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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KATHLEEN O'NEILL, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

CARNIVAL CORPORATION & PLC; PRINCESS CRUISE LINES, LTD.,

Defendants.

Case No. 2:20-CV-06218-GW-MRW
Action Filed: July 13, 2020

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS CLASS ACTION COMPLAINT

Date: October 15, 2020
Time: 8:30 a.m.
Judge: Hon. George H. Wu
Courtroom: 9D

Magistrate: Hon. Michael R. Wilner
Filed: August 28, 2020

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Defendants PRINCESS CRUISE LINES, LTD, CARNIVAL CORPORATION, and CARNIVAL PLC ("Defendants") file this Motion to Dismiss under Federal Rules of Civil Procedure 8, 12(b)(1), 12(b)(6), 12(f) and 23(d)(1)(D). This motion is made following the L.R. 7-3 conference of counsel on August 20, 2020.

INTRODUCTION

This is a would-be class action of cruise-ship passengers impacted by COVID-19 but it is brought by an individual who did not suffer serious illness from the disease and who contractually waived her right to bring a class action. Like the majority of persons who contract COVID-19, Plaintiff Kathleen O'Neill alleges that she suffered only mild symptoms including fever, cough, and chills. She did not require a ventilator, hospitalization, or any other medical intervention other than being given Tylenol. These minor ailments are insufficient to state a disease-based negligence claim under binding Supreme Court precedent, which requires a plaintiff to allege concrete, harmful symptoms to recover. Such a rule exists for good reason: COVID-19 is a global pandemic and the overwhelming majority of persons are either asymptomatic or develop only mild symptoms. Allowing such individuals to recover in tort would threaten unlimited and unpredictable liability for businesses. Beyond her failure to state a claim, the Complaint suffers numerous other significant deficiencies. Her allegations that Defendants failed to develop effective procedures in the early stages of the pandemic to stop the spread of COVID-19 fall well short of the "extreme and outrageous conduct" required to plead a claim for *intentional* infliction of emotional distress. Plaintiff's negligence claims fail as to Carnival Corporation and Carnival plc because the Complaint fails to allege that these entities owed passengers a duty of care. And Plaintiff's consent to a class-action waiver in her passenger ticket contract prevents her from bringing any class claims. Finally, Plaintiff's request for injunctive relief fails because Plaintiff lacks standing to seek prospective injunctive relief.

BACKGROUND

I. Plaintiff's Experience Aboard the *Coral Princess*

Plaintiff alleges the following: Kathleen O'Neill and her husband were passengers aboard the *Coral Princess* when it departed from Chile on March 5, 2020. (Compl. ¶ 67). As the *Coral Princess* sailed toward Argentina, the COVID-19 crisis escalated around the world to the point that ports refused to allow the cruise ship to dock. (*Id.* ¶ 72). The *Coral Princess* was forced to remain at sea, during which time an outbreak of COVID-19 occurred aboard the vessel. (*Id.* ¶ 73).

Plaintiff alleges that she "developed a cough, her throat became scratchy, and she began to feel feverish." (*Id.* ¶ 79). As a result of these symptoms O'Neill requested and was provided Tylenol, (*id.*), but she did not seek medical treatment on the ship's medical deck (*id.* ¶ 77). After disembarking, O'Neill "tested positive and her husband tested negative for COVID-19." (*Id.* ¶ 81). O'Neill subsequently returned home and "experienced dry cough, a 102-degree fever, chills, a sore throat, and more." (*Id.* ¶ 82). O'Neill did not require hospitalization or medical intervention. (*Id.* ¶¶ 82-83).

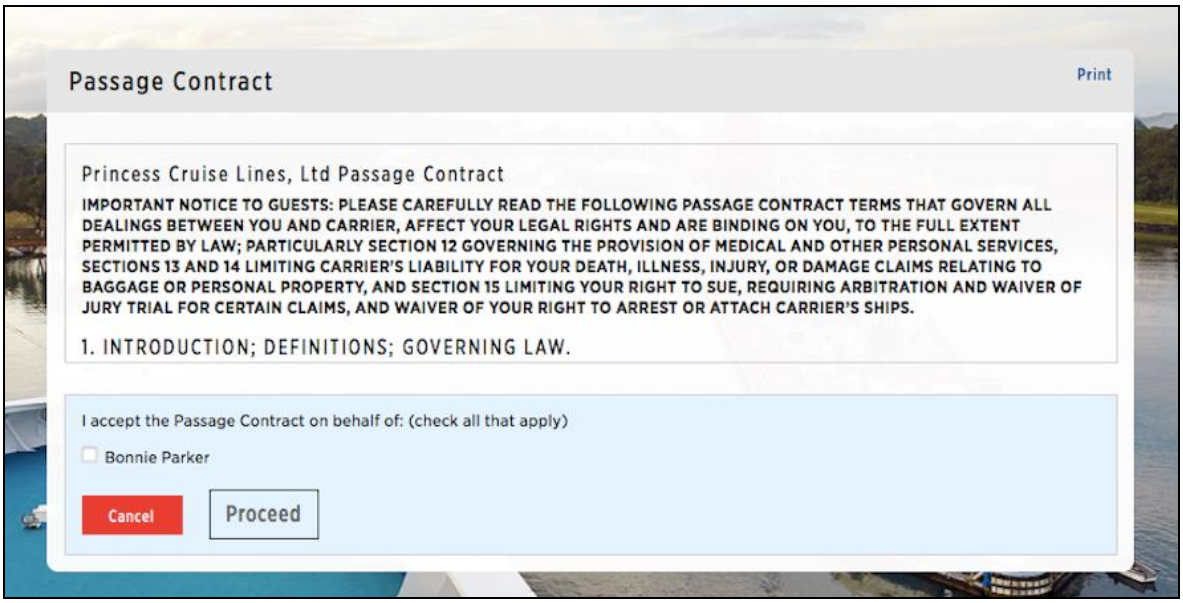
II. Plaintiff Agrees to a Class Action Waiver

O'Neill filed this putative class-action Complaint, bringing claims for Negligence (Count I), Gross Negligence (Count II), Negligent Infliction of Emotional Distress (Count III), and Intentional Infliction of Emotional Distress (Count IV). The Complaint, however, acknowledges that O'Neill's ticket contract ("Passage Contract") contains a class-action waiver. (Compl. ¶¶ 87-89).

