UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 2:23-cv-14362-KMM

ST. JOE HOMES & INVESTMENTS, LLC, *et al.*,

Plaintiffs,

v.

WESTCHESTER SURPLUS LINES INSURANCE COMPANY,

Defendant.
_______________________________________/

ORDER

THIS CAUSE came before the Court upon Defendant Westchester Surplus Lines Insurance Company's ("Defendant") Motion for Summary Judgment. ("Motion" or "Mot.") (ECF No. 52). Plaintiffs St. Joe Homes & Investments, LLC and Sebring One, LLC ("Plaintiffs") filed a Response in opposition. ("Resp.") (ECF No. 58). Defendant filed a Reply. ("Reply") (ECF No. 61). The Motion is now ripe for review.

I. BACKGROUND[1]

This action arises from a property insurance claim filed by Plaintiffs due to damages and losses caused by conditions brought on by Hurricane Ian. Def.'s SOF at 1. Plaintiffs own two properties located at 2803 US Highway 27 S, Sebring, FL 33870 ("2803 Property") and 2805 US Highway 27 S, Sebring, FL 33870 ("2805 Property"). *Id.* ¶ 1. Defendant Westchester Surplus

[1] The facts herein are taken from the Complaint ("Compl.") (ECF No. 1-2), Defendant's Statement of Material Facts ("Def.'s SOF") (ECF No. 53), Plaintiffs' Statement of Material Facts ("Pls.' SOF") (ECF No. 59), Defendant's Reply Statement of Material Facts ("Reply SOF") (ECF No. 60), and a review of the corresponding record citations and exhibits.

Lines Insurance Company issued an insurance policy bearing the policy number FS16421625 001, with the policy period from February 28, 2022 to February 28, 2023 (the "Policy"). *Id.* ¶ 4. The Policy provides two separate and distinct types of coverage: commercial property coverage and commercial general liability coverage. *Id.* ¶ 5. The commercial property coverage provides coverage for direct physical loss or damage to covered property caused by or resulting from any "Covered Cause of Loss," which includes wind or hurricane events. Reply SOF ¶ 8. The commercial general liability only applies to suits seeking damages of "bodily injury" or "property damage." *Id*. The Policy contains separate sections, known as the "Declarations" pages, for the commercial property coverage and commercial general liability coverage, which detail the relevant covered properties. Def.'s SOF ¶ 6. The commercial property declarations page lists solely two buildings at the 2803 Property. *Id.* ¶ 9. The commercial general liability coverage declarations page solely lists the 2803 Property, but in the "Class and Premium Table" indicates that a property with 26 units, and a property with 17 units are insured. Pls.' SOF ¶ 7. The 2803 Property and 2805 Property have 26 and 17 units respectively. *Id.*

For commercial property coverage, the Policy provides that Defendant will pay for direct physical loss of or damage to the properties described on the relevant declarations page. Def.'s SOF ¶ 10. The Policy's other provisions relevant to this action include: (1) a provision excluding fences from coverage while outside of buildings; (2) replacement cost coverage, where Defendant states it will not pay a replacement cost for any loss or damage until the damaged property is repaired or replaced; and (3) a $2,500 limit on payments for loss or damage to outdoor signs. *Id.* ¶¶ 11–16.

On September 29, 2023, Plaintiffs filed a Complaint in the Circuit Court of the Tenth Judicial Circuit in and for Highlands County, Florida against Defendant. *See generally* Compl.

On November 15, 2023, Defendant filed a Notice of Removal. (ECF No. 1). Plaintiffs assert one count for breach of contract, claiming damages pursuant to the Policy that the 2803 and 2805 Properties suffered damages and losses caused by conditions brought on by Hurricane Ian, including to the exterior walls of the property, exterior doors of the units, windows, a fence surrounding the property, air conditioning units, a billboard, and an external sign. Def.'s SOF ¶¶ 21, 27, 28. Now before the Court is Defendant's Motion for Summary Judgment. (ECF No. 52).

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001).

Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment.

