IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TOTAL RECON AUTO CENTER, LLC Plaintiff, VS. STATE FARM INSURANCE, Defendant.	)))))))))))))	Case No. 8:23-CV-02495-PJM

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW, Defendant State Farm Mutual Automobile Insurance Company (improperly identified as State Farm Insurance) (hereinafter referred to as "State Farm"), by and through its undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b), and moves to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted and failure to meet the required pleading standards set forth in Fed. R. Civ. P. 8 and 9. In support thereof, Defendant states:

I. INTRODUCTION

Plaintiff, Total Recon Auto Center, LLC ("Plaintiff" or "Total Recon") alleges it is an "independent collision center" and is "TACC" certified. Compl. ¶¶ 6 – 8. While the Complaint fails to define "TACC certified," it appears Plaintiff primarily provides services to Tesla vehicles. *Id.* State Farm is an insurance company insuring automobiles in the State of Maryland, including, but not limited to, Tesla vehicles.

Plaintiff asserts State Farm "decided to launch an intentional campaign to harm Plaintiff, including deliberately disseminating harmful misinformation to [State Farm's] insureds." Compl. ¶ 13. Plaintiff vaguely alleges State Farm began "steering" customers and prospective customers away from Plaintiff by telling them they should choose a repair shop in State Farm's network because Plaintiff charges out-of-pocket costs for which the customers may be liable. *Id.* at ¶¶ 13, 14, 26, 34, 41 and 50. Plaintiff further alleges State Farm has internally classified Plaintiff as an "Alternative Workflow" shop, State Farm put Plaintiff on its "No-List," and State Farm "escalat[es]" calls from Plaintiff's customers and prospects to cause delays, inconvenience, intimidation, and to steer the individuals away from Plaintiff. *Id.* at ¶¶ 26(a) – (d). Based upon these allegations, the Complaint attempts to assert claims for: (1) tortious interference with contractual relations (Count I); (2) tortious interference with prospective advantage (Count II); and (3) defamation per se (Count III). Plaintiff seeks compensatory and punitive damages including those for lost profits and damage to its reputation. *Id.* at ¶¶ 18, 39, 48, 57.[1]

In reality, Plaintiff - a stranger to the relationship between State Farm and its insureds - seeks to dictate the manner in which State Farm handles its insureds' claims and the manner, in which State Farm explains its obligations under its insurance policy to its insureds. Plaintiff's Complaint fails to state with particularity the circumstances giving rise to the intentional torts alleged as required by the Federal Rules of Civil Procedure. Similarly, Plaintiff fails to set forth

[1] While the Complaint only asserts claims for these three torts, the Complaint also alleges violations of Md. Code Ann., Ins. §§ 10-503 and 27-104 ("Code"). However, the Code does not provide a private right of action and § 27-301 of the Code makes clear "[t]he intent of [the] subtitle is to provide an additional **administrative** remedy to a claimant for a violation of [the Code]." (Emphasis added). Because Plaintiff (i) does not have a private right of action to bring alleged violations of §§ 10-503 and 27-104 against State Farm, and (ii) does not have any privity of contract with State Farm, Plaintiff lacks standing to bring such claims against State Farm and any such claims must be dismissed.

sufficient factual allegations to state a cause of action upon which relief can be granted. As such, the Complaint should be dismissed.

II. **LEGAL STANDARD**

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although this standard does not require "detailed factual allegations," it requires more than "labels and conclusions." *Bell Atlantic v. Twombly*, 550 U.S. 544, 545 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to dismiss for failure to state a claim, a plaintiff must make a showing, rather than just a blanket assertion, of entitlement to relief and the showing must consist of enough facts to state a claim for relief that is plausible on its face. *Medeiros v. Wal-Mart, Inc.*, 434 F. Supp. 3d 395 (W.D. Va. 2020) (quoting *Iqbal*, 556 U.S. at 678 and *Twombly*, 550 U.S. at 557.

Since the Supreme Court's issuance of *Twombly*, "a wholly conclusory statement of claim [will no longer] survive a motion to dismiss simply because [its] pleadings left open that possibility that [it] might later establish some set of [undisclosed] facts to support recovery." *Twombly*, 550 U.S at 561-62 (internal quotations omitted). "[T]he court 'need not accept the [plaintiff's] legal conclusions drawn from the facts,' nor need it 'accept as true unwarranted inferences, unreasonable conclusions, or arguments.'" *Philips v. Pitt County Mem'l Hosp.,* 572 F.3d 176, 180 (4th Cir. 2009) (alteration in original). Plaintiff's claim must "plausibly" give rise to an entitlement to relief and its "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.; Twombly*, 550 U.S at 555. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678 (2009) (quoting *Twombly*, 550 U.S. at 557.). A pleading offering "labels and conclusions" or "a formulaic recitation of the elements of a cause of

action will not do." *Twombly,* 550 U.S., at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.*, at 557.

Thus, the Court is within its authority to dismiss a complaint for failure to allege sufficient facts or for failure to state a cognizable claim for relief as a matter of law. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir.1999).

III. ARGUMENT

A. COUNTS I – III FAIL TO MEET OPERATIVE PLEADING REQUIREMENTS.

1. Counts I – III Fail to Meet Rule 9(b)'s Heightened Pleading Requirements.

Fed. R. Civ. P. 9(b) provides in relevant part: "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."

