

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

CASE NO. 26-20181-CIV-ALTONAGA/Reid

SHELLIAN CLARKE, et al.,

Plaintiffs,

v.

CARNIVAL CORPORATION,

Defendant.

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ORDER

THIS CAUSE came before the Court on Defendant, Carnival Corporation’s Motion to Dismiss Plaintiffs’ Second Amended Complaint [ECF No. 32], filed on May 1, 2026. Plaintiffs, Shellian Clarke and Donovan Clarke filed a Response [ECF No. 33]; to which Defendant filed a Reply [ECF No. 34]. The Court has reviewed the Second Amended Complaint (“SAC”) [ECF No. 31], the parties’ written submissions, and applicable law. For the following reasons, the Motion is granted in part.

I. BACKGROUND

This is a negligence action based on injuries Plaintiffs, passengers on Defendant’s cruise ship, sustained while returning to the cruise ship from a shore excursion. (*See* SAC ¶¶ 9–23). On July 10, 2025, while the ship was docked at a port in Belize, Plaintiffs traveled from the cruise ship to shore in a tender vessel — a small boat used for transportation between the shore and a larger vessel. (*See id.* ¶¶ 12–15). Sea Charters Tender, Ltd. (“SCTL”) operated the tender vessel, and an agreement (“Agreement”) governed the relationship between SCTL and Defendant. (*See id.* ¶ 10; *see also generally id.*, Ex. A, Agmt. [ECF No. 31-1]).

When the tender vessel returned from the excursion, the weather was poor, and the seas were rough. (*See id.* ¶ 16). As the tender vessel approached the cruise ship, there did not appear to be any crew members at the cruise ship's dock to assist the tender vessel. (*See id.* ¶¶ 18, 21). No tender vessel crewmembers were "maintaining a look out[.]" and the tender vessel captain was not notified of an impending allision. (*Id.* ¶ 19 (alteration added); *see id.* ¶ 20). The tender vessel then struck the cruise ship, lost power, and began to drift. (*See id.* ¶¶ 21, 23). The tender vessel's captain announced the allision was due to engine failure. (*See id.* ¶ 22).

Plaintiffs allege Defendant was negligent and breached its duties to them directly (*see id.* ¶¶ 27, 34, 62, 70), and vicariously through the acts of SCTL (*see id.* ¶¶ 40, 44, 50, 54). Plaintiffs also allege they suffered physical, emotional, and economic injuries because of Defendant's negligence. (*See id.* ¶¶ 28, 30, 35, 37, 45, 47, 55, 57, 63, 65, 71, 73).

On January 12, 2026, Plaintiffs initiated this action. (*See generally* Compl. [ECF No. 1]). In the SAC, Plaintiffs assert seven claims for relief: negligence based on breach of the duty of safe transport (Counts I and II for Shellian and Donovan Clarke, respectively) (*see* SAC ¶¶ 24–37); negligence on a vicarious liability theory as to SCTL (Counts III and IV for Shellian and Donovan Clarke, respectively) (*see id.* ¶¶ 38–57); negligence based on breach of the duty of safe transport assumed by contract (Counts V and VI for Shellian and Donovan Clarke, respectively) (*see id.* ¶¶ 58–73); and declaratory judgment (Count VII) (*see id.* ¶¶ 74–77). Defendant moves to dismiss all Counts for failure to state claims upon which relief may be granted. (*See generally* Mot.).

II. LEGAL STANDARD

A motion to dismiss for failure to state a claim tests the sufficiency of the pleading; it does not decide the merits of the case. *See Milburn v. United States*, 734 F.2d 762, 764–65 (11th Cir. 1984). "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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This standard “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation[.]” *id.* (alteration added; quoting *Twombly*, 550 U.S. at 555), or “a formulaic recitation of the elements of a cause of action[.]” *Twombly*, 550 U.S. at 555 (alteration added). On a motion to dismiss, a court construes the complaint in the light most favorable to the plaintiff and accepts its factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

III. DISCUSSION

A. Counts I–VI (Negligence Claims)

To state a negligence claim under federal maritime law,¹ “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.” *Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022) (quotation marks and citation omitted). “Generally, ship owners and operators do not owe a heightened or special duty of care to their passengers.” *Brown v. Carnival Corp.*, 202 F. Supp. 3d 1332, 1338 (S.D. Fla. 2016). Instead, a cruise ship operator “owes passengers a duty of reasonable care under the circumstances.” *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015) (quotation marks and citations omitted).

