

Sheehan & Associates, P.C.
Spencer Sheehan
spencer@spencersheehan.com
(516) 303-0552

United States District Court
Eastern District of New York

1:18-cv-05351-NGG-LB

Jonathan Johnson individually and on
behalf of all others similarly situated

Plaintiff

- against -

First Amended Complaint

7-Eleven, Inc.

Defendant

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Defendant 7-Eleven, Inc. (“defendant”) manufactures, bottles, distributes, labels and sells bottled water products identified as “alkaline water” (“Products”).
2. The Products are sold in defendant’s thousands of company and franchise stores throughout the country and online by and through third-parties.
3. Defendant claims that its alkaline water is superior to non-alkaline water in achieving hydration and achieving a “balance” of the consumer’s internal pH.
4. The Products do not provide any superiority in either category compared to standard bottled or tap water.



5. Defendant’s labeling, colors and invocation of scientific terms give the impression that the Product’s superiority in the realm of hydration is backed by scientific rigor, causing a reasonable consumer to believe that being alkalized imparts hydration-promoting properties.

6. Plaintiff’s claims are not substantiation claims as defendant has not alleged that the product is clinically tested, nor that any benefit was “clinically proven” by scientific proof.

I. Balance Claims

7. The representations with respect to “balancing” are designed so the consumer expects the water to affect the pH balance of their body, based on the purported pH of the water,

9.5 or greater.

8. Defendant's acid-base scale on the Products is affirmatively false in that defendant represents that the higher the pH, the greater the alkalinity, when in fact as opined by several experts in the field, higher pH does not mean substantial alkalinity.

9. Many sources for tap water are composed of a pH greater than 7, and even at pH of 9, without being sold at higher prices, giving a reasonable consumer the impression that a higher pH provides benefits, in reality, it does not.

10.

11. All of the specific claims contribute to the deceptive context of the representation, to "achieve a perfect balance."

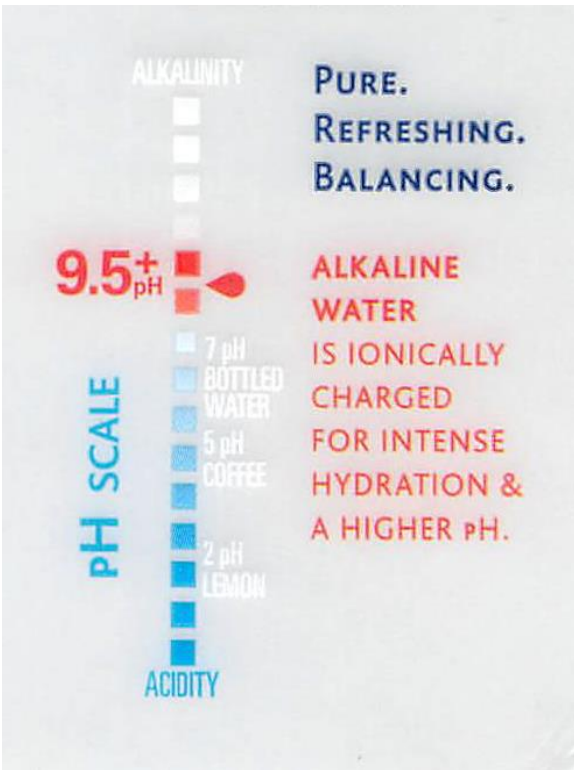
12. Alkalinity is in relation to "acidic" and these terms refer to the pH level of different types of foods and beverages.

13. The acidity or alkalinity of any solution is indicated on the pH scale ranges from 0 (strongly acidic) to 14 (strongly basic or alkaline).

14. The Products' front labels contain a pH scale and other statements emphasizing their ability to achieve an internal physiological balance for someone who drinks the Products.

Front Label

Reverse of Front Label (Visible to Consumers)



15. A pH of 7.0 is neutral and in the middle of the pH scale shown above, while the pH of blood is slightly basic (7.35 – 7.45).

16. Food and beverages are unable to influence the pH of blood or intra- or extra-cellular liquids, as minor deviations cause serious sickness or death.

17. The lungs, kidneys and buffer systems to regulate the blood's acid-base balance.

18. The kidney responds to disturbances of the acid base balance through changes in H^+ secretion and HCO_3^- reabsorption and production on a time scale of hours to days.

19. The respiratory center in the medulla oblongata of the brain responds to pH and CO_2 within minutes, adjusting the breathing rate.

20. The chemical buffer systems in both the extracellular and intracellular compartments act immediately to prevent excessive fluctuations of the blood pH.

21. The most important pH buffer system in the blood involves carbonic acid (a weak acid formed from the carbon dioxide dissolved in blood) and bicarbonate ions (the weak base).

22. All consumed food travels to the highly acidic stomach, with a pH of c. 3.0.

23. The low pH is necessary to break it down and sterilize any bacteria ingested.

24. After leaving the stomach, the matter goes to the intestines where it is neutralized and slightly alkalized by pancreatic solutions.

25. As a result, everything consumed - once it gets to the intestines—is roughly the same pH, regardless of its pH at the time it was consumed.

26. If the pH of blood changes slightly, it will cause serious medical disturbances requiring hospitalization.

27. Extracellular levels of other ions such as Na, K, Ca and inorganic phosphate are also barely affected by fluctuations in their respective nutritional intakes, unless their variations are very large in quantity and extend over prolonged periods.

28. The only impact of consuming a product with a pH of 9.5 or above would be to alter the pH of the excreted urine to be more alkaline.

29. Moreover, significant amounts of the Product would have to be consumed to even achieve such a transient change in the pH of the blood, which would be almost impossible to do in a short period of time before the body adjusts the pH back to its normal level.

30. Defendant's claims – that the Products attain “Balance” and are “Balancing” are misleading because water with a pH of 9.5 or greater is by definition, and the scale provided by defendant, is not balanced.

31. Defendant's claim of “ionically charg[ing]” the water to convert it to “alkaline water”

with a pH of 9.5 is false because electrolysis alone (the method defendant employs to create a higher pH) that results in higher pH, does not make water more alkaline.

32. That water cannot be ionically charged to be made alkaline is the conclusion of scientists and experts in the field, such as Mark Timmons, certified by The Water Quality Association as a CWS-VI, CI, CSR since 1980.

33. According to Timmons, “The only thing that neutralizes acid is alkalinity, not the water being alkaline...Alkaline water does not mean that it has substantial alkalinity. There must be alkaline minerals in the water — to begin with — in order to produce alkalinity in your water.”¹

34. The contention that the Product can be “ionically charged for intense hydration & a higher pH” is affirmatively false because water without dissolved ions is too uncondutive to undergo significant electrolysis by water ionizer devices.²

35. That defendant’s water is treated with electrolysis is based upon plaintiff’s counsel’s investigation into the bottling plant used for the Products.

36. This investigation was based upon the telephone number on the back of the Products — “1-800-994-2915,” which is the phone number for a bottling company for a large carbonated soft drinks conglomerate in the northeast United States.

¹ <https://www.uswatersystems.com/blog/2017/08/scientists-say-dont-beduped-by-alkaline-water>

² <http://www.chem1.com/CO/ionbunk.html>.



37. This bottling company and plant produces bottled water products under different brand names, through which electric currents are run (electrolysis).

38. The alkalinity of pure water cannot be changed without adding something to it (magnesium, calcium, bicarbonate, etc.) – viz, the mineral compounds present on the ingredient list of the Products.



39. Pure water can never be alkaline or acidic, nor can it be made so by electrolysis.

40. Consumption of any “alkaline” water results in the alkalinity being quickly removed by the highly acidic gastric fluid in the stomach.

41. Defendant’s claim that the “ionically charged” water can achieve the claimed “balancing” is affirmatively false because once alkaline water enters one’s stomach, the body simply pours in greater amounts of acid to neutralize the water, such that no “balancing” can possibly be created.

42. The water is not balancing because the ions are purportedly increased to 9.5 to with

the use of electrolysis and thus, this Product is not “alkaline water” that promotes any plausible sense of balance.

II. pH of greater than 9.5 Claims

43. Plaintiff’s counsel observed and tested that the Product had a pH level of less than 9.5 one week after purchasing the Product in 2018.

44. Plaintiff’s counsel also performed testing on basic tap water and defendant’s alkaline water recorded 7.4 pH compared to the 7.1 pH of tap water.

45. The Plaintiff tested the Product using an appropriate device for ascertaining the pH of liquid substances.

46. Plaintiff could not have tested the Product when it was bottled because the water is bottled on private property that is not open to the public or available to Plaintiff unless through discovery.

47. Plaintiff will request additional samples for testing through discovery as defendant has not provided samples or testing protocols it relies upon.

48. Plaintiff is unable to conduct expert testing and prepare an expert report on these contentions until granted access to the source of production, receives all test reports and results from the Defendant.

49. Then Plaintiff’s expert can also test the degradation of alkaline water, which occurs over time, and after the water is bottled.

50. Degradation of pH ions is an accepted fact, such that the longer the Product sits, the more pH will be lost.

51. The “9.5+” representation is implied to the consumer that such alkalinity will last for a reasonable time through consumption, as there is no counter-inference or designation on the bottle such as “good if used through [date].”

52. A reasonable consumer will believe that the Product will maintain its alkalinity a reasonable time after it is sourced and manufactured through point of purchase, and a reasonable amount of time thereafter for consumption.

III. Hydration Claims

53. Hydration is the process of making one’s body absorb water or other liquid and “intense hydration” is understood in the present context to refer to the Product’s ability to provide hydration faster and more efficiently (consuming fewer ounces) compared to non-alkaline water.

54. The representations indicating the alkaline water is capable of providing superior hydration compared to non-alkaline water include “ionically charged for intense hydration & a higher pH” and the “scale” on the interior of the transparent bottle, with “balance” and “hydration” on opposite sides, shown in the above images.

55. The most prominent representation on the wrap-around label is a large water droplet consisting of one hundred and forty-eight (148) smaller water droplets in various shades of blue, adjacent to a medium sized bright red water droplet containing the text, “9.5+ pH”



56. Though a “drop” or “droplet” is often a term referring to a small amount of liquid, it is actually an approximated unit of measure of volume, and refers to the amount dispensed as one drop from a dropper or drip chamber.³

57. A consistent measurement for a drop is 0.05 mL, with 20 drops per milliliter.⁴

58. Based upon measurements, the larger droplet is approximately 8 times as large as the smaller, red drop.

59. This represents that one drop (0.05 mL) of the alkaline water is equivalent to eight drops (0.40 mL) of non-alkaline water, a definitive claim outside the realm of puffery and not completely implausible.

³ "[Drop - size](#)". Physics and Astronomy Online.

⁴ The pharmacopoeia of the Royal College of Physicians of London, M. DCCC. IX. Longman, Hurst, Rees, and Orme. p. 6-7. Retrieved 18 December 2011.

60. However, this claim is false and misleading because alkaline water is not superior to non-alkaline water in delivering hydration.

61. This conclusion is clear from studies that sought to demonstrate the efficacy of alkaline water in achieving hydration.

62. According to promoters of this theory, alkaline water reduces blood viscosity (what happens to a person's blood when they exercise – it gets thicker) faster and more efficiently than non-alkaline water.⁵

63. The study's conclusion – that the alkalized water reduced blood viscosity greater than the control water – is unrelated to the water being alkalized.

64. the control group was given purified reverse osmosis water, which had all minerals and electrolytes removed, while the alkalized water possessed electrolytes.

65. Therefore, the fact that the water may have been “ionically charged” was irrelevant to its ability to impact blood viscosity, even if the control group was not given water with electrolytes removed.

66. Blood viscosity is influenced by hematocrit, red blood cell deformability, red blood cell aggregation, and plasma viscosity, but not impacted by discrete nutritional disturbances from consuming a non-medicinal beverage.

IV. Other Representations

67.

⁵ “Effect of electrolyzed high-pH alkaline water on blood viscosity in healthy adults,” *Journal of the International Society of Sports Nutrition*, 13.1 (2016): 45.

68. Consumers make decisions within 90 seconds of their initial interaction with a product.

69. Depending on context, color is a vital source of information – to categorize products and their functions, make comparative assumptions and guide consumer choices.

70. Consumers associate red as the color “of life-giving blood,” and is considered an amulet, such that in traditional cultures, a red string would be placed around the necks of children to protect them against scarlet fever and other pestilential diseases.

71. In the present context, “red” refers to the benefits to the blood (internal pH) of a prospective consumer, and plaintiff and class members.

72. The red water droplet is presented side-by-side to the larger droplet consisting of almost 150 drops of water – the equivalent of stating alkaline water is capable of providing hydration through consumption of smaller amounts of it, compared to non-alkaline waters.

73. That the Product “hydrates and refreshes” is affirmatively false because ingestion and consumption of the Product may lead to negative consequences to one’s health, including growth retardation.⁶

74. Upon information and belief, these conclusions plausibly apply to human ingestion.

75. Alkaline water can interfere with digestion of proteins and agitate the body’s normal pH, leading to metabolic alkalosis, a condition producing the following symptoms: nausea, vomiting, hand tremors, muscle twitching, tingling in the extremities or face, confusion.

76. Moreover, a renowned medical center, the Cleveland Clinic, has confirmed that

⁶ Marina Merne et al., "[Systemic and local effects of long-term exposure to alkaline drinking water in rats.](#)" International journal of experimental pathology 82.4 (2001): 213-219.

alkaline waters, such as defendant's Product, do not have any added health benefits.⁷

77. Multiple studies have concluded that a pH balance has no beneficial impact on the alkalinity balance in the blood.

78. Moreover, defendant has taken no meaningful steps to clear up consumer misconceptions regarding its alkaline branded water Product.

79. Many consumers have consumed alkaline water based on the belief it will help balance their diets from eating foods high in acid, as the label suggests.⁸

80. At defendant's store, the alkaline water is shelved adjacent to the non-alkaline water product in the refrigerated products section to obtain a price premium compared.

81. Defendant do not contend that the Product is clinically tested, so this is not a substantiation claim.

82. The Product is more acidic than as represented.

83. Plaintiff paid more for the Product, and would only have been willing to pay less, or unwilling to purchase them at all, absent the misleading claims complained of.

84. The Products contain other representations which are misleading and deceptive.

85. Excluding tax, the Products cost no less than \$2.99 for 33.8 oz, a premium price compared to defendant's non-alkalinized water, which costs no more than \$1.49 for 33.8 oz.

Jurisdiction and Venue

86. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2).

87. Upon information and belief, the aggregate amount in controversy is more than

⁷ <https://health.clevelandclinic.org/alkaline-water-dont-believe-the-marketing-hype/>

⁸ <https://abc11.com/health/alkaline-water-has-noproven-benefits-expert-says/1458290/>

\$5,000,000.00, exclusive of interests and costs.

88. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

89. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and in New York.

90. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

91. Plaintiff is a citizen of Kings County, New York.

92. In 2017 and 2018, Plaintiff purchased the Alkaline Water.

93. Plaintiff relied on defendant's representations as described herein.

94. Even though plaintiff would like to purchase the Product, he cannot purchase the Product in the future based on the current labeling.

95. Plaintiff would purchase the Products again if there were assurances that the Products' representations were no longer misleading.

96. Plaintiff paid a premium of no less than \$2.99 for 33.8 oz, because prior to purchase, plaintiff saw and relied on the misleading representations.

97. Defendant is a Texas corporation with its principal place of business in Dallas, Texas.

Class Allegations

98. The classes consist of all consumers in the following states: all, New York who purchased any Products with actionable representations during the statutes of limitation.

99. A class action is superior to other methods for fair and efficient adjudication.

100. The class is so numerous that joinder of all members, even if permitted, is impracticable, as there are likely hundreds of thousands of members.

101. Common questions of law or fact predominate and include whether the representations were likely to deceive reasonable consumers and if plaintiff(s) and class members are entitled to damages.

102. Plaintiff(s) claims and the basis for relief are typical to other members because all were subjected to the same representations.

103. Plaintiff(s) is/are an adequate representative because his/her/their interests do not conflict with other members.

104. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

105. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

106. Plaintiff(s) counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

107. Plaintiff(s) seeks class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350
and Consumer Protection Statutes of Other States ("Consumer Protection Acts")

108. Plaintiff incorporates by references all preceding paragraphs.

109. This is a claim for relief under the New York General Business Law, as well as the various Consumer Protection Acts of the jurisdictions in which Class Members are present and purchased defendant's Alkaline Water, including but not limited to:

- a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et. seq.*;

- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et. seq.*;
- c. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et. seq.*;
- d. California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* and Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200- 17210 *et. seq.*;
- e. Colorado Consumer Protection Act, Colo Rev. Stat § 6-1-101, *et. seq.*;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen Stat § 42-110a, *et. seq.*;
- g. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et. seq.*;
- h. District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et. seq.*;
- i. Florida Deceptive and Unfair Trade Practices, Act *Florida Statutes* § 501.201, *et. seq.*;
- j. Georgia Fair Business Practices Act, §10-1-390 *et. seq.*;
- k. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et. seq.* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statute § 481A-1, *et. seq.*;
- l. Idaho Consumer Protection Act, Idaho Code § 48-601, *et. seq.*;
- m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et. seq.*;
- n. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et. seq.*;
- o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et. seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et. seq.*;
- p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et. seq.*;
- q. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et. seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et. seq.*; Massachusetts

- Unfair and Deceptive Practices Act, Mass. Gen Laws ch. 93A;
- r. Michigan Consumer Protection Act, §§ 445.901, *et. seq.*;
 - s. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et. seq.*; and
Minnesota Uniform Deceptive Trade Practices Act, Minn Stat. § 325D.43, *et. seq.*;
 - t. Mississippi Consumer Protection Act, Miss. Code An.. §§ 75-24-1, *et. seq.*;
 - u. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et. seq.*;
 - v. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14-101,
et. seq.;
 - w. Nebraska Consumer Protection Act, neb. Rev. Stat. § 59 1601 *et. seq.*, and the Nebraska
Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et. seq.*;
 - x. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et. seq.*;
 - y. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et. seq.*;
 - z. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et. seq.*;
 - aa. New Mexico Unfair Practices Act, N.M. Sta. Ann. §§ 57 12 1, *et. seq.*;
 - bb. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et. seq.*;
 - cc. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code §§ 109;
 - dd. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et. seq.*;
 - ee. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) & (g);
 - ff. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-
13.1-1 *et. seq.*;
 - gg. South Carolina Unfair Trade Practices Act, S.C. Code Law § 39-5-10, *et. seq.*;
 - hh. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified

Laws §§ 37 24 1, *et. seq.*;

ii. Tennessee Consumer Protection ct, Tenn. Code Ann. § 47-18-101 *et. seq.*;

jj. Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9, § 2451, *et. seq.*;

kk. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86/0101, *et. seq.*;

ll. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et. seq.*;

mm. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et. seq.*

110. Defendant's representations and omissions are false, unfair, deceptive and misleading and are not unique to the parties and have a broader impact on the public.

111. The misrepresentations or omissions are material in that they relate to matters which are important to consumers or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members regarding Defendant' products.

112. The representations and omissions were relied on by plaintiff and class members, who paid more than they would have, causing damages.

Negligent Misrepresentation

113. Plaintiff incorporates by references all preceding paragraphs.

114. Defendant misrepresented the composition of the Products in that the water molecules comprising the alkaline water did not have different properties compared to non-alkaline waters which cost significantly less and would not achieve the balance or faster hydration represented.

115. Defendant had a duty to disclose and/or provide non-deceptive labeling of the Products and knew or should have known same were false or misleading.

116. This duty is based, in part, on defendant's representation that the Product was able to achieve "balancing" and premium hydration, vis-à-vis non-alkaline water.

117. Defendant negligently misrepresented and/or negligently omitted material facts.

118. This duty is based, in part because defendant had knowledge that consumers value convenience and would pay more for a product that would provide a greater amount of hydration in a shorter period of time and with consumption of less of water.

119. Defendant negligently misrepresented and/or negligently omitted material facts.

120. Plaintiffs reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the Products.

121. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, thereby suffering damages.

Breach of Express Warranty and Implied Warranty of Merchantability

(Asserted on Behalf of Nationwide Class and New York Subclass)

122. Plaintiff incorporates by references all preceding paragraphs.

123. Plaintiff, and each member of the Class, formed a contract with Defendant at the time they purchased Defendant's Alkaline Water.

124. Defendant is a merchant with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers, an implied warranty that those goods were merchantable.

125. The terms of that contract include the promises and affirmations of fact made by Defendant on the labels.

126. Defendant's Alkaline branded water labeling and advertising constitute express

warranties, are part of the basis of the bargain, and are part of a standardized contract between Plaintiff and class members and defendant.

127. Alternatively, privity was established between Defendant and Plaintiff and Class Members because Defendant, and/or their agents, were substantially, if not completely responsible for directly promoting and marketing Defendant's Alkaline branded water to Plaintiff and Class Members

128. All conditions precedent to Defendant's liability under the warranty have been performed by Plaintiff and the Classes.

129. Defendant breached the terms of the express and implied warranty by not providing a product that provided the benefits promised.

130. The statements and claims on the Products were not "puffery" or mere opinion – they were affirmations of specific benefits and superior performance over alternative and lower priced sources of water.

131. The warranties are false because the Product does not provide "intense" hydration but instead has a deleterious effect and health consequences on those that consume it.

132. Plaintiff and Class Members reasonably relied on these representations in purchasing the Products instead of less expensive, but equally or more effective water.

133. The breaches of the warranty proximately caused Plaintiff's injury.

134. As a result of Defendant's breaches of warranty, Plaintiff and the Classes have been damaged and injured in the amount of the purchase price of the Products.

135. Defendant owed a special duty based on its role as a purported learned intermediary.

136. The Products did not conform to their affirmations of fact and promises, wholly due

to defendant's actions.

137. Plaintiff and class members relied on defendant's claims, paying more than they would have.

Fraud

138. Plaintiff incorporates by references all preceding paragraphs.

139. Defendant's purpose was to mislead consumers who seek products that can provide health benefits and promoting an internal pH balance is believed by consumers to be something worthwhile.

140. Plaintiff and class members observed and relied on defendant's claims, causing them to pay more than they would have, entitling them to damages.

Unjust Enrichment

141. Plaintiff incorporates by references all preceding paragraphs.

142. It would be inequitable for Defendant to retain profits, benefits and other compensation obtained by its wrongful conduct in marketing and selling of the Defendant Alkaline Water.

143. Defendant obtained benefits and monies because the Products were not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff(s) as representative and the

undersigned as counsel for the class;

2. Entering preliminary and permanent injunctive relief by directing defendant to correct such practices to comply with the law;
3. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law and GBL claims;
4. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
5. Such other and further relief as the Court deems just and proper.

Dated: February 15, 2019

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

505 Northern Blvd., Ste. 311

Great Neck, NY 11021

(516) 303-0552

spencer@spencersheehan.com

Levin-Epstein & Associates, P.C.

Joshua Levin-Epstein

1 Penn Plaza, Suite 2527

New York, NY 10119

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Plaintiff

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Defendant

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505 Northern Blvd., #311
Great Neck, NY 11021
Tel: (516) 303-0052
Fax: (516) 234-7800

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: February 15, 2019

/s/ Spencer Sheehan
Spencer Sheehan

Certificate of Service

I certify that on February 15, 2019, I served the foregoing by electronically filing and/or mailing (first-class mail) same, to the persons or entities indicated below, at their last known address of record (blank where not applicable).

Defendant's Counsel _____

CM/ECF

First-Class Mail

/s/ Spencer Sheehan
Spencer Sheehan