

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

CASE NO. 1:24-cv-20989-JLK

MERMAID MARINE HOLDINGS, LLC,  
a Florida Limited Liability Company and  
AQUARIUS EAST TOURS, INC., an  
inactive Florida for Profit Business,

Plaintiffs,

v.

MAVERICK YACHT MANAGEMENT  
LLC, a Florida for Profit Business,  
JOHANN FUEBEL, an individual, and  
JUAN MEIRELES, an individual,

Defendants.

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**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

THIS MATTER is before the Court on Defendants' Motion to Dismiss (the "Motion") (DE 14), filed on June 13, 2024. The Court has also considered Plaintiffs' Response (DE 15), filed June 27, 2024, Defendants' Reply (DE 18), filed July 12, 2024, and Plaintiffs' Sur-Reply (DE 21), filed July 22, 2024. The matter is ripe for review.

**I. BACKGROUND**

On March 14, 2024, Plaintiffs filed their Complaint alleging that Defendants negligently managed and operated Plaintiffs' yacht. *See* DE 1. Defendants moved to dismiss the original complaint (DE 5) and in response, Plaintiffs filed their first amended complaint as a matter of course (DE 6). Then, on May 24, 2024, Plaintiffs moved to amend their complaint based on new information from disclosures made during discovery (DE 11), which the Court granted (DE 12).

Ultimately, on May 30, 2024, Plaintiffs filed their Second Amended Complaint (“SAC”), which remains the operative Complaint. *See* DE 13. In the SAC, Plaintiffs specifically allege:

Count I for Negligence against Maverick  
Count II for Negligence *Per Se* against Maverick  
Count III for Gross Negligence against Maverick  
Count IV for Breach of Contract against Maverick (on behalf of Mermaid)  
Count V for Breach of Contract against Maverick (on behalf of Aquarius)  
Count VI for Negligence against Johann Faubel  
Count VII for Negligence *Per Se* against Johann Faubel  
Count VIII for Gross Negligence against Johann Faubel  
Count IX for Negligence against Juan Meireles  
Count X for Negligence *Per Se* against Juan Meireles, and  
Count XI for Gross Negligence against Juan Meireles

Because this cause comes before the Court on a Motion to Dismiss, all facts in the Plaintiffs’ well-pleaded Complaint are accepted as true and construed in the light most favorable to the Plaintiffs. *See Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1262 (11th Cir. 2004). Further, this Court favors the Plaintiffs with all reasonable inferences from the allegations in the Complaint. *Stephens v. Dep’t of Health & Human Servs.*, 901 F.2d 1571, 1573 (11th Cir. 1990).

Plaintiff Mermaid Marine Holdings, LLC (“Mermaid”) is the registered owner of the 70-foot Manhattan Sunseeker yacht, the M/V SIRENA (the “yacht”). SAC ¶ 2. Plaintiff Mermaid is owned by Nicholas Stocking and his wife, Jennifer Blake. *Id.* Plaintiff, Aquarius East Tours, Inc. (“Aquarius”), is fully owned by Nicholas Stocking, and its sole business purpose was to manage and operate the yacht. *Id.* ¶¶ 3–4. Defendant Maverick Yacht Management, LLC (“Maverick”) is co-owned and managed by Defendant Johann Faubel, and Defendant Juan Meireles. *Id.* ¶¶ 5–8.

On September 18, 2018, Mermaid bought the yacht. *Id.* ¶ 13. On June 18, 2022, Nicholas Stocking signed two identical Yacht Management Agreements with Defendant Maverick to manage the yacht. *Id.* ¶ 14. The first agreement was on behalf of Plaintiff Mermaid, and the second on behalf of Plaintiff Aquarius. *Id.* In September 2022, Defendant Maverick transported the yacht

from North Bay Village to Fort Lauderdale according to its hurricane preparedness plan in an attempt to protect the yacht from the approaching Hurricane Ian. *Id.* ¶¶ 17–19. On September 30, 2022, Defendants Faubel, and/or Meireles decided to transport the yacht back to its home dock in North Bay Village via the Atlantic Ocean despite approximately 10-foot waves in the Atlantic Ocean near Haulover Inlet and off the coast of Miami-Dade County. *Id.* ¶¶ 19–20.

