

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

SHANE’S FLOORING, LLC DBA SB
CONTRACTING, LLC

Plaintiff,

v.

HARTFORD UNDERWRITERS
INSURANCE COMPANY

Defendant.

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Civil Action No. 7:25-CV-00006-O

ORDER

Before the Court are Defendant’s Motion to Dismiss and Brief in Support (ECF Nos. 14–15), filed March 14, 2025; Plaintiff’s Response and Brief in Support (ECF Nos. 20–21), filed April 18, 2025; and Defendant’s Reply (ECF No. 23), filed May 2, 2025. After considering the briefing and relevant law, the Court **GRANTS in part** and **DENIES in part** Defendant’s Motion.

I. BACKGROUND¹

This case arises out of an insurance contract (the “Policy”) between Plaintiff Shane’s Flooring, LLC and Defendant Hartford Underwriters Insurance Company. Plaintiff owns the insured property (the “Property”) located at 1405 32nd Street, Wichita Falls, Texas, 76302. During the Policy period, a hailstorm damaged the Property, and Plaintiff timely reported the damage to Defendant. Specifically, Plaintiff informed Defendant that all skylights on the Property were broken by hail and that there was water leakage.

¹ Unless otherwise cited, the Court’s recitation of the facts is taken from Plaintiff’s Amended Complaint. See Pl.’s Am. Compl., ECF No. 10. At the Rule 12(b)(6) stage, these facts are taken as true and viewed in the light most favorable to Plaintiff. *Sonnier v. State Farm Mut. Auto. Ins.*, 509 F.3d 673, 675 (5th Cir. 2007).

Defendant engaged an adjuster, who, according to Plaintiff, was an unlicensed inspector in Texas, to investigate the Property's damage. Plaintiff informed the adjuster the Property did not have any leaks prior to the hailstorm. However, the adjuster's report did not say what ultimately caused the water leak. On or around June 14, 2022, based on photos from the adjuster, Defendant determined Plaintiff's roof only sustained cosmetic damage. Because the Policy excludes coverage for cosmetic damage, Defendant denied payment.

At Plaintiff's request, Defendant hired an engineer to further inspect the Property. The engineer did not measure the gaps between roof panels where the hail had struck. The engineer also ignored water leaks from the panels, despite the fact that it was raining the day the engineer inspected the Property. In September 2022, based on the engineer's findings, Defendant paid Plaintiff for the damaged skylights, but not the water leakage.

In November 2022, Plaintiff invoked appraisal. Although both parties retained third-party appraisers, Defendant's appraiser became nonresponsive to Plaintiff's appraiser. The appraisal award was finally issued on or around August 13, 2024, signed by Plaintiff's appraiser, and included a full roof replacement. Defendant, though, maintained its position that the roof damage was cosmetic and, consequently, denied payment of the full award.

Plaintiff asserts Defendant failed to timely and properly handle the insurance claim, compensate Plaintiff, and conduct a reasonable investigation. Plaintiff brought this action, alleging claims for breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code Chapters 541 and 542. Defendant has since moved to dismiss all of Plaintiff's claims under Federal Rule of Civil Procedure 12(b)(6).²

² Def.'s Mot. Dismiss 1, ECF No. 14.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a) requires a claim for relief to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Rule 8 does not require detailed factual allegations, but “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). If a plaintiff fails to satisfy Rule 8(a), the defendant may file a motion to dismiss the plaintiff’s claims under Federal Rule of Civil Procedure 12(b)(6) for “failure to state a claim upon which relief may be granted.” FED. R. CIV. P. 12(b)(6).

To defeat a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “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.” *Iqbal*, 556 U.S. at 663 (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

In reviewing a Rule 12(b)(6) motion, the Court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mut. Auto. Ins.*, 509 F.3d 673, 675 (5th Cir. 2007). A court need not accept legal conclusions as true, and only a complaint that states a plausible claim for relief survives a motion to dismiss.

