

NO. A11-997

State of Minnesota
In Court of Appeals

COREY BAKER AND JAMIE BAKER,
Plaintiffs – Appellants,

v.

BEST BUY STORES, L.P., AND
CHARTIS WARRANTYGUARD, INC.,
Defendants – Respondents.

RESPONDENT BEST BUY STORES, L.P.'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
I. STATEMENT OF THE FACTS.....	4
A. Appellants Purchased a Geek Squad Black Tie Protection Plan	4
B. Best Buy Satisfies the Requirements of the Plan Once It Replaces the Covered Product.....	6
C. Appellants Allege Breach of Contract, Consumer and Common Law Fraud, False Statements in Advertisements, and Unjust Enrichment	7
II. SUMMARY OF ARGUMENT.....	8
III. LEGAL ARGUMENT	10
A. The Standard of Review.....	10
B. The District Court Correctly Held that the Terms of the Contract Are Unambiguous	10
1. The Plan’s Terms are Unambiguous	11
2. The Service Plan is Not Insurance Under Minnesota Law	16
C. The District Court Properly Dismissed Appellants’ Statutory Causes of Action.....	18
1. The Dismissal of Appellants’ Statutory Claims Relating to the Plan Was Appropriate Because the Plan Contains No Misrepresentation.....	18
2. The Dismissal of Appellants’ Statutory Claims Relating to Advertisements Was Appropriate Because Appellants Failed to Sufficiently Allege Their Claims and There Was No Misrepresentation	21
IV. CONCLUSION.....	23
CERTIFICATE OF BRIEF LENGTH.....	24

TABLE OF AUTHORITIES

Minnesota Supreme Court Cases

Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 553 (Minn. 2003)10
Denelsbeck v. Wells Fargo & Co., 666 N.W.2d 339 (Minn. 2003).....10
Group Health Plan, Inc. v. Phillip Morris, Inc., 621 N.W.2d 2 (Minn. 2001)21, 22
Martens v. Min. & Mfg. Co., 616 N.W.2d 732, 739 (Minn. 2000)10
Nathe Bros. v. Am. Nat’l Fire Ins. Co., 615 N.W.2d 341, 345 (Minn. 2000)14
Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988)19
Wiegand v. Walser Automotive Group, Inc., 683 N.W.2d 807 (Minn. 2004) ...9, 21, 22
Youngers v. Schafer, 264 N.W. 794 (Minn. 1936).....11

Minnesota Court of Appeals Cases

Allen v. Burnet Realty LLC, 784 N.W.2d 84 (Minn. App. 2010).....17
Anderson v. McOskar Enterprises, Inc., 712 N.W.2d 796 (Minn. App. 2006)11

Other Federal Court Cases

Crail v. Best Buy Co., Inc., Civ. No. 2006-227, 2007 U.S. Dist. LEXIS 68983
(E.D. Ky. September 7, 2007), *aff’d*, 2008 U.S. App. LEXIS 17087
(6th Cir. 2008) 12, 16, Addendum

Minnesota Statutes

Minn. Stat. § 59B 17, 19, Addendum
Minn. Stat. § 60A.0217
Minn. Stat. § 325G.31..... 19, Addendum
Minn. Stat. § 325G.32..... 19, Addendum

Minnesota Rules of Civil Procedure

Minn. R. Civ. P. 9.02..... 21

STATEMENT OF ISSUES ON APPEAL

1. Whether the district court properly dismissed appellants' breach of contract claims where respondents fulfilled their unambiguous obligations to appellants under the contract by providing appellants with a new replacement television?

District Court's Ruling: The district court found that the contract was unambiguous and that respondents fulfilled all of their obligations under the contract by providing appellants with a replacement television.

