

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 25-21930-Civ-BECERRA/TORRES

FENYANG AJAMU STEWART,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

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**REPORT AND RECOMMENDATION ON DEFENDANT'S
MOTION TO DISMISS**

This cause comes before the Court on Defendant's ("Royal Caribbean") Motion to Dismiss [D.E. 28] Plaintiff's Amended Complaint. [D.E. 20]. Plaintiff has responded to the Motion [D.E. 32], to which Royal Caribbean has replied. [D.E. 36]. The Motion, therefore, is ripe for disposition.¹ After careful review of the Motion and relevant authorities, and for the reasons set forth below, we recommend that Royal Caribbean's Motion be **GRANTED in part** and **DENIED in part**.

¹ On July 29, 2025, the Honorable Jacqueline Becerra referred all pre-trial matters to the Undersigned Magistrate Judge for disposition. [D.E. 24].

I. BACKGROUND

This case centers on allegations that Royal Caribbean's security personnel battered and assaulted Plaintiff on the gangway of the Navigator of the Seas cruise ship. This unruly attack, alleges Plaintiff, stemmed from Royal Caribbean's effort to force Plaintiff to pay an outstanding invoice.

In light of this, Plaintiff has brought a ten-count complaint (now amended) against Royal Caribbean, alleging:

- Count I: Civil Assault;
- Count II: Civil Battery;
- Count III: False Imprisonment;
- Count IV: Unlawful Search and Seizure;
- Count V: Unconstitutional Policy, Custom, or Practice;
- Count VI: Failure to Train;
- Count VII: Failure to Provide Safe Means of Egress;
- Count VIII: Failure to Warn of Dangerous Condition and Custom;
- Count IX: Negligent Supervision; and
- Count X: Gross Negligence.

In the pending Motion, Royal Caribbean seeks to dismiss all counts except for Count I and Count II. Further, Royal Caribbean seeks to strike Plaintiff's demands for punitive damages, injunctive relief, and declaratory relief.

II. APPLICABLE LAWS AND PRINCIPLES

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a claim for failure to state a claim upon which relief can be granted. “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) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Conclusory statements, assertions or labels will not survive a 12(b)(6) motion to dismiss. *Id.* “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*; see also *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010) (setting forth the plausibility standard). “Factual allegations must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555 (citation omitted). Additionally:

Although it must accept well-pled facts as true, the court is not required to accept a plaintiff’s legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (noting “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions”). In evaluating the sufficiency of a plaintiff’s pleadings, we make reasonable inferences in Plaintiff’s favor, “but we are not required to draw plaintiff’s inference.” *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005). Similarly, “unwarranted deductions of fact” in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff’s allegations. *Id.*; see also *Iqbal*, 556 U.S. at 681 (stating conclusory allegations are “not entitled to be assumed true”).

Sinaltrainal v. Coca-Cola, 578 F.3d 1252, 1260 (11th Cir. 2009), *abrogated on other grounds by Mohamad v. Palestinian Auth.*, 566 U.S. 449, 453 n.2 (2012). The Eleventh Circuit has endorsed “a ‘two-pronged approach’ in applying these principles: 1)

eliminate any allegations in the complaint that are merely legal conclusions; and 2) where there are well-pleaded factual allegations, ‘assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.’” *American Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 679).

III. ANALYSIS

We will address in turn each count that Royal Caribbean seeks to dismiss.

A. Count III: False Imprisonment

Plaintiff alleges that he “was unlawfully detained and physically prevented from exiting the bridgeway by RCCL’s agents,” and “was not free to leave for nearly 30 minutes.” [D.E. 20 at ¶ 53].

“False imprisonment in Florida is defined as ‘the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty.’” *Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334, 1338 (S.D. Fla. 2012) (citing *Johnson v. Barnes & Noble Booksellers, Inc.*, 437 F.3d 1112, 1116 (11th Cir. 2006)).

Royal Caribbean argues that Plaintiff fails to allege that he was unlawfully detained, and thus, Plaintiff fails to plausibly state a claim for false imprisonment. In support, Royal Caribbean points to its ticket contract with Plaintiff, which provides: “Carrier may ... restrain any Guest at any time when ... the Guest’s conduct or presence ... is believed to present a possible danger, security risk or be detrimental to himself or the health, welfare, comfort or enjoyment of others, or is in violation of

any provision of this agreement” [D.E. 30 at 6]. In light of this provision, Royal Caribbean that argues that it had a lawful reason to detain Plaintiff.

