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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 THE FIRST AMENDED CLASS ACTION COMPLAINT

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

Magistrate: Hon. Michael R. Wilner
Filed: October 2, 2020

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Defendants PRINCESS CRUISE LINES, LTD, CARNIVAL CORPORATION, and CARNIVAL PLC ("Defendants") file this Motion to Dismiss the First Amended Complaint ("FAC") under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), 12(f) and 23(d)(1)(D). This motion is made following the L.R. 7-3 conference on September 25, 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 does not allege facts to establish causation—indeed, who does not allege contracting the disease on Defendants' vessel—and who contractually waived her right to bring a class action. Plaintiff Kathleen O'Neill alleges that she was a passenger on the *Coral Princess* when it embarked on a cruise from South American. Despite the fact that transmission of COVID-19 continues to this day, including among large sophisticated institutions, O'Neill nonetheless seeks to hold Defendants liable for failing to anticipate and stop a COVID-19 outbreak in early March 2020, at the very outset of what became the global COVID-19 pandemic. O'Neill's claims are untenable and fail for several reasons.

First, O'Neill does not plausibly allege facts to establish causation. While O'Neill alleges that she tested positive for COVID-19 several days after disembarking from the *Coral Princess*, she tellingly does not allege that she actually contracted the disease on the vessel. As other courts in this District have found in COVID-19 related litigation directed against Defendants, this failure alone is sufficient basis to dismiss. *See Dachinger v. Princess Cruise Lines Ltd.*, No. 2:20-cv-03847-RGK-SK, slip op. at 8 (C.D. Cal. Sep. 8, 2020). And given O'Neill's allegations that her COVID-19 symptoms did not begin until several days after she returned to her home, and that she spent the last five to six days of the cruise confined to her room with her husband who did not test positive for COVID-19, O'Neill's allegations do not "tend[] to exclude the alternative plausible explanation"

that she contracted COVID-19 after disembarking from the *Coral Princess*. *Rueda Vidal v. Bolton*, 2020 WL 5652492, at *1 (9th Cir. 2020). O'Neill's failure to allege facts to establish causation requires dismissal of the FAC.

Beyond this failure to allege causation, the FAC also suffers numerous other significant deficiencies. O'Neill's 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. O'Neill's alter ego claims fail as to Carnival Corporation and Carnival plc as a matter of law. And O'Neill's express consent to a class-action waiver in her passenger ticket contract prevents her from bringing any class claims. Finally, O'Neill's request for injunctive relief fails because she lacks standing to seek prospective injunctive relief.

BACKGROUND

I. O'Neill's Experience Aboard the *Coral Princess*

O'Neill alleges the following: Kathleen O'Neill and her husband were passengers aboard the *Coral Princess* when it departed from Chile on March 5, 2020. (FAC ¶ 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. (FAC ¶ 72). The *Coral Princess* was forced to remain at sea, during which time an outbreak of COVID-19 occurred aboard the vessel. (FAC ¶ 73).

O'Neill makes the following additional allegations about her experience on the *Coral Princess* and specifically with COVID-19:

- O'Neill and her husband mixed freely among the passengers and crew for approximately 26 days until March 31 when passengers were instructed to return to their cabins. (FAC ¶ 87 (alleging that on March 31 passengers were told to return to their cabins "after everyone had been socializing and making purchases for about 26 days in an environment known to Carnival and

Princess to be susceptible to contagion"); *id*. ¶78 (alleging that passengers on the *Coral Princess* were able to continue engaging in activities and that "the party went on").

