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

NICHOLAS BROWN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE BRITA PRODUCTS COMPANY,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

1. Violation of Unfair Competition Law
(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law
(Cal. Bus. & Prof. Code § 17500)
3. Violation of Consumers Legal
Remedies Act (Cal. Civ. Code §§
1750, *et seq.*)
4. Breach of Warranty
5. Unjust Enrichment

JURY TRIAL DEMAND

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COMPLAINT

1. Plaintiff Nicholas Brown (“**Plaintiff**”), individually and on behalf of all others similarly situated, as more fully described herein (the “**Class**” and “**Class Members**”), brings this class action complaint against Defendant The Brita Products Company (“**Defendant**” and/or “**Brita**”), and alleges the following based upon information and belief, unless otherwise expressly stated as based upon personal knowledge.

I. INTRODUCTION

2. **Background.** Safe and affordable access to clean water is an internationally recognized and fundamental human right, the lack of which has devastating effects on other basic human rights including the health, dignity, and prosperity of billions of people.¹ Numerous municipalities across the United States have recognized the fundamental right to safe and clean water, including, for example, the California legislature. *See, e.g.*, Cal. Water Code § 106.3(a) (2012). Consumers have poured billions of dollars into the filtered and purified water market.² Companies, like Defendant, manufacture, distribute, and sell home water treatment devices to make millions off people’s need for safe and affordable drinking water, including particularly vulnerable or health and environmentally conscious sects of society, such as those who live in disaster stricken areas where access to clean and safe drinking water has been disrupted; rural and metropolitan areas that do not have publicly available access to clean and safe drinking water either because constituents rely on well-water or their water tables and reservoirs have pollutants; and health or environmentally conscious individuals who are particularly concerned about hazardous contaminants in their drinking water or wish to avoid using plastic water bottles. No matter where people reside, or their socioeconomic status and educational background, consumers expect that when they purchase a water filtration device, particularly one with the Challenged Representations at issue here, that it

¹ *Resolution Adopted by the General Assembly on 28 July 2010*, UNITED NATIONS, https://www.un.org/waterforlifedecade/human_right_to_water.shtml#:~:text=On%2028%20July%202010%2C%20through,realisation%20of%20all%20human%20rights (last visited Aug. 15, 2023);, Human Rights to Water and Sanitation, UNITED NATIONS, <https://www.unwater.org/water-facts/human-rights/> (last visited Aug. 15, 2023).

² *US Water Purifier Market*, FORTUNE BUSINESS INSIGHTS, <https://www.fortunebusinessinsights.com/us-water-purifier-market-104696> (last visited Aug. 15, 2023).

will remove and effectively reduce hazardous contaminants commonly found in drinking water. This case is about Defendant, the manufacturer, marketer, advertiser, and seller of certain Brita brand water pitchers, dispensers, and filters (the “**Products**”), that chose to take advantage of consumers and their families’ basic and fundamental need for clean and safe drinking water by misleadingly and deceptively marketing their Products to convince consumers that they will remove common hazardous contaminants from drinking water, or in the very least reduce them to below lab detection limits. Unfortunately, the Products are not nearly as effective as Defendant deliberately leads people to believe, causing consumers to overpay millions and forego more effective alternatives. In this way, Defendant has not only bilked millions of dollars from consumers in ill-gotten gains, but Defendant has put the health and welfare of millions of consumers and their families at risk.

3. **Challenged Representations.** In an effort to increase profits and gain an unfair advantage over its lawfully acting competitors, Defendant falsely and misleadingly markets, advertises, labels, and packages certain of its Brita brand water Pitchers, Dispensers, and Filters (the “**Products**”) with the Challenged Representations: “BRITA WATER FILTRATION SYSTEM” (“**WFS Identification Claim(s)**”); “Cleaner, Great-Tasting Water” or “Healthier, Great-Tasting Water” (“**Clean Claims(s)**”); “The #1 FILTER” (“**#1 Filter Claims**”); and/or “REDUCES Chlorine (taste and odor) and more!”, “REDUCES Chlorine (taste and odor), Mercury, Copper and more”, “Reduces Chlorine (taste and odor), Mercury, Copper and more”, “Reduces 3X Contaminants” (“**More Reduction Claim(s)**”) (collectively, the “**Challenged Representations**”). *See Exhibit 2* (Product Images); *see also, infra* at ¶ 33. The Challenged Representations mislead reasonable consumers into believing that the Products remove or reduce to below lab detection limits common contaminants from their drinking water that are hazardous to health, including the Common Hazardous Contaminants. *See, infra* at ¶ 6 (identifying each Product at issue) and at ¶ 4 (identifying Common Hazardous Contaminants); *see also Exhibit 1* (Product List); *Exhibit 2* (Product Images); *Exhibit 3* (Performance Chart listing all contaminants, the reduction rate (if any), and highlighting contaminants hazardous to health in red, including the Common Hazardous Contaminants, for each System and Filter). Not only are the Products home water treatment devices (“**WTDs**”), each of

1 which Defendant uniformly names and prominently labels as a “BRITA WATER FILTRATION
2 SYSTEM,” but Defendant also uses one or more of the above statements and water-related imagery
3 on the Products’ front labels and packaging to advertise the Products as home WTDs that will
4 remove or reduce to below lab detection limits common hazardous contaminants from their drinking
5 water, including the Common Hazardous Contaminants. Defendant also fails to state, expressly,
6 clearly, and conspicuously on the Products’ packaging and labels that the Products will not remove
7 or reduce contaminants hazardous to health, including the Common Hazardous Contaminants, to
8 below lab detection limits (“**Material Omission**”). *See id.*

9 **4. Common Hazardous Contaminants, Lack of Registrations, and Lack of**
10 **Certifications.** The Products fail to remove or reduce to below lab detection limits some of the
11 highest risk, notorious, or prevalent contaminants from drinking water, such as arsenic, chromium-
12 6 (hexavalent chromium), nitrate and nitrites, perfluorooctanoic acid (PFOA), perfluorooctane
13 sulfonate (PFOS), radium, total trihalomethanes (TTHMs), and uranium, among others (“**Common**
14 **Hazardous Contaminants**”). *See Exhibit 3* (Performance Chart); *Exhibit 4* (Tap Water
15 Concentration and Safety Limits Chart). As summarized in the Performance Chart, attached as
16 **Exhibit 3**, none of the Products remove or reduce a litany of common water contaminants hazardous
17 to health to below lab detection limits (indicated in red and tested according to NSF/ANSI 53),
18 including the Common Hazardous Contaminants highlighted here. In addition, as identified in red
19 on the Product List, attached as **Exhibit 1**, numerous Products have not been registered with the
20 California Water Board pursuant to Cal. Health & Safety Code sections 116825, *et seq.*, throughout
21 the time that they have been marketed and sold in the State of California, making their marketing
22 and sale unlawful. *See Exhibit 1* (Product List). Similarly, none of the Products have been certified
23 pursuant to Cal. Health & Safety Code sections 116825, *et seq.* to remove or reduce contaminants
24 hazardous to health to below lab detection limits, including the Common Hazardous Contaminants
25 highlighted here, also making their marketing and sale in the State of California unlawful. *See*
26 **Exhibit 3** (Performance Chart).

27 **5. The Deception of the Challenged Representations and Unlawful Marketing &**
28 **Sale of the Products.** The Challenged Representations and Material Omission have misled

1 reasonable consumers, including Plaintiff, into believing that the Products will remove or reduce
2 contaminants hazardous to their health, including the Common Hazardous Contaminants, to below
3 lab detectable limits. However, the Products fail to live up to Defendant's promises. Contrary to the
4 Challenged Representations, the Products fail to entirely remove or reduce the hazardous
5 contaminants that are listed in the Performance, Tap Water Concentration and Safety Limits, and
6 Health Hazards Charts, including the Common Hazardous Contaminants highlighted here. *See*
7 **Exhibit 3-5**. Indeed, the Products fail to significantly reduce, or have otherwise not been certified
8 to reduce, numerous contaminants hazardous to health. *See Exhibit 3* (Performance Chart) (blanks
9 indicate no reduction/certification). Additionally, the Products have not been certified to remove or
10 reduce contaminants hazardous to health to below lab detectible limits, including the Common
11 Hazardous Contaminants highlighted here. *See Exhibit 3-5*. To be sure, several Products are not
12 registered with the California State Water Resources Control Board ("**California Water Board**").
13 *See Exhibit 1* (Product List). Through falsely, misleadingly, and deceptively marketing the Products
14 with the Challenged Representations and Material Omission, Defendant has sought to take
15 advantage of consumers' need for safe and clean drinking water. In this way, Defendant has charged
16 consumers a premium for Products that comport with the Challenged Representations that they
17 would not have otherwise paid if Defendant disclosed the Material Omission. Defendant has done
18 so at the expense of unwitting consumers, as well as Defendant's lawfully acting competitors, over
19 whom Defendant maintains an unfair competitive advantage. Accordingly, Defendant's Challenged
20 Representations and Material Omission are misleading and deceptive, and therefore unlawful.

21 6. **The Products.** The Products at issue are Brita-brand Standard Water Filters (Model
22 #OB03), Stream Filters (Model #OB05), and Elite/Longlast Filters (Model #OB06) (collectively,
23 the "**Filters**"), including all compatible Brita-brand water Dispensers and water Pitchers
24 (collectively, the "**Systems**"), sold to consumers in the United States and the State of California,
25 that contain one or more of the Challenged Representations or contain the Material Omission on
26 Products labels and/or packaging, in all sizes, variations, packs, sets, and bundles (collectively
27 referred to herein and throughout this complaint as the "**Products**"). The Products include, but are
28 not necessarily limited to:

a. **Pitchers-Standard/Elite/Longlast.** Brita water pitchers compatible with the Standard Filter (Model #OB03) and Elite/Longlast Filter (Model #OB06), including but not necessarily limited to:

- 1) Amalfi (Model #OB32)
- 2) Atlantis (Model #OB32)
- 3) Avalon (Model #OB52)
- 4) Bella (Model #OB44)
- 5) Capri (Model #OB43)
- 6) Carmel (Model #OB52)
- 7) Champlain (Model # Unknown)
- 8) Chrome (Model #OB39)
- 9) Classic (Model #OB01)
- 10) Denali (Model #OB62)
- 11) Everyday (Model #OB04)
- 12) Grand (Model #OB36)
- 13) Huron (Model #OB60)
- 14) Infinity (Model #OB54)
- 15) Lake (Model #OB58)
- 16) Marina (Model #OB47)
- 17) Metro (Model #OB11)
- 18) Mini Plus (Model #OB44)
- 19) Mist (Model #OB01)
- 20) Monterey (Model #OB50)
- 21) Oceania (Model #OB48)
- 22) Pacifica (Model #OB41)
- 23) Slim (Model #OB11)
- 24) Soho (Model #OB11)
- 25) Space Saver (Model #OB21)
- 26) Stainless Steel (Model #OB51)
- 27) Tahoe (Model #OB60)
- 28) Wave (Model #OB53)
- 29) Vintage (Model #OB43)

b. **Dispensers-Standard/Elite/Longlast.** Brita water dispensers compatible with Standard Filter (Model #OB03) and Elite/Longlast Filter (Model #OB06), including but not necessarily limited to:

- 30) Ultramax (Model #OB24)
- 31) Ultraslim (Model # Unknown)

c. **Pitchers-Stream.** Brita water pitchers compatible with Stream Filter (Model #OB05), including but not necessarily limited to:

- 32) Cascade (Model #OB57)
- 33) Hydro (Model #OB56)
- 34) Rapids (Model #OB55)

d. **Dispensers-Stream.** Brita water dispensers compatible with Stream Filter (Model #OB05), including but not necessarily limited to:

35) Ultraslim (Model # Unknown)

7. **Primary Dual Objectives.** Plaintiff brings this action individually and in a representative capacity on behalf of those similarly situated consumers who purchased the Products during the relevant Class Period (Class and/or Subclass defined *infra* at ¶ 45), for dual primary objectives. **One**, Plaintiff seeks, on Plaintiff's individual behalf and on behalf of the Class/Subclass, a monetary recovery of the price premium Plaintiff and consumers have overpaid for Products as a result of the Challenged Representations and Material Omission, as consistent with permissible law (including, for example, damages, restitution, disgorgement, and any applicable penalties/punitive damages solely as to those causes of action so permitted). **Two**, Plaintiff seeks, on their individual behalf and on behalf of the Class/Subclass, injunctive relief to stop Defendant's unlawful manufacture, marketing, and sale of the Products with the Challenged Representations and Material Omission to avoid or mitigate the risk of deceiving the public into believing that the Products conform to the Challenged Representations, by requiring Defendant to change its business practices, which may include one or more of the following: removal or modification of the Challenged Representations and disclosure of the Material Omissions on the Products' labels and/or packaging; removal or modification of the Challenged Representations and disclosure of the Material Omissions in the Products' advertising; modification of the Product's Filters so that they live up to the Challenged Representations; registration of all unregistered Products with the California Water Board; certification of each and every performance claim by a California-approved lab, including the Challenged Representations, consistent with Cal. Health & Safety Code §§ 116825, *et seq.*; and/or discontinuance of the Product's manufacture, marketing, and/or sale.

II. JURISDICTION

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, California Business and Professions Code, Sections 17203 and 17535, and California Code of Civil Procedure, Section 382. The Court has both general and specific jurisdiction over the Defendant. The Court has personal jurisdiction over Defendant pursuant to

California Code of Civil Procedure Section 410.10, because Defendant’s principal place of business is in the State of California and Defendant operates in the State of California, including, but not limited to, advertising, marketing, distributing, and selling the Products in the State of California.

III. VENUE

9. Venue is proper in this Court pursuant to California Code of Civil Procedure Section 395.5. A substantial part of the events or omissions giving rise to Plaintiff’s causes of action occurred in this County. Venue is also proper in this Court pursuant to California Civil Code section 1780(d). Defendant is doing business in this County and at least some of the transactions that form the basis of this Complaint have taken place in this County.

IV. PARTIES

A. Plaintiff

10. **Plaintiff Nicholas Brown.** The following is alleged based upon Plaintiff Nicholas Brown’s personal knowledge:

- a. **Residence.** Plaintiff Brown is a resident of the County of Los Angeles, in the State of California.
- b. **Purchase Details.** Plaintiff Brown purchased the Brita Everyday Water Pitcher with the Standard Filter (the “**Purchased Product**”) for approximately \$15.00 at a store in Los Angeles, California, in or around early 2022. *See Exhibit 2-11* (Exemplar Everyday Product Image).
- c. **Reliance on Challenged Labeling Claims.** In making the purchase, Plaintiff Brown viewed the Product, which appeared to be a WTD, and read the Challenged Representations on the Product’s labels and packaging, an example of which is depicted in **Exhibit 2-11** (Exemplar Everyday Product Image), leading Plaintiff to believe that the Product removes or reduce common contaminants hazardous to health, including the Common Hazardous Contaminants, to below lab detectable limits.
- d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff Brown did not know that the Challenged Representations was false—i.e., that the Product does not remove or reduce common contaminants hazardous to health, including the Common Hazardous Contaminants, to below lab detectable limits.
- e. **No Notice of Contradictions.** Plaintiff Brown did not notice any disclaimer, qualifier, or other explanatory statement or information on the Product’s labels or packaging that contradicted the prominent Challenged Representations or otherwise suggested that the Product does not remove or reduce common contaminants hazardous to health, including the Common Hazardous Contaminants, to below lab detectable limits.

- f. **Causation/Damages.** Plaintiff Brown would not have purchased the Product or would not have paid as much for the Product, had the Material Omission been disclosed and/or had Plaintiff otherwise known that the Challenged Representations were not true—i.e., that the Product does not remove or reduce common contaminants hazardous to health, including the Common Hazardous Contaminants, to below lab detectable limits.
- g. **Desire to Repurchase.** Plaintiff Brown continues to see the Products available for purchase and desires to purchase them again if the Challenged Representations were true—i.e., if the Products removed or reduced common contaminants hazardous to health, including the Common Hazardous Contaminants, to below lab detectable limits.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff Brown is not personally familiar with the science behind the Products as he does not possess any specialized knowledge, skill, experience, or education in water treatment devices, similar to and including the Products, their filtration technology, and/or the ability of such devices and the Products to remove or hazardous contaminants from water. Thus, Plaintiff Brown is unable to determine whether the Products' Challenged Representations are true—i.e., whether the Products remove or reduce common contaminants hazardous to health, including the Common Hazardous Contaminants, to below lab detectable limits.
- i. **Inability to Rely.** Plaintiff Brown is, and continues to be, unable to rely on the truth of the Challenged Representations on the Products' labels and packaging.

11. **Plaintiff's Future Harm.** Defendant continues to market and sell the Products with the Challenged Representations and Material Omission. Plaintiff would like to purchase the Products in the future if they lived up to and conformed with the Challenged Representations. However, Plaintiff is an average consumer who is not sophisticated in, for example, water treatment devices, similar to and including the Products, water filtration technology, and/or the ability of the Products to remove or reduce common contaminants hazardous to health. Since Plaintiff would like to purchase the Products again to obtain the benefits of the Challenged Representations that Defendant continues to use—despite the fact that the Products were once marred by false advertising or warranties—Plaintiff would likely and reasonably, but incorrectly, assume the Products are true to and conform with the Challenged Representations on their labels, packaging, and Defendant's advertisements. Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendant has fixed the Products such that Plaintiff may buy them again, believing they are no longer falsely advertised and warranted. In this regard, Plaintiff is currently and in the future deprived of the ability to rely on the Challenged Representations in deciding to purchase the Products.

