UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:23-cv-24050-KMM

CHERYL WILKERSON,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____ /

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant" or "Carnival") Motion for Summary Judgment. ("Motion" or "Mot.") (ECF No. 88). Plaintiff Cheryl Wilkerson ("Plaintiff") filed a Response in opposition. ("Resp.") (ECF No. 101). Defendant filed a Reply. (ECF No. 134). The Motion is now ripe for review. As discussed below, the Motion is GRANTED IN PART AND DENIED IN PART.

I. BACKGROUND[1]

This is a maritime personal injury action in which Plaintiff seeks to recover damages for injuries she sustained as a result of a slip-and-fall accident while aboard Defendant's cruise ship, *Glory*. *See generally* SAC. Plaintiff alleges that on or about October 26, 2022, she "slipped and fell on a wet gangway on Deck 0 forward portside" while she was disembarking the subject vessel.

[1] The following facts are taken from Plaintiff's Second Amended Complaint ("SAC") (ECF No. 19), Defendant's Statement of Material Facts ("DSMF") (ECF No. 87), Plaintiff's Response to Defendant's Statement of Material Facts ("PSMF") (ECF No. 100), Defendant's Reply Statement of Material Facts ("DRSMF") (ECF No. 133), and a review of the corresponding record citations and exhibits.

DSMF ¶ 2; PSMF ¶ 2. Plaintiff specifically alleges that "'[t]he floor of the gangway was wet and had water on it [.]'" DSMF ¶ 3 (quoting SAC ¶ 19); PSMF ¶ 3. Plaintiff's alleged incident occurred on the main portion of the gangway, and the gangway was a "5 meter long gangway ramp that was manufactured by non-party Finnish Site Engineering-FSE, Ltd." DSMF ¶¶ 10–11; PSMF ¶¶ 10–11. As a result of the fall, Plaintiff claims that she sustained "severe injuries that include, but are not limited to, a complex tear of the anterior horn of her right knee, a midbody region lateral meniscus, injuries to her right knee, pain, suffering, and other serious injuries, which require surger(ies) including, but not limited to, a total knee replacement." SAC ¶ 15. Plaintiff alleges that these injuries have resulted in "pain and suffering, disability, scarring, disfigurement, mental anguish, loss of independence, lost wages, lost earning capacity, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and loss of the value of [Plaintiff's] vacation, cruise, and transportation costs." *Id.* ¶ 40.

Plaintiff commenced the instant Action against Defendant on October 23, 2023. *See generally* (ECF No. 1). In her SAC, Plaintiff asserts three claims against Defendant: (1) negligent failure to remedy (Count I); (2) negligent failure to warn of dangerous condition (Count II); and (3) negligent design, installation, and/or approval of the subject gangway and the vicinity (Count III). *Id.* ¶¶ 22–37. Defendant now moves for summary judgment on all counts. *See generally* Mot.

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248 (1986) (citation omitted). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992) (citation omitted). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

III. DISCUSSION

Defendant argues that it is entitled to summary judgment on all of Plaintiff's claims because: (1) the record is devoid of any evidence of notice; (2) the record is devoid of any evidence that Carnival failed to remedy a dangerous condition; (3) the record is devoid of any evidence that Carnival participated in the design, installation, and/or approval of the subject gangway; and (4)

the record is devoid of any evidence of causation. Mot. at 4–14. In response, Plaintiff argues that: (1) there is abundant evidence of notice; (2) there was a dangerous condition that caused Plaintiff's fall; and (3) there is evidence of Carnival's failure to remedy. *See generally* Resp. The Court addresses each argument in turn, mirroring the Motion's format.

A. Applicable Maritime Negligence Principles

"Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (citing *Keefe v. Bahama 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." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (quoting *Daigle v. Point Landing, Inc.*, 616 F.2d 825, 827 (5th Cir. 1980)). "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). "Each element is essential to Plaintiff's negligence claim and Plaintiff cannot rest on the allegations of [his] complaint in making a sufficient showing on each element for the purposes of defeating summary judgment." *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1236–37 (S.D. Fla. 2006).

"A cruise-ship operator 'is not liable to passengers as an insurer, but only for its negligence.' The mere fact of an accident causing injury is insufficient to establish that a dangerous condition existed." *D'Antonio v. Royal Caribbean Cruise Line, Ltd.*, 785 F. App'x 794, 796 (11th Cir. 2019) (quoting *Keefe*, 867 F.2d at 1322); *see also Miller v. NCL (Bahamas) Ltd.*, No. 1:15-CV-22254-UU, 2016 WL 4809347, at *4 (S.D. Fla. Apr. 6, 2016) ("Generally, ship owners and operators do not owe a heightened or special duty of care to their passengers."). Rather, "[u]nder maritime law, the owner of a ship in navigable waters owes passengers a duty of

reasonable care under the circumstances." *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015) (internal quotation marks and citation omitted).

