UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

Case No. 1:24-cv-22270-WILLIAMS/GOODMAN

MARGUERITE DORRIAN,

Plaintiff,

v.

CARNIVAL CORPORATION

Defendant.
_____/

REPORT AND RECOMMENDATIONS ON MOTION TO DISMISS

Marguerite Dorrian ("Dorrian" or "Plaintiff") was a passenger on the *Venezia*, a Carnival Corporation ("Carnival") cruise ship. According to her Amended Complaint [ECF No. 13, ¶ 8], Plaintiff "tripped and fell on a raised metal floor strip on Deck 4 [.]" Dorrian alleges that Carnival "knew or should have known of the dangerous condition" because "on multiple prior occasions to [ ] Plaintiff's fall . . ., other passengers had tripped over the same raised metal floor strip[.]" *Id*. at ¶ 10.

Alleging physical, emotional, and economic injuries, and seeking compensatory damages, Dorrian filed an Amended Complaint against Carnival.[1] The Amended Complaint is broken down into two negligence counts: Count I is for "Failure to

[1] Plaintiff amended her original complaint after Defendant filed its initial motion to dismiss [ECF No. 9].

Maintain" and Count II is for "Duty to Warn."

Carnival filed a motion to dismiss, Plaintiff filed a response and Carnival filed a reply. [ECF Nos. 16; 20; 21]. United States District Judge Kathleen M. Williams referred the motion to the Undersigned for a report and recommendations. [ECF No. 17].

Carnival's motion is based on Plaintiff's failure to: (1) adequately allege that Carnival was on notice of the purported dangerous condition; and (2) plausibly allege any breach of duty.

For the reasons outlined below, the Undersigned **respectfully recommends** that Judge Williams **grant** the motion and **dismiss** the Amended Complaint (albeit **without** prejudice and with **leave** to file a second amended complaint).

I. Factual Background (*i.e.*, Plaintiff's Allegations)

The following allegations concern Count I, "Failure to Maintain":

> 8. On or about August 15, 2023, at approximately 3:30 PM, [ ] Plaintiff, MARGUERITE DORRIAN, tripped and fell on a raised metal floor strip on Deck 4, suffering severe injuries including a fracture dislocation of her left shoulder.
>
> 9. That at all times pertinent, [ ] Defendant, CARNIVAL, had a duty to use reasonable care under the circumstances, in the maintenance of the VENEZIA, for the safety of its passengers, specifically [ ] Plaintiff, MARGUERITE DORRIAN, including hallways such as the hallway on Deck 4.
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> 10. That on multiple prior occasions to [ ] Plaintiff's fall of August 15th, 2023, other passengers had tripped over the same metal floor strip which caused [ ] Plaintiff to fall, such that [ ] Defendant, CARNIVAL, knew or should have known of the dangerous condition which existed on Deck 4. After Plaintiff's fall and during that time she was on the ground and then

being attended to by medical personnel, she was seen by numerous passengers who were walking in that area. A number of those passengers posted that they saw [ ] Plaintiff on the ground or being attended to by medical personnel, and that they had witnessed a number of other passengers who had tripped on the metal strip or had tripped themselves.

11. That [ ] Defendant, CARNIVAL, breached its duty of care to [ ] Plaintiff and was negligent in that [ ] Defendant, CARNIVAL, by and through its personnel, negligently maintained the Deck 4 hallway placing a raised metal strip in the hallway such as a to cause a tripping hazard, and/or failing to inspect said area to correct said hazardous condition, so that [ ] Plaintiff, MARGUERITE DORRIAN, fell, in breach of its duty to provide a reasonably safe hallway for passengers to walk on.

12. That as a direct and proximate result of the negligence of [ ] Defendant, [ ] Plaintiff, MARGUERITE DORRIAN, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a known or unknown previously existing condition. The losses are either permanent or continuing in nature and [ ] Plaintiff will continue to suffer the losses in the future.

[ECF No. 13, ¶¶ 8–12].

The following allegations concern Count II, "Duty to Warn":

14. On or about August 15, 2023, at approximately 3:30 PM, [ ] Plaintiff, MARGUERITE DORRIAN, tripped and fell on a raised metal floor strip on Deck 4, suffering severe injuries including a fracture dislocation of her left shoulder.

15. That at all times pertinent, [ ] Defendant, CARNIVAL, had a duty to use reasonable care under the circumstances, for the safety of the passengers of the VENEZIA, including Plaintiff, MARGUERITE DORRIAN, to warn them of dangers, including hallways such as the hallway on Deck 4.

16. That on multiple prior occasions to [ ] Plaintiff's fall of August 15th, 2023, other passengers had tripped over the same metal floor strip which caused [ ] Plaintiff to fall, such that [ ] Defendant, CARNIVAL, knew or

> should have known of the dangerous condition which existed on Deck 4. After Plaintiff's fall and during that time she was on the ground and then being attended to by medical personnel, she was seen by numerous passengers who were walking in that area. A number of those passengers posted that they saw [ ] Plaintiff on the ground or being attended to by medical personnel, and that they had witnessed a number of other passengers who had tripped on the metal strip or had tripped themselves.
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> 17. That at all times pertinent hereto, [ ] Defendant, CARNIVAL, had a duty to warn passengers, including [ ] Plaintiff, of the tripping hazard caused by the raised metal strip contained in the hallway on Deck 4, where other passengers had tripped prior to [ ] Plaintiff's fall. The raised metal strip was a tripping hazard and [ ] Defendant's failure to warn by placing signs or illuminating strips around the metal strip left passengers unaware of the danger presented by the raised metal strip.
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> 18. That as a direct and proximate result of the negligence of [ ]Defendant, [ ] Plaintiff, MARGUERITE DORRIAN, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a known or unknown previously existing condition. The losses are either permanent or continuing in nature and [ ] Plaintiff will continue to suffer the losses in the future.

Id. at 14–18.

II. Applicable Legal Standards and Analysis

To survive a motion to dismiss under Rule 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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). 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.* (citing *Twombly*, 550 U.S. at 556). The standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S. at 555).

"The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

On a motion to dismiss, "the court must accept all factual allegations in a complaint **as true** and take them in the light most favorable to plaintiff." *Dusek v. JPMorgan Chase & Co.*, 832 F.3d 1243, 1246 (11th Cir. 2016) (emphasis added).

Federal Rule of Civil Procedure 8(a) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." It does not "require that a plaintiff specifically plead every element of a cause of action." *Balaschak v. Royal Caribbean Cruises, Ltd.*, No. 09-21196, 2009 WL 8659594, at *6 (S.D. Fla. Sept. 14, 2009) (citing *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001), which, in turn, cited Jack H. Friedenthal, et al., Civil Procedure, § 5.7 (2d ed. 1993) for the view that "[w]hat the pleader need not do is worry about the particular form of the statement or that it fails to allege a specific fact to cover every element of the substantive law involved.").

To properly plead a claim for negligence under the General Maritime Law of the United States, a plaintiff must allege 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." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012).

To survive a motion to dismiss, a plaintiff must plead sufficient facts to support each element of her direct liability negligence claims (as opposed to vicarious liability), including that the defendant had "actual or constructive notice of [a] risk-creating condition," at least where the risk is one commonly encountered on land and not clearly linked to nautical adventure. *See Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022); *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 212 (2022).

In *Newbauer*, the Eleventh Circuit affirmed a district court's granting of a cruise ship operator's motion to dismiss when the court found that Newbauer failed to provide any factual allegations to support her claim that Carnival had actual or constructive notice of the hazard which allegedly caused her injury. The Court explained when notice exists and how it could be established:

> Actual notice exists when the defendant knows about the dangerous condition, and constructive notice exists where "the shipowner ought to have known of the peril to its passengers." [*Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)]. A plaintiff "can establish constructive notice with evidence that the 'defective condition exist[ed] for a sufficient period of time to invite corrective measures.'" [*Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019)] (alteration in original) (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988)). "Alternatively, a plaintiff can establish constructive notice with evidence of substantially similar incidents in which 'conditions substantially similar to the occurrence in question must have caused the prior accident.'" *Id.* (quoting *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661–62 (11th Cir. 1988)).

26 F.4th at 935.

The *Newbauer* plaintiff cruise-passenger alleged she was injured when she slipped and fell on a wet, slippery transitory substance on the cruise ship's Lido deck. The passenger filed suit against the cruise ship operator, alleging that it negligently failed to maintain the area and/or warn her of the condition.

In dismissing Newbauer's claims, the district court found that "[n]one of the [p]laintiff's allegations suggest Carnival was on constructive notice, let alone actual notice, of the hazard complained of because the [p]laintiff's complaint fails to satisfy applicable federal pleading standards under Federal Rule 8 and the *Iqbal*/*Twombly* standard." *Newbauer v. Carnival Corp*., No. 20-23757-CIV, 2021 WL 723164, at *2 (S.D. Fla. Feb. 24, 2021), *aff'd*, 26 F.4th 931 (11th Cir. 2022). In affirming the district court's decision, the Eleventh Circuit similarly concluded that the passenger "failed to include any **factual** allegations that were sufficient to satisfy the pleading standard set forth in *Iqbal* and *Twombly* such that it is facially plausible that Carnival had actual or constructive notice of the dangerous condition." *Newbauer*, 26 F.4th at 935 (emphasis added).

In *Fawcett v. Carnival Corp*., the district court found that the plaintiff cruise-passenger successfully alleged that the cruise ship operator had notice of the dangerous condition because the complaint included prior similar incidents that:

> identifie[d] numerous slip-and-fall events, including "fall incidents on wet flooring in the Lido Marketplace dining area on the Lido Deck" of the *Breeze* — a vessel of the same class as the *Magic* — and slip and fall incidents

> specifically on "wet or slippery areas of the Lido Deck" of the *Magic*. (*Id*. ¶¶ 18–19, 26–27). [The] [p]laintiff also lists specific dates and cites cases associated with these incidents. (*See id*. ¶¶ 19, 27). These factual allegations push [the] [p]laintiff's claims beyond mere conclusory recitals. *See Green v. Carnival Corp*., 614 F. Supp. 3d 1257, 1263–65 (S.D. Fla. 2022) (finding the plaintiff adequately pleaded notice where he alleged 15 prior substantially similar incidents).

682 F. Supp. 3d 1106, 1111 (S.D. Fla. 2023).

Here, Plaintiff's Amended Complaint does not properly allege notice with enough specificity because there is *no* specificity. She merely states that "a number of" other passengers mentioned in some type of a "post" that they had either tripped or witnessed others tripping on the same metal strip. She does not allege how long that dangerous condition existed before she encountered it. She does not allege facts demonstrating that Carnival knew of these purported observations or experiences by other passengers (who later posted about what they supposedly saw or experienced themselves).

These are not factual allegations from which notice may be inferred. Rather, they are threadbare allegations that do not allege specific facts suggesting how Carnival knew or should have known of the specific dangerous condition alleged.

Without more, Plaintiff's allegations are merely conclusory. Her allegations make "inferential leap[s]" that are "too great" for this Court to follow. *Holland*, 50 F.4th at 1096 (holding that "the inferential leap from Holland's premise -- that the staircase is highly visible and well-trodden -- to his conclusion -- that the hazard existed for a sufficient length of time – [was] too great").

