UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:25-cv-60384-LEIBOWITZ

ZACHARY WHEELER,

Plaintiff,

v.

MSC CRUISES, S.A.,

Defendant.
_____/

ORDER

Before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint ("the Motion"), filed on June 2, 2025. [Mot., ECF No. 8]. Plaintiff Zachary Wheeler ("Plaintiff") filed this lawsuit on February 26, 2025, against Defendant MSC Cruises, S.A. ("Defendant" or "MSC"). [Compl., ECF No. 1]. The Court has reviewed the Complaint, the Motion, and is otherwise fully advised. For the reasons below, the Motion [ECF No. 8] is **GRANTED**.

I. BACKGROUND

As alleged, Plaintiff was a fare-paying passenger aboard the MSC Seashore cruise ship vessel ("the Seashore") in November 2023. [Compl. ¶ 13]. While the Seashore was in navigable waters, Plaintiff slipped and fell while attempting to exit a "whirlpool" on Deck 8 of the Seashore. [*Id.* ¶ 14]. Plaintiff alleges the wet, slippery surface of the steps leading out of the pool posed a slipping hazard that was not apparent to approaching passengers. [*Id.*]. Plaintiff further alleges Defendant failed to place adequate signs, warnings, and anti-slip mats in or around the subject area or in areas reasonably visible to passengers. [*Id.* ¶ 16(b)]. Additionally, Plaintiff pleads six prior incidents involving "similar wet, slippery areas on pool decks, steps and/or floor surfaces onboard the SEASHORE and other similar vessels in the sister class":

- "On April 1, 2017, 2023, [sic] D.A., a passenger onboard the MSC DIVINA slipped and fell on a wet, slippery floor surface near the pool on Deck 14.
- "On July 23, 2023, J.P., a passenger onboard the MSC SEASIDE, slipped and fell on an unreasonably wet, slippery floor surface near a waterslide on Deck 18.
- "On May 1, 2023, Passenger C. H. slipped and fell on an unreasonably wet, slippery stair on the pool deck of the MSC SEASIDE.
- "On July 30, 2023, passenger A.E., slipped and fell on an unreasonably wet, slippery pool deck surface on Deck 18 of the MSC SEASIDE.
- "On December 31, 2022, passenger M.J. slipped and fell on the unreasonably wet, slippery floor surface on deck 8 of the M/S SEASCAPE.
- "On September 8, 2022, M.G., a passenger onboard the MSC SEASHORE, slipped and fell on the unreasonably wet, slippery surface on Deck 8."

[Compl. ¶ 17].

Plaintiff alleges that he sustained various injuries as a result of his fall, "including but not limited to a fractured right foot which required surgical repair." [*Id.* ¶ 18]. Plaintiff asserts two counts of negligence against Defendant: (1) negligent maintenance for failing to maintain the subject area and allowing a hazardous condition to exist, and (2) negligent failure to warn of that hazardous condition. [*See* Compl. ¶ 19–35].

II. LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, "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) (internal quotations omitted)). To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). When reviewing a motion to dismiss under Rule 12(b)(6), a court must accept as true all well-pleaded factual allegations contained in the complaint, and the plaintiffs receive the benefit of all favorable inferences

that can be drawn from the facts alleged. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012); *Iqbal*, 556 U.S. at 678. However, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678. Evidence on a 12(b)(6) motion is generally limited to the facts contained in the complaint and attached exhibits. *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009).

III. ANALYSIS

To prevail on his maritime negligence claims,[1] Plaintiff must prove that (1) Defendant had a duty to protect him from a particular injury; (2) Defendant breached that duty; (3) the breach actually and proximately caused his injury; and (4) he suffered actual harm. *See Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1280 (11th Cir. 2015); *Chaparro*, 693 F.3d at 1336 (11th Cir. 2012) ("In analyzing a maritime tort case, we rely on general principles of negligence law.") (internal citation omitted).

