UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:22-cv-23807-KMM

TAYLOR ANN MOORE,

Plaintiff,

v.

MSC CRUISES, S.A.,

Defendant.
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ORDER

THIS CAUSE came before the Court upon Defendant MSC Cruises, S.A.'s Motion to Dismiss Plaintiff's Complaint ("Mot.") (ECF No. 6). Plaintiff filed a Response ("Resp.") (ECF No. 9), and Defendant filed a Reply (ECF No. 10). For the reasons set forth below, the Court GRANTS Defendant's Motion and dismisses Plaintiff's Complaint (ECF No. 1) 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.* ¶ 6–7. Plaintiff alleges that the amount in controversy in this maritime personal injury case exceeds $75,000. *Id.* ¶ 1.

Plaintiff alleges that she was a fare-paying passenger aboard the MSC Meraviglia, a cruise ship owned and/or operated by Defendant. *Id.* ¶ 11. On October 14, 2022, Plaintiff claims she slipped "on a foreign transitory liquid substance" and hit her head on the floor while "stepping

[1] The following facts are taken from the Complaint ("Compl.") (ECF No. 1) 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).

down the outdoor stairs between deck 18 and deck 16." *Id.* ¶ 14. Plaintiff also claims that Defendant "failed to diagnose [Plaintiff's] concussion, traumatic brain injuries, or make an appropriate referral for her treatment." *Id.* ¶ 16. Plaintiff lists nine (or more)[2] potential conditions that may have contributed to her fall:

> a. The stairsteps Plaintiff slipped on were contaminated with a foreign liquid substance;
> b. The stairsteps Plaintiff slipped on were unreasonably slippery;
> c. The stairsteps Plaintiff slipped on lacked slip resistant strips, or in the alternative, lacked adequate slip resistant strips;
> d. The shiny and otherwise obscuring visual condition of the stairs was such that it was difficult for Plaintiff to decern [sic] that they were slippery prior to Plaintiff's fall;
> e. There was either non-existent drainage for the subject stairsteps or any such drainage was not reasonably draining liquid from the subject area at the time of Plaintiff's incident;
> f. The stairsteps and railings involved in Plaintiff's incident were uneven and not uniform or otherwise proper in dimensions (including proper width, height, depth, angles, and otherwise), which unreasonably hindered Plaintiff's body's ability to step safely down the subject stairsteps;
> g. The area was not adequately lit, and the stairsteps Plaintiff fell on lacked adequate visual cues to help passengers see each step (such as yellow or other conspicuous tape/signs/stickers/bright noticeable coloring/other cues);
> h. MSC did not have crewmembers adequately supervising the subject area at the time; and
> i. The unreasonable overcrowding on the subject stairs, as there were approximately 5 or more persons trying to use the subject stairs at the same time, far too many passengers for stairs of this size. The crewmembers MSC had in the subject area failed to adequately control this crowd and failed to allow for a safe number of passengers to descend the stairs during appropriate intervals of time.[3]

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[2] The list is premised with the following statement: "[T]he dangerous and/or risk creating conditions include, *but are not limited to* the following." Compl. ¶ 17 (emphasis added). Plaintiff also adds to the bottom of the list one final risk creating condition: "Other dangerous conditions that will be revealed through discovery." *Id.* at ¶ 17(j).

[3] Plaintiff defines the "subject area" as including, but not limited to, "the subject stairs, and the surrounding area involved in [Plaintiff's] incident, and all material and effects pertaining thereto, including any material that was applied or that should have been applied, and/or other parts

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

On November 21, 2022, Plaintiff filed her 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 MSC's crew, staff, employees, and/or agents, based on vicarious liability (Count VI); vicarious liability 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,

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thereof, the area and stairs' design and/or visual condition, railings, nosings, and/or any other applied, adhesive, and/or other material." Compl. ¶ 10.

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

Just as the same copy-and-paste complaint did in *Rivera v. MSC Cruises S.A.*,[4] Plaintiff's Complaint here violates the second *Weiland* category. To state a claim for maritime negligence,

[4] *See* (ECF No. 34), Case No. 1:22-cv-21386-KMM (S.D. Fla. November 18, 2022). The documents are so similar as to contain even the same errata. *Compare* Compl. ¶ 17(d) (improperly confusing "decern" with "discern" while discussing the conditions of the ground upon which Plaintiff slipped), *with* (ECF No. 11) at ¶ 14(f), Case No. 1:22-cv-21386-KMM (S.D. Fla. 2022) (same error and same conditions).

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 purport to isolate a single breach or causal connection leading to liability; she instead lists a litany of conditions that *purportedly* 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 nine (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. Nor are those breaches limited to a particular area. Paragraph 10 of the Complaint gives an expansive (and similarly unconstrained) definition of the "subject area" which leaves the reader guessing just how Plaintiff's fall occurred. *See id.* ¶ 10.

The ambiguity in the conditions surrounding Plaintiff's fall becomes especially problematic when applying those conditions to Plaintiff's claims. For instance, Count IV of Plaintiff's Complaint alleges negligent failure to warn of dangerous conditions. *Id.* ¶¶ 68–83. Therein, Plaintiff states that Defendant breached its duty of care to her by "failing to warn [her] of the dangerous conditions discussed in paragraph 17(a-f, h-j)" without specifying *which* dangerous condition (or subset thereof) "proximately caused [Plaintiff] great bodily harm." *See id.* As such, Defendant is left to wonder which of the nine (or more) conditions it *actually* failed to warn Plaintiff of. Similarly, Count V of the Complaint alleges negligent design of the "subject area." *Id.* ¶¶ 84–103. Here, Plaintiff alleges Defendant permitted the presence of the "dangerous conditions discussed in paragraph 17(a-g, j)" in the "subject area"—though unclear which part of that multi-faceted definition is at issue—and that such conditions rendered that area (or subset thereof) "unreasonably dangerous." *See id.* 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 cause of action. *See* 792 F.3d at 1321.

The Court reiterates for Plaintiff's attorneys that this copy-and-paste 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, in what seems to be an intentional pattern with Plaintiff's attorneys, 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 inadequate lighting combined with an improperly constructed set of steps; yet on the other hand, they may have been the result of a lack of slip-resistant strips in combination with a poorly maintained handrail. *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. But a complaint is not meant to initiate a game of Clue[5]; it 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. Just as the same complaint did in *Rivera*,[6] Plaintiff's Complaint here fails to give notice of the claims against Defendant in a manner that creates an unnecessary discovery burden. The Complaint is therefore

[5] *I.e.*, it was either Colonel Mustard in the Billiard Room with the knife, or Mr. Green in the Conservatory with the lead pipe. *See Clue* [Board game]. (1949). Parker Brothers.

[6] Having failed to heed this Court's prior admonition in *Rivera*, Plaintiff's counsel is henceforth on notice that repetition of the same pleading failures before this Court may subject counsel to sanctions or other disciplinary action.

subject to dismissal.

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. 13) is GRANTED. Plaintiff's Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE.

DONE AND ORDERED in Chambers at Miami, Florida this 21st day of April, 2023.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record