

Melvin O. Lamb, III drove the Tahoe into their father's vehicle, and their father died because of the injuries from the crash. Compl. ¶¶ 3, 30-32. Plaintiffs allege Robert Workman is the Personal Representative of the Workman Estate and that he, in his individual capacity, along with Kelly Tick and Matthew Workman (collectively referred to as the "Individual Plaintiffs") are heirs of the Workman Estate. Compl. ¶¶ 20-22.

Plaintiffs are not insureds of State Farm, but Plaintiffs allege Melvin O. Lamb, Jr. and Melvin O. Lamb III were State Farm's insureds under an automobile liability insurance policy covering the Tahoe (the "Policy"). Compl. ¶¶ 33-35. Plaintiffs allege the Policy was not subject to an excluded driver endorsement at the time of the Accident and State Farm initially represented to them, through a "Confirmation of Coverage," the Policy covering the Tahoe on the date of the Accident was "policy number 632318940A". Compl. ¶¶ 5-6, 34-35.

Plaintiffs allege State Farm created a new declarations page for the Policy a month after the accident (the "New Declarations Page") to exclude coverage and avoid payment for claims arising from the Accident. Compl. ¶¶ 7, 40-42, 50. The New Declarations Page identified the Policy's number as 632 3189-B07-40B and stated it "[r]eplaced policy number 632189-40A," the Policy number provided to them in the earlier "Confirmation of Coverage." Compl. ¶¶ 5-6, 51-52. Plaintiffs also allege the New Declarations Page materially misrepresented Melvin O. Lamb, III was an excluded driver and referenced an excluded driver endorsement, Form 6023DC, that was not approved by the South Carolina Department of Insurance and was not previously referenced on the Policy's prior declarations pages (the "Unapproved Form"). Compl. ¶¶ 51, 58-60. According to Plaintiffs, State Farm wanted them to rely upon the New Declarations Page as being true when it was not and State Farm knew Plaintiffs would use it to make decisions about what coverage may be available via "their own automobile insurance policies" and decisions about litigation. Compl. ¶¶ 44, 46-48, 96-97, 99. Plaintiffs allege State Farm then created a certified copy of the Policy using the New Declarations Page, with the certification falsely stating the Policy,

including the New Declarations Page, was a true and accurate record of the terms and conditions of the Policy in effect at the time of the Accident (“Certified Policy”). Compl. ¶¶ 54-56.

State Farm provided the New Declarations Page and Certified Policy to Defendant Gallivan, White & Boyd, P.A. (“GWB”), its counsel, to use in litigation. Compl. ¶ 64. The New Declarations Page and the Unapproved Form were attached to a lawsuit State Farm, through its counsel GWB, filed on August 16, 2021 to deny coverage for claims arising from the Accident (the “Underlying Suit”). Compl. ¶¶ 12, 77.

Plaintiffs allege State Farm falsely stated in the Underlying Suit’s Complaint it had no duty to defend or indemnify Melvin O. Lamb, Jr. or Melvin O. Lamb, III based on the excluded driver endorsement. ¶¶ 75-76. According to Plaintiffs, “State Farm wanted a determination by a court that [it] had no duty to indemnify, defend or pay for damages that occurred because of the collision... to try to make the Plaintiffs and others abandon claims made for coverage available under the actual State Farm policy, to improperly deny coverage, and to avoid paying legitimate claims.” Compl. ¶¶ 63, 72; see also, Compl. ¶ 73. In addition to filing the New Declarations Page as an attachment to its Complaint in the Underlying Suit and making false allegations in the Complaint, Plaintiffs allege Defendants “provided” the Certified Policy in the Underlying Suit’s “discovery process.” Compl. ¶ 13.

State Farm’s Underlying Suit was filed against the Estate of James K. Workman (“Workman Estate”), Melvin O. Lamb, III, Melvin O. Lamb Jr., and others who had personal injury or property damage liability claims arising from the Accident. Compl. ¶ 74. The Individual Plaintiffs were not parties to the Underlying Suit and there are no allegations the Individual Plaintiffs had personal injury or property damage liability claims arising from the Accident *See* Compl. ¶ 74; *see also*, Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*,

C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.).¹ Plaintiffs nonetheless allege they “obtained counsel to defend them” in the Underlying Suit “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 101. Plaintiffs further allege they “obtained counsel to address issues, including those related to their own automobile policies,” “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 102.

According to Plaintiffs, they filed a motion in the Underlying Suit when they discovered the Policy documents filed with State Farm’s Complaint were “fraudulent and created after the [Accident]”. Compl. ¶ 103. Plaintiffs allege State Farm then immediately sought dismissal of the Underlying Suit, “[a]dmitted coverage,” and “[r]emoved all limits on coverage.” Compl. ¶¶ 103-104. The Underlying Suit was eventually dismissed with prejudice. Compl. ¶ 107.

