

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No.: 1:24-cv-24428-WILLIAMS/GOODMAN

D.S.,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

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**REPORT AND RECOMMENDATIONS ON MOTION TO DISMISS**

In this maritime personal injury action, Defendant Carnival Corporation ("Defendant" or "Carnival") filed a motion to dismiss Plaintiff D.S.'s ("Plaintiff") First Amended Complaint ("FAC"). [ECF No. 15].<sup>1</sup> Plaintiff filed a response in opposition, and Defendant filed a reply. [ECF Nos. 21; 26]. United States District Judge Kathleen M Williams referred the motion to the Undersigned. [ECF No. 16].

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<sup>1</sup> Plaintiff filed her Complaint [ECF No. 1] and Defendant filed its motion to dismiss [ECF No. 12]. The next day, presumably in response to the motion, Plaintiff voluntarily filed her FAC. [ECF No. 13]. In her response [ECF No. 21, p.4] to Carnival's motion to dismiss her FAC, Plaintiff noted that "Carnival suggested in its motion to dismiss D.S.'s first complaint that allegations such as these would be sufficient, yet Carnival refiled its motion to dismiss even after D.S. included these allegations in her amended complaint."

For the reasons stated below, the Undersigned **respectfully recommends** that the District Court **grant in part and deny in part** Defendant's motion to dismiss **without prejudice** and with leave to file a second amended complaint.

## **I. Background**

Plaintiff's FAC against Defendant is for damages related to physical injuries she allegedly sustained after falling down a flight of stairs aboard the Carnival *Radiance* as a result of being overserved alcohol. [ECF No. 13]. These physical injuries include: a concussion; headaches; a possible traumatic brain injury; back injuries; tailbone injuries; bruising; pain; and extreme mental anguish. *Id.* at ¶ 16.

She also alleges that due to Defendant's misrepresentations to her about the contents of video from closed circuit television surveillance ("CCTV"), she lost the ability to sue for sexual assault. *Id.* at ¶ 57. Plaintiff contends that the misrepresentations (*i.e.*, a Carnival employee falsely told her at 2:50 a.m. that the CCTV did not show anything harmful happening to her from 11:45 p.m. to 12:20 a.m.), which caused her to not request a rape kit. This, in turn, allegedly prevented her from "being able to know if she had been sexually assaulted." [ECF No. 13, ¶¶ 14–15].

Defendant filed a motion to dismiss Plaintiff's FAC because it says Plaintiff fails to: (1) identify a specific negligent employee; (2) allege that Defendant's employees knew or should have known that she was too intoxicated to receive another drink; (3) sufficiently plead that a crew member misrepresented or omitted a material fact; (4) include a

plausible allegation of inducement; and (5) request available damages (if any). [ECF No. 15].

Plaintiff's FAC contains two counts: Over-Service of Alcohol by Carnival's Employees (Vicarious Liability), and Intentional Misrepresentation by a Carnival Employee (Vicarious Liability). In her core allegations, she alleges that:

13. D.S.'s incident began on or about January 5, 2024, and continued through January 6, 2024, while she was a fare paying passenger on CARNIVAL's vessel, the *Radiance*.

14. On or about January 5, 2024, between approximately 2:58 p.m. and 11:37 p.m., CARNIVAL crew members at the Blue Iguana Tequila, at the Serenity Bar, at the Red Frog Rum Bar, at the *Radiance* Casino Bar, at the Winners Luck Bar, and at "Bar @ Sportsquare," served D.S. approximately fourteen alcoholic beverages continually within a span of approximately eight hours and thirty-nine minutes. She was swaying, stammering, slurring her speech, had alcohol on her breath, and was acting belligerent while she was in plain view of the crew members serving her these alcoholic beverages, and was visibly intoxicated such that each of CARNIVAL's crew members should not have continued to serve alcohol to her while she was exhibiting these visible signs of intoxication, and each of these crew members were negligent for continuing to serve her alcoholic beverages in her intoxicated state. Due to her intoxicated state that was caused by this over-service of alcohol, between approximately January 5, 2024, at 11:45 p.m.[,] and January 6, 2024, at 12:20 a.m., D.S. stumbled while attempting to walk down a set of stairs, and suffered a severe fall down these stairs, which was observed by another passenger who happened to be nearby when she fell.

15. Then, on January 6, 2024, at 2:50 a.m., after D.S. was brought to the security office on the ship, a ship security officer, who was a CARNIVAL crew member, intentionally misrepresented to D.S. that she could be seen on CCTV for the entire duration of time discussed above, and that nothing harmful happened to her during this time. However, this representation was clearly false, as D.S. had fallen down the stairs as previously described, and this crew member knew this was false since D.S. had bruises on her

body that were clearly visible to this crew[ ]member, and which were clearly from a fall. As a result, D.S. declined to have a rape kit administered, thereby preventing her from being able to know if she had been sexually assaulted. In fact, there are a number of gaps of time not shown on CCTV, including a large gap of time between approximately January 5, 2024, at 11:45 p.m. and January 6, 2024, at 12:20 a.m., and as a result, D.S. has been unable to know whether she suffered a sexual assault during the unaccounted-for period of time, which she suspected had happened to her and which she had a concern had happened to her, and which she communicated to the medical center's staff and security officer, causing her pain, suffering, extreme mental anguish, and other injuries.

16. As a result, D.S. sustained severe injuries, including, but not limited to, a concussion, headaches, a possible traumatic brain injury, back injuries, tailbone injuries, bruising, pain, suffering, extreme mental anguish, and other injuries.

17. CARNIVAL's crew[ ]members onboard the *Radiance*, including the staff that over-served alcohol to D.S. and medical staff were in regular full-time employment of CARNIVAL and/or the ship, as salaried crew[ ]members.

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25. CARNIVAL knew, or should have known, that the risk and actual occurrences of falls were magnified and/or influenced by factors such as the design and installation of the subject areas and the vicinity, the unfamiliarity of passengers with its cruise ships, the passenger's lack of knowledge of the prior, severe incidents and/or injuries which CARNIVAL knew to be associated with the presence and consumption of alcohol aboard vessels which reduced passengers' judgment, and the general party atmosphere fostered aboard the vessel by CARNIVAL, which deliberately markets all you can drink beverage packages.

