UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:19-cv-24442-JLK

KATHRYN BAKER,

Plaintiff,

v.

NCL AMERICA, LLC, d/b/a
NCL AMERICA, NCL AMERICA Inc. and
NORWEGIAN CRUISE LINE;
NCL (BAHAMAS) LTD
d/b/a NORWEGIAN CRUISE LINE,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

THIS CAUSE comes before the Court on Defendants' Motion to Dismiss (the "Motion") (DE 13), filed on December 2, 2019. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants NCL America and NCL Bahamas (collectively "Norwegian") seek dismissal of Plaintiff's Complaint. The Court has carefully considered the Motion, Plaintiff's Response (DE 15), Norwegian's Reply (DE 17), and is otherwise fully advised in the premises.

I. BACKGROUND

As background, this case arises from a slip-and-fall on a Norwegian cruise.[1] (*See generally* Compl., DE 1). Plaintiff Kathryn Baker, a passenger aboard the *Norwegian Pride of America*, slipped and fell on a large puddle of water while walking on Deck 11 of the ship, injuring her right ankle and tearing a ligament in her right shoulder. (*See id.* ¶¶ 16, 22). Plaintiff alleges that she

[1] The factual allegations of the Complaint (DE 1) are construed in the light most favorable to the Plaintiff and are accepted as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

"noticed a crew member nearby . . . [but] that crew member did not come over to help [her] after the slip and fall. Instead, Ms. Baker called to the crew member to radio for help." (*Id.* ¶ 17).

Plaintiff filed this negligence action against Norwegian on October 28, 2019, alleging: (1) negligent failure to maintain (Count I); (2) negligent failure to provide a reasonably safe ship (Count II); (3) negligent failure to warn (Count III); (4) negligent training of personnel (Count IV); (5) negligent supervision of personnel (Count V); and (6) negligent design, construction and selection of materials (Count VI). (*See id.*). Norwegian now moves to dismiss the Complaint in its entirety. (*See* Mot. Dismiss at 9). In the Motion to Dismiss, Norwegian argues that Plaintiff has failed to allege sufficient facts to state a claim for relief that is plausible on its face. (*See id.*).

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (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.* A complaint must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

III. DISCUSSION

Norwegian advances several arguments in the Motion, including that (a) Plaintiff's Complaint is an impermissible shotgun pleading; (b) the Complaint fails to allege specific facts establishing Norwegian's actual or constructive notice of the dangerous condition; (c) the Complaint seeks to impose a higher standard of care on Norwegian than the duty of "reasonable care under the circumstances" required by maritime law; (d) the negligent training and supervision

claims are unsupported by specific factual allegations; and (e) the Complaint fails to state a claim for negligence *per se*. (*See generally* Mot. Dismiss).

After careful consideration, the Court finds that the Motion to Dismiss should be granted. As Norwegian correctly asserts, a plaintiff must establish that a defendant shipowner had actual or constructive notice of the dangerous condition to sustain a negligence action under maritime law. *See Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). Here, however, the Complaint fails to articulate specific facts showing that Norwegian had actual or constructive notice of the "large puddle of water" that allegedly formed on Deck 11 of the *Pride of America* when Plaintiff slipped and fell. For instance, the Complaint alleges that Norwegian knew (or should have known) of the dangerous condition because, among other things, Norwegian "cleans this floor regularly and knows from that cleaning/mopping that the floor becomes frequently, if not repetitively wet or contaminated by slick conditions." (Compl. ¶ 19). The Complaint also alleges that Norwegian "knows from prior slip and fall incidents on Deck 11 and on floors similar to the flooring on which Kathryn Baker fell that the flooring becomes dangerously slick when wet and causes people to fall." (*Id.*). Additionally, regarding the negligent supervision claim, the Complaint alleges that Norwegian "should have become aware that [its] crew member(s) were failing to properly warn passengers of the dangerously slippery conditions . . . given that the dangerous condition existed for an extend[ed] period of time without a crew member tending to the dangerous condition or appropriately warning passengers of the dangerous condition." (*Id.* ¶ 81). These are conclusory allegations, not allegations of fact. *See, e.g.*, *Polanco v. Carnival Corp.*, Case No.: 10-21716-CIV-JORDAN, 2010 U.S. Dist. LEXIS 150857, at *7 (S.D. Fla. Aug. 11, 2010).

Therefore, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion to Dismiss **(DE 13)** be, and the same hereby is, **GRANTED**. Plaintiff's Complaint (DE 1) be, and the same hereby is, **DISMISSED**.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 24th day of January, 2020.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record