STATE OF INDIANA	) MARION COUNTY SUPERIOR COURT
	) SS: CIVIL DIVISION
COUNTY OF MARION	) CAUSE NO.: 49D01-2401-CT-000154

KAYA P.R. STEWART, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
SIMON PROPERTY GROUP, L.P., a/k/a SIMON PROPERTY GROUP, INC., and ALLIED UNIVERSAL EVENT SERVICES, INC.,	)
	)
Defendants.	)

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

I. PROCEDURAL HISTORY

Plaintiffs filed an Amended Complaint on January 30, 2024 alleging Count I: Premises Liability Against Simon Properties; Count II: Negligence Against All Defendants; Count III: Gross Negligence Against All Defendants; and Count IV: Negligent Infliction of Emotional Distress Against All Defendants. Defendants, Simon Properties and Defendant, Allied Universal Event Services, Inc. each filed a Motion to Dismiss all Counts on March 19, 2024. Plaintiffs filed their Response April 19, 2024 and Defendants each replied on April 29, 2024. A Hearing on the Motion was heard May 1, 2024. All parties presented argument to the court.

II. RELEVANT FACTS

For the purpose of this Motion to Dismiss, the Court takes all facts contained in Paragraphs 31-52 of Plaintiff's Amended Complaint as true.

III. STANDARD OF REVIEW

Under Indiana law, a motion to dismiss for failure to state a claim "tests the legal sufficiency of the [plaintiff's] claim, not the facts supporting it." *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015) (citation omitted). In reviewing a Rule 12(B)(6) motion to dismiss, "a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would not be entitled to recover under any set of facts admissible under the allegations of the complaint." *Huffman v. Ind. Office of Envtl. Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004). Under notice pleading, all that is required for a complaint to defeat a 12(B)(6) motion to dismiss is a clear and concise statement that will put the defendants on 'notice' as to what has taken place and the theory that the plaintiffs plan to pursue in their attempt for recovery." *Lincoln Nat'l Bank v. Mundinger*, 528 N.E.2d 829, 836 (Ind. Ct. App. 1988) (citations omitted).

Although courts "accept the facts alleged in the complaint as true and draw every reasonable inference in the plaintiff's favor," they "need not accept as true allegations that are contradicted by other allegations or exhibits attached to or incorporated into the pleading." *Trustees of Indiana Univ. v. Spiegel*, 186 N.E. 3d 1151, 1157 (Ind. Ct. App. 2022). Courts "also need not accept as true conclusory, nonfactual assertions or legal conclusions." *Id.*

IV. DISCUSSION

Goodwin and Rogers

Defendants (Simon as property owners and Universal as an extension of Simon) have asked the Court to rely on the two pivotal cases that address duties owed to invitees*: Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384 (Ind. 2016) and *Rogers v. Martin*, 63 N.E.3d 316 (Ind. 2016). In these

cases, the courts identify the "broad plaintiff" (in this case the mall patrons) and the "broad occurrence" (in this case the mass shooting) and rely not on the individual facts but on duties owed to the broad plaintiffs during a broad occurrence. In 2016, the Indiana Supreme Court held in *Goodwin* and *Rogers* that trial courts act "as gatekeeper" and "must decide—in the context of duty—whether [a] criminal act is foreseeable" such that the defendant owed a duty to protect a plaintiff-invitee against the crime." *Goodwin* at 388–89. Plaintiff correctly points out, however, the progeny of *Goodwin* and *Rogers* allow recovery when proprietor "knows or has reason to know that the acts of the third party are occurring or are about to occur." *Hamilton v. Steak n' Shake Operations, Inc*., 92 N.E.3d 1166, 1172 (Ind. Ct. App. 2018), *trans. denied.*

The Plaintiffs ask the court to extend an "imminent harm exception" to the no-duty rule. They contend that the "key factor" in the adjudication is "whether the defendant knew or had reason to know of any present and specific circumstances that would cause a reasonable person to recognize the probability or likelihood of imminent harm." *Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, 140 N.E.3d at 837, 838 (Ind. 2020). Although *Cavanaugh* does not expressly provide such an exception, the concept remains. Whether or not the Defendants in the instant cause "knew or had reason to know" of facts that may have made the shooting foreseeable can not be known at this juncture. The Defendants rely on the very low bar of "notice" in their complaint which they have met.

The court cannot find that either Defendant can invoke the "No-Duty" rule under the facts laid out in this complaint. It is noteworthy that all the cases relied upon by both Defendants are findings at the Summary Judgment stage. While eight years since *Goodwin* and *Rogers i*s certainly not a lifetime, it is significant enough for many courts to have considered the issues in a Motion to Dismiss scenario.

V. CONCLSION

The facts as alleged in the complaint are meant to put Defendants on Notice. While certainly further discovery may not yield the results desired, at this stage of the proceedings, the Plaintiffs have met their notice obligations and discovery should proceed. Based on the foregoing, the Court **DENIES t**he Defendant's Motion to Dismiss each of Counts I-IV.

SO ORDERED, ADJUDGED AND DECREED this 5/14/2024.

Honorable Christina Klineman
Judge, Marion Superior Court D01

Distribution: All Counsel of Record