UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 19-cv-23591-BLOOM/Louis

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

NORWEGIAN CRUISE LINE HOLDINGS LTD.,

Defendant.
_____/

DEFENDANTS' OBJECTION
TO REPORT AND RECOMMENDATION ON
DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S JURY TRIAL DEMAND

Defendants Norwegian Cruise Line Holdings Ltd. ("Norwegian"), Carnival Corporation d/b/a Carnival Cruise Line ("Carnival"), MSC Cruises S.A., MSC Cruises SA Co., and MSC Cruises (USA) Inc. (collectively, "MSC Cruises"), and Royal Caribbean Cruises Ltd. ("Royal Caribbean") (collectively, "Defendants") hereby respectfully object to the Magistrate Judge's report and recommendation that the Court deny Defendants' motion to strike Plaintiff's Jury Trial Demand ("Report") (ECF No. 343).[1]

Both the parties and the Magistrate Judge agree that the Helms-Burton Act, 22 U.S.C. § 6021 *et seq.* (the "Act"), does not confer a statutory right to a jury trial through explicit grant in the plain language of the statute or through its legislative history. Report at 7. Thus, the Court must consider whether Title III comprises the type of claim protected by the Seventh Amendment. The Supreme Court has instructed that the analysis this Court must conduct is to first, "compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity" and, second, "examine the remedy sought and determine whether it is legal or equitable in nature." *Granfinanciera, S.A., v. Nordberg*, 492 U.S. 33, 42 (1989) (citing *Tull v. United States*, 481 U.S. 412, 417-418 (1987)). The Supreme Court has held that "[t]he second stage of this analysis is more important than the first." *Id.*

Defendants' Motion to Strike Plaintiff's Jury Demand should be granted, because under both prongs of the *Granfinanciera* analysis, the Seventh Amendment does not confer Plaintiff a right to a jury trial under Title III of the Helms-Burton Act (the "Act").

[1] The record cited here is to *Havana Docks v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, as Judge Louis in the *Norwegian* matter was assigned to prepare a report and recommendation on Defendants' Motion to Strike Plaintiff's Jury Trial Demand that was filed by each of the four cruise lines against which Plaintiff has brought actions: (1) Carnival Corporation (No. 19-cv-21724); (2) MSC Cruises S.A. et al. (No. 19-cv-23588); (3) Royal Caribbean Cruises, Ltd. (No. 19-cv-23590); and (4) Norwegian Cruise Line Holdings, Ltd., (No. 19-cv-23591).

I. Plaintiff Admits and the Magistrate Judge Agrees That A Claim Under the Act Has No Analogy to Any Action at Law.

The two-pronged test in *Granfinanciera* first requires the Court to consider whether the claim created under Title III of the Act concerns legal (as opposed to equitable) rights when compared to 18th century actions brought in English courts of law before the courts of law and equity merged. *Granfinanciera, S.A.*, 492 U.S. at 42 (quoting *Tull*, 481 U.S. at 417-18). In her report, the Magistrate Judge agrees with Defendants that none of the common law torts identified by Plaintiff reflect an exact match to Title III. Report at 9. The Report contends that nevertheless, "elements of each resemble pieces of the rights being adjudicated under the Act." Report at 9-10.

This conclusion is wrong for several reasons. First, that is not the test set forth by the Supreme Court. The applicable test does not call for identifying a mere "resemblance," it specifically calls for identifying an "analog." *Granfinanciera, S.A.*, 492 U.S at 42 ("the Seventh Amendment also applies to enforce statutory rights that are ***analogous*** to common-law causes of action ordinarily decided in English law courts in the late 18th century") (emphasis added). Next, even if mere "resemblance" was sufficient, there is no explanation in the Report as to how elements of the torts identified by Plaintiff "resemble pieces of the rights being adjudicated under the Act." Report at 9-10. That is because there is no resemblance. *See* Reply in Support of Motion to Strike Plaintiff's Jury Trial Demand, ECF No. 264 at 2-5 (discussing negligence, trespass on the case, trover, ejectment, trespass *quare clausum fredit*, and accomplice-after-the fact and distinguishing them from provisions of the Act).

The causes of action that Plaintiff identifies are materially different because they all require the cause of action be brought by the plaintiff ***against*** the wrongdoer to recover damages caused ***by*** the wrongdoer. In contrast, Plaintiff's claim under Title III does not seek to recover damages from Defendants that are related to Defendants' alleged use of the Terminal; instead, Plaintiff

seeks to recover damages from Plaintiff for harm that was caused by the Cuban Government's confiscation of Plaintiff's concession to operate at the Terminal some six decades ago.

The Act defines an award of damages as the greater of the amount of the certified claim (plus interest), or the fair market value of the confiscated property (calculated as being either the current value, or the value of the property when confiscated plus interest). *See* 22 U.S.C. § 6082(a)(1)(A). Moreover, the right to treble damages attaches where a United States national owns the certified claim. *Id.* at § 6082(a)(3). Thus, even if the alleged wrongful act is Defendants' use of the Terminal, and not the act of confiscating the property by the Cuban government (Report at 10 ("By its plan language, the Act imposes liability on persons who traffic in the property in order to deter them from doing so . . . .")), the damages available under the Act are not tied to the harm caused by the alleged wrongdoer.

There is no tort claim under common law that has this fundamental disconnect between the alleged wrongful conduct and the measure of a plaintiff's damages against the actual defendant in the suit. Moreover, there is no tort in common law where one measure of valuing damages is predetermined by an administrative agency (at which proceeding the wrongdoer had no opportunity to participate), and not the fact-finder, or where the administrative agency is potentially given conclusive deference. Yet this is the case under Title III with respect to the value of the certified claim determined by the Foreign Claims Settlement Commission ("FCSC"). 22 U.S.C. §§ 6082(a)2); 6083(a)(1). And, unlike any of the tort claims that Plaintiff identifies, in situations where a claim has not been certified, the Act further empowers federal courts adjudicating Title III claims to refer claims to the FCSC for determination regarding the amount of damages and ownership. *Id.* at § 6083(a)(2). There is no dispute that the actions to recover damages in common law identified by Plaintiff left the determination of the value of damages to

the jury. Since the Act is unlike any claim available under common law, the first prong of *Granfinanciera* indicates the Act does not confer Plaintiff a right to a jury trial.

The Report cites to *City of Monterrey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999), for its proposition that the key to finding that § 1983 sounded in tort was that it "provide[s] redress for interference with protected personal or property interests." *Id*. at 709. But the difference between § 1983 and Title III of the Act is that § 1983 provides redress for interference with protected personal or property interests ***against the person that interfered*** with such interests. Title III, as the Report acknowledges (Report at 10), has a separate level of redress not found in § 1983 that allows a plaintiff to collect damages not only against the party that interfered with his or her personal or property interests (the Cuban Government), but also against any third party who supposedly "trafficked" in the property, which is broadly defined to include people who merely "use" the property and those who participate in or profit from someone ***else's*** use of the property.[2] *See* Am. Compl. ¶¶ 23-24, ECF No. 56. As the Magistrate Judge correctly points out, "liability hinges on whether or not a defendant has trafficked in the property, and how much or how often (or how little) they might have trafficked is irrelevant." Report at 3. However, neither § 1983 nor the common law claims proffered by Plaintiff allow a plaintiff to bring a cause of action against a third party for damages not caused by that third party.

The Magistrate Judge also correctly recognizes that the Act is unlike other actions at law in permitting the President to unilaterally suspend the Act based on foreign policy interests and in extinguishing claims contingent on the election of a democratic government in Cuba. Report at 11. *See also* 22 U.S.C. § 6085(c)1(B); § 6082(h)(1)(B). Neither of these characteristics exists in

[2] As discussed in Defendants' Motion to Strike, Defendants maintain that Plaintiff's ownership interest was limited to a non-exclusive right to operate a cargo business ***at*** the Havana Cruise Port Terminal and that Plaintiff did not, in fact, ***own*** the pier or other real property.

any other identified action at law, let alone do both of them. It is these factors, along with the fact that significant aspects of Title III delegate damage-adjudicating functions to the FCSC and are closely integrated with the International Claims Settlement Act (a federal regulatory scheme enacted to permit United States nationals to certify claims against foreign sovereign entities), that makes a claim brought under Title III ***not*** subject to the Seventh Amendment. As the Magistrate Judge recognizes, "[p]ublic rights include those seemingly private rights created by Congress that are 'so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary.'" Report at 5, citing *Granfinanciera, S.A.*, 492 U.S. at 54.

A review of the history and purpose of the Act yields no doubt that the right to bring a private claim under Title III of the Act is closely integrated with the Act's International Claims Settlement and Cuban embargo programs. Congress entrusted the FCSC with adjudication of certain aspects of the Act, including whether Plaintiff has a certified claim and the value of that property; the statute even provides a presumption in favor of the agency's valuation unless that presumption is rebutted by clear and convincing evidence that the fair market value is the appropriate damages in any suits under the Act. 22 U.S.C. § 6082(a)(2).[3] And in Title III actions dealing with an uncertified claim, the ***district court*** decides whether to refer the claim to the FCSC or to another special master for determination of the value of the claim. *Id.* at § 6083 (a)(2). Title

[3] Such a presumption should not apply in the event of fraud or misrepresentation to the Foreign Claims Settlement Commission. *See* Final Report of Cuba Claims Settlement Commission at 118 ("Any claimant … who knowingly and willfully conceals a material fact or makes a false statement or representation with respect to any matter before the Commission shall, under law, forfeit all rights to any award or payment on account of this claim."); 22 U.S.C. § 1623(e). Accordingly, the FCSC's decision is not entitled to deference here. *De Gaster v. Dillon*, 247 F. Supp. 511 (D.D.C. 1963) (refusing to enforce FCSC award after determining that fraudulent evidence was presented to the FCSC).

III additionally provides that plaintiffs in a Title III action who fail to recover through a private action maintain the potential to be compensated following "any agreement between the United States and Cuba settling claims covered." *Id*. at § 6082 (f)(2)(A)(i). Moreover, the Act allows the private cause of action to be suspended unilaterally by the President if the President makes a determination—as every President except one did—that "such suspension is necessary to the ***national interests of the United States*** and will expedite a transition to democracy in Cuba." *Id*. at § 6085(c)(1)(B) (emphasis added). And the cause of action vanishes entirely if a democratically elected government comes to power in Cuba. *Id.* at § 6092(h)(1)(B). There is no common law cause of action in which a President can strip away one's right to bring a claim for reasons of public national interest.

The Magistrate Judge's Report states that even though Congress delegated to the FCSC the ability to render determinations as to the value of a claim, it created no federal regulatory scheme for an alternative non-Article III adjudicative process insofar as liability is concerned and there is accordingly no alternative administrative process to be hampered by the imposition of a jury as a factfinder. Report at 8. However, a jury is traditionally tasked with adjudicating not only issues of liability, but also with adjudicating damages. Title III, by contrast, entrusts the adjudication of the value of the claim, i.e., damages, to an administrative or regulatory scheme: the FCSC. By entrusting the FCSC with adjudicating the value of a claim, Congress delegated to a tribunal with specialized expertise. This delegation by Congress to the FCSC is inconsistent with the use of a jury for any part of a claim brought under Title III. *Curtis v. Loether*, 415 U.S. 189, 194 (1974) ("the Seventh Amendment is generally inapplicable in administrative proceedings, where jury trials would be incompatible with the whole concept of administrative adjudication") (citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)); *Granfinanciera, S.A.*, 492 U.S. at 54 ("The

concept of expertise on which the administrative agency rests is not consistent with the use by it of a jury as fact finder." (quoting L. Jaffe, Judicial Control of Administrative Action 90 (1965) (internal quotations omitted))); *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 575 (1990) ("congressional delegation to a specialized decision maker" is a hallmark of statutory claims for which Congress did not intend a jury trial).

It is true that that the Supreme Court's "public rights" cases, referenced below, arise in cases where Congress has withdrawn jurisdiction over an action by courts of law and assigned them exclusively to a non-Article III administrative body. But the Seventh Amendment Constitutional questions are common both to those cases and this one. After all, if Congress can constitutionally withdraw those actions involving public rights (that is, rights "so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary") from the judiciary altogether, then *a fortiori* the Seventh Amendment does not require a jury trial for such actions. The public-rights cases stand clearly for the proposition that when Congress creates new statutory "public rights" that are so closely intertwined with a federal regulatory scheme, a cause of action brought under that public right does not need to be tried by a jury. *Granfinanciera S.A.*, 492 U.S. at 51 ("Congress may devise novel causes of action involving public rights free from the strictures of the Seventh Amendment…."); *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 138 S. Ct. 1365, 1373 (2018) (Congress has "significant latitude" to assign adjudication of public rights); *Atlas Roofing Co. v. Occ'l Safety and Health Rev. Comm'n*, 430 U.S. 442, 455 (1977) ("when Congress creates new statutory 'public rights,' it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment's injunction that jury trial is to be 'preserved' in 'suits at common law'").

While the Supreme Court cases do not address a statute such as Title III, in which only certain aspects of a claim have been entrusted by Congress explicitly to an administrative agency or a special master in the district court's discretion, that is only because no such statute has ever existed. The test for deciding whether "public rights" are implicated as set forth by the Supreme Court nevertheless applies. *Granfinanciera, S.A.*, 492 U.S. at 54-55. The Act's express concerns for foreign relations and bringing about a change in Cuban politics, and the origins of the Act including its integration of parts of the International Claims Settlement Act (a separate act entirely) and the FCSC, suggests Title III is more analogous to those public rights for which the Supreme Court has held the Seventh Amendment ***does not*** require a trial by jury. *See, e.g., Glidden Co. v. Zdanok*, 370 U.S. 530, 572 (1962) ("[S]uits against the Government, requiring as they do a legislative waiver of immunity, are not 'suits at common law' within the meaning of the Seventh Amendment."); *Arango v. Guzman Travel Advisors*, 761 F.2d 1527, 1534 (11th Cir. 1985). Congress, in enacting Title III, enacted a statutory right that is so closely intertwined with a federal regulatory scheme that it unequivocally implicates the type of "private rights" considered by the Court in *Granfinanciera. Id.*

Because the Act has no analogy to common law causes of action and is inherently intertwined with a public scheme that implicates public rights, the first prong of the test set forth by the Supreme Court indicates that the Act does not confer Plaintiff with the right to a trial by jury.

II. The Remedy Under the Act Is Equitable in Nature

The second prong of the test in *Granfinanciera* requires the Court to "examine the remedy sought and determine whether it is legal or equitable in nature." *Granfinanciera, S.A.*, 492 U.S. at 42 (citing *Tull*, 481 U.S. at 417-418. This stage of the analysis is more significant than the first.

Id. Even where an action is determined to be one at law, "if the remedy sought is equitable, then the case is properly heard in a court of equity." *Hughes v. Pridework Capital Partners, LLC.*, 812 Fed. Appx. 828, 834 (11th Cir. 2020).

The Magistrate Judge recognizes that even where a claim seeks money damages, certain money damages such as restitution and unjust enrichment may be remedies at equity depending on "the basis for [the plaintiff's] claim and the nature of the underlying remedies sought." Report at 11-12; *AcryliCon USA, LLC v. Silikal GmbH*, 985 F. 3d 1350, 1374 n.45 (2021). Where restitution damages could be comprised of property "belonging in good conscience to the plaintiff" that may "clearly be traced to particular funds or property in the defendant's possession," then the restitution is equitable in nature. Report at 12; *AcryliCon*, 985 F. 3d at 1374.

The determinative question, according to the Magistrate Judge, is whether the action imposes liability on a defendant for a sum of money or whether it seeks "to restore to the plaintiff particular funds or property in the defendant's possession." Report at 12; *Hughes*, 812 Fed. Appx. at 833 (citing as an example the disgorgement of profits, which seeks the return of specific funds traceable to the defendant and is thus equitable).

There is no dispute that Congress intended the Act to be a remedy for United States nationals who have been wrongfully deprived of their property against, not only the person or entity that took their property (the Cuban Government), but also against anyone who profited or was unjustly enriched by the taking. In its findings, Congress stated that "[t]he international judicial system, as currently structured, lacks effective remedies for the wrongful confiscation of property ***and for unjust enrichment*** from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property." 22 U.S.C. § 6081(8). The remedy under the Act clearly seeks "to restore to the plaintiff particular funds"—

the value of the property. While these "funds" were not taken by Defendants and are therefore not in the possession of Defendants, the remedy under the Act is nonetheless the return of the value of the property which was confiscated and therefore is akin to equitable restitution. The Magistrate Judge does not dispute the fact that "the Act calculates damage awards using the value of the property." Report at 13.

The Report also does not address the important fact that the Act allows Plaintiff to seek as damages not only the property's value at the time of the taking, but also provides that the appropriate amount of damages can be measured based on the value of the property as it stands ***today***. 22 U.S.C. § 6082(a)(1)(A)(i)(III) and §6082(a)(2). Indeed, Plaintiff has taken the position in this case it will seek not just the current value of Plaintiff's original property plus interest, but also the value of improvements that the Cuban government built on the property ***after*** expropriation — such as the cruise terminal that was constructed decades after confiscation. This characteristic of the measure of damages for a claim brought under the Act makes it akin to equitable restitution because Plaintiff is able to obtain as a remedy an increase in value of the Property since the confiscation, thus tying Plaintiff's remedy directly to the property confiscated. *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002) (recognizing as an equitable remedy "where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property")); Restatement (First) of Restitution § 160 cmt. D (1937) (in some situations "the defendant is compelled to surrender the benefit on the ground that he would be unjustly enriched if he were permitted to retain it, even though that enrichment is not at the expense or wholly at the expense of the plaintiff."). In answering the Magistrate Judge's determinative question, Plaintiff's demand for the value of the property as of today, including with the improvements made by the Cuban government or

including Plaintiff's hypothetical luxury hotel and mega-terminal, is an imposition of liability based on "restor[ing] to the plaintiff particular funds or property."

The Report further states that characterizing the damages as disgorgement is not accurate given that the damages are measured by the property value with no apparent connection to a defendant's revenue or profits. Report at 14. While it is true that this measure of damages is not linked to any profits made by Defendants, it is equally completely disconnected from the harm allegedly caused by Defendants. *Fair Isaac corp. v. Fed. Ins. Co.*, 408 F. Supp 3d 1019. 1031 (D. Minn. 2019), aff'd, 468 F. Supp 3d 110 (D. Minn. 2020) (finding relief equitable where "it is disconnected from and in addition to any actual harm FICO has suffered"). In any event, it cannot be ignored that both Plaintiff's operative Complaint and the statute on which it bases its claim attempt to justify damages to be paid by third party traffickers based on alleged "improper profits." Plaintiff alleges in its complaint that the Defendants "profited from the communist Cuban Government's possession of the Subject Property. *See* Am. Compl. (ECF No. 56) ¶ 24. Plaintiff contends that a person "traffics" for purposes of liability, regardless of wrongdoing, if the person "uses . . . confiscated property" or "participates in, or ***profits*** from, trafficking . . . by [the Cuban Government]." *Id.* ¶¶ 23-24. Moreover, Congress stated in its findings that the Act aims to compensate for "the subsequent exploitation of this property at the expense of the rightful owner," *see* 22 U.S.C. § 6081(2), and "deny traffickers any ***profits*** from economically exploiting Castro's wrongful seizures." *Id.* § 6081(11). Thus, Plaintiff's own contentions and the Act's purpose as set forth by Congress both support the conclusion the remedy under the Act is ***equitable*** in nature.

The Report cites *Tull* for the proposition that even where damages ***are*** calculated using profits, the remedy is not necessarily equitable disgorgement. 481 U.S. at 423-24. But *Tull* was not a private suit but rather a civil enforcement action. That is why the district could impose a fine

in instances where the petitioner received no profits at all from property sales. *Id.* That court's holding that the Clean Water Act's penalty provisions are punitive in nature and thus inherently legal rather than equitable is based on the fundamental fact that statute allows the Government to impose civil penalties. *Id.* at 424 (noting that "while a court in equity may award monetary restitution as an adjunct to injunctive relief, it may not enforce civil penalties"). Title III, on the other hand, is not a statute where the Government is imposing fines on third party traffickers. While the language in the Act states its purpose is to deter third party traffickers from profiting based on the use of confiscated property, the remedy under the Act is not the imposition of civil penalties or fines by the Government, as is the case with the Clean Water Act.

Conspicuously, there are other places in the Act where the purpose of the Act is framed explicitly as seeking an equitable remedy precisely because there is no adequate remedy at law. Congress stated that the purpose of the Act was to address the concern that "[t]he international judicial system, as currently structured, ***lacked sufficient remedies*** for the wrongful confiscation of property . . . ." 22 U.S.C. § 6081(8) (emphasis added). The International Claims Settlement Act, which Plaintiff's experts supposedly applied to measure Plaintiff's damages in this case, requires an ***"equitable"*** measurement to be assessed by the FCSC rather than a jury. 22 U.S.C. § 1623(a)(2)(B). It further requires "the Commission" to apply "applicable principles of international law, justice, ***and equity***," and apply "the method most . . . ***equitable*** to the claimant." *Id.* This indicates the nature of the remedy sought by Plaintiff is equitable. As the Supreme Court once put it, "[t]he absence of a complete and adequate remedy at law, is the only test of equity jurisdiction." *Payne v. Hook*, 74 U.S. 425, 430 (1868); *Guthrie v. Transamerica Life Insurance Company*, 2021 WL 4314909, at *3 (N.D.Cal., 2021).

The Report relies on *Fleitmann v. Welsback St. Lighting Co. of Am.*, 240 U.S. 27, 29 (1916), in concluding that the Act's treble damages provision further bolsters an interpretation of the damages under the Act as legal in nature. Report at 14. But the Supreme Court in *Fleitmann* did not hold that all statutes with treble damages are legal actions to which the Seventh Amendment applies. Rather, the Court's holding, consisting of just five paragraphs, only considered and addressed the Sherman Act—but resolved no constitutional question on this issue. *Id.* at 29. The Fifth Circuit, prior to its split from the 11th Circuit, recognized this important limitation. *Swofford v. B&W, Inc.*, 336 F. 2d 406, 414 (5th Cir. 1964) ("We read *Fleitmann* to hold that the right of trial by jury in a suit for treble damages under the Sherman Act is a matter of statutory right rather than a Seventh Amendment right.").

In *Swofford*, the court considered an award of exemplary damages which allowed a court to increase damages up to three times the amount found or assessed. *Id.* at 411. Even though this was essentially a treble damages provision, the *Swofford* court concluded it did not give a plaintiff the right to a jury trial. *Id.* at 412 ("[W]e find no authority for the proposition that the parties enjoyed a constitutional right to jury trial on the award and amount of exemplary damages. Quite to the contrary, the cases indicate that Congress has fluctuated, with approval by the Supreme Court, between jury trial and no jury trial on the question of exemplary damages in patent actions."). In holding that plaintiff was not entitled to a jury trial on the issue of exemplary/ punitive damages, the *Swofford* court made clear not all provisions that are meant to deter conduct provide plaintiff with a Seventh Amendment right to a jury trial.

Thus, the language under the Act, the stated purpose of the Act by Congress and the fact that the remedy available under the Act explicitly seeks to restore to Plaintiff the value of its property (rather than, for example, anything Defendants gained from any alleged use of the

property) all indicate the nature of the remedy sought under the Act by Plaintiff is equitable, and therefore Plaintiff does not have a right to a trial by jury in this case.

III. Conclusion

For these reasons, the Court should not adopt the recommendation in the Report from the Magistrate Judge and should find the nature of the remedy sought by Plaintiff is equitable in nature. The Court should thus enter an Order granting Defendants' Motion to Strike Plaintiff's Jury Demand because Plaintiff is not entitled to a trial by jury under the Seventh Amendment for its claim brought under Title III of the Act.

Dated: January 25, 2022

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida
Telephone: (954) 356-0011

By:/s/ *Stuart H. Singer*
Florida Bar No. 377325
ssinger@bsfllp.com
Meredith Schultz
Florida Bar No. 29536
mschultz@bsllp.com
Pascual A. Oliu
Florida Bar No. 0107737
Corey P. Gray
Florida Bar No. 0115473
cgray@bsfllp.com

Pedro A. Freyre
Florida Bar No. 192140
Pedro.freyre@akerman.com
AKERMAN LLP
98 S.E. 7th Street, Suite 1100
Miami, Florida 33131
Telephone: (305) 374-5600

HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, Florida 33131
Telephone: (305) 459-6500
Facsimile: (305) 459-6550

By: /s/ *Allen P. Pegg*
Richard C. Lorenzo
Florida Bar No. 071412
richard.lorenzo@hoganlovells.com
Allen P. Pegg
Florida Bar No. 597821
allen.pegg@hoganlovells.com

Counsel for Norwegian Cruise Line Holdings Ltd.

HOLLAND & KNIGHT LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Telephone: (305) 374-8500
Facsimile: (305) 789-7799

By: */s/ Scott D. Ponce*
Sanford L. Bohrer
Florida Bar No. 160643
sbohrer@hklaw.com

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

Counsel for Carnival Corporation

VENABLE LLP
600 Massachusetts Avenue
Washington, D.C. 20001
Telephone: (202) 344-4703
Facsimile: (202) 344-8300

By:*/s/ J. Douglas Baldridge*
Florida Bar No. 708070
JBaldridge@venable.com
Andrew T. Hernacki (admitted *pro hac vice*)
ATHernacki@venable.com
Justin B. Nemeroff (admitted *pro hac vice*)
JBNemeroff@venable.com

Counsel for MSC Cruises

Scott D. Ponce
Florida Bar No. 0169528
sponce@hklaw.com

Counsel for Royal Caribbean Cruises Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2022, the foregoing was filed with the Clerk of Court using CM/ECF, which will serve a Notice of Electronic Filing on all counsel of record.

By: */s/ Allen P. Pegg*