UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-04203-RGK-SK	Date	October 20, 2020
Title	***Robert Archer et al v. Carnival Corporation and PLC et al***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Plaintiffs' Motion to Certify Class [DE 68]**

I. INTRODUCTION

Plaintiffs initiated this putative class action on April 8, 2020. Plaintiffs filed a First Amended Complaint on June 2, 2020, a Second Amended Complaint ("SAC") on August 14, 2020, and a Third Amended Complaint ("TAC") on October 2, 2020. The TAC is brought against Defendants Carnival Corporation, Carnival PLC, and Princess Cruise Lines, Ltd ("Princess Cruises") (collectively, "Defendants"). The TAC asserts four claims: (1) negligence; (2) gross negligence; (3) negligent infliction of emotional distress; and (4) intentional infliction of emotional distress. All of Plaintiffs' claims arise out of the COVID-19 outbreak on the *Grand Princess*—a cruise ship operated by Princess Cruises.

Presently before the Court is Plaintiffs' Motion to Certify Class and Appoint Class Representatives and Class Counsel. For the following reasons, the Court **DENIES** Plaintiffs' Motions.

II. FACTUAL BACKGROUND

Plaintiffs' TAC alleges the following:

A. The COVID-19 Outbreak on the *Grand Princess*

Plaintiffs were passengers aboard the *Grand Princess* when it departed from San Francisco on February 21, 2020 bound for Hawaii. Before February 21, the *Grand Princess* had been on a roundtrip cruise from San Francisco to Mexico. The Mexico cruise departed on February 11 and was scheduled to return to San Francisco on February 21. At that time, the plan was for the *Grand Princess* to off-load all but 62 passengers from the Mexico cruise and then onboard the passengers for the Hawaii cruise. The problem, however, was that some of the passengers on the Mexico cruise were infected with SARS-

CoV-2, the virus which causes COVID-19. This led to an outbreak on the *Grand Princess* which resulted in numerous individuals contracting COVID-19.

Defendants knew or should have known about the risk of a COVID-19 outbreak on the ship. First, Defendants knew that cruise ships create a heightened risk of viral outbreak. According to an article co-authored by Defendants' own Senior Vice President and Chief Medical Officer, Dr. Grant Tarling, cruise ships "represent a potential source for introduction of novel or antigenetically drifted influenza strains" and cruise ship characteristics, such as "close quarters and prolonged contact among travelers on ships…increase the risk of communicable disease transmission." (TAC ¶ 128.)

Second, several international organizations had issued statements recognizing the severity of the situation. On January 30, 2020, the World Health Organization declared COVID-19 a global health emergency. Further, in early February, the European Union "released specific guidelines for the cruise industry that included an outline of the risk of COVID-19 outbreaks aboard cruise ships and recommended response protocols." (*Id.* ¶ 118.)

Third, Defendants had already experienced a COVID-19 outbreak on another cruise ship: the *Diamond Princess*. The CDC even issued a statement about the outbreak on the *Diamond Princess* on February 18, stating that the CDC "believes the rate of new reports of positives [now] on board, especially among those without symptoms, highlights the high burden of infection on the ship and the potential for ongoing risk." (*Id.* ¶ 122.)

Fourth, at least one passenger on the Mexico cruise was suffering from COVID-19 symptoms. On February 20, an infected passenger on the Mexico cruise sought treatment at the ship's medical center for "acute respiratory distress." (*Id.* ¶ 145.) It appears that at least three other passengers on the Mexico cruise also suffered from COVID-19 symptoms while on the vessel. (*Id.* ¶ 146.) Defendants thus should have known that the passengers from the Mexico cruise who also departed on the Hawaii cruise had been exposed to the virus. (*Id.* ¶ 117-18.)

Despite knowing the risks of setting sail during a pandemic, Defendants proceeded with the Hawaii cruise without providing appropriate personal protective equipment ("PPE"), and without taking other measures to prevent spread of the virus. Just as they had on the *Diamond Princess*, Defendants chose to "keep the fun going" by continuing to host large public gatherings until March 4, more than a week into the voyage. (*Id.* ¶ 120.) Even after March 4, when passengers were reporting signature symptoms of COVID-19, Defendants continued to hold public events such as Formal Night and its associated dinner. (*Id.* ¶ 160.)

