UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

PLANET HOLLYWOOD INTERNATIONAL, INC.,

Plaintiff,

v. **Case No. 6:21-cv-471-CEM-DCI**

ZURICH AMERICAN INSURANCE COMPANY,

Defendant.
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ORDER

THIS CAUSE is before the Court on Defendant's Motion to Dismiss ("Motion," Doc. 19) and Plaintiff's Response (Doc. 21). For the reasons set forth below, the Motion will be granted and Plaintiff's Complaint will be dismissed with prejudice.

I. BACKGROUND

Plaintiff operates and franchises restaurants worldwide. (Am. Compl., Doc. 14, at 20). Defendant issued an "all risk" commercial property insurance policy ("Policy") to Plaintiff for the period of July 1, 2019, through July 1, 2020. (*Id.* at 51). "In early 2020, the Coronavirus and COVID-19 struck Florida and the United States, in the context of a global pandemic." (*Id.* at 4). In an attempt to respond to

this pandemic, "governmental authorities across the United States issued orders closing 'nonessential' businesses, including restaurants . . . , issued orders mandating strict social distances among the population, and issued stay-at-home orders." (*Id.* at 48). "As a result of the Pandemic-induced Government Directives, [Plaintiff] was forced to temporarily close its businesses commencing on or about March 13, 2020, causing [Plaintiff] to lose access to and to lose the ability to generate income from its restaurant properties and premises." (*Id.* at 48–49). Plaintiff filed a claim with Defendant under the Policy, which Defendant denied. (*Id.* at 72–74).

Plaintiff has now filed this case, bringing claims for declaratory judgment and breach of contract. Defendant has moved to dismiss both claims with prejudice.

II. LEGAL STANDARD

"A pleading that states a claim for relief 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). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir. 2009). Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and

"[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o 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.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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." *Id.* Ordinarily, in deciding a motion to dismiss, "[t]he scope of the review must be limited to the four corners of the complaint." *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002).

III. ANALYSIS

The parties agree that all of the relevant Policy provisions require a "direct physical loss of or damage to property." Recently, the Eleventh Circuit addressed this precise issue in *SA Palm Beach, LLC v. Certain Underwriters at Lloyd's London*, 32 F.4th 1347 (11th Cir. 2022). There, the Eleventh Circuit consolidated several appeals to address the question of "whether, under Florida law, all-risk commercial insurance policies providing coverage for 'direct physical loss of or damage to' property or 'direct physical loss or damage to' property insure against losses and expenses incurred by businesses as a result of COVID-19." *Id.* at 1350. Three of the insureds in the cases before the Eleventh Circuit in *SA Palm Beach* were

restaurants, making similar—if not identical—arguments to those at issue here. *See generally id.* The *SA Palm Beach* Court explained that "every federal and state appellate court" decision it was able to find that "has decided the meaning of 'physical loss of or damage to' property (or similar language) in the context of the COVID-19 pandemic has come to the same conclusion and held that some tangible alteration of the property is required." *Id.* (collecting cases). "There is therefore no coverage for loss of use based on intangible and incorporeal harm to the property due to COVID-19 and the closure orders that were issued by state and local authorities even though the property was rendered temporarily unsuitable for its intended use." *Id.*

The *SA Palm Beach* Court also addressed allegations by two of the plaintiffs that the presence of the COVID-19 virus particles on surfaces of the property caused physical damage. It concluded that such allegations were insufficient to state a claim, explaining "surfaces not tangibly altered or harmed can be cleaned without requiring repair. [The plaintiff's] need to clean or disinfect stores to get rid of COVID-19 does not constitute direct physical loss or damage under Florida law." *Id.* at 1362.

While the allegations of Plaintiff's Amended Complaint are voluminous,[1] they do not materially differ from those addressed in *SA Palm Beach*. Accordingly, the

[1] Indeed, given the copious allegations regarding COVID-19 and its general impacts on society that are not tied to the specific issues in this case, the Amended Complaint may constitute the type of shotgun pleading that is "replete with conclusory, vague, and immaterial facts not

Court is bound to follow the Eleventh Circuit's published opinion and find that Plaintiff cannot state a claim. *See PF Sunset View, LLC v. Atl. Specialty Ins. Co.*, 21-11580, 2022 WL 1788920, at *2 & n.1 (11th Cir. June 2, 2022) (acknowledging that *SA Palm Beach* resolved a similar appeal and noting that "within one week of [the Eleventh Circuit's] decision in *SA Palm Beach*, Florida's Third District Court of Appeal rendered a similar interpretation of the phrase 'direct physical loss of or damage to property': losses stemming from suspension of business operations during the pandemic did not fall under the policy provision because they did not 'carr[y] a tangible aspect' or cause some 'actual alteration to the insured property.'" (quoting *Commodore, Inc. v. Certain Underwriters at Lloyd's London*, No. 3D21-0671, 2022 WL 1481776, at *4 (Fla. 3d DCA May 11, 2022))).

IV. AMENDMENT

Finally, Plaintiff requests that, if the Court grants the Motion, Plaintiff be permitted to amend. Plaintiff's request is one sentence and is not supported by any legal citation. Additionally, any amendment would be futile. The Eleventh Circuit has issued binding caselaw precluding coverage in this situation. Amendment will not be permitted, and Plaintiff's claims will be dismissed with prejudice.

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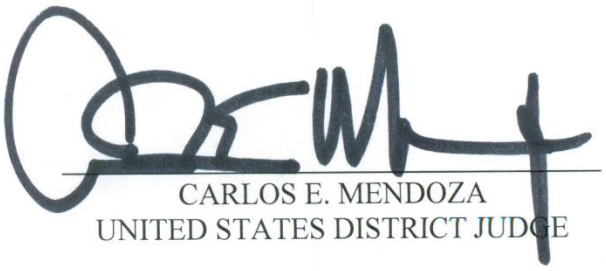
obviously connected to any particular cause of action." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1322 (11th Cir. 2015).

V. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion to Dismiss (Doc. 19) is **GRANTED**.
2. Plaintiff's Amended Complaint (Doc. 14) is **DISMISSED with prejudice**.
3. The Clerk is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on August 2, 2022.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record