UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:22-cv-21386-KMM

MILIGZA RIVERA,

Plaintiff,

v.

MSC CRUISES, S.A.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant MSC Cruises, S.A.'s Motion to Dismiss Plaintiff's First Amended Complaint ("Mot.") (ECF No. 13). Plaintiff filed a response ("Resp.") (ECF No. 15), and Defendant filed a Reply (ECF No. 18). For the reasons set forth below, the Court GRANTS Defendant's Motion and dismisses Plaintiff's First Amended Complaint (ECF No. 11) without prejudice.

I. BACKGROUND[1]

This case arises under the Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332 and under the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. Compl. ¶¶ 2–3. Plaintiff is a citizen and resident of Florida. *Id.* ¶ 1. Defendant is a foreign corporation with its corporate headquarters and principal place of business in Florida. *Id.* ¶ 6. Plaintiff alleges that the amount in controversy in this maritime personal injury case exceeds $75,000. *Id.* ¶ 3.

Plaintiff alleges that she was a fare-paying passenger aboard the MSC Divina, a cruise ship owned and/or operated by Defendant. *Id.* ¶ 13. On October 31, 2022, Plaintiff claims she slipped

[1] The following facts are taken from the First Amended Complaint ("Compl.") (ECF No. 11) and accepted as true for purposes of ruling on the Motion to Dismiss. *MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1302 (11th Cir. 2022).

"on a foreign transitory liquid substance" and hit her head on the floor while "walking in the vicinity of the Black and White Club on Deck 7." *Id.* ¶ 13. Plaintiff also claims that Defendant "failed to diagnose Plaintiff's serious brain injuries despite the fact that Plaintiff told Defendant's medical staff that she fell on her head." *Id*. Plaintiff lists ten (or more)[2] potential conditions that may have contributed to her fall:

a. The floor Plaintiff slipped on was contaminated with a foreign liquid substance; and
b. The floor Plaintiff slipped on was unreasonably slippery; and
c. The floor Plaintiff slipped on was poorly maintained such that it was unreasonably slippery; and
d. The floor Plaintiff slipped on lacked adequate slip resistant material; and
e. The floor Plaintiff slipped on was uneven and not uniform in dimensions; and
f. The visual condition of the floor was such that it was difficult for Plaintiff to decern [sic] that it was slippery prior to Plaintiff's fall; and
g. There were no adequate handrails in the subject area; and
h. There was either non-existent drainage for the subject floor or any such drainage was not reasonably draining liquid from the subject area at the time of Plaintiff's incident; and
i. There was inadequate lighting in the area; and
j. There were no adequate warnings in the subject area.[3]

[2] The list is premised with the following statement: "The dangerous and/or risk creating conditions include, *but are not limited to*, the following conditions present on the date of Plaintiff's incident." Compl. ¶ 14 (emphasis added). Plaintiff also states that "if a dangerous condition was either inadvertently omitted, or is discovered in the course of discovery, the non-inclusion of such a dangerous condition in this list shall not prevent Plaintiff from raising the dangerous condition in a subsequent stage of litigation." *Id.* at n.2.

[3] Plaintiff defines the "subject area" as including, but not limited to, "the floor/deck and surfaces thereof, and all material and effects pertaining thereto, including any anti-slip/skid material that was applied or that should have been applied, the lighting in the subject area, drains that were or should have been in the area to reduce the amount of liquid in the area, any sources of liquid in the subject area and/or the sources of the liquid involved in Plaintiff's incident, the area and surface's design and/or visual condition, and/or any other applied and/or adhesive material." Compl. ¶ 10.

Id. ¶ 14. According to Plaintiff, "each of these dangerous conditions alone was sufficient to cause [her] incident and injuries," and Plaintiff alleges Defendant "was negligent as to each of these conditions." *Id.*

On June 10, 2022, Plaintiff filed her First Amended Complaint, alleging nine claims: negligent failure to warn (Count I); negligent design, installation and/or approval (Count II); negligence against Defendant for the acts of its crewmembers based on vicarious liability (Count III); negligent failure to inspect (Count IV); negligent failure to maintain (Count V); negligent failure to remedy (Count VI); vicarious liability for the negligence of the ship's medical staff (Count VII); apparent agency for the acts of the ship's medical staff (Count VIII); and assumption of duty for the negligence of the ship's medical staff (Count IX). *See generally* Compl.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires a plaintiff to plead "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. Certain pleadings in violation of that rule may be subject to dismissal as "shotgun pleadings." *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1357 (11th Cir. 2018) ("[W]e have condemned shotgun pleadings time and again, and . . . we have repeatedly held that a District Court retains authority to dismiss a shotgun pleading on that basis alone."). The Eleventh Circuit has identified four categories of shotgun pleadings, the second of which being "a complaint that . . . is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321–23 (11th Cir. 2015). The unifying factor in all shotgun pleadings, however, is their failure "to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323.

In turn, Federal Rule of Civil Procedure 12(b)(6) provides that a court may dismiss a complaint for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

III. DISCUSSION

Plaintiff's Complaint clearly violates the second *Weiland* category. To state a claim for maritime negligence, Plaintiff must allege that (1) Defendant had a duty to protect her from injury; (2) Defendant breached that duty; (3) the breach proximately caused Plaintiff's injury; and (4) Plaintiff suffered harm as a result. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). Yet here, Plaintiff does not purport to isolate a single breach or causal connection leading to liability; just as Defendant describes, "Plaintiff listed a litany of conditions that *purportedly* existed at the time of the incident, but without ever alleging *which condition or conditions caused her to fall.*" Reply at 2 (emphasis added). To wit, Paragraph 14 of the

Complaint lists ten (or more) separate potential breaches, any one of which *could have* caused Plaintiff's injuries, without alleging which actually *did* cause Plaintiff's injuries. *See* Compl. ¶ 14. Nor are those breaches limited to a particular area. Paragraph 10 of the Complaint gives an expansive (and similarly unconstrained) definition of the "subject area" which leaves the reader guessing just how Plaintiff's fall occurred. *See id.* ¶ 10.

The ambiguity in the conditions surrounding Plaintiff's fall becomes especially problematic when applying those conditions to Plaintiff's claims. For instance, Count I of Plaintiff's Complaint alleges negligent failure to warn of dangerous conditions. *Id.* ¶¶ 32–44. Therein, Plaintiff states that Defendant breached its duty of care to her by "failing to warn [her] of the dangerous conditions discussed in paragraph 14," without specifying *which* dangerous condition (or subset thereof) "proximately caused Plaintiff great bodily harm." *See id.* Defendant is therefore left to wonder which of the ten (or more) conditions it actually failed to warn Plaintiff of. In a similar vein, Count II of the Complaint alleges negligent design of the "subject area." *Id.* ¶¶ 45–62. Here, Plaintiff alleges Defendant permitted "dangerous design defects" "such as those discussed in paragraph 14(b–i)," and that the defects "made the subject area"—though unclear which part of that multi-faceted definition is at issue—"unreasonably dangerous." *See id.* By failing to specify which defect relates to each count (or indeed, which defects Plaintiff actually alleges to have caused her fall), all the conditions listed are rendered "conclusory, vague, and immaterial facts not obviously connected" to any cause of action. *See* 792 F.3d at 1321.

At bottom, Plaintiff's Complaint reflects some of the policy rationales underlying this Circuit's "thirty-year salvo of criticism aimed at shotgun pleadings." *Id*. Shotgun pleadings are not merely violative of Rule 8(a)(2). They also "waste scarce judicial resources [and] inexorably broaden the scope of discovery." *Vibe Micro*, 878 F.3d at 1295 (citations and annotations omitted).

And here, intentionally or otherwise, Plaintiff's Complaint leaves the door open for any number of circumstantial combinations which led to her fall. On one hand, Plaintiff's injuries could have been caused by poor maintenance of the surface in combination with poor lighting; yet on the other hand, they may have been the result of inadequate drainage combined with an improperly constructed floor. *See* Compl. ¶¶ 10–14. The issue is not that either of those pairings, in and of itself, fails to meet Rule 8(a)(2). It is that the breadth of Plaintiff's allegations forces Defendant to *guess* which pairing is genuinely at issue. But a complaint is not meant to initiate a game of Clue[4]; it is intended to "give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *See Weiland*, 792 F.3d at 1321. Plaintiff's Complaint fails to do so in a manner that creates an unnecessary discovery burden on Defendants. The Complaint is therefore subject to dismissal.

IV. CONCLUSION

UPON CONSIDERATION of the Motions, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss (ECF No. 13) is GRANTED. Plaintiff's First Amended Complaint (ECF No. 11) is DISMISSED WITHOUT PREJUDICE.

DONE AND ORDERED in Chambers at Miami, Florida this 18th day of November, 2022.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record

[4] I.e., it was either Colonel Mustard in the Billiard Room with the knife, or Mr. Green in the Conservatory with the lead pipe. *See Clue* [Board game]. (1949). Parker Brothers.