

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

TASHARA HUNTER,
as personal representative for the Estate of
Q.H, deceased minor, and as parent and
Natural Guardian of J.H, minor,

Plaintiffs,

v.

CARNIVAL CORPORATION,
and DOCTOR DOE(S), and NURSE DOE(S),

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs sue Defendants and allege:

1. This action is brought by TASHARA HUNTER, and as personal representative for the Estate of Q.H., deceased minor child, and as parent and natural guardian of J.H., a minor. The initials, Q.H., and J.H. are used to protect the identity of the minors.
 - a. Tashara Hunter, Mother;
 - b. Q.H., minor child born June 3, 2007;
 - c. J.H., minor child born October 2, 2003;
2. Plaintiffs are citizens and residents of Florida.
3. Defendant, CARNIVAL CORPORATION (hereinafter "Carnival"), is a corporation incorporated under the law of Panama having its principal place of business in Miami, Florida.
4. Defendant(s) DOCTOR DOE(S), is/are the ship's doctor(s) aboard the ship *Carnival*

Victory who saw, examined, treated and/or were consulted concerning the medical condition of Q.H., a minor, while aboard the *Carnival Victory*. Upon information and belief, DOCTOR DOE(S) is/are not citizen(s) of Florida. The legal name(s) and identity(ies) of DOCTOR DOE(S) are presently unknown to the Plaintiff but will be revealed through discovery. Upon discovery of the legal name(s) and identity(ies) of DOCTOR DOE(S), the Plaintiff will amend the Complaint to substitute the legal name(s) of the individual ship's doctor(s) who saw, examined, treated and/or were consulted concerning the medical condition of Q.H., a minor, while aboard the *Carnival Victory*, for DOCTOR DOE(S). Throughout this Complaint, DOCTOR DOE(S) is used both singularly and plural because it is presently unknown the number of ship's doctors who saw, examined, treated and/or were consulted concerning the medical condition of Q.H., a minor, while aboard the *Carnival Victory*.

5. Defendants, NURSE DOE(S), are the ship's nurses aboard the ship *Carnival Victory* who saw, examined, treated and/or were consulted concerning the medical condition of Q.H., a minor, while aboard the *Carnival Victory*. Upon information and belief, NURSE DOE(S) is/are not citizens of Florida. The legal name(s) and identity(ies) of NURSE DOE(S) are presently unknown to the Plaintiff but will be revealed through discovery. Upon discovery of the legal name(s) and identity(ies) of NURSE DOE(S), the Plaintiff will amend the Complaint to substitute the legal name(s) of the individual ship's nurse(s) who saw, examined, treated and/or were consulted concerning the medical condition of Q.H., a minor, while aboard the *Carnival Victory*, for NURSE DOE(S). Throughout this Complaint, NURSE DOE(S) is used both singularly and plural because it is presently unknown the number of ship's nurses who saw, examined, treated and/or were consulted concerning the medical condition of Q.H., a minor, while aboard the *Carnival Victory*.

6. The Doctor Defendants and Nurse Defendants who worked aboard the subject cruise ship

and provided medical care to the decedent are often collectively referred to herein as the Medical Defendants.

7. This matter is being brought under the maritime and admiralty jurisdiction of the Court. In particular, Plaintiff brings this action pursuant to Article III, §2 of the United States Constitution, delegating jurisdiction over admiralty cases to the federal courts. Specifically, Plaintiff brings this action pursuant to 28 U.S.C. §1333 which gives Article III courts “original jurisdiction ... of ... [a]ny civil case of admiralty or maritime jurisdiction.” *Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs*, 709 F. 3d 1055, 1058 (11th Cir. 2013).

8. Defendant Carnival, at all times material hereto, personally or through an agent:

a. Operated, conducted, engaged in or carried on a business venture in this state and/or county or had an office or agency in this state and/or county;

b. Was engaged in substantial activity within this state;

c. Operated vessels in the waters of this state;

d. Committed one or more of the acts stated in Florida Statutes §§ 48.081, 48.181 and/or 48.193;

e. The acts of Defendant set out in this Complaint occurred in whole or in part in this county and/or state.

f. Defendant was engaged in the business of providing to the public and to the Plaintiffs, for compensation, vacation cruises aboard the M/V *Carnival Victory*.

