

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: \_\_\_\_\_ CIV- \_\_\_\_\_

MAGISTRATE JUDGE: \_\_\_\_\_

NOTAISH SEUNARINE,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.

\_\_\_\_\_ /

**DEFENDANT'S NOTICE OF REMOVAL OF CIVIL ACTION**  
**PURSUANT TO 9 U.S.C. § 205 AND 28 U.S.C. § 1441**

Defendant Royal Caribbean Cruises, Ltd. ("RCL"), by and through undersigned counsel, seek removal of this cause from the Circuit Court of the 11<sup>th</sup> 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, Notaish Seunarine ("Plaintiff"), is a resident, domiciliary, and citizen of Guyana. (A copy of Plaintiff's passport reflecting same is attached hereto as Exhibit "A").
2. Defendant, Royal Caribbean Cruises, Ltd., is a Liberia corporation with its principal place of business and base of operations located in Miami, Florida. The vessel on which Plaintiff was a crew member, the *Adventure of the Seas*,

is a cruise ship registered and flagged in the Bahamas at the time of Plaintiff's injury.

3. On August 25, 2007, Plaintiff entered into an individual contract of employment with RCL titled "Sign On Employment Agreement" (A copy of the Sign On Employment Agreement is attached hereto as Exhibit "B".) By executing the Sign On Employment Agreement, Plaintiff agreed to be subject to the terms and conditions of the "Collective Bargaining Agreement" effective January 1, 2005. (A copy of the Collective Bargaining Agreement is attached hereto as Exhibit "C"). Article 26(d) of the Collective Bargaining Agreement is entitled, "Grievance and Dispute Resolution Procedure" and states in paragraph (d):

If not resolved by the Union, the Owners/Company, and/or the Seafarer, **all grievances and any other dispute whatsoever, whether in contract, regulatory, tort or otherwise, including constitutional, statutory, common law, admiralty, intentional tort and equitable claims, relating to or in any way connected with the seafarer's service for the Owners/Company, including but not limited to claims for personal injury or death, no matter how described pleaded or styled, and whether asserted against the Owners/Company, Master, Employer, Ship Owner, vessel or vessel operator, shall be referred to and resolved exclusively by binding arbitration** pursuant to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. ("The Convention"), except as otherwise provided in any government mandated contract, such as the Standard POEA Contract for Philippine Seafarer. Any arbitration shall take place in the Seafarers country of citizenship or the ship's flag state, unless arbitration is unavailable under the Convention in those countries, in which case only said arbitration shall take place in Miami, Florida. Any arbitration in Miami, Florida shall be administered

by the American Arbitration Association under its International Dispute Resolution Procedures. The Union shall appoint one arbitrator, the Owners/ Company shall appoint one arbitrator and a third arbitrator shall be jointly appointed by the Union and the Owners/Company. However, the Owners/Company and the Union, in their discretion, may jointly select a single arbitrator. The parties shall have the right in any arbitration to conduct examinations under oath of parties and witnesses, and medical examination necessary to verify any injuries or damages claimed. **The arbitration referred to in this Article is exclusive and mandatory. Claims and lawsuits may not be brought by any Seafarer or party hereto, except to enforce arbitration or a decision of the arbitrator.** (Emphasis added)

(See Exhibit "C").

4. Plaintiff alleges that he suffered personal injuries while working as a cleaner/tailor on the *Adventure of the Seas*. On January 28, 2011, Plaintiff filed suit in the Circuit Court for the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida. Said action was styled, *Notaish Seunarine, Plaintiff v. Royal Caribbean Cruises, Ltd., Defendant*, Case No.: 11-3110 CA 24.
5. Plaintiff filed a Seaman's Complaint against RCL asserting claims for (1) Jones Act Negligence; (2) Unseaworthiness; (3) Failure to Provide Maintenance and Cure; (4) Failure to Treat; and (5) Wages and Penalties.
6. Plaintiff's claims arise out of his employment and pursuant to the Collective Bargaining Agreement which is incorporated by reference to Plaintiff's Sign On Employment Agreement wherein the parties are mandated to submit all disputes to arbitration in Plaintiff's country of citizenship or the ship's flag state. 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 Bahamas<sup>1</sup>.

7. The arbitration mandated between Plaintiff and Defendant is subject to the provisions of the 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.*
8. 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.*
9. This Court has removal jurisdiction pursuant to 9 U.S.C. §202 *et. al.* and, to the extent applicable, 28 U.S.C. § 1441. *Bautista v. Star Cruises and Norwegian Cruise Line, Ltd.*, 396 F. 3d 1289 (11<sup>th</sup> Cir. 2005) (claims of negligence and unseaworthiness under the Jones Act were properly removed to federal court). See also, *Francisco v. Stolt Achievement MT*, 293 F. 3d 270 (5<sup>th</sup> Cir. 2002).
10. 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 (5<sup>th</sup> Cir. 1991)(Under § 205, a defendant may remove a case to federal court at any time before the trial.)

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<sup>1</sup> The Republic of Guyana, is not a signatory to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (“Convention”); thus, the arbitration must take place in the Bahamas.

11. This Court has subject matter jurisdiction by virtue of 28 U.S.C. §1331.
12. Upon filing of this Notice of Removal, Defendant will promptly give written notice thereof to Plaintiff, through his attorneys of record, and the Clerk of the Circuit Court for the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida.
13. Defendant attached hereto and makes a part of this notice a copy of the process, pleadings and order filed in the Eleventh Judicial Circuit of the State of Florida, In and For Miami-Dade County (See, Exhibit “D”).

WHEREFORE Defendant Royal Caribbean Cruises, Ltd. respectfully requests the Notice of Removal be accepted as good and sufficient as required by law, and that the aforesaid action, Case Number 11-3110 CA 24 on the docket of the Court for the Eleventh 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 Defendant is entitled.

Dated: March 21, 2011

[Signature and Certificate of Service on Following Page]

Respectfully submitted,

/s/ Jerry D. Hamilton

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### **CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on March 21, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record or pro se parties identified on the following 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

Service List

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