UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20883-LEIBOWITZ/AUGUSTIN-BIRCH

LYNNE BALTZER,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.
_____/

REPORT AND RECOMMENDATION ON
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This cause comes before the Court on Defendant Royal Caribbean Cruises, Ltd.'s Motion for Summary Judgment. DE 44. The Honorable David S. Leibowitz, United States District Judge, referred the Motion to the undersigned United States Magistrate Judge. DE 55. Plaintiff Lynne Baltzer filed a response, DE 51, and Defendant filed a reply. DE 58. Having carefully considered the record and the briefing and being otherwise fully advised in the premises, the Court **RECOMMENDS DENYING** Defendant's Motion for Summary Judgment [DE 44].

I. Background

This is a cruise ship slip-and-fall case, and the undisputed facts of this case are as follows. On May 9, 2024, Plaintiff was a fare-paying passenger on Defendant's *Freedom of the Seas* ship. DE 60 (joint statement of undisputed facts). While aboard Defendant's ship, Plaintiff slipped and fell on a wet spot or area inside of the Windjammer Café. DE 43 ¶ 2 (Defendant's statement of material facts); DE 50 ¶ 2 (Plaintiff's response to Defendant's statement of material facts); DE 50 ¶ 1 (Plaintiff's additional facts in opposition to summary judgment); DE 57 ¶ 1 (Defendant's response to Plaintiff's statement of additional material facts). Defendant did not have actual notice

of the wet substance on the floor at the time of the incident. DE 43 ¶ 3 (Defendant's statement of material facts); DE 50 ¶ 3 (Plaintiff's response to Defendant's statement of material facts).

II. Summary Judgment Standard

"Summary judgment is appropriate if the evidence establishes 'no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *McCormick v. City of Fort Lauderdale*, 333 F.3d 1234, 1243 (11th Cir. 2003) (quoting Fed. R. Civ. P. 56(c)). "A factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358 (11th Cir. 1999) (quotation marks omitted). "An issue of fact is material if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Burgos v. Chertoff*, 274 F. App'x 839, 841 (11th Cir. 2008) (quotation marks omitted). When ruling on a motion for summary judgment, a court must draw all reasonable inferences when reviewing the record in a light most favorable to the nonmoving party. *Damon*, 196 F.3d at 1358.

III. Analysis

Plaintiff raises two negligence counts against Defendant: (1) negligent maintenance, and (2) negligent failure to warn. DE 1. Since these counts arise from Plaintiff's slip and fall while aboard Defendant's cruise ship, the Court must apply maritime law to this matter. *Brady v. Carnival Corp.*, 33 F.4th 1278, 1281 (11th Cir. 2022) ("Maritime law governs the liability of a cruise ship for a passenger's slip and fall."). Under maritime law, Plaintiff must demonstrate four elements to show negligence: (1) Defendant had a duty to protect Plaintiff from a particular injury; (2) Defendant breached that duty; (3) the breach actually and proximately caused Plaintiff's injury; and (4) Plaintiff suffered actual harm. *See id.* Defendant claims an entitlement to summary judgment on both of Plaintiff's negligence counts, maintaining that Plaintiff cannot establish that

it had notice of the wet floor or that it breached a duty. DE 44. The Court will evaluate these contentions in turn.

A. Notice

Cruise ship operators owe passengers "a duty of ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition." *Brady*, 33 F.4th at 1281. As set forth above, it is undisputed that Defendant did not have actual notice of the wet floor. As such, Plaintiff must establish that Defendant had constructive notice of the wet floor, which can be demonstrated in one of two ways. *Guevara v. NCL (Bah.) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). First, Plaintiff "can establish constructive notice with evidence that the defective condition existed for a sufficient period of time to invite corrective measures." *Id.* (alteration and quotation marks omitted). Or second, Plaintiff "can establish constructive notice with evidence of substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Id.* (quotation marks omitted).

