UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:25-cv-21716-KMM

DAELYNNE VELOZ,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant" or "Carnival") Motion to Dismiss with Prejudice Plaintiff's Amended Complaint (the "Motion" or "Mot."). (ECF No. 27). Plaintiff Daelynne Veloz ("Plaintiff") filed a response. ("Resp.") (ECF No. 28). Defendant filed a reply. ("Reply") (ECF No. 33). The Motion is now ripe for review. As set forth below, the Motion is GRANTED IN PART.

I. BACKGROUND[1]

On or about November 28, 2024, Plaintiff was on board the Carnival *Magic* vessel as a fare paying passenger. Am. Compl. ¶ 7. Plaintiff was at the onboard "night club" at around one o'clock in the morning dancing with friends and family. *Id.* ¶¶ 8, 10. Plaintiff alleges that she "took only a few steps forward" then "slipped and fell on wine that another business invitee at the nightclub spilled." *Id.* ¶ 11. Plaintiff also alleges that there was "no anti-slip mat, warning or sign

[1] The following facts are taken from Plaintiff's Amended Complaint ("Am. Compl.") (ECF No. 25) 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.

surrounding the liquid on the floor." *Id.* ¶ 9. Plaintiff alleges she "sustained severe and permanent injuries" from this incident, including a fractured tibia. *Id.* ¶¶ 12, 15. According to Plaintiff, the Carnival crew "failed to use reasonable care to design, inspect[,] maintain, and/or upkeep the subject area in a reasonably safe condition." *Id.* ¶ 13. She further alleges that Defendant, "by and through its employees who were tending to the incident area," knew or should have known that there was high passenger traffic and spills were more likely at the time of the incident, and failed to use reasonable care to maintain the premises in a reasonably safe condition. *Id.* ¶ 14. Plaintiff brings Count I for negligent maintenance, Count II for negligent failure to warn, Count III for negligent training, and Count IV for negligent design. *Id.* ¶¶ 16–48. Defendant now moves to dismiss Plaintiff's Amended Complaint as a shotgun pleading and for failure to plead the required elements, particularly notice, as to her direct-liability negligence claims. *See generally* Mot.

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 Amended Complaint should be dismissed because: (1) it is a shotgun pleading; and (2) it fails to sufficiently plead the direct-liability claims. *See generally* Mot. Defendant also argues that dismissal should be with prejudice because Plaintiff has twice filed a shotgun pleading that failed to allege notice. *Id.* at 7, 16. Plaintiff argues that she has resolved the shotgun pleading deficiencies this Court previously identified, and that notice is now sufficiently alleged. *See generally* Resp. The Court addresses Defendant's arguments in turn.

A. Shotgun Pleading

Defendant first argues that the Amended Complaint is a "shotgun" pleading. *See* Mot. at 4–7. As discussed in this Court's Order dismissing Plaintiff's initial Complaint, 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 Cnty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015); *Lampkin-Asam v. Volusia Cnty. 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).

In *Weiland*, the Eleventh Circuit sought to provide clarity and consistency to the issue of shotgun pleadings by outlining the four categories within which these pleadings often fall, and Defendant argues that the Amended Complaint—as with the original Complaint—is the third type of shotgun pleading, which is "one that commits the sin of not separating into a different count each cause of action or claim for relief." 792 F.3d at 1321–23. Importantly, the Eleventh Circuit explained that regardless of the particular type, "[t]he 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.

Defendant argues that the Amended Complaint continues to be the third type of shotgun pleading because while it separates out four distinct claims, in contrast to the original Complaint's single count of negligence, each of those claims still reflects comingled theories. Mot. at 5. Specifically, Defendant points to the repetition of the following allegation in each of the Counts: "Defendant, CARNIVAL, owed a duty to its passengers, including the Plaintiff, VELOZ, to use reasonable care under the circumstances, and specifically to design, inspect, maintain, upkeep and/or clean the subject area of Carnival Magic, in a reasonable and safe manner." *Id.* Defendant also points to allegations relating to "inspection, maintenance, warning, and other affirmative acts" pled under Count I, which is only relating to negligent maintenance, and allegations that Defendant "allowed dirty liquid and/or some other inconspicuous similar slippery substance to remain on the floor" pled under Counts II through IV despite such allegations only being relevant to the negligent maintenance claim. *Id.* at 6. Plaintiff contends that she corrected the shotgun nature of the original Complaint in the Amended Complaint "by separating each negligence theory into its own count and tailoring duty and breach allegations to the specific theory pled." Resp. at 3. She further

contends that because Rule 8 allows for alternative or inconsistent theories, "factual overlap between claims does not transform a complaint into a shotgun pleading." *Id.*

Here, while Plaintiff has indeed separated out her four negligence claims as instructed by this Court, the Amended Complaint continues to be the third type of shotgun pleading outlined in *Weiland*. 792 F.3d at 1323; *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). Plaintiff is correct that factual overlap between claims is not fatal, but that is not the issue in the Amended Complaint. Taking Count II as an example, that Defendant "failed to design, inspect, maintain, upkeep and/or clean an area" is not a factual allegation that could give rise to a claim for negligent failure to warn, as nothing therein relates to a duty or failure to warn. Am. Compl. ¶ 26. Similarly, that Defendant "allowed dirty liquid" to remain on the floor of its premises is also unrelated to a duty or failure to warn. *Id.* ¶ 28. That the liquid was present and Defendant knew or should have known about it such that a duty to warn arose are relevant allegations that Plaintiff has properly included under Count II, but that is not enough—Plaintiff must also exclude allegations that are irrelevant to the specific theory of negligence asserted. *Id.* ¶ 29. Because Plaintiff appears to have attempted to remedy the deficiencies this Court previously explained, albeit insufficiently, she will be allowed one last opportunity to file a complaint that is not a shotgun pleading. Should Plaintiff choose to so amend, she must distinguish not only between theories of negligence but also confine herself to pleading only allegations directly relevant to each Count. *See 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)). Accordingly, the Court dismisses Plaintiff's Amended Complaint without prejudice as a shotgun pleading.

B. Stating a Claim for Negligence

Because the Court will allow Plaintiff an opportunity to amend, it turns to Defendant's argument that Plaintiff failed to adequately plead her direct-liability negligence claims, particularly as to notice. Mot. at 8–15. 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." *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012); *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 v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). Constructive notice may exist 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," or upon a showing of previous substantially similar incidents that occurred under substantially similar conditions. *Id.*; *Guevara*, 920 F.3d at 720. The Court addresses Defendant's failure-to-plead arguments in turn.

1. Counts I and II: Alleged Notice of the Spilled Liquid

Defendant argues that Plaintiff failed to allege notice of the spilled liquid as to Counts I and II because Plaintiff pleads only conclusory allegations that Defendant knew or should have known "by and through its employees who were tending to the incident area . . . that this particular area had increased passenger traffic and increased susceptibility to spills at the time of the incident," and knew or should have known that "the substance would greatly increase the risk that patrons . . . would fall on the premises." Mot. at 8–9. In response, Plaintiff argues that these allegations that Defendant identifies "suggest[] actual notice." Resp. at 4.

Plaintiff's allegations do not meet the level of specificity that courts in this District and this Circuit have held satisfy the notice requirement, and she does not cite a single case in support of her position as to this point. Even cases holding that a shipowner through its employees may be put on actual notice of a danger require some showing of knowledge on the part of the employee. *See, e.g.*, *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1303 (11th Cir. 2020) (finding sufficient allegation of actual knowledge of danger where an *employee placed* a bucket "more than one foot tall and filled with dirty water" behind a blind corner as "[a]t least one Costa employee must have actually known . . . where the bucket had been placed"). There is no similar allegation of actual knowledge, either by admission of an employee or a logical inference as in *Higgs*. *Id.*; *see also Green v. Carnival Corp.*, 614 F. Supp. 3d 1257, 1263 (S.D. Fla. 2022) (finding actual knowledge sufficiently alleged where "crewmember[] was aware of the dangerous condition and attempted to clean up the area").

Although Plaintiff only argues she has stated actual notice, the Amended Complaint is also devoid of any allegations as to the length of time that the dangerous condition was present or previous incidents that were substantially similar as would show constructive notice. *See, e.g.*, *Keefe*, 867 F.2d at 1322; *Guevara*, 920 F.3d at 720. And, while Plaintiff contends that a reasonable crewmember would know that a slippery substance may be dangerous particularly in a high-traffic area, this is not sufficient to allege constructive notice. Am. Compl. ¶¶ 14, 21, 27, 29; *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022) (rejecting conclusory arguments where plaintiff "failed to provide any factual allegations supporting the notion that high traffic in the area gave Carnival notice of the condition"). Accordingly, the Court finds that Plaintiff fails to state a claim as to Counts I and II due to the lack of alleged notice.

2. Count III: Alleged Training Programs Conducted Negligently

As to Count III, which is for negligent training, Defendant argues that Plaintiff has not alleged an actual training program that could have been conducted negligently. Mot. at 11–13. In response, Plaintiff contends that she "alleges Carnival failed to properly train crew to identify and remedy spills in high-risk areas, which is recognized as a viable claim under *Mayer v. Carnival Corp.*, 731 F. Supp. 3d 1316, 1322 (S.D. Fla. 2024)." Resp. at 4. Plaintiff is correct that negligent failure to train is a recognized cause of action under maritime law, which "occurs when an employer was negligent in the implementation or operation of the training program and this negligence caused a plaintiff's injury." *Quashen v. Carnival Corp.*, 576 F. Supp. 3d 1275, 1304 (S.D. Fla. 2021) (quoting *Reed v. Royal Caribbean Cruises, Ltd.*, No. 19-cv-24668, 2021 WL 2592914, at *9 (S.D. Fla. Apr. 23, 2021)). However, negligent training claims require an alleged "training policy in place that was applicable to the particular risk." *Id.* (citation omitted).

Even under Plaintiff's cited case, this Count fails for lack of allegation as to a particular training program applicable to the instant situation that could have been negligently implemented or operated. As explained in *Mayer*, "courts in our District tend to dismiss claims for negligent training where a plaintiff hasn't alleged 'that certain training programs exist.'" 731 F. Supp. 3d at 1322 (collecting cases). Here, Plaintiff does not allege any existing Carnival training program, to say nothing of the lack of alleged negligent operation or implementation beyond conclusory assertions. As this Court has explained, "[t]here is a significant difference between a cruise line that has a relevant training protocol but fails to implement it, and a cruise line that has no relevant training protocol at all." *Quashen*, 576 F. Supp. 3d at 1305. Accordingly, the Court finds that Plaintiff has failed to state a claim as to Count III due to the lack of any alleged training program.

3. Count IV: Alleged Notice to Defendant of Negligent Design

Lastly, Defendant argues that Count IV fails because Plaintiff fails to allege that Carnival had notice of the "hazardous condition" giving rise to the negligent design claim. Mot. at 13–15. Plaintiff responds that her pleadings are sufficient because "where the shipowner created or approved the design, notice is inherent." Resp. at 4 (citing *Whelan v. Royal Caribbean Cruises Ltd.*, No. 1:12-cv-22481, 2013 WL 5583970, at *4 (S.D. Fla. Aug. 14, 2013)). Therefore, it is undisputed that Plaintiff has not separately alleged notice. The only question is whether notice can indeed be inherent as to the shipowner in negligent design claims.

This Court in its previous Order dismissing Plaintiff's Complaint explained why an argument under *Whelan* was unavailing due to the Eleventh Circuit's subsequent clarification in *Yusko v. NCL (Bahamas), Ltd.* that actual or constructive notice of a risk-creating condition is required "when a shipowner is alleged to be directly liable for a passenger's injuries." (ECF No. 24) at 6–7 (discussing *Yusko*, 4 F.4th 1164, 1168 (11th Cir. 2021)). Moreover, even in *Whelan* the court specifically held that for the plaintiff to avoid proving notice on the basis that the defendant created the design, the plaintiff must allege that the defendant "actually created, participated in, or approved the design." 2013 WL 5583970, at *4 (citation omitted). That court also distinguished the scenario before it of an allegedly hazardous step, which was undeniably part of the intentional design of the boat, as "the sort of condition that is 'created' by an actor . . . not merely a condition that 'arises,' as might be the case with a pool of water on the deck." *Id.* The Amended Complaint does not contain any allegations that speak to Defendant's role in the design or construction of the subject vessel, for which conclusory assertions that Defendant must have participated in or accepted the designs will not do absent specific factual allegations. *See generally Liles v. Carnival Corp. & PLC*, No. 22-cv-22977, 2023 WL 34644 (S.D. Fla. Jan. 4, 2023). Accordingly, the Court

finds that Plaintiff has failed to state a claim as to Count IV due to lack of notice alleged.

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 with Prejudice Plaintiff's Amended Complaint (ECF No. 27) is GRANTED IN PART. As the Court found above that dismissal with prejudice is not warranted at this stage, Plaintiff's Amended Complaint (ECF No. 25) is DISMISSED WITHOUT PREJUDICE. Plaintiff will be granted one final opportunity to file an amended pleading that meaningfully addresses the aforementioned deficiencies, on or before September 23, 2025. Failure to do so will result in dismissal with prejudice of all Counts.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of September, 2025.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record