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11 Attorneys for Defendant
Nestlé Waters North America Inc.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 DONELL COREY KENDALL,
17 individually, and on behalf of all others
similarly situated,

18 Plaintiff,

19 v.
20

21 NESTLÉ WATERS NORTH
AMERICA INC., doing business as
22 READY REFRESH, BY NESTLÉ, and
23 DOES 1 through 20, inclusive,

24 Defendants.
25
26
27
28

Case No. 2:20-cv-10511

NOTICE OF REMOVAL

NESTLÉ WATERS NORTH AMERICA INC.'S NOTICE OF REMOVAL

Defendant Nestlé Waters North America Inc. (“NWNA”) hereby removes this action, Case No. 20STCV36528 in the Superior Court of the State of California for the County of Los Angeles, to this Court under 28 U.S.C. § 1441(a) (removal of civil actions). Removal is proper based on the original subject matter jurisdiction of this Court under 28 U.S.C. § 1332(d)(2) (diversity of citizenship in a class action under the Class Action Fairness Act (“CAFA”)). This removal comports with 28 U.S.C. § 1446 (procedure for removal of civil actions) and 28 U.S.C. § 1453 (removal of class actions). NWNA provides the following summary of the grounds for removal.

I. TIMELINESS OF REMOVAL

1. On September 23, 2020, plaintiff Donell Corey Kendall commenced this action by filing a putative class action complaint against NWNA in the Los Angeles County Superior Court, Case No. 20STCV36528.

2. NWNA received service of a copy of the Complaint on October 19, 2020. This Notice of Removal is therefore timely under 28 U.S.C. § 1446(b) (requiring the filing of the notice of removal “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading”). *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding service triggers the 30-day period in which to file notice of removal).

II. VENUE

3. Venue is proper in this Court because the Central District of California, Western Division, is “the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

III. THIS COURT HAS JURISDICTION UNDER CAFA

4. This Court has original subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because: (a) “any member of a class of plaintiffs is a citizen of a State different from any defendant”; (b) “the number of members of all proposed plaintiff

1 classes in the aggregate is [greater] than 100”; and (c) “the matter in controversy
 2 exceeds the sum or value of \$5,000,000.” 28 U.S.C. § 1332(d)(2)(A), (d)(5)(B),
 3 (d)(2).

4 **There Is Minimal Diversity Under CAFA**

5 5. The complaint alleges that plaintiff Donell Corey Kendall is a
 6 California resident, Compl. ¶ 1, and that “[u]nnamed Class Plaintiffs are, and at all
 7 times relevant herein, were residents of the State of California,” *id.* ¶ 2. Plaintiff
 8 seeks to represent a class of “all those subscribers of Defendants’ water delivery
 9 services who were charged late fees by the Defendants during the past four years,”
 10 *id.* ¶ 18, a class which plaintiff alleges includes citizens of California, *see id.* ¶¶ 4,
 11 7, 20. Plaintiff alleges that “the affected consumers” are “immense[ly]
 12 geographical[ly] dispers[ed].” *Id.* ¶ 30(a).

13 6. Plaintiff alleges that NWNA is incorporated under the laws of
 14 Delaware, with its principal place of business in Stamford, Connecticut. Compl.
 15 ¶ 3. Under 28 U.S.C. § 1332(c)(1), NWNA is a citizen of both Delaware and
 16 Connecticut. CAFA’s requirement of minimal diversity is satisfied because
 17 members of the putative class are citizens of a state different from NWNA. 28
 18 U.S.C. § 1332(d)(2)(A).

19 **There Are At Least 100 Members of the Proposed Class**

20 7. The putative class includes “all those subscribers of Defendants’ water
 21 delivery services who were charged late fees by the Defendants during the past four
 22 years.” Compl. ¶ 18. Plaintiff alleges that “[t]he members of the Class are so
 23 numerous that separate joinder of each member is impracticable” and that “in the
 24 County of Los Angeles alone, the members of the Class would easily exceed the
 25 minimum numbers to satisfy this [numerosity] requirement.” *Id.* ¶ 20. Based on
 26 these allegations, the requirement that there be at least 100 members of the
 27 proposed class is satisfied.
 28

The Amount in Controversy Exceeds \$5 Million

8. The complaint alleges that NWNA “always charged” customers whose monthly payments were late, a late fee of \$20 per month, which was allegedly “often in excess of seventy percent (70%) per month of the actual cost of the beverage service.” Compl. at 3:1-5. The complaint alleges that late fees were “in excess” of the “maximum rate allowed by applicable law,” which the complaint alleges is 1.5% per month. *Id.* at 3:5-9. The difference between the alleged \$20 late fee per month, and the alleged maximum late fee of 1.5% (approximately \$0.43) per month is \$19.57. “Plaintiff seeks to obtain damages, restitution, and other appropriate relief in the amount by which Defendants were unjustly enriched,” namely, alleged “late fees” charged “in excess of 1.5% per month” (*id.* at 3:10-15; *see id.* at 18:2-6) to “subscribers of Defendants’ water delivery services” during the past four years (*id.* at 6, ¶ 18). Plaintiff also seeks attorneys’ fees. *See id.* at 3:16-19, 18:12.

9. Based on these allegations, the amount in controversy exceeds \$5 million. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (“[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”); *Arias v. Residence Inn*, 936 F.3d 920, 927 (9th Cir. 2019) (“Where a removing defendant has shown potential recovery ‘could exceed \$5 million and the plaintiff has neither acknowledged nor sought to establish that the class recovery is potentially any less,’ the defendant ‘has borne its burden to show the amount in controversy exceeds \$5 million.’”) (quoting *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010)) (emphasis in *Arias*; alterations omitted).

Exceptions to CAFA Jurisdiction Do Not Apply

10. CAFA includes two exceptions to the exercise of federal jurisdiction, the local controversy exception and the home state exception. 28 U.S.C. § 1332(d)(4)(A), (d)(4)(B). “[O]nce federal jurisdiction has been established . . . ,

1 the objecting party bears the burden of proof as to the applicability of any express
 2 statutory exception under §§ 1332(d)(4)(A) and (B).” *Serrano v. 180 Connect, Inc.*,
 3 478 F.3d 1018, 1024 (9th Cir. 2007). No exception applies.

4 11. The local controversy exception does not preclude the exercise of
 5 subject matter jurisdiction because it is not the case: (a) “greater than two-thirds of
 6 the members of all proposed plaintiff classes in the aggregate are citizens of the
 7 State in which the action was originally filed”; (b) NWNA “is a citizen of the State
 8 in which the action was originally filed”; and (c) “principal injuries resulting from
 9 the alleged conduct or any related conduct of [NWNA] were incurred in the State in
 10 which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(A)(i)(I)-(III).
 11 NWNA is not a citizen of California. *See* Compl. ¶ 3.


12 12. For the same reasons, the home state exception also does not preclude
 13 the exercise of subject matter jurisdiction because it is not the case that “two-thirds
 14 or more of the members of all proposed plaintiff classes in the aggregate, and
 15 [NWNA], are citizens of the State in which the action was originally filed.” 28
 16 U.S.C. § 1332(d)(4)(A). NWNA is not a citizen of California. *See* Compl. ¶ 3.

17 Pursuant to 28 U.S.C. § 1446(a), NWNA attaches as Exhibit A copies of all
 18 process, pleadings, and orders served upon NWNA in the state court action. In
 19 accordance with 28 U.S.C. § 1446(d), NWNA shall file a copy of this Notice of
 20 Removal with the Clerk of the Superior Court of the State of California for the
 21 County of Los Angeles and provide written notice to plaintiff. *See* Exhibit B.

22 By removing this case to federal court, NWNA does not waive any available
 23 defenses and does not admit any of the allegations in the complaint.

24 Dated: November 17, 2020

WHITE & CASE LLP

25 By: 
 26 Bryan A. Merryman

27 Attorneys for Defendant
 28 Nestlé Waters North America Inc.

PROOF OF SERVICE

I hereby certify that I am employed in Los Angeles County, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 S. Flower Street, Suite 2700, Los Angeles, CA 90071-2433.

On November 17, 2020, I caused true and correct copies of the foregoing document(s) described as **Notice of Removal** to be served on each of the recipients listed below:

- by placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at Los Angeles, California on November 17, 2020; and
- by transmitting the document(s) electronically to the person(s) at the e-mail address(es) listed below. The transmission was reported as complete and without error.

Azar Mouzari
Beverly Hills Trial Attorneys, P.C.
468 N. Camden Drive, Suite 238
Beverly Hills, CA 90210
Email: azar@bhtrialattorneys.com
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1155 N. Central Avenue, Suite 201
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Attorneys for Plaintiff Donell Corey Kendall

Thomas B. Mayhew
Farella Braun + Martel LLP
Russ Building
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Email: tmayhew@fbm.com
Telephone: 415.954.4400

Attorneys for Defendant Nestlé Waters North America Inc.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on November 17, 2020, at Los Angeles, California.


Karmella Salgado

EXHIBIT A

Process, Pleadings, and Orders Served in State Court Action

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 23 2020

Sheri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

NESTLE WATERS NORTH AMERICA, INC., doing business as READY REFRESH, BY NESTLE,
and DOES 1 through 20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DONELL COREY KENDALL, individually, and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presente su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): STANLEY MOSK COURTHOUSE
111 N. Hill St., Los Angeles, CA 90012

CASE NUMBER: (Número del Caso):

20 STCV36528

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ALEXIS DJIVRE, LAW OFFICE OF ALEXIS DJIVRE, 7740 Central Ave., Ste. 201, Glendale, CA 91202

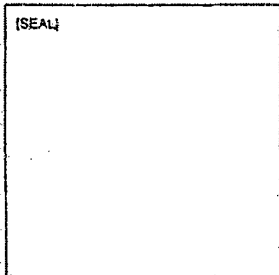
DATE: **SEP 23 2020**
(Fecha)

Clerk, by
(Secretario)

Kristina Vargas, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Nestle Waters North America, Inc., dba Ready Refresh By Nestle
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): Entity form unknown
4. ☐ by personal delivery on (date)

1 Azar Mouzari, SBN 263461
2 BEVERLY HILLS TRIAL ATTORNEYS, P.C.
3 468 N. Camden Drive, Suite 238
4 Beverly Hills, CA 90210
5 azar@bhtrialattorneys.com
6 (310) 858-5567

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 23 2020

Sherril R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

7 Alexis Djivre, SBN 245138
8 LAW OFFICE OF ALEXIS DJIVRE
9 1155 N. Central Avenue, Suite 201
10 Glendale, CA 91202
11 alexisdjivre@gmail.com
12 (213) 700-3436

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15 DONELL COREY KENDALL, individually,
16 and on behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 NESTLE WATERS NORTH AMERICA,
20 INC., doing business as READY REFRESH,
21 BY NESTLE, and DOES 1 through 20,
22 inclusive,

23 Defendants.

CASE NO. **20STCV36528**

COMPLAINT FOR DAMAGES
[CLASS ACTION]

(1) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION AND
DECEPTIVE BUSINESS PRACTICES
LAW (BUSINESS & PROFESSIONS
CODE SECTIONS 17200, ET SEQ.)