Passengers are prompted to read and accept the terms of the Passage Contract after booking their cruise. *See* Ex. #1, Decl. of Collin Steinke ("Steinke Decl.") ¶ 3. Upon making their reservation, all passengers receive a "Booking Confirmation Email" that includes a "Booking Confirmation PDF." *Id.* The PDF contains the following notice: "**IMPORTANT NOTICE:** Upon booking the Cruise, each passenger explicitly agrees to the terms of the Passage Contract

(http://www.princess.com/legal/passage_contract/). Please read all sections carefully as they affect the passenger's legal rights." *Id.* ¶ 4. The Booking Confirmation Email further instructs the passengers to manage their booking on Princess's website, at which point they are prompted to read and accept the Passage Contract. *Id.* ¶¶ 6-10. All passengers receive seven additional e-mails prior to departure prompting them to manage their booking online. *Id.* ¶ 6.

Passengers cannot proceed with managing their booking until they expressly accept the terms of the Passage Contract:



Id. ¶ 9. The Passage Contract emphasizes the binding nature of its terms and specifically directs the reader's attention to the class-action waiver provision, one of the few provisions in all capital letters. *Id.* ¶ 10-15. Upon accepting the terms, a notation is contemporaneously and automatically added to the passenger's booking record maintained by Princess in the ordinary course of business recording the date and time when the passage contract is expressly accepted online. *Id.* Princess's booking records show that O'Neill booked her cruise on September 6, 2018, and accepted the terms of the Passage Contract on September 25, 2019. *Id.* ¶ 16.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion, a complaint must allege "enough facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 555. The plausibility standard "asks for more than a sheer probability that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A pleading that offers labels and conclusions or a formulaic recitations of the elements of a cause of action will not do." *Id.*

ARGUMENT

I. Plaintiff Fails to State a Claim Because She Has Not Alleged Concrete, Harmful Symptoms of COVID-19

Plaintiff fails to state a claim because she does not allege that she suffered concrete, harmful symptoms. Plaintiff allegedly suffered only minimal and common symptoms of COVID-19—fever, sore throat, and a cough—which required nothing more than Tylenol and rest. Under established principles of tort law, including Supreme Court precedent involving disease-based negligence claims, she must allege more than this *de minimis* harm in order to state a claim for relief. This rule is supported by substantial policy considerations: Allowing recovery based on a positive test, or mild symptoms, will lead to unpredictable and unlimited liability in a manner that is plainly at odds with the "fundamental interest served by federal maritime jurisdiction"—the protection of "maritime commerce." *The Dutra Grp. v. Batterton*, 139 S. Ct. 2275, 2287 (2019).

A. The Supreme Court's Decisions in *Metro-North* and *Ayers* Require Plaintiffs to Allege Concrete, Harmful Symptoms of a Disease

In *Metro-North*, the Supreme Court addressed recovery for disease in the context of a suit alleging negligent infliction of emotional distress. The Court held

that a plaintiff seeking to recover from disease exposure "cannot recover unless, and until, he manifests symptoms of a disease." *Metro-North Commuter R. Co. v. Buckley*, 521 U.S. 424, 427 (1997). This rule applies to any claim based on alleged exposure to a potential source of disease—specifically including "germ-laden air." *Metro-North*, 521 U.S. at 437. The Supreme Court "sharply circumscribed" recovery under federal law specifically to avoid the "uncabined recognition of claims for negligently inflicted emotional distress," which would "hol[d] out the very real possibility of nearly infinite and unpredictable liability for defendants." *Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 146 (2003) (quoting *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 546 (1994)). Another court in this district applied *Metro-North* to dismiss fifteen lawsuits filed by passengers on another cruise ship who had not alleged any symptoms of, or diagnoses with, COVID-19. *Weissberger v. Princess Cruise Lines, Ltd.*, No. 2:20-cv-02267-RGK, 2020 WL 3977938 (C.D. Cal. July 14, 2020). Yet another court in this district went further confirming that testing positive for COVID-19 without significant symptoms would be insufficient to establish liability. *Cox v. Princess Cruise Lines Ltd.*, 2:20-cv-04130-DDP-GJS, ECF No. 31 (Aug. 17, 2020), Ex. #2 & ECF No. 33; Ex. #3 (*Cox* hearing transcript).

The Supreme Court clarified *Metro-North* further in *Ayers*. In *Ayers*, plaintiffs diagnosed with asbestosis—"scarring of the lungs by asbestos fibers"—sued to recover for pain and suffering stemming from the disease. 538 U.S. at 142 n.2. The question presented was whether a plaintiff "who suffers from the disease asbestosis" may, as part of his "recovery for his asbestosis-related 'pain and suffering,'" recover "damages for fear of developing cancer." *Id.* at 140. The Court said yes, but with caveats that are dispositive here. The Court allowed recovery for emotional distress only because it was "brought on by a physical injury, *for which pain and suffering recovery is permitted*." *Id.* at 147 (emphasis added). Importantly, the parties in *Ayers* "agreed[]" that asbestosis—which the Court characterized as "a chronic, painful and concrete reminder that [a plaintiff] has been injuriously exposed

to a substantial amount of asbestos"—was itself such "a cognizable injury." *Id.* at 156; *see id.* at 148 (asbestosis is "clinically serious, often disabling, and progressive"). Because asbestosis was a compensable physical injury, a plaintiff suffering from asbestosis could also recover for emotional distress under the common law principle that "pain and suffering associated with, or 'parasitic' on, a physical injury are traditionally compensable." *Id.* at 148.

Key here, the plaintiffs in *Ayers* had significant symptoms. In assuring that its decision would not "risk 'unlimited and unpredictable liability'"—"a point central to the Court's decision in *Metro-North*"—*Ayers* approvingly cited "[c]ommentary distinguish[ing] asymptomatic asbestos plaintiffs from plaintiffs who developed asbestosis and thus *suffered real physical harm*." *Id.* at 156 (emphasis added; quotation marks omitted). Those "asymptomatic asbestos plaintiffs" could not recover either for a physical injury or emotional distress; recovery was limited to those with "real physical harm." *Id.* On that score, the Court observed that the law "classi[ied]" individuals as "asymptomatic" even when asbestos exposure caused some symptoms such as "pleural thickening," an asbestos-related disease where fibers scar the lungs, thickening the lung lining and causing chest pain and difficulty breathing. *Id.* at 156.

Presaging cases like this one, *Ayers* explained that limiting recovery to individuals who actually suffered from the "chronic, painful and concrete" condition of asbestosis—a "fraction" of "those exposed to asbestos"—was critical to "reduce[] the universe of potential claimants to numbers neither 'unlimited' nor 'unpredictable.'" *Id.* at 157. Courts have adhered to this line between "plaintiffs who develop asbestosis," which "is a physical injury," and "those who are merely exposed to asbestos but remain asymptomatic," *Howard Cohn v. Diamond Offshore Mgmt. Co.*, 2003 WL 21750661, at *2 (E.D. La. July 28, 2003), with the latter category including individuals who are diagnosed with conditions "such as pleural plaques or pleural thickening in the lung unaccompanied by an objectively verifiable

functional impairment," *In re Hawaii Fed. Asbestos Cases*, 734 F. Supp. 1563, 1567 (D. Haw. 1990) (cited in *Ayers*, 538 U.S. at 157); *see Weissberger*, 2020 WL 3977938, at *3 ("[*Ayers*] found that plaintiffs who *actually contracted asbestosis and manifested symptoms* had sustained a physical impact" (emphasis added)).

The requirement of concrete, harmful symptoms to trigger liability accords with the widely recognized tort principle that a plaintiff claiming compensable harm from a disease must adduce objective testimony of a "functional impairment." *In re Hawaii Fed. Asbestos Cases*, 734 F. Supp. 1563, 1567 (D. Haw. 1990) (emphasis added); *see also, e.g.*, *Sheridan v. Cabot Corp.*, 113 F. App'x 444, 448 (3d Cir. 2004); *Sondag v. Pneumo Abex Corp.*, 55 N.E.3d 1259, 1265 (Ill. App. Ct. 2016) ("To qualify as 'physical harm,' the alteration of the body must have a detrimental effect in a more practical sense, such as by causing noticeable respiratory symptoms"). It also respects the rule that *de minimis* injuries do not support tort claims, *see Skaff v. Meridien N. Am. Beverly Hills, LLC*, 506 F.3d 832, 839-40 (9th Cir. 2007) ("The ancient maxims of *de minimis non curat lex* and *lex non curat de minimis* teach that the law cares not about trifles."). Defendants do not suggest that COVID-19 is trifling and does not seek to minimize its impact. But the virus affects different individuals differently and some persons who become infected do not suffer significant symptoms and, thus, have no legally cognizable injury. *See, e.g.*, *Granfield v. CSX Transp., Inc.*, 597 F.3d 474 (1st Cir. 2010) ("*de minimis* aches and pains are not considered to be an injury for the purposes of the FELA statute of limitations"); *Oliver v. Keller*, 289 F.3d 623 (9th Cir. 2002) (plaintiffs cannot recover for emotional suffering under the Prison Litigation Reform Act absent a physical injury that is more than *de minimis*); *Stewart v. Cent. of Ga. R. Co.*, 87 F. Supp. 2d 1333, 1339 (S.D. Ga. 2000) (same for the FELA).

B. Plaintiff Fails to Allege Concrete, Harmful Symptoms.

Metro-North and *Ayers* require dismissal of Plaintiff's claims. To be sure, O'Neill alleges that she contracted COVID-19. (Compl. ¶ 83). But the only symptoms she alleges are, at best, *de minimis*: she "developed a cough, her throat became scratchy, and she began to feel feverish." (*Id*. ¶ 79). As a result of these symptoms she requested and was provided Tylenol, *id*., but she did not seek medical treatment on the ship. After disembarking she experienced these symptoms for several weeks. O'Neill was eventually informed by a doctor "that she was no longer at risk for transmitting COVID-19" and has fully recovered. (*Id*. ¶¶ 82-83). Like asbestos-exposed individuals who suffered only pleural thickening, O'Neill has not suffered sufficient "real physical harm" to recover damages.[1]

The same concerns at issue in *Metro-North*, *Ayers*, *Weissberger*, and *Cox* warrant dismissal here. COVID-19 has infected over 24.4 million people worldwide, including over 5.8 million in the United States alone.[2] And as the SAC itself alleges, "COVID-19 causes mild illness in about 80% of cases, and . . . only about 20% of people develop more severe symptoms." (*Id*. ¶ 146 (internal quotations omitted)). If a plaintiff can recover without having suffered serious

[1] Two courts in this District have recently addressed whether individuals who allegedly contracted COVID-19 but who do not allege more than *de minimis* symptoms can state a claim under *Ayers*. On August 17, Judge Pregerson granted a motion to dismiss claims brought by plaintiffs who tested positive for COVID-19 on the ground that it was not clear from the complaint if they had symptoms that were more than *de minimis*. *See Cox v. Princess Cruise Lines Ltd.*, 2:20-cv-04130-DDP-GJS, ECF No. 31 (Aug. 17, 2020), Ex. #2 & Ex. #3. On August 21, Judge Fischer held in several cases involving materially identical complaints filed by the same law firm as in *Cox* that, at the motion to dismiss stage, the court was "not prepared to hold that only some COVID-19 symptoms are sufficiently 'serious' or 'harmful' to warrant compensation" and that plaintiffs' allegations were sufficient to give Princess notice of the claims against it. *See Birkenholz v. Princess Cruise Lines Ltd.*, 2:20-cv-03167-DSF-JC, ECF No. 29 (Aug. 21, 2020). To the extent Judge Fischer's opinion rested on a finding that *Ayers* does not mandate a minimum level of physical injury ,her opinions did not address cases cited by Princess (that Judge Pregerson followed) holding that allegations of *de minimis* physical injury are not compensable as a matter of law.

[2] *See* Johns Hopkins, *COVID-19 Dashboard*, https://coronavirus.jhu.edu/map.html (Aug. 1, 2020).

symptoms, liability will be expanded dramatically and courts will be forced into the impossible task of attempting to sort out responsibility for a global pandemic that will ultimately infect a large portion of the world's population. This Court has recognized the dangers of straying from the *Metro-North* and *Ayers* framework, noting that "given the prevalence of COVID-19 in today's world," a rule under which a "passenger could recover without manifesting any symptoms … would lead to a flood of trivial suits, and open the door to unlimited and unpredictable liability." *Weissberger*, 2020 WL 3977938, at *4. Allowing recovery without any plausible allegation of significant harmful symptoms will similarly create a "flood" of cases in which courts "would be forced to make highly subjective determinations concerning the authenticity of claims . . . ." *Gottshall*, 512 U.S. at 552. Allowing Plaintiff's claims to proceed would open the door to virtually limitless liability for all manner of businesses, schools, airlines, and even private persons who are found somewhere on the causal chain that ends with an individual's positive diagnosis for the disease.

II. Plaintiff Fails to State a Claim for Intentional Infliction of Emotional Distress

Plaintiff's claim for intentional infliction of emotional distress ("IIED") independently fails because the allegations in the Complaint fall well short of the high bar to plead such a claim.

Plaintiffs must allege "extreme and outrageous conduct" to plead an IIED claim. *See Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 841 (9th Cir. 2002) (quoting Restatement (Second) of Torts § 46)) (applying this standard to IIED claims under federal maritime law). This standard is "extremely difficult to meet." *Id.* at 842. "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 841 (quoting Restatement (Second) of Torts § 46).

