

**IN THE CIRCUIT COURT FOR
BALTIMORE CITY**

MAYOR AND CITY COUNCIL OF,
BALTIMORE

Plaintiff,

vs.

BP P.L.C., *et al.*,

Defendants.

Case No. 24-C-18-004219

**MEMORANDUM IN SUPPORT OF CROWN CENTRAL LLC’S AND CROWN
CENTRAL NEW HOLDINGS LLC’S DEFENDANT-SPECIFIC MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Defendants Crown Central LLC and Crown Central New Holdings LLC (collectively, and when not referred to individually, the “**Crown Entities**”), by their undersigned attorneys and pursuant to Maryland Rule 2-322(b)(2), file this Defendant-Specific Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted.

I. DEFENDANT-SPECIFIC MOTION

While the Crown Entities incorporate by reference the arguments set forth in Defendants’ Joint Motion to Dismiss for Failure to State a Claim, and the Memorandum of Law in Support of the Motion to Dismiss (collectively, the “**Joint Brief**”), they move to dismiss on the additional, unique basis that Plaintiff fails to identify any statement made by a Crown Entity, let alone conduct within the three (3) years preceding the filing of the Complaint, that could even arguably constitute a violation of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-301 *et seq.* (“**MCPA**”), or other tortious act. To the contrary, Plaintiff’s Complaint is devoid of any such allegation as to any Crown Entity. In turn, in an attempt to bypass the necessary pleading requirements, Plaintiff merely lumps the Crown Entities together with all of the other defendants

through the use of the defined term “Defendants,” thereby attempting to impute the alleged statements or conduct of other defendants to the Crown Entities. Similarly, by using the defined term “Crown Central,” Plaintiff attempts to impute the activities of Crown Central LLC onto Crown Central New Holdings LLC; *see generally* Compl. At ¶26(d), even though only Crown Central LLC participated in types of activities that are generally the subject of the Complaint.

II. NATURE OF THE SUIT

Since Plaintiff’s lawyers first filed this action, its theory of the case has shifted substantially. Specifically, the allegedly offensive conduct supporting the action has shifted from the extraction, refining, and distribution of petroleum products, towards the conduct of making false representations. Plaintiff’s counsel had no choice but to make this shift because the conduct of extracting, refining, and distributing petroleum products (and otherwise participating in the industry) is expressly permitted, and even demanded, by the governments of the United States, the State of Maryland, Anne Arundel County, Annapolis, and Baltimore (and nearly every other jurisdiction in world). By attempting to shift its theory away from lawful activity towards misrepresentations, Plaintiff’s counsel solved one problem, but created another.

Against all twenty-six “Defendants,” Plaintiff makes the following types of generic allegations:

Defendants, major corporate members of the fossil fuel industry, have known for nearly a half century that unrestricted production and use of their fossil fuel products create greenhouse gas pollution that warms the planet and changes our climate. They have known for decades that those impacts could be catastrophic and that only a narrow window existed to take action before the consequences would be irreversible. They have nevertheless engaged in a coordinated, multi-front effort to conceal and deny their own knowledge of those threats, discredit the growing body of publicly available scientific evidence, and persistently create doubt in the minds of customers, consumers, regulators, the media, journalists,

teachers, and the public about the reality and consequences of the impacts of their fossil fuel pollution.

Compl. ¶1. Plaintiff's allegations against the Crown Entities, specifically, are generic, conclusory and otherwise flawed. Plaintiff fails to identify any statement made by a Crown Entity. Plaintiff's specific claims against Crown are limited to the following:

21. **Crown Central Entities**

a. Crown Central Petroleum Corporation has been among the largest independent refiners and marketers of petroleum products in the United States. Crown Central Petroleum Corporation was incorporated in Maryland and had its principal place of business in Baltimore, Maryland. Crown Central Petroleum Corporation was formerly known as, did or does business as, and/or is the predecessor in liability to Crown Central LLC and Crown Central New Holdings, LLC. Crown Central LLC is incorporated in Maryland and has its principal offices in Baltimore, Maryland. Crown Central New Holding, LLC is incorporated in Maryland and has its principal offices in Baltimore, Maryland.