Counts I – III are all premised upon State Farm's alleged "intentional misrepresentations or falsehoods." Compl. ¶¶ 13-16 (introductory allegations incorporated into each Count), 34 (Count I), 41 (Count II) and 50 (Count III). Thus, each Count must meet Rule 9's heightened pleading requirements. Under Fourth Circuit decisional law, a fraud claim "must at a minimum, describe 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." *U.S. ex rel. Palmieri v. Alpharma, Inc.*, 928 F. Supp. 2d 840, 854 (D. Md 2013) (quoting *United States ex rel. Owens v. First Kuwaiti Gen'l Trading & Contracting Co.*, 612 F.3d 724, 731 (4th Cir. 2010)); *see also Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999). "[T]he 'circumstances' required to be pled with particularity under Rule 9(b) are '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.'" *Harrison*, 176 F.3d at 784 (quoting 5 Charles

Alan Wright and Arthur R. Miller, Federal Practice and Procedure: Civil § 1297, at 590 (2d ed. 1990)). As explained by the Fourth Circuit in *Harrison,* one of the purposes behind Rule 9(b)'s heightened pleading requirement "is to eliminate fraud actions in which all the facts are learned after discovery." *Harrison,* 176 F.3d at 784.

In the present action, the Complaint's allegations fail to meet this heightened standard. Indeed, of the cited paragraphs supposedly alleging misrepresentation, only paragraphs 16 and 50 even attempt to identify the alleged misrepresentations with anything approaching the required specificity. Nevertheless, these paragraphs also fail to meet the required standard. None of either paragraph's subparts identify any State Farm employee or agent (i.e., who allegedly made the misrepresentations). Rather, they generically refer to "State Farm." Moreover, they completely fail to provide any details of the alleged communications between Plaintiff's customers and "State Farm" such as the dates of the alleged communications or how they were allegedly made. Simply put, the Complaint fails to allege "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" as required by the law of this Circuit and the Federal Rules of Civil Procedure. *See Harrison*, 176 F.3d at 784. As such, the Complaint does not satisfy Rule 9's heightened requirements and Counts I-III should be dismissed.

2. Plaintiff Is Not Permitted To Base Its Complaint On Unidentified Customers or Prospective Customers.

Were the Complaint's failure to meet its Rule 9 pleading obligations not bad enough, the Complaint also bases its claims on unidentified customers/prospective customers. Specifically, Count I seeks recovery related to alleged customers Plaintiff "has not yet been able to identify." Compl. ¶ 32. Count II alleges the prospective customers for which it seeks recovery "include, but are not limited to" two specifically identified customers. Compl. ¶ 46. Count III similarly alleges

the individuals to whom State Farm made its allegedly disparaging remarks "are not limited to" those identified in Count III. Compl. ¶ 50. These generic allegations fail to meet the required pleadings standards of the Federal Rules. *See CoStar Realty Info., Inc. v. Field*, 612 F. Supp. 2d 660, 674 (D. Md. 2009) and *Baptist Hospital of Miami, Inc. v. Medica Healthcare Plans, Inc.,* 385 F.Supp.3d 1289, 1292 (S.D. Fla. 2019).

Unlike Plaintiff, plaintiffs in other cases with similar allegations have met their pleading obligations by providing adequate detail in their complaints. *CoStar Realty Info., Inc. v. Field*, 612 F. Supp. 2d 660, 674 (D. Md. 2009). In *CoStar*, plaintiff alleged copyright infringement by defendant of sixty-seven (67) separate copyrights. Unlike Plaintiff here, the plaintiff in *Costar* specifically identified each of the sixty-seven (67) individual copyright infringement claims and attached to its complaint a list of each of the sixty-seven (67) photographs alleged to have been infringed upon, as well as the corresponding sixty-seven (67) copyright registration numbers forming part of plaintiff's claims. Only after making this showing did the court hold the copyright claims were properly pled.

Similarly, *Baptist Hospital of Miami, Inc.* provides another example of a sufficiently detailed complaint. In *Baptist Hospital*, the plaintiff medical providers sued an insurance company to recover allegedly unreimbursed medical bills. The plaintiffs claimed reimbursement for 88 individual benefits claims. Unlike this case, however, the plaintiffs in *Baptist Hospital* pled each of the claims separately and with specificity. The opinion in *Baptist Hospital* recites the level of detail which allowed the court to conclude plaintiffs had met their pleading obligations. Unlike here, each operative paragraph was separately numbered and "describes an individual medical benefit claim by listing the patient initials, patient account number, dates of service, and facility for that claim." *Id.* at 1292. To further meet the plaintiffs' pleading obligation, the complaint also

contained a chart with this information as well as the amount allegedly due for each claim. The detailed pleading in *Baptist Hospital* allowed the court to hold the plaintiffs met their pleading obligations.

In this case, Plaintiff has failed to provide sufficient factual allegations to permit State Farm to know what claims and "customers" are the subject of Plaintiff's lawsuit. Plaintiff is in the best position to provide the necessary details to put State Farm on notice as to the specific claims Plaintiff is bringing; however, Plaintiff relies on generalized statements that unknown and unidentified individuals have been impacted, which fails to provide the notice required under the relevant pleading standard. In fact, Plaintiff admits in paragraph 32 of its Complaint it intends to engage in a "fishing expedition" via discovery in an attempt to identify potential claims and gather support for its causes of action. However, as explained by the Fourth Circuit in *Harrison,* one of the purposes behind Rule 9(b)'s heightened pleading requirement "is to eliminate fraud actions in which all the facts are learned after discovery." *Harrison,* 176 F.3d at 784. As such, Plaintiff is neither entitled to assert claims with respect to customers or prospective customers not identified in the Complaint nor engage in an unwarranted "fishing expedition" in which Plaintiff attempts to identify potential claims through the discovery process.

Rather, Plaintiff's allegations related to these unidentified claims and customers, as well as the remainder of Plaintiff's Complaint, should be dismissed.

