UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-22950-WILLIAMS/REID

ILONA ISOM,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS

This cause is before the Court on Defendant, Carnival Corporation's ("Carnival") Motion to Dismiss [ECF No. 8] Plaintiff, Ilona Isom's ("Isom") Complaint [ECF No. 1]. For the reasons discussed below, it is **RECOMMENDED** that Carnival's Motion to Dismiss be **GRANTED IN PART AND DENIED IN PART**.

RELEVANT PROCEDURAL HISTORY

On September 15, 2022, Isom filed the Complaint seeking compensatory damages, asserting four claims against Carnival: (1) negligence; (2) vicarious liability for negligence of cleaning staff; (3) vicarious liability for negligence of medical staff under actual agency/respondeat superior; and (4) vicarious liability for negligence of medical staff under apparent agency. [ECF No. 1]. Carnival moved to dismiss the Complaint, seeking dismissal of all four claims. [ECF No. 8]. Isom filed a response in opposition to Carnival's motion to dismiss [ECF No. 16], and Carnival filed a reply. [ECF No. 21].

BACKGROUND

Carnival is a Panama corporation with its principal place of business in Miami-Dade County, Florida. [ECF No. 1 at 2]. Carnival owned, operated, or maintained the Carnival Mardi Gras ("Mardi Gras"), a cruise ship. [*Id.* at 3]. Isom, a Florida resident, was a passenger on the Mardi Gras cruise ship which departed from Port Canaveral on September 11, 2021. [*Id.* at 3]. On September 17, 2021, she went to the Lido Marketplace dining room on the ship for breakfast and sat at one of the tables. [*Id.*]. As she walked into the dining room, she saw crewmembers sanitizing or wiping down the tables, including the one at which she sat. [*Id.*]. Isom ran her hand across the tabletop, sat down, and placed her hands on her lap. [*Id.*]. Within minutes of doing so, she felt a burning sensation mostly on her right thigh and where she had placed her hands on her legs. [*Id.* at 3–4]. In addition, burning, red welts appeared on both of her thighs. [*Id.* at 4].

Isom immediately sought medical treatment at the ship's medical center. [*Id.*]. According to Isom, the medical center on the Mardi Gras was staffed only by a "trial run paramedic with limited experience." [*Id.*]; [ECF No. 16 at 2]. The paramedic provided cortisone cream for her injury. [ECF No. 1 at 4]. After the cruise, when her injuries did not improve with the prescribed cortisone cream, Isom went to a dermatologist. [*Id.*]. The dermatologist diagnosed Isom with chemical burns to her thighs and told her the medication prescribed by the cruise's medical staff was incorrect for her injury. [*Id.*]. Isom then received additional medical treatment for her injuries, but her right thigh is permanently scarred. [*Id.*].

DISCUSSION

Carnival has moved to dismiss Isom's Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). [ECF No. 8 at 1]. Carnival argues that the Complaint contains conclusory factual allegations and bare recitals of the

elements of the causes of action, and therefore is insufficiently pled. [*Id.*]. For the reasons addressed below, Carnival's assertion is partially incorrect. The Complaint contains well-pleaded allegations as to two of the four claims sufficient to survive Carnival's Motion to Dismiss.

A plaintiff's complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss [under Rule 12(b)(6)], 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)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The plausibility standard "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence" to support the claim. *Twombly*, 550 U.S. at 556. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. In the process, the court must take the plaintiff's factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Britt v. Carnival Corp.*, 580 F. Supp. 3d 1211, 1213 (S.D. Fla. 2021).

The Undersigned finds, and the parties agree, that this Complaint is governed by maritime law. "Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019); *see Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1167 (11th Cir. 2021). Decisions in maritime tort cases "rely on general principles of negligence law." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (quoting *Daige v. Point Landing, Inc.*, 616 F.2d 825, 827 (5th Cir. 1980)). "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 v. Carnival Corp.*, 50 F.4th 1088, 1093 (11th Cir. 2022).

