UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21997-CIV-LENARD

FRED KANTROW AND MARLENE KANTROW, on their own behalves and on behalf of all other similarly situated passengers who sailed aboard the CELEBRITY ECLIPSE between March 1 and March 30, 2020,

Plaintiffs,

v.

CELEBRITY CRUISES, INC.,

Defendants.
_____/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT (D.E. 7)

THIS CAUSE is before the Court on Defendant Celebrity Cruises, Inc.'s Motion to Dismiss the Amended Complaint, ("Motion," D.E. 7), filed September 1, 2020. Plaintiffs Fred Kantrow and Marlene Kantrow, on their own behalves and on behalf of all other similarly situated passengers who sailed aboard the Celebrity *Eclipse* between March 1 and March 30, 2020, filed a Response on September 15, 2020, ("Response," D.E. 13), to which Defendant filed a Reply on September 29, 2020, ("Reply," D.E. 24). Upon review of the Motion, Response, Reply, and the record, the Court finds as follows.

I. Background[1]

Since December 2019, there has been a worldwide outbreak of SARS-CoV-2 (hereinafter "COVID-19"), which is now considered a pandemic. (Am. Compl. ¶¶ 10, 21.) The virus originated in China and quickly spread throughout Asia, Europe, and North America. (Id. ¶ 21.) 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. (Id. ¶ 12.)

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, for the subject voyage. (Id. ¶ 14.) That 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 increased screening requirements and took proactive measures to maintain high health standards onboard its ships. (See id.)

On February 13, 2020, the Centers for Disease Control ("CDC") published the Interim Guidance for Ships on Managing Suspected Coronavirus Disease 2019, which provided guidance for ship operators, including cruise ship operators, to help prevent, detect, and medically manage suspected COVID-19 infections aboard ships. (Id. ¶¶ 23,

[1] The following facts are gleaned from Plaintiff's Amended Complaint, (D.E. 5), and are deemed to be true for purposes of ruling on the Motion to Dismiss.

25.) Also in February 2020, two cruise ships owned by the Carnival Corporation experienced outbreaks of COVID-19. (Id. ¶¶ 28-29.) 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 seven hundred confirmed cases and resulted in a two-week quarantine. (Id. ¶ 26.) Second, in late February, the *Grand Princess* experienced an outbreak off the coast of California; 103 passengers eventually tested positive for COVID-19. (Id. ¶ 29.) 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. (Id. ¶ 30.) The next day, March 8, 2020, the U.S. Department of State, in conjunction with the CDC, set forth a recommendation that U.S. citizens not travel by cruise ships. (Id.) On March 14, 2020, the CDC issued its first No Sail Order which was applicable to cruise ship operators. (Id. ¶ 31.)

Meanwhile, on March 1, 2020, Celebrity commenced the at-issue voyage aboard the *Eclipse* from Argentina for a fourteen-night Argentinian and Chilean cruise with approximately 2,500 passengers and 750 crewmembers onboard. (Id. ¶ 32(p).)

On March 2, 2020, Defendant acquired knowledge that a person aboard the *Eclipse* displayed flu-like symptoms consistent with a positive COVID-19 diagnosis. (Id. ¶¶ 11, 15, 32(q).) However, Defendant did not thereafter, or at any time during the voyage, enact quarantine and/or physical distancing measures amongst passengers and/or crewmembers aboard the vessel. (Id. ¶ 15.)

On March 9, 2020, numerous passengers aboard the *Eclipse* began exhibiting respiratory symptoms and sought medical care. (Id. ¶ 32(t).)

On March 15, 2020, the *Eclipse* was denied the ability to dock in Chile due to concerns that passengers and crewmembers may have COVID-19. (Id. ¶ 32(w).) Defendant continued to permit passengers to enjoy the voyage as normal without any quarantine or physical distancing measures. (Id.)

On March 17, 2020, the captain of the *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. (Id. ¶ 32(x).) Defendant would continue to offer a "full schedule of entertainment, activities, and dining options" to passengers. (Id.) 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 28, 2020 that "[a]ll guests onboard remain healthy and happy." (Id. ¶¶ 17, 32(x).) Defendant continued to conduct large gatherings onboard the *Eclipse* without providing passengers and crewmembers with masks or enforcing any social distancing measures. (See id. ¶¶ 18-19.)

On March 30, 2020, the *Eclipse* docked in San Diego. (Id. ¶ 32(bb).) At least 45 passengers and crewmembers ultimately tested positive for COVID-19, and at least two people died. (Id. ¶ 20.)

On May 13, 2020, Plaintiffs Fred and Marlene Kantrow filed their initial Complaint. (D.E. 1.) The same day, the Court issued a Paperless Order Directing Plaintiffs to File an Amended Complaint. (D.E. 4.) Therein, the Court found that Plaintiff's Complaint "is a 'shotgun pleading' in that it 'commits the sin of not separating into a different count each cause of action or claim for relief.'" (Id. (quoting Weiland v. Palm Beach Cnty. Sheriff's

Office, 792 F.3d 1313, 1323 (11th Cir. 2015)).) The Court noted, for example, that Paragraph 46 of the Complaint contained thirty-two sub-paragraphs alleging separate ways in which Defendant breached the duty of care it owed to Plaintiffs, and that Paragraph 55 contained six sub-paragraphs alleging separate ways in which Defendant breached the duty of care it owed to Plaintiffs. (Id.) The Court found that "[e]ach alleged breach of the duty of care is a separate claim which must be pled separately." (Id. (citations omitted).)