26. CARNIVAL deliberately makes alcohol available to passengers and crew aboard its vessels, despite knowing that alcohol is banned for safety reasons aboard vessels operated by the U.S. Government and military and aboard U.S. flagged merchant ships.

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30. CARNIVAL, quite to the contrary, deliberately does as much as possible to encourage and facilitate alcohol consumption aboard its vessels.

31. CARNIVAL fully understands and expects that alcohol over-consumption by passengers will result in the diminution of their inhibitions, motor skills, and good judgment, which CARNIVAL, upon information and belief, expects will foster the general party atmosphere that CARNIVAL desires, and promotes aboard its vessels, so as to enhance some of its other revenue producing shipboard activities such as gambling and the purchase of more alcohol.

32. CARNIVAL thus knew that the presence of intoxicated passengers aboard its vessels, including in the subject areas and the vicinity, was common.

33. As a result of CARNIVAL's scienter as described, CARNIVAL knew or should have known of the risk of the subject incident, which was foreseeable.

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35. CARNIVAL served its all-inclusive "CHEERS!" alcoholic drink package to D.S., which in-and-of itself encourages its passengers to over-consume alcohol, and its crew[ ]members served approximately fourteen alcoholic beverages in the hours leading up to her fall.

36. As a result of consuming these alcoholic beverages[,] D.S. became intoxicated, and D.S.'s state of intoxication was and/or should have been readily observable to any reasonable person, including CARNIVAL's crew[ ]members.

37. Alternatively, if D.S. did not become intoxicated, D.S. became impaired and/or her ability to perceive her surroundings were otherwise adversely affected, and this impaired/diminished condition was and/or should have been readily observable to any reasonable person, including CARNIVAL's crew[ ]members.

38. D.S. was continuously and intentionally served alcohol by

CARNIVAL's crew[ ]members numerous times, well past the point where a person would become visually intoxicated.

39. CARNIVAL is vicariously liable for the acts of its crew[ ]members who continued to serve D.S. alcoholic beverages past the point where she became visually intoxicated.

40. The crew[ ]members that over-served alcohol to D.S., as discussed previously, were agents of CARNIVAL for the following reasons:

- a. All of CARNIVAL's crew[ ]members, including the subject crew[ ]members, were the staff and/or employees of CARNIVAL, or were CARNIVAL'[s] agents, apparent agents, and/or servants; and/or
- b. These staff, employees, and/or agents were subject to the right of control by CARNIVAL; and/or
- c. These staff, employees, and/or agents were acting within the scope of their employment or agency; and/or
- d. CARNIVAL acknowledged that these staff, employees, and/or agents would act on CARNIVAL'[s] behalf, and they accepted the undertaking.

41. CARNIVAL is vicariously liable for its crew[ ]members' over-service of alcohol to D.S.

42. These crew[ ]members' breaches were the cause in-fact of D.S.'s great bodily harm in that, but for CARNIVAL's crew[ ]members' breach, D.S.'s incident and injuries would not have occurred.

43. These crew[ ]members' breaches proximately caused D.S. great bodily harm in that the incident that occurred was a foreseeable result of the crew[ ]member's breach.

44. As a result of these crew[ ]members' over-service of alcohol, D.S. has suffered severe bodily injuries resulting in pain and suffering, disability, scarring, disfigurement, mental anguish, lost wages, lost earning capacity, loss of independence, loss of capacity for the enjoyment of life, expense of

hospitalization, medical and nursing care and treatment, punitive damages, and loss of the value of D.S.'s vacation, cruise, and transportation costs.

45. The losses are permanent and/or continuing in nature.

46. D.S. has suffered these losses in the past and will continue to suffer such losses [sic] in the future.

47. The conduct of CARNIVAL's crew[ ]members referenced above constituted an intentional tort. Moreover, CARNIVAL encouraged and ratified the acts of these crew[ ]members though [sic] means that include, but are not limited to, its culture of promoting crew[ ]members who serve as much alcohol to passengers as possible, as this makes more money for CARNIVAL. Accordingly, an award of punitive damages to D.S. is warranted in this case, in addition to the compensatory damages referenced above and below.

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49. As the owner of a ship in navigable waters, CARNIVAL owed to all who are on board the [s]hip the duty of exercising reasonable care under the circumstances of matters related to the subject incident. This duty applies to the representations that CARNIVAL's crew[ ]member made to D.S. that she could be seen on CCTV for the entire duration of time discussed previously, and that nothing harmful had happened to her during this duration of time.

50. In fact, CARNIVAL's crew[ ]member knew that there were a number of gaps of time not shown on CCTV, including a large gap of time between approximately January 5, 2024, at 11:45 p.m. and January 6, 2024, at 12:20 a.m. Moreover, CARNIVAL's crew[ ]member knew that his representation that nothing harmful had happened to her was clearly false, as D.S. had fallen down the stairs as previously described, and D.S. had bruises on her body that were clearly visible to this crew[ ]member, and which were clearly from a fall.

51. As a result, D.S. has been unable to know whether she had in fact been a victim of sexual assault, as she suspected had happened to her, during the unaccounted-for period, causing her pain, suffering, extreme mental anguish, and other injuries.

52. As a direct and proximate cause of the reliance upon the intentional misrepresentations by CARNIVAL's crew[ ]member, D.S. declined to have a rape kit administered.

53. The crew[ ]member that made these misrepresentations to D.S., as discussed previously, was an agent of CARNIVAL for the following reasons:

a. All of CARNIVAL's crew[ ]members, including the subject crew[ ]member, were the staff and/or employees of CARNIVAL, or were CARNIVAL'[s] agents, apparent agents, and/or servants; and/or

b. These staff, employees, and/or agents were subject to the right of control by CARNIVAL; and/or

c. These staff, employees, and/or agents were acting within the scope of their employment or agency; and/or

d. CARNIVAL acknowledged that these staff, employees, and/or agents would act on CARNIVAL'[s] behalf, and they accepted the undertaking.

54. CARNIVAL is vicariously liable for its crew[ ]member's misrepresentations.

55. This crew[ ]member's breaches as [sic] the cause in-fact of D.S.'s great bodily harm in that, but for CARNIVAL's crew[ ]member's breach, D.S.'s incident and injuries would not have occurred.

56. This crew[ ]member's breach proximately caused D.S. great harm in that the injuries that occurred was [sic] a foreseeable result of the crew[ ]member's breach.

