

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

ELLERY MAYNARD, as grandfather and
legal guardian of KYLEE-ANN
ROSE GEISINGER, a minor,

Plaintiff,

v.

MSC CRUISES S.A.
(f/k/a MSC CROCIERE, S.A.),
RUDY SAMUEL SANTOS HERNANDEZ,

Defendants.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL¹

Plaintiff sues Defendants and alleges:

PRELIMINARY ALLEGATIONS

1. Plaintiff is a citizen of the state of Maine, over the age of eighteen years and is otherwise *sui juris*. Plaintiff is the natural grandfather and legal guardian of KYLEE-ANN ROSE GEISINGER, a minor.
2. Pursuant to stipulation between Plaintiff and MSC CRUISES, S.A. (f/k/a MSC CROCIERE, S.A.) and for the limited purposes of this litigation and incident only,

¹ Amended in accordance with Stipulation of the parties. [D.E. 12]

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MSC CRUISES, S.A. ("MSC"), stipulates that it may be deemed to be the owner and operator of the cruise vessel *MSC Divinia*.

3. Defendant, RUDY SAMUEL SANTOS HERNANDEZ ("SANTOS

HERNANDEZ") is Defendants' employee/crewmember who, while working as a cabin steward, sexually assaulted and battered KYLEE-ANN ROSE GEISINGER, a minor.

4. The matter in controversy exceeds, exclusive of interests and costs, the sum specified by 28 U.S.C. § 1332. In the alternative, if diversity jurisdiction does not apply, then this matter falls under the admiralty and maritime jurisdiction of this Court.

5. Defendants, at all times material hereto, personally or through an agent:
- a. Operated, conducted, engaged in or carried on a business venture in this state and/or country or had an office or agency in this state and/or county;
 - b. Was engaged in substantial activity within this state;
 - c. Operated vessels in the waters of this state;
 - d. Committed one or more of the acts stated in Florida Statutes, §§ 48.081, 48.181 or 48.193;
 - e. The acts of Defendants set out in this Complaint occurred in whole or in part in this county and/or state;
 - f. The Defendants, as a common carrier, were engaged in the business of providing to the public and to the Plaintiff in particular, for compensation, vacation cruises aboard the vessel, *MSC Divina*.

6. Defendants are subject to the jurisdiction of the Courts of this state.

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7. The causes of action asserted in this Complaint arise under the General Maritime Law of the United States.
8. At all times material hereto, Defendant MSC owned, operated, managed, maintained and/or controlled the vessel, *MSC Divina*.
9. On or about February 13, 2016, the Plaintiff and KYLEE-ANN ROSE GEISINGER board the *MCS Divina* in Miami, Florida for a seven night Caribbean cruise. The vessel was scheduled to return to Miami.
10. At all material times, KYLEE-ANN ROSE GEISINGER was a lawfully aboard Defendant's vessel as paying passenger, which was in navigable waters.
11. On or about February 14, 2016, Defendant SANTOS HERNANDEZ, observed twelve (12) year old KYLEE-ANN ROSE GEISINGER enter the cabin she shared with her grandfather. Knowing that this young child was alone inside the room, Defendant SANTOS HERNANDEZ used his card key to enter the room where he sexually assaulted and battered KYLEE-ANN ROSE GEISINGER.
12. As a result of her assault, KYLEE-ANN ROSE GEISINGER suffered great shame, psychological trauma, psychological scarring, embarrassment and humiliation.
13. All conditions precedent for the filing and maintaining of this action have been fulfilled, performed or waived.

COUNT I

NEGLIGENCE FOR SEXUAL ASSAULT/BATTERY

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AS TO DEFENDANT MSC CRUISES, S.A

14. Plaintiff realleges, adopts and incorporates by reference the allegations in paragraphs 1 through 13 as though alleged originally herein.
15. At all times material hereto, it was the duty of Defendant MSC to provide KYLEEANN ROSE GEISINGER with reasonable care under the circumstances while she was a passenger aboard the ship.

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16. On or about February 14, 2016, KYLEE-ANN ROSE GEISINGER was injured due to the fault and negligence of Defendant MSC, and/or its agents, servants and/or employees as follows:
- a. Failing to provide reasonably safe conditions for Plaintiff KYLEE-ANN ROSE GEISINGER aboard Defendant's vessel. Said safe conditions include, but are not limited to, the prevention of permitting an atmosphere to exist wherein persons could sexually assaulted and/or battered;
 - b. Failing to undertake reasonable investigation of the offending person's background, criminal record and employment history prior to hiring the crewmember;
 - c. Negligently hiring a crewmember who Defendant knew or should have known was a danger to female passengers;
 - d. Continuing to employ and retain as a crewmember who Defendant knew or should have known posed a dangerous threat to the passengers, especially female passengers, including the Plaintiff;
 - e. Failing to adequately monitor and control the conduct of their crewmembers;
 - f. Failing to adequately monitor passengers;

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- g. Failing to protect their passengers, especially minors, from sexual assaults and/or batteries by Defendant's crewmembers;
- h. Failing to provide adequate training for their crewmembers in regard to interactions with passengers;
- i. Failing to adequately warn passengers of the dangers of its crewmembers;
- j. Failing to adequately monitor passengers, especially minor passengers, so as to keep them away from dangerous crewmembers and/or dangerous situations;
- k. Failing to adequately monitor common areas on the ship to protect passengers;

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- l. Failing to provide adequate supervision and/or security for minor passengers aboard its vessels;
- m. Failing to promulgate and/or enforce policies and/or procedures designed to prevent crewmembers from sexually assaulting and/or battering passengers aboard the ship;
- n. Failing to promulgate and/or enforce policies and/or procedures designed to prevent passengers from becoming sexually assaulted and/or battered passengers aboard the ship;
- o. Defendant violated the International Safety Management Code by failing to have an adequate Safety Management System Manual and/or by failing to adequately implement and follow the Safety Management System Manual they have, as it related to protecting passengers from sexual assault and/or battery aboard Defendant's ships, all of which caused Plaintiff to be injured; and/or
- p. In other manners not yet known, but which are expected to be revealed in discovery.

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17. As a direct and proximate result of the negligence of Defendant MSC, KYLEEANN ROSE GEISINGER was directly and proximately caused to be sexually assaulted and/or physically battered by a crewmember.
18. As a result of the foregoing, the Plaintiff KYLEE-ANN ROSE GEISINGER was injured about her body and extremities, pain and suffering; mental anguish; inconvenience; great shame, psychological trauma, psychological scarring, embarrassment, humiliation aggravation of preexisting conditions, the loss of the capacity for the enjoyment of life; and other mental and/or nervous disorders, and has incurred medical expenses in the past and will incur medical expenses in the future. All of the Plaintiff's damages are permanent and continuing in nature and

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Plaintiff will suffer the losses and impairments in the future. In addition, Plaintiff lost the benefit of her vacation, cruise and transportation costs.

WHEREFORE, Plaintiff demands judgment for compensatory damages, including pre-judgment interest, costs, and all damages allowable by law and further demands trial by jury as well as any further relief as this Court deems just and appropriate.

COUNT II

STRICT VICARIOUS LIABILITY AS TO MSC CRUISES, S.A.

19. Plaintiff realleges, adopts and incorporates by reference the allegations in paragraphs 1 through 13 as though alleged originally herein.

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20. At all times material, the Defendant MSC had a non-delegable duty to protect their passengers, including KYLEE-ANN ROSE GEISINGER, from sexual assault and/or batteries committed by their agents, servants, employees, and/or representatives. The Defendant are strictly vicariously liable for the breach of this non-delegable duty. *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891 (11th Cir. 2004).
21. The Defendant MSC breached its non-delegable duty when the Defendant's crewmember sexually assaulted and battered KYLEE-ANN ROSE GEISINGER on or about February 14, 2016.
22. At all times material hereto, the crewmember that sexually assault and/or battered KYLEE-ANN ROSE GEISINGER was hired, retained, trained, supervised by, as

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well as in the employ of, Defendant MSC for service as a crewmember during said voyage.

23. As a result of the foregoing, the Plaintiff KYLEE-ANN ROSE GEISINGER was injured about her body and extremities, pain and suffering; mental anguish; inconvenience; great shame, psychological trauma, psychological scarring, embarrassment, humiliation aggravation of preexisting conditions, the loss of the capacity for the enjoyment of life; and other mental and/or nervous disorders, and has incurred medical expenses in the past and will incur medical expenses in the future. All of the Plaintiff's damages are permanent and continuing in nature and

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Plaintiff will suffer the losses and impairments in the future. In addition, Plaintiff lost the benefit of her vacation, cruise and transportation costs.

WHEREFORE, Plaintiff demands judgment for compensatory damages, including pre-judgment interest, costs, and all damages allowable by law and further demands trial by jury as well as any further relief as this Court deems just and appropriate.

COUNT III

INTENTIONAL TORT AS TO DEFENDANT SANTOS HERNANDES

24. Plaintiff realleges, adopts and incorporates by reference the allegations in paragraphs 1 through 13 as though alleged originally herein.

25. On or about February 14, 2016, the Defendant SANTOS HERNANDEZ was working aboard the *MSC Divina* as a stateroom attendant.

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26. While in the course and scope of his duties, Defendant SANTOS HERNANDEZ used his card key to enter the passenger stateroom and sexually assault and batter KYLEE-ANN ROSE GEISINGER who was alone in the room.

27. As a result of the foregoing, the Plaintiff KYLEE-ANN ROSE GEISINGER was injured about her body and extremities, pain and suffering; mental anguish; inconvenience; great shame, psychological trauma, psychological scarring, embarrassment, humiliation aggravation of preexisting conditions, the loss of the capacity for the enjoyment of life; and other mental and/or nervous disorders, and has incurred medical expenses in the past and will incur medical expenses in the

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future. All of the Plaintiff's damages are permanent and continuing in nature and Plaintiff will suffer the losses and impairments in the future. In addition, Plaintiff lost the benefit of her vacation, cruise and transportation costs.

WHEREFORE, Plaintiff demands judgment for compensatory damages, including pre-judgment interest, costs, and all damages allowable by law and further demands trial by jury as well as any further relief as this Court deems just and appropriate.

Dated: **September 21, 2016**,

By /s/ Carol L. Finklehoffe
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **September 21, 2016**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached 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 electronically receive Notices of Electronic Filing.

LIPCON MARGULIES ALSINA & WINKLEMAN, P.A.

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By: /s/ Carol L. Finklehoffe
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