

STATE OF NORTH CAROLINA
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 25CVS002466-330

STANLEY SOMERVILLE and
MICHAEL GENWRIGHT, *on behalf of
themselves and all others similarly
situated*,

Plaintiffs,

v.

QUALITY OIL COMPANY, LLC and
RELIABLE TANK LINE, LLC

Defendants.

**DEFENDANTS'
MOTION TO DISMISS**

Defendants Quality Oil Company, LLC and Reliable Tank Line, LLC, by and through undersigned counsel, respectfully move the Court for an order dismissing Plaintiffs' complaint with prejudice under North of Civil Procedure Rule 12(b)(6) for failure to state a claim upon which relief can be granted. In support of this motion, and as will be argued in the forthcoming memorandum of law that will be submitted under North Carolina Rule of Civil Procedure 5(a1) and Local Rule 14.10, Defendants state as follows:

1. Plaintiffs allege that on November 29, 2023, they purchased from the Carbon City, North Carolina Quality Plus gas station regular-grade gasoline for their vehicles that was "contaminated," did not match the grade advertised at the pump, and was "worthless" and "not fit for use by vehicles." (Compl. ¶¶ 75–90.)

2. Based on those allegations, Plaintiffs filed this putative class action approximately a year and a half later. Plaintiffs seek to represent a class of "all persons and entities that purchased contaminated fuel" sold or distributed by the

Defendants in the four-year period leading up to the filing of the complaint in April 2025. (Compl. ¶ 100.) Plaintiffs are pursuing six claims: (1) a violation of the North Carolina Unfair and Deceptive Practices Act, N.C.G.S. § 75-1.1 *et seq.*, (2) negligent misrepresentation, (3) breach of the implied warranty of merchantability under the Uniform Commercial Code (“UCC”), N.C.G.S. § 25-2314, (4) unjust enrichment, (5) negligence per se, and (6) civil conspiracy. (*Id.* at ¶¶ 100–173.) The Court should dismiss each of these claims under Rule 12(b)(6) for the following reasons.

3. First, the economic loss rule bars Plaintiffs’ negligent misrepresentation and negligence per se claims. Plaintiffs’ dispute is governed, at most, by contract law principles under the UCC. *See Neugent v. Beroth Oil Co.*, 149 N.C. App. 38, 44, 560 S.E.2d 829, 833 (2002) (UCC governs the “sale of motor fuel”); *Phillips v. Rest. Mgmt. of Carolina, L.P.*, 146 N.C. App. 203, 211, 552 S.E.2d 686, 692 (2001) (“The nature of a claim for breach of an implied warranty of merchantability is contractual.”). In cases where the UCC operates to allocate risk, the economic loss rule bars related tort claims. *See Severn Peanut Co. v. Indus. Fumigant Co.*, 807 F.3d 88, 94 (4th Cir. 2015) (“North Carolina’s economic loss doctrine...prohibits recovery for purely economic loss in tort when a contract, a warranty, or the UCC operates to allocate risk,” such as “in cases arising out of the sale of failed goods....”) (citing *Lord v. Customized Consulting Specialty, Inc.*, 182 N.C.App. 635, 639, 643 S.E.2d 28, 30–31 (2007)).

4. Second, Plaintiffs’ unjust enrichment claim is barred by the existence of the UCC claim, which provides Plaintiffs with an adequate remedy at law. *BDM Invs. v. Lenhil, Inc.*, No. 11 CVS 449, 2014 WL 1168909, at *13 (N.C. Super. Mar. 20, 2014)

(unjust enrichment is “unavailable to a party with an adequate remedy at law”), *aff’d*, 264 N.C. App. 282, 826 S.E.2d 746 (2019).

5. Third, Plaintiffs have not adequately pled the element of “actual injury” for their UDTPA claim. *Faucette v. 6303 Carmel Rd., LLC*, 242 N.C. App. 267, 275, 775 S.E.2d 316, 323 (2015) (quoting *Spartan Leasing Inc. v. Pollard*, 101 N.C.App. 450, 460–61, 400 S.E.2d 476, 482 (1991)).

6. Fourth, the civil conspiracy claim fails because there is no independent cause of action for civil conspiracy. *Ehmann v. Medflow, Inc.*, No. 15 CVS 3098, 2022 WL 4462356 (N.C. Super. Sept. 12, 2022). This claim also fails because Plaintiffs allege that the two Defendants are alter egos of each other. (Compl. ¶¶ 17–20.) As a matter of law, corporations cannot conspire with themselves and other commonly owned entities. *See Seguro-Suarez by & through Connette v. Key Risk Ins. Co.*, 261 N.C. App. 200, 218, 819 S.E.2d 741, 754 (2018) (describing same and collecting cases); *Ehmann v. Medflow, Inc.*, No. 15 CVS 3098, 2022 WL 4462356 (N.C. Super. Sept. 12, 2022) (dismissing civil conspiracy claim against “commonly owned” entities)).

7. Fifth, Plaintiffs’ implied warranty of merchantability claim fails because they failed to allege they gave notice to Defendants prior to filing suit. *Maybank v. S.S. Kresge Co.*, 302 N.C. 129, 135 (1981). This claim also fails because plaintiffs have not adequately pled they were “injured by such goods.” *Phillips v. Rest. Mgmt. of Carolina, L.P.*, 146 N.C. App. 203, 212, 552 S.E.2d 686, 692 (2001) (quoting *Ismael v. Goodman Toyota*, 106 N.C.App. 421, 430, 417 S.E.2d 290, 295 (1992)).

Accordingly, Defendants respectfully request that the Court enter an order

dismissing Plaintiffs' complaint with prejudice.

This the 16th day of July 2026.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served this day upon the person(s) shown below. Such service was accomplished by through the Court's electronic filing system and by email.

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This the 16th day of July 2026.

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