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8  
 9  
 10 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

11 CHRISTOPHER WEIDNER,  
 12 Individually and as Personal  
 13 Representative of the Decedent, CARL  
 WEIDNER

14 Plaintiffs,

15 vs.

16 CARNIVAL CORPORATION,  
 17 CARNIVAL PLC, and PRINCESS  
 CRUISE LINES LTD.,

18 Defendants.

CASE NO.: 2:20-CV-04074-RGK-SK

**DEFENDANT PRINCESS CRUISE  
 LINES, LTD.'S NOTICE OF  
 MOTION AND MOTION TO  
 DISMISS PLAINTIFFS'  
 COMPLAINT**

Date: August 31, 2020  
 Time: 9:00 a.m.  
 Judge: Hon. R. Gary Klausner  
 Courtroom: 850

Magistrate: Hon. Steve Kim  
 Filed: 05/04/2020

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1 Defendant, PRINCESS CRUISE LINES, LTD. (“PRINCESS”) hereby files  
2 this Motion to Dismiss the Complaint filed by Plaintiffs herein. For the reasons set  
3 forth below, Plaintiffs’ Complaint should be dismissed.

4 This motion is made following several conferences of counsel pursuant to  
5 L.R. 7-3 which took place between May 18, 2020 and July 9, 2020.

6 **I. INTRODUCTION**

7 Plaintiffs, Christopher Weidner, the decedent’s son, as an individual and as  
8 “Personal Representative of the Decedent, Carl Weidner,” bring a maritime tort case  
9 relating to Carl Weidner’s cruise aboard the *Grand Princess* from February 21, 2020  
10 until March 10, 2020. (Compl. ¶¶ 2-5). Decedent Carl Weidner is alleged to have  
11 contracted COVID-19 “while a passenger onboard the M/V GRAND PRINCESS,  
12 sailing on the high seas.” (Compl. ¶3). Carl Weidner is alleged to have died on  
13 March 26, 2020 “as a result of infection with COVID-19.” (Compl. ¶69). Plaintiffs’  
14 Complaint purports to state a cause of action under the Death on the High Seas Act  
15 (hereafter “DOHSA”), Common Law Negligence for Wrongful Death, and  
16 Common Law Gross Negligence for Wrongful Death.

17 Plaintiffs name three sets of defendants in this lawsuit: PRINCESS CRUISE  
18 LINES, LTD. (hereafter “PRINCESS”), CARNIVAL CORPORATION (hereafter  
19 “CARNIVAL”) and CARNIVAL PLC (hereafter “PLC”). Plaintiffs allege all three  
20 Defendants “owned, controlled, and operated the cruise ship, M/V GRAND  
21 PRINCESS.” (Compl. ¶ 9). Nonetheless, Plaintiffs fail to allege *any* action or  
22 omission taken by PRINCESS and fail to differentiate what actions were taken by  
23 which Defendant.

24 The Complaint against PRINCESS should be dismissed for the following  
25 reasons: First, in violation of the pleading standards of Federal Rule of Civil  
26 Procedure 8(a), Plaintiffs improperly lump PRINCESS, CARNIVAL, and PLC  
27 together as a single entity, referring to them throughout the Complaint simply as  
28 “Defendants.” Plaintiffs improperly ascribe all the alleged duties and all the alleged

1 breaches to all the parties under the generalized rubric of “Defendants” without  
2 distinguishing among the separate entities who owes what duties or who is alleged  
3 to have committed which purported act or omission. This defect is more than a  
4 semantic one and makes it impossible for each Defendant to determine which  
5 allegations are alleged against it versus the other Defendants. Additionally,  
6 Plaintiffs’ Complaint is an impermissible shotgun pleading that runs afoul of Rule  
7 8’s pleading requirement. This independent basis for dismissal deprives Defendants  
8 of knowing exactly what they are accused of doing wrong.

9       Second, Plaintiffs bring death claims under both the Death on the High Seas  
10 Act (“DOHSA”) and under California state law. Plaintiffs have failed to plead  
11 sufficient facts to establish standing to bring a death claim under either DOHSA or  
12 California law. Plaintiffs have pled no fact to establish that Christopher Weidner has  
13 been appointed the personal representative of the Estate of Carl Weidner or that  
14 Christopher Weidner is Carl Weidner’s successor in interest. This defect is fatal to  
15 all three counts.<sup>1</sup>

16       Finally, assuming the Court is satisfied that Christopher Weidner has  
17 adequately pled standing to state a claim on behalf of the Estate of Carl Weidner,  
18 Plaintiffs’ common law Negligence and Gross Negligence claims must be dismissed  
19 as DOHSA is the exclusive remedy for Plaintiff’s wrongful death claim and  
20 preempts his state law claims.

21       As set forth below, the Court should dismiss the Complaint and Plaintiffs’  
22 claims against PRINCESS.

23 **II. LEGAL STANDARD**

24       To survive a Rule 12(b)(6) motion, a complaint must allege “enough facts to  
25

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26 <sup>1</sup> Opposing counsel has advised that Plaintiffs intend to request a stay, pending  
27 appointment of a personal representative by the Estate. Defendant has no objection  
28 to staying this matter to allow time for the Estate to appoint a personal  
representative.

1 state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550  
 2 U.S. 544, 570 (2007) . “Factual allegations must be enough to raise a right to relief  
 3 above the speculative level, ... on the assumption that all the allegations in the  
 4 complaint are true (even if doubtful in fact).” *Id.* at 555 (citations omitted). “The  
 5 plausibility standard “asks for more than a sheer possibility that a defendant has  
 6 acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A pleading that  
 7 offers labels and conclusions or a formulaic recitation of the elements of a cause of  
 8 action will not do.” *Id.*

9 Federal Rule of Civil Procedure 8(a) states that in order for a pleading to state  
 10 a claim for relief it must contain, “(1) a short and plain statement of the grounds for  
 11 the court's jurisdiction, unless the court already has jurisdiction and the claim needs  
 12 no new jurisdictional support; (2) a short and plain statement of the claim showing  
 13 that the pleader is entitled to relief; and (3) a demand for the relief sought, which  
 14 may include relief in the alternative or different types of relief.”

### 15 III. MEMORANDUM OF LAW

#### 16 A. Federal Maritime Law Applies to Plaintiffs’ Claims

17 As Plaintiffs acknowledge by invoking this Court’s maritime jurisdiction and  
 18 stating that the “Court has Admiralty subject matter jurisdiction pursuant to the  
 19 Death on The High Seas Act,” Federal maritime law applies to Plaintiffs’ claims.<sup>2</sup>  
 20 (Compl. ¶ 19). Maritime law applies when “(1) the alleged wrong occurred on or  
 21 over navigable waters, and (2) the wrong bears a significant relationship to  
 22 traditional maritime activity.” *Williams v. United States*, 711 F.2d 893, 896 (9th  
 23 Cir.1983). “[V]irtually every activity involving a vessel on navigable waters” is a  
 24 “traditional maritime activity sufficient to invoke maritime jurisdiction.” *See*  
 25 *Taghadomi v. United States*, 401 F.3d 1080, 1087 (9th Cir. 2005) ((quoting *Jerome*  
 26 *B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 542 (1995)));  
 27

28 <sup>2</sup> Plaintiffs’ Passage Contract applicable to their voyage similarly invokes maritime



1 *Wilkinson v. Carnival Cruise Lines, Inc.*, 920 F.2d 1560, 1654 n. 10 (11th Cir. 1991)  
 2 (“In maritime tort cases such as this one, in which injury occurs aboard a ... ship  
 3 upon navigable waters, federal maritime law governs the substantive legal issues.”).