1 **B. Defendant**

2 12. **Defendant The Brita Products Company (“Defendant”)** is a corporation that has a
3 principal place of business in the County of Alameda, State of California. Defendant was doing
4 business in the State of California at all relevant times, including the Class Period. Directly and
5 through its agents, Defendant has substantial contacts with and receives substantial benefits and
6 income from and through the State of California. Defendant is one of the owners, manufacturers,
7 and/or distributors of the Products, and is one of the companies that created and/or authorized the
8 use of the Challenged Representations to market the Products. Defendant and its agents promoted,
9 marketed, and sold the Products at issue throughout the United States, including in particular the
10 State of California and this County. The unfair, unlawful, deceptive, and misleading Challenged
11 Representations and Material Omission on the Products were prepared, authorized, ratified, and/or
12 approved by Defendant and its agents to deceive and mislead consumers in the State of California
13 into purchasing the Products. Additionally, Defendant knew of the Material Omission, but it failed
14 to disclose it at the time Plaintiff, and all Class Members, purchased the Product(s), notwithstanding
15 its duty to do so. Further, Defendant had the right and authority, at all relevant times, to disclose the
16 Material Omission and otherwise correct the Challenged Representations, including the time leading
17 up to and through the incident giving rise to the claims asserted herein (including, Plaintiff’s
18 purchase described *supra* at ¶ 10, in addition to all Class Members’ purchase).

19 **V. FACTUAL ALLEGATIONS**

20 **A. Regulatory Background and Contamination of Tap Water**

21 13. **EWG Tap Water Database.** The Environmental Working Group (“EWG”) is a non-
22 profit organization composed of scientists (including leading experts on toxic chemicals), policy
23 experts, and communications and data experts, among others, that works to protect our environment
24 and public health.³ Since 2003, the EWG has collected and compiled water contamination data for
25 nearly 50,000 community water systems nationwide in its online Tap Water Database, to the extent
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28 ³ *Who We Are*, ENV’T WORKING GRP., <https://www.ewg.org/who-we-are> (last visited Aug. 15, 2023); *Our Team*, ENV’T WORKING GRP., <https://www.ewg.org/who-we-are/our-team> (last visited Aug. 15, 2023).

State drinking water authorities collected and reported them.⁴ In the 2021 Update to EWG’s Tap Water Database, it reported nearly 31 million test results for 534 chemicals, 324 of which were detected in drinking water.⁵ The EWG also included population statistics obtained from State drinking water programs, supplemented by the U.S. EPA Environfacts database, to determine the amount of affected people.⁶ The database reveals that tap water throughout the United States and California have a substantial number of contaminants hazardous to health, including the Common Hazardous Contaminants, many of which exceed regulatory goals, safety recommendations, and legal limits from the EWG and EPA. *See Exhibit 4* (Tap Water Concentration and Safety Limits Chart).

14. **EPA Mandatory Contaminant Levels.** More specifically, the United States Environmental Protection Agency sets federal Maximum Contaminant Levels (“MCL”) for over 90 contaminants found in drinking water.⁷ However, as the EWG explains, these “legal limits are based on economic and political considerations that usually don’t reflect the lower levels that scientists have found pose health risks.”⁸ Further, despite the now more than 60,000 chemicals being used in America, no new contaminants have been added to the list of nationally regulated drinking water pollutants in over 20 years.⁹ Recognizing the political pressures and that compliance with the EPA’s legal limits does not ensure drinking water is safe, the EWG has set Health Guidelines based on the most recent and reliable scientific evidence, legal standards, and health advisories to protect public health.¹⁰

⁴ *Tap Water Database—Data Sources and Methodology*, ENV’T WORKING GRP. (Nov. 2021), <https://www.ewg.org/tapwater/methodology.php> (last visited Aug. 15, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ *National Primary Drinking Water Regulations*, EPA, <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations> (last visited Aug. 15, 2023); *Drinking Water Regulations*, EPA, <https://www.epa.gov/dwreginfo/drinking-water-regulations#:~:text=EPA%20sets%20legal%20limits%20on,using%20the%20best%20available%20technology> (last visited Aug. 15, 2023).

⁸ *California Drinking Water: How the Combination of Multiple Contaminants Raises Cancer Risks*, ENV’T WORKING GRP. (Apr. 30, 2019), <https://www.ewg.org/research/california-drinking-water> (last visited Aug. 15, 2023).

⁹ *See id.*

¹⁰ *Developing Health-protective Standards for Drinking Water*, EWG TAP WATER DATABASE (Nov. 2021), <https://www.ewg.org/tapwater/ewg-standards.php> (last visited Aug. 15, 2023).

15. **EWG Tap Water Database (2021 Update)—Common Hazardous Contaminant Environmental Concentrations.** As summarized in the Tap Water Concentration and Safety Limits Chart (**Exhibit 4**), and according to the EWG Tap Water Database, *each of the Common Hazardous Contaminants was found in more than 40 states, including California; affected between 24 million to nearly 300 million people depending on the contaminant; and often exceeded permissible safe drinking water limits.* Indeed, *most* of the Common Hazardous Contaminants *exceed EWG’s Health Guideline and nearly half exceed the EPA* National Public Drinking Water Regulations’ (“NPDWR”) *Public Health Goal* or, at times, the EPA Maximum Contamination Levels. *Id.* For example:

- a. **Arsenic** was found in tap water in excess of the EWG’s Health Guideline (0.004 ppb), which also exceeds the EPA’s Public Health Goal (0 ppb), for 50 states (including California) and over 13,000 utilities, affecting the drinking water of approximately 109 million people. *Id.*
- b. **Chromium-6** was found in tap water in excess of EWG’s Health Guideline (0.2 ppb) for 50 states (including California) and over 8,000 utilities, affecting approximately 233 million people. *Id.*
- c. **Nitrate** was found in tap water in excess of EWG’s Health Guideline (0.14 ppb) for 49 states (including California) and over 21,000 utilities, affecting approximately 187 million people. *Id.*
- d. **Nitrite** was also found in tap water for 44 states (including California) and over 1,500 utilities, affecting approximately 31 million people. *Id.* PFOA and PFOS (to the extent data was collected) were found in tap water for 28 or more states and approximately 1,000 utilities, affecting approximately 24 million people. *Id.*
- e. **Perfluorooctanoic Acid (PFOA)** was found in tap water in excess of EWG’s Health Guideline (0.000007 ppb) for 30 states (including California) and over 1,000 utilities, affecting approximately 24 million people. *Id.*
- f. **Perfluorooctane Sulfonate (PFOS)** was found in tap water in excess of EWG’s Health Guideline (0.001 ppb) for 27 states and over 600 utilities, affecting approximately 19 million people. *Id.* (further noting PFOS found in California tap water).
- g. **Radium** was found in tap water in excess of EWG’s Health Guideline (0.05 pCi/L), which also exceeds the EPA’s Public Health Goal (0 pCi/L), for 49 states (including California) and over 23,000 utilities, affecting approximately 146 million people. *Id.*
- h. **Trihalomethanes (THMs or TTHM)** was found in tap water in excess of EWG’s Health Guideline (0.05 pCi/L) for 50 states (including California) and over 32,000 utilities, affecting approximately 295 million people. *Id.*

- i. **Uranium** was found in excess of EWG's Health Guideline (0.43 pCi/L) which also exceeds the EPA's Public Health Goal (0 pCi/L), for 44 states (including California) and over 6,000 utilities, affecting approximately 61 million people. *Id.* (further noting Uranium found in tap water, regardless of any limits, affecting 80 million people).

16. **EWG Tap Water Database (2021 Update)—Additional Hazardous Contaminants Common to Tap Water.** To be sure, many hazardous contaminants exceed EWG's Health Guideline, the EPA National Public Drinking Water Regulations' Public Health Goal and Maximum Contamination Levels. The Brita Products' Tap Water Concentration and Safety Limits Chart, attached as **Exhibit 4**, summarizes EWG's data for the Common Hazardous Contaminants, in addition to approximately 52 different contaminants that are likewise hazardous to health *and* that Defendant claims to reduce in its Performance Data Sheets with respect to at least one of its Brita-brand filtration systems, regardless of whether it is a Pitcher, Dispenser, or Filter at issue in this case. *See Exhibit 4* (Tap Water Concentration and Safety Limits Chart); *see also, supra*, at ¶ 6 (identifying the Products).¹¹ It also includes the safety limits, if any, for those contaminants as set by the EWG Health Guidelines, EPA's Public Health Goals, or EPA's Maximum Concentration Levels for drinking water. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). It further includes the rates of reduction, if any, that Defendant claims on its Performance Data Sheets for the Products. *Id.* As set forth in the Tap Water Concentration and Safety Limits Chart (**Exhibit 4**), *of the Common Hazardous Contaminants and approximately 52 additional hazardous contaminants (noted above), an overwhelming majority have been found in at least 20 states or affected the drinking water for at least 1 million people, including:*

- (1) Alachlor,
- (2) Arsenic,
- (3) Atrazine,
- (4) Benzene,
- (5) Cadmium,
- (6) Carbon Tetrachloride,

¹¹ In addition to the Products at-issue, Defendant manufactures, markets, and sells Brita Hub filtration devices, Brita faucet mount filtration devices, and Brita water bottles, which have Performance Data Sheets available online on its website. *Performance Data Sheets*, BRITA, <https://www.brita.com/performance-data/> (last visited Aug. 15, 2023). The Performance Chart, attached as **Exhibit 3**, summarizes each of Defendant's reduction claims made in its Performance Data Sheets with respect to all Brita filters, while the Contaminant Reduction, Environmental Concentration, and Permissible Limits Charts, attached as **Exhibit 4**, and the Health Hazards Chart, attached as **Exhibit 5**, include only those reduction claims that Defendant makes for the Products at issue in this case.

- (7) Chlordane,
- (8) Chlorobenzene,
- (9) Chloropicrin,
- (10) Copper,
- (11) Dibromochloropropane,
- (12) p-Dichlorobenzene,
- (13) 1,2-Dichloroethane,
- (14) 1,1-Dichloroethylene,
- (15) cis-1,2-Dichloroethylene,
- (16) trans-1,2-Dichloroethylene,
- (17) 1,2-Dichloropropane,
- (18) Dinoseb,
- (19) Endrin,
- (20) Ethylbenzene,
- (21) Ethylene dibromide (EDB),
- (22) Haloacetonitriles (HAN),
- (23) 1,1,1-trichloro-2-propanone,
- (24) Heptachlor epoxide,
- (25) Hexachlorocyclopentadiene,
- (26) Mercury,
- (27) Nitrate,
- (28) Nitrite,
- (29) P-Dichlorobenzene,
- (30) Perfluorooctanoic Acid (PFOA),
- (31) Perfluorooctane Sulfonate (PFOS),
- (32) Radium,
- (33) Simazine,
- (34) Styrene,
- (35) Tetrachloroethylene,
- (36) Toluene,
- (37) 1,1,1-Trichloroethane,
- (38) Trichloroethylene,
- (39) Thihalomethanes (THMs or TTHM, including Chloroform, Bromoform, Bromodichloromethane, and Chlorodibromomethane),
- (40) Uranium, and
- (41) Xylenes (total).

Id. Indeed, only a few hazardous contaminants, of the approximately 60 hazardous contaminants identified in **Exhibit 4**, were not found in tap water, though it appears to be the result of a lack of testing as no data was collected for them. *Id.* (see, for example, Chloropicrin, Copper, 1,1-Dichloro-2-propanone, and 1,1-Dichloro-2-propanone). Moreover, the contaminants listed in the Chart (**Exhibit 4**), are limited to the Common Hazardous Contaminants and those Defendant has claimed to reduce with respect to one of its Brita-brand filtration devices, regardless of whether it is a Product at issue in this case. It does not include more than 250 additional contaminants identified by the

EWG in its Tap Water Database, many or most of which are regulated and/or carry significant health concerns.¹²

17. **Prevalence of Chromium-6—EWG 2009-2010 Study.** As far back as approximately 2009-2010, the EWG commissioned testing for hexavalent chromium in tap water from 35 cities and drew from data reported by State drinking water authorities.¹³ Laboratory tests detected the contaminant in 89% of the cities sampled (31 cities serving more than 26 million people), more than 70% of which (25 cities) had concentrations in excess of the 0.06 ppb safety limit previously proposed by California regulators to reduce the risk of cancer (including one city more than 200 times higher). *Id.* In fact, the EWG found 35 cities averaged 3 times higher than California’s proposed safety goal. *Id.* And, in California alone, the EWG found chromium-6 was detected in tap water supplied to more than 31 million people based on its review of State water agency reports. *Id.* It’s analysis of State agency data further revealed that “[a]t least 74 million people in nearly 7,000 communities drink tap water polluted with ‘total chromium,’ which includes hexavalent and other forms of [chromium].” *Id.* From its review of water utility testing data, combined with EWG’s commissioned testing, the EWG prepared the below maps that illustrate the prevalence of chromium, including its carcinogenic form, in tap water across the United States and California. *Id.* The EWG’s analysis of this data indicated “chromium-6 constitutes half of the total chromium found in most water supplies.” *Id.* To be sure, the EWG found national samples from 25 cities tested higher for chromium-6 than California’s previously proposed 0.06 limit, as depicted in the graph below. *Id.*

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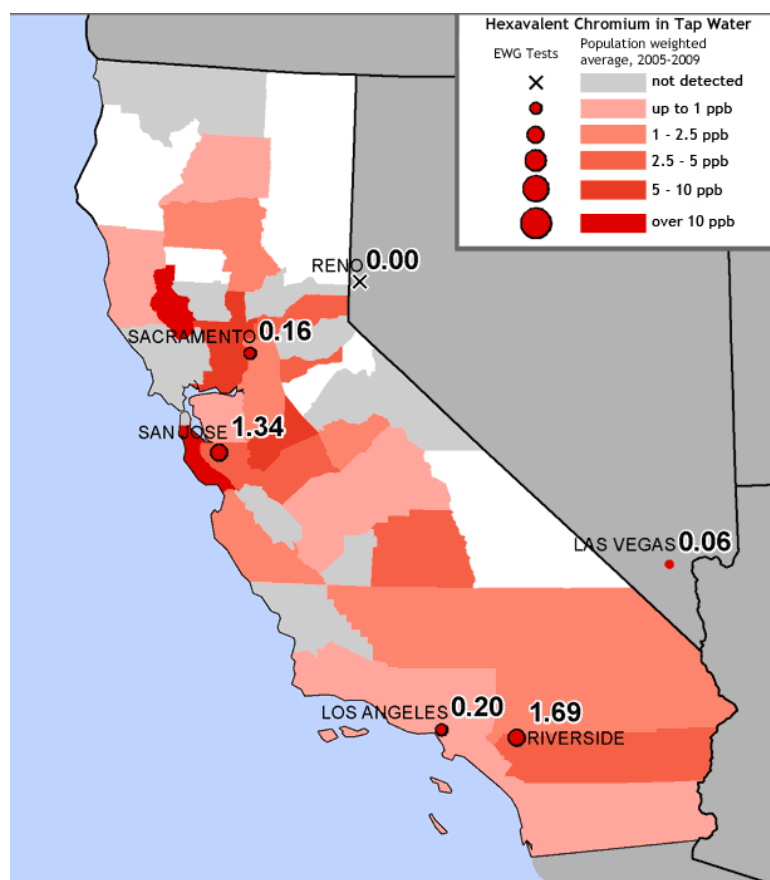
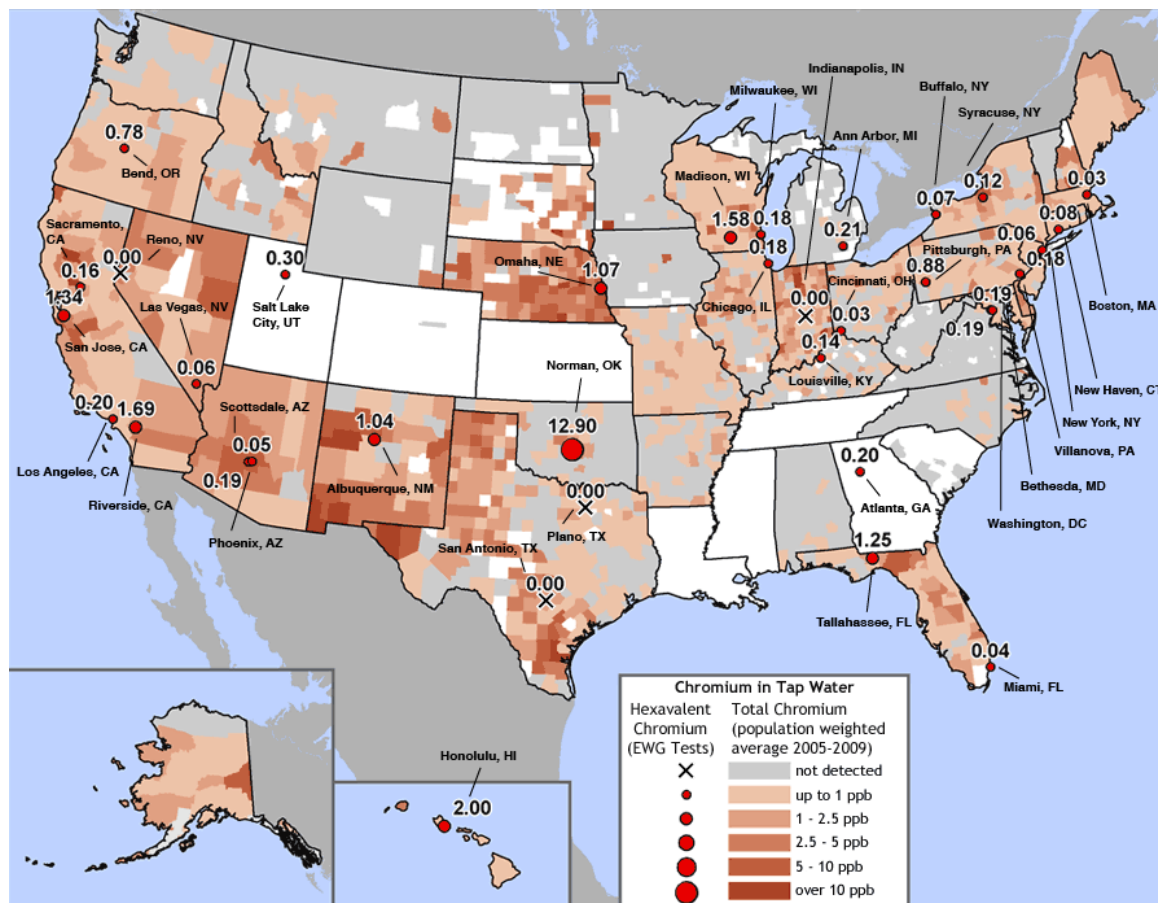
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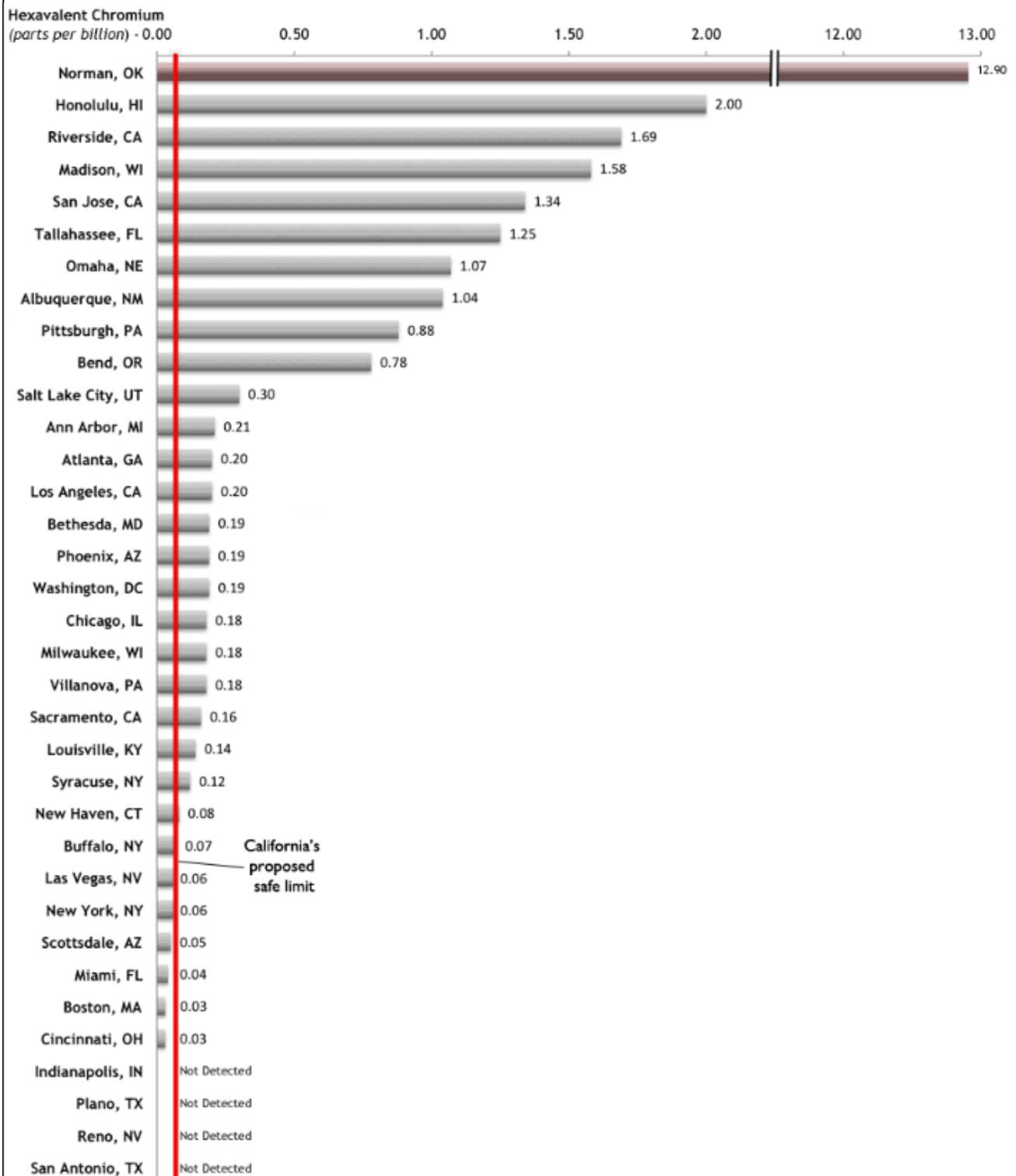
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¹² Compare *id.* with *Tap Water Database—Data Sources and Methodology* (Nov. 2021), EWG, <https://www.ewg.org/tapwater/methodology.php> (last visited Aug. 15, 2023) (noting 324 regulated chemicals detected in drinking water).