The duty of reasonable care requires, "as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition." *Keefe*, 867 F.2d at 1322. "In other words, a cruise ship operator's duty is to shield passengers from known dangers (and from dangers that should be known), whether by eliminating the risk or warning of it." *Tesoriero v. Carnival Corp.*, 965 F.3d 1170, 1178 (11th Cir. 2020). Thus, a cruise ship operator's liability often "hinges on whether it knew or should have known about the dangerous condition." *Guevara*, 920 F.3d at 720; *see also D'Antonio*, 785 F. App'x at 797. "The mere fact that an accident occurs does not give rise to a presumption that the setting of the accident constituted a dangerous condition. *Miller*, 2016 WL 4809347, at *4.

Moreover, to establish that the owner of a ship in navigable waters breached its duty of care, a plaintiff must show: "(1) a dangerous condition existed; (2) the vessel's operator had actual notice of the dangerous condition; or (3) if there was no actual notice, that [d]efendant had constructive notice of the dangerous condition for an interval of time sufficient to allow the vessel's operator to implement corrective measures." *Stewart v. Carnival Corp.*, 365 F. Supp. 3d 1272, 1275 (S.D. Fla. 2019) (quoting *Reinhardt v. Royal Caribbean Cruises, Ltd.*, No. 1:12-CV-22105-UU, 2013 WL 11261341, at *4 (S.D. Fla. Apr. 2, 2013)).

"Actual notice exists when the shipowner knows of the unsafe condition." *Lebron v. Royal Caribbean Cruises Ltd.*, 818 F. App'x 918, 920 (11th Cir. 2020) (citing *Keefe*, 867 F.2d at 1322). "A maritime plaintiff can establish constructive notice with evidence that the defective condition existed for a sufficient period of time to invite corrective measures." *Guevara*, 920 F.3d at 720 (cleaned up). "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)).

B. The Record Is Not Devoid of Any Evidence of Notice

First, Defendant argues that there is no evidence establishing that it had actual or constructive notice of the alleged dangerous condition, the wet gangway, which is an essential element for all of Plaintiff's claims. Mot. 4–9. Specifically, Defendant argues that: (1) Plaintiff never saw any alleged substance on the gangway either before or after she fell; (2) Plaintiff does not know where the alleged substance came from or how long the alleged substance, if any, was on the ground of the gangway; and (3) there is no evidence of any substantially similar incidents. *Id.* at 6–9. In response, Plaintiff argues that there is abundant evidence that Carnival had constructive notice because: (1) there were "wet floor signs allegedly in the area"; (2) Carnival's "meeting minutes and corrective measures" show that Carnival had notice; (3) Plaintiff "observed other passengers slipping prior to her incident on the subject gangway, and there were multiple crewmembers within 10-15 feet of the gangway who were close enough to have been able to see this"; (4) the "length of time the liquid was on the gangway"; (5) Plaintiff "has evidence of fourteen (14) prior substantially similar incidents"; and (6) the legal standard for prior substantially similar incidents supports the finding that Carnival had notice. Resp. at 3–20.

Turning to Plaintiff's first argument, Plaintiff argues that Carnival had constructive notice "based on the wet floor signs allegedly in the area." Resp. at 3–6. Specifically, Plaintiff alleges that there were "two wet floor cones" immediately next to the gangway. *Id.* at 3. For support, Plaintiff points to Defendant's Corporate Representative Monica Borcegue's ("Ms. Borcegue") Deposition where she testified that she believes there were two caution cones "near the end of the

gangway on the sides" at the time of Plaintiff's incident. ("Borcegue Dep.") (ECF No. 100-1) at 27. The caution cones read "Caution, wet floor" in English and in Spanish. *Id.* at 27–28. Plaintiff also points to Defendant's Supplemental Answers to Plaintiff's First Set of Interrogatories where Defendant states that "a caution cone was visibly posted at the subject gangway advising passengers that the floor was set. Specifically, the caution cones advised 'CAUTION CUIADO WET FLOOR PISO MOJADO.'" (ECF No. 100-3) at 10.

