**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**
**WEST PALM BEACH DIVISION**

**CASE NO. 25-81204-CIV-CANNON/McCabe**

**RAMONA S. DOWDY,**

Plaintiff,

v.

**CLASSICA CRUISE OPERATOR LTD. INC**
*a/k/a* **CLASSICA CRUISE OPERATOR LTD,**

Defendant.
_____/

**ORDER GRANTING IN PART AND DENYING IN PART**
**DEFENDANT'S MOTION TO DISMISS**

**THIS CAUSE** comes before the Court upon Defendant's Motion to Dismiss Plaintiff's Complaint under Rule 12(b)(6) (the "Motion") [ECF No. 7]. The Court has reviewed the Motion, Plaintiff's Opposition [ECF No. 11], Defendant's Reply [ECF No. 12], Plaintiff's Complaint [ECF No. 1], and the full record. Fully advised in the premises, Defendant's Motion is **GRANTED IN PART AND DENIED IN PART**, and Counts II, IV, VI, and VIII of Plaintiff's Complaint are **DISMISSED**.

## RELEVANT BACKGROUND AND PROCEDURAL HISTORY

The following allegations are drawn from Plaintiff's Complaint [ECF No. 1], accepted as true and construed in the light most favorable to Plaintiff. *See, e.g.*, *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). Plaintiff is Ramona Dowdy, a Virginia citizen; the sole Defendant is Classica Cruise Operator Ltd. Inc. (also known as Classica Cruise Operator Ltd.) [ECF No. 1 ¶¶ 2–3].

On January 28, 2024, Plaintiff was a passenger aboard Defendant's cruise ship,

*Margaritaville at Sea Paradise* [ECF No. 1 ¶¶ 8–9]. That day, when Plaintiff walked into the ship's lounge for the first time on her cruise, she tripped on a hidden step within the ship's lounge [ECF No. 1 ¶¶ 8–14]. According to Plaintiff, her "right foot got caught on the hidden step and she fell forward with full force and weight of her body"—suffering injuries to her left arm and right knee and necessitating orthopedic surgery [ECF No. 1 ¶¶ 14–17]. The step in question was "a hidden, unmarked, low level step/sudden change in height within [the ship's] dark, busy lounge area" that did not have "any visual markers, lights, railings or warnings at or near the hidden step" [ECF No. 1 ¶¶ 12–13]. Consequently, the step was "hidden and/or unapparent to passengers," including Plaintiff, who "did not anticipate or see the step in the walkway" [ECF No. 1 ¶ 13].

On the basis of the foregoing allegations, Plaintiff brings the following eight claims against the Defendant under theories of direct and vicarious liability: negligent failure to maintain by Defendant (Count I) and Defendant's crew members (Count II) based on Defendant's alleged failure to maintain the walkway free of hidden tripping hazards; negligent failure to warn by Defendant (Count III) and Defendant's crew members (Count IV), based on Defendant's purported failure to warn passengers of the hidden step; negligent training of personnel by Defendant (Count V) and Defendant's crew members (Count VI) based on Defendant's alleged failure to train crew members to inspect for and remedy hidden tripping hazards;[1] and negligent design, construction, and selection of materials by Defendant (Count VII) and Defendant's crew members (Count VIII), related to Defendant's design of the walkway area with the hidden step [ECF No. 1 ¶¶ 24–105].

Defendant now moves to dismiss Plaintiff's Complaint in its entirety for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). As to the direct liability negligence claims in Counts I, III, V, and VII, Defendant argues that Plaintiff has not pleaded actual or constructive notice of

[1] Plaintiff mistakenly numbers Count VI as Count V [*see* ECF No. 1 p. 27].

the hazardous step warranting liability for maritime negligence [ECF No. 7 pp. 3–11]. Defendant also assails Plaintiff's vicarious liability claims in Counts II, IV, VI, and VIII, contending that Plaintiff may bring such claims only under a theory of direct liability—and only if she alleges specific, identifiable crew members who were allegedly negligent [ECF No. 7 pp. 12–16]. Plaintiff disputes these arguments, focusing on Defendant's constructive notice of the hazardous step [ECF No. 11 ¶¶ 3–19]. As for her vicarious liability claims, Plaintiff asserts that (1) no legal authority prevents her from bringing both direct and premises liability claims for maritime premises liability, and (2) the Complaint plausibly pleads an identifiable group of Defendant's allegedly negligent crew members [ECF No. 11 ¶¶ 21–39].

Defendant's Motion is ripe for adjudication [ECF Nos. 7, 11, 12].

## RULE 12(b)(6) LEGAL STANDARD

To avoid dismissal under Rule 12(b)(6), a complaint must allege facts that, if accepted as true, "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim for relief is plausible if the complaint contains factual allegations that allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Conclusory 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).