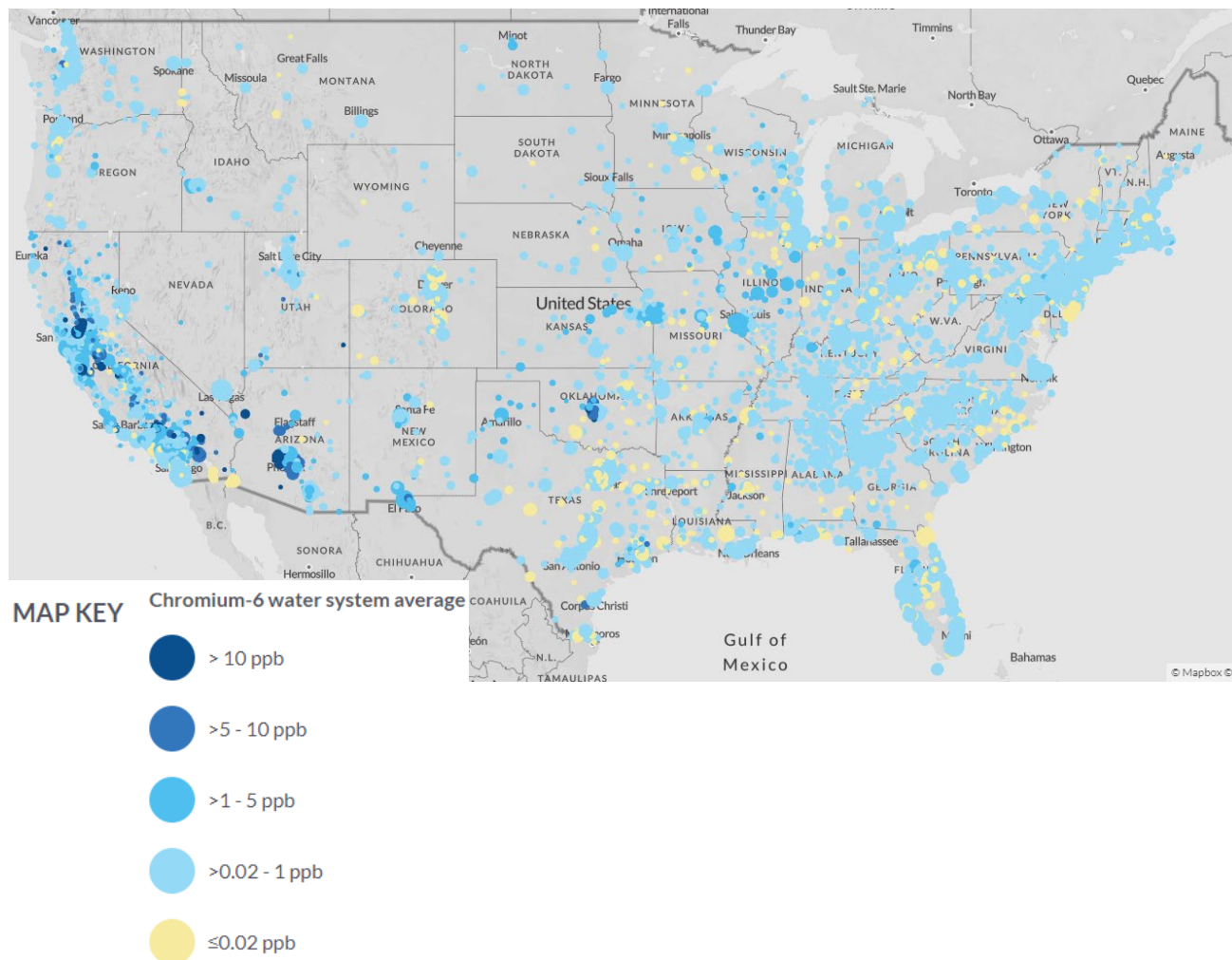
¹³ *Chromium-6 in U.S. Tap Water*, EWG (Dec. 20, 2010), <https://www.ewg.org/research/chromium-6-us-tap-water> (last visited Aug. 15, 2023).





18. **Prevalence of Chromium-6—EWG 2022 Study.** In 2022, the EWG updated its interactive map (depicted below), which shows chromium-6 contamination has not improved since

its 2009-2010 study.¹⁴ Rather, the EWG estimated that tap water serving 251 million people, “often exceeding levels scientists say are safe.” *Id.* As shown in the map and described by EWG, countless communities and every state show chromium-6 tap water contamination in excess of the 0.02 ppb recommendation published by California scientists as far aback as 2010. *Id.*

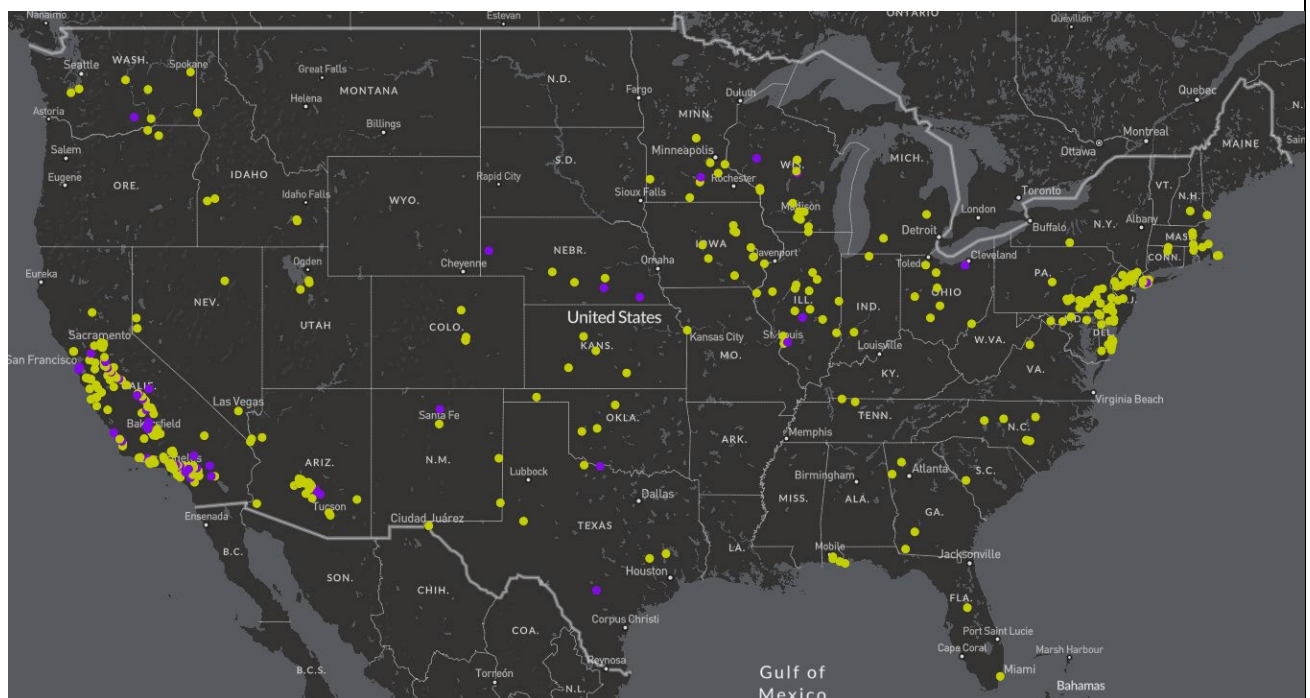


19. **Prevalence of Nitrate Contamination—EWG 2021.** As part of the EWG’s ongoing tap water study, it published a map (depicted below) that illustrates the extent of tap water contamination throughout the United States, including some dire statistics for California, and shows nitrate affects both rural/agricultural communities and major cities.¹⁵ Of note, the EWG’s analysis

¹⁴ *EPA Draft review finds ‘Erin Brokovich’ chemical likely carcinogenic in drinking water*, EWG (Oct. 21, 2022), <https://www.ewg.org/news-insights/news-release/2022/10/epa-draft-review-finds-erin-brockovich-chemical-likely> (last visited Aug. 15, 2023).

¹⁵ *Nitrate contaminates drinking water for almost 60 million people in cities across the country*, EWG (updated Nov. 3, 2021), <https://www.ewg.org/tapwater/nitrate-contaminates-drinking-water.php> (last visited Aug. 15, 2023).

of tap water systems shows that 757 systems serving 43 states and 59.5 million people tested at or above 3 mg/L, 410 systems serving 39 states and 37.8 million people tested at or above 5 mg/L, and 60 systems serving 11 states and almost 3.9 million people tested at or above 10 mg/L. *Id.* In fact, California has the largest number of systems showing elevated nitrate levels, totaling 223 systems serving 22.7 million people, an overwhelming majority of California's population. *Id.* Indeed, 168 systems in California serving almost 19.2 million people tested at or above 5 mg/L, and 41 systems serving 3.4 million people tested at or above 10 mg/L. *Id.*



MAP KEY



At least one nitrate test at or above 10 mg/L



At least one nitrate test at or above 5 mg/L, no tests at or above 10 mg/L

20. **Prevalence of PFAS Contamination—EWG 2019-2020 Self-Commissioned Study & CDC Biomonitoring Studies.** Noteworthy here, are the persistence of PFAS, which afflict more than half the states in the nation, including California. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). Recently, the EWG reports that “[t]he number of U.S. communities confirmed to be contaminated with the highly toxic fluorinated compounds known as

PFAS continues to grow at an alarming rate.”¹⁶ In approximately 2019-2020, the EWG commissioned lab tests for the first time that found PFAS in drinking water for dozens of U.S. cities, including major metropolitan areas.¹⁷ They confirmed that prior studies “dramatically underestimated” the “number of Americans exposed to PFAS from contaminated tap water.” *Id.* This led scientists to believe that PFAS are “likely detectable in all major water supplies in the U.S.” *Id.* Back in 2020, the EWG found that “[o]f tap water samples from 44 places in 31 states and the District of Columbia, only one location had no detectable PFAS, and only two other locations had PFAS below the level that independent studies show pose risks to human health.” *Id.* (further noting that, in 34 of the places tested and determined to be contaminated with PFAS, their “contamination ha[d] not been publicly reported by the Environmental Protection Agency or state environmental agencies,” as testing was not required for the previously unregulated PFAS). Among PFAS, PFOA and PFOS were detected in 30 and 34 of the 44 samples, respectively, comprising a quarter of the total PFAS level in each sample. *Id.* The graph depicted below shows the results of the EWG’s independent PFAS tests. Consistent with the EWG’s findings, the CDC’s biomonitoring studies, dating back to 1999, show that four PFAS (PFOA, PFOS, PFHxS or perflurohexane sulfonic acid, and PFNA or perfluronoanoic acid) were in “nearly all of the people tested,” “indicat[ing] widespread exposure to these PFAS in the U.S. population.”¹⁸ The EWG concluded that the CDC’s findings “show that ***the blood of nearly all Americans is contaminated with PFAS,***” ***though*** noting that ***this “estimate . . . could be much too low,*** based on [the EWG’s] findings.¹⁹ Ultimately, back in 2019-2020, the EWG found PFAS ubiquitous and the nation’s drinking water supply heavily contaminated with them, aptly quoting an expert in the field: “If you sample, you will find it.” *Id.* (quotation and citation omitted).

