UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	2:24-cv-04935-MRA-PD	Date	May 15, 2025
Title	Daryel Buesking v. Princess Cruise Lines, Ltd., et al.		

Present: The Honorable	MONICA RAMIREZ 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 GRANTING DEFENDANT PRINCESS CRUISE LINES, LTD.'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT [ECF 96]**

Before the Court is Defendant Princess Cruise Lines, Ltd.'s Motion to Dismiss Plaintiff's Second Amended Complaint (the "Motion"). ECF 96. The Court read and considered the moving, opposing, and reply papers 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 **GRANTS** the Motion.

I. BACKGROUND[1]

Plaintiff Daryel Buesking ("Buesking" or "Plaintiff") commenced this maritime action against Defendants 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 Second Amended Complaint ("SAC") on January 29, 2025.[2] ECF 93 (SAC).

On August 17, 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, which collectively refers to Aloschi, SNAV, and XYZ Corporation(s), owned and operated the Capri excursion. *Id.* ¶¶ 11, 13. The excursion required Princess' passengers to take a ferry from Naples to Capri. *Id.*

[1] The factual background is described as alleged in Plaintiff's Second Amended Complaint ("SAC"). *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).

[2] Plaintiff dismissed Defendants SNAV and XYZ Corporation(s) on February 25, 2025. ECF 99.

Aloschi contracted with Princess to provide the excursion to Princess' cruise passengers and made a group purchase of ferry tickets for Princess' passengers from SNAV. *Id.* ¶ 18. SNAV owned and operated the ferry. *Id.* ¶ 19. Princess sold the Capri excursion directly to its passengers, and therefore knew or should have known the number of its passengers participating in the excursion. *Id.* ¶ 24(a). 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(b). It also conducted yearly inspections of the tour. *Id.* ¶ 24(b), (c). During these processes, Princess was supposed to verify whether the tour provider and on-site tour operators are qualified and competent to operate the excursion and whether the vessels used are reasonably safe for the cruise passengers. *Id.* ¶ 24(d). Princess also maintains a website in which it acknowledged that "Capri is popular, so you might encounter crowds and delays at . . . the boarding area for the jetfoil boat in Capri[.]" *Id.* ¶ 24(e). Customer reviews posted to the website also noted crowded conditions on the island. *Id.* (including screen captures of customer reviews). The website noted that the "[t]our timeline may vary to avoid overcrowding, etc." *Id.* ¶¶ 24(e), (f).

Princess exclusively marketed, promoted, and sold this excursion to Buesking via its website. *Id.* In addition, Princess co-owned, 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 brings 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.* ¶¶ 25-32, 41-47. Plaintiff filed a First Amended Complaint ("FAC") on August 19, 2024. ECF 14. Princess moved to dismiss the FAC on October 11, 2024. ECF 41. The Court granted in part and denied in part Princess' motion on January 22, 2025, finding in relevant part that Plaintiff had not stated sufficient facts

to plausibly allege that Princess had actual or constructive knowledge of the overcrowding conditions on the ferry or the unmarked threshold. ECF 91 at 7-9.

The SAC amends the FAC to add allegations generally relating to Princess' notice of the overcrowding conditions. *See* SAC ¶¶ 24(a), (e), (f). On February 12, 2025, Princess moved to dismiss Plaintiff's SAC. ECF 96. Plaintiff filed an Opposition on February 20, 2025. ECF 97. Princess filed a Reply on March 3, 2025. ECF 102.

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 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. Negligence (Claims 1 & 2)

Princess argues that the SAC still fails to plausibly allege that Princess had notice of the overcrowding conditions, and therefore fails to state a claim against Princess. *See generally* ECF 96. Plaintiff opposes, responding that Princess had notice of the overcrowding because it

received customer complaints of the overcrowding, warned passengers of that danger, and noted corrective actions that would be taken to minimize overcrowding. ECF 97 at 4-8.

Plaintiffs' claims are claims of maritime torts. *See* SAC ¶¶ 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. 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." *Id.* (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 SAC alleges that Princess had a duty to provide Buesking with reasonable and ordinary

care and breached its duty based on its failure to (a) provide a reasonably safe excursion, (b) reasonably inspect the subject excursion vessel to ensure its reasonable safety, (c) ensure reasonable and/or sufficient warnings on its website and at the site of the tour excursion/vessel as to the overcrowding, (d) adequately inspect and/or monitor excursion providers, and (e) reasonably limit participation for the excursion to prevent overcrowding. SAC ¶ 26. Princess argues that the SAC 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. ECF 41-1 at 14-16.

1. Prior Inspections

The SAC alleges that based on Princess' initial approval process and yearly inspections of the tour, Princess should have discovered the crowded conditions. SAC ¶ 24(c). The Court previously explained that "several logical gaps" exist in Plaintiff's inspection theory of notice, which led the Court to reject any inference that the same or similar overcrowding condition that caused Plaintiff's injury existed during Princess' inspection process. ECF 91 at 7. The Court agrees with Defendant that Plaintiff has not provided any additional factual allegations to correct these deficiencies. *See* ECF 96-1 at 10 n.2. In fact, Plaintiff altogether fails to respond to this argument in the Opposition, and therefore concedes it. *See Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197, 1210 n.7 (N.D. Cal. 2013) (collecting cases holding that a party concedes an argument by failing to respond to it in opposition).

2. Contractual Privity

The SAC alleges that because Princess was in privity with Aloschi, who was in privity with SNAV, Princess knew, or should have known, the exact number of planned passengers on the subject ferry on the day of the incident. SAC ¶ 24(a). In other words, Princess had notice of SNAV's bookings in real-time because it was a third party to a contract between SNAV and Aloschi. Princess argues that this theory fails because Plaintiff does not allege the contents of any contract between Princess, Aloschi, and SNAV, nor does the existence of a contractual relationship between Aloschi and SNAV "automatically charge Aloschi with knowledge of all of SNAV's bookings (let alone a third party to that contract like Princess)." ECF 96-1 at 11. The Court agrees that an inference of notice based on contracting is not reasonable. In fact, that Aloschi purportedly resold tickets that it *purchased* from SNAV cuts against Plaintiff's theory that Aloschi must have known the total number of passengers on board a particular vessel because, as a purchaser, it would have had no need to know the total number of passengers on board (*i.e.*, how many tickets had been sold total). *See* SAC ¶ 18. Again, Plaintiff's Opposition does not

rebut, and therefore concedes, this argument. *See Ramirez*, 941 F. Supp. 2d at 1210 n.7.

3. Website's Description of the Excursion

The SAC cites and screenshots Princess' website advising passengers that "the boarding area" in Capri "could be busy" and that it would vary the tour timelines to avoid overcrowding as evidence Princess had notice that the subject ferry to Capri would be overcrowded. SAC ¶¶ 24(e), (f).

The Court agrees with Defendant that this assertion is a non sequitur. *See* ECCF 96-1 at 12. For a warning to be evidence of notice of a dangerous condition, "there must also be a connection between the warning and the danger." *Guevara*, 920 F.3d at 721; *accord Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1288 (11th Cir. 2015). The same is true of a corrective measure. *See Carroll v. Carnival Corp.*, 955 F.3d 1260, 1265 (11th Cir. 2020) (citing *Guevara*, 920 F.3d at 720-22; *Sorrels*, 796 F.3d at 1288). Here, Plaintiff was injured while aboard the ferry in Naples, *not* at the boarding area in Capri. SAC ¶¶ 17, 20, 21. And Princess' statement that tour times may vary to avoid crowding bears no connection to the particular danger alleged here. In short, that Princess was aware Capri is a popular and crowded tourist destination is not sufficient to show that Princess knew the ferry to Capri itself would be overcrowded.

The cases cited by Plaintiff are inapposite. In *Guevara*, where the plaintiff "slipped and fell as he stepped down from a landing" located on a cruise ship operated by the defendant, the Eleventh Circuit held that a warning sign alerting passengers to "watch your step" was evidence of the operator's knowledge of the dangerous condition—"the step down." 920 F.3d at 710, 721. Likewise, in *Sorrels*, where the plaintiff slipped and fell on a pool deck, the Eleventh Circuit held that a cruise employee's testimony that the cruise operator would "sometimes post warning signs on the pool deck after it had rained" was enough to create a genuine issue of material fact regarding whether the cruise line had actual or constructive knowledge that the deck could be slippery after it rained. 796 F.3d at 1279, 1288. Unlike *Guevara* and *Sorrels*, however, and as explained above, the alleged warning—posted as a general disclaimer on Princess' website, not at the site of the dangerous condition on a third-party vessel—does not bear a sufficient connection to the specific overcrowding condition that purportedly caused Plaintiff's injury. In *Carroll* too, where the plaintiff tripped over a lounge chair on a particular deck of a cruise ship, the Eleventh Circuit found "evidence reflecting that [the operator] took corrective measures *to prevent people from tripping over the lounge chairs in the walkway on Deck 11*." 955 F.3d at 1265 (emphasis added). Princess' statement about tour timelines on its website does not bear nearly as particular a connection to the crowded conditions on the subject ferry as the corrective measures taken in *Carroll* to address the trip hazard caused by the lounge chairs. The statement applies broadly to

the tour in its entirety—not just the timing of transport to and from the island, but also a visit to Villa San Michelle, free time in Anacapri, lunch in Capri Town, and other aspects of the tour. ECF 96-1 at 12-13. The only reasonable inference to be drawn from such a statement is that Princess was cautioning interested customers that while the posted itinerary is representative of what to expect on the excursion, the exact timeline was subject to change depending on various conditions, *not* that it knew in particular of crowding conditions on the transport vessels to the island.

4. Customer Reviews

The SAC alleges that Princess knew or should have known of the overcrowding on the ferry itself based on customer reviews posted to Princess' website. SAC ¶ 24(e). The Court previously held that "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.'" ECF 91 at 7 (citation omitted). The SAC now includes screen captures of customer comments dating between "a year ago" and "two years ago." SAC ¶ 24(e).

Princess argues that none of these reviews establish that Princess had actual or constructive knowledge that the subject ferry was overcrowded. ECF 96-1 at 13. The Court agrees. Several of the customer reviews described crowded conditions on the furnicular and the island itself.[3] SAC ¶ 24(e). Only one customer review states that after a tour of the island, "at least 500 people were waiting again for the same ferry. We all had to converge into one line to get onboard. It was just crazy, as there could have been many accidents. Luckily none happened. " *Id.* As above, while this review may go to Princess' knowledge of crowded conditions on Capri itself, it is not enough to plausibly show that Princess had knowledge of any dangerous conditions on the ferry to the island. Crucially, this comment, posted "a year ago," did not *predate* the August 2023 incident, and therefore could not have given Princess "a sufficient interval of time to invite corrective measures." *Monteleone*, 838 F.2d at 65. Lastly, the customer's statement that no accidents actually occurred further discounts Princess' constructive notice of overcrowding. SAC ¶ 24(e); *cf. Guevara*, 920 F.3d at 720 ("[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.").

The SAC also fails to allege facts showing Princess' notice of the unmarked threshold.

[3] A furnicular is a type of cable railways system that connects points along a railway track laid on a steep slope. *See Furnicular*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/funicular.

Without any showing that Princess had actual or constructive knowledge of the dangerous conditions, the Court finds that Plaintiff fails to state claims for negligence and failure to warn. Accordingly, the Court **GRANTS** Princess' Motion as to Claims 1 and 2.

B. Agency Liability (Claim 5)

The SAC generally alleges that Excursion Entities (Aloschi and SNAV) were agents of Princess, such that Princess is liable for any torts committed by Excursion Entities. SAC ¶¶ 41-47. Princess previously moved to dismiss Plaintiff's agency allegations on the grounds that the passage contract disclaimed that Excursion Entities are not subject to Princess' supervision or control. ECF 42 at 10-11. In its prior Order denying Princess' motion to dismiss this claim, the Court found that the passage contract was not incorporated by reference in the FAC and therefore declined to consider whether the terms of the contract precluded an agency theory of liability against Princess. ECF 91 at 5. "[B]ecause this was the only argument raised against Plaintiff's agency allegations," the Court denied Princess' motion to dismiss the agency claim. *Id.* The SAC did not amend any of the agency allegations. *See* SAC ¶¶ 41-47.

Now Princess argues that Plaintiff has not plausibly alleged that SNAV had notice of any dangerous condition, and as such, Plaintiff cannot be held liable for SNAV's negligence under an agency theory of liability. ECF 96-1 at 14. Plaintiff responds in relevant part that to the extent Princess attempts to relitigate the agency claim, the Court's previous order addressed this issue and ruled that it survives dismissal. ECF 97 at 9 n.5. As such, Plaintiff "adopts and incorporates by reference the arguments previously made in his previous response in opposition." *Id.* at 9 (citing ECF 43). Plaintiff does not substantively respond to Princess' argument that he does not plausibly allege a negligence claim against Excursion Entities.

In general, under Rule 12(g)(2), a defendant "must not make another motion . . . raising a defense or objection that was available to the party but omitted from its earlier motion." Fed. R. Civ. P. 12(g)(2). Fed. R. Civ. P. 12(g)(2); *see Labowitz v. Bird Rides, Inc.*, No. CV 18-9329-MWF (SK), 2020 WL 2334116, at *8 (C.D. Cal. Mar. 31, 2020) (collecting cases). Technically, "[i]f a failure-to-state-a-claim defense under Rule 12(b)(6) was not asserted in the first motion to dismiss under Rule 12, Rule 12(h)(2) tells us that it can be raised, but only in a pleading under Rule 7, in a post-answer motion under Rule 12(c), or at trial." *See In re Apple iPhone Antitrust Litig.*, 846 F.3d 313, 318 (9th Cir. 2017), *aff'd sub nom. Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)). Nevertheless, the Ninth Circuit has "read Rule 12(g)(2) in light of the general policy of the Federal Rules[]" set forth in Rule 1 and concluded that "[d]enying late-filed Rule 12(b)(6) motions and relegating defendants to the three procedural avenues specified in Rule 12(h)(2) can produce unnecessary and costly delays, contrary to the direction of Rule 1." *Id.* As such, the

Ninth Circuit is generally "forgiving of a district court's ruling on the merits of a late-filed Rule 12(b)(6) motion."[4] *Id.* at 319.

In its prior motion to dismiss, Princess could have, but did not, raise that Plaintiff's agency theory against Princess fails because Plaintiff had not pleaded a viable claim for negligence against Excursion Entities. The Court admonishes Princess for this omission, but still finds that Plaintiff has not properly pleaded a negligence claim against Excursion Entities upon which to predicate its agency theory against Princess.

General maritime law recognizes typical respondeat superior principles, under which a principal may be held to be directly or vicariously liable for the negligence of its agent. *See De Los Santos v. Scindia Steam Nav. Co.*, 598 F.2d 480, 489 (9th Cir. 1979); *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1234-35 (11th Cir. 2014) (collecting cases). "[T]o hold a principal liable for the negligence of an apparent agent, a plaintiff must sufficiently allege the elements of apparent agency in addition to the elements of the underlying negligent act of the agent for which the plaintiff seeks to hold the principal liable." *Thompson v. Carnival Corp.*, 174 F. Supp. 3d 1327, 1342 (S.D. Fla. 2016).

The Court agrees with Princess that Plaintiff does not adequately state a negligence claim against Excursion Entities and therefore has not stated a claim against Princess under an agency theory. For one, Plaintiff's allegations impermissibly lump Aloschi and SNAV together as "Excursion Entities" without differentiating between the two defendants. This "lumping together of multiple defendants in one broad allegation fails to satisfy notice requirement[s]." *Gen-Probe, Inc. v. Amoco Corp.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996) (citing *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988)). "As a general rule, when a pleading fails to allege what role each Defendant played in the alleged harm,' this 'makes it exceedingly difficult, if not impossible, for individual Defendants to respond to Plaintiffs' allegations.'" *Sebastian Brown Prods., LLC v. Muzooka, Inc.*, 143 F. Supp. 3d 1026, 1037 (N.D. Cal. 2015) (quoting *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015)). In addition, Plaintiff does not allege facts showing that either Aloschi or SNAV had actual or constructive notice of the purported hazards described in the Complaint.

Accordingly, the Court **GRANTS** Princess' Motion as to Claim 5.

[4] Moreover, a district court has authority to raise *sua sponte* the issue whether a pleading fails to state a claim upon which relief can be granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("A trial court may dismiss a claim sua sponte under [Rule] 12(b)(6).").

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)). Notwithstanding the liberal standard under Rule 15(a), leave to amend is "not to be granted automatically." *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013) (quoting *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1387 (9th Cir. 1990)), *aff'd sub nom. Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015).

Here, the Court finds that further amendment would be futile as to Claims 1 and 2. The Court's prior Order clearly identified the deficiencies with Claims 1 and 2 and granted leave to amend. ECF 91. The SAC's failure to correct these flaws has made clear that Plaintiff cannot state negligence claims against Princess directly. The "court's discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend his complaint." *Fidelity Fin. Corp. v. Fed. Home Loan Bank of San Francisco*, 792 F.2d 1432, 1438 (9th Cir. 1986). Nevertheless, the Court finds that it is not absolutely clear that Plaintiff cannot hold Princess liable under an agency theory. Thus, the Court, in its discretion, **DENIES** leave to amend Claims 1 and 2 but **GRANTS** leave to amend Claim 5, correcting the deficiencies identified herein in a manner consistent with all Rule 11 obligations.

IV. CONCLUSION

For the foregoing reasons, Princess' Motion to Dismiss the SAC is **GRANTED** without leave to amend Claims 1 and 2 and with leave to amend Claim 5. Any amended complaint shall be filed within **21 days** of the date of the Court's 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