Courts routinely dismiss IIED claims based on facts that are either comparable to or more outrageous than those alleged here. *See, e.g., Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334, 1339 (S.D. Fla. 2012) (dismissing cruise-passenger's IIED claim alleging that crew members assaulted her and prevented her from leaving her room of a period of time); *Nelson v. Celebrity Cruises, Inc.*, No. 18-21797, 2018 WL 3369671 (S.D. Fla. July 9, 2018) (dismissing cruise-ship passengers' IIED claims alleging they were "expos[ed] to deadly Ebola"); *Wallis*, 306 F.3d at 842 (dismissing cruise-ship passenger's IIED claim alleging that the Captain told the plaintiff that her husband "was probably dead and that his body would be sucked under the ship, chopped up by the propellers, and probably not be recovered"). All of these cases were found legally insufficient to support a claim for IIED and are more egregious than anything alleged here.

Plaintiff's allegations here fall well short of the "extremely difficult" standard of "extreme and outrageous" conduct and rest on the failure to anticipate and stop a COVID-19 outbreak in the early stages of the pandemic and prior to the disease even being declared to be a pandemic. According to Plaintiff, Defendants "fail[ed] to have effective measures to medically screen for, examine, or treat COVID-19 symptoms was extreme and outrageous conduct," (Compl. ¶ 129), and failed to have in place "effective procedures to clean, sanitize, or disinfect the ship" and by failing "to have an emergency plan for containing the spread of the virus," (*id*. ¶¶ 130-31).

This alleged conduct was simply not "beyond all possible bounds of decency," "atrocious," or "utterly intolerable." *Wallis*, 306 F.3d at 841 (internal quotations omitted). Even today, with many more months of medical knowledge, the CDC still cannot definitively advise schools or businesses on how to prevent the spread of COVID-19. COVID-19 outbreaks continue to this day, even at institutions that have had more than six months to equip themselves. If Plaintiff has stated a claim, then any one of the more than 5.8 million people who contracted COVID-19 to date could similarly bring an IIED claim against a business or person

for failing to implement sufficient measures to prevent infection. Such expansive liability for *intentional* infliction of emotional distress makes little sense for businesses that are currently operating in the midst of the pandemic; it makes even less sense for businesses that operated in the pandemic's early stages. Plaintiffs' IIED claim fails.[3]

III. Plaintiff Fails to Establish that Carnival Had a Duty of Care

Even if O'Neill has stated a claim (and she has not), her claims sounding in negligence—Counts I, II, and III of the Complaint—should be dismissed as to Carnival Corporation and Carnival plc.[4] Plaintiff has not alleged that the Carnival entities, as opposed to Princess, which owned and operated the vessel, owed Plaintiff a legally cognizable duty of care.

A. Federal Maritime Law Governs Plaintiffs' Claims

As Plaintiff recognizes by invoking this Court's admiralty jurisdiction (Compl. ¶ 5), federal maritime law governs this suit. Courts have maritime jurisdiction when "(1) the alleged wrong occurred on or over navigable waters, and (2) the wrong bears a significant relationship to traditional maritime activity." *Williams v. United States*, 711 F.2d 893, 896 (9th Cir.1983). "'[V]irtually every activity involving a vessel on navigable waters" is a "traditional maritime activity sufficient to invoke maritime jurisdiction.'" *See Taghadomi v. United States*, 401 F.3d 1080, 1087 (9th Cir. 2005). When a case falls within a court's maritime jurisdiction, "'[s]ubstantive maritime law'"—not state law—"controls the claim.'" *Adamson v. Port of Bellingham*, 907 F.3d 1122, 1125-26 (9th Cir. 2018) (alteration

[3] The Complaint fails to clearly specify whether Plaintiff seeks punitive damages. (*See* Compl. ¶ 94 (asserting that "[w]hether Defendants' conduct warrants the imposition of punitive damages" is a question of law and fact common to the putative class). To the extent any claims survive and Plaintiff does seek punitive damages, Defendants reserve the right to argue that they are not available as a matter of law under *Batterton*, 139 S. Ct. 2275 (2019).

[4] The Complaint names "Carnival Corporation & plc" but that is not a legal entity in its own right.

in original) (quoting *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 366 n.1 (9th Cir. 1992)).

B. The Complaint Does Not Plausibly Allege that the Carnival Entities Had a Duty of Care Under Maritime Law

Three of Plaintiff's four claims sound in negligence. (Compl. ¶¶ 101-125.) A necessary element of any maritime negligence claim is that the defendant owed the plaintiff a duty of care. *See Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 953 (9th Cir. 2011); *Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1291 (9th Cir. 1997). "In maritime negligence cases, the determination of a legal duty is a question of law to be decided by the court." *In re Sea Legend LLC*, 2019 WL 8889971, at *6 (C.D. Cal. June 11, 2019) (quotation marks omitted).

Plaintiff does not identify any specific duty that the Carnival entities owed them. Nor could they. Under maritime law, the duty of care to prevent harm to passengers extends only to "the owner of a ship," *Samuels*, 656 F.3d at 953 (emphasis added) (quoting *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959)), or to the vessel's "operator"—*i.e.*, an entity that charters a vessel and is in its "full possession and control," *Karvelis v. Constellation Lines S.A.*, 806 F.2d 49, 52 (2d Cir. 1986); *see, e.g.*, *Saudi v. S/T Marine Atlantic*, 2001 WL 893871, *3 (S.D. Tex. Feb. 20, 2001) (defendant was not operator of vessel where it had no ownership interest in or operational management responsibilities for vessel). By contrast, an entity that does not own or operate the ship generally has no duty of care to passengers. That is true even if the entity has significant responsibility over matters related to the voyage—for example, "issuing tickets, maintaining vessel, maintaining terminals and offices, arranging for loading and unloading of passengers, arranging advertising, provisioning ship, and procuring officers and crew." *Chan*, 123 F.3d at 1293 (citing *Weade v. Dichmann, Wright & Pugh*, 337 U.S. 801, 805 (1949)).

There is no plausible allegation that either Carnival entity owned or operated

the *Coral Princess*. To the contrary, Plaintiff identifies Princess as one of Carnival's "operating lines" within the "Carnival Corporation and Carnival plc corporate umbrella," (Compl. ¶ 16), and explains that Carnival wholly owns Princess "as a subsidiary," (*id.* ¶ 8). Were there any doubt on this score, the Passage Contract that all passengers agreed to before boarding the *Coral Princess* expressly provided that Princess, not Carnival, was the vessel's operator. *See* Princess, *Passage Contract*, https://www.princess.com/legal/passage_contract/pcl.html (*See,* Ex. C to Steinke Decl., Ex. #1). The Passage Contract states that it "constitutes the entire understanding and agreement between You and Princess Cruise Lines, Ltd., the operator of the ship ('Carrier')," and the contract uniformly refers to Princess—not Carnival—as the "Carrier." *Id.* Plaintiff's Complaint relies on the Passage Contract, (Compl. ¶ 7; *see also id.* ¶¶ 87-89), such that the Court may consider it without converting this motion into a motion for summary judgment. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). The Contract's plain terms undercut any allegation that Carnival operated the *Coral Princess*, and thus vitiate Plaintiff's attempt to claim that Carnival had a separate cognizable duty of care to the ship's passengers.

And Carnival's ownership of Princess does not alone create any legal duties to Princess's customers. It is axiomatic that "the mere fact that one corporation owns all the shares in another does not render it liable for the torts of the latter"—even when "two corporations have common shareholders, officers or directors." 10 Fletcher Cyclopedia of the Law of Corporations § 4878.[5]

[5] *See, e.g., Allen v. Pac. Bell*, 212 F. Supp. 2d 1180, 1200 (C.D. Cal. 2002) (parent company not liable where it "had no more control over [subsidiary] than that typically exercised by the parent corporation in a parent/subsidiary relationship"); *Hall v. North American Indus. Servs., Inc.*, 2007 WL 3020075, *8 (E.D. Cal. Oct. 11, 2007) (parent owed no duty to ensure safety of third parties when it did not operate or otherwise control premises where injury occurred); *Gianfredi v. Hilton Hotels Corp., Inc.*, 2010 WL 1381900, at *9 (D.N.J. Apr. 5, 2010) (parent company has no duty to guest of subsidiary's hotel that parent "does not directly own or exercise control"); *McConkey v. McGhan Med. Corp.*, 144 F. Supp. 2d 958, 963-64 (E.D. Tenn. 2000) (parent company has no

This principle holds true even if Carnival "knew of the alleged problems but [nonetheless] took no action to prevent its subsidiaries' alleged wrongdoing." *Bristow v. Lycoming Engines*, 2007 WL 1106098, *8 (E.D. Cal. Apr. 10, 2007); *see also In re Silicone Gel Breast Implants Products Litig.*, 837 F. Supp. 1128, 1140 (N.D. Ala. 1993) (declining to impose legal duty on shareholders of close corporation to supervise activities of corporation that reasonably could be expected to injure third parties). The Carnival entities, as a corporate parent and affiliate of the actual owner and operator of the vessel, thus had no duty of care.

C. Plaintiff's Grouped Allegations Against "Defendants" Cannot Establish That Carnival Had a Duty of Care

Rule 8 forecloses Plaintiff from establishing a duty through undifferentiated allegations against Carnival and Princess—e.g., by alleging that "Defendants owed … a duty," (Compl. ¶ 103), or that "Defendants ignored all warnings that vessels continuing to sail would likely" suffer COVID-19 outbreaks, (*id*. ¶ 54).

"[D]istrict courts in California routinely hold that undifferentiated pleading against multiple defendants does not meet Rule 8 pleading requirements." *ThinkBronze, LLC v. Wise Unicorn Ind. Ltd.*, 2013 WL 12120260, at *10 n.59 (C.D. Cal. Feb. 7, 2013).[6] One court in this District has already rejected virtually identical grouped pleadings against Carnival and Princess, finding that they violated Rule 8

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duty to warn customers of subsidiaries of allegedly defective product).

[6] Cases adopting this principle are legion. *See, e.g., Makaron v. GE Sec. Mfg., Inc.*, 2014 WL 12614468, at *3 (C.D. Cal. July 31, 2014) ("Undifferentiated pleading against multiple defendants is improper." (quotation marks omitted)); *Markman v. Leoni*, 2010 WL 8275829, at *9 (C.D. Cal. Nov. 3, 2010) ("Plaintiff may not simply lump defendants together but must make specific factual allegations as to each."), *report and recommendation adopted*, 2012 WL 83721 (C.D. Cal. Jan. 5, 2012); *Estrada v. Caliber Home Loans, Inc.*, 172 F. Supp. 3d 1108, 1117 (C.D. Cal. 2016) (dismissing a complaint that "persistently made allegations against 'Defendant' without distinguishing which of the two defendants the allegation is against"); *Dunson v. Cordis Corp.*, 2016 WL 3913666, at *3 (N.D. Cal. July 20, 2016) (complaint "facially insufficient" because "Plaintiffs lump defendants Cordis and Confluent in an undifferentiated group for each cause of action").

and were insufficient to allege that Carnival had a duty of care to passengers on a Princess vessel. *Toutounchian v. Princess Cruise Lines, Ltd.*, No. 20-3717-DSF-AGR, slip. op at 5 (C.D. Cal. Aug. 17, 2020). This rule applies with special force where, as here, a plaintiff makes "conclusory" allegations of joint or coordinated behavior by corporate affiliates. *ThinkBronze*, 2013 WL 12120260, at *10. Plaintiff effectively seeks to erase corporate distinctions without having to meet the rigorous standard to pierce the corporate veil. As the *Toutounchian* court recognized, Rule 8 forecloses this type of pleading.

D. Plaintiff Has Made No Plausible Allegation of Alter Ego Status

Nor can Plaintiff overcome her pleading deficiency through conclusory allegations that Carnival and Princess are "alter egos." (Compl. ¶ 19). It is undisputed that Princess is a separate corporate entity from Carnival Corporation and Carnival plc. (*Id.* ¶ 14). Under maritime law, disregarding corporate separateness "requires that the controlling corporate entity exercise *total domination* of the subservient corporation, to the extent that the subservient corporation manifests *no separate corporate interests of its own*." *Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1294 (9th Cir. 1997) (emphasis added) (quoting *Kilkenny v. Arco Marine Inc.*, 800 F.2d 853, 859 (9th Cir. 1986)).

This rare remedy of veil-piercing is available "only under extraordinary circumstances," like when "the corporate form [is] being used for wrongful purposes." *Vitol, S.A. v. Primerose Shipping Co.*, 708 F.3d 527, 543-44 (4th Cir. 2013) (quotation marks omitted). "Common ownership alone" is far from sufficient. *Chan*, 123 F.3d at 1294; *see also, e.g., Kirno Hill Corp. v. Holt*, 618 F.2d 982, 985 (2d Cir. 1980) ("[Being] the sole owner … does not alone justify piercing the corporate veil."). Rather, "[c]orporate separateness is respected unless doing so would work injustice upon an innocent third party." *Chan*, 123 F.3d at 1293 (quoting *Kilkenny v. Arco Marine Inc.*, 800 F.2d 853, 859 (9th Cir. 1986)).