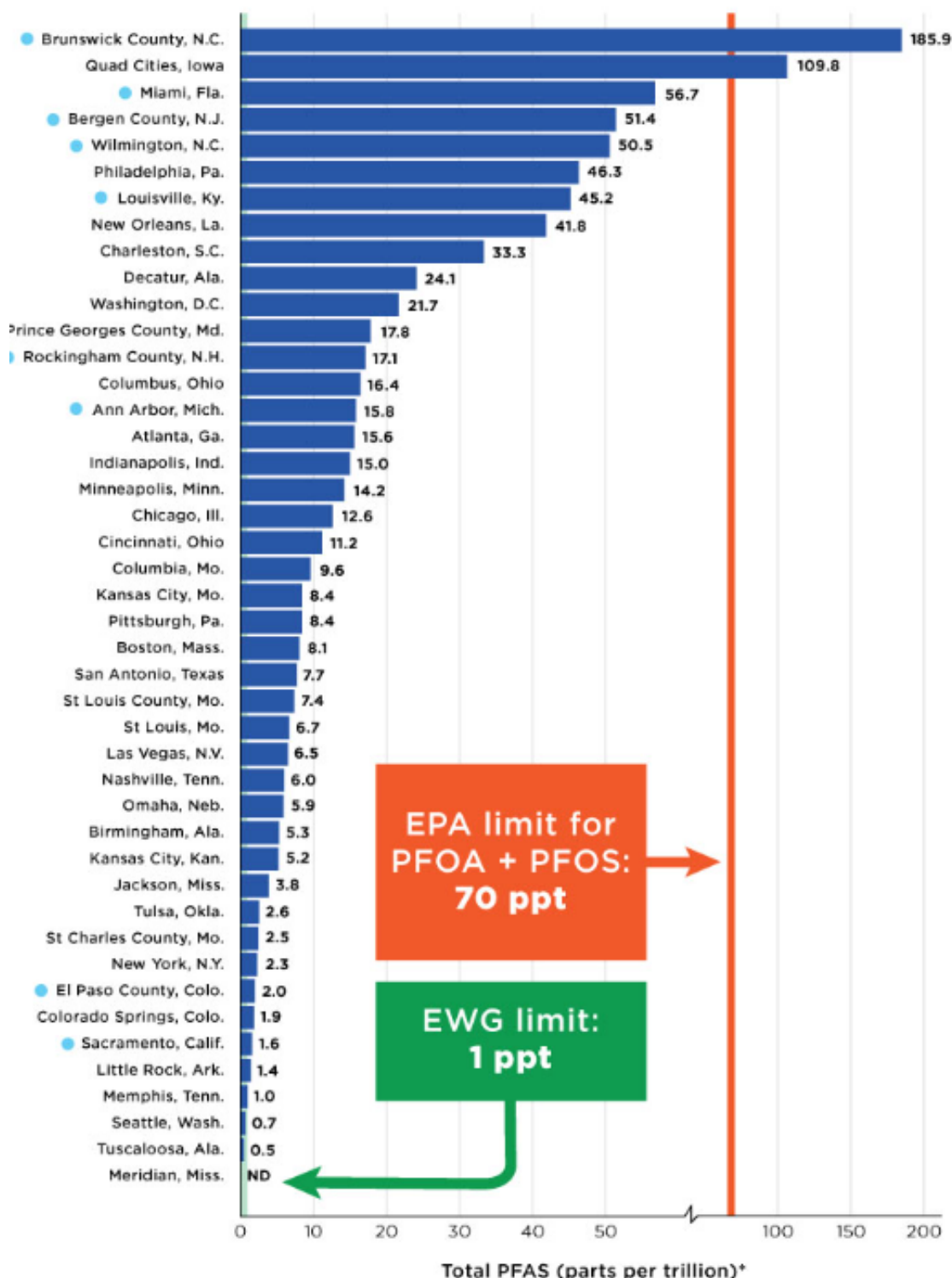
¹⁶ *PFAS Contamination in the U.S.* (June 8, 2022, Updated March 14, 2023), EWG, https://www.ewg.org/interactive-maps/pfas_contamination/ (last visited Aug. 15, 2023).

¹⁷ Evans, et al., *PFAS Contamination of Drinking Water Far More Prevalent Than Previously Reported*, EWG, <https://www.ewg.org/research/national-pfas-testing> (last visited Aug. 15, 2023).

¹⁸ *Per- and Polyfluorinated Substances (PFAS) Factsheet*, CDC (May 2, 2022), https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Aug. 15, 2023).

¹⁹ Evans, et al., *PFAS Contamination of Drinking Water Far More Prevalent Than Previously Reported*, EWG, <https://www.ewg.org/research/national-pfas-testing> (last visited Aug. 15, 2023) (emphasis added).

EWG TESTS FOUND TOXIC PFAS CHEMICALS IN TAP WATER IN 31 STATES AND D.C.



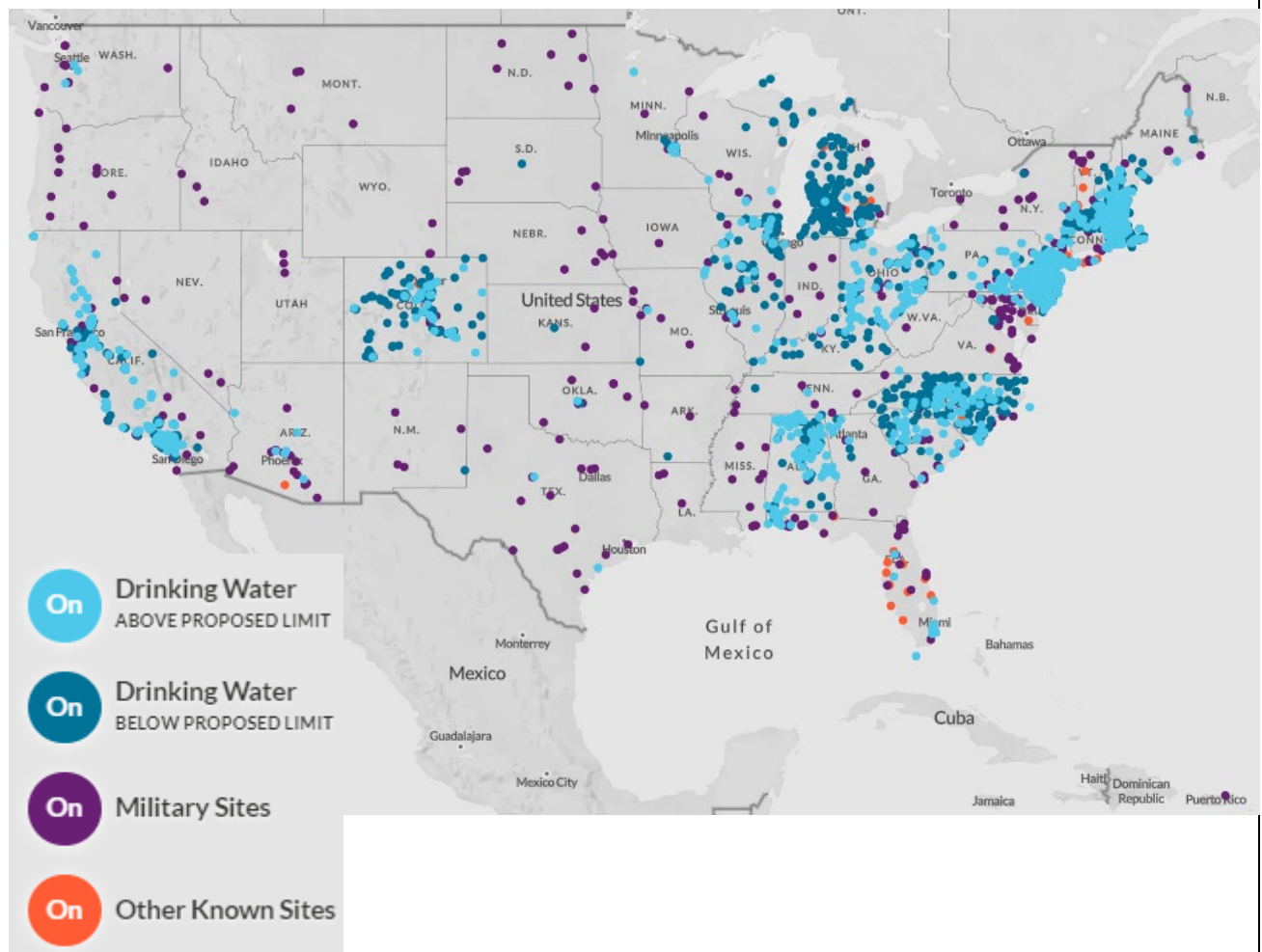
Source: EWG, from samples taken between May and December 2019.

● PFAS previously reported by EPA or State

*Sum of detections of 30 types of PFAS

Samples were taken by either EWG staff or local volunteers and analyzed by an independent accredited laboratory using a modified version of EPA Method 537. Details of all samples taken at each site and the precise sampling dates are in the tables in the Appendix.

21. **Prevalence of PFAS Contamination—PFAS Map.** In addition to compiling the EWG Tap Water Database, the EWG mapped the contamination of PFAS across the United States, including territories, based on its analysis of “the best data available from official records,” including test data for public drinking water systems (which is limited to those utilities that serve a threshold number of constituents and approximately 6 different PFAS, including PFOA and PFOS), the EPA’s Safe Drinking Water Information System, the Department of Defense report “Addressing Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA),” and the Department of Defense public records, among others.²⁰ The EWG confirmed that, “[a]s of June 2022, 2,858 locations in 50 states and two territories are known to be contaminated.” *Id.* The EWG’s map and color legend are depicted below and demonstrate the ubiquity of PFAS in America, and their persistence in the environment and public drinking water, raising a host of public health concerns.

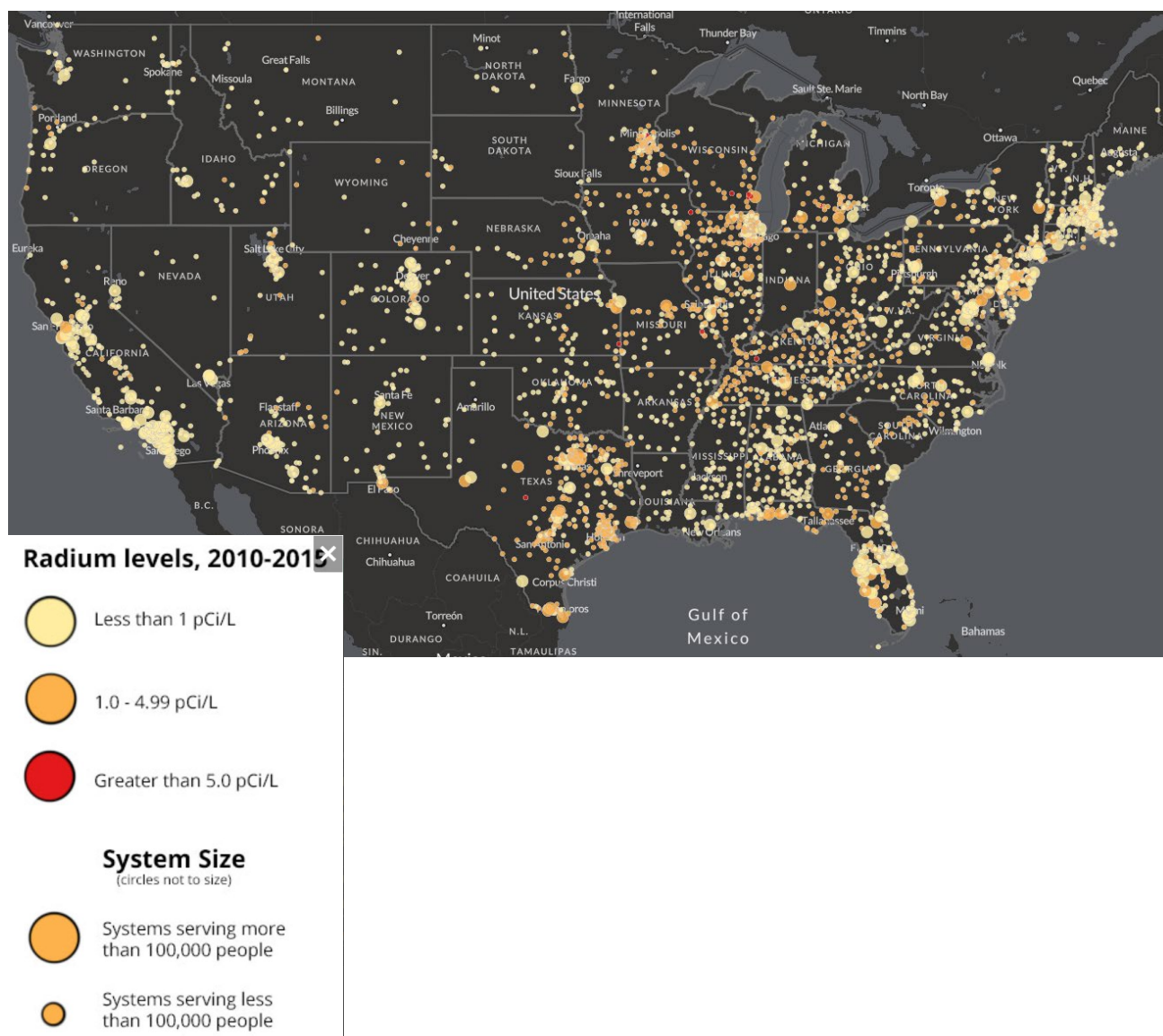


²⁰ *PFAS Contamination in the U.S. (June 8, 2022)*, EWG (updated Mar. 14, 2023), https://www.ewg.org/interactive-maps/pfas_contamination/#about (accessed Aug. 15, 2023).

See id.

22. **Prevalence of Radium Contamination—EWG 2010-2015.** As part of the EWG's ongoing tap water study, it published a map (depicted below) that illustrates the extent of radium contamination throughout the United States, based on data collected from 2010 to 2015.²¹ While all radiation is carcinogenic and there is no safe level for developing fetuses, radium was nonetheless found in the tap water of 153 million people across 49 states, including a few states, including a number of states depicted in orange that far exceed federal limits depicted in orange.

Id.



²¹ *EWG Tap Water Atlas Radium*, EWG, <https://www.ewg.org/research/covid-stimulus/atlas-radium.html> (last visited Aug. 16, 2023).

B. Water Contaminants' Health Hazards & Defendant's Products' Failure to Perform

23. **Health Hazards—Contaminants Hazardous to Health Commonly Found in Tap Water.** The approximately 50 hazardous contaminants noted above, which Defendant claims to remove in the Performance Data Sheets for at least some of its Brita filters (though not necessarily the Products), in addition to numerous others and the Common Hazardous Contaminants highlighted here, threaten a wide range of serious health concerns. **Exhibit 5** (Health Hazards Chart).²² The Health Hazards Chart itemizes each of the foregoing hazardous contaminants, including the Common Hazardous Contaminants, that pose risks to health, including, for example:

- a. Cancer
- b. Harm to developing fetus and child development
- c. Harm to the reproductive system and development, and decreased fertility
- d. Hormone disruption
- e. DNA damage
- f. Harm or changes in the brain, nervous system, and resultant behavior
- g. Harm to the heart, intestines, gastrointestinal system, immune system, liver, lungs, kidney, respiratory system, skin, spleen, stomach, thyroid
- h. Harm to hemoglobin, blood vessels

Exhibit 5 (Health Hazards Chart). And, despite their prevalence throughout tap water systems in the United States and California, including many in excess of safety limits that impact hundreds of millions of people, the Products do not remove or reduce to below lab detectable limits any of the hazardous contaminants listed in the Health Hazards Chart and Defendant fails to adequately inform consumers of this on the Products' packaging and labels. **Exhibit 2** (Product Images); **Exhibit 3** (Performance Chart); **Exhibit 4** (Tap Water Concentration and Safety Limits Chart); **Exhibit 5** (Health Hazards Chart).

²² See *Performance Data Sheets*, BRITA, <https://www.brita.com/performance-data/> (last visited Aug. 15, 2023).

24. **Health Hazards—Arsenic.** Inorganic arsenic is a potent carcinogen, naturally found in the earth’s crust, and “is widely distributed throughout the environment in the air, water, and land.”²³ Arsenic is most dangerous to public health when it contaminates water.²⁴ Arsenic in drinking water comes from natural, industrial, and agricultural sources, whether leached from rocks into groundwater used for drinking or irrigation; the result of mining waste, metal production, coal power plants, and burning of other fossil fuels; or due to arsenic’s prior use as a pesticide for orchards and farm fields that has contaminated surrounding soil or water, as poultry feed, or as a lumber preservative, contaminating soil in many residential areas and playgrounds.²⁵ Indeed, the EWG detected 1.72 ppb of arsenic in Los Angeles drinking water, 430 times the EWG’s Health Guideline of 0.004 ppb (and California’s Public Health Goal), nearly 5 times the EPA Maximum Contaminant Level, and unacceptable under the EPA’s 0 ppb or no-tolerance Public Health Goal. *See Exhibit 4* (Tap Water Concentration and Safety Limits Chart).²⁶ Arsenic can cause a variety of serious adverse health effects, including:

- Cancer (including bladder, lung, and skin)
- Lung damage
- Central nervous system damage
- Brain and nervous system damage
- Skin damage
- Changes to heart and blood vessels
- Increased risk of heart disease, stroke, and diabetes²⁷

²³ *Arsenic*, WORLD HEALTH ORG. (Feb. 15, 2018), <https://www.who.int/news-room/fact-sheets/detail/arsenic> (last visited Aug. 15, 2023).

²⁴ *Id.*

²⁵ *Arsenic*, EWG (Nov. 2021), <https://www.ewg.org/tapwater/reviewed-arsenic.php> (last visited Aug. 15, 2023).

²⁶ *Los Angeles Department of Water and Power*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA1910067> (last visited Aug. 15, 2023).

²⁷ *Tap Water Database—Arsenic*, EWG, <https://www.ewg.org/tapwater/contaminant.php?contamcode=1005> (last visited Aug. 15, 2023); *Arsenic*, EWG (Nov. 2021), <https://www.ewg.org/tapwater/reviewed-arsenic.php> (last visited Aug. 15, 2023).

Long-term exposure to even low levels of arsenic can cause cancer, thickening and discoloration of the skin, high blood pressure, heart disease, nerve effects including numbness and pain, and more.²⁸ According to findings in 2019, arsenic alone was estimated to cause 7,251 cancer cases that could be avoided with efficient filtration in California.²⁹ While the EPA sets a legal limit of 10 ppb for arsenic in drinking water, the EWG and California Office of Environmental Health Hazard Assessment have determined that “arsenic concentrations in water should be below 0.004 ppb to reduce the lifetime cancer risk to one in a million,” as according to the EWG, arsenic levels at 10 ppb “still puts many Americans at risk – as many as 600 cancer cases for every million people who have arsenic in their water.”³⁰ This is consistent with the EPA’s no-tolerance Public Health Goal of 0 ppb. *See Exhibit 5* (Health Hazard Chart). To be sure, arsenic was found in all tap water for all 50 states, including California, in excess of the EWG’s Health Guideline, affecting more than 100 million people, including 31 states that exceed federal limits affecting half a million people. *Exhibit 4* (Tap Water Concentration & Safety Limits Chart). Yet, the Products do not remove or reduce arsenic from consumers’ drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products’ packaging and labels. *Exhibit 3* (Performance Chart); *Exhibit 2* (Product Images).

25. **Health Hazards—Chromium-6.** Chromium-6, the infamous “Erin Brockovich” chemical, is used in a number of industrial processes, such as corrosion-resistant coatings, leather tanning, chromium plating, colored glass marking, and in paints and inks that color plastics.³¹ It is commonly used for anti-corrosion metal coating, wood preservation, and textile dyeing, and detected in groundwater due to these industries’ pollution, and natural gas compression stations that

²⁸ *See Arsenic in Well Water*, MICH. DEP’T OF ENV’T, GREAT LAKES, AND ENERGY (Jul. 2019), <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/DWEHD/Water-Well-Construction/Arsenic-in-Well-Water.pdf?rev=da1d29f6a211455c9399f1b88d6eb89e> (last visited Aug. 15, 2023).

²⁹ *See California Drinking Water: How the Combination of Multiple Contaminants Raises Cancer Risks*, *supra* note 8.

³⁰ *Arsenic*, EWG (Nov. 2021), <https://www.ewg.org/tapwater/reviewed-arsenic.php> (last visited Aug. 15, 2023).

³¹ *See John P. Rafferty, What is Hexavalent Chromium (or Chromium-6)*, BRITANNICA, <https://www.britannica.com/story/what-is-hexavalent-chromium-or-chromium-6> (last visited Aug. 15, 2023).

use it as anti-corrosion agent.³² It taints tap water for 251 million Americans. **Exhibit 5** (Tap Water Concentration and Safety Limits Chart).³³ As the EWG explained, “the EPA’s national survey of chromium-6 concentrations in drinking water revealed that the contaminant was found in more than three-fourths of water systems sampled, which supply water to more than two-thirds of the American population.”³⁴ Indeed, the EWG found chromium-6 “taints tap water of 251 million Americans.”³⁵ Exposure to chromium-6 through ingestion can cause a host of adverse health effects as severe as cancer, including:

- Cancer,
- Reproductive harm,
- Eye irritation,
- Respiratory irritation, asthma attacks, nasal ulcers,
- Dermal burns,
- Anemia,
- Vertigo,
- Gastrointestinal hemorrhage, convulsions, ulcers, acute gastroenteritis, and
- Damage or failure of the liver and kidneys.³⁶

Given the prevalence and grave consequences of exposure to chromium-6, currently, the EWG’s Health Guideline for chromium-6 in tap water sets a limit of 0.02 ppb, in line with the California Office of Health Hazard Assessment’s 2011 public health goal of 0.02 ppb, even though the EPA

³² Amarelo, Monica, *What is chromium-6? Here’s what you need to know*, EWG (Mar. 3, 2022), <https://www.ewg.org/news-insights/news/2022/03/what-chromium-6-heres-what-you-need-know> (last visited Aug. 16, 2023).

³³ *Id.*

³⁴ *Chromium-6*, EWG (Oct. 2019), <https://www.ewg.org/tapwater/reviewed-chromium-6.php> (last visited Aug. 15, 2023). Indeed, in one study analyzing the Parajo Valley Unified School District (CA), researchers discovered that the 50 ppb hexavalent chromium maximum contaminant level (MCL) was 500 times higher than the public health goal of 0.02ppb.³⁴ See Todd Guild, *Ohlone School Grappling with Water Quality Issues*, THE PAJARONIAN (Dec. 6, 2019), <https://pajaronian.com/ohlone-school-grappling-with-water-quality-issues/> (last visited Aug. 15, 2023).

³⁵ *EPA draft review finds ‘Erin Brockovich’ chemical likely carcinogenic in drinking water*, EWG (Oct. 21, 2022), <https://www.ewg.org/news-insights/news-release/2022/10/epa-draft-review-finds-erin-brockovich-chemical-likely> (last visited Aug. 16, 2023).

³⁶ See *The Dangers of Hexavalent Chromium (Chromium 6) in California Drinking Water*, CLEAN WATER ACTION, <https://www.cleanwateraction.org/features/dangers-hexavalent-chromium-chromium-6-california-drinking-water> (last visited Aug. 15, 2023).

established a 100 ppb limit for chromium-6 as combined with chromium-3, which is currently considered harmless.³⁷ Indeed, the contaminant has been detected at levels 29x, 4.5x, 2.1x, and 5.8x EWG's Health Guideline in major cities, including Los Angeles, San Francisco, New York, and Detroit respectively.³⁸ To be sure, chromium-6 has been found in 50 states in excess of the EWG's Health Guideline, affecting 233 million people. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). Yet, the Products do not remove or reduce hexavalent chromium from consumers' drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products' packaging and labels. **Exhibit 3** (Performance Chart); **Exhibit 2** (Product Images).

26. **Health Hazards—Nitrate.** "Nitrate is a chemical component of fertilizer and animal manure that can run off farm fields and get into both surface water and groundwater sources of drinking water. It can get into drinking water supplies via urban runoff and municipal wastewater discharges."³⁹ While drinking water contamination is commonly caused by agriculture, and therefore considered a rural, small-town issue, the EWG found "[d]rinking water supplies for almost 60 million people living in major cities and other urban areas throughout the U.S. are contaminated with elevated levels of nitrate." *Id.* It also found that "[a]t least 22.7 million of the people affected live in California." *Id.* Studies have shown nitrate can cause severe and fatal adverse health outcomes, including:

- Methemoglobinemia ("blue baby syndrome"), a potentially fatal condition that starves infants of oxygen if they ingest too much nitrate,

³⁷ Amarello, Monica, *What is chromium-6? Here's what you need to know*, EWG (Mar. 3, 2022), <https://www.ewg.org/news-insights/news/2022/03/what-chromium-6-heres-what-you-need-know> (last visited Aug. 16, 2023).

³⁸ See *Los Angeles Department of Water and Power*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA1910067> (last visited Aug. 15, 2023); *San Francisco City Water System*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA3810011> (last visited Aug. 15, 2023); *City of Detroit*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=MI0001800> (last visited Aug. 15, 2023); *New York City System*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=NY7003493> (last visited Aug. 15, 2023).

³⁹ *Nitrate contaminates drinking water for almost 60 million people in cities across the country*, EWG (updated Nov. 3, 2021), <https://www.ewg.org/tapwater/nitrate-contaminates-drinking-water.php> (last visited Aug. 15, 2023).

- Increased risk of colorectal cancer at 5 mg/L
- Increased risk of thyroid disease at 5 mg/L, and
- Increased risk of neural tube birth defects at 5 mg/L. *Id.*
- In addition to increased heart rate, headaches, stomach cramps, and vomiting.⁴⁰

These health concerns, when viewed in light of the prevalence of nitrate in tap water, paint a dire picture. The EWG's analysis of tap water systems shows nearly all states are approaching these thresholds, or surpassing them. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). As discussed above, nitrate contaminates drinking water in 43 states (affecting 59.5 million people) at 3 mg/L or more, 39 states (affecting 37.8 million people) at 5 mg/L or more, and 11 states (affecting 3.9 million people) at 10 mg/L or more.⁴¹ In fact, California had the largest number of systems showing elevated nitrate levels, affecting 22.7 million people, including 19.2 and 3.4 million people whose drinking water tested at or above 5 mg/L and 10 mg/L, respectively. *Id.* These statistics show that millions of people have tap water that approaches or exceeds the EPA's 10 mg/L limit, and far surpasses the EWG's Health Guideline of approximately 0.14 mg/L.⁴² Indeed, nitrate was detected at levels 12 times the EWG Health Guideline in Los Angeles.⁴³ Yet, the Products do not remove or reduce nitrate from consumers' drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products' packaging and labels. **Exhibit 3** (Performance Chart); **Exhibit 2** (Product Images).

⁴⁰ See *Nitrate In Drinking Water*, MINN. DEP'T OF HEALTH, <https://www.health.state.mn.us/communities/environment/water/contaminants/nitrate.html#HealthEffects> (last visited Aug. 15, 2023).

⁴¹ *Nitrate contaminates drinking water for almost 60 million people in cities across the country*, EWG (updated Nov. 3, 2021), <https://www.ewg.org/tapwater/nitrate-contaminates-drinking-water.php> (last visited Aug. 15, 2023).

⁴² *Tap Water Database—Nitrate*, EWG, <https://www.ewg.org/tapwater/contaminant.php?contamcode=1040#:~:text=The%20EWG%20Health%20Guideline%20of,to%20fetal%20growth%20and%20development> (last visited Aug. 16, 2023).

⁴³ *Los Angeles Department of Water and Power*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA1910067> (last visited Aug. 15, 2023); *City of Detroit*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=MI0001800> (last visited Aug. 15, 2023).

27. **Health Hazards—Nitrite.** Nitrite is a salt that often appears in groundwater, both naturally and artificially, due to run-off water, sewage, or mineral deposits,⁴⁴ and from fertilizer applied to agricultural lands that pollute drinking water.⁴⁵ Nitrate is closely related and often grouped together with nitrate.⁴⁶ Nitrite causes similar health risks as nitrate, but is “significantly more toxic.”⁴⁷ Excessive nitrite in water can cause:

- Cancer, and
- Harm to child development, including deprivation of oxygen in infants. *Id.*

The EPA has set a legal limit of 1 ppm, though it does not fully protect against the risk of cancer. *Id.* Thus, the EWG set a Health Guideline at 0.14 ppm.⁴⁸ The EWG also found that 15 states, serving nearly 200,000, have tap water that exceeds the EPA limit, and 48 states, serving 124 million people, have tap water that exceeds the EWG’s Health Guideline for nitrate and nitrate combined. *Id.*; see also **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). Indeed, nitrate and nitrite combined were detected at a level 7.6 times the EWG’s Health Guideline in Los Angeles.⁴⁹ Yet, the Products do not remove or reduce nitrite from consumers’ drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products’ packaging and labels. **Exhibit 3** (Performance Chart); **Exhibit 2** (Product Images).

⁴⁴ *What is Nitrite and Why Is It In My Water?*, H2O DISTRIBUTORS, <https://www.h2odistributors.com/info/contaminants/contaminant-nitrites/#:~:text=Nitrites%20come%20from%20fertilizers%20through,into%20a%20body%20of%20water>. (last visited Aug. 15, 2023).

⁴⁵ *Tap Water Database—Nitrite*, EWG, <https://www.ewg.org/tapwater/contaminant.php?contamcode=1041> (last visited Aug. 15, 2023).

⁴⁶ *Nitrate and Nitrite*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/contaminant.php?contamcode=1038> (last visited Aug. 15, 2023).

⁴⁷ *Id.*; see also *Nitrate and Nitrite in Drinking Water For Well Owners*, MICH. DEP’T OF HEALTH AND HUM. SERV.’S, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/DWEHD/Water-Well-Construction/Nitrate-and-Nitrite-in-Drinking-Water.pdf?rev=61bc5789d3f045e29fe64ad1a3cc03a5> (last visited Aug. 15, 2023).

⁴⁸ *Tap Water Database—Nitrate and Nitrite*, EWG, <https://www.ewg.org/tapwater/contaminant.php?contamcode=1038> (last visited Aug. 15, 2023).

⁴⁹ *Los Angeles Department of Water and Power*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA1910067> (last visited Aug. 15, 2023); *City of Detroit*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=MI0001800> (last visited Aug. 15, 2023).

28. **Health Hazards—PFAS.** PFAS are long lasting manufactured chemicals that are widely used and break down very slowly over time.⁵⁰ There are many different PFAS, but the most widely used and notorious are perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonic acid (“PFOS”), and to a lesser extent perfluorohexane sulfonic acid (“PFHxs”), and perfluorononanoic acid (“PFNA”).⁵¹ They have been used in industry and consumer products since the 1940s because of their useful properties, resulting in their persistence throughout the environment, and growing water contamination, including, for example:

- In public drinking water systems and private drinking wells;
- At landfills, disposal sites, and hazardous waste sites;
- As a result of fire-extinguishing foam used in training and to respond to emergencies at airports, shipyards, military bases, firefighting training facilities, chemical plants, and refineries;
- At and around manufacturing chemical production facilities, including for example those for chrome plating, electronics, textiles, and paper;
- From food packaging, such as grease-resistant paper, containers, wrappers;
- In household products and dust from, for example, stain and water-repellents used on textiles, cleaning products, non-stick cookware, paints, varnishes, and sealants;
- In various personal care products, like shampoo, dental floss, and cosmetics;
- From biosolids, like fertilizer from wastewater treatment plants used on agricultural lands that affect ground and surface water and animals that graze on the land; and
- In the animal products we consume as a result of their environmental exposure, including, for example, fish caught from contaminated water and dairy products from exposed livestock.⁵²

There is no sect of society that can escape PFAS. Not only are these chemicals persistent, constantly being released into the environment as described above, but PFAS are known as “forever chemicals” because they build up in our bodies and, generally, do not break down in the

⁵⁰ *PFAS Explained*, EPA (Apr. 10, 2023), <https://www.epa.gov/pfas/pfas-explained> (last visited Aug. 13, 2023).

⁵¹ *What are PFAS?*, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (Nov. 1, 2022), <https://www.atsdr.cdc.gov/pfas/health-effects/overview.html> (last visited Aug. 13, 2023).

⁵² *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, EPA (June 7, 2023), <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last visited Aug. 15, 2023).

environment.⁵³ It is for this reason that PFAS are generally found in air, soil, and *water*, with a number of studies showing that exposure to PFAS may cause serious and dire health effects in humans and animals.⁵⁴ It is therefore not surprising that the CDC’s biomonitoring studies reveal that four PFAS (PFOA, PFOS, PFHxS, and PFNA) are likely in the blood of nearly every American,⁵⁵ which the EWG believes is a gross understatement.⁵⁶ While research into the harmful effects of PFAS in humans is still ongoing, including adverse health outcomes due to prolonged low level exposure,⁵⁷ the EPA notes that “current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:

- Reproductive effects such as decreased fertility or increased health blood pressure in pregnant women.
- Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- Reduced ability of the body’s immune system to fight infections, including reduced vaccine response.
- Interference with the body’s natural hormones.
- Increased cholesterol levels and/or risk of obesity.”

Id.; see also **Exhibit 5** (Contaminant Health Hazard Chart).⁵⁸ In light of these of adverse health concerns and the prevalence and persistence of PFAS, including PFOA and PFOS, the EWG has concluded that “there is no safe level for PFAS in [drinking] water.”⁵⁹ It set a Health Guideline for drinking water at 1 ppt (0.001 ppb), the EPA has proposed legal limit of 4 ppt for PFOA and PFOS,

⁵³ *What are PFAS chemicals?*, ENV’T WORKING GRP., <https://www.ewg.org/what-are-pfas-chemicals> (last visited Aug. 15, 2023).

⁵⁴ *PFAS Explained*, *supra* note 50.

⁵⁵ *Per- and Polyfluorinated Substances (PFAS) Factsheet*, CDC (May 2, 2022), https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Aug. 15, 2023).

⁵⁶ Evans, et al., *PFAS Contamination of Drinking Water Far More Prevalent Than Previously Reported*, EWG, <https://www.ewg.org/research/national-pfas-testing> (last visited Aug. 15, 2023) (emphasis added).

⁵⁷ *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, *supra* note 52.

⁵⁸ See also *What are the health effects of PFAS?*, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (Nov. 1, 2022), <https://www.atsdr.cdc.gov/pfas/health-effects/index.html> (last visited Aug. 13, 2023).

⁵⁹ *PFAS*, EWG (updated Mar. 14, 2023), <https://www.ewg.org/tapwater/reviewed-pfcs.php> (last visited Aug. 16, 2023).

and California’s Office of Environmental Health Hazard Assessment in 2021, drafted a public health goal for PFOA of no more than 0.007 ppt. *Id.* Indeed, PFOA and PFOS has been found in excess of EWG’s Health Guideline in 27 and 30 states, affecting the drinking water 24 and 19 million Americans, respectively. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). Yet, the Products do not remove or reduce hexavalent chromium from consumers’ drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products’ packaging and labels. **Exhibit 3** (Performance Chart); **Exhibit 2** (Product Images).

29. **Health Hazards—Radium.** Radium is a radioactive substance.⁶⁰ Radioactive elements, like radium, enter groundwater from natural deposits in the earth’s crust, particularly in areas surrounding mining or oil and gas drilling.⁶¹ Radioactive elements produce radiation called “ionizing” as this process can release electrons from atoms and molecules, turning them into ions. *Id.* The EPA has classified all ionizing radiation as carcinogenic, as clear evidence shows high doses of radiation cause cancer and lower doses merely reduce the likelihood of developing cancer. *Id.* When ingested, radium can cause:

- Cancer,
- Impairment of fetal growth, birth defects, and damage to brain development (*id.*)
- Kidney damage⁶²
- DNA damage⁶³

⁶⁰ *Radium in Water*, CULLIGAN WATER, [https://www.culligannation.com/radium-in-water#:~:text=How%20do%20I%20remove%20radium,and%20faucet%20filters\)%20are%20ineffective](https://www.culligannation.com/radium-in-water#:~:text=How%20do%20I%20remove%20radium,and%20faucet%20filters)%20are%20ineffective) (last visited Aug. 15, 2023).

⁶¹ *170 Million in U.S. Drink Radioactive Tap Water*, EWG (Jan. 11, 2018), <https://www.ewg.org/research/170-million-us-drink-radioactive-tap-water#1> (last visited Aug. 15, 2023).

⁶² *Radium in Water*, CULLIGAN WATER, [https://www.culligannation.com/radium-in-water#:~:text=How%20do%20I%20remove%20radium,and%20faucet%20filters\)%20are%20ineffective](https://www.culligannation.com/radium-in-water#:~:text=How%20do%20I%20remove%20radium,and%20faucet%20filters)%20are%20ineffective) (last visited Aug. 15, 2023).

⁶³ *Radiation*, EWG, <https://www.ewg.org/tapwater/reviewed-radiological.php#.WjKcyrT82uo> (last visited Aug. 16, 2023).

