

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: NSD806/2020  
File Title: SUSAN KARPIK v CARNIVAL PLC (ARBN 107 998 443 / ABN 23107998443) & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 12/04/2021 3:01:55 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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## Defence to Further Amended Statement of Claim

No. NSD806/2020

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Susan Karpik**  
Applicant

**Carnival PLC** (ARBN 107 998 443 / ABN 23107998443)  
First Respondent

**Princess Cruise Lines Limited** (a company registered in Bermuda)  
Second Respondent

### **A** Parties

#### A.1 The Applicant and Group Members

1. The Respondents do not plead to paragraph 1.
2. The Respondents do not plead to paragraph 2.
3. The Respondents do not know and cannot admit paragraph 3.

#### A.2 The Respondents

4. In response to paragraph 4 the Respondents:
  - a. as to sub-paragraph (d):
    - i. admit that the First Respondent carried on business in Australia;
    - ii. deny that the Voyage involved the First Respondent carrying on business in Australia.
  - b. deny sub-paragraph (g); and
  - c. otherwise admit the paragraph.
5. In response to paragraph 5 the Respondents:

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- a. deny sub-paragraphs (b) and (d); and
- b. otherwise admit the paragraph.

**B Coronavirus Characteristics**

- 6. The Respondents rely on paragraphs 7 – 16 below.
- 7. The Respondents admit paragraph 7.
- 8. The Respondents admit paragraph 8.
- 9. The Respondents admit paragraph 9.
- 10. The Respondents admit paragraph 10.
- 11. The Respondents admit paragraph 11.
- 12. The Respondents admit that Coronavirus is contagious, but otherwise deny paragraph 12.
- 13. The Respondents admit there was no vaccine for Coronavirus at any time before the completion of the Voyage, but otherwise deny paragraph 13.
- 14. In response to paragraph 14 the Respondents:
  - a. admit sub-paragraph (a) – (d) inclusive, (f) and (g); and
  - b. do not know and cannot admit sub-paragraph (e).
- 14A. The Respondents admit paragraph 14A.
- 15. The Respondents admit paragraph 15.
- 16. The Respondents admit paragraph 16.
- 17. The Respondents admit paragraph 17.
- 18. In response to paragraph 18 the Respondents:
  - a. admit that World Health Organisation (**WHO**) Coronavirus disease 2019 (COVID-19) Situation Report – 47, containing data as reported by national authorities by 10am Central European Time (8pm AEDT) on 7 March 2020 (**WHO Sitrep 47**) contained the information alleged in sub-paragraph (a), (b), (c)(i)-(ii), (c)(iv)-(vii) and (d);
  - b. say that WHO Sitrep 47 says Canada had 51 confirmed cases as at 7 March 2020; and
  - c. otherwise do not know and cannot admit the paragraph.
- 19. In response to paragraph 19 the Respondents:

- a. admit that the Australian Government, Department of Health, Communicable Diseases Intelligence, COVID-19, Australia: Epidemiological Report 6, reporting week ending 1900 AEDT 7 March 2020, published on 11 March 2020 contained the information alleged in sub-paragraph (a), (b), (c), (d) and in the chapeau to (e);
- b. admit that the media releases referred to in the particulars to sub-paragraph (e) contained the informed alleged in the particulars; and
- c. otherwise do not know and cannot admit the paragraph.

**C Coronavirus Risk**

19A The Respondents deny paragraph 19A.

20. In response to paragraph 20, the Respondents:

- a. admit that prior to the Voyage of the Ruby Princess departing Sydney on 8 March 2020, there had been cases of Coronavirus on board the Diamond Princess and the Grand Princess, both of which are ships owned by the Second Respondent; and
- b. otherwise do not admit the paragraph.

**C.1 Diamond Princess outbreak**

21. The Respondents admit paragraph 21.

22. In response to paragraph 22 the Respondents:

- a. admit there were approximately 3,700 passengers and crew on the Diamond Princess; and
- b. otherwise deny the paragraph.

23. In response to paragraph 23 the Respondents:

- a. admit the Second Respondent made the announcement alleged in the paragraph; and
- b. otherwise deny the paragraph.

24. In response to paragraph 24 the Respondents:

- a. admit the Second Respondent made the announcement alleged in the paragraph; and
- b. otherwise deny the paragraph.

25. In response to paragraph 26 the Respondents:

- a. admit the Second Respondent made the announcement alleged in the paragraph; and
  - b. otherwise deny the paragraph.
26. In response to paragraph 26 the Respondents:
- a. admit the Second Respondent made the announcement alleged in the paragraph; and
  - b. otherwise deny the paragraph.
27. In response to paragraph 27 the Respondents:
- a. admit the Second Respondent made the announcement alleged in the paragraph; and
  - b. otherwise deny the paragraph.
28. In response to paragraph 28 the Respondents:
- a. admit the Second Respondent made the announcement alleged in the paragraph; and
  - b. otherwise deny the paragraph.
29. The Respondents admit paragraph 29.
30. The Respondents admit paragraph 30.
31. The Respondents admit paragraph 31.
32. The Respondents admit paragraph 32.

C.2 Grand Princess Outbreak

33. The Respondents admit paragraph 33.
34. In response to paragraph 34 the Respondents:
- a. say that there were 2,422 guests and 1,122 crew; and
  - b. otherwise deny the paragraph.
35. The Respondents admit paragraph 35.
36. The Respondents admit paragraph 36.
37. The Respondents admit paragraph 37.

C.3 Voyage of the Ruby Princess 24 February - 8 March 2020

38. The Respondents admit paragraph 38.
39. The Respondents admit paragraph 39.

40. In response to paragraph 40 the Respondents:
- a. admit sub-paragraph (a);
  - b. as to sub-paragraph (b):
    - i. say that the announcement was made at the request of NSW Health as part of its "Ruby Princess COVID-19 health assessment, Sydney arrival Sunday 8 March";
    - ii. say that the screening was conducted by NSW Health; and
    - iii. otherwise admit the sub-paragraph;
  - c. as to sub-paragraph (c):
    - i. say that the passengers who had first presented to the medical centre prior to the screening had been provided with a face mask and advised to wear the mask to the screening;
    - ii. the passengers that attended the screening but had not previously attended the medical centre, or who had attended the medical centre and obtained a mask but had not worn it to the screening, were provided a face mask at the screening; and
    - iii. otherwise do not admit the sub-paragraph.
  - d. do not know and cannot admit sub-paragraph (d);
  - e. admit sub-paragraph (e);
  - f. admit sub-paragraph (f);
  - g. do not know and cannot admit sub-paragraphs (g), (h) and (i);

**Particulars**

- i. as to 40(b)(i) and (ii) – Emails at Annexure KAR-3 and KAR-9 in Exhibit 16 in the evidence in the Special Commission of Inquiry.

41. The Respondents deny paragraph 41.

41A. In response to paragraph 41A the Respondents:

- a. admit there was a risk that Passengers would contract Coronavirus during the Voyage; and
- b. otherwise deny the paragraph.

**D Reasonable Precautions**

41B. In response to paragraph 41B the Respondents:

- a. admit the risk of Passengers contracting Coronavirus during the Voyage could have been avoided by cancelling the Voyage; and
  - b. otherwise deny the paragraph.
42. In response to paragraph 42 the Respondents:
- a. admit that the measures referred to at sub-paragraphs (a) – (l) could have reduced the risk of Passengers contracting Coronavirus during the Voyage;
  - b. do not admit the allegation in sub-paragraph (m) which is vague and embarrassing and should be struck out; and
  - c. otherwise deny the paragraph.
43. In response to paragraph 43 the Respondents:
- a. admit that the measures referred to at sub-paragraphs (a) – (h) could have reduced the risk of Passengers contracting Coronavirus during the Voyage;
  - b. admit that offering Passengers and crew medical advice and treatment could have reduced the risk of Passengers contracting Coronavirus during the Voyage;
  - c. do not admit the allegation in sub-paragraph (v) which is vague and embarrassing and should be struck out; and
  - d. otherwise deny the paragraph.
44. [Not used].
- E Guidelines, protocols and procedures**
- E.1 CDC Coronavirus Guidance for Ships**
45. The Respondents admit paragraph 45.
46. The Respondents admit paragraph 46.
- E.2 NSW Health Coronavirus Procedures for the Cruise Line Industry**
47. The Respondents admit paragraph 47.
48. The Respondents admit paragraph 48.
49. In response to paragraph 49 the Respondents:
- a. say that the sub-paragraphs generally reflect the content of parts of the NSW Health 22 February Enhanced Procedure; and
  - b. otherwise do not admit the paragraph and rely on the NSW Health 22 February Enhanced Procedure for its full force and effect.
50. In response to paragraph 50 the Respondents:

- a. say that the sub-paragraphs generally reflect the content of parts of the letter the First Respondent wrote to NSW Health on 26 February 2020; and
- b. otherwise do not admit the paragraph and rely on the letter for its full force and effect.

51. In response to paragraph 51 the Respondents:

- a. say that NSW Health sent an email with a further draft of the 'Enhanced COVID-19 Procedures for the Cruise Line industry' dated 3 March 2020 (**NSW Health 3 March Draft Enhanced Procedure**), to Joel Katz, Managing Director, Cruise Lines International Association (CLIA) for review, who provided the document by email to the First Respondent.
- b. say that the paragraph generally reflects the content of part of the NSW Health 3 March Draft Enhanced Procedure; and
- c. otherwise do not admit the paragraph and rely on the NSW Health 3 March Draft Enhanced Procedure for its full force and effect.

#### Particulars

i. As to (a):

- 1. The emails are those referred to in the particulars to paragraph 51 of the ASOC.
- 2. The emails referred to in the particulars to paragraph 52 of the ASOC confirm that the Enhanced Procedure that came to be circulated on 9 March 2020 was an update to the NSW Health 22 February Enhanced Procedure, and that the NSW Health 3 March Draft Enhanced Procedure was only ever a draft circulated for review.

52. In response to paragraph 52 the Respondents:

- a. admit that the Respondents received an update to the NSW Health 'Enhanced COVID-19 Procedures for the Cruise Line industry' dated 9 March 2020 (**NSW Health 9 March Enhanced Procedure**) on or about 10 March 2020;
- b. say that the paragraph generally reflects the content of part of the NSW Health 9 March Enhanced Procedure; and
- c. otherwise do not admit the paragraph and rely on the NSW Health 9 March Enhanced Procedure for its full force and effect.

53. In response to paragraph 53 the Respondents:



- a. say that sub-paragraph (a) and (d) generally reflect the content of part of the document titled Information for the Cruise Industry (v3);
- b. otherwise do not admit the sub-paragraphs and rely on the document titled Information for the Cruise Industry (v3) for its full force and effect;
- c. deny sub-paragraph (b) and (c);
- d. in respect of sub-paragraphs (e), (f), (g), (h) and (i):
  - i. say that the document titled Information for the Cruise Industry (v3) generally identified those matters, along with other matters, as measures which would help reduce the risk of illness on board cruise vessels; and
  - ii. otherwise do not admit the sub-paragraphs and rely on the document titled Information for the Cruise Industry (v3) for its full force and effect; and
- e. in respect of sub-paragraph (j):
  - i. say that the document titled Information for the Cruise Industry (v3) generally identified the use of surgical mask, disposable full length gown, gloves and eye protection as one of the steps a crew member should take if required to assist a passenger who was unwell; and
  - ii. otherwise do not admit the sub-paragraph and rely on the document titled Information for the Cruise Industry (v3) for its full force and effect.

#### E.4 CDNA Guidelines

54. The Respondents admit paragraph 54.
55. In response to paragraph 55 the Respondents:
  - a. say that the paragraph generally reflects the content of part of the CDNA Guidelines in January and February 2020; and
  - b. otherwise do not admit the paragraph and rely on the document for its full force and effect.
56. In response to paragraph 56 the Respondents:
  - a. say that the paragraph generally reflects the content of part of the CDNA Guidelines as amended on or about 10 March 2020; and
  - b. otherwise do not admit the paragraph and rely on the document for its full force and effect.

E.5 Respondents' own protocols

57. In response to paragraph 57 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
58. In response to paragraph 58 the Respondents:
- a. say that sub-paragraphs (a) and (b) generally reflect the content of part of the Respondent's Fleet Sanitation Protocol; and
  - b. otherwise do not admit the paragraph and rely on the Respondent's Fleet Sanitation Protocol for its full force and effect.
59. In response to paragraph 59 the Respondents:
- a. admit that, on or about February 2020, a document titled Identification, Assessment and Management of Patients for Coronavirus Disease 2019 (COVID-19) was issued by the Holland America Group;
  - b. repeat and rely on paragraph 4(b) above; and
  - c. otherwise deny the paragraph.
60. In response to paragraph 60 the Respondents:
- a. say that sub-paragraphs (a) – (f) inclusive generally reflect the content of parts of the Respondents' Identification and Assessment Protocol; and
  - b. otherwise do not admit the paragraph and rely on the Respondents' Identification and Assessment Protocol for its full force and effect.
61. In response to paragraph 61 the Respondents:
- a. say that sub-paragraphs (a) – (e) inclusive are extracts of the content of parts of the video referred to in the particulars to the paragraph;
  - b. say that the Respondent's screening policy was set out in the Instructional Notices, Operational Directives and the Traveller's Health Declarations which were promulgated in accordance with them, not in the video referred to in paragraph 61; and
  - c. otherwise deny the paragraph.
62. The Respondents admit paragraph 62.
63. In response to paragraph 63 the Respondents:

- a. say that as at 8 March 2020 the Second Respondent was operating the Ruby Princess at a high level of cleaning and sanitation; and
- b. otherwise does not admit the paragraph.

64. [not used].

**F The Voyage**

**F.1 Pre-boarding and boarding**

65. The Respondents admit paragraph 65.

66. The Respondents admit paragraph 66.

67. In response to paragraph 67 the Respondents:

- a. admit the paragraph with respect to the Second Respondent;
- b. deny the paragraph with respect to the First Respondent.

68. In response to paragraph 68 the Respondents:

- a. admit the paragraph generally reflects the content of part of the email sent by the Second Respondent; and
- b. otherwise deny the paragraph.

69. In response to paragraph 69 the Respondents:

- a. admit sub-paragraphs (a), (d)(i) and (ii), (f), (g) and (h);
- b. in response to sub-paragraph (b):
  - i. admit that not all guests had their temperature taken; and
  - ii. otherwise deny the sub-paragraph;
- c. deny sub-paragraph (c) and say that passengers were asked to declare whether they had travelled to certain specified countries in the previous 14 days;
- d. as to sub-paragraph (d)(iii):
  - i. say that two different versions of the 'Traveller's Health Declaration – Australia' were used, one which contained the countries listed in paragraph 69(d)(iii) as "Question 3" countries, and another which listed those countries and which also listed as Question 3 countries Indonesia and Cambodia; and
  - ii. otherwise deny the paragraph.
- e. as to sub-paragraph (e):
  - i. admit the paragraph with respect to the Second Respondent;

ii. deny the paragraph with respect to the First Respondent.

70. The Respondents admit paragraph 70.
71. The Respondents admit paragraph 71.
72. The Respondents admit paragraph 72.
73. The Respondents do not know and cannot admit paragraph 73.
74. The Respondents admit paragraph 74.
75. The Respondents admit paragraph 75.
76. In response to paragraph 76 the Respondents:
- a. say that:
    - i. more than 1,600 Passengers listed their home country or nationality as Australia in their booking;
    - ii. more than 500 Passengers listed their home country or nationality as the United States of America in their booking;
    - iii. more than 200 Passengers listed their home country or nationality as the United Kingdom, France, Germany, the Netherlands or Spain in their booking; and
  - b. otherwise do not know and cannot admit the paragraph.
77. In response to paragraph 77 the Respondents:
- a. admit that swabs taken from 2 Passengers and 1 crew member on 18 March 2020 tested positive for Coronavirus;
  - b. admit that of the 2 Passengers referred to at sub-paragraph (a) above, one of them passed away on 23 March 2020; and
  - c. otherwise do not know and cannot admit the paragraph.

## F.2 Medical supplies

78. The Respondents admit paragraph 78.
79. In response to paragraph 79 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
80. The Respondents admit paragraph 80.
81. The Respondents admit paragraph 81.

82. In response to paragraph 82 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
83. The Respondents admit paragraph 83.
84. The Respondents admit paragraph 84.
85. In response to paragraph 85 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
86. In response to paragraph 86 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.

**G The Applicant**

87. The Respondents do not know and cannot admit paragraph 87.
88. The Respondents admit paragraph 88.
89. The Respondents do not know and cannot admit paragraph 89.
90. The Respondents do not know and cannot admit paragraph 90.
91. In response to paragraph 91 the Respondents:
- a. say that the Applicant was sent Emergency Notification emails in the lead up to the Voyage; and
  - b. otherwise deny the paragraph.

**Particulars**

As to (a) – Emergency Notification emails were sent on 25 February and 29 February 2020.

**G.1 The Applicant's cabin**

92. The Respondents admit paragraph 92.
93. The Respondents do not know and cannot admit paragraph 93.

**G.2 Physical distancing on the Voyage**

94. In response to paragraph 94 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;

- b. deny the paragraph with respect to the First Respondent.
95. The Respondents admit paragraph 95.
96. The Respondents admit paragraph 96.
97. In response to paragraph 97 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
98. In response to paragraph 98 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
99. The Respondents admit paragraph 99.
100. In response to paragraph 100 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
101. In response to paragraph 101 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
102. In response to paragraph 102 the Respondents:
- a. admit the paragraph with respect to the Second Respondent;
  - b. deny the paragraph with respect to the First Respondent.
103. The Respondents do not know and cannot admit paragraph 103.
104. The Respondents do not know and cannot admit paragraph 104.
- G.3** **Illness**
105. The Respondents do not know and cannot admit paragraph 105.
106. The Respondents do not know and cannot admit paragraph 106.
107. In response to paragraph 107 the Respondents:
- a. admit Mr Karpik attended the Medical Centre on 17 March 2020; and
  - b. otherwise do not know and cannot admit the paragraph.
108. The Respondents admit the medical centre on board the Ruby Princess was operated by the Second Respondent.

109. The Respondents do not know and cannot admit paragraph 109.
110. In response to paragraph 110 the Respondents:
- a. say that Mr Karpik attended the medical centre for the public health screening on 17 March 2020; and
  - b. admit that other Passengers attended at that time; and
  - c. otherwise do not admit the paragraph.
111. The Respondents do not know and cannot admit paragraph 111.
112. In response to paragraph 112 the Respondents say:
- a. at the time of Mr Karpik's medical consultation on 17 March 2020, his symptoms did not meet the criteria to be advised to isolate; and
  - b. otherwise do not know and cannot admit paragraph 112
113. The Respondents do not know and cannot admit paragraph 113.
114. The Respondents do not know and cannot admit paragraph 114.
115. In response to paragraph 115 the Respondents:
- a. admit that Mr Karpik was attended by a female staff member when he attended the medical centre on 17 March 2020; and
  - b. otherwise do not know and cannot admit the paragraph.
116. In response to paragraph 116 the Respondents:
- a. admit the female staff member advised Mr Karpik of the matters alleged in sub-paragraph (a) and (b); and
  - b. do not know and cannot admit sub-paragraph (c).
117. The Respondents do not know and cannot admit paragraph 117.
118. The Respondents admit paragraph 118.
119. The Respondents do not know and cannot admit paragraph 119.
120. The Respondents do not know and cannot admit paragraph 120.
121. The Respondents do not know and cannot admit paragraph 121.
- G.4 Physical distancing on disembarkation
122. The Respondents admit paragraph 122.
123. The Respondents do not know and cannot admit paragraph 123.
124. The Respondents do not know and cannot admit paragraph 124.

- 125. The Respondents do not know and cannot admit paragraph 125.
- 126. The Respondents do not know and cannot admit paragraph 126.
- 127. The Respondents do not know and cannot admit paragraph 127.
- 128. The Respondents deny paragraph 128.
- 129. The Respondents do not know and cannot admit paragraph 129.

G.5 The Applicant and Mr Karpik did not 'come back new' from their cruise

- 130. The Respondents do not know and cannot admit paragraph 130.
- 131. The Respondents do not know and cannot admit paragraph 131.
- 132. The Respondents do not know and cannot admit paragraph 132.
- 133. The Respondents do not know and cannot admit paragraph 133.
- 134. The Respondents do not know and cannot admit paragraph 134.
- 135. The Respondents do not know and cannot admit paragraph 135.
- 136. The Respondents do not know and cannot admit paragraph 136.
- 137. The Respondents do not know and cannot admit paragraph 137.
- 138. The Respondents do not know and cannot admit paragraph 138.
- 139. The Respondents do not know and cannot admit paragraph 139.
- 140. The Respondents do not know and cannot admit paragraph 140.
- 141. The Respondents do not know and cannot admit paragraph 141.
- 142. The Respondents do not know and cannot admit paragraph 142.
- 143. The Respondents do not know and cannot admit paragraph 143.
- 144. The Respondents do not know and cannot admit paragraph 144.
- 145. The Respondents do not know and cannot admit paragraph 145.

G.6 The Applicant's loss and damage

- 146. The Respondents do not know and cannot admit paragraph 146.

**H Knowledge of the Respondents**

H.1 Knowledge prior to the Voyage

- 147. In response to paragraph 147 the Respondents:
  - a. as to sub-paragraph (a):



- i. admit that, by 5 March 2020, the Respondents knew, or ought reasonably to have known:
      - 1. of the matters pleaded in paragraphs 7, 8, 9, 10, 11, 14(a) – (d), 14(f), 14(g), 14A, 15 and 16;
      - 2. that Coronavirus was contagious;
      - 3. there was no vaccine for Coronavirus at any time before the completion of the Voyage;
    - ii. deny that, by 5 March 2020, the Respondents knew, or ought reasonably to have known of the matters pleaded in paragraphs 14(e);
  - b. admit sub-paragraph (b);
  - c. as to sub-paragraph (c):
    - i. deny that the Respondents knew, or ought reasonably to have known of the matters pleaded in paragraph 19A;
    - ii. admit the Respondents knew, or ought reasonably to have known of the matters pleaded in paragraph 20 to 30 inclusive;
  - d. admit sub-paragraph (d), (e), (f), (g), (h), (i) and (l);
  - e. deny sub-paragraph (j) and (m).
148. In response to paragraph 148 the Respondents:
- a. repeat and rely on paragraph 147 above;
  - b. deny sub-paragraph (b);
  - c. admit sub-paragraph (c), (d), (j) and (k);
  - d. deny sub-paragraphs (e) – (i).
149. The Respondents deny paragraph 149.
150. In response to paragraph 150 the Respondents:
- a. admit sub-paragraph (f), (g) and (i); and
  - b. otherwise deny the paragraph.
- H.2 Knowledge at and after sailing
151. In response to paragraph 151 the Respondents:
- a. as to sub-paragraph (a), repeat and rely on paragraph 147 above;
  - b. as to sub-paragraph (b), repeat and rely on paragraph 148 above;

- c. as to sub-paragraph (c), repeat and rely on paragraph 150 above;
- d. admit sub-paragraph (d);
- e. as to sub-paragraph (e):
  - i. repeat and rely on paragraphs 65 to 76 above; and
  - ii. deny the sub-paragraph;
- f. admit sub-paragraph (f).

### H.3 Knowledge of the NSW Health and CDNA Guidelines

- 152. The Respondents admit paragraph 152.
- 153. The Respondents deny paragraph 153 and say that:
  - a. the CDNA Guidelines were guidelines used by clinicians and health authorities in Australia for determining whether to test someone for Coronavirus and how to manage confirmed and suspect cases;
  - b. the CDNA Guidelines do not purport to be advice to the public on how to assess or respond to the risk of Coronavirus being present in any particular location;
  - c. the CDNA Guidelines were not advice to the operators of ships in international waters on how to assess or respond to the risk of Coronavirus being present on those ships;
  - d. neither the CDNA, nor any Australian government agency was advising the public to assess or respond to the risk of COVID-19 being present in any particular location by reference to the CDNA Guidelines; and
  - e. Neither NSW Health nor the Commonwealth advised the Respondents that passengers and crew of the Ruby Princess should be advised that they, or people on board fell within the changed CDNA testing criteria.
- 154. The Respondents deny paragraph 154.
- 155. The Respondents deny paragraph 155.
- 156. The Respondents deny paragraph 156.
- 157. The Respondents admit paragraph 157.

### H.4 Knowledge of disappointment

- 158. The Respondents admit paragraph 158.
- 159. In response to paragraph 159 the Respondents:
  - a. admit the paragraph with respect to the Second Respondent;

- b. deny the paragraph with respect to the First Respondent.

**I Claim under the ACL**

160. The Respondents deny paragraph 160.

161. In response to paragraph 161 the Respondents:

- a. say that the Second Respondent supplied or offered to supply the Passenger Group Members with goods and services during the Voyage that were reasonably necessary to enable them to have a safe and enjoyable cruise; and
- b. otherwise deny the paragraph.

162. In response to paragraph 162 the Respondents:

- a. repeat paragraph 161; and
- b. otherwise deny the paragraph.

163. In response to paragraph 163 the Respondents:

- a. admit that Passenger Group Members acquired services from the Second Respondent on the Voyage; and
- b. otherwise deny the paragraph.

164. In response to paragraph 164 the Respondents:

- a. admit that the amount paid by the Passenger Group Members for the services provided to them on the Voyage did not exceed \$40,000;
- b. admit that the services provided to the Passenger Group Members on the Voyage were of a kind ordinarily acquired for personal, domestic or household consumption; and
- c. otherwise deny the paragraph.

165. In response to paragraph 165 the Respondents:

- a. admit that the services provided to the Passenger Group Members during the Voyage were services provided in trade or commerce; and
- b. deny that the services provided to the Passenger Group Members during the Voyage were services provided in trade or commerce within Australia or between Australia and places outside Australia.

**I.2 Australian Consumer Law Guarantees**

166. The Respondents admit paragraph 166.

167. The Respondents admit paragraph 167.

168. The Respondents admit paragraph 168.
169. The Respondents admit paragraph 169.
170. In response to paragraph 170 the Respondents:
- a. admit that by going on the Voyage, Passenger Group Members impliedly made it known that they were desirous of having a safe, relaxing and pleasurable cruise holiday; and
  - b. otherwise deny the paragraph.
171. The Respondents deny paragraph 171.
172. In response to paragraph 172 the Respondents:
- a. admit that by going on the Voyage, Passenger Group Members impliedly made it known that they were desirous of having a safe, relaxing and pleasurable cruise holiday; and
  - b. otherwise deny the paragraph.
173. The Respondents deny paragraph 173.
174. The Respondents deny paragraph 174.

**I.3 Alleged breach of purpose and result guarantees**

175. The Respondents deny paragraph 175.
176. The Respondents deny paragraph 176.
177. The Respondents deny paragraph 177.

**J Negligence**

- 177AA. With respect to the negligence claim of the Passenger Group Members the Respondents say that:
- a. the substantive law governing the claims of UK sub-group members is the law of England;
  - b. the substantive law governing the claims of US sub-group members is:
    - i. the general maritime law of the United States, except in cases involving death are governed exclusively by the Death on the High Seas Act, 46 USC § 30301; and
    - ii. to the extent such maritime law is not applicable, the laws of the State of California;

- c. the substantive law governing the claims of other Passenger Group Members is the law of New South Wales.

#### **Particulars**

- i. As to (a) – UK passage contract, cl 2
- ii. As to (b) – US passage contract, cll 1 and 15
- iii. As to (c) – Australian passage contract, cll 34, 37 or 38 from time to time.

#### J.1 Risk of Harm

177A. In response to paragraph 177A the Respondents:

- a. admit sub-paragraphs (a) and (b);
- b. as to sub-paragraph (c):
  - i. admit that there was a risk that Passengers may feel distressed if they discovered they had been in close contact with another person who contracted a contagious disease, such as Coronavirus;
  - ii. otherwise deny the sub-paragraph;
- c. admit sub-paragraphs (d).

177B. In response to paragraph 177B the Respondents:

- a. admit the risks referred to in sub-paragraph 177A(a) and (b) were not insignificant; and
- b. otherwise deny the paragraph.

177C. In response to paragraph 177C the Respondents:

- a. admit the risks referred to in sub-paragraph 177A(a) and (b) were reasonably foreseeable; and
- b. otherwise deny the paragraph.

#### J.2 Duty of Care

178. In response to paragraph 178 the Respondents:

- a. admit that the Second Respondent owed a common law duty of care to Passenger Group Members (excluding UK sub-group members) to exercise due care and skill when providing services to them during the Voyage;
- b. say that the Article 14 of the Athens Convention in its application to UK sub-group members prohibits the bringing of an action for damages for the death of

or personal injury to a passenger, or for the loss of or damage to luggage, otherwise than in accordance with the Convention; and

c. otherwise deny paragraph 178.

179. In response to paragraph 179 the Respondents:

a. admit that the standard of care owed by the Second Respondent has referred to at paragraph 178(a) above is to be determined by factors including those pleaded at paragraph 179 sub-paragraphs (a) – (c) of the amended statement of claim; and

b. otherwise deny sub-paragraph (d).

180. The Respondents deny paragraph 180.

180A. The Respondents deny paragraph 180A.

181. [not used]

182. [not used]

183. [not used]

184. [not used]

185. [not used]

186. [not used]

187. [not used]

188. [not used]

189. [not used]

190. [not used]

191. [not used]

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- 265. [not used]
- 266. [not used]
- 267. [not used]
- 268. [not used]

**K Misleading and deceptive conduct**

- 269. In response to paragraph 269 the Respondents:
  - a. say that by allowing the Passenger Group Members to board the ship, the Second Respondent implicitly represented to them that the Second Respondent would take reasonable care for their safety during the Voyage; and
  - b. otherwise deny the allegation
- 270. In response to paragraph 270 the Respondents:
  - a. say that by allowing the Passenger Group Members to board the ship, the Second Respondent implicitly represented to them that the Second Respondent would take reasonable care for their safety during the Voyage; and
  - b. otherwise deny the allegation
- 271. In response to paragraph 271 the Respondents:
  - a. say that by sending the email of 5 March 2020, the Second Respondent represented to those who received it that:
    - i. the Second Respondent had implemented increased monitoring, screening and sanitation protocols to protect the health of passengers;
    - ii. the measures were designed to be flexible to adapt to changing conditions and recommended best practices;
  - b. otherwise deny the allegation.
- 272. In response to paragraph 272 the Respondents:

- a. say that by allowing the Passenger Group Members to board the ship, the Second Respondent implicitly represented to them that the Second Respondent would take reasonable steps to supply them with goods and services reasonably necessary to enable them to have a safe and enjoyable cruise; and
- b. otherwise deny the allegation.

273. In response to paragraph 273 the Respondents:

- a. deny making the representations alleged;
- b. say that to the extent the representations made by the Second Respondent as pleaded at paragraphs 270 and 272 above were representations with respect to future matters (which is denied), the Second Respondent had reasonable grounds to make them; and
- c. otherwise deny the allegation.

274. In response to paragraph 274 the Respondents deny making the representation alleged.

275. In response to paragraph 275 the Respondents deny making the representation alleged.

276. In response to paragraph 276 the Respondents deny making the representation alleged.

277. In response to paragraph 277 the Respondents deny making the representation alleged.

278. In response to paragraph 278 the Respondents:

- a. do not know and cannot admit the paragraph; and
- b. say that whether each Passenger Group Member relied on any alleged representation is not capable of determination as a common question.

279. The Respondents deny paragraph 279.

280. The Respondents deny paragraph 280.

281. The Respondents deny paragraph 281.

282. The Respondents deny paragraph 282.

283. In response to paragraph 283 the Respondents:

- a. admit that the implied representations referred to in paragraph 269(a), 270(a) and 272(a) above were made in trade and commerce within Australia or between Australia and places outside Australia;
- b. say that to the extent that the 5 March 2020 email sent by the Second Respondent was received by Passenger Group Members who purchased their tickets in Australia, this was a representation in trade and commerce within Australia or between Australia and places outside Australia; and

- c. otherwise deny the allegation and say that any other representations made by the Second Respondent were not in trade or commerce within Australia or between Australia and places outside Australia.

## **L Loss and damage**

284. The Respondents deny paragraph 284.
285. The Respondents deny paragraph 285.
286. The Respondents deny paragraph 286.
287. The Respondents do not plead to paragraph 287 as it makes no material allegation against them.
288. The Respondents deny paragraph 288.
289. The Respondents do not plead to paragraph 289 as it makes no material allegation against them.

## **M Defences**

### **M.1 Voluntary assumption of risk and no duty to warn of obvious risks**

290. The risk that a passenger on the Voyage might contract a contagious disease (such as Coronavirus) from another person was an obvious risk, or an open and obvious risk, to a reasonable person in the circumstances.
291. The risk that the Voyage might be shortened or altered to comply with the policies and lawful directions of government authorities was an obvious risk, or an open and obvious risk, to a reasonable person in the circumstances.
292. The Applicant and the Passenger Group Members knew, or alternatively, are presumed to have known of the risks pleaded at paragraphs 290 and 291.
293. In the premises, the Respondents were under no duty to warn the Passenger Group Members of the risks pleaded at paragraphs 290 and 291.
294. By going on the Voyage, the Applicant and the Passenger Group Members voluntarily accepted that the risks in paragraphs 290 and 291 might materialise.
295. The loss and damage claimed by the Applicant is result of the risks in paragraphs 290 and 291 materialising.
296. In the premises, the Respondents are not liable for the loss and damage claimed by the Applicant.

**Particulars**

- a. To the extent New South Wales law applies, ss 5F, 5G and 5H of the *Civil Liability Act 2002* (NSW).

**M.2 Inherent risk**

297. The risk of a person contracting a contagious disease (such as Coronavirus) from another person cannot be avoided by the exercise of reasonable care and skill.
298. In the premises, the Respondents are not liable for harm suffered by Passenger Group Members as a result of the materialisation of that risk.

**Particulars**

- a. To the extent New South Wales law applies, ss 5I of the *Civil Liability Act 2002* (NSW).

**M.3 Contribution / Comparative Fault**

299. Further or in the alternative, if (which is denied) the Respondents breached a duty of care to the Passenger Group Members as alleged, the Respondents say:
- a. the Applicant and the Passengers owed a duty to take reasonable care for their own safety, and to not act in a way which put themselves at risk;
  - b. the standard of care required of the Applicant and the Passengers was that of a reasonable person in their position, knowing what that person knew or ought to have known at the time;
  - c. if (which is denied) either Respondent breached a duty of care by failing to cancel the Voyage, the Passengers failed to take reasonable care for their own safety by going on the Voyage;
  - d. if (which is denied) either Respondent breached a duty of care by failing to enforce physical distancing between people on the ship, the Passengers failed to take reasonable care for their own safety by participating in activities on the ship in close proximity to other people;
  - e. if (which is denied) either Respondent breached a duty of care by failing to prevent self-service food, the Passengers failed to take reasonable care for their own safety by eating self-service food;
  - f. if (which is denied) either Respondent breached a duty of care by failing to require Passengers to wear masks in public spaces on the ship, the Passengers failed to take reasonable care for their own safety by failing to wearing a masks;

- g. the damages recoverable in respect of the wrong of the Respondents is to be reduced to such extent as the court thinks just and equitable having regard to the Applicant and the Passengers' share, or comparative fault, in the responsibility for the damage.

**Particulars**

- a. To the extent New South Wales law applies, s 9(1)(b) of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW).
  - b. To the extent US law applies, 46 U.S.C. § 30304.
300. Further or in the alternative, if (which is denied) the Respondents contravened s 18 of the ACL, any loss or damage suffered by the Applicant and Passenger Group Members was caused by their failure to take reasonable care.

**Particulars**

- a. Paragraph 299 (a) – (g)
- b. *Competition and Consumer Act 2010* (Cth), s 137B.

M4. Defences to ACL guarantee claims

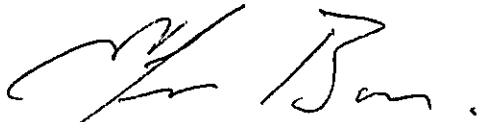
301. The claims alleged in the amended statement of claim at paragraphs 160 – 177 are claims for damages for harm resulting from negligence brought under statute.

302. If:

- a. which is denied, either Respondent failed to comply with the guarantees alleged in the amended statement of claim at paragraphs 160 – 177; and
- b. the law of New South Wales is the proper law of the contract of any Passenger Group Member,

sections 5H, 5I and 5R of the *Civil Liability Act 2002* (NSW) and s 9(1)(b) of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) are laws that limit or preclude liability for the failure, and recovery of that liability by reason of s 275 of the ACL.

Date: 12 April 2021



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Signed by Ernest van Buuren  
Lawyer for the First and Second  
Respondents

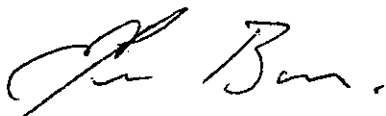
This pleading was prepared by David McLure SC, Tom Prince and Trent March of counsel.

### **Certificate of lawyer**

I Ernest van Buuren certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 12 April 2021



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Signed by Ernest van Buuren  
Lawyer for the First and Second  
Respondents