United States District Court
for the
Southern District of Florida

Jane Doe, Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-25152-Civ-Scola
	)	
Royal Caribbean Cruises Ltd., Defendant.	)	

Order Granting in Part and Denying in Part Motion to Dismiss

The Plaintiff Jane Doe brings this maritime negligence action against Defendant Royal Caribbean Cruises, Ltd. ("Royal Caribbean") for injuries sustained when she was sexually assaulted by a crewmember. (Sec. Am. Compl., ECF No. 31.) Royal Caribbean has filed a motion to dismiss the second amended complaint in its entirety for failure to state a claim. (Mot. to Dismiss, ECF No. 32.) Doe opposes the motion (Resp., ECF No. 22) and Royal Caribbean timely filed a reply. (Reply, ECF No. 37.) After careful consideration, Royal Caribbean's motion is **granted in part and denied in part**. **(Mot., ECF No. 32.)**

1. Background[1]

The central events of this matter took place on January 28, 2020 in cabin #1607 on board Defendant's vessel *Liberty of the Seas*. (ECF No. 31 at ¶¶ 7–8.) At around 10:30 p.m. on that date, Royal Caribbean employee "Lawson" knocked on Doe's cabin holding a purported coffee delivery. (*Id.* at ¶ 12.) After Doe—who uses a walker and wears a back brace—opened the door, Lawson entered the cabin to set down the coffee and told Doe "that he knew she was lonely, and that he had not been with a woman in 4 months." (*Id.*) Lawson then forcibly restrained and pushed Doe against the cabin wall over Doe's resistance and screams to "'stop' and 'get out'." (*Id.*) While Doe struggled against him, Lawson sexually assaulted her—forcibly kissing her and digitally penetrating her vagina. (*Id.*) When leaving, Lawson told Doe that he would be back, keeping her fearful. (*Id.* at ¶ 13.)

After Lawson left, Doe's terror increased when she discovered that the coffee pot was empty and realized that Lawson had unfettered key access to all

[1] The Court accepts Doe's factual allegations as true for the purposes of evaluating the Defendants' motions to dismiss. *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

cabins assigned to him—including her own. (*Id.*) Over the next three hours, Doe's distress mounted as Lawson repeatedly called her cabin phone, so much so that she ultimately unplugged the phone. (*Id.* at ¶ 14.)

Doe reported Lawson's assault and subsequent phone calls to Royal Caribbean officer "Gary" and to "Jorge Pedrosa" in onboard guest services. (*Id.* at ¶ 15.) Royal Caribbean security told Doe that CCTV video footage captured Lawson entering her cabin with a coffee pot and call logs to her cabin confirmed Lawson's repeated calls. (*Id.*) Although Royal Caribbean video recorded its interview with Doe regarding the assault, she alleges that Royal Caribbean security did not ask her to fill out an incident report until her second interaction with security personnel. (*Id.* at ¶ 16.) Days passed without Royal Caribbean ever informing Doe if it was taking any action with respect to Lawson. Finally, on February 1, 2020, Royal Caribbean announced an emergency stop at Port Cozumel, after which Doe called guest services. (*Id.* at ¶ 18.) Guest services then informed Doe that Lawson was removed from the vessel and left at port after being under armed guard for two days. (*Id.*)

Doe claims that Royal Caribbean was on notice that sexual assaults on board its ships were "an on-going repetitive problem." (*Id.* at ¶ 21.) Doe alleges generally that Royal Caribbean's employee hiring, retention, and supervision practices, and how they relate to Lawson, were deficient. Particularly, Doe takes issue with Royal Caribbean's methodology for conducting background searches using Lexis/Nexis, which is not a comprehensive means of researching someone's criminal history. (*Id.* at ¶ 40.) Doe further asserts that Royal Caribbean's failure to reasonably train, monitor, and control its crew members, including Lawson, caused her injuries. (*Id.* at ¶ 52.) Doe challenges Royal Caribbean's failure to monitor its CCTV footage in real time. (*Id.* at ¶ 53.)

On December 18, 2020, Doe initiated this action against Royal Caribbean. (ECF No. 1.) She asserted nine causes of action, including claims for strict liability, intentional inflection of emotional distress ("IIED"), and seven counts of negligence, including negligent infliction of emotional distress ("NIED"), failure to warn, and negligent misrepresentation. The Court dismissed Doe's claims for negligent hiring, retention, and supervision for failing to allege sufficient facts that Royal Caribbean was on notice of Lawson's dangerous propensities. The Court also dismissed Doe's claim for negligent misrepresentation as vague and failing to meet the heightened pleading requirements of Rule 9(b). Doe's claim for NIED was also dismissed for failing to connect her alleged mental anguish to Royal Caribbean's conduct. The Court also struck several allegations that amounted to legal arguments as opposed to facts giving rise to Doe's claims. The Court granted Doe leave to amend her complaint by a date certain.

