

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Tara McCluskey El — PETITIONER
(Your Name)

VS.

Celebrity Cruises, Inc. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

San Francisco Superior Court of California

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in **any** other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____

, or

a copy of the order of appointment is appended.


(Signature)

RECEIVED

AUG 22 2022
AFFIDAVIT IN SUPPORT OF MOTION for LEAVE INCLUDED IN BACK (2 pages)
OFFICE OF THE CLERK
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Tara McCluskey El, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Self-employment	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Income from real property (such as rental income)	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Interest and dividends	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Gifts	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Alimony	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Child Support	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Disability (such as social security, insurance payments)	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Unemployment payments	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Public-assistance (such as welfare)	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Other (specify): _____	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Total monthly income:	\$ <u>N/A</u>	\$ _____	\$ <u>N/A</u>	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$ N/A
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$ N/A
			\$
			\$

4. How much cash do you and your spouse have? \$ N/A

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	\$	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<input type="checkbox"/> Home Value N/A	<input type="checkbox"/> Other real estate Value N/A
<input type="checkbox"/> Motor Vehicle #1 Year, make & model _____ Value N/A	<input type="checkbox"/> Motor Vehicle #2 Year, make & model N/A Value _____
<input type="checkbox"/> Other assets Description N/A Value _____	

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>N/A</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>N/A</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>N/A</u>	\$ <u>N/A</u>
Food	\$ <u>N/A</u>	\$ <u>N/A</u>
Clothing	\$ <u>N/A</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>N/A</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>N/A</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>N/A</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>N/A</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>N/A</u>	\$ <u>N/A</u>
Life	\$ <u>N/A</u>	\$ <u>N/A</u>
Health	\$ <u>N/A</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others	\$ <u>N/A</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>N/A</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

N/A

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 9, 2023


(Signature)

**AFFIDAVIT OF FACT- NOTICE- WRIT
OVERWHELMING AMOUNT OF CASE LAW TO SUPPORT MY CASE
MY CONSTITUTIONAL RIGHTS HAVE BEEN DENIED**
No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

TARA MCCLUSKEY EL – PETITIONER

VS.

CELEBRITY CRUISES, INC. - RESPONDENT(S)

**ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

Tara McCluskey El

1585 62nd St. #8771

Emeryville, California Republic [94662]

(650) 701-3356

Petitioner in Pro se

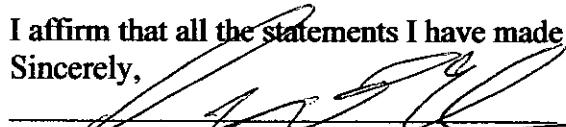
**AFFIDAVIT OF FACT- NOTICE- WRIT
OVERWHELMING AMOUNT OF CASE LAW TO SUPPORT MY CASE
MY CONSTITUTIONAL RIGHTS HAVE BEEN DENIED**

Dear Honorable Sirs and Madams,

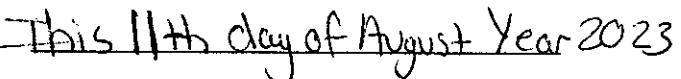
I am putting my faith in you to Honor your oath of office and provide the justice that has been intentionally denied to me by the use of intentional fraud upon the court and continuous aiding and abetting of that fraud by the judges and magistrates in the Southern District Court of Miami and the 11th District Appeals Court of Atlanta. I have included in my Petition for a Writ of Certiorari evidence that plainly shows that is what has happened in my case. as I clearly included that evidence in my submissions to the court and both courts worked diligently to try to keep it from being on "the record." The defendant's did not even deny the fraud, they admitted it and the courts have been acting as their attorney from the bench. I also have included an affidavit of bias and Motion for recusal of the judges in the 11th Circuit court of Appels which they did not even read.

I should not be having to file this case here as it should have been decided in my favor or settled in the District Court "but for" the aiding and abetting of fraud by officers of the court who have violated their oath of office and my constitutional right to due process in my cases. These events have put me in a financial bind as I have shelled out thousands of dollars in not only court cost, put printing, mail cost not to mention my life energy which is priceless. It would be unjust to ask me for a penny when I am owed so much and due this negligence and fraud have so little.

I affirm that all the statements I have made are true and am aware that I may be punished if not.
Sincerely,


Tara McCluskey El- Petitioner
All rights reserved and retained eternally
UCC 1-308 UCC 1-103

Date



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TARA MCCLUSKEY EL -

Petitioner,

VS.

CELEBRITY CRUISES, INC. -

Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Tara McCluskey El
1585 62nd St. #8771
Emeryville, California Republic [94662]
(650) 701-3856
Petitioner in Pro se/ Race: White woman

QUESTIONS PRESENTED

The questions presented in this case are:

1. Did the panel of 3 judges in the Eleventh Circuit Court of Appeals violate my 14th amendment and Constitutional Rights to due process sections 1 and 3, 28 U.S. CODE § 144 bias or prejudice of judge. use bias, corruption and fraud to deny my MOTION to file excess Words for En Banc Hearing Petition/ which includes **Request for En Banc Hearing in Lieu of 3 Panel Judge Review and Petition to Set Aside/ VACATE Opinion resulting from 3 judge panel (Poll Request FRAP 35 I.O.P. (1) (3)**
2. Did the judges in this appeals court use fraud, corruption and bias to deny my **AFFIDAVIT OF BIAS** and **MOTION FOR RECUSAL** submitted to the court and violate their oath of office by refusing to read any of the documents that were submitted by the Plaintiff as evidenced by their rulings and judgements. They refused to provide an attorney to me though one was requested and charged me a fee to fight an already fraudulent case in which they did not perform their job/duty. The same bias judges ruled on my Motions of bias and recusal, how does that work lawfully?
3. Did the magistrate and district judge use bias and aide and abet the Defendant's in my case in "submitting fraudulent documents" on the record "**via a fraudulent affidavit**" with a contract attached that was never sent to myself nor the people responsible for booking my cruise in order to avert justice, prevent a fair trial "**any trial at all**" and assist them in unjustly not paying the money they owe me for damages. These actions violating my **Fourteenth Amendment Section 1** robbing me of my due process and **Section 3** supporting *open rebellion against their oath to support the constitution of the United States*.8 U.S. Code § 1324c · Penalties for document fraud.Did this violate Fausett & Company, Inc., v. Bullard, 217 Ark. 176, 229 S.W.2d 490; Massey v. Tyra, supra.....**THE MISREPRESENTATION OF AN ACTUAL FACT IS FRAUD**
4. Does the 3 panel ruling of the 11th Circuit Court of appeals violate the ruling of **SHAW'S SUPERMARKETS, INC. VS. MARGARITA MELENDEZ SJC-13054 "TOLLING OF STATUTE OF LIMITATIONS" SUPREME JUDICIAL COURT** along with several other courts ruling on the matter? If there was

III

never a contract sent to me or the people responsible for booking my cruise, then 46 U.S. Code § 30106 applies to my case?

5. If 46 U.S. Code § 30106 The Uniform Statute of Limitations for Maritime Torts "provides a three-year statute of limitations" applies in my case, why was it not adhered to by the magistrate and district judge?
6. Did the district magistrate unlawfully rule on D.E. 33 striking it from the record which contained the document 33 that I did not consent to her ruling or being any part of my trial. tried to violate my rights fraudulently claiming that I made a sur reply when in fact I sent "overnight" the "signed" documents previously sent the day before "overnight" which the Defendant's forgot to sign and had emailed over to me after the 3pm cutoff time the post office allows for overnight delivery. And McAliley approved my verbiage change but continued to fraudulently refer to Life Journey's as my agent.
7. Did the United States District Court of Florida use extreme bias in **denying** my motion for Tolling of Statute of Limitations- Extension of time due to COVID-19 while the very SAME judge **granted** the SAME defendant's in my case "Randy Ginsberg attorney for Celebrity Cruises, Inc. an extension for the same COV'D 19 reasons
Darlene Murzyn v. Royal Caribbean Ltd 1:20-cv-20269-KMM
8. Does the 3 panel ruling of the 11th Circuit Court of appeals violate the ruling of **SHAW'S SUPERMARKETS, INC. VS. MARGARITA MELENDEZ SJC-13054 "TOLLING OF STATUTE OF LIMITATIONS" SUPREME JUDICIAL COURT** along with several other courts ruling on the matter.

PLEASE SEE ALL QUESTIONS INCLUDING PREFERRED QUESTIONS ON PAGES IV- VI Numbers 1-17. Thank you.

- The below questions have been PROFFERED on the record by Plaintiff. EVIDENCE PRESERVED IN D.E. 53, 53-1, 53-2 including D.E. 33, D.E. 28 AS A PERMANENT PART OF THE RECORD See D.E. 28 as proof yellow highlighter is not black (Please reference corresponding appendix 48-3 -48-6)

1. Did the United States Court of Appeals for the Eleventh Circuit Judges use and show BIAS by allowing the Defendants/ Appellee to submit documents out of time and deny my/Plaintiff's right to do the same in a collusive attempt to keep my evidence off the record?
2. Did the United States District Court of Appeals For the Eleventh Circuit Judges violate my constitutional right to DUE PROCESS by denying my "Motion to file excess words "which was necessary to prove my case of fraud and collusion by the United States District Court Southern District of Florida which is "what I paid" and submitted my case on appeal for?

02/11/2021	16	PAPERLESS ORDER REFERRING <u>15</u> Defendant's motion to dismiss. THIS MATTER is before the Court on a <i>sua sponte</i> review of the record. Pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules for the Southern District of Florida, Defendant's motion <u>15</u> is REFERRED to United States Magistrate Judge Chris M. McAliley for a report and recommendation. Signed by Judge Kathleen M. Williams on 2/11/2021. (sgj) (Entered: 02/11/2021)
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1. Did the District Judge Kathleen Williams violate her own order #16 dated 02/11/2021 Pursuant to 28 U.S.C. § 636 page Corrected Brief page 69.
2. Was it **fraud** and or gross error when Magistrate McAliley struck D.E. 33 from the record because she claims they were similar and did Plaintiff prove that they were different and that this was done by the magistrate in attempt to remove Plaintiff/ Appellant's EVIDENCE from the record and cause injury by fraudulently, etc. removing Attachment B Joint Consent to Jurisdiction to which Plaintiff **did not consent** from the record (Rule 60) fraudulently calling it a sur reply. (finagled)Page 69-71
3. Did the District Court error in granting Celebrity Cruises Motion for summary judgement and imposing an unreasonable judgement.
4. Did the 3 panel judge error in denying my corrected brief and appendix while allowing out of time documents and motions for the Defendant's/Appellee's appearing to be bias.
5. Should Appellant's Corrected Brief and Corrected Appendix be approved and 3 panel judge and Robert J. Luck's ruling overturned and reviewed as

ENBANC BRIEF AND APPENDIX without having to send another corrected appendix in which has already been submitted on the record.

6. Did the magistrate judge violate my right to due process 14th amendment by acting as a voluntary character witness for the defense (Celebrity Cruises, Inc.) ; and in acting as attorney for the defendants (Celebrity Cruises, Inc. by stating that the Plaintiff could not have boarded the ship without signing the contract without having any evidence of that being a fact knowing that a major part of Plaintiffs case is the FACT that she did not sign any contract with Celebrity Cruises and being “the magistrate judge” in which Plaintiff **did not consent**. (finagled)
7. Did the district court error by refusing to make Plaintiff aware of what evidence they were requesting that they thought was missing although being asked repeatedly by Pro Se Plaintiff.
8. Did the Court and 11th circuit court error in not taking into proof and evidence that the defendant's Celebrity Cruises, Inc. attempted to make a bad faith settlement with Plaintiff
9. Did District Judge Kathleen not honorably review her Magistrates Judge abuse of discretion. Page 71 brief
10. Did District Judge Kathleen Williams deliberately runout DE 46, DE 47, on my time to file an appeal by not answering my emergency motion to correct errors and extension of time to file an appeal PAGE 72
11. Did Plaintiff clearly demonstrate that proof was necessary to prove that the defendant's **had not sent Plaintiff any contract,” to either herself or Life Journey's**. Page 73
12. Did defendants/Appellee's and the court commit fraud by submitting and allowing on the record a perjured Affidavit of Amanda Campos and fraudulently claim to have sent a contract to either Appellant/Plaintiff and or Life Journey's with no evidence Page 73 (finagled) violation of Title 18, United States Code, Section 1503 and Section 371
13. Did the District and magistrate judges violate their Canon Law oaths Pages 82-85
14. Did Plaintiff/ Appellant preserve her NOTICE OF CLAIM OF UNCONSTITUTIONALITY FOR VIOLATION OF ADMINISTRATION OF JUSTICE, VIOLATION OF THE CONSTITUTION ARTIVLE VI AND VIOLATION OF CONSTITUTIONAL RIGHT UNDER COLOR OR MAKING A DETERMINATION WITHUT JURISDICTION. (DE 42 Pages 2, 5, 8, 9, 18, 20, 23, 25, 26, 29) Page 91 of corrected brief

15. Did Defendants also commit fraud and gross error by saying that Plaintiff ceased communication with them when they refused to respond to Plaintiff for the investigators report and pictures of the area that caused Plaintiff injuries due to Celebrity Cruise's negligence. See DE42 5-10 in its entirety.
16. Was the district and magistrate judge bias and the 11th district 3 panel opinion judges?
17. Did the judges in this appeals court use fraud and bias to deny my **MOTION FOR RECUSAL and the AFFIDAVIT OF BIAS** submitted to the court and violate their oath of office by refusing to read any of the documents that were submitted by the Plaintiff as clearly evident by their rulings and judgements. They refused to provide an attorney to me though one was requested and charged me a fee to fight an already fraudulent case in which they did not perform their job.

Fourteenth Amendment

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Procedural Due Process

"Procedural due process" concerns the procedures that the government must follow before it deprives an individual of life, liberty, or property. The key questions are: What procedures satisfy due process? And what constitutes "life, liberty, or property"?

Historically, due process ordinarily entailed a jury trial. The jury determined the facts and the judge enforced the law. In past two centuries, however, states

have developed a variety of institutions and procedures for adjudicating disputes. Making room for these innovations, the Court has determined that due process requires, at a minimum: (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal. *Mullane v. Central Hanover Bank* (1950).

By Interpretation: The Fourteenth Amendment Due Process Clause | Constitution

Center

Nathan S. Chapman Associate Professor of Law at the University of Georgia School of Law and

Kenji Yoshino Chief Justice Earl Warren Professor of Constitutional Law at New York University School of Law and the Director of the Center for Diversity, Inclusion, and Belonging

PARTIES TO THE PROCEEDINGS

***All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:**

Petitioner is Tara McCluskey El, Tara McCluskey

Respondent's are Celebrity Cruises, Inc.

Amanda Campos

Kathleen M. Williams

Chris McAliley

Robert J. Luck

Elizabeth L. Branch

Jill A. Pryor

Robin S. Rosenbaum

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Celebrity Cruises, Inc., successor by merger is a wholly owned subsidiary of Royal Caribbean.

USCA11 Case: 21-14139 Document: 33-1 Date Filed: 10/11/2022 Page: 2 of 8

PREVIOUSLY SUBMITTED AND ALSO LISTED

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, and 11th Circuit Local Rules 26.1-1, 26.1-2, and 26.1-3, Celebrity Cruises Inc., is not a publicly traded company; however, its parent corporation, Royal Caribbean Cruises, Ltd., is a publicly traded company under the symbol “RCL” on the New York Stock Exchange, and no other publicly held corporation owns more than 10 percent of its stock.

RELATED CASES

Tara McCluskey El v. Celebrity Cruises, Inc.

McCluskey El v. Celebrity Cruises 1:20-cv-24706

No. 1:20-cv-24706 United States District Court for the Southern District of Miami
entered on November 16, 2020

Tara McCluskey El v. Celebrity Cruises, Inc.

No. 21-14139, United States Court of Appeals for the Eleventh Circuit.
Judgement entered 5/22/2023

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A. SEE (a) – (c) directly below.

B.

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REASONS FOR GRANTING THE WRIT.....	
1. Without uniformity in the Court, due process can not be secured. Without corruption in the Court, the people have no recourse but chaos.....	
2. The tolling of the Statute of limitations was valid in my case and enforceable according to the majority of courts decisions and rulings due to COVID-19 Global World Wide Pandemic. Judges bias taint the legal system and violate The United States Constitution for America which violates their oath of office to protect the constitution. The Courts are supposed to work for the People, not against the People for their own gain or corporate interest.
3. The Eleventh Circuit's decision in McCluskey El v. Celebrity Cruises, Inc. will serve the People of the United States and prevent future fraud upon the Court.	
4. I express a belief, based on a reasoned and studied judgment, that this appeal involves one or more questions of exceptional importance:	

- (a) a United States court of appeals has entered a decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; and has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power
- (b) a state court of last resort had decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

This petition for a writ of certiorari should be granted for compelling reason

CONCLUSION.....Page 37-38

Fraud was perpetrated upon me by the Defendant's Celebrity Cruises, Inc. aided and abetted by the 11th District Court of Appeals and the District Court for the Southern District of Miami.

My case should have had the statute of limitations tolled backed up by a plethora of other cases throughout the country who honorably did so without needing to state the obvious as to the reason why. Chris McAliley should have never been allowed to oversee my case as I did not consent to her doing so.

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APPENDIX E- TME SENSITIVE Appellant Respectfully ask for Leave to file this UNOPPOSED MOTION to file UNTIMELY INITIAL BRIEF WITH APPENDIX which contains more than 14,000 words and 30 pages. Document 48-1 and 48-2 which contains APPELLANTS CORRECTED OPENING BRIEF	
APPENDIX F- APPELLANT'S corrected APPENDIX Document 48-3 – 48-6 which contains Appellants/Plaintiff's EVIDENCE for this Honorable Supreme Court for <i>reference</i>. Both the Eleventh District Court of Appeals and the United States District Court of for the Southern District of Miami used bias and fraud TRYING to keep a part of it off the record.	
<ul style="list-style-type: none"> • APPENDIX is 984 pages and is broken into 4 SECTIONS due to its size "PLEASE REFERENCE <u>BOTTOM</u> OF the <u>ACTUAL APPENDIX PAGES FOR THE PAGE NUMBER WHICH ALIGNS WITH THE APPENDIX citations (not the document file page number.)</u> • PLEASE REFERENCE actual appendix pages 	1-299

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- *Rule 1.530 (e) When an action has been tried by a court without a jury, the sufficiency of the evidence may be raised on appeal whether or not I made any objection in the trial court.*

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Except as otherwise provided by law, a civil action for damages for personal injury
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(Pub. L. 109-304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)
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The Uniform Statute of Limitations for Maritime Torts provides a three-year statute of limitations barring claims arising from injury or death occurring on navigable waters during a traditional maritime activity three years after the cause of action accrues.72

By its terms, the Uniform Statute applies to all suits for personal injury and death "arising out of a maritime tort." A tort becomes a maritime tort when it occurs anywhere on navigable waters, Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995), and bears a substantial relationship to traditional maritime activity. *Id.*72.....882

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Corrupt justice: what happens when judges' bias taints a case?

Corrupt justice: what happens when judges' bias taints a case? | US justice system | The Guardian <https://www.theguardian.com/us-news/2015/oct/18/judge-bias>

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PETITION FOR WRIT OF CERTIORARI

Tara McCluskey El (Tara McCluskey) respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit in this case.

I respectfully ask this court to be merciful on the fact that all of the information here does not contain page numbers. I did the best I could. I have had to keep reiterating the same points and evidence now going on 4 times trying to find different ways to put it which can only be shown in one way. This case has been making me physically sick and extremely disruptive to my life. If you look at what is contained in the Appendices you will see you have everything beautifully laid it to come to an honorable and just determination in my case. *Sincerely, Thank you.*

OPINIONS BELOW

The decisions under review for this petition are as follows:

The opinion of the Eleventh Circuit Court of Appeals biased 3 panel ruling USCA11
Case: 21-14139 Document: 52-1 Date Filed: 04/21/2023 and **APPENDIX A**

Order denying Appellant's Motion to file Excess Words for En Banc Hearing
"construed as a motion to file a petition for rehearing en banc with excess words
USCA11 Case: 21-14139 Document: 52-1 Filed 5/22/2023 **APPENDIX**

Order denying Plaintiff-Appellant's Motion for Recusal of Judges Robert J. Luck,
Elizabeth L. Branch, Jill A. Pryor, and Robin S. Rosenbaum USCA11 Case: 21-14139
Document: 69 Entered 6/28/2023 (decided by RSR, JP, and BCG) *Were they going to
voluntarily recuse themselves for their bias? I demanded this be ruled on by all active
judges?*

APPENDIX C

Order denying Plaintiff-Appellants Motion for Recusal of Judges Robert J. Luck,
Elizabeth L. Branch, Jill A. Pryor, and Robin S. Rosenbaum "as it relates to a request
for the recusal of the undersigned, is denied USCA11 Case: 21-14139 Document: 65
RJL Entered on 6/28/2023

APPENDIX C

Order: Appellee's motion for leave to file the supplemental appendix out of time is
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Document: 33 Entered 11/02/2022 "Defendant's lied and submitted this document as
unopposed in the system to get it granted when it was actually **OPPOSED** by me, as
they were still submitting fraudulent documents that I had already included in my
first drafted appendix which is not allowed.

Order: Appellant's motion to amend her initial brief and appendix is DENIED.

Appellants motion for an extension of time to file her reply brief is granted. Appellant

Entered 11/14/2022 Document No. 40

Motion Moot: Unopposed Motion for extension of time for October 24, 2022 unopposed

Motions (including due date changes/extensions) [41] due to this courts order filed

11/14/2022 Motion filed by Tara McCluskey El Entered 11/15/2022 Document No. 42

Emergency Time Sensitive Notice to Court to Revisit Order dated 11/14/2022

construed as a motion for reconsideration of single judge's order entered on

11/14/2022 filed by Tara McCluskey El Document No.44

Order: Appellant's "Notice to Court to Revisit Order dated 11/14/2022 is denied. [44]

ELB and RJL Entered 12/20/2022 Document 45

No action will be taken on the appellant's motions for extension of time and for leave to perfect briefs, appendix, and motion for reconsideration of November 14, 2022 order. The appellant may file a motion to file an timely reply brief with a reply brief and motion to file a corrected initial brief and/or appendix with a corrected initial

brief and/or appendix. The appellant's motion for reconsideration of the court's November 14, 2022, order was denied on December 20th. Entered 12/21/2022. This was entered by Joe Curuso. Document No. 46

District Court of Florida for Southern District of Miami denying motion for reconsideration

District Court of Florida for Southern District of Miami denying docket entry 33 and calling it a sur reply in attempt to keep my evidence off of the record.

JURISDICTIONAL STATEMENT

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 22, 2023

This Court had jurisdiction under 28 U.S.C. § 1254

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III Judicial Branch (Plaintiff did not consent to a magistrate judge)

- **Section 2 Justiciability**
 - **Clause 1 Cases or Controversies**
 - The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases

affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

United States District Court for the Southern District of Florida

(b) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on
Consent of the Parties **Title 28, United States Code, Section 636(c)**...

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UNITED STATES CONSTITUTION, ARTICLE 1 Clause 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant Title of Nobility.

CODE OF CONDUCT (CANON) FOR UNITED STATES JUDGES

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.....833

US Code Title 18 - Crimes and Criminal Procedure

Part I - Crimes Chapter 63 - Mail Fraud and Other Fraud Offenses

Sec. 1349 - Attempt and conspiracy

Fourteenth Amendment

Fourteenth Amendment Explained

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor *deny to any person within its jurisdiction the equal protection of the laws*

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Violation of the Administration of Justice, Violation of the Constitution Article IV and

Article IV, Section 2, Clause 1:

Article IV, Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. (What has happened to me/ Plaintiff in my case is domestic violence, the outright deliberate collusion to finagle documents and aide and abet in corruption and fraud by the courts)

- In other cases, the Court found occasions to opine on the nature of a republican government guaranteed by the Clause in dicta. For example, *In re Duncan* observes:
- By the constitution, a republican form of government is guarant[eed] to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves . . .⁸
- Similarly, the Court in *United States v. Cruikshank*, while adopting a narrow construction of the rights secured by the Fourteenth Amendment's Privileges or Immunities Clause,⁹ stated that a republican form of government includes a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances as well as the equality of the rights of citizens.

Violation of Constitutional Right Under Color or Making a Determination without Jurisdiction. DE 42

55 En Banc Petition
Excess Words



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Rules of Evidence Provision 90.1041

- (b) Do not have to renew objection at trial. My evidence was preserved on the record. I have the right to make a proffer of evidence. Wrongly excluded evidence is **REVERSIBLE ERROR**.....13, 30
-

Rule 1.530 (e) When an action has been tried by a court without a jury, the sufficiency of the evidence may be raised on appeal whether or not I made any objection in the trial court.

46 U.S. Code § 30106 –.....759.....10, 18, 31, 34

Time limit on bringing maritime action for personal injury or death

Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose.

(Pub. L. 109-304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

<https://www.law.cornell.edu/uscode/text/46/30106>

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INTRODUCTION

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AFFIDAVIT OF BIAS OF Judge(s) Accompanying EN BANC PETITION HEARING

28 U.S. Code § 144 - Bias or prejudice of judge

28 U.S. Code § 1746 - Unsworn declarations under penalty of perjury

IN THE UNITED STATES DISTRICT COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Case No: 21-14139-AA

District Case Court No: 1:20-cv-24706-KMW

TARA MCCLUSKEY EL,

Appellant,

vs.

CELEBRITY CRUISES, INC.

Appellee.

I, Plaintiff Tara McCluskey El asserts and affirms the belief that the Robert J. Luck may be bias to her along with the other judges who acted in concert with him on denying my motions and unfavorable opinion. This affidavit is made in good faith.

Respectfully, the *3 judge panel* decision/opinion dated April 21, 2023 in which Appellant appears to have and feels as she has proved the judge(s) bias in her Motion filed _____ ignores the Supreme Court and the majority of District Court's ruling on the issue of Equitable Tolling

**IN THE UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**Case No: 21-14139-AA
District Case Court No: 1:20-cv-24706-KMW**

TARA MCCLUSKEY EL.

Appellant,

vs.

CELEBRITY CRUISES, INC.

Appellee.

TIME SENSITIVE

**MOTION FOR RECUSAL OF JUDGES ROBERT J. LUCK, ELIZABETH L. BRANCH,
JILL A. PRYOR, ROBIN S. ROSENBAUM**

MOTION TO BE DECIDED EN BANC

**11th Cir. R. 47-1 9. Recusal or Disqualification of Judges. And B and C.,
FRAP 27. Motions (B) Accompanying documents. (already provided DE
#’s 47, 48 and 55 at great expense to Plaintiff, please see your court
dockets for this double burden of cost should be bore by the court. (C)
Documents barred or not required Rule 60 (b) (3)FRAUD UPON THE
COURT. Rules of Evidence Provision 90.1041 (b)**

ORAL ARGUEMENT

**Plaintiff filed with the court an AFFIDAVIT OF BIAS JUDGE(S) on May 12,
2023 DE 55 Pages 12-14. An unpenned order was issued on May 22, 2023 DE 58
without any named judges making the order. I want to know who are the judges or
judge who issued the order because the Court cannot speak, so a physical person**

The United States District Court and the 11th Circuit court of Appeals has committed fraud on myself and the Court, regarding Tara McCluskey El vs. Celebrity Cruises, Inc. on appeal 21-14139 -AA for many reasons listed in my accompanying documented lengthy appendices. Not to mention their 3 panel judge opinion undermines the Supreme Court and its Rulings on this matter and creates intra-circuit confusion, and conflicts with other circuits' authoritative decisions See Fed. R. App. P. 35(b)(1) (a) and (b) (noting that Supreme Court Rulings and circuit conflict are basis for en banc review.

En banc Court can reconsider the exceptionally detrimental binding circuit precedent as the 3 judge panel could not and was showing great bias towards me while approving Motions to file out of time documents for the defendant's/Appellee's and denying me the Appellant the same rights file my corrected brief and corrected appendix out of time even though I had sent it on-time and it was somehow lost in the postal mail. The defendant's attorney Lizbeth USPS tracking information for my corrected brief said that her office received and signed for two packages to her but she herself was only sent one and confirmed as such for me. Somehow my brief addressed to the 11th Circuit court of appeals was lost in the USPS system. I called and spoke to Joe Caruso about it and asked if they could make an exception because the delivery to the defendant's could be confirmed. Joe said that I would have to send it in again to the Court which is what caused it to be untimely. I let him know that what I had sent in on time was a draft of my brief though quite sizeable and wanted to show the court in good faith that I was working on it and was nearly complete so they would have no issue with extending a little time as I had been ill for a few weeks. The Corrected Brief and Corrected appendix and due date changes were "UNOPPOSED" by the defendants for extension of time and to correct and amend both Initial

Brief and Appendix. I asked him to make notes in the system to make the court aware so I would not be penalized. ***He said he would and for me to go ahead and take my time and complete my corrected brief and corrected appendix because they would not be sending my documents to the court for roughly another 2 months.*** Joe also entered those notes on the docket so I knew what to name them when submitted. My documents have made it to the court on time if I knew beforehand there was a due date and you can see that from the record so I do not know why I was penalized with an unfavorable decision first from Robert J. Luck and then another judge regarding my document submissions. 28 U.S. Code § 144 - Bias or prejudice of judge and District Court 1:20-cv-24706 KMW; not to mention committing collusion to obstruct justice by their corrupt rulings. It was plainly and extremely clear in my case that the Tolling of Statute of limitations should have applied due to COVID-19 Worldwide Pandemic. It was also extremely clear that ***I did not consent*** to having a **magistrate judge** hear any part of my case or conduct in business in my case. Only an article III judge should have been handling and seeing over my case SEE It is also clear that the defendant's submitted a ***fraudulent perjured affidavit*** in my case in order to get a "ticket contract" on the record because they had never sent me the document nor did the defendant's send the document to the people who booked the cruise on my behalf whom worked for Abraham Hicks in partnership with Celebrity Cruises, Inc [in roughly over a decade long partnership] Celebrity Cruises, Inc. Celebrity Cruises, Inc. is Abrahams "sole" go to for her seminars.

The Mediterranean sailing I went on had over 800 passengers from Abraham Hicks alone, yet Defendant's claim they reached out to Celebrity but had no way of obtaining my email to send me the contract and actually perjured themselves in an

affidavit stating that they did not have my email address. My evidence clearly shows that Celebrity sent me an email early September, I believe the 4th welcoming me.

Yet McAliley in her **non-consented** to to capacity begins to act from the bench for the Defendant's and state that there was no way I could have boarded the ship without signing the contract. How does she know this, was she there? Is she an expert? Is she acting as attorney from the bench therefore requiring her to recuse herself from my case and any determinations, recommendations, rulings and ORDERS be deemed null and void.

STATEMENT OF THE CASE

- **18 U.S.C. § 242 Deprivation of Rights Under Color of Law**
- This provision makes it a crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. It is *not* necessary that the offense be motivated by racial bias or by any other animus.
- Defendants act under color of law when they wield power vested by a government entity. Those prosecuted under the statute typically include police officers, sheriff's deputies, and prison guards. However other government actors, such as judges, district attorneys, other public officials, and public school employees can also act under color of law and can be prosecuted under this statute.
- Section 242 does not criminalize any particular type of abusive conduct. Instead, it incorporates by reference rights defined by the Constitution, federal statutes, and interpretive case law. Cases charged by federal prosecutors most often involve physical or sexual assaults. The Department has also prosecuted public officials for thefts, false arrests, evidence-planting, and failing to protect someone in custody from constitutional violations committed by others.

I did not consent to have Chris McAliley handle any portions of my case and it was expressed on many levels in writing. McAliley went so far as to strike my document from the record so she could continue to aide and abet the defendants in there fraud against me and upon the court.

Mr. Donald J. Trump has been extending enormous amounts of time for his filings and hearings in his case and *he has lawyers "case available to site as reference but not in solitude of other cases 23SC188945 The State of Georgia vs. DONALD JOHN TRUMP.* I am Pro Se and not all briefed on the standard of practice of law as an attorney is and I am being denied my rights to 6 to 9 month (per the Order denying me the requested counsel to hep with my case issued on 5/18/2022) and giving me 40 days from the date. to submit my brief.)extension to organize and prove the fraud being perpetrated against me by oath taking *officers of the court* and the defendant's entered by JP 5/18/2023 Document No. 16. Plaintiff asked for a few extensions because I was not aware I was not giving myself enough time to research my case thoroughly and present it *properly.* I did adhere to the deadlines set by the court and submit a Brief on 8/22/2022 Document No. 23 entered 8/23/2022 and a rushed appendix on 9/26/2022 all submitted within 4 months of the initial 5/18/2022 filing and without missing the deadlines. I tried to be as concise as possible but it was impossible given the little time I was given and being a Pro Se party to this case defending myself against a huge law firm fighting fraud against me. I asked the defendant's counsel if they had any objection to me correcting my initial brief and

appendix and they said they had no objections. THEY NEVER DENIED THE FRAUD, THEY ADMITTED IT. See their answer ____

I sent a MOTION to the court UNOPPOSED to amend my initial brief and appendix 11/03/2022 and 11/08/2022, 11/09/2022 and **RJL Robert J. Luck DENIED** them like he is trying to punish me for not accepting the defendant's fraudulent out of time appendix (the motion was originally sent on 10/31/2022 but I had not heard back from the defendant's so I did not know where they stood on it) These motions were denied while only granting a 30 day extension to file a reply brief. **[Document No. 40]** There is and was no reason to *not allow me* the opportunity to correct my initial brief and appendix. It wasn't like I had missed the deadlines or was asking for an abhorrent amount of time to file the documents. I just wanted to make sure I got everything the judges of the court needed to see to and make a fair decision in my case "on the record." And laid out in a way that would leave no questions as to the absolute fraud upon me and the court that had taken place in my case. When RJL and ELB came into the picture **things got all bad.**

Arbas v. Nicholson, 403 F.3d 1379 (Fed. Cir. 2005) We exercise jurisdiction pursuant to 38 U.S.C. § 7292(a). We review the Veterans Court's legal determination that physical illness can never justify equitable tolling *de novo*. See *Collaro v. West, 136 F.3d 1304, 1307 (Fed. Cir. 1998)*.

As an initial matter, we have definitively decided that section **7266(a) is subject to equitable tolling. *Bailey v. West, 160 F.3d 1360 (Fed. Cir. 1998)***. We have also established that mental illness can justify the equitable tolling of section 7266(a) under some circumstances. ***Barrett v.***

Principi, 363 F.3d 1316 (Fed. Cir. 2004). Thus, we are presented with a narrow issue: may physical, as opposed to mental, illness justify the tolling of section 7266(a). For the reasons stated below, we find that it may.

The Veterans Court did not have the benefit of *Barrett*, which was released after its judgment in this case.

In *Barrett*, we determined that "equitable tolling is available in a variety of circumstances." 363 F.3d at 1318. One circumstance that qualifies for tolling is when a veteran's "mental illness rendered him incapable of 'rational thought or deliberate decision making,' or 'incapable of handling [his] own affairs or unable to function [in] society.'" *Id.* at 1321 (citations omitted). We elaborated further on this theme in *Mapu v. Nicholson*, 397 F.3d 1375, 1380 (Fed. Cir. 2005), which "reject[ed] the suggestion that equitable tolling is limited to a small and closed set of factual patterns and that equitable tolling is precluded if a veteran's case does not fall within those patterns." Thus, we are not limited by the two scenarios presented in *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990), or those found in our prior cases. *Mapu*, 397 F.3d at 1380.

Our precedent requires little extrapolation to conclude that equitable tolling based on physical illness is appropriate. For if mental illness can justify tolling, we see no reason why a physical illness may not as well. There are a myriad of physical illnesses or conditions that impair cognitive function or the ability to communicate. Solely by way of example, while a stroke victim does not suffer from a mental illness, it would be manifestly unjust to refuse tolling if the stroke were sufficiently incapacitating. The same could be true of one who has suffered severe head trauma or a heart attack. In other cases, one may retain full consciousness but still be unable to speak or communicate effectively, as may be the case

for those in extreme pain or who have been immobilized. These examples are not intended as an exhaustive list of conditions that warrant tolling.

Brown v. Parkchester South Condominiums, 287 F.3d 58 (2d Cir. 2002)

The Second and Seventh Circuits have reached the same conclusion. the plaintiff failed to attach a copy of the complaint to the summons and the district court dismissed the suit as time barred. On appeal, the court held that "equitable tolling may be appropriate where the plaintiff's failure to comply with the statute of limitations is attributable to the plaintiff's medical condition." *Id.* at 60. Based on the plaintiff's assertion that he had suffered three strokes that impaired his ability to properly pursue his legal rights, the case was remanded for an evidentiary hearing to determine whether tolling was warranted.

Zerilli-Edelglass v. New York City Transit Auth., 333 F.3d 74, 80 (2d Cir. 2003)

(allowing equitable tolling "where a plaintiff's medical condition or mental impairment prevented her from proceeding in a timely fashion").

In addition, several district courts have tolled statutes of limitations based on physical illness. For example, in both *Eber v. Harris County Hospital District, 130 F.Supp.2d 847, 867 (S.D.Tex. 2001)*, and *Dundon v. United States, 559 F.Supp. 469, 475 (E.D.N.Y. 1983)*, the court tolled the statute of limitations while the plaintiff was in a coma. Similarly, in *Smith v. Shared Medical System, No. Civ.A. 02-8372, 2004 WL 1656635, *8 (E.D.Pa. July 23, 2004)*, the limitations period was tolled during the period of time that the plaintiff was incapacitated due to a stroke. Other courts, while ultimately not tolling the statute, have also considered whether certain medical conditions warrant tolling. *See, e.g., McKinley v. Thornton, No. 99 C*

6127, 2001 WL 630707, at *2 (N.D.Ill. May 31, 2001) ("[Equitable tolling] may apply when a plaintiff experiences a physical disability, but is only available under limited circumstances."); *Chaney v. City of Chicago*, No. 95 C 1979, 1996 WL 718519, at *4 (N.D.Ill.Dec.12, 1996) (assessing whether plaintiff's chronic fatigue syndrome merited equitable tolling); *Montgomery v. Frank*, 796 F.Supp. 1062, 1067 (E.D.Mich. 1992) (assessing whether the plaintiff's medical condition prevented her from contacting her Equal Employment Opportunity counselor).

We were in a Global "Worldwide" lockdown which constitutes prison "Marshall Law" PRECLUDE???

STOP CLOCK STANDARD

HABEAS CORPUS

David Wit, et al v. United Behavioral Health District: 0971-3 : 3:14-cv-02346-JCS Court of Appeals Docket #: 21-15193 (reversed on appeal due to district courts error) Judge Kathleen did not honorably review her Magistrates Judge for an abuse of discretion and upon seeing her abuse of discretion and *not wanting to discipline or rule against Chris McAliley*. Kathleen deliberately made the clock runout DE 46, DE 47, on my time to file an appeal but not answering my emergency motion to correct errors and extension of time to file an appeal. Kathleen then denied my motion for an **EXTENSION OF TIME TO FILE AN APPEAL DE 50.** The following case also finds that the district court made manifestly erroneous decisions *David Wit, et al v. United Behavioral Health District: 0971-3 : 3:14-cv-02346-JCS*

FRENCH LAUNDRY PARTNERS, LP, ET AL V. HARTFORD FIRE

INSURANCE CO., ET AL, No. 21-15927 (9th Cir. 2023) is a case that certifies a

David Wit, et al v. United Behavioral Health District:

Court of Appeals Docket #: 21-15193

The panel held, however, that these findings did not excuse the district court from reviewing UBH's interpretation of the plans for an abuse of discretion.

Accordingly, the district court erred by substituting its interpretation of the plans for UBH's interpretation. The panel reversed the district court's judgment that UBH wrongfully denied benefits to the named plaintiffs based upon the court's finding that the Guidelines impermissibly deviated from GASC. The panel held that the district court also erred in its judgment on plaintiffs' breach of duty claim, which also relied heavily on the district court's conclusion that the Guidelines impermissibly deviated from GASC.

Finally, the panel held that the district court erred when it excused unnamed class members from demonstrating compliance with the plans' administrative exhaustion requirement.

Both of Plaintiffs' claims hinge on a theory that UBH improperly developed and relied on internal guidelines that were inconsistent with the terms of the class members' plans and with state-mandated criteria.

FINDINGS OF THIS COURT OF APPEALS 9TH CIRCUIT

On the merits, the district court erred in excusing absent class members' failure to exhaust administrative remedies as required under the Plans. The district court also erred in determining that the Guidelines improperly deviate from GASC based on its interpretation that the Plans mandate coverage that is coextensive with GASC. Therefore, the WIT V. UNITED

DE 44 DEFENDANT'S RESPONSE TO [D.E. 42] PLAINTIFF'S OBJECTION TO THE MAGISTRATES REPORT & RECOMMENDATION [D.E. 41]

1. Objected. Here the defendant's go on to continuously lie that the alleged evidence "they put on the record through a perjured fraudulent affidavit" is undisputed. And more so continue their lie that life journey's was my agent "which they clearly are not" and factually disputed. Abraham Hicks and Life Journey's has a business/partnership relationship with Celebrity Cruises and Celebrity Cruises as a "matter of fact" in their perjured affidavit say they initially tried to send the alleged contract directly to "Plaintiff" but had no ability to do so to their lack of competence to reach out to Life Journey's which I have proven to be false because I could not have had a room number without being in their system as evidenced earlier in this brief.
- 2.

Plaintiff clearly demonstrated that proof was necessary to prove that the defendant's had not sent Plaintiff any contract, "to either herself or Life Journey's". Defendant's had ample time to deliver to her one in person when she boarded the ship or on a daily basis for 12 days.

A party seeking additional time for discovery may not rely on vague assertions that more discovery is needed; instead, he must show that the discovery he seeks will enable him to demonstrate the existence of a genuine issue of material fact. Id. : Reflectone, Inc. v. Farrand Optical Co., Inc., 862 F.2d 841, 843 (11th Cir. 1989). If the party cannot make such a showing, it is appropriate to proceed with the summary judgment ruling even if the party has not yet conducted any discovery. Reflectone, Inc., 862 F.2d at 843-44. Plaintiff has prove DE that she demanded that defendant's needed to produce the evidence that they sent a ticket contract in the first place "via email" mail, etc. And if in fact, it had been done so, that proof would have been in evidence rather than a perjured affidavit of Amanda Campos.

3. Objected. Magistrate McAliley did not apply the appropriate standard in treating the motion for summary judgment. Defendant's state case Miorelli v. Hall, 2018 U.S. App. Lexis 21260, (11th Cir. Fla. July 31, 2018. It is not Covid related case and could have used their own cases

Amy Novara v. Royal Caribbean

1:20-cv-20762- JEM.....30, 31, 45, 56 and Darlene Murzyn v. Royal Caribbean Ltd

1:20-cv-20269-KMM.....30 in which Defendant's asked for more time for their case due to COVID-19 and it was approved. They did not have to go back in time hypocritically.

4. McAliley's report and recommendation is biased and fraudulent, and the judges in this case should recuse themselves for their bias (numerous mentions of why throughout my case and this brief including the cases in which defendant's were a party above.
5. Defendant's are still lying and insisting on a ticket contract they alleged was sent to me but provide no proof but a perjured affidavit of Amanda Campos. Defendant's make a silly claim that since I figured I was going to have to go it alone, I researched how to do so using "common sense" allegedly my own words demonstrate that I had the ability to learn about their ticket contract. I would have only been able to learn about it had I known about it. I filed a claim DIRECTLY WITH CELEBRITY CRUSIES, and was given a claim number.

D.E. 46 Plaintiff asserts a Claim of Unconstitutionality which she reserved the right to do in her previous filings and motions.

DE 46 PLAINTIFF'S MOTION AND AFFIDAVIT/ UNSWORN DECLARATION FOR RECONSIDERATION TO THE HONORABLE JUDGE KATHLEEN M. WILLIAMS

UNITED STATES CONSTITUTION, ARTICLE 1 Clause 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant Title of Nobility.

She asked the judge and the court to allow a Subpoena duces tecum or other means that the court sees fit to make defendant's produce a signed document with the Plaintiff's signature that she agreed to a contract with them because Plaintiff asserts as she has continually that she has no contract with the defendant's. The defendant's can not prove that she does and Plaintiff has proved over and over again that no such contract exist with her signature and had there been one Defendant's would have willingly produced it as evidence. There is not 1 party in this case, there are two "Plaintiff and the Defendant's"

DE 45 In Judge Kathleen M. Williams order dated 9/22/2021 Dkt#45 #2 goes on to state that she is treating McAliley motion for summary judgement and McAliley had given Plaintiff to state and support her claims. I pointed out to Judge Williams that I have consistently stated my claims throughout this process and continually stated there is no contract "and provided evidence of the same" and stated t if Defendant's had a contract to produce it, which was never done. There is no offer and acceptance of a contract, and no signed contract. In the interest of justice, I ask that you strike your ORDER to dismiss my claim and compel Defendant's to produce the contract by which you based your ORDER on the recommendation of Magistrate McAliley which "without any proof" stated that Plaintiff could not have boarded the ship without signing the contract. I am telling this court as I have stated over and over that I signed nothing and if you are basing your ORDER on an unproven statement by Magistrate McAliley, I demand that the document he made assumptions about being signed be produced to the court in the interest of justice. Defendant's never made any such statements as they know they have no contract with Plaintiff. This is an example of what I meant when I said Magistrate McAliley is acting s attorney for the Defense.

Downing v. Wolverine Insurance Co. (1965), 62 Ill. App.2d 305, 210 N.E.2d 603

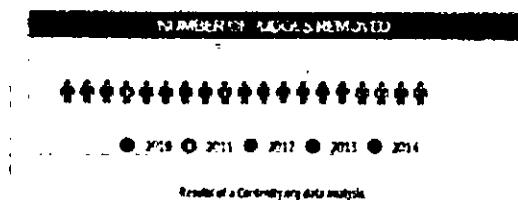
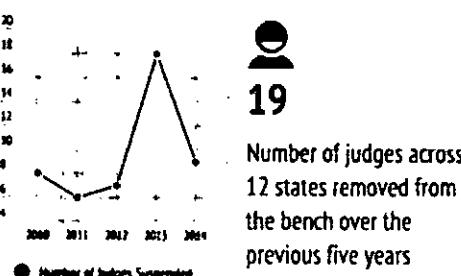
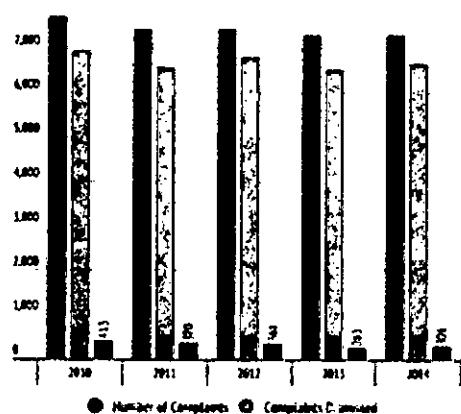
It has been very difficult for Plaintiff's to get justice from corrupt judges from the Court's because as the graph on the next page proves; judges cover for each other and rarely follow through on any discipline.

CASANDRY MURRAY, V. THE SUPERIOR COURT OF ORANGE COUNT, RESPONDENT;
General Electric Company et al. (the whole document)

(Armendariz, supra, 24 Cal.4th at p. 114.) In evaluating substantive unconscionability, courts often look to whether the arbitration agreement meets certain minimum levels of fairness. In Armendariz, our Supreme Court instructed that, at a 25 minimum, a mandatory employment arbitration agreement must (1) provide for neutral arbitrators, (2) provide for more than minimal discovery, (3) require a written award that permits limited judicial review, (4) provide for all of the types of relief that would otherwise be available in court, and (5) require the employer to pay the arbitrator's fees and all costs unique to arbitration. (Id. at pp. 102-103.) "Elimination of or interference with any of these basic provisions makes an arbitration agreement substantively unconscionable." (Wherry v. Award, Inc. (2011) 192 Cal.App.4th 1242, 1248.) Requiring Murrey to Pay Costs Unique to Arbitration The Solutions manual, section III(D)(6)(c)(ii), required each party to bear the "reasonable cost of compliance" with discovery requests. The court severed this provision as "imposing an obligation beyond the Discovery Act." (See Armendariz, supra, 24 Cal.4th at p. 113 [required an employer to pay "all types of costs that are unique to arbitration"].) In its briefing, GE does not dispute this provision was substantively **unconscionable**.

WHAT HAPPENS WHEN YOU COMPLAIN ABOUT A JUDGE?

Contently.org looked at data from 12 states (California, Texas, New York, Pennsylvania, Connecticut, Wisconsin, Indiana, Minnesota, Colorado, Washington, Georgia and South Carolina) to see how complaints about judicial malfeasance are handled.



Photograph: Contently.org

The analysis shows that a dozen of these commissions collectively dismissed out of hand 90% of the complaints filed during the last five years, tossing 33,613 of 37,216 grievances without conducting any substantive inquiry. When they did take a look - 3,693 times between 2010 and 2014 - investigators found wrongdoing almost half the time, issuing disciplinary actions in 1,751 cases, about 47%.

The actions taken ranged from a letter of warning to censure, a formal sanction that indicates a judge is guilty of misconduct but does not merit suspension or removal.

Actually removing a judge was a rarity. Just 19 jurists in 12 states were ordered off the bench for malfeasance, which is about three per decade for each state. And even that result is becoming less common, with only one removal in 2014 and three in 2013 among all 12 states.

The states examined - California, Texas, New York, Pennsylvania, Connecticut, Wisconsin, Indiana, Minnesota, Colorado, Washington, Georgia and South Carolina - were chosen because they comprise a representative sample from different populations and areas of the country and because they had matching data for the years 2010 through 2014.

California, which created the first judicial disciplinary body in the country in 1960, had a dismissal rate of 98%. It did not suspend or remove a single judge in 2013 or 2014 and acted just once over the last five years, removing a sitting judge in 2012. Colorado's lone judicial action since 2010 was a suspension in 2013. Texas has not removed a judge in five years, though it has suspended 23 for varying lengths of time.

One discouraging factor is the secrecy under which these commissions operate. Allegations against a judge are commonly kept confidential unless a sanction of some kind is imposed. New York's CJC, for example, is prevented by law from disclosing whether anyone has complained about a judge, discussing specific allegations, revealing what evidence might have been presented or what steps, if any, it took to investigate.

When conduct boards do act, the sanctions usually amount to an admonishment that may be embarrassing but costs the judge little.

Among those still on the bench after ethical violations are Louisiana judge Robin Free. Free oversaw a personal injury claim in 2010 by a man and his wife, Israel and Leslie Robles, who were hurt in an oil field run by Houston-based fracking contractor Integration Production Services, Inc. The trial had begun when the two sides agreed to a \$1.2m settlement. As he mulled signing

Judicial discipline at the federal level is almost non-existent. A Contently.org examination of the most recent five years of complaint data shows that 5,228 grievances were lodged against federal jurists between 2010 and 2014, including 2,561 that specifically alleged bias or conflict of interest. But only three judges were disciplined during those years and each got the mildest rebuke on the books: censure or reprimand. None was suspended or removed.

The numbers suggest that at least some of these judges' rulings did not pass the smell test: 4,168 of the dismissed complaints were tossed due to a lack of sufficient evidence, bringing up the possibility that some litigants raised valid concerns but failed to find definitive proof.

United States v. Al-Moayad, 545 F. 3d 139 (2d Cir. 2008)

But the flexible approach we endorsed in *Dhafir* is unsuited to this case. By the time it calculated the defendants' guidelines ranges, the district court had resolved (albeit erroneously) all of the necessary factual issues. Nor did the application of the grouping rules under § 3D1.3(a) or the hazardous substances guideline present any unique or novel conceptual issues. *Dhafir*, *Crosby*, and *Cavera* lay out a limited exception to the general rule that "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range." *Gall v. United States*, 552 U.S. 38, 49, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). In appropriate cases, that exception can conserve judicial resources and avoid turning a difficult guidelines calculation into an end unto itself, divorced from the considerations Congress has directed must ultimately determine an appropriate criminal sentence. See *Cavera*, 550 F.3d at 188–89; 18 U.S.C. § 3553(a). That limited exception, however, is not a license for district courts to avoid calculating the proper guidelines range when the facts have been determined and the law is clear.

In short, the factual and procedural errors detailed above require us to vacate the sentences of defendants Allen and Onoff and remand for resentencing. Accordingly, we need not, and do not, consider whether their sentences were substantively unreasonable.

CONCLUSION For the foregoing reasons, the judgments of conviction as to CES, Copeland, and Dunn, and the sentences of Allen and Onoff are VACATED. The case is REMANDED for a new trial as to CES, Copeland, and Dunn and for resentencing

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-dispositive Matters-Government Appeal of Release Order.

(1) **Appeal of Non-dispositive Matters**—28 U.S.C. § 636(b)(1)(A). Any party may appeal from a Magistrate Judge's order determining a motion or matter under subsection 1(c) of these rules, *supra*, within fourteen (14) days after being served with the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from a concise statement of the alleged error in the Magistrate Judge's ruling, and statutory, rule, or case authority, in support of the moving party's position. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. The objecting party may file a reply within seven (7) days after service of the response. Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty pages in length. The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider sua sponte any matter determined by a Magistrate Judge under this rule

The judge also erred in not looking at the evidence that Plaintiff had already made a personal injury claim directly with CELEBRITY, not a memo that she was going to file a claim DE 42 Pages 6-17 DE 33 entire document fraudulently and deceitfully stricken from the record by Chris McAliley because it showed that I did not consent to having her handle any matters of my case. What DE also contained was the Scheduling Order *she herself ORDERED was due*

DE 31 page 2, 3 (Why McAliley erroneously struck DE 33 from the record.)

JOINT SCHEDULING REPORT AND PROPOSED SCHEDULING ORDER

(INCLUDES SCHEDULE A AND SCHEDULE B WHICH MUST BOTH BE

EXECUTED BY BOTH PARTIES TO BE FINAL AND PART OF THE

RECORD. Randy Ginsberg said as much in his notes which is what DE31-1

EXHIBIT is fully marked up with Randy's notes and I wrote on there it is an

exhibit for my case. It is not even a fully agreed upon document, as there were

corrections that needed to be made and to be **FULLY EXECUTED BY BOTH**

PARTIES.

DE 31 only contained one component to the JOINT SCHEDULING ORDER,

BUT NOT THE ACTUAL SCHEDULING ORDER WHICH WAS FULLY

EXECUTED IN DE 33 containing THE FACT THAT Myself (Plaintiff Tara

McCluskey does not consent to have any part of case pretrial or otherwise

handled by a Magistrate judge which is why McAliley wanted it struck from the

record USING AN ERRANEous and fraudulent EXCUSE THAT IT WAS A

SURREPLY. SEE DE 33 page 5

(c) Proposed Limits on Time

See attached proposed Joint Scheduling Order

(h) Suggestion on the advisability of referring matters to a Magistrate

Judge or master:

At this time, Plaintiff objects to *referring any matters* to the magistrate, including discovery matters.

(j) Requested date or dates for conferences before trial, a final pretrial conference, and trial.

See attached Proposed Joint Scheduling Order (attachment "A") though **the accepted DE 29** does not include **Schedule A or B executed by both parties**.

This was cc'd to Kathleen M. Williams and she should have reprimanded her Magistrate Judge which I did not consent to.

I also made the corrections that McAliley said I needed to make in her **ORDER DE 29** denying my **UNOPPOSED motion to Amend DE 28**. In Kathleen M. Williams De 45 ORDER granting the defendant's dismissal for summary judgement (she footnotes say that only one person signed when DE 33 which was erroneously and fraudulently stricken from the record shows that both parties signed the document "Joint Consent to Jurisdiction by a United states magistrate judge. She based her oder and judgement on this lie and misrepresentation, error in judgement violationg the Canon laws set forth for District Judges.

1. The conclusions in the report (DE 41) are **AFFIRMED AND ADOPTED.**¹

¹ In Plaintiff's Answer to Magistrate Judge's Report and Recommendation, which the Court construes as an objection to the Report, Plaintiff states that she "did not consent to have [her] case reviewed or have recommendations made by a magistrate judge." (DE 42 at 1.) Plaintiff references a document submitted to the Court, titled "Joint Consent to Jurisdiction by a United States Magistrate Judge," stating that "No [sic] is stated in Joint Consent to Jurisdiction, which includes all matters." (*Id.* at 1-2 (citing DE 31-1 at 10-11).) Only Plaintiff appears to have signed this document. (See DE 31-1.)

The Court advises Plaintiff that a federal district judge may *on their own* (i.e., without either party's consent) designate a United States magistrate judge to submit a report and recommendation on a motion for summary judgment, which the federal district judge may then affirm and adopt. See 28 U.S.C. § 636(b)(1)(A)-(C). On February 11, 2021, pursuant to this federal law and the Magistrate Rules of the Local Rules for the Southern District of Florida, the Court referred Defendant's Motion (DE 15) to United States Magistrate Judge Chris M. McAliley for a report and recommendation. (DE 16.) The fact that one party to a

Page 1 of 2

Case 1:20-cv-24706-KMW Document 45 Entered on FLSD Docket 09/22/2021 Page 2 of 2

DE 31 is not executed by both parties because Defendant's forgot to send it and
sent later that evening. I had to get to the post office and I made several notations
on DE 31-1 letting the court know that it was signed by both parties (including
multiple markings and notes of what Randy Ginsberg wanted me to change and he
would sign evidenced by his own handwriting.) I was sending it as a record of
evidence as such and it would remain an exhibit for future reference, but the
scheduling order is on DE 33 which McAliley erroneously and fraudulently struck
from the record. McAliley and Judge Williams need to be investigated for
relationships to Royal Caribbean/ Celebrity Cruises.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

TARA MCCLUSKEY EL,

Plaintiff.

v.

CELEBRITY CRUISES, INC..

Defendant.

ORDER DENYING MOTION TO AMEND

Plaintiff, *pro se*, filed an "Unopposed Motion to Amend Plaintiff's Answer Outside the Initial Deadline Set by the Court Answer to Defendant Celebrity Cruises Motion to Dismiss Plaintiff's Complaint and/or Final Summary Judgment Providing the Good Lawful Cause to Deny Defendant's Motion Supporting it is Set Forth in this Motion/Answer" (the "Motion"). (ECF No. 28).

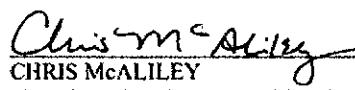
Plaintiff does not clearly state the relief she seeks. It appears that Plaintiff asks for permission to amend her response to Defendant's Motion to Dismiss the Complaint, after the deadline to file that response has passed. Plaintiff does not state why she needs to amend her response, and the response she provides in the Motion is essentially the same as the one previously filed. Additionally, although Plaintiff states the Motion is "unopposed," Plaintiff does not provide a certification of good faith conferral with defense counsel, as required under Local Rule 7.1(a)(3).

Thus, for the foregoing reasons, the Court DENIES Plaintiff's Motion. (ECF No. 28).

this is why I
thought I
had to add
the
conferral to
all my
documents
and DE 33

Case 1:20-cv-24706-KMW Document 29 Entered on FLSD Docket 06/01/2021 Page 2 of 2

DONE and ORDERED in Miami, Florida, this 1st day of June, 2021.


CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

cc: Honorable Kathleen M. Williams
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:20-cv-24706-William/McAlliey

TARA MCCLUSKEY,

TARA MCCLUSKEY EL,

Plaintiff (s),

v.

CELEBRITY CRUISES, INC.

Defendant

ATTACHMENT B
JOINT CONSENT TO JURISDICTION BY A
UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, United States Code, Section 636(c), the undersigned Parties to the above-captioned civil matter, by and through their undersigned counsel or self, hereby voluntarily consent to have a United States Magistrate Judge decide the following matters and issue a final order or judgement with respect thereto.

1. Motions concerning Discovery	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Motions for Costs	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Motions for Attorney's Fees	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Motions for Sanctions or Contempt	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. Motions to Dismiss or for Judgement on the Pleadings	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6. Motions to Certify or Decertify Class	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7. Motions for Preliminary Injunction	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
8. Motions for Summary Judgement	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
9. Motions to Remand (in removal cases)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Case 1:20-cv-24706-KMW Document 33 Entered on FLSD Docket 06/08/2021 Page 17 of 18

10. All other Pre-Trial Motions

Yes No

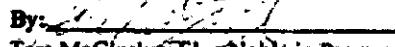
11. Jury or Non-Jury Trial on Merits and Trial Motions, in

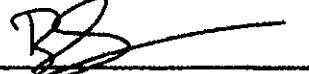
Including Motions in Limine

Yes No

Dated: June 02, 2021

Respectfully submitted,

By: 
 Tara McCluskey El, a Noble in Pro per
 All rights reserved
 1585 62nd Street #8771
 Emeryville, California Republic
 (650) 701-3356
 Greatest26@live.com

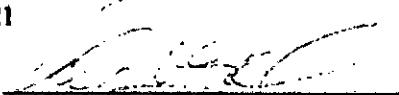
By: 
 Randy S. Ginsberg (FBN: 1854851)
 rginsberg@rccl.com

CELEBRITY CRUISES, INC.
 1080 Caribbean Way
 Miami, Florida 33132
 Tel: (305) 539-6327
 Alt: (305) 539-4457
 Fax: (305) 539-6561

Attorney for Defendant

Certificate of Service

I hereby certify that on this June 3, 2021, I served a true and correct copy of the foregoing document via United States Postal Service No: EJ 817 390 939 US, overnight delivery to the Court Clerk and Certified United States Postal Mail No. 7018 3090 0001 1274 1114 to all counsel of record listed on the service list below and being emailed to rginsberg@rccl.com ATTORNEY TO BE NOTICED on this June 3, 2021


 Tara McCluskey El, a Noble

12/21/2022 46
 60 pg. 0.61 MB

No action will be taken on the appellant's motions for extension of time and for leave to perfect briefs, appendix, and motion for reconsideration of November 14, 2022 order. The appellant may file a motion to file an untimely reply brief with a reply brief and a motion to file a corrected initial brief and/or appendix with a corrected initial brief and/or appendix. The appellant's motion for reconsideration of the Court's November 14, 2022, order was denied on December 20th. [Entered: 12/21/2022 12:40 PM]

This DE 33 shows what was contained in it which **the fact that I, plaintiff Tara McCluskey El, Tara McCluskey did not consent** to have Chris McAliley handle **ANY MATTERS** in my case, **which includes dispositive which makes this an ARTICLE III situation Constitutionality claim** which I DID reserve the right to do. *It was an inadvertent clerical error made by a pro se litigant that I did not include in the header that the JOINT SCHEDULING ORDER WAS INCLUDED in DE 33 but they all were aware of the fact. Reading the docket item would have made that clear. McAliley, district judge Kathleen M. Williams and the defendants knows that DE 33 is critical to my case which is why they keep saying no reasonable jury would come to the conclusion viewing EVIDENCE OF RECORD. Weston v. State of Florida No. 2D22-1216*

Just as my case manager's Manager gave me remedy to add this non objected to revised reply brief, appendix and answer. It appears he knew and it was quite obvious I was not clear how to go about filing the proper motion for remedy after my multiple attempts to MOTION to have the appeals court to accept DE 38, DE 39 & DE 41 and being DENIED Appeal No. 21-14139 DE 40 AND DE 42 and DE 45.

n the absence of an objection, the district court is free to review the Report & Recommendation *de novo (should have been reviewed sua sponte)* if it so chooses. See Thomas v. Arn, 474 U.S at 154 Delgado v. Bowen, 782 F.2d 79, 82 (2D Cir. 1985); Reisselman, 708 F. Supp.2d at 806 (N.D. Iowa). AS indicated above, section 636(b)(1) and Fed. R. Civ. P. 72(b)(3) each explicitly permits the district court to receive additional evidence as part of its review. See Amadasu, *supra*, 2012 WL 3930386, at *4

However, there is no provision in either Section 636 or Rule 72 regarding whether the district court, in reviewing a magistrates judge's Report and Recommendation, may consider legal arguments made for the first time to the district court, but which could have been made to the magistrate judge. (Plaintiff objected to the magistrate in its entirety, along with the report and recommendation and also to the district judge. I have proven my appeal beyond any reasonable doubt and any conclusion that a reasonable jury would have come to in my case that it should be reinstated with a new district judge. Celebrity Cruises along with all other cruise lines had their sailings suspended interrupted and Celebrity voluntarily as well as the courts shutting down and not having any proceedings held in person (this is unprecedented) and trying to argue otherwise is absurd.

DE 42 Was erroneously redacted by the court scanner system as the blocked out sections in all of my Motions were yellow highlighter for easy referral to what I was stating. If any of these redactions caused the court to error in its judgment, then that too merits a reinstatement of my case. I have included the court system error redaction documents in my appendix. Please refer to them. These clearly show that I filed a claim with Celebrity Cruises, I did not intend to do so as the perjured affidavit of Amanda Campos claims. Many of Plaintiff's arguments 1-12 overlap which is why same of the answers are limited to prevent excessive redundancy.

DE 42 PLAINTIFF'S ANSWER TO MAGISTRATE'S JUDGE REPORT AND RECOMMENDATION

NOTICE OF CLAIM OF UNCONSTITUTIONALITY FOR VIOLATION

OF THE ADMINISTRATIVE PROCEDURES ACT OF 1946,

OBSTRUCTION OF THE ADMINISTRATION OF JUSTICE, AND

VIOLATION OF CONSTITUTIONAL RIGHT UNDER COLOR OR

MAKING A DETERMINATION WITHOUT JURISDICTION Claim of

Unconstitutionality- TARA MCCLUSKEY ET AL V. CELEBRITY CRUISES,

INC. : ALL EVIDENCE AND DOCET ENTRIES THAT I MADE ARE TO

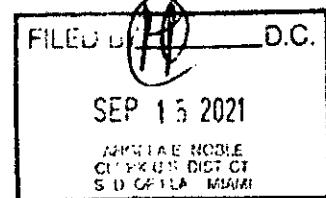
BE PRESERVED FOR MY CASE IN CASE APPEAL IS NEEDED

Plaintiff was not given an opportunity to correct her deficient Motion for reconsideration due to Judge Williams not wanting her to get DE 33 executed scheduling report **(by both parties) on the record. Judge Williams Ordered** the **Joint Scheduling Conference Report herself D.E. 20** and then fraudulently and erroneously accepted one that was not even valid as it did not have both signatures and clearly had the Defendant's counsel notes marked all over it in his writing saying it needed both parties signature. (Randy thanked me, as I am the one who prepared the **Joint Scheduling Conference Report** and I let the court know I would be sending the signed one once received which is **D.E. 33**.
Judge Williams then denied my motion for reconsideration and to correct clerical error nunc pro tunc. She said she denied my motion because it did not have the conference with counsel 7.1 rule which is the reason I asked to correct my motions in the first instance. It was a clerical error as clearly **the majority of my motions before show that I had the meet and confer** and only added the 7.1 rule to all of my prior motions in which I may have forgotten as clerical error (I believe it was 3). This is clearly an act of error, misjudgment. I am applying violation of my Constitutional Rights, all the Rule/ regulations, Statutes, case law authorities and analytical materials listed in this Brief as well as arguments to the above-mentioned statements. Judge Williams then denied my motion for extension of time to file an appeal without allowing me remedy to correct. **D.E.'s 48-52.**

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

Case 1:20-cv-24706-KMW Document 42 Entered on FLSD Docket 09/16/2021 Page 1 of 30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:20-cv-24706-Williams/McAliley



TARA MCCLUSKEY,
TARA MCCLUSKEY EL,

Plaintiff (s),

v.

CELEBRITY CRUISES, INC.

Defendant

PLAINTIFF'S ANSWER TO MAGISTRATE'S JUDGE REPORT AND

RECOMMENDATION

NOTICE OF CLAIM OF UNCONSTITUTIONALITY FOR VIOLATION OF THE

ADMINISTRATIVE PROCEDURES ACT OF 1946, OBSTRUCTION OF THE

ADMINISTRATION OF JUSTICE, AND VIOLATION OF CONSTITUTIONAL RIGHT

UNDER COLOR OR MAKING A DETERMINATION WITHOUT JURISDICTION

Claim of Unconstitutionality- TARA MCCLUSKEY EL v. CELEBRITY CRUISES, INC.;

ALL EVIDENCE AND DOCKET ENTRIES THAT I MADE ARE TO BE PRESERVED

FOR MY CASE IN CASE APPEAL IS NEEDED

To: The Honorable Judge Kathleen Williams respectfully.

OBJECTED, DISPUTED AND DENIED: Magistrate Judge Report and

Throughout my case IN ITEMS NUMBERED 1-12 & conclusion, the
Magistrate McAliley and Judge Williams violated my constitutional rights to
contract or not. **The Administrative procedures Act of 1946, Obstruction of the**

Administration of Justice, Violation of Constitutional Right under Color of Law and Making a determination WITHOUT JURISDICTION & her own Order DE16

843.0855 Criminal actions under color of law or through use of simulated legal process.

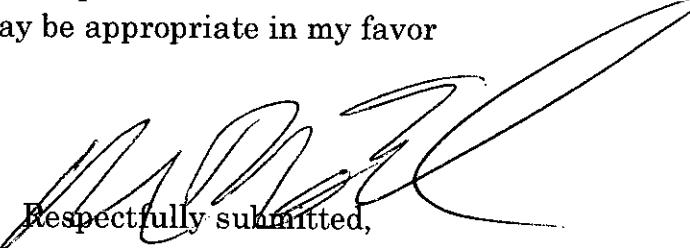
In United States of America v. Eliyahu "Eli" Weinstein, a/k/a "Mike Konig", Aryeh "Ari" Bromberg, Joel Wittels, Shlomo Erez, and Alaa Hattab a CRIMINAL COMPLAINT has been filed under Mag. No. 23-3038 making materially false and fraudulent pretenses and representations, for the purpose of executing a scheme and artifice to defraud in violation of Title 18, United States Code, Section 1349 and did willfully combine, conspire and to commit an offense against the United States, obstruct justice, contrary to Title 18, United States Cod, Section 371. "3. Based on these material misrepresentations and omissions, Weinstein and his co-conspirators defrauded at least 150 investors of more than \$35 million in investor funds. "4. \$200 million in restitution that he still owes his previous victims. "41. Weinstein also admitted to engaging in the Ponzi Scheme, stating, "I finagled, and Ponzed, and lied to people to cover us."

CONCLUSION

Fraud was perpetrated upon me by the Defendant's Celebrity Cruises, Inc. aided and abetted by the 11th District Court of Appeals and the District Court for the Southern District of Miami.

My case should have had the statute of limitations tolled backed up by a plethora of other cases throughout the country who honorably did so without needing to state the obvious as to the reason why. Chris McAliley should have never been allowed to oversee my case as I did not consent to her doing so.

Wherefore, Tara McCluskey El prays that this honorable Supreme Court will accept its petition for Writ of Certiorari for certification, and award all further relief as may be appropriate in my favor



Respectfully submitted,

Tara McCluskey El
Pro Se Petitioner
1585 62nd Street #8771
Emeryville, California Republic [94662]
Tel. (650) 701-3356
E. diamond17@live.com

Petitioner*
]

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TARA MCCLUSKEY EL -

Petitioner,

VS.

CELEBRITY CRUISES, INC.

Respondent(s)

PROOF OF SERVICE

I, Tara Mccluskey El, do affirm that or declare that on this date, August 21 2023, the first business day following the due date which fell on a Sunday, as required by Supreme Court Rule 29 I have served and enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class prepaid.

The names are as follows:

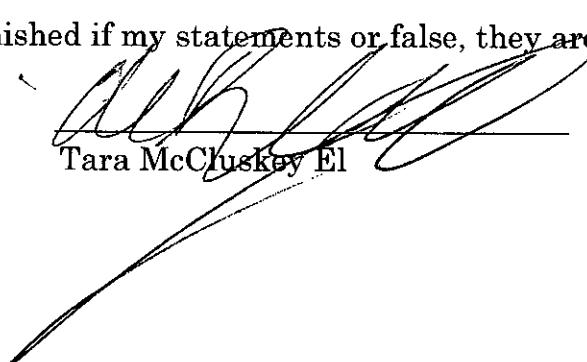
Darren W. Friedman
Foreman Friedman, PA
2 S Biscayne Blvd Ste 2300
Miami, Fl 33131
(PRIORITY Mail No

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
One First Street, NE, in Washington, DC, 20543
Priority Mail No

Lizbeth M. Michel
Foreman Friedman, PA
2 S Biscayne Blvd Ste 2300
Miami, Fl 33131 (PRIORITY Mail No

I declare knowing that I may be punished if my statements or false, they are true and correct.

Signed on August 19, 2023


Tara Mccluskey El

APPENDIX

TABLE OF APPENDICES

APPENDIX A- OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED/ DOCKETED 11/29/2021...10pgs.....1a

APPENDIX B- MEMORANDUM ORDER ADOPTING UNLAWFUL MAGISTRATES REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MIAMI.....2PGS 11a a

APPENDIX C- AFFIDAVIT OF BIAS SUBMITTED IN FILING DATED 5/12/2023
included in D.E. #55

APPENDIX D- MOTION TO FILE EXCESS WORDS FOR EN BANC HEARING
PETITION EN BANC PETITION TO REVIEW THIS MOTION FOR REVIEW
ACCOMPANIED BY

HEARING ENBANC PETITION Document 55

REQUEST FOFOR ENBANCHEARING IN LIEU OF 3 PANEL JUDGE REWIEW
AND PETITION TO SET ASIDE/ VACATE OPINION RESULTING FROM 3
JUDGE PANELPOLL REQUEST FRAP 35 I.O.P. (1) (3)

APPENDIX E- TME SENSITIVE Appellant Respectfully ask for Leave to file this
UNOPPOSED MOTION to file UNTIMELY INITIAL BRIEF WITH APPENDIX
which contains more than 14,000 words and 30 pages. **Document 48-1 and 48-2** which
contains **APPELLANTS CORRECTED OPENING BRIEF**

APPENDIX F- APPELLANTS corrected APPENDIX Document 48-3 – 48-6 which contains Appellants/Plaintiff's EVIDENCE for this Honorable Supreme Court for *reference*. Both the Eleventh District Court of Appeals and the United States District Court of for the Southern District of Miami used bias and fraud TRYING to keep a part of it off the record.

APPENDIX F is 984 pages and is broken into 4 SECTIONS due to its size "PLEASE REFERENCE BOTTOM OF the ACTUAL APPENDIX PAGES FOR THE PAGE NUMBER WHICH ALIGNs WITH THE APPENDIX citations (not the document file page number.)

- PLEASE REFERENCE actual appendix pages 1-299
- Document 48-3 filing 1 of 299
- PLEASE REFERENCE actual appendix pages 300-538
- Document 48-4 filing 1 of 239
- PLEASE REFERENCE actual appendix pages 539 -757
- Document 48-5 filing 1 of 219
- PLEASE REFERENCE *actual appendix pages..... 758-985
- Document 48-6 filing 1 of 229

APPENDIX G- 33-1 FRAUD MOTION TO AMEND SAYING UNOPPOSED WHEN ACTUALLY OPPOSED 8 PAGES 21-14139_Documents.....

APPENDIX H- Document 36 *APPELLEES* MOTION TO FILE SUPPLEMENTAL APPENDIX OUT OF TIME GRANTED (bias).....

Appendix I - O also included. Listed in Writ of Certiorari

APPENDIX A-

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED/ DOCKETED 11/29/2021...10pgs.....

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-14139

Non-Argument Calendar

TARA MCCLUSKEY EL,

Plaintiff - Appellant,

versus

CELEBRITY CRUISES, INC.,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-24706-KMW

Before ROSENBAUM, JILL PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

Tara Mccluskey El, proceeding pro se, sued Celebrity Cruises alleging negligence after a slip-and-fall accident on a cruise ship. We affirm the district court's grant of summary judgment for Celebrity, as the action was filed outside the contractually agreed upon statute of limitations, and Mccluskey El had constructive notice of that contract even if she never read it. None of Mccluskey El's arguments for equitable tolling are persuasive. And the district court did not abuse its discretion by denying Mccluskey El's post-judgment motions for reconsideration and to amend. We affirm the lower court in full.

I.

Mccluskey El—a California native—slipped and fell while exiting the jacuzzi on September 29, 2019 during a cruise around Spain. She sued the ship's operator, Celebrity Cruises, for negligence in November 2020. Her complaint notes that she is “submitting my claim a short time after September 29, 2020” due to the COVID-19 pandemic and her injury. Celebrity moved to dismiss, attaching a copy of the contract included with each ticket sale and an affidavit from an employee of Celebrity's parent company. The contract bore the name Tara Mccluskey, and said that maritime tort actions must be filed within one year of the date they occurred. And the affidavit explained that several days before the cruise, Life Journeys—who Mccluskey El paid to book and

arrange her cruise as part of a group—requested (and received) a copy of the contract. The affidavit also states that the contract was always accessible on Celebrity's website.

McCluskey El asserted in a sworn statement that she neither received the contract pre- or post-cruise nor had an opportunity to become meaningfully informed about its modification to the default statute of limitations. But a forum selection clause in the contract required her to bring suit in the Southern District of Florida, which she did. Alternatively, she argued that the contractually imposed statute of limitations should be equitably tolled because the contract was unconscionable, because of the pandemic, because an attorney she consulted with said (incorrectly) that she had two years to file her claim, and because Celebrity failed to inform her about the statute of limitations. While she argues on appeal that she could have filed her complaint in California state court, where some statutes of limitations were equitably tolled during the pandemic, she did not raise this argument in the district court.

The district court appointed a magistrate judge to consider the case, who construed the motion to dismiss as one for summary judgment under Federal Rule of Civil Procedure 12(d). The magistrate judge gave McCluskey El multiple opportunities to submit whatever evidence she wished. Ultimately, she recommended summary judgment for Celebrity. She found that Life Journeys was McCluskey El's agent, and that she had

constructive notice of the contract when it was sent to Life Journeys. Alternatively, the magistrate judge noted that the contract was publicly available for viewing before, during, and after the cruise on Celebrity's website. What mattered was the opportunity to read the contract, not whether McCluskey El had done so. Finding McCluskey El's equitable tolling arguments equally unpersuasive, the district court accepted the recommendation and granted summary judgment for Celebrity.

McCluskey El moved for reconsideration, which the district court denied for substantially the same reasons as its initial judgment. She also moved to amend that motion for reconsideration and to correct a clerical error. The district court denied this as moot given the earlier dismissal of the reconsideration motion. McCluskey El timely appealed the district court's decisions on these two motions, alongside its grant of summary judgment for Celebrity.

II.

This Court reviews *de novo* the district court's grant of summary judgment. *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1314 (11th Cir. 2011). Whether the terms of a cruise-ticket contract were adequately communicated to passengers is a question of law, so we review it *de novo*—just like our review of a district court's decisions about equitable tolling. *See Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1567 (11th Cir. 1990); *Chang v. Carnival Corp.*, 839 F.3d 993, 996 n.4 (11th Cir.

2016). Conversely, we consider denials of motions to reconsider, amend, or correct clerical errors for abuse of discretion. *See Lambert v. Fulton Cnty., Georgia*, 253 F.3d 588, 598 (11th Cir. 2001); *Stansell v. López*, 40 F.4th 1308, 1311 (11th Cir. 2022).

III.

McCluskey El is correct that in general, there is a three-year statute of limitations to file maritime tort actions. 46 U.S.C. § 30106. However, federal statute permits parties to adjust that time period via contract. 46 U.S.C. § 30526(b)(2). Such adjustments are valid if they are reasonably communicated to passengers. *See Krenkel v. Kerzner Int'l Hotels, Ltd.*, 579 F.3d 1279, 1281 (11th Cir. 2009). So here, we assess if McCluskey El had the ability to become meaningfully informed of the contract's terms and to reject them (though non-negotiated contracts are acceptable). *Id.*

Our precedent states that whether a passenger "chose to avail themselves of the notices and to read the terms and conditions is not relevant to the reasonable communicativeness inquiry." *Est. of Myhra v. Royal Caribbean Cruises, Ltd.*, 695 F.3d 1233, 1246 n.42 (11th Cir. 2012), superseded by statute on other grounds as stated in *Caron v. NCL (Bahamas), Ltd.*, 910 F.3d 1359, 1364 n.2 (11th Cir. 2018). The magistrate judge was correct in assessing whether McCluskey El had the *opportunity* to read it. Providing those terms in a travel packet was such an opportunity. *Id.* at 1246.

Here, Life Journeys received that packet, not McCluskey El. While McCluskey El disputes how to label her relationship with

Life Journeys, she does not dispute the substance of it—she paid the company to book and pay for her ticket on the vessel, which it did. And the record is full of examples of McCluskey El communicating with, and issuing specific instructions to, Life Journeys. That is the quintessential principal-agent relationship between a travel agent and their client. *See, e.g., Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1238 (11th Cir. 2000). We generally hold that constructive notice exists when an agent accepts contract documents on behalf of their principal. *See, e.g., Windward Traders, Ltd. v. Fred S. James & Co.*, 855 F.2d 814, 820 (11th Cir. 1988). Here, that notice to the agent is sufficient to provide constructive notice to McCluskey El.

Even if not, we agree with the district court that McCluskey El never argued that anything prohibited her from accessing the terms of the contract online before, during, or after embarking on the cruise or suffering her alleged injuries. In short, there is no evidence that McCluskey El lacked constructive knowledge about the one-year statute of limitations in the ticket contract.¹ To the

¹ McCluskey El argues that the affidavit was improperly considered, which created cumulative error. We need not decide whether cumulative error could apply in a civil case, because on appeal she only identifies this one error, which by definition is not cumulative. *United States v. Leonard*, 4 F.4th 1134, 1147 (11th Cir. 2021). And regardless, the district court properly considered Celebrity's affidavit. McCluskey El first objected to the entire affidavit in her

contrary, she expressed familiarity with the contract in her complaint, which was filed in the correct venue and attempted to justify why it was submitted more than one year after the accident. Given that notice, the district court correctly concluded that McCluskey El's suit was untimely under the agreed-upon statute of limitations.

And we agree that none of McCluskey El's equitable tolling arguments are compelling, as "tolling is an extraordinary remedy

amended response to the defendant's motion to dismiss. But in a subsequent sworn statement, McCluskey El did not dispute Celebrity's claims in the affidavit that it provided the contract to Life Journeys before the cruise. And rather than dispute the existence of an online contract, she only asks "[h]ow would Plaintiff know" about it. Finally, in her objections to the report and recommendation and on appeal, she asserts that the entire affidavit is fraudulent. Her bare and baseless assertions of fraud, unsupported by fact or legal arguments, are abandoned. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–82 (11th Cir. 2014). On appeal, she does not raise any arguments about the legally relevant portions of the affidavit—that Celebrity emailed Life Journeys the contract before the cruise, and that it was available on the website regardless—other than fraud. That is a sufficient reason to affirm, as "issues not briefed on appeal by a *pro se* litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). Even if we considered her arguments disputing the substance of the affidavit, McCluskey El's sworn statement never disputes the affidavit's legally relevant claims—she only denies knowledge of the online contract, and asserts that she cannot verify that Celebrity emailed Life Journeys the contract. Drawing inferences in McCluskey El's favor and assuming that she did not read either the online or emailed contract, she still had several reasonable opportunities to become informed of the terms if she chose to do so. See *Est. of Myhra*, 695 F.3d at 1246 n.42.

which should be extended only sparingly.” *Justice v. United States*, 6 F.3d 1474, 1479 (11th Cir. 1993). *First*, the contract was not unconscionable. Federal statute explicitly permits parties to use contracts to agree to a one-year statute of limitations for maritime tort actions. 46 U.S.C. § 30526(b)(2). We have interpreted that statute to be valid. *Nash*, 901 F.2d at 1566.

Second, generalized assertions that the COVID-19 pandemic was a just cause for equitable tolling are insufficient. McCluskey El identifies no Eleventh Circuit precedent where the pandemic resulted in equitable tolling of a statute of limitations. To the contrary, as the lower court noted, McCluskey El “filed her Complaint despite these obstacles, without an attorney, in the midst of the pandemic, in November 2020.” Nor did she assert any individualized facts about her situation that would make her case analogous to past instances where we have waived the statute of limitations in the maritime tort context. *See, e.g., Booth v. Carnival Corp.*, 522 F.3d 1148, 1149–50 (11th Cir. 2008).

Third, though McCluskey El points out that California state courts waived statutes of limitations for 180 days in response to the pandemic, that argument is legally irrelevant. She first raised this issue on appeal, which is too late to preserve it. *Walker v. Jones*, 10 F.3d 1569, 1572 (11th Cir. 1994). And, in any event, California is not in the Eleventh Circuit—its state-court decisions are persuasive authority at best for this Federal Court of Appeals.

Fourth, it is unfortunate for McCluskey El that an attorney she spoke with erroneously told her she had two years to file her claim. But this kind of error is insufficient to create equitable tolling. *Cadet v. Florida Dep't of Corr.*, 853 F.3d 1216, 1227 (11th Cir. 2017).

Finally, McCluskey El argues that Celebrity did not tell her about the statute of limitations, even when it knew that she intended to file a claim. But would-be defendants are under no duty to inform potential plaintiffs that the statute of limitations is running. *Raziano v. United States*, 999 F.2d 1539, 1542 (11th Cir. 1993). The district court correctly determined that each of these arguments was an insufficient basis to equitably toll the statute of limitations, and dismissal of the action as untimely was thus proper.

As for the post-judgment motions, we likewise find no error. There was no newly discovered evidence or manifest errors of law or fact, so the district court properly denied McCluskey El's motion for reconsideration. *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). These motions may not be used to relitigate matters "that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005). And the later motion to correct and amend the reconsideration motion impermissibly attempted to correct substantive errors, so it was also properly denied. *See Stansell*, 40 F.4th at 1311.

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Opinion of the Court

21-14139

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We **AFFIRM** the district court's grant of summary judgment for Celebrity Cruises, and its denial of McCluskey El's subsequent motions.

**Additional material
from this filing is
available in the
Clerk's Office.**