

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CIVIL DIVISION

SHARILYNE ANDERSON and
VERA MELNYK

CASE NO:

Plaintiff,

vs.

GURMEET AHLUWALIA,
NIEL HESELTON, DYNAMIC YACHT
MANAGEMENT, L.L.C., and DREAM
HOLDINGS LTD, NIGEL BURGESS INC.
in personam,

Defendants.

**COMPLAINT FOR DAMAGES IN PERSONAM FOR NEGLIGENCE, FALSE
IMPRISONMENT, AND INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS,
(JURY TRIAL DEMANDED)**

Plaintiffs, Sharilyne Anderson (“Sharilyne”) and Vera Melnyk (“Vera”) (collectively, “Plaintiffs”), bring a complaint *in personam* against Defendants Gurmeet Ahluwalia (“Ahluwalia”), Niel Heselton (“Captain Heselton”), Dynamic Yacht Management, L.L.C. (“Dynamic”), And Dream Holdings Ltd (“Dream Holdings”), Nigel Burgess Inc. (“Burgess”), and allege:

PRELIMINARY STATEMENT

When Plaintiffs decided to accept Charterer’s invitation to spend Christmas aboard the “superyacht” DREAM they expected a world class luxury cruise managed by “The experienced and highly professional crew that will meet your every need and desire to ensure a magnificent voyage.” As advertised by defendants. Instead, they received a crew headed by an angry, arrogant,

dismissive, and grossly negligent captain, discernably inexperienced in the waters he was navigating. Despite being properly ordered by the Charterer (pursuant to his authority under the Charter Agreement) numerous times to take the vessel between the island of Andros and the archipelago to the east called the Exuma District – a body of water known by the Charterer to have calmer seas than the open ocean to the east of Exuma, the captain refused. The captain laughed and mocked Charterer at the suggestion that he knew the voyage could be done, if necessary, with a specialized pilot who better knew the waters. Charterer had previously used a pilot on previous charters in the Bahamas. Despite Charterer informing the captain of this in detail, the captain refused to consider it.

Moreover, the captain seemed affronted at the idea that he would need outside navigational assistance. He appeared angry and resentful that a Charterer would deem to intrude on his alleged specialized knowledge, experience, and authority as captain. The captain refused to take on the pilot and sought instead to punish the Charterer and his party for their insolence through intentionally piloting the yacht into the open ocean. Without the tidal break the Bahamian islands provide, the yacht was thrown about on the water night and day with few breaks.

What resulted was anything other than the relaxing luxury holiday experience promised. Instead, it was a days-long voyage spent managing intense vomiting, vertigo, sleepless nights, severe anxiety and fear over potential capsizing or sinking of the vessel, and dodging shards of glass as deck chairs, not properly secured as required by the crew, careened into glass railings and rained shards of glass on the dining area below. It was a voyage marred with fear and uncertainty as they watched the vessel's captain seemingly overwhelmed or out of control captain scream and deride the crew in front of them. No one seemed in charge. No one seemed to know the area. No one seemed to know what they were doing or concern themselves with the safety, let alone luxurious

experience, of the charter party.

Finally, when Charterer and his party had enough, they demanded and instructed the captain to drop them off at Grand Exuma Island to avoid the dangerous return to Nassau. Despite completely manageable mooring and landing conditions, the captain again refused the Charterer's orders and guest demands, asserting speciously that the waters were too rough to safely land one of the older women of the party. The captain's solution, among pleas to be let off the chartered boat anywhere along the way back, was to confine the charter party to the boat against their will until he completed the full 19-hour tour through open ocean again. Once again, illness, vertigo, severe emotional distress, were the hallmarks of what should have been an enjoyable ride home. But the captain, proving himself once again in charge, forced the guests to endure it all anew. By the time the charter party stumbled onto the deck of the marina, they were sick, exhausted, and fearful of ever boarding another boat.

Plaintiffs seek damages for this harrowing and destructive voyage and the needless pain and injury suffered at the hands of a punitive captain. Plaintiffs seek this recovery from both the individuals and the vessel DREAM herself.

SUBJECT MATTER JURISDICTION AND VENUE

1. This is an *in personam* action for damages in excess of seventy-five thousand (\$75,000.00) dollars, exclusive of interest and costs as can nearly be determined.
2. This Court has diversity subject matter jurisdiction for the *in personam* claims pursuant to 28 U.S.C. § 1332 in that the parties are diverse, and the amount in controversy for each count and each plaintiff is greater than \$75,000 exclusive of interest and costs.
3. This Court also has secondary jurisdiction pursuant to 28 USC § 1333(1) Savings to Suitors for the negligence claim.

4. Venue and jurisdiction for the *in personam* claims is proper in the Southern District of Florida, pursuant to 28 U.S.C. § 1391 as the acts occurred on the high seas, the Charter Agreement allowing use of the vessel for the guests' passage was executed by and on behalf of defendants in this District, the defendants do business in this District, derive substantial income in this district, and operate, charter, manage, crew, victualize and moor vessels in this district including the motor yacht "DREAM".

THE PARTIES

5. At all times hereinafter mentioned Plaintiff, Sharilyne Anderson ("Sharilyne") is domiciled in Toronto, Canada and her residence is within Toronto, Canada.

6. At all times hereinafter mentioned Plaintiff, Vera Melnyk ("Vera" collectively and together with Sharilyne, "Plaintiffs") is domiciled in Barrie, Canada and her residence is located at Barrie, Canada.

7. Defendant Gurmeet Ahluwalia, ("Ahluwalia"), at all times hereinafter mentioned, is believed to be domiciled in the State of Florida residing at 444 NW 120th Dr. Coral Springs, FL 33071. Ahluwalia is the agent of Dream Holdings LTD signing on the organization's behalf throughout all relevant times.

8. Defendant Niel Heselton ("Captain Heselton") is the ship's captain/master that was operating the DREAM and overseeing the charter giving rise to this action. He is a British National residing in England at 6 Romilly Street, NE33 2SP South Shields, Tyne and Wear, England.

9. Defendant Captain Heselton is subject to personal jurisdiction under Florida Long-Arm Statute, Fla. Stat. § 48.193. Captain Heselton contracted to captain DREAM with Florida-based entities. Captain Heselton was hired by Defendants Dynamic Yacht Management, L.L.C. and/or Defendant Nigel Burgess Inc., and was working in an employment or agency capacity at the

time of the acts described herein.

10. Both company Defendants are Florida-based business entities operating, conducting, engaging in, or carrying on a business or business venture in the state of Florida with offices in that state. The Agreement giving rise to the charter the Captain operated from was executed in Florida.

11. On information and belief, the employment agreement hiring Captain Heselton to act as master/captain of the DREAM was executed in Florida with Florida entities and is governed by Florida law.

12. Those same Defendants had directive control over some or all of Captain Heselton's acts or omissions supporting the claims. All tortious conduct of Captain Heselton was done within the scope of his duties and as supervised or controlled by the remaining Defendants.

13. Defendant Dynamic Yacht Management, L.L.C. ("Dynamic") is at all times hereinafter mentioned a Florida Limited Liability Company, Number L07000008872, with its Principal Place of Business at 5850 Coral Ridge Dr., Ste. #103a, Coral Springs, FL 33076. Defendant Ahluwalia also serves as registered agent of this entity, along with Dream Holdings LTD, at 444 NW 120th Dr. Coral Springs, FL 33071.

14. Defendant Dream Holdings LTD ("Dream Holdings") is at all times hereinafter mentioned a foreign corporation organized under the laws of the Cayman Islands with an address of DMS Corporate Services, 20 Genesis Close PO Box 1344 Grand Cayman Ky1-1108 with an agent named Gurmeet Ahluwalia residing in 444 NW 120th Dr. Coral Springs, FL 33071 who resides and operates and engages in a business on behalf of Defendant Dream Holdings. Defendant Dream Holdings is subject to *in personam* jurisdiction under the Florida Long-Arm Statute, Fla. Stat. § 48.19 by operating, conducting, engaging in, or carrying on a business or business venture

in this state or having an office or agency in this state both individually and through its agent. At all times mentioned herein Defendant Dream Holdings was acting in a management, hiring, master, or directive capacity over Captain Heselton and Defendant Ahluwalia.

15. Defendants Nigel Burgess Inc. is at all times hereinafter mentioned a Florida Profit Corporation, Number P98000064863, with its Principal Place of Business at 390 Alton Rd, Ste B, Miami Beach Marina, Miami Beach, FL 33139 and a registered agent, Laura Garay, 390 Alton Road, Suite B, Miami Beach, FL 33139. On information and belief, at all times mentioned herein Defendant Burgess was acting in a management, hiring, master or directive capacity over Defendants Dynamic, Ahluwalia, and Captain Heselton.

FACTS COMMON TO ALL COUNTS

16. A couple weeks before Christmas, 2020, the Charterer and Sharilyne began talking about how they wanted to escape their Canadian isolated existence and spend the holidays with family and friends experiencing a yacht charter in the Bahamas they had previously enjoyed. Charterer and Sharilyne contacted a charter broker who gave them a list of two possible yachts that were not already booked.

17. After reviewing the advertising profiles of both yachts, the Charterer and Sharilyne chose DREAM for its specific onboard amenities, and representations made in their advertisements.

18. The Charterer entered into the Agreement in Fort Lauderdale, Florida on December 18, 2021 for the DREAM charter between himself, Defendants Ahluwalia, Dream Holdings, and Burgess. Charterer invited Plaintiffs to join the charter as guests and they were aboard DREAM as lawful guests.

19. The DREAM yacht is a 60m (196.9ft) luxury motor yacht that advertises itself online as the “right balance of large yacht ambience...and congenial nautical experience.”

20. This same website represents “The experienced and highly professional crew will meet your every need and desire to ensure a magnificent voyage.”

21. The website domain name yachtdream.com is owned and operated by Defendant Dynamic. Defendant Dynamic is described online as a yacht management or services company providing a number of services including crew placement and training or total yacht management.

22. Defendant Ahluwalia, manager and registered agent for Defendant Dynamic, signed the Charter for and on behalf of the yacht owner, Defendant Dream Holdings.

23. The DREAM was to meet Charterer and Sharilyne at a marina on Nassau on December 22, 2021 at noon and sail at the Charterer’s direction until it returned at the same place on January 1, 2021 at noon.

24. Charterer and Sharilyne would meet the captain and crew in the Bahamas. Initially, Charterer and Sharilyne would sail alone for the first few days but pick up the rest of their friends and family on December 27, 2020 in Eleuthera at the direction of Captain Heselton (who stated he could not pick them up in Exuma or Nassau).

25. Charterer and Sharilyne arrived in Nassau the day before the charter and received permission from Defendant Ahluwalia, through their broker, to stay the night onboard instead of at a hotel to minimize the risk of COVID-19 exposure.

26. Defendant Ahluwalia was one of many points of contact that Captain Heselton would reach via phone for instructions and guidance throughout the charter when he became overwhelmed or confused.

27. Defendant Ahluwalia, and his company Defendant Dynamic, is believed to have been one of the employment or managerial authorities over Captain Heselton. Defendant Burgess, a global yacht services corporation that offers total yacht management (e.g., charter, sales,

marketing, berthing, etc.), is believed to be the other manager of DREAM and its charters and personnel.

28. Defendant Burgess, as part of its management, advertises and books DREAM through its website.

29. Charterer and Sharilyne met Captain Heselton and crew the next day – the official first day of the charter.

30. Captain Heselton, for one, was an odorous, ill-tempered man who was curt and dismissive with the guests and outright angry and abusive to the crew.

31. Despite the Agreement guaranteeing that the Owner shall provide a qualified captain, it was clear that Captain Heselton had likely never worked aboard DREAM or within the geographic area of the charter.

32. Captain Heselton was often easily flustered and overwhelmed and seemed completely unfamiliar with the area, the crew, and the vessel itself.

33. Sharilyne was later informed that Captain Heselton was a backup captain for DREAM and was subsequently replaced by the “regular” captain following termination of their charter.

34. Sharilyne was also informed that it was a new crew operating the vessel; a crew recently assembled by the Head Stewardess immediately prior to the charter.

35. The first indications of the Captain’s failings came before they had even left the dock. Inexplicably, despite being set to castoff at noon, the DREAM didn’t leave port until almost dark – ostensibly waiting on provisions to be loaded way behind schedule. This delayed process lasted almost the entire first day and resulted in the boat stopping for the night immediately outside the harbor.

36. Almost an entire half day of the charter was wasted. Additionally, at no time did Captain Heselton or any of the crew conduct a safety brief or demonstration prior to setting sail. Plaintiffs never knew where to access lifeboats, life vests, or any other emergency gear in the event it was necessary which caused additional stress.

37. Notwithstanding the auspicious start, Charterer and Sharilyne sat down with the Captain Heselton the next morning to plan out the voyage. The Agreement states that “The Captain shall comply with all reasonable orders given to him by the Charterer regarding the management, operation and movement of the Vessel, wind, weather, and other circumstances permitting...” except when “..in the reasonable opinion of the Captain, [Charterer’s orders would] result in the Vessel moving to any port or place that is not safe and proper or might result in the Charterer failing to re-deliver the Vessel upon expiration of the Charter period.”

38. Under his authority in the Agreement, Charterer briefed Captain Heselton that they wanted to sail between Andros and the island of Eleuthera among the archipelago in the center between the two called the Exuma District.

39. This area of the Bahamian waters was known for being calm enjoyable sailing. However, due to its coral reefs and shallower waters, occasionally a specially experienced pilot was required to navigate within that space. Charterer is aware of many vessels that transits the directed route without the use of a pilot.

40. Charterer and Sharilyne had been to the area and chartered previous vessels and knew both the waters and the piloting process. In contrast Captain Heselton seemed to know little to nothing of the area and didn’t even know some of the significant island names.

41. As the conversation continued, Captain Heselton became more and more agitated and upset at Charterer’s instructions. Eventually Captain Heselton excused himself from the

conversation to contact someone, believed to be Defendant Ahluwalia or someone from Defendant Burgess.

42. The Captain returned with a printed map that showed his planned route to take the DREAM into the open Atlantic Ocean to the east of Eleuthera.

43. Again, Charterer objected and instructed the Captain to get a pilot and to stay inside the island chains for calmer waters and to prevent wasting fuel and time needlessly.

44. Captain Heselton refused this order and stated the draft of the boat was too deep to safely navigate the basin route as Charterer directed.

45. In refusing the order, Captain Heselton laughed at both Charterer and Plaintiff Anderson stating that they must have been confused.

46. Charterer informed Captain Heselton he was incorrect and that, while a pilot trained in navigating the basin could be hired and utilized, navigating the basin was possible and safer than taking the yacht to the open ocean. Charterer further stated that he had taken this route before without issue.

47. Captain Heselton laughed derisively at Charterer again and became hostile at Charterer's suggestion of a pilot and Charterer's attempts to direct a route.

48. Captain Heselton again refused both to take on a pilot and to further discuss the southern route towards the Exuma District islands and dismissed the Charterer's reasonable orders.

49. The conversation ended with Captain Heselton insisting that he would be taking the open ocean route despite the objections of the Charterer and Sharilyne.

50. Captain Heselton, in contravention of Charterer's reasonable orders, and against all navigational prudence, willfully and with reckless disregard for the safety of the vessel, its crew, and guests, chose a navigation route that traveled to the north and then east of Nassau, Bahamas

and ultimately to the East of the Eleuthera island. This route needlessly and recklessly exposed the vessel to the open Atlantic Ocean without barrier or break of any waves. Predictably, what resulted was a harrowing 10–15-hour ordeal where Charterer and Sharilyne were needlessly and punitively subjected to hours upon hours of waves pummeling the yacht as it more than doubled the travel time necessary to reach their destination had they taken the Charterer's route.

51. Charterer and Sharilyne became violently ill, vomiting throughout the night. They could not stand or lay comfortably. They could not sleep. The crew suggested that Charterer and Sharilyne move to a room further below deck to reduce the chance of illness. This did nothing.

52. Sharilyne, became distraught and anxious over the vessel capsizing or sinking and being stuck in the lower decks of the vessel without access or knowledge of safety procedures or gar. She suffered bouts of panic and severe emotional distress from fears of drowning and death before the end of the night preventing her from sleep.

53. The vessel eventually made it around the easterly side of the Eleuthera island and arrived in calmer waters back inside the Bahama island chain.

54. Charterer and Sharilyne, needing to wait an additional day or two to pick up their additional family and friends in Eleuthera, sailed to Norman Cay, bizarrely the very Exuma District Captain Heselton had refused to travel to via the direct southern route from Nassau.

55. The Captain made no mention of any navigational problems to that destination this time. On December 27, 2020, the DREAM returned to Eleuthera and the remainder of Charterer's and Sharilyne's family and friends boarded the vessel, including Vera.

56. Upon their arrival, Charterer again instructed Captain Heselton to return to the west side of the Exuma District and travel south where the waters would be calmer.

57. Again, Captain Heselton refused that order and informed Charterer there was "no

other option” that they must again travel southeast to Cat Island – exposing the vessel needlessly once again to areas of rough open ocean to the east.

58. Captain Heselton even acknowledged it would yet again be rough seas to travel there but that it would be calm at the island.

59. The passengers were again subjected to hours of rough sailing, some having to crawl on all fours to be able to safely walk the decks of the ships. Other, less mobile passengers, like Vera, were functionally prevented from moving for fear of severe physical injury. Vera had to be constantly held in chairs to keep from injury. Almost all guests suffered violent bouts of vomiting and illness from the sailing conditions.

60. Notably, the seas were so rough that an improperly secured deck chair on the upper deck of the vessel crashed into the glass partition above the dining area raining down shards of broken glass that narrowly missed the guests but caused severe emotional distress over the likelihood of being injured.

61. In addition to the constant work to stay upright and care for Vera, the crew further demonstrated their lack of training and operational malaise when Vera’s caregiver informed them that she needed a bit of sugar to care for Vera’s blood sugar levels.

62. It took asking a crew member – a member billed by Defendants Dynamic and Burgess as catering “to every need and desire” three times to get a cup of sugar to aid Vera. Vera’s caregiver actually had to explain the Vera’s dire medical condition to get any of the crew to finally act.

63. The DREAM finally arrived at Hawks Nest Marina on Cat Island. Captain Heselton informed the passengers that this would be an ideal location for everyone to disembark and have some beach time along with a beachside barbecue the following day. However, on landing at Hawks

Nest Marina, the passengers observed signs warning individuals not to swim in the water due to sharks.

64. A simple web search by Sharilyne discovered that Hawks Nest was notorious among the Bahamas for sharks. The passengers refused to swim there and insisted that they travel further south outside notoriously shark-infested waters.

65. The charter party finally arrived at Columbus Cove on December 30th and remained there until January 1st, 2021. On January 1st, the passengers were to all disembark on Exuma and catch a flight home.

66. Captain Heselton sailed DREAM the short distance from Cat Island to Exuma but upon arriving refused to allow the passengers to disembark.

67. Captain Heselton stated that the seas were too rough to allow Vera to easily disembark. Charterer noted that waves were present, but they were nothing that would prevent them disembarking.

68. In fact, Charterer and Sharilyne noted that the waves were equivalent to those in which Vera had boarded DREAM via one of the tenders. Charterer informed Captain Heselton that they would disembark via the tenders together as Vera had arrived.

69. Becoming dismissive and angry again, Captain Heselton refused to allow anyone to leave the ship and instead traveled for another hour around the southern tip of Exuma looking for a place to moor and disembark the passengers.

70. Yet there was not a place Captain Heselton found agreeable.

71. It seemed to some in the charter party that Captain Heselton merely wanted to return to Nassau regardless. Once again, Charterer told Captain Heselton that at least some of the party could disembark via the tenders while the others could be delivered to any other island with an

airport and completely calm waters – even where they had first been picked up. Again, Captain Heselton refused to land. Charterer and Sharilyne informed the captain that Charterer needed to depart to make an important medical appointment.

72. This disclosure caused Captain Heselton, call and consult yet again with parties off ship. Following this call, believed to be someone associated with Defendants Dynamic or Burgess, Captain Heselton again refused and stated that he would only allow passengers to disembark at Nassau, Bahamas, the starting point.

73. The captain further stated that he would only consider taking DREAM around the eastern edge of Eleuthera island into the open ocean once again.

74. Sharilyne became distraught at the idea of experiencing the severe fear and illness of the open ocean again and subjecting the other passengers to that experience. Charterer and Sharilyne implored the captain to stop the boat anywhere along the way to allow them to disembark.

75. They indicated multiple sites containing airports they could charter from. They even suggested the Eleuthera airport where they had recently picked up the other passengers.

76. Captain Heselton refused any and all suggestions – even Eleuthera – on the contrived basis that it was “unsafe” without having checked or evaluated the areas.

77. Captain Heselton instead, with full knowledge of the conditions of the seas and its affect upon the vessel, confined the passengers, including Plaintiffs, against their will to the vessel for the 18-hour forcing them to endure the reverse trek back into the open ocean where DREAM was again buffeted needlessly by rough seas.

78. Almost all guests suffered severe illness and severe emotional harm as they were punitively compelled to sail back to the starting point against their will.

79. Adding further insult to the situation, Defendant Ahluwalia, emailing Charterer the

last day, insisted that Charterer send him a waiver for Vera to disembark via a tender – a waiver not required on the embarkation trip.

80. But, even after giving this waiver via email, Captain Heselton refused to allow them to disembark and continued the trek to Nassau.

81. Moreover, it became clear that Captain Heselton had been exaggerating Vera's physical condition as Defendant Ahluwalia chastised Charterer for not disclosing she was in a wheelchair – she was not – she uses a walker.

82. Finally, Charterer and his guests were shocked to discover in one of Defendant Ahluwalia's final emails that he possessed photos and surveillance footage of the charter party. Surveillance that was not disclosed to any member of the party prior to recording and may possess imagery where the charter party would have possessed a reasonable expectation of privacy.

COUNT I: NEGLIGENCE
(All Defendants)

83. Plaintiffs re-allege and incorporate all the allegations in paragraphs 1 – 82 above as if the same were repeated herein.

84. To establish a claim of negligence, a plaintiff must show “(1) that defendant owed plaintiff a duty; (2) that defendant breached that duty; (3) that this breach was the proximate cause of plaintiffs injury; and (4) that plaintiff suffered damages.” *Kadylak v. Royal Caribbean Cruise, Ltd.*, 167 F. Supp. 3d 1301, 1308 (S.D. Fla. 2016).

85. General maritime law recognizes the traditional principles of agency. Therefore, an employer may be found liable for the negligent acts of an employee acting within the scope of his employment. *Id.* at 1310.

86. In determining if acts occur within the course of employment, a court considers whether "(a) it is of the kind he is employed to perform; (b) it occurs substantially within the

authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master, and (d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master. *Id.* at 1310.

87. At all material times, Defendants were engaged in the business of operating vessels for carriage of persons and for this purpose operated, among other vessels, the M/Y DREAM.

88. At all material times, Plaintiffs were lawful guests and invitees aboard DREAM at the behest of Charterer.

89. At all material times, Defendants owed Plaintiffs, lawful invitees aboard the vessel they operated on navigable waters, a duty of reasonable care to keep them safe from harm and serious injury on the vessel, to act and navigate the vessel prudently as to avoid injury or illness and to allow free ingress and egress to and from the vessel.

90. *Duties and Breaches of Captain Heselton*

- a. In addition to the general duty above, Captain Heselton owed a duty under the voyage charter to comply with all reasonable orders given to him by the Charterer regarding the management, operation and movement of the Vessel, wind, weather, and other circumstances permitting.
- b. At all material times, the negligent actions by Captain Heselton arose directly from the kind of tasks a boat captain is hired to perform (i.e., safety briefings and drills, ships navigation and operation, monitoring sea conditions and weather, etc.). The actions occurred entirely within the authorized time and space of the boat charter managed and contracted by Defendants. All Captain Heselton's acts were actuated, at least in part, by a purpose to serve Defendants through operation and return of DREAM to Owners.

c. Captain Heselton breached these duties by:

- i. Failing to conduct a safety brief or orientation for the guests boarding the boat.
- ii. Failing to follow the reasonable orders of the Charterer regarding the management, operation, and movement of the vessel.
- iii. Failing to prudently navigate or operate the vessel to prevent dangerous conditions and minimize perils to the guests including Plaintiffs.
- iv. Willfully, wantonly, and with reckless disregard for the safety of the guests, crew, or vessel, intentionally exposing DREAM to the rough and tumultuous seas of the open ocean risking death or serious injury. This breach constitutes gross negligence on the part of Captain Heselton.
- v. Failing to properly monitor the conditions of the environment or seas on which the DREAM traveled.
- vi. Failing to prudently navigate or operate the vessel to competently land, dock, or moor the vessel without harm or fear of unreasonable harm.
- vii. Failing to utilize weather routing and a pilot to navigate safely within Bahamian waters.

91. *Duties and Breaches of Defendants Ahluwalia and Dynamic*

- a. In addition to the general duty above and being vicariously liable for Captain Heselton's gross and simple negligence, Defendants owed a duty of

reasonable care to Plaintiffs to properly hire, staff, train, and supervise Captain Heselton in the execution of his duties aboard DREAM.

- b. Defendants Ahluwalia and Dynamic breached these duties by:
 - i. Ratifying or directing the gross negligence and other tortious conduct of Captain Heselton in exposing the DREAM, its crew and guests, including Plaintiffs, to the punitive return voyage through the open Atlantic Ocean.
 - ii. Failing to competently hire, staff, or adequately train the captain and crew to safeguard passengers and guests, including Plaintiffs, from injury or unnecessary illness.
 - iii. Failing to adequately staff the crew to prevent dangerous conditions and minimize perils and injuries to lawful guests aboard, including Plaintiffs.
 - iv. Failing to properly monitor the conditions of the environment or seas on which the DREAM traveled or utilize efficient weather routing.
 - v. Failing to properly train captain and crew regarding the reasonable landing, docking, or mooring of the vessel under otherwise reasonable conditions.
 - vi. Failing to train the captain and crew regarding their duties under the Charter.
 - vii. Failing to properly train the captain and crew as to their duty to conduct safety briefings and train guests and invitees as to the safety equipment and procedures aboard the DREAM.

- viii. Failing to properly supervise and observe the navigation route of the vessel to ensure that the captain and crew were preventing dangerous conditions and minimizing perils to the passengers, including Plaintiffs.
- ix. Failing to properly supervise or train the captain and crew to reasonably prevent the commission of intentional torts by the crew or captain against the guests, including Plaintiffs.

92. *Duties and Breaches of Defendant Burgess*

- a. In addition to the general duty above and being vicariously liable for Captain Heselton's gross negligence, Defendants owed a duty of reasonable care to Plaintiffs to properly hire, staff, train, supervise, and manage Captain Heselton and Defendants' Ahluwalia and Dynamic in the execution of their responsibilities and duties in managing and directing DREAM and its crew.
- b. Defendants breached their duty of care by:
 - i. Ratifying or directing the gross negligence and other tortious conduct of Captain Heselton in exposing the DREAM, its crew and guests, including Plaintiffs, to the punitive return voyage through the open Atlantic Ocean.
 - ii. Failing to competently hire, staff, or adequately train the captain and crew to safeguard passengers, including Plaintiffs, from injury or unnecessary illness.
 - iii. Failing to adequately staff the crew to prevent dangerous conditions and minimize perils and injuries to lawful guests aboard, including

Plaintiffs.

- iv. Failing to properly monitor the conditions of the environment or seas on which the DREAM traveled.
- v. Failing to properly train captain and crew regarding the reasonable landing, docking, or mooring of the vessel under otherwise reasonable conditions.
- vi. Failing to train the captain and crew regarding their duties under the Charter.
- vii. Failing to properly supervise and observe the navigation route of the vessel to ensure that the captain and crew were preventing dangerous conditions and minimizing perils to the passengers, including Plaintiffs.
- viii. Failing to properly supervise and observe the navigation route of the vessel to ensure that the captain and crew were following a reasonably prudent route that would not unnecessarily delay or extend the Charter or otherwise reasonably interfere with the enjoyment of the guests including Plaintiffs.
- ix. Failing to properly supervise or train the captain and crew to reasonably prevent the commission of intentional torts by the crew or captain against the guests, including Plaintiffs.
- x. Failing to supervise or ensure that Defendants Ahluwalia and Dynamic were properly training, managing, and supervising the conduct of Captain Heselton and the crew of the DREAM.

93. Plaintiffs suffered injuries and damages as a direct and proximate cause arising from Defendants' breach of their duty, including but not limited to physical injuries, illness, pain, suffering, emotional distress (including but not limited to, fear of death by drowning, fear of being trapped or confined on a vessel, fear of boarding vessels of any kind).

**COUNT II: FALSE IMPRISONMENT
(All Defendants)**

94. To establish false imprisonment, a plaintiff must prove: "(a) an act intending to confine another within fixed boundaries; (b) the act directly or indirectly results in such a confinement; and (c) the confined person is conscious of or harmed by the confinement." *Barnes v. Carnival Corp.*, No. 06-20784-CIV, 2006 WL 8433555, at *4 (S.D. Fla. Dec. 22, 2006) (citation omitted). False imprisonment is "the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty." *Johnson v. Barnes & Noble Booksellers, Inc.*, 437 F.3d 1112, 1116 (11th Cir. 2006).

95. Plaintiffs re-allege and incorporate all the allegations in paragraphs 1 - 82 above as if the same were repeated herein.

96. Captain Heselton, using his authority over DREAM and its charterer and guests, and by refusing to stop or moor the vessel despite reasonable orders by Charterer to do so, had directly and intentionally confined passengers, including Plaintiffs, to the fixed boundaries of DREAM yacht.

97. Passengers, including Plaintiffs were forcefully confined to the vessel for approximately 15 hours of travel in the rough open ocean.

98. The passengers, including Plaintiffs, were astutely aware of their forced confinement as they continually asked Captain Heselton to allow them to disembark and several different

locations along the way and which said reasonable requests were directly refused by the Captain.

99. Plaintiffs suffered harm as a direct and proximate result of this false imprisonment including but not limited to, physical illness, anxiety, loss of liberty, loss of enjoyment and benefit of the Charter, pain, suffering, severe emotional distress (including but not limited to, panic attacks, trauma, fear of death by drowning, fear of being trapped or confined on a vessel, fear of boarding vessels of any kind).

100. Defendants are vicariously liable for the tortious activity of Captain Heselton since the above conduct fell squarely within the scope of his duties of employment as ship's captain, it occurred within the authorized time and space of the charter, it was employed to serve the ship owner and stakeholder by returning the ship to the originating port, and the constructive force employed to confine the charter party was his moral authority of Captain Heselton's role as captain and not unexpected by the master. *See Jackson Marine Corp. v. Blue Fox*, 845 F.2d 1307 (5th Cir.1988) (the general maritime law to the principal the servant's acts committed within the scope of a servant's employment). Moreover, the tortious conduct was ratified, adopted, or approved of by all Defendants when Captain Heselton called Defendants before returning to Nassau.

**COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(All Defendants)**

101. Under Florida law, a plaintiff must plead the following elements in order to state a claim for IIED: "(1) extreme and outrageous conduct; (2) an intent to cause, or reckless disregard to the probability of causing, emotional distress; (3) severe emotional distress suffered by the plaintiff; and (4) that the conduct complained of caused the plaintiff's severe emotional distress." *Blair v. NCL (Bahamas) Ltd.*, 212 F. Supp. 3d 1264, 1269 (S.D. Fla. 2016) (citing *Metro. Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278 (Fla. 1985)).

102. Plaintiffs re-allege and incorporate all the allegations in paragraphs 1 - 82 above as if the same were repeated herein.

103. Captain Heselton intentionally inflicted continued emotional distress during the voyage and exhibited outrageous conduct including screaming at the crew in front of guests, acting aggressively toward all aboard, committing assault and fear of physical harm, continued intentional transit over rough seas to further punish the guests aboard the vessel, refusal to allow any guest to disembark.

104. First, Captain Heselton ignored reasonable orders for safe and calm navigation, and with reckless disregard to the probability of causing severe emotional distress, instead exposed M/Y DREAM and its guests to the dangerous high seas and swells of the open ocean travel during rough weather intentionally when there were safer alternative passages. This choice constituted outrageous conduct under the circumstances, intentional or reckless conduct without regard to guests' physical well-being, safety or health or the safe navigation of the vessel.

105. As a direct result of Captain Heselton's intentional and reckless conduct, Plaintiffs suffered severe emotional distress, physical manifestations including vomiting, panic attacks, vertigo and in constant fear of the boat capsizing and drowning in addition to bruises from being tossed about the vessel.

106. Captain Heselton, with reckless disregard to the probability of yet again causing emotional distress, confined passengers against their will and subjected them needlessly to a 19-hour dangerous voyage while being battered about on the violent seas twice.

107. Confining passengers and forcing them to needlessly suffer extreme oceanic conditions, heavy sea motion, vomiting, anxiety, abuse, fear of harm and death, that caused severe illness and fear for their safety is extreme or outrageous conduct and a violation of prudent

seamanship.

108. Due to this conduct, Plaintiffs suffered and continue to suffer severe emotional distress which also manifested itself to physical injury, panic, anxiety, vertigo, vomiting, weight loss and constant fear for their safety and the safety of the invited passengers. Plaintiffs also suffered loss of freedom, mental and physical exhaustion, and panic attacks and fear.

109. Defendants are vicariously liable for the tortious activity of Captain Heselton since the above conduct fell squarely within the scope of his duties of employment as ship's captain, it occurred within the authorized time and space of the charter, it was employed, at least in part, to serve the ship owner and stakeholder through navigation of the vessel and management of the crew, and the moral authority of Captain Heselton's role as captain gave him authority over the crew and the navigation of DREAM. Finally, the force implied by his shouts and berating of the crew is that which the ship owner could reasonably expect to see in the circumstances. Moreover, the tortious conduct was ratified, adopted, or approved of by Defendants when Captain Heselton called Defendants before initiating the route and/or Defendants later ratified his tortious conduct following actual notice from Charterer.

WHEREFORE, for those claims raised above, Plaintiffs prays as follows:

- A. On all Counts, each Plaintiff demands judgment against Defendants jointly and severally for:
- a. An amount of damages in the amount of \$5,000,000 or damages so proven, plus pre and post-judgment interest;
 - b. the attorneys' fees, costs and expenses which Plaintiffs have incurred in this action;
 - c. punitive damages;

- d. such other and further relief as the Court deems just and proper, and
- e. that this Court maintain jurisdiction over this matter through the entry of judgment or arbitration award, including all appeals if any.

Respectfully submitted this 12th Day of April 2021

s/Matthew J. Valcourt
Matthew J. Valcourt
Fla. Bar No. 0088791
Valcourt and Associates LLC
850 NE Third St Suite 208
Dania FL 33004
Telephone: (305) 763-2891
Facsimile: (305) 470-7484
Email: mvalcourt@valcourtlaw.com
Attorneys for Plaintiffs