

STATE OF MINNESOTA
IN COURT OF APPEALS

Corey Baker and Jamie Baker,

Plaintiffs/Appellants,

TRIAL COURT CASE NO. 62-CV-11-164

vs.

COURT OF APPEALS CASE NO. A11-997

Best Buy Stores L.P. and Chartis
WarrantyGuard, Inc.,

Defendants/Respondents.

BRIEF OF RESPONDENT CHARTIS WARRANTYGUARD, INC.

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STATEMENT OF LEGAL ISSUES

The District Court correctly interpreted the clear and unambiguous language of the parties' contract—the service plan—purchased by Appellants Corey and Jamie Baker (“Appellants”). The issues in this appeal are as follows:

(1) Whether the District Court erred as a matter of law when it concluded that Appellants failed to plead a cognizable breach of contract action where Respondents Best Buy Stores, L.P. (“Best Buy”) and Chartis WarrantyGuard, Inc. (“CWG”) (collectively, “Respondents”) fulfilled their obligations to Appellants in their entirety under the plain language of the contract when Best Buy replaced Appellants' television with a brand new, comparable television and Appellants accepted the replacement television?

- The District Court correctly concluded that Appellants failed to plead an actionable breach of contract claim because Respondents fulfilled all of their obligations owed to Appellants.

Apposite Authority:

- *Nat'l City Bank v. Engler*, 777 N.W.2d 762 (Minn. Ct. App. 2010)
- *Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.*, 480 N.W.2d 368 (Minn. Ct. App. 1992)
- *Crail v. Best Buy Co., Inc.*, Civil No. 2006-227 (WOB), 2007 U.S. Dist. LEXIS 68983 (E.D. Ky. Sept. 17, 2007)

(2) Whether the District Court erred as a matter of law when it concluded that Appellants' breach of contract claim could not survive against CWG where Appellants' Complaint failed to allege any action or inaction by CWG that constituted a breach?

- The District Court correctly concluded that Appellants failed to plead an actionable breach of contract claim because Appellants failed to allege any action or inaction on the part of CWG that constituted a breach.

Apposite Authority:

- *Briggs Transp. Co. v. Ranzenberger*, 217 N.W.2d 198 (Minn. 1974)
- *Bd. of Pub. Works v. Wis. Power & Light Co.*, 613 F. Supp. 2d 1122 (D. Minn. 2009)
- *Crail v. Best Buy Co., Inc.*, Civil No. 2006-227 (WOB), 2007 U.S. Dist. LEXIS 68983 (E.D. Ky. Sept. 17, 2007)

(3) Whether the District Court erred as a matter of law in dismissing Appellants' Minnesota Consumer Fraud Act ("MCFA") and Minnesota False Statement in Advertisement Act ("MFSAA") claims where Appellants failed to plead any misrepresentation or false statement made by CWG to Appellants?

- The District Court correctly concluded that Appellants failed to plead any actionable misrepresentation or false statement made by CWG and, thus, Appellants' MCFA and MFSAA claims were appropriate for dismissal.

Apposite Authority:

- Minnesota Statutes Section 325F.69, subdivision 1
- Minnesota Statutes Section 325F.67
- *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001)
- *Ly v. Nystrom*, 615 N.W.2d 302 (Minn. 2000)

(4) Whether the District Court erred as a matter of law in dismissing Appellants' MCFA and MFSAA claims where Appellants failed to plead any causal

connection between any misrepresentation or false statement made by CWG and any damages suffered by Appellants?

- The District Court correctly concluded that Appellants failed to plead actionable MCFA and MFSAA claims because Appellants failed to plead any “causal nexus” between the purported actionable misrepresentations by CWG and the purported damages suffered by Appellants.

Apposite Authority:

- Minnesota Statutes Section 325F.69, subdivision 1
- Minnesota Statutes Section 325F.67
- *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001)

(5) Whether Appellants’ MCFA and MFSAA claims were legally insufficient based upon Appellants’ failure to plead how their claim would benefit the public?

- The District Court correctly concluded that Appellants could not pursue their MCFA and MFSAA claims because they failed to plead that their claims conferred a public benefit.

Apposite Authority:

- Minnesota Statutes Section 325F.69, subdivision 1
- Minnesota Statutes Section 325F.67
- *Berczyk v. Emerson Tool Co.*, 291 F. Supp. 2d 1004 (D. Minn. 2003)
- *Ly v. Nystrom*, 615 N.W.2d 302 (Minn. 2000)
- *LensCrafters, Inc. v. Vision World, Inc.*, 943 F. Supp. 1481 (D. Minn. 1996)

STATEMENT OF THE CASE

This case involves Appellants' inappropriate attempt to rewrite the television service plan Respondents issued to Appellants. Appellants purportedly filed suit on behalf of a putative class consisting of all persons who have purchased a Geek Squad Black Tie Protection Plan ("Plan") against Best Buy, an electronics retailer that sells the plan at its stores, and CWG, the Obligor and Administrator under the Plan. Appellants' Complaint included the following claims: breach of contract, consumer fraud under the MCFA, false statements under the MFSAA, common law fraud, and unjust enrichment.

