UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-20363-RAR

LEOLA Y. HOPKINS,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER GRANTING IN PART MOTION TO DISMISS

THIS CAUSE comes before the Court on Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint ("Motion"), [ECF No. 35]. Defendant filed the Motion on June 11, 2025. *Id.* Defendant filed a Response on June 25, 2025, [ECF No. 37], and Plaintiff filed a Reply on July 2, 2025, [ECF No. 38]. The Court held a hearing on the Motion on August 6, 2025, [ECF No. 43]. The Motion is now ripe for adjudication. Upon review, the Court **GRANTS in part** Defendant's Motion for the reasons explained herein.

BACKGROUND

This is a cruise-ship personal injury case. On February 2, 2024, Plaintiff Leola Hopkins was exiting "a very crowded late night comedy show" on deck seven of the Carnival Mardi Gras. Second Am. Compl. ("SAC"), [ECF No. 34] ¶ 12. As she was heading towards the exit doors near the top of the theater, "her foot was run over by an individual operating a powerchair and/or motorized scooter that backed up into the crowd of exiting people[.]" *Id.* As a result, Plaintiff was "knocked backward onto the stairs behind her" and sustained injuries. *Id.*

Plaintiff filed the initial Complaint in this action on June 27, 2025, bringing two counts: negligence (Count I) and negligent design (Count II). Defendant Carnival Corporation filed a

Motion to Dismiss the initial Complaint on March 5, 2025. [ECF No. 14]. In a Paperless Order issued on March 6, 2025, the Court reminded Plaintiff that she could amend as a matter of right and cure any alleged deficiencies in the initial Complaint. [ECF No. 15].

Plaintiff filed a First Amended Complaint on March 18, 2025, [ECF No. 21], again bringing two counts: Negligence (Count I) and Negligent Design (Count II). The Court therefore denied the first Motion to Dismiss as moot. *See* [ECF No. 22]. Defendant then filed a Motion to Dismiss the First Amended Complaint on April 1, 2025. [ECF No. 23]. Defendant's second Motion to Dismiss sought to dismiss the Amended Complaint because (1) Counts I and II failed to allege Defendant's notice of a dangerous condition; (2) Count I improperly commingled distinct causes of action; (3) Count II failed to plead a claim for negligent design because it failed to aver that Defendant actually created, participated in, or approved the alleged improper design; (4) Counts I and II improperly sought to extend Defendant's duty of care under general maritime law; and (5) Count I improperly pleaded a negligent mode of operation claim. *See generally id.* On May 7, 2025, the Court held a hearing on Defendant's second Motion to Dismiss, [ECF No. 29].

At the hearing, the Court explained that it would grant Plaintiff's second Motion to Dismiss because (1) Plaintiff failed to properly allege Defendant's notice of a dangerous condition; (2) Count I displayed characteristics of a shotgun pleading because it commingled several different theories of negligence into a single claim; (3) Count II failed to plead a claim for negligent design because it did not plead facts demonstrating that Defendant actually created, participated in, or approved the alleged improper design; (4) certain allegations appeared to improperly extend Carnival's duty of care under general maritime law; and (5) certain aspects of Count I resembled an improper negligent mode of operation claim. *Id.* At the hearing, the Court also provided Plaintiff with detailed guidance regarding the pleading flaws in the First Amended Complaint. *Id.* The Court then entered an Order granting the second Motion to Dismiss. *See* [ECF No. 30].

Plaintiff filed the SAC on May 28, 2025. The SAC replaces the previous complaints' general negligence count with a negligent failure to warn claim and repleads the negligent design claim. The instant Motion—Defendant's third Motion to Dismiss—seeks to dismiss the SAC for four reasons: (1) Counts I and II fail to allege that Carnival had actual or constructive notice of the allegedly dangerous condition; (2) Count I fails to plead that the condition was not open and obvious; (3) Plaintiff improperly asserts a negligent mode of operation theory, which is not cognizable under maritime law; and (4) Plaintiff attempts to expand Carnival's duty beyond what is required under general maritime law. *See generally* Mot.

