UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLIE MEEKS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:22-CV-3447**
	§	
HARD'S MARINE SERVICE, LTD.,	§	
	§	
Defendant.	§	
	§	
	§	

MEMORANDUM AND ORDER

This is a retaliation and wrongful termination suit brought under the Seaman's Protection Act. 46 U.S.C. § 2114. Pending before the Court are Defendant Hard's Marine Service, LTD.'s Motions to Dismiss (Dkt. No. 13,[1] 21.)[2] Based on a thorough review of the motions, arguments, and relevant law, the Court **GRANTS** Defendant's Motion to Dismiss (Dkt. No. 21) and Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

I. BACKGROUND

On October 6, 2022, Charlie Meeks ("Plaintiff") filed an action against Hard's Marine Service, LTD. ("Defendant") under the Seaman's Protection Act ("SPA"), seeking recovery under §§ 2114(a)(1)(A), (B), & (D). (Dkt. No. 1 at ¶ 21.) On February 3, 2023, Plaintiff filed a First Amended Complaint ("FAC"), seeking recovery under §§ 2114(a)(1)(B), (C), & (D). (Dkt. No. 16

[1] The Court **DENIES** this motion as **MOOT**.

[2] On January 12, 2023, this case was transferred to the Undersigned because the parties consented to proceed before a Magistrate Judge for all proceedings under 28 U.S.C. § 636(c) (Dkt. No. 11).

at ¶ 22.) On February 20, 2023, Defendant filed a Motion to Dismiss. (Dkt. No. 21.) On March 9, 2023, Plaintiff filed a response, and on March 15, 2023, Defendant replied. (Dkt. Nos. 22, 23.)

On September 14, 2021, Plaintiff boarded the vessel the MV ROBIN LANETTE in Channelview, Texas, to begin his two-week shift. (Dkt. No. 16 at ¶ 9.) That day, Plaintiff learned that one of his colleagues whose shift was scheduled to end the same day, showed signs of COVID-19 prior to disembarking the vessel. (*Id.*) Plaintiff learned that at least six coworkers were directly exposed to the sick coworker while on the vessel. (*Id.*) Plaintiff then expressed concerns to his superior, Jacob Clay ("Clay"), about working with those who might have been exposed to the sick coworker and thus may have contracted COVID-19. (*Id.* at ¶ 10.) Plaintiff alleges that Clay dismissed his concerns and assured him that the coworker did not have COVID-19. (*Id.*) Plaintiff alleges Clay did so without knowing the coworker's testing status. (*Id.*) Plaintiff relied upon Clay's assurances and boarded the vessel that day. (*Id.* at ¶ 11.) Later that day, Plaintiff learned from another colleague that the coworker was tested. (*Id.* at ¶ 10.) Two days later on September 16, 2021, a positive test result came back. (*Id.* at ¶ 11.)

Defendant ordered Plaintiff to attend a meeting with an inspector and other personnel at the dock. (*Id.* at ¶ 14.) Plaintiff voiced his concerns regarding the exposure of COVID-19 and refused to attend the meeting. (*Id.*) Plaintiff asserts it was then that he reported a hazardous condition of the vessel, reported a disease, and refused to perform his duties because he had a "reasonable apprehension of serious injury to the seaman, other seaman, or the public." (*Id.*) It appears this was over text message to Clay.[3] (*Id.* at ¶ 15.) Clay responded that Plaintiff needed to alert his Captain, who would be Plaintiff's contact on how to proceed. (*Id.*) Clay asserted he was

[3] Plaintiff only attaches one text message in his complaint, while quoting the conversation in the following paragraph. The Court presumes Plaintiff's "reporting" was conducted solely over text message, as the FAC is without further detail.

unaware of the sick colleague, he was not the person who should handle the issue with Plaintiff, and that he would only work with the Captain on the issue. (*Id.*) Plaintiff responded that he thought he would be fired for reporting the issues, to which Clay responded by giving reasons why he would or would not fire someone. (*Id.*) Plaintiff continued that he feared retaliation, and Clay again explained that Plaintiff needed to alert his Captain and handle the situation with him. (*Id.* at ¶ 16.) Thereafter, Plaintiff declined to perform his duties. (*Id.* at ¶ 17.) Plaintiff asserts this exchange was when he internally reported both the crew's exposure to COVID-19, the sick coworker's positive COVID-19 test, and requested correction for the dangerous condition. (*Id.* at ¶¶ 17–19.) On September 28, 2021, Defendant fired Plaintiff on the final day of his shift. (*Id.* at ¶ 20.) Plaintiff claims he was fired in retaliation for alerting Defendant about the sick coworker. (*Id.*)

