UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-22227-Civ-WILLIAMS/TORRES

JAMES STORM,

Plaintiff,

v.

CARNIVAL CORPORATION,
a Panamanian Corporation d/b/a
CARNIVAL CRUISE LINES *et al.*,

Defendants.

_____/

REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on the Caymanian Land & Sea Cooperative Society's ("Defendant" or "Caymanian") motion to dismiss James Storm's ("Plaintiff") first amended complaint ("FAC"). [D.E. 30]. Plaintiff responded on November 20, 2020 [D.E. 33] to which Defendant replied on December 4, 2020. [D.E. 38]. Therefore, Defendant's motion is now ripe for disposition. After careful consideration of the motion, response, reply, relevant authority, and for the reasons discussed below, Defendant's motion to dismiss should be **GRANTED**.[1]

[1] On August 25, 2020, the Honorable Kathleen Williams referred Carnival's motion to the undersigned Magistrate Judge for disposition. [D.E. 22].

I. BACKGROUND

Plaintiff filed this action on May 28, 2020 [D.E. 1] for injuries sustained onboard the *Carnival Miracle* while participating in a shore excursion that Caymanian operated on July 9, 2019. Plaintiff alleges that, as the excursion neared its end, crewmembers called passengers back onto the excursion boat. Plaintiff returned to the boat, dried off, and told his wife that he needed to use the restroom below deck. Plaintiff began to walk down stairs to his cabin when he suddenly realized that the floor was wet and he slipped. His right middle finger then became caught on something sharp. As he fell, the top portion of his middle finger was severed from the rest of his hand. One of the crewmembers discarded the severed portion of the finger in the trash and the captain of the excursion told Plaintiff that it could not be re-attached. The captain then applied first aid and Plaintiff boarded the cruise ship.

Once onboard the cruise ship, Carnival's physician evaluated Plaintiff and continued treatment on his finger. Plaintiff reported that he was in extreme pain and an x-ray was taken. The physician cleaned the wound, gave Plaintiff a tetanus shot, and instructed him to take some powerful pain medication. Carnival later administered antibiotics intravenously and gave Plaintiff oral medication to take twice daily for the remainder of the cruise. Carnival advised Plaintiff to elevate his right arm/hand while resting and during sleep. Plaintiff returned to the ship's medical clinic for follow up treatment and wound cleanings over the next several days. After the cruise, because Carnival and the excursion operators were negligent

and caused substantial injuries, Plaintiff filed a twelve-count complaint for damages under federal maritime law.

II. APPLICABLE PRINCIPLES AND LAW

A court must dismiss or transfer an action when it lacks personal jurisdiction. *See Verizon Trademark Servs., LLC v. Producers, Inc.*, 810 F. Supp. 2d 1321, 1323–24 (M.D. Fla. 2011). "A plaintiff seeking to establish personal jurisdiction over a nonresident defendant 'bears the initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction.'" *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013) (quoting *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). To defeat a defendant's motion to dismiss for lack of personal jurisdiction, a plaintiff "must establish *a prima facie* case of personal jurisdiction over a nonresident defendant by presenting enough evidence to withstand a motion for directed verdict." *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1317 (11th Cir. 2006) (citing *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990)). A prima facie case requires factual allegations "with reasonable particularity" that there is the possible existence of sufficient "contacts between [the party] and the forum state." *Mellon Bank PSFS v. Farino,* 960 F.2d 1217, 1223 (3d Cir. 1992) (citing *Provident Nat. Bank v. California Fed. Sav. & Loan Assoc.*, 819 F.2d 434 (3d Cir. 1987)).

When a defendant challenges jurisdiction and submits an affidavit as supporting evidence, "the burden traditionally shifts back to the plaintiff to produce

evidence supporting jurisdiction," *Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1269 (11th Cir. 2002), as long as the affidavit contains "specific factual declarations within the affiant's personal knowledge." *Louis Vuitton*, 736 F.3d at 1351. If a defendant's affidavit only contains conclusory assertions, the burden does not shift. *See id.* at 1351. When a defendant satisfies this burden, the plaintiff, in order to justify the exercise of jurisdiction, must "substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof, and not merely reiterate the factual allegations in the complaint." *Polskie Linie Oceaniczne v. Seasafe Transport A/S*, 795 F.2d 968, 972 (11th Cir. 1986); *see also Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000) (finding that once the burden shifts back, a plaintiff must substantiate jurisdictional allegations with affidavits, testimony, or other evidence). "Where the evidence conflicts . . . the district court must construe all reasonable inferences in favor of the plaintiff." *Van Vechten v. Elenson*, 920 F. Supp. 2d 1284, 1289 (S.D. Fla. 2013) (citing *PVC Windoors, Inc. v. Babbitbay Beach Const., N.V.*, 598 F.3d 802, 810 (11th Cir. 2010)). "If such inferences are sufficient to defeat a motion for judgment as a matter of law, the court must rule for the plaintiff, finding that jurisdiction exists." *PVC Windoors, Inc.*, 598 F.3d at 810.

Whether a court has personal jurisdiction is governed by a two-part analysis. The first step is to "ensure that it has personal jurisdiction over the defendant under the [s]tate's long-arm statute." *USA Mgmt. Grp., LLC v. Fitness Publications, Inc.*, 2015 WL 11233075, at *1 (S.D. Fla. Mar. 4,

2015) (citing *Cable/Home Commc'n Corp. v. Network Prods., Inc.*, 902 F.2d 829, 855–56 (11th Cir. 1990)). "When a federal court uses a state long-arm statute, because the extent of the statute is governed by state law, the federal court is required to construe it as would the state's supreme court." *Lockard v. Equifax, Inc.*, 163 F.3d 1259, 1265 (11th Cir. 1998); *see also Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino,* 447 F.3d 1357, 1361 (11th Cir. 2006).

The relevant long-arm statute in this case is Florida. This means that Defendant "can be subject to personal jurisdiction under Florida's long-arm statute in two ways: first, section 48.193(1)(a) lists acts that subject a defendant to specific personal jurisdiction—that is, jurisdiction over suits that arise out of or relate to a defendant's contacts with Florida, Fla. Stat. § 48.193(1)(a); and second, section 48.193(2) provides that Florida courts may exercise general personal jurisdiction—that is, jurisdiction over any claims against a defendant, whether or not they involve the defendant's activities in Florida-if the defendant engages in 'substantial and not isolated activity' in Florida, *id.* § 48.193(2)." *Tarasewicz v. Royal Caribbean Cruises Ltd.*, 2015 WL 3970546, at *19 (S.D. Fla. June 30, 2015) (quoting *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1204 (11th Cir. 2015)); *see also Johns v. Taramita,* 132 F. Supp. 2d 1021, 1027 (S.D. Fla. 2001) ("[A] federal court must look to the long-arm statute of the state where it sits and the cases that interpret that statute.") (citing *Associated Transport Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, S.A.*, 197 F.3d 1070, 1072–74 (11th Cir. 1999) (applying Florida long-arm statute to determine whether personal

jurisdiction exists over defendant to suit in admiralty); *Shaffer v. Tiffany Yachts, Inc.*, 1996 WL 870734, *2 (S.D. Fla. Oct. 31, 1996) (same)). The Florida Supreme Court has construed the state's long-arm statute in a way that it "bestows broad jurisdiction on Florida courts" when a nonresident defendant "commits a 'tortious act' on Florida soil." *Execu-Tech Bus. Sys. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000).

If a state's long-arm statute is satisfied, the second step is to "'analyze this long-arm jurisdiction under the due process requirements of the federal constitution.'" *USA Mgmt. Grp.*, LLC, 2015 WL 11233075, at *1 (quoting *Cable/Home Commc'n Corp.*, 902 F.2d at 857). That analysis depends on whether general and/or specific jurisdiction is claimed. Generally speaking, "[s]pecific jurisdiction arises out of a party's activities in the forum that are related to the cause of action alleged in the complaint." *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000) (citing *Madara,* 916 F.2d at 1516 n.7, *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414 nn.8-9 (1984)). The amount of minimum contacts required to support specific jurisdiction occurs when a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla,* 357 U.S. 235, 253 (1958).

On the other hand, general jurisdiction "arises from a defendant's contacts with the forum that are unrelated to the cause of action being litigated." *Consol. Dev. Corp.*, 216 F.3d at 1292. "The due process requirements for general personal

jurisdiction are more stringent than for specific personal jurisdiction, and require a showing of continuous and systematic general business contacts between the defendant and the forum state." *Id.* (citing *Borg–Warner Acceptance Corp. v. Lovett & Tharpe, Inc.*, 786 F.2d 1055, 1057 (11th Cir. 1996)). General personal jurisdiction occurs in "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities." *International Shoe v. Washington,* 326 U.S. 318 (1945).

The U.S. Supreme Court has established that general jurisdiction ordinarily exists when it comports with a defendant's place of incorporation or its principal place of business. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014) ("Those [two] affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable."). But, to be clear, the Court has not held that *only* a corporation's place of incorporation or its principal place of business may suffice for general jurisdiction. The Court has merely indicated that those two places are the most common ways of establishing general jurisdiction. *See Daimler AG*, 134 S. Ct. at 760 ("*Goodyear* did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums.").

The due process analysis turns on whether a defendant has "certain minimum contacts with the forum, so that the exercise of jurisdiction does not

offend traditional notions of fair play and substantial justice." *Consol. Dev. Corp.*, 216 F.3d at 1291 (citing *International Shoe,* 326 U.S. 316; *Borg–Warner Acceptance Corp.*, 786 F.2d at 1057). This prong "imposes a more restrictive requirement" than the first one because it requires that a defendant avail itself of the forum state. *See Execu-Tech Bus. Sys.*, 752 So. 2d at 584. It "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Importantly, a defendant's "unilateral activity . . . cannot satisfy the requirement of contact with the forum State," because "it is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum State[.] *Kulko v. Superior Court of California In and For City and County of San,* 436 U.S. 84, 93-94 (1978) (citation omitted). The Supreme Court has further explained that "an essential criterion in all cases is whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State." *Id.* at 92. As such, courts cannot find that the second prong has been met when a nonresident defendant's contacts are "so 'random,' 'fortuitous,' or 'attenuated' that it cannot fairly be said that the potential defendant 'should reasonably anticipate being haled into court' in another jurisdiction." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 486 (1985) (citation

omitted); *see also Kulko,* 436 U.S. at 92 (holding that a defendant's mere "glancing presence" in a State is insufficient to establish minimum contacts).

III. ANALYSIS

Defendant's motion seeks to dismiss Plaintiff's FAC for lack of personal jurisdiction. Plaintiff opposes the motion because, although Caymanian is an entity based in the Cayman Islands, the company "committed one or more of the acts stated in Florida Statutes, §§ 48.081, 48.181 and/or 48.193[.]" [D.E. 14 at ¶ 6(d)]. The act that Plaintiff relies on the most is a conferral of jurisdiction clause that Caymanian agreed to when it signed a contract with Carnival in the operation of a shore extrusion. Plaintiff also argues that specific jurisdiction exists because Caymanian contracted to insure Carnival in this forum for any and all injuries to guests and damages to property. However, even if those acts fail to give rise to specific jurisdiction, Plaintiff reasons that general jurisdiction exists because Carnival marketed the shore excursion through its website and targeted Florida residents. And Plaintiff further contends that jurisdiction exists under Fed. R. Civ. P. 4(k)(2) because there is ample evidence that Caymanian has sufficient contacts with the United States as a whole. If all of Plaintiff's arguments fall short, he requests, as a last resort, leave to conduct jurisdictional discovery.

A. Whether Specific Jurisdiction Exists

Turning first to whether specific jurisdiction exists under Florida's long-arm statute, certain acts that cause injuries in Florida may allow for a nonresident defendant to be sued in this state. *See* Fla. Stat. § 48.193 ("A person . . . who

personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself . . . to the jurisdiction of the courts of this state for any cause of action arising from . . . [c]omitting a tortious act within this state."). This means that a defendant's physical presence in Florida is not necessarily required and that a "nonresident defendant's telephonic, electronic, or written communications into Florida" may be sufficient so long as the cause of action arises from these communications. *Wendt v. Horowitz,* 822 So. 2d 1252, 1260 (Fla. 2002).

"'[A] fundamental element of Florida's specific jurisdiction calculus is that [a] plaintiff's claim must arise out of or relate to at least one of the defendant's contacts with the forum.'" *Fraser v. Smith,* 594 F.3d 842, 850 (11th Cir. 2010) (quoting *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1222 (11th Cir. 2009) (internal quotation marks omitted)); *see also Resource Healthcare of Am., Inc. v. McKinney,* 940 So. 2d 1139, 1143 (Fla. 2d DCA 2006) (holding that Florida's long-arm statute "confers jurisdiction over parties who operate, conduct, engage in, or carry on a business or business venture in this state or have an office or agency in this state for any cause of action *arising from the 'doing of' those acts.*") (emphasis added). Therefore, "[o]ur inquiry must focus on the direct causal relationship between the defendant, the forum, and the litigation." *Fraser,* 594 F.3d at 850 (internal quotation marks omitted) (quoting *Helicopteros,* 466 U.S. at 413).