B. Plaintiffs' Experiences

As a result of Defendants' actions and omissions, Plaintiffs were all exposed (in close proximity and for extended periods of time) to individuals who had or likely had COVID-19. Most Plaintiffs "suffered symptoms [of COVID-19] in line with the clinical criteria identified by the CDC and [Council of State and Territorial Epidemiologists]." (TAC ¶ 181.)

Plaintiffs "were traumatized by their direct exposure to COVID-19, the risk that they would contract the virus, and the reasonable apprehension associated with that risk, as well as by their confinement on an infected vessel in isolation and for two weeks, on military bases, in some cases knowing that their friends and loved ones were suffering from, or could contract, a potentially lethal illness." (*Id.* ¶ 272.) Plaintiffs also suffer anxiety that they may later experience negative effects or complications as a result of their exposure to SARS-CoV-2. (*Id.* ¶ 274.)

III. JUDICIAL STANDARD

A. Class Certification Under Rule 23

1. Rule 23(a) Requirements

As a threshold to class certification, the proposed class must satisfy four prerequisites under Federal Rule of Civil Procedure 23(a). First, the class must be so numerous that joinder of all members individually is impracticable. Fed. R. Civ. P. 23(a)(1). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members[.]" *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-CV-8629-FMO (EX), 2019 WL 1940619, at *3 (C.D. Cal. Mar. 27, 2019) (quoting another source).

Second, there must be questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). The commonality requirement is liberally construed. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The Supreme Court has explained that the plaintiffs' "claims must depend upon a common contention…. That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1019).

Third, the claims or defenses of the class representative must be typical of the claims or defenses of the class as a whole. Fed. R. Civ. P. 23(a)(3). This does not require that the claims of the representative parties be identical to the claims of the proposed class members. *Hanlon*, 150 F.3d at 1020. Rather, typicality focuses on whether the unnamed class members have injuries similar to those of the named plaintiffs, and whether those injuries result from the same injurious course of conduct. *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001).

Fourth, the proposed class representatives and proposed class counsel must be able to fairly and adequately protect the interests of all members of the class. Fed. R. Civ. P. 23(a)(4). The adequacy requirement is satisfied if the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class, and do not have interests adverse to unnamed class members. *Hanlon*, 150 F.3d at 1020.

2. Rule 23(b) Requirements

If all four prerequisites of Rule 23(a) are satisfied, the court must then determine whether to certify the class under one of the three subsections of Rule 23(b). Under Rule 23(b), the proposed class must establish that: (1) there is a risk of substantial prejudice from separate actions; (2) declaratory or injunctive relief benefitting the class as a whole would be appropriate; or (3) common questions of law or fact predominate such that a class action is superior to other methods available for adjudicating the controversy at issue. Fed. R. Civ. P. 23(b).

In this case, Plaintiffs seek certification under Rule 23(b)(3). A class action may be maintained under Rule 23(b)(3) if the court finds that (1) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

The predominance requirement is "far more demanding" than the commonality requirement of Rule 23(a). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623–24 (1997). When evaluating whether common issues predominate, the operative question is whether a putative class is "sufficiently cohesive" to merit representative adjudication. *Id.* at 623. Though common issues need not be "dispositive of the litigation," *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 29 (D.D.C. 2001), they must "present a significant aspect of the case [that] can be resolved for all members of the class in a single adjudication" so as to justify "handling the dispute on a representative rather than an individual basis" *Hanlon*, 150 F.3d at 1022.

As for superiority, courts consider several factors to determine whether a class action is superior to other methods of adjudication. These factors include: (1) the interest of each member in "individually controlling the prosecution or defense of separate actions"; (2) the "extent and nature of any litigation already begun"; (3) the "desirability or undesirability of concentrating the litigation of the claims"; and (4) the "likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). "This list is not exhaustive and other factors may be considered." *Wolin*, 617 F.3d at 1175. "[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy. Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Id.* (internal citations and quotation marks omitted).