3. Plaintiff Has Failed To Allege It Incurred Damages In Relation To Several Of The Customers Identified In The Complaint

In paragraphs 16 and 50 of the Complaint, Plaintiff identifies various individuals to whom State Farm allegedly made misrepresentations or "disparaging remarks." Yet, even assuming the truth of the allegations in paragraphs 16 and 50, at most only three customers, those identified in subparagraphs (a), (e) and (f) of those paragraphs, are alleged to have failed to do business with

Plaintiff or cancelled an appointment with Plaintiff.[2] To recover under the three causes of actions contained in Plaintiff's Complaint, Plaintiff must show State Farm's alleged conduct caused it to incur damages. *See Bindagraphics, Inc. v. Fox Grp., Inc.*, 377 F. Supp. 3d 565, 576 (D. Md. 2019) (plaintiff must provide "a detailed account of the damages it incurred" in order to state a claim for tortious interference with a contract and finding that a claim where allegations of damages are "hypothetical and speculative" must be dismissed); *Yuan v. Johns Hopkins Univ.*, 227 Md. App. 554, 582, 135 A.3d 519, 535-36 (2016) *aff'd*, 452 Md. 436, 157 A.3d 254 (2017) (*citing Kaser v. Fin. Prot. Mktg., Inc.*, 376 Md. 621, 628-29, 831 A.2d 49 (2003) (internal quotation marks and citation omitted)) (plaintiff must allege actual damage and loss resulting to state a cause of action for tortious interference with a prospective business advantage); *Offen v. Brenner*, 402 Md. 191, 198, 935 A.2d 719, 723 (2007) (one of the elements for defamation is "the plaintiff thereby suffered harm"). Here, the Complaint contains no allegation five of the individuals identified in Paragraphs 16 and 50 (i.e., Tash Gohlke, Inder Chawla, Raymond Irizarry, Ethan Karaus, and Halef Safaipour) failed to do business with Plaintiff. Thus, Plaintiff may not base any claim with respect to these individuals as there are no allegations State Farm's conduct caused Plaintiff any damages.

B. COUNT I SEPARATELY FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Count I attempts to assert a claim for tortious interference with contractual relations. The

[2] For the avoidance of any doubt, State Farm rejects the assertion that informing an insured he/she might be liable for expenses to Plaintiff constitutes any misrepresentation. Plaintiff appears to wrongly assume State Farm's insureds would not be exposed to out of pocket expenses simply because State Farm agreed to pay Plaintiff a specific hourly rate. Plaintiff fails to consider State Farm's insurance policies with its insureds might not require State Farm to pay certain expenses charged by Plaintiff if, for example, State Farm disagreed the service in question was necessary or the service was not related to the damage caused by the accident.

elements of such a claim are: (1) existence of a contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional interference with the contract; (4) breach of the contract by the third party; and (5) resulting damages to the plaintiff." *Steele v. Johns Hopkins Health Sys. Corp.*, No. CV JKB-19-3628, 2020 WL 4471710, at *5 (D. Md. Aug. 4, 2020).

In addition to being properly dismissed for the reasons set forth *supra*., Count I should also be dismissed because (1) Plaintiff fails to identify with particularity a contract existed with any individual identified in the Complaint; (2) Plaintiff fails to identify the damages it incurred; and (3) Plaintiff fails to show State Farm improperly interfered with its contractual relations.

1. Count I Fails To Adequately Allege Plaintiff Had A Contract With Any Of The Individuals Listed In The Complaint

Paragraph 16 of the Complaint identifies seven individuals to whom State Farm allegedly made misrepresentations and interfered with Plaintiff's business. However, Plaintiff fails to allege six of these individuals had a contract with Plaintiff at the time State Farm engaged in its allegedly improper conduct (i.e., Nelson Sanabria, Tash Gohlke, Inder Chawla, Raymond Irizarry, Caroline Mosher, and Ethan Karaus). For the sole remaining individual, David Dochter, Plaintiff makes the conclusory allegation it had a "valid repair agreement" with Dochter prior to Dochter rescinding the agreement. Compl. ¶ 31. However, the Complaint provides no specific allegations to support this conclusory allegation. The Complaint does not provide the date the agreement was entered, whether the agreement was written or oral, the material terms of the agreement, or the price of the agreement. Plaintiff similarly attaches no documents to support the allegation this alleged contract existed. As such, Plaintiff has failed to state a claim for tortious interference with contractual relations as Plaintiff has failed to provide more than conclusory allegations State Farm's conduct interfered with an existing contract between Plaintiff and a third party.

2. Count I Fails To Adequately Allege Plaintiff Sustained Damages As It Relates To State Farm's Alleged Interference With Its Contracts.

Count I should also be dismissed because it impermissibly seeks damages with respect to customers with which Plaintiff had no agreement. As a matter of law, Plaintiff must establish the damages it seeks are a "natural, proximate and direct effect of the tortious misconduct." *See Med. Mut. Liab. Soc. of Md. v. B. Dixon Evander & Assocs., Inc*., 660 A.2d 433, 439 (Md. 1995); *see also Peterson v. Underwood*, 264 A.2d 851, 855 (Md. 1970) ("[c]ausation in fact is concerned with the ...inquiry of whether defendant's conduct actually produced an injury"); *Jones v. Malinowski*, 473 A.2d 429, 435 (Md. 1984). Furthermore, this Court has specifically stated a plaintiff must provide a detailed account of damages it has incurred to state a cause of action for tortious interference with contract. *See Bindagraphics, Inc*, 377 F. Supp. 3d at 576. A plaintiff is not permitted to maintain a cause of action for tortious interference when plaintiff's claimed damages are "hypothetical and speculative." *Id.*

