UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-22087-CIV-ALTONAGA/Reid

ABIGAIL DEMBINSKI,

Plaintiff,

v.

NCL (BAHAMAS) LTD.,

Defendant.
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ORDER

THIS CAUSE came before the Court on Defendant, NCL (Bahamas) Ltd.'s Motion to Dismiss Plaintiff's Complaint [ECF No. 8], filed on July 17, 2024. Plaintiff, Abigail Dembinski, filed a Response [ECF No. 16]; to which Defendant filed a Reply [ECF No. 17]. The Court has carefully considered the parties' written submissions, the record, and applicable law.

I. BACKGROUND

This case arises from an accident suffered by Plaintiff while aboard the *Norwegian Joy* (the "Vessel"), a cruise ship operated by Defendant. (*See* Compl. [ECF No. 1] ¶¶ 8, 16, 20). While in the Vessel's social club, Plaintiff was overserved alcohol by Defendant (presumably through its employees) while in the presence of Defendant's bartenders, waiters, and other crewmembers. (*See id.* ¶¶ 16–18). Over the course of the evening, Plaintiff began exhibiting physical and verbal signs of being overly intoxicated. (*See id.* ¶ 19). After she had been visibly intoxicated for an "extended period", the bartender refused to serve Plaintiff another drink and asked her to leave the premises. (*Id.*). When Plaintiff walked away from the bar, she "tripped and fell, violently striking her head, and lost consciousness." (*Id.* ¶ 20). None of Defendant's employees assisted Plaintiff or rendered medical aid after her fall. (*See id.* ¶ 21).

Based on these facts, Plaintiff brings a five-count Complaint against Defendant, alleging negligent overservice of alcoholic beverages (Count I), negligent security (Count II), negligent supervision (Count III), general negligence (Count IV), and negligent failure to warn (Count V). (*See id.* ¶¶ 23–43). Defendant moves to dismiss Counts III–V[1] of the Complaint. (*See generally* Mot.; Reply). Defendant argues: (1) Count III fails to state a claim of negligent supervision; (2) Count IV, general negligence, violates the rule against shotgun pleadings; and (3) Count V fails to allege a claim of negligent failure to warn because the dangers of drinking alcohol are open and obvious to passengers. (*See generally id.*).

II. LEGAL STANDARDS

Motion to Dismiss. "To survive a motion to dismiss [under Federal Rule of Civil Procedure 12(b)(6)], 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) (alteration added; quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (alteration added; quoting *Twombly*, 550 U.S. at 555). Pleadings 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 (citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility 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." *Id.* at 678 (alteration added; citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant

[1] Defendant originally moved to dismiss Counts I and II but withdrew that request in its Reply. (*See generally* Mot.; Reply).

acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), abrogated on other grounds by *Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

Shotgun Pleadings. Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim" showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). The complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests[.]" *Twombly*, 550 U.S. at 555 (alteration adopted; other alteration added; citation and quotation marks omitted). Federal Rule of Civil Procedure 10(b) further requires that a pleading "state its claims or defenses in numbered paragraphs, each limited as far as practicable[.]" Fed. R. Civ. P. 10(b) (alteration added).

"Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often disparagingly referred to as 'shotgun pleadings.'" *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). A shotgun pleading makes it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996). A common type of shotgun pleading "is one that commits the sin of not separating into a different count each cause of action or claim for relief." *Weiland*, 792 F.3d at 1323 (footnote call number omitted). The "unifying characteristic" of shotgun pleadings is they "fail . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* (alteration added; footnote call number omitted).

III. DISCUSSION

A. Negligent Supervision

In Count III, Plaintiff alleges Defendant negligently failed to supervise Plaintiff and its employees who served alcohol in the social club of the Vessel. (*See* Compl. ¶ 32). To state a claim of negligent supervision, a plaintiff must allege that (1) the employer received actual or constructive notice of an employee's unfitness, and (2) the employer did not investigate or take corrective action such as discharge or reassignment of that employee. *See Doe v. NCL (Bahamas) Ltd.*, No. 18-cv-20060, 2018 WL 3848421, at *3 (S.D. Fla. Aug. 13, 2018) (citation omitted). A defendant may only be held liable for the negligent supervision of its own employees. *Cf. id.* ("Negligent supervision occurs when, during the *course of employment*, the employer becomes aware or should have become aware of problems with an *employee* that indicated his unfitness, and the employer fails to take further actions such as investigating, discharge, or reassignment." (emphasis added; quotation marks and citation omitted)).

Plaintiff alleges Defendant should have (1) supervised her while she was consuming alcohol, (2) followed its policy on alcohol sales to prevent injury, and (3) noticed when Plaintiff was overly intoxicated and provided medical care "in a timely manner[.]" (Compl. ¶ 32 (alteration added)). Defendant asserts that Count III fails to state a claim because the Complaint provides no factual allegations regarding: (1) which employee Defendant failed to properly supervise; (2) whether Defendant was or should have been aware of the employee's unfitness; and (3) whether Defendant failed to take necessary steps after learning of the employee's unfitness. (*See* Mot. 6).[2] The Court agrees with Defendant.

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[2] The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

First, Plaintiff cannot state a claim of negligent supervision for Defendant's failure to supervise *Plaintiff*, because she is not an employee of Defendant. *Cf. Doe*, 2018 WL 3848421 at *3. Second, nowhere does Plaintiff allege Defendant knew, or should have known, of an employee's unfitness to serve alcohol or assist Plaintiff. (*See generally* Compl.). A mere legal conclusion that "Defendant knew of the foregoing dangerous conditions" which caused Plaintiff's incident is insufficient. (Compl. ¶ 33); *see also Twombly*, 550 U.S. at 555. Without pleading Defendant's predicate knowledge of an employee's shortcomings, Plaintiff's claim fails.

