UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-60083-WPD

LINDA MCQUEEN,

Plaintiff,

v.

MSC CRUISES, S.A.

Defendant.

_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant MSC Cruises, S.A. ("Defendant")'s Motion to Dismiss [DE 11], filed herein on March 17, 2025. The Court has carefully considered the Motion [DE 11], Plaintiff's Response, filed March 31, 2025 [DE 12], and Defendant's Reply, filed April 7, 2025 [DE 13] and is otherwise fully advised in the premises.

I. BACKGROUND

Plaintiff brings this negligence action against Defendant MSC Cruises, S.A.[1] Plaintiff alleges that on December 18, 2023, Plaintiff fractured her left arm "when a wet, sticky, contaminated and/or hazardous floor surface caused her to fall in the common area" on Defendant's cruise ship. [DE 1] ¶ 11. Plaintiff's Complaint contains just one count of negligence. *Id.* at pp. 3–4.

[1] MSC Cruises S.A. states that it is not and was never known as MSC Cruises S.A. CO., nor was MSC Cruises S.A. formerly known as MSC Cruises (USA) Inc.

II. STANDARD OF LAW

To adequately plead a claim for relief, Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," to "give fair notice of what the . . . claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating *Conley*, 355 U.S. at 41). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include any theory on which the plaintiff may recover. *See Linder v. Portocarrero*, 963 F. 2d 332, 334–36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F. 2d 43 (5th Cir. 1967)).

Nevertheless, the Court need not take allegations as true if they are merely "threadbare recitals of a cause of *action's* elements, supported by mere conclusory statements . . ." *Iqbal*, 556 U.S. at 663. In sum, "a district court weighing a motion to dismiss asks 'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" *Twombly*, 550 U.S. at n. 8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984)).

III. DISCUSSION

Defendant moves to dismiss on the grounds that Plaintiff has not alleged Defendant was on notice of the hazardous condition. The Court agrees and finds the Complaint is subject to dismissal.

"As a preliminary matter, we note that the substantive law applicable to this action, which involves an alleged tort committed aboard a ship sailing in navigable waters, is the general maritime law, the rules of which are developed by the federal courts." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989) (citing *Kermarec v. Compagnie Generale Transatlantique,* 358 U.S. 625, 628 (1959) (citation omitted)).

To state a negligence claim based on a shipowner's direct liability for its own negligence "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." *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1253 (11th Cir. 2014) (quotation omitted). "With respect to the duty element in a maritime context, 'a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew.'" *Guevara v. NCL (Bahamas) Ltd.,* 920 F.3d 710, 720 (11th Cir. 2019) (quoting *Kermarec*, 358 U.S. at 630). "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. . . the menace is one commonly encountered on land and not clearly linked to nautical adventure.'" *Id.* (quoting *Keefe*, 867 F.2d at 1322).

"Actual notice exists when the defendant knows about the dangerous condition." *Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022) (citations omitted).

"Constructive notice exists where 'the shipowner ought to have known of the peril to its passengers, the hazard having been present for a period of time so lengthy as to invite corrective measures.'" *Id.* (quoting *Keefe*, 867 F.2d at 1322). A plaintiff establishes constructive notice either by alleging the "defective condition exist[ed] for a sufficient period of time to invite corrective measures" or by alleging "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Guevara*, 920 F.3d at 720 (quotations omitted).

In this action, Plaintiff makes the following allegation regarding notice:

> "At all times floor surfaces upon the vessel and other similar vessels in the same material hereto, Defendant knew or should have known of the dangerous condition that caused Plaintiff to fall. Defendant further had notice of repeated safety issues giving rise to the propensity for falls on similar areas and class as the subject vessel and each subclass as well as fleetwide from prior incident"

[DE 1 ¶ 18]. Defendant argues this allegation is insufficient to establish constructive notice. The Court agrees. Plaintiff's allegations that Defendant "knew or should have known" of the dangerous condition is exactly the kind of "threadbare recital[] of a cause of action's elements" that does not suffice to state a legal claim. *Iqbal*, 556 U.S. at 663. Nor does Plaintiff allege constructive notice by asserting facts that could lead this Court to conclude the condition existed for a "sufficient period of time to invite corrective measures" or facts showing there had been "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Guevara*, 920 F.3d at 720 (quotations omitted).

Plaintiff argues she alleges "eighteen different examples of the Defendant's failure to inspect, maintain, warn, clean and/or monitor the area to which there was a dangerous condition. . . supports Plaintiffs allegation that Defendant had notice." But the supposed "examples" are just more conclusory statements without supporting factual allegations. *See,*

e.g., [DE 1] ¶ 16 (Defendant's "[f]ailure to reasonably clean and/or dry the subject area so as to maintain it in a reasonably clean and/or dry and/or safe condition").

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion [DE 11] is **GRANTED**. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE.** Plaintiff granted one opportunity to file an amended complaint by **April 22, 2025,** that cures the deficiencies identified in this Order. Failure to file an amended complaint will result in the Court dismissing this action and closing this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida this 16th day of April, 2025.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to: Counsel of record