UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-24706-WILLIAMS/MCALILEY

TARA MCCLUSKEY EL,

Plaintiff,

vs.

CELEBRITY CRUISES, INC.,

Defendant.
_____/

REPORT AND RECOMMENDATION

Defendant, Celebrity Cruises, Inc., filed a Motion to Dismiss Plaintiff's Complaint and/or for Final Summary Judgment (the "Motion"), which the Honorable Kathleen M. Williams referred to me for a report and recommendation. (ECF Nos. 15, 16). Plaintiff, Tara McCluskey EL, who is not represented by counsel, filed a response and Defendant filed a reply. (ECF Nos. 30, 32).[1] After I determined that the Motion must be resolved as one for summary judgment, which I discuss below, I gave Plaintiff an opportunity to submit evidence in support of her response. (ECF No. 37). She did so. (ECF Nos. 38, 40). For the reasons that follow, I recommend that the Court grant Defendant's Motion.

[1] After Defendant filed its reply, Plaintiff, with the Court's permission, amended her response. (ECF Nos. 32, 35). I consider here the documents Plaintiff attached to her initial response, which she references in her amended response. *See* (ECF No. 25-1).

I. BACKGROUND[2]

In July 2019, Plaintiff booked a cruise on a Celebrity ship as part of a group sailing with Life Journeys' Abraham-Hicks Group ("Life Journeys"). (ECF No. 15-2 at 2 ¶¶ 6-7). Life Journeys arranged the cruise for Plaintiff and Plaintiff paid Life Journeys for the ticket. (ECF No. 15-2 at 2 ¶ 6; ECF No. 25-1 at Ex. A, B). The twelve-night cruise was set to depart from Spain, on September 18, 2019. (ECF No. 15-2 at 2 ¶ 5).

On September 14, 2019, Defendant provided the Guest Ticket Booklet, which included the Cruise/Cruisetour Ticket Contract (the "Contract"), to Life Journeys via email. (*Id.* ¶ 11). Defendant did not provide the Contract directly to Plaintiff because it did not have Plaintiff's email address at that time. (*Id.* ¶¶ 9, 11). Later that night at 11:42 p.m., after Defendant had already sent the Contract to Life Journeys, Defendant's booking system recorded an update: Plaintiff's email address was added and there was an update to her nationality and title (to "Ms."). (*Id.* at 2-3 ¶ 12).

The Contract includes a provision that states, in pertinent part, a passenger shall not maintain a personal injury lawsuit against Defendant unless the passenger files the lawsuit within one year of the date of injury. (ECF No. 15-1 at 11 ¶ 10).[3]

[2] Unless otherwise noted, the facts set forth herein are taken from the Complaint, Guest Ticket Booklet, Amanda Campos' affidavit and Plaintiff's response. (ECF Nos. 1; 15-1; 15-2; 32). Ms. Campos is an employee of Royal Caribbean Cruises, Ltd., which Defendant is a subsidiary of. (ECF No. 15-2 at 1 ¶¶ 1, 3).

[3] The provision also requires passengers to provide written notice of claims to Defendant within six months of the injury date. This requirement is not relevant here, as Defendant does not raise the issue.

Passengers may access their contracts when they update their information in Defendant's booking system, and at any time on Defendant's website, www.celebritycruises.com. (ECF No. 15-2 at 3 ¶¶ 13-14).

On September 29, 2019, while on board the ship, Plaintiff suffered an injury. (ECF No. 1 at 5 ¶¶ 12-13). She was soaking her feet in the jacuzzi and when she left, she slipped on some water nearby and fell. (*Id.* ¶ 12).[4]

Several days later, Plaintiff notified Defendant that she intended to make a claim and requested from Defendant her medical records. (ECF No. 15-2 at 4 ¶ 19). At some point after her accident, Plaintiff spoke to some attorneys regarding her claim. (ECF No. 32 at 2).

On November 16, 2020, more than a year after her accident, Plaintiff filed this lawsuit. (ECF No. 1). The Complaint alleges one count of negligence against Defendant. (*Id.*).

Defendant now asks this Court to dismiss Plaintiff's Complaint or, alternatively, to grant summary judgment in its favor, because the Contract's one-year time limit bars her untimely claim. (ECF No. 15).

II. STANDARD

The first question the Court must answer is whether to address Defendant's Motion as one for dismissal or for summary judgment.

[4] Plaintiff alleges that the fall caused "grievous bodily injury, including but not limited to her left knee, leg and ankle, her tailbone, right knee, leg and tailbone, hips, wrists and right shoulder and other injuries still being assessed." (ECF No. 1 at 5 ¶ 13).

When evaluating a motion to dismiss, a court must limit its review to the four corners of the complaint. *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002) (citation omitted). An exception exists for documents attached to a motion to dismiss, if those documents are "referred to in the complaint, central to the plaintiff's claim, and of undisputed authenticity." *Hi-Tech Pharmaceuticals, Inc. v. HBS Int'l Corp.*, 910 F.3d 1186, 1189 (11th Cir. 2018) (citations omitted).

Here, Defendant attached two documents to its Motion: (i) the Contract, and (ii) Amanda Campos' affidavit. (ECF Nos. 15-1, 15-2). Defendant argues that the Court may consider the Contract – not the affidavit – and resolve the Motion as one for dismissal. (ECF No. 15 at 1 n.1).

I disagree. Plaintiff does not refer to the Contract in the Complaint. In a similar case, the Eleventh Circuit Court of Appeals recently found that a cruise ticket contract is not central to a plaintiff's claim that seeks damages for injuries due to the defendant's negligence. *See Roberts v. Carnival Corp.*, 824 F. App'x 825, 826-27 (11th Cir. 2020). The Court thus cannot resolve the issue at the motion to dismiss stage.

If a court considers materials outside the complaint, it must convert a motion to dismiss into one for summary judgment. *Id.* at 826 (citations omitted). Unless the Court sets a different deadline, which it did not do here, a defendant may move for summary judgment "at any time until 30 days after the close of all discovery." Fed. R. Civ. P. 56(b). The Court may enter summary judgment when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "material" fact is one that, under the applicable law, might affect the outcome of

the case. *DannaMarie Provost v. Hall*, 757 F. App'x 871, 875 (11th Cir. 2018) (citation omitted).

III. ANALYSIS

At the outset, I note that Plaintiff is not represented by counsel, so I construe her pleadings liberally. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) ("*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed."). This leniency, however, "does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014) (citation omitted). Because Plaintiff is representing herself, I allowed her several opportunities to address Defendant's Motion and present evidence that may place the material facts in dispute.[5] Plaintiff failed to do so.

A. Enforceability of the time limit

Maritime tort claims are generally subject to a three-year statute of limitations. 46 U.S.C. § 30106. Parties to a contract, however, may choose to set a shorter period. *DannaMarie Provost*, 757 F. App'x at 875 (citations omitted). Title 46 U.S.C.

[5] Although Plaintiff improperly moved to amend her response after Defendant filed its reply memorandum, this Court gave Plaintiff the benefit of the doubt as a *pro se* litigant and allowed amendment. (ECF Nos. 32, 35). After the Court determined that the Motion must be resolved on summary judgment, the Court notified Plaintiff of this, and invited her to provide additional evidence in response to Defendant's Motion. (ECF No. 37). Plaintiff submitted that evidence by the Court's deadline, with two pages missing. (ECF No. 38). The Court brought this to Plaintiff's attention and gave her more time to submit those two pages. (ECF No. 39). Plaintiff did so, and, without permission, also filed with the Court other information. (ECF No. 40). The Court again gives Plaintiff the benefit of the doubt and considers that additional information here.

§ 30508(b)(2) expressly permits cruise lines to impose a one-year limit on the time passengers have to file a personal injury lawsuit.

The one-year time limit is enforceable if it was "reasonably communicated to the passenger." *Roberts*, 824 F. App'x at 828 (quotation marks and citation omitted). Whether it was reasonably communicated is a question of law. *DannaMarie Provost* 757 F. App'x at 875 (citation omitted).

The Eleventh Circuit provides a two-factor test for reasonable communication, which evaluates "(1) the physical characteristics of the clause and (2) the passenger's opportunity to become meaningfully informed of the contract terms." *Roberts*, 824 F. App'x at 828 (quotation marks and citation omitted). Plaintiff does not argue that the first factor is not satisfied here. Nor could she, given the Eleventh Circuit's decision that the physical characteristics of an identical contract provided "reasonable notice" to passengers of its terms. *DannaMarie Provost*, 757 F. App'x at 876; *compare id.* at 873, *with* (ECF No. 15-1 at 1, 9, 11 ¶ 10).

The second factor focuses on whether the passenger "had the ability to become meaningfully informed of the clause and to reject its terms." *Baer v. Silversea Cruises Ltd.*, 752 F. App'x 861, 865 (11th Cir. 2018) (quoting *Krenkel v. Kerzner Int'l Hotels, Ltd.*, 579 F.3d 1279, 1281 (11th Cir. 2009)). This does not require that the passenger actually read the contract, or its provision limiting the time for passengers to file claims. *Id.* at 866 (citation omitted). Courts should consider "any extrinsic factors indicating the passenger's ability to become meaningfully informed of the contractual terms at stake." *Baer v. Silversea Cruises Ltd.*, No. 17-cv-60208, 2018 WL 707682, at *4 (S.D. Fla. Feb. 5, 2018)

(quotation marks and citation omitted), *aff'd*, 752 F. App'x 861 (11th Cir. 2018); *see also Roberts*, 824 F. App'x at 828 ("[T]he second factor takes into account facts beyond the contract."). Extrinsic factors include: "the circumstances surrounding the passenger's purchase of the ticket, the passenger's ability and incentive to become familiar with its terms, and any other notice that the passenger received outside of the ticket." *Baer*, 2018 WL 707682, at *4 (citations omitted).

Plaintiff argues that she did not have an opportunity to become meaningfully informed of the time limit because she never received the Contract from Defendant. *See generally* (ECF Nos. 32, 38). This argument is not persuasive.

First, before Plaintiff boarded the cruise, Defendant provided the Contract to Life Journeys. The reasonable communication factor "may be satisfied by constructive notice when a reasonable opportunity to become meaningfully informed of the contract term is provided to the passenger's agent who books travel arrangements on the passenger's behalf." *Baer*, 2018 WL 707682, at *5 (citing *McArthur v. Kerzner Int'l Bahamas Ltd.*, 607 F. App'x 845, 847-48 (11th Cir. 2015) and *Kirby v. NCL (Bahamas) Ltd.*, No. 10-23723-CV, 2010 WL 11556551, at *1 (S.D. Fla. Dec. 28, 2010)), *aff'd*, 752 F. App'x at 866 (11th Cir. 2018) ("The record reflects that Baer communicated regularly with Nichols, authorized her to book the cruise on his behalf, and received relevant documents from her. Based on this, Baer had the opportunity to avail himself of the notices contained in the ticket contract. Further, we typically find constructive notice in other contexts where an agent accepts contract documents on behalf of a principal." (citations omitted)).

Here, the record reflects that Life Journeys was Plaintiff's travel agent.[6] Plaintiff regularly communicated with Life Journeys regarding the cruise, authorized it to book the cruise on her behalf, and paid it for the trip. *See* (ECF Nos. 15-2 at 2 ¶¶ 6-7; 25-1 at Ex. A, B). On September 14, 2019 – four days before the cruise departed – Defendant produced the Contract to Life Journeys. (ECF No. 15-2 at 2 ¶ 11).[7]

I therefore find that Plaintiff had constructive notice of the time limit in advance of the September 18th cruise. *Baer*, 752 F. App'x at 866; *see also McArthur*, 607 F. App'x at 847-48 ("[B]ecause the McArthurs' trip involved travel arrangements made by the travel agent, they are charged with constructive notice of the terms and conditions in the contract the travel agent had with the Atlantis Resort."); *Kirby*, 2010 WL 11556551, at *1 ("Courts have even held that a travel agent's possession of the ticket is sufficient to charge passengers with constructive notice of the ticket provisions."); *Gomez v. Royal Caribbean Cruise Lines*, 964 F. Supp. 47, 50 (D.P.R. 1997) ("The courts have also held that notice of important conditions of a passage contract can be imputed to a passenger who has not personally received the ticket or possession thereof. The ticket may be received by passengers themselves or by their travel agent." (citations omitted)).

[6] In her first response to Defendant's Motion, Plaintiff referred to Life Journeys as her "travel agent." *See, e.g.*, (ECF No. 25 at 6 ¶ 20). After Defendant filed its reply memorandum, Plaintiff amended her response and called Life Journeys her "travel point of contact." *See* (ECF No. 32 at 6 ¶ 20). This does not change the Court's analysis.

[7] In her response, Plaintiff states that Defendant "allegedly" sent the Contract to Life Journeys. (ECF No. 32 at 4 ¶ 11). She provides no evidence, however, that Defendant did not do this, and thus does not put this fact in dispute.

Second, Plaintiff certainly had opportunities to become meaningfully informed of the time limit. Ms. Campos' affidavit demonstrates that Plaintiff could have accessed the Contract at any time on Defendant's website. (ECF No. 15-2 at 3 ¶ 14). Plaintiff neither disputes nor presents evidence that contradicts this statement.[8] Plaintiff argues only that she never received the Contract from Defendant. *See generally* (ECF Nos. 32, 38 at 2-3). The Court thus finds that there is no genuine dispute that Plaintiff was able to read the Contract if she wished to do so.

In her affidavit, Ms. Campos assumes that Plaintiff is the one who updated information in Defendant's booking system the night of September 14, 2019, and states that at that time Plaintiff could have accessed and read the Contract. (ECF No. 15-2 at 3 ¶ 13). Ms. Campos, however, offers no evidence that it was Plaintiff, rather than Life Journeys, who modified information in Defendant's online booking system. (*Id.*). Plaintiff does not squarely deny that she made changes in the booking system. Rather, she makes a vague statement, that neither confirms nor denies this.[9]

Regardless of who made the entries in Defendant's booking system, the record supports that Plaintiff had access to the Contract at any time online. Other courts have found as much, in similar circumstances. *See Calixterio v. Carnival Corp.*, No. 15-22210-

[8] When I invited Plaintiff to present additional evidence on this issue, I noted that upon the Court's own search, it found sample ticket contracts online, at www.celebritycruises.com/faqs/cruise-ticket-contract, which include the one-year time limitation for any passenger lawsuits. Plaintiff did not address this in her subsequent filing.

[9] *See* (ECF No. 38 at 2-3) ("Because there was an update in Defendant's booking system does not mean that it was done by the Plaintiff personally on their website nor is that a method of meaningfully informing someone.").

CIV, 2016 WL 3973791, at *4 (S.D. Fla. Jan. 7, 2016) ("Although Plaintiff asserts she never actually read the ticket contract, there is nothing in the record to suggest that Plaintiff could not read the ticket contract—which was available on Carnival's website and in her mother-in-law's possession—prior to embarking on the cruise had she chosen to do so."); *Angel v. Royal Caribbean Cruises, Ltd.*, No. 02-20409-CIV, 2002 WL 31553524, at *4-5 (S.D. Fla. Oct. 22, 2002); *see also Veverka v. Royal Caribbean Cruises, Ltd.*, No. 12-3070, 2015 WL 1270139, at *6 (D.N.J. Mar. 18, 2015) ("Putting aside the fact that Plaintiff could not have boarded the Vessel without signing the Ticket Contract, even if Plaintiff did not receive the Ticket Contract, it was available online, and she could have read it following her injury." (citations to the record omitted)), *aff'd*, 649 F. App'x 162 (3d Cir. 2016).

Moreover, Plaintiff had up to a year after the incident to become meaningfully informed of the time limit and good reason to seek out that information. *See Angel*, 2002 WL 31553524, at *4 ("[E]ven if Plaintiff did not have an opportunity to read the ticket contract before accepting its terms upon boarding the vessel, he had a year after the accident to apprise himself of its conditions ... Consequently, Plaintiff's contention that he did not have an opportunity to read the ticket, either before or after his injury, is without merit." (citations omitted)); *Racca v. Celebrity Cruises, Inc.*, 376 F. App'x 929, 931 (11th Cir. 2010) ("[A]fter his injury, or certainly after one of his surgeries, it is not unreasonable to expect Racca to read the three-page contract which the face of the brochure directed him to."). As other courts have observed, after an injury, a plaintiff has "both ample time and a powerful incentive" to become aware of a ticket contract's terms. *Calixterio*, 2016 WL 3973791, at *4 (quoting *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 866 (1st Cir.

1983)); *see also Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1568 (11th Cir. 1990) ("[Plaintiff] was not likely to read it until she was injured ....").

Plaintiff's actions in this lawsuit constitute an additional extrinsic factor that supports this Court's conclusion. The Court has observed that Plaintiff is resourceful and intelligent. Days after her injury, she notified Defendant that she intended to make a claim and requested medical records from Defendant, and she conferred with attorneys at some point thereafter. Her *pro se* Complaint is well-drafted, and despite her being a citizen of California who suffered an injury near Spain, she figured out that she had to file this suit here, as required by the Contract's forum selection clause. *See* (ECF No. 15-1 at 10-11). Plaintiff also conducted legal research of rulings issued from this District Court, printed orders from those cases and filed them here, to support her argument for equitable tolling, discussed below. *See* (ECF No. 40 at 7-15). She has demonstrated her ability to comply with this Court's deadlines, which were set in several orders granting her motions for extensions of time to respond to Defendant's Motion and allowing her additional time to submit further evidence that supports her position. *See, e.g.*, (ECF Nos. 24, 25, 37, 38, 39, 40). If after her accident, Plaintiff looked at the Contract, which is four pages long, because she was thinking of bringing a claim, her attention would have been directed to paragraph 10, which has the time limit provision, under this bolded title: "**NOTICE OF CLAIMS AND COMMENCEMENT OF SUIT OR ARBITRATION; SECURITY**". (ECF No. 15-1 at 11 ¶ 10).[10]

[10] The first page of the Guest Ticket Booklet is essentially a cover page with a few statements that includes a bolded paragraph, "**IMPORTANT NOTICE TO GUESTS**", that directs the reader to

On this record Plaintiff's argument that she had no opportunity to become meaningfully informed of the Contract is entirely unpersuasive. *See Calixterio*, 2016 WL 3973791, at *4; *Angel* 2002 WL 31553524, at *4; *see also Palmer v. Norwegian Cruise Line & Norwegian Spirit*, 741 F. Supp. 2d 405, 413 (E.D.N.Y. 2010) ("[T]he Second Circuit does not require that a passenger personally possess, read, see, or purchase a ship ticket for its terms to be enforceable, as long as the ticket was generally available to the passenger for a reasonable period of time both before and after embarkation." (citations omitted)).

For the foregoing reasons, I find that Plaintiff had an opportunity to become meaningfully informed of the time limit and, therefore, that provision was reasonably communicated to her. I conclude that the one-year time limit is enforceable.[11]

B. Equitable tolling

In her response, Plaintiff states that she was unable to file her Complaint before November 16, 2020 because of the COVID-19 pandemic. *See generally* (ECF No. 32). She argues that it thus would be "unconscionable" to enforce the one-year filing time limit. (*Id.*

"pay[] particular attention to section 3 and sections 9 through 11, which limit [Defendant's] liability and the [the passenger's] right to sue". (ECF No. 15-1 at 1). The first paragraph of the Contract, which starts on page 9 of the Guest Ticket Booklet, repeats this same sentence, but this time, all the words are capitalized and bolded. (*Id.* at 9).

[11] Plaintiff makes an additional argument, which I outright reject. In her response, she states: "this verbiage does not apply to me and that it is § 2-302. Unconscionable contract or Clause." (ECF No. 32 at 10 ¶ 17) (emphasis omitted). She does not clearly state which language she is referring to, as she also mentions the arbitration clause. (*Id.*). Assuming Plaintiff argues that the time limit is an unconscionable provision of the Contract, this plainly is not so, given the federal statute that allows cruise lines to limit by contract the time in which a passenger may bring a personal injury lawsuit, and the Eleventh Circuit's recognition of the enforceability of that limit. *See* 46 U.S.C. § 30508(b)(2); *see also Nash*, 901 F.2d 1565.

at 8-12). I construe this as a request that this Court equitably toll the limitations period to allow this case to proceed, and I allowed Plaintiff an opportunity to provide evidence in support of this argument, should she have any. (ECF No. 37). Plaintiff provided a sworn statement in which she, among other things, confirmed her request that the Court equitably toll the limitations period. (ECF No. 40 at 6).

When a plaintiff files a complaint past the limitations period, a court may, under the doctrine of equitable tolling, excuse the delay and toll the limitations period, to recognize the complaint as timely filed. *Justice v. United States*, 6 F.3d 1474, 1479 (11th Cir. 1993). "Equitable tolling 'pauses the running of, or tolls, a statute of limitations when a litigant has pursued [her] rights diligently but some extraordinary circumstance prevents [her] from bringing a timely action.'" *Fedance v. Harris*, 1 F.4th 1278, 1284 (11th Cir. 2021) (quoting *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014)); *see also Booth v. Carnival Corp.*, 522 F.3d 1148 (11th Cir. 2008) (applying the doctrine of equitable tolling to a cruise line's contractual limitations period). The doctrine is "an extraordinary remedy which should be extended only sparingly." *DannaMarie Provost*, 757 F. App'x at 876 (quotation marks and citation omitted).

In *Justice v. United States*, the Eleventh Circuit provides this guidance for the application of equitable tolling:

> The interests of justice are most often aligned with the plaintiff when the defendant misleads her into allowing the statutory period to lapse, when she has no reasonable way of discovering the wrong perpetrated against her, or when she timely files a technically defective pleading and in all other respects acts with the proper diligence ... which ... statutes of limitation were intended to insure. The interests of justice side with the

> defendant when the plaintiff does not file her action in a timely fashion despite knowing or being in a position reasonably to know that the limitations period is running, and, of course, when she fails to act with due diligence. It bears emphasizing, however, that due diligence on the part of the plaintiff, though necessary, is not sufficient to prevail on the issue of equitable tolling.... [A] generally diligent plaintiff who files late because of [her] own negligence typically may not invoke equity to avoid the [limitations period].

Justice, 6 F.3d at 1479-80 (quotation marks and citations omitted). The burden is on the plaintiff to demonstrate that equitable tolling should apply. *DannaMarie Provost*, 757 F. App'x at 876 (citation omitted).

In her sworn statement, Plaintiff states: "Due to the COVID 19 that Plaintiff contracted on the cruise in question due to Defendant's negligence, plaintiff was and is still experiencing loss of memory and cognition and was not meaningfully aware or informed of the Ticket Contract." (ECF No. 40 at 6) (emphasis omitted). She also states that she had a difficult time hiring an attorney because all of them wanted to know the extent of her injuries, and that "it was extremely challenging to obtain medical examinations due to the Covid-19 pandemic ...." (*Id.*).

Plaintiff has not met her burden. "[B]lanket allegations without evidence showing the COVID-19 pandemic interfered with [Plaintiff's] diligent efforts to pursue [her] rights does not warrant equitable tolling." *Powell v. United States*, No. CV 121-023, 2021 WL 2492462, at *4 (S.D. Ga. May 24, 2021) (collecting cases).

Plaintiff makes broad allegations without providing detailed facts to support them. She fails to demonstrate how COVID-19 prevented her from filing this lawsuit within the limitations period, or how her difficulty in hiring an attorney or getting a medical exam

constitutes an extraordinary circumstance to warrant equitable tolling. Notably, Plaintiff filed her Complaint despite these obstacles, without an attorney, in the midst of the pandemic, in November 2020.

In sum, Plaintiff does not demonstrate that the circumstances here warrant such an extraordinary remedy.[12]

IV. RECOMMMENDATION

I RESPECTFULLY RECOMMEND that the Court **GRANT** Defendant's Motion to Dismiss Plaintiff's Complaint and/or for Final Summary Judgment, (ECF No. 15).

V. OBJECTIONS

No later than September 15, 2021, Plaintiff may file any written objections to this Report and Recommendation with the Honorable Kathleen M. Williams, who is obligated to make a *de novo* review of only those factual findings and legal conclusions that are the subject of objections. Defendant may file a response to Plaintiff's objections, if any, **no later than September 21, 2021**. The Court will strictly enforce these deadlines. Only those objected-to factual findings and legal conclusions may be reviewed on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985), *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989), 28 U.S.C. § 636(b)(1), 11th Cir. R. 3-1 (2016).

[12] Plaintiff, without the Court's permission, attached orders issued in other cases before this District Court in which Royal Caribbean was a party, and argues that Royal Caribbean obtained an extension of time due to the pandemic, and so she should be granted more time to file this suit. *See* (ECF No. 40 at 6-13). The Court in those cases ruled on discovery matters and extended discovery deadlines, due to the health concerns involved in having an expert board and inspect a cruise ship that has staff on board. The standard for allowing time extensions for discovery is good cause, and that was specifically shown in the orders Plaintiff attached. The equitable tolling standard is different.

RESPECTFULLY RECOMMENDED in Miami, Florida, this 3rd day of September 2021.

CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable Kathleen M. Williams
Counsel of record
Tara McCluskey (*pro se*)