List of the Most Apposite Cases and Statutory Provisions:

- *Anderson v. McOskar Enterprises, Inc.*, 712 N.W.2d 796 (Minn. App. 2006)
- *Crail v. Best Buy Co., Inc.*, Civ. No. 2006-227, 2007 U.S. Dist. LEXIS 68983 (E.D. Ky. September 7, 2007), *aff'd*, 2008 U.S. App. LEXIS 17087 (6th Cir. 2008)
- *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339 (Minn. 2003)
- *Youngers v. Schafer*, 264 N.W. 794 (Minn. 1936)
- Minn. Stat. § 59B

2. Whether the district court properly dismissed appellants' statutory claims under the Minnesota Consumer Fraud Act and the Minnesota False Statement in Advertisement Act where appellants could not prove any misrepresentation and failed to plead these claims with the requisite particularity?

District Court's Ruling: The district court found that the absence of a misrepresentation in the contract is fatal to appellants' statutory claims in regard to the contract and that appellants have not sufficiently alleged misrepresentations in advertisements.

List of the Most Apposite Cases and Statutory Provisions:

- *Group Health Plan, Inc., v. Phillip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001)
- *Wiegand v. Walser Automotive Group, Inc.*, 683 N.W.2d 807 (Minn. 2004)

I. STATEMENT OF THE FACTS

A. Appellants Purchased a Geek Squad Black Tie Protection Plan

On December 20, 2008, appellants purchased a television at a Best Buy store located in Maplewood, Minnesota. Appellants' Appendix ("A.A.") 5, 55. At the time of purchase, appellants also elected to purchase from Best Buy a four-year Geek Squad Black Tie Protection Plan (the "2008 Service Plan" or the "Plan") for the television. A.A. 5, 33-54. Appellants later received a new replacement television from Best Buy pursuant to that Plan and then brought suit complaining that Best Buy "refuse[d] to honor" that Plan because "Plaintiffs have not received any compensation for remaining years under the 2008 Service Plan." A.A. 6.

The Plan consists of a document describing its terms and conditions as well as a receipt for the Plan. A.A. 33-56. The Plan began on the date of purchase. A.A. 35. Under the Plan, Best Buy will repair or replace the covered product under specified circumstances. A.A. 34. The Plan "does not replace [the] product's manufacturer's warranty." A.A. 35. "After the manufacturer's warranty expires, the Plan continues to provide the benefits provided by the manufacturer's warranty as well as certain additional benefits as listed within [the] terms and conditions." *Id.* One of these benefits is that, if the product fails during the duration of the Plan, even after the manufacturer's warranty has

expired, Best Buy will either repair or, at its discretion, replace the product or provide a voucher for the fair market value of the product. A.A. 34.

The Plan sets forth its terms in simple and unambiguous language. First, the Plan makes clear that it is a legal contract:

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.

A.A. 34. On the front page under "Coverage," the Plan describes the benefits of the Plan:

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.

Id.

Then the Plan makes clear that the Plan is fulfilled if the product is replaced:

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.

A.A. 35 (emphasis added) (hereinafter, the “fulfillment provision”). Under the caption “**Limits of Liability**,” the Plan also states:

The total liability under this Plan is the fair market value of the product, as determined by us, not to exceed the original purchase price of your product. ... 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.

A.A. 48 (emphasis added) (hereinafter, the “satisfaction provision”).

These terms make clear that the Plan does not provide unlimited coverage.

The Plan provides that if Best Buy elects to replace, instead of repair, a covered product during the term of the Plan, but after the expiration of the manufacturer’s warranty, Best Buy’s obligations under the Plan are fulfilled.

A.A. 35, 48. In addition, the Plan allows the customer to cancel the Plan—at no charge—within the first 30 days. A.A. 49.

B. Best Buy Satisfies the Requirements of the Plan Once It Replaces the Covered Product

Approximately two years after appellants purchased their television and the 2008 Service Plan, and after the expiration of the manufacturer’s one-year warranty, appellants returned their television to Best Buy and sought service under the Plan. A.A. 6. In appellants’ case, because the manufacturer’s warranty had expired, they would have been without recourse absent the Plan. But because they had purchased the Plan for this particular product, Best Buy replaced their product, providing appellants with the maximum benefit under

the contract—a new replacement television. *Id.* Appellants have not alleged that the replacement television was of inferior quality or an unsuitable replacement. *See* A.A. 4-10. The choice of whether to repair or replace the product was within Best Buy’s discretion under the contract. A.A. 34. In addition, the Plan explicitly provides that in the event the product is replaced, all obligations owing under [the] Plan will be “fulfilled in their entirety” or “satisfied.” A.A. 35, 48.

