**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:19-cv-23334-KMM

KEITH OFFENBERG,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

**ORDER**

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Carnival" or "Defendant") Motion for Summary Judgment ("Mot.") (ECF No. 69). Plaintiff Keith Offenberg ("Plaintiff") filed a Response in Opposition to Defendant's Motion for Summary Judgment. ("Resp.") (ECF No. 74). Defendant filed a Reply in Support of its Motion for Summary Judgment. ("Reply") (ECF No. 77). The Motion is now ripe for review.

## I. BACKGROUND[1]

On August 11, 2018, Plaintiff was a passenger aboard the Carnival *Pride*. Def.'s 56.1 ¶ 1; Pl.'s Resp. 56.1 ¶ 1. While exiting the ship's Green Thunder water slide, Plaintiff grabbed ahold of what turned out to be a slippery handrail, and he slipped and fell. Def.'s 56.1 ¶¶ 2, 9–10; Pl.'s Resp. 56.1 ¶¶ 2, 9–10. Initially, Plaintiff attributed the slip and fall to the combination of (1) an oily substance on the handrail Plaintiff used to steady himself while exiting the slide, and (2) the

[1] The undisputed facts are taken from Defendant's Statement of Material Facts in Support of Its Motion for Summary Judgment ("Def.'s 56.1") (ECF No. 70), Plaintiff's Response to Defendant's Statement of Undisputed Facts in Support of Motion for Summary Judgement ("Pl.'s Resp. 56.1") (ECF No. 74-1), Defendant's Reply in Support of the Statement of Material Facts ("Def.'s Reply 56.1") (ECF No. 78), and a review of the corresponding record citations and exhibits.

lack of an attendant present to assist passengers in exiting the slide. *See* Compl. ¶ 25. In response to the instant Motion, however, Plaintiff argues that it was the lack of an attendant present that was the risk-creating condition in this case, not that the handrail was defective or that the presence of an oily substance made the handrail dangerous. Resp. at 2–3; Def.'s 56.1 ¶ 10; Pl.'s Resp. 56.1 ¶ 10.

The Parties dispute whether an attendant was present at the bottom of the slide. Def.'s 56.1 ¶¶ 18–19; Pl.'s Resp. 56.1 ¶¶ 18–19. Defendant asserts that an attendant was present—relying on the attendant's witness statement—and that the attendant's primary responsibility while manning the bottom of the slide was to signal to the attendant at the top of the slide when it was safe to allow the next passenger to go down the slide. Def.'s 56.1 ¶ 18–19. Plaintiff asserts that while the attendant may have been *assigned* to the bottom of the slide, he was not *present* at the bottom of the slide. Pl.'s Resp. 56.1 ¶ 18. Further, Plaintiff asserts that regardless of what the attendant's primary responsibility was, he was also responsible for assisting passengers in exiting the slide when they request such assistance. *Id.* ¶ 19. Plaintiff cites to Carnival's Waterworks/Waterslides Safety Manning Requirements policy that provides a list of waterslide attendants' duties, including that attendants "[e]nsure that all riders exit the pool immediately upon splashdown," and that they "[b]e prepared to enter [the] splash pool to assist customer[s] out of [the] pool." Def.'s 56.1 Ex. D ("Carnival's Safety Policy") at 5. Plaintiff also cites to record evidence wherein Plaintiff states that there was no attendant present at the slide's exit to ask for assistance. Pl.'s Resp. 56.1 ¶ 16; Def.'s 56.1 Ex. A ("Offenberg Dep. Tr.") (ECF No. 70-1) at 89:2–9 ("[I]f there was an attendant there at the time to help out and I did not have to grab the handrail, I do believe emphatically that this would not have happened."). Defendant cites to record evidence wherein Plaintiff acknowledged that (1) he thought about whether he needed assistance exiting the landing area, (2)

he could have raised his hand to get the attention of the attendant at the top of the slide, and (3) he nonetheless attempted to exit the landing area without assistance. Def.'s 56.1 ¶ 16, Offenberg Dep. Tr. at 111:4–17.

Following the accident, Plaintiff "walked between 20 to 30 feet to the stern of the ship, and that is when [he] located a gentleman who worked for Carnival." Offenberg Dep. Tr. at 89:13–19. The Carnival employee sat Plaintiff down and called for a wheelchair. *Id.* When the wheelchair arrived, Plaintiff was escorted to the medical center. *Id.* at 89:20–90:3. Defendant cites to the written statement of Slavcho Toshev ("Toshev"), a Carnival Crewmember, which Toshev signed at 3:00 PM on the date of the accident on a standard Carnival form ("Toshev Statement"). Def.'s 56.1 ¶ 18, Ex. C. In his statement, Toshev asserts that he was on duty at the bottom of the Green Thunder slide when the accident occurred, he observed the accident, he gave Plaintiff ice, and he escorted Plaintiff to the medical center in a wheelchair. *Id.* However, as discussed in III.A. *infra*, the Toshev Statement is inadmissible.

Plaintiff's slip and fall resulted in "a severe rotator cuff tear requiring surgical repair and that will require a future shoulder replacement procedure according to his treating physician." Resp. at 1. Additionally, Plaintiff "dislocated two of his toes, requiring a procedure to reset them on board the ship and a second surgical procedure when he returned home to Virginia. *Id.* at 1–2.

On August 9, 2019, Plaintiff filed a Complaint alleging that Defendant was negligent for (1) failing to monitor passengers using the slide so as to allow safe ingress and egress from the slide; (2) failing to warn of the presence of a hazardous or dangerous oily condition on the handrail used by passengers to exit the slide; (3) failing to correct the hazardous or dangerous oily condition of the handrail before Plaintiff used it; (4) inadequate staffing of the slide to ensure safe use and operation; (5) failing to implement and enforce policies and procedures regulating safe slide use

and operation; and (6) failing to station an attendant at the slide exist to assist Plaintiff in exiting the slide. ("Compl.") (ECF No. 1). Now, Defendant moves for summary judgement. *See generally* Mot.

## II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992) (citation omitted). But if the record, taken as a

whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

## III. DISCUSSION

Defendant argues that it is entitled to summary judgement because Plaintiff cannot establish that Defendant acted negligently. Mot. at 4. Specifically, Defendant argues that there is no record evidence that Carnival had notice of a risk-creating condition—*i.e.*, the alleged lack of an attendant present at the bottom of the slide.[2] *Id.* at 6–10. Citing to the Toshev Statement, Defendant argues that "it is undisputed that there was an attendant present manning the bottom of the waterslide on the date of the subject incident." *Id.* at 9. Defendant argues that "[i]t is also undisputed by the record evidence that the aquatic attendants are not expected to assist passengers in getting out of the slide," but rather "the attendant's primary responsibility is to watch the landing area to ensure that the passengers exit the slide before signaling to the attendant at the top of the slide that another passenger may descend the slide." *Id.*; Def.'s 56.1 Ex. B ("Vazquez Dep. Tr.") (ECF No. 70-2) at 69:20–21, 70:14–71:5.

Plaintiff argues that "the lack of an attendant made the task of exiting the slide dangerous

---

[2] Defendant also raises arguments regarding the slippery handrail being open and obvious condition, however the Court will not assess those arguments as Plaintiff makes clear in his Response that his theory of the case rests on whether an attendant was present. Specifically, Plaintiff states that:

> Plaintiff is not arguing that this particular handrail was defective. Plaintiff is not even arguing that the presence of a slippery oil-like substance on this particular handrail made it dangerous. Plaintiff is arguing instead that the lack of an attendant made the task of exiting the slide dangerous for passengers such as [Plaintiff] given the issues inherent in exiting a waterslide, such as foreseeably slippery handrails, which Defendant acknowledges are "common sense expectations."

Resp. at 2.

for passengers such as [Plaintiff] given the issues inherent in exiting a water slide, such as foreseeably slippery handrails, which the Defendant acknowledges are 'common sense expectations.'" Resp. at 2. "Carnival's policies and procedures dictate that an attendant is required to be present at the bottom of the slide while it is in use" and that "[o]ne of the duties and responsibilities of the attendant located at the bottom of the slide is to render assistance in exiting the slide to those passengers who need or request it." *Id.* at 3. Further, a warning sign placed at the top of the slide "tells passengers to obey all instructions by the shutdown attendant in order to exit quickly when they reach the end of the slide." *Id.* However, Plaintiff argues that there was no attendant present at the bottom of the slide, Carnival has acknowledged that not having an attendant present would be a violation of its policies, and "[i]t is well settled that the very existence of cruise line policies and procedures addressing a given condition implies at least constructive notice of the condition." *Id.* According to Plaintiff, Defendant's assertions that an attendant *was* present and that attendants are not expected to assist passengers getting out of the slide are "flagrant misrepresentations of the record." *Id.* at 4. Additionally, Plaintiff argues that a dispute of material fact exists as to whether an attendant was present because the Toshev Statement is inadmissible hearsay. *Id.*

In reply, Defendant argues that the case law Plaintiff cites does not support the proposition that "the very existence of policies and procedures addressing a given condition implies at least constructive notice." Reply at 3. According to Defendant, the cases Plaintiff cites for that proposition "are distinguishable because here, the policy and procedure for manning the bottom of the slide is clearly not a corrective measure to prevent passengers from slipping and falling when exiting the slide" because "the purpose of having the attendant at the bottom is to notify the attendant at the top that the exit lane is empty and that it is safe to send another passenger down

the slide." *Id.* at 4. As to the Toshev Statement, Defendant argues that it is admissible as a hearsay exclusion "because it is an opposing party's statement that was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." *Id.* at 4. Alternatively, Defendant argues that the statement is admissible as a hearsay exception—a present sense impression—because the statement was provided "immediately following the incident." *Id.* Further, Defendant argues that the Court may consider the Toshev Statement at the summary judgment stage "if the statement could be reduced to admissible evidence at trial or reduced to admissible form." *Id.* (citing *Macuba v. Debour*, 193 F.3d 1316, 1322 (11th Cir. 1999)).

**A. The Toshev Statement is Inadmissible Hearsay.**

"The general rule is that inadmissible hearsay cannot be considered on a motion for summary judgment." *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1293 (11th Cir. 2012) (quoting *Macuba*, 193 F.3d at 1322) (internal quotation marks omitted). "Nevertheless, 'a district court may consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form.'" *Id.* at 1293–94 (quoting *Macuba*, 193 F.3d at 1323). "The most obvious way that hearsay testimony can be reduced to admissible form is to have the hearsay declarant testify directly to the matter at trial." *Id.* at 1294 (citing *Pritchard v. S. Co. Servs.*, 92 F.3d 1130, 1135 (11th Cir. 1996)).

The Court finds that the Toshev Statement is inadmissible hearsay. The Toshev Statement is not admissible as an opposing party statement because it is was made by one of Defendant's representatives and it is being offered by Defendant, not by the opposing party. *See* Fed. R. Evid. 801(d)(2) (explaining that an opposing party statement is one made *against* an opposing party). Nor is the statement admissible as a present sense impression because it was made at approximately 3:00 PM following an accident that occurred at approximately 11:30 AM, not

"while or immediately after" the accident. *See* Fed. R. Evid. 803(1). Accordingly, the Court finds that the statement is not admissible either as a hearsay exclusion or hearsay exception.

Further, the Court finds that the statement cannot reasonably be reduced to admissible evidence at trial or reduced to admissible form because Defendant acknowledges that neither Party has been able to locate Toshev for a deposition in this matter. *See* Reply at 5. Thus, at this late stage of litigation, it seems highly unlikely that Toshev will testify directly to this matter at trial such that the Toshev Statement would be admissible at the summary judgment stage. Accordingly, the Court finds that there is indeed a genuine issue of material fact as to whether an attendant was present at the bottom of the Green Thunder slide such that Plaintiff could have had a reasonable opportunity to request assistance in exiting the slide.[3]

**B. Applicable Maritime Negligence Principles.**

"[I]t is a settled principle of maritime law that a shipowner owes a duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew." *Smith v. Royal Caribbean Cruises, Ltd*., 620 F. App'x 727, 729 (11th Cir. 2015) (per curiam) (quoting *Doe v. Celebrity Cruises, Inc*., 394 F.3d 891, 908 (11th Cir. 2004) (citation omitted)). However, "[a] carrier by sea does not serve as an insurer to its passengers; it is liable only for its negligence." *Weiner v. Carnival Cruise Lines*, No. 11-CV-22516, 2012 WL 5199604, at *2 (S.D. Fla. Oct. 22, 2012) (citing *Kornberg v. Carnival Cruise Lines, Inc*., 741 F.2d 1332, 1334 (11th Cir. 1984)).

"To prevail on a maritime tort claim, a plaintiff must show that (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

[3] Even if the Toshev Statement was admissible, Plaintiff's contradictory testimony would still create a genuine issue of material fact as to whether an attendant was present at the bottom of the slide.

harm." *Smith*, 620 F. App'x at 730 (citing *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (per curiam) (other citations omitted)). The Eleventh Circuit has held that "[t]he ordinary-reasonable-care-under-the-circumstances standard we apply, as a prerequisite to imposing liability, requires that the shipowner have had actual or constructive notice of the risk-creating condition . . . ." *Id.* (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989) (per curiam)).

However, in the context of a duty to warn, "federal courts need not even reach the defendant's actual or constructive notice of a risk-creating condition if they determine that condition was an open and obvious danger. The duty to warn in the maritime tort context extends to only known dangers which are not apparent and obvious." *Id.* (citing *Cohen v. Carnival Corp.*, 945 F. Supp. 2d 1351, 1357 (S.D. Fla. 2013); *Luby v. Carnival Cruise Lines, Inc.*, 633 F. Supp. 40, 41 n.1, 42 (S.D. Fla. 1986) (dismissing a passenger's claim because the presence of a ledge behind a shower curtain was an open and obvious condition), *aff'd*, 808 F.2d 60 (11th Cir. 1986); *Mosher v. Speedstar Div. of AMCA Int'l, Inc.*, 979 F.2d 823, 826 (11th Cir. 1992) (stating that, under Florida law, obvious danger bars failure-to-warn claims)).

"Open and obvious conditions are those that should be obvious by the ordinary use of one's senses." *Lugo v. Carnival Corp.*, 154 F. Supp. 3d 1341, 1345 (S.D. Fla. 2015) (quoting *Lancaster v. Carnival Corp.*, 85 F. Supp. 3d 1341, 1344 (S.D. Fla. 2015)). "Whether a danger is open and obvious is determined from an objective, not subjective, point of view." *Id.* (quoting *Flaherty v. Royal Caribbean Cruises, Ltd.*, No. 15-22295, 2015 WL 8227674, at *3 (S.D. Fla. Dec. 7, 2015) (internal quotation and citation omitted)); *John Morrell & Co. v. Royal Caribbean Cruises, Ltd.*, 534 F. Supp. 2d 1345, 1351 (S.D. Fla. 2008) ("Individual subjective perceptions of the injured party are irrelevant in the determination of whether a duty to warn existed.").

"Maritime law recognizes the doctrine of comparative negligence, including in personal injury cases." *In re Gozleveli*, No. 12-61458-CV, 2015 WL 3917089, at *4 (S.D. Fla. June 25, 2015) (citations omitted). In certain circumstances, therefore, a plaintiff can still recover damages "even if [a] plaintiff is injured by an open and obvious danger." *See Johnson v. Carnival Corp.*, No. 07-20147-CIV, 2007 WL 9624463, at *3 (S.D. Fla. Dec. 13, 2007); *see also Carroll v. Carnival Corp.*, 955 F.3d 1260, 1268 (11th Cir. 2020). However, despite the nature of comparative negligence, the Eleventh Circuit has upheld summary judgement in circumstances where a dangerous condition is open and obvious. *See Krug v. Celebrity Cruises, Inc.*, 745 F. App'x 863, 867 (11th Cir. 2018) (per curiam) ("Defendant did not breach its duty of reasonable care by failing to warn Plaintiff of a condition of which she, or a reasonable person in her position, would be aware."); *see also Leroux v. NCL (Bahamas) Ltd.*, 743 F. App'x 407, 409–10 (11th Cir. 2018) (per curiam) ("Here, the risk-creating condition, the raised threshold, was open and obvious to Plaintiff by her own account."); *Smith*, 620 F. App'x at 730 ("Defendant Royal did not breach its duty of reasonable care by failing to warn him of a condition of which he, or a reasonable person in his position, would be aware.").

Plaintiff raises six theories of negligence which can be grouped into two categories: failure to warn of a known danger and failure to adequately staff the slide, the latter of which is akin to negligent maintenance. Those categories are addressed in turn below.

**C. Carnival Had No Duty to Warn of an Open and Obvious Condition.**

Here, Defendant did not breach its duty of reasonable care by failing to warn Plaintiff of a condition of which he, or a reasonable person in his position, would be aware. *Krug*, 745 F. App'x at 867.

The following facts are undisputed or otherwise supported by the record. First, Plaintiff

testified that while he was at the top of the slide waiting for his turn, he observed other passengers descend the slide and exit the landing area using the handrail. Def.'s 56.1 ¶¶ 8, 12, Offenberg Dep. Tr. 82:8–13, 97:3–11; Pl.'s Resp. 56.1 ¶¶ 8, 12. Before Plaintiff descended the slide, he observed that there was no attendant present at the bottom of the slide and felt some apprehension. Offenberg Dep. Tr. 98:7–15 ("I did notice there was no attendant there. . . . Quite frankly, when I was standing there at the top of the slide and looking at the slide, I was wondering what I got myself into."). Yet, Plaintiff choose to ride the slide. *Id.* 98:19–23 ("Once I got up there I was going to go down the slide. . . . I was there to ride the slide."). When he got to the bottom of the slide, Plaintiff thought that perhaps he might need assistance getting out. *Id.* 111:4–8. While he did not see an attendant present at the bottom of the slide, Plaintiff acknowledged that he could have signaled to the attendant at the top of the slide for assistance. *Id.* 111:9–13. Yet, Plaintiff attempted to exit the slide on his own, without assistance. *Id.* 111:14–17. Plaintiff avers that the risk-creating condition was the lack of an attendant present at the bottom of the slide to assist him. Resp. at 3. Yet, on Plaintiff's own account, the lack of an attendant was open and obvious both before he descended the slide and once he reached the bottom. Further, Plaintiff acknowledged that he could have flagged the attendant at the top of the slide, but he did not avail himself of that option. Taken together, these uncontroverted facts demonstrate that a reasonable person in Plaintiff's position would have been aware of any risks posed by exiting a waterslide, including a slip and fall accident such as the one that occurred here, when assistance was allegedly needed but not sought through reasonable means. *Krug*, 745 App'x at 866; *Leroux*, 743 F. App'x at 408.

Thus, because the Court finds that the alleged risk-creating condition was open and obvious, the Court need not reach Plaintiff's argument as to Defendant being on notice of said dangers in the context of Plaintiff's failure to warn theory. *Smith*, 620 F. App'x at 730 (citations

omitted) ("[F]ederal courts need not even reach the defendant's actual or constructive notice of a risk-creating condition if they determine that condition was an open and obvious danger. The duty to warn in the maritime tort context extends to only known dangers which are not apparent and obvious."). Accordingly, Defendant is entitled to summary judgment as to Plaintiff's claims based on a failure to warn negligence theory.

**D. Fact Issues Remain as to Inadequate Staffing of the Slide and Defendant's Duty to Maintain.**

Plaintiff argues that Defendant "has a duty to maintain its vessel and correct actually or constructively known dangerous conditions," and "the alleged obviousness of a hazard is at most a component of partial comparative negligence defense." Resp. at 5–6. Thus, even if "the dangers posed by the lack of an attendant were open and obvious as a matter of law, this finding would only excuse Defendant's failure to warn, and would not entitle Defendant to summary judgment as to Plaintiff's other claims." *Id.* at 5.

Even if a risk is open and obvious, a plaintiff may pursue a negligent maintenance claim. *See Carroll*, 955 F.3d at 1269 (citation omitted) (finding that the plaintiff had presented evidence creating a genuine dispute of material fact as to whether the defendant negligently maintained an unsafe walkway). A defendant owes its passengers "the ordinary duty not to unreasonably create or cause . . . a hazardous condition that in turn injures a passenger." *Lancaster*, 85 F. Supp. 3d at 1345 ("The Court's analysis does not end with the duty to warn inquiry . . . because Defendant still owed Plaintiff a general duty of reasonable care.").

Here, Plaintiff has presented evidence that Carnival's policies and procedures require that an attendant be present at the bottom of the slide. Carnival's Safety Policy. Specifically, Carnival's Safety Policy provides a list of attendants' duties, including that attendants "[e]nsure that all riders exit the pool immediately upon splashdown," and that they "[b]e prepared to enter

splash pool to assist customer out of pool." *Id.* at 5. Defendant asserts, based on the deposition testimony of its corporate representative, that the primary purpose of the attendant stationed at the bottom of the slide is to signal to the attendant at the top of the slide when it is safe to send the next passenger down. Vazquez Dep. Tr. 69:20–21. While that may be the attendant's primary purpose, Carnival's Safety Policy also clearly provides that one of the duties of the attendant is to assist customers exiting the slide area, if needed. As discussed above, there remains a genuine issue of material fact as to whether an attendant was present to render such assistance. On this record, a reasonable juror could find that Defendant negligently maintained the Green Thunder slide with inadequate staffing, in violation of its own policy. *See id.* 72:25–73:2 ("If there was no one stationed at the bottom of the slide while the slide was in operation, that would be a violation of the waterslide policy, yes.").

Accordingly, Defendant is not entitled to summary judgment as to Plaintiff's negligent maintenance theories of liability.

## IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment (ECF No. 69) is GRANTED IN PART and DENIED IN PART. Defendant is entitled to summary judgment only as to Plaintiff's failure to warn theories of liability.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of June, 2021.

K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record