

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-60887-CIV-DIMITROULEAS

PAUL CARTER,

Plaintiff,

vs.

BPCL MANAGEMENT, LLC,  
d/b/a BAHAMAS PARADISE CRUISE LINE, et. al.,

Defendants.

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**ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT;  
DENYING DEFENDANT’S MOTION TO STRIKE AS MOOT**

THIS CAUSE is before the Court on Defendant Paradise Cruise Line Operator, Ltd., Inc. (“Paradise”)’s Motion for Summary Judgment [DE 265] (“Motion for Summary Judgment”), and Defendant Paradise’s Motion to Strike Improper References in Plaintiff’s Response in Opposition to Defendant’s Motion for Summary Judgment and Response in Opposition to Defendant’s Statement of Facts [DE 323] (“Motion to Strike”).<sup>1</sup> The Court has carefully considered the Motions, Responses, Replies, the parties’ statements of facts, the exhibits and affidavits filed in the record, and is otherwise fully advised in the premises.

For the reasons stated herein, Defendant’s Motion for Summary Judgment is granted and Defendant’s Motion to Strike is denied as moot.

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<sup>1</sup> On September 15, 2021, Magistrate Judge Lurana S. Snow granted Defendant’s Motion to Strike with respect to Parts II.A., II.B., and III.G., striking all references to “Rule 26 violations,” the biofilm theory, and the unnamed neurotoxicology expert. *See* [DE 328]. The Court has incorporated those rulings in ruling on the Motion for Summary Judgment.

**I. BACKGROUND<sup>2</sup>**

Plaintiff Paul Carter (“Plaintiff”) commenced this action on April 3, 2019. [DE 1]. Thereafter, Plaintiff filed a four (4) count Second Amended Complaint on March 5, 2020, alleging claims for negligence, violation of the Florida Deceptive and Unfair Practices Act (“FDUTPA”), breach of contract, and a violation of the Telephone Consumer Protection Act (“TCPA”). [DE 109]. The Court dismissed the FDUTPA claim on November 6, 2020. [DE 152].

On December 22, 2016, Paradise Cruise Line Operator, Ltd. registered as a corporation under the trade name “Bahamas Paradise Cruise Line” and the former owners, Cruise Operator, Inc., cancelled the fictitious name registration. DSOF ¶¶ 3, 4. Paradise owned, operated, managed, and supervised the Grand Celebration from December 22, 2016 through November 2020. DSOF ¶ 4.

On April 4, 2018, Plaintiff and Tippadee Carter (“Mrs. Carter”) boarded Paradise’s Grand Celebration vessel. [DE 109], ¶ 13. According to Plaintiff, he was prevented from bringing any bottled water onboard by employees of Defendant. [DE 109], ¶ 15. Plaintiff was required to purchase a water bottle. [DE 109], ¶ 17. After drinking the tap water onboard, Plaintiff became ill, which resulted in other alleged injuries. [DE 109], ¶¶ 18-21; DSOF ¶¶ 1, 17.

Plaintiff argues that he provided notice of his illness to Defendant Paradise’s employees while aboard the ship. PSOF<sup>3</sup> ¶ 2. Defendant argues that the only written notice of claims

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<sup>2</sup> The Court refers to Defendant Paradise’s Statement of Facts [DE 266] as DSOF and Plaintiff’s Response thereto [DE 310] as PSOF. Defendant has interpreted Plaintiff’s Response as a combined statement and additional facts. The Court will refer to Defendant’s Reply [DE 313] to those additional facts as DRSOFF. The Statements of Fact and responses thereto include various citations to specific portions of the record. Any citations herein to the statements of facts and responses thereto should be construed as incorporating those citations to the record.

<sup>3</sup> Plaintiff’s Response to Defendant’s Statement of Facts contains various improper references, many of which are the subject of Defendant’s Motion to Strike [DE 323]. The Court has repeatedly notified Plaintiff that his opposition to the Motion for Summary Judgment must be based on properly cited record evidence. *See* DEs 268, 277, 296, 302. In an effort to afford the *pro se* Plaintiff leniency, the Court has attempted to extrapolate portions of Plaintiff’s Statement of Facts to the extent they are relevant to this Court’s determination on the Motion for Summary Judgment. Any non-responsive portions of Plaintiff’s Response to Defendant’s Statement of Facts are deemed

Paradise received was a letter from Plaintiff's former counsel, dated March 13, 2019, postmarked April 4, 2019, and received on April 8, 2019. DSOF ¶ 2.