In this case, the Complaint alleges as a result of State Farm's conduct "customers of Total Recon breached or cancelled their contract with Total Recon." Compl. ¶ 38. However, the Complaint provides no detailed account of the alleged damages Plaintiff actually incurred. Rather, the Complaint contains speculative unsupported allegations Plaintiff "suffered significant damages, including but not limited to lost profits and actual harm to reputation." Compl. ¶ 39. Similarly, while Plaintiff asserts it had a contract with David Dochter, which Dochter rescinded upon speaking to State Farm, Plaintiff fails to provide any specific calculation of the lost profits it incurred based on this rescission. Given Plaintiff cannot claim damages for any individual with whom it did not have a contract (*see KVC Waffles Ltd. v. New Carbon Co., LLC*, No. 20-CV-195-LKG, 2022 WL 2919677, at *8 (D. Md. July 22, 2022)) and Plaintiff failed to provide an accounting of the damages it actually incurred as it relates to Dochter,

Plaintiff has failed to state a claim upon which relief can be granted and this Count should be dismissed in its entirety.

3. Plaintiff Also Fails To Adequately Plead Improper Intentional Interference.

The third element of tortious interference with contractual relations is "defendant's intentional interference with that contract." *Steele v. Johns Hopkins Health Sys. Corp.*, No. CV JKB-19-3628, 2020 WL 4471710, at *5 (D. Md. Aug. 4, 2020). To establish this element, a plaintiff must prove the defendant's conduct is "independently wrongful or unlawful, quite apart from its effect on the plaintiff's business relationships." *Alexander & Alexander Inc. v. B. Dixon Evander & Associates, Inc.*, 336 Md. 635, 657, 650 A.2d 260, 271 (1994); *see also Macklin Lyon v. Campbell*, 707 A.2d 850, 860 (Md. Ct. Spec. App. 1998); 334 Md. at 301, 639 A.2d 112; *Travelers Indemnity v. Merling,* 326 Md. 329, 343, 605 A.2d 83 (1992). While the Complaint contains many vague "scattershot" allegations, it fails to tether those allegations to specific alleged customers. Moreover, Plaintiff also provides no indication as to how State Farm's communications that an insured may be subject to out-of-pocket expenses is wrongful or without justification. State Farm's obligations to its insureds are governed by its contract. Several items or repairs may not be covered under State Farm's contract and could subject an insured to out-of-pocket expenses. For example, an insured may be subject to out-of-pocket expenses if State Farm finds the repair is unnecessary or the repair fixes damages unrelated to the accident. Given the foregoing, stating an insured may be responsible for out-of-pocket expenses is not wrongful nor without justification. As such, Count I should be dismissed in its entirety.

C. COUNT II SEPARATELY FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Count II seeks to assert a claim for tortious interference with prospective advantage. The elements of this claim are: "(1) intentional and willful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting." *Sirius Fed., LLC v. Jelen*, No. 22-CV-00223-LKG, 2023 WL 2213929, at *7 (D. Md. Feb. 24, 2023) (citing *Blondell v. Littlepage*, 991 A.2d 80, 97 (D. Md. 2010).

In addition, a plaintiff must (i) prove tortious intent and improper or wrongful conduct and (ii) "identify a possible future relationship which is likely to occur, absent the interference, with specificity." *K & K Mgmt., Inc. v. Lee*, 316 Md. 137, 153, 557 A.2d 965, 973 (1989); *Mixter v. Farmer*, 215 Md. App. 536, 549, 81 A.3d 631, 638 (2013); *Ronald M. Sharrow, Chartered v. State Farm Mut. Auto. Ins. Co*., 306 Md. 754, 765, 511 A.2d 492, 498 (1986); *Nat. Design, Inc. v. Rouse Co.*, 302 Md. 47, 485 A.2d 663 (1984); Restatement (Second) of Torts § 766B; *TECx Glob. Educ. Found. v. W. Nottingham Acad. in Cecil Cnty*., 22-CV-00175-LKG, 2023 WL 4764596, at *7 (D. Md. July 26, 2023) (quoting *Baron Fin. Corp. v. Natanzon*, 471 F.Supp.2d 535, 546 (D. Md. 2006) (citing Maryland law)).

To establish a *prima facie* claim, a plaintiff "must establish some evidence that a prospective business relationship is likely to occur." *Mixter v. Farmer*, 215 Md. App. 536, 549, 81 A.3d 631, 638 (2013) (quoting *Baron*, 471 F.Supp.2d at 542 (D. Md. 2006)). Indeed, as noted by this Court in *Baron,* absent a showing a business relationship was likely to occur, "it is unclear" how the remaining elements of the claim could be established. *Baron*, 471 F.Supp.2d at 546 (D. Md. 2006).

1. Count II Fails To State A Claim For Any Customer Other Than Nelson Sanabria and Caroline Mosher

Paragraph 16 identifies seven individuals to whom State Farm allegedly made misrepresentations. However, in Count II, Plaintiff only claims two of those seven prospective customers allegedly failed to do business with Plaintiff as a result of State Farm's alleged conduct (i.e., Nelson Sanabria and Caroline Mosher). Compl. ¶ 46. Thus, no claim may be asserted with respect to the other five because Plaintiff has failed to show State Farm's conduct caused Plaintiff to incur any damages. Moreover, while Plaintiff's Complaint also asserts State Farm's conduct interfered with "additional prospective customers," such an allegation is insufficient as a matter of law to state a cause of action for tortious interference with prospective advantage as Plaintiff must identify a "possible future relationship . . . with specificity." *See Mixter*, 215 Md. App. at 549 (*citing Baron Fin. Corp.*, 471 F. Supp. 2d at 546 (D. Md. 2006)).

