IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

RABBY F. SYED, JOSE P. KIYOSHI, and FELIPE Q. ATALIG,
individually, and on behalf of others similarly situated,
Plaintiffs-Appellants,

v.

MOBIL OIL MARIANA ISLANDS, INC. and MARIANA ACQUISITION CORPORATION,
d.b.a. SHELL MARIANAS,
Defendants-Appellees.

SUPREME COURT NO. 2011-SCC-0010-CIV
SUPERIOR COURT NO. 09-0467

SLIP OPINION

Cite as: 2012 MP 20

Decided December 31, 2012

Michael W. Dotts & Ramon Quichocho, Saipan, MP, for Appellants
Julian Brew, Los Angeles, CA; Richard L. Johnson, Hagatna, Guam; & Thomas E. Clifford, Saipan, MP, for Appellee Mobil Oil Mariana Islands, Inc.
Edward Manibusan, Saipan, MP; & C. Patrick Civille, Hagatna, Guam, for Appellee Mariana Acquisition Corp., d.b.a. Shell Marianas
BEFORE: JOHN A. MANGLONA, Associate Justice; JOSEPH N. CAMACHO, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem.[1]

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[1] The Honorable Herbert D. Soll, Justice Pro Tem, recused himself after oral argument and did not participate in the drafting of this opinion.

MANGLONA, J.:

¶ 1 Plaintiffs-Appellants Rabby F. Syed (collectively, "Plaintiffs") appeal the trial court's dismissal of their complaint, which seeks damages from an alleged conspiracy on the part of Defendants-Appellees Mobil Oil Mariana Islands, Inc. ("Mobil") and Mariana Acquisition Corporation D.B.A. Shell Marianas ("Shell") (collectively, "Defendants") to unlawfully set gasoline prices in the Commonwealth. On appeal, Plaintiffs contend the Superior Court erroneously relied on inapplicable federal authorities to interpret NMI Rule of Civil Procedure 8(a)(2) ("Rule 8(a)(2)"). For the reasons stated herein, we hold that the trial court applied the wrong legal standard in dismissing Plaintiffs' first amended complaint ("FAC"). Using the proper legal standard, we REVERSE the trial court's dismissal of Plaintiffs' price fixing and unjust enrichment claims and find these claims legally sufficient. We also AFFIRM the trial court's dismissal of Plaintiffs' remaining causes of action.

I

¶ 2 We are asked to consider whether Mobil, Shell, or both adopted unlawful practices during their past sale of gasoline in the Commonwealth. Fuel costs in the Commonwealth are considerably higher than other places in the United States, including Hawaii and Guam.[2] Another contrast between these Pacific fuel markets involves price fluctuations (or lack thereof). Because Hawaii, Guam, and the Commonwealth purchase gasoline from the same Asian markets, ordinary market forces would suggest price fluctuations both between the islands and in different locations on each island. An example of market forces acting to affect fuel prices occurs on Hawaii's smaller islands, which have population sizes similar to Saipan and Guam, where fuel prices are higher than the most populated island, Oahu. Nonetheless, even on the smaller Hawaiian Islands, these prices vary on an almost daily basis.

¶ 3 Guam and the Commonwealth, on the other hand, seem to have remarkably few price fluctuations for fuel. In Guam and the Commonwealth, gasoline prices change infrequently despite the existence of multiple fuel retailers and the recognition that fuel is purchased from volatile Asian markets. There are at least three explanations for this unusual price stability: (1) prices only change when a new fuel shipment arrives, of which intervals can last more than a month; (2) competing retailers find it advantageous to follow each others' pricing strategies; or (3) these retailers have some mutual understanding that prices should remain identical, whether expressly or implicitly coordinated, and they adjust prices in conjunction with that mutual understanding. This lawsuit is largely an outgrowth of the third possibility, with

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[2] NMI Rule of Evidence 201(b) allows us to take judicial notice of certain undisputed facts. *See* Fed. R. Evid. 201 advisory committee's note, subdivision (f) (explaining that judicial notice may be taken at trial or on appeal); *see also Commonwealth v. Laniyo*, 2012 MP 1 ¶ 6 (seeking guidance from federal courts of appeals regarding an identical federal rule). We do so here generally regarding fuel origins and prices in Guam, Hawaii, and in the Commonwealth, to the extent not pleaded. *See* Pls.' FAC ¶ 97 n.5.