While transporting the yacht, at around 10:53 a.m. on September 30, 2022, Defendant Faubel, made a sudden and sharp maneuver portside in response to an approaching wave. *Id.* ¶ 23. Immediately following the sudden maneuver, the yacht violently slammed several times in short succession resulting in loud banging noises that were heard on a ship-based audio feed and observed through the ship-based video system. *Id.* ¶ 24. After Defendants returned the yacht to North Bay Village, Plaintiff had it professionally inspected which revealed substantial damage. *Id.* ¶ 32. To date, the total cost of repairs exceeds \$800,000. *Id.* ¶ 37.

## II. LEGAL STANDARD

Under Federal Rule of Procedure 8(a)(2), “[t]o 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this standard, a plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. A complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

## III. DISCUSSION

Defendants argue that Counts I–III, VI–XI of Plaintiffs’ SAC should be dismissed and that Plaintiff Aquarius should be dismissed from this action in its entirety. *See Mot.*

The Court will address each argument in turn.

**A. Counts I and II are not barred by the Yacht Management Agreements’ Indemnification Provision.**

Defendants argue that the Yacht Management Agreements entered into by both Plaintiff Mermaid and Plaintiff Aquarius with Defendant Maverick include an indemnity provision that bars Count I for Negligence and Count II for Negligence *Per Se*. Mot. at 4–5. The pertinent portion of the indemnification provision states:

Disclaimer of Liability and Indemnification Agreement. OWNER ASSUMES ALL RESPONSIBILITY FOR INJURY, DEATH, PROPERTY DAMAGE, OR OTHER CLAIMS OF ANY NATURE THAT MAY ARISE DURING THE TERMS OF THIS AGREEMENT AND/OR THE USE OF THE YACHT. OWNER SHALL INDEMNIFY AND HOLD HARMLESS MYM [DEFENDANT MAVERICK] AGAINST AND FROM ANY LOSS OR EXPENSE MYM MIGHT SUFFER, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND LEGAL FEES, ARISING FROM OR IN ANY WAY RELATED TO THE USE OF THE YACHT, MYM’S [DEFENDANT MAVERICK’S] MANAGEMENT OF THE YACHT OR THE SERVICES RENDERED PURSUANT TO THIS AGREEMENT. THIS OBLIGATION SHALL SURVIVE BEYOND THE COMPLETION OR TERMINATION OF THIS AGREEMENT.

See DE 13-1 at 4; DE 13-2 at 4. Plaintiffs allege that this same indemnification provision is included in both Agreements between Plaintiffs Mermaid, Plaintiff Aquarius, and Defendant Maverick. SAC ¶ 14. Plaintiffs attach the Yacht Management Agreement as exhibits to their SAC. See SAC Ex. 1 DE 13-1, Ex. 2 DE 13-2. Defendants argue that Plaintiffs agreed to hold Defendant Maverick harmless from “ANY LOSS OR EXPENSE . . . ARISING FROM OR IN ANY WAY RELATED TO THE USE OF THE YACHT, MYM’S [DEFENDANT MAVERICK’S] MANAGEMENT OF THE YACHT OR SERVICES RENDERED.” Mot. at 5.

Plaintiffs take issue with Defendants’ interpretation of the indemnification provision and argue it should be construed more narrowly to apply to only the enumerated “management service” Defendant Mermaid agreed to provide, not the alleged operation during the incident. Resp. at 7–

10. Plaintiff points to the phrase “PURSUANT TO THIS AGREEMENT” in the indemnification provision and quotes for the Court those agreed management services:

- i. Yacht will be thoroughly inspected by MYM on a weekly basis. Any discovered faults, deficiencies or issues will be promptly reported to Owner and/or the Yacht’s crew.
- ii. Offer recommendations and input regarding contractors and/or repairers needed.
- iii. Offer recommendations and input regarding captain and crewmembers for retention by Owner.
- iv. MYM will provide Owner with a recommended hurricane safety plan by March of each year.
- v. Provide monthly cash flow and budget reports for analysis to assist Owner transform Yacht into a professional business.
- vi. Vessel technical assistance for day-to-day and unique needs of Owner and Yacht, through MYM’s global database of contacts.
- vii. 24/7 availability to assist with needs of Yacht through MYM’s global database of contracts.
- viii. Logistic and managerial support for any boat shows.
- ix. Assist in the marketing and promotion of the Yacht for charter, if desired.
- x. If the Yacht is being offered for sale, MYM will assist in the sale by ensuring the Yacht is ready for showings; coordinating with brokers and/or potential buyers; attending showings and sea trials; and assisting in photography.

*Id.* at 7–8. Plaintiffs argue that services to “navigate, operate, or transport” the yacht are not included in the agreement, and because the alleged damage happened while operating and transporting the yacht, the indemnification provision does not apply here. *Id.* at 8.

Therefore, the Parties agree that the Yacht Management Agreements control, but dispute the interpretation of “USE OF THE YACHT” and “SERVICES RENDERED PURUSANT TO THIS AGREEMENT” in the indemnification provision. “Because the Agreement was attached as an exhibit to the Complaint, the Court may consider it for purposes of this Motion; however, it is inappropriate to engage in contract interpretation at this stage in the litigation.” *Fla. Power & Light Co. v. Nuclear Energy Inst., Inc.*, Case No. 18-cv-80118-MIDDLEBROOKS, 2018 U.S. Dist. LEXIS 80042, at \*8 (S.D. Fla. May 10, 2018) (citing *Assa Compañia De Seguros, S.A. v.*

*Codotrans, Inc.*, 15 F. Supp. 3d. 1271, 1276 (S.D. Fla. 2014) (collecting cases for the proposition that “a court may not engage in contract interpretation at the motion to dismiss stage as these arguments are more appropriate for summary judgment”); *see also Larach v. Standard Chartered Bank Intl (Americas) Ltd.*, 724 F. Supp. 2d 1228, 1239 (S.D. Fla. 2010) (“The parties’ differing interpretations of their respective obligations under the pledge agreement demonstrate that this issue is not ripe for decision at the motion to dismiss stage.”).

The Court finds that taking the allegations stated in the SAC as true, there are sufficient facts to proceed with discovery under the negligence claims. Plaintiff alleges that “[t]he Agreement did not state that the services to be rendered by [Defendant Maverick] would include navigating or operating the Vessel.” SAC ¶ 16. And further, “Defendants decided to transport the Vessel via the Atlantic Ocean without first obtaining [the owner Nicholas] Stocking’s permission or consent.” *Id.* ¶ 20. These facts indicate that Defendants’ operation of the yacht may not be a covered “use of the yacht.” With these facts, at this stage of the case, the Defendants’ Motion to Dismiss Count I due to the indemnity provision is denied.

**B. Counts I and II are not barred by the Maritime Economic Loss Rule.**

Defendants alternatively seek dismissal of Count I and Count II based on the maritime Economic Loss Rule. Mot. at 5–6. “Generally, the maritime Economic Loss Rule provides that a tort action may not lie where the basis for liability arises from a contract.” *Am. Marine Tech., Inc. v. World Grp. Yachting, Inc.*, 418 F. Supp. 3d 1075, 1081 (S.D. Fla. 2019) (citations omitted). Defendants argue that Plaintiffs attempt to circumvent contractual limitations by alleging tort actions, but the SAC fails to allege facts which separate the actions of Defendant Maverick from their contractual duties. Mot. at 6. Plaintiffs’ Response again argues that the alleged incident and negligence was outside the scope of the contractual services because the Yacht Management

Agreements did not contemplate Defendant Maverick navigating or operating the yacht. Resp. at 11–12.

