

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

**Case Number: 1:24-CV-20542-JEM**

HUMBERTO REYES,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

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**OMNIBUS ORDER ON MOTION TO DISMISS COMPLAINT AND PLAINTIFF'S  
MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

**THIS CAUSE** comes before this Court upon Defendant's Motion to Dismiss Plaintiff's Complaint, (ECF No. 7), and Plaintiff's Motion for Leave to File First Amended Complaint, (ECF No. 10). This Court has reviewed the Motions, pertinent portions of the record, and is otherwise fully advised of the premises. After careful consideration, and for the reasons set forth herein, Defendant's Motion to Dismiss, (ECF No. 7), is **GRANTED**, and Plaintiff's Motion for Leave to File First Amended Complaint, (ECF No. 10), is **DENIED**.

**I. BRIEF FACTUAL BACKGROUND**

Plaintiff in this case, Humberto Reyes, was a fare-paying passenger on the cruise ship "Freedom of the Seas" for a voyage that returned to port in Miami, Florida. (Compl. ¶ 4, ECF No. 1.) Defendant, Royal Caribbean Cruises, owned, operated, managed, designed, and maintained the cruise ship "Freedom of the Seas." (*Id.* ¶ 3.) On February 24, 2023, Plaintiff disembarked from the cruise ship and was directed to Defendant's terminal in the Port of Miami, in Miami, Florida. (*Id.* ¶ 11.) During disembarkation, passengers were directed by employees of Defendant to board an

escalator, with their luggage, down to a lower floor where the immigration checkpoint and exits were located. (*Id.* ¶ 12.) Plaintiff alleges that, as a result of the instructions given, passengers and their luggage were on the escalator steps immediately in front of and behind Plaintiff. (*Id.* ¶ 13.) As Plaintiff approached the bottom of the escalator, the luggage of a passenger directly in front of Plaintiff became lodged or stuck in one of the escalator steps. (*Id.* ¶ 14.) As a result, alarms from the escalator sounded, indicating an issue with the escalator. (*Id.*) Despite numerous alarms on the escalator sounding, the escalator continued to move. (*Id.* ¶ 15.) Subsequently, a passenger in front of Plaintiff fell backwards and into another passenger who then fell into Plaintiff. (*Id.* ¶ 16.) Consequently, Plaintiff allegedly sustained severe and permanent bodily injury. (*Id.*)

Defendant moved to dismiss the Complaint, arguing it failed to state a claim upon which relief can be granted as it fails to sufficiently allege that Defendant was on notice of the risk-creating condition. (ECF No. 7). Additionally, Defendant argues that the Complaint fails to state a claim upon which relief can be granted because it is unclear and overly vague. (*Id.*) Plaintiff did not substantively respond to Defendant's Motion, but instead moved for Leave to File First Amended Complaint, (ECF No. 10.) However, the only changes made to the Amended Complaint were the addition of language stating that Defendant created a dangerous condition by overloading the subject escalators with passengers and their luggage and that Defendant "knew or should have known that overloading the subject escalator presented a dangerous condition to occupants of the subject escalator." (ECF Nos. 1, 10-1 ¶¶ 16-17.) Plaintiff's Response to Defendant's Motion to Dismiss does not argue against the arguments raised in Defendant's Motion, but instead argues the Motion should be denied because its proposed Amended Complaint corrects the defects raised by Defendant's Motion and therefore renders the Motion moot. (ECF No. 11.)

## II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint based on the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When reviewing a motion to dismiss, the plaintiff should receive the benefit of all favorable inferences that can be drawn from the facts alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Additionally, the pleadings are construed broadly so long as the allegations are enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true. *Levine v. World Fin. Network Nat'l Bank*, 437 F.3d 1118, 1120 (11th Cir. 2006). While detailed factual allegations are not required, a plaintiff must provide “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft*, 556 U.S. at 678. This requires “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Accordingly, conclusory allegations, unwarranted deductions of facts, or legal conclusions masquerading as facts will not prevent dismissal. *Oxford Asset Mgmt. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

The Federal Rules of Civil Procedure provide that after a responsive pleading or motion is served, “a party may amend its pleading with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a). While leave to amend should be freely given when justice so requires, a district court need not allow an opportunity to amend if the amendment would be futile. *Allen v. Dekalb County*, 632 F. App’x 593 (11th Cir. 2016). The Eleventh Circuit “has found that denial of leave to amend is justified by futility when the ‘complaint as amended is still subject to dismissal.’” *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) (quoting

*Halliburton & Assoc., Inc. v. Henderson, Few & Co.*, 774 F.2d 441, 444 (11th Cir. 1985)). An amendment is futile where it cannot withstand a motion to dismiss. *Id.*

### III. DISCUSSION

#### A. Defendant's Motion to Dismiss

General maritime law applies to cases, such as this one, that allege torts committed aboard cruise ships sailing in navigable waters. *Harding v. NCL (Bahamas) Ltd.*, 90 F.Supp.3d 1305, 1307 (S.D. Fla. 2015). Under general maritime law, a shipowner owes its passengers a duty of reasonable care under the circumstances. *Id.* To establish negligence, the passenger has the burden to prove: (1) the defendant had a duty to protect the plaintiff from a particular injury, (2) the defendant breached that duty, (3) the breach actually and proximately caused the plaintiff's injury, and (4) the plaintiff suffered actual harm. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). Notably, plaintiffs in maritime negligence cases also must adequately plead notice on the part of a vessel owner, as "a cruise line owes its passengers a duty to warn of *known* dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit." *Id.* (emphasis added) (citing *Carlisle v. Ulysses Line Ltd.*, 475 So. 2d 248, 251 (Fla. 3d DCA 1985)). The duty to warn "encompasses only dangers of which the carrier knows, or reasonably should have known." *Carlisle*, 475 So. 2d at 251. Accordingly, the imposition of liability is limited to carriers who have had "actual or constructive notice of [the alleged] risk-creating condition." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). The mere fact that an accident occurs does not give rise to a presumption of notice of a risk-creating condition. *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1237 (S.D. Fla. 2006).

"In order to survive [the cruise line's] motion to dismiss, [the passenger] therefore has to plead sufficient facts to support each element of her claim, including that [the cruise line] had

actual or constructive notice about the dangerous condition.” *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022). Actual notice exists when the defendant knows about the dangerous condition. *Id.* “A maritime plaintiff can establish constructive notice with evidence that the ‘defective condition exist[ed] for a sufficient period of time to invite corrective measure.” *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). Alternatively, a plaintiff can establish constructive notice with evidence of substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident. *Id.*

In *Harding*, the plaintiff was walking on the ship’s deck when she “was suddenly caused to slip and fall.” *Harding v. NCL (Bahamas) Ltd.*, 90 F.Supp.3d 1305, 1306. She alleged that the defendant negligently failed to keep its deck dry, failed to close off the wet deck, and failed to give notice of the slippery conditions. *Id.* However, this Court granted the defendant’s motion to dismiss because the plaintiff did not allege a single *fact* from which it could be inferred that the defendant knew or should have known of the dangerous condition contributing to her fall. *Id.* at 1307-08. The plaintiff failed to allege how the defendant knew, or why it should have known of the conditions; or for how long the defendant was on notice. *Id.* at 1308. This Court stated, “such facts are a *prerequisite* to imposing liability.” *Id.* (quoting *Gayou v. Celebrity Cruises, Inc.*, No. 11–23359–Civ, 2012 WL 2049431, at \*5 (S.D. Fla. June 5, 2012)) (internal quotations omitted) (emphasis added). This Court also rejected the plaintiff’s argument that she “properly alleged that the defendant had notice either active or constructive, of a dangerous condition,” because of the plaintiff’s allegation that “the defendant knew or should have known that the deck was wet,” finding it to be “precisely the type” of an “unadorned, the-defendant-wrongfully-harmed-me-accusation,” that rarely survives a motion to dismiss. *Id.*

Here, Plaintiff's Complaint fails to provide facts sufficient to establish that Defendant was on notice of the dangerous condition. Plaintiff does not allege that Defendant had either actual or constructive notice of the risk-creating condition nor does he point to the occurrence of any substantially similar incidents to establish constructive notice. The only allegation that could be construed as demonstrating Defendant's notice is that the alarms sounding by the escalator constituted notice, and that Defendant failed to stop the elevator from continuing to move. However, the Complaint does not allege that the alarms provided Defendant with notice of the risk-creating condition, and this Court will not strain to make Plaintiff's arguments for him. "A district court cannot and will not fill in the blanks for an argument that plaintiffs have not developed." *Fails v. Bd. of Trustees Univ. of W. Fla.*, 30 Fla. L. Weekly Fed. D 5, 10 (N.D. Fla. 2023). In addition, even if the Complaint did explicitly allege that the alarms provided notice, there are no accompanying facts alleged as to how long the alarms sounded or whether Defendant had time to correct the risk-creating condition.

Further, Plaintiff fails to allege that the escalator was defective, if Defendant knew or should have known of any defects, or if the actual directing of passengers by Defendant's employees was negligent. Plaintiff does not allege that the passengers were directed to stand unreasonably close together, required to stand in any sort of unreasonable manner, or that the requirement that the passengers bring their luggage on the escalator was negligent. Finally, Plaintiff does not allege that the other passenger's luggage, that began the chain reaction that caused injury to Plaintiff, became stuck due to any negligence on Defendant's part. As a whole, Plaintiff fails to properly allege any negligence on Defendant's part. Plaintiff's response in opposition does not address these arguments and instead, only states that the defects have been corrected by the Amended Complaint.

Therefore, this Court finds that Plaintiff failed to allege sufficient facts to support a claim for relief that is plausible on its face, and the Motion to Dismiss, (ECF No. 7), is **GRANTED**.

***B. Plaintiff's Motion for Leave to Amend Complaint***

While leave to amend should be freely given when justice so requires, a district court need not allow an opportunity to amend if the amendment would be futile. *Allen v. Dekalb County*, 632 F. App'x 593 (11th Cir. 2016). The Eleventh Circuit “has found that denial of leave to amend is justified by futility when the complaint as amended is subject to dismissal.” *Burger King Corp.*, 169 F.3d at 1310. An amendment is futile if it cannot withstand a motion to dismiss. *Henley v. Turner Broad. Sys., Inc.*, 267 F.Supp.3d 1341, 1363 (N.D. Ga. 2017) (quoting *Halliburton & Assoc., Inc. v. Henderson, Few & Co.*, 774 F.2d 441, 444 (11th Cir. 1985).

Here, Plaintiff's Amended Complaint is nearly identical to his initial Complaint. The only changes made to the Amended Complaint were the addition of language stating that Defendant created a dangerous condition by overloading the subject escalators with passengers and their luggage and that Defendant “knew or should have known that overloading the subject escalator presented a dangerous condition to occupants of the subject escalator.” (ECF Nos. 1, 10-1 ¶¶ 16-17.) Once again, these “facts” are mere conclusory allegations with no supporting factual basis. The Amended Complaint fails to allege sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face such as whether the elevator was defective in some manner and whether Defendant knew or should have known of such defect, whether Defendant required the passengers to use the escalator in a particularly dangerous way, if the passengers were directed to stand unreasonably close together or in any sort of unreasonable manner, that the requirement that the passengers bring their luggage on the escalator was negligent, or that the other passenger's

luggage, that began the chain reaction that caused injury to Plaintiff, became stuck due to any negligence on Defendant's part.

“The court cannot automatically impute awareness of the danger just because the defendant created the condition.” *Simone v. NCL (Bahamas) Ltd.*, 584 F.Supp.3d 1206, 1212 (S.D. Fla. 2021). To demonstrate notice, the plaintiff can point to previous injuries or show that the defendant previously warned of the danger. *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1280 (11th Cir. 2015). Plaintiff makes no attempt through his Amended Complaint to allege notice with evidence of substantially similar prior incidents or that the defective condition existed for sufficient time to invite corrective measures. The minimal additions to the Amended Complaint are legal conclusion masquerading as fact and will not prevent dismissal. The Amended Complaint fails to provide sufficient facts to support that Defendant had actual or constructive notice of the alleged dangerous condition.

Therefore, this Court finds that Plaintiff failed to correct the deficiencies in the original Complaint, such that the Amended Complaint is futile, and Plaintiff's Motion for Leave to File Amended Complaint, (ECF No. 10), is **DENIED**. The Court also concludes it is unnecessary to allow Plaintiff, who is represented by counsel, the opportunity to file a further amended complaint. Defendant's Motion to Dismiss notified Plaintiff of his pleading deficiencies and, in response, Plaintiff sought leave to file his proposed Amended Complaint, which also fails to state a claim. A further opportunity to amend is not required. *See Eiber Radiology, Inc. v. Toshiba Am. Med. Sys., Inc.*, 673 Fed.Appx. 925, 929-30 (11th Cir. 2016) (“We do not ... require ... leniency [in allowing opportunities to amend] where a plaintiff has been represented by counsel. We have never required district courts to grant counseled plaintiffs more than one opportunity to amend a deficient complaint.”); *Cornelius v. Bank of Am., NA*, 585 Fed.Appx. 996, 1000 (11th Cir. 2014) (“[T]he

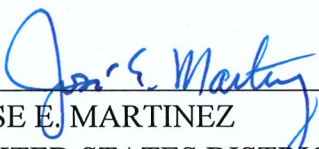
subject complaint was Cornelius's second attempt to make a legally cognizable claim.... Because Cornelius already had been given an opportunity to correct his pleadings, the judge was not required to give him another chance.”); *United States v. Fulton Cty., Georgia*, No. 1:14-cv-4071, 2016 WL 4158392, at \*15 (N.D. Ga. Aug. 5, 2016) (declining to allow a further opportunity to amend where, after a motion to dismiss was filed, plaintiffs submitted a proposed amended complaint that failed to state a claim); *cf. Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002); *Henley v. Turner Broad. Sys., Inc.*, 267 F.Supp.3d 1341, 1363 (N.D. Ga. 2017) (same).

#### IV. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** that:

1. Defendant's Motion to Dismiss, (ECF No. 7), is **GRANTED** as set forth herein.
2. Plaintiff's Complaint, (ECF No. 1), is **DISMISSED**.
3. Plaintiff's Motion for Leave to File Amended Complaint, (ECF No. 10), is **DENIED**.
4. The Clerk of Court is **DIRECTED** to **CLOSE** this case and **DENY** all pending motions as **MOOT**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 7 day of February, 2025.

  
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JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
All counsel of record