#### 4 **B. The Complaint Violates Rule 8(a)**

5 As currently articulated, Plaintiffs’ Complaint makes it impossible for  
 6 PRINCESS to determine which claims are directed to PRINCESS, and which acts or  
 7 omissions Plaintiffs ascribes to other Defendants. Despite admitting that PRINCESS  
 8 and the other Defendants are separate corporate entities (*see* Compl. ¶¶ 6-8),  
 9 Plaintiffs refer to them interchangeably as “Defendants” throughout the Complaint,  
 10 without differentiating what actions were taken by which entity. Plaintiffs preface  
 11 these generalized allegations with a boilerplate statement that “at all times relevant  
 12 hereto, CARNIVAL CORPORATION, CARNIVAL PLC, and PRINCESS  
 13 advertised, marketed, sold, and profited (directly or indirectly) from and owned,  
 14 controlled, and operated the cruise ship, M/V GRAND PRINCESS.” (Compl. ¶ 9).  
 15 Plaintiffs misuse of the euphemism “Defendants” in this way is a violation of the  
 16 federal pleading rules set forth by the Supreme Court in *Bell Atlantic Corp. v.*  
 17 *Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). *See*  
 18 *also e.g., Makaron v. GE Sec. Mfg., Inc.*, 2014 WL 12614468, at \*3 (C.D. Cal. July  
 19 31, 2014) (“Undifferentiated pleading against multiple defendants is improper.”)

20 The Complaint does not describe any specific action or omission to any  
 21 specific Defendant. For example, in paragraph 84, Plaintiffs allege that  
 22 “[d]efendants failed to do what a reasonably careful cruise ship owner and operator  
 23 would do under the circumstances” (Compl. ¶ 84; *see also id.* ¶¶ 79-94, 97-108, and  
 24 111-126). Plaintiffs state that “defendants” did not adequately screen passengers  
 25 (Compl. ¶ 86), that “defendants” failed to notify passengers onboard (*id.* ¶ 89); and  
 26 that “defendants” “chose not to implement quarantine.” (*id.* ¶ 90). No particular  
 27

28 law. *See*, [https://www.princess.com/legal/passage\\_contract/plc.html](https://www.princess.com/legal/passage_contract/plc.html) at Section 1.

1 “defendant” is ever specified for any claimed act.

2 This practice of “lumping” together the actions of all defendants violates Rule  
3 8(a) of the Federal Rules of Civil Procedure. *Newman v. OneWest Bank, FSB*, 2010  
4 WL 797188, at \*5 (C.D. Cal. Mar. 5, 2010) (“Plaintiffs’ allegations fail to meet the  
5 basic pleading requirements of Rule 8(a)” when “they lump all of the defendants  
6 together.”); *Markman v. Leoni*, 2010 WL 8275829, at \*9 (C.D. Cal. Nov. 3, 2010),  
7 *report and recommendation adopted*, 2012 WL 83721 (C.D. Cal. Jan. 5, 2012)  
8 (“Plaintiff may not simply lump defendants together but must make specific factual  
9 allegations as to each.”); *DeSisto College, Inc. v. Line*, 888 F.2d 755, 761 (11th Cir.  
10 1989). A plaintiff fails to comply with the Rule 8(a) pleading standard where the  
11 complaint “lump[s] all the defendants together and fail[s] to distinguish their  
12 conduct because such allegations fail to give adequate notice to the defendants as to  
13 what they did wrong.” *Appalachian Enters., Inc. v. ePayment Solutions, Ltd.*, No. 01  
14 CV 11502 (GBD), 2004 WL 2813121, at \*7 (S.D.N.Y. Dec. 8, 2004); *Classen*  
15 *Immunotherapies, Inc. v. Biogen IDEC*, No. Civ. WDQ-04-2607, 2005 WL  
16 1936166, at \*2 (D. Md. July 22, 2005). When faced with such a Complaint, “district  
17 courts in California routinely hold that undifferentiated pleading against multiple  
18 defendants does not meet Rule 8 pleading requirements.” *ThinkBronze, LLC v. Wise*  
19 *Unicorn Ind. Ltd.*, 2013 WL 12120260, at \*10 n.59 (C.D. Cal. Feb. 7, 2013).

20 Courts have granted dismissal, for example, when a “complaint persistently  
21 made allegations against ‘Defendant’ without distinguishing which of the two  
22 defendants the allegation is against.” *Estrada v. Caliber Home Loans, Inc.*, 172 F.  
23 Supp. 3d 1108, 1117 (C.D. Cal. 2016); *see also, e.g., Dunson v. Cordis Corp.*, 2016  
24 WL 3913666, at \*3 (N.D. Cal. July 20, 2016) (complaint “facially insufficient”  
25 because “Plaintiffs lump defendants Cordis and Confluent in an undifferentiated  
26 group for each cause of action”); *Fagbohunge v. Caltrans*, 2014 WL 644008, at \*3  
27 n.4 (N.D. Cal. Feb. 19, 2014) (a “general allegation regarding ‘defendants’ is ...  
28 insufficient on its face because it does not identify which specific defendants ...

1 Plaintiff's complaint must differentiate between each of the defendants and clearly  
2 state the factual basis for each cause of action as to each specific defendant.”).

3 Because Plaintiffs fail to articulate what alleged acts or duties are attributable  
4 to PRINCESS and what alleged acts or duties are attributable to CARNIVAL or  
5 PLC, the Complaint should be dismissed. *See id.*; *See also Petrovic v. Princess*  
6 *Cruise Lines, Ltd., et al.*, Case No.: 12-21588-Civ-Altonaga/Simonton, at \*9 (S.D.  
7 Fla. July 20, 2012)(“Plaintiff’s “grouping” of Defendants in the Complaint creates  
8 confusion ... it is not for the Court or the parties to ‘speculate as to the identity of the  
9 Defendants these allegations are levied against as the burden rests on the plaintiff[]  
10 ....”); *Burnette v. Dresser Indus., Inc.*, 849 F.2d 1277, 1283 (10th Cir. 1988);  
11 *Medina v. Bauer*, No. 02 Civ. 8837(DC), 2004 WL 136636, at \*6 (S.D.N.Y Jan. 27,  
12 2004)(“by lumping all the defendants together and failing to distinguish their  
13 conduct,” plaintiffs complaint “fail[ed] to give adequate notice to defendants of  
14 what they did wrong”); *Lippe v. Bairnco Corp.*, 225 B.R. 846, 860 (S.D.N.Y.  
15 1998)(“plaintiffs cannot simply ‘lump’ all the defendants together and allege that  
16 the purported acts of every defendant can be imputed to every other defendant”).  
17 Plaintiffs’ Complaint must be dismissed because each and every one of Plaintiffs’  
18 factual allegations and assertions of negligence targets an undifferentiated set of  
19 “defendants.”

20 Plaintiffs’ Complaint additionally violates Rule 8 by incorporating, in each of  
21 their claims, all of the previous paragraphs in the entire Complaint. (*See Compl.*  
22 ¶¶95, 109). This practice of “shotgun” pleading has similarly been rejected. *See*  
23 *Spindler v. California*, CV 18-8712-JLS(E), 2020 WL 2559442, at \*5 (C.D. Cal.  
24 Jan. 20, 2020); *see also Stanislaus Food Products Co. v. USS-POSCO Industries*,  
25 2010 WL 3521979, at \*31 n.16 (E.D. Cal. Sept. 3, 2010) (“Allegations, however,  
26 which incorporate each preceding paragraph, regardless of relevancy, are not  
27 permitted.”); *Destfino v. Kennedy*, 2008 WL 4810770, at \*3 (E.D. Cal. Nov. 3,  
28 2008), *aff’d*, 630 F.3d 952 (9th Cir. 2011) (“This practice [of wholesale

1 incorporation of prior allegations] has been harshly criticized as a form of ‘shotgun  
 2 pleading’ which violates Rule 8’s requirement of a ‘short and plain statement’ and  
 3 interferes with the court’s ability to administer justice.’”) (citation omitted);  
 4 *Sollberger v. Wachovia Securities LLC*, 2010 WL 2674456, at \*4-5 (C.D. Cal. June  
 5 30, 2010) (shotgun pleading whereby each count incorporates every antecedent  
 6 allegation by reference “deprives Defendants of knowing exactly what they are  
 7 accused of doing wrong,” and “alone warrants dismissal”). “The Court has  
 8 recognized that allowing shotgun pleadings would lead to many negative  
 9 consequences.” *See Sollberger*, 2010 WL 2674456, at \*4; *see also Mason v. County*  
 10 *of Orange*, 251 F.R.D. 562, 563–64 (C.D.Cal.2008) (quoting *Anderson v. District*  
 11 *Board of Trustees*, 77 F.3d 364, 366–67 (11th Cir.1996)) (“[E]xperience teaches  
 12 that, unless cases are pled clearly and precisely, issues are not joined, discovery is  
 13 not controlled, the trial court's docket becomes unmanageable, the litigants suffer,  
 14 and society loses confidence in the court's ability to administer justice.”). Here  
 15 Plaintiffs’ incorporation of all preceding paragraphs and lumping of all Defendants  
 16 violates of Rule 8’s pleading requirements and therefore also warrants dismissal.

17 **C. Plaintiffs Have Not Alleged Sufficient Facts to Establish Standing to**  
 18 **Bring a Wrongful Death Claim**

19 Plaintiffs have failed to plead the required facts to establish standing for a  
 20 wrongful death claim under any legal schema. Plaintiffs’ Complaint brings death  
 21 claims under both the Death on the High Seas Act (“DOHSA”) and California state  
 22 law. However, Plaintiffs have failed to plead sufficient facts to establish that  
 23 Christopher Weidner has been appointed the personal representative of the Estate of  
 24 Carl Weidner or that Christopher Weidner is Carl Weidner’s successor in interest.

25 The Death on the High Seas Act (“DOHSA”) provides that only “the personal  
 26 representative of the Decedent may bring a civil action in admiralty against the  
 27 person or vessel responsible,” and that such action “shall be for the exclusive benefit  
 28 of the Decedent’s spouse, parent, child, or dependent relative.” 46 U.S.C.A. §30302

1 (West). “By authorizing only certain surviving relatives to recover damages, and by  
 2 limiting damages to the pecuniary losses sustained by those relatives, Congress  
 3 provided the *exclusive recovery* for deaths that occur on the high seas.” *Helman v.*  
 4 *Alcoa Global Fasteners, Inc.*, 843 F. Supp. 2d 1038, 1041 (C.D. Cal. 2011) (internal  
 5 citations omitted); *See also Bodden v. American Offshore, Inc.*, 681 F.2d 319, 329  
 6 (5th Cir.1982); *Dooley v. Korean Air Lines Co., Ltd.*, 524 U.S. 116, 123, 118 S.Ct.  
 7 1890, 141 L.Ed.2d 102 (1998). A “personal representative is by definition a court-  
 8 appointed executor or administrator of an estate, not merely an heir.” *Helman v.*  
 9 *Alcoa Global Fasteners, Inc.*, 843 F. Supp. 2d 1038, 1042 (C.D. Cal. 2011) (internal  
 10 citations and quotations omitted). In *Helman*, the court deemed plaintiffs who  
 11 alleged standing as “individuals,” as “successors-in-interest” and through their  
 12 “guardian ad litem” lacked standing to bring DOHSA claims. Courts have uniformly  
 13 recognized, a “personal representative” is an individual “empowered by law to  
 14 administer the decedent’s estate.” *In re Air Crash Disaster Off Coast of Nantucket*  
 15 *Island, Massachusetts on October 31, 1999*, No. MD-00-1344 (BMC), 2010 WL  
 16 1221401, \*5 (E.D.N.Y. Mar. 29, 2010); *see also Alcabasa v. Korean Air Lines Co.,*  
 17 *Ltd.*, 62 F.3d 404, 407 (D.C. Cir. 1995) (“[A] ‘personal representative’ is by  
 18 definition a court-appointed executor or administrator of an estate, not merely an  
 19 heir,” citing *Brigg v. Walker*, 171 U.S. 466 (1898)).

20 Here, Plaintiffs have not alleged that Christopher Weidner has been appointed  
 21 the personal representative of the Estate of Carl Weidner<sup>3</sup>. Christopher Weidner is  
 22 however alleged to be “the Decedent’s surviving adult biological son.” (Compl. ¶ 5).  
 23 However, being an adult biological offspring is not enough to support standing for  
 24 the purpose of bringing a DOHSA claim on behalf of the Estate of Carl Weidner.

25 \_\_\_\_\_  
 26 <sup>3</sup> While the styling of the case suggests that “Christopher Weidner is the Personal  
 27 Representative of the Decedent, Carl Weidner,” Plaintiffs have not alleged that  
 28 Christopher Weidner has been appointed the Personal Representative of the *Estate*  
*of Carl Weidner*.

1 Standing is also lacking even if DOHSA does not apply. “Where there is no  
2 personal representative for the estate, the decedent’s ‘successor in interest’ may  
3 prosecute the survival action if the person purporting to act as successor in interest  
4 satisfies the requirements of California law.” *Tatum v. City and County of S.F.*, 441  
5 F.3d 1090, 1094, n.2 (9th Cir. 2006). To satisfy California’s requirements, a plaintiff  
6 must submit an affidavit or declaration attesting to the fact that he or she is the  
7 decedent’s successor in interest and attach the decedent’s death certificate. Cal. Civ.  
8 Proc. §377.32; *see also Almarou v. Robbins*, CV 18-04908-CJC, 2019 WL 7945592,  
9 at \*2 (C.D. Cal. Nov. 5, 2019). A plaintiff bears the burden of demonstrating that  
10 they meet the requirements for bringing a survival action. *Byrd v. Guess*, 137 F.3d  
11 1126, 1131 (9th Cir. 1998), *overruled on other grounds by Nicholson v. City of Los*  
12 *Angeles*, 935 F.3d 685, 696 (9th Cir. 2019); *see also Almarou*, 2019 WL 7945592, at  
13 \*2.

14 The Complaint incorporates none of the required affidavits or declarations  
15 delineated above. Plaintiffs have neither alleged that Christopher Weidner is the  
16 personal representative of the Estate of Carl Weidner, nor have they alleged in any  
17 meaningful way that Christopher Weidner is the successor in interest to Carl  
18 Weidner. Plaintiffs have not submitted the required affidavit or declaration. The  
19 Complaint thus does not allege sufficient facts to establish Christopher Weidner’s  
20 standing to bring a wrongful death claim on behalf of Carl Weidner.

21 For the foregoing reasons, the claims on behalf of Carl Weidner’s Estate  
22 should be dismissed without prejudice or stayed with leave to amend once Plaintiffs  
23 can establish that either Christopher Weidner or someone else has standing to bring  
24 such claims.

25 **D. The Death on The High Seas Act is Plaintiffs’ Exclusive Remedy**

26 Plaintiffs correctly concede their expectation that this matter is properly  
27 controlled by DOHSA, and admit that they have only brought common law claims  
28 “out of an abundance of caution, including if this Court should determine that the

1 Death on the High Seas Act, 46 U.S.C. §30301 *et seq.*, does not apply in this case.”  
 2 (Compl. ¶¶ 3, 19, 78-94, 96, and 110). Plaintiffs have specifically pled that Carl  
 3 Weidner’s contraction of COVID-19 while on the high seas occurred while the ship  
 4 was more than three miles from shore and resulted in his death. (Compl. ¶¶ 3, 63,  
 5 and 69). Defendant agrees with Plaintiffs insomuch that this matter is properly  
 6 controlled by DOHSA, and seeks an order from the Court dismissing counts two and  
 7 three which are premised upon common law, and instructing Plaintiffs to cure the  
 8 standing defect so that this matter may proceed pursuant to DOHSA.

9 “When the incident takes place outside the three-mile limit, DOHSA and  
 10 DOHSA alone controls.” *Helman v. Alcoa Global Fasteners, Inc.*, 843 F. Supp. 2d  
 11 1038, 1041 (C.D. Cal. 2011) (internal citations omitted); *See also Bodden v.*  
 12 *American Offshore, Inc.*, 681 F.2d 319, 329 (5th Cir.1982); *Dooley v. Korean Air*  
 13 *Lines Co., Ltd.*, 524 U.S. 116, 123, 118 S.Ct. 1890, 141 L.Ed.2d 102 (1998).  
 14 “DOHSA provides the exclusive remedy for wrongful deaths that occur on the high  
 15 seas.” *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1122 (9th Cir. 2010). Courts in the  
 16 Ninth Circuit have dismissed state law claims when preempted by DOHSA. *See*  
 17 *Helman v. Alcoa Glob. Fasteners, Inc.*, 637 F.3d 986, 988 (9th Cir. 2011).  
 18 Furthermore, The Supreme Court denounced survival actions in cases where  
 19 DOHSA applies by stating, “because Congress has already decided these issues, it  
 20 has precluded the judiciary from enlarging either the class of beneficiaries or the  
 21 recoverable damages. As we noted in *Higginbotham*, ‘Congress did not limit  
 22 DOHSA beneficiaries to recovery of their pecuniary losses in order to encourage the  
 23 creation of nonpecuniary supplements.’” *Dooley v. Korean Air Lines Co.*, 524 U.S.  
 24 116, 123, 118 S. Ct. 1890, 1895, 141 L. Ed. 2d 102 (1998).

25 The Death on the High Seas Act provides that, “when the death of an  
 26 individual is caused by wrongful act, neglect, or default occurring on the high seas  
 27 beyond 3 nautical miles from the shore of the United States, the personal  
 28 representative of the decedent may bring a civil action in admiralty against the

1 person or vessel responsible. The action shall be for the exclusive benefit of the  
 2 decedent's spouse, parent, child, or dependent relative.” 46 U.S.C.A. § 30302  
 3 (West). Courts have made clear that DOHSA applies where “the decedent is on the  
 4 high seas at the time he suffers his mortal injury.” *See Motts v. M/V Green Wave*,  
 5 210 F.3d 565, 569 (5th Cir. 2000); *Citing Offshore Logistics, Inc. v. Tallentire*, 477  
 6 U.S. 207, 224 (1986); *see also Garofalo v. Princess Cruises, Inc.*, 2001 A.M.C. 623,  
 7 624, 85 Cal.App.4th 1060, 102 Cal.Rptr.2d 754 (2000) (stating that “when a high  
 8 seas injury is a cause, but not the sole cause, of the decedent's death, DOHSA  
 9 provides the exclusive remedy as to the high seas tortfeasor”). Plaintiffs concede  
 10 that Carl Weidner contracted COVID-19 while the vessel was on the high seas and  
 11 more than three miles away from shore. (Compl. ¶¶ 3, 63). Carl Weidner is alleged  
 12 to have “died as a result of infection with COVID-19.” (Compl. ¶ 69). Here,  
 13 Plaintiffs have alleged the contraction took place both beyond three nautical miles  
 14 from shore and upon the high seas. (Compl. ¶¶ 3, 63). As such, DOHSA applies and  
 15 preempts all of Plaintiffs’ California state law death claims. *See Helman v. Alcoa*  
 16 *Glob. Fasteners, Inc.*, 637 F.3d 986, 988 (9th Cir. 2011) (dismissed state law claims  
 17 when preempted by DOHSA).

18 The location of the where the injury occurs is the most important factor when  
 19 determining the applicability of the DOHSA. *See Touhey v. Carnivale Cruise Lines*,  
 20 1981 A.M.C. 1218, 1219 (Cal. App. Ct. 1980) (“It is clear that the place where the  
 21 injury occurs is the crucial factor in determining whether or not the federal courts  
 22 have exclusive jurisdiction.”). Here the location of the injury has been specifically  
 23 alleged in the Complaint, which thus counsels in favor of early review of the  
 24 DOHSA issue. *See* (Compl. ¶¶ 3, 63); *Kennedy v. Carnival Corp.*, 385 F. Supp. 3d  
 25 1302, 1313–14 (S.D. Fla. 2019), report and recommendation adopted, 18-20829-  
 26 CIV, 2019 WL 2254962 (S.D. Fla. Mar. 21, 2019); *see also Moyer v. Rederi*, 645 F.  
 27 Supp. 620, 627 (S.D. Fla. 1986) (“Authority is clear that a cause of action under  
 28 DOHSA accrues at the time and place where an allegedly wrongful act or omission



1 was consummated in an actual injury, not at the point where previous or subsequent  
 2 negligence actually occurred.); *see also Motts v. M/V Green Wave*, 210 F.3d 565,  
 3 567 (5th Cir. 2000) (“DOHSA applies where the decedent is injured on the high  
 4 seas, even if a party's negligence is entirely land-based and begins subsequent to that  
 5 injury.”); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 218 (1986) (applying  
 6 DOHSA to a helicopter crash at sea); *Executive Jet Aviation, Inc. v. City of*  
 7 *Cleveland*, 409 U.S. 249, 271 n.20 (1972) (applying DOHSA to a wrongful-death  
 8 action arising out of an airplane crash on the high seas beyond a marine league from  
 9 the shore of a State); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 620 (1978)  
 10 (applying DOHSA to a helicopter crash at sea).

11 Plaintiffs’ allegations that decedent spent time ashore treating prior to death  
 12 does not alter the analysis that DOHSA applies, as courts have held that DOHSA  
 13 applies when the decedent suffers injury at sea but subsequently dies on land. *See*  
 14 *Public Administrator of the County of New York v. Angela Compania Naviera, S.A.*,  
 15 592 F.2d 58 (2d Cir.1979) (DOHSA deemed applicable where seaman died in an  
 16 Athens hospital eight months after receiving allegedly inadequate medical treatment  
 17 on board a freighter); *Chute v. United States*, 466 F.Supp. 61 (D.Mass.1978)  
 18 (DOHSA deemed applicable to plaintiff's decedent who died in a Massachusetts  
 19 hospital after being taken ashore following the sinking of a yacht in Nantucket  
 20 Sound); *Touhey v. Roos-Loos Medical Group*, (1980, Ct. of App.Cal.) 1981 A.M.C.  
 21 1218 (DOHSA deemed applicable where decedent, injured aboard defendant's  
 22 cruise ship, died onshore approximately one year after the injury).

23 Here, Plaintiffs contend that Carl Weidner’s contraction of COVID-19 while  
 24 on the high seas occurred while the ship was more than three miles from shore and  
 25 resulted in his death. (Compl. ¶¶ 3, 63, and 69). As Plaintiffs allege that decedent’s  
 26 contraction of the virus resulted in his death, recovery for said death is limited to  
 27 and by DOHSA, as the contraction of the virus occurred on the high seas beyond  
 28 three nautical miles from shore.

1 Plaintiffs’ factual allegations properly comport to a finding that DOHSA  
2 controls the subject litigation, but for the lack of standing. As such, Plaintiff’s first  
3 cause of action should be dismissed with leave to amend to allow Plaintiffs to cure  
4 the issue of standing as discussed above, and Plaintiff’s second and third causes of  
5 action should be dismissed with prejudice as DOHSA controls and preempts all  
6 other causes of action.

7 **V. CONCLUSION**

8 For the foregoing reasons, Defendant requests that the Court grant its motion  
9 and dismiss this case.<sup>4</sup>

10  
11 DATED: July 10, 2020

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28 <sup>4</sup> Defendant reserves the right to raise the issue of punitive damages at a later time.