

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil (Consumer Protection)

State of Minnesota, by its Attorney
General, Keith Ellison,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

Reynolds Consumer Products, Inc.,
Reynolds Consumer Products, LLC,
& Walmart Inc.,

Defendants.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Defendants, alleges as follows:

INTRODUCTION

1. Plastic waste is an increasingly dire international problem. Over 90% of plastic waste is not recycled.¹ Recycling offers substantial benefits to Minnesotans by reducing the amount of waste that gets landfilled or incinerated. Landfills pose threats to groundwater, among other adjacent natural resources, and incinerators pollute our air. Recycling conserves natural resources, saves energy, increases economic security by tapping a domestic source of materials, and reduces greenhouse gas emissions.

2. As consumers have become increasingly aware of the problems associated with pollution and plastic waste, many consumers actively seek to purchase products that are either compostable or recyclable to divert such waste from waterways, oceans, their communities, landfills, and incinerators.

3. Consumers must determine which materials can and cannot be recycled, relying heavily on industry representations, and Minnesotans have demonstrated an eagerness to participate in recycling programs while choosing to purchase recyclable goods over single-use goods.

PARTIES

4. Keith Ellison, the Attorney General of the State of Minnesota, is authorized to bring this action and seek the relief requested pursuant to his authority in Minnesota

¹ United States Environmental Protection Agency, *Facts and Figures About Materials, Waste and Recycling; Plastics: Material-Specific Data*, <https://perma.cc/Q8RU-A4J7> (accessed on November 14, 2022).

Statutes Chapter 8 to sue for injunctive relief, equitable relief including restitution and disgorgement, and civil penalties, together with costs and disbursements including costs of investigation and reasonable attorney fees, for violations of the law of this state respecting unfair, discriminatory and other unlawful practices in business, commerce, or trade. The Attorney General also has common law authority, including *parens patriae* authority, to bring this action to enforce Minnesota's laws, to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—violations of Minnesota's laws.

5. Defendant Reynolds Consumer Products, Inc. is a publicly traded corporation organized and existing under the laws of the state of Delaware, with its principal place of business located in Lake Forest, Illinois. It is the parent company of Defendant Reynolds Consumer Products, LLC.

6. Defendant Reynolds Consumer Products, LLC is a company organized and existing under the laws of the state of Delaware, with its principal place of business located in Lake Forest, Illinois. It is a wholly-owned subsidiary of Reynolds Consumer Products, Inc. and owns the “Hefty” trademark.

7. Defendant Walmart, Inc. (“Walmart”) is a publicly traded corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Bentonville, Arkansas. Walmart wholly owns the Great Value trademark.

8. Whenever reference is made in this complaint to any act or practice of the Defendants Reynolds Consumer Products, Inc., Reynolds Consumer Products, LLC (together, “Reynolds”), or Walmart (collectively, “Defendants”), such allegation shall be

deemed to mean that the principals, officers, directors, employees, consultants, agents, and representatives of said Defendants did, or authorized, such act or practice, on behalf of said Defendants while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action and to grant the relief requested pursuant to Minnesota Statutes sections 484.01, 325F.67, 325F.69 and 325D.44, and 325E.41.

10. This Court has personal jurisdiction over Defendants pursuant to the Minnesota long-arm statute, Minnesota Statute section 543.19, because Defendants transact business and cause harm in Minnesota, and the causes of action arise out of and relate to Defendants' business here.

11. Venue lies in this Court pursuant to Minnesota Statute section 542.09 because at least a part of this action arose in Ramsey County.

FACTS

12. At all times relevant to this Complaint, Defendants were engaged in trade or commerce in the State of Minnesota by selling consumer products, including Hefty "Recycling" trash bags and Great Value "Recycling" drawstring bags, to Minnesota consumers through online commerce, big box retailers, and chain grocery stores located in Minnesota.

13. Reynolds sell Hefty “Recycling” trash bags in 13- and 30-gallon sizes. Both sizes are sold in packaging depicted below. The illustration depicts the front of a typical box of Hefty “Recycling” bags:²



14. Reynolds place the prominent representation “RECYCLING” on the front label of the Hefty “Recycling” trash bags with a green background and white font. Next to the representation, Reynolds include images of the Hefty “Recycling” trash bags filled with recyclable waste.

