

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JESSICA MITCHELL and
KENNETH COMBS JR.,
individually, and on behalf of
all others similarly situated,

Plaintiffs,

CASE NO.: 1:20-CV-21503-UU

vs.

NURSECON AT SEA, LLC and
ROYAL CARIBBEAN INTERNATIONAL,

Defendants.

**DEFENDANT’S, NURSECON AT SEA, LLC, MOTION TO DISMISS/COMPEL
ARBITRATION**

Defendant, NURSECON AT SEA, LLC (“NurseCon”), through undersigned counsel and pursuant to Fed.R.Civ.P. 12(b)(1)¹ seeks an Order from this Court dismissing the case and compelling it to be decided by binding arbitration, and in support of this request shows:

¹ NurseCon relies on this Motion to Dismiss/Compel Arbitration as its responsive pleading. Courts have repeatedly held that a motion to compel arbitration constitutes a responsive pleading. See, e.g., *Shea v. BBVA Compass Bancshares, Inc.*, 1:12-CV-23324-KMM, 2013 WL 869526, at *2 n.3 (S.D. Fla. Mar. 7, 2013) (“[m]otions to compel arbitration are treated generally as motions to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).”) (citing *Bell v. Atlantic Trucking Co.*, 09-CV-406J32, 2009 WL 4730564, at *2 (M.D. Fla. Dec. 7, 2009) (“Courts have deemed a motion seeking to compel arbitration as a factual attack as it asserts that a provision of an extrinsic document, an arbitration clause contained within the body of a contract, deprives the court of its power to adjudicate the plaintiff’s claims.”)); *Creative Tile Mktg., Inc. v. SICIS Int’l, S.r.L.*, 922 F. Supp. 1534, 1537 n.1 (S.D. Fla. 1996) (“[w]hile a motion to compel arbitration is not included in the ambit of Rule 12(b) motions that suffice as responsive pleadings in lieu of answers, courts traditionally have entertained certain types of pre-answer motions—such as a motion to compel arbitration and stay proceedings—not specifically provided for in the Federal Rules of Civil Procedure.”) (citing *Smith v. Pay-Fone Systems, Inc.*, 627 F. Supp. 121, 122 (N.D. Ga. 1985)). For reasons of judicial economy the Court should first determine whether it lacks subject matter jurisdiction. If the Court agrees that it lacks subject matter jurisdiction, grants this Motion and dismisses the case for pursuit in arbitration it will be the arbitrator’s task to determine sufficiency of the causes

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I. INTRODUCTION

NurseCon at Sea, LLC is the promoter of a Continuing Medical Education (CME) conference/convention called "NurseCon". It is the creation of an internet/social media personality "Nurse Blake." The conference, which sold out in minutes, was to be hosted on board one of the Defendant, Royal Caribbean International's, cruise ships – Navigator of the Seas --- on April 27th through May 1st, 2020.

In March, NurseCon made the difficult, and extremely responsible decision to cancel the cruise based on the escalating, and unforeseen, U.S. novel coronavirus health pandemic. NurseCon, who had only technically reserved half of the cruise ship for NurseCon, made the responsible decision to keep approximately 1500 nurses from getting on a cruise ship and potentially getting ill when needed at their jobs, even before RCCI canceled the sailing and before U.S. authorities precluded further sailing departures from the U.S. Plaintiffs, both of whom were subsequently offered refunds they had requested, either accepted the refund outright (Plaintiff Mitchell) or requested a refund and then refused it (Coombs), choosing instead to maintain a class action lawsuit.

Important for purposes of this Motion, Plaintiffs' Amended Complaint treats the Defendants in this case identically, lobbing vague and generalized accusations of a failure to refund monies (for tickets purchased) following cancellation of the event and cruise itself. See, Amended Complaint at ¶¶20, 22, 30, 36-40, 43-44, 49-50,53-54, 58 and the Prayer for Relief. There is, in a word, no differentiation by Plaintiffs as to the actions of the Defendants upon

of action. Nursecon reserves the right to challenge the legal sufficiency of Plaintiff's claims in a separate motion to dismiss before the Court if this Motion is denied.