In response, Plaintiff points to his allegations that Royal Caribbean’s agents “forcibly blocked, pushed, tackled, and restrained” him, while “employing a dangerous prone restraint technique.” [D.E. 20 at ¶ 16]. Further, Plaintiff alleges that when he asked if he was being detained, Royal Caribbean’s agent responded “No.” [D.E. 20 at ¶ 22]. Thus, Plaintiff alleges that there exists a fact dispute as to whether Royal Caribbean had the right to detain Plaintiff, especially in the manner in which he was detained.

We agree with Plaintiff that, at this early stage, there exists a prevalent fact issue as to whether Royal Caribbean lawfully detained Plaintiff. The Court is cognizant that Defendant’s ticket contract, under certain circumstances, permits its ability to “restrain any Guest.” [D.E. 30 at 6]. But discovery and more fleshed-out argument is required to determine whether Royal Caribbean can, as Plaintiff alleges, surround guests with multiple agents, “tackl[e]” them to the ground, “forcibly pin[]” them “for several minutes,” “appl[y] significant weight to” the “back, legs, and torso,” and “physically block [their] path” to exit the area. [D.E. 20 at ¶¶ 24, 25, 28].

These allegations, which at this stage we must accept as true, do more than enough to allege that Royal Caribbean’s detention in this case was unlawful. Accordingly, the Motion should be denied as to Count III. *See Amparo v. Classica Cruise Operator Ltd., Inc.*, No. 20-CV-60896-RAR, 2021 WL 4989915, at *6 (S.D. Fla. Oct. 26, 2021) (finding an issue of fact on the plaintiff’s false imprisonment claim

because it was “clearly in dispute whether Classica had the authority to detain Plaintiffs under the terms of the Cruise Ticket Contract and whether they had the legal authority to do so” and that “even if the detention was initially warranted, a reasonable jury could find that the detention became unreasonable or unwarranted at some point thereafter”); *Blumel v. Mylander*, 919 F. Supp. 423, 427 (M.D. Fla. 1996) (denying motion to dismiss false imprisonment claim where the plaintiff alleged a “set of facts” that, “if proven, could easily constitute false imprisonment,” because they “would clearly support a finding that [the defendant] ‘unlawfully’ detained Blumel under the law of false imprisonment”).

B. Count IV: § 1983 Claim for Fourth Amendment Violation

In Count IV, Plaintiff alleges that Royal Caribbean’s “security personnel,” while “under color of law,” “detained and forcibly restrained Plaintiff on the ship’s gangway for several minutes in a prone position,” from which Plaintiff suffered “physical injury, emotional distress, humiliation, and ongoing psychological trauma.” [D.E. 20 at ¶¶ 61, 62, 65].

But Royal Caribbean’s security personnel are not state actors. And while Plaintiff alleges that the security personnel acted under the color of law, “the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful.” *Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1277 (11th Cir. 2003) (quoting *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999)). Consequently, Plaintiff must allege—

beyond a conclusory statement—that this case is a rare instance in which a private actor can be held liable under the Fourth Amendment (and § 1983).

In this Circuit, courts employ three distinct tests to determine “whether the actions of a private entity are properly attributed to the state.” *Id.* Those tests are “(1) the public function test; (2) the state compulsion test; and (3) the nexus/joint action test.” *Willis v. Univ. Health Servs., Inc.*, 993 F.3d 837, 840 (11th Cir. 1993).

The Eleventh Circuit explains those tests as follows:

The public function test limits state action to instances where private actors are performing functions “traditionally the exclusive prerogative of the state.” The state compulsion test limits state action to instances where the government “has coerced or at least significantly encouraged the action alleged to violate the Constitution.” The nexus/joint action test applies where “the state has so far insinuated itself into a position of interdependence with the [private party] that it was a joint participant in the enterprise.” We must determine on a case-by-case basis whether sufficient state action is present from a non-state actor (defendant) to sustain a section 1983 claim.

Id.

Here, Plaintiff has not plausibly alleged that any of these three tests are satisfied. As an initial matter, no allegations in the Complaint meaningfully suggest that the state coerced or significantly encouraged Royal Caribbean’s detention policy. The state compulsion test, then, is inapplicable. The same goes for the nexus/joint action test; Plaintiff does not plausibly allege nor make meaningful argument that the state was so present in this situation that, effectively, it acted jointly with Royal Caribbean.