In December 2008, Appellants purchased a television from Best Buy, along with a four-year Plan. The Plan consisted of a document describing its terms and conditions, as well as a receipt for the Plan.¹

In November 2010, Appellants returned their television to Best Buy for repair or replacement under the Plan. Best Buy, in accordance with the terms and conditions of the Plan, replaced Appellants' television with a brand new, comparable television and thereby completely fulfilled and satisfied all of its obligations owed under the Plan. Appellants accepted this replacement television and also purchased another Plan upon receiving their replacement television. Appellants subsequently filed the instant lawsuit. Appellants lawsuit is based on the proposition that despite the unambiguous terms of the Plan, Respondents should be obligated to fully service Appellants' new television for the Plan's original four year term.

¹ For purposes of this appeal, all of the "facts" referenced throughout this Responsive Brief are taken from Appellants' Complaint. CWG does not concede the accuracy of any of these "facts."

Respondents immediately moved to dismiss Appellants' Complaint in its entirety under Rule 12.02(e) of the Minnesota Rules of Civil Procedure, as Respondents had complied with all of their obligations under the Plan, and because, as a matter of law, there were no set of facts as set forth in the Complaint that could support any of Appellants' claims.

Indeed, Appellants' Complaint does not contain a single allegation related to certain necessary elements for each cause of action that they have pled and that were ruled upon by the Court. For example, Appellants' breach of contract claim could not survive due to the fact that, *inter alia*, Respondents fully performed, and Appellants have failed to allege any damages flowing from the purported breach. More specifically, as it relates to CWG, Appellants do not direct any specific allegations relating to any action or inaction attributable to CWG which might even possibly support their breach of contract claim against it.

Similarly, Appellants' MCFA and MFSAA claims could not survive due to the fact that, *inter alia*, Appellants failed to allege any misrepresentation, let alone one attributable to CWG, any causal connection between any misrepresentation and an injury sustained by Appellants, and damages flowing from said misrepresentation.

The District Court correctly concluded that the foregoing factual and legal deficiencies warranted dismissal of Appellants' Complaint in its entirety and, more particularly, expressly held that Appellants failed to plead sufficient facts to show that a term of the Plan had been breached, or that there was any misrepresentation attributable

to Respondents. As such, the District Court dismissed Appellants' Complaint in its entirety and with prejudice.² This appeal followed.

STATEMENT OF THE FACTS

On December 20, 2008, Appellants purchased a television at a Best Buy store located in Maplewood, Minnesota. (AA-5)³ At the same time, Appellants purchased a four-year Plan that warranted their television from defect and set forth terms of additional service that Best Buy would provide under certain circumstances. *Id.* When Appellants purchased the Plan, they received written materials that explained its terms, as well as a receipt of their purchase. The Plan became effective on the date of purchase. (AA-35)

Importantly, the express language of the Plan states that it “does not replace [the] product’s manufacturer’s warranty, but it does provide certain additional benefits during the term of the manufacturer’s warranty. . . . After the manufacturer’s warranty expires, this Plan continues to provide the benefits provided by the manufacturer’s warranty, as well as certain additional benefits as listed within these terms and conditions.” (AA-34-35) The Plan further expressly states in simple, unambiguous language the following:

1) On the front page, the Plan states: “This is a legal contract (hereinafter referred to as the “Plan”). By purchasing it, you understand that it is a legal contract and acknowledge that you have had the opportunity to read the terms and conditions set forth herein. This Plan and your purchase receipt, containing the effective date and expiration date of your Plan, and the product purchase identification constitute the entire agreement between you and us.”

² At oral argument on Respondents' Motions to Dismiss, Appellants acknowledged that the Complaint did not adequately set forth claims for common law fraud and unjust enrichment, which were dismissed by the Court in its Order. Appellants did not further pursue those claims on appeal.

³ “AA” shall refer to the Appellants' Appendix.

2) On the front page under "Coverage," the Plan states: "If we determine in our sole discretion that your product cannot be repaired, we will replace it with a product of like kind and quality that is of comparable performance or reimburse you for replacement of the product with a voucher or gift card, at our discretion, equal to the fair market value of the product as determined by us, not to exceed the original purchase price of your product, including taxes."