II. LEGAL STANDARDS

A. Rule 12(b)(6)

Rule 12(b)(6) allows a defendant to move to dismiss a complaint based on failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). To survive such a motion, "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.* Although a complaint need not contain detailed factual allegations, it "must provide the plaintiff's grounds for entitlement to relief—including factual allegations that . . . raise a right to relief above the speculative level." *Wilson v. Houston Cmty. Coll. Sys.*, 955 F.3d 490, 500 (5th Cir. 2020) (quotations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Winn v. Cleburne Indep. Sch.*

Dist., No. 3:18-CV-02949-E, 2020 WL 5291941, at *3 (N.D. Tex. Sept. 3, 2020) (quoting *Iqbal*, 556 U.S. at 678). Thus, a claim "is implausible on its face when 'the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'" *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 796 (5th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 679); *see also Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019).

A court must accept "all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiff." *True v. Robles*, 571 F.3d 412, 417 (5th Cir. 2009) (quotations omitted). However, a court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). "Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, 'documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.'" *Wolcott v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (quoting *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008)). Dismissal is proper only if the plaintiff's complaint: (1) does not include a cognizable legal theory, or (2) includes a cognizable legal theory but fails to plead enough facts to state a claim to relief that is plausible on its face. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Frith v. Guardian Life Ins. Co.*, 9 F. Supp. 2d 734, 737–38 (S.D. Tex. 1998) (holding that dismissal pursuant to Rule 12(b)(6) "can be based either on a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory").

B. Seaman's Protection Act, 46 U.S.C.A. § 2114

Seamen are usually at-will employees whose employment is "terminable at will by either party." *Smith v. Atlas Off–Shore Boat Serv., Inc.*, 653 F.2d 1057, 1060 (5th Cir. 1981) (quoting *Findley v. Red Top Super Mkts., Inc.*, 188 F.2d 834, 837 n.1 (5th Cir. 1951)). The Seaman's Protection Act ("Act") "forbids retaliation against 'whistleblower' seamen" under seven

circumstances. *Garrie v. James L. Gray, Inc.*, 912 F.2d 808, 809 (5th Cir. 1990). "The statute's goal is to guarantee that [seamen] . . . will be free from the 'debilitating threat of employment reprisals for publicly asserting company violations' of maritime statutes or regulations." *Baetge-Hall v. Am. Overseas Marine Corp.*, 624 F. Supp. 2d 148, 158 (D. Mass. 2009) (quoting *Gaffney v. Riverboat Services of Indiana, Inc.*, 451 F.3d 424, 444 (7th Cir. 2006)). The statute explains that:

> (a)(1) A person may not discharge or in any manner discriminate against a seaman because--
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> (A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;
>
> (B) the seaman in good faith has reported or is about to report to the vessel owner, Coast Guard or other appropriate Federal agency or department sexual harassment or sexual assault against the seaman or knowledge of sexual harassment or sexual assault against another seaman;
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> (C) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public;
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> (D) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;
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> (E) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;
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> . . .
>
> (2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(C) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.
>
> (3) To qualify for protection against the seaman's employer under paragraph (1)(C), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

46 U.S.C.A. §§ 2114 (a)(1)(A)-(a)(3).[4]

III. DISCUSSION

Plaintiff seeks relief under §§ 2114 (a)(1)(B)-(a)(1)(D). Defendant asserts that Plaintiff fails to state a claim under any provision of the Act. (Dkt. No. 21-1 at 6.) The Court will analyze each section to determine if Plaintiff states a claim for relief.

A. § 2114 (a)(1)(B)[5]

Here, Plaintiff must allege that he

> refused to perform duties ordered by [his] employer because [he had] a reasonable apprehension or expectation that performing such duties would result in serious injury to [him], other seamen, or the public. . . . The circumstances causing [his] apprehension of serious injury [] must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer. . . . To qualify for protection against [his employer], the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

§§ 2114 (a)(1)(C), (a)(2), & (a)(3).

