

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: _____

ABDIEL CHIN CUBILLAS,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

_____ /

NOTICE OF REMOVAL

Defendant, Royal Caribbean Cruises, Ltd., (“RCCL”), by and through its undersigned counsel, hereby files this, its Notice of Removal, pursuant to 28 U.S.C. §1441, et seq., and 9 U.S.C. §202, et seq., and respectfully states as follows:

1. This is an action by Abdiel Chin Cubillas (“Plaintiff”), a seaman from Panama and former employee of RCCL, who alleges he suffered an injury during the course of his employment aboard the *Freedom of the Seas* and/or the *Independence of the Seas* in or about January 2009.

2. At all times material to Plaintiff’s Complaint, the terms of Plaintiff’s employment were governed by a Sign on Employment Agreement (“SOEA”) between the parties. A copy of the applicable SOEA is attached hereto as *Exhibit “A.”*

3. The SOEA also incorporates a Collective Bargaining Agreement (“CBA”) attached hereto as *Exhibit “B.”*

4. The CBA at Article 36(A), provides, in pertinent part, as follows:

...[A]ll 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 Owner/Company, including but not limited to claims for personal injury/disability or death, no matter how described, pleaded, or styled, and whether asserted against the Owner/Company, Master, Employer, Ship Owner, vessel or vessel operator, shall be referred to and resolved exclusively by mandatory binding arbitration pursuant to the United Nations Conventions on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 300 UN.T.S. ("The Convention").

5. By signing the SOEA, Plaintiff acknowledged and agreed to be bound by its terms and conditions including those incorporated by referenced within the CBA.

6. The SOEA and incorporated CBA constitute an arbitration agreement falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention").

7. 9 U.S.C. §205 states:

Where the subject matter on an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceedings to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.

8. Accordingly this suit is an action over which the United States District Court has original jurisdiction under the provisions of 9 U.S.C. § 202 *et seq.*, and one that may be removed to federal court under the provisions of 9 U.S.C. § 205, in that it is an action arising under the laws of the United States and relating to an arbitration agreement falling under the Convention.

9. On or about May 12, 2011, Plaintiff served RCCL with a Complaint in state court in the Eleventh Circuit of Miami-Dade County, Florida, *Abdiel Chin Cubillas v. Royal Caribbean Cruises Ltd.*, Case No. 11-13354 CA 09. A copy of the Complaint and all other

pleadings, process, and orders in this case are attached hereto as *Exhibit "C,"* pursuant to 28 U.S.C. §1446(a).

10. This suit is an action of which this court has original jurisdiction under the provision of 9 U.S.C. § 202 *et seq.*, and one that may be removed to this court under the provisions of 9 U.S.C. § 205, in that it is an action arising under the laws of the United States and relating to an arbitration agreement falling under the Convention. The grounds for removal are as follows:

- a) There has been no trial of the state court action.
- b) Plaintiff is a seaman from Panama. RCCL is a foreign corporation, and the *Freedom of the Seas* and the *Independence of the Seas* are vessels registered in the Bahamas.
- c) The underlying Sign on Employment Agreement and CBA requires arbitration as all possible venues for the arbitration are signatories to the Convention.
- d) RCCL stipulates to the application of United States law in arbitration.
- e) Because the Agreement is between a foreign corporation and a foreign seaman and because the Agreement provides for arbitration, this dispute falls under the provisions of the Convention. See 9 U.S.C. § 202 *et seq.*

11. Accordingly, this court has jurisdiction over this action, and this case is removed to the United States District Court, Southern District of Florida pursuant to U.S.C. § 205.

12. RCCL files and presents herewith the sum of \$350.00 as required by 28 U.S.C. §1446.

WHEREFORE, Defendant, Royal Caribbean Cruises, Ltd., moves this court for an order

that the action now pending against it in the Eleventh Judicial Circuit, in and for Miami-Dade County, described above, be removed to this Court and proceed therein.

Respectfully submitted,

ROYAL CARIBBEAN CRUISES LTD.
1050 Caribbean Way
Miami, Florida 33132
(305) 539-6000 Tel./ (305) 539-8101 Fax

By: /s/ John J. Quick
JOHN J. QUICK
Fla. Bar No.: 648418

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via regular mail on June 7, 2011, to **Brett Rivkind, Esq.**, Rivkind, Pedraza & Margulies, P.A., Suite 600, Concord Building, 66 West Flagler Street, Miami, Florida 33130.

By: /s/ John J. Quick
JOHN J. QUICK
Fla. Bar No.: 648418