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 6 CELEBRITY CRUISES, INC.; and
 ROYAL CARIBBEAN CRUISES LTD.
 7

8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 DONALD BESSEY,)	CASE No: C08-04862 BZ
)	
11 Plaintiff,)	MOTION FOR ADMINISTRATIVE
)	RELIEF
12 vs.)	[Local Rule 7-11]
)	
13 CELEBRITY CRUISES, INC.; ROYAL)	DATE: TBD
14 CARIBBEAN CRUISES LTD; AND DOES)	TIME: TBD
1-10, INCLUSIVE,)	CTRM: G, 15th Floor
)	
15 Defendants.)	Complaint Filed: October 23, 2008
)	Trial Date: None Set
_____)	Magistrate Judge: Hon. Bernard Zimmerman

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 18 Pursuant to Local Rule 7-11, Defendants CELEBRITY CRUISES, INC. and ROYAL
 19 CARIBBEAN CRUISES LTD. (collectively "RCL") hereby seeks administrative relief from General
 20 Order 56 so as to allow the filing of a motion for summary judgment.

21 **I. FACTUAL BACKGROUND**

22 Plaintiff is a physically disabled person who travels in a motorized scooter. Plaintiff booked an
 23 international cruise on the Maltese-flagged cruise ship MILLENNIUM and now seeks to enforce Title
 24 III of the Americans with Disabilities Act ("ADA") and California Civil Code, sections 54, 54.1, and
 25 54.3 so as to require RCL to provide "full and equal" physical access to disabled cruise ship passengers
 26 aboard MILLENNIUM. Plaintiff wants RCL to undertake "readily achievable" barrier removal of
 27 physical obstacles aboard MILLENNIUM.

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1 As an ADA claim, this action is subject to General Order #56. General Order #56 requires
2 parties to retain experts, make FRCP 26 disclosures, conduct a visual premises inspection, and mediate
3 all claims before any other discovery can be conducted or any dispositive motions can be filed. Thus,
4 this case could proceed for nearly a year before RCL would be afforded an opportunity to file a motion
5 for summary judgment that could dispense with the need for any of the requirements of General Order
6 #56.

7 There is no reason to force RCL to incur the costs of making disclosures, retaining experts,
8 conducting a vessel inspection (which would have to take place in Hawaii, as the vessel will not be in
9 California in the foreseeable future), and participating in a mediation if this matter can be resolved by
10 way of a motion for summary judgment. RCL's proposed motion for summary judgment is based on
11 legal theories that can be resolved without any further discovery, disclosures or inspections.

12 **II. APPLICABLE LAW:**

13 General Order #56 applies "[i]n any action which asserts a denial of a right of access protected
14 by Title III of the Americans with Disabilities Act." (General Order #56, preamble) Under General
15 Order #56, all "discovery and proceedings are STAYED" except for certain specified requirements that
16 must be completed before any motions, such as a motion for summary judgment, can be filed. For
17 instance, the parties are required to conduct an inspection of the premises (with experts) within 100 days
18 of the filing of the complaint. (General Order #56, ¶3.) Federal Rule of Civil Procedure 26(a)
19 disclosures are required 7 days prior to the premises inspection. (General Order #56, ¶2.) After the
20 inspection, the parties are required to meet and confer and thereafter are required to conduct a mediation
21 (General Order #56, ¶¶4,6.) If the mediation fails to resolve the matter in its entirety, the plaintiff must
22 seek leave of court to set a case management conference. (General Order #56, ¶7.) Thus, this case could
23 proceed for nearly a year and could cost RCL tens of thousands of dollars in defense fees, expert costs,
24 and mediation fees before the legitimacy of the claim can even be tested by way of a motion for
25 summary judgment.

26 General Order #56 recognizes, however, the need to alter or modify its provisions to fit the needs
27 of a particular case: "Any party who wishes to be relieved of any requirement of this order may file a
28 Motion for Administrative Relief pursuant to L.R. 7-11." (General Order #56, ¶8.) L. R. 7-11

1 "recognizes that during the course of case proceedings a party may require a Court order with respect
2 to miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local
3 rule or standing order of the assigned judge." While the filing of a motion for summary judgment is
4 governed by federal statute, General Order #56 precludes the filing of such a motion at his point in the
5 litigation. Since RCL's motion for summary judgment is based on legal theories that need no additional
6 discovery to adjudicate, RCL seeks to be relieved of the requirements of General Order #56 so it may
7 file its motion for summary judgment now.

8 **III. ARGUMENT**

9 This action is unique in several respects. First, the "premises" to be inspected is a foreign-
10 flagged cruise ship. MILLENNIUM is not located in the Northern District of California where this
11 action was filed. In fact, MILLENNIUM is typically outside of the territorial waters of the United
12 States. MILLENNIUM is a Maltese-flagged cruise ship that only enters the territorial boundaries of the
13 United States for brief periods of time. Due to its current itinerary, MILLENNIUM will not be in
14 California in the foreseeable future. The next time MILLENNIUM will be in the United States at all
15 is in April, when it will be in Hawaii, not in California. The arrangement of a General Order #56 extra-
16 territorial premises inspection alone is a task that will involve dozens of man-hours and will require
17 parties to travel to Hawaii to complete. It is hard to imagine a more expensive or onerous General Order
18 #56 premises inspection.

19 Second, this action involves the application of United States law on a foreign-flag cruise ship.
20 Before parties incur the expense of retaining experts and conducting the premises inspection, a legal
21 determination as to whether the ADA can even require RCL to reconstruct the physical features of
22 MILLENNIUM must be made. Since MILLENNIUM is a foreign-flagged cruise ship and because there
23 are currently no ADA regulations whatsoever governing cruise ships, be they foreign-flagged or
24 domestic-flagged, plaintiff's claim lacks legal merit. RCL must be afforded an opportunity to test
25 whether plaintiff's claim could withstand a legal-based motion for summary judgment before it incurs
26 the costs associated with conducting the requirements of General Order #56.

27 Thus, RCL seeks relief from the stay imposed by General Order 56 so a motion for summary
28 judgment can be filed to test the notion that RCL can be compelled to alter, reconstruct or retrofit

1 MILLENNIUM under Title III of the ADA.

2 **IV. SUMMARY JUDGMENT IS WARRANTED**

3 Plaintiff asserts two causes of action. Plaintiff’s First Cause of Action alleges denial of full and
4 equal access to a public accommodation under California Civil Code, sections 54, 54.1, and 54.3. The
5 Second Cause of Action alleges violation of 42 U.S.C. Section 12101 *et. seq.* (Americans With
6 Disabilities Act).

7 Both causes of action lack legal merit for the following four reasons that will be expanded upon
8 in RCL’s motion for summary judgment:

9 1. No regulations regarding accessibility apply to cruise ships. Thus, even if Title III of the ADA
10 applied to the internal affairs of a foreign flagged vessel, there is no guidance, standard, specification
11 or notice whatsoever as to how cruise ships should be constructed so as to be ADA compliant. Without
12 clear direction from regulators, RCL cannot be forced to undertake any physical alterations to
13 MILLENNIUM to conform to Title III of the ADA. “Due process requires that the government provide
14 citizens and other actors with sufficient notice as to what behavior complies with the law.” (*United*
15 *States v. AMC Entertainment, Inc.* (9th Cir., Dec. 2008) 549 F.3d 760,767.) No government agency has
16 provided any guidance to owners of cruise ships as to how to undertake physical alterations of their
17 ships to conform to Title III of the ADA so any injunction requiring RCL to modify MILLENNIUM
18 would violate RCL’s due process rights. (*See AMC Entertainment, Inc.*

19 2. The ADA Title III barrier removal requirements cannot be applied to foreign flag vessels
20 cruising in international trade unless or until amended by Congress to express a clear intent for such
21 application. This is especially true with regard to the physical characteristics of the ship, it’s design or
22 construction. *See Spector v. Norwegian Cruise Line, Ltd.*, 545 U.S. 119 (2005); *McCulloch v. Sociedad*
23 *Nacional de Marineros de Honduras*, 372 U.S. 10 (1963); *Benz v. Compania Naviera Hidalgo, S.A.*, 353
24 U.S. 138 (1957).) “[A]pplications of the barrier removal requirement [of the ADA] likely would
25 interfere with the internal affairs of foreign ships.” (*Spector*, p. 135.)

26 3. Application of the structural modifications, alterations and barrier removal provisions of the
27 ADA would impermissibly circumvent the requirements of the Administrative Procedures Act and the
28 “primary jurisdiction doctrine.”

1 4. Federal maritime and international law preclude a state from applying its laws to render RCL
2 liable based on structural aspects of a foreign flag ship cruising in international waters. Prosecution of
3 plaintiff's state law claims would be an impermissible extraterritorial application of state law violative
4 of the Commerce Clause of the United States Constitution.

5 Given the strength of RCL's legal defenses, it wishes to file a motion for summary judgment
6 now, before it incurs the costs associated with a vessel inspection in Hawaii, retention of experts,
7 mediation, and FRCP 26 disclosures.

8 **V. CONCLUSION**

9 Rather than force RCL to incur tens of thousands of dollars in fulfilling the requirements of
10 General Order #56 in a case that has dubious legal merit, RCL seeks administrative relief from General
11 Order #56 so it may file its motion for summary judgment now. RCL should be relieved from the
12 requirements of General Order #56 and the stay on all proceedings must be lifted to permit RCL to file
13 its motion for summary judgment.

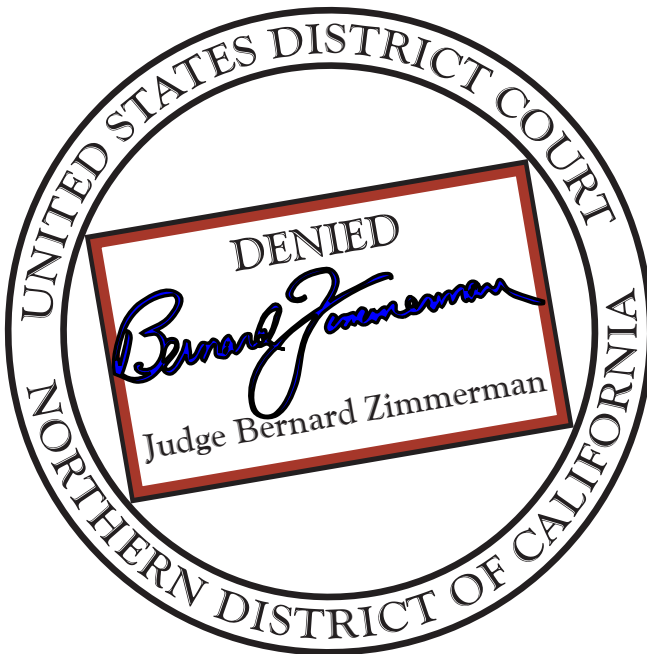
14 Dated: March 12, 2009

KAYE, ROSE & PARTNERS, LLP

/s/ Ronald K. Losch

By: _____

Ronald Losch
William Carey
Attorneys for Defendants
CELEBRITY CRUISES, INC.; and
ROYAL CARIBBEAN CRUISES LTD.



DATED: March 24, 2009

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PROOF OF SERVICE BY MAIL AND FAX

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California.

I am over the age of 18 and not a party to the within action; my business address is 425 California Street, Suite 2025, San Francisco, California, 94104.

I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service.

On this date, I served the following documents described as:

MOTION FOR ADMINISTRATIVE RELIEF [Local Rule 7-11]

on the parties in this action by executing this Proof of Service and immediately thereafter causing true copies thereof to be enclosed in an envelope with postage thereon being fully prepaid and placed for collection and mailing following the ordinary course of business addressed to:

Paul L. Rein
Celia McGunniess
Law Offices of Paul L. Rein
200 Lakeside Drive, Suite A
Oakland, CA 94612
Fax 510 832-4787

Brian Gearinger
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825 Van Ness Ave., 4th Floor
San Francisco, CA 94109
Fax 415 440-3103

Thereafter I caused the documents to be faxed to the parties at the Fax numbers listed above.

I declare under penalty of perjury that the above facts are true and correct. Executed in San Francisco, California on March 12, 2009.

/s/ Susan Romero

Susan Romero