

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	2:24-cv-04935-MRA-PD	Date	January 22, 2025
Title	Daryel Buesking v. Princess Cruise Lines, Ltd., et al.		

Present: The Honorable MÓNICA RAMÍREZ ALMADANI, UNITED STATES DISTRICT JUDGE

Gabriela Garcia

None Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

Proceedings: (IN CHAMBERS) ORDER DENYING IN PART AND GRANTING IN PART DEFENDANT PRINCESS CRUISE LINES, LTD.’S MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT [ECF 41]

Before the Court is Defendant Princess Cruise Lines, Ltd.’s Motion to Dismiss Plaintiff’s First Amended Complaint. ECF 41. The Court read and considered the Motion and deemed the matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78(b); L.R. 7-15. For the reasons stated herein, the Court **DENIES IN PART** and **GRANTS IN PART** the Motion.

I. BACKGROUND¹

Plaintiff Daryel Buesking (“Buesking” or “Plaintiff”) commenced this maritime action against Princess Cruise Lines, Ltd. (“Princess”), Aloschi Bros. SRL. (“Aloschi”), SNAV S.P.A. (“SNAV”), and XYZ Corporation(s) on June 12, 2024. ECF 1. Plaintiff filed the operative First Amended Complaint (“FAC”) on August 19, 2024. ECF 14 (FAC).

In and around August 2023, Buesking was a paying passenger aboard the *Enchanted Princess*, a cruise vessel owned, operated, managed, and controlled by Princess. *Id.* ¶¶ 12, 14. As part of the cruise experience, Princess offered Buesking and other cruise passengers an excursion from Naples, Italy to the island of Capri. *Id.* ¶ 16. Excursion Entities owned and operated the Capri excursion. *Id.* ¶ 13. The excursion required Princess’ passengers to take a

¹ When deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court is required to presume that all well-pleaded allegations are true, resolve all reasonable doubts and inferences in the pleader’s favor, and view the pleading in the light most favorable to the non-moving party. See *infra* II. As such, the factual background is described as alleged in Plaintiff’s First Amended Complaint (“FAC”). See *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

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ferry from Naples to Capri. *Id.* Aloschi contracted with Princess to provide the excursion to Princess’ cruise passengers and made a group purchase of ferry tickets for Princess’ passengers. *Id.* ¶ 18. SNAV owned and operated the ferry. *Id.* ¶ 19. Prior to offering the excursion, Princess completed an initial approval process and approved of the tour provider, Aloschi, and the on-site tour operator, SNAV. *Id.* ¶ 24(a). It also conducted yearly inspections of the tour. *Id.* ¶ 24(a)-(b).

Princess exclusively marketed, promoted, and sold this excursion to Buesking via its website. *Id.* In addition, Princess co-owned and co-operated and managed the excursion with Excursion Entities. *Id.* ¶ 13. Princess allowed its name to be used in Excursion Entities’ advertising and marketed the excursion using its logo on its website, in its brochures, and in its ship without disclosing that the excursion was run by another entity. *Id.* ¶¶ 43(a), (c). That the excursion was run by other entities was not disclosed to Buesking. *Id.* ¶ 43(b). Prior to the excursion, Buesking’s only contacts regarding the excursion were with Princess. *Id.* ¶ 43(e). Princess charged and collected the fee for the excursion from Buesking. *Id.* ¶ 43(g). The receipt for the purchase of the excursion was from Princess. *Id.* ¶ 43(h).

On August 17, 2023, Buesking participated in the Capri excursion. *Id.* ¶ 17. While walking on an escape route aboard the ferry, Buesking tripped over an unmarked obstacle, believed to be a bulkhead door threshold, and crashed head-first into a row of seats causing Buesking to suffer a spinal cord injury. *Id.* ¶¶ 20, 21(a)-(b). The vessel was overcrowded with hundreds of passengers instructed to board at the same time, which created a chaotic boarding process and made it difficult to identify hazards aboard the vessel. *Id.* ¶ 21(d).

On these facts, Plaintiff alleges three causes of action against Princess: (1) general negligence (Claim 1), (2) negligent failure to warn (Claim 2), and (3) agency liability for the negligent acts of Excursion Entities (Claim 5). *Id.* ¶¶ 25-47. On October 11, 2024, Princess filed the instant Motion to Dismiss Plaintiff’s FAC pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF 41. Plaintiff opposes. ECF 43. Princess filed a Reply. ECF 64.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a claim upon which relief can be granted.” “On a motion to dismiss, all material facts are accepted as true and are construed in the light most favorable to the plaintiff.” *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012) (citing *Coal. for ICANN Transparency, Inc. v. VeriSign, Inc.*, 611 F.3d 495, 501 (9th Cir. 2010)); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Dismissal is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See Johnson v. Riverside Healthcare Sys., LP*, 534

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F.3d 1116, 1121 (9th Cir. 2008). In other words, a complaint must “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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (per curiam). This is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

Although the court “must accept as true all of the allegations contained in a complaint,” it is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

III. DISCUSSION

A. **Passage Ticket Contract (Claim 5)**

Princess argues that its Passage Ticket Contract contains provisions limiting Princess’ liability related to shore excursions and precluding Plaintiff’s agency allegations. ECF 41-1 at 8-11. To consider these arguments, the Court must look to the terms of the Passage Ticket Contract. Although the Passage Ticket Contract is not attached to Plaintiff’s FAC, Princess argues that it is incorporated by reference into the FAC. *Id.* at 8. Plaintiff responds that the Passage Ticket Contract is not necessary to advance Plaintiff’s tort claims and, as such, it should not be considered on a Rule 12(b)(6) motion. ECF 43 at 5-6.

“Generally, district courts may not consider materials outside the pleadings when assessing the sufficiency of a complaint” under Rule 12(b)(6), unless the extrinsic material is incorporated into the complaint by reference or subject to judicial notice. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018); *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). As relevant here, “[i]ncorporation-by-reference is a judicially created doctrine that treats certain documents as though they are part of the complaint itself.” *Khoja*, 899 F.3d at 1002. A document “may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.” *Ecological Rts. Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 511 (9th Cir. 2013) (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)). A complaint “necessarily relies” on a document if “(1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.” *Daniels-Hall v.*

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Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010) (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)). Ultimately, the doctrine is intended to “prevent[] plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims.” *Khoja*, 899 F.3d at 1002.

It is true that Plaintiff’s FAC alleges that this action is being pursued in this district, as opposed to state court, because of “a forum selection clause in [Princess’] cruise tickets,” and that Plaintiff was a “paying passenger” aboard Princess’ vessel. FAC ¶¶ 4, 14. It does not follow, however, that the Passage Ticket Contract is central to Plaintiff’s tort claims. Princess’ purported negligence may arise out of its duty to Plaintiff as a fare paying passenger. See *Parsons v. Crystal Cruises, LLC*, No. CV207382DMGAFMX, 2021 WL 5994517, at *3 (C.D. Cal. Sept. 20, 2021) (taking judicial notice of cruise ticket where plaintiff did not dispute its authenticity, referenced the ticket in his pleading, and relied on other provisions of the ticket to defeat a *forum non conveniens* challenge). But this is not one of “those rare instances when assessing the sufficiency of [Plaintiff’s] claim[s] requires that the document at issue be reviewed.” *Khoja*, 899 F.3d at 1002; see also *Blow v. Carnival Corp.*, 674 F. Supp. 3d 1239, 1253 (S.D. Fla. 2023) (joining other courts in the Southern District of Florida in finding that ticket contracts are not central to a plaintiffs’ tort-based claims, and therefore not incorporated by reference). Instead, Princess submits the Passage Ticket Contract to merely create a defense, which the Ninth Circuit has characterized as just “another way of disputing the factual allegations in the complaint, but with a perverse added benefit” of denying the plaintiff an opportunity to respond to the defendant’s new version of facts. *Khoja*, 899 F.3d at 1002-03 (“Although the incorporation-by-reference doctrine is designed to prevent artful pleading by plaintiffs, the doctrine is not a tool for defendants to short-circuit the resolution of a well-pleaded claim.”).

Moreover, Princess has not placed the authenticity of the Passage Ticket Contract appended to its Motion beyond reasonable dispute. As an initial matter, “documents that the court may consider under the incorporation-by-reference doctrine still must be authenticated.” *Jenkins v. Bank of Am., N.A.*, No. 22-CV-1251-BAS-JLB, 2023 WL 2939349, at *2 (S.D. Cal. Apr. 13, 2023) (citing *Gustafson v. Experian Info. Sols. Inc.*, No. 2:14-CV-01453-ODW EX, 2014 WL 2115210 (C.D. Cal. May 21, 2014)). Here, Princess wholly failed to authenticate the subject document through a supporting affidavit. See Fed. R. Evid. 901(a) (requiring that the proponent “produce evidence sufficient to support a finding that the item is what the proponent claims it is”); cf. *Bias v. Moynihan*, 508 F.3d 1212, 1224 (9th Cir. 2007) (explaining that at the summary judgment stage, “documents must be authenticated and attached to a declaration wherein the declarant is the person through whom the exhibits could be admitted into evidence.” (citation and internal quotation marks omitted)). Even if the document had been properly authenticated, it is not reasonably certain that Plaintiff entered into this particular copy of the Passage Ticket Contract at the time of

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purchase. It appears that Princess has a standard passage contract, but it is periodically revised—in this case, the copy attached to the Motion was last updated in October 2022. ECF 41-2 at 24. Although the FAC alleges that the cruise trip occurred in and around August 2023, it is not clear from the face of the FAC when Plaintiff purchased the cruise ticket. If the ticket was purchased prior to October 2022, Plaintiff may have entered into an agreement that predates the subject document. Thus, incorporating by reference the copy of the Passage Ticket Contract appended to the Motion would require the Court to not only assume its authenticity, but also infer certain facts not contained in the FAC. This is inappropriate on a Rule 12(b)(6) motion to dismiss. *See Khoja*, 899 F.3d at 1003 (emphasizing that “what inferences a court may draw from an incorporated document should also be approached with caution”).

Princess’ reliance on *Williams v. Affinity Insurance Services*, No. 23-cv-06357-JST, 2024 WL 3153214 (N.D. Cal. June 24, 2024), and *Bond v. Cruiseport Curacao, C.V.*, No. C17-1639-MJP, 2018 WL 6413193 (W.D. Wash. Dec. 4, 2018), is unavailing. *See* ECF 64 at 3. In *Williams*, the court took judicial notice of the cruise ticket contract, without any opposition or substantial analysis, because it was viewed as a publicly available document. 2024 WL 3153214, at *3. It did *not* find that the ticket was incorporated by reference in the pleading. *See Khoja*, 899 F.3d at 998 (describing judicial notice and incorporation by reference as procedures permitting the court to consider materials outside a complaint, but “each does so for different reasons and in different ways”). In *Bond*, the court explicitly converted the defendant’s Rule 12(b)(6) motion into a motion for partial summary judgment under Rule 56 because the motion required the Court to consider materials beyond the pleadings. 2018 WL 6413193, at *3. Here, Princess does not advocate for its Rule 12(b)(6) motion to be converted to a Rule 56 motion. *See* ECF 41-1 at 8.

The Court declines to incorporate by reference the copy of the Passage Ticket Contract appended to Princess’ Motion, and therefore does not consider Princess’ arguments that the terms of said Passage Ticket Contract preclude claims relating to the shore excursion and Plaintiff’s agency allegations. Accordingly, because this was the only argument raised against Plaintiff’s agency allegations, the Court **DENIES** Princess’ Motion as to Plaintiff’s agency claim (Claim 5).

B. Sufficiency of Factual Allegations (Claims 1 and 2)

Plaintiffs’ claims are claims of maritime torts. *See* FAC ¶¶ 1, 2. The “sufficiency of the complaint is governed by the general maritime law of the United States.” *Stacy v. Rederiet Otto Danielsen, A.S.*, 609 F.3d 1033, 1035 (9th Cir. 2010) (citing *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1409 (9th Cir. 1994)). For claims of negligence, a plaintiff must allege duty, breach, causation, and damages. *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 953 (9th Cir.

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2011).

“[T]he owner of a ship in navigable waters owes to all who are on board . . . the duty of exercising reasonable care under the circumstances of each case.” *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 953 (9th Cir. 2011) (quoting *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959)). The degree of care required in a particular circumstance “depends upon the ‘extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger.’” *Id.* (quoting *Rainey v. Paquet Cruises, Inc.*, 709 F.2d 169, 172 (2d Cir. 1983)). “Where the condition constituting the basis of the plaintiff’s claim is not unique to the maritime context, a carrier must have ‘actual or constructive notice of the risk-creating condition’ before it can be held liable.” *Id.* (quoting *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)). “In other words, a cruise ship operator’s duty is to shield passengers from known dangers (and from dangers that should be known), whether by eliminating the risk or warning of it.” *Tesoriero v. Carnival Corp.*, 965 F.3d 1170, 1178 (11th Cir. 2020); *see also Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (holding that a cruise line operator’s duty to warn of known dangers extends “beyond the point of debarkation in places where passengers are invited or reasonably expected to visit”).

A cruise ship operator’s liability often “hinges on whether it knew or should have known about the dangerous condition.” *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). As is relevant here, “[a] defendant is deemed to have constructive notice ‘if, in the exercise of reasonable care, [it] ought to have known about or discovered the alleged dangerous condition[.]’” *Galentine v. Holland Am. Line-Westours, Inc.*, 333 F. Supp. 2d 991, 996 (W.D. Wash. 2004) (quoting *Ribitzki v. Canmar Reading & Bates, Ltd. P’ship*, 111 F.3d 658, 663 (9th Cir. 1997)). “This implies a duty of reasonable inspection.” *Id.* Further, constructive notice “requires that a defective condition exist for a sufficient interval of time to invite corrective measures.” *Id.* (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988) (citation and internal quotation marks omitted); *see also Keefe*, 867 F.2d at 1322 (describing this inquiry as the “crucial question”).

The FAC alleges that Princess had a duty to provide Buesking with reasonable and ordinary care and breached its duty based on its failure to (a) reasonably inspect the subject excursion vessel to ensure its reasonable safety, (b) eliminate the trip hazard from the vessel, and (c) reasonably limit participation for the excursion to prevent overcrowding. FAC ¶¶ 25, 26. Princess argues that the FAC does not allege sufficient facts in support of the reasonable inference that it knew or should have known that the excursion provider’s particular vessel would be unreasonably crowded or that there was an unreasonably dangerous unmarked threshold on board.

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ECF 41-1 at 14-16.

1. Overcrowding

Plaintiff first points to allegations in the FAC that Princess sold the excursion to Plaintiff and other passengers on its cruise in order to draw an inference that “Princess knew how many of *its* passengers would be on the ferry—in addition to other members of the general public,” and further alleges that the ferry operators required “hundreds of passengers” to board the ferry. ECF 43 at 18 (citing FAC ¶¶ 16, 21(d)). Yet, as Princess notes, these allegations fail to show that Princess knew of the total number of passengers on board or the total capacity of the subject vessel at the time of the incident. *See* ECF 64 at 8. Neither of Plaintiff’s allegations, in isolation or taken together, permits the Court to draw the reasonable inference that Princess had actual or constructive knowledge of the overcrowding conditions on the ferry.

Plaintiff next argues that Princess should have learned of the overcrowding when its representatives conducted its initial excursion approval process and annual inspections and through comments left other passengers on Princess’ website specifically complaining about the overcrowding problem. ECF 43 at 18 (citing FAC ¶¶ 24(b)-(c)). However, Plaintiff does not sufficiently explain how Princess’ approval process and annual inspections would have revealed to Princess that the excursion vessel was reasonably likely to be overcrowded on the day of the incident. *See Singh v. Royal Caribbean Cruises Ltd.*, 576 F. Supp. 3d 1166, 1184 (S.D. Fla. 2021) (holding that without further factual elaboration, a plaintiff’s allegation that a cruise operator’s initial approval process and yearly inspection would have revealed a dangerous condition is conclusory); *Sanlu Zhang v. Royal Caribbean Cruises, Ltd.*, No. 19-20773-CIV, 2019 WL 8895223, at *5 (S.D. Fla. Nov. 15, 2019) (same). Apart from non-specific, conclusory statements that the approval process and inspections occurred under “the same or similar conditions,” FAC ¶ 24(b), Plaintiff leaves for the Court to fill several logical gaps to state its theory of liability. For example, did the approval process and annual inspections take place on the same or similar ferry as the subject vessel, such that they had comparable load limits? Did the approval process and inspections occur at the same or similar time of year and time of day as the subject excursion, such that it could be reasonably inferred that the effects of tourism on crowding was equivalent? As to Plaintiff’s allegations of other passenger complaints of overcrowding, the FAC does not specify when prior to the incident those complaints were made to allow the Court to reasonably infer that Princess had “a sufficient interval of time to invite corrective measures.” *Monteleone*, 838 F.2d at 65. Without further factual enhancement, Plaintiff’s allegations resemble “unadorned, the defendant-unlawfully-harmed-me accusation[s]” that Rule 8 seeks to prevent. *Iqbal*, 556 U.S. at 678.

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The Court is not persuaded by Plaintiff’s reliance on *Adams v. Carnival Corp.*, 482 F. Supp. 3d 1256 (S.D. Fla. 2020), and *Burton v. Carnival Corp.*, No. 23-CV-24604, 2024 WL 3829964 (S.D. Fla. Aug. 15, 2024). In *Adams*, the plaintiff alleged that the cruise operator, Carnival, co-owned and co-controlled the subject zip-lining excursion, and the court found that these allegations “coupled with Carnival’s internal procedures to do initial and annual inspections of its shore excursions and Carnival selling the zip-lining excursion through its website is sufficient at the pleading stage.” 482 F. Supp. 3d at 1269. Moreover, the plaintiff specifically alleged that Carnival inspected its excursion providers’ equipment and operations, *id.* at 1268, which allowed the court to draw the reasonable inference that “it knew or should have known that [the excursion operator] did not provide passengers with helmets and adequate instructions and the zip-line brakes were faulty,” *id.* at 1269. Here, there are no allegations that Princess co-owned, controlled, or operated the subject ferry, and the FAC does not thread the same needle between the inspection process and the allegedly dangerous overcrowding. Likewise, in *Burton*, the plaintiff alleged that the decedent’s death was caused by dangerous conditions associated with a cruise excursion, including a strong rip current and insufficient snorkel and swim instructions or gear. 2024 WL 3829964, at *1. The court found that the complaint sufficiently alleged that the cruise operator’s initial and annual inspections occurred under similar conditions in part because the operator would have learned through its site inspection of “the naturally strong current in the area of the subject excursion.” *Id.* at *6. The incident alleged here involved a variable condition on a transport vessel, not a naturally occurring condition at an excursion location. This distinction matters because the former context requires more factual content than the latter to support a reasonable inference of actual or constructive notice. *See Iqbal*, 556 at 678 (explaining that determining the facial plausibility of a claim is a “context-specific task”).

2. Unmarked Threshold

Plaintiff argues that the allegation in the FAC that the threshold was an unmarked trip hazard on an escape route—coupled with the assertion that Princess’ approval and inspection process would have also revealed the risk creating condition—supports the reasonable inference that Princess had actual or construction knowledge of the trip hazard. ECF 43 (citing FAC ¶ 24(b)). The Court agrees with Princess that Plaintiff “fails to explain how an unmarked obstacle is notice of itself or even that the obstacle existed on any other date when Princess visited or inspected the ferry.” ECF 64 at 9-10.

Plaintiff’s allegations that Princess had actual or constructive notice of the unmarked threshold fare no better than the allegations that Princess had notice of the overcrowding. Unlike overcrowding, the FAC alleges only that the unmarked threshold was a risk creating condition on the specific ferry boarded by Plaintiff, not that it was a pervasive issue across all transport vessels

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used on the excursion. *See* FAC ¶¶ 20, 21(a)-(b). Thus, Princess’ approval and inspections process would not have revealed the obstacle unless the inspections took place on the very same vessel and the obstacle existed at that time. These allegations, however, are absent from the FAC. Plaintiff maintains that such “a major structural component of the vessel . . . was obviously there since the ferry was constructed.” ECF 43 at 19. This argument, absent from the FAC, does not save Plaintiff’s claim. Under this theory, as Princess rightly observes, Plaintiff would need to allege sufficient facts to support the reasonable inference that Princess undertook “the duty to structurally inspect for every conceivable hazard on every conceivable means of conveyance that the tour operator might have used to transport tour participants to the island of Capri.” ECF 64 at 10.

Plaintiff’s allegations, taken together, do not plausibly show that Princess knew or had reason to know of the risk creating conditions alleged in the FAC. Accordingly, the Court **GRANTS** Princess’ Motion as to Plaintiff’s negligence claims (Claims 1 and 2).

C. Leave to Amend

Federal Rule of Civil Procedure 15(a) provides that once the time for amending a pleading as a matter of course has expired, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). In general, “[t]he court should freely give leave when justice so requires.” *Id.* At base, “leave to amend should be granted if it appears *at all possible* that the plaintiff can correct the defect.” *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000)).

Here, the Court finds that granting leave to amend would not be futile. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (“Leave to amend is warranted if the deficiencies can be cured with additional allegations that are ‘consistent with the challenged pleading’ and that do not contradict the allegations in the original complaint.” (quoting *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990))). Thus, Plaintiff is **GRANTED** leave to amend the pleading, correcting the deficiencies identified herein in a manner consistent with all Rule 11 obligations.

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IV. CONCLUSION

For the foregoing reasons, Princess’ Motion to Dismiss the FAC is **DENIED IN PART** as to Claim 5 and **GRANTED IN PART** as to Claims 1 and 2 with leave to amend. Any amended complaint shall be filed within **21 days** of the date of this Order. Plaintiff shall attach to the amended complaint a redline copy reflecting all additions and deletions of material from the FAC. Any claim not included in a timely-filed amended complaint will be deemed dismissed without leave to amend.

IT IS SO ORDERED.

_____ : _____
 Initials of Deputy Clerk gga