Defendant argues Plaintiff received his Cruise Ticket Contract ("Contract") prior to the cruise from his travel agent at his travel agent's Welcome Center. DSOF ¶ 5. Plaintiff argues that he did not receive the Contract prior to his cruise from a travel agent, and instead received the Contract upon boarding. PSOF ¶ 5. Defendant states that Mrs. Carter signed the Contract on Plaintiff's behalf and Plaintiff's use of the Contract constituted his acceptance of the terms. DSOF ¶ 6. Plaintiff states Mrs. Carter was asked to sign a number a documents during a "rush of paperwork," during which Mrs. Carter received no verbal notification that she was being asked to sign a contract. PSOF ¶ 6. Plaintiff further states he believed he was traveling onboard a vessel operated by another cruise line. *Id.*

As to the terms of the Contract, Defendant states that Mrs. Carter's signature appears below a text box stating "IMPORTANT THAT YOU READ" in capital, bold font with the trade name "Bahamas Paradise Cruise Line" on the other side of the page from Mrs. Carter's signature. DSOF ¶ 7. Defendant also states that every passenger sailing on a Paradise vessel does so by virtue of a Contract, which advises passengers to read its terms and conditions and advises the acceptance of the Contract constitutes the passenger's agreement to those terms and conditions. DSOF ¶ 9. Defendant also cites to the following language included in the contract:

**This is your ticket contract. It is important that you read all of the terms and conditions of this contract. Your attention is particularly drawn to the exemptions and limitations on the carrier's liability on paragraphs 4, 6, 12 and 15, which limit our liability and your right to sue. By accepting this ticket, the passenger and/or purchaser agrees to its terms and conditions on**

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admitted. *See Jones v. Bank of Am., N.A.*, 564 F. App'x 432, 434 (11th Cir. 2014) ("[A] party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is unopposed.") (quoting *Kramer v. Gwinnett Cnty., Ga.*, 306 F. Supp. 2d 1219, 1221 (N.D. Ga. 2004)); *see also Hartford Steam Boiler Inspection & Ins. Co. v. Brickellhouse Condo. Ass'n, Inc.*, 2016 WL 5661636, at \*3 (S.D. Fla. Sept. 30, 2016) (holding that plaintiff "impliedly concede[d]" a point by failing to address defendant's argument).

**his own behalf and also on behalf of any other person or persons for who this ticket is purchased as his, her or their agent (whether or not signed).**

DSOF ¶ 10. At the top of the first page of terms and conditions of the Contract:

**CRUISE TICKET CONTRACT**  
**IMPORANT NOTICE TO PASSENGERS**  
**THIS IS YOUR CRUISE TICKET CONTRACT. IT CONTAINS IMPORTANT LIMITATIONS ON THE RIGHTS OF PASSENGERS. IT IS IMPORTANT THAT YOU CAREFULLY READ ALL TERMS AND CONDITIONS OF THIS CONTRACT, WITH PARTICULAR ATTENTION TO PARAGRAPHS 4, 6, 12 AND 15, WHICH LIMIT OUR LIABILITY AND YOUR RIGHT TO SUE, AND RETAIN IT FOR FUTURE REFERENCE.**

DSOF ¶ 12. Finally, Defendant cites to the following relevant terms as they pertain to pre-suit notice and time limitations. Specifically, paragraph 12 of the Contract states with regards to personal injury claims:

NO SUIT SHALL BE MAINTAINBLE AGAINST THE CARRIER,<sup>4</sup> THE VESSEL OR ANY TRANSPORT, FOR PERSONAL INJURY, ILLNESS OR DEATH OF PASEENGER UNLESS WRITTEN NOTICE OF THE CLAIM, WITH FULL PARTICULARS, IS DELVIERED TO THE CARRIER AT ITS PRINCIPAL OFFICE WITHIN SIX (6) MONTHS FROM THE DATE OF SUCH PERSONAL INJURY, ILLNESS OR DEATH OF THE PASSENGER.

