UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-24032-CIV-LENARD/LOUIS

SALWA AL-HINDI,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.
_____/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (D.E. 18)

THIS CAUSE is before the Court on Defendant Royal Caribbean Cruises, LTD.'s Motion to Dismiss Plaintiff's First Amended Complaint, ("Motion," D.E. 18), filed April 11, 2023. Plaintiff Salwa Al-Hindi filed a Response on May 9, 2023, ("Response," D.E. 21), to which Defendant filed a Reply on May 19, 2023, ("Reply," D.E. 27). Upon review of the Motion, Response, Reply, and the record, the Court finds as follows.

I. Background[1]

Plaintiff Salwa Al-Hindi is a 68-year-old citizen of Kuwait. (Am. Compl. ¶ 1.) Plaintiff's daughter purchased a ticket for Plaintiff to vacation alone on a four-night cruise to the Bahamas upon Defendant's vessel *Independence of the Seas*, which was set to depart from Port Canaveral, Florida (near Orlando) on September 26, 2022, and return to the same

[1] The following allegations are gleaned from Plaintiff's Amended Complaint (D.E. 17), and are deemed to be true for purposes of ruling on Defendant's Motion to Dismiss.

port on September 30, 2022. (Id. ¶ 6.) When the ticket was purchased, the receipt and all future receipts were registered to be sent directly to Plaintiff's email address. (Id.) Plaintiff subsequently upgraded her stateroom and Defendant emailed a confirmation receipt directly to Plaintiff's email address, along with a revised Guest Booklet and Ticket Contract. (Id. ¶ 9.)

On September 14, 2022, Plaintiff flew from Kuwait to Saint John, New Brunswick, Canada to visit her sister. (Id. ¶ 10.) On September 25, 2022, Plaintiff flew from Saint John, New Brunswick to Orlando, Florida. (Id.)

On September 26, 2022, Plaintiff attempted to board the *Independence of the Seas*. (Id. ¶ 11.) Prior to boarding, individuals acting on behalf of Defendant questioned Plaintiff because there were similarities between her name and the name of another passenger. (Id.)

On September 27, 2022, at approximately 7:00 AM, Plaintiff was contacted by telephone and directed to immediately report for additional questioning. (Id. ¶ 12.) Shortly thereafter, Defendant advised that Plaintiff must immediately disembark the cruise ship, which was now docked in Nassau, Bahamas. (Id.) Plaintiff was shocked and asked for clarification. (Id. ¶ 13.) Defendant advised Plaintiff that someone from headquarters had ordered her to be removed from the cruise ship due to "certain financial issues." (Id.) Plaintiff explained that her ticket and all amenities were fully paid – as evidenced by the receipts emailed directly to her by Defendant. (Id.) Plaintiff offered and attempted to provide proof of payment, but Defendant refused to review or consider this information. (Id.) Plaintiff asked Defendant to identify the financial issues, but Defendant refused to explain. (Id. ¶ 15.)

At this time, Plaintiff advised Defendant that she had diabetes, blood pressure and liver issues that required her medication to remain refrigerated at all times to avoid placing Plaintiff's health and safety at risk. (Id. ¶ 16.) Based on her medical condition, Plaintiff asked for permission to remain on the vessel or for reasonable accommodations to refrigerate her medication. (Id.) However, Defendant did not allow Plaintiff to remain on the vessel and did not provide any accommodations. (Id. ¶ 17.) Instead, Defendant booked a ticket—at Plaintiff's cost—from Nassau to Orlando for the same day. (Id. ¶ 18.) Plaintiff was then escorted to her room by two armed security guards so that she could pack her bags and retrieve her medication before disembarking from the cruise ship. (Id. ¶ 19.) No icepacks were offered to Plaintiff for her medications. (Id.)

Defendant forced Plaintiff to disembark the cruise ship at approximately 8:00 AM on September 27, 2022. (Id. ¶ 20.) At the same time, Defendant "knew that Hurricane Ian threatened Plaintiff's health and safety upon her return to Orlando, Florida." (Id. ¶ 21.) Specifically, on September 27, 2022, at approximately 8:00 AM, Hurricane Ian struck the west coast of Cuba while registering maximum sustained winds of 125 miles per hour. (Id. ¶ 22.) The National Hurricane Center issued a Tropical Storm Warning applicable to Brevard County, which indicated that Hurricane Ian was likely to hit Port Canaveral, within the next 36 hours. (Id.) A few hours later, the United States Coast Guard closed Port Canaveral to all vessels. (Id. ¶ 23.) For the next several days, Defendant maintained a travel advisory page that closely tracked each Hurricane Ian update, posted updates to its travel advisory page, and publicized these announcements on Twitter. (Id. ¶ 24.)

When Plaintiff arrived at the airport in Nassau, Bahamas, she discovered that Defendant had booked her on a flight for one month later—October 27, 2022. (Id. ¶ 27.) With nowhere to stay, Plaintiff secured another ticket for the same day—September 27, 2022—to fly from Nassau to Orlando. (Id.) Upon arriving in Orlando, Plaintiff discovered that the luggage containing her medication was missing. (Id. ¶ 28.) She was informed by the airline that it remained in Nassau and could not be delivered for several days due to Hurricane Ian. (Id.) Plaintiff ultimately checked into a hotel where, due to Hurricane Ian, she was required to shelter in place. (Id. ¶¶ 29-30.) Plaintiff remained at the hotel for the next three days while Hurricane Ian struck Florida and the Orlando International Airport remained closed. (Id. ¶ 30.)