To demonstrate that Defendant had constructive notice of the wet floor, Plaintiff opts for the second method of demonstrating constructive notice—evidence of substantially similar incidents—and highlights the following evidence. First, she points to the deposition transcript of Defendant's corporate representative. DE 51 at 2–3. Therein, Defendant's corporate representative testified that the Windjammer Café is a buffet area of the cruise ship where passengers carry plates and cups and where "it's probably more likely that somebody could spill something there than if they were just walking around in a different area without carrying any kind of food or beverages." DE 51-1 at 20:21–21:15. Defendant's corporate representative also explained that Defendant was "aware of the possibility that people could spill things in the Windjammer and people could slip and fall as a result." *Id.* at 22:3–9. Defendant's corporate representative further stated that the crew

members of a ship are tasked with monitoring the floors to make sure nothing has been spilled and that there is a spill clean-up station located in or near the Windjammer Café. *Id.* at 30:9–17, 55:1–14.

Second, Plaintiff cites Defendant's "Own The Spill" policy, which states that "[a]ll Officers, Staff and Crew must be willing to assist and take responsibility in the ship's cleanliness efforts, no matter what department they work in" and requires, inter alia, that spills be quickly cleaned and dried. DE 51-2 at 2. The stated purpose of the "Own The Spill" policy is to "help reduce exposure to injuries resulting from slips and falls, by emphasizing the need to quickly respond to spills of liquids in guest and crew areas, in particular our restaurants, bars, public spaces and by managing excess water on open decks." *Id.* at 1. Third, Plaintiff explains that Defendant has a policy regarding standards for slip resistance of the floors on its ships, and this policy provides the minimum requirements for slip resistance in the Windjammer Café. DE 51-3 at 18. Lastly, and most importantly, Plaintiff submits Defendant's interrogatory answers, wherein Defendant disclosed that, within the three years preceding Plaintiff's slip and fall, there have been thirty-six slip and falls in the Windjammer Café, with fifteen occurring on the ship Plaintiff was a passenger on and twenty-one taking place in the Windjammer Café of a sister ship. DE 51-4 at 6–10.

Viewing this evidence in a light most favorable to Plaintiff, the nonmoving party, a genuine dispute of material fact exists as to whether Defendant had constructive notice of the wet floor. As previously explained, one manner of demonstrating constructive notice is "evidence of substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Guevara*, 920 F.3d at 720; *see also Skindariene v. Royal Caribbean Cruises, Ltd.*, 806 F. Supp. 3d 1342, 1354 (S.D. Fla. 2025) (explaining the same). Importantly, "[t]he 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 (Bah.) Ltd.*, 796 F.3d 1275, 1287 (11th Cir. 2015); *see also Tuite v. Carnival Corp.*, 713 F. Supp. 3d 1338, 1345 (S.D. Fla. 2024) (explaining the same).

Here, the parties do not dispute that Plaintiff slipped and fell on a wet floor in the Windjammer Café. And Plaintiff has produced evidence, in the form of Defendant's interrogatory answer, of other incidents where a passenger reported slipping and falling on a wet floor in the Windjammer Café on either the ship Plaintiff was a passenger on or that ship's sister ship, which contains the same Windjammer Café. *See* DE 51-4 at 6–10. Specifically, Defendant identified thirty-six incidents which occurred on "the same area and flooring surface where Plaintiff's alleged incident occurred onboard the [ship Plaintiff was a passenger on] and all sister class ships." *See id.* Even though some of these incidents appear somewhat distinguishable from Plaintiff's slip and fall, such as incidents where a guest reported slipping and falling on food or a greasy surface, Defendant does not contend in its briefing that any of these incidents lack substantial similarity to Plaintiff's slip and fall.[1] Instead, Defendant maintains that none of the prior incidents can impute constructive knowledge because there is no evidence that it took any corrective measures in response to these reported incidents. DE 58 at 5.

