UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:25-cv-20664-KMM

LINDA FRANCIS,

Plaintiff,

v.

NCL (BAHAMAS) LTD.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant NCL (Bahamas) Ltd.'s ("Defendant" or "NCL") Motion to Dismiss Plaintiff's First Amended Complaint. ("Motion" or "Mot.") (ECF No. 9). Plaintiff Linda Francis ("Plaintiff") filed a response. ("Resp.") (ECF No. 14). Defendant filed a reply. ("Reply") (ECF No. 15). The Motion is now ripe for review. As set forth below, the Court GRANTS the Motion.

I. FACTUAL BACKGROUND[1]

On or about August 17, 2024, Plaintiff was on board the NCL *Breakaway* vessel as a fare paying passenger. Am. Compl. ¶¶ 6–12. Plaintiff "had an appointment with Ship employees to assist Plaintiff in getting into the pool[,]" and while Plaintiff was "walking to the pool for her appointment, Plaintiff tripped and fell due to an elevated portion of the pool deck that was not

[1] The following facts are taken from Plaintiff's First Amended Complaint ("Am. Compl.") (ECF No. 8) and are accepted as true for purposes of ruling on the Motion to Dismiss. *See MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1302 (11th Cir. 2022). They are construed in a light most favorable to Plaintiff, the non-moving party.

open and obvious to Plaintiff." *Id.* ¶¶ 12–13. From what the Court can tell, Plaintiff brings one claim for negligence. *Id.* ¶¶ 16–18.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The purpose of Rule 8(a)(2) "is to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 974 (11th Cir. 2008) (internal citation and quotation marks omitted).

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "To 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) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

III. DISCUSSION

Defendant argues that the First Amended Complaint should be dismissed because: (1) it is a shotgun pleading; and (2) Plaintiff has failed to sufficiently allege that NCL had notice of the allegedly dangerous condition. Mot. at 1. Plaintiff disputes Defendant's arguments and avers that the First Amended Complaint is not a shotgun pleading and that Plaintiff need not allege knowledge when Defendant created the dangerous condition. *See generally* Resp. The Court addresses Defendant's arguments in turn.

Defendant first argues that the First Amended Complaint is a "shotgun" pleading. *See* Mot. at 2–3. Complaints that violate Rule 8(a)(2) or Rule 10(b) of the Federal Rules of Civil Procedure are often and widely referred to as shotgun pleadings. *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015); *Lampkin-Asam v. Volusia Cty. Sch. Bd.*, 261 Fed. Appx. 274, 277 (11th Cir. 2008); *Weinstein v. City of N. Bay Vill.*, 977 F. Supp. 2d 1271, 1285 (S.D. Fla. 2013). Courts of this Circuit have consistently found the use of such pleadings an impediment to the efficient administration of the judicial system. *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1125–28 (11th Cir. 2014) (discussing "the persistence of the shotgun pleading problem"); *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279 (11th Cir. 2006) ("Such pleadings divert already stretched judicial resources into disputes that are not structurally prepared to use those resources efficiently.").

In *Weiland*, the Eleventh Circuit sought to provide clarity and consistency to the issue of shotgun pleadings by outlining the four categories where these pleadings often fall within:

> Though the groupings cannot be too finely drawn, we have identified four rough types or categories of shotgun pleadings. The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type, at least as far as our published opinions on the subject

> reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third 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. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

792 F.3d at 1321–23. "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323.

Here, Plaintiff's First Amended Complaint is the second and/or third type of shotgun pleading outlined in *Weiland*. *See id.*; *see also Coney v. RCCL Caribbean Cruises, Ltd.*, No. 1:22-cv-24003-JEM (S.D. Fla. July 27, 2023) (ECF No. 36); *Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334, 1337 (S.D. Fla. 2012). The First Amended Complaint states that Plaintiff brings a claim for "negligence" under a section entitled "Claims for Damages," but directly above in the "General Allegations" section, Plaintiff alleges that Defendant breached its duty to Plaintiff in five separate ways. Am. Compl. ¶¶ 16–18. These ways include Defendant allegedly: (1) "Failing to properly design the elevated portion of the pool deck where Plaintiff fell so that it was reasonably safe for Plaintiff"; (2) "Failing to properly design the elevated portion of the pool deck where Plaintiff fell so that it was open and obvious to Plaintiff"; (3) "Failing to inspect the Ship and warn Plaintiff of unseen, hidden, or latent dangers"; (4) "Failing to keep the Ship deck reasonably safe for Plaintiff"; and (5) "Failing to assist Plaintiff in getting to the pool knowing her physical condition." *Id.* ¶ 16(a)-(e).

