UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-20815-CIV-ALTONAGA/Torres

ALCIDES LANDIVAR, *et al.*,

Plaintiffs,

v.

CELEBRITY CRUISES INC.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court on Defendant, Celebrity Cruises Inc.'s Motion to Dismiss Plaintiffs' Complaint [ECF No. 18], filed on June 1, 2021. Plaintiffs, Alcides Landivar and Maria Gutierrez, filed a Response in Opposition [ECF No. 19] to the Motion, to which Defendant filed a Reply [ECF No. 20]. The Court has carefully considered the Complaint [ECF No. 1], the parties' written submissions, the record, and applicable law. For the following reasons, the Motion is granted in part and denied in part.

I. BACKGROUND

This action arises from a cruise ship passenger's alleged contraction of COVID-19 while onboard one of Defendant's vessels. (*See generally* Compl.). Plaintiffs reside in Florida (*see id.* ¶ 1), and Defendant is a foreign corporation with its principal place of business and headquarters in Miami, Florida (*see id.* ¶ 2). Plaintiffs assert the Court has admiralty jurisdiction over their claims. (*See id.* ¶ 3).

Since December 2019, there has been a worldwide outbreak of COVID-19, which originated in China and quickly spread throughout Asia, Europe, and North America. (*See id.* ¶ 31). The dangerous conditions associated with COVID-19 include its manifestations (*e.g.*, severe

pneumonia, acute respiratory distress syndrome, septic shock and/or multi-organ failure) and/or its symptoms (*e.g.*, fever, dry cough, and/or shortness of breath); the high fatality rate associated with contracting the virus; and its extreme contagiousness. (*See id.* ¶¶ 22–23).

Defendant first recognized the risks of COVID-19 aboard its vessels on February 5, 2020 when it sent an email to all its prospective passengers, including Plaintiffs. (*See id.* ¶ 21). The email indicated that any guest or crewmember who had traveled to, from, or through China, Hong Kong, or Macau within 15 days of departure would be unable to board Defendant's ships due to the COVID-19 crisis. (*See id.*). The email also indicated that Defendant had increased screening requirements and had taken proactive measures to maintain high health standards onboard its ships. (*See id.*).

On February 13, 2020, the Centers for Disease Control and Prevention ("CDC") published the *Interim Guidance for Ships on Managing Suspected Coronavirus Disease 2019*, providing guidance for ship operators, including cruise ship operators, to help prevent, detect, and medically manage suspected COVID-19 infections aboard ships. (*See id.* ¶¶ 32, 34). In addition, two cruise ships owned by Carnival Corporation experienced outbreaks of COVID-19 in February 2020. (*See id.* ¶¶ 35–38). First, in early February, the *Diamond Princess* experienced an outbreak in Yokohama Harbor, Japan; the outbreak began with ten confirmed COVID-19 cases, which rapidly multiplied to 700 confirmed cases and resulted in a two-week quarantine. (*See id.* ¶ 35). Second, in late February, the *Grand Princess* experienced an outbreak off the coast of California; 103 passengers eventually tested positive for COVID-19. (*See id.* ¶¶ 37–38).

On March 7, 2020, Vice President Mike Pence met with top cruise industry executives to address the impact of COVID-19 on the cruise industry. (*See id.* ¶ 39). The next day, the U.S. Department of State, in conjunction with the CDC, set forth a recommendation that U.S. citizens

should not travel by cruise ship. (*See id.*). On March 14, 2020, the CDC issued its first No Sail Order which applied to cruise ship operators. (*See id.* ¶ 40).

Meanwhile, on March 1, 2020, Defendant commenced the at-issue voyage aboard the *Celebrity Eclipse* from Argentina for a 14-night Argentinian and Chilean cruise with approximately 2,500 passengers, including Plaintiffs, and 750 crewmembers onboard. (*See id.* ¶¶ 11, 41(o)). On March 2, 2020, Defendant acquired knowledge that a person aboard the *Celebrity Eclipse* displayed flu-like symptoms consistent with a positive COVID-19 diagnosis. (*See id.* ¶¶ 24–25, 41(p)). Nonetheless, Defendant did not at any time during the voyage enact quarantine or physical distancing measures amongst passengers and/or crewmembers aboard the vessel. (*See id.* ¶ 25). On March 9, 2020, numerous passengers aboard the *Celebrity Eclipse* began exhibiting respiratory symptoms and sought medical care. (*See id.* ¶ 41(r)). Defendant did not provide crew members with personal protective equipment such as masks and gloves. (*See id.*).

On March 15, 2020, the *Celebrity Eclipse* was denied the ability to dock in Chile due to concerns that passengers and crewmembers may have contracted COVID-19. (*See id.* ¶ 41(u)). Defendant continued to permit passengers to enjoy the voyage as normal without any quarantine or physical distancing measures. (*See id.*).

On March 17, 2020, the captain of the *Celebrity Eclipse* issued a letter to passengers stating that because they were being denied port entry in Chile, they would be sailing to San Diego in order to disembark. (*See id.* ¶ 41(v)). Defendant continued to offer a "full schedule of entertainment, activities, and dining options" to passengers. (*Id.* (quotation marks omitted)). Defendant attempted to pacify passengers by offering them complimentary alcoholic beverages and otherwise downplaying the severity of a possible COVID-19 outbreak, such as by misrepresenting to passengers on March 17 and March 28, 2020 that "[a]ll guests onboard remain

healthy and happy." (*Id.* ¶¶ 26–27 (alteration in original; quotation marks omitted); *see also id.* ¶¶ 41(v), (z)). Defendant continued to conduct large gatherings onboard the *Celebrity Eclipse* without providing passengers and crewmembers masks or enforcing any physical distancing measures. (*See id.* ¶¶ 28, 41(w)).

As a result of Defendant's statements, Plaintiffs believed they were safer on the vessel than on land and thus continued to participate in activities, such as dining with other passengers, as if there were no COVID-19 cases aboard the vessel. (*See id.* ¶¶ 41(v), (z)). Due to the extended nature of the cruise, however, Plaintiff Landivar was left with an insufficient supply of insulin to treat his diabetes and visited the medical center several times between March 23 and March 28, 2020 to obtain more insulin. (*See id.* ¶ 41(x)). Defendant rationed the amount of insulin it could provide him because it had failed to properly stock the vessel before the voyage. (*See id.*).

During this time, Plaintiff Landivar also presented to Defendant's medical personnel with complaints of symptoms consistent with a positive COVID-19 diagnosis — including feeling feverish, general weakness, and flu-like symptoms — but Defendant failed to properly assess and treat him for COVID-19. (*See id.*). On March 26, 2020, another passenger also visited the ship's medical center with symptoms consistent with a positive COVID-19 diagnosis. (*See id.* ¶ 41(y)).

On March 30, 2020, the *Celebrity Eclipse* docked in San Diego. (*See id.* ¶ 41(aa)). Upon returning home to Miami on March 31, 2020, Plaintiff Landivar went to a hospital with COVID-19 symptoms and was administered a COVID-19 test. (*See id.* ¶ 41(bb)). He received a positive COVID-19 test result on April 4, 2020 and underwent an above-the-knee amputation to his right leg on April 15, 2020 as a result of contracting COVID-19 and receiving insufficient insulin on Defendant's vessel. (*See id.* ¶¶ 41(cc), (ff)). At least 45 passengers and crewmembers on the

Celebrity Eclipse ultimately tested positive for COVID-19, and at least two people died. (*See id.* ¶¶ 30, 41(dd)).

Plaintiffs filed their Complaint on February 27, 2021. (*See generally id.*). Plaintiffs assert 21 claims[1] against Defendant, including two negligent misrepresentation claims (Counts II and XV) and a loss-of-consortium claim (Count XXII); and they demand a trial by jury. (*See id.* ¶¶ 50–56, 142–148, 194–200).

Defendant now moves to dismiss the Complaint, arguing: (1) Plaintiffs are not entitled to a jury trial under admiralty jurisdiction; (2) Plaintiff Gutierrez's loss-of-consortium claim is barred under federal maritime law; and (3) Plaintiffs' negligent misrepresentation claims do not meet the heightened pleading standard of Federal Rule of Civil Procedure 9(b) and are otherwise not actionable because they are based on generic statements about health and safety. (*See generally* Mot.; Reply).[2]

II. LEGAL STANDARDS

Rule 12(b)(6). "To survive a motion to dismiss [under Federal Rule of Civil Procedure 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration added; quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (alteration added; quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of

[1] The Complaint suggests there are 22 claims, but the counts are misnumbered; there is no Count XVI. (*See* Compl. 50–53). The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

[2] Defendant requests the Court dismiss "each count of the Complaint." (Mot. 8). Defendant's Motion, however, presents arguments only with respect to Plaintiffs' jury trial demand and Counts II, XV, and XXII.

the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (alteration added; citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), abrogated on other grounds by *Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

Rule 12(f). Under Federal Rule of Civil Procedure 12(f), the Court "may strike from a pleading any . . . redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f) (alteration added). A motion to strike is intended to clean up the pleadings, removing irrelevant or confusing allegations. *See Williams v. Delray Auto Mall, Inc.*, 289 F.R.D. 697, 699–700 (S.D. Fla. 2013) (citations omitted).

III. DISCUSSION

Defendant contends the Court must strike Plaintiffs' jury trial demand and dismiss Counts II, XV, and XXII (negligent misrepresentation and loss-of-consortium claims). (*See generally* Mot.; Reply). The Court addresses each argument in turn.

A. Jury Trial Demand

Plaintiffs allege subject matter jurisdiction exists under the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. section 1333. (*See* Compl. ¶ 3).[3] Despite proceeding exclusively under the Court's admiralty jurisdiction, Plaintiffs demand a jury trial. (*See id.* 72). This demand is misplaced.

It is well settled that there is generally no right to a jury trial in admiralty cases. *See Beiswenger Enters. Corp. v. Carletta*, 86 F.3d 1032, 1037 (11th Cir. 1996) ("[A]s in all admiralty cases, there is no right to a jury trial." (alteration added; citations omitted)); *McNair v. Royal Caribbean Cruises, Ltd.*, No. 21-21048-Civ, 2021 WL 1062588, at *2 (S.D. Fla. Mar. 19, 2021) ("The [p]laintiff's demand for a jury trial is incompatible with a case proceeding solely under the Court's admiralty jurisdiction." (alteration added; citations omitted)).

Despite their insistence to the contrary, Plaintiffs cannot rely on the saving-to-suitors clause to justify their jury trial demand, for that clause only "establishes the right to choose whether to proceed within a court's admiralty jurisdiction or general civil jurisdiction when *both* admiralty and non-admiralty federal jurisdiction exist."[4] *St. Paul Fire & Marine Ins. Co. v. Lago Canyon,*

[3] Plaintiffs state they are citizens of Bolivia and residents of Florida (*see* Compl. ¶ 1), while Defendant is a foreign corporation with its principal place of business in Florida (*see id.* ¶ 2). The Court notes domicile, not residence, is the key factor for purposes of diversity jurisdiction; mere residence in a given state is insufficient. *See Travaglio v. Am. Express Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013). Nevertheless, the parties agree there is no diversity of citizenship — indeed, complete diversity is lacking whether Plaintiffs' citizenship is in Florida or Bolivia, *see Caron v. NCL (Bahamas), Ltd.*, 910 F3d 1359, 1364–65 (11th Cir. 2018) (no alienage-diversity jurisdiction between foreign corporation and another foreign citizen) — and Plaintiffs only invoke the Court's admiralty jurisdiction (*see* Compl. ¶¶ 1–3; Mot. 3 n.1; Resp. 2).

[4] Ordinarily, the saving-to-suitors clause also provides a plaintiff in a maritime case alleging an *in personam* claim the option to file suit in state court. *See St. Paul Fire & Marine Ins. Co.*, 561 F.3d at 1187 n.13. The forum-selection clause in Defendant's ticket contract, however, required Plaintiffs to file their lawsuit in the United States District Court for the Southern District of Florida. (*See* Compl. ¶ 4; Resp. 1–2); *DeRoy v. Carnival Corp.*, 963 F.3d 1302, 1315 (11th Cir. 2020) ("While the saving-to-suitors clause gives state and federal courts concurrent jurisdiction over admiralty *in personam* cases such as this one, parties are free to contract for a federal forum for potential claims, provided, of course, that the federal forum has independent subject-matter jurisdiction." (citations omitted); confirming enforceability of similar forum-

Inc., 561 F.3d 1181, 1194 n.5 (11th Cir. 2009) (Wilson, J., concurring) (citing *Waring v. Clarke*, 46 U.S. (5 How) 441, 461 (1847) (other citations omitted; emphasis added)); *see also Salty Dawg Expedition, Inc. v. Borland*, 301 F. Supp. 3d 1189, 1191 (M.D. Fla. 2017) ("The decisions consistently interpret the saving-to-suitors clause to preserve the right to a jury trial if the plaintiff in an admiralty dispute successfully invokes a jurisdiction other than admiralty (for example, diversity or federal question)." (citation omitted)). Thus, to pursue the "savings clause" so as to be entitled to a jury trial in an admiralty case, an independent basis for federal subject matter jurisdiction such as "the requirements of diversity of citizenship and jurisdictional amount must be satisfied." *St. Paul Fire & Marine Ins. Co.*, 561 F.3d at 1194 n.5 (Wilson, J., concurring) (quoting *In re: Chimenti*, 79 F.3d 534, 537 (6th Cir. 1996) (citation omitted)).

The parties agree there can be no diversity jurisdiction under 28 U.S.C. section 1332 in this case. Because Plaintiffs' case is proceeding exclusively under the Court's admiralty jurisdiction and no other independent basis for subject matter jurisdiction exists, Plaintiffs' jury trial demand is improper and is therefore stricken under Rule 12(f) as immaterial and impertinent. *See, e.g.*, *Neenan v. Carnival Corp.*, No. 99-2658-Civ, 2001 WL 91542, at *2 (S.D. Fla. Jan. 29, 2001) (no right to jury trial where plaintiffs brought passenger maritime negligence action in admiralty, no independent jurisdictional basis existed, and defendant did not consent to jury trial).

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selection clause where federal court had admiralty, but not diversity or federal-question jurisdiction); *Leslie v. Carnival Corp.*, 22 So. 3d 561, 562–63 (Fla. 3d DCA 2008), *upheld on reh'g en banc*, 22 So. 3d 567, 568 (Fla. 3d DCA 2009) (enforcing similar forum-selection clause against the allegation that the clause deprives Florida citizens of their right to a jury trial under the saving-to-suitors clause); *Mellon v. Princess Cruise Lines Ltd.*, No. cv 17-1256, 2017 WL 8794206, at *1–2 (C.D. Cal. Dec. 4, 2017) (denying plaintiff's request for jury trial where federal court's only basis for jurisdiction was admiralty, despite plaintiff's argument he would have brought his claims in state court but for a forum-selection clause in his passenger contract with the defendant cruise line).

Plaintiffs alternatively request an advisory jury under Rule 39 of the Federal Rules of Civil Procedure. (*See* Compl. ¶ 4; Resp. 3–4). The Rule provides that where "an action [is] not triable of right by a jury, the court, on motion or on its own . . . may try any issue with an advisory jury[.]" Fed. R. Civ. P. 39(c)(1) (alterations added). Where an advisory jury is empaneled, it exists merely to assist the judge, who is not bound to accept the advisory jury's findings. *See Sheila's Shine Prod., Inc. v. Sheila Shine, Inc.*, 486 F.2d 114, 122 (5th Cir. 1973) (citation omitted). Because an advisory jury is a function of assistance and not of right, the Court's decision on whether to use an advisory jury is discretionary. *See id.*

Plaintiffs offer no argument to support their request for an advisory jury aside from their claim that courts in this district "regularly try cases to an advisory jury where entitlement to a jury does not exist as a matter of right." (Resp. 4 (collecting cases)). None of the cases Plaintiffs rely on involve admiralty claims or admiralty jurisdiction, and the Court does not find them to be persuasive given the facts of this case. Moreover, Plaintiffs have cited no unique or compelling circumstances necessitating the assistance of an advisory jury, particularly given the District's backlog of trials for parties entitled to trial by jury due to the pandemic. To the contrary, empaneling an advisory jury would require the Court and the parties to expend additional time and expenses to select an advisory jury, draft jury instructions, and instruct the advisory jury. *See N.Y. Marine & Gen. Ins. Co. v. Boss Interior Contractors, Inc.*, No. 20-cv-23777, 2021 WL 1535401, at *3 (S.D. Fla. Apr. 19, 2021) (denying advisory jury request for similar reasons); *Neenan*, 2001 WL 91542, at *2 (denying plaintiffs' advisory jury request where complaint placed claims "solely within admiralty jurisdiction, under which claims are traditionally tried without a jury").

Accordingly, Plaintiffs' alternative request for an advisory jury is denied.

B. Count XXII — Loss of Consortium

Plaintiff Gutierrez seeks damages for loss of consortium in each count of the Complaint (*see* Compl. ¶¶ 49, 56, 63, 70, 77, 84, 91, 99, 107, 115, 123, 129, 135, 141, 148, 154, 161, 173, 183, 193) and asserts an independent claim for loss of consortium (*see id.* ¶¶ 194–200). Defendant argues — and the Court agrees — that Eleventh Circuit precedent clearly bars such damages in personal injury cases under federal maritime law.[5] *See Eslinger v. Celebrity Cruises, Inc.*, 772 F. App'x 872, 872 (11th Cir. 2019) ("Our court has held that plaintiffs may not recover punitive damages, including loss of consortium damages, for personal injury claims under federal maritime law." (citations omitted); affirming district court's dismissal of plaintiff's loss-of-consortium claim over objections the district court "did not examine the exceptional circumstances related to her claim"); *Simmons v. Royal Caribbean Cruises, Ltd.*, 423 F. Supp. 3d 1350, 1353 (S.D. Fla. 2019) ("[L]oss of consortium claims are not cognizable under federal maritime law." (alteration added; citation omitted)); *Parker v. Princess Cruise Lines Ltd.*, No. 2:20-cv-03788, 2020 WL 6594994, at *5 (C.D. Cal. Sept. 18, 2020) (dismissing loss-of-consortium claim for spouse of passenger who allegedly contracted COVID-19 onboard defendant's cruise ship).[6]

Plaintiff Gutierrez therefore cannot recover damages for loss of consortium. Count XXII is dismissed.

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[5] The parties agree federal maritime law governs this action. (*See* Mot. 2–3; *see generally* Resp.); *see also Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) ("Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." (citation omitted)). "In the absence of well-developed maritime law, courts may supplement the maritime law with general common law and state law principles." *Marabella v. NCL (Bahamas) Ltd.*, 437 F. Supp. 3d 1221, 1225 (S.D. Fla. 2020) (citation omitted).

[6] Considering the Eleventh Circuit's decision in *Eslinger*, the Court is unconvinced there is any exception to the general bar on loss-of-consortium damages for "exceptional circumstances" or "intentional misconduct," as Plaintiffs suggest. (Resp. 4 (citing *Petersen v. NCL (Bahamas) Ltd.*, 748 F. App'x 246 (11th Cir. 2018))).

C. Counts II and XV—Negligent Misrepresentation

In Counts II and XV, Plaintiffs allege Defendant made misleading statements as to the health of its passengers and the presence of COVID-19 onboard the cruise ship. (*See* Compl. ¶¶ 50–56, 142–148). Defendant argues these claims should be dismissed because the former is a generic non-actionable statement and the latter does not meet the heightened pleading standard of Federal Rule of Civil Procedure 9. (*See* Mot. 5–8; Reply 4–5).

To state a common law negligent misrepresentation claim under Florida law, a plaintiff must allege:

> (1) misrepresentation of a material fact; (2) that the representor made the misrepresentation without knowledge as to its truth or falsity or under circumstances in which he ought to have known its falsity; (3) that the representor intended that the misrepresentation induce another to act on it; and (4) that injury resulted to the party acting in justifiable reliance on the misrepresentation.

Doria v. Royal Caribbean Cruises, Ltd., 393 F. Supp. 3d 1141, 1145 (S.D. Fla. 2019) (citations omitted). As fraud-based claims, Plaintiffs' negligent misrepresentation claims are subject to the heightened pleading standard of Federal Rule of Civil Procedure 9(b), which requires Plaintiffs to allege in their Complaint:

> (1) precisely what statements were made in what documents or oral representations or what omissions were made, and (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and (3) the content of such statements and the manner in which they misled the plaintiff, and (4) what the defendants obtained as a consequence of the fraud.

Giuliani v. NCL (Bahamas) Ltd., No. 1:20-cv-22006, 2021 WL 2573133, at *3 (S.D. Fla. June 23, 2021) (citations omitted). In other words, "the Complaint must set forth particular allegations about the 'who, what, when, where, and how' of the fraud." *Ceithaml v. Celebrity Cruises, Inc.*, 207 F. Supp. 3d 1345, 1353 (S.D. Fla. 2016) (citation omitted).

Plaintiffs' Complaint appears to identify two alleged bases for the negligent misrepresentation claims: (1) the ship captain's statement that "all guests onboard remain healthy and happy" (Compl. ¶¶ 41(v), 41(z), 52(a), 142, 144(a) (alteration adopted; quotation marks omitted)); and (2) the misrepresentation that "no person onboard had COVID-19" (*id.* ¶¶ 52(a), 144(a)). It is unclear whether Plaintiffs intended to assert two separate misrepresentations by Defendant or whether Plaintiffs simply meant they inferred "no person onboard had COVID-19" from the captain's statement that "all guests onboard remain[ed] healthy and happy[.]" (*Id.* (alterations added); *see* Resp. 6–8 (discussing only the particularity of the captain's statement, then broadly describing Defendant's misrepresentation as "statements that there was no COVID-19 outbreak aboard the subject vessel")).

To the extent Plaintiffs rely on the statement that "no person onboard had COVID-19" as a distinct misrepresentation (Compl. ¶¶ 52(a), 144(a)), the statement is not pleaded with sufficient particularity to meet the heightened pleading standard of Rule 9(b). Plaintiffs do not specify who said "no person onboard had COVID-19" or when, where, and how the statement was made. (*See generally id.*). Indeed, Plaintiffs' Response does not defend or otherwise address the specificity of this alleged misrepresentation. (*See* Resp. 6–8). Plaintiffs therefore cannot base their negligent misrepresentation claims on Defendant's alleged statement that "no person onboard had COVID-19[.]" (Compl. ¶¶ 52(a), 144(a) (alteration added)).

Defendant does not dispute Plaintiffs sufficiently pleaded the ship captain's statement that "all guests onboard remain healthy and happy" (*id.* (alteration adopted)), but instead argues the statement is a "broad generalization regarding safety and health" that "cannot form the foundation of a negligent misrepresentation claim" (Mot. 6). Current case law, however, holds an alleged misrepresentation about a cruise ship activity's safety "can give rise to a cognizable negligent

misrepresentation claim." *Adams v. Carnival Corp.*, 482 F. Supp. 3d 1256, 1266 (S.D. Fla. 2020) (collecting cases); *see also Giuliani*, 2021 WL 2573133, at *4 (denying motion to dismiss negligent misrepresentation claim based on "safety" against cruise line's objection the statement was "unactionable puffery").

The Court likewise concludes Defendant's statements about the good health of its passengers can give rise to a cognizable negligent misrepresentation claim. The decision in *Hill v. Celebrity Cruises, Inc.*, No. 09-23815-Civ, 2011 WL 5360629, at *7 (S.D. Fla. Sept. 19, 2011), *report and recommendation adopted in relevant part*, 2011 WL 5360247, at *3 (S.D. Fla. Nov. 7, 2011), does not counsel a contrary conclusion. In *Hill*, the court held the cruise line's statement the vessel could "accommodate all guests' medical needs" was "mere sales talk" and "nothing more than an enthusiastic subjective claim[.]" *Hill*, 2011 WL 5360629, at *7 (alteration added). By contrast, guests' health status is an ascertainable fact and statements regarding guests' health status are thus objective by nature.[7]

Moreover, the *Hill* court determined no reasonable consumer would base his or her decisions on such "puffery" about a cruise line's ability to accommodate medical needs. *Id.* ("A material fact is one of such importance that the claimant would not have entered into the transaction but for the false statement." (citation omitted); "Puffing signifies meaningless superlatives that no reasonable person would take seriously, and so it is not actionable[.]" (alteration added; citation and quotation marks omitted)). But as Plaintiffs allege, Defendant's statements about its passengers' health were made amidst a viral pandemic and were accompanied by offers of "complimentary" alcoholic beverages as well as a "full schedule of entertainment, activities and dining options[,]" which Plaintiffs allege reasonably led them to believe it was safe to participate

[7] In addition, *Hill* was decided on a motion for summary judgment, when the legal standard is far more demanding than the standard applicable to the instant Motion to Dismiss.

in such activities. (Compl. ¶¶ 41(v), 41(z) (alteration added; quotation marks omitted)). *Hill* is therefore unpersuasive.

Plaintiffs' allegations about the ship captain's statements are sufficient to state a cognizable claim of negligent misrepresentation. Accordingly, Defendant's motion to dismiss Counts II and XV is denied.

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendant, Celebrity Cruises Inc.'s Motion to Dismiss Plaintiffs' Complaint **[ECF No. 18]** is **GRANTED in part** and **DENIED in part** as follows:

1. The Motion with respect to Plaintiffs' jury trial demand, construed as a motion to strike, is **GRANTED**. Plaintiffs' jury trial demand is stricken from the Complaint.
2. The Motion is **GRANTED** as to Count XXII and Plaintiff Gutierrez's assertion in each count of loss-of-consortium damages.
3. The Motion is **DENIED** as to Plaintiffs' negligent misrepresentation claims set forth in Counts II and XV.
4. Defendant shall file an answer to the remaining claims of Plaintiffs' Complaint **[ECF No. 1]** by **July 26, 2021**.

DONE AND ORDERED in Miami, Florida, this 12th day of July, 2021.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record