In the operative amended complaint, Doe brings claims for negligent security (count one), negligent hiring (count two), negligent supervision (count three), strict liability for sexual assault, sexual battery, and rape (count four), negligent infliction of emotional distress (count five), intentional infliction of emotional distress (count six), negligent failure to warn (count seven), and negligent misrepresentation (count eight). (*See generally* Sec. Am. Compl., ECF No. 31.) Royal Caribbean now moves to dismiss counts one, two, three, five, six, and seven. (ECF No. 20.)

2. Legal Standard

A court considering a motion to dismiss, filed under Federal Rule of Civil Procedure 12(b)(6), must accept all of the complaint's allegations as true, construing them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). Although a pleading need only contain a short and plain statement of the claim showing that the pleader is entitled to relief, a plaintiff must nevertheless articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting Fed. R. Civ. P. 8(a)(2)) (internal punctuation omitted). A court must dismiss a plaintiff's claims if she fails to nudge her "claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

3. Analysis

A. Legal Arguments in Violation of Rule 8

As an initial matter, Royal Caribbean argues that counts one, two, three, five, six, and seven should be dismissed with prejudice because they include improper legal arguments, which the Court struck in its previous order. Rule 8(a)(2) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The rule works to require a plaintiff to present her claims discretely and succinctly, so that her adversary can discern the claims against it. *McIntyre v. JPMorgan Chase Bank*, No. 113CV02981RLVJFK, 2014 WL 12859839, at *6 (N.D. Ga. Feb. 7, 2014) (citing *Davis v. Coca-Cola Bottling Co. Consolidated*, 516 F.3d 955, 980 n. 57 (11th Cir. 2008)). Dismissal of a complaint because it includes improper information is appropriate where "huge swaths" of the complaint are improper, "consisting of lengthy legal arguments, case citations, and quotations from treatises."

Wright v. Waste Pro USA, Inc., No. 0:19-CV-62051-KMM, 2020 WL 8230193, at *5 (S.D. Fla. May 28, 2020) (Moore, J.). Chiefly, dismissal is warranted where improper materials in a complaint require the court and the defendant to "wade through excessive, irrelevant and improper verbiage to determine the basis and nature of Plaintiff's claim." *Id.* (citing *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1321–23 (11th Cir. 2015)).

Here, the Court finds that dismissal is not warranted on this ground. Although the complaint does include legal citations and arguments, it is not difficult for the Court, or Royal Caribbean, to discern the facts giving rise to the claims alleged in the complaint. Royal Caribbean argues that dismissal is justified because the Court already warned Doe of the improper citations and legal arguments. While this is true, dismissal is drastic remedy and will not be ordered under the circumstances. *Wright*, 2020 WL 8230193, at *5. All paragraphs containing legal citations and legal arguments are stricken.

B. Negligent Hiring and Negligent Supervision (Counts Two and Three)

Royal Caribbean argues that Doe has failed to allege her claims for negligent hiring and negligent supervision. Royal Caribbean contends that Doe has not alleged that Royal Caribbean had notice, or should have had notice, that Lawson was unfit to perform his job or had dangerous propensities.

To state a claim for negligent hiring, Doe must allege (1) that Lawson was incompetent or unfit to perform the work provided; (2) that Royal Caribbean knew or reasonably should have known of the particular incompetence or unfitness; and (3) that the competence or unfitness proximately caused Doe's injuries. *Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1334 (S.D. Fla. 2019) (Torres, MJ), *report and recommendation adopted,* No. 18-20829-CIV, 2019 WL 2254962 (S.D. Fla. Mar. 21, 2019) (Williams, J.); *see also Smolnikar v. Royal Caribbean Cruises, Ltd.*, 787 F. Supp. 2d 1308, 1318 (S.D. Fla. 2011) (Jordan, J.). To meet the second element, a plaintiff must allege sufficient facts showing that the employer was on notice of the harmful propensities of the person hired or retained. *Kennedy*, 385 F. Supp. 3d at 1334. The issue of liability "primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background." *Murphy v. Carnival Corp.*, 426 F. Supp. 3d 1311, 1314 (S.D. Fla. 2019) (Scola, J.).

Here, the complaint alleges that: (1) Lawson was unfit for his job as a crew member because he had dangerous propensities; (2) Royal Caribbean would have known of these dangerous characteristics had it conducted a reasonable background check, and (3) Lawson's unfitness caused Doe's injuries. (Sec. Am. Compl., ECF No. 31 at ¶ 35.) The crux of Doe's claim is that Royal Caribbean should have known Lawson was unfit but failed to learn of

same because its background check was deficient. The complaint alleges that in another case, Royal Caribbean's corporate representative testified that Royal Caribbean conducted background checks of their prospective employees using Lexis/Nexis. (*Id.* at ¶ 40.) The complaint further claims that "a Lexis/Nexis search would not produce sufficient information to determine if Lawson had a propensity for sexual assault [because] [t]he sexual offense registry for India, where Lawson was a citizen, is for law enforcement use only and not available to the public." (*Id.*) Additionally, in another action, Royal Caribbean's corporate representative testified that the company relies on the visa approval process conducted by the United States Secretary of State's Office. (*Id.* at ¶ 41.) Doe argues that "[h]ad [Royal Caribbean] conducted a thorough background check, [Royal Caribbean] would not have hired Lawson. If [Royal Caribbean] had not hired [Lawson], Plaintiff's accident would have never occurred." (*Id.* at ¶ 43.)

The Court finds that Doe has failed to allege sufficient facts to state a claim of negligent hiring. The complaint does not allege that a different type of background check would have yielded different information regarding Lawson's criminal history or that a better search was even possible. Indeed, the complaint concedes that the Indian criminal registry is not publicly available. Moreover, although the complaint cites to two different methods employed by Royal Caribbean at different times in other unrelated cases, it is unclear what type of background check was conducted in *this* case, much less why it was deficient. *Murphy*, 426 F. Supp. 3d at 1315 (finding the plaintiff failed to state a claim for negligent retention because the complaint did not assert specific facts to cruise line's background practices that would have put the cruise line on notice of the employee' dangerous propensities). Lastly, the complaint alleges that Royal Caribbean failed to obtain a waiver from Lawson to conduct "an independent check of criminal history." (Sec. Am. Compl., ECF No. 31 at ¶ 42.) It is unclear what the "independent background check" consists of, what results it would have yielded, or how it would be more thorough than the background check that was actually conducted. At best, the complaint alleges Doe's criticisms of the background checks conducted in other instances, which is insufficient to survive Royal Caribbean's motion to dismiss.

Relatedly, Doe's claim for negligent supervision likewise fails. "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. 18-20060-CIV, 2018 WL 3848421, at *3 (S.D. Fla. Aug. 13, 2018) (Scola, J.) (quoting *Doe v. NCL (Bahamas) Ltd.*, No. 1:16-CV-23733-UU, 2016 WL 6330587, at *4 (S.D. Fla. Oct. 27, 2016) (Ungaro, J.)). The complaint alleges

that Royal Caribbean "knew or should have known that Lawson was violating [its] 'zero tolerance' policy for fraternization between crew and passengers and/or officers from the CCTV footage which captured Lawson bringing coffee to a disabled passenger's cabin at 10:30p.m. when that passenger had not ordered coffee." (Sec. Am. Compl., ECF No. 31 at ¶ 51.) In other words, Doe claims that Royal Caribbean failed to supervise Lawson by not watching the CCTV records in real time. Additionally, Doe contends, Royal Caribbean "breached its duties by failing to monitor and track all orders made to room service." (*Id.* at ¶ 56.)

Doe's negligent supervision claim is due to be dismissed for failing to allege that Royal Caribbean had become aware that Lawson was a danger to other passengers. Indeed, the complaint does not allege that Lawson had previously attacked other passengers. Doe reasons that because Lawson entered Doe's cabin with a pot of coffee at night, Royal Caribbean should have known that Lawson was at least violating the anti-fraternization policy. This does not amount to a problem that Royal Caribbean should have corrected. Additionally, Doe does not cite to any authority supporting her contention that Royal Caribbean had a duty to monitor CCTV and all orders made to room service in real time. Accordingly, counts two and three are dismissed.

C. Negligent Infliction of Emotional Distress (Count Five)

Royal Caribbean moves to dismiss Doe's claim for NIED for failure to state a claim. Particularly, Royal Caribbean challenges Doe's failure to allege that she suffered psychological trauma from injuries to another person.

A NIED claim requires mental or emotional harm (such as fright or anxiety) that is caused by another's negligence but that is not directly brought about by a physical injury, though it may manifest itself in physical symptoms. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337–38 (11th Cir. 2012). Admiralty law allows recovery for negligent infliction of emotional distress claims which pass the "zone of danger" test. *Martins v. Royal Caribbean Cruises Ltd.*, 174 F. Supp. 3d 1345, 1354 (S.D. Fla. 2016) (Goodman, J.). The zone of danger test limits recovery for emotional injury to those plaintiffs who sustain a physical impact as a result of a defendant's negligent conduct, or who are placed in immediate risk of physical harm by that conduct. *Chaparro*, 693 F.3d at 1337-38. Plaintiffs must allege more than merely being a witness to a traumatic event to sufficiently plead NIED; the plaintiff must be, at least, threatened with imminent physical impact. *Id.*

Royal Caribbean argues that Doe has failed to state a claim for emotional distress because she does not pass the zone of danger test. The Court disagrees. The complaint alleges that Doe was threatened with imminent

physical impact because Lawson repeatedly called her cabin after he assaulted her and she knew he had unfettered access to all cabins, including her own. These allegations are sufficient to plausibly state that Doe was in the zone of danger for a second attack.

Because Doe has alleged that she suffered severe mental anguish and harm, the Court must next analyze whether the complaint adequately pleads a claim for negligence. *Wu v. NCL (Bahamas) Ltd.*, No. 16-22270-CIV, 2017 WL 1331712, at *3 (S.D. Fla. Apr. 11, 2017) (Scola, J.). "To plead negligence in a maritime case, 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." *Id.* (quoting *Franza v. Royal Carribean Cruises, Ltd.*, 772 F.3d 1225, 1253 (11th Cir. 2014)).

Here, the complaint alleges that Royal Caribbean had a duty to its passengers to hire and/or supervise its crew members. (Am. Compl., ECF No. 31 at ¶ 78.) As noted above, the complaint has failed to state that Royal Caribbean was negligent in its hiring and supervising practices, thus, those allegations do not support the NIED claim.

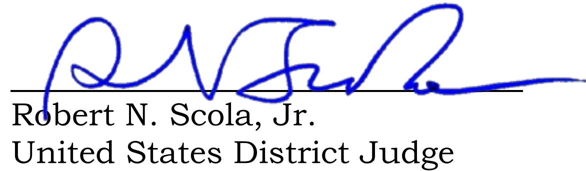
Doe also alleges that Royal Caribbean negligently failed to warn her of the known dangers of crime and sexual assaults on its vessels. "A defendant's failure to warn [a] plaintiff does not breach" the duty of reasonable care under federal maritime law "unless the resultant harm is reasonably foreseeable." *K.T. v. Royal Caribbean Cruises, Ltd.*, 931 F.3d 1041, 1046 (11th Cir. 2019). "Liability for a failure to warn thus arises from foreseeability, or the knowledge that particular conduct will create danger." *Id.* Here, the complaint alleges that Royal Caribbean had knowledge of prior sexual assaults on its vessels such that the danger was foreseeable. (Sec. Am. Compl., ECF No. 31 at ¶ 20.) The complaint also alleges that Royal Caribbean failed to provide adequate warnings of the foreseeable danger by failing to "distribute any written materials and/or memos; provide warnings on its website; make audible announcements; play video warning messages or other types of warnings to its passengers that they are at high risk of crime and injury aboard [Royal Caribbean's] vessels." (*Id.* at ¶ 103.) With respect to the element of causation, the complaint alleges that Doe, who is disabled, would have never taken the subject cruise had she known of the high risk of being sexually assaulted. (*Id.* at ¶ 104.) These allegations are sufficient to survive Royal Caribbean's motion to dismiss. *See K.T.*, 931 F.3d at 1046 (finding that plaintiff had stated a cause for negligent failure to warn of dangers of sexual assault by alleging that the cruise line had notice of the danger from prior incidents, a duty to warn of the danger, the cruise line failed to provide adequate warnings of the danger, and

the failure to warn resulted in the plaintiff not taking precautionary steps to avoid sexual assault). Accordingly, the Court will not dismiss Doe's NIED claim.

4. Conclusion

For the aforementioned reasons, the Court **grants in part and denies in part** Royal Caribbean's motion to dismiss. **(ECF No. 32.)** Counts two and three are dismissed with prejudice. All other counts may proceed.

Done and ordered, at Miami, Florida, on December 15, 2021.



Robert N. Scola, Jr.
United States District Judge