I. Count I of Isom's Complaint Did Not Sufficiently Allege Carnival's Notice

To plead a negligence claim based on a shipowner's direct liability, "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.* at 1094 (quoting *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1253 (11th Cir. 2014)). Carnival had the duty to exercise reasonable care towards passengers on its cruise. *Guevara*, 920 F.3d at 720 (quoting *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959)). The duty of reasonable care requires that Carnival have actual or constructive notice of the risk-creating condition prior to imposing liability. *Id.*; *Holland*, 50 F.4th at 1094; *see Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1334 (11th Cir. 1984) (explaining that a shipowner "is not liable to passengers as an insurer, but only for its negligence"); *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989) (explaining that the duty of reasonable care applies to maritime cases where the hazard is not unique to nautical travel). Thus, the plaintiff must allege, as part of the duty element, that Carnival knew or should have known about the risk-creating condition. *Guevara,* 920 F.3d at 720.

A plaintiff can allege the shipowner's knowledge of the risk-creating condition by sufficiently pleading either actual or constructive notice. *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022). "Actual notice exists when the defendant knows about the dangerous condition." *Id.* "A maritime plaintiff can establish constructive notice with evidence that the 'defective condition exist[ed] for a sufficient period of time to invite corrective measures.'"

Guevara, 920 F.3d at 720 (alteration in original) (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988)). Alternatively, Plaintiff may "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.* (quoting *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661–62 (11th Cir. 1988)); *see Cogburn v. Carnival Corp.*, No. 21-11579, 2022 WL 1215196, at *4 (11th Cir. Apr. 25, 2022) (internal citations omitted) ("In applying this standard, the relevant question is whether 'the two incidents were similar enough to allow the jury to draw a reasonable inference' concerning the cruise ship operator's 'ability to foresee' the incident at issue.").

In its motion to dismiss, Carnival argues that Count I of the Complaint, alleging Carnival's negligence under a direct liability theory, should be dismissed because Isom failed to plead sufficient facts to establish Carnival's actual or constructive notice of the risk created by cleaning products. [ECF No. 8 at 7]. Specifically, Carnival argues that Isom has only made conclusory allegations that the allegedly hazardous cleaning products existed for a sufficient length of time or that substantially similar incidents with cleaning products occurred to establish Carnival's constructive notice. [*Id.* at 7–9]. Carnival also argues that Count I is really a claim for negligent maintenance or negligent failure to warn, and therefore it should be dismissed because Isom failed to plead that the danger was not "open and obvious." [*Id.* at 2–3, 9].

In response, Isom argues that Count I is not a failure to maintain or failure to warn claim and is clearly an active negligence claim because Carnival allegedly created the hazardous condition. [ECF No. 16 at 4]. In focusing on the type of direct liability negligence claim alleged, Isom has missed the mark.

Regardless of the specific type of claim or whether the defendant created the hazardous condition, direct liability negligence claims require the plaintiff to allege the defendant's actual or constructive notice of the condition as part of the defendant's duty of reasonable care. *See Holland*, 50 F.4th at 1094; *Guevara,* 920 F.3d at 720; *Newbauer*, 26 F.4th at 933, 935–36 (requiring the plaintiff to allege notice as part of negligent failure to maintain and failure to warn claims after plaintiff slipped on a wet deck); *Amy v.Carnival Corp.*, 961 F.3d 1303, 1306–08 (11th Cir. 2020) (explaining that plaintiff must allege notice for her negligent creation and maintenance claim after plaintiff's child fell through guardrails to a lower deck). To survive the motion to dismiss, Isom is required to plead actual or constructive notice in her direct liability claim showing that Carnival knew or should have known that she or others could suffer from chemical burns from the cleaning products.

