UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:21-cv-20198-KMM

SURAYA STERLING,

Plaintiff,

v.

CARNIVAL CORPORATION & PLC,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation & PLC's ("Defendant") Motion for Summary Judgment. ("Mot.") (ECF No. 52). Plaintiff Suraya Sterling ("Plaintiff") filed an Objection to Defendant's Motion for Summary Judgment. ("Resp.") (ECF No. 58). Defendant filed a Reply in Support of its Motion for Summary Judgment. ("Reply") (ECF No. 62). The Motion is now ripe for review.

I. BACKGROUND[1]

On August 24, 2019, Plaintiff was a passenger aboard the Carnival *Conquest*. Def.'s 56.1 ¶ 1; Pl.'s Resp. 56.1 ¶ 1. Shortly after leaving the club on the boat to head back to her cabin, Def.'s 56.1 ¶¶ 8, 10; Pl.'s Resp. 56.1 ¶¶ 8, 10, Plaintiff claims that she slipped on a wet floor on Deck 3 of the Monet Restaurant at approximately 1:00 A.M., fell down the stairs, and broke her

[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. 53), Plaintiff's Statement of Material Facts in Support of Her Objection to Defendant's Motion for Summary Judgment ("Pl.'s Resp. 56.1") (ECF No. 59), Defendant's Response to Plaintiff's Statement of Additional Facts in Opposition ("Def.'s Reply 56.1") (ECF No. 64), and a review of the corresponding record citations and exhibits.

left leg. ("Compl.") (ECF No. 1) ¶ 9.

No one was with Plaintiff at the time of the alleged incident, and to Plaintiff's knowledge no one observed her fall. Def.'s 56.1 ¶¶ 6–7; Pl.'s Resp. 56.1 ¶¶ 6–7. However, the Parties purport to dispute whether the floor Plaintiff claims she slipped on was wet. Defendant points the Court to Plaintiff's deposition testimony in which she stated she did not personally observe and does not have first-hand knowledge of what she purportedly slipped on. Def.'s 56.1 ¶ 21 (citing Def.'s 56.1 Ex. F ("Pl. Dep. Tr.") (ECF No. 53-6) at 70 ("They[2] saw a clear liquid. I don't know what I slipped on. I didn't investigate exactly."); Pl. Dep. Tr. at 71 ("Q: What did you slip on on the top of Deck 4? A: I don't know."); Pl. Dep. Tr. at 72 ("Q: When you say you slipped, did you actually see yourself slip on anything? A: Actually like saw myself slip on something, no, I wasn't looking down.")). Defendant also cites to Plaintiff's deposition testimony in which she testified she was told by two travel companions after the incident that the floor at the top of the stairs was wet. Def.'s 56.1 ¶ 22 (citing Pl. Dep. Tr. at 73–74 ("Q: When did they tell you they saw this clear substance on the top of the stairwell on Deck 4? A: That morning when I woke up and was in the wheelchair, like on the way to the airport.")). It is undisputed that Plaintiff's two travel companions never provided statements when they were on the vessel. Def.'s 56.1 ¶ 23; Pl.'s Resp. 56.1 ¶ 23.

In opposition, Plaintiff asserts that she testified in her deposition that she slipped on a wet floor and fell. Pl.'s Resp. 56.1 ¶¶ 21–22 (citing Pl.'s Dep. Tr. at 110. ("Q: And you testified that you slipped on a wet floor, correct? A: Yes.")). Plaintiff also points to her October 28, 2021 Affidavit, in which Plaintiff states that she slipped and fell on a wet floor, and "upon being placed

[2] Plaintiff testified that she was informed by two travel companions that the floor she purportedly slipped on was wet. Pl. Dep. Tr. at 73.

in a medical facility/room, [she] felt that the front of [her] shirt was wet from whatever foreign substance/liquid substance that [she] slipped on." Pl.'s Resp. 56.1 Ex. B ("Sterling Aff.") (ECF No. 59-2) at 1. In addition, in her response in opposition to summary judgment, Plaintiff cites to the Passenger Injury Statement she completed the day after the alleged incident, wherein she wrote that she slipped on water and that the floor was slippery and wet. Resp. at 4 (citing Resp. Ex. 1 (ECF No. 58-1)).

The Parties do not dispute that the Monet Restaurant, where Plaintiff claims she slipped and fell, was closed at the time of the alleged incident at 1:00 A.M. Def.'s 56.1 ¶¶ 3–5; Pl.'s Resp. 56.1 ¶¶ 3–5. It is also undisputed that the final dinner seating in the Monet Restaurant had been at 8:15 P.M. Def.'s 56.1 ¶ 4; Pl.'s Resp. 56.1 ¶ 4. However, the Parties dispute where the alleged slip and fall occurred. Defendant asserts that Plaintiff was found in the Renoir Restaurant, not the Monet Restaurant. Def.'s 56.1 ¶¶ 13, 15–17. In support, Defendant cites to the deposition testimony of Nila Alexander ("Alexander"), a Bar Waitress aboard the *Conquest*, who stated that she encountered Plaintiff sitting on the floor of the Renoir Restaurant and that another guest was attempting to pick Plaintiff up off the floor. Def.'s 56.1 ¶ 15 (citing Def.'s 56.1 Ex. E ("Alexander Tr.") (ECF No. 53-5) at 30–31). Alexander testified that upon finding Plaintiff in the Renoir Restaurant, she left to retrieve ship security and led them back to the Renoir Restaurant. Def.'s 56.1 ¶ 15 (citing Alexander Tr. at 33–35).