Bailey v. Allgas, Inc., 284 F.3d 1237, 1243 (11th Cir. 2002); *see also* Fed. R. Civ. P. 56(c). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. DISCUSSION

Defendant argues that it is entitled to summary judgment on Plaintiffs' breach of contract claim. *See generally* Mot. Specifically, Defendant argues that Plaintiffs' claim fails as a matter of law because (a) the Policy, on its face, does not cover the 2805 Property and Plaintiffs are not entitled to any damages for the 2805 Property; (b) pursuant to the Policy's replacement cost provision, Defendant is not liable because Plaintiffs cannot demonstrate that they have repaired or replaced lost or damaged property or that they have spent money in excess of the $27,000 deductible in making any necessary repair; (c) the Policy clearly and unambiguously limits payments for signs to $2,500 per sign; and (d) fences damaged by wind/hurricanes are not covered under the Policy. *See generally* Mot. In Response, Plaintiffs argue that the scope of coverage in the Policy is ambiguous and certain extrinsic evidence demonstrates that Defendant intended to provide coverage to the 2805 Property. *See generally* Resp. Plaintiffs further argue that they are entitled to replacement costs for repairs already performed, and the Policy provides for coverage of fences. *Id.* The Court addresses each argument in turn.

A. The Policy's Coverage of the 2805 Property

Defendant first argues that it is entitled to summary judgment because the 2805 Property is not listed on the Policy. *See* Mot. at 3. Defendant points to the plain language of the Policy,

stating that Defendant "will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." *Id.* at 5. The Declarations page only lists two buildings at the 2803 Property and does not list, schedule, or include the 2805 Property. *Id.* Thus, Defendant argues that Plaintiffs are not entitled to any damages or payments for the 2805 Property, including any payment for the alleged costs to replace the roofs of the two buildings. *Id.*

In response, Plaintiffs argue that the Policy contains a clear ambiguity regarding the scope of its coverage. Resp. at 3. Specifically, the commercial general liability coverage declarations page of the Policy solely lists the 2803 Property, but in the "Class and Premium Table" indicates that a property with 26 units, and a property with 17 units are insured. Pls.' SOF ¶ 7. The 2803 Property and 2805 Property have 26 and 17 units respectively. *Id.* Plaintiffs argue that this shows there is a discrepancy in the Policy as it describes providing coverage for both the 2803 Property and the 2805 Property, yet only identifies the address of the 2803 Property in its location schedule. Resp. at 3.

Plaintiffs further provide additional evidence outside of the Policy itself to support that the scope of the coverage in the Policy is ambiguous and Defendant intended to provide coverage to the 2805 Property. Specifically, Plaintiffs first provide an insurance application, which lists both the 2805 Property and the 2803 Property for general commercial liability coverage and commercial property damage coverage. Resp. at 4. To support their reliance on this application, Plaintiffs cite to the Eleventh Circuit case *In Travelers Prop. Cas. Co. of Am. v. Talcon Grp. LLC*, which held that under Florida law, the review of an insurance policy is not limited to the four corners of the document and instead must be construed according to its entirety, including any application for insurance. 88 F.4th 1371, 1377 (11th Cir. 2023). Plaintiffs conclude that given it is listed on the

insurance application "any notion that the 2805 Property was inadvertently admitted or denied is unjustifiable." Resp. at 4.

Plaintiffs provide further extrinsic evidence to support that Defendant intended to provide coverage to the 2805 Property, including an ACORD insurance certification, a form which typically verifies a business's insurance coverage. *Id* at 6. The certification specifically lists the 2805 Property in the Property Information section, and details under the Coverage Information section that has coverage included for "Building, Basic Form, Actual Cash Value, Business Income with Extra Expense, and Wind and Hail." *Id.* Plaintiffs further cite to a chain of emails during the claim adjustment process, where there appears to have been confusion as to whether the 2805 Property was covered under the Policy. Resp. at 6. One email specifically states "I have attached a copy of the policy which indicates the covered loss location is listed as 2803 US Highway 27 S, Sebring, FL 33870. The policy does not list 2805 US Highway 27 S, Sebring, FL 33870 as a covered loss location." (ECF No. 59-4) at 4. Plaintiffs argue that this discussion regarding the coverage over the 2805 Property, or lack thereof, supports that the Policy's language is unclear and requires a liberal interpretation in favor of the insured. *See* Resp. at 6.

In its Reply, Defendant argues that Plaintiffs failed to authenticate the commercial insurance application, the evidence of insurance form, or the emails attached to Plaintiffs' Response Statements of Material Facts. Reply at 2. Specifically, Defendant argues that Plaintiffs did not provide an affidavit from anyone testifying as to the authenticity of these documents, nor is there any deposition of any party testifying as to the authenticity of these documents. *Id.* at 4. Defendant concludes that the insurance application, the insurance form, and the emails should thus be stricken and the Court should not consider these documents when ruling on the Motion. *Id.*

Defendant further argues that the Policy, absent such additional documents, is unambiguous on its face based on the plain language and takes issue with Plaintiffs' purported references to the 2805 Property in the Policy. *Id.* at 5. Lastly, Defendant argues that when a contractual provision is clear and unambiguous, the Court cannot consider extrinsic evidence, such as the insurance application, the ACORD form, and the email correspondence. *Id.* at 6. Defendant concludes that even in consideration of the application and form, such documents have no bearing on the actual terms set forth in the Policy itself. *Id.* at 8.

