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2 **I. BACKGROUND**

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

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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