57. As a result of this crew[ ]member's misrepresentations, D.S. has lost the ability to sue CARNIVAL for sexual assault, suffered severe injuries resulting in pain and suffering, disability, mental anguish, lost wages, lost earning capacity, loss of capacity for the enjoyment of life, care and treatment, punitive damages, and loss of the value of D.S.'s vacation, cruise, and transportation costs.

58. The losses are permanent and/or continuing in nature.

59. D.S. has suffered these losses in the past and will continue to suffer such losses [sic] in the future.

60. The conduct of CARNIVAL's crew[ ]member referenced above constituted an intentional tort. Moreover, CARNIVAL encouraged and ratified the acts of this crew[ ]member though [sic] means that include, but are not limited to, its culture of promoting crew[ ]members who discourage lawsuits through falsely informing passengers that they were not injured. Moreover, sexual assaults have to be reported pursuant to the Cruise Vessel Security and Safety Act, becoming a permanent part of CARNIVAL's statistics, and public, and for this reason, CARNIVAL also encourages non-reporting of sexual assaults. Accordingly, an award of punitive damages to D.S. is warranted in this case, in addition to the compensatory damages referenced above and below.

[ECF No. 13, ¶¶ 13–17; 25–26; 30–47; 49–60].

## II. Legal Standard

In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court must take as true all well-pleaded facts in the plaintiff's complaint and all reasonable inferences drawn from those facts. *Jackson v. Okaloosa Cnty., Fla.*, 21 F.3d 1531, 1534 (11th Cir. 1994). To state a claim for relief, a pleading must contain: “(1) a short and plain statement of the grounds for the court's jurisdiction[;] . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought[.]” Fed. R. Civ. P. 8(a). Thus, “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)).

### III. Analysis

“Personal-injury claims by cruise ship passengers, complaining of injuries suffered at sea, are within the admiralty jurisdiction of the district courts.” *Caron v. NCL (Bahamas), Ltd.*, 910 F.3d 1359, 1365 (11th Cir. 2018) (citing *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 587–88, 111 S. Ct. 1522, 1524, 113 L. Ed. 2d 622 (1991)). “Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters.” *Guevara v. NCL (Bah.) Ltd.*, 920 F.3d 710, 720 (citing *Keefe v. Bah. Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989)).

“In analyzing a maritime tort case, [courts] rely on general principles of negligence law.” *Van Deventer v. NCL Corp. Ltd.*, No. 23-CV-23584, 2024 WL 836796, at \*4 (S.D. Fla. Feb. 28, 2024) (quoting *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012)). “To prevail on a negligence 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.’” *Guevara*, 920 F.3d at 720 (quoting *Chaparro*, 693 F.3d at 1336).

The duty of care owed by an owner of a ship in navigable waters while its passengers are on board the vessel is a duty of exercising reasonable care under the circumstances. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959); *Everett v. Carnival Cruise Lines*, 912 F.2d 1355, 1358 (11th Cir. 1990). This standard “requires, as a prerequisite to imposing liability, that the carrier have had actual or

constructive notice of [a] risk-creating condition, at least where, as here, the menace is one commonly encountered on land and not clearly linked to nautical adventure.” *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). *See generally* *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1167 (11th Cir. 2021) (“[A] passenger cannot succeed on a maritime negligence claim against a shipowner unless that shipowner had actual or constructive notice of a risk-creating condition.”).

But a cruise passenger plaintiff need **not** establish actual or constructive notice by the cruise ship operator of a risk-creating condition when the claim is based on *vicarious* liability (*i.e.*, negligence by specific cruise ship crew members, employees, or other agents, acting within the scope of their employment). *Yusko*, 4 F.4th at 1169–70.

Here, the FAC's allegations are solely based on vicarious liability. Therefore, in order to proceed under these vicarious liability claims, Plaintiff **does not need to** plead or establish actual or constructive notice.

Defendant makes arguments related to Counts I and II. I will address them on a count-by-count basis and will then analyze whether punitive damages are available to Plaintiff.

*Count I: Over-Service of Alcohol by Carnival's Crew, Staff, Employees, and/or Agents,  
Based on Vicarious Liability*

Defendant argues that Count I should be dismissed because Plaintiff failed to: identify a negligent employee; allege that a Carnival employee knew or should have known that she was too intoxicated to receive another drink; and sufficiently allege

causation. [ECF No. 15].

Defendant contends that Plaintiff, under a respondent superior theory, “is required to identify which Carnival crew member over-served her.” *Id.* at 3. Defendant follows with “a blanket statement that a crew member over-served Plaintiff does not meet the *Holland* standards requiring identification of a specific crew member’s negligent action.” *Id.* (citing *Holland v. Carnival Corp.* 50 F.4th 1088, 1097 (11th Cir. 2022)).

Plaintiff argues that she sufficiently identified each of the relevant crew members because she specified the bars where they were working. [ECF No. 21, p. 3]. She additionally states that “under the law in this [D]istrict,” she has adequately specified the crew members who over-served her alcohol. *Id.* at 4.

The Undersigned agrees with Plaintiff that she is not now required to specify the names of each employee who served her. Plaintiff relies on multiple cases, including *Mclean v. Carnival Corp.*, No. 22-23187, 2023 WL 372061 (S.D. Fla. Jan. 24, 2023), where the plaintiff alleged that she was injured while walking up a gangway because the cruise line’s employees, “who were operating the gangway[,] improperly aligned the gangway with the ship . . . .” *Id.* at \*1 (internal quotation marks omitted). The *Mclean* Court found that the plaintiff’s allegations contained enough information to plead a claim for vicarious liability because:

The [p]laintiff identifies here a **specific action by crew members of Carnival’s**—“misaligning the gangway”—that allegedly caused her injury. While the [p]laintiff does not specifically name the crew[ ]members, there is no requirement in the law that she do so, and it would seem

fundamentally unfair to require the [p]laintiff to remember the names of each of the crew[ ]members involved in the incident simply to file a complaint. **There were, undoubtedly, specific crew[ ]members involved in the incident that the [p]laintiff alleges.** The [p]laintiff's allegations are not general allegations of a failure to maintain a safe premises. *See Yusko*, 4 F.4th at 1167. These specific allegations are sufficient to plead a claim for vicarious liability rather than Carnival's direct negligence.