In *Sorrels v. NCL (Bahamas) Ltd.*, the Eleventh Circuit held that the posting of warning signs is sufficient to demonstrate that the defendant had actual or constructive notice that the subject surface could be slippery when wet. 796 F.3d 1275 (11th Cir. 2015). The court found that the presence of a warning sign, when "viewed in the light most favorable to [plaintiff], is enough to withstand summary judgment as to notice." *Id.* at 1289; *see also Merideth v. Carnival Corp.*, 49 F. Supp. 3d 1090, 1094–95, (S.D. Fla. 2014) (finding constructive notice when a warning was posted in the area where plaintiff was injured); *Esanu v. Oceana Cruises, Inc.*, 49 F. Supp. 3d 1078, 1080–81 (S.D. Fla. 2014) (same). However, "[n]ot all warning signs will be evidence of notice; there must also be a connection between the warning and the danger. *Guevara*, 920 F.3d at 721.

Upon review, the Court finds that there is a sufficient connection between the warning signs and the hazard Plaintiff alleges caused her to fall. Plaintiff alleges that when she "was going down the gangway ramp attached to the ship" she "slipped and fell on the wet and unreasonably slippery gangway ramp." SAC ¶ 13. Defendant does not dispute that there were two warning cones placed "near[,]" the subject gangway and based on the copies of photographs produced by the Parties, the cones were situated at the start or entrance of the subject gangway, seemingly providing a warning for the step up onto the gangway and the gangway itself. *See* Reply at 1;

(ECF No. 100-14). Further, it is undisputed that the warning cones stated in English and Spanish, "Caution, wet floor," and that those warning cones were placed by Defendant. Reply at 1; Borcegue Dep. at 27–28. Nevertheless, Defendant argues that the caution cones were located "near[,]" not on, the subject gangway and that Ms. Borcegue testified that "the language on the cones really didn't have anything to do with the condition of that day. [The warning] is just for the gap between the gangway and the doors." *Id.*; Borcegue Dep. at 28.

However, as noted above, the warning cones at issue stated "Caution, wet floor[,]" and thus a person reading the warning would not conclude that they were placed to signal a gap between the gangway and the doors. *See Bahr v. NCL (Bahamas) Ltd.*, No. 19-CV-22973, 2021 WL 4034575, at *8 (S.D. Fla. Sept. 3, 2021), *clarified on denial of reconsideration*, No. 19-CV-22973, 2021 WL 5038742 (S.D. Fla. Oct. 29, 2021) (holding that placement of warning cones stating "Caution, wet floor" at the end of a gangway ramp that the plaintiff slipped and fell on precluded summary judgment on the issue of notice where the defendant argued the cones were instead used as a "matter of course regardless of environmental conditions," and that the cones were "intended to warn of a change in elevation"). Here, as in *Bahr*, "a reasonable jury could conclude that the warning sign's language applies to the hazard causing the Plaintiff's fall[,]" and Ms. Borcegue's testimony that the cones were instead used to warn for the gap between the gangway and the doors "underscore[s] that there is a genuine issue of material fact with respect to the warning cones and whether they indicate that Defendant had constructive notice in this case." *See id.* (citing *Fylling v. Royal Caribbean Cruises, Ltd.*, No. 18-CV-21953, 2019 WL 8275158, at *3 (S.D. Fla. Dec. 10, 2019), *report and recommendation adopted by* 2020 WL 3266198 (S.D. Fla. Mar. 12, 2020)).

As such, based on the evidence in the record, the Court finds that Plaintiff has sustained her burden of presenting evidence sufficient to create a genuine issue of material fact to withstand summary judgment as to notice as to Count II, negligent failure to warn of a dangerous condition.

In its Reply, Defendant argues that "should the Court determine that the placement of warning signs is evidence of notice, it should be limited to Plaintiff's claim for failure to warn[]" because the wet floor signs have "no application to Plaintiff's claim for negligent failure to remedy." Reply at 2. Accordingly, the Court next considers the Parties' notice arguments as they relate to Count I, negligent failure to remedy, to determine whether there is a genuine issue of material fact that Defendant was on notice of any known danger requiring remedy at the time of Plaintiff's alleged incident.