For example, Plaintiff wants the Court to accept as true her allegation that Carnival was on notice of the dangerous condition because other passengers say in posts that they had tripped over the same metal strip -- without including any basic information about *when* those incidents occurred, *whether (and how)* those incidents were reported, *who* was involved, *when* (specifically) the posts were issued and *what* information was posted. These sorts of barebones and conclusory allegations are roundly condemned in the Eleventh Circuit. *Foley v. Carnival Corp*., No. 23-cv-23025, 2024 WL 361189, at *5 (S.D. Fla. Jan. 31, 2024) ("[The] [p]laintiff's statements that [a] defendant had notice of the dangerous condition because of the 'length of time' it existed and because of the 'high traffic nature of the Lido Deck,' with nothing more, are insufficient to allege notice." (quoting *Fawcett*., 682 F. Supp. 3d at 1110)).

Plaintiff argues that her Amended Complaint alleges plausible facts that support her claims. [ECF No. 20, p. 4]. She includes a footnote in her response to Carnival's motion to dismiss with alleged comments from a Facebook group page related to her incident. *Id*. However, she fails to include any factual support providing those comments and to establish their relevance. Without this additional information, the Undersigned is unable to determine whether those comments were: (1) actually made by other *Venezia* passengers; (2) made by real people (as opposed to bots); (3) accurate; and (4) relevant. Because if the *Venezia* Facebook group page is available to the public, then *anyone* with a Facebook account can comment and say whatever they please.

As Carnival correctly highlights, Plaintiff failed to include the alleged facts related to the Facebook posting **in her Amended Complaint** and that the Court's review is limited to the four corners of her Amended Complaint. *Bruhl v. Price WaterhouseCoopers Int'l*, No. 03-23044-CIV-MARRA, 2007 WL 997362, at *4 (S.D. Fla. Mar. 27, 2007) ("Plaintiffs are certainly aware that when a motion to dismiss is based on failure to state a claim, the Court must either limit itself to the allegations within the pleading[.]") (citing Fed. R. Civ. P. 12(b); *Universal Express, Inc. v. U.S. S.E.C.*, No. 04-20481-CV-AJ, 2006 WL 1004381, *1 (11th Cir. 2006); *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (review of facial challenges is limited to the four corners of the complaint)).

The Undersigned additionally notes that the Amended Complaint contains a "Failure to Warn" count but includes no language detailing how (or even plainly stating that) the raised metal floor strip was not an open and obvious danger. Motions to dismiss a failure to warn count are properly granted when a plaintiff fails "to allege that any danger was not open and obvious[.]" *Spall v. NCL (Bahamas) Ltd.*, 275 F. Supp. 3d 1345, 1349 (S.D. Fla. 2016); (quoting *Lapidus v. NCL Am. LLC*, 924 F. Supp. 2d 1352, 1356 (S.D. Fla. 2013)). *See also Navarro v. Carnival Corp.*, No. 19-21072-CIV, 2020 WL 1307185, at *2 (S.D. Fla. Mar. 19, 2020) (holding that a plaintiff must sufficiently "allege that the risk creating condition was not open and obvious").

In addition, Carnival's dismissal motion contends that Plaintiff failed to adequately allege a breach of duty, but Plaintiff failed to respond to that argument.

Plaintiff's failure to respond to a legal argument has consequences: the Court will conclude that she abandoned her claim or conceded that Carnival's argument is correct. *See Jones v. Bank of Am., N.A.*, 564 F. App'x 432, 434 (11th Cir. 2014); *See also Naval Logistic, Inc. v. M/V Family Time*, No. 23-22379, 2024 WL 3691535 (S.D. Fla. Aug. 6, 2024) ("When a party fails to respond to an argument or otherwise address a claim, the Court deems such an argument or claim abandoned."); *MSC Trading, S.A. v. Delgado*, No. 22-cv-20075, 2024 WL 3564584 (S.D. Fla. July 29, 2024) (same).

III. Conclusion

The Undersigned **respectfully recommends** that Judge Williams **grant** Carnival's motion to **dismiss** and dismiss the Amended Complaint, albeit **without prejudice** and with **leave** to amend.

IV. Objections

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with the District Judge. Each party may file a response to the other party's objection within fourteen (14) days of the objection. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of

justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED in Chambers, in Miami, Florida, August 26, 2024.

Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable Kathleen M. Williams
All Counsel of Record