IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LARRY RELF, on behalf of himself and all Others similarly situated, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, J.D. POWER & ASSOCIATES, and MITCHELL INTERNATIONAL, INC., Defendants.	)	CASE NO.: 4:18-cv-00240-CDL

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT

I. INTRODUCTION

Four years after State Farm Mutual Automobile Insurance Company ("State Farm") paid its insured, Plaintiff Larry Relf, the actual cash value of his car following a total loss claim, Plaintiff filed this case seeking additional amounts on behalf of himself and a putative class of State Farm insureds in Georgia. He further alleges that State Farm conspired with co-Defendants J.D. Power & Associates ("J.D. Power") and Mitchell International Inc. ("Mitchell") to undervalue his claim by using the Mitchell Work Center Total Loss ("WTCL") valuation tool to determine the actual cash value of his totaled car.

Despite the sweeping allegations in the Complaint, this is nothing more than a basic, belated case of an insured being dissatisfied with the amount paid on his insurance claim. And as a result, the Complaint fails to state any claims against State Farm upon which relief could be granted. Plaintiff filed this case well beyond the one-year time period in State Farm's Automobile Policy ("Policy"). This alone bars his breach of contract and bad faith claims. Beyond that, the Complaint is nothing more than conclusory allegations stacked upon formulaic averments. On the contract claim, Plaintiff fails to identify even the most basic elements of a breach of contract claim such as the Policy provision which State Farm allegedly breached. On the bad faith claim, he failed to comply with the statutory notice requirement. On the conspiracy claim, he has not identified the predicate tort necessary to sustain a civil conspiracy. Moreover, Plaintiff's claims are nothing more than a backdoor attempt to assert a private right of action to enforce a provision of Georgia's Total Loss Regulation, something Georgia courts have repeatedly rejected.

For all the reasons described below, the Court should dismiss Plaintiff's Complaint.

II. BACKGROUND

A. Factual Allegations in the Complaint[1]

Plaintiff had an automobile policy with State Farm. Compl. ¶¶ 48-49. On December 19, 2014, Plaintiff was involved in a car accident in his covered vehicle, a 2006 Pontiac Torrent. *Id*. After his accident, Plaintiff submitted a claim, and State Farm concluded his vehicle was a total loss. Compl. ¶ 49. Using the Work Center Total Loss ("WTCL") valuation tool from J.D. Power and Mitchell, State Farm determined the vehicle's "Base Value" was $6,646.99. Compl. ¶¶ 49, 51-52. The "Base Value" was determined through the WTCL valuation tool by comparing Plaintiff's Pontiac Torrent to four other Torrents, each for sale and located in Georgia. Dkt. No. 1-6 at 3-6. An adjustment of $298.77 was then applied to reduce the Base Value of Plaintiff's vehicle for its condition ("Condition Adjustment"), and Plaintiff was paid the difference minus his deductible. Compl. ¶ 52; Dkt. No. 1-6 at 1.

Plaintiff alleges State Farm undervalued his and other total loss claims in Georgia. Nearly the entire Complaint focuses on how J.D. Power and Mitchell's WTCL valuation tool allegedly compiles inaccurate vehicle valuation and violates Georgia's Total Loss Regulation. *See* Compl. ¶¶ 16-21. In particular, Plaintiff argues the WCTL valuation tool uses a "statistically invalid" method to make the initial determination of the Base Value and that this methodology is inconsistent with Rule 120-2-52.06 of the applicable regulations. Compl. ¶¶ 16-18, 30. Plaintiff does not articulate why the methodologies employed by the WCTL valuation tool are "invalid," instead settling for generic, conclusory averments. *See id*. ¶¶ 17, 20, 29, 30, 31, 32, 35, 40, 42.

[1] State Farm considers these allegations as true only for the purposes of this Motion to Dismiss. *Hardy v. Regions Mortg., Inc.*, 449 F.3d 1357, 1359 (11th Cir. 2006).

The only "facts" Plaintiff offers that directly question the accuracy of the tool is prior litigation against J.D. Power and Mitchell in Oklahoma, *Hamon v. Farmers Insurance Company, Inc.*, Case No. 6:14-cv-001661, which Plaintiff's counsel also filed. Compl. ¶¶ 44-46. State Farm was not a party in this litigation. And even though anything that might be of value from the *Hamon* case is subject to a protective order, Plaintiff assures the Court that the plausibility of his claims would be self-evident were these materials revealed. *Id*.

