

81. Between October 28, 2021 and December 7, 2021, a similar class action with filed in the United States District Court for the Eastern District of New York alleging substantially similar claims against the Defendant relating to the related to the compostability of the Earth Rated Products. The action was subsequently amended on May 6, 2022 (the “U.S. Litigation”), the whole as appears more fully from a copy of the First Amended Class Action Complaint in Case No. 2:21-cv-06775-JS-SIL dated May 6, 2022, produced herein as **Exhibit R-37**;

82. On March 14, 2024, the U.S. Litigation was settled, establishing a settlement fund of US\$825,000.00 for approved claims, notice and settlement administration expenses, fee awards, and service awards, the whole as appears more fully from a copy of the Class Action Settlement Agreement in Case No. 2:21-cv-06775-JS-SIL dated March 14, 2024, produced herein as **Exhibit R-38**;

83. On May 14, 2024, the United States District Court for the Eastern District of New York granted preliminary approval of the class action settlement. On October 23, 2024, the Court granted final approval of the settlement, the whole as appears more fully from a copy of the Order Granting Preliminarily Approval of Class Action Settlement in Case No. 2:21-cv-06775-JS-SIL dated May 14, 2024, and from a copy of the Final Order Granting Final Approval of Class Action Settlement Agreement and Entering Judgment in Case No. 2:21-cv-06775-JS-SIL dated October 23, 2024, produced herein *en liasse* as **Exhibit R-39**;

VIII. Summative Remarks

84. The Defendant engaged and continues to engage in a widespread, uniform marketing campaign using the Earth Rated product packaging, its website, and various advertisements to mislead consumers about the benefits of its Earth Rated Products;

85. The Defendant’s ongoing practice of manufacturing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable – when in fact, the Earth Rated Products are not actually capable of being composted – is likely to deceive ordinary consumers who reasonably understood the labelling of the Earth Rated Products to mean what it says – that the Earth Rated Products will be converted into usable compost. In reliance upon the Defendant’s claims that the Earth Rated Products are compostable, Class Members sought out and were willing to pay more for the Earth Rated Products than similar products that do not claim to be compostable, and in fact did purchase and use the Earth Rated Products;

86. The advertisements and representations made by the Defendant as set forth above were and are false and/or misleading. The acts and practices of the Defendant, as alleged herein, constitute unfair or deceptive acts or practices and the marking of false statements;
87. No reasonable consumer would expect that a certified compostable bag was incapable of being composted – it goes against the very language of the representation;
88. As a result of the Defendant's deceptive claims, consumers have purchased products that are substantially different than represented;
89. The Plaintiff and the other Class Members were among the intended recipients of the Defendant's deceptive representations and omissions described herein. The Defendant's deceptive representations and omissions, as described herein, are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions;
90. Consumers were induced into purchasing Earth Rated Products through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim a refund for the purchase price of those products;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFF

91. The Plaintiff has purchased and used many Earth Rated Products over the years, from various stores including, but not limited to, Walmart and Petsmart, in either of the 120-bag format for approximately \$16.99 or the 225-bag format for approximately \$25.99 plus taxes per box;
92. The Plaintiff believed, from having seen the Defendant's marketing and having read the product labelling, including the Earth Rated branding, that the Earth Rated Products were capable of being composted and he acted by purchasing and using the products in reliance;
93. The Plaintiff has recently discovered that these product claims are false and misleading. The Plaintiff has also recently discovered that a similar class action was settled in the United States for the Earth Rated Products due to the false advertising relating to the compostability claims;
94. In consequence, the Plaintiff now realizes that he has been misled by the Defendant; had he known the true facts, the Plaintiff would not have purchased the Earth Rated Products or would not have paid a premium over most any other bag – since the

Earth Rated Products are not capable of being composted in Quebec and in the majority of facilities across the country;⁵

95. The Plaintiff's damages are a direct and proximate result of the Defendant's conduct and its false and misleading advertising;
96. In consequence of the foregoing, the Plaintiff is justified in claiming damages in the amount of money spent purchasing the Earth Rated Products at all as well as in the amount of time and energy spent in using them;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

97. Every member of the Class has purchased Earth Rated Products believing that they were capable of being composted due to Defendant's marketing, advertising, and labelling of this claim;
98. The Class Members were, therefore, induced into error by the Defendant's false and misleading advertising;
99. Had the Defendant disclosed the truth about Earth Rated Products, reasonable consumers would not have purchased them and/or certainly would not have paid such a high price for them;
100. In consequence of the foregoing, each member of the Class is justified in claiming at least one or more of the following as damages:
- a. The purchase price of the Earth Rated Product(s) or in the alternative, a portion of the purchase price for the Earth Rated Product(s);
 - b. Punitive damages;
101. The Defendant engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from Class Members;
102. All of these damages to the Class Members are a direct and proximate result of the Defendant's conduct and its false and misleading advertising;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

⁵ As outlined above, it does appear that Calgary accepts the Earth Rated Products; however, no other facility was found that actually composts them and it is unclear on whether Calgary composts them or simply accepts them and then sends them to the landfill during processing.

