UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-20851-BLOOM/Elfenbein

JENNIFER MELISSA FREDERICKS TAYLOR,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

OMNIBUS REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on four pending motions: (1) Defendant Carnival Corporation's ("Defendant" or "Carnival") Motion to Compel Arbitration and to Stay (the "Motion to Compel"), ECF No. [4]; (2) Plaintiff Jennifer Melissa Fredericks Taylor's ("Plaintiff") Motion for Remand to State Court (the "Motion to Remand"), ECF No. [15]; (3) Defendant's Motion to Stay Discovery, (the "Motion to Stay"), ECF No. [23]; and (4) Plaintiff's Motion to Supplement Exhibits in Support of the Motion for Remand, (the "Motion to Supplement"), ECF No. [28], (collectively "the Motions"). The Honorable Beth Bloom referred all four motions to me for a Report and Recommendation. *See* ECF Nos. [24] and [25]. Having reviewed all applicable filings and relevant law, I **RECOMMEND** that the Motion to Compel, **ECF No. [4]**, be **GRANTED IN PART and DENIED IN PART**, the Motion to Remand, **ECF No. [15]**, be **DENIED**, the Motion to Stay, **ECF No. [23]**, be **DENIED as moot**, and the Motion to Supplement, **ECF No. [28]** be **GRANTED**.

I. BACKGROUND

This case arises from a knee injury allegedly sustained by Plaintiff, Jennifer Melissa Fredericks Taylor ("Plaintiff"), while employed as a crewmember aboard the Carnival Breeze, a cruise ship operated by Carnival. *See* ECF No. [1-2] at ¶¶3, 8–21. Plaintiff seeks to recover damages for personal injuries under maritime law. *See id*. The employment agreement Plaintiff executed with Carnival (the "Arbitration Agreement") specifies Plaintiff's hourly wage at $1.6071 with a guaranteed monthly wage of $900. *See* ECF No. [4-1] at 1; ECF No. [15-9] at ¶5. The Arbitration Agreement also includes an arbitration provision with the following relevant language requiring all disputes, including "gateway" or threshold issues of arbitrability, be resolved by arbitration (the "Delegation Clause"):

> Except for a wage dispute governed by CCL's Wage Grievance Policy and Procedure, any and all disputes, arising out of or in connection with this Agreement or Seafarer's service on the vessel . . . . **shall be resolved by final and binding arbitration on an individual basis**. In addition, Seafarer agrees to arbitrate on an individual basis any and all disputes **regarding the existence, validity, termination or enforceability of any term or provision in this Agreement**, including but not limited to this provision to arbitrate. All Arbitration between the parties shall be referred to and finally administered and resolved by National Arbitration and Mediation. . . .

See ECF No. [4-1] at 6, ¶9. This provision also explains allocation of cost and fee responsibilities between the Parties resulting from any arbitration proceedings (the "Fee-Splitting Provision") as follows:

> Each party shall bear its own attorney's fees and costs associated with maintaining an action in arbitration, including, but not limited to, travel, lodging, expert(s) and court reporter(s) fees and costs, regardless of any rules or laws to the contrary. **Seafarer and CCL agree to each pay one-half (1/2) of the fees required to initiate arbitration** under the terms of this Agreement. The arbitration **shall not commence until both parties pay their portion of the required fee**. Once arbitration is commenced, CCL shall pay for the [sic] all other reasonable administrative costs of arbitration and fees of the arbitrator as assessed by NAM.

ECF No. [4-1] at 6, ¶9 (collectively with the Delegation Clause, the "Arbitration Clause").

Following the termination of her employment and medical benefits and in accordance with the Arbitration Clause, on November 7, 2024, Plaintiff submitted a demand for arbitration to National Arbitration and Mediation ("NAM"). *See* ECF No. [8-1]. Plaintiff, asserting financial hardship, requested that NAM require Carnival to pay the full initiation fee in accordance with NAM's discretionary rules. *See id*. On November 12, 2024, NAM issued an invoice requiring Plaintiff to pay $1,500 (half of the $3,000 initiation fee), *see* ECF No. [8-3], and in its response, NAM inquired whether Carnival would voluntarily cover Plaintiff's portion of the fee, *see* ECF No. [8-2]. On January 10, 2025, Carnival refused and NAM closed the arbitration due to Plaintiff's nonpayment of the fee. *See* ECF No. [8-6]. Days later, on January 15, 2025, Plaintiff reiterated her financial inability to bear the cost and urged NAM to either reconsider requiring Carnival to advance the fee or waive or defer Plaintiff's payment. *See* ECF No. [8-7]. NAM denied this request on January 28, 2025. *See* ECF No. [8-8].

Faced with the impending expiration of the statute of limitations and the uncertainty of the availability of the arbitration forum, Plaintiff had simultaneously filed her Complaint in state court on November 7, 2024, asserting the same claims she was also attempting to arbitrate. *See* ECF No. [1-2] at ¶52. Plaintiff's counsel paid the $401 filing fee in the state court action. *See* ECF No. [4-3]. Carnival subsequently removed this matter to this Court. *See* ECF No. [1].

This issue is now before the Court on Carnival's Motion to Compel, wherein Carnival seeks to enforce the Arbitration Clause in the Agreement, arguing that all disputes, including threshold questions of arbitrability, are subject to binding arbitration. *See* ECF No. [4]. Carnival "requests that the Court compel arbitration so that an arbitrator can decide whether the arbitration provision can be enforced as to whether to arbitrate, the manner in which the Parties will arbitrate, and Plaintiff's underlying claims for damages." *See id*. at 2. Carnival further argues that Plaintiff's

counsel's willingness to pay the $401 state court filing fee, but refusal to pay the $1,500 arbitration fee, is an attempt to undermine Plaintiff's contractual obligations and forum shop. *See id*. at 3.

Plaintiff opposes the Motion to Compel, advancing four main arguments based on Plaintiff's financial inability to satisfy the arbitration's initiation fee, including: (1) there is no precedent that required seafarers, like plaintiff, to pay filing fees; (2) Defendant has waived any right to enforce its arbitration agreement; (3) the arbitration "has been had in accordance with the terms of the agreement" under 9 U.S.C. § 3; and (4) the arbitration agreement is void, inoperative, and incapable of being performed. *See generally* ECF No. [8]. As an initial matter, Plaintiff argues that no legal precedent exists that requires Plaintiff's counsel to advance these initiation fees in any matters, including arbitration. *See id*. at 5-6, n.3. In support, Plaintiff cites to 28 U.S.C. § 1916 for the proposition that seamen are not required to pay filing fees.[1] *See* ECF No. [8] at 6. Plaintiff subsequently argues that the issue of initial payment is not a gateway question of arbitrability to be decided by the arbitrator because the Arbitration Agreement does not assign it to the arbitrator, nor can it be, as Plaintiff cannot access arbitration without resolving the payment issue first.

Turning to the second argument, Plaintiff states that Carnival's refusal to advance the full fee constitutes a waiver of its right to arbitrate. *See id*. at 7–10. Third, Plaintiff argues that the arbitration "had been had" because Plaintiff complied with her duties under the Agreement and Carnival was expressly required to pay her share, but it refused to do so. *See* ECF No. [8] at 14-15. Fourth, Plaintiff argues that the Agreement has become "null and void" under the Convention

[1] 28 U.S.C. § 1916 is a federal statute that only governs federal court procedures. Accordingly, this statute applies solely to federal courts and does not bind private arbitration organizations. *See* 28 U.S.C. § 1916 ("***In all courts of the United States***, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.") (emphasis added).

on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") because the initiation fee requirement "limit[s] the right of a claimant for personal injury or death to a trial by court of competent jurisdiction." *See id*. at 16 (quoting 46 U.S.C. § 30509) (internal quotations omitted). Plaintiff also cites 9 U.S.C. § 1 for the argument that the Federal Arbitration Act ("FAA") forbids the enforcement of the Arbitration Clause against Plaintiff. *See id*. at 15.

In its Reply, Carnival argues that the issues raised by Plaintiff — including Plaintiff's payment obligations and any alleged waiver — are "gateway" questions of arbitrability delegated to the arbitrator in the Delegation Clause. *See* ECF No. [17] at 3. Carnival argues that where an arbitration agreement includes clear delegation language, like the Delegation Clause here, this Court lacks jurisdiction to decide threshold arbitrability questions. *See id*. Carnival also refutes Plaintiff's contention that Carnival was obligated, either by order from NAM or under NAM's Rules, to pay for Plaintiff's portion of the initiation fee. *See id*. at 5. Carnival argues that, if NAM had decided the issue of Plaintiff's payment, NAM decided that Plaintiff, not Carnival, must pay her initiation fee. *See id*. Carnival also argues that the arbitration has not "been had" pursuant to the terms of the Arbitration Agreement because: (1) Plaintiff did not pay half of the initiation fee, as the terms of the Arbitration Agreement require; and (2) the arbitration did not "commence" before Plaintiff abandoned the arbitration proceedings, as declared by NAM and as Arbitration Agreement's terms expressly dictate. *See id*. at 6. Additionally, Carnival argues that its insistence on enforcing the Fee-Splitting Provision cannot constitute a waiver of its right to arbitrate. *See id*. at 9–10. As to Plaintiff's arbitration defenses, Carnival argues that Plaintiff failed to point to any case law supporting her argument that the Arbitration Agreement has become "null and void" under the New York Convention as the Supreme Court has stated that this treaty does not conflict with the enforcement of arbitration agreements. Finally, Carnival argues that Plaintiff failed to

show that she is financially unable to pay the initiation fee to render the Arbitration Agreement inoperative or incapable of being performed.

Shortly before Defendant filed its Reply, Plaintiff filed a sworn affidavit attesting to her financial condition, which she attached to the Motion to Remand. *See* ECF No. [15-9]. In the Motion to Remand, Plaintiff argues that the Court's sole basis for jurisdiction, 9 U.S.C. § 205, does not apply without an enforceable arbitration agreement. *See* ECF No. [15] at 13. Plaintiff's affidavit states that she earned $1.60 per hour while working for Carnival, with a guaranteed monthly wage of $900, which the Arbitration Agreement corroborates. *See* ECF No. [15-9] at ¶5; ECF No. [4-1]. Following her injury and termination from employment, she has been unable to work or earn income. *See* ECF No. [15-9] at ¶¶6, 11. Plaintiff's doctor recommended surgery to treat her injury, costing $3,000, which she could not afford, and for which Carnival declined to pay. *See id*. at ¶7. Instead, to pay for the surgery, she borrowed approximately $3,300 against her only asset — a home co-owned with her mother in Nicaragua. *See id.* at ¶¶7–9. The loan agreement required Plaintiff to pay the money back with 20% interest by October 2024. *See id*. at ¶10. After defaulting on that loan, she lost her home to the lender in December 2024. *See id*. at ¶12. Plaintiff affirms that she has no savings, no income, no credit, no assets, and currently relies on the financial support of her mother and aunt, who expect eventual repayment. *See id*. at ¶¶13–14, 18. She expressly states that she cannot afford to pay, nor is she able to raise or borrow money for the $1,500 required to initiate arbitration. *See id*. at ¶15.

After reviewing the Parties' briefing on the Motion to Compel, the Court requested supplemental briefing, "explaining (1) whether application of the effective vindication doctrine to the initial fee-splitting provision in the Parties' Arbitration Agreement, ECF No. [4-1] at 9, renders the Arbitration Agreement 'incapable of being performed' by Plaintiff within the meaning of

Article II(3) of the New York Convention, and, (2) if so, whether the initial fee-splitting provision is severable from the remainder of the Arbitration Agreement." *See* ECF No. [35]. In her supplemental response, Plaintiff argues that the Delegation Clause renders the Arbitration Clause "incapable of being performed" within the meaning of the Convention, given Plaintiff's financial circumstances, and that while the provision may be severable from the Arbitration Clause, judicial estoppel should bar such severance. *See* ECF No. [38] at 6.