DSOF ¶ 16. Further, paragraph 12 of the Contract states with regards to non-injury claims:

NO SUIT SHALL BE MAINTAINBLE AGAINST THE CARRIER FOR ANY NON-INJURY, ILLNESS OR DEATH CLAIMS . . . OR FOR ANY LOSSES, DAMAGES OR EXPENSES, RELATED TO OR IN ANY WAY ARISING OT OF OR CONNECTED WITH THIS CONTRACT . . . UNLESS WRITTEN NOTICE OF THE CLAIM, WITH FULL PARTICULARS, IS DELIVERED TO THE CARRIER’S PRINCIPAL OFFICE WITHIN THIRTY (30) DAYS AFTER TERMINATION OF THE CRUISE TO WHICH THIS CONTRACT RELATES.

DSOF ¶ 19. As to the time for filing suit for non-injury claims under paragraph 12 of the Contract:

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<sup>4</sup> Paragraph 23 of the Contract states that “carrier” includes “the vessel and its tenders, and their respective owners, operators, charterers, managers, affiliates, successors and assigns, and independent contractors” and “passenger” includes “the plural where appropriate and all persons engaging to and/or traveling under this contract, persons in their care and their respective heirs and representatives.” DSOF ¶ 14.

IN NO EVENT SHALL ANY SUCH SUIT BE MAINTAINBLE UNLESS SUIT IS COMMENCED (FILED) WITHIN SIX (6) MONTHS AFTER THE TERMINATION OF THE CRUISE AND PROCESS SERVED WITHIN SIXTY (60) DAYS AFTER FILING, NOTWITHSTANDING ANY PROVISION OF LAW OF ANY STATE OR COUNTRY TO THE CONTRARY.

DSOF ¶ 21.

Defendant states that Plaintiff did not provide written notice to Paradise of his personal injury claim within six (6) months from the date of his personal injury on April 4, 2018, which should have occurred on or before October 1, 2018. DSOF ¶ 18. Nor did Plaintiff provide written notice to Paradise of his non-injury claims within thirty (30) days from the termination of his cruise on April 6, 2018, which should have occurred on or before May 6, 2018. DSOF ¶ 20. Nor did Plaintiff file suit for his non-injury claims within six (6) months after termination of his cruise on April 6, 2018, which should have occurred on or before October 1, 2018. DSOF ¶ 22.

## **II. STANDARD OF REVIEW**

Under Rule 56(a), “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant bears “the stringent burden of establishing the absence of a genuine issue of material fact.” *Suave v. Lamberti*, 597 F. Supp. 2d 1312, 1315 (S.D. Fla. 2008) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

“A fact is material for the purposes of summary judgment only if it might affect the outcome of the suit under the governing law.” *Kerr v. McDonald’s Corp.*, 427 F.3d 947, 951 (11th Cir. 2005) (internal quotations omitted). Furthermore, “[a]n issue [of material fact] is not ‘genuine’ if it is unsupported by the evidence or is created by evidence that is ‘merely colorable’ or ‘not significantly probative.’” *Flamingo S. Beach I Condo. Ass’n, Inc. v. Selective Ins. Co. of Southeast*, 492 F. App’x 16, 26 (11th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477

U.S. 242, 249–50 (1986)). “A mere scintilla of evidence in support of the nonmoving party’s position is insufficient to defeat a motion for summary judgment; there must be evidence from which a jury could reasonably find for the non-moving party.” *Id.* at 26-27 (citing *Anderson*, 477 U.S. at 252). Accordingly, if the moving party shows “that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party” then “it is entitled to summary judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact.” *Rich v. Sec’y, Fla. Dept. of Corr.*, 716 F.3d 525, 530 (11th Cir. 2013) (citation omitted).

### **III. DISCUSSION**

#### **A. Enforceability of the Pre-Suit Written Notice Requirements and Suit Limitations Periods**

Defendant argues Plaintiff’s negligence claim is barred under the terms of the Contract as Plaintiff failed to give timely pre-suit written notice of his negligent failure to warn claim. Defendant further argues Plaintiff’s non-injury breach of contract and TCPA claims are barred for failure to satisfy the timely pre-suit written notice requirement and for failing to file a suit for such non-injury claims within the contractual six-month period. Thus, the Court must first address whether these contractual requirements are enforceable under applicable law.