Plaintiffs alleging unlawful price fixing. Since neither party adequately provided the Superior Court with easily ascertainable facts, such as details surrounding the number and size(s) of annual fuel shipments to the Commonwealth, we must traverse a less than lucid factual setting.[3]

¶ 4 In 2009, Plaintiffs claimed to see through this haze and brought an action on behalf of themselves and a class of retail gasoline purchasers in the Commonwealth against Defendants. These Plaintiffs originally alleged four causes of action,[4] which included a claim of unlawful price fixing by Mobil and Shell.

¶ 5 Defendants moved under NMI Rule of Civil Procedure Rule 12(b)(6) ("Rule 12(b)(6)") to dismiss all of the claims. In June 2010, the Superior Court granted the Defendants' motion and offered leave to amend only the price fixing claim.

¶ 6 Plaintiffs responded by amending its price fixing claim, while also adding four additional claims because they asserted that Defendants, by only filing a Rule 12(b)(6) motion, had not yet made a "responsive" filing. The Superior Court did not accept this argument, but treated these additional claims as a request for leave to amend, which it granted.

¶ 7 The five causes of action contained in Plaintiffs' FAC include: (1) violation of 4 CMC § 5105(t) ("section 5105") of the Commonwealth Consumer Protection Act ("CPA"), 4 CMC §§ 5101-5123, by unlawfully fixing gasoline prices ("Claim One"); (2) violation of section 5105(x) of the CPA, by increasing the price of gasoline before emptying the service station storage tank of all gasoline previously offered at a lower price ("Claim Two"); (3) unfair or deceptive practices in violation of section 5105(m) of the CPA, which allegedly stem from the underlying facts of the first two counts ("Claim Three"); (4) unjust enrichment as a result of unlawfully fixing gasoline prices ("Claim Four"); and (5) fraud, which occurred when Defendants: (a) increased the price of gasoline before emptying the service station storage tank of all gasoline previously offered at a lower price; and (b) intentionally uttered false public statements regarding price increases ("Claim Five").

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[3] As we will explain, Plaintiffs unnecessarily put their claims in jeopardy when they did not find and include these easily obtainable facts. "It is the appellant's burden to submit the relevant evidentiary record before this Court and identify the parts of the record which support the appeal." *Guerrero v. Tinian Dynasty Hotel & Casino*, 2006 MP 26 ¶ 28.

[4] *Syed v. Mobil Oil Mariana Islands, Inc.*, No. 09-0467-CV (NMI Super. Ct. Nov. 13, 2009) (Class Action Complaint and Demand for Jury Trial at 16-20) [N: "Class Action Complaint and Demand for Jury Trial" is the actual document title.]. First, Plaintiffs argued that Mobil and Shell had agreed to fix the price of gasoline on Saipan. *Id.* at 16-17. Second, they contended that Defendants engage in false advertising when they advertise and sell gasoline priced at amounts that all end in nine-tenths of a cent before rounding up to the closest dollar when charging consumers. *Id.* at 17-19. Third, Plaintiffs alleged that Shell and Mobil intentionally engaged in business practices that are unfair or deceptive in violation of 4 CMC § 5105(l)-(m) of the CPA. *Id.* at 19-20. The fourth claim surrounded fraud relating to Defendants' statements about where its fuel comes from (Singapore), even as Mobil and Shell allegedly asserted publicly that increasing fuel costs in the United States required it to raise prices. *Id.* at 20-21; Pls.' FAC ¶¶ 67-68.

¶ 8 The Defendants again moved to dismiss Plaintiffs' FAC under Rule 12(b)(6). In March 2011, the Superior Court granted this motion and dismissed all of Plaintiffs' claims with prejudice. Plaintiffs appeal the dismissal.

II

¶ 9 The Supreme Court has appellate jurisdiction over final judgments and orders of the Superior Court. 1 CMC § 3102(a). We review de novo the Superior Court's dismissal of a complaint under Rule 12(b)(6) for failure to state a claim. *Aldan v. Pangelinan*, 2011 MP 10 ¶ 4 (citing *O'Connor v. Div. of Pub. Lands*, 1999 MP 5 ¶ 2). We review the trial court's denial of leave to amend for an abuse of discretion. *Commonwealth v. Superior Court*, 2008 MP 11 ¶ 12 (citing *Park v. City of Chicago*, 297 F.3d 606, 612 (7th Cir. 2002)).

