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

Case No.: 19-cv-21725-King

JAVIER GARCIA-BENGOCHEA,

Plaintiff,

vs.

CARNIVAL CORPORATION, d/b/a
Carnival Cruise Lines, a foreign corporation,

Defendant.
_____/

**CARNIVAL CORPORATION D/B/A CARNIVAL CRUISE LINES'S**
**AMENDED ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(A), Defendant Carnival Corporation ("Carnival") answers Plaintiff's Complaint ("Complaint") as follows:

**PARTIES**

1. Plaintiff, Javier Garcia-Bengochea, is a U. S. Citizen and a resident of Jacksonville, Duval County, Florida.

**RESPONSE**: Carnival lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1, and accordingly, denies same.

2. Defendant, Carnival Corporation, 3655 N.W. 87th Avenue, Doral, Florida 33178, is a foreign corporation doing business as Carnival Cruise Lines and maintains its principal place of business in Doral, Miami-Dade County, Florida.

**RESPONSE**: Carnival admits the allegations in paragraph 2 of the Complaint.

## JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), because Plaintiff's claim arises under 22 U.S.C. § 6021, *et seq.*, and the amount in controversy exceeds the sum or value of $50,000, exclusive of interest, costs, and attorneys' fees.

**RESPONSE**: Carnival admits that Plaintiff's claim arises under federal law and that plaintiff seeks more than $50,000. Carnival denies that this Court has subject matter jurisdiction.

4. Venue is proper in this judicial District under 28 U.S.C. § 1391(b)(1), because the Defendant resides in this judicial District, and under 28 U.S.C. §§ 1391(b)(2) and 1391(d), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial District.

**RESPONSE**: Carnival admits the allegations in paragraph 4.

## THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT

5. The LIBERTAD Act became effective March 12, 1996. One of the LIBERTAD Act's purposes is to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime." 22 U.S.C. § 6022(6). Title III of the LIBERTAD Act ("Title III") establishes a private right of action for money damages against any person who "traffics" in such property as defined by 22 U.S.C. § 6023(13). *See* 22 U.S.C. § 6082.

**RESPONSE**: The allegations in paragraph 5 state a legal conclusion, and as such no response is required. To the extent a response is required, Carnival states that the text of the LIBERTAD Act speaks for itself.

## FACTUAL ALLEGATIONS

6. Plaintiff, a U. S. national as defined by 22 U.S.C. § 6023(15), is the rightful owner of an 82.5% interest in certain commercial waterfront real property in the Port of Santiago de Cuba identified specifically by the Republic of Cuba ("Cuba") as La Maritima and Terminal Naviera (the "Subject Property").

**RESPONSE**: Carnival denies the allegations in paragraph 6.

Cuba's Confiscation of the Subject Property

7. The communist Cuban Government confiscated the Subject Property on October 13, 1960 by the adoption of Cuba's Gazette Law 890. The communist Cuban Government maintains possession of the Subject Property and has not paid any compensation to Plaintiff for its seizure.

**RESPONSE**: Carnival lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7, and accordingly, denies same.

8. More specifically, the communist Cuban Government nationalized, expropriated, and seized ownership and control of the Subject Property. The Subject Property has not been returned and adequate and effective compensation has not been provided. Further, the claim to the Subject Property has not been settled pursuant to an international claims settlement agreement or other settlement procedure.

**RESPONSE**: Carnival lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8, and accordingly, denies same.

9. Plaintiff never abandoned its legitimate interest in the Subject Property.

**RESPONSE**: Carnival lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9, and accordingly, denies same.

Certification of the Confiscated Subject Property

10. A portion of Plaintiff's ownership interest in the Subject Property, which represents Plaintiff's 32.5% interest in the Subject Property, has been certified by the Foreign Claims Settlement Commission under the International Claim Settlement Act of 1949. A copy of the certified claim is attached hereto as Exhibit A.

**RESPONSE**: Carnival admits that Exhibit A is a Foreign Claims Settlement Commission document. Carnival denies the allegations in paragraph 10 to the extent Plaintiff seeks to imply anything beyond what is indicated in Exhibit A, which speaks for itself.

11. The remaining portion of Plaintiff's interest in the Subject Property is based upon an uncertified claim.

**RESPONSE**: Carnival lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11, and accordingly, denies same.

Carnival's Trafficking in the Confiscated Subject Property

12. On information and belief, beginning on or about May 6, 2016 and continuing for at least a year thereafter, the Defendant knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the Subject Property by regularly embarking and disembarking its passengers on the Subject Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property.

**RESPONSE**: Carnival admits that starting in 2016 and pursuant to both a general and a specific license from the U.S. government it conducted cruises to Santiago, Cuba and embarked and disembarked passengers on docks at the port and otherwise denies the allegations in paragraph 12.

13. On information and belief, beginning on or about May 6, 2016 and continuing for at least a year thereafter, the Defendant also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Subject Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property.

**RESPONSE**: Carnival denies the allegations in paragraph 13.

14. The Defendant's knowing and intentional conduct with regard to the confiscated Subject Property is trafficking as defined in 22 U.S.C. § 6023(13)(A).

**RESPONSE**: Carnival denies the allegations in paragraph 14.

15. As a result of the Defendant's trafficking in the Subject Property, the Defendant is liable to Plaintiff for all money damages allowable under 22 U.S.C. § 6082(a).

**RESPONSE**: Carnival denies the allegations in paragraph 15.

16. Plaintiff timely provided the Defendant with written notice by certified mail of Plaintiff's intent to commence this action with respect to the Subject Property in accordance 22 U.S.C. § 6082(a)(3).

**RESPONSE**: The allegations in paragraph 16 state a legal conclusion and as such no response is required. To the extent a response is required, Carnival admits that it received a notice dated February 11, 2019. Carnival states that the notice and Section 6082 of the LIBERTAD Act speak for themselves; Carnival denies any allegation that is inconsistent with the terms of the notice of the text of the LIBERTAD Act.

**Claim for Damages**
**Title III of the LIBERTAD Act**

17. Plaintiff incorporates by reference paragraphs 1 through 16 as if fully stated herein.

**RESPONSE**: Carnival incorporates by reference its responses to paragraph 1 through 16 as if fully stated herein.

18. This claim is brought pursuant to Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

**RESPONSE**: The allegations in paragraph 18 state a legal conclusion and as such no response is required.

19. As set forth in Title III and alleged above, beginning on or around May 6, 2016, the Defendant did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the Subject Property which was confiscated by the communist Cuban Government on or after January 1, 1959 and is therefore liable to Plaintiff, who owns the claim to the Subject Property for money damages.

**RESPONSE**: Carnival denies the allegations in paragraph 19.

20. Plaintiff is entitled to all money damages allowable under 22 U.S.C. § 6082(a), including, but not limited to, those equal to the sum of:

a. The amount greater of: (i) the amount certified by the Foreign Claims Settlement Commission, plus interest; (ii) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2); or (iii) the "fair market value" of the Subject Property, plus interest;

b. Three times the amount determined above (treble damages); and

c. Court costs and reasonable attorneys' fees.

**RESPONSE**: Carnival denies the allegations in paragraph 20, including all allegations in subparts.

21. As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

**RESPONSE**: Carnival admits that the United States Government, effective May 2, 2019, did not suspend the right to bring an action under Title III, and otherwise denies the allegations in paragraph 21.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

A. Ordering the Defendant to pay damages (including treble damages);

B. Ordering the Defendant to pay pre- and post-judgment interest on any amounts awarded;

C. Order the Defendant to pay attorneys' fees, costs, and expenses; and

D. Ordering such other relief as may be just and proper.

**RESPONSE**: Carnival denies that Plaintiff is entitled to judgment, and therefore, Carnival denies that Plaintiff is entitled to any relief.

## DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury.

**RESPONSE**: Carnival denies that there is a right to a jury trial under Title III, and reserves its rights to strike the jury trial demand.

In addition to the foregoing responses, Carnival denies any liability for the claims alleged in the Complaint and denies each allegation that has not been specifically admitted.

## DEFENSES

Carnival asserts the following affirmative defenses to the claims alleged against it in the Complaint:

**FIRST DEFENSE – LAWFUL TRAVEL**

Carnival's use of the Subject Property was, at all times, incident to lawful travel to Cuba and necessary to the conduct of such travel. 22 U.S.C. § 6023(13).

**SECOND DEFENSE – LAWFUL TRAVEL**

Carnival's transactions relating to and involving the Subject Property were, at all times, incident to lawful travel to Cuba and necessary to the conduct of such travel. 22 U.S.C. § 6023(13).

**THIRD DEFENSE – FAILURE TO OWN CLAIM**

Plaintiff's claim is barred because he does not own the claim he asserts.

**FOURTH DEFENSE – UNTIMELY ACQUISITION OF CLAIM**

Plaintiff's claim is barred because, to the extent he ever acquired the claim he asserts, he acquired his claim after March 12, 1996. 22 U.S.C. § 6082(a)(4)(B). As shown in the attached Exhibit 1 (which includes a certified translation), if Plaintiff acquired the claim he asserts at all, he acquired the claim from his cousin Desiderio Parreno via a will executed in 2000.[1] Accordingly, Plaintiff acquired his claim, if at all, after March 12, 1996.

**FIFTH DEFENSE – INTERNATIONAL LAW**

Plaintiff's claim is barred to the extent that it interprets the LIBERTAD Act inconsistently with international legal principles, including limitations on the extraterritorial application of United States law.

**SIXTH DEFENSE – EX POST FACTO CLAUSE**

[1] Exhibit 2 shows that Desiderio inherited all of Albert Parreno's Cuban assets, including his claims to shares of La Maritima, S.A.

Plaintiff's claim is barred in whole or in part by the Ex Post Facto Clause to the extent Plaintiff seeks to penalize Carnival for conduct occurring before the LIBERTAD Act's cause of action came into effect.

**SEVENTH DEFENSE – ARTICLE II**

Plaintiff's claim is barred in whole or in part by Article II of the Constitution to the extent it seeks to impose liability for foreign policy decisions made by the Executive Branch.

**EIGHTH DEFENSE – STANDING**

The Court lacks jurisdiction over this case because Plaintiff lacks standing as Plaintiff has not suffered an injury in fact that is fairly traceable to Carnival's conduct and redressable by a favorable decision.

**NINTH DEFENSE – SETOFF**

Carnival is entitled to a set-off or reduction of any verdict or judgment for all amounts which have been paid or are payable to or for the benefit of Plaintiff or which are otherwise available to the Plaintiff.

**TENTH DEFENSE – ONE SATISFACTION RULE**

Plaintiff's damages are barred in whole or in part by the one-satisfaction rule.

**ELEVENTH DEFENSE – FIFTH AMENDMENT**

Plaintiff's damages claim is barred in whole or in part as the damage remedy under Title III is wholly disproportionate and violates the Due Process Clause of the Fifth Amendment.

**TWELFTH DEFENSE – EIGHTH AMENDMENT**

Plaintiff's damages claim is barred in whole or in part by the Eighth Amendment.

**THIRTEENTH DEFENSE – LACK OF INTENT**

Plaintiff's claim is barred in whole or in part because Carnival did not knowingly and intentionally traffic in the Subject Property.

**FOURTEENTH DEFENSE – LACK OF TRAFFICKING**

Plaintiff's claim is barred because it held only stock in a Cuban company, and thus, Plaintiff does not and did not own a claim to property that Carnival allegedly trafficked in.

**FIFTEENTH DEFENSE – FAILURE TO STATE A CLAIM**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**SIXTEENTH DEFENSE – LACK OF USE OF ALL CLAIMED PROPERTY**

Plaintiff's damages claim is barred in whole or in part because to the extent Carnival trafficked in Plaintiff's claimed property (which Carnival denies), Carnival did not traffic in all of the property underlying Plaintiff's claim.

**SEVENTEENTH DEFENSE – ELECTION OF REMEDIES**

Plaintiff's claim is barred in whole or in part because it has brought another "civil action or proceeding" under "Federal law" that seeks monetary compensation "by reason of the same subject matter" as that of this suit. 22 U.S.C. § 6082(f).

**EIGHTEENTH DEFENSE – CAUSATION**

Plaintiff's claim is barred in whole or in part for failure to plead causation.

**NINETEENTH DEFENSE – ACT OF STATE**

Plaintiff's claim is barred by the act of state doctrine, which must be applied here because it has constitutional underpinnings. *See Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard Tanker Dauntless Colocotronis*, 577 F.2d 1196, 1201 n.4 & n.6 (5th Cir. 1978) ("Although in one decision the [Supreme] Court stated both that the [act of state]

doctrine had constitutional underpinnings and the doctrine was not compelled by the Constitution, the better view would be that the doctrine is constitutionally compelled by the concept of separation of powers and placement of plenary foreign relations powers in the executive.”).

**TWENTIETH AFFIRMATIVE DEFENSE – INCORRECT CERTIFIED AMOUNT**

The amount certified by the Foreign Claims Settlement Commission (“FCSC”) is incorrect, and therefore rebuttable. The FCSC valued an ownership interest in La Maritima, S.A., a Cuban company, not the underlying assets of the company.

**TWENTY-FIRST DEFENSE – NO CLAIM**

Plaintiff’s claim is barred in whole or in part by the fact that at the time of the confiscation, the property Plaintiff alleges he owns a claim to was owned by Cuban nationals, and accordingly, those nationals had no “claim” for an expropriation under international law.

**TWENTY-SECOND DEFENSE – IMPROPER ASSERTION OF CERTIFIED CLAIM**

Plaintiff’s claim is barred in whole or in part because he is seeking to assert an “interest in property for which a United States national has a certified claim.” 22 U.S.C. § 6082(a)(5)(d).

**TWENTY-THIRD DEFENSE – STATUTE OF LIMITATIONS**

Plaintiff’s claim is barred in whole or in part by the applicable statute of limitations because it involves uses of property and transactions that occurred more than two years before suit was filed. 22 U.S.C. § 6084.

**TWENTY-FOURTH DEFENSE – DUE PROCESS**

Plaintiff’s claim is barred in whole or in part by the Fifth Amendment’s Due Process Clause including because Plaintiff seeks to hold Carnival liable for conduct that the Federal Government authorized as lawful by both general and specific licenses and under regulations promulgated under 31 C.F.R. Part 515 and facilitated and encouraged as a matter of national policy, because Carnival

reasonably relied on the LIBERTAD Act's suspension, because Plaintiff seeks to hold Carnival liable for conduct occurring before the LIBERTAD Act's cause of action came into effect, because the LIBERTAD Act is unconstitutionally vague, and to the extent Plaintiff seeks to use findings from the Foreign Claims Settlement Commission against Carnival because Carnival had no opportunity to be heard before the Commission.

Dated: October 7, 2019

Respectfully submitted,

By: *s/ Stuart H. Singer*

Stuart H. Singer
(Florida Bar No. 377325)
Evan Ezray
(Florida Bar No. 1008228)
BOIES SCHILLER FLEXNER LLP
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
ssinger@bsfllp.com
eezray@bsfllp.com

George J. Fowler, III
(*pro hac vice*)
Luis Llamas
(Florida Bar No. 89822)
JONES WALKER LLP
201 St. Charles Ave.
New Orleans, LA 70170
Telephone: (504) 582-8752
gfowler@joneswalker.com
llamas@joneswalker.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record via the court's CM/ECF System on October 7, 2019.

By:*/s/ Stuart H. Singer*