In 46 U.S.C. § 30508(b),<sup>5</sup> Congress placed limits on contractual time limits and pre-suit notice requirements regarding their passengers’ right to file personal injury suits. The statute also

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<sup>5</sup> 46 U.S.C. § 30508(b) provides, in pertinent part:

The owner, master, manager, or agent of a vessel transporting passengers or property between ports of the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for—

contains a clause that articulates the effect of a failure to give notice, stating that “[w]hen notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if”: (1) the court determines that “the owner . . . of the vessel had knowledge of the injury . . . and the owner has not been prejudiced by the failure”; (2) the court determines “there was a satisfactory reason why the notice could not have been given”; or (3) the owner failed to object to the failure to give notice. 46 U.S.C. § 30508(c). Courts will enforce such contractual time limitations and requirements “if the cruise ticket provided the passenger with reasonably adequate notice that the limit existed and formed part of the passenger contract.” *Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1566 (11th Cir. 1990). Moreover, the Eleventh Circuit has held that “[w]hether the notice to passengers was reasonably adequate is a question of law.” *Id.* at 1567. The two-factor test for reasonable communication evaluates (1) the physical characteristics of the clause and (2) the passenger’s opportunity to become meaningfully informed of the contract terms. *Estate of Myhra v. Royal Caribbean Cruises, Ltd.*, 695 F.3d 1233, 1245 (11th Cir. 2012). In assessing the reasonable communicativeness of a ticket contract, courts often examine the entire ticket to determine whether the ticket contract “reasonably communicate[s] to the passenger the existence therein of important terms and conditions which affect legal rights.” *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 864 (1st Cir. 1983)

Plaintiff does not dispute that Mrs. Carter signed the Contract. Nor does he dispute the actual terms of the Contract. Instead, Plaintiff’s argument boils down to Plaintiff and Mrs. Carter’s lack of knowledge of the existence of the Contract or the Contract’s terms. The Court

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- (1) giving notice of, or filing a claim for, personal injury or death to less than 6 months after the date of the injury or death; or
  - (2) bringing a civil action for personal injury or death to less than one year after the date of the injury or death.

will now address each argument as it relates to each prong of the reasonable communicativeness test.<sup>6</sup>

***1. The Ticket Contract's Physical Characteristics Provide Reasonably Adequate Notice***

Under the first factor of the reasonable communication test, the Court is satisfied that Contract's physical characteristics are conspicuous enough to warn passengers of the Contract's terms and conditions, particularly the terms related to a passenger's limitation of liability. In evaluating the physical characteristics of a ticket contract, "[f]eatures such as size of type, conspicuousness and clarity of notice on the face of the ticket, and the ease with which a passenger can read the provisions in question, are called into question." *Id.*

Here, the cover page of the Contract contains a text box that states "IMPORTANT THAT YOU READ" in highlighted, capital letters, followed by a textbox indicating that it is important that passengers read all terms and conditions of the contract. The warning further states: "Your attention is particularly drawn to the exemptions and limitations on the carrier's liability in paragraphs 4, 6, 12 and 15, which limit our liability and your right to sue." The first page of the Contract further states, in bold capital letters, "IMPORTANT NOTICE TO PASSENGERS" and immediately underneath:

**THIS IS YOUR CRUISE TICKET CONTRACT. IT CONTAINS IMPORTANT LIMITATIONS ON THE RIGHTS OF PASSENGERS. IT IS IMPORTANT THAT YOU CAREFULLY READ ALL TERMS AND CONDITIONS OF THIS CONTRACT, WITH PARTICULAR ATTENTION TO PARAGRAPHS 4, 6, 12 AND 15, WHICH LIMIT OUR LIABILITY AND YOUR RIGHT TO SUE, AND RETAIN IT FOR**

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<sup>6</sup> The Court notes that Plaintiff makes most of his legal arguments within Plaintiff's Statement of Facts. The Court has previously instructed Plaintiff concerning his duty to appropriately respond to Defendant's Motion for Summary Judgment in accordance with Local and Federal Rules. *See* [DE 268]. In an effort to afford *pro se* Plaintiff leniency, the Court interprets the legal arguments in Plaintiff's Statement of Facts as arguments incorporated into Plaintiff's Memorandum of Law in Opposition to Defendant's Motion [DE 318].