15. The back of the package states: “HEFTY RECYCLING BAGS ARE PERFECT FOR ALL YOUR RECYCLING NEEDS”:³

² Photo retrieved from Reynolds’ website: <https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags> on October 6, 2022.

³ Photo retrieved from Amazon, <https://www.amazon.com/Hefty-Trash-Bags-Recycling-Bin/dp/B01MXEU7YM?th=1>, on October 11, 2022.



16. The back label also states: “DESIGNED TO HANDLE ALL TYPES OF RECYCLABLES” and “TRANSPARENT FOR QUICK SORTING AND CURBSIDE IDENTIFICATION.” A graphic of a blue recycling truck is included, with the “chasing arrows” recycling symbol prominently displayed on its side.

17. Reynolds’ website provided additional representations about the suitability of the Hefty “Recycling” trash bags for recycling, stating that they “[r]educ[e] your environmental impact” and are “designed to handle your heaviest recycling jobs.” Reynolds add, “[t]hese transparent bags make it easy to sort your recyclables and avoid the landfill.”⁴

⁴ <https://perma.cc/XSD8-QNMC>, accessed October 10, 2022. Recently, Reynolds updated their website to include in their description that “This bag is not recyclable. This bag is designed for use in participating program areas only - contact your local municipality or recycling center to confirm acceptance.” Reynolds did not include this qualification as recently as May 16, 2022. *Compare id. with* <https://web.archive.org/web/20210922055825/https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags>, cached archive, available at <https://web.archive.org/web/20210922055825/https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags>.