In order to determine whether there is a genuine issue of material fact as to the Policy's purported coverage for the 2805 Property, the Court must first address the question of whether the Court may review the extrinsic evidence provided by Plaintiffs in opposition to the Motion, specifically the insurance application, the ACORD insurance form, and the email discussion between parties regarding the coverage.

As a threshold matter, the Court recognizes that for a document "[t]o be admissible in support of or in opposition to a motion for summary judgment, a document must be authenticated by and attached to an affidavit that meets the requirements of Rule 56(e)." *Saunders v. Emory Healthcare, Inc.*, 360 F. App'x 110, 113 (11th Cir. 2010) (holding that the district court's decision to strike unauthenticated exhibits filed in opposition to a motion for summary judgment was not an abuse of discretion); *Williams v. Eckerd Fam. Youth Alternative*, 908 F. Supp. 908, 911 (M.D. Fla. 1995) ("[T]o be considered in support of or in opposition to a motion for summary judgment, it must be authenticated by an affidavit that meets the requirements of the summary judgment rule."); *Max Warehousing, LLC v. Auto-Owners Ins. Co.*, 587 F. App'x 528, (11th Cir. 2014) (affirming a district court order granting summary judgment where the court could not consider a

document the plaintiff failed to produce during discovery nor authenticated when it was attached to its summary judgment opposition).

Here, Plaintiffs attach evidence of a commercial insurance application, an insurance form, and email correspondence as exhibits to Plaintiffs' Statement of Material Facts. *See* (ECF No. 59-1) through (ECF No. 59-4). After a review of the exhibits, Plaintiffs do not provide any affidavit from any individual testifying as to the authenticity of these documents, and there does not appear to be any pertinent deposition from any party or witness testifying as to the authenticity of these documents. Furthermore, the Court has reviewed the deposition of Plaintiffs' corporate representative Gregory Weinstein (the "Weinstein Deposition"), who did not testify regarding the insurance application, the insurance form, or any of the emails. *See generally* (ECF No. 53-1). Defendant further indicates that none of the parties or witnesses that have been deposed to date have testified as to the authenticity of such documents. Reply at 4. Defendant has timely objected to the admissibility of these documents in its Reply. *See generally* Reply. Accordingly, the Court finds that Plaintiffs have failed to authenticate the insurance application, ACORD insurance form, and the email correspondence, and thus the Court cannot consider such evidence for the instant Motion.

The Court now turns to the question of whether, absent the unauthenticated materials, there is a genuine issue of material fact as to whether the Policy covers the 2805 Property. The interpretation of an insurance agreement is a question of law. *Gov't Emps. Ins. Co. v. Macedo*, 228 So.3d 1111, 1113 (Fla. 2017); *Lee v. Montgomery*, 624 So.2d 850, 851 (Fla. 1st DCA 1993). Unambiguous provisions in insurance contracts are construed according to their plain meaning. *Allstate Ins. Co. v. Orthopedic Specialists*, 212 So.3d 973, 975–76 (Fla. 2017). Thus, any coverage determination "begins with a review of the plain language of the insurance policy as bargained for

by the parties." *Koikos v. Travelers Ins. Co.*, 849 So.2d 263, 266 (Fla. 2003). Ambiguous provisions and exclusions are interpreted against the insurer and in favor of the insured. *Auto–Owners Ins. Co. v. Anderson*, 756 So.2d 29, 34 (Fla. 2000). "To find in favor of the insured on this basis, however, the policy must actually be ambiguous." *Penzer v. Transp. Ins. Co*., 29 So.3d 1000, 1005 (Fla. 2010) (emphasis omitted).

Here, the Parties agree that the 2805 Property is not listed, nor explicitly identified anywhere within the Policy. *See* Def.'s SOF ¶ 9; Pls.' SOF ¶ 9. The Parties, disagree, however, as to whether there is an ambiguity in the Policy, specifically in the commercial general liability coverage section. There, the declarations page lists the 2803 Property, but in the "Class and Premium Table" indicates that properties with 26 units and 17 units are insured. Pls.' SOF ¶ 7. The 2803 Property and 2805 Property have 26 and 17 units respectively. *Id.* Even if the Court assumes that this is an ambiguity within the Policy, the properties listed within the commercial general liability coverage hold no bearing on the relief Plaintiffs request in this action. Specifically, the commercial general liability coverage only applies to suits seeking damages of "bodily injury" or "property damage." Reply SOF ¶ 8. Moreover, the Policy states that such commercial general liability coverage does not apply to "property that [the insured] owns, rents, or occupies." Reply at 5. The applicable section of the Policy relevant to this action is the commercial property coverage, providing insurance coverage for direct physical loss or damage to covered property caused by or resulting from any "Covered Cause of Loss," which includes wind or hurricane events. Reply SOF ¶ 8. The Parties do not dispute that the commercial property coverage solely lists two buildings on the 2803 Property. Def.'s SOF ¶ 9; Pls.' ¶ 9. The language of the Policy unambiguously makes no reference to the 2805 Property. Accordingly, the Court