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which they base liability in this case. This is important to the equitable estoppel analysis, discussed, *infra*.

As described extensively in Defendant Royal Caribbean Cruises Ltd. ("RCCL"), Motion to Dismiss [ECF No. 27], the Plaintiffs in this case booked their cruises through a licensed travel agent, "Destinations", who is not a party to this action. As detailed by RCCL in its Motion, RCCL and Destinations have a contractual relationship, whereby Destinations acts as RCCL's travel agent selling the cruise. As part of their purchase of the cruise on board RCCL's ship through Destinations for the NurseCon sponsored event, Plaintiffs were provided with the Cruise Ticket Contract and had access to its terms online as well.

Because both Plaintiffs agreed to resolve any claims arising out of the cruise through binding arbitration, and because the claims alleged against RCCL and NurseCon allege substantially interdependent and concerted misconduct, the doctrine of equitable estoppel prevents Plaintiffs from denying that such claims against NurseCon must be arbitrated. NurseCon is also entitled to enforce the arbitration provision as an intended third party beneficiary of the Cruise Ticket Contract. Finally, the same reasoning applies such that NurseCon may avail itself of the Class Waiver provision contained in the Cruise Ticket Contract, further mandating a dismissal of this case with prejudice for lack of subject matter jurisdiction.

II. THE CLAIMS AGAINST NURSECON ARE SUBJECT TO MANDATORY BINDING ARBITRATION

In the Cruise Ticket Contract accepted by Plaintiffs, there is express, bolded capitalized language stating that

"THIS AGREEMENT REQUIRES THE USE OF ARBITRATION FOR CERTAIN DISPUTES AND WAIVES ANY RIGHT TO TRIAL BY JURY TO RESOLVE THOSE DISPUTES. PLEASE READ SECTION 10 BELOW."

See, Exhibit 1 – Jessica Mitchell Cruise/Cruisetour Ticket Contract at p.10 (top)).

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The Agreement continues, with regard to arbitration at Section 10:

10. NOTICE OF CLAIMS AND COMMENCEMENT OF SUIT OR ARBITRATION;
SECURITY:

b. ARBITRATION OF ALL OTHER CLAIMS: ANY AND ALL OTHER DISPUTES, CLAIMS, OR CONTROVERSIES WHATSOEVER, EXCEPT FOR PERSONAL INJURY, ILLNESS OR DEATH OF A PASSENGER WHETHER BASED ON CONTRACT, TORT, STATUTORY, CONSTITUTIONAL OR OTHER LEGAL RIGHTS, INCLUDING BUT NOT LIMITED TO ALLEGED VIOLATION OF CIVIL RIGHTS, DISCRIMINATION, CONSUMER OR PRIVACY LAWS, OR FOR **ANY LOSSES, DAMAGES OR EXPENSES, RELATING TO OR IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS CONTRACT OR PASSENGER'S CRUISE, NO MATTER HOW DESCRIBED, PLEADED OR STYLED, SHALL BE REFERRED TO AND RESOLVED EXCLUSIVELY BY BINDING ARBITRATION** PURSUANT TO THE UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (NEW YORK 1958), 21 U.S.T. 2517, 330 U.N.T.S. 3, 1970 U.S.T. LEXIS 115, 9 U.S.C. §§ 202-208 ('THE CONVENTION') AND THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1, ET SEQ., ('FAA') SOLELY IN MIAMI, FLORIDA, U.S.A. TO THE EXCLUSION OF ANY OTHER FORUM. THE ARBITRATION SHALL BE ADMINISTERED BY NATIONAL ARBITRATION AND MEDIATION ('NAM') UNDER ITS COMPREHENSIVE DISPUTE RESOLUTION RULES AND PROCEDURES AND NAM'S FEE SCHEDULE IN EFFECT AT THE TIME OF THE PROCEDURE, EACH OF WHICH ARE DEEMED TO BE INCORPORATED HEREIN BY REFERENCE. ANY QUESTION ABOUT THE ARBITRATION ADMINISTRATORS MENTIONED ABOVE MAY BE DIRECTED TO THEM AS FOLLOWS: NATIONAL ARBITRATION AND MEDIATION, INC., 990 STEWART AVE, 1ST FL., GARDEN CITY, NY 11530, PHONE: (800) 358-2550 EXT. 128. NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL NOR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE APPLICABLE ARBITRATION RULES AND HEREIN, OR OTHERWISE TO LITIGATE THE CLAIM IN ANY COURT. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT PASSENGER OR CARRIER WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. AN AWARD RENDERED BY AN ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION UNDER THE CONVENTION OR FAA. PASSENGER AND CARRIER FURTHER AGREE TO PERMIT THE TAKING OF A DEPOSITION UNDER OATH OF THE PASSENGER ASSERTING THE CLAIM, OR FOR WHOSE BENEFIT THE CLAIM IS ASSERTED, IN ANY SUCH ARBITRATION. THE ARBITRATOR AND NOT ANY FEDERAL, STATE OR LOCAL COURT OR AGENCY, SHALL HAVE EXCLUSIVE AUTHORITY TO RESOLVE ANY DISPUTE RELATING TO THE INTERPRETATION, APPLICABILITY, ENFORCEABILITY OR FORMATION OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO ANY CLAIM THAT ALL OR ANY PART OF THIS AGREEMENT IS VOID OR VOIDABLE. IN THE EVENT THIS PROVISION IS DEEMED UNENFORCEABLE BY AN ARBITRATOR OR COURT OF COMPETENT JURISDICTION FOR ANY REASON, THEN AND ONLY THEN THE PROVISIONS OF SECTION 9 ABOVE GOVERNING VENUE AND JURISDICTION SHALL EXCLUSIVELY APPLY TO ANY LAWSUIT INVOLVING CLAIMS DESCRIBED IN THIS SECTION 10(b).

See, Exhibit 1 at Section 10. (emphasis supplied)

A. NurseCon Is Entitled To Enforce The Arbitration Provisions In the Cruise Ticket Contract

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In order to avoid a gaping hole in the FAA's protection of arbitration agreements, courts have long recognized that nonsignatories may invoke such agreements under certain circumstances. In *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009), the Supreme Court explained that "[b]ecause 'traditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through 'assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel,'" a "litigant who was not a party to the relevant arbitration agreement may invoke [the FAA] if the relevant state contract law allows him to enforce the agreement." *Id.* at 631-32 (quoting 21 R. LORD, WILLISTON ON CONTRACTS § 57:19, at 183 (4th ed. 2001)).

1. Plaintiffs are Equitably Estopped from Denying Nursecon the Right to Invoke Arbitration.

A nonsignatory to an arbitration agreement may rely on principles of equitable estoppel to compel a signatory to arbitrate a dispute. At least two such principles of equitable estoppel apply here. First, Plaintiffs rely on their purchase of the cruise tickets from RCCL through Destinations in asserting their claims against NurseCon. Second, Plaintiffs allege that NurseCon along with the defendant cruise line RCCL, which is a signatory to the arbitration agreement, purportedly have engaged in substantially interdependent and concerted misconduct.

a. Plaintiffs' Claims Reference and Presume the Existence of the Cruise Ticket Contract.

Florida courts have adopted the view that "[e]quitable estoppel is [] warranted when each of the signatory's claims against a non-signatory make reference to or presume the existence of a written agreement." *Armas v. Prudential Sec., Inc.*, 842 So. 2d 210, 212 (Fla. Dist. Ct. App. 2003) (citing *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir.1999)); *see also Koechli v. BIP Int'l, Inc.*, 870 So. 2d 940, 944 (Fla. Dist. Ct. App. 2004). Under this approach,

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equitable estoppel is warranted when a signatory's "claims rely upon and are necessarily related to the . . . agreement [containing an arbitration clause]." *Koehli*, 870 So. 2d at 945. In their Amended Complaint Plaintiffs repeatedly make reference, express or implied, to the funds paid or refunds they are entitled to based on the purchase of the tickets. See, Amended Complaint at ¶¶13-15, 20; 26,30, 43.c, 49, 53, and 58.

b. Plaintiffs allege that NurseCon and RCCL Engaged in Substantially Interdependent and Concerted ZMisconduct.

Florida courts have also held that equitable estoppel is "warranted when the signatory to the contract containing the arbitration clause raises allegations of concerted conduct by both the non-signatory and one or more of the signatories to the contract." *Marcus v. Fla. Bagels, LLC*, 112 So. 3d 631, 633-34 (Fla. Dist. Ct. App. 2013) (quoting *Shetty v. Palm Beach Radiation Oncology Assocs.—Sunderam K. Shetty, M.D., P.A.*, 915 So. 2d 1233, 1235 (Fla. Dist. Ct. App. 2005)); see also *Maldonado v. Mattress Firm, Inc.*, No. 8:13-cv-292-T-33AEP, 2013 WL 2407086, at *4 (M.D. Fla. June 3, 2013) (same); *Kolsky v. Jackson Square, LLC*, 28 So. 3d 965, 969 (Fla. Dist. Ct. App. 2010) (same). This second, and independent, ground for applying equitable estoppel is also satisfied.

Plaintiffs' underlying claims are meritless. But it is clear that the Amended Complaint contains the requisite allegations of substantially interdependent and concerted misconduct. Thus where, as here, the "complaint alleges a conspiracy among the signatory . . . and the non-signatory," Florida law permits a nonsignatory to compel arbitration on the grounds of equitable estoppel. *Kolsky*, 28 So. 3d at 970; see also *Armas*, 842 So. 2d at 212 (permitting non-signatory to enforce arbitration where plaintiff's "claims against [the nonsignatory] arise out of the same factual allegations of concerted conduct by both the non-signatory . . . and the signatories"). Moreover, even where concerted conduct is not formally alleged, the doctrine of equitable

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estoppel applies when—as here—allegations against a nonsignatory “essentially ar[ise] out of the same operative facts” or are “predicated upon the same allegations” as allegations against a signatory. *Shetty*, 915 So. 2d at 1235.

In short, Plaintiffs' claims for entitlement to a refund or some form of wrongful withholding of monies against NurseCon are, from the face of the Amended Complaint intertwined with and entirely dependent on their purchase of the cruise ticket containing the provisions at issue in this Motion, from RCCL through its travel agent.

a. NurseCon may enforce the arbitration provisions as a third-party beneficiary of the Cruise Ticket Contract.

In the alternative, NurseCon may enforce the arbitration provisions under the third party beneficiary doctrine. “In Florida, a nonsignatory to an arbitration agreement may nevertheless be compelled to arbitrate under the agreement when ‘the non-party is specifically the intended third party beneficiary of the contract.’” *Great Lakes Reinsurance (UK) PLC v. Sunset Harbour Marina, Inc.*, No. 10–24469–CIV, 2012 WL 6195149, at *4 (S.D. Fla. Dec. 12, 2012) (quoting *Morgan Stanley DW Inc. v. Halliday*, 873 So. 2d 400, 403 (Fla. Dist. Ct. App. 2004)). ““To find the requisite intent, it must be established that the parties to the contract actually and expressly intended to benefit the third party.” *Id.* (quoting *Halliday*, 873 So. 2d at 403)). Moreover, a third party need not be named specifically in a contract as long as the contract is intended to benefit “class of persons to which that third party belongs.” *Vencor Hosps. v. Blue Cross Blue Shield of R.I.*, 169 F.3d 677, 680 (11th Cir. 1999) (applying Florida law).

The Cruise Ticket Contract states that “ANY LOSSES, DAMAGES OR EXPENSES, RELATING TO OR IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS CONTRACT OR PASSENGER’S CRUISE, NO MATTER HOW DESCRIBED, PLEADED OR STYLED, SHALL BE REFERRED TO AND RESOLVED EXCLUSIVELY BY BINDING

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ARBITRATION.” See, Exhibit 1 at Section 10. This provision makes clear that it covers any kind of losses, damages or expenses---thus disputes---that relate in any way to the “Contract” or “Passenger’s Cruise”. Plaintiff’s claim against NurseCon as the promoter of an event taking place onboard an RCCL’s ship, undoubtedly “relates” to both the Contract and Passenger’s Cruise. This is precisely so because it NurseCon’s promotion of its event onboard the ship that resulted in Plaintiffs’ purchase of their tickets---and their claim now that they are somehow entitled to damages even though they’ve been offered or taken actual refunds. Based on the policy in favor of enforcing arbitration, NurseCon should be viewed as a third party beneficiary of the Cruise Ticket Contract, and thus entitled to enforce its provisions relating to mandatory arbitration of this dispute, as well as the class action waiver, discussed below.

III. THE CLASS ACTION WAIVER APPLIES TO NURSECON

The same equitable estoppel arguments that allow NurseCon to avail itself of the arbitration clause in the agreement between the Plaintiffs and RCCL, also allow it to avail itself of the forum selection clause in the agreement which include a class action wavier. Section 9 of the agreement provides

9. FORUM SELECTION CLAUSE FOR ALL LAWSUITS; CLASS ACTION WAIVER:

a. EXCEPT AS PROVIDED IN SECTION 10 (b) WITH REGARD TO CLAIMS OTHER THAN FOR PERSONAL INJURY, ILLNESS OR DEATH OF A PASSENGER, IT IS AGREED BY AND BETWEEN PASSENGER AND CARRIER THAT ALL DISPUTES AND MATTERS WHATSOEVER ARISING UNDER, IN CONNECTION WITH OR INCIDENT TO THIS AGREEMENT, PASSENGER’S CRUISE, CRUISETOUR, LAND TOUR OR TRANSPORT, SHALL BE LITIGATED, IF AT ALL, IN AND BEFORE THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA LOCATED IN MIAMI-DADE COUNTY, FLORIDA, U.S.A., (OR AS TO THOSE LAWSUITS TO WHICH THE FEDERAL COURTS OF THE UNITED STATES LACK SUBJECT MATTER JURISDICTION, BEFORE A COURT LOCATED IN MIAMI-DADE COUNTY, FLORIDA, U.S.A.) TO THE EXCLUSION OF THE COURTS OF ANY OTHER STATE, TERRITORY OR COUNTRY. PASSENGER HEREBY CONSENTS TO JURISDICTION AND WAIVES ANY VENUE OR OTHER OBJECTION THAT HE MAY HAVE TO ANY SUCH ACTION OR PROCEEDING BEING BROUGHT IN THE

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APPLICABLE COURT LOCATED IN MIAMI-DADE COUNTY, FLORIDA.

b. CLASS ACTION RELIEF WAIVER. PASSENGER HEREBY AGREES THAT EXCEPT AS PROVIDED IN THE LAST SENTENCE OF THIS PARAGRAPH, PASSENGER MAY BRING CLAIMS AGAINST CARRIER ONLY IN PASSENGER'S INDIVIDUAL CAPACITY. EVEN IF THE APPLICABLE LAW PROVIDES OTHERWISE, PASSENGER AGREES THAT ANY ARBITRATION OR LAWSUIT AGAINST CARRIER, VESSEL OR TRANSPORT WHATSOEVER **SHALL BE LITIGATED BY PASSENGER INDIVIDUALLY AND NOT AS A MEMBER OF ANY CLASS OR AS PART OF A CLASS OR REPRESENTATIVE ACTION, AND PASSENGER EXPRESSLY AGREES TO WAIVE ANY LAW ENTITLING PASSENGER TO PARTICIPATE IN A CLASS ACTION. IF YOUR CLAIM IS SUBJECT TO ARBITRATION AS PROVIDED IN SECTION 10 BELOW, THE ARBITRATOR SHALL HAVE NO AUTHORITY TO ARBITRATE CLAIMS ON A CLASS ACTION BASIS.** YOU AGREE THAT THIS SECTION SHALL NOT BE SEVERABLE UNDER ANY CIRCUMSTANCES FROM THE ARBITRATION CLAUSE SET FORTH IN SECTION 10.b BELOW, AND IF FOR ANY REASON THIS CLASS ACTION WAIVER IS UNENFORCEABLE AS TO ANY PARTICULAR CLAIM, THEN AND ONLY THEN SUCH CLAIM SHALL NOT BE SUBJECT TO ARBITRATION.

In *Liles v. Ginn-la West End*, 631 F.3d 1242 (11th Cir. 2011), the court held that a nonsignatory can invoke a forum selection clause in an agreement between the plaintiffs and another party under equitable estoppel. This theory

allows a nonsignatory to compel arbitration in two different circumstances. First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause “must rely on the terms of the written agreement in asserting [its] claims” against the nonsignatory. When each of a signatory's claims against a nonsignatory “makes reference to” or “presumes the existence of the written agreement”, the signatory's claims “arise[] out of and relate[] directly to the [written] agreement,” and arbitration is appropriate. Second, “application of equitable estoppel is warranted ... when the signatory [to the contract containing the arbitration clause] raises allegations of ... substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.”

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Id. at 1256 (cites omitted); *Elite Advantage, LLC v. Trivest Fund, IV, L.P.*, No. 15-22146, 2015 WL 4982997 (S.D. Fla. Aug. 21, 2015) (equitable estoppel invoked to allow a non-signatory to a franchise agreement to avail itself of the forum selection clause in the franchise agreement finding that “[t]he contracts are not only factually significant in the telling of the story, Plaintiffs’ claims are intimately founded upon and intertwined with the contractual obligations contained in the DirectBuy franchise agreements....”).

As set forth above, here, the Plaintiffs’ claims against NurseCon presume the existence of and arise directly out of the contracts between Plaintiffs and RCCL. And, all of Plaintiffs’ allegations allege “substantially interdependent and concerted misconduct” by NurseCon and RCCL. The Amended Class Action Complaint repeatedly alleges NurseCon and RCCL acted in concert and throughout refers to them interchangeably as “Defendants.” Defendant RCCL’s Objection to Initial Disclosures and Motion to Stay Discovery set forth the reasons why the class action waiver is independently valid and enforceable. ECF No. 24 at 6-8. Defendant NurseCon adopts and incorporates those arguments herein.

Defendant NurseCon is thus entitled to invoke the class action waiver in the contract between Plaintiffs and RCCL. Because the Plaintiffs’ sole basis for federal jurisdiction is 28 U.S.C. § 1332(d), the case must be dismissed.

Furthermore, the claims against NurseCon should also be dismissed because class action waiver contained in the forum selection clause is part and parcel of the arbitration clause. ECF No. 24-1 at 13; ECF No. 24-2 at 13. The clause provides, in pertinent part, that “YOUR CLAIM IS SUBJECT TO ARBITRATION AS PROVIDED IN SECTION 10 BELOW, THE ARBITRATOR SHALL HAVE NO AUTHORITY TO ARBITRATE CLAIMS ON A CLASS ACTION BASIS. YOU AGREE THAT THIS SECTION SHALL NOT BE SEVERABLE

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UNDER ANY CIRCUMSTANCES FROM THE ARBITRATION CLAUSE SET FORTH IN SECTION 10.b.” *Id.*

Under these circumstances, the Plaintiffs are precluded from disputing the validity of the class action waiver. In *Mckenzie Check Advance of Fla., LLC v. Betts*, 112 So. 3d 1176 (Fla. 2013), the Florida Supreme Court held that under the Supreme Court's decision in *AT & T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011), precluded Florida courts from invalidating class action waivers connected with arbitration agreements because the FAA preempts them from doing so. 112 So.3d at 1183-88; *Cruz v. Cingular Wireless LLC*, 648 F.3d 1205 (11th Cir. 2011). Further, because the instant class action wavier is part of the arbitration clause its enforceability may not be relitigated in the arbitration. *McKenzie Check Advance of Fla., LLC v. Betts*, 191 So.3d 530, 535 (Fla. App. 2016).

Based upon the foregoing, the Court should dismiss the Plaintiffs' Amended Complaint because of the valid and enforceable class action wavier contained in the forum selection and arbitration clauses of the Cruise Ticket Contract between the Plaintiffs and RCCL.

Respectfully submitted this 29th day of June, 2020.

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