UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:25-cv-24294-KMM

MARTA MARIA VALDES VAZQUEZ,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant" or "Carnival") Motion to Dismiss (the "Motion" or "Mot."). (ECF No. 13). No response was filed, and the time to do so has now passed. The Motion is now ripe for review. *See* S.D. Fla. L.R. 7.1(c) ("Failure to [file an opposition] may be deemed sufficient cause for granting the motion by default."); *Jones v. Bank of Am., N.A.*, 564 F. App'x 432, 434 (11th Cir. 2014) (explaining "party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is unopposed" (citation omitted)). As set forth below, the Motion is GRANTED.

I. BACKGROUND[1]

On or about April 26, 2025, Plaintiff was on the Carnival Conquest cruise ship when she was in the buffet area near the pool and slipped on a "liquid substance on the floor and fell towards the floor." Compl. ¶¶ 7–9. Plaintiff alleges that the liquid was "not properly identified," with no

[1] The following facts are taken from Plaintiff's Complaint ("Compl.") (ECF No. 1) and are accepted as true for purposes of ruling on the Motion. *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.

warning signs present. *Id.* ¶¶ 9, 13. She further alleges that Defendant controlled the premises of the Conquest and had notice of the spilled liquid because it "knew or should have known that the floor was not proper[l]y clear of any substances," but nevertheless "failed to take reasonable measures to prevent foreseeable safety hazards," thereby breaching its duty to "use reasonable care and to take adequate and reasonable safety precautions or measures to protect customers." *Id.* ¶¶ 10–12. Plaintiff brings one Count for negligence. *Id.* ¶¶ 15–22. Defendant now moves to dismiss Plaintiff's Complaint for failure to allege notice and as a shotgun pleading. *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 Complaint should be dismissed because it fails to allege actual or constructive notice and is a shotgun pleading. *See generally* Mot. As discussed above, Plaintiff did not file any memorandum in opposition. While this is grounds for granting the Motion by default pursuant to Local Rule 7.1(c), because dismissal will be without prejudice the Court turns to the merits of the Motion in an effort to streamline future amendments. The Court addresses Defendant's arguments in turn.

A. Actual or Constructive Notice

Defendant first argues that the Complaint fails to allege notice of any kind. *See* Mot. at 3–6. Plaintiff's negligence claims arise under general maritime law "because the alleged tort was committed aboard a ship sailing in navigable waters." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). "In analyzing a maritime tort case, [the Court] relies on general principles of negligence law." *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (internal quotations omitted). 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." *See id.*; *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*, 867 F.2d at 1322. Actual notice exists when the Defendant knows about the dangerous condition. *See Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022). In contrast, constructive notice exists 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." *Keefe*, 867 F.2d at 1322. Constructive notice may also exist where a plaintiff demonstrates that substantially similar incidents occurred under substantially similar conditions. *Guevara*, 920 F.3d at 720.

Here, while Plaintiff asserts the conclusory allegation that Defendant knew or should have known of the spilled liquid through its agents, employees, or others, there are no factual allegations supporting this contention. To impute actual notice to Defendant through one of its employees or agents, Plaintiff still must allege actual notice on the part of the employee or agent. *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"); *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"). As to constructive notice, the Complaint does not allege the length of time the dangerous condition was present or previous incidents that were substantially similar. *See, e.g.*, *Keefe*, 867 F.2d at 1322; *Guevara*, 920 F.3d at 720; *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 has failed to state a claim for negligence due to the lack of notice alleged.

B. Shotgun Pleading

Defendant next argues that the Complaint should be dismissed as a shotgun pleading. Mot. at 6–9. 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 Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015); *Lampkin-Asam v. Volusia Cty. 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). Courts in this Circuit have consistently found the use of such pleadings an impediment to the efficient administration of the judicial system. *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1125–28 (11th Cir. 2014) (discussing "the persistence of the shotgun pleading problem"); *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279 (11th Cir. 2006) ("Such pleadings divert already stretched judicial resources into disputes that are not structurally prepared to use those resources efficiently.").

In *Weiland*, the Eleventh Circuit sought to provide clarity and consistency to the issue of shotgun pleadings by outlining the four categories where these pleadings often fall within:

> Though the groupings cannot be too finely drawn, we have identified four rough types or categories of shotgun pleadings. The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type, at least as far as our published opinions on the subject reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third type of shotgun pleading is one that commits the sin of not

> separating into a different count each cause of action or claim for relief. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

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.

Here, Defendant is correct that the Complaint is the third type of shotgun pleading because it does not "separate[e] into a different count each cause of action or claim for relief." *Id.*; *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). Despite only asserting one Count for negligence, Plaintiff then proceeds to list sixteen (16) subsections detailing different "nonexclusive particulars" as to how Defendant was negligent. Compl. ¶ 19 (alleging, *inter alia*, failure to warn, use reasonable care in the premises, maintain, train, follow policies, hire, and "[a]dditional acts of negligence not yet discovered"). The Court will not detail all of the causes of action contained in this paragraph of the Complaint, of which there are numerous, but if Plaintiff hopes to survive dismissal in the future she must separate each cause of action into a separate count, and only plead facts specifically underlying that cause of action in the corresponding count. *See Ortiz v. Carnival Corp.*, No. 20-24838-CIV, 2020 WL 6945958, at *1 (S.D. Fla. Nov. 25, 2020). Accordingly, the Court dismisses the Complaint on the independent basis that it is a shotgun pleading.

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 (ECF No. 13) is GRANTED. Plaintiff's Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE. Plaintiff may amend her Complaint to address the aforementioned deficiencies on or before November 20, 2025.

DONE AND ORDERED in Chambers at Miami, Florida, this 31st day of October, 2025.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record