3) On the next page under "Coverage," the Plan states: "**Our obligations under this Plan will be fulfilled in their entirety if we replace your product, issue you a voucher or gift card or reimburse you for replacement of your product pursuant to these terms and conditions.**"

(4) In the section titled "Limits of Liability," the Plan states: "**In the event that the total of all authorized repairs exceeds the fair market value of the product or we replace the product, we shall have satisfied all obligations owed under the Plan.**"

5) In the section titled "Cancellation," the Plan states: "If you cancel within thirty (30) days of your Plan's purchase or receipt of this Plan, whichever occurs later, you will receive a full refund of the price paid for the Plan less the value of any service provided to you under this Plan."

(AA-34-35, AA-48-49) (emphasis added). As clearly indicated by the terms set forth above, the Plan does not provide unlimited protection. Rather, the express terms of the Plan provided Best Buy with the option, in its sole discretion, to replace, instead of repair, a covered product during the term of the Plan. (AA-34) The Plan further unequivocally states that if Best Buy elects to replace a covered product during the term of the Plan, but subsequent to the expiration of the manufacturer's warranty, Best Buy's obligations under the Plan are fulfilled. (AA-35, AA-48)

Appellants submitted the television they purchased from Best Buy for repair in November 2010. (AA-6) In compliance with the terms of the Plan, Best Buy elected to provide Appellants with the best possible benefit set forth in the Plan and provided

Appellants with a brand new replacement television. (*Id.*) Pursuant to the Plan, as soon as Best Buy provided Appellants with a brand new replacement television, all obligations under the Plan were “fulfilled in their entirety” or “satisfied.” (AA-35, AA-48) In other words, because Best Buy elected to replace the television pursuant to the Plan, Best Buy’s obligations under the Plan were completely met. (AA-35, AA-48) As the manufacturer’s warranty had expired, but for the Plan, Appellants would not have received a new television.

At the time that they received their replacement television, Appellants were reminded by Best Buy that the replacement television was not covered by the Plan. (AA-6) Appellants were further advised that if they wanted their replacement television to be covered, they needed to purchase a new services contract. *Id.* Appellants chose to buy a new services contract from Best Buy to cover their replacement television. *Id.* Appellants have never taken the position that their replacement television is substandard or that Respondents⁴ failed to comply with the replacement television’s services contract.

Despite conceding that there was nothing wrong or otherwise objectionable with their replacement television, Appellants filed a Complaint in the District Court of Ramsey County on January 7, 2011 against Respondents. Appellants brought claims against Respondents on behalf of themselves and a putative class for breach of contract, violation of the MCFA, violation of the MFSAA, common law fraud, and unjust

⁴ Importantly, while CWG is the obligor and administrator of the Plan, the factual allegations found in Appellants’ Complaint only relate to the conduct of Best Buy. Indeed, Appellants’ Complaint does not describe any action, or inaction, attributable to CWG.

enrichment. (AA-9) At their core, Appellants' claims are based on an argument that despite the unambiguous language of the Plan, Respondents should be obligated to fully service Appellants' brand new television for the original four-year term of the Plan. The putative class that Appellants purported to represent "consist[s] of all persons who have purchased a service plan from the Defendants," regardless of whether those individuals actually ever tried to avail themselves of the protection provided by the Plan. (AA-6) Both Respondents immediately moved to dismiss the Complaint.

After briefing and oral argument, on April 1, 2011, the District Court granted Respondents' Motion to Dismiss, and dismissed Appellants' claims with prejudice. (AA-156-166) The District Court set forth the basis for its dismissal in a detailed memorandum that is fully supported by the record and applicable law.

ARGUMENT

I. LEGAL STANDARD.

"In reviewing cases involving dismissal for failure to state a claim upon which relief can be granted pursuant to Rule 12.02(e), the question before the appellate court is whether the complaint sets forth a legally sufficient claim for relief." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003); *see also Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). A reviewing court should only reverse the trial court's dismissal of an action if the complaint, standing alone, clearly states each element of a cause of action and the facts that, if proven, would entitle the plaintiff to relief. *Id.* When a complaint incorporates a contract, the court may also review the contract to determine whether, as a matter of law, a claim has been stated. *Id.*

at 740; *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). The standard of review used by this Court in examining the District Court's dismissal of Appellants' claims is *de novo*. *Bodah*, 663 N.W.2d at 553.

II. ANALYSIS.

The District Court appropriately dismissed Appellants' Complaint with prejudice because the Complaint, when viewed together with the parties' contract (the Plan), plainly failed to state a cause of action upon which relief could be granted. Simply put, Appellants' Complaint does not state any set of facts that allege that Best Buy, much less CWG, failed to comply with the terms of the Plan. Similarly, Appellants have failed to allege, as a matter of law, any set of facts that could conceivably support claims under the MCFA and MFSAA. The reason is simple. Appellants' allegations confirm that Respondents fulfilled all of the Plan's obligations, that Respondents have not made any false statements or misrepresentations, and Appellants have not been "wronged."

