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9

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JUIZHAN HSU, individually, and as  
 survivor of her deceased husband,  
 13 CHUNG CHEN’s Estate, and as  
 14 Personal Representative of the  
 ESTATE OF CHUNG CHEN, for the  
 15 benefit of its survivors, and VIVIAN  
 CHEN, Individually, and as survivor of  
 16 her deceased father, CHUNG CHEN’S  
 Estate,

17  
 18 Plaintiffs,  
 19 vs.

20 PRINCESS CRUISE LINES, LTD.,  
 21 Defendant.

CASE NO.: 2:20-CV-03488-DSF-JC

**DEFENDANT PRINCESS CRUISE  
 LINE LTD.’S MOTION TO DISMISS  
 PLAINTIFFS’ THIRD AMENDED  
 COMPLAINT**

Date: November 16, 2020  
 Time: 1:30 p.m.  
 Judge: Hon. Dale S. Fischer  
 Courtroom: 7D

Magistrate: Hon. Jacqueline Chooljian  
 Filed: 04/15/2020

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1 Defendant, PRINCESS CRUISE LINES, LTD. (“Defendant” or  
2 “PRINCESS”), files this Motion to Dismiss the Third Amended Complaint filed by  
3 Plaintiffs herein.

4 This motion is made following several conferences of counsel pursuant to  
5 L.R. 7-3 which took place between May 7, 2020 and September 16, 2020.

6 **I. INTRODUCTION**

7 The Death on the High Seas Act (“DOHSA”) provides the exclusive remedy  
8 for a death arising from an injury occurring on a vessel more than three nautical  
9 miles from any shore of the United States. It is by now well established that the  
10 touchstone for determining whether DOHSA applies is the location of the vessel at  
11 the time of injury. And in the specific context of COVID-19, courts in this District  
12 have confirmed that the place of injury is the location of the vessel when the  
13 decedent contracted the disease. If the vessel was more than three nautical miles  
14 from any shore of the U.S. at the time the decedent contracted COVID-19, then  
15 DOHSA applies and provides the exclusive remedy for their claims. *See Maa v.*  
16 *Carnival Corp. & PLC*, CV 20-6341 DSF (SKX), 2020 WL 5633425, at \*8 (C.D.  
17 Cal. Sept. 21, 2020).

18 These principles apply to Plaintiffs’ claims related to Chung Chen and compel  
19 dismissal of the Third Amended Complaint (“TAC”). Plaintiffs allege that Chung  
20 Chen contracted COVID-19 while on board the *Ruby Princess* and that he  
21 subsequently died from the disease. But the *Ruby Princess* was on a roundtrip  
22 voyage between Australia and New Zealand<sup>1</sup>, meaning that the vessel was more  
23 than three nautical miles from the U.S. at the time he contracted the disease and that  
24 DOHSA applies to all claims related to Chung Chen’s death. The Court should  
25 therefore dismiss or strike all claims in the TAC related to Chung Chen’s death.

26 \_\_\_\_\_  
27 <sup>1</sup> Cruises to Australia and New Zealand are sometimes referred to as cruises to the  
28 Antipodes or cruises in Antipodean waters, meaning relating to Australia and New Zealand.

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1 The Court should separately dismiss or strike Plaintiffs’ request for damages related  
2 to loss of consortium related to the death of Chung Chen because they are not  
3 available under general maritime law.

4 **II. BACKGROUND**

5 The TAC makes the following allegations: Plaintiffs, including Chung Chen,  
6 were passengers on the *Ruby Princess* when it departed from Sydney, Australia on  
7 March 8, 2020. (TAC ¶ 12). During the cruise, the *Ruby Princess* experienced an  
8 outbreak of COVID-19 and “returned to Australia three days early.” (TAC ¶ 20).  
9 The TAC does not allege the cruise ever came within three miles of the United  
10 States (nor could it since this was a cruise between Australia and New Zealand).  
11 The TAC clearly alleges that Chung Chen contracted COVID-19 on the vessel:  
12 “CHUNG CHEN, deceased, became ill with symptoms of COVID-19 on March 18,  
13 2020 after contracting COVID-19 while onboard the ship, which ultimately resulted  
14 in his untimely death.” (TAC ¶ 23). Chung Chen subsequently died on April 4,  
15 2020, in Los Angeles, California. (TAC ¶ 5). In addition to Chung Chen, Plaintiffs  
16 Vivian Chen and Juishan Shu, Chung Chen’s daughter and wife, respectively, allege  
17 that that they contracted COVID-19. (TAC ¶ 21-22). Vivien Chen alleges that she  
18 contracted COVID-19 and began having symptoms on March 18, 2020, while still  
19 onboard the *Ruby Princess*. (TAC ¶ 22). Juishan Hsu alleges she developed  
20 symptoms of COVID-19 on March 25, 2020. (TAC ¶ 21).

21 The TAC includes causes of action for negligence and gross negligence in  
22 connection with the death of Chung Chen. In particular, Vivien Chen and Juishan  
23 Hsu bring these claims in their individual capacities, as well as in their role as  
24 survivors of the estate of Chung Chen. Jusihan Hsu also brings these same claims in  
25 her role as personal representative of the estate of Chung Chen. In addition to  
26 seeking recovery for compensatory and punitive damages, Plaintiffs also seek to  
27 recover for their loss of consortium from the death of Chung Chen. (TAC ¶ 26).

28 ///

1 **III. LEGAL STANDARD**

2 To survive a Rule 12(b)(6) motion, a complaint must allege “enough facts to  
3 state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550  
4 U.S. 544, 570 (2007). “Factual allegations must be enough to raise a right to relief  
5 above the speculative level, ... on the assumption that all the allegations in the  
6 complaint are true (even if doubtful in fact).” *Id.* at 555 (citations omitted). “The  
7 plausibility standard “asks for more than a sheer possibility that a defendant has  
8 acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A pleading that  
9 offers labels and conclusions or a formulaic recitation of the elements of a cause of  
10 action will not do.” *Id.*

11 Under Federal Rule of Civil Procedure 12(f), “the Court may order stricken  
12 from any pleading . . . any redundant, immaterial, impertinent or scandalous matter.”  
13 *Clark v. State Farm Mut. Auto Ins. Co.*, 231 F.R.D. 405, 406 (C.D. Cal. 2005).

14 **IV. MEMORANDUM OF LAW**

15 **A. Federal Maritime Law Applies to Plaintiffs’ Claims**

16 As Plaintiffs acknowledge by invoking this Court’s maritime jurisdiction and  
17 stating that the case “involves a maritime tort” (TAC ¶ 3), Federal maritime law  
18 applies to Plaintiffs’ claims.<sup>2</sup> Maritime law applies when “(1) the alleged wrong  
19 occurred on or over navigable waters, and (2) the wrong bears a significant  
20 relationship to traditional maritime activity.” *Williams v. United States*, 711 F.2d  
21 893, 896 (9th Cir.1983). “[V]irtually every activity involving a vessel on navigable  
22 waters” is a “traditional maritime activity sufficient to invoke maritime  
23 jurisdiction.” *See Taghadomi v. United States*, 401 F.3d 1080, 1087 (9th Cir. 2005)  
24 ((quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S.  
25 527, 542 (1995))); *Wilkinson v. Carnival Cruise Lines, Inc.*, 920 F.2d 1560, 1654 n.  
26 10 (11th Cir. 1991) (“In maritime tort cases such as this one, in which injury occurs  
27

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



1 aboard a ... ship upon navigable waters, federal maritime law governs the  
2 substantive legal issues.”). Courts in this District have confirmed that maritime law  
3 applies to similar COVID-19 lawsuits against cruise lines. *See, e.g., Maa v.*  
4 *Carnival Corp. & PLC*, CV 20-6341 DSF (SKX), 2020 WL 5633425, (C.D. Cal.  
5 Sept. 21, 2020) (“Defendants correctly asset that Plaintiffs’ claims are governed by  
6 federal maritime law.”).

7 **B. The Death on The High Seas Act is the Exclusive Remedy for All Claims**  
8 **Relating to Chung Chen**

9 The Death on the High Seas Act governs Plaintiffs’ claims related to the death  
10 of Chung Chen. The Act provides that, “when the death of an individual is caused  
11 by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical  
12 miles from the shore of the United States, the personal representative of the  
13 decedent may bring a civil action in admiralty against the person or vessel  
14 responsible. The action shall be for the exclusive benefit of the decedent's spouse,  
15 parent, child, or dependent relative.” 46 U.S.C.A. § 30302 (West). In other words,  
16 DOHSA applies as long as the “wrongful act, neglect, or default” that causes the  
17 death of an individual occurs “on the high seas beyond 3 nautical miles from the  
18 shore of the United States.”

19 Federal courts have “consistently interpreted DOHSA as applying to maritime  
20 incidents occurring within the territorial waters of foreign states.” *Ridley v. NCL*  
21 *(Bahamas) Ltd.*, 824 F. Supp. 2d 1355, 1359 (S.D. Fla. 2010) (citing *Sanchez v.*  
22 *Loffland Bros. Co.*, 626 F.2d 1228 (5th Cir.1980); *Moyer*, 645 F.Supp. at 623–24.  
23 This notably includes the Ninth Circuit, which has similarly applied DOHSA in  
24 cases where the injury resulting in death occurs in a foreign nation’s territorial  
25 waters. *See Howard v. Crystal Cruises, Inc.*, 41 F.3d 527, 529–30 (9th Cir.1994)  
26 (applying DOHSA to a death which occurred within Mexico's territorial waters); *see*

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 also *Motts v. M/V Green Wave*, 210 F.3d 565, 569–70 (5th Cir.2000) (recognizing  
 2 application of DOHSA); *Cormier v. Williams/Sedco/Horn Constructors*, 460  
 3 F.Supp. 1010 (E.D.La.1978) (applying DOHSA to accident occurring in navigable  
 4 river in Peru); *Kuntz v. Windjammer “Barefoot” Cruises, Ltd.*, 573 F.Supp. 1277  
 5 (W.D.Pa.1983) (applying DOHSA to claim resulting from scuba death in  
 6 Bahamas)).

7 Moreover, in determining whether DOHSA applies, the location of death and  
 8 the location of the negligent act, does not control. Rather, the location of the  
 9 decedent’s **injury** controls, even if death ultimately occurs on land and even if  
 10 plaintiffs allege that some negligence also occurred on land. See *Bergen v. F/V St.*  
 11 *Patrick*, 816 F.2d 1345, 1350 (9th Cir. 1987), *opinion modified on other grounds*,  
 12 866 F.2d 318 (9th Cir. 1989); *Motts v. M/V Green Wave*, 210 F.3d 565, 569 (5th Cir.  
 13 2000); *Crear v. Omega Protein, Inc.*, 2002 WL 1941447, at \*5 (E.D. La. Aug. 21,  
 14 2002); *Touhey v. Carnival Cruise Lines*, 1981 A.M.C. 1218, 1219 (Cal. App. Ct.  
 15 1980) (“It is clear that the place where the injury occurs is the crucial factor in  
 16 determining whether or not the federal courts have exclusive jurisdiction.”). The  
 17 Ninth Circuit has explained that DOHSA applies where “the site of an accident [is]  
 18 on the high seas” regardless of where “death actually occurs or where the wrongful  
 19 act causing the accident may have originated. . . . It is . . . irrelevant that decisions  
 20 contributing to the [boat’s] unseaworthiness may have occurred onshore or within  
 21 territorial waters,” *Bergen v. F/V St. Patrick*, 816 F.2d 1345, 1348 (9th Cir. 1987),  
 22 *opinion modified on reh’g*, 866 F.2d 318 (9th Cir. 1989).

23 In cases alleging death based on an illness, the relevant site of the accident or  
 24 injury is where “the decedent’s illness commenced.” *Moyer v. Rederi*, 645 F.Supp.  
 25 620, 628 (S.D. Fla. 1986); *see id.* (“The key operative fact . . . is that the decedent’s  
 26 illness commenced while he was participating in the snorkeling expedition; i.e.,  
 27 while he was on the high seas, as defined by DOHSA” and it does not matter that  
 28 the plaintiff alleged that “Defendants acted negligently both before and after the

1 snorkeling expedition”). This Court has likewise recognized in COVID-19 related  
2 litigation involving wrongful death claims that that for purposes of DOHSA’s  
3 application “the relevant site would be the place where [the deceased passenger]  
4 contracted COVID-19.” *Maa v. Carnival Corp. & PLC*, CV 20-6341 DSF (SKX),  
5 2020 WL 5633425, at \*8 (C.D. Cal. Sept. 21, 2020).

6 These principles compel application of DOHSA to all claims related to Chung  
7 Chen’s death. Plaintiffs allege that Chung Chen contracted “COVID-19 while  
8 onboard the ship, which ultimately resulted in his untimely death.” (TAC ¶ 23).  
9 Plaintiffs also allege that the *Ruby Princess*, was scheduled for a roundtrip cruise  
10 departing from and returning to Sydney Australia. (*Id.* at ¶ 12, 20).<sup>3</sup> Therefore, at  
11 all times the *Ruby Princess* was beyond three nautical miles from any shore of the  
12 United States, and the claims relating to Chung Chen are covered by DOHSA.

13 The *Maa* case is directly on point with respect to DOHSA’s application. In  
14 *Maa*, decedent claimed to have contracted COVID-19 onboard the *Coral Princess*  
15 as it sailed between Buenos Aires and Barbados. *Maa*, 2020 WL 5633425, at \*19.  
16 Although the Complaint did not allege the precise location of the vessel when Mr.  
17 Maa contracted COVID-19, the court concluded that a passage between Buenos  
18 Aires and Barbados was, by definition, more than three nautical miles from the  
19 United States and that DOHSA applied. *Id.* at \*18-19. “The claims asserted on  
20 behalf of Mr. Maa are DISMISSED with leave to amend to bring an appropriate  
21 claim under DOHSA”). The court reached this conclusion notwithstanding  
22 allegations that Mr. Maa’s death occurred on land and that certain acts of negligence  
23 occurred on land at Princess’ offices in California. As this court made clear in *Maa*,  
24 such arguments are irrelevant and cannot avoid imposition of DOHSA. (*Id.* at \*18  
25 (“Plaintiffs ignore this binding Ninth Circuit case law and instead point to irrelevant  
26

27 <sup>3</sup> The Court can take judicial notice of the undisputed, and undisputably, fact that the  
28 cruise was not be within three nautical miles of any U.S. shore.

1 factual allegations that Mr. Maa died on shore, that “numerous acts and omissions  
2 leading to the alleged harms undertaken by Defendants not at sea, but on land, and  
3 that Defendants sold Plaintiffs the air travel from their home base in California to  
4 South America.”)).

5 Because DOHSA applies, it requires dismissal of all claims related to the  
6 death of Chung Chen. Federal courts, including the Ninth Circuit, have consistently  
7 held that “DOHSA provides the exclusive remedy for wrongful deaths that occur on  
8 the high seas.” *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1122 (9th Cir. 2010);  
9 *Helman v. Alcoa Global Fasteners, Inc.*, 843 F. Supp. 2d 1038, 1041 (C.D. Cal.  
10 2011) (holding that “when the incident takes place outside the three-mile limit,  
11 DOHSA and DOHSA alone controls.”). When DOHSA applies or preempts and  
12 requires dismissal of state law claims. *See Helman v. Alcoa Glob. Fasteners, Inc.*,  
13 637 F.3d 986, 988 (9th Cir. 2011); *Maa*, 2020 WL 5633425, at \*19. The U.S.  
14 Supreme Court has likewise explained that DOHSA precludes even survival actions:  
15 “[B]ecause Congress has already decided these issues, it has precluded the judiciary  
16 from enlarging either the class of beneficiaries or the recoverable damages. As we  
17 noted in *Higginbotham*, ‘Congress did not limit DOHSA beneficiaries to recovery of  
18 their pecuniary losses in order to encourage the creation of nonpecuniary  
19 supplements.’” *Dooley v. Korean Air Lines Co.*, 524 U.S. 116, 123 (1998).

20 Plaintiffs purport to bring negligence and gross negligence claims in  
21 connection with the death of Cheng Chung, but DOHSA preempts and precludes  
22 these claims. Plaintiffs likewise seek punitive and other non pecuniary damages  
23 relating to his death which are outside the bounds of those prescribed by Congress.  
24 (*Id. See*, TAC ¶¶ 26, 33, and the Wherefore clause p. 14). Punitive damages are not  
25 pecuniary damages and therefore they are unavailable under DOHSA. *Bergen v. F/V*  
26 *St. Patrick*, 816 F.2d 1345, 1347 (9th Cir. 1987), opinion modified on reh’g, 866  
27 F.2d 318 (9th Cir. 1989) For these reasons, the Court should dismiss the TAC as  
28 relates to Chung Chen with leave to amend to proceed exclusively under DOHSA

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1 and without non pecuniary damage claims such as punitive damages.

2 **C. Vivian Chen and Juishan Hsu’s Claims for Loss of Consortium Are**  
3 **Barred by Maritime Law**

4 The Court should also dismiss Plaintiffs’ claims for loss of consortium related  
5 to the death of Cheng Chung. Plaintiffs Vivian Chen and Juishan Hsu seek recovery  
6 of loss of consortium related to Cheng Chung’s death. (TAC ¶¶ 26, 33). Yet it is  
7 well established that federal maritime law does not authorize recovery for loss of  
8 consortium or loss of society. *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1408  
9 (9th Cir. 1994) (consortium and loss of society damages are not available under  
10 general maritime law); *Stepski v. M/V NORASIA ALYA*, 2010 WL 6501649, at \*9  
11 (S.D.N.Y. 2010); *Doyle v. Grasko*, 579 F.3d 898, 908 (8th Cir. 2009); *Adler v. Royal*  
12 *Cruise Line, Ltd.*, 1996 WL 438799, at \*6 (N.D. Cal. 1996); *Cox v. Princess Cruise*  
13 *Lines, Ltd.*, 2013 WL 3233461, at \*4 (C.D. Cal. June 25, 2013). For this reason, the  
14 Court should also dismiss or strike Plaintiffs’ request for loss of consortium  
15 damages..

16 **V. CONCLUSION**

17 For the foregoing reasons, Defendant requests that the Court grant its Motion  
18 and dismiss Plaintiffs’ Third Amended Complaint.

19

20

21 DATED: October 1, 2020

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