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11 Attorneys for Plaintiff, CINDY BAKER, on behalf of herself and all others
 12 similarly situated

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA – CENTRAL DISTRICT**

15 CINDY BAKER, on behalf of herself
 16 and all other similarly situated,

17 Plaintiff

18 v.

19 NESTLE S.A., a Swiss corporation,
 20 NESTLE USA, INC., a Delaware
 21 corporation, NESTLE WATERS
 22 NORTH AMERICA, a Delaware
 23 corporation, and DOES 1 through 100,
 24 inclusive,

25 Defendants.

26 Case No.

27 **CLASS ACTION COMPLAINT
 28 FOR:**

1. **VIOLATION OF CALIFORNIA
 FALSE ADVERTISING LAWS
 [Business and Professional Code
 §17500 *et seq.*, Cal. Civ. Code §
 1750 *et seq.*]**
2. **VIOLATION OF THE UNFAIR
 COMPETITION LAW
 [Business and Professional Code
 § 17200 *et seq.*]**
3. **BREACH OF EXPRESS
 WARRANTY**
4. **FRAUD**
5. **NEGLIGENT
 MISREPRESENTATION**
6. **RESTITUTION**
7. **INJUNCTION**

DEMAND FOR JURY TRIAL

1 Plaintiff Cindy Baker, on behalf of herself and all others similarly situated
2 brings this action against defendants Nestle S.A., Nestle USA, Inc., Nestle Waters
3 North America, and DOES 1 through 100 and state:

4 **I. PARTIES**

5 **A. Plaintiff**

6 1. Plaintiff Cindy Baker (“Plaintiff”) is a California resident
7 who on multiple occasions in the last year has purchased and consumed Nestle
8 Pure Life Purified bottled water for herself and her family in Los Angeles,
9 California. In particular, on about October 31, 2017, Plaintiff purchased a case of
10 Nestle Pure Life Purified bottled water for her and her family at the Smart & Final
11 located in Encino, California.

12 **B. Defendants**

13 2. Defendant Nestle S.A. (“Nestle Switzerland”) is a Swiss corporation
14 located in Vevey, Switzerland, and doing business throughout the United States,
15 California, including the County of Los Angeles.

16 3. Defendant Nestle USA, Inc. (“Nestle USA”) is a Delaware
17 corporation located in Stamford, Connecticut, and doing business throughout
18 California, including the County of Los Angeles.

19 4. Defendant Nestle Waters North America (“Nestle North America”) is
20 a Delaware corporation located in Arlington, Virginia, and doing business
21 throughout California, including the County of Los Angeles.

22 5. Nestle Switzerland, Nestle USA and Nestle North America are
23 referred to herein as Defendants.

24 6. Plaintiffs are informed and believe, and based thereon allege, that
25 each defendant acted in all respects pertinent to this action as the agent of the other
26 Defendants, carried out a joint scheme, business plan or policy in all respects
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1 pertinent hereto, and the acts of each defendant are legally attributable to the other
2 defendants. Furthermore, Defendants in all respects acted as the employer and/or
3 joint employer of Plaintiffs. Plaintiffs are informed and believe and thereon allege
4 that at all times relevant to this action, the named defendant and defendants DOES
5 1 through 100 were affiliated and were an integrated enterprise.

6 **II. FACTUAL ALLEGATIONS**

7 7. Recently, the World Health Organization (“WHO”) announced that it
8 is launching a review of the potential risks of plastic particles in certain bottled
9 drinking water, including Nestle Pure Life Purified bottled water, after a study
10 found high levels of tiny pieces of plastic in the samples tested.

11 8. The testing and analysis was recently conducted at the State
12 University of New York in Fredonia as part of a project from the U.S.-based
13 journalism organization Orb Media. Of the tested bottled water brands, Nestle
14 Pure Life Purified bottled drinking water was found to contain high levels of
15 plastic particles, with alarming rates of micro plastics per liter detected.

16 9. The study found that Nestle Pure Life Purified bottle drinking water
17 contained various microplastics, including polypropylene, nylon, and polyethylene
18 terephthalate.

19 10. In one case, a bottle of Nestlé Pure Life Purified bottled drinking
20 water was found to contain more than 10,000 pieces of microplastic per liter of
21 water.

