UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:24-cv-20199-KMM

LAURA DUMONT,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's Motion to Dismiss Plaintiff's First Amended Complaint. ("Motion" or "Mot.") (ECF No. 32). Plaintiff Laura Dumont filed a response ("Resp.") (ECF No. 33) and Defendant filed a reply (ECF No. 34). The Motion is now ripe for review.

I. BACKGROUND

On January 21, 2023, Plaintiff was on board the *Carnival Mardi Gras* vessel as a fare paying passenger. ("Am. Compl.") (ECF No. 29) ¶¶ 8, 10. Plaintiff is visually impaired, legally blind, and requires a walker to ambulate. *Id.* ¶ 12. When Plaintiff booked the cruise, she notified the booking agent, who was employed by Defendant, of her legal blindness and requested a handicap accessible room. *Id.* ¶¶ 14, 33. When Plaintiff entered her room on the cruise, she walked into a central beam in the middle of the room. *Id.* ¶ 18. As a result of walking into the beam, Plaintiff alleges that she fell on her back and "suffered serious and permanent injuries . . . [that] are continuing and permanent in nature." *Id.* ¶¶ 20, 28. Now, Plaintiff brings two claims based on Defendant's alleged negligence: (1) vicarious liability against Defendant for the booking

agent's negligence (Count I), *id.* ¶¶ 29–34; and (2) negligence as to Defendant (Count II), *id.* ¶¶ 35–43. Defendant seeks dismissal of both claims. *See generally* Mot.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

III. DISCUSSION

As an initial matter, Plaintiff's negligence claims arise under general maritime law "because the alleged tort was committed aboard a ship sailing in navigable waters." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). "In analyzing a maritime tort case, [the Court] relies on general principles of negligence law." *Chapparro v.*

Carnival Corp., 693 F.3d 1333, 1336 (11th Cir. 2012) (internal quotations omitted). At the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly allege that: "(1) the defendant had a duty to protect the plaintiff from a particular injury, (2) the defendant breached that duty, (3) the breach actually and proximately caused the plaintiff's injury, and (4) the plaintiff suffered actual harm." *Id.*; *see also Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019).

First, Defendant argues that Plaintiff's Amended Complaint should be dismissed as it is an impermissible shotgun pleading. Mot. at 4–6. Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim" showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). "Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often disparagingly referred to as 'shotgun pleadings.'" *Weiland v. Palm Beach Cty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). One type of shotgun pleading is a complaint "guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. Another type of shotgun pleading "commits the sin of not separating into a different count each cause of action or claim for relief." *Id.* at 1323. The unifying characteristic of all types of shotgun pleadings is that they fail, 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*. Such a shotgun pleading makes it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." *Anderson v. Dist. Bd. of Trs.*, 77 F.3d 364, 366 (11th Cir. 1996). Therefore, "shotgun pleadings are routinely condemned by the Eleventh Circuit." *Real Est. Mortg. Network, Inc. v. Cadrecha*, No. 8:11-cv-474, 2011 WL 2881928, at *2 (M.D. Fla. July 19, 2011) (citing *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991)).

The Amended Complaint is a quintessential shotgun pleading in violation of Rule 8(a)(2), at least with respect to Count II. Defendant argues that Plaintiff appears to allege claims for "failure to warn, failure to maintain, negligent training, and possibly others" in a single count. Mot. at 3. Indeed, Count II, styled as "Negligence as to Carnival Corporation," alleges in a single paragraph that Defendant failed to provide Plaintiff with a reasonably safe room, failed to warn Plaintiff of the beam, failed to have adequate policies to ensure Plaintiff's safety, failed to notify its agents and employees of Plaintiff's visual impairment, and negligently allowed Plaintiff to enter a dangerous room. Am. Compl. ¶ 40. In her Response, Plaintiff does not address Defendant's argument that the Amended Complaint is a shotgun pleading. *See generally* Resp. The Court finds that the Amended Complaint impermissibly comingles different theories of negligence within the same count. For example, negligent training is a separate cause of action from general negligence and cannot be nestled within the same count. *See Van Deventer v. NCL Corp. Ltd.*, No. 23-CV-23584, 2024 WL 836796, at *5 (S.D. Fla. Feb. 28, 2024) ("The inclusion of a negligent training claim within a general negligent maintenance claim renders the Amended Complaint a shotgun pleading warranting dismissal."). The Amended Complaint plainly commits the sin of not separating into a different count each cause of action or claim for relief. *See Weiland*, 792 F.3d at 1323. Accordingly, the Court is "unwilling to address and decide serious [] issues on the basis of this [C]omplaint," *Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001), and need not reach Defendant's argument that Plaintiff fails to properly plead notice as to the negligence claim.

Regarding the vicarious liability claim, Defendant argues that Plaintiff fails to plausibly allege what negligent or tortious acts the booking agent committed for Defendant to be vicariously liable. Mot. at 6–8. In response, Plaintiff states that she "booked her reservation through a booking

agent of Defendant's" and "Defendant and/or its booking agent . . . selected a room that was improper under the circumstances." Resp. at 6. Under the theory of vicarious liability, an employer may be held liable for its employee's torts if committed during the scope of the employment. *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1168 (11th Cir. 2021). In *Yusko*, the Eleventh Circuit held that "a passenger need not establish that a shipowner had actual or constructive notice of a risk-creating condition to hold a shipowner liable for the negligent acts of its employees." *Id.* at 1170. At this stage in the proceedings, where the Court must accept Plaintiff's allegations as true, the Amended Complaint is minimal but facially sufficient with regard to the vicarious liability claim. Plaintiff alleges that a booking agent employed by Defendant was made aware of Plaintiff's visual impairment and booked a room for Defendant. Am. Compl. ¶¶ 29–33. As a result of the booking agent's actions (booking a room with a beam inside), Plaintiff was injured and suffered physical pain and mental anguish. *Id.* ¶ 34. Accordingly, Plaintiff has properly stated a claim for vicarious liability and Count I survives dismissal.[1]

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's First Amended Complaint (ECF No. 32) is GRANTED IN PART and DENIED IN PART. Count II of Plaintiff's Amended Complaint (ECF No. 29) is DISMISSED WITHOUT PREJUDICE. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil

[1] To the extent that Defendant argues "in the alternative" that the vicarious liability claim "is an attempt to bypass the notice requirement of direct liability," Mot. at 7, the Court is unconvinced because Plaintiff does allege a negligence claim under a theory of direct liability against Defendant in Count II. *See Yusko*, 4 F.4th at 1170 (explaining that the "plaintiff is the master of his or her complaint and may choose to proceed under a theory of direct liability, vicarious liability, or both").

Procedure, Plaintiff is granted leave to file an amended complaint within twenty-one (21) days of the date of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of August, 2024.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record