Defendant, however, advocates for a requirement the caselaw does not impose. Indeed, *Carroll v. Carnival Corp.*, 955 F.3d 1260 (11th Cir. 2020), the opinion Defendant appears to reference in support of its position, did not reach the substantially similar doctrine because there was "other evidence in the record establishing that there is a genuine dispute of material fact as to whether Carnival had notice of the dangerous condition." *Id.* at 1266 n.4. And a Judge within this

[1] Having failed to do so, Defendant has waived any such argument. *Akeo v. Palace Elite Resorts*, No. 25-CV-23733, 2026 WL 799296, at *7 (S.D. Fla. Mar. 23, 2026) (determining that the failure to raise an argument results in the forfeiture thereof). Insofar as Defendant asserts in its reply statement of material facts that not all of the thirty-six slip-and-fall incidents it disclosed to Plaintiff involved a wet floor, DE 57 at 9, Defendant is correct. However, by the Court's count, at least twenty-six of those thirty-six prior incidents involved a passenger reporting slipping and falling on a wet floor inside the Windjammer Café. *See* DE 51-4 at 6–10.

District has also rejected an argument similar to the one Defendant advances. *See Quashen v. Carnival Corp.*, 576 F. Supp. 3d 1275, 1297 n.17 (S.D. Fla. 2021) (rejecting an argument that the plaintiff "failed to make a sufficient showing that the dangerous condition was present for a period of time so lengthy as to invite corrective measures" because "Eleventh Circuit precedent is clear that constructive notice can be shown in two distinct ways—and, therefore, evidence of routine inspections and failure to show the existence of a dangerous condition for a substantial period of time do not defeat a finding of constructive notice based on evidence of substantially similar prior occurrences").

Because there is evidence of prior incidents in which conditions substantially similar to Plaintiff's slip and fall caused the incident, a genuine dispute of material fact exists as to whether Defendant had constructive notice of the wet floor. *See Guevara*, 920 F.3d at 720 ("[A] plaintiff can establish constructive notice with evidence of substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." (quotation marks omitted)); *cf. Foster v. Royal Caribbean Cruises Ltd.*, 812 F. Supp. 3d 1294, 1306 (S.D. Fla. 2025) (determining that Royal Caribbean Cruises had constructive notice that its "Bolidt Future Teak decks" tended to burn passengers' feet based on twenty-five prior incidents of passengers reporting that they burned their feet on those decks). Defendant is not entitled to summary judgment on account of a lack of notice.

B. Breach of Duty

To establish a breach of duty, there must be a showing that: (1) "a dangerous condition existed; and (2) the vessel's operator had actual notice of the dangerous condition; or (3) if there was no actual notice, that defendant had constructive notice of the dangerous condition for an interval of time sufficient to allow the vessel's operator to implement corrective measures." *Martin-Viana v. Royal Caribbean Cruises Ltd.*, 733 F. Supp. 3d 1308, 1321 (S.D. Fla. 2024)

(alterations omitted). Defendant maintains that it did not breach its duty regarding Plaintiff's failure-to-warn count, DE 44 at 9–11, but whether Defendant breached its duty is a factual matter reserved for the finder of fact, not for this Court to resolve as a matter of law on summary judgment. *See Parkey v. Carter*, 702 F. Supp. 3d 1253, 1260 (S.D. Fla. 2023) ("Breach of duty is an issue of fact normally within the province of the jury." (alteration and quotation marks omitted)); *Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1333 (S.D. Fla. 2019) ("Courts have held that it is in the purview of the jury to determine whether a defendant breached his duty of care."); *Radke v. NCL (Bah.) Ltd.*, 536 F. Supp. 3d 1313, 1323 (S.D. Fla. 2021) ("[A]s Plaintiff correctly notes, it is the factfinder's role to determine whether such warnings are sufficient under the circumstances." (quotation marks omitted)); *Magazine v. Royal Caribbean Cruises, Ltd.*, No. 12-23431-CIV, 2014 WL 1274130, at *4 (S.D. Fla. Mar. 27, 2014) ("Whether adequate efforts were made to communicate a warning to the ultimate user and whether the warning if communicated was adequate are uniformly held questions for the jury." (quotation marks omitted)). The Court also notes that the cases Defendant cites in support of its position involve whether the cruise ship operator had notice of the danger, not whether the cruise ship operator breached a duty. *See Tonelli v. NCL (Bah.) Ltd.*, 428 F. Supp. 3d 1313, 1320 (S.D. Fla. 2019) (finding that the plaintiff failed to demonstrate notice); *Cigainero v. Carnival Corp.*, 426 F. Supp. 3d 1299, 1304 (S.D. Fla. 2019) (finding no duty to warn because the danger was open and obvious); *Guevara*, 920 F. 3d at 723 (affirming court's finding that plaintiff failed to demonstrate notice); *Thomas v. NCL (Bah.), Ltd.*, 203 F. Supp. 3d 1189, 1193 (S.D. Fla. 2016) (finding genuine issue of material fact as to whether cruise ship operator had notice). For these reasons, Defendant has not shown an entitlement to summary judgment on Plaintiff's failure-to-warn count.

