UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-CV-81260-MIDDLEBROOKS

CONVERGENCE TECHNOLOGIES, INC.,

Plaintiff,

v.

BERKELY INSURANCE COMPANY,

Defendant.
_____/

ORDER ON MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendant, Berkely Insurance Company's, Motion to Dismiss, filed on November 10, 2025. (DE 12). Plaintiff filed its Response on November 24, 2025. (DE 14). On December 4, 2025, Defendant filed its Reply. (DE 21). For the reasons stated, the motion is granted and the complaint is dismissed.

I. BACKGROUND

Plaintiff is a technology company that provides administrative services and consulting in various digital and technological fields including credit card processing, financial services and the provision of internet access. (DE 1 at ¶ 7). This dispute arises out of a denial of coverage under a Commercial Crimes policy provision in Plaintiff's insurance policy with the Defendant. The policy provided up to $1,000,000 per occurrence for forgery or alteration in specific circumstances. Specifically, the policy stated:

> a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:
> (1) Made or drawn by or drawn upon you; or
> (2) Made or drawn by one acting as your agent[.]

(DE 1-2 at 19). During the pendency of the policy term, Plaintiff was the victim of a crime. (*Id.* at ¶ 11). On several occasions, a third party by the name of Michael Schumacher assumed the identity

as CEO of the Plaintiff company and executed five "Merchant Advance" agreements. (*Id.* at ¶ 12). In each instance, the contract involved an outside corporation advancing a large sum of money in exchange for repayment by Plaintiff. (*Id.* at ¶ 14). In its Complaint, Plaintiff reports the occurrences and sheds light on Schumacher's scheme. As one example, beginning in December 2023 and "continuing through January 2024, Mr. Schumacher forged the CEO's name on loan documents in order to receive an advance of funds from an entity known as Unlimited Capital LLC. During this same period, a total of approximately $1,732,727.00 which was not requested by the Plaintiff was funded into its bank accounts without its knowledge or consent. Thereafter, based upon the terms of the fraudulent and forged loan documents, Unlimited Capital LLC removed approximately $4,797,909 from the company's accounts representing a significant net loss as a result of Mr. Schumacher's forgery." (*Id.* at ¶ 12). Although it is unclear how Mr. Schumacher personally benefited from engaging in this forgery, the harm to the Plaintiff is clear. Large amounts of money would be deposited into Plaintiff's account, and thereafter, the private entities who purportedly contracted with Plaintiff's CEO began automatically withdrawing funds from Plaintiff's account. (DE 1-2 at ¶ 14). Although the Complaint does not explain the operations of the repayment, a review of the relevant agreements and Plaintiff's descriptions in briefing offer a deeper perspective. The repayment consisted of a series of payments, occurring in one of two ways: either a fixed amount per day, or some percentage of each deposit into Plaintiff's operating account (*e.g.*, some proportion of the Plaintiff's weekly operating account deposits) . These payments from the Plaintiff company would continue daily until the repayment amount was paid in full. For example, Plaintiff describes the agreement with outside lender "Top Tier Capital," in which Top Tier advanced the sum of $2,250,000.00 in exchange for repayment for $3,350,000.00 at a rate of either: (a) $84,375.00 per business day; or (b) 30% of each deposit into the business's operating account.

(DE 14 at 2). Under the terms of the Merchant Agreement, Plaintiff was required to continue making these payments until such time as the agreed repayment amount was satisfied in full. (*Id.*).

Plaintiff submitted proof of loss to Defendant, seeking coverage under the insurance policy, but was ultimately denied. (DE 1-2 at ¶ 15). As a result, Plaintiff filed suit in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida for five counts of breach of contract. (DE 1-2). Each count relates to a different third-party corporation with whom Schumacher fraudulently executed a Merchant Advance agreement. The Defendant's reason for denying coverage, and the basis of its Motion to Dismiss, is that the disputed Commercial Crimes policy provision applies only to a "limited universe of covered documents" and the mechanics of Merchant Advance agreements do not fit within the intended scope of the disputed policy language, "checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain." (DE 12 at 1).

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the allegations in a complaint. *See* Fed. R. Civ. P. 12(b)(6). In assessing legal sufficiency, the Court is bound to apply the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That is, the complaint "must … contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover v. Liggett Grp., Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (internal quotations omitted) (citing *Marshall Cty. Bd. of Educ. V. Marshall Cty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993)).

When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and assume the truth of the plaintiff's factual allegations. *See Erickson v.*

Pardus, 551 U.S. 89, 93 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). However, pleadings that "are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations," *Iqbal*, 556 U.S. at 678; *see also Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009) (stating that an unwarranted deduction of fact is not considered true for purposes of determining whether a claim is legally sufficient). "[A] formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted). "Factual allegations must be enough to raise [the plaintiff's] right to relief above the speculative level." *Id.*

Importantly, Plaintiff's Complaint does not attach the Merchant Advance agreements that are central to this case. Those agreements are instead attached as exhibits to the Defendant's Motion to Dismiss. (*See* DE 12 Exhibits 2-7). Accordingly, "when resolving a motion to dismiss… a court may properly consider a document not referred to or attached to a complaint under the incorporation-by-reference doctrine if the document is (1) central to the plaintiff's claims; and (2) undisputed, meaning that its authenticity is not challenged." *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024). Plaintiff does not contend that the Defendant's exhibits are inauthentic or irrelevant to the dispute, and upon review of the agreements, I find that both of these criteria for incorporating an extrinsic document are met here.

III. DISCUSSION

Plaintiff was indisputably the victim of a "forgery" crime. But not all forgeries giving rise to financial loss by an insured are covered by the Commercial Crimes Policy provision. Instead, the Policy language limits coverage to losses in connection with certain specific types of documents/transactions, such as those involving negotiable instruments. The issue is whether these Merchant Advance Agreements fit the definition of the types of documents that are covered.

The Parties advance arguments that would require me to make sweeping conclusions that either all promissory notes are negotiable instruments or vice versa.[1] I decline the invitation because such analysis would not actually resolve the dispute.[2] Instead, the instant dispute may be resolved by answering a narrower question: whether the terms of the Commercial Crimes policy provision are limited to negotiable instruments *only*. And if so, whether Merchant Advance agreements are negotiable under Florida law. Upon review, I find that the Policy language concerns only negotiable instruments, and the specific features of the Merchant Advance agreements render them non-negotiable. As a result, they cannot be considered covered documents under the Policy.

The Parties point to no controlling case law to govern my analysis of these issues, nor am I aware of any. Although not binding, I find the reasoning in *Vons Companies, Inc. v. Fed. Ins. Co.*, to be particularly compelling. 57 F. Supp. 2d 933, 945 (C.D. Cal. 1998), aff'd, 212 F.3d 489 (9th Cir. 2000). There, the district court noted:

> [T]he rationale behind making forgery a crime is the need of business to rely on negotiable instruments. *See also People v. Bendit,* 111 Cal. at 281, 43 P. 901 ("A very large part of the business of civilized countries is done by means of negotiable instruments.

[1] Defendant's broad argument is straightforward: the only Policy language Plaintiff could point to is "promissory notes, or similar written promises, orders or directions to pay a sum certain" but "a promissory note is an ***unconditional*** promise to pay a fixed amount of money, and as such, it is a self-authenticating negotiable instrument." (DE 12 at 4, 7) (citing *Demakis v. SunTrust Bank*, 312 So. 3d 1015, 1016 (Fla. 2nd DCA 2021) (emphasis added)). Plaintiff, on the other hand, disputes the premise of Defendant's argument and instead argues that promissory notes need not be a negotiable instrument. Instead, Plaintiff argues that all negotiable instruments are promissory notes. (DE 14 at 6).

[2] To the extent that I will address the premises of their claims, it is enough to say that both are incorrect in how they approach whether all promissory notes are negotiable instruments, or that all negotiable instruments are promissory notes. It is entirely conceivable that a promissory note may not be a negotiable instrument. Negotiability is a particular legal status that affords benefits such as protection against certain defenses when held by a bona fide holder, but lack of negotiability does not negate the note's validity. Conversely, Plaintiff's argument that all negotiable instruments are promissory notes completely flips the applicable UCC framework. A draft or a check, which are orders to pay as opposed to a promise to pay, for example, are not promissory notes, but may be negotiable instruments.

> These are rarely presented by the makers, but are paid to others on the faith that the signatures, and the bodies of the instruments, are genuine."). As a result, the documents have traditionally been those with legal effect, documents that can be "deposited."

Id. at 945. The central concern with negotiable checks, drafts, or promissory notes, where speed and liquidity are prioritized, is that these documents may be easily deposited and uniquely vulnerable to forgery or fraud. It is in these instances that such instruments can be deposited on their face, such that a forged instrument can trigger payment. A non-negotiable instrument, on the other hand, does not circulate upon presentment, or create immediate obligations to pay; instead requiring certain conditions or performance prior to the transfer of value. With this logical backdrop in mind, the Policy is not ambiguous. I read the Commercial Crimes policy provision in a manner similar to the *Vons* court and find that it applies only to negotiable instruments.

The Florida statutes are clear that a "negotiable instrument" is "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order." Fla. Stat. § 673.1041(1) (2012). The Merchant Advance Agreements, by their very nature, cannot meet this definition.[3] Defendant is correct to point out that the conditions embedded within these various Merchant Advance Agreements preclude negotiability. The RBLX Funding agreement, for example, requires that Plaintiff "authorize Company and its agents to investigate their financial responsibility and history, and will provide to Company any authorizations, bank or financial statements, tax returns, etc., as Company deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement" and further that Plaintiff "authorizes all of its banks, brokers and processors to provide Company with Merchant's banking, brokerage and/or history to determine qualification or continuation in this

[3] Although I reference the terms of two of the agreements, namely the Top Tier and RBLX Merchant Agreements, I have reviewed all five in their entirety. The applicable terms and conditions across the five agreements are substantially similar.

program and for collections purposes." (DE 12-4 at 2). Florida statutes are clear that a negotiable instrument "[d]oes not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money[.]" Fla. Stat. § 673.1041(1)(c). Moreover, a quintessential element of a negotiable instrument is that it is "payable on demand or at a definite time." Fla. Stat. § 673.1041(1)(b). The agreement terms in the RBLX agreement, for example, states that Plaintiff also authorizes Company to collect amounts due from Plaintiff under the Merchant Advance Agreement by initiating ACH debits either of $56,212.50 weekly *or* 30% of each banking deposit. (DE 12-4 at 6). The result is that either the Company receives the weekly amount, a fluctuating bank deposit, or no amount at all.[4] To be "payable on demand or at definite time," the Florida Statutes state that a promise or order is "payable on demand" if it: (a) States that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder; or (b) Does not state any time of payment. Fla. Stat. § 673.1081(1). Here, the Merchant Advance Agreements do not suggest that they are payable on demand; nor are they silent as to the time of payment. The Agreements affirmatively specify weekly remittances or that remittances are to be made as a percentage of future receivables, tying payment to the occurrence of ongoing business activity.

Next, the Statute continues to state that a promise or order is "payable at a definite time" if: "it is payable **on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued**, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event." Fla. Stat. § 673.1081(2) (emphasis added). This is plainly not the

[4] Each of the Merchant Agreements make clear that purchasers of the risk, *i.e.*, the Companies, may find that the future receivables are never collectible.

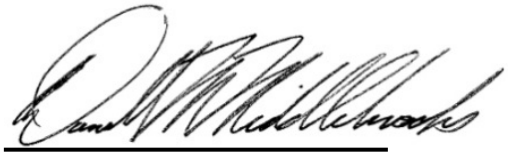
case here, as there is no definite period upon which, when the promise or order is issued, one may ascertain at what date the full amount will be paid.

CONCLUSION

Accordingly, it is hereby **ORDERED and ADJUDGED** that:

1. Defendant's Motion to Dismiss (DE 12) is **GRANTED**.
2. Plaintiff's Complaint is **DISMISSED**.
3. The Clerk of Court shall **CLOSE THIS CASE.**
4. All pending motions are **DENIED AS MOOT.**

SIGNED in Chambers, at West Palm Beach, Florida this 10th day of February, 2026.



Donald M. Middlebrooks
United States District Judge

cc.

Counsel of Record