2. Count II Also Fails To State A Claim Based Upon Nelson Sanabria and Caroline Mosher As It Fails To Identify The Future Relationship Between Plaintiff And These Two Individuals

As to both Sanabria and Mosher, Count II fails to "identify a possible future relationship which is likely to occur, absent the interference, with specificity." *Mixter*, 215 Md. App. at 549. As to Sanabria, the Complaint alleges no facts about any relationship at all. For example, the Complaint does not mention whether Sanabria had previously agreed to have repairs completed at Plaintiff, whether Sanabria had a pre-existing relationship with Plaintiff, or what were the discussions between Sanabria and Plaintiff prior to her communication with State Farm.

Similarly, as to Mosher, the Complaint merely alleges she cancelled an appointment "due to issues with State Farm" utilizing Plaintiff. Importantly, the Complaint does not provide any further context as to what these issues were, what State Farm told Mosher, what Mosher told Plaintiff, or whether Mosher would have entered into a contract with Plaintiff but for his communications with State Farm. These scant allegations fall well short of Plaintiff's requirement

to identify future business relations with specificity, nor do they satisfy the pleading standard articulated by the Supreme Court in *Twombly* requiring a plaintiff's claim to "plausibly" give rise to an entitlement to relief and its "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S at 555.

3. Count II Also Fails To State A Claim Based Upon Nelson Sanabria and Caroline Mosher As It Fails To Allege Required Malice or Damages.

To satisfy the third element of a claim for tortious interference with prospective advantage, Plaintiff must show State Farm's actions were "done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice)" *Kaser v. Fin. Prot. Mktg., Inc.*, 376 Md. 621, 628, 831 A.2d 49, 53 (2003). "An essential element of a tortious interference claim is a showing that the actions undertaken were 'wrongful.'" *Baron Fin. Corp.,* 471 F. Supp. 2d at 541 (D. Md. 2006) (quoting *Martello v. Blue Cross & Blue Shield of Md., Inc.*, 795 A.2d 185, 194 (Md. Ct. Spec. App. 2002)). Thus, to satisfy these requirements, an actionable complaint "must at least include allegations of conduct primarily motivated by actual malice that was not merely 'incidental' to the 'pursuit of legitimate commercial goals.'" *State Farm*, 381 F. Supp. at 571-72 (D. Md. 2019) (quoting *Alexander & Alexander Inc.*, 336 Md. At 657, 650 A.2d at 271 (1994)). The conduct must be "independently wrongful or unlawful, quite apart from its effect on the plaintiff's business relationships." *Alexander & Alexander Inc.*, 336 Md. At 657, 650 A.2d at 271; *see also Macklin v. Robert Logan Associates*, 334 Md. 287, 301, 639 A.2d 112, 119 (1994); *Lyon v. Campbell*, 707 A.2d 850, 860 (Md. Ct. Spec. App. 1998); *Travelers Indemnity v. Merling,* 326 Md. 329, 343, 605 A.2d 83 (1992).

While State Farm agrees Maryland law provides this element of this claim may be satisfied by defamatory statements, the Complaint fails to allege any defamatory statement uttered to Sanabria or Mosher or any facts that would establish malice. As to Sanabria, the Complaint merely

alleges he "became concerned about having to pay out-of-pocket expenses at Total Recon as a result of intentional misrepresentations by State Farm and decided not to use Total Recon." Compl. ¶¶ 16(a) and 46(a). The Complaint fails to allege with required specificity even one "intentional misrepresentation" allegedly made to Sanabria, much less who made the alleged misrepresentation or when, how or where it was made. Nor does the Complaint allege any facts that would establish State Farm acted maliciously in any communication with Sanabria.

The Complaint's allegations as to Mosher are even more deficient. As to Mosher, the Complaint merely claims she cancelled an appointment "after speaking with State Farm, due to 'issues with [S]tate [F]arm' regarding utilizing Total Recon." Compl. ¶¶ 16(f) and 46(b). The Complaint does not even attempt to apply the "label" of an intentional misrepresentation to Mosher's alleged communications with State Farm much less what was allegedly said by State Farm, by whom and when. Nor are there any facts alleged which would establish State Farm acted maliciously in any communication with Mosher. Thus, the Complaint's allegations as to Sanabria and Mosher do not remotely approach the required pleading standards.

Likewise, the Complaint cannot and does not plausibly plead damages as to Sanabria or Mosher as the Complaint fails to establish the elements of the claim necessary to impose liability upon State Farm. *See Iqbal*, 556 U.S. at 678 and *Twombly*, 550 U.S. at 557. Given the foregoing, Count II of Plaintiff's Complaint should be dismissed.

D. COUNT III SEPARATELY FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Count III seeks to assert a claim for defamation. The elements of this claim are: (1) the defendant made a defamatory statement to a third person, (2) the statement was false, (3) the defendant was legally at fault in making the statement, and (4) the plaintiff thereby suffered harm.

Solomon Found. v. Christian Fin. Res., Inc., 1:22-CV-00993-JRR, 2023 WL 3058321, at *3 (D. Md. Apr. 24, 2023).

As defamation is an intentional tort, it is not surprising alleged defamatory statements must be pled with specificity. “To satisfy federal pleading standards, a plaintiff must specifically allege each defamatory statement.” *Doe v. Salisbury Univ.,* 123 F.Supp.3d 748, 758 (D. Md. 2015). A “plaintiff may not baldly allege a broad course of conduct over a lengthy period of time and late sue on any act that occurred during that time period.” *English Boiler & Tube, Inc. v. W.C. Rouse & Son, Inc.,* 172 F.3d 862, 1999 WL 89125, at *3 (4th Cir. 1999) (unpublished table decision).

> [A plaintiff] need not plead detailed allegations as to each one of the who, what, where, and when, in order to state a claim. But, they must provide more than vague and hazy allegations as to at least some of these questions. Their failure to do so renders [the] pleading deficient.

State Farm Mut. Auto. Ins. Co. v. Slade Healthcare, Inc., 381 F. Supp. 3d 536, 568 (D. Md. 2019); *see also Baron Fin. Corp.*, 471 F.Supp.2d at 542 (D. Md. 2006) (dismissing defamation claim when plaintiff alleged only defendant told “persons associated” with sales organizations the defendant and his co-defendant “were taking legal action” against the plaintiff, “seeking substantial money damages”).

Here, as demonstrated *infra*., Count III fails to identify one State Farm employee who allegedly uttered a misrepresentation, when these misrepresentations occurred, how they were communicated, or where they were communicated. This omission alone is fatal to Plaintiff’s defamation claim. *See Slade Healthcare, Inc*., 381 F. Supp. 3d at 568 (D. Md. 2019).

1. Count III Must Be Dismissed As To Allegedly Defamatory Statements Contained In Paragraph 51 As They Are Untethered To Any Specific Customer or Potential Customer.

Paragraph 51 of the Complaint alleges State Farm made the following allegedly "disparaging statements:"

- Plaintiff charges out-of-pocket costs;
- Plaintiff's repair plan would not be in line with State Farm's;
- Plaintiff "may charge more than what State Farm has determined is reasonable and necessary to repair the vehicle."
- Plaintiff may charge "[r]epair charges for unnecessary operations and/or unreasonable pricing relative to the damage to your vehicle because of this loss";
- Plaintiff may charge "[p]otential handling fees that are not reasonable to complete the estimate on your vehicle damage on your behalf"; and
- Plaintiff may charge "[s]upplements where State Farm is unable to review damages or inspect the vehicle before the supplemental repairs began."

Compl. ¶ 51.

However, these alleged statements are completely untethered to any of Plaintiff's customers or alleged customers. As a result, even if the statements were otherwise defamatory, and State Farm denies they are, they cannot form the basis of a defamation claim because the causation "link" is missing. There is no allegation any specific customer or potential customer failed to do business with Plaintiff because of these alleged statements. Thus, Plaintiff could not have suffered damage; one of the elements of a claim for defamation. These alleged defamatory statements do not provide any supporting evidence of a defamation claim as they are completely untethered to the remaining allegations of the Complaint. *Solomon Found. v. Christian Fin. Res., Inc.*, 1:22-CV-00993-JRR, 2023 WL 3058321, at *3 (D. Md. Apr. 24, 2023).

Moreover, these statements are pled with impermissible generality because the Complaint fails to identify the maker(s) of each statement, the specific content of each statement, the date of publication of each statement, the manner of publication of each statement (e.g. e-mail,

telephone call, or otherwise), and/or the recipients of each statement. This Circuit has repeatedly acknowledged "[a] plaintiff may not baldly allege a broad course of conduct over a lengthy period of time and later sue on any act that occurred during that time period." *English Boiler*, 172 F.3d 862; *see also Slade Healthcare, Inc.*, 381 F. Supp. 3d at 568 (D. Md. 2019) ("Although defendants claim that State Farm has made this defamatory statement, they fail to allege even one specific instance of State Farm actually making the statement," thus the court held the pleading failed to allege enough facts to establish a plausible claim of defamation).

Thus, the Complaint must be dismissed as to any alleged statement untethered to any identified customer or potential customer.

2. The Complaint Fails To Alleged Actionable Defamatory Statements With Respect To The Eight Individuals Identified in Paragraph 50 of The Complaint.

Count III should be dismissed with respect to the seven/eight individuals identified in paragraphs 16 (a) – (g) and 50 (a) – (h) of Count III because, as demonstrated below, no actionable defamatory statement was allegedly made to any of them.[3] State Farm addresses these individuals in the order presented in paragraphs 16 and 50:

a. Sanbria: The Complaint alleges a telephone call between Sanbria and Plaintiff, the substance of which is not alleged. The Complaint alleges Sanbria "became concerned" about having to pay out-of-pocket expenses based upon unspecified "intentional misrepresentations by State Farm." There is no allegation of what was said by any State Farm employee, when it was said, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement. Moreover, even if Sanbria was told he might have to pay out of pocket costs, such a statement could not be defamatory because Sanbria may well have been obligated to pay out of pocket costs if Plaintiff charged for services other than those for which State Farm was obligated to pay under its insurance policy with Sanbria.

[3] Paragraph 16 identifies 7 of the 8 individuals identified in paragraph 50. As paragraph 16 is incorporated into Count III, State Farm refers to its allegations for the sake of completeness.

b. Gohlke: The Complaint alleges communication between Gohlke and Plaintiff. The only reference to State Farm was State Farm's estimate was allegedly low and Gohlike's wife was concerned whether State Farm would pay for repairs. There is no allegation of any statement by any State Farm employee, what the State Farm employee allegedly said, when it was said, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement. Moreover, the Complaint fails to allege any causation or damages because it fails to allege Gohlke failed to do business with Plaintiff.

c. Chawla: The Complaint alleges communication between Chawla and Plaintiff. The only reference to State Farm is the assertion State Farm told Chawla she might have to pay unspecified out of pocket costs. There is no allegation of precisely what was said by any State Farm employee, when it was said, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement. Moreover, even if Chawla was told she might have to pay out of pocket costs, such a statement could not be defamatory because Chawla may well have been obligated to pay out of pocket costs if Plaintiff charged for services other than those for which State Farm was obligated to pay under its insurance policy with Chawla. Finally, the Complaint fails to allege any causation or damages because it fails to allege Chawla failed to do business with Plaintiff.

