

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

COMPASS MARKETING,  
INC.

Plaintiff,

v.

FLYWHEEL DIGITAL LLC,  
*et al.*

Defendants.

Case Number: 1:22-cv-00379-JKB

\* \* \* \* \*

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**  
**THE COMPLAINT BY FLYWHEEL DIGITAL LLC, JAMES COLUMBUS “CHIP”**  
**DIPAULA, JR., PATRICK MILLER, AND ASCENTIAL PLC**

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## PRELIMINARY STATEMENT

Plaintiff Compass Marketing LLC (“Compass”) makes the remarkable claim that it is entitled to trade secret protection over how to use Amazon.com’s online vendor portal, which Compass—a marketing consulting firm and not an Amazon vendor itself—can only access by logging in with its *clients’* vendor credentials. Simply put, there is no protectable trade secret here. Underscoring the lack of merit in its claims, Compass brings this lawsuit for supposed trade secret theft, racketeering, and a litany of state law claims nearly *eight years* after defendants Chip DiPaula and Patrick Miller left Compass to found Flywheel Digital LLC (“Flywheel,” and collectively, the “Flywheel Defendants”), and almost *four years* after Flywheel was sold to a subsidiary of UK-based Ascential plc (“Ascential”) for as much as \$400 million. This is simply a lawsuit by a failed competitor looking to cash in on Flywheel’s success.

Compass’s claims against the Flywheel Defendants and Ascential should be dismissed because the Complaint on its face (1) establishes that the limitations period has run for all claims, (2) fails to identify *even one* trade secret belonging to Compass that DiPaula or Miller used at Flywheel, (3) does not identify any cognizable predicate acts for its racketeering claim, and (4) even fails to plead sufficient facts to confer personal jurisdiction over Ascential in the District.

*First*, on the face of the Complaint, Compass understood in 2014 that Flywheel would offer the same services that DiPaula and Miller provided while at Compass and compete directly for Compass’s clients. Compass knew that one of its significant clients (which had initially expressed interest in adding eCommerce services) became “unresponsive” shortly after DiPaula and Miller left. Also in 2014, Compass knew that DiPaula and Miller had tried unsuccessfully to buy Compass’s eCommerce business, and Compass even consulted then with legal counsel about filing a lawsuit but elected not to do so. In 2016, after DiPaula’s and Miller’s non-solicitation restrictions

expired, Flywheel hired six Compass employees and continued to compete for Compass's clients, and Compass once again consulted legal counsel and again decided not to sue.

In view of the foregoing, Compass's claims against the Flywheel Defendants and Ascential are time-barred. The Defend Trade Secrets Act ("DTSA") and the Racketeering Influenced Corrupt Organizations Act ("RICO") claims, both rooted in the alleged theft and use of Compass's so-called "trade secrets" by DiPaula and Miller to found Flywheel in 2014, were time-barred by DTSA's three-year statute of limitations as of 2017 and by RICO's four-year statute of limitations as of 2018. Compass's state law claims, which are little more than variations on a theme, were also time-barred by Maryland's general three-year statute of limitations as of 2017 (three years from Flywheel's 2014 founding) or by the very latest 2019 (three years after Flywheel's hiring of six Compass employees). Where, as here, the Complaint itself establishes that the plaintiff was well aware of its injuries, and the limitations period has objectively run, dismissal is proper.

There is also no basis for tolling any statute of limitations here. For example, once Compass clients began terminating their engagements with Compass (as alleged about Procter & Gamble in 2014), Compass had a duty to investigate the circumstances of those terminations, including whom their clients were hiring instead and how newcomer Flywheel was purportedly able to assume those contracts. Compass pleads no facts showing it did so. And even if Compass is now unhappy with the contemporaneous legal advice provided by its General Counsel, Daniel White (as intimated in the Complaint), that does not toll the limitations period for claims against the Flywheel Defendants or Ascential. Compass's theory, unsupported by a single fact, that Daniel White must have had some undisclosed interest in Flywheel does not alter that conclusion.<sup>1</sup>

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<sup>1</sup> While not essential to resolving this Motion, none of the White Defendants ever had any interest in Flywheel, as evidenced by Ascential intervening purchase of 100% of Flywheel. *Cf.* Compl. ¶¶ 209-11.

Nor is Compass's belated discovery in 2020 of an online news article and PowerPoint presentation from 2015 (both by Patrick Miller) sufficient to revive or toll the already-lapsed limitations periods. Once a statute of limitations has run, it cannot be revived by a Google search. In any event, Compass could have found these materials by Compass's former employee turned "main competitor" with reasonable diligence well before January 2020.

*Second*, even if the claims were not time-barred (and they are), the DTSA and Maryland Uniform Trade Secrets Act ("MUTSA") claims fail as a matter of law. Most significantly, while the Complaint is littered with marketing buzzwords, there are no well-pled facts as to what Compass's "trade secrets" even are, and Compass does not identify even one proprietary algorithm, database, or software belonging to Compass that the Flywheel Defendants allegedly used to found or run Flywheel. At most, the Complaint alleges that, while at Compass, DiPaula and Miller became familiar with Amazon's "back end" vendor portal, logged into their clients' accounts, reviewed sales data, and performed manual troubleshooting, all of which helped Compass develop a sense of the best practices for selling merchandise through this new retail channel. That is precisely the kind of general knowledge of a business or industry that an employee is free to take and use in competition with a former employer, *not* a protectable trade secret.

Moreover, while the Complaint relies solely on a supposed "eCommerce Guide" as the source of the allegedly pilfered trade secrets, Compass has not annexed it to the Complaint, quoted a single line from that document, or even included a cover page or index. This is surprising because even Compass acknowledges that the PowerPoint version of the eCommerce Guide that existed as of 2014 was replaced by "open-source" software that automates the very same processes. (And Compass does not allege that the Flywheel Defendants misappropriated or even had access to that software.) The Complaint also makes clear that, by 2016, Amazon offered its own automated

vendor platform solutions. Compass cannot claim a protectable trade secret over how to use Amazon's platform when anyone with access to the vendor portal (including Compass's own clients) can figure it out. *See S-E-A, Ltd. v. Cornetto*, No. JKB-18-1761, 2018 WL 3996270, at \*3 (D. Md. Aug. 21, 2018) (dismissing DTSA claim where employer did "not allege that its method of using a third-party vendor's software and hardware could not be developed independently by someone outside of" the former employer). One can only assume that the eCommerce Guide (if it exists) would confirm Compass had no protectable trade secrets in 2014.

*Third*, the RICO claims also fail as a matter of law. Among other defects, the only predicate act alleged is a purported criminal theft of trade secrets. As this Court has held, the relevant statutory provision applies only to the *theft* of trade secrets (not the *use* of trade secrets). *See Hardwire, LLC v. Ebaugh*, No. JKB-20-0304, 2021 WL 3809078, at \*7 (D. Md. Aug. 26, 2021). Moreover, trade secret theft only became a RICO predicate offense in 2016 and cannot be applied retroactively. *Id.* Because the alleged trade secret theft occurred when DiPaula and Miller left Flywheel in 2014, and the only acts that the Complaint alleges after 2016 are continued *use* of those alleged trade secrets, Compass's RICO claims fail as a matter of law.

*Fourth*, the claims against Ascential, a publicly-traded British company, fail because Ascential did not even acquire Flywheel until 2018—i.e., long after Flywheel was formed and hired Compass employees—and there are *no* allegations that Ascential participated in any trade secret theft. Indeed, the Complaint fails to plead sufficient facts to confer personal jurisdiction over Ascential in the District and fails as to Ascential for that reason alone.

For these and other reasons set forth below, the claims should be dismissed with prejudice.

## FACTUAL BACKGROUND<sup>2</sup>

**Compass Marketing.** Compass is a marketing consulting company with an “eCommerce Department” that uses “data-driven insights” to advise sellers of consumer packaged goods (“CPGs”) like “beverages, cosmetics, and cleaning products” on how to sell their products on online platforms like Amazon.com (“Amazon”). Compl. ¶¶ 2, 4, 32, 57.<sup>3</sup> Over time, Compass’s eCommerce Department developed “best practices” by “downloading Amazon data” on behalf of its clients, “querying that data through keyword searches, and then manually entering data inputs into Compass internal spreadsheets” for analysis. *Id.* ¶¶ 4, 42-43.

**The eCommerce Guide.** Compass’s eCommerce Department allegedly compiled its “data-driven insights” into a “step-by-step” employee training tool called the “eCommerce Guide.” *Id.* ¶¶ 42, 57, 63, 65. While the Complaint summarizes the contents of the eCommerce Guide using buzzwords (like “[p]rocesses and communication strategies ... to interact with the back end of Amazon.com” or “[m]ethods ... to generate a ‘vendor score card’ for [Compass’s] CPG clients”), Compass pleads no facts to support a finding that any of the ten alleged categories constitutes an actual trade secret as opposed to general knowledge about a business or an industry. *Id.* ¶ 64; *see also id.* ¶ 227 (alleging the “trade secrets” are listed in paragraph 64).

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<sup>2</sup> For purposes of this Motion only, the Flywheel Defendants and Ascential assume without conceding that the allegations in the Complaint are true—even if (as is the case here) those same allegations would be proven false on a full record. “Ex.” refers to exhibits to the Declaration of G. Stewart Webb dated April 4, 2022 (the “Webb Decl.”). “In the Fourth Circuit, documents referenced and relied upon by the plaintiff”—as well as “[m]atters of public record”—“can be considered without converting a motion to dismiss into a motion for summary judgment.” *Bey v. Shapiro Brown & Alt, LLP*, 997 F. Supp. 2d 310, 312 n.2, 314 (D. Md. 2014), *aff’d*, 584 F. App’x 135 (4th Cir. 2014); *see also Am. Chiropractic Ass’n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004).

<sup>3</sup> All internal quotations, citations, and alterations have been omitted and all ellipses and emphasis have been added unless otherwise stated.

*The White Family.* Compass was run by three brothers. *Id.* ¶ 92. John White “managed sales and ran the Company as CEO.” *Id.* Daniel White “oversaw legal and accounting,” while Michael White “directed operations and finances.” *Id.* Michael’s son, George White, (together with Michael and Daniel, the “White Defendants”), managed Compass’s IT systems. *Id.* ¶ 20.<sup>4</sup>

*DiPaula’s and Miller’s Employment with Compass.* DiPaula and Miller began working for Compass in 2010 and 2011, respectively, and subsequently became the managers of the eCommerce team reporting directly to John White. *Id.* ¶¶ 45, 47, 50, 53, 63, 92. As alleged, DiPaula and Miller each signed an “Agreement Relating to Employment and Post Employment” containing certain restrictive covenants, including confidentiality and non-solicitation provisions (each an “NDA”). *Id.* ¶¶ 45-47. DiPaula and Miller allegedly agreed not to use or disclose “any Proprietary Information which is not generally known to the public, or has not otherwise been disclosed or recognized as standard practice in the industries in which COMPASS is engaged” (the “Confidentiality Provision”). *Id.* ¶ 45. They also agreed “for a period of two years following the termination of [their] employment” (the “Non-Solicitation Period”) not to “directly or indirectly”:

(i) induce or encourage any employee of COMPASS to leave ... , (ii) hire any ... employee of COMPASS ... , or (iii) induce or encourage any customer, client, potential customer, potential client and/or other business relation of COMPASS to not do business or cease or reduce doing business with COMPASS or in any way interfere with the relationship between any such customer, client, potential client, supplier or other business relation and COMPASS.

*Id.* ¶¶ 46, 47 (the “Non-Solicitation Provision”). The Complaint does not allege that the NDAs contain a non-competition provision, and they do not.<sup>5</sup>

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<sup>4</sup> Allegations and claims against the White Defendants (defined below) are entirely severable and should be the subject of a separate proceeding. *See* Fed R. Civ. P. 21. They are summarized here only to the extent they may be relevant or helpful in deciding this Motion.

<sup>5</sup> While the Complaint alleges that Compass sought legal advice “concerning whether Compass should seek to enforce the non-competition provisions” in the NDAs, *id.* ¶ 81, the Complaint does

Compass also alleges that it gave DiPaula and Miller an employee handbook “[a]s part of routine employee onboarding” that prohibits, among other things, (i) “[t]heft, misappropriation or unauthorized possession or use of property [and] documents” of Compass as well as “removal of same from Company premises without authorization”; (ii) “[d]ivulging trade secrets or other confidential business information to any unauthorized persons”; and (iii) “[o]btaining unauthorized confidential information” as to “clients or employees” (the “Handbook”). *Id.* ¶ 48. There are no well-pled facts that DiPaula or Miller ever agreed to be bound by the Handbook.

The Complaint does not attach copies of either the NDAs or the Handbook.

***DiPaula and Miller Formed Flywheel.*** On September 3, 2014, DiPaula and Miller formed Flywheel Digital LLC (“Flywheel”). *Id.* ¶ 77. The next day, “DiPaula and Miller each sent resignation emails at the same time to John White.” *Id.* ¶ 75. Miller’s email said that he had “long wanted to own [his] own company” and was resigning from Compass “[t]o do so.” *Id.* Less than a month after resigning, DiPaula tried to buy Compass’s eCommerce Department, telling John White that he and Miller “feel vested *in our colleagues we recruited and trained, and the clients we have nurtured* these past few years.” *Id.* ¶ 78 (emphasis in Complaint). DiPaula followed up a week later, expressing “urgency” and that he and Miller remained interested in acquiring Compass’s eCommerce business. *Id.* ¶ 80. Compass’s allegation that DiPaula expressed a “desire to purchase and own ... all of [Compass’s] associated trade secrets and proprietary information and know how” is wholly unsupported by the underlying emails.<sup>6</sup> DiPaula and Miller ultimately

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not identify any provision in the NDAs that bars DiPaula or Miller from competing directly with Compass—and there is none. Webb Decl., Ex. 1; *see also* Compl. ¶ 47 (alleging that the NDAs “contained the same relevant terms and conditions”).

<sup>6</sup> Compare Webb Decl. Ex. 4 (emails dated October 1, 2015 and October 8, 2015) with Compl. ¶¶ 78-80. These emails are incorporated by reference.

did not purchase the eCommerce Department. Instead, Flywheel immediately “offered and continues to offer *identical* services as Compass and is Compass’s *main competitor*.” *Id.* ¶ 61.

***Compass Contemplated Legal Action Against Flywheel Eight Years Ago.*** After Flywheel’s founding, Compass’s CEO, John White, sought legal advice from Compass’s General Counsel, Daniel White, who allegedly advised John “that Compass should not pursue legal action against Flywheel, DiPaula, and/or Miller”—neither of whom were subject to any contractual non-compete provisions—“and should instead compete with Flywheel in the marketplace, where Compass’s trade secrets and proprietary information and know how” would be expected to provide Compass “with such *a substantial competitive advantage* in comparison to a newly formed business like Flywheel *without such information*.” *Id.* ¶¶ 81-82. Compass declined to pursue legal action at that time.

***Compass Struggled to Compete with Flywheel.*** Compass found its prospects “changed *drastically* ... when Flywheel arrived on the scene.” *Id.* ¶¶ 60-61. For example, The Procter & Gamble Company (“P&G”) had been “a long-time” client of Compass’s “traditional marketing services” when DiPaula and Miller allegedly “pitched ... to expand the relationship, which P&G expressed interest in doing.” *Id.* ¶¶ 194-95. “Shortly after DiPaula and Miller left Compass, however, P&G representatives became unresponsive” and “terminated its engagement with Compass ....” *Id.* ¶¶ 196-97. Compass alleges solely on “information and belief” that “DiPaula and Miller falsely told” unnamed “P&G representatives that Compass was exiting the eCommerce business” and that “Flywheel was being set up to service the P&G account.” *Id.* ¶ 197. Compass alleges that *nine* other Compass clients “ultimately terminated their service contracts with Compass and hired Flywheel,” though Compass does not allege when they did so. *Id.* ¶ 317. Compass also fails to allege any steps taken before 2020 to investigate why those clients terminated

their contracts, who they hired instead, or how Flywheel was purportedly able to assume those contracts. *See id.* ¶ 82.

***Flywheel Publicized Its Experience, Clients and Marketing Strategy.*** In August 2015, Miller published an article online entitled “The Future of Amazon Fresh?” via a company called Profitero (the “Profitero Article”) that referenced Miller’s experience over “the last four years,” which included his time at Compass. *Id.* ¶ 184 & n.1.<sup>7</sup> In November 2015, Miller presented at an industry conference called the Online & Digital Grocery Summit USA (the “Digital Grocery Summit”). *Id.* ¶ 186. In the audio recording on the conference website, the moderator identified *seven* current or former Compass clients as Flywheel clients. *Id.* Compass also alleges that the downloadable Flywheel-branded PowerPoint presentation (the “Digital Grocery Presentation”)<sup>8</sup> is “prima facie evidence of misappropriation *in 2014.*” *Id.* ¶¶ 187, 190. Nowhere does Compass allege that these 2015 Online Materials have not been publicly available online since 2015. Yet Compass alleges it did not discover these online materials until January 2020. *Id.* ¶ 191.

***The “Mass Exodus” of Compass Employees after the Non-Solicitation Period Expired.*** In October 2016, six Compass employees left Compass to join Flywheel. *Id.* ¶ 83. Compass alleges “[o]n information and belief” that DiPaula and Miller recruited them “specifically because of their deep knowledge of Compass’s trade secrets” and that the departing employees took with them “electronic or hard copy files that memorialized Compass’s trade secret, proprietary, and confidential information regarding maximizing sales on Amazon.” *Id.* ¶¶ 84-85. Compass alleges this “mass exodus” “gutt[ed]” the eCommerce Department. *Id.* ¶¶ 83, 89. Compass does not

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<sup>7</sup> According to the Complaint, Compass “predicted the sales opportunity in Amazon’s nascent specialty channels, such as Amazon Fresh (groceries)” as early as 2013. *Id.* ¶ 39.

<sup>8</sup> The Flywheel Defendants and Ascential refer to the Profitero Article and the Digital Grocery presentation together as the “2015 Online Materials.”

identify what “trade secrets” or files the departing employees allegedly took with them or any steps taken to investigate whether critical files had been downloaded or copied before they left.

***Compass Again Contemplated Legal Action Against Flywheel.*** As alleged, John White asked his General Counsel, Daniel White, “whether Compass could pursue [the Flywheel Defendants] for non-solicitation issues with the [October] 2016 gutting of the eCommerce Department.” *Id.* ¶ 89. “Daniel advised Compass against from [sic] pursuing legal action,” and told John that, “if Compass wished to pursue the claims, it would need to hire outside counsel to do so.” *Id.* Compass “decided not to pursue non-solicitation legal remedies at that time.” *Id.* ¶ 90.

***Automation Software Replaced the 2014 eCommerce Guide.*** Compass alleges that, “[p]rior to 2016, Amazon offered no back-end automation or application programming interface” for vendors. *Id.* ¶ 4. Beginning “around 2016,” however, software tools became available “to automate review of the [Amazon] data,” including via Amazon’s vendor portal. *Cf. id.* ¶ 55. Compass is clear that it has replaced the PowerPoint eCommerce Guide from 2014 with a “software tool known as the Compass Digital Analytics Program” (“CDAP”) that “automate[s] the same processes that Compass was undertaking manually” in 2014. *Id.* ¶¶ 65-67. Compass does not allege that DiPaula or Miller have ever had access to CDAP or its source code, let alone that they stole that source code. Thus, even if Flywheel had access to Compass’s manual processes *as of 2014*, Flywheel would have had to automate those processes independently of Compass to remain competitive. On the face of the Complaint, the 2014 eCommerce Guide is obsolete.

***Flywheel Became an Ascential Company.*** In November 2018, a subsidiary of Ascential, a “London-based ... company,” “acquired Flywheel for the purchase price of up to \$400 million, with an initial payment of \$60 million” and the rest as “contingent earn out payments over the following three years.” *Id.* ¶ 209.

*The Flywheel Acquisition Prompted a “Storm” at Compass.* “Within days of Compass learning that Flywheel had been sold to Ascential [in November 2018] ..., a storm began brewing inside the Company that involved Michael and Daniel White.” *Id.* ¶ 91. By early 2019, John White had fired his brothers Daniel and Michael White, and they were subsequently removed from Compass’s board of directors. *Id.* ¶¶ 94-95. John White then hired a “criminal investigator” to investigate his brothers’ conduct and “a certified forensic fraud examiner as Compass’s new Controller.” *Id.* ¶ 96. Only two aspects of this “internal” investigation are relevant here.

*First*, Compass alleges that Daniel White *wrote* two checks to DiPaula—not Flywheel—in late 2015 for a total of \$35,000, *id.* ¶¶ 203, 205, and *received* one check from Compass with “Final Payments to James DiPaula and Patrick Miller” in the “Memo” field. *Id.* ¶ 204. As alleged, this so-called “‘severance payment scheme’ was false” and violated unspecified company policies. *Id.* ¶ 206.<sup>9</sup> Compass alleges instead “[u]pon information and belief” that Daniel provided the funds “to support” the “funding and operation of Flywheel.” *Id.* ¶ 207. Compass does not allege why Daniel White would do so or why Compass could not have identified the issue in 2015.

*Second*, Compass alleges that “[s]ometime after April 30, 2019,” George White “cut off Compass access to employee email accounts ... and other business records and accounts” (the “IT Lockout”). *Id.* ¶¶ 146-49. While Compass claims to have an unspecified “reason to believe that the IT Lockout coincided with additional misuse of its proprietary information, including valuable trade secret information,” *id.* ¶ 153, there are *no facts* connecting any of the Flywheel Defendants or Ascential to the IT Lockout or suggesting George White ever provided any information or trade

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<sup>9</sup> There are no well-pled facts to support Compass’s theory that the checks to DiPaula were part of any “false” “severance payment scheme” by Daniel White as opposed to, for example, simply paying out unused accrued vacation days or unpaid expense reimbursements. *See id.* ¶ 206.

secrets to the Flywheel Defendants or Ascential. By 2019, Flywheel had been openly operating, and DiPaula and Miller had been gone from Compass, for more than four years.

*The 2015 Online Materials.* “On or about January 20, 2020,” Compass’s new controller found the 2015 Online Materials, apparently via an internet search. *Id.* ¶¶ 184, 186. Compass alleges that, only after this discovery, it began “investigat[ing] whether any of the clients that left Compass since 2014 subsequently engaged Flywheel for identical eCommerce services.” *Id.* ¶ 192. Compass still waited another two years to file this lawsuit.

*Compass Belatedly Attempted to Extract Consideration from Ascential.* In 2021, years after Ascential acquired Flywheel, a “friend of John White” contacted Ascential to convey “Compass’s concerns” and seek “a business resolution.” *Id.* ¶¶ 214-16. Compass alleges that, since that time, “Ascential has been fully on notice as to the trade secret misappropriation contentions” in the Complaint. *Id.* ¶ 243. Compass also alleges, without factual support, that Ascential has “chosen to enable, participate in, and profit from the past and continued misappropriation ....” *Id.* In October 2021, Compass sent its first cease and desist letter to Ascential and Flywheel. *Id.* ¶ 222. On February 14, 2022, nearly eight years after DiPaula and Miller founded Flywheel, Compass filed this omnibus lawsuit asserting 23 counts, including 21 claims naming various Flywheel Defendants, 11 claims also naming Ascential, and 9 claims naming the White Defendants. *See generally id.*

## ARGUMENT

“[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss” under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Offering merely “labels and conclusions,” “a formulaic recitation of the elements of a cause of action,” or “naked assertions devoid of further factual enhancement” does not suffice. *Id.* at 678. Nor is a court obligated to

accept as true “legal conclusion[s] couched as [] factual allegation[s].” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Untimely claims may be dismissed at the pleadings stage where (as here) the complaint itself “includes all necessary facts.” *Meridian Invs., Inc. v. Fed. Home Loan Mortg. Corp.*, 855 F.3d 573, 577 (4th Cir. 2017).

**I. THE CLAIMS AGAINST THE FLYWHEEL DEFENDANTS AND ASCENTIAL ARE TIME-BARRED**

“[W]hen the face of the complaint includes all necessary facts for the defense to prevail,” the statute of limitations “is an affirmative defense that [a defendant] can raise in a motion to dismiss.” *Meridian*, 855 F.3d at 577 (affirming dismissal on statute of limitations grounds); *LC Cap. Partners, L.P. v. Frontier Ins. Grp., Inc.*, 318 F.3d 148, 156 (2d Cir. 2003) (courts have granted motions to dismiss based on inquiry notice in “a vast number of cases”). Here, Compass pleads more than enough facts that, if assumed true, would have put an ordinary person on notice of potential claims in 2014 and no later than 2016. Because all claims against the Flywheel Defendants and Ascential are subject to three- or four-year statutes of limitations, they were time-barred by 2017 (DTSA, MUTSA, and other state law claims) and by 2018 (RICO claims). The instant complaint “includes all necessary facts for” the Flywheel Defendants and Ascential “to prevail” and should be dismissed in its entirety as untimely. *Meridian*, 855 F.3d at 577.

**A. Compass Knew Flywheel Was Competing with It in 2014**

The Complaint alleges that in **2014**, DiPaula and Miller were at “the helm” of the eCommerce team reporting to the CEO (John White) and “had an electronic copy of the eCommerce Guide.” Compl. ¶¶ 53, 71, 92. In September, DiPaula and Miller resigned simultaneously, with Miller telling Compass’s CEO in writing that he was resigning in order to

own his own company. *Id.* ¶ 75. “[L]ess than one month” later, DiPaula tried to buy the eCommerce Department. *Id.* ¶¶ 77-78, 80.

Compass knew right away that Flywheel “offered and continues to offer *identical services* as Compass” and became “Compass’s *main competitor*.” *Id.* ¶ 61. Compass considered taking legal action, but was allegedly advised by counsel that it had no valid claims. *Id.* ¶ 81. Despite Compass’s head start in eCommerce, “[t]he opportunities available to” Compass “changed *drastically*” as soon as “Flywheel arrived on the scene.” *Id.* ¶ 61. P&G stopped responding “[s]hortly after DiPaula and Miller left Compass.” *Id.* ¶¶ 195-96. Nine other Compass clients have also allegedly terminated their contracts with Compass to hire Flywheel. *E.g., id.* ¶ 317.

In **2015**, Miller presented at an industry conference, and the moderator publicly listed as purported Flywheel clients *no fewer than seven* companies that Compass’s CEO “immediately recognized” as Compass clients. *Id.* ¶¶ 186-87. Compass’s CEO is also alleged to have readily identified the contents of the Digital Grocery Presentation as “hav[ing] been generated with knowledge of Compass’s trade secret information and proprietary business know how.” *Id.* ¶ 187. The 2015 Online Materials are still online, and according to Compass, provide “prima facie evidence of misappropriation *in 2014 ....*” *Id.* ¶ 190.

In **2016**, “there was a *mass exodus* of Compass’s eCommerce Department employees” to Flywheel. *Id.* ¶ 83. Once again, Compass consulted counsel regarding potential legal action, but decided against it. *Id.* ¶¶ 89-90. The Complaint does not identify any trade secrets misappropriated by these departing employees, any files or other information they brought with them apart from general knowledge about marketing products on Amazon, or any steps Compass took at the time of the “mass exodus” to determine whether any of the departing employees took any files when they left.

**B. Compass’s Federal DTSA and State MUTSA Claims Are Time-Barred (Counts I & II)**

DTSA and MUTSA claims must be brought within three years of when the alleged misappropriation “is discovered or *by the exercise of reasonable diligence should have been discovered*”; for statute of limitations purposes, “a continuing misappropriation constitutes a single claim” of misappropriation. 18 U.S.C. § 1836(d); Md. Code Ann., Com. Law § 11-1206; *see also Azima v. Del Rosso*, No. 1:20CV954, 2021 WL 5861282, at \*8 (M.D.N.C. Dec. 10, 2021) (DTSA claim for “continuing misappropriation” accrues “when the original misappropriation was discovered”), *reconsideration denied*, 2022 WL 837185 (M.D.N.C. Mar. 21, 2022).

Compass alleges a continuing misappropriation. The Complaint alleges, “[u]pon information and belief,” that “Miller misappropriated the electronic version of the Compass eCommerce Guide” containing Compass’s so-called trade secrets in 2014, that “he and DiPaula used it to develop the Flywheel business model,” and that “[b]ased on Flywheel’s own description of its business on the Flywheel website, that use of the misappropriated Compass information *continues today ....*” Compl. ¶ 189; *see also id.* ¶ 239 (alleging “Flywheel, DiPaula, Miller, and Ascential *have used and are continuing to use* Compass’s trade secrets”). Accordingly, Compass’s DTSA and MUTSA claims accrued when Compass discovered or should have discovered the facts underlying the alleged 2014 theft of the eCommerce Guide. 18 U.S.C. § 1836(d); Md. Code Ann., Com. Law § 11-1206(a); *Azima*, 2021 WL 5861282, at \*8 (dismissing DTSA claim because later use was a “continuing misappropriation” that “did not re-accrue the statute of limitations”).<sup>10</sup>

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<sup>10</sup> In *Azima*, the plaintiff alleged that his confidential business data had been hacked and published online before 2016 and was disclosed and used again in 2018 and 2019. 2021 WL 5861282, at \*3. The district court held that the “new links” to the previously hacked data “constituted a continuing misappropriation and thus did not re-accrue the statute of limitations” for DTSA. *Id.* at \*8. The district court declined to dismiss the state law trade secret misappropriation claim for later acts

As explained above, the Complaint shows that Compass knew or should have known all of the facts underlying its misappropriation claim in 2014 (when Flywheel was founded and Compass started losing clients) and certainly by 2016 (when Flywheel hired away Compass employees and Compass could have—from a simple internet search—read both the Profitero Article and Digital Grocery Presentation, which Compass claims is “prima facie evidence” of its claims). *E.g.*, *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 175 (2004) (MUTSA claim was time-barred because “Dual, Inc.’s knowledge of the termination of its JSTARS contract was sufficient to place Dual, Inc. on notice to investigate how another company was able to assume the JSTARS contract so quickly after Dual, Inc.’s termination”); *see also Birmingham v. PNC Bank, N.A.*, No. PX 16-198, 2016 WL 3855686, at \*5 (D. Md. July 15, 2016) (dismissing negligent misrepresentation claim where, among other things, “the information contained in the transaction journal ... was neither unknowable nor undiscoverable during the limitations period”).

Compass even admittedly knew enough to seek legal counsel as to potential claims concerning Flywheel’s founding in 2014 and the “mass exodus” in 2016. *Id.* ¶¶ 81, 83, 89-90.<sup>11</sup> That Compass is unhappy with prior legal advice or has since received different legal advice does not toll the statute of limitations as to the Flywheel Defendants or Ascential. *E.g.*, *Rizzo-Price v. JP Morgan Chase Bank, N.A.*, No. GLR-18-142, 2019 WL 5698707, at \*4 (D. Md. Jan. 16, 2019) (where “the facts that gave rise to [plaintiff’s] claims occurred in 2013 and 2014,” the fact that

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because, “[i]n contrast to federal law,” North Carolina’s statute of limitations for trade secret misappropriation “does *not* include language addressing continuing misappropriations.” *Id.* As explained above, a continuing misappropriation is a single claim under both the DTSA *and* MUTSA.

<sup>11</sup> Compass posits “[u]pon information and belief” that Daniel White, Compass’s former General Counsel, “knew and encouraged” the alleged misappropriation, *id.* ¶ 208, but pleads zero facts to support any supposed conflict of interest, and, in any event, that is not a basis for tolling any claims against the Flywheel Defendants or Ascential.

plaintiff “did not learn of their potential legal significance until” 2017 “does not save her claims from being time-barred”).<sup>12</sup>

The DTSA and MUTSA statutes of limitations ran by October 2017, or at the very latest October 2019. Accordingly, Compass’s federal and state misappropriation claims are time-barred.

**C. Compass’s Federal RICO Claims Are Time-Barred (Counts III & IV)**

“Private RICO suits are governed by a four-year statute of limitations, which runs from the date when the plaintiff discovered, or should have discovered, the injury.” *Potomac Elec. Power Co. v. Elec. Motor & Supply, Inc.*, 262 F.3d 260, 266 (4th Cir. 2001); *Fowler v. Wells Fargo Home Mortg., Inc.*, No. GJH-15-1084, 2015 WL 2342377, at \*3 (D. Md. May 13, 2015) (“[I]t is the Plaintiff’s knowledge of her own *injury* that controls the running of the statute of limitations, and not Plaintiff’s knowledge of the underlying RICO pattern.”).

The only RICO predicate act alleged against the Flywheel Defendants and Ascential is a violation of 18 U.S.C. § 1832—i.e., a criminal theft of trade secrets. Compl. ¶¶ 251-52. As this Court has observed, this provision only applies to *theft* of trade secrets (not their use or disclosure). *Hardwire*, 2021 WL 3809078, at \*7. As with its civil trade secrets claims, Compass should have discovered the alleged theft no later than 2014, and its RICO claims have been time-barred since 2018 and certainly no later than 2020. *E.g.*, *Fowler*, 2015 WL 2342377, at \*3 (RICO claim was time-barred based on allegations of defendants’ actions); *see also S-G Metals Indus., Inc. v. New Eng. Life Ins. Co.*, 346 F.3d 218, 220, 222-23 (1st Cir. 2003) (affirming dismissal of RICO claims

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<sup>12</sup> *See also Choice Hotels Int’l, Inc. v. Grover*, 792 F.3d 753, 754 (7th Cir. 2015), *cert. denied*, 577 U.S. 1049 (2015) (“When lawyers fail, the remedy is malpractice litigation against the wrongdoer, not more litigation against an innocent adversary in the original litigation.”); *cf. Raplee v. United States*, 842 F.3d 328, 334 (4th Cir. 2016) (citing *Choice Hotels* and noting that “in a civil suit for damages, if a plaintiff misses a deadline because his attorney abandoned him, he can recover those damages from the attorney”).

as time-barred); *Lanza v. Merrill Lynch & Co.*, 154 F.3d 56, 60 (2d Cir. 1998) (affirming dismissal of RICO claim and noting that “the question of inquiry notice need not be left to a finder of fact”).<sup>13</sup>

#### D. Compass’s Remaining State Law Claims Are Also Time-Barred

Maryland has a generally applicable three-year statute of limitations for civil claims, Md. Code Ann., Cts. & Jud. Proc. § 5-101, which “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.” *Doe v. Archdiocese of Wash.*, 114 Md. App. 169, 188 (1997). In other words, a plaintiff “cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect.” *Poffenberger v. Risser*, 290 Md. 631, 637-38 (1981). “Once on notice of one cause of action, a potential plaintiff is charged with responsibility for investigating, within the limitations period, all potential claims and all potential defendants with regard to the injury.” *Archdiocese*, 114 Md. App. at 188 (trial court “properly dismissed all of the claims ... based on the statute of limitations”). Thus, Compass’s claims for Breach of Contract (Count V), Tortious Interference (Count VI and VII), Unfair Competition (Count VIII), Unjust Enrichment (Count IX), Fraudulent Concealment/Fraud (Count X), and Conspiracy and Aiding and Abetting (Count XI-XII) are time-barred. *See Okoro v. Wells Fargo Bank, N.A.*, No. 16-cv-0616-PX, 2016 WL 5870031, at \*7 (D. Md. Oct. 6, 2016) (tortious interference), *aff’d*, 684 F. App’x 324 (4th Cir. 2017); *Woodrow v. Vericrest Fin., Inc.*, No. AW-09-cv-1612, 2009 WL

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<sup>13</sup> Compass also alleges that *Michael and Daniel White* committed RICO predicate acts because, among other things, they provided “severance” checks to Miller and DiPaula in 2015. Compl. ¶ 255. However, the Complaint does not allege that this is a predicate act *as to the Flywheel Defendants or Ascential* and, in any event, the checks were issued more than four years before the Complaint was filed, and Compass does not allege that the checks were undiscoverable with reasonable diligence from Compass’s own accounting records.

4348594, at \*3 (D. Md. Nov. 30, 2009) (fraud); *Shailendra Kumar, P.A. v. Dhandra*, 426 Md. 185, 189, 196 n.4, 210 (2012) (breach of contract); *Dual*, 383 Md. at 167-69 (among others, tortious interference, misappropriation of trade secrets, breach of contract, fraud in the inducement, and unjust enrichment); *Wilcox v. Ladas*, No. CCB-13-2096, 2014 WL 4662049, at \*4 (D. Md. Sept. 18, 2014) (unjust enrichment); *Shulman v. Rosenberg*, No. 1889, Sept Term, 2016, 2018 WL 286404, at \*9 (Md. Ct. Spec. App. Jan. 4, 2018) (unfair competition), *cert. denied*, 458 Md. 597 (2018); *see also, e.g., Prince George's Cnty. v. Longtin*, 419 Md. 450, 480 (2011) (“[A] civil conspiracy claim incorporates ... its statute of limitations.”).

#### E. Tolling Does Not Apply

The doctrine of equitable tolling requires a plaintiff to demonstrate fraudulent concealment—i.e., “that (1) the party pleading the statute fraudulently concealed facts which are the basis of a claim, and that (2) the claimant failed to discover those facts within the statutory period, despite (3) the exercise of due diligence.” *Pocahontas Supreme Coal Co. v. Bethlehem Steel Corp.*, 828 F.2d 211, 218 (4th Cir. 1987). A plaintiff must plead fraudulent concealment with particularity under Rule 9(b). *Dual*, 383 Md. at 170-71 (plaintiff must “plead *with specificity* facts that would tend to support ... fraud and concealment”).

Compass does not identify a single misstatement or action by any of the Flywheel Defendants or Ascential to conceal the alleged misappropriation of the eCommerce Guide, which is fatal to its attempt at tolling. *E.g., Dual*, 383 Md. at 170-71 (no tolling absent “specific or detailed factual assertions as to how Lockheed concealed from Dual, Inc. its alleged role in the termination of the JSTARS contract”). To the contrary, the Complaint alleges Flywheel publicly presented “prima facie evidence” of the alleged misappropriation at an industry conference and then published it on the internet where it remains to this day. Compl. ¶¶ 186-87, 190-91.

The allegations in the Complaint also fail to establish any due diligence by Compass. Compass alleges that its prospects “changed *drastically* ... when Flywheel arrived on the scene,” with “P&G terminat[ing] its engagement with Compass shortly thereafter” and contracting with Flywheel instead. *Id.* ¶¶ 61, 196-97. Yet Compass does not identify any steps taken to investigate *why* P&G and others terminated their contracts with Compass, *how* Flywheel was able to assume those contracts without Compass’s purportedly valuable trade secrets, *id.* ¶ 81, or *who* would be providing them with eCommerce services if not Compass. *E.g., Dual*, 383 Md. at 169 (“[O]nce a putative plaintiff is aware ... that its contract has been terminated, that plaintiff is under a duty to investigate the circumstances surrounding that termination.”).<sup>14</sup> Nor does Compass allege any steps it took to investigate whether any of the six employees who left Compass in 2016 to work for Compass’s main competitor took any files with them.

Compass’s purported “discovery” of the 2015 Online Materials in early 2020 also does not toll the statute of limitations. According to Compass, there was “prima facie evidence” of misappropriation publicly available online even before the 2016 “mass exodus.” Compl. ¶¶ 83, 190. That Compass did not conduct a simple internet search for several more years evidences a lack of diligence by Compass—not concealment or fraud by Flywheel.<sup>15</sup> *E.g., Dual*, 383 Md. at 171 (statute of limitations was not tolled absent “facts that demonstrate why Dual, Inc. was unable to discover the information contained in the report prior to the time that it obtained the

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<sup>14</sup> As in *Dual*, Compass has similarly “failed to plead adequately or specifically why it was unable to discover that [Flywheel] assumed [Compass’s] former role” in the contract with P&G or any other terminating client. *Dual*, 383 Md. at 175 (MUTSA claim not tolled).

<sup>15</sup> Compass asks this Court to believe that it had “deep expertise” in the rapidly growing field of eCommerce, but could not have discovered what its main competitor for Amazon vendor clients was saying publicly about Amazon online. Compl. ¶¶ 4, 38-39, 61, 184, 186. Compass’s lack of diligence suggests an independent reason for any loss of clients and market share to Flywheel.

report”). In any event, *even after* Compass discovered the Digital Grocery Presentation, Compass *still* waited *two years* to file this lawsuit. *Id.* ¶¶ 11, 184, 186. Tolling is not warranted here.

Having failed to make *any* inquiry despite the circumstances as plead in the Complaint, Compass’s claims are time-barred, and dismissal is warranted. *Poffenberger*, 290 Md. at 637-38.

## **II. COMPASS FAILS TO STATE CLAIMS FOR MISAPPROPRIATION OF TRADE SECRETS UNDER THE DTSA AND MUTSA (COUNTS I & II)**

Even if Compass’s claims were not time-barred (which they are), its DTSA and MUTSA claims should be dismissed. 18 U.S.C. § 1836(b)(1); Md. Code Ann., Com. Law § 11-1203. These statutes prohibit, for example, the “acquisition of a trade secret” by someone “who knows or has reason to know that the trade secret was acquired by improper means” (like theft), as well as the “use of a trade secret ... without express or implied consent” by someone “who ... knew or had reason to know that the knowledge of the trade secret was ... acquired under circumstances giving rise to a duty to” limit its use. 18 U.S.C. §§ 1839(5), (6); Md. Code Ann., Com. Law §§ 11-1201(b), (c). To be protected under the DTSA and MUTSA, a “trade secret” must “derive[] independent economic value, actual or potential, from not being generally known to” and must not be “*readily ascertainable through proper means* by another person who can obtain economic value from the disclosure or use of the information ...” 18 U.S.C. § 1839(3)(B); Md. Code Ann., Com. Law § 11-1201(e)(1). The owner of the trade secret must take “reasonable” measures to maintain secrecy. 18 U.S.C. § 1839(3)(A); Md. Code Ann., Com. Law § 11-1201(e)(2). And the trade secret must not be “of a general knowledge in the trade or business.” *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 475 (1974).

**A. Compass Does Not Plead Any Protectable Trade Secret**

Compass's DTSA and MUTSA claims are expressly premised on the "representative trade secret categories disclosed or referred to in the eCommerce Guide." Compl. ¶¶ 63-65, 227.<sup>16</sup> While Compass attempts to describe the categories using buzzwords like "methods" and "processes," there are no *facts* upon which a reasonable inference can be drawn that the claimed "trade secrets" are not "not generally known to or readily ascertainable by others in the relevant business"—or even which (if any) alleged "trade secrets" Compass is claiming the Flywheel Defendants used to found or run Flywheel.

More specifically, as this Court has held, an employer cannot assert a protectable interest in how to use third-party technology absent allegations that the methods *could not be developed independently* by someone besides the plaintiff. *S-E-A*, 2018 WL 3996270, at \*3 (dismissing DTSA claim). In *S-E-A*, the plaintiff employer brought a DTSA claim against its former employee for allegedly misappropriating "its proprietary ... graphics and animation technology and training." *Id.* In briefing, the employer further indicated that it had "a proprietary 3D scanning process" that used a third party "3D measurement" scanner. *Id.* This Court dismissed the claim in the absence of any allegations that the "method of using a third-party vendor's software and hardware could not be developed independently by someone outside of S-E-A." *Id.*

Here, Compass describes the eCommerce Guide as "a step-by-step guide" of its "Amazon protocols." Compl. ¶ 63. Like the plaintiff in *S-E-A*, Compass does not allege that the 2014 methods cannot be independently derived—nor can it. To the contrary, the Complaint establishes that Compass itself developed its "data-driven insights" by downloading and manually analyzing

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<sup>16</sup> While Compass refers to the categories in paragraph 64 as "[a] sampling," *id.* ¶ 64, there are no other alleged trade secrets before the Court.

third-party Amazon data.<sup>17</sup> *Id.* ¶¶ 4, 43, 57. Compass does *not* claim it took special skills to access this data. *Id.* ¶ 55. And, while Compass asserts that access “remains scarce,” it is clear from the Complaint that Amazon sales data is available “through proper means” to anyone with an Amazon vendor account (like Compass’s eCommerce clients), as well as those who gain access to the same “with authorization” (like Compass). 18 U.S.C. § 1839(3)(B).<sup>18</sup> In fact, Compass even appears to acknowledge the eCommerce Guide is a shortcut—not a prerequisite—to providing eCommerce services. Compl. ¶ 87 (alleging that, “[b]y relying on Compass’s trade secrets that it misappropriated, Flywheel was able to rapidly *accelerate, or avoid altogether, any research and development required to provide these services*”).

Compass has also admittedly replaced the 2014 eCommerce Guide with a software tool (“CDAP”) that automates “the same processes.” *Id.* ¶¶ 66-67. Tellingly, while Compass acknowledges the march of technology, *id.* ¶¶ 4, 55, 66-67, it makes no attempt to plead which, if any, of the pre-automation “trade secret categories” in the 2014 eCommerce Guide were not already public or general industry knowledge given the tools available in 2016.<sup>19</sup>

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<sup>17</sup> While Compass seeks to leave room to argue that it did “other things” to develop Amazon best practices, they are not alleged in the Complaint. Compass’s allegation that it used “software” contradicts allegations elsewhere that “software tools were not available to automate review of the data” until “around 2016.” *Compare id.* ¶ 4 with *id.* ¶ 55. Nor is “software” one of the alleged “trade secret categories” alleged in the Complaint. *Id.* ¶ 64.

<sup>18</sup> Amazon grants data access not to Compass, but to Compass’s Amazon vendor *clients*. See Compl. ¶ 55 (alleging that Compass pulled data “*on behalf of its clients, by logging in with authorization* to a restricted Amazon portal known as Amazon Vendor Central”); *id.* ¶ 59. Compass’s allegation that it had “unique access to and analysis of eCommerce data,” *id.* ¶ 51, is thus contradicted by other allegations in the Complaint.

<sup>19</sup> For this reason, the Complaint does not adequately allege that the eCommerce Guide has had any “independent economic value” since 2016 at the latest. *E.g., Structural Pres. Sys., LLC v. Andrews*, 931 F. Supp. 2d 667, 679 (D. Md. 2013). Transfiguring knowable Amazon best practices into protectable trade secrets would have the effect of prohibiting DiPaula and Miller from using general knowledge they gained at Compass to compete with their former employer in the absence of any contractual non-compete and in derogation of Maryland law. *Md. Metals, Inc. v. Metzner*,

Absent any allegations that Compass's 2014 Amazon best practices could not be independently derived, Compass cannot state plausible DTSA and MUTSA claims based on the 2014 eCommerce Guide; these claims should be dismissed. *S-E-A*, 2018 WL 3996270, at \*3.

### **III. THE RICO CLAIMS ARE INADEQUATELY PLEADED (COUNTS III & IV)**

As this Court has recognized, “[a] civil RICO claim is a unique cause of action that is concerned with eradicating *organized, longterm, habitual criminal activity*.” *Hardwire*, 2021 WL 3809078, at \*5 (citing *U.S. Airline Pilots Ass’n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010)). The Fourth Circuit “*does not* lightly permit ordinary business contract or fraud disputes to be transformed into federal RICO claims.” *Id.* Given the “powerful incentive[s] for plaintiffs to attempt to fit garden variety fraud claims within the standard of civil RICO” (including treble damages, attorneys’ fees, and federal jurisdiction), courts “have an obligation to scrutinize civil RICO claims early” on. *Id.* To state a claim under RICO, a plaintiff must allege: “(1) conduct causing injury to business or property, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity.” *Id.* at \*6. Compass’s RICO claims fail in several respects.

#### **A. Compass Failed to Plead One Predicate Act, Let Alone a “Pattern”**

A “pattern of racketeering activity” must consist of “*at least two related* predicate acts that amount to or pose a *threat of continued criminal activity*.” *Id.* Here, the only RICO predicate offense as to the Flywheel Defendants or Ascential is purported “daily conduct” by Miller, DiPaula, and Flywheel (but not Ascential) “[s]ince 2014” to “*use[]* Compass’s stolen trade secrets ... to run Flywheel’s operations,” which Compass alleges “amounts to [criminal] misappropriation

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282 Md. 31, 46 (1978) (“This Court has long subscribed to the view that an employee enjoys a right, in competing against his former employer, to utilize general experience, knowledge, memory and skill as opposed to specialized, unique or confidential information gained as a consequence of his employment.”).

of trade secrets pursuant to 18 U.S.C. § 1832.” Compl. ¶¶ 249-53. Compass’s theory is “untenable” for the same reasons this Court dismissed the RICO claim in *Hardwire*.

In *Hardwire*, the “alleged initial unauthorized disclosure” took place “in 2014.” 2021 WL 3809078, at \*7. The same is true here. Compl. ¶ 67 (alleging “the original trade secret theft” occurred “in 2014”). As this Court recognized in *Hardwire*, however, the criminal trade secrets statute did not become a predicate RICO offense until **May 11, 2016**, and RICO amendments are presumed *not* to apply retroactively unless “the activity” continued “after the effective date.” 2021 WL 3809078, at \*6. Compass does not allege continued *theft* after 2016. Rather, here (as in *Hardwire*), the only allegations as to post-DTSA conduct “relate to the further *use* of those trade secrets.” *Id.* at \*7; *see* Compl. ¶ 251. As this Court recognized, even if continued use of trade secrets could support “*civil* remedies under § 1836, it falls outside the scope of conduct prohibited under § 1832.” 2021 WL 3809078, at \*7. As such, Compass (like *Hardwire*) “fails to allege any predicate acts of racketeering activity,” and fails to state a claim under RICO. *Id.*

Compass does not (and cannot) allege Ascential took part in the alleged initial theft years before the Flywheel acquisition in 2018. And Compass’s vague and conclusory allegations of a post-acquisition “competitive benefit” from the “*misuse*” of “information” also “falls outside the scope of ... § 1832.” Compl. ¶ 252; *Hardwire*, 2021 WL 3809078, at \*7. The RICO claims against the Flywheel Defendants and Ascential may be (and should be) dismissed for this reason alone.

#### **B. Compass Fails to Allege a RICO Enterprise**

A RICO “enterprise” must be both “distinct” from the “defendant ‘persons’” alleged to violate RICO and “something other than an association of a corporate defendant with its own employees.” *Gondel v. PMIG 1020, LLC*, No. CCB-08-1768, 2009 WL 248681, at \*4 (D. Md. Jan. 22, 2009), *aff’d*, 351 F. App’x 791 (4th Cir. 2009); *see also New Beckley Min. Corp. v. Int’l*

*Union, United Mine Workers of Am.*, 18 F.3d 1161, 1163 (4th Cir. 1994) (affirming dismissal); *United States v. Crysopt Corp.*, 781 F. Supp. 375, 381 (D. Md. 1991). The RICO enterprise here thus cannot be any of the named defendants (including Flywheel) or an association of the Flywheel Defendants and Ascential as a matter of law.

An “enterprise” also “requires the existence of collaboration or agreement between the members of the enterprise,” and courts in this district have dismissed RICO claims that (as here) fail to provide any “specific allegations” of such agreement or collaboration. *Rojas v. Delta Airlines, Inc.*, 425 F. Supp. 3d 524, 537, 538 (D. Md. 2019) (no RICO enterprise where “[p]laintiffs fail to provide any specific allegations as to how, when, or where [an] agreement actually occurred or who made what communications”); *Grant v. Shapiro & Burson, LLP*, 871 F. Supp. 2d 462, 473 (D. Md. 2012) (dismissing a RICO complaint that “contain[ed] no factual averments regarding the relationships between or among Defendants, much less how they function[ed] as a continuing unit”). Here, Compass has not alleged any such collaboration or agreement between the Flywheel Defendants and Ascential on the one hand and the White Defendants on the other hand. In fact, the allegations against the Flywheel Defendants and Ascential (which concern Flywheel’s founding and the alleged misappropriation) are entirely severable from any allegations against the White Defendants (which concern intra-family drama, corporate expenses, and the IT Lockout). The only allegations connecting any of the White Defendants to any of the Flywheel Defendants—i.e., the two checks in 2015—fall far short of showing any ongoing collaboration or agreement.<sup>20</sup>

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<sup>20</sup> As explained above, Compass alleges no facts that in any way connect the Flywheel Defendants or Ascential to the IT Lockout, any “additional misuse of” Compass proprietary or trade secret information purportedly “coincid[ing]” with the IT Lockout, or any misappropriation at all in 2019. Compl. ¶ 153.

Compl. ¶¶ 202-08. And there are no allegations *at all* that connect Ascential to any of the White Defendants. There is no RICO enterprise here, and the claim fails for that reason alone.

**IV. COMPASS ALSO FAILED TO PLEAD ITS REMAINING STATE LAW CLAIMS AGAINST THE FLYWHEEL DEFENDANTS AND ASCENTIAL**

**A. Compass’s Fraudulent Concealment/Fraud Claim Does Not Satisfy Rule 8—Let Alone Rule 9(b) (Count X)**

Under Maryland law, both fraud and fraudulent concealment require Compass to plead justifiable reliance and damages. *Gale v. Select Portfolio Serv., Inc.*, DKC 20-1289, 2021 WL 165132, at \*8 (D. Md. Jan. 19, 2021) (fraudulent concealment); *Soft Stuff Distribs., Inc. v. Ryder Truck Rental, Inc.*, No. CCB-11-2605, 2012 WL 3111679, at \*3-5 (D. Md. July 30, 2012) (fraud). For fraudulent concealment, Compass must also allege (1) a duty owed to disclose a material fact; (2) failure to disclose; and (3) intent to defraud or deceive. *Gale*, 2021 WL 165132, at \*8. Compass alleges that “[a]ll defendants have committed *countless* wrongful *acts and misrepresentations* in order to conceal and further perpetuate ... misappropriation ... and racketeering schemes,” Compl. ¶ 308, and that Ascential “has *worked* to continually conceal” the misappropriation through “*its acquisition of and post-acquisition support* of Flywheel’s business.” *Id.* ¶ 309. Because Compass’s fraud claim is predicated on alleged affirmative acts, misrepresentations, and support, it must plead the circumstances constituting the fraud with particularity under Rule 9(b), including “the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.” *Simmons v. Bank of Am., N.A.*, No. PJM 13-0733, 2014 WL 509386, at \*4 (D. Md. Feb. 6, 2014) (granting motion to dismiss). Compass does not plead any acts or misstatements by the Flywheel Defendants or Ascential to conceal the alleged misappropriation or that Compass justifiably relied on any statement or omission by the Flywheel Defendants or Ascential. *Cf.* Compl. ¶ 311

(“Compass justifiably relied upon *Michael and Daniel’s* ... actions”). Count X is wholly inadequate and should be dismissed.

**B. Maryland Law Does Not Recognize A Separate Cause of Action for “Aiding and Abetting” (Counts XVII, XVIII, XIX, XX, and XXI) or “Conspiracy” (Counts XI, XII, XIII, XIV, XV, and XVI)**

It is “well established in Maryland” that “aiding and abetting and conspiracy” are not “causes of action independent of an underlying tort.” *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 360 n.6 (2000); *Seneca One Fin., Inc. v. Bloshek*, 214 F. Supp. 3d 457, 465-66 (D. Md. 2016). Counts XVII, XVIII, XIX, XX, and XXI (aiding and abetting) and Counts XI, XII, XIII, XIV, XV, and XVI (conspiracy) should all be dismissed on that basis as a matter of Maryland law. Members of a corporate family also cannot conspire together as a matter of law under the intracorporate conspiracy doctrine. *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 771-72 (1984) (parent company cannot conspire with its subsidiary); *Walters v. McMahan*, 795 F. Supp. 2d 350, 358-59 (D. Md. 2011), *aff’d*, 684 F.3d 435 (4th Cir. 2012) (company cannot conspire with employees as a matter of law); *Marmott v. Md. Lumber Co.*, 807 F.2d 1180, 1184-85 (4th Cir. 1986) (“[A] conspiracy between a corporation and its agents, acting within the scope of their employment, is a legal impossibility,” dismissing a conspiracy claim among a company and its employees); *Rich v. Hersl*, No. ADC-20-488, 2022 WL 672751, at \*5 (D. Md. Mar. 7, 2022) (dismissing RICO conspiracy claim against police department and employees). Counts XI, XIII, XIV, XV, and XVI (conspiracy) must be dismissed because the Flywheel Defendants and Ascential cannot conspire together as a matter of law, and Compass does not allege they conspired with anyone else.<sup>21</sup>

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<sup>21</sup> While Compass conclusorily alleges that all “Defendants agreed to work together in concert” for Counts XI, XV, and XVI, there are zero allegations that could support a meeting of the minds between the Flywheel Defendants and Ascential on the one hand and the White Defendants on the other. For example, in its RICO conspiracy claim, Compass appears to allege two wholly separate

**C. The Breach of Contract Claims Fail (Count V)**

Compass alleges that DiPaula and Miller breached the terms of the Handbook and NDA. Compl. ¶¶ 274-75. As this Court has recognized, however, “a complaint asserting breach of contract” must allege “with certainty and definiteness *facts* showing a contractual obligation owed by the defendant ... and a breach of that obligation by defendant.” *Dangerfield v. Johns Hopkins Bayview Med. Ctr., Inc.*, No. JKB-19-155, 2019 WL 5190977, at \*3 (D. Md. Oct. 11, 2019) (dismissing breach of contract claim). Compass’s contract claims fail in several respects.

Compass alleges that “[a]s part of routine employee onboarding, Compass gave each of DiPaula and Miller an Employee Handbook.” Compl. ¶ 48. But mere receipt does not create a binding contract, and this Court is not obligated to accept Compass’s legal conclusion that its “offer of employment required DiPaula and Miller to be bound by” the Handbook or the mere recitation of elements that “DiPaula and Miller agreed to” its terms. *Id.* ¶ 270; *Iqbal*, 556 U.S. at 678. Nor are there any well-pled facts, exhibits or quoted language to support Compass’s legal interpretation of the “offer” or purported acceptance. Moreover, the alleged misappropriation in 2014 cannot constitute a breach of the Handbook for the same reasons Compass failed to state its DTSA and MUTSA claims.<sup>22</sup> Because Compass “fails to satisfy even the most liberal pleading standards,” Count V fails as to the Handbook. *Dangerfield*, 2019 WL 5190977, at \*3.

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conspiracies. *Compare* Compl. ¶ 260 (alleging “Flywheel, DiPaula, Miller, and Ascential share” a “common purpose”) *with id.* ¶ 264 (alleging “Michael, Daniel, and George White share” a “common purpose”).

<sup>22</sup> Compass also alleges that DiPaula and Miller breached the Handbook by “requesting client information from Compass employees” after they left Compass. Compl. ¶ 275. But Compass has alleged no facts showing DiPaula and Miller ever asked any Compass employee for any information after leaving in 2014.

Compass also alleges that DiPaula and Miller breached the Confidentiality Provision of the NDA by “[s]tealing Compass trade secrets ... to found and operate their business at Flywheel” and the Non-Solicitation Provision of the NDA by “[s]oliciting Compass clients to join Flywheel” and “[s]oliciting potential eCommerce client [P&G].” Compl. ¶ 274(a)-(c). Neither holds any water. Once again, there is no protectable trade secret here, and Compass has not even attempted to name one that DiPaula or Miller actually used at Flywheel. Further, the Confidentiality Provision only prohibits disclosure of information that “is not generally known to the public, or has not otherwise been disclosed or recognized as standard practice in the industries in which COMPASS is engaged.” *Id.* ¶ 271. As explained above, however, Compass has not identified any 2014 “trade secret” that has not since been rendered obsolete or become generally known in the industry. As for any breach of the Non-Solicitation Provision, there are no allegations that Flywheel Defendants *solicited* any Compass eCommerce Department clients or employees *during* the Non-Solicitation Period, and the Non-Solicitation Provision is overbroad and unenforceable.<sup>23</sup>

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<sup>23</sup> Non-solicitation provisions that “restrict solicitation of [current] customers beyond those with whom a former employee engaged in direct business dealings” or potential customers may not be enforced. *Paul v. ImpactOffice LLC*, No. TDC-16-2686, 2017 WL 2462492, at \*7 (D. Md. June 6, 2017); *see also Allied Fire Prot., Inc. v. Thai*, No. PWG-17-551, 2017 WL 4354802, at \*6 (D. Md. Oct. 2, 2017) (unenforceable non-solicitation provision “cover[ed] not only [current clients of plaintiff], but also ‘future clients’”); *Seneca One*, 214 F. Supp. 3d at 464-65 (non-solicitation provision covering “potential customers” was overbroad); *Paul*, 2017 WL 2462492, at \*8 (“[C]ovenants ... that restrict solicitation of customers beyond those with whom a former employee engaged in direct business dealings [are] overbroad and unenforceable because they serve ... to restrict competition.”). On their face, the Non-Solicitation provisions sought to prevent DiPaula and Miller from soliciting “any” customer or client, including a “potential customer” or “potential client” *regardless* of whether they ever interacted with DiPaula or Miller at Compass. Webb Decl. Ex. 2. There are no allegations as to any contacts between DiPaula and Miller, on the one hand, and any existing Compass client other than P&G, on the other, and the incidental contacts alleged in the Complaint as to P&G—which comprise one business trip to India and a group “interview[] with P&G,” Compl. ¶¶ 52, 194, 195—are not the kind of “constant contact with customers” that non-solicitation provisions may protect. *Bindagraphics Inc. v. Fox Grp., Inc.*, 377 F. Supp. 3d 565, 571-72, 574-75 (D. Md. 2019). A court also “cannot

#### D. Compass Fails to Plead Tortious Interference (Counts VI and VII)

Counts VI and VII should also be dismissed. To plead tortious interference with an existing contract, Compass must establish, among other things, a “*breach* of that contract by the third party.” *C&R Caulking v. Bank of Am., N.A.*, No. JKB-21-0499, 2021 WL 2661875, at \*6 (D. Md. June 29, 2021). While Compass alleges clients “*terminate[d]* their contracts,” Compass does not allege that any client or employee *breached* any contract with Compass. *See* Compl. ¶¶ 281-82.<sup>24</sup> This is fatal to Compass’s claim as to existing contracts. *E.g., Allied Fire*, 2017 WL 4354802, at \*9 (no tortious interference absent breach).

In the absence of any breach, Compass must allege, among other things “intentional and willful acts ... done with the unlawful purpose to cause ... damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice) ....” *Id.* at \*9-10.<sup>25</sup> Because Compass’s tortious interference theory sounds in fraud, Compass must satisfy Rule 9(b).<sup>26</sup> *C&R Caulking*, 2021 WL 2661875, at \*6 (applying Rule 9(b) to tortious interference with contract claim). Allegations based on “information and belief” are permitted where “essential information

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supplement, rearrange, or otherwise rewrite language.” *Paul*, 2017 WL 2462492, at \*9 (non-solicitation provision was unenforceable since court “may not ... re-write the provision to narrow its enforcement to customers with whom Paul had sales”). Nor is Compass in any way entitled to injunctive relief to enforce a non-solicitation clause that expired on its face in 2016. Compl. ¶ 368.

<sup>24</sup> Compass does not allege the contracts were not terminable at will, in which case “[t]he situation is entirely different” as “it is not improper or wrongful conduct ... to provide that third party with a reason for exercising his or her discretion.” *Macklin v. Robert Logan Assocs.*, 334 Md. 287, 304 (1994). Moreover, DiPaula and Miller never signed a non-compete, and there are no allegations they solicited eCommerce Department clients or employees *during* the two-year Non-Solicitation Period. *Cf.* Compl. ¶ 83 (alleging employees resigned “two years *and one month*” later).

<sup>25</sup> “A broader right to interfere with economic relations exists where no contract ... is involved.” *Macklin*, 334 Md. at 298.

<sup>26</sup> Compass alleges that “DiPaula and Miller intentionally and maliciously lied” to P&G to prevent it “from entering into an eCommerce contract with Compass, and to facilitate Flywheel’s engagement of P&G as a client,” Compl. ¶¶ 285-86, which sounds in fraud.

lies uniquely within another party's control, *but only if* the pleading sets forth the specific facts upon which the belief is reasonably based.” *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1330 & n.7 (Fed. Cir. 2009) (collecting cases). Here, the only alleged falsehood appears to be telling unnamed “P&G representatives that Compass was exiting the eCommerce business.” Compl. ¶ 197. But Compass does not allege whether DiPaula and Miller were speaking with P&G's CEO or an intern, what was said, whether the communication was via phone or carrier pigeon, when the alleged statement was made, or any facts upon which its “belief” is reasonably based.<sup>27</sup> This does not satisfy Rule 9(b) and warrants dismissal of Compass's claim.

#### **E. The Unfair Competition Claim Fails (Count VIII)**

In Maryland, the tort of unfair competition serves to prevent a business from “damaging or jeopardizing another's business by fraud, deceit, trickery or unfair methods of any sort.” *S. Volkswagen, Inc. v. Centrix Fin., LLC*, 357 F. Supp. 2d 837, 852 (D. Md. 2005). Rule 9(b) applies to allegations involving “fraud or mistake.” *E.g., C&R Caulking*, 2021 WL 2661875, at \*6. As above, Compass has not adequately alleged “deceptive statements” or “conduct” by any of the Flywheel Defendants—or any conduct at all by Ascential—that was “directed at Compass” or “Compass's eCommerce customers.” Compl. ¶¶ 291-95. Nor has Compass alleged any “coordinated series of unfair and deceptive acts” or the misappropriation of any protectable trade secrets integral to Flywheel's success. *Id.* ¶¶ 291-93, 297. Compass's wholly conclusory

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<sup>27</sup> The allegation that “DiPaula told multiple” unnamed “Compass employees that Flywheel would not be competing with Compass in any respect” fails for the same reason. *Id.* ¶ 197. Compass also pleads no facts suggesting that statement was false when made. Instead, Compass alleges that DiPaula and Miller tried to buy the eCommerce Department, *id.* ¶¶ 78, 80, which if consummated, would have made that true. That P&G allegedly “contracted with Flywheel” also indicates any statement that “Flywheel was being set up to service the P&G account” was also true. *Id.* ¶ 197.

allegations that misappropriating the eCommerce Guide breached some fiduciary duty owed to Compass is similarly unavailing. *Id.* ¶¶ 296-97.<sup>28</sup>

#### F. The Unjust Enrichment Claim Fails (Count IX)

When breach of contract and unjust enrichment claims cover the same subject matter, the latter “*must include an allegation of fraud or bad faith in the formation of the contract.*” *Jones v. Pohanka Auto N., Inc.*, 43 F. Supp. 3d 554, 573 (D. Md. 2014) (first emphasis in original). Because Compass’s unjust enrichment claim is based on the same alleged misappropriation as its breach of contract claims, Compl. ¶ 302; *see also id.* ¶ 45, and Compass does not allege fraud or bad faith *in the formation of* the NDAs, the unjust enrichment claim must be dismissed.

#### V. THE COURT LACKS PERSONAL JURISDICTION OVER ASCENTIAL

“A motion to dismiss under Rule 12(b)(2) ... raises an issue for the court to resolve, generally as a preliminary matter.” *Hardwire*, 2021 WL 3809078, at \*3. There is no question that general jurisdiction over UK-based Ascential is lacking here.<sup>29</sup> The exercise of specific personal jurisdiction over a non-resident defendant requires that “(1) an applicable state long-arm statute confers jurisdiction and (2) the assertion of that jurisdiction is consistent with constitutional due

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<sup>28</sup> While Maryland law recognizes a fiduciary duty owed by “*high-echelon* employee[s] ... [to not compete] during the tenure of [their] employment,” there is also “a privilege in favor of employees which *enables them to prepare or make arrangements to compete with their employers* prior to leaving ... without fear of incurring liability for breach of their fiduciary duty of loyalty.” *Md. Metals*, 282 Md. at 38, 39, 48 (affirming dismissal of a complaint).

<sup>29</sup> “General personal jurisdiction exists if the defendant maintains continuous and systematic contacts with the forum state,” which for a corporate defendant like Ascential, “typically exists exclusively in the defendant’s state of incorporation and its principal place of business.” *Curtin v. Cyprus Amax Mins. Co.*, No. JKB-20-921, 2020 WL 3129012, at \*2 (D. Md. June 12, 2020). It is undisputed that “Ascential is a public limited company in the United Kingdom, with its principal place of business” in “London, England,” Compl. ¶ 21, and Compass does not allege any continuous or systematic contacts between Ascential and Maryland. General jurisdiction is lacking here.

process.” *Hardwire*, 2021 WL 3809078, at \*8.<sup>30</sup> Maryland’s long-arm statute confers personal jurisdiction over any person who, among other things, “[t]ransacts any business ... in [Maryland]” or “[c]auses tortious injury in [Maryland] by an act or omission in [Maryland],” Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(1), (3), and “is coextensive with the limits of personal jurisdiction set by the due process clause of the Federal Constitution.” *Price v. Waste Mgmt.*, No. ELH-13-02535, 2014 WL 1764722, at \*6 (D. Md. Apr. 30, 2014).

Here, Compass asserts without any factual basis that Ascential was (i) “doing business in Maryland”; (ii) “engaging in tortious conduct in Maryland related to the misappropriation and use of Compass’s trade secrets”; (iii) “having contact with Maryland in furtherance of a conspiracy”; and (iv) that two “Ascential officers ... served on the Flywheel Board of Directors, and upon information and belief, regularly travel to Maryland to manage Flywheel operations.” Compl. ¶ 30. None of these theories confers personal jurisdiction over Ascential.

As set forth in the Declaration of Louise Meads (“Meads Decl.”), and contrary to the conclusory allegation in the Complaint, *id.* ¶ 21, *Ascential* does not do business or maintain offices in Maryland—*Flywheel* does. Meads Decl. ¶¶ 6, 11.<sup>31</sup> *Ascential*, an “indirect shareholder” of *Flywheel*, *id.* ¶¶ 8-9, is not subject to jurisdiction in Maryland merely because *Flywheel* “is present or doing business there.” *Price*, 2014 WL 1764722, at \*12.

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<sup>30</sup> While the Fourth Circuit interprets RICO “to authorize ... the exercise of personal jurisdiction in any district court,” where (as here) a plaintiff fails to state a RICO claim, it “must establish a basis for ... personal jurisdiction ... unrelated to RICO.” *Hardwire*, 2021 WL 3809078, at \*4. Moreover, because this Court has already rejected RICO claims based on the same alleged predicate act, Compass’s RICO claim is not even “colorable.” *Id.*

<sup>31</sup> The Meads Declaration is clear that, among other things, “Ascential does not maintain any offices ... in the State of Maryland” and “Flywheel employs its own personnel to conduct business in Maryland,” who “are not employees of Ascential.” *Id.* ¶¶ 6, 11. “In the case of a factual challenge,” this Court may “consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *S-E-A*, 2018 WL 3996270, at \*1.

Compass alleges no *conduct* (tortious or otherwise) by *Ascential* related to the alleged misappropriation, and the court cannot attribute Flywheel’s alleged conduct to Ascential absent “circumstances warranting it to pierce the corporate veil.” *Newman v. Motorola, Inc.*, 125 F. Supp. 2d 717, 722 (D. Md. 2000). “Without more, interlocking directorships and complete ownership of the subsidiary’s stock by the parent, are insufficient to demonstrate” the requisite “agency relationship.” *Fleetwood v. B.C.E., Inc.*, No. DKC 2003-2125, 2004 WL 903754, at \*4 (D. Md. Apr. 28, 2004) (granting dismissal and denying discovery).<sup>32</sup>

Moreover, as explained above, Ascential and the Flywheel Defendants cannot conspire as a matter of law under the intracorporate conspiracy doctrine, which also precludes a finding of personal jurisdiction. *E.g., AGV Sports Grp., Inc. v. Protus IP Sols., Inc.*, No. RDB 08-3388, 2009 WL 1921152, at \*4-5 (D. Md. July 1, 2009) (applying intracorporate conspiracy doctrine).

This Court should dismiss all claims against Ascential for lack of personal jurisdiction.

### CONCLUSION

The Complaint establishes that Compass’s claims are time-barred, and at all events, are insufficiently pleaded as a matter of law. Compass has not even established personal jurisdiction over Ascential. Accordingly, the Flywheel Defendants and Ascential respectfully request that the Court dismiss the claims against them in the Complaint with prejudice.

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<sup>32</sup> See also *Gray v. Riso Kagaku Corp.*, No. 95-1741, 1996 WL 181488, at \*3 (4th Cir. Apr. 17, 1996) (no personal jurisdiction over parent where, among other things, “a majority of” subsidiary’s board members “were also associated with” parent); *Element Fleet Corp. v. Quimby*, No. GLR-18-1986, 2019 WL 1293275, at \*3 (D. Md. Mar. 19, 2019) (“[T]en trips in a year does not constitute significant or long-term business activities in Maryland[.]”).

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Respectfully submitted,

By: /s/ G. Stewart Webb, Jr.

VENABLE LLP  
G. Stewart Webb, Jr. (Bar No. 00828)  
750 East Pratt Street, Suite 900  
Baltimore, Maryland 21202-3142  
Telephone: (410) 244-7400  
Fax: (410) 244-7742  
gswebb@venable.com

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP  
Michael C. Keats  
Rebecca L. Martin  
Arthur Kutoroff  
One New York Plaza  
New York, New York 10004-1980  
Telephone: (212) 859-8000  
Fax: (212) 859-4000  
michael.keats@friedfrank.com  
rebecca.martin@friedfrank.com  
arthur.kutoroff@friedfrank.com

*Attorneys for Flywheel Defendants and Ascential*