UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 22-CV-24025-PCH

CHRIS McILWAIN, as Parent and
Natural Guardian of Z.E.M., a Minor,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES LTD. d/b/a
ROYAL CARIBBEAN GROUP,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court upon Defendant, Royal Caribbean Cruises LTD.'s ("Royal Caribbean") Motion to Dismiss Complaint and to Strike Demand for Punitive Damages [ECF No. 9] ("MTD" or the "Motion"). Plaintiff, Z.E.M. filed a Response in Opposition [ECF No. 10], to which Royal Caribbean filed a Reply [ECF No. 13]. The Court has carefully considered the briefing, the record, and the applicable law. After accepting, as it must, Plaintiff's factual allegations as true, the Court concludes, even though it is a close question, that Plaintiff's claims are sufficiently pled to survive dismissal. The claims do not, however, support seeking punitive damages against Royal Caribbean. For the reasons set forth below, Royal Caribbean's Motion is denied in part and granted in part.

I. Background

Plaintiff was sexually assaulted on a Royal Caribbean cruise and seeks to hold the company liable for negligence. *See generally* Complaint [ECF No. 1]. Plaintiff

was 14 years old at the time of the cruise. *Id.* ¶ 12. She attended the "onboard youth program and/or cruise sanctioned activities" (the "minors-only event"), where she met a 19-year-old (the "Assailant"). *Id.* ¶¶ 11, 13. Royal Caribbean's own "policies and/or cruise industry standards," provide that "onboard youth program and/or activities for teens were for passengers between the ages of 13 and 17, and they prohibited legal adults (i.e. ages 18 and over)." *Id.* ¶ 10. The Assailant therefore "should not have [been] allowed [to attend]."*Id.* ¶ 13. Sometime after meeting each other,[1] "Plaintiff and the Assailant were on their way to a New Year's Eve party for teenagers" on the ship when, while walking through a common area, the Assailant pushed Plaintiff into a bathroom and sexually assaulted her. *Id.* ¶¶ 14, 15.

Plaintiff raises three common-law negligence claims against Royal Caribbean: (1) negligent failure to warn; (2) negligent security; and (3) general negligence. *Id.* ¶¶ 22–39. Under all three claims, she alleges that Royal Caribbean owed her, and breached, a duty of "reasonable care under the circumstances." *Id.* ¶¶ 20, 27, 35. For two reasons, Royal Caribbean allegedly had the requisite knowledge to trigger this duty: first, Royal Caribbean "should have had security monitoring and regulating the behavior of its passengers, especially where minors are involved." *Id.* ¶ 17; and second, Royal Caribbean's own "shipboard incident reports," submitted "to the Secretary of Transportation and/or the [FBI]," reflect that there were "81 sexual assaults reported on [Royal Caribbean's] vessels between 2016 and 2019." *Id.* ¶ 18. Plaintiff also claims that Royal Caribbean made a business decision to not warn customers "so as to not scare any prospective passengers away, and claims this constitutes "willful and outrageous conduct" that exposes Royal Caribbean to punitive damages. *Id.* ¶ 19.

[1] The Complaint does not specify the exact date of the minors-only event. *See* Complaint [ECF No. 1] ¶¶ 8–15.

Under the failure-to-warn count, Plaintiff alleges the following: Royal Caribbean should have warned her about dangers (1) involving places to which she was invited or was reasonably expected to visit; and (2) of which Royal Caribbean knew or should have known. *Id.* ¶ 21. Plaintiff was invited to the "youth program, teen activities, and/or public areas aboard the vessel" and was reasonably expected to visit them. *Id.* ¶ 22. Royal Caribbean breached its duty by failing to warn passengers about (1) a lack of adequate supervision of minor passengers in "the youth program and/or teen activities. *Id.* ¶ 23.a; (2) a "lack of adequate security aboard [Royal Caribbean's] vessels," including the ships youth program, teen activities, and public areas. *Id.* ¶ 23.b; and (3) "the dangers and/or prevalence of sexual assaults aboard" its ships, generally, and specifically to minor passengers. *Id.* ¶ 23.c–d. Royal Caribbean is legally responsible for her sexual assault because she "would not have gone on the cruise, in the youth program and/or teen activities, and/or throughout public areas of the vessel" had she been warned. *Id.* ¶ 24.

Under the negligent security count, Plaintiff alleges the following: Royal Caribbean owed a duty "to provide reasonable security and/or implement reasonable security measures aboard the vessel." *Id.* ¶ 28. Under Royal Caribbean's own policies and industry standards, onboard security is supposed to "maintain a high level of visibility" to "deter and prevent the escalation of incidents" by, among other things, "patrolling indoor and outdoor areas" and interacting with guests. *Id.* ¶¶ 29–30. Royal Caribbean breached this duty through a litany of acts or omissions, including failing to adequately secure and monitor teen activities and common areas of the ship, failing to have enough security on patrol, and failing to promulgate and enforce policies to prevent sexual assaults. *Id.* ¶ 31.a–l. Had Royal Caribbean provided reasonable security measures, Plaintiff would not have been sexually assaulted. *Id.* ¶ 32.

Under the general negligence count, Plaintiff asserts a substantively similar theory as the negligent security count but specifies that certain breaches relate to crewmembers rather than to security. *See id.* ¶¶ 35–39.

Royal Caribbean moves to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). *See* MTD at 11.[2] All three negligence claims, the argument goes, fail to establish (1) a dangerous condition of which Royal Caribbean should have been aware; (2) that Royal Caribbean breached a duty; and (3) that any breach was the proximate cause of Plaintiff's harm. *Ibid*.

The crux of Royal Caribbean's argument is the following: there are no factual allegations making it reasonably foreseeable that Plaintiff would be sexually assaulted after meeting a 19-year-old at a minors-only event because the assault happened at a different place and time. MTD at 4. Unlike in cases where courts have found a cruise ship liable, here there were no "red flags," like a minor openly being served alcohol, on which Royal Caribbean failed to act. MTD at 15. The numerous incident reports also don't establish foreseeability because Plaintiff doesn't provide the necessary context regarding how many ships were at issue in generating 81 sexual assault reports. MTD at 6. Thus, Royal Caribbean's duty of reasonable care was not triggered and, by definition, "there can be no breach." MTD at 10. Moreover, because Plaintiff's sexual assault "did not happen during the teen activity" but rather after she voluntarily met with the boy at a different place and time, "any supposed failure by Royal Caribbean in checking the age of attendants was obviously not the proximate cause" of her sexual assault. MTD at 4.

Royal Caribbean also urges the Court to strike Plaintiff's claim for punitive damages because they are "not available in this maritime case," and even if they

[2] Royal Caribbean's Motion to Dismiss was filed without page numbers, so the Court references the page numbers imprinted on the document by the CM/ECF filing system.

were, "the complaint fails to allege exceptional circumstances and intentional misconduct to sustain punitive damages." MTD at 7.

II. Legal Standard

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (alteration added) (citing *Twombly*, 550 U.S. at 556). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id*. (alteration added) (quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted).

On a motion to dismiss, a court construes the complaint in the light most favorable to the plaintiff and accepts its factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)). Unsupported allegations and conclusions of law, however, will not benefit from this favorable reading. *See Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."). The scope of review on a motion to dismiss under Rule 12(b)(6) is limited to the four corners of the complaint and the exhibits attached. *See Thaeter v. Palm Beach Cty. Sheriff's Office*, 449 F.3d 1342, 1352 (11th Cir. 2006) (citation omitted).

As to Royal Caribbean's request to strike Plaintiff's punitive damages request, Federal Rule of Civil Procedure 12(f) states: "the Court may strike from a pleading

an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "'A motion to strike is a drastic remedy[,]' which is disfavored by the courts." *Thompson v. Kindred Nursing Ctrs. E.*, LLC, 211 F. Supp. 2d 1345, 1348 (M.D. Fla. 2002) (quoting *Augustus v. Bd. of Pub. Instruction of Escambia Cnty., Fla.*, 306 F.2d 862, 868 (5th Cir. 1962)). A motion to strike is often denied "unless the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party." *Bank of Am., N.A. v. GREC Homes IX, LLC*, No. 13-21718, 2014 WL 351962, at *4 (S.D. Fla. Jan. 23, 2014) (internal quotations and citations omitted). However, "[a] request for punitive damages must be stricken from the complaint if the allegations therein do not present a factual basis supporting the recovery of punitive damages, in other words, factual allegations showing wanton, willful or outrageous conduct." *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23321-Civ-SCOLA, 2012 WL 4479084, at *2 (S.D. Fla. Sept. 28, 2012).

III. Discussion

"In analyzing a maritime tort case, we rely on general principles of negligence law." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (cleaned up). Under those principles, "[t]o plead negligence, 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." *Ibid*. The parties do not dispute that Plaintiff suffered actual harm.

A. Duty

A shipowner has a duty to exercise "reasonable care towards [patrons] lawfully aboard the vessel." *Ibid.* This standard "requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition, at least where . . . the menace is one commonly encountered on

land and not clearly linked to nautical adventure." *K.T. v. Royal Caribbean Cruises*, Ltd., 931 F.3d 1041, 1044 (11th Cir. 2019); *see Knight v. Philips South Beach LLC*, No. 09-20473-CIV, 2010 WL 11601873, *3–4 (S.D. Fla. Nov. 4, 2011) (noting that under Florida negligence jurisprudence, a business' duty to take reasonable security precautions for their invitee's benefit does not extend to unforeseeable criminal acts).

Royal Caribbean claims that the Court is compelled to conclude that Plaintiff's allegations fail to show that her sexual assault was reasonably foreseeable, based on *H.S., a minor, by and through R.S. v. Carnival Corp.*, 727 Fed. Appx. 1003 (11th Cir. 2018). *See* MTD at 11. In *H.S.*, the plaintiff was also a minor passenger, who attended a youth club on the defendant's cruise ship. *H.S.*, 727 Fed. Appx. at 1004. While there, she engaged in sexual touching with two teenage boys. *Ibid.* "Unruly behavior" was prohibited on the ship, but the defendant allegedly did nothing to watch for or stop sexual touching. *Ibid.* This failure allegedly emboldened the teenagers, and they left to one of their rooms with the plaintiff. *Id.* At the room, they gave the plaintiff alcohol, and she engaged in further sexual acts. *Ibid.* The plaintiff sued Carnival for, among other claims, negligence, alleging in relevant part that Carnival inadequately trained staff on supervising adolescents and failed to warn parents about the history of sexual assaults on ships. *Id.* at 1005.

The district court dismissed the complaint, concluding that the allegations did not plausibly show that "the criminal act by which she was harmed was foreseeable based upon what Carnival observed or should have observed." *Id.* at 1005. The Eleventh Circuit agreed. *Id.* at 1006. It noted that "H.S. failed to allege how Carnival could have foreseen from the teenagers' conduct in Club O2 that H.S. would visit E.H.'s stateroom, become intoxicated, and be sexually assaulted. H.S.'s allegations established instead that Carnival was obligated to supervise her inside Club O2." *Ibid.* Nor did any allegations "support a plausible inference that Carnival was aware

of teenage boys sexually assaulting teenage girls on its vessels or, more specifically, that teenage girls were leaving the youth nightclub, visiting peers' staterooms unchaperoned, and being sexually abused." *Ibid.*

According to Royal Caribbean, *H.S.* is analogous to the case here in that nothing happened at the minors-only event that would make a subsequent sexual assault foreseeable: if alleged notice of inappropriate (though initially consensual) sexual touching is insufficient to make subsequent sexual assault reasonably foreseeable, then, "Z.E.M.'s complaint requires an even greater leap to infer that by allowing Z.E.M. and the boy to meet at the teen activity, Royal Caribbean reasonably could foresee . . . that the boy would sexually assault Z.E.M. hours or days later, in a bathroom on the common areas of the ship, when Z.E.M. and the boy voluntarily met up after the teen activity had ended." MTD at 13.

But, unlike *H.S.*, Plaintiff's Complaint here specifically alleges that past incident reports of sexual assault made the danger known to Royal Caribbean. *See* Complaint ¶¶ 18–19 (alleging, "Before the incident, Defendant knew or should have known that a sexual assault and/or rape was reasonably foreseeable considering the prevalence of sexual assaults aboard Defendant's vessels" and citing the "Secretary of Transportation's statistical compilation of shipboard incidents" as a basis for Royal Caribbean's knowledge).

As plaintiff notes, the Eleventh Circuit has relied on reports of past sexual assault to find such harm reasonably foreseeable. *See K.T.*, 931 F.3d at 1047–49. *K.T.* involved adult passengers buying drinks for a minor aboard the ship, allegedly in front of staff who did nothing to stop it, after which the minor was led to a room where she was sexually assaulted. *Id.* at 1043. She then sued Royal Caribbean for negligence and negligent failure to warn about the dangers of sexual assault aboard vessels. *Id.* at 1043. The plaintiff alleged, as relevant here, that the sexual assault was reasonably foreseeable because Royal Caribbean "had experienced and had

actual knowledge of . . . assaults and batteries and sexual crimes" and "anticipated and foresaw that crimes would be perpetrated on passengers aboard its vessels." *Id.* at 1044.

In writing for the majority, then-Chief Judge Carnes concluded that these allegations were sufficient, but also separately concurred to explain an alternative basis for that result: "publicly available data . . . reinforc[ing] . . . that Royal Caribbean knew or should have known about the danger of sexual assault aboard its cruise ships." *Id.* at 1047. Judge Carnes noted that Cruise Line Incident Reports reflected that at least 20 of the 66 complaints of sexual assault reported over five years occurred on Royal Caribbean's ships. *Id.* at 1049. He concluded that these incident reports were "based in part on information Royal Caribbean itself submitted" and that "it would be absurd to suggest that a multi-billion-dollar business like Royal Caribbean was not aware of congressional reports about the problem of sexual assaults aboard its cruise ships." *Ibid.*

Royal Caribbean's attempt to distinguish the allegations in *K.T.* from those in this case is unavailing. *See* MTD at 15–16 (outlining the allegations in *K.T.* and noting, "nothing of the sort is alleged by Z.E.M. in her complaint"). The Court acknowledges that *K.T.* involved a different set of allegations, that adult passengers intoxicated a minor passenger in view of staff that did not intervene. But *K.T.*'s *reasoning*—that a defendants own incident reports can establish the foreseeability of sexual assault—is what is critical here. That reasoning applies, irrespective of the sexual assault here involving a minor being pushed into a bathroom from a common area, rather than being plied with alcohol before being taken to a room.

The Court also disagrees with Royal Caribbean's claim that "*K.T.* does not support Plaintiff's argument regarding the Cruise Line Incident Reports." Reply at 7. Royal Caribbean contends this is so because the data only "supplemented" the other allegations and because the other allegations, lacking here, were "what was

most significant" to the decision. Reply at 7. Even if that reading were correct, the reasonable inferences that can be derived from the incident reports lead to the same category of factual assertions that the *K.T.* court found sufficient: that Royal Caribbean "had experienced and had actual knowledge of . . . assaults and batteries and sexual crimes" and "anticipated and foresaw that crimes would be perpetrated on passengers aboard its vessels." *K.T.*, 931 F.3d at 1044.

Moreover, *K.T.* itself contradicts Royal Caribbean's contention that to establish foreseeability, the Complaint must "specify how many vessels on Royal Caribbean's fleet" resulted in the 81 incident reports. The Eleventh Circuit never imposed such a requirement when concluding that 20 reports of sexual assault over five years to Royal Caribbean made the danger reasonably foreseeable. *See id.* at 1047–49. Nor have district courts found such a requirement implicit in the *K.T.* opinion. *See Doe (K.U.) v. Royal Caribbean Cruises Ltd.*, No. 20-cv-20443, 2020 WL 5215067 *1 (S.D. Fla. Sept. 1, 2020) (finding a sexual assault reasonably foreseeable based on allegations of shipboard incident reports without any mention of the number of ships that generated the reports).

Because we are at the pleading stage of litigation, the Court finds sufficient Plaintiff's allegation that Royal Caribbean's incident reports reflect that the risk of sexual assault was a foreseeable one for which passengers should have been warned and protected. "If a cruise line owes its passengers a duty to warn of known dangers at excursion destinations—areas over which it usually has little (if any) control—a cruise line certainly owes its passengers a duty to warn of known dangers aboard its ship." *K.T.*, 921 F.3d at 1046. Contrary to Royal Caribbean's warning, finding that incident reports can establish foreseeability *is not* "akin to holding Royal Caribbean strictly liable for any sexual assault by a passenger." Reply at 5. "[W]e are not talking about strict liability. We are talking about negligence in failing to act to prevent a foreseeable or known danger." *Id.* at 1045. For Royal Caribbean to be liable, Plaintiff

would still need to present the necessary evidence and convince the fact finder of her theories of liability.

B. Breach

Because Royal Caribbean's argument that there was no alleged breach turns on concluding that there was no duty[3]—which the Court has already rejected—the Court need not spend much time on this point. As detailed in the Background section of this Order, the Complaint alleges several breaches based on Royal Caribbean's acts or omissions. *See* Complaint ¶¶ 23, 31, and 36. They suffice to state a claim.

C. Causation

Royal Caribbean's last argument for dismissal is that the allegations do not reflect that any of Royal Caribbean's breaches were the proximate cause of Plaintiff's sexual assault. The issue is largely intertwined with the question of whether the sexual assault was foreseeable. *See H.S.*, 727 Fed. Appx. at 1006 (explaining that "[b]ecause the proximate cause of [a plaintiff's] injury was an intervening criminal act by 'a fellow passenger,' [the defendant] could not be liable in negligence unless the 'injury by its nature could have been reasonably anticipated or naturally expected to occur or reasonably foreseen in time for [the defendant] to have prevented the injury.'") (quoting *Bullock v. Tamiami Trail Tours, Inc.*, 266 F.2d 326, 331 (5th Cir. 1959)). The Court has already addressed that issue and will not rehash it here.

The crux of Royal Caribbean's argument is that Plaintiff's sexual assault is unconnected to Royal Caribbean's alleged breach of allowing the Assailant into the

[3] Although Royal Caribbean's Motion to Dismiss and Reply argue that the Complaint insufficiently alleges a breach, Royal Caribbean's only argument appears to be that it had no duty because the sexual assault was not foreseeable, and that therefore it necessarily could not have breached its duty. *See* MTD at 10 ("Such allegations are insufficient to trigger a duty . . . And since without duty there can be no breach, Plaintiffs have failed to state a cause of action for negligence.")

minors-only event because "[a]ccording to the complaint, *nothing* happened to the Plaintiff during the teen activity." Reply at 1. Royal Caribbean highlights that it was only after Plaintiff voluntarily met with the Assailant at another place and time that he pushed her into a bathroom and sexually assaulted her. *Id.*

If Plaintiff's Complaint had alleged only breaches of policies and security related to the minors-only event, the Court would be more inclined to conclude that the proximate cause allegations fail as a matter of law. Plaintiff, however, also alleges breaches, unrelated to Royal Caribbean's allowing the Assailant into the minors-only event, that are causally connected to her sexual assault. For example, as to the first count, Plaintiff alleges that Royal Caribbean "breached its duty to warn the Plaintiff" by, among other things, "[f]ailing to warn passengers of the dangers and/or prevalence of sexual assaults on minors aboard Defendant's vessels." Complaint ¶ 23.d. As to the second count, Plaintiff alleges that Royal Caribbean breached its duty by, among other things, "[f]ailing to have sufficient security officers on duty and/or patrolling the vessel to maintain a high level of security presence, thereby preventing and/or reducing the number and/or severity of incidents." *Id.* ¶ 31.e. Last, as to the third count, Plaintiff alleges that Royal Caribbean breached its duty to Plaintiff by, among other things, "[f]ailing to promulgate and/or enforce adequate policies and/or procedures designed to prevent sexual assaults on passengers generally and on minor passengers specifically aboard Defendant's ships." *Id.* ¶ 36.e.

D. Punitive Damages

There is an intra-district split on whether punitive damages are allowed in maritime tort cases. In *Eslinger v. Celebrity Cruises, Inc.*, the Eleventh Circuit noted, "Our court has held that plaintiffs may not recover punitive damages, including loss of consortium damages, for personal injury claims under federal maritime law." 772 Fed. Appx. 872, 873 (11th Cir. 2019). Some courts have taken that statement as a

binding holding. *See Simpson v. Carnival Corp.*, 20-25253-CIV, 2021 WL 6428172, at *1 (S.D. Fla. Dec. 30, 2021) ("Binding Eleventh Circuit precedent unequivocally precludes the recovery of punitive[] damages in a negligence case, like Simpson's, for personal injuries under general maritime law."). Other courts have narrowly read *Eslinger* to apply only to loss of consortium claims, and they accept punitive damages claims where intentional wrongdoing can be shown. *See Doe v. Carnival Corp.*, 470 F. Supp. 3d 1317, 1326 (S.D. Fla. 2020). Part of the rationale for doing so is that the Supreme Court had recognized the "general rule that punitive damages were available at common law," which rule "extended to claims arising under federal maritime law." *Simmons v. Royal Caribbean Cruises, Ltd.*, 423 F. Supp. 3d 1350, 1353 (S.D. Fla. 2019) (quoting *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009)); *see also Bodner v. Royal Caribbean Cruises, Ltd.*, 17-20260-CIV, 2018 WL 4047119, at *8 (S.D. Fla. May 8, 2018) (detailing reasons for narrowly reading *Eslinger*).

The Court need not join in the dispute because, even if precedent does not bar punitive damages here, the Complaint fails to make the necessary allegations. To "demonstrate 'intentional misconduct' for the purposes of recovering punitive damages" Plaintiff must show that "the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage." *Bonnell v. Carnival Corp.*, 13-CV-22265, 2014 WL 12580433, at *4 (S.D. Fla. Oct. 23, 2014) (citing *Mee Indus. v. Dow Chemical Co.*, 608 F.3d 1202, 1220 (11th Cir. 2010)).

Despite Plaintiff's claim that Royal Caribbean knew of the risk of sexual assault on cruise ships and failed to disclose that for financial reasons, there are no allegations that support that there was a "high probability" that Plaintiff would therefore be sexually assaulted. The vast majority of passengers on cruise ships do

not suffer sexual assault. As Royal Caribbean points out, as part of a different argument, under its current fleet of 27 ships, "81 [Incident] Reports over a span of three years translates to one report per ship per year." Reply at 6. Without more, "Plaintiff's negligence allegations here simply do not rise to the level of 'intentional misconduct' necessary for the Court to find that this is an 'exceptional circumstance' in which punitive damages may be warranted." *Simmons*, 423 F. Supp. 3d at 1353–54.

Accordingly, it is

ORDERED AND ADJUDGED that Royal Caribbean's Motion [ECF No. 9] is DENIED IN PART and GRANTED IN PART. The motion to dismiss is denied and the motion to strike the claim for punitive damages is granted. Royal Caribbean shall file its answer to the Complaint by no later than July 6, 2023.

DONE AND ORDERED in Chambers at Miami, Florida, on June 20, 2023.

PAUL C. HUCK
UNITED STATES DISTRICT JUDGE

cc: All counsel of record