Plaintiffs thereafter filed this action against State Farm and GWB. Plaintiffs allege State Farm’s filing of the Underlying Suit was an abuse of process and that the New Declarations Page filed with the Underlying Suit constitutes actionable fraud. Compl. ¶¶ 110-112, 121-124. With respect to fraud, Plaintiffs further allege State Farm had a duty to disclose to them there was a declarations page to the Policy existing at the time of the Accident which did not show that Melvin O. Lamb, III was an excluded driver and that the excluded driver endorsement it sought to enforce through the Underlying Suit was not approved by the SCDOT. Compl. ¶¶ 93, 118. Plaintiffs allege State Farm negligently misrepresented that the New Declarations Page was “real” and that the excluded driver endorsement State Farm sought to enforce through the Underlying Suit complied with South Carolina law. Compl. ¶ 133. Plaintiffs also assert a claim for civil conspiracy, alleging State Farm “acted together in combination or by agreement” with GWB, its counsel, and that State Farm and GWB “acted together and committed one or more overt acts in furtherance of that

¹ At the July 10, 2024 hearing on this Motion, State Farm requested the Court take judicial notice of its Complaint, the Workman Estate’s Answer, and the Workman Estate’s Rule 26.03 Responses filed in the Underlying Suit, Civil Action No. 2:21-cv-2623-MBS in the United States District Court for the District of South Carolina and provided the Court with file-stamped copies of the same. The court must take judicial notice “if requested by a party and supplied with the necessary information.” S.C. R. Evid. 201(d).

agreement.” Compl. ¶¶ 149, 151. Finally, the Individual Plaintiffs assert State Farm engaged in conduct actionable under SCUTPA. Compl. ¶¶ 153-161. Plaintiffs allege “Defendants’ wrongful conduct” caused Plaintiffs to suffer losses, “including attorney’s fees, costs, and expenses including to defend the [Underlying Suit],” and resulted in them being damaged in “various ways.” Compl. ¶ 105, 108, 113, 131.

Standard of Law

The Court must regard all properly pleaded factual allegations as true and admitted when reviewing a Rule 12(c) motion for judgment on the pleadings. *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). Absent particularized facts in support, conclusory allegations and bald assertions are not properly pleaded and need not be accepted as true. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018) (“[T]he circuit court did not err in dismissing [plaintiff]’s SCUTPA claim because [plaintiff] merely stated [the defendants]’ conduct satisfied the public interest requirement of SCUTPA without alleging any particularized facts.”) (citing *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (holding conclusory allegations are demurrable)).

While the Court may, under Rule 201,² take judicial notice of facts the accuracy of which are “capable of verification by reference to readily available sources of indisputable reliability,” *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984), the Court may not otherwise consider matters outside the pleadings when considering judgment on the pleadings, *Falk*, 341 S.C. at 286, 533 S.E.2d at 353. *See also, Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497, n.2 (2014) (noting that reliance on the existence and contents of court filings does not convert a motion for judgment on the pleadings to one for summary judgment).

² “A judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” S.C. R. Evid. 201(b). Judicial notice may be taken at any stage of the proceeding. S.C. R. Evid. 201 (f).

Analysis and Holdings

Considering the properly pleaded factual allegations in the Plaintiffs' Complaint—which are deemed admitted and true for purposes of ruling on the Motion—together with judicially noticeable facts, the Court grants State Farm's Motion (1) without prejudice as to Plaintiffs' claims of abuse of process, fraud, and negligent misrepresentation; (2) with prejudice as to Plaintiffs' claims of civil conspiracy and violation of the SCUPTA; and (3) as to the individual Plaintiffs for lack of standing and failure to state viable claims.

1. Abuse of Process

In South Carolina, there are two “essential elements of an abuse of process claim,” the first being “an ulterior purpose” for the process, the second being “a willful act in the use of process not proper in the regular conduct of the proceeding.” *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 914 (Ct. App. 1994). State Farm moves for judgment because there are no well pleaded factual allegations in the Complaint as to the first, ulterior purpose element. Mot. ¶ 1. State Farm also contends the Individual Plaintiffs lack standing to assert an abuse of process claim. Mot. ¶ 6. The Court agrees.

A. No Primary, Ulterior Purpose Outside the Litigation

In terms of the “ulterior purpose” element, a claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, but to “primarily” accomplish some other purpose for which the process was not designed. *Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct. App. 2002); *see also Pallaes v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133-34 (2014). Liability for abuse of process “exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its sole or paramount reason for acting.” *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 256. Thus, there is no abuse of process if the party has an “incidental or

concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133.

In their Complaint, Plaintiffs only allege “State Farm had an ulterior purpose in filing the lawsuit.” Compl. ¶ 110. Accordingly, the “process” at issue was the filing of the Underlying Suit and, to be entitled to any relief for abuse of process, Plaintiffs “must allege facts sufficient to show” the Underlying Suit was brought *primarily* for an ulterior purpose—that is, collateral reasons. *Food Lion*, 351 S.C. at 74, 567 S.E.2d at 255. Plaintiffs have not alleged such facts. Instead, Plaintiffs allege State Farm “filed the Underlying Suit using the bogus documents seeking a Declaratory Judgment that [the Policy] did not provide coverage, including a duty to defend or indemnify Melvin O. Lamb, III or Melvin O. Lamb, Jr. for the personal injury or property damages arising from the collision.” Compl. ¶ 73. The cause of action brought by State Farm in the Underlying Suit was for a declaratory judgment that there was no coverage under the Policy for the liability claims arising out of the Accident. Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.) (“State Farm seeks a declaratory judgment that it has no obligation or duty to defend or indemnify [Melvin O. Lamb, III] or [Melvin O. Lamb, Jr.] for any claims arising out of the [Accident].”). Thus, there are no allegations of a primary, ulterior purpose of the Underlying Suit. In fact, Plaintiffs’ Complaint acknowledges the Underlying Suit was brought to obtain a declaration that State Farm owed no coverage, which is precisely the relief sought in the Underlying Suit.

Plaintiffs argued the Underlying Suit was also brought for the ulterior purpose of getting the Plaintiffs to use their own automobile insurance policies for coverage. There are no such allegations in the Complaint, nor have Plaintiffs alleged they had any vehicles involved in the Accident for which they could seek coverage under their own insurance policies. In any event, such allegation, if made, would not save Plaintiffs’ abuse of process claim because the Underlying Suit was brought to obtain a declaratory judgment that there was no coverage—that is, it was

brought to recover on the cause of action stated therein. A claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, and there is no abuse of process if the party has an “incidental or concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation by bringing such action. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133; *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 255-56.

For the above reasons, Plaintiffs’ properly pleaded allegations of fact do not sufficiently plead a cause of action for abuse of process as required by Rule 12(c). While such a claim may or may not ultimately be remedied by amending the complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead an abuse of process cause of action.

B. No Standing as to Individual Plaintiffs

As to the standing of the Individual Plaintiffs, the abuse of process claim additionally fails because they were not parties to the Underlying Suit. In this regard, “[t]he tort of abuse of process is intended to compensate *a party* for harm resulting from *another party’s* misuse of the legal system.” *Pallares*, 407 S.C. at 370, 756 S.E.2d at 133 (emphasis added); *see also, e.g., Swanson v. Bixler*, 750 F.2d 810, 814 (10th Cir. 1984) (dismissing abuse of process claims of stepson arising from conservatorship proceedings against stepfather because he had “no standing to complain about the institution of these processes”); *Gurman v. Metro Hous. & Redevelopment Auth.*, 884 F. Supp. 2d 895, 901-02 (D. Minn. 2012) (finding the position that plaintiffs could sue for abuse of process when they were not part of underlying litigation unreasonable); *Martel v. City of Newton, Kan.*, 6 F. Supp. 2d 1243, 1247 (D. Kan. 1998) (“The tort of abuse of process does not provide or implicate an indiscriminate right of third persons, indirectly affected by a prosecution, to separately advance an abuse of process claim.”).

2. Fraud and Negligent Misrepresentation

As to Plaintiffs' fraud and negligent misrepresentation claims, State Farm argues it is entitled to judgment because there are no well-pleaded factual allegations regarding reliance on the truth of the alleged fraudulent and negligent misrepresentations and injury caused by such reliance and, as a judicially noticeable fact, the Workman Estate, which was a party to the Underlying Suit, did not rely on the alleged misrepresentations. Mot. ¶ 2. State Farm also argues the Individual Plaintiffs, to whom the alleged misrepresentations were not made, lack standing. Mot. ¶ 6. The Court agrees.

A. No Detrimental Reliance

Reliance on the truth of a false representation and pecuniary loss proximately caused by such reliance are two essential elements of Plaintiffs' fraud and negligent misrepresentation causes of action. *Carter v. Boyd Const. Co.*, 255 S.C. 274, 280–81, 178 S.E.2d 536, 539 (1971) (holding reliance on the truth of the false representation and consequent and proximate injury are essential elements to fraud); *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) (holding plaintiff must allege justifiable reliance on the alleged negligent misrepresentation as well as pecuniary loss he suffered as a proximate result of his reliance). With respect to their fraud cause of action, pursuant to Rule 9, Plaintiffs must allege with specificity their detrimental reliance on false representations.

Plaintiffs cite the following paragraphs of their Complaint as sufficiently alleging reliance:

- ¶ 15 – “After Plaintiffs expended effort, time and expense in defending the lawsuit, including taking the deposition of a State Farm corporate representative, Defendants’ scheme was exposed.”
- ¶ 44 – “State Farm created that declarations page because it wanted Plaintiffs, the Court, and others to rely upon it as being true when it was not.”
- ¶ 46 – “State Farm knew or should have known that Plaintiffs, others harmed by the collision and their automobile insurance carriers would use the false documents to make decisions about available automobile coverage.”

- ¶ 47 – “State Farm knew or should have known Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on State Farm’s false declarations page in making decisions and determinations about what coverage may be available via their own automobile insurance policies.”
- ¶ 48 – “State Farm knew or should have known that Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on the State Farm’s false declarations page in making decisions and determinations about litigation.”
- ¶ 101 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.”
- ¶ 102 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.”
- ¶ 105 – “As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants...”
- ¶ 130 – “Plaintiffs and others had a right to rely on documents State Farm represented as being true.”

Neither the above nor any other allegations in Plaintiffs’ Complaint allege with specificity that Plaintiffs in fact relied on any false representation made to them by State Farm as being true, or that they suffered pecuniary loss as a result of such reliance. The absence of these allegations is fatal to Plaintiffs’ fraud and negligent misrepresentation claims.

In addition, the Court can take judicial notice of the Workman Estate’s Answer to State Farm’s Complaint for Declaratory Judgment Action (the “Answer”) as well as its Local Rule 26.03 Responses, both publicly filed court documents in the Underlying Suit. *See Sun v. Matyushevsky*, No. 2015–UP–146, 2015 WL 1249074, at *1 (S.C. Court App. March 18, 2015); *see also Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014) (recognizing a circuit court may take judicial notice of previously entered, related court orders and consider them when ruling on a Rule 12(b)(6), SCRC, motion to dismiss); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”).

In its Answer, the Workman Estate **denied** State Farm’s coverage position it now claims was fraudulent, and, in fact, affirmatively averred both that State Farm had previously represented there was coverage, and that the Unapproved Form was inapplicable, ineffective, and invalid. *See* Answer ¶¶ 9, 16, 17, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 35 (D.S.C., Oct. 26, 2021). Likewise, the Workman Estate’s Local Rule 26.03 Responses stated a State Farm representative would “testify that coverage applies or at least that State Farm cannot show the exclusion applies based on the allegations of the Complaint and documents it has produced.” *See* Rule 26.01 Responses ¶ 2, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 39 (D.S.C., Oct. 26, 2021) (emphasis added). If the alleged misrepresentations were relied upon as true, the Workman Estate would have admitted instead of denied State Farm’s coverage position, and it would not have challenged the position through its averments. Consequently, Plaintiffs cannot establish the necessary allegations to support their fraud and negligent misrepresentation claims, and State Farm’s Motion must be granted. *See Ivy v. Travelers Ins. Co.*, No. 1:22-cv-01228-TWP-MG, 2023 WL 3225690, at *1 (S.D. Ind. 2023) (granting motion for judgment on the pleadings where lawsuit alleged abuse of process and fraud based on the defendant’s filing, in another lawsuit, false affidavits with a response in opposition to a motion for summary judgment based on lack of reliance because the plaintiff opposed the affidavits and raised their falsity to the court in the underlying action); *Alvarado v. Rainbow Inn, Inc.*, 312 F.R.D. 23, 31 (D.D.C. 2015) (noting a party asserting fraud must allege reliance and finding defendant’s counterclaim, which asserted plaintiff’s complaint constituted actionable fraud, failed because defendant did not allege reliance and its answer “reveal[ed] ... it at no time believed the representations plaintiff made”).

The Court has also considered Plaintiffs’ arguments made under Rule 9(b), S.C. R. Civ. P., *Bailey v. Glover*, 88 U.S. 342, 349 (1874), *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636, 641 (2005), and the Omnibus Insurance Fraud and Reporting Immunity Act and finds them

unpersuasive. First, Plaintiffs argue reliance is a condition of mind that need not be stated with particularity under Rule 9(b). This position is without legal support. *Cf. Truauto MC, LLC v. Textron Specialized Vehicles, Inc.*, No. 2:19-CV-1381-RMG, 2020 WL 438310, at *4 (D.S.C. Jan. 28, 2020) (applying South Carolina law and stating, under analogous Rule 9, FRCP, reliance must be pleaded with particularity and finding plaintiffs' fraud-based claims subject to dismissal because they did not allege reliance with particularity), *appeal dismissed and remanded*, No. 20-1341, 2020 WL 5642025 (4th Cir. Sept. 18, 2020).