After providing appellants with a new replacement television, Best Buy reminded appellants that the Plan that applied to their original television did not apply to the new product. A.A. 6. Appellants then voluntarily chose to buy another Plan from Best Buy. *Id.*

C. Appellants Allege Breach of Contract, Consumer and Common Law Fraud, False Statements in Advertisements, and Unjust Enrichment

After receiving a new replacement television and after purchasing another Plan, appellants filed their complaint on behalf of themselves and a putative class against Best Buy and Chartis WarrantyGuard, Inc., alleging claims of breach of contract, consumer fraud, false statements in advertisement, common law fraud, and unjust enrichment, and seeking compensatory damages, injunctive relief, attorneys’ fees and costs. A.A. 6-9. In their memorandum responding to respondents’ motions to dismiss, appellants did not address their claims of common law fraud or unjust enrichment, and conceded at oral argument that

they failed to state a claim with respect to these two causes of action. *See* A.A. 102-19, 181.

After briefing and oral argument, Hennepin County District Judge Janet N. Poston dismissed appellants' complaint with prejudice. A.A. 166. The district court set forth the bases for its dismissal of all of appellants' claims in an eleven-page memorandum. A.A. 156-66.

II. SUMMARY OF ARGUMENT

The district court properly performed the duty delegated to it under the law – to construe and interpret an unambiguous contract – and correctly determined that Best Buy had fully performed the Plan by providing appellants with a new replacement television. Its decision is firmly supported by the record. Appellants' argument that the contract is ambiguous is unreasonable and fails as a matter of law because it ignores express contractual provisions that are fatal to appellants' position. Indeed, appellants' proffered interpretation would lead to an absurd conclusion in which express and explicit provisions have no meaning. The only reasonable reading of these provisions is Best Buy's – and the district court's – interpretation: that all of Best Buy's obligations under the Plan are "fulfilled in their entirety" and "satisfied" upon replacement of the product.

Appellants also alleged that Best Buy made false and misleading statements with respect to the duration of the Plan. Specifically, appellants

alleged that Best Buy misrepresented “that [appellants’] Service Plan expires at the end of a specified term when, under certain circumstances, it expires prior to the specified term” in violation of the Minnesota Consumer Fraud Act and Minnesota False Statements in Advertisement Act. In support of their position, appellants apparently identify two apposite cases – *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001) and *Wiegand v. Walser Automotive Groups, Inc.*, 683 N.W.2d 807 (Minn. 2004) – but they fail to cite those cases anywhere in their legal argument. Notably, the district court analyzed those cases and correctly found that they support respondents’ position. The alleged misrepresentations here are nothing more than selective and incomplete contractual language taken verbatim from the Plan. Indeed, when read in conjunction with the Plan, the alleged misrepresentations are not misrepresentations at all, and there is no possibility that appellants could prove otherwise.

Appellants also contend that this Court should reverse the district court’s dismissal of their consumer fraud and false statements in advertisement claims because their allegations regarding advertisements must be accepted as true and are sufficiently particular. Even if their allegations are accepted as true, however, they fail as a matter of law for the same reasons that the alleged misrepresentations contained within the Plan fail: there is no possibility of proof

of a misrepresentation because the statements appellants allege that Best Buy made are entirely consistent with the Plan and therefore not misrepresentations.

III. LEGAL ARGUMENT

A. The Standard of Review

The Court of Appeals reviews a district court's grant of dismissal of a complaint for failure to state a claim under Rule 12.02(e) of the Minnesota Rules of Civil Procedure *de novo*. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). "A Rule 12.02(e) motion raises the single question of whether the complaint states a claim upon which relief can be granted." *Martens v. Min. & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). A complaint does not set forth a claim as a matter of law if it is impossible to grant relief on any evidence that might be produced consistent with the complaint. *See id.* Thus, even if appellants' factual allegations are taken as true, the district court's order dismissing the complaint for failure to state a claim must be upheld if the complaint is insufficient as a matter of law.

