

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| Debra Cox and Ted Cox       | ) | CV 13-01765 RSWL (JEMx)        |
|                             | ) |                                |
| Plaintiffs,                 | ) | <b>ORDER RE: DEFENDANT'S</b>   |
|                             | ) | <b>MOTION TO DISMISS</b>       |
| v.                          | ) | <b>PORTIONS OF PLAINTIFFS'</b> |
|                             | ) | <b>COMPLAINT [8]</b>           |
|                             | ) |                                |
| Princess Cruise Lines,      | ) |                                |
| LTD., and DOES I through L, | ) |                                |
| inclusive                   | ) |                                |
|                             | ) |                                |
| Defendants.                 | ) |                                |
|                             | ) |                                |
|                             | ) |                                |

Currently before the Court is Defendant Princess Cruise Lines, Ltd.'s ("Defendant") Motion to Dismiss Portions of Plaintiffs' Complaint [8]. The Court, having reviewed all papers and arguments submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:** The Court **GRANTS in part** and **DENIES in part** Defendant's Motion.

///

1 **I. BACKGROUND**

2 This Motion stems from an Action brought by  
3 Plaintiffs Debra Cox ("Debra") and Ted Cox ("Ted";  
4 collectively "Plaintiffs") against Defendant.  
5 Plaintiffs allege in their Complaint that on October  
6 24, 2012, they embarked on a fourteen-day round-trip  
7 cruise from Los Angeles, California, to Hawaii aboard  
8 the *Golden Princess*, a cruise ship owned and operated  
9 by Defendant. Compl. ¶ 7. Debra has a disability  
10 consisting of a below-the-right-knee leg amputation,  
11 and she relies on a mobility scooter for  
12 transportation. Compl. ¶ 8. Prior to embarking on the  
13 cruise, Plaintiffs advised Defendant of Debra's  
14 disability and of her need for a handicap accessible  
15 room. *Id.* Defendant accommodated Debra by placing  
16 Plaintiffs in a wheelchair-accessible cabin with a  
17 balcony. *Id.* at ¶ 7. In order that disabled  
18 passengers might obtain access to the balcony from the  
19 cabin, Defendant purportedly designed, manufactured,  
20 installed, and maintained a ramp that allowed  
21 wheelchairs and mobility scooters to go over the cabin  
22 door threshold and outside to the balcony. *Id.* at ¶ 7.  
23 Plaintiffs allege that two days into their cruise, on  
24 October 26, 2012, Debra used the ramp to go outside the  
25 cabin onto the balcony. *Id.* at ¶ 9. On her way back  
26 into the cabin, the handicap ramp failed, separating  
27 under the load, and caused Debra's mobility scooter to  
28 trip over, resulting in a displaced intertrochanteric

1 fracture of Debra's right femur. Id.

2 Plaintiffs subsequently instigated the present  
3 Action against Defendant and Does I through L, for  
4 alleged (1) negligence, (2) strict liability in tort,  
5 (3) common carrier negligence, and (4) loss of  
6 consortium [1]. Defendant presently moves pursuant to  
7 Federal Rule of Civil Procedure 12(b)(6) for dismissal  
8 of Plaintiffs' second, third, and fourth claims and  
9 Plaintiffs' "claim" for exemplary and punitive damages  
10 [8].

## 11 **II. LEGAL STANDARD**

12 Federal Rule of Civil Procedure 12(b)(6) allows a  
13 party to move for dismissal of one or more claims if  
14 the pleading fails to state a claim upon which relief  
15 can be granted. Dismissal can be based on a lack of  
16 cognizable legal theory or lack of sufficient facts  
17 alleged under a cognizable legal theory. Balistreri v.  
18 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
19 1990). However, a party is not required to state the  
20 legal basis for its claim, only the facts underlying  
21 it. McCalden v. Cal. Library Ass'n, 955 F.2d 1214,  
22 1223 (9th Cir. 1990), cert. denied, 112 S. Ct. 2306  
23 (1992). In a Rule 12(b)(6) motion to dismiss, a court  
24 must presume all factual allegations of the complaint  
25 to be true and draw all reasonable inferences in favor  
26 of the non-moving party. Klarfeld v. United States,  
27 944 F.2d 583, 585 (9th Cir. 1991).

28 The question presented by a motion to dismiss is

1 not whether the plaintiff will prevail in the action,  
2 but whether the plaintiff is entitled to offer evidence  
3 in support of its claim. Bell Atl. Corp. v. Twombly,  
4 550 U.S. 544, 583 (2007). "While a complaint attacked  
5 by a Rule 12(b)(6) motion to dismiss does not need  
6 detailed factual allegations, a plaintiff's obligation  
7 to provide the 'grounds' of his 'entitle[ment] to  
8 relief' requires more than labels and conclusions, and  
9 a formulaic recitation of a cause of action's elements  
10 will not do." Id. at 555 (internal citation omitted).  
11 Although specific facts are not necessary if the  
12 complaint gives the defendant fair notice of the claim  
13 and the grounds upon which the claim rests, a complaint  
14 must nevertheless "contain sufficient factual matter,  
15 accepted as true, to state a claim to relief that is  
16 plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
17 662, 678 (2009) (internal quotation marks omitted).

18 If dismissed, a court must then decide whether to  
19 grant leave to amend. The Ninth Circuit has repeatedly  
20 held that a district court should grant leave to amend  
21 even if no request to amend the pleadings was made,  
22 unless the court determines that the pleading could not  
23 possibly be cured by the allegation of other facts.  
24 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).  
25 The court has discretion to deny leave to amend where  
26 deficiencies cannot be cured. Keniston v. Roberts, 717  
27 F.2d 1295, 1300 (9th Cir. 1983).

28 ///

1 **III. ANALYSIS**

2 Although neither Party disputes that this case is  
3 governed by maritime law, the Parties do not actually  
4 address the test for maritime law as defined by the  
5 Supreme Court in Jerome B. Grubart, Inc. v. Great Lakes  
6 Dredge & Dock Co., 513 U.S. 527, 534 (1995). Thus, the  
7 Court addresses, as a preliminary matter, whether  
8 maritime law does, in fact, govern this case. Although  
9 maritime law historically turned on the single question  
10 of whether the tort at issue occurred on navigable  
11 waters, Gruver v. Lesman Fisheries Inc., 489 F.3d 978,  
12 982 (9th Cir. 2007), the Supreme Court refined the test  
13 in Grubart so that a tort claim is subject to federal  
14 maritime law when (1) it occurs on navigable waters or  
15 is caused by a vessel on navigable water, (2) the  
16 incident has a potentially disruptive impact on  
17 maritime commerce, and (3) the activity giving rise to  
18 the incident has a substantial relationship to  
19 traditional maritime activities. Grubart, 513 U.S. at  
20 534.

21 Applying this test to the case at hand, the Court  
22 finds that the torts at issue are governed by maritime  
23 law because the lawsuit arises from alleged misconduct  
24 that occurred while the *Golden Princess* was in  
25 navigable waters; injuries at sea invariably have the  
26 potential to disrupt maritime commerce (see Christensen  
27 v. Georgia-Pac. Corp., 279 F.3d 807, 815, n.31 (9th  
28 Cir. 2002); McClenahan v. Paradise Cruises, Ltd., 888

1 F. Supp. 120, 122 (D. Haw. 1995)); and the navigation  
2 of a cruise ship has a substantial relationship to  
3 traditional maritime activities (see McClenahan, 888 F.  
4 Supp. at 122). Thus, in determining whether Plaintiffs  
5 have sufficiently stated claims upon which relief can  
6 be granted, the Court looks to federal maritime law.

7 Debra brings three claims against Defendant, only  
8 two of which are at issue here: strict liability in  
9 tort and common carrier negligence. Compl. ¶¶ 15-30.  
10 Upon reading the Complaint, it is clear that Plaintiffs  
11 believe Defendant, as a corporation, fulfills various  
12 roles, two of which form the bases of Debra's  
13 claims—the role of designer and manufacturer of the  
14 handicap accessible ramp that was placed in Plaintiffs'  
15 *Golden Princess* cabin (see id. at ¶¶ 7, 10, 16), and  
16 the role of a common carrier for the transport of  
17 paying passengers (see id. at ¶ 27). Plaintiffs'  
18 belief about Defendant's multi-faceted capacity and the  
19 corresponding allegations in Plaintiffs' Complaint  
20 informs the Court's analysis of Debra's claims for  
21 purposes of this Motion.

22 Defendant argues that Debra's claim for strict  
23 liability in tort must be dismissed because shipowners  
24 generally owe only a duty of reasonable care to  
25 passengers, and courts only apply strict liability in  
26 maritime passenger personal injury cases when a crew  
27 member commits an intentional tort or crime toward a  
28 passenger. Reply 3:19-4:6. While the sole case from

1 this Circuit upon which Defendant relies for this point  
2 appears at first glance to support Defendant's position  
3 (see Morton v. De Oliveira, 984 F.2d 289, 291-92 (9th  
4 Cir. 1993)), the facts of Morton are dissimilar to the  
5 ones at issue here, where Debra asserts strict product  
6 liability against the cruise line for having  
7 *defectively designed and manufactured a product* that  
8 was used on the ship itself.

9 Unlike the cases to which Defendant cites, Debra is  
10 not claiming that Defendant is strictly liable in its  
11 role as a common carrier for her injuries. Instead,  
12 she claims that Defendant is strictly liable in its  
13 role as a product designer and manufacturer for the  
14 injuries she sustained when using the handicap  
15 accessible ramp that Defendant purportedly designed and  
16 manufactured. As noted by Plaintiffs, the Supreme  
17 Court and the Ninth Circuit *have* adopted strict  
18 liability under maritime law for purposes of asserting  
19 strict product liability in tort. See E. River S.S.  
20 Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 865-  
21 66 (1986); Matthews v. Hyster Co., Inc., 854 F.2d 1166,  
22 1168 (9th Cir. 1988). Defendant does not dispute this.  
23 Although Debra may not ultimately prevail on her strict  
24 liability claim if she cannot prove that Defendant did,  
25 in fact, design or manufacture the allegedly faulty  
26 handicap ramp, that is not the Court's concern at this  
27 stage of litigation. What matters is that "[g]eneral  
28 maritime law incorporates strict liability and

1 negligence principles of products liability," and Debra  
2 has asserted a strict product liability claim under  
3 maritime law against Defendant, the purported designer  
4 and manufacturer of an allegedly faulty product.

5 Matthews, 854 F.2d at 1168. Although the Southern  
6 District of Florida reached a different conclusion in  
7 Bird v. Celebrity Cruise Line, Inc., 428 F. Supp. 2d  
8 1275 (Nov. 4, 2005), when determining whether Celebrity  
9 Cruise Line could be held strictly liable for providing  
10 tainted food to passengers, this Court is not bound by  
11 the Bird court's decision, particularly when it is  
12 contrary to Ninth Circuit precedent establishing that  
13 strict product liability is an available remedy under  
14 maritime law for personal injury. Thus, the Court  
15 **DENIES** Defendant's request to dismiss Debra's claim for  
16 strict liability in tort.

17 Unlike her claim for strict liability in tort,  
18 Debra's common carrier negligence claim asserts that  
19 Defendant breached a duty while acting in its capacity  
20 as a common carrier cruise ship, not as the designer or  
21 manufacturer of a product. Compl. ¶¶ 26-30. The  
22 Supreme Court has held that in caring for passengers,  
23 "the owner of a ship in navigable waters owes to all  
24 who are on board . . . the duty of exercising  
25 reasonable care under the circumstances of each case."  
26 Kermarec v. Compagnie Generale Transatlantique, 358  
27 U.S. 625, 631 (1959). In asserting her third claim  
28 against Defendant, Debra admittedly holds Defendant to



1 a higher "common carrier" standard rather than a  
2 "reasonable care" standard. Compl. ¶ 27; Opp'n 6:1-3.  
3 As Plaintiffs suggest, Defendant's common carrier  
4 status may be relevant for purposes of determining what  
5 constituted "reasonable care under the circumstances."  
6 See In re Catalina Cruises, Inc., 137 F.3d 1422, 1425-  
7 26 (9th Cir. 1998); Rainey v. Paquet Cruises, Inc., 709  
8 F.2d 169, 172 (2d Cir. 1983). However, because this is  
9 a maritime tort action for negligence, Defendant may  
10 only be held to a standard of reasonable care, not to  
11 the higher standard for common carriers. Catalina  
12 Cruises, 137 F.3d at 1425; Peters v. Titan Navigation  
13 Co., 857 F.2d 1342, 1344 (9th Cir. 1988). Accordingly,  
14 the Court **GRANTS** Defendant's request to dismiss Debra's  
15 common carrier negligence claim for lack of cognizable  
16 legal theory without leave to amend, for Plaintiffs'  
17 pleading cannot be cured with additional allegations of  
18 any other facts. Lopez v. Smith, 203 F.3d 1122, 1130  
19 (9th Cir. 2000).

20 "[C]ourts have generally held that . . . loss of  
21 consortium . . . [is] not recoverable under the general  
22 maritime law for accidents occurring on the high seas."  
23 Stepski v. M/V NORASIA ALYA, No. 7:06-CV-01694, 2010 WL  
24 6501649, at \*9 (S.D.N.Y. Jan. 14, 2010). See Doyle v.  
25 Graske, 579 F.3d 898, 908 (8th Cir. 2009) ("[G]eneral  
26 maritime law does not allow recovery of loss-of-  
27 consortium damages by the spouses of nonseafarers  
28 negligently injured beyond the territorial waters of

1 the United States."); Adler v. Royal Cruise Line, Ltd.,  
2 No. C 95-1304 CW, 1996 WL 438799, at \*6 (N.D. Cal. Mar.  
3 20, 1996) ("Under the Ninth Circuit rule, damages for  
4 loss of consortium are not recoverable in cases  
5 involving injuries to passengers outside of territorial  
6 waters."); Chan v. Society Expeditions, Inc., 39 F.3d  
7 1398, 1407-08 (9th Cir. 1994) (holding that loss of  
8 consortium damages were not available under general  
9 maritime law to the dependents of a cruise ship  
10 passenger injured outside state territorial waters).  
11 Although Defendant insists that Debra incurred her  
12 injury while the *Golden Princess* was cruising on the  
13 "high seas" outside state territorial waters (Reply  
14 7:20-25), this assertion requires a factual finding,  
15 which is not the purpose of a Rule 12(b)(6) motion to  
16 dismiss. Looking within the "four corners" of the  
17 Complaint, Plaintiffs allege that Debra sustained  
18 injury two days after the *Golden Princess* embarked from  
19 Los Angeles to Hawaii. Compl. ¶¶ 7, 9. Plaintiffs  
20 make no allegations as to where the ship was  
21 specifically located. Absent clear indication in the  
22 Complaint that the *Golden Princess* could not have been  
23 within territorial waters at the time of Debra's  
24 injury, Ted should be permitted to pursue this claim  
25 and offer evidence in support of it, regardless of  
26 whether he can ultimately prevail on it. Twombly, 550  
27 U.S. at 583. Therefore, the Court **DENIES** Defendant's  
28 request to dismiss Ted's claim for loss of consortium.

1           Lastly, Defendant asks the Court to dismiss  
2 Plaintiffs' "claim" for punitive damages. See Mot.  
3 Part V. Although Defendant acknowledges that punitive  
4 damages are available under federal maritime law for  
5 "wanton, willful, or outrageous conduct," Defendant  
6 contends that the facts as alleged in relation to  
7 Plaintiffs' strict liability claim do not rise to a  
8 level justifying the imposition of punitive damages.  
9 Mot. 13:15-16 (quoting Atlantic Sounding Co., Inc. v.  
10 Townsend, 557 U.S. 404, 409 (2009)), 14:7-8.

11           As succinctly stated by the Southern District of  
12 Florida,

13           the plaintiff does not have a "claim" for  
14 punitive damages. . . . [P]unitive damages is  
15 merely one form of *relief* that the plaintiff may  
16 be entitled to if she prevails on her claim. . .

17           . ["The] test of a complaint pursuant to a  
18 motion to dismiss lies in the claim, not in the  
19 demand. Thus, the only issue on a motion [to]  
20 dismiss is whether the claim as stated would  
21 give the plaintiff a right to any relief, rather  
22 than to the particular relief demanded.["]

23 Doe v. Royal Caribbean Cruises, Ltd., No. 11-23323-CIV,  
24 2012 WL 920675, at \*2 (S.D. Fla. Mar. 19, 2012)  
25 (quoting Cassidy v. Millers Cas. Ins. Co., 1 F. Supp.  
26 2d 1200, 1214 (D. Colo. 1998)). Accordingly, unless  
27 punitive damages appear to be a legal impossibility (as  
28 opposed to a factual impossibility), the Court will not

1 strike a demand for punitive damages that stems from a  
2 well pled claim under a cognizable legal theory. Id.  
3 at \*5 (noting that the facts underlying a claim for  
4 punitive damages need not be specifically pled because  
5 Federal Rule of Civil Procedure 8 only requires a  
6 plaintiff to make a "demand" for the relief sought, as  
7 opposed to a "short and plain statement"). Because  
8 Plaintiffs have sufficiently pled Debra's claim for  
9 strict liability in tort, and Defendant does not allege  
10 that punitive damages are a legal impossibility here,  
11 the Court **DENIES** Defendant's request to dismiss  
12 Plaintiffs' demand for punitive damages.

#### 13 **IV. CONCLUSION**

14 Based on the foregoing, the Court **GRANTS in part**  
15 and **DENIES in part** Defendant's Motion to Dismiss  
16 Portions of Plaintiffs' Complaint. The Court **GRANTS**  
17 Defendant's request to dismiss Debra's claim for common  
18 carrier negligence and **DENIES** Defendant's request to  
19 dismiss Debra's strict liability in tort claim, Ted's  
20 loss of consortium claim, and Plaintiffs' demand for  
21 punitive damages.

22 **IT IS SO ORDERED.**

23 DATED: June 25, 2013

RONALD S.W. LEW

HON. RONALD S.W. LEW

Senior U.S. District Court Judge

24  
25  
26  
27  
28