The Ninth Circuit has reversed alter-ego findings absent evidence of "a shared corporate existence or common scheme to perpetrate fraud on third parties." *Chan*, 123 F.3d at 1294, and has affirmed dismissal of complaints that fail to "allege facts supporting a plausible alter ego claim." *G.O. Am. Shipping Co. v. China COSCO Shipping Corp.*, 764 F. App'x 629, 629 (9th Cir. 2019) (mem.). Again, the court in *Toutounchian* similarly dismissed virtually identical COVID-19 related allegations against Carnival and Princess because the Complaint's allegations were insufficient to maintain an alter ego theory. *Toutounchian*, No. 20-3717-DSF-AGR, slip. op at 5. The Court held that "the cited paragraphs allege nothing more than Carnival's corporate ownership of Princess," and that "[t]o the extent Plaintiffs are pursuing an alter ego theory, the Complaint contains nothing more than 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* at 5 (quoting *Iqbal*, 556 U.S. at 678).

Plaintiffs do not allege anything approaching the requisite corporate domination that could warrant piercing the veil. Plaintiffs even describe Princess as "semiautonomous" (Compl. ¶ 16), nullifying any claim of "total domination." And their remaining allegations of ownership and control; and shared directors, executive officers, and assets (*id.* ¶¶ 13-18) are nowhere near sufficient under the governing standard. A plaintiff cannot rely on "[c]onclusory allegations of 'alter ego' status … to state a viable claim." *Xyience Beverage Co., LLC v. Statewide Beverage Co., Inc.*, 2015 WL 13333486, at *5 (C.D. Cal. Sept. 24, 2015) (collecting cases). "Rather, a plaintiff must allege specifically … the elements of alter ego liability, as well as facts supporting each." *CSX Transp., Inc. v. California Railcar Corp.*, 2010 WL 11597958, at *3 (C.D. Cal. Aug. 9, 2010). Because the only non-conclusory factual allegations in the Complaint point to a typical parent-subsidiary relationship, allowing Plaintiffs' claims against Carnival to proceed would convert veil-piercing into the rule rather than the exception.

The Complaint contains no allegation of corporate domination nor any indication that Princess—a separate company incorporated and headquartered

elsewhere—has "no separate corporate interests" from Carnival Corporation and Carnival plc. *Chan*, 123 F.3d at 1294. The absence of specific allegations against the Carnival entities confirms they have been included in this suit for no reason except their corporate relationship to Princess. The Carnival entities should be dismissed.

IV. Plaintiff's Class Claims Are Barred Under the Class Action Waiver

Even if Plaintiff could state a valid individual claim, her class allegations fail under the class-action waiver cited repeatedly in the Complaint. Under maritime law, the terms of a passenger ticket contract are enforceable if they are "reasonably communicated" and "fundamentally fair." *Oltman v. Holland Am. Line, Inc.*, 538 F.3d 1271, 1276 (9th Cir. 2008). The terms of the Passage Contract here were both reasonably communicated to the Plaintiff and are fundamentally fair under controlling precedent. Numerous courts have enforced virtually identical class action waivers and this Court should do the same here.

A. The Passage Contract was Reasonably Communicated

The Ninth Circuit employs a two-pronged "reasonable communicativeness test" to "determine under federal common law and maritime law when the passenger of a common carrier is contractually bound by the fine print of a passenger ticket." *Oltman*, 538 F.3d at 1276. The Passage Contract satisfies both prongs.

"The first prong of the test focuses on the physical characteristics of the ticket and requires courts to assess features such as size of type, conspicuousness and clarity of notice on the face of the ticket, and the ease with which a passenger can read the provisions in question." *Id.* The Ninth Circuit held that the statute of limitations provision of a cruise ticket contract was sufficiently conspicuous where the contract instructed passengers to "READ TERMS AND CONDITIONS CAREFULLY" and further stated: "IMPORTANT NOTICE TO PASSENGERS . . . THIS DOCUMENT IS A LEGALLY BINDING CONTRACT." *Id.* The contract also directed the passengers to the statute of limitations provision, specifically, by

stating that "YOUR ATTENTION IS ESPECIALLY DIRECTED TO CLAUSES A.1, A.3 . . . WHICH CONTAIN IMPORTANT LIMITATIONS ON YOUR RIGHT TO ASSERT CLAIMS AGAINST US." *Id.* The referenced clause "clearly" provided that passengers could "not maintain a lawsuit . . . unless . . . the lawsuit is commenced not later than one (1) year after the day of death or injury." *Id.* Based on these physical characteristics, the Ninth Circuit held that the ticket contract's terms were "sufficiently conspicuous and [met] the first prong of the test." *Id.*; *see also Dempsey v. Norwegian Cruise Line*, 972 F.2d 998, 999 (9th Cir. 1992) (holding similar terms in cruise ticket were reasonably communicated).

At least one court in this district has held that a prior version of Princess's Passage Contract—which is virtually identical to the version at issue here—satisfied the first prong of the "reasonable communicativeness" test. *See Loving v. Princess Cruise Lines, Ltd.*, No. CV 08-2898-JFW, 2009 WL 7236419, at *3-4 (C.D. Cal. Mar. 5, 2009). That contract provided, in all-capital letters:

> IMPORTANT NOTICE TO PASSENGERS: PLEASE CAREFULLY READ THE FOLLOWING PASSAGE CONTRACT TERMS WHICH GOVERN ALL DEALINGS BETWEEN YOU AND CARRIER, AFFECT YOUR LEGAL RIGHTS AND ARE BINDING ON YOU . . . PARTICULARLY . . . SECTION 15 THROUGH 18 LIMITING THE CARRIER'S LIABILITY AND YOUR RIGHTS TO SUE.

Id. at *4. The Court held that, in light of *Oltman*, Princess's Passage Contract satisfied the first prong of the reasonable communicativeness test. *Id.* (citing *Oltman*, 538 F.3d at 1276; *Dempsey*, 972 F.2d at 999).

The virtually identical Passage Contract here also satisfies the first prong. As in *Oltman* and *Loving*, the Passage Contract's first lines clearly, in all-capital letters, emphasize the binding nature of its terms and directs the passenger's attention to the specific provision at issue here—the class-action waiver:

> **IMPORTANT NOTICE TO GUESTS: PLEASE CAREFULLY READ THE FOLLOWING PASSAGE CONTRACT TERMS THAT GOVERN ALL DEALINGS BETWEEN YOU AND CARRIER, AFFECT YOUR LEGAL RIGHTS AND ARE BINDING ON YOU, TO THE FULL EXTENT PERMITTED BY LAW; PARTICULARLY SECTION 12 GOVERNING THE PROVISION OF MEDICAL AND OTHER PERSONAL SERVICES, SECTIONS 13 AND 14 LIMITING CARRIER'S LIABILITY FOR YOUR DEATH, ILLNESS, INJURY, OR DAMAGE CLAIMS RELATING TO BAGGAGE OR PERSONAL PROPERTY, AND SECTION 15 LIMITING YOUR RIGHT TO SUE, REQUIRING ARBITRATION AND WAIVER OF JURY TRIAL FOR CERTAIN CLAIMS, AND WAIVER OF YOUR RIGHT TO ARREST OR ATTACH CARRIER'S SHIPS.**

