UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SEASCAPE OF LITTLE HICKORY ISLAND, INC.,
Plaintiff,

v.

HARTFORD INSURANCE COMPANY OF THE MIDWEST,
Defendant.

CASE NO. 2:26-cv-01330-KCD-KRH

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENSE MOTION TO DISMISS

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I. INTRODUCTION

In this action for recovery under a NFIP "write-your-own" insurance policy, defendant by pre-answer motion to dismiss asks the Court to dismiss the Complaint on the basis of documents outside the Complaint. As established in the declarations submitted in Opposition, these letters were never received by the plaintiff insured and cannot – certainly not at this early stage – support dismissal of the Complaint. While defendant relies on a line of cases holding that a court can consider denial letters on a Rule 12(b)(6) motion when the plaintiff conceded the legitimacy of those letters, that is not the case here. Plaintiff has submitted detailed, factually supported declarations to the contrary.

Defendant alternatively moves to dismiss plaintiff's cause of action under Policy Number 81701905745, which plaintiff does not oppose. Defendant also appears to seek the dismissal of state-law claims that plaintiff does not assert. Plaintiff acknowledges its claims are limited to the SFIP and does not seek, e.g., attorney fees (and, indeed, does not allege them).

II. FACTUAL BACKGROUND

The plaintiff is a homeowners association in Bonita Springs, which owns real and personal property. (Compl. ¶ 3) The Plaintiff was insured as of September 2022 with Defendant Hartford Insurance Company of the Midwest under "Write Your

Own" NFIP policies.[1] (*Id.* ¶ 4) The property was damaged by Hurricane Ian. (*Id.* ¶ 10)

Plaintiff promptly submitted claims to Defendant. (*Id.* ¶ 11) Defendant has made certain payments but has not paid all that plaintiff contends it is owed. (*Id.* ¶ 14) Plaintiff alleged that it received a partial denial of the claims on or about April 28, 2025. (Compl. ¶ 18)

In support of the instant motion, defendant contends that it actually sent three denial letters in June 2023. (Mot. at ¶¶ 6-8) Defendant also claims that it sent additional denial letters in August 2025. (Mot. at nn. 4-5)

The President of the Plaintiff Association, both at the time of Hurricane Ian and today, is a man named Ron George. Mr. George has submitted a Declaration in Opposition to Defendant's motion.[2] Mr. George attests:

- Prior to being provided these purported partial denial letters by his counsel, he had never seen them. (Ex. 1, George Decl. ¶ 5)

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[1] Defendant states that it was "erroneously referred to as Hartford Fire Insurance Company," (Motion at 1) but the Complaint accurately names Hartford Insurance Company of the Midwest as the issuing carrier and defendant.

2 Other than initial hurricane disclosures which were served less than a week ago, no discovery has been conducted in this matter and defendant has not asked the Court to convert this motion to one for summary judgment. As defendant has nonetheless interposed factual declarations, plaintiff does in response. Plaintiff has not had the benefit of discovery, including of whether and how the subject letters were sent, and would need to complete discovery before responding to a summary judgment motion.

- He has reviewed, and directed Seascape's property manager to review, the files held by Seascape and has not found any of the letters in its files. (*Id.* ¶ 6)
- During the claims period, Seascape worked closely with a public adjuster, Dennis Niland. (*Id.* ¶ 7) Anytime Seascape would receive claims related-correspondence, it would be sent to both Mr. Niland and Mr. George. (*Id.* ¶ 8)
- Seascape has reviewed records of emails during the June and July 2023 period and found no evidence that these letters were ever emailed to Mr. Niland. If Seascape had received them, they would have been scanned and immediately sent to Mr. Niland. (*Id.* ¶ 9)
- Not long after the purported date of these letters, Seascape did receive checks relating to the claim, which were scanned and immediately sent to Mr. Niland. (*Id.* ¶ 10)
- Seascape never received the letters and disputes the authenticity of the letters. (*Id.* ¶ 11)
- Mr. George also explains that mail delivery was severely disrupted in the wake of Hurricane Ian. (*Id.* ¶¶ 13-14)

In addition to Mr. George's declaration, plaintiff submits a declaration from the plaintiff's public adjuster, Mr. Niland. Mr. Niland attests:

- Mr. Niland is a licensed public adjuster who has represented Seascape in connection with its Hurricane Ian insurance claim. (Exhibit 5, Niland Decl. ¶ 2)
- Prior to being provided these purported letters by plaintiff's counsel, he had never seen them. (*Id.* ¶ 5)
- In June 2023, he was actively working on this claim on behalf of Seascape. He was in regular, almost daily contact with the adjuster retained on behalf of Hartford Insurance Company of the Midwest, Brian Naquin. (*Id.* ¶ 6)
- He reviewed his email correspondence in this period and found many emails from and to Mr. Naquin. In none of them did Mr. Naquin provide the purported letters. (*Id.* ¶ 8)
- Throughout the time period Mr. Niland represented Seascape, Seascape would as a matter of course scan and email to him any written correspondence they received relating to the claim. (*Id.* ¶ 9)

- He reviewed his email correspondence and found that these letters were never sent to him, as they would have been had Seascape received them. (*Id.* ¶ 10)

III. **ARGUMENT**

A. **Standard for Motion to Dismiss**

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, (2007)). At the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1273 n.1 (11th Cir. 1999).

B. **Defendant's Motion to Dismiss Plaintiff's Claims as Time-Barred Should Be Rejected**

Defendant's motion on statute-of-limitations grounds should be denied on several inter-related but conceptually distinct grounds. First, as a procedural matter, plaintiff has provided evidentiary support disputing the reliability of the documents on which defendant relies, and they should therefore not be considered on this 12(b)(6) motion. Second, defendant itself has failed to provide a sufficient evidentiary foundation for the letters it asks the Court to consider, as it provides a declaration from a non-party that a *different company* (Torrent) allegedly sent the letters and provides no factual support other than a bald statement. Third, the cases on which defendant relies are factually distinct from the instant matter given the disputed status of these letters.

Plaintiff does not, generally speaking, take issue with defendant's explication of the applicable statute of limitations for a SFIP claim. As defendant explains, the statute of limitations is one year from the date of a denial letter or partial denial. (*See generally* Def. MOL at 13-15) Indeed, Plaintiff's complaint alleges the receipt of a partial denial on or about April 28, 2025 and that the lawsuit was filed within a year of that date. (Compl. ¶ 18)

i. The Letters are Not Indisputably Authentic and Should Not Form the Basis of a Motion to Dismiss

"[A]t the motion to dismiss stage, the scope of a court's review must be limited to the four corners of the complaint." *Boyd v. Peet*, 249 F. App'x 155, 157 (11th Cir. 2007). Defendant's argument is, it concedes, not based on the four corners of the complaint.

The Court may, as defendant points out, consider documents "attached to the complaint or incorporated into it by reference." *Gill ex rel. K.C.R. v. Judd*, 941 F.3d 504, 511 (11th Cir. 2019). But these letters are also not attached to the complaint. Nor are they incorporated into it by reference. Instead, the complaint references a partial denial dated April 28, 2025. (Compl. ¶ 18)

Defendant is therefore asking the Court to consider documents neither attached to the complaint nor incorporated by reference in it. There are limited circumstances when a Court may do so at the motion-to-dismiss stage. In the Eleventh Circuit, "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). Neither of those conditions apply here.

Dispositively, where the authenticity of a document is challenged (as it is here), the document cannot be considered on a motion to dismiss. *See Horsley v. Feldt*, 304 F.3d 1125, 1135 (11th Cir. 2002). For example, in *Denton v. Board of Governors for the State University of Florida*, the Eleventh Circuit earlier this year reversed a district court's granting of a motion to dismiss, holding that the court should not have considered disputed evidentiary submissions. No. 24-10567, 2026 U.S. App. LEXIS 16524, at *54, n.16 (11th Cir. June 9, 2026).

Courts in this district have routinely held that disputed documents cannot be considered on a motion to dismiss. *See Nuveen Fishing, LLC v. Front Runner Boatworks, LLC*, No. 25-cv-1419, 2026 U.S. Dist. LEXIS 175535, at *7 (M.D. Fla. Aug. 5, 2026) ("Nuveen disputes the authenticity of the extrinsic warranty, arguing that it 'has never seen th[e] document and has never assented to its terms.' Therefore, at the pleadings stage, this Court will only consider the warranties alleged in the Amended Complaint."); *Moog Mktg., Inc. v. TD Bank, N.A.*, No. 18-cv-1765, 2019 U.S. Dist. LEXIS 18368, at *3 (M.D. Fla. 2019) ("Here, the deposit agreement [attached to defendant's motion to dismiss] is neither mentioned in, nor attached to, the Amended Complaint. Additionally, [plaintiff] disputes the authenticity of the deposit agreement.

