

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

AT LAW AND IN ADMIRALTY
CASE NO.:

DELENA LANGLEY, individually, and
as Personal Representative of
the Estate of Elizabeth Ann James,

Plaintiff,

v.

NCL (Bahamas) Ltd.,

Defendant.

_____ /

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, DELENA LANGLEY, individually, and as Personal Representative of the Estate of Elizabeth Ann James, by and through the undersigned attorney, hereby files this Complaint for Damages and Demand for Jury Trial and sues Defendant, NCL (Bahamas) Ltd., (hereinafter “NCL”), and alleges as follows:

GENERAL ALLEGATIONS

1. This is an action seeking damages in excess of seventy-five thousand dollars (\$75,000.00), exclusive of interest, costs, and attorneys’ fees.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1333 and 1332. Further, this matter is being filed in the United States District Court for the Southern District of Florida located in Miami-Dade County, Florida, as required by the forum selection clause contained within the Cruise Ticket Contract issued by Defendant. Upon information and belief, Defendant is in possession of a copy of the subject Ticket Contract.

3. At all times material hereto, DELENA LANGELY was and is a resident and citizen of Alabama. Elizabeth Ann James was a resident and citizen of Alabama. DELENA LANGELY is a surviving daughter of Elizabeth Ann James and is in the process of being appointed Personal Representative of the Estate of Elizabeth Ann James. *See, Kennedy v. Carnival Corporation*, 385 F.Supp.3d 1302, *1312 (S.D. Fla. 2019). Elizabeth Ann James resided with DELENA LANGLEY. DELENA LANGELY brings this action on behalf of herself and the other survivors of Elizabeth Ann James, Derrick Lynn James (son) and Deidre Ann Francis (daughter).

4. At all times material hereto, NCL was incorporated in Bermuda, and has its principal place of business in Miami, Florida.

5. Plaintiff has complied with all conditions precedent to bringing this action, including by reporting the incident following the cruise, cooperating in Defendant's investigation of the incident, and by providing Defendant with timely written notice of the claims.

6. At all times material hereto, NCL owned, operated, maintained, managed, and/or controlled the cruise ship *Jade*. *Jade* featured several pools and aquatic attractions.

7. The causes of action in this complaint are brought under the United States General Maritime Law, Florida Law, Alabama Law, and/or Puerto Rican Law, where there is no conflict with the general maritime law. *See, Goodloe v. Royal Caribbean Cruises, Ltd.*, 1 F4th 1289 (11th Cir. 2021) (applying a modified *Lauritzen*-test to determine which state law supplemented DOHSA remedies in a wrongful death involving medical malpractice occurring in the territorial waters of Alaska); *Lauritzen v. Larsen*, 345 U.S. 571 (1953).

8. **CRUISE SHIP SWIMMING POOLS:** NCL has swimming pools available on its ships for use by guests. In fact, during various parts of the cruise, the swimming pools and pool deck are the main activity available for guests on the ships. NCL holds its swimming pools out to

passengers as clean and safe for swimming. NCL claims that it cleans, treats, and filters the water in its swimming pools so that it is safe for use by guests. NCL warns its guests about various hazards around the pool and pool deck but does not warn guests about dangerous bacteria and other pathogens in the water in its swimming pools. NCL does not warn guests about the risks of severe infection if a passenger enters the pool water with broken skin.

NCL made the decision to use seawater in the swimming pools on *Jade*. Therefore, depending on where the seawater is harvested from, it may contain various pathogens, chemicals, contaminants, parasites, or other harmful organisms. NCL claims that it cleans, chlorinates, and treats the seawater that it provides in its swimming pools so that it is clean and safe for passenger use. NCL claims that it refills the pools on *Jade* every twelve hours with fresh seawater. Therefore, if NCL does not treat the water that it harvests from the ocean sufficiently, contaminants, pathogens, bacteria, chemicals, parasites, and/or other harmful organisms can be taken from the ocean and put into the swimming pool where unsuspecting guests will be exposed to harm. Thus, NCL must carefully select the locations for refiling the swimming pools with seawater, carefully treat and clean the seawater, and warn guests about the dangers presented by the use of seawater in this manner. NCL knew or should have known that the process that it was using for water decontamination, filtration, and treatment was insufficient as a result of prior testing revealing a deadly bacterium, legionella, and other harmful bacteria on vessels in its fleet.

9. VIBRIO VULNIFICUS AND VIBRIOPARAHAEMOLYTICUS (“Vibrio”):

Vibrio is a bacterium that thrives in warm brackish water in the Caribbean Sea and Gulf of Mexico. Vibrio is responsible for causing many deaths in the Gulf and Caribbean every year. The CDC tracks and publishes data every year regarding deaths caused by vibrio. Puerto Rico is known

to have vibrio in its territorial waters. Vibrio is known to flourish during the summer when ocean waters are warmest.

Vibrio infects humans in two ways: (1) through exposure of broken skin into contaminated seawater or brackish water containing vibrio, or (2) through the ingestion of vibrio contaminated seafood (most commonly shellfish). Vibrio kills approximately 20% of the people who become infected through broken skin within five days of exposure. As an operator of cruise ships bringing thousands of passengers to Puerto Rico on a regular basis, NCL knew or should have known about the dangers of vibrio in Puerto Rico's waters.

10. LOCATION AND GENERAL FACTS OF THE INCIDENT: On or about June 26, 2024, DELENA LANGELY and Elizabeth Ann James were fare-paying passengers aboard the Defendant's vessel, *Jade* in the territorial waters of Puerto Rico – which are within the territorial waters of the United States. Elizabeth Ann James had a small scratch on her leg from where the family dog had accidentally scratched her approximately one week earlier.

While the vessel was in the warm territorial waters of Puerto Rico, where Defendant knew or should have known that vibrio would likely be present, Defendant filled the swimming pool with seawater contaminated with vibrio. Defendant did not sufficiently test, treat, or decontaminate the water. NCL did not warn passengers about the risks of contaminated seawater in the pool.

While the vessel was in port in Puerto Rico (within the territorial waters of Puerto Rico), Elizabeth Ann James draped her legs over the edge of the pool and into the pool water while her family swam in the pool. Sadly, the small scratch on Elizabeth Ann James' leg was the point for vibrio in the pool water to enter into her body. The vibrio exposure and infection began while the

vessel was in Puerto Rican waters. The negligence and injury that caused Elizabeth Ann James' death occurred in the territorial waters of Puerto Rico.

Over the next few days, Elizabeth Ann James felt ill. When she returned home to Alabama she was taken to a hospital and was transferred to an ICU where it was confirmed that she had a severe "flesh-eating" vibrio infection in her leg. While the doctors attempted to treat the infection with medications and painful debridement, Elizabeth Ann James ultimately died from a severe vibrio infection on July 15, 2024, in Alabama. Before her death Elizabeth Ann James suffered tremendously as the infection devoured her leg and internal organs. She was in horrific pain. Vibrio was in her blood. There was nothing that could be done. She had to suffer until she died.

11. NOTICE: NCL KNEW OR SHOULD HAVE KNOWN THAT VIBRIO IN PUERTO RICO'S TERRITORIAL WATERS WAS A DANGER TO PASSENGERS.

During the years and months prior to Elizabeth Ann James' incident, Defendant's cruise ships, employees, and passengers were brought by Defendant to Puerto Rico and other locations in the Caribbean Sea and Gulf of Mexico where vibrio is prevalent. Upon information and belief vibrio was present in the seawater in these locations and was thriving to a great extent during summer cruises. *See Aponte v. Royal Caribbean Cruise Lines, Ltd.*, 739 Fed. Appx. 531 (11th Cir. 2018). In the years and months prior to Plaintiff's incident, Defendant filled the pools some of the vessels in its fleet with seawater containing vibrio. Defendant either knew that vibrio existed in the seawater or should have known that vibrio existed in the seawater that it was harvesting for use in its shipboard pools. Upon information and belief, Defendant routinely sampled, tested, and evaluated the water used in its pools for safety, including for the presence of harmful pathogens. Reasonable testing of the seawater would have revealed the presence of significant and dangerous amounts of vibrio in the seas in summer months. Upon information and belief, Defendant selected

the treatment process for the seawater to be used in its pools. This treatment process was either not effective or not followed by Defendant and its agents. Defendant knew or should have known that the presence of vibrio in the seawater used in its shipboard pools would present an unreasonable risk of danger to passengers who accidentally swallowed pool water or who had any areas of broken skin that might be exposed to the pool water. Therefore, Defendant knew or should have known about the dangerous condition prior to Elizabeth Ann James' incident and injury.

12. **NOTICE: PRIOR INCIDENTS:** Defendant knew or should have known that using seawater in its shipboard pools during the summer would expose passengers to the risk of injury or death as a result of prior incidents that garnered significant media attention. *See Cosmo v. Carnival Corporation*, 272 F.Supp.3d 1336 (S.D. Fla. 2017)(J. Scola).

a. On October 16, 2023, People Magazine and other large media outlets published a lengthy story about Debbie King, a 72-year-old Florida woman who developed a severe vibrio infection resulting in the amputation of her leg. Debbie King has a small scrape on her leg that came into contact with seawater in the Gulf of Mexico. The scrape was the point of entry for vibrio into Mrs. King's body. This story received international media attention.

b. In August of 2023, Inside Edition, local news in Atlanta, Travel Noire, a cruise ship focused YouTube channel ("TheShipLife"), various other news organizations and social media outlets, published stories about Jennifer Barlow, a model who went on a cruise and visited an island in the Bahamas. Prior to departing the cruise ship Ms. Barlow shaved her legs and suffered a small scrape. Later that day she went into the seawater in the Bahamas and contracted necrotizing fasciitis (flesh eating bacteria) likely from vibrio.

Ms. Barlow's leg had to be amputated to prevent the infection from killing her. The small scrape was the point of entry for vibrio to infect Ms. Barlow's body.

c. On September 20, 2023, CBS News, People magazine, USA Today, Business Insider, and other news media outlets reported that a woman allegedly had all of her limbs amputated as a result of a vibrio infection from ingesting contaminated seafood.

d. On October 22, 2022, CNN published a news story about the presence of vibrio in Florida's waters after Hurricane Ian. As a result of Hurricane Ian, there were 74 cases of vibrio infections, and 17 deaths statewide associated with vibrio. Similarly, after Hurricane Milton, public health officials in South Florida advised that there is a "no swim" advisory in various counties in Florida due to the presence of vibrio and other pathogens in the water.

e. Upon information and belief, Defendant has employees and agents who are tasked with monitoring news media outlets, including but not limited to magazines, social media, blogs, YouTube, TikTok, Instagram, Facebook, internet websites, network news, local news, and international news stories for any stories that may be relevant to the cruise industry and/or to the health and safety of its passengers and crew. Defendant's agents and employees knew or should have known of the aforementioned prior news stories of severe vibriosis causing death and/or catastrophic injury and therefore, should have known of the risks posed by the use of warm coastal water in its pools.

f. On February 17, 2023, NCL notified passengers on four of its sailings that they may have been exposed to legionella by NCL. NCL was aware that two guests were diagnosed with legionnaire's disease following those cruises.

g. On March 4, 2019, *Jade* was inspected by the CDC as part of its Vessel Sanitation Program. The CDC prepared a report with its findings. Items 10 and 44 of the report cited NCL for a violations in monitoring water quality and lack of knowledge of water quality treatment processes and standards in recreational facilities (pools) and stated as follows:

Item No.: 10
Site: Recreational Water Facilities-Water Chemistry - Alkalinity
Violation: Staff was unaware of what was total alkalinity and was not monitoring it in RWFs. The inspector explained what was alkalinity and the way they could measure it with their test kit.
Recommendation: Monitor and adjust the RWF's flow rates, free and combined halogen levels, pH, total alkalinity, and clarity as recommended by the manufacturer and to maintain optimum public health protection and water chemistry. Install flow meters to monitor flow rates.

Item No.: 44
Site: Recreational Water Facilities-Water Chemistry - Alkalinity
Violation: Staff was unaware of what was total alkalinity and was not monitoring it in RWFs. The inspector explained what was alkalinity and the way they could measure it with their test kit.
Recommendation: Ensure the supervisor or person in charge of recreational water operations on the vessel demonstrates to VSP?during inspections and on request ? knowledge of recreational water operations, is able to demonstrate this knowledge by compliance with Section 6 of the VSP 2018 Operations Manual or by responding correctly to the inspector?s questions as they relate to the specific operation, and properly trains employees to comply with Section 6 of the VSP 2018 Operations Manual as it relates to their assigned duties.

h. On October 31, 2018, *Jade* was inspected by the CDC as part of its Vessel Sanitation Program. The CDC prepared a report with its findings. Item 10 of the CDC report cited NCL for several violations of recreational water quality testing, treatment, chemical management, safety, warning requirements, and knowledge as stated below.

Item No.: 10
Site: Recreational Water Facilities-Whirlpool Spas # 7 and # 8 Logs
Violation: There was no documentation of any calibration verification performed for these two facilities for the entire month of October 2018. During spot checks for previous months, no documentation of calibration verification was found. Crew reported that they verified calibration when they opened the facilities but did not record it. There was no column on the log for these two facilities.
Recommendation: Conduct manual comparison tests for free halogen residual and pH before opening the RWF to verify calibration. Ensure the analyzer reading is within 0.2 ppm for free halogen and 0.2 for pH. For RWFs open longer than 24 hours, conduct a manual comparison test every 24 hours and in increments of less than or equal to 15 minutes.

Item No.: 10
Site: Recreational Water Facilities-Spa Safety Signs
Violation: The safety signs for the male whirlpool spa, female whirlpool spa, and hydropool did not comply with the 2018 Operations Manual: 1) The signs stated 'No diapers allowed' but did not state 'No children in diapers or who are not toilet trained.' 2) The signs did not caution against use by children. 3) The signs did not caution against use by individuals who have diabetes. Crew noted that no children were allowed in the spa area, but the vessel did not have a variance to allow them to remove wording related to children from the safety signs. Crew replaced the signs while the inspector was on the vessel.
Recommendation: Provide safety signs for all RWFs, except for baby-only water facilities. Ensure the signs, at a minimum, include the following words: (1) do not use these facilities if you are experiencing diarrhea, vomiting, or fever; (2) no children in diapers or who are not toilet trained; (3) shower before entering the facility; and (4) bather load #. For children?s RWF signs, include the exact wording ?TAKE CHILDREN ON FREQUENT BATHROOM BREAKS? or ?TAKE CHILDREN ON FREQUENT TOILET BREAKS.? In addition to the safety sign requirements in section 6.7.1.1.1, install a sign at each whirlpool spa and spa pool entrance listing precautions and risks associated with the use of these facilities. Include, at a minimum, cautions against use by the following: (1) individuals who are immunocompromised; (2) individuals on medication or who have underlying medical conditions such as cardiovascular disease, diabetes, or high or low blood pressure; and (3) pregnant women, elderly persons, and children. Additionally, caution against exceeding 15 minutes of exposure. Those under 16 years of age are considered children for the purpose of whirlpool safety sign requirements.

Item No.: 10
Site: Recreational Water Facilities-Whirlpool Spas # 7 and # 8
Violation: Crew had been draining the facilities every seven days or between occupancy, whichever was shorter, but were not draining the facilities every 72 hours. There was no variance on file. The inspector reviewed documentation for the past three cruises, and crew reported that this would be consistent for all other sailings. The whirlpool spas were private facilities that could only be accessed by persons with access to the associated suites; however, the whirlpool spas were designed to hold more than four persons.
Recommendation: Change the whirlpool spa water, including compensation tank, filter housing, and associated piping, every 72 hours, provided that the system is operated continuously and that the correct water chemistry levels are maintained during that period, including daily shock halogenation. Change spa pool water as often as necessary to maintain proper water chemistry. Change the water at least every 30 days. Record the date and time of whirlpool spa and spa pool water changes in the log.

13. NOTICE: CDC AND PUBLIC HEALTH ANNOUNCEMENTS REGARDING VIBRIO.

On September 23, 2023, the United States Centers for Disease Control distributed a Health Advisory via the CDC Health Alert Network regarding vibrio. The advisory was titled “Severe *Vibrio Vulnificus* Infections in the United States Associated with Warming Coastal Waters” available at: <https://emergency.cdc.gov/han/2023/han00497.asp>

Upon information and belief, NCL obtained and/or was provided with this health advisory in 2023. Therefore, NCL knew or should have known about the risks of vibrio infection posed to passengers by NCL’s use of warm seawater in its shipboard pools. This advisory provided NCL with the following information:

Vibrio naturally live in coastal waters, including salt water and brackish water, which is a mixture of salt water and fresh water. Most people get infected with *Vibrio* by eating raw or undercooked shellfish, particularly oysters. Some people get infected when an open wound is exposed to salt water or brackish water containing *Vibrio* [1].

Unlike other *Vibrio* species, *V. vulnificus* is primarily transmitted through open-wound contact with salt water or brackish water, but occasionally (in approximately 10% of cases) the bacteria also can infect people if they eat raw or undercooked shellfish. Person-to-person transmission has not been reported. People at higher risk for wound infection include those with underlying health conditions such as liver disease, diabetes, and immunocompromising conditions [3]. ***V. vulnificus* wound infections have a short incubation period and are characterized by necrotizing skin and soft tissue infection**, with or without hemorrhagic bullae. Many people with *V. vulnificus* wound infection require intensive care or surgical tissue removal.

***V. vulnificus* bacteria thrive in warmer waters—especially during the summer months (May to October) and in low-salt marine environments like estuaries.** In the United States, *V. vulnificus* infections have been most commonly reported by Gulf Coast states. However, *V. vulnificus* infections in the Eastern United States increased eightfold from 1988–2018, and the northern geographic range of infections has increased 48 km per year [4]. During July–August 2023, the United States has experienced above-average coastal sea surface temperatures and widespread heat waves [5]. During the same period, several East Coast states, including [Connecticut](#), [New York](#), and [North Carolina](#), have reported severe and fatal *V. vulnificus* infections. Many of these infections were acquired after an open wound was exposed to coastal waters in those states. Some of these infections were associated with consumption of raw or undercooked seafood or had unclear etiology.

Amid increasing water temperatures and extreme weather events (e.g., heat waves, flooding, and severe storms) associated with climate change [6], **people who are at increased risk for *V. vulnificus* infection should exercise caution when engaging in coastal water activities. Prompt treatment is crucial to reduce mortality from severe *V. vulnificus* infection.** CDC continues to monitor reports of *V. vulnificus* infections.

Defendant knew or should have known that Puerto Rico was likely to have a severe increase in vibrio in its waters in June 2024, as the average high air temperature for June 2024 was 92 degrees Fahrenheit and the average temperature was 86.1 degrees Fahrenheit. The water temperature in Puerto Rico's territorial waters was approximately 83 degrees Fahrenheit, or more.

Defendant also knew or should have known that using seawater in its shipboard pools presented a risk of vibrio infection to its passengers as a result of Florida Department of Health Publications regarding cases and deaths as a result of vibrio in Florida. In 2022, there were 74 cases of vibrio and 17 deaths in Florida. In 2023, There were 46 cases of vibrio and 11 deaths in Florida. In 2024, there have been cases and 11 deaths from vibrio in Florida.

14. **NOTICE: DEFENDANT CREATED THE DANGEROUS CONDITION AND EXPOSED PASSENGERS TO IT.** By choosing to fill its pools with seawater in areas where NCL knew or should have known that vibrio was likely to thrive, NCL created the dangerous condition. NCL then exposed its passengers to that contaminated seawater. NCL regularly tested, inspected, and examined the water in its pool system as well the pool cleaning and filtration systems on *Jade*. A reasonable inspection would have revealed that the seawater being used in the summer months on cruises on *Jade* was contaminated with vibrio and not being appropriately de-contaminated by NCL's pool filtration and cleaning processes. Therefore, NCL knew or should have known about this dangerous condition.

15. **NOTICE: DEFENDANT KNEW OR SHOULD HAVE KNOWN ABOUT THE RISKS OF VIBRIO INFECTION THROUGH ITS FOOD STORAGE AND PREPARATION STANDARDS AND RESPONSIBILITIES.** Defendant operates many large cruise ships, which are essentially floating hotels. The cruise ships have many restaurants that serve food including but not limited to, seafood, shellfish, mussels, oysters, sushi, and sashimi. This type of seafood is widely known in the food storage and service industry to potentially be contaminated with vibrio. Therefore, Defendant follows food storage and preparation standards intended to decontaminate these foods (commonly with chlorine, clean seawater, cooking, and/or UV light). Defendant is required to train its food storage, service, and preparation employees about vibrio and proper food handling, storage, and preparation techniques. As a result, Defendant knew or should have known about vibrio in seawater and the dangers associated with vibrio prior to the subject incident. Upon information and belief, Defendant warns passengers in its restaurants about the dangers of bacteria including vibrio in raw oysters and other raw or undercooked seafoods, it chose not to warn about these same dangers in its saltwater swimming pools, even though it knew or should have known the same risks existed in the swimming pools.

**COUNT I
NEGLIGENT FAILURE TO WARN
(WRONGFUL DEATH)**

Plaintiff hereby adopts and incorporates paragraphs 1 through 15 as if fully set-forth herein, and alleges as follows:

16. **DUTIES OWED:** At all times material hereto, Defendant had the duty to use reasonable care under the circumstances, and to maintain and operate its vessel, *Jade*, in a reasonably safe condition and manner. *See, Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989). Cruise lines owe their passengers a duty to warn of known or foreseeable

dangers which are not open and obvious. *See, Brown v. Carnival Corporation*, 202 F.Supp. 3d 1332 (S.D. Fla. 2016)(J. Ungaro)(citing *Witover v. Celebrity Cruises, Inc.*, 161 F. Supp. 3d. 1139, 1146 (S.D. Fla. 2016).

17. Defendant, at all relevant times, knew or should have known of industry safety standards and publications of CDC, ASTM International, ANSI, and other industry standards and safety standards applicable to water sanitation, filtration, treatment, and pool management. Defendant also maintains internal policies and procedures regarding warning guests of dangerous conditions – which would include infectious bacteria.

18. **DIRECT LIABILITY:** Defendant is directly negligent for failing to reasonably warn Elizabeth Ann James that it used seawater in its pools and about the dangers posed by its use of seawater likely to contain dangerous levels of bacteria, including vibrio, in its pools. Defendant is directly negligent for failing to warn Elizabeth Ann James about the likely presence of harmful bacteria, including vibrio, in the pool water and the risks posed to her health by entering the water with any cuts or scrapes. Defendant is directly negligent for failing to warn Elizabeth Ann James about the likely presence of harmful bacteria, including vibrio, in the pool water and the risks to her health posed by being exposed to the water. The presence of harmful amounts of vibrio in pool water was not open and obvious and not known to Elizabeth Ann James.

19. **BREACH:** Defendant breached the aforementioned duties of care owed to Elizabeth Ann James by failing to reasonably warn passengers that seawater is used in the pools and may contain harmful bacteria, particularly vibrio, which may cause severe infection, illness, and amputation or death. Defendant breached its duties of care by failing to reasonably warn Elizabeth Ann James about the dangers of entering the pool water with any cuts, scrapes, or broken skin, including infection, illness, injury, amputation, and/or death. Defendant breached its duties

of care and failed to warn that its water sanitation protocols would not protect passengers from the dangers posed by harmful bacteria in the water, particularly vibrio, and that severe infection and death may result from using the swimming pools. Defendant breached the duties of care owed by failing to use reasonable care under the circumstances to warn Elizabeth Ann James of the hazard.

20. **CAUSATION:** Defendant's breaches were the direct, proximate, and legal cause of Elizabeth Ann James injuries and death. Had Defendant properly warned of the dangerous conditions, Elizabeth Ann James would not have come into contact with contaminated seawater, would not have been infected by vibrio, and would not have been injured and ultimately caused to die.

21. **DAMAGES:** As a direct and proximate result of the aforementioned negligence of Defendant, Elizabeth Ann James suffered pre-death pain and suffering and ultimately died, and Plaintiff seeks recovery for all available damages including:

a) Under the Florida Wrongful Death Act on behalf of each survivor Plaintiff seeks recovery for loss of parental companionship, instruction, and guidance, and for mental pain and suffering from the date of the injury through the future life expectancy of each survivor. These losses and injuries are permanent and continuing in nature, and Plaintiff will continue to suffer them in the future.

b) Under Alabama law, Plaintiff seeks recovery for punitive damages.

c) Under the law of Puerto Rico Plaintiff seeks recovery for the pecuniary losses, loss of society and companionship, loss of services, and mental and moral suffering of each survivor.

d) Under the general maritime law, pre-death pain and suffering, medical expenses, and funeral expenses.

WHEREFORE, the Plaintiff demands Judgment against the Defendant for damages, court costs, and all interest due under all applicable law including interest from the date of the subject incident under General Maritime Law, and any and all other damages which the Court deems just or appropriate.

**COUNT II
GENERAL NEGLIGENCE
(WRONGFUL DEATH)**

Plaintiff hereby adopts and incorporates paragraphs 1 through 15 as if fully set-forth herein, and alleges as follows:

22. **DUTIES OWED:** At all times material hereto, Defendant had the duty to use reasonable care under the circumstances, and to maintain and operate its vessel, *Jade*, in a reasonably safe condition and manner. *See, Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989).

23. Defendant, at all relevant times, knew or should have known of industry safety standards and publications of CDC, ASTM International, ANSI, and other industry standards and safety standards applicable to water sanitation, filtration, treatment, and pool management.

24. **DIRECT LIABILITY:** Defendant is directly negligent for harvesting seawater contaminated with vibrio and placing that seawater, while still contaminated with dangerous amounts of vibrio into its shipboard swimming pools for use by passengers. Defendant is directly negligent for failing to reasonably select locations where water was free from vibrio, or for failing to use treated freshwater for its pools. Defendant is directly negligent for failing to reasonably and appropriately sanitize, treat, filter, and de-contaminate the seawater prior to placing it in the shipboard pools for use by passengers.

25. **BREACH:** Defendant breached the aforementioned duties of care owed to Elizabeth Ann James by failing to reasonably filter, treat, sanitize, and de-contaminate the seawater so that it did not contain harmful bacteria, particularly vibrio, which may cause severe infection, illness, and amputation or death to passengers using the pool. Defendant breached its duties of care by failing to reasonably select a location where safe seawater could be harvested for use in the shipboard pools and/or by failing to use treated freshwater in its shipboard pools. Defendant breached the duties of care owed by failing to use reasonable care under the circumstances to protect Elizabeth Ann James from the hazard.

26. **CAUSATION:** Defendant's breaches were the direct, proximate, and legal cause of Elizabeth Ann James injuries and death. Had Defendant properly filtered, sanitized, treated, and de-contaminated the water Elizabeth Ann James would not have come into contact with contaminated water would not have been infected by vibrio, and would not have been injured and ultimately caused to die.

27. **DAMAGES:** As a direct and proximate result of the aforementioned negligence of Defendant, Elizabeth Ann James, suffered pre-death pain and suffering and ultimately died, and Plaintiff seeks recovery for all available damages including:

a) Under the Florida Wrongful Death Act on behalf of each survivor Plaintiff seeks recovery for loss of parental companionship, instruction, and guidance, and for mental pain and suffering from the date of the injury through the future life expectancy of each survivor. These losses and injuries are permanent and continuing in nature, and Plaintiff will continue to suffer them in the future.

b) Under Alabama law, Plaintiff seeks recovery for punitive damages.

c) Under the law of Puerto Rico Plaintiff seeks recovery for the pecuniary losses, loss of society and companionship, loss of services, and mental and moral suffering of each survivor.

d) Under the general maritime law, pre-death pain and suffering, medical expenses, and funeral expenses.

WHEREFORE, the Plaintiff demands Judgment against the Defendant for damages, court costs, and all interest due under all applicable law including interest from the date of the subject incident under General Maritime Law, and any and all other damages which the Court deems just or appropriate.

**COUNT III
STRICT PRODUCT LIABILITY
(WRONGFUL DEATH)**

Plaintiff hereby adopts and incorporates paragraphs 1 through 15 as if fully set-forth herein, and alleges as follows:

28. Defendant NCL harvested seawater for use in its shipboard swimming pools. Upon information and belief, NCL filtered, treated, chemically manipulated, and otherwise altered the composition and properties of the seawater using various processes, including halogenation, exposure to UV rays, and treatment with ozone, so that the seawater would be safe for use by NCL's fare-paying passengers. NCL then placed the finished product¹ (supposedly filtered, treated, disinfected, sanitized, chemically manipulated seawater), into its pools on *Jade* for use by its passengers.

¹ "A product is tangible personal property distributed commercially for use or consumption." *Restatement (Third) of Torts: Product Liability Section 19(a)(1998)*. Cases have held that natural materials that are refined and produced commercially are products. *See, Aubin v. Union Carbide Corp.*, 177 So.3d 489 (Fla. 2015)(refining raw material of asbestos into asbestos fibers was sufficient to create a product); *see also, Travelers Indemnity Co. of America v. Connecticut Light & Power, Co.*, 2008 WL 2447351 (Conn. 2008)("It is the opinion of this court that electricity is a product for the purposes of [Connecticut law] once it passes through the meter of a consumer.")

29. DEFENDANT SOLD THE PRODUCT: At all times material, Defendant marketed, advertised, and sold cruise vacations with shipboard swimming pools on the *Jade*. DELENA LANGELY and Elizabeth Ann James purchased Defendant's cruise vacation on *Jade*. An integral component of the cruise vacation from the perspective of the purchasers was the availability of several shipboard pools on *Jade* which would be clean, safe, open, and available to them for use when the vessel was at sea and in port. This was important to them in part because Elizabeth Ann James was a senior citizen and planned to stay on the ship at some of the ports-of-call, therefore, the shipboard pools would provide entertainment for her during sea days and days at port. DELENA LANGELY and Elizabeth Ann James purchased the cruise vacations from NCL, in part, because of the availability of safe shipboard pools during the cruise.

30. THE PRODUCT WAS UNREASONABLY DANGEROUS: At the time that Defendant placed the finished product (supposedly cleaned, filtered, disinfected, sanitized, treated, chemically manipulated sea water) into the pools on *Jade* it was defective and unreasonably dangerous because the water was contaminated with vibrio bacteria which presented a great risk of bodily harm and death to people who used the pool facilities as intended or reasonably and foreseeably misused the pool facilities. At the time that Elizabeth Ann James placed her legs into the pool water while the vessel was in the territorial waters of Puerto Rico, the pool water was defective and dangerous because it contained significant amounts of harmful vibrio bacteria.

31. THE PRODUCT DID NOT MEET THE CONSUMER EXPECTATIONS TEST: A reasonable consumer would not expect that pool water provided to passengers for use on a cruise ship operated by a multi-billion-dollar cruise line would be contaminated with live vibrio, a flesh-eating bacteria that causes severe infection and death. NCL's product was more dangerous than a reasonable consumer would expect.

31. **FORESEEABLE USE OF THE PRODUCT:** It was reasonably foreseeable to NCL that Elizabeth Ann James, and other passengers, would use the pool by entering the water on *Jade* without her first performing an inspection that would reveal the presence of vibrio in the pool prior to her use.

32. **USE OF THE PRODUCT CAUSED HARM:** The defect in the product (contamination with dangerous amounts of live vibrio bacteria) caused Elizabeth Ann James to develop a severe vibrio infection that ultimately caused her death. If the product was not defectively dangerous, Elizabeth Ann James would not have developed a vibrio infection and died.

33. **DAMAGES:** As a direct and proximate result of the Defendant's defective product, Elizabeth Ann James, suffered pre-death pain and suffering and ultimately died, and Plaintiff seeks recovery for all available damages including:

a) Under the Florida Wrongful Death Act on behalf of each survivor Plaintiff seeks recovery for loss of parental companionship, instruction, and guidance, and for mental pain and suffering from the date of the injury through the future life expectancy of each survivor. These losses and injuries are permanent and continuing in nature, and Plaintiff will continue to suffer them in the future.

b) Under Alabama law, Plaintiff seeks recovery for punitive damages.

c) Under the law of Puerto Rico Plaintiff seeks recovery for the pecuniary losses, loss of society and companionship, loss of services, and mental and moral suffering of each survivor.

d) Under the general maritime law, pre-death pain and suffering, medical expenses, and funeral expenses.

WHEREFORE, the Plaintiff demands Judgment against the Defendant for damages all court costs, all interest due under the applicable law including interest from the date of the subject incident under General Maritime Law, and any and all other damages which the Court deems just or appropriate.

**COUNT IV
NEGLIGENT MAINTENANCE
(WRONGFUL DEATH)**

Plaintiff hereby adopts and incorporates paragraphs 1 through 15 as if fully set-forth herein, and alleges as follows:

22. **DUTIES OWED:** At all times material hereto, Defendant had the duty to use reasonable care under the circumstances, and to maintain and operate its vessel, *Jade*, in a reasonably safe condition and manner. *See, Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989).

23. Defendant, at all relevant times, knew or should have known of industry safety standards and publications of CDC, ASTM International, ANSI, and other industry standards and safety standards applicable to water sanitation, filtration, treatment, and pool management.

24. **DIRECT LIABILITY:** Defendant is directly negligent for failing to reasonably maintain the pools, and recreational water facilities, including all halogenation systems, monitoring systems, water quality systems, UV disinfection systems, and any other components of the recreational water facilities systems.

25. **BREACH:** Defendant breached the aforementioned duties of care owed to Elizabeth Ann James by failing to reasonably maintain the pools, and recreational water facilities, including all halogenation systems, monitoring systems, water quality systems, UV disinfection systems. Defendant breached the duties of care owed by failing to use reasonable care under the

circumstances to maintain the systems designed and intended to protect Elizabeth Ann James from the hazard.

26. **CAUSATION:** Defendant's breaches were the direct, proximate, and legal cause of Elizabeth Ann James injuries and death. maintain the pools, and recreational water facilities, including all halogenation systems, monitoring systems, water quality systems, UV disinfection systems Elizabeth Ann James would not have come into contact with contaminated water would not have been infected by vibrio, and would not have been injured and ultimately caused to die.

27. **DAMAGES:** As a direct and proximate result of the aforementioned negligence of Defendant, Elizabeth Ann James, suffered pre-death pain and suffering and ultimately died, and Plaintiff seeks recovery for all available damages including:

- a) Under the Florida Wrongful Death Act on behalf of each survivor Plaintiff seeks recovery for loss of parental companionship, instruction, and guidance, and for mental pain and suffering from the date of the injury through the future life expectancy of each survivor. These losses and injuries are permanent and continuing in nature, and Plaintiff will continue to suffer them in the future.
- b) Under Alabama law, Plaintiff seeks recovery for punitive damages.
- c) Under the law of Puerto Rico Plaintiff seeks recovery for the pecuniary losses, loss of society and companionship, loss of services, and mental and moral suffering of each survivor.
- d) Under the general maritime law, pre-death pain and suffering, medical expenses, and funeral expenses.

WHEREFORE, the Plaintiff demands Judgment against the Defendant for damages, court costs, and all interest due under all applicable law including interest from the date of the subject

incident under General Maritime Law, and any and all other damages which the Court deems just or appropriate.

COUNT IV
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(DELENA LANGELY, INDIVIDUALLY)

Plaintiff hereby adopts and incorporates paragraphs 1 through 15 as if fully set-forth herein, and alleges as follows:

34. **DUTIES OWED:** At all times material hereto, Defendant had the duty to use reasonable care under the circumstances, and to maintain and operate its vessel, *Jade*, in a reasonably safe condition and manner. *See, Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989). Cruise lines owe their passengers a duty to warn of known or foreseeable dangers which are not open and obvious. *See, Brown v. Carnival Corporation*, 202 F.Supp. 3d 1332 (S.D. Fla. 2016)(J. Ungaro)(citing *Witover v. Celebrity Cruises, Inc.*, 161 F. Supp. 3d 1139, 1146 (S.D. Fla. 2016).

35. Defendant, at all relevant times, knew or should have known of industry safety standards and publications of CDC, ASTM International, ANSI, and other industry standards and safety standards applicable to water sanitation, filtration, treatment, and pool management. Defendant also maintains internal policies and procedures regarding warning guests of dangerous conditions – which would include infectious bacteria.

36. **DIRECT LIABILITY:** Defendant is directly negligent for failing to reasonably warn Elizabeth Ann James about the dangers posed by its use of seawater likely to contain dangerous levels of bacteria, including vibrio, in its pools. Defendant is directly negligent for failing to warn Elizabeth Ann James about the likely presence of harmful bacteria, including vibrio, in the pool water and the risks posed to her health by entering the water with any cuts or

scrapes. Defendant is directly negligent for failing to warn Elizabeth Ann James about the likely presence of harmful bacteria, including vibrio, in the pool water and the risks to her health posed by being exposed to the water. Defendant is directly negligent for failing to reasonably and appropriately select, clean, and treat the water in its pools to ensure that it was free from harmful pathogens including vibrio.

37. **BREACH:** Defendant breached the aforementioned duties of care owed to Elizabeth Ann James and DELENA LANGELY by failing to reasonably warn passengers that seawater is used in the pools and may contain harmful bacteria, particularly vibrio, which may cause severe infection, illness, and amputation or death. Defendant breached its duties of care by failing to reasonably warn Elizabeth Ann James and DELENA LANGELY about the dangers of entering the pool water with any cuts, scrapes, or broken skin, including infection, illness, injury, amputation, and/or death. Defendant breached its duties of care and failed to warn that its water sanitation protocols would not protect passengers from the dangers posed by harmful bacteria in the water, particularly vibrio, and that severe infection and death may result from using the swimming pools. Defendant breached its duties of care by failing Defendant is directly negligent for failing to reasonably and appropriately select, clean, and treat the water in its pools to ensure that it was free from harmful pathogens including vibrio. Defendant breached the duties of care owed by failing to use reasonable care under the circumstances to warn Elizabeth Ann James and DELENA LANGELY of the hazard.

38. **CAUSATION:** Defendant's breaches were the direct, proximate, and legal cause of Elizabeth Ann James injuries and death. Had Defendant properly warned of the dangerous conditions, she would not have come into contact with contaminated seawater, would not have been infected by vibrio, and would not have been injured and ultimately caused to die. DELENA

LANGELY was in the zone of danger posed by the dangerous conditions, was exposed to the same contaminated pool water that caused her mother's horrific infection and death, touched her mother during her illness and death, witnessed her mother's illness, suffering, and death and feared for her own safety and health.

39. **DAMAGES:** As a direct and proximate result of the aforementioned negligence of Defendant, DELENA LANGELY, suffered severe emotional distress, mental pain and anguish, physical manifestations of emotional distress, including but not limited to, post-traumatic stress, anxiety, depression, severe fear, crying, shaking, insomnia, psoriasis, and tachycardia. These losses and injuries are permanent and continuing in nature, and Plaintiff will continue to suffer them in the future. *See, Gerhart v. Carnival Corporation*, 2015 WL 12533127 (S.D. Fla. 2015) (psychological manifestations and/or continued mental disturbances are sufficient to state a negligent infliction of emotional distress claim).

WHEREFORE, the Plaintiff, DELENA LANGELY, individually, demands Judgment against the Defendant for damages, all court costs, and all interest due under the applicable law including interest from the date of the subject incident under General Maritime Law, and any and all other damages which the Court deems just or appropriate.

Dated: October 17, 2024
Coral Gables, Florida

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