UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:22-cv-22868-KMM

JABRETTA REASON,

Plaintiff,

v.

CARNIVAL CORPORATION & PLC,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss Count VI of Plaintiff's First Amended Complaint ("Mot.") (ECF No. 11). Plaintiff filed a response ("Resp.") (ECF No. 12), and Defendant filed a Reply (ECF No. 13). For the reasons set forth below, the Court GRANTS Defendant's Motion and dismisses Plaintiff's First Amended Complaint (ECF No. 10) without prejudice.

I. BACKGROUND[1]

This case arises under the Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332 and under the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. Compl. ¶¶ 2–3. Plaintiff is a citizen and resident of Florida. *Id.* ¶ 5. Defendant is a foreign corporation with its corporate headquarters and principal place of business in Florida. *Id.* ¶ 7. Plaintiff alleges that the amount in controversy in this maritime personal injury case exceeds $75,000. *Id.* ¶ 3.

Plaintiff alleges that she was a fare-paying passenger aboard the Carnival Spirit, a cruise ship owned and/or operated by Defendant. *Id.* ¶¶ 11–13. On March 15, 2022, Plaintiff claims she

[1] The following facts are taken from the First Amended Complaint ("Compl.") (ECF No. 10) and accepted as true for purposes of ruling on the Motion to Dismiss. *MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1302 (11th Cir. 2022).

"slipped and fell on the unreasonably slippery gangway" and "sustained severe injuries that include, but are not limited to, a right shoulder dislocation, a tear of her right rotator cuff, and fractures to her right shoulder, and other serious injuries, which require surger(ies) [sic]." *Id.* ¶¶ 14–15. Plaintiff lists ten (or more)[2] potential conditions that may have contributed to her fall:

> a. The subject surface was unreasonably slippery, which caused REASON to slip and fall.
> b. The floor of the gangway was unreasonably raised/elevated (such that it was also uneven).
> c. The gangway REASON slipped on lacked adequate slip resistant material, including a reasonable anti-slip strip.
> d. There was no adequate slip-guard on the subject gangway.
> e. There were no adequate handrails and/or other such safety measures on the subject gangway.
> f. There was no rug/carpet on the subject surface to prevent it from becoming slippery.
> g. The subject gangway, as well as the surrounding area, lacked adequate visual cues (such as proper visual elements/coloring) to help passengers appreciate the danger of the subject gangway.
> h. Other dangerous conditions that will be revealed through discovery.
> i. The unreasonable lack of policies and/or the unreasonable non-enforcement of such policies regarding the use of proper slip-resistant footwear on the subject gangway.
> j. The unreasonable passenger crowding in the subject area, caused by CARNIVAL'S lack of reasonable crowd control.[3]

Id. ¶ 17. According to Plaintiff, "[e]ach of these dangerous conditions alone was sufficient to cause [her] incident and injuries," and Plaintiff alleges Defendant "was negligent as to each of these conditions alternatively." *Id.*

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[2] The list is premised with the following statement: "The dangerous and/or risk creating conditions include, *but are not limited to*, the following." Compl. ¶ 14 (emphasis added). Several of the reasons cited in the list are also nuanced by other potential factors in footnotes, bringing the total list of potential conditions to just under twenty. *See, e.g.*, Compl. at 5 nn.7–10.

[3] Plaintiff defines the "subject area" as including, but not limited to, "the gangway/metal ramp/gangplank (hereinafter "gangway") REASON slipped on, the surrounding area, and all material and effects pertaining thereto, including any anti-slip/skid material that was applied or that should have been applied, and/or other parts thereof, the area and surface's design and/or visual condition, and/or any other applied, adhesive, and/or other material." Compl. ¶ 10.

On October 3, 2022, Plaintiff filed her First Amended Complaint, alleging nine claims: negligent failure to inspect (Count I); negligent failure to maintain (Count II); negligent failure to remedy (Count III); negligent failure to warn of dangerous condition (Count IV); negligent design, installation, and/or approval of the subject area and the vicinity (Count V); negligence for the acts of carnival's crew, staff, employees, and/or agents, based on vicarious liability (Count VI); vicarious liability against carnival for the negligence of the ship's medical staff (Count VII); apparent agency for the acts of the ship's medical staff (Count VIII); and assumption of duty for the negligence of the ship's medical staff (Count IX). *See generally* Compl.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires a plaintiff to plead "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. Certain pleadings in violation of that rule may be subject to dismissal as "shotgun pleadings." *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1357 (11th Cir. 2018) ("[W]e have condemned shotgun pleadings time and again, and . . . we have repeatedly held that a District Court retains authority to dismiss a shotgun pleading on that basis alone."). The Eleventh Circuit has identified four categories of shotgun pleadings, the second of which being "a complaint that . . . is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321–23 (11th Cir. 2015). The unifying factor in all shotgun pleadings, however, is their failure "to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323.

In turn, Federal Rule of Civil Procedure 12(b)(6) provides that a court may dismiss a complaint for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

"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) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "[C]onclusory 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).

III. DISCUSSION

Plaintiff's Complaint violates the second *Weiland* category. To state a claim for maritime negligence, Plaintiff must allege that (1) Defendant had a duty to protect her from injury; (2) Defendant breached that duty; (3) the breach proximately caused Plaintiff's injury; and (4) Plaintiff suffered harm as a result. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). Yet here, Plaintiff does not attempt to isolate a single breach or causal connection leading to liability; instead, Plaintiff describes a litany of conditions *may have* existed at the time of the incident, without ever alleging *which condition or conditions caused her to fall.* To wit, Paragraph 17 of the Complaint lists ten (or more) separate potential breaches, any one of which *could have* caused Plaintiff's injuries, without alleging which actually *did* cause Plaintiff's injuries. *See* Compl. ¶ 17. This issue is exacerbated by Paragraph 10, which gives an expansive definition of

the "subject area" that leaves the reader guessing just how Plaintiff's fall occurred. *See id.* at ¶ 10.

The ambiguity in the conditions causing Plaintiff's fall becomes especially problematic when applying those conditions to her claims. Defendant rightly cites Count VI as being objectionable where, in a claim for negligence for the acts of Carnival's crew, Plaintiff does not make "specific allegations regarding what duty a crewmember breached to her that caused her injury" or even point to a crewmember who might have breached that duty. Mot. at 10–11. Yet the problem is not limited to Count VI—the Complaint is replete with such imprecisions. For instance, Count IV of the Complaint alleges negligent failure to warn of dangerous conditions. Compl. ¶¶ 68–83. Therein, Plaintiff states Defendant breached its duty by "failing to warn [her] of the dangerous conditions discussed in paragraph 17(a-f and h-j)," without specifying *which* dangerous condition (or subset thereof) "proximately caused [Plaintiff] great bodily harm." *Id.* Defendant is therefore left to wonder which of the nine (or more) conditions it actually failed to warn Plaintiff of. By failing to specify which defect relates to each count (or indeed, which defects Plaintiff actually alleges to have caused her fall), all the conditions listed are rendered "conclusory, vague, and immaterial facts not obviously connected" to any count. *See* 792 F.3d at 1321.

At bottom, Plaintiff's Complaint reflects some of the policy rationales underlying this Circuit's "thirty-year salvo of criticism aimed at shotgun pleadings." *Id*. Shotgun pleadings are not merely violative of Rule 8(a)(2). They also "waste scarce judicial resources [and] inexorably broaden the scope of discovery." *Vibe Micro*, 878 F.3d at 1295 (citations and annotations omitted). And here, intentionally or otherwise, Plaintiff's Complaint leaves the door open for any number of circumstantial combinations which led to her fall. On one hand, Plaintiff's injuries could have been caused by the gangway's lack of adequate slip-guard material in combination with its poor elevation; yet on the other hand, they may have been the result of the gangway's lack of adequate

handrails combined with Carnival's lack of reasonable crowd control. *See* Compl. ¶¶ 10–17. The issue is not that either of those pairings, in and of itself, fails to meet Rule 8(a)(2). It is that the breadth of Plaintiff's allegations forces Defendant to *guess* which pairing is genuinely at issue. A complaint is intended to "give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *See Weiland*, 792 F.3d at 1321. Plaintiff's filing fails to do so in a manner that creates an unnecessary discovery burden on Defendants.[4] The First Amended Complaint is therefore subject to dismissal as a whole.

IV. CONCLUSION

UPON CONSIDERATION of the Motions, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss (ECF No. 11) is GRANTED. Plaintiff's First Amended Complaint (ECF No. 11) is DISMISSED WITHOUT PREJUDICE. Plaintiff may refile its Amended Complaint within FOURTEEN (14) days of the issuance of this Order.

DONE AND ORDERED in Chambers at Miami, Florida this 2nd day of January, 2023.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record

[4] Paragraph 17(h) gives the game away with respect to Plaintiff's shotgun approach of describing dangerous conditions, as Plaintiff explicitly cites "[o]ther dangerous conditions that will be revealed through discovery" as a dangerous condition in and of itself. *See* Compl. ¶ 17; *see also Anderson v. Dist. Bd. of Trustees of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 367 (11th Cir. 1996) ("Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice.").