Defendant asserts that Plaintiff was unable to recall where the slip and fall occurred when asked by ship security. Def.'s 56.1 ¶ 17 (citing Pl. Dep. Tr. at 97–98). Defendant also cites to Plaintiff's Passenger Injury Statement, wherein Plaintiff wrote "N/A" where the form asked her to indicate where the incident occurred. Def.'s 56.1 ¶ 18 (citing Def.'s 56.1 Ex. H (ECF No. 53-8)). Defendant asserts that prior to disembarking at the end of the cruise, Plaintiff never identified for

Defendant where she fell, or indicated that the alleged slip and fall occurred in or involved a set of stairs in the Monet Restaurant. Def.'s 56.1 ¶ 20. Rather, Defendant asserts that Plaintiff did not identify for Defendant where she fell until after her cruise when she retained an attorney who indicated in a letter of representation that Plaintiff fell on Deck 3 of the Monet Restaurant. Def.'s 56.1 ¶¶ 26–27 (citing Def.'s 56.1 Ex. M (ECF No. 53-13)). However, Defendant asserts that Plaintiff later testified that she fell on Deck 4 of the Monet Restaurant. Def.'s 56.1 ¶ 28 (citing Pl. Dep. Tr. at 98).

In response, Plaintiff asserts that she was not found in the Renoir Restaurant. Pl.'s Resp. 56.1 ¶¶ 13–17. Plaintiff cites to Alexander's deposition testimony, wherein Alexander stated (1) she does not remember what Plaintiff's race is, (2) does not remember what Plaintiff looked like or what Plaintiff was wearing, and (3) she had not observed Plaintiff consuming alcohol during the cruise. Alexander Tr. at 48–51, 55, 59. Plaintiff also asserts that she indicated where she fell, citing to her Complaint, the entirety of her October 28, 2021 Affidavit, and deposition testimony wherein she affirmed that she slipped and fell when she was a passenger on a cruise operated by Defendant. Pl.'s Resp. 56.1 ¶¶ 18–20, 26–27 (citing Compl. ¶ 18; Sterling Aff.; Pl. Dep. Tr. at 110).

The Parties also purport to dispute whether Defendant knew about the allegedly wet floor. Defendant asserts that there is no record evidence (1) that any passenger or crewmember reported the existence of a wet floor in the Monet Restaurant to Defendant, (2) that any other passenger or crewmember was injured by a wet floor in the Monet Restaurant, (3) as to how the purportedly wet floor in the Monet Restaurant came to be wet, (4) as to how long the purportedly wet floor in the Monet Restaurant was wet, and (5) evidence of substantially similar incidents. Def.'s 56.1 ¶¶ 32–35, 37. Plaintiff disputes Defendant's assertion that there is no record evidence of

Defendant's notice, claiming that there is a likelihood that that evidence exists in security camera ("CCTV") footage. Pl.'s Resp. 56.1 ¶¶ 32–35. In support, Plaintiff cites to the entirety of her Exhibit D – Plaintiff's Request for Discovery and Defendant's Noncompliance.[3] Pl.'s Resp. 56.1 Ex. D (ECF No. 59-4). Plaintiff asserts that Defendant admitted it has photographs and video footage of the area and the incident and that Plaintiff requested those materials, but Defendant refused to provide them.[4] Pl.'s Resp. 56.1 Add'l Facts ¶¶ 1–2. Defendant asserts that it has no video footage of the incident. Def.'s Reply 56.1 ¶¶ 1–2 (citing Def.'s Reply 56.1 Ex. A (ECF No. 64-1)).

Plaintiff filed this action on August 10, 2020 in the United State District Court for the District of Connecticut. *See generally* Compl. The case was ordered transferred to this Court on January 6, 2021. (ECF No. 18). Plaintiff raises a negligence claim, asserting that (1) Defendant or its employees owed her a duty to exercise ordinary care in maintaining the floor by wiping it up, or at the least by placing a warning sign, Compl, ¶ 11, (2) Defendant breached that duty by failing to provide any warning signs, inspect the floor, prevent passengers from walking on the wet floor, dry the floor, and warn of the alleged hazard, *id.* ¶ 14, and (3) thus, Plaintiff sustained multiple physical injuries and damages resulting therefrom. *See id.* ¶¶ 15–19.

Now, Defendant moves for summary judgment on Plaintiff's negligence claim and Defendant's voluntary intoxication affirmative defense. *See generally* Mot.

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[3] As noted below, this dispute formed the substance of Plaintiff's Motion to Compel (ECF No. 57), which was denied by United States Magistrate Judge Lauren F. Louis. *See* (ECF No. 68).

[4] Plaintiff also asserts that Defendant has refused to disclose a copy of the Incident Report. Pl.'s Resp. 56.1 Add'l Facts ¶ 3. Defendant asserts that this material is privileged. Def.'s Reply 56.1 ¶ 3.

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 fails to establish that Defendant acted negligently or that a dangerous condition existed. Mot. at 1. Specifically, Defendant asserts that (1) there is no record evidence that a wet floor existed at the top of a flight of stairs in the Monet Restaurant, (2) there is no record evidence that Defendant had notice of a wet floor in the Monet Restaurant, and (3) there is no record evidence that Defendant's purported negligence caused Plaintiff's injury, rather the record evidence establishes that Plaintiff's intoxication caused her injury. *See generally id.* In addition, Defendant asserts that it is entitled to summary judgment on its voluntary intoxication affirmative defense.[5] *See id.* at 14–15.

In response, Plaintiff asserts that there is record evidence that creates a genuine issue of material fact that (1) the floor Plaintiff slipped on was wet, (2) Defendant had actual or constructive notice of the wet floor, and (3) the wet floor caused Plaintiff to slip and fall down the stairs. *See generally* Resp. Plaintiff also argues that Defendant is not entitled to summary judgment on its voluntary intoxication affirmative defense.[6] *Id.* at 13–17.

In reply, Defendant argues that (1) the only evidence Plaintiff presents to corroborate her

[5] Defendant has moved for summary judgment on its voluntary intoxication affirmative defense. *See generally* Mot. The Parties do not dispute (1) the number of alcoholic drinks Plaintiff consumed leading up to her injury, (2) that Plaintiff's ship medical records describe Plaintiff as intoxicated, uncooperative, and disoriented, or (3) that Defendant's expert's opinion is that Plaintiff presented with acute ethanol intoxication. Def.'s 56.1 ¶¶ 39–42, 47–64; Pl.'s Resp. 56.1 ¶¶ 39–42, 47–64. However, because the Court finds that Plaintiff has failed to adduce evidence that creates a genuine dispute that the floor was wet, and thus Plaintiff's negligence claim fails, the Court need not decide whether Defendant is entitled to summary judgment on its voluntary intoxication affirmative defense.

[6] Plaintiff also argues that if Plaintiff was intoxicated, it was because Defendant overserved her alcohol. This argument was the substance of Plaintiff's Motion for Leave to File Amended Complaint. (ECF No. 51). That motion was denied. (ECF No. 67).

claim that the floor she slipped on was wet are Plaintiff's "own self-serving statements," which are based on speculation rather than personal knowledge, Reply at 1–2, (2) Plaintiff never identified for Defendant where she fell, and no surveillance footage of the incident exists, *id.* at 3–4, (3) Plaintiff mistakenly conflates foreseeability with actual or constructive notice, *id.* at 4, and (4) Plaintiff fails to adduce evidence of causation in light of her failure to refute evidence that she was intoxicated, coupled with the lack of evidence of a wet floor. *Id.* at 5. In addition, Defendant argues that no reasonable jury could find that Plaintiff was not more than 50 percent at fault for her injury given the unrefuted evidence. *Id.* at 7.

Viewing the facts in the light most favorable to Plaintiff, the Court finds that Defendant is entitled to summary judgment on Plaintiff's negligence claim against Defendant. Plaintiff has failed to adduce evidence creating a genuine dispute (1) as to whether a floor was wet at the top of the stairs in the Monet Restaurant, or (2) that Defendant had actual or constructive notice of the purportedly wet floor even if the floor was wet.

A. Applicable Maritime Negligence Principles.

This case is governed by Federal maritime law. "Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). "[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) (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., 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 harm." *Smith*, 620 F. App'x at 730 (citing *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (other citations omitted)). "Under federal admiralty law, a cruise ship has no duty to warn of known dangers that are open and obvious." *Krug v. Celebrity Cruises, Inc.*, 745 F. App'x 863, 866 (11th Cir. 2018). Moreover, the Eleventh Circuit has held that "[t]he ordinary reasonable care under the circumstances standard . . . as a prerequisite to imposing liability, requires that the shipowner have had actual or constructive notice of the risk creating condition, at least where, . . . the risk is one just as commonly encountered on land (or, in a pool built on land) and not clearly linked to nautical adventure." *Id.* (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)). "In other words, a cruise ship operator's duty is to shield passengers from known dangers (and from dangers that should be known), whether by eliminating the risk or warning of it. Liability for a cruise ship operator thus 'hinges on whether it knew or should have known' about the dangerous condition." *Tesoriero v. Carnival Corp.*, 965 F.3d 1170, 1178 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 2516 (2021).

B. Whether the Floor Was Wet Is Based on Plaintiff's Personal Knowledge or on Speculation.

The Parties purport to dispute whether the floor Plaintiff claims she slipped on was wet. Defendant argues that there is no record evidence that a wet floor existed at the top of a flight of stairs in the Monet Restaurant, as Plaintiff alleges. Mot. at 5. According to Defendant, given that there is nothing in the record to corroborate Plaintiff's claim that a floor was wet at the top of a flight of stairs in the Monet Restaurant, *id.* at 5–7, "all we are left with is": (1) Plaintiff's own

self-serving statements, none of which are based on her own personal knowledge or observation, and (2) speculation as to the cause of her fall. *Id.* at 7–8.

Plaintiff responds that there is record evidence that the floor she slipped on was wet, as Plaintiff: (1) stated in a Passenger Injury Statement the day after the injury that she slipped on a slippery, wet floor and hurt her ankle, (2) testified that the floor she slipped on was wet, and (3) submitted an affidavit that, when she was at the ship medical center, she felt and noticed her shirt was wet from a foreign wet substance.[7] Resp. at 4–5.

In reply, Defendant argues that Plaintiff relies on her Passenger Injury Statement, deposition testimony, and affidavit, all of which are based upon speculation and not personal knowledge. Reply at 1–2.

Based on the record before the Court, the Court finds that Plaintiff has failed to adduce sufficient record evidence to create a genuine dispute regarding whether the floor was wet. "[A] plaintiff cannot defeat a motion for summary judgment through his own bare and self-serving allegations." *Hall v. Skipper*, 808 F. App'x 958, 959 (11th Cir. 2020) (citing *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 851 (11th Cir. 2000)). However, a plaintiff's self-serving statements can defeat summary judgment where those statements are based on personal knowledge or observation. *See Hester v. Univ. of Ala. Birmingham Hosp.*, 798 F. App'x 453, 456 (11th Cir. 2020). Moreover, "[c]onclusory allegations and speculation are insufficient to create a genuine issue of material fact." *Id.* (quoting *Glasscox v. City of Argo*, 903 F.3d 1207, 1213 (11th Cir.

[7] Plaintiff also argues that Defendant admitted that the Monet and Renoir Restaurants are both located on Decks 3 and 4 of the *Conquest*, and that maps of the vessel show staircases between Decks 3 and 4 within both restaurants. Resp. at 5 (citing Resp. Ex. D (ECF No. 58-4)). According to Plaintiff, this evidence shows "that a dangerous condition can exist on a stairway connecting Deck 4 to Deck 3 at the Monet and Renoir Restaurants." *Id.* However, the issue the Court must decide is not whether a dangerous condition *can* exist, it is whether Plaintiff has adduced sufficient evidence upon which a rational jury could find that a dangerous condition *did* exist.

2018)).

Here, it is undisputed that no one was with Plaintiff at the time of the incident, and that no one saw Plaintiff fall. Def.'s 56.1 ¶¶ 6–7; Pl.'s Resp. 56.1 ¶¶ 6–7. Plaintiff claims she slipped and fell on a wet floor on Deck 3 of the Monet Restaurant while aboard the Carnival *Conquest*.[8] Compl. ¶ 9. In opposition to Defendant's Motion, Plaintiff points the Court to her testimony from the end of her deposition as evidence that the floor she slipped on was wet:

> Q. In response to defense counsel's questions, or one of his questions, you indicated that you slipped and fell on August 24, 2019 while you were a passenger on the Defendant Carnival Cruise Line; is that correct?
> A. Yes.
> Q. And you testified that you slipped on a wet floor, correct?
> A. Yes.

Resp. at 4 (citing Pl. Dep. Tr. at 110). Plaintiff also points the Court to her October 28, 2021 Affidavit, in which she states that she slipped and fell on a wet floor, and "upon being placed in a medical facility/room, [she] felt that the front of [her] shirt was wet from whatever foreign substance/liquid substance that [she] slipped on." *Id.* at 5 (citing Sterling Aff. at 1). Further, in her Response, Plaintiff points to the Passenger Injury Statement she completed the day after the incident, wherein she wrote that she slipped on water and that the cause of her injury was a slippery and wet floor. *Id.* at 4 (citing Pl.'s Ex. A ("Inj. St.") (ECF No. 58-1)).

However, Plaintiff's deposition testimony reveals that she neither observed nor has personal knowledge of what she claims she slipped on. First, Plaintiff's testimony throughout her deposition was that she remembers slipping and falling but has no memory of what happened afterward, until she woke up in the ship's medical facility.

> Q. Okay. Absent reviewing documents, do you actually have a memory of what

[8] Plaintiff later testified that she fell on Deck 4 of the Monet Restaurant, and landed on Deck 3. Def.'s 56.1 ¶ 28 (citing Pl. Dep. Tr. at 98); Pl. Dep. Tr. at 100.

happened of how you were hurt on the ship?
A. I remember up to that point and then after, no.
Q. When you say up to that point, what do you mean?
A. Up to the point that I fell. After, no.
Q. Do you actually remember falling?
A. Yes.

Pl. Dep. Tr. at 17–18.

Q. Why don't you remember anything else?
A. That's when I fell, as I was walking. I see the carpet, see the railing.
Q. And then what?
A. I just remember falling down. I just remember falling and I don't remember nothing else besides waking up in the hospital bed.

Pl. Dep. Tr. at 64. Plaintiff, who stated that she has no recollection of the time between when she fell and when she woke up, testified further that (1) she does not know what she slipped on, (2) did not personally see what she slipped on, and (3) that her knowledge that she slipped and fell on a wet floor is based on what she was later told by others when she was on the way to the airport after her cruise:

Q. What did you slip on?
A. They saw a clear liquid. *I don't know what I slipped on*. I didn't investigate exactly.
Q. Okay. So --
A. They said it was wet and they saw clear liquid and they gave that statement.
Q. You have to let me ask the question here. So your cousin said that where you landed on the bottom of 3, there was a knocked over Purell container and the clear liquid around you, but that was on the bottom of Deck 3. You slipped on the top on Deck 4, right?
A. Yes. It was clear, she told me it was clear liquid, not only at the bottom, but the top as well and my clothes was wet.
Q. Well, did she walk from Deck 3 up to Deck 4 to see what was there?
A. I don't know.
Q. Because she doesn't say that in her statement. So where are you getting that from?
A. From her, at that time.

Pl. Dep. Tr. at 70–71 (emphasis added). When asked directly whether she saw anything on the floor she slipped on, Plaintiff testified that she had not:

> Q. I'm going to ask you a real specific question here. On Deck 4, before you fell, did you see anything on the floor?
> A. *No*.
> Q. Okay. So you never saw a substance on Deck 4?
> A. *No, from my eyes, no*.
> Q. When you say you slipped, did you actually see yourself slip on anything?
> A. Actually like saw myself slip on something, no, I wasn't looking like down. Like it happened all so quick, so.
> Q. Got it.
> A. So not like --
> Q. Right. So as you're approaching these Deck 4 stairs, you're not looking down and you didn't see any substance on the floor, correct?
> A. Yes.
> Q. Yes meaning I'm correct?
> A. *As I'm walking down did I see something on the floor, no*.

Pl. Dep. Tr. at 72 (emphasis added). As noted above, rather, Plaintiff testified that she was told by others that she slipped on a clear liquid:

> Q. Okay. And the only thing you've ever heard was that on the bottom of Deck 3, you know, at the bottom of the stairwell after you landed your cousin said she saw a clear puddle on that floor on Deck 3, correct?
> A. I also heard there was a clear puddle as well at the top.
> Q. Who told you that there was a clear puddle on the top of Deck 4?
> A. Diesha Hanes. Diesha Hanes and Laquisha Simmons both found me. They said there was a clear liquid on top and they saw a clear liquid at the bottom as well, with my shirt wet.

Pl. Dep. Tr. at 73. Plaintiff was not told about the purportedly wet floor at the top of the stairs until the next morning, after she woke up:

> Q. When did they tell you they saw this clear substance on the top of the stairwell on Deck 4?
> A. That morning when I woke up and was in the wheelchair, like on the way to the airport.
>
> [. . .]
>
> Q. When did she tell you that she saw this puddle on Deck 4?
> A. Everything that they told me was exactly after everything happened, so I woke up that morning, we talked that morning.

Pl. Dep. Tr. at 74, 81. Plaintiff's testimony at the end of her deposition, where she briefly affirmed

that she slipped on a wet floor, Pl. Dep. Tr. at 110, does not directly respond to her testimony from earlier in her deposition, where she expressly stated multiple times that she did not personally observe what she slipped on. Nor does it respond to Plaintiff's express testimony that her knowledge of what she slipped on is drawn from the statements of Plaintiff's travel companions—Daisha Haynes and Laquisha Simmons—whom the Court has either struck or Plaintiff is precluded from using.[9]

In her response, as noted above, Plaintiff points the Court to the following as evidence that the floor was wet: (1) Plaintiff's Passenger Injury Statement, in which she wrote she slipped on water and that the floor was slippery, Resp. at 4 (citing Inj. St.), (2) Plaintiff's deposition testimony in which she affirmed that she slipped on a wet floor, *id.* (citing Pl. Dep. Tr. at 110), and (3) Plaintiff's affidavit, in which stated that when she was in the ship medical facility she felt that the front of her clothes were wet from the liquid or substance she slipped on, *id.* at 5 (citing Sterling Aff.).

However, Plaintiff has not presented any record evidence demonstrating that she has personal knowledge that the floor she slipped on was wet. Plaintiff's deposition testimony was that Plaintiff has no recollection of what happened after she fell until she woke up, and that she was later told that the floor was wet by others, whom this Court has struck or whom Plaintiff is precluded from using to supply evidence. Pl. Dep. Tr. at 17–18, 64, 70–74, 81. Plaintiff has not adduced evidence that she knows the floor was wet independent of the statements of the stricken

[9] The Court struck Ms. Haynes as a witness and precluded her from testifying or presenting evidence. *See* (ECF No. 50). In addition, Plaintiff does not dispute that she is precluded from utilizing Ms. Simmons to supply evidence because Plaintiff failed to disclose Ms. Simmons. Def.'s 56.1 ¶ 25; Pl.'s Resp. 56.1 ¶ 25.

witness[10] and the witness Plaintiff concedes she cannot rely upon. And, as noted above, Plaintiff's testimony that she slipped on a wet floor does not directly confront her testimony from the same deposition in which she states she did not observe what she slipped and fell on and that her knowledge that the floor was wet is based on the statements of others. *Compare* Pl. Dep. Tr. 70–74, 81 *with* Pl. Dep. Tr. at 110. Thus, Plaintiff's statements in her Passenger Injury Statement that she slipped and fell on water and that the floor was slippery and wet are not based on personal knowledge or observation. Inj. St. Likewise, Plaintiff's statement in her affidavit that she slipped on a wet floor is not based on personal knowledge or observation. Sterling Aff. at 1.

Plaintiff recognizes that "[a] litigant's self-serving statements based on personal knowledge or observation can defeat summary judgment." Resp. at 4 (quoting *Hester*, 798 F. App'x at 456). However, self-serving statements must be based on personal knowledge or observation. *Hester*, 798 F. App'x at, 456. Here, where Plaintiff has not pointed the Court to evidence beyond the Passenger Injury Statement, Plaintiff's deposition testimony, and Plaintiff's Affidavit, the record evidence based on Plaintiff's own personal knowledge or observation is (1) that Plaintiff asserts she slipped and fell down a set of stairs when she was a passenger aboard a cruise ship operated by Defendant, Pl. Dep. Tr. at 77, and (2) when Plaintiff was in the ship's medical facility thereafter, she felt that the front of her shirt was wet.[11] Sterling Aff. at 1. Based

[10] The Court also notes that Ms. Haynes's witness statement, the text of which is included in Plaintiff's answers to Defendant's interrogatories, Mot. Ex. I (ECF No. 52-9), does not state that the floor was wet at the top of the stairs Plaintiff claims she fell down. *See id.* at 7–8. Plaintiff testified that Ms. Haynes later told her that the floor at the top of the stairs was wet, and that Plaintiff was only adding to Ms. Haynes's witness statement based on what Ms. Haynes told Plaintiff. Pl. Dep. Tr. at 82–83.

[11] Plaintiff's affidavit states that "[u]pon being placed in a medical facility/room, I felt that the front of my shirt was wet from whatever foreign substance/liquid substance that I slipped on," Sterling Aff. at 1. However, this affidavit directly contradicts Plaintiff's ship medical records

on this evidence, the Court finds that Plaintiff's claim that she slipped on a wet floor is speculative. *See Giles v. Winn-Dixie Montgomery, LLC*, 574 F. App'x 892, 894 (11th Cir. 2014) ("[A] plaintiff's speculation about the cause of a fall is insufficient evidence to overcome a summary judgment motion.").

Thus, the Court agrees with Defendant that there is no genuine dispute as to whether the floor was wet, *see Cordoba*, 419 F.3d at 1181, and Plaintiff has failed to satisfy her burden of bringing forth evidence from which a rational jury could find that the floor she slipped on was wet. Accordingly, Defendant is entitled to summary judgment on Plaintiff's negligence claim on all theories of negligence for which the existence of a wet floor is an essential element.

C. There Is No Record Evidence that Defendant Had Actual or Constructive Knowledge of the Wet Floor.

Even if the floor at the top of the stairs in the Monet Restaurant was wet, Defendant is entitled to summary judgment on Plaintiff's negligence claim because there is no record evidence that Defendant had actual or constructive notice.[12]

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stating that she was unresponsive when she was brought to the ship medical center, which Plaintiff does not dispute:

> The room smells alcohol and vomitus. One guest was lying on the floor can't even woke-up and not responding to any pain stimuli. Guest breath smells alcohol. She also has a lot of brown vomitus all over the floor. . . . Placed her on the wheelchair and brought her down to the Medical Center with the companion who are intoxicated. . . . *Patient still unresponsive while in the Medical Center*. . . . While doing the assessment in the Medical Center patient keep on vomiting with brown in color.

Def.'s 56.1 ¶ 49 (quoting Def.'s 56.1 Ex. I (ECF No. 53-9) at 1) (emphasis added); Pl.'s Resp. 56.1 ¶ 49 ("Undisputed."). It also contradicts Plaintiff's testimony that she has no recollection of what happened after she fell until she woke up the next morning. *See* Pl. Dep. Tr. at 64; 74.

[12] Under Federal maritime law, a defendant also has no duty to warn passengers of dangerous conditions that are open and obvious. *See Smith*, 620 F. App'x at 730. The Court does not address

"When the non-moving party bears the burden of proof on an issue at trial," as Plaintiff does in this case on her negligence claim, "the moving party need not 'support its motion with affidavits or other similar material negating the opponent's claim,' in order to discharge this initial responsibility." *Rice-Lamar v. City of Ft. Lauderdale*, 232 F.3d 836, 840 (11th Cir. 2000) (quoting *Celotex*, 477 U.S. at 434). "Instead, the moving party simply may 'show'—that is, point out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* (quoting *Celotex*, 477 U.S. at 325) (alterations incorporated). Here, Defendant points the Court to the lack of record evidence as to Defendant's actual or constructive notice of the purportedly wet floor.

The Court first addresses Plaintiff's argument that Defendant in bad faith failed to disclose evidence of security camera ("CCTV") footage of the alleged incident before turning to Defendant's argument that it lacked actual or constructive notice.

a. Evidence of CCTV Footage.

In her response to the instant Motion, Plaintiff argues that Defendant had "yet to provide Plaintiff's counsel with a copy of any CCTV video footage of the area where the plaintiff fell" and that "[t]his Carnival ship is commonly known to have CCTV cameras located all over the ship which simultaneously record many different aspects, angles, and sections of the deck." Resp. at 11. Thus, "if Defendant were to comply with Plaintiff's requests for this video footage, the likelihood of discovering how this liquid got to the location of the fall, what the liquid is, how the

whether the purportedly wet floor was an open and obvious condition because the Parties do not address it in their briefing.

plaintiff fell, and if any employees took notice of the liquid, is quite high."[13] *Id.* at 11. Setting aside whatever common sense may dictate regarding whether Defendant's cruise ships contain security cameras "all over," Plaintiff cites to no evidence that the location where Plaintiff fell was monitored by a CCTV camera.

More to the point, though, the Court observes that Plaintiff's Motion to Compel Defendant to disclose this precise discovery material was denied. (ECF No. 68). The same day that Plaintiff filed an Objection to Defendant's Motion for Summary Judgment (ECF No. 58) and her Statement of Material Facts in Support (ECF No. 59), Plaintiff also moved for an order compelling Defendant to "disclose and produce CCTV video footage of and around the time of the fall."[14] (ECF No. 57) at 1. Plaintiff's argument in her Motion to Compel (ECF No. 57) largely tracks her argument in her Response that Defendant in bad faith failed to disclose CCTV footage of the location where she was injured and Defendant's Incident Report. Resp. at 5–9. In both, Plaintiff argues that "[i]f indeed the dangerous condition did not exist and Plaintiff was responsible for her own injuries, then logical [sic] shows it would do Defendant no harm to send Plaintiff the Incident Report and video surveillance records." Resp. at 8; (ECF No. 57) at 4.

Plaintiff's Motion to Compel was denied as untimely pursuant to both this Court's Scheduling Order (ECF No. 30) and Local Rule 26.1(g) of the Local Rules of the Southern District of Florida ("Local Rules"). *See generally* (ECF No. 68). Specifically, Plaintiff failed to explain why her Motion to Compel was filed (1) more than a month after the discovery deadline, (2) after

[13] In her Response, Plaintiff asserts that it is not the case that "Plaintiff did not make timely discovery requests for discoverable information. Plaintiff's inability to locate the injury site as Defendant states, is actually due to Defendant's bad faith actions in not disclosing discoverable information to Plaintiff." Resp. at 5.

[14] In that motion, Plaintiff also moved to compel Defendant to disclose a copy of the Incident Report related to her injury. *See generally* (ECF No. 57).

the deadline to file pretrial dispositive motions, such as the instant Motion for Summary Judgment, and (3) more than 30 days after the discovery dispute arose, as required by Local Rule 26.1(g). *See generally id.* Plaintiff filed no objection to United States Magistrate Judge Lauren F. Louis's Order (ECF No. 68) denying her Motion to Compel, and the time to do so has passed. *See* Fed. R. Civ. P. 72(a). Nor did Plaintiff expressly invoke Federal Rule of Civil Procedure 56(d) in either her Motion to Compel or her Response. *See generally* (ECF No. 57); Resp.

Plaintiff references the discovery dispute noted above in paragraphs 32 through 36 of Plaintiff's Statement of Material Facts (ECF No. 59), for all of which Plaintiff provides the same response: "Disputed. The likelihood of record evidence in CCTV footage existing . . . (Ex. D, - Plaintiff's Request for Discovery and Defendant's Noncompliance)." Pl.'s Resp. 56.1 ¶¶ 32–36 (ellipses in original). Given that Plaintiff's Motion to Compel was denied, the Court finds that paragraphs 32 through 36 of Plaintiff's Statement of Material Facts are not supported by citations to record evidence.[15] *See* S.D. Fla. L.R. 56.1(b)(1). The Court is within its authority to, and therefore does, deem admitted paragraphs 32 through 36 in Defendant's Statement of Material Facts, *see* S.D. Fla. L.R. 56.1(c), which all relate to whether Defendant had notice of the purportedly wet floor.

b. There Is No Record Evidence of Defendant's Actual or Constructive Notice.

Defendant argues there is no record evidence as to how the floor in the Monet Restaurant

[15] Defendant also asserts that "Plaintiff did not timely propound any written discovery in this matter; Plaintiff did not take any depositions; Plaintiff did not disclose any experts and/or rebuttal experts; Plaintiff neither requested nor conducted a vessel inspection." Def.'s 56.1 ¶ 31. Plaintiff purports to dispute this fact, asserting "Disputed. Prior to legal representation and her in individual [sic] capacity, Plaintiff requested . . . the video and incident report and Defendant failed to provide them." Pl.'s 56.1 ¶ 31. Plaintiff's response neither directly addresses Defendant's contention, nor provides citation to record evidence supporting that she requested the CCTV video.

purportedly came to be wet, how long the floor was wet if it was wet, whether the floor was wet long enough to invite corrective measure, or evidence of substantially similar incidents in which conditions substantially similar caused the prior accident. Mot. at 9–10; Def.'s 56.1 ¶¶ 34–37. In addition, Defendant asserts that there is no record evidence that any passenger or crewmember reported a wet floor in the Monet Restaurant prior to when Plaintiff alleges she fell, or that any other passenger or crewmembers were injured by the purportedly wet floor in the Monet Restaurant. Mot. at 9–10; Def.'s 56.1 ¶¶ 32–33.

Plaintiff responds that Defendant's safety publications "evince its knowledge of the dangers discussed in the publications." Resp. at 10 (citing *Frasca v. NCL (Bahamas) Ltd.*, 654 F. App'x 949, 952–54 (11th Cir. 2016)). Specifically, Plaintiff references Defendant's "Safety Publication on Potential Slip & Fall Locations" attached as Exhibit J to Plaintiff's Response (ECF No. 58-10), which is not referenced in, cited in, or attached to Plaintiff's Statement of Material Facts in Opposition. *See generally* Pl.'s Resp. 56.1. Plaintiff states that this publication shows Defendant recognizes that spills are very common in high traffic areas, "such as outside a restaurant near a central staircase where the incident at-hand occurred." Resp. at 10.

In reply, Defendant argues that the Safety Publication on Potential Slip & Fall Locations is undated and unverified. Reply at 4. Defendant also argues that "there would have been no traffic" at the Monet Restaurant when Plaintiff was found at approximately 1:00 A.M., given that the Monet Restaurant was closed at that time. *Id.* at 4. In addition, Defendant argues that Plaintiff conflates foreseeability with actual and constructive notice. *Id.* (quoting *Navarro v. Carnival Corp.*, No. 19-21072-CIV, 2020 WL 1307185, at *3 (S.D. Fla. Mar. 19, 2020).

The Court finds that Plaintiff has failed to adduce record evidence of Defendant's notice.

"Actual notice exists when the defendant knows of the risk creating condition." *Bujarski*

v. NCL (Bahamas) Ltd., 209 F. Supp. 3d 1248, 1250 (S.D. Fla. 2016) (citing *Keefe*, 867 F.2d at 1322). In the absence of actual notice, a plaintiff must establish constructive notice. The recent Eleventh Circuit case *Tesoriero v. Carnival Corp.* is instructive:

> We have identified at least two ways that constructive notice can be shown. *First*, a plaintiff can establish constructive notice by showing that a "defective condition existed for a sufficient period of time to invite corrective measures." [*Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019)] (alterations adopted) (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988)). *Second*, a plaintiff can show evidence of "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Id.* (quotation marks and citation omitted). On the other hand, the fact that the cruise line runs the ship is not enough—constructive notice of a risk cannot be imputed merely because a shipowner "created or maintained" the premises. [*Everett v. Carnival Cruise Lines*, 912 F.2d 1335, 1358–59 (11th Cir. 1990)].

Tesoriero, 965 F.3d at 1178–79.

Here, as noted above, it is undisputed that there is no record evidence (1) "that any passenger or crewmember reported to Defendant the existence of the purportedly wet floor in the *Monet* Restaurant prior to the alleged incident," (2) "that any other passenger or crewmember was injured as a result of the purportedly wet floor in the *Monet* Restaurant," (3) "as to how the subject floor . . . purportedly came to be wet," (4) "as to how long the subject floor . . . was purportedly wet prior to the alleged incident," and (5) "that the purportedly wet floor . . . existed for 'a sufficient period of time to invite corrective measures.'" Def.'s 56.1 ¶¶ 32–36 (quoting *Guevara*, 920 F.3d at 720). Based on the undisputed record evidence, Plaintiff fails to establish that Defendant had actual notice of a wet floor, assuming a wet floor existed.

The Court also finds that Plaintiff fails to adduce evidence that Defendant had constructive notice of the purportedly wet floor.

Having failed to adduce evidence as to how long the purportedly floor was wet, Plaintiff fails to establish that the purportedly wet floor was wet long enough to invite corrective measures.

Tesoriero, 965 F.3d at 1178–79 (citing *Guevara*, 920 F.3d at 720). Nor has Plaintiff pointed the Court to "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Id.* (quoting *Guevara*, 920 F.3d at 720).

Further, the Court notes that Plaintiff cites to a Safety Publication on Potential Slip & Fall Locations, Resp. Ex. J (ECF No 58-10), in her Response without referencing, citing, or attaching it to her Statement of Material Facts in Opposition. *See generally* Pl.'s Resp. 56.1. The Court may disregard the exhibit on that basis. *Aning v. Fed. Nat'l Mortg. Ass'n*, 663 F. App'x 773, 776 (11th Cir. 2016) (quoting *Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir. 2008)) ("In applying Local Rule 56.1 at the summary judgment stage, the district court should 'disregard or ignore evidence relied on by the respondent—but not cited in its response to the movant's statement of undisputed facts—that yields facts contrary to those listed in the movant's statement.'").

Nonetheless, the Safety Publication on Potential Slip & Fall Locations is insufficient to establish Defendant's constructive notice, as that document appears inapplicable to the current case. First, the text highlighted in yellow specifically refers to spills in "high traffic areas like the Lido Restaurant / Beverage Stations, [and] public areas like Bars & Lounges." (ECF No. 58-10) at 1. Plaintiff does not claim that she fell at a beverage station, bar, or lounge. Compl. ¶¶ 8–9; Def.'s 56.1 ¶ 3; Pl.'s Resp. 56.1 ¶ 3. Moreover, the document specifically references the "Lido Restaurant." (ECF No. 58-10). Neither Party has presented any evidence where the Lido Restaurant is located in relation to the Monet and Renoir Restaurants on the *Conquest*, or if the Lido Restaurant referenced in the publication is the same "Lido" on the *Conquest* that is identified in Defendant's newsletter of events for the date of the alleged incident. *See generally* Def.'s 56.1 Ex. D (ECF No. 53-4).

Second, to the extent Plaintiff cites *Frasca v. NCL (Bahamas) Ltd.*, 654 F. App'x 949, 952–

54 (11th Cir. 2016) to support that Defendant's safety publication "evince[s] [Defendant's] knowledge of the dangers discussed in the publications," Resp. at 10, the Court finds the instant case distinguishable. In *Frasca*, the Eleventh Circuit found that, because the defendant cruise operator played a safety video on televisions in passenger cabins warning that "outside decks will get wet from salt spray and sea air and can become very slippery," that permitted the inference that the cruise ship operator was on notice that the decks could be slippery and dangerous when wet.[16] *Frasca*, 654 F. App'x at 953–54. Moreover, there was evidence that the deck was visibly wet and shiny, that there were puddles of water on the deck's surface, and a heavy fog or mist was in the air. *Id.* at 952. The Eleventh Circuit also stated the following in a footnote:

> We assume that [the] [d]efendant's staff members were aware of the weather conditions, just as we explained above that a reasonable passenger would have known of the conditions. In any event, [the] [d]efendant has not produced any evidence to suggest that its staff were unaware of the weather conditions at the relevant times.

Id. at 954 n.4. Here, Plaintiff has not adduced evidence that Defendant or its employees were aware of the purportedly wet floor. Neither can the Court assume Defendant's employees were aware of the wet floor. In fact, it is undisputed that (1) no passenger or crewmember reported to Defendant that there was a wet floor in the Monet Restaurant prior to Plaintiff's slip and fall, (2) that no other passenger or crewmember was injured by a wet floor in the Monet Restaurant, (3) there is no evidence as to how the floor purportedly came to be wet, or (4) there is no evidence as to how long the purportedly wet floor was wet prior to Plaintiff's injury. Def.'s 56.1 ¶¶ 32–35.

Accordingly, Plaintiff fails to adduce evidence of Defendant's notice of the wet floor. Thus, even if the floor in question were wet, Defendant is entitled to summary judgment on

[16] It was also noted that passengers were warned about the potential slippery nature of the decks during a safety drill on the first day of the cruise. *Frasca*, 654 F. App'x at 954.

Plaintiff's negligence claim.

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 of Summary Judgment (ECF No. 52) is GRANTED. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, final judgment shall be entered by separate order. The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 18th day of December, 2021.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record