(2) VIOLATION OF CALIFORNIA'S
CONSUMER LEGAL REMEDIES
ACT (CIVIL CODE SECTIONS 1750,
ET SEQ.)

(3) BREACH OF IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING

(4) MONEY HAD AND RECEIVED

(5) UNJUST ENRICHMENT

(6) IMPOSITION OF UNLAWFUL
PENALTIES IN VIOLATION OF
CALIFORNIA CIVIL CODE
SECTION 1671

(7) NEGLIGENCE

[DEMAND FOR JURY TRIAL]

UNLIMITED JURISDICTION

- 1 -

COMPLAINT FOR DAMAGES
[CLASS ACTION]

1
2 COMES NOW Plaintiff DONELL COREY KENDALL ("Kendall"), individually,
3 and on behalf of all others similarly situated (collectively "Plaintiffs"), and through their
4 counsel of record, Beverly Hills Trial Attorneys, P.C. and the Law Office of Alexis Djivre,
5 file this class action complaint against NESTLE WATERS NORTH AMERICA, INC.,
6 doing business as READY REFRESH, BY NESTLE, and DOES 1 through 20, inclusive
7 ("Defendants"), seeking damages and relief on behalf of themselves and for all others
8 similarly situated for violation of California's Unfair Competition Law California - *Business*
9 *& Professions Code* sections 17200, *et seq.* ("UCL"), California's Consumer Legal
10 Remedies Act - California *Civil Code* sections 1750, *et seq.*, ("CLRA"), and related claims
11 as stated herein as below. Unless explicitly stated to the contrary, all allegations are based
12 upon information and belief.

13 INTRODUCTION

14 Defendants NESTLE WATERS NORTH AMERICA, INC., doing business as
15 READY REFRESH, BY NESTLE, and DOES 1 through 20, inclusive, are a retail beverage
16 delivery service that provides bottled water and other beverages to customers' homes and
17 offices on a monthly subscription basis. Plaintiff DONELL COREY KENDALL, and others
18 similarly situated ("Plaintiffs"), purchased water and other beverages from the Defendants
19 pursuant to contract. Many of the Plaintiffs, such as Plaintiff DONELL COREY
20 KENDALL, never received a formal written contract. However, on Defendants' website,
21 there was an offer page (See Exhibit "1"), which listed terms and conditions of beverage
22 service by recurring delivery.¹ In those terms, there was a provision for a fee if the
23

24
25 ¹ Because this webpage advertised a special offer in 2014, that webpage no longer exists,
26 however, the \$20 late fee still exists, and is listed on the Terms and Conditions section (See Exhibit
27 "2") of the ReadyRefresh Water & Beverage Delivery website at:
28 https://www.readyrefresh.com/en/terms?gelid=Cj0KCCQjw9b4BRcMARIsADMUlyoVa6ZmNj95gNjIc8fbyNLqeIKedjNH4GfCGqjX0hhUJQNYhBpw1MlaAvGIEALw_wcB&gclid=aw.ds
Notably, the new terms no longer state that the alternate fee could be interest of 1.5% per month.

1 customers' monthly payments were late. The contract provided that the customer would pay
 2 Defendants "...the greater of (i) a late fee not to exceed \$20 per month, or (ii) interest of
 3 1.5% per month on any unpaid amount...." Because the monthly interest was usually so
 4 minimal, Defendants always charged the \$20 fee. That flat fee was often in excess of seventy
 5 percent (70%) per month of the actual cost of the beverage service. Plaintiffs assert that
 6 California law prevents service charges, late fees and finance charges in excess of eighteen
 7 percent (18%) per annum or 1.5% per month, and that the "maximum rate allowed by
 8 applicable law is, in fact, 18% per annum. Defendants consistently charged Plaintiffs late
 9 fees substantially in excess of that amount.

10 Plaintiff DONELL COREY KENDALL brings this action on behalf of himself and
 11 other similarly situated consumers who have entered into contracts with Defendants for the
 12 delivery of bottled water and other beverages, and were charged late fees that were in excess
 13 of 1.5% per month, in order to obtain redress for those who have paid those unlawful fees.
 14 Plaintiff seeks to obtain damages, restitution, and other appropriate relief in the amount by
 15 which Defendants were unjustly enriched as a result of its deceptive and unlawful practices.
 16 Finally, Plaintiffs seek reasonable attorneys' fees pursuant to California *Code of Civil*
 17 *Procedure* section 1021.5, as this lawsuit seeks the enforcement of an important right
 18 affecting the public interest, and satisfies that statutory requirements for an award of
 19 attorneys' fees.

20 PARTIES

21 **PLAINTIFFS**

22 1. Plaintiff DONELL COREY KENDALL is, and at all times relevant herein,
 23 was a resident of the City and County of Los Angeles, State of California. Plaintiff
 24 DONELL COREY KENDALL purchased water from the Defendants, and each of them,
 25 from on or about August 2014 to approximately late 2018. During that period, Defendants
 26 charged DONELL COREY KENDALL late fees in the amount of \$20 for each month he
 27 was late in paying for his beverage delivery service. When Plaintiff entered into an
 28

1 agreement to purchase water delivery services from the Defendants, he was unaware that
2 any late fee he would be charged was akin to usury, in that it exceeded the maximum
3 allowable by California law. At all times material hereto, Plaintiff DONELL COREY
4 KENDALL was injured as a result of Defendants' unfair competition and deceptive billing
5 practices as described herein.

6 2. Unnamed Class Plaintiffs, are, and at all times relevant herein, were residents
7 of the State of California. Each of these Plaintiffs were charged late fees by the
8 Defendants in the amount of \$20 for each month they were late in paying for their
9 beverage delivery service.

10 **DEFENDANTS**

11 3. Defendant NESTLE WATERS NORTH AMERICA, INC., doing business
12 as READY REFRESH, BY NESTLE, is, and has been, a Delaware Corporation with its
13 principal office or place of business in Stamford, Connecticut. At all times relevant herein,
14 Defendants have marketed and have caused to be marketed their services, and have
15 conducted business within the jurisdiction of this Court.

16 4. At all times material hereto, Defendants, and each of them, engaged in their
17 unfair and deceptive billing practices within the jurisdiction of this Court.

18 5. Plaintiffs are uncertain of the true names and capacities of the Defendants
19 sued herein as DOES 1 through 20, inclusive, and therefore, sue said Defendants under
20 said fictitious names. Plaintiffs will amend this complaint further to insert the true names
21 and capacities of said Defendants when the same are discovered. Plaintiffs are informed
22 and believe and thereon allege that each of the fictitiously named Defendants are
23 responsible in some manner for the occurrences herein alleged and are liable to the named
24 Plaintiffs, and all other similarly situated on the claims hereinafter set forth. Said named
25 Defendants and fictitiously named Defendants are hereinafter collectively referred to as
26 "Defendants."

27 6. At all times mentioned, all Defendants and each of them, were agents and/or
28

1 employees of all other Defendants, and in doing the things hereinafter mentioned were
2 acting within the course and scope of their authority as such agents and with the consent
3 and ratification of all other Defendants.

4 **JURISDICTION AND VENUE**

5 7. This Court has personal jurisdiction over the Defendants by virtue of
6 Defendants transacting, doing and soliciting business in this county, because a substantial
7 part of the relevant events occurred in this county, because the property that is the subject
8 of the is action is situated here, and because the Defendants' conduct harms the consumers
9 of the City and County of Los Angeles, California.

10 8. Venue is proper in this Court as the activities of Defendants complained of
11 herein took place in Los Angeles County, as well as elsewhere in the State of California.

12 **GENERAL ALLEGATIONS**

13 9. Defendants are providers of bottled water and other beverages to consumers.

14 10. Plaintiffs, on behalf of themselves and the Class they seek to represent,
15 allege on information and belief, that Defendants and each of them at all times relevant
16 herein, charged their customers exorbitant late fees without notice to their customers and in
17 violation of California's Unfair Competition Laws, Consumer Legal Remedies Act and
18 common law.

19 11. At the time a payment was deemed "late" by Defendants, Plaintiffs and other
20 customers were charged exorbitant and disproportionately high late fees for which they
21 had not been provided adequate notice.

22 12. Defendants knew that their late fees were unlawful under California law.

23 13. Defendants fraudulently concealed from and intentionally failed to disclose
24 to Plaintiff and other members of the Class the fact that the late fee was in excess of the
25 maximum amount allowable under California law.

26 14. Plaintiffs relied on the fact that any late fees they would be required to pay
27 would not be in excess of the maximum amount allowable under California law. Plaintiffs
28

1 would not have entered into such contracts but for the deceptive marketing by Defendants.
 2 Furthermore, these contracts were contracts of adhesion, in that Plaintiffs would not be
 3 able to purchase water delivery from the Defendants unless they agreed to the terms and
 4 conditions of the contracts, including the late fee charges.

5 15. Defendants intentionally failed to disclose material facts regarding the truth
 6 about the late fees in order to entice Plaintiffs into entering their contracts for water
 7 delivery.

8 16. Plaintiffs have suffered harm as a result of paying such excessive late fees.

9 CLASS ACTION ALLEGATIONS

10 17. As further stated herein as to the following claims, Plaintiffs bring their
 11 causes of action on behalf of themselves and all others similarly situated, and certification
 12 of this class action is appropriate under California *Code of Civil Procedure* section 382 and
 13 California *Civil Code* section 1781, because the questions of law or fact common to the
 14 respective Class members predominate over questions of law or fact affecting only
 15 individual members.

16 18. The "Class" is defined as all those subscribers of Defendants' water delivery
 17 services who were charged late fees by the Defendants during the past four years. No
 18 claim is made for any corporate entity under the causes of action for violation of the CLRA
 19 and the UCL. A subclass of non-corporate users' claims is asserted for
 20 consumers/individuals.

21 **A. Commonality**

22 19. There are questions of law and fact that are common to the claims of
 23 Plaintiffs. Among these common questions are the following:

24 (a) Whether Defendants violated California's Unfair Competition Law in
 25 charging excessive late fees without providing adequate notice of the same;

26 (b) Whether Defendants violated California's Consumer Legal Remedies
 27 Act by charging excessive late fees without providing adequate notice of the same;

28

- 6 -
 COMPLAINT FOR DAMAGES
 [CLASS ACTION]

1 (c) Whether Defendants' conduct was unfair under the UCL in charging
2 its customers excessive late fees without providing adequate notice of the same;

3 (d) Whether Defendants' conduct was misleading under the UCL;

4 (e) Whether Defendants' practices and representations made in
5 connection with the customer agreement terms pertaining to the late fees were false and/or
6 misleading;

7 (f) Whether Defendants' conduct in connection with the practices and
8 representations made in the customer agreement terms pertaining to the late fees unjustly
9 enriched Defendants at the expense of and to the detriment of Plaintiffs;

10 (g) Whether Defendants' conduct as set forth above injured consumers,
11 and if so, the extent of the injury;

12 (h) Whether Defendants' conduct constitutes imposition of an illicit
13 penalty in charging excessive late fees in violation of Civil Code section 1671; and

14 (i) Whether Defendants were negligent in charging their customers
15 excessive late fees without providing adequate notice of the same.

16 **B. Numerosity**

17 20. The members of the Class are so numerous that separate joinder of each
18 member is impracticable. Plaintiffs are informed and believe that in the County of Los
19 Angeles alone, the members of the Class would easily exceed the minimum numbers to
20 satisfy this requirement.