Plaintiff alleges that he refused to perform duties ordered by his employer because he had a reasonable apprehension or expectation that performing the duties would result in serious injury to himself, other seamen, or to the public. (Dkt. No. 16 at ¶ 14.) Specifically, Plaintiff claims he refused to return to the dock to meet with an inspector and other personnel because his apprehension or expectation of contracting, and then exposing others to COVID-19, was

[4] The Act was amended to include section (B), which provides protection for sexual harassment. *See* 2022 Amendments, Subsection (a)(1)(B) to (H), Pub.L. 117-263, § 11605(1) (explaining the amendment redesignated former subparts (B) to (G) as subparts (C) to (H), respectively, and added a new subpart (B)). Plaintiff uses the ordering convention used prior to the amendment, thus the Court will refence the pre-amended subsections in the title of each section.

[5] Now§ 2114 (a)(1)(C).

reasonable. (*Id.*) Plaintiff asserts that he sought correction of the issue by asking to remain on the vessel, the crew to be quarantined, and the vessel be taken out of service. (*Id.* at ¶ 17.)

Plaintiff claims that his reasonable fear comes from his exposure to six employees who may have been in contact with a disembarked employee who later tested positive for COVID-19. (*Id.* at ¶ 11.) Plaintiff does not assert that Defendant did not allow him to stay on the vessel, nor that Defendant forced him off the vessel to meet with the inspector and other personnel. (Dkt. No. 22 at 8.) While Plaintiff makes clear that Defendant did not quarantine the crew or take the ship out of service, it is unclear who Plaintiff asked to correct the issue in this manner. It is also unclear that this person had the authority to quarantine the crew or take the ship out of service. Similarly, Plaintiff does not allege someone specifically refused to quarantine the crew or take the ship out of service. While the remedies Plaintiff requested are in line with the Center for Disease Control's ("CDC") guidance that Plaintiff cites in its briefing, they are recommendations, not requirements as Plaintiff claims.[6] Plaintiff cites interim guidance from the CDC, not regulations which were violated by Defendant as alleged.

Defendant most directly rectified Plaintiff's fear of third-hand exposure by not forcing him dockside. Plaintiff assumes without plausibly alleging that the attenuated exposure to COVID-19 would result in a serious injury. Plaintiff seemingly admits that he was able to obtain a correction of the unsafe condition he feared, and avoid the serious injury to others, by remaining on the vessel. The statute does not require that every possible measure be taken to correct the condition, but only that there is a correction of the condition. The condition here being exposure to others once

[6] CDC, *Options for Managing Non-Cruise Ships with One or More Confirmed Cases of COVID-19*, https://www.cdc.gov/quarantine/maritime/recommendations-for-ships.html (last visited August 9, 2023) (explaining recommendations for non-cruise ships and crew).

dockside. Defendants did not force Plaintiff dockside and allowed him to remain on the vessel, addressing his concerns. Accordingly, Plaintiff's fails to state a claim under this subsection.

B. § 2114 (a)(1)(C)[7]

Here, Plaintiff must allege he "testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law." § 2114 (a)(1)(D). Plaintiff does not allege that there was a proceeding, convened to enforce a maritime safety law or regulation, at which he testified. Plaintiff asserts that his internal complaint should be considered testifying at a proceeding. (Dkt. No. 22 at 8–10.) "The Occupational Safety and Health Administration ("OSHA") has consistently interpreted the amended SPA to recognize at least some forms of internal complaints as protected activity." *West v. Am. River Transportation Co.*, LLC, No. 4:20-CV-00313-JAR, 2020 WL 5893445, at *2 (E.D. Mo. Oct. 5, 2020) (finding dismissal was not warranted because Plaintiff's internal complaint could apply to sections 2144(a)(1)(C) or (a)(1)(D)). Thus, the Court must determine if Plaintiff's internal complaint is sufficient for protection under the Act.

OSHA instructs that a seaman may not be retaliated against or discharged under the Act if the seaman "[t]estified in a proceeding brought to enforce a maritime safety law or regulation, including making an internal complaint, such as to a master, captain, or other supervisor, relating to a violation of a maritime safety law or regulation." Occupational Safety and Health Administration, DEPP FS-3762, Fact Sheet: Filing Whistleblower Complaints under the Seaman's Protection Act (2018); *see also* Investigator's Desk Aid to the Seaman's Protection Act (SPA) Whistleblower Protection Provision, at *4 (explaining that internal complaints are included in testifying in a proceeding and are considered a protected activity). Neither resource defines what

[7] Now § 2114 (a)(1)(D).

an internal complaint is in this context but does specify that it must relate to a violation of a maritime safety law or regulation.