On September 30, 2022, "Plaintiff required hospitalization in Orlando for injuries proximately caused by Defendant failing to afford Plaintiff reasonable accommodations to refrigerate her medication and the stress caused by Defendant forcing Plaintiff to disembark from the cruise ship without warning and during Hurricane Ian." (Id. ¶ 31.) That evening, Plaintiff received her luggage; however, it had been opened and searched through, and her medication and personal items—including her clothing and glucose monitoring device—had been removed from her luggage. (Id. ¶ 32.)

On October 14, Plaintiff returned to Saint John, New Brunswick, Canada, where she was "again hospitalized at two different hospitals for injuries which were proximately caused by Defendant failing to afford Plaintiff reasonable accommodations to refrigerate her medication and the stress caused by Defendant forcing Plaintiff to disembark from the cruise ship without warning and during Hurricane Ian." (Id. ¶ 33.)

On December 13, 2022, Plaintiff initiated this lawsuit. (D.E. 1.) Defendant moved to dismiss the original Complaint arguing, inter alia, that it was a shotgun pleading because (1) it lumped several distinct theories of liability into one count and (2) each count incorporated by reference all of the preliminary paragraphs, even though not all of the preliminary paragraphs were relevant to all of the claims. (D.E. 7 at 2-5.)

On March 14, 2023, the Court issued an Order finding that the original Complaint constituted a "shotgun pleading" in that it failed to separate into a different count each cause of action or claim for relief. (D.E. 16.) The Court observed that "Paragraph 29 of the Complaint contains nine sub-paragraphs alleging separate ways in which Defendant breached the duty of care it owed to Plaintiff. Each alleged breach of the duty of care is a separate claim which must be pled separately." (Id. (citations omitted).) Consequently, the Court instructed Plaintiff to file an Amended Complaint. (Id.)

On March 28, 2023, Plaintiff filed the operative Amended Complaint, (D.E. 18), which contains three causes of action:

- Count I: Negligence for failure to use reasonable care to investigate the basis for disembarkation, (id. ¶¶ 37-42);
- Count II: Negligence for failure to use reasonable care after being placed on notice of Plaintiff's medical condition, (id. ¶¶ 43-50); and
- Count III: Negligence for failure to use reasonable care in arranging Plaintiff's disembarkation and return travel, (id. ¶¶ 51-63).

On April 11, 2023, Defendant filed the instant Motion to Dismiss, arguing that the Amended Complaint is a "shotgun pleading" and, in any event, fails to state a claim upon

which relief can be granted. (D.E. 18.) Plaintiff filed a Response, (D.E. 21), to which Defendant filed a Reply, (D.E. 27).

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a claim for "failure to state a claim upon which relief can be granted." "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 Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Conclusory statements, assertions or labels will not survive a 12(b)(6) motion to dismiss. Id. "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.; see also Edwards v. Prime, Inc., 602 F.3d 1276, 1291 (11th Cir. 2010) (setting forth the plausibility standard). "Factual allegations must be enough to raise a right to relief above the speculative level[.]" Twombly, 550 U.S. at 555 (citation omitted). Additionally:

> Although it must accept well-pled facts as true, the court is not required to accept a plaintiff's legal conclusions. Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (noting "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"). In evaluating the sufficiency of a plaintiff's pleadings, we make reasonable inferences in Plaintiff's favor, "but we are not required to draw plaintiff's inference." Aldana v. Del Monte Fresh Produce, N.A., Inc., 416 F.3d 1242, 1248 (11th Cir. 2005). Similarly, "unwarranted deductions of fact" in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff's allegations. Id.; see also Iqbal, 129 S. Ct. at 1951 (stating conclusory allegations are "not entitled to be assumed true").

Sinaltrainal v. Coca-Cola, 578 F.3d 1252, 1260 (11th Cir. 2009), abrogated on other grounds by Mohamad v. Palestinian Auth., 566 U.S. 449, 453 n.2 (2012). The Eleventh Circuit has endorsed "a 'two-pronged approach' in applying these principles: 1) eliminate any allegations in the complaint that are merely legal conclusions; and 2) where there are well-pleaded factual allegations, 'assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.'" Am. Dental Ass'n v. Cigna Corp., 605 F.3d 1283, 1290 (11th Cir. 2010) (quoting Iqbal, 556 U.S. at 679).

III. Jurisdiction, venue, and applicable law

The Parties agree that the Court has admiralty jurisdiction, 28 U.S.C. § 1333, and that federal maritime law applies. (See Am. Compl. ¶ 4; Mot. at 2 n.1, 3; Resp. at 7.) Venue lies in the Southern District of Florida pursuant to the forum selection clause in the Ticket Contract. (Am. Compl. ¶ 5.)

"Federal maritime law applies to actions arising from alleged torts 'committed aboard a ship sailing in navigable waters.'" Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308, 1315 (S.D. Fla. 2011) (citing Keefe v. Bahama Cruise Line, Inc., 867 F.2d 1318, 1321 (11th Cir. 1989)). It also applies to tort actions arising at an offshore location during the course of a cruise. Ceithaml v. Celebrity Cruises, Inc., 739 F. App'x 546, 550 n.4 (11th Cir. 2018) (citing Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 900-02 (11th Cir. 2004)).

