UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case Nos. 1:20-cv-22202-KMM-JB, 1:20-cv-22319-KMM-JG, and 1:20-cv-23011-RNS-EGT
(Chief Judge Moore and Magistrate Judge Becerra)

SERVICE LAMP CORPORATION PROFIT SHARING PLAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CARNIVAL CORPORATION, ARNOLD W. DONALD, AND DAVID BERNSTEIN, Defendants.	Case No. 1:20-cv-22202-KMM-JB
JOHN P. ELMENSDORP, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CARNIVAL CORPORATION, CARNIVAL PLC, ARNOLD W. DONALD, DAVID BERNSTEIN, and MICKY ARISON, Defendants.	Case No. 1:20-cv-22319-KMM-JG
ABRAHAM ATACHBARIAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CARNIVAL CORPORATION, CARNIVAL PLC, ARNOLD W. DONALD, DAVID BERNSTEIN, and MICKY ARISON, Defendants.	Case No. 1:20-cv-23011-RNS-EGT

MEMORANDUM OF LAW IN SUPPORT OF STUART ROY ROSENBLATT'S MOTION FOR CONSOLIDATION OF THE RELATED ACTIONS, APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF SELECTION OF COUNSEL

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PRELIMINARY STATEMENT

Stuart Roy Rosenblatt ("Movant") respectfully submits this memorandum of law in support of his motion for: (a) consolidation of the above-captioned actions (the "Related Actions");[1] (b) appointment as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995, as amended (the "PSLRA"), 15 U.S.C. §78u-4(a)(3)(B); and (c) approval of his selection of Levi & Korsinsky LLP ("Levi & Korsinsky as Lead Counsel and Cullin O'Brien Law, P.A. ("Cullin O'Brien") as Liaison Counsel; and (d) for such other relief as the Court deems proper.

The Related Actions presently pending before this Court are brought on behalf of all persons who purchased or otherwise acquired securities of Carnival Corporation ("Carnival" or the "Company") between September 26, 2019 through May 1, 2020, inclusive (the "Class Period")[2]. The plaintiffs in the Related Actions allege violations of the Securities Exchange Act of 1934 ("Exchange Act") against the Company, Arnold W. Donald ("Donald"), David Bernstein

[1] On July 6, 2020, the Court entered an order consolidating the cases entitled *Service Lamp Corporation Profit Sharing Plan et al., v. Carnival Corporation, et al.,* C.A. 1:20-cv-22202-KMM-JB (S.D. Fl. May 27, 2020) (the "*Service Lamp* Action" or the "Lead Case") and *John P. Elmensdorp et al., v. Carnival Corporation, et al.,* C.A. 1:20-cv-22319-KMM-DG (S.D. Fl. June 3, 2020) (the "*Elmensdorp* Action"). A third related case, entitled *Abraham Atachbarian et al., v. Carnival Corporation, et al.,* C.A. 1:20-cv-23011-RNS-EGT (S.D. Fl. July 21, 2020) (the "*Atachbarian* Action") was filed on July 21, 2020, and has yet to be consolidated with the Lead Case. As of the date of this filing, Plaintiff Atachbarian has yet to file a notice of related action.

[2] Each of the three Actions propose different Class Periods (1) the *Service Lamp* Action defines the Class as "all those who purchased or otherwise acquired Carnival common stock and securities between January 28, 2020 and May 1, 2020, inclusive"; (2) *Elmensdorp* Action defines the Class as "all persons and entities who purchased or otherwise acquired Carnival's common stock (NYSE: CCL) and/or Carnival's American Depository Shares ("ADSs") (NYSE: CUK) between September 26, 2019, and April 30, 2020, inclusive"; and (3) the *Atachbarian* Action defines the Class as "all persons and entities who sold put option contracts or purchased call options for the shares of Carnival common stock (the "Class") during the period of January 27, 2020 through May 1, 2020." Collectively, the Class definition that encompasses the largest Class would consist of all persons or entities who purchased securities of Carnival from September 26, 2019 through May 1, 2020. Movant adopts the most inclusive Class definition.

("Bernstein"), and Micky Arison ("Arison") (collectively, the "Defendants")[3].

The PSLRA provides that the Court appoint as lead plaintiff the movant with the largest financial interest in the litigation that has also made a prima facie showing that it is a typical with the other class members and an adequate class representative under Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). See *Mulvaney v. Geo Group, Inc.*, 2016 WL 10519276, *1 (S.D. Fla. Nov. 21, 2016).

Movant satisfies both requirements. Movant, with losses of approximately $45,995.59,[4] believes that he has the largest financial interest in the outcome of the Related Actions and also satisfies the requirements of Rule 23 in that his claims are typical of the claims of the Class, and he will fairly and adequately represent the interests of the Class. Thus, Movant is the presumptive lead plaintiff under the PSLRA and should be appointed lead plaintiff.

STATEMENT OF FACTS

Carnival purports to be the world's largest leisure travel company and the largest cruise company, carrying nearly 45 percent of global cruise guests and operates in North America, Australia, Europe, Asia, and operates a portfolio of global, regional and national cruise brands that sell tailored cruise products, services and vacation experiences on 104 cruise ships to destinations around the world. *Service Lamp* ¶ 2.[5]

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[3] Defendant Arison is not a named Defendant in the *Service Lamp Corporation Profit Sharing Plan* Action

[4] Movant's certification identifying his transactions in Carnival, as required by the PSLRA, as well as a chart detailing his losses, are attached to the Declaration of Cullin O'Brien, dated July 27, 2020 (the "O'Brien Declaration"), as Exhibits A and B, respectively.

[5] Citations to "*Elmensdorp* ¶ __" are to paragraphs of the Class Action Complaint (the "*Elmensdorp* Complaint") filed in the *Elmensdorp* Action. Citations to "*Service Lamp* ¶ __" are to paragraphs of the Class Action Complaint (the "*Service Lamp* Complaint") filed in the *Service Lamp* Action. Unless otherwise defined, capitalized terms shall have the same meaning set forth in the *Service Lamp* and *Elmensdorp* Complaints. The facts set forth in the *Service Lamp and Elmensdorp* Actions are incorporated herein by reference.

Throughout the Class Period, Defendants made materially false and/or misleading statements, and/or failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors that: (1) the Company's medics were reporting increasing events of COVID-19 illness on the Company's ships; (2) Carnival was violating port of call regulations by concealing the amount and severity of COVID-19 infections on board its ships; (3) in responding to the outbreak of COVID-19, Carnival failed to follow the Company's own health and safety protocols developed in the wake of other communicable disease outbreaks; (4) by continuing to operate, Carnival ships were responsible for continuing to spread COVID-19 at various ports throughout the world; and (5) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis. *Service Lamp* ¶ 8.

On September 26, 2019, when Carnival filed its Form 10- Q for the quarterly period ended August 31, 2019, and a Form 8-K, the Company purportedly described all the major risks posed by the Coronavirus, now termed COVID-19, that potentially could impact the Company and its shareholders (in identical lists). *Elmensdorp* ¶ 9. However, both the 10-Q and 8-K entirely omitted any reference to the possible harm to shareholders that would be caused by the Company's insufficient facilities and preparation for a viral infection and/or other outbreaks of diseases on one or more of its ships. *Id.*

In December of 2019, COVID-19 was officially detected in the city of Wuhan in Hubei province, China .Since it was first detected, COVID-19 has spread throughout the world, resulting in an ongoing pandemic. *Service Lamp* ¶ 26.

On January 28, 2020, the Company filed with the SEC its annual report on Form 10-K for the fiscal year ending November 30, 2019 ("2019 10-K"). . ¶ 27. In that report, Defendants stated

that the Company was committed to ensuring a safe experiences for its guests and that Carnival was fully compliant with all legal and statutory requirements concerning health and safety. *Id.* Specifically, Defendants stated that they were "dedicated to fully complying with, or exceeding, all legal and statutory requirements related to health, environment, safety, security and sustainability throughout our business." *Id*. On that same day, the Company also announced in a press release the resignation of Debra Kelly-Ennis, who resigned from her position as a director of the Company and Carnival plc, including her role as a member of their Health, Environmental, Safety and Security ("HESS") committees, effective January 27, 2020, which resignation enabled Kelly-Ennis to step out from under her duty as a director to sign the 2019 Form 10-K. *Service Lamp* ¶ 31.

By February 5,2020, 3,700 passengers and crew members were quarantined about the Diamond Princess, a Gem-class ship operated by Princess Cruises, a cruise line owned by Carnival. *Service Lamp* ¶ 5. Then on February 20, the Grand Princess, the first of the Grand-class cruise ships, docked in San Francisco and at least one known COVID infected person disembarked, which had reportedly been seen by the ship doctor, exhibiting symptoms for COVID for at least six day while on board. *Id*. By March 4, 2020 there was a COVID related fatality on board the Grand Princess, and seven (7) Company ships accounted for 49 of the 70 cruise ship fatalities. *Id.*

On April 16, 2020, when the Company still had at sea two (2) of its cruise ships, *Bloomberg Businessweek* issued an article titled "Carnival Executives Knew They Had a Virus Problem, But Kept the Party Going," which exposed that Carnival may have neglected to adequately protect passengers from COVID-19 on a series of cruise voyages and yet proceeded to operate new cruise departures despite knowledge of the spread of COVID-19. *Service Lamp* ¶ 40.

On this news, the Company's share price fell $0.53 per share from a prior close of $12.38

per share to close at $11.85 per share on April 16, 2020. *Service Lamp* ¶ 43.

Then, on May 1, 2020, *The Wall Street Journal* published an article titled "Cruise Ships Set Sail Knowing the Deadly Risk to Passengers and Crew." *Service Lamp* ¶ 44. The article discussed how Carnival ships facilitated the spread of COVID-19 and provided new facts on early warning signs Carnival and its affiliated cruise lines possessed and the Company's disclosure failures. *Id*. Furthermore, the article also noted that The House Committee on Transportation and Infrastructure had requested documents from Carnival related "to Covid-19 or other infectious disease outbreaks aboard cruise ships" and that testimony from a separate investigation in Australia revealed that Carnival and its affiliated cruise lines may have misled shore officials by concealing those exhibiting COVID-19 symptoms prior to docking. *Id.*

On this news, the Company's share price fell $1.97 per share from a prior close of $15.90 per share to close at $13.93 per share on May 1, 2020, further damaging Carnival investors. *Id.*

ARGUMENT

I. CONSOLIDATION OF THE RELATED ACTIONS IS APPROPRIATE

The PSLRA provides that "[i]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this [sub-]chapter has been filed," the Court shall not make the determination of the most adequate plaintiff until "after the decision on the motion to consolidate is rendered." 15 U.S.C. §78u-4(a)(3)(B)(ii). Thereafter, the Court "shall appoint the most adequate plaintiff for the consolidated actions." *Id*.

Under Federal Rule of Civil Procedure 42(a), consolidation is appropriate when the actions involve common questions of law or fact. See Fed. R. Civ. P. 42(a). "Consolidation of shareholder class actions is recognized as benefitting the court and the parties by expediting pretrial proceedings, reducing case duplication, and minimizing the expenditure of time and money by all

persons concerned." *Newman v. Eagle Bldg. Techs.*. 209 F.R.D. 499, 501-02 (S.D. Fla. 2002) (citing *In re Olsten Corp. Sec. Lit.*, 3 F. Supp.2d 286, 294 (E.D.N.Y. 1998)). Consolidation is particularly appropriate in securities class action litigation such as the Related Actions. *Id.* at 502. See also *Mitchell v. Complete Mgmt., Inc.*, No. 99-CV-1454 (DAB), 1999 WL 728678, at *1 (S.D.N.Y. Sept. 17, 1999) ("In securities actions where the complaints are based on the same 'public statements and reports' consolidation is appropriate if there are common questions of law and fact ") (citation omitted); *In re Sunbeam Sec. Litig.*, 1998 WL 1990884, *2 (S.D. Fla. Dec. 4, 1998). Courts thus routinely find that consolidating multiple securities cases is an efficient solution where the complaints arise generally from the same alleged false and misleading statements.

The Related Actions present similar factual and legal issues, as they all involve the same subject matter and are based on the same wrongful course of conduct asserted against the same defendants. Because the Related Actions arise from the same facts and circumstances and involve the same subject matter, consolidation under Rule 42(a) is appropriate. See *Eagle Bldg. Techs.*, 209 F.R.D. at 501-02.

II. APPOINTING MOVANT AS LEAD PLAINTIFF IS APPROPRIATE

A. The Procedure Required by the PSLRA

The PSLRA establishes the procedure for appointment of the lead plaintiff in "each private action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a). The plaintiff who files the initial action must publish notice to the class within 20 days after filing the action, informing class members of their right to file a motion seeking appointment as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(A). The PSLRA requires the Court to consider within 90 days all motions filed within 60 days after publication of that notice by any person or group of persons who are members of the proposed

class to be appointed lead plaintiff. 15 U.S.C. §§78u-(a)(3)(A)(i)(II) and (a)(3)(B)(i).

The PSLRA provides a presumption that the most "adequate plaintiff" to serve as lead plaintiff is the "person or group of persons" that:

(aa) has either filed the complaint or made a motion in response to a notice;

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii)(I). The presumption may be rebutted only upon proof by a class member that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class" or "is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II).

As set forth below, Movant satisfies the foregoing criteria and is not aware of any unique defenses that defendants could raise against him. Therefore, Movant is entitled to the presumption that he is the most adequate plaintiff to represent the Class and, as a result, should be appointed lead plaintiff in the Related Actions.

B. Movant Satisfies the Lead Plaintiff Provisions of the PSLRA

As described in further detail below, Movant should be appointed lead plaintiff because he satisfies all of the requirements set forth by the PSLRA. Movant filed a timely motion to be appointed lead plaintiff, to his knowledge holds the largest financial interest in the relief sought by the Class, and satisfies the typicality and adequacy requirements of Rule 23

1. Movant Timely Filed His Application to Be Appointed Lead Plaintiff

On May 27, 2020, counsel in the *Service Lamp* Action caused a notice (the "Notice") to be published pursuant to Section 21D(a)(3)(A) of the Exchange Act, which announced that a

securities class action had been filed against Carnival and certain of its officers, advising putative class members that they had until July 27, 2020 to file a motion seeking appointment as a lead plaintiff in the Related Actions.[6] Movant has reviewed the complaint filed in the *Service Lamp* Action and has timely filed this motion pursuant to the Notice.

2. Movant Has the Largest Financial Interest in the Relief Sought by the Class

According to 15 U.S.C. §78u-4(a)(3)(B)(iii), the Court shall appoint as lead plaintiff the movant with the largest financial loss in the relief sought by the action. Damages are calculated under the PSLRA based on: (i) the difference between the purchase price paid for the shares and the average trading price of the shares during the 90-day period beginning on the date the information correcting the misstatement was disseminated; or (ii) the difference between the purchase price paid for the shares and the average trading price of the shares between the date when the misstatement was corrected and the date on which the plaintiff sold their shares, if they sold their shares before the end of the 90-day period. 15 U.S.C. §78u-4(e).

During the Class Period, Movant purchased 5,830 shares of which he retained 3,300 shares of Carnival securities through the end of the Class Period at a cost of $100,307.50 in reliance upon the materially false and misleading statements issued by Defendants and, as a result, suffered a substantial loss of approximately $45,995.59. See O'Brien Decl. Ex. B. To the best of his knowledge, there is no other applicant who has sought, or is seeking, appointment as lead plaintiff that has a larger financial interest in this litigation. Accordingly, Movant is the presumptive lead plaintiff under the PSLRA.

[6] The *Service Lamp* Action was filed in this Court on May 27, 2020. On that same day, the Notice was published over *Globe Newswire*, a widely-circulated national wire service. See O'Brien Decl. Ex. C.

3. Movant Satisfies the Requirements of Rule 23(a)

In addition to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must also "otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) provides that a class may be certified only if the following four requirements are satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative party are typical of the claims or defenses of the class; and the representative party will fairly and adequately protect the interests of the class. Of these four prerequisites, only two—typicality and adequacy—directly address the personal characteristics of the lead plaintiff movant. Consequently, in deciding a lead plaintiff motion, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a) and defer examination of the remaining requirements until a class certification motion is filed. See *Sheet Metal Workers Local 28 Pension Fund v. Office Depot, Inc*., Nos. 07-81038-CIV, 07-14348, 2008 WL 1943955, at *2 (S.D. Fla. May 2, 2008); *Dillard v. Platform Specialty Products Corporation*, 2016 WL 10586300, *3 (S.D. Fla. June 30, 2016); *Miller v. Dyadic Intern., Inc., et al*., 2008 WL 2465286, *6 (S.D. Fla. April 18, 2008) (considering only typicality and adequacy on a motion for designation as lead plaintiff); see generally Fed. R. Civ. P. 23(a)(3)-(4). At the lead plaintiff stage, a movant need only make a preliminary showing that he/she/it satisfies the typicality and adequacy requirements of Rule. 23. *Id*.

As detailed below, Movant satisfies both the typicality and adequacy requirements of Rule 23, thereby justifying his appointment as lead plaintiff.

a. Movant's Claims Are Typical of the Claims of the Class

Under Rule 23(a)(3), the claims or defenses of the representative parties must be typical of

those of the class. A plaintiff satisfies the typicality requirement if the plaintiff has: (a) suffered the same injuries as the absent class members; (b) the injuries are as a result of the same course of conduct by defendants; and (c) the plaintiff's claims are based on the same legal issues that prove the defendant's liability. See *Dyadic*, 2009 WL 2465286 at *6;. *Geo Group, Inc*., 2016 WL 10519276, at *2 (citing *Dyadic*, 2008 WL 2465286, at *6). Rule 23 does not require that the named plaintiffs be identically situated with all class members. It is enough if their situations share a common issue of law or fact. See *Prado-Steinman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 & n.14 (11th Cir. 2000) (finding typicality satisfied as long as the named plaintiffs share the "same essential characteristics of the claims" as the class).

Movant meets the typicality requirement of Rule 23. Movant, like the other members of the Class, acquired Carnival securities during the Class Period at prices artificially inflated by the Defendants' materially false and misleading statements, and was damaged thereby. Thus, his claims are typical, if not identical, to those of the other members of the Class. Accordingly, Movant satisfies the typicality requirement of Rule 23(a)(3). See *Jahm v. Bankrate, Inc*., 2015 WL 13650037, *2 (S.D. Fla. Jan. 16, 2015).

b. Movant Will Fairly and Adequately Protect the Interests of the Class

Movant is an adequate representative for the Class. Under Rule 23(a)(4), representative parties must also "fairly and adequately protect the interests of the class." Adequate representation will be found if the representative has: (a) retained able and experienced counsel; and (b) the representative has no fundamental conflicts of interest with the interests of the class as a whole. Fed. R. Civ. P. 23(a)(4). The PSLRA directs the Court to limit its inquiry regarding the adequacy of the movant to whether the interests of the movant are clearly aligned with the members of the putative Class and whether there is evidence of any antagonism between the interests of the movant

and other members of the Class. 15 U.S.C. §78u-4(a)(3)(B).

Movant's interests are aligned with those of the other members of the Class. Not only is there no evidence of antagonism between Movant and the other Class members, but Movant has a significant, compelling interest in prosecuting the Related Actions to a successful conclusion based upon the very large financial losses he has suffered as a result of the wrongful conduct alleged in these Related Actions. This motivation, combined with Movant's identical interest with the members of the Class, demonstrates that Movant will vigorously pursue the interests of the Class. In addition, Movant has selected a law firm to represent him and the Class that are highly experienced in prosecuting securities class actions.

In sum, because of Movant's common interests with the Class members, his clear motivation and ability to vigorously pursue the Related Actions, and his competent counsel, the typicality and adequacy requirements of Rule 23(a)(3) and (4) are met. Because Movant meets those typicality and adequacy requirements and has sustained the largest amount of losses from Defendants' alleged wrongdoing, Movant is the presumptive Lead Plaintiff in accordance with 15 U.S.C. §78u-4(a)(3)(B)(iii)(I), and should be appointed as such to lead the Related Actions.

III. APPOINTING MOVANT'S CHOICE OF COUNSEL IS APPROPRIATE

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to Court approval. 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should interfere with the lead plaintiff's selection of counsel only when necessary "to protect the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa).

Movant has selected and retained Levi & Korsinsky as the proposed Lead Counsel for the Class and Cullin O'Brien Law as proposed Liaison Counsel. Each firm has extensive experience in successfully prosecuting complex securities class actions such as this one and are well-qualified

to represent the Class. See O'Brien Decl. Exhibits D and E (firm résumés of proposed counsel). Thus, the Court should approve Movant's choice of counsel. See, e.g., *Dillard*, 2016 WL 10586300, at *4 (approving and appointing movant's choice of co-lead counsel); *Biver v. Nicholas Fin., Inc*., 2014 WL 1763211, at *7 (M.D. Fla. Apr. 30, 2014) (same).

CONCLUSION

For the foregoing reasons, Movant respectfully requests that this Court: (1) consolidate the Related Actions; (2) appoint Movant as Lead Plaintiff for the Class in the Related Actions; (3) approve Levi & Korsinsky as Lead Counsel and Cullin O'Brien as Liaison Counsel for the Class; and (4) grant such other relief as the Court may deem proper.

Dated: July 27, 2020

Respectfully submitted,

/s/ Cullin O'Brien
Cullin O'Brien
Florida Bar No. 0597341
CULLIN O'BRIEN LAW, P.A.
6541 NE 21st Way
Fort Lauderdale, Florida 33308
Tel: (561) 676-6370
Fax: (561) 320-0285
E-mail: cullin@cullinobrienlaw.com

Proposed Liaison Counsel for Movant and the Class

Shannon L. Hopkins (*pro hac vice* forthcoming)
LEVI & KORSINSKY, LLP
1111 Summer Street, Suite 403
Stamford, CT 06901
Tel: 203-992-4523
Fax: 212-363-7171
Email: shopkins@zlk.com

Proposed Counsel for Movant and the Class

CERTIFICATE OF SERVICE

I HEREBY certify that on July 27, 2020, I electronically filed the foregoing document with the Clerk of the Court CM/ECF.

/s/ Cullin O'Brien
Cullin O'Brien