Finally, Defendant contends that it is entitled to summary judgment on Plaintiff's failure-to-maintain count because there is no evidence of "any work orders for the subject flooring

surface," no evidence that the subject flooring surface "was in need of repair," no evidence that it knew the subject flooring surface was wet, and no evidence that it did not maintain the subject surface properly. DE 44 at 11–13. As before, whether Defendant breached its duty by failing to maintain the floor surface is a factual matter reserved for the finder of fact, and most of the cases Defendant cites in support of its position once again concern notice and other matters besides breach of duty. *See Horne v. Carnival Corp.*, 741 F. App'x 607, 610 (11th Cir. 2018) (affirming dismissal of failure-to-maintain claim because cruise ship operator did not have actual or constructive notice of the danger); *Rojas v. Carnival Corp.*, No. 113CV21897LENARDGOOD, 2015 WL 7736475, at *5 (S.D. Fla. Nov. 30, 2015) (assuming that cruise ship operator had a duty and breached that duty and focusing on whether there was proximate cause). Insofar as the court in *Roberts v. Carnival Corp.* found that there was no "evidence showing that Defendant acted unreasonably with respect to any need to remedy or maintain the subject threshold," *Roberts* is distinguishable and actually supports a finding of a genuine dispute of material fact here. No. 1:19-CV-25281-KMM, 2021 WL 3887819, at *11 (S.D. Fla. May 25, 2021)

In *Roberts*, the court noted that the defendant "took steps to remedy the subject threshold" and that, after the defendant did so, "there was one incident in April of 2017 and then no incidents for over two years, up until Plaintiff's incident in June 2019." *Id.* As for the incident in 2017, the court noted that there was no "evidence as to the specifics of the April 2017 accident," which meant "there is, therefore, no evidence that this lone incident should have put Defendant on notice of any known danger requiring remedy." *Id.* And since there were no incidents after 2017 until the plaintiff's incident, the court found that "Defendant would be reasonable in believing the subject threshold did not require any remedy." *Id.*

Here, on the other hand, there were at least twenty-six different slip and falls on wet flooring in the Windjammer Café in the three years preceding Plaintiff's slip and fall, which creates

a genuine dispute of material fact as to whether Defendant reasonably believed the flooring in the Windjammer Café did not require any remedy. For these reasons, Defendant has not shown an entitlement to summary judgment on Plaintiff's failure-to-maintain count.

IV. Recommendation

For the foregoing reasons, the Court **RECOMMENDS DENYING** Defendant's Motion for Summary Judgment [DE 44].

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to any of the above findings and recommendations. 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(a). The parties are hereby notified that a failure to timely object waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1 (2014).

DONE AND SUBMITTED in Chambers at Fort Lauderdale, Florida, this 13th day of May, 2026.

PANAYOTTA AUGUSTIN-BIRCH
UNITED STATES MAGISTRATE JUDGE