> General maritime law is "an amalgam of traditional common-law rules, modifications of those rules, and newly created rules." See East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864–65, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986). See also Brockington v. Certified Elec., Inc., 903 F.2d 1523, 1530 (11th Cir. 1990). In the absence of well-developed

> maritime law pertaining to [Plaintiff's] negligence claims, [the Court] will incorporate general common law principles and Florida state law to the extent they do not conflict with federal maritime law. See Just v. Chambers, 312 U.S. 383, 388, 61 S. Ct. 687, 85 L. Ed. 903 (1941) ("With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation."). See also Becker v. Poling Transp. Corp., 356 F.3d 381, 388 (2nd Cir. 2004) ("federal maritime law incorporates common law negligence principles generally, and [state] law in particular"); Wells v. Liddy, 186 F.3d 505, 525 (4th Cir. 1999) (in the absence of a well-defined body of maritime law relating to a particular claim, the general maritime law may be supplemented by either state law or general common law principles).

Smolnikar, 787 F. Supp. 2d at 1315; see also Hesterly v. Royal Caribbean Cruises, Ltd., 515 F. Supp. 2d 1278, 1282 (S.D. Fla. 2007).

IV. Discussion

The Court will first address whether the Amended Complaint is an impermissible shotgun pleading, and then address whether it fails to state a claim upon which relief can be granted.

a. Shotgun pleading

First, Defendant argues that the Amended Complaint is a shotgun pleading because it (1) contains immaterial facts not obviously connected to any particular cause of action, and (2) indiscriminately incorporates into each Count all of the 36 preliminary paragraphs, even though not every allegation is relevant to each cause of action. (Mot. at 3-7.)

Plaintiff argues that the Amended Complaint is not a shotgun pleading. (Resp. at 7-10.) She argues that the Court has already implicitly rejected Defendant's second argument, because Defendant made the same argument in its Motion to Dismiss the

original Complaint, but the Court did not find that the original Complaint constituted a shotgun pleading in that it incorporated the preliminary allegations into each Count. (Id. at 7-8.) She further argues that the Amended Complaint is not a shotgun pleading simply because it incorporates all of the preliminary paragraphs into each cause of action even though not every preliminary paragraph is relevant to every claim, and Defendant has not explained how incorporating the preliminary paragraphs into each Count inhibits it from formulating a response. (Id. at 8.) She argues that Courts "routinely hold that incorporating general factual allegations is proper and does not create a shotgun pleading." (Id. at 9 (citations omitted).)

In its Reply, Defendant argues that when addressing the Motion to Dismiss the original Complaint, the Court took no position as to whether it was a shotgun pleading in that it incorporated irrelevant factual allegations into each count. (D.E. 27 at 1.) It maintains that the Amended Complaint is a shotgun pleading for this reason, (id. at 1-2), and argues that Plaintiff's failure "'to clearly connect each factual allegation to the appropriate count in the complaint'" violates Rule 9(b), (id. at 2 (quoting Ferrell v. Durbin, 311 F. App'x 253, 259 (11th Cir. 2009))).

To begin with, because Plaintiff has not alleged any claims sounding in fraud, Rule 9(b) does not apply.

Next, there are four "rough types or categories of shotgun pleadings." Weiland v. Palm Beach Cnty. Sheriff's Office, 792 F.3d 1313, 1321 (11th Cir. 2015). They are: (1) "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last

count to be a combination of the entire complaint[,]" id. (citations omitted); (2) a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action[,]" id. at 1322 (citations omitted); (3) a complaint that fails to separate "into a different count each cause of action or claim for relief[,]" id. at 1323 (citations omitted); and (4) a complaint that asserts "multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against[,]" id. (citations omitted). "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." Id.

The Court finds that the Amended Complaint does not constitute an impermissible shotgun pleading. Although each count incorporates paragraphs 1 through 36 (which include general factual allegations, jurisdictional allegations, and allegations regarding the Parties), they do not incorporate or reallege the paragraphs of the preceding counts such that the allegations of each count are rolled into every successive count. Furthermore, although not every background allegation is strictly relevant to each count, the incorporation by reference of general factual allegations into each Count does not render the Amended Complaint a shotgun pleading. See id. at 1324 (holding that a complaint wherein each count realleged each of the 49 preliminary paragraphs, but not the paragraphs of the preceding counts, was not an impermissible shotgun pleading); Broberg v. Carnival Corp., 303 F. Supp. 3d 1313, 1319-20 (S.D. Fla. 2017) (declining to dismiss complaint as an impermissible shotgun pleading even though it incorporated each of the first 57

paragraphs into each count); Martins v. Royal Caribbean Cruises Ltd., 174 F. Supp. 3d 1345, 1358 (S.D. Fla. 2016) (finding that complaint that incorporated by reference all 54 factual allegations into each count did not constitute an impermissible shotgun pleading); Perricone v. Carnival Corp., CASE NO. 15-20309-CV-GAYLES, 2016 WL 1161214, at *3 (S.D. Fla. Mar. 24, 2016) (finding that a complaint that incorporated by reference the first 29 paragraphs into each count was not an impermissible shotgun pleading). Here, each Count permits Defendant to discern precisely what Plaintiff is claiming and frame a responsive pleading.

Therefore, the Motion to Dismiss the Amended Complaint as a shotgun pleading is denied.

b. Failure to state a claim

Next, Defendant argues that each claim should be dismissed because they improperly impose heightened duties of care, fail to sufficiently allege the requisite elements, and/or are otherwise deficiently pled. (Mot. at 8-15.)

