IN THE UNITED STATES DISRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 1:19-cv-23588-Bloom/Louis

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

MSC CRUISES (USA) INC. and
MSC CRUISES SA CO.

Defendants.

MSC CRUISES' MOTION FOR LIMITED STAY

Defendants MSC Cruises (USA) Inc. and MSC Cruises SA Co. (collectively "MSC Cruises"), through undersigned counsel, file this Motion for a Limited Stay and state as follows:

INTRODUCTION

MSC Cruises seeks a ninety-day stay of discovery given the immense impact that the COVID-19 pandemic has had on the public generally and on MSC Cruises specifically. Numerous courts, including in this district, have recognized the unprecedented impact of the COVID-19 pandemic globally—and particularly on the cruise industry—and have issued similarly-requested stays. As has been well documented in the media, those hardships include (but are not limited to) the complete suspension of all of cruise sailings, the organizational challenges that result from having its U.S. and Europe-based operations closed and its staff working from home, and most importantly, ensuring the health and safety of its staff, customers, and crew.

Disruptions in business operations, staffing limitations and remote work have created enormous challenges that impede MSC Cruises' and its counsel's ability to adequately conduct discovery and meet existing deadlines. This is compounded by the fact that potential custodians

and/or deponents and relevant documents are located in at least three countries.[1] Given that Title III has not been in effect for the approximately twenty-three years since Congress originally passed it, Plaintiff will not be unduly prejudiced by a brief further stay of its ability to pursue any claim that it may have in this forum.

To allow for this case to proceed in the most just and efficient fashion possible, the Court should allow a stay of discovery for at least 90 days to permit MSC Cruises to focus its limited resources and efforts on the immediate crisis to ensure the safety of the public, MSC Cruises' employees, and the survival of MSC Cruises' business through, and after, the COVID-19 pandemic.

PROCEDURAL BACKGROUND

I. The Court Dismissed the Case, Re-Opened the Case Upon Reconsideration and MSC Cruises Seeks Appeal of the Reconsideration Order

The Court is well familiar with the substance and procedural history of this case. *See, e.g.*, Order, D.E. 55 at 3-8. Accordingly, MSC Cruises incorporates by reference the procedural history set forth in its Motion for Certification for Interlocutory Appeal, D.E. 58 at 2-4.[2]

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[1] MSC Cruises does not waive any arguments regarding the scope of its discovery obligations, including, but not limited to, the production of documents or witnesses outside of the United States.

[2] Additionally, a stay is independently warranted in this case pending the resolution of the interlocutory appeal process sought by MSC Cruises (and other cruise defendants sued by Plaintiff). If such appeal is granted, it could be dispositive of this case and result in the termination of the litigation. Courts in this Circuit routinely grant such stays in tandem with certification orders. *See, e.g.*, *In re Pacific Forest Products*, 335 B.R. 910, 924 (S.D. Fla. 2005) (granting 1292 motion concurrently with motion to stay). The Court should exercise its inherent authority (1) to avoid the unnecessary expenditure of this Court's and the parties' resources. *See Mamani v. Berzain*, 07-22459, 2014 WL 12689038, at *3 (S.D. Fla. Aug. 18, 2014) ("Given that at least one issue certified on appeal may be dispositive of the case in its entirety, the interests of judicial economy would best be served by a stay of this case. Moreover, the Plaintiffs will suffer minimal prejudice from a further delay of this case pending appeal"). Accordingly, in the event the Court grants MSC Cruises' motion to certify the order for interlocutory appeal, this Court should stay the action in its entirety until the resolution of that appeal (which undoubtedly would be longer than 90 days).

On April 20, 2020, after the Court re-opened the case and Plaintiff filed its Amended Complaint [D.E. 56]. The Court has since issued an Amended Scheduling Order, [D.E. 57], which sets the discovery deadline on January 26, 2021.

II. Discovery Is in the Early Stages

There has been no meaningful discovery activity in this case thus far. On November 27, 2019, during the briefing of MSC Cruises' motion to dismiss, Plaintiff served broad interrogatories and document requests, including forty-six (46) separate requests for production and twenty-two (22) interrogatories issued to both defendants individually. On January 6, 2020, before the MSC Cruises' discovery responses were due, the Court dismissed the case with prejudice. Following the Court's grant of Plaintiff's Motion for Reconsideration, Plaintiff filed its Amended Complaint and has resumed its press for discovery.

LEGAL STANDARD

"It is well accepted that '[t]he District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Barnes v. CS Mktg. LLC*, No. 19-24218-CIV, 2020 WL 30373, at *1 (S.D. Fla. Jan. 2, 2020) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997)). In particular, "[m]atters pertaining to discovery are committed to the sound discretion of the district court." *Patterson v. United States Postal Serv.*, 901 F.2d 927, 929 (11th Cir. 1990); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001) ("[W]e accord district courts broad discretion over the management of pre-trial activities, including discovery and scheduling.").

"The party moving for a stay of discovery has 'the burden of showing good cause and reasonableness.' *Randy Rosenberg, D.C., P.A. v. GEICO Gen. Ins. Co.*, No. 19-CV-61422, 2019 WL 6052408, at *1 (S.D. Fla. Nov. 15, 2019) (Bloom, J.) (internal citation omitted). A stay is warranted where it will not prejudice the Court or either party and will avoid unnecessary

expenditure of judicial resources. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (courts "must weigh competing interests and maintain an even balance."); *Dunn v. Air Line Pilots Ass'n*, 836 F. Supp. 1574, 1584 (S.D. Fla. 1993) (decision to stay "is based on a balancing test"), *aff'd*, 193 F.3d 1185 (11th Cir. 1999). Courts examine factors "such as whether a stay will unduly prejudice or tactically disadvantage the non-moving party; simplify the issues and streamline trial; and reduce the burden of litigation on the parties and on the court." *Brent v. Source Interlink Distrib., LLC*, 2014 WL 4162770, at *2 (M.D. Fla. Aug. 21, 2014).

ARGUMENT

I. A Stay Is Warranted Given COVID-19 Related Hardships

The Court should grant a ninety-day stay of discovery in this case given the immense impact that the COVID-19 pandemic has had on the public generally and on the cruise lines specifically. The COVID-19 crisis has caused an unprecedented disruption to the operations of the cruise line industry, with sailings coming to a complete halt. MSC Cruises' main priority throughout this crisis continues to be the safety of its staff, customers, and crew. Consequently, MSC Cruises has diverted substantial resources to address their needs and does not have the resources or manpower to satisfy its discovery obligations in a timely or effective manner.

Although there can of course be no guarantee,[3] MSC Cruises anticipates at present that the immediate and increased allocation of its resources to address the novel travel safety, employment, and corporate operations issues will have subsided enough within ninety days to allow it to adequately engage in discovery. Finally, this stay will not cause any prejudice to Plaintiff.

[3] Given the uncertainty surrounding the pandemic, some courts have granted initial stays with the option to revisit the issue after the duration of the stay through status reports or renewed motions. *See, e.g.*, *Collier v. California*, 2020 U.S. Dist. LEXIS 50916, *1 (S.D. Cal. Mar. 24, 2020) (granted a motion to stay all proceedings indefinitely and directed the parties to submit a joint status report every thirty days "on their current working conditions and abilities to properly litigate this case").

A. Background on the COVID-19 Pandemic

As Magistrate Judge Goodman recently described the current situation:

> The entire world is in the midst of a pandemic. Thousands of people worldwide have contracted the Corona virus and there have been hundreds of virus-caused deaths in the United States. Millions of Americans have been ordered to remain in their homes. Millions more have lost their jobs in the past two weeks. The stock market has taken a brutal beating in the last two to three weeks. Many people are scared. Others are panicked. Everyone is unsure about the future. Cruises have been canceled and all the major airlines have severely curtailed their flights.
>
> We are living in an unprecedented situation.

C.W. v. NCL (Bahamas) Ltd., No. 1:19-cv-24441-CMA, D.E. 38 (S.D. Fla. Mar. 21, 2020).