(Steinke Decl., Ex. #1, ¶ 12). Section 15 then provides, again in all-capital letters:

> C. WAIVER OF CLASS ACTION: THIS PASSAGE CONTRACT PROVIDES FOR THE EXCLUSIVE RESOLUTION OF DISPUTES THROUGH INDIVIDUAL LEGAL ACTION ON YOUR OWN BEHALF INSTEAD OF THROUGH ANY CLASS OR REPRESENTATIVE ACTION. EVEN IF THE APPLICABLE LAW PROVIDES OTHERWISE, YOU AGREE THAT ANY ARBITRATION OR LAWSUIT AGAINST CARRIER WHATSOEVER SHALL BE LITIGATED BY YOU INDIVIDUALLY AND NOT AS A MEMBER OF ANY CLASS OR AS PART OF A CLASS OR REPRESENTATIVE ACTION, AND YOU EXPRESSLY AGREE TO WAIVE ANY LAW ENTITLING YOU TO PARTICIPATE IN A CLASS ACTION. IF YOUR CLAIM IS SUBJECT TO ARBITRATION UNDER SECTION 15(B)(ii) ABOVE, THE ARBITRATOR SHALL HAVE NO AUTHORITY TO ARBITRATE CLAIMS ON A CLASS ACTION BASIS. YOU AGREE THAT THIS CLASS ACTION WAIVER SHALL NOT BE SEVERABLE UNDER ANY CIRCUMSTANCES FROM THE ARBITRATION CLAUSE SET FORTH IN SECTION 15(B)(ii) ABOVE, AND IF FOR ANY REASON THIS CLASS ACTION WAIVER IS UNENFORCEABLE AS TO ANY PARTICULAR CLAIM, THEN AND ONLY THEN SUCH CLAIM SHALL NOT BE SUBJECT TO ARBITRATION.

(*Id.* ¶ 15). As was true in *Oltman* and *Loving*, the physical characteristics of the Passage Contract here clearly satisfy the first prong of the "reasonable communicativeness" test. Numerous other courts, too, have held that virtually identical language in cruise-ship passenger contracts satisfies the first prong. *See, e.g., McIntosh v. Royal Caribbean Cruises, Ltd.*, No. 17-cv- 23575, 2018 WL 1732177, at *3 (S.D. Fla. Apr. 10, 2018); *DeLuca v. Royal Caribbean Cruises, Ltd.*, 244 F. Supp. 3d 1342, 1349 (S.D. Fla. 2017).

"The second prong requires [courts] to evaluate the circumstances surrounding the passenger's purchase and subsequent retention of the ticket/contract," including "the passenger's familiarity with the ticket, the time and incentive under the circumstances to study the provisions of the ticket, and any other notice that the passenger received outside of the ticket." *Oltman*, 538 F.3d at 1276. The Ninth Circuit held that this prong was satisfied even where passengers only received the contract at the time of departure. "Although the [passengers] may not

have read the terms and conditions before departing, they were free to read them at their leisure and presented no evidence that their travel booklets were taken away from them during or after their cruise ship." *Id.* at 1276-77; *see also Loving*, 2009 WL 7236419, at *4 (Princess's Passage Contract satisfied the second prong where it "was mailed to Plaintiffs . . . approximately three weeks prior to embarkation")*.*

This case is no different. Plaintiff had ample opportunity to study the provisions of the Passage Contract, including the class-action waiver. As part of booking her cruise online, which O'Neill completed in September 2018, O'Neill provided Princess with her contact information and promptly received a "Booking Confirmation Email." (Steinke Decl., Ex. #1, ¶¶ 3, 16). The Booking Confirmation Email contains an attached .pdf document which states: "IMPORTANT NOTICE . . . Upon booking the Cruise, each Passenger explicitly agrees to the terms of the Passage Contract (http://www.princess.com/legal/passage_contract/). Please read all sections carefully as they affect the passenger's legal rights." (*Id.* ¶ 4). It further directs the passenger to manage their booking online, at which point they are again prompted to both read and accept the Passage Contract. (*Id.* ¶¶ 6-10). On September 25, 2019, approximately six months before departure, O'Neill accepted the terms of the Passage Contract. (*Id.* ¶ 16) Although O'Neill alleges that the class waiver was not reasonably communicated to her and that she did not have an opportunity to become meaningfully informed (Compl. ¶ 89), she had well over a year after booking her cruise and some six months after agreeing to the terms and conditions, (*Id.* ¶ 16). Under *Oltman* and *Loving*, Plaintiff had ample opportunity to become meaningfully informed as to the contract's terms. The Passage Contract satisfies this prong of the "reasonable communicativeness" test.

B. Enforcement Would Not Be Fundamentally Unfair

Cruise ship contract clauses are also "subject to judicial scrutiny for fundamental fairness." *Oltman*, 538 F.3d at 1277 (quoting *Carnival Cruise Lines v.*

Shute, 499 U.S. 585, 595 (1991)). This inquiry turns on "whether the clause was included because of 'bad-faith motive' and whether the clause was 'a means of discouraging cruise passengers from pursuing legitimate claims." *Id.* (quoting *Shute*, 499 U.S. at 595). Courts also consider whether the cruise line obtained the passenger's "accession to the . . . clause by fraud or overreaching." *Id.* (quoting *Shute*, 499 U.S. at 595). The Complaint references the Passage Contract's class-action waiver but alleges no bad-faith or that Defendants obtained Plaintiff's accession to the agreement through fraud or overreaching. (Compl. ¶¶ 87-89).

Nor can it be said that a class-action waiver discourages passengers from pursuing legitimate claims. Class-action waivers are common in the cruise-ship industry and beyond and the U.S. Supreme Court and the Ninth Circuit have affirmed that class-action waivers are enforceable.[7] And the fact that more than 130 plaintiffs have filed individual capacity lawsuits against this cruise line relating to COVID-19 in just the first few months of the pandemic shows that a class waiver does not discourage such claims. *E.g.*, *Weissberger*, 2020 WL 3977938, at *1.