What remains is the public function test. On that front, Plaintiff alleges that the actors are in “quasi-governmental roles,” and “engaged in conduct that reasonably

conveyed the impressions of acting under police or legal authority.” [D.E. 20 at ¶ 61]. But Plaintiff cites no authority to demonstrate that a private company’s security, comprised of private actors, can constitute state action simply because they subjectively “convey[] the impression of acting under police ... authority.” [*Id.*].

In reality, a company’s security and theft prevention are far from “the *exclusive* prerogative of the state.” *Willis*, 993 F.3d at 840 (emphasis added). Indeed, this Circuit, relying on the Supreme Court’s decision in *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149 (1978), has held exactly that:

Plaintiffs here urge that the defendants performed public functions in detaining them as suspected shoplifters, in searching their purses, and in detaining them after the gun was found, even though the defendants no longer had any reason to believe they were shoplifting. We disagree. Like the warehouseman in *Flagg Brothers*, the merchant here did not perform any function ‘exclusively reserved to the state.’ A merchant’s detention of persons suspected of stealing store property simply is not an action exclusively associated with the state. Experience teaches that the prime responsibility for protection of personal property remains with the individual. A storekeeper’s central motivation in detaining a person whom he believes to be in the act of stealing his property is self-protection, not altruism. Such action cannot logically be attributed to the state.

White v. Scrivner Corp., 594 F.2d 140, 142 (5th Cir. 1979).

In light of this binding authority, we are not convinced that Plaintiff has plausibly alleged that Royal Caribbean’s security acted as state actors. None of Plaintiff’s allegations distinguish the pending case from one, such as *White*, where a private company seeks to (from its perspective) prevent theft or something of the like. Thus, Plaintiff has not plausibly alleged state action.

As to Count IV, then, Defendant’s Motion should be granted and Count IV should be dismissed. See *Washington v. Veterans of Foreign Wars of U.S.*, 196 F. App’x

777, 779 (11th Cir. 2006) (citing *Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001)) (“Here, none of the parties were state actors. A private party will be considered a state actor only where one of the following conditions is met: (1) the state has coerced or at least significantly encouraged the action alleged to have violated the Constitution; (2) the private parties performed a public function that was traditionally the exclusive prerogative of the state; or (3) the state had so far insinuated itself into a position of interdependence with the private parties that it was a joint participant in the enterprise. As Washington has failed to allege any of the foregoing conditions, the district court properly dismissed his constitutional claim.”); *see also Rocha-Jamarillo v. Madrigal*, 727 F. Supp. 3d 1370, 1394–95 (M.D. Ga. 2024) (“Here, ... Plaintiff has not alleged facts which are sufficient to establish that Defendant Paulk was a state actor under any of these tests As a result, the Court finds that Plaintiff has failed to sufficiently plead that Defendant Paulk was acting under color of state law for purposes of Section 1983 liability and, therefore, Plaintiff has failed to state a claim under Section 1983.”); *Green v. Abony Bail Bond*, 316 F. Supp. 2d 1254, 1262 (M.D. Fla. 2004) (granting motion to dismiss section 1983 claim; “[s]ince bail bondsmen are not state actors, the Plaintiffs have no cause of action against the Defendants pursuant to 42 U.S.C. § 1983”).

C. Count V: Monell Claim

The same goes for Plaintiff’s *Monell* claim. There, Plaintiff alleges that his injuries were the product of Royal Caribbean’s customary, systemic, and

unconstitutional policy of permitting security personnel to detain cruisegoers over payment disputes and to use excessive force.

But an essential prerequisite to a successful *Monell* claim is an underlying constitutional violation. *See Cunningham v. Cobb Cnty., Georgia*, 141 F.4th 1201, 1213 (11th Cir. 2025) (internal citation omitted) (“If a plaintiff cannot establish an actual constitutional violation by an officer, the plaintiff’s *Monell* claim fails at step one. ... Put differently, when a plaintiff fails to establish an underlying constitutional violation, we can dismiss the plaintiff’s claims against the local government (or local government entity) as a matter of law.”).

Here, we have found that Plaintiff has failed to plausibly allege that he was harmed by state actors; hence, we have found that Plaintiff has not plausibly alleged a constitutional violation. And without a predicate constitutional violation, Plaintiff’s *Monell* claim cannot succeed. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (“If a person has suffered no constitutional injury ..., the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point.”); *Sheets v. Charlotte Cnty.*, No. 2:24-CV-958-JES-KCD, 2025 WL 1644084, at *6 (M.D. Fla. June 10, 2025) (“No factual allegations are made, however, as to which test, if any, establishes Weiser as a State actor. Having failed to show Weiser is plausibly a State actor, this [*Monell* claim] merits dismissal.”).

Royal Caribbean’s Motion should therefore also be granted as to Count V.

D. Count VI: Failure to Train

In this count, Plaintiff alleges that Royal Caribbean has “failed to adequately train its security personnel and customer-facing staff on the appropriate and lawful handling of billing disputes, including de-escalation tactics and distinguishing civil disputes from security threats.” [D.E. 20 at ¶ 81].

In its Motion, Royal Caribbean argues that Plaintiff fails to identify a specific training program, and also fails to allege how Royal Caribbean failed to implement that program. In response, Plaintiff argues only that Royal Caribbean has a duty to train its employees to peacefully resolve customer disputes, and failed to do so by neglecting to instruct de-escalation tactics.

“Negligent failure to train is a ‘recognized dut[y] under federal maritime law.’” *Mayer v. Carnival Corp.*, 731 F. Supp. 3d 1316, 1322 (S.D. Fla. 2024) (quoting *Diaz v. Carnival Corp.*, 555 F. Supp. 3d 1302, 1310 (S.D. Fla. 2021)). “To state a claim of negligent training, Plaintiff must allege Defendant ‘was negligent in the implementation or operation of the training program and the negligence cause[d] [his] injury.’” *Anders v. Carnival Corp.*, No. 23-21367-CIV, 2023 WL 4252426, at *4 (S.D. Fla. June 29, 2023) (quoting *Diaz*, 555 F. Supp. at 1310).

The problem with Plaintiff’s claim is that it does not identify an actual training program that Royal Caribbean failed to implement. Critically, a failure to train claim cannot merely allege that a company’s “general policies and operations” were executed negligently. *Quashen v. Carnival Corp.*, 576 F. Supp. 3d 1275, 1304 (S.D. Fla. 2021) (“[G]eneral maritime law does not recognize a claim of negligence that is

premised upon a company's general policies and operations.”). Rather, a plaintiff must allege that a “defendant acted negligently in the implementation or operation of its *training programs*.” *Walsh v. Carnival Corp.*, No. 20-CV-21454-UU, 2020 WL 10936272, at *5 (S.D. Fla. July 7, 2020).

And here, Plaintiff’s Complaint alleges only that Royal Caribbean should train its employees to peacefully resolve customer disputes—not that Royal Caribbean has such a training program but has negligently implemented it. Accordingly, Plaintiff’s allegations fall short of stating a claim for negligent failure to train. *See Mayer*, 731 F. Supp. 3d at 1322 (dismissing negligent failure to train claim because the plaintiff “never actually alleges that Carnival has a training program for its bartenders that goes beyond the company's general policies and operations,” “much less that the program trains bartenders on the dangers of making drinks around broken glass,” and thus “[t]aking the allegations in the light most favorable to the Plaintiff, we cannot say that Mayer has stated a claim for negligent training based on the facts we have before us”); *Watts v. City of Hollywood, Fla.*, 146 F. Supp. 3d 1254, 1273 (S.D. Fla. 2015) (granting a motion to dismiss a negligent training claim because, in part, “[t]he Complaint does not contain any allegations describing a particular training program, let alone allegations highlighting why such a training program is defective and how the defect is a widespread problem”); *Walsh v. Carnival Corp.*, No. 20-CV-21454-UU, 2020 WL 10936272, at *5 (S.D. Fla. July 7, 2020) (“In short, it is not enough to identify that certain training programs exist and to allege in a conclusory manner that Defendant was negligent in operating such training programs. Plaintiff

must allege sufficient factual allegations to establish that Defendant acted negligently in the implementation or operation of its training programs. And Plaintiff has failed to do so.”); *Donaldson v. Carnival Corp.*, No. 20-23258-CIV, 2020 WL 6801883, at *2 (S.D. Fla. Nov. 19, 2020) (quoting *Christie v. Royal Caribbean Cruises, Ltd.*, No. 20-22439-Civ, 2020 WL 6158815, at *6 (S.D. Fla. Oct. 21, 2020)) (“As this Court recently stated, where a Plaintiff’s pleading could be ‘interchangeably alleged against any cruise line defendant’ the Plaintiff has failed to adequately state a claim. The Plaintiff offers no specific facts as to the Defendant’s crewmembers showing any alleged negligence in support of Counts I and II. Such threadbare allegations fail to satisfy federal pleading standards.”); *cf. Spotts v. Carnival Corp.*, 711 F. Supp. 3d 1360, 1368 (S.D. Fla. 2024) (denying motion to dismiss negligent training claim where the plaintiff’s allegations included that “Carnival ‘trains its crew members to inspect and maintain the deck areas in a clean and dry condition. CARNIVAL’s trainings and procedures instruct crew members that its floors are slippery when wet which can cause passengers to slip and fall and get injured. CARNIVAL also trains and created procedures which require crew members to place wet floor signs on walkways that become repetitively wet and/or are known to be wet.’”).

