UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-23502-CIV-ALTONAGA/Reid

BEAU BOLLINGER,

Plaintiff,

v.

NCL (BAHAMAS) LTD.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant, NCL (Bahamas) Ltd.'s Motion to Dismiss Plaintiff's Amended Complaint . . . [ECF No. 33], filed on July 11, 2025. Plaintiff, Beau Bollinger filed a Response [ECF No. 36], to which Defendant filed a Reply [ECF No. 39]. The Court has reviewed the record, the parties' written submissions, and applicable law. For the following reasons, the Motion is granted in part.

I. BACKGROUND

This action arises from injuries Plaintiff sustained while returning from a shore excursion as a passenger on Defendant's cruise ship. (*See generally* Am. Compl. [ECF No. 32]). According to Plaintiff, Defendant executed an agreement with a Honduran company offering snorkeling excursions (the "Tour Operator"), under which Defendant marketed and sold excursions to its passengers both online before cruises and on board through printed materials, announcements, an excursion desk, and television programming. (*See id.* ¶¶ 9–10, 20, 27). While the Tour Operator ran the excursions on the Honduran island of Roatan, Defendant exercised control over the excursions and was responsible for ensuring the Tour Operator acted safely, complied with insurance requirements, and adhered to an agreed-upon schedule. (*See id.* ¶¶ 20–27, 29–30).

Plaintiff purchased the "Island Adventure" snorkeling excursion online from Defendant before the cruise began; the excursion could only be booked through Defendant. (*See id.* ¶¶ 12, 15–16, 22, 26). Because Defendant did not disclose the Tour Operator's identity or indicate the excursion was operated by a third party, Plaintiff believed the Island Adventure was operated directly by Defendant, or by its agent or partner. (*See id.* ¶¶ 13, 15, 17–18, 21). Defendant assured prospective purchasers they would "[n]ever" get left behind on a "Norwegian organized tour" because if the tour ran late, the ship would wait. (*Id.* ¶ 14 (alteration added)).

On February 28, 2024, Plaintiff participated in the Island Adventure excursion and prepared to return to the cruise ship — but the Tour Operator did not have adequate transportation arranged to have Plaintiff back in time for the ship's departure. (*See id.* ¶ 38). Instead, the Tour Operator "hastily coordinated . . . ad hoc alternative transportation" by pickup truck, instructing Plaintiff to ride in the cargo bed of the truck for the return voyage. (*Id.* (alteration added)).

As Plaintiff boarded the bed of the truck, the driver accelerated without warning, causing Plaintiff to fall and suffer spinal injuries requiring surgery, and resulting in pain and emotional distress. (*See id.* ¶¶ 38–39). Defendant knew or should have known — based on its role in scheduling, its relationship with the Tour Operator, its knowledge of the limited infrastructure on the island of Roatan, and its knowledge of the number of passengers visiting the island — that the Tour Operator lacked adequate transportation to return guests safely in time for the ship's departure. (*See id.* ¶¶ 40–45).

Plaintiff initiated this action on September 11, 2024, asserting seven negligence claims against Defendant (*see generally* Compl. [ECF No. 1]), and Defendant filed a Motion to Dismiss [ECF No. 18]. The Court granted the Motion after a hearing (*see* Min. Entry [ECF No. 24]),

concluding that, among other pleading deficiencies, Plaintiff failed to sufficiently allege Defendant had notice that the Island Adventure posed a risk of harm (*see* June 12, 2025 Order [ECF No. 25]).

In his Amended Complaint, Plaintiff raises six claims for relief: negligent failure to warn ("Count I") (*see* Am. Compl. ¶¶ 40–47); negligent selection of tour operator ("Count II") (*see id.* ¶¶ 48–52); negligent retention of tour operator ("Count III") (*see id.* ¶¶ 53–57); negligence based on apparent agency or agency by estoppel ("Count IV") (*see id.* ¶¶ 58–65); negligence based on joint venture ("Count V") (*see id.* ¶¶ 66–86); and negligence regarding provision of land transportation ("Count VI") (*see id.* ¶¶ 87–94). Defendant moves to dismiss the Amended Complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6), contending each claim is defective because Plaintiff has not adequately alleged Defendant had notice of alleged dangerous conditions. (*See* Mot. 3–8). Defendant further argues that Counts IV and V should be dismissed because Plaintiff improperly seeks to impose heightened duties on Defendant, and Plaintiff's allegations are insufficient to plead a joint venture or apparent agency between Defendant and the Tour Operator. (*See id.* 8–17).

II. LEGAL STANDARD

A motion to dismiss for failure to state a claim tests the sufficiency of the complaint; it does not decide the merits of the case. *See Milburn v. United States*, 734 F.2d 762, 765 (11th Cir. 1984). "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration added; quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). A pleading withstands a motion to dismiss if it alleges "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

This pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S. at 555). "In other words, a plaintiff must provide the grounds for his entitlement to relief but needn't include detailed factual allegations." *Soho Ocean Resort TRS, LLC v. Rutois*, No. 21-cv-11392, 2023 WL 242350, at *2 (11th Cir. Jan. 18, 2023) (citing *Twombly*, 550 U.S. at 555). When considering a motion to dismiss, a court must construe the complaint and its attachments in the light most favorable to the plaintiff and take its factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

III. DISCUSSION

The Court first addresses the sufficiency of Plaintiff's notice allegations and then turns to arguments specific to Counts IV and V.

Notice. Defendant argues that Plaintiff fails to allege facts supporting Defendant had notice of risk-creating conditions associated with the excursion, requiring dismissal of all claims for relief. (*See* Mot. 3–8). The Court agrees with Defendant that several of Plaintiff's claims — Counts I–III and VI — should be dismissed on this ground.

To state a negligence claim, "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 plaintiffs injury; and (4) the plaintiff suffered actual harm." *Chaparro v. Carnival Corp.,* 693 F.3d 1333, 1336 (11th Cir. 2012) (citation omitted). Under maritime law, a ship owner generally "owes to all who are on board . . . the duty of exercising reasonable care under the circumstance of each case." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989) (alteration added; quotation marks omitted; quoting *Kermarec*

v. Compagnie Generale Transatlantique, 358 U.S. 625, 632 (1959)). While this duty extends "beyond the point of debarkation" to places where passengers are expected to visit, *Chaparro*, 693 F.3d at 1336 (citation omitted), a ship owner is not liable for negligence absent actual or constructive notice of risk-creating conditions, *see Thompson v. Carnival*, 174 F. Supp. 3d 1327, 1340 (S.D. Fla. Mar. 30, 2016) (citation omitted).

The Amended Complaint does not allege facts from which the Court can reasonably infer Defendant had notice of the hazards associated with the shore excursion. (*See generally* Am. Compl.); *see also Nichols v. Carnival Corp.*, 423 F. Supp. 3d 1316, 1322–25 (S.D. Fla. Sept. 17, 2019) (dismissing a complaint for failure to allege a defendant cruise line had notice of a tour operator's conduct (citing *Mellnitz v. Carnival Corp.*, No. 18-cv-24933 (S.D. Fla. 2019); other citations omitted)); *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1394 (S.D. Fla. May 9, 2014) (same (citations omitted)). Plaintiff does not allege that participants on an Island Excursion previously sustained injuries from unsafe transportation — or even that the Tour Operator previously used unsafe transportation. (*See generally* Am. Compl.). Nor does Plaintiff supply information supporting an inference that Defendant knew or should have known the excursion presented the alleged hazards. (*See id.*).

Instead, Plaintiff asks the Court to make an inferential leap — that based on Defendant's coordination with the Tour Operator regarding scheduling and capacity, and knowledge of the island's population and infrastructure, Defendant knew or should have known the Tour Operator would resort to unsafe, ad hoc transportation arrangements. (*See id.* ¶¶ 25, 30–35; *see also* Resp. 15–16). These are insufficient "facts" to support a reasonable inference that Defendant had constructive notice of any dangerous condition associated with the shore excursion. *See Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022) (finding the plaintiff "failed to include

factual allegations that plausibly suggest Carnival had constructive notice of the dangerous condition."); *Ajwani v. Carnival Corp.*, 722 F. Supp. 3d 1333, 1338 (S.D. Fla. 2024) (dismissing negligence claim when the plaintiffs generally alleged a cruise line visited an excursion as part of an annual renewal process but failed to provide "any details about the process or how it would put [the cruise line] on notice" (alteration added)).

In the Response, Plaintiff gestures at an alternative theory: Defendant should have known a rushed return — and, presumably, dangerous conditions — were likely because it failed to inform the Tour Operator that the ship would wait for passengers before departing. (*See* Resp. 16; Am. Compl. ¶ 93). This theory, too, lacks factual support. Plaintiff neither explains why such a failure would satisfy the notice requirement, nor supplies *any* information to support his speculative, conclusory statement that Defendant failed to communicate its policy to the Tour Operator. (*See generally* Resp.; Am. Compl.).

At bottom, Plaintiff's allegations, taken as true, do not plausibly show that Defendant knew or should have known the Tour Operator would employ a risky method of transporting the passengers back to the ship. *See Brooks*, 116 F.3d at 1369 (citation omitted). In fact, outside of adding allegations regarding the size and population of Roatan, Plaintiff adds very few facts to the Amended Complaint to remedy the notice deficiencies the Court identified in the original Complaint at the June 12, 2025 Hearing addressing Defendant's first Motion to Dismiss. (*Compare* Compl. *with* Am. Compl.). Consequently, Counts I–III and VI are dismissed. *See Hays Grp. v. Aichele*, No. 18-cv-20726, 2018 WL 8223773, at *6 (S.D. Fla. July 5, 2018) (citation omitted); *see also Holland*, 50 F.4th at 1095–96 (citations omitted).

Plaintiff's remaining two claims are based on vicarious-liability theories of agency (Count IV) and joint venture (Count V) — which do not require Plaintiff to plead that Defendant had

notice of a risk of harm. (*See* Resp. 2 (citing *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1170 (11th Cir. 2021))). The Court thus proceeds to Defendant's other arguments as to those claims.

Negligence Based on Apparent Agency (Count IV). Defendant argues that Plaintiff's claim of negligence based on apparent agency should be dismissed for two reasons. First, Defendant contends the claim relies on "numerous heightened duties of care" that do not exist under general maritime law. (Mot. 8; *see also id.* 9–11; Am. Compl. ¶¶ 58–65). Defendant insists its only duty was to warn of known, hidden dangers (*see* Mot. 9 (citations omitted)), and, contrary to Plaintiff's allegations, it "did not owe a duty to ensure the safety of the excursion" (*id.* 10 (citation omitted)). Second, Defendant asserts Plaintiff could not have reasonably believed the Tour Operator was Defendant's agent — as required for an apparent-agency claim —considering the language in Plaintiff's ticket contract and ticket and on Defendant's website. (*See id*. 12–14).

i. Heightened Duties

To begin, Defendant's argument that its only duty was to warn of dangers is unavailing. Although the duty to warn is often the "most relevant duty regarding off-vessel excursions," a cruise-ship defendant may owe additional duties under certain circumstances — particularly in the context of an agency relationship between the defendant and an excursion operator. *Hazelitt v. Royal Caribbean Cruises, Ltd.*, No. 23-cv-21014, 2023 WL 4763217, at *5 (S.D. Fla. July 26, 2023) (quotation marks omitted; citing *Bailey v. Carnival Corp.*, 369 F. Supp. 3d 1302, 1310 (S.D. Fla. 2019)); *see also Pucci v. Carnival Corp.*, 146 F. Supp. 3d 1281, 1287 n.4 (S.D. Fla. 2015) (citation omitted). In fact, the duty to warn is "*a subset* of the general duty a [sic] of reasonable care that a shipowner owes to its passengers." *Hazelitt*, 2023 WL 4763217, at *5 (emphasis added; citing *Blow v. Carnival Corp.*, No. 22-cv-22587, 2023 WL 3686840, at *8 (S.D. Fla. May 26, 2023)).

In Count IV, Plaintiff expressly advances an agency theory, alleging the Tour Operator acted as Defendant's apparent agent or as an agent by estoppel. (*See* Am. Compl. ¶¶ 58–65). Consequently, Defendant's argument about heightened duties fails to persuade. *See Hazelitt*, 2023 WL 4763217, at *6 (citation omitted).

ii. Apparent Agency

"Under federal maritime law, a defendant can be vicariously liable for actions of its apparent agents." *Singh v. Royal Caribbean Cruises Ltd.*, 576 F. Supp. 3d 1166, 1187 (S.D. Fla. 2021) (citation omitted). Apparent agency exists when (1) representations of the principal cause a third party to believe an alleged agent has authority to act for the principal; (2) the belief is reasonable; and (3) the third party reasonably acts on this belief to his detriment. *See id.* (citing *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1324 (S.D. Fla. 2011)).

Defendant argues that statements on its website, the ticket contract, and Plaintiff's ticket foreclose apparent agency. (*See* Mot. 12–14). It asks the Court to consider these materials under the incorporation by reference doctrine — an exception to the general rule that courts only consider a complaint and its attachments on a motion to dismiss. (*See id.*); *see also Aronson*, 30 F. Supp. 3d at 1397 (citation omitted). The doctrine allows a court to consider a document not attached to a complaint if it is "(1) central to the plaintiff's claims; and (2) undisputed, meaning that its authenticity is not challenged." *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024) (footnote call number omitted).

Defendant argues the doctrine applies because Plaintiff *references* the website, ticket contract, and ticket in his Amended Complaint. (*See* Mot. 12–13). This argument overlooks the centrality requirement, which is not met here. Despite the pleading's mentions of the website, ticket, and ticket contract, the materials are peripheral rather than central to Plaintiff's claim —

which sounds solely in tort and references the documents only incidentally. (*See, e.g.*, Am. Compl. ¶¶ 5, 13–16); *see also Singh*, 576 F. Supp. 3d at 1187–88 (explaining that "courts in this district have found that documents like these are not central to a claim where the claim is based in tort and not in contract" (citations omitted)). Therefore, the Court will not consider these documents in adjudicating the Motion. *See Singh*, 576 F. Supp. 3d at 1187–88 (collecting cases refusing to consider the same documents upon similar claims).

Remaining is Plaintiff's claim for negligence based on apparent agency, grounded in Defendant's conduct: advertising the excursion in print, online, and onboard using Defendant's logo; collecting payment; encouraging passengers to book exclusively through Defendant; making safety-related representations during booking; and concealing the Tour Operator's identity. (*See* Am. Compl. ¶¶ 10–21, 59). Plaintiff also alleges he would have declined to book the tour if he had believed a party other than Defendant or its agent operated it. (*See id.* ¶ 19). These statements are sufficient to plead apparent agency. *See Singh*, 576 F. Supp. 3d at 1188 (citing *Heller v. Carnival Corp.*, 191 F. Supp. 3d 1352, 1362 (S.D. Fla. 2016)).

Joint Venture (Count V). To state a claim of negligence through joint venture, Plaintiff must plead "(1) a community of interest in the performance of a common purpose; (2) joint control or right of control; (3) a joint proprietary interest in the subject matter; (4) a right to share in the profits; and (5) a duty to share in any losses which may be sustained." *Fojtasek v. NCL (Bahamas) Ltd.*, 613 F. Supp. 2d 1351, 1357 (S.D. Fla. May 11, 2009) (citation omitted). Plaintiff alleges that the required community of interest arose out of the agreement between Defendant and the Tour Operator, which established shared finances and control of the Island Adventure and made the two entities jointly liable for negligence. (*See* Am. Compl. ¶¶ 66–86). Defendant contends that the agreement between Defendant and the Tour Operator (the "Agreement") is incorporated

by reference — and the Agreement explicitly disclaims such a relationship. (*See* Mot. 15; *see also id.*, Ex. D, Standard Shore Excursion Agreement (the "Agreement") [ECF No. 38-4] 1)).

Regardless of whether Defendant is correct that the Agreement is incorporated and disclaims a joint venture, Plaintiff's allegations are sufficient to sustain his joint-venture claim. As Plaintiff notes, "joint venture agreements may be 'implied' . . . arising through the conduct of the parties, notwithstanding a written disclaimer." (Resp. 14 (citation omitted; alteration added)); *see also Adams v. Carnival Corp.*, 482 F. Supp. 3d 1256, 1271 (S.D. Fla. 2020) (citations omitted); *Ash v. Royal Caribbean Cruises Ltd.*, No. 13-20619-Civ, 2014 WL 6682514, at *8 (S.D. Fla. Nov. 25, 2014) ("[W]hile the Tour Operator Agreement specifically states that it does not constitute a joint venture, a subsequent course of conduct may have created such a joint venture agreement, and the Amended Complaint only references an 'agreement.'" (emphasis omitted)).

Here, Plaintiff alleges Defendant exercises control over the Island Adventure, shares in the losses and profits of the venture, and holds an ownership interest in the venture. (*See* Am. Compl. ¶¶ 69–79). Taking these allegations as true, it would be imprudent to dismiss the joint venture claim. *See Brooks*, 116 F.3d at 1369 (citation omitted). Because Plaintiff's allegations of ownership, control, and shared profits plausibly support the existence of an implied joint venture agreement, Count V survives. *See Adams*, 482 F. Supp. 3d 1271 (citations omitted).

IV. CONCLUSION

For these reasons, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint **[ECF No. 33]** is **GRANTED in part and DENIED in part**. Counts I–III and VI are dismissed.

DONE AND ORDERED in Miami, Florida, this 10th day of September, 2025.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record