d. Irizarry: The Complaint alleges communication between Irizarry and Plaintiff. The Complaint contains references to several items including Irizarry's possible payment of out of pocket costs of which Irizarry was allegedly "advised" or "informed" of by State Farm. However, there is no allegation of precisely what was said by any State Farm employee, when it was said, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement. Moreover, even if Irizarry was told he might have to pay out of pocket costs, such a statement could not be defamatory because Irizarry may well have been obligated to pay out of pocket costs if Plaintiff charged for services other than those for which State Farm was obligated to pay under its insurance policy with Irizarry. Moreover, the Complaint fails to allege any causation or damages because it fails to allege Irizarry failed to do business with Plaintiff.

e. Dochter: The Complaint alleges communication between Dochter and Plaintiff. The only reference to State Farm is the assertion Dochter spoke with State Farm and Docthter told Plaintiff "my insurance will not allow me to use your shop" and using Plaintiff would require a longer approval process. The Complaint contains no allegation of precisely what was said by any State Farm employee, when it was said, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement.

f. Mosher: The Complaint alleges communication between Mosher and Plaintiff. The only reference to State Farm is Mosher allegedly cancelled her appointment

with Plaintiff "due to issues with State Farm." The Complaint contains no allegation of any statement by State Farm, when it was said, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement. The Complaint fails to allege any causation or damages because, while it alleges Mosher "cancelled her appointment," it fails to affirmatively allege she failed to do business with Plaintiff.

g. Karaus: The Complaint alleges communication between Karaus and Plaintiff in which Karaus allegedly advised Plaintiff of a telephone call between "State Farm" and Karaus in which Karaus was allegedly told State Farm might not cover all repairs costs because Plaintiff was not in State Farm's "network" and asking Plaintiff to "talk to State Farm and then tell me about any charges that won't be covered before you do any work?" The Complaint fails to allege when Karaus communicated with State Farm, the manner in which the statement was communicated or the identity of the State Farm employee allegedly making the statement. Moreover, even if Karaus was told he might have to pay out of pocket costs, such a statement could not be defamatory because Karaus may well have been obligated to pay out of pocket costs if Plaintiff charged for services other than those for which State Farm was obligated to pay under its insurance policy with Karaus. Likewise, the Complaint fails to allege any causation or damages because it fails to allege Karaus failed to do business with Plaintiff.

h. Safaipour: The Complaint alleges communication between Safaipour and Plaintiff. The Complaint does not contain any allegations about the contents of Plaintiff's communications with Safaipour or of any communication between Safaipour and State Farm. Moreover, the Complaint fails to allege any causation or damages because it fails to allege Safaipour failed to do business with Plaintiff.

3. Count III Also Fails To Adequately Allege State Farm Was At Fault For The Allegedly Defamatory Statement.

To satisfy the third element of a claim for defamation, under Maryland law, plaintiff must show the defendant was legally at fault in making the defamatory statement. *Solomon Found. v. Christian Fin. Res., Inc.*, 1:22-CV-00993-JRR, 2023 WL 3058321, at *3 (D. Md. Apr. 24, 2023). This "fault" element may be based on either negligence or actual malice.[4] *Samuels v. Tschechtelin*, 135 Md. App. 483, 544, 763 A.2d 209 (2000) (citing *New York Times Co. v.*

[4] Malice is defined as "conduct by the defendant characterized by evil motive, intent to injure, ill will or fraud." *Alexander & Alexander Inc.*, 336 Md. At 652, 650 A.2d at 269 (1994).

Sullivan, 376 U.S. 254, 279–80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *Batson,* 325 Md. at 728, 602 A.2d 1191; *Jacron Sales Co. v. Sindorf,* 276 Md. 580, 594–97, 350 A.2d 688 (1976)).

In an attempt to meet this element of its claim, the Complaint merely alleges: (1) "State Farm was legally at fault in making these statements." (Compl. ¶ 55) and (2) "State Farm made these statements negligently or with actual malice to injure Total Recon's business, knowing they were false." (Compl. ¶ 56). These allegations fail. The Complaint contains no facts demonstrating State Farm's acts rise to the level of negligence or malice.

"[A] wholly conclusory statement of claim [will no longer] survive a motion to dismiss simply because [its] pleadings left open that possibility that [it] might later establish some set of [undisclosed] facts to support recovery." *Twombly*, 550 U.S at 561-62 (internal quotations omitted). "[T]he court 'need not accept the [plaintiff's] legal conclusions drawn from the facts.'" *Philips v. Pitt County Mem'l Hosp.,* 572 F.3d 176, 180 (4th Cir. 2009) (alteration in original). A pleading offering "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S., at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id*., at 557.

Thus, Count III should be dismissed on this ground as well.

4. Count III Fails To Adequately Allege Damages.

As with the other Counts, it only remains to be said that, having failed to establish the other required elements of this claim, Plaintiff fails to establish damages in Count III. Yet, of course, damages are an element of a claim for defamation. *Solomon Found. v. Christian Fin. Res., Inc.*, 1:22-CV-00993-JRR, 2023 WL 3058321, at *3 (D. Md. Apr. 24, 2023). Under Maryland law, a defamation plaintiff that alleges that a defendant acted with actual malice is entitled to a presumption of harm. *Henderson v. Claire's Stores, Inc.*, 607 F. Supp. 2d 725, 732 (D. Md. 2009).