¹ Because this case “involves an alleged tort committed aboard a ship sailing in navigable waters,” it is governed by general maritime law — “the rules of which are developed by the federal courts.” *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989) (citations omitted).

That duty “requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of a risk-creating condition, at least where[] . . . the menace is one commonly encountered on land and not clearly linked to nautical adventure.” *Holland*, 50 F.4th at 1094 (alteration adopted; other alterations added; quotation marks and citations omitted). As the Court explained at a hearing on Defendant’s Motion to Dismiss the First Amended Complaint [ECF No. 21], the notice requirement may not apply to “matters that are a nautical adventure[.]” (Reply, Ex. A, Apr. 3, 2026 Hearing Tr. [ECF No. 34-1] 28:15–16 (alteration added)).²

The Court addresses Defendant’s arguments supporting dismissal of each of the six negligence claims below. Due to the similarities between Counts I, II, V, and VI, the Court starts with the contentions regarding those Counts before reaching Counts III and IV.

1. Counts I & II

In Counts I and II, Plaintiffs assert Defendant breached its duty to provide safe means to embark and disembark the cruise ship. (See SAC ¶¶ 25, 27, 32, 34). Plaintiffs assert Defendant breached its duty “in one of more of the following ways[,]” listing nine alleged breaches of Defendant’s duty to safely embark and disembark passengers. (*Id.* ¶¶ 27, 34 (alteration added)).

Heightened Duties. Defendant contends Counts I and II improperly impose heightened duties of care by setting forth “violations of various navigation and collision avoidance rules” that, according to Defendant, exceed the duty of reasonable care under the circumstances. (Mot. 5; see also *id.* 4–6). Defendant cites no authority finding the alleged breaches to exceed the duty to exercise reasonable care in facilitating embarkation and disembarkation from a ship. (See *id.*).

Instead, Defendant responds to Plaintiffs’ catch-all allegations of breach with a catch-all defense of its own: “[b]ecause many of the alleged duties and breaches are vague, assumed,

² The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

implied, incorrect, and unsupported by the alleged facts, they are insufficient to state a claim for negligence under maritime law and require dismissal of” the SAC. (Mot. 6 (alteration added; citations omitted)). This position presents two related arguments. First, Defendant contends Plaintiffs do not adequately allege any of the supposed breaches occurred. (*See id.* 5). Second, Defendant asserts Counts I and II are defective for setting forth an overly extensive list of breaches unconnected to the facts alleged, making it difficult to determine the facts supporting each alleged breach — essentially a shotgun pleading argument. (*See id.* 5–6).

Both contentions fail to persuade. Plaintiffs adequately allege facts supporting at least the breaches described in paragraphs 27a–d and 27g–i, as well as 34a–d and 34g–i. (*Compare* SAC ¶¶ 14–23, *with id.* ¶¶ 27, 34); *see also Brooks*, 116 F.3d at 1369 (a court must take a plaintiff’s allegations as true on a motion to dismiss (citation omitted)).³ Counts I and II do not make the SAC a shotgun pleading, either, as Plaintiffs adequately allege facts supporting most of the alleged breaches, and it is not difficult to match the breaches to the corresponding factual allegations. (*Compare* SAC ¶¶ 14–23, *with id.* ¶¶ 27, 34). Plaintiffs also (unnecessarily) separate each of the negligence claims by Plaintiff and have sued only one Defendant.

Consequently, the concerns invoked in the authorities Defendant cites are inapplicable. *See Brown*, 202 F. Supp. 3d at 1338 (complaint alleging 41 breaches of maritime duty was a shotgun pleading where many of the alleged breaches contradicted each other and lacked plausible facts in support); *Murphy v. Carnival Corp.*, 426 F. Supp. 3d 1311, 1316 (S.D. Fla. 2019) (dismissing maritime negligence claim on shotgun pleading grounds where many allegations were unsupported “by the recitation of facts[,]” and the court could not “discern which theories appl[ied]

³ The breaches alleged in paragraphs 27g–i and 34g–i pertain to SCTL’s crew’s alleged negligence, not that of Defendant. Those alleged breaches belong in Counts III and IV, where Plaintiffs allege Defendant’s liability for the negligence of the tender vessel crew on a vicarious liability theory.

to” which defendants (alterations added)); *Royal Caribbean Cruises, Ltd. v. Jackson*, 921 F. Supp. 2d 1366, 1371 (S.D. Fla. 2013) (dismissing claim that set forth 41 alleged breaches of maritime duty because the pleading “failed to allege a connection between the facts and the alleged breaches”); *Wilson v. NCL Bahamas, Ltd.*, No. 18-25203-Civ, 2019 WL 2106470, at *4 (S.D. Fla. May 14, 2019) (dismissing maritime negligence claim that explicitly alleged heightened duties of care).

Notice. Defendant also asserts Counts I and II must be dismissed because Plaintiffs fail to allege Defendant had notice of the risk-creating condition. (*See* Mot. 6–9). The Court previously explained that the notice requirement for maritime negligence actions does not apply to matters concerning a nautical adventure. (*See* Apr. 3, 2026 Hearing Tr. 28:15–16); *cf. Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (explaining that the notice requirement applies “at least where” the risk-creating condition is “one commonly encountered on land and not clearly linked to nautical adventure”).

Courts have applied the notice requirement to water-based accidents unrelated to the navigation of a vessel in the sea, such as shore excursions with a nautical component. *See Pucci v. Carnival Corp.*, 146 F. Supp. 3d 1281, 1288 (S.D. Fla. 2015) (citations omitted); *but see Milbrath v. NCL Bahamas, Ltd.*, No. 17-cv-22071, 2018 WL 2021344, at *3 (S.D. Fla. Mar. 8, 2018) (“[T]he Eleventh Circuit has not held that the *Keefe* notice prerequisite is peculiar to ‘non-maritime’ menaces.” (alteration added; citations omitted)). The risk creating conditions alleged here — including rough seas, excessive boat speeds, and an unmanned loading dock (*see* SAC ¶¶ 16–18) — arose in a nautical adventure. Plaintiffs allege negligence relating to an allision of two boats, not an incident one encounters on land or that is only tangentially nautical. Defendant

fails to grapple with this fact in the Motion (*see* Mot. 6–9); and in its Reply, focuses only on *Pucci*, which involved risk-creating conditions that were not purely a nautical adventure (*see* Reply 2–4).

In any event, viewing the pleading in the light most favorable to Plaintiffs, Defendant was on notice of the rough seas and unmanned loading dock before the allision occurred — both dangerous conditions that allegedly contributed to the allision. The Court thus declines to dismiss Counts I and II.

2. Counts V & VI

In Counts V and VI, Plaintiffs allege Defendant breached the same duty referenced in Counts I and II — the duty to safely embark and disembark passengers. (*Compare* SAC ¶¶ 25, 32, *with id.* ¶¶ 60, 68 (all referencing the same duty)). Counts V and VI are distinct because Plaintiffs’ theory is that Defendant assumed the duty through its Agreement with SCTL. (*See id.* ¶¶ 60, 68; *see also* Resp. ¶¶ 8–10).

Defendant contends this theory does not permit Plaintiffs to maintain Counts V and VI as causes of action. (*See* Reply 4–7). The Court agrees. Plaintiffs fail to persuade that they may assert a tort claim against Defendant based on a contract to which Plaintiffs are not parties or third-party beneficiaries.

Plaintiffs cite cases where courts have held that a contract between a passenger plaintiff and a cruise line defendant can create non-delegable duties. (*See* Resp. ¶ 9 (citations omitted)); *Lienemann v. Cruise Ship Excursions, Inc.*, No. 18-21713-Civ, 2018 WL 6039993, at *7–8 (S.D. Fla. Nov. 15, 2018) (denying motion to dismiss negligence claim based on duty arising from shore excursion contract between plaintiff and defendant); *Bailey v. Carnival Corp.*, 369 F. Supp. 3d 1302, 1308–09 (S.D. Fla. 2019) (same). But Plaintiffs extend that logic to an Agreement to which they are not parties.

Plaintiffs assert that “one who may foreseeably be injured by the negligent performance of a contractual duty has the right to maintain an action against the allegedly negligent performer, even if he is not in privity with that performer.” *Indulgence Yacht Charters Ltd. v. Ardell Inc.*, No. 08-60739, 2008 WL 11333102, at *2 (S.D. Fla. Sept. 11, 2008) (quotation marks and citations omitted); *see also Goodman v. DTG Operations*, No. 15-61359, 2016 WL 759299, at *2 (S.D. Fla. Feb. 26, 2016) (citation omitted) (same); (*see also* Resp. ¶ 8 (citing *Gallichio v. Corp. Grp. Serv., Inc.*, 227 So. 2d 519, 521 (3rd DCA 1969); *Rouzie v. Alterman Transp. Lines, Inc.*, 596 So. 2d 747, 749 (Fla. 3rd DCA 1992))).⁴ Yet Plaintiffs do not allege Defendant breached (or even negligently performed) the Agreement. (*See* SAC ¶¶ 58–73).

Plaintiffs appear to allege Defendant assumed certain obligations in section 12 of the Agreement. (*See id.* ¶¶ 60–61 (citation omitted), 68–69 (citation omitted); *see also* Resp. ¶ 8 (asserting, without citing any provision of the Agreement, that the Agreement “expressly contemplated that both Carnival and SCTL would provide safe transport for Carnival’s passengers”). Section 12 simply lists circumstances permitting termination of the Agreement, including SCTL’s failure abide by sections four and ten. (*See* Agmt. § 12). Sections four and ten require SCTL’s compliance with safety measures and its provision of services to Defendant; they do not impose obligations on Defendant. (*See id.* §§ 4, 10; *but see id.* § 4 (requiring Defendant to provide a berthing schedule to SCTL)). Plaintiffs therefore fail to adequately allege Defendant

⁴ Without a controlling principle under maritime law, “courts may apply state law provided that the application of state law does not frustrate national interests in having uniformity in admiralty law.” *Willis v. Royal Caribbean Cruises, Ltd.*, 77 F.4th 1332, 1338 (11th Cir. 2023) (quotation marks and citation omitted). The Court need not decide whether it would be appropriate to apply state law on tort claims by non-parties to a contract for breach or negligent performance of a contract because, as explained, Plaintiffs do not explain how Defendant breached or negligently performed the Agreement.

breached or negligently performed the Agreement, preventing them from asserting a tort claim based on Defendant's breach or negligent performance of the Agreement.⁵

In sum, Plaintiffs fail to adequately allege their theory that by contracting with SCTL, Defendant created duties owed to Plaintiffs. Counts V and VI are therefore dismissed.

3. Counts III & IV

In Counts III and IV, Plaintiffs assert negligence claims against Defendant over the actions of SCTL on a vicarious liability theory, alleging the tender vessel crew members were Defendant's employees or servants. (*See* SAC ¶¶ 38–57; *see also id.* ¶¶ 39–40, 49–50). Defendant seeks dismissal of Counts III and IV because (1) Plaintiffs may not assert a negligence claim against Defendant based on vicarious liability for SCTL's actions without also pleading a negligence claim against SCTL directly (*see* Mot. 12–13); (2) Plaintiffs fail to allege under what vicarious liability theory they assert Counts III and IV (*see* Mot. 13–14); and (3) the Agreement disclaims an employer-employee relationship between SCTL's employees and Defendant (*see* Mot. 14; Reply 7–8). Each argument fails to persuade.

First, Defendant misconstrues what an “underlying” negligence claim is. Defendant is correct that there can be no vicarious liability negligence claim where a plaintiff fails to plead an underlying negligence claim. (*See* Mot. 12–13 (citing *Thompson v. Carnival Corp.*, 174 F. Supp. 3d 1327, 1343 (S.D. Fla. 2016); *Kennedy v. Carnival Corp.*, No. 18-20829-Civ, 2018 WL 4410223, at *7 (S.D. Fla. July 24, 2018), *report and recommendation adopted*, 2018 WL 4409970 (S.D. Fla. Aug. 7, 2018); *Brown*, 202 F. Supp. 3d at 1340)). That is, when a plaintiff alleges a defendant is liable for a third party's negligence, the plaintiff must plead the third party's

⁵ Plaintiffs also cite a case involving duties to third parties that the defendant expressly assumed in a contract. (*See* Resp. ¶ 8 (citing *Coral Gables v. Prats*, 502 So. 2d 969, 971 (Fla. 3d DCA 1987))). Plaintiffs do not allege there is any such express assumption in the Agreement. (*See generally* SAC; Agmt.).

negligence, plus include allegations about the relationship between the defendant and the third party that create vicarious liability for the third party's negligence. Contrary to Defendant's assertion (*see* Mot. 12–13 (citing no support)), a plaintiff need not bring a separate, standalone negligence claim against the third party in addition to the claim against the vicariously liable defendant.

Second, Defendant contends “Plaintiffs failed to assert upon which type of agency they based the vicarious liability claims[,]” while acknowledging that Plaintiffs allege the relationship between Defendant and SCTL “was one of master and servant[.]” (*Id.* 13 (alterations added; quoting SAC ¶¶ 40, 50; quotation marks and other citation omitted)). As Defendant notes, the SAC alleges a vicarious liability theory of negligence based on a master-servant or employer-employee relationship. (*See* SAC ¶¶ 39–40, 49–50). Under federal maritime law, a defendant may be vicariously liable for the actions of its employees. *See Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1169 (11th Cir. 2021); *see also Marshall v. Carnival Corp.*, No. 23-cv-24400, 2024 WL 4144460, at *3 (S.D. Fla. Sept. 11, 2024) (citation omitted). Therefore, Plaintiffs state a proper basis for vicarious liability.

Third, Defendant asserts that “[t]he contract itself does not support the ‘master and servant’ theory.” (Mot. 14 (alteration added)). Certainly, the Agreement provides that SCTL shall “be and remain an independent contractor and not an employee of” Defendant, and vests in SCTL the responsibility to pay and provide benefits to SCTL's employees. (Agmt. § 10(vii); *see also* Reply 7–8).⁶

⁶ As the Court is considering a motion to dismiss, it does not address the cases Defendant cites where a court was ruling on a motion for summary judgment. (*See* Reply 7–8 (citing *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1318 (S.D. Fla. 2011); *Wolf v. Celebrity Cruises, Inc.*, 101 F. Supp. 3d 1298, 1307 (S.D. Fla. 2015), *aff'd*, 683 F. App'x 786 (11th Cir. 2017))).

But generally, “the existence of an agency relationship is a question of fact under the general maritime law.” *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1235–36 (11th Cir. 2014) (citations omitted). And an “agency relationship may be inferred from circumstantial evidence or implied from a course of dealings. . . . This principle holds true even when the principal and agent deny the relationship.” *Citibank, N.A. v. Data Lease Fin. Corp.*, 828 F.2d 686, 691 (11th Cir. 1987) (alteration added; citations omitted); *see also Naviera Neptuno S.A. v. All Int’l Freight Forwarders, Inc.*, 709 F.2d 663, 665 (11th Cir. 1983) (“Federal maritime law embraces the principles of agency[.]” (alteration added; citation omitted)).

Some courts have dismissed agency-based vicarious liability negligence claims upon considering an agreement that expressly disclaims an agency relationship between the defendant and the alleged agent. *See Dudley v. NCL (Bahamas) Ltd.*, 688 F. Supp. 3d 1194, 1208–09 (S.D. Fla. 2023) (citations omitted). But the undersigned has held it is inappropriate to dismiss an agency-based negligence claim at the pleading stage on that basis. *See Bollinger v. NCL (Bahamas) Ltd.*, No. 24-23502-Civ, 2025 WL 3688977, at *5 (S.D. Fla. Sept. 10, 2025).

The parties do not contest consideration of the Agreement on the present Motion. (*See generally* Mot.; Resp.; Reply). Yet Plaintiffs make extensive allegations about Defendant’s control over SCTL. (*See* SAC ¶¶ 41–42, 51–52). Given these allegations, disposing of the agency-based negligence claims would be imprudent. *See Brooks*, 116 F.3d at 1369 (citation omitted); *Almendarez v. City of Hollywood*, No. 16-cv-61175, 2016 WL 10540360, at *3 n.3 (S.D. Fla. Nov. 21, 2016) (“The [c]ourt[] . . . declines [d]efendants’ invitation to weigh evidence at the motion to dismiss stage.” (alterations added)).

B. Count VII (Declaratory Judgment)

In Count VII, Plaintiffs seek a declaratory judgment under 28 U.S.C. section 2201 and Florida Statutes section 86.021 as to three questions concerning their rights under the Agreement. (See SAC ¶¶ 74–77). Defendant asserts Plaintiffs may not seek declaratory relief regarding a contract to which they are neither parties nor third-party beneficiaries. (See Mot. 14–17).

First, Count VII does not contain a cause of action. “Declaratory relief is a procedural device [that] depends on an underlying substantive cause of action and cannot stand on its own.” *Arencibia v. AGA Serv. Co.*, 533 F. Supp. 3d 1180, 1195 (S.D. Fla. 2021) (alteration added; citations omitted); see also *Siamas v. Zelcs*, No. 25-cv-1448, 2025 WL 2494253, at *3 (M.D. Fla. Aug. 29, 2025) (noting “declaratory judgment is not a cause of action; it is a remedy” (quotation marks and citations omitted)).

Moving on, a party may seek a declaratory judgment regarding a contract only if it is a party to or a third-party beneficiary of that contract. See, e.g., *Sattiewhite v. Kula & Samson, L.L.P.*, No. 12-24178-Civ, 2013 WL 12091097, at *3 (S.D. Fla. July 23, 2013); *Montpelier US Ins. Co. v. Portofino of St. Augustine, LLC*, No. 18-cv-1530, 2019 WL 3831633, at *2 (M.D. Fla. Aug. 15, 2019).⁷ Under Florida law, “[t]he contracting parties’ intent to benefit the third party must be *specific* and must be *clearly expressed* in the contract in order to endow the third party beneficiary with a legally enforceable right.” *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 982 (11th Cir. 2005) (alteration added; emphasis in original; citations omitted); see also *Interface Kanner, LLC v. JPMorgan Chase Bank, N.A.*, 704 F.3d 927, 932 (11th Cir. 2013) (noting a similar rule under federal common law (citing *Kremen v. Cohen*, 337 F.3d 1024, 1029 (9th Cir. 2003));

⁷ “Whether a non-party to a contract has a legally enforceable right therein for standing purposes is a matter of state law.” *Montpelier US Ins. Co.*, 2019 WL 3831633, at *2 (citing *Miree v. DeKalb Cnty.*, 433 U.S. 25, 29–33 (1977)).

other citation omitted)). A third party's incidental benefit from a contract is not enough. *See Bochese*, 405 F.3d at 981. Still, at the pleading stage, the requisite intent may be alleged generally. *See* Fed. R. Civ. P. 9(b); *Belik v. Carlson Travel Grp., Inc.*, 864 F. Supp. 2d 1302, 1313 (S.D. Fla. 2011).

As to Plaintiffs' interest in the Agreement, Plaintiffs merely allege they "were injured while on a Carnival cruise while being transported on a tender furnished by SCTL, which was being provided in accordance with the terms of the" Agreement. (SAC ¶ 76; *see also generally id.*). Plaintiffs fail to allege, even generally, anything about Defendant's and SCTL's intent in entering the Agreement — let alone any specific or clearly expressed intent to benefit Plaintiffs. In their Response, Plaintiffs assert Defendant and SCTL contracted "to primarily and directly benefit the Plaintiffs as passengers on the tender vessel" based on language in the Agreement referring generally to SCTL's transportation of Defendant's passengers. (Resp. ¶ 17). Plaintiffs do not allege this in the pleading, so the Court does not consider the assertion. *See Burgess v. Religious Tech. Ctr., Inc.*, 600 F. App'x 657, 665 (11th Cir. 2015) (plaintiffs "cannot amend their complaint through a response to a motion to dismiss" (citation omitted)).

In any event, Plaintiffs concede they have not expressly alleged they are third-party beneficiaries but instead are asking the Court to decide whether they are. (*See* Resp. ¶ 17; *see also* SAC ¶ 77b). While one of the questions Plaintiffs ask the Court to resolve regarding the Agreement is whether they are third-party beneficiaries, Plaintiffs must adequately allege exactly that — their status as third-party beneficiaries — to have standing to seek as a remedy a declaratory judgment regarding anything about the Agreement in the first instance.

In sum, Plaintiffs fail to allege that the Agreement reflects Defendant's and SCTL's intent to benefit Plaintiffs. *See Belik*, 864 F. Supp. 2d at 1313. Plaintiffs therefore lack standing to seek

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the remedy of a declaratory judgment regarding the Agreement, *see Sattiewhite*, 2013 WL 12091097, at *3, and Count VII is dismissed.

IV. CONCLUSION

Accordingly, it is

ORDERED AND ADJUDGED that Defendant, Carnival Corporation's Motion to Dismiss Plaintiffs' Second Amended Complaint [ECF No. 32] is **GRANTED in part**. Defendant shall respond to the Second Amended Complaint [ECF No. 31] by **June 19, 2026**.

DONE AND ORDERED in Miami, Florida, this 8th day of June, 2026.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record