Accordingly, because Plaintiff’s complaint vaguely alleges that Royal Caribbean negligently trained its employees, rather than identifying a specific training program that Royal Caribbean negligently implemented or operated, Count VI should be dismissed without prejudice.

E. Count VII: Failure to Provide Safe Means of Egress

Here, Plaintiff alleges that Royal Caribbean breached its maritime duty to Plaintiff to provide safe egress, and “breached this duty by: Stationing security officers in a manner that physically blocked and obstructed Plaintiff’s exit on the disembarkation gangway; Creating a threatening and hostile environment that rendered the exit route psychologically and physically unsafe; and Deviating from normal disembarkation procedures to target Plaintiff under the pretext of an unresolved billing dispute.” [D.E. 20 at ¶ 92].

But these allegations, as Royal Caribbean points out, essentially re-allege the intentional torts. Effectively, Plaintiff alleges that the officers blocked his exit, created a hostile environment, then targeted him and physically beat him. Plainly, the intentionally-tortious conduct is the underpinning of the claim. Such intentional conduct (which also serves as the basis for Plaintiff’s assault, battery, and false imprisonment claims) cannot serve as the basis for this negligence claim. *See Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334, 1337 (S.D. Fla. 2012) (“Defendant cannot be found negligently liable for the commission of the same intentional tort for which Defendant is strictly liable. To hold otherwise in this instance would eviscerate any distinction between tort liability premised on negligence and tort liability premised on intentional tortious activity. Thus, Count I is improper to the extent that Count I attempts to state a negligence cause of action against Defendant for the commission of intentional torts, and is therefore dismissed with prejudice.”); *Doe v. Carnival Corp.*, No. 24-CV-22749-RAR, 2024 WL 4723115, at *3 (S.D. Fla. Nov. 8, 2024) (noting

that, while in theory, claims for strict liability for intentional torts and strict liability negligence claims can be pleaded together, “a plaintiff cannot allege that a defendant negligently committed the same intentional tort through the same conduct for which the defendant is strictly liable”).

Accordingly, the Motion should be granted as to Count VII.

F. Count VIII: Failure to Warn of Dangerous Conditions

On this front, Plaintiff alleges that Royal Caribbean “failed to warn Plaintiff that: Security personnel would be stationed to intercept him on the gangway; He was considered ‘detained’ or subject to a forum of involuntary delay; [and] Any attempt to disembark might result in the use of physical force or a call to law enforcement.” [D.E. 20 at ¶ 100].

Royal Caribbean argues that Plaintiff fails to state a claim. Specifically, Plaintiff fails to allege that Royal Caribbean had knowledge that the security personnel stationed on the gangway posed a danger. In support, Royal Caribbean avers that there are “no facts demonstrating that any of the security personnel involved in the alleged incident had ever injured a passenger before, or ... that any passenger was injured by security personnel attempting to prevent them from disembarking in the past.” [D.E. 28 at 13].

Plaintiff, meanwhile, stands on his allegations that Royal Caribbean had a duty to warn him that the security personnel may intercept him and use force.

But Plaintiff has not alleged that Royal Caribbean had any knowledge that the security personnel would commit intentional torts upon a passenger. He does allege

that Royal Caribbean “knew or should have known that” their practice of detaining guests with security personnel “posed serious risks to passenger safety.” [D.E. 20 at ¶ 19]. But this allegation is conclusory: there are no factual underpinnings to support this allegation, and there is no obvious reason why Royal Caribbean should have known the security personnel posed a risk to Plaintiff. And short of plausible allegations that Royal Caribbean was on notice of this apparent danger, Plaintiff fails to state a claim. *See Spall v. NCL (Bahamas) Ltd.*, 275 F. Supp. 3d 1345, 1349 (S.D. Fla. 2016) (granting motion to dismiss failure to warn claim because, in part, “Plaintiffs failed to provide any facts relating to how Defendant knew or should have known of such dangers and/or hazards, which is necessary in order to state a plausible claim on a failure to warn theory”); *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1394 (S.D. Fla. 2014) (granting motion to dismiss duty to warn claim because, in part, “the Complaint contains no factual allegations to support the inference that Celebrity was on actual or constructive notice of any specific hazards”); *Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-CIV, 2012 WL 2049431, at *5 (S.D. Fla. June 5, 2012) (“Gayou's negligence count, premised on Celebrity's failure to warn, fails to state a claim because he has not alleged any *facts* from which it may be inferred that Celebrity either knew or should have known of any dangerous or unsafe condition”) (emphasis in original).

