IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF BALTIMORE ***Plaintiff*,** **v.** **BP P.L.C., *et al*.** ***Defendants*.**	**CASE NO. 24-C-18-004219**

CROWN DEFENDANTS' REPLY IN SUPPORT OF THEIR
INDIVIDUAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Upon consideration of this Reply, Defendants Crown Central LLC and Crown Central New Holdings LLC (collectively, "Crown"), respectfully request this Court to dismiss Plaintiff's Complaint against Crown for failure to state a claim upon which relief can be granted.

The Crown defendants join the Joint Reply in Support of Motion to Dismiss filed by the group of Defendants, and submit this brief in reply to Plaintiff's Crown-Specific Opposition to the Crown-Specific Motion to Dismiss.

Plaintiff bases its cause of action for alleged violations of the Maryland Consumer Protection Act ("MCPA") on Defendants' alleged "deceptive marketing and promotion of their products by…disseminating misleading marketing materials" that allegedly caused Maryland consumers to buy and consume fossil fuel products that would otherwise not be consumed. *See* Compl. ¶¶ 170, 182, 295, 297. However, this allegation cannot apply to Crown because Crown did not market, sell, or promote the use of fossil fuels to consumers in Maryland—or anywhere else—after 2006. As of that date, Crown divested its retail marketing assets. Therefore, Crown could not and did not advertise or sell fossil fuels to Maryland consumers (or commit any other torts) in the three years preceding the filing of the Complaint. Plaintiff ***does not dispute this fact***, and all

of Plaintiff's last-ditch theories and pulling of additional document to bolster a bare-bones complaint, fail to address Plaintiff's lack of claim and lack of capacity to circumvent the applicable statute of limitations. Moreover, even before 2006, Plaintiff fails to identify any marketing material or statement where Crown misled Maryland consumers about gasoline.

Recently, in a substantially similar climate change case in Delaware, the state court granted numerous defendants' Motion to Dismiss the Delaware consumer fraud cause of action, finding that the statute of limitations had run and that such claims were therefore barred. *State of Delaware v. BP America Inc., et al.*, 2024 WL 98888, C.A. No. N20C-09-097 MMJ CCLD (Jan. 9, 2024). This Court should do the same with respect to Plaintiff's claims against Crown. Further, the Court should dismiss because Plaintiff has not pled its claim against Crown and improperly attempts to impute the alleged actions of other Defendants on Crown, or improperly attempts to claim a "concert of action" theory that does not exist and is not supported by pled facts, which is the Maryland pleading requirement.

ARGUMENT

1. No Violative Conduct Could Have Occurred Within the Statute of Limitations

For the purpose of this Crown-specific brief, the question for this Court is whether Plaintiff's MCPA claim includes well-pled, non-conclusory allegations supported by specific facts that sufficiently establish violative conduct by Crown within the three-year statute of limitations.[1] Of the 171-page Complaint, only two paragraphs make allegations about Crown. *See* Compl. ¶¶ 21, 31. None of these paragraphs allege specific, violative conduct by Crown; to the contrary,

[1] *See MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 310-313 (2021) (affirming grant of dismissal where complaint lacked non-conclusory allegations and was "devoid of specific facts" to support plaintiff's claims); *see also Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995) (stating, the Court does "not consider…merely conclusory charges that are not factual allegations.").

they only contain generic, conclusory allegations, which this Court need not accept as true.[2] Plaintiff defends its lack of specific allegations against Crown by pointing to generic, conclusory allegations against all 26 Defendants, which allegedly put Crown "on notice" of the claims against it. *See Compl.* at 104. However, Plaintiff provides no explanation for how Crown could be engaged in the allegedly "same wrongful act" as other Defendants (Opp. at 11), when Crown has not engaged in gasoline sales to Maryland consumers since before 2006. Crucially, at no point does Plaintiff provide any examples of how Crown marketed or sold fossil fuel products in Maryland, while concealing and misrepresenting their dangers—at any time—and certainly not within the three-year statute of limitations.

Further, this Court should follow Maryland precedent in finding that Plaintiff has failed to plead its MCPA claim with sufficient particularity, as Plaintiff has failed to allege any specific and individual violative activity against Crown.[3] "The requirement of particularity requires plaintiff to identify who made what false statement, when, and in what manner (*i.e.*, orally, in writing, etc.)…," which Plaintiff has failed to plead here with respect to Crown.[4] Moreover, Crown is not sufficiently on notice of the specific and individual claims against it due to Plaintiff's generic, group-based pleading—especially where Plaintiff has conceded that Crown did not engage in any consumer-directed marketing or sales activity within the applicable statute of limitations.[5]

---

[2] *Supra* fn. 1. For this reason, all of the claims involving fraud or misrepresentation lack the requisite specificity and should be dismissed.

[3] *See McCormick v. Medtronic, Inc*., 219 Md. App. 485, 529 (2014) (finding, "if a party alleges an 'unfair or deceptive trade practice' under [Md. Code Ann., Com. Law § 13-301(9)], he or she must allege fraud with particularity…").

[4] *McCormick,* 219 Md. App. at 528.

[5] *See RRC Northeast, LLC v. BAA Maryland, Inc.,* 413 Md. 638, 644 (2010) ("The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice."); *see also Heritage Harbour, L.L.C. v. John J. Reynolds, Inc*., 143 Md. App. 698, 710 (2002) ("Pleadings must provide notice to the parties of the nature of claims, state the facts upon which the claims exist, establish the boundaries of the litigation, and afford the speedy resolution of frivolous claims.").

2. Fraudulent Concealment Does Not Apply to Toll the Statute of Limitations

Plaintiff asserts that the statute of limitations should be tolled because it was not on notice of its MCPA claim due to Crown's alleged fraudulent concealment. Opp. at 9. Fraudulent concealment only operates to toll the statute of limitations until a plaintiff discovers its rights, or could have discovered them with the exercise of reasonable diligence.[6] In this case, Plaintiff's Complaint alleges it was aware of a connection between the use of fossil fuels and climate change, and any alleged injuries, long before the expiration of the statute of limitations.[7] *See, e.g.*, Compl. ¶ fns. 3, 4, 9. This is undisputed, so instead Plaintiff argues that the City's historical knowledge of climate change, fossil fuel use, and climate impacts is not enough to trigger the limitations clock. Opp. at 10.

However, Plaintiff's arguments purposefully ignore the elements of a MCPA claim. Any alleged violative activity under the MCPA—*i.e.,* misleading advertisements or marketing statements made by Crown to Maryland consumers—were necessarily open, obvious, and able to be observed and/or discovered by Plaintiff; which, when coupled with Plaintiff's admitted "knowledge of climate change, fossil fuel use, and climate impacts," means Plaintiff was – at a minimum - on "inquiry notice," certainly by 2018 (*i.e.*, three years preceding the filing of Plaintiff's Complaint), of its potential claims against Crown, and any purported tolling ended at that time.[8] Indeed, since well prior to 2012, the City of Baltimore has undertaken climate action

[6] *See Doe v. Archdiocese of Washington*, 114 Md. App. 169, 187 (1997).
[7] In dismissing the consumer fraud claims as barred by the statute of limitations, the Delaware court also found that fraudulent concealment tolling did not apply where the general public, including plaintiff, had knowledge of or had access to information regarding the existence of climate change and effects prior to the expiration of the limitations period. *State of Delaware*, 2024 WL 98888 (Jan. 9, 2024). This Court should do the same.
[8] *See Doe*, 114 Md. App. at 188-89 ("The statute of limitations begins to run when the potential plaintiff is on 'inquiry notice' of such facts and circumstances that would 'prompt a reasonable person to inquire further.'"); *see also Cain v. Midland Funding, LLC,* 475 Md. 4, 35-37 (2021) (finding that the relevant inquiry is knowledge of "the operative facts giving rise to the cause of action"); *see also Moreland v. Aetna U.S. Healthcare, Inc*., 152 Md. App. 288, 298 (2003) ("Knowledge of facts, [] not actual knowledge of their legal significance, starts the statute of limitations running…") (internal citations omitted).

planning to combat the impact of climate change, expressly acknowledging gasoline consumption as a primary factor. *See, e.g.*, Baltimore Climate Action Plan at p. 16 ("Relationship of Transportation to GHG Emissions—This sector's emissions (15.6 percent of the total inventory) are generated by vehicle consumption of gasoline estimates."[9]

Despite public knowledge—and public acknowledgment—of the impact of gasoline emissions, without explanation, Plaintiff waited many years, *after* the MCPA statute of limitations had run, to bring its claim against Crown. Plaintiff never explains what reasonable diligence it took to investigate its purported claims against Crown once it was put on notice, nor does Plaintiff demonstrate affirmative fraud or concealment on the part of Crown, as expressly required by Maryland law.[10]

Nevertheless, Plaintiff claims that it was not put on notice of its MCPA claim until recently. Opp. at 15. However, fraudulent concealment requires that something affirmative be done by a defendant, which kept plaintiff in ignorance of its cause of action.[11] It is well publicized and public knowledge that Crown has not sold gasoline since 2006, and therefore has taken no steps of any kind—let alone steps to either market gasoline or to cover up its marketing of gasoline, and Plaintiff has not pled otherwise. Plaintiff fails to plead any facts demonstrating an affirmative action by Crown that prevented Plaintiff from gaining knowledge of the facts by the exercise of due diligence, and there are no such facts that can even be pled even if Plaintiff had leave to amend or revise its Complaint. In fact, Plaintiff has failed to plead any specific facts supporting how or why Crown's purported actions only recently became discoverable, as the law requires to claim

[9] *Available at* https://www.baltimoresustainability.org/plans/climate-action-plan/
[10] *See Windesheim v. Larocca*, 443 Md. 312, 335 (2015); *see also Dual Inc. v. Lockheed Martin Corp*., 383 Md. 151, 172-73 (2004).
[11] *See Dual*, 383 Md. at 170; *see also Bacon v. Arey*, 203 Md. App. 606, 653-54 (2012).

fraudulent concealment.[12] This is fatal to Plaintiff's claim of fraudulent concealment, especially considering that a plaintiff asserting a tolling exception must plead facts supporting the applicability of that exception, which Plaintiff has failed to do.

3. The Alleged Conduct of Other Defendants Cannot be Imputed to Crown

Plaintiff attempts to save its MCPA claim by shifting the blame to a large trade association, American Petroleum Institute ("API"), claiming that Crown is somehow responsible and "jointly liable" for any violative action committed by API within the statute of limitations. Opp. at §B. In furtherance of this goal, Plaintiff improperly equates mere membership in API to the commission of fraudulent activity in violation of the MCPA. Opp. at 8-9, 10-12. This argument must fail as a matter of law.

Plaintiff focuses its argument on the fact that it *alleged* Defendants acted in concert to deceive Maryland consumers in order to sell more consumer goods, *i.e.*, fossil fuel products. However, even if the Court were to assume this statement were true, Plaintiff's MCPA claim must still fail, as Crown did not sell ***any*** fossil fuel products to Maryland consumers after 2006, outside the statute of limitations – a fact which is ***undisputed*** by Plaintiff. Thus, there is no predicate activity which can form the basis of Plaintiff's MCPA claim. Put another way, API could not have misled the public on Crown's behalf or at Crown's direction within the statute of limitations because Crown simply did not market or sell fossil fuel products to consumers in Maryland during that time period.

Further, Plaintiff's MCPA claim must fail because without concerted action, statements of a trade association are not imputable to an individual member-company, such as Crown.[13]

---

[12] *See supra* fns. 7-11.

[13] *See SD3, LLC v. Black & Decker (U.S.) Inc*., 801 F.3d 412, 423 (4th Cir. 2015), as amended on reh'g in part (Oct. 29, 2015) (dismissing antitrust allegations against corporate subsidiaries where there were no specific allegations against individual defendants as part of alleged conspiracy, as guilt is not recognized "by mere association."); *see also Alvord-Polk, Inc. v. F. Schumacher & Co*., 37 F.3d 996, 1013 (3d Cir. 1994) (showing activities of association may

Likewise, Plaintiff's "joint tortfeasor" argument, which attempts to hold Crown liable for the alleged violative conduct of "other Defendants" within the statute of limitations must be disregarded by this Court.[14] Opp. at 8. The Complaint provides zero allegations as to a Crown-specific role in this alleged conspiracy, and zero explanation as to how such a conspiracy would work in the context of competitors' advertising their own products (ignoring the fact that Crown did not advertise or sell products to consumers in Maryland during the limitations period).

In a Hail Mary attempt to save its claim, Plaintiff introduces a Crown 10-K statement from 2000, and a Texas case from 1995. Plaintiff tries to use these public documents to bolster its bare Complaint about Crown, even though it is not appropriate to plead new facts in an opposition to a motion to dismiss. But even if Plaintiff had pled these facts in its Complaint, the motion to dismiss should be granted. First, the documents show only that Crown was a member of API—a fact that is undisputed. Second, these public documents emanate from 1995 and 2000, and Crown ceased gasoline operations in Maryland by 2006. If the public documents say what Plaintiff wants them to say, Plaintiff had notice of its claim when Crown ceased operating in 2006, and this claim should have been brought long ago.

4. Plaintiff Has Not Properly Pled Any Cause of Action Against Crown

In addition to relying on a concert of action theory, discussed above, Plaintiff acknowledges that pleading with particularly applies to its "fraud-like" MCPA claims." In so doing, Plaintiff tacitly concedes that all fraud-like claims, including fraud-like MCPA claims, must be dismissed with prejudice. Plaintiff posits that its other MCPA claims, such as unfair and

impose liability upon members, but only where association members engage in concerted action with the association, *i.e.*, perform some action/violative conduct themselves); *see also Newman v. Motorola, Inc*., 125 F. Supp. 2d 717, 724 (D. Md. 2000) (dismissing trade association from action where it was not a "merchant" under the MCPA); *AD/SAT, Div. of Skylight, Inc. v. Associated Press*, 181 F.3d 216, 234 (2d Cir. 1999) (finding lack of concerted action among association members did not give rise to inference of conspiracy, noting the mere opportunity to conspire does not by itself support the inference that illegal activity actually occurred).

[14] *Supra* fn. 14.

deceptive trade practices, do not require pleading with particularity. Although Crown disputes this assertion—because Plaintiff's unfair trade practice theory involves misleading consumers (*i.e.* a fraud-type of theory)—Plaintiff does not address Crown's other contention, which is that the Complaint also must be dismissed under the normal pleading standard. Even if the pleading with particularity requirement is not applied, Plaintiff's specific unfair trade practice claim as to Crown still must be dismissed because—other than its improper concert of action theory discussed above—Plaintiff fails to allege any action Crown took in Maryland that was an unfair or deceptive trade practice, and Crown genuinely lacks knowledge of any such statement sufficient to investigate the truth of any allegation. Plaintiff also cannot overcome the fact that it had all of the information necessary to bring its claims—including obvious knowledge of the impact of climate change and gasoline emissions' contribution to that phenomenon—long before the statute of limitations ran.

Plaintiff's failure to meet the general pleading requirement also appears in its tort and other non-fraud claims (*e.g*. nuisance), requiring dismissal for reasons discussed in far greater detail in Defendants' Joint Motion to Dismiss and Joint Reply briefs (in which Crown has joined in full).

CONCLUSION

For the reasons stated above, and in Defendant's Joint Motion to Dismiss and Joint Reply, Crown respectfully requests this Court to dismiss with prejudice Plaintiff's claims against Defendants Crown Central LLC and Crown Central New Holdings LLC.

Dated: January 26, 2024

Michelle N. Lipkowitz
(AIS No.0212180016)
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
555 12th Street NW , Suite 1100
Washington, DC 20004
(202) 434-7449
Email: MNLipkowitz@mintz.com

Thomas K. Prevas (AIS No. 0812180042)
SAUL EWING LLP
1001 Fleet Street, 9th Floor
Baltimore, Maryland 21202-3133
Telephone: (410) 332-8683
Facsimile (410) 332-8123
Email: thomas.prevas@saul.com
Attorneys for Defendants CROWN

CROWN CENTRAL LLC &
CROWN NEW HOLDINGS LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January, 2024, a copy of the foregoing, Defendants Crown Central LLC, Crown Central New Holdings LLC Reply in Support of its Reply to Defendant's Individual Motion to Dismiss for Failure to State a Claim, was served via email and first-class mail, postage-prepaid on the following:

Sara Gross
Chief, Affirmative Litigation Division
Baltimore City Department of Law
100 North Holliday Street
Baltimore, Maryland 21202
410.396.3947
Sara.gross@baltimorecity.gov

Victor M. Sher (*pro hac vice forthcoming)*
Matthew K. Edling (*pro hac vice forthcoming)*
Martin D. Quiñones (*pro hac vice forthcoming)*
Katie H. Jones (*pro hac vice forthcoming)*
Quentin C. Karpilow (*pro hac vice forthcoming)*
Sher Edling LLP
100 Montgomery St., Ste. 1410
San Francisco, CA 94104
Tel: (628) 231-2500
Fax: (628) 231-2929
vic@sheredling.com
matt@sheredling.com
marty@sheredling.com
katie@sheredling.com
quentin@sheredling.com

Attorneys for Plaintiff Mayor and City Council of Baltimore

Thomas K. Prevas