On May 19, 2020, the Kantrows filed the operative Amended Complaint as a class action. (D.E. 5.) The Amended Complaint alleges that "Plaintiffs, the Class Representatives and Class Members herein, were passengers aboard Defendant's vessel between March 1 and March 30, 2020 and who contracted [COVID-19] and/or were placed at a heightened risk of exposure to COVID-19 while aboard Defendant's vessel and/or as a result of Defendant's careless conduct alleged herein." (Id. ¶ 10.) The Amended Complaint alleges the following twenty-one causes of action:

- Count I: Negligent Failure to Warn (Failure to Warn of Other Passengers/Crew with Positive COVID-19 Symptoms)
- Count II: Negligent Failure to Warn (Misrepresentation as to all Guests Onboard Remaining Healthy)
- Count III: Negligent Failure to Warn (Failure to Warn of COVID-19 Dangers)
- Count IV: Negligent Failure to Warn (Failure to Warn of COVID-19 Safety Measures)
- Count V: Negligent Management of Infectious Disease Outbreak Aboard Vessel (Failure to Take Remedial Action to Control Spread of COVID-19)

- Count VI: Negligent Management of Infectious Disease Outbreak Aboard Vessel (Failure to Take Precautions as to Passengers/Crew with Positive COVID-19 Symptoms)

- Count VII: Negligent Management of Infectious Disease Outbreak Aboard Vessel (Failure to Perform Available Testing)

- Count VIII: Negligent Management of Infectious Disease Outbreak Aboard Vessel (Failure to Enforce Infectious Disease Policies and Procedures)

- Count IX: Negligent Boarding (Failure to Evaluate Passengers/Crew Before Boarding)

- Count X: Negligent Boarding (Failure to Evaluate Passengers/Crew Before Boarding per CDC Guidelines)

- Count XI: Negligent Boarding (Failure to Restrict Access to Vessel)

- Count XII: General Negligence (Failure to Enforce Physical Distancing Measures)

- Count XIII: General Negligence (Failure to Sanitize the Vessel)

- Count XIV: General Negligence (Failure to Enact Vessel Lockdown)

- Count XV: Negligent Infliction of Emotional Distress (Failure to Enforce Physical Distancing Measures)

- Count XVI: Negligent Infliction of Emotional Distress (Misrepresentation as to All Guests Onboard Remaining Healthy)

- Count XVII: Negligent Infliction of Emotional Distress (Negligent Disembarkation Procedure)

- Count XVIII: Intentional Infliction of Emotional Distress (Failure to Screen Boarding Passengers)

- Count XIX: Intentional Infliction of Emotional Distress (Failure to Enforce Physical Distancing Measures)

- Count XX: Intentional Infliction of Emotional Distress (Misrepresentation as to All Guests Onboard Remaining Healthy)

- Count XXI: Intentional Infliction of Emotional Distress (Careless Provision of Alcohol)

(Id. ¶¶ 44-167.) Each Count contains the following damages allegation:

> As a result of Defendant's negligence, Plaintiffs and others similarly situated contracted COVID-19 and/or suffered medical complications arising from it and were injured about their body and extremities, suffered both physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, temporary and/or permanent physical disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of their injuries including life care, suffered physical handicap, lost wages, income lost in the past, and their working abilities and earning capacities have been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiffs and others similarly situated will suffer the losses and impairments in the future.

(Id. ¶¶ 49, 55, 61, 67, 73, 79, 85, 92, 99, 106, 113, 118, 123, 128, 133a, 138a, 143a, 149a, 155a, 161a, 167a.) Counts XV through XXI contain the following additional damages allegation:

> As a result of Defendant's intentional and/or reckless conduct, Plaintiffs and others similarly situated . . . [w]ere exposed to an actual risk of physical injury, which caused severe mental and emotional anguish with severe physical manifestations of that mental and emotional anguish including, but not limited to, severe sickness, nausea, exhaustion, fatigue, headaches, insomnia, lack of sleep, poor sleep, nightmares and/or respiratory difficulties.

(Id. ¶¶ 133b, 138b, 143b, 149b, 155b, 161b, 167b.)

On September 1, 2020, Defendant filed the instant Motion to Dismiss the Amended Complaint for failure to state a claim upon which relief can be granted. (D.E. 7.)

II. Legal Standard

Under Rule 12(b)(6), a court may dismiss a claim for "failure to state a claim upon which relief can be granted." "To survive a motion to dismiss, 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) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Conclusory statements, assertions or labels will not survive a 12(b)(6) motion to dismiss. Id. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.; see also Edwards v. Prime, Inc., 602 F.3d 1276, 1291 (11th Cir. 2010) (setting forth the plausibility standard). "Factual allegations must be enough to raise a right to relief above the speculative level[.]" Twombly, 550 U.S. at 555 (citation omitted). Additionally:

> Although it must accept well-pled facts as true, the court is not required to accept a plaintiff's legal conclusions. Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (noting "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"). In evaluating the sufficiency of a plaintiff's pleadings, we make reasonable inferences in Plaintiff's favor, "but we are not required to draw plaintiff's inference." Aldana v. Del Monte Fresh Produce, N.A., Inc., 416 F.3d 1242, 1248 (11th Cir. 2005). Similarly, "unwarranted deductions of fact" in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff's allegations. Id.; see also Iqbal, 129 S. Ct. at 1951 (stating conclusory allegations are "not entitled to be assumed true").

Sinaltrainal v. Coca-Cola, 578 F.3d 1252, 1260 (11th Cir. 2009), abrogated on other grounds by Mohamad v. Palestinian Auth., 566 U.S. 449, 453 n.2 (2012). The Eleventh Circuit has endorsed "a 'two-pronged approach' in applying these principles: 1) eliminate any allegations in the complaint that are merely legal conclusions; and 2) where there are well-pleaded factual allegations, 'assume their veracity and then determine whether they

plausibly give rise to an entitlement to relief.'" Am. Dental Ass'n v. Cigna Corp., 605 F.3d 1283, 1290 (11th Cir. 2010) (quoting Iqbal, 556 U.S. at 679).

III. Applicable Law

"Federal maritime law applies to actions arising from alleged torts 'committed aboard a ship sailing in navigable waters.'" Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308, 1315 (S.D. Fla. 2011) (citing Keefe v. Bahama Cruise Line, Inc., 867 F.2d 1318, 1321 (11th Cir. 1989)). It also applies to tort actions arising at an offshore location during the course of a cruise. Ceithaml v. Celebrity Cruises, Inc., 739 F. App'x 546, 550 n.4 (11th Cir. 2018) (citing Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 900-02 (11th Cir. 2004)).

> General maritime law is "an amalgam of traditional common-law rules, modifications of those rules, and newly created rules." See East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864–65, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986). See also Brockington v. Certified Elec., Inc., 903 F.2d 1523, 1530 (11th Cir. 1990). In the absence of well-developed maritime law pertaining to [Plaintiff's] negligence claims, [the Court] will incorporate general common law principles and Florida state law to the extent they do not conflict with federal maritime law. See Just v. Chambers, 312 U.S. 383, 388, 61 S. Ct. 687, 85 L. Ed. 903 (1941) ("With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation."). See also Becker v. Poling Transp. Corp., 356 F.3d 381, 388 (2nd Cir. 2004) ("federal maritime law incorporates common law negligence principles generally, and [state] law in particular"); Wells v. Liddy, 186 F.3d 505, 525 (4th Cir. 1999) (in the absence of a well-defined body of maritime law relating to a particular claim, the general maritime law may be supplemented by either state law or general common law principles).

Smolnikar, 787 F. Supp. 2d at 1315; see also Hesterly v. Royal Caribbean Cruises, Ltd., 515 F. Supp. 2d 1278, 1282 (S.D. Fla. 2007).

IV. Discussion

Defendant initially argues that every count of the Amended Complaint fails to state a claim because the named Plaintiffs—Fred and Marlene Kantrow—did not plead their alleged injuries, and instead asserted a "shotgun-style pleading of a laundry list of every injury that could conceivably befall a human being[.]" (Mot. at 2-8 (citing Heinen v. Royal Caribbean Cruises LTD, 806 F. App'x 847, 849-50 (11th Cir. 2020)).) Because the Court previously dismissed their original Complaint without prejudice as a shotgun pleading, Defendant argues that the Court should dismiss the Amended Complaint with prejudice. (Id. at 7.) Defendant further argues that if the Kantrows are proceeding on the theory that they were only exposed to COVID-19 then their negligence-based claims fail as a matter of law. (Id. at 8-11 (citing Metro North Commuter R.R. Co. v. Buckley, 521 U.S. 424, 427 (1997); Weissberger v. Princess Cruise Lines, Ltd., Case Nos. 2:20-cv-02267-RGK-SK, et al., 2020 WL 3977938, *3-5 (C.D. Cal. July 14, 2020)).) Defendant further argues that the "Negligent Boarding" claims in Counts IX through XI should be dismissed with prejudice because there is no such claim. (Id. at 12.) It further argues that the Intentional Infliction of Emotional Distress claims in Counts XVIII through XXI should be dismissed with prejudice because the Amended Complaint does not allege that Defendant engaged in "extreme and outrageous conduct." (Id. at 13-15 (quoting Wu v. NCL (Bahamas) Ltd., Civil Action No. 16-22270-Civ-Scola, 2017 WL 1331712, at *2 (S.D. Fla. Apr. 11, 2017) (quoting Restatement (Second) of Torts § 46)).)