Consequently, we recommend that Count VIII be dismissed.

G. Count IX: Negligent Supervision

In Count IX, Plaintiff alleges that Royal Caribbean “owed Plaintiff a duty to supervise its security agents and employees to ensure that they acted within lawful bounds and did not violate passenger rights” and failed to do so. [D.E. 20 at ¶ 107]. Plaintiff further alleges that the Guest Services Manager, Kwame, “failed to prevent the detention or use of force” and “did not direct security to stand down despite knowing there was no lawful authority to detain Plaintiff.” [*Id.* at ¶ 110].

In its Motion, Royal Caribbean argues that Plaintiff fails to allege Royal Caribbean had notice that any of the crewmembers or security personnel were unfit for the position.

“Negligent supervision ‘occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further actions such as investigating, discharge, or reassignment.’” *Doe v. NCL (Bahamas) Ltd.*, No. 1:16-CV-23733-UU, 2016 WL 6330587, at *4 (S.D. Fla. Oct. 27, 2016) (quoting *Cruz v. Advance Stores Co.*, 842 F. Supp. 2d 1356, 1359 (S.D. Fla. 2012)). Thus, a plaintiff “must allege that (1) the employer received actual or constructive notice of an employee's unfitness, and (2) the employer did not investigate or take corrective action such as discharge or reassignment.” *Cruz*, 842 F. Supp. 2d at 1359.

Here, Royal Caribbean’s point is well taken: Plaintiff offers no allegations that Kwame or Royal Caribbean had notice that any of the security personnel would (as alleged) violently detain and attack Plaintiff. Plaintiff’s allegations, therefore, fail to

state a claim for negligent supervision. *See Doe*, 2016 WL 6330587, at *4 (granting motion to dismiss because “Plaintiff fails to state a claim for negligent supervision because she fails to allege that Defendant: (1) had actual or constructive notice of the bartender's or any other crewmember's unfitness; and (2) failed to take corrective action in light of its knowledge”); *Doe v. NCL (Bahamas) Ltd.*, No. 18-20060-CIV, 2018 WL 3848421, at *3 (S.D. Fla. Aug. 13, 2018) (granting motion to dismiss because “[t]he Plaintiffs fail to allege any facts that NCL had actual or constructive notice of Selvam’s unfitness before the alleged sexual assault and battery, and that NCL failed to investigate or take corrective action”); *Doe v. Carnival Corp.*, 472 F. Supp. 3d 1187, 1194 (S.D. Fla. 2020) (“Plaintiff fails to state a claim for negligent monitoring or supervision because she fails to allege that Dufry: (1) had actual or constructive notice of Ganesh Joshi's or “Segain's” unfitness;1 and (2) failed to take corrective action in light of its knowledge.”).

H. Count X: Gross Negligence

Here, Plaintiff alleges that Royal Caribbean’s agents “forcibly pushed, grabbed, tackled and restrained Plaintiff on the narrow bridgeway,” and by subjecting Plaintiff to violent force in this precarious setting ... acted with conscious disregard for the foreseeable risk of death or catastrophic injury.” [D.E. 20 at ¶¶ 117–18].

But, as Royal Caribbean points out, this claim simply recasts Plaintiff’s intentional tort claims (assault, battery, and false imprisonment) into a negligence claim. Put otherwise, Plaintiff cannot plausibly and properly plead the negligent

commission of an intentional tort. And because Plaintiff's gross negligence claim does just that, it is insufficient. *See Lizarazo v. Miami-Dade Cnty.*, No. 1:16-CV-20558-UU, 2016 WL 11589781, at *3 (S.D. Fla. Apr. 26, 2016) (dismissing gross negligence claim in light of a pending intentional tort claim because “[e]ven viewing the direct and inferential allegations in the light most favorable to Plaintiff, the Court cannot reconcile the logically inconsistent claims. Other than the conclusory allegation that each officer ‘failed to prevent his fellow officers from assaulting [Plaintiff],’ the gross negligence counts do not contain any factual content showing the Officers nonfeasance or mere misfeasance in witnessing the use of excessive force but failing to come to Plaintiff's aid. Rather, by Plaintiff's account, each officer actively participated in the alleged beating by striking Plaintiff, which quite clearly, supports a claim for battery.”); *see also Doe v. Norwegian Cruise Lines, Ltd.*, No. 23-CV-24236, 2024 WL 3916800, at *4 (S.D. Fla. Aug. 22, 2024) (“Doe raises her negligence claim based on Norwegian's failure to prevent an intentional tort for which she claims it is strictly liable. Counts 1 and 2 are premised on the same intentional tort — Roe's assault. The Court is persuaded Count 1 fails to state a claim for this reason.”).

Accordingly, the Motion should be granted on this score, and Count X should be dismissed.

I. Punitive Damages

Royal Caribbean next moves to dismiss Plaintiff's demand for punitive damages. In support, Royal Caribbean argues that Plaintiff fails to allege Royal Caribbean's knowledge of the wrongful conduct.

Plaintiff, meanwhile, argues that punitive damages are in order because the force used on Plaintiff “was neither necessary nor proportionate, especially given the elevated and dangerous condition of the gangway, creating a substantial risk of catastrophic harm.” [D.E. 32 at 16]. Further, Plaintiff argues, the “conduct exceeded mere negligence and reflected a conscious disregard for Plaintiff’s safety.” [*Id.*].

In admiralty, a plaintiff “may recover punitive damages” for an intentional tort “upon a showing of ‘intentional or wanton and reckless conduct’ on the part of defendants amounting to ‘a conscious disregard of the rights of others.’” *In re Amtrak Sunset Ltd. Train Crash in Bayou Canot, Ala. on Sept. 22, 1993*, 121 F.3d 1421, 1428 (11th Cir. 1997) (quoting *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694, 699 (1st Cir. 1995)). And “[u]nder general principles of tort law, punitive damages cannot be recovered from a principal for actions of its agent, unless the principal authorized the actions, approved the actions, was somehow reckless in allowing them to happen, or the agent was acting within the scope of his employment.” *Jones v. Compagnie Generale Mar.*, 882 F. Supp. 1079, 1085 (S.D. Ga. 1995).

Here, Plaintiff has, of course, alleged that the actors in this case were acting within the scope of their employment when they allegedly committed the intentional torts (otherwise, strict liability would not attach). These are not allegations of mere negligence; they are allegations that Royal Caribbean’s agents intentionally harmed Plaintiff, or at the very least did so with reckless disregard. Consequently, taken in the light most favorable to Plaintiff at this early juncture, we find that Plaintiff has plausibly pleaded intentional misconduct. *See Atl. Sounding Co. v. Townsend*, 557

U.S. 404, 409, 414 (2009) (“Punitive damages have long been an available remedy at common law for wanton, willful, or outrageous conduct”) (“[P]unitive damages have long been available at common law[,] [and] . . . the common-law tradition of punitive damages extends to maritime claims.”); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 510-11 (2008) (recognizing availability of punitive damages under maritime law when a defendant engaged in “reckless action,” that was “worse than negligent but less than malicious”); *see, e.g., Noon v. Carnival Corp.*, No. 18-23181-CIV, 2019 WL 3886517, at *13 (S.D. Fla. Aug. 12, 2019) (“Defendant takes issue with Plaintiff’s position because punitive damages are purportedly not recoverable under general maritime law where only simple negligence is alleged. But, Plaintiff’s allegations, in the light most favorable to Plaintiff, include gross recklessness tantamount to intentional misconduct because the crewmembers not only refused to assist Mrs. Noon, but they even prevented her family members from contacting emergency service providers in a timely basis after Mrs. Noon’s oxygen had been cut off.”); *Colarte v. Carnival Corp.*, No. 1:24-CV-22203, 2024 WL 4124295, at *10 (S.D. Fla. Aug. 23, 2024), *report and recommendation adopted*, 2024 WL 4122238 (S.D. Fla. Sept. 9, 2024) (finding that punitive damages were adequately pleaded where the defendant’s employees were alleged to have engaged in intentional misconduct); *Doe v. Carnival Corp.*, 470 F. Supp. 3d 1317, 1326 (S.D. Fla. 2020) (“At this stage, viewing the allegations in the light most favorable to Plaintiff, Plaintiff has adequately alleged entitlement to punitive damages ‘to the extent’ that Carnival was ‘more than simply negligent.’”).

