UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 24-cv-60277-DAMIAN

KEVIN CHENAULT,

Plaintiff,

v.

SEABULK VESSEL MANAGEMENT, *et al.*,

Defendants.

_____/

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [ECF NO. 19]

THIS CAUSE is before the Court on Defendants, Seabulk Vessel Management, Seabulk Logistics Services, LLC, Seabulk Marine Services, Inc., Seabulk Tankers, Inc., Seabulk Operators, Inc., Seabulk Transmarine II, Inc., Seabulk Offshore Operators, SEACOR Container Lines, LLC, SEACOR Holdings, Inc., United Ocean Services, Inc., and US United Ocean Services, LLC's (collectively, "Defendants"), Motion to Dismiss Plaintiff, Kevin Chenault's, Complaint, and Incorporated Memorandum of Law, filed March 25, 2024. [ECF No. 19 (the "Motion to Dismiss")].

THE COURT has considered the Motion to Dismiss, the Parties' memoranda [ECF Nos. 26 and 27], the pertinent portions of the record, and all relevant authorities and is otherwise fully advised in the premises. For the reasons that follow, the Court grants the Motion to Dismiss.

I. BACKGROUND

Plaintiff alleges that he was injured on February 17, 2021, while employed as a seafarer aboard the vessel *M/V Texas Enterprise*, when painting the hull of that vessel while suspended

in a harness. [ECF No. 1 (the "Complaint") at ¶ 57–59]. He alleges he sustained "serious injuries to his lower back and right hip[]" as a result of negligence and the unseaworthiness of the vessel. *Id.* ¶ 59.

Plaintiff filed the Complaint on February 16, 2024, and asserts three causes of action: (1) Jones Act negligence; (2) unseaworthiness; and (3) maintenance and cure. In the Motion to Dismiss now before the Court, Defendants[1] assert Plaintiff's Complaint should be dismissed because it fails to sufficiently allege facts supporting the three causes of action and is an improper shotgun pleading. *See* Motion to Dismiss.

II. LEGAL STANDARD

A. Federal Rule of Civil Procedure 8(a)

At the pleading stage, a complaint must contain "a short and plain statement of the claim showing the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). This pleading requirement serves to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Although Rule 8(a) does not require "detailed factual allegations," it does require "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action" will not suffice. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, a complaint's "factual allegations must be enough to raise a right to relief above the speculative level," *id.*, and must be sufficient "to state a claim for relief that is plausible on its face," *id.* at 570. A plaintiff makes a facially plausible

[1] All Defendants in the lawsuit joined in the Motion to Dismiss except for Does 1 through 10. Plaintiff sued Does 1 through 10 "by such fictitious names" because he "does not know the[ir] true names and capacities" and asserts he "will amend [his] Complaint to set forth the true names and capacities of these Defendants when ascertained, along with appropriate charging allegations." Compl. ¶ 49.

claim when she "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

B. Federal Rule of Civil Procedure 12(b)(6)

Rule 12(b)(6) provides that a defendant may move to dismiss a complaint that does not satisfy the applicable pleading requirements for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In considering a Rule 12(b)(6) motion to dismiss, the court's review is generally "limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (quoting *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir. 2002)). The Court must review the complaint in the light most favorable to the plaintiff, and it must generally accept the plaintiff's well-pleaded facts as true. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, pleadings that "are no more than conclusions[] are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft*, 556 U.S. at 679. Dismissal pursuant to a Rule 12(b)(6) motion is warranted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint." *Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp.*, 208 F.3d 1308, 1310 (11th Cir. 2000) (internal quotation marks omitted) (quoting *Hishon*, 467 U.S. at 73).

C. Shotgun Pleading

A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2) or 10(b)—or both. *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). Whereas Rule 8(a)(2) requires the complaint to provide "a short and plain

statement of the claim showing that the pleader is entitled to relief," Rule 10(b) requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). "If doing so would promote clarity," Rule 10(b) also mandates that "each claim founded on a separate transaction or occurrence . . . be stated in a separate count." *Id.* The "self-evident" purpose of these rules is "to require the pleader to present his claims discretely and succinctly, so that[] his adversary can discern what he is claiming and frame a responsive pleading." *Weiland*, 792 F.3d at 1320 (quoting *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1544 n.14 (11th Cir. 1985) (Tjoflat, J., dissenting)). These rules were also written for the benefit of the court, which must be able to determine "which facts support which claims," "whether the plaintiff has stated any claims upon which relief can be granted," and whether the evidence introduced at trial is relevant. *Id.* (quoting *T.D.S. Inc.*, 760 F.2d at 1544 n.14 (Tjoflat, J., dissenting)).

Shotgun pleadings "are flatly forbidden by the [spirit], if not the [letter], of these rules" because they are "calculated to confuse the 'enemy,' and the court, so that theories for relief not provided by law and which can prejudice an opponent's case, especially before the jury, can be masked." *Id.* (alterations in original) (quoting *T.D.S. Inc.*, 760 F.2d at 1544 n.14 (Tjoflat, J., dissenting)). Besides violating the rules, shotgun pleadings also "waste scarce judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public's respect for the courts." *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018) (cleaned up) (internal quotation marks omitted). As the Eleventh Circuit has explained, it has "little tolerance" for shotgun pleadings. *Id.*

The Eleventh Circuit has identified four categories of shotgun pleadings: (1) "a complaint containing multiple counts where each count adopts the allegations of all preceding

counts;" (2) a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action"; (3) a complaint that does not separate "each cause of action or claim for relief" into a different count; and (4) a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Weiland*, 792 F.3d at 1321–23; *see also Barmapov v. Amuial*, 986 F.3d 1321, 1324–25 (11th Cir. 2021).

III. DISCUSSION

A. Failure to State a Claim

Defendants first challenge the sufficiency of the allegations in the Complaint by arguing that "Plaintiff has failed to allege a sufficient factual basis to support his claims for negligence, unseaworthiness, and maintenance and cure[]," and thus has failed to state a claim. Mot. at 4. Defendants argue that the only factual allegation in the Complaint is alleged at paragraph 59, and even that "lacks any meaningful factual allegations from which any negligence or unseaworthiness could actually be inferred." *Id.* According to Defendants, "one could imagine numerous scenarios from which Plaintiff's alleged injuries might arise without any negligence or unseaworthiness at all." *Id.*

In response, Plaintiff contends "[t]he Complaint contains sufficient factual allegations, *giving notice to each individually named defendant*, that Plaintiff is seeking relief under the Jones Act 46 U.S.C. §30104 (Count 1), and the General Maritime Law doctrines of Unseaworthiness (Count 2) and Maintenance and Cure (Count 3)." Resp. at 3 (emphasis in original). Plaintiff also recites the legal standards for his causes of action and points to paragraph 81 of the Complaint, which, according to Plaintiff, "enumerate[s] 16 reasons why

the vessel was unseaworthy, causing the Plaintiff's incident and subsequent injuries." *Id.* at 15. In their Reply, Defendants aver that the "Complaint may assert generalized legal theories or conclusions, but it omits critical factual allegations." Reply at 2.

Defendants' arguments are well-taken. A review of the Complaint reveals that Plaintiff provides no factual basis upon which to understand what happened during the incident in question, let alone to support a finding that the incident was the result of the Defendants' acts or omissions. In the sole paragraph of the Complaint that describes the incident, Plaintiff alleges:

> On February 17, 2021, Plaintiff was required to paint the hull of the vessel, suspended over a harness. Due the hazardous nature of the activity, and as result of the negligence of Plaintiff's employers and the unseaworthiness of the M/V TEXAS ENTERPRISE, Plaintiff sustained serious injuries to his lower back and right hip. Said injuries were directly and proximately caused by the negligence of Defendants and the unseaworthiness of the M/V TEXAS ENTERPRISE.

Compl. at ¶ 59.

The Court agrees that these allegations "do not explain what was hazardous or negligent about asking Plaintiff to perform a basic work task[.]" Reply at 4. Notably, in his Response to the Motion to Dismiss, Plaintiff does not point to any factual support that was overlooked by Defendants. Plaintiff's argument that he provides notice of the *legal theories* in his Complaint is of no consequence. Plaintiff must provide notice of the *facts* supporting his claims. *See Doe v. Carnival Corp.*, 470 F. Supp. 3d 1317, 1322 (S.D. Fla. 2020) (Ungaro, J.) ("While the Court must consider the allegations contained in the plaintiff's complaint as true, this rule 'is inapplicable to legal conclusions.' . . . the complaint's allegations must include

'more than an unadorned, the-defendant-unlawfully-harmed-me accusation.'") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Here, Count I vaguely attributes Plaintiff's injuries to "the hazardous nature of the activity, . . . the negligence of Plaintiff's employers and the unseaworthiness of the M/V TEXAS ENTERPRISE[.]" Compl. at ¶ 59. This tells the Defendants almost nothing about what negligence is alleged to have occurred. *See Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002) (explaining that conclusory allegations and legal conclusions masquerading as facts will not prevent dismissal).

Counts II and III are no different. Count II alleges that "Plaintiff's injuries are due to the SHIPOWNER DEFENDANTS' breach of their absolute and nondelegable duty to provide a seaworthy vessel, including a nondelegable duty to provide adequate crew." Compl. at ¶ 80; *see also id.* at ¶ 83 ("As a result of the unseaworthiness of the vessel, the Plaintiff was injured suffered [sic] physical pain and suffering, mental anguish . . . aggravation of any previously existing conditions there from . . ."). This tells the Defendants almost nothing about what unseaworthiness Defendants allegedly are responsible for. Was the vessel inadequate, the crew somehow at fault, or both? Count III alleges that Defendants "willfully and callously delayed, failed and/or refused to pay Plaintiff's maintenance and refused to provide the Plaintiff the level of cure that the Plaintiff needs[.]" Compl. at ¶ 90. The Complaint fails to explain whether Defendants refused to pay maintenance, delayed in paying it, or both. It also fails to explain what the maintenance was allegedly supposed to consist of. Again, this

tells the Defendants almost nothing about what is alleged to have happened with respect to Plaintiff's maintenance and cure.

As explained above, a Complaint must give a defendant notice by "plead[ing] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Here, after a thorough review of the Complaint, the Court has cannot figure out what happened to the Plaintiff that caused his injuries and why it was allegedly Defendants' fault. Therefore, the Complaint fails to include sufficient factual allegations to support Plaintiff's causes of action and does not give Defendant adequate information to put Defendants on notice of the claims against them sufficient to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512. Dismissal of all three Counts of the Complaint for failure to state a claim is warranted.

B. Shotgun Pleading

Although the Court has already determined that dismissal is warranted pursuant to Rule 12(b)(6), the Court will also address the shotgun pleading allegations in order to assure that those issues are also corrected should Plaintiff choose to file an amended complaint.

Defendants argue that the Complaint is a shotgun pleading because (1) it combines multiple, distinct theories of liability into each claim without supporting factual allegations and (2) it includes multiple claims against multiple Defendants without specifying which of the Defendants is responsible for which acts or omissions. Mot. at 5. Plaintiff does not meaningfully address these arguments in his Response.

The Eleventh Circuit has identified four categories of shotgun pleadings: (1) "a complaint containing multiple counts where each count adopts the allegations of all preceding

counts;" (2) a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action"; (3) a complaint that does not separate "each cause of action or claim for relief" into a different count; and (4) a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Weiland*, 792 F.3d at 1321–23. Here, Defendants assert the Complaint falls into the third and fourth categories.

1. Shotgun-Style Allegations

As to the third category of shotgun pleadings, Defendants argue that "Plaintiff's Complaint is awash in differing theories of liability which must be distinguished as pled separately under [Eleventh] Circuit law." Reply at 3. The Court agrees. After dismissal of the Complaint on this basis, "the burden will remain on Plaintiff to review [his] Complaint and ensure that each factual allegation is supported by law and plausible facts, and is alleged in good faith." *Brown v. Carnival Corp.*, 202 F. Supp. 3d 1332, 1338 (S.D. Fla. 2016) (Ungaro, J.) (finding that a plaintiff's conclusory pleading of the breach of a duty with a lengthy list of alleged breaches, shotgun-style, was insufficient to state a valid negligence claim under maritime law).

Count I "epitomizes a form of 'shotgun' pleading" by alleging that Defendant owed a duty to Plaintiff "then proceed[ing] to allege at least [sixteen] ways in which Defendant breached this duty." *Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334, 1337 n.2 (S.D. Fla. 2012) (Moore, J.) (quoting *Ebrahimi v. City of Huntsville Bd. of Educ.*, 114 F.3d 162, 164 (11th Cir. 1997)). Count II appears to copy the same conclusory list as Count I, listing sixteen ways

Defendants are alleged to have "breach[ed] their absolute and nondelegable duty" to provide a seaworthy vessel. Compl. ¶ 81. Count II therefore commits an identical error.

The Complaint also contains overlapping allegations in support of each cause of action. Defendants are correct, for instance, that Plaintiff includes allegations that go toward the unseaworthiness cause of action in his negligence count, *e.g.,* Compl. at ¶ 68(d), and that Plaintiff also includes allegations that go toward the negligence cause of action in his unseaworthiness count, *e.g.,* Compl. at ¶ 81(c). Plaintiff must sort out exactly which allegations support each cause of action instead of copy-and-pasting the same lengthy list of allegations to two distinct counts.

Moreover, each theory alleging, respectively, a breach of the duty "to provide Plaintiff a safe work environment, free of hazards" and a breach of the duty "to provide a seaworthy vessel," Compl. at ¶¶ 66 and 77, must "be asserted independently and with supporting factual allegations." *Kercher v. Carnival Corp.*, No. CV 19-21467-CIV, 2019 WL 1723565, at *1 (S.D. Fla. Apr. 18, 2019) (Scola, J.). As discussed above, the Court is able to discern few supporting factual allegations that would back these theories amongst the jumble of legally conclusory allegations.

In sum, because Plaintiff offers only "vague and conclusory factual allegations in an effort to support a multiplicity of . . . claims [,]" *Ebrahimi*, 114 F.3d at 164, Counts I and II of the Complaint must be dismissed as a shotgun pleading.

2. Asserting Claims Against Multiple Defendants

Defendants also contend the Complaint makes no effort to separate out what conduct was allegedly committed by which Defendant, arguing it thereby qualifies as a shotgun pleading under the fourth category. A plaintiff may plead claims against multiple defendants

by referring to them collectively, for example, by referring to a group of defendants as "defendants." *See Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997). These collective allegations are construed as pertaining to each defendant individually. *Id.* However, this type of pleading can still run afoul of the applicable pleading standard when the collective allegations deny a defendant notice of the specific claims against him or her. *See 1-800-411-I.P. Holdings, LLC v. Georgia Inj. Centers, LLC*, 71 F. Supp. 3d 1325, 1330 (S.D. Fla. 2014) (Cohn, J.) (citing *Frazier v. U.S. Bank Nat. Ass'n*, No. 118775, 2013 WL 1337263 at *3 (N.D. Ill. Mar. 29, 2013)).

Here, a review of the allegations reflects that Plaintiff likely intends to generally assert all of his claims against all of the Defendants (except that there is a division between Does 1-4 and Does 6-10, with the former group identified in the first and third causes of action, and the latter group in the second cause of action[2]). Although the Defendants are indeed intermingled on the face of the Complaint, the Court finds that the Complaint does provide fair notice to them with respect to the identity of the Defendants against which each cause of action is asserted.[3] This is so because Plaintiff is pled as an employee, or alternatively a borrowed servant, of each Defendant—and each Defendant is pled as having "owned, operated, managed, maintained and/or controlled the vessel M/V TEXAS ENTERPRISE." *See* Compl. at ¶¶ 6–48. Each Defendant is therefore identified as occupying the same (or a substantially similar) role with respect to Plaintiff's alleged injuries. (This is not a situation

[2] The Court is left to wonder about Doe 5, against which no cause of action appears to be asserted.

[3] Lacking their identities at this time, the Court makes no finding as to whether the pleading against Does 1-10 provides fair notice to such Defendants.

where Plaintiff is, for instance, suing both the entities that operate the vessel and the entities that manufactured the harness.) Plaintiff identifies the Defendants who filed the Motion to Dismiss, together with Does 6-10, as the "Shipowner Defendants," and the Court is satisfied at this stage of the proceedings that this does not impermissibly confuse which Defendants are being identified in each count.[4]

IV. CONCLUSION

For the reasons set forth above, the Court finds that the factual allegations in the Complaint are insufficient to state a claim for relief. The Court also finds that the Complaint improperly lumps together multiple theories of liability, pled in a conclusory manner, to the extent it makes it difficult to discern what theories are being pled and which facts, if any, support such theories. However, the Court is not of the view that amendment would be futile in light of the fact that Plaintiff may be able to allege facts that would support his claims and may be able to narrow down and separate out his theories of liability. It is simply not the role of the Court, nor should it be a defendant's responsibility, to speculate about what facts might exist and might support Plaintiff's various theories for relief.

Accordingly, for the reasons set forth above, it is hereby

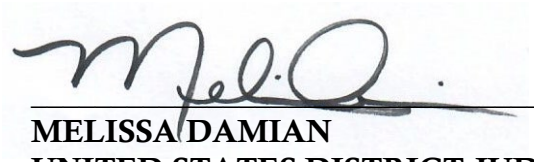
ORDERED AND ADJUDGED that Defendants' Motion to Dismiss Plaintiff's Complaint **[ECF No. 19]** is **GRANTED**. It is further

ORDERED AND ADJUDGED that the Complaint is **DISMISSED WITHOUT PREJUDICE**. It is further

[4] The Court is also cognizant of the fact that each of the Defendants is represented by the same counsel, jointly filed the same Motion to Dismiss, and thus many if not all of the Defendants appear to be corporate affiliates or subsidiaries of one another (setting aside Does 1-10).

ORDERED AND ADJUDGED that in the event Plaintiff intends to file an Amended Complaint, he must do so **within fourteen (14) days** of the date of this Order.

DONE AND ORDERED in Chambers in the Southern District of Florida, this 3rd day of June, 2024.



MELISSA DAMIAN
UNITED STATES DISTRICT JUDGE