



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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REAN SMITH,

Plaintiff,

19 **CIVIL** 7076 (PAE)

-against-

JUDGMENT

CALYPSO CHARTER CRUISES INC. and
FRANK GIORDANO, JR.,

Defendants.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion & Order dated September 8, 2021, the defendants' motion for summary judgment is granted. This motion requires dismissal of all of Smith's claims. The grant of summary judgment is with prejudice to all claims brought by Smith based on the theory that he was an employee. That is because, in ordering targeted discovery, the Court explicitly defined the discovery to be taken as relating to the presence of absence of "an employer-employee relationship between Smith and defendants." Dkt. 34. The grant of summary judgment is without prejudice, however, to Smith's claims under the NYCHRL, to the extent that these claim that Smith worked for defendants as an independent contractor. Although the evidence adduced in discovery uniformly supports that Smith's work for Calypso came about because his LLCs were hired to work for Calypso and that he thus did not qualify as a "natural person" retained as an independent contractor within the meaning of the NYCHRL, the Court's order authorizing targeted discovery did not expressly identify as a subject of discovery whether, if an independent contractor relationship existed, it was of a nature that fell within the NYCHRL. Smith therefore was not on unambiguous notice of the need to adduce discovery on this point during targeted discovery. It would therefore not be fair to preclude him from bringing a new action, in a court of

competent jurisdiction, pursuing claims under the NYCHRL based on the theory that he was an independent contractor within the protection of that statute; accordingly, the case is closed.

Dated: New York, New York
September 8, 2021

RUBY J. KRAJICK

BY: Clerk of Court
K Margo
Deputy Clerk