finds that there is no genuine issue of material fact with respect to Plaintiffs' breach of contract claim for the 2805 Property and thus summary judgment is warranted.

B. The Policy's Coverage of Replacement Cost Value

Defendant next argues that there is no genuine issue of material fact as to whether Plaintiffs are entitled to the replacement cost value of damaged property pursuant to the Policy. *See* Mot. at 5. Plaintiffs seek damages to repair/ replace the sign, billboard, window, doors, air conditioning units, and for exterior stucco cracks. *Id.* at 6. Defendant argues that the Policy unambiguously provides for replacement cost coverage when the damaged property is actually repaired or replaced. *Id.* at 8. The Policy further provides for a $27,000 deductible. *Id.* at 9. Defendant avers that Plaintiffs are only able to prove repairs of $400 to $600 for the billboard and $7,000 for repairs to the roof, which are not in excess of the $27,000 deductible provided for the in the Policy, and thus Plaintiffs cannot establish entitlement to damages they seek under the replacement cost provision. *Id.* at 9.

In response, Plaintiffs argue that Defendant is attempting to limit Plaintiffs' ability to recover for costs covered under the Policy. Resp. at 8. Plaintiffs assert that under the "broad evidence rule," any evidence which tends to establish a correct estimate of the value of damaged or destroyed property may be considered by the Court to determine the value at the time of loss. *See* Resp. at 7; *Worcester Mut. Fire Ins. Co. v. Eisenberg*, 147 So. 2d 575, 576 (Fla. 3d DCA 1962). Plaintiffs largely rely on a Fifth Circuit case *Berkshire Mut. Ins. Co. v. Moffett*, which held that where the existence of damages has been established, recovery will not be denied just because damages are difficult to ascertain, and the evidence of damages shall be liberally construed "as a matter of just and reasonable inference." 378 F.2d 1007, 1011–12 (5th Cir. 1967). Under this standard, Plaintiffs point to the Weinstein Deposition, where Plaintiffs' corporate representative

states that certain repairs were performed, costs incurred, and work was carried out by a maintenance crew on the doors, locks, and windows, arguing that this is sufficient evidence entitling Plaintiffs to replacement costs. Resp. at 9.

The Policy's Replacement Cost provision states as follows:

> **3. Replacement Cost**
> **a.** Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
> * * *
> **d.** We will not pay on a replacement cost basis for any loss or damage:
> **(1)** Until the lost or damaged property is actually repaired or replaced; and
> **(2)** Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.
> * * *
> **e.** We will not pay more for loss or damage on a replacement cost basis than the least of **(1), (2)** or **(3),** subject to f. below:
> **(1)** The Limit of Insurance applicable to the lost or damaged property;
> **(2)** The cost to replace the lost or damaged property with other property:
> **(a)** Of comparable material and quality; and
> **(b)** Used for the same purpose; or
> **(3)** The amount actually spent that is necessary to repair or replace the lost or damaged property

(ECF No. 1-1) at 48.

The Parties do not appear to dispute that under the plain terms of the Policy, Defendant is not liable for replacement costs until the actual repair or replacement is made. Def.'s SOF ¶ 14; Pls.' ¶ 14. The Parties dispute, however, whether Plaintiffs have provided sufficient evidence of repairs, such that they would be entitled to replacement costs. Resp. at 9. First, with respect to the "broad evidence rule," the Court agrees with Defendant that Plaintiffs' reliance on this doctrine is misplaced. In *Moffett*, the parties disputed the actual cash value of the property at the time of the loss and the replacement cost thereof. 378 F.2d, at 1011. The "broad evidence rule" permits the consideration of evidence that could aid in correctly valuating the 'actual cash value' in damaged property cases. *Id.* Here, the parties are concerned with the replacement cost value,

which, unlike actual cost value, "is designed to cover the difference between what property is actually worth and what it would cost to rebuild or repair that property." *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 438 (Fla. 2013). The precise issue in this case is whether there is sufficient evidence that repairs or replacements were even performed at all, not the actual cost value of the damages incurred. Thus, absent a dispute as to the actual cost value, this doctrine is misplaced.

With respect to replacement cost value, several Eleventh Circuit cases concerning policies with analogous replacement cost value provisions have held that where an insurance policy unambiguously requires the insured to repair its property before receiving damages, the contract contains no allowances for advance payments to fund repairs. *Buckley Tower Condo., Inc. v. QBE Ins. Corp.*, 395 F. App'x 659, 662 (11th Cir. 2010); *CMR Constr. & Roofing, LLC v. Empire Indemnity Ins. Co.*, 843 F. App'x 189, 192-93 (11th Cir. 2021) ("Nor could Empire have breached the insurance policy based on the actual cash value because CMR did not and does not seek actual cash value."). Here, even construing the evidence liberally, the only evidence Plaintiffs proffer that repairs were done is the Weinstein Deposition, where Plaintiffs' corporate representative states that repairs were done to the doors and air conditioning units. Mot. at 7. However, Plaintiffs fail to provide any invoices, receipts, or even photos to prove such repairs were ever performed. *Id.* at 7. The Weinstein Deposition further clarifies that Plaintiffs have not conducted any repairs as to the exterior stucco cracks, nor have they replaced the billboard. *Id.*

Given the plain language of the Policy requires repairs to have been made in order to recover, and Plaintiffs have not provided evidence of any repairs in excess of the $27,000 deductible, Plaintiffs cannot establish entitlement to damages sought under the Policy's replacement cost provision. Accordingly, summary judgment is warranted.

C. **The Policy's Coverage of Damages to the Signs and Fence**

Defendant lastly argues that under the Policy, Plaintiffs are unambiguously only entitled to $2,500 per damaged sign, and that fences are not covered under the Policy. Mot. at 9. Plaintiffs are specifically seeking $31,668.83 to repair a Budget Inn sign at the 2803 Property, or $95,506.87 to replace the Budget Inn sign, and $50,000 to repair a billboard. *Id.* Plaintiffs also seek $12,000 for replacement of the fence at the 2803 Property. *Id.* at 10.

With respect to the damage payments for the signs, the Policy provides the following language:

> **D. Limits Of Insurance**
>
> The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.
>
> The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is $2,500 per sign in any one occurrence.

(ECF No. 1-1) at 42.

In Plaintiffs' Response, Plaintiffs appear to concede that there is a $2,500 insurance limit set forth in the Policy. Based on the clear and unambiguous language in the Policy, the Court agrees that Plaintiffs are only entitled to $2,500 per sign and thus summary judgment is warranted.

Turning to coverage for fences, the Policy provides that the "Covered Property" does not include the following:

> **q.** The following property while outside of buildings: (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

(ECF No. 1-1) at 36.

The Policy also provides that the insured "may extend the insurance provided by this Coverage Form to apply to your outdoor fences . . . caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

(1) Fire;
(2) Lightning;
(3) Explosion;
(4) Riot or Civil Commotion; or
(5) Aircraft.

Id. at 36.

Plaintiffs argue that the Policy provides coverage for windstorms, as set forth in the declarations and on the Causes of Loss Basic Form contained within the Policy. Resp. at 10. Furthermore, Plaintiffs point to an estimate prepared by Defendant's independent adjuster related to its coverage determination, which included a replacement cost value for the fence. *Id.*; *see also* (ECF No. 1-6). Plaintiffs conclude that this estimate conveys that Defendant believed the fence was covered under the Policy. Resp. at 10.

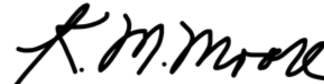
First, looking to the plain language of the Policy, windstorm is generally a Covered Cause of Loss and is included in the Causes of Loss basic form. (ECF No. 1-1) at 34. The provision related to fences (provided above), however, clearly excludes windstorm as a Covered Cause of Loss. (ECF No. 1-1) at 36. Second, with respect to the letter from Defendant's independent adjuster, which provides the estimated damages costs for the property's fence, the Court agrees that this inclusion was misleading to Plaintiffs during the coverage determination period. However, Plaintiffs do not provide, nor has the Court been able to find, any case to support that an initial estimate from an independent adjuster may modify or alter the terms of the Policy such that Defendant is in breach of contract. Accordingly, relying on the plain text of the Policy, a

reasonable juror could not find the fence was covered under the Policy, and thus summary judgment is warranted.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment (ECF No. 52) is GRANTED. All remaining motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of September, 2024.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record