"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.'" Franza v. Royal Caribbean Cruises, Ltd., 772 F.3d 1225, 1253 (11th Cir. 2014) (quoting Chaparro v. Carnival Corp., 693 F.3d 1333, 1336 (11th Cir. 2012)).

1. Count I

In Count I, Plaintiff alleges, inter alia, that: "Defendant owed a duty to use reasonable care to timely investigate whether there were good faith bases to require that Plaintiff disembark from the cruise ship[,]" (Am. Compl. ¶ 38); "Defendant breached its duty . . . by failing to use reasonable care to investigate whether there was any reasonable basis to require that Plaintiff disembark the cruise ship[,]" (id. ¶ 39); "[a]s a proximate result of Defendant's breach of the duty of care, Plaintiff was wrongly required to disembark from the cruise ship without a reasonable basis, which caused Plaintiff [sic] suffer bodily injuries, pain and suffering, hospitalization in Orlando, Florida, hospitalization in Saint John, Canada, disability, scarring, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money[,]" (id. ¶ 40).

Defendant argues that its duty of reasonable care does not include the duty "to timely investigate good faith bases for disembarkation." (Mot. at 9.) It further argues that "the ticket contract between Plaintiff and Defendant specifically permitted Defendant to refuse to transport any passenger, and/or to remove any passenger from the vessel at any time, for, among other reasons, failing to comply with Defendant's rules, policies, and/or procedures." (Id. (citing Ticket Contract at Section 9i).) It argues that "the facts alleged by Plaintiff are that she was required to disembark after Defendant determined the existence of financial issues violating Defendant's rules, policies, and/or procedures[,]" (id. (citing Am. Compl. ¶ 13)), and therefore Defendant had a right to disembark Plaintiff, (id. at 10). It further argues that Count I fails to allege that Defendant had actual or

constructive knowledge of a risk-creating condition. (Id.) It further argues that even if it owed Plaintiff the duty alleged, the Amended Complaint fails to plausibly allege that Defendant breached the duty—"i.e., that Defendant's investigation was, in fact, negligent, and that it failed to adequately investigate the basis for disembarkation." (Id. at 10-12.)

Plaintiff argues that Defendant's duty of reasonable care extends to disembarkation. (Resp. at 11-12 (citing Lancaster v. Carnival Corp., 85 F. Supp. 3d 1341, 1345 (S.D. Fla. 2015); McLean v. Carnival Corp., No. 12–24295–CIV, 2013 WL 1024257, at *4 (S.D. Fla. Mar. 14, 2013)).) It further argues that "[a] cruise line cannot use a ticket contract to limit or abrogate its duty under common law to act with reasonable care[,]" (id. at 12 (citing 46 U.S.C. § 30527; Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1335 (11th Cir. 1984))), and even if it could, the Ticket Contract in this case only permits Defendant to remove a passenger under specific circumstances, and whether those circumstances are present cannot be decided at the motion to dismiss stage—especially because Plaintiff "does not allege any facts related to the ticket contract, policies or procedures, or any party's compliance or non-compliance with these rules[,]" (id. at 12-13). Plaintiff further argues that the Court may not speculate that Defendant conducted a proper investigation and correctly determined that "financial issues" entitled it to disembark Plaintiff, especially when accepting the well-pled allegations as true and construing them in the light most favorable to Plaintiff. (Id. at 13-14.) Plaintiff further argues that the Amended Complaint alleges that Defendant "created an unsafe or foreseeably hazardous condition by negligently requiring her to leave the cruise ship[,]" and "[u]nder these circumstances, 'no allegation of notice is necessary to survive the Motion to Dismiss.'" (Id. at 14 (quoting

McLean, 2013 WL 1024257, at *4, and citing Villeta v. Carnival Corp., CASE NO. 13-24369-CIV-ALTONAGA/O'Sullivan, 2014 WL 11930610, *3 (S.D. Fla. Oct. 6, 2014)).) Finally, Plaintiff argues that the Amended Complaint plausibly alleges each of the elements of a negligence claim. (Id.)

In its Reply, Defendant distinguishes the cases Plaintiff cites in support of her arguments that Defendant owed her a duty to ensure she was safely disembarked, (D.E. 27 at 3-4), that Defendant cannot abrogate its duty through a ticket contract, (id. at 4), and that there is no notice requirement where the defendant created the unsafe condition, (id. at 6-7). It further argues that Plaintiff has failed to allege how or why she believes Defendant failed to conduct a thorough investigation into the alleged financial issues that gave rise to her disembarkation. (Id. at 6.) It further argues that the Eleventh Circuit has held "that creation of a dangerous condition does not negate [sic] notice requirement." (Id. (citing Pizzino v. NCL (Bahamas) Ltd., 709 F. App'x 563, 567 (11th Cir. 2017)).) Defendant argues that Plaintiff was safely disembarked and suffered no injuries while on the ship or during disembarkation. (Id. at 6-7.)

