**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-24668-CIV-LENARD

**DEBORAH REED,**

Plaintiff,

**v.**

**ROYAL CARIBBEAN CRUISES, LTD., and JOHN DOE,**

Defendants.
_____/

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (D.E. 82)**

**THIS CAUSE** is before the Court on Plaintiff's Motion for Partial Summary Judgment, ("Motion," D.E. 82), filed November 30, 2020. Defendant Royal Caribbean Cruises, Ltd. filed a Response on December 14, 2020, ("Response," D.E. 101), to which Plaintiff filed a Reply on December 21, 2020, ("Reply," D.E. 104). Upon review of the Motion, Response, Reply, and the record, the Court finds as follows.

## I. Background

This is a maritime personal injury action in which Plaintiff is suing Royal Caribbean for injuries allegedly sustained while participating in an organized dance party aboard Defendant's *Vision of the Seas* cruise ship. (See Second Am. Compl. ¶¶ 11-13.) According to the operative Second Amended Complaint, during the dance party "a fellow intoxicated male passenger, JOHN DOE, approached Plaintiff." (Id. ¶ 14.)

> Plaintiff initially consented to dancing with JOHN DOE, but Plaintiff did not consent to any touching between the two. Nonetheless, JOHN DOE grabbed Plaintiff's hand and despite her pleas that he not twirl her, JOHN DOE refused to comply with Plaintiff's requests. Suddenly, the JOHN DOE spun Plaintiff and forcefully released her causing Plaintiff to fall and land on the marble floor. As a result of the fall, Plaintiff suffered traumatic injuries that included, but are not limited to, a fractured wrist which required surgery.

(Id. ¶ 15.)

Plaintiff initiated this lawsuit on November 12, 2020 naming only Royal Caribbean as a Defendant. (See D.E. 1.) The Court struck the original Complaint as a "shotgun pleading," (D.E. 4), and on November 27, 2019, Plaintiff filed her First Amended Complaint naming only Royal Caribbean as a Defendant. (See D.E. 5.) On May 26, 2020, Plaintiff filed the operative Second Amended Complaint with leave of the Court, naming Royal Caribbean and John Doe as Defendants. (See D.E. 35.) The Second Amended Complaint asserts the following claims against Royal Caribbean:

- Count I: Assumption of Duty: negligent supervision and training, (id. ¶¶ 17-29);
- Count II: Assumption of Duty: failure to adequately warn, (id. ¶¶ 30-48); and
- Count III: Negligence: over service of alcohol, (id. ¶¶ 49-68).

Count IV is a claim for negligence against John Doe. (Id. 13-14.) John Doe has since been identified as Augustine Morris, and Defendant has provided Plaintiff with Mr. Morris's contact information. (See D.E. 84 at 1 n.1.) However, Plaintiff has not served Defendant or otherwise amended her pleadings.

On June 5, 2020, Royal Caribbean filed an Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint, which contains the following affirmative defenses:

1. RCCL alleges Plaintiff did not exercise ordinary care, caution or prudence to avoid the happening of the alleged incident, injuries or damages, if any, and by this failure to do so, Plaintiff thereby directly and proximately contributed to the happening of said alleged injuries, losses and damages, if any.

2. RCCL alleges that Plaintiff's Second Amended Complaint and each of the purported causes of action therein fail to state facts sufficient to constitute a cause of action against RCCL.

3. RCCL alleges that Plaintiff failed to reasonably and seasonably exercise care and diligence to avoid loss and to minimize damages therefore Plaintiff may not recover for the losses, if any, which could have been prevented. Therefore, Plaintiff's recovery, if any, should be reduced by her failure to mitigate damages.

4. RCCL alleges that the damages allegedly suffered by Plaintiff were not caused by any act or omission to act on the part of this answering Defendant and were caused by other trauma suffered by the Plaintiff in her lifetime wholly unrelated to RCCL.

5. RCCL alleges that if it is found liable to Plaintiff for damages herein, which RCCL denies, the measure of damages must be limited to the amount that was foreseeable and within the contemplation of the parties at the time the alleged agreements, if any, were entered into as this suit sounds in contract.

6. RCCL alleges that because of the conduct, acts and omissions of Plaintiff, as stated previously in this Answer and otherwise, Plaintiff has waived any claim to damages alleged in the Complaint.

7. RCCL alleges that if it is liable for damages herein, which RCCL denies, Plaintiff's damages must be reduced by the amount attributable to Plaintiff's comparative or relative fault therein.

8. RCCL alleges that the alleged negligent and dangerous conditions that Plaintiff contends caused her alleged injuries were open and obvious. Therefore Plaintiff is not entitled to any recovery.

9. RCCL is informed and believes and thereon alleges that it is not legally responsible in any fashion with respect to damages and injuries claimed by the Plaintiff in the Complaint; however, if this answering Defendant is subject to any liability, it will be due in whole or in part

to the breach of warranty, acts, omissions, activities, carelessness, recklessness and negligence of others; wherefore, any recovery obtained by Plaintiffs against this answering Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative liability; the liability of this answering Defendant, if any, is limited to direct proportion to the percentage of fault actually attributed to this answering Defendant.

10. RCCL alleges that Plaintiff's passage was subject to the terms of the passenger contract, and that this answering Defendant is liable, if at all, only subject to the terms thereof.

11. RCCL alleges that its actions with respect to Plaintiff were at all times reasonable and made in good faith.

12. RCCL maintains it is not guilty of any and all of the allegations of Plaintiff's Complaint, that at the time of trial the names of all responsible persons or entities should appear on the verdict form so that a jury can apportion liability as required by Florida Statutes section 768.81(3).

13. RCCL alleges that any recovery obtained by Plaintiff herein, which is denied, should be reduced, off set, or set off for any and all collateral source benefits received by or payable to Plaintiff.

14. RCCL alleges that Plaintiff's injuries, if any, were the result of a pre-existing injury, physical or mental illness, which was not aggravated by the alleged incident herein. Alternatively, if any pre-existing mental or physical injury or illness was aggravated by any alleged incident herein, Plaintiff is only entitled to reimbursement for the degree of aggravation, any and all recovery obtained herein must be reduced to the percentage of the aggravation which she allegedly suffered as a result of this claimed incident.

15. Defendant alleges the damages alleged in Plaintiff's Second Amended Complaint were solely the result of Plaintiff's willful misconduct and were not the result of an intentional or negligent act of Defendant.

16. RCCL claims that the alleged condition which Plaintiff encountered aboard the subject vessel, which Plaintiff claims proximately caused

her injuries is reasonably safe and this Defendant had no prior notice that this condition was dangerous and further denies that this condition is any danger or hazard whatsoever.

17. RCCL asserts that this is an admiralty and maritime claim and the substantive rules of maritime law apply to Plaintiff's claims herein.

18. RCCL alleges that the incident and injuries alleged in the Complaint were the result of intervening and unforeseeable causes for which RCCL had no duty to protect Plaintiff from.

19. Defendant alleges that any negligence alleged on behalf of RCCL, the existence of which RCCL expressly denies, was not the proximate cause of Plaintiff's injuries, if any, and as such, no liability exists.

20. RCCL alleges that if it is liable for damages herein, which RCCL denies, Plaintiff's damages must be reduced by the amount attributable to Plaintiff's comparative or relative fault therein.

21. RCCL alleges that the incident and injuries alleged in the Complaint were the result of the actions and/or negligence of third parties.

(D.E. 37.)

On November 30, 2020, Plaintiff filed the instant Motion for Partial Summary Judgment in which she seeks partial summary judgment on most of Defendant's affirmative defenses.[1] (D.E. 82.) The Parties have filed statements of material facts in support of and in opposition to Plaintiff's Motion. (See D.E. 82 at 2, D.E. 100, D.E. 104 at 2-3.) However, for purposes of this Order it is sufficient to note that it appears

[1] Defendant has also filed a Motion for Summary Judgment. (D.E. 84.) After Plaintiff filed a Response (D.E. 97) and Defendant filed a Reply (D.E. 101), Plaintiff filed a Motion for a Stay of Ruling on Defendant's Motion for Summary Judgment Until All Discovery is Completed, and a Motion for Leave to Supplement Plaintiff's Response to Defendant's Motion for Summary Judgment. (D.E. 109.) That Motion remains pending.

undisputed that Plaintiff fell when Mr. Morris "twirled" her during the dance party. (See generally D.E. 82 at 2 ¶ 1; D.E. 100 ¶ 1; see also D.E. 83 ¶ 4; D.E. 98 ¶ 4.)

## II. Legal Standard

On a motion for summary judgment, the Court is to construe the evidence and factual inferences arising therefrom in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). Summary judgment can be entered on a claim only if it is shown "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In addition, under Federal Rule of Civil Procedure 56(f)(1), the Court may grant summary judgment for the non-moving party "[a]fter giving notice and a reasonable time to respond." Fed. R. Civ. P. 56(f)(1); see also Gentry v. Harborage Cottages-Stuart, LLLP, 654 F.3d 1247, 1261 (11th Cir. 2011). The Supreme Court has explained the summary judgment standard as follows:

> [T]he plain language of [Rule 56] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (internal quotation omitted). The trial court's function at this juncture is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). A dispute about a material fact is genuine if the evidence is such that a reasonable fact-finder could return a verdict for the

nonmoving party. Id. at 248; see also Barfield v. Brierton, 883 F.2d 923, 933 (11th Cir. 1989).

The party moving for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. Once the movant makes this initial demonstration, the burden of production, not persuasion, shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324; see also Fed. R. Civ. P. 56(c). In meeting this burden the nonmoving party "must do more than simply show that there is a metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). That party must demonstrate that there is a "genuine issue for trial." Id. at 587. An action is void of a material issue for trial "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." Id.

"Partial summary judgment may be granted on affirmative defenses." Lebron v. Royal Caribbean Cruises, Ltd., CASE NO. 16-24687-CIV-WILLIAMS/SIMONTON, 2018 WL 5098972, at *2 (S.D. Fla. Aug. 14, 2018) ("Lebron II") (citing Int'l Ship Repair & Marine Servs., Inc. v. St. Paul Fire & Marine Ins. Co., 944 F. Supp. 886, 891 (M.D. Fla. 1996)). "Plaintiff has the burden of showing that Defendant cannot maintain these defenses

by a preponderance of the evidence." Id. (citing Eli Rsch., LLC v. Must Have Info Inc., No. 2:13-CV-695-FTM-38CM, 2015 WL 5934632, at *2 (M.D. Fla. Oct. 6, 2015)).

## III. Discussion

Plaintiff argues that "Defendant has put forth no evidence" to support its First, Third, Fourth, Fifth, Sixth, Eighth, Tenth, Fourteenth, Fifteenth, and Sixteenth Affirmative Defenses. (Mot. at 4-11.) She further argues that Defendant's Ninth, Eleventh, Twelfth, and Thirteenth Affirmative Defenses are not "legally proper" affirmative defenses. (Id. at 6-10.) Finally, she argues that Defendant's Sixteenth, Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses are denials, and not affirmative defenses. (Id. at 11-14.) Plaintiff does not seek summary judgment on Defendant's Second, Seventh, Seventeenth, or Twentieth Affirmative Defenses. (See id.)

### a. "No Evidence"

Plaintiff argues that "Defendant has put forth no evidence" to support its First, Third, Fourth, Fifth, Sixth, Eighth, Tenth, Fourteenth, Fifteenth, and Sixteenth Affirmative Defenses, and therefore that the Court should enter summary judgment in Plaintiff's favor on those affirmative defenses. (Mot. at 4-11.) Defendant argues that merely stating that there is no evidence to support an affirmative defense is insufficient to prevail on summary judgment.[2] (Resp. at 4-5.) Plaintiff does not reply to Defendant's argument. (See D.E. 104.)

[2] In the alternative, Defendant argues that comparative fault is at the heart of its First, Third, Sixth, Eighth, Ninth, Twelfth, and Fifteenth Affirmative Defenses, and cites to evidence of Plaintiff's comparative fault. (Resp. at 5-6.) It further argues that there is record evidence supporting its "pre-existing conditions" assertion in its Fourteenth Affirmative Defense. (Id. at 8.)

"[M]erely stating there is no evidence to support the affirmative defenses is not enough to prevail on summary judgment." Eli Rsch., 2015 WL 5934632, at *3 (citing United States v. Four Parcels of Real Prop. in Greene & Tuscaloosa Counties in Ala., 941 F.2d 1428, 1438 (11th Cir. 1991)); see also Fret v. Melton Truck Lines, Inc., 706 F. App'x 824, 828 (5th Cir. 2017) ("It is not enough for the moving party merely to make a conclusory statement that the other party has no evidence to prove his case."). Plaintiff must show that Defendant "cannot maintain these defenses by a preponderance of the evidence." Eli Rsch, 2015 WL 5934632, at *2 (citing Tingley Sys., Inc. v. HealthLink, Inc., 509 F. Supp. 2d 1209, 1218 (M.D. Fla. 2007) (citing Int'l Ship Repair, 944 F. Supp. at 891)); see also Lebron II, 2018 WL 5098972, at *2.

Here, Plaintiff merely makes a conclusory statement that "Defendant has put forth no evidence" to support its First, Third, Fourth, Fifth, Sixth, Eighth, Tenth, Fourteenth, Fifteenth, and Sixteenth Affirmative Defenses. (Mot. at 4-11.) The Court finds that Plaintiff's conclusory "no evidence" assertion is insufficient to sustain her burden of showing that Defendant cannot maintain these defenses by a preponderance of the evidence. Accordingly, the Court denies Plaintiff's Motion for Partial Summary Judgment on Defendant's First, Third, Fourth, Fifth, Sixth, Eighth, Tenth, Fourteenth, Fifteenth, and Sixteenth[3] Affirmative Defenses. See Eli Rsch., 2015 WL 5934632, at *3; see also

---

The Court need not reach these arguments because Plaintiff's conclusory "no evidence" argument is insufficient to sustain her burden on summary judgment.

[3] Plaintiff further argues that she is entitled to summary judgment on Defendant's Sixteenth Affirmative Defense because it is a denial and not an affirmative defense. The Court addresses that argument separately in Section III(e), infra.

StoneCoat of Tex., LLC v. ProCal Stone Design, LLC, Civil Action No. 4:17CV303, 2019 WL 5395569, at *60 (E.D. Tex. July 25, 2019) (recommending that the court deny the plaintiffs' motion for partial summary judgment on the defendant's affirmative defenses which simply alleged that there was no evidence to support the affirmative defenses), report and recommendation adopted, 2019 WL 4256987 (E.D. Tex. Sept. 9, 2019).

**b. Fabre doctrine**

Plaintiff argues that Defendant's Ninth and Twelfth Affirmative Defenses are based on Florida's "Fabre doctrine" which is inapplicable under general maritime law. (Mot. at 6-7, 8-9 (citing Barrios v. Carnival Corp., Case Number: 19-20534-CIV-MORENO, 2019 WL 1876792, at *3 (S.D. Fla. Arp. 26, 2019)).)

In Fabre v. Marin, 623 So. 2d 1182, 1185-87 (Fla. 1993), "the Florida Supreme Court created an affirmative defense that allows named defendants to apportion liability to non-parties termed Fabre Defendants . . . ." Estate of Miller v. Thrifty Rent-A-Car Sys., Inc., 609 F. Supp. 2d 1235, 1239 (M.D. Fla. 2009). However, "[t]he Fabre defense . . . is not applicable in a federal maritime action." Wiegand v. Royal Caribbean Cruises Ltd., 473 F. Supp. 3d 1348, 1351 (S.D. Fla. 2020) (citing Groff v. Chandris, Inc., 835 F. Supp. 1408, 1409-10 (S.D. Fla. 1993)). "Instead, under general maritime law, the 'principles of joint and several liability under which a plaintiff may obtain judgment for the full amount against any and all joint tortfeasors without regard to percentage of fault,' are binding." Id. (citing Groff, 835 F. Supp. at 1410 (citing Ebanks v. Great Lakes Dredge & Dock Co., 688 F.2d 716 (11th Cir. 1982))). See also Barrios, 2019 WL 1876792, at *3.

Royal Caribbean's Ninth Affirmative Defense asserts, in relevant part, that if Defendant is found to be liable, Plaintiff's recovery against Defendant "should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative liability; the liability of this answering Defendant, if any, is limited to direct proportion to the percentage of fault actually attributed to this answering Defendant." (D.E. 37 ¶ 9.) Plaintiff's Twelfth Affirmative Defense asserts that "at the time of trial the names of all responsible persons or entities should appear on the verdict form so that a jury can apportion liability as required by Florida Statutes section 768.81(3)." (Id. ¶ 12.)

Royal Caribbean argues that its Ninth and Twelfth Affirmative Defenses do not attempt to improperly apportion liability "to Mr. Morris or non-parties." (Resp. at 7.) Rather, it seeks to apportion fault between Royal Caribbean and Plaintiff pursuant to principles of comparative fault. (Id.)

The Court rejects Royal Caribbean's argument. Its Ninth Affirmative Defense explicitly seeks an apportionment of liability among "all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages," (D.E. 37 ¶ 9 (emphasis added))—not just Plaintiff. Its Twelfth Affirmative Defense explicitly seeks to have the jury apportion liability among "all responsible persons or entities." (Id. ¶ 12 (emphasis added).) Because the Ninth and Twelfth Affirmative Defenses are "predicated on diminishing Defendant's fault by shifting it to others, [they] run[] afoul of maritime law." Barrios, 2019 WL 1876792, at *3; see

also Wiegand, 473 F. Supp. 3d at 1352 (striking affirmative defenses seeking to apportion fault to a non-party). To the extent that Royal Caribbean seeks to mitigate damages based on Plaintiff's comparative fault, that affirmative defense is asserted in its unchallenged Seventh and Twentieth Affirmative Defenses.

Therefore, the Court grants Plaintiff's Motion for Partial Summary Judgment as to Royal Caribbean's Ninth and Twelfth Affirmative Defenses.

**c. Royal Caribbean's "reasonable" and "good faith" actions**

Plaintiff argues that Defendant's Eleventh Affirmative Defense—which asserts that Royal Caribbean's "actions with respect to Plaintiff were at all times reasonable and made in good faith[,]" D.E. 37 ¶ 11)—is not an affirmative defense or even a denial because "even if Defendant's actions with respect to Plaintiff were reasonable and made in good faith, it would still be negligent for its inaction in respect to failing to address the intoxicated man's danger." (Mot. at 8.) Royal Caribbean does not respond to Plaintiff's argument on this issue. (See D.E. 82.)

"An affirmative defense has been described as '[a]ny matter that does not tend to controvert the opposing party's prima facie case as determined by the applicable substantive law.'" Hassan v. U.S. Postal Serv., 842 F.2d 260, 263 (11th Cir. 1988) (quoting 2A J. Moore, Moore's Federal Practice ¶ 8.27[3] (2d ed. 1985)). Stated differently, "[a]n affirmative defense is one that admits to the complaint, but avoids liability, wholly or partly, by new allegations of excuse, justification, or other negating matters." Adams v. Jumpstart Wireless Corp., 294 F.R.D. 668, 671 (S.D. Fla. 2013).

"To plead negligence, 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) (citing Zivojinovich v. Barner, 525 F.3d 1059, 1067 (11th Cir. 2008) (citing Clay Elec. Coop, Inc. v. Johnson, 873 So. 2d 1182, 1185 (Fla. 2003))). The duty of care a shipowner owes to a passenger is one of "ordinary reasonable care under the circumstances[.]" Keefe v. Bahama Cruise Line, Inc., 867 F.2d 1318, 1322 (11th Cir. 1989)).

Royal Caribbean has not explained how its assertion that it acted reasonably and in good faith with respect to Plaintiff admits the allegations contained in the Second Amended Complaint but is an excuse for avoiding liability; indeed, it has not responded to Plaintiff's arguments on this issue at all. The Court finds that the assertion contained in Royal Caribbean's Eleventh Affirmative Defense attempts to controvert Plaintiff's negligence claim, and specifically the allegation that the defendant breached a duty of reasonable care it owed to the plaintiff. As such, it is properly construed as a denial, and not an affirmative defense. See Lebron II, 2018 WL 5098972, at *6 (finding that Royal Caribbean's affirmative defense that it "complied with and otherwise fulfilled its duty of reasonable care to the Plaintiff and as such, the Plaintiff herein is unable to recover of this Defendant" was actually a denial and granting the plaintiff partial summary judgment as to that affirmative defense), report and recommendation adopted 2018 WL 5098870 (S.D. Fla. Aug. 28, 2018); cf. Jones v. Royal Caribbean Cruises, Ltd., Case No. 12–20322–CIV–TORRES, 2013 WL 12061858, at *2-3 (S.D. Fla. Mar. 14, 2013) (finding that Royal

Caribbean's affirmative defense asserting that "any negligence alleged on behalf of Defendant . . . was not the proximate cause of Plaintiff's injuries, if any, and as such, no liability exists" was not an affirmative defense but rather a denial of the proximate cause element of a maritime negligence claim, and granting the plaintiff partial summary judgment as to that affirmative defense). Because Defendant has already asserted a denial to Plaintiff's negligence claims through its Answer to the Second Amended Complaint, (see D.E. 37 ¶¶ 17-68), the Court will grant Plaintiff's Motion for Partial Summary Judgment as to Defendant's Eleventh Affirmative Defense, leaving the factual issue of Plaintiff's claim for trial (or disposition upon Defendant's pending Motion for Summary Judgment, if appropriate). See Lebron II, 2018 WL 5098972, at *6, 7 (granting partial summary judgment to plaintiff as to affirmative defense that was actually a denial); Jones, 2013 WL 12061858, at *2-3 (same); Eli Rsch., 2015 WL 5934632, at *4 (same); Tingley Sys., 509 F. Supp. 2d at 1220 (same).

**d. Collateral source**

Plaintiff argues that Defendant's Thirteenth Affirmative Defense—which asserts that any recovery Plaintiff obtains "should be reduced, off set, or set off for any and all collateral source benefits received by or payable to Plaintiff"—is not a legally proper affirmative defense. (Mot. at 9 (citing Higgs v. Costa Crociere S.P.A. Co., 969 F.3d 1295, 1313-14, 1316 (11th Cir. 2020); Milbrath v. NCL Bahamas, Ltd., Case No.: 1:17-cv-22071-UU, 2018 WL 2036081, at *5 (S.D. Fla. Feb. 28, 2018)).) Defendant does not respond to Plaintiff's argument. (See D.E. 101.)

"The collateral source rule is both a substantive principle of damages and an evidentiary rule." Higgs, 969 F.3d at 1310. "In its substantive role, the collateral source rule provides that a plaintiff is entitled to recover the full value of the damages caused by a tortfeasor, without offset for any amounts received in compensation for the injury from a third party (like an insurance company or a family member)." Id. (citations omitted). "In its evidentiary role, the collateral source rule bars the admission of evidence of payments made by third parties." Id. (citation omitted). "It is . . . well established that the collateral source rule -- both in its substantive and evidentiary roles -- applies to maritime tort cases." Id. at 1311.

In Higgs, a jury awarded Plaintiff, inter alia, $61,000 in past medical expenses, which "roughly matched the amount billed by [the plaintiff's] healthcare provider." 969 F.3d at 1302. The district court subsequently reduced the jury's award of medical expenses to $16,326.01, which was the amount actually paid by the plaintiff's insurer. Id. The plaintiff appealed, arguing that the district court erroneously reduced the jury's award for past medical damages. Id. at 1299. The Eleventh Circuit agreed with the plaintiff, holding

> that the appropriate measure of medical damages is a reasonable value determined by the jury upon consideration of all relevant evidence. Both the amount billed by healthcare providers and the amount paid by insurers are admissible as relevant to the question of fixing reasonable value. Because the district court erroneously reduced the jury's award of medical damages to Higgs under a per se rule that would cap the amount of damages at the amount paid, we reverse.

Id. at 1308 (emphasis in original).

Here, Defendant's Thirteenth Affirmative Defense seeks to "reduce[], off set, or set off" Plaintiff's recovery by amounts paid by a collateral source, (D.E. 37 ¶ 13), which is

clearly contrary to the holding Higgs. Birren v. Royal Caribbean Cruises, Ltd., __ F.R.D. __, 2020 WL 6487517, at *6 (S.D. Fla. 2020) (striking as "clearly contrary" to Higgs Royal Caribbean's affirmative defense seeking to limit the plaintiff's past medical expense damages and offset those damages "for any and all monies paid by third parties that are related in any way to the above styled action"). Therefore, the Court grants Plaintiff's Motion for Partial Summary Judgment as to Royal Caribbean's Thirteenth Affirmative Defense.

**e. Denials**

Finally, Plaintiff argues that Defendant's Sixteenth, Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses are denials, and not affirmative defenses. (Id. at 11-14.) Defendant does not directly respond to this argument as to the Sixteenth Affirmative Defense, but argues that the Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses assert "superseding cause" defenses that are not ripe for summary adjudication. (See D.E. 101 at 7-8.)

**1. "No notice"**

In its Sixteenth Affirmative Defense, Defendant asserts that it "had no prior notice" of the allegedly dangerous condition and "further denies that this condition is any danger or hazard whatsoever." (D.E. 37 ¶ 16 (emphasis added).)

"[T]he 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 . . . ." Keefe, 867 F.2d at 1322.

Counts I, II, and III of Plaintiff's Second Amended Complaint each allege that Royal Caribbean had knowledge or notice of the risk-creating/dangerous condition, (D.E. 35 ¶¶ 26, 42, 45, 57, 65), and Defendant's Answer denies each of those allegations, (D.E. 37 ¶¶ 26, 42, 45, 57, 65).

The Court finds that Defendant's Sixteenth Affirmative Defense is actually a denial because it does not accept the Second Amended Complaint as true, and instead attempts to controvert Plaintiff's negligence claim. Lebron v. Royal Caribbean Cruises, Ltd., CASE NO.: 16-24687-CIV-WILLIAMS/SIMONTON, 2017 WL 7792720, at *5 (S.D. Fla. Aug. 18, 2017) ("Lebron I") (finding that Royal Caribbean's affirmative defense "that it had no notice, actual, constructive or otherwise of any dangerous condition which the Plaintiff alleges was the proximate cause of his damage" was actually a denial); Lebron II, 2018 WL 5098972, at *7 (same); see also Lodsada v. Norwegian (Bahamas) Ltd., 296 F.R.D. 688, 691 (S.D. Fla. 2013) (finding that affirmative defenses were actually denials "because they do not accept the Complaint as true"). As such, the Court grants Plaintiff's Motion for Partial Summary Judgment as to the Sixteenth Affirmative Defense, leaving the factual issue of Plaintiff's claim for trial (or disposition upon Defendant's pending Motion for Summary Judgment, if appropriate). See Lebron II, 2018 WL 5098972, at *7 (granting partial summary judgment to plaintiff as to "no notice" affirmative defense that was actually a denial, and "leaving the factual issue on Plaintiff's claim for trial").

**2. Superseding cause**

Defendant argues that its Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses "all speak to superseding causes" that would exculpate it from liability. (Resp.

at 7-8.) It further argues that if a jury found that Mr. Morris "'accosted' Plaintiff and flung her against her will, it would constitute a battery which is a superseding cause." (Id. at 8.) Plaintiff does not respond to this argument. (See D.E. 104.)

"Under general federal maritime law, a superseding cause defense, if successful, completely exculpates the defendant of any liability in the matter." Wiegand, 473 F. Supp. 3d at 1352 (citing Exxon Co., U.S.A. v. Sofec, Inc., 517 U.S. 830, 837 (1996)); see also Birren, __ F.R.D. __, 2020 WL 6487517, at *7.

> "The doctrine of superseding cause is . . . applied where the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of independent origin that was not foreseeable. It is properly applied in admiralty cases.
>
> ". . . [T]he superseding cause doctrine can be reconciled with comparative negligence. Superseding cause operates to cut off the liability of an admittedly negligent defendant, and there is properly no apportionment of comparative fault where there is an absence of proximate causation."

Exxon, 517 U.S. at 837-38 (quoting 1 T. Schoenbaum, Admiralty and Maritime Law § 5–3, pp. 165–166 (2d ed. 1994)).

The Court agrees with Defendant that its Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses each speak to superseding causes. The Court further agrees with Defendant that a jury could find that Mr. Morris's actions constituted a superseding cause of Plaintiff's damages. See Wiegand, 473 F. Supp. 3d at 1351 (denying the plaintiff's motion to strike Royal Caribbean's affirmative defense alleging that a man who dropped his eighteen-month-old granddaughter through an open window to her death 150 feet below constituted a superseding cause of the plaintiff's damages). Therefore, Plaintiff's Motion

for Partial Summary Judgment as to Defendant's Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses is denied.

## IV. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Partial Summary Judgment (D.E. 82) is **GRANTED IN PART AND DENIED IN PART** consistent with this Order and as follows:

1. Plaintiff's Motion for Partial Summary Judgment is **GRANTED** on Defendant's Ninth, Eleventh, Twelfth, Thirteenth, and Sixteenth Affirmative Defenses; and
2. Plaintiff's Motion for Partial Summary Judgment is **DENIED** as to Defendant's s First, Third, Fourth, Fifth, Sixth, Eighth, Tenth, Fourteenth, Fifteenth, Eighteenth, Nineteenth, and Twenty-First Affirmative Defenses.

**DONE AND ORDERED** in Chambers at Miami, Florida this 5th day of March, 2021.

**JOAN A. LENARD**
**UNITED STATES DISTRICT JUDGE**