UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID RUMRILL and DONNA RUMRILL, Plaintiffs, v. PRINCESS CRUISE LINES LTD., Defendant.	CV 20-3317 DSF (PJWx) Order GRANTING in part Defendant's Motion to Dismiss (Dkt. 21)

Defendant Princess Cruise Lines Ltd. moves to dismiss Plaintiffs David and Donna Rumrill's First Amended Complaint (FAC) in its entirety. Dkt. 21-1 (Mot.). Plaintiffs oppose. Dkt. 23 (Opp'n).[1] The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below, the motion is GRANTED in part.

[1] The opposition not only improperly includes citations in the footnotes contrary to this Court's Standing Order, Dkt. 11 at 4.d., but the citations fail to include the specific page or paragraph number referred to. For example, Plaintiffs' citations to "Amended Complaint," see Opp'n at 4 n.1, and "Ibid. Footnote 1," id. at 4 n.2, are entirely unhelpful to the Court.

I. BACKGROUND

Plaintiffs were passengers on the cruise ship Ruby Princess, which departed from Sydney, Australia on March 8, 2020. Dkt. 20 (FAC) ¶¶ 4-5, 9-10. Defendant "owned and operated" the Ruby Princess. Id. ¶ 7. As a result of an outbreak of COVID-19, the Ruby Princess returned 3 days early. Id. ¶¶ 9-10. Plaintiffs allege that "[a]s a result of the Defendant's lackadaisical approach to the safety of Plaintiffs, its passengers and crew aboard the Ruby Princess, Plaintiffs contracted COVID-19 on Defendant's ship." Id. ¶ 17; see also id. ¶¶ 9-10. Plaintiffs ultimately "disembarked early" and "flew black to Florida where they remained quarantined and ultimately became ill with COVID-19." Id. ¶ 19. Plaintiffs "suffered physical pain and suffering from developing COVID-19, suffered emotional distress and emotional harm, [and] [are] traumatized from contracting COVID-19." Id. ¶ 20; see also id. ¶ 24 ("Plaintiffs have contracted COVID-19, on said ship, suffered physical injury as a result of said disease as well as emotional trauma from contracting said disease, and the emotional trauma will continue to plague them into the future"). Plaintiffs bring claims for negligence and gross negligence against Defendant.

II. LEGAL STANDARD

Rule 12(b)(6) allows an attack on the pleadings for failure to state a claim on which relief can be granted. "[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). However, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Id. (alteration in original) (quoting Twombly, 550 U.S. at 557). A complaint must "state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. This means that the complaint must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. There must

be "sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . and factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Ruling on a motion to dismiss will be "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (alteration in original) (citation omitted) (quoting Fed. R. Civ. P. 8(a)(2)). As a general rule, leave to amend a complaint that has been dismissed should be freely granted. Fed. R. Civ. P. 15(a).

III. DISCUSSION

A. Adequacy of Allegations of Physical Injury

The bulk of Defendant's motion makes arguments that are entirely irrelevant to this action. See Mot. at 5-11. This appears to be based on Defendant's incorrect assumption that Plaintiffs' claims here are indistinguishable from the recently-dismissed claims of other plaintiffs in similar cases who did not allege any physical harm. See Weissberger v. Princess Cruise Lines, Ltd., No. 2:20-CV-02328-RGK-SK, 2020 WL 3977938 (C.D. Cal. July 14, 2020). In those cases, the plaintiffs had "not test[ed] positive for SARS-CoV-2 or suffer symptoms of COVID-19." Id. at *1. Instead, plaintiffs sought "emotional distress damages based on their fear of contracting COVID-19 while quarantined on the ship." Id. Here, the SAC alleges Plaintiffs "became ill," "suffered physical pain and suffering from developing COVID-19," and "suffered physical injury as a result of said disease." FAC ¶¶ 19-

20, 24.[2] Therefore, Defendant's arguments focused on emotional distress claims are inapposite.