Iqbal, 556 U.S. at 678–79. When there are well-pleaded factual allegations, a court assumes their veracity and then determines whether they plausibly give rise to an entitlement to relief. *Id.*

“Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (citations omitted). A court may also consider documents that a defendant attaches to a motion to dismiss if the plaintiff refers to them in the complaint and they are central to the plaintiff’s claims. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000).

III. ANALYSIS

Defendant moves to dismiss all claims in Plaintiff’s Amended Complaint.³ The Court considers each claim in turn.⁴

A. Count I: Breach of Contract

Plaintiff alleges Defendant breached its insurance contract with Plaintiff by failing or refusing to pay Plaintiff adequate policy benefits under the terms of the Policy.⁵ Defendant argues Plaintiff fails “to plead with specificity the elements required.”⁶ The Court disagrees with Defendant.

To state a prima facie claim for breach of contract under Texas law,⁷ the plaintiff must plead the following elements: “(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained

³ See generally Def.’s Br. Supp. Mot. Dismiss, ECF No. 15.

⁴ As a preliminary note, Defendant objects to the exhibits attached to Plaintiff’s Response. Def.’s Reply 1–3, ECF No. 23. Specifically, Defendant argues the Court may not consider the attached insurance policy or Defendant’s discovery responses. This argument, however, is irrelevant, because the Court does not rely on these documents in rendering its determination.

⁵ Pl.’s Am. Compl. 4, ECF No. 10.

⁶ Def.’s Br. Supp. Mot. Dismiss 4, ECF No. 15.

⁷ The parties do not dispute that Texas law applies to this action.

by the plaintiff as a result of the breach.” *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 418 (5th Cir. 2009) (quoting *Aguiar v. Segal*, 167 S.W.3d 443, 450 (Tex. App.—Houston [14th Dist.] 2005, pet. denied)).

To begin, Plaintiff’s Amended Complaint sufficiently pleads the existence of a valid contract. Plaintiff’s Amended Complaint states, “Plaintiff is the owner of an Insurance Policy . . . which was issued by [Defendant].”⁸ So, there is no dispute a valid contract exists between the parties.

Defendant argues Plaintiff must point to specific contract provisions to plead its breach-of-contract claim, relying on *Sanchez Oil & Gas Corporation v. Crescent Drilling & Production, Inc.*, 7 F.4th 301 (5th Cir. 2021).⁹ But there, the Fifth Circuit stated that “[w]hile litigants should, when possible identify specific contractual provisions alleged to have been breached, Rule 8 does not require that level of granularity.” *Id.* at 309. So, Plaintiff is not required to identify the specific contractual provisions alleged to have been breached. Even if it were, Plaintiff specifies five provisions in the Policy Defendant allegedly violated.¹⁰

Plaintiff’s Amended Complaint also pleads the second element, that is, Plaintiff’s performance or tendered performance of the Policy. Defendant argues that Plaintiff’s Amended Complaint fails to allege Plaintiff paid its insurance premiums.¹¹ However, Plaintiff’s Amended Complaint states that Plaintiff “satisfied all conditions precedent to pursue a bona fide and valid property loss claim.”¹² “As a general rule, “[t]he payment of the premium in accordance with the provisions of an insurance policy is a condition precedent to the establishment of liability of the

⁸ Pl.’s Am. Compl. 2, ECF No. 10.

⁹ Def.’s Br. Supp. Mot. Dismiss 4–5, ECF No. 15.

¹⁰ These provisions include “Covered Property, Covered Causes of Loss, Additional Coverages, Coverage Extensions, and Loss Payment.” Pl.’s Am. Compl. 4, ECF No. 10.

¹¹ Def.’s Br. Supp. Mot. Dismiss 5, ECF No. 15.