Plaintiff argues that specific jurisdiction exists in this case because Caymanian entered into a Standard Shore Excursion Agreement (the "Agreement")

with Carnival, where Caymanian consented to the jurisdiction of the Southern District of Florida:

> In the event of litigation, the prevailing party shall be entitled to recover all costs incurred in connection with the litigation, including, without limitation, reasonable attorney's fees. OPERATOR consents to the personal jurisdiction over it and to the venue of the courts serving the Southern District of Florida in the event of any lawsuit to which CARNIVAL is a party and which is related to, in connection with, arising from or involving the Shore Excursion or the terms of this Agreement.

[D.E. 30-1 at 7].

Plaintiff relies primarily on two provisions under Florida law to enforce this clause – namely, sections 685.101 and 685.102 – because they allow courts to exercise personal jurisdiction in certain circumstances not otherwise provided for under Florida's long-arm statute. "When sections 685.101 and 685.102 are satisfied, personal jurisdiction may be exercised and the courts may dispense with the more traditional minimum contacts analysis." *Corp. Creations Enterprises LLC v. Brian R. Fons Attorney at Law P.C.*, 225 So. 3d 296, 301 (Fla. 4th DCA 2017) (citing *Medytox Diagnostics, Inc. v. Samuels*, 2014 WL 12606310, at *5 (S.D. Fla. July 18, 2014)). Sections 681.101 and 685.102 allow parties to confer jurisdiction on Florida courts with the signing of a contract if five jurisdictional requirements are satisfied:

> To satisfy the statutory requirements, the contract, agreement, or undertaking must (1) include a choice of law provision designating Florida Law as the governing law, (2) include a provision whereby the non-resident agrees to submit to the jurisdiction of the courts of Florida, (3) involve consideration of not less than $250,000, (4) not violate the United States Constitution, and (5) either bear a substantial or reasonable relation to Florida or have at least one of the

parties be a resident of Florida or incorporated under its laws. *Jetbroadband WV, LLC v. MasTec N. Am., Inc.*, 13 So. 3d 159, 162 (Fla. 3d DCA 2009). "Thus, as long as one of the parties is a resident of Florida or incorporated under its laws, and the other statutory requirements are met, sections 685.101–.102 operate irrespective of whether the underlying contract bears any relation to Florida and notwithstanding any law to the contrary." *Id.* (citing §§ 685.101 and 685.102, Fla. Stat.). Because the Agreement in this case meets all five statutory requirements, Plaintiff concludes that this confers personal jurisdiction and that there is no need to conduct the more traditional minimum contacts analysis.

Plaintiff argues that the Eleventh Circuit's decision in *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1312–13 (11th Cir. 2018) is instructive on this point because the Court found in that case that personal jurisdiction is a waivable right, and that is what Caymanian did when it agreed to the conferral of jurisdiction clause:

> Even where neither the forum state's long-arm statute nor the due process minimum contacts analysis is satisfied, a court may exercise personal jurisdiction over a party if the party consents. "[A] litigant may give express or implied consent to the personal jurisdiction of the court." Parties may, for example, contract or stipulate "to submit their controversies for resolution within a particular jurisdiction." Where these agreements are "freely negotiated" and not "unreasonable [or] unjust," their enforcement does not offend due process.

Id. (internal citations omitted). Plaintiff's reliance on *Waite* is somewhat overstated because the principles that the Court identified were established long ago. Plaintiff makes it appear as though *Waite* set forth some new principle of law with respect to personal jurisdiction being a waivable right. But, *Waite* did no such thing. The

Supreme Court identified that principle more than half a century ago. *See, e.g.*, *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964) (consent to personal jurisdiction by contract); *Petrowski v. Hawkeye-Sec. Ins. Co.*, 350 U.S. 495, 495-96 (1956) (consent to personal jurisdiction by stipulation).

The issue instead is whether a contract between a cruise line and an excursion operator provides sufficient grounds for a federal court to exercise jurisdiction in a personal injury action commenced by a non-signatory plaintiff.[2] And there are at least two decisions in our district that support Plaintiff's position. In *Steffan v. Carnival Corp.*, 2017 WL 4182203, at *4–7, (S.D. Fla. Aug. 1, 2017), the plaintiff presented claims for negligence and breach of a third-party beneficiary contract. The court examined the five factors enumerated above and concluded that personal jurisdiction existed. However, that decision does not carry much weight because the defendant failed to file a response to the jurisdictional issues. *Id.* at *1 n.1. It therefore appears that the court did not have the benefit of the defendant's briefing and relied wholly on the plaintiff's arguments in finding that personal jurisdiction existed.

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[2] Plaintiff's position, at the outset, is on shaky ground because sections 685.101 and 685.102 "must be strictly construed and any doubts about the applicability of the statute [must be] resolved in favor of the defendant and against a conclusion that personal jurisdiction exists." *Schuster v. Carnival Corp.*, 2011 WL 541580, at *3 (S.D. Fla. Feb. 8, 2011) (internal citations and quotation marks omitted). Significantly, sections 685.101 and 685.102 do not address third-party beneficiaries and only contemplate enforcement of a contract by a party to a contract against another party. *See* Fla. Stat. § 685.101(1) ("The parties to any contract"). While this was not an issue that the parties raised, it potentially undermines Plaintiff's entire theory of specific jurisdiction against Caymanian without even considering all the other shortfalls identified in this Report and Recommendation.