Indeed, “there is no evidence of a dose threshold below which a fetus would be safe from these effects.”⁶⁴ While the EPA MCL for radium-226 and radium-228 combined is 5 pCi/L (measure of radioactivity in water and gas), the EWG has determined that the lifetime increased cancer risk at this level is 70 cases per 1 million people.⁶⁵ Accordingly, the EWG has set the public health guideline for radium-226 and radium-228 combined as 0.05 pCi/L to protect people against cancer.⁶⁶ California set a public health goal that likewise limits these isotopes to 5 pCi/L and 0.019 pCi/L, respectively. *Id.* To be sure, EWG found that from 2010 to 2015, water systems in 27 states, serving 276,000 Americans, exceeded the federal limit.⁶⁷ And radium-226 and radium-228 continued to contaminate water in every state. *Id.* As of 2021, EWG’s analysis of tap water revealed that 165 million people across the United States are exposed to radioactive contaminants in their drinking water.⁶⁸ California has the most people affected by radiated drinking water, with almost 25 million people serviced by systems that reported detectable levels of both isotopes.⁶⁹ Indeed, the EWG’s current database reflects approximately 146 million Americans in 49 states have tap water that exceeds the EWG’s Health Guideline, including 32 states and half a million people whose water exceeds the federal limit. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). Yet, the Products do not remove or reduce radium from consumers’ drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products’ packaging and labels. **Exhibit 3** (Performance Chart); **Exhibit 2** (Product Images).

⁶⁴ *170 Million in U.S. Drink Radioactive Tap Water*, EWG (Jan. 11, 2018), <https://www.ewg.org/research/170-million-us-drink-radioactive-tap-water#1> (last visited Aug. 15, 2023).

⁶⁵ *Radium, Combined (-226 & -228)*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/contaminant.php?contamcode=4010> (last visited Aug. 15, 2023); *see also 170 Million in U.S. Drink Radioactive Tap Water*, ENV’T WORKING GRP., <https://www.ewg.org/research/170-million-us-drink-radioactive-tap-water> (last visited Aug. 15, 2023).

⁶⁶ *Radium, Combined (-226 & -228, supra note 65.*

⁶⁷ *170 Million in U.S. Drink Radioactive Tap Water*, EWG (Jan. 11, 2018), <https://www.ewg.org/research/170-million-us-drink-radioactive-tap-water#1> (last visited Aug. 15, 2023).

⁶⁸ *Radiation* (November 2021), ENV’T WORKING GRP., <https://www.ewg.org/tapwater/reviewed-radiological.php#.WjKcyrT82uo> (last visited Aug. 16, 2023).

⁶⁹ *170 Million in U.S. Drink Radioactive Tap Water*, EWG (Jan. 11, 2018), <https://www.ewg.org/research/170-million-us-drink-radioactive-tap-water#1> (last visited Aug. 15, 2023).

30. **Health Hazards—Total Trihalomethanes.** Total trihalomethanes (TTHMS) are a group of carcinogenic disinfection byproducts formed during water treatment with chlorine and other disinfectants.⁷⁰ TTHMS refer to the four most common byproducts of chlorine disinfection, chloroform, bromodichloromethane, chlorodibromomethane, and bromoform.⁷¹ Long-term and short-term exposure to TTHMS can cause:

- Bladder cancer
- Liver, kidney, and intestinal tumors
- Increased risk during pregnancy of spontaneous miscarriage, cardiovascular defects, neural tube defects, and low birth weight⁷²
- Liver damage,
- Kidney damage,
- Dull chest pain,
- Skin sores,
- Testicle damage and more.⁷³

The EPA has set legal limits for TTHMS in tap water at 80 ppb, while the EWG set its Health Guideline at 0.15 ppb to reduce the risk of cancer.⁷⁴ These contaminants have been detected at levels 177, 274, 254, and 198 times the EWG Health Guideline in major cities across the nation, including Los Angeles, San Francisco, New York, and Detroit, respectively.⁷⁵ Indeed, in 48-50 states,

⁷⁰ See *Total Trihalomethanes*, FLA. DEP'T OF HEALTH, https://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh_tthms_faq.pdf (last visited Aug. 15, 2023).

⁷¹ *Id.*

⁷² *Tap Water Database--Total Trihalomethanes (TTHMS)*, EWG, <https://www.ewg.org/tapwater/contaminant.php?contamcode=2950#> (last visited Aug. 16, 2023).

⁷³ *Id.*

⁷⁴ *Tap Water Database--Total Trihalomethanes (TTHMS)*, EWG, <https://www.ewg.org/tapwater/contaminant.php?contamcode=2950#> (last visited Aug. 16, 2023).

⁷⁵ See *Total Trihalomethanes (TTHMs)*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/contaminant.php?contamcode=2950#:~:text=State%20and%20national%20drinking%20water%20standards%20and%20health%20guidelines&text=Guideline%200.15%20ppb-,The%20health%20guideline%20of%200.15%20parts%20per%20billion%2C%20or%20ppb,million%20lifetime%20cancer%20risk%20level> (last visited Aug. 15, 2023); *Los Angeles Department of Water and Power*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA1910067> (last visited Aug. 15, 2023); *San Francisco City Water System*, EWG TAP WATER DATABASE,

TTHMS have afflicted hundreds of millions of people (between 157 and 296 million, depending on the contaminant), all or nearly all of whom have been exposed to levels exceeding the EWG's guideline, and approximately half a million people in 36 states whose drinking water exceeds the federal limit. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). Yet, the Products do not remove or reduce TTHMS from consumers' drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products' packaging and labels.

Exhibit 3 (Performance Chart); **Exhibit 2** (Product Images).

31. **Health Hazards—Uranium.** Uranium is a naturally occurring radioactive element, similar to radium, present in rocks, which break down to soil, and introduced into water systems.⁷⁶ The mining of uranium leads to waste products that are more radioactive than the natural rock and contaminants water, soil, and the air if it is not disposed of properly. *Id.* Exposure to uranium and radiation, similar to radium, can cause adverse health effects:

- Liver cancer,
- Bone cancer, and
- Lung cancer. *Id.*

The EPA set a federal limit on the contamination of water at 20 pCi/L.⁷⁷ However, according to the EWG, consuming water with 20 pCi/L of uranium "would cause more than 4.6 cancer cases in a population of 100,000."⁷⁸ Accordingly, the EWG set a Health Guideline for 0.43 pCi/L. *Id.* Indeed, uranium has been found in 44 states, in excess of the EWG guideline, affecting 61 million people, and in 22 states in excess of the federal limit, affecting more than 62,000 people. **Exhibit 4** (Tap Water Concentration and Safety Limits Chart). It has also been detected at levels 7 times the EWG's

<https://www.ewg.org/tapwater/system.php?pws=CA3810011> (last visited Aug. 15, 2023); *City of Detroit*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=MI0001800> (last visited Aug. 15, 2023); *New York City System*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=NY7003493> (last visited Aug. 15, 2023).

⁷⁶ *Radionuclide Basics: Uranium*, EPA, <https://www.epa.gov/radiation/radionuclide-basics-uranium> (last visited Aug. 16, 2023).

⁷⁷ *See Uranium*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/contaminant.php?contamcode=X006> (last visited Aug. 15, 2023).

⁷⁸ *Id.*

guideline in Los Angeles.⁷⁹ Yet, the Products do not remove or reduce uranium from consumers' drinking water to below detectable lab limits, and Defendant fails to adequately inform consumers of this on the Products' packaging and labels. **Exhibit 3** (Performance Chart); **Exhibit 2** (Product Images).

C. Materiality of Challenged Representations, Reasonable Consumer's Perception, and the Failure of the Products to Fulfill Defendant's Promises

32. **Consumer Demand for Clean Drinking Water.** Millions of Americans are harmed by drinking water, as discussed above. There are now more than 60,000 chemicals used in America which means consumers are not drinking one chemical at a time; rather, each glass of tap water often contains a cocktail of harmful chemicals.⁸⁰ The array of toxic pollutants in just California drinking water could in combination cause more than 15,000 excess cases of cancer, according to a peer-reviewed study to assess cumulative risk from carcinogenic drinking water contaminants.⁸¹ The health hazards of water contaminants, including the contaminants listed in the Health Hazards and Tap Water Concentration Charts are numerous, severe, and can result in death or debilitating and lifelong diseases. Consumers and public health concerns over the safety of drinking water drive consumers to buy the Products. Defendant takes advantage of those fears through its marketing and advertising of the Products. Indeed, the only purpose behind the Products is to provide safe and clean water. Thus, the Challenged Representations and Material Omission are material to consumers in deciding to the buy the Products.

33. **Challenged Representations on Products' Labels and Packaging.** Defendant trades on the consumers' need for clean and safe drinking water to convince consumers that the Products remove or reduce common water contaminants hazardous to health, including the Common Hazardous Ingredients.

⁷⁹ *Los Angeles Department of Water and Power*, EWG TAP WATER DATABASE, <https://www.ewg.org/tapwater/system.php?pws=CA1910067> (last visited Aug. 15, 2023).

⁸⁰ See Whitney, *Is LA Tap Water Safe to Drink? Los Angeles Tap Water Quality 2021*, PREMIERE SALES WATER BLOG (May 30, 2019), <https://premieresales.com/la-tap-water-drinking-water-los-angeles-california-water-quality/> (last visited Aug. 15, 2023).

⁸¹ *California Drinking Water: How the Combination of Multiple Contaminants Raises Cancer Risks*, *supra* note 8.

- 1 a. **Design/Purpose.** The Product is a home water filtration device that functions as a
2 water pitcher or dispenser. By its very nature, the device conveys to consumers that it
3 will remove hazardous contaminants from their drinking water. *See Exhibit 2*
4 (Product Images).
- 5 b. **Uniform Name and Product Identification.** Defendant uniformly names and
6 prominently labels as a “BRITA WATER FILTRATION SYSTEM.” *Id.*
- 7 c. **Challenged Representations.** Defendant packages and labels the Products with the
8 Challenged Representations, each of which convey, alongside the Products’ very
9 nature and uniformly labeled name, that the Products will remove or reduce hazardous
10 water contaminants, including the Common Hazardous Contaminants, to below lab
11 detectable limits. *Id.*
- 12 d. **Reinforcing Labeling Claims.** Defendant repeats one or more of the Challenged
13 Representations on the back, side, or top panels of the Products’ labels and packaging,
14 in addition to water-related imagery and reinforcing claims, such as “BRITA WATER
15 FILTRATION SYSTEM”, “Better water for you. Better water for the planet.”,
16 “TRANSFORM YOUR WATER”, “FRESH FILTER = FRESHER WATER”, “GET
17 MORE WITH BRITA”, “Reduces 30 contaminants including Lead, Benzene,
18 Mercury, Cadmium, Asbestos, & more”, “Reduces 3X more contaminants vs. Brita
19 Standard Filters”, and/or “Improves water taste & odor” (collectively “**Reinforcing**
20 **Labeling Claims(s)**”), to buttress the Challenged Representations and support the
21 consumers’ perception.
- 22 e. **Material Omission.** Defendant fails to disclose that the Material Omission anywhere
23 on the Products’ packaging or labeling, including in particular on the front-facing or
24 top panels to inform consumers that the Products will not, contrary to their design,
25 name, Challenged Representations, and Reinforcing Labeling Claims, remove or
26 reduce common hazardous water contaminants to below lab detectable limits,
27 including the Common Hazardous Contaminants. *Id.*
- 28

Indeed, the Challenged Representations are prominently placed on each Product's primary display panel of the front label or packaging. *Id.* The front primary display panel contains scant imagery and information about the Products, largely limited to the brand name (Brita), identity of the product (i.e., water filters), and one or a few claims about the Products' attributes. *Id.* The Challenged Representations are stated in clear, legible, and highly visible font, including a typeface that starkly contrasts with the background color and imagery. *Id.* The net-effect or net-impression on consumers who view the Products is that the Products will remove or reduce common hazardous water contaminants, such as the Common Hazardous Contaminants, to below lab detectable limits. Defendant reinforces its deceptive labeling by materially omitting that the Products fail to do so. *Id.*

34. **Brita Filters Fail to Remove Hazardous Contaminants.** However, the Products fail to remove or reduce contaminants hazardous to health, including the Common Hazardous Contaminants and those identified in the Performance, Tap Water Concentration and Safety Limits, and Health Hazards Charts, to at least below lab detectable limits. *See Exhibit 3-5.* Accordingly, Defendant's labeling, advertising, marketing, and packaging of the Products with the Challenged Representations, including the Material Omission, is misleading, false, and deceptive. The Products' labels and packaging lead reasonable consumers to believe that the Products remove or reduce common hazardous contaminants to below lab detectable limits. And they omit the fact that they fail to do so, including some of the most harmful contaminants present in drinking water at levels exceeding the health guidelines.

D. Plaintiff and Reasonable Consumers Were Misled by the Challenged Representations and Material Omission into Buying the Products, to Their Detriment

35. **Reasonable Consumer's Perception.** The Challenged Representations and Material Omission lead reasonable consumers, like Plaintiff, into believing that the Products conform to the Challenged Representations—meaning, consumers are led to believe that the Products remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits.

36. **Materiality.** The Challenged Representations and Material Omission are material to

reasonable consumers, including Plaintiff, in deciding to buy the Products—meaning that it is important to consumers that the Products remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits.

37. **Reliance.** The Class, including Plaintiffs, reasonably relied on the Challenged Representations and Material Omission in deciding to purchase the Products.

38. **Falsity.** The Challenged Representations and Material Omission are deceptive because the Products do not remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. *See Exhibit 3-5.*

39. **Consumers Lack Knowledge of Falsity.** The Class, who purchased the Products, including Plaintiff, do not know and had no reason to know, at the time of purchase, that the Products' Challenged Representations and Material Omission are false, misleading, deceptive, and unlawful. Nothing on the Products' labeling or packaging adequately, expressly, unambiguously, or conspicuously inform consumers that the Challenged Representations are false—specifically, that the Products do not remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. *See Exhibit 2* (Product Images). That is because the Products' labeling and packaging do not contain a clear, unambiguous, and conspicuously displayed statement, reasonably proximate to the Challenged Representations, that reasonable consumers are likely to notice, read, and understand to mean that, contrary to the prominent, clear, and unambiguous front-label Challenged Representation, consistent with the Products' design and nature, name, Reinforcing Labeling Claims, and Material Omission, that the Challenged Representations are indeed false. To the extent Defendant hopes that some inconspicuous fine print or other statements and disclaimers on some other portion of the Products' packaging should have cured the reasonable consumers' perception, studies show that only approximately 7.7% to 11.6% of people even look at a consumer product's side or back labels before they buy it.⁸² Thus, the very placement of qualifying statements or contradictory disclaimers

⁸² Grunert, Klaus, et. al, *Nutrition knowledge, and use and understanding of nutrition information on food labels among consumers in the UK*, 55 *Appetite* 177, at 179-181 (2010) available at <https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A487F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6>

on back or side panels, by their very placement, are not sufficiently conspicuous to presume that a reasonable consumer would have even noticed it, let alone understood it to qualify or contradict prominently placed front-panel representations, like the Challenged Representations.

40. **Defendant’ Knowledge.** Defendant knew, or should have known, that the Challenged Representations and Material Omission are false, misleading, deceptive, and unlawful, at the time that Defendant manufactured, marketed, advertised, labeled, and sold the Products using the Challenged Representations and Material Omission to Plaintiffs and the Class. Defendant intentionally and deliberately used the Challenged Representation, alongside the Products’ design/purpose, name, and the Reinforcing Labeling Claims, to cause Plaintiff and similarly situated consumers to buy the Products believing that the Challenged Representations are true.

- a. **Knowledge of Reasonable Consumers’ Perception.** Defendant knew or should have known that the Challenged Representations and Material Omission would lead reasonable consumers into believing that the Products remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. Not only has Defendant utilized a long-standing brand strategy to identify the Products as effective filters that provide clean and safe drinking water, but Defendant

655A&originRegion=us-east-1&originCreation=20220720162546 (last accessed July 20, 2022) (consumer purchasing behavior study using in-store observation and interview data collection methodology to realistically estimate the degree consumers use nutritional information (found on side/back panels of food product labels and packaging), finding: (1) only **11.6% of respondents**, who looked at a product and placed it in their shopping cart, **were actually observed looking at the side/back panels of its packaging or labels** (panels other than the front panel) before placing it in the cart; (2) of those who looked at the side/back panels, only 31.8% looked at it the product “in detail” (i.e., 3.7% of respondents who looked at the product, looked at side/back panels in detail)); and (3) the **respondents self-reported frequency of reviewing side/back panels** (for nutritional information) **is overreported by 50%** when the in-store interview data and observational data are compared); Grunert, Klaus, et. al, *Use and understanding of nutrition information on food labels in six European countries*, 18(3) Journal of Public Health 261, 261, 263, 266 (2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2967247/> (last accessed July 20, 2022) (consumer purchasing behavior study using in-store observation and interview data collection methodology to evaluate whether people look at food labels before buying them, where they looked, and how long they looked, finding: (1) respondents spent, on average, approximately 35 seconds, per product, on products they bought; and (2) 62.6% of respondents looked at the front packaging, and **only 7.7% looked elsewhere (side/back panels) on the packaging**, for products they bought); Benn, Yael, et al., *What information do consumers consider and how do they look for it, when shopping for groceries online*, 89 Appetite 265, 265, 270 (2015), available at <https://www.sciencedirect.com/science/article/pii/S0195666315000422#bib0060> (last accessed Jul. 20, 2022) (consumer purchasing behavior study using online eye-movement tracking and recordation, finding: (1) once on the product webpages, respondents tend to look at the pictures of products, rather than examine detailed product information; and (2) by comparison to pictures of products where 13.83-19.07% of respondents fixated, far less fixated on subsidiary information: 4.17% of respondents looked at nutrition information, 3.30% ingredients, 2.97% allergy information, and 0.09% recycling information for example).

also has an obligation under section 5 of the Federal Trade Commission Act, codified at 15 U.S.C. §§ 45, to evaluate its marketing claims from the perspective of the reasonable consumer. That means Defendant was statutorily obligated to consider whether the Challenged Representations, be it in isolation or conjunction with its marketing strategy, would mislead reasonable consumers into believing that the Products remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. Thus, Defendant either knew that the Challenged Representations are misleading before it marketed the Products to the Class, including Plaintiffs, or Defendant would have known that that they were deceptive had it complied with its statutory obligations.

- b. **Knowledge of Falsity.** Defendant manufactured and marketed the Products with the Challenged Representations, but Defendant opted to make Products that do not conform with those representations. Specifically, Defendant advertised, labeled, and packaged the Products with the Challenged Representations, but chose to manufacture the Products without the ability to remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. **Exhibit 3-5.** Additionally, Defendant was obligated under Cal. Health & Safety Code section 116825 *et seq.*, to certify its marketing claims, including those that conveyed to consumers that the Products remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. Thus, Defendant either complied with its obligation and knew the Products could not live up to Defendant's promises, or Defendant would have known that the Products could not perform had Defendant complied with its statutory obligation.
- c. **Knowledge of Materiality.** Defendant knew or should have known of the Challenged Representations materiality to consumers. *First*, manufacturers and marketers, like Defendant, generally reserve the front primary display panel of labels or packaging on consumer products for the most important and persuasive information, which they believe will motivate consumers to buy the products. Here, the conspicuousness of the Challenged Representations on the Products' labels and packaging demonstrates Defendant's awareness of its importance to consumers and Defendant's understanding that consumers prefer and are motivated to buy products that conform to the Challenged Representations. *Second*, manufacturers and marketers repeat marketing claims to emphasize and characterize a brand or product line, shaping the consumers' expectations, because they believe those repeated messages will drive consumers to buy the Product. Here, the constant, unwavering use of the Challenged Representations on countless Products, advertisements, and throughout Defendant's marketing campaign, evidences Defendant's awareness that the falsely advertised Product-attribute is important to consumers. It also evidences Defendant's intent to convince consumers that the Products conform to the Challenged Representations and, ultimately, drive sales. *Third*, the Products' primary, if not only, purpose was to provide safe and clean drinking water. Thus, Defendant knew, in designing the Products, that the Challenged Representations and Material Omission were material to consumers.
- d. **Defendant's Continued Deception, Despite Its Knowledge.** Defendant, as the manufacturer and marketer of the Products, had exclusive control over the Challenged Representations' inclusion on the Products' labels, packaging, and advertisements—i.e., Defendant readily and easily could have stopped using the Challenged Representations to sell the Products. However, despite

Defendant's knowledge of the Challenged Representations' falsity, and Defendant's knowledge that consumers reasonably rely on the representation in deciding to buy the Products—to filter harmful contaminants out of drinking water—Defendant deliberately chose to market the Products with the Challenged Representation thereby misleading consumers into buying or overpaying for the Products. Thus, Defendant knew, or should have known, at all relevant times, that the Challenged Representations mislead reasonable consumers, such as Plaintiff, into buying the Products to attain the product-attributes that Defendant falsely advertised and warranted.

41. **Duty to Disclose Material Omission.** Defendant had, at all relevant times, an obligation to disclose the Material Omission—that the Products do not remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits. Defendant not only knew or should have known that reasonable consumers would perceive the Products and Challenged Representations to mean that the Products remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits, but Defendant knew that this attribute was material to consumers, causing them to rely on the Challenged Representations in deciding to buy the Products. Defendant also knew or should have that the Challenged Representations were false—that the Products would not remove or reduce common hazardous water contaminants, including the Common Hazardous Contaminants, to below lab detectable limits.

42. **Detriment.** Plaintiff and similarly situated consumers would not have purchased the Products or would not have overpaid a price premium for them, if they had known that the Challenged Representations were false and, therefore, the Products do not have the attribute claimed, promised, warranted, advertised, and/or represented. Accordingly, based on Defendant's Challenged Representations and Material Omission, reasonable consumers, including Plaintiff, purchased the Products to their detriment.

E. The Products are Substantially Similar

43. As described herein, Plaintiff purchased the Purchased Product. The additional Products identified *supra* at ¶ 6 (collectively, the “**Unpurchased Products**”) are substantially similar to the Purchased Product.

a. **Defendant.** All Products are manufactured, sold, marketed, advertised, labeled, and packaged by Defendant.

b. **Brand.** All Products are sold under the same brand name: Brita.

- c. **Marketing Demographics.** All Products are marketed directly to consumers for personal use.
- d. **Purpose.** All Products are water filtration devices designed and marketed to remove or reduce contaminants from water.
- e. **Use.** All Products are used in the same manner—water is placed into the pitcher or dispenser, and passed through the filter, to then be used or consumed.
- f. **Misrepresentations and omissions.** All Products contain one or more Challenged Representations conspicuously and prominently placed on the primary display panel of the front label. All Products contain the Material Omission on their packaging and labeling.
- g. **Packaging.** All Products are packaged in similar packaging.
- h. **Key Attributes.** All Products fail to remove or reduce common contaminants hazardous to health in drinking water to below lab detectable limits identified in the Performance Chart, attached as **Exhibit 3**, including the Common Hazardous Contaminants highlighted here.
- i. **Misleading Effect.** The misleading effect of the Challenged Representations and Material Omission on consumers is the same for all Products—consumers over-pay for water filtration devices that remove or reduce to below lab detectable limits common contaminants hazardous to health in water, including the Common Hazardous Contaminants highlighted here.

F. No Adequate Remedy at Law

44. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

- a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitations under the FAL and CLRA. In addition, the statutes of limitations vary for certain states' laws for breach of warranty and unjust enrichment/restitution, between approximately 2 and 6 years. Thus, California Subclass members who purchased the Products more than 3 years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL. Similarly, Nationwide Class members who purchased the Products prior to the furthest reach-back under the statute of limitations for breach of warranty, will be barred from recovery if equitable relief were not permitted for restitution/unjust enrichment.
- b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes, for example, Defendant's overall unfair marketing scheme to promote and brand the Products with the Challenged Representations and omissions, across a multitude of media platforms, including the Products' labels and packaging, over a long period of time, in order to gain an unfair advantage over competitor products and to take advantage of consumers' desire for products that comport with the Challenged Representations. The UCL also creates a cause of action for violations of law (such as statutory or regulatory

requirements and court orders related to similar representations and omissions made on the type of products at issue). Thus, Plaintiff and Class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct). Similarly, unjust enrichment/restitution is broader than breach of warranty. For example, in some states, breach of warranty may require privity of contract or pre-lawsuit notice, which are not typically required to establish unjust enrichment/restitution. Thus, Plaintiff and Class members may be entitled to recover under unjust enrichment/restitution, while not entitled to damages under breach of warranty, because they purchased the products from third-party retailers or did not provide adequate notice of a breach prior to the commencement of this action.

- c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief is appropriate on behalf of Plaintiff and members of the Class because Defendant continues to misrepresent the Products with the Challenged Representations and omissions. Injunctive relief is necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm). Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel the public misperception about the Products that has resulted from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to, publicly disseminated statements providing accurate information about the Products’ true nature; and/or requiring prominent qualifications and/or disclaimers on the Products’ front label concerning the Products’ true nature. An injunction requiring affirmative disclosures to dispel the public’s misperception and prevent the ongoing deception and repeat purchases based thereon, is also not available through a legal remedy (such as monetary damages). In addition, Plaintiff is *currently* unable to accurately quantify the damages caused by Defendant’s future harm, because discovery and Plaintiff’s investigation have not yet completed, rendering injunctive relief all the more necessary. For example, because the court has not yet certified any class, the following remains unknown: the scope of the class, the identities of its members, their respective purchasing practices, prices of past/future Product sales, and quantities of past/future Product sales.
- d. **Public Injunction.** Further, because a “public injunction” is available under the UCL, damages will not adequately “benefit the general public” in a manner equivalent to an injunction.
- e. **California vs. Nationwide Class Claims.** Violations of the UCL, FAL, and CLRA are claims asserted on behalf of Plaintiff and the California Subclass against Defendant, while breach of warranty and unjust enrichment/restitution are asserted on behalf of Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims, such as restitution, would bar recovery for non-California members of the Class. In other words, legal remedies available or adequate under the California-specific causes of action (such as the UCL, FAL, and CLRA) have no impact on this Court’s jurisdiction to award equitable relief under the remaining causes of action asserted on behalf of non-California putative class members.

- f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an initial pleading in this action, and discovery has not yet commenced and/or is at its initial stages. No class has been certified yet. No expert discovery has commenced and/or completed. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiff(s)'s individual claims and any certified class or subclass. Plaintiff(s) therefore reserve(s) Plaintiff(s)'s right to amend this complaint and/or assert additional facts that demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal remedies are available for either Plaintiff(s) and/or any certified class or subclass. Such proof, to the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

VI. CLASS ACTION ALLEGATIONS

45. **Class Definition.** Plaintiff brings this action as a class action on behalf of himself and all others similarly situated as members of the Class defined as follows:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products, containing the Challenged Representations or Material Omission on the Products' labels or packaging, for purposes other than resale ("**Nationwide Class**"); and

All residents of California who, within four years prior to the filing of this action, purchased the Products, containing the Challenged Representations or Material Omission on the Products' labels or packaging, for purposes other than resale ("**California Subclass**").

(the "Nationwide Class" and "California Subclass" are collectively referred to as the "**Class**").

46. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

47. **Reservation of Rights to Amend the Class Definition.** Pursuant to California Civil Code Section 382, Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

48. **Numerosity.** Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of

purchasers (if not more) dispersed throughout the United States, and the California Subclass likewise consists of thousands of purchasers (if not more) dispersed throughout the State of California. Accordingly, it would be impracticable to join all members of the Class before the Court.

49. **Common Questions Predominate.** There are numerous and substantial questions of law or fact common to all members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by advertising and selling the Products;
- b. Whether Defendant's conduct of advertising and selling the Products as effective water filters and omitting that they fail to filter higher risk contaminants present in drinking water constitutes an unfair method of competition, or unfair or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- c. Whether Defendant used deceptive representations and omissions in connection with the sale of the Products in violation of Civil Code section 1750, *et seq.*;
- d. Whether Defendant represented that the Products have characteristics or quantities that they do not have in violation of Civil Code section 1750, *et seq.*;
- e. Whether Defendant advertised the Products with intent not to sell them as advertised in violation of Civil Code section 1750, *et seq.*;
- f. Whether Defendant's labeling and advertising of the Products are misleading in violation of Business and Professions Code section 17500, *et seq.*;
- g. Whether Defendant knew or by the exercise of reasonable care should have known its labeling and advertising was and is misleading in violation of Business and Professions Code section 17500, *et seq.*;
- h. Whether Defendant's conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant's conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Plaintiff and the Class paid more money for the Products than they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than they actually received;
- m. Whether Defendant's conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and

- o. Whether Defendant was unjustly enriched by their unlawful conduct.

50. **Predominance.** The common questions of law and fact predominate over questions that affect only individual Class Members.

51. **Typicality.** Plaintiff's claims are typical of the claims of the Class Members he seeks to represent because Plaintiff, like the Class Members purchased Defendant's misleading and deceptive Products. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

52. **Adequacy.** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

53. **Ascertainability.** Class Members can easily be identified by an examination and analysis of the business records regularly maintained by Defendant, among other records within Defendant's possession, custody, or control. Additionally, further Class Member data can be obtained through additional third-party retailers who retain customer records and order histories.

54. **Superiority and Substantial Benefit.** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoy its ill-gotten gains;

- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused to them by Defendant.

55. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

56. **Injunctive/Declaratory Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or declaratory relief with respect to the Class as a whole.

57. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VII. CAUSES OF ACTION

COUNT ONE

Violation of California Unfair Competition Law

(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(On Behalf of the California Subclass)

58. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

59. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products within the applicable statute of limitations.

1 60. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the
2 “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall
3 mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
4 misleading advertising.”

5 61. **False Advertising Claims.** Defendant, in its advertising and packaging of the
6 Products, made misleading statements and fraudulent omissions regarding the quality and
7 characteristics of the Products—specifically, the Challenged Representations and Material
8 Omission—despite the fact the Products fail to remove or reduce to below lab detection limits
9 common contaminants from drinking water that are hazardous to health. Such claims and omissions
10 appear on the label and packaging of the Products, which are sold at retail stores and point-of-
11 purchase displays.

12 62. **Defendant’s Deliberately Fraudulent Marketing Scheme.** Defendant does not
13 have any reasonable basis for the claims about the Products made in Defendant’s advertising and
14 on Defendant’s packaging or labeling because the Products fail to remove or reduce to below lab
15 detection limits common contaminants from drinking water that are hazardous to health. Defendant
16 knew and knows that the Products cannot remove or reduce to below lab detection limits some of
17 the most hazardous contaminants prevalent in drinking water, though Defendant intentionally
18 advertised and marketed the Products to deceive reasonable consumers they do so.

19 63. **Misleading Advertising Claims Cause Purchase of Products.** Defendant’s labeling
20 and advertising of the Products led to, and continues to lead to, reasonable consumers, including
21 Plaintiff, believing that the Products remove or reduce to below lab detection limits common
22 contaminants from drinking water that are hazardous to health.

23 64. **Injury in Fact.** Plaintiff and the California Subclass have suffered injury in fact and
24 have lost money or property as a result of and in reliance upon the Challenged Representations and
25 Material Omission—namely Plaintiff and the California Subclass lost the purchase price for the
26 Products they bought from the Defendant.

27 65. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein, constitutes
28 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair

1 competition and provides, in pertinent part, that “unfair competition shall mean and include
2 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
3 advertising.” Cal. Bus & Prof. Code § 17200. In addition, Defendant’s use of various forms of
4 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise
5 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue
6 or misleading advertising, and an unlawful business practice within the meaning of Business and
7 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to
8 deceive the consuming public, in violation of Business and Professions Code Section 17200.

9 **66. No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant
10 failed to avail itself of reasonably available, lawful alternatives to further its legitimate business
11 interests.

12 **67. Business Practice.** All of the conduct alleged herein occurred and continues to occur
13 in Defendant’s business. Defendant’s wrongful conduct is part of a pattern, practice and/or
14 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily
15 alters its conduct or Defendant is otherwise ordered to do so.

16 **68. Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,
17 Plaintiff and the members of the California Subclass seek an order of this Court enjoining Defendant
18 from continuing to engage, use, or employ its practice of labeling and advertising the sale and use
19 of the Products. Likewise, Plaintiff and the members of the California Subclass seek an order
20 requiring Defendant to disclose such misrepresentations and omissions, and to preclude
21 Defendant’s failure to disclose the existence and significance of said misrepresentations.

22 **69. Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in
23 violation of the UCL, Plaintiff and members of the California Subclass were harmed in the amount
24 of the purchase price they paid for the Products. Further, Plaintiff and members of the California
25 Subclass have suffered and continue to suffer economic losses and other damages including, but
26 not limited to, the amounts paid for the Products, and any interest that would have accrued on those
27 monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for
28 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate

70. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for violation of the UCL on behalf of Plaintiff and the California Subclass. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was, at all times, aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

“Unfair” Prong

71. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

72. **Injury.** Defendant's action of mislabeling the Products with the Challenged Representations and omissions does not confer any benefit to consumers; rather, doing so causes injuries to consumers, who do not receive products commensurate with their reasonable expectations, overpay for the Products, receive Products of lesser standards than what they reasonably expected to receive, and are exposed to increased health risks. Consumers cannot avoid

any of the injuries caused by Defendant's deceptive labeling and advertising of the Products. Accordingly, the injuries caused by Defendant's deceptive labeling and advertising outweigh any benefits.

73. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged activity amounts to unfair conduct under California Business and Professions Code Section 17200. They "weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim." *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

74. **No Utility.** Here, Defendant's conduct of labeling the Products with the Challenged Representations and omissions when the Products fail to filter harmful contaminants of concern has no utility and financially harms purchasers. Thus, the utility of Defendant's conduct is vastly outweighed by the gravity of harm.

75. **Legislative Declared Policy.** Some courts require that "unfairness must be tethered to some legislative declared policy or proof of some actual or threatened impact on competition." *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

76. **Unfair Conduct.** Defendant's labeling and advertising of the Products, as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant knew or should have known of its unfair conduct. Defendant's misrepresentations and omissions constitute an unfair business practice within the meaning of California Business and Professions Code Section 17200.

77. **Reasonably Available Alternatives.** There existed reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products with the Challenged Representations.

78. **Defendant's Wrongful Conduct.** All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

79. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practices of labeling the Products with the Challenged Representations.

80. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact, have lost money and were exposed to increased health risks as a result of Defendant's unfair conduct. Plaintiff and the California Subclass paid an unwarranted premium for these Products. Specifically, Plaintiff and the California Subclass paid for Products that remove or reduce to below lab detection limits common contaminants from their drinking water that are hazardous to health. Plaintiff and the California Subclass would not have purchased the Products, or would have paid substantially less for the Products, if they had known that the Products' advertising and labeling were deceptive. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

"Fraudulent" Prong

81. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

82. **Fraudulent & Material Challenged Representations and omissions.** Defendant used the Challenged Representations and Material Omissions with the intent to sell the Products to consumers, including Plaintiff and the California Subclass. The Challenged Representations and Material Omissions are deceptive, and Defendant knew, or should have known, of their deception. The Challenged Representations and omissions are likely to mislead consumers into purchasing the Products because they are material to the average, ordinary, and reasonable consumer.

83. **Fraudulent Business Practice.** As alleged herein, the misrepresentations and omissions by Defendant constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

84. **Reasonable and Detrimental Reliance.** Plaintiff and the California Subclass reasonably and detrimentally relied on the material and deceptive Challenged Representations and omissions to their detriment in that they purchased the Products.

85. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products with the Challenged Representations and omissions.

4 87. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and
5 the California Subclass seek an order of this Court enjoining Defendant from continuing to engage,
6 use, or employ its practice of labeling the Products with the Challenged Representations and
7 Material Omission.

8 **88. Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact
9 and have lost money as a result of Defendant’s fraudulent conduct. Plaintiff paid an unwarranted
10 premium for the Products. Specifically, Plaintiff and the California Subclass paid for Products with
11 the ability to remove or to reduce to below lab detection limits common contaminants from their
12 drinking water that are hazardous to health, when, in fact, the Products do not filter out a plethora
13 of harmful chemicals. Plaintiff and the California Subclass would not have purchased the Products
14 if they had known the truth. Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement
15 of ill-gotten gains pursuant to the UCL.

16	<u>“Unlawful” Prong</u>
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89. **Unlawful Standard.** The UCL identifies violations of other laws as “unlawful practices that the unfair competition law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

90. **Violations of CLRA and FAL.** Defendant’s labeling of the Products, as alleged herein, violates California Civil Code sections 1750, *et seq.* (the “**CLRA**”) and California Business and Professions Code sections 17500, *et seq.* (the “**FAL**”) as set forth below in the sections regarding those causes of action.

91. **Fraud.** Additionally, Defendant's use of the Challenged Misrepresentations to sell the Products violates California Civil Code sections 1572 (actual fraud), 1573 (constructive fraud), 1709-1710 (fraudulent deceit), and 1711 (deceit upon the public), as set forth above.

92. **Cal. Health & Safety Code §§ 116825, *et seq.* re: Water Treatment Devices.**

California Health and Safety Code sections 116825, *et seq.* govern the registration, certification,

1 labeling/packaging claims, and sale of the Products in the State of California.

2 a. **Applicability.** California Health and Safety Code sections 116825, *et seq.*
3 apply to Defendant's sale of the Products using the Challenged
4 Representations. The Products are "water treatment devices" because they are
5 systems sold for residential use and intended to improve the water supply
6 through filtration. *See* Cal. Health & Safety Code § 116825(a). Defendant
7 claims that the Products remove contaminants—which constitute any health-
8 related physical, chemical, biological, or radiological substance or matter in
9 water. *Id.* § 116825(d). Defendant makes "health or safety claims", under
10 section 116825(e), as the Products purport to remove the Filtered
11 Contaminants.

12 b. **Registration & Publication.** California Health and Safety Code section
13 116832 requires a manufacturer, such as Defendant, who sells water treatment
14 devices, such as the Products, in California for which the manufacturer makes
15 a "health or safety claim," such as the Challenged Representations, to register
16 the devices with the regulatory agency in California that enforces sections
17 116825, *et seq.*, by providing the following information that the regulatory
18 agency will publish online: (1) identification of the manufacturer by name,
19 contact information, and website; (2) the devices name and product
20 identification number; (3) the name of each contaminant claimed to be
21 removed or reduced by the device; (4) the name of the organization that meets
22 ANSI accreditation standards that has certified that the device removes or
23 reduces the contaminant, including the name of the testing protocol or standard
24 used to test the device, date of the test, summary of the results, and the date by
25 which the device must be retested; and (5) a product information worksheet
26 that summarizes the foregoing information, provides a copy of the
27 aforementioned certificate, provides the service flow rate and rated service
28 life, describes general use conditions/needs (e.g., maximum turbidity,

1 bacteriological quality of source water, max/minimum operating temperatures
2 and pressures), and references to the owner's manual for general operation and
3 maintenance and the manufacturer's warranty. Pursuant to section 116845,
4 the California regulatory agency publishes online a list of each water treatment
5 device with valid certification, each device with registration materials
6 submitted in compliance with section 116832, and the aforementioned product
7 information worksheet. Section 116835 prohibits the sale of water treatment
8 devices, such as the Products, in the State of California, if the device is not
9 included on the published list.

10 c. **Label/Packaging.** Under California Health and Safety Code section 116835,
11 manufacturers who make a health or safety claim for a water treatment device,
12 such as Defendant who makes the Challenged Representations for the
13 Products, are required to "the exterior packaging . . . shall clearly identify the
14 contaminant or contaminants that the device has been certified . . . to remove
15 or reduce. If a device has been certified to remove or reduce more than five
16 contaminants, at least five contaminants shall be listed on the exterior
17 packaging followed by a statement directing consumers to visit the
18 manufacturer's Internet Web site to obtain information regarding additional
19 contaminants that the device is certified to remove or reduce."

20 d. **Violations of Section 116825, et seq.** Defendant has violated the registration
21 and certification requirements applicable to the Products. Defendant has
22 failed to register certain Products identified in the Product List, attached as
23 **Exhibit 1**, with the California regulatory agency pursuant to section 116825.
24 Defendant has not provided any of the disclosures or proof of certification
25 through an ANSI accredited laboratory that performed NSF/ANSI
26 standardized testing for the Products performance consistent with the
27 Challenged Representations. Defendant has continued to sell the Products in
28 violation of section 116835, even though said Products are not published

1 online by the California regulatory agency pursuant to section 116845.
2 Defendant has failed to comply with the Label/Packaging requirements
3 pursuant to section 116835 because the Challenged Representations are not
4 clearly identified on the exterior packaging of the Products or on a referenced
5 website.

6 e. **Statutory Penalties.** Pursuant to section 116840 of the California Health and
7 Safety Code, Plaintiff and the California Subclass, are entitled to a civil
8 penalty up to and including \$5,000 for each violation. As the conduct
9 constituting Defendant's violation is of a continuing nature, each day of the
10 conduct is a separate and distinct violation. Accordingly, Plaintiff and the
11 California Subclass seek civil penalties under this section in an amount to be
12 proven at the time of trial.

13 93. **Additional Violations.** Defendant's conduct in making the deceptive representations
14 and omissions described herein constitutes a knowing failure to adopt policies in accordance with
15 and/or adherence to applicable laws, as set forth herein, all of which are binding upon and
16 burdensome to their competitors. This conduct engenders an unfair competitive advantage for
17 Defendant, thereby constituting an unfair, fraudulent and/or unlawful business practice under
18 California Business & Professions Code sections 17200-17208. Additionally, Defendant's
19 misrepresentations of material facts, as set forth herein, violate California Civil Code sections 1572,
20 1573, 1709, 1710, 1711, and 1770, as well as the common law.

21 94. **Unlawful Conduct.** Defendant's packaging, labeling, and advertising of the Products,
22 as alleged herein, are deceptive, misleading, and unreasonable, and constitute unlawful conduct.
23 Defendant knew or should have known of its unlawful conduct.

24 95. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives
25 to further its legitimate business interests, other than the conduct described herein. Defendant could
26 have refrained from labeling the Products with the Challenged Representations and omissions.

27 96. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in
28 Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of

1 conduct.

2 97. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff and
3 the California Subclass seek an order of this Court enjoining Defendant from continuing to engage,
4 use, or employ its practice of deceptive advertising of the Products.

5 98. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact
6 and have lost money as a result of Defendant's unlawful conduct. Plaintiff and the California
7 Subclass paid an unwarranted premium for the Products. Plaintiff and the California Subclass would
8 not have purchased the Products if they had known that Defendant's purposely deceived consumers
9 into believing that the Products are effective water filters. Accordingly, Plaintiff seeks damages,
10 restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

11 **COUNT TWO**

12 **Violation of California False Advertising Law**

13 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

14 **(*On Behalf of the California Subclass*)**

15 99. **Incorporation by reference.** Plaintiff re-alleges and incorporates by reference all
16 allegations contained in this complaint, as though fully set forth herein.

17 100. **California Subclass.** Plaintiff brings this claim individually and on behalf of the
18 California Subclass who purchased the Products within the applicable statute of limitations.

19 101. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code
20 section 17500, *et seq.*, prohibits "unfair, deceptive, untrue or misleading advertising[.]"

21 102. **Material Challenged Representations Disseminated to Public.** Defendant violated
22 section 17500 when it advertised and marketed the Products through the unfair, deceptive, and
23 misleading Challenged Representations and omissions disseminated to the public through the
24 Products' labeling, packaging, and advertising. These representations were deceptive because the
25 Products do not conform to them. The representations were material because they are likely to
26 mislead a reasonable consumer into purchasing the Products.

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28 ///

1 103. **Knowledge.** In making and disseminating the representations alleged herein,
2 Defendant knew or should have known that the representations were untrue or misleading, and
3 acted in violation of § 17500.

4 104. **Intent to sell.** Defendant's Challenged Representations and omissions were
5 specifically designed to induce reasonable consumers, like Plaintiff and the California Subclass, to
6 purchase the Products.

7 105. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct in
8 violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount
9 of the purchase price they paid for the Products and increased health risks from ingesting
10 contaminants the Products fail to filter from drinking water. Further, Plaintiff and members of the
11 Class have suffered and continue to suffer economic losses and other damages including, but not
12 limited to, the amounts paid for the Products, and any interest that would have accrued on those
13 monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for
14 violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate
15 Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin
16 Defendant's misconduct to prevent ongoing and future harm that will result.

17 106. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct described
18 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
19 damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the
20 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact,
21 receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as
22 Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed
23 to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all
24 relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would
25 look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct
26 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their
27 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally
28 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and

consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

COUNT THREE

Violation of California Consumers Legal Remedies Act

(Cal. Civ. Code §§ 1750, *et seq.*)

(*On Behalf of the California Subclass*)

107. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

108. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

109. **CLRA Standard.** The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.”

110. **Goods/Services.** The Products are “goods,” as defined by the CLRA in California Civil Code §1761(a).

111. **Defendant.** Defendant is a “person,” as defined by the CLRA in California Civil Code §1761(c).

112. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as defined by the CLRA in California Civil Code §1761(d).

113. **Transactions.** The purchase of the Products by Plaintiff and members of the California Subclass are “transactions” as defined by the CLRA under California Civil Code section 1761(e).

114. **Violations of the CLRA.** Defendant violated the following sections of the CLRA by selling the Products to Plaintiff and the California Subclass through the misleading, deceptive, and fraudulent Challenged Representations and Material Omissions:

- f. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have.”

1 g. Section 1770(a)(7) by representing that the Products “are of a particular standard,
2 quality, or grade . . . [when] they are of another.”

3 h. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as
4 advertised.”

5 115. **Knowledge.** Defendant’s uniform and material representations and omission
6 regarding the Products were likely to deceive, and Defendant knew or should have known that its
7 representations and omissions were misleading.

8 116. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that
9 Defendant intentionally misled and withheld material information from consumers, including
10 Plaintiff, to increase the sale of the Products.

11 117. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the California
12 Subclass could not have reasonably avoided such injury. Plaintiff and members of the California
13 Subclass were unaware of the existence of the facts that Defendant suppressed and failed to disclose,
14 and Plaintiff and members of the California Subclass would not have purchased the Products and/or
15 would have purchased them on different terms had they known the truth.

16 118. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass suffered harm
17 as a result of Defendant’s violations of the CLRA because they relied on the Challenged
18 Representations in deciding to purchase the Products. The Challenged Representations were a
19 substantial factor. The Challenged Representation was material because a reasonable consumer
20 would consider it important in deciding whether to purchase the Products.

21 119. **Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California Civil Code,
22 section 1782, Plaintiff, more than thirty days prior to the filing of this complaint, on or about June
23 15, 2022, Plaintiff’s counsel, acting on behalf of all members of the Class, mailed a Demand Letter,
24 via U.S. certified mail, return receipt requested, addressed to Defendant The Brita Products
25 Company at its headquarters and principal place of business registered with the California Secretary
26 of State (1221 Broadway St., Oakland, CA 94612) and its registered agent for service of process
27 (CT Corp. System, 330 N. Brand Blvd., Suite 700, Glendale, CA 91203), which were delivered to
28 those addresses on or about June 21, 2022 and June 23, 2022, respectively. *See Exhibit 6* (Pre-lit
Demand Letter).

1 120. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct in
2 violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the amount
3 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have
4 suffered and continue to suffer economic losses and other damages including, but not limited to,
5 the amounts paid for the Products, and any interest that would have accrued on those monies, in an
6 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of this Act
7 in the form of damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff
8 and the California Subclass for said monies.

9 121. **Injunction.** Given that Defendant's conduct violated California Civil Code section
10 1780, Plaintiff and members of the California Subclass are entitled to seek, and do hereby seek,
11 injunctive relief to put an end to Defendant's violations of the CLRA and to dispel the public
12 misperception generated, facilitated, and fostered by Defendant's false advertising campaign.
13 Plaintiff has no adequate remedy at law. Without equitable relief, Defendant's unfair and deceptive
14 practices will continue to harm Plaintiff and the California Subclass. Accordingly, Plaintiff seeks
15 an injunction to enjoin Defendant from continuing to employ the unlawful methods, acts, and
16 practices alleged herein pursuant to section 1780(a)(2), and otherwise require Defendant to take
17 corrective action necessary to dispel the public misperception engendered, fostered, and facilitated
18 through Defendant's deceptive labeling of the Products with the Challenged Representations.

19 122. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct described
20 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
21 damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the
22 intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving.
23 Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant
24 was, at all times, aware of the probable dangerous consequences of its conduct and deliberately
25 failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive
26 as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people
27 would look down upon it and/or otherwise would despise such corporate misconduct. Said
28 misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of

1 their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally
2 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers.
3 The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,
4 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.
5 Accordingly, Plaintiff seeks an award of punitive damages against Defendant.

6 **COUNT FOUR**

7 **Breach of Warranty**

8 ***(On Behalf of the Nationwide Class and California Subclass)***

9 123. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
10 allegations contained in this complaint, as though fully set forth herein.

11 124. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and
12 on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products
13 within the applicable statute of limitations.

14 125. **Express Warranty.** By advertising and selling the Products at issue, Defendant made
15 promises and affirmations of fact on the Products' packaging and labeling, and through its
16 marketing and advertising, as described herein. This labeling and advertising constitute express
17 warranties and became part of the basis of the bargain between Plaintiff and members of the Class
18 and Defendant. Defendant purports, through the Products' labeling and advertising, to create
19 express warranties that the Products, among other things, conform to the Challenged
20 Representations.

21 126. **Implied Warranty of Merchantability.** By advertising and selling the Products at
22 issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products
23 are merchantable and conform to the promises or affirmations of fact made on the Products'
24 packaging and labeling, and through its marketing and advertising, as described herein. This
25 labeling and advertising, combined with the implied warranty of merchantability, constitute
26 warranties that became part of the basis of the bargain between Plaintiff and members of the Class
27 and Defendant—to wit, that the Products, among other things, conform to the Challenged
28 Representations.

1 127. **Breach of Warranty.** Contrary to Defendant's warranties, the Products do not
2 conform to the Challenged Representations and, therefore, Defendant breached its warranties about
3 the Products and their qualities.

4 128. **Causation/Remedies.** As a direct and proximate result of Defendant's breach of
5 warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they
6 paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to
7 suffer economic losses and other damages including, but not limited to, the amounts paid for the
8 Products, and any interest that would have accrued on those monies, in an amount to be proven at
9 trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of damages,
10 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said
11 monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future
12 harm that will result.

13 129. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action
14 for breach of warranty on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and
15 unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct
16 warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious
17 as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they
18 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff
19 and consumers as Defendant was aware of the probable dangerous consequences of its conduct and
20 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is
21 oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that
22 reasonable people would look down upon it and/or otherwise would despise such misconduct. Said
23 misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of
24 their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally
25 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers.
26 The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,
27 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.
28

COUNT FIVE

Unjust Enrichment/Restitution

(On Behalf of the Nationwide Class and California Subclass)

130. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

131. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (the Class) who purchased the Products within the applicable statute of limitations.

132. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

133. **Defendant's Knowledge of Conferred Benefit.** Defendant had knowledge of such benefit and Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

134. **Defendant's Unjust Receipt Through Deception.** Defendant's knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent, misleading, and deceptive representations and omissions.

135. **Causation/Damages.** As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

136. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for unjust enrichment on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and

unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendant was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendant.

VIII. PRAYER FOR RELIEF

137. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Defendant as follows:

- a. **Certification:** For an order certifying this action as a class action, appointing Plaintiff as the Class Representative, and appointing Plaintiff's Counsel as Class Counsel;
- b. **Declaratory Relief:** For an order declaring that Defendant's conduct violates the statutes and laws referenced herein consistent with applicable law and pursuant to only those causes of action so permitted;
- c. **Injunction:** For an order requiring Defendant to change its business practices to prevent or mitigate the risk of the consumer deception and violations of law outlined herein. This includes, for example, orders that Defendant immediately cease and desist from selling the unlawful Products in violation of law; that enjoin Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; that require Defendant to engage in an affirmative advertising campaign to dispel the public misperception of the Products resulting from Defendant's unlawful conduct; and/or that require Defendant to take all further and just corrective action, consistent with applicable law and pursuant to only those causes of action so permitted;
- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with applicable law and pursuant to only those causes of

1 action so permitted;

- 2 e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory
3 penalties, and/or monetary fines, consistent with applicable law and pursuant to only
4 those causes of action so permitted;
- 5 f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs, consistent
6 with applicable law and pursuant to only those causes of action so permitted;
- 7 g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-
8 judgment interest, consistent with applicable law and pursuant to only those causes of
9 action so permitted; and
- 10 h. **All Just & Proper Relief:** For such other and further relief as the Court deems just
11 and proper.

12 Dated: August 16, 2023

Respectfully submitted,

13 **CLARKSON LAW FIRM, P.C.**

14 By:

15 /s/ Katherine A. Bruce

16 RYAN J. CLARKSON

17 KATHERINE A. BRUCE

18 KELSEY J. ELLING

19 OLIVIA M. TREISTER

20 *Attorneys for Plaintiff*

IX. **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

Dated: August 16, 2023

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

By:

/s/ Katherine A. Bruce

RYAN J. CLARKSON

KATHERINE A. BRUCE

KELSEY J. ELLING

OLIVIA M. TREISTER

Attorneys for Plaintiff