United States District Court
for the
Southern District of Florida

Jane Doe, Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-25152-Civ-Scola
	)	
Royal Caribbean Cruises Ltd.,	)	
Defendant.	)	

Order Granting in Part and Denying in Part Motion to Dismiss

The Plaintiff Jane Doe brings this maritime negligence action against Defendant Royal Caribbean Cruises, Ltd. ("RCCL") for injuries sustained when she was sexually assaulted by a crewmember. (Am. Compl., ECF No. 19.) RCCL has filed a motion to dismiss the amended complaint in its entirety for failure to state a claim. (Mot. to Dismiss, ECF No. 20.) Doe opposes the motion (Resp., ECF No. 22) and RCCL timely filed a reply. (Reply, ECF No. 23.) After careful consideration, RCCL's motion is **granted in part and denied in part** with leave to amend the dismissed counts.

1. Background[1]

The central events of this matter took place on January 28, 2020 in cabin #1607 on board Defendant's vessel *Liberty of the Seas*. (ECF No. 19 at ¶¶ 7–8.) At around 10:30 p.m. on that date, RCCL employee "Lawson" knocked on Doe's cabin holding a purported coffee delivery. *Id.* at ¶ 17. After Doe—who uses a walker and wears a back brace—opened the door, Lawson entered the cabin to set down the coffee and told Doe "that he knew she was lonely, and that he had not been with a woman in 4 months." *Id.* Lawson then forcibly restrained and pushed Doe against the cabin wall over Doe's resistance and screams to "'stop' and 'get out'." *Id.* While Doe struggled against him, Lawson sexually assaulted her—forcibly kissing her and digitally penetrating her vagina. *Id.* When leaving, Lawson told Doe that he would be back, keeping her fearful. *Id.*

After Lawson left, Doe's terror increased when she discovered that the coffee pot was empty and realized that Lawson had unfettered key access to all

[1] The Court accepts Doe's factual allegations as true for the purposes of evaluating the Defendants' motions to dismiss. *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

cabins assigned to him—including her own. *Id.* at ¶ 18. Over the next three hours, Doe's distress mounted as Lawson repeatedly called her cabin phone, and she ultimately unplugged the phone. *Id.* at ¶ 19.

Doe reported Lawson's assault and subsequent phone calls to RCCL officer "Gary" and to "Jorge Pedrosa" in onboard guest services. *Id.* at ¶ 20. RCCL security told Doe that CCTV video footage captured Lawson entering her cabin with a coffee pot and call logs to her cabin confirmed Lawson's repeated calls. *Id.* Although RCCL video recorded its interview with Doe regarding the assault, she alleges that RCCL security did not ask her to fill out an incident report until her second interaction with security personnel. *Id.* at ¶ 21. Days elapsed without RCCL ever informing Doe if it was taking any action with respect to Lawson. Finally, on February 1, 2020, RCCL announced an emergency stop at Port Cozumel, after which Doe called guest services. *Id.* at ¶¶ 22–23. Guest services then informed Doe that Lawson was removed from the vessel and left at port after being under armed guard for two days. *Id.* at ¶ 23.

Doe alleges generally that RCCL's employee hiring, retention, and supervision practices, and how they relate to Lawson, were deficient. To support this claim, Doe asserts that RCCL hires through "hiring partners" in underdeveloped countries that conduct background checks on employee candidates. *Id.* at ¶ 50. Doe contends that because these candidates are from underdeveloped countries, RCCL knows that it is "all but impossible" these background records are complete and reliable. *Id.* Doe further asserts that RCCL's failure to reasonably train, monitor, and "control its male crew members and/or officers to stay away from female passengers is disastrous in combination with RCCL encouraged partying and drinking on its ships." *Id.* at ¶ 13. Doe adds that RCCL fails to enforce a "zero tolerance" policy for fraternization between crew and passengers on its vessels, compounding a failure to secure passengers—including Doe—in relation to sexual assault. *Id.* at ¶ 66.

Doe brings claims for negligent security (Count I), negligent hiring (Count II), negligent retention (Count III), negligent supervision (Count IV), strict liability for sexual assault, sexual battery, and rape (Count V), negligent infliction of emotional distress (Count VI), intentional infliction of emotional distress (Count VII), negligent failure to warn (Count VIII), and negligent misrepresentation (Count IX). (ECF No. 19.) RCCL now moves to dismiss Counts I–IV and VI–IX of the amended complaint. (ECF No. 20.)

2. Legal Standard

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court must accept all the complaint's allegations as true, construing them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). A pleading must only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of a complaint. *See* Fed. R. Civ. P. 12(b)(6). In assessing the legal sufficiency of a complaint's allegations, the Court is bound to apply the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That is, the complaint "must . . . contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover v. Liggett Grp., Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (internal quotations omitted) (citing *Marshall Cnty. Bd. of Educ. v. Marshall Cnty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993). "A claim has facial plausibility when the plaintiff pleads 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. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* A court must dismiss a plaintiff's claims if he fails to nudge his "claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

Thus, a pleading that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" will not survive dismissal. *See id.* at 555. "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 679.

3. Analysis

A. Negligent Security (Count I)

RCCL moves to dismiss Count I on one ground: Doe is improperly attempting to hold RCCL liable for negligence based on the same conduct that underlies her strict liability claim in Count V. (ECF No. 20 at 5.) In support of its argument, RCCL relies primarily on *Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334 (S.D. Fla. 2012) (Moore, J.), which involved a passenger on a cruise

who claimed that crew members attacked her. *Garcia*, 838 F. Supp. 2d at 1336. The plaintiff-passenger raised several intentional tort claims as well as a negligence claim. *Id.* at 1336–37. The district court in *Garcia* concluded that the plaintiff's negligence claim "epitomize[d] a form of 'shotgun' pleading" and that the claim could not survive because it was premised solely on the defendant's alleged commission of an intentional tort. *Id.* at 1337. Of particular relevance for this case is the district court's holding that the defendant could not "be found negligently liable for the commission of the same intentional tort for which [the] [d]efendant is strictly liable." *Id.* The Court in *Garcia* dismissed the plaintiff's negligence claim with prejudice. *Id.* at 1337–38. Other courts in this district have relied on *Garcia* to reject negligence claims in the summary judgment context. *See Garcia v. Carnival Corp.*, No. 13-21628, 2014 WL 12531509, at *3 (S.D. Fla. Apr. 10, 2014) (Altonaga, J.) (concluding that cruise-line defendant was entitled to summary judgment for negligence claim because it was "simply a recasting of the [the plaintiff's] assault, battery, and sexual assault claim").

The Court, however, finds *Garcia* distinguishable from the present case. In *Garcia*, the plaintiff alleged that the defendant was negligent because (1) it committed intentional torts against her, and (2) it failed to prevent the intentional torts against her. *Garcia*, 838 F. Supp. 2d at 1337. Here, Count I includes both allegations that go to heart of Count V for strict liability, but also cover other breaches that pertain to RCCL's failing to provide adequate security on board that do not require a finding that RCCL negligently committed an intentional tort. *Doe v. NCL (Bahamas) Ltd.*, No. 18-20060-CIV, 2018 WL 3848421, at *2 (S.D. Fla. Aug. 13, 2018) (Scola, J.) Indeed, while Count I generally alleges "RCCL is strictly liable for sexual assault, sexual battery, and rape committed by crewmembers and had a duty to reasonably protect passengers from reasonably foreseeable sexual assault, sexual battery, and rape," it includes more specific allegations regarding RCCL's other breaches. For instance, the amended complaint alleges breaches of duty for failing to have sufficient cameras in passenger areas, failure to enforce trainings and rules to prevent sexual harassment, and failure to thoroughly investigate reported instances of sexual harassment. (ECF No. 19 at ¶ 36.) Moreover, the Eleventh Circuit's opinion in *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 913 (11th Cir. 2004), in which the Eleventh Circuit held that cruise-line defendants are strictly liable for assaults committed by crew members, did not state that plaintiffs could no longer alternatively plead their claims, which Federal Rule of Civil Procedure 8(d) allows plaintiffs to do. *See Santana v. Miami-Dade Cty.*, No. 14–CIV–20840, 2015 WL 1914786, at *4 (S.D. Fla. Apr. 27, 2015) (Bloom, J.) (recognizing that the plaintiff could alternatively plead his claims). For these

reasons, RCCL's motion to dismiss is denied on this ground.

B. Negligent Hiring, Retention, and Supervision (Counts II–Counts IV)

Doe's claims for negligent hiring, retention, and supervision are not impermissibly duplicative of her strict liability claim like Count I, but they still fail to meet federal pleading standards.

To state a claim for negligent hiring or retention, a plaintiff must allege that "(1) the agent/employee/contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the particular incompetence or unfitness; and (3) the incompetence or unfitness was a proximate cause of the plaintiff's injury." *Doe,* 2018 WL 3848421 at *3; see *also Witover v. Celebrity Cruises, Inc.*, 161 F. Supp. 3d 1139, 1148 (S.D. Fla. 2016) (Lenard, J.)). To satisfy the second element of this claim, "a plaintiff must allege facts showing that the employer was put on notice of the harmful propensities of the agent/employee/contractor." *Id.* Negligent hiring occurs when the employer knew or should have known of the employee's unfitness before the employee was hired. *Id.* The issue of liability "primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background." *Id.* Negligent retention occurs "after employment begins, where the employer knows or should know of the employee's unfitness and fails to take further action such as investigating, discharge or reassignment." *Id.* (citations and quotations omitted).

Doe fails to "allege facts showing that the employer was put on notice of the harmful propensities of the employee." *Mumford v. Carnival Corp.*, 7 F. Supp. 3d 1243, 1249 (S.D. Fla. 2014) (Lenard, J.). Doe fails to allege that Lawson was incompetent or unfit to perform his work or that RCCL should have known about his harmful propensities before he was hired. Doe claims that RCCL should have known Lawson was unfit to be a crewmember because "[u]pon information of [*sic*] belief, an adequate background check and screening would have revealed information on crewmember Lawson which would have prevented the Defendant from hiring Lawson." (ECF No. 19 at ¶ 47). This position is untenable because Doe has not alleged any facts indicating that RCCL's background checks and hiring practices were deficient. *Murphy v. Carnival Corp.*, 426 F. Supp. 3d 1311, 1315 (S.D. Fla. 2019) (Scola, J.). Moreover, the amended complaint is riddled with vague allegations regarding RCCL's hiring of men from countries where reliable background checks cannot be completed and men who RCCL knows have been away from their wives and girlfriends for months at a time. (*Id.* at ¶¶ 48, 49.) *Doe*, 2018 WL 3848421, at *3 (granting motion to dismiss on claims for negligent hiring or retention

because the complaint "includes broad allegations about NCL's hiring of "young men from developing countries or from countries where the economy is bleak" who are "away from their families and spouses and significant others for months at a time" and for whom background checks cannot be adequately completed or verified."); *Doe v. NCL (Bahamas) Ltd.*, No. 1:16-CV-23733-UU, 2016 WL 6330587, at *3 (S.D. Fla. Oct. 27, 2016) (Ungaro, J.) ("dismissing claim for negligent hiring or retention because "[w]hile Plaintiff's Complaint indirectly alleges that the bartender was incompetent or unfit to perform the work, Plaintiff alleges no facts whatsoever to create a plausible inference that Defendant either "knew or reasonably should have known of [any] particular incompetence or unfitness."). Lastly, Doe's general allegations—that RCCL knew or should have known that Lawson was unfit to be a crewmember from unspecified "passenger and/or crewmember complaints," "guests comment cards," "performance evaluation Lawson's supervisor(s) conducted after each contract Lawson served with the cruise line," and "from watching and observing Lawson's interactions with guests and/or other crewmembers"—do not sufficiently allege that RCCL knew Lawson was particularly incompetent or unfit. (ECF No. 19 at ¶¶ 60–61.) Simply put, Doe does not allege any facts that "speak to the negligent hiring or retention of [Lawson] in particular." *Doe*, 2018 WL 3848421, at *3. Doe's statements are complete speculation and do not allege any "facts" with respect to specific notice, even taken in the light most favorable to Doe.

Doe's statements are similarly speculative and do not satisfy the first element of a negligent supervision claim. Even assuming RCCL acquired actual or constructive notice of Lawson's unfitness based on the events of January 8, 2020, Doe does not plead any facts that show RCCL "did not investigate or take corrective action such as discharge or reassignment." *Doe*, 2018 WL 3848421, at *2. Rather, Doe affirmatively pleads that RCCL informed her that it removed Lawson from the vessel and left him at port after he was under armed guard for two days. (ECF No. 19 at ¶ 23.) Doe fails to state a claim for negligent hiring, retention, or supervision of Lawson, and the Court will dismiss Counts II–IV. While Doe's allegations fail to demonstrate a plausible basis for relief on these claims, in keeping with this Court's precedent—the Court will allow Doe to re-plead these claims. *See id.* at *4 (Scola, J.).

C. Negligent Failure to Warn (Count VIII)

RCCL moves to dismiss Doe's claim for negligence in failing to warn Doe of the risk of sexual assault onboard its vessel *only* on the grounds that it is duplicative of Doe's claim for strict liability for sexual assault, Count V. *See*

Mot. at 5–8. But as this Court has held, a plaintiff may plead a negligence claim in the alternative alongside their intentional tort claims where it is not simply a "general negligence claim for the torts [plaintiff] alleges [the employee of the cruise line] committed[.]" *See Doe*, 2018 WL 3848421, at *2.

RCCL's purported negligence in failing to warn Doe of the dangers onboard its vessel, without which she "would never have taken the subject cruise," (ECF No. 19 at ¶ 127) is not a general recasting of the intentional tort claim outlined in Count V—it is a permissible negligence claim that may be pleaded "in conjunction with the strict liability claim." *Doe*, 2018 WL 3848421, at *2. The Court is skeptical that this *ex ante* failure to warn was a proximate cause of the sexual assault at issue in this case but will not *sua sponte* raise any other basis for dismissal. And so, the Court will not dismiss Count VIII.

D. Negligent Misrepresentation (Count IX)

Doe's claim for negligent misrepresentation fails to satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *See, e.g.*, *Holguin v. Celebrity Cruises, Inc.*, No. 10-20215-CIV, 2010 WL 1837808, at *1 (S.D. Fla. May 4, 2010) (Altonaga, C.J.) (applying Rule 9(b) to negligent misrepresentation claim). To satisfy Rule 9(b), Doe must allege: (1) precisely what statements or omissions RCCL made; (2) the time and place of each statement or omission; (3) who made the statement or omission; (4) the content of the statements and how they mislead the plaintiff; and (5) what RCCL obtained as a result of the fraud. *See Gayou v. Celebrity Cruises, Inc.,* No. 11-23359-CIV, 2012 WL 2049431, at *7 (S.D. Fla. June 5, 2012) (Scola, J.) (quoting *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001)). Substantively, Doe must also plead that RCCL should have known its statement(s) were false. *Woodley v. Royal Caribbean Cruises, Ltd.*, 472 F. Supp. 3d 1194, 1206 (S.D. Fla. 2020) (Moore, J.) (quoting *Ceithaml v. Celebrity Cruises, Inc.*, 207 F. Supp. 3d 1345, 1352–53 (S.D. Fla. 2016)); *Hill v. Celebrity Cruises, Inc.*, No. 09-23815-CIV, 2011 WL 5360247, at *3 (S.D. Fla. Nov. 7, 2011) (Moreno, J.) (internal quotation marks and citation omitted).

Doe fails to allege both the timing of any purportedly false statements and that RCCL should have known it made materially false statements. Doe alleges simply that RCCL "negligently misrepresented that it would provide a safe cruise shop to its passengers [,]" and identifies statements allegedly made on RCCL's website, (ECF No. 19. at ¶¶ 130, 133–35.) This Court has observed that the timing of the purported misrepresentations "is especially significant" when involving a website and that "[t]he importance of 'when' cannot be understated here." *Gayou*, 2012 WL 2049431, at *7. As in *Gayou*, general

allegations that RCCL made misrepresentations on its website "at or near the time [Doe] booked the subject cruise" is insufficient under Rule 9(b) because "[w]ebsite content is updated and changed all the time." *Id.*; *see also McLaren v. Celebrity Cruises, Inc.*, No. 11-23924-CIV, 2012 WL 1792632, at *10 (S.D. Fla. May 16, 2012) (Altonaga, C.J.) (dismissing negligent misrepresentation claim without prejudice where plaintiff failed to identify allegation specifying the time alleged misrepresentations on, *inter alia*, defendant's website were made). Further, Doe fails to assert facts supporting that RCCL knew or should have known it was making material misrepresentations. Thus, the Court shall dismiss Count IX.

E. Negligent Infliction of Emotional Distress (Count VI)

Doe fails to plead a claim for negligent infliction of emotional distress ("NIED"). An NIED claim requires (1) an underlying negligence claim resulting in (2) "mental or emotional harm (such as anxiety or fright) that is caused by the negligence of another" while (3) the plaintiff is within the "zone of danger." *Wu v. NCL (Bahamas) Ltd.*, No. 16-22270-CIV, 2017 WL 1331712, at *3 (S.D. Fla. Apr. 11, 2017) (Scola, J.) (cleaned up). "[T]he zone of danger test permits recovery for NIED if a 'plaintiff is placed in immediate risk of physical harm by defendant's negligent conduct.'" *Id.* (quoting *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337–38 (11th Cir. 2012)).

The only surviving negligence claim in this action is Count VIII—negligent failure to warn. But Doe does not plead facts supporting the proposition that RCCL's alleged negligence in failing "to warn its passengers about the high risk of passengers of crime and injury aboard RCCL's vessels," (ECF No. 19 at ¶ 126), caused Doe to suffer mental and emotional anguish and harm. Doe outlines her mental and emotional distress because of Lawson's actions, but fails to tie this to the surviving negligence claim for RCCL's failure to warn her of the risk of crime onboard its ships. The Court cannot conclude that RCCL's alleged negligent warning placed Doe "in *immediate risk* of physical harm[.]" *Chaparro*, 693 F.3d at 1338 (11th Cir. 2012) (quoting *Stacy v. Rederiet Otto Danielsen, A.S.*, 609 F.3d 1033, 1035 (9th Cir. 2010)). As such, the Court will dismiss Count VI.

F. Intentional Infliction of Emotional Distress (Count VII)

At this preliminary stage, Doe adequately pleads a claim for intentional infliction of emotional distress ("IIED"). For an IIED claim to survive a motion to dismiss, Doe must allege facts showing: "(1) extreme and outrageous conduct; (2) an intent to cause, or reckless disregard to the probability of causing,

emotional distress; (3) severe emotional distress suffered by the plaintiff; and (4) that the conduct complained of caused the plaintiff's emotional distress." *Blair v. NCL (Bahamas) Ltd.*, 212 F. Supp. 3d 1264, 1269 (S.D. Fla. 2016) (Seitz, J.) (citing *Metropolitan Life Insurance Co. v. McCarson*, 467 So.2d 277, 278 (Fla.1985)). Whether conduct is extreme or outrageous is a question of law rather than fact, and a plaintiff must allege facts establishing that the defendant's actions "go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *McCarson*, 467 So. 2d at 278–79. This Court evaluates the outrageousness of conduct in this context on an objective rather than subjective basis. *Blair*, 212 F. Supp. 3d at 1270.

Given the Court's analysis of the negligence claims, *supra*, it treats Count VII as one for strict liability for its employee Lawson's conduct. *See Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 918 (11th Cir. 2004) ("[I]f a cruise ship can be held strictly liable for its crew members' intentional torts, a cruise ship can certainly be held strictly liable for other, lesser forms of crew member sexual assaults on passengers."). Lawson's conduct, as alleged by Doe, aboard the *RCCL Liberty of the Seas* on January 28, 2020 went far beyond all bounds of decency. As alleged, Lawson did not stop at merely committing a violent crime that gives rise to Count V for sexual assault. Doe alleges that Lawson used deceit to commit a violent sexual assault against her—a woman who wears a back brace and uses a walker—and then proceeded to intimidate her for hours afterwards through at least one menacing statement and repeated phone calls. (ECF No. 19 at ¶¶ 111–12.) Indeed, this is a case where "the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *McCarson*, 467 So. 2d at 279. RCCL does not dispute the other elements of an IIED claim, but certainly the allegations in the amended complaint evince RCCL employee Lawson's outrageous conduct with—at a minimum—reckless disregard towards causing the severe emotional distress Doe experienced because of the conduct. Doe sufficiently alleges the tort of IIED in Count VII that goes beyond and is independent from the minimum elements of Count V, and the Court will not dismiss it.

G. The *Pennsylvania* Rule, Negligence *Per Se*, and Other Legal Arguments

Throughout the Amended Complaint, Doe cites, among other legal

doctrines not appropriate in a complaint, the "*Pennsylvania* Rule."[2] *See In re Superior Constr. Co.*, 445 F.3d 1334, 1340 (11th Cir. 2006) (discussing burden-shifting under the *Pennsylvania* Rule when a ship is involved in an allision). Doe has not pleaded any facts indicating that this action ought to involve the *Pennsylvania* Rule and cites inapposite cases for the proposition that "[t]he Eleventh Circuit has applied the Rule beyond collision or allision cases." (ECF No. 22 at 18-19) (citing three Fifth Circuit cases, including after the formation of the Eleventh Circuit, and none involving intentional torts onboard vessels).

Irrespective of the merits of the issue, the applicability of the *Pennsylvania* Rule is a legal argument that has no place in the Amended Complaint. In a similar vein, Doe makes other *legal* arguments in the Amended Complaint regarding negligence *per se* and notice of sexual assault on cruise ships. (ECF No. 19 at ¶ 25.) RCCL moves to strike these "allegations" as improper for a complaint, and the Court agrees. If RCCL raises legal issues regarding burdens of proof, the applicable negligence standard, or constructive notice of sexual assault on cruise ships in a subsequent motion to dismiss or motion for summary judgment—Doe is of course welcome to make her arguments in briefing. At this time, all such legal citation and argument is properly stricken from the amended complaint. *See e.g.*, *Reese v. Carnival Corp.*, No. 20-20475-CIV, 2020 WL 584099, at *2 (S.D. Fla. Feb. 6, 2020) (Scola, J.) (("Reese's complaint contains eight pages of legal argument which the Court finds improperly incorporated into this pleading.") (collecting cases)).

4. Conclusion

For the reasons set forth above, RCCL's motion to dismiss is **granted in part and denied in part. (ECF No. 20.)** The motion is granted with respect to Counts II–IV, VI, and IX and those counts are dismissed without prejudice. The motion is denied as to Counts I, Count VII, Count VIII. All legal arguments raised in the amended complaint are stricken. Further, Doe may file a second amended complaint by July 16, 2021. Failure to do so may result in dismissal with prejudice of Counts II–IV, VI, and IX.

[2] The *Pennsylvania* Rule derives its name from a nineteenth century case and refers to a burden-shifting doctrine relating to situations involving a maritime accident (generally an allision). *See S.S. Pa. v. Troop*, 86 U.S. (19 Wall.) 125, 133 (1873).

Done and ordered, at Miami, Florida, on July 6, 2021.

Robert N. Scola, Jr.
United States District Judge