

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

MICHAEL DALY and MICHAEL  
DOTSON, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

DANONE WATERS OF AMERICA, LLC

Defendant.

Case No. 1:24-cv-02424

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY DEMANDED**

Now come the Plaintiffs, Michael Daly and Michael Dotson (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through their attorneys, and for their First Amended Class Action Complaint against the Defendant, DANONE WATERS OF AMERICA LLC, (“Defendant”), Plaintiffs allege and states as follows:

**PRELIMINARY STATEMENT**

1. This is an action for damages, injunctive relief, and any other available legal or equitable remedies, for violations of Illinois Consumer Fraud and Deceptive Business Practices Act (“ILCFA”), 815 ILCS 505/1 *et seq.*, common law fraud, unjust enrichment, Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*, Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*, and the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*) resulting from the illegal actions of Defendant, in intentionally labeling its Products as Natural Spring Water, when they contain microplastics. Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

**PARTIES**

2. Plaintiff Michael Daly is an individual who resides in Evergreen Park, Illinois.
3. Plaintiff Michael Dotson is an individual who resides in Los Angeles, California.
4. Defendant is a Delaware limited liability company, whose principal place of business is located in Denver, Colorado.
5. At all times relevant hereto, Defendant was engaged in the marketing and sale of bottled water.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §1332(d), because Defendant removed this case alleging that the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest or costs and is a class action in which the members of the class are citizens of a State different from the Defendant.
7. This court has personal jurisdiction over Defendant, because Defendant does business within the State of Illinois and County of Cook.
8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred in this District.

**FACTS COMMON TO ALL COUNTS**

9. Defendant advertises, markets, sells, and distributes bottled water throughout Illinois, California, and the United States.
10. During the Class Period Defendant sold Evian bottled water (the “Products”) labeled, marketed, and advertised as “Natural Spring Water” but which actually contained microplastics.

11. Microplastics are small sized plastic particles that originate from manufacturing and physical degradation of plastics. Microplastics encompass a variety of different molecules with different structures, shapes, sizes, and polymers.

12. Microplastics are not naturally occurring. Instead, microplastics are typically made from polypropylene, polyethylene, polystyrene, and other synthetic polymers.<sup>1</sup>

13. Microplastics can leach into the water from the bottle, and consumers are exposed to additives, processing aid, and unreacted monomers.<sup>2</sup>

14. In 2018 Orb Media commissioned a global study on synthetic microplastic contamination in bottled water.<sup>3</sup> The study was performed at the Mason lab at State University of New York at Fredonia, Department of Geology & Environmental Sciences. The study tested 259 individual bottles from 27 different lots across 11 brands purchased from 19 locations in 9 countries. Ninety-three percent, (“93%”), of bottled water showed signs of microplastic contamination.

15. A study conducted in 2019 found the origin of bottled microplastics in drinking water due to mechanical stress.<sup>4</sup> They proposed that the main mechanical reason for bottled water contamination originated from releasing microplastic particles from the bottleneck and plastic cap by frequent opening and closing.

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<sup>1</sup> Md. Iftakharul Muhib, Md. Khabir Uddin, Md. Mostafizur Rahman, and Guilherme Malafaia, "Occurrence of microplastics in tap and bottled water, and food packaging: A narrative review on current knowledge," *Science of The Total Environment* (2022), <http://dx.doi.org/10.1016/j.scitotenv.2022.161274>.

<sup>2</sup> *Id*; Winkler, A., Santo, N., Ortenzi, M.A., Bolzoni, E., Bacchetta, R., Tremolada, P., 2019. Does mechanical stress cause microplastic release from plastic water bottles? *Water Res.* 166, 115082

<sup>3</sup> Orb Media, "Plus Plastic," Orb Media (2023), available at <https://orbmedia.org/plus-plastic>.

<sup>4</sup> Winkler, A., Santo, N., Ortenzi, M.A., Bolzoni, E., Bacchetta, R., Tremolada, P., 2019. Does mechanical stress cause microplastic release from plastic water bottles? *Water Res.* 166, 115082.

16. Microplastic contamination in the Products is possible at various manufacturing levels and as a result of usage by reasonable consumers.<sup>5</sup>

17. Toxic effects of microplastics on the physiology and behavior of marine invertebrates have been extensively documented.<sup>6</sup> Similar effects have also been observed in larger marine vertebrates such as fish. Furthermore, recent studies using mouse models have reported potential effects of Microplastics on mammalian gut microbiota, as well as cellular and metabolic toxicity in the host.<sup>7</sup> However, the pathophysiological consequences of acute and chronic exposure to microplastics in mammalian systems, particularly in humans, are not yet fully understood.<sup>8</sup>

18. After being absorbed, Microplastics have the potential to be transported through the circulatory system and subsequently accumulate in various organs, including the kidney, gut, and liver.<sup>9</sup> Thus, the effects on several blood and the immune system cell lines have been widely reported for several Microplastics. Moreover, Microplastics exhibit a "Trojan Horse" effect by absorbing and transporting various environmental pollutants.<sup>10</sup>

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<sup>5</sup> See Md. Iftakharul Muhib, Md. Khabir Uddin, Md. Mostafizur Rahman, and Guilherme Malafaia, "Occurrence of microplastics in tap and bottled water, and food packaging: A narrative review on current knowledge," *Science of The Total Environment* (2022), <http://dx.doi.org/10.1016/j.scitotenv.2022.161274>.

<sup>6</sup> Damià Barceló, Yolanda Picó, & Ahmed H. Alfarhan, *Microplastics: Detection in human samples, cell line studies, and health impacts*, *Environmental Toxicology and Pharmacology* (2023), <https://doi.org/10.1016/j.etap.2023.104204>; Grote, K., Brüstle, F., Vlacil, A.K., 2023. Cellular and systemic effects of micro- and nanoplastics in mammals—what we know so far. *Materials* 16, 3123. <https://doi.org/10.3390/ma16083123>;

<sup>7</sup> Yong, C.Q.Y., Valiyaveetil, S., Tang, B.L., 2020. Toxicity of microplastics and nanoplastics in mammalian systems. *Int. J. Environ. Res. Public Health* 2020 Vol. 17, 1509. <https://doi.org/10.3390/IJERPH17051509>.

<sup>8</sup> Damià Barceló, Yolanda Picó, & Ahmed H. Alfarhan, *Microplastics: Detection in human samples, cell line studies, and health impacts*, *Environmental Toxicology and Pharmacology* (2023), <https://doi.org/10.1016/j.etap.2023.104204>

<sup>9</sup> Id.

<sup>10</sup> Id.

19. Studies indicate that exposure to microplastics through ingestion can lead to gastrointestinal problems such as irritable bowel syndrome; endocrine disruption such as adverse effects on hormonal balance and reproductive function; and cardiovascular problems such as increase of oxidative stress and impaired regular heart function.<sup>11</sup>

20. Microplastics contamination is a material concern to Plaintiff and other reasonable consumers.

21. Bottled water that is contaminated with microplastics is not natural.

22. The Food and Drug Administration (“FDA”) has not officially defined the term “natural” and has not promulgated an official rule regarding the use of the term “natural.”

23. Furthermore, FDA has considered the term "natural" to mean that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in that food.<sup>12</sup>

24. Microplastics are not expected to be in food or water.

25. Plaintiffs, and reasonable consumers, do not expect “Natural” water products to contain microplastics.

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<sup>11</sup> Ebuka Chizitere Emenike et al., *From Oceans to Dinner Plates: The Impact of Microplastics on Human Health*, Volume 9, issue 10, Heliyon, 2023, <https://www.sciencedirect.com/science/article/pii/S240584402307648X>

<sup>12</sup> U.S. Food and Drug Administration, "Use of the Term 'Natural' on Food Labeling," FDA (2023), available at <https://www.fda.gov/food/food-labeling-nutrition/use-term-natural-food-labeling>.

26. The following picture includes an example of Defendant's fraudulent labeling:



27. Yet, when consumers drink Defendant's Products, they are consuming synthetic plastic particles.

28. On December 13, 2023, Plaintiff Daly purchased one case of Products labeled, marketed, and sold as "Natural Spring Water", from a Pete's Fresh Market in Evergreen Park, IL.

29. On January 27, 2024, Plaintiff Dotson purchased several of Products labeled, marketed, and sold as "Natural Spring Water", from a Food For Less in Los Angeles.

30. Plaintiffs' Products contained microplastics despite being labeled Natural Spring Water.

31. Persons, like Plaintiffs herein, have an interest in purchasing products that do not contain false and misleading claims with regards to the contents of the Products.

32. By making false and misleading claims about the contents of its Products, Defendant impaired Plaintiffs' ability to choose the type and quality of products they chose to buy.

33. Therefore, Plaintiffs have been deprived of their legally protected interest to obtain true and accurate information about their consumer products as required by law.

34. As a result of Defendant's fraudulent labeling, Plaintiffs and the Class have been misled into purchasing Products that did not provide them with the benefit of the bargain they paid money for, namely that the Products were Natural Spring Water.

35. As a result of Defendant's fraudulent labeling, Plaintiffs and the Class paid a price premium for premium Products, but instead received non-premium Products.

36. Plaintiffs and the Class purchased Defendant's Products because Defendant's advertising claimed that the Products were Natural Spring Water.

37. Due to Defendant's intentional, deceitful practice of falsely labeling the Products as Natural Spring Water, Plaintiffs could not have known that the Products contained microplastics.

38. Plaintiffs were unaware that the Products contained microplastics when they purchased them.

39. Worse than the lost money, Plaintiff, the Class, and Sub-Class were deprived of their protected interest to choose the type and quality of products they ingest.

40. Defendant, and not Plaintiffs, the Class, or Sub-Class, knew or should have known that labeling, marketing, and selling the Products as Natural Spring Water was false, deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members would not be able to tell the Products they purchased contained microplastics unless Defendant expressly told them.

41. Defendant knew that the Products contained microplastics but chose to label the Products with Natural Spring Water labeling anyway to induce consumers to purchase the Products.

42. Furthermore, copious research has shown the deleterious effects of plastic bottles on both the environment and human health, yet Defendant continues to bottle its water in plastic and continues to label the Products as Natural.<sup>13</sup>

43. As a result of Defendant's acts and omissions outlined above, Plaintiffs have suffered concrete and particularized injuries and harm, which include, but are not limited to, the following:

- a. Lost money;
- b. Wasting Plaintiffs' time; and
- c. Stress, aggravation, frustration, loss of trust, loss of serenity, and loss of confidence in product labeling.

#### **CLASS ALLEGATIONS**

44. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a member of the proposed class (the "Class"), defined as follows:

All persons within the United States who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

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<sup>13</sup> ABC7 News, "Nanoplastics found in bottled water and the bloodstream, study says," ABC7 News (2023), available at <https://abc7news.com/nanoplastics-bottled-water-bloodstream-plastic/14302293/>.



45. Plaintiff Daly also brings this action on behalf of himself and all others similarly situated, as a member of the proposed sub-class (the “Illinois Sub-Class”), defined as follows

All persons within the State of Illinois who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

46. Plaintiff Dotson also brings this action on behalf of himself and all others similarly situated, as a member of the proposed sub-class (the “California Sub-Class”), defined as follows:

All persons within the State of California who purchased the Products within four years prior to the filing of the original Complaint through the date of class certification.

47. Defendant, their employees and agents are excluded from the Class and Sub-Classes. Plaintiffs do not know the number of members in the Class and Sub-Classes, but believe the members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

48. The Class and Sub-Classes are so numerous that the individual joinder of all of their members is impractical. While the exact number and identities of their members are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and believe and thereon alleges that the Class and Sub-Classes include thousands, if not millions of members. Plaintiff alleges that the class members may be ascertained by the records maintained by Defendant.

49. This suit is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) because the Class and Sub-Classes are so numerous that joinder of their members is impractical and the disposition of their claims in the Class Action will provide substantial benefits both to the parties and the Court.

50. There are questions of law and fact common to the Class and Sub-Classes affecting the parties to be represented. The questions of law and fact common to the Class and Sub-Classes predominate over questions which may affect individual class members and include, but are not necessarily limited to, the following:

- a. Whether the Defendant intentionally, negligently, or recklessly disseminated false and misleading information by labeling the Products as Natural when the Products contain microplastics;
- b. Whether the Class and Sub-Class members were informed that the Products contained microplastics;
- c. Whether the Products contained microplastics;
- d. Whether Defendant's conduct was unfair and deceptive;
- e. Whether Defendant unjustly enriched itself as a result of the unlawful conduct alleged above;
- f. Whether the inclusion of microplastics in the Products is a material fact;
- g. Whether there should be a tolling of the statute of limitations; and
- h. Whether the Class and Sub-Class are entitled to restitution, actual damages, punitive damages, and attorney fees and costs.

51. As a residents of the United States and the States of Illinois and California who purchased the Products, Plaintiffs are asserting claims that are typical of the Class and Sub-Classes.

52. Plaintiffs have no interests adverse or antagonistic to the interests of the other members of the Class and Sub-Classes.

53. Plaintiff will fairly and adequately protect the interests of the members of the Class and Sub-Classes. Plaintiffs have retained attorneys experienced in the prosecution of class actions.

54. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class and Sub-Classes members is impracticable. Even if every Class and Sub-Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the delay and expense to all parties, and to the court system, resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system and protects the rights of each class member. Class treatment will also permit the adjudication of relatively small claims by many class members who could not otherwise afford to seek legal redress for the wrongs complained of herein.

55. The prosecution of separate actions by individual members of the Class and Sub-Classes would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party class members to protect their interests.

56. Defendant has acted or refused to act in respect generally applicable to the Class and Sub-Classes thereby making appropriate final and injunctive relief with regard to the members of the Class and Sub-Classes as a whole.

57. The size and definition of the Class and Sub-Classes can be identified through records held by retailers carrying and reselling the Products, and by Defendant's own records.

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**COUNT I**  
**VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND**  
**DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, et seq.**  
**On behalf of the Class and Illinois Sub-Class**

58. Plaintiffs incorporate all of the allegations and statements made in Paragraphs 1 through 43 above as if fully reiterated herein.

59. Plaintiff Daly is a “person” as defined in 815 ILCS 505/1(c), as he is a natural person.

60. Defendant is a “person” as defined in 815 ILCS 505/1(c), as it is a company and a business entity and/or association.

61. 815 ILCS 505/2 states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

62. Through its representation of the Products as Natural Spring Water, Defendant made false promises, misrepresentations, concealments, suppressions, and omissions of material facts, with the intent that Plaintiff rely upon said false promises, misrepresentations, concealments, suppressions, and omissions of material facts.

63. 815 ILCS 505/10a states:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper...

(c) [T]he Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

64. In taking the actions and omissions set forth above, and making the false promises, misrepresentations, concealments, suppressions, and omissions of material facts set forth above, Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, including, but not limited to, 815 ILCS 505/2.

65. Defendant failed to comply with the requirements of the ILCFA, including, but not limited to, 815 ILCS 505/2 as to the Class and Sub-Class members with respect to the above-alleged transactions

66. By reason thereof, Plaintiff is entitled to a judgment against Defendant, declaring that Defendant's conduct violated 815 ILCS 505/2, enjoining Defendant from engaging in similar conduct in the future, and awarding actual damages, punitive damages, injunctive relief, costs, and attorneys' fees.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;

- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiffs' attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

**COUNT II**  
**COMMON LAW FRAUD**  
**On behalf of the Class and Sub-Classes**

67. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 57 above as if fully reiterated herein.

68. Through its false statements that the Products contained "Natural Spring Water", Defendant made false statements of material fact.

69. At the time Defendant made its statements to Plaintiffs that the Products contained "Natural Spring Water", it knew, or reasonably should have known, that the statements described above were false.

70. At the time Defendant made the statements to Plaintiffs, Defendant intended to induce Plaintiffs to purchase the Products.

71. Plaintiffs relied upon the truth of the statements described above and purchased the Products, only to find that the Products they purchased contained microplastics.

72. As a result of their reasonable reliance upon Defendant's false statements of material fact as set forth above, Plaintiffs and other members of the Class and Sub-Classes have suffered concrete and particularized injuries, harm, and damages which include, but are not limited to, the loss of money spent on products that did not provide them with the benefit of the bargain they paid money for, and stress, aggravation, frustration, inconvenience, emotional distress, mental

anguish, and similar categories of damages.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiffs as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiffs' attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

**COUNT III**  
**UNJUST ENRICHMENT**  
**On Behalf of the Class and Sub-Classes**

73. Plaintiffs incorporate all of the allegations and statements made in Paragraphs 1 through 57 above as if fully reiterated herein.

74. Plaintiff conferred monetary benefits to Defendant by purchasing the Products.

75. Defendant has been unjustly enriched by retaining the revenues derived from Plaintiffs' purchase of the Products based on the false statements that the Products contained

“Natural Spring Water”.

76. Defendant’s retention of the revenue it received from Plaintiff, and the Class and Sub-Classes members, is unjust and inequitable because Defendant’s false statements caused injuries to Plaintiffs, and the Class and Sub-Classes members, as they would not have purchased the Products, or would not have paid a premium price, if they knew the Products contained microplastics.

77. Defendant’s unjust retention of the benefits conferred on it by Plaintiffs, and the Class and Sub-Classes members, entitles Plaintiffs, and the Class and Sub-Class members, to restitution of the money they paid to Defendant for the Products.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff’s attorneys’ fees, court costs, and other litigation costs; and



g. Any other relief deemed just and proper by this Court.

**COUNT IV**  
**VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING ACT**  
**(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**  
**On behalf of the Class and the California Sub-Class**

78. Plaintiff incorporates by reference each allegation set forth above in paragraphs 1 through 57.

79. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...or...to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

80. California Business and Professions Code section 17500, *et seq.*’s prohibition against false advertising extends to the use of false or misleading written statements.

81. Defendant misled consumers by making misrepresentations and untrue statements about the Class Products, namely, Defendant sold the Products with labeling claiming the Products were Natural, and made false representations to Plaintiff and other putative class members in order to solicit these transactions.

82. Specifically, Defendant claimed the Products were Natural when the Products contained synthetic microplastics.

83. Defendant knew that their representations and omissions were untrue and misleading, and deliberately made the aforementioned representations and omissions in order to deceive reasonable consumers like Plaintiff and other Class and Sub-Class Members.

84. As a direct and proximate result of Defendant’s misleading and false advertising,

Plaintiff and the other Class Members have suffered injury in fact and have lost money or property. Plaintiff reasonably relied upon Defendant's fraudulent statements regarding the Products, namely that they did not know the Products contained synthetic microplastics. In reasonable reliance on Defendant's omissions of material fact and false advertisements, Plaintiff and other Class and Sub-Class Members purchased the Products. In turn Plaintiff and other Class Members ended up with products that turned out to actually be different than advertised, and therefore Plaintiff and other Class Members have suffered injury in fact.

85. Plaintiff alleges that these false and misleading written representations made by Defendant constitute a "scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

86. Defendant advertised to Plaintiff and other putative class members, through written representations and omissions made by Defendant and its employees, that the Class Products would be Natural.

87. Defendant knew that the Class Products did in fact contain synthetic microplastics.

88. Thus, Defendant knowingly sold Class Products to Plaintiff and other putative class members that contained synthetic microplastics and were not Natural.

89. The misleading and false advertising described herein presents a continuing threat to Plaintiff and the Class and Sub-Class Members in that Defendant persists and continues to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendant's conduct will continue to cause irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendant to cease their false advertising, as well as disgorgement and restitution to Plaintiff and all Class Members Defendant's revenues associated with their false advertising, or such portion of those

revenues as the Court may find equitable.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff, on behalf of himself and the Class and Sub-Class, requests the following relief:

- (a) An order certifying the Class and Sub-Class and appointing Plaintiff as Representative of the Class and Sub-Class;
- (a) An order certifying the undersigned counsel as Class and Sub-Class Counsel;
- (b) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- (c) Actual damages suffered by Plaintiff and Class and Sub-Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class and Sub-Class Members from the sale of misbranded Class Products during the relevant class period;
- (d) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (e) Any and all statutory enhanced damages;
- (f) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (g) Pre- and post-judgment interest; and
- (h) All other relief, general or special, legal and equitable, to which Plaintiff and Class and Sub-Class Members may be justly entitled as deemed by the Court.

**COUNT V**  
**VIOLATIONS OF UNFAIR BUSINESS PRACTICES ACT**  
**(Cal. Bus. & Prof. Code §§ 17200 et seq.)**  
**On behalf of the Class and California Sub-Class**

90. Plaintiff incorporates by reference each allegation set forth above in paragraphs 1 through 57.

91. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendant's business practices and the alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

### **UNFAIR**

92. California Business & Professions Code § 17200 prohibits any “unfair ... business act or practice.” Defendant’s acts, omissions, misrepresentations, and practices as alleged herein also constitute “unfair” business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendant’s legitimate business interests, other than the conduct described herein. Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.

93. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or competition; and, (3) is not one that consumers themselves could reasonably have avoided.

94. Here, Defendant’s conduct has caused and continues to cause substantial injury to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury in fact due to Defendant’s decision to sell them fraudulently labeled products (Class Products). Thus, Defendant’s conduct has caused substantial injury to Plaintiff and the members of the Class and Sub-Class.

95. Moreover, Defendant’s conduct as alleged herein solely benefits Defendant while providing no benefit of any kind to any consumer. Such deception utilized by Defendant convinced Plaintiff and members of the Class that the Class Products were natural, in order to induce them to spend money on said Class Products. In fact, knowing that Class Products, by their objective terms contained microplastics, unfairly profited from their sale, in that Defendant

knew that the expected benefit that Plaintiff would receive from this feature is nonexistent, when this is typically never the case in situations involving consumer products. Thus, the injury suffered by Plaintiff and the members of the Class and Sub-Class is not outweighed by any countervailing benefits to consumers.

96. Finally, the injury suffered by Plaintiff and members of the Class and California Sub-Class is not an injury that these consumers could reasonably have avoided. After Defendant, fraudulently labeled the Class Products as Natural, the Plaintiff, Class members, and Sub-Class Members suffered injury in fact due to Defendant's sale of Class Products to them. Defendant failed to take reasonable steps to inform Plaintiff and Class and Sub-Class members that the Class Products contained synthetic microplastics and are not Natural as a result. As such, Defendant took advantage of Defendant's position of perceived power in order to deceive Plaintiff and the Class members to purchase the products. Therefore, the injury suffered by Plaintiff and members of the Class is not an injury which these consumers could reasonably have avoided.

97. Thus, Defendant's conduct has violated the "unfair" prong of California Business & Professions Code § 17200.

#### **FRAUDULENT**

98. California Business & Professions Code § 17200 prohibits any "fraudulent ... business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a consumer must allege that the fraudulent business practice was likely to deceive members of the public.

99. The test for "fraud" as contemplated by California Business and Professions Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200 violation can be established even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage.

100. Here, not only were Plaintiff and the Class and Sub-Class members likely to be deceived, but these consumers were actually deceived by Defendant. Such deception is evidenced by the fact that Plaintiff agreed to purchase Class Products at a price premium even though the Products contained synthetic microplastics. Plaintiff's reliance upon Defendant's deceptive statements is reasonable due to the unequal bargaining powers of Defendant and

Plaintiff. For the same reason, it is likely that Defendant's fraudulent business practice would deceive other members of the public.

101. As explained above, Defendant deceived Plaintiff and other Class Members by labeling the Products as Natural, when in fact the Products contain synthetic microplastics.

102. Thus, Defendant's conduct has violated the "fraudulent" prong of California Business & Professions Code § 17200.

#### **UNLAWFUL**

103. California Business and Professions Code Section 17200, et seq. prohibits "any unlawful...business act or practice."

104. As explained above, Defendant deceived Plaintiff and other Class Members by labeling the Products as Natural, when in fact the Products contain synthetic microplastics.

105. Defendant used false advertising, marketing, and misrepresentations to induce Plaintiff and Class and Sub-Class Members to purchase the Class Products, in violation of California Business and Professions Code Section 17500, et seq.

106. Had Defendant not falsely advertised, marketed or misrepresented the Class Products, Plaintiff and Class Members would not have purchased the Class Products. Defendant's conduct therefore caused and continues to cause economic harm to Plaintiff and Class Members. These representations by Defendant are therefore an "unlawful" business practice or act under Business and Professions Code Section 17200 *et seq.*

107. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts entitling Plaintiff and Class and Sub-Class Members to judgment and equitable relief against Defendant, as set forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code section 17203, Plaintiff and Class and Sub-Class Members seek an order requiring Defendant to immediately cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant to correct its actions.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff, on behalf of himself and the Class and Sub-Class, requests the following relief:

- (a) An order certifying the Class and Sub-Class and appointing Plaintiff as Representative of the Class and Sub-Class;
- (a) An order certifying the undersigned counsel as Class and Sub-Class Counsel;
- (b) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- (c) Actual damages suffered by Plaintiff and Class and Sub-Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class and Sub-Class Members from the sale of misbranded Class Products during the relevant class period;
- (d) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (e) Any and all statutory enhanced damages;
- (f) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (g) Pre- and post-judgment interest; and
- (h) All other relief, general or special, legal and equitable, to which Plaintiff and Class and Sub-Class Members may be justly entitled as deemed by the Court.

**COUNT VI**  
**Violation of Consumer Legal Remedies Act**  
**(Cal. Civ. Code § 1750 et seq.)**  
**On behalf of the Class and California Sub-Class**

108. Plaintiffs incorporate all of the allegations and statements made in paragraphs 1 through 57 above as if fully reiterated herein.

109. Defendants' actions as detailed above constitute a violation of the Consumer Legal Remedies Act, Cal. Civ. Code §1770, to the extent that Defendants violated the following provisions of the CLRA:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have; Cal. Civ. Code § 1770(5);
- b. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; Cal. Civ. Code § 1770(7);
- c. Advertising goods or services with intent not to sell them as advertised; Cal. Civ. Code §1770(9);
- d. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; Cal. Civ. Code §1770(14); and
- e. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; Cal. Civ. Code §1770(16);

110. On or about February 22, 2024, through his Counsel of record, using certified mail with a return receipt requested, Plaintiff served Defendant with notice of their violations of the CLRA, and asked that Defendant correct, repair, replace, or otherwise rectify the goods and services alleged to be in violation of the CLRA; this correspondence advised Defendant that it must take such action within thirty (30) calendar days, and pointed Defendant to the provisions of the CLRA that Plaintiffs believe to have been violated by Defendant. Defendant has not replied to this notice letter with a letter dated on or before March 22, 2024, and thus refused to adequately correct, repair, replace, or otherwise rectify the issues raised therein

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**PRAYER FOR RELIEF**

Wherefore, Plaintiff, on behalf of himself and the Class and Sub-Class, requests the following relief:

- (a) An order certifying the Class and Sub-Class and appointing Plaintiff as Representative of the Class and Sub-Class;
- (a) An order certifying the undersigned counsel as Class and Sub-Class Counsel;
- (b) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- (c) Actual damages suffered by Plaintiff and Class and Sub-Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class and Sub-Class Members from the sale of misbranded Class Products during the relevant class period;
- (d) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (e) Any and all statutory enhanced damages;
- (f) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (g) Pre- and post-judgment interest; and
- (h) All other relief, general or special, legal and equitable, to which Plaintiff and Class and Sub-Class Members may be justly entitled as deemed by the Court.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues in this action so triable, except for any issues relating to the amount of attorneys' fees and costs to be awarded should Plaintiff prevails on any of their claims in this action.

RESPECTFULLY SUBMITTED,

MICHAEL DALY and MICHAEL DOTSON

By: /s/ Todd M. Friedman

Attorney for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 25, 2024, a copy of the foregoing First Amended Class Action Complaint was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Steven G. Perry  
Attorney for Plaintiff