Here's the key issue governing whether this complaint is sufficient to survive the Motion: A carrier owes a duty only where the carrier has "actual or constructive notice of the risk-creating condition." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). Actual notice arises when a "defendant knows of the risk creating condition." *Holland v. Carnival Corp.*, 2021 WL 86877, at *2 (S.D. Fla. Jan. 11, 2021) (Scola, J.) (cleaned up). As for constructive notice, a plaintiff must plead facts sufficient to show that a dangerous condition existed long enough that the shipowner must have known the condition was present. *See Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022). Alternatively, a Plaintiff may allege the existence of "substantially similar incidents" in which similar conditions led to the prior accident. *Id.* In either case, a plaintiff must plead facts sufficient to show that her allegations regarding notice are *plausible* and not merely *possible*. *Id.* at 1096.

[1] This action is governed by federal maritime law because Plaintiff's injury occurred on a ship sailing in navigable waters. *See Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019).

The "'substantial similarity' doctrine does not require identical circumstances and allows for some play in the joints depending on the scenario presented and the desired use of the evidence." *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1287 (11th Cir. 2015). However, to survive a motion to dismiss, allegations of similar events must point to some "apparent connection to the incident at issue" and must offer some "explanation as to how the[] incidents put [the carrier] on notice of the hazardous condition." *Sanlu Zhang v. Royal Caribbean Cruises, Ltd.*, No. 19-20773-CIV, 2019 WL 8895223, at *4 (S.D. Fla. Nov. 15, 2019) (Scola, J.) (citing *Serra-Cruz v. Carnival Corp.*, 400 F. Supp. 3d 1364, 1371 (S.D. Fla. Sep. 19, 2019) (Ungaro, J.)); *see also Pollard v. Carnival Corp.*, No. 24-20497-CIV, 2024 U.S. Dist. LEXIS 186326, at *7–8 (S.D. Fla. Oct. 11, 2024) (Martinez, J.) ("Plaintiff fails to allege facts that make the connection between her alleged accident and the cited incidents beyond the fact that all the incidents were slip and falls on the gangway of a Carnival ship.").

Defendant argues that Plaintiff has failed to plead facts sufficient to show that Defendant had actual or constructive knowledge of the hazardous condition. [Mot. at 5]. Plaintiffs' allegations regarding notice principally fall into two buckets: (1) allegations concerning "prior incidents" and (2) allegations concerning Defendant's internal safety policies. The Court considers each in turn.

A. *Allegations concerning "prior incidents"*

Plaintiff alleges six prior incidents involving "similar wet, slippery areas on pool decks, steps and/or floor surfaces onboard the SEASHORE and other similar vessels in the sister class." [Compl. ¶ 17]. Defendant argues that Plaintiff "has not, and cannot, plausibly plead how the six (6) listed alleged 'prior incidents' are substantially similar to the alleged incident here insofar as to put MSC on notice of the alleged risk creating condition." [Rep., ECF No. 15 at 4]. The Court agrees.

Defendant calls to the Court's attention three cases in which plaintiffs—represented by Plaintiff's counsel in this case—asserted similar allegations regarding prior incidents that were found insufficient to survive motions to dismiss in this District. [*Id.*]. In one of those cases, *Pollard v. Carnival*

Corp., the plaintiff identified three prior incidents by the date of the incident, the abbreviations of the passengers' names, the subject vessels' names, and a brief description of the incident—the same pleading strategy pursued here. [*See* ECF No. 15-2 ¶ 15]. The court found that plaintiff had "fail[ed] to allege facts that make the connection between her alleged accident and the cited incidents beyond the fact that all the incidents were slip and falls on the gangway of a Carnival ship." *Pollard*, 2024 U.S. Dist. LEXIS 186326, at *7–8 (Martinez, J.). The court went on to explain that "[w]ithout specific factual allegations, the Court cannot conclude that these incidents were substantially similar to the accident alleged by Plaintiff." *Id.* The same is true here. Plaintiff offers six threadbare descriptions of alleged events that took place on other ships, other decks, and other surfaces, each of which refers generically to an "unreasonably wet, slippery" surface. [Compl. ¶ 17]. Without more, the Court cannot determine whether these events bare anything more than a superficial resemblance to the incident at issue in this case, and therefore cannot conclude that "the prior incidents on other vessels were sufficient to provide Defendant constructive notice of the allegedly dangerous condition." *Pollard*, 2024 U.S. Dist. LEXIS 186326, at *8; *see also Thomas v. Carnival Corp.*, No. 24-cv-22914, 2025 U.S. Dist. LEXIS 115756, at *6 (S.D. Fla. June 17, 2025) (Martinez, J.) (dismissing case where plaintiff alleged prior incident that took place on different deck of a different ship); *Kendall v. Carnival Corp.*, 2023 WL 8593669, at *3 (S.D. Fla. 2023) (Moore, J.) (dismissing case where only one of the alleged prior incidents had taken place on the same vessel).