9. At all times material hereto, Defendant Carnival is subject to the jurisdiction of the Courts of this state.

10. The causes of action asserted in this Complaint arise under the General Maritime Law of the United States.

11. At all times material hereto, Defendant Carnival owned, operated, managed, maintained and/or controlled the vessel, *Carnival Victory*.

12. At all times material hereto, Defendant Carnival knew, or should have known, of a number of drownings and near-drownings of minors onboard cruise ships, which have been highly publicized within the cruise industry since 2013 and preceded a major change at Disney Cruise Lines in late 2013, when Disney Cruise Lines began posting lifeguards onboard its ships after a minor child nearly drowned and was grievously and permanently injured. Despite the foregoing, Defendant Carnival actively decided not to post lifeguards onboard Carnival ships.

13. On or about October 13, 2013, the Plaintiff and her 2 minor children were paying passengers on Defendant's vessel, *Carnival Victory*, which was in navigable waters.

14. On or about October 10, 2013, Plaintiffs boarded the subject vessel for a cruise vacation. During the subject cruise voyage, the vessel had an extremely dangerous hidden condition, which was that there were no lifeguards onboard the vessel despite the fact that Carnival advertises and holds itself out as having "family friendly" and "kid friendly" cruises. In fact, a significant portion of the vessel is designed for the entertainment of minors and children. The *Carnival Victory* includes a plethora of children's activities and programs such as the "Camp Carnival" and "Seuss at Sea." Additionally, Carnival provides interactive games and activities for children only. The intentional decision to not have lifeguards at pools that are held out as kid friendly is reckless conduct.

15. The main pool area aboard the *Carnival Victory* is known as "The Triton Pool" and is located in the middle of the ship on Deck 9 (Lido deck). The Triton Pool area consists of a pool surrounded by two whirlpools. The area also features a twisting green slide.

16. On the date of the subject incident, there were no lifeguards monitoring swimmers and

there were no crew members enforcing shipboard rules and policies.

17. Additionally, there was no lifesaving medical equipment at or near the pool deck, so as to give a drowning victim a higher chance at survival.

18. This is the subject area where the incident occurred:



19. Immediately prior to the drowning, the boys' father, Caselle Hunter, briefly lost sight of Q.H. and J.Q. The next thing Caselle Hunter knew, Q.H.'s lifeless body was being pulled out of the pool by other passengers.

20. Passengers were yelling for medical equipment and medical staff. Both the medical staff

and medical equipment arrived on scene after an unreasonably long period of time. When the medical staff arrived, they attempted to use the automated external defibrillator (AED) but it was of no use because by the time Carnival medical staff arrived on scene, Q.H. had no pulse.

21. The passenger who pulled Q.H. out of the pool was able to begin resuscitation efforts. Notably, due to the lack of response by Carnival, passengers were forced to attempt to save Q.H.

22. J.H. was present during the resuscitation efforts and crying for his brother not to die. However, Q.H. passed away due to the drowning. J.H. was an immediate witness and/or bystander to the efforts to save Q.H. as well immediate witness and/or bystander to the passing of Q.H. All of Q.H.'s family present at the scene of the incident were harmed by bearing witness to the terror of seeing their immediate family member lose his life. Additionally, all of Q.H.'s family present at the scene of the incident were harmed by bearing witness to the delayed and inadequate medical response by Carnival.

23. At the time of the subject incident, J.H. was in the zone of danger, as he was placed in immediate risk of physical harm given that he was swimming in the same pools which were unattended by lifeguards. Additionally, J.H. was a witness to the drowning of his sister and was a witness to the delayed and reckless medical response by Carnival.

24. Carnival's conduct regarding the subject incident is outrageous. Carnival advertises and holds itself out as having "family friendly" and "kid friendly" cruises. Carnival even has a big green waterslide intended for children in its pool area. Yet, Carnival refuses to utilize lifeguards to monitor the pool area. Furthermore, Carnival doesn't keep lifesaving medical equipment at or near the pool deck in case of an emergency. No Carnival staff stationed at the pool deck are prepared for a medical drowning emergency. And because there are no readily available staff members at the pool deck in case of a drowning, passengers are forced to attempt lifesaving efforts.

After Q.H. was pulled from the pool, it took approximately 10 minutes for Carnival's medical staff and medical equipment to arrive on scene. This is outrageous conduct, especially considering the fact that the cruise vessel is hundreds of miles from the nearest hospital.

25. Punitive damages are sought in this action because there is simply no reason that Carnival should not have lifeguards at the pools which Carnival holds out as being "kid friendly." Numerous children have died or been grievously injured recently onboard cruise ships due to drowning or near drowning prior to this incident, yet Carnival does not even spend a single penny on utilizing lifeguards onboard its ships to prevent these tragedies. Carnival's misconduct in failing to have lifeguards is wholly intentional and calculated and thus subjects Carnival to punitive damages.

26. Punitive damages are also sought in this action because it is inexcusable that it took approximately 10 minutes for medical staff and live saving medical equipment to arrive on scene. This conduct is especially egregious considering the fact that there are no lifeguards monitoring the pool area and the nearest hospital is hundreds of miles away. Carnival's conduct is wholly intentional and calculated and thus subjects Carnival to punitive damages.

COUNT I – NEGLIGENCE AGAINST CARNIVAL
(DEATH ON THE HIGH SEAS ACT 46 U.S.C. SECTIONS 30301-30308)

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

27. It was the duty of Defendant to provide the Plaintiff with reasonable care under the circumstances.

28. On or about October 13, 2013, Defendant and/or its agents, servants, and/or employees breached its duty to provide Plaintiff with reasonable care under the circumstances.

29. On or about October 13, 2013, the Plaintiff Q.H., passed away due to the fault and/or

negligence of Defendant and/or its agents, servants, and/or employees as follows:

- a. Failure to use lifeguards to protect passengers and in particular children in the area of a child friendly swimming pool;
- b. Knowingly choosing to not use lifeguards in swimming areas on its ships advertised designed and marketed to children;
- c. Failing to properly and adequately warn passengers and the plaintiff in particular that the swimming pools do not have lifeguards;
- d. Failing to provide reasonably safe occupancy of pool capacity;
- e. Failing to abide by the proper capacity of pools;
- f. Failure to adequately and regularly monitor the subject area to prevent drowning or near drowning incidents;
- g. Failure to close off and/or place warning signs on or around the swimming pools;
- h. Failing to create adequate enclosures around the subject swimming pool to prevent children from entering the pool; and/or
- i. Failure to ascertain the cause of prior similar accidents happening on any of the Defendant's vessels fleet wide so as to take adequate measures to prevent their reoccurrence, and more particularly Plaintiff's accident; and/or
- j. Failure to have adequate medical equipment close enough to the pool area in case of emergency; and/or
- k. Failure to have working medical equipment at or near the subject pool area; and/or
- l. Failure to respond to a medical emergency with the necessary lifesaving medical equipment; and/or
- m. Failure to respond to a medical emergency in a reasonable amount of time; and/or

- n. Failure to train crew members on lifesaving protocol during emergency situations;
and/or
- o. Failure to adequately train crew members to timely respond and locate necessary
lifesaving equipment; and/or
- p. Failure to provide proper and effective medical care; and/or
- q. Failure to have medical personnel stationed at or near the subject children's pool
area; and/or
- r. Failure to provide proper life saving device and/or equipment readily available
poolside, including but not limited to, AED device, suction device, etc.; and/or
- s. Failure to adequately label the pool as "Adults Only" so that children would
reasonably know not to enter the pool; and/or
- t. Failure to properly separate the Children area from the Adult area to prevent
confusion and drowning accidents]; and/or
- u. Failure to enforce pool area rules and policies; and/or
- v. Failure to have crew and/or staff located at the pool area so that they can enforce
the pool area rules and policies; and/or
- w. Failure to have adequate policies and procedures pertaining to the subject pool area;
and/or
- x. Failure to adequately warn that there are no lifeguards on duty.

All of which caused and/or contributed to the Decedent drowning and passing away while
onboard the *Carnival Victory*.

30. At all material times, Defendant had exclusive custody and control of the vessel, *Carnival
Victory*.

31. Defendant knew of the foregoing conditions causing the Decedent's accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendant, in the exercise of reasonable care under the circumstances, should have learned of them and corrected them.

32. As a result of Carnival's negligence, the following damages were incurred:

a. Q.H. was injured about his body and extremities, including severe physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, and aggravation of any previously existing conditions therefrom and resulting death. Q.H., incurred medical expenses in the care and treatment of the injuries, suffered physical handicap, and his working ability and earning capacity in the future was impaired. Q.H. lost the money paid for the cruise, incurred extra expenses such as transportation and had the enjoyment of the cruise ruined or damaged.

b. The Estate of Q.H. incurred funeral and medical expenses. Also, the estate lost the benefit of the net accumulations that Q.H. would have obtained had he lived to his normal life expectancy.

c. The survivors suffered lost support and services, funeral expenses, decedent's companionship and protection, mental pain and suffering, loss of nurture and guidance, loss of society, and all other damages as allowable by law.

WHEREFORE, Plaintiffs demand judgment for any and all damages recoverable under the Death on the High Seas Act against Defendants and request trial by jury.

**COUNT II – NEGLIGENCE AGAINST CARNIVAL FOR THE ACTS OF THE
MEDICAL DEFENDANTS BASED ON A THEORY OF VICARIOUS LIABILITY
UNDER RESPONDEAT SUPERIOR**

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

33. On or about October 13, 2013 the Medical Defendants were the Doctor Defendants and Nurse Defendants aboard the vessel *Carnival Victory*.

34. At all times material hereto, the Medical Defendants were the agents, apparent agents, servants, and/or employees of Defendant Carnival.

35. At all times material hereto, the Medical Defendants were subject to the control and/or right to control by Defendant Carnival.

36. At all times material hereto, the Medical Defendants were acting within the scope of their employment and/or agency.

37. At all times material hereto, Carnival acknowledged that the Medical Defendants would act on Carnival's behalf, and all of the Medical Defendants accepted the undertaking.

38. At all times material hereto, Carnival is vicariously liable for the acts of the Medical Defendants based on the following:

a. They worked in the ship's medical facility aboard the vessel, which was owned and/or operated by Carnival; and/or

b. They wore a ship's uniform provided by Carnival; and/or

c. They represented themselves as the "ship's medical crew" to the Plaintiff; and/or

d. The Ship's Doctors were called ship's officer(s) by Carnival, the ship's officers and the crew; and/or

e. They ate with the ship's crew; and/or

f. They were under the commands of the ship's officers and followed all of the master's rules and regulations; and/or;

g. Their charges for medical treatment and medicine were charged directly to passenger's "Sail & Sign" account (or the equivalent shipboard credit card) linked to Carnival; and/or

h. They communicated directly with Carnival (to the captain and to unknown persons in Carnival's shore side office) while providing treatment to the Plaintiff; and/or

i. The literature provided by Carnival and its representatives showed the doctor(s) and/or nurse(s) as crewmembers and employees of Carnival;

j. There were Carnival insignias in various places inside the ship's medical facility where the Medical Defendants worked; and/or

k. They were employed full-time by Carnival; and/or

l. They were paid a salary by Carnival; and/or

m. They spoke to the Plaintiff(s) as though they had authority to do so by Carnival.

39. At all times material hereto, Carnival had a duty to provide the Plaintiff with reasonable care under the circumstances.

40. At all times material hereto, the Medical Defendants owed a duty to provide Plaintiff with reasonable care under the circumstances.

41. On or about October 13, 2013 the Medical Defendants breached their duty to provide reasonable care under the circumstances by:

a. Failure to promptly provide Plaintiff with proper and/or adequate medical care and attention; and/or

b. Failure to timely and/or properly assess the condition of the Plaintiff; and/or

c. Failure to properly treat Plaintiff's medical condition; and/or

- d. A substantial departure from the accepted standards of reasonable medical care and treatment for a ship's doctor and/or ship's nurse; and/or
- e. A breach of the prevailing professional standard of care for said health care providers, to wit: that level of care, skill and treatment which, in light of all relevant surrounding circumstances as recognized as acceptable and appropriate by a reasonably prudent similar health care provider.

42. On or about October 13, 2013, Carnival breached its duty to provide Plaintiffs with reasonable care under the circumstances through the above acts of its agents and/or employees and/or servants, including the Medical Defendants.

43. The negligence of Defendants was so far below the standard of care that it constitutes wanton willful or outrageous conduct that entitles Plaintiffs to punitive damages. Simply stated, it took an unreasonably long amount of time to respond to a medical emergency and Defendants did not have the necessary medical equipment and/or functioning medical equipment to save the decedent's life.