It is undisputed the Parties were in contractual privity. However, the economic loss doctrine bars parties in contractual privity from “recover[ing] damages in tort for matters *arising* from the contract.” *Indemnity Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So.2d 532, 536 (Fla. 2004). This Court has already held that Plaintiffs allege facts outside the scope of the contract and the Court would benefit from discovery to determine how Defendants used the yacht pursuant to the contract. *See generally* § A, *supra*. In *American Marine*, the Court found “the alleged negligent conduct relates directly to the services performed under the Service Agreement.” *Am. Marine Tech., Inc.*, 418 F. Supp. 3d at 1082. Here, there is no direct relation, as the listed management services in the agreement do not include operating or motoring the yacht, and the allegations are that it was done without Plaintiff owners’ consent or knowledge. Parties may bring causes of action “for either intentional or negligent acts considered to be independent from acts that breached the contract.” *See HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So.2d 1238, 1239 (Fla.1996).

Plaintiffs have alleged facts outside normal breach of contract that makes its negligence claims distinct, namely the unauthorized operation of the yacht. Again, in light of this Court’s finding that Plaintiffs allege facts outside the scope of the contract, discovery is needed to determine the parameters of the contract and how the yacht was used during the course of the Yacht Management agreement(s).

**C. Plaintiffs’ Count II Negligence *Per Se* Would Benefit from Discovery.**

Defendants argue that Count II for Negligence *Per Se* should be dismissed because the statutes Plaintiffs cite are inapplicable. Mot. at 7–8. Specifically, Defendants argue that the SAC references Inland Navigational Rule 5 (33 C.F.R. § 83.05) and Rule 6 (33 C.F.R. § 83.06), but the

SAC also alleges the incident took place “in the Atlantic Ocean near Haulover Inlet and off the coast of Miami-Dade County” which is not on an inland waterway, thus outside the jurisdiction of the Inland Navigational Rules. *Id.*; Compl. ¶ 20. In their Response, Plaintiffs cite Inland Navigational Rule 1(a) which states “[t]hese Rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.” Resp. at 12 (citing 33 U.S.C.S., Ch. 30, Pt. A, Rule 1).

To be sure, “the Inland Navigation Rules only apply to ‘vessels upon the inland waters of the United States.’” *Schneider v. Leonard*, No. 2:21-CV-00549-JES-KCD, 2023 U.S. Dist. LEXIS 42855, at \*16 (M.D. Fla. March 14, 2023) (citing 33 C.F.R. § 83.01(a)). “A ‘demarcation line’ delineates those waters upon which mariners must comply with the Inland Rules or must comply with The International Regulations for Preventing Collisions at Sea, 1972 (commonly referred to as the COLREGS or the Rules of the Road).” *In re Gore Marine Corp.*, 767 F. Supp. 2d 1316, 1321 (M.D. Fla. 2011) (citing 33 U.S.C. § 1601 *et seq.*).

At this stage, the Court takes as true Plaintiffs’ allegation that the incident happened in the Atlantic Ocean near Haulover Inlet and off the coast of Miami-Dade County. However, the SAC is silent regarding exact location, the navigational demarcation line, and does not include any maps for the Court’s review. The exact location may have a bearing on the applicable Navigational Rules, so therefore the Court finds that Defendants’ Motion to Dismiss Count II for Negligence *Per Se* is denied, so the Parties may conduct discovery on the exact location of the alleged incident.

**D. Plaintiffs’ Count III for Gross Negligence Improperly Repeats Allegations.**

Defendants argue that Plaintiffs’ claim for Gross Negligence should be dismissed because the facts that Plaintiffs allege are the same as those that support their simple Negligence claim, and even taken as true, the facts do not meet the threshold to support *gross* negligence. Mot. at 8–9.

“Gross negligence in an admiralty case is shown where a defendant knows of the risk of harm created by the defendant's conduct or knows facts that make the risk obvious to another in the defendant’s situation and disregards that risk.” *Great Lakes Reinsurance (UK) PLC v. Sunset Harbour Marina, Inc.*, Case No. 10-24469-CIV-Jordan, 2012 WL 13012738, at \*5 (S.D. Fla. Jan. 4, 2012) (internal quotation marks and citation omitted). “[G]ross negligence involves some extreme departure from reasonable care coupled with a conscious awareness of the risk of harm.” *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-cv-21620-CMA, 2011 WL 3703329, at \*16 (S.D. Fla. 2011) (other citations omitted).

Plaintiffs allege that on September 30, 2022, Maverick, Faubel, and/or Meireles decided to transport the yacht, and at that time, “the waves and conditions in the Intracoastal were relatively calm and stable; however, there were approximate 10-foot waves in the Atlantic Ocean near Haulover Inlet and off the coast of Miami-Dade County”. SAC ¶ 19. And, “[d]espite the relatively calm conditions in the Intracoastal, Defendants decided to transport the [yacht] via the Atlantic Ocean without first obtaining [the owner’s] permission or consent.” *Id.* ¶ 20. Further, “Defendants did not review or obtain current weather reports that would have detailed the height of the waves, currents, and overall conditions through the path they intended to transport the Vessel.” *Id.* ¶ 21. These facts show that the risk would be obvious to another in Defendants’ situation and yet they disregarded that risk. However, although the SAC may sufficiently plead gross negligence, Plaintiffs improperly repeat their gross negligence allegations which are identical to the facts supporting their negligence claim.

Defendants argue that Plaintiffs improperly recite the same facts that Plaintiffs assert in their claims for simple negligence but under the guise of “gross” negligence. Mot. at 9. Defendants cite *Great Lakes Reinsurance*, which dismissed plaintiff’s claim of gross negligence where “the

claim for gross negligence is based on the exact same allegations as the claim for negligence, except that it includes the requisite labels.” *Id.* at 9 (citing *Great Lakes Reinsurance (UK) PLC*, 2011 WL 13223741, at \*6. Plaintiffs respond by arguing the *Great Lakes Reinsurance* court did not hold that there cannot be common facts alleged in negligence and gross negligence claims, but the problem was plaintiff’s claims “rest[ed] entirely upon the same singular, non-descript allegation” and here, there are specific facts. Resp. at 13 (citing *Great Lakes Reinsurance*, 2011 WL 13223741, at \*3).

The *Great Lakes Reinsurance* Court found that plaintiff’s causes of action for gross negligence and breach of contract both relied entirely upon the same singular, non-descript allegation, (which the instant Plaintiffs cite) so therefore the gross negligence claim was simply a restatement of the breach of contract claim. *Id.* at \*8. However, that Court separately found that plaintiff’s claim for gross negligence was based on the exact same allegations as the claim for negligence, except that the gross negligence claims included the requisite “labels.” *Id.* at \*16.

A review of the SAC shows that the facts Plaintiffs allege in their simple negligence claim are identical to the facts in their gross negligence claim, For example, compare Plaintiffs’ negligence claim that Defendant Maverick “breached their duty of care owed to Plaintiffs by violating the following Inland Rules of Navigation” (SAC ¶ 45) with Plaintiffs’ gross negligence allegation that Defendant Maverick “breached their duty of care owed to Plaintiffs by violating the following Inland Rules of Navigation *in a grossly negligent manner.*” (*Id.* ¶ 61) (emphasis added).

This duplication of facts with a replacement of labels has been dismissed by Courts in this District. See *Great Lakes Reinsurance*, 2011 WL 13223741, at \*6 (S.D. Fla. 2011); *Noble House, LLC v. Derektor Fla., Inc.*, No, 20-cv-62438-GAYLES, 2022 WL 19561568, at \*3 (S.D. Fla. 2022) (dismissing plaintiff’s gross negligence claim because it “alleges no additional duties, and

breaches thereof, apart from its ordinary negligence claim.”) Therefore, Count III for Gross Negligence is dismissed, but Plaintiffs may proceed with their simple Negligence claims.

**E. Plaintiffs Do Not Allege Sufficient Facts to Pierce the Corporate Veil For Individual Defendants, but Individual Defendants May Still be Liable as Tortfeasors.**

Defendants argue that Plaintiffs’ Counts VI – XI attempt to assert causes of action against Defendant Johann Faubel and Juan Meireles in their personal capacities as owners/agents of Defendant Maverick, but these individual Defendants are entitled to the protection of their duly established limited liability company, Defendant Maverick. Mot. 9–10. Plaintiffs respond that Defendants Faubel and Meireles committed the tortious conduct outside the scope of the services they were hired to perform, and as they personally committed the negligent acts, are not personally exculpated for wrongdoing simply because they own the Defendant company. Resp. 15–16.

“Notwithstanding the limitation of liability afforded by the Florida LLC statute, it is possible to pierce an LLC’s corporate veil under certain circumstances to hold individual members or managers personally liable.” *Hernandez v. MB Yachts, LLC*, No. 22-cv-22135-JLK/DAMIAN 2023 U.S. Dist. LEXIS 23951, at \*9 (S.D. Fla. Feb 10, 2023). Under Florida law, a plaintiff must plead facts showing the following in order to pierce a corporate veil: “(i) the defendant shareholder dominated and controlled the corporation to such an extent that the corporation lacked an independent existence and the defendant was in fact an ‘alter ego’ of the corporation; (ii) the defendant engaged in ‘improper conduct’ in the formation or use of the corporation; and (iii) the improper formation or use of the corporate form injured the plaintiff.” *E. Okeechobee Palms, LLC v. Kellam*, No. 9:14-CV-80866, 2015 U.S. Dist. LEXIS 194426, 2015 WL 12977392, at \*4 (S.D. Fla. Feb. 23, 2015) (Middlebrooks, J.), *aff’d*, 637 F. App’x 568 (11th Cir. 2016) (citing *Molinos*

*Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1349 (11th Cir. 2011), and *XL Vision, LLC. v. Holloway*, 856 So. 2d 1063, 1066 (Fla. Dist. Ct. App. 2003)).

Plaintiffs do not plead facts in the SAC necessary to satisfy this high standard in order to pierce the corporate veil and hold Defendants Faubel and Meireles liable as the managers of Maverick. Plaintiffs allege no facts that establish wrongdoing with respect to the formation or use of Defendant Maverick's organizational structure. Therefore, Plaintiffs fails to state a claim against Defendants Faubel and Meireles in their capacity as the owners/agents of Maverick, based on piercing the corporate veil under Florida law. However, there are sufficient facts to show Defendants Faubel and Meireles may be liable as tortfeasors, and the Court need not pierce Defendant Maverick's corporate veil in order to impose individual liability on Faubel and Meireles.

In Florida, "the law is clear to the effect that officers or agents of corporations may be individually liable in tort if they commit or participate in a tort, even if their acts are within the course and scope of their employment." *White v. Wal-Mart Stores, Inc.*, 918 So. 2d 357, 358 (Fla. Dist. Ct. App. 2005). "All that needs to be alleged is that the agent or officer personally participated in the tort, even if the complained of action was because of and entirely within the scope of his or her employment." *Vesta Constr. & Design, L.L.C. v. Lotspeich & Assocs.*, 974 So. 2d 1176, 1180 (Fla. Dist. Ct. App. 2008) (citation omitted). Here, the Court holds that Plaintiffs' negligence claim should proceed to discovery to determine what "use of the yacht" meant under the Yacht Management Agreement, and exactly how the yacht was being used at the time of the alleged incident. With the Court denying Defendants' Motions to Dismiss Plaintiffs' Negligence claim, it is possible Defendants Faubel and Meireles may be held liable as tortfeasors. For this reason, the Court will dismiss Counts VII and XI for Gross Negligence against individuals Faubel and

Meireles, for the reasons stated in the previous section, including the improper formulaic duplication of facts.

**F. Plaintiff Aquarius is an Inactive Business Under Florida Law.**

Defendants argue that Plaintiff Aquarius should be dismissed because it has been an inactive corporation at all times during the instant contract execution and litigation. Mot. at 11–12. Defendants specifically argue that Plaintiff Aquarius was administratively dissolved in September 2021, before the Yacht Management Agreement was executed, point out that the SAC (in the caption) indicates that Plaintiff Aquarius is inactive, and requests the Court take judicial notice of the Florida Department of State’s business records to prove Plaintiff Aquarius is inactive. *Id.* Plaintiffs respond by saying that this action is brought to windup Plaintiff Aquarius’ affairs and if dismissed, there will be factual and legal issues that still exist. Resp. at 16–17.

It is undisputed that Plaintiff Aquarius is an inactive business, Plaintiffs say as much in their caption. Courts within the Southern District have taken judicial notice of online corporate records at the motion to dismiss stage. *See, e.g., Tecnoglass, LLC v. RC Home Showcase, Inc.*, 301 F. Supp. 3d 1267, 1270 n.1 (S.D. Fla. 2017) (taking judicial notice of corporate records available on the Florida Division of Corporation’s website). Such judicial notice of public records on a Rule 12(b)(6) motion does not convert the motion to dismiss into a motion for summary judgment. *McDaniel v. Burlington Coat Factory of Florida, LLC*, No. 16-cv-62739-COHN, 2016 WL 10932749, at \*1 n.3 (S.D. Fla. Dec. 29, 2016). A review of Florida’s Sunbiz.org records indicate that Plaintiff Aquarius is inactive and was administratively dissolved for failure to file an annual report on September 24, 2021. Plaintiffs allege that on June 18, 2022, Nicholas Stocking, in the capacity of CEO/manager of Plaintiff Aquarius signed a Yacht Management Agreement with

Defendant Maverick. SAC ¶ 14. This is almost eight (8) months after Plaintiff Aquarius became “inactive.”

Under Florida law, a dissolved corporation “continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including . . . discharging or making provisions for discharging its liabilities [and] doing every other act necessary to wind up and liquidate its business and affairs.” *Pension Ben. Guar. Corp. v. 20 SE 3rd St LLC*, NO. 18-cv-81009-RLR, 2019 U.S. Dist. LEXIS 30424, \*18–19 (citing Fla. Stat. § 607.1405(1)). Plaintiff Aquarius’ execution of the Yacht Management Agreement was not a part of winding up affairs, rather it was continuing to carry on business. The instant Agreement listed management services detailed in this Order, and it was to provide for the day-to-day management of Nicholas Stocking’s yacht, which is alleged to have been purchased in 2018 by Plaintiff Mermaid.

Further, § 607.1622(8) reads as a qualified ban on a dissolved corporation's capacity to sue.

Section 607.1622(8) provides

Any corporation failing to file an annual report which complies with the requirements of this section shall not be permitted to maintain or defend any action in any court of this state until such report is filed and all fees and taxes due under this act are paid and shall be subject to dissolution or cancellation of its certificate of authority to do business as provided in this act.

Fla. Stat. § 607.1622(8). Again, Plaintiff Aquarius is an inactive corporation and the Yacht Management Agreement and this action were not brought to wind up Plaintiff Aquarius’ affairs.

Therefore, Plaintiff Aquarius is not permitted to maintain this action in this Court.

Therefore, it is **ORDERED, ADJUDGED and DECREED** that:

- 1) Defendants’ Motion to Dismiss Plaintiff’s Complaint (**DE 14**) be, and the same hereby is, **GRANTED IN PART AND DENIED IN PART**;

- 2) Defendants' Motion to Dismiss Plaintiffs' Count I (Negligence), Count II (Negligence *Per Se*), and Counts VI, VII, IX, and X (Individual Negligence and Negligence *Per Se* Claims against Johann Faubel and Juan Meireles) is hereby **DENIED**;
- 3) Defendants' Motion to Dismiss Plaintiffs' Count III (Gross Negligence), Count VIII (Gross Negligence against Johann Faubel), and Count XI (Gross Negligence against Juan Meireles) is hereby **GRANTED**;
- 4) Plaintiff AQUARIUS EAST TOURS, INC., an inactive Florida for Profit Business (and Count V for Breach of Contract on behalf of Aquarius) are hereby **DISMISSED**;  
and
- 5) Plaintiff Mermaid Marine may, if it so chooses, file a Third Amended Complaint on or by August 29, 2024, attempting to cure the pleading deficiencies identified in this order, not broaden the scope of this litigation.

**DONE AND ORDERED** in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 15th day of August, 2024.

  
JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE

**cc: All Counsel of Record**