a. Shotgun-style damages allegation

Defendant argues every count of the Amended Complaint fails to state a claim because the named Plaintiffs—Fred and Marlene Kantrow—did not plead their alleged injuries, and instead asserted a "shotgun-style pleading of a laundry list of every injury that could conceivably befall a human being[.]" (Mot. at 2-8 (citing Heinen, 806 F. App'x at 849-50).) It argues that the Eleventh Circuit recently held in Heinen that an almost identical damages allegation (drafted by the same attorneys who represent the Plaintiffs in this case) was improper and affirmed a dismissal with prejudice. (Id. at 3-5.) Defendant further argues that "any contention that either or both of Mr. and Ms. Kantrow, themselves, suffered all of the injuries that the amended complaint piles into the kitchen sink simply is not plausible[.]" (Id. (citing Heinen, 806 F. App'x at 850).) It argues that "[t]he Eleventh Circuit has made clear that a named plaintiff in a putative class action must ***personally*** incur injury and damages, and cannot create standing by borrowing or otherwise relying upon injuries and damages that unnamed class members might have incurred[.]" (Id. at 6 (citing, e.g., Griffin v. Dugger, 823 F.2d 1476, 1482 (11th Cir. 1987)).) Defendant argues that because the Plaintiffs' "replaced their initial shotgun pleading with another shotgun pleading[,]" the Court should dismiss the Amended Complaint with prejudice. (Id. at 7 (citing Vibe Micro, Inc. v. Shabanets, 878 F.3d 1291, 1295 (11th Cir. 2018)).)

Plaintiffs argue that the Amended Complaint "explicitly states that both Plaintiffs 'contracted COVID-19' aboard Defendant's vessel," (Resp. at 1 (citing Am. Compl. ¶¶ 9-13, 49, 55, 61, 67, 133)); "clearly identified the injuries associated with their COVID-19 contraction: 'The dangerous conditions associated with COVID-19 include its

manifestations – severe pneumonia, acute respiratory distress syndrome (ARDS), septic shock and/or multi-organ failure – and/or its symptoms – fever, dry cough, and/or shortness of breath[,]'" (id. at 2 (quoting Am. Compl. ¶ 12)); and "specifically identified a primary source of their emotional distress: 'the high fatality rate associated with contracting the virus[,]'" (id. at 2 (citing Am. Compl. ¶ 12)). They argue that Heinen is distinguishable because the general damages allegation in that case was not supported by specific factual allegations regarding the plaintiffs' damages. (Id.) They argue that "Plaintiffs' allegations that they 'contracted COVID-19,' coupled with allegations concerning the manifestations and symptoms of that virus, provide sufficient factual support that Plaintiffs plausibly suffered physical and emotional injuries as a result of Defendant's tortious conduct." (Id.) However, Plaintiffs further argue that if the Court requires, Plaintiffs are able to replead the Complaint to more specifically state the damages each Plaintiff suffered individually. (Id. at 2-3.) They argue that the Court should not dismiss the Amended Complaint with prejudice because (1) "this is the first time Defendant – or the Court – has raised this specific pleading issue, and Plaintiffs are willing and able to amend to address the issue[,]" and (2) Plaintiffs complied with the Court's order to separate into a different count each cause of action or claim for relief. (Id. at 3-4.)

In its Reply, Defendant argues that the Amended Complaint "expansively defin[es] 'Plaintiffs' to mean 'the Class Representatives ***and*** Class Members herein,' and alleges that 'Plaintiffs' contracted COVID-19 '***and/or***' were merely exposed to it[.]" (Reply at 1 (quoting Am. Compl. ¶ 10)). "Thus," Defendant argues, "every subsequent reference in the pleading to 'Plaintiffs' is ***not*** a reference to Mr. and Ms. Kantrow alone, but is instead

a reference to the Kantrows (the 'Class Representatives') ***and*** the 'Class Members herein.'" (Id.) It argues that the Amended Complaint does not allege that the Kantrows contracted COVID-19, only that "Plaintiffs" did. (Id. at 1-2.) It argues that "[t]he amended complaint fails to state a claim because the Kantrows have not alleged whether ***they*** contracted COVID-19 or were merely exposed to it[.]" (Id. at 2 (citing Heinen, 806 F. App'x at 849; Anderson v. Bd. of Trs. of Cent. Fla. Cmty. Coll., 77 F.3d 364, 366 (11th Cir. 1996)).) It further argues that even if "Plaintiffs" only meant the Kantrows, "the amended complaint would still fail to state a claim because it alleges that 'Plaintiffs' suffered every injury in the pleading's laundry list of every conceivable injury that a person could suffer[,]" which the Eleventh Circuit held to be an impermissible shotgun allegation in Heinen. (Id. at 2.) As such, Defendant argues that Plaintiffs "replaced" its original shotgun pleading with another one, and that the Court should accordingly dismiss the Amended Complaint with prejudice. (Id. at 3 (citing Heinen, 806 F. App'x at 849).) They argue that Plaintiffs' assertion that the Amended Complaint should not be dismissed "because it is a different type of shotgun pleading than their last one" is "a lame excuse that is not supported by citation to any authority." (Id.) They argue that dismissal with prejudice is especially appropriate because the same attorneys that represented the plaintiffs in Heinen represent Plaintiffs here. (Id.)

The Court agrees with Defendant that the damages allegation contained in each count is an impermissible "shotgun"-style allegation requiring dismissal. Heinen, 806 F. App'x at 849-50. In Heinen, nineteen plaintiffs sued Royal Caribbean for negligence and negligent infliction of emotional distress, alleging that Royal Caribbean waited too long to

cancel their cruise due to Hurricane Harvey, causing them to travel to Galveston, Texas (where the cruise was scheduled to sail from) "and weather hurricane-force conditions." 806 F. App'x 847. The district court dismissed the plaintiffs' original complaint because it "failed to identify the individual harms the appellants suffered due to Royal Caribbean's purported negligence." Id. The plaintiffs filed an amended complaint alleging that each plaintiff suffered "physical and emotional damage," and, "in shotgun fashion, . . . ticked off a laundry list of injuries at the end of their complaint, without specifying who suffered what." Id. The district court found that those allegations failed to state a claim under Rule 12(b)(6) and dismissed the case with prejudice. Id.

The plaintiffs appealed and the Eleventh Circuit affirmed. Id. at 849-50. First, it observed that "[a]lthough each appellant alleged that Royal Caribbean's delay caused them 'physical and emotional damage,' that threadbare allegation does not suffice without factual allegations in support." Id. at 849. It further noted that "[t]he only specific factual support for the appellants' threadbare allegations of harm comes in a combined paragraph listing what seems to be every possible injury imaginable." Id. Although the Eleventh Circuit did not reproduce the damages allegation in its opinion, the amended complaint in Heinen alleged:

> As a result of the negligence of RCCL, Plaintiffs were injured about their body and extremities, suffered both physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, temporary and/or permanent physical disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of their injuries including life care, suffered physical handicap, lost wages, income lost in the past, and their working ability and earning capacity has been impaired. The injuries and damages are permanent

> or continuing in nature, and Plaintiffs will suffer the losses and impairments in the future.

Heinen v. Royal Caribbean Cruises LTD, Case No. 18-23395-Civ-Moreno, D.E. 20 ¶¶ 57, 63 (S.D. Fla. Jan. 15, 2019). However, the plaintiffs failed "to identify which appellant suffered which injury." Heinen, 806 F. App'x at 850. The Eleventh Circuit observed that "[s]urely each [plaintiff] did not suffer every injury listed in the kitchen-sink paragraph the [plaintiffs] add at the end. In any event, the complaint does not plausibly allege that they have done so." Id. Because the plaintiffs had not connected their general allegation of "physical and emotional damage" with the specific "kitchen-sink" injuries they pleaded in bulk, the allegations were not properly pled, the court could not accept them as true, the amended complaint did not contain plausible allegations of harm, and, as such, it failed to state a claim. Id. (citing Chaparro, 963 F.3d at 1336-38).

Here, the Amended Complaint generally alleges that "Plaintiffs, the Class Representatives and Class Members herein, were passengers aboard Defendant's vessel between March 1 and March 30, 2020 and . . . contracted [COVID-19] and/or were placed at a heightened risk of exposure to COVID-19 while aboard Defendant's vessel and/or as a result of Defendant's careless conduct alleged herein." (Am. Compl. ¶ 10.) Then, each Count of the Amended Complaint contains a "kitchen-sink" damages allegation that is virtually identical to the one in Heinen. Specifically, each count of the Amended Complaint alleges that "Plaintiffs"

> contracted COVID-19 and/or suffered medical complications arising from it and were injured about their body and extremities, suffered both physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, temporary and/or permanent physical disability, impairment, inconvenience

> in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of their injuries including life care, suffered physical handicap, lost wages, income lost in the past, and their working abilities and earning capacities have been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiffs and others similarly situated will suffer the losses and impairments in the future.

(Am. Compl. ¶¶ 49, 55, 61, 67, 73, 79, 85, 92, 99, 106, 113, 118, 123, 128, 133a, 138a, 143a, 149a, 155a, 161a, 167a.) However, the Amended Complaint does not connect this "kitchen-sink" damages allegation to each named Plaintiff. Stated differently, Plaintiffs "ticked off a laundry list of injuries at the end of [each Count], without specifying who suffered what." Heinen, 806 F. App'x at 849. Surely, both Fred and Marlene Kantrow "did not suffer every injury listed in the kitchen-sink paragraph" and, "[i]n any event, the [Amended C]omplaint does not plausibly allege that they have done so." Id. at 850. As such, it fails to state a claim upon which relief can be granted. Id. (citing Chaparro, 693 F.3d at 1336-38).

Finally, the Court notes that the Kantrows do not have standing to assert claims on behalf of putative class members who suffered injuries that the Kantrows themselves did not suffer:

> Under elementary principles of standing, a plaintiff must allege and show that he personally suffered injury. See Payne v. Travenol Laboratories, Inc., 565 F.2d 895, 898 (5th Cir.) ("To meet the requirement for standing under Article III, a plaintiff must establish either that the asserted injury was in fact the consequence of the defendant's action or that the prospective relief will remove the harm.") (citation omitted), cert. denied, 439 U.S. 835, 99 S. Ct. 118, 58 L. Ed. 2d 131 (1978); Thurston v. Dekle, 531 F.2d 1264, 1269 (5th Cir. 1976) ("The threshold case-or-controversy inquiry is whether there existed a named plaintiff with standing to raise the issue before the court."), vacated on other grounds, 438 U.S. 901, 98 S. Ct. 3118, 57 L. Ed. 2d 1144

> (1978). If he cannot show personal injury, then no article III case or controversy exists, and a federal court is powerless to hear his grievance. This individual injury requirement is not met by alleging "that injury has been suffered by other, unidentified members of the class to which [the plaintiff] belong[s] and which [he] purport[s] to represent." Warth v. Seldin, 422 U.S. 490, 502, 95 S. Ct. 2197, 2207, 45 L. Ed. 2d 343 (1975); see also Minority Police Officers Ass'n v. City of South Bend, 721 F.2d 197, 202 (7th Cir. 1983) ("Feelings of solidarity do not confer standing to sue."). Thus, a plaintiff cannot include class action allegations in a complaint and expect to be relieved of personally meeting the requirements of constitutional standing, "even if the persons described in the class definition would have standing themselves to sue." Brown v. Sibley, 650 F.2d 760, 771 (5th Cir. Unit A July 1981); see also Vuyanich v. Republic Nat'l Bank, 723 F.2d 1195, 1200 (5th Cir.), cert. denied, 469 U.S. 1073, 105 S. Ct. 567, 83 L. Ed. 2d 507 (1984). A named plaintiff in a class action who cannot establish the requisite case or controversy between himself and the defendants simply cannot seek relief for anyone—not for himself, and not for any other member of the class. O'Shea v. Littleton, 414 U.S. 488, 494, 94 S. Ct. 669, 675, 38 L. Ed. 2d 674 (1974). Moreover, it is not enough that a named plaintiff can establish a case or controversy between himself and the defendant by virtue of having standing as to just one of many claims he wishes to assert. Rather, each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim.

Griffin v. Dugger, 823 F.2d 1476, 1482-83 (11th Cir. 1987) (emphasis added). See also Blum v. Yaretsky, 457 U.S. 991, 999 (1982) ("Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.").

Although the Court agrees with Defendant that the Amended Complaint must be dismissed in its entirety because each Count contains the implausible, shotgun-style damages allegation, the Court finds that a dismissal without prejudice is appropriate. The Court will grant Plaintiffs leave to make a final amendment to cure all deficiencies, if they are able to do so. See Smith v. Psychiatric Sols., Inc., 750 F.3d 1253, 1262 (11th Cir. 2014)

("District courts have unquestionable authority to control their own dockets" and enjoy "broad discretion in deciding how best to manage the cases before them.").

The Court will now address whether some of Plaintiffs' claims otherwise require dismissal with prejudice.

b. Negligent Boarding

Defendant argues that Counts IX through XI of the Amended Complaint, which allege claims for "Negligent Boarding," should be dismissed with prejudice because "there simply is no such thing as an independent claim for 'negligent boarding[.]'" (Mot. at 12.) It further argues that the Amended Complaint does not, in any event, allege that the Kantrows were injured when they boarded the ship. (Id.)

Plaintiffs argue that their "negligent boarding" claims are "simple 'general negligence' claim[s] governed by the 'reasonable care under the circumstances' standard." (Resp. at 5.) They point out that "the Court previously ordered that Plaintiffs' counsel 'separately allege an independent count for various theories of liability.'" (Id. at 5 n.1.) They further argue that the claim is cognizable under maritime law, which recognizes a claim for the negligent performance of a gratuitous undertaking. (Id. at 6 (citing Sexton v. Carnival Corp., Case Number: 18-20629-CIV-MORENO, 2018 WL 3405246, at *2-3 (S.D. Fla. 2018); Disler v. Royal Caribbean Cruise, Ltd., Case Number: 17-23874-CIV-MORENO, 2018 WL 1916614, at *4 (S.D. Fla. 2018)).) Plaintiffs argue that Defendant "undertook a duty to screen prospective passengers and crewmembers who recently traveled to high-risk areas where the novel COVID-19 virus first manifested." (Resp. at 6 (citing Am. Compl. ¶ 14).) They argue the Amended Complaint alleges that Defendant did

not exercise reasonable care in the performance of that duty. (Id. (citing Am. Compl. ¶¶ 98, 103(a), 110(a)).) Finally, they argue that the fact that the Amended Complaint does not allege that Plaintiffs were injured "while boarding" the vessel is immaterial, as the relevant issue is whether Defendant's negligence during the boarding process "caused and/or contributed to the proliferation of cases aboard the vessel during the voyage, thus resulting in Plaintiffs' COVID-19 contraction and related injuries." (Id. (citing Am. Compl. ¶ 97).)

In its Reply, Defendant argues that Plaintiffs failed to cite any authority recognizing a claim for "negligent boarding." (Reply at 7.) It further argues that the "undertaker's doctrine" is inapplicable because Defendant's "allegedly inadequate response to COVID-19 simply has nothing to do with the Kantrows' boarding of the ship." (Id. at 7-8.)

"To plead negligence in a maritime case, 'a plaintiff must allege that (1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff's injury; and (4) the plaintiff suffered actual harm.'" Franza v. Royal Caribbean Cruises, Ltd., 772 F.3d 1225, 1253 (11th Cir. 2014) (quoting Chaparro, 693 F.3d at 1336). Under the Restatement (Second) of Torts § 323—which is applicable to maritime cases, Disler, 2018 WL 1916614, at *4 (citation omitted):

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or

> (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323.

The Court finds that dismissal with prejudice of the "negligent boarding" claims is improper. The Court previously ordered Plaintiffs to file an amended complaint which separates into a different count each cause of action or claim for relief, noting that each alleged breach of the duty of care Defendant owed to Plaintiffs was a "separate claim which must be pled separately." (D.E. 4 (citations omitted).) Plaintiffs complied and have alleged in their Amended Complaint that Defendant breached a duty of care it owed to Plaintiffs during the boarding process. (Am. Compl. ¶¶ 93-113.) Defendant does not argue—and cannot seriously contend—that it does not owe its passengers a duty of reasonable care during the boarding process. See Lipkin v. Norwegian Cruise Line Ltd., 93 F. Supp. 3d 1311, 1320 (S.D. Fla. 2015) (observing that "cruise ship operators are common carriers with a 'continuing obligation of care for their passengers'") (quoting Carlisle v. Ulysses Line Ltd., 475 So. 2d 248, 251 (Fla. Dist. Ct. App. 1985)). Thus, the Court cannot find that Plaintiffs' "negligent boarding" claims are not cognizable as a matter of law.[2] As such, dismissal with prejudice is improper.

[2] In Section IV(a), supra, the Court found that the damages allegation in Counts IX, X, and XI (and every other count) was an "impermissible 'shotgun'-style allegation requiring dismissal." (Citing Heinen, 806 F. App'x at 849-50). The Court takes no position as to whether the "negligent boarding" claims in Counts IX, X, and XI otherwise plausibly allege a negligence claim under maritime law. The Court finds only that a cruise passenger could plausibly allege negligence during the boarding process, and therefore that dismissal with prejudice of Counts IX, X, and XI is improper.

c. Intentional Infliction of Emotional Distress

Finally, Defendant argues that Counts XVIII through XXI, which assert claims for intentional infliction of emotional distress ("IIED") should be dismissed with prejudice because Defendant's alleged underlying conduct "is incapable, as a matter of law, of stating a claim for intentional infliction of emotional distress." (Mot. at 13.)

Plaintiffs argue that Defendant "lied, concealed the truth, and/or misrepresented to passengers, including Plaintiffs, that all passengers aboard the vessel at that time were 'healthy' – implying that no one on the ship had contracted COVID-19 – when Celebrity knew that was not the case." (Resp. at 8.) They argue that Defendant's "lie, concealment, and/or misrepresentation, is so outrageous in character, and so extreme in degree, that it goes beyond all bounds of decency, and is to be regarded as atrocious, and utterly intolerable in a civilized community." (Id. at 8-9.)

Defendants argue that Plaintiffs' IIED claims are not supported by decisions from this District which have found that "a claim for IIED does ***not*** exist where a plaintiff alleges that he or she contracted or was exposed to potentially deadly illnesses aboard a cruise ship[,]" (Reply at 8 (citing Brown v. Royal Caribbean Cruises, Ltd., Civil Action No. 16-24209-Civ-Scola, 2017 WL 3773709, at *1, 3 (S.D. Fla. Mar. 17, 2017); Negron v. Celebrity Cruises, Inc., Civil Action No. 18-21797-Civ-Scola, 2018 WL 3369671, at *1, 3 (S.D. Fla. July 10, 2018))), even where "the plaintiff alleges that the cruise line knew that the illness was present on the vessel, but nonetheless failed to disclose it to passengers[,]" (id. (citing Brown, 2017 WL 3773709, at *1)).

"'Courts sitting in admiralty typically look to the standards set out in the Restatement (Second) of Torts § 46 (1965) as well as state law to evaluate claims for intentional infliction of emotional distress.'" Broberg v. Carnival Corp., 303 F. Supp. 3d 1313, 1317 (S.D. Fla. 2017) (quoting Wu v. NCL (Bahamas) Ltd., No. 16-22270-Civ-Scola, 2017 WL 1331712, at *2 (S.D. Fla. Apr. 11, 2017)). To state a claim for intentional infliction of emotional distress under Florida law, a plaintiff must plead the following elements: "1) extreme and outrageous conduct; 2) an intent to cause, or reckless disregard to the probability of causing, emotional distress; 3) severe emotional distress suffered by the plaintiff and 4) that the conduct complained of caused the plaintiff's severe emotional distress." Id. (citing Blair v. NCL (Bahamas) Ltd., 212 F. Supp. 3d 1264, 1269 (S.D. Fla. 2017) (citing Metro. Life. Ins. Co. v. McCarson, 467 So. 2d 277, 278 (Fla. 1985))).

At issue in this case is whether Plaintiffs' IIED claims allege "extreme and outrageous conduct." (See Mot. at 13-15.)

> "While there is no exhaustive or concrete list of what constitutes outrageous conduct, Florida common law has evolved an extremely high standard." Garcia v. Carnival Corp., 838 F. Supp. 2d 1334, 1339 (S.D. Fla. 2012) (quoting Merrick v. Radisson Hotels Int'l, No. 06-cv-01591-T-24TGW (SCB), 2007 WL 1576361, at *4 (M.D. Fla. May 30, 2007)). Whether conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a question of law for the court to decide, not a question of fact. Blair, 212 F. Supp. 3d at 1269–1270.

Id. at 1317-18. "'Outrageous' conduct is that which 'goes beyond all possible bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community.'" Wu, 2017 WL 1331712, at *2 (quoting Rubio v. Lopez, 445 F. App'x 170, 175 (11th Cir. 2011)).

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort.

Id. (quoting Restatement (Second) of Torts § 46 cmt. d; Brown v. Zaveri, 164 F. Supp. 2d 1354, 1362 (S.D. Fla. 2001)). "Notably, the cause of action for IIED is 'sparingly recognized by the Florida courts.'" Id. (quoting Vamper v. United Parcel Serv., Inc., 14 F. Supp. 2d 1301, 1306 (S.D. Fla. 1998)). This sparse recognition is reflected in the Florida and maritime cases addressing claims of IIED. See, e.g., Rubio, 445 F. App'x at 175 (finding failure to allege sufficient outrageous conduct where deputy sheriff hobble-tied arrestee on black asphalt pavement in sun, resulting in second-degree burns to face and chest); Wallis v. Princess Cruises, Inc., 306 F.3d 827, 842 (9th Cir. 2002) (finding no outrageous conduct where crewmember on cruise ship remarked within earshot of the plaintiff after her husband fell overboard that her husband was probably dead and that his body would be sucked under the ship, chopped up by the propellers, and would probably not be recovered); Garcia v. Carnival Corp., 838 F. Supp. 2d 1334, 1339 (S.D. Fla. 2012) (finding no outrageous conduct where crewmembers assaulted cruise passenger and prevented her from leaving her room for a period of time); Vamper, 14 F. Supp. 2d at 1306–07 (finding no outrageous conduct where defendants fabricated reckless driving charge against plaintiff, called him the "n" word, threatened him with termination, and physically struck him on ankle).

Upon review of the relevant case law, the Court finds that the Amended Complaint does not allege that Defendant engaged in "extreme and outrageous conduct" sufficient to

sustain a claim for intentional infliction of emotional distress under maritime or Florida law. See Brown, 2017 WL 3773709, at *2. In Brown, the plaintiff was a passenger aboard cruise ship from November 9 to 13, 2015. Id. at *1. Once the ship was out to sea, the cruise carrier notified its passengers (including the plaintiff) that Legionnaires disease had been discovered in the ship's water system, that two cases of passengers contracting disease had been confirmed—one in July 2015 and one in October 2015—and that all of the passengers on board the ship had potentially been exposed to the disease. Id. After the cruise was over, the plaintiff was admitted to the hospital and treated for Legionnaires disease, was hospitalized for seven days, and suffered kidney disease, congestive heart failure, and pulmonary failure (among other things). Id. He was forced to retire from his job. Id. The plaintiff sued the cruise carrier for intentional infliction of emotional distress, arguing that it "acted with deliberate and wanton recklessness in choosing not to advise passengers of the presence of the disease prior to the ship's departure from port." Id. at *2. The plaintiff further alleged that the defendant's "motivation in failing to advise passengers of the presence of the disease prior to the departure of the ship was to protect the Defendant's economic interests, and that such conduct is outrageous, extreme, beyond the bounds of decency, and utterly intolerable in a civilized society." Id. The court found that "the Defendant's alleged conduct fails to rise to the level of outrageousness required by the Restatement (Second) of Torts and Florida state law." Id. Specifically:

> Even construing the facts in the light most favorable to the Plaintiff, Royal Caribbean's alleged conduct is not such that it "goes beyond all possible bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community." See Rubio, 445 Fed. Appx. at 175. While the Plaintiff's allegations describe truly objectionable behavior, the allegations

> simply do not rise to the level of outrageousness required by the applicable case law.

Id. at *3. Accordingly, the court dismissed the IIED claim with prejudice. Id.

The Court finds that Plaintiffs' allegations that Defendant lied, concealed, and misrepresented to its passengers that everybody onboard the *Eclipse* was healthy when it knew that was false is comparable to, and even less objectionable than, the conduct alleged in Brown. In any event, it fails to rise to the level of outrageousness required by the applicable case law. See id. Therefore, Counts XVIII through XXI are dismissed with prejudice for failure to state a claim upon which relief can be granted. See id.

V. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Dismiss the Amended Complaint (D.E. 7) is **GRANTED IN PART AND DENIED IN PART** consistent with this Order;
2. Counts XVIII through XXI are **DISMISSED WITH PREJUDICE**;
3. Counts I through XVII are **DISMISSED WITHOUT PREJUDICE** with leave to amend; and
4. Plaintiffs shall have fourteen days in which to file a Second Amended Complaint.

DONE AND ORDERED in Chambers at Miami, Florida this 29th day of December, 2020.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE