UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-22092-CIV-ALTONAGA/Damian

KAREN DONNELLY,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.; *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants Royal Caribbean Cruises Ltd. ("RCL"), and Special Needs Group, Inc. and Garnett Holdings, LLC's (together "SNG['s]")[1] Motion to Dismiss Plaintiff's Amended Complaint [ECF No. 35], filed on September 16, 2023. Plaintiff, Karen Donnelly, filed a Response [ECF No. 39], to which Defendants filed a Reply [ECF No. 42]. The Court has considered the Amended Complaint [ECF No. 30], the parties' written submissions, and applicable law. For the following reasons, the Motion is denied.

I. BACKGROUND

Plaintiff was a passenger aboard the *Harmony of the Seas*, a cruise ship operated by RCL. (*See* Am. Compl. ¶ 5). On July 4, 2022, while visiting RCL's private island, Coco Cay, Plaintiff was struck and injured by a cruise ship passenger operating a motor scooter. (*See id.* ¶¶ 25–26).

When the *Harmony of the Seas* set sail on July 3, 2022, SNG, a scooter rental company, rented a motor scooter to passenger Carmen Aponte with RCL's permission. (*See id.* ¶¶ 22–23). At the time, "Aponte was 84 years old, frail, [] suffered from early signs of dementia, [and] lacked

[1] In the Complaint, Plaintiff jointly refers to Garnett Holdings, LLC d/b/a Needs at Sea, and Special Needs Group, Inc. as "SPECIAL NEEDS[.]" (Am. Compl. 1 (alteration added)). Defendants also appear to refer to both jointly as "SNG" in their Motion. (*See generally* Mot.).

the dexterity to operate a motorized scooter." (*Id.* ¶ 24 (alterations added)). While Plaintiff was standing on a designated walking path, Aponte "approached [Plaintiff] from behind on the subject motorized scooter and suddenly, without warning, accelerated and struck Plaintiff's lower extremities . . . throw[ing] [Plaintiff] forward, injuring both her ankles and her right shoulder, [and] ultimately necessitating medical treatment and subsequently surgery of her right shoulder." (*Id.* ¶¶ 25–26 (alterations added)).

A host of dangerous conditions created by Defendants caused her injury. (*See generally id.*). First, Defendant RCL "[f]ail[ed] to mandate . . . that the [SNG] staff be required to determine whether the scooter renter ha[d] the dexterity and mobility to operate it [sic] motorized scooters[;]" allowed vendors to rent scooters to passengers without providing appropriate training and instruction; and did not make any effort to determine passengers' ability to operate motor scooters. (*Id.* ¶ 36 (alterations added)). Additionally, RCL failed to "designate travel areas assigned for passenger pedestrian use and other areas for motorized scooter use on . . . Coco Cay[,]" "properly undertake crowd control[,]" and train and supervise its crewmembers in crowd control. (*Id.* (alterations added)). These dangers were exacerbated by the island's narrow pathways near the souvenir shops where Plaintiff was injured. (*See id.*).

Similarly, Defendant SNG "fail[ed] to take proper precautions[,]" including "instruct[ing], train[ing], [and] warn[ing]" the motor scooter operator in the "operational mechanics and characteristics of the scooter, [including] its joystick and the potential for unexpected acceleration[.]" (*Id.* ¶ 47 (alterations added)). Further, SNG "[f]ail[ed] to provide an adequate acceleration/throttling mechanism for the subject mobility scooter and/or fail[ed] to warn regarding the same[.]" (*Id.* (alterations added)).

Plaintiff asserts three claims for relief: negligence against RCL (*see id.* ¶¶ 27–42), negligence against SNG (*see id.* ¶¶ 43–48), and vicarious liability against SNG for Aponte's negligent operation of the motor scooter under Florida's "dangerous instrumentality doctrine" (*id.* ¶¶ 49–62). Defendants move to dismiss the Amended Complaint, asserting it is an impermissible shotgun pleading and fails to state claims for relief.