22 11. Plaintiff has recently purchased and consumed Nestle Pure Life
23 Purified drinking water purchased from Smart & Final in Encino, California.
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1 **III. CLASS DEFINITION AND ALLEGATION**

2 12. Plaintiff seeks to represent the following subclasses of California
3 consumers pursuant to Federal Rule of Civil Procedure Rule 23:

4 **Subclass 1** (California False Advertising Subclass). All persons who
5 purchased Nestle Pure Life Purified bottled drinking water in
6 California, in the last 4 years.

7 **Subclass 2** (California Consumption Subclass). All persons who
8 consumed Nestle Pure Life Purified bottled drinking water in
9 California, in the last 4 years.

10 **Subclass 3** (U.S. Purchase Subclass). Plaintiffs seek to represent all
11 persons who purchased Nestle Pure Life Purified bottled drinking
12 water in the United States, in the last 4 years.

13 **Subclass 4** (U.S Consumption Subclass). Plaintiffs seek to represent
14 all persons who consumed Nestle Pure Life Purified bottled drinking
15 water in the United States, in the last 4 years.

16
17 Plaintiff reserves the right to amend these subclasses.

18 **IV. CLASS ALLEGATIONS**

19 13. *Numerosity.* The members of the proposed class are so numerous that
20 their individual joinder is impracticable. Plaintiff is informed and believes, and on
21 that basis alleges, that the proposed class contains hundreds of thousands of
22 members. The precise number of proposed class members is unknown to Plaintiff.
23 The true number of the proposed class is known by the Defendant, however, and
24 thus, may be notified of the pendency of this action by first class mail, electronic
25 mail, and by published notice.

26 14. *Existence and Predominance of Common Questions of Law and*
27 *Fact.* Common questions of law and fact exist as to all members of the proposed
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1 class and predominate over any questions affecting only individual proposed class
2 members. These common legal and factual questions regarding, among other
3 things, whether bottled water marketed, labeled, and sold as “pure” and “purified”
4 constitutes an actionable act or omission based upon the recent studies finding high
5 levels of plastics in Nestle Pure Life Purified bottled water and include , but are not
6 limited to, the following:

- 7 (a) whether Defendants had adequate substantiation for their claims
8 prior to making them;
- 9 (b) whether the advertising claims made by Defendants are true, or
10 are false and/or misleading, or reasonably likely to deceive;
- 11 (c) whether Defendants’ alleged conduct violates public policy;
- 12 (d) whether the alleged conduct constitutes violations of the laws
13 asserted;
- 14 (e) whether Defendants engaged in false or misleading advertising;
- 15 (f) whether Plaintiff and the proposed class have sustained
16 monetary loss and the proper measure of that loss;
- 17 (g) whether Plaintiff and the proposed class are entitled to an award
18 of punitive damages;
- 19 (h) whether Plaintiff and the proposed class are entitled to
20 declaratory and injunctive relief; and
- 21 (i) whether Plaintiff and the proposed class are entitled to
22 restitution.
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24 15. **Typicality.** Plaintiff's claims are typical of the claims of the proposed
25 class in that the Defendants were unjustly enriched as a result of Plaintiff’s and the
26 proposed class’ respective purchases of the bottled water at issue.
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1 16. ***Adequacy of Representation.*** Plaintiff will fairly and adequately
2 protect the interests of the members of the proposed class. Plaintiff has retained
3 counsel experienced in complex consumer class action litigation. Plaintiff intends
4 to prosecute this action vigorously. Plaintiff has no adverse or antagonistic
5 interests to those of the proposed class.

6 17. ***Superiority.*** A class action is superior to all other available means for
7 the fair and efficient adjudication of this controversy. The damages or other
8 financial detriment suffered by individual proposed class members is relatively
9 small compared to the burden and expense that would be entailed by individual
10 litigation of their claims against the defendant. It would thus be virtually
11 impossible for the class, on an individual basis, to obtain effective redress for the
12 wrongs done to them. Furthermore, even if proposed class members could afford
13 such individualized litigation, the court system could not. Individualized litigation
14 would create the danger of inconsistent or contradictory judgments arising from the
15 same set of facts. Individualized litigation would also increase the delay and
16 expense to all parties and the court system from the issues raised by this action. By
17 contrast, the class action device provides the benefits of adjudication of these
18 issues in a single proceeding, economies of scale, and comprehensive supervision
19 by a single court, and presents no unusual management difficulties under the
20 circumstances here.
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22 18. Unless a class action is certified here, Defendants will retain monies
23 received as a result of its conduct that was taken from Plaintiff and proposed class
24 members. Unless a class-wide injunction is issued, Defendants will continue to
25 commit the violations alleged, and the proposed class members and the general
26 public will continue to be misled.
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1 (4) Representing that goods or services are of a particular standard,
2 quality, or grade, or that goods are of a particular style or
3 model, if they are of another;

4 (5) Advertising goods or services with intent not to sell them as
5 advertised.

6 23. Defendants' advertising, marketing, packaging, labeling and bottling
7 is misleading, and misrepresents or omits important information to potential
8 purchasers and consumers of Nestle Pure Life Purified bottled water. Defendants,
9 and each of them, have violated and continue to violate the CLRA by
10 misrepresenting the purity and purification of this water. Defendants, and each of
11 them, knew or should have known, that the representations and advertisements
12 were false and misleading. Defendants, and each of them, have intentionally,
13 negligently and recklessly concealed and omitted the truth about the purity and
14 purification of the water sold to the public. By doing so, Defendants encouraged
15 consumers to purchase bottled water they believed was pure and purified.
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17 24. Pursuant to California Civil Code §1782(d), Plaintiff and the
18 proposed class seeks a Court order enjoining the above-described wrongful acts
19 and practices of Defendants and for restitution and disgorgement.

20 25. Pursuant to section 1782 of the Act, by certified letters dated March
21 21, 2018, Plaintiff and the proposed class notified Defendants in writing by
22 certified mail of the particular violations of the CLRA set forth in §1770, and
23 demanded that Defendants stop the sale, distribution, advertising, marketing,
24 labeling, packaging or bottling of Nestle Pure Life Purified drinking water in
25 California, and to pay full restitution to all affected California consumers. The
26 CLRA letter was mailed as directed by Civil Code §1782. Plaintiffs will amend
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1 this Complaint to bring specific claims under the CLRA after the statutory period
2 has passed.

3 26. Plaintiffs allege Defendants' conduct is malicious, fraudulent, willful
4 and wanton, and Defendants intentionally misleads and withholds material
5 information from consumers in order to increase the sale of their bottled water.
6 Plaintiff and the class members would not have purchased Nestle Pure Life
7 Purified bottled water had it not been for Defendants' misrepresentations and
8 concealment of material misrepresentations and omissions.

9 27. Concurrent with the filing of the complaint in this action, Plaintiffs
10 filed an Affidavit of Venue in accordance with Civil Code section 1780(d).

11 **SECOND CLAIM FOR RELIEF**

12 **Violation of Business & Professions Code Section 17200, *et seq.*,**
13 **Section 17500 *et seq.***

14 28. Plaintiff incorporates by reference and realleges each and every
15 allegation contained in the foregoing paragraphs as if fully set forth herein.

16 29. Plaintiff brings this claim individually and on behalf of the proposed
17 class for the last four years and continuing.

18 30. The Unfair Competition Law, Business & Professions Code §17200,
19 et seq. ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or
20 practice and any false or misleading advertising. In the course of conducting
21 business, Defendants committed unlawful business practices by, *inter alia*, making
22 the representations (which also constitutes advertising within the meaning of
23 §17200) and omissions of material facts, as set forth more fully herein, and
24 violating Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, Business &
25 Professions Code §§17200, *et seq.*, 17500, *et seq.*, California Health & Safety
26 Code §110390 *et seq.*, 21 U.S.C. §301, *et seq.*, and the common law.
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1 31. As alleged herein, Defendants’ misrepresentations and omissions of
2 material facts, constitute “unfair” business acts and practices within the meaning of
3 Business & Professions Code §§17200, *et seq.*, in that Defendants’ conduct was
4 injurious to consumers, offended public policy, and was unethical and
5 unscrupulous.

6 32. Plaintiff also asserts Defendants violated public policy by withholding
7 material facts regarding, among other things, the purity and purification of its
8 bottled drinking water from consumers. Defendants’ violation of California’s
9 consumer protection and unfair competition laws in California resulted in harm to
10 consumers including Plaintiff and the proposed class.

11 33. Plaintiff and the proposed class have suffered injury in fact and lost
12 money or property as a result of Defendants’ conduct.

13 34. Plaintiff and the class she seeks to represent reserve the right to allege
14 other violations of law which constitute other unlawful business acts or practices.

15 35. The actions of Defendants constitute “unfair” business acts or
16 practices because, as alleged above herein.

17 36. Plaintiff alleges violations of consumer protection, unfair competition
18 and truth in advertising laws, resulting in harm to Plaintiff and other purchasers
19 and consumers of Nestle Pure Life Purified drinking water. Defendants’ acts and
20 omissions also violate and offend the public policy against engaging in false and
21 misleading advertising, unfair competition and deceptive conduct towards
22 consumers. This conduct violates the unfair prong of Business & Professions Code
23 § 17200, *et seq.*

24 37. Defendants’ actions, claims, nondisclosures, and misleading
25 statements, as alleged in this Complaint, were false, misleading and likely to
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1 deceive the consuming public within the meaning of Business & Professions Code
2 §17200, et seq.

3 38. Plaintiff and other members of the proposed class have in fact been
4 deceived as a result of their reasonable reliance on Defendants’ representations and
5 omissions as alleged herein. Plaintiff and other proposed class members have
6 suffered injury in fact and lost money as a result of these unlawful, unfair, and
7 fraudulent practices.

8 39. As a result of this conduct, Defendants have been able to reap unjust
9 revenue and profit.

10 40. Unless restrained and enjoined, Defendants will continue to engage in
11 the above-described conduct. Accordingly, Plaintiff alleges injunctive relief is
12 appropriate.

13 41. Plaintiffs, on behalf of themselves, all others similarly situated, and
14 the general public, seeks restitution and disgorgement of all money obtained from
15 Plaintiff and the proposed class collected as a result of unfair competition, an
16 injunction prohibiting Defendants from continuing such practices, corrective
17 advertising and all other relief this Court deems appropriate, consistent with
18 Business & Professions Code §17203.
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20 **THIRD CLAIM FOR RELIEF**

21 **Breach of Express Warranty**

22 42. Plaintiff incorporates by reference and realleges each and every
23 allegation contained in the foregoing paragraphs as though fully set forth herein.

24 43. Plaintiff, and each member of the proposed class, formed a contract
25 with Defendants at the time Plaintiff and the other members of the proposed class
26 purchased Defendants’ bottled water based on the representations and warranties
27 made by Defendants, including that Defendants’ water is “pure” and “purified”.
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1 labeling and bottling is misleading, and misrepresents or omits important
2 information to potential purchasers or consumers of it.

3 51. Plaintiffs allege Defendants' deceptive practices were specifically
4 designed to induce Plaintiff and the proposed class to purchase the Nestle Pure Life
5 bottled drinking water over those of Defendants' competitors. Defendants'
6 deceptive practices were carried out in Defendants' advertising, marketing and
7 packaging, all which misrepresents the purity and purification of Nestle's Pure Life
8 bottled water.

9 52. Plaintiff and the proposed class would not have purchased Nestle Pure
10 Life Purified bottled drinking water had it not been for Defendant's omissions,
11 misrepresentations and concealment of material facts regarding whether Nestle
12 Pure Life Purified drinking water is pure or purified.

13 53. Plaintiff alleges she and the proposed class were denied the benefit of
14 the bargain when they decided to purchase Nestle's Pure Life Purified bottled
15 drinking water over other brands. Had Plaintiff and the proposed class been aware
16 that Nestle Pure Life Purified bottled drinking water contained unacceptable
17 amounts of plastic particles and microplastic contamination, they would not have
18 purchased Defendants bottled water. But for Defendants' false and misleading
19 advertising and labeling, and omissions of fact regarding the purity or purification
20 of this water, Plaintiff and the proposed class would not have purchased or
21 consumed Nestle Pure Life Purified bottled drinking water, who specifically
22 promoted the purity and purification of this bottled water.

23 54. The content of the advertisements, as alleged herein, were of a nature
24 likely to deceive a reasonable consumer. Defendants' advertising, marketing and
25 packaging misrepresents the purity and purification of this water.
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1 62. When Defendants advertised and labeled, and continue to advertise
2 and label, Nestle Pure Life Purified drinking water to consumers as “pure” and
3 “purified” Defendants knew these advertising statements were false and
4 misleading.

5 63. Plaintiff and the proposed class would not have reasonably decided to
6 purchase or consume Defendants’ drinking water but for Defendants’ false and
7 misleading representations and concealment of material facts.

8 64. By misrepresenting and concealing material information about Nestle
9 Pure Life Purified drinking water, Defendants intended to induce, and did
10 reasonably induce, Plaintiff and the proposed class into purchasing and consuming
11 this water.

12 65. Plaintiff and the proposed class justifiably relied on the
13 representations made by Defendants about Nestle Pure Life Purified drinking
14 water.

15 66. Defendants representations and omissions regarding the Pure Life
16 Purified bottled water, namely that the water is pure and purified, were made with
17 knowledge or with reckless disregard for the true purity and purification of the
18 water.

19 67. Defendants and each of them: made representations, as facts, which
20 were not true and Defendants did not believe to be true at the time made; made
21 assertions, as facts, which were not true and Defendants had no reasonable grounds
22 for believing to be true at the times they were made; misled the public, through
23 misleading images and in other manners (e.g., by misrepresenting the purity and
24 purification of the water; and/or suppressed facts, which it was bound to disclose,
25 or give information of other facts which were likely to mislead for want of
26 communications of the suppressed facts.
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EIGHTH CLAIM FOR RELIEF

INJUNCTION

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3 79. Plaintiff incorporates all previous paragraphs of this complaint as
4 though full set forth herein.

5 80. Plaintiff seeks injunctive relief under the CLRA to prohibit the
6 unlawful acts alleged herein, which threaten ongoing and future injury to the
7 general public. Plaintiff seeks injunctive relief as permitted by law or equity,
8 including: enjoining Defendants from continuing the unlawful practices as set forth
9 herein, and directing Defendants to identify, with Court supervision, victims of its
10 conduct and pay them restitution and disgorgement of all monies acquired by
11 Defendants by means of any act or practice declared by this Court to be wrongful.
12 Plaintiff also seek injunctive relief ordering Defendants to engage in a corrective
13 advertising campaign and to stop the sale, distribution, advertising, marketing,
14 labeling, packaging or bottling of Nestle Pure Life Purified drinking water in
15 California, and to pay full restitution to all affected California consumers.

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17 81. Defendants’ bottled water advertising and marketing practices
18 caused Plaintiff suffer, and continues to suffer from false advertising and fraud
19 damages.

20 82. Plaintiff seeks to enjoin Defendants’ continuing false and misleading
21 advertisements and labeling regarding the Nestle’s Pure Life Purified bottled
22 drinking water being pure or purified.

23 83. Plaintiff and the proposed class do not have a plain, speedy, and
24 adequate remedy in the ordinary course of law, other than the requested injunctive
25 relief.

26 84. If not enjoined, Defendants will continue to engage in the unfair and
27 illegal false advertising to its consumers.
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PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the class, prays for a judgment:

1. Certifying the proposed class lass as requested herein, and appointing Plaintiff as Class Representative, and Plaintiff’s counsel as Class Counsel;

2. Awarding Plaintiff and the proposed class all due damages, including actual economic damages and general and specific damages;

3. Awarding restitution and disgorgement of Defendants’ revenues to Plaintiff and the proposed class;

4. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

5. Awarding injunctive relief ordering Defendants to engage in a corrective advertising campaign and to stop the sale, distribution, advertising, marketing, labeling, packaging or bottling of Nestle Pure Life Purified drinking water in California, and to pay full restitution to all affected California consumers;

6. Awarding attorneys' fees and costs to Plaintiff’s counsel;

7. Awarding punitive damages as against Defendants;

8. Awarding damages, fines and penalties against Defendants as permitted by law;

9. Providing such further relief as may be just and proper.

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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: April 11, 2018

HAMNER LAW OFFICES, APLC

/s/ Christopher J. Hamner

By: Christopher J. Hamner, Esq.
Attorneys for Plaintiff Cindy Baker on
behalf of herself, and others similarly
situated