

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

Case No. 1:23-cv-20664-KMM

RACHEL MALLORY,  
Plaintiff,

v.

CARNIVAL CORPORATION,  
Defendant.

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**ORDER**

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant") Motion to Dismiss. ("Motion" or "Mot.") (ECF No. 8). Plaintiff Rachel Mallory ("Plaintiff") filed a response. ("Resp.") (ECF No. 9). Defendant filed a reply. ("Reply") (ECF No. 13). Because the Court finds that Plaintiff does not state a claim upon which relief can be granted, the Court GRANTS Defendant's Motion and DISMISSES Plaintiff's Complaint WITHOUT PREJUDICE. ("Compl.") (ECF No. 1).

**I. FACTUAL BACKGROUND**

The facts of this case are simple. On February 26, 2022, Plaintiff boarded one of Defendant's vessels, the "Carnival Valor" ("the Vessel"), as a passenger on a cruise. Compl. ¶ 9–12. While walking along the upper deck of the Vessel, Plaintiff alleges that she slipped and fell "due to her foot being stuck on an unknown substance on the floor." *Id.* ¶ 13. Consequently, Plaintiff alleges that she suffered "serious, debilitating and permanent injuries in the form of a fractured right arm." *Id.* ¶ 14. Plaintiff subsequently initiated this suit, alleging that Defendant's negligence caused her injury. *See generally id.*

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “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) (citation and internal quotation marks omitted). This requirement “give[s] the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff’s factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers “a formulaic recitation of the elements of a cause of action will not do.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). “[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

## III. DISCUSSION

In the instant Motion, Defendant argues that Plaintiff has failed to allege facts sufficient to demonstrate that Defendant had notice of any potential danger-causing condition, as is required for a negligence claim arising under maritime law. *See generally* Mot. Plaintiff disputes Defendant’s argument and avers that it has properly pled sufficient facts regarding notice to support its claim. *See generally* Resp. For the following reasons, the Court agrees that Plaintiff

has failed to satisfy its burden under the pleading standards pursuant to Federal Rule of Civil Procedure 8(a)(2) and grants Defendant's Motion.

As an initial matter, Plaintiff's negligence claim arises under general maritime law "because the alleged tort was committed aboard a ship sailing in navigable waters." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). "In analyzing a maritime tort case, [the Court] relies on general principles of negligence law." *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (internal quotations omitted). Accordingly, at the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly allege 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 harm." *See id.*; *see also Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019).

In the maritime context, a plaintiff must also demonstrate that "the [shipowner] [] had actual or constructive notice of [a] risk-creating condition." *Keefe*, 867 F.2d at 1322. Actual notice exists when the Defendant knows about the dangerous condition. *Holland v. Carnival Corp.*, 50 F. 4th 1088, 1095 (11th Cir. 2022). In contrast, constructive notice exists where "the shipowner ought to have known of the peril to its passengers" because the "hazard [had] been present for a period of time so lengthy as to invite corrective measures." *Keefe*, 867 F.2d at 1322. Constructive notice may also exist where a plaintiff demonstrates that substantially similar incidents occurred under substantially similar conditions. *Guevara*, 920 F.3d at 720.

In the instant Motion, Defendant only argues that Plaintiff has not pled sufficient facts to show that Defendant had notice of the dangerous condition. *See generally Mot.* Specifically, Defendant argues that Plaintiff only alleges "conclusory allegation[s]" that Defendant had actual

or constructive knowledge of the dangerous condition without “any factual predicate in support of a ‘reasonable inference that the defendant is liable for the misconduct alleged.’” *Id.* at 5 (quoting *Holland*, 50 F. 4th at 1095). Further, Defendant argues that because Plaintiff fails to plead any factual basis to support the claim that Defendant had actual or constructive notice of a hazardous condition, the Complaint fails “to satisfy the pleading standard set forth in *Iqbal* and *Twombly*.” *See id.* at 6 (internal citations and quotation marks omitted).

In its response, Plaintiff predominately focuses its argument on an erroneous understanding of the Rule 8(a)(2) pleading standard to aver that it has alleged facts sufficient to demonstrate notice. *See generally Resp.* Throughout its response, Plaintiff continuously and incorrectly characterizes the pleading requirements under Rule 8(a)(2). *See generally id.* For example, Plaintiff relies exclusively on a single case for the proposition that “all that is required under Rule 8(a) is a pleading which ‘sufficiently notices defendant of the legal theories and circumstances surrounding a plaintiff’s claim.’”<sup>1</sup> *Id.* at 3 (quoting *Everhart v. Royal Caribbean Cruises, Ltd.*, No. 07-23098, 2008 WL 717795, at \*2 (S.D. Fla. Mar. 17, 2008)). According to Plaintiff, “only a complaint which is merely a ‘formulaic recitation of elements of a cause of action will not do’ and must be dismissed.” *Id.* (quoting *Twombly*, 550 U.S. at 555). After incorrectly framing the pleading requirements, Plaintiff then asserts that it has satisfied Rule 8(a)(2) regarding notice because Paragraph 16 of the Complaint states: “Carnival owed Plaintiff the duty of reasonable care under the circumstances for her safety and the duty to warn Plaintiff of all dangers it knew or should have known.” *Id.* at 4 (quoting Compl. ¶16).

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<sup>1</sup>Plaintiff’s repeated reference to *Everhart* is unavailing. *Everhart* does not alter the plausibility standard articulated in *Twombly*, but in fact, mentions that Plaintiff must still articulate the “circumstances surrounding a plaintiff’s claim.” *Everhart*, 2008 WL 717795, at \*2.

The Court finds that Plaintiff has incorrectly articulated the pleading standard, and additionally, failed to allege facts sufficient to sustain its negligence claim. First, the Court notes that the pleading standards are well-established, despite Plaintiff's attempt to distort the Rule 8(a)(2) requirements as only mandating that Plaintiff notice the Defendant of the claims brought against it. *See* Resp. at 3–5, 7. Rule 8(a)(2) requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Within that short and plain statement of facts, there must be sufficient factual allegations “to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Furthermore, “Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.”<sup>2</sup> *Id.* at 556, n.3. Thus, a complaint “demands more than an unadorned, the-defendant-unlawfully-harmed me accusation.” *Chaparro*, 93 F.3d at 1337 (quoting *Iqbal*, 556 U.S. at 678).

Therefore, Plaintiff's threadbare allegations regarding Defendant's alleged notice of a hazardous condition are insufficient. When a plaintiff makes conclusory legal allegations but fails to “include factual allegations that plausibly suggest [a defendant] had constructive notice of the dangerous condition,” the plaintiff in a maritime negligence claim “has failed to satisfy the pleading standard set forth in *Iqbal* and *Twombly*.” *Holland*, 50 F. 4th, at 1095. Here, Plaintiff alleges no factual allegations in support of its claim that Defendant had notice of any dangerous condition. *Cf. Newbauer v. Carnival Corp.*, 26 F. 4th 931, 935–36 (11th Cir. 2022) (upholding the district court's decision granting a motion to dismiss where the complaint “contains only conclusory allegations as to actual or constructive notice”). Instead, Plaintiff only alleges the following:

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<sup>2</sup> At no point does *Twombly* suggest, as Plaintiff argues, that “only a complaint which is merely a formulaic recitation of elements of a cause of action will not do.” Resp. at 4 (internal quotation omitted) (emphasis added).


Defendant had actual knowledge of the dangerous condition; or if Defendant lacked such knowledge, this dangerous condition existed for a length of time that, in the exercise of ordinary care, the Defendant, CARNIVAL CORPORATION, should have known of the condition, or in the alternative, the condition occurred with regularity and was therefore foreseeable.

Compl. ¶ 18. Because Plaintiff has failed to allege any factual circumstances leading to an inference that it was plausible that Defendant had notice of a dangerous condition, Plaintiff's allegations are insufficient under Rule 8(a)(2). As such, the Court grants Defendant's Motion.

### **CONCLUSION**

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 to Dismiss (ECF No. 8) is GRANTED. Plaintiff's Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE. Plaintiff may amend its Complaint to address the aforementioned deficiencies by May 15, 2023.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of April, 2023.



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K. MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

c: All counsel of record