**FUTURE REFERENCE.**

Furthermore, within the Contract, the provisions outlining pre-suit written notice requirements and time for filing suit are printed in capitalized typeface, which are unlike other paragraphs in the Contract that are not capitalized.

Looking at the Contract as a whole, the Court finds that the Contract repeatedly gives passengers conspicuous notice of the importance and existence of contractual restrictions related to the right to sue, which include the written pre-suit notice requirements and contractual time limitations. Here, there is a facial warning on the cover of the Contract, as well as an additional warning on the first page of the Contract. Moreover, the applicable pre-suit written notice requirements (as well as the requirements related to time limitations) are written in capitalized typeface, bringing further attention to the existence of these terms.

As to the physical characteristics of the Contract, Plaintiff argues that the portion of the Contract Plaintiff and Mrs. Carter retained provides no notice that further reading is required. However, in doing so, Plaintiff relies on a Motion to Submit Evidence this Court denied and an Opposition to Paradise's Notice of Filing the Court already stated it would not consider. *See* [DEs 256, 268]. The only other argument Plaintiff makes related to the physical characteristics of Defendant's Contract is that the contract was in a font too small to read. However, other courts have found that contract tickets with similar physical features provided reasonable notice, even where the typeface appeared small. *See Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 836 (9th Cir. 2002) (finding that reference to a liability limitation "buried six sentences" into a paragraph "in extremely small (1/16 inch) type" was sufficient to provide reasonable notice where the paragraph was legible and carried warning headlines); *see also Spataro v. Kloster Cruise, Ltd.*, 894 F.2d 44, 46-47 (2d Cir. 1990) (finding that a box warning gave sufficient and reasonable

conspicuous notice of the contractual terms governing the parties rights located on the following pages). Moreover, Plaintiff’s argument that the font size is too small to read “without a magnifying glass” is belied by the fact that Plaintiff complied with the jurisdictional and venue requirements listed in the exact same typeface, and the fact that Plaintiff relied on and quoted directly from the language of the Contract in Count III – Breach of Contract. *See* [DE 109].

***2. Plaintiff Had the Opportunity to Become Meaningfully Informed of the Ticket Contract’s Terms***

The Court also finds that Plaintiff had a meaningful opportunity to become informed of the Contract’s requirements. The second prong of the reasonable communicativeness test relates to whether the passenger “had the ability to become meaningfully informed of the clause and to reject its terms.” *See Myhra*, 695 F.3d at 1246. Plaintiff disputes that he or Mrs. Carter had an opportunity to become meaningfully informed of the Contract’s requirements, alleging that: (1) Plaintiff did not receive the Contract until boarding; (2) neither Plaintiff nor Mrs. Carter were specifically advised of the Contract language; and (3) Defendant’s employees failed to clarify which cruise line Plaintiff would be traveling aboard. PSOF ¶¶ 10, 12, 16, 19, 21.

First, Plaintiff avers that he did not receive the Contract prior to the cruise from a travel agent. Yet, as Defendant points out, Plaintiff’s response to Request for Admission #21 admits that he received the Contract prior to the cruise. DRSOF ¶ 5. Even if, as Plaintiff argues, Plaintiff never authorized this admission submitted by Plaintiff’s now withdrawn counsel, Mrs. Carter testified that she received the Contract prior to the cruise.<sup>7</sup> *Id.* “When a party has given

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<sup>7</sup> Plaintiff continuously disputes admissions in his Response to Requests for Admission and allegations in the Second Amended Complaint because they were filed by his now-withdrawn counsel without authorization. Plaintiff’s responses to Defendant’s requests for admissions were filed on March 3, 2020. *See* [DE 245-1]. Plaintiff’s Second Amended Complaint was filed on March 5, 2020. *See* [DE 109]. Plaintiff’s counsel withdrew on March 10, 2020. *See* [DE 113]. Defendant moved to dismiss Plaintiff’s Second Amended Complaint on March 18, 2020. *See* [DE 119]. However, Plaintiff has not sought to modify the pleading or withdraw his admissions since that time.

clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.” *Van. T. Junkins & Associates, Inc. v. U.S. Industries, Inc.*, 736 F.2d 656, 657 (11th Cir. 1984). The same is true when a party attempts to contradict such answers by reciting new facts without a record citation.

Furthermore, “[a]lthough we must view factual inferences favorably toward the nonmoving party and *pro se* complaints are entitled to a liberal interpretation by the courts, . . . a *pro se* litigant does not escape the essential burden under summary judgment standards of establishing that there is a genuine issue as to a fact material to his case in order to avert summary judgment.” *Brown v. Crawford*, 906 F.2d 667, 670 (11th Cir. 1990). Plaintiff’s *pro se* response consists of rambling narratives with few record citations, many of which fail to comply with this Court’s previous orders or otherwise include non-responsive factual allegations unsupported by the record. Where, as here, Plaintiff has not presented any evidence to rebut either of these admissions and entirely fails to respond to legal arguments concerning the same, the Court cannot find that a genuine issue of material fact exists.

Second, Plaintiff contends that Defendant’s employees never informed Mrs. Carter that she was signing a contract, and therefore Plaintiff could not have been on notice of its terms. However, the second prong of the reasonable communicativeness test concerns not whether Plaintiff read the contract, but whether he had the opportunity to do so. *See Myhra*, 695 F.3d at 1246 n.42 (“We note that whether the [plaintiffs] chose to avail themselves of the notices and to read the terms and conditions is not relevant to the reasonable communicativeness inquiry.”); *see also Corna v. American Hawaii Cruises, Inc.*, 794 F. Supp. 1005, 1010 (D. Haw. 1992) (“A party cannot avoid the effect of contractual provisions to which he is a party by simply choosing

not to read the contract.”). Thus, the fact that, as Plaintiff argues, Mrs. Carter mistakenly believed her ticket contract was merely a voucher to receive her boarding passes does not mean she did not have an opportunity to review the Contract prior to boarding. And, even if Plaintiff had no opportunity to read the Contract before accepting its terms upon boarding the vessel, he had ample time after the incident to apprise himself of its conditions. *See Racca v. Celebrity Cruises, Inc.*, 606 F. Supp. 2d 1373, 1375-76.

Moreover, the Eleventh Circuit has found constructive notice of a ticket contract’s terms where a travel agent accepts the ticket contract on behalf of a customer, and that customer later receives the ticket contract from the travel agent. *See Baer v. Silversea Cruises Ltd.*, 752 F. App’x 861, 865-66 (11th Cir. 2018); *see also Gomez v. Royal Caribbean Cruise Lines*, 964 F. Supp. 47, 50-51 (D.P.R. 1997) (“[N]otice of important conditions of a passage contract can be imputed to a passenger who has not personally received the ticket or possession thereof. The ticket may be received by passengers themselves or by their travel agent.”). Under precedent broadly interpreting notice of a ticket contract’s terms, Plaintiff’s arguments relating to his lack of knowledge of the Contract’s terms are unavailing. *See, e.g., Angel v. Royal Caribbean Cruises, Ltd.*, 2002 WL 31553524 at \*3 (S.D. Fla. Oct. 22, 2002) (finding one-year limitations period enforceable because “even if Plaintiff did not have an opportunity to read the contract before accepting its terms . . . he had a year after the accident to apprise himself of its conditions”) (collecting cases).

Plaintiff’s contention that he believed he was traveling aboard a ship operated by a different cruise line and therefore the ticket contract should not be enforced against him is equally unavailing. Plaintiff knew or should have known that he needed a ticket to board the cruise, and that when he boarded the cruise that ticket became a valid contract for passage

between Plaintiff and the cruise line operator, regardless of which cruise line was operating the vessel. Moreover, in paragraph 23, the plain terms of the Contract define “carrier” as “the vessel and its tenders, and their respective owners, operators, charterers, managers, affiliates, successors and assigns, and independent contractors.” Maritime contracts “must be construed like any other contracts: by their terms and consistent with the intent of the parties.” *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 31 (2004). Under general principles of contract interpretation, “[t]he plain meaning of a contract’s language governs its interpretation.” *In re FFS Data, Inc.*, 776 F.3d 1299, 1305 (11th Cir. 2015) (internal quotation marks omitted). Therefore, pursuant to the plain meaning of “carrier” as defined under the Contract, which is defined broadly, and Plaintiff’s Second Amended Complaint, which states that Paradise “owned, operated, managed, supervised and controlled . . . the Grand Celebration,” Plaintiff’s argument has no merit.<sup>8</sup>

Whether notice to passengers in a ticket contract is reasonable is a question of law to be determined by the Court, which can be properly resolved on a motion for summary judgment. *See Nash*, 901 F.2d at 1566. Thus, based on the foregoing discussion, the Court concludes that the ticket contract is enforceable, and that Plaintiff is subject to the written pre-suit notice requirements and time limitations periods for bringing suits. Having found that the written pre-suit notice and time limitation periods are enforceable, the Court now turns to whether Plaintiff’s injury and non-injury claims are time-barred.

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<sup>8</sup> Plaintiff also contends that Defendant failed to clarify which cruise line Plaintiff would be traveling for over six (6) months, from October 5, 2017 to April 4, 2018, when Plaintiff departed on his cruise. The Court rejects this argument since it is unclear to the Court how this contention would affect Plaintiff’s ability to become meaningfully informed of the Contract’s clauses relating to limitation of liability.

**B. Applicability of the Pre-Suit Written Notice Requirement to Plaintiff's Negligence Claim**

The next question is whether Plaintiff's negligence claim is time-barred under the enforceable pre-suit written notice requirement. As related to personal injury claims, paragraph 12 of the Contract states that "no suit shall be maintainable against the carrier . . . for personal injury, illness or death of passenger unless written notice of the claim . . . is delivered to the carrier . . . within six (6) months from the date of such personal injury, illness or death of the passenger."

Plaintiff argues that he provided notice to Defendant's employees while aboard the ship. As a matter of law, however, the notice Plaintiff provided does not comply with the obligation to provide *written* notice under the Contract. In fact, Defendant contends that the only written notice from Plaintiff was received on April 8, 2019, five days after Plaintiff commenced this action and about six months after the date in which written notice of Plaintiff's personal injury claim should have been provided to Defendant. Plaintiff provided no substantive response to this contention other than that he informed Defendant's employees onboard the ship that he was not feeling well. Therefore, it is undisputed that Plaintiff did not provide timely pre-suit written notice to Defendant of his negligence claim.

Moreover, Plaintiff has not attempted to raise any argument that Defendant had knowledge of and was not prejudiced by his failure to provide notice of his negligence claim under 46 U.S.C. § 30508(c)(1). *See* § 30508(c)(1) ("When notice of a claim for personal injury or death is required by contract, the failure to give notice is not a bar to recover if . . . the court finds that the owner . . . had knowledge of the injury . . . and . . . has not been prejudiced by the failure."). "There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment." *Resol. Tr. Corp. v.*

*Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995). However, the Court notes that even if Plaintiff had properly raised this argument, Plaintiff has not offered evidence tending to show Defendant was aware of his negligence claim. The Eleventh Circuit has held that the burden of proving Defendant knew about the injury is on Plaintiff. *See Davis v. Valsamis, Inc.*, 72 F. App'x 688, 695-96 (11th Cir. 2018). Plaintiff only alleges that he informed some of the ship's staff that he was not feeling well. Even assuming these facts are true, they would not give Defendant knowledge of Plaintiff's claim, only of facts that might support such a claim.

Accordingly, Plaintiff's negligent failure to warn claim fails for failure to comply with the required pre-suit written notice; thus, the Court need not address the substantive elements of Plaintiff's negligence claim. *See Kirby v. NCL (Bahamas) Ltd.*, 2010 WL 11556551, at \*2 (S.D. Fla. Dec. 28, 2010) (granting motion to dismiss where it was undisputed that Plaintiff did not provide timely written notice of her alleged injuries); *see also Racca*, 606 F. Supp. 2d at 1375-76 (granting summary judgment in favor of defendant where there was no record that plaintiff provided defendant with written notice of his claim prior to filing the untimely lawsuit). To be clear, the Court has not determined that there is no genuine dispute as to any material facts in the underlying negligence claim. The Court only concludes that such claim is time-barred under pre-suit notice requirement of the Contract that binds Plaintiff in this action.

**C. Applicability of the Pre-Suit Written Notice Requirement and Time Limitations Period to Plaintiff's Breach of Contract and TCPA Claims**

Defendant also moves for summary judgment on Plaintiff's breach of contract and TCPA claims, alleging that: (1) Plaintiff failed to provide the required pre-suit written notice; (2) Plaintiff failed to file suit within six (6) months of the termination of his cruise; (3) there is no evidence of an oral contract and Plaintiff cannot recover personal injury damages in a breach of

contract claim; and (4) there is no evidence that Defendant violated the TCPA under either a theory of direct or vicarious liability. Paragraph 12 of the Contract establishes a pre-suit written notice requirement for all non-injury claims “or for any losses, damages or expenses, related to or in any way arising out of or connected with this contract . . . unless written notice of the claim . . . is delivered . . . within thirty (30) days after termination of the cruise.” It also provides that no “such suit be maintainable unless the suit is commenced (filed) within six (6) months after the termination of the cruise.”

The Court finds that Plaintiff’s responses do not demonstrate any issues of material fact or any legal argument that would preclude summary judgment relating to Defendant’s argument regarding pre-suit notice or filing suit within the applicable time limitation for Plaintiff’s breach of contract and TCPA claims. Even if Plaintiff had responded to these facts or arguments, Plaintiff does not attempt to argue that any issues of material fact or any legal argument preclude summary judgment on the underlying substantive claims. In Plaintiff’s Response to Defendant’s Statement of Facts, Plaintiff merely states that he “disputes each of Defendants’ remaining statements, #32 to #74.” Moreover, Plaintiff’s Memorandum of Law is completely devoid of any legal argument relating to his TCPA or breach of contract claims. Instead, Plaintiff only asserts that calls from a radio station, promotional giveaways from goholidaycruise.com, and a Federal Trade Commission Complaint where the Defendant is not named as a party establish Defendant is liable under the TCPA.

In order to prevail on a motion for summary judgment, the movant must demonstrate that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law. *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the party opposing the motion, who must set forth “specific facts” that show that there is a genuine issue for trial.

*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (citing Fed. R. Civ. Pro. 56(e)). Further, “the onus is upon the parties to formulate arguments; grounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned.” *Resol. Tr. Corp.*, 43 F.3d at 599. “There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment.” *Id.* A court may find that a party waived any challenge to arguments which it did not address in its response to a summary judgment motion. *Schwarz v. Bd. of Supervisors on behalf of Villages Cmty. Dev. Districts*, 672 F. App'x 981, 983 (11th Cir. 2017) (affirming a district court's finding that plaintiffs had waived any challenge to the defendant's motion for summary judgment on certain grounds which the plaintiffs did not address in their response to the motion for summary judgment). “Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones.” *McPherson v. Kelsey*, 125 F.3d 989, 995-996 (6th Cir. 1997)); *see also N.L.R.B. v. McClain of Georgia, Inc.*, 138 F.3d 1418, 1422 (11th Cir. 1998) (“Issues raised in a perfunctory manner, without supporting arguments and citation to authorities, are generally deemed to be waived.”) (citing *Continental Tech. Serv., Inc. v. Rockwell Int'l Corp.*, 927 F.2d 1198, 1199 (11th Cir. 1991)). As the Court has previously stated, the Court recognizes Plaintiff has proceeded *pro se* in this matter since April 14, 2021. Even the leniency afforded to *pro se* litigants does not excuse Plaintiff's failure to address at least some of the facts and issues raised by Defendant, particularly as they relate to elements of Plaintiff's claims. Accordingly, the Court finds that Plaintiff has waived a challenge to Defendant's arguments in favor of summary judgment as they relate to his

breach of contract and TCPA claims due to his failure to provide any sort of substantive response.

In sum, Plaintiff's negligent failure to warn claim fails for failure to comply with the required pre-suit written notice. Moreover, Plaintiff's breach of contract and TCPA claims are deemed waived for failure to dispute issues of material fact and failure to provide any sort of substantive response to Defendant's legal arguments.

#### IV. CONCLUSION

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant Paradise's Motion for Summary Judgment [DE 265] is **GRANTED** for the reasons stated herein.
2. Pursuant to Fed. R. Civ. P. 58(a), the Court will enter a separate final judgment.
3. Defendant's Motion to Strike [DE 323] is **DENIED as moot** since the portions of Plaintiff's Responses that Defendant sought to strike were either not necessary to this Court's analysis or were addressed herein.
4. The Clerk is directed to **DENY as moot any pending motions**.
5. The Clerk is **DIRECTED** to mail a copy of this Order to the address below.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida,  
this 28th day of September, 2021.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:  
Counsel of record

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