UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-22534-CIV-ALTONAGA/Reid

ERVIN MEGILL, JR.,

Plaintiff,

v.

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

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants, Royal Caribbean Cruises, Ltd. ("Royal Caribbean") and Starguard Elite, LLC's ("Starguard['s]") Joint Motion to Dismiss Plaintiff's Complaint [ECF No. 22], filed on August 13, 2024. Plaintiff, Ervin Megill, Jr. filed a Response [ECF No. 23]; to which Defendants filed a Reply [ECF No. 29]. The Court has considered the record, the parties' written submissions, and applicable law. For the following reasons, the Motion is granted.

I. BACKGROUND

Plaintiff was a passenger on Royal Caribbean's cruise ship, *Oasis of the Seas*. (*See* Compl. [ECF No. 1] ¶¶ 13, 19). As part of his cruise, Plaintiff visited Royal Caribbean's privately owned island, Coco Cay. (*See id.* ¶¶ 15, 20). While on the island, Plaintiff attempted to exit a swimming pool via its crowded stairs; someone sitting on the stairs bumped into Plaintiff, causing him to fall and suffer a serious hip injury. (*See id.* ¶¶ 21–23). Plaintiff contends Starguard was "hired, retained and/or contracted by" Royal Caribbean "to provide lifeguards and aquatic safety services" at the pool on Coco Cay. (*Id.* ¶ 18). He further alleges both Defendants knew or should have

known of the dangerous, crowded conditions on the pool stairs, yet neither took measures to address the danger. (*See id.* ¶¶ 25–35).

Plaintiff brings three claims: in Count I, he alleges negligence against Royal Caribbean (*see id.* ¶¶ 36–40); in Count II, he alleges negligence against Starguard (*see id.* ¶¶ 41–45); and in Count III, he alleges Royal Caribbean is vicariously liable for Starguard's (in)actions (*see id.* ¶¶ 46–53). Defendants now jointly seek dismissal of the Complaint, arguing it is an impermissible shotgun pleading; Starguard did not owe Plaintiff a heightened duty of care, as is alleged; and the vicarious liability claim is duplicative of the negligence claim. (*See generally* Mot.).

II. LEGAL STANDARDS

Shotgun Pleadings. Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim" showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). The complaint must "give 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) (alteration adopted; other alteration added; citation and quotation marks omitted). Federal Rule of Civil Procedure 10(b) further requires that a pleading "state its claims or defenses in numbered paragraphs, each limited as far as practicable[.]" Fed. R. Civ. P. 10(b) (alteration added).

"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 Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). 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. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996). Therefore, "shotgun pleadings are routinely condemned by the Eleventh Circuit." *Real Estate Mortg. Network, Inc. v. Cadrecha*, No.

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)).

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. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996). A common type of shotgun pleading "is one that commits the sin of not separating into a different count each cause of action or claim for relief." *Weiland*, 792 F.3d at 1323 (footnote call number omitted). The "unifying characteristic" of shotgun pleadings is they "fail . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* (alteration added; footnote call number omitted).

Rule 12(b)(6). "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 *Twombly*, 550 U.S. at 570). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id*. (alteration added; quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]" *Twombly*, 550 U.S. at 555 (alteration added; citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 678 (alteration added; 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). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take its 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

Defendants urge the Court to dismiss Plaintiff's Complaint in its entirety, arguing the Complaint is a shotgun pleading because of the way the direct negligence and vicarious liability claims are alleged. (*See generally* Mot.). Plaintiff objects, arguing he is allowed to posit alternative theories of negligence within the same count. (*See* Resp. 3–6).[1] The Court agrees with Defendant; the Complaint is a shotgun pleading requiring dismissal.[2]

"In a claim based on an alleged tort occurring at an offshore location during the course of a cruise, federal maritime law applies, just as it would for torts occurring on ships sailing in navigable waters." *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1392 (S.D. Fla. 2014) (citations omitted).[3] "In analyzing a maritime tort case, [the Court] rel[ies] on general principles

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

[2] Because the Complaint in its entirety is due to be dismissed, the Court does not address Defendants' Count II-specific arguments. (*See* Mot. 6–8). Nevertheless, the Court doubts the propriety of reviewing the contract attached to the Motion and Defendants' factual statements in evaluating the sufficiency of Count II. (*See* Mot. 2, n.1; Ex. A, Lifeguard Training & Certification Services Agreement for Private Destinations [ECF No. 22-1]); *see also Crabb v. Ingram*, No. 23-cv-81212, 2024 WL 1406392, at *2 (S.D. Fla. Mar. 19, 2024) ("Defendants have gone outside the four corners of the complaint to raise this argument[, therefore] . . . Defendants' Motion to Dismiss on this ground must fail." (alterations added)); Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." (alteration added)).

[3] There is no dispute that federal maritime law governs this case. (*See* Compl. ¶ 1; Mot. 3–4).

of negligence law." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (alterations added; citation, quotation marks, and footnote call number omitted).

To state a maritime negligence claim, a plaintiff must allege "(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.* (citation omitted). The maritime standard of care requires "that the carrier have had actual or constructive notice of the risk-creating condition[.]" *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1286 (11th Cir. 2015) (alteration added; citation and quotation marks omitted).

In other words, "[t]he scope of [a defendant's] duty to protect its passengers is informed, if not defined, by its knowledge of the dangers they face onboard." *K.T. v. Royal Caribbean Cruises, Ltd.*, 931 F.3d 1041, 1044 (11th Cir. 2019) (alterations added). A carrier's duty of reasonable care includes a "duty to warn of known dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit." *Id.* at 1046 (citation and quotation marks omitted). "When the tortfeasor is an employee, the principle of vicarious liability allows an otherwise non-faulty employer to be held liable for the negligent acts of that employee acting within the scope of employment." *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1169 (11th Cir. 2021) (alteration adopted; citation and quotation marks omitted).

Against, this backdrop, Defendants argue Plaintiff's Complaint is an impermissible shotgun pleading because, "while Plaintiff asserts a total of three (3) counts in his Complaint, he sets forth over eighty-three (83) alleged breaches of purported 'duties.'" (Mot. 4 (citation and footnote call number omitted); *see also id.* 4–6). It is true "not every count involving multiple claims is a shotgun pleading." *Cont'l 332 Fund, LLC v. Albertelli*, 317 F. Supp. 3d 1124, 1138 (M.D. Fla. 2018) (citations omitted); (*see also* Resp. 4 (quoting same)). Certainly, Plaintiff may

allege a list of failures, *i.e.*, different breaches of the same duty, within the same general negligence claim. *See Heller v. Carnival Corp.*, 191 F. Supp. 3d 1352, 1360 (S.D. Fla. 2016) (declining to address a list of alleged breaches "in line-item fashion" because the court had already determined negligence had been pleaded and the additional allegations were not "different duties or claims"); *Holguin v. Celebrity Cruises, Inc.*, Nos. 10-20215-Civ, 10-20545-Civ, 10-20546-Civ, 2010 WL 1837808, at *1 (S.D. Fla. May 4, 2010) (declining to "strike alleged duties . . . in line-item fashion" where the claim alleged "facts supporting *a* duty of care" (alteration added; emphasis in original)).

Still, the Court agrees with Defendants as to three defects regarding Plaintiff's claims. First, Plaintiff seemingly attempts to bring claims of negligent training, but nestles them within his general negligence claims. (*See* Compl. ¶¶ 39(w), 44(aa), 53(aa)). Negligent training sounds in negligence but is a separate cause of action with distinct elements. *See Reed v. Royal Caribbean Cruises, Ltd.*, No. 19-24668-Civ, 2021 WL 2592914, at *9 (S.D. Fla. Apr. 23, 2021) (collecting cases). To state a claim of negligent training, Plaintiff must allege Defendants were "negligent in the implementation or operation of the training program and the negligence cause[d] [his] injury." *Diaz v. Carnival Corp.*, 555 F. Supp. 3d 1302, 1310 (S.D. Fla. 2021) (alterations added; citations and quotation marks omitted). Because negligent training is a discrete claim, it must be pleaded separately. *See Reed*, 2021 WL 2592914, at *9.

Second, Plaintiff includes, in all counts, a specious allegation that Defendants are negligent "for "[a]ll other acts and/or omissions learned in discovery." (Compl. ¶¶ 39(y), 44(cc), 53(cc)). This kind of "allegation" is "the very model of a fishing expedition." *Rygula v. NCL (Bahamas) Ltd.*, No. 18-24535-Civ, 2019 WL 13237012, at *4 (S.D. Fla. Aug. 28, 2019). Should Plaintiff uncover new information during discovery which he would like to incorporate into his Complaint — assuming he needs to — he is welcome to seek leave to amend his Complaint. *See* Fed. R. Civ.

P. 15(a). But given the commingling of his negligent training claims and the inclusion of his "fishing expedition" allegations, all three Counts are due to be dismissed.

Finally, Defendants are correct that Count III — for vicarious negligence — impermissibly conflates vicarious and direct liability claims. (*See* Mot. 9–11). Count III includes allegations of negligent maintenance (*see* Compl. ¶¶ 53(p), 53(q)), and failure to warn (*see id.* ¶ 53(t)). A problem arises: "negligent maintenance and failure to warn claims are limited to a theory of direct liability[.]" *Worley v. Carnival Corp.*, No. 21-23501-Civ, 2022 WL 845467, at *2 (S.D. Fla. Mar. 22, 2022) (alteration added; citation and quotation marks omitted). By including direct liability claims in a vicarious liability count, Plaintiff fails separate each cause of action or claim for relief into its own count. *See Weiland*, 792 F.3d at 1323. Plaintiff would be well-advised to ensure his vicarious and direct liability counts are kept separate if he amends his Complaint.

Despite the Complaint's numerous shortcomings, Plaintiff insists his Complaint provides Defendants "with adequate notice[.]" (Resp. 5 (alteration added)). Perhaps. But "when shotgun complaints are allowed to survive past the pleadings stage, 'all is lost — extended and largely aimless discovery will commence, and the trial court will soon be drowned in an uncharted sea of depositions, interrogatories, and affidavits.'" *Barmapov v. Amuial*, 986 F.3d 1321, 1329 (11th Cir. 2021) (Pryor, J. concurring) (citation omitted)).

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendants, Royal Caribbean Cruises, Ltd. and Starguard Elite, LLC's Joint Motion to Dismiss Plaintiff's Complaint **[ECF No. 22]** is **GRANTED**. Plaintiff has until **September 26, 2024** to file an amended complaint.

DONE AND ORDERED in Miami, Florida, this 13th day of September, 2024.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record