103. The Plaintiff is not privy to the specific number of persons who purchased Earth Rated Products; however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). Nevertheless, the Defendant's sales records could establish the size of the class to a reasonable degree of exactitude;
104. Class Members are numerous and are scattered across the entire province of Quebec and country;
105. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system;
106. While certain Class Members may have suffered a substantial loss, it is expected that the majority have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding;
107. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity;
108. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;
109. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them together in one action;
110. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and have access to justice;
- B) The claims of the members of the Class raise identical, similar or related issues of law or fact
111. All consumers were subjected to the same deceptive actions – the marketing, advertising, promoting, packaging, labelling, selling, and/or representing of the Earth Rated Products as being environmentally-friendly and compostable with the Earth Rated brand name;

112. Individual issues, if any, pale by comparison to the common issues that are significant to the outcome of the litigation;
113. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Defendant's misconduct;
114. The claims of the members raise identical, similar or related issues of fact or law, namely:
- a) Did the Defendant engage in unfair, false, misleading, or deceptive acts or practices regarding the manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada?
 - b) Is the Defendant liable to the Class Members for reimbursement of the purchase price of the Earth Rated Products as a result of its misconduct?
 - c) Should an injunctive remedy be ordered to prevent the Defendant from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct – more specifically, to cease representing the Earth Rated Products as being compostable?
 - d) Is the Defendant responsible to pay punitive damages to Class Members and in what amount?
115. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

116. The action that the Plaintiff wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief, and a declaratory judgment;
117. The conclusions that the Plaintiff wishes to introduce by way of an application to institute proceedings are:

GRANT the class action of the Plaintiff and each of the members of the Class;

DECLARE that the Defendant has committed unfair, false, misleading, and/or deceptive conduct with respect to its manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada;

ORDER the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct by manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada;

CONDEMN the Defendant to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay punitive damages to each of the members of the Class, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) The Plaintiff requests that he be designated as representative of the Class

118. The Plaintiff is a member of the Class;

119. The Plaintiff is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;

120. The Plaintiff has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;

121. The Plaintiff has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

122. The Plaintiff, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

123. The Plaintiff has given instructions to his attorneys to put information about this class action on their website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

124. The Plaintiff is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendant's conduct;
125. The Plaintiff understands the nature of the action;
126. The Plaintiff's interests do not conflict with the interests of other Class Members and further, the Plaintiff has no interest that is antagonistic to those of other members of the Class;
127. The Plaintiff is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
128. The Plaintiff has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;
- B) The Plaintiff suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal
129. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
130. The Plaintiff's attorneys practice their profession in the judicial district of Montreal;
131. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages, injunctive relief, and declaratory relief;

APPOINT the Plaintiff as representative of the persons included in the Class herein described as:

- All persons residing in Canada who have purchased Earth Rated Product(s) or any other group to be determined by the Court;

Alternately (or as a subclass)

- All persons residing in Quebec who have purchased Earth Rated Product(s) or any other group to be determined by the Court;

IDENTIFY the principle issues of fact and law to be treated collectively as the following:

- a) Did the Defendant engage in unfair, false, misleading, or deceptive acts or practices regarding the manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada?
- b) Is the Defendant liable to the Class Members for reimbursement of the purchase price of the Earth Rated Products as a result of its misconduct?
- c) Should an injunctive remedy be ordered to prevent the Defendant from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct – more specifically, to cease representing the Earth Rated Products as being compostable?
- d) Is the Defendant responsible to pay punitive damages to Class Members and in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Plaintiff and each of the members of the Class;

DECLARE that the Defendant has committed unfair, false, misleading, and/or deceptive conduct with respect to its manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada;

ORDER the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct by manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Earth Rated Products as compostable throughout Canada;

CONDEMN the Defendant to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay punitive damages to each of the members of the Class, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class Members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE, THE GLOBE AND MAIL, and THE NATIONAL POST;

ORDER that said notice be available on the Defendant's website, as well as its Facebook page(s) and Twitter account(s) with a link stating "Notice to Earth Rated Product Purchasers";

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE with costs, including all publication and dissemination fees.

Montreal, December 19, 2024

(s) Andrea Grass

ACTIS LAW GROUP INC.

Per: Me Andrea Grass

Attorneys for the Plaintiff

ACTIS LAW GROUP INC.
500 Place d'Armes, Suite 1800
Montreal, Quebec, H2Y 2W2
Telephone: (514) 495-5249
Email: agrass@actislaw.org