*Id.* at \*3 (emphasis added).

Here, Plaintiff sufficiently identifies the alleged negligent employees because her FAC lists the bars that they work at, states that these bartenders over-served her (a specific action), and alleges that being over-served led to her incident. Therefore, Defendant's motion should be **denied** as to this first argument. However, the Undersigned acknowledges that these same allegations, without more actual specific evidence and additional details, will likely *not* survive against a summary judgment challenge.

Defendant also argues that Plaintiff fails to allege that an employee knew or should have known that she was intoxicated because she "uses conclusory allegations that crew members had notice of Plaintiff's intoxicated state." [ECF No. 15, p. 4 (citing [ECF No. 13, ¶¶ 36-37])]. It cites *Hodson v. MSC Cruises, S.A.*, No. 20-22463-CIV, 2021 WL 3639752, at \*13 (S.D. Fla. Aug. 2, 2021), *report and recommendation adopted*, No. 20-22463-CIV, 2021 WL 3634809 (S.D. Fla. Aug. 16, 2021) and states that Plaintiff is obligated to identify an employee and show how that employee was negligent while acting within the scope of employment. *Id.*

Plaintiff disagrees and states that her FAC sufficiently alleges that Defendant's employees knew or should have known that she was intoxicated. [ECF No. 21, p. 5 (quoting [ECF No. 13, ¶ 14 ("She was swaying, stammering, slurring her speech, had alcohol on her breath, and was acting belligerent while she was in plain view of the crew[ ]members serving her these alcoholic beverages, and was visibly intoxicated[.]"))]].

She cites *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23323-CIV, 2011 WL 6727959, at \*4 (S.D. Fla. Dec. 21, 2011) and *Broberg v. Carnival Corp.*, 303 F. Supp. 3d 1313, 1317 (S.D. Fla. 2017) in arguing that her allegations are sufficient to raise her right to relief above the speculative level. [ECF No. 21, p. 4]. However, as Defendant states, neither of these two cases are parallel to this one because neither include allegations based on vicarious liability.

In *Doe*, the plaintiff was sexually assaulted while on a cruise and sued the cruise line under a negligence theory, alleging that:

[T]he series of events just described was captured on the ship's video surveillance system. She further alleges that by installing surveillance cameras, the defendant affirmatively undertook a duty to assign sufficient personnel to continuously monitor the video cameras and that the defendant breached that duty by failing to assign sufficient trained staff to adequately monitor the cameras in this instance. The plaintiff also alleges that the defendant should have warned her about the risks of crime by third parties on the cruise, and specifically of sexual battery, because another passenger was sexually assaulted two weeks earlier on the same ship. The plaintiff further alleges that the defendant did not exercise reasonable care in over-serving her alcohol.

2011 WL 6727959, at \*1.

The language Plaintiff highlights from *Doe* is inapplicable here because it discusses whether the *Doe* plaintiff sufficiently alleged a breach of the cruise line's duty of care, **not** whether she sufficiently alleged that the cruise line's employees knew or should have known that she was intoxicated. *Broberg* is equally as unhelpful because it fails to detail **which facts** are sufficient enough to support a claim for over-serving alcohol to a passenger. *Broberg*, 303 F. Supp. 3d at 1317.

Moreover, *Broberg* concerned a cruise passenger who had multiple alcoholic drinks, began climbing the outside railing, fell backwards into the water and presumably drowned. The ship's camera system recorded her fall overboard but crew members did not become aware of it for several hours, the ship did not initiate a search and rescue operation and the captain did not report the fall to the United States Coast Guard until fifteen hours after the incident (and eight hours after Mrs. Broberg's travel companions notified crew members that she was missing). The *Broberg* Court held that the plaintiff's complaint stated a plausible claim for negligence by over-serving her, failing to detect and report her fall for fifteen hours, *and* failing to initiate a prompt search and rescue when she fell overboard.

Plaintiff's FAC, unlike what Defendant argues, includes enough information to sufficiently and plausibly allege that Defendant's employees knew or should have known that she was intoxicated. *See* [ECF No. 13, ¶ 14]. In its initial motion to dismiss, Defendant made this same argument and stated, "[t]here are no allegations regarding Plaintiff

stumbling, sleeping at a bar, slurring her words, or exhibiting any other intoxicated-like behaviors.” [ECF No. 12, p. 4]. Although her FAC cures that issue by adding those very allegations, Defendant is still making the **same** argument.

The Undersigned rejects Defendant’s argument. The Court should **deny** Defendant’s motion on the “notice” argument because Plaintiff’s FAC plausibly alleges that she exhibited the relevant behavior in front of Defendant’s employees (who therefore knew or should have known that she was too intoxicated to be served another alcoholic beverage).<sup>2</sup>

Defendant’s final challenge to Count I concerns causation. It argues that the FAC “is devoid of any allegations that plausibly suggest proximate causation. At no point does Plaintiff allege what the ‘incident’ was, much less how over-service caused her incident.” [ECF No. 15, p. 5]. It contends that even if Plaintiff had alleged that she fell down the

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<sup>2</sup> Plaintiff states that she went to six bars over the course of more than eight hours. [ECF No. 13, ¶ 14]. She alleges that she had approximately fourteen drinks within that time frame. *Id.* However, certain sales of liquor (*i.e.*, first or second drink) cannot be labeled as “over-serving,” and, without a better timeline, the Undersigned is unable to determine *when* Plaintiff began exhibiting the intoxicated behavior she describes in the FAC (and therefore cannot ascertain *who* -- which specific crewmember -- would have seen it).

It is not reasonable to think that she exhibited that kind of behavior at every bar unless she was over served while at the *first* bar. While this is currently not an issue barring her from moving forward in this case, it will likely need to be factored into a summary judgment motion evaluation.

stairs due to being over-served, it still would not pass the *Iqbal/Twombly* standard because she does not remember falling. *Id.*

Plaintiff contends that she sufficiently alleged that “**under the law in this district**”<sup>3</sup> the over-service of alcohol caused her injuries and highlights the following from her FAC:

**Due to her intoxicated state that was caused by this over-service of alcohol**, between approximately January 5, 2024, at 11:45 p.m.[,] and January 6, 2024, at 12:20 a.m., D.S. **stumbled while attempting to walk down a set of stairs, and suffered a severe fall down these stairs**, which was observed by another passenger who happened to be nearby when she fell.

[ECF No. 21, p. 6 (quoting [ECF No. 13, ¶ 14]) (bold and underline emphasis in original; bold emphasis added)].

She then quotes language from *L.A. by & through T.A. v. Royal Caribbean Cruises, Ltd.*, No. 17-CV-23184, 2018 WL 3093548, at \*4 (S.D. Fla. June 22, 2018) to illustrate how the plaintiff there sufficiently alleged facts that plausibly established that the harm the plaintiff suffered was foreseeable. *Id.* at 5. However, that quoted language dealt with holding a cruise ship liable under a negligence theory for a third-party’s criminal acts—

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<sup>3</sup> Plaintiff repeatedly states this throughout her response to Defendant’s motion. [ECF No. 21]. However, approximately less than half of the cases she cites to are binding. The cases Plaintiff mostly relies on are district court rulings, which are **not** “the law” in the Eleventh Circuit. *See Ga. v. President of the United States*, 46 F.4th 1283, 1304 (11th Cir. 2022) (“[A] district court’s decisions do not bind other district courts, other judges on the same court, or even the same judge in another case.”) (citing *Camreta v. Greene*, 563 U.S. 692, 709, n.7 (2011)); *Fox v. Acadia State Bank*, 937 F.2d 1566, 1570 (11th Cir. 1991) (“A district court is not bound by another district court’s decision, or even an opinion by another judge of the same district court, but a district court in this circuit is bound by this [circuit] court’s decisions.”).

not for holding a cruise ship vicariously liable for its employees' liability for over-serving her and her fall down the stairs (something not related to a third-party criminal act). Defendant's reliance [ECF No. 15, p. 5] on *Klein v. Carnival Corp.*, No. 21-22662-CIV, 2022 WL 910636, at \*2 (S.D. Fla. Mar. 29, 2022) is unhelpful for the same reason.

Plaintiff highlights, but does not address, Defendant's argument that she failed to "allege what the 'incident' was, much less how over-service caused her incident." [ECF No. 21, p. 6 (quoting [ECF No. 15, p. 5])]. The FAC alleges that two events happened (or possibly happened) after she was over-served: (1) she fell down a set of stairs; and (2) she may have been sexually assaulted. She never clarifies whether the "incident" includes both events or just one. This confusion is heightened by her reliance on *L.A.*, which dealt with negligence for a third-party's criminal acts. But, as previously stated, her fall down the stairs as a result of being too intoxicated is *not* related to a third-party's criminal act.

Therefore, Plaintiff did not sufficiently allege causation because her FAC fails to appropriately define what the "incident" was and how Defendant's employees' actions caused it.

At bottom, the Undersigned **respectfully recommends** that the Court **grant in part** Defendant's motion with regards to Count I because of Plaintiff's failure to sufficiently allege causation. However, the Court should **deny in part** Defendant's motion concerning its argument on Plaintiff's identification of its employees and "notice," because the Amended Complaint sufficiently alleges both of those elements.

Count II: Intentional Misrepresentation by Carnival's Crew, Staff, Employees, and/or Agents,  
Based on Vicarious Liability

Defendant argues that Count II should be dismissed because Plaintiff failed to: adequately plead that an employee misrepresented or omitted a material fact; include a plausible allegation of inducement; and sufficiently allege how she suffered a detriment as a result of the intentional misrepresentation. [ECF No. 15].

Defendant first argues that Plaintiff failed to meet the four elements necessary to plead intentional misrepresentation. The Eleventh Circuit has explained that:

A fraudulent misrepresentation claim under Florida law has four elements: **“(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation.”** *Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010) (citation omitted and emphasis deleted).

*In re Harris*, 3 F.4th 1339, 1349 (11th Cir. 2021) (emphasis added).<sup>4</sup>

Carnival contends that Plaintiff failed to meet the first element because she does not meet the heightened pleading standard under Fed. R. Civ. P. 9(b). Plaintiff disagrees and quotes the following elements necessary to meet Rule 9(b)'s heightened standard:

(1) precisely what statements were made in what documents or oral representations or what omissions were made, and (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and (3) the content of such statements and the manner in which they misled the plaintiff, and (4) what the defendants obtained as a consequence of the fraud.

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<sup>4</sup> General admiralty law does not provide for a misrepresentation cause of action, therefore the Court must look to state law. *Smith v. Carnival Corp.*, 584 F. Supp. 2d 1343, 1351 (S.D. Fla. 2008).

[ECF No. 21, p. 6 (quoting *Dome v. Celebrity Cruises Inc.*, 595 F. Supp. 3d 1212, 1223 (S.D. Fla. 2022))]. She argues that paragraphs 15<sup>5</sup> and 57<sup>6</sup> from her FAC sufficiently meet those elements. *Id.* The Undersigned agrees that her Amended Complaint has sufficiently

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<sup>5</sup> Paragraph 15 states:

Then, on January 6, 2024, at 2:50 a.m.[.] after D.S. was brought to the security office on the ship, a ship security officer, who was a CARNIVAL crewmember intentionally misrepresented to D.S. that she could be seen on CCTV for the entire duration of time discussed above, and that nothing harmful happened to her during this time. However, this representation was clearly false, as D.S. had fallen down the stairs as previously described, and this crewmember knew this was false since D.S. had bruises on her body that were clearly visible to this crew member, and which were clearly from a fall. As a result, D.S. declined to have a rape kit administered, thereby preventing her from being able to know if she had been sexually assaulted.

[ECF No. 13, ¶ 15 (emphasis added)].

<sup>6</sup> Paragraph 57 states:

As a result of this crewmember's misrepresentations, D.S. has lost the ability to sue CARNIVAL for sexual assault, suffered severe injuries resulting in pain and suffering, disability, mental anguish, lost wages, lost earning capacity, loss of capacity for the enjoyment of life, care and treatment, punitive damages, and loss of the value of D.S.'s vacation, cruise, and transportation costs.