Even more interesting is what Plaintiff does not say in his Complaint. Not once does he cite a particular Policy provision State Farm allegedly breached. He did not even attach his Policy.[2] And while Plaintiff does reference the Condition Adjustment subtracted from the Base Value figure in the total loss calculation, *id*. ¶ 52, nowhere does he describe what amount he is owed or was underpaid due to the alleged invalid procedures associated with that Base Value calculation. Nor does Plaintiff meaningfully articulate how he believes State Farm was aware of the alleged problems with the WCTL valuation tool. Instead, he states in a conclusory fashion that State Farm "knew" the WCTL valuation tool was inaccurate. *Id*. ¶¶ 41-42, 75.

B. Claims and Class Allegations

Plaintiff alleges three claims against State Farm: breach of contract (Count I), bad faith (Count II), and civil conspiracy (Count V). *Id*. ¶¶ 67-79, 96-102. Plaintiff asserts three claims against Mitchell and J.D. Power: tortious interference with performance of a contract (Count III), breach of contract arising from Plaintiff's status as third-party beneficiary of the agreement (Count

[2] State Farm has attached as Exhibit A to this Motion a copy of the operative automobile insurance Policy governing Plaintiff's claims. The Court may consider the Policy without converting the present motion into one for summary judgment because the Policy is central to the asserted claims. *See Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1340 n.3 (11th Cir. 2005) ("A document outside the four corners of the complaint may still be considered if it is central to the plaintiff's claims and is undisputed in terms of authenticity.").

IV), and civil conspiracy (Count V). *Id*. ¶¶ 80-95, 96-102. State Farm does not address the tortious interference or third-party beneficiary counts as they are not asserted against State Farm.

Plaintiff also seeks to represent a class of State Farm insureds in Georgia for the past six years who (1) had their total loss vehicles valued by J.D. Power and Mitchell's WCTL Valuation System, and (2) received a negative condition adjustment. Compl. ¶ 53; *see also id*. ¶¶ 54-66.

C. Georgia's Total Loss Regulation

Much of the Complaint centers on Georgia's Total Loss Regulation, promulgated pursuant to Georgia's Motor Vehicle Accident Reparations Act ("MVARA"). Ex. B. In particular, Plaintiff argues repeatedly that Rule 120-2-52.06 of the Total Loss Regulation enumerates the methods an insurance company may use to provide for actual cash value of a vehicle. Compl. ¶¶ 16-17.

As background, Rule 120-2-52.06 outlines four methods for an insurer to fashion a "Cash Equivalent Method" for paying total loss vehicles. Plaintiff contends that State Farm has chosen subsection (a)(4) to calculate a cash equivalent settlement, which allows for a statistical assessment of the comparable vehicles' fair market value, provided the source meets these criteria:

> (i) The source shall give primary consideration to the values of vehicles in the local market area, or may consider data on vehicles outside the area when comparable vehicles have not been available for data collection in the local market area.
>
> (ii) The source's database shall produce values for at least 85% of all makes and models for at least the last fifteen (15) model years, taking into account the values of all major options for such vehicles.
>
> (iii) The source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters (such as time and area) to assure statistical validity.

GA. COMP. R. & REGS. 120-2-52.06(a)(4)(i-iii).

III. ARGUMENT

Plaintiff brings three causes of action against State Farm: (1) breach of contract; (2) bad faith; and (3) civil conspiracy. Each of the claims suffers from numerous legal and pleading deficiencies. The Court should dismiss each of these counts.

A. Standard of Review

In order to survive a Rule 12(b)(6) motion, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Dismissal is appropriate when a plaintiff fails to "raise a right to relief above the speculative level." *Id*. at 555. To plead facial plausibility, a plaintiff must set forth factual content that permits the courts to draw the reasonable inference that the defendant is liable. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Id*.

While allegations in the complaint are assumed to be true, "threadbare recitals" of the elements of a cause of action that are supported by mere conclusory statements are insufficient. *Id*. at 678. "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1262-63 (11th Cir. 2004); *see also Iqbal*, 556 U.S. at 678 (noting that the "tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). Rather, legal conclusions must be "supported by factual allegations." *Iqbal*, 556 U.S. at 679.