Plaintiff explains he expressed his concerns to Clay, his superior, regarding the hazardous condition of the vessel under 33 C.F.R. § 160.216 & 42 C.F.R. § 70.4. (Dkt. No. 16 ¶¶ 10, 14.) The text message in Plaintiff's FAC acknowledges Plaintiff gave Clay the information that the departed coworker was sick, but also that Clay was not the proper person to report the illness to. Clay informed Plaintiff that he needed to report the issue to the Captain. It is unclear from the FAC if Plaintiff complied with his superior's instructions. In this situation, Plaintiff should have reported the issue to the Captain who would then work with Clay and Plaintiff to resolve the issue. Plaintiff seemingly did not follow the internal reporting requirements as instructed by his supervisor. (*Id.* at ¶ 15.)

Expressing concerns and making an internal complaint are distinct. Even the way the concern was expressed, through text message, does not seem akin to lodging an internal complaint. This is especially true in light of when the Plaintiff expressed his concerns, he was advised to report the issue elsewhere, and only to deal with a specific person. Convincingly, Plaintiff's text message discussion with Clay does not rise to the form of an internal complaint that was considered a protected activity in the cases cited by Plaintiff. *See* (Dkt. No. 22 at 8–10 (citing *In the Matter of: Jason B. Meeks v. Genesis Marine, LLC*, 2018 WL 6978222, at *3 (finding official witness statements to internal investigators about the illicit drug and alcohol use a sufficient internal complaint under SPA); *Passaic Valley Sewerage Comm'rs v. U.S. Dep't of Lab.*, 992 F.2d 474, 476 (3d Cir. 1993) (finding written memorandum circulated to plaintiff's superior, chief of division, executive director, in house legal counsel, and program commissioners were sufficient internal complaints constituting a protected activity under the Clean Water Act)). In both cases

cited, plaintiffs followed a formalized complaint procedure, which Plaintiff here did not. The Court finds Plaintiff's text message discussion is not analogous to the internal complaints that were considered a protected activity. Accordingly, Plaintiff fails to state a claim under this subsection.

C. § 2114 (a)(1)(D)[8]

Here, Plaintiff must allege he "notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman." § 2114 (a)(1)(E).

Plaintiff alleges that he internally reported the work-related illness, specifically that the disembarked coworker was sick when he left the ship, it was suspected he had COVID-19, that some of the crew had been exposed to the coworker, he was exposed to those coworkers who had been exposed, and the coworker tested positive for COVID-19 when he was off the ship. (Dkt. No. 16 at ¶ 18.) Plaintiff presupposes COVID-19 is a work-related illness, but the Court need not decide so here because Plaintiff's claim fails more readily due to the statute's reporting requirement.

Plaintiff reported this to Clay, his superior, who instructed him to report the issues to his Captain. (*Id.* at ¶ 15.) Plaintiff does not allege that he notified either the vessel owner or the Secretary, yet Plaintiff cursorily equates informing Clay with informing the owner of the vessel. (Dkt. No. 22 at 10.) The equivocation is unsupported and unpersuasive because Defendant notified Plaintiff in its initial disclosures that it is not the owner of the vessel, but Mamaru Towing, LLC is. (Dkt. No. 23 at 4.) Plaintiff does not allege that it notified Mamaru Towing or the Secretary. Plaintiff fails to state a claim under this subsection.

D. Plaintiff does not plead subsections (a)(1)(A), (E), (F), and (G) and does not allege facts to trigger the subsections.

[8] Now § 2114 (a)(1)(E).

Plaintiff does not allege facts which plausibly show he contacted the Coast Guard regarding the safety violations, cooperated with or provided information for a safety investigation, or had issues with accurate reporting of hours of duty. Accordingly, Plaintiff fails to state a claim under the remaining provisions of the Act.

IV. CONCLUSION

Based on the foregoing, the Court **GRANTS** Defendant's Motion to Dismiss (Dkt. No. 21) and Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

SIGNED in Houston, Texas on August 15, 2023.

Sam S. Sheldon
United States Magistrate Judge