"It is a settled principle of maritime law that a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew." Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959) (citations omitted). "A cruise line like [Defendant] owes its passengers 'a 'duty of reasonable care' under the circumstances.'" Fuentes v. Classica Cruise Operator Ltd, Inc., 32 F. 4th 1311, 1317 (11th Cir. 2022) (quoting Sorrels v. NCL (Bahamas) Ltd., 796 F.3d 1275, 1279 (11th Cir. 2015)). "Generally speaking, a duty of care exists under maritime

law 'when injury is foreseeable or when contractual or other relations of the parties impose it. In determining the existence of [a] duty a court must examine and weigh the probability of an accident, the potential extent of the injury, and the cost of adequate precautions.'" Id. (quoting 1 Thomas Schoenbaum, Admiralty and Maritime Law § 5:4 (6th ed. & 2021 update)). "'[T]he maritime standard of reasonable care usually requires that the cruise [line] have actual or constructive knowledge of the risk-creating condition.'" Id. (quoting Sorrels, 796 F.3d at 1286).

Here, the Court finds that under the circumstances alleged in the Amended Complaint, Defendant's duty of ordinary reasonable care required it to investigate whether there existed a basis for forcing Plaintiff to disembark. Specifically, it alleges that Plaintiff's ticket was paid for and that Defendant emailed her a receipt for the payment. (Am. Compl. ¶¶ 6, 8.) It further alleges that her internet and food and beverage packages were paid for. (Id. ¶ 7.) The Amended Complaint does not allege that there was any outstanding balance on her cruise voyage. Regardless, on September 27, 2022, at approximately 8:00 AM—while the ship was docked in Nassau, Bahamas—Defendant instructed Plaintiff to immediately disembark due to "certain financial issues." (Id. ¶¶ 12-13, 20.) Defendant booked a ticket (at Plaintiff's cost) from Nassau to Orlando, Florida, even though it "knew that Hurricane Ian threatened Plaintiff's health and safety upon her return to Orlando, Florida." (Id. ¶ 21.) Indeed, at the same date and time—September 27, 2022, at approximately 8:00 AM—Hurricane Ian "struck the west coast of Cuba while registering maximum sustained winds of 125 miles per hour." (Id. ¶ 22.) "The National Hurricane Center issued a Tropical Storm Warning applicable to Brevard County, which

indicated that Hurricane Ian was likely to hit Port Canaveral, Brevard County, Florida within the next 36 hours or less." (Id.) Thus, Defendant was on notice of a risk-creating condition posing a foreseeable injury. Also, Defendant knew that Plaintiff—a 68-year-old woman from Kuwait—had several medical issues and was travelling alone. (Id. ¶¶ 1, 6, 16-17.) Under these circumstances, the Court finds that Defendant's duty of ordinary reasonable care required it to investigate whether there existed a basis for forcing Plaintiff to disembark. See Lancaster, 85 F. Supp. 3d at 1345 (finding that shipowner's duty of ordinary reasonable care required it to not "unreasonably create or cause (through selecting and dictating the manner of debarkation) a hazardous condition that in turn injures a passenger").

The Court rejects Defendant's reliance on the Ticket Contract at this stage in the proceedings. (Mot. at 10.) "When considering a motion to dismiss, all facts set forth in the plaintiff's complaint 'are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto.'" Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231 (11th Cir. 2000) (quoting GSW, Inc. v. Long Cnty., 999 F.2d 1508, 1510 (11th Cir. 1993)). However, "the court may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment if the attached document is (1) central to the plaintiff's claim and (2) undisputed." Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005) (emphasis added). Here, Plaintiff did not attach the Ticket Contract to her Amended Complaint. Although Defendant argues that the Court may consider the Ticket Contract because Plaintiff refers to it in her Amended Complaint and it is central to her claim, (id. at 10 n. 2 (citing Fin. Sec. Assur., Inc. v. Stephens, Inc., 500 F.3d 1276, 1284

(11th Cir. 2007))), the Court finds that the Ticket Contract is not central to Plaintiff's claims—rather, it is central to Defendant's defense. Therefore, the Court cannot consider it at the pleading stage. Miranda v. Ocwen Loan Servicing, LLC, 148 F. Supp. 3d 1349, 1353 (S.D. Fla. 2015) ("Documents that are relevant to the defendant's affirmative defenses, rather than the plaintiff's claim, will fail to meet the centrality requirement.") (citing Lockwood v. Beasley, 211 F. App's 873, 877 (11th Cir. 2006)); Hernandez v. J.P. Morgan Chase Bank N.A., CASE NO. 14-24254-CIV-GOODMAN, 2016 WL 2889037, at *7 (S.D. Fla. May 16, 2016) (same); see also GoPlus Corp. v. Crown Equip. Corp., 533 F. Supp. 3d 1344, 1353-54 (S.D. Ga. 2021) (finding that the Court could not consider a letter referenced once in the amended complaint and attached to the defendant's motion for judgment on the pleadings because it was central to the defendant's affirmative defense, but not the plaintiff's claims); Future Fibre Techs. Pty. Ltd. v. Optellios, Inc., CASE NO. 2:08–CV–00600–UA–DNF, 2009 WL 10669938, at *2 (M.D. Fla. May 7, 2009) ("Though it is central to [the defendant's] affirmative defense, [the document attached to the defendant's motion for judgment on the pleadings] is not central to Plaintiff's claim and cannot be considered for purposes of a 12(c) motion").

The Court further rejects Defendant's argument that the Amended Complaint fails to allege that Defendant breached its duty of reasonable care—"i.e., that Defendant's investigation was, in fact, negligent, and that it failed to adequately investigate the basis for disembarkation." (Mot. at 10-11.) Accepting the Amended Complaint's allegations as true and construing them in the light most favorable to Plaintiff, Plaintiff's voyage was fully paid for and there were no "financial issues" necessitating her immediate removal.

(See Am. Compl. ¶¶ 6-7, 9, 13, 15.) Plaintiff even attempted to offer receipts as proof of payment, but Defendant "refused to review or consider this information." (Id. ¶ 13.) Plaintiff asked Defendant to identify the financial issues, but Defendant refused. (Id. ¶ 15.) Construed in the light most favorable to Plaintiff, there was no financial issue requiring Plaintiff's forced disembarkation, and an investigation would have revealed that. The fact that Defendant believed there was a financial issue requiring a 68-year-old Kuwaiti woman's immediate expulsion from the ship in Nassau, Bahamas while a major hurricane posed an imminent threat to the Caribbean and Florida suggests that Defendant breached its duty to investigate the basis for disembarkation.

Therefore, Defendant's Motion to Dismiss Count I is denied.

2. Count II

In Count II, Plaintiff alleges, inter alia, that "prior to forcing Plaintiff to disembark from the cruise ship, Defendant had actual notice that Plaintiff suffered from medical conditions that required Defendant provide reasonable accommodations to allow Plaintiff to refrigerate, retrieve and/or safeguard her medications[,]" (Am. Compl. ¶ 45); "Defendant also had actual notice that failing to provide these accommodations would pose significant health risks to Plaintiff[,]" (id.); "Defendant owed Plaintiff a duty to act with reasonable care under the facts and circumstances alleged herein[,]" (id. ¶ 46); "Defendant breached its duty of care to the Plaintiff by acting without reasonable care to afford Plaintiff with reasonable accommodations to either remain on board the cruise ship or refrigerate, retrieve and/or safeguard Plaintiff's medications after being advised of her medical conditions[,]" (id. ¶ 47); and "as a proximate result of Defendant's breach of the duty of care, Plaintiff

was required to disembark from the cruise ship without being afforded reasonable accommodations to refrigerate, retrieve and/or safeguard her medications, which caused Plaintiff [sic] suffer bodily injuries, pain and suffering, hospitalization in Orlando, Florida, hospitalization in Saint John, Canada, disability, scarring, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money[,]" (id. ¶ 48).

Defendant argues that it did not owe Plaintiff the "heightened" duty of care alleged in Count II based on knowledge of her medical conditions. (Mot. at 12.) It also argues that the allegations supporting Count II are contradictory and create confusion—specifically, Plaintiff alleges in Count II that Defendant was negligent by failing to allow her to retrieve her medications after being advised of her medical conditions, (id. at 12-13 (citing Am. Compl. ¶ 47)), but in the incorporated background allegations she alleges that "she was escorted to her cabin 'so that she could pack her bags and retrieve her medication before disembarking from the cruise ship[,]'" (id. at 13 (citing Am. Compl. ¶ 19)). Defendant argues that these "allegations are contradictory and muddy what is even being alleged, further justifying dismissal" as a shotgun pleading. (Id. at 13 (citing Lampkin-Asam v. Volusia Cnty. Sch. Bd., 261 F. App'x 274, 277 (11th Cir. 2008); Weinstein v. City of N. Bay Vill., 977 F. Supp. 2d 1271, 1285 (S.D. Fla. 2013); Marino v. Spizzigo Enters, L.L.C., CASE NO. 20-24391-CIV-LENARD, 2021 WL 8894429, at *6 (S.D. Fla. Feb. 3, 2021)).)

Plaintiff argues that Count II does not allege a heightened duty of care—rather, what constitutes reasonable care under the circumstances varies with the facts of each case and

may take into account a passenger's medical conditions. (Resp. at 15-16 (citing Carroll v. Carnival Corp., No. 11–23372–CIV, 2013 WL 1857115, at *4 (S.D. Fla. May 2, 2013); Incardone v. Royal Caribbean Cruises, Ltd., Case Number: 16-20924-CIV-MARTINEZ-GOODMAN, 2020 WL 2950684, at *3-4)); see also id. at 17 (citing Pucci v. Carnival Corp., 146 F. Supp. 3d 1281, 1288 (S.D. Fla. 2015)).) She further argues that whether Defendant breached its duty is a "fact-intensive inquiry based on the specific circumstances of Defendant's knowledge, Ms. Al-Hindi's health, and steps a reasonable cruise line should have taken under these circumstances" not suitable for disposition at the motion to dismiss stage. (Id. at 16.) She further argues that she "plainly alleges facts" supporting both the duty and breach elements. (Id. at 16-17.) She alleges that her allegations "are neither confusing nor contradictory. [She] alleges that she was escorted to her room to retrieve her luggage and medications, but that after being escorted, Defendant did not in fact provide reasonable accommodations or reasonably allow her to 'refrigerate, retrieve and/or safeguard' these medications." (Id. at 18.)

In its Reply, Defendant maintains that Plaintiff is attempting to impose a heightened duty of care upon Defendant based on its knowledge of her health issues. (D.E. 27 at 7 (citing Carroll, 2013 WL 1857115, at *4).)

"It is a settled principle of maritime law that a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew." Kermarec, 358 U.S. at 630 (citations omitted). "[T]he benchmark against which a shipowner's behavior must be measured is ordinary reasonable care under the circumstances." Keefe, 867 F.2d at 1322.

Here, the Court finds that under the circumstances alleged in the Amended Complaint, Defendant's duty of ordinary reasonable care required it to provide Plaintiff with an accommodation to keep her medications refrigerated. Specifically, it alleges that when Defendant instructed Plaintiff to immediately disembark the ship while it was docked in Nassau, Bahamas, she advised Defendant "and its agents that she had diabetes, blood pressure and liver issues that required her medication remain refrigerated at all times to avoid placing Plaintiff's health and safety at risk." (Am. Compl. ¶ 16.) "Based on her medical condition, Plaintiff asked for permission to remain on the vessel or for reasonable accommodations to refrigerate her medication." (Id.) Under these circumstances, Defendant had a duty to provide Plaintiff with some accommodation so that she could keep her medication refrigerated. This is not a heightened duty—it is what is reasonable under the circumstances. See Carroll, 2013 WL 1857115, at *4 ("[W]hether a carrier is negligent, or not, depends on if it acted reasonably under the fact-driven circumstances of each case. To be sure, a carrier with knowledge of a passenger's abnormal physical disability may have to do more under the reasonable care standard toward that passenger than it would toward a passenger with no physical disability."); see also Pucci, 146 F. Supp. 3d at 1286-87 (same). This is especially true where, as here, there was allegedly no basis for expelling Plaintiff from the ship to begin with.

The Court further finds that the allegations are not so contradictory and confusing as to render Count II subject to dismissal as a shotgun pleading. Although Count II alleges that Defendant failed to "provide reasonable accommodations to allow Plaintiff to refrigerate, retrieve and/or safeguard her medications[,]" (Am. Compl. ¶ 45 (emphasis

added)), while the background allegations state that "Plaintiff was . . . escorted to her room by two armed security guards so that she could pack her bags and retrieve her medication before disembarking from the cruise ship[,]" these allegations are not so confusing that Defendant is unable to form a response. See CBT Flint Partners, LLC v. Goodmail Sys., Inc., 529 F. Supp. 2d 1376, 1381 (N.D. Ga. 2007) ("Although the Defendant contends that it has no idea how to formulate a responsive pleading, a 'denial' is a good place to start.").

Therefore, Defendant's Motion to Dismiss Count II is denied.

3. Count III

In Count III, Plaintiff alleges, inter alia, that "[b]ased on its knowledge of the strength and potential forecast of Hurricane Ian, Plaintiff's age and solitary travel, Plaintiff's medical condition, and the risks posed to Plaintiff by forcing her to disembark and travel to Orlando, Florida, Defendant owed Plaintiff the duty to act with reasonable care in securing and booking Plaintiff's travel arrangements so as to not unreasonably endanger Plaintiff's health and safety by forcing her to disembark from the cruise vessel and return to Orlando, Florida, while Hurricane Ian approached[,]" (Am. Compl. ¶ 59); "Defendant breached its duty of care to the Plaintiff by acting without reasonable care to secure and book Plaintiff reasonably safe travel accommodations and requiring that Plaintiff disembark from the cruise ship and return to Orlando, Florida as Hurricane Ian approached, while she traveled alone and without reasonable accommodations to refrigerate her medications[,]" (id. ¶ 60); and "as a proximate result of Defendant's breach of the duty of care, Plaintiff was required to disembark from the cruise ship without being afforded reasonable accommodations to refrigerate, retrieve and/or safeguard her

medications, which caused Plaintiff [sic] suffer bodily injuries, pain and suffering, hospitalization in Orlando, Florida, hospitalization in Saint John, Canada, disability, scarring, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money[,]" (id. ¶ 61).

Defendant argues that Count III seeks to hold Defendant liable for events that occurred off the vessel, but the duty it owed Plaintiff after she left the ship was limited to warn her of known dangers in places she is invited or reasonably expected to visit. (Mot. at 14.) It argues that Plaintiff failed to allege that Defendant owed – let alone breached – a duty to warn her of known dangers off the ship upon her disembarkation from the vessel, i.e., that a hurricane was looming in places she was reasonably expected to be." (Id.) It further argues that even if Plaintiff had "asserted the proper duty of care, Plaintiff's own allegations demonstrate that Defendant discharged this duty[,]" e.g., by maintaining a travel advisory page that closely monitored Hurricane Ian and provided passengers with publicized updates and posting updates on Twitter. (Id. at 14-15.) Finally, Defendant alleges that "in all counts of the complaint, although pled as claims for negligence, Plaintiff alleges her injuries were caused by 'actions intentionally inflicted by Defendant.'" (Id. at 15 (citing Am. Compl. ¶¶ 42, 50, 63).) As such, it argues that the negligence claims should be dismissed. (Id.)

Plaintiff argues that Count III plausibly alleges that that "Defendant assumed a duty of care by its actions and breached its duty by knowing of the dangers posed by [Plaintiff's] health and Hurricane Ian and then, booking [Plaintiff's] travel arrangements to fly into the

path of Hurricane Ian." (Resp. at 20 (citing Owen, 2022 WL 2198101, at *2; Sexton v. Carnival Corp., Case Number: 18-20629-CIV-MORENO, 2018 WL 3405246, at *3 (S.D. Fla. July 12, 2018); Storm v. Carnival Corp., Case No. 20-22227-Civ-WILLIAMS/TORRES, 2020 WL 6293346, at *10 (S.D. Fla. Sept. 10, 2020), report and recommendation adopted, 2020 WL 6290351 (S.D. Fla. Oct. 27, 2020)).) Plaintiff further argues that Count III "also alleges facts which are sufficient to support a cognizable negligent failure to warn[,]" and in any event, "whether a cruise line has a duty to warn of a particular danger 'is better decided after some factual development.'" (Id. (quoting Flaherty v. Royal Caribbean Cruises, Ltd., CASE NO. 15–22295–CIV–LENARD/GOODMAN, 2015 WL 8227674, at *3 (S.D. Fla. Dec. 7, 2015)).)