II. LEGAL STANDARD

"To survive a motion to dismiss [under Federal Rule of Civil Procedure 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) (alteration added; quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A pleading withstands a motion to dismiss if it alleges "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), *abrogated on other grounds by Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012). A complaint's "well-pled allegations must nudge the claim 'across the line from conceivable to plausible.'" *Id.* (quoting *Twombly*, 550 U.S. at 570).

This pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

III. DISCUSSION

A. Shotgun Pleading

Defendants first argue the Amended Complaint is a shotgun pleading. (*See* Mot. 1–2).[2] Complaints that do not "separate[] into a different count each cause of action or claim for relief" are considered shotgun pleadings because they "fail . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015) (alterations added; footnote call numbers omitted). According to Defendants, Counts I and III commingle direct negligence and vicarious liability claims (*see* Mot. 2, 5–8); and Count II "contains both a claim for direct negligence and [] a design/manufacturing defect" (*id.* 8 (alteration added)). Plaintiff addresses Counts I and II only, affirming that she does not allege a vicarious liability claim against RCL in Count I (*see* Resp. 3), nor a design manufacturing defect claim against SNG in Count II (*see id.* 8).

At Count I, RCL construes Plaintiff's use of the phrase "dangerous instrumentality" as an allegation of RCL's vicarious liability under Florida's dangerous instrumentality doctrine. (Mot. 6). But Plaintiff does not allege vicarious liability in Count I. Plaintiff explains that the use of that phrase is not an invocation of the dangerous instrumentality doctrine but "merely a description of the fact that motorized scooters are instrumentalities that can be dangerous if not operated properly." (Resp. 4). This "isolated mention" of a dangerous instrumentality "does not transform the claim into one for vicarious liability under the dangerous instrumentality doctrine." *Seale v.*

[2] The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

Ocean Reef Club, Inc., No. 13-cv-21515, 2013 WL 4647218, at *9 (S.D. Fla. Aug. 29, 2013).[3] The only claim stated in Count I is a direct negligence claim against RCL.

Next, SNG argues Plaintiff states a "direct negligence [claim] and [also] improperly alleges a design/manufacturing defect" claim in Count II. (Mot. 8 (alterations added)). SNG's conclusory assertion is supported only by a citation to paragraph 47 of the Amended Complaint. (*See* Mot. 8). The Court assumes SNG refers to paragraph 47(e), alleging SNG's "fail[ure] to provide an adequate acceleration/throttling mechanism . . . and/or fail[ure] to warn regarding the same[.]" (Am. Compl. ¶ 47 (alterations added)). Yet, SNG fails to elucidate how Plaintiff has alleged a design/manufacturing defect claim by the mere inclusion of paragraph 47(e). (*See* Resp. 8). Certainly, Plaintiff never outright asserts a design/manufacturing defect claim; to the extent the first half of the sentence can be read as such, it would be insufficient to state such a claim.

Finally, SNG contends Plaintiff raises a direct negligence claim in Count III in addition to her vicarious liability claim because she "includes allegations of numerous failures (active negligence) on the part of [SNG]." (Mot. 8 (alteration added)). Plaintiff does not comment on this argument. (*See generally* Resp.). While the Court agrees paragraph 61 includes facts relevant to a direct negligence rather than vicarious liability claim (*see* Am. Compl. ¶ 61), this has not prevented SNG from responding to Plaintiff's vicarious liability allegations (*see* Mot. 10–15). Moreover, SNG also makes specific arguments seeking dismissal of Plaintiff's direct negligence claim (*see id.* 8–10), which Plaintiff clearly makes in Count II (*see* Am. Compl. ¶¶ 43–48). In

[3] RCL mischaracterizes Plaintiff's argument as a concession that the scooter "is not within the purview of Florida's [d]angerous [i]nstrumentality [d]octrine." (Reply 5 (alterations added)). Plaintiff admits nothing of the sort. (*See generally* Resp.). All Plaintiff states is that she does not raise a vicarious liability claim against RCL under the dangerous instrumentality doctrine. (*See id.* 3–4). And for good reason — to be vicariously liable, the defendant must "have an identifiable property interest" in the instrument. *John Morrell & Co. v. Royal Caribbean Cruises, Ltd.*, 534 F. Supp. 2d 1345, 1352 (S.D. Fla. 2008) (emphasis and quotation marks omitted; quoting *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000)).

sum, the Court is unconvinced the Amended Complaint is a shotgun pleading that fails to "give [SNG] adequate notice of the claims against [it.]" *Weiland*, 792 F.3d at 1323 (alterations added; footnote call number omitted).