21 **C. Typicality**

22 21. Plaintiffs' claims are typical of the claims of the Class in that they are
23 claiming Defendants charged them excessive late fees without notice to them.

24 22. The core issues which predominate over all the other issues in the litigation
25 involve Defendants' unfair competition, violation of the CLRA and other violations, as
26 discussed above, specifically with respect to the excessive charging of late fees without
27 notice to the customers.

23. Upon information and belief, there has never been a prior lawsuit certified as a class on behalf of Plaintiffs based on the allegations in this Complaint.

D. Adequacy of Representation

24. Plaintiffs will fairly and adequately protect the interests of the Class and are committed to the vigorous prosecution of this action. They have retained competent counsel, experienced in litigation of this nature, to represent them and members of the Class. There is no hostility between Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

25. To prosecute this case, Plaintiffs have chosen the law firms of Beverly Hills Trial Attorneys, P.C. and the Law Office of Alexis Djivre, who have represented Plaintiffs in class actions and as private attorneys general in bringing public interest actions.

E. Superiority

26. The questions of law or fact common to the claims of Plaintiffs and of each Class member predominate over any questions of law or fact affecting only individual members of the Class. All claims by named Plaintiffs and unnamed Class members are based on the same alleged "across the board" representations by Defendants and other acts constituting negligence, unfair competition under the UCL, violation of Consumer Legal Remedies Act and imposition of unfair and illicit penalties.

27. Common issues predominate when as here, liability can be determined on a class-wide basis, even when there are some individualized damages.

28. As a result, when determining whether common questions predominate, courts focus on the liability issue and if the liability issue is common to the class as in the case at bar, common questions are held to predominate over individual questions.

29. Since all claims by named Plaintiffs and unnamed Class members are based on the same alleged "across the board" failures by Defendants and other unfair competition under the UCL, the predominance requirement needed for class action treatment is satisfied.

30. A class action is superior to thousands of individual actions in part because of the non-exhaustive factors listed below:

3 (a) Joinder of all class members would create extreme hardship and
4 inconvenience for the affected consumers because of their immense geographical
5 dispersion.

(b) It is highly unlikely that individual Plaintiffs would shoulder the burden of this vast and complex litigation as many are simply too poor or uneducated about Defendants' actions to bring separate actions:

9 (c) The interests of justice will be well served by resolving the common
10 disputes of potential class members in one forum;

(d) Individual suits would not be cost effective. The costs to individual Plaintiffs in a collective action are lowered through the pooling of resources and by limiting the controversy to one proceeding which efficiently resolves common issues of law and fact that arose from the same alleged activity; and

15 (e) The action is manageable as a class action; individual lawsuits are not
16 economically maintainable as individual actions.

17 31. Defendants have also acted or refused to act on grounds generally applicable
18 to the Class, thereby making appropriate final declaratory relief with respect to the Class as
19 a whole.

FIRST CAUSE OF ACTION

(For Injunctive Relief and Restitution Against All Defendants)

Under *Business and Professions Code* sections 17200, et seq.)

23 32. Plaintiffs reallege and incorporate here by reference each of the foregoing
24 paragraphs, and further allege as follows.

25 33. Plaintiffs, pursuant to *Business and Professions Code* section 17204, bring
26 this first cause of action on behalf of themselves and as a private attorneys general.

34. *Business and Professions Code* section 17200, *et seq.*, also known as the

1 Unfair Competition Law (“UCL”) defines “unfair business competition” to include any
 2 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
 3 misleading” advertising. The UCL imposes strict liability. Plaintiffs need not prove that
 4 Defendants intentionally or negligently engaged in unlawful, unfair or fraudulent business
 5 practices – but only that such practices occurred.

6 ***“Unfair” Prong***

7 35. A business act or practice is “unfair” under the UCL if it offends an
 8 established public policy or is immoral, unethical, oppressive, unscrupulous or
 9 substantially injurious to consumers, and that unfairness is determined by weighing the
 10 reasons, justifications and motives of the practice against the gravity of the harm to the
 11 alleged victims.

12 36. Defendants’ actions constitute “unfair” business practices because, as alleged
 13 above, Defendants engaged in a misleading and deceptive penalty for paying one’s water
 14 delivery bills more than 30 days late. That fee was described as “a late fee not to exceed
 15 \$20 per month.” However, the terms also state that “[i]f the late fee exceeds the maximum
 16 rate allowed by applicable law, the late charge will be equal to such maximum rate.” The
 17 maximum rate allowed by California is approximately 18% per annum, or 1.5% per month.
 18 In most cases, a monthly fee of \$20 was in excess of 70% of the beverage charge.
 19 Furthermore, the terms imply that the fee may be based on “any” charge—including, but
 20 not limited to, the beverages themselves, the bottle fees, the delivery fees and taxes. It is
 21 unclear how the determination is made. These acts and practices offend an established
 22 public policy of transparency in pricing, and are immoral, unethical, oppressive and
 23 unscrupulous, which are substantially injurious to consumers.

24 37. The harm to Plaintiff DONELL COREY KENDALL and Class members
 25 outweighs the utility of Defendants’ practices. There were reasonably available
 26 alternatives to further Defendants’ legitimate business interests other than the misleading
 27 and deceptive conduct described herein.

28

1 ***"Fraudulent" Prong***

2 38. A business act or practice is "fraudulent" under the UCL if it is likely to
3 deceive members of the consuming public.

4 39. Defendants' acts and practices alleged above constitute fraudulent business
5 acts or practices as they have deceived Plaintiff, and are highly likely to deceive and have
6 deceived members of the consuming public. Plaintiff DONELL COREY KENDALL
7 relied on Defendants' fraudulent and deceptive representations regarding their late fees.
8 These misrepresentations played a substantial role in Plaintiff's decision to enter into an
9 agreement with Defendants for beverage delivery, and Plaintiff would not have purchased
10 their products without these misrepresentations.

11 ***"Unlawful" Prong***

12 40. A business act or practice is "unlawful" under the UCL if it violates any
13 other law or regulation.

14 41. As detailed in Plaintiff's Second Cause of Action below, the Consumer
15 Legal Remedies Act, California *Civil Code* sections 1750 - 1784 ("CLRA"), prohibits a
16 business from engaging in sales practices that are deceptive or misrepresentations when
17 offering goods and services to the general public.

18 42. Defendants' retention of funds from Plaintiff and others as a result of their
19 wrongful activities amounts to conversion under *Civil Code* section 3336.

20 43. Plaintiffs allege that the practice of Defendants is an unfair business practice
21 under section 17200 of the *Business and Professions Code*, entitling them and others to
22 restitution, and further that such practice should be enjoined.

23 44. Such illegal conduct also constitutes an unfair business practice under
24 section 17200.

25 45. Plaintiffs allege, on information and belief, that Defendants' unfair practices
26 should be temporarily and permanently enjoined.

27 46. Plaintiffs further allege that the actions conducted by the Defendants are, and
28

1 continue to be, a deliberate and intentional attempt by Defendants to "fleece the consumer"
2 in violation of law, and is of such a fraudulent and malicious nature as described in section
3 3294 of the California *Civil Code* so as to entitle the Plaintiffs to punitive damages.

4 47. Besides being unlawful, Defendants' conduct alleged herein is "unfair"
5 within the meaning of section 17200 inasmuch as such conduct offends public policy in
6 this State, has no utility or rational justification and is substantially injurious to the general
7 public.

8 48. Besides being unlawful and unfair, Defendants' conduct alleged herein is
9 also "fraudulent" and/or "misleading" within the meaning of *Business & Professions Code*
10 sections 17200 inasmuch as such conduct is likely to deceive members of the general
11 public.

12 49. On information and belief, Defendants have received unearned commercial
13 benefits, at the expense of their competitors and the general public, as a result of their
14 employment of unlawful, and/or unfair and/or fraudulent and/or misleading business
15 practices, including charging excessive late fees without advance notice to their customers.

16 50. Defendants' unlawful business practices are ongoing, and unless enjoined
17 under *Business & Professions Code* section 17203, and/or under section 17535, are likely
18 to continue to deceive other members of the general public at the expense of Defendants'
19 competitors. The amounts charged by Defendants for late fees are unlawful in that the
20 amount is an improper attempt to state liquidated damages such that the amount operates
21 as a penalty in violation of California law.

22 51. Plaintiffs allege it is clear, as a matter of law, that the Defendants have
23 created an elaborate scheme to cheat consumers in violation of *Civil Code* section 1749.5
24 by their actions. Rather than refunding the ill-gotten money to their consumers,
25 Defendants have kept the money they gained due to their unfair actions.

26 52. Plaintiffs further allege that unless the court issues a Temporary Restraining
27 Order and an Order to Show Cause re Preliminary Injunction enjoining the Defendants
28

1 from violating section 1749.5 of the California *Civil Code*, irreparable harm and injury will
 2 result to the Plaintiffs (and to the unsuspecting public) before the matter can be heard.

3 53. In prosecuting this action for the enforcement of important rights affecting
 4 the public interest, Plaintiffs also seek, in addition to damages, restitution and other
 5 equitable relief, to recover attorney fees under (i) section 1021.5 of the *Code of Civil*
 6 *Procedure*, and/or (ii) the "common fund" doctrine available to prevailing Plaintiffs who
 7 confer a benefit on the general public.

8 SECOND CAUSE OF ACTION

9 (For Injunctive Relief Against All Defendants Under
 10 California *Civil Code* section 1750, *et seq.*)

11 54. Plaintiffs reallege and incorporate here by reference each of the foregoing
 12 paragraphs, and further allege as follows.

13 55. Defendants are "persons" as defined by *Civil Code* section 1761(c).

14 56. Plaintiff and each member of the Class are "consumers" within the meaning
 15 of *Civil Code* section 1761(d).

16 57. The Consumers Legal Remedies Act applies to Defendants' conduct because
 17 it extends to transactions that are intended to, or result in the sale or lease of goods or
 18 services to consumers. The delivery of bottled water and other beverages at issue herein
 19 constitutes "services" under the CLRA.

20 58. Defendants violated and continue to violate the CLRA by engaging in the
 21 following practices prescribed by *Civil Code* section 1770(a) in transactions with Plaintiffs
 22 and the members of the Class which were intended to result in, and did result in, payment
 23 of excess amounts for late fees for late subscription payments.

24 59. In violation of *Civil Code* section 1770(a)(2), Defendants made
 25 misrepresentations as well as omitted to provide important information to the public that
 26 were deceptive.

27 60. In violation of *Civil Code* section 1770(a)(14), Defendants represented that
 28

1 their billing transactions with their customers involved rights, remedies or obligations
2 which the transactions did not have or involve, or which were prohibited by law, as
3 described above.

4 61. In violation of *Civil Code* section 1770(a)(16), Defendants represented that
5 the subject of the transactions with their customers had been supplied in accordance with
6 their representations, when they were not, as above described.

7 62. Defendants have failed to disclose material facts to the Plaintiffs by
8 continuing to charge them excessive late fees, and by failing to disclose their illegal
9 conduct in not crediting the late fees they illegally collected from their customers.
10 Defendants had a duty to disclose the omitted facts because: 1) they had exclusive
11 knowledge of material facts not known to Class members and which could not be
12 discerned from review of Defendants' contracts and agreements; 2) because they actively
13 concealed material facts; and 3) because they made partial representations, including those
14 discussed above, while suppressing true material facts. The facts that Defendants
15 misrepresented and concealed as alleged in the preceding paragraphs were material to the
16 decisions Plaintiffs made in entering contracts with the Defendants, and their failure to
17 complain about the excessive late fees they were charged by Defendants. Defendants are
18 liable under the CLRA for these material omissions.

19 63. Pursuant to *Civil Code* section 1782(d), Plaintiffs seek a court order
20 enjoining the above-described wrongful acts and practices of Defendants.

21 64. Pursuant to *Civil Code* section 1782, Plaintiffs have notified Defendants in
22 writing by certified mail of the particular violations of *Civil Code* section 1770 and the
23 other violations as alleged herein and demanded that Defendants rectify the problems
24 associated with the actions detailed above and give notice to all affected consumers of its
25 intent to so act.

26 ///

27 ///

28

THIRD CAUSE OF ACTION

**(For Breach of The Implied Covenant of Good Faith and Fair Dealing
Against All Defendants)**

65. Plaintiffs hereby incorporate all paragraphs above as though fully set forth herein.

66. In all contracts, including the written contracts between the Plaintiffs and Defendants, there is an implied covenant of good faith and fair dealing requiring the parties to deal fairly with each other in all respects in connection with the contracts and not to take any action which deprives the other of the benefits of the contracts to any extent.

67. In each of the contracts between Plaintiffs and Defendants, the covenants of good faith and fair dealing include obligations on the part of Defendants to charge and collect only fair and equitable late fees, and not more. Defendants breached the covenants of good faith and fair dealing in each of the contracts by charging excessive late fees without notice to their consumers.

68. As a direct and proximate result of Defendants' breaches of the implied covenant of good faith and fair dealing, Plaintiffs have been damaged in amounts to be proven at trial, and continue to be damaged.

FOURTH CAUSE OF ACTION

(For Money Had and Received Against All Defendants)

69. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

70. Plaintiffs paid to Defendants, and Defendants retained, monies which it would be inequitable for Defendants to continue to retain.

71. The payment by Plaintiffs of excess monies described above was done as a result of:

- (a) Mistake of fact and/or ignorance of law; and/or
- (b) Reliance on negligent misrepresentations that specific excessive and unlawful amounts were due when no such amounts were due.

72. The payments of these excess monies created an indebtedness on the part of Defendants to Plaintiffs and the other Class members.

73. As a result of Defendants' unjust retention and collection of the excess monies discussed above, Defendants are indebted to Plaintiffs and each member of the Plaintiff Class in a sum certain, the amount of which can be proven at trial by reference to Defendants' own records. It would be inequitable for Defendants to retain said sums, and Plaintiffs and the members of the Plaintiff Class are entitled to recover said sums as money had and received by Defendants from Plaintiffs and the members of the Plaintiff Class as damages.

10 FIFTH CAUSE OF ACTION

11 (For Unjust Enrichment Against All Defendants)

12 74. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

75. Defendants have been unjustly enriched by failing to appropriately credit Plaintiffs and members of the Plaintiff Class for the excessive and unwarranted late fees it charged them without notice.

76. The unlawful retention of monies pursuant to Defendants' misconduct warrants the imposition of a constructive trust to be maintained for the benefit of Plaintiffs and the members of the Plaintiff Class.

19 SIXTH CAUSE OF ACTION

20 (For Imposition of Unlawful Penalties in Violation of California
Civil Code section 1671 Against All Defendants)

22 77. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

23 78. Defendants' late fee policy and practices, as set forth herein, violate *Civil*
24 *Code* section 1671 in that they are unreasonable under the circumstances existing at the
25 time the contracts were made. In particular, the following policies and actions violate *Civil*
26 *Code* section 1671:

77 (a) Defendants' contract constitutes a contract of adhesion that does not

1 afford customers any control over its terms, including the terms setting forth Defendants'
2 late fee policy;

3 (b) The contract's provisions pertaining to the imposition of late fees for
4 untimely payment is unreasonably vague and ambiguous in that it does not provide
5 customers with an indication of the amount they will be charged in the event they make
6 untimely payments; and

7 (c) Defendants' late fee policy and practice cause customers to incur
8 excessive penalties that bear no relation to the damages Defendants actually incur as a
9 result of the untimely payments.

10 79. As a direct result of Defendants' late fee policy and practice, Plaintiffs were
11 forced to incur excessive and unreasonable penalties. Plaintiffs suffered injury in fact in
12 the form of lost money and/or property as a result of paying the excessive and
13 unreasonable late fees billed and automatically charged by Defendants.

14 **SEVENTH CAUSE OF ACTION**

15 **(For Negligence Against All Defendants)**

16 80. Plaintiffs reallege and incorporate here by reference each of the foregoing
17 paragraphs, and further allege as follows.

18 81. Defendants, and each of them, owed a duty to Plaintiffs and those they seek
19 to represent, to act with reasonable care.

20 82. Defendants breached their duty of care by negligently harming Plaintiffs in
21 charging them excessive late fees without advance notice to the customer.

22 83. As a result of Defendants' breach, Plaintiffs and those they seek to represent,
23 suffered harm and injuries in an amount according to proof at trial.

24 **PRAYER FOR RELIEF**

25 1. Plaintiff, DONELL COREY KENDALL, individually and on behalf of all
26 others similarly situated, prays for relief and judgment against Defendants as follows:

27 (a) An order certifying the Class and designating DONELL COREY
28

1 KENDALL as Class Representative and his counsel as Class Counsel;

2 (b) Awarding Plaintiff and the proposed Class members damages
3 according to proof;

4 (c) Awarding restitution and disgorgement of all profits and unjust
5 enrichment that Defendants obtained from Plaintiff and the Class members as a result
6 of their unlawful, unfair and fraudulent business practices described herein;

7 (d) Awarding declaratory and injunctive relief as permitting by law or
8 equity to individual non-corporate Plaintiffs, including enjoining Defendants from
9 continuing the unlawful practices set forth herein, and directing Defendants to
10 identify, with Court supervision, victims of their misconduct and pay them all money
11 they are required to pay;

12 (e) Awarding attorneys' fees and costs; and

13 (f) Providing such further relief as may be just and proper.
14

15 Dated: September 21, 2020

BEVERLY HILLS TRIAL LAWYERS, P.C.

16
17 /s/ Azar Mouzari
18 Azar Mouzari
Attorneys for Plaintiff
19

20 Dated: September 21, 2020

LAW OFFICE OF ALEXIS DJIVRE

21
22 /s/ Alexis Djivre
23 Alexis Djivre
Attorneys for Plaintiff
24
25
26
27
28

EXHIBIT 1



All Products | Brands | 5-gallon quick shop | What are you looking for?

Order by phone: 1-866-512-7315

Already a customer? Sign-In

Save up to \$50 plus get free delivery on your first order, when you select recurring delivery.

1. DELIVERY: Customer will purchase from Company, Company's bottled water, ready to drink iced teas, and other beverage products and related products ("Products") as ordered by Customer from time to time. Company reserves the right to subject all orders to a minimum delivery requirement of either \$20.00 or any two Products as determined by Company from time to time per delivery, exclusive of any taxes, fees or surcharges. All orders are subject to credit approval. Where a customer receives included Equipment (defined below) and skips more than two monthly deliveries in the twelve month period(s) beginning with the month in which service begins, Company reserves the right to charge that customer a "Skip Fee" of \$4.99 per month for each skipped month after the second skipped month. Service may not be available in all areas.

2. LEASED EQUIPMENT: If Customer requests, Company will lease to Customer, and Customer will pay Company lease payments for, the coolers, filtration systems and/or equipment as agreed between Company and Customer ("Leased Equipment"). Customer acknowledges that this is a true lease. If Customer purchases equipment from Company, Customer will be responsible for all repair or replacement costs unless otherwise specified in Company's warranty. If any, AccuPure plans include standard installation of up to one hour's labor and 25 feet of standard installation equipment. Customer is responsible for all additional labor and materials costs. Installation will begin at the point Customer designates. Company's responsibility and equipment apply only from that point to the AccuPure delivery point, which will be designated by Customer. Customer will provide any permission necessary for alteration of the premises such as cutting or drilling.

3. EQUIPMENT FOR CERTAIN PLANS: If Customer has selected a plan that includes use of equipment, Company will provide the equipment designated by Company ("Included Equipment") for Customer's use for the agreed upon time and at the agreed upon price. If Customer has selected (i) upgraded Included Equipment, Customer will pay Company the monthly upgrade fee specified; or (ii) a plan with no Included Equipment, Company will not provide any equipment to Customer.

4. USE OF LEASED EQUIPMENT, INCLUDED EQUIPMENT AND COMPANY'S BOTTLES: Company will install the Leased Equipment or Included Equipment, as applicable (collectively, "Equipment"), at Customer's address provided by Customer to Company. If Customer's negligence, abuse or misuse causes damage requiring repair or replacement, Customer will pay Company all such costs on demand. The Equipment and multi-gallon bottles ("Bottles") are, and will at all times be, Company's sole and exclusive property, and Customer will have no right, title or interest except as provided in this Agreement. Customer can purchase the Equipment only if Customer and Company agree in writing. Customer will use the Equipment and all Bottles only for Company's Products and will not reuse or refill Bottles for any purpose whatsoever. Customer will at all times operate and maintain the Equipment and Bottles in a safe, sanitary and proper manner in accordance with Company's instructions and clean and maintain the Equipment periodically and at least once every six months, as outlined in the Company-approved guidelines. Customer (i) will not remove the Equipment from Customer's location without Company's prior written consent, (ii) will not alter the Equipment in any manner, (iii) will permit only Company to repair the Equipment, (iv) will notify Company immediately if the Equipment or any Bottles are stolen, lost, damaged or destroyed, and (v) will keep the Equipment and bottles free and clear of, and promptly notify the Company of, any liens, liens and encumbrances. Company may enter Customer's premises at reasonable times to inspect and repair the Equipment and to deliver or pick up Bottles.

5. TERM: The Initial Term of this Agreement will start on the date that the Equipment, if any, is installed by Company or, for Customers who purchase Products only, on the first date that such Products are delivered to Customer, and will continue for the period set forth on the order form. If no date is set forth on the order form then the Initial Term shall be for one month from the date of first delivery. Upon expiration of the Initial Term, this Agreement will continue in effect on a month to month basis until terminated by either Company or Customer on 30 days' written notice. Notwithstanding the foregoing, the Initial Term for AccuPure Customers is one year from the date of installation. A Customer who terminates this Agreement before the end of the Initial Term will be subject to a one-time early termination charge to compensate Company for, as applicable, the value of equipment and/or free Products or services provided to Customer and administrative, installation, labor and other costs of Customer's account, as follows: (a) Delivery Customers: up to \$25; and (b) AccuPure Customers: up to \$150. **ALL CUSTOMERS:** Upon expiration or termination of this Agreement, Customer will permit Company to retrieve the Equipment and/or Bottles, which will be in the same condition as received by Customer, reasonable wear and tear excepted. If Customer fails to return any Equipment or Bottles, Customer will pay Company the full replacement value.

6. PRICES: (a) **DELIVERY CUSTOMERS:** Leased Equipment rental fees and bottled water and ready to drink tea prices will not be increased during the first six months or during the Initial Term of this Agreement, whichever is shorter. Any price increase during the balance of the Initial Term will not exceed Company's then current regular non-introductory prices. (b) **ACCUPURE CUSTOMERS:** Leased AccuPure Equipment rental fees will not be increased during the first six months of the Initial Term of this Agreement. Any rental fee increase during the balance of the Initial Term will not exceed \$5.00 per month. (c) **ALL CUSTOMERS:** Prices for Products and rental fees are subject to change at any time on thirty (30) days' notice, subject to the periods provided in this Section 6, if any. Prices of commodities such as coffee, cocoa, sugar, paper and related products will be reviewed on a regular basis and are subject to increase at any time.

7. CHARGES, SURCHARGES, FEES, DEPOSITS AND REFUNDS: Customer will pay all charges for Products, Equipment, purchased equipment, and all applicable surcharges, taxes and fees, including, without limitation, (a) all bottle deposits up to \$10 per Bottle and/or account deposits up to \$100; (b) any applicable delivery fees of up to \$10.00 per delivery; (c) the Skip Fee, if applicable; and (d) all applicable State bottle deposits and redemption value on any free and purchased Products upon Customer's receipt of Company's invoice. Company may change its administrative, surcharges or other charges or deposit fees at any time with prior notice to Customer. If Customer does not pay any charge within thirty (30) days of the invoice date, Customer will pay Company the greater of (i) a late fee not to exceed \$20 per month, or (ii) interest of 1.5% per month on any unpaid amount from the invoice date until paid. If the late fee or interest rate exceeds the maximum rate allowed by law, the late charge will be equal to such maximum rate. Customer will make all payments due without set-off, counterclaim or defense. Payment of invoice by Customer is an acknowledgment of acceptance and delivery. At Company's sole discretion, applicable refunds, if any, may be credited back to the credit card used for payment.

8. RISK OF LOSS: Customer assumes risk of loss or damage to the Equipment and Bottles in Customer's possession and is responsible for all liability resulting from their use and operation. Customer will pay Company upon demand costs to repair or replace any lost, stolen, damaged or destroyed Equipment and/or Bottles, as determined by Company. Customer will, to the full extent permitted by law, indemnify, defend and hold harmless Company, its parent, affiliates, officers, directors, employees and agents from any loss, damage, liability, cost, fine or expense, including without limitation, reasonable attorneys' fees, incurred in connection with this Agreement. This provision will survive termination or expiration of this Agreement.

9. DEFAULT BY CUSTOMER; COMPANY'S REMEDIES: Customer will be in default if Customer: (a) fails to pay any amount when due; (b) fails to perform or violates any other term or condition and fails to cure the same within ten (10) days after the occurrence; or (c) abandons or abuses the Equipment or any Bottles. Upon default, Company will have the right to exercise any or all of the following cumulative remedies and any other rights or remedies it may have at law or in equity: (i) terminate this Agreement without relieving Customer of its accrued and continuing obligations; (ii) declare immediately due and payable (as liquidated damages and not as penalty) all outstanding charges plus the balance of the Leased Equipment rental to the end of the term; and/or (iii) repossess the Equipment and Bottles, Customer waiving notice, legal process, or liability for trespass or other damage; or, declare it a total loss, and Customer will pay Company its replacement value. Customer waives any requirement that Company post a bond or other undertaking in a repossession proceeding. Customer will pay all of Company's costs, including reasonable collection and/or attorneys' fees, as a result of Customer's default or the exercise of Company's remedies.

10. MOBILE PHONE DELIVERY SERVICE: Company provides a mobile messaging service ("Mobile Messaging Service") to its Customers. The Mobile Messaging Service is utilized to provide information to Customers via their mobile phones about upcoming delivery of their purchases. Text messages or phone calls may be made using an auto dialer or pre-recorded voice. If Customer wishes to receive the Mobile Messaging Service, Customer agrees to provide Company with a valid mobile number and to notify Company immediately of any changes to Customer's mobile number. Customer agrees that Company may make phone calls or send text messages through Customer's wireless provider. Company does not charge

recipients to receive text messages, however, messaging and data rates may apply. CUSTOMER IS RESPONSIBLE FOR ALL CHARGES AND FEES ASSOCIATED WITH TEXT MESSAGING IMPOSED BY THEIR WIRELESS SERVICE PROVIDER. Customer will receive approximately 5 messages per delivery. Customer agrees to indemnify, defend, and hold harmless Company, its officers, directors, employees, agents, licensors and suppliers from and against all losses, expenses, damages and costs of any kind (including reasonable attorneys' fees), resulting from any activity related to Customer's use of the Mobile Messaging Service, or from Customer providing Company with a mobile number that is not Customer's own mobile number. Customer agrees that Company will not be liable for failed, delayed, or misdirected delivery of any information sent through the Mobile Messaging Service; any errors in such information; any action Customer may or may not take in reliance on the information or Mobile Messaging Service; or any disclosure of information to third parties resulting from Customer's use of the Mobile Messaging Service.

11. ELECTRONIC BILLING AND NOTIFICATIONS: Customer agrees that Company may provide Customer with information regarding this Agreement by posting the information in Customer's account on the ReadyRefresh website and that doing so satisfies any obligation Company may have to provide the information in writing. Customer may have the right to withdraw consent and, when required by law, Company will provide Customer with paper copies upon request. To receive, access, and retain the notices, Customer must have Internet access and a computer or device with a compatible browser; software capable of viewing PDF files; and the ability to print or download and store PDF files. Customer confirms that Customer is able to receive, access, and retain information on the website. Customer may withdraw consent or update contact information by calling Ready Refresh.

12. MISCELLANEOUS: Customer may not directly or indirectly transfer any of its rights under this Agreement and will not allow any third party to take possession of the Equipment or Bottles without Company's prior written consent. The terms of this Agreement may be waived or amended only in writing signed by Company and Customer. Failure or delay in exercising any right will not constitute a waiver. Customer grants Company authority to conduct credit investigations and Company retains the right to terminate this agreement at any time based on such information.

13. DISCLAIMER OF WARRANTY: COMPANY DOES NOT MANUFACTURE THE EQUIPMENT PROVIDED TO CUSTOMER, IF ANY, AND, UNLESS OTHERWISE SPECIFICALLY SET FORTH IN WRITING BY COMPANY, HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS SUITABILITY OR FITNESS FOR ANY PURPOSE OR MERCHANTABILITY. CUSTOMER ACCEPTS THE EQUIPMENT "AS IS," NO DEFECT IN OR UNFITNESS OF THE EQUIPMENT, NO LOSS OR DAMAGE AND NO OTHER CONDITION WHATSOEVER WILL RELIEVE OR SUSPEND CUSTOMER'S OBLIGATIONS, WHICH ARE ABSOLUTE AND UNCONDITIONAL, TO THE FULL EXTENT PERMITTED BY LAW. COMPANY WILL INCUR NO LIABILITY WHATSOEVER TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH ANY DEFECT IN OR CONDITION OF THE EQUIPMENT OR ITS USE, OPERATION OR FUNCTION.

Nestlé Waters North America SMS Terms and Conditions

*Introductory offer good for new customers only, 1 year credit approval, who, when prompted, select any delivery frequency option other than "one-time". Cannot be combined with other offers. New customers who sign up for home delivery service under this offer will receive a one-time account credit equal to 50% of their first recurring order (excluding taxes, deposits, and fees) toward their first invoice and will not be charged a delivery fee until a charge on their first delivery. Maximum account credit is \$50. Account credit cannot be redeemed for cash. Customer must purchase a minimum of \$20.00 of beverages. New customers do not include any customers who have had a delivery through ReadyRefresh™ by Nestlé in the past twelve months. Discount does not apply to applicable bottle deposit, sales tax, the purchase of accessories or the rental of dispenser equipment. Discount will only apply to purchase of dispenser if customer signs up for recurring delivery of 6-gallon bottles. If, as part of your plan, you receive free use of a dispenser, the dispenser will be free for the first 12 months, after which you will be charged the then current standard rental fee. If dispenser shown is not available, substitute of equal value may be provided. LIMIT: One (1) account credit per customer account. Account and/or bottle deposits, activation fees, and certain restrictions apply. Plans and pricing subject to change at any time. Service available in most areas. Offer expires 4/30/18. ©2018 Nestlé Waters North America, Inc.

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EXHIBIT 2

7/16/2020

Terms & Conditions | ReadyRefresh Water & Beverage Delivery

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Agreement

This Agreement governs your purchases of bottled water and other beverages and related products ("Products") and Equipment (as defined below) from Nestlé Waters North America Inc. ("Company"). The information you provide will be treated in accordance with our Privacy Policy, [available here](#). If you do not provide Company all of the requested information, we may not be able to provide you with the requested goods or services.

THIS AGREEMENT CONTAINS A PROVISION THAT GENERALLY REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE IN THE EVENT OF A DISPUTE. SEE THE DISPUTE RESOLUTION SECTION BELOW FOR MORE INFORMATION.

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Delivery

Customer will purchase Products from Company as ordered by Customer from time to time. Company reserves the right to subject all orders to a minimum delivery requirement as determined by Company from time to time per delivery, exclusive of any taxes, fees or surcharges. All orders are subject to credit approval. Service may not be available in all areas.

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Equipment

If Customer requests, Company will lease to Customer, and Customer will pay Company lease payments for, the coolers, filtration systems and/or equipment as agreed between Company and Customer ("Equipment"). Customer acknowledges that this is a true lease. If Customer purchases Equipment from Company, Customer will be responsible for all repair or replacement costs unless otherwise specified in Company's warranty, if any. AccuPure plans include standard installation of up to one hour's labor and 25 feet of standard installation equipment; Customer is responsible for all additional labor and materials costs. Installation will begin at the point Customer designates, Company's responsibility and equipment apply only from that point to the AccuPure delivery point, which will be designated by Customer. Customer will provide any permission necessary for alteration of the premises such as cutting or drilling.

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Use of equipment and bottles

Company will install the Equipment, at Customer's address provided by Customer to Company. If Customer's negligence, abuse or misuse causes damage requiring repair or replacement, Customer will pay Company all such costs on demand. The Equipment and multi-gallon bottles ("Bottles") are, and will at all times be, Company's sole and exclusive property, and Customer will have no right, title or interest except as provided in this Agreement. Customer can purchase the Equipment only if Customer and Company agree. Customer will use the Equipment and all Bottles only for Company's Products and will not reuse or refill Bottles for any purpose whatsoever. Customer will at all times operate and maintain the Equipment and Bottles in a safe, sanitary and proper manner in accordance with Company's instructions and clean and maintain the Equipment periodically and at least once every three months. Customer (i) will not remove the Equipment from Customer's location without Company's prior written consent, (ii) will not alter the Equipment in any manner, (iii) will permit only Company to repair the Equipment, (iv) will notify Company immediately if the Equipment or any Bottles are stolen, lost, damaged or destroyed, and (v) will keep the Equipment and Bottles free and clear of, and promptly notify the Company of, any levies, liens and encumbrances. Company may enter Customer's premises at reasonable times to inspect and repair the Equipment and to deliver or pick-up Bottles.

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Term

The Initial Term of this Agreement will start on the earlier of: the date that the Equipment, if any, is installed by Company; or, for Customers who purchase Products only, on the first date that such Products are delivered to Customer; or on the date when Customer authorizes payment for Products, and will continue for the period set forth on the order form. If no date is set forth on the order form then the Initial Term shall be for one month from the date of first delivery. Upon expiration of the Initial Term, this Agreement will continue in effect on a month to month basis until

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terminated by either Company or Customer on 30 days' notice. Notwithstanding the foregoing, the Initial Term for AccuPure Customers is one year from the date of installation. A Customer who terminates this Agreement before the end of the Initial Term may be subject to a one time early termination charge to compensate Company for, as applicable, the value of equipment and/or free Products or services provided to Customer and administrative, installation, labor and other costs of Customer's account, as follows: (a) Delivery Customers: up to \$25; and (b) AccuPure Customers: up to \$150; ALL CUSTOMERS: Upon expiration or termination of this Agreement, Customer will permit Company to retrieve the Equipment and/or Bottles, which will be in the same condition as received by Customer, reasonable wear and tear excepted. If Customer fails to return any Equipment or Bottles, Customer will pay Company the full replacement value.

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Prices

(a) DELIVERY CUSTOMERS: Equipment rental fees and prices for bottled water and other beverages and related products will not be increased during the first two months or during the Initial Term of this Agreement, whichever is shorter. Any price increase during the balance of the Initial Term will not exceed Company's then current regular non-introductory prices. (b) ACCUPURE CUSTOMERS: Leased AccuPure Equipment rental fees will not be increased during the first six months of the Initial Term of this Agreement. Any rental fee increase during the balance of the Initial Term will not exceed \$5 per month. (c) ALL CUSTOMERS: Prices for Products and rental fees are subject to change. Prices of commodities such as coffee, cocoa, sugar, paper and related products will be reviewed on a regular basis and are subject to increase at any time.

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Charges; surcharges, fees, deposits and refunds

CUSTOMER WILL PAY ALL CHARGES FOR PRODUCTS, EQUIPMENT, AND ALL APPLICABLE SURCHARGES, TAXES AND FEES, INCLUDING, WITHOUT LIMITATION, (A) ALL BOTTLE DEPOSITS UP TO \$10 PER BOTTLE AND/OR ACCOUNT DEPOSITS UP TO \$100; (B) ANY APPLICABLE DELIVERY FEES OF UP TO \$20 PER DELIVERY; (C) A FEE OF UP TO \$5 FOR EACH PAPER INVOICE IN LIEU OF, OR IN ADDITION TO, AN ELECTRONIC INVOICE; (D) A FEE OF UP TO \$8.99 PAYABLE IN THE EVENT CUSTOMER CANCELS A SCHEDULED DELIVERY ON LESS THAN 24 HOURS' PRIOR NOTICE; (E) A FEE OF UP TO \$50 FOR THE RECONDITIONING OF EACH COOLER LEASED BY CUSTOMER AND PAYABLE UPON THE CANCELLATION OF SERVICE; (F) IN THE EVENT CUSTOMER IS IN DEFAULT ON THE PAYMENT OF ANY INVOICE FOR A PERIOD EXCEEDING 150 DAYS, A REINSTATEMENT FEE OF UP TO THE SUM OF (I) THE OUTSTANDING AMOUNT PLUS (II) 25% OF SUCH OUTSTANDING AMOUNT; AND (G) ALL APPLICABLE STATE BOTTLE DEPOSITS AND REDEMPTION VALUE ON ANY FREE AND PURCHASED PRODUCTS UPON CUSTOMER'S RECEIPT OF COMPANY'S INVOICE.

Customer acknowledges and agrees that, promptly after the delivery of any Products and Equipment, Company may invoice customer for all delivered Products and Equipment as well as any applicable surcharges, taxes and fees. Company may change its administrative, surcharges or other charges or deposit fees at any time with prior notice to Customer. If Customer does not pay any charge within thirty (30) days of the invoice date, Customer will pay Company a late fee not to exceed \$20 per month. If the late fee exceeds the maximum rate allowed by applicable law, the late charge will be equal to such maximum rate. Customer will make all payments due without set-

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off, counterclaim or defense. Payment of invoice by Customer is an acknowledgment of acceptance and delivery. At Company's sole discretion, applicable refunds, if any, may be credited back to the credit card used for payment.

For recurring Deliveries with automatic payment, Company will charge Customer's authorized payment method per the billing period described when Customer authorized automatic payment. Customer can update the payment method by visiting the ReadyRefresh website. If Customer's payment method expires and Customer does not update or change the payment method, Customer shall remain responsible for any uncollected amounts.

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Risk of loss

Customer assumes risk of loss or damage to the Equipment and Bottles in Customer's possession and is responsible for all liability resulting from their use and operation. Customer will pay Company upon demand costs to repair or replace any lost, stolen, damaged or destroyed Equipment and/or Bottles, as determined by Company. Customer will, to the full extent permitted by law, indemnify, defend and hold harmless Company, its parent, affiliates, officers, directors, employees and agents from any loss, damage, liability, cost, fine or expense, including without limitation, reasonable attorneys' fees, incurred in connection with this Agreement. This provision will survive termination or expiration of this Agreement.

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Default by customer; company's remedies

Customer will be in default if Customer: (a) fails to pay any amount when due; (b) fails to perform or violates any other term or condition and fails to cure the same within ten (10) days after the occurrence; or (c) abandons or abuses the Equipment or any Bottles. Upon default, Company will have the right to exercise any or all of the following cumulative remedies and any other rights or remedies it may have at law or in equity: (i) terminate this Agreement without relieving Customer of its accrued and continuing obligations; (ii) declare immediately due and payable (as liquidated damages and not as penalty) all outstanding charges plus the balance of the Equipment rental to the end of the term; (iii) subject Customer to a reinstatement fee as described in the section entitled "Charges; surcharges, fees, deposits and refunds;" and/or (iv) repossess the Equipment and Bottles; and Customer hereby waives notice, legal process, or liability for trespass or other damage by Company or its third-party representatives, or, Company may declare it a total loss, and Customer will pay Company its replacement value. Customer waives any requirement that Company post a bond or other undertaking in a repossession proceeding. Customer will pay or reimburse all of Company's costs, including reasonable collection and/or attorneys' fees, as a result of Customer's default or the exercise of Company's remedies.

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Mobile phone delivery service

Company provides a mobile messaging service ("Mobile Messaging Service") to its Customers. The Mobile Messaging Service is utilized to provide information to Customers via their mobile phones about upcoming delivery of their purchases. Text messages or phone calls may be made using an auto dialer or prerecorded voice. If Customer wishes to receive the Mobile Messaging Service, Customer agrees to provide Company with a valid mobile number and to notify Company immediately of any changes to Customer's mobile number. Customer agrees that Company may make phone calls or send text messages through Customer's wireless provider to the number

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Customer provides. Company does not charge recipients to receive text messages, however, messaging and data rates may apply. CUSTOMER IS RESPONSIBLE FOR ALL CHARGES AND FEES ASSOCIATED WITH TEXT MESSAGING IMPOSED BY THEIR WIRELESS SERVICE PROVIDER. Customer will receive approximately 5 messages per delivery. Customer agrees to indemnify, defend, and hold harmless Company, its officers, directors, employees, agents, licensors and suppliers from and against all losses, expenses, damages and costs of any kind (including reasonable attorneys' fees), resulting from any activity related to Customer's use of the Mobile Messaging Service, or from Customer providing Company with a mobile number that is not Customer's own mobile number. Customer agrees that Company will not be liable for failed, delayed, or misdirected delivery of any information sent through the Mobile Messaging Service; any errors in such information; any action Customer may or may not take in reliance on the information or Mobile Messaging Service; or any disclosure of information to third parties resulting from Customer's use of the Mobile Messaging Service. Company's Privacy Policy is available on the ReadyRefresh website.

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Electronic billing and notifications

Customer agrees that Company may provide Customer with information regarding this Agreement by posting the information in Customer's account on the ReadyRefresh website and that doing so satisfies any obligation Company may have to provide the information in writing. Customer may have the right to withdraw consent and, when required by law, Company will provide Customer with paper copies upon request. To receive, access, and retain the notices, Customer must have Internet access and a computer or device with a compatible browser; software capable of viewing PDF files; and the ability to print or download and store PDF files. Customer confirms that Customer is able to receive, access, and retain information on the website. Customer may withdraw consent or update contact information by calling ReadyRefresh.

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Miscellaneous

Customer may not directly or indirectly transfer any of its rights under this Agreement and will not allow any third party to take possession of the Equipment or Bottles without Company's prior written consent. NWNA reserves the right to change any of the terms of this Agreement at any time for any reason. NWNA will notify Customer of such changes by posting an updated Agreement here or by asking Customer to read and accept a new version. Customer's continued purchase or receipt of Products after an updated Agreement is posted constitutes acceptance of the modified Agreement. Customer cannot modify this Agreement unless NWNA agrees to the change in writing. Failure or delay in exercising any right will not constitute a waiver. Customer grants Company authority to conduct credit investigations and Company retains the right to terminate this Agreement at any time based on such information. This Agreement, together with any additional terms, rules, the Company's Privacy Policy, and any other regulations, procedures and policies which Company refers to and which are hereby incorporated by reference, contain the entire understanding and agreement between Customer and Company concerning this Agreement, and transactions involving Products, Bottles, and Equipment and supersedes any and all prior understandings. To the extent that there is a conflict between this Agreement and any additional terms for Products, Bottles, or Equipment, the additional terms shall govern. If any provision of this Agreement is held to be illegal, invalid or unenforceable, this shall not affect any other provisions

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and the Agreement shall be deemed amended to the extent necessary to make it legal, valid and enforceable. Any provision that must survive in order to allow us to enforce its meaning shall survive the termination of this Agreement.

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Disclaimer of Warranty

COMPANY DOES NOT MANUFACTURE THE EQUIPMENT PROVIDED TO CUSTOMER, IF ANY, AND, NOTWITHSTANDING ANYTHING TO THE CONTRARY, HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS SUITABILITY OR FITNESS FOR ANY PURPOSE OR MERCHANTABILITY. CUSTOMER ACCEPTS THE EQUIPMENT "AS IS." NO DEFECT IN OR UNFITNESS OF THE EQUIPMENT, NO LOSS OR DAMAGE AND NO OTHER CONDITION WHATSOEVER WILL RELIEVE OR SUSPEND CUSTOMER'S OBLIGATIONS, WHICH ARE ABSOLUTE AND UNCONDITIONAL. TO THE FULL EXTENT PERMITTED BY LAW, COMPANY WILL INCUR NO LIABILITY WHATSOEVER TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH ANY DEFECT IN OR CONDITION OF THE EQUIPMENT OR ITS USE, OPERATION OR FUNCTION.

Some jurisdictions do not allow exclusion of implied warranties, so the above exclusions may not apply to Customer.

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Dispute Resolution

TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AND COMPANY AGREE TO SUBMIT EXCLUSIVELY ANY CLAIM, CONTROVERSY OR DISPUTE ARISING OUT OF OR RELATING TO PRODUCTS, EQUIPMENT, BOTTLES, THIS AGREEMENT OR ANY OTHER POLICIES OR OTHER TERMS INCORPORATED THEREIN (INCLUDING THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION, ENFORCEABILITY, VALIDITY, OR RIGHTS UNDER ANY OF ANY OF THE FOREGOING) (EACH, A "DISPUTE") FOR RESOLUTION BY CONFIDENTIAL, INDIVIDUAL, BINDING ARBITRATION, EXCEPT THAT CUSTOMER MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF CUSTOMER'S CLAIMS QUALIFY.

THE PARTIES AGREE THAT THE ARBITRATOR, AND NOT ANY FEDERAL, STATE, PROVINCIAL OR LOCAL COURT OR AGENCY, SHALL HAVE EXCLUSIVE AUTHORITY TO RESOLVE ANY DISPUTES RELATING TO THE INTERPRETATION, APPLICABILITY, ENFORCEABILITY OR FORMATION OF THIS AGREEMENT TO ARBITRATE, INCLUDING ANY CLAIM THAT ALL OR ANY PART OF THIS AGREEMENT TO ARBITRATE IS VOID OR VOIDABLE. THE ARBITRATOR SHALL ALSO BE RESPONSIBLE FOR DETERMINING ALL THRESHOLD ARBITRABILITY ISSUES, INCLUDING ISSUES RELATING TO WHETHER THE TERMS ARE UNCONSCIONABLE OR ILLUSORY AND ANY DEFENSE TO ARBITRATION, INCLUDING WAIVER, DELAY, LACHES OR ESTOPPEL.

TO THE FULLEST EXTENT PERMITTED BY LAW: (I) CUSTOMER EXPRESSLY WAIVES ANY RIGHT CUSTOMER MAY HAVE TO ARBITRATE A DISPUTE AS A CLASS ACTION; AND (II) CUSTOMER ALSO EXPRESSLY WAIVES CUSTOMER'S RIGHT TO A JURY TRIAL.

THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. HOWEVER, AN ARBITRATOR CAN AWARD ON AN INDIVIDUAL BASIS THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING INJUNCTIVE AND DECLARATORY RELIEF OR STATUTORY DAMAGES), AND MUST FOLLOW THE TERMS OF THIS AGREEMENT AS A COURT WOULD.

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THE ARBITRATION WILL BE HELD IN CONNECTICUT. IF CUSTOMER INFORMS COMPANY THAT THIS LOCATION IS NOT CONVENIENT FOR CUSTOMER, COMPANY WILL WORK WITH CUSTOMER TO DETERMINE A MUTUALLY CONVENIENT LOCATION. ANY DISAGREEMENTS REGARDING THE FORUM FOR ARBITRATION WILL BE SETTLED BY THE ARBITRATOR. DISPUTES WILL BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT AS A CLASS ACTION. IN THE EVENT THAT ARBITRATION IS NOT PERMITTED BY APPLICABLE LAW: (I) THE PARTIES EXPRESSLY AGREE THAT ANY DISPUTE WILL BE BROUGHT AND HEARD SOLELY AND EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF COMPETENT JURISDICTION LOCATED IN CONNECTICUT. THE PARTIES WAIVE ANY PLEA OR DEFENSE THAT SUCH COURTS ARE NOT THE APPROPRIATE VENUE OR THAT THEY ARE NOT SUBJECT TO PERSONAL JURISDICTION OF SUCH COURTS.

THE ARBITRATION WILL BE ADMINISTERED BY JAMS. CUSTOMER MAY OBTAIN A COPY OF THE RULES OF JAMS BY CONTACTING THE ORGANIZATION. EACH PARTY SHALL AGREE ON ONE ARBITRATOR TO CONDUCT THE ARBITRATION. IN THE EVENT THE PARTIES CANNOT AGREE ON AN ARBITRATOR, THE ARBITRATOR WILL BE SELECTED IN ACCORDANCE WITH THE JAMS RULES.

IF CUSTOMER INITIATES ARBITRATION, CUSTOMER'S ARBITRATION FEES WILL BE LIMITED TO THE FILING FEE SET FORTH BY JAMS. REGARDLESS OF WHO INITIATES ARBITRATION, COMPANY WILL PAY CUSTOMER'S SHARE OF ARBITRATION FEES (NOT INCLUDING ATTORNEYS' FEES) UP TO A MAXIMUM OF \$2,500. IF THE ARBITRATOR RULES AGAINST COMPANY, IN ADDITION TO ACCEPTING WHATEVER RESPONSIBILITY IS ORDERED BY THE ARBITRATOR, COMPANY WILL REIMBURSE CUSTOMER'S REASONABLE ATTORNEYS' FEES AND COSTS UP TO A MAXIMUM OF \$5,000, REGARDLESS OF WHO INITIATED THE ARBITRATION, UNLESS THE ARBITRATOR FINDS SOME OR ALL OF CUSTOMER'S CLAIMS TO BE FRIVOLOUS OR TO HAVE BEEN BROUGHT IN BAD FAITH. IN ADDITION, IF THE ARBITRATOR RULES IN COMPANY'S FAVOR, IT WILL NOT SEEK REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS, REGARDLESS OF WHO INITIATED THE ARBITRATION, UNLESS THE ARBITRATOR FINDS SOME OR ALL OF CUSTOMER'S CLAIMS TO BE FRIVOLOUS OR TO HAVE BEEN BROUGHT IN BAD FAITH.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, TO THE EXTENT EITHER PARTY IN ANY MANNER HAS VIOLATED OR THREATENED TO VIOLATE THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, THE NON-BREACHING PARTY MAY SEEK INJUNCTIVE OR OTHER APPROPRIATE RELIEF IN ANY STATE, PROVINCIAL OR FEDERAL COURT OF COMPETENT JURISDICTION.

EXCEPT AS OTHERWISE PROHIBITED BY LAW, ANY DISPUTE MUST BE BROUGHT WITHIN ONE (1) YEAR FROM THE DATE THE CAUSE OF ACTION ARISES.

IN THE EVENT THAT ANY PROVISION OF THE AGREEMENT TO ARBITRATE IS HELD INVALID OR UNENFORCEABLE, ALL OTHER TERMS WITHIN THE AGREEMENT TO ARBITRATE SHALL REMAIN IN FULL FORCE AND EFFECT.

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Limitation of Liability

TO THE FULLEST EXTENT ALLOWED BY LAW, AND EXCEPT AS EXPRESSLY ESTABLISHED IN THIS AGREEMENT, COMPANY IS NOT LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), TO THE

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EXTENT THE FOREGOING LIMITATION OF LIABILITY IS, IN WHOLE OR IN PART, HELD TO BE INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF COMPANY FOR ANY REASON AND UPON ANY CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY AND OTHER ACTIONS IN CONTRACT OR TORT) IN ANY WAY RELATED TO THE SITE OR THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED UP TO TWO HUNDRED FIFTY DOLLARS (\$250).

Some jurisdictions, such as New Jersey, do not allow limitations on damages. In the event the applicable jurisdiction does not allow the limitation on liability to the extent indicated above, our liability in such jurisdictions shall be limited to the extent permitted by law.

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Alexis Djivre, SBN 245138 LAW OFFICE OF ALEXIS DJIVRE 1155 N. Central Ave., Ste. 201 Glendale, CA 91202 TELEPHONE NO.: 213-700-3436 FAX NO.: ATTORNEY FOR (Name): Plaintiffs, DONELL COREY KENDALL, et al.		FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles FILED SEP 23 2020 Superior Court of California County of Los Angeles SEP 23 2020 Shari R. Carter, Executive Officer/Clerk of Court By: Kristina Vargas, Deputy Kristina Vargas	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: 111 N. Hill St. CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse		CASE NAME: DONELL COREY KENDALL, et. al. v. NESTLE WATERS N.A., etc.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: 20STCV36528 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 7 - B&P 17200, CC 1750, BREACH OF GOOD FAITH, etc.
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 21, 2020

Alexis B. Djivre

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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Form Adopted for Mandatory Use
Judicial Council of California
CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/DPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/DPD/WD

Non-P/DPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-P/DPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review

Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SHORT TITLE: KENDALL V. NESTLE WATERS

CASE NO. 20STCV36528

20STCV36528

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.
2. Permissive filing in central district.
3. Location where cause of action arose.
4. Mandatory personal injury filing in North District.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.
11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
	Other Personal Injury/Property Damage/Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11

SHORT TITLE: KENDALL v. NESTLE WATERS	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 8, 11

LASC CIV 109 Rev. 12/18
For Mandatory Use

**CIVIL CASE COVER SHEET ADDENDUM
AND STATEMENT OF LOCATION**

Local Rule 2.3
Page 2 of 4

SHORT TITLE: KENDALL v. NESTLE WATERS		CASE NUMBER		
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above		
Judicial Review	Asset Forfeiture (05) <input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6		
	Petition re Arbitration (11) <input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5		
	Writ of Mandate (02) <input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2		
		Other Judicial Review (39) <input type="checkbox"/> A6150 Other Writ/Judicial Review	2, 8	
		Provisionally Complex Litigation	Antitrust/Trade Regulation (03) <input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
Construction Defect (10) <input type="checkbox"/> A6007 Construction Defect	1, 2, 3			
Claims Involving Mass Tort (40) <input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8			
Securities Litigation (28) <input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8			
Toxic Tort/Environmental (30) <input type="checkbox"/> A6038 Toxic Tort/Environmental	1, 2, 3, 8			
Insurance Coverage Claims from Complex Case (41) <input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8			
Enforcement of Judgment	Enforcement of Judgment (20) <input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9		
		RICO (27) <input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8	
		Other Complaints (Not Specified Above) (42) <input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8 2, 8 1, 2, 8 1, 2, 8	
			Partnership Corporation Governance (21) <input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
			Other Petitions (Not Specified Above) (43) <input type="checkbox"/> A6121 Civil Harassment With Damages <input type="checkbox"/> A6123 Workplace Harassment With Damages <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case With Damages <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9

SHORT TITLE KENDALL v. NESTLE WATERS	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS:
CITY: 	STATE: 	ZIP CODE: 	

Step 5: Certification of Assignment: I certify that this case is properly filed in the Central (Los Angeles) District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: September 21, 2020


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		<small>Reserved for Clerk's File Stamp</small> FILED Superior Court of California County of Los Angeles 09/23/2020 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>K. Vargas</u> Deputy
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		
NOTICE OF CASE ASSIGNMENT UNLIMITED CIVIL CASE		
Your case is assigned for all purposes to the judicial officer indicated below.		CASE NUMBER: 20STCV36528

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
✓ William F. Highberger	10				

Given to the Plaintiff/Cross-Complainant/Attorney of Record

Sherri R. Carter, Executive Officer / Clerk of Court

on 09/24/2020
 (Date)

By K. Vargas, Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the California Rules of Court, Title 3, Division 7, as applicable in the Superior Court, are summarized for your assistance.

APPLICATION

The Division 7 Rules were effective January 1, 2007. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Division 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Independent Calendaring Courts will be subject to processing under the following time standards:

COMPLAINTS

All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days.

CROSS-COMPLAINTS

Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

STATUS CONFERENCE

A status conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties to attend a final status conference not more than 10 days before the scheduled trial date. All parties shall have motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested form jury instructions, special jury instructions, and special jury verdicts timely filed and served prior to the conference. These matters may be heard and resolved at this conference. At least five days before this conference, counsel must also have exchanged lists of exhibits and witnesses, and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Three of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party, or if appropriate, on counsel for a party.

This is not a complete delineation of the Division 7 or Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is imperative.

Class Actions

Pursuant to Local Rule 2.3, all class actions shall be filed at the Stanley Mosk Courthouse and are randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be a class action it will be returned to an Independent Calendar Courtroom for all purposes.

***Provisionally Complex Cases**

Cases filed as provisionally complex are initially assigned to the Supervising Judge of complex litigation for determination of complex status. If the case is deemed to be complex within the meaning of California Rules of Court 3.400 et seq., it will be randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be complex, it will be returned to an Independent Calendar Courtroom for all purposes.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 14

20STCV36528

**DONELL COREY KENDALL vs NESTLE WATERS NORTH
AMERICA, INC.**

October 13, 2020

9:15 AM

Judge: Honorable Kenneth R. Freeman
Judicial Assistant: B. Guerrero
Courtroom Assistant: T. Lewis

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re: Reassignment of Case;

This case was ordered transferred to the Assistant Supervising Judge of Complex Civil Litigation, Judge Kenneth R. Freeman in Department 14, for reassignment purposes only.

The case is reassigned for the following reason: Peremptory Challenge to Judicial Officer William F. Highberger.

Good cause appearing and on order of the Court, the above matter is reassigned to Judge Elihu M. Berle in Department 6 at the Spring Street Courthouse for all further proceedings.

If any appearing party has not yet exercised a peremptory challenge under Code of Civil Procedure section 170.6, peremptory challenges by them to the newly assigned judge must be timely filed within the 15 day period specified in Code of Civil Procedure section 170.6, with extensions of time pursuant to Code of Civil Procedure section 1013 if service is by mail. Previously non-appearing parties, if any, have a 15-day statutory period from first appearance to file a peremptory challenge (Government Code section 68616(1)).

Counsel for Plaintiff is to give notice.

Certificate of Mailing is attached.

FILED
Superior Court of California
County of Los Angeles

OCT 15 2020

Sherril R. Carter, Executive Officer/Clerk
By Marisela Fregoso Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DONELL COREY KENDALL, individually, and on
behalf of all others similarly situated,

Plaintiff(s),

vs.

NESTLE WATERS NORTH AMERICA, INC.,
doing business as READY REFRESH, BY NESTLE,
and DOES 1 through 20, inclusive,

Defendant(s).

Case No.: **20STCV36528**

**INITIAL STATUS CONFERENCE
ORDER
(COMPLEX LITIGATION
PROGRAM)**

Case Assigned for All purposes to
Judge Elihu M. Berle

Department 6
Date: December 11, 2020
Time: 11:00 a.m.

1 This case has been assigned for all purposes to Judge Elihu M. Berle in the
 2 Complex Litigation Program. An Initial Status Conference is set for December 11, 2020,
 3 at 11:00 a.m. in Department 6 located in the Los Angeles Superior Courts at United States
 4 Courthouse at 312 N. Spring Street, Los Angeles, California 90012.

5 Counsel for all parties are ordered to attend the Initial Status Conference remotely
 6 via LA COURT CONNECT. The attorney portal can be found on the Court's website at
 7 lacourt.org. NO PERSONAL APPEARANCES WILL BE ALLOWED, unless special
 8 permission is granted upon appropriate application.

9 Plaintiff's counsel is directed to serve a copy of this Initial Status Conference Order
 10 on all parties, within five (5) days of service of this order. If any defendant has not yet
 11 been served in this action, service is to be completed within twenty (20) days of the date of
 12 this order.

13 The Court orders counsel to prepare for the Initial Status Conference by identifying
 14 and discussing the central legal and factual issues in the case. Counsel for plaintiff is
 15 ordered to initiate contact with counsel for defense to begin this process. Counsel then
 16 must negotiate and agree, as possible, on a case management plan.

17 Counsel must file a Joint Initial Status Conference Statement seven (7) calendar
 18 days before the Initial Status Conference. The Joint Initial Status Conference Statement
 19 must be filed on line-numbered pleading paper and must specifically address each of the
 20 below numbered items. Do not use the Judicial Council Form CM-110 (Case Management
 21 Statement).

- 22 **1. PARTIES AND COUNSEL:** Please list all presently named plaintiffs
 23 and/or class representatives and presently named defendants, together with all
 24 counsel of record, including counsel's contact and email information.
- 25 **2. ELECTRONIC SERVICE OF PAPERS:** for administrative efficiency
 26 and conservation of resource for the parties and court, the complex program
 27 requires the parties in every new case to use a third-party cloud service, such as:
 28 ■ Case Anywhere (www.caseanywhere.com),

1 ■ CaseHomePage (www.casehomepage.com), or

2 ■ File&ServeXpress (www.lexisnexis.com/fileandserve).

3 The parties are to select one of these vendors and submit the parties' choice
4 when filing the Joint Initial Status Conference Statement. If the parties cannot
5 agree, the court will select the vendor at the Initial Status Conference.

6 Electronic service is not the same as electronic filing. Only traditional methods
7 of filing by physical delivery of original papers or by fax filing are presently
8 available.

9 **3. CLAIMS AND DEFENSES:** Set forth a brief description of the core factual
10 and legal issues, derived from Plaintiff's claims and defendant's defenses.

11 **4. POTENTIAL ADDITIONAL PARTIES:** Does any plaintiff presently
12 intend to add more plaintiffs and/or class representatives? If so, and if known, by what
13 date and by what name will these parties be identified? Does any plaintiff presently intend
14 to name more defendants? If so, and if known, by what date and by what name will these
15 defendants be identified? Does any appearing defendant presently intend to file a cross-
16 complaint? If so, who will be named as a cross-defendant?

17 **5. IMPROPERLY NAMED DEFENDANT(S):** Does any party contend that
18 the complaint names the wrong person or entity, please explain.

19 **6. (For class actions) ADEQUACY OF PROPOSED CLASS**
20 **REPRESENTATIVE(S):** Does any party contend one or more named plaintiffs might
21 not be an adequate class representative. If so, please explain.

22 **7. (For class actions) FOR CLASS ACTIONS ESTIMATED SIZE:** What is
23 the estimated size of the putative class?

24 **8. (For class actions) OTHER ACTIONS WITH OVERLAPPING CLASS**
25 **DEFINITIONS:** Are there other cases with overlapping class definitions? If so, please
26 identify the court, the short caption title, the docket number, and the case status.

1 **9. ARBITRATION AGREEMENTS AND/OR CLASS ACTION**

2 **WAIVER CLAUSES:** Does any party contend there is an arbitration agreement and/or
3 class action waiver. If so, please discuss.

4 **10. POTENTIAL EARLY CRUCIAL MOTIONS:** Are there any issues that
5 can be identified and resolved early. If so, please identify and set forth proposed
6 procedures for resolution.

7 **PLEASE NOTE:** By stipulation a party may move for summary adjudication
8 of a legal issues or a claim for damages that does not completely dispose of a cause of
9 action, an affirmative defense, or an issue of duty. (C.C.P. § 437c(t)).

10 **11. PROTECTIVE ORDERS:** Parties considering an order to protect
11 confidential information from general disclosure should consider the model protective
12 orders found on the Los Angeles Superior Court Website under “Civil Tools for
13 Litigators.”

14 **12. DISCOVERY:** Counsel are to discuss a plan of discovery. In class actions,
15 prior to class certification, the court generally allows discovery on matters relevant to class
16 certification, which depending on circumstances, sometimes may include some factual
17 issues also touching the merits.

18 **13. INSURANCE COVERAGE:** Please state (1) if there is insurance for
19 indemnity or reimbursement, and (2) whether there are any insurance coverage issues
20 which might affect settlement.

21 **14. ALTERNATIVE DISPUTE RESOLUTION:** Counsel are requested to
22 discuss ADR and proposed neutrals to conduct such proceedings.

23 **15. TIMELINE FOR CASE MANAGEMENT:** Counsel to propose future
24 dates for:

- 25 ■ The next status conference,
26 ■ A schedule for alternative dispute resolution,
27 ■ A filing deadline for the motion for class certification, and
28 ■ Filing deadlines and descriptions for other anticipated non-discovery motions.

1 **PENDING FURTHER ORDERS OF THIS COURT**, and except as otherwise
2 provided in this Initial Status Conference Order, **these proceedings are stayed, except for**
3 **service of summons and complaint and filing of Notice of Appearance.** This stay shall
4 preclude the filing of any answer, demurrer, motion to strike, or motions challenging the
5 jurisdiction of the Court. Any defendant may file a Notice of Appearance for purposes of
6 identification of counsel and preparation of a service list. The filing such a Notice of
7 Appearance shall be without prejudice to any challenge to the jurisdiction of the Court,
8 substantive or procedural challenges to the Complaint, any affirmative defense, and the
9 filing of any cross-complaint in this action. This stay is issued to assist the Court and the
10 parties in managing this “complex” case. Although the stay applied to discovery, this stay
11 shall not preclude the parties from informally exchanging documents that may assist in
12 their initial evaluation of the issues presented in this case.



13
14
15
16
17
18
19 Dated: OCT 15 2020

HON. ELIHU M. BERLE
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 6

20STCV36528

**DONELL COREY KENDALL vs NESTLE WATERS NORTH
AMERICA, INC.**

October 15, 2020

10:04 AM

Judge: Honorable Elihu M. Berle
Judicial Assistant: M. Fregoso
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: M. Molinar

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for 12/11/2020 at 11:00 AM in this department. At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of Prejudice pursuant to Code of Civil Procedure Section 170.6.

Counsel are directed to access the following link for information on procedures in the Complex litigation Program courtrooms: <http://www.lacourt.org/division/civil/CI0037.aspx>

Pursuant to Government Code Sections 70616(a) and 70616(b), a single complex fee of one thousand dollars (\$1,000.00) must be paid on behalf of all plaintiffs. For defendants, a complex fee of one thousand dollars (\$1,000.00) must be paid for each defendant, intervenor, respondent or adverse party, not to exceed, for each separate case number, a total of eighteen thousand

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 6

20STCV36528

October 15, 2020

**DONELL COREY KENDALL vs NESTLE WATERS NORTH
AMERICA, INC.**

10:04 AM

Judge: Honorable Elihu M. Berle
Judicial Assistant: M. Fregoso
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: M. Molinar

dollars (\$18,000.00), collected from all defendants, intervenors, respondents, or adverse parties. All such fees are ordered to be paid to Los Angeles Superior Court, within 10 days of service of this order.

The plaintiff must serve a copy of this minute order and the attached Initial Status Conference Order on all parties forthwith and file a Proof of Service in this department within 7 days of service.

**PARTIES SHALL FILE A JOINT INITIAL STATUS CONFERENCE REPORT 7 DAYS
PRIOR TO THE INITIAL STATUS CONFERENCE.**

Certificate of Mailing is attached.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Nestlé Waters Charged Calif. Ready Refresh Subscribers Illegally Excessive Late Payment Fees](#)
