UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
**Case Number: 19-21478-CIV-MARTINEZ-OTAZO-REYES**

SCOTT BRENNAN,
Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES, LTD.,
Defendants.
_____/

**ORDER ON MOTION TO DISMISS**

THIS CAUSE came before the Court Defendant's Motion to Dismiss Plaintiff's Complaint, [ECF No. 9]. The Court has reviewed the Motion, Plaintiff's response thereto, and the record in its entirety. After careful consideration, the Court **GRANTS** Defendant's Motion to Dismiss.

## I. Background

While onboard one of Defendant's cruise ships, Plaintiff allegedly sustained injuries while using the FlowRider surfing simulator. Specifically, Plaintiff alleges that while using the FlowRider, he fell and suffered traumatic neck injuries. Accordingly, Plaintiff has filed a two-count Complaint, [ECF No. 1], against Defendant for negligence and strict liability. Defendant moves to dismiss Count I as an impermissible shotgun pleading violation of Federal Rules of Civil Procedure 8(a)(2) and 10(b). Defendant additionally argues that Count II should be dismissed for failure to state a claim.

## II. Standard of Review

"Dismissal is appropriate where it is clear the plaintiff can prove no set of facts in support of the claims in the complaint." *Marshall County Bd. of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir.1993) (citations omitted). "In ruling on a motion to dismiss, the court must accept the well pleaded facts as true and resolve them in the light most favorable to the plaintiff." *St. Joseph's Hosp., Inc. v. Hosp. Corp. of America*, 795 F.2d 948, 954 (11th Cir.1986). "When the allegations contained in the complaint are wholly conclusory, however, and fail to set forth facts which, if proved, would warrant the relief sought, it is proper to dismiss for failure to state a claim." *Davidson v. Georgia*, 622 F.2d 895, 897 (5th Cir.1980).

**III. Count I Constitutes an Impermissible Shotgun Pleading**

Plaintiff's Complaint, [ECF No. 1], appears to violate the one-claim-per-count rule. *See* Fed. R. Civ. P. 10(b); *see also Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1322–23 n.13 (11th Cir. 2015) (discussing shotgun pleadings that fail to "separate[] into a different count each cause of action or claim for relief").

In *Anderson v. District Board of Trustees of Central Florida Community College*, 77 F.3d 364, 366-7 (11th Cir. 1996), the court, concerned about the ramifications of cases proceeding on the basis of "shotgun" pleadings, noted:

> Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice.

*See also Magluta v. Samples*, 256 F.3d 1282 (11th Cir. 2001); *Cesnik v. Edgewood Baptist Church*, 88 F.3d 902, 905 (11th Cir. 1996); *L.S.T., Inc. v. Crow*, 49 F.3d 679, 684 (11th Cir. 1995). Such "shotgun" pleading imperils fundamental principles of due process.

The Eleventh Circuit has expressed increased frustration with district courts that let the case proceed despite such shotgun pleadings. *See Byrne v. Nezhat*, 261 F.3d 1075, 1130 (11th Cir.

2001). The *Byrne* court sought to avoid having district courts undergo the time-consuming process of "rearranging the pleadings and discerning whether the plaintiff has stated a claim, or claims, for relief, and whether the defendant's affirmative defenses are legally sufficient." *Id*. at 1129. The *Byrne* panel also counseled, "Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice. The time a court spends managing litigation framed by shotgun pleadings should be devoted to other cases waiting to be heard." *Id*. at 1131.

As Judge Scola has highlighted in the context of another maritime personal injury claim, "multiple claims for relief cannot be all dumped into one nebulous count." *See Elliot-Savory v. Royal Caribbean Cruises, LTD.*, 1:19-cv-23662-RNS, ECF No. 4 (S.D. Fla. Sept. 9, 2019).

Plaintiff asserts one count of negligence under approximately thirty-six (36) theories of liability. *See* ECF No. 1 at ¶ 35(a)–(jj); *see also Corigat v. Carnival Corp.*, 1:19-cv-20577-RNS, ECF No. 4 (S.D. Fla. Feb. 13, 2019). Such theories include, among a plethora of others, failure to warn passengers of the FlowRider's dangers, failure to adequately train and supervise employees, improperly modifying the FlowRider for use onboard, failing to properly assist passengers, negligent hiring, and failure to include height restriction for minor passengers (though Plaintiff is a grown man and the Complaint asserts that there is indeed a height restriction).

As Judge Scola has adequately explained, these are separate causes of action that must be asserted independently and with supporting factual allegations. *See Elliot-Savory v. Royal Caribbean Cruises, LTD.*, 1:19-cv-23662-RNS, ECF No. 4 at 2; *see also Garcia v. Carnival Corp*., 838 F. Supp. 2d 1334, 1337 n.2 (S.D. Fla. 2012) (Moore, J.) (dismissing maritime negligence claim that "epitomizes a form of 'shotgun' pleading," where the plaintiff alleged defendant owed a duty of "reasonable care under the circumstances," and then "proceed[ed] to allege at least twenty-one ways in which Defendant breached this duty").

Accordingly, as to Count I, Defendant's Motion to Dismiss is due to be **GRANTED**.

**IV. Count II Strict Liability**

Plaintiff next asserts a claim for strict products liability for the negligent design, installation, and utilization of the FlowRider. Plaintiff alleges that Defendant was "a manufacturer, designer, distributor, and/or was otherwise within the chain of distribution of the FlowRider product." ECF No. 1 at ¶ 37.

The Supreme Court has "recogniz[ed] products liability, including strict liability, as part of the general maritime law." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 865–66 (1986); *accord Bird v. Celebrity Cruise Line, Inc.*, 428 F. Supp. 2d 1275, 1281–84 (S.D. Fla. 2005) (analyzing whether strict products liability is cognizable under federal maritime law for passenger slip-and-falls and rejecting such claim). The Restatement (Second) of Torts Section 402A defines the claim of strict products liability as follows:

> (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
>
> **(a) the seller is engaged in the business of selling such a product,** and
>
> (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

Restatement (Second) of Torts § 402A (Am. L. Inst. 1965) (emphasis added). "By definition, a strict products liability claim applies to sellers of products, rather than services." *Lalonde*, 2019 WL 144129, at *2.

Plaintiff cites solely to *Morris v. Royal Caribbean Cruises, Ltd.*, as reason to find that Defendant can be held strictly liable as the "manufacturer" of the FlowRider onboard.[1] *See* 11-

[1] Plaintiff also contends that because Defendant has filed an answer in other cases involving a FlowRider, Defendant both concedes strict liability and is engaged in pseudo-judge shopping. The Court will not assume that Defendant's decision to file an answer rather than a motion to dismiss in previous cases as an implication that Defendant conceded that strict liability is a viable claim in this case. And, in light of the more recent decisions involving this exact issue by Judge Ungaro and Judge King, Plaintiff should be wary

23206-CIV-Graham, 2012 WL 13013187 (S.D. Fla. Feb. 7, 2012). The Court, however, agrees with the reasoning set forth in the more recent decisions of *Lalonde* and *Bender* as cited by Defendant. *See Lalonde v. Royal Caribbean Cruises, Ltd.*, 1:18-CV-20809-JLK, 2019 WL 144129 (S.D. Fla. Jan. 1, 2019); *Bender v. Royal Caribbean Cruises, Ltd.*, 19-CV-21188-UU, ECF No. 14 (S.D. Fla. May 31, 2019). In dismissing the plaintiff's strict products liability claim with prejudice, the *Lalonde* court expressly distinguished the *Morris* decision and found that the plaintiff failed to allege sufficient facts to support the allegation that the defendant was a "seller" of the FlowRider. *Lalonde*, 2019 WL 144129, at *2. The same analysis rings true here. Plaintiff has alleged the same manufacturer-by-way-of-modification theory here as in *Lalonde*, and as in *Lalonde*, Plaintiff has not established a factual basis to support his claim for strict products liability.

Accordingly, it is

**ORDERED and ADJUDGED**:

1. Defendant's Motion to Dismiss Plaintiff's Complaint, [ECF No. 9], is **GRANTED.**

2. Count I of Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**.

3. Count II of Plaintiff's Complaint is **DISMISSED WITH PREJUDICE.**

4. Plaintiff has ten (10) days to file an Amended Complaint consistent with this Order. Until such Amended Complaint is filed, this case is **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 31st of January 2020.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Otazo-Reyes
All Counsel of Record

of making such accusations.