The second decision is *Lienemann v. Cruise Ship Excursions, Inc.*, 349 F. Supp. 3d 1269 (S.D. Fla. 2018), where a district court relied almost entirely on *Steffan* and found that jurisdiction existed due to an excursion contractor agreement. There, the defendants entered into an excursion contractor agreement governing excursion tickets. *Id.* at 1271. Plaintiff sued for negligence and breach of a third-party beneficiary contract for injuries resulting from an excursion. *Id.* After examining the five factors, the court denied the defendants' motion to dismiss for lack of personal jurisdiction. *Id.* at 1274 (citing *Steffan*, 2017 WL 4182203, at *4–7). The court rejected the excursion operator's argument that the plaintiff could not enforce the consent to jurisdiction clause because she was not a party to the agreement. *Id.* at 1275. Instead, the court found that the plaintiff was a third-party beneficiary to the agreement because "the agreement expressly intended to benefit Carnival's guests." *Id.* And in supporting that conclusion, the court relied on the contract's *absence* of an express disclaimer of third-party beneficiaries, references to the word "guests," and the agreement's use of the word "third party." *Id.*

Plaintiff contends that we should follow these decisions, and find that personal jurisdiction exists in this case for the same reasons because – although Plaintiff was not a party or signatory to the underlying Agreement – he is a third-party beneficiary.[3] Plaintiff argues that this allows him to avail himself of the

[3] There is no dispute that the Agreement was only executed between Carnival and Caymanian. In fact, both parties reference the same document in their respective briefs, further suggesting that there is no dispute that the contract attached to Caymanian's motion to dismiss is the operative agreement. [D.E. 30-1].

Agreement's conferral of jurisdiction clause because he meets all the elements to state a claim as a third-party beneficiary.

There are four requirements to state a claim for breach of a third-party beneficiary contract:

> (1) [T]he existence of a contract to which Plaintiff is not a party; (2) an intent, either expressed by the parties, or in the provisions of the contract, that the contract primarily and directly benefit Plaintiff; (3) breach of that contract by one of the parties; and (4) damages to Plaintiff resulting from the breach.

Aronson v. Celebrity Cruises, Inc., 30 F. Supp. 3d 1379, 1398 (S.D. Fla. 2014) (citation omitted). For a third-party to have a legally enforceable right under a contract, the benefit to a third-party must be the "direct and primary object of the contracting parties." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 982 (11th Cir. 2005); *see also Wolf v. Celebrity Cruises, Inc.*, 101 F. Supp. 3d 1298, 1311 (S.D. Fla. 2015). To put it simply, "[t]he contracting parties' intent to benefit the third party must be mutual, specific, and clearly expressed in order to endow a third-party beneficiary with a legally enforceable right." *Hawaiian Airlines, Inc. v. AAR Aircraft Servs., Inc.*, 167 F. Supp. 3d 1311, 1319, 2016 WL 867116, at *5 (S.D. Fla. Mar. 7, 2016); *see also Aronson*, 30 F. Supp. 3d at 1398 (noting that an "'incidental or consequential benefit' to a third party is insufficient to state a claim").

As support, Plaintiff points to count 8 of the FAC where it includes allegations of how the Agreement intended to benefit passengers:

> The intent of Carnival and the Excursion Entities for the contract to benefit Carnival passengers, including the Plaintiff, was demonstrated by the provisions of the contract. These provisions include, but are not limited to, the following and/or provisions similar to the following: (a) the purpose of the agreement explicitly stating that it is for the Excursion Entities to provide shore excursions to guests on CARNIVAL's vessels; (b) prohibiting dangerous activities from forming any part of shore excursions; (c) CARNIVAL having the right to charge its passengers the price that CARNIVAL determines in its sole discretion; (d) CARNIVAL having the sole discretion to provide its passengers a full or partial reimbursement of the excursion ticket if a passenger is dissatisfied; (e) CARNIVAL requiring that the Excursion Entities exercise reasonable care for the passengers' safety at all times; (f) CARNIVAL requiring that the Excursion Entities satisfy and continue to satisfy the highest standards of quality in the industry; and/or (g) CARNIVAL requiring that the Excursion Entity maintain insurance for any and all injuries to passengers.

[D.E. 14 at ¶ 102].

Plaintiff also argues that there is no third-party beneficiary disclaimer clause prohibiting a passenger from enforcing the conferral of jurisdiction clause, and he points to the purpose of the Agreement as further evidence that the contract's intent is for the benefit of Carnival's passengers. [D.E. 30-1 at 5 ("Purpose of Agreement: [Carnival] is in the business of providing cruise vacations aboard the Vessels that call on various ports worldwide. . . . During the term of this Agreement (set forth below), [Carnival] agrees to sell tickets for Shore Excursions to Vessel Guests and [Caymanian] agrees to arrange and provide Shore Excursions, subject to and in accordance with this Agreement.")]. He then reasons that nothing more is required to find that he qualifies as a third-party beneficiary and that he should be allowed to enforce the conferral of jurisdiction clause. Plaintiff therefore concludes that Caymanian has consented to this forum and that any objections to specific

jurisdiction lack merit despite the fact that Plaintiff is not a signatory to the Agreement. [D.E. 33 at 16 ("It makes no difference that Plaintiff is not a signatory to the contract.")].

We do not find any of Plaintiff's arguments to be compelling. While some courts have found that personal jurisdiction exists because of a conferral of jurisdiction clause, those cases are misplaced for many of the same reasons that Judge Ungaro identified in *Serra-Cruz v. Carnival Corp.*, 400 F. Supp. 3d 1354 (S.D. Fla. 2019). There, the plaintiff brought claims against Carnival Corporation and an excursion operator based in the Dominican Republic following an ATV accident. *See id.* at 1356. The shore-excursion agreement between Carnival Corporation and the shore-excursion entity contained a consent to jurisdiction provision, where the excursion operator consented to personal jurisdiction "in the event of any lawsuit to which [Carnival] [was] a party and which [was] related to, in connection with, arising from or involving the [s]hore [e]xcursions or terms in this [a]greement." *Id.* (alterations added; quotation marks omitted).[4]

The plaintiff argued in *Serra-Cruz* that the contract between the cruise line and the excursion operator provided a sufficient basis for the court to exercise jurisdiction in a personal injury action initiated by a non-signatory plaintiff. *See id.* at 1360. But, the court refused to allow the plaintiff "to enter

[4] This is almost the same language that appears in the Agreement here. [D.E. 30-1 at 7 ("OPERATOR consents to the personal jurisdiction over it and to the venue of the courts serving the Southern District of Florida in the event of any lawsuit to which CARNIVAL is a party and which is related to, in connection with, arising from or involving the Shore Excursion or the terms of this Agreement.")].

through the 'back door' and use the [a]greement's consent to jurisdiction clause via a meritless third-party beneficiary claim to find jurisdiction over a foreign defendant in a personal injury case." *Id.* at 1363 (alteration added).

