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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
MISSOULA DIVISION

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KEILA CROSS, on behalf of herself and  
all others similarly situated,

*Plaintiff,*

v.

ALLIED WASTE SERVICES OF NORTH  
AMERICA, LLC, D/B/A REPUBLIC  
SERVICES,

*Defendant.*

**CLASS ACTION COMPLAINT**

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**Parties, Jurisdiction, and Venue**

1. Plaintiff Keila Cross is a resident of Missoula, Montana, and a customer of Defendant Allied Waste Services of North America, LLC, because Cross pays for curbside recycling services at her home.
2. Defendant Allied Waste Services of North America, LLC is a Delaware

entity with its principal place of business in Arizona, and operates under the assumed business name of Republic Services in Montana (the remainder of this Complaint will refer to the Defendant as “Republic Services”).

3. This Court has original jurisdiction under the Class Action Fairness Act (CAFA) at 28 U.S.C. § 1332(d) because:
  - a. The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs;
  - b. Cross is a citizen of Montana;
  - c. Republic Services is a citizen of Arizona and Delaware;
  - d. The number of putative class members is greater than 100; and
  - e. The home state exceptions to CAFA are not applicable.
4. Venue is proper in the District of Montana because a substantial part of the events or omissions giving rise to the claim occurred in Montana.

#### **Facts Common to All Claims**

5. Republic Services is one of the largest, if not the largest, solid waste and recycling company operating in Montana.
6. Republic Services provides residential garbage pick-up in many Montana communities, including Missoula.
7. Republic Services also offers—for an additional fee—residential recycling pick-up services in many Montana communities, including Missoula.

8. For many residential customers in Montana, in exchange for additional monthly fees, Republic Services will provide a second bin, so customers can place their garbage in one bin, and their recycling in a separate bin.
9. Upon information and belief, in most parts of Montana, Republic Services picks up residential garbage every week, but only picks up residential recycling every other week.
10. On its website, Republic Services has a form where customers or potential customers can fill in their address, and Republic Services will show the services offered for that address, under the heading “Learn What Can Be Recycled In Your Area.”
11. For Cross’s address, Republic Services claims that “acceptable solid waste materials” for recycling include:
  - Aluminum cans
  - Aluminum foil
  - Cardboard
  - Cereal Boxes
  - Household Plastic 1
  - Household Plastic 2
  - Household Plastic 3
  - Household Plastic 4

- Household Plastic 5
- Household Plastic 6
- Household Plastic 7
- Magazines
- Mail
- Paper
- Paperboard
- Phonebooks, and
- Steel Cans.

12. Based on Republic Service’s representations about what can be recycled, Cross became and remained a customer of Republic Service’s curbside recycling services.

13. However, Cross has learned that Republic Services has repeatedly implied it does not actually recycle some of the materials it claims, especially #3, #4, #6, and #7 plastics.<sup>1</sup>

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<sup>1</sup> For example, in *Plastic Recycling in Missoula is Common and Complicated*, by Erica Zurek, which was published in the Missoula Current on October 30, 2020, and is available at <https://missoulacurrent.com/outdoors/2020/10/plastic-recycling-complicated/>, representatives for Republic Services appear to have stated that #1 and #2 plastics have a realistic market, but that plastics #3–#4 and #6–#7 are nearly impossible to recycle. In addition, Republic Services employees have been quoted in the New York Times stating that “material being collected on the street doesn’t have a place to go.” *Your Recycling Gets Recycled, Right? Maybe, or Maybe Not*, Livia Albeck-Ripka, New York Times, Section B, Page 1 (May 29, 2018), also

14. Indeed, following pushback from consumer and environmental advocacy groups, in 2020 Republic Services published a report on “Advancing Plastics Recycling through Investment, Innovation and Education,” which is available at [https://www.republicservices.com/cms/documents/sustainability\\_reports/Plastics-Recovery-Program-Review2020.pdf](https://www.republicservices.com/cms/documents/sustainability_reports/Plastics-Recovery-Program-Review2020.pdf). In that report, Republic Services conceded that plastics #3, #4, #6, and #7 “are ‘end of the line’ plastics that currently have limited or no end markets,” and further conceded that “we believe the most responsible form of management, particularly from a climate perspective, is landfill.”
15. Put another way, many of the products Republic Services collects and purports to recycle are sent directly to the landfill—the same place residential garbage collection ends up.
16. And while Republic Services warns customers about the prospect of some otherwise recyclable materials ending up in the landfill—such as greasy pizza boxes<sup>2</sup>—it does not reasonably inform customers that there is

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available at <https://www.nytimes.com/2018/05/29/climate/recycling-landfills-plastic-papers.html>.

<sup>2</sup> See, e.g., <https://www.republicservices.com/blog/everything-you-think-you-know-about-recycling-wrong-and-heres-how-to-fix-it> (“Once a pizza box is soiled with grease and cheese, the cardboard is no longer recyclable and can contaminate other recyclables when placed in the bin.”).

essentially no likelihood that many of the household plastics it collects and purports to recycle have essentially no prospect of ever being recycled.

**Count I—Violation of the Montana Consumer Protection Act**

17. Cross incorporates the preceding allegations as if set forth in this part.
18. Cross is a consumer as defined by the Montana Consumer Protection Act (“MCPA”).
19. The MCPA prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce within Montana.
20. Republic Services engages in “trade” or “commerce” when it advertises and promotes residential curbside recycling services, and also when it collects residential recycling and bills customers for the same.
21. By representing that it recycles materials that it does not, but charging consumers for such “recycling,” Republic Services is engaging in unfair acts and practices.
22. By representing that it recycles materials that it does not, but charging consumers for such “recycling,” Republic Services is engaging in deceptive acts and practices.
23. By representing that it recycles materials that it does not, but charging consumers for such “recycling,” Republic Services is likely to mislead customers, and its misrepresentations are material.
24. Montana consumers act reasonably when relying on Republic Services

representations, representations made from an expert in the matter, because Montana consumers are not, and are not required to be, recycling experts.

25. Republic Services actions offend established public policy, namely, the charging of consumers for certain services when, in fact, Republic Services does not provide such services.
26. Republic Services' actions are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.
27. Republic Services knew or should have known that, at the times it has told customers and prospective customers that all manner of plastics "can be recycled in your area," Republic Services had no reasonable basis to believe those claims were true.
28. As a result of Republic Services false and deceptive acts, Cross and all others similarly situated have suffered an ascertainable loss of money, and Cross and all others similarly situated are entitled to statutory damages of \$500 per violation.

### **Count II—Class Certification**

29. Cross incorporates the preceding allegations as if set forth in this part.
30. Cross requests that she be designated as class representative and lead plaintiff in a class certified under Federal Rule of Civil Procedure 23. Cross and all other members of the class—which includes every Republic Services

residential customer in Montana who has paid for curbside recycling during the two years preceding the date of this complaint—are similarly situated for the purposes of Rule 23, have all suffered the same harm, and all seek statutory damages under the MCPA.

31. The proposed class meets the requirements of Rule 23(a) because:
  - a. An action joining every prospective class member would involve so many individuals that joinder of all of them would be impractical, if not impossible. Upon information and belief, the number of class members will be in the thousands.
  - b. The legality and propriety of the Defendant's actions involves questions of law and fact common to all class members.
  - c. Cross's claims are typical of the class claims, and the questions posed by this action concern the same issues for Cross and for every member of the class.
  - d. Cross will fairly and adequately represent and protect the interests of the class. Resolution in favor of Cross and the class will fairly and adequately inure to the benefit of the entire class.
  - e. Cross's attorneys are skilled in litigating the types of issues presented, and have litigated class actions in both state and federal courts in Montana.



- f. The individual claims are too small to justify the costs of individual lawsuits, and therefore it is unlikely these claims will ever be prosecuted if not on behalf of a class.
32. A class action is maintainable under the requirements of Rule 23(b)(3) because:
- a. Prosecution of separate actions creates the danger of inconsistent or varying adjudication of each class member's individual case was litigated in separate actions spread across the state, which would create a substantial likelihood of inconsistent results.
  - b. Common questions of law and fact predominate of any question affecting Cross or any other individual class member, and so a class action is a superior method for the fair and efficient adjudication of the controversy.
  - c. The remedy requested is not onerous or impractical, and the precise amount of statutory damages owed to the class is calculable to a sum certain based on the Defendant's own records.
33. Cross therefore requests that the Court certify the class and authorize notice under Rule 23. Cross also requests that the Defendant be directed to provide notice to all qualifying class members, since the Defendant is in exclusive control of the information needed to contact the class members.

### **Prayer for Relief**

Cross and the class she seeks to represent request the following relief:

- A. For an order certifying the class under Federal Rule of Civil Procedure 23(b)(3), and appointing Cross as class representative and lead plaintiff, and her attorneys as lead counsel;
- B. For a judgment that the Defendant's conduct violates the Montana Consumer Protection Act;
- C. For statutory damages of \$500 per class member for each violation (i.e. for every month that each class member paid for curbside recycling);
- D. For costs and attorney fees;
- E. For an order directing that class attorney fees, costs, and associated expenses be paid out of the common fund resulting from any successful recovery;
- F. For an order directing that the class representative be awarded a reasonable incentive award from the common fund; and
- G. For any other appropriate relief.

November 29, 2021.

WORDEN THANE P.C.  
*Attorneys for Plaintiff*

/s/ Jesse Kodadek  
Jesse Kodadek

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Keila Cross

(b) County of Residence of First Listed Plaintiff Missoula (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jesse Kodadek and Martin Rogers, Worden Thane P.C., 321 W. Broadway, Ste. 300, Missoula, MT 59802

DEFENDANTS

Allied Waste Services of North America, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Montana Consumer Protection Act Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ More than \$5 million. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/29/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Jesse Kodadek

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Case 9:21-cv-00145-DLC-KLD Document 1-1 Filed 11/29/21 Page 2 of 2**  
**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.