C. The Record Is Not Devoid of Any Evidence that Carnival Failed to Remedy a Dangerous Condition

Defendant argues that it is entitled to summary judgment as to Count I because the record is devoid of any evidence that Carnival had notice that the subject gangway was allegedly wet or otherwise in a dangerous condition at the time of Plaintiff's alleged incident. Mot. at 9–10. As detailed above, Plaintiff again argues that there is evidence that Carnival had notice that the subject gangway was allegedly wet or otherwise in a dangerous condition based on: 1) the "wet floor signs allegedly in the area"; (2) Carnival's "meeting minutes and corrective measures"; (3) Plaintiff "observ[ing] other passengers slipping prior to her incident on the subject gangway, and [because] there were multiple crewmembers within 10-15 feet of the gangway who were close enough to have been able to see this"; (4) the "length of time the liquid was on the gangway"; (5) "evidence of fourteen (14) prior substantially similar incidents"; and (6) the legal standard for prior substantially similar incidents. Resp. at 3–20.

In order for a plaintiff to succeed on his or her failure to maintain claim, he or she must show that the defendant had actual or constructive notice that the subject area "was in a dangerous condition." *Horne v. Carnival Corp.*, 741 F. App'x 607, 609 (11th Cir. 2018). Here, the Court is satisfied that a reasonable jury could find that Defendant had constructive notice that the subject gangway was in a dangerous condition based on Plaintiff's second, third, and fourth arguments regarding Carnival's meeting minutes, the nearby Carnival employees, and the length of time the liquid was on the gangway, respectively.

Regarding the meeting minutes, Plaintiff contends that Carnival's meeting minutes "cited the need for safeguards for the gangway's slipperiness four months prior to [Plaintiff's] incident[,]" and thus, Carnival had notice that the subject gangway was in a dangerous condition. Resp. at 6–7, 20. Here, Plaintiff refers to Carnival's meeting minutes from June 27, 2022, which was four months prior to Plaintiff's alleged accident. *See* Resp. at 7, 20; Borcegue Dep. at 72–73.

The June 27, 2022, meeting minutes include the following:

> "The medical team recommendation for the injuries noted: The Ramp at the home port gangway for both guests and crew is slippery and can we add more protection to avoid slips and falls- It's due to the weather condition, however yellow cautions cones are always visible at the area. Security personnel assign at the area were advised guests and crew to be more cautious. Security Personnel were advised to contact H/K personnel in order to dry/mop the wet floor."

PMSF ¶ 4. Defendant argues that "Plaintiff incorrectly assumes that the meeting minute[s] is referring to the gangway where Plaintiff's alleged incident occurred, or even a similar gangway." Reply at 9. Defendant points to Ms. Borcegue's testimony that the ramp at the home port gangway, as referred to by the medical team in the above meeting minutes, "would be whichever gangway they use when they are in home port. That's likely not on deck zero. It would likely be on deck 3. And those gangways don't belong to Carnival." Borcegue Dep. at 85. As such, Defendant concludes that "the meeting minute[s] referenced by Plaintiff refers to a gangway that is entirely

different than the subject gangway, is in a different area than the subject gangway, and is not even owned or maintained by Carnival." Reply at 3.

The Court disagrees with Defendant's conclusions based on Ms. Borcegue's statements. Ms. Borcegue only states that the gangway referred to in the meeting minutes was "likely not" the same gangway as the subject gangway. Borcegue Dep. at 85. Ms. Borcegue's statements leave room for a reasonable jury to find that the subject gangway and the gangway referred to in the meeting minutes are the same or substantially similar such that Defendant was on notice that the subject gangway was in need of remedy. *See Anderson*, 477 U.S. at 248.

Next, turning to Plaintiff's argument that the "length of time the liquid was on the gangway" imputes notice, Plaintiff alleges that the liquid was on the gangway "for at least five minutes prior to her incident." Resp. at 10. Plaintiff testified that she was waiting to cross the gangway for "about five minutes," and while she was waiting, she was watching the people in front of her on the gangway and did not see anyone carrying or spilling a drink. ("Plaintiff Dep.") (ECF No. 100-2) at 270–71. Further, Plaintiff testified that wherever the subject liquid came from, "it was there prior to when Plaintiff got there[.]" Plaintiff Dep. at 271. Plaintiff's husband, Jerry Wilkerson, who Plaintiff was with at the time of the alleged incident, testified the same. (ECF No. 100-13) at 50, 63–64. Moreover, Plaintiff testified that there were several, "maybe 10 to 12, maybe 15[,]" Carnival security personnel stationed "around 10 feet" from the gangway. *Id.* at 145–46.

"A maritime plaintiff can establish constructive notice with evidence that the defective condition existed for a sufficient period of time to invite corrective measures." *Guevara*, 920 F.3d at 720 (cleaned up); *see Burgess v. Sam's E., Inc.*, No. 2:22-CV-14074-KMM, 2023 WL 3600605, at *4 (S.D. Fla. Apr. 7, 2023) ("The length of time that the allegedly transitory substance existed prior to Plaintiff's fall is also sufficient to create a genuine issue of material fact as to notice."); *see*

also Wilkerson v. Carnival Corp., No. 0:23-CV-24050-PCH, 2024 WL 5469985, at *2 (S.D. Fla. Jan. 29, 2024) ("Although Carnival argues that five minutes is not enough to establish notice, there is no bright-line rule in Eleventh Circuit caselaw—nor does Carnival cite any—stating that five minutes is insufficient.").

Defendant argues that "Plaintiff wrongfully assumes that the alleged substance on the floor of the gangway was there for at least five minutes prior to her alleged incident. Reply at 4-5. For support, Defendant points to Plaintiff's testimony where Plaintiff states: "I cannot tell you how long it [the alleged substance] had been there because I don't know." Plaintiff Dep. at 300. However, thereafter, Plaintiff states that the alleged substance "had to be there before we got there[,]" and again, that she was waiting there for "like, five minutes." *Id.* One can reasonably interpret Plaintiff's statements to mean that Plaintiff does not know how much longer than five minutes the alleged substance was on the ground, not that the alleged substance was on the ground for less than five minutes. *See Burgess*, 2023 WL 3600605, at *4 ("As the Eleventh Circuit has . . . explained, rarely will there be 'direct evidence of how long a substance was on the ground[.]'" (quoting *Sutton v. Wal-Mart Stores E., LP*, 64 F.4th 1166, 1169 (11th Cir. 2023))).

Accordingly, viewing the evidence in the record in the light most favorable to Plaintiff, the Court finds that Plaintiff has sustained her burden of presenting evidence sufficient to create a genuine issue of material fact to withstand summary judgment as to whether Defendant had notice the subject area was in a dangerous condition as to Count I, negligent failure to remedy.

D. The Record Is Devoid of Any Evidence that Carnival Participated in the Design, Installation, and/or Approval of the Subject Gangway

In the SAC, Plaintiff asserts that Defendant is liable for negligent design, installation and/or approval of the subject gangway and vicinity, Count III, because Defendant "approved of the subject gangway's design[,]" and "maintain[ed] the contractual right to participate, review,

modify, and/or reject the design and elements" of the subject gangway. SAC ¶¶ 60, 65. Defendant contends that it is entitled to summary judgment with respect to Count III because "the record is devoid of any evidence that Carnival participated in the design, installation, and/or approval of the subject gangway." Mot. at 11–14. Plaintiff does not address Defendant's request for summary judgment on Count III in her response.

"Liability based on negligent design requires proof that the ship-owner or operator 'actually created, participated in or approved' the alleged improper design." *Diczok v. Celebrity Cruises, Inc.*, 263 F. Supp. 3d 1261, 1264 (S.D. Fla. 2017) (citing *Groves v. Royal Caribbean Cruises, Ltd.*, 463 Fed. App'x 837, 837 (11th Cir. 2012)). The Eleventh Circuit has upheld summary judgment in circumstances where there was no evidence that a defendant actually created, participated in or approved an alleged improper design. *Rodgers v. Costa Crociere, S.P.A.*, 410 F. App'x 210, 212 (11th Cir. 2010) ("[W]e conclude that the district court did not abuse its discretion in granting summary judgment on Rodgers's negligent design theory of liability, where there was no evidence whatsoever that Costa actually designed the stairs or the hand rails."); *Groves*, 463 Fed. App'x at 837 (affirming summary judgment where plaintiff presented "no evidence that RCL actually created, participated in, or approved the alleged negligent design of these areas near the dining room where Groves was injured").

Here, Plaintiff does not challenge Defendant's request for summary judgment as to Count III. *See generally* Resp.; PSMF ¶¶ 16–19 ("For purposes of this case only, [Plaintiff] elects not to challenge [Defendant's] motion for summary judgment as it pertains to its participation in the design, installation, or approval of the gangway.") "'[A] party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is unopposed." *Jones v. Bank of Am., N.A.*, 564 F. App'x 432, 434 (11th Cir. 2014) (quoting *Kramer v. Gwinnett Cnty., Ga.*, 306

F.Supp.2d 1219, 1221 (N.D. Ga. 2004)). Further, "'[w]hen a party fails to respond to an argument or otherwise address a claim, the Court deems such argument or claim abandoned.'" *Id.* (quoting *Hudson v. Norfolk S. Ry. Co.*, 209 F.Supp.2d 1301, 1324 (N.D. Ga. 2001)). As such, the Court views Plaintiff's negligent design, installation and/or approval claim as abandoned and grants summary judgment as to Count III.

E. The Record Is Not Devoid of Any Evidence of a Dangerous Condition or Causation[2]

Finally, Defendant argues that it is entitled to summary judgment on all Counts asserted by Plaintiff because the record is devoid of any evidence of causation. *Id.* Specifically, Defendant contends that Plaintiff and her husband both testified that they did not see any substance on the ground of the gangway either before or after Plaintiff fell, that it is "pure speculation that any alleged substance existed on the gangway at the time of Plaintiff's alleged incident[,]" and that it is "pure speculation that Plaintiff's foot came into contact with any alleged substance on the gangway that existed prior to her alleged incident." *Id.* at 13. Here, it appears to the Court that Defendant is primarily arguing that there is no evidence of a dangerous condition. In response, Plaintiff argues that there is evidence that a dangerous condition, the alleged substance, caused Plaintiff's fall. Resp. at 18–19.

Viewing the evidence in the light most favorable to Plaintiff, the Court finds that there is a genuine dispute of material fact as to whether a dangerous condition existed that caused Plaintiff's fall. Here, Plaintiff alleges that the dangerous condition which caused her to fall was "some type of liquid" on the gangway that Plaintiff believed to be water. Resp. at 18; *see also* SAC ¶ 13

[2] As noted below, while Defendant entitles this section, "The Record is Devoid of Any Evidence of Causation[,]" Defendant mainly argues in this section that the record is devoid of any evidence of a dangerous condition. *See* Mot. at 12–14.

(describing the dangerous condition as the "wet and unreasonably slippery gangway ramp[,]" where the "floor of the gangway was wet and had water on it[.]"). "Plaintiffs are generally the masters of their complaints and can thus choose how to plead their theory of liability." *Wiegand v. Royal Caribbean Cruises Ltd.*, No. 21-12506, 2023 WL 4445948, at *2 (11th Cir. July 11, 2023) (citing *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1170 (11th Cir. 2021)). As such, the Eleventh Circuit has noted that courts "routinely accept[] the plaintiff's definition of the dangerous condition(s) that caused his injury." *Id.* The Court must therefore focus only on whether Plaintiff has adduced sufficient evidence establishing the existence of a wet gangway on the date of the incident.

Defendant claims there is no evidence that the gangway was wet or had water on it on the date of the incident. Mot. at 13; DSMF ¶¶ 6–7. "As a general principle, a plaintiff's testimony cannot be discounted on summary judgment unless it is blatantly contradicted by the record, blatantly inconsistent, or incredible as a matter of law, meaning that it relates to facts that could not have possibly been observed or events that are contrary to the laws of nature." *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1253 (11th Cir. 2013). Further, "a litigant's self-serving statements based on personal knowledge or observation can defeat summary judgment." *United States v. Stein*, 881 F.3d 853, 857 (11th Cir. 2018). Although Defendant argues that Plaintiff did not testify that she saw any alleged substance on the gangway either before or after she fell, Plaintiff did testify during her deposition that the alleged substance "looked like water," "was clear," "didn't have a smell," and "was liquid," and although "she could not be 100% certain what the substance was that she slipped on, she knew it was some type of liquid, and she believed it to be water[.]" Resp. at 18; Plaintiff Dep. at ¶¶ 156, 295; PSMF ¶¶ 6–7. Further, Plaintiff testified that: (1) "the ramp was . . . damp. I didn't know it was damp until I fell"; (2) after she fell her

shorts, hands, and knee were damp; and (3) there was "an inch, 2-inch, 3-inch" of the substance on the gangway." Plaintiff's Dep. at 150–51, 297. The Court cannot say that Plaintiff's testimony is blatantly contradicted by the record, blatantly inconsistent, or incredible as a matter of law as to discount it on summary judgment. *See Feliciano*, 707 F.3d at 1253. Accordingly, based on the evidence in the record, the Court finds that Plaintiff has sustained her burden of presenting evidence sufficient to create a genuine issue of material fact regarding the existence of a dangerous condition that caused her fall.

IV. CONCLUSION

Accordingly, 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 for Summary Judgment (ECF No. 88) is GRANTED IN PART AND DENIED IN PART. Summary Judgment is granted as to Count III of the Second Amended Complaint and denied as to Counts I and II.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of June, 2025.

K. M. Moore

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record