b. Defendants Crown Central Petroleum Corporation, Crown Central LLC, Crown Central New Holdings LLC, and their predecessors, successors, parents, subsidiaries, affiliates, and divisions are collectively referred to herein as "Crown Central."

c. Crown Central transacts and/or has transacted substantial fossil fuel-related business in Maryland. A substantial portion of Crown Central's fossil fuel products are or have been extracted, refined, transported, traded, distributed, marketed, manufactured, sold, and/or consumed in Maryland, from which Crown Central derives and have derived substantial revenue. For example, Crown Central marketed or markets gasoline and other fossil fuel products to consumers in Maryland through over 100 Crown-branded petroleum services stations in Maryland.

Compl. ¶ 26 (emphasis added). The only other allegations in the Complaint that refer to a Crown Entity is as follows:

[31].a **The American Petroleum Institute (API)**: The following Defendants and/or their predecessors in interest are and/or have been API members at times relevant to this litigation: BP, Chevron, Crown Central, ExxonMobil, Shell, ConocoPhillips, Marathon, and Hess.

Absent Plaintiff's choice to throw all Defendants into the same pot, Plaintiff pleads no facts about the conduct of the Crown Entities. With respect to Crown Central New Holdings LLC, Plaintiff alleges only that it did business in Maryland, which does not create a cause of action. Plaintiff also labels Crown Central New Holdings LLC as a successor in interest without any factual information to support this claim (it is not a successor in interest). As to Crown Central LLC, Plaintiff suggests that Crown Central LLC's conduct is ongoing, yet it was widely reported in media that Crown Central divested its assets and ceased petroleum-related activities in 2005.¹

III. STANDARD OF REVIEW

This Court may dismiss all or part of an action for failure to state a claim upon which relief can be granted. MD. RULE 2-322(b)(2). The complaint should contain "such statements of fact as may be necessary to show the pleader's entitlement to relief." *Sullivan v. Caruso Builder Belle Oak, LLC*, 251 Md. App. 304 (2021); MD. RULE 2-305. For the purposes of a motion to dismiss, a court assumes the truth of all well-pleaded, relevant and material facts and all inferences that can be reasonably drawn from those pleadings. *See Fioretti v. Md. State Bd. of Dental Examiners*, 351 Md. 66, 72 (1998). A court, however, need not consider mere conclusory charges that are not factual allegations. *Morris*, 340 Md. at 531; *see also Faya v. Almaraz*, 329 Md. 435, 443 (1993). "Bald allegations and conclusory statements by the pleader will not suffice." *Aleti v. Metropolitan Baltimore, LLC*, 251 Md. App. 482 (2021).

Finally, Maryland Courts have consistently applied Md. Code Ann., Cts. & Jud. Proc. § 5-101, including when holding "that a claim for money damages under the MCPA is subject to

¹ See, e.g., <https://www.baltimoresun.com/news/bs-xpm-2006-09-08-0609080170-story.html>. From 2006 to 2013, Crown Central LLC continued to license the "Crown" brand-name and trademarks to local distributors or gasoline station owners. Crown Central sold that licensing business in 2013 and has had no other role in the industry. From 2006 to the present Crown Central LLC has not engaged in the type of business alleged in in the Complaint.

the three-year statute of limitations.” *Cain v. Midland Funding, LLC*, 475 Md. 4, 39 (2021), 475 Md. at 39; *see Master Fin., Inc. v. Crowder*, 409 Md. 51, 65 (2009) (applying Md. Code Ann., Cts. & Jud. Proc. § 5-101 in finding that MCPA claims are subject to the three-year period of limitations) (citing *Greene Tree Home Owners Ass’n, Inc. v. Greene Tree Assocs.*, 358 Md. 453 (2000)).

IV. ARGUMENT

Misrepresentation underpins each of the Plaintiffs claims. To sustain this claim, Plaintiff minimally must identify the statement made by a Crown Entity, and allege when the statement was made to demonstrate that the claim is within the statute of limitations period.

a. Plaintiff Has Failed to Plead Misrepresentation with the Requisite Particularity.

In Maryland, the element of misrepresentation must be pled with particularity, regardless of the claim. *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 529 (2014). “The requirement of particularity must be seen as a kind of judge-made gloss on the general rules of pleading.” *Id.* at 527. The requirement of *particularity* applies to any action premised on misrepresentation, including under the MCPA. *Id.* at 529 (the MCPA “replicates common law fraud”). The requirement of *particularity* “ordinarily means that a plaintiff must identify who made what false statement, when, and in what manner (i.e., orally, in writing, etc.) and why the statement is false.” *Id.* at 528.²

² *See also, e.g., Bezmenova v. Ocwen Financial Corp.*, Civil Action No. 8:13-cv-00003-AW, 2013 WL 1316445, at *3 (D. Md. Mar. 27, 2013) (dismissing MCPA claim where plaintiff challenged amounts she owed, but failed to identify actual misrepresentations made by defendants); *Jackson v. S. Holland Dodge, Inc.*, 197 Ill. 2d 39, 52 (2001) (finding that plaintiff did not state a claim under the Illinois Consumer Fraud Act against the assignee of a consumer credit contract where there was no evidence that the assignee directly participated in a scheme with the dealership to defraud the plaintiff); *Psensky v. Am. Honda Fin. Corp.*, 875 A.2d 290, 297 (N.J. App. Div. 2005) (dismissing claims against finance company where there was no allegation of direct misconduct against the company).

To state a claim under the MCPA relating to the conduct alleged in this case, Plaintiff must allege “(1) an unfair or deceptive practice or misrepresentation that is (2) relied upon, and (3) causes them actual injury.” *Bey v. Shapiro Brown & Alt, LLP*, 997 F. Supp. 2d 310, 319 (D. Md. 2014). The MCPA defines “unfair, abusive, or deceptive trade practices” to include, *inter alia*, “[f]alse, falsely disparaging, or misleading oral or written statement[s],” as well as “omission[s] of any material fact.” Md. Code Ann., Com. Law §§ 13-301(1), (3), (9). A plaintiff thus must offer well-pleaded allegations of a “misrepresentation or material omission” to state a claim. *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 722 n.11 (2015). To state a claim under the private cause of action provisions of the MCPA, the consumer must have suffered an identifiable loss, measured by the amount the consumer spent or lost as a result of his or her reliance on the sellers’ misrepresentation. *Goss v. Bank of America, N.A.*, 917 F.Supp. 2d 445 (2013).

Here, Plaintiff fails to offer any specific allegations that a Crown Entity made a “misrepresentation or material omission.” Nowhere in the Complaint does Plaintiff plead specifically what statements were “wrongful,” what facts were “misrepresented,” or what “wrongful” marketing materials or advertisements were directed by a Crown Entity to a Maryland consumer. Plaintiffs also fail to say when the alleged misstatement occurred. Accordingly, all Plaintiff claims sounding in misrepresentation must be dismissed, including the MCPA claim.

b. Plaintiff Has Not and Cannot Establish the Crown-Affiliated Entities Undertook Any Conduct, Including MCPA Violative Conduct, Within the Applicable Statute of Limitations

Plaintiff’s causes of action based on misrepresentations, including sections 13-301(1), (3), and (9) of the MCPA, are all subject to a three-year statute of limitations. Based on the date the Complaint was filed, Plaintiff must allege that a Crown Entity made an offending statement on or after February 22, 2018. *See, e.g.,* Md. Code Ann., Cts. & Jud. Proc. § 5-101; *see also Cain*, 475

Md. at 39 (applying three-year statute of limitation to MCPA claim). Plaintiff's Complaint lacks *any* specific allegation that a Crown Entity made a statement at all, much less a statement made after February 22, 2018. *Compare* Compl. ¶¶ 26, 36, 47 (mentions of Crown) *with* Compl. ¶¶ 295-310 (MCPA cause of action). Moreover, even if Plaintiff was given leave to amend its Complaint, it would still confront that Crown Central LLC has not directed gasoline products to Maryland (or been a member of API) since before 2006, and Crown Central New Holdings, LLC, never has engaged in such activities. All of Plaintiffs claims are barred because Crown Central LLC has not engaged in the alleged activities that are the subject of the Complaint since before 2006.

c. Plaintiff Has Failed to Meet the Minimum Pleading Requirements under Maryland Law

Notwithstanding the fact that Plaintiff does not allege that a Crown Entity made a statement with particularity (including who, what, when, where, how and why wrong) to plead a cause of action premised on a misrepresentation, Plaintiff must minimally identify the offending statement at the heart of the claim. Md. Rule 2-305. Moreover, Plaintiff must allege events involving Crown that occurred within the applicable statute of limitations period.

Maryland is a fact-based pleadings state, and Maryland Rule 2-305 requires a short, plain statement of facts that supports every element of the claim. Under Maryland's rules of pleading, a plaintiff must state such facts in his or her complaint as are necessary to show an entitlement to relief. *Johns Hopkins Hosp. v. Pepper*, 346 Md. 679, 698 (1997) (citing Md. Rule 2-303(b)).

A plaintiff may not simply “dump” all defendants “in the same pot.” *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002). Rather, the complaint must allege “acts or omissions by [each defendant] that would serve as a basis for the imposition of liability.” *Id.* “[D]efendants . . . are not fungible [and the court] must examine what each is charged with doing or failing to do.” *Wells v. State*, 100 Md. App. 693, 703 (1994). For that reason, a

“conclusory” “characterization” of Defendants’ alleged conduct is insufficient to state a claim against an individual defendant. *Id.*; *see also Samuels v. Tschechtelin*, 135 Md. App. 483, 528–29 (2000) (allegations that “lumped under the general title of ‘Defendants’ and summarily included in each of appellant’s seven counts” insufficient). Instead, because each defendant is entitled to understand the particular conduct with which it is charged, Plaintiff must allege “what each [defendant] is charged with doing or failing to do”—even under the general fact-pleading rules. *Wells*, 100 Md. App. at 703. *See also SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 423 (4th Cir. 2015) (“‘The fact that two separate legal entities may have a corporate affiliation does not alter [the] pleading requirement’ to separately identify each defendant’s involvement in the conspiracy.”).

Plaintiff’s allegations against the collectively pled Crown-Entities are mere conclusory allegations. Plaintiffs complain primarily that the Crown Entities do business in Maryland and participated in the petroleum industry at some time in the past or present. No specific conduct is identified, and, for sure, no conduct is identified that has occurred in the three years preceding the filing of the Complaint. Indeed, Crown Central LLC has not participated in the activities that are the general subject of the Complaint since 2005, and Crown Central New Holdings, LLC, never has participated in such activities (nor are they alleged to have done so except to the extent they are collectively pled as belonging to the defined term “Crown Central” or incorrectly labeled (without factual basis) a successor in interest).

Maryland pleadings standards, and basic due process, require more. Crown Central LLC cannot conduct a reasonable inquiry to respond to Plaintiff’s Complaint without knowing at least some basic information. While Maryland heightens the pleadings standard for misrepresentation to address this problem, even if the Court did not apply the heightened standard, Plaintiff’s

Complaint fails to meet even the basic requirements of fact-based pleading that are a hallmark of this State, and the Crown Central LLC lacks the basic information needed to investigate to provide an answer regarding any of the Plaintiff's claims.³

No Crown Entity has control over any of the other Defendants or API. For Plaintiff to have stated a claim against a Crown Entity based on a statement made by API, for example, Plaintiff must plead facts demonstrating some form of agency or other control over API beyond mere membership or attending conferences. Plaintiff has not pled this, and Plaintiff cannot plead this, because it is simply untrue. Likewise, even within the Crown Entities, Plaintiff cannot use the defined term Crown Central to plead or otherwise impute the actions of Crown Central LLC, which did operate and direct petroleum products to Maryland consumers and may have been a member of API (from time to time) prior to 2006, to Crown Central New Holdings LLC, which did not engage in these activities.

³ This problem is not mere hyperbole. Crown Central LLC has not operated as a petroleum company for almost two decades, and no employees remain.

CONCLUSION

For all of these reasons, and for those set forth in the Joint Brief and Memorandum in support thereof, the Crown Entities move to dismiss for failure to state a claim upon which relief can be granted.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of October, 2023, a copy of the foregoing **Crown Central LLC's and Crown New Holdings LLC's Defendant-Specific Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted** was served via email by agreement of parties upon the following:

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