

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-20929-Civ-COOKE/GOODMAN

MARCUS IRVIN, *et al.*,

Plaintiffs,

vs.

NCL (BAHAMAS) LTD.,  
*doing business as* NCL,

Defendant.

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**ORDER DENYING DEFENDANT’S MOTION TO DISMISS**

THIS MATTER is before the Court on Defendant’s Motion to Dismiss (the “Motion”) (ECF No. 11), filed April 1, 2020. On April 15, 2020, Plaintiffs filed a Response in Opposition to Defendant’s Motion (ECF No. 15). Having reviewed the Motion, the Response, and the relevant legal authorities, and for the reasons provided below, the Court **DENIES** the Motion.

**BACKGROUND**

Plaintiffs, Marcus Irvin, Danielle Callender, Evan Crawford, Alyssa White, Lynn Hammell, Lisa Stewart, and Eleonor Lindner (collectively, “Plaintiffs”), bring this maritime personal injury action against Defendant, NCL (Bahamas) Ltd. (“NCL”), for injuries sustained while passengers aboard NCL’s cruise ship, the *Norwegian Escape* (the “*Escape*” or “ship”). ECF No. 1 at ¶ 18, 31.

On March 3, 2019, Plaintiffs boarded the *Escape* in New York, and headed to Florida. *Id.* at ¶ 19. At approximately midnight, the ship sailed into a severe winter storm. *Id.* at ¶ 20. This caused the ship to tilt three separate times: “an initial tilt,” “a much stronger second tilt,” and “a third tilt that caused damage across the ship.” *Id.* at ¶ 26. During these events,

passengers were thrown from chairs, out of beds, and to the opposite side of the ship. *Id.* at ¶ 30.

Initially, no announcements were made. *Id.* ¶ at 28. But at some point, during the course of the last two tilts, the *Escape's* captain made a "Code Alpha" announcement to those onboard; but he did not provide an explanation for what the emergency code meant. *Id.* ¶ at 29. Many passengers observed the *Escape's* crew put on life vests, but when passengers asked for a life vest the crew was silent. *Id.* Many passengers feared the ship was going to capsize. *Id.* Over the course of these events, Plaintiffs sustained physical impact. *Id.* at ¶ 31. And as a result of these events, Plaintiffs continue to suffer physical, mental, and emotional injuries. *See, e.g., Id.* at ¶ 68, 151.

Based on these allegations, Plaintiffs filed suit against NCL, each pursuing a claim for negligence and negligent infliction of emotional distress. *See, e.g., Id.* at ¶¶ 60-68, 123-28. Additionally, Plaintiffs seek punitive damages. *See, e.g., Id.* at ¶ 68.

#### LEGAL STANDARD

Federal Rule of Civil Procedure 8(a) requires that a complaint "contain. . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While this standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The standard requires the complaint to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema N.A.*, 543 U.S. 506, 512 (2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). To provide the "grounds" for "entitle[ment] to relief," the complaint must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

"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.'" *Iqbal*, 556 U.S. 662, 678 (2009) (citing *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.*

When considering a motion to dismiss, the Court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Duty Free Ams., Inc. v. Estee Lauder Cos.*, 797 F. 3d 1248, 1262 (11th Cir. 2015) (citing *Murphy v. F.D.I.C.*, 208 F.3d 959, 962 (11<sup>th</sup> Cir. 2000)). However, this tenet is inapplicable to legal conclusions. *Iqbal*, 556 U.S. at 678.

## DISCUSSION

NCL argues the Court should dismiss the Complaint because: (1) Plaintiffs' Complaint is a shotgun pleading that alleges duties and breaches that do not exist as a matter of law; and (2) Plaintiffs are not entitled to pursue punitive damages for their negligence-based claims.

### I. Plaintiffs' Complaint is Not a Shotgun Pleading

NCL argues that Plaintiffs' Complaint is a shotgun pleading. The Eleventh Circuit has recognized four types of shotgun pleadings. See *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323. NCL contends that Plaintiffs' Complaint is a shotgun pleading that fails to separate each cause of action or claim for relief into different counts. ECF No. 11 at 3.

In their Complaint, each plaintiff asserts one count of negligence and one count of negligent infliction of emotional distress. ECF No. 1. The negligence counts contain factual allegations showing: (1) NCL owed a duty to Plaintiffs, (2) NCL breached that duty, (3) the breach caused Plaintiffs' injuries, and (4) Plaintiffs suffered harm. *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) ("In analyzing a maritime tort case, we rely on general principles of negligence law."). Similarly, the negligent infliction of emotional distress counts contain factual allegations showing that Plaintiffs have suffered mental or emotional harm that was caused by NCL's alleged negligence. See *id.* at 1337-38.

Each count in the Complaint contains factual allegations supporting each element of that respective cause of action. This is not a situation where Plaintiffs have commingled distinct theories of liability, *Gharfen v. Carnival Corp.*, 309 F. Supp. 3d 1317, 1323-24 (S.D. Fla. 2018), or failed to provide adequate factual allegations, *Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-Civ-SCOLA, 2012 U.S. Dist. LEXIS 77536, at \*9-14 (S.D. Fla. June 5, 2012).

NCL also asserts Plaintiffs' Complaint alleges breaches that stem from duties that are not owed as a matter of law. It is well-settled that cruise shipowners owe their passengers a duty of reasonable care under the circumstances, which includes a duty to warn passengers of known dangers which are not apparent and obvious. *See Smith v. Royal Caribbean Cruises, Ltd.*, 620 F. App'x 727, 729 (11th Cir. 2015). Here, Plaintiffs allege NCL breached its duty when it did not warn passengers of the approaching severe weather, (ECF No. 1 at ¶ 65(j)), did not advise passengers to brace themselves or stay put, (ECF No. 1 at ¶ 65(k)), and sailed the ship into a storm, (ECF No. 1 at ¶ 65(h)). The Court finds these allegations "give [NCL] adequate notice of the claims against [it] and the grounds upon which each claim rests." *Weiland*, 792 F.3d at 1323. Accordingly, dismissal of Plaintiffs' negligence claims is inappropriate.

## **II. Plaintiffs Are Permitted to Pursue Punitive Damages.**

Under maritime law, personal injury claimants "have no claim for. . . punitive damages, except in exceptional circumstances. . . such as situations of intentional wrongdoing." *In re Amtrack "Sunset Limited" Train Crash in Bayou Canot v. Warrior & Gulf Navigation Co.*, 121 F.3d 1421, 1429 (11th Cir. 1997); *see also Terry v. Carnival Corp.*, 3 F. Supp. 3d 1363, 1371 (S.D. Fla. 2014). To show intentional misconduct, a plaintiff "must show that 'the Defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damages.'" *Incardone v. Royal Caribbean Cruises*, No. 16-20924-CIV-MARTINEZ-GOODMAN, 2020 U.S. LEXIS 10000, at \*17 (S.D. Fla. Jan. 18, 2020).

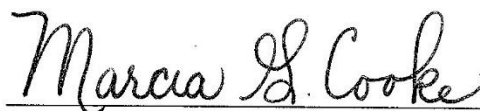
NCL contends that Plaintiffs have not and cannot show factual allegations of intentional misconduct. ECF No. 11 at 5, 7. However, Plaintiffs have alleged: NCL has ports in various locations that commonly experience harsh winter conditions (ECF No. 1 ¶¶ 33-35); NCL experienced a similar winter storm situation with another cruise ship in the previous year (ECF No. 1 ¶¶ 41-46); NCL was aware of the severe weather conditions prior to departure and as it continued to monitor the forecast (ECF No. 1 ¶¶ 49-51, 55); and NCL sailed the *Escape* through the storm, which caused the ship to tilt (ECF No. 1 ¶ 20). Given these allegations, it can be inferred that NCL knew of the wrongfulness in sailing the *Escape* into the winter storm and the high probability that such conduct would cause injury.

Therefore, Plaintiffs have sufficiently pled for punitive damages. *See Nghi Tang v. Ncl Bah.*, No. 1:20-cv-20967-KMM, 2020 U.S. Dist. LEXIS 125927, at \*7 (S.D. Fla. July 14, 2020).

**CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendant's Motion to Dismiss (ECF No. 11).

**DONE and ORDERED** in Chambers, Miami, Florida this 28th day of September 2020.



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MARCIA G. COOKE  
United States District Judge

Copies furnished to:  
*Jonathan Goodman, U.S. Magistrate Judge*  
*Counsel of Record*