LEGAL STANDARD

Motion to Dismiss. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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." *Id.* (citing *Twombly*, 550 U.S. at 556). "[T]he standard 'calls for enough fact to raise a reasonable expectation that discovery will reveal evidence' of the claim." *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 556). "[W]hen plaintiffs 'have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). When evaluating a Rule 12(b)(6) motion to dismiss, the court must accept all well-pleaded factual allegations as true and draw all inferences in favor of the plaintiff. *Jackson v. Alto Experience, Inc.*, 716 F. Supp. 3d 1327, 1333 (S.D. Fla. 2024) (citing *Smith v. United States*, 873 F.3d 1348, 1351 (11th Cir. 2017)). The Court may only consider allegations in the pleadings and exhibits attached to those pleadings. *Id.* at 1333.

Maritime Law. General maritime law governs this action because it "aris[es] from [an] alleged tort[ ] committed aboard a ship sailing in navigable water." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). To prevail on a maritime negligence claim, Plaintiff must show "(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." *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022) (quotation omitted). A cruise ship operator owes to its passengers the duty of exercising "ordinary reasonable care under the circumstances." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). In order to demonstrate that the carrier had a duty with respect to a dangerous condition, "the carrier [must] have had actual or constructive notice of the risk-creating condition." *Id.* "Actual notice exists when the defendant knows about the dangerous condition." *Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022) (citations omitted). Constructive notice exists when either: (1) "the hazardous condition existed for a sufficient length of time"; or (2) "substantially similar incidents occurred in which 'conditions substantially similar to the occurrence in question must have caused the prior accidents.'" *Id.* at 1096 (citations omitted).

ANALYSIS

I. Actual or Constructive Notice

Defendant argues that the SAC must be dismissed in its entirety because Plaintiff fails to establish that Defendant had actual or constructive notice of a dangerous condition. *See* Mot. at 3–10. Plaintiff alleges the dangerous condition that caused her injuries is "combining the passage for exit on deck 7 at the Mardi Gras theater for handicap seating and pedestrian traffic in and out of the theater" in a manner that "would cause a dangerous hazard to both those fare-paying passengers transiting the area [on] foot and those transiting that same section utilizing a wheelchair or a motorized power chair, forcing said passengers to make their own determination as to an exit

strategy." SAC ¶ 26; *see also id.* ¶ 29.c (referring to "the dangerous condition of having a wheelchair and/or motorized power chair collide with those exiting the theater independently on foot"); *id.* ¶ 30 (referring to "the dangerous condition of the inadequate placement and/or storage of the Wheelchairs/ Scooters/ Segways").

Several notice allegations are common to Counts I and II, while others are specific to Counts I and II respectively. The Court concludes that Plaintiff fails to adequately plead that Carnival had actual or constructive notice of a dangerous condition with respect to Count I. Although Count II for the most part also fails to plead Carnival's actual or constructive notice, Count II contains notice allegations that Defendant does not address in the Motion and that the Court therefore cannot address *sua sponte*. As such, the Court will dismiss Count I with prejudice, but will permit Plaintiff to file a Third Amended Complaint *solely* as to Count II.

a. Notice Allegations Common to Counts I and II

Plaintiff advances two separate sets of notice allegations common to Counts I and II. First, paragraphs 13–16 of the SAC allege that Carnival was on notice of the dangerous condition because Carnival takes steps to comply with the ADA, specifically: Carnival had to remediate its ships in 2015 to comply with ADA regulations pursuant to a settlement with the Justice Department, SAC ¶¶ 13–14; Carnival "implements accessibility standards and policies to provide greater access on [its] cruises" pursuant to its 2015 settlement, *id.* ¶ 13; and a Carnival representative said in a YouTube interview in 2021 that Carnival was "working with an outside ADA expert company that has been doing surveys of all of their ships with a goal of increasing accessibility onboard" and that "[t]he *Mardi Gras* is brand new and should be our most accessible ship," *id.* ¶ 15. Second, Plaintiff cites *Spector v. Norwegian Cruise Line Limited*, 545 U.S. 119 (2005), for the general proposition that "the cruise industry operating in the United States' waters must abide by the ADA Guidelines." *Id.* ¶¶ 17–19.

These allegations do not establish that Defendant had notice of the dangerous condition alleged here. Plaintiff argues that "ADA guidelines and regulations, while not conclusive, are admissible to aid in establishing the standard of care," Resp. at 7, but fails to explain why Defendant's accessibility standards and ADA remediation establish notice of the dangerous condition at bar. Even if industry standards or ADA non-compliance could be used to establish notice, Plaintiff does not cite any specific ADA requirement or guideline that applies, how Carnival failed to comply with that requirement or guideline, or how failure to comply with that requirement or guideline was related to the dangerous condition alleged. Accordingly, Plaintiff's notice allegations common to Counts I and II fail to establish that Defendant had actual or constructive notice of a dangerous condition. *See Zygarlowski v. Royal Caribbean Cruises Ltd.*, No. 11-21340, 2013 WL 12059607, at *6 (S.D. Fla. Feb. 25, 2013) ("The record shows, at most, that Royal Caribbean had notice that the ramp did not comply with the [ADA] guidelines. This, however, is not equivalent to having notice of the danger that the ramp allegedly created for cruise passengers like Zygarlowski.").

b. Notice Allegations Specific to Count I

With regard to Count I, Plaintiff attempts to plead notice by referencing the warnings or policies for guests with disabilities posted on Carnival's website. First, there is a warning that "[c]areful attention must be paid when backing in and out of elevators as they are often in close proximity to the staircase and may be narrow and difficult to navigate," which in Plaintiff's view suggests "that Carnival is aware of the hazardous situations that their tight spaces can cause for the Wheelchairs/ Scooters/ Segways users and those navigating the vessel amongst them a foot." SAC ¶ 21. Second, the website reminds guests that "[m]obility devices cannot be left unattended in any venue area unless the guest is temporarily away attending an event and, the device is parked in an area that allows all guests safe exit from the venue," which Plaintiff says "suggests that Carnival is

aware of the dangers that commingling the placement of the Wheelchairs/ Scooters/ Segways in areas used to exit a venue causes and constitutes a dangerous hazard." SAC ¶ 22. And third, the website states that "[w]hen in public areas, guests must maintain their device clear of any exits or fire doors and ensure it does not obstruct any fire or safety equipment," which Plaintiff says suggests "that Carnival knew or should of known of the danger that commingling the exit area with Wheelchairs/ Scooters/ Segways seating and/or storage would pose to the passengers seeking passageway through the only exit on deck 7 for the Mardi Gras theater for fare-paying passengers on the mobility devices and those [on] foot." SAC ¶ 23.

These warnings do not establish notice because they are either inapposite or insufficiently connected to the dangerous condition alleged here. It is true that "[e]vidence that a ship owner has taken corrective action can establish notice of a dangerous or defective condition." *Carroll v. Carnival Corp.*, 955 F.3d 1260, 1265 (11th Cir. 2020). And corrective action can include warning passengers about a danger posed by a condition. *See id.*; *see also Guevara*, 920 F.3d at 720–22 (holding that a warning sign alerting passengers to "watch [their] step" was sufficient to create an issue of material fact on whether the cruise ship had notice of the dangerous nature of the step down). A warning signal may be used to establish notice "because the defendant's use of the warning create[s] the logical inference that the defendant had prior knowledge of the dangerous condition necessitating the warning." *Lipkin v. Norwegian Cruise Line Ltd.*, 93 F. Supp. 3d 1311, 1323 (S.D. Fla. 2015).

However, "not all warning signs will be evidence of notice." *Guevara*, 920 F.3d at 721. In order to establish notice of a dangerous condition, "there must also be a connection between the warning and the danger." *Id.* (citing *Taiariol v. MSC Crociere S.A.*, 677 F. App'x 599 (11th Cir. 2017)). Thus, "in . . . corrective action cases," courts must be "attentive to defining the purported risk at the right level of specificity" in determining whether a "particularized corrective action . . .

constitute[s] evidence of notice." *J.F. by & through S.F. v. Carnival Corp.*, 141 F.4th 1164, 1172 (11th Cir. 2025). For example, in *Taiariol*, the Eleventh Circuit rejected the plaintiff's contention that a "watch your step" sticker affixed to the nosing of a step was evidence that the cruise line had notice of the nosing's slippery condition because "[c]ommon sense dictates that the sticker served to caution persons on the ship that the step was there" but "there [was] no evidence that it was intended to warn passengers that the nosing may be slippery." *Taiariol*, 677 F. App'x at 602; *see also Dudley v. NCL (Bahamas) Ltd.*, 688 F. Supp. 3d 1194, 1203 (S.D. Fla. 2023) (finding that general warning in ticket contract that "it is possible to sustain injury while participating in" shore excursions did not provide notice of a dangerous condition where the plaintiff was "thrown from a Segway, run over by it, landed on the ground, and the Segway fell on top of him" during a shore excursion).

Here, the warnings Plaintiff highlights do not establish notice because Plaintiff fails to demonstrate a connection between the warning signs and the dangerous condition alleged. The warning about "backing in and out of elevators as they are often in close proximity to the staircase and may be narrow and difficult to navigate," SAC ¶ 21, is unrelated to the dangerous condition alleged here: "commingling the exit area with Wheelchairs/ Scooters/ Segways seating and/or storage," *id.* ¶ 23. The warning or policy that "[m]obility devices cannot be left unattended in any venue area unless the guest is temporarily away attending an event and, the device is parked in an area that allows all guests safe exit from the venue," *id.* ¶ 22, is likewise inapposite because Plaintiff does not allege that she was harmed by an unattended mobility device. And the warning or policy that "guests must maintain their device clear of any exits or fire doors and ensure it does not obstruct any fire or safety equipment," *id.* ¶ 23, is also irrelevant to Defendant's notice because Plaintiff does not allege that she was injured because the mobility device in question was obstructing an exit or fire door.

To the extent Plaintiff wishes to aggregate these warnings into a general principle that "wheelchairs are dangerous in tight spaces," this defines the dangerous condition "at too high a level of generality." *J.F.*, 141 F.4th at 1172. As the Eleventh Circuit has cautioned, in order to constitute evidence of notice, a plaintiff must point to "particularized corrective action" aimed at mitigating the specific kind of danger alleged, *id.*, in order to establish a sufficient "connection between the [corrective action] and the danger," *Guevara*, 920 F.3d at 721. None of the warnings cited here suggest that Carnival had notice of any danger caused by "combining the passage for exit on deck 7 at the Mardi Gras theater for handicap seating and pedestrian traffic in and out of the theater" in a manner that "would cause a dangerous hazard to both those fare-paying passengers transiting the area [on] foot and those transiting that same section utilizing a wheelchair or a motorized power chair, forcing said passengers to make their own determination as to an exit strategy." SAC ¶ 26. In short, the warnings here simply do not "create the logical inference that the defendant had prior knowledge of the dangerous condition necessitating the warning." *Lipkin*, 93 F. Supp. 3d at 1323.

Plaintiff therefore fails to establish Defendant's notice with respect to Count I. Because Plaintiff has now failed to establish notice on Count I after *three* pleading attempts, the Court dismisses Count I *with* prejudice. *See Eiber Radiology, Inc. v. Toshiba Am. Med. Sys., Inc.*, 673 F. App'x 925, 929-30 (11th Cir. 2016) ("We have never required district courts to grant counseled plaintiffs more than one opportunity to amend a deficient complaint, nor have we concluded that dismissal with prejudice is inappropriate where a counseled plaintiff has failed to cure a deficient pleading after having been offered ample opportunity to do so.").[1]

[1] Defendant argues that Plaintiff fails to allege that the alleged dangerous condition was open and obvious, as is required to state a claim for negligent failure to warn. However, because the Court dismisses Count I for failure to establish notice, there is no need to address whether the alleged dangerous condition was open and obvious. In any event, the Court notes that Plaintiff does allege that the dangerous condition "was neither known, open nor obvious to the Plaintiff." SAC ¶ 30. Whether a dangerous condition was open

c. Notice Allegations Specific to Count II

Plaintiff alleges three bases for notice specific to Count II. First, Plaintiff alleges that "the turnaround space needed per ADA guidelines was not present between the table and the seating on the top deck of the Mardi Gras theater on deck 7, as shown on the image of the theater below #14." SAC ¶ 35. As with Plaintiff's previous ADA-based notice theories, this allegation does not establish notice because it does not cite any specific ADA requirement or guideline that applies, how Carnival failed to comply with that requirement or guideline, or how failure to comply with that requirement or guideline related to the dangerous condition alleged. *See Zygarlowski*, 2013 WL 12059607, at *6.

Second, Plaintiff alleges that "Carnival knew or should have known that storing or creating a handicap area in a narrow space as that between the table and the passage area before the seats on deck 7 of the Mardi Gras theater, would cause a hazardous and dangerous condition to those passengers that would be exiting or entering the theater through said passageway" because Carnival's website had a warning that "[d]ue to safety considerations, wheelchairs cannot be stored in the corridors." SAC ¶ 36. As with the warnings Plaintiff cites under Count I, this allegation is inapposite to Carnival's notice. In other words, whatever danger there is of wheelchairs left unattended in corridors is unrelated to the dangerous condition alleged here—"combining the passage for exit on deck 7 at the Mardi Gras theater for handicap seating and pedestrian traffic in and out of the theater." *Id.* ¶ 26.

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and obvious is often a fact-intensive inquiry, and "rarely will a court determine that a danger is open and obvious at the motion to dismiss stage." *Thayer v. NCL (Bahamas) Ltd.*, No. 20-23174, 2020 WL 7632099, at *4 (S.D. Fla. Dec. 4, 2020), *R & R adopted*, No. 20-23174, 2020 WL 7625224 (S.D. Fla. Dec. 22, 2020). Thus, it is "generally accepted that the legal question of whether a condition is open and obvious is better decided [not at the motion to dismiss stage but] after some factual development." *Flaherty v. Royal Caribbean Cruises, Ltd.*, No. 15-22295, 2015 WL 8227674, at *3 (S.D. Fla. Dec. 7, 2015); *see also Lipkin*, 93 F. Supp. 3d at 1320.

Third, Plaintiff alleges that the layout of the ship's accessibility routes on deck 7 shows "no accessible routes for entry to the Mardi Gras theater on deck 7 for those utilizing mobility devices." SAC ¶ 39 (reproducing accessibility map of deck 7). Rather, "the proper designated and designed mobility device and handicap seating and storage for the Mardi Gras Theatre . . . [are] located on deck 6, not deck 7." *Id.* ¶ 40. According to Plaintiff, this shows that Carnival "negligently allow[ed] a passageway created for exiting and entering the Mardi Gras theater at deck 7 to be utilized as additional temporary or improvised handicap seating and/or storage during events." *Id.* ¶ 41; *see also id.* ¶ 39 (alleging that the "handicap seating and/or storage of mobility devices for the theater on [deck 7] was something improvised by the ship to create more availability to these events and shows for the passengers[—t]hus, negligently creating an area not previously designed for that use"). Given that Carnival "designed" the handicap seating area on deck 7, Plaintiff maintains that Carnival "knew or should have known, with a degree of reasonable care, under the circumstances, that said passageway was too narrow to accommodate for entering and exiting, as well as[ ] the handicap seating and storage for that section." *Id.* ¶ 41.

Defendant does not address these allegations anywhere in its briefing, as counsel for Defendant acknowledged at the hearing on the Motion. The Court cannot raise arguments that Defendant did not raise itself. *See In re Egidi*, 571 F.3d 1156, 1163 (11th Cir. 2009) ("Arguments not properly presented in a party's initial brief or raised for the first time in a reply brief are deemed waived."). Thus, although Plaintiff's ADA- and warning-based theories fail to establish notice, the Court cannot conclude at this juncture that Plaintiff fails to plead notice with respect to Count II based on Carnival's design of accessibility routes aboard the *Mardi Gras* and its placement of handicap seating in an area not designed to be accessible to wheelchairs. The Court therefore cannot

dismiss Count II for failure to establish notice and will permit Plaintiff to replead a Third Amended Complaint as to Count II only under Plaintiff's sole viable notice theory.[2]

II. Request for Discovery and Leave to Amend

In her Response, Plaintiff requests "limited discovery as to Carnival's actual or constructive knowledge or notice of the alleged dangerous condition of the subject area that led to [her] injury" if "the Court needs further clarification on the pending material issues in deciding on the Motion," Resp. at 17, and also seeks leave to amend "to allege a plausible claim for negligence," *id.* at 19.

As to Plaintiff's request for discovery, ordinarily, a plaintiff must plead a claim to receive discovery; a plaintiff cannot request discovery to construct a claim. *See Twombly*, 550 U.S. at 556 (noting that the motion to dismiss standard "calls for enough fact to raise a reasonable expectation that discovery *will* reveal evidence" of a claim) (emphasis added). In ruling on a motion to dismiss, a court is "limited to the four corners of the complaint." *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002); *see also La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004) ("In analyzing the sufficiency of the complaint, we limit our consideration to the well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed."). The Court is not aware of (nor does Plaintiff cite) any authority that would support her request for preliminary factual discovery to establish "Carnival's actual or constructive knowledge

[2] Defendant renews its arguments, previously raised in its second Motion to Dismiss, [ECF No. 23], that Plaintiff pleads a negligent mode of operation theory not recognized under maritime law and impermissibly seeks to extend Carnival's duty of care beyond what is recognized under maritime law. Although the Court agrees that certain inartfully pleaded allegations in the Second Amended Complaint bear resemblance to a negligent mode of operation theory and appear to improperly extend Carnival's duty of care, such allegations are not pervasive throughout the Complaint and therefore do not provide an independent basis for dismissal. As the Court previously explained in its Order on Defendant's First Motion to Dismiss, [ECF No. 30], Plaintiff is reminded on amendment that (1) any allegations as to Defendant's duty must be tied to the duty of reasonable care under the circumstances recognized under general maritime law, *id.* (citing *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959)), and (2) she may not seek to hold Defendant directly liable based on "general policies and operations" and must tie any negligence allegations to "the specific incident in which the plaintiff was injured," *id.* (citing *Malley v. Royal Caribbean Cruises Ltd.*, 713 F. App'x 905, 910 (11th Cir. 2017)).

or notice of the alleged dangerous condition of the subject area that led to Hopkins' injury." Resp. at 17.

As to Plaintiff's request for amendment, the Court will permit Plaintiff to replead the Complaint with respect to Count II using her one viable notice theory, as previously discussed. However, the Court dismisses Plaintiff's negligent failure to warn claim with prejudice and without leave to amend. "Because justice does not require district courts to waste their time on hopeless cases, leave may be denied" as futile "if a proposed amendment fails to correct the deficiencies in the original complaint or otherwise fails to state a claim." *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1255 (11th Cir. 2008) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Further, there is no requirement that a court must grant a plaintiff more than one opportunity to amend a deficient complaint. *Eiber Radiology, Inc.*, 673 F. App'x at 929–30. This is Plaintiff's third bite at the apple, and there is no indication that a fourth would cure the deficiencies in pleading notice with respect to Count I. Nor does Plaintiff identify how amendment would cure the deficiencies identified in the present Motion to Dismiss or in the Court's prior orders. Given Plaintiff's multiple failed attempts to plead notice with respect to Count I and failure to identify how amendment would cure these defects, the Court finds that amendment would be futile with respect to Count I and accordingly dismisses Count I with prejudice.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Dismiss, [ECF No. 35], is **GRANTED** with respect to Count I, and **DENIED** with respect to Count II.

2. Count I is **DISMISSED *with prejudice***.

3. Plaintiff shall file a Third Amended Complaint with respect to Count II only in compliance with this Order on or before **August 19, 2025**.

4. Defendant shall answer Plaintiff's Third Amended Complaint on or before **August 26, 2025**.

DONE AND ORDERED in Miami, Florida, this 12th day of August, 2025.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE