UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARTHA A. FLORES,

Plaintiff,

v.

PRINCESS CRUISE LINES, LTD., TRANSCOMA CRUISES, AND DOES 1-10,

Defendants.

Case No.: 2:24-cv-3023-MEMF-MAR

ORDER GRANTING MOTION TO DISMISS [ECF NO. 34]

Before the Court is the Motion to Dismiss filed by specially appearing Defendant Transcoma Cruises. ECF No. 34. For the reasons stated herein, the Court GRANTS the Motion to Dismiss.

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I. Background

A. Factual Background[1]

Plaintiff Martha A. Flores ("Flores") is a citizen of California. Compl. ¶ 4. Defendant Princess Cruise Lines, Ltd. ("Princess") is a corporation with its principal place of business in California. *Id*. ¶ 5. Princess is a common carrier engaged in the cruise business. *Id*. ¶ 6. Defendant Transcoma Cruises ("Transcoma"; together with Princess, "Defendants"[2]) is a for-profit foreign business existing under the laws of Spain. *Id*. ¶ 8. Transcoma offers port logistics and travel services, including airport-to-ship motorcoach transfer services in Barcelona, Spain. *Id*.

On or about April 15, 2023, Flores was a paying passenger on Princess's vessel, *Enchanted Princess*. *Id*. ¶ 18. Princess recommended to Flores to purchase Transcoma's airport-to-ship transfer, and Flores did. *Id*. ¶ 21. Prior to the purchase, Princess did not inform Flores about the name, address, owner, and/or operator of the transfer. *Id*. ¶ 22. Flores believed that Princess operated the transfer. *Id*. Flores relied on Princess's description of the transfer when she purchased it, and had she known that the motorcoach provided during the transfer would be unsafe, she would not have purchased it. *Id*. ¶ 24.

At the airport, Flores was directed by Princess's employees to board the motorcoach. *Id*. ¶ 2. Upon arriving at the Barcelona cruise pier, Flores tried to exit the motorcoach. *Id*. ¶ 3. When another passenger walked by, she stepped to the side and fell into a dark, unmarked stairwell near the back of the motorcoach. *Id*. Flores suffered severe and permanent injuries to her left leg and knee, necessitating surgical repair. *Id*.

B. Procedural History

On April 14, 2024, Flores filed suit. Compl. She alleges against Princess (1) negligence, (2) vicarious liability – actual agency; and (3) vicarious liability – ostensible/apparent agency. *See*

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[1] The following factual allegations are derived from the allegations in Flores's Complaint, ECF No. 1 ("Complaint" or "Compl."), unless otherwise indicated. For the purposes of this Motion, the Court treats these factual allegations as true, but at this stage of the litigation, the Court makes no finding on the truth of these allegations, and is therefore not—at this stage—finding that they *are* true.

[2] Flores had initially named Transcoma Cruises USA LLC as another defendant. *See* Compl. On September 17, 2024, the parties filed a joint stipulation to dismiss Defendant Transcoma Cruises USA LLC. ECF No. 27. The Court granted the stipulation and dismissed Defendant Transcoma Cruises USA LLC. ECF No. 28.

generally id. Against Transcoma, she alleges (4) negligence. *See generally id.* Against both Defendants, she alleges (5) third-party beneficiary breach of contract. *See generally id.* On July 1, 2024, Princess filed its Answer. ECF No. 15.

On November 13, 2024, Transcoma filed the instant Motion to Dismiss. ECF Nos. 34 ("Motion" or "Mot."). The Motion is fully briefed. ECF Nos. 35 ("Opposition" or "Opp'n"), 38 ("Reply"). Flores filed evidentiary objections to the Motion. ECF No. 36. Transcoma filed its responses to Flores's objections and its own evidentiary objections. ECF Nos. 39 (responses), 40 (evidentiary objections).

On May 7, 2025, the Court sent a tentative order to the parties, and the parties subsequently stipulated to submit on the tentative order. ECF No. 48. The Court therefore issues this Order consistent with the tentative order.

II. Applicable Law

A. Rule 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) authorizes a party to seek dismissal of an action for lack of subject-matter jurisdiction. Rule 12(b)(1) jurisdictional challenges can be either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When a motion to dismiss attacks subject-matter jurisdiction on the face of the complaint, the court assumes the factual allegations in the complaint are true and draws all reasonable inferences in the plaintiff's favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009). In a factual challenge, the moving party "disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone*, 373 F.3d at 1039. "When the defendant raises a factual attack, the plaintiff must support her jurisdictional allegations with competent proof under the same evidentiary standard that governs in the summary judgment context." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citation and quotation marks omitted). The court need not accept the allegations in the complaint as true. *Safe Air for Everyone*, 373 F.3d at 1039. The plaintiff bears the burden of proving subject-matter jurisdiction by a preponderance of the evidence. *Leite*, 749 F.3d at 1121.

B. Rule 12(b)(2)

A defendant can move to dismiss for lack of personal jurisdiction under Rule 12(b)(2). Fed. R. Civ. P. 12(b)(2). The party asserting the existence of jurisdiction bears the burden of establishing it. *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 862 (9th Cir. 2003). If the court does not require an evidentiary hearing, a plaintiff "need only make a prima facie showing of the jurisdictional facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008) (internal quotation marks omitted). But "where the motion challenges the facts alleged, a Rule 12(b)(2) motion must be decided on the basis of competent evidence (usually declarations and discovery materials)." Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 9-D; *see Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977) (holding that a court "may not assume the truth of allegations in a pleading which are contradicted by affidavit" when considering motion to dismiss for lack of personal jurisdiction).

Uncontroverted allegations in the complaint must be taken as true, and "[c]onflicts between parties over statements contained in affidavits must be resolved in the plaintiff's favor." *Schwarzenegger v. Fred Martin Motor Co*., 374 F.3d 797, 800 (9th Cir. 2004). Depending on the nature and extent of a defendant's contacts, if any, with a forum state, the appropriate exercise of personal jurisdiction may be either general—that is, the party is subject to any claims in that forum—or specific—that is, the party is subject only to claims arising out of its forum-related activities. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

To establish personal jurisdiction over a defendant, a plaintiff must show both that the long-arm statute of the forum state confers personal jurisdiction over an out-of-state defendant, and that the exercise of jurisdiction is consistent with federal due process requirements. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154–55 (9th Cir. 2006). California's long-arm statute is coextensive with the scope of what is permitted by due process. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd*., 328 F.3d 1122, 1129 (9th Cir. 2003) (citing Cal. Civ. Proc. Code § 410.10). Constitutional due process requires that jurisdiction be exercised over a nonresident party only if that party has "minimum contacts" with the forum, such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310,

316 (1945) (internal quotation marks omitted); *accord Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985).

i. General Jurisdiction

If general jurisdiction is established, a party may be "haled into court in the forum state to answer for any of its activities anywhere in the world," and its contacts with the forum state need not relate to the claim asserted. *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014) (quoting *Schwarzenegger*, 374 F.3d at 801). General jurisdiction exists only when a party's contacts with the forum state are "substantial or continuous and systematic" so as to "approximate physical presence" in the state. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc*., 223 F.3d 1082, 1086 (9th Cir. 2000) (internal quotation marks omitted). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Goodyear*, 564 U.S. at 924.

ii. Specific Jurisdiction

The Ninth Circuit employs a three-prong test for specific personal jurisdiction:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger, 374 F.3d at 802 (citation omitted).

"If any of the three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due process of law." *Pebble Beach*, 453 F.3d at 1155 (internal quotation marks omitted). The plaintiff bears the burden of satisfying the first two prongs of the test. *Id.* The first prong may be satisfied with facts sufficient to show either "purposeful availment or purposeful direction, which, though often clustered together under a shared umbrella, 'are, in fact, two distinct concepts.'" *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010) (quoting *Pebble Beach*, 453 F.3d at 1155). Courts in the Ninth Circuit "generally apply the purposeful availment test when the underlying claims arise from a contract, and the purposeful

direction test when they arise from alleged tortious conduct." *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017).

iii. Purposeful Availment

"[T]he 'purposeful availment' requirement is satisfied if the defendant has taken deliberate action within the forum state or if he has created continuing obligations to forum residents." *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). Evaluating purposeful availment "requires a qualitative evaluation of the defendant's contact with the forum state." *Harris Rutsky & Co.*, 328 F.3d at 1130 (internal quotation marks omitted). Although courts consider all relevant factors, the Supreme Court has identified four as particularly instructive: (1) prior negotiations; (2) contemplated future consequences; (3) the terms of the contract; and (4) the parties' actual course of dealing. *See Burger King*, 471 U.S. at 479.

iv. Purposeful Direction

In the purposeful direction inquiry, courts apply the "effects test," which requires proof that defendant "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) (internal quotation marks omitted). This test looks "to the defendant's contacts with the forum State itself, not the defendant's contacts with the persons who reside there." *Picot v. Weston*, 780 F.3d 1206, 1214–15 (9th Cir. 2015) (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)). "[M]ere injury to a forum resident is not a sufficient connection to the forum," and "an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." *Id.* (quoting *Walden*, 571 U.S. at 290). Consideration of the act is limited to whether an "external manifestation of the actor's will" is reflected, and "does not include any of [the act's] results, even the most direct, immediate, and intended." *Schwarzenegger*, 374 F.3d at 806 (internal quotation marks omitted). With respect to the "express aiming" prong of the effects test, "something more" is required than a "foreign act with foreseeable effects in the forum state." *Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 675 (9th Cir. 2012) (internal quotation marks omitted).

C. Improper Venue (Rule 12(b)(3))

Federal Rule of Civil Procedure 12(b)(3) provides that a party may move to dismiss a case for "improper venue." 28 U.S.C. § 1406 provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). "These provisions . . . authorize dismissal only when venue is 'wrong' or 'improper' in the forum in which it was brought." *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 55 (2013); *see also In re Hall, Bayoutree Assocs.*, 939 F.2d 802, 804 (9th Cir. 1991) (determining that dismissal for improper venue must be without prejudice). "Whether venue is 'wrong' or 'improper' depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws . . . ." *Atl. Marine*, 571 U.S. at 55.

III. Discussion

A. The Court Has "Pendent Party" Jurisdiction over Transcoma.

Transcoma argues that this Court lacks subject matter jurisdiction—admiralty jurisdiction under 28 U.S.C. § 1333—because the alleged injury did not occur on navigable waters and was not caused by a vessel. Mot. at 2. Transcoma also argues that the contract based on which the case arises pertains to carriage of passengers on land, which is only an "incidental" maritime activity. *Id*. Flores responds that there is admiralty jurisdiction over Princess and that admiralty jurisdiction extends to the entire case. Opp'n at 3. Flores also relies on 28 U.S.C. § 1367 to assert that this Court has supplemental jurisdiction. The Court will evaluate the arguments in turn.

Article III of the Constitution grants the federal courts jurisdiction over maritime cases. U.S. Const. art III, § 2, cl. 1. Federal district courts have "original jurisdiction, exclusive of the courts of the States, of . . . [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1). "The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, *caused by a vessel on navigable waters*, even though the injury or damage is done or consummated on land." 46 U.S.C. § 30101 (emphasis added).

The Court finds that the alleged injury, on its own, does not give rise to admiralty jurisdiction over Transcoma. Paragraphs 3 and 25 of the Complaint describe the events that led to Flores's injury:

> Upon arrival at the Barcelona cruise pier *to embark* Princess' cruise ship, *Enchanted Princess*, Plaintiff stood up and walked behind her husband in the motorcoach's narrow aisle to exit the vehicle. Passengers were directed to only exit through the front door, as the back exit door of the motorcoach was not opened for passenger use. As another passenger walked by, Plaintiff side stepped slightly and fell into a dark, unmarked stairwell near the back of the motorcoach. The elevation drop at the stairwell was not visible in the dark vehicle; there were no visual cues to warn of, or signal, that the drop was present, and an optical illusion created by vehicle's dark flooring and the dark stairwell made it appear that the flooring was continuous and flush. As a result of this dangerous condition, Plaintiff fell into the stairwell and suffered severe and permanent injuries to her left leg and knee, including a bicondylar fracture of the left tibia requiring surgical repair.

Compl. ¶ 3 (emphasis added).

> Plaintiff was injured *in the motorcoach* when she fell into a dark, unmarked stairwell near the back of the vehicle. The elevation drop at the stairwell was not visible in the dark vehicle; there were no visual cues or indications to warn of, or signal, that the abrupt change was present, and an optical illusion created by vehicle's dark flooring and the dark stairwell made it appear that the flooring was continuous and flush. No warnings, verbal or otherwise, were given by Princess, Transcoma, or the motorcoach driver of the hazardous condition prior to Plaintiff's incident.

Id. ¶ 25 (emphasis added).

As these allegations show, Flores was injured while *inside* the motorcoach *on Spanish land*; she was about to "embark" on the vessel, and she was not *on* the vessel. *Id*. ¶ 3. There is similarly no allegation that the motorcoach was onboard the *Enchanted Princess* while on navigable waters. As such, the Court finds that the alleged injury, on its own, does not give this Court admiralty jurisdiction over Flores's tort claim against Transcoma.[3]

Similarly, the Court finds that Flores's contract claim is only incidental and therefore too attenuated to invoke admiralty jurisdiction over Transcoma. Here, the contract between Princess and Transcoma concerned airport-to-ship transportation services. Compl. ¶ 2. This allegation does not

[3] Flores cites to several out-of-circuit district court cases to argue that "admiralty jurisdiction over Plaintiffs' tort claim is not precluded." *See* Opp'n at 3–4. In light of the Court's finding that it has "pendent party jurisdiction," the Court sees no need to evaluate this argument.

give rise to a reasonable inference that Transcoma's services occurred on the cruise ship or somehow physically affected the cruise ship. Absent such allegations, the Court finds that Flores's contract claim is too attenuated to give rise to admiralty jurisdiction over Transcoma.[4]

Nevertheless, the Court finds that it has subject matter jurisdiction over Transcoma through "pendent party" admiralty jurisdiction. The Court finds *Roco Carriers, Ltd. v. M/V Nurnberg Express*, 899 F.2d 1292 (2nd Cir. 1990), instructive. There, the plaintiff filed suit against two defendants. *Id*. at 1294. The Second Circuit found that the plaintiff's claim against the first defendant fell within admiralty jurisdiction. *Id*. at 1295. The plaintiff's claim against the second defendant, however, was outside federal admiralty jurisdiction because the claim arose from events that occurred on land. *Id*. Finding the language of 28 U.S.C. § 1333(1) broad enough to permit the district court to have subject matter jurisdiction via "pendent party jurisdiction" over the second defendant so long as (1) there is admiralty jurisdiction over the first defendant and (2) claims against both parties "arise[] out of a common nucleus of operative facts," the Second Circuit held that the district court had subject matter jurisdiction over the second defendant as well. *See id.* at 1295–97.

Applying the Second Circuit's reasoning to Flores's allegations, the Court finds that it has "pendent party" admiralty jurisdiction over Transcoma. Turning first to whether Flores has adequately alleged the Court's admiralty jurisdiction over Princess, the Court finds that she has. In particular, Flores's contract claim against Princess is based on her status as a paying passenger onboard the *Enchanted Princess,* and the contract between Princess and Flores would have been a "maritime contract" that affects "maritime commerce." Compl. ¶ 2; *see Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 15 (2004). This is sufficient to find admiralty jurisdiction over Flores's contract claim against Princess. Similarly, as for her tort claim against Princess, negligence is recognized under maritime law. *See Leathers v. Blessing*, 105 U.S. 626, 629 (1881). The elements of negligence under maritime law are (1) duty, (2) breach, (3) causation, and (4) damages. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1070 (9th Cir. 2001). Maritime law negligence recognizes respondeat superior

[4] Another district court made a similar finding. *See Carnival Corp. v. Operadora Aviomar S.A. de C.V.*, 883 F. Supp. 2d 1316, 1321 (S.D. Fla. Aug, 8, 2012) (finding that a contract that contemplates services that "do not occur on the cruise ship and do not physically affect the cruise ship" is "merely incidental" to the maritime activity of the cruise ship plaintiff).

principles. *See De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 489 (9th Cir. 1979). Here, reading the allegations and drawing inferences in Flores's favor, she has sufficiently alleged that she was harmed by Transcoma's failure to exercise reasonable care, Compl. ¶¶ 56–60, 68–73, 75–79; and that Transcoma is an agent of Princess, *id*. ¶¶ 39, 40. Although Transcoma disputes that it is an agent of Princess, it does not make a factual attack and only quotes from a caselaw. *See* Mot. at 15–16. Moreover, although the injury took on land, the United States Supreme Court has held that "the shore is now an artificial place to draw a line. Maritime commerce has evolved . . . and is often inseparable from some land-based obligations." *Norfolk S. Ry.*, 543 U.S. at 15. In light of the Supreme Court's guidance, this Court finds that insofar as Flores alleges that the acts of Princess's agent on land caused her harm, admiralty jurisdiction extends to that conduct. As such, the Court finds that under the principles of respondeat superior in the context of maritime law, Flores has adequately pleaded that this Court has admiralty jurisdiction over Princess.[5]

Having so found that there is admiralty jurisdiction over Princess, the Court turns next to whether Flores's claims against Princess and Transcoma arise out of a common nucleus of operative facts and finds that they do. Compl. ¶¶ 3, 25.

Because the broad language of 28 U.S.C. § 1333 permits subject matter jurisdiction over non-admiralty claims, the Court finds that it has "pendent party jurisdiction" over Flores's claims against Transcoma. The Court therefore DENIES the Motion on this basis.

B. Flores Has Not Adequately Pleaded Personal Jurisdiction.

Transcoma advances several arguments against personal jurisdiction: (1) Flores's "upon information and belief" allegations are insufficient to establish personal jurisdiction; (2) Transcoma is incorporated and maintains its principal place of business in Spain, and thus it is not "at home" in California; (3) there is no purposeful direction (for tort claim) or purposeful availment (for contract claim); (4) finding personal jurisdiction would offend traditional notions of fair play and substantial justice; and (5) Transcoma did not consent to California's personal jurisdiction. Mot. at 11–15. Flores responds that Transcoma "consented" to California's jurisdiction and that she made a prima

[5] Moreover, Princess admits in its Answer the claims against it are "governed by maritime law." Answer ¶ 12.

facie showing of specific jurisdiction. Opp'n at 8–16. Because Flores has the burden to establish jurisdiction, the Court will evaluate Flores's arguments in turn. The Court GRANTS the Motion on the basis that Flores has not established personal jurisdiction.

i. Flores Has Not Shown that Transcoma Consented to California's Jurisdiction.

As an initial matter, the Court finds that Transcoma has made a factual attack on Flores's allegation of personal jurisdiction. *See* ECF No. 34-1 ("Cordero Declaration" or "Cordero Decl.").[6] As such, the Court will not assume the truth of Flores's allegations of personal jurisdiction insofar as they are challenged by affidavit and instead evaluate the evidence submitted by the parties. *See Data Disc*, 557 F.2d at 1284.

Flores argues that Transcoma consented to California jurisdiction by virtue of: (1) agreeing to the *choice of law* provision contained in the agreement between Defendants;[7] (2) the agency relationship between Defendants; and (3) Transcoma's status as a third-party beneficiary of the Passage Contract between Princess and Flores. Mot. at 10–12. The Court will evaluate these arguments in turn.

The Court finds that Flores has not shown that Transcoma consented to California's jurisdiction under the first theory. Flores argues in the Opposition that Transcoma "likely" consented to either California or Washington. Opp'n at 8. Further, Flores argues that Transcoma should be subject to California or Washington "[*i*]*n the event* that Transcoma's Agreement with Princess only

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[6] The Court OVERRULES Flores's evidentiary objections against the Cordero Declaration. ECF No. 36. The Court finds Cordero's declaration testimony relevant to the issues raised in the Motion and the case; the probative value not substantially outweighed by danger of prejudice or other concerns contemplated in Fed. R. Evid. 403; that Cordero's personal knowledge may be inferred from his position as the legal representative of Transcoma, *see In re Kaypro*, 218 F.3d 1070, 1075 (9th Cir. 2000) ("Personal knowledge may be inferred from a declarant's position."); and that the November 19, 208 Ground Handler Services Agreement signed by Defendants, attached as Exhibit A, does not constitute hearsay. Relatedly, as to all other matters to which the parties object but not incorporated in this Order, the Court has deemed them not necessary to the disposition of this Motion and therefore OVERRULES them.

[7] Flores also argues that insofar as Transcoma consented to California's jurisdiction, she, as the third-party beneficiary of the agreement between Defendants, may enforce the forum selection provision against Transcoma. *See* Mot. at 11 ("Plaintiffs' allegations adequately suggest that Transcoma likely consented to being sued in California . . . and that Plaintiff is a third-party beneficiary who may enforce the Agreement [between Defendants]."). Because Flores has not provided the Court with the agreements at issue, the Court of course cannot evaluate whether Flores is indeed a third-party beneficiary of those agreements under California law. *Montemayor v. Ford Motor Co.*, 92 Cal. App. 5th 958, 973 (2023) (listing factors to determining whether a third party is a thirty-party beneficiary of a contract).

contains a choice of law provision for the laws of the State of California or Washington." *Id.* at 10 (emphasis added); *see id.* at 15 ("Additionally, the *likely* existence of a California forum selection clause and/or venue clause in the parties' Agreement also satisfy the minimum contacts requirements") (emphasis added). In support of these arguments, Flores submits the HA Group Vendor Services Agreement ("VSA") as Exhibit C to Aksana M. Coone's Declaration, ECF No. 35-1 ("Coone Declaration" or "Coone Decl."), but the VSA does not contain Defendants' names or signatures. Although the VSA references a "Ground Handler Services Agreement," implying that the VSA should be read alongside a Ground Handler Services Agreement, Flores does not proffer any such agreement purportedly made between Defendants, let alone any Ground Handler Services Agreement. Moreover, even if the VSA that Flores has submitted is for the Ground Handler Services Agreement between Defendants, the VSA does not state that Defendants agreed to resolve their disputes in California, and Flores provides no authority that compels this Court to find that agreeing to a choice of law provision specifying one state *must* be construed as a party's consent to be subject to that state's personal jurisdiction.[8] Lastly, Flores argues, through her counsel's declaration, that "contracts involving services provided to Princess, which is headquartered in California, contain California choice of law/venue," but this argument is based on the counsel's "experience from prior litigation," not based on extrinsic evidence that the Court may review objectively. *See* Coone Decl. ¶ 4. As such, the Court finds that Flores has failed to show that Transcoma consented to California's jurisdiction based on the first theory.[9, 10]

The Court likewise finds that the agency relationship between Defendants does not give rise to consent. The Court finds Flores's reliance on *Espinoza v. Princess Cruise Lines, Ltd.*, 581 F.

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[8] Flores cites to *Burger King* to argue that a choice of law provision gives rise to consent, but as she concedes, it would be a "factor" in establishing jurisdiction, not a dispositive element. *See* Opp'n at 15; *Burger King*, 471 U.S. at 481–82 (considering the parties' 20-year interdependent relationship in addition to the choice of law provision at issue to hold that a choice of law provision should not be ignored in considering personal jurisdiction).

[9] For the reasons stated in this section, the Court SUSTAINS Defendants' evidentiary objections against the Aksana Declaration and the exhibits attached thereto.

[10] Because Flores has failed to show that Transcoma consented to California's jurisdiction for any disputes it may have with Princess, the Court finds Flores's third-party beneficiary argument moot and will not evaluate it in this Order. The Court also does not reach the question of whether—even if the agreements did contain the provisions Flores asserts—this would be enough to constitute consent.

Supp. 3d 1201 (C.D. Cal. Jan. 25, 2022), unavailing. Although it is true that the court in *Espinoza* analyzed the issue of agency, it was discussed in the context of deciding the *principal*'s motion for summary judgment to avoid liability from its alleged agent's conduct, whereas the instant Motion was brought by Transcoma, the alleged *agent*, to avoid liability from its own alleged conduct. *See id.* at 1221–23. Moreover, although the Complaint contains allegations that may give rise to an agency relationship between Princess (as the principal) and Transcoma (as an agent), the Court finds that the reverse is not alleged. *See* Compl. ¶¶ 39 ("At all times material hereto, Transcoma was the agent, apparent agent, servant, and/or employee of Princess. . . ."), 40 ("At all times material, Defendant Transcoma was an agent, ostensible/apparent agent, and/or representative of Princess."). Absent allegations that raise reasonable inference that *Transcoma* was the principal in its relationship with Princess, the Court finds Flores's reliance on *Espinoza* unavailing and that, therefore, Flores has failed to establish California's personal jurisdiction under her second theory.

Similarly, the Court finds that Transcoma's status as a third-party beneficiary of Flores and Princess's Passage Contract does not serve as a basis for finding personal jurisdiction. In particular, Flores has misconstrued the Passage Contract. The "third-party beneficiary" provision she points to does not state that Princess's "rights and liabilities" are extended to its agents. ECF No. 35-1 at 4–5.[11] It states that Princess's "rights and *exemptions from liability*" are extended to its agents. *Id.* And Flores has not pointed to any authority suggesting that extending a party's rights and exemptions from liability to a third party also imposes on that third party a requirement to be subject to the forum selection clause in the contract. Put another way, although there are circumstances under which a third party can enforce the terms of a contract, Flores has not persuaded this Court that a third party can also have the terms of a contract enforced against it. Moreover, what Flores describes in this line of argument is a contracting party (Flores) suing a third-party beneficiary (Transcoma) for breach. But, as a matter of law, a third-party beneficiary is the one to whom the benefits of the contract are conferred without being obligated to perform a contractual duty. The Court is not aware of any caselaw where a contracting party attempted to enforce a forum selection clause against a

[11] The Court cites to the page numbers generated by the CM/ECF system.

third-party beneficiary, let alone an instance where a contracting party sued a third-party beneficiary. And Flores has not presented any authority that compels this Court to find otherwise.

Relatedly, the Court finds Flores's reliance on *Lu* and *Bugna* unavailing, as these cases are clearly distinguishable. Opp'n at 12. In *Lu*, the plaintiffs, citizens of California, signed a franchise agreement with a subsidiary company, also a citizen of California, that specified Florida as the forum of choice. *Lu v. Dryclean-U.S.A. of Cal., Inc.*, 11 Cal. App. 4th 1490, 1492 (1992). The parent companies were citizens of Florida. *Id*. Alleging misrepresentation, the plaintiffs filed suit in California. *Id*. To avoid the enforcement of the forum selection clause, the plaintiffs argued that it would be unreasonable to litigate in Florida because the parent companies did not sign the franchise agreement. *Id*. at 1493. The court found the argument unavailing, specifically because of the close relationship between the defendants, who were in fact alleged to be in an alter ego relationship. *Id*. at 1494. Similarly, *Bugna v. Fike*, 80 Cal. App. 4th 229 (2000), is inapposite. There, the plaintiffs argued that the forum selection clause to which they agreed (specifying Colorado as the forum) should not extend to the non-signatory defendants. *Id*. at 232. The court disagreed. *Id*. at 235 ("The key to the closely related test is whether the nonsignatories were close to the contractual relationship, not whether they were close to the third party signator."). The court found the facts that the non-signatory defendants' status as "key transaction participants" and that there was conspiracy between the signatory and the non-signatory defendants satisfied the "closely related" test and therefore justified enforcing the Colorado forum selection provision. *See id.* But here, Flores has not adequately alleged that Princess and Transcoma were "closely related." Rather, Flores merely alleges that it was Princess that advertised Transcoma's services, and there is no allegation that Transcoma had any control over Princess's advertisements. *See* Compl. ¶¶ 39 (allegations regarding Princess's advertisement of Transcoma's services), 40 (alleging that Transcoma was Princess's agent). Given the differences between the instant case and the cases that Flores relies on to advance her argument, the Court finds Flores's reliance on these cases unavailing.[12]

[12] Flores also relies on *Petrey v. Princess Cruise Lines, Ltd*., No. 2:23-CV-03401-JLS-AJR, 2024 WL 3454992 (C.D. Cal. June 19, 2024), to argue for consent. But that case does not discuss at all personal jurisdiction; if any, the court in *Petrey* merely observes that "[t]he parties agree that maritime law governs this

In sum, the Court finds that Flores has not established jurisdiction over Transcoma in California based on consent.

ii. Flores Has Not Sufficiently Established Specific Jurisdiction.

Flores argues that she has met the burden to show specific jurisdiction. Opp'n at 14. In particular, she asserts that she alleged Transcoma's activities were directed at California, such as reaching out to Princess, a California business, and contracting with Princess with a choice of law/venue provision specifying California; agreeing to indemnify Princess; agreeing to be covered by the Passage Contract between Princess and Flores; sending invoices to and receiving payment from Princess in California; and attending meetings and conferences held by Seatrade Cruise and the Cruise Line International Association. *See id.* at 14–15; *see also* FAC ¶ 15.

Turning first to Flores's contract claim (breach of contract claim as a third-party beneficiary), the Court finds that Flores has not met the purposeful availment test. The Court finds the holdings of *Walden* instructive. There, the Supreme Court held that "[w]e have consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Walden*, 571 U.S. at 284. The Supreme Court further noted that "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id*. at 285. Although Flores provides a lengthy list of allegations that purport to demonstrate that Transcoma purposefully availed itself to California, those allegations ultimately boil down to only one basis upon which Flores asserts purposeful availment against Transcoma: Transcoma "reaching out" to Princess, a California-based co-defendant, to establish a "long term business partnership[]." *See* Compl. ¶ 15. As noted earlier, other than this allegation, Flores provides no other factual basis upon which the Court may find that Flores availed itself of California's jurisdiction. *See, e.g.*, *id.* ¶ 39 (Princess in charge of marketing Transcoma's services). Moreover, Flores provides no explanation on how attending conferences and meetings constitutes purposeful availment, i.e., neither the Complaint nor the Opposition state that Seatrade Cruise and the Cruise Line International Association are based in California or are otherwise related to California. Even

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action pursuant to a choice-of-law provision in the [cruise tour package] that Petrey purchased," not whether that provision can be used to establish personal jurisdiction. *See id.* at *1.

then, the Court finds that Transcoma's relationships with these third-party entities is "insufficient basis for jurisdiction" as a matter of law. *See Walden*, 571 U.S. at 285. As such, the Court finds that Flores has failed to establish specific jurisdiction for her contractual claim against Transcoma.[13]

Turning next to Flores's tort claim against Transcoma (negligence), the Court finds that Flores has failed to satisfy the purposeful direction test. Reading the allegations in Flores's favor, the Court finds that Transcoma took an "intentional act" "expressly aimed at" California by contracting with Princess, a California corporation. *See Schwarzenegger*, 374 F.3d at 805 (listing the parts of the *Calder* effects test). However, even drawing inferences in Flores's favor, the Court does not find that this act constitutes one "causing harm that the defendant knows is likely to be suffered in the forum state." *See id*. After all, the harm that Flores suffered occurred in Spain, not California. *See* Compl. ¶¶ 3, 25. As such, the Court finds that Flores has not shown specific jurisdiction for her negligence claim under the purposeful direction test.

In sum, the Court finds that Flores has not met either the purposeful availment test or the purposeful direction test.

C. Jurisdictional Discovery is Warranted.

Flores requests this Court grant jurisdictional discovery if the Court finds that she lacks personal jurisdiction over Transcoma. Opp'n at 16–18. Transcoma responds that because Flores has failed to make a "colorable" showing that discovery is needed, the Court should deny the request. Reply at 6–7.

The Court finds that Flores has not shown that broad jurisdictional discovery would cure most the defects identified above. Flores appears to seek this Court's permission to obtain discovery on all of "Transcoma's extensive contacts with cruise lines all over the United States." *See* Opp'n at 17. Having already found that Flores's theories for Transcoma's contacts with California are insufficient to establish personal jurisdiction, and in light of Flores's acknowledgement that "[t]he extent of Transcoma's contact with the US is unknown," *id.* at 17, the Court concludes that any

[13] Insofar as the Court has already found that Flores's arguments based on the Passage Contract, the VSA, and the Ground Handler Services Agreement unavailing, the Court will not evaluate Flores's contract-based arguments in this section of the Order.

further discovery into Transcoma's contacts is not warranted. *See Pebble Beach Co.*, 453 F.3d at 1160 ("Where a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by the defendants, the Court need not permit even limited discovery.") (cleaned up). As such, the Court denies Flores's broad request for jurisdictional discovery.

Because, however, there is the possibility that Flores may be able to show consent through her third-party beneficiary theory, the Court will grant her limited discovery into the agreements referenced above. The parties are to meet and confer regarding this limited discovery, which should be completed within thirty (30) days.

D. This District is an Improper Venue.

Flores argues that California is the proper venue because she has sufficiently shown personal jurisdiction. Opp'n at 19 (citing 28 U.S.C. § 1391(c)(2)). Alternatively, Flores seeks jurisdictional discovery to establish personal jurisdiction. *Id*. Transcoma responds that venue in admiralty cases is governed by 28 U.S.C. § 1390, not § 1391, and that Flores's claims against it should be dismissed for improper venue. Reply at 7. The Court GRANTS the Motion on the basis of improper venue.

The Court finds, as a matter of law, that Flores's argument based on 28 U.S.C. § 1391(c)(2) is unavailing and that venue for admiralty cases is governed by § 1390. *See* Fed. R. Civ. P. 82 ("An admiralty or maritime claim under Rule 9(h) is governed by 28 U.S.C. § 1390."); *see also Matter of Star & Crescent Boat Co., Inc.*, 549 F. Supp. 3d 1145, 1154–55 (C.D. Cal. July 15, 2021) ("An admiralty or maritime claim is governed by 28 U.S.C. § 1390 rather than Section 1391(b)."") (citing Fed. R. Civ. P. 82 and 28 U.S.C. § 1390(b)) (cleaned up). Flores makes no argument that this District is a proper venue under 28 U.S.C. § 1390. Moreover, even if 28 U.S.C. § 1391(c)(2) governed, having found that there is no personal jurisdiction over Transcoma, the Court does not find that this District is proper venue.[14] *Cf.* 28 U.S.C. § 1391(b)(3); *see* Section III.B, *supra*.

[14] Flores also argues that this Court may "properly sever and transfer Plaintiff's claims against Transcoma to the United States District Court for the Western District of Washington" because "the parties indeed agreed to a Washington State choice of law provision." Opp'n at 9. But the Court finds this argument unavailing. As discussed above, Flores has not shown that Transcoma agreed to any forum selection provision. *See* Section III.B.i, *supra*. Flores also has not provided any authority that compels this Court to find that agreeing to a

As such, the Court finds that this District is not a proper venue for this action against Transcoma.

E. The Court Need Not Reach Other Questions.

Having found that the Flores has not shown personal jurisdiction and that this District is improper venue, the Court sees no need to reach the remaining questions about forum non conveniens or whether Flores has sufficiently alleged the basis for her claims.

IV. Conclusion

For the foregoing reasons, the Court hereby ORDERS as follows:

1. The Motion is GRANTED;
2. Flores shall be permitted limited jurisdictional discovery into the agreements between Transcoma and Princess with a discovery cut-off of thirty (30) days from this Order;
3. Flores shall be permitted to amend her complaint to address the jurisdictional defect noted above regarding the third-party beneficiary/consent theory within forty-five (45) days of this Order.
4. If Flores does not file an amended complaint within forty-five (45) days of this Order, only her claims against Princess will remain.

IT IS SO ORDERED.

Dated: May 9, 2025

MAAME EWUSI-MENSAH FRIMPONG

United States District Judge

choice of law provision is equivalent to agreeing to a forum selection provision. *Id*. Absent such showings, the Court does not find that Washington is where this suit could have been brought when she filed it in this District. *Cf.* 28 U.S.C. § 1406(a).