Accordingly, on this score, Royal Caribbean's Motion should be denied. At best, the question of punitive damages can be revisited at summary judgment based on a review of the complete record developed in the case.

J. Declaratory and Injunctive Relief

Lastly, Royal Caribbean seeks to dismiss Plaintiff's request for injunctive and declaratory relief.

1. Injunctive Relief

As to injunctive relief, Plaintiff alleges that he is set to embark on another Royal Caribbean cruise in February of 2026. Consequently, Plaintiff requests certain mandatory actions be compelled in advance of his cruise, to ensure that this incident will not repeat itself.

Recently, the Court, in its Order denying Plaintiff's Motion for Preliminary Injunction, denied this request for relief. [D.E. 55]. The Court sees no reason to stray from that reasoning here. And when the Court removes as the basis for Plaintiff's injunctive relief his fear that he will be detained on his upcoming cruise, there exist no plausible allegations of future harm.

Accordingly, for the reasons set forth in that Order and because Plaintiff fails to plausibly allege the threat of future injury, the Court should grant Defendant's Motion to strike Plaintiff's request for injunctive relief. *See Zononi v. CHW Grp., Inc.*, No. 22-CV-14358, 2023 WL 2667941, at *5 (S.D. Fla. Mar. 7, 2023) ("After reviewing the FAC, the Court finds no allegations to suggest a threat of future injury, other than the mere fact of past injuries. Without more, past injuries alone do not suffice.");

Schaevitz v. Braman Hyundai, Inc., 437 F. Supp. 3d 1237, 1249 (S.D. Fla. 2019) (dismissing prayer for declaratory and injunctive release based upon failure to allege facts showing threat of imminent future harm).

2. Declaratory Relief

Plaintiff further requests the Court to declare that Royal Caribbean is liable under every count of the Amended Complaint. Royal Caribbean, meanwhile, moves to strike these requests for relief, on grounds that there exists no live controversy.

In cases where “only ... past conduct violated [the plaintiff’s] rights ... declaratory relief would have no force or effect.” *Rager v. Augustine*, 760 F. App’x 947, 954 (11th Cir. 2019) (citing *Emory v. Peeler*, 756 F.2d 1547, 1551-52 (11th Cir. 1985)). Here, *supra*, we recommend the dismissal of Plaintiff’s request for injunctive relief, and also the dismissal of Counts IV–X. All that remains in Plaintiff’s Complaint in terms of declaratory relief, then, is requests to declare past harm. Those requests, because they relate solely to past harms, are inappropriate. *See AA Suncoast Chiropractic Clinic, P.A. v. Progressive Am. Ins. Co.*, 938 F.3d 1170, 1180 (11th Cir. 2019) (dismissing claims for declaratory relief because the plaintiff did not satisfy “the requirement that the plaintiff seeks relief for a future harm”) *Michele F. Libman MD PA v. First Health Grp. Corp.*, No. 24-14119-CIV, 2024 WL 4564804, at *3 (S.D. Fla. Aug. 12, 2024) (internal citations omitted) (“Applying this framework to Plaintiff’s claims for declaratory judgment, the Court discerns that much of what Plaintiff seeks in its prayer for relief are declarations concerning the propriety of Defendants’ past conduct. ... These claims, although cast in the form of declaratory

relief, really speak in legal remedies (i.e., breach of contract) and related damages rather than Plaintiff's uncertainty as to its legal rights in a continuing, live controversy. ... Declaratory judgment is therefore improper").

Thus, Plaintiff's request for declaratory relief should be stricken.

IV. CONCLUSION

For the reasons set forth above, Defendant's Motion [D.E. 28] should be **GRANTED in part** and **DENIED in part**:

- A. Counts IV and V should be dismissed from Plaintiff's Amended Complaint with prejudice;
- B. Counts VI, VII, VIII, IX, and X should be dismissed from Plaintiff's Amended Complaint with leave to amend on a proper showing and motion;
- C. Plaintiff's request for injunctive relief should be stricken from the Amended Complaint;
- D. Plaintiff's request for declaratory relief should be stricken from the Amended Complaint; and
- E. The remainder of Defendant's Motion should be denied.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have fourteen (14) days from service of this Report and Recommendation within which to file written objections, if any, to the District Judge. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal

conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell*, 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security*, 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE and SUBMITTED in Chambers at Miami, Florida this 13th day of January, 2026.

/s/ Edwin G. Torres

EDWIN G. TORRES
United States Magistrate Judge