A. The District Court Correctly Dismissed Appellants' Breach Of Contract Claim As They Failed To Allege Any Conduct By CWG That Constituted A Breach.

It is axiomatic that in order for a plaintiff to state a claim for breach of contract against a defendant that the plaintiff state in its complaint some action or inaction by the defendant that constitutes a breach of the parties' agreement. *Briggs Transp. Co. v. Ranzenberger*, 217 N.W.2d 198, 200 (Minn. 1974) (outlining the required elements of a breach of contract claim under Minnesota law, including the existence of a contract, performance by plaintiff of any condition precedent, breach of the contract, and damages caused thereby). Nonetheless, Appellants' Complaint is devoid of any reference to any

conduct, action or inaction by CWG that breached any agreement between Appellants and CWG.⁵ Appellants' Complaint does not even allege that Appellants ever communicated, whether orally or in writing, with CWG or that CWG failed to comply with any of the Plan's terms. In light of the fact that Appellants' Complaint is devoid of certain of the elements necessary to maintain a breach of contract action under Minnesota law, Appellants' breach of contract claim against CWG fails and the District Court's dismissal with prejudice should be affirmed. *See Gebremeskel v. Univ. of Minn.*, No. C9-02-183, 2002 WL 1611336, at *3 (Minn. Ct. App. July 23, 2002)⁶ (dismissing plaintiff's breach of contract claim where it failed to allege certain necessary elements); *Bd. of Pub. Works v. Wis. Power & Light Co.*, 613 F. Supp.2d 1122, 1131-32 (D. Minn. 2009) (dismissing one defendant from breach of contract action where face of complaint did not sufficiently connect defendant to contract or conduct in question); *Willis v. Tarasen*, No. Civ. 04-4110 (JMR/FLN), 2005 WL 1270729, at *3 (D. Minn. May 6, 2005) (dismissing a breach of contract action due to plaintiff's complaint being devoid of any factual basis of the existence of a contract).

⁵ Importantly, Appellants completely failed to plead any facts that would support an actual or apparent agency theory of liability. Fully aware of this pleading deficiency, Appellants attempted to argue that Best Buy was somehow the agent of CWG in their Response to Respondents' Motion to Dismiss. (AA-116-118). As the Court is well aware, Appellants are not allowed to add fact or legal theories that are not set forth in the Complaint in their memorandum resisting a motion to dismiss their claims. *Carney v. State of Minnesota*, 792 N.W.2d 115 (Minn. Ct. App. 2010) (noting that trial court correctly declined to address new theory raised by plaintiff in his memorandum in opposition to motion to dismiss); *Great American Ins. Co. v. Golla*, 493 N.W.2d 602, 605 (Minn. App. 1992) (noting that a party cannot raise an issue for the first time in response to a motion to dismiss). As a result, the Court should not consider Appellants' agency argument and the District Court's Order should be affirmed.

⁶ A true and correct copy of *Gebremeskel* can be found at CWG-1.

B. Appellants' Breach Of Contract Claim Also Fails Because Respondents Fulfilled All Of Their Obligations Under The Plan.

1. Respondents Complied With the Clear, Unambiguous Terms of the Plan.

The parties agree that the Plan is a valid contract. (AA-7) Appellants base their purported breach of contract claim on Respondents' refusal to treat the Plan as in force after Best Buy provided them with a brand new replacement television. *Id.* Appellants further go to great lengths to argue that the District Court's dismissal of their breach of contract claim was inappropriate because the contract language in question is ambiguous. However, simply because one party offers a tortured reading of a few words of a contract does not render the contract ambiguous where one interpretation is "contrary to the contract's plain language." *Boat Dealers' Alliance, Inc. v. Outboard Marine Corp.*, 182 F.3d 619, 622 (8th Cir. 1999). Similarly, the existence of multiple dictionary definitions of a particular word does not render the word ambiguous. *Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.*, 480 N.W.2d 368, 375 (Minn. Ct. App. 1992). Further, under Minnesota law, the language of a contract must be given its plain meaning and a contract is ambiguous only if, after considering its language alone, it is susceptible to multiple interpretations. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). In other words, "[w]hen a contractual provision is clear and unambiguous, based on the plain language of the contract, courts may not rewrite, modify, or limit the effect of the contract by 'strained construction.'" *Nat'l City Bank v. Engler*, 777 N.W.2d 762, 765 (Minn. Ct. App. 2010).

