

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 22 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

CONNIE CHONG, individually and on  
behalf of all similarly situated,

Appellant,

v.

NESTLÉ WATER NORTH AMERICA,  
INC.; DOES 1 through 10,

Appellees.

No. 20-56373

D.C. No.

2:19-CV-10901-DMG-KS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dolly M. Gee, District Judge, Presiding

Submitted October 20, 2021\*\*  
Pasadena, California

Before: CALLAHAN and FORREST, Circuit Judges, and AMON,\*\*\* District  
Judge.

Connie Chong, individually and on behalf of all others similarly situated,

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Carol Bagley Amon, United States District Judge for  
the Eastern District of New York, sitting by designation.

appeals the district court's order dismissing her statutory claims, which alleged that Nestlé Waters North America ("Nestlé") violated various California consumer protection laws in connection with its labeling of Arrowhead Brand water, for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The district court also dismissed Chong's purported standalone claim of unjust enrichment. We have jurisdiction under 28 U.S.C. § 1291. Reviewing the district court's dismissal de novo, *Curtis v. Irwin Indus., Inc.*, 913 F.3d 1146, 1151 (9th Cir. 2019), we affirm.

1. Chong argues that the district court erred in dismissing her claims under California's Unfair Competition Law ("UCL"), False and Misleading Advertising Law ("FAL"), and the California Legal Remedies Act ("CLRA") by finding that a "reasonable consumer" would not be misled by the Arrowhead labels. Under the "reasonable consumer" standard, plaintiffs must demonstrate that "members of the public are likely to be deceived," which "requires more than a mere possibility that [a] label 'might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016) (first quoting *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008); and then quoting *Lavie v. Procter & Gamble Co.*, 129 Cal. Rptr. 2d 486, 495 (Ct. App. 2003)).

In sum, Chong argues that the district court did not properly credit her

allegation that she believed the mountain printed on the front of the Arrowhead label to be “Arrowhead Mountain,” and on the basis of that belief, determined that “NESTLÉ Product was [sourced exclusively] from the springs in the arrowhead mountain.” We reject Chong’s argument. The district court properly accepted as true that Chong believed that the mountain on the front of the labels was “Arrowhead Mountain,” but upon reviewing the labels submitted for judicial notice by Nestlé, determined that there was not “any indication that the image of the mountain and lake refer to any specific mountain or lake, but rather to the true statement that Arrowhead Water is comprised entirely of mountain spring water.” The court was correct to find that this case “presents the rare case where this Court may conclude on the pleadings that no reasonable consumer would be misled by any of the product labels at issue in this suit.”

**2.** Chong also argued that Nestlé violated the UCL by virtue of “bare technical violation[s]” of state and federal law, which can serve as predicate offenses under the UCL’s “unlawful” conduct prong. This, too, is unpersuasive. The district court properly found that Chong had not sufficiently alleged any violations of state or federal law that could serve as predicate violations under the UCL “unlawful” conduct prong.

**3.** Finally, the district court was correct to dismiss Chong’s unjust enrichment claim. Even assuming she did not waive this claim, it fails on the

merits. Restitution under an unjust enrichment theory is only required if “it is unjust” for the benefiting party to retain that benefit. *Ghirardo v. Antonioli*, 924 P.2d 996, 1003 (Cal. 1996) (quoting Restatement of Restitution § 1 cmt. C (Am. L. Inst. 1937)). Chong has not alleged a violation of the UCL, FAL, or CLRA, and has not otherwise pointed to any reason why it would be “unjust” for Nestlé to retain any proceeds from the sale of Arrowhead Water. As a result, her unjust enrichment claim was properly dismissed.

**AFFIRMED.**

## United States Court of Appeals for the Ninth Circuit

Office of the Clerk  
95 Seventh Street  
San Francisco, CA 94103

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

#### Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

#### Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

#### (1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

#### B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 10. Bill of Costs**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>*

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**Case Name**

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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