44. As a result of the negligence of the Medical Defendants, for which Carnival is vicariously liable based on a theory of apparent agency and/or agency by estoppel, the following damages were incurred:

- a. Q.H. was injured about his body and extremities, including severe physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, and aggravation of any previously existing conditions therefrom and resulting death. Q.H. incurred medical expenses in the care and treatment of the injuries, suffered physical handicap, and his working ability and earning capacity in the future was impaired. Q.H. lost the

money paid for the cruise, incurred extra expenses such as transportation and had the enjoyment of the cruise ruined or damaged.

b. The Estate of Q.H. incurred funeral and medical expenses. Also, the estate lost the benefit of the net accumulations that Q.H. would have obtained had he lived to his normal life expectancy.

c. The survivors suffered lost support and services, funeral expenses, decedent's companionship and protection, mental pain and suffering, loss of nurture and guidance, loss of society, and all other damages as allowable by law.

WHEREFORE, Plaintiffs demand judgment for any and all damages recoverable under the Death on the High Seas Act against Defendants and request trial by jury.

**COUNT III - NEGLIGENCE AGAINST CARNIVAL FOR THE
ACTS OF THE MEDICAL DEFENDANTS BASED ON A THEORY OF
VICARIOUSLY LIABILITY UNDER APPARENT AGENCY**

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

45. On or about October 13, 2013 the Medical Defendants were the Doctor Defendants and Nurse Defendants aboard the vessel *Carnival Victory*.

46. At all times material hereto, the Medical Defendants were represented to the Plaintiff and the ships' passengers as employees and/or agents and/or servants of Carnival, in that:

- a. They worked in the ship's medical facility aboard the vessel, which was owned and/or operated by Carnival; and/or
- b. They wore a ship's uniform provided by Carnival; and/or
- c. They represented themselves as the "ship's medical crew" to the Plaintiff; and/or
- d. The Ship's Doctors were called ship's officer(s) by Carnival, the ship's officers and the

crew; and/or

- e. They ate with the ship's crew; and/or
- f. They were under the commands of the ship's officers and followed all of the master's rules and regulations; and/or;
- g. Their charges for medical treatment and medicine were charged directly to passenger's "Sail & Sign" account (or the equivalent shipboard credit card) linked to Carnival; and/or
- h. They communicated directly with Carnival (to the captain and to unknown persons in Carnival's shore side office) while providing treatment to the Plaintiff; and/or
- i. The literature provided by Carnival and its representatives showed the doctor(s) and/or nurse(s) as crewmembers and employees of Carnival;
- j. There were Carnival insignias in various places inside the ship's medical facility where the Medical Defendants worked; and/or
- k. They were employed full-time by Carnival; and/or
- l. They were paid a salary by Carnival; and/or
- m. They spoke to the Plaintiff(s) as though they had authority to do so by Carnival.

47. It was reasonable for the Plaintiffs to believe that the Medical Defendants were Carnival's agents because they wore ship's uniforms and admitted the decedent to the ship's medical facility. In addition, at all times material hereto, the Medical Defendants spoke and acted as though they were authorized to do so by Carnival. In addition, pre-cruise literature in the public domain stated that there was a medical facility onboard the vessel with doctors and nurses, which the Plaintiff reasonably believed were Carnival's agent.

48. At no time did Carnival represent to the Plaintiff in particular, or the ship's passengers in general, that the Ship's Doctors and/or the Ship's Nurses were not agents or employees of Carnival,

in meaningful way, but instead were independent contractors.

49. At all material times hereto, Plaintiffs reasonably relied on the representations of the Medical Defendants that they were employees and/or agents and/or servants of Carnival to their detriment. This reliance was detrimental because it resulted in the decedent receiving negligent medical care. Had the Plaintiffs not detrimentally relied on the negligent untimely medical response, inadequate medical care, and improper medical advice given by the Carnival Medical staff, the decedent would not have passed away.

50. At all times material hereto, Carnival knew of the Medical Defendants' agency representation and allowed the Medical Defendants to represent themselves as such.

51. Carnival is estopped to deny that the Medical Defendants were its apparent agent and/or apparent employee and/or apparent servant.

52. On or about October 13, 2013, Carnival had a duty to provide the Plaintiff with reasonable care during a drowning emergency and through the acts of its apparent agents, the Medical Defendants breached their duty to provide Plaintiff with reasonable care under the circumstances.

53. Plaintiff was injured due to the fault and/or negligence of Carnival through the acts of its apparent agents, the Medical Defendants, as follows:

- a. Failure to promptly provide Plaintiff with proper and/or adequate medical care and attention; and/or
- b. Failure to timely and/or properly assess the condition of the Plaintiff; and/or
- c. Failure to properly treat Plaintiff's medical condition; and/or
- d. A substantial departure from the accepted standards of reasonable medical care and treatment for a ship's doctor and/or ship's nurse; and/or
- e. A breach of the prevailing professional standard of care for said health care providers, to

wit: that level of care, skill and treatment which, in light of all relevant surrounding circumstances as recognized as acceptable and appropriate by a reasonably prudent similar health care provider.

54. On or about October 13, 2013, Carnival breached its duty to provide Plaintiff with reasonable care under the circumstances through the above acts of its agents and/or employees and/or servants, including the Medical Defendants.

55. The negligence of Defendants was so far below the standard of care that it constitutes wanton willful or outrageous conduct that entitles Plaintiffs to punitive damages. Simply stated, it took an unreasonably long amount of time to respond to a medical emergency and Defendants did not have the necessary medical equipment and/or functioning medical equipment readily available to save the decedent's life.

56. As a result of the negligence of the Medical Defendants, for which Carnival is vicariously liable based on a theory of apparent agency and/or agency by estoppel, the following damages were incurred:

a. Q.H. was injured about his body and extremities, including severe physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, and aggravation of any previously existing conditions therefrom and resulting death. Q.H. incurred medical expenses in the care and treatment of the injuries, suffered physical handicap, and his working ability and earning capacity in the future was impaired. Q.H. lost the money paid for the cruise, incurred extra expenses such as transportation and had the enjoyment of the cruise ruined or damaged.

b. The Estate of Q.H. incurred funeral and medical expenses. Also, the estate lost the

benefit of the net accumulations that Q.H. would have obtained had he lived to his normal life expectancy.

c. The survivors suffered lost support and services, funeral expenses, decedent's companionship and protection, mental pain and suffering, loss of nurture and guidance, loss of society, and all other damages as allowable by law.

WHEREFORE, Plaintiffs demand judgment for any and all damages recoverable under the Death on the High Seas Act against Defendants and request trial by jury.

COUNT IV – NEGLIGENCE AGAINST DOCTOR DEFENDANTS

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

57. At all times material hereto, the DOCTOR DOE(S), was/were the ship's physicians aboard the vessel *Carnival Victory* on or about October 13, 2013.

58. At all times material hereto, the Doctor DOE(S), were physicians holding themselves out to the general public, and the Plaintiff in particular, as being competent and able to safely and properly practice the medical profession.

59. It was the duty of the Doctor DOE(S) to provide Plaintiff with reasonable care under the circumstances and/or medical care which did not fall below the applicable standard of care for cruise ship doctors.

60. On or about October 13, 2013, the Doctor Doe(s) and/or their agents, servants, and/or employees, breached their duty to provide Plaintiff with reasonable care under the circumstances.

61. On or about the above date, Plaintiff was injured due to the fault and negligence of the Doctor Doe(s) and/or their agents, servants, and/or employees as follows:

a. Failure to promptly provide Plaintiff with proper and/or adequate medical care and

attention; and/or

- b. Failure to timely and/or properly assess the condition of the Plaintiff; and/or
- c. Failure to timely and/or properly treat the Plaintiff with adequate medical equipment; and/or
- d. Failure to properly treat Plaintiff's medical condition; and/or
- e. A substantial departure from the accepted standards of reasonable medical care and treatment for a ship's doctor and/or ship's nurse; and/or
- f. A breach of the prevailing professional standard of care for said health care providers, to wit: that level of care, skill and treatment which, in light of all relevant surrounding circumstances as recognized as acceptable and appropriate by a reasonably prudent similar health care provider.

62. The negligence of Defendants was so far below the standard of care that it constitutes wanton willful or outrageous conduct that entitles Plaintiff to punitive damages. Simply stated, it took an unreasonably long amount of time to respond to a medical emergency and Defendants did not have the necessary medical equipment and/or functioning medical equipment to save the decedent's life.

63. As a result of Carnival's negligence, the following damages were incurred:

a. Q.H. was injured about his body and extremities, including severe physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, and aggravation of any previously existing conditions therefrom and resulting death. Q.H. incurred medical expenses in the care and treatment of the injuries, suffered physical handicap, and his working ability and earning capacity in the future was impaired. Q.H. lost the

money paid for the cruise, incurred extra expenses such as transportation and had the enjoyment of the cruise ruined or damaged.

b. The Estate of Q.H. incurred funeral and medical expenses. Also, the estate lost the benefit of the net accumulations that Q.H. would have obtained had he lived to his normal life expectancy.

c. The survivors suffered lost support and services, funeral expenses, decedent's companionship and protection, mental pain and suffering, loss of nurture and guidance, loss of society, and all other damages as allowable by law.

WHEREFORE, Plaintiffs demand judgment for any and all damages recoverable under the Death on the High Seas Act against Defendant and request trial by jury.

COUNT V – NEGLIGENCE AGAINST NURSE DEFENDANTS

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

64. At all times material hereto, the Nurse Defendants, NURSE DOE(S), were the ship's nurses aboard the vessel *Carnival Victory* on or about October 13, 2013.

65. It was the duty of the Nurse Defendants to provide Plaintiff with reasonable care under the circumstances and/or medical care which did not fall below the applicable standard of care for cruise ship nurses.

66. On or about October 13, 2013, the Nurse Defendants, and/or their agents, servants, and/or employees breached their duty to provide Plaintiff with reasonable care under the circumstances.

67. On or about the above date(s), Plaintiff was injured due to the fault and negligence of the Nurse Defendants, and/or their agents, servants, and/or employees as follows:

a. Failure to promptly provide Plaintiff with proper and/or adequate medical care and

attention; and/or

- b. Failure to timely and/or properly assess the condition of the Plaintiff; and/or
- c. Failure to timely and/or properly treat the Plaintiff with adequate medical equipment; and/or
- d. Failure to properly treat Plaintiff's medical condition; and/or
- e. A substantial departure from the accepted standards of reasonable medical care and treatment for a ship's doctor and/or ship's nurse; and/or
- f. A breach of the prevailing professional standard of care for said health care providers, to wit: that level of care, skill and treatment which, in light of all relevant surrounding circumstances as recognized as acceptable and appropriate by a reasonably prudent similar health care provider.

68. The negligence of Defendants was so far below the standard of care that it constitutes wanton willful or outrageous conduct that entitles Plaintiff to punitive damages. Simply stated, it took an unreasonably long amount of time to respond to a medical emergency and Defendants did not have the necessary medical equipment and/or functioning medical equipment readily available to save the decedent's life.

69. As a result of Carnival's negligence, the following damages were incurred:

a. Q.H. was injured about his body and extremities, including severe physical pain and suffering, mental and emotional anguish, loss of enjoyment of life, disability, impairment, inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity, disfigurement, and aggravation of any previously existing conditions therefrom and resulting death. Q.H. incurred medical expenses in the care and treatment of the injuries, suffered physical handicap, and his working ability and earning capacity in the future was impaired. Q.H. lost the

money paid for the cruise, incurred extra expenses such as transportation and had the enjoyment of the cruise ruined or damaged.

b. The Estate of Q.H. incurred funeral and medical expenses. Also, the estate lost the benefit of the net accumulations that Q.H. would have obtained had he lived to his normal life expectancy.

c. The survivors suffered lost support and services, funeral expenses, decedent's companionship and protection, mental pain and suffering, loss of nurture and guidance, loss of society, and all other damages as allowable by law.

WHEREFORE, Plaintiffs demand judgment for any and all damages recoverable under the Death on the High Seas Act against Defendant and request trial by jury.

**COUNT VI –J.H'S COUNT FOR INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS AGAINST DEFENDANTS**

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

70. On or about the above referenced date, Defendants and/or their agents, servants and/or employees deliberately and/or recklessly inflicted emotional distress on the immediate family of Q.H. by, *inter alia*, failing to utilize lifeguards at swimming pools onboard its ships which are designed and marketed for young children; responding to a medical emergency without any urgency and in an unreasonable amount of time; and failing to have adequate medical equipment and/or lifesaving devices at or near the pool area in case of an emergency.

71. Despite Carnival marketing its pools onboard its ships as "kid friendly;" and despite numerous children drowning or near-drowning onboard Carnival ships and other cruise ships prior to this incident; and despite Disney Cruise Lines posting lifeguards at its pools onboard since 2013, Carnival actively decided not to post lifeguards at its pools onboard its ships to prevent these

undeniably preventable tragedies. Carnival's misconduct in failing to have lifeguards is wholly intentional and calculated to save Carnival money while greatly increasing the risk to its passengers. Based on the culmination of the circumstances, Carnival's conduct is outrageous and goes beyond all possible bounds of decency.

72. Carnival's deliberate and/or reckless misconduct caused J.H. severe mental and emotional anguish and harm by seeing, hearing and witnessing the traumatizing event where Q.H. drowned and passed. J.H. also suffered severe mental and emotional anguish and harm by seeing, hearing and witnessing the delayed and inadequate medical treatment by Medical Defendants.

73. Carnival's knowing and intentional failure to provide lifeguards at children's swimming pools is a deliberate and reckless infliction of mental suffering on the Plaintiff. It is outrageous and shocking beyond the bounds of all decency that a multi-billion dollar corporation can hold itself out as having "kid friendly" cruises and yet fail to provide even the most basic safety measures at swimming pools that are designed for children and are an attractive nuisance to children. Simply stated, Carnival is literally luring children into its swimming pools knowing that many have drowned, will drown, and knowing that the incident(s) could easily be prevented. Meanwhile, Carnival's actively made a decision to attempt to insulate themselves from any responsibility by: (1) refusing to post lifeguards at its pools before the incident; (2) posting inadequate signage to attempt to advise passengers of the lack of lifeguards; and (3) recognizing the danger of not having a lifeguard or staff member supervising by placing a staff member to supervise after the death of Q.H. Nevertheless, Carnival knew or should have known that its actions would lead to drownings and/or near-drownings of minor passengers but intentionally ignored those risks in implementing or continuing to implement its policy to not post lifeguards at its pools. This type of intentional misconduct must be considered unacceptable in our civilized society. Carnival's intentional

misconduct caused the Plaintiff severe mental and emotional suffering.

74. As a direct and proximate result of Defendants' Intentional Infliction of Emotional Distress, the Plaintiff experienced mental and emotional anguish, loss of enjoyment of life, impairment and inconvenience in the normal pursuits and pleasures of life. In addition, these losses continue into the future.

WHEREFORE, the Plaintiffs demand judgment for all damages recoverable under the law, including punitive damages, against the Defendants and request trial by jury.

**COUNT VII – J.H.'S COUNT FOR NEGLIGENT INFLICTION OF EMOTIONAL
DISTRESS AGAINST DEFENDANTS**

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one (1) through twenty-six (26) as though alleged originally herein.

75. On or about the above referenced date, Defendants and/or their agents, servants and/or employees negligently inflicted emotional distress on J.H. by, *inter alia*, failing to utilize lifeguards at swimming pools onboard its ships which are designed and marketed for young children; responding to a medical emergency without any urgency and in an unreasonable amount of time; and failing to have adequate medical equipment at or near the pool area in case of an emergency.

76. Despite Carnival marketing its pools onboard its ships as "kid friendly;" and despite numerous children drowning or near-drowning onboard Carnival ships and other cruise ships prior to this incident; and despite Disney Cruise Lines posting lifeguards at its pools onboard since 2013, Carnival actively decided not to post lifeguards at its pools onboard its ships to prevent these undeniably preventable tragedies. Carnival's s misconduct in failing to have lifeguards is negligent and calculated to save Carnival money while greatly increasing the risk to its passengers. Based on the culmination of the circumstances, Carnival's conduct is negligent.

77. J.H. saw, heard, witnessed, and/or arrived on the scene as the traumatizing event occurred.

In addition, he was an immediate witness and/or bystander to the efforts to save his brother, Q.H. as well as an immediate witness and/or bystander to the passing of Q.H. Moreover, J.H. was harmed by bearing witness to the terror of seeing his brother, Q.H., lose his life. J.H. sustained a physical impact and/or was placed in immediate risk of physical harm as a result of Q.H.'s drowning and passing.

78. Carnival's negligent conduct caused J.H. severe mental and emotional anguish and harm by seeing, hearing, witnessing, and/or arriving on the scene where the traumatizing event occurred to Q.H.'s drowning and passing. The Plaintiff also suffered severe mental and emotional anguish and harm by seeing, hearing and witnessing the delayed and inadequate medical treatment by Medical Defendants.

79. As a direct and proximate result of Defendants' Negligent Infliction of Emotional Distress, J.H. experienced mental and emotional anguish, loss of enjoyment of life, impairment and inconvenience in the normal pursuits and pleasures of life. These losses continue into the future.

WHEREFORE, the Plaintiff demands judgment for all damages recoverable under the law, including punitive damages, against the Defendants and requests trial by jury.

DATED OCTOBER 11, 2016

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