Finally, in analyzing whether the proposed class meets the requirements for certification, a court must take the substantive allegations of the complaint as true and may consider extrinsic evidence submitted by the parties. *See Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975).

IV. DISCUSSION

Defendants argue that Plaintiffs' Motion for Class Certification should be denied on several grounds. The Court addresses each in turn.

A. Whether *Princess Cruises'* Passage Contract Bars Class Certification

First, Princess Cruises argues that Plaintiffs' Motion for Class Certification should be denied because Plaintiffs entered into a passage contract ("Passage Contract") which includes a class-action waiver. Plaintiffs do not dispute that they assented to the terms of the passage contract, including the class-action waiver. Plaintiffs, however, contend that the class-action waiver is unenforceable.

"A cruise ship passenger ticket is a maritime contract, governed by federal maritime law." *Loving v. Princess Cruise Lines, Ltd.*, No. CV 08-2898-JFW (AJWx), 2009 WL 7236419, at *3 (C.D. Cal. Mar. 5, 2009). The Court "employs the 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 v. Holland Am. Line, Inc.*, 538 F.3d 1271, 1276 (9th Cir. 2008) (quoting *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 835 (9th Cir. 2002)).

The first prong of the reasonable communicativeness 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.* (internal quotation marks omitted). "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." *Id.* (internal quotation marks omitted).

1. The Passage Contract

The Court begins with the Passage Contract itself. To book a cruise with Princess Cruises, the passenger is required to provide an email address. After the passenger reserves their cruise, Princess Cruises' automated booking system sends the passenger an email. In the body of the email, there is a booking confirmation (the "Booking Confirmation Email"). (Ex. A, ECF No. 78-3.) There is also an attached pdf (the "Booking Confirmation PDF"). (Ex. B, ECF No. 78-4.)

The last paragraph of the Booking Confirmation PDF is entitled "**IMPORTANT NOTICE**" and states: "Upon booking the Cruise, each Passenger explicitly agrees to the terms of the Passage Contract (https://www.princess.com/legal/passage_contract/). Please read all sections carefully as they affect the passenger's legal rights." If a passenger clicks on the words "Passage," "Contract," or on the website address, the passenger is taken to Princess Cruises' website page containing the Passage Contract.

Both the Booking Confirmation Email and the Booking Confirmation PDF advise guests to click on the "Cruise Personalizer" link to complete the necessary information required before sailing. When a passenger clicks on the link to the Cruise Personalizer, they are taken to a login page. On the login page, they are required to input their name, date of birth, and booking number for the reservation. Once the passenger has entered this information, a copy of the Passage Contract appears on the screen in a dialog box. The passenger may scroll through the Passage Contract and/or print it out before checking the box indicating acceptance of the Passage Contract's terms and conditions. The passenger must affirmatively check the box accepting the terms and conditions of the Passage Contract before they can proceed into the Cruise Personalizer. The passenger cannot proceed beyond the Passage Contract screen unless they click the box to accept the agreement. The dialog box containing the Passage Contract is shown below:

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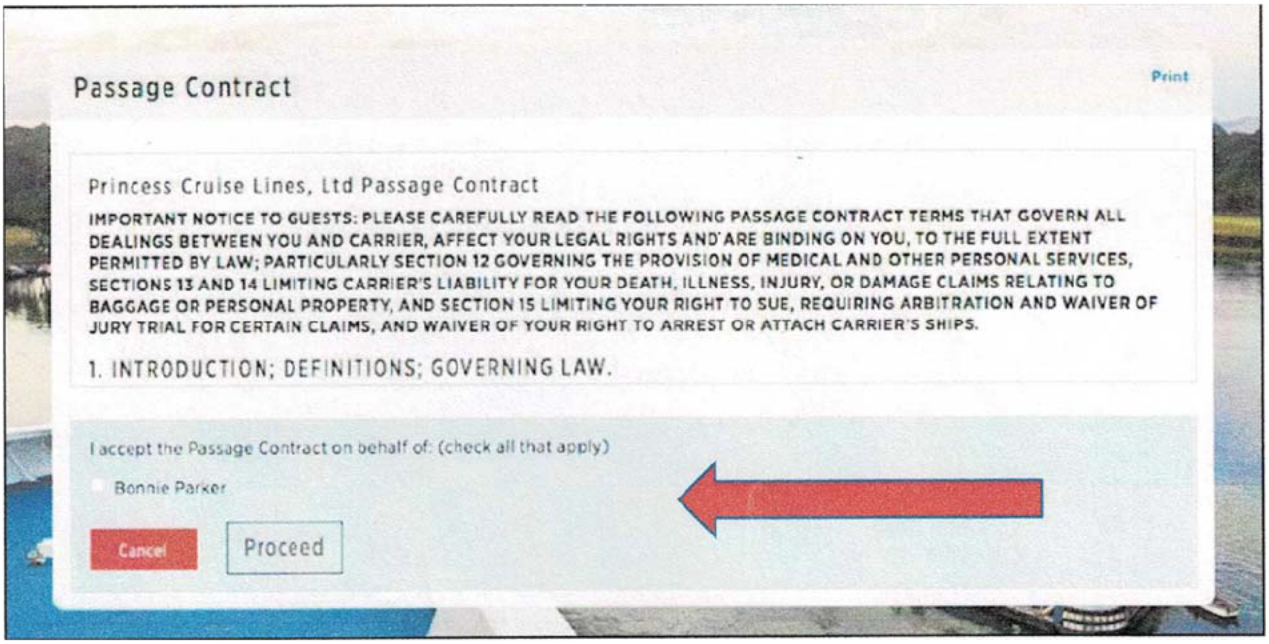

(Steinke Decl. ¶ 9.)

The Passage Contract itself begins with a paragraph entitled "**IMPORTANT NOTICE TO GUESTS**[.]" (Ex. C, ECF No. 78-5.) The introductory paragraph states, in full:

> **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.**

(Ex. C at 1.)

As noted in the introductory paragraph, Section 15 limits passengers' right to sue. Section 15 begins on page 19 and is entitled "NOTICE OF CLAIMS AND ACTIONS; TIME LIMTIATION; ARBITRATION; FORUM; WAIVER OF CLASS ACTION; WAIVER OF RIGHT TO IN REM PROCEDURES OF ARREST AND ATTACHMENT." (*Id.* at 19.) Section 15 contains four subsections lettered A through D. Subsection C is titled "Waiver of Class Action" and provides as follows:

> 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.* at 22.)

2. The Reasonableness Communicativeness Test

a. Physical Characteristics

The Court finds that class-action waiver in the Passage Contract is sufficiently conspicuous to satisfy the first prong of the reasonable communicativeness test. The Passage Contract was available to passengers in several ways. First, the Booking Confirmation PDF linked to the Passage Contract. Second, if a passenger opened the Cruise Personalizer, the Passage Contract would show up in a dialog box. Finally, the Passage Contract was also available on Princess Cruises' website. Once a passenger opens the Passage Contract, the first paragraph warns passengers "**IMPORTANT NOTICE TO GUEST**" and encourages the passenger that it is important for them to read Section 15, which limits the passenger's right to sue. The title of Section 15 clearly states that in all-caps it includes a class-action

waiver. Subsection C states, "WAIVER OF CLASS ACTION" and unambiguously indicates that the passenger is waiving her right to pursue a class or collective action against Princess Cruises. Based on these physical characteristics, the first prong is satisfied. *See Loving v. Princess Cruise Lines, Ltd.*, No. CV 08-2898-JFW(AJWx), 2009 WL 7236419, at 4 (C.D. Cal. Mar. 5, 2009) (finding a passage contract with similar physical characteristics sufficient under the first prong of the reasonable communicativeness test).

Plaintiffs argue that the Passage Contract fails the first prong because the face of the ticket does not include the Passage Contract, and the Passage Contract was buried in the Booking Confirmation Email. Neither arguments are persuasive. Plaintiffs contend that the decision in *Loving* requires a passage contract to be visible on the face of a passage contract. But the passage contract in *Loving*—which satisfied the reasonable communicativeness test—did not appear in on the face of the ticket. The contract was in a separate "multi-page booklet" that came in a pre-cruise packet three weeks prior to the passenger's departure. *Id.* at 1-4. Plaintiffs further contend that that Plaintiffs were required to "navigate an electronic labyrinth of attachments and links to view [the Passage Contract]." (Pls.' Reply at 2, ECF No. 79.) This is not true. Plaintiffs were emailed the Booking Confirmation PDF. From there, Plaintiffs need only click on the link at the bottom of the Confirmation to find the Passage Contract. This is no more a labyrinth as was opening a separate booklet in *Loving*. Finally, courts have enforced other contracts that give similar warnings on the back of their ticket. *See, e.g. Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 836 (9th Cir. 2002) (finding that an "IMPORTANT NOTICE" warning headline that directed passengers to read other parts of the ticket satisfied the reasonable communicativeness test); *Spataro v. Kloster Cruise, Ltd.*, 894. F.2d 44, 46 (2d. Cir. 1990) (holding that a notice on page five of an eight-page ticket sufficiently gave passengers warning of their rights and liabilities).

Thus, the Passage Contract's class action waiver satisfies the first prong of the reasonable communicativeness test.

b. Extrinsic Factors

The Passage Contract also satisfies the second prong of the reasonable communicativeness test. Here, Princess Cruises sent the Booking Confirmation Email and the Booking Confirmation PDF—each of which linked to the Passage Contract—to Plaintiffs upon booking. Passengers were also required to affirmatively select that they had read and accepted the passage contract. At any point, the passengers could print out the contract and peruse its terms. Plaintiffs have presented no evidence that Defendants took away their opportunity to review the contract before, during, or after the cruise. *See Oltman*, 538 F.3d at 1278 ("[Plaintiffs] were free to read [the contract] at their leisure and presented no evidence that their travel booklets were taken away from them during or after the cruise trip.").

Plaintiffs argue that because the Passage Contract was not made available to them before purchasing tickets, it should be unenforceable. But that is not the test. In *Loving*, the plaintiffs were not provided with their passage contract until "three weeks prior to embarkation." 2009 WL 7236419, at *4. Here, all Plaintiffs accepted the terms of the Passage Contract "at least 2 months before boarding the vessel," providing them ample opportunity to review the Contract. (Defs' Opp'n at 5-6, ECF No. 78.)

Further, it is reasonable to expect that Plaintiffs, who were allegedly traumatized by the experience on the *Grand Princess*, "would consult their tickets or an attorney to determine their rights after disembarking the cruise." *Id.* (citing *Dempsey v. Norweigian Cruise Line*, 972 F.2d 998, 1000 (9th Cir. 1992)). Because the [Plaintiffs] "had the ability to become meaningfully informed [of the Passage Contract], [] the second prong of the reasonable communicativeness test is met." *Oltman*, 538 F.3d at 1277 (internal quotation marks omitted).

3. *Fundamental Fairness*

"Cruise tour contract clauses are also 'subject to judicial scrutiny for fundamental fairness.'" *Oltman*, 538 F.3d at 1277 (quoting *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991)). To determine whether the clause is fundamentally fair, courts must "focus 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.* (internal quotation marks omitted). The Court must also consider whether the cruise-ship company obtained the passenger's accession to the clause by fraud or overreaching. *Id.*

Here, Plaintiffs have not provided any evidence of bad-faith motive, fraud, overreaching, or that the waiver discourages passengers from pursuing legitimate claims. Class-action waivers are common in many industries and have generally been upheld. *See, e.g., AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 340 (2011); *Carter v. Rent-A-Center, Inc.*, 718 Fed. Appx. 502, 504 (9th Cir. 2017). Nor do Plaintiffs cite to caselaw holding that class-action waivers are fundamentally unfair.

