UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-20027-CIV-ALTONAGA/Damian

KAREN CASEY,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court on Defendant, Carnival Corporation's Motion to Dismiss the Amended Complaint [ECF No. 31], filed on April 24, 2023. Plaintiff, Karen Casey, filed a Response [ECF No. 35], to which Defendant filed a Reply [ECF No. 39]. The Court has carefully reviewed the Amended Complaint [ECF No. 30], the parties' written submissions, and applicable law. For the following reasons, the Motion is granted in part and denied in part.

I. BACKGROUND

On March 5, 2022, Plaintiff sustained injuries after she slipped, fell, and landed in a puddle "at least five feet in size" while she was using an outdoor staircase near the "jacuzzi area on Deck 9" of the Carnival *Freedom*, on which she was a passenger. (Am. Compl. ¶¶ 7–9, 13–14). After she fell, Plaintiff noticed the puddle, which had "accumulated throughout hours and hours of crew and/or passengers tracking, dripping and/or otherwise spreading water throughout the day and into the night of March 5, 2022." (*Id.* ¶ 11).

Plaintiff then brought this action. The Amended Complaint asserts five claims for relief: negligent maintenance (Count I) (*see id.* ¶¶ 31–40); negligent failure to warn (Count II) (*see id.* ¶¶ 41–49); negligent training of personnel (Count III) (*see id.* ¶¶ 50–70); negligent supervision of

personnel (Count IV) (*see id.* ¶¶ 71–85); and negligent design, construction, and selection of materials (Count V) (*see id.* ¶¶ 86–102). Defendant moves to dismiss Counts III and IV for failure to state claims for relief. (*See generally* Mot.).

II. LEGAL STANDARD

"To survive a motion to dismiss [under Federal Rule of Civil Procedure 12(b)(6)], 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) (alteration added; quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). 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 the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

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.* at 678 (alteration added; citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), *abrogated on other grounds by Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

III. DISCUSSION

Defendant raises two principal arguments in support of its request for dismissal of the negligence claims in Counts III and IV. (*See generally* Mot.). First, Defendant contends that Plaintiff fails to plead sufficient facts in Count III as to how Defendant was negligent in the implementation or operation of its training program. (*See id.* 3–8). Second, Defendant asserts that Plaintiff fails to plausibly allege in Count IV that Defendant had notice that a specific crew member was unfit. (*See id.* 8–11).

"Federal maritime law governs claims arising from alleged tort actions aboard ships sailing in navigable waters." *Diaz v. Carnival Corp.*, 555 F. Supp. 3d 1302, 1306 (S.D. Fla. 2021) (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989)).[1] "Drawn from state and federal sources, the general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864–65 (1986) (alteration added; citations and footnote call number omitted). Thus, "[i]n the absence of well-developed maritime law[,]" federal courts "incorporate general common law principles" provided "they do not conflict with federal maritime law." *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1315 (S.D. Fla. 2011) (alterations added; citations omitted).

To properly state a negligence claim under federal maritime law, a plaintiff must allege: "(1) a legal duty on the defendant to protect the plaintiff from particular injuries; (2) the defendant's breach of that duty; (3) the plaintiff's injury being actually and proximately caused by the breach; and (4) the plaintiff suffering actual harm from the injury." *Heller v. Carnival Corp.*, 191 F. Supp. 3d 1352, 1357 (S.D. Fla. 2016) (quotation marks and citation omitted). Maritime

[1] There is no dispute that federal maritime law governs the outcome of this case. (*See* Am. Compl. ¶ 8 (alleging Plaintiff was injured while a passenger on "a ship in navigable water"); Mot. 3).

law imposes on shipowners "a duty to exercise reasonable care to those aboard a vessel who are not members of the crew." *Diaz*, 555 F. Supp. 3d at 1306 (citing *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959)).

Negligent training and negligent supervision are both recognized claims for relief under federal maritime law. *See id.* at 1310. "Negligent training occurs when an employer 'was negligent in the implementation or operation of the training program' and this negligence caused a plaintiff's injury." *Doe v. NCL (Bahamas) Ltd.*, No. 16-cv-23733, 2016 WL 6330587, at *4 (S.D. Fla. Oct. 27, 2016) (quoting *Cruz v. Advance Stores Co.*, 842 F. Supp. 2d 1356, 1359 (S.D. Fla. 2012); other citations omitted); *see also Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005) ("[T]o state a claim for negligent training, [the plaintiff] must show [the defendant] was negligent in the implementation or operation of the training program." (alterations added)). "Negligent supervision occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further actions such as investigating, discharge, or reassignment." *Doe v. Carnival Corp.*, 470 F. Supp. 3d 1317, 1324 (S.D. Fla. 2020) (quotation marks and citations omitted).

A. Count III (Negligent Training of Personnel)

Defendant makes two arguments for dismissing Count III. (*See* Mot. 3–8). To start, Defendant argues that Count III "contains many allegations as to how [Defendant] does in fact train its crew[] yet fails to allege any facts as to how [Defendant] was negligent in the implementation or operation of its training program." (*Id.* 4 (alterations added)). According to Defendant, Plaintiff's allegations regarding the training program actually "demonstrate" the program is "comprehensive," and establish that Defendant "satisfied [its] duty[.]" (*Id.* 5

(alterations added)). In Defendant's view, the negligent training claim must therefore be dismissed, because Plaintiff's detailed descriptions of the training program "expressly contradict Plaintiff's" failure-to-train allegations. (*Id.* 6 (citing *Marino v. Spizzigo Enters., L.L.C.*, No. 20-Civ-24391, 2021 WL 8894429, at *6 (S.D. Fla. Feb. 3, 2021)).

Plaintiff insists that there are no contradictory allegations; instead, the Amended Complaint "explain[s] the various specific training programs created and used by [Defendant] . . . as to its slip and fall procedures[,]" and accuses Defendant of "fail[ing] to train *how* to implement its procedures[.]" (Resp. 4 (alterations added; emphasis in original; citing Am. Compl. ¶¶ 17, 19–20, 67–68)). Plaintiff's characterization of her allegations is accurate; Count III does not contain contradictory allegations. (*Compare* Am. Compl. ¶¶ 17, 19–20 *with id.* ¶¶ 67–68). *Cf. Marino*, 2021 WL 8894429, at *6 (dismissing contradictory claims where complaint alleged, without pleading in the alternative, that the plaintiff was an hourly employee who did not receive tips while simultaneously alleging she received tips that her employer took, among other contradictory allegations).

It appears Defendant is asking the Court to decide, at the pleadings stage, whether Defendant's training programs are adequate — put differently, whether Defendant breached its duty. (*See* Mot. 4–6). The Court declines to do so; that factual determination is "'ordinarily reserved for the fact-finder'" and is inappropriate for resolution on a motion to dismiss. *U.S. Structural Plywood Integrity Coal. v. PFS Corp.*, 524 F. Supp. 3d 1320, 1339 (S.D. Fla. 2021) (quoting *Williams v. Davis*, 974 So. 2d 1052, 1057 n.2 (Fla. 2007)).

Defendant alternatively argues that "Plaintiff's allegations as to how [Defendant] breached its duty to train its crew are wholly conclusory." (Mot. 6 (alteration added; citing *Watts v. City of*

Hollywood, 146 F. Supp. 3d 1254 (S.D. Fla. 2015)). Plaintiff is adamant that her allegations are sufficient. (*See* Resp. 4–5). Plaintiff is correct.

To state a negligent training claim, the plaintiff must plead that defendant "was negligent in its implementation or operation of a training program." *Doe*, 2016 WL 6330587, at *4 (quotation marks and citation omitted). As explained, Plaintiff provides detailed factual allegations about Defendant's training program (*see* Am. Compl. ¶¶ 17, 19–20); making this case unlike *Watts*, which Defendant principally relies on (*see* Mot. 6–8). The *Watts* plaintiff failed to identify any training program at all and also failed to allege how the defendant's training was insufficient, arguing only that "her allegation the City allowed and facilitated its employees' unlawful accessing of her information 'strongly implie[d] a very faulty implementation of training.'" *Watts*, 146 F. Supp. 3d at 1269 (alteration added; citation omitted).

By contrast, here, Plaintiff alleges that

> 67. [Defendant] failed to train its crew and/or implement its procedures as to how to inspect for wet areas and puddles on a regular basis; maintain the open decks including the exterior staircase floors in a clean and dry condition; to cordon and/or block off wet areas to prevent passengers from walking on wet floors and warn passengers the flooring can be slippery when wet. Carnival failed to comply with industry standards regarding how to train and/or otherwise supervise its crew members to inspect and maintain the flooring and warn passengers of wet floors and the dangerousness of wet floors.
>
> 68. At the time the Plaintiff slipped and fell, the hotel steward and/or pool and deck supervisor who were responsible for warning, maintaining and inspecting that area failed to do so. The steward's supervisor — the pool and deck supervisor — was responsible for training and/or implementing Carnival's procedures failed [sic] to reasonably train the steward and/or ensure that Carnival's procedures to warned [sic], maintained [sic] and inspected [sic] were implemented on the day of the incident.

(Am. Compl. ¶¶ 67–68 (alterations added)). Unlike *Watts*, Plaintiff does not merely allege her slip and fall "strongly implies" a negligent implementation of training. 146 F. Supp. 3d at 1269

(quotation marks omitted). While the Amended Complaint is not a model of clarity, it is unlike the threadbare pleading in *Watts*.

Defendant cites at least one decision where a court considered similar allegations and determined they were too conclusory to survive a motion to dismiss. (*See, e.g.*, Reply 3 (citing *Hagle v. Royal Caribbean Cruises Ltd.*, No. 22-cv-23186, 2023 WL 3571292, at *7 (S.D. Fla. May 2, 2023), *report and recommended adopted*, 2023 WL 3568130 (S.D. Fla May 19, 2023). In *Hagle*, the plaintiff tripped and fell down insufficiently lit stairs while disembarking. *See id.* at *1. The *Hagle* court dismissed a negligent training claim premised on allegations that the defendants "failed to train [their] employees to provide 'a safe means of disembarking the RCCL *Allure of the Seas*' and . . . to warn of the dangers in disembarking 'including the dangerous condition where [Plaintiff] was injured.'" *Id.* at *7 (alterations added; citation omitted). With little analysis, the court deemed the allegations "factually insufficient, conclusory, and boilerplate." *Id.*

The Court is more persuaded by the reasoning in *Martinez v. Celebrity Cruises, Inc.*, No. 20-Civ-23585, 2021 WL 356159 (S.D. Fla. Jan. 8, 2021), *report and recommendation adopted*, 2021 WL 355134 (S.D. Fla. Feb. 2, 2021), which Plaintiff cites (*see* Resp. 4–5). In *Martinez*, the plaintiff accused the defendant of negligently hiring an excursion operator, alleging the defendant breached its duty to investigate when it failed to adequately investigate "the fitness and competency of the tour operator," "whether others had fallen while boarding the tour boat during other related excursions," and "complaints from prior passengers about the incompetency and unfitness of the tour operator." 2021 WL 356159, at *6. The court reasoned that "it [wa]s unclear what else Ms. Martinez could have alleged to show that Celebrity did *nothing* to investigate the excursion operator." *Id.* (alteration added; citation omitted). So, too, here.

Defendant asserts that "Plaintiff must allege how and why the specific crewmembers at issue were negligently trained, and how that was [Defendant]'s fault." (Reply 2 (alteration added; citation omitted)). As in *Martinez*, it appears Defendant "wants [Plaintiff] to list all the ways in which it could have [trained] the [employees] but failed to do so." 2021 WL 356159, at *7 (alterations added). *Twombly* and *Iqbal* do not demand so much. *See id.* "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) (quoting *Twombly*, 550 U.S. at 556).

Count III meets this standard. The facts alleged — among other things, that Defendant did not train its crew or implement its procedures on how to inspect for wet areas regularly, cordon off wet areas, and warn passengers — at minimum "raise a reasonable expectation that discovery will reveal evidence" of Defendant's liability. *Id.* Plaintiff certainly provides enough facts to push her "claims across the line from conceivable to plausible[.]" *Twombly*, 550 U.S. at 570 (alteration added).

B. Count IV (Negligent Supervision of Personnel)

Count IV does not fare as well. Defendant argues that in Count IV, Plaintiff fails to sufficiently plead constructive notice because the relevant allegations are "not specific to any crewmember on duty at the time of the alleged incident, and" do not indicate whether the on-duty deck crewmembers were "even employed by [Defendant]" during the relevant time periods or "responsible for the areas where the incident occurred, such that [Defendant] would have had knowledge of their unfitness." (Mot. 10 (alterations added)). According to Defendant, "allegations as to the safety of the subject area cannot serve as a factual basis that any particular *employee* — as opposed to the area itself — was in any way unfit." (*Id.* 11 (emphasis in original)).

Insisting otherwise, Plaintiff explains that she "is not alleging that [Defendant] failed to supervise one singular crew member who caused or contributed to an incident" but instead "alleges a systemic problem . . . with [Defendant]'s open deck crew assigned to implement and carry out Carnival's slip and fall prevention procedures." (Resp. 6 (alterations added; citing Am. Compl. ¶ 68)). Defendant correctly notes that "even if Plaintiff could allege that the" deck crew was "collectively negligently supervised, she fails to allege how [Defendant] had notice that that *specific group of crewmembers* had demonstrated their lack of fitness prior to her incident." (Reply 3 (alteration and emphasis added)).

To state a negligent supervision claim, a plaintiff must allege "(1) the employer received actual or constructive notice of an employee's unfitness, and (2) the employer did not investigate or take corrective action such as discharge or reassignment." *Doe*, 470 F. Supp. 3d at 1324 (quotation marks and citation omitted). An "employer cannot knowingly keep 'a dangerous servant on the premises which defendant knew or should have known was dangerous and incompetent.'" *Mercado*, 407 F.3d at 1162 (alteration adopted; quoting *Mallory v. O'Neil*, 69 So. 2d 313, 315 (Fla. 1954)).

Plaintiff's claim is based on Defendant's constructive notice of its crew's unfitness, alleged as follows:

> 80. [Defendant]'s supervisors and high-ranking crew participate in shipboard safety meetings during which slip and fall prevention is regularly discussed. [Defendant]'s focus on slip and fall prevention includes the open decks areas because Carnival knows the open decks regularly suffer from accumulations of water and slip and fall incidents. Upon information and belief the meeting minutes including those from the *Freedom* which predate the incident reveal that wet open deck floors including the teak staircase adjacent to the jacuzzi where [Plaintiff] slipped and fell were a) the cause of numerous slip and fall incidents; b) suffered from a repetitive problem of water accumulations; c) slip incidents were the result of improper maintenance, warnings and lack of proper supervision; and d) were the identified [sic] as a "hot spot" for crew to focus on and be retrained to [sic]

> because of the crews [sic] failure to follow [Defendant]'s procedures. Upon information and belief [Defendant] knew or should have known about the significant numbers of slip and fall incidents documented in [Defendant]'s databases for the its [sic] ships including the *Freedom*. These incidents put [Defendant] on notice that passengers and crew suffered a high rate of slip and falls on wet open decks. Therefore, [Defendant] knew or reasonably should have known that its shipboard crew assigned to inspect and maintain the open decks (open deck stewards and pool and deck supervisor) were unfit to perform their jobs.

(Am. Compl. ¶ 80 (alterations added)). Defendant argues these allegations are insufficient because they "do[] not connect [Defendant]'s alleged knowledge of a repetitive problem with the open decks being wet to a specific crew on duty at the time of the alleged incident." (Reply 3–4 (alterations added); Mot. 10 (citing *Baldoza v. Royal Caribbean Cruises, Ltd.*, No. 20-Civ-22761, 2021 WL 243676, at *8–*9 (S.D. Fla. Jan. 25, 2021)).

Baldoza is instructive. There, the plaintiff relied on prior injuries on a FlowRider Surfing Simulator as the basis for the defendant's constructive notice of its employees' incompetence. *See id.* at *9. The court rejected that reasoning, as allegations of prior injuries were insufficient "absent an allegation that the same employee was involved in a prior case." *Id.* The court dismissed the negligent supervision claim because "the plaintiff []failed to allege facts concerning [the defendant]'s actual or constructive notice of its employees' incompetence as it relates to the employees responsible for instructing, supervising, and/or assisting passengers that participated in the FlowRider activity." *Id.* (alterations added).

Plaintiff attempts to distinguish *Baldoza* because it involved a single attraction manned by one employee, and the deck here is "inspected and maintained by a *group* of crew[.]" (Resp. 6 (alteration added; emphasis in original)). Plaintiff further argues that *Baldoza*'s holding "does not make sense" when compared to the "systemic problem" alleged here. (*Id.*). These arguments fail to persuade.

Apparently, Plaintiff believes Defendant is on notice that its entire deck crew on the *Freedom* — and presumably every other vessel in its fleet — is unfit, without regard to when the employee was hired (*i.e.*, whether the crewmember was hired *after* the prior incidents) or whether the employee had any involvement in prior slip and fall incidents. (*See* Mot. 10). But to state a claim of negligent supervision, Plaintiff must allege facts that Defendant was "on notice of its *specific employees*' unfitness" — not on notice of a recurring problem without any connection to the employees at issue. *Hagle*, 2023 WL 3571292, at *7 (alteration and emphasis added); *see Baldoza*, 2021 WL 243676, at *8–*9.

It may very well be true that some of the "systemic problems" involved the employees on duty at the time of Plaintiff's fall, but that inference is purely speculative; it is just as likely that none of the prior incidents involved the on-duty employees. And Plaintiff must plead more than the "sheer possibility that [] [D]efendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (alterations added; citation omitted).

Put simply, Plaintiff's notice allegations lack the specificity necessary to "support a plausible inference [that Defendant] had actual or constructive notice its employees had harmful propensities — prior to the incident at issue here — or w[ere] otherwise unfit to serve." *Watts*, 146 F. Supp. 3d at 1269 (first alteration added; second alteration in original; quotation marks and citations omitted). By failing to allege facts that at least raise the inference that Defendant was on notice of specific employees' incompetence, Plaintiff fails to "nudge[] [her] claim[] across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570 (alterations added).

IV. CONCLUSION

For these reasons, it is

ORDERED AND ADJUDGED that Defendant Carnival Corporation's Motion to

Dismiss the Complaint **[ECF No. 31]** is **GRANTED in part** and **DENIED in part**. Count IV of the Amended Complaint [ECF No. 30] is **DISMISSED without prejudice** but without leave to amend, as the deadline to amend the pleadings has passed. (*See* Feb. 17, 2023 Order [ECF No. 12] 1). The Motion is **DENIED** as to Count III.

DONE AND ORDERED in Miami, Florida, this 8th day of June, 2023.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record