The facts alleged in the Complaint are not sufficient to establish that Carnival had actual or constructive notice of the hazard created by the cleaning products. Isom's allegations that Carnival "[k]new of the foregoing conditions, policies or procedures in advance of the subject incident," or was aware of the danger because "it directed and/or participated in the selection and purchase of said chemicals/agents," is insufficient to establish actual notice. [ECF No. 1 at 5–6]. Further, Isom's allegations that Carnival had constructive notice of the risk of chemical burns from cleaning products from substantially similar incidents is insufficient because no other incidents are alleged. [*Id.* at 5]; *cf. Cogburn*, 2022 WL 1215196, at *4 (explaining that evidence of another passenger slipping and falling in the same location as the plaintiff showed the shipowner's constructive notice of an unreasonably slippery floor). These allegations for both actual and constructive notice are "[t]hreadbare recitals of the elements of a cause of action, supported by

mere conclusory statements," and are not enough to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678.

Taking the allegations in the Complaint as true, Isom also cannot establish Carnival's constructive notice of the risk-creating condition by alleging that sufficient time had elapsed to invite corrective measures. *Guevara*, 920 F.3d at 720. The Complaint alleges that Isom saw crewmembers wiping down the tables in the Lido Marketplace "moments" before the incident, and Isom sat at and touched a table that had just been wiped down. [ECF No. 1 at 3]. The Complaint also alleges that "[w]ithin minutes" of touching the table, Isom began to feel a burning sensation where she had placed her hands on her lap. [*Id.* at 3–4]. Based on these allegations, it can reasonably be inferred that Carnival could not have known about the risk created by the cleaning products. Since the events described in Isom's complaint happened within moments, the risk of chemical burns created by the cleaning products did not "exist for a sufficient period of time to invite corrective measures," from Carnival. *Guevara*, 920 F.3d at 720 (quoting *Monteleone*, 838 F.2d at 65); *cf. Katzoff v. NCL (Bahamas) Ltd.*, No. 19-cv-22754-MGC, 2020 WL 7493098, at *2 (S.D. Fla. Aug. 31, 2020) (explaining that a plaintiff's allegations that a dark-colored monitor was on a crowded dance floor before and during a dance contest prior to plaintiff tripping on it sufficiently established constructive notice). Because Isom has not sufficiently pled Carnival's actual or constructive notice of the risk-creating condition, Count I of the Complaint must be dismissed.

II. Count II of the Complaint Did Not Properly Plead a Vicarious Liability Claim

In contrast to a direct liability negligence claim, "a shipowner's duty to a plaintiff is not relevant to a claim based on vicarious liability." *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.'" *Id.* (quoting *Langfitt v. F. Marine Terminals, Inc.*, 647 F.3d 1116, 1121 (11th Cir. 2011)). Because "the scope of a shipowner's duty has nothing to do with vicarious liability," *Yusko*, 4 F.4th at 1169, plaintiffs asserting vicarious liability against a shipowner do not need to establish that the shipowner had actual or constructive notice of the risk-creating condition. *Id.* at 1170; *see Holland*, 50 F.4th at 1094.

To plead negligence based upon on vicarious liability, however, the plaintiff must still adequately allege the same four elements which would be alleged for a direct liability claim. *See Yusko*, 4 F.4th at 116768. The difference lies in the fact that the plaintiff must allege that the tortfeasor is the employee*, not* the shipowner. *See Id.*; *Hunter v. Carnival Corp.*, No. 22-20236-CIV-ALTONAGA/Torres 2022 WL 2498757, at *1, *6 (S.D. Fla. July 1, 2022) (holding that a maritime plaintiff could assert a vicarious liability claim against the shipowner for the cabin steward's negligent placement of a ladder in an unsecured position).

Carnival contends Isom's vicarious liability claim is simply an attempt to circumvent notice requirements for direct liability claims. [ECF No. 8 at 9–10]. Carnival argues that *Yusko*'s holding—allowing maritime plaintiffs to plead both direct and vicarious liability claims—does not extend to negligent maintenance or negligent failure to warn claims, and therefore Isom must allege Carnival's notice. [*Id.* at 10]; *See Britt v. Carnival Corp.*, 580 F. Supp. 3d 1211, 1216 (S.D. Fla. 2021) ("*Yusko* contemplates, and this Court agrees, that claims stemming from the negligent maintenance of a ship's premises or failure to warn will be made out under a direct liability theory, which requires notice."); *Yusko*, 4 F.4th at 1170 (noting that plaintiffs would be limited to direct liability as a matter of "common sense" for maintenance of dangerous premises). Carnival also

argues that Isom has not identified a specific employee whose negligent actions caused her injury. [ECF No. 8 at 13].

In its reply, Carnival correctly argues that the Eleventh Circuit's decision in *Holland* applies. [ECF No. 21 at 5–6]. In *Holland*, the plaintiff asserted two claims against the shipowner for negligent maintenance and negligent failure to warn after slipping on a wet substance, and both claims were alleged under a vicarious liability theory. 50 F.4th at 1091–92. In both vicarious liability claims, the plaintiff alleged the shipowner's actual or constructive notice of the risk-creating condition. *Id.* at 1092. As to the crewmembers, the plaintiff alleged that they failed to routinely inspect the area, maintain the stairs in a reasonably safe condition, and properly clean and dry the area, and that they failed to warn him with appropriate signs, markings, or warnings. *Id.* The plaintiff appealed the district court's order granting the shipowner's motion to dismiss for failing to allege the shipowner's notice of the hazardous condition. *Id.* at 1092–93. The appellate court explained that the plaintiff clearly sought to hold the shipowner directly liable because (1) he could not identify a specific employee whose negligence caused the injury; and (2) he focused his claims and oral arguments on the shipowner's notice and duty to the plaintiff. *Id.* at 1094–95. "[O]ther than the claims' titles and conclusory allegation asserting that [the shipowner] was vicariously liable, there is nothing in [the plaintiff]'s complaint" to support a claim for vicarious liability. *Id.* at 1094.

Here, Count II of the Complaint, titled "Vicarious Liability," alleges that Carnival, not a crewmember, owed a duty to Isom and subsequently breached that duty. [ECF No. 1 at 6–9]. Specifically, Isom alleged in the vicarious liability claim that Carnival breached its duty by:

> a. Failing to clean the dining tables with a non-irritating chemical cleaner/agent;
> b. Failing to use shipboard cleaning chemicals/agents in prescribed concentrations so as to avoid caustic solutions;

> c. Failing to properly clean and dry the dining tables with shipboard chemical cleaners/agents prior to passenger use;
> d. Failing to maintain the dining tables in a reasonably safe manner for passengers free of shipboard chemical cleaners/agents;
> e. Failing to properly advise passengers of the dangers of the cleaning chemicals/agents used on the dining tables;
> f. Failing to properly cordon off the area and/or block access to the dining tables while still wet with cleaning chemicals/agents; [and]
> g. Failing to post signs warning and/or cautioning that the dining tables are cleaned with chemicals/agents that can cause burns.

[ECF No. 1 at 7]. Isom subsequently states in her response to the motion to dismiss that Carnival's "notice of the crewmember's negligent acts of failing to use the proper concentrations of cleaning chemicals/agents and/or failing to dry to [sic.] table prior to allowing passengers to utilize the table, along with the other negligent acts" is not required. [ECF No. 16 at 9]. However, Isom still alleges that Carnival had notice of the risk, using the same conclusory language as the notice allegation in the direct liability claim. [ECF No. 1 at 5–8].

Also, although Isom has alleged enough information for a specific crewmember to be identified, she has not pleaded enough "factual content that allows the court to draw the reasonable inference that" a Carnival crewmember is negligent. *Iqbal*, 556 U.S. at 678. Like the plaintiff in *Holland*, Isom has only alleged Carnival's negligence and not any crewmember's wrongdoing aside from the title of the claim and conclusory allegations. *See Holland*, 50 F.4th at 1094–95. Thus, Isom has not adequately pleaded a claim for vicarious liability, and if viewed as a direct liability claim, it fails for the same reasons as the direct liability claim in Count I. *See id.* at 1095–97 (reviewing plaintiff's claims as direct liability claims where the plaintiff clearly sought to hold the shipowner directly liable and deciding that plaintiff failed to allege notice). Accordingly, Count II of the Complaint must be dismissed.

III. Counts III and IV of the Complaint Adequately Plead Actual Agency/Respondeat Superior and Apparent Agency Claims.

"That maritime law has long incorporated the concept of respondeat superior should come as no surprise." *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1234 (11th Cir. 2014). "An agency relationship requires: (1) the principal to acknowledge that the agent will act for it; (2) the agent to manifest an acceptance of the undertaking; and (3) control by the principal over the actions of the agent." *Id.* at 1236 (internal citations omitted). Probative factors of the control element in a maritime case include: "(1) direct evidence of the principal's right to or actual exercise of control; (2) the method of payment for an agent's services, whether by time or by the job; (3) whether or not the equipment necessary to perform the work is furnished by the principal; and (4) whether the principal had the right to fire the agent." *Id.* at 1236–37 (internal citations omitted).

"Unlike actual agency, the doctrine of apparent agency allows a plaintiff to sue a principal for the misconduct of an independent contractor who only reasonably appeared to be an agent of the principal." *Id.* at 1249. Apparent agency requires: (1) a representation by the principal to the plaintiff; (2) that causes the plaintiff to reasonably believe that the alleged agent is authorized to act for the principal's benefit; and (3) that induces the plaintiff's detrimental, justifiable reliance upon the appearance of agency. *Id.* at 1252. However, "agency is not a cause of action, but rather a theory of negligence liability." *Reinhardt v. Paradise Cruise Line Operator, Ltd.*, No. 18-cv-60048-UU 2018 U.S. Dist. LEXIS 183308, at *14 (S.D. Fla. Oct. 24, 2018). "To establish negligence premised on agency, a plaintiff must prove both agency and negligence on the part of the agent." *Id.*; *see Franza*, 772 F.3d at 1253 (applying the negligence elements to a maritime medical negligence case premised on agency theory).

Carnival argues that Isom has not alleged enough factual allegations to support either her actual agency/respondeat superior claim or her apparent agency claim.[1] [ECF No. 8 at 15]. Specifically, Carnival argues that Isom has not pled enough factual allegations of Carnival's duty to Isom or breach of that duty to support Carnival's negligence. [*Id.* at 15–16]. In response, Isom argues that Carnival was negligent because her injuries were not properly assessed, and the prescribed cortisone cream was contraindicated to her injuries. [ECF No. 16 at 13].

In both claims, Isom alleges that Carnival and its medical staff owed her a duty of reasonable care, specifically the duty to provide medical aid as a reasonable medical provider would give under similar circumstances. [ECF No. 1 at 9, 12]. Isom alleges breach of that duty by alleging that Carnival, through the ship's medical staff, failed to properly assess her condition as a chemical burn, appropriately diagnose her, and prescribe proper treatment. Instead, the medical staff prescribed a cortisone cream that was contraindicated for her injuries. [*Id.*]. Isom also alleges breach by alleging that she was not properly treated because the medical center was run by insufficiently trained staff (allegedly a "trial-run" paramedic) without supervision, and that the medical staff failed to utilize available diagnostic equipment, monitor her, consult with land-based specialists, or use telemedicine while treating her. [*Id.* at 9–10, 12–13]. Further, Isom stated that the "trial-run" paramedic on duty prescribed a cortisone cream for the red welts on her thighs and provided no additional treatment, and the welts did not improve with the prescribed cream. [*Id.* at 4]. Taking all these allegations into consideration, Isom has adequately pleaded the duty and breach elements for both her actual agency/respondeat superior and apparent agency claims.

Isom also adequately alleged an actual agency relationship between Carnival and the medical staff. Isom alleges that Carnival acknowledged that the medical staff would act on its

[1] Carnival addressed the actual agency/respondeat superior claim and the apparent agency claim together in its motion to dismiss. [ECF No. 8 at 14–17]. Therefore, this Court will do the same.

behalf and that the staff accepted the undertaking by alleging that Carnival directly employed and paid the medical staff, that Carnival provided, owned, and operated the medical center, and that Carnival represented to both immigration authorities and passengers that the medical staff were members of the crew. [*Id.* at 11]; *See Franza*, 772 F.3d at 1236. For the control element, Isom alleged that Carnival had the right to hire and fire the medical staff, the power to control their working hours, to transfer them between vessels, and to limit their medical practice to prevent them from practicing on their own or for any other entity. [ECF No. 1 at 10–11]. Isom also alleged that Carnival provided all equipment, medicines, supplies, and tools in the medical center. [*Id.* at 11]. In addition, she was directly charged by Carnival for medical services, and the medical staff did not receive those charges but were instead paid a salary by Carnival. [*Id.* at 11]. Thus, Isom adequately plead the elements of an actual agency/respondeat superior relationship between Carnival and its medical personnel. *See Franza*, 772 F.3d at 1236–37.

Finally, Isom adequately pleaded an apparent agency relationship between Carnival and its medical staff. Isom alleged that Carnival represented that the medical staff were its employees or agents because Carnival promotes its medical staff as such through brochures, online advertising, and on its vessels. [ECF No. 1 at 13]. Specifically, she alleged that Carnival advertises that the medical staff work in medical centers owned and operated by Carnival, that the passengers are billed directly by Carnival, and that the medical staff wear uniforms that have the Carnival name and logo. [*Id.* at 14]. Further, Isom alleges in her complaint that the medical staff were introduced to passengers as a member of the crew, that they are under the command of the vessel's superior officers, that Carnival represented them as crewmembers to immigration authorities, and that they eat with the crew. [*Id.* at 14–15]. These are all "salient representations" by Carnival to Isom of the agency relationship to satisfy the first apparent agency element. *Franza*, 772 F.3d at 1252.

Based on these allegations, Isom could reasonably conclude that the medical staff were authorized to provide medical services for Carnival's benefit. Isom specifically alleges that Carnival promotes that its medical staff work in its onboard medical centers as a marketing tool to induce passengers, like Isom, to buy cruise tickets, especially because Carnival goes to various foreign ports where adequate medical care may not be available. [ECF No. 1 at 13–14]; *See Franza*, 772 F.3d at 1252. Further, Isom alleges she was required to go to the ship's medical center to receive treatment for her injury. [ECF No. 1 at 15]. Further, Isom satisfies the third apparent agency element because she used the prescribed cream but suffered permanent scarring to her right thigh because the welts did not improve while using the prescribed cream. [*Id.* at 4]. Therefore, Isom has adequately pleaded an apparent agency relationship between Carnival and its medical staff. Accordingly, Counts III and IV of the complaint should not be dismissed for failure to state a claim.

CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Defendant, Carnival's Motion to Dismiss [ECF No. 8] be **GRANTED IN PART AND DENIED IN PART**.

Objections to this Report may be filed with the district judge within fourteen days of receipt of a copy of the Report. Failure to timely file objections will bar a *de novo* determination by the district judge of anything in this Report and shall constitute a waiver of a party's "right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions." 11th Cir. R. 3-1; *see also Harrigan v. Metro-Dade Police Dep't Station #4*, 977 F.3d 1185, 1191-92 (11th Cir. 2020); 28 U.S.C. § 636(b)(1)(C).

SIGNED this 4th day of April, 2023.

LISETTE M. REID
UNITED STATES MAGISTRATE JUDGE

cc: **U.S. District Judge Kathleen M. Williams;**

All Counsel of Record