In reaching that conclusion, the court relied on Judge Cooke's decision in *Evesson v. Carnival Corp. et al.*, No. 17-cv-23474-MGC, D.E. 41 (S.D. Fla. June 20, 2018). The court in *Evesson* found that the plaintiff was neither a party to the shore-excursion contract nor a third-party beneficiary of that contract, and thus could not enforce a jurisdictional clause. The court further explained that the shore-excursion contract simply defined the relationship between the operator and the cruise line, concluding that the conferral of jurisdiction clause did not constitute a blanket personal jurisdictional waiver. Thus, the court granted the shore-excursion company's motion to dismiss because it could not exercise specific jurisdiction over the company. *Id.*

Plaintiff tries to sidestep these cases with arguments that he qualifies as a third-party beneficiary because the Agreement often refers to "guests" and states that the purpose of the excursion contract is to provide worldwide cruise vacations to passengers. However, "[f]or a contract to intend to benefit a third party, such intent must be specific and must be clearly expressed in the contract." *Heller v. Carnival Corp.*, 191 F. Supp. 3d 1352, 1365 (S.D. Fla. 2016) (internal citations omitted). Vague references to "guests" or "passengers" do not meet that threshold because that class of persons is not identifiable and for, all practical purposes, almost limitless. While "third parties do not need to be specifically named in the

contract to qualify as intended beneficiaries," a contract must refer "to a well-defined class of readily identifiable persons that it intends to benefit . . . to endow the third party beneficiary with a legally enforceable right." *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1398 (S.D. Fla. 2014) (internal citations and quotation marks omitted). And "[i]t is not sufficient for a third party to have an "incidental or consequential benefit." *Serra-Cruz*, 400 F. Supp. 3d at 1362 (quoting *Aronson*, 30 F. Supp. 3d at 1398).[5]

The same is true with respect to Plaintiff's contention that the Agreement's purpose is to provide worldwide cruise vacations to guests and passengers. Courts have rejected these types of arguments because they are far too generalized. *See, e.g.*, *Serra-Cruz*, 400 F. Supp. 3d at 1363 ("Plaintiff . . . alleges the Defendants breached the Agreement by failing to 'offer reasonably safe excursions,' an argument that is routinely rejected by courts in this District.") (citing *Aronson*, 30 F. Supp. 3d 1379 at 1398 ("To the extent that Plaintiff alleges that Wrave and Carnival contracted to ensure the safety of Celebrity" passengers, this is far too generalized to support a third-party beneficiary claim."); *Lapidus v. NCL Am. LLC*, 924 F. Supp. 2d 1352, 1361 (S.D. Fla. 2013)).

As for Plaintiff's suggestion that the *absence* of an express disclaimer saves the day, that too is unavailing. Judge Ungaro rejected this same argument in *Serra-Cruz* because it undermines the entire way in which courts determine whether a third-party beneficiary claims exists under a contract. *See Serra-Cruz*,

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[5] While "guests" appears throughout the Agreement, it does not appear in the consent to jurisdiction clause.

400 F. Supp. 3d at 1362 ("[T]hird-party beneficiary status is not created by the absence of an express disclaimer to the contrary."). Plaintiff's argument is also not compelling for an entirely separate reason because Defendant attached, in support of its motion, the declaration of Darney Kelly[6] ("Mr. Kelly") who stated that "Caymanian has never entered into any contracts with Carnival (including the Shore Excursion Agreement) with the intent to primarily or directly benefit third parties, including but not limited to, cruise ship passengers as the Plaintiff, James Storm." [D.E. 30-1 at 4]. And Plaintiff noticeably failed to offer any evidence in opposition to this declaration. Therefore, given these considerations, we agree that the absence of an express disclaimer does not give rise to a third-party beneficiary claim when otherwise none exists.

In addition, Plaintiff's third-party beneficiary claim fails to confer personal jurisdiction because it does not arise out of the Agreement. *See Wolf v. Celebrity Cruises, Inc.*, 683 F. App'x 786, 793 (11th Cir. 2017) (holding that the court was without jurisdiction over the excursion operator in a personal injury case that asserted a third-party beneficiary claim "[b]ecause the alleged tortious activity occurred outside of Florida [and] there is no connexity between the Agreement and Mr. Wolf's cause of action"). Plaintiff disagrees, but he fails to rely on anything to substantiate his position or to explain how his injuries have anything to do with the contract. He instead relies on adjectives and superlatives with nothing to tie his injuries to the contract. [D.E. 33 at 2 ("[T]his action arises out of the severe and permanent injuries Plaintiff sustained during an excursion he booked and paid for

[6] Mr. Kelly is the Chairman of the Caymanian Corporation.

through CARNIVAL. This excursion was indisputably a transaction contemplated by this Agreement, and it is indisputable that Plaintiff's lawsuit arose from that transaction.")]. In any event, Plaintiff's injuries arise out of an alleged incident that occurred in the Cayman Islands. They have nothing to do with a contractual relationship between a cruise line and an excursion operator. *See Wolf*, 683 F. App'x at 793 ("Because the alleged tortious activity occurred outside of Florida, and there is no connexity between the Agreement and Mr. Wolf's cause of action, the district court did not err in determining it lacked specific personal jurisdiction over OCT."). Plaintiff has therefore failed to put forth any persuasive argument or evidence that he has a third-party beneficiary claim to confer personal jurisdiction.

In a last ditch effort, Plaintiff claims that specific jurisdiction exists because Caymanian contracted to insure Carnival for any and all injuries to guests, or damages to property. Florida law allows for personal jurisdiction over a defendant who "contract[s] to insure a person, property, or risk located within this state at the time of contracting." Fla. Stat. § 48.193(1)(a)(4). Plaintiff's argument fails in this respect because he offered no evidence to rebut Mr. Kelly's declaration that "Caymanian has never entered into a contract to insure any individual and/or entity within the State of Florida." [D.E. 30-1 at 3]. But, even if Plaintiff had offered evidence, his argument would still fail because – as previously stated – his claims do not arise under the Agreement. Instead, his claims arise from an injury that occurred while he was on an excursion in the Cayman Islands. See *Serra-Cruz*, 400 F. Supp. 3d at 1359 ("Judge Seitz rejected a similar argument on the grounds that

the plaintiff's negligence claims did not arise from an indemnity agreement. Similarly, in this case, Plaintiff's claims do not arise in contract; rather, Plaintiff's claims arise from an injury that occurred while she was on an off-shore excursion in the Dominican Republic."). Because Plaintiff has not alleged that any other tortious act occurred in Florida and all of his arguments have otherwise failed, we conclude that specific jurisdiction does not exist in this case.