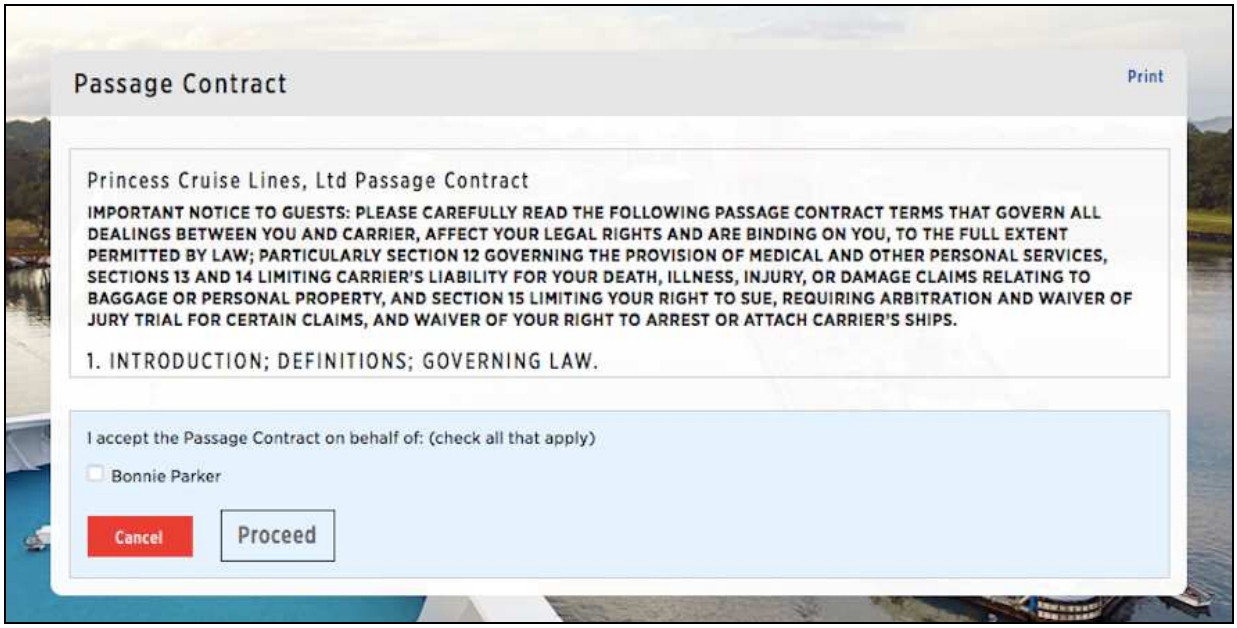
- O'Neill and her husband spent the next five to six days together in their room, "21 paces from end to end," until April 6, when they disembarked, flew home on a chartered flight, and then were driven home. (FAC ¶¶ 88, 93).
- O'Neill and her husband began a 14-day home quarantine on April 8, were tested on April 9 at a drive-through testing center, and were informed on April 10 that O'Neill had tested positive while her husband tested negative. (FAC ¶¶ 94, 95).
- Beginning after she returned home, tested positive for COVID-19, and was "isolated in her room," O'Neill suffered "acute symptoms of COVID-19" for 14 days, including "difficulty breathing, a 102-degree fever, a cough and sore throat, mood swings, brain fog, chills, and fatigue so extreme she could barely make it out of bed." (FAC ¶ 96).
- O'Neill was informed on April 23 that "she was no longer at risk for transmitting COVID-19." (FAC ¶ 97).

II. O'Neill Agrees to a Class Action Waiver

As she acknowledged in her original Complaint, O'Neill's ticket contract ("Passage Contract") contains a class-action waiver. (Compl. ¶¶ 87-89, ECF No. 1). Passengers are prompted to read and accept the terms of the Passage Contract after booking their cruise. *See* Ex. A, 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.* ¶¶ 6-11. 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). "When faced with two possible explanations . . . plaintiffs cannot offer allegations that are 'merely consistent with' their favored explanation but are also consistent with the alternative explanation. Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true, in order to render plaintiffs' allegations plausible within the meaning of *Iqbal* and *Twombly*." *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678).

ARGUMENT

I. O'Neill Fails to State a Claim Because She Fails to Allege Facts to Establish Causation

The Court should dismiss the FAC because O'Neill fails to allege facts to establish an essential element of her claims—causation. Simply put, O'Neill does not allege that she contracted COVID-19 on the *Coral Princess*, and there are no factual allegations in the FAC that exclude the alternative possibility that she contracted the disease after disembarking.