With regard to the allegedly similar incidents pled here, the Court is left to wonder, as Judge Moore did in *Kendall*: "Was the dangerous condition similar or the same to the one here? Where and how did the accident occur? . . . Did the accident occur in a high-traffic area? Did Defendant take any precautionary actions? The list goes on." 2023 WL 8593669, at *3. Accepting Plaintiff's arguments would require this Court to find that a cruise ship operator has constructive notice of a dangerous condition whenever superficially similar incidents have occurred over a range of several

years and across multiple vessels. *See id.* "Such a holding would constitute a great deviation from Eleventh Circuit precedent requiring a plaintiff to show substantially similar accidents to the one at issue to demonstrate constructive notice, particularly when, as here, the Court has no other facts from which it can analyze the factual similarities (or lack thereof) of the multiple accidents." *Id.* (citing *Holland v. Carnival Corp.*, 50 F.4th 1088, 1096 (11th Cir. 2022)).

B. *Allegations concerning Defendant's internal safety policies*

Plaintiff also alleges that "Defendant established internal standards," including "co-efficient of friction standards for pool decks, steps, and/or other foreseeably slippery surfaces used in heavily trafficked areas near water," which indicate Defendant's constructive knowledge of dangerous conditions. [Compl. ¶ 12]. Plaintiff relies on *Carroll v. Carnival Corp.*, in which the Eleventh Circuit held that the testimony of multiple employees on Carnival's policies regarding on-deck obstructions raised a genuine dispute of material fact sufficient to survive summary judgment. 955 F.3d 1260, 1266 (11th Cir. 2020).

Carroll does little to bolster Plaintiff's position here. That case involved an extensive factual record concerning a specific hazardous condition; Plaintiff here has only offered a conclusory allegation as to Defendant's policies regarding slippery surfaces in general. [*See* Compl. ¶ 12]. The mere allegation that a defendant had developed safety standards applicable to the site of an alleged injury is insufficient to survive a motion to dismiss, even when coupled with allegations of prior similar incidents. *See Holland*, 50 F.4th at 1095 (affirming dismissal where plaintiff alleged that prior similar slip and fall incidents on a staircase were "frequent" and that safety agencies had "developed safety standards applicable to the staircase"); *Patton v. Carnival Corp.*, No. 22-13806, 2024 WL 1886504, at *1 (11th Cir. Apr. 30, 2024) (affirming dismissal where plaintiff attached company "safety documents" purporting to show that "the company was aware thresholds posed trip and fall risks"); *see also Watson v. Carnival Corp.*, 2024 WL 4137299, at *12 (S.D. Fla. Aug. 21, 2024) (Goodman, M.J.), report and

recommendation adopted, 2024 WL 4132931 (S.D. Fla. Sept. 10, 2024) (Williams, J.) (applying *Holland* to dismiss case where plaintiff alleged that the defendant's "internal safety materials . . . demonstrate[d] 'a reasonable tendency for the type of hazard at issue.'").

* * *

Even when accepting Plaintiffs' well-pleaded allegations as true and when viewing the evidence in the light most favorable to Plaintiff, Plaintiff has failed to adequately plead a claim for maritime negligence. His allegations regarding prior incidents and internal policies—whether considered together or separately—are too "threadbare," too conclusory to survive a motion to dismiss under well-established precedent in the Eleventh Circuit.

IV. CONCLUSION

For the reasons stated above, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss the Complaint [**ECF No. 8**] is **GRANTED**. The Complaint [**ECF No. 1**] is **DISMISSED without prejudice**. The Clerk of Court is directed to **ADMINISTRATIVELY CLOSE** this case. Plaintiff may file an amended complaint that cures the deficiencies identified in this Order on or before August 18, 2025. Failure to do so may be grounds for **dismissal of this case without further notice**.

DONE AND ORDERED in the Southern District of Florida on July 28, 2025.

DAVID S. LEIBOWITZ
UNITED STATES DISTRICT JUDGE

cc: counsel of record