

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 21-266-DMG (JEMx)**

Date November 16, 2021

Title ***Brenda L. Campbell v. Carnival Corp., et al.***

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Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**KANE TIEN

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)

None Present

Attorneys Present for Defendant(s)

None Present

**Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS' JOINT MOTION TO
DISMISS [22]**

On July 23, 2020, Plaintiff Brenda L. Campbell, acting as the executor of the estate of Carl E. Weidner, filed a Complaint against Defendants Carnival Corporation and Carnival plc (collectively, "Carnival"), and Princess Cruise Lines, Ltd ("Princess") in the U.S. District Court for the Northern District of California. [Doc. # 1.] The Complaint asserts claims for maritime common law survival actions of (1) negligence, (2) fraud, (3) intentional infliction of emotional distress ("IIED"), (4) negligent infliction of emotional distress ("NIED"), and (5) negligent misrepresentation.

On October 5, 2020, Defendants filed a Joint Motion to Transfer ("MTT") pursuant to 28 U.S.C. section 1404(a) or, in the alternative, Motion to Dismiss ("MTD") for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). [Doc. # 22.] The MTT and MTD are fully briefed. [Doc. ## 34, 35.] On January 14, 2021, the U.S. District Court for the Northern District of California granted Defendants' MTT, and the case was transferred to this Court. [Doc. # 36.]

The parties requested that this Court rule on the merits of the arguments in the MTD. [Doc. ## 53, 54.] For the following reasons, the Court **GRANTS in part** and **DENIES in part** Defendants' MTD, with leave to amend.

**I.
FACTUAL BACKGROUND**

Plaintiff Campbell is the surviving adult niece of Decedent Weidner and Executor of his Estate. Compl. at ¶¶ 4-5. Decedent was, and Campbell is, a Pennsylvania resident. *Id.* at ¶¶ 1, 4.

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Defendant Carnival Corporation is a Panama corporation that has its principal place of business in Florida. Defendant Carnival plc is incorporated in the United Kingdom with headquarters in Florida. Compl. at ¶¶ 6-7. Carnival Corporation and Carnival plc operate as “a single economic enterprise” in the cruise ship industry, sharing a senior executive management team, identical Boards of Directors, and headquarters. *Id.* at ¶ 11. Throughout her Complaint, Campbell refers to Carnival Corporation and Carnival plc as “Carnival.” Defendant Princess, a Bermuda corporation with its principal place of business in California, is one of Carnival’s operating lines and shares the same Board of Directors and many executive officers with Carnival. *Id.* at ¶¶ 8, 14, 17. Carnival has stated that Princess and the other cruise ship operating lines are “semi-autonomous entities within the Carnival Corporation and Carnival PLC corporate umbrella.” *Id.* at ¶ 14. Under an alter ego theory, Campbell refers to the Carnival entities and Princess jointly as “Defendants.” *Id.* at ¶ 10. At all times relevant to the Complaint, Defendants owned, controlled, and operated the cruise ship, M/V *Grand Princess*. *Id.* at ¶¶ 9, 31.

Decedent was a passenger onboard the *Grand Princess*, where he contracted COVID-19, from February 21, 2020 until his disembarkation on March 9, 2020 in Alameda County. *Id.* at ¶¶ 2, 3. Campbell alleges that Defendants knew about COVID-19 outbreaks on several of their cruise ships prior to the commencement of the *Grand Princess*’ voyage from San Francisco to Hawaii on February 21, 2020 (the “Hawaii voyage”), including COVID-19 outbreaks on the *Grand Princess*’ prior voyage between Mexico and San Francisco that commenced on February 11, 2020 (the “Mexico voyage”). *Id.* at ¶¶ 31, 34, 36-29. At least two infected passengers from the *Grand Princess*’ Mexico voyage remained on board the ship for the Hawaii voyage, when Decedent embarked. *Id.* at ¶ 39. An article published in *The New York Times* on March 9, 2020 reported that, as of the weekend prior to the article’s publication, Carnival’s Chief Medical Officer (“CMO”) Grant Tarling asserted that Carnival believed that at least one passenger boarding the *Grand Princess*’ Mexico voyage on February 11, 2020, had already been infected with COVID-19. *Id.* at ¶ 37, fn.9.

Campbell asserts that Defendants failed to take proper safety measures for the Hawaii voyage and failed to promptly notify passengers that the *Grand Princess* had been exposed to COVID-19 during the Mexico voyage. *See id.* at ¶¶ 42-43. Just after the *Grand Princess* began the Mexico voyage, and before Decedent embarked on the ship, on February 12, 2020, Princess mailed an “Emergency Notification” to Hawaii voyage passengers, including Decedent, with a “Coronavirus Travel Advisory” indicating that the company was monitoring the coronavirus situation, barring any travelers who had traveled from or through China, and requiring enhanced screening and pre-boarding health reporting. *Id.* at ¶¶ 44, Ex. 1 (Princess Emergency Notification). Then, on February 25, 2020, during the Hawaii voyage, Defendants notified passengers of the Mexico voyage about their potential exposure to COVID-19. *Id.* at ¶ 46. Defendants did not send a similar notification to Hawaii voyage passengers, including Decedent, until March 4, 2020. *Id.* at ¶ 49. The March 4, 2020 notification, which was signed by Carnival

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Carnival’s Chief Medical Officer Grant Tarling, included information about COVID-19 and recommendations regarding personal hygiene and sanitation. *Id.* at ¶¶ 51-52. The *Grand Princess* was not permitted to return to port in San Francisco, and its passengers not allowed to disembark, until March 9, 2020. *Id.* at ¶¶ 54-57, 63.

Shortly after disembarking, Decedent experienced COVID-19 symptoms and was hospitalized on March 11, 2020. *Id.* at ¶ 65. He was diagnosed with COVID-19 on March 13, 2020, and on March 26, 2020, he died due to “infection related to the COVID-19 virus.” *Id.* at ¶¶ 66, 68.

II. LEGAL STANDARD

Pursuant to Rule 12(b)(6), a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A court may grant such a dismissal only where the plaintiff fails to present a cognizable legal theory or to allege sufficient facts to support a cognizable legal theory. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. Legal conclusions, in contrast, are not entitled to the assumption of truth. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Furthermore, a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief” that gives the defendant “fair notice” of the grounds upon which the claims are based. *Twombly*, 550 U.S. at 555. The allegations must “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678.

Should a court dismiss certain claims, “[l]eave to amend should be granted unless the district court ‘determines that the pleading could not possibly be cured by the allegation of other facts.’” *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (*en banc*)).

III. DISCUSSION

Defendants move to dismiss all of Campbell’s claims for (1) lack of standing to assert a maritime survival action, (2) failure to allege that Defendants had actual or constructive notice of

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the alleged risk-creating conditions, (3) failure to state claims against Carnival, and (4) failure to state a claim for IIED. MTD at 1 [Doc. # 22].¹

Because Campbell submitted a declaration with her Opposition asserting that she is Decedent's successor-in-interest, Defendants no longer contest that, for the purposes of this motion, she has established standing. *See* Campbell Decl. at ¶¶ 1-4 [Doc. # 34-1]; Reply at 17. The Court therefore turns to Defendants' remaining arguments.

A. Actual or Constructive Notice of the Alleged Risk-Creating Conditions

As a preliminary matter, maritime law applies in this case because Campbell's claims arose from an incident occurring on a ship traveling in navigable waters. *Kermarac v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959). "To recover for [maritime] negligence, a plaintiff must establish: (1) duty; (2) breach; (3) causation; and (4) damages." *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1070 (9th Cir. 2001). Under the maritime standard of reasonable care, a carrier ordinarily must have had "actual or constructive notice of the risk-creating condition" before it can be held liable. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). Cruise lines, such as Defendant Princess, are only responsible for warning passengers of "dangers that 'the cruise line knows or reasonably should have known,' and 'which are not apparent and obvious to the passenger.'" *Archer v. Carnival Corp. & PLC*, No. CV 20-04203-RGK-(SKx), 2020 WL 7314847, at *8 (C.D. Cal. Nov. 25, 2020) (quoting *Weiner v. Carnival Cruise Lines*, No. CV 11-22526, 2012 WL 5199604, at *2 (S.D. Fla. Oct. 22, 2012)). "Under maritime law, the duty of care generally extends to the owner of a ship, *Kermarac v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959), and the vessel's operator, *Karvelis v. Constellation Lines S.A.*, 806 F.2d 49, 52 (2d Cir. 1986)." *Id.* at *4.

Defendants, who are each alleged to own and operate the *Grand Princess*, argue that Campbell's negligence, fraud, negligent misrepresentation, and IIED claims are premised on their actual or constructive knowledge of the danger of COVID-19 on the *Grand Princess*, which is not plausibly alleged. MTD at 20. Campbell explicitly alleges that this case is based on similar facts as the class action discussed by another court in this district in *Archer v. Carnival Corp. & PLC*, No. CV 20-04203-RGK (SKx), 2020 WL 7314847 (C.D. Cal. Nov. 25, 2020). *See* Compl. at ¶ 75. As the court held in *Archer*, while the parties contest whether Princess and Carnival had sufficient notice about COVID-19 outbreaks and the virus' risks prior to the *Grand Princess*' voyage, "Defendants owed Plaintiffs a duty of care to warn them of potential dangers of COVID-19 the entire time Plaintiffs were on the ship." 2020 WL 7314847, at *8. Thus, because Defendants sent a warning on February 25, 2020 about COVID-19 exposure to passengers from the *Grand Princess*' Mexico voyage, they had actual notice of the presence of

¹ All page references herein are to page numbers inserted by the CM/ECF system.

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COVID-19 onboard the ship by February 25, 2020. Compl. at ¶ 46. Defendants thus knew of the risk of COVID-19 exposure while Decedent was on the ship on February 25, 2020, yet failed to notify him or any other passengers of the Hawaii voyage until March 4, 2020.

Therefore, the Court **DENIES** Defendants' MTD with respect to each of Campbell's claims for failure to allege notice of a risk-creating condition.²

B. Alter Ego Allegations Against the Carnival Entities

Defendants also seek to dismiss claims against Carnival because the Complaint does not sufficiently allege that Carnival Corporation or Carnival plc are alter egos of Princess. In *Archer*, in which the plaintiffs made nearly identical allegations in support of Carnival and Princess' alter ego liability, the court concluded that the plaintiffs did not plausibly allege that Carnival "exercise[s] total domination of the subservient corporation[.]" *Archer*, No. 2020 WL 7314847, at *5 (quoting *Kilkenny v. Arco Marine Inc.*, 800 F.2d 853, 859 (9th Cir. 1986)). The Court concurs with that assessment and finds alter ego insufficiently pled here for the same reasons.

But unlike in *Archer* and *Toutounchian v. Princess Cruise Lines Ltd.*, No. CV 20-03717-DSF (AGRx), at 4-7 (C.D. Cal. Aug. 17, 2020) [Doc. # 34], which Defendants cite in their MTD, Campbell's Complaint alleges that Carnival Corporation, Carnival plc, and Princess each directly owns and operates the *Grand Princess*, and all Defendants sent the February 25, 2020 email to passengers of the Mexico voyage, evincing their awareness of the risk to passengers still aboard the *Grand Princess* on the Hawaii voyage. Compl. at ¶¶ 9, 31, 46; see MTD at 25. Accepting Campbell's factual allegations as true, as it must on a Rule 12(b)(6) motion, the Court finds that Campbell has sufficiently alleged Carnival owns and operates the *Grand Princess* and had actual knowledge of the COVID-19 outbreak. Accordingly, although the Court agrees that the Complaint insufficiently alleges alter ego liability, the Court **DENIES** Defendants' MTD all claims against Carnival in light of the independent duty of care.

C. Intentional Infliction of Emotional Distress

Defendants also seek to dismiss Campbell's IIED claim. To state an IIED claim, a plaintiff must plead (1) extreme and outrageous conduct, (2) that the defendant acted with the intent to cause or a reckless disregard for the probability of causing emotional distress, (3) that the plaintiff suffered severe emotional distress, and (4) that the extreme conduct was the actual and proximate cause of the emotional distress. *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827,

² Defendants make no other more specific arguments to dismiss the negligence, fraud, NIED, and negligent misrepresentation claims.

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841 (9th Cir. 2002). Even assuming that Defendants' actions can be considered extreme or outrageous, there are no allegations in the Complaint that Defendants acted with intent or reckless disregard for the probability of causing emotional distress. Defendants provided a pre-embarkment "Emergency Notice" with a coronavirus travel advisory, and it is implausible on the facts alleged that they delayed notifying the Hawaii voyage passengers of prior outbreaks on the *Grand Princess* with any intent or reckless disregard to inflict severe emotional distress on their own customers.

The Complaint is also deficient in alleging severe emotional distress. "Severe emotional distress" means "extreme" emotional distress "so severe that no reasonable [person] should be expected to endure it." See Restatement (Second) of Torts § 46 cmt. j (1965); see also *Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009) ("discomfort, worry, anxiety, upset stomach, concern, and agitation" are not severe emotional distress) (citing *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 1004 (1993)); *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1377 (2010) (lost sleep, upset stomach, and general anxiety are not severe emotional distress). While Campbell alleges Decedent suffered physical harm, the Complaint does not include any allegations regarding the nature or degree of Decedent's emotional distress.

The Court therefore **GRANTS, with leave to amend**, Defendants' MTD the IIED claim.

**IV.
CONCLUSION**

For the foregoing reasons, the Court **GRANTS in part** Defendants' MTD, with leave to amend. The Court **DENIES** the remainder of Defendants' MTD.

Campbell shall file her First Amended Complaint, or file notice to inform the Court and Defendants that she does not intend to amend the Complaint, by **December 7, 2021**. Defendants shall file their response within 21 days after Campbell files and serves her First Amended Complaint, or they are notified of her intent to proceed on the Complaint.

IT IS SO ORDERED.