B. Plaintiff Fails to State a Claim for Breach of Contract (Count I).

There are multiple reasons to dismiss the breach of contract claim. First, the Policy contract itself limits the time to bring a lawsuit against State Farm to one year after the date of loss. Plaintiff's accident was in 2014, so he is well beyond this limitation. He also fails to allege the necessary elements for a breach of contract claim, such as not identifying a single provision of the Policy that State Farm has allegedly breached. Next, despite his protestations to the contrary, Plaintiff essentially seeks to create a private right of action to enforce the provisions of the Georgia Total Loss Regulation. This is prohibited by Georgia law. And finally, even if he could pursue a private right of action under the Georgia Total Loss Regulation, Plaintiff fails to describe any violation of this regulation.

1. Plaintiff Filed This Suit After the One-Year Limitations Period Imposed by the Policy.

Under the Policy contract, Plaintiff has one year from the date of loss for Physical Damages coverage to file suit against State Farm. Ex. A, Policy at 37 ("Legal action may not be brought against ***us*** until there has been full compliance with all provisions of this policy. In addition, legal action may only be brought against ***us*** regarding: . . . c. Physical Damages Coverages if the legal action relating to these coverages is brought against ***us*** within one year immediately following the date of the accident or loss.") (emphasis in original). Plaintiff acknowledges his date of loss was more than four years before he brought this lawsuit. Comp. ¶ 49.

Georgia courts enforce these limitations periods found in insurance contracts, even though the contractual statute of limitations is shorter than Georgia's statute of limitations for a breach of contract claim. *White v. State Farm Fire & Cas. Co.*, 728 S.E.2d 685, 687-88 (Ga. 2012) (finding that "claim for theft coverage under his multiple line insurance policy is barred because he failed to initiate that claim within the policy's one-year statute of limitations provision."). This is well-settled Georgia law. *See, e.g., Thornton v. Ga. Farm Bureau Mut. Ins. Co.*, 695 S.E.2d 642, 643-

44, 649 (Ga. 2010) (finding that a one-year contractual claims limitation was unambiguous and was triggered from the date of the loss when it required an insured to file suit within a year "after the date of the loss"); *Encompass Ins. Co. of Am. v. Friedman*, 682 S.E.2d 694, 696-97 (Ga. Ct. App. 2009) (upholding policy provision which states: "No action [against Encompass] can be brought unless the policy provisions have been complied with and the action is started . . . [w]ithin one year after the date of loss."); *Morrill v. Cotton States Mut. Ins. Co.*, 666 S.E.2d 582, 584-85 (Ga. Ct. App. 2008) (noting that "[t]his court has decided that an insurance policy provision placing a one-year limitation upon the right of the policyholder to sue the insurer is valid and enforceable").

In *Tucker v. State Farm Mutual Automobile Insurance Company*, 109 F. Supp. 3d 1350, 1352-53 (N.D. Ga. 2015), Judge Story recently considered the same State Farm insurance policy. The court reasoned, "Insurance is a matter of contract and the parties are bound by the terms of the policy. It is also the general rule that the insured is chargeable with knowledge of all the conditions imposed upon him by the terms of his policy." *Id.* The court concluded that plaintiff filed his suit more than one year after the limitations period, rejected the physical damages claim, and dismissed plaintiff's bad faith claim and for extra-contractual damages. *Id.* The same result is appropriate here, as Plaintiff failed to file this case within the time permitted under the Policy.

2. The Complaint Fails to Allege the Essential Elements Necessary for a Breach of Contract Claim.

Even if this action were timely, the Complaint still fails to state a claim for breach of contract. Plaintiff contends that State Farm breached its Policy in "multiple ways," such as "fail[ing] to properly investigate and confirm the statistical validity of the WCTL Valuation Methodology," improperly delegating its "obligation to value total loss vehicles," and failing to "properly adjust and pay the amount due and owed to Plaintiff for his total loss." Compl. ¶ 69. But Plaintiff never ties his assertions of "statistical invalidity" of State Farm's calculations to any

contractual obligation that State Farm owes Plaintiff. In fact, the Complaint excludes any reference to a specific provision of Plaintiff's Policy contract. Without a clear indication of which provision State Farm breached, Plaintiff's claim for breach of contract must be dismissed. *Bryant v. Progressive Mountain Ins. Co.*, 243 F. Supp. 3d 1333, 1340 (M.D. Ga. 2017) ("A plaintiff asserting a breach of contract claim must allege a particular contractual provision that the defendants violated to survive a motion to dismiss."); *see also Allstate Ins. Co. v. ADT, LLC*, No. 1:15-CV-517-WSD, 2015 WL 5737371, at *7 (N.D. Ga. Sept. 30, 2015); *Am. Casual Dining, L.P. v. Moe's Southwest Grill, L.L.C.*, 426 F. Supp. 2d 1356, 1369 (N.D. Ga. 2006).

Why Plaintiff fails to identify a specific Policy provision is self-evident—there is nothing in the Policy requiring State Farm to calculate the vehicle's value using any particular methodology. The Policy simply provides that State Farm will "pay the actual cash value of the covered vehicle minus any applicable deductible." Ex. A at 23. It does not define actual cash value, and does not expressly oblige State Farm to use any particular source or method to calculate actual cash value, as Plaintiff seems to assert, nor is it required to do so. While he devotes the bulk of the Complaint to the WCTL valuation tool and its flawed methodology, Plaintiff has not stated any facts to explain how State Farm's valuation runs afoul of its obligation to pay actual cash value. Therefore, Plaintiff's assertion that State Farm engaged in a "statistically invalid" method of calculating actual cash value cannot be a breach.

Further, inasmuch as he pursues a breach of contract claim based on the inaccurate calculation of his vehicle's Base Value, Plaintiff has not alleged the amount he has been damaged. *See, e.g.*, Compl. ¶¶ 29, 31. To establish a breach of contract, Plaintiff must state the amounts he was underpaid by State Farm. *See Matthews v. State Farm Fire & Cas. Co.*, 500 F. App'x 836, 841 (11th Cir. 2012) (granting of judgment on plaintiff's breach of contract claim against insurer

where plaintiff failed to show that insurer underpaid plaintiff's claim); *Williams v. GreenPoint Mortg. Funding, Inc.*, No. 1:15-CV-4487-SCJ-LTW, 2017 WL 8221400, at *4 (N.D. Ga. Jan. 30, 2017) (collecting cases where breach of contract claims were dismissed for failure to establish damages). The only amount Plaintiff outlines that he is owed relates to the Condition Adjustment applied to his vehicle's Base Value. Compl. ¶ 52; *see also* Dkt. No. 1-6 (subtracting Condition Adjustment of $289.77 from Base Value). Without an allegation as to the sum owed for an invalid methodology for Base Value, any breach of contract claim predicated on the Base Value's determination is inappropriate.

3. There is No Private Right of Action under the Georgia Total Loss Regulation.

While the Policy does not contain any language regarding the methodology for calculating the value of Plaintiff's vehicle, the Georgia Total Loss Regulation does. Thus, Plaintiff attempts to use a breach of contract claim as a vehicle to assert a direct action under Rule 120-2-52.06 of Georgia's Total Loss Regulation against State Farm. Such a claim is not viable, however, because only Georgia's Insurance Commissioner can enforce this regulation.

For example, Plaintiff links his criticisms of State Farm's methodology for total loss valuations with the Georgia regulations. *See, e.g.*, Compl. ¶ 19 ("The WCTL methodology used by Defendants is statistically invalid and, therefore, directly violates the Georgia Total Loss Regulation and, specifically, Section (a)(4)."), ¶ 20 ("Plaintiff's breach of contract claim is based upon . . . State Farm's failure to adjust total loss claims in the manner required by the Georgia Total Loss Regulations."), ¶ 21 ("As a condition of doing business in Georgia, State Farm's insurance Policies and claim adjustment practices must comply with the Georgia Total Loss Regulation. State Farm's failure to do so [] is a breach of its insurance Policies."). By parroting

language directly from Rule 120-2-52.06, Plaintiff shows that his breach of contract claim is actually a dressed-up claim to privately enforce the Georgia Total Loss Regulation.

But Georgia's legislature has neither expressly nor impliedly provided a private right of action to enforce this regulation. Rule 120-2-52.06 was promulgated by the Insurance Commissioner pursuant to the MVARA, O.C.G.A. §§ 33-2-9, 33-34-8. Ex. B. Nothing in either the MVARA or Rule 120-2-52.06 suggests that individuals may pursue private litigation against an insurer under these provisions. In fact, Georgia courts have held the opposite. *State Farm Mutual Auto. Ins. v. Hernandez Auto Painting & Body Works, Inc.*, 719 S.E.2d 597, 761 (Ga. Ct. App. 2011) (holding that no private right of action exists to enforce the MVARA because such Act did not provide for a private right of action but instead provided "the Insurance Commissioner with the authority to enforce the provisions of Title 33"); *see also Cross v. Tokio Marine & Fire Insurance Co.*, 563 S.E.2d 437, 439 (Ga. Ct. App. 2002) (no private right of action exists to enforce § 33-3-28 where the statute did not specifically include such a right and the Insurance Commissioner possessed the exclusive regulatory remedy).

Rather, with the MVARA, the only oversight provisions provide authority for enforcement to the Georgia Commissioner of Insurance.[3] O.C.G.A. §§ 33-6-35 through 33-6-37. And the Regulations promulgated under the MVARA similarly provide that failure to comply with the regulations subjects an insurer to penalties under the insurance laws of Georgia. GA. COMP. R. & REGS. 120-2-28-.11. Thus, it is clear that Georgia's legislature has not authorized Plaintiff's suit to enforce alleged violations of regulations like Rule 120-2-52.06 underlying the MVARA. *See*,

[3] The State of Georgia retains the ability to evaluate consumer complaints and to choose to initiate an action against an insurance company that it deems has violated the insurance statutes and regulations. O.C.G.A. § 33-2-24. So any violation of the MVARA should first be pursued through the established administrative process and not through private litigation.

e.g., *Parris v. State Farm Mutual Automobile Insurance Co.*, 494 S.E.2d 244, 246 (Ga. Ct. App. 1997) ("While the legislature could have specifically created a cause of action for a breach of [the statute] by its terms it did not choose to do so. This failure strongly indicates the legislature's intentions that no such cause of action be created by said statute.").

Similarly, an implied private right of action does not exist. A plaintiff asserting "the existence of an implied right of action bears the burden of establishing that proposition." *Brooks-Powers v. Metro. Atlanta Rapid Transit Auth.*, 579 S.E.2d 802, 805 (Ga. Ct. App. 2003). And "where the statute in question is part of a comprehensive regulatory scheme that includes enforcement provisions and remedies for statutory violations, a private right of action will not be implied." *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 294 (N.D. Ga. 2003). As discussed above, no section of the MVARA provides an express right of action for a private litigant to enforce. Moreover, several of the MVARA's provisions establish an oversight mechanism for Georgia's Insurance Commissioner. *See* O.C.G.A. §§ 33-34-8, 33-34-5.1, 33-34-2(4). Because the statute as a whole does not reflect the legislature's intent to create a private right of action, and the statute and regulations' enforcement provisions vest authority with the State, the Court should decline to infer a private right of action here.

Undoubtedly aware of this case law, Plaintiff assures the Court that he "does not assert a private right of action under Georgia's Total Loss Regulation" and that his breach of contract claim is premised on State Farm's "use of statistically invalid methodologies" and "failure to adjust total loss claims [as] required by Georgia Total Loss Regulation." Compl. ¶ 20. This self-serving pronouncement is untethered from the relevant law. Georgia's Insurance Commissioner, not a private plaintiff, is vested with the responsibility to evaluate State Farm's valuation methodologies. *Mazaiwana v. Allstate Ins. Co.*, No. 1:14-CV-756-ODE, 2015 WL 11243470, at *3 (N.D. Ga. Jan.

26, 2015). Plaintiff cannot graft onto the Policy Georgia's Total Loss Regulations and then pursue a breach of contract claim for a violation of that regulation. *See Armstead v. Allstate Prop. & Cas. Ins. Co.*, No. 1:14-CV-586-WSD, 2016 WL 4123838, at *6 (N.D. Ga. July 1, 2016) (rejecting plaintiff's argument that insurer acted in bad faith by violating the parallel UCSPA, which similarly provides no private right of action, because the plaintiff "attempts, in essence, to shoehorn a UCSPA cause of action into her bad faith claim"). To allow such a result would subvert Georgia's legislative intent as to the enforcement of the MVARA and its underlying regulations.

4. The Complaint Fails To Allege that the WCTL Methodology Violates the Georgia Total Loss Regulation.

Even if Plaintiff were permitted to sue State Farm for technical violations of the Georgia Total Loss Regulation, the Complaint does not actually allege any violations of Rule 120-2-52.06. Several of Plaintiff's allegations regarding the invalidity of the WCTL valuation tool are at odds with the Georgia Total Loss Regulation. For example, Plaintiff criticizes State Farm for not valuing vehicles with nationally recognized guidebooks like NADA, Kelley Blue Book, or Black Book Guidebooks. Compl. ¶ 17. But Rule 120-2-52.06 does not list any particular guidebooks as "statistically valid" methods.

Moreover, the Complaint omits any factual allegations that the WCTL valuation tool fails to comply with any of Rule 120-2-52.06's subsections. Plaintiff has not provided any facts to create a plausible inference that the WCTL valuation tool fails to give primary consideration to the value of vehicles in the local area, that it fails to produce values for at least 85% of all makes and models for the last 15 years, or that it fails to produce fair market values. *Compare* Compl. ¶¶ 17, 20, 29, 30, 31, 32, 35, 40, 42 *with* GA. COMP. R. & REGS. 120-2-52.06(a)(4). The regulation does not prohibit a valuation method that adjusts the valuation of the vehicle based on its conditions, which appears to be Plaintiff's principal complaint. *See* Compl. ¶¶ 52-53 (seeking relief for

downward or negative condition adjustment). Other than Plaintiff's repeated conclusory assertions that the WCTL valuation tool uses a "statistically invalid" methodology for reducing the value of the vehicle, the Complaint is bereft of any detail or substance as to how State Farm violated the Georgia Total Loss Regulation.

C. Plaintiff Fails to State a Bad Faith Claim (Count II).

As with his breach of contract claim, Plaintiff's bad faith claim is untimely, as it too is subject to the one-year limitations period in State Farm's Policy. Further, Plaintiff has ignored the condition precedent of a bad faith claim in Georgia: providing the insurer statutory notice under O.C.G.A. § 33-4-6. Lastly, the Complaint's allegations do not make out the predicate elements necessary for a bad faith claim. The Court should dismiss Count II for any of these reasons.

1. Plaintiff's Bad Faith Claim is Similarly Subject to The Policy's One-Year Statute of Limitations.

Just as with his breach of contract claim, Plaintiff's bad faith allegations are also subject to the Policy's one-year statute of limitations from his date of loss. *See Tucker*, 109 F. Supp. 3d at 1353 (dismissing bad faith claim when the lawsuit was filed more than one-year after the contractual limitations period); *Cagle v. State Farm Fire & Cas. Co.*, 512 S.E.2d 717, 718 (Ga. Ct. App. 1999) (finding that a bad faith claim must also be brought within the 1-year statute of limitations in the policy). As Plaintiff waited four years to file this lawsuit, his bad faith claim should be dismissed.

2. Plaintiff Did Not Provide the Requisite Statutory Notice.

Georgia's bad faith statute requires an insured demand payment within 60 days prior to filing suit. O.C.G.A. § 33-4-6; *see also BayRock Mortg. Corp. v. Chicago Title Ins. Co.*, 648 S.E.2d 433, 435 (Ga. Ct. App. 2007). The demand must be sufficient to alert the insurer that bad faith is being asserted. *S. Realty Mgmt., Inc. v. Aspen Specialty Ins. Co.*, No. 1:08-CV-0572-JOF,

2008 WL 4787511, at *2 (N.D. Ga. Oct. 27, 2008). Failure to abide by the statute's 60-day notice provision provides independent grounds to dismiss a bad faith claim based on Georgia law. *Cagle*, 512 S.E.2d at 718 ("A failure to wait at least 60 days between making demand and filing suit constitutes an absolute bar to recovery of a bad-faith penalty and attorney fees under this statute.").

Plaintiff did not allege that he provided State Farm with notice, so his claim for bad faith should be dismissed. This Court has characterized this notice provision as a condition precedent for any bad faith claim against an insurer. *See Maddox v. State Farm Fire & Cas. Co.*, No. 5:18-CV-00342-TES, 2019 WL 137596, at *2 (M.D. Ga. Jan. 8, 2019) ("Because Plaintiffs' bad faith claim could only proceed if they had given Defendant notice of the potential bad faith claim, Plaintiffs must have alleged in their Amended Complaint that that they gave such notice."). Without any allegations about Plaintiff's statutory notice to State Farm, his bad faith claim is not cognizable.

3. Plaintiff's Allegations Fail to State a Claim for Bad Faith.

Beyond missing the one-year time limit in the Policy and failing to provide the requisite 60-day notice, Plaintiff has not properly alleged a claim for bad faith. To prevail on a bad faith claim, a complaint must allege something more than a simple disagreement between the insured and insurance company. *Fortson v. Cotton States Mut. Ins. Co.*, 308 S.E.2d 382, 384 (Ga. Ct. App. 1983) (the insured must show a "frivolous and unfounded refusal in law or in fact to comply with the demand of the policyholder" to pay a claim); *Worsham v. Provident Cos.*, 249 F. Supp. 2d 1325, 1341 (N.D. Ga. 2002) ("Where there is a disputed question of fact whether an insurer had a reasonable and probable cause for refusing to pay a claim, bad faith penalties are not available under § 33-4-6."). "If there are any reasonable grounds for an insurer to contest the claim, there is no bad faith." *Matthews v. State Farm Fire & Cas. Co.*, 500 F. App'x 836, 842 (11th Cir. 2012).

The Complaint's allegations demonstrate State Farm has not refused to comply with any "demands of the policyholder." *See Fortson*, 308 S.E.2d at 384. State Farm never disputed that it owed Plaintiff the actual cash value for his totaled vehicle, and it paid him that amount, which Plaintiff never contested, until now. Compl. ¶¶ 49-52. Plaintiff has not alleged any facts from which this Court could plausibly infer that State Farm made a frivolous or unfounded refusal to comply with Plaintiff's demand. In fact, Plaintiff's own allegations underscore that State Farm has a valid defense because he fails to articulate how State Farm "knew" that the WCTL valuation tool was allegedly statistically invalid. Plaintiff simply asserts State Farm was aware of the problems with WCTL valuation tool in a formulaic fashion without alleging any facts to support such knowledge. *See id*. ¶¶ 41, 43, 75. Finally, as discussed above, Plaintiff's bad faith claim cannot be premised on a violation of the MVARA. *Hernandez Auto Painting & Body Works, Inc.*, 719 S.E.2d at 761. Nothing in the Complaint plausibly alleges that State Farm failed to comply with the demands of the policyholder, nor can Plaintiff show State Farm refusal to pay him.

D. The Court Should Dismiss Plaintiff's Civil Conspiracy Claim (Count V) Because He Fails To Allege any Predicate Tort, and the Bad Faith Statute Provides the Only Remedy for These Claims.

The Complaint alleges Defendants conspired "to underpay Plaintiff and the Class by using WCTL Valuations," and State Farm "is a part of the conspiracy by reason of having actual knowledge that the WCTL Valuations provided through its partnership with J.D. Power and Mitchell were statistically invalid and continued to utilize the WCTL Valuations when determining the payment of Plaintiff and Class Members' total loss claim." Compl. ¶¶ 97, 99. Plaintiff does not allege an underlying tort for his civil conspiracy claim and leans heavily on conclusory assertions that the WCTL valuation tool is "statistically invalid." In addition, Georgia law recognizes that breach of contract and bad faith claims are the exclusive remedy for addressing insurance disputes. For either of these reasons, Plaintiff's civil conspiracy claim fails.

1. Plaintiff Has Not Identified a Predicate Tort and Fails to Allege the Essential Elements for a Civil Conspiracy Claim.

To "recover damages based on a civil conspiracy, a plaintiff must show that two or more persons combined either to do some act which is a tort, or else to do some lawful act by methods which constitute a tort." *Peterson v. Aaron's, Inc.*, 108 F. Supp. 3d 1352, 1356 (N.D. Ga. 2015). Civil conspiracy is a "theory for imposing liability on one who did not actually commit the underlying tort;" or, to put it another way, it is simply "an avenue by which [a party] may be liable for the torts of their alleged co-conspirators." *Pullar v. Gen. MD Grp.*, No. 1:12-CV-4063-TWT, 2013 WL 5284684, at *5 (N.D. Ga. Sept. 17, 2013). "Absent the underlying tort, there can be no liability for civil conspiracy." *Miller v. Lomax*, 596 S.E.2d 232, 242 (Ga. Ct. App. 2004).

Plaintiff has not identified an underlying tort. Compl. ¶¶ 96-102. In fact, a close review of Plaintiff's allegations shows his conspiracy allegations are nothing more than a regurgitation of his statements that the WCTL valuation tool is "statistically" compromised. *Id.* Without expressly identifying the underlying tort, Plaintiff has not stated a valid conspiracy claim. *See Miller*, 596 S.E.2d at 242. Furthermore, the Complaint says nothing about Defendants' alleged agreement to engage in tortious conduct or their overt steps in furtherance of the conspiracy. Compl. ¶¶ 96-102. These are essential elements Plaintiff must allege beyond, the Defendants "entered into an illicit agreement." *See McIntee v. Deramus*, 722 S.E.2d 377 (Ga. Ct. App. 2012) (stating that the "essential element of the alleged conspiracy is proof of a common design establishing that two or more persons in any manner, either positively or tacitly, arrive at a mutual understanding as to how they will accomplish an unlawful design").

2. Georgia Law Precludes Tort Claims in Insurance Disputes.

Plaintiff's conspiracy claim is also barred because "OCGA § 33–4–6 provides the exclusive remedy for an insured's claim of bad faith failure to pay policy proceeds." *Am. Safety*

Indem. Co. v. Sto Corp., 802 S.E.2d 448, 456 (Ga. Ct. App. 2017). In fact, this Court recently acknowledged that "[u]nder Georgia law, an insured who alleges that his insurer failed to pay a claim that is covered under his insurance policy is limited to a claim for breach of contract and bad-faith penalties pursuant to O.C.G.A. § 33-4-6." *Stiegel v. USAA Cas. Ins. Co.*, No. 4:16-CV-346 (CDL), 2017 WL 4393871, at *2 (M.D. Ga. Oct. 3, 2017) (Land, J.). Just as in *Stiegel*, Plaintiff's conspiracy claim requests the money that he believes he is contractually owed because State Farm supposedly "undervalued" his claim. Compl. ¶ 100. And since he is not seeking reimbursement of his premiums or any relief separate and apart from the Policy, Plaintiff's remedies are restricted to his flawed breach of contract and bad faith claims. *Stiegel*, 2017 WL 4393871, at *2; *see also McCall v. Allstate Ins. Co.*, 310 S.E.2d 513, 515-16 (Ga. 1984).

E. Plaintiff's Request for Declaratory and Injunctive Relief Are Improper.

Although not specifically set forth as causes of action, Plaintiff's Prayer for Relief asked for "declaratory and injunctive relief as permitted by law." Plaintiff has not specifically plead his request for declaratory relief in the complaint, and this request must be dismissed. *United States v. DeKalb Cty., Ga.*, No. 1:10-CV-4039-WSD, 2011 WL 6369569, at *11-12 (N.D. Ga. Oct. 11, 2011) (dismissing request for declaratory relief when plaintiff had failed to provide the essential pleading requirements). Plaintiff's request for injunctive relief should also be dismissed because he has not alleged the elements of injunctive relief: "(1) a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *McMahon v. Cleveland Clinic Found. Police Dep't*, 455 F. App'x 874, 878 (11th Cir. 2011). Notwithstanding that the Complaint lacks any facts addressing these elements for injunctive relief, Plaintiff is

simply seeking payment under his contract. *See, e.g.*, Compl. ¶¶ 52, 66, 70, 87, 101. There is no basis to believe Plaintiff will suffer any irreparable injury without an injunction.[4]

IV. CONCLUSION

Plaintiff's claims against State Farm should be dismissed. Plaintiff has failed to plead a breach of contract or bad faith claim, and both claims are barred by the Policy's one-year statute of limitations. In addition, Plaintiff's civil conspiracy claim fails to identify an underlying tort and is barred because bad faith and contract claims are the exclusive remedy for an insurance dispute.

Dated: February 8, 2019

Respectfully submitted,

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[4] Plaintiff's request for punitive damages and attorneys' fees should also be dismissed with the bad faith claim. Such damages are limited to circumstances when the Plaintiff can demonstrate bad faith. *Great Sw. Express Co. v. Great Am. Ins. Co. of New York*, 665 S.E.2d 878, 881 (Ga. Ct. App. 2008) (dismissing request for punitive damages because such damages can only be sought through a bad faith claim); *Howell v. S. Heritage Ins. Co.*, 448 S.E.2d 275, 276 (Ga. Ct. App. 1994) (dismissing request for attorneys' fees because such damages could only be sought through a bad faith claim).

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF which will send a notice of electronic filing to all counsel of record.

/s/ Daniel F. Diffley
Attorney for Defendant State Farm Mutual
Automobile Insurance Company