Defendant next contends Plaintiffs' allegations of physical harm are "conclusory statements" insufficient to recover under maritime law.[3] Mot. at 8; Dkt. 24 (Reply) at 1 (Plaintiffs' "conclusory allegations of 'pain and suffering' and 'physical injury,' . . . are insufficient under Rule 8"), 3 ("Plaintiffs' generalized allegations of 'physical pain and suffering' or 'physical injury' . . . are paradigmatically insufficient"). Defendant's position is that a plaintiff must allege "what the injury consists of" to plausibly allege physical injury. Mot. at 8; see also Reply at 3 (Plaintiffs failed to allege any "actual symptoms of COVID-19" and the FAC lacks "any particularized allegation of a symptom or of any concrete physical harm"). There is no bright line rule as to how detailed a description of a plaintiff's injury must be. Rather, the cornerstone of the inquiry is whether the allegations give the defendant fair notice of the claims against it and the ability to defend itself effectively. Starr, 652 F.3d at 1216.

Here, Defendant contends that "[b]ecause of the conclusory nature of Plaintiffs' allegations, there is no way to tell whether they are claiming anything beyond non-cognizable, *de minimis* injuries." Reply at 6. Defendant contends that Plaintiffs have failed to allege "any 'genuine and serious' manifestation of actual, physical symptoms." Mot. at 8 (citing Norfolk & W. Ry. Co. v. Ayers, 538 U.S. 135, 157-158 (2003)). This is a mischaracterization of what Ayers requires. In Ayers, the Supreme Court held that "a plaintiff who has asbestosis but not cancer can recover damages for fear of cancer . . . without proof of

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[2] In opposition, Plaintiffs state, without citation, that they "evidently manifested symptoms prior to their diagnosis" and that "[t]hey were not asymptomatic." Opp'n at 10, 12. However, "[s]tatements made in an opposition brief cannot amend a complaint." Batts v. Bankers Life & Cas. Co., No. C 13-04394 SI, 2014 WL 296925, at *4 n.5 (N.D. Cal. Jan. 27, 2014).

[3] The parties agree that federal maritime law applies to Plaintiffs' claims. Mot. at 5; see Opp'n at 11-12, 14-15.

physical manifestations of the claimed emotional distress . . . as an element of his asbestosis-related pain and suffering damages" so long as the plaintiff proves his "fear is genuine and serious." 538 U.S. at 157. Contrary to the Defendant's misleading quotation, the Supreme Court's reference to "genuine and serious" addressed a fear of developing cancer, not a requirement for "serious" manifestations of physical symptoms of asbestosis. Defendant also contends that Ayers "suggests" that individuals who are diagnosed with a disease must allege "harmful, concrete symptoms." See Reply at 1; id. at 3 (Ayers requires "diagnosis" and "specific, injurious symptoms"). But nothing in Ayers requires plaintiffs to allege at the pleadings stage what their specific symptoms are or that they are sufficiently "harmful" or "injurious." The Supreme Court only distinguished "asymptomatic asbestos plaintiffs from plaintiffs who 'developed asbestosis and thus suffered real physical harm.'" 538 U.S. at 156 (quoting Henderson & Twerski, Asbestos Litigation Gone Mad: Exposure-Based Recovery for Increased Risk, Mental Distress, and Medical Monitoring, 53 S.C.L.Rev. 815, 830 (2002)); see also id. (noting that the Supreme Court in Metro-N. Commuter R. Co. v. Buckley, 521 U.S. 424, 437 (1997) "sharply distinguished exposure-only plaintiffs from 'plaintiffs who suffer from a disease'"). Neither Ayers nor Metro-North bars claims of plaintiffs who suffer from a disease because their symptoms are not sufficiently "harmful." Instead, those cases compared plaintiffs with no symptoms at all to symptomatic plaintiffs.

At this stage, the Court is not prepared to hold that only some COVID-19 symptoms are sufficiently "serious" or "harmful" to warrant compensation. While in some situations, more detail may be necessary,[4] here the Court concludes that knowing whether Plaintiffs

[4] For example, in one of the cases cited by Defendant, a pro se prisoner alleged that during an eleven-year period he "sustained injuries" from forty-five unnamed prison staff and did not provide any details regarding the injuries or the identities of the defendants. Youngblood v. Lamarque, No. C 12-4423 PJH PR, 2012 WL 5818298, at *1 (N.D. Cal. Nov. 15, 2012). In that situation, where dozens of defendants committed undescribed acts over more than a decade, "plaintiff's allegation that he suffered physical injuries is

experienced a headache or fever, chest pains or loss of smell, is not necessary to give Defendant fair notice of the claims against it or for it to effectively defend itself. To the extent each specific symptom or ailment Plaintiffs have suffered due to their contraction of COVID-19 is relevant, that information can be obtained through discovery. To the extent Defendant disputes the truth of Plaintiffs' allegations that they suffered pain, illness, and physical injury as a result of contracting COVID-19, that is not an issue properly resolved at this stage.

Plaintiffs' allegations of physical injury due to the contraction of COVID-19 are sufficient to survive a motion to dismiss.[5]

B. Causation

Defendant next contends that the FAC does not adequately allege causation, specifically that "any conduct by [Defendant] was the proximate cause of their positive diagnosis." Mot. at 11. Plaintiffs allege that they departed out of Sydney, Australia on March 8, 2020 aboard the Ruby Princess, returned to Sydney on March 19, 2020, and, at some unstated time, "flew back to Florida where they remained quarantined" for an unstated amount of time. SAC ¶¶ 9-10, 19. Plaintiffs further allege that they were exposed to COVID-19 while on board the Ruby Princess due to Defendant's negligence, see id. ¶¶ 12-14, 16, 18, and then, at some unstated time, they "ultimately became ill with COVID-19," id. ¶19; see also id. ¶¶ 9-10.

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conclusory, and so fails to state a claim under the standard announced in *Iqbal*." Id. at *2.

[5] In Reply, Defendant contends that "[e]ven if Plaintiffs had suffered a cognizable physical injury that allows for the recovery of pain and suffering, they still would be foreclosed from recovering damages for emotional distress." Reply at 8. However, the cases cited by Defendant do not support that position and, more importantly, the Supreme Court in Ayers, 538 U.S. 135, held to the contrary. Id. at 157 ("a plaintiff who has asbestosis but not cancer can recover damages for fear of cancer under the [FELA] without proof of physical manifestations of the claimed emotional distress . . . as an element of his asbestosis-related pain and suffering damages").

First, Defendant contends that Plaintiffs "do not allege they experienced symptoms of the disease on the vessel (or at all)" or that they "came into direct contact with any passengers or crew who had COVID-19," but only that "the virus was present somewhere aboard the ship . . . during a prior sailing while they were not present on the ship." Mot. at 11. However, Plaintiffs also allege there was "an outbreak of COVID-19 on the March 8, 2020 sailing" and Defendant "failed to even attempt to quarantine any of the passengers onboard" or "notify the passengers that there was an actual outbreak." SAC ¶ 16. To the contrary, the cruise "continue[d] as if it were a normal cruise, up until the time it returned to Australia three days early." Id. That is sufficient to allege Plaintiffs were exposed to the virus while onboard the Ruby Princess. Defendant contends, without citation, that if Plaintiffs contracted COVID-19 from an asymptomatic individual, "Defendant would likely not be liable." Mot. at 11. However, Defendant fails to explain why this would be true and Plaintiffs contend, "[i]t is irrelevant whether Plaintiffs contracted the virus from an asymptomatic or symptomatic passenger" because "the virus transmits just as easily from either source." Opp'n at 13.

Second, Defendant contends the Plaintiffs allege only that "at some undisclosed time after returning home from their cruise," they "ultimately became ill with COVID-19." Mot. at 1 (citing FAC ¶ 19). According to Defendant, this "makes it impossible to determine if they caught the virus at some port of call, through an asymptomatic individual . . . , during their post-cruise transportation, or at some time after they returned to Florida." Id. at 11. Plaintiffs respond that it is "disingenuous" for Defendant "[t]o argue that Plaintiffs could have become ill from some other source . . ., especially in light of Defendant's prior experience of the deadly virus spreading like wildfire on its ships, and its knowledge of an outbreak on this very ship just prior to Plaintiffs' sailing" and the fact that the New South Wales government is investigating the decision to dock and disembark the ship's passengers. Opp'n at 13-14. However, that many passengers did contract COVID-19 while aboard the March 8 sailing of the Ruby Princess says nothing about whether that is where Plaintiffs contracted

it. Although Plaintiffs allege they "contracted COVID-19 on Defendant's ship, FAC ¶ 17, the FAC fails to contain sufficient allegations to plausibly support that conclusion. While a plaintiff need not rule out all other possible causes of harm, the complaint must include factual allegations that "allow[] the court to draw the reasonable inference" that the defendant's conduct caused the alleged harm. Iqbal, 556 U.S. at 678. Here, Plaintiffs have failed to allege the amount of time between the alleged exposure and the date they began experiencing COVID-19 symptoms or received a positive test result – a key fact necessary to render the causation allegations plausible, not merely possible.[6]

Plaintiffs' claims are therefore DISMISSED with leave to amend.[7]

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[6] The CDC has consistently stated that the incubation period of COVID-19 – that is, the period of time between exposure and symptoms occurring – is not more than 14 days. See, e.g., https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html.

[7] Defendant raises concerns that if the claims survive a motion to dismiss, that would mean that "[a] positive COVID-19 test result" would "be carte blanche to sue any business that allegedly had an infected individual patronize that business at some point in time in the past." Mot. at 3. In Defendant's view, "[b]y allowing this case to go forward as pled, anyone with a positive COVID-19 test could pick the deepest pocket business they visited and claim they are entitled to millions of dollars in damages simply because another individual who later tested positive had been in the same area previously." Id. This purportedly would be true "regardless of whether the individual alleges they came into contact with a source of COVID-19 at that establishment." Id. at 10. This overstates the potential liability to businesses. First, to the extent Defendant's concern stems from its misperception that Plaintiffs' claims are based on diagnosis alone, the Court's finding otherwise should quell its concerns. As Defendant notes, "the CDC estimates that nearly 50% of all carriers have no symptoms; other studies suggest the number could be as high as 80%." Reply at 5. Therefore, like in Ayers, 538 U.S. 135, permitting recovery only for plaintiffs who suffer from a disease, and not for asymptomatic plaintiffs, "reduce[s] the universe of

C. Punitive Damages

Whether a plaintiff can recover punitive damages under maritime law depends "on the particular claims involved." The Dutra Grp. v. Batterton, 139 S. Ct. 2275, 2278 (2019); see also Atl. Sounding Co. v. Townsend, 557 U.S. 404, 423 (2009) ("As this Court has repeatedly explained, 'remedies for negligence, unseaworthiness, and maintenance and cure have different origins and may on occasion call for application of slightly different principles and procedures.'" (quoting Fitzgerald v. U. S. Lines Co., 374 U.S. 16, 18 (1963))). The Supreme Court has held that punitive damages are not categorically barred for maintenance and cure claims, Atl. Sounding, 557 U.S. at 424, but are unavailable for unseaworthiness claims "because there is no historical basis for allowing punitive damages in unseaworthiness actions," Batterton, 139 S. Ct. at 2287. The Supreme Court has also held that plaintiffs asserting claims for negligence under the Jones Act and unseaworthiness leading to the death of seamen are limited to

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potential claimants to numbers neither 'unlimited' nor 'unpredictable'" where only a fraction of those exposed will develop symptoms. Id. at 157. Second, to establish causation, Plaintiffs must plausibly allege both that they were exposed to COVID-19 while they patronized the business and that the business breached a duty to prevent or mitigate that exposure. Therefore, under Defendant's example, it must be plausible that the plaintiff was exposed to the other patron with COVID-19, not just that they were both "in the same area" at different points in time. For example, here, Plaintiffs have plausibly alleged that they came into contact with individuals who had contracted COVID-19 while aboard the Ruby Princess. See SAC ¶ 16. And because there is a limited incubation period between when a person contracts COVID-19 and when he or she gets the disease, plaintiffs cannot plausibly allege causation for businesses they patronized months earlier. Finally, businesses that take reasonable precautions to prevent the spread of COVID-19 on their premises will not be held liable for negligence, even if a person was ultimately exposed to COVID-19 while patronizing that business. Each of those requirements will prevent that random and limitless liability that concerns Defendant.

pecuniary damages. Miles v. Apex Marine Corp., 498 U.S. 19, 31 (1990).

Defendant argues that punitive damages are available only if they "'have traditionally been awarded' in the category of case at issue." Mot. at 12 (citing Batterton, 139 S. Ct. at 2283). Defendant claims to be "aware of no binding precedent supporting the imposition of punitive damages for negligently (even grossly negligently) inflicted harm without actual physical injury or property damage." Id. at 12-13. But as explained above, this is not a case where harm was inflicted without alleged physical injury. Defendant also contends Plaintiffs cannot recover punitive damages because their claims, "which . . . [are] based on alleged grossly negligent exposure to a disease, ha[ve] [not] traditionally given rise to punitive damages." Reply at 10. Whether or not this is true, Defendant reads Batterton too narrowly. The question considered in Batterton was not whether a court had previously awarded punitive damages based on similar facts, but whether punitive damages had been awarded for similar legal claims – here, that is claims for gross negligence resulting in personal injury to a non-seaman. Neither party directly answers that question.[8] Plaintiffs

[8] There have been cases recognizing the availability of punitive damages in maritime cases "where a defendant's conduct is outrageous, owing to gross negligence, willful, wanton, and reckless indifference for the rights of others, or behavior even more deplorable." Exxon Shipping Co. v. Baker, 554 U.S. 471, 493 (2008) (internal citations and quotations omitted); see, e.g., id. at 476, 490, 515 (affirming, in part, an award of punitive damages to commercial fishermen and native Alaskans against a supertanker that caused an oil spill, although Exxon did not "offer a legal ground for concluding that maritime law should never award punitive damages, or that none should be awarded in this case"); Churchill v. F/V Fjord, 892 F.2d 763, 772 (9th Cir. 1988) (declining to award punitive damages on the facts, but noting that "[p]unitive damages are available under the general maritime law and may be imposed for conduct which manifests reckless or callous disregard for the rights of others or for conduct which shows gross negligence or actual malice or criminal indifference." (internal quotation marks omitted)

simply contend Batterton should be limited to claims for unseaworthiness, which is not at issue here, and that "[t]here is no precedent foreclosing Plaintiffs' claims for punitive damages." Opp'n at 14-15.[9] Because motions to strike should be granted only where "any questions of law are clear and not in dispute," Robinson v. Managed Accounts Receivable Corp., 654 F.Supp.2d 1051, 1065 (C.D. Cal. 2009) (quoting In re New Century, 588 F. Supp. 2d 1206, 1220 (C.D. Cal. 2008)), the Court declines to strike the punitive damages request at this time.

IV. CONCLUSION

Defendant's motion to dismiss is GRANTED in part. All claims are DISMISSED with leave to amend. An amended complaint must be filed no later than September 17, 2020. Failure to file by that date will waive the right to do so. The Court does not grant leave to add new

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(quoting Protectus Alpha Nav. Co. v. N. Pac. Grain Growers, Inc., 767 F.2d 1379, 1385 (9th Cir. 1985))).

[9] In fact, many recent district court cases have declined to strike punitive damage requests stemming from negligence claims causing personal injury to ship passengers. See, e.g., Tang v. NCL (Bahamas) Ltd., No. 1:20-CV-20967-KMM, 2020 WL 3989125, at *3 (S.D. Fla. July 14, 2020) (declining to strike punitive damages claim in a personal injury maritime action where "Plaintiffs allege that Defendant decided to sail through a severe storm despite knowing the severity of the storm"); Doe v. Carnival Corp., No. 1:20-CV-20737-UU, 2020 WL 3772102, at *6 (S.D. Fla. June 26, 2020) ("At this stage, viewing the allegations in the light most favorable to Plaintiff, Plaintiff has adequately alleged entitlement to punitive damages 'to the extent' that Carnival was 'more than simply negligent'"); Noon v. Carnival Corp., No. 18-23181-CIV, 2019 WL 3886517, at *13 (S.D. Fla. Aug. 12, 2019) ("[W]e now know, from the Supreme Court's most recent maritime case, that punitive damages are available for maintenance and cure claims but not for claims of unseaworthiness. . . . We need not focus on other maritime causes of action, however, because the Supreme Court has repeatedly recognized that punitive damages are available for traditional negligence claims that arise in the maritime context").

defendants or new claims. Leave to add new defendants or new claims must be sought by a properly-noticed motion. At the time of filing the amended complaint, Plaintiffs must also submit a red-lined version to the Court's chambers email.

IT IS SO ORDERED.

Date: August 21, 2020

Dale S. Fischer
United States District Judge