B. Count I: Negligence Against RCL

RCL argues Plaintiff's negligence claim against RCL fails to allege sufficient facts to state a cause of action, but it attacks only what it perceives as the Amended Complaint's vicarious liability claim — a "claim" the Court has already found Plaintiff does not make. (*See* Mot. 5; *see also id.* 5–7; Reply 1–2). As Defendants raise no other ground for dismissal of Count I, the Court moves on.

C. Count II: Negligence Against SNG

SNG argues Plaintiff's direct negligence claim against it fails because Plaintiff does not "properly plead what duty was owed to her by [SNG]" and "fail[s] to plead causation." (Mot. 10 (alterations added)). Plaintiff insists SNG's arguments are "perplexing" and ignore on point authority analyzing the scope of a different scooter rental company's duty of care. (Resp. 4; *see also id.* 4–8).

Courts apply general principles of negligence law to maritime cases.[4] *See Taiariol v. MSC Crociere, S.A.*, No. 15-cv-61131, 2016 WL 1428942, at *3 (S.D. Fla. Apr. 12, 2016) (citing *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012)). "To prove negligence, a plaintiff must show: (1) that the defendant had a duty to protect the plaintiff from a particular injury, (2) that the defendant breached the duty, (3) that the breach was the actual and proximate cause of the plaintiff's injury, and (4) that the plaintiff suffered damages." *Diaz v. Carnival Corp.*, 555 F. Supp. 3d 1302, 1306 (S.D. Fla. 2021) (citing *Chaparro*, 693 F.3d at 1336).

[4] The parties agree that federal maritime law governs this case. (*See generally* Mot.; Resp.).

According to SNG, Plaintiff "fail[s] to plead how any [] duty was owed to her, as she was not within any privity with [SNG]." (Reply 2 (alterations added)). It is unclear how the concept of privity is even relevant given the allegations. "The duty element of negligence focuses on whether the defendant's conduct foreseeably created a broader 'zone of risk' that poses a general threat of harm to others." *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992) (citation omitted). Foreseeability requires "a general analysis of the broad type of plaintiff and harm involved[.]" *Grieco v. Daiho Sangyo, Inc.*, 344 So. 3d 11, 22 (Fla. 4th DCA 2022) (alteration added). At issue is whether SNG's conduct foreseeably created a zone of risk to third-party, non-scooter-renting passengers.

Plaintiff relies on *Conden v. Royal Caribbean Cruises, Ltd.*, where the Undersigned found a scooter rental company could owe a duty of care to persons injured by a company-rented scooter. (*See* Resp. 5 (citing No. 20-22956, 2021 WL 4973584 (S.D. Fla. Feb. 22, 2021))). SNG contends *Conden* is distinguishable because the injured party was the person who rented the scooter, in contrast to this case, where the injury befell a third party. (*See* Reply 2).

The Court does not find *Conden* particularly helpful here. The plaintiff's allegations in *Conden* were sufficiently plausible to support a duty of reasonable care by the scooter company to the plaintiff because the company "could reasonably foresee [] its participation and involvement [with the rental of motor scooters] could contribute to an injury of the type Plaintiff alleged[.]" *Conden*, 2021 WL 4973584, at *3 (alterations added). The *Conden* holding merely draws the Court back to the aforementioned "zone of risk" analysis, and whether SNG could reasonably foresee an injury like Plaintiff's. *See id.* (assessing the defendant's duty based on the foreseeability of the alleged harm); *see also Smith v. Fla. Power & Light Co.*, 857 So. 2d 224, 229 (Fla. 2d DCA 2003) ("[T]he zone of risk created by a defendant defines the scope of the defendant's legal duty

and the scope of the zone of risk is in turn determined by the foreseeability of a risk of harm to others." (alteration added)).

Plaintiff plausibly alleges SNG's motor scooters create a "general zone of foreseeable danger of harm" to cruise ship passengers walking near motor scooter operators; and that, consequently, SNG owes them a duty of reasonable care. *U.S. Structural Plywood Integrity Coal. v. PFS Corp.*, 524 F. Supp. 3d 1320, 1339 (S.D. Fla. 2021) (emphasis, quotation marks and citation omitted); *see also Lipkin v. Norwegian Cruise Line, Ltd.*, 93 F. Supp. 3d 1311, 1328 (stating "a duty to protect a plaintiff from harm from a third party may arise if the defendant is in actual or constructive control of . . . the instrumentality of the harm" (alteration added; citation omitted)). Plaintiff identifies a warning to customers on SNG's website advising against "ordering a power chair rental" if they "have [not] previously used one and feel comfortable" because of "the complicated nature of using the joystick[.]" (Am. Compl. ¶ 31 (alteration added; emphasis omitted)). The warning points out "cruise ship hallways are more narrow and more difficult to navigate[.]" (*Id.* (alteration added; emphasis omitted)).

Here, the accident took place on a narrow, crowded pathway. (*See id.* ¶¶ 25, 36(i)). This warning makes it plausible that SNG believed inexperienced and uncoordinated motor scooter operators are at risk of causing accidents that injure third parties. Renting a scooter to Aponte — a mobility-limited, lacking in dexterity, and potentially inexperienced operator, could have foreseeably created a "zone of risk" to other passengers in her vicinity.

SNG urges the Court to consider *Feehan v. Wal-Mart Stores, Inc.*, which it asserts "found no duty to protect a plaintiff from being struck by a motor scooter." (Mot. 9 (citing No. 15-cv-3853, 2016 WL 128137 (D. Minn. Jan. 12, 2016))). In *Feehan*, the court dismissed a negligence claim because the plaintiff did not allege what screening, warnings, and training the defendant

should have implemented; and whether those precautions would have made any difference. *See Feehan*, 2016 WL 128137, at *2. *Feehan* makes no broader statement on the duty owed by scooter rental companies to third-party plaintiffs. *See generally id.* Here, Plaintiff gives several examples of the kinds of instructions, training, warnings, and screening processes that would have helped prevent her injury. (*See* Am. Compl. ¶ 47).

Moving on, SNG argues Plaintiff fails to plead SNG's conduct caused her injury, or "what instruction/training/warning should have been given to prevent this accident." (Mot. 10). As noted, Plaintiff alleges SNG should have instructed, trained, warned, and/or otherwise assisted the end user in the operational mechanics and characteristics of the scooter, its joystick, and the potential for unexpected acceleration. (*See* Am. Compl. ¶ 47; *see also id.* ¶ 25 (alleging Aponte's "difficulty with controlling the motorized scooter [] caus[ed] it to suddenly accelerate into Plaintiff" (alterations added))). These allegations are sufficient to establish causation.

D. Count III: Vicarious Liability Against SNG

SNG argues Count III fails because Florida's dangerous instrumentality doctrine — which imposes vicarious liability upon the owner of a dangerous instrumentality who "voluntarily entrusts" that instrumentality to "an individual whose negligent operation[5] causes damage to another[,]" *Rippy v. Shepard*, 80 So. 3d 305, 306 (Fla. 2012) (alteration added; quoting *Aurbach*, 753 So. 2d at 62) — does not apply to this case (*see* Mot. 13–15).[6] Plaintiff insists the doctrine

[5] Plaintiff does not explicitly state Aponte operated the motor scooter negligently. Rather, she alleges Aponte had "difficulty [] controlling the motorized scooter" and "suddenly, without warning, accelerated and struck Plaintiff" from behind. (Am. Compl. ¶ 25 (alteration added)). Plaintiff minimally pleads Aponte's negligence at this stage for purposes of the dangerous instrumentality doctrine.

[6] SNG also states that absent the dangerous instrumentality doctrine, Plaintiff has not alleged any special relationship between Aponte and SNG that would give rise to vicarious liability for Plaintiff's injuries. (*See* Mot. 10–12). Plaintiff does not address this argument in her Response and thereby concedes it. (*See generally* Resp.); *see also GolTV, Inc. v. Fox Sports Latin Am. Ltd.*, 277 F. Supp. 3d 1301, 1311 n.7 (S.D.

is applicable both within the scope of maritime law and to her specific allegations. (*See* Resp. 8–10). The Court agrees with Plaintiff.

SNG first asserts the dangerous instrumentality doctrine is Florida-specific and does not apply in the context of maritime law. (*See* Mot. 13–14; Reply 5). In maritime cases, the Court "will incorporate general common law principles and Florida state law to the extent they do not conflict with federal maritime law." *Lienemann v. Cruise Ship Excursions, Inc.*, No. 18-cv-21713, 2018 WL 6039993, at *3 (S.D. Fla. Nov. 15, 2018) (citing *Just v. Chambers*, 312 U.S. 383, 388 (1941); other citations omitted). SNG does not argue the doctrine conflicts with federal maritime law. (*See generally* Mot.; Reply). Therefore, SNG's argument that the doctrine "is specific to Florida alone" is unavailing. (Mot. 13; *see* Reply 5).

Next, SNG argues in the alternative that even if Florida's dangerous instrumentality doctrine applies to a case governed by maritime law, Plaintiff's claim fails because a motor scooter is not a dangerous "instrument." (*See* Mot. 11, 14–15).[7] According to SNG, a motor scooter is a "benign device, traveling at incredibly low rates of speed," which could "[n]ever be considered peculiarly dangerous." (Mot. 15 (alteration added)).

Following *Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984), courts must consider three factors in determining whether an object is a dangerous instrumentality: whether the instrument is a "motor vehicle," whether the instrument is extensively regulated by the Florida legislature, and what evidence exists of the instrument's "danger in its normal operation[.]" *Salsbury v. Kapka*, 41 So. 3d 1103, 1105 (Fla. 4th DCA 2010) (alteration added; discussing *Meister*); *see also Newton*

Fla. 2017) ("When a party fails to respond to an argument or address a claim in a responsive brief, such argument or claim can be deemed abandoned." (citations omitted)).

[7] Plaintiff alleges that SNG is the owner of the motor scooter. (*See generally* Am. Compl.).

v. Caterpillar Fin. Servs. Corp., 253 So. 3d 1054, 1056 (Fla. 2018); *Festival Fun Parks, LLC v. Gooch*, 904 So. 2d 542, 545–46 (Fla. 4th DCA 2005); *Rippy*, 80 So. 3d at 308–09. While motor scooters do not fit the statutory definition of "motor vehicle," "no one test is determinative of whether an instrumentality is dangerous[,]" *Rippy*, 80 So. 3d at 308 (alteration added), and motor scooters are plausibly dangerous instrumentalities.

First, the Court considers whether motor scooters are "motor vehicles." Courts often consider the statutory definition of "motor vehicle" when assessing this factor. *See, e.g.*, *Gooch*, 904 So. 2d at 545. It is unlikely motor scooters fit any statutory definition of "motor vehicle": sections 316.003(46), 320.01(1)(a), and 322.01(28) of the Florida Statutes all specifically exclude motorized scooters and/or wheelchairs from their definitions of motor vehicles. *See Gooch*, 904 So. 2d at 545 (analyzing similar statutory provisions to determine whether go-karts were motor vehicles). Section 320.01 states "motor vehicles" must be "operated on the roads of the state," and Plaintiff emphasizes that Florida Statute section 316.2068(1)(a) "specifically permit[s]" "personal assisted mobility devices . . . to be operated on a road or street where the posted speed limit is 25 mph or less." (Resp. 9 (alterations added)). But Plaintiff does not address the specific exclusion of motorized scooters from the statutory definitions of "motor vehicle." (*See generally id.*).