For a disease-based negligence claim, O'Neill must allege facts to establish that she was exposed to the disease and that this exposure was a substantial contributing factor in causing subsequent physical injuries. *See McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1175 (9th Cir. 2016). And to plausibly allege causation in COVID-19-related litigation, specifically, plaintiffs must "actually allege that they contracted COVID-19," and must "allege the time they began experiencing symptoms." *Parker v. Princess Cruise Lines Ltd.*, No. 2:20-cv-03788-RGK-SK, slip op. at 6 (C.D. Cal. Sep. 18, 2020); *see also Archer v. Carnival Corp.*, No. 2:20-cv-04203-RKG-SK, slip op. at 7-8 (C.D. Cal. Sep. 22, 2020) (same). As Judge Klausner explained in another case involving a cruise passenger

who allegedly contracted COVID-19, a complaint fails to sufficiently allege facts to establish causation if it is "'impossible to determine if [plaintiff] caught the virus before embarkation, at some port of call, through an asymptomatic individual … or during their post-cruise government managed transportation or quarantine.'" *Dachinger v. Princess Cruise Lines Ltd.*, No. 2:20-cv-03847-RGK-SK, slip op. at 8 (C.D. Cal. Sep. 8, 2020) (quoting Mot. at 11, ECF No. 25). Allegations of this sort are necessary to "'allow[] the court to draw the reasonable inference' that the defendant's conduct caused the alleged harm." *Parker*, slip op. at 6 (quoting *Iqbal*, 556 U.S. at 678). These COVID-19 cases stem from the principle that "plaintiffs cannot offer allegations that are 'merely consistent with' their favored explanation [of injury] but are also consistent with [an] alternative explanation." *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1105 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678, and *Twombly*, 550 U.S. at 554).

The Ninth Circuit recently applied the *Century Aluminum* rule in *Rueda Vidal v. Bolton*, 2020 WL 5652492 (9th Cir. 2020). In a motion to dismiss the plaintiff's *Bivens* action alleging that immigration officers seized and arrested her without reasonable suspicion or probable cause, defendants "offer[ed] the 'obvious alternative explanation' that the officers were aware of her immigration status, giving them reasonable suspicion and probable cause for her arrest." *Id.* at *1. The Ninth Circuit noted that a "judicially noticed Notice to Appear ('NTA')" was issued for plaintiff the day of her arrest and that the timing of the NTA "tends to support, rather than exclude an inference that the officers who seized and arrested Rueda Vidal were aware of her immigration status, by indicating that the enforcement authorities alleged that day that she was undocumented." *Id.* The court further noted that the plaintiff's allegations in the complaint about the circumstances of her arrest "do not give rise to an inference that the officers were sent out without any check on Rueda Vidal's immigration status" and that "the complaint needed to have alleged some factual basis to conclude that it was plausible, not merely possible, that

such a check was not run." *Id.* The court thus concluded that the allegations in the complaint "do not meet the *Century Aluminum* standard of tending to exclude the alternative plausible explanation that the officers were aware of Rueda Vidal's probable immigration status when they seized and arrested her." *Id.* (citing *Century Aluminum*, 729 F.3d at 1108).

O'Neill's allegations fall woefully short. O'Neill does not allege *when* she contracted COVID-19 and, as noted above, she never once alleges that she actually contracted COVID-19 on the *Coral Princess*. If O'Neill did not contract COVID-19 on the vessel, then she has no plausible factual allegations to support even an inference that Defendants' conduct caused her alleged injuries. This failure on its own compels dismissal of the FAC. *Dachinger*, slip op. at 8.

Beyond failing to allege that she contracted COVID-19 on the *Coral Princess*, O'Neill's allegations do not "tend[] to exclude the alternative possible explanation" for her injury—that she contracted COVID-19 after disembarking—as is required under *Century Aluminum* and *Rueda Vidal*. By O'Neill's own account, she and her husband mixed freely among passengers and crew for approximately 26 days until March 31, when they were confined together in their cabin, which was only "21 paces from end to end," for 5 to 6 days until April 6, when they disembarked and traveled home to their home by air and car. (FAC ¶¶ 87, 88). Yet even as she alleges that COVID-19 is "extremely contagious," (FAC ¶ 24), and despite sharing extremely close quarters for nearly a week, O'Neill, but *not* her husband, tested positive for COVID-19, (FAC ¶¶ 88-89, 95). Moreover, while O'Neill alleges that she "developed a cough, her throat became scratchy, and she began to feel feverish" "[w]hile on board," she does not allege that these were symptoms of COVID-19 or when specifically they occurred. (FAC ¶ 92). In fact, the only COVID-19 symptoms O'Neill alleges that she suffered did not begin until *after* she tested positive and began to self-isolate on April 10, which was four days

after she disembarked. (FAC ¶¶ 93, 96). Those "acute" symptoms, O'Neill alleges, then continued for 14 days. (FAC ¶ 96).

The FAC fails for the same reason as the complaint in *Rueda Vidal*. Just as Rueda Vidal's allegations and the judicially noticed NTA tended to support, rather than exclude, an inference that officers had reviewed her immigration status before her arrest, O'Neill's allegations here tend to support, rather than exclude, an inference that she contracted COVID-19 after disembarking and during or after her trip home. Based on the allegations in the FAC, O'Neill could not have contracted COVID-19 on the *Coral Princess* unless it was before March 31, when passengers were directed to remain in their rooms. But if that is what happened, then O'Neill would have to allege facts to establish why her husband did not contract this "extremely contagious" disease from her during the five to six days they spent together in their room or in the time they spent traveling home. There are no such allegations in the FAC. O'Neill's allegations that her COVID-19 symptoms did not begin until after April 10, which was several days after she disembarked from the *Coral Princess* and traveled home, reinforces that she has not alleged facts to exclude an inference that she did not contract COVID-19 on the vessel.[1] Because O'Neill alleges no facts to exclude the alternative that she contracted COVID-19 after disembarking, the FAC does not establish causation and her negligence claims must be dismissed.

II. O'Neill Fails to State a Claim for Intentional Infliction of Emotional Distress

The Court should dismiss O'Neill's claim for intentional infliction of emotional distress (IIED) because O'Neill has failed to allege that Defendants

[1] One of the CDC guidance documents on COVID-19 that O'Neill cites (FAC 25 n.17) states that the median time between exposure to onset of symptoms is four to five days. *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, Ctrs. for Disease Control & Prevention (updated Sept. 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html.

committed "extreme and outrageous conduct" that "intentionally or recklessly cause[d] [Plaintiffs] severe emotional distress." *See Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 841 (9th Cir. 2002) (quoting Restatement (Second) of Torts § 46) (applying Restatement standard to IIED claims under federal maritime law). This standard is "extremely difficult to meet." *Id.* at 842. "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." Restatement (Second) of Torts § 46, cmt. d. Rather, "[l]iability 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." *Wallis*, 306 F.3d at 841 (quoting Restatement (Second) of Torts § 46).

Courts thus routinely dismiss IIED claims based on facts that are either comparable or more outrageous than those alleged here. In *Brown v. Royal Caribbean Cruises, Ltd.*, for example, the court dismissed an IIED claim based on allegations that a cruise line "knew of the presence of Legionnaires' disease" and "acted with deliberate and wanton recklessness in choosing not to advise passengers of the presence of the disease prior to the ship's departure," because, although the complaint "describe[d] truly objectionable behavior, the allegations simply d[id] not rise to the level of outrageousness required by the applicable case law." 2017 WL 3773709, at *2-3 (S.D. Fla. Mar. 17, 2017). Likewise, in *Negron v. Celebrity Cruises, Inc.*, the court dismissed cruise-ship passengers' IIED claims based on allegations that they were "expos[ed] to areas contaminated with Ebola" after being forced to disembark and travel to a local hospital due to another passenger's medical condition. 2018 WL 3369671, at *1 (S.D. Fla. July 9, 2018). And in *Garcia v. Carnival Corp.*, the court dismissed a cruise-ship passenger's IIED claim based on

allegations that crew members assaulted her and prevented her from leaving her room. 838 F. Supp. 2d 1334, 1339 (S.D. Fla. 2012). *See also, e.g.*, *Wallis*, 306 F.3d at 842 (dismissing cruise-ship passenger's IIED claim alleging that an employee said, after the passenger's husband disappeared from the vessel, that the husband "was probably dead and that his body would be sucked under the ship, chopped up by the propellers, and probably not be recovered"); *York v. Commodore Cruise Line, Ltd.*, 863 F. Supp. 159 (S.D.N.Y. 1994) (dismissing cruise-ship passenger's IIED claim alleging ship failed to notify authorities of cruise passenger's rape claim, ship made misrepresentations to examining doctor, and ship misrepresented applicable law).

O'Neill's allegations here fall well short of the "extremely difficult" standard of "extreme and outrageous" conduct and are clearly less egregious than the other cruise cases wherein IIED claims were dismissed. O'Neill's allegations rest on the failure to anticipate and stop an outbreak of the novel coronavirus, COVID-19, in early March 2020. Notwithstanding the fact that outbreaks at large institutions continue to this day, O'Neill insists that Defendants engaged in "extreme and outrageous conduct" by failing to "have effective measures to medically screen for, examine, or treat COVID-19 symptoms", "to clean, sanitize, or disinfect the ship in case of viral contagion", and to "have an emergency plan for containing the spread of the virus and/or for disembarking infected or uninfected passengers or crew." (FAC ¶¶ 141-43). Even if these allegations were true, Defendants' alleged conduct was simply not "beyond all possible bounds of decency," "atrocious," or "utterly intolerable" as required to plead an IIED claim. *Wallis*, 306 F.3d at 841 (internal quotations omitted). The *Coral Princess* embarked *nine days* before the CDC issued a No Sail Order restricting cruise-ship operations in the United States,[2] and *three*

[2] *See* U.S. Dep't of Health & Human Servs., Order Under Sections 361 & 365 of the Public Health Service Act (42 U.S.C. §§ 264, 268) and 42 Code of Federal Regulations Part 70 (Interstate) and Part 71 (Foreign): No Sail Order and Other Measures Related to Operations (Mar.

days before the World Health Organization declared COVID-19 a pandemic (FAC ¶ 83). O'Neill admits that, even today, COVID-19 "is novel" and that its effects are "not well known." (FAC ¶ 26).[3] O'Neill notably does not allege that Defendants did anything inconsistent with what the CDC (or South American authorities) had recommended at the time. In fact, O'Neill admits that Princess took precautions to contain the spread of COVID-19 onboard by directing all guests to return to their cabins for the duration of the cruise. (FAC ¶ 87).[4] In these extremely uncertain and unprecedented circumstances—at the very outset of a pandemic that *still* remains out of control—Defendants' conduct was not "outrageous" as a matter of law.

Nor has O'Neill adequately alleged that Defendants "intentionally" or "recklessly" caused her emotional distress. *Wallis*, 306 F.3d at 841 (quoting Restatement (Second) of Torts § 46). Nowhere does O'Neill allege that Defendants intended to cause her harm or emotional distress, nor would such allegations be plausible, considering that Defendants have no incentive whatsoever to intentionally inflict emotional harm on their guests. And O'Neill's only allegation of "reckless" conduct is Defendants' decision to sail the *Coral Princess* in light of encountering illness on other vessels. (FAC ¶ 144). This does not amount to recklessness under *Wallis* and the Restatement. Rather, O'Neill must allege facts demonstrating "that such risk is *substantially greater* than that which is necessary to make [a

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14, 2020), https://www.cdc.gov/quarantine/pdf/signed-manifest-order_031520.pdf.

[3] There tremendous uncertainty even to this day about COVID-19, including for example whether aerosol transmission of COVID-19 is common. *CDC Publishes—Then Withdraws—Guidance on Aerosol Spread of Coronavirus*, NPR (Sept. 21, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/09/21/915351325/cdc-publishes-then-withdraws-guidance-on-aerosol-spread-of-coronavirus.

[4] O'Neill alleges that she visited the ship's doctor on March 26 and that, "[u]nbeknownst" to her, "many people were extremely ill in sick bay" but there was no announcement about "the spread of illness until four days" later. (FAC ¶ 86). O'Neill, however, does not allege that the "extremely ill" people in sick bay had COVID-19 or when the ship's doctor, much less Princess, became aware that passengers on the *Coral Princess* had COVID-19 before directing all passengers to remain in their cabins.

defendant's] conduct negligent." Restatement (Second) of Torts § 500 (emphasis added). That she cannot do. The fact that CDC itself did not issue a No-sail Order until a week after the *Coral Princess* set sail—as well as the measures Defendants did undertake to limit the spread of the disease (FAC ¶ 88), foreclose a finding of recklessness as a matter of law.[5]

If O'Neill has stated a claim here, then any one of the more than 7 million Americans who have contracted COVID-19 to date could bring an IIED claim against any business, institution, or person who might have exposed them to the disease for failing to implement sufficient measures to prevent infection—notwithstanding that governments, schools, universities, and other institutions are still struggling to control the pandemic. Defendants' failure to anticipate and prevent the outbreak of a disease that *nobody* was able to anticipate or prevent does not "go beyond all possible bounds of decency" so as "to be regarded as atrocious, and utterly intolerable in a civilized community." *Wallis*, 306 F.3d at 841. Moreover, if O'Neill's theory is correct, recovery would not be limited to persons who actually contracted COVID-19; rather, anyone who happened to be present in a place where someone later was found to have been diagnosed with COVID-19 could also bring an IIED claim. That is simply not the law. "Given the prevalence of COVID-19 in today's world," a rule under which a passenger could recover for purely emotional damages "without manifesting any symptoms … would lead to a flood of trivial suits, and open the door to unlimited and unpredictable liability," *Weissberger*, 2020

[5] One court has permitted IIED claims to proceed based on similar allegations as here. *See* In Chambers Order at 8-9, *Archer v. Carnival Corp. & plc*, No. CV 20-4203 (C.D. Cal. Sept. 22, 2020), Dkt. 82. That decision is wrong. It failed to recognize that the standard for extreme and outrageous conduct is "extremely difficult to meet." *Wallis*, 306 F.3d at 842. It failed to acknowledge that courts regularly dismiss IIED claims at the motion-to-dismiss stage. It failed to address—and is entirely irreconcilable with—the numerous cases cited above in which IIED claims were dismissed based on similar or more-outrageous conduct. And it failed to consider whether the plaintiffs had adequately alleged intent or recklessness.

WL 3977938, at *4. Such liability is precisely what the Supreme Court foreclosed in *Metro-North* and *Ayers*. *See id.* Plaintiffs' IIED claims must be dismissed.[6]

III. O'Neill Has Made No Plausible Allegation of Alter Ego Status

O'Neill's allegations that Carnival and Princess acted as alter egos (FAC ¶ 22) are conclusory and should be dismissed, as several Courts in this District have already done with virtually identical allegations. *Toutounchian v. Princess Cruise Lines Ltd.*, 2:20-cv-03717-DSF-AGR, slip op. at 5 (C.D. Cal. Aug. 17, 2020); *Archer v. Carnival Corp.*, 2:20-cv-04203-RGK-SK, slip op. at 6-7 (C.D. Cal. Sep. 22, 2020); *Maa*, 2020 WL 5633425, at *10. It is undisputed that Princess is a separate corporate entity from Carnival Corporation and Carnival plc. (FAC ¶ 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)).[7]

The alter ego allegations here are virtually identical to those dismissed in *Toutounchian*, *Archer*, and *Maa*, and should be dismissed. O'Neill does not allege anything approaching the requisite corporate domination much less a "common scheme to perpetrate fraud on third parties" that could warrant piercing the veil. *Chan*, 123 F.3d at 1294. The allegations of shared directors, executive officers, and assets; monitoring of subsidiaries for compliance with a plea agreement; and

[6] The Complaint fails to clearly specify whether O'Neill seeks punitive damages. (*See* FAC ¶ 106 (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 *The Dutra Group v. Batterton*, 139 S. Ct. 2275 (2019).

[7] O'Neill's reference to Defendants as "agents" likewise is not supported by factual allegations that go beyond the typical parent-subsidiary (or affiliate) relationship.

involvement of a parent company in responding to the COVID-19 outbreak (FAC ¶¶ 15-21) are nowhere near sufficient under the governing standard. A plaintiff cannot rely on "naked assertion[s] devoid of further factual enhancement" to plead an alter ego theory. *Toutounchian*, slip op. at 5 (C.D. Cal. Aug. 17, 2020). "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); *see also, e.g., Wehlage v. EmpRes Healthcare, Inc.*, 791 F. Supp. 2d 774, 782-83 (N.D. Cal. 2011) ("broad," "general" alter-ego allegations insufficient). Where, as here, the only non-conclusory factual allegations in the FAC point to a typical parent-subsidiary relationship, allowing Plaintiff's claims against Carnival to proceed would turn the piercing doctrine on its head, converting it into the rule rather than the exception.

The FAC contains no allegation of corporate domination, and certainly no 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 any specific allegations against the Carnival entities indicates they have been included in this suit for no reason except their corporate relationship to Princess.

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

Even if O'Neill could state a valid individual claim, her class allegations fail under the class-action waiver cited repeatedly in the Complaint. Under maritime law, which governs enforceability of contracts between carriers and passengers, 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.

1. "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. A, ¶ 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). Most of O'Neill's Passage Contract is not in all capital letters, therefore highlighting the importance of the provisions at issue here even more.

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) (enforcing a virtually identical class-action waiver in case alleging class was put in harm's way while Texas was under a state of emergency due to Hurricane Harvey and rejecting arguments that class waiver was void based on public policy and was unenforceable as unconscionable); *DeLuca v. Royal Caribbean Cruises, Ltd.*, 244 F. Supp. 3d 1342, 1349 (S.D. Fla. 2017) (enforcing class-action waiver in case alleging physical and emotional injuries that allegedly occurred when vessel encountered storm and rejecting public policy and unconscionability arguments); *Lankford v. Carnival Corp.*, No. 12-24408, 2014 WL 11878384, at *4 (S.D. Fla. July 25, 2014) (enforcing class-action waiver in case alleging injuries arising from bacterial infections allegedly contracted from contaminated hot tub on vessel).

2. "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. O'Neill 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" after making her cruise booking. (Steinke Decl., Ex. A, ¶¶ 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.* ¶¶ 5-11). On September 25, 2019, approximately six months before departure, O'Neill accepted the terms of the Passage Contract. (*Id*. ¶ 16) O'Neill thus had well over a year after booking her cruise and some six months after agreeing to the terms and conditions to review and become familiar with the Passage Contract. (*Id.* ¶ 16). Under *Oltman* and *Loving*, O'Neill had ample opportunity to become meaningfully informed as to the contract's terms. The Passage Contract satisfies this prong of the "reasonable communicativeness" test.

Another Court in this district recently enforced provisions found in another Passenger Contract in COVID-19-related litigation. *See Maa v. Carnival Corp.*, No. 2:20-cv-06341-DSF-SK, 2020 WL 5633425, at *6 (C.D. Cal. Sep. 21, 2020). In *Maa*, the Court observed that "many cruise line cases require only that the passenger had an opportunity to review the contract . . . *before boarding*." *See id.* (emphasis in original). *But see Oltman*, 538 F.3d at 1277 (holding it sufficient for passengers to receive the contract during the cruise itself). The court thus enforced the Princess federal forum selection clause found in the ticket. *Id*. Other courts, too, have held that cruise-ship passengers had ample opportunity to read the terms under similar circumstances. *McIntosh*, 2018 WL 1732177, at *3; *DeLuca*, 244 F. Supp. 3d at

1349; *Lankford*, 2014 WL 11878384, at *4. And, in *Carnival Cruise Lines Inc. v. Shute*, 499 U.S. 585, 597 (1991), the Supreme Court enforced a contractual forum selection clause in a cruise ticket even though it was not sent to plaintiffs, by way of their travel agent, until after they purchased the ticket and were subject to a cancellation clause without a refund. The Passage Contract thus satisfies the second 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 *Shute*, 499 U.S. at 595). 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 FAC here alleges no bad-faith or that Defendants obtained Plaintiff's accession to the agreement through fraud or overreaching.

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.[8] 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;

[8] *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).

Parker v. Princess Cruise Lines Ltd., No. 2:20-cv-03788-RGK-SK (C.D. Cal. Sep. 18, 2020); *cf. Maiava v. Princess Cruise Lines Ltd.*, 2:20-cv-04393-DSF-JC, slip op. (C.D. Cal. Aug. 31, 2020); *Toutounchian v. Princess Cruise Lines Ltd.*, 2:20-cv-03717-DSF-AGR, slip op. (C.D. Cal. Aug. 17, 2020).