On the other hand, a plaintiff that fails to allege actual malice must show actual damages in order to be entitled to recover. *Id.*; *see also Ziemkiewicz v. R+L Carriers, Inc.*, 996 F. Supp. 2d 378, 382 (D. Md. 2014)).

As demonstrated above, the Complaint fails to contain sufficient factual allegations to support a claim State Farm acted with actual malice in making the alleged defamatory statements. As such, Plaintiff is not entitled to a presumption of harm and must show that it incurred actual harm by Defendant's allegedly defamatory conduct. However, Plaintiff fails to provide factual allegations to support its alleged damages. The Complaint contains only vague conclusory claims that Plaintiff was harmed by the alleged defamatory statements (Compl. ¶¶ 41 and 57), and such conclusory allegations are not to be accorded any weight in light of the fact Plaintiff has failed to state a claim for defamation as demonstrated above. *Twombly*, 550 U.S., at 555.

E. PLAINTIFF'S REQUESTS FOR PUNITIVE DAMAGES SHOULD BE STRICKEN.

Fed. R. Civ. P. 12(f) provides "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Plaintiff seeks punitive damages in each of its Counts. Those requests should be stricken because Plaintiff fails to "allege, in detail, facts that, if proven true, would support the conclusion that the act complained of was done with actual malice." *Hill v. Brush Engineered Materials, Inc.*, 383 F. Supp. 2d 814, 825 (D. Md. 2005) (*quoting Scott v. Jenkins*, 345 Md. 21, 690 A.2d 1000, 1008 (1977)). Importantly, mere allegations that a defendant acted knowingly without specific factual allegation to support that charge are insufficient as a matter of law to state a claim for punitive damages. *Id.* (stating that pleadings containing general allegations of malice and knowledge do

not satisfy the requirement of "a high degree of specificity from a plaintiff seeking punitive damages").

1. Applicable Legal Standards.

For punitive damages to be recoverable under wrongful interference with contractual relations (Count I) or business relationships (Count II), the alleged wrongful interference must be accompanied by "actual malice" which is defined as "conduct by the defendant characterized by evil motive, intent to injure, ill will or fraud." *Alexander & Alexander Inc.,* 336 Md. at 652, 650 A.2d at 269 (1994); *Schaefer v. Miller*, 322 Md. 297, 317, 587 A.2d 491, 501 (1991) (concurring opinion); *Rite Aid Corp. v. Lake Shore Inv.*, 298 Md. 611, 626–627, 471 A.2d 735, 742–743 (1984); *Damazo v. Wahby*, 259 Md. 627, 638, 270 A.2d 814, 819 (1970); *Knickerbocker Co. v. Gardiner Co*., 107 Md. 556, 569–570, 69 A. 405, 410 (1908). Moreover, bare allegations of ill will or intent are insufficient as a matter of law to state a claim a defendant acted maliciously. *Mayfield v. NASCAR*, 674 F.3d 369, 378 (4th Cir. 2012) (allegations the defendant made statements it knew were false was the "kind of conclusory allegation – a mere recitation of the legal standard - . . . that *Twombly* and *Iqbal* rejected.")

For punitive damages to be recoverable for a defamation claim, plaintiff must establish the defendant acted with "constitutional malice." *Yerkie v. Post-Newsweek Stations, Michigan, Inc*., 470 F. Supp. 91, 93 (D. Md. 1979) (quoting *The New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)). "Constitutional malice" is defined as "knowledge of falsity or reckless disregard for the truth." *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 349, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). The constitutional malice standard has been adopted by Maryland. *Batson v. Shiflett*, 325 Md. 684, 728, 602 A.2d 1191, 1213 (1992).

2. The Complaint Fails To Contain Allegations Sufficient To Meet Applicable Legal Standards.

As demonstrated above, none of the Complaint's Counts state claims upon which relief may be granted. Thus, Plaintiff's claims for punitive damages should also be dismissed. It is axiomatic there can be no recovery of punitive damages if no tort was committed. *Alexander & Alexander*, 336 Md. at 650.

Even if Counts I – III otherwise state claims upon which relief may be granted, the Complaint fails to set forth specific allegations State Farm acted maliciously or with ill intent. Plaintiff's Complaint contains merely bare allegations State Farm's conduct was malicious, which is insufficient as a matter of law to state a claim upon which relief can be granted and to overcome a Motion to Dismiss. See *Hill*, 383 F. Supp. 2d at 825. Finally, Plaintiff's claims for damages are impermissibly speculative, which fail to support a claim for punitive damages. *Twombly,* 550 U.S., at 555.

IV. CONCLUSION

Based upon the foregoing, State Farm requests the Court dismiss Plaintiff's Complaint with prejudice, award State Farm its costs and grant State Farm such other and further relief the Court deems proper.

Respectfully submitted on September 27, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September 2023, I served a true and accurate copy of the foregoing on all counsel of record via the Court's CM/ECF system.

/s/ Daniel C. Johnson
Daniel C. Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TOTAL RECON AUTO CENTER, LLC)
)
Plaintiff,)
)
VS.)
) Case No. 8:23-CV-02495-PJM
STATE FARM INSURANCE,)
)
Defendant.)
)
)
)
)

ORDER

UPON CONSIDERATION of Defendant State Farm's Motion to Dismiss, and any Opposition thereto, it is this ____ day of ______________, 2023, by the U.S. District Court for the District of Maryland, hereby:

ORDERED, that Defendant's Motion to Dismiss shall be, and the same hereby is, **GRANTED**, and it is further,

ORDERED, that Plaintiff's Complaint is dismissed with prejudice.

____
JUDGE PETER J. MESSITTE
U.S. District Court for the District of Maryland

Copies to all parties.