Still, "the various definitions of 'motor vehicle' within the Florida Statutes are not dispositive" of whether an instrumentality is in fact a motor vehicle, and courts may look to dictionary definitions, analyze analogous cases, and rely on "common knowledge and common experience" to evaluate this factor. *Newton*, 253 So. 3d at 1056–57 (citations and quotation marks omitted). For example, motor scooters would appear to meet the Black's Law Dictionary definition of a motor vehicle: "[a] wheeled conveyance that does not run on rails and is self-

propelled[.]" *Id.* at 1056 (citing BLACK'S LAW DICTIONARY 1788 (10th ed. 2014); alterations added; quotation marks omitted).

Second, the Court evaluates the extent of regulation of motor scooters. Perhaps a motor scooter is not a motor vehicle, but it is certainly an instrument regulated under Florida law. SNG argues motor scooters "do not require any title to be held, license requirement, or specific training[,]" and are not treated the same as motor vehicles (Mot. 14 n.3 (alteration added)); but Plaintiff points to other regulations governing motor scooters (*see* Resp. 9). For example, section 316.2068, Florida Statutes, permits counties and municipalities to "regulate the operation of electric personal assisted [sic] mobility devices on any road, street, sidewalk, or bicycle path" if they "determine[] that regulation is necessary in the interest of safety."[8] (Resp. 9 (alteration added; quoting Fla. Stat. § 316.2068(5))). While the motor scooter regulations may not be as robust as those involving motor vehicles, the fact that motor scooters are tools which the legislature "felt it was its duty to regulate and restrain for the protection of the public" lends credence to the notion that they are dangerous instrumentalities. *Meister*, 462 So. 2d at 1072 (quoting *S. Cotton Oil Co. v. Anderson*, 86 So. 629, 634 (Fla. 1920)).

Third, the Court considers the "dangerousness" of the motor scooter, *Salsbury*, 41 So. 3d at 1105; including whether when "negligently operated[,] [it] has the same ability to cause serious injury as does any motor vehicle operated on a public highway[,]" *Meister*, 462 So. 2d at 1073 (alterations added). This presents a factual question inappropriate on a motion to dismiss. "Evidence of a vehicle's danger in its normal operation is essential before a court may extend the dangerous instrumentality doctrine, and [a] trial court's failure to produce an evidentiary record

[8] The same statute also authorizes Florida's Department of Transportation to "prohibit the operation of [motor scooters] on any road" if it is "necessary in the interest of safety," and requires users under 16 years old to wear a helmet. Fla. Stat. §§ 316.2068(4), (6).

[would be] error." *Salsbury*, 41 So. 3d at 1105–06 (alterations added). SNG asserts that the motor scooter could not possibly be dangerous because it is "such a benign device, travelling at incredibly low rates of speed[;]" but that is a question to be resolved later upon review of a developed factual record. (Mot. 15 (alteration added)); *see Salsbury*, 41 So. 3d at 1105–06. Indeed — and here improperly speculating about facts in addressing a motion to dismiss — given the varying ages and abilities of people operating motor scooters and the narrow pedestrian areas the scooters traverse, it is plausible that motor scooters could carry similar risk of serious injury to at least that of golf carts, which were found to be dangerous instruments in *Meister*. *See* 462 So. 2d at 1073.

Again, "no one test is determinative of whether an instrumentality is dangerous[.]" *Rippy*, 80 So. 3d at 308 (alteration added). Plaintiff alleges sufficient facts to support at least two of the dangerous instrumentality factors and so plausibly states a vicarious liability claim against SNG.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendants' Motion to Dismiss **[ECF No. 35]** is **DENIED**.

DONE AND ORDERED in Miami, Florida, this 16th day of November, 2023.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record