The deposit agreement therefore cannot be incorporated by reference into Moog's Complaint."); *Meyer v. Integron Nat'l Ins. Co.*, No. 19-cv-1397, 2020 U.S. Dist. LEXIS 109008, at *3-4 (May 14, 2020) (refusing to consider insurance policy defendant attached to motion to dismiss because "Plaintiffs appear to be contesting the authenticity of Defendant's 'policy.'"); *Serian v. JetBlue Airways Corp.*, No. 23-cv-2471, 2024 U.S. Dist. LEXIS 121658, at *5 (M.D. Fla. July 11, 2024); *Skye Energy Ventures LLC v. Hollander*, No. 25-cv-274, 2025 U.S. Dist. LEXIS 123267, at *5-6 (M.D. Fla. June 30, 2025).

As set out in the Declarations of Ron George and Dennis Niland, the plaintiff never received the letters that defendant now claims to have sent. (*See generally* Exhibits 1, 5) Mr. George, who was the President of the plaintiff Association at the time of the loss, attested that plaintiff never received any of these letters, that plaintiff searched its files and did not locate them, and that it would have scanned and preserved the letters had it received them. (Exhibit 1) Mr. Niland, the insured's public adjuster, testified that he was in active communication with the defendant's assigned adjuster at the time these letters were purportedly sent, that he never received him, that the insured plaintiff routinely sent him claim-related correspondence and would have sent him letters such as those relied upon by defendant, and that he too reviewed his files and confirmed he never received these letters. (Exhibit 5)

Defendant's motion asks the Court to hold, as a matter of law, that the clock started ticking on plaintiff's claims based on letters it did not receive and on the say-so of a third party. Plaintiff submits that this argument is wrong and would also be unjust:

plaintiff complied with its obligations under the policy and filed suit that was indisputably timely based on the denial letters it received.

The purported denial letters are also not "central to the plaintiff's claims." Plaintiff alleged a contract, its compliance with the contract, defendant's breach of that contract, and damages arising from the breach. These were the elements of its claim. The Eleventh Circuit addressed an analogous situation in *Roberts v. Carnival Corp.*, 824 Fed. Appx. 825, 827 (11th Cir. 2020). The plaintiff in that case was injured on a Carnival cruise boat. She sued Carnival. Carnival filed a motion to dismiss, attaching what it said was a "ticket contract" and an "acceptance report". *Id.* at 826. The ticket contract contained what purported to be a one-year statute of limitation, which, if applied, would have made the action untimely. Relying on the ticket contract, the district court had granted Carnival's motion to dismiss. *Id.* The Eleventh Circuit reversed, holding: "The ticket contract is not central to her claims because it is not a necessary or essential part of [the plaintiff's] effort to show that she was injured due to Carnival's negligence." *Id.* at 826. (Unlike in the instant case, the Carnival ticket contract appeared to be undisputed.)

The remaining exception to the general rule that a court may not consider documents outside the four corners of the complaint on a motion to dismiss is for documents susceptible to judicial notice. *See, e.g.*, *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271 (11th Cir. 1999). This includes court filings and similar public documents. *United States v. Rey*, 811 F.2d 1453, 1457 n.5 (11th Cir. 1987). There is no contention that these documents, purportedly created by one private entity on behalf of another private entity, would satisfy this exception.

ii. Even on Its Face, Defendant Has Not Provided an Evidentiary Foundation for the Admissibility of the Purported Letters

In support of this motion to dismiss, defendant submits a declaration from an employee of a non-party, Torrent Technologies. (*See generally* Dkt. No. 23-1) The declaration states that Torrent "on behalf of Hartford, created and mailed [each] letter." (*Id.* ¶¶ 8-10) But the declarant, Ms. Snow, (i) does not state that she herself sent that letter, (ii) does not identify who sent that letter, (iii) does not identify any policy or procedure under which such letters would have been sent, and (iv) provides no testimonial evidence from *Hartford*. She provides her *ipse dixit*, which – at most – is entitled to no more deference than plaintiff's declarations to the contrary.

iii. The Cases Defendant Cites Do Not Support Dismissal Here

Defendant cites several cases in which courts have granted motions to dismiss on the basis of denial letters attached to a defendant insurer's motion papers. In each of these, however, the plaintiffs conceded the authenticity of the document and challenged only whether the acknowledged denial letters constituted a qualifying denial under the specific facts of their claims (or, in at least one instance, did not oppose the motion to dismiss at all). *See D'Ambrosio v. Am. Bankers Ins. Co. of Florida*, No. 25-cv-155, 2025 U.S. Dist. LEXIS 197960, at *2 (M.D. Fla. Oct. 7, 2025) ("Plaintiffs do not dispute the timeline above. Nor do they contest the validity of the denial letter."); *Clack v. Hartford Fire Ins. Co.*, No. 25-cv-1019, 2026 U.S. Dist. LEXIS

13329, at *1 n.2 (M.D. Fla. Jan. 26, 2026) ("Although not attached to the complaint, the Court can consider Hartford's denial letter here because it is undisputed and central to Clack's claim."); *Rosario v. Occidental Fire & Cas. Co. of N.C.*, No. 24-cv-1135, 2025 U.S. Dist. LEXIS, at *4 (M.D. Fla. May 16, 2025) ("Plaintiff has not challenged the authenticity of the denial letters, which are central to Plaintiff's breach of insurance contract claim, so the Court duly considers them."); *Barnes v. Am. Bankers Ins. Co. of Fla.*, No. 25-cv-778, at *2 (M.D. Fla. Dec. 9, 2025) ("Plaintiffs do not dispute the timeline above. Nor do they contest the validity of the denial letter."); *Martini v. Am. Bankers Ins. Co. of Florida*, No. 24-cv-904, 2025 U.S. Dist. LEXIS 64479, at *10 (M.D. Fla. Apr. 4, 2025) ("The relevant facts as set forth in the Complaint and relevant documents are straightforward and undisputed . . ."); *4922 Management LLC v. Selective Ins. Co. of the Southeast*, No. 24-cv-894 (M.D. Fla. Feb. 6, 2025) ("And Plaintiffs do not challenge the letter's authenticity. So the Court considers it."); *Adams v. Allstate Ins. Co.*, 25-cv-243, 2025 U.S. Dist. LEXIS 103686, at *1 (M.D. Fla. June 2, 2025) ("Plaintiffs Nicholas and Lori Adams—who are represented by counsel—failed to timely respond. The Court ordered them to explain why they failed to respond and show cause why the motion should not be granted. (Doc. 12). Again, they failed to respond. So the Court now treats the motion as unopposed. *See* Local Rule 3.01(c)"); *Caruso v. First Protective Ins. Co.*, No. 24-cv-615, 2025 WL 448953, at *1 (M.D. Fla. Feb. 10, 2025) ("And Plaintiffs do not challenge the letter's authenticity. So the Court considers it."); *Price v. Wright Nat'l Flood Ins. Co.*, No. 24-cv-914, 2025 U.S. Dist.

LEXIS 25813, at *2 (M.D. Fla. Feb. 13, 2025); *Mercer v. Am. Bankers Ins. Co. of Fla.*, No. 24-cv-882, 2025 U.S. Dist. LEXIS 64482, at *11 (M.D. Fla. Apr. 4, 2025) ("The relevant facts as set forth in the Complaint and relevant documents are straightforward and undisputed . . ."); *Matthies v. First Cmty. Ins. Co.*, 25-cv-17, 2025 U.S. Dist. LEXIS 67389, at *9 (M.D. Fla. Apr. 9, 2025) ("It is undisputed that there were partial denials of the claim in March 2023 and June 2023, and the lawsuit was filed on December 2, 2024."); *Raulerson v. Am. Strategies Ins. Corp.*, No. 25-cv-00407, 2025 U.S. Dist. LEXIS 72895, at *5 (M.D. Fla. Apr. 17, 2025) ("As for the authenticity of the exhibits, Plaintiff neither contests nor challenges their validity in his response to the motion to dismiss.").

C. Plaintiff Does Not Oppose the Dismissal of Claim Under SFIP 8701905745

Plaintiff acknowledges that it was paid the policy limit under Policy 8701905745 and does not oppose the dismissal of its claims under that policy. As defendant notes, plaintiff previously agreed to dismiss this claim.

D. Plaintiff Does Not Seek Attorney Fees

Defendant asks the Court to dismiss claims for attorney fees. Plaintiff does not assert such claims.

IV. CONCLUSION

As defendant concedes, the allegations of the complaint taken as true would require denial of defendant's motion. Plaintiff disputes the factual basis of defendant's motion, with detailed and specific declarations. Plaintiff respectfully submits that, under the specific circumstances described here, this motion should be denied.

Dated: August 19, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2026, the foregoing document was electronically filed with the Clerk of the Court. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List.

Kelsey W. Shannon, Esq.

SERVICE LIST

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