18. Reynolds sold the Hefty “Recycling” trash bags on their website with images demonstrating how to use the bags:⁵



[Products](#) » [Trash Bags](#) » Clear and Blue Recycling Bags

[Products](#) » [Trash Bags](#) » Clear and Blue Recycling Bags

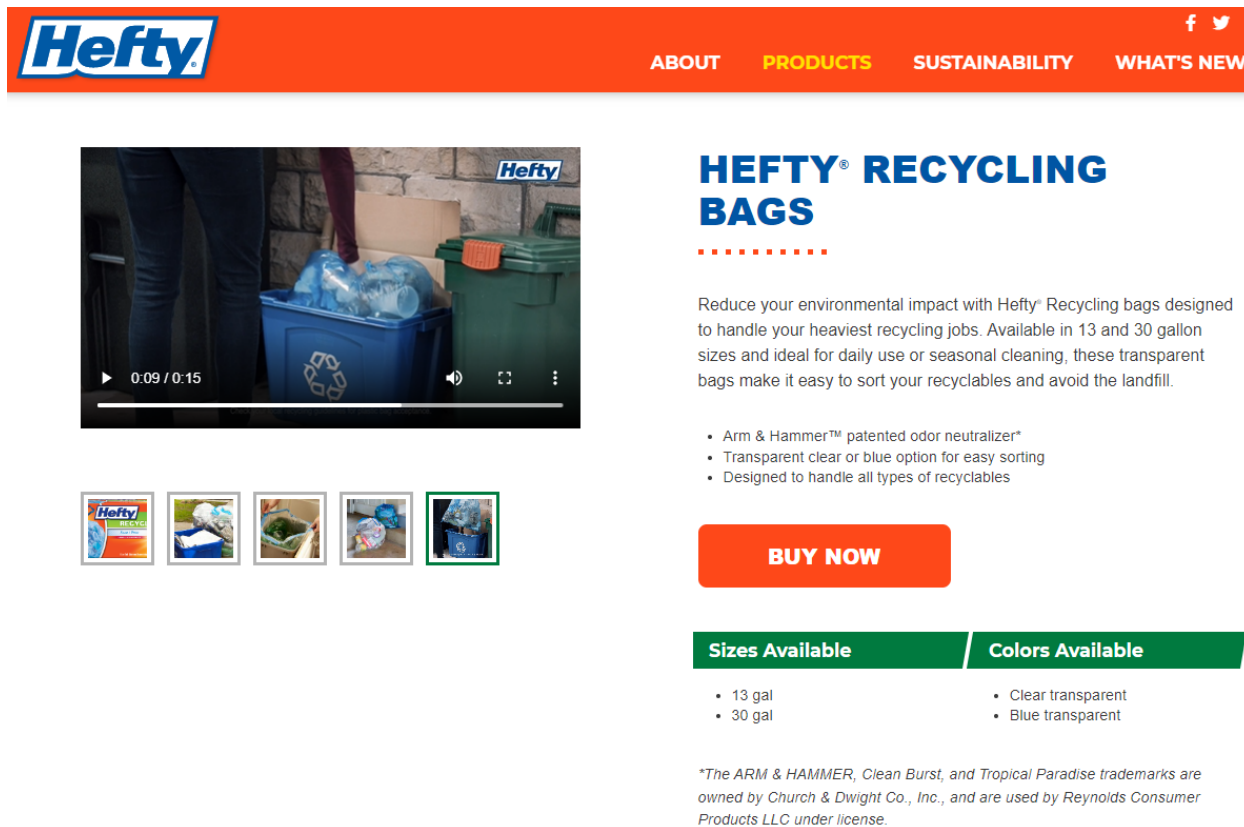


[Products](#) » [Trash Bags](#) » Clear and Blue Recycling Bags



⁵ <https://perma.cc/XSD8-QNMC>, accessed on October 10, 2022.

19. Reynolds also sold the Hefty “Recycling” trash bags to Minnesota consumers along with a video advertisement showing that the bags should be put in the recycling bin with other recyclable waste:⁶



Hefty ABOUT PRODUCTS SUSTAINABILITY WHAT'S NEW

HEFTY® RECYCLING BAGS

Reduce your environmental impact with Hefty® Recycling bags designed to handle your heaviest recycling jobs. Available in 13 and 30 gallon sizes and ideal for daily use or seasonal cleaning, these transparent bags make it easy to sort your recyclables and avoid the landfill.

- Arm & Hammer™ patented odor neutralizer*
- Transparent clear or blue option for easy sorting
- Designed to handle all types of recyclables

BUY NOW

Sizes Available	Colors Available
<ul style="list-style-type: none">• 13 gal• 30 gal	<ul style="list-style-type: none">• Clear transparent• Blue transparent

*The ARM & HAMMER, Clean Burst, and Tropical Paradise trademarks are owned by Church & Dwight Co., Inc., and are used by Reynolds Consumer Products LLC under license.

20. On retailer websites, like Target, a person identified as a Reynolds’ “Brand Expert” responded to questions about the recyclability of their products in the affirmative:⁷

⁶ Video available at <https://web.archive.org/web/20210922055825/https://www.hefty.com/products/trash-bags/clear-and-blue-recycling-bags> (click on the fifth image icon to access the video; this video has since been removed from Reynolds’ website).

⁷ This screenshot was taken on October 6, 2022, of Target’s website, <https://perma.cc/R5ZQ-HRMA>, but the response has since been removed. For readability, the question asks, “Are the bags themselves recyclable?” and someone who identified themselves as a Hefty Consumer Relations’ Brand Expert responds, “This product can be recycled. Since every recycling center operates

Hefty Recycling Blue Tall Kitchen Drawstring Trash Bags - 13 Gallon - 60ct
★★★★★ 88 | [2 Questions](#)

\$10.49

at St Paul Midway 

Add to cart

About this item

Details

Shipping & Returns

Q&A (2)

Q: Are the bags themselves recyclable?

Ashley - 2 years ago

A: This product can be recycled. Since every recycling center operates independently, it is best to contact your local facility to see if they accept plastic bags. Some will accept them, and some will not. It depends on their business model and legislation.

Hefty Consumer Relations - 2 years ago [Helpful \(5\)](#) [Not helpful \(0\)](#) [Report](#)

Brand expert

Answer it

21. On online purchasing platforms, like Amazon, Reynolds advertise the product as simplifying the recycling process for consumers:⁸

independently, it is best to contact your local facility to see if they accept plastic bags. Some will accept them, and some will not. It depends on their business model and legislation.”

⁸ This screenshot was taken on October 11, 2022, of Amazon’s website, <https://www.amazon.com/Hefty-Trash-Bags-Recycling-Bin/dp/B01MXEU7YM?th=1>.

13 gallon bags designed at 0.7 mil for lighter recycling loads.

Reliable, tie-able drawstring.

See it, don't smell it with patented Arm & Hammer Odor Control.



Be a Part of a Global Solution



Plastic: Are your plastic items piling up? You can reuse and/or recycle them. Put plastic in its place.



Paper: Need scrap paper? Reuse perfectly good-to-go-again papers and buy paper that's made from recycled sources. Recycle yours weekly.



Glass: Did you know glass is extremely recyclable and reusable? Say 'see you again soon' to glass jars and bottles.

22. Reynolds hold themselves out to Minnesota consumers and to the public as leaders in the recycling movement and as educators of the recycling process. Their website boasts that “we are a leader in implementing the How2Recycle Label, which . . . clearly communicates recycling instructions to the public.” Further, Reynolds claim to provide “[s]tandardized instructions . . . for both the product itself and recycling instructions for packaging on all Hefty® brand products.”⁹

⁹ This screenshot was taken on October 25, 2022, of Defendants Reynolds’ website, <https://perma.cc/M6HK-J8CP>.

CLEANER COMMUNITIES

The Hefty® brand is proud that our waste bags directly aid litter control and clean-up efforts that keep our communities cleaner.

Sustainable Choices

The Hefty® brand offers several sustainable product options:

- [Hefty Renew™ trash bags](#) made from 20% recycled plastic
- [Hefty Compostables™ trash bags](#) for food and yard waste collection
- [Hefty ECOSAVE™ Tableware](#) made from plant-based materials
- [Hefty Compostable Printed Paper Plates](#) made from plant-based materials

We work with retailers to carry the assortment that aligns to local recycling and composting practices.

Environmental Regulations and Efficiencies

We adhere to all air, water, and power regulations in the communities we operate. In addition, we continuously work to reduce our consumption of raw materials and energy in producing our products, including reducing or recycling scrap generated during our production processes. We seek to ship full truckloads of product from our closest production facility to reduce fuel usage and carbon emissions. We offer recycling in our facilities as available in each community.

How2Recycle™ Label

To encourage recycling, we are a leader in implementing the How2Recycle™ Label, which is a voluntary standardized labeling system that clearly communicates recycling instructions to the public. Standardized instructions are provided for both the product itself and recycling instructions for packaging on all Hefty® brand products.

Sustainable Packaging

We are proud members of the Sustainable Packaging Coalition® (SPC), an industry working group dedicated to a more robust environmental vision for packaging.

[VISIT SPC](#)

23. Special circumstances exist that trigger a duty on the part of Reynolds to disclose material facts to its customers about the recyclability of their products. Specifically, Reynolds have a duty to disclose the facts that the bags cannot be recycled at any Material Recovery Facility (MRF) in Minnesota, that the otherwise recyclable items placed into the bags do not get recycled, and that the bags themselves are not recyclable anywhere (at any MRF in the country) when contaminated by waste residue.

24. Moreover, the nature and quality of Reynolds' representations are so incomplete that by failing to disclose the information identified in the preceding paragraph, Reynolds did not say enough to prevent the representations made to Minnesota consumers from being deceptive and misleading. These representations include, among other things: (a) the bags are perfect for consumers' recycling needs; (b) the plastic bags are recyclable;

and (c) that the bags make it easy for consumers to ensure their recyclables avoid the landfill.

25. Walmart sells Great Value “Recycling” drawstring bags in 13-, 30-, and 33- gallon sizes. All sizes are sold in the packaging depicted below. The illustration depicts the front of two typical boxes of Great Value “Recycling” bags:¹⁰



26. Walmart places the prominent representation “Recycling” on the front label of the Great Value “Recycling” drawstring bags. Near the representation, Walmart includes images of the Great Value “Recycling” drawstring bags filled with recyclable waste.

27. For the 33-gallon bags, Walmart provides details about its products on their website, advertising that one can “[t]ake your recycling out with ease with these Great Value 33-Gallon Recycling Bags. These clear bags are perfect for your recycling needs. . .

¹⁰ These screenshots were taken on November 14, 2022, from Defendant Walmart’s website, <https://www.walmart.com/ip/Great-Value-Clear-Recycling-Bags-33-Gallon-45-Count/886411756> and <https://www.walmart.com/ip/Great-Value-Clear-30-Gallon-Drawstring-Large-Recycling-Bags-Unscented-20-Count/395910681>.

. These bags feature a convenient drawstring closure that makes them easy to lift, carry and toss away.”

28. In its product description, Walmart instructs consumers to “[s]imply pull up on the drawstring to close the bag and then knot the drawstring for extra security.”

29. Walmart advertises that “[t]hese clear bags *are even good for municipal programs*. Recycling can be made easy with Great Value 33-Gallon Recycling Bags.”¹¹ (Emphasis added.) Further down on its website, Walmart states again that the bags are “Good for using in municipal programs.”

30. For the 30-gallon bags, Walmart advertises, “Recycling at home is made easy when you use our Great Value Clear 30-Gallon Drawstring Large Recycling Bags. Our recycling bags are a convenient way for you to collect and sort your recyclables all in one go before taking them out to the curb Simplify your recycling routine with a little help from our Great Value Clear 30-Gallon Drawstring Large Recycling Bags.”¹²

¹¹ Statements made on Defendant Walmart’s website, <https://www.walmart.com/ip/Great-Value-Clear-Recycling-Bags-33-Gallon-45-Count/886411756>, last accessed on May 2, 2023.

¹² Statements made on Defendant Walmart’s website, <https://www.walmart.com/ip/Great-Value-Clear-30-Gallon-Drawstring-Large-Recycling-Bags-Unscented-20-Count/395910681>, last access on May 2, 2022.

Product details

Recycling at home is made easy when you use our Great Value Clear 30-Gallon Drawstring Large Recycling Bags. Our recycling bags are a convenient way for you to collect and sort your recyclables all in one go before taking them out to the curb or your local recycling center. Once your 30-gallon bag is full, you can use the drawstrings to create easy-to-hold handles after you've tied the bag closed, so you can have a sanitary way to carry your collected contents away. Plus, the bags are clear, making it easy to identify what you've stored inside. Simplify your recycling routine with a little help from our Great Value Clear 30-Gallon Drawstring Large Recycling Bags.

Great Value products provide families with affordable high-quality grocery and household consumable options. With our wide range of product categories spanning grocery and household consumables, we offer you a variety of products for your family's needs. Our products are conveniently available online and in Walmart stores nationwide, allowing you to stock up and save money at the same time.

Great Value Clear 30-Gallon Drawstring Large Recycling Bags, Unscented, 20 Count:

- Pack of 20 unscented Great Value Clear Recycling Bags with drawstrings
- Ideal for collecting recyclable materials and simplifying sorting for municipal programs
- Drawstring closures allow for effortless disposal
- Bags come in convenient leaf-roll packaging for easy, one-bag dispensing
- Large 30-gallon capacity (113.5 L)
- Dimensions: 30" x 33"

31. Again, in the product details, Walmart states that these bags are “[i]deal for collecting recyclable materials and simplifying sorting for municipal programs.”

32. Special circumstances exist that trigger a duty on the part of Walmart to disclose material facts to its customers about the recyclability of its products. Specifically, Walmart has a duty to disclose the facts that the bags cannot be recycled at any MRF in Minnesota, that the otherwise recyclable items placed into the bags do not get recycled, and that the bags themselves are not recyclable anywhere (at any MRF in the country) when contaminated by waste residue.

33. Moreover, the nature and quality of Walmart’s representations are so incomplete that by failing to disclose the information identified in the preceding paragraph, Walmart did not say enough to prevent the representations made to Minnesota consumers from being deceptive and misleading. These representations include, among other things: (a) the bags are perfect for consumers’ recycling needs; (b) the plastic bags are recyclable;

(c) the bags are good for municipal recycling programs; and (d) the bags are deal for collecting recyclable materials and simplifying sorting for municipal programs.

34. Despite Defendants' representations, neither the Hefty "Recycling" trash bags nor the Walmart's Great Value "Recycling" drawstring bags are recyclable at Minnesota MRFs and are not suitable for the disposal of recyclable products at Minnesota MRFs.¹³

35. Defendants' product markings and marketing collateral all create an intentional misapprehension by consumers that the bags and their contents can be placed in the recycling stream. Nowhere in any of these customer-facing statements does it say the bag itself should not be added to the recycling stream, and no instructions tell consumers to empty the bags of their contents and dispose of the bags in ordinary trash receptacles.

36. These "Recycling" bags are made from low-density polyethylene and are not recyclable at Minnesota MRFs.

37. When Defendants' "Recycling" bags are delivered by waste haulers to Minnesota MRFs, the bags *and all of the otherwise recyclable items contained within them* are diverted to landfills or incinerators. The costs to MRFs and the risks to MRF employees associated with manually tearing open the bags and sorting through their contents is too great to warrant attempting to recycle the otherwise recyclable materials within the bags.

¹³ There are "blue bag" collection programs, but upon diligent investigation, the AGO could not identify any operating in the State of Minnesota. Even if a blue-bag collection program does exist somewhere in the state, it would have limited geographic reach and the misrepresentations cited in this Complaint are not specific to such programs.

The risks stem from the unknown contents within the bags such as toxic liquids, broken glass, needles, sharp metal objects, and other items or chemicals that can puncture employees' gloves or splash on employees' bodies and cause injury.

38. The otherwise recyclable items (like cardboard, glass, aluminum, etc.) placed into Defendants' "Recycling" bags by Minnesota consumers who are trying to recycle those items ultimately end up in landfills or incinerators and are not recycled.

39. Defendants' "Recycling" bags themselves are also not recyclable once contaminated by any waste or residue whatsoever. While the bags themselves would otherwise be recyclable if uncontaminated and delivered in pristine condition to a designated plastic-bag-recycling collection site or recovery center, the act of filling the bag with other recyclable materials makes the bags themselves contaminated and unrecyclable.

40. There are no MRFs within the State of Minnesota that can process or recycle Defendants' "Recycling" bags in any condition.

41. If the "Recycling" bags are unintentionally processed by an MRF, they can entangle and jam the machinery used to separate and categorize recyclables, cause friction-induced fires, and harm MRF employees who must remove the bags or crawl into the machines to untangle the equipment, thereby increasing recycling costs and delaying the process. Every time a plastic "Recycling" bag enters the recycling processing systems, MRF employees risk injury from fires and from having to remove the bags or crawl into the machinery to fix the equipment.

42. MRFs are required to shut down their facilities two to three times a day to untangle these types of bags from their sorting and categorizing machinery. MRFs bear the

costs of disposing of the bags, transporting them and the materials they contain to a waste collection site, and fixing the sorting machinery. MRFs and their employees also bear the risk of injury whenever personnel need to remove the bags or extinguish the friction-caused fires from entangled bags. MRFs further bear the costs arising from the damage to their equipment from the bags and from their associated fires.

43. If the bags are not thrown away or entangled in the machinery and make it through the sorting process, they end up devaluing the rest of the recycled materials by diluting them with unrecyclable, low-density polyethylene plastic and increasing costs for down-stream processors and distributors of recycled materials who then must filter out the bags from other recyclables.

44. At all times relevant to this Complaint, Defendants have sold and continue to sell Hefty and Great Value “Recycling” bags in Minnesota.

CLAIMS FOR RELIEF

COUNT I: PREVENTION OF CONSUMER FRAUD ACT VIOLATION

45. Minnesota realleges and incorporates by reference paragraphs 1-44 of this Complaint.

46. Minnesota Statutes, section 325F.69, subdivision 1, provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

47. Defendants are “persons” within the meaning of Minn. Stat. § 325F.69.

48. Plastic “Recycling” trash bags are “merchandise” within the meaning of Minn. Stat. § 325F.69.

49. Defendants repeatedly violated Minnesota Statutes, section 325F.69, subd. 1, by using fraud, false pretense, false promise, misrepresentation, misleading statements, or deceptive practices in connection with the sale of their “Recycling” trash bags in Minnesota. Those practices include, but are not limited to:

- a. Misrepresenting and misleading consumers to believe that their products are recyclable;
- b. Misrepresenting and misleading consumers to believe that the recyclable content deposited in the bags will be recycled; and
- c. Misrepresenting and misleading consumers to believe that the bags make it easy for municipal recycling programs to sort the recyclables placed inside the bags.

50. Defendants also repeatedly violated Minnesota Statutes, section 325F.69, subd. 1, by omitting material information in the course of marketing and selling their products in Minnesota such that their failures to sufficiently disclose such material information constituted deceptive and fraudulent practices. These failures to disclose and material omissions include, but are not limited to, the following information:

- a. The bags cannot be recycled at any MRF in Minnesota;
- b. The otherwise recyclable items placed into the bags will not be recycled;
- c. The bags themselves are not recyclable anywhere (at any MRF in the country) when contaminated by waste residue; and

d. The bags impose substantial challenges on MRFs and municipal recycling programs.

51. Defendants made these fraudulent, false, and misleading statements and omissions with the intent that others rely on them in connection with the sale of their products.

52. There is a causal nexus between Defendants' deceptive and fraudulent conduct, representations, and material omissions described in this Complaint and the harm incurred by the State and its residents.

53. Given the representations they made, their special knowledge, and the circumstances described in this Complaint, Defendants had a duty to disclose material facts to potential customers in connection with their marketing and offering of goods and services to Minnesota consumers. By not doing so, Defendants failed to disclose material information in violation of Minnesota Statutes section 325F.69, subdivision 1.

54. Defendants' conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes, section 325F.69.

COUNT II: DECEPTIVE TRADE PRACTICES ACT VIOLATION

55. Minnesota realleges and incorporates by reference paragraphs 1-44 of this Complaint.

56. Minnesota Statutes section 325D.44, subdivision 1, reads in pertinent part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

...

- (4) uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- (7) represents that goods or services are of a particular standard, quality, or grade . . . if they are of another;
- (9) advertises goods or services with intent not to sell them as advertised;
- (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

57. Defendants are “persons” within the meaning of this statute.

58. In the course of their business, vocation, or occupation, Defendants have repeatedly violated Minnesota Statutes section 325D.44, subd. 1, by engaging in the deceptive trade practices described in this Complaint. Defendants’ deceptive acts and practices have the tendency or capacity to deceive and/or mislead the State and its residents and therefore constitute multiple separate deceptive trade practices. These misrepresentations include, but are not limited to:

- a. Representing to Minnesota consumers that the bags are recyclable, which is deceptive, misrepresents an advertised characteristic or benefit, misrepresents that the bags are of a particular quality, indicates an intent to not sell the bags as advertised, and creates a likelihood of confusion or of misunderstanding in violation of Minnesota Statutes section 325D.44, subdivision 1(4), (5), (7), (9), and (13);
- b. Representing to Minnesota consumers that the recyclable content deposited in the bags will be recycled, which is deceptive, misrepresents an advertised characteristic or benefit, misrepresents that the bags are of

a particular quality, indicates an intent to not sell the bags as advertised, and creates a likelihood of confusion or of misunderstanding in violation of Minnesota Statutes section 325D.44, subdivision 1(4), (5), (7), (9), and (13); and

- c. Representing to Minnesota consumers that the bags make it easy for municipal recycling programs to sort the recyclables placed inside the bags, which is deceptive, misrepresents an advertised characteristic or benefit, misrepresents that the bags are of a particular quality, indicates an intent to not sell the bags as advertised, and creates a likelihood of confusion or of misunderstanding in violation of Minnesota Statutes section 325D.44, subdivision 1(4), (5), (7), (9), and (13).

59. Defendants engaged in conduct that created a likelihood of confusion or misunderstanding about their products by, among other things, deceiving consumers about the recyclability of their products.

60. Defendants also repeatedly violated Minnesota Statutes section 325D.44, subd. 1, by, among other things, omitting material information in the course of marketing and selling their products that caused a likelihood of confusion or misunderstanding by failing to sufficiently disclose that their products are not recyclable and that using their products to recycle other materials impedes the recycling of those materials and the entire recycling process. These failures to disclose and material omissions include, but are not limited to, the following information:

- a. The bags cannot be recycled at any MRF in Minnesota;

- b. The otherwise recyclable items placed into the bags will not be recycled;
- c. The bags themselves are not recyclable anywhere (at any MRF in the country) when contaminated by waste residue; and
- d. The bags impose substantial costs and challenges on municipal recycling programs and MRFs.

61. Given the representations they made, their special knowledge, and the circumstances described in this Complaint, Defendants had a duty to disclose material facts to potential customers in connection with their marketing and offering of goods and services to Minnesota consumers. By not doing so, Defendants failed to disclose material information in violation of Minnesota Statutes section 325F.69, subdivision 1.

62. There is a causal nexus between Defendants' deceptive and fraudulent conduct, representations, and material omissions described in this Complaint and the harm incurred by the State of Minnesota and its residents.

63. Defendants' conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 325D.44.

COUNT III: VIOLATION OF FALSE STATEMENT IN ADVERTISING ACT

64. Minnesota realleges and incorporates by reference paragraphs 1-44 of this Complaint.

65. The False Statement in Advertising Act (FSAA) provides:

Any person, firm, corporation, or association who, with intent to sell . . . , or with intent to increase the consumption [of any merchandise, securities, or service] . . . makes, publishes,

disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state . . . an advertisement of any sort regarding merchandise . . . or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

Minn. Stat. § 325F.67.

66. Plastic “Recycling” trash bags are “merchandise” within the meaning of Minnesota Statutes section 325F.67.

67. Defendants repeatedly violated Minnesota Statutes, section 325F.67 by making, publishing, disseminating, circulating, and/or placing before the public advertisements regarding their products containing material assertions, representations, and/or statements of facts which were untrue, deceptive, and or misleading.

68. Defendants made the aforementioned advertisements with the intent to increase sales of their products.

69. Defendants’ conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 325F.67.

COUNT IV: DECEPTIVE ENVIRONMENTAL MARKETING CLAIMS

70. Minnesota realleges and incorporates by reference paragraphs 1-44 of this Complaint.

71. Minnesota Statutes section 325E.41, subdivision 1(a), reads in pertinent part:

Environmental marketing claims made by a manufacturer, packager, wholesaler, or retailer for a product sold or offered for sale or distribution in this state, including those related to the product's packaging, must conform to the standards or be consistent with the examples contained in Code of Federal Regulations, title 16, part 260, "Guides for the Use of Environmental Marketing Claims" regarding general environmental benefits claims, claims that a product or package is degradable, compostable, recyclable, or contains recycled content, and claims relating to source reduction, refillability, or ozone safety.

72. Defendants are "manufacturer[s], packager[s], wholesaler[s], or retailer[s]" within the meaning of Minnesota Statutes section 325E.41, subdivision 1(a). Additionally, the plastic "Recycling" trash bags that Defendants manufacture, package, wholesale, and/or retail are "product[s]" within the meaning of this statute.

73. The Guides for the Use of Environmental Marketing Claims provide:

It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.

16 C.F.R. § 260.12(a).

Marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.

16 C.F.R. § 260.12(b).

An item that is made from recyclable material, but, because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable

16 C.F.R. § 260.12(d).

74. Defendants are “marketers” within the meaning of these regulations.

75. Defendants repeatedly violated Minnesota Statutes, section 325E.41 by failing to conform to the standards or be consistent with the examples contained in Code of Federal Regulations, title 16, part 260, “Guides for the Use of Environmental Marketing Claims” regarding general environmental benefits claims and claims that their products are recyclable.

76. Defendants misrepresented the recyclability of their products and failed to qualify their recyclable claims to the extent necessary to avoid deception and confusion.

77. Defendants’ conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 325E.41.

REQUEST FOR RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgment against Defendants as follows:

78. Determine that Defendants’ acts described in this Complaint constitute multiple separate violations of Minnesota Statutes sections 325D.44, 325F.67, 325F.69, and 325E.41;

79. Enjoin Defendants and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them from

engaging in conduct that violates Minnesota Statutes sections 325D.44, 325F.67, 325F.69, or 325E.41;

80. Order Defendants to fund a corrective public education campaign in Minnesota relating to the issue of recyclable materials, administered and controlled by an independent third party;

81. Award judgment against Defendants for maximum civil penalties pursuant to Minnesota Statutes section 8.31, subdivision 3 for each separate violation of Minnesota law;

82. Award judgment against Defendants for restitution pursuant to Minnesota Statutes section 8.31, Minnesota common law, the *parens patriae* doctrine, and the general equitable powers of this Court to remedy the great harm and injury to the State resulting from Defendants' unlawful conduct;

83. Order Defendants to disgorge all profits made as a result of their unlawful conduct;

84. Award Minnesota the costs of investigation and this action, attorneys' fees, expert consultant and expert witness fees, and all other costs and disbursements as authorized by Minnesota Statute section 8.31, subd. 3a; and

85. Grant such additional relief as the Court deems just and proper.

Dated: June 6, 2023,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Joseph T. Heegaard _____

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