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TAMARA CHARLES
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

COMMISSIONER OF THE DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS; and GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS, Plaintiffs, v. PEPSICO, INC.; PEPSICO CARIBBEAN, INC.; THE COCA-COLA COMPANY; and CC ONE VIRGIN ISLANDS, LLC, Defendants.	CIVIL NO.: SX-25-CV- **ACTION FOR PUBLIC NUISANCE AND OTHER RELIEF** JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, Commissioner of the Department of Licensing and Consumer Affairs ("Commissioner") and Government of the United States Virgin Islands ("Government") and files this Complaint against Defendants PepsiCo, Inc. ("PepsiCo"), PepsiCo Caribbean, Inc. ("PepsiCo Caribbean"), The Coca-Cola Company ("Coca-Cola"), and CC One Virgin Islands, LLC ("CC One") (collectively, Defendants) and in support thereof, would show unto the Court as follows:

INTRODUCTION

1. Plastic pollution is a global crisis and a threat to both the environment and human health. PepsiCo and Coca-Cola—the top plastic polluters in the world—have littered the Virgin Islands with their plastic bottles and engaged in a disinformation campaign to make consumers falsely believe that purchasing their products in single-use plastic bottles is an environmentally responsible choice.

2. Plastic waste litters the Virgin Islands' beaches, waterways, parks, and numerous other public areas and degrades the island's natural beauty and resources (see Figure 1 showing plastic pollution in the East End Marine Park on St. Croix).

Figure 1: East End Marine Park, St. Croix[1]



3. The waste that turns up in the Virgin Islands, collected by Public Works, sometimes recycled by volunteers, and often migrating into the ocean, is the product of an explosion in the production of virgin plastic over the last several decades. Plastic production has risen from 2.3 million tons in 1950 to 448 million tons in 2015.[2] By 2060, plastic manufacturing is expected to triple.[3]

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[1] University of the Virgin Islands et al., *Keeping Our Coastlines Clean: A U.S. Virgin Islands Marine Debris Curriculum*, at 57, https://marinedebris.noaa.gov/curricula/keeping-our-coastlines-clean-us-virgin-islands-marine-debris-curriculum (last visited Oct. 25, 2024).
[2] Erin McCormick et al., *Americans' Plastic Recycling is Dumped in Landfills, Investigation Shows*, The Guardian (June 21, 2019), https://www.theguardian.com/us-news/2019/jun/21/us-plastic-recycling-landfills (Photo Credit: Kristin Wilson Grimes).
[3] Organisation for Economic Co-operation and Development, *Global Plastics Outlook* (June 21, 2022), https://www.oecd.org/en/publications/global-plastics-outlook_aa1edf33-en/full-report.html.

4. Nearly half of all plastic is designed for single-use packaging.[4] Plastic bottles make up a considerable portion of single-use plastic waste. For example, in 2021, companies generated roughly 600 billion plastic water bottles alone, resulting in 25 million tons of plastic waste.[5] The majority of this waste ends up in landfills.

5. As plastic pollution increases, it infiltrates drainage systems and accrues in landfills. Plastic waste particularly burdens islands, like the Virgin Islands, where the limited land area for managing trash, expensive transportation for recycling products, and ready transfer of plastic litter from land to ocean makes single-use plastic particularly costly, hard to manage, and dangerous.

6. Rather than confront this reality, the plastic industry has spread deceptive information about the true impact of plastic and its recyclability for decades. Following their lead, PepsiCo and Coca-Cola have employed similar disinformation campaigns, deceptively promising that recycling could offset any harm associated with single-use plastic bottles. For example, Coca-Cola has promised to create a "circular economy"[6] for their bottles, in which plastic bottles can be recycled and reused an endless number of times. In truth, plastic bottles can only be recycled once, if at all. Similarly, PepsiCo has overplayed the recyclability of their bottles by promising that it can create a "circular economy for plastics."[7] Moreover, PepsiCo and Coca-Cola have promoted

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[4] United Nations Environment Programme, *Our Planet is Choking on Plastic*, https://www.unep.org/interactives/beat-plastic-pollution/ (last visited Oct. 3, 2024).
[5] Rachel Ramirez, *The Plastic Water Bottle Industry is Booming. Here's Why That's a Huge Problem*, CNN (Mar. 16, 2023), https://www.cnn.com/2023/03/16/world/plastic-water-bottles-un-report-climate/index.html.
6 *See, e.g.*, The Coca-Cola Company, *Packaging Solutions for a World Without Waste*, https://www.coca-colacompany.com/sustainability/packaging-sustainability (last visited Oct. 4, 2024).
7 *See, e.g.*, PepsiCo, Inc., *Packaging*, https://www.pepsico.com/our-impact/esg-topics-a-z/packaging (last visited Oct. 4, 2024).

chemical recycling as a solution to littered or landfilled plastics that they know, or should know, will not actually solve the problem. PepsiCo and Coca-Cola have also made false promises that they would increase the use of recycled plastic by certain percentages and eliminate the use of virgin plastic.

7. Based in part on PepsiCo's and Coca-Cola's deceptive representations about the recyclability of their single-use plastic bottles, consumers and volunteer groups in the Virgin Islands expend considerable effort to recycle plastic.[8] But Defendants know plastic recycling is mostly theater—a show designed to make consumers feel good about, and be willing to, consume unprecedented volumes of Defendants' single-use plastic.

8. Defendants know, and have known, that the plastic in which their beverages are sold is not, and will not, be recycled at a scale meaningful enough to offset the significant harm associated with single-use plastic. Even worse, PepsiCo and Coca-Cola have used recycling to distract consumers from real solutions to the plastic crisis—reducing the use of plastic and investing in sustainable materials that can be reused.

9. The Commissioner and Government are bringing this lawsuit to hold Defendants accountable for their role in the plastic crisis that is overwhelming the Virgin Islands.

PARTIES

Plaintiffs

10. Plaintiff Commissioner of the Department of Licensing and Consumer Affairs, by and through the Attorney General of the Virgin Islands, brings Counts One and Two of this action pursuant to 12A V.I.C. § 104(d) and 12A V.I.C. § 327.

[8] *See* Island Green Living, https://islandgreenliving.org/ (last visited Oct. 16, 2024).

11. Plaintiff Government of the United States Virgin Islands is an unincorporated territory of the United States, organized and existing pursuant to the Revised Organic Act, 48 U.S.C. §§ 1541 to 1645, and has the right to bring suit.

12. The Attorney General of the Virgin Islands brings Count Three of this Action in the name of the People of the Virgin Islands, as the legal representative of Government of the Virgin Islands, 3 V.I.C. § 114, and pursuant to his common law authority.

Defendants

13. Defendant PepsiCo, Inc. is a North Carolina corporation with its principal place of business at 700 Anderson Hill Road in Purchase, New York 10577. At all relevant times, PepsiCo manufactured, marketed, and sold beverages packaged in plastic bottles, including, but not limited to, Pepsi, Mountain Dew, Aquafina, LifeWTR, and Gatorade, throughout the United States including in the Virgin Islands. PepsiCo uses both its own bottlers and independent bottlers to bottle its beverages.[9]

14. Defendant PepsiCo Caribbean, Inc. is a Puerto Rico corporation with a principal place of business at 668 Calle Cubitas in Guaynabo, Puerto Rico 00969 and is registered with the Office of the Lieutenant Governor to do business in the Virgin Islands. At all relevant times, Pepsi Caribbean manufactured and distributed PepsiCo beverages packaged in plastic bottles in the Virgin Islands.

15. PepsiCo has three main distribution channels for its products.[10] First, PepsiCo, along with its independent bottlers and distributors, operate a direct-store-delivery system where beverages are delivered to retail stores. Second, PepsiCo delivers some of its products from

[9] Michael J. de la Merced, *PepsiCo to Pay $7.8 Billion to Buy Its Two Top Bottlers*, N.Y. Times (Aug. 4, 2009), https://www.nytimes.com/2009/08/05/business/05pepsi.html.
[10] PepsiCo, Inc., Annual Report (Form 10-K), at 4-5 (Feb. 8, 2024).

manufacturing plants and distribution centers, both company and third-party operated, to customer warehouses. Third, PepsiCo distributes some of its products, primarily for its foodservice and vending business, through third-party distributors.

16. Defendant The Coca-Cola Company is a Delaware company with its principal place of business at One Coca-Cola Plaza, N.W. in Atlanta, GA 30313. At all relevant times, Coca-Cola manufactured, marketed, and sold beverages packaged in plastic bottles, including, but not limited to, Coca-Cola, Diet Coke, Dasani, Sprite, MinuteMaid, Fanta, Vitamin Water, and SmartWater, throughout the United States including in the Virgin Islands.

17. Coca-Cola and its bottling partners are collectively known as the Coca-Cola system.[11] Coca-Cola owns the brands it sells (*e.g.*, Coca-Cola, Vitamin Water) and is responsible for consumer marketing initiatives. It also manufactures and sells concentrates, beverage bases, and syrups for its products to bottling operations. Coca-Cola bottling partners manufacture, package, merchandise, and distribute final branded beverages to Coca-Cola's customers and vending partners, who then sell the products to consumers. Coca-Cola Company does not own, manage, or control most local bottling companies. Coca-Cola's finished product operations consist primarily of company-owned or company-controlled bottling, sales, and distribution operations.

18. Defendant CC One Virgin Islands, LLC is a Virgin Islands limited liability company with its principal place of business 12 Norre Gade in St. Thomas, Virgin Islands 00802. At all relevant times, CC One manufactured and distributed Coca-Cola beverages packaged in plastic bottles in the Virgin Islands.

[11] The Coca-Cola Company, *The Coca-Cola System*, https://www.coca-colacompany.com/about-us/coca-cola-system (last visited Sept. 30, 2024).

JURISDICTION AND VENUE

19. This Court has jurisdiction over this civil matter pursuant to 4 V.I.C. § 76, 12A V.I.C. § 104, and 12A V.I.C. § 328.

20. This Court has personal jurisdiction over the parties in this matter pursuant to 5 V.I.C. § 4903.

21. This Court is the proper venue pursuant to 4 V.I.C. § 78.

FACTUAL ALLEGATIONS

A. The Plastic Crisis in the Virgin Islands Impacts the Environment and Human Health.

22. Because of its versatility and durability, plastic is commonly used across a number of business sectors. However, its long life cycle and lack of recyclability threatens both terrestrial ecosystems and marine life. Plastic pollution also poses a significant risk to human health.

23. Plastics are part of a sector known as "petrochemicals," which are products made from fossil fuels such as oil and gas.[12] The vast majority of plastics cannot be recycled; that is, they cannot be collected, processed, and remanufactured into new products because of both technical and economic limitations.[13]

24. Widespread production and promotion of single-use plastic has led to persistent plastic leakage into the environment. Around the world each year, an estimated 11 million tons of plastic waste become aquatic pollution, and 18 million tons are polluted to land. In the United

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[12] *See* James G. Speight, *The Refinery of the Future*, at 1 (2011), https://www.sciencedirect.com/science/article/abs/pii/B9780815520412100013 ("A petrochemical is any chemical derived from petroleum and natural gas and used for a variety of commercial purposes as distinct from fuels that are burned to release energy.").

[13] U.S. EPA, *The U.S. Recycling System*, https://www.epa.gov/circulareconomy/us-recycling-system (last visited Sept. 23, 2024) ("In the United States, recycling is the process of collecting and processing materials (that would otherwise be thrown away as trash) and remanufacturing them into new products.").

States, between 1.13 million to 2.24 million metric tons of plastic waste leaks into the environment each year.[14] Plastic products account for approximately 85 percent of total marine waste and between 70 to 80 percent of all waste that ends up on land or in marine environments combined.[15]

25. Nearly two-thirds of total plastic waste comes from products that are discarded within five years of purchase.[16] Single-use plastics, such as plastic packaging, bags, straws, and disposable bottles and plasticware, represent the largest plastics application and account for one-third of all plastics consumed globally.[17] Single-use plastics comprise most of the plastic waste that escapes and/or is discharged into the environment.[18] Production of single-use plastics has consistently risen over the years. For example, from just 2019 to 2021, production of single-use plastics rose 6 million tons.[19]

26. The University of Virgin Islands Caribbean Green Center conducted a waste characterization study in 2019 that detailed the type of waste disposed of in St. Thomas, St. Croix, and St. John by sorting and weighing all materials found in randomly selected samples of waste at disposal facilities.[20] It found that 21% of the waste (by weight) or 2,007 pounds in St. Thomas was

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[14] Tik Root, *U.S. is Top Contributor to Plastic Waste, Report Shows*, The Washington Post (Dec. 1, 2021), https://www.washingtonpost.com/climate-environment/2021/12/01/plastic-waste-ocean-us/.
[15] U.S. Environmental Protection Agency, *Draft National Strategy to Prevent Plastic Pollution* (May 2, 2023).
[16] Press Release, Organization for Economic Cooperation and Development, Plastic Pollution is Growing Relentlessly as Waste Management and Recycling Fall Short (Feb. 2, 2022).
[17] Dominic Charles & Laurent Kimman, *Plastic Waste Makers Index 2023*, Minderoo Foundation (2023) at 17, https://cdn.minderoo.org/content/uploads/2023/02/04205527/Plastic-Waste-Makers-Index-2023.pdf.
[18] *Id.*
[19] *Single-Use Plastic Production Rose between 2019 and 2021 Despite Pledges*, Reuters (Feb. 6, 2023), https://www.reuters.com/business/environment/single-use-plastic-waste-rises-2019-2021-despite-pledges-2023-02-06/.
[20] Gregory Guannel, et al., *U.S. Virgin Islands 2019 Residential Waste Characterization*, Caribbean Green Technology Center (May 12, 2021) at 5, 7-9,

plastic.[21] Within that 21% of plastic waste, PET Bottles—the type of plastic bottles in which Defendants package their beverages—were the second most commonly found plastic and comprised 4.5% of the waste (by weight) or 433.57 pounds.[22] Researchers observed: "The high composition of plastic by weight is notable considering the low density of these materials."[23] In other words, because plastic is such a lightweight material, it takes a considerable volume of plastic to constitute 21% of the waste by weight, particularly when there are much heavier materials in the samples, such as lumber, metal, and glass. The study recognized: "[T]here are health and environmental issues associated with the low degradation rate of plastic, as well as the creation of microplastics in the air, land and sea."[24]

27. In the Virgin Islands, approximately 90% of marine debris is from land-based sources.[25] The most common marine debris collected during beach cleanups are plastic bottles, glass bottles, and bottle caps. In 2018, volunteers participating in a cleanup of the East End Reserve in St. Thomas collected seven times more plastic beverages bottles than volunteers collected during a territory-wide cleanup in 2016. This plastic litter detracts from the Virgin Islands' natural beauty and resources.

28. Defendants use a variety of different plastic polymers in their packaging, including polyethylene terephthalate ("PET" or "PETE"), polypropylene ("PP"), high-density polyethylene

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https://static1.squarespace.com/static/5d4a78607f06a500017a3e3e/t/6098eb95bddead19da16abb4/1716835215311/USVI+Waste+Characterization+2019.pdf.

[21] *Id.* at 10, 21.

[22] *Id.*

[23] *Id.* at 14

[24] *Id.*

[25] Howard Forbes, *The Tide is Turning on Marine Debris in the U.S. Virgin Islands*, NOAA Marine Debris Program (Mar. 25, 2021), https://blog.marinedebris.noaa.gov/tide-turning-marine-debris-us-virgin-islands.

("HDPE"), low-density polyethylene ("LDPE"), and several others. The waste characterization study found that PET bottles were the second most common source of plastic in St. Thomas.[26]

29. Most plastic beverage bottles are made of PET; however, plastic beverage caps are typically made of HDPE or PP.[27] These plastics are generally not recyclable and, even if they can be recycled, usually can only be recycled once before being discarded. However, because of the expense involved in recycling bottle caps, it is more likely that the plastic will end up in a landfill instead. Upon information and belief, Pepsi Caribbean and CC One Virgin Islands manufacture and distribute many of the single-use plastic bottles sold in the Virgin Islands.

30. Because plastic pollution has spread to every corner of the planet, its impact on ecosystems and humans has been studied extensively. Researchers have shown that plastic pollutes soil and waters, and harms living organisms, and that the capacity of ecosystems to adapt to climate change is diminished by plastic pollution, which can alter habitats and natural processes.[28] Plastic pollution compromises the natural processes of marine life and threatens wildlife with laceration or death.[29] Furthermore, because of the buoyancy of most plastics, plastic waste accrues on the sea

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[26] *Id.*
[27] Neon, *Different Types of Plastic, Their Applications, and Recycling Codes*, Raj Ras By Connect Civils (Sept. 30, 2019), https://rajras.in/types-of-plastic/.
[28] Plastic Pollution, United Nations Environment Program, https://www.unep.org/plastic-pollution (last visited Oct. 3, 2024).
[29] Simon Reddy, *Plastic Pollution Affects Sea Life Throughout the Ocean*, The Pew Charitable Trusts (Sept. 24, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/09/24/plastic-pollution-affects-sea-life-throughout-the-ocean.

surface.[30] Some types of plastic resins, such as polyethylene, have also been found to release greenhouse gases as they break down in the environment.[31]

31. Recycling in the Virgin Islands is particularly difficult and expensive. Until the past six or seven years, recycling was largely nonexistent. Now, volunteers, private businesses, and nonprofit organizations undertake the burdensome task of collecting and sorting potentially recyclable materials. Consumers must haul these materials to collection points. There are 4 collection points on St. Croix, 15 on St. Thomas, and 9 on St. John.[32] Barges must be hired to transport recyclable materials to the mainland. Because there is little return for plastic, virgin cardboard, glass, and aluminum take first priority, and plastic is shipped only to the extent that there is leftover space.

32. Due in significant part to Defendants' conduct in falsely promoting and distributing single-use plastic, the Virgin Islands faces a waste management crisis. The Virgin Islands' two landfills—Bovoni on St. Thomas and Anguilla on St. Croix—have been near or at capacity for years. The Bovoni landfill (see Figure 2 below) opened in 1979 and is more than 200 feet high, containing more than 2 million cubic yards of waste.[33] The Anguilla landfill, which opened in 1967, is 220 feet high, with 70 feet below ground-level.[34]

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[30] Beatriz Santos, *Around 60% of Plastic in Oceans is Floating at the Surface, Say Dutch Scientists*, Sustainable Plastics (Aug. 9, 2023), https://www.sustainableplastics.com/news/around-60-plastic-oceans-floating-surface-say-dutch-scientists.

[31] Brooke Bauman, *How Plastics Contribute to Climate Change*, Yale Climate Connections (Aug. 20, 2019), https://yaleclimateconnections.org/2019/08/how-plastics-contribute-to-climate-change/.

[32] *See* Bin Sites Mapped, Caribbean Green Technology Center (last visited Nov. 5, 2024), https://cgtc-usvi.org/usvi-public-bin-sites.

[33] Guannel *supra* note 20.

[34] *Id.*

33. The federal government entered into consent decrees with the Virgin Islands after finding the landfills presented "imminent and substantial endangerment[s] to health and the environment."[35] These decrees required the Virgin Islands to stop accepting waste at Anguilla and Bovoni by 2018 and 2019, respectively, and implement mitigation measures, such as recycling programs and an assessment of groundwater that may be contaminated.

Figure 2 Bovoni Landfill, St. Thomas[36]



34. The situation is now dire. With no other options, and with the consent of the federal government, Bovani and Anguilla were still accepting waste in areas where garbage has settled, creating more space. However, the Virgin Islands must close Anguilla and Bovoni by 2026 and 2028, respectively. Bovoni is expected to run out of space in 2028, and the Anguilla landfill has

[35] *U.S. v. Government of the U.S. Virgin Islands*, No. 3:10-cv-00048 (2012) (Bovani); *See U.S. v. Government of the U.S. Virgin Islands, et al.*, No. 3:10-cv-48 (2013) (Anguilla).
[36] Suzanne Carlson, *Bovoni Landfill Temporarily Accepting Green Waste From Haulers*, The Virgin Islands Daily News (Aug. 20, 2024), https://www.virginislandsdailynews.com/news/bovoni-landfill-temporarily-accepting-green-waste-from-haulers/article_7cf40d16-5e8f-11ef-9633-9fd8ac83e524.html.

been temporarily shut down because of a fire.[37] Officials have discussed various solutions, including expanding the existing landfills, opening new landfills, using trash-reduction technology, or potentially shipping trash to another landfill in Puerto Rico, a significant expense for the Virgin Islands There is limited space for landfills on the islands, significantly increasing the difficulty in finding a viable solution to the explosion of plastic waste.

35. Defendants, in falsely marketing and purposefully manufacturing, bottling, and selling excessive amounts of beverages packaged in single-use plastic bottles without implementing or paying for an environmentally responsible way to dispose of them, have shifted the burden of dealing with plastic waste on to the government and people of the Virgin Islands.

36. In addition, plastic litter interferes with the use of public property. Substantial amounts of plastic packaging and products litter public sidewalks, streets, beaches, and waterways. Plastic pollution is an ugly nuisance and, due to the quantity and constant replenishment, it is nearly impossible to fully clear from public areas.

37. But plastic waste is more than unsightly and expensive to address. There is significant evidence that the presence of plastics and microplastics negatively impacts public health, as well as the environment. When plastic—like Defendants' plastic bottles—are left as litter in the environment, they inevitably disintegrate into smaller and smaller pieces until they eventually become "microplastics," tiny plastic bits measuring five millimeters or less, that are readily transported by air, wind, water, and the fecal matter of organisms that ingest them. They are currently almost impossible to eradicate in the environment. Microplastic pollution has

[37] Suzanne Carlson, *Government Working to Create More Landfills Amid Ongoing Trash Crisis*, The Virgin Islands Daily News (May 9, 2023), https://www.virginislandsdailynews.com/news/government-working-to-create-more-landfills-amid-ongoing-trash-crisis/article_0258f72a-4132-57b4-b915-a3d68ee3b007.html.

emerged as a global environmental threat to land ecosystems because of its impact on soil environments. Microplastics affect both seed germination and plant growth and productivity, as well as reduce food yields and negatively impact food chain components and food security.[38]

38. Microplastics affect a variety of fish, birds, turtles, and other marine mammals. Microplastics have been found in the guts and feces of a wide variety of both marine and land-based wildlife.[39] Ingestion of microplastics has negative impacts on the health of the animals, including their immune systems.[40] Microplastics also contaminate the soil and water, affecting the food production and the lives, of millions of people, including people in the Virgin Islands.[41]

39. Microplastics also have been found to harm humans. While the full effect of microplastics on the human body is still being explored, the research thus far points to troubling and dangerous consequences resulting from the boom in plastic waste caused, in part, by Defendants' conduct. For example, ingesting microplastics has been shown to reduce nutritional intake and cause physical damage, such as lacerations and inflammatory responses in marine and freshwater invertebrates, leading to reduced reproduction and growth.[42] These effects vary

[38] Raveendra Sahasa, *Effect of polyethylene microplastics on seed germination of Blackgram (Vigna mungo L.) and Tomato (Solanum lycopersicum L.)*, Envt'l Adances (Feb. 5, 2023) at 2, https://www.sciencedirect.com/science/article/pii/S2666765723000091.
[39] John Prata & Patricia Dias-Pereira, *Microplastics in Terrestrial Domestic Animals and Human Health: Implications for Food Security and Food Safety and Their Role as Sentinels, A*nimals (Feb. 14, 2023) at 8-9, https://www.mdpi.com/2076-2615/13/4/661.
[40] Sumon Sarkar, et al., *Microplastic Pollution: Chemical Characterization and Impact on Wildlife*, Int'l J. Envtl. Res. & Pub. Health (Jan. 18 2023) at 23-25, https://pmc.ncbi.nlm.nih.gov/articles/PMC9914693/pdf/ijerph-20-01745.pdf.
[41] Carole Excell, et al., *Legal Limits on Single-Use Plastics and Microplastics: A Global Review of National Laws and Regulations*, United Nations Environment Programme (July 3, 2018) at 6, https://www.unep.org/resources/publication/legal-limits-single-use-plastics-and-microplastics-global-review-national.
[42] *Ingestion*, NOAA Marine Debris Program, https://marinedebris.noaa.gov/why-marine-debris-problem/ingestion (last visited Nov. 5, 2024).

between species and are influenced by the types of plastics and the concentration of microplastics present in the environment.[43]

40. Studies have shown that microplastics are contaminating the air we breathe, the food we eat, and the water we drink.[44] One study revealed the consumption of common food and beverages, such as water, beer, shellfish, and salt, results in a weekly ingestion of approximately five grams of plastic.[45] In other words, humans consume the equivalent of a credit card's worth of plastic every week.[46]

41. Microplastics have been found to penetrate some human organs.[47] Particles can be lodged in the respiratory or digestive tract and can then be absorbed through the small intestine and lungs, subsequently being distributed throughout the body to other organs through the circulatory system.[48] In addition, microplastics have been found to accumulate in the human gut, lungs, and bloodstream, and, in some cases, the male testes, mammary glands, and placental tissue.[49]

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[43] XiaoZhi Lim, *Microplastics are Everywhere – But Are They Harmful?*, Nature (May 4, 2021), https://www.nature.com/articles/d41586-021-01143-3.
[44] Dalberg Advisors et al., *No Plastic In Nature: Assessing Plastic Ingestion From Nature to People*, WWF International (2019) at 7-9, 11, https://files.worldwildlife.org/wwfcmsprod/files/Publication/file/91am5jqlgw_WWF_McK_Plastic_Waste_FinalWeb2.pdf?_ga=2.63986223.1013812354.1655063013-1628915625.1655063013.
[45] *Id*.
[46] Chris Cillizza, *We consume a credit card's worth of plastic *every* week*, CNN (Nov. 2, 2022), https://www.cnn.com/2022/10/31/us/microplastic-credit-card-per-week/index.html.
[47] *See* Simon Ducroquet & Shannon Osaka, *The Plastics We Breathe*, Wash. Post (June 10, 2024), https://www.washingtonpost.com/climate-environment/interactive/2024/microplastics-air-human-body-organs-spread/.
[48] Suvash Saha & Goutam Saha, *Effect of Microplastics Deposition on Human Lung Airways: A Review with Computational Benefits and Challenges*, Heliyon (Jan. 11, 2024) at 3, https://www.cell.com/heliyon/fulltext/S2405-8440(24)00386-4?_returnURL.
[49] Antonio Ragusa, et al., *Plasticenta: First Evidence of Microplastics in Human Placenta*, Envtl. Int'l (Jan. 2021) at 7, https://www.sciencedirect.com/science/article/pii/S0160412020322297.

42. Microplastics and nanoplastics ("MNPs") are emerging as a potential risk factor for cardiovascular disease. A study published in the New England Journal of Medicine this year found patients with carotid artery plaque in which MNPs were detected had a higher risk of a combination of heart attack, stroke, or death from any cause at 34 months of follow-up than those in whom MNPS were not detected.[50]

43. The National Institute of Health shared a preview of another study in 2024 which is still undergoing peer review. It found microplastics in the livers, kidneys, and brains of human cadavers, with brains containing 7-to-30 times more plastic (mostly nanoplastics) than other organs.[51] Most alarming, the brains of people with Alzheimer's disease or dementia contained significantly more plastic than the brains of people without these diseases.

44. Microplastics also contain many chemicals that have been extensively studied and are well-known to harm human health, including bisphenols, phthalates, volatile organic compounds, PFAS, flame retardants, and heavy metals.[52]

B. Defendants' Contribute Significantly to the Plastic Waste Crisis.

45. Defendants depend on and increase the manufacture of single-use plastics. Many drinks produced, manufactured, distributed, and sold by PepsiCo and Coca-Cola are packaged in single-use plastic packaging, which are bought, used, and then immediately thrown away by consumers. Single-use plastics create the need for the plastic industry to continually manufacture

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[50] Raffaele Marfella, et al., *Microplastics and Nanoplastics in Atheromas and Cardiovascular Events*, 390 New Eng. J. of Med. 900, 908 (Mar. 6, 2024), https://www.nejm.org/doi/full/10.1056/NEJMoa2309822.
[51] Matthew Campen et al., *Bioaccumulation of Microplastics in Decedent Human Brains Assessed by Pyrolysis Gas Chromatography-Mass Spectrometry*, National Library of Medicine (May 6, 2024) at 6, https://pmc.ncbi.nlm.nih.gov/articles/PMC11100893/.
[52] Tracey J. Woodruff, *Health Effects of Fossil Fuel-Derived Endocrine Disruptors*, 390 New Eng. J. Med. 922, 928 (2024)

virgin plastic. The new plastic produced contributes to an endless cycle of pollution in the Virgin Islands.

46. Defendants are significant contributors to the plastic waste crisis around the world. PepsiCo and Coca-Cola have been ranked as the world's top plastic polluters for five consecutive years, and yet, they have faced little to no accountability for their plastic trash that litters areas around the globe, including the Virgin Islands. PepsiCo's and Coca-Cola's reliance on and deceptive marketing of single-use plastics are key contributors to plastic waste.

47. Researchers have found a direct link between increased plastic production and increased plastic pollution, such that every 1% increase in consumer goods companies' plastic production is associated with a 1% increase in plastic pollution in the environment.[53] To put it another way, the more plastic packaging PepsiCo and Coca-Cola use and sell, the more plastic pollution occurs.

48. A brand audit conducted by Break Free From Plastic found that PepsiCo was the number one polluter with 34,780 items identified and recorded across 30 countries.[54] PepsiCo produces approximately 2.5 million metric tons of plastic annually. Coca-Cola produces approximately 3.224 million metric tons of plastic every year and consistently has been one of the world's top plastic polluters. Similarly, Coca-Cola was ranked as the number two polluter with 33,820 items identified and recorded across 40 countries.[55] Coca-Cola produces approximately

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[53] Press Release, Break Free From Plastic, New Research Confirms Plastic Production is Directly Linked to Plastic Pollution (Apr. 25, 2024), https://www.breakfreefromplastic.org/2024/04/25/new-research-confirms-plastic-production-is-directly-linked-to-plastic-pollution/.

[54] Break Free From Plastic, *Branded 6: Holding the World's Worst Plastic Polluters Accountable Annually Since 2018* (2023) at 5, https://drive.google.com/file/d/1YFyfRv4m_viZZXa8b1HdpucDX3WEwJzv/view (hereinafter "2023 Brand Audit Report").

[55] *Id.*

3.224 million metric tons of plastic every year. Both PepsiCo and Coca-Cola have consistently been two of the world's top plastic polluters. Upon information and belief, these results are consistent with pollution rates in the Virgin Islands.

49. From 2014 to 2024, Defendants manufactured, distributed, and sold in the Virgin Islands at least twelve million Coca-Cola products, including Dasani, Smart Water, Coke, Sprite, Vitamin Water, and Fuze Iced Tea, and more than two million PepsiCo products, including Aquafina, Lifewater, Pepsi, Gatorade, and Lipton Iced Tea. These products were all packaged in single-use plastic bottles.

C. PepsiCo and Coca-Cola Have Engaged in Disinformation Campaigns to Deceive Consumers About the Environmental Impact of Their Products.

50. PepsiCo and Coca-Cola have used the plastic industry's decades-long playbook to deceive consumers and further exacerbate the plastic pollution crisis. The strategy for marketing and selling more plastic products, despite the clear harm to the environment, has evolved over the years. By the 1970s, public concern over plastic pollution had become apparent. However, the plastic industry promoted incineration and landfilling as "solutions" to the problem. Both ideas worsened the issue, creating more pollution and releasing harmful toxins into the atmosphere.

51. Many people grew up learning to help the environment by practicing the three Rs—Reduce, Reuse, and Recycle. But, in the 1980s, the plastic industry only promoted recycling as the key to solving the plastic waste problem even though it knew plastics were notoriously difficult to recycle.

52. The plastics industry began to lie about the viability of recycling as a direct result of the backlash faced by lawmakers and the public. Facing the possibility of a plastic ban, the plastics industry banded together to form various trade associations that lobbied lawmakers around

the country. The goal was to sell the promise of recycling as a solution to the problem the plastics industry created.

53. One of the first steps was implementing Resin Identification Codes, or RICs. RICs grouped plastics by resin type and labeled them with a number surrounded by a triangle of "chasing arrows," the recognized symbol for recycling. While the claimed goal of RICs was to promote recycling, experts determined that it made no difference to the actual recycling process and only comforted consumers. False-solution campaigns, like the RICs, have become commonplace and have been adopted by PepsiCo and Coca-Cola. In addition, the plastic industry also made performative investments as part of its campaigns to promote plastic recycling.

54. PepsiCo and Coca-Cola have joined and extended the plastic industry's deceptive campaigns. These campaigns are particularly harmful because they emphasize recycling—a solution experts have known for decades cannot work on a large enough scale—instead of tried-and-true solutions like reducing the use of plastic and investing in sustainable materials that can be reused.

1. To increase comfort with single use plastics, PepsiCo and Coca-Cola have portrayed themselves as "sustainable" companies, but their actions show otherwise.

55. PepsiCo and Coca-Cola know that consumers increasingly and deliberately seek out products and services from environmentally responsible and sustainable companies.[56]

56. PepsiCo and Coca-Cola purport to be environmentally conscious companies that work to protect the interests of the planet. For example, PepsiCo's website touts that it is "building a stronger more sustainable future."[57] Similarly, Coca-Cola's website states that their "growth

[56] 2023 Brand Audit Report *supra* note 50 at 5.
[57] *See, e.g.*, PepsiCo, Inc., *PepsiCo Positive*, https://www.pepsico.com/ (last visited Nov. 5, 2024).

strategy is grounded in [their] core values and commitment to social and environmental responsibility."[58]

57. A PepsiCo post on X similarly touted their desire to "drive a lasting and meaningful impact for [their] business, the planet, and the people who live on it" (see Figure 3 below).[59]

Figure 3: PepsiCo X Post



58. In a post on X from June 2021, Coca-Cola acknowledged that it had "a responsibility to help solve the global plastic waste crisis" (see Figure 4 below).[60]

[58] *See, e.g.*, The Coca-Cola Company, *Our Sustainability Progress*, https://www.coca-colacompany.com/ (last visited Nov. 5, 2024).
[59] PepsiCo (@PepsiCo), X (formerly Twitter) (July 7, 2023, 10:30 AM), https://x.com/PepsiCo/status/1677324115278016513.
[60] The Coca-Cola Co. (@CocaColaCo), X (formerly Twitter) (June 3, 2021, 9:01 AM), https://x.com/CocaColaCo/status/1400437378645438476.

Figure 4: Coca-Cola X Post



59. PepsiCo and Coca-Cola invest in advertisements that give the false impression of sustainability to keep their sales and profits high. For example, in 2019, Coca-Cola invested $4.24 billion in advertising and marketing alone,[61] compared to only $11 million to help fund a river cleanup initiative the same year.[62]

60. PepsiCo and Coca-Cola are aware that consumers have become increasingly sensitive to sustainability and recycling and have attempted to brand themselves as sustainable, despite the reality.[63]

61. PepsiCo and Coca-Cola both are members of a number of organizations that push false solutions to the plastic crisis while maintaining profits and the status quo for the plastics industry. The Consumer Brands Association, of which both PepsiCo and Coca-Cola are members, have made efforts to deceive consumers by advocating for changes to the definition of recycling. The association has pressed lawmakers and advocates that companies should be able to stamp

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[61] *Coca-Cola Spent $4.24bn for Advertising in 2019, $20bn in the Last 5 Years,* Focus on Business (Mar. 5, 2020), https://focusonbusiness.eu/en/news/coca-cola-spent-4-24bn-for-advertising-in-2019-20bn-in-the-last-5-years/3404.

[62] Press Release, The Coca-Cola Company, *Benioff Ocean Initiative and the Coca Cola Foundation Announce $11 Million in Funding to Clean Up River and Stem Flow of Waste to Oceans* (Jan. 15, 2020), https://www.coca-colacompany.com/media-center/benioff-ocean-initiative-and-the-coca-cola-foundation-announcement.

[63] *See* The Recycling Partnership, *Consumer Research on Recycling Behavior and Attitudes Regarding On-Pack Labeling* (Mar. 10, 2023), https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/.

"recyclable" on products that are technically "capable" of being recycled, despite the products most likely ending up in a landfill.[64] The group has also previously urged a looser definition of "recyclable" to the Federal Trade Commission.[65]

62. Coca-Cola has proactively lobbied against packaging regulations around the world for over a decade.[66] PepsiCo is also a core partner in six industry alliance groups, including Alliance to End Plastic Waste, Closed Loop Partners, and Circulate Capital. However, these groups are promoting numerous false solution projects, such as advocating for unproven technologies for recycling and pushing responsibility for the plastic waste to consumers, that are funded by the top seven polluting, fast-moving consumer good companies.[67]

63. In addition, in 2015, Coca-Cola funded and steered a report, published by the Ocean Conservancy and written by McKinsey & Company, placing the blame for the majority of plastic pollution in the ocean on five Asian countries—the Philippines, China, Indonesia, Vietnam, and Thailand. The report was highly problematic in that it failed to address key contributors to ocean pollution, specifically Coca-Cola's and others' continual use and promotion of single-use plastics.[68] The report was later retracted, and Ocean Conservancy issued a formal apology acknowledging plastic production as the root cause of ocean pollution.

64. Until 2022, Coca-Cola was a major financial supporter of PLASTICS—a trade association that lobbied against bans on single-use plastic. Coca-Cola ended its association with

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[64] Lisa Song, *These Household Brands Want to Redefine What Counts as Recyclable*, ProPublica (Sep. 9, 2024), https://www.propublica.org/article/recycling-recyclable-plastics-consumer-brands-association.
[65] *Id.*
[66] Break Free From Plastic, Brand Audit Report 2022 (2022) at 18, https://brandaudit.breakfreefromplastic.org/brand-audit-2023 (hereinafter 2022 Brand Audit Report).
[67] *Id.*
[68] *Id.* at 17.

PLASTICS after facing significant backlash from several environmental groups.[69] PepsiCo was also a long-time member of PLASTICS.

2. PepsiCo and Coca-Cola Falsely Pushed Recycling as the Solution to Reassure Consumers about Single-Use Plastic Packaging.

65. For decades, plastic manufacturers and experts have known about the futility of recycling.[70] In April 1973, an industry consultant tasked with forecasting possible issues for top industry executives wrote a report that said that recycling plastic was unlikely to happen on a broad scale.[71]

66. PepsiCo has characterized the problem as a "plastic pollution crisis" and has expressly acknowledged that its plastic packaging may end up as waste on land or in water with "potential environmental impacts." Coca-Cola has also acknowledged that the world has a "packaging waste problem" and acknowledged its responsibility to help solve the global plastic waste crisis.

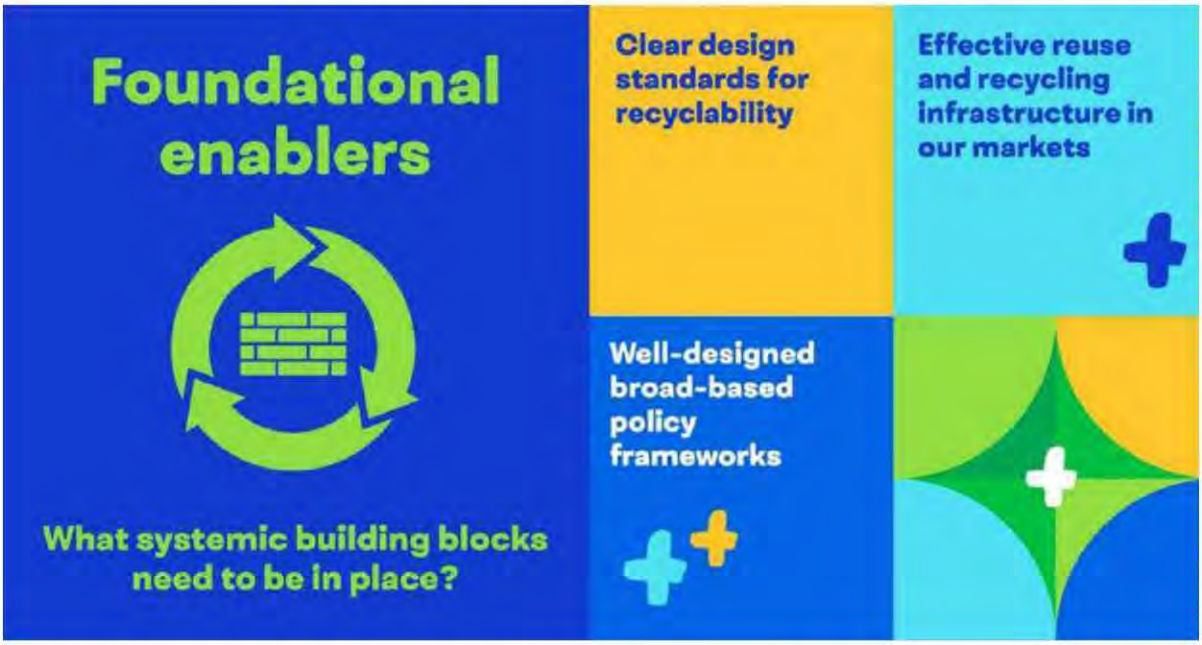
67. PepsiCo is well-aware of its role in the plastic pollution crisis and has expressly acknowledged that its own plastic packaging may end up as waste on land or in water bodies with "potential environmental impacts." PepsiCo Chief Sustainability Officer Jim Andrew, in association with the Ellen MacArthur Foundation, issued a press release stating "[w]e know we

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[69] Ewan Palmer, *Coca-Cola and PepsiCo Ditch Ties to Plastics Industry Association Following Pressure from Greenpeace: 'A Victory for Every Person That Spoke Up'*, Newsweek (July 24, 2019), https://www.newsweek.com/coca-cola-pepsi-plastics-industry-association-1450866#.
[70] Laura Sullivan, *Plastic Wars: Industry Spent Millions Selling Recycling — To Sell More Plastic*, NPR (Mar. 31, 2020), https://www.npr.org/2020/03/31/822597631/plastic-wars-three-takeaways-from-the-fight-over-the-future-of-plastics.
[71] *Id.*

cannot recycle our way out of this plastic pollution crisis" (see Figure 5 (PepsiCo Positive program strategy) below).[72]

Figure 5: PepsiCo pep+ program strategy.



68. Similarly, Coca-Cola promotes an ever-renewable circular chain of recycling of their products (see Figure 6 below). This ignores and blatantly misrepresents the reality of recycling plastic products, misleading and deceiving consumers.

[72] PepsiCo, *PepsiCo Introduces New Packaging Goal, Doubling Down on Scaling Reusable Packaging Options* (Dec. 5, 2022), https://www.pepsico.com/our-stories/press-release/pepsico-introduces-new-packaging-goal-doubling-down-on-scaling-reusable-packagin12052022 (hereinafter "PepsiCo 2022 Press Release").

Figure 6: Coca-Cola Circular Economy Advertisement



69. Despite PepsiCo's and Coca-Cola's awareness of the limits of recycling as a solution to the plastic pollution crisis, they have routinely and consistently portrayed recycling as a practical solution (see Figure 7 (Coca-Cola claiming it can create a "world without waste") below).

Figure 7: Coca-Cola #WorldWithoutWaste Campaign



70. PepsiCo and Coca-Cola have pushed recycling as a key solution to the plastic waste problem. For example, Coca-Cola's website states that "by properly recycling bottles and cans, we can help sustain a circular economy where we can source more recycled material to use in future packaging" (see Figure 8 ("again and again and again" advertising) below). Furthermore, Coca-Cola's packaging places a heavy focus on recycling and pushes that "recycling is [its] message on the bottle."[73] Similarly, PepsiCo's sustainable packaging vision includes a heavy focus on "driving recycling and a circular economy for recycled materials."[74] In addition, PepsiCo and Coca-Cola, along with Dr. Pepper, are partners in the "Every Bottle Back" initiative (see Figure 9 below). This falsely portrays the feasibility of collecting every bottle.

Figure 8: Coca-Cola "again and again and again" Advertising



[73]The Coca-Cola Company, *Endlessly Refreshing*, https://us.coca-cola.com/EndlesslyRefreshing (last visited Nov. 5, 2024).
[74] PepsiCo, Inc., Packaging, https://www.pepsico.com/our-impact/esg-topics-a-z/packaging (last visited Nov. 5, 2024).

Figure 9: "Every Bottle Back" Advertisement[75]

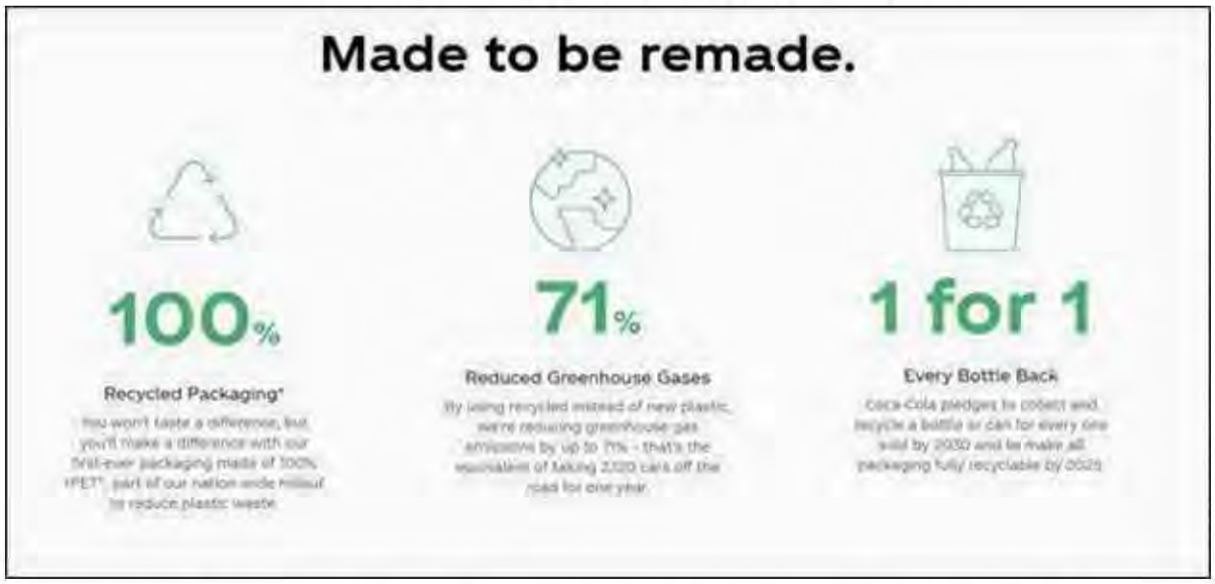


71. PepsiCo's website asserts that it is "helping build a circular and inclusive value chain" and plans to "introduce more sustainable packaging into the value chain."[76] While PepsiCo touts a desire to cut virgin plastic use by 50%, this ignores that much plastic cannot be effectively recycled, or if it can, can only be recycled once. The self-described, never-ending, and environmentally virtuous circular chain that PepsiCo claims it will create is in clear contravention to well-documented research and reality itself.

72. PepsiCo and Coca-Cola have placed significant emphasis on the idea that their plastic bottles are "made to be remade" (see Figure 10 below).[77] However, this downplays how difficult recycling plastic bottles is and the effectiveness of doing so. Plastic bottles cannot be recycled into new bottles over and over again, as PepsiCo and Coca-Cola suggest and state.

[75] American Beverage Association, Facebook (Feb. 1, 2021, 9:14 AM), https://www.facebook.com/AmeriBev/videos/every-bottle-back/4906053126135778/.
[76] PepsiCo, Inc., *Positive Value Chain: Packaging*, https://sustainabilityaction.pepsico.com/pep-positive-pillars/positive-value-chain-packaging (last visited Nov. 5, 2024).
[77] American Beverage Association, *Working Together to Get Every Bottle* Back, https://www.innovationnaturally.org/every-bottle-back/ (last visited Nov. 5, 2024).

Figure 10: "Made to be Remade" Initiative



73. As PepsiCo and Coca-Cola are aware, it is economically and practically impossible to recycle all of the plastic that they produce. In 1996, only 9.5% of plastic was recycled. By 2018, that number had fallen to 8.7%. Recycling simply cannot keep pace with Defendants' plastic production—or their false promises.

74. It is estimated that, between 1950 and 2015, only 0.9% of plastics produced has been recycled more than once, and doing so may not be an unequivocal benefit given the inputs of the process combined with the diminishing returns of the product.[78] The reality is that even plastic bottles that can be recycled must be clear, colorless, and free of contaminants from things such as labels—making it difficult to make plastic bottles of recycled plastic bottles.[79] As a consequence, as PepsiCo and Coca-Cola knew or should have known, a significant number of their plastic bottles would not and do not get recycled and are actually "downcycled," meaning they are remade into

[78] *See* Sarah Deweerdt, *Why It's So Hard to Recycle Plastic*, Scientific American (Dec. 13, 2022), https://www.scientificamerican.com/article/why-its-so-hard-to-recycle-plastic/.
[79] Emily Chung, *What really happens to plastic drink bottles you toss in your recycling bin*, CBC News (Jan. 7, 2020), https://www.cbc.ca/news/science/bottle-recycling-1.5416614.

an item of lower quality which typically cannot be recycled again.[80] Downcycling has significant ramifications for the role of recycling because it imposes a terminal point on the life of any given plastic product.[81] Thus, PepsiCo and Coca-Cola's promotion of recycling as a fix to the plastic pollution crisis is not feasible or based in the reality of the packaging they make and how they know consumers use and recycle them.

75. Recycled material merely delays production of virgin material from fossil fuel precursors until a later date. This means that recycling alone, using current common methods, is incapable of eliminating the impacts—such as greenhouse gas emissions—of plastic productions, even in the unlikely event that recycling rates reached 100%.[82]

76. PepsiCo and Coca-Cola have also advocated for "advanced recycling," also known as chemical recycling, to the public after traditional recycling efforts have largely failed, despite knowing it is ineffective. For example, Coca-Cola senior director of sustainability and public policy in Europe stated that "this new technology is critical to improve access to recycled materials for bottles."[83] Similarly, PepsiCo supported a position paper advocating for the use of chemical recycling.[84] "Advanced recycling" is a term used by the plastic industry to describe a variety of heat or solvent-based technologies that can theoretically convert certain types of plastic waste into

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[80] Emily Petsko, *Recycling Myth of the Month: That plastic bottle you thought you recycled may have been 'downcycled' instead*, Oceana (July 1, 2021), https://oceana.org/blog/recycling-myth-month-plastic-bottle-you-thought-you-recycled-may-have-been-downcycled-instead/.
[81] *See* Abigail Holt, *Can Downcylcing Save Us? No…Here's* Why, Lasso Loop (Sept. 2, 2022), https://www.lassoloop.com/lasso-life/downcycling-is-not-the-solution.
[82] *Id.*
[83] Dieter Holger, *Coca-Cola Trials Turning Hard-to-Recycle Plastic Into Bottles*, The Wall Street Journal (May 11, 2023), https://www.wsj.com/articles/coca-cola-trials-turning-hard-to-recycle-plastic-into-bottles-2f8d0dec.
[84] Cecilia Keating, *Nestle, Danone, Unilever and PepsiCo Agree on Plastic Chemical Recycling Principles*, Trellis (Apr. 15, 2022), https://trellis.net/article/nestle-danone-unilever-and-pepsico-agree-plastic-chemical-recycling-principles/.

fuels, chemicals, waxes, and petrochemical feedstock, which, after further refinement, can be used to make new plastic. Pyrolysis is the most common type of proposed advanced recycling and involves heating plastic in a standalone chamber until it breaks down into liquids, waxes, and gases. The liquid is composed of an oil called pyrolysis oil that includes naphtha and other hydrocarbons. The naphtha is then further broken down into ethylene and propylene, which are polymerized to make new plastics, including polyethylene and polypropylene. However, very little of the plastic waste that undergoes this process will be recycled into new plastic, with a 2023 study finding that only 1 to 14 percent of the plastic was actually made into a new plastic product.[85] Moreover, chemical conversion has not been proven at scale. Compared with traditional, or mechanical, recycling, it has higher costs, energy requirements, and greenhouse emissions.[86] As one report put it, "chemically transforming plastic into fuel is not recycling, it's simply another way to burn fossil fuel."[87]

77. As PepsiCo and Coca-Cola are well aware, chemical recycling will not reduce the amount of plastic being produced and is not actual recycling of its single-use plastic products. This is an example of a false solution, which are methods that are unproven, infeasible, or promote a false narrative, project advanced by PepsiCo and Coca-Cola.[88]

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[85] Taylor Uekert et al., *Technical, Economic, and Environmental Comparison of Closed-Loop Recycling Technologies for Common Plastics*, 11 ACS Sustainable Chem. Eng. 965, 969 (2023), https://pubs.acs.org/doi/epdf/10.1021/acssuschemeng.2c05497?ref=article_openPDF.
[86] The Pew Charitable Trusts, *Breaking the Plastic Wave* (2020), https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_distilledreport.pdf.
[87] Break Free From Plastic, *Missing the Mark: Unveiling Corporate False Solutions to the Plastic Pollution Crisis* (2021), https://www.breakfreefromplastic.org/missing-the-mark-unveiling-corporate-false-solutions-to-the-plastic-crisis/.
[88] *Id.*

3. PepsiCo and Coca-Cola Misled Consumers About Their Use of Recycled Plastic.

78. PepsiCo and Coca-Cola have made numerous, misleading, and unrealistic promises to consumers about reducing their use of "virgin" plastic and increasing their use of recycled plastic.

79. PepsiCo announced in 2019 that it would reduce the total amount of virgin plastic it uses by 35% by 2025.[89] However, PepsiCo ceased to publish its progress toward this beverage bottle objective and substituted a new goal for reducing virgin plastic. That new goal was to reduce virgin plastic by 50% by 2030.[90] This is just one example of PepsiCo making public declarations for sustainable initiatives and failing to actually implement any methodology to reach those goals. By repeating this endless cycle of making promises and not living up to them, PepsiCo is able to reap significant profits and maintain a public face that it is fighting the pollution crisis. In reality, PepsiCo continually pushes back the projected completion date of its initiatives.

80. Coca-Cola has employed the same strategy. It has promoted the lofty goal of creating a "world without waste," while simultaneously pushing practices and initiatives that will not accomplish this goal.[91] Coca-Cola claimed that it can achieve a "circular economy" and published objectives to curb its contributions to plastic pollution, while simultaneously failing to meet them.

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[89] *PepsiCo Accelerates Plastic Waste Reduction Efforts*, PR Newswire (Sept. 13, 2019), https://www.prnewswire.com/news-releases/pepsico-accelerates-plastic-waste-reduction-efforts-300917771.html.

[90] PepsiCo, Inc., *PepsiCo Introduces New Packaging Goal Doubling Down on Scaling Reusable Packaging* (Dec. 5, 2022), https://www.pepsico.com/our-stories/press-release/pepsico-introduces-new-packaging-goal-doubling-down-on-scaling-reusable-packagin12052022.

[91] The Coca-Cola Company, *Packaging Solutions for a World Without Waste*, https://www.coca-colacompany.com/sustainability/packaging-sustainability (last visited Nov. 5, 2024).

81. Furthermore, Coca-Cola Chief Executive Officer, James Quincey, made clear in a 2019 interview that the company has no intention of reducing its plastic use.[92]

82. Both Coca-Cola and PepsiCo's plastic productions have actually increased over the past few years, directly contradicting their consistent promises to be sustainable and reduce their use of virgin plastic.[93] Coca-Cola produces over 3.2 million metric tons of plastic each year, and PepsiCo produces 2.5 million tons of plastic each year, both of which increase every year.[94]

83. Coca-Cola heavily markets its bottles made of 100% recycled plastic (see Figures 11 and 12 below), making consumers believe that all—or at least a substantial share—of the company's bottles are made of recycled plastic. But Coca-Cola fails to disclose that the vast majority of its products are still packaged using virgin plastic. Coca-Cola and PepsiCo pledged to source a quarter of their plastic packaging from recycled material by 2025. By 2030, Coca-Cola says it aims to source 50% of its plastic bottles from recycled material and PepsiCo hopes to eliminate the use of virgin plastic. Yet, in 2022, Coca-Cola's rate of sourcing recycled plastic was at 13.6%, and PepsiCo's was at 6%.[95] One major hurdle to recycling plastic bottles is collecting them. The National Association for PET Container Resources estimated the long-stagnant recycling rate in the United States would need to somehow double by 2025 and triple by 2030 to generate enough supply for the industry to fulfill their pledges.[96]

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[92] Simon Jack, *In the War on Plastics Is Coca-Cola a Friend or Foe?*, BBC (Oct. 24, 2019), https://www.bbc.com/news/business-50175594.
[93] 2022 Brand Audit Report, *supra* note 62 at 18-19.
[94] *Id.*
[95] Ben Elgin, *Big Soda's Addiction to New Plastic Jeopardizes Climate Progress*, Bloomberg (July 12, 2022), https://www.bloomberg.com/features/2022-coke-pepsi-plastic-recycling-climate-action/.
[96] *Id.*

Figure 11: Dasani 100% Recycled Bottle Advertisement



Figure 12: 100% Coca-Cola Recycled Bottle Advertisement



84. These misrepresentations and false promises are significant. Research shows that consumers care about, and are likely to be deceived by, claims relating to the recyclability of plastic products.[97] For example, 78% of consumers look at recycling information on a product or product label to make sure an item ends up in the right place.[98] And, 71% of consumers said they would

[97] The Recycling Partnership, *Consumer Research on Recycling Behavior and Attitudes Regarding On-Pack Labeling* (Mar. 10, 2023), https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/.
[98] *Id.*

feel disappointed, deceived, upset, angry, and/or lied to if products were marked as recyclable when they could not be made into new things.[99]

4. PepsiCo and Coca-Cola Failed to Disclose the Presence of Microplastics in Their Products and the Resulting Risks.

85. Plastics have been found to leach into beverages as well as the environment. Microplastics are a major source of this contamination. A 2018 study of 259 bottled water samples across 19 different locations in nine countries, including the United States, found 93 percent were contaminated with microplastic, including Aquafina Water (sold by PepsiCo) and Dasani Water (sold by Coca-Cola).[100]

86. In January 2024, researchers from Columbia University and Rutgers University conducted a similar study using a new optical technique with unprecedented sensitivity and specificity to detect plastics in water.[101] They found that 10% of the plastic particles in water were microplastics and 90% of the particles were nanoplastics, which require high-powered, advanced microscopes to observe. Researchers found one liter of bottled water had an average number of 240,000 nanoplastics.

87. Despite this research, PepsiCo and Coca-Cola have failed to disclose the presence of microplastics in their products or the harms that microplastics pose to consumers.

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[99] *Id.*

[100] Sherri Mason, et al., *Synthetic Polymer Contamination in Bottled Water*, 6 Frontiers in Chemistry 407 (2018).

[101] Naixin Qian et al, *Rapid single-particle chemical imaging of nanoplastics by SRS microscopy*, PNAS (Jan. 8, 2024), https://www.pnas.org/doi/full/10.1073/pnas.2300582121.

COUNTS

COUNT ONE
Violations of the Consumer Protection Law of 1973, 12A V.I.C. § 101
(Against PepsiCo and Coca-Cola)

88. The Commissioner realleges and incorporates by reference the allegations in each of the above paragraphs as though fully set forth herein.

89. Since at least the past ten years, if not earlier, PepsiCo and Coca-Cola engaged in deceptive trade practices in connection with the sale or offering for sale of beverages packaged in single-use plastic bottles in the Virgin Islands. They have engaged in this conduct by making false or misleading statements or representations which had the capacity, tendency, or effect of deceiving or misleading consumers, including but not limited to: representations that the services have approval, characteristics, uses, or benefits that they do not have; the services are of a particular standard, quality, or style, when they are of another (12A V.I.C. § 102(a)(1)); and/or the use, in any oral or written representation, or exaggeration, innuendo, or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive (12A V.I.C. § 102(a)(2)) in violation of 12A V.I.C. § 101. PepsiCo and Coca-Cola have also engaged in this conduct by engaging in the practices alleged herein, including, but not limited to, repeatedly, directly or indirectly, expressly or by implication, and in numerous instances and/or on a continuing basis:

a. deceptively representing that single-use plastic does not pose any significant environmental hazard;

b. deceptively representing the ability of recycling to offset any environmental risks associated with single-use plastic;

c. deceptively representing the economic viability of recycling single-use plastic;

d. deceptively representing that single-use plastic can be continuously recycled as part of a circular plastics economy, including that single-use plastic beverage bottles can be continuously remade into single-use plastic beverage bottles rather than being downcycled into other products;

e. deceptively representing the effectiveness of chemical recycling;

f. deceptively representing their use of recycled plastic in their single-use plastic packaging;

g. failing to disclose the presence of microplastics in its products packaged in single-use plastic bottles; and

h. failing to disclose the environmental and health-related risks associated with microplastics.

COUNT TWO
Violations of the Consumer Fraud and Deceptive Business Practices Act, 12A V.I.C. § 304
(Against PepsiCo and Coca-Cola)

90. The Commissioner realleges and incorporates herein by reference the allegations contained in the preceding paragraphs.

91. Since at least the past ten years, if not earlier, PepsiCo and Coca-Cola, with the intent to defraud, engaged in unfair or deceptive trade acts or practices in connection with the sale or offering for sale of beverages packaged in single-use plastic bottles in the Virgin Islands by making false or misleading statements or representations, which had the capacity, tendency, or effect of deceiving or misleading consumers and/or caused, or were likely to cause, substantial injury to consumers which was not reasonably avoidable by consumers themselves and not

outweighed by countervailing benefits to consumers or to competition, by engaging in the practices alleged herein, including, but not limited to, repeatedly, directly or indirectly, expressly or by implication, and in numerous instances and/or on a continuing basis:

a. deceptively representing that single-use plastic does not pose any significant environmental hazards;

b. deceptively representing the ability of recycling to offset any environmental risks associated with single-use plastic;

c. deceptively representing the economic viability of recycling single-use plastic;

d. deceptively representing that single-use plastic can be continuously recycled as part of a circular plastics economy, including that single-use plastic beverage bottles can be continuously remade into single-use plastic beverage bottles rather than being downcycled into other products;

e. deceptively representing the effectiveness of chemical recycling;

f. deceptively representing their use of recycled plastic in their single-use plastic packaging;

g. failing to disclose the presence of microplastics in its products packaged in single-use plastic bottles;

h. failing to disclose the environmental and health-related risks associated with microplastics; and

i. creating or assisting in the creation of a public nuisance as alleged in the first cause of action.

COUNT THREE
Public Nuisance
Common Law Claim
(Against All Defendants)

92. The Government realleges and incorporates by reference the allegations in each of the above paragraphs as though fully set forth herein.

93. In the Virgin Islands, a public nuisance is an unreasonable interference with a right common to the general public.

94. Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:

a. whether the conduct involves a significant interference with the public health, public safety, public peace, public comfort, or public convenience, or

b. whether the conduct is proscribed by a statute, ordinance, or administrative regulation, or

c. whether the conduct is of a continuing nature or has produced a permanent or long-lasting effecting, and, as the actor knows or has reason to know, has a significant effect upon the public right.

95. Defendants have contributed to and/or assisted in creating a condition that involves a significant interference with the public health, public comfort, and public convenience. Specifically, Defendants contributed to plastic pollution by manufacturing, bottling, distributing, and selling beverages packaged in single-use plastic bottles in the Virgin Islands. PepsiCo and Coca-Cola further contributed to plastic pollution by falsely marketing Defendants' products in single-use plastic bottles, which Defendants sell in substantial numbers in the Virgin Islands, including:

a. falsely representing that single-use plastic does not pose any significant environmental hazard;

b. falsely representing that recycling can offset the environmental risks associated with single-use plastic;

c. falsely representing the economic viability of recycling single-use plastic;

d. falsely representing that single-use plastic can be continuously recycled as part of a circular plastics economy, including that single-use plastic beverage bottles can be continuously remade into single-use plastic beverage bottles rather than being downcycled into other products;

e. falsely representing the effectiveness of chemical recycling; and

f. falsely representing their use of recycled plastic in their single-use plastic packaging.

96. The public nuisance created by Defendants' actions is substantial because it has resulted in physical harm and threatens further physical harm to the Virgin Islands' environment and natural resources, in addition to the health of its residents and wildlife.

97. As discussed above, microplastic pollution has emerged as a global threat to the environment and human health. Microplastics affect seed germination, plant growth and productivity, as well as reduce food yields and negatively impact food chain components and food security. Microplastics have been found in a variety of fish, birds, turtles, and other marine mammals. The full effect of microplastics on the human body is still being explored. But studies have found microplastics in the digestive tract, lungs, bloodstream, male testes, mammary glands, placental tissues, liver, kidneys, and brains. One recent study found microplastics and nanoplastics may be potential risk factors for cardiovascular disease.

98. The Virgin Islands is facing a waste management crisis due, in part, to the explosion of single-use plastic products—like Defendants' single-use plastic bottles. The Virgin Islands' two operational landfills were supposed to shut down in 2018 and 2019, respectively, pursuant to an agreement with the federal government but have continued to operate out of necessity. However, these landfills will likely be out of space by 2028, which leaves the Virgin Islands with only a handful of extremely costly options.

99. Plastic also contaminates waterways in the Virgin Islands. Globally, plastic accounts for approximately 85 percent of total marine waste. An estimated 11 million tons of plastic waste becomes aquatic pollution annually. Plastic pollution compromises the natural processes of marine life and threatens wildlife with laceration and death. For example, sea turtles and marine mammals can become entangled in or ingest plastic, causing suffocation, starvation, and drowning.

100. Plastic litter also interferes with the use of public property due to the substantial amount of plastic packaging on sidewalks, streets, beaches, and waterways. In addition, plastic pollution is an ugly nuisance. It litters the Virgin Islands' beaches, waterways, parks, and other public areas, degrading the land's natural beauty and resources. Plastic bottles and caps—like the ones Defendants manufacturer—are among the most common marine debris collected during beach cleanups. It is nearly impossible to completely remove them from public areas, particularly once they breakdown into microplastics and nanoplastics. The public nuisance created by Defendants' actions is also unreasonable. Defendants sold millions of products in single-use plastic bottles in the Virgin Islands while PepsiCo and Coca-Cola engaged in deceptive campaigns to make consumers think purchasing their products is an environmentally responsible choice.

Defendants also failed to take any meaningful action to help responsibly dispose of their products in the Virgin Islands.

101. Defendants knew or should have known that their single-use plastic bottles would unreasonably interfere with the public health, public comfort, and public convenience and thereby create a nuisance.

102. The public nuisance created, perpetrated, and maintained by Defendants can be abated and further recurrence of such harm and inconvenience can be prevented.

PRAYER FOR RELIEF

WHEREFORE, the Commissioner and Government respectfully requests that the Court:

A. Determine that PepsiCo and Coca-Cola have engaged in unfair and deceptive trade practices in violation of 12A V.I.C. §§ 101 and 304;

B. Permanently enjoin PepsiCo and Coca-Cola and their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents, and employees thereof under 12A V.I.C. §§ 104(d) and 328(a)(2) from engaging in any acts or practices that violate 12A V.I.C. §§ 101 and 304, including, but not limited to, the unfair and deceptive trade practices alleged herein;

C. An Order from the Court that PepsiCo and Coca-Cola pay into the Court all monies received as a result of their violations of 12A V.I.C. § 101 to be administered in accordance with and pursuant to 12A V.I.C. § 104(c);

D. Given PepsiCo's and Coca-Cola's serious and repeated violations of the law, order Defendants to pay the maximum civil penalty under 12A V.I.C. § 328(b) for each and every violation of 12A V.I.C. § 304, respectively;

E. An Order from the Court on behalf of the Government providing for abatement of the public nuisance that Defendants created;

F. An Order assessing and awarding a judgment in favor of the Commissioner and Government and against Defendants for attorneys' fees and costs and pre and post judgment interest; and

G. Any and all other relief this Court deems appropriate.

The Commissioner and Government demand a jury trial on all issues so triable.

Dated: April 11, 2025

RESPECTFULLY SUBMITTED,

JALICHA PERSAD
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