UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-cv-24522-JB/Torres

MICKEL WHITE,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.
d/b/a ROYAL CARIBBEAN GROUP,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant Royal Caribbean Group's Motion to Dismiss Plaintiff's Complaint ("Motion") ECF No. [8]. Plaintiff Mickel White filed a Response in Opposition, ECF No. [15], and Royal Caribbean filed a Reply. ECF No. [20]. The Court has carefully considered the parties' briefing, the record, and the applicable law. For the reasons set forth below, the Motion to Dismiss is **GRANTED IN PART,** and the Complaint is **DISMISSED WIHTOUT PREJUDICE**.

I. BACKGROUND

On November 17, 2022, White was a passenger onboard Royal Caribbean's vessel the *Harmony of the Seas*. Complaint, ECF No. [1] at ¶ 14. White alleges that she "slipped and fell in a wet foreign substance while exiting the Central Park café on deck 8." *Id.* White asserts that Royal Caribbean knew or should have known of the slipping hazard for a variety of reasons. In particular, Plaintiff alleges that "prior

to and/or at the time of Plaintiff's injury-producing incident," Royal Caribbean's "crewmembers were standing within a close distance" of the area where she fell "and/or were actively monitoring same for slipping hazards," such that they should have observed the dangerous condition; Royal Caribbean had "installed video cameras to monitor the area the subject area" and would have observed the dangerous condition if the subject area was "reasonably monitored" via camera; and Royal Caribbean's crewmembers should have continuously monitored the subject area to identify and remedy hazardous conditions "per Defendant's policies and procedures." *Id.* ¶ 18.

White also alleges that the dangerous condition "existed for a sufficient length of time" such that Royal Caribbean should have learned of and corrected the hazard. *Id.* ¶ 19. White further asserts that there were prior slip and fall incidents onboard Royal Caribbean cruise ships wherein the passenger alleged that the floor was unreasonably slippery, and cites a small litany of personal injury cases brought against Royal Caribbean in this district. *Id.* Finally, White alleges that Royal Caribbean had notice of the dangerous condition because it "directly participated in and approved of the designs for the interior areas of the subject vessel, including the selection of flooring materials for the public areas onboard the ship." *Id.* ¶ 9.

White asserts four claims against Royal Caribbean based on these facts: (i) Negligent Failure to Warn (Count I); (ii) Negligent Maintenance (Count II); (iii) Negligent Design (Count III); and (iv) General Negligence (Count IV). *Id.* at 5–13. Royal Caribbean now moves to dismiss the Complaint under Federal Rule of Civil

Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. *See generally* Motion, ECF No. [8]. Royal Caribbean argues that dismissal is warranted because the Complaint does not plausibly allege that Royal Caribbean had notice of the allegedly dangerous condition. *Id*. at 4–9. Royal Caribbean also argues that the Complaint constitutes an impermissible shotgun pleading in violation of Rule 8 of the Federal Rules of Civil Procedure. Specifically, Royal Caribbean contends that: (i) White's allegations are conclusory and vague, and are not obviously connected to a particular cause of action; (ii) White improperly commingles elements of direct and vicarious liability theories of injury in Count IV; and (iii) White improperly incorporates factual allegations into each count that support only specific causes of action. *Id.* at 10–13.

In response, White argues that she sufficiently alleged that Royal Caribbean had constructive notice of the dangerous condition, to wit, "liquid on a tile floor," and is not required to plead all the facts on which her claim is based. ECF No. [15] at 1, 3–11. White further argues that the Complaint does not rise to the level of a shotgun pleading, and alleges only a direct liability claim, rather improperly pleading a direct negligence claim together with a vicarious liability claim. *Id*. at 11–14. In the alternative, Plaintiff requests leave to file an amended complaint in the event the Court grants the Motion. *Id*. at 15

II. ANALYSIS

A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). 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.* (alteration added) (citing *Twombly*, 550 U.S. at 556). The plausibility standard "calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" of the defendant's liability. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012).

Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (alteration added) (quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do." *Twombly*, 550 U.S. at 555.

On a motion to dismiss, a court construes the complaint in the light most favorable to the plaintiff and accepts its factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). Unsupported allegations and conclusions of law, however, will not benefit from this favorable reading. *See Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.").

A. White Fails To Plausibly Allege That Royal Caribbean Had Notice Of The Dangerous Condition.

"To prevail on a negligence claim, a plaintiff must show 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." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). Under maritime law, a shipowner in navigable waters owes passengers a duty of reasonable care under the circumstances. *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015). Additionally, to be held liable for injury caused to a passenger by a risk-creating condition on a ship, the shipowner must have had actual or constructive notice of that condition. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989).

As mentioned above, White argues that the Complaint sufficiently pleads that Royal Caribbean had constructive notice of the slipping hazard.[1] Constructive notice of a dangerous condition on a ship exists where the shipowner ought to have known about the danger presented to the ship passengers by that condition. *Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022). This can be established by alleging that "the defective condition existed for a sufficient period of time to invite corrective measures," or "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Guevara*, 920 F.3d at 720.

[1] White does not argue that she alleged facts which would support actual notice. *See generally*, Response, ECF No. [15].

Royal Caribbean argues that White's allegations of notice are merely conclusory and therefore insufficient. ECF No. [8] at 6. The Court agrees. Even construing the allegations in her Complaint in the light most favorable to Plaintiff, White fails to plausibly allege that Royal Caribbean had constructive notice of the dangerous condition at issue.

First, White's conclusory allegation that "the forgoing dangerous conditions existed for a sufficient length of time" such that Royal Caribbean should have learned of and corrected the hazard is insufficient to plausibly allege constructive notice. In particular, White fails to allege the length of time the hazard was present, or provide other facts that could give rise to an inference that the liquid substance had been on the floor "for a sufficient length of time." *See* Complaint, ECF No. [1] at ¶ 19; *Patton v. Carnival Corp.*, No. 22-13806, 2024 WL 1886504, at *3 (11th Cir. 2024) ("[Plaintiff] hasn't plausibly alleged that the dangerous condition existed for a sufficient length of time to impute notice to Carnival because the complaint lacks any plausible allegation as to how long the dangerous condition existed.") (quotation marks and citation omitted).

Further, White's allegations that Royal Caribbean's "crewmembers were standing within a close distance to the subject area and/or were actively monitoring same for slipping hazards" is similarly inadequate to plausibly allege that Royal Caribbean had constructive notice of a slipping hazard because White omits any facts that show the crewmembers could have observed the hazard. *See* Complaint, ECF No. [1] at ¶ 18; *cf. Holland*, 50 F.4th at 1096 (dismissing complaint that did not allege

that any crewmembers were in the immediate area who could have observed or warned of the hazard). White argues that her Complaint properly pleads notice because she "does in fact allege that there were crewmembers in the subject area whose duty included monitoring for slipping hazards, and thus could and should have observed the hazard." Response, ECF No. [15] at 5. But merely compounding conclusory allegations with more conclusory allegations—in other words, stating that there were crewmembers in the subject area that could and should have observed the hazard without providing facts like where the crewmembers were stationed in relation to her fall, whether there were any obstructions in their line of sight, or what duties they had pursuant to what procedures or policies—does not push these allegations from possible to plausible.

Likewise, White's allegation that Royal Caribbean "installed video cameras to monitor the subject area," without more, is insufficient. *See* Complaint, ECF No. [1] at ¶ 18. This allegation does not, for example, allege what direction these cameras were facing or how long they were recording, or otherwise provide facts that plausibly allege Royal Caribbean did have video cameras installed to monitor the subject area that were actively monitored in a manner that could establish constructive notice. Finally, White's allegation that Defendant's employees should have monitored the subject area "per Defendant's policies and procedures" does not attempt to explain what these policies and procedures were or how they would have put Royal Caribbean on notice of any alleged hazard. *Id*.

White also argues that she established constructive notice through alleging substantially similar prior incidents that involve "passengers slipping, falling, and suffering injuries on wet tile floors on the subject vessel." Response, ECF No. [15] at 8. The Court is not persuaded.

As an initial matter, White does not accurately characterize the allegations of her Complaint. She does not allege the existence of prior incidents where passengers were injured "on wet tile floors of the subject vessel." *See generally* Complaint, ECF No. [1]. Instead, she alleges that there were "prior incidents of passengers injured due to unreasonably wet and slippery floors and/or hazardous flooring surface areas, while aboard Defendant's vessels and/or other vessels reported within the cruise industry." *Id*. at ¶¶ 26, 33, 39.

Further, despite White's argument that the five prior incidents cited in the Complaint took place on the same vessel involved in the instant action, the Court's independent review of the complaints in those cases revealed that only one of them allegedly occurred on the *Harmony of the Seas*, and the incident involved an injury that occurred on a different deck and in front of a different café. *See* Complaint, ECF No. 1 ¶ 19, *Lockett v. Royal Caribbean Group*, Case No. 23-cv-22726-BB (S.D. Fla. July 21, 2023). The remaining prior incidents alleged did not even occur on sister ships of the vessel at issue here. *See Rodriguez v. RCCL,* Case No. 21-20517 (S.D. Fla. 2021) (alleged slip and fall on *Anthem of the Seas*); *Tyson v. RCCL*, Case No. 20-22986 (S.D. Fla. 2020) (alleged slip and fall on *Brilliance of the Seas*); *Yohe v. RCCL*, Case No. 20-20417 (S.D. Fla. 2020) (alleged slip and fall on *Anthem of the Seas*);

Andrews v. RCCL, Case No. 19-21653 (S.D. Fla. 2019) (alleged slip and fall on *Freedom of the Seas*).

The Court recognizes that "[t]he 'substantial similarity' doctrine does not require identical circumstances[.]" *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1287 (11th Cir. 2015). However, White does not allege any details of these prior incidents that would permit the Court to infer that they were caused by conditions substantially similar to those alleged in the Complaint. *See Ajwani v. Carnival Corporation*, No. 23-cv-20911-DPG, 2024 WL 1239466, at *3 (S.D. Fla. March 24, 2024) (granting motion to dismiss for failure to plausibly allege constructive notice where "Plaintiffs reference prior complaints, guest comments, and injuries purportedly involving the Excursion but fail to provide any detail about the facts in those cases or explain how those cases are factually similar to this action.").

Therefore, even while reading the Complaint in the light most favorable to White, the Court concludes that Plaintiff has not plausibly alleged that Royal Caribbean had notice of the allegedly dangerous condition. Therefore, dismissal of the Complaint is warranted. The Court notes that White requested leave to amend her pleading, *see* Response, ECF No. [15] at 14, and nothing about this case so far suggests that such amendment would be futile. Accordingly, the Court will allow White to file an amended complaint to cure the deficiencies noted in this Order.

B. Vicarious Liability

Royal Caribbean also argues that Count IV improperly includes allegations of a claim for both direct liability and vicarious liability. *See* Motion, ECF No. [8], at

11. Royal Caribbean focuses on a paragraph in Count IV which states that "Defendant through its crew, agents, employees, staff or representatives, who were acting in the course and scope of their employment or agency with the Defendant, breached the duty of care owed to the Plaintiff and were negligent," based upon several actions that these alleged crewmembers may have done or failed to do. *Id*. at 13; Complaint, ECF No. [1] at ¶ 38. In her Response, White clarified that this paragraph "in no way seeks to plead the level of employee action and independence required to sustain a claim for [v]icarious [l]iability." ECF No. [15] at 13.

To be sure, "[c]ommingling direct and vicarious liability is an improper pleading practice." *Sexton v. Carnival Corp.*, No. 18-20629-CIV-MORENO, 2018 WL 3405246 at *2 (S.D. Fla. July 12, 2018). However, White has confirmed that Count IV is not based upon vicarious liability. ECF No. [15] at 14 (. . . "Plaintiff is clearly only bringing forward claims of [d]irect [l]iability."). Further, Count IV is simply titled "General Negligence Against Defendant" and does not refer to vicarious liability. *See* Complaint, ECF No. [1] at 11-12.

Accordingly, the Court will not dismiss Count IV on the basis that it improperly includes allegations of a claim for both direct liability and vicarious liability.[2] However, given that the Court has provided White with leave to amend, to avoid the

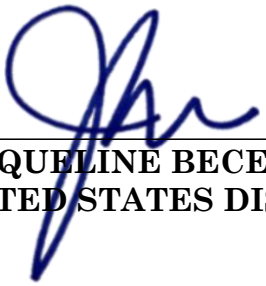
[2] Royal Caribbean also argues that the Complaint is a shotgun pleading. *See* Motion, ECF No. [8] at 9-11. The Court has carefully reviewed the Complaint, and does not agree. *See Spotts v. Carnival Corp.*, No. 23-cv-22906, at * 7-8 (S.D. Fla. Jan. 10, 2024) (refusing to dismiss complaint as shotgun pleading).

possibility of confusion, Plaintiff should expressly state in her amended complaint that Count IV is based only on a theory of direct liability.

III. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Royal Caribbean's Motion to Dismiss [ECF No. 8] is **GRANTED IN PART** and Plaintiff's Complaint, ECF No. [1] is **DISMISSED WITHOUT PREJUDICE.** Plaintiff may file an amended complaint on or before **July 8, 2024**.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of June, 2024.



JACQUELINE BECERRA
UNITED STATES DISTRICT JUDGE