III

¶ 10 The facts in this case detail either extraordinarily unusual, but unintentional, economic activity, as Defendants assert, or the presence of unlawful price fixing, as Plaintiffs contend. To survive a motion to dismiss, a plaintiff must properly set out a claim for relief. Our Rules of Civil Procedure, however, offer only the following guidance: "[a] pleading . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." NMI R. Civ. P. 8(a)(2). In this opinion, we clarify the applicable standard for determining whether a civil complaint properly sets out a claim for relief.

A. The Standard Applied in the Trial Court's Dismissal Order

¶ 11 In its order granting Defendants' motion to dismiss Plaintiffs' FAC, the Superior Court followed the pleading standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).[5] In doing so, the court impermissibly deviated from this Court's controlling precedent. 7 CMC § 3401 (allowing Commonwealth courts to resort to the Restatements or law from other jurisdiction *only* "in the absence of written law"); *see also Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 59 n.21 (quoting *Borja v. Goodman*, 1 NMI 225, 242 (1990) (Vilagomez, J., concurring)) (stating "written law" as used in 7 CMC § 3401 includes Commonwealth case law). It is the province and duty of this Court alone to definitively decide questions of Commonwealth law, which includes interpreting our Rules of Civil Procedure. *See* NMI Const. art. IV, §§ 1, 3. Thus, while opinions from other jurisdictions interpreting laws analogous to Commonwealth laws are persuasive, *see, e.g.*, *In re Estate of Camacho*, 2012 MP 8 ¶ 19 (Slip Opinion, July 18, 2012) (looking to other jurisdictions when interpreting identical provisions of law), they do not bind our courts. Setting aside this Court's precedent on a matter of Commonwealth law in favor of a contrary ruling from the United States Supreme Court,

[5] This standard will be discussed in greater detail below.

which can only bind Commonwealth courts on certain federal issues not implicated here,[6] improperly ascribes authority to a place where it does not exist. Because this Court has never adopted *Twombly* or *Iqbal*, the trial court erred.

B. The Existing Commonwealth Pleading Standard

¶ 12 Over the years, this Court has relied on different sources of law to craft an admittedly confusing pleading standard. Originally, in *In re Adoption of Magofna*, this Court borrowed from a treatise on the Federal Rules of Civil Procedure and announced the following pleading standard:

> [T]he complaint, and other relief-claiming pleadings need not state with precision all elements that give rise to a legal basis for recovery as long as fair notice of the nature of the action is provided. However, the complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial.

1 NMI 449, 454 (1990) (emphasis omitted) (citations omitted) (quoting 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil 2d* § 1216 (2d ed. 1990)).

¶ 13 Shortly thereafter, in *Govendo v. Micronesian Garment Manufacturing*, this Court attempted to refine the pleading standard by stating, "[d]ismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 2 NMI 270, 283 (1991) (quoting *Abramson v. Brownstein*, 897 F.2d 389, 391 (9th Cir. 1990)) (internal quotation marks omitted). Later, we repeated this "no set of facts" language in *Camacho v. Micronesian Development Co.*, 2008 MP 8 ¶ 10. In none of these cases, however, did we deeply explicate the standard.

¶ 14 The breadth of the "no set of facts" language has led to a belief among some practitioners that a plaintiff need only present a wholly conclusory statement of a claim, if some possibility exists that the plaintiff may at some unknown point supplement a bare-bones complaint with factual sustenance. Notably, that view has been abandoned in the federal courts. *Twombly*, 550 U.S. at 562-63. In the following two sections, we will explore the federal standard before ultimately deciding to retain the pleading standard set forth in *In re Adoption of Magofna*.

C. The Federal Pleading Standard: Twombly *and* Iqbal

¶ 15 In recent years, the United States Supreme Court has issued several opinions interpreting Federal Rule of Civil Procedure 8(a) and refining the federal pleading standard.[7] Federal courts now require the

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[6] United States Supreme Court interpretations of federal laws (including the United States Code and the United States Constitution) are binding on Commonwealth courts if those laws apply in the Commonwealth pursuant to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note. *See, e.g.*, Covenant §§ 501-506 (48 U.S.C. § 1801 note) (discussing federal laws applicable in the Commonwealth).

following: "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The United States Supreme Court attempted to clarify what "plausible" meant by stating,

> The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Id. (quoting *Twombly*, 550 U.S. at 556-57).

¶ 16 The United States Supreme Court issued its opinions narrowing the federal pleading standard chiefly in response to two growing phenomena: (1) increasingly high anticipated costs of continued, general litigation, and (2) grossly overburdened federal courts. *Twombly*, 550 U.S. at 558-59; *see McCurry v. Chevy Chase Bank, FSB*, 233 P.3d 861, 863 (Wash. 2010) ("The *Twombly* Court concluded that federal trial courts are incapable of adequately preventing discovery abuses, weak claims cannot be effectively weeded out early in the discovery process, and this makes discovery expensive and encourages defendants to settle 'largely groundless' claims." (quoting *Twombly*, 550 U.S. at 558)).

D. The Commonwealth Pleading Standard: In re the Adoption of Magofna Reaffirmed

¶ 17 We are not convinced that the "plausibility" standard is the proper standard for the Commonwealth at this time. For one, as a general matter, we are not aware of any evidence demonstrating the presence of rampant discovery abuse by plaintiffs in the Commonwealth that would justify adopting the "plausibility" standard. Likewise, while Commonwealth trial courts have heavy caseloads, we nonetheless decline to adopt a heightened pleading standard at this time as to do so would prematurely close the doors of justice on plaintiffs.

¶ 18 In rejecting the "plausibility" standard, we are persuaded by the reasoning of another high court, the Tennessee Supreme Court, which recently analyzed and rejected the "plausibility" standard. *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 430-37 (Tenn. 2011) (discussing Tennessee Supreme Court's decision not to adopt *Twombly* and *Iqbal*). In *Webb*, the Tennessee Supreme Court noted that "such a broad and sweeping change in the procedural landscape [that would come via adoption of the "plausibility" standard] should come by operation of the normal rule-making process, not by judicial fiat in the limited context of a single case." *Id.* at 436 (footnote omitted). The court continued that "it must be remembered that we are addressing the standard in assessing the sufficiency of a single document filed at the very beginning of a case — the complaint." *Id.* at 437. We agree with the Tennessee high court that at this early stage, "evaluation of the likelihood of success on the merits or of the weight of the facts

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[7] Federal Rule of Civil Procedure 8(a)(2) states, in relevant part: "A pleading that states a claim for relief must contain: . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief."

pleaded," as would be required to determine the "plausibility" of claims, is highly difficult. *Id.* Instead, we find that weighing evidence should be left to a point after discovery when there is additional evidence to weigh.

¶ 19 Having rejected the federal pleading standard, we reaffirm *In re the Adoption of Magofna* and hold that to survive a Rule 12(b)(6) motion to dismiss, a "complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *In re the Adoption of Magofna*, 1 NMI at 454 (emphasis omitted) (citations omitted) (quoting Wright & Miller, § 1216). This standard is meant to ensure that a plaintiff pleads enough direct and indirect allegations to provide adverse parties "fair notice of the nature of the action." *Id.*

¶ 20 While we reaffirm *In re the Adoption of Magofna*, we set aside our previous reliance on the "no set of facts" language. As other courts have pointed out,[8] a literal interpretation of the "no set of facts" language internally conflicts with the following notice pleading principle: in order to properly present a pleading under Rule 8(a)(2), a party must offer more than a blanket assertion of entitlement to relief. *See In re Adoption of Magofna*, 1 NMI at 454. A plaintiff may not, as a result, set the machinery of the judiciary into motion with a "short and plain statement" lacking either sufficient factual accompaniment or a clear assertion of the claims presented. NMI R. Civ. P. 8(a)(2). To the extent previous cases conflict with this change, they are overruled.

¶ 21 The *In re Adoption of Magofna* standard has been the law in the Commonwealth for over twenty years, and we see no compelling reason to discard it. *See Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 430-37 (Tenn. 2011) (discussing Tennessee Supreme Court's decision not to adopt *Twombly* and *Iqbal*). The standard restated above provides "fair notice of the nature of the action" by requiring plaintiffs to include direct or indirect "allegations on every material point necessary to sustain a recovery." *In re the Adoption of Magofna*, 1 NMI at 454. At the same time, it protects defendants from having to defend complaints based solely on unsupported legal conclusions since such conclusions do not constitute direct or indirect allegations.

¶ 22 In reaffirming *In re the Adoption of Magofna*, we also retain other settled parameters of the pleading standard. When deciding Rule 12(b)(6) motions, for example, trial courts must still accept factual allegations in the complaint as true and "construe the complaint in the light most favorable to the

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[8] *See, e.g.*, *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1155 (9th Cir. 1989) (recognizing that even under *Conley*, "conclusory allegations without more are insufficient to defeat a motion to dismiss for failure to state a claim." (citations omitted) (internal quotation marks omitted)); *O'Brien v. Di Grazia*, 544 F.2d 543, 546 n. 3 (1st Cir. 1976) ("[W]hen a plaintiff . . . supplies facts to support his claim, we do not think that *Conley* imposes a duty on the courts to conjure up unpleaded facts that might turn a frivolous claim of unconstitutional . . . action into a substantial one.").

plaintiff." *Cepeda v. Hefner*, 3 NMI 121, 127-28 (1992) (citations omitted). However, "a trial court has no duty to strain to find inferences favorable to the [plaintiff]." *Id.* at 127.

¶ 23 In addition, some types of complex claims, such as those where a mental state is at issue, will require more factual accompaniment than others because of the additional nuance built into the claims themselves. For instance, suggesting a mental state exists generally takes more facts than suggesting the presence of an easement. Moreover, for claims involving "fraud or mistake," Rule 9(b) charges plaintiffs with the task to "state with particularity" their allegations. In contrast to Rule 8(a)(2), Rule 9(b) mandates that plaintiffs provide detailed allegations that leave few questions unanswered regarding the incident in question.

E. Plaintiffs' First Amended Complaint

¶ 24 We turn to Plaintiffs' FAC. Applying the foregoing principles de novo, we hold that Claims One and Four are legally sufficient, while Claims Two, Three, and Five fail to state a claim.

1. Claim One: Unlawful Price Fixing

¶ 25 Plaintiffs' FAC begins with a claim that centers on the unusually stable (and high) fuel prices in the Commonwealth. In particular, Plaintiffs contend that the identical price of unleaded gasoline offered by Defendants throughout Saipan indicates a cognizable claim of impermissible price fixing. Defendants argue that to the extent prices are the same, they represent permissible parallel conduct similar to that in *Twombly*.[9]

¶ 26 While Defendants are correct that Plaintiffs provide little supporting data, such as a comparison of the prices for the different grades of fuel over a substantial period of time, the FAC describes a context in which impermissible price fixing may be inferred, which is enough to defeat a Rule 12(b)(6) motion to dismiss.

¶ 27 Commonwealth law requires a claimant to demonstrate the presence of two elements to prove unlawful price fixing: (1) an agreement to fix prices, and (2) prices bearing no reasonable relationship to the costs of the product. 4 CMC § 5105(t).[10] Here, Plaintiffs allege that nearby Mobil and Shell gasoline stations possess precisely the same sale price, despite being apparent competitors. Pls.' FAC ¶ 55. Plaintiffs also point to other Mobil and Shell gasoline stations many miles apart in the same geographic

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[9] In *Twombly*, plaintiffs sued major telecommunication companies for conspiring to inflate prices for local telephone and internet services. 550 U.S. at 550. In support of this claim, the plaintiffs alleged that the companies engaged in "parallel conduct" that sought to discourage competition by: (1) establishing similar policies putting upstart telecommunication companies competing in their established service areas at a qualitative service disadvantage, and (2) through refusals to compete against other major telecommunication companies in their established service areas. *Id.* at 550-51.

[10] "The following unfair methods of competition . . . in the conduct of any trade or commerce are hereby declared . . . unlawful: . . . (t) Engaging in price fixing which bears no reasonable relationship to the cost of the merchandise." 4 CMC § 5105(t).

market that also have the same sale prices for fuel. *Id.* ¶ 56. While it is true that they are selling a commodity, real marketplace differences, even on a small island, ordinarily create price differentials between competitors.

¶ 28 Defendants disagree, claiming the instant matter involves lawful parallel conduct. They contend that the facts of this case closely resemble *Twombly*, where a plaintiff also filed antitrust claims the United States Supreme Court found lacked plausibility. 550 U.S. at 570.

¶ 29 Defendants' heavy reliance on *Twombly* is misplaced because: (1) the comparisons begin and end at the category of the case; and (2) the "plausibility" standard announced in that case does not apply to Commonwealth cases. Unlike the anti-competitive agreements alleged in *Twombly*, which involved parallel conduct of *avoidance*, 550 U.S. at 564-65, Shell and Mobil seemingly compete openly in the same geographic region. This difference is significant precisely because shunning competition, such as the conduct alleged in *Twombly*, *id.*, rests on an obvious legal alternative: after experiencing life with monopolies, all market participants possessed an incentive not to upset a reliably profitable enterprise. *Id*. at 568. Here, in contrast, two companies apparently compete in the same geographic region, yet market forces—albeit small—produce identical prices throughout the entire geographic region. Consequently, on the facts pled below, the situation here is not the same as the situation in *Twombly*.

¶ 30 Further, given the geographic and demographic nuances of the island, unrestrained market forces would likely result in divergent prices. Allegations that all prices for fuel in Garapan, Saipan, precisely match those offered everywhere else in Saipan, despite alleged competition, seems atypical when construed in the light most favorable to Plaintiffs. *Cepeda*, 3 NMI at 127-28.

¶ 31 Plaintiffs' FAC captures a most unusual economic situation, where companies that are theoretically competitors charge the exact same rates for the same commodities at all of their retail locations. Plaintiffs claim this situation is the result of unlawful price fixing. At oral argument, Defendants offered no contrary explanation for the identical prices. Therefore, while it is possible that Mobil and Shell require their respective fuel stations to maintain the same prices in Saipan while also mirroring their competitor's prices without an agreement with one another, we hold that Plaintiffs' complaint provides direct allegations suggesting an agreement to fix prices.

¶ 32 The second, and more difficult, element to state a claim under section 5105(t) requires Plaintiffs to show that Defendants' gasoline prices represent an unreasonable deviation from the cost of the product. 4 CMC § 5105(t). Plaintiffs devote two paragraphs to this showing, which we address in order.

¶ 33 Plaintiffs' first paragraph claims there is an unreasonable deviation from the cost of the product without providing any direct or indirect supporting allegations. Pls.' FAC ¶ 60. This is an example of a conclusory and speculative statement that does not state a claim. *See, e.g., In re Adoption of Magofna*, 1 NMI at 454.

¶ 34 Second, Plaintiffs note that Mobil brings all fuel to Saipan, which Shell subsequently purchases from Mobil. Pls.' FAC ¶ 61. This, according to Plaintiffs, demonstrates an unreasonable relationship to Defendants' costs because their identical sale prices should be different if Mobil adds an additional freight charge. *Id.* We hold that Plaintiffs' complaint contains an "allegation[] from which an inference fairly may be drawn that evidence [showing an unreasonable relationship between gas prices and gasoline costs] will be introduced at trial." *See In re Adoption of Magofna*, 1 NMI at 454. For example, one "inference [that] may fairly be drawn," *In re Adoption of Magofna*, 1 NMI at 454, is that, by matching Shell's price for gasoline despite the alleged existence of a freight cost charged Shell by Mobil, Mobil is charging consumers more than the market rate for gasoline. Whether Plaintiffs will actually obtain evidence during discovery supporting their claim is of no moment at this stage in litigation. All that is necessary is that Plaintiffs provided an allegation from which an inference could be fairly drawn. *Id.*

¶ 35 Because we find that Plaintiffs have alleged direct or indirect "allegations on every material point necessary to sustain a recovery" for price fixing, *In re Adoption of Magofna*, 1 NMI at 454, we reverse the Superior Court's dismissal of this claim and hold that Plaintiffs properly stated a claim for unlawful price fixing.

2. Claim Two: Unlawful Price Increases

¶ 36 The second claim involves another provision of the CPA, which proscribes "[i]ncreasing the cost of merchandise which has previously been placed into the stream of commerce by having been offered to the public for sale at a specific price." 4 CMC § 5105(x).

¶ 37 Plaintiffs argue that Mobil and Shell violated this provision whenever they raised the price of fuel because they had already offered all of the fuel in their holding tanks at a lower price. This theory has numerous problems. First, the fuel in the tank has not been placed into the stream of commerce. The analogy to items on a store shelf, as Defendants point out, fails because the statute does not govern what price a business sets for goods in its inventory—which is akin to fuel in a storage tank. Second, the logical extension of this theory would prevent businesses, including those selling commodities, from raising prices until they completely run out of a particular product. Third, the presence of section 5105(y), which prohibits businesses from increasing prices due to a natural disaster or goods shortage, serves to prevent the kinds of issues that might otherwise counsel toward stretching section 5105(x) to include Plaintiffs' claim.

¶ 38 As a result, while the Plaintiffs offer direct allegations, their legal theory fails because the facts pled do not demonstrate that Defendants placed goods into the stream of commerce upon delivery of fuel into its tanks. Accordingly, we affirm the Superior Court's dismissal of this claim.

3. Claim Three: Generally Unfair and Deceptive Business Practices

¶ 39 This general claim rests upon a provision prohibiting "any act or practice which is unfair or deceptive to the consumer." 4 CMC § 5105(m). We find that this provision is not intended to be duplicative of other provisions, despite its intentionally general language. We reach this conclusion based on our review of the entire statutory provision at issue as well as our treatment of section 5105(m) in another case. Section 5105 details thirty-three other enumerated provisions, leading us to believe the drafters of this legislation meant section 5105(m) to cover only factual allegations that did not fit into another provision. *See Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 62 ("The basic rule of statutory construction is to first seek the legislative intention, and to effectuate it if possible, and the law favors constructions which harmonize with reason, and which tend to avoid unjust, absurd, unreasonable or confiscatory results, or oppression." (quoting *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 515 (1989)) (internal quotation marks omitted)). Likewise, our only case reviewing 5105(m) supports our conclusion. *Agulto v. Northern Marianas Investment Grp., Ltd.*, 4 NMI 7 (1993). In *Agulto*, a lawsuit to recoup gambling winnings after a defendant's alleged refusal to pay, we implicitly held that the plaintiff could plead under 5105(m) because none of the other more specific sections applied. *See id.* at 9-10.

¶ 40 Plaintiffs do not allege any new facts pertaining to this allegation, but merely incorporate previously alleged facts. Whether the allegations pertain to (1) misrepresentations by Defendants explaining cost increases; (2) Defendants' practice of raising prices on delivered, but unsold, fuel; or (3) an unlawful price fixing agreement, none of this conduct creates an independently viable unfair or deceptive practice that is not covered by other provisions in the CPA. Consequently, Plaintiffs fail to state a claim for relief under section 5105(m), and we affirm the Superior Court's dismissal of this claim.

4. Claim Four: Unjust Enrichment and Disgorgement of Profits

¶ 41 Plaintiffs next present a claim for unjust enrichment. To prove a claim for unjust enrichment, a claimant must show: (1) the defendant was enriched; (2) the enrichment came at the plaintiff's expense; and (3) equity and good conscience militate against permitting the defendant to retain what the plaintiff seeks to recover. Restatement[11] (Third) of Restitution and Unjust Enrichment § 1 (2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution.").

¶ 42 In this matter, Plaintiffs assert Defendants received the benefit of increased profits as a result of inflated prices, and have retained those benefits at the expense of the Plaintiffs. The salient question here is whether Mobil, Shell, or both *unjustly* retained those profits "at the expense of another." *Id.* Claiming Defendants unjustly retained heightened profits at the expense of consumers, Plaintiffs point out that Mobil brings all fuel to Saipan, which Shell subsequently purchases from Mobil. Pls.' FAC ¶ 61. This,

[11] *See* 7 CMC § 3401 ("rules of the common law, as expressed in . . . restatements . . ., shall be the rules of decision" in Commonwealth courts, absent contrary written or local customary law); *see also Estate of Ogumoro*, 2011 MP 11 ¶ 64 (finding that, in the absence of Commonwealth legal authority, "the Restatements are the operative rules of decision in the Commonwealth").

Plaintiffs argue, shows an unreasonable relationship to Defendants' costs because their identical sale prices should be different if Mobil adds an additional freight charge. *Id.* If true, Mobil overcharges consumers (relative to the expected market price), resulting in artificially inflated profits at the expense of consumers. Because we find, viewing the facts in the light most favorable to the Plaintiff, that Plaintiffs properly set forth a claim for price fixing, we conclude that Plaintiffs' complaint contains direct or indirect "allegations on every material point necessary to sustain a recovery" for unjust enrichment. *In re Adoption of Magofna*, 1 NMI at 454.

¶ 43 As a result, we reverse the trial court's dismissal of this claim and hold that Plaintiffs properly stated a claim for unjust enrichment.

5. Claim Five: Fraud

¶ 44 Rule 9(b) requires claimants to plead cases of fraud with "particularity." NMI R. Civ. P. 9(b). To establish fraudulent misrepresentation, we require a showing of the following elements: (1) a material, false misrepresentation by the defendant; (2) the defendant's knowledge of its falsity; (3) the defendant's intent that the plaintiff act reasonably upon it; and (4) the plaintiff's justifiable and detrimental reliance upon the misrepresentation. *Fusco v. Matsumoto,* 2011 MP 17 ¶ 47.

¶ 45 Plaintiffs' general allegations of fraud revolve around two alleged actions: (1) Defendants' move to increase the price of gasoline before emptying the service station storage tank of all gasoline allegedly offered at that earlier price, and (2) Defendants' statements about where its fuel originates (Singapore) in conjunction with its explanation for rising fuel costs in the Commonwealth (blaming increases on price fluctuations in the United States). We will address these in turn.

¶ 46 As we discussed earlier under Plaintiffs' 4 CMC § 5105(x) claim, Mobil and Shell did nothing unlawful if they raised the price of delivered, but unsold, fuel. This factual allegation cannot sustain a claim of fraudulent misrepresentation because no false misrepresentation occurred.

¶ 47 Plaintiffs also claim Defendants made public statements that increasing fuel costs in the United States required them to raise prices. Plaintiffs' argument conflates alleged misstatements designed to justify price increases with misrepresentations designed to induce damaging consumer behavior. Plaintiffs offer no facts showing Defendants induced them to do anything they would not have ordinarily done, much less that Plaintiffs justifiably and detrimentally relied on a material misrepresentation about what drives fuel cost fluctuations.

¶ 48 Because Plaintiffs failed to plead facts showing all elements of fraudulent misrepresentation with "particularity," NMI R. Civ. P. 9(b), we affirm the trial court's dismissal of this claim.

F. Plaintiffs' Request for Leave to Amend

¶ 49 Finally, Plaintiffs requested leave from the trial court to amend any of the last four claims in its FAC that do not state a claim for relief because they had not had a chance to amend them. The trial court

denied this request. We review the trial court's denial of leave to amend the FAC for an abuse of discretion. *Commonwealth v. Superior Court*, 2008 MP 11 ¶ 12.

¶ 50 For the reasons stated above, Claim Two, Plaintiffs' theory that Defendants unlawfully raised prices, is fundamentally flawed, and no factual supplement could cure this deficiency. We therefore DENY Plaintiffs' request for leave to amend this claim.

¶ 51 The same reasoning applies to Claim Three regarding generally unfair and deceptive business practices. Plaintiffs seemingly used this theory as a contingency if the others did not succeed and alleged no new facts in support of it. Because Plaintiffs merely re-alleged the same claims, and these claims possess fatal legal flaws, we DENY Plaintiffs' request for leave to amend this claim.

¶ 52 As to Claim Five, alleging fraudulent misrepresentation by Defendants, the factual allegations presented by Plaintiffs, assumed as true, do not satisfy the elements for this cause of action because they were not pled with sufficient particularity. NMI R. Civ. P. 9(b). Plaintiffs have not indicated any additional facts they would add to redress these gaps. As a result, Plaintiffs have not shown that the Superior Court abused its discretion by denying leave to amend this claim. Thus, we DENY Plaintiffs' request for leave to amend this claim.

IV

¶ 53 For the foregoing reasons, we hold that the trial court applied the wrong legal standard in dismissing Plaintiffs' FAC. Applying the proper legal standard, we REVERSE the trial court's dismissal of Claims One and Four and AFFIRM the trial court's dismissal of, and denial of leave to amend, Claims Two, Three, and Five. We REMAND this matter to the Superior Court for further proceedings consistent with this opinion.

ENTERED this 31st day of December, 2012.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tem