In its Reply, Defendant argues that the cases to which Plaintiff cites in support of her assumption of duty argument are distinguishable in that they involved an assumption of duty to provide reasonable medical care while the passenger was onboard the ship. (D.E. 27 at 8-9 (citations omitted).) It argues that Plaintiff has cited "no case law establishing that Defendant owed—let alone breached—any duty supposedly owed to her regarding exercising reasonable care in securing Plaintiff's travel arrangements after she was disembarked from the subject vessel." (Id. at 9.) It further maintains that the Amended Complaint confirms that it discharged its duty to warn Plaintiff of Hurricane Ian by, for example, posting updates on its travel advisory page and through Twitter announcements. (Id.)

First, Count III does not purport to allege a negligence claim based upon a failure to warn. (See Am. Compl. ¶¶ 51-63.) Thus, the Parties' arguments regarding any alleged failure to warn are inapposite.

Second, although each Count alleges that "Plaintiff's injuries constitute physical injuries, having been at actual risk of physical injury, and/or actions intentionally inflicted by Defendant[,]" (Am. Compl. ¶¶ 42, 50, 63 (emphasis added)), this is a legal conclusion that the Court does not consider at the motion to dismiss stage. Am. Dental Ass'n, 605 F.3d at 1290. And in any event, this allegation—written in the disjunctive—does not render an otherwise properly pled negligence claim improper. See Milo & Gabby, LLC v. Amazon.com, Inc., 12 F. Supp. 3d 1341, 1354 (W.D. Wash. 2014) ("If a party makes alternative statements, 'the pleading is sufficient if any one of them is sufficient.'") (quoting Fed. R. Civ. P. 8(d)(2)).

Third, "[f]ederal courts have recognized that the assumption of duty doctrine, as set forth in [section] 323 of the Second Restatement of Torts, is applicable in maritime cases." Owen v. Carnival Corp., CASE NO. 18-25372-CIV-ALTONAGA/Goodman, 2022 WL 2198101, at *2 (S.D. Fla. Mar. 9, 2022) (quoting Noon v. Carnival Corp., Case No. 18-23181-Civ-WILLIAMS/TORRES, 2019 WL 3886517, at *7 (S.D. Fla. Aug. 12, 2019)). See also Kantrow v. Celebrity Cruises, Inc., 510 F. Supp. 3d 1311, 1323 (S.D. Fla. 2020); Disler v. Royal Caribbean Cruise Ltd., Case Number: 17-23874-CIV-MORENO, 2018 WL 1916614, at *4 (S.D. Fla. Apr. 23, 2018). Under Section 323,

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm

> resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> > (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323. "Stated succinctly, 'one who voluntarily assumes a duty and then breaches that duty becomes liable to one who is injured because of the breach.'" Owen, 2022 WL 2198101, at *2 (quoting Noon, 2019 WL 3886517, at *7).

The Court finds that the Amended Complaint fails to plausibly allege that Defendant's breach of an assumed duty to act with reasonable care when booking Plaintiff's travel arrangements increased the risk of harm to Plaintiff, or that Plaintiff suffered harm because of her reliance upon Defendant's undertaking. Even construing the Amended Complaint's allegations in the light most favorable to Plaintiff, Defendant did not "forc[e] her to . . . travel to Orlando, Florida[,]" (Am. Compl. ¶ 59), and did not "book[] [her] travel arrangements to fly into the path of Hurricane Ian[,]" (Resp. at 20). Rather, the Amended Complaint alleges that when Plaintiff arrived at the airport in Nassau on September 27, 2022, she "discovered that [Defendant] had booked her on a flight not for the same day, but a month later on October 27, 2022." (Id. ¶ 27.) The Amended Complaint does not allege that Hurricane Ian posed a risk to Orlando, Florida on October 27, 2022; rather, it alleges that Hurricane Ian struck Florida sometime between September 27 and 30, 2022. (Id. ¶¶ 30-31.) Thus, the Amended Complaint does not plausibly allege that Defendant's negligence in booking Plaintiff's flight increased the risk of harm posed by Hurricane Ian (or otherwise), or that Plaintiff suffered harm because of her reliance upon

Defendant's flight booking. Indeed, the Amended Complaint alleges that it was Plaintiff who booked the flight from Nassau to Orlando for September 27, 2022, while Orlando was in Hurricane Ian's projected path. (Id. ¶ 27.) Consequently, the Court finds that Count III does not plausibly allege a claim for negligence under an assumption of duty theory.

Therefore, Defendant's Motion to Dismiss Count III is granted.

V. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Dismiss Plaintiff's First Amended Complaint (D.E. 18) is **GRANTED IN PART AND DENIED IN PART** consistent with this Order;
2. Count III is **DISMISSED WITHOUT PREJUDICE**; and
3. Defendant shall have fourteen days from the date of this Order to file an Answer to Counts I and II of the Amended Complaint.

DONE AND ORDERED in Chambers at Miami, Florida this 1st day of June, 2023.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE