UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:24-cv-22995-WILLIAMS/GOODMAN

ROSA GORONI,

Plaintiff,

v.

CARNIVAL CORPORATION

Defendant.
_____/

REPORT AND RECOMMENDATIONS ON MOTION TO DISMISS

Rosa Goroni ("Goroni" or "Plaintiff") was a passenger on the *Carnival Glory* ("*Glory*"), a Carnival Corporation ("Carnival" or "Defendant") cruise ship. According to her Amended Complaint ("FAC"),[1] "[she] was walking along Deck 10 on her way to a

[1] Plaintiff filed her FAC [ECF No. 15] in response to Defendant's first motion to dismiss [ECF No. 12]. Federal Rule of Civil Procedure 15(a) permits a party to amend a pleading once "as a matter of course" no later than 21 days after serving it or 21 days after service of a responsive pleading. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may amend a pleading "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2); *see also HMD Am., Inc. v. Q1, LLC*, No. 23-21865-CIV, 2023 WL 5831727, at *1 (S.D. Fla. Sept. 7, 2023) ("Under Rule 15, a plaintiff may amend its complaint once as a matter of course within [21] days after service of a 12(b) motion."). Here, Carnival's initial motion to dismiss was filed on September 10, 2024 and Plaintiff filed her FAC nine days later on September 19, 2024. Therefore, Plaintiff amended her pleading "as a matter of course" within 21 days after service of Carnival's initial dismissal motion.

lunch table and as she crossed over an area which changed from a carpeted deck to a hard deck, she tripped and fell over a loose/ uneven/protruding strip/ strip/ moulding/ ledge/ grading which separated the two different deck coverings." [ECF No. 15, ¶ 10]. Plaintiff alleges that this

> loose/ uneven/ protruding strip/ strip/ moulding/ ledge/ grading was neither open nor obvious to Plaintiff and, after her fall, she noticed that **the [protruding] strip/ strip/ moulding/ ledge/ grading was dinged/dented from other pedestrians having struck it** such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions – as Plaintiff did not observe another pedestrian strike the strip/ moulding/ ledge/ grading that afternoon and she had just boarded, the condition had existed for a length of time in excess of the day of Plaintiff's incident. Further, **the top leading edge of the strip/ moulding/ ledge/ grading was dented down evincing that Defendant's employees had attempted to push/hammer it back down to its proper position but had done so negligently and improperly**.

Id. (emphasis added).

Plaintiff also alleges that:

> Other passengers on Defendant's ships have previously been injured under similar, if not identical, circumstances/conditions where Defendant failed to exercise reasonable care to ensure that similar raised strip/ moulding/ ledge/ grading did not pose a hazard to pedestrian traffic. *Colarte v. Carnival Corp*[.], Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/ protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival***

> ***Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . ."). Inasmuch as prior incidents need not be identical to the sued-upon incident to put a defendant on notice of a dangerous condition, *Hessen v. Jaguar Cars, Inc.*, 915 F.2d 641 (11th Cir. 1990); *Jones v. Otis Elevator Co.*, 861 F.2d 655 (11th Cir. 1988); *Worsham v. A.H. Robins Co.*, 734 F.2d 676 (11th Cir. 1984); *Jackson v. Firestone Tire & Rubber Co.*, 788 F.2d 1070, 1082 (5th Cir. 1986); *Bailey v. So. Pacific Transp. Co.*, 613 F.2d 1385 (5th Cir. 1980); *Ree v. Royal Caribbean Cruises Ltd.*, 315 FRD 682, 686 (S.D. Fla. 2016) (citing *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1191 (10th Cir. 2009)), the *Patton*, *Johnson*, and *Zarr* incidents are sufficient to place Defendant on constructive notice of a dangerous condition with the strip/ moulding/ ledge/ grading at the location of Plaintiff's incident in the present matter.

Id. at ¶ 11 (footnote omitted; emphasis in original).

Alleging physical, emotional, and economic injuries, and seeking compensatory damages, Plaintiff filed this action against Carnival. The FAC is divided into four counts: Count I is for negligence; Count II is for failure to warn; Count III is for vicarious liability for negligent maintenance; and Count IV is for vicarious liability for failure to warn.

Carnival filed a motion to dismiss, Plaintiff filed a response and Carnival filed a reply. [ECF Nos. 20; 22; 24].[2] United States District Judge Kathleen M. Williams referred

[2] On the same day it filed its reply, Carnival also filed a notice of supplemental authority. [ECF No. 25]. "The purpose of a notice of supplemental authority is to inform the Court of recent developments in the law that are germane to an issue the Court is being asked to decide." *Baez v. Ltd Fin. Servs., L.P.*, No. 615CV1043ORL40TBS, 2016 WL 11805632, at *2 (M.D. Fla. Jan. 27, 2016). It is unclear *why* Carnival filed a notice of

the motion to the Undersigned for a report and recommendations. [ECF No. 21].

Carnival's motion is based on three grounds: (1) Counts I and II constitute an improperly commingled shotgun pleading; (2) Plaintiff fails to adequately allege in Counts I and II that Carnival was on notice of the purported dangerous condition; and (3) Plaintiff fails to plead in Counts III and IV sufficient facts to support her vicarious liability claims. [ECF No. 20].

For the reasons outlined below, the Undersigned **respectfully recommends** that Judge Williams **grant in part and deny in part** Carnival's motion.

I. Factual Background (*i.e.*, Plaintiff's Allegations)

The following allegations concern **all** four counts of Plaintiff's FAC:

> 10. On or about September 3, 2023, shortly after first boarding the ship, before the ship sailed, and while Plaintiff was still unfamiliar with the ship, as Plaintiff was walking along Deck 10 on her way to a lunch table and as she crossed over an area which changed from a carpeted deck to a hard deck, she tripped and fell over a loose/ uneven/ protruding strip/ strip/ moulding/ ledge/ grading which separated the two different deck coverings. The loose/uneven/protruding strip/ strip/ moulding/ ledge/ grading was neither open nor obvious to Plaintiff and, after her fall, she noticed that the [protruding] strip/ strip/ moulding/ ledge/ grading was dinged/dented from other pedestrians having struck it such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions – as Plaintiff did not observe another pedestrian strike the strip/ moulding/ ledge/ grading that afternoon and she had just boarded, the condition had existed for a length of time in excess of the day of Plaintiff's incident. Further, the top leading edge of the strip/ moulding/ ledge/ grading was dented down

supplemental authority because the only case discussed in (and attached to) the notice, *Manzy v. Carnival Corp.*, No. 24-22357-CIV-DAMIAN, 2024 U.S. Dist. LEXIS 181053 (S.D. Fla. Oct. 3, 2024), is also discussed (at length) in Carnival's reply [ECF No. 24].

evincing that Defendant's employees had attempted to push/hammer it back down to its proper position but had done so negligently and improperly.

11. Other passengers on Defendant's ships have previously been injured under similar, if not identical, circumstances/ conditions where Defendant failed to exercise reasonable care to ensure that similar raised strip/ moulding/ ledge/ grading did not pose a hazard to pedestrian traffic. *Colarte v. Carnival Corp*[.], Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp*[.], Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . ."). Inasmuch as prior incidents need not be identical to the sued-upon incident to put a defendant on notice of a dangerous condition, *Hessen v. Jaguar Cars, Inc.*, 915 F.2d 641 (11th Cir. 1990); *Jones v. Otis Elevator Co.*, 861 F.2d 655 (11th Cir. 1988); *Worsham v. A.H. Robins Co.*, 734 F.2d 676 (11th Cir. 1984); *Jackson v. Firestone Tire & Rubber Co.*, 788 F.2d 1070, 1082 (5th Cir. 1986); *Bailey v. So. Pacific Transp. Co.*, 613 F.2d 1385 (5th Cir. 1980); *Ree v. Royal Caribbean Cruises Ltd.*, 315 FRD 682, 686 (S.D. Fla. 2016) (citing *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1191 (10th Cir. 2009)), the *Patton*, *Johnson*, and *Zarr* incidents are sufficient to place Defendant on constructive notice of a dangerous condition with the strip/ moulding/ ledge/ grading at the location of Plaintiff's incident in the present matter.

12. As a consequence, Plaintiff sustained injury to her left knee, right knee, and left thumb and necessitated care in Defendant's infirmary.

13. As a consequence, Plaintiff also necessitated continued medical care following her return home.

14. All conditions precedent to the maintenance of this action have been performed, or, alternatively, have been waived.

[ECF No. 15, ¶¶ 10–14 (footnote omitted; bold emphasis in original; underline emphasis added)].

The following allegations concern Count I's **negligence** theory:

15. At all times material, Defendant owed Plaintiff a duty of reasonable care under the circumstances. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S. Ct. 406 (1959); *Everett v. Carnival Cruise Lines, Inc.*, 912 F.2d 1355 (11th Cir. 1990); *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318 (11th Cir. 1989), *on remand*, 715 F. Supp. 1069 (M.D. Fla. 1989).

16. On or about September 3, 2023, Defendant, and/or its agents, employees, and/or servants breached its/their duty to provide Plaintiff with reasonable care under the circumstances.

17. On or about September 3, 2023, Plaintiff was injured due to the fault and/or negligence of Defendant, and/or its agents, employees, and/or servants as follows:

a. Failure to exercise reasonable care for Plaintiff's safety; and/or

b. Failure to provide Plaintiff with a reasonably safe deck area to walk on; and/or

c. Failure to properly supervise and control passenger use of the deck area to ensure it was reasonably safe for use by passengers, including Plaintiff; and/or

d. Failure to inspect, maintain, and monitor the deck area to ensure it was reasonably safe for use by passengers, including Plaintiff; and/or

e. Allowing a raised, uneven, and protruding strip/ moulding/ ledge/ grading above the deck surface thus creating a trip hazard and rendering the deck unsafe for Plaintiff; and/or

f. Failure to inspect, maintain, and monitor the raised, uneven, and protruding strip/ moulding/ ledge/ grading which made the deck unsafe for Plaintiff, rendering the deck unsafe for Plaintiff; and/or

g. Failure to properly repair/replace the raised, uneven, and protruding strip/ moulding/ ledge/ grading despite the fact that the condition had existed for a sufficient period of time as evinced by dings and dents on the strip/ moulding/ ledge/ grading; and/or

h. Failure to properly instruct/train its crewmembers on how to inspect, maintain, and monitor public deck areas; and/or

i. Failure to properly instruct/train its crewmembers on how to properly repair/replace and maintain strip/ moulding/ ledge/ grading components so that these did not protrude up from the deck and become a tripping hazard; and/or

j. Failure to comply with safety codes and standards designed and promulgated to reduce the risk of the type of accident Plaintiff suffered, from happening; and/or

k. Failure to have adequate risk management procedures in place designed to reduce the occurrence of the type of accident suffered by [ ] Plaintiff; and/or

l. Failure to implement available safety and ergonomic standards designed to reduce and/or prevent the type of accident Plaintiff suffered from happening; and/or

m. Failure to take steps as a result of prior similar, if not identical, incidents (involving the same circumstances/conditions) to reduce and/or prevent the type of accident Plaintiff suffered from happening. *Colarte v. Carnival Corp*[.], Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell

over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp*[.], Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

18. Despite being on constructive notice of a dangerous condition, Defendant maintained the uneven/ protruding strip/ moulding/ ledge/ grading which was also improperly repaired and which separated hard covering deck from carpeted deck and caused Plaintiff's accident.

19. Alternatively, because Defendant has a policy in place whereby "the subject area is monitored by Hotel Stewards assigned to the area on a continuous basis throughout the day" and "Housekeeping Team Members visually inspect the area during the course of . . . routine cleaning," Defendant knew of the foregoing conditions causing Plaintiff's accident and did not correct them and allowed them to be maintained, or in the exercise of reasonable care under the circumstances, should have learned of them, corrected them, and not allowed them to be maintained inasmuch as the dangerous condition had existed for a length of time in excess of the morning of Plaintiff's incident. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/ protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the**

Conquest-Class is derived, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp*., Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

20. The conditions created and/or known to Defendant occurred with sufficient regularity so as to be reasonably foreseeable to Defendant. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/ protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

21. As a direct and proximate result of the negligence of Defendant, Plaintiff was injured about Plaintiff's body and extremities; suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of previously existing conditions; incurred

> medical expenses in the care and treatment of Plaintiff's injuries; has suffered physical handicap; and has lost wages in the past and will incur loss of earning capacity in the future. The injuries are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

Id. at ¶¶ 15–21 (bold emphasis in original).

The following allegations concern Count II's **failure to warn claim**:

> 22. At all times material, Defendant owed Plaintiff a duty of reasonable care under the circumstances, which includes a duty to warn of hidden dangerous conditions known or, in the exercise of reasonable care, knowable to Defendant. *Poole v. Carnival Corp.*, Case No. 14-20237-Cooke (S.D. Fla. Apr. 8, 2015); *Luby v. Carnival Cruise Lines, Inc.*, 633 F. Supp. 40 (S.D. Fla. 1986), *aff'd*, 808 F.2d 60 (11th Cir. 1986).
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> 23. On or about September 3, 2023, Defendant, and/or its agents, employees, and/or servants breached its/their duty to provide Plaintiff with reasonable care under the circumstances by failing to warn Plaintiff of a dangerous condition known to Defendant. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/ protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

24. On or about September 3, 2023, Plaintiff was injured due to the fault and/or negligence of Defendant, and/or its agents, employees, and/or servants as follows:

a. Failure to exercise reasonable care for Plaintiff's safety; and/or

b. Failure to warn Plaintiff of a dangerous condition, to wit: a raised, uneven, and protruding strip/ moulding/ ledge/ grading above the deck surface thus creating a hidden, non-obvious trip hazard and rendering the deck unsafe for Plaintiff; and/or

c. Failure to warn Plaintiff of a dangerous condition, to wit: a raised, uneven, and protruding strip/ moulding/ ledge/ grading up and above the deck surface thus creating a hidden, non-obvious trip hazard and rendering the deck unsafe for Plaintiff, which Defendant had knowledge of and was on notice of; and/or

d. Failure to warn Plaintiff of a dangerous condition, to wit: a raised, uneven, and protruding strip/ moulding/ ledge/ grading up and above the deck surface thus creating a hidden, non-obvious trip hazard and rendering the deck unsafe for Plaintiff, which, in the exercise of reasonable care, Defendant should have had knowledge of and was on notice of.

25. Despite being on constructive notice of a dangerous condition, Defendant maintained the foregoing conditions causing Plaintiff's accident, but did not warn Plaintiff of the hidden dangerous conditions.

26. Alternatively, because Defendant has a policy in place whereby "the subject area is monitored by Hotel Stewards assigned to the area on a continuous basis throughout the day" and "Housekeeping Team Members visually inspect the area during the course of . . . routine cleaning," Defendant knew of the foregoing conditions causing Plaintiff's accident, or, in the exercise of reasonable care under the circumstances, should have learned of them inasmuch as the dangerous condition had existed for a length of time in excess of the morning of Plaintiff's incident, yet did not warn Plaintiff. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/ protruding strip/

moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

27. The conditions created and/or known to Defendant occurred with sufficient regularity so as to be reasonably foreseeable to Defendant, such that Defendant was under an obligation to warn Plaintiff. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

> 28. As a direct and proximate result of the negligence of Defendant, Plaintiff was injured about Plaintiff's body and extremities; suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of previously existing conditions; incurred medical expenses in the care and treatment of Plaintiff's injuries; has suffered physical handicap; and has lost wages in the past and will incur loss of earning capacity in the future. The injuries are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

Id. at ¶¶ 22–28 (bold emphasis in original).

The following allegations concern Count III's **vicarious liability for negligent maintenance** claim:

> 31. At all times material, Defendant's crewmembers, including hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel assigned to operate and maintain the aft Deck 10 area of Plaintiff's fall, owed passengers, including [ ] Plaintiff, a duty of reasonable care for their safety, including a duty to maintain the area in a reasonably safe condition.
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> 32. At all times material, Defendant's crewmembers, including hotel personnel, housekeeping personnel, and/or dining room personnel assigned to operate and maintain the aft Deck 10 area of Plaintiff's fall, owed passengers, including [ ] Plaintiff, a duty of reasonable care for their safety, including a duty to inspect and monitor the area for dangerous conditions and summon maintenance/repair personnel to perform repairs of the deck.
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> 33. At all times material, Defendant's crewmembers, maintenance/repair personnel assigned to maintain/repair the aft Deck 10 area of Plaintiff's fall, owed passengers, including Plaintiff, a duty of reasonable care for their safety, including a duty to repair strip/ moulding/ ledge/ grading in the area in a proper and non-negligent manner so that the strip/ moulding/ ledge/ grading did not protrude up from the deck and cause a tripping hazard.
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> 34. At all times material, Defendant's crewmembers, including hotel personnel, housekeeping personnel, dining room personnel, and/or

maintenance/repair personnel assigned to operate and maintain the aft Deck 10 area of Plaintiff's fall 4 [sic] breached their duties to Plaintiff and were thereby negligent, in one or more of the following ways:

a. Failure to exercise reasonable care for Plaintiff's safety; and/or

b. Failure to provide Plaintiff with a reasonably safe deck area to walk on; and/or

c. Failure to properly supervise and control passenger use of the deck area to ensure it was reasonably safe for use by passengers, including Plaintiff; and/or

d. Failure to inspect, maintain, and monitor the deck area to ensure it was reasonably safe for use by passengers, including Plaintiff; and/or

e. Allowing a raised, uneven, and protruding strip/ moulding/ ledge/ grading above the deck surface thus creating a trip hazard and rendering the deck unsafe for Plaintiff; and/or

f. Failure to inspect, maintain, and monitor the raised, uneven, and protruding strip/ moulding/ ledge/ grading which made the deck unsafe for Plaintiff, rendering the deck unsafe for Plaintiff; and/or

g. Failure to properly repair/replace the raised, uneven, and protruding strip/ moulding/ ledge/ grading despite the fact that the condition had existed for a sufficient period of time as evinced by dings and dents on the strip/ moulding/ ledge/ grading; and/or

h. Failure to comply with safety codes and standards designed and promulgated to reduce the risk of the type of accident Plaintiff suffered, from happening; and/or

i. Failure to implement available safety and ergonomic standards designed to reduce and/or prevent the type of accident Plaintiff suffered from happening; and/or

j. Failure to take steps as a result of prior similar, if not identical, incidents (involving the same circumstances/conditions) to reduce and/or prevent the type of accident Plaintiff suffered from

happening. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . .").

35. The negligent acts and/or omissions of Paragraph 34 of Defendant's crewmembers, including hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel, occurred while these personnel were engaged in furtherance of the business of Defendant's ship, specifically the maintenance of common passenger areas and food services, and Defendant is therefore vicariously liable for their negligence.

36. As a direct and proximate result of the negligence of Defendant's employees for which it is vicariously liable, Plaintiff was injured about Plaintiff's body and extremities; suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of previously existing conditions; incurred medical expenses in the care and treatment of Plaintiff's injuries; has suffered physical handicap; and has lost wages in the past and will incur loss of earning capacity in the future. The injuries are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

Id. at 31–36 (bold emphasis in original).

The following allegations concern Count IV's **vicarious liability for failure to warn** claim:

> 37. At all times material, Defendant was vicariously liable for the negligent acts and/or omissions of its crewmembers, hotel personnel, housekeeping personnel, dining room personnel, maintenance/repair personnel, agents, and/or employees, who were acting in furtherance of the business of the ship. *Yusko v. NCL (Bahamas) Ltd.*, [4 F.4th 1164] (11th Cir. 2021); *Elardi v. Royal Caribbean Cruises Ltd.*, [No. 19-CV-25035,] 2021 WL 7367291 (S.D. Fla. [Dec. 2,] 2021).
>
> 38. At all times material, the maintenance, repairs, upkeep, and operations in the ship's common areas, such as the aft Deck 10 area of Plaintiff's fall was [sic] part of the business of the ship, so that all negligent acts and/or omissions of Defendant's crewmembers, hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel in connection with the maintenance, repairs, upkeep, and operations of the area at the time and place of the subject incident were undertaken in furtherance of the business of the ship and were acts and/or omissions for which Defendant is vicariously liable.
>
> 39. At all times material, Defendant's crewmembers, including hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel assigned to operate and maintain the area of the aft Deck 10 area of Plaintiff's fall, owed passengers, including Plaintiff, a duty of reasonable care for their safety, including a duty to warn passengers of dangerous conditions in and around the aft Deck 10 area of Plaintiff's fall of which such personnel knew or should have known.
>
> 40. At all times material, Defendant's crewmembers, including hotel personnel, housekeeping personnel, and/or dining room personnel assigned to operate and maintain the aft Deck 10 area of Plaintiff's fall, as a consequence of their duty to inspect and monitor the area on a routine basis, knew or should have known of the protruding strip/ moulding/ ledge /grading, and were under a duty to warn Plaintiff as this defect was unknown and not obvious to her.

41. At all times material, Defendant's crewmembers, maintenance/ repair personnel assigned to maintain/repair the area of the aft Deck 10 area of Plaintiff's fall, as a consequence of their duty to maintain and repair the subject strip/ moulding/ ledge/ grading in a proper and non-negligent manner, knew or should have known of the protruding strip/ moulding/ ledge/ grading, and were under a duty to warn Plaintiff as this defect was unknown and not obvious to her.

42. At all times material, Defendant's crewmembers, including hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel assigned to operate and maintain the area of the aft Deck 10 area of Plaintiff's fall breached their duties to warn Plaintiff and were thereby negligent, in one or more of the following ways:

a. Failure to exercise reasonable care for Plaintiff's safety; and/or

b. Failure to warn Plaintiff of a dangerous condition, to wit: a raised, uneven, and protruding strip/ moulding/ ledge/ grading above the deck surface thus creating a hidden, non-obvious trip hazard and rendering the deck unsafe for Plaintiff; and/or

c. Failure to warn Plaintiff of a dangerous condition, to wit: a raised, uneven, and protruding strip/ moulding/ ledge/ grading up and above the deck surface thus creating a hidden, non-obvious trip hazard and rendering the deck unsafe for Plaintiff, which Defendant had knowledge of and was on notice of; and/or

d. Failure to warn Plaintiff of a dangerous condition, to wit: a raised, uneven, and protruding strip/ moulding/ ledge/ grading up and above the deck surface thus creating a hidden, non-obvious trip hazard and rendering the deck unsafe for Plaintiff, which, in the exercise of reasonable care, Defendant should have had knowledge of and was on notice of.

43. The negligent acts and/or omissions of Paragraph 42 of Defendant's crewmembers, including hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel, occurred while these personnel were engaged in furtherance of the business of Defendant's ship, specifically the maintenance of common passenger areas and food services, and Defendant is therefore vicariously liable for their negligence.

> 44. As a direct and proximate result of the negligence of Defendant's employees for which it is vicariously liable, Plaintiff was injured about Plaintiff's body and extremities; suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of previously existing conditions; incurred medical expenses in the care and treatment of Plaintiff's injuries; has suffered physical handicap; and has lost wages in the past and will incur loss of earning capacity in the future. The injuries are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

Id. at 37–44.

II. Applicable Legal Standards

To survive a motion to dismiss under Rule 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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). 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.* (citing *Twombly*, 550 U.S. at 556). The standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S. at 555).

"The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

On a motion to dismiss, "the court must accept all factual allegations in a complaint **as true** and take them in the light most favorable to [the] plaintiff." *Dusek v. JPMorgan Chase & Co.*, 832 F.3d 1243, 1246 (11th Cir. 2016) (emphasis added).

Federal Rule of Civil Procedure 8(a) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." It does not "require that a plaintiff specifically plead every element of a cause of action." *Balaschak v. Royal Caribbean Cruises, Ltd.*, No. 09-21196, 2009 WL 8659594, at *6 (S.D. Fla. Sept. 14, 2009) (citing *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001), which, in turn, cited Jack H. Friedenthal, et al., Civil Procedure, § 5.7 (2d ed. 1993) for the view that "[w]hat the pleader need not do is worry about the particular form of the statement or that it fails to allege a specific fact to cover every element of the substantive law involved.").

III. Analysis

As noted above, Carnival moves to dismiss the FAC in its entirety. [ECF No. 20]. Carnival contends that: (1) Counts I and II constitute an improperly commingled shotgun pleading; (2) Plaintiff fails to adequately allege in Counts I and II that Carnival was on notice of the purported dangerous condition; and (3) Plaintiff fails to plead in Counts III and IV sufficient facts to support her vicarious liability claims. *Id.* The Undersigned will address these arguments in turn.

A. Shotgun Pleading

At the outset, Carnival argues that Count I of Plaintiff's FAC is a shotgun pleading because it improperly attempts to assert multiple negligence theories into a single count. Carnival notes that:

> [w]ithin Count I, Plaintiff includes the following causes of action, including, negligent failure to provide a reasonably safe deck, negligent crowd control, negligent failure to inspect, negligent failure to maintain, negligent failure to train, negligent failure to comply with safety codes and standards, and negligent failure to implement safety codes and standard[s].

[ECF No. 20, pp. 4–5 (quoting [ECF No. 15, ¶¶ 17(b)–(l)])].

Carnival further points out that all of Plaintiff's counts incorporate by reference paragraph 7 of the FAC, "which states Carnival 'employed the crewmembers assigned to inspect and monitor the area of Plaintiff's fall (Hotel Stewards), clean the area of Plaintiff's fall (Housekeeping Team Members), and repair the subject strip/ moulding/ ledge/ grading (Carpentry Department), and is **vicariously liable for the negligence of these crewmembers**[.]'" [ECF No. 20, p. 6 (quoting [ECF No. 15, ¶ 7 (emphasis added)])]. Defendant argues that this is improper (as to Counts I and II) because, by incorporating by reference the allegations in paragraph 7, those counts commingle both direct and vicarious liability claims. *Id.*

Plaintiff disputes Defendant's characterization of her FAC as a shotgun pleading. [ECF No. 22, p. 4 ("That Plaintiff has alleged and described Defendant's breach of the applicable standard of care in more detail and with more specific allegations does not

make her [FAC] a 'shotgun pleading' as cruise line defendants have become so prone to use the term." (footnote omitted))].

Plaintiff *appears* to suggest that her negligent training allegations actually concern failures to maintain the area. *Id.* at 5. However, this is unclear because Plaintiff does not specifically make this argument, but, instead, directs the Court's attention to *Branyon v. Carnival Corp.*, where United States District Judge Roy K. Altman construed allegations that Carnival failed to adequately train its employees as a failure to maintain the premises. No. 24-CV-20576, 2024 WL 3103313, at *3 (S.D. Fla. June 24, 2024) ("We interpret this sentence as a description of one of the ways in which (the [p]laintiff says) the Defendant failed to maintain its premises—not as an attempt to sneak a failure-to-train claim inside a claim for negligent maintenance.").

Plaintiff also argues that paragraph 7 "is not part of a 'Count,' but only part of the 'Preliminary Allegations' and a short statement of law[.]" [ECF No. 22, pp. 5–6]. This argument is not well taken because in each count, Plaintiff incorporates by reference the preliminary allegations (paragraphs 1 through 14) of the FAC. [ECF No. 15, pp. 4, 8, 11, 14 ("Plaintiff realleges, adopts, and incorporates by reference the allegations in Paragraphs one (1) through fourteen (14) **as though fully alleged herein**." (emphasis added))].

The Undersigned agrees with Defendant that, as pled, Counts I and II, which incorporate by reference paragraph 7, improperly plead both negligence and vicarious

liability in the same count. *See Gharfeh v. Carnival Corp.*, No. 17-20499-CIV, 2018 WL 501270, at *6 (S.D. Fla. Jan. 22, 2018) ("Carnival is correct that Count I improperly commingles claims. Count I's title suggests that it contains only a claim for vicarious liability, based on theories of actual agency/respondeat superior, apparent agency/estoppel, and joint venture. But it also includes allegations of direct negligence. Count I is thus an example of an impermissible shotgun pleading and it needs to be clarified.").

Moreover, in Count I, Plaintiff includes a failure to train claim. [ECF No. 15, ¶¶ 17(h); (i) ("**Failure to properly instruct/train its crewmembers** on how to inspect, maintain, and monitor public deck areas[ ]" and "**Failure to properly instruct/train its crewmembers** on how to properly repair/replace and maintain strip/ moulding/ ledge/ grading components so that these did not protrude up from the deck and become a tripping hazard[ ]" (emphasis added))]. As this Court has explained:

> Negligent training sounds in negligence but is a separate cause of action with distinct elements. *See Reed v. Royal Caribbean Cruises, Ltd.*, No. 19-Civ-24668, 2021 WL 2592914, at *9 (S.D. Fla. Apr. 23, 2021) (collecting cases). To state a claim of negligent training, Plaintiff must allege Defendant "was 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; quotation[ ] marks and citation omitted). Because negligent training is a discrete claim, it must be pled separately. *See Reed*, 2021 WL 2592914, at *9.

Anders v. Carnival Corp., No. 23-21367-CIV, 2023 WL 4252426, at *4 (S.D. Fla. June 29, 2023).

Lastly, courts in this District have recognized that each alleged breach of the duty of care should be pled separately. It is not sufficient to cast a wide net of purported breaches in an attempt to keep one negligence claim afloat. *See Dunn v. NCL (BAHAMAS) Ltd.*, No. 23-cv-20083, 2023 WL 4186418, at *3 (S.D. Fla. June 26, 2023); *Al-Hindi v. Royal Caribbean Cruises, Ltd.*, No. 22-24032-CIV, [ECF No. 16] (S.D. Fla. March 14, 2023); *see also Reed*, 2021 WL 2592914, at *10 (collecting cases).

For these reasons, the Undersigned **respectfully recommends** that Judge Williams **dismiss** the FAC as a shotgun pleading. If Plaintiff is permitted to file a second amended complaint (and she should be, in the Undersigned's view), then she should separate her negligence claims into separate counts, to avoid the shotgun pleading argument. *See Kercher v. Carnival Corp.*, No. CV 19-21467-CIV, 2019 WL 1723565, at *1 (S.D. Fla. Apr. 18, 2019) (collecting cases) ("Each theory is a separate cause of action that must be asserted independently and with supporting factual allegations.").

B. Notice

Next, Carnival argues that Plaintiff failed to plead notice of an allegedly dangerous condition in Counts I and II.

To properly plead a negligence claim under the general maritime law of the United States, 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."

Chaparro v. Carnival Corp., 693 F.3d 1333, 1336 (11th Cir. 2012). Moreover,

> the benchmark against which a shipowner's behavior must be measured is ordinary reasonable care under the circumstances, **a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition**, at least where, as here, the menace is one commonly encountered on land and not clearly linked to nautical adventure. [Carnival]'s liability thus hinges on whether it knew or should have known about the [dangerous condition].

Keefe, 867 F.2d at 1322 (emphasis added).

To survive a motion to dismiss, a plaintiff must plead sufficient facts to support each element of his **direct liability** negligence claims (as opposed to vicarious liability), including that the defendant had "actual or constructive notice of [a] risk-creating condition[.]" *See Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022); *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 212 (2022).

Here, the FAC attempts to plead notice by alleging: (1) facts concerning the apparent nature of the dangerous condition; (2) prior incidents occurring on other Carnival ships; (3) Carnival's alleged policy; and (4) general foreseeability. The Undersigned will discuss these notice allegations below.

1. The Apparent Nature of the Dangerous Condition

The FAC seeks to plead notice in Counts I and II by alleging that:

> On or about September 3, 2023, shortly after first boarding the ship, before the ship sailed, and while Plaintiff was still unfamiliar with the ship, as Plaintiff was walking along Deck 10 on her way to a lunch table and as she crossed over an area which changed from a carpeted deck to a hard deck, she tripped and fell over a loose/ uneven/ protruding strip/ strip/ moulding/ ledge/ grading which separated the two different deck coverings. The

> loose/uneven/protruding strip/ strip/ moulding/ ledge/ grading was neither open nor obvious to Plaintiff and, after her fall, she noticed that **the [protruding] strip/ strip/ moulding/ ledge/ grading was dinged/dented from other pedestrians having struck it such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions** – as Plaintiff did not observe another pedestrian strike the strip/ moulding/ ledge/ grading that afternoon and she had just boarded, the condition had existed for a length of time in excess of the day of Plaintiff's incident. Further, **the top leading edge of the strip/ moulding/ ledge/ grading was dented down evincing that Defendant's employees had attempted to push/hammer it back down to its proper position but had done so negligently and improperly.**

[ECF No. 15, ¶ 10 (emphasis added)].

Carnival argues that "Plaintiff's allegations regarding the apparent nature of the alleged dangerous conditions are merely speculative and conclusory inferences drawn by Plaintiff herself." [ECF No. 20, p. 9]. It contends that these allegations are similar to the inadequate notice allegations pled in *Patton v. Carnival Corp.*, where the Eleventh Circuit affirmed Senior United States District Judge Robert N. Scola Jr.'s dismissal of a plaintiff's complaint against Carnival. No. 22-13806, 2024 WL 1886504, at *1 (11th Cir. Apr. 30, 2024).

In *Patton*, a passenger "tripped over a 'metal threshold' that was not flush with the floor." *Patton v. Carnival Corp.*, No. 22-21158-CIV, 2022 WL 7536256, at *1 (S.D. Fla. Oct. 13, 2022), *aff'd*, No. 22-13806, 2024 WL 1886504 (11th Cir. Apr. 30, 2024). The plaintiff sought to support her claim that Carnival had actual or constructive knowledge of this condition by:

> (1) [including] a new, undated photograph (alongside a similar, previously pleaded photograph) of the threshold at issue which [the plaintiff] ple[d] was taken "at or shortly after the time [she] tripped and fell"; (2) an argument by inference that there [was] "a reasonable inference that the gap had developed over time and had been present for some time" and therefore Carnival's employees must have seen the raised metal threshold before the incident because they "routinely do clean the floors in the area"; and (3) minutes from multiple "safety meetings" on the ship indicate[d] that "Carnival was aware of the tripping hazard posed by damaged threshold[s,]" generally.

Id. at *2 (record citations omitted).

Judge Scola was unpersuaded by the photographs because "Patton [did] not even attempt to plead that the photographs must represent the state of the metal threshold before the time of the incident." *Id*. Thus "[t]he photographs . . . fail[ed] to allege the state of the threshold ***at the time of the incident***, let alone the threshold's state for an unidentified amount of time before the incident." *Id.* (emphasis in original). He also rejected the plaintiff's "common sense" argument "that Carnival employees would have seen the alleged tripping hazard, as they routinely clean the floors in the area once a day," *id.* (internal quotation marks omitted), for the reasons stated in an earlier dismissal order.[3] Lastly, Judge Scola noted that "the [safety] minutes address[ed] only generalized concerns" and "[were] not substantially similar in nature to the allegations [in Patton's amended complaint]." *Id.*

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[3] Namely that, "at most, Patton complain[ed] of a metal threshold that was uneven with the floor by inches, if not less. Therefore, absent any allegations that Carnival employees would have plausibly seen the metal threshold and recognized its potential danger, Patton ha[d] not sufficiently alleged notice." 2022 WL 2982699, at *2.

The Eleventh Circuit affirmed Judge Scola's ruling, finding that the plaintiff's constructive knowledge argument "f[e]ll[ ] short for the same reason it did in *Holland*. *Patton*, 2024 WL 1886504, at *2. As the appellate court explained:

> Here, too, [the plaintiff] ha[d]n't plausibly alleged that the dangerous condition existed for a "sufficient length of time" to impute notice to Carnival because **the complaint lack[ed] any plausible "allegation as to how long" the dangerous condition existed**. *See Holland*, 50 F.4th at 1096. Likewise, **she hasn't plausibly described the dangerous condition "in a way that would suggest" it had been there "for a sufficient period of time."** *See id.* **The photographs don't help her because, as the district court explained, [the plaintiff] "does not even attempt to plead that the photographs . . . represent the state of the metal threshold before the time of the incident**."
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> ***
>
> [S]he contends that, although the photos attached to the complaint were taken "at or shortly after" she fell, the "reasonable inference[ ]" to draw is that "the dangerous condition of the threshold was due to wear and developed over a considerable time, much more than just a few minutes, hours or even days." **But there's not enough in the complaint or the attachments for us to conclude that this inference is reasonable and not an unwarranted deduction**. *See Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009) ("In evaluating the sufficiency of a plaintiff's pleadings, we make reasonable inferences in [the] [p]laintiff's favor, but we are not required to draw [the] plaintiff's inference. Similarly, unwarranted deductions of fact in a complaint are not admitted as true for the purpose of testing the sufficiency of [the] plaintiff's allegations." (cleaned up)). **[The plaintiff] never explains (and it's not self-evident) what in the photos or complaint shows that it's a reasonable inference that the gap beneath the metal threshold emerged gradually over the course of days due to wear and tear**.

Id. at *3 (emphasis added).

Here, Plaintiff argues that she has pled constructive notice. *See* [ECF No. 22, p. 7 ("By Defendant's own definition of 'constructive notice,' Plaintiff has sufficiently pled a prima facie case[.]")]. She states that:

> Insofar as the length of time the defect/dangerous condition had existed, Plaintiff has alleged that "the [protruding] strip/ strip/ moulding/ ledge/ grading was dinged/dented from other pedestrians having struck it such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions - **as Plaintiff did not observe another pedestrian strike the strip/ moulding/ ledge/ grading that afternoon and she had just boarded, the condition had existed for a length of time in excess of the day of Plaintiff's incident**. Further, the top leading edge of the strip/ moulding/ ledge/ grading was dented down evincing that Defendant's employees had attempted to push/hammer it back down to its proper position but had done so negligently and improperly."

Id. at 7 (quoting [ECF No. 15, ¶ 10 (emphasis in Response)]).

Some of paragraph 10's allegations are similar to those pled in *Colarte v. Carnival Corp.*, a case brought by the same attorney representing Goroni and cited eight times in the FAC. No. 1:24-CV-22203, 2024 WL 4124295, at *1 (S.D. Fla. Aug. 23, 2024) (Goodman, Mag. J.), *report and recommendation adopted*, No. 24-22203-CV, 2024 WL 4122238 (S.D. Fla. Sept. 9, 2024) (Williams, J.). The *Colarte* plaintiff unsuccessfully attempted to plead notice by (among other things) alleging that:

> On or about July 21, 2023, [she] was walking along Deck 4 of the [*Carnival Conquest*] on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding moulding/ ledge which separated the hallway from the restaurant. The raised, uneven, and protruding moulding/ ledge was neither open nor obvious to Plaintiff and, after her fall, **she noticed that the moulding/ ledge was dinged/dented from other pedestrians having**

> **struck it such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions**.

Id. at *2 (emphasis added). The Undersigned, in a report and recommendations to Judge Williams, noted that:

> [t]hese are not factual allegations from which notice may be inferred -- they are threadbare allegations that do not allege specific facts suggesting how Carnival knew or should have known of the specific dangerous condition alleged. Plaintiff primarily alleges notice based on "the length of time" the condition had been present or the "sufficient regularity" it occurred but has not alleged what the length of time was or how many reoccurrences.

Id. at *7. Finding that "[the] [p]laintiff's conclusory allegations closely follow[ed] those found in *Newbauer* and [were] similarly unsupported," the Undersigned further stated that "[e]ven if the alleged dangerous condition had been present for a certain length of time, [the] [p]laintiff ha[d] also failed to assert facts that Carnival was aware that it posed a danger." *Id.*

Similarly here, the FAC attempts to plead notice by alleging (in part) that:

> Plaintiff was walking along Deck 10 on her way to a lunch table and as she crossed over an area which changed from a carpeted deck to a hard deck, she tripped and fell over a loose/uneven/protruding strip/ strip/ moulding/ ledge/ grading which separated the two different deck coverings. The loose/uneven/protruding strip/ strip/ moulding/ ledge/ grading was neither open nor obvious to Plaintiff and, after her fall, she noticed that **the [protruding] strip/ strip/ moulding/ ledge/ grading was dinged/dented from other pedestrians having struck it such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions - as Plaintiff did not observe another pedestrian strike the strip/ moulding/ ledge/ grading that afternoon and she had just boarded, the condition had existed for a length of time in excess of the day of Plaintiff's incident**.

[ECF No. 15, ¶ 10 (emphasis added)].

This notice allegation is nearly identical to the conclusory notice allegation in *Colarte*. *See Colarte*, 2024 WL 4124295, at *2 ("[The plaintiff] noticed that the moulding/ ledge was dinged/dented from other pedestrians having struck it such that it had been in this raised, uneven, and protruding condition for a sufficient period of time to put Defendant on notice of the dangerous conditions."). Thus, for the same reasons articulated in *Colarte*, it is insufficient to establish notice here.

Paragraph 10 goes on to allege that: "the top leading edge of the strip/ moulding/ ledge/ grading was **dented down evincing that Defendant's employees had attempted to push/hammer it back down to its proper position** but had done so negligently and improperly." [ECF No. 15, ¶ 10 (emphasis added)]. This too is problematic. There are no facts in the FAC to support Plaintiff's conclusory allegation that the dent was caused by Carnival's employees hammering down "the strip/ moulding/ ledge/ grading" in a faulty repair attempt.

Moreover, given that paragraph 10 also alleges that "the [protruding] strip/ strip/ moulding/ ledge/ grading was dinged/**dented from other pedestrians having struck it**," it is equally as likely that the dent could have also been caused (depending on the malleability of the unspecified material) by a passenger stepping on the strip/ moulding/ ledge/ grading. *See Holland*, 50 F.4th at 1096 (holding that "the inferential leap from Holland's premise -- that the staircase is highly visible and well-trodden -- to his

conclusion -- that the hazard existed for a sufficient length of time – [was] too great.").

The instant case is different from *Green v. Carnival Corp.*, for instance, where the Undersigned determined that the plaintiff had properly pled notice since "[the] [p]laintiff allege[d] a reason for Carnival to have known of [the] tripping hazard because it appeared to be a condition that had been caused by wear and tear over time and [g]iven the time it takes for flooring to become worn and warped, Carnival had enough time–in the exercise of reasonable care–to have repaired it." No. 1:24-CV-22519, 2024 WL 4954017, at *4 (S.D. Fla. Nov. 5, 2024) (Goodman, Mag. J.), *report and recommendation adopted*, No. 24-22519-CV, 2024 WL 4948979 (S.D. Fla. Dec. 3, 2024) (Williams, J.). It is also different from *Fadraga v. Carnival Corp.*, where Judge Scola found that the complaint's "allegations [were] sufficient to allow the Court to infer that Carnival had notice of the temperature of the soup that Carnival itself prepared and served and, based on that temperature, Carnival knew or should have known, that it was too hot." No. 23-23503-CIV, 2024 WL 1908980, at *4 (S.D. Fla. Apr. 30, 2024).

Here, the facts pled in paragraph 10 of the FAC "are generic, conclusory, speculative, and are insufficient to plead that Carnival was on notice (prior to Plaintiff's incident) of a dangerous condition onboard the vessel." *Colarte*, 2024 WL 4124295, at *7.

2. Prior Incidents

The FAC also seeks to establish notice by citing to prior incidents:

Other passengers on Defendant's ships have previously been injured under similar, if not identical, circumstances/conditions where Defendant failed to exercise reasonable care to ensure that similar raised strip/ moulding/ ledge/ grading did not pose a hazard to pedestrian traffic. *Colarte v. Carnival Corp*[.], Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp.*, Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp*[.], Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the [p]laintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . ."). Inasmuch as prior incidents need not be identical to the sued-upon incident to put a defendant on notice of a dangerous condition, *Hessen v. Jaguar Cars, Inc.*, 915 F.2d 641 (11th Cir. 1990); *Jones v. Otis Elevator Co.*, 861 F.2d 655 (11th Cir. 1988); *Worsham v. A.H. Robins Co.*, 734 F.2d 676 (11th Cir. 1984); *Jackson v. Firestone Tire & Rubber Co.*, 788 F.2d 1070, 1082 (5th Cir. 1986); *Bailey v. So. Pacific Transp. Co.*, 613 F.2d 1385 (5th Cir. 1980); *Ree v. Royal Caribbean Cruises Ltd.*, 315 FRD 682, 686 (S.D. Fla. 2016) (citing *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1191 (10th Cir. 2009)), the *Patton*, *Johnson*, and *Zarr* incidents are sufficient to place Defendant on constructive notice of a dangerous condition with the strip/ moulding/ ledge/ grading at the location of Plaintiff's incident in the present matter.

[ECF No. 15, ¶ 11 (emphasis in original)]. The FAC alleges that the *Glory* is a Conquest-Class ship. *Id.* at ¶ 8.

Carnival argues that Plaintiff still fails to plead notice because "none of the alleged prior incidents occurred on the same vessel, same deck, or same area as alleged by Plaintiff" and "[she] has not pled sufficient factual allegations to establish that the alleged dangerous conditions in the cited prior incidents are similar to the alleged dangerous condition here." [ECF No. 20, p. 10]. Carnival further notes that "Plaintiff has failed to identify what exactly she alleged [sic] tripped over. Was it a strip, moulding, ledge, or grading?" *Id.*

Carnival argues that *Kendall v. Carnival Corp.* is instructive. No. 1:23-CV-22921-KMM, 2023 WL 8593669, at *4 (S.D. Fla. Dec. 8, 2023). In *Kendall*, United States District Judge K. Michael Moore granted Carnival's motion to dismiss based on the plaintiff's failure to link other incidents to the specific area or vessel. No. 1:23-CV-22921-KMM, 2023 WL 8593669, at *3 (S.D. Fla. Dec. 8, 2023) (holding that the plaintiff's vague assertions about incidents on entirely different vessels would "constitute a great deviation from Eleventh Circuit precedent requiring a plaintiff to show substantially similar accidents to the one at issue to demonstrate constructive notice").[4]

[4] The *Kendall* Court dismissed the complaint without prejudice and with leave to amend. 2023 WL 8593669, at *4. The plaintiff filed an amended complaint, followed by a second amended complaint, and the case then settled. *See* [ECF Nos. 19; 35; 48; 49 in Case No. 1:23-CV-22921-KMM].

Carnival argues that "[a]s in *Kendall*, Plaintiff failed to plead sufficient facts or circumstances to demonstrate how these incidents establish that Carnival was on notice of the risk-creating condition specific to the subject area or vessel." [ECF No. 20, p. 11].

In her response to the instant motion, Plaintiff appears to add a fifth case to the list of prior incidents: "in *Bunch v. Carnival Corp.*, [825 F. App'x 713, 714 (11th Cir. 2020) (per curiam)], on July 24, 2017, on this very ship, *GLORY*, [a] plaintiff 'tripped over and fell on a raised threshold while exiting an aerobics room.'" [ECF No. 22, p. 8].

To the extent Plaintiff is citing *Bunch* as an additional prior incident, such an attempt is procedurally improper because it is well-settled that a plaintiff may not amend her pleading in her response to a motion to dismiss. *See Mitsubishi HC Cap. Am., Inc. v. Aerospace Asset Trading, LLC*, No. 22-20074-CIV-DAMIAN/SANCHEZ, 2024 WL 4120819, at *5 n.4 (S.D. Fla. Aug. 27, 2024) ("[A] party may not supplant allegations made in their pleading with new allegations raised in a response to a motion to dismiss."); *Tsavaris v. Pfizer, Inc.*, No. 1:15-CV-21826-KMM, 2016 WL 375008, at *3 (S.D. Fla. Feb. 1, 2016) ("A plaintiff . . . cannot amend the complaint in a response to a motion to dismiss, for a court's review on dismissal is limited to the four corners of the complaint." (citing *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002))).

In any event, the incident in *Bunch* is dissimilar to Plaintiff's case. The plaintiff in *Bunch* fell when she failed to clear the threshold of a doorway to the aerobics room that was several inches high. 825 F. App'x at 714. The *Bunch* plaintiff testified that "she could

not see the threshold because the stainless[-]steel baseboard reflect[ed] the carpet and it looked flush to the floor, like an optical illusion." *Id.* at 714–15 (alteration in original; internal quotation marks omitted).

Goroni, on the other hand, alleges that she tripped and fell on "Deck 10 on her way to a lunch table [ ] as she crossed over an area which changed from a carpeted deck to a hard deck" due to a "loose/ uneven/ protruding strip/ strip/ moulding/ ledge/ grading which separated the two different deck coverings." [ECF No. 15, ¶ 10]. There are *no* allegations that she tripped on a doorway threshold or that her fall was caused by an optical illusion in the flooring. In fact, other than both falls occurring on the same ship, there are no similarities between the two incidents.

"[A] plaintiff can establish constructive notice with evidence of substantially similar incidents in which 'conditions substantially similar to the occurrence in question must have caused the prior accident.'" *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (quoting *Otis Elevator Co.*, 861 F.2d at 661–62). "The substantial similarity standard does not require identical factual circumstances among the accidents; instead, the accidents must only be 'similar enough to allow the jury to draw a reasonable inference' regarding the cruise ship operator's ability to foresee the accident at hand." *Kendall*, 2023 WL 8593669, at *2 (quoting *Cogburn v. Carnival Corp.*, No. 21-11579, 2022 WL 1215196, at *4 (11th Cir. Apr. 25, 2022)).

For a plaintiff to adequately plead notice based on substantially similar incidents, the complaint must include enough allegations "to plausibly plead that [the] [d]efendant had notice of the dangerous condition." *Fawcett v. Carnival Corp.*, 682 F. Supp. 3d 1106, 1111 (S.D. Fla. 2023).

In *Fawcett*, the district court found that the plaintiff adequately alleged the existence of prior similar incidents because his complaint:

> identifie[d] numerous slip-and-fall events, including "fall incidents on wet flooring in the Lido Marketplace dining area on the Lido Deck" of the Breeze — a vessel of the same class as the *Magic* — and slip and fall incidents specifically on "wet or slippery areas of the Lido Deck" of the *Magic*. [The] [p]laintiff also list[ed] specific dates and cite[d] cases associated with [the] incidents. These factual allegations push[ed] [the] [p]laintiff's claims beyond mere conclusory recitals. *See Green v. Carnival Corp.*, 614 F. Supp. 3d 1257, 1263–65 (S.D. Fla. 2022) (finding the plaintiff adequately pleaded notice where he alleged 15 prior substantially similar incidents).

Id. (record citations omitted).

Turning to the four incidents cited in the FAC, the Court can readily discard *Zarr v. Carnival Corp.*, Case No. 17-Civ-20312-Altonaga because the FAC contains no allegations that the vessel in question, the *Magic*, is similar to the *Glory*.

Johnson is also not sufficiently similar to the instant case because the *Johnson* plaintiff fell as a result of her shoe being caught in "a gap between the carpet and [a] metal nosing." [ECF No. 15, ¶ 11]. Similarly, in *Patton*, it was the gap that caused the tripping hazard. *See Patton*, No. 22-13806, 2024 WL 1886504, at *1 ("Ms. Patton tripped on a 'metal threshold' that extended across the hallway. The threshold had been 'improperly

affixed and not adequately secured to the floor,' causing it to protrude about a half inch too high and **'leaving a gap that posed a tripping hazard**.'" (emphasis added)).

The amended complaint in *Patton* alleged that the plaintiff's sandal got caught in this gap, causing her fall. *See* [ECF No. 14 in Case No. 22-cv-21158-RNS, ¶ 13 ("As the photographs illustrate, **the metal threshold is sufficiently bent upwards to allow for a sufficient gap in space for [the] [p]laintiff's sandal to get caught in the threshold, thereby causing her to trip and fall**." (emphasis added))].

There are no allegations in the FAC that Goroni fell because of a gap in the "[protruding] strip/ strip/ moulding/ ledge/ grading which separated the two different deck coverings." [ECF No. 15, ¶ 10]. *See Jones v. Carnival Corp.*, No. 1:23-CV-23690, 2024 WL 3383979, at *4 (S.D. Fla. July 9, 2024) ("Because [the] [p]laintiff has not sufficiently alleged that the incidents giving rise to these three cases occurred under similar circumstances or shared the same cause, and **because the incidents in fact occurred under very different circumstances with different causes**—with the first incident caused by a tender shuttle traveling at a high speed and hitting a wave, the second incident caused by a slippery deck, and the third incident caused by a steep stairwell and blocked handrail—**[the] [p]laintiff has not sufficiently alleged that the previous and instant incidents are substantially similar**." (emphasis added)).

Accordingly, Plaintiff cannot plead constructive notice through *Zarr*, *Johnson*, or *Patton*.

This leaves *Colarte*. The FAC describes the incident in *Colarte* as follows:

> *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant")[.]

[ECF No. 15, ¶ 11 (emphasis in original)].

The *Colarte* plaintiff fell on July 21, 2023,[5] approximately 44 days before Goroni's September 3, 2023 fall.[6] Both passengers encountered similar tripping hazards on sister ships. The Undersigned finds, as pled, *Colarte's* facts are substantially similar to the instant case. *See Lopez v. Carnival Corp.*, No. 22-CV-21308, 2022 WL 4598657, at *3 (S.D. Fla. Sept. 30, 2022) ("Defendant argues that the other alleged incidents relate to a different class of ships with different designs, configurations, and layouts. However, whether the alleged incidents are in fact substantially similar as to give notice is an issue of fact, which the Court need not resolve at the dismissal stage.").

Moreover, a single, substantially similar incident can be sufficient. *See Worley v. Carnival Corp.*, No. 21-CIV-23501, 2023 WL 1833840, at *9 (S.D. Fla. Feb. 1, 2023), *report and*

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5 *Colarte*, 2024 WL 4124295, at *2.

6 [ECF No. 15, ¶ 10].

recommendation adopted, No. 21-23501-CIV, 2023 WL 2346338 (S.D. Fla. Mar. 3, 2023) ("To be sure, [the] [p]laintiff is relying on only one prior incident, from approximately six months before the incident involved in our lawsuit. But one prior, similar incident can indeed be enough to prevent summary judgment against a personal injury plaintiff urging a constructive notice theory.").

At this stage in the proceedings, Plaintiff's one prior incident generates an adequate, plausible allegation concerning an effort to establish constructive notice through prior, similar incidents. During discovery, Plaintiff may well uncover additional incidents involving passengers who tripped and fell on "loose/ uneven/ protruding strip/ strip/ moulding/ ledge/ grading." [ECF No. 15, ¶ 10]. Alternatively, she might not discover any additional prior incidents, and Defendant could uncover evidence that *Colarte* is not in fact sufficiently similar to help establish constructive notice and move for summary judgment on that ground. For now, though, the Undersigned considers the allegations about *Colarte* to be enough for Plaintiff to assert, for pleading purposes, the requisite notice.

3. Carnival's Policy

The FAC also seeks to establish notice through Carnival's policy:

> Alternatively, because **Defendant has a policy in place whereby "the subject area is monitored by Hotel Stewards assigned to the area on a continuous basis throughout the day" and "Housekeeping Team Members visually inspect the area during the course of . . . routine cleaning,"** Defendant knew of the foregoing conditions causing Plaintiff's

> accident and did not correct them and allowed them to be maintained, or in the exercise of reasonable care under the circumstances, should have learned of them, corrected them, and not allowed them to be maintained inasmuch as the dangerous condition had existed for a length of time in excess of the morning of Plaintiff's incident.

Id. at ¶ 19 (some emphasis added).

Carnival argues that Plaintiff's allegation [concerning a policy] is too vague and conclusory to establish Carnival's notice." [ECF No. 20, p. 11].

Plaintiff does not address this argument in her response. Therefore, the Undersigned deems Plaintiff's allegation concerning Carnival's policy to have been *waived* for purposes of evaluating whether Plaintiff adequately and plausibly alleged notice. "Failure to respond to an argument may result in waiver." *W. 32nd/33rd Place Warehouse Condo. Ass'n, Inc. v. W. World Ins. Co.*, No. 22-CV-21408, 2023 WL 6317993, at *4 (S.D. Fla. Aug. 21, 2023) (citing *Five for Ent. S.A. v. Rodriguez*, No. 11-24142-CIV, 2013 WL 4433420, at *14 (S.D. Fla. Aug. 15, 2013) ("A failure to address issues in response to a motion is grounds for finding that the claims have been abandoned."); *Altare v. Vertical Reality MFG, Inc.*, No. 19-CV-21496, 2020 WL 209272, at *2 (S.D. Fla. Jan. 14, 2020) ("[The] [p]laintiff did not respond to this argument and, consequently, the Court deems any response waived.")).

Thus, Plaintiff will not be able to establish notice of the alleged dangerous condition by pointing to Carnival's supposed policy for purposes of defending against the motion to dismiss. She may, however, raise the argument in response to a summary

judgment motion, should Carnival file one (and if she actually responds to the argument, as opposed to generating another waiver).

4. General Foreseeability

Lastly, the FAC attempts to plead notice through general foreseeability:

> The conditions created and/or known to Defendant occurred with sufficient regularity so as to be reasonably foreseeable to Defendant. *Colarte v. Carnival Corp[.]*, Case No. 24-Civ-22203-Williams (**on *Carnival Conquest* which is a sister ship in the same class as *GLORY***, "[the] [p]laintiff was walking along Deck 4 of the ship on her way to breakfast in the Monet Restaurant and as she passed through a hallway into the restaurant, she tripped and fell over an uneven/protruding strip/ moulding/ ledge/ grading which separated the hallway from the restaurant"); *Patton v. Carnival Corp.*, Case No. 22-Civ-21158-Scola (**on *Carnival Victory*, which is a Destiny-Class ship from which the Conquest-Class is derived**, the plaintiff "was walking towards the elevators on Deck 9 when she tripped and fell on a metal threshold which was damaged in such a way that it was not flush with the floor"); *Johnson v. Carnival Corp*., Case No. 19-Civ-23167-Bloom (**on *Carnival Freedom* which is a sister ship in the same class as *GLORY***, "a gap between the carpet and metal nosing on a step caught [the plaintiff's] shoe causing her to lose her balance, trip on the gap, fall down the stairs and thereby sustain serious injuries, including a fractured right fibula requiring surgical repair"); *Zarr v. Carnival Corp[.]*, Case No. 17-Civ-20312-Altonaga (on *Carnival Magic*, "the Plaintiff was caused to trip, slip and fall on a piece of flooring or wooden grading on the surface of the floor that had negligently been permitted to remain, and become loose and unsecured. . . ."). [ECF No. 15, ¶¶ 20; 27 (emphasis in original)].

Carnival notes that:

> In *Holland*, Judge Scola held that the [sic] "[a]llowing the [p]laintiff's claim to proceed as alleged would endorse a 'general foreseeability theory of liability'—a theory that has been roundly rejected by federal courts because it would essentially convert a carrier into an insurer of passenger safety." 2021 U.S. Dist. LEXIS 4322, at *9–10 (quoting *Navarro v. Carnival Corp.*, 2020

U.S. Dist. LEXIS 47953, at *4 (S.D. Fla. Mar. 18, 2020)); *see also Newbauer*, 2021 U.S. Dist. LEXIS 34240, at *9.

[ECF No. 20, p. 12].

Plaintiff failed to address its foreseeability theory of notice in its response. Accordingly, the Undersigned deems Plaintiff's general foreseeability allegation to have been abandoned for purposes of evaluating whether Plaintiff adequately and plausibly alleged notice in response to the motion to dismiss. *See W. 32nd/33rd Place Warehouse Condo. Ass'n, Inc.*, 2023 WL 6317993, at *4; *Altare*, 2020 WL 209272, at *2. Moreover, a "general foreseeability theory of liability" "has been roundly rejected by federal courts because it would essentially convert a carrier into an insurer of passenger safety." *Navarro v. Carnival Corp.*, No. 19-21072, 2020 WL 1307185, at *4 (S.D. Fla. March 19, 2020).

By way of overall summary on the notice issue, the Undersigned **respectfully recommends** that Judge Williams **deny** Carnival's motion to dismiss on a purported failure to adequately and plausibly allege constructive notice.[7]

C. Vicarious Liability Claims

Lastly, Carnival argues that Plaintiff's vicarious liability claims (Counts III and IV) should be dismissed because "Plaintiff has failed to proffer sufficient factual allegations to support her . . . claims." [ECF No. 20, p. 13].

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[7] Plaintiff's response does not address *actual* notice, only *constructive* notice. *See* [ECF No. 22, p. 7 ("By Defendant's own definition of 'constructive notice,' Plaintiff has sufficiently pled a prima facie case.")].

In *Yusko*, the Eleventh Circuit clarified decades' worth of case law involving cruise ship litigation and held that vicarious liability could be imposed against "an otherwise non-faulty employer," ship owner or cruise operator "for the negligent acts of that employee acting within the scope of employment." 4 F.4th at 1169. As succinctly summarized by the *Yusko* Court, "an employer can be held liable under a vicarious liability theory even if it has not violated any duty at all." *Id.*

Carnival contends that "the majority of allegations contained within Plaintiff's vicarious liability claims are general allegations of a failure to maintain a safe premises and a failure to warn of the alleged dangerous condition" and that "Plaintiff has failed to identify a specific crewmember whose negligence caused her alleged injuries." [ECF No. 20, p. 13 (citing *Holland*, 50 F.4th at 1094)].

Carnival insists that "[i]t is not [its] position that Plaintiff need [sic] to specifically name the allegedly negligent crewmember," but "Plaintiff is required to proffer sufficient factual allegations to allow Carnival to identify the negligent actions taken by particular crewmembers in order to sufficiently plead a claim for vicarious liability." *Id.* & n.1 (noting there were 1,150 crewmembers onboard the *Glory*).

Plaintiff contends that she is not "required to proffer sufficient factual allegations to allow Carnival to identify the negligent actions taken by particular crewmembers" and accuses Defendant of willfully misconstruing *Yusko*. [ECF No. 22, p. 13 (emphasis omitted)]. According to Plaintiff,

> When the *Yusko* [C]ourt noted that "sometimes, as in *Keefe*, a passenger will not be able to identify any specific employee whose negligence caused her injury," the court was merely stating that there may simply be no such actively negligent employee. In context, the word "identify" was not intended to suggest that the employee needed to be named – particularly not at the pleading stage. Rather, the court was merely pointing out that there simply may be no evidence that an employee had acted negligently in a specific instance, in which case there could be no claim for vicarious liability. This Court correctly ruled in *Hodson v. MSC Cruises*, [*S.A.*, No. 20-22463-CIV, 2021 WL 3639752, at *1 (S.D. Fla. Aug. 2, 2021), *report and recommendation adopted*, No. 20-22463-CIV, 2021 WL 3634809 (S.D. Fla. Aug. 16, 2021)], that a plaintiff need not know the name of the employee even at the summary judgment stage. *Id.* at *12 (and cases cited therein); *see also Plott v. NCL Am[.], LLC*, 786 F[ ]. App[']x. 199, 202 [n.3] (11th Cir. 2019) ([the] plaintiff was not even required to identify NCL crewmembers at the summary judgment stage).

Id. at 13–14.

Plaintiff further states that because she "has identified Defendant's 'hotel personnel, housekeeping personnel, dining room personnel, and/or maintenance/repair personnel assigned to operate and maintain the area of the aft Deck 10 area of Plaintiff's fall[,]'" *id.* at 14 (quoting [ECF No. 15, ¶¶ 32; 42]), that "this fully complies with Plaintiff's obligation to put Defendant on 'fair notice of what the claim is and the grounds upon which it rests.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

Plaintiff maintains that it is enough to allege that "certain employees" of Defendant were negligent. *Id.* She relies on *Mclean v. Carnival Corp.*, No. 22-23187-CIV, 2023 WL 372061 (S.D. Fla. Jan. 24, 2023). In *Mclean*, Judge Scola determined that the plaintiff had properly pled a claim for vicarious liability against Defendant because:

> First, the [p]laintiff pleads that certain employees of Carnival's "misaligned the gangway" that she was to use to board the ship. And she pleads that those employees were acting within the scope of their employment. Those facts alone are sufficient to support that (1) the employees acted negligently and (2) Carnival may be vicariously liable for its employees' negligent actions. *Yusko*, 4 F.4th at 1167.

Id. (quoting *Mclean*, 2023 WL 372061, at *3) (record citations omitted).

Plaintiff proceeds to cite those paragraphs of the FAC which lists the crewmembers' alleged acts and/or omissions. *Id.* at 15 (citing [ECF No. 15, ¶¶ 10, 34(c)–(g), 42(b)–(d)]). These paragraphs include allegations that Defendant's employees "had attempted to push/hammer [the subject strip/ moulding/ ledge/ grading] back down to its proper position but had done so negligently and improperly," allowed the "raised, uneven, and protruding strip/ moulding/ ledge/ grading above the deck surface thus creating a trip hazard[,]" and failed to: (1) "properly supervise and control passenger use of the deck area[;]" (2) "inspect, maintain, and monitor the deck area[;]" (3) "inspect, maintain, and monitor the raised, uneven, and protruding strip/ moulding/ ledge/ grading which made the deck unsafe[;]" and (4) "properly repair/replace the raised, uneven, and protruding strip/ moulding/ ledge/ grading despite the fact that the condition had existed for a sufficient period of time as evinced by dings and dents on the strip/ moulding/ ledge/ grading" which rendered the deck unsafe. *Id.* (citing [ECF No. 15, ¶¶ 10, 34(c)–(g)]).

Plaintiff also alleges that these employees failed to warn her of "a raised, uneven, and protruding strip/ moulding/ ledge/ grading above the deck surface" thus creating "a hidden, non-obvious trip hazard" "which Defendant had knowledge of and was on notice of" and "which, in the exercise of reasonable care, Defendant should have had knowledge of and was on notice of." *Id.* (citing [ECF No. 15, ¶¶ 42(b)–(d)]).

In its reply, Carnival states that:

> **Taking Plaintiff's assertion to its logical conclusion would mean that "any claim could theoretically be one for vicarious liability, because a company can only act through its employees."** *Manzy v. Carnival Corp.*, No. 24-22357-CIV-DAMIAN, 2024 U.S. Dist. LEXIS 181053, at *7 (S.D. Fla. Oct. 3, 2024). Here, Plaintiff has identified potentially dozens, if not hundreds, of crewmembers whose negligence caused Plaintiff's alleged injuries. As such, Plaintiff's vicarious liability claims are improperly pled. If this Honorable Court were to rule Plaintiff's vicarious liability claims were properly pled, then the notice requirement in personal injury lawsuits against cruise ships that the Eleventh Circuit that [sic] has continued to affirm would effectively be diminished. *See, e.g., Patton v. Carnival Corp.*, 2024 U.S. App. LEXIS 10441, 2024 WL 1886504 (11th Cir. Apr. 30, 2024).

[ECF No. 24, p. 8 (emphasis added)].

Carnival relies heavily on *Manzy* and (as noted above) filed a separate notice of supplemental authority [ECF No. 25] citing *Manzy*.

In *Manzy*, "this Court conclude[d] that [the] [plaintiff's] allegation that 'Carnival employees working at the Limelight Lounge' were responsible for her injuries [was] not sufficiently specific to sustain a vicarious liability claim." 2024 U.S. Dist. LEXIS 181053, *8–9. The *Manzy* Court noted that:

> In other examples where courts in this District found plaintiffs had successfully pled a vicarious liability claim, **those plaintiffs identified a single responsible employee, even if not by name**. *See Hunter v. Carnival Corp.*, 609 F. Supp. 3d 1305, 1309-12 (S.D. Fla. 2022) (Altonaga, J.) (claim based on specific cabin steward's failure to secure bunk bed ladder); *Swain v. Carnival Corp.*, 23-22973-CIV, 2024 U.S. Dist. LEXIS 23994, 2024 WL 552196, at *3 (S.D. Fla. Feb. 12, 2024) (Scola, J.) (allegation that "one Carnival security guard in particular was nearby, throughout the entirety of the encounter and failed to intervene in the attack"). **This is consistent with *Yusko* itself, wherein a single allegedly negligent dancer was pled to have caused the plaintiff's injuries**.

Id. at *7 (emphasis added).

The *Manzy* Court further noted that "[the plaintiff's] claim 'involve[d] the conduct of multiple individual agents of the principal, not identifiable to the plaintiff at the outset of the case[,]' and therefore [was] exactly the sort of claim that must be brought under a theory of direct liability." *Id.* at *7–8 (quoting *Mathis v. Classica Cruise Operator Ltd. Inc.*, Case No. 23-CV-81479, 2024 WL 1430508, at *5 (S.D. Fla. Apr. 1, 2024)).

Carnival states that "[its] main contention is that Plaintiff is required to plead 'sufficient facts to identifying [sic] a specific employee or groups of employees who were allegedly responsible for her injury." [ECF No. 24, p. 8 (citing *Manzy*, 2024 U.S. Dist. LEXIS 181053, at *6)]. According to Carnival:

> Plaintiff, like the plaintiff in *Manzy*, "has not plausibly pled a vicarious liability claim by simply identifying that there were possibly a group of employees" from the hotel department, housekeeping department, dining room department, and/or maintenance/repair department working in the aft Deck 10 area where Plaintiff alleges[ ] she was injured. *Manzy*, 2024 U.S. Dist. LEXIS 181053, at *8. As such, Plaintiff's allegations that Carnival's crewmembers working in the subject area who were allegedly responsible for her injuries is not sufficient specific [sic] to sustain her vicarious liability

> claims. Therefore, Counts III and IV of [the FAC] Complaint should be dismissed with prejudice.

Id. at 10.

"To establish a shipowner's vicarious liability in a maritime-tort case, a plaintiff must show that a tortfeasor employee committed 'negligent acts . . . within the scope of employment.'" *Mitchell v. Carnival Corp.*, No. 24-CV-23407, 2024 WL 4818486, at *3 (S.D. Fla. Nov. 18, 2024) (quoting *Branyon*, 2024 WL 3103313, at *4).

In *Manzy*, the Court determined that "[the plaintiff's] claim 'involve[d] the conduct of multiple individual agents of the principal, not identifiable to the plaintiff at the outset of the case[,]' and therefore [was] exactly the sort of claim that must be brought under a theory of direct liability." 2024 U.S. Dist. LEXIS 181053, *7–8. But, as Judge Altman noted in *Branyon,* there is a disagreement among the courts on whether *Yusko* forecloses vicarious liability claims for negligent maintenance and failure to warn:

> To the extent Carnival is arguing that "*Yusko* . . . preclude[s] vicarious liability claims for negligent maintenance and negligent failure to warn," we reject its interpretation and respectfully disagree with our colleagues' decisions in *Britt* [*v. Carnival Corp.*, 580 F. Supp. 3d 1211 (S.D. Fla. 2021) (Moore, J.)] and *Worley* [*v. Carnival Corp.*, No. 21-23501-CIV, 2022 WL 845467, at *1 (S.D. Fla. Mar. 22, 2022) (Moreno, J.)]. **Far from implying that a plaintiff is barred from asserting negligent-maintenance or negligent failure-to-warn claims under a theory of vicarious liability, *Yusko* made clear that a "plaintiff is the master of his or her complaint and may choose to proceed under a theory of direct liability, *vicarious liability*, or both."** *Yusko*[, 4 F.4th at 1170] (emphasis added). The *Yusko* Court even added that, "in some cases [alleging negligent failure to warn or failure to maintain], it will be easier for a passenger to proceed under a theory of vicarious liability than under one of direct liability[.]" *Ibid.*

And *most* courts in our District have interpreted *Yusko*, not as foreclosing vicarious-liability negligence claims, but as "recognizing that a plaintiff will not always be able to plead a vicarious liability claim plausibly and in good faith." *Hunter*[, 609 F. Supp. 3d at 1310]; *see also ibid.* ("[J]ust as *Yusko* permits, [p]laintiff has asserted both direct and vicarious liability claims against [d]efendant here. [The] [p]laintiff may or may not be able to prove the cabin steward's negligence in the end. But [the] [p]laintiff is certainly allowed to allege that the cabin steward negligently set up [the] [p]laintiff's cabin and that [the] [d]efendant is vicariously liable as a result."); *Green*[, 614 F. Supp. 3d at 1267 n.6] ("To the extent that [d]efendant appears to argue that . . . *Yusko* established that 'claims for negligent maintenance and failure to warn are limited to a theory of direct liability,' the [c]ourt disagrees . . . . *Yusko* did not limit negligent maintenance and failure to warn claims as theories of direct liability in all circumstances."); *Mathis* [ ], 2024 WL 1430508, at *6 [ ] ("The [c]ourt does not interpret [*Yusko*] to impose the blanket ban that [the] [d]efendant suggests. Rather, the language simply acknowledges that in many cases passengers will seek to hold the principal liable for maintaining dangerous premises . . . . **The language does not foreclose the possibility that plaintiffs in other cases might hold the principal liable under a theory of vicarious liability based on the conduct of specific agents of the principal who were responsible for the tort.**"); *Davis v. Carnival Corp.*, [No. 22-CV-24109] 2023 WL 5955700, at *3 (S.D. Fla. July 31, 2023) (Reid, Mag. J.) (rejecting Carnival's interpretation of *Yusko* and holding that, while the plaintiff "may be unable to prove the crewmembers' negligence" at trial, "she must nonetheless be allowed to assert a vicarious liability claim against Carnival" at the pleading stage). We likewise find that *Yusko* does not bar a plaintiff from asserting negligent-maintenance or failure-to-warn claims under a theory of vicarious liability.

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As many of our colleagues have explained, a plaintiff is "entitled to plead [vicarious-liability] claims in the alternative" to her direct-liability claims for negligent maintenance or negligent failure to warn. *See Benson v. Carnival Corp.*, 2024 WL 964235, at *4 (S.D. Fla. Mar. 6, 2024) (Scola, J.); *see also Hostert v. Carnival Corp.*, 2022 WL 22393202, *3 (S.D. Fla. Aug. 10, 2022) (Graham, J.) (same); *Coletti v. Carnival Corp.*, [No. 23-CV-23275,] 2024 WL 580355, at *3 (S.D. Fla. Feb. 13, 2024) (Bloom, J.) ("Consistent with *Yusko*, [p]laintiff alleges negligent maintenance (Count IV), negligent failure to correct (Count V), and negligent failure to warn (Count VI) claims under

> both theories [of liability]. ***Yusko* accordingly provides no support for dismissing Counts IV–VI simply because the [c]omplaint also alleges those claims based on a theory of vicarious liability**." (cleaned up)). In any event, vicarious-liability claims and direct-liability claims aren't duplicative of one another. In direct-liability claims, after all, the plaintiff must show that the defendant had notice of the dangerous condition—a requirement that same plaintiff doesn't have to prove in her vicarious-liability claim. *See*, *e.g.*, *Green*, 614 F. Supp. 3d at 1266 ("[The] [p]laintiffs are generally not required to allege actual or constructive notice of the danger to assert claims of vicarious liability.").

Branyon, 2024 WL 3103313, at *4–5 (record citation and footnote omitted; italics emphasis in original; bold emphasis added).

In *Mitchell*, Judge Altman determined that the plaintiff's allegations concerning "the employees in Carnival's New Build and Refurbishment Departments charged with the design of the [vessel's] floors" were sufficient. 2024 WL 4818486, at *5. In doing so, he explained:

> **Mitchell doesn't need to identify a specific crewmember in her vicarious-liability claim**. *See Mclean*, 2023 WL 372061, at *3 ("While the [p]laintiff does not specifically name the crewmembers, there is no requirement in the law that she do so, and it would seem fundamentally unfair to require the [p]laintiff to remember the names of each of the crewmembers involved in the incident simply to file a complaint. There were, undoubtedly, specific crewmembers involved in the incident that the [p]laintiff alleges."); *Hunter*, 609 F. Supp. 3d at 1311 n.3 ("[The] [d]efendant argues . . . that the [a]mended [c]omplaint does not adequately identify the crewmember whose alleged negligence would make [the] [d]efendant liable . . . . This argument is . . . unpersuasive . . . . Additionally, the [a]mended [c]omplaint identifies the allegedly negligent employee by his or her position (cabin steward), cabin assignment (cabin 3104), and conduct (placing the ladder on the short end of the bunkbed); and alleges that these facts will easily enable [the] [d]efendant to identify the employee during discovery . . . . These allegations suffice.")); *Branyon*, 2024 WL 3103313, at *5 ("At this stage of the case, then, we see no reason to preclude the [p]laintiff from proceeding with

> her theory that Carnival is vicariously liable for the negligent acts and omissions of an identified crewmember employee, a photographer's assistant whose negligence contributed to Ms. Branyon's trip and fall." (cleaned up)). **And, as we've seen, Mitchell's allegations are nothing like "Holland['s] [attempt to] . . . avoid pleading the elements necessary to allege Carnival's direct liability for negligent maintenance and failure to warn by titling his claims as claims for vicarious liability and asserting in a conclusory allegation that Carnival was vicariously liable for *any* negligent action by *any* of its crewmembers."** *Holland*, 50 F.4th at 1097 (emphases added). **If, by summary judgment, *Mitchell* has *still* failed to identify the specific crewmembers who were (allegedly) responsible for the (supposedly) faulty floor design, Carnival will be able to reraise this issue at that time**.

Id. (italics emphasis in *Mitchell*; bold emphasis added).

In *Coletti* this Court found that the plaintiff had sufficiently pled vicarious liability claims against Carnival. 2024 WL 580355, at *6. In discussing the complaint's description of the negligent employees, the Court noted:

> **Counts IV – VI also identify specific employees, namely, Defendant's employees assigned to maintain, monitor, or warn passengers of hazards in the particular area of the Deck 9 where [the] [p]laintiff slipped and fell**. Each Count alleges that those employees were negligent in several ways. For example, Count IV alleges that the **employees assigned to the particular area of the Deck 9** were negligent by "[f]ailing to maintain the floor surface of the interior deck where [the] [p]laintiff slipped and fell[,]" to timely "remove, cordon off, or otherwise ameliorate the hazard[,]" to "prevent wet, slippery, transitory, and/or foreign substances from accumulating on the interior area of Deck 9[,]" to "inspect, clean, and/or maintain the floor surface of the interior area of Deck 9 . . . where [the] [p]laintiff slipped[,]" and "to conduct frequent, timely, or adequate inspections of the area[.]" Counts V and VI similarly allege several ways in which those employees breached their respective duties of reasonable care.
>
> **[The] [p]laintiff thus identifies specific employees by virtue of their alleged assignment to the particular area where he fell** and alleges several ways in which those employees breached their respective duties of

> reasonable care. Defendant provides no support for its position that Counts IV – VI must be dismissed for failing to identify those employees with greater specificity. **For his part, [the] [p]laintiff provides case law supporting his position that describing the employee or employees in question by their role or task so that Defendant may identify them from its records is sufficient**. *See*, *e.g.*, *Mclean*[, 2023 WL 372061, *1]; *Davis*[, 2023 WL 5955700]; and *Hunter*[, 609 F. Supp. 3d at 1307].

Id. (emphasis added).

The Undersigned similarly concludes that, at this preliminary stage in the proceedings, Plaintiff has sufficiently identified the allegedly negligent employees through their roles or tasks and thus "has done enough to get to discovery on her vicarious-liability [claims]." *Id.* at *3; *see also Mathis*, 2024 WL 3616006, at *4 ("Whether [the] [p]laintiff can produce evidence that independently supports a cause of action related to the individual crewmember's negligence is a question better reserved for summary judgment."); *Haggerty v. Carnival Corp.*, No. 1:24-CV-20367, 2024 WL 3415789, at *11 (S.D. Fla. June 25, 2024) (Goodman, Mag. J.), *report and recommendation adopted*, No. 24-20367-CV, 2024 WL 3411641 (S.D. Fla. July 15, 2024) (Williams, J.) ("Haggerty will need to pinpoint evidence sufficient to establish that Carnival's employees negligently designed the ship or negligently approved of the design in order to avoid an adverse summary judgment ruling or trial verdict. But, for pleadings purposes, these allegations are sufficient.").

Accordingly, the Undersigned **respectfully recommends** that Judge Williams **deny** Carnival's motion to the extent it seeks to dismiss Plaintiff's vicarious liability

claims (Counts III and IV) on the ground that they do not more specifically identify the subject employees.

IV. Conclusion

The Undersigned **respectfully recommends** that Judge Williams **grant in part and deny in part** Carnival's motion to dismiss. Specifically, Judge Williams should **dismiss** the FAC as a shotgun pleading, albeit **without prejudice** and **with leave to amend**. But the Court should **deny** the dismissal motion to the extent it argues that Plaintiff has failed to plead constructive notice and vicarious liability.

Assuming she files a second amended complaint ("SAC"), Plaintiff should separate her negligence claims into separate counts, to avoid the shotgun pleading argument. *See Kercher*, 2019 WL 1723565, at *1. The Undersigned **respectfully recommends** that Plaintiff be **afforded leave** to file a SAC.

V. Objections

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with the District Judge. Each party may file a response to the other party's objection within fourteen (14) days of the objection. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of

justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED in Chambers, in Miami, Florida, December 9, 2024.

Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable Kathleen M. Williams
All Counsel of Record