SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

PEOPLE OF THE STATE OF NEW YORK, by Letitia James, Attorney General of the State of New York,

Plaintiff,

- against -

PEPSICO, INC.; FRITO-LAY, INC.; FRITO-LAY NORTH AMERICA, INC.,

Defendants.

COMPLAINT

Index No. _____

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Plaintiffs, the People of the State of New York, by their Attorney, Letitia James, Attorney General of the State of New York, as and for their Complaint against Defendants PepsiCo, Inc., Frito-Lay, Inc., and Frito-Lay North America, Inc., (collectively, "PepsiCo"), allege upon information and belief as follows:

NATURE OF THE ACTION

1. Year after year, plastic packaging amasses on the shores of the Buffalo River. Single-use plastic beverage bottles, bottle caps, and snack food wrappers, of the type manufactured, distributed, and sold by PepsiCo, are collectively the most abundant forms of plastic waste along the shores of the Buffalo River, and PepsiCo is the single largest identifiable contributor to this plastic waste.

Plastic waste collected in April 2022 from the Erie Basin Marina in the City of Buffalo, including Gatorade bottles and Lay's potato chip packaging produced by PepsiCo.

2. Because plastic does not biodegrade in the environment, but rather fragments into smaller and smaller pieces known as microplastic or nanoplastic,

PepsiCo's plastic packaging pollutes the land and the river itself. PepsiCo's plastic packaging contaminates the river and public drinking water supplies, threatening public health, harming freshwater species, and endangering the ecosystem. In all its forms, this plastic pollution interferes with the public's use and enjoyment of the Buffalo River and its environs, and adversely affects the aesthetic value of the river and its shoreline.

3. In a survey of plastic pollution in the Buffalo River and its environs conducted by the Office of the Attorney General in 2022, PepsiCo's plastic packaging far exceeded any other source of identifiable plastic waste, and it was three times more abundant than the next contributor (McDonald's).

4. In 2022 alone, PepsiCo produced approximately 2,600,000 metric tons (or roughly 5,732,000,000 pounds) of plastic packaging, equivalent to the weight of over seven Empire State Buildings. PepsiCo's bottled beverages represented approximately 20% of the retail market for comparable beverages sold the United States, and PepsiCo is also the second largest food company in the world.

5. PepsiCo has long known of the harms caused by its single-use plastic packaging, acknowledging on its website that there is a "plastic pollution crisis" and that its own packaging has "potential environmental impacts."

6. PepsiCo also acknowledges its significant role in addressing the problem of plastic pollution. As PepsiCo Chairman and CEO Ramon Laguarta has stated, "[a]s one of the world's leading food and beverage companies, we recognize the significant role PepsiCo can play in helping to change the way society makes, uses, and disposes of plastics."

7. But, just as PepsiCo has long been aware that its packaging contributes substantially to plastic pollution in the environment, it is also aware that the public's perceptions regarding packaging and its environmental impact—specifically single-use plastic and other plastic packaging—could cause "damage to [PepsiCo's] reputation or brand image . . . .[and] could lead consumers to reduce or publicly boycott the purchase or consumption of [PepsiCo] products," as the company has acknowledged in its annual reports filed with the Securities and Exchange Commission.

8. PepsiCo has failed to abate the harm or warn the public that its plastic packaging is a potential source of plastic pollution and presents a risk of harm to human health and the environment. Instead, it has misled the public about its efforts to combat plastic pollution, while increasing its production and sale of single-use plastic packaging.

9. Year after year, PepsiCo touts ineffective solutions and lofty goals that have repeatedly failed to materialize.

10. By its continued manufacturing, production, marketing, distribution, and sale of vast quantities of single-use plastic packaging, PepsiCo has significantly contributed to, and continues to contribute to, the existence of a public nuisance that injures the community living in the City of Buffalo and surrounding areas. PepsiCo's plastic packaging also fails to warn the public or consumers of its potential to contribute to plastic pollution in waterways and fails to warn the public or consumers of the potential harms caused by its packaging. PepsiCo's repeated and persistent omissions and misleading statements relating to the actual and

threatened harms caused by its plastic packaging in the sale of its products in New York also violate New York General Business Law § 349 and New York Executive Law § 63(12).

11. In light of the failure of PepsiCo's purported solutions to remedy the harms caused by its plastic packaging, and PepsiCo's failure to otherwise abate the public nuisance to which it has substantially contributed, the State brings this action seeking declaratory, injunctive and monetary relief.

PARTIES

Plaintiff

12. The Attorney General of the State of New York, on behalf of the **People of the State of New York**, brings this suit to protect the health and interests of citizens and residents, and the natural resources of the State. This action is brought pursuant to the Attorney General's common law and statutory authority, including Article 22-A of the New York General Business Law and Article 63 of the New York Executive Law.

Defendants

13. **Defendant PepsiCo, Inc.** is incorporated in North Carolina. Its principal executive office is located at 700 Anderson Hill Road, Purchase, New York 10577. PepsiCo, Inc. regularly transacts business in New York State, derives substantial revenue from its business in the State, and owns and/or uses real property within the State.

14. **Defendant Frito-Lay, Inc. ("Frito-Lay")** was formed in 1961 and merged with the Pepsi-Cola Company to create PepsiCo, Inc in 1965. It is currently

a wholly-owned subsidiary of PepsiCo, Inc. Frito-Lay is incorporated in Delaware, and its headquarters are located in Plano, Texas. Frito-Lay regularly transacts business in New York State, derives substantial revenue from its business in the State, and owns and/or uses real property within the State.

15. **Defendant Frito-Lay North America, Inc. ("Frito-Lay North America")** is a wholly owned subsidiary of PepsiCo, Inc. and operates as the convenient foods business unit of PepsiCo, Inc. It is incorporated in Delaware, and its headquarters are located in Plano, Texas. Frito-Lay North America regularly transacts business in New York State, derives substantial revenue from its business in the State, and owns and/or uses real property within the State.

16. PepsiCo is engaged in the manufacture, production, marketing, packaging, distribution and sale of beverages and food, the overwhelming majority of which is packaged in single-use plastic. Through its own operations, the operations of authorized bottlers, contract manufacturers and other third parties under its control, PepsiCo serves customers throughout New York, including residents of the City of Buffalo and surrounding areas.

17. PepsiCo produces at least 85 different beverage brands, including Pepsi products, Gatorade, Mountain Dew, Mug Root Beer, Propel drinks, Aquafina water, and Brisk and Pureleaf teas.

18. PepsiCo also produces at least 29 snack food brands, including, among others, Lay's potato chips, Doritos tortilla chips, Fritos corn chips, Cheetos cheese-flavored snacks, Santitas tortilla chips, Sun Chips multigrain chips, and Tostitos tortilla chips.

19. In 2022 alone, PepsiCo generated more than $86 billion in net revenue.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to New York Constitution VI § 7(a) and Judiciary Law § 140-b. No claim or substantial question of federal law is alleged.

21. This Court has personal jurisdiction over PepsiCo pursuant to C.P.L.R. §§ 301 and 302.

22. Venue in this county is proper pursuant to C.P.L.R. § 503(a) as plaintiffs reside in the county and a substantial part of the events or omissions giving rise to the claim occurred in the county.

LEGAL FRAMEWORK

Public Nuisance

23. Under New York common law, a public nuisance claim exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby offending public morals, interfering with use by the public of a public place, or endangering or injuring the property, health, safety, or comfort of a considerable number of persons.

New York General Business Law § 349

24. New York General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this State. The law applies to "virtually all economic activity, and

[its] application has been correspondingly broad." *Plavin v. Group Health Inc.*, 35 N.Y.3d 1 (2020).

25. The Attorney General is authorized to bring an action to enjoin a person or entity from engaging in deceptive acts or practices in the conduct of business and to seek restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices.

26. Violations of New York General Business Law § 349 may also be penalized by a civil penalty of up to $5,000 per violation.

New York Executive Law § 63(12)

27. New York Executive Law § 63(12) authorizes the Attorney General to bring a proceeding for repeated or persistent illegality in the carrying on, conducting, or transaction of business.

28. A violation of any state, federal, or local law or regulation constitutes an illegality within the meaning of New York Executive Law § 63(12).

FACTS

A. The Buffalo River

29. The Buffalo River is an urban, navigable freshwater river in the Great Lakes region, approximately 8 miles in length and located entirely within Erie County, New York. Beginning where Cayuga Creek and Buffalo Creek join, the river flows west through the City of Buffalo to its outflow into Lake Erie. The river's watershed is approximately 450 square miles, includes the Cayuga, Buffalo, and Cazenovia Creek tributaries, and lies exclusively within the State of New York.

The watershed encompasses significant portions of the City of Buffalo and Erie County, as well as portions of Wyoming County and Genesee County.

30. The Buffalo River was once considered one of the most polluted rivers in the United States. Discharges from grain milling and manufacturing industries that operated along the river in the late 1800s and at the turn of the century, along with chemical and sewer discharges, had so polluted the river that it was devoid of fish by the 1920s. Extensive dredging to deepen and widen the river for navigation during this time also damaged the river's ecosystem. As late as the 1960s, the river was considered biologically dead.

The Buffalo River in April 1951.

31. In 1987, the United States and Canada International Joint Commission designated the Buffalo River as a Great Lakes Area of Concern, and the New York State Department of Environmental Conservation created a remedial

action plan in 1989 for the restoration and maintenance of the river. Various state and federal agencies, private interests, and non-profit organizations joined the efforts to restore the river.

32. The ensuing decades saw substantial investment in projects designed to restore the river's ecosystem. These projects included the removal of over one million cubic yards of contaminated sediment from the river floor at a cost of $45 million, the creation of natural fish-sheltering structures, and the restoration of aquatic vegetation to allow fish populations such as walleye, bass, bullhead, and trout to return. Tree seedlings were planted along the river's edge to reduce erosion and provide shade on the river, helping to keep the river cool and maintain adequate levels of dissolved oxygen for aquatic life. New environmental policies and regulations were imposed. Efforts to control sewage discharges through the Buffalo Sewer Authority's Long Term Control Plan further improved the river.

33. The Buffalo River and its shoreline improved markedly as the result of these and other efforts. Water quality is improving, native aquatic vegetation is taking hold, fish populations are recovering, and the recreational use by the public expanded greatly. The river and its shoreline are now widely used by visitors and residents of Buffalo for a variety of recreational activities including kayaking, fishing, recreation in shoreline parks, and boat tours.

34. Residents of Erie County, including those living in the City of Buffalo, have overwhelmingly supported initiatives designed to protect the surrounding environment and water quality. In Erie County, for instance, 62% of voters

supported the passage of the Green Amendment the New York State Constitution establishing the right to clean water, clean air, and a healthful environment.

35. As efforts to remediate the Buffalo River from past contamination continue, however, the harms caused by plastic pollutions threatens to derail that progress.

B. PepsiCo's Plastic Packaging in the Buffalo River and Along Its Shoreline

i. PepsiCo's Single-Use Plastic Packaging

36. PepsiCo relies upon the pervasive production of single-use plastic for its packaging. Most of the beverages and snack food items manufactured, produced, distributed, and sold by PepsiCo are packaged in single-use plastic, discarded immediately after the beverage or snack is consumed.

37. PepsiCo uses a variety of different plastic polymers in its packaging, including polyethylene terephthalate ("PET" or "PETE"), polypropylene ("PP"), high-density polyethylene ("HDPE"), low-density polyethylene ("LDPE"), and others.

38. PepsiCo has owned and operated its own bottling operations since 2009, accounting for 80% of its bottling volume. This allows it to directly control the manufacturing, distribution, and sale of its beverage products.

39. PepsiCo's plastic bottles are typically made of PET. To manufacture its beverage bottles, PepsiCo's bottling operations first obtain preformed PET vessels from a supplier. These "pre-forms" are small, thick tubes of PET resin, typically molded to include the bottle's eventual screw top shape. After receipt of

the pre-forms, PepsiCo manufactures the bottle using a process known as stretch-blow molding, first heating the pre-forms and then injecting them with air while the pre-form is held in a mold to form the desired bottle shape. After the bottle is manufactured, PepsiCo then fills, caps, and applies the label to the beverage bottle.

40. For the remaining 20% of its beverage bottle volume, PepsiCo utilizes independent bottlers. Independent bottling operations are typically allocated territories according to contracts with PepsiCo. Those contracts grant independent bottlers rights to manufacture, distribute, and sell specified beverages within the identified geographic territory. But PepsiCo retains control over the manufacturing, production, distribution, and sale of its beverages.

41. The New York counties through which the Buffalo River and its tributaries flow, i.e. Erie, Genesee, and Wyoming counties, are supplied by PepsiCo's own bottling operations, not those of an independent bottler.

42. While PepsiCo's plastic beverage bottles are made of PET, plastic beverage caps are typically made of HDPE or PP, and plastic wraps or sleeves used as labels for the bottles contain LDPE or HDPE.

43. PepsiCo's plastic snack and food wrappers are generally composed of multiple layers of combined plastics and metals. For example, a potato chip bag is can be composed of a combination of biaxially oriented polypropylene ("BOPP"), LDPE, and aluminum.

44. PepsiCo similarly exercises control over the manufacturing, production, distribution, and sale of its snack food products, dictating packaging

materials and utilizing its own trucks or contracted third parties under its control to deliver its products.

45. For both its bottled beverages and its snack food products, PepsiCo also relies heavily on Direct-Store-Delivery, wherein PepsiCo and its contracted parties deliver beverages and snack foods directly to retail stores for merchandising.

ii. PepsiCo's Contribution to Plastic Pollution in the Buffalo River and Along Its Shoreline

46. As a result of PepsiCo's and others' persistent manufacturing, production, distribution, and sale of beverages and snack foods in single-use plastic packaging, single-use plastic items have become a dominant form of pollution in urban watersheds such as the Buffalo River.

47. PepsiCo's products are a particularly significant contributor to the plastic pollution affecting the Buffalo River, and PepsiCo's single-use plastic packaging is found in abundance along the shores of the Buffalo River and its tributaries.

48. In 2022, the Office of the Attorney General conducted a survey of all types of waste collected at 13 sites along the Buffalo River and in its watershed. In total, 2,621 pieces of waste containing identifiable brands were collected throughout 2022; nearly three quarters (73%) of those items were plastic.

49. PepsiCo's plastic packaging far exceeded any other source of identifiable plastic waste, and it was three times more abundant than the next contributor (McDonald's). Of 1,916 pieces of plastic waste containing an identifiable brand, 328 (17.1%) were produced by PepsiCo.

Rank	Producer[1]	Total Items	Percent
1	**PepsiCo**	328	17.1%
2	**McDonald's Corporation**	109	5.7%
3	**The Hershey Company**	80	4.2%
4	**Restaurant Brands International** *(subsidiaries include Burger King, Tim Hortons, Popeyes, and Firehouse Subs)*	75	3.9%
5	**Mars, Inc.**	73	3.8%
6	**The Coca-Cola Company**	60	3.1%
7	**Sazerac Company, Inc.** (*alcoholic beverage company that produces bourbons and whiskeys and owns various other brands including Fireball, Southern Comfort, Seagram's V.O., Myers's, and Goldschläger, among others*)	59	3.1%
8	**7-Eleven, Inc.**	42	2.2%
9	**BlueTriton Brands, Inc.** (*beverage company that produces bottled water including Arrowhead Water, Deer Park Spring Water, and Poland Spring, among others)*	42	2.2%
10	**Kellogg Company**	41	2.1%

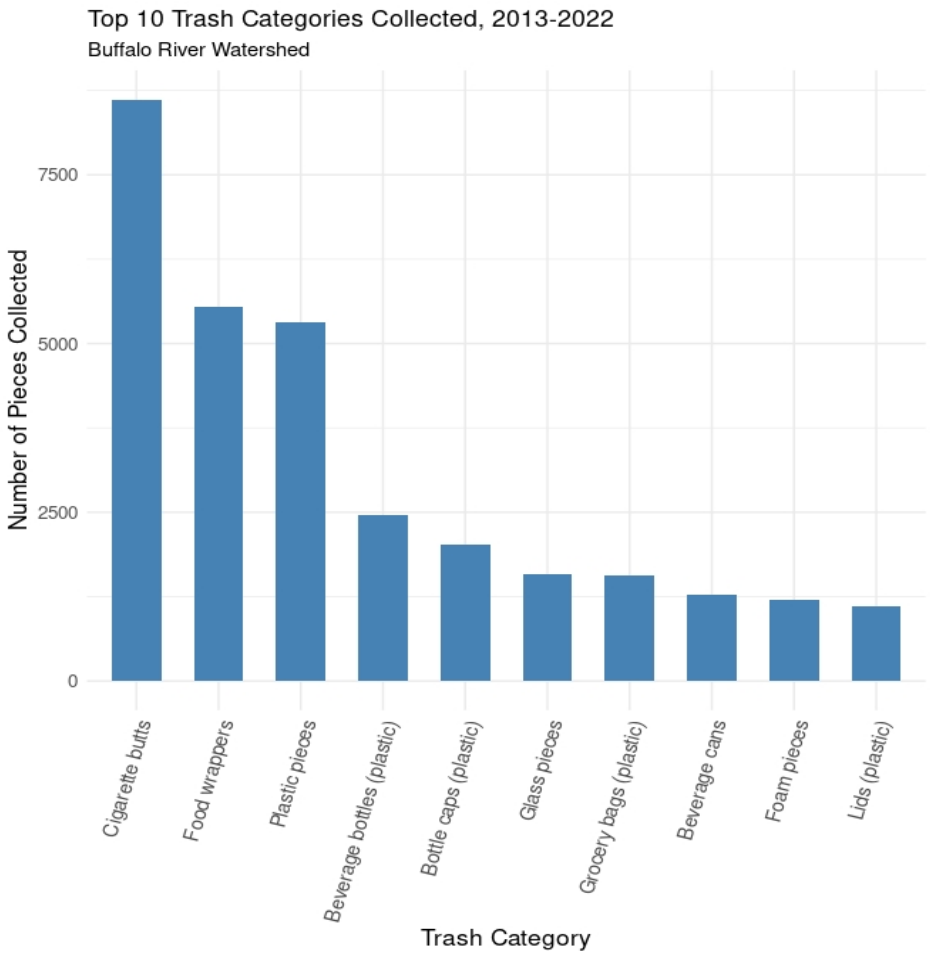
Top ten producers of plastic waste identifiable by brand, collected at 13 sites along the shores of the Buffalo River and its tributaries.

50. The findings of the 2022 survey conducted by the Office of the Attorney General are consistent with the observations recorded in other studies. For instance, the non-governmental organization Buffalo Niagara Waterkeeper and

[1] Of the 1,916 pieces of branded plastic waste collected, 157 plastic tobacco wrappers of varying brands were collected and counted on April 23, 2022, but the brands were not recorded before disposal.

others have engaged in trash pick-ups throughout Erie County since 2008; every year volunteers and volunteer organizations remove trash from local beaches, parks, and waterways and record data on the types of trash being collected. Over 56,000 pieces of trash have been collected in the Buffalo River watershed and recorded since 2008.

51. In these cleanups, plastic waste overwhelms all other types of waste collected. From 2013 to 2022, approximately 78% of all items collected were plastic. Single-use plastic packaging for food and beverages, including food wrappers, plastic bottles, and bottle caps were found in significant amounts every year. Historic data from 2008 to 2012 showed similar results.



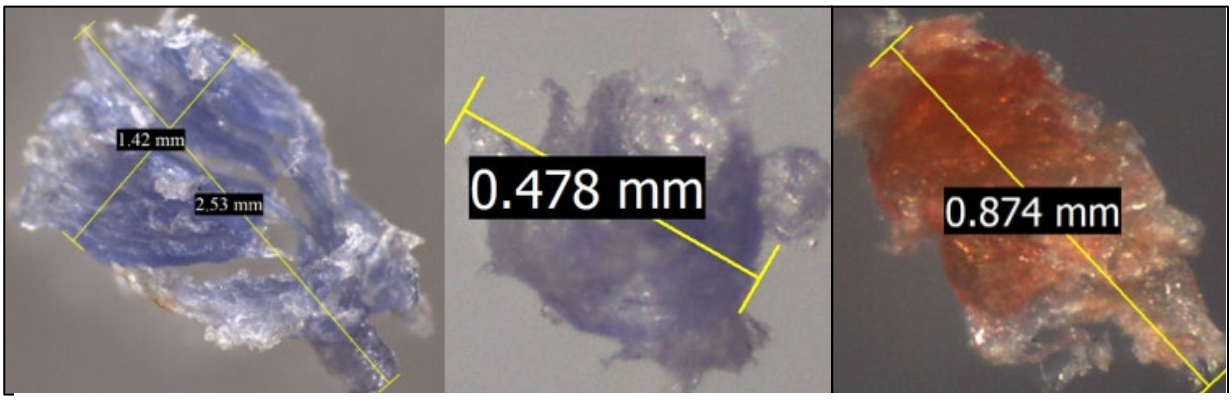
52. Although cigarette butts were recorded as the most abundant type of plastic pollution in the 2013 to 2022 cleanups, the combination of plastic beverage bottles, plastic food wrappers and plastic bottle caps – including the types produced by PepsiCo – heavily outweighs cigarette butts in terms of contribution of plastic mass into the environment.

53. In another 2022 study, the non-governmental organization 5 Gyres analyzed 14,237 pieces of waste collected at national parks. Of that total, 81% was plastic, 8.1% was metal, 6.5% was paper, and 1.3% was glass. PepsiCo's packaging (including Gatorade, Pepsi, Aquafina, Mountain Dew, and LifeWTR beverage bottles, as well as Cheetos, Doritos, Frito-Lay, Lay's, Tostitos, Ruffles, and Sun Chips snack food wrappers, among others) was the leading contributor to this waste.

54. Similarly, in a separate study, the non-governmental organization Break Free From Plastic aggregated 2,125,415 items of plastic waste from 2,373 separate collections across the United States from 2018 to 2022. Of the items for which a brand was identifiable, 50,558 were produced by PepsiCo. The study documented PepsiCo as either the number one (2020-2022) or number two (2018-2020) producer of branded plastic waste collected across the United States.

iii. Fragmentation of PepsiCo's Plastic Packaging into Microplastic and Contamination of Water Bodies

55. Once PepsiCo's single-use plastic packaging is discarded and enters the environment, it fragments into smaller and smaller pieces of plastic, referred to as microplastic or nanoplastic depending on the size. Microplastic refers to pieces of plastic smaller than 5 millimeters in diameter. The term nanoplastics refers to the smallest subset of microplastic pieces, measuring 1000 nanometers or less.



Microplastic collected from the Buffalo River.

56. Aging and fragmentation of large plastic pieces starts immediately upon physical abrasion and mechanical action, such as the initial act of opening a plastic bottle or plastic food packaging. Once in the environment, sunlight and thermal radiation, temperature fluctuation and continued physical abrasion all contribute to the further fragmentation of plastic into smaller and smaller pieces. Within months of a piece of plastic entering the environment, significant aging, reduction of particle size, and surface roughness can be observed.

57. Plastic waste is not only more prevalent in urban areas, but it is also more mobile. Impervious surfaces (such as pavement and concrete), as well as urban storm sewers, act to facilitate the movement of plastics into water bodies

during runoff-events from rain or snow melt. Urban rivers are thus significant sources of plastic waste entering the Great Lakes, including Lake Erie.

58. Large quantities of microplastics have been found in the Buffalo River, and an analysis of those samples has confirmed the presence of microplastic from snack food wrappers and polymers of the type used in PepsiCo's plastic beverage bottles and bottle caps.

59. Researchers have estimated that almost 10,000 metric tons of plastic waste is entering the Great Lakes annually, primarily originating from rivers running through large population centers. Applying the same methodology, approximately 230 metric tons of the plastic waste entering Lake Erie each year is from the Buffalo River.

C. The Harms Caused by PepsiCo's Plastic Packaging

60. The plastic pollution contaminating the Buffalo River and its environs, to which PepsiCo is a substantial contributor, causes wide-ranging harms to the public and New York State.

61. First, the contamination of freshwater ecosystems by plastic and microplastics is a threat to human health. The City of Buffalo and other New York communities source their drinking water from Lake Erie, and microplastics have been detected in Lake Erie. Moreover, other communities source their drinking water from the Niagara River, downstream of the Buffalo River. Microplastics have been detected in the City of Buffalo's drinking water supply as well as the water supplies of other communities.

62. Microplastics have been found throughout the human body. They can enter the human circulatory system through the small intestine and have been detected in the liver and spleen, placenta, blood, and even breastmilk.

63. Microplastics have also been detected in popular game fish species that are known to inhabit Lake Erie and the Buffalo River and are consumed in the community, including fish species such as walleye and perch offered on local menus in the region.

64. Once in the environment, these microplastics attract, and can act as vectors for, pathogens and a variety of contaminants, including heavy metals and other persistent organic pollutants. These environmental contaminants are associated with a range of harms to human health.

65. Moreover, a wide range of commercial plastic packaging, including PET and PP, leach chemical additives having detectable estrogenic activity, substances that cause adverse health effects at low doses in fetal and juvenile mammals. These health-related problems include early puberty in females, reduced sperm counts, altered functions of reproductive organs, obesity, altered sex-specific behaviors, and increased rates of some types of cancers. The effects from plastic additives have been observed in mammals, and researchers expect the same effects would be observed in humans.

66. Exposure to microplastic and nanoplastic itself can also cause biochemical and structural damage in laboratory animals, including inflammation in the intestine and dysfunction of the liver, excretory and reproductive systems in mammals. Such exposure can also cause adverse toxicological effects on human

cells, including cell barrier damage and reduced cell viability, and it can negatively affect human gut microbiota communities.

67. Infants and young children are particularly sensitive and thus at higher risk of health effects from plastic related exposures. Environmental exposures during early life development can permanently influence health and vulnerability to disease later in life.

68. In addition to negative effects on human health, research surrounding plastic and microplastic pollution shows negative impacts occurring over a wide range of species living in freshwater and terrestrial habitats due to exposure from various plastic polymers of different sizes and shapes.

69. Microplastics and nanoplastics contaminate every level of the food web in the Great Lakes, and both plastic fragments and the chemicals they carry can bioaccumulate in freshwater species. At least 206 freshwater species have been found to ingest or become entangled in plastic, with many lethal and sublethal adverse effects.

70. The range of negative impacts on freshwater species from plastic pollution is as wide as the species impacted. Microplastic reduces root growth in aquatic plants, birds die from entanglement, and fish species show injury and inflammatory responses when microplastics are ingested. Microplastic exposure can also cause neurotoxic effects in animals, such as oxidative stress and inhibition of neurotransmitters important in brain functioning.

71. Birds that inhabit the Buffalo River and its environs, such as mallard ducks, loons, and cormorants, are known to ingest plastic pollution, mistaking it for food. As a consequence, they can suffer from weakness, irritation of the stomach lining, digestive tract blockage, internal bleeding, abrasion, ulcers, failure to put on fat stores necessary for migration and reproduction, absorption of toxins, and even potential death through starvation.

Mallard ducks feeding in a mass of floating waste.

72. Various fish species inhabiting the Buffalo River are also known to ingest microplastic, including yellow perch, northern pike, brown bullhead, smallmouth bass, and largemouth bass. Like birds, fish have been shown to suffer ill effects from plastic pollution such as reduced nutritional intake as a result of microplastic ingestion and entanglement. These fish are also recreationally caught

on the Buffalo River or its tributaries and are commonly eaten by humans and other animals.

A rainbow trout, a species that also inhabits the Buffalo River, captured in Lake Ontario deformed by a plastic bottle ring.

73. In addition to the threats to the health of humans and other organisms, PepsiCo's plastic packaging also interferes with the public's enjoyment and use of public spaces. It negatively impacts the recreational and aesthetic value of the river and its environs, and it is costly to remove.

74. Plastic pollution, to which PepsiCo substantially contributes, is damaging the very same public spaces that have been the subject of decades-long efforts to restore habitats and increase recreational potential. For instance, in the case of Seneca Bluffs Natural Habitat Park, a 15-acre park on the south shore of the Buffalo River, restoration efforts have included repairing the shoreline to allow the riverbank to gradually meet the river and to provide animals such as beavers and muskrats with access to the vegetation, shrubs, and trees in the park, planting of native species to replace invasive ones, and the placement of logs and root wads

along the shoreline to act as a refuge location for fish and other aquatic life, among other things.

75. At Thomas Higgins Natural Habitat Park, located at the confluence of the Buffalo River and the Cazenovia Creek, restoration projects have included creation of a wetland and a pond to hold water following snow melt and spring rains, as well as planting of trees, shrubs, and wildflowers to create a healthy habitat for wildlife populations, including turtles and waterfowl.

76. At Red Jacket Natural Habitat Park, green infrastructure was enhanced to help mitigate erosion and capture contaminants from municipal runoff, and a living fence consisting of densely growing hedges was planted around the perimeter of the park to provide additional natural habitat and prevent the intrusion of invasive species. The restoration also included an improved walkway for visitors and kayak launch access.

77. As with all other sites surveyed in 2022 by the Office of the Attorney General along the Buffalo River, PepsiCo's plastic packaging is found in abundance at these three parks. Of the hundreds of pieces of plastic waste containing identifiable brands collected at Seneca Bluffs Natural Habitat Park, Thomas Higgins Natural Habitat Park, and Red Jacket Natural Habitat Park in 2022, PepsiCo produced approximately 16%. According to a recent survey of residents, 73% reported encountering plastic waste and debris along the shoreline of the Buffalo River.

Plastic pollution, including a Fritos snack wrapper produced by PepsiCo, on the shoreline of the Buffalo River at Red Jacket Natural Habitat Park. Observed September 8, 2023.

78. To counter the negative effects of plastic pollution, and in the face of PepsiCo's failure to abate the harms caused by plastic pollution, the public has undertaken costly measures to reduce the quantity of plastic pollution in and around the Buffalo River. For instance, as a part of the redevelopment of Buffalo's Inner Harbor, the Buffalo Sewer Authority was awarded $8.6 million in funding through the American Recovery and Reinvestment Act to support the construction of the Hamburg Drain Floatables Control Facility, estimated to cost $18 million. This facility is designed to capture floatable waste, a significant portion of which is plastic pollution, from twenty sewer regulators within the Hamburg drain system before it gets to Canalside, a newly created and popular tourist destination at the mouth of the Buffalo River.

79. The accumulation of single-use plastic waste in the Buffalo River, to which PepsiCo substantially contributes, is also a factor in the ongoing need for the Hamburg drain system, constructed and operated at great public expense. Nearly half of branded trash items observed during two site visits to the Hamburg Drain Floatables Control Facility were plastic beverage bottles or plastic snack food wrappers produced by PepsiCo.

Cheetos snack wrapper in the hopper at the Hamburg Drain Floatables Control Facility, observed December 14, 2022.

Gatorade plastic bottle on the conveyer belt at the Hamburg Drain Floatables Control Facility, observed December 14, 2022.

D. PepsiCo's Misleading Statements and Failure to Warn

80. PepsiCo has long been aware of the existing and threatened harms caused by the accumulation of plastic waste in the environment and its own contribution to the problem. Since the 1980s, researchers have known that plastic is accumulating in rivers, landfills, and sewers and flowing into water bodies.

81. PepsiCo itself characterizes the problem as a "plastic pollution crisis," and the company has expressly acknowledged that its own plastic packaging may end up as waste on land or in water bodies with "potential environmental impacts." As PepsiCo Chief Sustainability Officer Jim Andrew explained, the company's plastic packaging "is something we're very aware of our responsibility around."

82. PepsiCo also intends and knows that its customers will discard its packaging after a single use. Over decades, PepsiCo has produced millions of metric tons of single-use plastic beverage bottles, caps, and food wrappers. None of this plastic packaging is reusable and little is recycled. Instead, the vast majority of the plastic is discarded, with significant quantities discarded into the environment or lost during waste collection, management, or final disposal.

83. PepsiCo is also aware of the acute limitations of recycling as a solution to the harms caused by plastic pollution. First, PepsiCo's snack food packaging is not recyclable. Recycling thus cannot provide a solution for the multi-layered plastic packaging used by PepsiCo for its Lay's potato chips, Doritos, Cheetos, Tostitos tortilla chips or other snack foods. Even as to PepsiCo's beverage bottles made from PET, the vast majority are not recycled. In 2020, only 26.6% of PET bottles were recycled in the US, with the rest incinerated, sent to landfills, or

discarded directly or indirectly into the environment. There are also geographical areas with limited or no access to recycling. As PepsiCo has acknowledged in a press release publicizing its relationship with the Ellen MacArthur Foundation and quoting the foundation, "[w]e know we cannot recycle our way out of this plastic pollution crisis."

84. Alternatives to single-use plastic packaging are available, but PepsiCo has chosen not to deploy these alternatives to any significant degree in the New York market. In December 2022, for example, the company announced refillable and returnable glass and plastic programs in major international markets including Mexico, Guatemala, Colombia, Chile, Germany, and the Philippines. PepsiCo's own brand of sparkling water, Bubly, introduced in 2019, is sold in cans and in soda fountains rather than plastic bottles.

85. Despite its characterization of the problem as a "crisis," and instead of taking steps to adequately abate the public nuisance to which it contributes, PepsiCo has: i) misled the public and consumers regarding the efficacy of plastic recycling and its own efforts to combat plastic pollution, and ii) failed to include a warning on its plastic packaging stating that the packaging is a potential source of plastic pollution and presents a risk of harm to human health and the environment.

i. PepsiCo's Misleading Statements Regarding the Efficacy of Plastic Recycling and Its Efforts to Combat Plastic Pollution

86. First, despite its awareness of the limitations of plastic recycling as a solution, PepsiCo has misleadingly and repeatedly portrayed recycling as a solution

to its own contribution to plastic pollution, claiming recycling is a path for PepsiCo to achieve its purported sustainability goals.

87. Using press releases and other public statements, PepsiCo deliberately creates the misleading impression that some or all of the types of plastic resins used in its plastic packaging are infinitely recyclable, i.e., that there is a circular economy for plastic in which PepsiCo's plastic packaging can be reprocessed over and over again. PepsiCo, for instance, claims that its recycling strategy will "keep the material in the circular economy." It claims to "recognize the role we can play in creating a circular economy for packaging," asserting that "[a] circular economy for packaging can help ensure that the valuable materials that are used in packaging are recycled and reused, rather than becoming waste."

88. But these and other references to a "circular economy for plastic" are misleading. Not only are PepsiCo's snack food wrappers not recyclable whatsoever, even the recyclability of PepsiCo's PET bottles is limited. Every time plastic is recycled, the polymer chain grows shorter, and the quality of the material decreases. Plastic can only be recycled a limited number of times before the quality of the plastic material is so degraded it cannot be used again for the same purpose. Contrary to the misleading impression given by PepsiCo's statements, PepsiCo's PET bottles can generally only be recycled a limited number of times before the plastic resin will no longer be of a sufficient quality to form a new bottle.

89. Second, PepsiCo's statements give a misleading impression of the company's progress toward reducing its contribution to plastic pollution. In particular, the company's misleading use of targets related to its plastic packaging

deceives consumers and the public into believing PepsiCo is moving toward a meaningful reduction in its production of single-use plastic, when in fact no such progress is being made.

90. For instance, in 2019, PepsiCo announced a target to reduce the total amount of virgin plastic used in its plastic beverage bottles by 35% by 2025, using its 2018 quantity as a baseline. According to PepsiCo, this reduction would "fundamentally change the way the world interacts with our packaging to deliver our vision of a world where plastics need never become waste." But this target quickly proved unattainable for PepsiCo. Two years later, PepsiCo's use of virgin plastic in its beverage bottles *increased* by 5%.

91. Faced with this failure, PepsiCo simply changed the target without fundamentally changing its practices. In 2021, PepsiCo stopped reporting its progress toward the 2019 beverage bottle target and instead announced a *new* target of reducing virgin plastic per serving in beverage bottles and convenient foods packaging by 50% by 2030, to include a 20% reduction in the total amount of virgin plastic used in its plastic packaging, now using 2020 as a baseline.

92. But in 2022, PepsiCo's total use of virgin plastic in its plastic packaging again increased, this time by 11%.

93. PepsiCo's messaging regarding its use of virgin plastic gives a misleading impression that the company is making meaningful progress toward combatting the problem of plastic pollution, which the company recognizes affects consumers' decisions about whether to purchase their products. No such progress,

however, is being made. For the last four years, PepsiCo's use of virgin plastic in its packaging has increased year by year.

Year	Quantity of Virgin Plastic Used by PepsiCo for its Packaging
2019	2,208,000 metric tons
2020	2,232,500 metric tons
2021	2,342,500 metric tons
2022	2,418,000 metric tons

94. In another example, in 2017, PepsiCo announced a specific target to increase the recycled content in its plastic packaging to 25% by 2025. At that time, PepsiCo reported that only 3% its plastic packaging was recycled content. However, PepsiCo once again made little progress toward reaching that 25% target: by 2020, PepsiCo had only increased the recycled content in its plastic packaging to 5%. PepsiCo then simply ceased reporting its progress toward the 2017 recycled content target. Instead, in 2021, without acknowledging its failure to make substantial progress toward its 2017 goal and without meaningfully changing its practices, PepsiCo announced a new target to increase its recycled content in its plastic packaging to 50% by 2030. In its 2021 and subsequent public statements, the company also misleadingly asserted that the recycled content metric "was not measured in prior years," when in fact it was.

95. Thus, even applying PepsiCo's own performance metrics, the company is not making meaningful progress toward abating the plastic pollution to which it contributes.

96. Indeed, when asked in May 2023 to identify "a sustainable packaging win . . . that [PepsiCo has] had of late," PepsiCo Vice President for Global Foods Packaging Yolanda Malone only pointed to the company's elimination of the plastic film previously used as the outer packaging for its snack food variety packs, i.e., boxes containing several individually packaged, single serve portions from various PepsiCo brands. This example was also one of only two examples offered in PepsiCo's 2022 annual report on performance metrics related to its use of virgin plastic. But the CEO of PepsiCo Foods North America Steven Williams acknowledged that this "win" only allowed PepsiCo to eliminate 12 million pounds (equivalent to 5,443 metric tons) of plastic packaging from its products, a negligible amount compared to the close to 6 *billion* pounds (2,600,000 metric tons) of plastic PepsiCo used in its packaging in 2022.

ii. PepsiCo's Failure to Warn Consumers and the Public About the Risk of Harm from Its Plastic Packaging

97. PepsiCo's plastic packaging also fails to warn consumers and the public that the packaging is a potential source of plastic pollution and presents a risk of harm to human health and the environment.

98. As PepsiCo acknowledges, consumers' perception of the environmental impact of PepsiCo's plastic packaging affects consumer behavior. As PepsiCo has stated in its annual reports filed with the Securities and Exchange Commission, "concerns or perceptions regarding [its] packaging and its environmental impact (such as single-use plastic and other plastic packaging)" could "lead consumers to reduce or publicly boycott the purchase or consumption of [the company's]

products." The company similarly recognizes that "[m]aintaining a positive reputation globally is critical to selling [its] products[,] . . . . [and the company's] reputation or brand image has in the past been, and could in the future be, adversely impacted by . . . any failure, or perception of a failure, to achieve our environmental, social and governance goals, including with respect to . . . packaging, water use and our impact on the environment."

99. In other words, the public's perception of the environmental impact of the company's single-use plastic packaging directly affects consumer behavior. If PepsiCo's products carried a warning about the packaging's potential contribution to plastic pollution and the risk of harms to human health and the environment that could result, the warning would affect consumer choices in a manner that would reduce those harms. Among other things, consumers would reduce their consumption of products sold in single-use packaging and instead opt for products that utilize reusable containers, consumers would choose products that were packaged in alternatives to plastic, or consumers would dispose of products in a manner that causes less environmental harm.

100. Despite this, none of PepsiCo's plastic packaging contains warnings about its potential contribution to plastic pollution or the resulting harms to human health or the environment.

FIRST CAUSE OF ACTION
Public Nuisance

101. Plaintiff realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

102. On November 2021, New York citizens voted overwhelmingly in favor of the Green Amendment, adding a new section 19 to Article I of the New York State Constitution. The Green Amendment provides that: "Each person shall have a right to clean air and water, and to a healthful environment."

103. PepsiCo's acts and omissions, and its widespread plastic pollution in the Buffalo River and along its shores, have created or contributed, and continue to create and contribute, to a substantial interference with the exercise of a common right of the people living in the City of Buffalo and its surrounding areas, interfering with the use by the public of public spaces, and/or endangering or injuring the property, health, safety or comfort of a considerable number of persons.

104. PepsiCo knew, or should have foreseen, that its actions and omissions would result in this offense, interference and/or damage to the public in the exercise of common rights.

105. The offense, interference, and/or damage to the public in the exercise of common rights caused by PepsiCo's actions and omissions remain unabated.

SECOND CAUSE OF ACTION
Strict Products Liability: Failure to Warn

106. Plaintiff realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

107. At all relevant times, the single-use plastic packaging produced, used, or specified by PepsiCo for packaging its beverages and snack food products created a substantial risk of harm to the People of the State of New York and their public

trust resources, including the Buffalo River, its bed and banks, and public parks along the river.

108. PepsiCo's consumers and the public are not, and were not at all relevant times, aware of the nature or extent of the harms caused by PepsiCo's single-use plastic packaging.

109. PepsiCo failed, and continues to fail, to adequately warn its consumers and the public of the known and foreseeable risks that follow from the intended use and foreseeable misuse of its single-use plastic packaging.

110. PepsiCo knew or should have known that the single-use plastic packaging containing its beverage and snack food products, whether used as intended or misused in a foreseeable manner, would cause harm to the People of the State of New York and their public trust resources, including the Buffalo River, its bed and banks, and public parks along the river.

111. PepsiCo's failure to warn has injured the People of the State of New York and their public trust resources, including the Buffalo River, its bed and banks, and public parks along the river.

THIRD CAUSE OF ACTION
Violation of New York General Business Law § 349

112. Plaintiff realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

113. PepsiCo engaged in deceptive practices in the conduct of business, trade, and/or commerce in New York, in violation of § 349 in the course of manufacturing, selling, distributing, promoting, and/or marketing beverages and

snack foods in single-use plastic packaging, including by omission of a warning regarding the known and foreseeable risks that follow from the intended use and foreseeable misuse of its single-use plastic packaging.

114. By letter dated November 7, 2023, the Attorney General timely provided PepsiCo with a pre-litigation notice pursuant to GBL § 349(c).

115. PepsiCo has damaged Plaintiff and numerous other individuals and entities resident in New York through its deceptive practices in violation of General Business Law § 349.

FOURTH CAUSE OF ACTION
Repeated and Persistent Illegality in Violation of New York Executive Law § 63(12)

116. Plaintiff realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

117. PepsiCo engaged in repeated and persistent illegality in violation of Executive Law § 63(12) through its violations of New York General Business Law § 349.

118. PepsiCo damaged the State of New York and its residents, and obtained ill-gotten profits, through its repeated and persistent illegality in violation of Executive Law § 63(12).

WHEREFORE, Plaintiff the People of the State of New York respectfully requests that a judgment and order be entered that:

1. Declares that the accumulation of plastic pollution in the Buffalo River and along its shorelines as described herein is a public nuisance;

2. Declares that PepsiCo has contributed to, and continues to contribute to, the creation of the public nuisance described herein;

3. Directs PepsiCo to take reasonable best efforts to abate the public nuisance described herein, by: i) undertaking studies to identify the extent of the plastic pollution described herein and identify appropriate actions to remediate the contamination, and undertaking the implementation of such effective remedial actions; or ii) endowing an abatement fund with sufficient capital to eliminate the public nuisance to which it has contributed and continues to contribute;

4. Enjoins PepsiCo to take reasonable best efforts to prevent further contribution to the plastic pollution accumulating in the Buffalo River and along its shorelines, including evaluating the efficacy of measures such as use of alternatives to single-use plastic in the Buffalo region; identification and implementation of methods to reduce the use of PepsiCo's single-use plastic packaging in the Buffalo region; and identification and implementation of measures to reduce the quantity of PepsiCo's plastic packaging entering the waterway;

5. Declares that PepsiCo has failed to adequately warn consumers that its single-use plastic packaging could contribute to the contamination of waterways and could lead to the presence of microplastic in drinking water, cause harms to the health of humans and other organisms, and other harms;

6. Enjoins PepsiCo to place an adequate warning on its single-use plastic beverage bottles and snack food wrappers sold or distributed in the Buffalo region that warns consumers that the packaging is a potential source of plastic pollution and presents a risk of harm to human health and the environment.

7. Enjoins PepsiCo from causing the sale or distribution of any product in the Buffalo region in single-use plastic packaging that does not contain an adequate warning;

8. Awards compensatory damages for the harm done to the Buffalo River and its shoreline, and the citizens and inhabitants of the City of Buffalo, including but not limited to damages for injury to natural resources, in an amount to be determined at trial;

9. Declares that PepsiCo has violated General Business Law § 349;

10. Enjoins PepsiCo from engaging in any further deceptive acts, omissions, or practices in violation of General Business Law § 349;

11. Awards Plaintiff, pursuant to General Business Law § 350-d, restitution or civil penalties from PepsiCo in the amount of $5,000 for each separate instance in which it employed a deceptive or unlawful act or practice in violation of General Business Law § 349;

12. Orders disgorgement of all revenues, profits, and gains wrongfully derived by PepsiCo on account of its repeated and persistent unlawful acts or practices in violation of Executive Law § 63(12) and General Business Law § 349(a); and

13. Grants such other relief as the Court may deem just.

Dated: November 15, 2023
New York, New York

FOR THE PEOPLE OF THE STATE OF NEW YORK

LETITIA JAMES
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