These alleged "failures" raise distinct theories of liability, and Plaintiff fails to separate each claim for relief into a different count. *See generally id.*; *see also Ortiz v. Carnival Corp.*, No.

20-24838-CIV, 2020 WL 6945958, at *1 (S.D. Fla. Nov. 25, 2020) ("Each distinct theory . . . must be asserted independently and with corresponding supporting factual *allegations*" (citations omitted)). Additionally, the formatting of the First Amended Complaint make it unclear what facts are connected to what cause of action and whether Plaintiff only intends to bring one cause of action or multiple. *See id.* Accordingly, the Court dismisses Plaintiff's First Amended Complaint without prejudice as a shotgun pleading.

The Court will permit Plaintiff one more opportunity to amend her Complaint. *See Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-Civ, 2012 WL 2049431, at *5–6, n.2 (S.D. Fla. June 5, 2012) (allowing the plaintiff to amend his complaint to "separately allege an independent count" for various theories of liability that were lumped into a single maritime negligence claim). As such, in case Plaintiff decides to file a Second Amended Complaint, the Court briefly addresses Defendant's second argument that Plaintiff's First Amended Complaint fails to adequately allege notice. *See* Mot. at 3–5.

Plaintiff's negligence claims arise under general maritime law "because the alleged tort was committed aboard a ship sailing in navigable waters." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). "In analyzing a maritime tort case, [the Court] relies on general principles of negligence law." *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (internal quotations omitted). At the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly 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." *See id.*; *see also Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019).

In the maritime context, a plaintiff must also demonstrate that "the [shipowner] [] had actual or constructive notice of [a] risk-creating condition." *Keefe*, 867 F.2d at 1322. Actual notice exists when the Defendant knows about the dangerous condition. *See Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022). In contrast, constructive notice exists where "the shipowner ought to have known of the peril to its passengers" because the "hazard [had] been present for a period of time so lengthy as to invite corrective measures." *Keefe*, 867 F.2d at 1322. Constructive notice may also exist where a plaintiff demonstrates that substantially similar incidents occurred under substantially similar conditions. *Guevara*, 920 F.3d at 720.

In response to Defendant's argument, Plaintiff states that she "need not allege knowledge when Defendant created the dangerous condition[,]" because the "caselaw distinguishes that dangerous conditions created by Defendant in a design or building flaw or otherwise need not be pointed out to Defendant by Plaintiff[,] [because] Defendant in those circumstances has actual or constructive knowledge because it created the dangerous condition in the first place." Resp. at 3. Plaintiff cites to three cases from this District to support her argument: *McLean v. Carnival Corp.*, No. 12-cv-24295, 2013 WL 1024257, at *4 (S.D. Fla. Mar. 14, 2013); *Rockey v. Caribbean Cruise, Ltd.*, No. 99-cv-708, 2001 WL 420993, at *4–5 (S.D. Fla. Feb. 20, 2001); and *Whelan v. Caribbean Cruise Ltd.*, No. 1:12–cv–22481, 2013 WL 5583970 (S.D. Fla. Aug. 14, 2013). *Id.*

Plaintiff is correct that courts in this district, including in these cases, have held that "[w]here it is alleged . . . that defendant created an unsafe or foreseeably hazardous condition, a plaintiff need not prove notice in order to show negligence." *See, e.g.*, *McLean v. Carnival Corp*, 2013 WL 1024257 at *4. However, in the present case, Plaintiff's First Amended Complaint does not allege that Defendant created an unsafe or foreseeable hazardous condition. *See generally* Am. Compl. The First Amended Complaint merely states that Defendant "fail[ed] to properly design

the elevated portion of the pool deck." *Id.* ¶ 16(a)-(b). Accordingly, the Court finds that Plaintiff has also failed to adequately allege notice.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's First Amended Complaint (ECF No. 9) is GRANTED. Plaintiff's First Amended Complaint (ECF No. 8) is DISMISSED WITHOUT PREJUDICE. Plaintiff may amend her Complaint to address the aforementioned deficiencies by May 8, 2025.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of April 24, 2025.

K. M. Moore
K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record