C. The Class Action Waiver Should be Enforced at the Pleading Stage

This Court enforce the class-action waiver now and strike or dismiss the class allegations with prejudice. Federal Rule of Civil Procedure 23 authorizes the Court to strike class action allegations by issuing an order "requiring that the pleadings be amended to eliminate allegations about representation of absent persons." Fed. R. Civ. P. 23(d)(1)(D). As a leading treatise notes, under Rules 23 and 12(f) "the court has the authority to strike class allegations prior to discovery if the complaint

[7] *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Carter v. Rent-A-Center, Inc.*, 718 Fed. Appx. 502, 504 (9th Cir. 2017) ("We have interpreted *Concepcion* as foreclosing any argument that a class action waiver, by itself, is unconscionable under state law or that an arbitration agreement is unconscionable solely because it contains a class action waiver."); *Kilgore v. KeyBank Nat. Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (same); *Johnmohammadi v. Bloomingdales, Inc.*, 755 F.3d 1072, 1074 (9th Cir. 2014) (similar).

demonstrates that a class action cannot be maintained." 1 McLaughlin on Class Actions § 3:14 (16th ed. Oct. 2019 update); *see id.* ("Class allegations also may be stricken when they are asserted in contravention of a clear legal bar against class treatment of the action."); *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 949 (6th Cir. 2011) ("Rule 23(c)(1)(A) says that the district court should decide whether to certify a class '[a]t an early practicable time' in the litigation, and nothing in the rules says that the court must await a motion by the plaintiffs.").

Courts routinely dispose of class actions pursuant to class-action waivers at the pleading stage, including in litigation involving cruise lines. *See, e.g.*, *Carter v. Rent-A-Center, Inc.*, 718 Fed. Appx. 502 (9th Cir. 2017); *Laver v. Credit Suisse Sec. USA, LLC*, 2018 WL 3068109 (N.D. Cal. June 21, 2018); *Provencher v. Dell, Inc.*, 409 F. Supp. 2d 1196 (C.D. Cal. 2006); *Cruz v. Cingular Wireless, LLC*, 648 F.3d 1205 (11th Cir. 2011); *Carretta*, 343 F. Supp. 3d 1300 (granting motion to dismiss class allegations based on waiver in cruise line's passage ticket contract); *McIntosh*, 2018 WL 1732177 (same); *Crusan*, 13-CV-20592-KMW [ECF No. 41] (same). The Court should enforce the class-action waiver and, because amendment cannot cure the legal defects, dismiss with prejudice or strike the class allegations.

D. The Class Action Waiver is Enforceable by All Defendants

The class action waiver applies to Plaintiff's claims against all Defendants. The Passage Contract states that all affiliated companies of Princess are entitled to all of Princess's rights, exemptions from liability, defenses, and immunities:

> You and Carrier agree and intend that certain third party beneficiaries derive rights and exemptions from liability as a result of this Passage Contract. Specifically, all of Carrier's rights, exemptions from liability, defenses and immunities under this Passage Contract (including, but not limited to, those described in Sections 4, 6, 7, 12, 13, 14, and 15) will also inure to the benefit of the following persons and entities who shall be considered "Carrier" only for purposes of such rights, exemptions from liability, defenses and immunities: Carrier's employees, agents, Alaska Railroad Corporation, the ship named on the booking confirmation/statement and/or boarding pass (or any substituted ship), the ship's tenders, the ship's owners, operators, managers, charterers, and agents, any affiliated or related companies thereof and their officers, crew, pilots, agents or employees, and all concessionaires, independent contractors, physician and medical personnel, retail shop personnel, health and beauty staff, fitness staff, shore excursion providers, tour operators, shipbuilders and manufacturers of all component parts,

(Steinke Decl.), Ex. #1, ¶ 13).

Where contract terms are intended to benefit non-signatories to a contract, those parties may claim the benefit of a class-action waiver. *See GemCap Lending I, LLC v. Pertl*, No. CV 19-1472-JFW, 2019 WL 6468580 (C.D. Cal. Aug. 9, 2019) (considering whether the parties to a contract were "on notice of its potential application"); *see also Santos v. Costa Cruise Lines, Inc.*, 91 F. Supp. 3d 372, 379 (E.D.N.Y. 2015) (allowing a non-signatory to enforce a forum selection clause where it was "foreseeable to the signatory against whom the non-signatory wishes to enforce the forum selection clause") (quoting *Magi XXI v. Stato della Citta del Vaticano*, 714 F.3d 714, 723 (2d Cir. 2013)).

In *Santos*, a passenger of a cruise operated by Costa Cruise Lines brought a negligence claim against Costa Cruise Lines and its parent companies, Carnival Cruise Lines and Carnival plc. The passenger ticket contract, like the contract at issue here, "allow[ed] both parents and agents to claim 'all of the defenses, limitations and exemptions . . . relating to the responsibility of the Carrier that may be invoked by the Carrier by virtue of [the] Contract.'" *Santos*, 91 F. Supp. 3d at 379. In light of this language, the Court held that "[a]ll Defendants are clearly able to enforce the forum-selection clause as their enforcement was foreseeable to Plaintiffs." *Id.* Indeed, "[a]s the Passage Ticket Contract conveys that all defense and limitations in the contract are available to [the Carrier's] parents, it is reasonably foreseeable that Defendants Carnival Cruise Lines, Inc. and Carnival PLC would seek to enforce the forum-selection clause against the Plaintiffs." *Id.*

This case is no different. The Passage Contract states that "any affiliated or related companies" of Princess will enjoy the same "rights, exemptions from liability, defenses and immunities" as Princess itself. (*See.*, Ex. C to Steinke Decl., Ex. #1, § 1). As the parent and corporate affiliate of Princess, affiliations Plaintiff herself recognizes (Compl. ¶¶ 67-75), the Carnival entities can invoke the class waiver. Dismissing or striking the class allegations now is in the interests of judicial

economy as it will avoid unnecessary discovery, eliminate the need for the court to delve into factual issues relating to class certification, and will make clear to the public that if they intend to pursue claims relating to their voyage they must do so individually before expiration of the one-year contractual limitation period rather than relying on this purported class action.

V. Plaintiff Lacks Standing to Seek Injunctive Relief

Finally, even if Plaintiff had stated a claim, her request for injunctive relief must be dismissed under Rule 12(b)(1) for lack of standing. A plaintiff must demonstrate " standing for each type of relief sought." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). For injunctive relief—a prospective remedy—the plaintiff must face a threat of *future* injury that is "actual and imminent, not conjectural or hypothetical." *Id.* The "threatened injury must be *certainly impending* to constitute injury in fact" and "allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (emphasis added). Here, all four components of the injunction that Plaintiff seeks relates to future business conduct. But Plaintiff does not plausibly allege that Defendants will engage in the same conduct in the future such that they would be "*certain*[]" to cause injury. *Clapper*, 568 U.S. at 409. And to the extent Plaintiff relies on her status as a past customer, that does not provide standing to enjoin conduct going forward. Indeed, Courts will deny standing even when a plaintiff alleges an "intent to purchase" from the defendant in the future; "profession of an intent … is simply not enough." *Levay Brown v. AARP, Inc.*, 2018 WL 5794456, at *3 (C.D. Cal. Nov. 2, 2018) (quoting *Lujan*, 504 U.S. at 565). Plaintiff's request for injunctive relief should be dismissed.

CONCLUSION

For the foregoing reasons, Defendant requests that the Court grant its motion to dismiss the complaint.

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