*Id.* at ¶ 57 (emphasis added).

alleged the where, when, who, and how a crew member misrepresented or omitted a material fact.<sup>7</sup>

Defendant then contends that Plaintiff failed to plausibly allege inducement and that she suffered a detriment as a result of the alleged misrepresentation. Plaintiff argues that she alleged how the misrepresentation led “her to believe that nothing bad happened to her, causing her to decline being tested with a rape kit.” [ECF No. 21, p. 7]. She also stated that she sufficiently alleged that Defendant gained from the crew member’s misrepresentation because it prevented her from suing it for sexual assault. *Id.* The Undersigned disagrees as to both points.

**First**, Plaintiff alleges that the crew member knew that something harmful had happened to her because of her bruises which “were clearly visible” and “clearly from a fall.” [ECF No. 13, ¶ 50]. However, she fails to sufficiently allege how “the representor[] [knew] that the representation is false[.]” *In re Harris*, 3 F.4th at 1349. The Eleventh Circuit explained that to meet the second element for intentional misrepresentation:

The Florida Supreme Court has held that the scienter element of fraudulent misrepresentation can be established in a number of ways, and not all of them involve knowledge of falsity: “The knowledge, by the maker of the representation, of its falsity, . . . can be established by either one of the three

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<sup>7</sup> Defendant argues that Plaintiff did not identify “an actual misrepresentation, much less the time or place or even who disclosed the false statement.” [ECF No. 15, p. 6]. But paragraph 15 from the Amended Complaint *explicitly* states the when (January 6, 2024 at 2:50 a.m.), where (the security office on the ship), and who elements (a ship security officer told her that nothing harmful happened to her that evening (an alleged misrepresentation due to Plaintiff’s injuries)). [ECF No. 13, ¶ 15].

following phases of proof: (1) [t]hat the representation was made with actual knowledge of its falsity; (2) without knowledge either of its truth or falsity; [or] (3) under circumstances in which the person making it ought to have known, if he did not know, of its falsity.” *Joiner v. McCullers*, 158 Fla. 562, 28 So. 2d 823, 824 (1947). See also *Dancey Corp. v. Borg-Warner Corp.*, 799 F.2d 717, 719 (11th Cir. 1986) (same).

*Id.* (emphasis added).

Here, the FAC does not meet any of those standards because Plaintiff’s allegations are merely conclusory and insufficiently supported. For example, she wants the Court to assume that because she was bruised, which she describes as “clearly visible”, that this crew member **must** have seen them and therefore *intentionally* made misrepresentations to Plaintiff. However, she fails to create a bridge between her assumption and her conclusion.<sup>8</sup> This “inferential leap” is “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.”).

**Second**, Plaintiff argues that she suffered a detriment because the crew member’s misrepresentation prevented her from suing Defendant for sexual assault. [ECF No. 21, p. 7]. However, as Defendant highlights, the FAC also alleges that this misrepresentation caused her to suffer severe physical injuries and disability. [ECF No. 15, p. 8 (citing [ECF

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<sup>8</sup> Were the bruises on her arms and was she wearing a sleeveless outfit? Were they on her thighs or calves (and was she wearing shorts or a short skirt?); Did she need to ask for ice or first aid to help with the bruises? Did she talk to the crewmember about her bruises? None of these details are in the FAC.

No. 13, ¶ 57)). Additionally, paragraph 55 from the FAC states that the misrepresentation is “the cause in-fact” of her “great bodily harm”, and that, but for the misrepresentation Plaintiff’s “incident and injuries would not have occurred.” [ECF No. 13, ¶ 55].

The Undersigned finds that Plaintiff’s allegations related to reliance and her injuries are too vague and conclusory for the Court to determine causation. How could the alleged misrepresentation have *caused* her fall, when she fell *before* she spoke with the crew member? How could the crew member’s misrepresentation actually cause her **physical** injuries? How was she injured when the crew member offered to administer a rape kit? As pled, the allegations are not plausible.

At bottom, the Undersigned agrees with Defendant that Plaintiff failed to meet all of the necessary elements for misrepresentation. *See In re Harris*, 3 F.4th at 1349.

Plaintiff additionally fails to sufficiently discuss in her opposition memorandum that the crew member’s alleged misrepresentation was intentional, instead of negligent.<sup>9</sup>

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<sup>9</sup> The Undersigned notes that Plaintiff’s response quoted the *Dome* elements for a misrepresentation of fact and represented them as if they applied to her *intentional* misrepresentation claim. [ECF No. 21, p. 6 (quoting *Dome*, 595 F. Supp. 3d at 1223)]. However, the elements she quotes relate to **negligent** misrepresentation claims, instead of intentional misrepresentations. *See Dome*, 595 F. Supp. 3d at 1223 (“Because **negligent misrepresentation** is a fraud-based claim, it is subject to the heightened pleading standard of Federal Rule of Civil Procedure 9(b) . . .”).

Plaintiff did not discuss whether the elements are the same for intentional and negligent misrepresentations of fact. **They are not.** *In re Harris*, 3 F.4th at 1349–50 (allegation that defendant “was negligent in making certain representations because he knew **or** should have known they were false” satisfied the elements of negligent misrepresentation under Florida law but did not allege an intentional

As outlined in the footnote, Florida law's requirements for an intentional misrepresentation claim are different than a negligent misrepresentation claim. Although the FAC's second count is entitled "**Intentional** Misrepresentation by Carnival's Crew, Staff, Employees, and/or Agents, Based on Vicarious Liability," (emphasis added), the actual allegations are conclusory and potentially inadequate. For example, the FAC focuses on the allegation that the crew member knew his representation was clearly false because "D.S. had fallen down the stairs as previously described," but there is no allegation that the fall was, in fact, captured on CCTV.

Combined with Plaintiff's failure to discuss applicable law, Count II's allegations are problematic. Because Plaintiff will (if Judge Williams were to adopt this Report and Recommendations) be filing a second amended complaint, Plaintiff will have the opportunity to clarify her allegations of intentional misrepresentation. For now, however, the Court should **grant in part** the motion to dismiss Count II (for Plaintiff's failure to sufficiently allege an intentional misrepresentation of fact).

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misrepresentation"). Defendant made the same mistake when it relied on *Smith*, 584 F. Supp. 2d at 1351, because the *Smith* Court applied the negligent misrepresentation elements from *Baggett v. Electricians Loc. 915 Credit Union*, 620 So. 2d 784, 786 (Fla. 2d DCA 1993), not the elements for intentional/fraudulent misrepresentation claims.