On March 13, 2020, President Donald Trump declared a national emergency in response to the novel COVID-19 outbreak in the United States. *See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, The White House (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/. In an effort to limit the spread of COVID-19, Florida Governor Ron DeSantis issued a state-wide "stay at home" order. *See* Fla. Exec. Order No. 20-91 (Apr. 1, 2020). Governor DeSantis also issued public restrictions for all of Southern Florida, including Broward county, the county in which the MSC Cruises maintain its only United States office. *See id.* No. 20-89 (Mar. 30, 2020). These orders restricting the ability to travel outside of one's home have created unprecedented challenges for workers who are now working from home, if their job allows them to, while caring for children who cannot go to school, and straining the resources of companies' abilities to operate remotely for an extended period of time.

B. COVID-19 Virus' Impact to the Cruise Industry

The cruise line industry has been drastically affected by the pandemic, with the entire sector coming to a screeching halt.[4] The Center for Disease Control and Prevention ("CDC") issued a No-Sail Order that shutters the entire cruise industry until at least July 24, 2020. *See* CDC, *CDC Announces Modifications and Extension of No Sail Order for All Cruise Ships*, available at https://www.cdc.gov/media/releases/2020/s0409-modifications-extension-no-sail-ships.html (last accessed Apr. 23, 2020). This order has a widespread impact on the economy, particularly in Southern Florida as "[t]he cruise industry is a vital artery of the U.S. economy, supporting over 421,000 American jobs, with every 30 cruisers supporting one U.S. job." *See CLIA Announces Voluntary Suspension in U.S. Cruise Operations*, Cruise Lines Int'l Ass'n (Mar. 13, 2020), https://cruising.org/news-and-research/press-room/2020/march/clia-covid-19-toolkit.

C. A Limited Stay During the COVID-19 Crisis is Warranted Given the Extraordinary Circumstances and Impacts on MSC Cruises

1. This Court and Others Have Granted Stays or Extensions Due to the Pandemic

Courts around the country, including this Court, have found that discovery stays of at least 60 to 90 days are warranted due to the pandemic. *See, e.g.*, *Kleiman v. Wright*, No. 18-CV-80176, 2020 WL 1472087, at *2 (S.D. Fla. Mar. 26, 2020) (Bloom, J.) (recognizing that the "global pandemic caused by the COVID-19 virus has spread across the world and has caused extensive

[4] *See* Sherisse Pham, CNN Business, April 1 2020 12:26 AM ET, https://www.cnn.com/2020/04/01/business/carnival-cruise-debt-coronavirus/index.html, (last accessed April 28, 2020) ("More than 50 cruise lines are suspending operations to and from US ports for 30 days due to the 'unprecedented situation' of the coronavirus pandemic, according to a cruise line trade association. . . . Even once the pandemic subsides and people who have been hunkering down for months begin to travel and book vacations again, Hardiman warned that very few will look to set sail for the open seas."); CNBC, https://www.cnbc.com/2020/04/05/carnivals-struggle-to-survive-the-coronavirus-as-outbreak-wipes-out-the-cruise-industry.html (last accessed April 23, 2020) ("The COVID-19 outbreak has laid waste to entire sectors of the global economy, but none faster than the cruise industry. The pandemic has basically shut down the cruise-ship business.").

logistical problems for businesses on a nationwide scale, including courts throughout the nation" and "workforces across the nation are stretched thin" such that an amendment to the scheduling order is appropriate); *Garbutt v. Ocwen Loan Servicing, LLC*, 2020 WL 1476159, at *1 (M.D. Fla. Mar. 26, 2020) (staying discovery until June 1, 2020 because "Defendant and its counsel is required to work from home, limiting their ability to access information for discovery"); *Sifuentes v. Ola*, 2020 U.S. Dist. LEXIS 69092, *2 (E.D. Cal. Apr. 20, 2020) (granting 90-day extension based on declaration submitted defendant; "given the current COVID-19 crisis, it is not feasible to complete discovery or complete a dispositive motion by the deadlines in the court's Scheduling Order"); *Bryant v. Boyd*, No. 1:18-CV-117-SEP, 2020 U.S. Dist. LEXIS 53618, at *5 (E.D. Mo. Mar. 27, 2020) (granting a stay of discovery where the "breadth of discovery in this case is substantial, and the Covid-19 pandemic will only compound the difficulty the parties have experienced obtaining discovery. A stay will cause Bryant no unfair prejudice"); *Life Time, Inc. v. Cherrish Corp.*, No. 19-cv-02651-JNE-KMM, 2020 U.S. Dist. LEXIS 52685, at *9 (D. Minn. Mar. 26, 2020) (extending "scheduling order deadlines by an additional 90 days across the board" due the pandemic); *Redding v. Griffith*, No. 2:18-cv-01536-BAT, 2020 U.S. Dist. LEXIS 52256, at *3 (W.D. Wash. Mar. 24, 2020) ("[I]n light of the unprecedented public health emergency posed by COVID-19, the Court will grant a sixty-day continuance of all deadlines in this matter.").

2. MSC Cruises' Ability to Engage in this Litigation is Limited

Throughout this crisis, MSC Cruises—and the larger MSC Cruises organization as a whole ("MSCC Organization")—have redirected their manpower and resources exclusively on navigating this extraordinary crisis. Beginning on March 14, 2020, MSC Cruises halted its entire fleet and has subsequently extended the cancellation of all sailings through July 10, 2020 "due to the evolving COVID-19 coronavirus crises." MSC CRUISES USA, https://www.msccruisesusa.com/en-us/Cruise-Changes-COVID19.aspx (May 1, 2020).

Suspension of MSC Cruises' operations will be even longer than that, however, due to the CDC's No-Sail Order through July 24. MSC Cruises' priority has been, and continues to be, the safety of its staff, customers, and crew. *See id.* ("This decision wasn't taken lightly; but the health and safety of our guests and crew members is our top priority."). MSC Cruises has accordingly re-directed its resources to deal with the operational challenges of addressing its staff's, customers' and crew's health concerns and implementing measures to ensure the health and safety of future guests and crew, including the decontamination of its vessels.

The impacts to MSC Cruises' employees and operations are only a small piece of the puzzle. The MSCC Organization's operations—of which MSC Cruises is only a part—are run from key offices in both Geneva, Switzerland and in Italy, countries that has been among the most severely affected by the pandemic. Each of these countries have instituted indefinite lockdowns which have confined MSCC Organization's employees to remote work at best.

The practical challenges of engaging in this litigation during this pandemic are substantial. First, MSC Cruises and its counsel cannot adequately conduct a comprehensive fact-gathering process to prepare a litigation strategy, which includes establishing defenses and responding to discovery requests. The lockdown has put a strain on the attorney-client relationship: The MSCC Organization's principals and in-house counsel, which are located both in the United States and Switzerland—are separated from one another in their respective homes and countries. These critical decisionmakers have focused the MSCC Organization's efforts on the pressing issues of health and safety of employees and future passengers for the foreseeable future. No one knows how long disruptions caused by remote working and/or limitations on travel will last.

Second, MSC Cruises cannot adequately and feasibly respond to discovery requests when staffing is limited and travel is banned. With limited staffing, it is difficult to interview or even

discuss the subject matter of the litigation with document custodians or potential deponents across at least three countries. Documents and electronic document repositories are also difficult, if not impossible, to access in light of social-distancing and lockdown orders. Responsive documents and ESI may be located in at least three countries that are among "the hardest hit"[5] by the pandemic: the United States, Italy and Switzerland. Access and collection are, of course, not the only concerns given that transfer, processing, and review would also require significant costs and resources.[6] *See, e.g.*, *United States ex rel. Bruno v. Schaeffer*, 2020 U.S. Dist. LEXIS 72603, *12-13 (M.D. La. Apr. 24, 2020) ("Even so, while requiring a production to be made or further document review be completed may be appropriate under normal circumstances, given the state of affairs throughout the country as a result of the COVID-19 pandemic, the Court finds it appropriate to stay this case in its entirety, including all pending discovery."). As a result, the shutdown of these offices has made it difficult, if not, impossible to answer discovery requests because MSC Cruises (i) cannot collect documents and (ii) in many instances, needs to refer to or review documents only available in the office to adequately respond.

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[5] *See* SWISS INFO, https://www.swissinfo.ch/eng/covid-19_coronavirus--the-situation-in-switzerland/45592192 (last accessed April 28, 2020) ("Switzerland is among the countries most affected by the pandemic in Europe" and the Swiss government issued a country-wide shutdown on March 16, which has been in effect for over six weeks).

[6] It is possible that both the European Union's and Switzerland's data privacy laws may apply. Given the stringency of these laws, their applicability could dramatically slow or even prohibit the transfer of some documents to the United States even without the disruption to government agencies and businesses caused by the pandemic. *See* Lawyers for Civil Justice, https://www.lfcj.com/uploads/1/1/2/0/112061707/lcj_gdpr_checklist_orrick.pdf ("[R]esponsive emails containing the email addresses of EU-based employees stored on a server in the U.S. by a U.S. company would be covered by the GDPR and could thus not be collected, reviewed or produced in discovery without first complying with the GDPR.").

3. The Requested Stay is Reasonable and Supported by Good Cause

The requested stay in this case is both reasonable and supported by good cause. Any delay that may result from staying the case is necessary due to the extraordinary hardships resulting from the protective measures being taken globally to combat COVID-19, which are outside of the parties' control. These hardships are magnified when it comes to the cruise line industry given that its operations have grounded to a complete halt.

The substantial prejudice MSC Cruises would face if it were required to engage in discovery within the next 90 days substantially outweighs the need to maintain an ordinary discovery schedule during an extraordinary time. MSC Cruises and its counsel are and will continue to be limited in their ability to (1) conduct a complete fact-gathering and prepare adequate written discovery responses due to remote working, (2) collect documents and identify custodians/deponents, and (3) review documents, particularly if contract attorneys are necessary, due to social distancing.

These issues are compounded by the breadth of Plaintiff's document requests. Plaintiff's 46 document requests effectively amount to demanding every single document related to MSC Cruises' U.S.-to-Cuba cruise travel, including but not limited to:

- "All documents, communications and studies . . . *before and after* MSC USA commenced providing carrier services to Cuba related to the prospect of MSC USA offering cruises to Cuba," (Doc. Request No. 12)
- All documents and communications among MSC USA employees or between MSC USA and the United States government, Cuban Government or anyone else in Cuba "relating to MSC USA's carrier services from the United States to Cuba," (Nos. 7, 10, 16)
- All documents and communications "sufficient to identify all the destinations in the world MSC USA anchors . . . for any of its ships offshore," (No. 15)
- All "marketing and advertising materials . . . concerning its carrier services to Cuba" (Nos. 19 and 20); and

- "All documents sufficient to identify all passengers who travelled to Cuba with MSC USA," including each (i) voyage manifest, (ii) passenger visas and (iii) passenger's "completed 'Guest Affidavit for Travel to Cuba' forms." (Nos. 22-24, 25).

In short, discovery in this case is wide-ranging, complex, and will likely be expensive and protracted. MSC Cruises should be able to respond to and engage in discovery when it has the ability to adequately focus its energies on this litigation.

Courts have granted stays or extensions based on the specific hardships MSC Cruises and other cruise industry defendants now raise in their respective motions. For example, in *Libutan v. MGM Grand Hotel LLC*, No. 220CV00304RFBNJK, 2020 WL 1434440 (D. Nev. Mar. 24, 2020), the court entered a 60-day stay of discovery and all proceedings due to the impacts the pandemic had on MGM Grand's operations:

> Navigating the COVID-19 local, national, and global public health emergency has imposed an enormous drain upon MGM Grand's resources. This unprecedented disruption in MGM Grand's business would cause extreme difficulty in its participation in an Early Neutral Evaluation . . . Moreover, <u>the unavailability of witnesses and documents due to the closure of MGM Grand will significantly infringe on both parties' ability to 'meaningfully participate in the discovery process</u>,' which is an appropriate basis for staying proceedings.

Id. at *2 (emphasis added).

In fact, several Judges in this District have already recognized the drastic impact of COVID-19 on certain parties' ability to perform pre-trial activities—including cruise lines, airlines, and travel companies—and have not hesitated to grant reasonable stays where appropriate. *See Roguerio v. American Airlines*, No. 19-cv-23965, D.E. 85 (S.D. Fla. April 6, 2020) (Martinez, J.) (granting 60 day renewable stay and administratively closing case "[g]iven the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions and worldwide pandemic, and to conserve the parties' and judicial resources"); *C.W. v. NCL (Bahamas) Ltd.*, No. 19-cv-24441, D.E. 38 (S.D. Fla. Mar. 21, 2020) (finding "it [is not] rational to expect defense counsel to enlist assistance from cruise ship attorneys and other

employees (e.g., to track down documents and information) to adequately prepare the corporate representative when the entire cruise ship industry is on lockdown and thousands of employees have been let go"); *Id.* at D.E. 41 (March 31, 2020) (Altonaga, J.) (staying case "[g]iven the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions, and to conserve the parties' and judicial resources"); *Mata v. Expedia*, No. 19-cv-22529, D.E. 122 (S.D. Fla. March 13, 2020) (Altonaga, J.) (staying discovery and administratively closing case "[g]iven it is impossible to proceed with the orderly progress of the case due to the uncertainty regarding the duration of travel restrictions, and to conserve the parties' and judicial resources").

As numerous Courts, including those in this district, have recognized, the unprecedented circumstances caused by the COVID-19 pandemic warrant a stay. *See*, *supra*, Section I.C.1. For MSC Cruises, and others in the cruise industry, the ongoing difficulties of working remotely with limited staff and resources against the COVID-19 backdrop present profound logistical issues for the fact-intensive discovery ahead in this action. Moreover, Plaintiff—who is not seeking emergency relief on any matter in this action—will not be prejudiced by this limited stay. Thus, given the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions and the worldwide pandemic, and to conserve the parties' and judicial resources, this Court should stay the case for ninety days.

CONCLUSION

For the foregoing reasons, the Court should enter an Order granting this Motion and staying discovery case for ninety days due to hardships attributable to the COVID-19 global pandemic, or, if this Court grants MSC Cruises' motion to certify for interlocutory appeal (D.E. 58), stay the action entirely until resolution of that appeal.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), counsel for MSC Cruises certifies that he has conferred with opposing counsel on April 30, 2020, and Plaintiff opposes the relief sought herein.

Dated: May 4, 2020

Respectfully submitted,

/s/ J. Douglas Baldridge

J. Douglas Baldridge (Florida Bar No. 708070)
Andrew T. Hernacki (admitted *pro hac vice*)
Justin B. Nemeroff (admitted *pro hac vice*)
VENABLE LLP
600 Massachusetts Avenue
Washington, D.C. 20001
T: (202) 344-4703
F: (202) 344-8300
JBaldridge@venable.com
ATHernacki@venable.com
JBNemeroff@venable.com

Counsel for MSC Cruises

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May 2020, a copy of the foregoing was filed through the Court's CM/ECF management system and electronically served on counsel of record.

/s/ J. Douglas Baldridge

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HAVANA DOCKS CORPORATION,

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Defendants.

[PROPOSED] ORDER GRANTING MSC CRUISES' MOTION FOR LIMITED STAY

THIS CAUSE is before the Court on Defendants MSC Cruises' Motion for a Limited Stay ECF No. [64] (the "Motion"). Upon review of the Motion, it is

ORDERED AND ADJUDGED that the Motion is GRANTED; and

All discovery deadlines in this case shall be stayed for ninety (90) days from the date of this Order.

DONE and ORDERED in Chambers in Miami, Florida on this ____ day of May 2020.

_____
BETH BLOOM
UNTIED STATES DISTRICT JUDGE

Copies to all counsel of record