

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CAROL CORTES,)	CV 19-2563-RSWL (AGRx)
)	
)	
Plaintiff,)	ORDER re: Defendant's
)	Motion for Summary
)	Judgment as to
)	Plaintiff's Remaining
)	Count III for Negligence
v.)	[38]
)	
)	
PRINCESS CRUISE LINES,)	
LTD., a corporation for)	
profit,)	
)	
Defendant.)	

Plaintiff Carol Cortes ("Plaintiff") originally brought this Action alleging negligence, and various statutory violations including violations of the Americans with Disabilities Act ("ADA") and the Disabled Persons Act ("DPA") against Defendant Princess Cruise Lines, LTD. ("Defendant"). On October 15, 2019,

1 Plaintiff voluntarily dismissed her statutory claims
2 with prejudice [25] leaving only her negligence cause
3 of action. Currently before the Court is Defendant's
4 Motion for Summary Judgment as to Plaintiff's Remaining
5 Count III for Negligence ("Motion") [38]. For the
6 reasons set forth below, the Court **DENIES** the Motion.

7 **I. BACKGROUND**

8 **A. Factual Background**

9 Plaintiff suffers from a motor neuron disease and
10 relies on a scooter or walker for stability and
11 mobility. Pl.'s Resp. to Def.'s Statement of
12 Uncontroverted Facts ("Pl.'s Resp. to Def.'s SUF") ¶ 2,
13 ECF No. 46-1; Ex. 1 to Decl. of Carol L. Finklehoffe in
14 Supp. of Opp'n ("Cortes Dep.") 17:5-8¹, 18:4, ECF No.
15 46-4. On April 4, 2018, Plaintiff embarked on a cruise
16 that departed from Fort Lauderdale, Florida as a
17 passenger aboard the Crown Princess (the "Ship"), a
18 cruise ship owned and operated by Defendant. Pl.'s
19 Separate Statement of Undisputed Facts ("Pl.'s SUF") ¶
20 1, ECF No. 46-1; Reply 15:22, ECF No. 49; Ex. C to
21 Decl. of Otis Felder in Supp. of Mot. ("Drumalds
22 Decl.")² ¶ 2, ECF No. 38-5. Prior to the trip at issue
23 in this Action, Plaintiff had been on approximately
24

25
26 ¹ Citations to any deposition testimony contained within
27 will be to the pages listed on the deposition transcript, not the
28 pages associated with the exhibit which it is contained.

² Defendant previously submitted the Drumalds Declaration in
support of its earlier filed Motion to Dismiss Plaintiff's
Statutory Causes of Action. See ECF No. 23-3.

1 thirty other cruises with Defendant. Pl.'s Resp. to
2 Def.'s SUF ¶ 3; Cortes Dep. 48:5-9. On the morning of
3 April 15, 2018, when the Ship had arrived in the port
4 of Palma, Spain, Plaintiff, while seated on her
5 scooter, turned on the water in her shower to adjust
6 the temperature, and then got up to grab the handrail
7 when she slipped and fell. Ex. B in Supp. of Felder
8 Decl. ("Tuck Decl.") ¶ 9, ECF No. 38-4; Pl.'s Resp. to
9 Def.'s SUF ¶ 8; Cortes Dep. 10:17-11:11, 20:5-21,
10 21:15-24; Drumalds Decl. ¶ 2. While on her cruise,
11 Plaintiff had taken approximately twelve showers, one
12 each day, without any problem. Pl.'s Resp. to Def.'s
13 SUF ¶¶ 4-5; Cortes Dep. 53:4-15.

14 Defendant had no record of any other passenger slip
15 and fall accidents in the shower area of Plaintiff's
16 cabin or any other similarly configured cabin aboard
17 the Ship. Ex. C to Decl. of Otis Felder in Supp. of
18 Mot. ("Tuck Declaration")³ ¶ 17, ECF No. 38-4.