B. Whether General Jurisdiction Exists

Next, Plaintiff contends that general jurisdiction exists under Florida's long-arm statute. Section 48.193(2) of the Florida Statutes provides that "[a] defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity." General jurisdiction requires a "showing of 'continuous and systematic general business contacts'" with Florida. *See Carib-USA Ship Lines Bahamas Ltd. v. Dorsett,* 935 So. 2d 1272, 1275 (Fla. 4th DCA 2006) (quoting *Helicopteros,* 466 U.S. at 416); Philip J. Padovano, *Florida Civil Practice* § 8.7 (2007 ed.) (stating that "[t]he phrase 'substantial and not isolated activity' in section 48.193(2)refers to a 'continuous and systematic general business contact' with the state")). To confer general jurisdiction, a defendant's contacts "must be so extensive to be tantamount to [the] defendant being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in the forum state's courts in any litigation arising out of any transaction or occurrence taking place anywhere in

the world." *Exhibit Icons, LLC v. XP Companies, LLC,* 609 F. Supp. 2d 1282, 1295 (S.D. Fla. 2009). This presents a much higher threshold than the contacts necessary to support specific jurisdiction.[7] *See Trustess of Columbia Univ. v. Ocean World, S.A.*, 12 So. 3d 788, 792 (Fla. 4th DCA 2009) ("The continuous and systematic general business contacts sufficient to confer general jurisdiction present a 'much higher threshold' than those contacts necessary to support specific jurisdiction under section 48.193(1).") (citation omitted).

Plaintiff claims that general jurisdiction exists because there are allegations that Carnival marketed the shore excursion through its website. [D.E. 33 at 19 ("Plaintiff . . . alleges that [Carnival] maintained an active role in advertising the subject excursions in this market through [Carnival's] website, located in Florida.")]. The most glaring problem with this argument is that Plaintiff's allegations do not even take aim at Caymanian. Plaintiff instead tries to assert general jurisdiction over Caymanian for actions that the company never took. But, Plaintiff never explains how general jurisdiction exists over Caymanian if it shares no relationship with Carnival other than a contract for passengers to enjoy a cruise and a shore excursion in the Cayman Islands. It does not appear, however, that

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[7] One reason a higher showing is required to establish general jurisdiction – as opposed to specific jurisdiction – is because the former does not require that a lawsuit's cause of action arise from activity within Florida, or that there be any connection between a claim and a defendant's Florida activities. *See, e.g., Camp Illahee Investors, Inc. v. Blackman,* 870 So. 2d 80, 85 (Fla. 2d DCA 2003) ("This 'does not require connexity between a defendant's activities and the cause of action.'") (quoting *Woods v. Nova Cos. Belize Ltd.,* 739 So. 2d 617, 620 (Fla. 4th DCA 1999)); *Burger King Corp.,* 471 U.S. at 476 ("Jurisdiction in [certain] circumstances may not be avoided merely because the defendant did not physically enter the forum State.").

Caymanian and Carnival have any connection to each other than a shore excursion contract.[8] It is therefore difficult to comprehend how general jurisdiction can exist over a foreign defendant when there are no allegations or evidence that it took any actions to target either Florida or the United States.

Putting aside that shortfall and assuming that Carnival's actions can confer general jurisdiction over Caymanian, Florida courts have established a "very high requirement for general jurisdiction," in connection with the sales and marketing of an online website. Florida courts have determined that the question of general jurisdiction focuses largely on whether the total sales in Florida are *de minimis* when compared to sales to other states. *See Caiazzo v. Am. Royal Arts Corp.*, 73 So. 3d 245, 260 (Fla. 4th DCA 2011). Yet, there is nothing in this record on the number of sales that Carnival made in advertising a shore excursion that Caymanian operated. The reason that information is essential is because – if a low number of sales could confer general jurisdiction – it "would stretch the concept of general jurisdiction beyond what either the statute or due process permits." *Atlantigas Corp. v. Nisource, Inc.*, 290 F. Supp. 2d 34, 53 (D.D.C. 2003). Thus, given the absence of any information on the number of sales that Carnival generated for the benefit of Caymanian, this also cannot confer general jurisdiction.

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[8] Plaintiff alleges in the FAC that Caymanian was an agent of Carnival, but then never explains how that agency relationship confers general jurisdiction. The same is true with respect to the allegation that the two companies operated a joint venture. This is a reoccurring problem in Plaintiff's response because he makes arguments that the two companies are operating as a unit but then fails to explain how it establishes general jurisdiction. Plaintiff then doubles down on that failure with no evidence to rebut the declaration of Mr. Kelly.

To the extent Plaintiff suggests that Caymanian should be subjected to general jurisdiction because the excursion was merely advertised on Carnival's website, that too is unavailing because the mere posting of content to a website does not create general jurisdiction in Florida. *See Trustees of Columbia Univ. In City of New York v. Ocean World, S.A.*, 12 So. 3d 788, 795 (Fla. 4th DCA 2009) ("The mere existence of a website does not show that a defendant is directing its business activities towards every forum where the website is visible.") (citing *McBee v. Delica Co.*, 417 F.3d 107, 124 (1st Cir. 2005)). To hold otherwise would "render any individual or entity that created . . . a website subject to personal jurisdiction' for virtually any matter." *Caiazzo*, 73 So. 3d at 260 (quoting *Dagesse v. Plant Hotel N.V.*, 113 F. Supp. 2d 211, 221 (D.N.H. 2000)).

Federal appellate courts applying due process or other long-arm statutes have also rejected the same argument because, if Plaintiff's position was the law, it would result in any corporation being sued in any state wherever an online website includes content about a particular business. *See, e.g., Louis Vuitton*, 736 F.3d at 1357 ("We are not saying that the mere operation of an interactive website alone gives rise to purposeful availment *anywhere* the website can be accessed.") (citation omitted); *be2 LLC v. Ivanov,* 642 F.3d 555, 558–59 (7th Cir. 2011) (concluding that there was insufficient evidence that the defendant, operator of a dating website which made user accounts freely available, purposefully availed himself of doing business in Illinois); *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 400–01 (4th Cir. 2003) (concluding that the Illinois defendant's semi-

interactive website alone did not create personal jurisdiction in Maryland because the overall content of the defendant's website had a strongly local character emphasizing its "mission to assist *Chicago-area* women in pregnancy crises"); *Revell v. Lidov,* 317 F.3d 467, 471 (5th Cir. 2002) ("Though the maintenance of a website is, in a sense, a continuous presence everywhere in the world, the cited contacts of [the defendant] with Texas are not in any way 'substantial.'"); *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1161 (W.D. Wis. 2004); ("Plaintiff's argument that general jurisdiction exists in this case [involving the defendant's internet activities in the forum state] borders on the frivolous."); *Bird v. Parsons,* 289 F.3d 865, 874 (6th Cir. 2002) ("[T]he fact that [the defendant] maintains a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction."). For these reasons, Plaintiff has presented no convincing argument that general jurisdiction exists over Caymanian.

C. Whether Federal Long-Arm Jurisdiction Exists

Plaintiff's penultimate argument is that jurisdiction exists under Fed. R. Civ. P. 4(k)(2) – a rule that is commonly referred to as federal long-arm jurisdiction. This rule was adopted "to provide a forum of federal claims in situations where a foreign defendant lacks substantial contacts with any single state but has sufficient contacts with the United States as a whole to satisfy due process standards and justify the application of federal law." *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1293–94 (Fed. Cir. 2012); *Oldfield*, 558 F.3d at 1216 ("[I]n cases where a defendant is not subject to jurisdiction in any state's courts of general jurisdiction, authorizes

a district court to aggregate a foreign defendant's nationwide contacts to allow for service of process") (citation and quotation marks omitted); *Associated Transp. Line, Inc.*, 197 F.3d at 1074 ("This rule permits the exercise of personal jurisdiction over foreign defendants for claims arising under federal law when the defendant has sufficient contacts with the nation as a whole, but is without sufficient contacts to satisfy the long-arm statute of any particular state.") (citing *United States S.E.C. v. Carrillo,* 115 F.3d 1540, 1543–44 (11th Cir. 1997)).

The rule is neither applicable nor relevant until a court finds that a defendant is not subject to personal jurisdiction in the courts of any state. *See Merial Ltd.*, 681 F.3d at 1294 ("[O]ne precondition for applying Rule 4(k)(2)) is that the defendant must not be subject to personal jurisdiction in the courts of any state (sometimes called the 'negation requirement'") (citation omitted); *see alsoHenriquez v. El Pais Q'Hubocali.com*, 500 F. App'x 824, 829 (11th Cir. 2012) ("Under Rule 4(k)(2), when a defendant is not subject to the jurisdiction of any one state, a court may aggregate a foreign defendant's nationwide contacts.") (internal quotation marks and citation omitted). Once it becomes clear that there is no specific or general jurisdiction under Florida's long-arm statute, the analysis on whether there is personal jurisdiction under Rule 4(k)(2) turns on whether there are enough minimum contacts with the United States as a whole.

There are three requirements to establish federal long-arm jurisdiction: (1) the exercise of jurisdiction must be consistent with the Constitution and the laws of the United States, (2) the claim must arise under federal law, and (3) the defendant

must not be subject to the jurisdiction of any state. *See Fraser,* 594 F.3d at 850. Plaintiff suggests in a single sentence that "even if [Caymanian's] contacts with the state of Florida are not substantial enough, they at least satisfy Rule 4(k)(2)," because that rule provides jurisdiction where a foreign defendant has sufficient contacts with the United States as a whole. [D.E. 33 at 19]. Plaintiff's argument is woefully inadequate in this case because he failed to put forth any reasons in support of his position. Plaintiff merely made the assertion that long-arm jurisdiction exists, without any explanation as to how the three requirements under Rule 4(k)(2) have been satisfied. That is a fatal mistake because, even if Rule 4(k)(2) could apply, "[c]onclusory statements . . . '[d]o not constitute the *prima facie* showing necessary to carry the burden of establishing jurisdiction." *First Chicago Int'l v. United Exchange Co.*, 836 F.2d 1375, 1378–79 (D.C. Cir. 1988) (citation omitted).

Looking past that failure, federal long-jurisdiction does not exist for another reason because there is insufficient evidence that Caymanian has the necessary minimum contacts with the United States. All that Plaintiff has argued thus far is that Carnival advertised, marketed, and sold tickets of Caymanian's excursion on an online website. By itself, that cannot trigger federal long-arm jurisdiction because maintaining a website accessible to users in a jurisdiction does not subject a defendant to being sued there. Instead, those users must be directly targeted in such a way that a defendant can foresee having to defend a lawsuit. *See, e.g., be2 LLC v. Ivanov,* 642 F.3d 555, 558 (7th Cir. 2011) ("If the defendant merely operates

a website, even a 'highly interactive' website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution."); *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452–54 (3d Cir. 2003) ("[T]he mere operation of a commercially interactive web site should not subject the operator to jurisdiction . . . Rather, there must be evidence that the defendant 'purposefully availed' itself of conducting activity in the [jurisdiction]."); *Instabook Corp. v. Instapublisher.com,*469 F. Supp. 2d 1120, 1127 (S.D. Fla. 2006) (finding insufficient contacts in a patent infringement case since, among other reasons, "Defendant could not reasonably anticipate being haled into court in Florida based on its operation of interactive websites accessible in Florida and its sales to two Florida residents" in the absence of "targeting or solicitation of Florida residents").

This is true even where a defendant clearly conducts business through its website because "courts have looked to find 'something more' that creates actual acts directed at the forum state[.]" *Xactware, Inc. v. Symbility Solution,* 402 F. Supp. 2d 1359, 1363 (D. Utah 2005). Courts in our district have held, for example, that federal long-arm jurisdiction exists when a company operates a website and availed itself of this forum through promotions of business through travel agents, advertising in United States publications, and attending trade shows throughout the country. *See Jackson v. Grupo Industrial Hotelero, S.A.*, 2008 WL 4648999, at *6–9 (S.D. Fla. Oct. 20, 2008) (concluding that "[t]hese allegations not only show a nexus with Plaintiff's causes of action, but also form a *prima facie* showing of

constitutionally adequate minimum contacts for this Court to assert personal jurisdiction over the defendants"); *see also Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 699 F. Supp. 2d 303, 314, 315 (D.D.C. 2010) (finding that the exercise of jurisdiction was consistent with the Constitution in an infringement action for purposes of Rule 4(k)(2)where defendant "sought business relationships with residents of the United States" by soliciting investors at industry conferences in the United States).

Yet, in this case, Plaintiff has not explained how Caymanian has any – let alone minimum contacts – with the United States. There is no information, for instance, on sales, advertising, or any other business information that could connect Caymanian with the country as a whole. This fails to meet the requirements of federal long-arm jurisdiction because Plaintiff needed to show that Caymanian targeted customers from the United States and that material purchases were in fact made online. *See Liberty Media Holdings, LLC v. Letyagin*, 2011 WL 13217328, at *4 (S.D. Fla. Dec. 14, 2011) ("Plaintiff has alleged that Defendant's website receives traffic and business from United States customers but has not met its burden of showing that Defendant did anything to target customers from the United States or even that anyone from the United States made a purchase on Defendant's website."). This is a tall task because selling excursion tickets in the United States through Carnival's website is readily identified as an "ordinary business activit[y]" with the Eleventh Circuit having already determined that this type of activity is "far from atypical for foreign corporations" and insufficient to warrant exercising

general jurisdiction under Rule 4(k)(2). *Schulman v. Inst. for Shipboard Educ.*, 624 F. App'x 1002, 1006 (11th Cir. 2015). Accordingly, Plaintiff has failed to show that general, specific, or federal long-arm jurisdiction exists in this case and therefore Caymanian's motion to dismiss this case for lack of personal jurisdiction should be **GRANTED**.

D. Jurisdictional Discovery

Plaintiff's final argument is that he should be entitled to conduct jurisdictional discovery to further explore his allegations (1) that Carnival operated a website, (2) that Caymanian advertised, marketed, and sold tickets through this website, (3) that Caymanian was an agent of Carnival, (4) that the cruise line and the excursion operator engaged in a joint venture, and (5) that Caymanian agreed to indemnify Carnival for the claims presented in the FAC.

"[F]ederal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits." *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729 (11th Cir. 1982) (citations omitted). Plaintiffs have a "qualified right" to jurisdictional discovery "if the jurisdictional question is genuinely in dispute and the court cannot resolve the issue in the early stages of the litigation." *Id.* at 729, n.7. The question of jurisdictional discovery is therefore a balance of competing interests:

> On one hand, the avowed purpose of the Federal Rules is to minimize the importance of procedural technicalities and to allow a court to decide cases on the merits. On the other, a court should decide only those cases that are properly before it, and the defendant has a legitimate and protectable interest in avoiding the time, effort, and

> expense of discovery when the court's jurisdiction to hear the merits may be lacking.

Id. at 730. We note, however, that it is not entirely accurate that a district court has complete discretion to grant or deny a request for jurisdictional discovery when the jurisdictional facts are in dispute. It is more appropriate to say that discretion is limited "to the form that the discovery will take," as opposed to whether there will be jurisdictional discovery at all. *Id.* Thus, "[a] plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum." *Diamond Chem. Co. v. Atofina Chems., Inc.,* 268 F. Supp. 2d 1, 15 (D.C. Cir. 2003).

Plaintiff's request for jurisdictional discovery falls short because it never identifies what discovery should be conducted to establish personal jurisdiction. In other words, there is no limiting principle that informs what discovery Plaintiff seeks nor or is there any explanation as to how any discovery will establish personal jurisdiction over Caymanian. *See, e.g.*, *Wolf*, 683 F. App'x at 792 ("Mr. Wolf's general request for jurisdictional discovery . . . did not specify what information he sought or how that information would bolster his allegations. The district court therefore did not improperly deny jurisdictional discovery.").

The purpose of jurisdictional discovery is to ascertain the truth of the allegations or facts underlying the assertion of personal jurisdiction. It should *not* used be a vehicle for a "'fishing expedition' in hopes that discovery will sustain the exercise of personal jurisdiction." *Parker v. Brush Wellman, Inc.,* 377 F. Supp.

2d 1290, 1305 (N.D. Ga. 2005); *Vogt v. Greenmarine Holding, LLC,* 2002 WL 534542, at *7 (N.D. Ga. Feb. 20, 2002) (denying jurisdictional discovery because the evidence the plaintiff "anticipated being able to adduce in the discovery process" would "still have failed to make out a prima facie case of personal jurisdiction"); *see also Trintec Indus., Inc. v. Pedre Promotional Prod., Inc.*, 395 F.3d 1275, 1283 (Fed. Cir. 2005) ("[Jurisdictional] discovery is appropriate where the existing record is 'inadequate' to support personal jurisdiction and 'a party demonstrates that it can supplement its jurisdictional allegations through discovery.") (citations omitted). It is also established that Plaintiff cannot pursue jurisdictional discovery "in an attempt to marshal facts that he 'should have had—but did not—before coming through the courthouse doors.'" *Thompson v. Carnival Corp.*, 174 F. Supp. 3d 1327, 1339 (S.D. Fla. 2016) (citing *Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1216 (11th Cir. 2007)).

A separate problem with Plaintiff's request for jurisdictional discovery is that – despite not submitting any evidence or affidavits supporting his jurisdictional allegations – the request itself is procedurally improper. If Plaintiff wishes to conduct jurisdictional discovery, he should have filed a motion setting forth the reasons why that relief should be granted. Instead, he buried it in a single paragraph in response to a motion to dismiss. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1280-81 (11th Cir. 2009) (denying jurisdictional discovery where "plaintiff never formally moved the district court for jurisdictional discovery, but, instead, buried such requests in its briefs as a proposed alternative to dismissing

defendant on the state of the current record"). But, even if he had properly requested jurisdictional discovery, there exists "no genuine dispute on a material jurisdictional fact to warrant jurisdictional discovery." *Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1290 (S.D. Fla. 2014); *see also Atlantis Hydroponics, Inc. v. Int'l Growers Supply, Inc.*, 915 F. Supp. 2d 1365, 1380 (N.D. Ga. 2013) (denying motion for jurisdictional discovery because "there are no disputed facts; Atlantis merely has a hunch that there may be facts—or a desire to find out if there are any facts—that justify the exercise of personal jurisdiction. On this basis, the plaintiff has not shown it is entitled to jurisdictional discovery"); *Yepez v. Regent Seven Seas Cruises,* 2011 WL 3439943, at *1 (S.D. Fla. Aug. 5, 2011) ("[T]he failure of a plaintiff to investigate jurisdictional issues prior to filing suit does not give rise to a genuine jurisdictional dispute."). As such, the undersigned finds no reason to allow Plaintiff to engage in jurisdictional discovery without remedying the shortfalls identified above.

IV. CONCLUSION

For the foregoing reasons, the Court **RECOMMENDS** that Caymanian's motion to dismiss [D.E. 30] be **GRANTED**.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have fourteen (14) days within which to file written objections, if any, with the District Judge. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's

Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell,* 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security,* 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND SUBMITTED in Chambers at Miami, Florida, this 18th day of December, 2020.

/s/ *Edwin G. Torres*
EDWIN G. TORRES
United States Magistrate Judge