Second, Plaintiffs argue, under *Bailey*, State Farm may not claim lack of reliance as a bar to their claims. *Bailey* concerned the two-year statute of limitations in the Bankruptcy Act of 1867 and whether it could protect "persons fraudulently obtaining property from the bankrupt party, in the enjoyment of the fruits of their fraud, if they are able to conceal from the assignee the knowledge of their fraud for two years." 88 U.S. at 345. The Supreme Court answered that question in the negative, noting the statute of limitations should not begin to accrue on a fraud claim until the fraud is or should have been discovered, and "[t]o hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." 88 U.S. at 349. *Bailey* has no application to the Court's ruling as no statute of limitations defense has been asserted by State Farm, and *Bailey* in no way dispenses of the requirement of detrimental reliance in claims of fraud and negligent misrepresentation.

Third, Plaintiffs argue, under *Slack*, their claims cannot be dismissed for lack of reliance. Reliance, however, is an essential element of every negligent misrepresentation and fraud cause of action which must be sufficiently alleged in the plaintiff's pleading, and *Slack* states nothing to the contrary. *Slack* held that general non-reliance clause in a contract did not prevent parties to the contract from suing for pre-contract negligent misrepresentation and fraud. 364 S.C. at 618, 614

S.E.2d at 641. There are no allegations of a contract between State Farm and any of the Plaintiffs and there is no non-reliance clause at issue in the allegations or the affirmative defenses. In short, *Slack* has no bearing on whether Plaintiffs have stated an actionable claim for fraud or negligent misrepresentation.

Fourth, based on the definition of “false statement or misrepresentation” in the Omnibus Insurance Fraud and Reporting Immunity Act,³ S.C. Code § 38-55-530(D), Plaintiffs argue there is no need to plead or show reliance because it is “fraud per se.” Plaintiffs cite no case law recognizing a “fraud per se” cause of action and no case law citing the Act as eliminating reliance as an element to common law fraud or negligent misrepresentation claims. Plaintiffs are not the first to assert fraud and negligent misrepresentation against an insurer in South Carolina, and there appears to be no Supreme Court, Court of Appeals, and/or District Court cases of South Carolina modifying or reducing the necessary elements of these causes of action in such suits based on the Omnibus Insurance Fraud and Reporting Immunity Act’s definition of “false statement or misrepresentation.” The Court rejects Plaintiffs’ attempt to circumvent the requirement they sufficiently allege detrimental reliance for both their fraud and negligent misrepresentation claims and finds the Act has no application to Plaintiffs’ common law claims.

For the above reasons, the Court grants State Farm’s Motion as to the fraud and negligent misrepresentation claims. While such claims may or may not ultimately be remedied by amending

³ There is no private right of action under the Act. “The purpose of [the Act] is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud; to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the Office of the Attorney General to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.” S.C. Code Ann. § 38-55-520. In addition to criminal liability, the Act provides a civil penalty that must be paid to the director of the Insurance Fraud Division, who may also be awarded attorneys’ fees and costs.

the Complaint, the Court dismisses these claims without prejudice so the remaining Plaintiff will have another opportunity to plead fraud and negligent misrepresentation causes of action.

A. No Standing as to Individual Plaintiffs

The fraud and negligent misrepresentation claims, as brought by the Individual Plaintiffs additionally and separately require dismissal based on lack of standing because the alleged fraudulent and negligent misrepresentations were made in the Underlying Suit, to which the Individual Plaintiffs were not parties. Both fraud and negligent misrepresentation require that false representation of fact be made by the defendant to the plaintiff. In the Complaint, Plaintiffs allege the false representations were contained in the New Declarations Page, which was filed as an attachment to State Farm's Complaint in the Underlying Suit. Compl. ¶¶ 12, 121, 122. The Individual Plaintiffs were not parties to the Underlying Suit and there are no allegations that New Declarations Page was given to them directly or published in any other setting. *See gen.* Compl.

3. Fraudulent Nondisclosure

In addition to fraudulent misrepresentations, Plaintiffs, under their fraud cause of action, allege State Farm had a duty but failed to disclose certain facts and information to them. Compl. ¶¶ 118-119. Nondisclosure becomes fraudulent only when a party having knowledge of the facts has a duty to disclose them to the other party, which occurs in three instances: (1) where it arises from a pre-existing definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in which the nondisclosure occurred; and (3) where the parties are involved in a contract or transaction that is itself intrinsically fiduciary in nature and necessarily calls for perfect good faith and full disclosure. *See, e.g., Jacobson v. Yaschik*, 155 S.E.2d 601, 605 (S.C. 1967). State Farm argues none of these instances is alleged in Plaintiffs' Complaint, nor are they implicated by the nature of the claims. Mot. ¶ 3.

The filing of a declaratory judgment action on coverage, an inherently adversarial litigation proceeding, is not an undertaking to speak on the issue of coverage and it does not create on the part of the insurer a duty of full disclosure owed to non-insured claimants named in and served with the action nor any other person who might come across the action. Even if the filing of a declaratory judgment action did give rise to a duty of disclosure, State Farm's filing of the Underlying Suit would not give rise to a duty of disclosure owed to the Individual Plaintiffs because they were not parties to the Underlying Suit. In sum, because there are three distinct instances where a party having knowledge of a fact may commit actionable fraud by failing to disclose that fact to another, none of those instances are alleged in or implicated by the Complaint, and separately because the Individual Plaintiffs were not parties to the Underlying Suit, the Court grants State Farm's Motion as to these Plaintiffs. While such a claim may or may not ultimately be remedied by amending the Complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead a fraudulent nondisclosure cause of action.

4. Civil Conspiracy

Plaintiffs assert a civil conspiracy existed between State Farm and GWB. To assert an actionable claim for civil conspiracy, Plaintiffs must allege "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to [them]." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

State Farm argues it is entitled to judgment because civil conspiracy between State Farm and GWB is impossible based on the allegations in Plaintiffs' Complaint and, in any event, Plaintiffs have failed to plead additional facts in furtherance of the conspiracy separate and independent from the other wrongful acts alleged in the Complaint. Mot. ¶ 4. State Farm also

argues the civil conspiracy claim must be dismissed as to the Individual Plaintiffs for lack of standing. Mot. ¶ 6. The Court agrees.

A. State Farm and GWB Acted Together in an Attorney-Client, Principal-Agent Relationship

With respect to the first element of Plaintiffs' claim, "a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886–87 (2006), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *McMillan*, "to the extent they impose or appear to impose a requirement of pleading (and proving) special damages" in a civil conspiracy claim); *see also*, 15A C.J.S. Conspiracy § 10 ("Because acts of agent are considered in law to be acts of principal, a conspiracy cannot exist between a principal and an agent. In other words, the identity between an agent and principal leads to a legal impossibility in the context of conspiracy."). Significant to this case, the attorney-client relationship is a principal-agent relationship. *State v. Goettie*, 41 S.C.L. 126, 128 (S.C. App. L. 1854) ("That the relations of attorney and client, and principal and agent, are identical...are propositions that will scarcely be questioned.").

As alleged by Plaintiffs in their Complaint, the Defendants were acting together in an attorney-client relationship. Compl. ¶¶ 8, 10, 12, 13. Citing Paragraphs 68 through 73 of their Complaint, Plaintiffs argue the Complaint alleges GWB acted in its own interests and owed separate duties and, therefore, GWB and State Farm could conspire together. Paragraphs 68 through 73 of the Complaint do not allege GWB was acting as anything other than State Farm's counsel. To the contrary, those allegations are premised on GWB acting as State Farm's counsel, as was the Plaintiff's motion for sanctions that was heard and denied in the earlier federal court action. Because a civil conspiracy cannot exist when the alleged act arises in an agent-principal relationship, a civil conspiracy between Defendants, as alleged in Plaintiffs' Complaint, cannot

exist. *See Myrtle Beach Lumber Co. v. Globe Int'l Corp.*, 315 S.E.2d 142, 143 (S.C. Ct. App. 1984) (“One of the significant features of our whole judicial system is that parties ... may be, and usually are, represented by attorneys learned in the law, and these attorneys by virtue of the very name of their office stand for and in place of their clients. An attorney is the alter ego of his client.”). For this reason, the Court grants State Farm’s Motion with respect to the civil conspiracy claim. While such a claim may or may not ultimately be remedied by amending the complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead a civil conspiracy cause of action.

B. No Separate, Overt Acts

Plaintiffs’ failure to plead separate, additional acts in furtherance of the alleged conspiracy is another basis for dismissal. With respect to the third, “overt act” element of civil conspiracy, the Supreme Court of South Carolina has recently affirmed a plaintiff’s repetition of the same acts that serve as the basis for other claims is insufficient. *See Paradis*, 433 S.C. at 573, 861 S.E.2d at 779–80 (noting prior precedent, other grounds of which were overruled by the Court, “correctly concluded the civil conspiracy claim failed as a matter of law” because “the only wrongful acts alleged were those for which damages had already been sought” and “the plaintiff’s repetition of the same acts as the prior claims was insufficient to salvage the claim”). Instead, “[i]n a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *Hackworth*, “to the extent they impose or appear to impose a requirement of pleading (and proving) special damages” in a civil conspiracy claim, while affirming pleading requirement for separate overt act in furtherance of conspiracy). Plaintiffs’ Complaint alleges no “additional acts” “separate and independent from

other wrongful acts alleged in the Complaint” and under *Hackworth* and *Paradis*, the civil conspiracy claim fails as a matter of law.

A. No Standing as to Individual Plaintiffs

Given the civil conspiracy claim merely incorporates by reference the alleged wrongful acts that serve as the bases for the other claims, the Individual Plaintiffs, through the civil conspiracy claim, seek to recover for the same acts that serve as the basis for their other claims. They face the same obstacle to standing as they do with the other claims discussed herein, and the Individual Plaintiffs’ lack of standing serves as an additional basis for dismissal of the civil conspiracy claim.

5. SCUTPA

Finally, construing the Complaint liberally, the Individual Plaintiffs’ claim under SCUTPA must be dismissed. Under SCUTPA, “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 [of SCUTPA] may bring an action individually, but not in a representative capacity, to recover actual damages.” S.C. Code Ann. § 39-5-140. However, “[n]othing in [SCUTPA] shall apply to ... unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-5[7]-320,” South Carolina’s Insurance Trade Practices Act. S.C. Code Ann. § 39-5-40(c). Thus, courts interpreting South Carolina law have consistently held “all unfair trade practices regarding the insurance business...are exempt from the coverage of SCUTPA.” *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130–31 (D.S.C. 1994); *see also, Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092, at *3 (S.C. Ct. App. June 26, 2006) (“Clearly, the legislature intended SCUTPA to exempt cases of unfair trade practices regarding the insurance business . . .”). Indeed, “by precluding unfair trade practices covered and regulated under Chapter 57,” the Insurance Trade Practices Act, Section 39-

5-40(c) “exempts from the coverage of SCUTPA *all unfair trade practices in the business of insurance.*” *Id.* This is because the Insurance Trade Practices Act governs any “unfair or deceptive act or practice in the business of insurance.” *Id.*; *see also e.g., Lewis v. Omni Indem. Co.*, 970 F. Supp. 2d 437, 451 (D.S.C. 2013).

The Individual Plaintiffs allege State Farm engaged in improper claim practices under Sections 38-59-20 and 38-77-341 of the South Carolina Code, and that such conduct is declared unlawful and recoverable under SCUTPA. Compl. ¶¶ 154-158. The Court finds no support in the law for the Individual Plaintiffs’ arguments.

Section 38-59-20 is part of the Insurance Claims Practices Act, S.C. Code Ann. §§ 38-59-10, *et seq.*, which “provides relief for a third-party victim of an improper claims practice” in the form of administrative review before the Chief Insurance Commissioner. *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001); *see also, Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 673, 541 S.E.2d 269, 272 (Ct. App. 2000) (“Section 38–59–20 declares that a third party may pursue *administrative action* before the Chief Insurance Commissioner if an insurer *inter alia* ‘[k]nowingly misrepresent[s] to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.’”), *aff’d as modified*, 354 S.C. 416, 581 S.E.2d 169 (2003). “This relief is important because South Carolina does not recognize a third party action for bad faith refusal to pay insurance benefits” and “[t]hird parties do not have a private right of action under S.C. Code Ann. § 38–59–20.” *Id.*

Based on the allegations of their Complaint, it is well settled under the law that Individual Plaintiffs are third parties with no standing to sue State Farm for bad faith and no private right of action for State Farm’s alleged violation of the Insurance Claims Practices Act. It also cannot be disputed the Individual Plaintiffs’ SCUTPA claim alleges State Farm engaged in unfair trade practices in the business of insurance, and all unfair trade practices in the business of insurance

are exempt from SCUTPA's reach. Accordingly, the Court finds no legal support for the Individual Plaintiffs' attempt to use SCUTPA as a means of pursuing these otherwise unavailable claims.

Section 38-77-341, the other statute the Individual Plaintiffs assert State Farm violated, prohibits insureds and third-parties from submitting inflated insurance claims to insurance companies and provides such conduct is unlawful under SCUTPA. *See* S.C. Code § 38-77-341(1). State Farm argues the plain language, subject matter, and preamble of Section 38-77-341 reveals the legislature did not intend to subject automobile insurers to SCUTPA, and the Court agrees.

A cardinal rule of statutory construction is that a court must ascertain and effectuate the actual intent of the legislature. *Burns v. State Farm Mut. Auto Ins. Co.*, 377 S.E. 2d 569 (S.C. 1989). The legislative intent undergirding Section 38-77-341 is demonstrated by the statute's plain language—it applies to persons *seeking* payment from insurance companies. Notably, subsection 1, upon which Plaintiffs rely, concerns “a false statement or representation of a material fact for use in an application **for payment** or for use in determining the right **to payment** under this chapter.” (emphasis added). Thus, its plain language was meant to apply to claimants seeking to be paid, not insurance companies. This is further demonstrated by the totality of the statute which is concerned entirely with reducing fraudulent or inflated claims: through submitting bills in excess of customary charges (subsection 2); through charging more for work covered by insurance (subsection 3); through bill inflation to cover deductibles (subsection 4); through excessive healthcare provider billing (subsection 5); or through exaggeration or false statements when seeking payment (subsection 1). Plaintiffs' interpretation—in which Section 38-77-341 would allow insurance companies subject to SCUTPA—is at odds with the plain language and subject matter of the statute. *See Mun. Ass'n of S.C. v. AT&T Comm. of S. States, Inc.*, 606 S.E.2d 468, 471 (S.C. 2004) (noting a court should affect legislative intent through “giving the words [of the statute] their ordinary meaning and harmonizing the language with [the statute's] subject matter”).

Any doubt concerning the legislature’s intent is resolved through the statute’s preamble, which underscores the statute’s purpose was to reduce fraudulent or exaggerated claims. Courts often look to the preamble as an indicator of legislative intent. *S.C. Pipeline Corp. v. Lone Star Steel Co.*, 546 S.E.2d 654, 656 (S.C. 2001). The entirety of the preamble enacting Section 38-77-341 states: “Whereas, it is the purpose and intent of the General Assembly in enacting this legislation to reduce insurance losses, including those of the Reinsurance Facility, and, consequently, the cost of mandatory automobile insurance.” 1989 S.C. Acts 148, Page 440. This “purpose and intent” would be advanced by reducing inflated claims, but would not be advanced by removing the insurance industry’s exemption from SCUTPA.

Further evidencing Section 38-77-341(1) is inapplicable to insurers, Chapter 57 and Chapter 59 of the insurance code governs precisely that conduct and charges the Insurance Commissioner with regulating it. *See, e.g.*, S.C. Code § 38-57-40 (“No person may make ... [a] statement misrepresenting the terms of a policy issued...”); S.C. Code § 38-59-40 (prohibiting insurers from “Knowingly misrepresenting to insureds or third-party claimants’ pertinent facts or policy provisions relating to coverages at issue”); *see also, Masterclean, Inc.*, 556 S.E.2d at 377 (“The Insurance Trade Practices Act prohibits insurers from misrepresenting an insurance policy with the intent to settle the claim ‘on less favorable terms than those provided in and contemplated by the contract or policy.’”) (quoting S.C. Code § 38–57–70 (1989)).

In short, Section 38-77-341(1) does not govern policy representations made by insurance companies, and the portions of the insurance code that do speak to such policy representations charge the insurance commissioner with addressing that conduct and do not serve as the grounds for private rights of action. As *Masterclean Inc., Trustees of Grace*, and their progeny confirm, this regulated conduct—indeed the entire “insurance business”—is not subject to SCUTPA. Based on Plaintiffs’ allegations and the law of South Carolina, Plaintiffs have not and cannot state a claim against State Farm under SCUTPA. State Farm’s Motion is granted, and the SCUTPA claim is

dismissed with prejudice because any amendment of the Complaint would not change the well-settled law regarding the inapplicability of the SCUTPA to “the insurance business.”

Conclusion

In sum, the Court grants State Farm’s Rule 12(c) Motion for Judgment on the Pleadings: (1) without prejudice as to Plaintiffs’ claims of abuse of process, fraud, negligent misrepresentation, and civil conspiracy such that the remaining Plaintiff may file an amended pleading to address the issues discussed herein within 30 days; (2) with prejudice as to Plaintiffs’ claim of violation of the SCUTPA; and (3) as to the Individual Plaintiffs because they lack standing and have failed to assert any claims sufficient to withstand the Motion. Accordingly, the sole remaining Plaintiff in this matter is Robert C. Workman as Personal Representative of the Estate of James K. Workman.

AND IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Robert C Workman , plaintiff, et al VS State Farm Mutual
Automobile Insurance Company , defendant, et al

Case Number: 2023CP1001832

Type: Order/Amend

So Ordered

s/ Thomas W. McGee III, Judge Code 2786