The Plan clearly states that if Best Buy chooses to provide a customer with a new replacement television, as opposed to only repairing their old television, Best Buy's obligations are "fulfilled." (AA-35) Best Buy in fact provided Appellants with a replacement television and, thus, Respondents have fully complied with the terms of the Plan. Indeed, Appellants' exact argument has already been addressed and disposed of in *Crail v. Best Buy Co., Inc.*, Civil No. 2006-227 (WOB), 2007 U.S. Dist. LEXIS 68983, at *8 (E.D. Ky. Sept. 17, 2007)⁷ (analyzing the Plan and the exact argument made in this case and determining that "[a]s a matter of law . . . the court concludes that the parties' contract is unambiguous and consists of both the Receipt and the Plan brochure"). Here, Appellants attempt to pull random snippets of language from the Plan and consider them in an intellectual vacuum, which obviously does not render ambiguous the Plan in its entirety. As the *Crail* court concluded, the Plan is clear that when Best Buy provided the Appellants with a brand new replacement television, Respondents' obligations were completely fulfilled. *Id.* Specifically, the *Crail* court held:

Thus, although the general term of the Plan that plaintiff purchased was four years, these provisions unambiguously inform the purchaser that: (1) it is within Best Buy's discretion to determine whether to repair or replace a product, and (2) if the product is replaced after the manufacturer's warranty has expired, then the Plan is fulfilled.

Id. at *9. As such, like the *Crail* court, the District Court correctly determined that the Plan is unambiguous and its decision should be affirmed.

⁷ A true and correct copy of *Crail* can be found at AA-57.

2. Appellants Received The “Benefit Of The Bargain” Of The Plan.

Even assuming all of Appellants’ allegations are true, their breach of contract claim also fails as Respondents fulfilled all of their obligations under the Plan and Appellants received the precise benefit of the bargain for which they paid. The clear, easy-to-understand language of the Plan expressly states that Best Buy’s “obligations under this Plan will be fulfilled in their entirety if [it] replace[s] your product. . . .” (AA-35) Even more bluntly, the Plan expressly states that “[i]n the event that the total of all authorized repairs exceeds the fair market value of the product or [Best Buy] replace[s] the product, [Best Buy] shall have satisfied all obligations owed under the Plan.” (AA-48) To be clear, this is the express language of the Plan that Appellants purchased in 2008.

In their Complaint, Appellants concede that when they took their original television to Best Buy, Best Buy replaced their original television with a brand new replacement television. (AA-6) Upon Best Buy’s production of the replacement television, which Appellants accepted, Best Buy satisfied all of its obligations under the Plan. (AA-48) As a result, Appellants received the exact benefit of the bargain to which they agreed. Indeed, the Court in *Crail* expressly held that:

Here it is undisputed that plaintiff received the benefit of this bargain. Once the manufacturer’s warranty had expired, his right to any further repair or replacement arose solely out of the terms of the Best Buy Plan. And, indeed, plaintiff received the benefit of that bargain: a new digital television valued at over \$1,500. This is not disputed. Nowhere in the Plan are there contrary terms that imply that any further coverage applied once such replacement occurred.

Crail (AA-59) (internal footnote omitted and emphasis added).

Moreover, assuming for the sake of argument that Appellants' Complaint somehow does allege some technical breach of the Plan, they cannot prove that they have been damaged and, thus, their breach of contract claim still fails. *Lipka v. Minn. Sch. Emps. Ass'n*, 537 N.W.2d 624, 631 (Minn. Ct. App. 1995) (holding that where a plaintiff has not asserted recoverable damages that have been suffered in connection with a breach of contract, the breach of contract claim fails). Here, Appellants have received the maximum benefit under the express terms of the Plan (a new replacement television) and, therefore, have not been damaged.

3. The Plan Is Not An Insurance Policy.

Knowing that they have already received the benefit of the Plan, Appellants incorrectly attempt to analogize the Plan to an insurance policy. Specifically, Appellants argue that the Plan is an insurance policy under Minnesota Statutes section 60A.02, subdivision 3 and the holding in *Allen v. Burnet Realty, LLC*, 784 N.W.2d 84 (Minn. Ct. App. 2010). (Appellants' Br., p. 15) However, Minnesota law expressly excludes and differentiates service contracts, such as the Plan, from insurance. Minn. Stat. § 59B.02, subd. 11. Indeed, section 59B.02, subdivision 11 defines a "service contract" as "a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity..." *Id.* Moreover, Minnesota Statutes section 59B.03, subdivision 8, expressly states that service contracts, such as the Plan, are

excluded from all provisions of Minnesota's insurance laws, including section 60A.02. Here, it cannot reasonably be disputed that the Plan is a contract, for separately stated consideration, that provides repair or replacement services for up to four years on a Best Buy customer's product. Unquestionably, the Plan falls squarely within section 59B.02, subdivision 11. As a result, Appellants' argument that the Plan is insurance within the meaning of Minnesota Statutes section 60A.02 is misplaced and should be disregarded.

Appellants' reliance on *Allen v. Burnet Realty* is similarly misplaced. 784 N.W.2d 84, 88 (Minn. Ct. App. 2010). In *Allen*, the Court used the "principal object and purpose" test to determine whether the subject Legal Assistance Program, an indemnification program offered by a real estate broker to all of its sales associates, was an insurance policy. *Id.* at 85-86. First, the Court noted that the definition of insurance found in section 60A.02 and upon which Appellants rely is "unworkably broad." *Allen*, 784 N.W.2d at 89. Second, the Court concluded that the contract at issue was not an insurance contract and was, instead, a program that "operates to spread the risk of a 'defective product.'" *Id.* Accordingly, even using *Allen* Court's test suggested by Appellants, it is clear that the Plan is not an insurance policy.

Moreover, the District Court thoroughly considered, and appropriately dismissed, Appellants' arguments in this regard. Indeed, the District Court concluded that:

The 2008 Service Plan can only be reasonably construed to have provided for defect-remedying services for four years up to certain specified levels including repair costs not exceeding the product's fair market value or replacement with a new or comparable product. The 2008 Service Plan afforded the Bakers additional time to obtain repairs to, or replacement of, the original television, beyond the expiration of the applicable manufacturer's warranty. Thus, the benefit of the bargain for the Bakers

was directly tied to their originally purchased television as opposed to the duration in coverage. Defendants' total obligations were satisfied and fulfilled pursuant to the 2008 Service Plan the very moment that those predetermined levels were met through the provision of a replacement television.

(AA-161) As such, even if the Plan is somehow found to be an insurance policy, even though it is not, an affirmation of the District Court's dismissal is warranted. Indeed, Appellants have failed to demonstrate how a determination that the Plan is an insurance policy somehow saves their breach of contract claim. Simply put, Appellants have already received the complete benefit of the bargain of the Plan.

Lastly, and perhaps most importantly, the Plan, by its own terms, "is not a contract of insurance" and, thus, Appellants knew that they were purchasing a service plan contract, not an insurance policy. (AA-48)

Accordingly, the District Court's determination that the Plan is not insurance should be affirmed.

C. Appellants' Statutory Fraud Claims Were Properly Dismissed As The Complaint Does Not Allege Numerous, Fundamental Elements.

Appellants' Complaint contains both MCFA and MFSAA claims. (Compl., Counts II-III) All of these claims require a plaintiff to prove that: (1) the defendant(s) made a misrepresentation or false statement; (2) the plaintiff was injured; and (3) the plaintiff's injury was a result of defendant's misrepresentation. *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2, 12-13 (Minn. 2001); *LensCrafters, Inc. v. Vision World, Inc.*, 943 F. Supp. 1481, 1491 (D. Minn. 1996) (holding that a plaintiff must plead and prove the publication of an advertisement, with the intent to sell or dispose of

merchandise, containing false or misleading advertisement, and damages in order to successfully plead a MFSAA claim). Because Appellants cannot prove any of these elements, their MCFA and MFSAA claims fail and the District Court's decision should be affirmed.

1. Without An Actionable Misrepresentation Or False Statement Attributable To Respondents, Appellants' MCFA And MFSAA Claims Fail.

As referenced above, Appellants' Complaint does not contain a single actionable misrepresentation or false statement that is attributable to Respondents. Indeed, the Plan, when read with Appellants' Complaint, proves that Respondents did not make any false statement or misrepresentation. Specifically, Appellants' Complaint attributes the following misrepresentations to Respondents, which relies exclusively on the Plan's plain language: "the Service Plan promised to repair or replace a defected product purchased from Best Buy" and "the 2008 Service Plan would not expire until 2012." However, as detailed above, the express language of the Plan states that Best Buy's obligations pursuant to the Plan are completely fulfilled upon Best Buy providing Respondents with a new, replacement television—an act which occurred in 2010. (AA-35) As such, the District Court correctly held that in this case:

there is no possibility of proof of a misrepresentation, and thus no possibility of proof of injury or a causal nexus. The 2008 Service Plan contained no false statement with regard to the duration of the agreement. The absence of a misrepresentation in the 2008 Service Plan is fatal to the Bakers' claims under the Consumer Fraud Act and the False Statement in Advertisement Act with regard to the agreement itself.

(AA-165)

Indeed, Appellants concede that Respondents “technically” complied with the Plan and that the Plan “technically” did not contain any misrepresentations. (Appellants’ Br., p. 24) Appellants’ unsupported assertion that Respondents’ true statements are still misleading belies common sense and a plain reading of the Plan. Again, there is simply nothing misleading about the terms of the Plan, Appellants’ linguistic gymnastics aside. Rather, the Plan is written “in a clear and coherent manner” in accordance with Minnesota Statutes section 325G.31. Further, Appellants have not alleged a violation of the Plain Language Contract Act, Minnesota Statutes section 325G.29, *et seq.*, and, therefore, section 325G.31 has no application to this case. As a result, Appellants’ Complaint fails to contain any actionable misrepresentations or false statements attributable to Respondents and the District Court’s dismissal of Appellants’ statutory claims should be dismissed.

Further, even if it is determined that the Plan actually does contain actionable misrepresentations or that Best Buy’s representatives made oral misrepresentations to Appellants, Appellants’ MCFA and MFSAA claims against CWG nevertheless fail because Appellants’ Complaint does not contain a single misrepresentation, false statement or deceptive practice attributable to CWG. Indeed, the Complaint does not even claim that Appellants ever had any contact whatsoever with CWG. As the Complaint does not even allege any misrepresentation, false statement, or deceptive practice attributable to CWG, it also does not (and could not) allege that Appellants relied on any such misrepresentation or deceptive practice, or that they were harmed as a result. These glaring omissions are also fatal to Appellants’ MCFA and MFSAA claims.

Therefore, the District Court's dismissal with prejudice should be affirmed. *Group Health Plan*, 621 N.W.2d at 12-14.

In anticipation of Appellants' reply memorandum, it must also be noted that case law analyzing oral misrepresentations, such as *Wiegand v. Walser Auto Groups, Inc.*, 683 N.W.2d 807 (Minn. 2004), is inapplicable to the instant case. Specifically, *Wiegand* dealt with the issue of whether an alleged oral misrepresentation that directly contradicted a written contract could be used to establish a causal nexus between the alleged oral misrepresentations and the purported injury. *Wiegand*, 683 N.W.2d at 812-13. In its holding, the Minnesota Supreme Court limited its holding to those involving oral misrepresentations—which are plainly not at issue in this case. *Id.* at 813 (“the existence of a written contract that contradicts Walser's alleged oral misrepresentations does not, as a matter of law, negate any possibility of the [plaintiffs] and potentially others proving a causal nexus between oral representations and consumer injuries”). As such, the District Court's decision should be affirmed.

2. Appellants' Statutory Fraud Claims Cannot Survive As They Failed To Plead A Causal Nexus Between Respondents' Action And Appellants' Purported Damages.

Even if the Court finds that Appellants pled an actionable misrepresentation, their MCFA and MFSAA claims still fail. Under Minnesota law, Appellants must plead and prove that there is a “causal nexus” between any injury they have suffered and the purported misrepresentation, false statement or deceptive practice. *Group Health Plan*, 621 N.W.2d at 12-13; *LeSage v. Norwest Bank Calhoun-Isles*, 409 N.W.2d 536, 539 (Minn. Ct. App. 1987). Here, Appellants have completely failed to allege any causal link

between any actionable conduct by CWG and any purported damages suffered by the Appellants. As a result of these basic pleading failures, the District Court's dismissal of Appellants' MCFA and MFSAA should be affirmed.

3. Appellants' MCFA Claim Also Fails Because Respondents Did Not Make Any Misrepresentation With The Intent That Others Rely On It.

Appellants' MCFA claim also fails because Appellants have failed to allege that Respondents made the misrepresentations purportedly in question "with the intent that others rely thereon." Minn. Stat. § 325.69, subd. 1; *See Ly v. Nystrom*, 615 N.W.2d 302, 310 (Minn. 2000). It is black letter law that a necessary element of a MCFA claim is that an actionable misrepresentation be made with the intent that others rely on it. *Ly*, 615 N.W.2d at 310. In other words, the purported misrepresentation could not have been made in a vacuum and the defendant must have intended that others not only receive the misrepresentation, but also that they rely on the same. *Id.* Simply put, the MCFA does not impose strict liability and, rather, requires some degree of culpability. *Jensen v. Touche Ross & Co.*, 335 N.W.2d 720, 727-28 (Minn. 1983) (holding that "the statute does not create strict liability. Section 325F.69, subd. 1 speaks of 'fraud' and 'misrepresentation,' of promises that are 'false' and statements that are 'misleading' or practices which are 'deceptive.' We conclude that these terms, given their plain, ordinary meaning, denote at least some degree of culpability. In the absence of a clear legislative intent, we think it is inappropriate to impose a strict liability standard here..."), *overruled on other grounds by Lennartson v. Anoka-Hennepin Independent School District No. 11*, 662 N.W.2d 125, 133 (Minn. 2003). However, Appellants' Complaint

does not allege that Respondents made any misrepresentation, let alone one with this necessary intent. These omissions are fatal to Appellants' Complaint and the District Court's dismissal with prejudice should be affirmed.

4. Appellants' MFCA and MFSAA Claims Must Also Be Dismissed Because Appellants' Action Does Not Benefit The Public.

It is a fundamental requirement that in order to pursue a claim pursuant to section 8.31 of the Minnesota Statutes, otherwise known as the "Private Attorney General Statute," the plaintiff must "demonstrate that their cause of action benefits the public." *Ly v. Nystrom*, 615 N.W.2d 302, 314. In other words, strictly "personal injuries" cannot form the basis of a claim pursuant to the Private Attorney General Statute. *Berczyk v. Emerson Tool Co.*, 291 F. Supp. 2d 1004, 1019 (D. Minn. 2003). Once again, Appellants' Complaint is devoid of any allegation that the Complaint was brought for the "public benefit" or how their action benefits the public. As such, Appellants' Complaint was properly dismissed and the District Court's decision should be affirmed.

5. Appellants' MFSAA Claim Also Fails Because Appellants Failed To Allege That CWG Published A False Advertisement With The Intent To Increase Consumption.

Further, Appellants' MFSAA claims fail as they failed to plead certain necessary elements. In order to bring a successful MFSAA claim, a plaintiff must plead and prove the publication of an advertisement, with the intent to sell or dispose of merchandise, containing a false or misleading advertisement, and damages suffered by the plaintiff. Minn. Stat. § 325F.67 (2010); *LensCrafters, Inc.*, 943 F. Supp. at 1491. Here, as the District Court found, Appellants completely failed to allege that CWG or a CWG

representative placed a false or misleading advertisement or other publication before the public with the intent to increase consumption.

In a blatant attempt to argue around their pleading failure, Appellants now contend that it is somehow Respondents' burden to prove that they have never issued a false advertisement. (Appellants' Br., pp. 27-29) Unfortunately for the Appellants, this is not what the law mandates. Rather, the law requires that a plaintiff state in its complaint the necessary facts on which its claims are based, including the recital of the purported false advertisement on which its MFSAA claim is based. (AA-163); Minn. R. Civ. P. 9.02; *Kinetic Co. v. Medtronic, Inc.*, 672 F. Supp. 2d 933, 944 (D. Minn. 2009) (holding that claims brought pursuant to the MFSAA and MCFA must be pled with particularity in accordance with Rule 9 of the Rules of Civil Procedure). As Appellants failed to do so, their MFSAA claim fails. As such, Appellants' MFSAA claim was not pled with the requisite specificity and was properly dismissed by the District Court. *Jensen*, 335 N.W.2d at 720 (holding that claim under false advertising statute failed because the defendant did not place before the public an advertisement or materials with the intent to increase consumption); *Denelsbeck v. Wells Fargo & Co.*, 2002 WL 3105713 (Minn. Ct. App. 2002), *rev'd on other grounds*, 666 N.W.2d 339 (Minn. 2003) (concluding that there did not appear to be any intent to increase consumption and, therefore, the claim was not viable)⁸. As Appellants failed to plead the required elements of their MFSAA claim, the District Court's dismissal should be affirmed.

⁸ A true and correct copy of *Denelsbeck* can be found at AA-99.

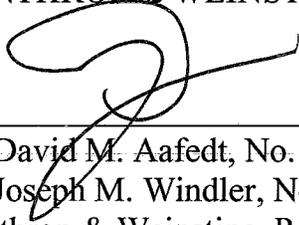
CONCLUSION

For the above stated reasons, Chartis WarrantyGuard, Inc. respectfully requests that this Court deny Appellants' appeal and affirm the District Court's dismissal of the case with prejudice.

Respectfully submitted,

Dated: September 15, 2011

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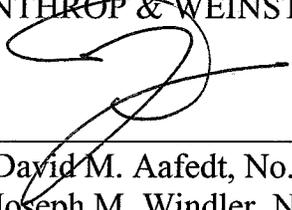
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01 subd. 3, the undersigned hereby certifies, as counsel for Respondent Chartis WarrantyGuard, Inc., that this brief was prepared in Microsoft Word 2003, using 13-point Times New Roman proportionally-spaced font, and further certifies this that this Brief complies with the type-volume limitation as there are 6,392 number of words of proportional space type in this brief, excluding the Table of Contents, Table of Authorities and Appendix.

Dated: September 15, 2011

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