19 Plaintiff suffered a variety of injuries as a result of
20 her fall including, "two broken ankles and
21 legs" Cortes Dep. 27:18-28:10.

22 **B. Procedural Background**

23 Plaintiff filed her Complaint [1] with this Court
24 on April 4, 2019, and subsequently filed her First
25 Amended Complaint ("FAC") [22] on September 16, 2019.

26

27 ³ Defendant previously submitted the Tuck Declaration in
28 support of its earlier filed Motion to Dismiss Plaintiff's
Statutory Causes of Action. See ECF No. 23-2.

1 In her FAC, Plaintiff alleged three causes of action
2 for: (1) violation of the ADA; (2) violations of the
3 DPA; and (3) negligence. See generally, FAC, ECF No.
4 22. Soon after, on September 30, 2019, Defendant filed
5 a Motion to Dismiss Plaintiff's Statutory Causes of
6 Action ("MTD") [23]. Subsequently, Plaintiff
7 voluntarily dismissed her first and second causes of
8 action with prejudice [25].

9 On November 8, 2019, Defendant filed its Answer to
10 Plaintiff's Complaint [27]. On May 19, 2020, Defendant
11 filed the instant Motion [38] seeking summary judgment
12 as to Plaintiff's remaining cause of action for
13 negligence. Two days later, on May 22, 2020, Plaintiff
14 filed an *Ex Parte* Application ("Application") to
15 continue the hearing on Defendant's Motion requesting
16 additional time to conduct discovery, which this Court
17 denied [43]. Plaintiff filed her Opposition to
18 Defendant's Motion [46] on May 26, 2020. On June 2,
19 2020, Defendant replied [49]. Most recently, the
20 parties stipulated to continue the trial date, final
21 pretrial conference date, expert disclosures date, and
22 expert discovery cut-off date [55], which this Court
23 granted [56]. Accordingly, the deadline for expert
24 disclosures was extended to December 31, 2020; expert
25 discovery cut-off was extended to January 29, 2021; the
26 final pre-trial conference is now set for February 23,
27 2021, and trial is continued until March 23, 2021. See
28 Order to Continue Trial and Certain Pre-Trial

1 Deadlines, ECF No. 56.

2 **II. DISCUSSION**

3 **A. Legal Standard**

4 Federal Rule of Civil Procedure ("Rule") 56(a)
5 states that a "court shall grant summary judgment" when
6 "the movant shows that there is no genuine dispute as
7 to any material fact and the movant is entitled to
8 judgment as a matter of law." A fact is "material" for
9 purposes of summary judgment if it might affect the
10 outcome of the suit, and a "genuine" issue exists if
11 the evidence is such that a reasonable fact-finder
12 could return a verdict for the nonmovant. Anderson v.
13 Liberty Lobby, 477 U.S 242, 248 (1986). The evidence,
14 and any inferences based on underlying facts, must be
15 viewed in the light most favorable to the nonmovant.
16 Twentieth Century-Fox Film Corp. v. MCA, Inc., 715 F.2d
17 1327, 1328-29 (9th Cir. 1983). In ruling on a motion
18 for summary judgment, the court's function is not to
19 weigh the evidence, but only to determine if a genuine
20 issue of material fact exists. Anderson, 477 U.S. at
21 255.

22 Where the nonmovant bears the burden of proof at
23 trial, the movant need only prove that there is no
24 evidence to support the nonmovant's case. In re Oracle
25 Corp. Secs. Litig., 627 F.3d 376, 387 (9th Cir. 2010).
26 If the movant satisfies this burden, the burden then
27 shifts to the nonmovant to produce admissible evidence
28 showing a triable issue of fact. Id.; Nissan Fire &

1 Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03
2 (9th Cir. 2000); see also Cleveland v. Policy Mgmt.
3 Sys. Corp., 526 U.S. 795, 805-06 (1999) (quoting
4 Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

5 **B. Discussion**

6 1. Plaintiff's Request for Judicial Notice

7 Under Federal Rule of Evidence ("FRE") 201, courts
8 may take judicial notice of facts that are: (1)
9 "generally known within the trial court's territorial
10 jurisdiction"; or (2) "can be accurately and readily
11 determined from sources whose accuracy cannot be
12 reasonably questioned."

13 In her Opposition, Plaintiff requests the Court
14 take judicial notice of three print-outs from
15 Defendant's website describing: (1) Defendant's wheel-
16 chair accessible cabins; (2) the Ship's recent dry dock
17 schedule and an overview of certain modifications made
18 and to be made during the dry dock; and (3) information
19 describing when the Ship was built and last
20 refurbished. See Pl.'s Req. for Judicial Notice in
21 Supp. of Opp'n ("RJN"), ECF No. 46-8.⁴

22 Defendant opposes Plaintiff's request for judicial
23 notice of the print-out discussing Defendant's
24

25 ⁴ Plaintiff's request identifies Exhibit A as: "page from
26 Defendant's website advertising ADA accessible staterooms in
27 accordance with Princess's Access Program; Exhibit B as "page
28 from Defendant's website showing the dry dock schedule for the
[Ship] and modifications made during the dry dock"; and Exhibit C
as "page from Defendant's website showing when the [Ship] was
built and when it was last refurbished." See RJN 1:20-25.

1 wheelchair accessible cabins and the print-out of
2 information on the Ship's dry dock schedule.
3 Specifically, Defendant claims that the print-out of
4 Defendant's wheelchair accessible stateroom is
5 inadmissible because "all issues relating to the ADA
6 are [] irrelevant." Def.'s Opp'n to Pl.'s Req. for
7 Judicial Notice ("RNJ Opp'n") 3:9-11, ECF No. 50.
8 Additionally, Defendant argues that the print-out
9 discussing the dry dock schedule for the Ship, cannot
10 accurately and readily determine whether modifications
11 were made to the wheelchair accessible stateroom and
12 further is immaterial. Id. at 4:3-10. The Court
13 **DENIES** Plaintiff's requests **as moot** as the Court does
14 not rely on any of Plaintiff's requested exhibits in
15 making its determination on the Motion. See Story v.
16 Mammoth Mountain Ski Area, LLC, 2:14-cv-2422-JAM-DAD,
17 2015 WL 2339437, at *1 (denying requests for judicial
18 notice where court "did not find the material
19 underlying either request relevant to the issues
20 presented by [the] motion").

21 2. Defendant's Evidentiary Objections

22 a. *Deposition Testimony of Janice Tuck*

23 Defendant filed several evidentiary objections to
24 portions of the deposition testimony of Janice Tuck
25 ("Tuck").⁵ See Def.'s Evid. Objs. 2:6-3:24, ECF No. 51.

26

27 ⁵ Janice Tuck was deposed in in Cox v. Princess Cruise
28 Lines, Ltd., CV 13-01765-RSWL (JEMx), a prior case involving
Defendant, which was before this Court. The parties stipulated

1 Specifically, Defendant objects to the sections of
2 Tuck's deposition discussing her position as
3 Defendant's Manager of Access Compliance and
4 Defendant's involvement in the design of its ships as
5 it relates to accessibility. See generally, Ex. 3 in
6 Supp. of Finklehoffe Decl. ("Tuck Dep."), ECF No. 46-7.

7 The crux of Defendant's objections is that Tuck's
8 testimony is irrelevant because Defendant argues that
9 its involvement in the design of the Ship cannot
10 support constructive notice for a negligence cause of
11 action; however, "[r]elevancy to a subject matter is
12 interpreted 'broadly to encompass any matter that bears
13 on, or that reasonably could lead to other matter that
14 could bear on, any issue that is or may be in the
15 case.'" RP Golden State Mgmt, LLC v. Ohio Sec. Ins.
16 Co., 1:19-0600-DAD-JLT, 2020 WL 5101974, at * 3 (E.D.
17 Cal. Aug. 28, 2020) (citing Oppenheimer Fund, Inc. v.
18 Sanders, 437 U.S. 340, 351 (1978)). As discussed
19 below, the extent of Defendant's involvement and
20 awareness of various industry guidelines or standards,
21 and its level of involvement in the design of the Ship
22 is relevant to assess whether Defendant had sufficient
23 notice of the alleged condition and acted reasonably
24 under the circumstances. As such, the Court finds that

25
26
27 to admit this prior testimony with respect to wheelchair
28 accessible staterooms aboard the Ship. See Order on Stipulation
for Order to Continue Certain Pre-Trial Deadlines and
Admissibility of Certain Evidence, ECF No. 48.

1 the Tuck Deposition meets the low threshold required
2 for relevance and **OVERRULES** Defendant's objections.

3 b. *Expert Declaration of Frank Fore*

4 Defendant also raises several evidentiary
5 objections to the declaration of Plaintiff's expert,
6 Frank Fore ("Fore") under FRE 702. Defendant claims
7 that Fore's declaration is inadmissible because it is
8 "neither reliable nor based on any approved methodology
9 and seeks to hold [Defendant] liable for general
10 negligence based on ADA recommendations." Def.'s Evid.
11 Objs. 6:12-16. Specifically, Defendant argues that
12 Fore's "declaration as to what 'industry standards'
13 apply [is] not based on anything except him saying it."
14 Id. at 5:1-2. Defendant highlights that Fore "does not
15 attest to why or how these various provisions apply to
16 the building of the [Ship]." Id. at 5:1-7.

17 FRE 702 provides that expert testimony is
18 admissible "if: (a) the expert's scientific, technical,
19 or other specialized knowledge will help the trier of
20 fact to understand the evidence or to determine a fact
21 in issue; (b) the testimony is based on sufficient
22 facts or data; (c) the testimony is the product of
23 reliable principles and methods; and (d) the expert has
24 reliably applied the principles and methods to the
25 facts of the case." "The district court's role as a
26 gatekeeper 'entails a preliminary assessment of whether
27 the reasoning or methodology underlying the testimony
28 is . . . valid and of whether that reasoning or

1 methodology properly can be applied to facts in issue.”
2 Weiss v. Holland America Line Inc., C12-2105 RSM, 2014
3 WL 1569204, at *3 (W.D. Wash. April 18, 2014) (citing
4 Daubert v. Merrell Dow Pharm., Inc., 409 U.S. 579, 592-
5 93 (1993)).

6 Fore has significant experience as an engineer,
7 contractor, inspector, and Coast Guard Master Captain.
8 See Decl. of Frank Fore in Supp. of Opp’n (“Fore
9 Decl.”) ¶¶ 2-7, ECF No. 46-2. Despite Defendant’s
10 arguments that Fore’s conclusions are not based on
11 anything other than “him saying it,” Def.’s Evid. Objs.
12 5:1-2, Fore’s Declaration does not appear to be
13 “obviously defective.” See Lubowski v. Crystal
14 Cruises, Inc., CV 16-7562-DMG (FFMx), 2017 WL 6940517,
15 at *1 n.2 (C.D. Cal. Oct. 16, 2017) (“[Plaintiff’s]
16 proffer of Leiner as an expert is not obviously
17 defective and the Court declines to resolve the expert
18 admissibility issue at this stage of the
19 proceedings.”). Given Fore’s extensive experience, it
20 reasonably follows that he would have a strong
21 understanding of various standards and guidelines for
22 cruise ship vessels as outlined in his declaration.
23 See Fore Decl. ¶ 11. Additionally, this information
24 will be helpful to a trier of fact to determine whether
25 Defendant breached its duty by allegedly not complying
26 with these guidelines. While conscious of its role as
27 gatekeeper, the Court **OVERRULES** Defendant’s objections
28 to the Fore Declaration. See Messick v. Novartis

1 Pharm. Corp., 747 F.3d 1193, 1196 (9th Cir. 2014)
2 (“[FRE] 702 should be applied with a ‘liberal thrust’
3 favoring admission” (internal citation
4 omitted)).

5 3. Motion for Summary Judgment

6 Maritime law applies to negligence actions when an
7 alleged tort occurs on a ship traveling in navigable
8 waters. Kermarec v. Compagnie Generale
9 Transatlantique, 358 U.S. 625, 628 (1959). “To recover
10 for negligence, a plaintiff must establish: (1) duty;
11 (2) breach; (3) causation; and (4) damages.” Morris v.
12 Princess Cruises, Inc., 236 F.3d 1061, 1070 (9th Cir.
13 2001).

14 a. *Duty*

15 “[A] ship owner owes a duty of reasonable care to
16 those aboard the ship who are not crewmembers.” In re
17 Catalina Cruises, Inc., 137 F.3d 1422, 1425 (9th Cir.
18 1998). “The degree of care required is always that
19 which is reasonable, but the application of reasonable
20 will . . . change with the circumstances of each
21 particular case.” Id.

22 Here, Plaintiff attempts to argue “Defendant was
23 required to exercise a higher degree of reasonable care
24 for [] Plaintiff’s safety given her physical
25 disabilities.” Opp’n 12:18-20, ECF No. 46. While what
26 is “reasonable care” changes based on the specific
27 facts of the action, “[i]t has been well-settled law
28 since the Supreme Court’s opinion in Kermarec that ship

1 owners owe a duty of 'reasonable care under the
2 circumstances of each case' to all people on board the
3 ship for legitimate purposes." Galentine v. Holland
4 America Lin-Westours, Inc., 333 F. Supp. 2d 991, 995
5 (W.D. Wash. 2004) (citing Kermarec, 358 U.S. at 632).
6 Therefore, because Plaintiff was not a crewmember and
7 was on aboard the Ship for a legitimate purpose,
8 Defendant owed her only a "duty of reasonable care."

9 b. *Actual or Constructive Notice*

10 When an allegedly dangerous condition is "one that
11 is not particular to maritime travel, a defendant is
12 liable for negligence under the 'reasonable care under
13 the circumstances' standard only if it had actual or
14 constructive notice of the condition that created the
15 danger." Galentine, 333 F. Supp. 2d at 996 (citing
16 Keefe v. Bahama Cruise Line, Inc., 867 F.2d 1318, 1322
17 (11th Cir. 1989)). A defendant is said to have
18 constructive notice if "in the exercise of reasonable
19 care, [it] ought to have known about or discovered the
20 alleged dangerous conditions" Ribitzki v.
21 Canmar Reading & Bates, Ltd. P'ship, 111 F.3d 658, 663
22 (9th Cir. 1997). As such, it follows that a defendant
23 will be deemed to have constructive knowledge if, by
24 reasonable inspection, the defendant could have
25 discovered the allegedly dangerous condition. See
26 Galentine, 333 F. Supp. 2d at 996-97.

27 Here, Plaintiff argues that Defendant had
28 constructive notice of the hazardous shower in

1 Plaintiff's cabin because: (1) it failed to comply with
2 industry standards; (2) the hazardous condition existed
3 for a sufficient period of time; and (3) Defendant was
4 directly involved in the design and construction of the
5 condition. Opp'n 12:9-14. But Defendant states that
6 creation alone does not amount to constructive
7 knowledge and that it did not have any record of other
8 accidents in Plaintiff's or other similarly configured
9 cabins. Reply 18:20-19:7.

10 It is undisputed that Defendant did not have any
11 record of any other passenger slip and fall incidents
12 in the shower areas of Plaintiff's cabin or other
13 similarly configured cabins aboard the Ship. See Tuck
14 Decl. ¶ 17; Pl.'s Resp. to Def.'s SUF ¶ 10.
15 Nevertheless, while Defendant may not have had actual
16 notice, there is a dispute of fact as to whether
17 Defendant had constructive notice of the alleged
18 condition by virtue of its role in designing the Ship.
19 In Tuck's deposition, she explicitly testified that
20 part of her role is to "point out" ADA or handicap
21 accessible features of a cabin, including "the turning
22 space, the roll-in shower, grab bars in the bathroom,
23 adjustable bar in the closet . . . and just the general
24 features of the room." Tuck Dep. 20:21-21:3. Further,
25 Tuck also testified that in her role she would review
26 ship construction plans for accessibility and make
27 recommendations, which to her knowledge would be
28 implemented. Id. at 27:18-28:25. This raises an issue

1 of fact as to whether Defendant knew about the
2 condition of the shower area in Plaintiff's cabin for a
3 sufficient amount of time to support constructive
4 notice. See Cox v. Princess Cruise Lines, Ltd., CV 13-
5 1765-RSWL (JEMx), 2015 WL 5031900, at *4 (C.D. Cal.
6 Aug. 25, 2015) (finding triable issue because alleged
7 defects were visible and "existed for a long enough
8 period of time for Defendant to know about them and do
9 something to mitigate the risk").

10 Construing the facts in the light most favorable to
11 Plaintiff, a genuine dispute exists regarding whether
12 Defendant, by virtue of its involvement in the review
13 and design of its ships and knowledge of the layout of
14 the cabins, had constructive notice of the alleged
15 conditions.

16 c. *Breach*

17 "Summary judgment is rarely granted in maritime
18 negligence cases because the issue of whether a
19 defendant acted reasonably is ordinarily a question for
20 the trier of fact." Christensen v. Georgia-Pacific
21 Corp., 279 F.3d 807, 813 (9th Cir. 2002). Defendant
22 argues that violations of the ADA cannot support a
23 negligence cause of action. Reply 17:1-18:19.

24 Defendant is partially correct. "ADA guidelines
25 apply to land-based buildings, and ships are not
26 required to conform to them." Jenkins v. MSC Cruises
27 (USA), Inc., 1:18-cv-22174-UU, 2019 WL 2010241, at *3
28 (S.D. Fla. March 22, 2019). Further, the ADA does not

1 allow for recovery of money damages for violations of
2 it standards. See White v. NCL America, Inc., 05-
3 22030-CIV, 2006 WL 1042548, at *6 (S.D. Fla. March 8,
4 2006); 42 U.S.C. § 1288. As such, Plaintiff's attempt
5 to recover damages for ADA violations under the guise
6 of a negligence claim fails. See White, 2006 WL
7 1042548, at *6; Samuels v. Safeway, Inc., 391 F. Supp.
8 3d 1, 5 (D.D.C. 2019) ("[T]he ADA cannot provide the
9 statutory basis for [Plaintiff's] negligence *per se*
10 claim . . .").

11 Nevertheless, while "alleged failure to comply with
12 [] guidelines is not dispositive, a jury can consider
13 it in determining the standard of care and whether the
14 [d]efendant exercised reasonable care under the
15 circumstances." Zygarlowski v. Royal Caribbean
16 Cruises, Ltd., 11-21340-CIV-SEITZ/SIMONTON, 2013 WL
17 12059607, at *7 (S.D. Fla. Feb. 25, 2013); see Muncie
18 Aviation Corp. v. Party Doll Fleet, Inc., 519 F.2d
19 1178, 1180-81 (5th Cir. 1975) ("Evidence of custom
20 within a particular industry, group, or organization is
21 admissible as bearing on the standard of care in
22 determining negligence. Compliance or non-compliance
23 with such custom, though not conclusive on the issue of
24 negligence, is one of the factors the trier of fact may
25 consider in applying the standard of care.").

