

UNITED STATES DISTRICT OF COURT
SOUTHERN DISTRICT OF FLORIDA

Miami Division

Case No.: 13-13575

LEIGH KRAFTCHECK, surviving spouse
and Personal Representative of the
Estate of Bernice Kraftcheck

Plaintiffs,

vs.

CELEBRITY CRUISES, INC., a Liberian corporation
and CWS & TOURS, LLC d/b/a Caribbean
Watersports & Tours, a U.S. Virgin Island corporation

Defendants.

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

COMES NOW, the Plaintiff LEIGH KRAFTCHECK, surviving spouse and Personal Representative of the Estate of Bernice Kraftcheck, by and through his undersigned counsel, and hereby brings this civil action for damages against the Defendants CELEBRITY CRUISES, INC., a Liberian corporation and CWS & TOURS, LLC d/b/a Caribbean Watersports & Tours, a U.S. Virgin Island corporation and states as follows:

JURISDICTION AND VENUE

1. This is an action under the general maritime law and the laws of the U.S. Virgin Islands as applicable for damages in excess of Ten Million Dollars (\$10,000,000.00), exclusive of costs, attorneys' fees and interest, and is otherwise within the diversity jurisdiction of this Court, pursuant to the requirements of 28 U.S.C. §1332.

2. At all material times, the Plaintiff Leigh Kraftcheck was the surviving spouse of the deceased, Bernice Kraftcheck and the duly appointed Personal Representative of the Estate of

Bernice Kraftcheck. The Plaintiff Leigh Kraftcheck was and is at all times materials hereto a resident of the state of Illinois.

3. At all material times, the Defendant CELEBRITY CRUISES, INC. [hereinafter "CELEBRITY"] is a Liberian corporation with its worldwide headquarters, principle address, principle place of business and base of operations in Miami, Florida.

4. At all times material, the Defendant CWS & Tours, LLC. [hereinafter "CWS"] was a corporation licensed under the laws of the U.S. Virgin Islands and doing business as Caribbean Water Sports & Tours.

5. Venue is proper in this District pursuant to 28 U.S.C. 1391(b), because the Defendant CELEBRITY maintains its base of operations in this District and is engaged in and doing business in Miami-Dade County, Florida.

6. Upon information and belief, the Defendant CWS entered into a contract with the Defendant CELEBRITY agreeing to venue in this Court for all such claims, including this one. The Plaintiff is unable to attach a copy of this contract to the complaint, since it does not presently have it in its possession, however, its counsel has seen similar boilerplate contracts between CELEBRITY and other excursion operators in other cases and therefore has reason to believe that such a contract exists in this case as well, which will be uncovered in discovery.

7. The Defendant CELEBRITY is a common carrier engaged in the business of marketing advertising, selling and operating a cruise line and the provision and sale of shore excursions out of various ports within the continental United States, including Miami, Florida and the world, including the U.S. Virgin Islands. The Defendant derives substantial revenues from cruises originating and terminating in various ports in the State of Florida, including Miami, Florida, as well as from the sale of shore excursions, which it aggressively advertises, markets and sells as part of the "cruise experience" to its customers.

8. At all times material hereto, the Defendant CELEBRITY was the operator, owner, owner pro hac vice and/or charterer of the *Celebrity Eclipse*.

9. At all times materials, the Defendant CWS owned and/or operated the St. Thomas Parasail excursion in St. Thomas, Virgin Islands, including all boats, equipment and employees related to and necessary for the operation of the excursion.

10. At all times material hereto, the CWS St. Thomas Parasail excursion was offered, arranged for, sponsored, recommended, marketed, sold, co-operated and/or managed by Defendant CELEBRITY from its headquarters in Miami, Florida.

11. At all times material hereto, the Defendant CWS either personally or through agents or representatives, was operating, conducting, engaging in and carrying-out business and/or business ventures in the State of Florida, thereby subjecting itself to jurisdiction in this state under the long arm statutes of Florida, including Florida Statutes §§ 48.081, 48.181 or 48.193.

12. At all times material hereto, the Defendant CWS, either personally or through its agents or representatives, was doing substantial and non-isolated business in the state of Florida, including the conducting of an ongoing business relationship with Defendant CELEBRITY and other cruise lines headquartered in Miami for marketing and selling of recreational shore excursions, including the St. Thomas Parasail excursion. The Defendant CWS also entered into contracts in Miami with the Defendant CELEBRITY, its parent Royal Caribbean Cruises Ltd. and other carriers as well as with various insurance brokers, including Aon, for the purchase of liability insurance for its business with said carriers.

13. At all times material hereto, the Defendant CWS marketed its shore excursions directly through its Florida marketing representative and/or partner and/or co-owner, the Defendant CELEBRITY, which promoted these shore excursions in its literature, on its website, and on board its cruise ships for sale to passengers boarding its ships in Miami.

14. At all times material hereto, upon information and belief the Defendant CWS entered into a contract with the Defendant CELEBRITY with the intent of providing protection for Celebrity's passengers, including the Plaintiff's decedent, whereby the Defendant CWS agreed to subject itself to the laws and jurisdiction of the State of Florida, consented to personal jurisdiction

over itself and consented to the venue of the federal court of the Southern District of Florida. CWS is believed to have also agreed to indemnify Defendant CELEBRITY for the claims made in this Complaint within the meaning of Florida Statutes §48.193(d). Furthermore, the Defendant CWS is subject to the jurisdiction of this Court because it sold and marketed tickets for the St. Thomas Parasail excursion through Celebrity's website, which is administered in Florida. The Plaintiff is not in possession of the subject contract between the Defendants CELEBRITY and CWS and therefore cannot attach a copy of the same to the Complaint.

15. All conditions precedent for filing and maintaining this action have been fulfilled, performed or waived.

GENERAL ALLEGATIONS

16. On or about November 12, 2011, Plaintiff's decedent boarded the *Celebrity Eclipse* for an Eastern Caribbean Cruise departing from Miami, Florida.

17. At all material times, Plaintiff's decedent was a fare paying passenger on board the *Celebrity Eclipse*.

18. At all material times, the Defendant CELEBRITY was and is engaged in the business of providing cruise vacation experiences to the public. The experience of recreational shore excursions at the various ports of call are the *sine qua non* of the cruises sold and advertised by Defendant CELEBRITY. The Defendant CELEBRITY organizes, promotes, advertises, vouches for, and directly sells the shore excursions provided by employees, agents, servants, and/or representatives of the Defendant CELEBRITY. The Defendant solicits, screens, selects, appoints, contracts with and partners with various excursion providers, including the Defendant CWS. The excursions become a permanent part of that particular cruise and are described, marketed and advertised in the literature published by CELEBRITY and provided directly to passengers, including the Plaintiff's decedent.

19. The Defendant CELEBRITY profits directly from the sale of shore excursions, taking and keeping the majority of the shore excursion revenue. The revenue from these excursions forms

a significant portion of the overall revenue generated by the Defendant CELEBRITY and is an integral portion of its business plan and model.

20. At all material times, the Defendant CELEBRITY hired and/or utilized its employees, agents, representatives, crewmembers, and/or other agents to promote, market, coordinate, explain and directly sell excursions provided by the Defendant CWS.

21. As part of its promotion of this significant portion of its business, the Defendant CELEBRITY maintains a department in its headquarters in Miami devoted to developing, promoting, marketing, coordinating, explaining, selling, overseeing, supervising, auditing, tracking and monitoring these excursions, including the St. Thomas Parasail excursion.

22. In addition, the Defendant CELEBRITY also maintains a department and/or a specified group of employees and crew members on each of its ships, including the *Eclipse*, to promote, market, coordinate, explain, oversee, supervise and sell these excursions as well as to assist the various tour operators, including the CWS to carry out and perform these excursions, including the St. Thomas Parasail excursions.

23. At all material times, the Defendant CELEBRITY derived substantial income from promoting, marketing, coordinating, directly selling and vouching for excursions provided by the Defendant CWS.

24. The Defendant CELEBRITY, in an effort to persuade and convince its passengers to purchase its excursions, makes representations in its literature, advertisements, promotional materials and onboard about the safety and security of the excursions, which CELEBRITY describes as "our Shore Excursions" and represents that the excursions are safe and operated with reliable and insured tour operators.

25. As part of its efforts to persuade its passengers to purchase and partake in these excursions, the Defendant CELEBRITY represents to its passengers, including Plaintiff's decedent, that it regularly oversees, monitors, audits, tracks and inspects the operators of its tour operators,

such as the Defendant CWS, both before and after it includes them as operators of the tours, which it promotes and sells to its passengers.

26. As part of its efforts to persuade its passengers to purchase and partake in these excursions, including the St. Thomas Parasail excursion, the Defendant CELEBRITY represents that it sets safety standards for tour operators, such as the Defendant CWS, to comply with in carrying out the excursions it promotes and sells to its passengers.

27. Defendant CELEBRITY provided the Plaintiff's decedent with promotional literature providing in part:

Shore Excursions. Designed for You.

Discover new places, new foods and new experiences. Travel to some of the most exciting cities the world has to offer and do things you never dreamed you would, or could. This is your vacation - and with our Shore Excursions you can be sure it will be one to remember.

To purchase your Shore Excursions, view full tour descriptions, images and videos, or download our Shore Excursion brochures by visiting www.CelebrityCruises.com/Shorex. . .

Your tour tickets will be delivered to your stateroom on the day of boarding. No waiting in line, just the ease and convenience of choosing your tours in

advance, safe in the knowledge that you were able to purchase them before they sold out. . .

Why book Shore Excursions?

- Whether you are looking for a high-energy adventure or a laid back, relaxing day, we have a Shore Excursion for you - from sight seeing to snorkeling, boating to flight seeing, hiking to beach breaks and so much more.
- Our shore excursions provide the best each port has to offer with a wide variety of activities and options to choose from. . .
- We've done the work of planning your day so that you don't have to - just choose which adventure to embark on. . .
- Our tours are operated with local, reputable and insured tour operators.

(emphasis added).

28. The Defendant CELEBRITY made further representations on its webpage and promotional materials regarding "our Shore Excursions," including

X Is where exhilaration plays well with relaxation.

Whether you prefer the thrill of parasailing - soaring 800 feet over the beaches below - or just basking on those beaches, Celebrity offers the perfect activity for every sun lover. . .

Customizing Your Vacation.

There are lots of things you can do to make this cruise all about you . . . looking for something to do off of the ship? We have lots of different shore and land excursions in every port. . .

These are just a few ways you can make sure your cruise is everything you thought it would be. And then some.

Shore and Land Excursions.

. . . There are a lot of different ones to choose from in every port of call. From water sports to land adventures. Define one that is right for you, just search the different ports that you will be stopping at. You will see a description of each excursion . . . and, since many shore excursions sell out, it is a good idea to book them as soon as possible.

Cloud 9.

It truly is paradise on Earth and with over 35 Celebrity ports and 42 itineraries to chose from, you can visit a different Shangri-La every day.

. . . Snap into a parachute and see the islands from a birds eye view, parasailing hundreds of feet above translucent seas.

Everything You Need to Know Before You Sail.

. . . Now is a great time to book a shore excursion. . .

We offer many different shore excursions from every port. They are a great way to experience the culture and history of the various ports of call.

Every Moment is Extraordinary.

When you give us your precious vacation days, we give you a world of modern luxury. That means you don't have to worry about a single thing, except perhaps which sensational restaurant or menu item to choose for dinner. So your vacation becomes a study in relaxation and rejuvenation. We've rethought everything about what makes a vacation more special, unique and a more unforgettable experience for everyone. From our

European style butlers to our complimentary extras, every detail of the Celebrity cruise has been designed with you in mind. . .

At Celebrity we are not just redefining cruising, we are reinventing the perfect vacation.

- We take care of your every need. . . .
- Vacations are short-memories that have to last a lifetime. From our exhilarating shore excursions at every port, to our inspiring onboard activities, everything is created with your ultimate enjoyment in mind. These memories will never fade into a sea of other vacations. . .

Discover a whole new palette of favorite colors.

- This is like dreaming in color. No matter which of our incredible shore excursions you choose, you will be surrounded by some of the most astonishing vibrant and beautiful sites anywhere in the world. Our Shore Excursions will help you discover the hidden retreats and unspoiled masterpiece mother nature created. . .
- Celebrity offers a wide variety of excursions.

When you book your tours through Celebrity, all excursions are operated with local, reputable, insured tour operators and guides who will introduce you to the most fabulous corners and discoveries in the Caribbean, and give you the inside story no brochure could ever reveal. For more information, or to book online, visit CelebrityCruises.com/Shoreex. . .

- When you are on vacation, you should be spending your precious vacation time doing all the things you love, like pondering what to choose from our incredible onboard offerings, or contemplating whether to spend the day zip-lining or exploring private ship wrecks. So we have simplified everything, put together helpful hints and even created easy ways to create exceptional special occasions. We concentrate on making sure everything is amazing-you concentrate on having the time of your life.

All Play. No Work.

- Celebrity's vacation planner lets you start enjoying the relaxation of a vacation before you even leave town. From choosing an itinerary, to reserving the perfect stateroom, onboard packages and spa treatments, we are here to help. Plus, you can expand and personalize your experience by adding the Shore Excursions that suit your interest. . .

- Our ports and Shore Excursions will captivate your imagination and keep everyday wonderfully fresh and different.

(emphasis added).

29. The General Information Booklet provided to Plaintiff's decedent with her cruise documents and available on the Defendant CELEBRITY'S website, provides the following information:

Withdrawal of Tours: The right is reserved to withdraw any tour, to limit membership in any tour, to make alterations in the operation of any tour, which may be deemed advisable for the safety or convenience of guests.

Itineraries are expected to be as operators described in the brochure but the right is reserved to change or omit a place to be visited or the sequence of the tour, in accordance with conditions and circumstances prevailing at the time of the tours, with or without previous notice; bearing in mind the convenience and best interest and safety of guests. The right is also reserved to decline, to accept, or to retain any person as a member of any party at any time.

Terms and Conditions.

2. Celebrity undertakes to use its best endeavors to insure that a shore excursion is performed as advertised. However, the passenger accepts in certain circumstances and for reasons beyond the control of Celebrity of whatever kind and nature, it may be impractical, unwise, or impossible for the shore excursion to be performed. The decision to abandon or withdraw a shore excursion is to be taken at the sole discretion of Celebrity but always taking into account the safety and convenience of the passenger.

...

4. The itineraries are expected by Celebrity to be as advertised, but Celebrity reserves the right to change its itineraries or to omit any place or places or to alter the advertised sequence of the excursion in accordance with the conditions and circumstances prevailing at the time of the excursion with or without previous notice. Any such change, omission or alteration made by Celebrity shall be made at their sole discretion but always bearing in mind the safety, convenience and/or best interest of the passengers.

(emphasis added).

30. The Shore Excursions FAQ (Frequently Asked Questions) page on the Defendant CELEBRITY'S website states in pertinent part as follows:

Q: Do we have to book an excursion with Celebrity Cruises? Can we go off on our own? If so, can you offer any suggestions on where to go?

You are not obligated to book an excursion with Celebrity Cruises in order to leave the ship. There is public transportation at most ports. We suggest you visit your local library, book store or a pertinent website to determine where you would like to go.

Please be aware that we cannot offer any alternatives from Celebrity Cruises established excursion program. All Celebrity Cruises excursion programs are coordinated with reputable tour operators and include a comprehensive overview of the most popular sites of interest. Celebrity Cruises will not be liable for any loss, injury or damage to any person or property arising from guest choosing to tour the port on their own. We cannot validate or account for a conditions that may not be suitable or safe for our guests. Please keep in mind that some ports have visa requirements and restrictions that may prevent you from venturing off on your own.

The usual safety precautions practiced in any urban or tourists area ought to be practiced as well during your cruise visits.

Q: Can you refer me to an outside tour operator or Destination Management Company?

A: No, we are unable to recommend outside tour operators, as we are not familiar with their tour contents and most importantly, their safety/insurance record. Please note that we cannot afford any alternatives from the established excursion program as we cannot validate costs or account for conditions that may not be suitable or safe for our guest(s). All tour programs are coordinated with reputable tour operators, equipment and include a comprehensive overview of the most popular site of interest to guest. *Refunds for independent tour arrangements will not be provided in the event of cancelled/misreports.*

Q: What Shore & Land Excursions do you recommend?

A: We recommend all Shore & Land Excursions and strive to include a variety of activities to accommodate each guests. Reviewing all Shore & Land Excursions descriptions is very important and will be the best way for you to determine the excursions that best suit your personal preferences, interests, life style and hobbies.

With reference to which specific excursion to take, this is again subject to personal preferences and what other excursions/plans you have planned in each of the ports.

31. The Defendant CELEBRITY made these representations with the purpose and intent that passengers rely upon them. Passengers, including the Plaintiff's decedent, relied upon, to her

detriment, these representations in choosing the cruise and the subject shore excursion, which she purchased directed from CELEBRITY in reliance upon these representations.

32. On or about November 15, 2011, the *Celebrity Eclipse* was docked in St. Thomas, U.S. Virgin Islands. While the ship was docked, the Plaintiff's decedent participated in the subject St. Thomas Parasail in reliance upon the Defendant CELEBRITY's above-described representations.

33. The subject St. Thomas Parasail excursion commenced with the Plaintiff's decedent being directed and instructed by CELEBRITY'S employees, servants, agents and/or representatives to meet in a lounge aboard the *Eclipse*, where after receiving some instructions she was then directed to a location selected by CELEBRITY on the pier. From this meeting point decedent was transported upon the instruction of CELEBRITY'S personnel on the scene to the dock where the St. Thomas parasail excursion was to take place. At the time the passengers departed the ship, the weather appeared pleasant and appropriate to the decedent, who relied upon the Defendants to determine whether the weather and climate conditions were appropriate and safe for parasailing.

34. Plaintiff's decedent was transported to a dock area at St. Thomas where she was instructed by CELEBRITY personnel to board a boat named "Turtle," which would take her parasailing.

35. After the decedent and the other CELEBRITY passengers boarded the "Turtle," the weather began to change as the wind became stronger. At all times, the decedent relied upon the expertise of the Defendants and their employees to determine whether the weather and climate conditions were safe and appropriate to undertake the excursion, including the above-described representations of the Defendant CELEBRITY that it would cancel or abort the excursion if necessary for the safety and best interests of its passengers.

36. While the decedent was actually parasailing, the guide rope broke causing the decedent to plummet from the sky to the water and sustain serious fatal injuries, eventually resulting in her death.

37. During her discussions with the CELEBRITY crewmembers in the Shore Excursion Department, and purchase of the excursion, there was no indication to the decedent whatsoever of the existence of the Defendant CWS or the fact that it would be performing the St. Thomas Parasail excursion. The only representations provided to the Plaintiff's decedent were those of Defendant CELEBRITY and CELEBRITY's repeated representations were that the excursions were "our excursions" and that it had "take[n] care of [the passenger's] every need." The Plaintiff's decedent reasonably relied on and believed Defendant CELEBRITY's statements and representations that the subject excursion was owned and operated by CELEBRITY and would be operated safely. At no time did the Defendant CELEBRITY represent to the Plaintiff's decedent in particular, or the ship's passengers in general, in any meaningful or timely way that the excursion was operated by another entity, the Defendant CWS, that any tour operator was not its partner, agent, employee or joint venturer or that the Defendant CELEBRITY would subsequently attempt to disavow all responsibility for the safe operation of the tour.

38. At all material times, the Defendant CELEBRITY was the owner or co-owner of the subject St. Thomas Parasail excursion. At all material times, the Defendant CELEBRITY was responsible for, and liable for, the actions of the Defendant CWS with respect to the subject excursion.

39. In the alternative, at all material times a partnership and/or agency relationship and/or joint venture existed between the Defendants CELEBRITY and CWS by virtue of the following, whereby CELEBRITY and CWS are jointly and severally responsible for the negligence of each other as partners of the partnership and/or agency relationship and/or joint venture:

- a. CELEBRITY recruited, screened, selected and investigated which companies, including CWS, that would be its tour operator partners for the provision of excursions to its passengers;

- b. CELEBRITY negotiated and entered into an agreement with CWS whereby CELEBRITY made all the arrangements for the Plaintiff's decedent to participate in the subject excursion being run by its tour operator partner, CWS.
- c. CELEBRITY advertised and marketed the subject excursion on its website, in its literature and aboard its vessels, on behalf of its tour operator partners, including CWS for which CELEBRITY incurred certain expenses and costs;
- d. CELEBRITY maintained a department and/or specific group of employees in its headquarters devoted to developing, promoting, marketing, coordinating, explaining, overseeing, supervising, auditing, tracking and monitoring the excursions sold to its passengers, including the subject excursion;
- e. CELEBRITY maintained an excursion desk on its ship staffed by its employees, from which it marketed, offered and sold excursions, provided expert advice and information, answered questions, handled and resolved complaints and refunds, on behalf of its tour operator partners, including CWS for which CELEBRITY incurred certain expenses and costs;
- f. CWS provided the equipment and personnel to be used in the subject excursion;
- g. CELEBRITY determined the amount of money charged for the subject excursion being run by its tour operator partner, the Defendant CWS;
- h. CELEBRITY collected the amount of money and charged it to passenger's on-board charge accounts for the subject excursion being run by its tour operator partner, the Defendant CWS;
- i. CELEBRITY paid its tour operator partner, the Defendant CWS, a portion of each ticket price, which portion was determined by CELEBRITY, for the subject excursion after the subject excursion tickets were sold by CELEBRITY;

- j. CELEBRITY had the sole discretion to offer and provide refunds to passengers who wished to cancel or were dissatisfied with the subject excursion;
- k. CELEBRITY shared in the profits and losses with its tour operator partner, including CWS for the subject excursion;
- l. CELEBRITY employed personnel on its vessels for the purpose of organizing the excursion and passengers going on the excursion, and specifically made announcements, directed its passengers where to go, took passengers to the staging area for each excursion, and specifically authorized its tour operator partners, including CWS when a shore excursion can proceed to leave the area of the vessel;
- m. CELEBRITY determined what time each excursion would be completed and what time passengers must be returned to the vessel;
- n. CELEBRITY controlled the operation of the excursion by promulgating various rules and regulations governing the conduct of the excursion, the equipment to be utilized and the personnel allowed to conduct the excursion, which it required its excursion partners, including the Defendant CWS to follow as part of its contract with CELEBRITY;
- o. CELEBRITY controlled and/or maintained the right of control over the excursion by supervising and monitoring its performance and retaining the right to require its excursion partners, including the Defendant CWS, to modify, alter or change the manner in which each excursion was conducted, the equipment utilized and/or the personnel conducting such excursion;
- p. CELEBRITY controlled the operation of the excursion by expressly reserving the right to determine when each excursion was safe to operate under the conditions existing at the time, including the right to modify, terminate or abort each excursion at any time when it was necessary to do so for the safety of its passengers;

- q. CELEBRITY represented to its passengers, including the Plaintiff's decedent, that it owned, operated and controlled all aspects of the excursions which is sold to its passengers including the Plaintiff's decedent as described in detail in paragraphs 24-30 above;
- r. CELEBRITY represented to its passengers that the excursions which it sold to them were safe, operated by reliable personnel using safe equipment and were being operated subject to the safety requirements established by Celebrity Cruises;
- s. In other manners not yet known, but which are expected to be revealed in discovery.

40. The Defendant CWS is an agent of CELEBRITY, partners with CELEBRITY and/or a joint venturer with CELEBRITY. Any representations of CELEBRITY to the contrary do not control the legal status of the parties. Further, even if CWS was an independent contractor, CELEBRITY is not relieved of its duty to verify that the representations which CELEBRITY makes in its literature and elsewhere about its tour operator partner, including the Defendant CWS are true, especially that the excursions are safe, reliable, licensed as well as the other representations referenced herein.

DAMAGES

41. The negligence of the Defendants CELEBRITY and CWS occurred either ashore or within the territorial waters of St. Thomas, U.S. Virgin Islands and accordingly, the Virgin Islands Wrongful Death Act is applicable to the claims of the Plaintiff, the decedent's beneficiaries, survivors and Estate.

42. The decedent Bernice Kraftcheck was survived by the following beneficiaries as defined under the Virgin Islands Wrongful Death Act:

- A. Leigh Kraftcheck, her husband.
- B. Danielle Haese, her adult daughter.
- C. Charity De Primo, her adult daughter.

D. The Estate of Bernice Kraftcheck.

43. Under the provisions of the Virgin Island's Wrongful Death Act, the decedent's beneficiaries are entitled to recover the following damages:

- A. Leigh Kraftcheck, as the decedent's surviving spouse, is entitled to recover for his loss of the decedent's companionship and protection, for his mental pain and suffering from the date of his wife's death, his loss support and services and all other damages permitted under maritime law and/or the law of the Virgin Islands.
- B. Danielle Haese, as the surviving daughter of the decedent, is entitled to recover for her loss of parental companionship, instruction and guidance, for her mental pain and suffering from the date of her mother's death, for her loss of support and services and for all other damages permitted under maritime law and the law of the Virgin Islands for her mother's death. The claims asserted by Danielle Haese in this lawsuit do not include any claims for damages for which she is entitled as a result of her own personal injuries and resulting damages sustained in the subject accident, which will be asserted in a separate lawsuit on her behalf.
- C. Charity De Primo, as the surviving daughter of the decedent, is entitled to recover for her loss of parental companionship, instruction and guidance, for her mental pain and suffering from the date of her mother's death, for her loss of support and services and for all other damages permitted under maritime law and the law of the Virgin Islands for her mother's death.
- D. The Estate of Bernice Kraftcheck is entitled to recover the decedent's loss of earnings, loss of net accumulations, medical and funeral bills incurred as a result of the decedent's injuries and death and all other damages permitted under maritime law and the law of the Virgin Islands.

44. As a result of the above-described accident, the decedent Bernice Kraftcheck suffered extreme pain and suffering, mental anguish, fear and apprehension of her impending death after the safety rope broke and she began to plummet from the sky to her impact with the water up until the time of her death for which her Estate is entitled to recover under the provisions of Virgin Islands law.

45. Alternatively, if this matter was to be governed by the Death on the High Seas Act, the decedent's beneficiaries are entitled to recover the full compensation for the pecuniary loss

sustained by each as set forth in the provisions of 46 U.S.C. §30301 et seq., including but not limited to loss of support, services and society, funeral and medical expenses, loss of nurture, guidance, care and instruction and loss of inheritance.

COUNT I
NEGLIGENCE AGAINST CELEBRITY

46. The Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through forty-five (45) above as though originally stated herein and further avers:.

47. The Defendant CELEBRITY owed a duty of reasonable care under the circumstances for the health, welfare and safety of its passengers and to warn of dangers known to CELEBRITY in places where its passengers, including the Plaintiff's decedent, were invited to, or may reasonably be expected to visit.

48. On or about November 15, 2011, the Defendant CELEBRITY and/or its agents, servants, joint venturers, partners, and/or employees breached its duty to act with reasonable care for the safety of Plaintiff's decedent under the circumstances and was negligent and careless by committing one or more of the following acts and/or omissions including, but not limited to:

- a. failing to provide a safe excursion;
- b. failing to provide an excursion with proper equipment and personnel;
- c. failing to properly and adequately inspect, investigate, screen, select, and retain the services of its tour operator partner, CWS, to ensure it was operating and running a reasonably safe excursion;
- d. failing to adequately monitor, supervise and audit the ongoing operations of its tour operator partner, CWS to ensure it was using safe, proper and appropriate equipment properly trained and competent personnel, and proper and safe procedures to provide a reasonably safe excursion for its passengers participating in the St. Thomas Parasail;

- e. failing to adequately warn the Plaintiff's decedent of the dangers and obstacles that would be encountered during the subject excursion;
- f. operating and/or allowing the excursion to proceed and/or continue under hazardous weather and/or environmental conditions, which posed an unreasonable risk of injury to the Plaintiff's decedent;
- g. assuring passengers, including the Plaintiff's decedent, that all aspects and conditions of the subject excursion were reasonably safe and appropriate for them, when in fact they were not;
- h. failing to adequately describe all aspects of the subject excursion to the Plaintiff's decedent, so she could make an informed decision as to her participation in the subject excursion;
- i. failing to ensure all necessary steps were taken for the Plaintiff's decedent to safely participate in all aspects of the subject shore excursion;
- j. failing to adequately monitor, supervise and/or inspect its Tour operator partner, CWS, to ensure that it employed reasonably safe means for passengers to participate in all aspects of the subject shore excursion;
- k. failing to promulgate, enforce, and/or follow adequate policies and procedures for the inspection and monitoring of the subject excursion to ensure proper equipment was used to allow for the reasonably safe participation of all aspects of the subject excursion;
- l. failing to ensure that properly trained and supervised persons operated the subject excursion;
- m. failing to ensure that its Tour operator partner, CWS, had proper policies and procedures in place to ensure passengers, including the Plaintiff's decedent, could reasonably safely participate in the subject excursion;

- n. having a shore excursion that was not competently or properly operated;
- o. failing to fulfill its promises and make good on its representations upon which it knew passengers would rely, including the above-described promises and representations made in its literature, website and verbally to the Plaintiff's decedent;
- p. failing to verify that the subject excursion was safe, reliable, licensed and insured;
- q. failing to implement a method of operation which was reasonable and safe and which would prevent the creation of a dangerous condition, such as the one in this case, and utilizing or allowing negligent methods of operation by its tour operator partner, CWS;
- r. failing to promulgate and enforce appropriate safety rules for its tour operator partner, CWS;
- s. by creating an environment whereby passengers were deceived into believing that they were safe because they had purchased a CELEBRITY excursion ticket as opposed to making their own excursion plans;
- t. by lulling its passengers into a false sense of security regarding the risks of the excursion, the competency of its tour partner and the safety of the excursion by its advertising, marketing and representations as set forth in more detail in paragraphs 24 through 30 above, which were intended to lead passengers to believe that CELEBRITY had "reinvent[ed] the perfect vacation, . . . by "take[ing] care of [its passengers] every need, so that they didn't "have to worry about a single thing," since "every detail of the CELEBRITY cruise had been designed with [the specific passenger] in mind;
- u. by failing to properly implement policies and procedures to track prior accidents, incidents or problems, so that the passengers could be properly warned of the danger

posed to their health, physical and mental well being by participating in the subject excursion;

- v. by failing to follow the Tour Operator Agreement, its own Safety and Quality Manuals [SQM] and/or its policies and procedures with regard to the subject excursions;
- w. by failing to properly, adequately and competently test and/or audit the equipment used on the subject excursion;
- x. by failing to mandate and enforce that the employees and/or agents involved in the excursion comply with the Defendant's policies and procedures relating to the health and safety of its cruise ship passengers;
- y. by failing to mandate and enforce that its excursion partners, including CWS maintain qualified and competent personnel to perform its excursions, including the subject St. Thomas Parasail excursion;
- z. in other manners not yet known, but which will be uncovered in discovery.

49. At all material times, Defendant CELEBRITY failed to determine the hazards that the subject excursion posed to the Plaintiff's decedent, failed to eliminate the hazards, failed to modify the hazards and/or failed to properly warn the Plaintiff's decedent of the hazards. All of the above directly and proximately caused the Plaintiff's decedent to be injured and killed.

50. Defendant CELEBRITY knew of the foregoing conditions causing Plaintiff's decedent's accident and death and did not correct them, or the conditions existed for a sufficient length of time so that CELEBRITY in the exercise of reasonable care under the circumstances should have learned of them and corrected them.

51. As a direct and proximate result of the aforementioned carelessness and negligence of the Defendant CELEBRITY, the Plaintiff's decedent sustained serious and fatal injuries resulting in her untimely and wrongful death. As a further direct and proximate result of said carelessness and

negligence, the decedents beneficiaries and Estate suffered the damages set forth in paragraphs forty-one (41) through forty-five (45) above.

WHEREFORE, the Plaintiff Leigh Kraftcheck, as surviving husband and Personal Representative of the Estate of Bernice Kraftcheck, demands judgment for all damages recoverable under the law against the Defendant, including those set forth in paragraphs forty-one (41) through forty-five (45) above and demands trial by jury of all issues triable as a right by a jury.

COUNT II
NEGLIGENCE AGAINST CWS

52. The Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through forty-five (45) above as though originally stated herein and further avers:

53. At all material times, Defendant CWS owned and/or operated the subject excursion.

54. The Defendant CWS owed a duty of reasonable care under the circumstances for the health, welfare and safety of those passengers of the Defendant CELEBRITY participating in its excursion.

55. On or about November 15, 2011, Defendant CWS and/or its agents, servants, joint venturers, partners, and/or employees breached its duty to provide Plaintiff's decedent with reasonable care under the circumstances and was negligent and careless by committing the following acts and/or omissions including, but not limited to:

- a. failing to provide a safe excursion;
- b. failing to provide an excursion with proper and safe equipment and personnel;
- c. failing to adequately train, monitor and supervise the subject excursion to ensure it had all the necessary equipment to allow for passengers to have reasonably safe means to participate in it;
- d. operating the excursion under hazardous weather and/or environmental conditions, which posed an unreasonable risk of injury to Plaintiff's decedent;

- e. failing to warn the Plaintiff's decedent of the dangers and obstacles that would be encountered during the subject excursion;
- f. failing to adequately monitor, supervise and/or inspect the subject excursion to ensure that it employed reasonable safe means for passengers to participate in all aspects of the subject excursions;
- g. failing to promulgate, enforce, and/or follow adequate policies and procedures for the inspection, monitoring, and supervision of the subject excursion to ensure proper and safe equipment was used to allow for the reasonably safe participation of all aspects of the subject excursion;
- h. failing to ensure that properly trained and supervised persons operated the subject excursion;
- i. operating a shore excursion that was not competently operated;
- j. failing to implement a method of operation which was reasonable and safe and would prevent the creation of a dangerous condition, such as the one in this case, and utilizing or allowing negligent methods of operation;
- k. failing to promulgate and enforce appropriate safety rules;
- l. failing to properly provide a complete and accurate description of all aspects of the subject shore excursions to CELEBRITY which it knew CELEBRITY would use to provide information to passengers in CELEBRITY's literature, website and onboard the vessel;
- m. failing to verify that the subject excursion was safe, reliable, licenced and insured;
- n. failing to exercise reasonable care for the safety of the cruise passengers, including the Plaintiff's decedent, participating in the subject excursion;
- o. failing to use safe equipment for the performance of the subject excursion;
- p. failing to properly maintain the equipment used for conducting the subject excursion;

- q. failing to use reasonable care in the hiring, screening, training and monitoring of its employees and/or agents operating the subject excursion;
- r. failing to warn the Plaintiff's decedent about the hazardous nature of the subject excursion;
- s. failing to institute and carry out safety inspections and maintenance procedures to make sure that the equipment used for the subject excursion was in good condition and otherwise safe;
- t. failing to exercise reasonable care in operating the subject excursion;
- u. in other manners not yet known at the present time, but which will be uncovered in discovery.

56. At all material times, Defendant CWS failed to determine the hazards that the subject excursion posed to the Plaintiff's decedent, failed to eliminate the hazards and failed to modify the hazards and failed to properly warn the Plaintiff's decedent of the hazards. All of the above directly and proximately caused the Plaintiff's decedent to be injured and killed.

57. Defendant CWS knew of the foregoing conditions causing Plaintiff's decedent's accident and did not correct them, or the conditions existed for a sufficient length of time so that CWS in the exercise of reasonable care under the circumstances should have learned of them and corrected them.

58. As a direct and proximate result of the aforementioned carelessness and negligence of the Defendant CWS the Plaintiff's decedent sustained fatal injuries, resulting her untimely and wrongful death. As a further direct and proximate result of said carelessness and negligence, the decedents beneficiaries and Estate suffered the damages set forth in paragraphs forty-one (41) through forty-five (45) above.

WHEREFORE, the Plaintiff, Leigh Kraftcheck, as surviving husband and Personal Representative of the Estate of Bernice Kraftcheck demands judgment for all damages recoverable

under the law against the Defendant as set forth in paragraphs forty-one (41) through forty-five (45) above and demands trial by jury of all issues triable as a right by a jury.

COUNT III
APPARENT AGENCY OR AGENCY BY ESTOPPEL CLAIM AGAINST CELEBRITY

59. The Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through forty-five (45) above as though originally stated herein and further avers:

60. The Defendant CELEBRITY held out the owners and/or operators of the St. Thomas Parasailing excursion as its apparent agent. The Defendant CELEBRITY represented to its cruise passengers, including but not limited to the Plaintiff, that the operator of the St. Thomas Parasail excursion was acting for the benefit of the Defendant CELEBRITY. Included among these representations, were the following:

- a. From the moment that the Plaintiff's decedent purchased her cruise ticket, the Defendant CELEBRITY bombarded its passengers with a series of internet, brochures and other media, all of which advertise the availability and safety of various CELEBRITY excursions, which were presented as an integral part of the "cruise ship experience." These excursions were marketed as excursions which were not independent of CELEBRITY, and which were distinguished from other, allegedly less safe excursions, which were not CELEBRITY excursions;
- b. CELEBRITY provided various literature, advertisements, promotional materials and similar documents both before and after the Plaintiff's decedent boarded the CELEBRITY *Eclipse*, which set forth the specific representations identified in detail in paragraphs 24 through 30 and incorporated herein by reference;
- c. CELEBRITY maintained a shore excursion desk manned by crew members on these *Eclipse* which promoted, advertised, explained, coordinated and

- supervised its excursions, including the subject St. Thomas Parasailing;
- d. CWS was not identified as the owner/operator of the St. Thomas Parasailing excursion at any time when it was being marketed by CELEBRITY and purchased by its passengers, including the Plaintiff's decedent herein;
 - e. The excursions, including the subject St. Thomas Parasailing excursion, were paid for by passengers by charging them to the passengers onboard account or through the passenger's account maintained with the cruise line website.
 - f. The Defendant CELEBRITY required that CWS personnel on the pier have and hold up a sign for CELEBRITY passengers, while cruise personnel were stationed at the foot of the pier and directed passengers toward the busses.

61. At all material times, Defendant CELEBRITY is estopped to deny that the Defendant CWS was its agent or employee.

62. The Defendant CELEBRITY is therefore legally responsible for the foregoing acts of negligence of the Defendant CWS set forth in Count II, including all subparts, which were a direct and proximate cause of the injuries and death of the Plaintiff's decedent.

63. As a direct and proximate result of the aforementioned carelessness and negligence of the Defendants CELEBRITY and CWS, the Plaintiff's decedent sustained serious and fatal injuries resulting her death. As a further direct and proximate result of said carelessness and negligence, the decedent's beneficiaries and Estate suffered the damages set forth in paragraphs forty-one (41) through forty-five (45) above.

WHEREFORE, the Plaintiff, Leigh Kraftcheck, as surviving husband and Personal Representative of the Estate of Bernice Kraftcheck demands judgment for all damages recoverable under the law against the Defendant CELEBRITY as set forth in paragraphs forty-one (41) through forty-five (45) above and demands trial by jury of all issues triable as a right by a jury

COUNT IV
JOINT VENTURE BETWEEN CWS AND CELEBRITY

64. The Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through forty-five (45) above as though originally stated herein and further avers:

65. At all material times, Defendants CELEBRITY and CWS intended to form and in fact engaged in a joint venture to provide excursions to passengers onboard CELEBRITY vessels as evidenced by the total circumstances of the agreement and relationship between the parties.

66. The provision of excursions at each port is a significant portion of the "Cruise experience" advertised, marketed and sold by CELEBRITY and an integral part of its overall business plan. In order to fulfill its business plan and to make each passengers "cruise experience" meet the representations contained in its above-described advertising and marketing, it was necessary for the Defendant CELEBRITY to enter into a joint venture with tour operations, such as the Defendant CWS, in order to provide such excursions.

67. As its part of this joint venture, Defendant CELEBRITY set up, developed, arranged for, sponsored, recommended, marketed, set the pricing, directly sold, provided expert advice, made announcements, organized passengers, handled customer complaints and issued refunds, controlled, supervised and monitored the St. Thomas Parasail excursion. As its part of the joint venture, CWS provided the personal and equipment for the subject excursion for CELEBRITY's passengers and agreed to work jointly with the Defendant CELEBRITY in its performance and operation.

68. Since the port excursions are a critical part of the Defendant CELEBRITY'S business strategy, it would be required to either create and fully run them itself or to partner with local tour operators. Therefore, by choosing this model, CELEBRITY further benefitted from the joint venture by not having to expend the money and other resources necessary to create its own excursions from scratch in each port.

69. Defendant CELEBRITY, on behalf of the joint venture, charged and collected a fee from its passengers who utilized the excursion. The fee was split between Defendant CELEBRITY

and CWS, so that each Defendant directly shared in the profits and losses of the joint venture.

70. Both CELEBRITY and CWS invested their time, money, effort, overhead, employees, operating costs, salaries and other resources into this joint venture and therefore, each further would share in the losses of the joint venture, if it was not successful or profitable by losing these investments. In addition, the Defendant CELEBRITY would also sustain additional losses if the joint venture was not successful by having to invest the money, resources and time necessary to create a replacement shore excursion in St. Thomas, since the existence of this excursion was of significant importance to CELEBRITY'S business model.

71. In addition to sharing in the ticket sales generated by the joint venture, both CELEBRITY and CWS also shared in the profits of the joint venture in that it increased the attractability and value of their overall products and services, thereby improving their overall business prospects and profits, while also helping in their efforts to expand their core businesses. In the case of CELEBRITY, the success of this excursion increased its ability to attract passengers for its cruises. In the case of CWS it increased its ability to successfully market its services to other cruise lines, hotels and other entities.

72. Both Defendants CELEBRITY and CWS had joint control over the joint venture. CWS had control over the day to day operation of the subject excursion through the use of its equipment and personnel. CELEBRITY also maintained control over the day to day operation of the excursion in that it established standards, policies and procedures to which it required CWS to adhere regarding the recruitment, hiring, qualifications, and training of its personnel; the inspection, quality, maintenance and safety of its equipment, the retention of insurance and the manner of its operation of the subject excursion. In addition, the Defendant CELEBRITY retained the right and ability to terminate, suspend or postpone excursions if CWS did not comply with these standards which it established, and retained the authority to inspect and supervise all aspects of the operation of the subject excursion by CWS. CELEBRITY also maintained control over the arrangements for

the scheduling, marketing, sales and refunds, as well as final authority over whether the excursion would be conducted, modified, cancelled or terminated at any time due to the existence of conditions, which threatened the safety of its passengers.

73. Both Defendants maintained insurance for their activities in the performance of the joint venture.

74. As a result of the above-described facts, the Defendants CELEBRITY and CWS therefore:

- a. Had a community of interest in the performance of the common purpose, i.e. the sale and provision of the subject excursion to passengers for profit and to further benefit their business models;
- b. Had joint control and/or a joint right to control with respect to the provision of the subject excursion to passengers on board CELEBRITY's ships;
- c. Had a right to share in the profits; and
- d. Had a duty to share in the losses which may have been sustained.

75. As joint venturers, Defendant CELEBRITY and CWS are liable for each other's actions and negligence. As a result the Defendant CELEBRITY is liable for the negligent conduct of CWS as set forth in Count II and incorporated herein by reference, and the Defendant CWS is liable for the negligent conduct of CELEBRITY as set forth in Count I and incorporated herein by reference.

76. As a direct and proximate result of the aforementioned carelessness and negligence of the Defendants, the Plaintiff's decedent sustained fatal injuries resulting in her death. As a further direct and proximate result of said carelessness and negligence, the decedent's beneficiaries and Estate suffered the damages set forth in paragraphs forty-one (41) through forty-five (45) above.

WHEREFORE, the Plaintiff, Leigh Kraftcheck, as surviving husband and Personal Representative of the Estate of Bernice Kraftcheck demands judgment for all damages recoverable

under the law against the Defendants CELEBRITY and CWS as set forth in paragraphs forty-one (41) through forty-five (45) above and demands trial by jury of all issues triable as a right by a jury.

COUNT V
ACTUAL AGENCY - CELEBRITY CRUISES, INC.

77. The Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through forty-five (45) above as though originally stated herein and further avers:

78. The Defendant CELEBRITY acknowledged that the Defendant CWS acted for it as its agent, the Defendant CWS accepted said undertaking and the Defendant CELEBRITY exercised or retained the right to exercise control over the Defendant CWS's actions.

79. Upon information and belief, the Defendant CWS entered into a contract with the Defendant CELEBRITY which provides the Defendant CELEBRITY with extensive control over the day to day operations of the Defendant CWS. The Plaintiff is unable to attach a copy of his contract to the complaint, since it does not presently have it in its possession, however, its counsel has seen similar boilerplate contracts between CELEBRITY and other excursion operators in other cases and therefore has reason to believe that such a contract exists in this case as well.

80. Upon information and belief, the contract between the Defendant CELEBRITY and CWS imposes various insurance, safety and service standard obligations on CWS spelled out in both the Tour Operator Agreement and other documents between the Defendants.

81. The Defendant CELEBRITY acted as principal to the owners and operators of CWS, which was the actual agent of CELEBRITY in connection with the performance of the subject St. Thomas Parasailing excursion. The Defendant CWS acknowledged that status either directly or indirectly as the agent of the Defendant CELEBRITY.

82. CELEBRITY performed all billing, advertising, organizing and direction of its passengers to the St. Thomas Parasailing excursion. Thus, the Defendant CELEBRITY is liable for the negligence of the Defendant CWS.

83. The Defendant CWS owed a duty of reasonable care to the Plaintiff's decedent as set forth in Count II of the Plaintiff's Complaint, which it violated in the manner set forth in paragraphs 55 through 58 of this Complaint, the allegations of which are incorporated herein by reference.

84. At all times material, the Defendant CWS was the agent of the Defendant CELEBRITY in connection with the above-described matters and accordingly, the Defendant CELEBRITY is legally responsible for the above-described acts of negligence of the Defendant CWS set forth in Count II, including all sub-parts, which were a direct and proximate cause of the injuries and death of Plaintiff's decedent.

85. As a direct and proximate result of the above-described carelessness and negligence of the Defendants CELEBRITY and CWS, the Plaintiff's decedent sustained serious and fatal injuries resulting in her death. As a further direct and proximate result of said carelessness and negligence, the decedent's beneficiaries and estate suffered the damages set forth in paragraphs forty-one (41) through forty-five (45) above.

WHEREFORE, the Plaintiff, LEIGH KRAFTCHECK, surviving husband and personal representative of the Estate of Bernice Kraftcheck demands judgment for all damages recoverable under the law against the Defendant CELEBRITY as set forth in paragraphs forty-one (41) through forty-five (45) above and demands trial by jury of all issues triable as a right by a jury.

COUNT VI
BREACH OF THIRD PARTY BENEFICIARY CONTRACT

86. The Plaintiff realleges, adopts and incorporates by reference the allegations in paragraphs one (1) through forty-five (45) above as though originally stated herein and further avers:

87. The Defendants CELEBRITY and CWS entered into a contract in which the Defendant CWS provided various excursions for the Defendant CELEBRITY's passengers, including the St. Thomas Parasail excursion.

88. Upon information and belief, this contract imposes various obligations upon the Defendant CWS intended for the benefit of the passengers of the Defendant CELEBRITY, including

the Plaintiff's decedent, including but not limited to insurance, safety and service standard obligations as well as the obligation to agree to jurisdiction for any litigation instituted by CELEBRITY's passengers against it for the breach of the obligations which it owed under the contract or any other rules, regulations and standards promulgated by the Defendant CELEBRITY.

This contract also requires CWS to comply with CELEBRITY's Tour Operators Manual and other policies, rules and regulations for the safety of its passengers, including Plaintiff's decedent. The Plaintiff is unable to attach a copy of this contract to the Complaint, since it does not presently have it in its possession, however, its counsel has seen similar boilerplate contracts between CELEBRITY and other excursion operators in other cases, and therefore has reason to believe that such a contract exists in this case as well, which will be uncovered in discovery.

89. The Defendant CWS breached this contract by failing to comply with the safety and service standard obligations imposed by the Defendant CELEBRITY for the benefit of its passengers as described in detail in Count II, which is incorporated herein by reference.

90. The Defendant CELEBRITY breached the subject contract by failing to comply with its obligations to make sure that the Defendant CWS complied with its safety and service standard obligations in connection with the operation of the subject excursion as set forth in more detail in Count I hereto, which is incorporated herein by reference.

91. The above-described obligations under this contract and the various standards, and obligations incorporated into it by reference, were intended for the benefit and safety of the passengers of the Defendant CELEBRITY, including the Plaintiff's decedent.

92. As a result of the Defendants' breach of the above-described contract, the Plaintiff's decedent sustained serious and fatal injuries, ultimately resulting in her untimely and wrongful death. As a further direct and proximate result of said breach of contract, the decedent's beneficiaries and Estate suffered the damages set forth in paragraphs forty-one (41) through forty-five (45) above.

WHEREFORE, the Plaintiff, LEIGH KRAFTCHECK, surviving husband and personal representative of the Estate of Bernice Kraftcheck demands judgment for all damages recoverable under the law against the Defendants CELEBRITY and CWS including those set forth in paragraphs forty-one (41) through forty-five (45) above and demands trial by jury of all issues triable as a right by a jury.

DATED this 14th of February, 2012.

Respectfully submitted,

By: /s/ Ira Leesfield

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(Application for pro hac vice pending)

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