Whether Punitive Damages are Available

Defendant argues that Plaintiff is barred from seeking punitive damages because she failed to show intentional misconduct by Defendant or that Defendant authorized or ratified its employee's tortious conduct. [ECF No. 15, p. 8].

The United States Supreme Court and the Eleventh Circuit (in a non-binding opinion) have previously explained that punitive damages are not available in personal injury-based passenger maritime claims. See *The Dutra Grp. v. Batterton*, 588 U.S. 358 (2019); *Eslinger v. Celebrity Cruises, Inc.*, 772 F. App'x 872 (11th Cir. June 28, 2019) ("Our court has held that plaintiffs may not recover punitive damages . . . for personal injury claims under federal maritime law.")<sup>10</sup> (internal citations omitted) (citing *In re Amtrak Sunset Ltd. Train Crash, etc.*, 121 F.3d 1421, 1429 (11th Cir. 1997)).

Some courts in our district have previously stricken a plaintiff-passenger's claims for punitive damages under similar scenarios. See *Adams v. NCL (Bahamas) Ltd.*, Case No. 20-20438-Civ-Ungaro, ECF No. 18 (S.D. Fla., Apr. 6, 2020) (finding no valid claim for punitive damages against cruise ship operator where the plaintiff alleged two crew members drugged her drink without her knowledge and then raped and/or sexually assaulted her in a stateroom because the allegations did not rise to the level of "intentional

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<sup>10</sup> Because the Eleventh Circuit did not select *Eslinger* for publication, it is not binding precedent. It may, however, be "cited as persuasive authority." See Fed. R. App. P. 32.1 and 11th Cir. R. 36-2.

misconduct” necessary for an “exceptional circumstance” in which punitive damages may be awarded); *see also Doe v. NCL (Bahamas) Ltd.*, Case No. 19-21486-CIV-Altonaga/Goodman, ECF No. 45 (S.D. Fla. Aug. 29, 2019) (striking punitive damages claim pursuant to the defendant’s motion, which relied on *Eslinger*, concerning a minor cruise ship passenger who alleged she had been sexually assaulted by the defendant’s cabin steward).<sup>11</sup>

On the other hand, other courts within our district have held, in post-*Eslinger* decisions, that “punitive damages *may* be available under maritime law upon a showing of the defendant’s intentional misconduct.” *Hindsman*, 2020 WL 13369050, at \*1 (emphasis added). The *Hindsman* Court held that,

[t]o demonstrate intentional misconduct for the purposes of recovering punitive damages, plaintiffs must show that “the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.”

*Id.* at \*2 (citing *Tang v. NCL (Bahamas) Ltd.*, No. 20-cv-20967, 2020 WL 3989125, at \*3 (S.D. Fla. July 14, 2020) (quoting *Mee Indus. v. Dow Chem. Co.*, 608 F.3d 1202, 1220 (11th Cir. 2010))).

Moreover, as noted, the *Hindsman* Court acknowledged that it was receding from its earlier decision in *Doe v. NCL (Bahamas) Ltd.*, No. 19-cv-21486, where it struck a

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<sup>11</sup> But Chief District Judge Cecilia M. Altonaga later receded from this ruling in *Hindsman v. Carnival Corp.*, No. 19-23536, 2020 WL 13369050, \*1, n.2 (S.D. Fla. Aug. 6, 2020).

punitive damages prayer for relief in a maritime personal injury case.

There are some courts within our district which have permitted punitive damages in maritime personal injury complaints, and the permitted exception applies **only** when *intentional* wrongdoing can be demonstrated. See *McIlwain v. Royal Caribbean Cruises, Ltd.*, No. 22-cv-24025, 2023 WL 4117109 at \*6 (S.D. Fla. June 20, 2023) (citing cases); see also *Escutia v. Carnival Corp.*, No. 23-24230, 2024 WL 1931703 at\*18 (S.D. Fla. Mar. 13, 2024) (“[T]here are some Courts in our District which have allowed punitive damages claims in personal injury cases under maritime law after *Eslinger*, but they have done so only in ‘exceptional circumstances’ upon a showing of ‘intentional misconduct’ by a defendant.”).

At bottom, there is “**an intra[-]district split** on whether punitive damages are allowed in maritime cases.” *McIlwain*, 2023 WL 4117109, at \*6 (emphasis added). The *Mcilwain* Court explained that “part of the rationale” [for reading *Eslinger* narrowly to apply only to loss of consortium claims and accepting punitive damages claims where intentional wrongdoing can be shown] is that ‘the Supreme Court had recognized the ‘general rule that punitive damages were available at common law,’ which rule ‘extended to claims arising under federal maritime law.’”

Setting aside the observation that punitive damages may not be available under *Eslinger*, which is not actually “the law” in our Circuit (as it is an unpublished opinion), pre-*Eslinger* authority could lead to the same conclusion here, as Defendant contends that

Plaintiff has not pled conduct on its part which would warrant punitive damages.<sup>12</sup>

Under the pre-*Eslinger* line of case law, a plaintiff may recover punitive damages only “where the plaintiff’s injury was due to the defendant’s ‘wanton, willful, or outrageous conduct.’” *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620, 2011 WL 3703329 at \*7 (S.D. Fla. Aug. 23, 2011) (quoting *Atl. Sounding Co., Inc. v. Townsend*, 557 U.S. 404 (2009)); *Cf. Norwegian Cruise Lines, Ltd. v. Zareno*, 712 So. 2d 791, 794 (Fla. 3d DCA 1998) (in order to award punitive damages in a maintenance and cure case against the shipowner, the plaintiff must show “substantive evidence of willful, callous, or egregious conduct” by the shipowner).

A court should strike or dismiss a punitive damages request when the substance of the allegations does not demonstrate that the alleged misconduct rises to the level necessary to support the remedy. *See Baker v. Carnival Corp.*, No. 06-21527, 2006 WL 3519093, at \*5 (S.D. Fla. Dec. 5, 2006) (striking the plaintiff’s request for punitive damages against a cruise ship operator in a rape case because the allegations did not rise to the then applicable standard).

