

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

LUIS CARLOS SANCHEZ MONTERO

Plaintiff,

v.

OCEANIA CRUISES INC., APOLLO SHIP
CHANDLERS, INC., and INTERNATIONAL
CRUISE SERVICES, INC.

Defendants.

DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION
PURSUANT TO 9 U.S.C. § 205

Defendants OCEANIA CRUISES INC. ("OCEANIA"), APOLLO SHIP CHANDLERS, INC. ("APOLLO"), and INTERNATIONAL CRUISE SERVICES, INC. ("ICS"), by and through undersigned counsel, seek removal of this cause from the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court of the Southern District of Florida, with full reservation of rights, exceptions and defenses, and respectfully represents:

1. Plaintiff, Luis Carlos Sanchez Montero ("Plaintiff"), is a resident, domiciliary, and citizen of the Dominican Republic. (A copy of Plaintiff's Passport reflecting citizenship is attached hereto as Exhibit "A").
2. Defendant OCEANIA is a foreign corporation with its principal place of business and base of operations in Miami, Florida.

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3. Defendant APOLLO is incorporated in Florida with its principal place of business in and base of operations in Miami, Florida.
4. Defendant ICS is a foreign corporation with its principal place of business and base of operations in Panama.
5. The vessel on which Plaintiff was a crew member, the *M/S Marina*, is a cruise ship registered and flagged in the Republic of the Marshall Islands at the time of Plaintiff's alleged injury.
6. On January 23, 2012, Plaintiff entered into an employment agreement titled "Crew Agreement" ("Agreement") that sets forth the basis for his employment with ICS. (See "Agreement" attached hereto as Exhibit "B").
7. Upon the signing of the Agreement, Plaintiff became subject to the terms and conditions of the Collective Bargaining Agreement ("CBA") as follows:
 - b. The current Collective Bargaining Agreement between the Company and ITF- FIT is incorporated by reference into this Agreement.

(See Exhibit "B" at ¶ 10(b)).

8. The CBA includes a provision requiring the parties to refer to arbitration all grievances and disputes as follows:

Grievances and disputes arising on the vessels or in connection with this Agreement which cannot be resolved on board or between the parties shall be referred to arbitration as elsewhere provided herein . . . Where a seafarer raises a grievance after leaving the vessel, the grievance shall be referred to the Unions at Rome and the Company at Miami, Florida and representatives of the parties shall promptly confer to resolve the grievance or refer it to arbitration . . . If the matter is not resolved within forty-eight (48) hours after the conference, either party may refer it to an arbitrator for final resolution. Arbitrator to be jointly appointed by the Unions

and the Company. The place of arbitration shall be either the country of the seafarer's citizenship or London, United Kingdom. The language of the proceedings shall be English.

(See "CBA" attached hereto as Exhibit "C").

9. Plaintiff alleges that he became injured on or about July 5, 2012 while working onboard the *M/S Marina*. On February 17, 2014, Plaintiff filed suit in the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida. Said action was styled, *Luis Carlos Sanchez Montero v. Oceania Cruises, Inc., Apollo Ship Chandlers, Inc. and International Cruise Services, Inc.*, Case No.: 14-4289 CA 01.
10. Plaintiff filed a Seaman's Complaint asserting claims for (1) Jones Act Negligence Regarding Injury Event Against Oceania Cruises, Inc.; (2) Unseaworthiness Against Oceania Cruises, Inc.; (3) Jones Act Negligence Regarding Injury Event Against Apollo Ship Chandlers, Inc.; (4) Jones Act Negligence Regarding Injury Event Against International Cruise Services, Inc.; (5) Jones Act Negligence — Failure to Provide Prompt and Adequate Cure Against Oceania Cruises, Inc.; (6) U. S. General Maritime Law Claim for Failure to Provide Prompt and Adequate Maintenance and Cure Against Oceania Cruises, Inc.; (7) Jones Act Negligence — Failure to Provide Prompt and Adequate Cure Against Apollo Ship Chandlers, Inc.; (8) U. S. General Maritime Law Claim for Failure to Provide Prompt and Adequate Maintenance and Cure Against Apollo Ship Chandlers, Inc.; (9) Jones Act Negligence — Failure to Provide Prompt and Adequate Cure Against

International Cruise Service, Inc.; and (10) U. S. General Maritime Law Claim for Failure to Provide Prompt and Adequate Maintenance and Cure Against International Cruise Services, Inc.

11. Plaintiff's claims arise out of his employment and pursuant to the terms and conditions of Plaintiff's contract of employment wherein the parties are mandated to submit all disputes to arbitration. Accordingly, both at the time the suit was instituted and at the time of the present removal, this dispute is subject to mandatory arbitration in the country of his citizenship or London under laws of the Marshall Islands.
12. The foreign arbitration mandated between Plaintiff and Defendant is subject to the provisions of the United Nations Convention of the Recognition and Enforcement of Foreign Arbitral Awards on June 10, 1958 ("The Convention"), and therefore The Convention and its enabling legislation are controlling pursuant to 9 U.S.C. §202 *et. al.*
13. Accordingly, this Court has subject matter jurisdiction by virtue of 28 U.S.C. §1331, 28 U.S.C. §1333, and 9 U.S.C. § 202, *et. al.*
14. This Court has removal jurisdiction pursuant to 9 U.S.C. §202 *et. al.* *Henriquez v. NCL (Bahamas), Ltd.*, 440 Fed. Appx. 714, 2011 WL 3890357 (11th Cir. 2011)(claims of Jones Act negligence and maintenance and cure were properly removed to federal court). See also, *Francisco v. Stolt Achievement MT*, 293 F. 3d 270 (5th Cir. 2002).

15. There has been no trial of the state court action; nor has there been an adjudication on the merits, thus this removal is timely pursuant to 9 U.S.C. § 205. See *McDermott Int'l, Inc. v. Lloyds Underwriters of London*, 944 F. 2d 1199, 1212 (5th Cir. 1991)(Under § 205, a defendant may remove a case to federal court at any time before the trial.)
16. This Court has subject matter jurisdiction by virtue of 28 U.S.C. §1331.
17. Upon filing of this Notice of Removal, Defendants will promptly give written notice thereof to Plaintiff, through his attorneys of record, and the Clerk of the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida.
18. Defendants attach hereto and make a part of this Notice a copy of the process, and pleadings filed in the Eleventh Judicial Circuit of the State of Florida, In and For Miami-Dade County (See, Exhibit "D") together with a docket sheet from the Clerk of the Court. (See, Exhibit "E").

WHEREFORE Defendants OCEANIA CRUISES INC., APOLLO SHIP CHANDLERS, INC., and INTERNATIONAL CRUISE SERVICES, INC. respectfully request the Notice of Removal be accepted as good and sufficient as required by law, and that the aforesaid action, Case Number 14-4289 CA 01 on the docket of the Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida, be removed from that Court to the United States District Court for the Southern District of Florida, and that this Court assume full and complete

jurisdiction thereof and issue all necessary orders and grant all general equitable relief to which Defendants are entitled.

Respectfully submitted,

/s/ Gilda M. Chavez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2014, I electronically filed the foregoing document with the Clerk of the court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Gilda M. Chavez

Gilda M. Chavez

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