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MAYOR AND CITY COUNCIL OF BALTIMORE,	*	**IN THE**
	*	**CIRCUIT COURT**
***Plaintiff*,**	*	**FOR**
v.	*	**BALTIMORE CITY, PART 23**
PEPSICO, INC., *et al.*,	*	**Case No.: C-24-CV-24-001003**
***Defendants*.**	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Joint Motion to Dismiss the Complaint filed by Defendants, PepsiCo, Inc., Frito-Lay, Inc., Frito-Lay North America, Inc., The Coca-Cola Company, W.R. Grace and Co., Mercury Plastics MD, Inc., Adell Plastics, Inc., and Polymershapes Baltimore on November 26, 2024 (Envelope No. 18974128)[1]; Plaintiff's Opposition, filed on January 27, 2025 (Envelope No. 19710548); Defendants, PepsiCo, Inc., Frito-Lay, Inc., Frito-Lay North America, Inc., The Coca-Cola Company, W.R. Grace and Co., Mercury Plastics MD, Inc., Adell Plastics, Inc., and Polymershapes Baltimore's Reply in Further Support of their Motions to Dismiss, filed on February 26, 2025 (Envelope No. 20139684); the undersigned's Order for Further Briefing, dated March 26, 2026; Plaintiff's Response to the Order for Further Briefing (Envelope No. 25977112), filed on April 10, 2026; Defendants PepsiCo, Inc., Frito-Lay, Inc., Frito-Lay North America, Inc., and the Coca-Cola Company's (hereinafter "Defendants") Joint Response to the Order for Further Briefing (Envelope No. 25977252), filed on April 10, 2026; Plaintiff's Opposition (Envelope No. 26077890) thereto, filed on April 17, 2026; Defendants' Opposition (Envelope No. 26080316)

[1] Defendants Poylmershapes Baltimore, Mercury Plastics MD, W.R. Grace & Co., and Adell Plastics have all been dismissed pursuant to this Court's Order dated July 21, 2025.

thereto, filed on April 17, 2026, the arguments made before the Court on July 10, 2026; and the contents of the record herein. For the reasons elaborated upon herein, Defendants' Joint Motion to Dismiss is hereby **GRANTED** as to Count XI, Public Nuisance.

I. FACTUAL BACKGROUND

This Memorandum Opinion incorporates the facts that were stated in the Court's Memorandum Opinion dated July 21, 2025.

II. PROCEDURAL BACKGROUND

This Memorandum Opinion only addresses the procedural background relevant to the remaining Count (Count XI, Public Nuisance). For an in-depth description of the procedural background in this matter please see the Memorandum Opinion dated July 21, 2025.

Mayor and City Council of Baltimore ("Plaintiff" or "the City") filed its Complaint on June 20, 2024 naming the following Defendants:

Pepsico, Inc.;
Frito-Lay, Inc.;
Frito-Lay North America, Inc.;
Coca-Cola, Inc.;
W.R. Grace And Company;
Mercury Plastics MD;
Adell Plastics, Inc.; and
Polymershapes Baltimore.

On November 26, 2024, all eight Defendants filed a Joint Motion to Dismiss (Envelope No. 18974128), alleging chiefly that Plaintiff fails to state a claim upon which relief can be granted as to each count in the Complaint. Plaintiff filed an Opposition (Envelope No. 19710548) on January 27, 2026. Defendants filed a Joint Reply (Envelope No. 20139684) on February 26, 2025. On May 1, 2025, this Court heard arguments regarding the Defendants' Motion to Dismiss.

On July 21, 2025, this Court issued a Memorandum Opinion and Order which ordered the following:

(1) Dismissed all counts against Polymershapes Baltimore;
(2) Dismissed all counts against Mercury Plastics MD;
(3) Dismissed all counts against Defendant W.R. Grace & Co.;
(4) Dismissed all counts against Adell Plastics;
(5) Granted Defendants' Joint Motion to Dismiss as to Count VI, VII, VIII, IX, X, XII, XIII, and XIV; and
(6) Issued a stay on Count XI against Defendants PepsiCo, Inc., Frito-Lay, Inc., Frito-Lay North America, Inc., and Coca-Cola, Inc. pending the Supreme Court of Maryland's ruling in the consolidated matter *Mayor and City Council of Baltimore v. B.P. P.L.C., et al.*; *Anne Arundel County v. B.P. P.L.C., et al.*; and *City of Annapolis v P PPC, et al.* (Case No. 11, September Term, 2025).

On October 6, 2025, the Supreme Court of Maryland heard oral arguments regarding the issue of public nuisance in the consolidated matter *Mayor and City Council of Baltimore v. B.P. P.L.C., et al.*; *Anne Arundel County v. B.P. P.L.C., et al.*; and *City of Annapolis v P PPC, et al.* (Case No. 11, September Term, 2025). The Supreme Court of Maryland issued its opinion in the above-referenced matter on March 24, 2026. Additionally, on March 23, 2026, the Supreme Court of Maryland issued another opinion regarding public nuisance in case *Express Scripts, Inc., et al. v. Anne Arundel County, Maryland*, Misc. No. 1, September Term, 2025.

In light of these recent Supreme Court of Maryland decisions, this Court ordered the parties, on March 26, 2026, to prepare and submit to the Court briefs addressing the application of public nuisance law to the facts of this case. Plaintiff's Response to the Order for Further Briefing (Envelope No. 25977112), was filed on April 10, 2026. Defendants, PepsiCo, Inc., Frito-Lay, Inc., Frito-Lay North America, Inc., and the Coca-Cola Company's Joint Response to the Order for Further Briefing (Envelope No. 25977252) was filed on April 10, 2026. The Defendants and Plaintiff filed Oppositions (Envelope Nos. 26077890, 26080316) on April 17, 2026.

On July 13, 2026, this Court heard arguments regarding whether under Maryland law the facts as alleged by Plaintiff constitute an actionable public nuisance.

III. STANDARD OF REVIEW

Pursuant to Maryland Rule 2-322(b)(2), a defendant may move to dismiss a civil action for failure to state a claim upon which relief can be granted. In evaluating such a motion, a court must assume the truth of the facts asserted in the plaintiff's complaint and any reasonable inferences that can be drawn from such facts. *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003) (citing *Bd. of Educ. v. Browning*, 333 Md. 281, 286 (1994)); see also *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010) (explaining that a motion to dismiss for failure to state a claim should be granted only if the "allegations and permissible inferences, *if true*, would not afford relief to the plaintiff") (emphasis added). The court must view the facts alleged in the complaint in the light most favorable to the non-moving party. *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004); *RRC*, 413 Md. at 643.

In its analysis, the court may consider only what is contained within the "four corners" of the complaint. *Adventist Healthcare, Inc. v. Behram*, 488 Md. 410, 431 (2024); *RRC*, 413 Md. at 643-44 (reiterating the "four corners" rule under which the "universe of facts" relevant to the court's analysis of a motion to dismiss is limited to the complaint and any supporting exhibits). For a complaint to survive a motion to dismiss for failure to state a claim, the facts must be pleaded with sufficient specificity; mere "bald assertions" and "conclusory statements" are not sufficient. *RRC*, 413 Md. at 644 (citing *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000); *Bobo v. State*, 346 Md. 706, 708-09 (1997)). Dismissal is proper only if the facts alleged in the complaint would, if proven, nonetheless fail to afford relief to the plaintiff.

Ricketts v. Ricketts, 393 Md. 479, 492 (2006); *Porterfield*, 374 Md. at 414; *RRC*, 413 Md. at 643.

IV. ANALYSIS

a. Public Nuisance (Count XI)

Maryland law does not impose public nuisance liability upon Defendants. Plaintiff claims that the Defendants' plastic production has created a public nuisance in the reduction of property values due to litter as well as the environmental and public health consequences of single-use plastics presence in the City's waterways. Compl. at 56—59. In response, Defendants argue that Plaintiff has failed to state a plausible public nuisance claim because "there is no public right to be free from the misuse of lawful products." Defendants' Joint Response at 8 (citing *Express Scripts, Inc. v. Anne Arundel Cnty.*, 493 Md. 329, 413 (2026)).

It is undisputed that the products at issue here—single use plastics—are lawful products. The question is whether the misuse of a lawful product that is not *heavily regulated* can constitute a public nuisance? More specifically whether there is a public right to be free from the nuisance of a lawful product? The Court concludes that both questions as applied to the facts of this case must be answered in the negative.

Public nuisance is "a criminal offense involving an interference with the community at large." *Express Scripts, Inc.*, 493 Md. at 396. "To maintain an action for a public nuisance, the government must establish that the conduct in question interferes with a public right." *Id*. at 403 (citing *Adams v. Comm'rs of Trappe*, 204 Md. 165, 170 (explaining that we have consistently described public nuisance as requiring "an injury to the public at large or to all persons who come in contact with it")). For the conduct to interfere with a public right it must involve a public good such as air, water, or public rights-of-way. *Id.* at 404. The conduct does not interfere with a public right if the conduct at question is the unlawful use of a lawful product. *Id.*

at 405. For example, obstructions to public streets, highways, and navigable waters are considered "nuisances per se." *Id.* at 371. Therefore, there is a public right to drive upon the highway, free from the risk of injury posed by obstructions to the highway. However, *Express Scripts, Inc.,* examined *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1105 (Ill. 2004) to demonstrate that recognizing a public right to be free from the unlawful use of a lawful product would cause broad implications that should not be imposed by the judiciary. *Id.* at 405. *Beretta U.S.A. Corp.*, examined whether the unlawful use of alcohol (a lawful product) on the highway constitute a public nuisance. *Id.* The court determined that there is not a public right to "drive upon the highways, free from the risk of injury posed by drunk drivers" because recognizing such a right "would provide the basis for public nuisance claims against brewers and distillers, distributing companies, and proprietors of bars, taverns, liquor stores, and restaurants with liquor licenses, all of whom could be said to contribute to an interference with the public right." *Id.* These manufactures, distributors, and retailers are conducting lawful activities and should not be held liable under public nuisance claims because others are misusing the products in an unlawful manner.

> We decline "to recognize a public right so broad and undefined that the presence of any potentially dangerous instrumentality in the community could be deemed to threaten it." *Beretta U.S.A. Corp.*, 290 Ill.Dec. 525, 821 N.E.2d at 1116. Recognizing such a public right would have a profound and boundless impact on tort liability in this State. We determine that the better course is judicial restraint. The General Assembly is far better suited to address societal concerns related to opioid diversion and abuse.

Id. at 409.

Express Scripts, Inc., analyzed whether pharmacy benefit managers could be liable for a claim of public nuisance by "allegedly flooding the market with opioids through their formulary and benefit management decisions." *Id.* at 336. The Court rejected said claims:

> [W]e decline to recognize a public right to be free from the adverse effects associated with a lawful product being diverted, misused, or abused. To recognize a general common law "public right" would permit nuisance liability to be imposed on an endless list of manufacturers, distributors, and retailers of manufactured products that are intended to be used lawfully.

Id. at 408.

In rejecting said claims the Court emphasized that the products at issue were lawful products that were already *heavily regulated* by the legislature. *Id.* This Court recognizes single-use plastics are not *heavily regulated*.

However, the *Express Scripts, Inc.* rationale applies to the instant case. The production of single-use plastic products and plastic packaging is a lawful activity. Plaintiff argues that this activity is interfering with a public right because consumers are improperly disposing single-use plastic products resulting in the contamination of Baltimore City's streets, waterways, and drinking water. Compl. ¶ ¶ 2—4, 10, 34—39, 204. Under *Express Scripts, Inc.,* the Court "decline[d] to recognize a public right to be free from the adverse effects associated with a lawful product being diverted, misused, or abused." 493 Md. at 408. Here, the Plaintiff is requesting the expansion of public nuisance law to impose responsibility on the Defendants for consumers misusing their lawful products and contaminating the streets, waterways, and drinking water. Maryland law does not permit public nuisance liability based on such indirect and generalized societal effects that arguably can go on in perpetuity. The General Assembly is better suited to address societal concerns related to single-use plastics disposal. If this Court recognized this type of public nuisance claim, it "would permit nuisance liability to be imposed on an endless list of manufacturers, distributors, and retailers of manufactured products that are intended to be used lawfully." *Id.* These are the exact type of concerns articulated in *Express Scripts, Inc*.

Plaintiff argues that *Express Scripts, Inc.* only applies to conduct that is *heavily regulated* and does not apply to all lawful conduct. Plaintiff's argument is unavailing because it relies on two cases cited in *Express Scripts, Inc.* both of which are readily distinguishable and inapplicable to the present case. The first case is *Adams v. Commissioners of Town of Trappe*, 204 Md. 165, 169 (1954) where the plaintiff sought to compel the defendant to remove from the street a gasoline pump and tank. The Court granted the injunction because the town "ordinance provided that no person shall erect gasoline pump in town without first obtaining permit from commissioners" and the defendant did not obtain a permit. *Id.* at 173. Plaintiff argues that gasoline pumps were a lawful product, yet *Adams* still found it to be a public nuisance. Plaintiff's argument is flawed because in *Adams* the gasoline pump was an unlawful product that could be lawful if a permit was obtained. *Id.* at 173. Plaintiff also relies on *Whitaker v. Prince George's Cnty.*, 307 Md. 368, 377 (1986) in arguing that lawful products could constitute a public nuisance. Specifically, Plaintiff states that houses are lawful, yet *Whitaker* still determined that plaintiff could bring a public nuisance claim against the defendant. Prostitution is illegal and running a prostitution house is unlawful. *See id* ("the keeping of a bawdyhouse or 'disorderly house' generally constitutes a criminal offense.").

This Court finds Plaintiff's reliance on these authorities unpersuasive.

V. CONCLUSION

The Defendants' Joint Motion to Dismiss is hereby granted as it pertains to Count IX, Public Nuisance.

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Audrey J.S. Carrión
Circuit Court for Baltimore City
Case No. C-24-CV-24-001003
July 22, 2026

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