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<sup>12</sup> Defendant also argues that Plaintiff failed to sufficiently allege that it “authorized or ratified a crew member(s)’ tort.” [ECF No. 15, p. 13 (citing *Haq v. United Airlines, Inc.*, No. 93-2248-CIV-Marcus, 1996 WL 426814, at \*7 (S.D. Fla. Apr. 16, 1996)]. This argument is rejected because *Haq* is an unpublished district court opinion that does not apply standards related to admiralty issues. Plaintiff’s reliance on *Broberg* and *L.A.* is also rejected because neither are directly on point. For example, *Broberg* addressed punitive damages related to the Death on the High Seas Act and *L.A.* involves claims for different causes of action.

Here, the issue is whether Defendant's employees alleged conduct -- over-serving Plaintiff and intentionally misrepresenting what was shown on the CCTV footage -- meets the intentional misconduct standard for a punitive damages claim. *See Noon v. Carnival Corp.*, No. 18-23181-Civ-Williams/Torres, 2019 WL 3886517, at \*13 (S.D. Fla. Aug. 12, 2019) (concluding that "[the] [p]laintiff may only recover punitive damages upon a showing of intentional misconduct"); *Simmons v. Royal Caribbean Cruises, Ltd.*, 423 F. Supp. 3d 1350, 1353–54 (S.D. Fla. 2019) (applying intentional misconduct standard to claim for punitive damages). *See also Hall v. Carnival Corp.*, 536 F. Supp. 3d 1306 (S.D. Fla. 2021).

Plaintiff argues that the following paragraphs from her Amended Complaint meet the necessary standard:

47. The conduct of CARNIVAL's crew[ ]members referenced above constituted an intentional tort. Moreover, CARNIVAL encouraged and ratified the acts of these crew[ ]members though [sic] means that include, but are not limited to, its culture of promoting crew[ ]members who serve as much alcohol to passengers as possible, as this makes more money for CARNIVAL. Accordingly, an award of punitive damages to D.S. is warranted in this case, in addition to the compensatory damages referenced above and below.

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60. The conduct of CARNIVAL's crew[ ]member referenced above constituted an intentional tort. Moreover, CARNIVAL encouraged and ratified the acts of this crew[ ]member though [sic] means that include, but are not limited to, its culture of promoting crew[ ]members who discourage lawsuits through falsely informing passengers that they were not injured. Moreover, sexual assaults have to be reported pursuant to the Cruise Vessel Security and Safety Act, becoming a permanent part of CARNIVAL's statistics, and public, and for this reason, CARNIVAL also encourages non-reporting of sexual assaults. Accordingly, an award of punitive damages to

D.S. is warranted in this case, in addition to the compensatory damages referenced above and below.

[ECF No. 21 (citing [ECF No. 13, ¶¶ 47, 60])].

A court should strike or dismiss a punitive damages request when the substance of the allegations does not demonstrate that the alleged misconduct rises to the level necessary to support the remedy. *See Baker v. Carnival Corp.*, No. 06-21527, 2006 WL 3519093, at \*5 (S.D. Fla. Dec. 5, 2006) (striking the plaintiff's request for punitive damages against a cruise ship operator in a rape case because the allegations did not rise to the then applicable standard).

Similar to the *McIlwain* Court, the Undersigned "need not join in the dispute" over the issue of whether punitive damages are *ever* available in a cruise ship personal injury case because "even if precedent does not bar punitive damages here, the [a]mended [c]omplaint fails to make the necessary allegations." 2023 WL 4117109, at \*6. To "demonstrate 'intentional misconduct' for the purposes of recovering punitive damages" Plaintiff must show that "the defendant had **actual** knowledge of the wrongfulness of the conduct and the **high probability** that injury or damage to the claimant would result and, despite that knowledge, **intentionally** pursued that course of conduct, resulting in injury or damage." *Bonnell v. Carnival Corp.*, 13-CV-22265, 2014 WL 12580433, at \*4 (S.D. Fla. Oct. 23, 2014) (emphasis added) (citing *Mee Indus.*, 608 F.3d at 1220).

Even if true, then Plaintiff's allegations are too vague and conclusory to support her conclusions on both counts. Neither count meets the intentional misconduct elements

because both fail to sufficiently allege the necessary elements. Therefore, the Undersigned **respectfully recommends** that Judge Williams **strike** that prayer for relief. *See, e.g., Simmons v. Royal Caribbean Cruises, Ltd.*, 423 F. Supp. 3d 1350 (S.D. Fla. 2019) (finding that punitive damages sought by a plaintiff who fell off a rock wall should be stricken from the complaint because the “plaintiff simply has not stated a valid claim for punitive damages under maritime law”).

If the Court permits Plaintiff an opportunity to submit a second amended complaint (as the Undersigned is recommending here), then she may again attempt to assert a punitive damages claim “if [she] has a good faith basis to allege the necessary facts to support a punitive damages claim because of exceptional circumstances of intentional wrongdoing.” *Escutia*, 2024 WL 19931703, at \*19 (emphasis supplied). However, as explained in *Escutia*, “any punitive damages claim would need to be consistent with Rule 11 and meet the exceptional circumstances threshold required by those district courts which still permit punitive damages claims after *Eslinger*.” *Id.*

#### **IV. Conclusion**

For the above-mentioned reasons, the Undersigned **respectfully recommends** that the District Court **grant in part and deny in part** Defendant's Motion to Dismiss **without prejudice and with leave to amend**.

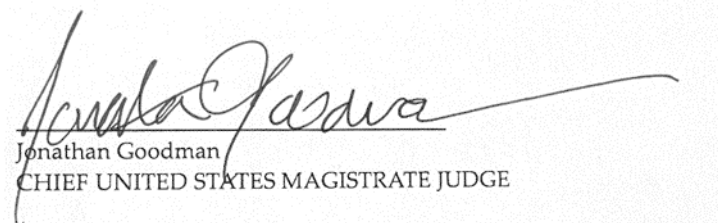
If Plaintiff files a second amended complaint, then any conclusions that form the basis for her claims must be supported by specific, applicable, non-conclusory factual

allegations. *See* Fed. R. Civ. P. 11(b).

**V. Objections**

The parties will have 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 Judge Williams. Each party may file a response to the other party's objection within 14 days of the objection. Failure to timely file objections shall bar the parties from a *de novo* determination by Judge Williams 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, March 17, 2025.



Jonathan Goodman  
CHIEF UNITED STATES MAGISTRATE JUDGE

**Copies furnished to:**

The Honorable Kathleen M. Williams  
All Counsel of Record