4. *Unconscionability*

"Unconscionability encompasses both procedural and substantive elements, and both must be proven to revoke a contract on that basis." *DeLuca v. Royal Caribbean Cruise, Ltd.*, 244 F. Supp. 3d 1342, 1348 (S.D. Fla. 2017). The party challenging the contract or contract term has the burden of establishing unconscionability. *Id.* Generally, procedural unconscionability focuses on whether there was unequal bargaining power between the parties, and substantive unconscionability on whether there are "overly harsh or one-sided results." *AT&T*, 563 U.S. at 340.

Class-action waivers in the cruise ship context are not unconscionable. *Deluca*, 244 F. Supp. 3d at 1348; *McIntosh v. Royal Caribbean Cruises, Ltd.*, No. 17-cv-23575, 2018 WL1732177, at *3 (S.D. Fla. Apr. 10, 2018). In *Deluca*, cruise ship passengers were barred from alleging class-action claims in their complaint because the cruise ship's passenger contract contained a class-action waiver. The district court held that the contract was not procedurally unconscionable because the waiver was reasonably communicated to the passengers, even though the passengers lacked equal bargaining power. *Id.* Likewise, the waiver was not substantively unconscionable because it did not affect passengers' "substantive right to bring a claim against [the cruise ship] and it does not limit [the cruise ship's] liability." *Id.* at 1349.

Plaintiffs attempt to distinguish *Deluca* and *McIntosh* because both cases "simply assert that [t]he class action waiver is not substantively unconscionable" and cites to *Lankford v. Carnival Corp.*, No 12-24408-CIV, 2014 WL 11878384 (S.D. Fla. July 25, 2014) which did not directly address unconscionability. But the *Deluca* court did not "simply assert" its point without reasoning. As stated above, the district court explained that class action-waivers are not substantively unconscionable because Plaintiffs may still bring individual claims and the waiver did not limit the cruise ship's liability. *See Deluca*, 244 F. Supp. 3d at 1349.

Furthermore, Plaintiffs did not address why the Passage Contract would be procedurally unconscionable. Instead, Plaintiffs assert that "class action waivers in adhesion contract can be unconscionable and thus unenforceable." (Pls.' Reply at 5.) But the Supreme Court has held that form contracts—even those that are non-negotiable and where a party lacks bargaining power—are enforceable. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593 (1991). "[Plaintiffs'] contention that the ticket contract is a contract of adhesion is not enough to find the ticket contract procedurally unconscionable." *Deluca*, 244 F. Supp. 3d at 1348.

The Passage Contract is neither procedurally nor substantively unconscionability. Thus, the Court finds that the Passage Contract is enforceable.

5. *Public Policy*

Finally, Plaintiffs argue that the Passage Contract's class-action wavier is unenforceable as a matter of public policy because "it would deprive" courts of the authority to effectively fashion legal remedies and control their cases. (Pls.' Reply at 6.) Plaintiffs cite to no cases for such a broad proposition. And as indicated above, courts have upheld cruise ship class-action waivers. *See e.g., Deluca*, 244 F. Supp. 3d at1349 ("In sum, the class action waiver is enforceable and is not unconscionable."); *McIntosh*, 2018 WL1732177, at *3 (same); *Lankford*, 2014 WL 11878384, at *6 ("Given the uncontroverted evidence, the class action waiver was reasonably communicated to Plaintiffs

and is therefore enforceable."). Thus, the Court finds that the class-action waiver is not void as a matter of public policy.

B. Whether the Class Satisfies 23(a), 23(b)(3), or 24(c)(4) Requirements

The Court has already found that the Plaintiffs' Motion for Class Certification is barred by the Passage Contract. Thus, the Court does not need to address whether Plaintiffs satisfy the Federal Rules of Civil Procedure 23(a) or 23(b)(3) requirements for class certification, or whether certification under Rule 23(c)(4) would be appropriate.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiffs' Motion.

IT IS SO ORDERED.

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