¹² Pl.’s Am. Compl. 3, ECF No. 10.

insurer.” *Monumental Life Ins. v. Hayes-Jenkins*, 403 F.3d 304, 310 (5th Cir. 2005) (alteration in original) (quoting *Walker v. Fed. Kemper Life Assurance Co.*, 828 S.W.2d 442, 449 (Tex. App.—San Antonio 1992, writ denied)). Additionally, Federal Rule of Civil Procedure 9(c) states that in “pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed.” FED. R. CIV. P. 9(c). Thus, by alleging satisfaction of conditions precedent in the Amended Complaint, Plaintiff sufficiently pleads its performance of the Policy.

Finally, assuming Plaintiff’s allegations are true, Plaintiff has satisfied the third and fourth elements. Specifically, Plaintiff’s Amended Complaint explains Defendant breached the Policy by paying a “small fraction of the award.”¹³ And Plaintiff maintains it sustained damages by alleging the costs due to Defendant’s alleged breach of contract.¹⁴

Because Plaintiff’s Amended Complaint sufficiently pleads a claim for breach of contract at this stage in litigation, the Court **DENIES** Defendant’s Motion to Dismiss Count I.

B. Counts II–V, X: Chapter 541 of the Texas Insurance Code and Common-Law Duty of Good Faith and Fair Dealing

Next, Plaintiff’s Amended Complaint maintains Defendant violated Sections 541.060(a)(2)(A), 541.060(a)(3), 541.060(a)(4)(A), 541.060(a)(7) of the Texas Insurance Code and the common-law duty of good faith and fair dealing.¹⁵ Defendant argues “Plaintiff merely pleads with conclusory facts that it disagrees with [Defendant]’s assessment.”¹⁶ The Court addresses each provision in turn.

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5–11.

¹⁶ Def.’s Br. Supp. Mot. Dismiss 1, ECF No. 15.

1. Texas Insurance Code § 541.060(a)(2)(A) and Common-Law Bad Faith

Section 541.060(a)(2) bars an insurer from “failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of . . . a claim with respect to which the insurer’s liability has become reasonably clear.” TEX. INS. CODE § 541.060(a)(2)(A). “[T]his statutory standard is identical to the common-law bad faith standard.”¹⁷ *Mid-Century Ins. of Tex. v. Boyte*, 80 S.W.3d 546, 549 (Tex. 2002). “A cause of action for breach of the duty of good faith and fair dealing exists when the insurer has *no reasonable basis* for denying or delaying payment of a claim.” *Higginbotham v. State Farm Mut. Auto. Ins.*, 103 F.3d 456, 459 (5th Cir. 1997).

The Texas Supreme Court has “acknowledged that an insurer’s reliance upon an expert’s report . . . will not necessarily shield the carrier if there is evidence that the report was not objectively prepared or the insurer’s reliance on the report was unreasonable.” *State Farm Lloyds v. Nicolau*, 951 S.W.2d 444, 448 (Tex. 1997). Further, “evidence casting doubt on the reliability of the insurer’s expert’s opinions may support a bad-faith finding.” *Id.*

Here, Plaintiff’s Amended Complaint explains Defendant “used an inspector who . . . was not a licensed adjuster in the state of Texas.”¹⁸ Additionally, Defendant relied “only on photos from the unlicensed inspector” in making the decision to deny payment under the Policy.¹⁹ Further, Defendant “conduct[ed] an outcome-oriented investigation.”²⁰

A court in this district held that similar allegations sufficiently pled a violation of Section 541.060(a)(2)(A). *See Anderson v. Cont’l W. Ins.*, No. 5:17-CV-222-M-BQ, 2017 WL 7310390, at *5 (N.D. Tex. 2017), *report and recommendation adopted*, No. 5:17-CV-222-M, 2018

¹⁷ Texas Insurance Code article 21.21 has been re-codified in Texas Insurance Code Chapter 541. *Tex. Mut. Ins. v. Morris*, 383 S.W.3d 146, 147 n.1 (Tex. 2012).

¹⁸ Pl.’s Am. Compl. 6, ECF No. 10.

¹⁹ *Id.*

²⁰ *Id.* at 4.

WL 637912 (N.D. Tex. Jan. 31, 2018). There, the plaintiff pled the defendant “failed to adequately inspect the property by sending an unlicensed, third-party inspector”; the inspector “never inspected the property himself”; and the defendant “performed an outcome-oriented investigation.” *Id.* The Court agrees with *Anderson’s* holding and likewise concludes Plaintiff’s Amended Complaint here plausibly pleads Defendant violated Section 541.060(a)(2)(A) and the common-law duty of good faith and fair dealing. The Court therefore **DENIES** Defendant’s Motion to Dismiss Counts III and X.

2. Texas Insurance Code § 541.060(a)(3)

Section 541.060(a)(3) bars an insurer from “failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer’s denial of a claim.” TEX. INS. CODE § 541.060(a)(3). Because an alleged violation of Section 541.060(a)(3) “is based on the sufficiency of the explanation provided when the claim was denied, rather than the validity of the investigation and reliability of [an expert]’s reports, this claim is not simply a recharacterization of the bad faith claim.” *Wings Platinum, LLC v. Westchester Surplus Lines Ins.*, No. 3:23-CV-2145-D, 2025 WL 1489236, at *6 (N.D. Tex. Feb. 4, 2025). “An explanation that an expert investigation revealed that damage to the roof was not caused by a covered cause of loss is a reasonable basis for declining coverage under the Policy.” *Id.*

Here, “Defendant denied payment of the full award due to its position that the roof hail damage was cosmetic and therefore excluded.”²¹ Defendant’s engineer (i.e., expert investigation) determined the roof damage was cosmetic.²² Thus, under Texas law, Defendant’s explanation of

²¹ *Id.* at 8.

²² *Id.* at 9.

the basis in the Policy for its denial of payment was reasonable. The Court therefore **GRANTS** Defendant's Motion to Dismiss Count V.

3. Texas Insurance Code § 541.060(a)(4)(A)

Plaintiff agrees with Defendant that this Count should be dismissed.²³ The Court therefore **GRANTS** Defendant's Motion to Dismiss Count IV.

4. Texas Insurance Code § 541.060(a)(7)

Section 541.060(a)(7) bars an insurer from “refusing to pay a claim without conducting a reasonable investigation with respect to the claim.” TEX. INS. CODE § 541.060(a)(7). Federal district courts applying Texas law have held an insurer liable for violating this provision when the insurer ignored its adjuster's findings or when the adjuster failed to account for all of the covered damage by overlooking storm damage. *See, e.g., Kotzur v. Metro. Lloyds Ins. of Tex.*, No. SA-19-CV-01165-XR, 2019 WL 6168207, at *3–4 (W.D. Tex. 2019) (holding joinder was proper in part because the plaintiffs' allegation that the defendant “ignored [adjuster]'s findings” was enough to state a claim under Section 541.060(a)(7)); *Shree Kuber Baba LLC v. Columbia Mut. Ins.*, No. SA-16-CA-01073-FB, 2017 WL 3274906, at *5 (W.D. Tex. 2017), *report and recommendation adopted*, No. SA-16-CA-1073-FB, 2017 WL 3274905 (W.D. Tex. Feb. 28, 2017) (recommending holding joinder was proper because the plaintiff “allege[d] that [the adjuster] disregard[ed] storm damage, including, . . . most of the hail and wind damage to the roofs” and “water intrusion damage, as a result of storm-created openings”). These district courts both applied Fifth Circuit precedent that “if a plaintiff can *survive a Rule 12(b)(6) challenge*, there is no improper joinder.” *Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp.*, 818 F.3d 193, 200 (5th Cir. 2016) (emphasis added) (citation omitted).

²³ Pl.'s Br. Supp. Resp. 15, ECF No. 21.

Here, Plaintiff's Amended Complaint maintains "Defendant paid nothing on . . . any interior leaks . . . despite Defendant acknowledging that its outside unlicensed inspector did not state the source of the interior water leak in its report on which Defendant relied to make its claim decision."²⁴ Additionally, the Complaint explains "Defendant's expert did not try to measure the gaps between the panels of the roof where hail had clearly hit and bent where the panels overlap."²⁵

Based on these allegations, Plaintiff's Amended Complaint plausibly pleads Defendant violated Section 541.060(a)(7) at this stage in litigation. The Court therefore **DENIES** Defendant's Motion to Dismiss Count II.

C. Counts VI–IX: Texas Prompt Payment of Claims Act

Next, Plaintiff asserts Defendant violated the Texas Prompt Payment of Claims Act ("TPPCA"), that is, Sections 542.055, 542.056, 542.057, and 542.058 of the Texas Insurance Code.²⁶ Defendant argues the allegations in these Counts are insufficient because "Plaintiff did not provide the information" as to when the statutory clock started for each TPPCA provision.²⁷ The Court addresses each provision in turn.

1. Texas Insurance Code §§ 542.057 and 542.058

Section 542.057 states "if an insurer notifies a claimant . . . that the insurer will pay a claim or part of a claim, the insurer shall pay the claim not later than the fifth business day after the date notice is made." TEX. INS. CODE § 542.057(a). Section 542.058 makes it a violation "if an insurer, after receiving all items, statements, and forms reasonably requested and required . . . delays payment of the claim . . . for more than 60 days." TEX. INS. CODE § 542.058(a). "Nothing in the TPPCA would excuse an insurer from liability for TPPCA damages if it was liable under the terms

²⁴ Pl.'s Am. Compl. 7, ECF No. 10.

²⁵ *Id.* at 8.

²⁶ *Id.* at 11–14.

²⁷ Def.'s Br. Supp. Mot. Dismiss 2, ECF No. 15.

of the policy but delayed payment beyond the statutory deadline, regardless of the use of the appraisal process.” *Barbara Techs. v. State Farm Lloyds*, 589 S.W.3d 806, 819 (Tex. 2019). And “[n]othing in Chapter 542 discharges prompt payment liability based on the partial payment of the amount that ‘must be paid’ under the policy. Otherwise, an insurer could pay a nominal amount toward a valid claim to avoid the prompt payment deadline that the Legislature has imposed.” *Hinojos v. State Farm Lloyds*, 619 S.W.3d 651, 656–57 (Tex. 2021) (footnote omitted).

Here, the parties disagree “on liability on the remainder of the appraisal award.”²⁸ But, as stated above, this does not shield Defendant from liability. Further, Plaintiff’s Amended Complaint alleges “Defendant increased the amounts that it owed under the Policy two times . . . [t]he second payment [being] some *two years* after its initial undisputed payment.”²⁹

Defendant argues that because Plaintiff’s Amended Complaint does not provide the commencement date of the statutory clock, this claim cannot survive under Rule 12(b)(6).³⁰ Although it is true Plaintiff does not allege when the clock began, the Amended Complaint asserts Defendant’s additional payments occurred “two years” after initial payment.³¹ Two years is, of course, far outside of the statutory deadlines prescribed in Sections 542.057 (fifth business day) and 542.058 (sixty days). Accordingly, Plaintiff’s Amended Complaint plausibly pleads Defendant violated Sections 542.057 and 542.058 of the Texas Insurance Code. The Court therefore **DENIES** Defendant’s Motion to Dismiss Counts VIII and IX.

2. Texas Insurance Code §§ 542.055 and 542.056

Section 542.055 states “[n]ot later than the 15th day . . . after the date an insurer receives notice of a claim, the insurer shall . . . request from the claimant all items, statements, and forms

²⁸ Pl.’s Br. Supp. Resp. 18, ECF No. 21.

²⁹ Pl.’s Am. Compl. 13, ECF No. 10 (emphasis added).

³⁰ Def.’s Br. Supp. Mot. Dismiss 2, ECF No. 15.

³¹ Pl.’s Am. Compl. 13, ECF No. 10.

that the insurer reasonably believes, at that time, will be required from the claimant.” TEX. INS. CODE § 542.055(a)(3). Section 542.056 states “an insurer shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 15th business day after the date the insurer receives all items, statements, and forms required by the insurer.” *Id.* § 542.056(a).

Beginning with Plaintiff’s Section 542.056 claim, Plaintiff alleges “[Defendant] failed to accept or deny Plaintiff’s full and entire claims within the statutorily mandated time of receiving all necessary information.”³² But Plaintiff does not say when it “receiv[ed] all necessary information.” Thus, it cannot be determined from Plaintiff’s Amended Complaint whether Defendant’s partial rejection of the claim was untimely under Section 542.056. *See Lopez v. Allstate Indem. Co.*, No. 7:22-CV-00023, 2022 WL 2132705, at *4 (S.D. Tex. June 14, 2022) (“[The] [p]laintiff fails to specify relevant dates or even the statutory time period, so the Court is unable to determine whether the alleged delay in fact constitutes a violation of [Section 542.056]”). The Court therefore **GRANTS** Defendant’s Motion to Dismiss Count VII.

Plaintiff’s Section 542.055 claim similarly maintains Defendant “failed to timely acknowledge Plaintiff’s claims, begin an investigation of Plaintiff’s claims, and request all information reasonably necessary to investigate Plaintiff’s claims within the statutorily mandated time of receiving notice of Plaintiff’s claims.”³³

But, similar to its Section 542.056 defect, “Plaintiff does not allege when [Defendant] first requested and received all information it thought it would need from Plaintiff.”³⁴ Thus, it cannot be determined from Plaintiff’s Amended Complaint whether Defendant requested all information it needed within the statutory timeframe. *See Mitchell v. Praetorian Ins.*, No. CV H-23-2049, 2024

³² *Id.* at 12.

³³ *Id.* at 11.

³⁴ Def.’s Br. Supp. Mot. Dismiss 12, ECF No. 15.

WL 310224, at *3 (S.D. Tex. Jan. 26, 2024) (“[The plaintiff] fails to state a claim under § 542.055 because she does not allege the date that [the defendant] received notice of the claim or when [the defendant] allegedly failed to acknowledge receipt of the claim, commence an investigation, or request information.”). The Court therefore **GRANTS** Defendant’s Motion to Dismiss Count VI.

IV. LEAVE TO AMEND

Plaintiff requests “the opportunity to amend its pleading.”³⁵ If a plaintiff’s pleadings are deficient under Rule 12(b)(6), a district court should “freely give leave [to amend] when justice so requires.” FED. R. CIV. P. 15(a)(2). Rule 15(a) even “evinces a bias in favor of granting leave to amend.” *Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 566 (5th Cir. 2002) (citation omitted). But “leave to amend under Rule 15 is by no means automatic.” *Goldstein v. MCI WorldCom*, 340 F.3d 238, 254 (5th Cir. 2003). One of the permissible reasons for denying a request for leave to amend is if the amendment would be futile. *Id.*

Here, the Court **GRANTS** Plaintiff leave to amend Counts VI and VII to cure the timeline defects. Plaintiff **SHALL** file an amended complaint by **no later than August 25, 2025**. Should Plaintiff fail to do so, these Counts shall be dismissed with prejudice.

³⁵ Pl.’s Br. Supp. Resp. 21, ECF No. 21.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part** and **DENIES in part** Defendant's Motion to Dismiss (ECF No. 14). Accordingly, the Court **DISMISSES with prejudice** Counts IV and V. The Court **DISMISSES without prejudice** Counts VI and VII and **GRANTS** Plaintiff's request for leave to amend these Counts. Plaintiff **SHALL** file an amended complaint **no later than August 25, 2025**.

SO ORDERED on this **8th day of August, 2025**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE