

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 24-cv-60715-SINGHAL/STRAUSS**

**MARLON LEONEL  
MITCHELL ANDERSON,**

Plaintiff,

v.

**MSC CRUISES, S.A.,**

Defendant.

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**REPORT AND RECOMMENDATION**

THIS MATTER came before the Court upon Defendant’s Motion to Compel Arbitration (“Motion”). [DE 9]. This Motion has been referred to me, pursuant to 28 U.S.C. § 636(b)(1) and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, for issuance of a report and recommendation. [DE 27]. I have reviewed the Motion, the Response [DE 17] and Reply [DE 21] thereto, and all other pertinent portions of the record.<sup>1</sup> For the reasons discussed herein, I respectfully **RECOMMEND** that the Motion be **GRANTED**.

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<sup>1</sup> In his Response, Plaintiff requests that this case be remanded to the 17th Judicial Circuit in and for Broward County, Florida. [DE 17] at 6, 8–10. The Court will not consider such a request raised in a response to a motion. *See Anderson v. Branch Banking & Tr. Co.*, 119 F. Supp. 3d 1328, 1351 (S.D. Fla. 2015) (“It is not appropriate to seek an order for affirmative relief in a response to a motion.”) (quoting *Silver v. Karp*, No. 14-80447-CIV, 2014 WL 4248227, at \*5 n.3 (S.D. Fla. Aug. 27, 2014)); *see also CompRehab Wellness Grp., Inc. v. Sebelius*, No. 11-23377-CIV, 2013 WL 1827675, at \*7 n.20 (S.D. Fla. Apr. 30, 2013) (noting that “a response to a motion is not a motion”) (citing Fed. R. Civ. P. 7). Additionally, the Court will not consider Plaintiff’s Reply Memorandum in Support of Plaintiff’s Request to Remand. *See* [DE 22]. The Reply Memorandum is inappropriate because it is replying to a request for affirmative relief raised in response to a motion. To the extent the Reply Memorandum is a sur-reply, that too is improper as Plaintiff did not first seek leave of Court to file one. *See* S.D. Fla. L.R. 7.1(c)(1).

## BACKGROUND

Plaintiff, Marlon Leonel Mitchell Anderson (“Anderson”), worked as a seaman aboard the cruise ship M/V MSC SEASIDE (“Seaside”) which Defendant, MSC Cruises, S.A. (“MSC”), owned and operated. [DE 5] ¶¶ 8–9. Espit Ventures PTE, LTD. (“Espit”) hired Anderson to work aboard Seaside in sales selling Dead Sea bath products. *Id.* ¶ 13. Anderson fell while descending a flight of stairs one evening onboard the Seaside. *Id.* ¶ 23. The medical examiner aboard the Seaside examined Anderson, prescribed him muscle relaxants, pain relievers, and crutches, and declared Anderson unfit for duty. *Id.* ¶27.

Anderson’s pain persisted, but he could not see a shoreside doctor for a period of weeks unless he wanted to resign from his position and seek treatment ashore on his own. *Id.* ¶¶ 29–30. Anderson did resign and returned to his home country of Nicaragua, where he sought additional testing for his injuries. *Id.* ¶ 31. Those additional tests revealed other injuries to Anderson’s left knee. *Id.* ¶ 32.

On April 2, 2024, Anderson filed a five-count complaint against MSC in Florida state court. [DE 1–2]. Anderson alleged negligence under the Jones Act, unseaworthiness, tortious failure to provide maintenance and cure, failure to provide prompt, proper, and adequate medical care, and a disability claim. *Id.* MSC promptly removed the action to this Court pursuant to 9 U.S.C. § 205, alleging that Anderson’s claims relate to an arbitration agreement. [DE 1]. One day after MSC’s removal, on April 30, 2024, Anderson filed his Amended Complaint. [DE 5].<sup>2</sup> In the Amended Complaint, Anderson alleged the same first four counts as in his original complaint, but he

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<sup>2</sup> In a footnote within the Motion, MSC asks this Court to strike Anderson’s Amended Complaint because the caption says, “IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA” instead of “UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA.” [DE 9] at 1 n.1. However, the Court should not impose the draconian sanction of striking the Amended Complaint in response to a harmless scrivener’s error.

removed the disability claim, which arose from the terms of MSC's Collective Bargaining Agreement ("CBA") between its employees, and all references and attachments to the CBA. [DE 5].

On the same day he filed his original complaint (April 2, 2024), Anderson initiated an arbitration proceeding against Espit with the International Centre for Dispute Resolution. [DE 9–1]. The arbitration clause contained within Anderson's employment contract with Espit (which both Anderson and Espit signed on April 21, 2023, in Managua, Nicaragua) reads in relevant part:

### **11. Dispute Resolution**

11.1. In case of any conflict between the Parties, it is hereby agreed as follows:

\* \* \*

11.1.2. In case The Salesperson is of the opinion that the provisions of this Agreement have been violated or breached, he shall refer his demand in writing to his supervisor.

11.1.3. In case the complaint is not resolved within 60 days, the dispute shall be referred to arbitration to the exclusion of any other legal or court proceeding.

It is further agreed in this respect that "dispute" shall include any claim of either of the parties and/or any party thereof against the other party and/or any other party thereof and shall include any claim and/or demand whatsoever, including (but not limited to) Jones Act claims, claims for damages due to personal injury, wrongful death, negligence, seaworthiness, failure to provide prompt and/or proper medical care or maintenance and cure and unjust redundancy, all of which whether based on a cause of action in tort or contract or under the laws of any nation or jurisdiction.

11.1.4. Both Parties hereby agree and declare, knowingly and voluntarily, that they wave [sic] their right to a trial in front of a court, including a jury trial, and the arbitration the parties give consent to by signing this Agreement shall be exclusive and mandatory. No dispute may be jointed with another lawsuit or in arbitration with a dispute of another person or resolved on a class-wide basis and each Salesperson waives any right to bring or participate in any class action, group action, collective action and/or other similar litigation against the Company.

\* \* \*

11.1.6. Any dispute shall be referred to and finally resolved by arbitration under the American Arbitration Association/International Center for Dispute Resolution International Rules, which rules are deemed to be incorporated by reference into

this Agreement and this clause. The number of Arbitrators shall be one. The Place of arbitration shall be Panama City and the Parties must arbitrate in the said designated jurisdiction to the exclusion of all other jurisdictions. The Language of the arbitration proceedings shall be English and the governing Law shall be the law of the Flag of the Ship. Each Party shall bear its own attorney's fees. The Salesperson hereby undertakes to undergo any physical and/or medical examination by The Company's doctors in case it is relevant to the case and otherwise, the Parties agree to waive any and all rights to compel information from each other.

[DE 9–3] at 2, 13–15.

Anderson's Statement of Claim for his arbitration against Espit contains nearly identical factual allegations as his Amended Complaint, though, at times, he attributes actions to Espit in his arbitration Statement of Claim that he attributes to MSC in his Amended Complaint. *Compare* [DE 5] ¶¶ 30, 35, *with* [DE 9–2] ¶¶ 16, 21. The arbitration Statement of Claim alleges three claims: negligence under the Jones Act, tortious failure to provide maintenance and cure, and failure to provide prompt, proper, and adequate medical care. [DE 9–2]. In light of the arbitration clause in Anderson's employment contract with Espit, MSC moves to compel Anderson to arbitrate his claims against MSC in the ongoing arbitration proceedings with Espit in Panama. [DE 9].

### **LEGAL STANDARD**

When confronted with an arbitration agreement that involves foreign parties, courts turn to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3, and its implementing legislation, Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 201–208, to determine if the arbitration agreement is enforceable. "In deciding a motion to compel arbitration under the [FAA], a court conducts 'a very limited inquiry.'" *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 (11th Cir. 2005) (quoting *Francisco v. Stolt Achievement MT*, 293 F.3d 270, 273 (5th Cir. 2002)).

A court must grant a motion to compel arbitration if the following four jurisdictional prerequisites are met and none of the Convention's affirmative defenses applies:

(1) there is an agreement in writing within the meaning of the Convention; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relation with one or more foreign states.

*Bautista*, 396 F.3d at 1294–95, 1294 n.7; *see also Suazo v. NCL (Bahamas), Ltd.*, 822 F.3d 543, 546 (11th Cir. 2016). The party seeking to compel arbitration “bears the burden of proving each of these jurisdictional prerequisites.” *Singh v. Carnival Corp.*, 550 F. App'x 683, 685 (11th Cir. 2013). Non-signatories to an arbitration agreement may seek to compel arbitration under equitable estoppel doctrines, as the Supreme Court has held that the Convention “does not conflict with the enforcement of arbitration agreements by non[-]signatories under domestic-law equitable estoppel doctrines.” *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020).

### ANALYSIS

MSC's primary argument in favor of compelling arbitration proceeds in two steps. Preliminarily, MSC argues that Maltese law governs interpretation of Anderson's employment contract with Espit (including who may enforce the contract) based on language within the contract's arbitration provision. [DE 9] at 3. Then MSC contends that, under Maltese law, MSC may compel arbitration as a non-signatory to the employment contract. *Id.* MSC's secondary argument in favor of compelling arbitration is that Anderson's claims against MSC are based on the same facts, and are inherently inseparable from, claims against a party to the arbitration contract. *Id.* at 4–5. Essentially, MSC argues, that Anderson's claims against it and Espit are so

intertwined that it has the ability to enforce the arbitration provision in the Espit contract. *See id.*; [DE 21] at 5.<sup>3</sup>

Anderson's response against compelling arbitration is an amalgamation of three arguments all stemming from the overarching contention that MSC has not met its burden of proving the first jurisdictional prerequisite (whether there is an agreement in writing within the meaning of the Convention).<sup>4</sup> First, Anderson argues that there is no written agreement to arbitrate between him and MSC. [DE 17] at 8–9. Anderson contends that the only written agreement is between him and Espit and that MSC is “not a party to and has no rights under the Espit contract.” *Id.* at 9. Second, Anderson argues that Maltese law does not govern the meaning and interpretation of the contract. Instead, Anderson maintains that either Singaporean or Nicaraguan law should govern this dispute as Espit is a Singaporean company and Anderson is from Nicaragua and executed the contract in Nicaragua. *Id.* at 12–14. In any case, Anderson argues that MSC has failed to establish that either Maltese, Singaporean, or Nicaraguan law permits it, as a non-signatory, to compel arbitration. *Id.* Third, Anderson seeks to remand this case to Florida state court alleging that the Court lacks subject matter jurisdiction as there is no agreement to arbitrate and MSC's removal was solely based on the Court's subject matter jurisdiction pursuant to 9 U.S.C. § 205.

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<sup>3</sup> In its Motion, MSC raises a third alternative ground for compelling arbitration. MSC argues that its CBA mandates arbitration. [DE 9] at 6. Anderson's original Complaint references the CBA, and his disability claim arose from the CBA. However, as stated above, Anderson's Amended Complaint removes all mention of the CBA and no longer contains his disability claim which arose only from the CBA. In its Reply to its Motion, MSC appears to abandon this alternative ground for compelling arbitration as MSC does not respond to any of Anderson's arguments against compelling arbitration under the CBA, and save for the last line of the Reply, MSC does not mention or argue for compelling arbitration under the CBA.

<sup>4</sup> Neither party addresses the other three jurisdictional prerequisites, and the Court presumes that Anderson does not contest that MSC has or can satisfy each of them. Regardless, it appears the three other jurisdictional prerequisites are met.

### **A. Governing Law**

First and foremost, the Court must determine what law governs interpretation of the Espit contract and (consequently) what law governs whether MSC (as a non-signatory) may compel Anderson to arbitration.

The Court should apply federal common law to threshold questions of arbitrability, which include whether MSC can compel arbitration through principles of equitable estoppel. “[W]hen interpreting an international arbitration agreement,” courts “ascertain the parties’ intent through plain contractual language.” *Internaves de Mexico s.a. de C.V. v. Andromeda Steamship Corp.*, 898 F.3d 1087, 1093 (11th Cir. 2018). While MSC argues that Maltese law governs interpretation of the contract between Anderson and Espit, including whether MSC can compel arbitration under that contract, MSC is wrong. In arguing that Maltese law applies, MSC points to the Espit contract arbitration provision, which states, “[t]he Language of the arbitration proceedings shall be English and the governing Law shall be the law of the Flag of the Ship.” [DE 9–3] at 14. However, as Anderson argues, this language does not mean that interpretation of the contract itself (including its definition of the scope of arbitrable issues or who is a party to the contract) is to be governed by the law of the Flag of the Ship (i.e., Malta). Instead, the plain meaning of that provision is that Maltese law governs the substantive issues *in the arbitration*. Rather, the Espit contract is silent on what law governs interpretation of the contract as a whole, including threshold inquiries of arbitrability.

While Anderson is correct that Maltese law does not govern the initial question of whether a non-signatory can enforce the arbitration agreement here, his suggestion that Singaporean or Nicaraguan law governs is also unsubstantiated. In fact, there is no binding case law from the

Supreme Court or Eleventh Circuit dictating the outcome of this question. There are, however, several persuasive authorities on the matter that the Court finds instructive.

Judge Tjoflat’s concurring opinion in *Outokumpu Stainless USA, LLC v. Coverteam SAS*, No. 17-10944, 2022 WL 2643936 (11th Cir. July 8, 2022) (Tjoflat, J., specially concurring), addresses the very question presented here. As mentioned above, Anderson argues that there is no written agreement to arbitrate between him and MSC, only him and Espit. Like Anderson, the plaintiff in *Outokumpu* argued that there was no “written agreement” with a non-signatory defendant requiring arbitration. *Outokumpu Stainless USA, LLC v. Coverteam SAS*, 902 F.3d 1316, 1325–27 (11th Cir. 2018), *rev’d and remanded sub nom. GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432 (2020). The Eleventh Circuit originally reversed the district court’s decision to grant a non-signatory’s motion to compel arbitration. *Outokumpu Stainless USA, LLC v. Coverteam SAS*, 902 F.3d 1316, 1326–27 (11th Cir. 2018), *rev’d and remanded sub nom. GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432 (2020). The appellate court held that the Convention’s requirement “that the agreement to arbitrate be ‘signed by the parties’ applies to both an arbitral clause and an arbitration agreement.” *Id.* at 1325. Since only other parties had signed the arbitration agreement, but not the subcontractor seeking to compel arbitration, the subcontractor was a “stranger to the Contract[.]” *Id.* at 1326. The court concluded that parties “cannot contract around the Convention’s requirement that the parties *actually sign* an agreement to arbitrate their disputes in order to compel arbitration.” *Id.*

On appeal, the Supreme Court reversed the Eleventh Circuit’s decision and held that the Convention “does not conflict with the enforcement of arbitration agreements by non[-]signatories under domestic-law equitable estoppel doctrines.” *GE Energy*, 590 U.S. at 445. The Court did

not address whether the subcontractor “could enforce the arbitration clauses under principles of equitable estoppel or which body of law governs that determination.” *Id.* Instead, the Court concluded that “[t]hose questions can be addressed on remand.” *Id.*

On remand, the Eleventh Circuit found that the non-signatory could compel arbitration, but the panel was split on the reason for doing so. The majority acknowledged that the case implicated equitable estoppel doctrines but concluded that it need not resolve the issue on those grounds. *Outokumpu*, 2022 WL 2643936, at \*3.<sup>5</sup>

In his concurrence, Judge Tjoflat took a different legal route. Believing the Supreme Court remanded the case with a clear directive to “address the equitable estoppel issue on remand,” Judge Tjoflat thoroughly analyzed which body of law the court should apply when evaluating whether (and how) equitable estoppel applies in Convention cases. *Id.* at \*5–7 (Tjoflat, J., specially concurring). Observing that the issue was one of first impression in the Eleventh Circuit, Judge Tjoflat nevertheless concluded that “all signs point[ed] to the conclusion that we must apply federal common law in determining whether equitable estoppel applies in New York Convention cases.” *Id.* at \*6.

Relying on *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988), Judge Tjoflat analyzed “whether federal common law should apply over state law (or any other law for that matter).” *Outokumpu*, 2022 WL 2643936, at \*6 (Tjoflat, J., specially concurring). Federal law should displace state (or any other) law if there is a “uniquely federal interest,” and the “application of state law would ‘frustrate specific objectives’ of federal legislation.” *Id.* (quoting *Boyle*, 487 U.S. at 507). As to the first part of the test, Judge Tjoflat found that there was “a quintessential ‘uniquely

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<sup>5</sup> Instead, the majority held that the arbitration contract terms, specifically the terms “Buyer” and “Seller,” were defined broadly enough in the agreement to cover not just the parties who signed the agreement but also the non-signatory subcontractors. *Id.*

federal interest.” *Id.* The Convention “is an international treaty with international obligations.” *Id.* Moreover, Judge Tjoflat held that the purpose of the Convention was “to standardize the enforcement of international arbitration agreements, and there is a strong federal interest in making sure that the United States lives up to its treaty obligations.” *Id.*

For the second part of the *Boyle* test, Judge Tjoflat noted that “allowing each state or international law to impose its own test for threshold questions of arbitrability would create an unmanageable tangle of arbitration law in the United States, lead to forum shopping, and frustrate the uniform standards the [Convention] and Chapter 2 of the FAA were enacted to create.” *Id.* Thus, both prongs of the *Boyle* test were satisfied, and Judge Tjoflat held that the court should apply federal common law “to threshold questions of arbitrability, which include[d] the application of equitable estoppel” to the non-signatory’s attempt to compel arbitration. *Id.*

At least two other cases have either used or approved of Judge Tjoflat’s methodology on this issue. The Ninth Circuit has held that “[i]n cases involving the [Convention], in determining the arbitrability of federal claims by or against non-signatories to an arbitration agreement, we apply ‘federal substantive law,’ for which we look to ‘ordinary contract and agency principles.’” *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021) (quoting *Letizia v. Prudential Bache Sec., Inc.*, 802 F.2d 1185, 1187 (9th Cir. 1986)). And, in this District, Judge Scola recently relied on Judge Tjoflat’s concurring opinion in *Outokumpu* when deciding what law governs the threshold question of arbitrability in a Convention case involving a non-signatory seeking to compel arbitration. *See Prcic v. Carnival Corp.*, 641 F. Supp. 3d 1313, 1318 (S.D. Fla. 2022) (“Because the Court finds Judge Tjoflat’s evaluation and reasoning persuasive, as well as predictive of the Eleventh Circuit’s view on the issue . . . , the Court agrees that federal common law applies ‘to threshold questions of arbitrability, which include the application of equitable

estoppel to [a nonsignatory’s] attempt to compel arbitration.”) (quoting *Outokumpu*, 2022 WL 2643936, at \*6) (Tjoflat, J., specially concurring) (alteration in original).

I similarly find Judge Tjoflat’s well-reasoned concurrence in *Outokumpu* persuasive, along with the Ninth Circuit’s opinion in *Setty* and Judge Scola’s opinion in *Prcic*. And I find that the reasoning in these cases, all of which dealt with a non-signatory seeking to compel arbitration under the Convention, equally applies in this case. Here, the parties’ dispute implicates the Convention and the FAA. The arbitration provision contains a choice of law provision for governing substantive issues within the arbitration. *See* [DE 9–3] at 14 (“The Language of the arbitration proceedings shall be English and the governing Law shall be the law of the Flag of the Ship.”). Yet, the contract is silent on the choice of law governing the threshold inquiry of arbitrability.<sup>6</sup> Convention cases involve “a quintessential ‘uniquely federal interest,’” and applying either Maltese, Singaporean, or Nicaraguan law to the threshold question of arbitrability would “frustrate the uniform standards the [Convention] and Chapter 2 of the FAA were enacted to create.” *Outokumpu*, 2022 WL 2643936, at \*6 (Tjoflat, J., specially concurring). For these reasons, the Court should apply federal common law to threshold questions of arbitrability, including the application of equitable estoppel to MSC’s attempt to compel arbitration.

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<sup>6</sup> *Cf. Outokumpu*, 2022 WL 2643936, at \*5 (Tjoflat, J., specially concurring) (“German law will govern the substantive issues in the case, as the choice of law provision in the contract between *Outokumpu* and *Fives* dictates. But we aren’t dealing with the substantive issues in the appeal right now. We are dealing with the threshold inquiry of arbitrability . . . .”); *Setty*, 3 F.4th at 1168 (“To argue that Indian law applies, *SS Mumbai* points to the Partnership Deed’s arbitration provision. But whether *SS Mumbai* may enforce the Partnership Deed as a non-signatory is a ‘threshold issue’ for which we do not look to the agreement itself.”); *Prcic*, 641 F. Supp. 3d at 1318 (“Although *Prcic* is likely right that Bermudan law would ‘govern the substantive issues in the case, as the choice of law provision in the contract between [*Prcic* and *Fleet*] dictates,’ here the Court is instead ‘dealing with the threshold inquiry of arbitrability.’”) (quoting *Outokumpu*, 2022 WL 2643936, at \*5) (Tjoflat, J., specially concurring) (alteration in original).

## B. Equitable Estoppel

Under federal common law equitable estoppel principles, a non-signatory to an arbitration agreement may compel arbitration in two circumstances: “(1) when the plaintiff-signatory ‘must rely on the terms of the written agreement in asserting [its] claims;’ or (2) when the plaintiff-signatory alleges ‘substantially interdependent and concerted misconduct’ by the signatories and non-signatories, and such alleged misconduct is ‘founded in or intimately connected with the obligations of the underlying agreement.’” *Lavigne v. Herbalife, Ltd.*, 967 F.3d 1110, 1119 (11th Cir. 2020) (alteration in original) (citation omitted) (quoting *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999), *abrogated on other grounds by Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009)); *see also Outokumpu*, 2022 WL 2643936, at \*7 (Tjoflat, J., specially concurring). In this case, Anderson’s claims rely on the Espit contract or, at the very least, allege interdependent misconduct by Espit and MSC that is intimately connected with the obligations of that contract.

All of Anderson’s claims against MSC rely on the Espit employment contract. Anderson alleges claims of negligence under the Jones Act, unseaworthiness, tortious failure to provide maintenance and cure, and failure to provide prompt, proper, and adequate medical care. *See* [DE 5]. Negligence claims under the Jones Act are reserved for seaman. 46 U.S.C. § 30104; *Skye v. Maersk Line Corp.*, 751 F.3d 1262, 1265 (11th Cir. 2014). Likewise, only a seaman may prosecute a claim for unseaworthiness. *See Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 629 (1959). And Anderson’s own allegations in his Amended Complaint concede that the remaining two claims pertain to a seaman’s rights. *See* [DE 5] ¶¶ 47–64.

Anderson’s Espit employment contract is what establishes that he is a seaman. *See* [DE 9–3]. The Supreme Court has held that, to be considered a seaman, the “employee’s duties must

contribute to the function of the vessel or to the accomplishment of its mission,” and “a seaman must have a connection to a vessel in navigation . . . that is substantial in terms of both its duration and its nature.” *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995). The Espit contract addresses both portions of this definition, detailing both Anderson’s responsibilities and duration aboard the Seaside.

As to Anderson’s duties, his role as an employee was to sell “Dead Sea products upon the [Seaside].” [DE 9–3] at 5. Moreover, the contract states that Anderson “shall be part of the [Seaside’s] shop sellers’ team and shall be subordinate to the [Seaside’s] shop manager.” *Id.* This role and its description establish that Anderson’s duties contributed to the function of the Seaside and the accomplishment of its mission. The Espit contract also establishes Anderson’s connection to the Seaside. The contract specifically states which ship Anderson was going to work on and for how long. For example, the contract states that Anderson will “work as a Salesperson on one of the ships [Espit] operates on and provides its services (Hereinafter: the “Ship”, in plural or singular).” *Id.* at 2. On the very next page, the employment contract states that “[t]he duration of the agreement will be up to 6 months and 15 days, commencing from the day on which [Anderson] embarks the ship **MSC Seaside** on or about **27.04.2023**.” *Id.* at 3.

Because the Espit employment contract establishes that Anderson is a seaman, it follows that his claims, which are all reserved for seaman, arise out of and rely on that contract. Indeed, the dispute provision within the Espit employment contract specifically addresses each of the types of claims Anderson alleges:

11.1.3. In case the complaint is not resolved within 60 days, the dispute shall be referred to arbitration to the exclusion of any other legal or court proceeding.

It is further agreed in this respect that “dispute” shall include any claim of either of the parties and/or any party thereof against the other party and/or any other party thereof and shall include any claim and/or demand whatsoever, including (but not

limited to) **Jones Act claims**, claims for damages due to personal injury, wrongful death, negligence, **seaworthiness, failure to provide prompt and/or proper medical care or maintenance and cure** and unjust redundancy, all of which whether based on a cause of action in tort or contract or under the laws of any nation or jurisdiction.

*Id.* at 13 (emphasis added). Thus, the contract itself contemplates the very lawsuit Anderson now brings.

Anderson's allegations in his Amended Complaint center on the idea that, while he signed an employment contract with Espit, once he began his work aboard the Seaside, he became MSC's "borrowed employee." [DE 5] ¶ 12. Anderson alleges that MSC's crew supervised him, provided him with "tools, equipment, clothing, shoes, supplies, and food," and directed his medical treatment after his injury. *Id.* ¶¶ 17–20. But the terms within the Espit employment contract dictated all those actions to occur (belying the idea, seemingly implied by Anderson's allegations, that MSC provided these services simply because Anderson appeared on the Seaside or as MSC's borrowed employee). Specifically, the contract states that Anderson "shall be part of the [Seaside's] shop sellers' team and shall be subordinate to the [Seaside's] shop manager," "be entitled to accommodation, shower room[,] and 3 meals per day," "be entitled to access the recreational facilities available for other crew members on the Ship," and "shall be entitled to regular and reasonable onboard medical care by the Ship's doctor as well as medicine for illness and injury suffered while aboard the Ship in a manner similar to services afforded to the crew of the Ship." [DE 9–3] at 5, 7, 10.

It is true that Anderson does not allege a breach of the Espit contract or invoke it as the basis for his claims. However, while Anderson's causes of action invoke the Jones Act, unseaworthiness, tortious failure to provide maintenance and cure, and failure to provide prompt, proper, and adequate medical care, those actions all arise from the seaman status created by the

Espit employment contract and the obligations promised by that contract. Even Anderson's allegations in his Amended Complaint supporting his allegation that he was MSC's "direct[]" employee spring from the terms contained in (and duties dictated by) the Espit employment contract. [DE 5] ¶¶ 10, 12–13,15. Thus, for all intents and purposes, each of Anderson's causes of action rely on the Espit employment contract.

Alternatively, at the very least, Anderson alleges "substantially interdependent and concerted misconduct" by the signatories (Espit) and non-signatories (MSC) and that misconduct is "founded on, or intimately connected with," the obligations of the Espit employment contract. That Anderson is alleging "substantially interdependent" misconduct is clear from his allegations, both here and in his arbitration proceedings against Espit. Anderson's allegations within his Statement of Claim in the arbitration proceedings against Espit are identical to the ones he now alleges against MSC. *See* [DE 9–2].

In the arbitration proceeding, Anderson alleges that "Espit failed to provide Claimant prompt, proper and adequate medical treatment aboard the vessel and/or shoreside; and Claimant thereby became injured, and his underlying medical conditions became aggravated." *Id.* ¶ 16. Here, Anderson alleges that "MSC and the vessel failed to provide [Anderson] prompt, proper and adequate medical treatment aboard the vessel and/or shoreside; and Plaintiff thereby became injured, and his underlying medical conditions became aggravated." [DE 5] ¶ 36. In both the arbitration proceeding and here, Anderson alleges that the Seaside's stairs "did not have adequate railings or hand holds; did not have adequate lighting; did not have adequate non-slip grip; had improper stair height; and/or otherwise did not conform to relevant industry standards for the safe design and construction of staircases." *Compare* [DE 9–3] ¶ 9, *with* [DE 5] ¶ 25. In other words, Anderson alleges the same misconduct against Espit and MSC, based on the same circumstances,

causing the same incident, and leading to the same injuries. Thus, the alleged misconduct of the signatory and non-signatory is clearly interdependent.

Further, for the same reasons that Anderson appears to “rely” on the contract, the misconduct that he alleges is “founded on, or intimately connected with,” the obligations of the Espit contract. In addition to the Espit contract establishing Anderson’s seaman status and his very reason for being on the Seaside to begin with, the contract’s medical care provision states that “the Salesperson shall be entitled to regular and reasonable onboard medical care by the Ship’s doctor as well as medicine for illness and injury suffered while aboard the Ship in a manner similar to services afforded to the crew of the Ship.” [DE 9–3] at 10. Anderson’s entire lawsuit stems from his fall onboard the Seaside and the alleged failure to provide the adequate medical care promised by that provision. *See* [DE 1] ¶ 39 (alleging MSC failed to “provide [Anderson] with prompt, proper, and adequate medical care when he sought medical attention for his medical conditions and related injuries”).

Therefore, Anderson is alleging “substantially interdependent and concerted misconduct” by Espit and MSC (i.e., the failure to provide adequate medical care and a safe working environment aboard the Seaside) and that alleged misconduct is intimately connected with the Espit employment contract. Consequently, equitable estoppel dictates that MSC may compel arbitration even as a non-signatory.

### **CONCLUSION**

For the reasons discussed above, I respectfully **RECOMMEND** that the Motion [DE 9] be **GRANTED**.

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable

Raag Singhal, United States District Judge. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except for plain error if necessary in the interests of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1.

**DONE AND SUBMITTED** in Fort Lauderdale, Florida this 5th day of February 2025.

  
Jared M. Strauss  
United States Magistrate Judge