

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

MARK J. PATANE, JULIE HARDING,	:	CIVIL ACTION NO. 17-cv-01381(JAM)
HEATHER HARRIGAN, STEPHEN S.	:	
SHAPIRO, CATHERINE PORTER, ERICA	:	ECF CASE
RUSSELL, TINA MORETTI, BRIDGET	:	
KOPET, JENNIFER S. COLE, BENJAMIN	:	<u>CLASS ACTION</u>
A. FLETCHER, DIANE BOGDAN and	:	
PARESHKUMAR BRAHMBHATT,	:	
Individually and on Behalf of All Others	:	ALL CASES
Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	Oral Argument Requested
v.	:	
	:	
NESTLE WATERS NORTH AMERICA,	:	
INC.,	:	
	:	June 22, 2021
Defendant.	:	

DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56, Defendant BlueTriton Brands, Inc. (“BlueTriton”), formerly known as Nestlé Waters North America Inc., hereby moves for the entry of partial summary judgment in favor of BlueTriton with respect to certain claims in the Consolidated Amended Class Action Complaint (“Complaint”) based upon the state statutes of repose to which they are subject. ECF No. 160.

Plaintiffs’ Complaint alleges claims of common-law fraud, breach of contract, and consumer protection violations and unfair and deceptive trade practices under the statutes of seven states, asserting BlueTriton misbrands Poland Spring® bottled water (“Poland Spring®”) as “spring water” when, according to plaintiffs, it is not spring water compliant with the United States Food and Drug Administration’s spring water standard of identity, 21 C.F.R. §

165.110(a)(2)(vi). Plaintiffs seek to represent a class and state sub-classes of purchasers of Poland Spring® bottled water products in eight northeastern states who “purchased Poland Spring Water for consumptive purposes after November 5, 2003.” ECF No. 160 ¶ 820. Plaintiffs admit in their Complaint that all of their claims are subject to “all applicable statutes of limitations.” *Id.* ¶ 812.

BlueTriton is entitled to partial summary judgment against certain of Plaintiffs’ claims as a matter of law, as follows:

- Plaintiffs’ claims for common-law fraud (Count I) and statutory consumer protection and unfair trade practice act violations (Counts III, IV, V, VI, VII, X, XI, and XII) are subject to three-year limitations periods and thus are time-barred to the extent they seek relief based on purchases of Poland Spring® bottled water products made more than three years prior to the August 15, 2017 filing of their initial complaint in this action (*i.e.*, August 15, 2014).
- Plaintiffs’ breach of contract claims (Count II) are subject to a four-year limitations period and are time-barred to the extent they seek relief based on purchases of Poland Spring® bottled water products made more than four years prior to the August 15, 2017 filing of their initial complaint in this action (*i.e.*, August 15, 2013).

Plaintiffs cannot meet their summary judgment burden of establishing that these limitations periods “have been tolled” based on theories of fraudulent concealment, estoppel, and the discovery rule pled in their Complaint. *Id.*; *see id.* ¶¶ 809-816. As a matter of law, none of plaintiffs’ causes of action is susceptible to any of these tolling doctrines. Even if one or more of those tolling doctrines could somehow apply to plaintiffs’ claims, plaintiffs have no facts or evidence capable of establishing the essential elements necessary to prove the applicability any of those doctrines to any of their claims as a matter of law.

WHEREFORE, as set forth in BlueTriton's accompanying memorandum of law, Statement of Undisputed Material Facts, and the supporting Declaration of Alexander S. Firsichbaum filed herewith and the supporting Declaration of John V. Reilly III previously filed (ECF No. 53-2), Defendant BlueTriton respectfully requests that this Court enter partial summary judgment in its favor with respect to Counts I, III, IV, V, VI, VII, X, XI, and XII of plaintiffs' Complaint to the extent that they seek relief based on purchases of Poland Spring® bottled water products occurring prior to August 15, 2014, and with respect to Count II of plaintiffs' Complaint to the extent that it seeks relief based on purchases of Poland Spring® bottled water products occurring prior to August 15, 2013.

Respectfully submitted,

DEFENDANT, BLUETRITON BRANDS, INC.,
FORMERLY KNOWN AS
NESTLÉ WATERS NORTH AMERICA INC.

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