

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

Case Number: 23-CV-24884-MARTINEZ

GWENDOLYN C. HINES,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

ORDER ON DEFENDANT’S MOTION TO DISMISS AMENDED COMPLAINT

THIS CAUSE is before this Court upon Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint, (ECF No. 14). (ECF No. 15.) This Court has reviewed the Motion, Plaintiff’s Response in Opposition (“Response”), (ECF No. 16), Defendant’s Reply, (ECF No. 17), pertinent portions of the record, applicable law, and is otherwise fully advised of the premises. After careful consideration, and for the reasons set forth herein, Defendant’s Motion, (ECF No. 15), is **GRANTED**.

I. BRIEF FACTUAL BACKGROUND

Plaintiff, Gwendolyn C. Hines, tripped and fell when walking on the gangway onto the Carnival *Celebration*. (ECF No. 14, ¶ 13.) She alleges that she tripped “on an improperly placed threshold on the gangway that was sticking up and posed a dangerous condition.” (*Id.*, ¶ 14.) She further claims that she “suffered serious injury” as a result of the fall. (*Id.*, ¶ 15.) Plaintiff alleges that Defendant “knew, or in the exercise of reasonable care should have known of the unreasonably dangerous condition of its ship and the risk of injury to Plaintiff and all similarly situated persons.” (*Id.*, ¶ 17.) The Amended Complaint contains one count for negligence against Defendant. (*Id.*)

Defendant moved to dismiss Plaintiff's initial complaint as a shotgun pleading and for failure to state a claim. (ECF No. 4.) Plaintiff's response to that motion was due on or before March 28, 2024. (*Id.*) Plaintiff failed to timely respond in opposition to Defendant's motion to dismiss or request an extension of time to do so. On April 15, 2024, this Court entered an Order to Show cause on or before April 19, 2024, why Defendant's motion should not be granted by default pursuant to Local rule 7.1(c)(1), or file its response to Defendant's motion by that same date. (ECF No. 7.) On April 19, 2024, Plaintiff moved for leave to amend its initial complaint, (ECF No. 8), which this Court granted, (ECF No. 12). The instant Amended Complaint, (ECF No. 14), and Motion to Dismiss, (ECF No. 15), followed.

Defendant argues that Plaintiff's Amended Complaint should be dismissed because it remains a shotgun pleading and because it fails to sufficiently allege that Defendant was on actual or constructive notice of any alleged hazard. (ECF No. 15.) Defendant further argues that the Amended Complaint should be dismissed with prejudice as Plaintiff failed to remedy the deficiencies of her initial complaint and should not be afforded continual opportunities to file a proper complaint. (*Id.*)

II. LEGAL STANDARD

"Courts in the Eleventh Circuit have little tolerance for shotgun pleadings. They waste scarce judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public's respect for the courts." *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018) (internal citations omitted). The Eleventh Circuit, while acknowledging that the groupings of shotgun pleadings cannot be too finely drawn, has identified four rough types or categories of shotgun pleadings:

the most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each

successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type, at least as far as our published opinions on the subject reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against. 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.

Weiland v. Palm Beach Cnty. Sheriff's Off., 792 F.3d 1313, 1321–23 (11th Cir. 2015). A district court has the “inherent authority to control its docket and ensure the prompt resolution of lawsuits,” which includes the ability to dismiss a complaint on shotgun pleading grounds. *Id.* at 1320.

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).

III. DISCUSSION

At the outset, this Court agrees with Defendant's argument that Plaintiff's Amended Complaint falls into the third category of shotgun pleadings— "one that commits the sin of not separating into a different count each cause of action or claim for relief." *Weiland*, 792 F.3d at 1322. The Amended Complaint contains one count for negligence against Defendant but confusingly commingles within that count allegations regarding negligent maintenance and negligent failure to warn, which are individual causes of actions with distinct elements. (ECF No. 14, ¶¶ 20-21.) Within the same count, Plaintiff also alleges that Defendant failed to "comply with all relevant ship building standards, codes, laws and regulations." (*Id.*) Resultingly, despite labeling the count as a "negligence" claim, it is unclear to Defendant and this Court what claims Plaintiff actually intends to bring, and therefore does not provide adequate notice to Defendant of the claims against it. However, even if Plaintiff's Amended Complaint is not a shotgun pleading, it remains subject to dismissal for failure to state a claim as it does not sufficiently allege notice.

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.* See also *Bodkin v. MSC Cruises*, 2023 U.S. Dist. LEXIS 139770, *4 (S.D. Fla. Aug. 10, 2023) (dismissing the plaintiff’s complaint because, “most of Plaintiff’s allegations regarding notice are conclusory and lack any detail about how Defendant knew or should have known that the Risk Creating Conditions existed.”).

Here, Plaintiff’s Amended Complaint fails to provide facts sufficient to establish that Defendant was on notice of the dangerous condition. Instead, it states in conclusory fashion that “CARNIVAL had actual knowledge of the dangerous condition described above, or in the exercise of reasonable care CARNIVAL should have known of such a condition.” (ECF No. 14, ¶ 22.) This Court has held that allegations similar to the above were “far too conclusory to survive dismissal.” *Lincoln v. NCL (Bah.) Ltd.*, No. 23-cv-20519, 2024 U.S. Dist. LEXIS 17341, at *17-18 (S.D. Fla. Jan. 29, 2024), and it is far too conclusory here. While it is true that *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. Here, the Amended Complaint is devoid of any *facts* to support that Defendant had actual or constructive notice of the alleged dangerous condition and fails to allege notice with evidence of substantially similar prior incidents or that the defective condition existed for sufficient time to invite corrective measures. (ECF No. 14.) Instead, the allegations in the Amended Complaint are legal conclusion masquerading as fact and will not prevent dismissal.


The Court also concludes it is unnecessary to allow Plaintiff, who is represented by counsel, the opportunity to file an additional amended complaint. Defendant's motion to dismiss Plaintiff's initial complaint, (ECF No. 4), notified Plaintiff of her pleading deficiencies and, in response, Plaintiff sought leave to amend her 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. 15), is **GRANTED** as set forth herein.
2. Plaintiff's Amended Complaint, (ECF No. 14), is **DISMISSED with prejudice**.
3. 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 19 day of March, 2025.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies furnished to:
All counsel of record