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 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 v. Royal Caribbean Cruises*, 343 F. Supp. 3d 1300 (S.D. Fla. 2018) (granting motion to dismiss class allegations based on waiver in cruise line's passage ticket contract); *McIntosh*, 2018 WL 1732177 (same); *Crusan v. Carnival Corp.*, 13-CV-20592-KMW (S.D. Fla. 2015) [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.[9]

What's more, much of the benefit of the class-action waiver is lost if a decision on its enforceability is deferred. Defendants bargained for the right to litigate on an individual basis to avoid the costs associated with class certification and the uncertainty surrounding whether the case will be treated as a class action. As is true with an arbitration agreement or forum selection clause, the enforceability of the Passage Contract's class-action waiver should be resolved at the pleading stage to ensure that the parties receive their benefit of the bargain.

D. The Class Action Waiver is Enforceable by All Defendants

The class action waiver applies to O'Neill'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:

[9] One court recently decided to withhold decision on the enforceability of a similar class waiver until the certification stage, but in that case the court had ordered expedited class-certification briefing, which both overlapped with defendants' motion-to-dismiss briefing and also raised the same class-waiver issue. *See* In Chambers Order at 4-5, *Archer v. Carnival Corp. & plc*, No. CV 20-4203 (C.D. Cal. Sept. 22, 2020), Dkt. 82. Here, Plaintiffs have not yet filed a motion to certify a class, and there is no reason for this Court to wait for them to do so before deciding the legal question of whether the class waiver they agreed to is enforceable. To the contrary, deciding the applicability of the class-action waiver now will save substantial party and judicial resources related to briefing a motion for class certification. Additionally, the case *Archer* relied on for the proposition that motions to strike class allegations are "disfavored" involved arguments that the proposed class could not satisfy the requirements of Rule 23. *Id.* (citing *In re Apple, AT&T iPad Unlimited Data Plan Litig.*, No. C-10-02553 RMW, 2020 WL 2428248, at *2 (N.D. Cal. June 26, 2012)). But this case, and *Archer* for that matter, is different because Defendants rely on a contractual class waiver, rather than Rule 23's substantive provisions (although, to be sure, if the Court does not dismiss the case and/or the class allegations, Plaintiff will not be able to satisfy her burden to prove that the proposed class satisfies Rule 23).

> 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. A ¶ 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. (Steinke Decl., Ex. A, § 1). As the parent and corporate affiliate of Princess, affiliations Plaintiff herself recognizes (FAC ¶¶ 10-11, 14), 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

Even if O'Neill's claims are allowed to proceed, her request for injunctive relief must be dismissed under Rule 12(b)(1) for lack of standing. To satisfy Article III's "case or controversy" requirement to show standing for injunctive relief—a prospective remedy—the plaintiff has the burden to prove a threat of *future* injury. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). That threat must be "actual and imminent, not conjectural or hypothetical." *Id.* In other words, 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). And it must be true that "injunctive relief will vindicate the rights of the particular plaintiff," not merely "the rights of third parties." *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 949 (9th Cir. 2011).

Under these principles, O'Neill has no standing to obtain injunctive relief. All four components of the injunction that Plaintiff seeks relate to Princess's future business conduct. (FAC at 47-48). But being a past customer does not provide

standing to enjoin a business's conduct going forward. Rather, O'Neill would need to plausibly allege not only that she *will* (not simply *might*) travel on a Princess vessel in the future, but also that, when she does, Princess's conduct would be "*certain*[]" to cause them injury. *Clapper*, 568 U.S. at 409. 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 v. Defenders of Wildlife*, 504 U.S. 555, 565 (1992)). Likewise, a plaintiff's "'some day' intentions—without any description of concrete plans or indeed any specification of when the some day will be—do not support a finding of … 'actual or imminent' injury.'" *Id.*

The FAC does not even allege a "some day intention[]," let alone future injury that is certainly impending. There is no allegation that O'Neill intends to travel on a Princess vessel, much less that such travel would occur before the pandemic ends. There also is no plausible allegation Princess would act negligently so as to harm O'Neill in the way she alleges she was harmed in the past. This Court should follow the decisions of other courts in this district that have dismissed virtually requests for injunctive relief in COVID-19 litigation for this very reason. *See, e.g.*, *Archer*, slip op. at 10.

CONCLUSION

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

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