Whereas, Carnival contends that the effective vindication doctrine does not render the Arbitration Agreement — or its Delegation Clause — "incapable of being performed" under Article II(3) of the New York Convention, because that doctrine is a post-award, public policy defense (under Article V), not a threshold arbitration enforcement defense. *See* ECF No. [37] at 3. Carnival also argues that, even if the effective vindication doctrine applied, Plaintiff failed to meet the evidentiary burden, offering insufficient proof of her inability to pay the arbitration fee, especially given her ability to pay the $401state court filing fee. *See id*. at 5. Carnival further asserts that if the doctrine is considered at this stage, it should be confined to the Delegation Clause, which governs who decides arbitrability issues, not the full merits of the claim. *See id*. at 6–7. Carnival also insists that the Arbitration Clause would be severable from the Arbitration Agreement, if unenforceable, pointing to the Arbitration Agreement's severability provision. *See id.* at 11–12.

All of the Motions are now ripe for review. Having reviewed the briefing on the Motion to Compel, the Motion for Remand, the Motion to Stay, and the Motion to Supplement, and the attachments thereto, the Court sets forth its analysis below.[2]

[2] "In assessing this Motion [to compel arbitration], the Court may consider the attached exhibits." *Tejon v. Zeus Networks, LLC*, 725 F. Supp. 3d 1351, 1354 n.1 (S.D. Fla. 2024) (citing *MarketSource, Inc. v. Fernandez*, No. 21-CV-23217, 2022 WL 18464969, at * 3 (S.D. Fla. Sept. 27, 2022) ("[On a motion to

II. LEGAL STANDARD

Federal courts have jurisdiction to decide motions to compel arbitration pursuant to the FAA, 9 U.S.C. §§ 1-16, and, where applicable, under the New York Convention and its implementing legislation, 9 U.S.C. §§ 201-208. *See Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1284 (11th Cir. 2015). Section 4 of the FAA provides that a party aggrieved by another's failure to arbitrate under a written agreement may petition a federal court for an order compelling arbitration. 9 U.S.C. § 4. "The New York Convention generally requires the courts of signatory nations[3] to give effect to private arbitration agreements and to enforce arbitral awards made in other signatory nations." *Escobar*, 805 F.3d at 1284 (citing New York Convention, art. II(3) and III). Before compelling arbitration, however, the court must satisfy itself that it has subject-matter jurisdiction over the dispute and that the arbitration agreement is valid, enforceable, and applicable to the claims at issue. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

"An arbitration agreement is governed by the New York Convention if the following four jurisdictional requirements are met: (1) the agreement is 'in writing within the meaning of the [New York] Convention'; (2) 'the agreement provides for arbitration in the territory of a signatory of the [New York] Convention'; (3) 'the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial'; and (4) one of the parties to the agreement is

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compel arbitration, like on a Rule 12(b)(1) motion, the Court may consider factual matters outside the pleadings.").

[3] The United States and Nicaragua, where Plaintiff is a citizen, *see* ECF No. [1-2] at ¶3, are signatory nations. *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3, T.I.A.S. No. 6997, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=XXII-1&chapter=22&clang=_en (last visited August 4, 2025).

not an American citizen." *Escobar*, 805 F.3d at 1285 (quoting *Bautista v. Star Cruises*, 396 F.3d 1289, 1295 n.7 (11th Cir. 2005)). "If the arbitration agreement satisfies those four jurisdictional prerequisites, the district court must order arbitration unless one of the New York Convention's affirmative defenses applies." *Id*. at 1285–86 (citing *Bautista,* 396 F.3d at 1294–95). "Indeed, 'under the [New York] Convention and Supreme Court and Circuit precedent, there is a strong presumption in favor of freely-negotiated contractual choice-of-law and forum-selection provisions, and this presumption applies with special force in the field of international commerce.'" *Id*. at 1286 (quoting *Bautista,* 396 F.3d at 1275).

The New York Convention provides two causes of action in federal court: (1) to compel arbitration under 9 U.S.C. § 206 and (2) to confirm an arbitral award under 9 U.S.C. § 207. *See id*. at 1286. At the initial arbitration-enforcement stage, Article II of the New York Convention allows only defenses showing the arbitration agreement is "null and void, inoperative or incapable of being performed," which are limited to standard contract defenses like fraud, mistake, duress, or waiver. *See id*.; *Suazo v. NCL (Bahamas), Ltd.*, 822 F.3d 543, 546 (11th Cir. 2016).

The court also retains jurisdiction to determine threshold issues of arbitrability, including whether a valid agreement exists, whether it binds the parties, and whether it covers the dispute at hand, unless the parties clearly and unmistakably delegate those questions to the arbitrator. *See AT&T Techs., Inc. v. Comm's Workers of Am.*, 475 U.S. 643, 649 (1986); *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 69-70 (2010). Where the agreement incorporates a valid delegation provision, the court's role is limited to determining whether the delegation is enforceable, and questions of scope, validity, or waiver of arbitration must be left to the arbitrator. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68-69 (2019). Thus, the court's jurisdiction includes deciding motions to compel arbitration, unless those threshold determinations have been

expressly delegated to the arbitral forum.

III. DISCUSSION

A. This Court Has Jurisdiction to Compel Arbitration

The Court finds that it has jurisdiction to decide Defendant's Motion to Compel under the FAA, 9 U.S.C. § 4, and the New York Convention, 9 U.S.C. § 201. The Eleventh Circuit has made clear that the FAA's seamen's exemption in 9 U.S.C. § 1 conflicts with the broad scope of the New York Convention and does not apply to arbitration agreements that fall under this treaty. *See Escobar*, 805 F.3d at 1284 (citing *Bautista*, 396 F.3d at 1294). This disposes of Plaintiff's argument that the FAA's exception has "expressly forbidden the enforcement of arbitration clauses in seamen's employment contracts." *See* ECF No. [8] at 15.

Where the New York Convention, not the FAA exemption, applies, a court must examine whether the arbitration agreement is enforceable under its terms. "In determining whether to compel arbitration under the Convention Act, a district court conducts 'a very limited inquiry,'" consisting of determining whether the four-factor jurisdictional requirements are satisfied. *Escobar*, 805 F.3d at 1285 (quoting *Bautista*, 396 F.3d at 1294). This case meets all four: (1) the Arbitration Agreement is in writing; (2) it provides for arbitration in either Panama or the Philippines, which are both signatories of the Convention;[4] (3) it arises out of an employer-employee commercial legal relationship; and (4) Plaintiff is a Nicaraguan citizen, *see* ECF No. [1-2] at ¶3. *See Escobar*, 805 F.3d at 1285 (quoting *Bautista*, 396 F.3d at 1295 n.7). Accordingly,

[4] Panama and the Philippines are signatory nations. *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3, T.I.A.S. No. 6997, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=XXII-1&chapter=22&clang=_en (last visited August 4, 2025); s*ee also* ECF No. [4-1] at ¶9. ("The seat of the arbitration and the final hearing shall be either in Panama City, Panama or Manila, Philippines whichever is closer to Seafarer's home country.")

the Arbitration Agreement meets the four jurisdictional requirements, which means the New York Convention governs.

Under the New York Convention, Defendant requests this Court to compel arbitration in accordance with the terms of the Arbitration Agreement. *See* 9 U.S.C. § 206. At the initial arbitration-enforcement stage, there are only three affirmative defenses to arbitration — that the arbitration agreement is "[1] null and void, [2] inoperative or [3] incapable of being performed." *See Escobar*, 805 F.3d at 1286 (citing New York Convention, art. II(3)). Accordingly, this Court only has jurisdiction to decide: (1) whether the Parties delegated the enforceability of the Fee-Splitting Provision to an arbitrator; and (2) if not, whether Plaintiff has an affirmative defense to the enforcement of the Arbitration Agreement.[5]

B. The Delegation Clause and Arbitrability of the Fee-Splitting Provision

Carnival argues that the Agreement contains a Delegation Clause requiring the arbitrator, not this Court, to determine the enforceability of the Fee-Splitting Provision. A "delegation provision is an agreement to arbitrate threshold issues concerning the arbitration agreement." *Rent-A-Center*, 561 U.S. at 69; *see also Attix v. Carrington Mortg. Servs., LLC*, 35 F.4th 1284, 1303 (11th Cir. 2022) (citing *Rent-A-Center*, 561 U.S. at 69) (emphasis in original) ("An agreement to arbitrate questions about the validity or enforceability of a primary arbitration agreement *is itself* an arbitration agreement."). Put simply, a delegation clause "is an agreement to arbitrate the arbitrability of the parties' claims, nested within another agreement to arbitrate the merits of those claims." *Id.* The Supreme Court has "recognized that parties can agree to arbitrate

[5] For these reasons, the Motion for Remand would be properly denied because this Court has subject-matter jurisdiction based on the existence of a valid and enforceable arbitration agreement. Federal courts have jurisdiction to determine the enforceability of arbitration provisions and to resolve threshold issues related to arbitrability where, as here, such authority has not been clearly and unmistakably delegated to the arbitrator. Accordingly, the Court retains jurisdiction to adjudicate the matters presented, making remand unwarranted.

gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Rent-A-Center*, 561 U.S at 69–70 (internal quotations omitted).

When a party challenges an arbitration agreement as a whole, not the delegation provision specifically, a court must "treat [the delegation provision] as valid . . ., and must enforce it . . ., leaving any challenge to the validity of the [a]greement as a whole for the arbitrator." *Id.* at 72. On the other hand, "the federal court must consider the challenge" when a party calls into question the validity of a "delegation provision specifically." *Id.* at 71–72. A delegation clause is "severable from the underlying agreement to arbitrate." S*ee also Parm v. Nat'l Bank of Ca., N.A.*, 835 F.3d 1331, 1334–35 (11th Cir. 2016)) (citing *Rent-A-Center*, 561 U.S. at 70–73); *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1263 (11th Cir. 2011). When the arbitration agreement contains a delegation clause, the district court's review "is limited, at least initially, to [plaintiff's] direct challenges to that clause" and "[o]nly if [the district court] determine[s] that the delegation clause is itself invalid or unenforceable may [it] review the enforceability of the arbitration agreement as a whole." *Id.* Importantly, a challenge to "a delegation agreement is a matter of substance, not form," meaning that a "party specifically challenges the validity or enforceability of a delegation agreement if, and only if, the substantive nature of the party's challenge meaningfully goes to the parties' precise agreement to delegate threshold arbitrability issues." *Attix*, 35 F.4th at 1304.

While Carnival's Arbitration Agreement contains a Delegation Clause stating that disputes regarding "the existence, validity, termination or enforceability of any term or provision in this [Arbitration] Agreement, including but not limited to this provision to arbitrate" are subject to arbitration, this language does not clearly and unmistakably delegate questions of arbitrability

concerning access to the forum itself. Moreover, much like in *Parm*, in which the plaintiff challenged the delegation clause by arguing that the arbitration forum was unavailable to the class, *Parm*, 835 F.3d at 1335 ("We first assess Parm's contention and the district court's finding that the delegation clause is unenforceable because the arbitration agreement provides no available forum for an arbitrator to decide threshold issues of arbitrability"), here, Plaintiff likewise challenges the Delegation Clause by arguing that NAM is not an available arbitral forum as she cannot access the arbitrator to resolve gateway issues, such as financial inaccessibility.

Specifically, Plaintiff contends that arbitration is unavailable to her — even for threshold issues — because she cannot pay the initial filing fee required to commence the arbitration. Consistent with Plaintiff's claims, Defendant and NAM have maintained that the arbitration shall not commence pursuant to the terms of the Arbitration Agreement until *both* Parties pay their portion of the required fee; thus, arbitration has not commenced and cannot commence until Plaintiff pays her initiation fee. *See* ECF No. [8-6] ("NAM has been advised by counsel for Carnival that they will not pay the Claimant's portion of the filing fee on Claimant's behalf."); ECF No. [8-8] ("if the Claimant's filing fee is not paid by either Claimant or Carnival, the referenced arbitration will not be considered commenced, and NAM will not proceed with the administration of this arbitration"); ECF No. [4] at 7 ("Since Plaintiff abandoned arbitration before paying her portion of the fee, the arbitration should be deemed 'not commenced.'"); ECF No. [4-1] at ¶9 ("The arbitration shall not commence until both parties pay their portion of the required fee."). Thus, Plaintiff's argument that NAM's refusal to commence the arbitration until she has paid her half of the filing fee despite her inability to do so is a challenge to the Delegation Clause in that it contends that the existence of an arbitral forum is illusory; that is, she cannot get her foot in the door to litigate gateway issues, much less the merits of her claims. *See Parm,* 835 F.3d at

1335, 1338 ("Neither party disputes that the [tribal arbitral] forum is unavailable, and as such, we agree with the district court that we cannot enforce the delegation clause or the underlying arbitration agreement."). Confronting an identical issue, the Honorable Kathleen M. Williams recently reached the same conclusion as to a challenge to the delegation clause contained in Carnival's arbitration agreement. *See Dean Wilson v. Carnival Corp.*, Case No. 24-CV-24894, ECF No. 37 (S.D. Fla. July 24, 2025) ("Plaintiff's contention that he cannot access the arbitrator even to resolve gateway issues such as financial inaccessibility or waiver is similarly a challenge to the Delegation Clause in substance.").

Although Carnival relies on the Arbitration Clause's language, its argument fails because the enforceability challenge on this issue relates to whether arbitration can commence at all and does not relate to the merits of claims or procedural matters within arbitration. Since Plaintiff's challenge centers on access to arbitration in the first instance, this Court properly exercises jurisdiction to decide this issue.

By contrast, Plaintiff's arguments that Carnival has waived its right to arbitrate and that arbitration has "been had" within the meaning of 9 U.S.C. § 3 dispute the merits of her claims or procedural rules within arbitration. Such "disputes over the . . . enforceability of" the Arbitration Clause as a whole come within the broad language of the Delegation Clause and are properly delegated to NAM to resolve. *See Lamonaco v. Experian Info. Sols., Inc.*, 2025 WL 1831283, --F.4th--, at *4–5 (11th Cir. July 3, 2025) (holding waiver was an issue for the arbitrator because the parties' delegation provision expressly stated so and the plaintiff did not challenge the delegation provision). *Lamonaco* explains that that courts must send "all arbitrability disputes to arbitration," except for "successful challenges to the delegation provision." *Id.* (quoting *Coinbase, Inc. v. Suski*, 602 U.S. 143, 152 (2024)). The Court, therefore, proceeds to analyze Plaintiff's effective

vindication doctrine challenge to the Delegation Clause, which cannot be delegated to the arbitrator, and considers the issue of Plaintiff's access to the forum.

C. Effective Vindication Doctrine as an Article II Defense

Plaintiff opposes arbitration because the Fee-Splitting Provision requiring her to pay one-half of the arbitration initiation fee renders the Arbitration Agreement unenforceable, arguing that it precludes her from effectively vindicating her rights. *See* ECF No. [38] at 1–6. The effective vindication doctrine, which originated as dictum in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), and was later clarified in *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 90 (2000), contemplated a court's ability to invalidate arbitration agreements when "the existence of large arbitration costs could preclude a litigant . . . from effectively vindicating her federal statutory rights in the arbitral forum." When "a party seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive," the Court explained such party "bears the burden of showing the likelihood of incurring such costs." *Id.* at 92.

Several years later, the Supreme Court further confirmed "the existence of a [cost-based] 'effective vindication' exception" to mandatory arbitration, which applies when "filing and administrative fees attached to arbitration . . . are so high as to make access to the forum impracticable." *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 235–36 (2013) (quoting *Green Tree Fin.*, 531 U.S. at 90). And, the Eleventh Circuit Court of Appeals has likewise recognized the existence of the effective vindication doctrine. *See Smith v. Int'l Bus. Machs. Corp.*, No. 22-11928, 2023 WL 3244583, at *6 (11th Cir. May 4, 2023) (emphasis in original) (explaining that the doctrine is "limited to preventing the 'prospective waiver of a party's *right to pursue* statutory remedies" and describing the effective vindication doctrine as "cover[ing] agreements 'forbidding

the assertion of certain federal statutory rights' or, perhaps, imposing fees for arbitration 'so high as to make access to the forum impracticable'") (quoting *Italian Colors Rest.*, 570 U.S. at 236); *Anders v. Hometown Mortg. Servs., Inc.*, 346 F.3d 1024, 1028 (11th Cir. 2003) ("It may be that an agreement to arbitrate is unenforceable if the cost of arbitration precludes the effective vindication of statutory rights in arbitration.") (citing *Green Tree*, 531 U.S. at 90).

Within the context of the New York Convention, the Eleventh Circuit has analyzed the cost-based effective vindication exception in both *Suazo*, 822 F.3d at 554, and *Escobar*, 805 F.3d at 1291. In these decisions, the Eleventh Circuit explained that "a party invoking the effective-vindication doctrine because the cost of arbitration is prohibitively expensive must present evidence of two things: (1) 'the amount of the fees he is likely to incur;' and (2) 'his inability to pay those fees.'" *Suazo*, 822 F.3d at 554 (quoting *Escobar,* 805 F.3d at 1291). Although the Circuit Court determined that the effective vindication doctrine did not apply in each of these cases, the denials were based on fact-specific issues, not on whether a cost-based effective vindication defense can be raised as an Article II defense. *See Suazo*, 822 F.3d at 554; *Escobar*, 805 F.3d at 1291–92. The Court will, therefore, proceed with analyzing whether Plaintiff has satisfied her burden under this two-part inquiry.

i. Plaintiff has shown the amount of fees she is likely to incur.

Plaintiff satisfies the first element, proving the exact amount of fees that prohibit her from accessing the arbitration forum. Here, unlike the plaintiffs in *Escobar* and *Suazo*, Plaintiff establishes that enforcing the Arbitration Agreement will effectively deny her access to the arbitral forum. Plaintiff satisfies the first element by providing the Court with the invoice from NAM detailing the fee she must pay to initiate arbitration. *See* ECF No. [8-3]. NAM and Carnival maintain that Plaintiff must pay $1,500 to commence the arbitration. *See* ECF No. [8-8]. Plaintiff

does not speculate as to this $1,500 fee, as this is the amount certain preventing Plaintiff from adjudicating her dispute as required by the Arbitration Agreement.

In *Escobar*, the arbitration agreement explicitly required the employer to pay the initial arbitration costs, and there was no showing that plaintiff would ever be asked to pay fees before arbitration commenced. 805 F.3d at 1292. The Eleventh Circuit found the plaintiff's alleged inability to pay was speculative because he had not established that any fees would immediately bar his access to arbitration. *Id*. In contrast, here, the express terms of the Arbitration Agreement require Plaintiff to pay her half of the filing fee upfront as a condition to commencing arbitration. Unlike *Escobar*, there is no advancement provision here; Defendant has refused to pay Plaintiff's share, and NAM will not proceed without payment from both parties. Therefore, the barrier to arbitration is not hypothetical or speculative — it is immediate and concrete.

In *Suazo*, the arbitration agreement provided that the employer would pay all arbitration costs if the employee used union representation, but the agreement was silent on costs when union representation was declined. 822 F.3d at 548–49. On appeal, the Eleventh Circuit found that the plaintiff's option to arbitrate for free through union representation undermined his effective vindication defense. *Id*. at 555. In addition, the plaintiff's evidence of cost was speculative, unsupported, and procedurally deficient. *Id*. At the district court level, the plaintiff submitted evidence that included his counsel's opinion, unsupported by documentation or data, and an email exchange with opposing counsel indicating that the costs would be equally divided at least until the arbitrator determined otherwise — evidence that the appellate court deemed insufficient. *Id*. at 555. In his reply brief on appeal, the plaintiff cited to the website of the arbitral body handling his claim, which listed an initial filing fee of $4,000, suggesting the plaintiff would pay up to $2,000 to initiate arbitration. *Id*. The Eleventh Circuit noted that, although "it seems likely that

[the plaintiff] will be required to bear half of the cost of initiating arbitration and 'may' also become responsible for some other costs prior to the arbitrator's decision[,]" plaintiff, nevertheless, failed to "carr[y] his burden of proving that it is likely that unaffordable costs will deny him 'access to the forum.'" *Id*. Acknowledging the arbitrator's discretion to impose the initiation fee on plaintiff coupled with plaintiff's failure to show his inability to afford the arbitration fees, the Eleventh Circuit concluded that the plaintiff failed to prove that "unaffordable costs will deny him 'access to the forum.'" *Id.*

In this case, however, Plaintiff has identified the precise cost ($1,500) she is required to pay before arbitration can begin under the Arbitration Agreement's terms and the demands of NAM and Defendant. There is no indication that Defendant intends to or is contractually obligated to front this expense; to the contrary, Defendant demands that Plaintiff cover her half of the initiation fee. Unlike *Suazo*, this is not a speculative barrier; it is a present and operative one. The Court, therefore, concludes that Plaintiff satisfied the first prong of the analysis.

ii. Plaintiff has shown her inability to pay the fees.

Plaintiff also satisfies the second element, clearly establishing her financial inability to pay her share of the $3,000 arbitration initiation fee. Plaintiff's sworn affidavit provides detailed evidence of her income, assets, debts, and expenses, which Carnival does not meaningfully dispute. Plaintiff attests that she earned $1.60 per hour while working for Carnival with a guaranteed monthly wage of $900. *See* ECF No. [15-9] at ¶5; ECF No. [4-1]. After her injury and termination, she was unable to work or earn an income. *See* ECF No. [15-9] at ¶¶6, 11. Unable to afford a $3,000 surgery that her doctor recommended — and which Carnival declined to cover — she borrowed $3,300 against her only asset, a co-owned home in Nicaragua. *See id*. at ¶¶6–10. After defaulting, she lost her home. *See id*. at ¶12. Plaintiff has no income, savings, credit, and

now, no assets, and relies on family support. *See id*. at ¶¶6–14, 18. She states she cannot afford or obtain the $1,500 needed to initiate arbitration. *See id*. at ¶15.

Given the strong evidentiary showing, this case requires an outcome that departs from the conclusions reached in *Escobar* and *Suazo*. Plaintiff's affidavit provides more information than in *Escobar*, which merely stated that "[plaintiff] was unemployed, had $0 in his bank account, and did not have any money to pay for arbitration." 805 F.3d at 1283. But even then, the appellate court in *Escobar* took no issue with the plaintiff's evidence of indigency, just his support for his arbitration cost estimate and the fact that the defendant offered to pay the initiation fee, which opened the doors to the arbitral forum. *Id*. at 1292. In *Suazo*, the plaintiff submitted only an affidavit containing the conclusory statements that he "lives in a poor community where it is not easy to find work," that he "does not have money to pay for an arbitration, much less for an arbitrator's salary," and that "he does not have the means to pay for thousands of dollars to an arbitrator." 822 F.3d at 555 (alterations accepted). Moreover, the plaintiff's option to arbitrate with union representation for free meant his poverty did not create a complete barrier to arbitration. *Id.* Unlike *Suazo*, Plaintiff's affidavit here contains specific assertions showing her indigency and her inability to pay the $1,500 fee.

Contrary to the circumstances in *Escobar* and *Suazo*, where the cost-shifting issue might never materialize or could be deferred until after the arbitration was finalized, Plaintiff here is barred from even accessing the arbitral forum due to her inability to pay upfront. The Fee-Splitting Provision, NAM's fee structure, and Plaintiff's financial circumstances combine to create "filing and administrative fees attached to arbitration that are so high as to make access to the forum [impossible]." *Italian Colors Rest.*, 570 U.S. at 236; *see also Bolivar v. Global Diagnostic Labs LLC*, No. 23-CV-1130, 2023 WL 7496161, at *4 (M.D. Fla. Oct. 26, 2023) (recommending

severing provisions of arbitration agreement requiring parties to share arbitration costs equally and advance those costs, because the plaintiffs showed through cost estimations and sworn declarations that "the payment of arbitration costs up front would preclude their ability to vindicate their rights through arbitration."), *aff'd & adopted*, 2023 WL 7495569 (M.D. Fla. Nov. 13, 2023).[6]

Therefore, in this case, Plaintiff has shown that her financial circumstances and the Fee-Splitting Provision render the Arbitration Clause incapable of being performed under the effective vindication doctrine, making the clause unenforceable. Next, the Court will address whether the Fee-Splitting Provision is severable from the remainder of the Arbitration Agreement.

D. Severability of the Fee Splitting Provision from the Arbitration Agreement

The Parties disagree as to the severability of the Fee-Splitting Provision. Plaintiff maintains that severing the provision "would leave the remainder of the arbitration agreement meaningless." *See* ECF No. [38] at 6. Defendant points to the severability clause in the Arbitration Agreement to conclude that "the Court should be permitted to sever any provisions that the Court deems unenforceable[.]" *See* ECF No. [37] at 11 (citing ECF No. [4-1] at ¶20). The Agreement's severability clause provides: "If any provision, term, or condition of this Agreement is invalid or unenforceable for any reasons, it shall be deemed severed from this Agreement and the remaining provisions, terms, and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect." *See* ECF No. [4-1] at ¶20.

"When an arbitration agreement contains invalid terms but the overarching contract has a severability clause, the [Court must] turn to [the governing law] to determine whether the contract's severability clause may be used to remove the offending terms in the arbitration

[6] Defendant argues that Plaintiff's counsel likely fronted the $401 state court filing fee, suggesting that Plaintiff could similarly afford to pay the arbitration initiation fee through her counsel. *See* ECF No. [4] at 3; ECF No. [17] at 8. Defendant fails to cite any legal duty or any legal precedent that would require such an arrangement. Accordingly, the Court declines to analyze this argument.

agreement." *Bodine v. Cook's Pest Control Inc.*, 830 F.3d 1320, 1325 (11th Cir. 2016).[7] If the "severability clause is enforceable under the relevant [forum] law, then 'any invalid provisions in the arbitration agreement are severable, and the underlying claims are to be arbitrated.'" *Id.* (quoting *Anders*, 346 F.3d at 1032 (alterations accepted)). "Whether [a] severability provision is to be given effect is a question of state law, because in placing arbitration agreements on an even footing with all other contracts, the FAA makes general state contract law controlling." *Bolivar*, 2023 WL 7496161, at *4 (quoting *Anders*, 346 F.3d at 1032).

The Arbitration Agreement's "governing law" provision requires that, except for specified Carnival vessels not at issue here, "the laws of the flag state of the vessel on which [the employee] is assigned at the time the cause of action accrues" should be applied. *See* ECF No. [4-1] at ¶10. Defendant asserts that Panama is the flag state for the subject ship, the Carnival Breeze; thus, Panamanian law applies. *See* ECF No. [37] at 12; ECF No. [1-2] at ¶3. Defendant's analysis of Panamanian law in this context begins and ends with the assertion that Panamanian law "***seems*** to recognize severability of clauses that are deemed unenforceable." *See* ECF No. [37] at 12 (citing "Civ. Code of the Panama Republic, Título II, Capítulo V" for the proposition that this Code "recogniz[es] relative nullity of imperfect contracts") (emphasis added). Plaintiff, on the other hand, analyzes the issue under Florida law. *See* ECF No. [38] at 7 (citing *Frankenmuth Mut. Ins. Co. v. Escambia Cnty., Fla.*, 289 F.3d 723, 728–29 (11th Cir. 2002) (applying Florida law)).

"A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing." Fed. R. Civ. P. 44.1. "Foreign law is a fact to be pleaded and proved;

[7] *Bodine* analyzes a domestic arbitration agreement under the FAA, not an international arbitration agreement under the New York Convention. *Id.* at 1323. However, the FAA "applies residually to supplement the provisions of the" New York Convention "where they d[o] not conflict." *Bautista*, 396 F.3d at 1297 (citing 9 U.S.C. § 208). The Court analyzes the severability issue under the FAA's framework because the New York Convention is silent on that issue.

and when the contrary is not alleged, the law of the sister state will be assumed to be the same as Florida law." *Stone v. Wall*, 135 F.3d 1438, 1442 (11th Cir. 1998); *see also Collins v. Collins*, 36 So. 2d 417, 417 (1948). "The district court is not required to conduct its own research into the content of foreign law if the party urging its application declines to do so." *Mut. Serv. Ins. Co. v. Frit Indus., Inc.*, 358 F.3d 1312, 1321 (11th Cir. 2004). "Although the court is permitted to take judicial notice of authoritative statements of foreign law, nothing requires the court to conduct its own research into obscure sources." *Id*. (quoting *McGhee v. Arabian Am. Oil Co.,* 871 F.2d 1412, 1424 n.10 (9th Cir. 1989)) (internal quotation marks omitted). "[W]here either no information, or else insufficient information, has been obtained about the foreign law, the forum will usually decide the case in accordance with its own local law except when to do so would not meet the needs of the case or would not be in the interests of justice." *Id*. (quoting Restatement (Second) of Conflict of Laws, § 136, cmt. h, at 378–79 (1971)) (citing *Cavic v. Grand Bahama Dev. Co., Ltd.,* 701 F.2d 879, 882 (11th Cir. 1983) (citing Restatement with approval).

Defendant's invocation of Panamanian law is wholly insufficient. Despite referencing the Panamanian Civil Code, Defendant fails to provide the Court with the actual text of the Code, a certified translation, an affidavit from a Panamanian law expert, or any substantive analysis of the cited provisions. Indeed, Defendant cites to a whole chapter of the Code without even specifying the specific section on which it relies. The Court declines to accept Defendant's cursory *six-word* parenthetical as an adequate foundation for the application of foreign law. It is not the role of the Court to independently investigate the content or meaning of foreign legal provisions when the party urging their application has made no meaningful effort to develop the argument. *See Mut. Serv. Ins.*, 358 F.3d at 1321. Defendant's failure to provide even minimal engagement with the

governing code provisions warrants skepticism of its position and justifies applying the law of the forum instead. *See id*.

Turning to Florida law, in a factually indistinguishable case, Judge Williams recently severed the same Fee-Splitting Provision in Carnival's arbitration agreement, reasoning that the contract's severability provision showed the parties' intention for the contract to be severable. *See Wilson*, Case No. 24-CV-24894, ECF No. 37 at 21 ("Here, the fact that the contract itself contains a severability provision demonstrates that the parties intended for the contract to be severable.") (quoting *Frankenmuth*, 289 F.3d 791–92). Further finding that the Fee-Splitting Provision did not go "to the essence of the [Arbitration Clause]" and removing it did not render the Arbitration Agreement meaningless, the district court ultimately severed the clause. *Id.* at 21-23 (quoting *Hudson v. P.I.P., Inc.*, No. 18-CV-61877, 2020 WL 5647009, at *3–4 (S.D. Fla. March 13, 2020)) (finding fees and costs clause of arbitration agreement severable, despite the absence of a severability clause, because that clause is "ancillary to[] the arbitration provision's main purpose of designating the forum for resolving disputes within its scope"), *aff'd & adopted*, 2020 WL 5647051 (S.D. Fla. Apr. 2, 2020); *Krstic v. Princess Cruise Lines, Ltd. (Corp)*, 706 F. Supp. 2d 1271, 1280 (S.D. Fla. 2010) (severing an unenforceable choice-of-law provision because of the "severance provision in the arbitration agreement [and] the general federal policy in favor of enforcing arbitration agreements"); *Dockeray v. Carnival Corp.*, 724 F. Supp. 2d 1216, 1226 (S.D. Fla. 2010) (relying on the "clearly written and stand-alone severability clause" to sever choice-of-law provision in arbitration agreement).

The Court finds the severability reasoning and analysis in *Wilson* to be particularly instructive and persuasive. Applying the law of the forum here, the undersigned likewise finds that the removal of the Fee-Splitting Provision leaves intact the remaining arbitration obligations

while providing a clear structure for assigning costs going forward. *See Bolivar*, 2023 WL 7496161, at *4 (finding unenforceable fees and costs provisions in arbitration agreement were severable); *Hudson*, 2020 WL 5647009, at *4 (same). Therefore, the undersigned recommends that the following language from the Fee-Splitting Provision be severed from the Arbitration Clause:

> Seafarer and CCL agree to each pay one-half (1/2) of the fees required to initiate arbitration under the terms of this Agreement. The arbitration shall not commence until both parties pay their portion of the required fee.

ECF No. [4-1] at 6, ¶9.

With the severance of this language, the Arbitration Clause would now read as follows:

> Each party shall bear its own attorney's fees and costs associated with maintaining an action in arbitration, including, but not limited to, travel, lodging, expert(s) and court reporter(s) fees and costs, regardless of any rules or laws to the contrary. [SEVERED PROVISIONS]. CCL shall pay for the [sic] all other reasonable administrative costs of arbitration and fees of the arbitrator as assessed by NAM.

ECF No. [4-1] at 6, ¶9. And with the severance of the Arbitration Clause, all impediments for Plaintiff to pursue her claims in arbitration have been removed. Given the enforceability of the remainder of the Arbitration Clause, the undersigned recommends that the Parties be compelled to arbitrate Plaintiff's claims and that case be stayed while the arbitration is pending.

IV. CONCLUSION

For the foregoing reasons, I respectfully **RECOMMEND** the following:

1. Carnival's Motion to Compel Arbitration, **ECF No. [4]**, be **GRANTED IN PART AND DENIED IN PART**. Plaintiff's claims be compelled to arbitration pursuant to the Arbitration Clause, ECF No. [4-1] at 31, ¶9, as modified herein. Specifically, the Fee-Splitting Provision be **SEVERED** from the Arbitration Clause as described

above, and Carnival shall pay for all reasonable administrative costs of arbitration and fees of the arbitrator as assessed by NAM, including initial filing fees.

2. Plaintiff's Motion to Remand, **ECF No. [15]**, be **DENIED**.

3. Defendant's Motion to Stay Discovery, **ECF No. [23]**, be **DENIED AS MOOT**.

4. Plaintiff's Motion for Leave to Supplement, **ECF No. [28]**, be **GRANTED**.[8]

5. The Court **STAY** and **ADMINISTRATIVELY CLOSE** this case pending the completion of the arbitration proceedings. The Court **CANCEL** all hearings, trial, and deadlines.

6. The Court provide a deadline for the Parties to file a joint status report regarding the status of the arbitration proceedings and a deadline for the Parties to file joint status report after completing arbitration, discussing the result of the arbitration and how this case should proceed.

Pursuant to Local Magistrate Rule 4(b), 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 Beth Bloom, 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 upon grounds of plain error if necessary in the interest 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.

[8] The Court has considered the information in the Motion to Supplement, ECF No. [28], but this information do not alter the Court's analysis.

RESPECTFULLY SUBMITTED in Chambers in Miami, Florida on August 4, 2025.

MARTY FULGUEIRA ELFENBEIN
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record