B. General Negligence

To state a negligence claim under maritime law, a plaintiff must plead "(1) a legal duty on the defendant to protect the plaintiff from particular injuries; (2) the defendant's breach of that duty; (3) the plaintiff's injury being actually and proximately caused by the breach; and (4) the plaintiff suffering actual harm from the injury." *Twyman v. Carnival Corp.*, 410 F. Supp. 3d 1311, 1319 (S.D. Fla. 2019) (quotation marks and citation omitted). Defendant next argues Count IV, Plaintiff's general negligence claim, constitutes a "shotgun count" because it incorporates six potential causes of action in one count. (Mot. 6). Plaintiff argues that she may set out alternative statements of a claim in a single count under Federal Rule of Civil Procedure 8(d)(2), and it is not "virtually impossible" to know which of Plaintiff's allegations support her general negligence claim. (Resp. 7 (quotation marks and citation omitted)).

Count IV is a single claim that describes multiple ways Defendant acted negligently. (*See* Compl. ¶¶ 35–36). This form of pleading is expressly permitted by Rule 8(d)(2), which states a "party may set out [two] or more statements of a claim . . . alternatively or hypothetically, either in a single count . . . or in separate ones." *Id.* (alterations added). As the Eleventh Circuit has explained, the term "claims" is often "shorthand" — and "potentially confusing" shorthand, at that

— for what is better described as "theories of liability[.]" *Hulsey v. Pride Rests., LLC*, 367 F.3d 1238, 1246 (11th Cir. 2004) (alteration added; quotation marks omitted). "While it may well be preferable to plead different theories of recovery in separate counts, it is not required." *Id.* at 1247 (citation omitted); *cf. Holguin v. Celebrity Cruises, Inc.*, No. 10-20215-Civ, 2010 WL 1837808, at *1 (S.D. Fla. May 4, 2010) ("The Court will not strike alleged duties from the Complaints in line-item fashion.").

Further, Defendant fails to demonstrate how Count IV does not put it on notice of the factual allegations supporting Plaintiff's claim. (*See generally* Mot.). Plaintiff's allegations permit Defendant to discern which factual allegations support each alleged breach of care. Plaintiff (1) identifies Defendant's to duty ensure the safety of its passengers who have become too intoxicated (*see* Compl. ¶ 35); (2) explains how Defendant caused her fall and subsequent injury (*see id.* ¶¶ 16–22); and (3) in provides a list of how Defendant may have breached its duty, resulting in injury (*see id.* ¶ 36).

C. Negligent Failure to Warn

Finally, Defendant argues Count V fails to state a claim of negligent failure to warn because a shipowner has no duty to warn passengers that alcohol may impair their senses — a danger that is open and obvious to bar attendees. (*See* Mot. 7). According to Plaintiff, Count V is "predicated on Defendant's failure to warn passengers that it would not monitor passenger intake of alcohol to prevent overservice[,]" and whether Defendant breached its duty should not be resolved at the pleading stage. (Resp. 9 (alteration added); *see id.* 9–10). Here, again, Plaintiff has the better argument.

A cruise line's duty of care includes the duty to warn its passengers of known dangers aboard its ship in places they are invited to or may reasonably be expected to visit which are not

open and obvious. *See K.T. v. Royal Caribbean Cruises, Ltd.*, 931 F.3d 1041, 1046 (11th Cir. 2019). Defendant first argues there is no duty to warn Plaintiff that alcohol may "impair [her] senses" because this danger is open and obvious. (Mot. 7 (alteration added)). Courts in this District, however, have repeatedly found "the question of whether a danger is open and obvious relies on a heavily factual inquiry which is inappropriate at the [m]otion to [d]ismiss stage[.]" *Wiegand v. Royal Caribbean Cruises Ltd.*, No. 19-cv-25100, 2020 WL 4187816, at *2 (S.D. Fla. Mar. 16, 2020) (alterations added; citations omitted; collecting cases).

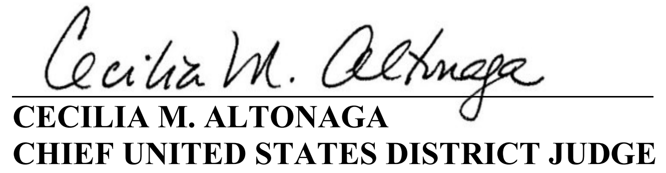
Defendant also argues Plaintiff's claim is predicated on nonexistent legal duties. (*See* Mot 7–8). Defendant cites an order granting summary judgment for this argument. (*See id.* (citing *Caron v. NCL (Bahamas) Ltd.*, No. 16-23065-Civ, 2017 WL 5135857, at *3 (S.D. Fla. Nov. 3, 2017))). The language Defendant points to in *Caron* was premised on that court's finding that the plaintiff "did not present any evidence" on an element of his claim. 2017 WL 5135857, at *3. Meeting such a standard is not required to state a claim for relief. *See Gates v. Khokhar*, 884 F.3d 1290, 1296 (11th Cir. 2018) (stating that "facts alleged in the complaint [are] true" for the purpose of a motion to dismiss (alteration added; citation omitted)).

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's Complaint **[ECF No. 1]** is **GRANTED in part.** Count III is **DISMISSED** without prejudice.

DONE AND ORDERED in Miami, Florida, this 6th day of September, 2024.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record