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January 11, 2021

BY EMAIL (shareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal Submitted by Marc Young

Ladies and Gentlemen:

This letter is submitted on behalf of Royal Caribbean Cruises Ltd., a Liberian corporation (the "Company"), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company requests that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") not recommend enforcement action if the Company omits from its proxy materials for the Company's 2021 Annual Meeting of Shareholders (the "2021 Annual Meeting") the proposal described below for the reasons set forth herein.

General

The Company received a proposal and supporting statement (the "Proposal") along with a cover letter dated October 5, 2020, from Marc Young (the "Proponent"), for inclusion in the proxy materials for the 2021 Annual Meeting. In addition to the Proposal, the Company received, via email, a letter from the Proponent containing a copy of a response to an order to show cause from the United States District Court for the Southern District of Texas, Houston Division ("Response"), relating to a complaint and request for injunction filed by the Proponent against the United States Secretary of Health and Human Services, among other federal officials, in regard to the U.S. Centers for Disease Control's ("CDC") March 14, 2020 *No Sail Order and Other Measures Related to Operations* ("No Sail

Order"). According to the Proponent, the action was dismissed due to a lack of standing. Copies of the Proposal and cover letters are attached hereto as Exhibit A. A copy of the Proponent's Response is attached hereto as Exhibit B.

This letter provides an explanation of why the Company believes it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with Section C of Staff Legal Bulletin 14D (Nov. 7, 2008) ("SLB 14D"), this letter is being submitted by email to shareholderproposals@sec.gov. A copy of this letter also is being sent to the Proponent as notice of the Company's intent to omit the Proposal from the Company's proxy materials for the 2021 Annual Meeting.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the Company.

Summary of the Proposal

The text of the resolution contained in the Proposal is as follows:

> **Be it resolved** that the Board of Royal Caribbean file suit against the illegal NO SAIL Order and any subsequent renewal in the future and demand an injunction ordering the CDC to comply with the requirements of the IHR and WHO. No expense that is rightfully that of any government should be assumed by RCL at the expense of the stockholders.

Background on CDC No Sail Order

On March 14, 2020, the Director of the CDC issued the No Sail Order, directing cruise ships that had not already voluntarily suspended their operations to do so. The Company had voluntarily ceased its U.S. operations on March 13, 2020.

On October 31, 2020, the CDC's No Sail Order expired. On and effective as of October 30, 2020, the CDC issued a *Framework for Conditional Sailing Order* (the "Conditional Order") that replaced the No Sail Order and permits cruise ship passenger operations in U.S. waters under certain conditions and using a phased approach. The Conditional Order remains in effect until the earlier of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID-19 constitutes a public health emergency, (2) the rescission or

modification by the CDC Director of the Conditional Order based on specific public health or other considerations or (3) November 1, 2021.

Bases for Exclusion

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the proxy materials for the 2021 Annual Meeting pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.
- Rule 14a-8(i)(3) because the Proposal is materially false and misleading;
- Rule 14a-8(i)(4) because the Proposal is designed to further a personal interest of the Proponent that is not shared by the other shareholders at large; and

Analysis

A. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first consideration recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates both of these two central considerations.

1. The Proposal relates to the Company's ordinary business matters.

In accordance with these principles, the Staff routinely has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) when those proposals direct the company to initiate specific litigation. *See, e.g.*, *Merck & Co., Inc.* (Mar. 21, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "file criminal charges against and prosecute all individuals, whose

actions or inactions resulted in Merck's guilty plea," noting that "[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under rule 14a-8(i)(7)"); *Point Blank Solutions, Inc.* (Mar. 10, 2008, *recon. denied* Mar. 20, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company initiate and settle litigation, noting that the proposal related to the company's "ordinary business operations (i.e., litigation strategy and related decisions)"); *NetCurrents, Inc.* (May 8, 2001) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requiring the company to file suit against two individuals, noting that the proposal related to the company's "ordinary business operations (i.e., litigation strategy and related decisions)"); *Microsoft Corp.* (Sept. 15, 2000) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company to file a class action suit against the U.S. Federal Government and the U.S. Department of Justice, noting that the proposal related to the company's "ordinary business operations (i.e., the conduct of litigation)"); *The Adams Express Co.* (July 18, 1996) (permitting exclusion under Rule 14a-8(c)(7) of a proposal requiring the company to initiate legal action against the Board of Governors of the U.S. Federal Reserve System, noting that the proposal was "directed at matters relating to the conduct of the [c]ompany's ordinary business operations (i.e. determination by the [c]ompany to institute legal action)").

Similarly, the Staff consistently has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) when those proposals relate to a company's litigation strategy and decisions involving a company's litigation strategy. *See, e.g.*, *Wal-Mart Stores, Inc.* (Apr. 13, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the risks associated with the gender pay gap where the company was involved in lawsuits relating to discrimination, noting that the proposal would "affect the conduct of ongoing litigation relating to the subject matter of the [p]roposal to which the [c]ompany is a party"); *General Electric Co.* (Feb. 3, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company issue a report assessing all potential sources of liability related to PCB discharges in the Hudson River while the company was a defendant in multiple pending lawsuits alleging damages related to the company's alleged past release of chemicals into the Hudson River, noting that "the company is presently involved in litigation relating to the subject matter of the proposal"); *Wal-Mart Stores, Inc.* (Apr. 14, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare an annual report on company actions taken to eliminate gender-based pay inequity where the company was involved in pending lawsuits relating to gender-based pay discrimination, noting the company "is presently involved in litigation relating to the subject matter of the proposal"); *Johnson & Johnson* (Feb. 14, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report to address the "health and social welfare concerns of people harmed by adverse effects from Levaquin" where the company was litigating cases involving claims that individuals had been injured by the product referenced in the proposal,

noting that "the company is presently involved in litigation relating to the subject matter of the proposal"); *Reynolds American, Inc.* (Mar. 7, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company make statements detailing the health hazards of secondhand smoke, noting that the proposal relates to the company's "ordinary business operations (i.e., litigation strategy)"; *AT&T Inc.* (Feb. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report containing specified information regarding the alleged disclosure of customer records to governmental agencies, noting that the proposal relates to the company's "ordinary business operations (i.e., litigation strategy)").

In this instance, the Proposal clearly relates to the Company's ordinary business matters because it would require the Company to initiate litigation against the CDC. Specifically, the Proposal requests that the Company "file suit against the illegal NO SAIL Order and any subsequent renewal in the future and demand an injunction ordering the CDC to comply with the requirements of the IHR and WHO." Although the Company is not currently engaged in a lawsuit with the U.S. government as a result of the No Sail Order, decisions regarding whether to initiate or defend lawsuits are fundamentally ordinary business matters that cannot, as a practical matter, be subject to direct shareholder oversight. Moreover, the Proposal seeks to not only dictate who should be sued, but also the type of action that should be brought and the nature of the underlying claim. As a result, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

We also note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon potential public policy considerations, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* the 1998 Release; Staff Legal Bulletin No. 14E (Oct 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *Wal-mart Stores, Inc.* (Apr. 13, 2018), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the risks to the company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent, where the proponent argued the proposal implicated a significant policy issue relating to gender pay equity. In granting no-action relief, the Staff determined that the proposal related to the company's ordinary business operations and would affect the conduct of ongoing litigation. *See also, e.g.*, *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary

business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter). In this instance, as described above, the Proposal focuses on the ordinary business matter of the Company's litigation strategy and related decisions, and, in particular, the decision of whether to initiate a lawsuit relating to the CDC's No Sail Order. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7).

2. The Proposal seeks to micromanage the Company.

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* the 1998 Release; *see also Abbott Laboratories* (Feb. 28, 2019) (permitting exclusion on the basis of micromanagement of a proposal that requested the adoption of a policy requiring compensation committee approval of certain sales of shares by senior executives); *JPMorgan Chase & Co.* (Mar. 30, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing on tar sands projects); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested open market share repurchase programs or stock buybacks subsequently adopted by the board not become effective until approved by shareholders); *Marriott Int'l, Inc.* (Mar. 17, 2010, *recon. denied* Apr. 19, 2010) (permitting exclusion on the basis of micromanagement of a proposal requiring the installation of showerheads that deliver no more than 1.6 gallons per minute of flow, along with mechanical switches that would allow guests to control the level of water flow).

In Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Staff stated that micromanagement depends on the level of prescriptiveness of a proposal. Specifically, when a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted. *See, e.g.*, *Exxon Mobil Corp.* (Mar. 6, 2020) (permitting exclusion on the basis of micromanagement of a proposal that requested the board charter a new board committee on climate risk); *Johnson & Johnson* (Feb. 14, 2019) (permitting exclusion on the basis of micromanagement of a proposal that urged the board to adopt a policy prohibiting adjustments to financial performance metrics to exclude compliance costs when

determining executive compensation because the proposal prohibited all adjustments without regard to specific circumstances or the possibility of reasonable exceptions).

In this case, the Proposal seeks to micromanage the Company by imposing a specific action – initiating litigation against the CDC – thereby supplanting the judgment of management and the Company's Board of Directors (the "Board"). Specific judgments concerning whether to initiate and proceed with litigation require a complex process involving the business judgment of the Company's management and Board. The Proposal would dictate not just the defendants to a lawsuit, but the nature of the action and the claims to be made therein, removing discretion from management and the Board in the conduct of the Company's business. The Company's management and Board have an obligation to act in the best interests of the Company and its shareholders, including in determinations relating to pursuing or forgoing litigation. Moreover, decisions relating to whether to pursue litigation necessitate the balancing of numerous factors such as costs, legal resources, press relations, venue, merit of the potential claim, and conflicts of interest. The Proposal, if approved, would improperly interfere with this obligation and circumvent the reasoned judgment of management and the Board by requiring the Company to initiate litigation against the CDC, supplanting the judgment of management and the Board without regard to the myriad factors the Company would need to consider in determining whether to pursue this type of action. As a result, the Proposal would micromanage the Company and is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Accordingly, consistent with the precedent described above, the Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

B. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(3) Because the Proposal is Materially False and Misleading in Violation of Rule 14a-9.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B").

1. The Proposal is materially false and misleading.

Rule 14a-9(a) prohibits false or misleading statements "with respect to any material fact, or which omit[s] to state any material fact necessary in order to make the statements therein not false or misleading." The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "the company demonstrates

objectively that a factual statement is materially false or misleading." SLB 14B. In accordance with SLB 14B, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(3) where such proposals were false or misleading under Rule 14a-9. *See, e.g.*, *Ferro Corp.* (Mar. 17, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that mischaracterized certain facets of Ohio and Delaware corporate law, noting that the company had "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading"); *see also Duke Energy Co.* (Feb. 8, 2002) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that urged the company's board to "adopt a policy to transition to a nominating committee composed entirely of independent directors" where the proposal was materially false and misleading because the company had no nominating committee).

In this case, the Proposal is materially false and misleading in a manner that would materially impact shareholders' views of the Proposal. Specifically, the Proposal requests that the Board file suit against an "illegal NO SAIL Order" and "demand an injunction ordering the CDC to comply with requirements of the IHR and WHO." The supporting statement indicates that as a result of the CDC's No Sail Order, the costs related to the Company's suspension of operations have been improperly shifted from certain member nations to the Company's shareholders. The Proposal, however, is materially false and misleading because the CDC's No Sail Order is no longer in effect and has been replaced by the Conditional Order. Indeed, the entire Proposal is fundamentally premised on the objectively false notion that the CDC's No Sail Order is illegally harming the Company and its shareholders and therefore must be enjoined, when, in fact, the CDC's No Sail Order is no longer in effect. Moreover, in addition to the nonsensical request to seek an injunction against an expired order, the Proposal proffers no evidence that the No Sail Order was indeed "illegal" and the Company would be hard-pressed to file a meritorious suit on the subject matter of the Proposal when the Company knows that such a complaint would be based on false and misleading allegations. Taken together, the Proposal's resolution, and much of the supporting statement, is therefore premised on an objectively false and misleading statement.

Accordingly, consistent with the precedent described above, the Proposal is excludable pursuant to Rule 14a-8(i)(3) as materially false and misleading in violation of Rule 14a-9.

2. The Proposal is impermissibly vague and indefinite so as to be materially false and misleading.

In addition, the Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal,

nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See* SLB 14B; *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."); *Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion under Rule 14a-8(i)(3) of a proposal where the company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal").

In accordance with these principles, the Staff has consistently permitted exclusion under Rule 14a-8(i)(3) of proposals that reference a particular set of external standards or guidelines, when the proposal or supporting statement fails to sufficiently describe the substantive provisions of such standards or guidelines. For example, in *Chevron Corp.* (Mar. 15, 2013), the Staff permitted exclusion under Rule 14a-8(i)(3) because the proposal referred to, but did not explain, the New York Stock Exchange listing standards for determining whether a director qualified as an independent director. Finding that the New York Stock Exchange listing standards' definition of "independent director" was a "central aspect of the proposal," the Staff permitted exclusion of the proposal "because the proposal does not provide information about what the New York Stock Exchange's definition of 'independent director' means." *See also, e.g.*, *Dell Inc.* (Mar. 30, 2012) (permitting exclusion under Rule 14a-8(i)(3) of a proposal to include certain shareholder named director nominees in company proxy statements, including any nominee named by "shareholders of whom one hundred or more satisfy SEC Rule 14a-8(b) eligibility requirements"); *Chiquita Brands Int'l, Inc.* (Mar. 7, 2012) (same); *MEMC Elec. Materials, Inc.* (Mar. 7, 2012) (same); *Sprint Nextel Corp.* (Mar. 7, 2012) (same); *Exxon Mobil Corp. (Naylor)* (Mar. 21, 2011) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting the use of, but failing to sufficiently explain, "guidelines from the Global Reporting Initiative"); *AT&T Inc.* (Feb. 16, 2010, *recon. denied* Mar. 2, 2010) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that sought a report on, among other things, "grassroots lobbying communications as defined in 26 C.F.R. § 56,4911-2").

Moreover, in Staff Legal Bulletin 14G (Oct. 16, 2012), the Staff explained its approach to assessing whether a proposal that contains a reference to an external standard is vague and misleading, addressing specifically the context where a proposal contains a reference to a website:

> In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and

> supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.
>
> If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite.

In this instance, the Proposal is vague and indefinite because it refers to a number of complex domestic and international regulatory bodies, laws, regulations and treaties that are given little to no context and, at a minimum, are not explained in sufficient detail such that shareholders voting on the proposal and the Company in implementing the Proposal would be able to determine with reasonable certainty exactly what actions or measures the Proposal requires. For example, the Proposal references the "International Sanitation Agreement," the "2005 International Health Regulations,"[1] "IHR (Article 23)" and "Article 28," the "World Health Organization," the "Law of the Sea" and "Annex 4 of the IHR" and the "Handbook for management of public health events on board ships,"[2] just to name few terms. The Proposal appears to be premised on a technical reading of these documents vis-à-vis the CDC's No Sail Order, but the Proposal's cursory references to these complex bodies and regulations are insufficient to provide shareholders and the Company with reasonably certainty as to what actions or measures the Proposal requires.

Accordingly, consistent with the precedent described above, the Proposal is excludable pursuant to Rule 14a-8(i)(3) on the basis that it is impermissibly vague an indefinite.

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[1] A copy of the IHR Health Regulations (2005) was provided to the Company by the Proponent and is available for download at https://apps.who.int/iris/bitstream/handle/10665/43883/9789241580410_eng.pdf?sequence=1.

[2] A copy of the Handbook for management of public health events on board ships was provided to the Company by the Proponent and is available for download at https://apps.who.int/iris/bitstream/handle/10665/205796/9789241549462_eng.pdf;jsessionid=9AC7166E5D552820DC0E795A9BAF166C?sequence=1.

C. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(4) Because the Proposal is Designed to Further a Personal Interest of the Proponent That Is Not Shared by the Other Shareholders at Large.

Under Rule 14a-8(i)(4), a company may exclude a shareholder proposal from its proxy materials if the proposal relates to the redress of a personal claim or grievance against a company or any other person, or if it is designed to result in a benefit to the proponent, or to further a personal interest of the proponent, which is not shared by other shareholders at large. As stated by the Commission, the purpose of the rule is to "insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer's shareholders generally." *See* Exchange Act Release No. 20091 (Aug. 16, 1983). The Commission also has noted that "the cost and time involved in dealing with" a shareholder proposal involving a personal grievance or furthering a personal interest not shared by other shareholders is "a disservice to the interests of the issuers and its security holders at large." *See* Exchange Act Release No. 19135 (Oct. 14, 1982) ("1982 Release"). In addition, even where the proposal is presented in general terms that "might relate to matters which may be of general interest to all security holders," a company may omit the proposal where "it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest." 1982 Release.

In accordance with these principles, the Staff has permitted exclusion of proposals featuring a facially neutral resolution but where the facts demonstrated that the proposal was submitted to redress a personal claim or grievance or to further a personal interest, which benefit or interest was not shared with the other shareholders at large. *See, e.g.*, *General Electric Co.* (Jan. 12, 2017, *recon. denied* Jan. 31, 2017) (permitting exclusion under Rule 14a-8(i)(4) of proposal to permit shareholders to act by written consent where the underlying facts showed the proponents were using the shareholder proposal process to press a former employee's personal, employment-related grievances with the company); *American Express Co.* (Jan. 13, 2011) (permitting exclusion under Rule 14a-8(i)(4) of a proposal to amend an employee code of conduct to include mandatory penalties for noncompliance when brought by a former employee who previously sued the company on several occasions for discrimination, defamation and breach of contract); *State Street Corp.* (Jan. 5, 2007) (permitting exclusion under Rule 14a-8(i)(4) of a proposal requesting an independent chairman where the proponent was a former employee with a history of litigation and harassment of the company and its CEO); *Sara Lee Corp.* (Aug. 10, 2001) (permitting exclusion under Rule 14a-8(i)(4) of a proposal regarding a policy for pre-approval of certain types of payments where the proponent had a personal interest in a subsidiary which the company had sold and where the proponent participated in litigation related to the subsidiary and directly adverse to the

company); *MGM Mirage* (Mar. 19, 2001) (permitting exclusion under Rule 14a-8(i)(4) of a proposal that would require the company to adopt a written policy regarding political contributions and furnish a list of any of its political contributions submitted on behalf of a proponent who had filed a number of lawsuits against the company based on the company's decisions to deny the proponent credit at the company's casino and, subsequently, to bar the proponent from the company's casinos); *see also Johnson & Johnson* (Jan. 7, 2000) (permitting exclusion under Rule 14a-8(i)(4) of a proposal that would require the company to adopt a policy of compensating inventors and discoverers of any product manufactured, marketed, distributed or sold by the company, where the proponent claimed to have invented a product sold by the company).

In this case, the Proposal is clearly designed to further the Proponent's personal interest in pursuing litigation against various federal agencies—an interest that is not shared by the Company's other shareholders at large. In particular, the Proposal aims to have the Company join in the Proponent's personal grievance against the CDC, an issue that has no bearing on the overall shareholders of the Company. Specifically, the Proposal requests that the Company bring suit against and enjoin the CDC's No Sail Order, the very same issue that the Proponent attempted to effect through his own private litigation, which was subsequently dismissed. As noted in the Proponent's October 5, 2020 email to the Company, the Proponent "had to dismiss" his suit "due to not being able to show my third party standing to be able to sue because the Cruise lines were voluntarily suspending their cruises and it was not the CDC actually causing the cancellations." *See* Exhibit A for a copy of this correspondence and Exhibit B for the Proponent's Response.

Indeed, it appears that having been denied a remedy through the federal court system, the Proponent is hoping that the Company will provide the type of relief that he sought personally and thereby advance his personal interest. This relief, however, is unique to the Proponent alone and not a matter for other shareholders to consider. As stated in correspondence with the Company, the Proponent represents that "[i]f the cruise lines were to sue the CDC, I would be willing to join as a plaintiff with specific damages due to the cancellations." The Proponent also has stated that he made investment decisions on the basis of his objections to the CDC's actions, writing in his correspondence to the Company that "I just sold today 100 shares that was [sic] purchased later in January 2020. This due to a cancelation today of another cruise (my 4th)." These statements, together with that fact that the Proponent previously attempted to bring a lawsuit on the same subject matter as the Proposal, demonstrate that the Proposal is designed to further a personal interest of the Proponent that is not shared by the Company's other shareholders at large.

Accordingly, consistent with the precedent described above, the Proposal is excludable pursuant to Rule 14a-8(i)(4).

Conclusion

On the basis of the foregoing, the Company respectfully requests the concurrence of the Staff that the Proposal may be excluded from the Company's proxy materials for the 2021 Annual Meeting. If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at (202) 371-7180. Thank you for your prompt attention to this matter.

Very truly yours,

Brian V. Breheny

Enclosures

cc: Marc Young

Bradley H. Stein
Senior Vice President, General Counsel, Corporate Secretary &
Chief Compliance Officer
Royal Caribbean Cruises Ltd.

EXHIBIT A

(see attached)

Bond, Andrew T (WAS)

Subject: Stockholder Proposal to be submitted at the Next Stockholders Meeting

From: Marc Young PE ***
Sent: Monday, October 5, 2020 12:45 PM
To: Bradley Stein <bstein@rccl.com>
Cc: Michael Bayley <mbayley@rccl.com>
Subject: [EXTERNAL] Stockholder Proposal to be submitted at the Next Stockholders Meeting

Dear RCL Corporate Secretary and Directors,

Attached is a Stockholder Proposal for consideration at the next Royal Caribbean (RCL) stockholders meeting and to be solicited in the Company Proxy material. This is below the SEC 500 word limit as written. (499 words)

Pursuant to the current Rule 14a-8(b) I am also submitting my evidence from my IRA account which demonstrates I have held my (over $2000) of RCL stock since 7/8/2019 (Over one year) in this account. * I will be holding the 100 shares purchased in 2019 in my account and not selling them prior to the stockholders meeting.

I have also provided copies of the ***WHO International Health Regulations*** and the ***WHO Handbook for Mgmt. of Public Health Events on Board Ship*** to show that my claims are valid.

For the RCL Directors information, I am also submitting a copy of one of my filings with the US District Court of South Texas in Houston, (20-cv-2299) that I had to dismiss (without prejudice) due to not being able to show my third party standing to be able to sue because the Cruise lines were voluntarily suspending their cruises and it was not the CDC actually causing the cancellations. This was successfully argued by the DOJ attorney.

Finally, I would also point to a SCOTUS majority opinion decision that places international travel a Constitutional Right protected by both the US Constitution's Freedom of Movement as well as the Fifth Amendment requirement for Due Process which I believe the CDC is denying by their actions. (Kent v Dulles 357 U.S. 116). Clearly as a stockholder we have the right to protect ourselves from such over reach by the federal government and by officers of the Corporation that allows these agency to exceed their delegated authority. If the cruise lines were to sue the CDC, I would be willing to join as a plaintiff with specific damages due to the cancellations.

And yes if the management of Royal Caribbean wishes to meet with me to discuss my proposal I will be agree to do so.

Marc Young, PE
PO Box 1693
Sealy, Texas 77474
***

*I will note I just sold today 100 shares that was purchased later in January 2020. This due to a cancelation today of another cruise (my 4th). My instructions to my Wells Fargo Advisor stockbroker was to sell the lower priced, more recent purchase (I have confirmed with him he can verify for you, if necessary).

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STOCKHOLDERS PROPOSAL - Stockholder Meeting 2021

Due to a viral pandemic that has circled the globe, multiple public health emergencies have been declared and worldwide by many governments. Royal Caribbean has responded with proper concern for safety of their clients, crew and employees with temporary suspensions of service to allow for a panel of health experts (Healthy Sail Panel) to develop a set of protocols to allow service to be resumed in a safe and effective manner in dealing with the virus. The key being those with the virus should be kept off the ships at all cost.

Whereas the COVID-19 response by the US Center for Disease Control and Prevention (CDC) has been to issue a NO SAIL ORDER that circumvents key multinational treaty obligations that have been in place since 1926 (International Sanitation Agreement) and most recently have culminated in the 2005 International Health Regulations (IHR). These agreements clearly put the burden on the member nation's health officers and at their cost for identification of ill passengers either getting on board a ship or disembarking from a ship and the responsibility for testing, isolation of the ill, quarantine of those with direct contact to those proven to be ill, as defined in the IHR (Article 23). Further it clearly defines in Article 28 that "free pratique" for ships to enter ports and to be allowed to embark and disembark passengers shall not be denied due to public health concerns.

The only requirements, per these regulations, for the Royal Caribbean ships are for proper sanitation, as defined by these regulations and notification of the next port officials if a undetected case at embarkation is allowed to get on and manifests itself on ship. Otherwise, they are not to allow for any known case or vector to remain on board. The World Health Organization is the designated lead in these regulations. Several key documents describe the response the Royal Caribbean ships need to take to comply with the International Health Regulations, which is their responsibility per the Law of the Sea and the IHR. These are **Annex 4** of the IHR and **Handbook for management of public health events on board ships.**

While the Healthy Sail Panel's 74 recommendations have identified a broad range of protocols that should result in a low risk of infection on any ship, there are many of the recommendations that propose to assume the responsibilities of the CDC with respect to US Ports. As a stockholder we are opposed to the assumption of the cost for such expenses when the member nations have already agreed that they should assume such cost.

Be it resolved that the Board of Royal Caribbean file suit against the illegal NO SAIL Order and any subsequent renewal in the future and demand an injunction ordering the CDC to comply with the requirements of the IHR and WHO. No expense that is rightfully that of any government should be assumed by RCL at the expense of the stockholders.

Marc Young

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©©©

Bond, Andrew T (WAS)

Subject: Stockholder Proposal to be submitted at the Next Stockholders Meeting

From: Marc Young PE ***
Sent: Saturday, October 31, 2020 10:54 AM
To: Bradley Stein <bstein@rccl.com>
Cc: Michael Bayley <mbayley@rccl.com>
Subject: [EXTERNAL] RE: Stockholder Proposal to be submitted at the Next Stockholders Meeting

The latest order by the CDC is nothing more than the NO SAIL ORDER repackaged as another illegal order. It still conflicts with the intent and purpose of the WHO International Health Regulations. The IHR if fully employed should have and would have avoided all the consequences that the current orders are trying to accomplish but at an additional cost to the cruise lines. My proposal is still valid and I still submit it for consideration at the next stockholders meeting.

Marc Young, PE
PO Box 1693
Sealy, Texas 77474
***

EXHIBIT B

(see attached)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

MARC S. YOUNG	§	**CASE NO. 20-cv-2299**
	§	
	§	**LEE H. ROSENTHAL**
v.	§	Chief Judge
	§	
	§	
AZAR, et al	§	
	§	
	§	

RESPONSE TO ORDER TO SHOW CAUSE

Marc S. Young, Pro Se Plaintiff, hereby files this Response in reply to the Court Order dated July 22 to show cause. In support of this Response, Young shows the following:

1. On June 30, 2020, Young filed his Motion for Complaint and Request for Injunction (Docket Entry #1), which was revised on July 13, 2020 (Docket Entry #5, Exhibit #1) along a motion to expedite the Courts Action. The Plaintiff is seeking an injunction against an order by the Secretary of Health and Human Services and the key officers for the Center for Disease Control and Prevention., pursuant to 5 U.S.C. § 702.

2. On July 22, 2020, the Court entered an order requiring the plaintiff to show cause by August 5, 2020 as to why the plaintiff filings on their face were not frivolous and should not be dismissed by the court.

3. The court has pointed to many of the claims in the pleadings submitted both with the original (Docket Item #1) and revised complaint (Docket Item #5, Exhibit #1) and the Motion to Expedite (Docket Item #5). Rule 8(d) (3) (FRCP) allows that "*A party may state as many separate claims as it has ... regardless of consistency.*"

4. While there were many claims made, they were in an attempt to support two basic principles. The first principle is that the order by the HHS/CDC officials exceeded their regulatory authority. While it is agreed by the plaintiff the Secretary and agency is given much latitude with respect to the agency's attempts to contain a rapidly spreading virus, the agency still must act within the constraints of the powers given the agency by Congress and the President and the limitations placed on Congress itself. One of those constraints is the U.S. Constitution and another is international laws and treaties of which the United States is a signatory party with ratification by the US Senate. The second principle is whether the pandemic is stll at a level to be considered an epidemic. At the time of the original filing, June 30th, the epidemic in the U.S. appeared to be winding down. This was demonstrated by a teleconference on June 25th, [Docket Item #5, Exhibit #6] when the Director talked of a return to baseline of the excess mortality of the Pneumonia, Influenza, and COVID-19 (PIC) and the excess mortality chart [Docket Item #5, Exhibit #7] put out weekly by the CDC which had almost returned to baseline. In fact, on July 4th, the baseline was achieved below what the CDC deemed to be the epidemic line on its weekly mortality chart. However, in recent weeks, due to the rapid increase in cases in Texas, Florida, Arizona and California, which appears to be related to the reopening, and the outbreak of mass demonstration, riots and people, in general, tired of the orders on social distancing, the percentage has re-established itself above the

baseline and the epidemic line. While it is no longer possible to argue that the epidemic in the United States has waned, it is important to note that if the definition by the World Health Organization of a SARS epidemic ending (Phase 4-Phase 5 transition) is used, it requires "the epidemic to be over 28 days after the last reported case of SARS globally has been placed in isolation or died AND the source(s) and routes(s) of transmission have all been identified and contained."[1] Personally, the Plaintiff's opinion was this would seem excessive. Normally, the definition of an epidemic or outbreak is "occurrence in a community or region of cases of an illness...clearly in excess of normal expectancy."[2] This is why the return to the baseline of normal expected PIC deaths was considered to be an indicator the U.S. epidemic was waning. More on this is addressed in [19] below.

5. This court has questioned its authority to reverse an order that the Secretary and the Director has made, through a partial interpretation of the statutes Congress has passed and regulations they have set forth in 42 C.F.R. Parts 70 & 71, which if viewed in their entirety along with other obligations to which the United States has agreed, in the form of treaties, paints a much different picture of their overall authority. Yes, we are under a public health emergency, but as clearly stated by the Supreme Court in Jacobsen v Massachusetts (197 U.S. 11), this does not overrule the U.S. Constitution. The fundamental right to due process mandates the ability of a single individual to be able to appeal a fundamentally flawed order and to have their day in court. If not this court, then where is this right to be protected. The Chevron defense that the court has referenced is a powerful tool the federal bureaus have relied on to be able to pretty much do as they please, requiring the federal courts to defer to a federal

[1] WHO SARS Risk Assessment and Preparedness Framework October 2004
[2] CDC Public Health 101 webinar on CDC Website

agency's interpretation of an ambiguous or unclear statute that Congress delegates to the agency. While the language of the Statute and the regulations may appear ambiguous, with language from 42 U.S.C.§264(a) like "*is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.*", Congress explicitly limited these powers in the next sentence of the same subsection of 42 U.S.C.§264(a). "*For purposes of carrying out and enforcing such regulations, the Surgeon General{Secretary} may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and* ***other measures, as in his judgment may be necessary.***" *{emphasis added}* Clearly the Secretary judgment choices appear to be limited to the selections itemized, but again some ambiguity with respect to "***Other Measures***" unless the restrictions in §264 (b), (c) & (d) are given proper weight. In these Congress appears to put further explicit restrictions on the Secretary. In 42 U.S.C.§264(b) "*Regulations prescribed under this section* ***shall not*** *provide for the apprehension, detention, or conditional release* ***of individuals except for*** *the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary,..."{emphasis added}* and in 42 U.S.C. §264 (c) "*Except as provided in subsection (d) of this section,* ***regulations prescribed under this section****, insofar as they provide for the apprehension, detention, examination, or conditional release* ***of individuals****, shall be applicable* ***only to individuals coming into a State or possession from a***

foreign country *or a possession.*" *{emphasis added}* An explicit limitation based on this section to individuals coming into a state from a foreign country. Section 42 U.S.C.§264 (d)[3] expanded the scope of the regulations but again still explicitly limited these regulations to individuals.

6. President's Executive Order as issued by President Bush and as revised by President Obama, as authorized by Congress in the US Code, limits the ability to apply certain diseases identified by the order to anything but *individuals*, but in the CDC NO SAIL ORDERs they are being applied to "*all ships*". The Presidents' EO's explicitly identifies actions to be taken against ***individuals.*** 42 C.F.R. §70.6 explicitly states it applies to all of Part 70 of the regulations. Part 70 Regulations is further limited to interstate travel and not

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(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination ***of any individual*** *reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that* ***if upon examination any such individual is found to be infected****, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term "State" includes, in addition to the several States, only the District of Columbia.*

(2) For purposes of this subsection, the term "qualifying stage", with respect to a communicable disease, means that such disease—

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

international or foreign travel. §70.6 specifically delineates a limitation of the part {Part 70} to be applied to individuals. Part §70.2 is the section of the regulations the CDC is relying upon to claim its right to take action. Yet, like the court has stated, with respect to judicially patrolled boundaries, it would appear that the Agency erected a boundary with the regulations to place a limit on the agency to deal with individuals and not in broad terms like an industry wide NO SAIL ORDER against all ships that has resulted in a global shutdown.

7. While some may still believe that the statutes are a bit ambiguous, when the multilateral international treaties that the United States has entered into are taken into effect, which is sort of a type of wall, which if self-implementing should have the same effect as the federal statutes, the NO SAIL ORDER conflicts with the 1958 Geneva Convention on Law Of the Sea (CLOS), of which the United States is a signatory party. This conflict is with respect to Articles 2, 6 and 10 of the 1958 Treaty. A treaty which, per the U.S. State Department, is reported to still be in effect as of January 1, 2019. (No later information is available but is believed to be still in effect).

8. The NO SAIL ORDER appears to try to dictate both a manner of operation of a ship outside of U.S. jurisdictional waters and to dictate how Cruise Lines are to manage their staff and conditions of labor for all ships to enter U.S. jurisdictional waters and Ports. It is clear that the 1958 CLOS Treaty gives these duties to the Flag State of a foreign flagged ship in Article 2, 6 and 10, not the CDC. The United States has a duty to take issue with any of these issues with the foreign Flag State not the Cruise Lines. In the later, signed but not ratified UNCLOS Treaty, that the US has agreed to follow, although not bound as by a ratified treaty, this is shown in Article 94 (3)(b) which relates the duties of the Flag State. "*3. Every*

State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:" .... "(b) the manning of ships, ***labour conditions*** *and the training of crews, taking into account the applicable international instruments;"* Although the Regulations give the Secretary wide latitude, there is still a wall that the U.S. Constitution imposes and that is based on a signed, as well as ratified treaties, that have been made by this country.

9. In reviewing the NO SAIL ORDER, key provisions in order to obtain a "free pratique" required to enter a US Port and to sail in US jurisdictional waters, there appears to be a conflict with a treaty to which the United States is currently a signatory party. The World Health Organization's International Health Regulations (2005). The Articles that are in conflict are Article 28, and Article 43.

10. The International Health Regulations (IHR) which is a World Health Organization multilateral agreement, the US ratified in 2007, requires in Article 28, Paragraph 1. "*a ship or an aircraft shall not be prevented for public health reasons from calling at any point of entry.*" and in paragraph 2. " *...ships or aircraft shall not be refused free pratique by States Parties for public health reasons; in particular they shall not be prevented from embarking or disembarking, discharging or loading cargo or stores, or taking on fuel, water, food and supplies. States Parties may subject the granting of free pratique to inspection* ***and, if a source of infection or contamination is found on board****, the carrying out of necessary disinfection, decontamination, disinsection or deratting, or* ***other measures necessary*** *to prevent the spread of the infection or contamination.".* The actions being taken in the NO SAIL ORDER appear to be exactly what the United States has agreed NOT TO DO as part of

the WHO International Health Regulations. Clearly when read with this treaty provision, a unilateral "NO SAIL" provision, based the same "other measures" language appears to conflict with the explicit language and intent in the treaty Article.

11. While it is stated in Article 43, that a State Party may adopt more stringent health regulations, "***Such measures shall not be more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection.***" Is this not the example of another boundary or wall that the Secretary or Director of the CDC should not have ventured over? Clearly they are bound by United States Senate ratified treaties.

12. The plaintiff in the July 13, Motion to Expedite, (Docket Item #5) attempted to show that the statutes should have been limiting the Secretary and CDC Director to applying quarantine to an individual with the disease or proven to have been exposed to the virus, (definition of Quarantine in §71.1 "*the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease*". In the references to an individual or even a group [of individuals] the "*detention of a carrier until the completion of the measures*" cited in 42 C.F.R. § 71.31(b), which also included the language "*outlined **in this part** that are necessary to prevent the introduction or spread of a communicable disease*", appears to include measures that are defined in the part. It would appear that the first part of the subsection § 71.31(a) "*Upon arrival at a U.S. port, a carrier will not undergo inspection unless the Director determines that a failure to inspect will present a threat of introduction of*

communicable diseases into the United States, as may exist when the carrier has on board individual(s) reportable in accordance with § 71.21 or meets the circumstances described in § 71.42. Carriers not subject to inspection under this section will be subject to sanitary inspection under § 71.41 of this part." is clearly directed at a carrier with **a reported individual with a communicable disease** (e.g. *§ 71.21)*. This is clear when subsequent sections that include such "*measures*" are discussed such as Isolation and Surveillance (§71.33) Medical Examinations (§71.36) and Requirements relating to the issuance of a Federal order for quarantine, isolation, or conditional release (§ 71.37). This subsection appears to detail the due process that an individual or group subject to a quarantine, isolation, or conditional release order is entitled to receive. It clearly outlines a person's right to a reassessment after 72 hours after a federal order has been served. (§ 71.38) The individual can request a medical review in the next subsection to appeal it (§ 71.39). Would not the intent of the statutes be better served if all the words in the regulations are considered and the appropriate limitations applied. Without the order being subjec5 to the APA, it would appear the CDC is not making the order subject to an agency appeal. With no appeal to the *No Sail Order* provided to those damaged by it, the Plaintiff is denied any recourse for the continual cancellation of cruises and reduction of value he has suffered in an investment due to the agency's excessive actions. This should violate the due process clause of the Fifth Amendment of the U.S. Constitution.

13. While the regulations in 42 C.F.R. §71.32(b) read alone may appear to give the CDC the right to detain a ship, a full reading of the regulation, gives the full meaning to the regulation. §71.32(a) (a) *Whenever the Director has reason to believe that* ***any arriving***

person is infected with or has been exposed to *any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act, he/she may isolate, quarantine, or place* ***the person*** *under surveillance and* ***may order disinfection or disinfestation, fumigation, as he/she considers necessary*** *to prevent the introduction, transmission or spread of the listed communicable diseases...."* Again invoking the President's EO which is directed at individuals and SARS. Further it only invokes the sanitation requirements that have long been subject to the Sanitation Conventions and treaties to which the United States has been a signatory party which have culminated in the WHO IHR. Even as far back as 1926 the Sanitation Conventions have allowed for inspections with reasonable similar terms. Subsection §71.32(b) clearly is a continuation and implementation of these same treaty conventions. While Congress nor the agency appears to have erected a boundary, it would appear that is because there was already a wall erected based on those treaties and more lately the WHO IHR treaty. E.g. Articles 23, 24, 25, 27 & 28. In addition, the IHR has published a "Handbook for Management of Public Health Events on Board Ships" which in addition to dealing with the SARS type outbreak, deals with a multitude of other diseases and develops a manner of dealing with them in a proper risk management fashion. It outlines many of the responsibilities of the Party States, and Flag States, which the CDC is now trying to force on the Cruise Lines to resume cruising. Given the United States agreement with the WHO IHR, it would appear that the CDC and possibly the current administration wants to trample all over the current obligations this country has in our international agreements.

14. Even in the latest extension of the No Sail Order issued on the 16th of July,

extending it until September 30th, the CDC admits that even with stringent post NO SAIL ORDER shutdown requirements being imposed on the cruise lines, with only crew aboard very lax enforcement by the cruise lines has been made. The CDC seems to go at length into trying to justify their continued shutdown and No Sail Order extension based on this lax enforcement. They describe in the latest extension of the order, a fleet of 123 cruise ships, only eight currently appearing to have an active case on board. Given the difficulty the United States and particularly states like Florida, Texas, Arizona and California are having in reducing their active cases, the reduction from as many as 99 ships with an outbreak to only eight would seem a tremendous improvement and further support for the claim that the environment might have a better chance of being controlled on a ship versus a home environment. However, representations are being made by the CDC, that are not supported by any real evidence of the true risk on board of a cruise ship versus the standard risk the average person may experience in a normal home environment to justify their actions. Only doing a proper statistical study of the full data, and disclosed per Rule 705 of the Federal Rules of Evidence the data used, subject to discovery, and to peer review, can a real determination be represented by either party in this case. Only through proper data sharing can the data required to do a proper analytical study of the risks associated with onboard versus a person's home situation be analyzed.

15. The Cruise Industry appears to be lining up "Public Health Experts" to develop a CDC mandated plan for them to resume sailing, which, from the treaties mentioned above, the CDC are going beyond their jurisdiction to order. On its face, it would appear that these cruise lines are bending to a sort of administrative pressure and hiring persons that are former

employees of the same regulatory agency in an effort to placate the agency. When any agency is allowed to continue to interject itself in a manner not allowed, and to continue to order arbitrary and capricious orders, it will almost always lead to this sort of result. With no mechanism for appeal, the agency is only open to a personnal appeal to the individuals in charge. This is why the Courts are given the right to review the laws set by Congress, a right established by Chief Justice Marshall in Marbury v Madison, 5 U.S. (1 Cranch) 137 (1803).

16. Review of the acts of agencies as is allowed by the Administrative Procedures Act in §702 which states, "*A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.*" Congress in passing this act has explicitly given the federal courts this power. Unlike Chevron where cases have been shown deference to the agency's interpretation, with respect to international law, the courts have tempered their assertions of deference with the explicit and unequivocal caveat that "*courts interpret treaties for themselves*"[4]. When the federal agencies have jumped their appropriate statutory and

[4] Kolovrat v. Oregon, 366 U.S. 187, 194 (1961); see also RESTATEMENT (THIRD) ON THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 326 (1989) ("Courts in the United States have final authority to interpret an international agreement for purposes of applying it as law in the United States ....").

regulatory boundarys or treaty walls, the Federal Courts are the necessary cowboys needed to round up those strays and corral them.

17. One of the key provisions that the Secretary of HHS and the CDC officials have relied on in all of the NO SAIL ORDERs is that the nature of the orders as an emergency, and as such, claim it is out of reach of the Administrative Procedures Act. Given that this is the third extension since March 14, 2020, and over four months have elapsed, it is hard to argue that the same emergency that existed in the original March order, exists today, although the Secretary has just extended for the third time his Public Health Emergency order effective July 25, 2020. It should also be noted that a few days befroe the latest extension by the Secretary, and the 2nd extension of the CDC NO SAIL ORDER, a Public Notice (CDC-2020-0087) was sent out asking for public comment on a "Request for Information Related to Cruise Ship Planning and Infrastructure, Resumption of Passenger Operations, and Summary Questions". How ever the closing date for these comments is dated September 21, 2020. It might have been an emergency in March 2020 when little was known of the outbreak and what was cause for it. But today, four months later, and with a 100 day period since the last extension was issued, a public notice and comment could and should have been made, prior to the latest extension. Maybe some of these issues could have been raised.

18. It is a well-established principle in public health that the least intrusive method of control should be used. This is also implied in the WHO IHR in Article 43, stated in paragraph [11] above, and has been publically stated by the WHO director. However, the CDC seems to want to exercise a level of control over all operations of the cruise lines. It even seems to want to write a new set of overly burdensome regulations trying to control their

activities and operations worldwide, even if it conflicts with the Geneva Convention Law of the Sea, and the more recent UN Convention on Law of the Sea (UNCLOS) Treaty, that many of the other countries in the world are signatory parties or the WHO International Health Regulation's Articles cited throughout this Response.

19. Finally, the question has to be raised of is the response appropriate to the risk to the public. While there is little doubt that the 2019 n-CoV a.k.a. COVID-19 is a highly contagious virus, that can cause death, and does require significant health care resources in dealing with it. There is a major question as to its overall risk to the American Public. The incidence rate (number of cases) on July 25[5] in the US is 4,099,310. As a it relates to the population, this 1,226 cases per 100,000 people and is a relatively high morbidity number at 1.22%. But deaths due to COVID-19 are at 145,013.[6] This is a relatively low crude mortality rate based on population of only 43 deaths per 100,000 or 0.043%. What justified many of the original public health emergency declarations, was an anticipation this was to be a 2 to 4 million deaths in the country or about 0.6-1.2% in mortality. These higher rates were based on the 1918-1919 Spanish Flu, which had a crude mortality rate at 608 per 100,000 or 0.6% in the U.S.[7] Even the CDC on their website's page for Legal Authorities for Isolation and Quarantine[8] states: "Large-scale isolation and quarantine was last enforced during the influenza ("Spanish Flu") pandemic in 1918–1919. In recent history, only a few public health events have prompted federal isolation or quarantine orders." Clearly the COVID-19 outbreak

[5] July 25th data from https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/case-in-us.html
[6] Ibid.

[7] www.influenzaarchive.org

[8] https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html

is order of magnitude lower than the Spanish Flu. It also begs the question of is this really covered by the Pesidential EO, since all the Secretary PHE declarations refrence a novel coronavirus, or COVID-19 and not a "SARS" type virus. The Presidents EO does not designate a coronavirus, just a SARS type virus. Is the CDC really following the principle stated in [16] of using the least intrusive method, given the approximately 30 times lower crude mortality rate. Again, even the IHR references using this least intrusive method philosophy.

20. It should be noted that under the IHR, Article 24 states, "*States Parties shall take all practicable measures* ***consistent with these Regulations*** *to ensure that conveyance operators: (a) comply with the health measures* ***recommended by WHO*** *and adopted by the State Party; (b) inform travelers of the health measures recommended by WHO and adopted by the State Party for application on board; and (c)* ***permanently keep conveyances for which they are responsible free of sources of infection or contamination****, including vectors and reservoirs. The application of measures to control sources of infection or contamination may be required* ***if evidence is found.***" {emphasis added} The Ship's Captain has an equal responsibility to report to any port if his ship is found to be carrying any person that has the virus symptoms. The NO SAIL RULE seems to try to add an almost impossible layer of further health regulations, with which almost no party today in this country could comply. There is a tremendous problem with testing that has developed a number of false positives. One case in Texas that was recently in the news had over 90 persons in a nursing home falsely testing positive for COVID-19. This is effectively a complete shutdown of an industry. Even the requirements for the shutdown ships just to be able to get crew repatriated with their home

country has placed a tremendous burden on the industry. The 28 day or two week incubation period free from any COVID-19 or ***COVID-like*** illness would put most industry out of business when even one false positive could shut one down for almost a month. A rule is arbitrary, if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational. The agency has made a clear error of judgment; an action not based upon consideration of relevant factors or in this case international law.

21. The Court has in its power per 5 U.S.C. §706 (2) (A)(B) and (C) *"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall- (2) hold unlawful and set aside agency action, findings, and conclusions found to be- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; and (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;..."*

22. Justice Scalia in Erickson v. Pardus, 551 U.S. at 94, stated "Federal Rule of Civil Procedure 8(a)(2) requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Specific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." "In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." Wouldn't this also apply to this courts determination on its own as to the validity of the plaintiff's case? Further, Justice Scalia, in

the same case further stated "The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed pro se is to be "liberally construed", Estelle, 429 U. S., at 106, and "a pro se complaint", however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice")." The original complaint, as revised in Exhibit #1 of Docket Item #5, has a very simple claim that the No SAIL ORDERS are causing the plaintiff harm by causing activities he and his wife want to do to be canceled and are denying him his ability to freely associate with no right of appeal to the agency that has done it. The grounds on which it rests is the constitutional guarantee of "due process" contained in the Fifth Amendment, e.g. "nor be deprived of life, liberty, or property, without due process of law". The arguments above are indicative that the agency has exceeded its authority in taking the actions in which it has made that deprivation. The agency's proof or denial are a matter for adjudication. The Plaintiff has demanded relief, but has received none. The fact that Mr. Young, as a Pro Se plaintiff, tends to expound too much and "tends to open his mouth and spill his brains onto the table" and "writes the way he speaks" is because he is an engineer. This may be seen by the court as a bit of frivolity and a waste of the courts time. Mr. Young begs for leniency, for his lack of polished court etiquette, nor is he trying to practice law for he is not an attorney, but has tried almost every day since he has taken on this case to obtain the services of one to no avail. But doesn't Justice Scalia's words also speak to that as well. The Plaintiff simply asks for his day in court to receive the "due process" for

which he is entitled by the US Constitution and begs this court for that relief in this instance.

23. Based on the foregoing, Marc Young requests a determination from the court that there is cause to go forward in his Request for Injunction.

24. Marc Young asks for the courts forbearance in the name of allowing him his constitutionally guaranteed right to "Due Process" as is protected by the 5th Amendment in the Bill of Rights to the U.S. Constitution, and other amendments.

WHEREFORE, PREMISES CONSIDERED, Marc Young respectfully requests that this Court grant this Motion and expedite its determination of his pending Complaint and Request for an Injunction. Marc Young prays for any further or additional relief to which he may be entitled in the premises.

RESPECTFULLY SUBMITTED this the 28h day of July, 2020.

MARC S. YOUNG

BY: Marc Steven Young

PRO SE

CERTIFICATE OF SERVICE

I, Marc S. Young, do hereby certify that I served a true and correct copy of the above and foregoing document by U.S. mail of this filing to ALL COUNSEL OF RECORD.

So certified this the 28th day of July, 2020.

BY: Marc Steven Young