26 A negligence claim cannot be based solely on an
27 alleged ADA violation; however, the question of whether
28 Defendant's shower should have contained more grab bars

1 or handrails, or different tiling is not for the Court
2 to decide at this junction. Construing the facts in
3 the light most favorable to Plaintiff, it follows that
4 a reasonable juror could determine that Defendant's
5 shower configuration breached Defendant's duty of
6 reasonable care to Plaintiff.⁶

7 d. *Causation*

8 "In order to establish that [a] defendant was
9 negligent, there must be a causal connection between
10 the alleged breach of duty and resulting injury
11 'In negligence cases, questions concerning
12 foreseeability and causation particularly lend
13 themselves to decision by a jury.'" Paul v. Holland
14 Am. Line, C05-2016RSWM, 2006 WL 3761368, at * 4 (W.D.
15 Wash. Dec. 21, 2006) (citing Wyler v. Holland Am. Line-
16 United States, Inc., 348 F. Supp. 2d 1206, 1209 (W.D.
17 Wash. 2003)).

18 Defendant claims that Plaintiff slipping on water
19 caused her injuries, not anything related to the
20

21 ⁶ Defendant dedicates a substantial portion of its arguments
22 to stating that it did not have a duty to eliminate a risk that
23 was apparent to Plaintiff and that could have been avoided with
24 reasonable care. Reply 24:1-8. Specifically, Defendant claims
25 that summary judgment is proper because the risk of water in the
26 shower area of Plaintiff's cabin was apparent. Id. But even if
27 a risk is open and obvious, that does not preclude a negligence
28 cause of action. See Carroll v. Carnival Corp., 955 F.3d 1260,
1269 (11th Cir. 2020) (finding cruise ship may be liable for
maintaining a dangerous condition even if the danger is open and
obvious). As such, the Court finds that Plaintiff has presented
sufficient evidence to overcome this argument at this stage of
the proceedings.

1 alleged insufficient grab bars or any other claimed
2 structural deficiency of the shower. See Reply 24:9-
3 26:2. In support of its position, Defendant relies on
4 Plaintiff's deposition testimony. Specifically,
5 Defendant points out that when asked what she
6 attributes as the reason she fell, Plaintiff responded,
7 "I attribute it to slipping on water." Mot. 27-19:7;
8 Cortes Dep. 55:1-5. Defendant also points out
9 "Plaintiff does not proffer any evidence . . . that
10 changing the configuration of the shower would have
11 changed the result." Reply 25:1-6. But also in her
12 deposition when asked whether she believed the lack of
13 adequate and proper hand rails and grab bars caused her
14 injuries, Plaintiff responded, "yes." Cortes Dep.
15 62:16-24. Also, Plaintiff's testimony discusses
16 changes to the bathroom tile and hand bars that
17 Plaintiff alleges Defendant could have made. Id. at
18 64:16-23. Construing the facts in the light most
19 favorable to Plaintiff, a reasonable juror could
20 determine that despite the presence of water on the
21 floor, Plaintiff's injuries were caused by the
22 inadequacies in the shower area of her cabin.

23 e. *Harm*

24 The parties do not dispute that Plaintiff was
25 injured as a result of the incident.

26 Reviewing the totality of admissible evidence in
27 the light most favorable to Plaintiff, a reasonable
28 juror could find that Defendant breached its duty of

1 reasonable care by failing to provide adequate shower
2 facilities in Plaintiff's cabin thereby causing her
3 injuries. Because there are genuine issues of material
4 fact, the Court **DENIES** Defendant's Motion.

5 **III. CONCLUSION**

6 For the reasons discussed above, the Court **DENIES**
7 Defendant's Motion.

8

9 **IT IS SO ORDERED.**

10

11 DATED: September 8, 2020

/s/ Ronald S.W. Lew
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28