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7 Attorneys for Plaintiff, CINDY BAKER, on behalf of herself and all others
8 similarly situated

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA – CENTRAL DISTRICT**

12 CINDY BAKER, on behalf of herself
13 and all other similarly situated,

14 Plaintiff

15 v.

17 NESTLE WATERS NORTH
18 AMERICA, a Delaware corporation,
19 and DOES 1 through 10, inclusive,

20 Defendants.

Case No. 2:18-cv-03097-VAP-PJW

**PLAINTIFF’S SECOND AMENDED
COMPLAINT FOR NEGLIGENCE**

DEMAND FOR JURY TRIAL

22 Plaintiff Cindy Baker, on behalf of herself and all others similarly situated
23 brings this Second Amended Complaint against defendant Nestle Waters North
24 America, Inc., and DOES 1 through 10 and state:

25 **PARTIES**

26 **A. Plaintiff**

27 1. Plaintiff Cindy Baker (“Plaintiff”) is a California resident who
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1 purchased Nestle Pure Life Purified bottled water, and consumed this bottled water
2 brand on October 31, 2017, with family and friends, in Los Angeles, California, at
3 Smart & Final in Encino California.

4
5 **B. Defendant**

6 2. Defendant Nestle Waters North America (“Nestle” or “Defendant”) is
7 a Delaware corporation located in Arlington, Virginia, and doing business
8 throughout California, including the County of Los Angeles.

9 3. Plaintiff is informed and believes, and based thereon alleges that at all
10 times relevant to this action, the named defendant and defendants Does 1 through
11 10 were affiliated and were an integrated enterprise and wrongful conduct and
12 reserves the right to seek leave to amend to add these doe defendants.

13 **PLAINTIFF’S ALLEGATIONS**

14 4. Plaintiff alleges recent and publicized testing and analysis of
15 Defendant’s Pure Life bottled water measured extremely high levels of plastics
16 particles, including micro plastics, such as polypropylene, nylon, and polyethylene
17 terephthalate (“plastics”). Defendant’s Pure Life Purified drinking water was
18 measured to have a concentration of more than 10,000 particles of plastics per liter.
19 The amount of plastics measured in Defendant’s Pure Life bottled water were
20 significantly higher than the other water brands tested. Plaintiff alleges that the
21 extremely high levels of particles measured in Defendant’s drinking water are not
22 reasonable, and can result in harm to humans. Plaintiff alleges that neither she nor
23 any other reasonable person would choose to drink bottled water which tests so
24 high for plastic content.

25 5. Plaintiff alleges her consumption of Nestle’s Pure Life bottled
26 drinking water has proximately caused Plaintiff acting negligently in making this
27 product to readily available the public, including throughout Los Angeles,
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1 California, during the liability period, and continuing. Plaintiff alleges that high
2 plastics content in bottled water can cause harm to the humans, as alleged herein,
3 and to be proven at trial. Plaintiff alleges that she and the proposed class have
4 been damaged by, among other things, the ingestion into the body of the type and
5 extremely high levels of plastics contained in Nestle Pure Life Purified bottled
6 water.

7 6. Plaintiff sues for negligent conduct only and does not make any
8 claim against Defendant based on any intentional conduct, such as false
9 advertising, fraud, false labeling or misrepresentation, or any other wrongful
10 conduct, which is covered by the Federal Food, Drug and Cosmetic Act
11 (“FDCA”).

12 7. Plaintiff does not seek to regulate or govern the safety or quality of
13 the bottled water at issue. Plaintiff’s negligence claim is based on damages
14 incurred *as a result of consuming* Nestle Pure Life bottled drinking water.
15

16 **CLASS ALLEGATIONS**

17 8. Plaintiff seeks to represent the following class of California
18 consumers pursuant to Federal Rule of Civil Procedure Rule 23:

19 **All persons who consumed Nestle Pure Life bottled drinking**
20 **water in California, in the 4 years prior to the filing of this action,**
21 **and continuing.**

22 Plaintiff reserves the right to amend this class definition or to add
23 subclasses.

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

4 10. ***Existence and Predominance of Common Questions of Law and***
5 ***Fact.*** Common questions of law and fact exist as to all members of the proposed
6 class and predominate over any questions affecting only individual proposed class
7 members.

8 11. ***Typicality.*** Plaintiff's claims are typical of the claims of the proposed
9 class.

10 12. ***Adequacy of Representation.*** Plaintiff will fairly and adequately
11 protect the interests of the members of the proposed class. Plaintiff has retained
12 counsel experienced in complex consumer class action litigation. Plaintiff intends
13 to prosecute this action vigorously. Plaintiff has no adverse or antagonistic
14 interests to those of the proposed class.

15 13. ***Superiority.*** A class action is superior to all other available means for
16 the fair and efficient adjudication of this controversy. The damages or other
17 financial detriment suffered by individual proposed class members is relatively
18 small compared to the burden and expense that would be entailed by individual
19 litigation of their claims against the Defendant. It would thus be virtually
20 impossible for the class, on an individual basis, to obtain effective redress for the
21 wrongs done to them. Furthermore, even if proposed class members could afford
22 such individualized litigation, the court system could not. Individualized litigation
23 would create the danger of inconsistent or contradictory judgments arising from the
24 same set of facts. Individualized litigation would also increase the delay and
25 expense to all parties and the court system from the issues raised by this action. By
26 contrast, the class action device provides the benefits of adjudication of these
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1 issues in a single proceeding, economies of scale, and comprehensive supervision
2 by a single court, and presents no unusual management difficulties under the
3 circumstances here.

4 **COUNT I**
5 **NEGLIGENCE**

6 14. Plaintiff incorporates by reference and re-alleges each and every
7 allegation set forth herein.

8 15. Plaintiff alleges Defendant had a reasonable duty of care to its
9 consumers of its bottled water, and to all others who might reasonably consume
10 this water, to not allow for release to the public, or make available for public
11 consumption, bottled drinking water which contains the extremely high levels of
12 plastics measured in Nestle Pure Life bottled drinking water.

13 16. Plaintiff alleges Defendant knew or should have known of the
14 extremely high levels of plastics in its Pure Life bottled water. Plaintiff alleges
15 that but for Defendant breaching the duties set forth herein above, Plaintiff and the
16 public would not have consumed this water.

17 17. Plaintiff alleges she and the proposed class have been harmed, injured
18 or economically damaged by the breaches of duty alleged herein, to an extent and
19 to an amount, be proven at trial.

20 18. Plaintiff reserves the right to seek leave from the court to add
21 appropriate additional Defendants to this action who may have also acted
22 negligently in this matter.

23 **PRAYER FOR RELIEF**

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

25 1. Certifying the proposed class as requested herein, and appointing
26 Plaintiff as Class Representative, and Plaintiff's counsel as Class Counsel;
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January 2019, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and will be sent electronically to the registered participants.

/s/ Christopher J. Hamner
Christopher J. Hamner, Esq.