UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAMELA WORTMAN, individually and PAMELA WORTMAN, as personal representative of the ESTATE OF EDWARD MIRELES, Plaintiffs, v. PRINCESS CRUISE LINES LTD., Defendant.	CV 20-4169 DSF (JCx) Order GRANTING Joint Stipulation to File Second Amended Complaint (Dkt. 24) and GRANTING in part Defendant's Motion to Dismiss (Dkt. 25)

Defendant Princess Cruise Lines Ltd. moves to dismiss Plaintiff Pamela Wortman's First Amended Complaint (FAC) in its entirety. Dkt. 25-1 (Mot.).[1] Wortman opposes. Dkt. 27 (Opp'n).[2] The Court deems this matter appropriate for decision without oral argument. See

[1] On the same day that Defendant filed its motion to dismiss, the parties also filed a joint stipulation to permit Wortman to file a Second Amended Complaint (SAC) to include facts showing that Wortman was the personal representative of the Estate of Edward Mireles. Dkt. 24. The Court GRANTS the stipulation and deems the motion to dismiss to apply to the SAC.

[2] 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, Wortman's citations to "Amended Complaint," see Opp'n at 4 n.1, and "ibid Footnote1," id. at 7 n.4, are entirely unhelpful to the Court.

Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below, the motion is GRANTED in part.

I. BACKGROUND

Pamela Wortman and Edward Mireles were passengers on the cruise ship Ruby Princess, which departed from Sydney, Australia on March 8, 2020. Dkt. 24-1 (SAC) ¶¶ 4-5, 8. Defendant "owned and operated" the Ruby Princess. Id. ¶ 7. Wortman alleges that "[a]s a result of the Defendant's lackadaisical approach to the safety of Plaintiffs, its passengers and crew aboard the Ruby Princess, Plaintiff, EDWARD MIRELES, contracted COVID-19." Id. ¶ 17. Wortman and Mireles ultimately "disembarked early" and "flew back to California, where Plaintiff, PAMELA WORTMAN, remains quarantined in her home after testing positive for COVID-19." Id. ¶ 19.[3] Wortman "is suffering with COVID-19 in about her body, suffered pain therefrom, physical handicap, incurred medical care, suffered emotional distress and said damages and injuries are continuing in their nature." Id. ¶ 21. Mireles died on April 7, 2020 as a result of contracting COVID-19. Id. ¶ 5; see also id. ¶¶ 17, 19-20. Wortman was appointed personal representative for Mireles's estate on May 22, 2020. Id. ¶ 4. Wortman, in her individual and representative capacity, brings 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

[3] The Court wonders whether Wortman indeed is "still suffering" with COVID-19 and still "remains quarantined" four months after Mireles died – or whether she has simply failed to update her pleadings.

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. Standing to Bring Claims on Behalf of Mireles

Defendant challenges Wortman's standing to bring claims on behalf of Mireles' estate because the FAC does not allege that she had been appointed its personal representative. See Mot. at 3, 5-7. Because the SAC resolves that issue, Defendant's motion to dismiss the claims brought on the estate's behalf is DENIED as moot.

B. Sufficiency of Wortman's Claims

The bulk of Defendant's motion makes arguments that are entirely irrelevant to this action. See Mot. at 7-12. This appears to be

based on Defendant's incorrect assumption that Wortman's 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 Wortman "is suffering with COVID-19 in about her body, suffered pain therefrom, physical handicap, incurred medical care, suffered emotional distress and said damages and injuries are continuing in their nature." SAC ¶ 21.[4] Although grammatically confusing and somewhat ambiguous, Wortman does allege that she suffered "pain" and "physical handicap" due to her contraction of COVID-19 and that she "incurred medical care." Therefore, Defendant's arguments focused on emotional distress claims are inapposite.

Defendant next contends Wortman's allegation of physical harm is a "conclusory statement" insufficient to recover under maritime law.[5] Mot. at 10; see also id. at 11 (Wortman's only allegation of "actual impairment due to the alleged diagnoses" is "a conclusory boilerplate statement that does not identify any particular impairment"); Dkt. 28 (Reply) at 2 ("The Amended Complaint notably alleges no actual symptoms of COVID-19" and "Plaintiffs' generalized allegations of 'physical pain and suffering' or 'physical handicap' . . . are paradigmatically insufficient."). Defendant's position is that a plaintiff

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[4] In opposition, Wortman states, without citation, that "Plaintiff evidently manifested symptoms prior to her diagnosis. The symptoms did not magically appear once Plaintiff got her positive test results." Opp'n at 11. 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).

[5] The parties agree that federal maritime law applies to Wortman's claims. Mot. at 5; see Opp'n at 14, 16-17.

must allege "what the injury consists of" to plausibly allege physical injury. Mot. at 10; see also Reply at 3 (Wortman failed to make "particularized allegation of a symptom"). 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 5. However, at this stage, the Court is not prepared to hold that only some COVID-19 symptoms are sufficiently serious to warrant compensation. While in some situations, more detail may be necessary,[6] here the Court concludes that knowing whether Wortman 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 Wortman has suffered due to her contraction of COVID-19 is relevant, that information can be obtained through discovery. To the extent Defendant disputes the truth of Wortman's allegations that she suffered pain and physical handicap as a result of contracting COVID-19, that is not an issue properly resolved at this stage.

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

Wortman's allegation of physical injury due to the contraction of COVID-19 is sufficient to survive a motion to dismiss.[7]

C. Causation

Defendant next contends that the SAC does not adequately allege causation, specifically that "any of the Plaintiffs contracted the virus on the ship." Mot. at 12. Wortman alleges that she and Mireles departed out of Sydney, Australia on March 8, 2020 aboard the Ruby Princess, but "disembarked early" and "flew back to California." SAC ¶¶ 8, 19. She further allege that they were exposed to COVID-19 while on board the Ruby Princess, see id. ¶¶ 12-14, 16, 18, and then, at some unstated time, they contracted COVID-19 and Mireles ultimately died on April 7, 2020, id. ¶¶ 5, 17, 19, 21.

First, Defendant contends that Wortman alleges only that "the virus was present somewhere aboard the ship . . . during a prior sailing (which they were not aboard) and after which they concede the ship was disinfected." Mot. at 12 (citing SAC ¶¶ 12-13). However, Wortman also alleges 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 Wortman and Mireles were exposed to the virus while onboard the Ruby Princess.

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[7] In Reply, Defendant contends that "[e]ven if Ms. Wortman had suffered an injury that allowed for the recovery of pain and suffering, she still would be foreclosed from recovering damages for emotional distress." Reply at 7. However, the cases cited by Defendant do not support that position and, more importantly, the Supreme Court in Norfolk & W. Ry. Co. v. Ayers, 538 U.S. 135 (2003) held to the contrary. Id. at 157 ("a plaintiff who has asbestosis but not cancer can recover damages for fear of cancer . . . without proof of physical manifestations of the claimed emotional distress . . . as an element of his asbestosis-related pain and suffering damages").

Second, Defendant contends the SAC alleges only that "at some undisclosed time after returning home from their cruise," Wortman and Mireles "tested positive for COVID-19." Mot. at 1 (citing SAC ¶ 21). According to Defendant, this "makes it impossible to determine if Plaintiffs caught the virus at some port of call, during the cruise, during their post-cruise transportation home, or at some other time or place after returning home." Id. at 12. Wortman responds 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 15-16. 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 Wortman and Mireles contracted it. The opposition states that Mireles "contracted COVID-19 during the sailing," Opp'n at 4, and that Wortman "contract[ed] the disease on Defendant's ship," id. at 5, but the SAC does not actually contain such allegations or sufficient allegations to plausibly support those inferences. 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, Wortman has failed to allege the amount of time between the alleged exposure and the date she and Mireles began experiencing COVID-19 symptoms or received a positive test result – a key fact necessary to render the causation allegations plausible, not merely possible.[8]

[8] 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.

The claims for negligence and gross negligence are therefore DISMISSED with leave to amend.[9]

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[9] 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 had an infected individual patronize that business at some point in time in the past." Mot. at 2. 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-pocketed 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. at 3. 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 11-12. This overstates the potential liability to businesses. First, to the extent Defendant's concern stems from its misperception that Wortman's claims are based on diagnosis alone, the Court's finding otherwise should quell its concerns. As Defendant notes, "[t]he CDC estimates nearly 50% of carriers lack symptoms; other studies suggest it is 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 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, Wortman must plausibly allege both that she and Mireles 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, Wortman has alleged that she and Mireles 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

D. 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 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 13 (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 14. But as explained above, this is not a case where harm was inflicted without alleged physical injury. Defendant also contends Wortman cannot recover punitive damages because the claims, "which . . . [are] based on alleged grossly negligent exposure to a disease, ha[ve] [not] traditionally given rise to punitive damages." Reply at 8. Whether or not this is true, Defendant reads Batterton too narrowly. The question considered in Batterton was not whether a court had previously

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of those requirements will prevent that random and limitless liability that concerns Defendant.

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.[10] Wortman simply contends 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 16-17.[11] Because motions to strike should be granted only where "any

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

[11] 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

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.[12]

E. Rule 8

Defendant contends the SAC is an impermissible shotgun pleading because the first paragraph in each cause of action incorporates each of the preceding paragraphs. Mot. at 15-16. Defendant maintains it is "deprive[d] . . . of knowing exactly what [it] [is] accused of doing wrong." Mot. at 4. Although the practice can be improper in certain circumstances, it does not violate Rule 8 here because it is clear from the face of this rather simple SAC what Defendant is alleged to have done.

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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").

[12] The Court also declines to strike punitive damages at this time for "any claims based on the death of Edward Mireles," Reply at 9 n.5, because Wortman apparently disputes that the Death on the High Seas Act (DOHSA) applies, Opp'n at 18, but neither party directly raised or briefed the issue. The Court does note that the contention that "the case would not be subject to DOHSA since the negligence occurred on land in Defendant's corporate office; not on the high seas," Opp'n at 18, is suspect in light of Ninth Circuit law holding that DOHSA applies where "the site of an accident [is] on the high seas" regardless of where "death actually occurs or where the wrongful act causing the accident may have originated. . . . It is . . . irrelevant that decisions contributing to the [boat's] unseaworthiness may have occurred onshore or within territorial waters," Bergen v. F/V St. Patrick, 816 F.2d 1345, 1348 (9th Cir. 1987), opinion modified on reh'g, 866 F.2d 318 (9th Cir. 1989).

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 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, Wortman 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