B. The District Court Correctly Held That the Terms of the Contract Are Unambiguous

The language of the contract between the parties is clear, and the district court correctly determined that the contract at issue is unambiguous. The determination of whether a contract is ambiguous is a question of law. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). If the contract is

unambiguous, the construction and effect of a contract is also a question of law, and the court must give effect to its plain meaning when the language is clear. *Id.* at 346-47; *Anderson v. McOskar Enterprises, Inc.*, 712 N.W.2d 796, 800-01 (Minn. App. 2006).

1. The Plan's Terms are Unambiguous

The Plan plainly states, in two different ways, in the fulfillment and satisfaction provisions, that Best Buy's obligations under the Plan are completely satisfied upon its election to replace the product. A.A. 35, 48. As such, the district court correctly determined that the contract at issue is unambiguous. When interpreting a contract, the court must read the contract as a whole. *Youngers v. Schafer*, 264 N.W. 794, 796 (Minn. 1936) ("It is a well settled rule that in construing an instrument it must be considered as an entirety and that all the language used therein must be given force and effect if that can be done."). Appellants cite *Youngers v. Schafer* but misapply the proposition for which it stands by arguing that a contract with an expiration date cannot end early without creating a conflict in terms. Appellants also argue that a contract is ambiguous if it is *reasonably* susceptible to more than one construction. *Anderson*, 712 N.W.2d at 800-01 (emphasis added). Appellants, however, have proffered no reasonable alternative to Best Buy's — and the district court's — interpretation of

the Plan. Consequently, the Plan should be strictly enforced according to the plain meaning of its unambiguous terms. *Id.*

In *Crail v. Best Buy Co., Inc.*, a case involving a nearly identical dispute, a federal district court held that the plaintiffs received the benefit of their bargain – a new replacement television from Best Buy pursuant to the unambiguous terms of a comparable service plan. See *Crail v. Best Buy Co., Inc.*, Civ. No. 2006-227, 2007 U.S. Dist. LEXIS 68983 (E.D. Ky. September 7, 2007), *aff'd*, 2008 U.S. App. LEXIS 17087 (6th Cir. 2008). The federal district court in *Crail* dismissed the plaintiff's breach of contract claim for failure to state a claim, stating:

[i]t 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 \$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, 2007 U.S. Dist. LEXIS 68983 at *4 (emphases added).

Here, appellants' argument assumes that a contract with an expiration date cannot be satisfied early without there being a conflict in terms—a fundamental misunderstanding of basic contract law. Finding the reasoning in *Crail* persuasive, the district court in this case stated:

The 2008 Service Plan can be harmonized in its entirety only through an interpretation that any potential obligations of [respondents] could arise during the listed four-year period and would terminate during that period when one of the predetermined maximum

liability levels was reached. That time arrived when the Bakers were given a new replacement television halfway through the four-year agreement. The Bakers have fully attained the benefit of their bargain.

A.A. 162.

Precisely as the district court described, the contract in question provides a time period within which the terms could be exercised. A.A. 35. Under the satisfaction provision, the purchaser may seek performance before that date up to the monetary limit defined by the fair market value of the product, not to exceed the cost of the initial purchase. A.A. 48. Upon reaching that limit, respondents satisfy all obligations under the contract, and the contract will no longer be in effect. *Id.* Another way respondents may fulfill their obligations under the contract is to wholly replace the product with a comparable replacement. *Id.* A comparable replacement triggers the fulfillment provision, and respondents' obligations under the contract are then fully satisfied. A.A. 35, 48. There is no conflict in terms. Appellants would not have been entitled to a replacement television had they sought one more than four years after the original purchase. They were entitled to a replacement when they sought one because it was before the expiration date of the contract. That is the clear, plain meaning of the expiration date, and appellants benefited from that provision. Indeed, appellants received and benefitted from a new replacement television.

Under the general rules of contract interpretation, the fulfillment and satisfaction provisions are simply conditions subsequent. *Nathe Bros. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 345 (Minn. 2000). A right was granted to appellants, creating an obligation by respondents. As part of that right, a condition existed whereby if respondents replaced the product with a comparable product, all of their obligations were satisfied and the Plan was fulfilled. In the absence of appellants requesting performance, the contract automatically expires upon the expiration date. There are two conditions which can trigger the end of the contract: one based on the total value of repairs and replacements, the other based on time. Whichever condition is met first extinguishes the contract. There is no conceptual discord between these two terms. This combination of expiration date and early fulfillment also makes intuitive sense. As the district court analogized, a coupon may have an expiration date, and may be redeemed prior to that expiration date, but once redeemed, it may not be re-redeemed every day until the expiration date arrives. A.A. 160-61.

In oral argument, appellants modified their argument that the Plan's terms are in conflict by asserting that the fulfillment provision must be construed to mean that respondents have fulfilled their obligations under the Service Plan *only* "for any single claim." A.A. 193. In support of their argument, appellants took issue with the definition of the term "fulfilled" as "to finish out; bring to an end,"

as Best Buy proposed. A.A. 185. Appellants offered an alternate definition for “fulfill” as “carried out.” *Id.* Using Best Buy’s definition, the reconstructed provision reads, “Our obligations will be finished out and brought to an end in their entirety if we replace your product.” Using appellants’ definition, the language would read “Our obligations will be carried out in their entirety if we replace your product.” Thus, under either definition, the meaning of the provision remains plain. This plain meaning of the provision is reinforced by the satisfaction provision, which states, “In the event that . . . we replace the product, we shall have satisfied all obligations owed under the Plan.” A.A. 48. Appellants have not claimed that the satisfaction provision is ambiguous—instead, they simply ignore it.

In this appeal, appellants now argue that the Plan impliedly covers replacement products because the Plan does not expressly say otherwise. Appellants’ Brief, p. 21. This is not a reasonable interpretation of the Plan. Indeed, there is no basis whatsoever for appellants’ alternative interpretation. The language expressly states that “[o]ur obligations under this Plan will be *fulfilled in their entirety* if we replace your product” and that “[i]n the event . . . we replace the product, *we shall have satisfied all obligations* owed under the Plan.” A.A. 35, 48 (emphasis added). In support of their interpretation, they cite a provision of the Plan that requires the consumer to present “all original and

exchange receipts” as a prerequisite for service under the Plan and argue that Best Buy’s exchange policy somehow applies to the Plan. Appellants’ Brief, p. 22. In fact, Best Buy’s exchange policy is entirely separate.¹ Furthermore, the Plan refers to an “exchange receipt,” not a “replacement receipt,” and the terms are not synonymous. As the district court held, “[t]o hold that only one ‘claim’ was satisfied out of many potential replacement claims during a four-year period would render meaningless express language indicating that obligations would be ‘fulfilled in their entirety’ and that ‘all obligations owed’ under the 2008 Service Plan would be ‘satisfied’ upon product replacement.” A.A. 161. As the *Crail court* explained, “[n]owhere in the Plan are there contrary terms that imply that any further coverage applied once such replacement occurred.” *See Crail*, 2007 U.S. Dist. LEXIS 68983, at *4.

2. The Service Plan is Not Insurance Under Minnesota Law

The question of whether the Plan is an insurance contract under Minnesota law was neither pled by appellants nor adjudicated by the district court. Furthermore, Minnesota’s insurance laws explicitly exclude service contracts, such as the Plan, from their scope. Thus, even if this Court allows appellants to raise new issues on appeal, appellants’ arguments regarding insurance fail.

¹ Best Buy has an exchange policy that allows consumers to exchange their product within 30 days with the original receipt (14 days for select products).

Minn. Stat. § 59B.03, subd. 8, provides that service contracts are excluded from all provisions of the Minnesota insurance laws, other than Chapter 59B, which regulates service contracts. The statute defines the term “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 ...” Minn. Stat. § 59B.02, subd. 11 (2010). This is precisely what the Plan is. The Plan is a contract that appellants voluntarily purchased separate from the television and which provides repair or replacement services for up to four years. If the television is replaced, the Plan is fulfilled by its express terms. As clearly stated by the plain terms of the contract, “This Plan is not a contract of insurance.” A.A. 49.

Thus, the more general definition of insurance found at Minn. Stat. § 60A.02, subd. 3, cited by appellants, does not apply. Appellants also cite *Allen v. Coldwell Banker Burnet*, a case in which the trial court found that the contracts at issue were *not* insurance contracts and the Minnesota Supreme Court affirmed. 784 N.W.2d 84, 88 (Minn. App. 2010), *aff’d*, 801 N.W.2d 153 (Minn. 2011). Even under the “principal object and purpose” test applied in *Allen*, the Plan is not

insurance because it does not go beyond the promise of replacing a defective product to include replacing vandalized or stolen products. *See id.* The Plan specifically disclaims coverage against vandalized or stolen products and instead covers operating failure. A.A. 44-45. The section entitled “**Exclusions to Coverage**” provides “[t]his plan does not cover . . . damage to your product caused by accident, abuse, neglect, intentional physical damage, misuse,” and “[t]his plan does not cover . . . products that have been lost or stolen.”). A.A. 45. Finally, the section entitled “**Coverage**” states “[t]his Plan covers parts and labor costs to repair you product in the event your product fails to properly operate.” A.A. 34. In sum, Plaintiff’s contention that the Plan is insurance fails.

C. The District Court Properly Dismissed Appellants’ Statutory Causes of Action

The district court properly dismissed appellants’ consumer fraud and false statements in advertisement claims with respect to alleged misrepresentations in the Plan itself and in advertisements of the Plan.

1. The Dismissal of Appellants’ Statutory Claims Relating to the Plan Was Appropriate Because the Plan Contains No Misrepresentation

The district court’s holding that “there is no possibility of proof of a misrepresentation” with respect to the Plan because the “Plan contained no false statement with regard to the duration of the agreement” is proper and should be upheld by this Court. A.A. 165. Failing to convince the district court, appellants

now cite Minn. Stat. § 325G.31, for the first time on appeal and argue that the Plan is misleading. Appellants' Brief, p. 24. This Court entertains "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quoting *Thayer v. American Financial Advisors, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982)).

In any event, this argument also fails. First, Minn. Stat. § 325G.31 does not apply to the Plan. This statutory provision provides "[e]xcept as provided in 325G.32, every consumer contact shall be written in a clear and coherent manner using words with common and everyday meanings and shall be appropriately divided and captioned by its various sections." Minn. Stat. § 325G.31 (2010). The exception provided in Minn. Stat. § 325G.32 states "[s]ection 325G.31 does not apply to any consumer contract for which a federal or state statute, rule or regulation prescribes standards of readability applicable to the entire contract." As described above, the Plan is a service contract governed by a state statute, specifically Minn. Stat. § 59B, *et seq.*, which prescribes standards of readability applicable to the entire contract. Minn. Stat. § 59B.05, subd. 1, provides that "[s]ervice contracts ... must be written, printed, or typed in clear, understandable language that is easy to read ..." Accordingly, the exception found in Minn. Stat. § 325G.32 brings this contract outside the scope of Minn. Stat. § 325G.31.

Second, the Plan is “written in a clear and coherent manner using words with common and everyday meanings,” “appropriately divided and captioned by its various sections” with “clear, understandable language.” The Plan first provides in clear and simple language that “[t]his is a legal contract.” A.A. 34. “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.” *Id.* Under the section captioned “**Coverage**,” the Plan states “this Plan *will be fulfilled in [its entirety if we replace your product,*” and under the section captioned “**Limits of Liability**,” the Plan states “[t]he *total liability under this Plan is the fair market value of the product,* as determined by us, not to exceed the original purchase price of your product. ... 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.*” A.A. 35, 48 (emphasis added). The Plan – under the section captioned “**Cancellation**” – also allows the customer to cancel the Plan at no charge within the first 30 days, or receive a pro rata refund at any time after that. A.A. 49. In sum, the terms make clear that the Plan does not provide unlimited coverage.

Moreover, the alleged misrepresentation that “the 2008 Service Plan would not expire until 2012” is not a misrepresentation. Appellants received a new replacement television under the Plan as promised, and that opportunity to do so

ran through 2012. Appellants' failure to acknowledge even a single provision of the contract that clearly disposes of their claims further undermines their arguments. Appellants are obviously trying to cherry pick provisions of the contract in an attempt to redraft the Plan in a manner that supports their position. The terms of the Plan are simple, clear, and unambiguous and they directly negate appellants' claims of deception. With respect to the Plan, the district court properly concluded that "[t]he absence of a misrepresentation in the 2008 Service Plan is fatal to the Bakers' claims under the Consumer Fraud Act and False Statements in Advertisement Act." A.A. 165.

2. The Dismissal of Appellants' Statutory Claims Relating to Advertisements Was Appropriate Because Appellants Failed to Sufficiently Allege Their Claims and There Was No Misrepresentation

The district court's holding that "the [appellants] have not stated their claims under the Consumer Fraud Act and the False Statements in Advertisement Act regarding the advertisements with the requisite particularity" with respect to the Plan advertisements is proper and should be upheld by this Court. A.A. 165; *see* Minn. R. Civ. P. 9.02.

Appellants rely on *Group Health Plan, Inc. v. Phillip Morris, Inc.* and *Wiegand v. Walser Automotive Group, Inc.* as the most apposite authority, but neither of those cases addressed the question of whether there was, in fact, a misrepresentation – the missing element of appellants' claims here. *Group Health*

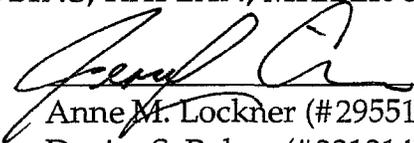
addressed the question of whether plaintiff must plead and prove *reliance*. 621 N.W.2d at 4 (emphasis added). *Wiegand* involved alleged oral misrepresentations that directly contradicted a written contract, and the court in that case found that such a contradiction would not preclude the plaintiff's ability to prove the requisite *causal nexus* between the alleged misrepresentation and the requisite *injury* as a matter of law. 683 N.W.2d at 812-13. Unlike *Wiegand*, the alleged misrepresentations here are nothing more than selective and incomplete contractual language taken verbatim from the Plan. Neither case supports Plaintiffs' arguments—as the district court correctly held.

Distinguishing the facts of this case from *Wiegand* and *Group Health*, the district court properly held that appellants here have not alleged any "specific false statement, oral or written" with respect to the advertisements. A.A. 165. Indeed, appellants failed to allege any false statement, oral or written, whatsoever. Still, even taking their allegations as true, their generalized claims that Best Buy put advertisements before the public that "misrepresented, or mislead consumers, that their Service Plan expires at the end of a specified term when, under certain circumstances, it expires prior to the specified term" fail as a matter of law. As set forth in preceding sections, the Service Plan does expire at the end of a specified term. There is nothing inconsistent with that statement and the remaining terms of the Plan when considered as a whole.

IV. CONCLUSION

For the reasons stated herein, Best Buy respectfully requests that this Court affirm the district court's order granting its motion to dismiss and deny appellants' appeal.

DATED: September 15, 2011 **ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

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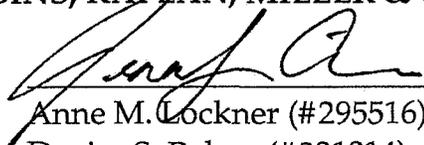
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BUY STORES, L.P.**

CERTIFICATE OF BRIEF LENGTH

The undersigned counsel for the respondent Best Buy Stores, L.P. certifies that this brief complies with the requirements of Minn. R. Civ. App. P. 132.01 in that it is proportionately spaced typeface utilizing Microsoft Word 2003 and contains 5,064 words, excluding the Table of Contents, Table of Authorities and Respondent's Addendum.

DATED: September 15, 2011 **ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

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