## DISCUSSION

### I. Plaintiff has adequately pleaded Defendant's constructive notice of the purportedly hazardous step, defeating Defendant's arguments for dismissal of Plaintiff's direct liability negligence claims in Counts I, III, V, and VII.

"In analyzing a maritime tort case," the Court "rel[ies] on general principles of negligence law." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (quotation omitted). The elements of a negligence claim are well settled: "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 plaintiff's injury; and (4) the plaintiff suffered actual harm." *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1253 (11th Cir. 2014) (quotation omitted). "With respect to the duty element in a maritime context, a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (quotation omitted).

The first prong (duty), "requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of a risk-creating condition . . . ." *Id.* (alteration adopted) (quotation omitted); *see also Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022) ("Thus, a shipowner's actual or constructive knowledge of the hazardous condition arises as part of the duty element in a claim seeking to hold the shipowner directly liable for its own negligence."). At least for constructive notice, this standard does not require proof that the shipowner was aware of the precise danger that caused the particular injury on the specific date in question. *See Brady v. Carnival Corp.*, 33 F.4th 1278, 1281 (11th Cir. 2022) (holding a reasonable jury could conclude that a defendant had actual notice of a slip and fall risk when it placed a wet-deck warning sign near the pool). But it does require the shipowner to have knowledge of the circumstances creating the specific danger—and it does permit consideration of evidence that the shipowner took corrective action to address the hazardous condition (and hence was aware of the hazard). *Id.* (reversing summary judgment in slip-on-water case where carrier placed a warning sign close to the place of the passenger's fall); *see also Carroll v. Carnival Corp.*, 955 F.3d 1260, 1265–66 (11th Cir. 2020). A plaintiff can also establish constructive notice "with evidence that the defective condition existed for a sufficient period of time to invite corrective measures" or "with evidence of substantially similar incidents in which conditions substantially similar to the

occurrence in question must have caused the prior accident." *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022) (quotations omitted).

Defendant focuses its Motion on the first element of duty, specifically, on the question of Defendant's notice. In Defendant's view, Plaintiff's Complaint consists of vague and conclusory allegations that fail to plead that Defendant had actual or constructive notice of the allegedly hazardous step in the ship's lounge [ECF No. 7 pp. 3–11]. Plaintiff takes a contrary view, pointing to four different ways in which the Complaint pleads "allegations giving rise to constructive notice" [ECF No. 11 ¶¶ 6–19].[2] First, according to Plaintiff, the low step was "installed when the ship was built" [ECF No. 11 ¶ 9; *see also* ECF No. 1 ¶ 19], meaning that "the defective condition existed for a sufficient period of time to invite corrective measures" [ECF No. 11 ¶ 10 (quotation omitted)]. Second, Defendant "had notice of the dangerous condition because the subject area violates industry standards" [ECF No. 11 ¶ 11; *see also* ECF No. 1 ¶ 21]. Third, Defendant had training policies and procedures specifically informing crew members that sudden changes in elevation and hidden steps can result in passenger injury and directing crew members to mark, illuminate, or warn passengers of any such changes or steps [ECF No. 1 ¶ 20; *see also* ECF No. 11 ¶ 15]. And fourth, Defendant had caution signs in other areas of the ship "identifying potential tripping hazards, changes in floor level and/or steps within walkways" [ECF No. 1 ¶ 22; *see also* ECF No. 11 ¶ 16]. When viewed collectively, Plaintiff continues, these allegations are enough to show at least constructive notice of the purportedly hazardous step [ECF No. 11 ¶ 8].

For purposes of Rule 12(b)(6), the Court agrees with Plaintiff that she has plausibly alleged Defendant's constructive notice of the purportedly hazardous hidden lounge step. Specifically,

[2] Plaintiff makes no argument in response that Defendant had actual notice of a hazard, focusing solely on constructive notice [*see* ECF No. 11 ¶¶ 6–19]

Plaintiff alleges facts which plausibly establish that a "defective condition"—a hidden, unmarked step on a walkway within a dark, busy lounge [ECF No. 1 ¶¶ 11–12]—"existed for a sufficient period of time to invite corrective measures." *See Guevara*, 920 F.3d at 720 (alteration adopted) (quotation omitted). According to Plaintiff, the step existed in this condition, in a "highly trafficked" and "busy lounge," since the ship's construction [ECF No. 1 ¶¶ 11, 19]. Additionally, Plaintiff alleges that Defendant was aware that this type of condition created a tripping hazard carrying a risk of injury, as evidenced by Defendant's training materials [ECF No. 1 ¶ 20]. As represented, these training materials specifically address this type of hazard: walkways with "hidden steps" or "a sudden change of incline and height" [ECF No. 1 ¶ 20]. The materials also identify the precise danger flowing from this hazard: such walkways "can cause passengers to slip and/or trip and fall and stumble and/or lose balance and fall and get injured" [ECF No. 1 ¶ 20]. Further, the training materials purportedly inform crew members on how to remedy this hazard: "Defendant specifically trains crew members to paint, mark, place written warning signs, markers, items to illuminate dark areas to draw attention to hidden steps in dark conditions such as glow tape, light strips and/or other devices; verbal warnings and/or other indicators to warn passengers of its steps in walkways" [ECF No. 1 ¶ 20].

These allegations, accepted as true and read together, plausibly establish that Defendant knew that hidden steps in the ship posed a tripping hazard requiring remedial action, and they raise the reasonable inference that the lounge step remained in this type of hazardous state "for a sufficient period of time to invite corrective measures." *See Guevara*, 920 F.3d at 720 (quotation omitted). Thus, Plaintiff has plausibly pled that Defendant had constructive notice of this hazard. *See id.*; *cf. Carroll*, 955 F.3d at 1265 (determining that "adopting a policy" to mitigate "a known danger" is "enough to withstand summary judgment on the issue of" a defendant's notice). The

Court therefore denies Defendant's Motion as to Counts I, III, V, and VII.[3]

**II. Plaintiff fails to plausibly plead a specific, identifiable agent, warranting dismissal of Plaintiff's vicarious liability claims (Counts II, IV, VI, and VIII).**

Defendant raises two attacks on Plaintiff's vicarious liability claims. First, Defendant asserts that Plaintiff improperly commingles claims for vicarious liability with claims for direct liability, suggesting that maritime premises liability claims can be brought under a theory of direct liability only [ECF No. 7 pp. 12–15]. Second, Defendant claims that Plaintiff fails to identify any crew member who, through his or her affirmative acts, caused Plaintiff's alleged injuries [ECF No. 7 pp. 15–16]. The Court agrees with Defendant's second argument and thus does not address the first argument.[4]

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[3] A brief aside on constructive notice and the Eleventh Circuit's statement that such notice may be established "with evidence that the defective condition existed for a sufficient period of time to invite corrective measures." *Guevara*, 920 F.3d at 720 (alteration adopted) (quotation omitted). That rule, if read broadly, has the potential to eviscerate the notice element altogether, particularly where the defective condition is of a hidden nature as is the case here. Indeed, it seems odd to conclude that the length of time a hidden condition exists, without more, is sufficient to give rise to a party's constructive notice of that condition. In any event, given Plaintiff's other allegations, as discussed *supra*, the Court is satisfied that Plaintiff has adequately alleged constructive notice for Rule 12(b)(6) purposes. It would be helpful to lower courts if the Eleventh Circuit could more precisely clarify the scope of constructive notice when inferred from length of time alone. Nothing in this Order should be read to construe any broader notion of constructive notice than permitted on the allegations presented; and Defendant may re-raise any challenge to notice on summary judgment and/or trial.

[4] Because the Court concludes that Plaintiff has failed to plead specific, identifiable employees who caused Plaintiff's injury, the Court need not address Defendant's other arguments regarding vicarious liability and notice [*see* ECF No. 7 pp. 12–15]. The precise scope of those arguments is not entirely clear and requires further development. To the extent Defendant argues that that all maritime premises liability claims, whether brought under a theory of direct or vicarious liability, require the necessary element of notice, that position has considerable weight in light of the Eleventh Circuit's decisions in *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1170 (11th Cir. 2021) (emphasizing the "robust" role that notice will continue to play in premises liability cases), and *Holland v. Carnival Corp.*, 50 F.4th 1088, 1097 (11th Cir. 2022) ("[N]othing in *Yusko* suggests that Holland can avoid pleading the elements necessary to allege Carnival's direct liability for negligent maintenance and failure to warn by titling his claims as claims for vicarious liability and asserting in a conclusory allegation that Carnival was vicariously liable for any negligent action by any of its crewmembers.").

"General principles of negligence law, as applied in the maritime context, recognize a claim based on a shipowner's direct liability for its own negligence or a claim based on a shipowner's vicarious liability for another's negligence." *Holland*, 50 F.4th at 1093. "Direct liability and vicarious liability are very different concepts . . . ." *Id.* "The former type of claim seeks to hold the principal liable for its own negligence; the latter seeks to hold the otherwise non-negligent principal liable for the acts of its agents that are within the scope of the agent's employment." *Mathis v. Classica Cruise Operator Ltd. Inc.*, No. 23-81479-CIV, 2024 WL 3616006, at *3 (S.D. Fla. Aug. 1, 2024); *see also Holland*, 50 F.4th at 1094 ("When the tortfeasor is an employee, the principle of vicarious liability allows an otherwise non-faulty employer to be held liable for the negligent acts of that employee acting within the scope of employment." (alteration adopted) (quotations omitted)).

An "essential part[] of any claim seeking to impose vicarious liability on an employer for an employee's negligence" is identifying a "specific crewmember whose negligence caused [the] injury." *Holland*, 50 F.4th at 1094; *see also Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1170 (11th Cir. 2021) (noting that where a passenger is not "able to identify any specific employee whose negligence caused her injury," then the passenger is "limited to a theory of direct liability"); *Mathis*, 2024 WL 3616006, at *3 ("[A] vicarious liability claim is appropriately targeted at a specific, identifiable agent, while direct liability claims are appropriate where there is a broader pattern of negligence that cannot be attributed to a single agent.").

Here, Plaintiff does not meet her burden to allege specific, identifiable crew members whose negligent actions caused her to trip and fall on the hidden step. Instead, Plaintiff makes broad, sweeping allegations that nearly the entire ship's crew bears responsibility for her injury,

including:

> [The] housekeeping stewards and their supervisor responsible for the inspection and maintenance where the Plaintiff fell; the crew responsible for providing warnings where the Plaintiff fell on the day of incident; the crew responsible for training the shipboard crew responsible for inspection, maintenance warnings and trip and fall prevention; and New Build and Refurbishment departments who designed/custom built and/or approved the specific low, hidden step in the walkway involved in this incident.

[ECF No. 11 ¶ 36 (citing ECF No. 1 ¶¶ 35, 53, 75, 97–98)]. While Plaintiff asserts that this "is a sufficiently specific group of crew" [ECF No. 11 ¶ 36], Defendant correctly responds that these allegations "would encompass nearly the entire crew onboard the ship as well as an entire shoreside department" [ECF No. 12 p. 11]. The breadth of Plaintiff's sweeping allegations demonstrates that Plaintiff is alleging "a broader pattern of negligence that cannot be attributed to a single agent," rather than appropriately targeting "specific, identifiable" agents. *See Mathis*, 2024 WL 3616006, at *3.[5] Thus, "[t]his case is exactly the type of case . . . where a passenger is limited to a theory of direct liability." *Holland*, 50 F.4th at 1097; *see also Yusko*, 4 F.4th at 1170 (noting that "there will be . . . occasions where passengers are limited to a theory of direct liability," such as where a passenger is seeking "to hold a shipowner liable for maintaining dangerous premises" and is not "able to identify any specific employee whose negligence caused her injury."). Plaintiff has failed to plausibly state claims for vicarious liability, warranting dismissal of Counts II, IV, VI, and VIII.

The only remaining question is whether to permit repleading of these vicarious lability counts. On this record, the answer is no. Plaintiff failed to request leave to amend, merely tacking on a request for leave to amend at the very end of her Response [ECF No. 11 ¶ 39]. That is insufficient to properly seek leave to amend. *Pop v. LuliFama.com LLC*, 145 F.4th 1285, 1298

[5] Plaintiff is correct that she does not necessarily need to identify the crew members by name [ECF No. 11 ¶ 32], but Plaintiff still must "identify . . . specific crewmember[s]." *Holland*, 50 F.4th at 1094. She has not done that, for the reasons stated herein.

(11th Cir. 2025) ("[W]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly." (quotation omitted)). In such cases, the Court "is not required to grant a plaintiff leave to amend [her] complaint sua sponte." *Id.* (quotation omitted). Even were the Court to overlook that clear procedural problem, Plaintiff offers nothing in her perfunctory and sweeping request to amend that would suggest the existence of any additional factual content or increased specificity to cure the deficiencies identified herein [*see* ECF No. 11 ¶ 39]. Because Plaintiff failed to properly request leave to amend, the Court dismisses Plaintiff's liability claims without prejudice but without leave to replead in this action.

**CONCLUSION**

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion to Dismiss Plaintiff's Complaint [ECF No. 7] is **GRANTED IN PART AND DENIED IN PART**.
2. Counts II, IV, VI, and VIII of Plaintiff's Complaint [ECF No. 1 ¶¶ 31–40, 48–57, 71–82, 93–105] are **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO REPLEAD IN THIS ACTION**.
3. Defendants shall answer Plaintiff's Complaint on or before **May 27, 2026.**
4. The Court expresses no opinion on the ultimate merits of Plaintiff's claim.

**ORDERED** in Chambers at Fort Pierce, Florida, this 11th day of May 2026.

**AILEEN M. CANNON**
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record