UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-20743-CIV-ALTONAGA/Goodman

ROXANNE NEWELL,

Plaintiff,

v.

CELEBRITY CRUISES, INC.; *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants, Celebrity Cruises, Inc. ("Celebrity") and CR Spaclub at Sea (HK) LTD's ("CR Spaclub['s]") Joint Motion to Dismiss [and Compel Arbitration] [ECF No. 69], filed on September 3, 2021. Plaintiff, Roxanne Newell, filed a Response in Opposition [ECF No. 77] to the Motion, to which Defendants filed a Reply [ECF No. 86]. The Court has carefully considered the Complaint [ECF No. 1], the parties' written submissions, the record, and applicable law. For the following reasons, the Motion is granted in part and denied in part.

I. BACKGROUND

This action arises from two alleged sexual assaults committed against Plaintiff while she was employed by CR Spaclub to work as a massage therapist aboard Celebrity's ships. (*See generally* Compl.). By way of background, CR Spaclub operated spa facilities onboard vessels owned or operated by Celebrity and retained persons such as Plaintiff to provide spa services to Celebrity's guests. (*See* Mot. 2).[1] Plaintiff's employment with CR Spaclub was governed by

[1] The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

several Seafarers Engagement Agreements ("SEAs") [ECF Nos. 69-1–69-3] for work to be performed on the *Celebrity Reflection*, *Celebrity Silhouette*, and *Celebrity Infinity*. The SEAs contain an arbitration provision, stating:

> 1.3 THIS AGREEMENT REQUIRES BOTH THE COMPANY AND SEAFARER TO RESOLVE MOST ENGAGEMENT-RELATED LEGAL DISPUTES THROUGH FINAL AND BINDING ARBITRATION. ARBITRATION IS THE ONLY FORUM FOR RESOLVING THESE KINDS OF DISPUTES, AND IF APPLICABLE BOTH THE COMPANY AND SEAFARER WAIVE THE RIGHT TO A TRIAL BEFORE A JUDGE OR JURY IN FEDERAL OR STATE COURT IN FAVOR OF ARBITRATION.
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> 1.5 COVERED DISPUTES: THE CLAIMS COVERED BY THIS AGREEMENT INCLUDE ALL ENGAGEMENT-RELATED CLAIMS BETWEEN THE COMPANY (INCLUDING ITS AFFILIATES, RELATED ENTITIES, OFFICERS, DIRECTORS, SEAFARERS, OR AGENTS) AND SEAFARER. THE ONLY CLAIMS THAT THIS AGREEMENT DOES NOT COVER ARE CLAIMS THAT THE COMPANY CANNOT BY LAW REQUIRE SEAFARER TO ARBITRATE. IF APPLICABLE, THE ARBITRATOR WILL APPLY UNITED STATES OF AMERICA FEDERAL LAW.

(Jan. 2016 SEA [ECF No. 69-2] §§ 1.3, 1.5; Sept. 2016 SEA [ECF No. 69-3] §§ 1.3, 1.5 (capitalization in original); *see also* 2015 SEA [ECF No. 69-1] §§ 1.2, 1.4).

During her employment as a massage specialist aboard Celebrity's ships, Plaintiff was sexually assaulted on two separate occasions. First, on August 19, 2016, while Plaintiff was working aboard the *Celebrity Silhouette*, another crewmember employed as Retail Operational Manager — referred to as Marco Doe in the Complaint — was over-served alcohol in the crew bar and violently assaulted and raped Plaintiff. (*See* Compl. ¶¶ 12, 15–17). Multiple other crewmembers overheard the assault and rape, but did not come to Plaintiff's aid, despite her pleas for help. (*See id.* ¶ 18). The assault lasted several hours. (*See id.*). On December 24, 2016, while

she was working aboard the *Celebrity Infinity*, Plaintiff was violently assaulted and raped by an accommodations maintenance manager named Raul Medina. (*See id.* ¶¶ 19, 21–22).

Plaintiff filed suit on February 26, 2018. (*See generally id.*). The Complaint asserts 10 claims for relief:

a. Count I – Negligence against CR Spaclub[2]

b. Count II – Negligence against Celebrity

c. Count III – Unseaworthiness against Celebrity

d. Count IV – Vicarious Liability of CR Spaclub

e. Count V – Vicarious Liability of Celebrity

f. Count VI – Intentional Tort of Sexual Assault against CR Spaclub

g. Count VII – Intentional Tort of Sexual Assault against Celebrity

h. Count VIII – Failure to Provide Maintenance and Cure against CR Spaclub

i. Count IX – Intentional Tort of Sexual Assault against Marco Doe

j. Count X – Intentional Tort of Sexual Assault against Raul Medina

(*See generally id.*).

On March 21, 2018, the Court entered an Order [ECF No. 9] reminding Plaintiff to perfect service upon all Defendants by May 27, 2018. On May 24, 2018, Plaintiff requested a 90-day extension of time to serve Defendants, Marco Doe and Raul Medina. (*See* Unopposed Mot. for Ext. of Time to Serve [ECF No. 41] 1–2). To better manage the orderly progress of the case, the Court denied Plaintiff's motion and instead closed the case pending service on the remaining

[2] Plaintiff initially asserted Counts I, IV, VI, and VIII against the "Canyon Ranch Entities," which the Complaint defines as CR Spaclub and Canyon Ranch d/b/a Canyon Ranch Health Resorts ("Canyon Ranch"). (*See* Compl. 2 ¶ 8 n.1). Plaintiff later voluntarily dismissed her claims against Canyon Ranch, so CR Spaclub is the only remaining "Canyon Ranch Entity" in the litigation. (*See* Notice of Voluntary Dismissal Without Prejudice [ECF No. 23] 1).

Defendants. (*See generally* Order Admin. Closing Case [ECF No. 42]). The Court noted that any party could move to reopen the case "once all parties have been served." (*Id.* 2).

While the case was administratively closed, Defendants, CR Spaclub and Celebrity, responded to Plaintiff's Interrogatories on June 20, 2018 and July 10, 2018, respectively, providing Plaintiff the full names and last-known contact information for Defendants, Marco Doe and Raul Medina. (*See* Mot. 5).

On July 23, 2021, Plaintiff advised that her efforts to serve Defendants, Marco Doe and Raul Medina, were unsuccessful (*see* Mot. to Reopen [ECF No. 58]), and she voluntarily dismissed her claims against them (*see* Notice of Voluntary Dismissal [ECF No. 59]). Plaintiff therefore moved to reopen the case. (*See* Am. Mot. to Reopen [ECF No. 60]). The Court reopened the case on July 26, 2021 (*see* Order Reopening Case [ECF No. 61]); entered a new Scheduling Order [ECF No. 64]; and set a revised deadline for Defendants to respond to Plaintiff's Complaint (*see* Aug. 25, 2021 Order [ECF No. 68]). The instant Motion followed.

II. LEGAL STANDARDS

Arbitration. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), codified at Chapter 2 of the Federal Arbitration Act ("FAA"), *see* 9 U.S.C. §§ 201–08, requires signatory States, such as the United States, "to give effect to private international arbitration agreements and to recognize and enforce arbitral awards made in other contracting states." *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1261 (11th Cir. 2011) (citation omitted). Under the Convention, there is a "strong presumption in favor of arbitration[.]" *Bautista v. Star Cruises*, 396 F.3d 1289, 1295 (11th Cir. 2005) (alteration added; citation omitted).

Courts determining whether to compel arbitration under the Convention should conduct a "very limited inquiry." *Id.* at 1294 (quotation marks and citation omitted). "[T]he first task of a

court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate that dispute." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (alteration added). If so, a court must grant a motion to compel arbitration "so long as (1) the four jurisdictional prerequisites are met and (2) no available affirmative defense under the Convention applies." *Suazo v. NCL (Bahamas), Ltd.*, 822 F.3d 543, 546 (11th Cir. 2016) (quotation marks and citations omitted).

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

Bautista, 396 F.3d at 1294 n.7 (alteration added; citation omitted). "[T]he only affirmative defense [to arbitration] . . . is a defense that demonstrates the arbitration agreement is null and void, inoperative or incapable of performance[.]" *Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1288 (alterations added; citations omitted).

"The party opposing a motion to compel arbitration . . . has the affirmative duty of coming forward by way of affidavit or allegation of fact to show cause why the court should not compel arbitration." *Sims v. Clarendon Nat'l Ins. Co.*, 336 F. Supp. 2d 1311, 1314 (S.D. Fla. 2004) (alteration added; quotation marks and citation omitted). Further, "any doubts concerning the scope of arbitrable issues should be resolved in favor arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983) (footnote call number omitted).

Laches. "To survive a motion to dismiss [under Federal Rule of Civil Procedure 12(b)(6)],

a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration added; quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (alteration added; quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (alteration added; citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), abrogated on other grounds by *Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

Because the Rule 12(b)(6) inquiry focuses on the allegations of the complaint, and "[g]iven the fact sensitive nature of a laches inquiry," courts are generally reticent to "bar claims under a laches defense" when ruling on a motion to dismiss. *Motley v. Taylor*, 451 F. Supp. 3d 1251, 1276 (M.D. Ala. 2020) (alteration added; citation and quotation marks omitted); *see also United States v. 1010 N. 30th Rd., Hollywood, Fla. 33021*, No. 20-cv-60622, 2020 WL 6875749, at *9 (S.D. Fla.

Oct. 22, 2020) ("A laches analysis requires a fact-intensive inquiry which the Court finds inappropriate to consider at the motion-to-dismiss stage of this litigation." (alteration adopted; citation and quotation marks omitted)). A court may, however, dismiss a complaint for failure to state a claim on equitable laches grounds if the face of the complaint "shows affirmatively that the claim is barred." *Motley*, 451 F. Supp. 3d at 1276 (citation and quotation marks omitted); *see also GlobalTranz Enters., LLC v. GlobalTransservice Corp.*, No. 20-62519-Civ, 2021 WL 1151417, at *2 (S.D. Fla. Mar. 26, 2021) (dismissal on laches not appropriate where the elements were not apparent from the face of the complaint). A defendant asserting the defense bears the burden of proving the case is barred by laches. *See Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1283 (11th Cir. 2015).

III. DISCUSSION

Defendants move to compel arbitration and dismiss the Complaint, arguing: (1) Counts I, II, III, and VIII are subject to mandatory arbitration under the SEAs governing Plaintiff's employment; and (2) Plaintiff's claims should be dismissed under the doctrine of laches. (*See generally* Mot.; Reply).[3] The Court considers both contentions.

A. Motion to Compel Arbitration

Plaintiff does not address the four jurisdictional prerequisites to the Convention. (*See generally* Resp.). Nevertheless, the Court finds the prerequisites are met.

First, the SEAs constitute written employment agreements. Second, the SEAs call for arbitration to take place in Miami-Dade County, Florida in the United States. (*See* 2015 SEA §

[3] The only remaining claims are Counts I, II, III, and VIII. As noted, Plaintiff previously voluntarily dismissed Counts IX and X. (*See* Notice of Voluntary Dismissal). Further, Plaintiff has withdrawn Counts IV, V, VI, and VII. (*See* Resp. 13). Consequently, Defendants' Motion to Dismiss is granted with respect to the voluntarily dismissed and withdrawn Counts.

1.8; Jan. 2016 SEA § 1.9; Sept. 2016 SEA § 1.9). The United States is a signatory of the Convention. *See* 9 U.S.C. §§ 201–08 (codifying the Convention); *Suazo*, 822 F.3d at 545 ("The United States became a signatory to the Convention in 1970."). Third, the SEAs plainly arise out of a commercial legal relationship. *See Bautista*, 396 F.3d at 1300 (holding employment contracts are commercial legal relationships under the Convention). Lastly, Plaintiff is a citizen of Great Britain. (*See* 2015 SEA 1 (listing nationality as "British"); Jan. 2016 SEA 1 (listing nationality as "GB"); Sept. 2016 SEA 1 (same)). Therefore, the four jurisdictional prerequisites are met.

Plaintiff, nevertheless, makes three arguments as to why she should not be compelled to arbitrate her claims.[4] First, Plaintiff asserts she did not agree to arbitrate the negligence claims related to her sexual assaults because the SEAs only require arbitration of "engagement-related claims" and being raped was not related to her employment as a massage therapist aboard Celebrity's ships. (*See* Resp. 5–9).[5] Second, Plaintiff contends that as a seafarer, she is exempt from complying with the arbitration agreement under Section 1 of the FAA. (*See id.* 3–5). Finally, Plaintiff argues that because Celebrity is a non-signatory to the SEAs, it cannot seek to compel arbitration of Plaintiff's claims against it. (*See id.* 10–13). The Court addresses each argument in turn.

Scope of the Arbitration Clause. With respect to her first argument, Plaintiff asserts her negligence claims (Counts I and II) are not "engagement-related" because they are common-law negligence claims that could stand alone even if she had not been employed by CR Spaclub, working aboard Celebrity's vessels. (*See id.* 2). As Defendants correctly point out, Plaintiff's

[4] Plaintiff does not appear to dispute the Convention applies. (*See* Resp. 5 (referring to the Convention)).

[5] Plaintiff concedes Count III (Unseaworthiness against Celebrity) and Count VIII (Failure to Provide Maintenance and Cure against CR Spaclub) "are arguably employment based claims, dependent upon [] Plaintiff's status as a CR Spaclub employee assigned to work aboard a Celebrity vessel." (Resp. 2 (alteration added; footnote call number omitted)).

attempt to cast her negligence claims as unrelated to her employment is undermined by the way she pleads the claims in her Complaint.

Plaintiff alleges "[t]he causes of action asserted in this Complaint arise under the Jones Act, 46 U.S.C. Section 688, and the General Maritime Law of the United States." (Compl. ¶ 4; *see also id.* ¶ 8 n.2[6] (stating a seaman "may have and allege more than one employer for purposes of the Jones Act" (citation omitted))). This paragraph is incorporated by reference into Counts I and II. (*See id.* ¶¶ 23, 29). Plaintiff further alleges she was "employed as a seaman" during both assaults (*id.* ¶¶ 12, 19); that allegation is likewise incorporated by reference into Counts I and II (*see id.* ¶¶ 23, 29). It is well-settled that being a seaman is a prerequisite to a Jones Act claim. *See O'Boyle v. United States*, 993 F.2d 211, 213 (11th Cir. 1993). Indeed, Plaintiff appears to acknowledge her negligence claims may arise under the Jones Act. (*See* Resp. 2 n.2).

She insists that, even if her negligence claims are considered Jones Act claims, they are not employment related. (*See id.*); *but see Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 1220–21 (11th Cir. 2011) (finding Jones Act negligence claims to be employment-related because such claims are predicated on a plaintiff's status as a seaman). Plaintiff relies on *Doe v. Princess Cruise Lines*. There, the plaintiff was employed as a bar server aboard a cruise ship. *See Doe*, 657 F.3d at 1208 (footnote call number omitted). After her shift, the plaintiff attended an after-hours birthday party inside another crew member's cabin, was slipped a date rape drug, and was subsequently raped. *See id.* at 1209. She later brought suit against her cruise line employer, asserting claims of Jones Act negligence, unseaworthiness, failure to provide maintenance and cure, and several other common law tort claims for the cruise line's actions after it learned of the

[6] The Complaint contains two sets of paragraphs numbered 7 and 8. (*See* Compl. 2–3). This citation refers to paragraph 8 appearing on page 2.

rape. *See id.* at 1211–12. The cruise line sought to compel arbitration of all claims. *See id.* at 1212.

Like this case, the arbitration clause at issue in *Doe* required arbitration of "any and all disputes, claims, or controversies . . . relating to or in any way arising out of or connected with" the crew agreement or her employment services. *Id.* at 1214–15 (alteration added; emphasis omitted); *see also id.* at 1217–18. The Eleventh Circuit held that the plaintiff's common law tort claims[7] all involved allegations about how the cruise line treated her after learning she had been raped and were not "relate[d] to" her crew agreement or the services she performed for the cruise line as a bar server. *Id.* at 1219 (alteration added). Because "[t]he cruise line could have engaged in that tortious conduct even in the absence of any contractual or employment relationship with [the plaintiff,]" the Eleventh Circuit concluded those claims were "not within the scope of the arbitration clause." *Id.* (alterations added; citation omitted).

The plaintiff's remaining claims, however — including the Jones Act negligence claim, unseaworthiness claim, and maintenance and cure claim — arose "directly from her undisputed status as a 'seaman' employed by [the cruise line]." *Id.* at 1220 (alteration added; footnote call number omitted). Specifically, the negligence claim "specifically refer[red]" to the Jones Act, *id.* (alteration added; citations omitted); the unseaworthiness claim was "dependent upon [her] status as a seaman[,]" *id.* (alterations added; citations omitted); and the claim concerning maintenance and cure involved "a traditional maritime law remedy for seamen[,]" *id.* at 1221 (alteration added; citations omitted). In other words, the plaintiff would not have been able to bring these claims "if she had not been a seaman and she was a seaman because of her employment with [the cruise line]." *Id.* (alteration added). Therefore, because those claims were based on the employment

[7] These claims were: false imprisonment, intentional infliction of emotional distress, spoliation of evidence, invasion of privacy, and fraudulent misrepresentation. *See Doe*, 657 F.3d at 1219.

relationship, the Eleventh Circuit held those claims fell within the scope of the arbitration provision. *See id.*

As in *Doe*, Plaintiff's remaining claims could not exist absent her employment and undisputed status as a seaman.[8] *See also Montero v. Carnival Corp.*, 523 F. App'x 623, 627–28 (11th Cir. 2013). She alleges the causes of action in her Complaint "arise under the Jones Act . . . and the General Maritime Law of the United States." (Compl. ¶ 4 (alteration added)). She alleges she was "employed as a seaman" during both rapes. (*Id.* ¶¶ 12, 19); *see also O'Boyle*, 993 F.2d at 213 ("[I]n order to recover damages under the Jones Act, [a plaintiff] must have the status of a seaman." (alterations added; citation omitted)). These allegations are incorporated by reference into both of Plaintiff's negligence claims (Counts I and II). (*See* Compl. ¶¶ 23, 29).

Moreover, her negligence claims are premised on Defendants' duties to provide Plaintiff with "reasonable care" and "a safe place to work, including a safe place to reside aboard the vessel" (*id.* ¶¶ 24, 30); and the Complaint further alleges those duties were breached (*see id.* ¶¶ 26, 32). *See, e.g.*, *Daigle v. L & L Marine Transp. Co.*, 322 F. Supp. 2d 717, 725 (E.D. La. 2004) ("The fundamental duty of a Jones Act employer is to provide his seaman employees with a reasonably safe place to work." (citations omitted)); *Jackson v. NCL Am., LLC*, No. 14-23460-Civ, 2016 WL 9488717, at *2 (S.D. Fla. Jan. 26, 2016) ("The employer of a seaman is negligent under the Jones

[8] Plaintiff also cites *Rutledge v. NCL (Bahamas) Ltd.*, No. 14-23682-Civ, 2015 WL 458133, at *4–5 (S.D. Fla. Feb. 3, 2015), where the court determined that the plaintiff's negligence and strict liability claims stemming from a sexual assault were not sufficiently related to her employment and therefore were not arbitrable. (*See* Resp. 7–8). The Court declines to rely on *Rutledge*, as it appears to be in direct conflict with binding Eleventh Circuit precedent. To the extent *Rutledge* does not conflict with *Doe*, it seems to be only because the plaintiff's negligence claim stemming from her sexual assault was based in common law, rather than the Jones Act. *See Rutledge*, 2015 WL 458133, at *4–5 (deciding Jones Act negligence claim was subject to arbitration, but "claims of negligence and strict liability stemming from sexual harassment and sexual assault" were not because those causes of action would exist even if she were not a cruise ship employee). As explained, the same cannot be said of Plaintiff's negligence claims. (*See* Compl. ¶¶ 4, 23, 29 (incorporating allegation that her claims arise under the Jones Act)).

Act if the employer . . . fails to use reasonable care to provide a seaman with a safe place to work." (alteration added; citation omitted)); *Doe*, 657 F.3d at 1220 (finding negligence claim stemming from rape and alleging cruise line failed to provide safe place to work and live aboard the vessel was arbitrable Jones Act claim). Finally, Plaintiff's claims concerning unseaworthiness and maintenance and cure are plainly related to her employment. *See Doe*, 657 F.3d at 1220–21; (Resp. 2 (conceding such claims are "employment based claims")).

As noted, the SEAs require arbitration of "engagement-related" claims and state "the only claims that this agreement does not cover are claims that the company cannot by law require seafarer to arbitrate." (Jan. 2016 SEA §§ 1.3, 1.5; Sept. 2016 SEA §§ 1.3, 1.5; 2015 SEA §§ 1.2, 1.4 (capitalization omitted)). Thus, because Plaintiff's remaining claims — Counts I, II, III, and VIII — are "engagement-related," they are within the scope of the arbitration clause.

Seamen's Exemption. Plaintiff next argues her seaman status exempts her from arbitration under the FAA. (*See* Resp. 3–5); *see also Bautista*, 396 F.3d at 1295 (construing argument that seamen's disputes are not arbitrable as a jurisdictional question of "whether the arbitration agreement arises out of a commercial legal relationship"). Specifically, Plaintiff argues the FAA's seamen exemption, which states "nothing herein contained shall apply to contracts of employment of seamen[,]" 9 U.S.C. § 1 (alteration added), applies to the Convention. (*See* Resp. 3–5). This argument is plainly foreclosed by binding Eleventh Circuit precedent.

The FAA is comprised of three Chapters. *See* 9 U.S.C. §§ 1–307. Chapter 2, which contains the Convention, provides that "Chapter 1 applies to actions and proceedings brought under this chapter to the extent that [Chapter 1] is not in conflict with this chapter or the Convention[,]" *id.* § 208 (alterations added); *see also Bautista*, 396 F.3d at 1297 ("Rather than put the Convention . . . on equal footing with the FAA in the field of foreign arbitration, Congress

gave the treaty-implementing statutes primacy in their fields, with FAA provisions applying only where they did not conflict" (alteration added; citations omitted)). Yet, "the provisions of Article II contemplate the use of domestic doctrines to fill gaps in the Convention." *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1645 (2020).

In *Bautista*, the Eleventh Circuit addressed the interplay of the seamen's exemption and the Convention. *See* 396 F.3d at 1299–1300. The *Bautista* plaintiff "assert[ed] that the United States national law definition of 'commercial' resides in section 1 of the FAA," which includes the seamen's exemption, but the court held "the exemption's application outside [Chapter 1] is restricted by the second and third chapters of title 9." 396 F.3d at 1296 (alterations added). Because the Convention "covers commercial legal relationships without exception[,]" the court reasoned it "conflicts with section 1, an FAA provision that exempts certain employment agreements that — but for the exemption — would be commercial legal relationships." 396 F.3d at 1299 (alteration added). Thus, the seamen's exemption did not apply to the Convention. *Id.* at 1300.

Plaintiff's argument to the contrary is premised on *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 (2019), which held that (1) the FAA's exclusion for contracts of employment of certain transportation workers applied to both employer-employee relationships and contracts involving independent contractors, and (2) courts should determine whether the exclusion applies before ordering arbitration. (*See* Resp. 5); *see Oliveira*, 139 S. Ct. at 537, 544. Plaintiff contends that, somehow, the *Oliveira* decision abrogates *Bautista*. (*See* Resp. 5). It plainly does not.

Oliveira concerned a driver who worked as an independent contractor for an interstate trucking company. *See* 139 S. Ct. at 536. There was no international arbitration agreement at issue in *Oliveira*, and the action did not arise under the Convention. Critically, the case contains

no discussion of the Convention or international arbitration agreements, and it certainly does not stand for the proposition Plaintiff claims: that the seamen's exemption applies to international agreements governed by the Convention. *See Garms v. Celebrity Cruises Inc.*, No. 21-20914-Civ, 2021 WL 2453187, at *3 (S.D. Fla. June 16, 2021) (rejecting argument that *Oliveira* overruled *Bautista*). Put simply, *Oliveira* is inapposite to the arbitration agreements in this case.

In sum, *Bautista* remains good law and binding precedent within the Eleventh Circuit. Because the seamen's exemption conflicts with the Convention, which covers all commercial relationships, the exemption does not apply in this case. *See Bautista*, 396 F.3d at 1299–300.

Claims Against Non-Signatory Celebrity. Finally, Plaintiff contends that even if her claims against CR Spaclub (Counts I and VIII) are subject to arbitration, she cannot be compelled to arbitrate her claims against Celebrity (Counts II and III) because Celebrity is not a signatory to the SEAs. (*See* Resp. 10–13). Celebrity argues Plaintiff's claims against it should nevertheless be subject to arbitration under the doctrine of equitable estoppel. (*See* Mot. 7–8; Reply 7–8 ("Plaintiff is asserting claims against Celebrity which are dependent upon her status as a seaman on one of Celebrity's vessels. This status was conferred upon her by her employment contract. Plaintiff cannot rely on the employment contract for her seaman status to raise her Jones Act and unseaworthiness claims against Celebrity while simultaneously repudiating the arbitration clause.")). In response, Plaintiff asserts Celebrity has not met its burden to establish equitable estoppel applies. (*See* Resp. 10). Upon consideration, the Court agrees with Plaintiff.

Generally, "one who is not a party to an agreement cannot enforce its terms against one who is a party" because the "right of enforcement generally belongs to those who have purchased it by agreeing to be bound by the terms of the contract themselves." *Lawson v. Life of the S. Ins. Co.*, 648 F.3d 1166, 1167–68 (11th Cir. 2011) (citations omitted). However, "a nonparty may

force arbitration 'if the relevant state contract law allows him to enforce the agreement' to arbitrate." *Id.* at 1170 (quoting *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 632 (2009); other citation omitted). Thus, the "issue of whether a non-signatory to an agreement can use an arbitration clause in that agreement to force a signatory to arbitrate a dispute between them is controlled by state law." *Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 845 F.3d 1351, 1354 (11th Cir. 2017) (citation omitted); *see also GE Energy Power Conversion Fr. SAS, Corp.*, 140 S. Ct. at 1644 (acknowledging that arbitration agreements may be enforced by non-signatories).

The Court, then, must make a threshold determination regarding the applicable law. Plaintiff contends Maltese law applies under the choice-of-law provision contained in the SEAs (*see* Resp. 10), while Celebrity argues federal general maritime law applies to this matter (*see* Reply 8). Ultimately, Celebrity ails to make the requisite showing in either scenario.

Numerous courts in this District and others have held that the law specified in an arbitration agreement's choice-of-law clause governs whether an arbitration agreement may be enforced by a non-signatory against a signatory. *See, e.g.*, *Sisca v. Hal Maritime, Ltd.*, No. 20-cv-22911, 2020 WL 6581608, at *5 (S.D. Fla. Nov. 10, 2020) (in maritime case, applying British Virgin Islands law per choice-of-law clause to determine whether non-signatory could compel signatory to arbitrate); *Haasbroek v. Princess Cruise Lines, Ltd.*, 286 F. Supp. 3d 1352, 1361 (S.D. Fla. 2017) (in maritime case, applying Bahamian law per choice-of-law clause to determine same); *Wexler v. Solemates Marine, Ltd.*, No. 16-cv-62704, 2017 WL 979212, at *4 (S.D. Fla. Mar. 14, 2017) (in maritime case, applying the law of the Cayman Islands per choice-of-law clause to determine same); *Sanchez v. Marathon Oil Co.*, Civ. Act. No. 20-1044, 2021 WL 1201677, at *4 (S.D. Tex. Jan. 21, 2021) (applying Texas law per choice-of-law clause to determine same); *Motorola Credit*

Corp. v. Uzan, 388 F.3d 39, 51 (2d Cir. 2004) (Swiss law); *Ramasamy v. Essar Glob. Ltd.*, 825 F. Supp. 2d 466, 469 (S.D.N.Y. 2011) (Texas law); *Lagrone v. Advanced Call Ctr. Techs., LLC*, No. 13-2136, 2014 WL 12539366, at *2 (W.D. Wash. Sept. 3, 2014) (Utah law). In short, if a non-signatory seeks to "invoke the arbitration clause[] in [an] agreement[] . . . , [it] must also accept the [] choice-of-law clause[] that govern[s] [that] agreement[]." *Motorola Credit Corp.*, 388 F.3d at 51 (alterations added).

Here, the SEAs contain a choice-of-law provision designating "the Maritime Law and Regulations of the Republic of Malta" as the governing law. (Jan. 2016 SEA § 1.2; Sept. 2016 SEA § 1.2). Celebrity makes no showing that Maltese law "recognizes the equitable estoppel doctrine in this context, much less that it would apply in [Celebrity's] favor." *Sisca*, 2020 WL 6581608, at *5 (alteration added). This is "significant" because Celebrity, as the party seeking arbitration, bears the initial burden to show that "an agreement compel[ling] [] arbitration of the claims against it" exists. *Haasbroek*, 286 F. Supp. 3d at 1362 (alterations added; citation and quotation marks omitted); *see also Wexler*, 2017 WL 979212, at *4 (non-signatory moving defendant "bears the initial burden to show that an agreement to arbitrate exists" (citations omitted)). Absent such a showing, Celebrity has not established the jurisdictional prerequisite that there is an agreement in writing to arbitrate the disputes between it and Plaintiff.

Still, Celebrity argues that "Plaintiff's arguments concerning Maltese law are inapposite" because the Complaint states the claims arise under United States general maritime law and "Defendants stipulate to the application" of United States general maritime law. (Reply 8). Because the issue of whether a non-signatory can compel a signatory to arbitration is controlled by state law, courts must often engage in a choice-of-law analysis to determine which law to apply. *See, e.g.*, *White v. Sunoco, Inc.*, 870 F.3d 257, 262–63 (3d Cir. 2017) (court sitting in diversity

applies choice-of-law rules of forum state to determine which state's laws would govern whether non-signatory could compel arbitration).

Courts sitting in admiralty apply federal maritime choice-of-law rules, wherein the law of the forum — *i.e.*, federal maritime law — applies to procedural questions such as whether a non-signatory may compel arbitration. *See, e.g.*, *Kakawi Yachting, Inc. v. Marlow Marine Sales, Inc.*, No. 8:13-cv-1408, 2014 WL 12650701, at *6 (M.D. Fla. Oct. 3, 2014); *Psara Energy, Ltd. v. Space Shipping, Ltd.*, 427 F. Supp. 3d 858, 865 (E.D. Tex. 2019) (Although *Carlisle* held that state law determines whether a non-signatory can compel arbitration, "because admiralty disputes are governed by federal law, decisions based on federal common law that were otherwise modified after [*Carlisle*], remain controlling and squarely on point." (alteration added; quotation marks and citation omitted)); *Authenment v. Ingram Barge Co.*, 878 F. Supp. 2d 672, 679–80 (E.D. La. 2012).

As set forth by the Eleventh Circuit, a party who is not a signatory to an arbitration agreement may nevertheless compel arbitration under the doctrine of equitable estoppel in two circumstances: (1) "when the plaintiff-signatory must rely on the terms of the written agreement in asserting its claims," or (2) "when the plaintiff-signatory alleges substantially interdependent and concerted misconduct by the signatories and non-signatories, and such alleged misconduct is founded in or intimately connected with the obligations of the underlying agreement." *Northrop & Johnson Yachts-Ships, Inc. v. Royal Van Lent Shipyard, B.V.*, 855 F. App'x 468, 474 n.4 (11th Cir. 2021) (alteration adopted; citations and quotation marks omitted); *see also Escobal v. Celebration Cruise Operator, Inc.*, 482 F. App'x 475, 476 & n.3 (11th Cir. 2012) (affirming district court's application of this federal equitable estoppel test as set forth in *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947–48 (11th Cir. 1999), despite the Supreme Court's *Carlisle* decision because *Carlisle* involved the FAA, not the Convention); *Cappello v. Carnival Corp.*,

No. 12-22181-Civ, 2012 WL 3291844, at *2–3 (S.D. Fla. Aug. 10, 2012) (given the *Escobal* decision, applying *MS Dealer* test where non-signatory cruise line did not identify what state law applied or whether equitable estoppel under state law would mandate arbitration, although the Court found "some difficulty with this approach in light of *Carlisle*"); *Pineda v. Oceania Cruises, Inc.*, 283 F. Supp. 3d 1307, 1310–11 (S.D. Fla. 2017) (applying *MS Dealer* test); *Ringewald v. Holland Am. Line-USA Inc.*, No. 1:15-cv-20254, 2015 WL 4199808, at *2 (S.D. Fla. July 10, 2015) (same).

Addressing the two circumstances in which equitable estoppel may apply under federal law, Celebrity first argues that Plaintiff does rely on the terms of her employment contracts to assert her claims against Celebrity. (*See* Reply 7). Specifically, Celebrity argues Plaintiff's negligence claim (Count II) and unseaworthiness claim (Count III) depend "upon her status as a seaman on one of Celebrity's vessels. This status was conferred upon her by her employment contract. Plaintiff cannot rely on the employment contract for her seaman status to raise her Jones Act and unseaworthiness claims against Celebrity while simultaneously repudiating the arbitration clause." (*Id.*). In other words, Celebrity contends Plaintiff relies on her employment agreements because her claims are maritime claims, which require her to be a seaman, and she would not be a seaman but-for the employment agreements.

As the Eleventh Circuit has made clear, "it is not enough for a plaintiff's allegations to rely simply on the fact that an agreement exists; the test is whether they rely on or depend on the *terms* of the written agreement." *Lavigne v. Herbalife, Ltd.*, 967 F.3d 1110, 1119 (11th Cir. 2020) (emphasis added; citation and quotation marks omitted). When, as here, a plaintiff's complaint "fails even to mention any of the terms, much less discuss them in detail, [courts] are hard-pressed to conclude that he or she relied on such terms." *Id.* (alteration added; citation omitted).

Neither Count II or Count III mentions the SEAs or alleges that Plaintiff is entitled to relief based on their terms, and Celebrity has made no particularized showing of why the terms of the SEAs are essential for Plaintiff to assert her claims. *See Cappello*, 2012 WL 3291844, at *4 (rejecting non-signatory cruise line's argument that the plaintiff must necessarily rely on the terms of her employment agreement to maintain Jones Act negligence and unseaworthiness claims and concluding cruise line had not shown the terms of the agreement were relevant to those claims); *id.* at *6 ("[T]he [employment] Agreement is factually significant in that it was the instrument by which [Plaintiff] was employed on [the cruise line]'s ship. . . . [The cruise line] has not, however, shown why the terms of the [] Agreement form the basis of [Plaintiff]'s claims." (alterations added)). Plaintiff's Complaint is clear: her claims arise under the Jones Act and general maritime law, and they are premised on Celebrity's status (and attendant duties) as the owner and operator of the vessels. (*See* Compl. ¶¶ 4, 5, 30, 36–38). Nothing in the Complaint relies on the terms of the SEAs.

Equitable estoppel may also be appropriate "when the plaintiff-signatory alleges substantially interdependent and concerted misconduct by the signatories and non-signatories, and such alleged misconduct is founded in or intimately connected with the obligations of the underlying agreement." *Northrop & Johnson Yachts-Ships, Inc.*, 855 F. App'x at 474 n.4 (alteration adopted; citations and quotation marks omitted). Celebrity apparently does not contend that Plaintiff alleges any interdependent and concerted misconduct (*see* Reply 8), and instead insists equitable estoppel should apply because Plaintiff's claims against Celebrity and CR Spaclub are "based on the same facts and inherently inseparable" (Mot. 8 (citations and quotation marks omitted)).

But Celebrity misconstrues the cases it cites. The mere fact that the claims against the signatory and non-signatory are "based on the same facts" is not nearly enough. (*Id.* (citations and quotation marks omitted)). In each of the cases cited, the plaintiff alleged the signatory and non-signatory engaged in interdependent and concerted misconduct *such that* the claims against them were inherently inseparable and inextricably intertwined. *See MS Dealer*, 177 F.3d at 948 (alleging they "conspired . . . to engage in a scheme to defraud her" (alteration added)); *Escobal v. Celebration Cruise Operator, Inc.*, No. 11-21791-cv, 2011 WL 13175628, at *3 (S.D. Fla. June 23, 2011) (factual allegations referred to signatory and non-signatory defendants jointly, "without specifying to which Defendant he refers"), *aff'd*, 482 F. App'x 475 (11th Cir. 2012); *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 374 (4th Cir. 2012) (concluding there were allegations of "coordinated behavior" between signatory and non-signatory defendants); *Ringewald*, 2015 WL 4199808, at *2 (factual allegations in complaint made "no distinction whatsoever between the defendants, in favor of levying all allegations against all of them together"); *see also McAdoo v. New Line Transp., LLC*, No. 8:16-cv-1917, 2017 WL 942114, at *5 (M.D. Fla. Mar. 9, 2017) (finding allegations of substantially interdependent and concerted misconduct where complaint did "not distinguish" between defendants and asserted all claims against both).[9] As Celebrity appears to acknowledge, Plaintiff simply has not alleged any such interdependent and concerted misconduct.

"In short, this is not a case where the Plaintiff is trying to have her cake and eat it too by using certain provisions of the contract to her benefit to help establish her claim while also

[9] In any event, Celebrity has not addressed how any such substantially interdependent and concerted misconduct, if any is alleged, "is founded in or intimately connected with the obligations of" the SEAs. *Lavigne*, 967 F.3d at 1119 (citation and quotation marks omitted). Again, it is insufficient that the alleged misconduct may "somehow [be] connected" to the SEAs. *Id.* (alteration added).

attempting to avoid the burdens of the other provisions." *Pineda*, 283 F. Supp. 3d at 1312 (alterations adopted; citation and quotation marks omitted). Thus, regardless of whether Maltese law recognizes a similar equitable estoppel principle in these circumstances or if federal maritime law applies, Celebrity has not made a sufficient showing that equitable estoppel applies to compel arbitration of Plaintiff's claims against it.

* * *

Because the Court concludes Plaintiff and CR Spaclub agreed to arbitrate their dispute, CR Spaclub satisfied the four jurisdictional prerequisites to the Convention, and Plaintiff raises no applicable affirmative defense, Defendants' Motion to compel arbitration of Counts I and VIII must be granted. *See Suazo*, 822 F.3d at 546. But dismissal of these claims, as CR Spaclub requests, is not appropriate. The correct procedure is to stay the case. *See Bender v. A.G. Edwards & Sons, Inc.*, 971 F.2d 698, 699 (11th Cir. 1992) ("Upon finding that a claim is subject to an arbitration agreement, the court should order that the action be stayed pending arbitration." (citing 9 U.S.C. § 3)).

B. Laches

Finally, Defendants argue Plaintiff's claims should be barred by the doctrine of laches. (*See* Mot. 16–19; Reply 8–10).[10] Specifically, Defendants argue Plaintiff unreasonably delayed reopening this case to pursue her claims against them. She initiated this action in February 2018 and three months later sought an extension of time to serve Marco Doe and Raul Medina, stating she was unaware of their last known addresses and was awaiting discovery responses from Celebrity and CR Spaclub with that information. (*See generally* Mot. Ext. Time to Serve [ECF

[10] The parties appear to agree that the doctrine of laches may apply to maritime claims such as the negligence and unseaworthiness claims asserted against Celebrity. (*See* Mot. 16–17; Resp. 15). Because the Court must compel arbitration of Plaintiff's claims against CR Spaclub, the Court only considers Defendants' laches argument with respect to Plaintiff's claims against Celebrity.

No. 41]). As explained, the Court closed the case on May 24, 2021, instructing the parties to inform the Court when service was perfected on all Defendants. (*See generally* Order Admin. Closing Case).

Celebrity and CR Spaclub provided Doe and Medina's last known addresses to Plaintiff in discovery responses served in June and July 2018, respectively. (*See* Mot. 18). Plaintiff did not move to reopen the case and dismiss Doe and Medina until three years later, in late July 2021. (*See generally* Mot. to Reopen; Am. Mot. to Reopen; Notice of Voluntary Dismissal).

Laches is an equitable defense that "bar[s] suit by a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." *Black Warrior Riverkeeper, Inc.*, 781 F.3d at 1283 (alteration added; quotation marks omitted; quoting *Russell v. Todd*, 309 U.S. 280, 287 (1940)). "To establish a laches defense, the defendant must show [(1)] a delay in asserting a right or claim, [(2)] that the delay was not excusable[,] and [(3)] that there was undue prejudice to the party against whom the claim is asserted." *Id.* (alteration adopted; other alterations added; citation and quotation marks omitted).

The doctrine of laches is typically invoked at the initiation of a case to argue the plaintiff unreasonably delayed in filing her complaint. Defendants concede they could not locate any authority to support application of laches where, as they argue here, Plaintiff unreasonably delayed in reopening her case and prosecuting her claims. (*See* Mot. 16 n.7); *cf. Henriquez v. City of Farmers Branch, Tex.*, No. 3:16-cv-868, 2021 WL 4465986, at *3–4 (N.D. Tex. Sept. 9, 2021) (denying laches argument in opposition to motion to reopen case where defendant argued the plaintiff was inexcusably dilatory "in seeking to reopen this civil case"); *H.C. Oil & Gas Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Nos. 3:96-cv-2923, 3:97-cv-0353, 2005 WL 265166, at *3 (N.D. Tex. Feb. 2, 2005) (denying laches argument on summary judgment where defendant

complained of plaintiff's "dilatory conduct in pursuing the case after he filed it" — namely, that the court administratively closed the case in 1999 to allow plaintiff to complete his prison sentence, plaintiff was released from prison in 2001, and he did not move to reopen the case until 2003).

Yet "even if laches were available as a defense when based on post-filing delay," Defendants are not entitled to dismissal of Plaintiff's claims at this juncture. *H.C. Oil & Gas Corp.*, 2005 WL 265166, at *4. The delays Defendants complain of plainly are not apparent on the face of the Complaint. *See Motley*, 451 F. Supp. 3d at 1276; *GlobalTranz Enters., LLC*, 2021 WL 1151417, at *2. And, as Defendants admit, they "have no knowledge as to what efforts, if any, Plaintiff took towards perfecting service on the alleged assailants, Marco Doe and Raul Medina." (Mot. 18 n.10). The parties attempt to hash out the actions Plaintiff did or did not take during the three-year period this case was administratively closed in their briefing (*see* Resp. 13–15; Reply 8–9), but their debate ultimately just demonstrates why the Court cannot decide the issue now: a laches inquiry is simply too "fact-intensive" to be resolved on a motion to dismiss. *1010 N. 30th Rd., Hollywood, Fla. 33021*, 2020 WL 6875749, at *9 (citation and quotation marks omitted).

In sum, because the Court "lacks the *evidence* necessary to decide the issue[,]" Defendants' motion to dismiss Plaintiff's claim under the doctrine of laches is denied. *Rotor Blade, LLC v. Signature Util. Servs., LLC*, No. 2:21-cv-00190, 2021 WL 2581280, at *10 (N.D. Ala. June 23, 2021) (alteration and emphasis added); *see also Henriquez*, 2021 WL 4465986, at *4 ("While [the defendant] may again invoke laches later in this case, his current showing is neither a basis not to reopen this case nor a reason for dismissal." (alteration added)).

IV. CONCLUSION

Accordingly, it is

ORDERED AND ADJUDGED that Defendants' Joint Motion to Dismiss [and Compel Arbitration] **[ECF No. 69]** is **GRANTED in part** and **DENIED in part**, as follows:

1. The Motion with respect to dismissal of Counts IV, V, VI, and VII is **GRANTED**. Counts IV, V, VI, and VII are **DISMISSED**.
2. The Motion with respect to compelling arbitration of Counts I and VIII against CR Spaclub is **GRANTED**. To the extent the Motion requests dismissal of Counts I and VIII, the Motion is **DENIED**.
3. The Motion with respect to compelling arbitration of or dismissing Counts II and III against Celebrity is **DENIED**.
4. The case is **STAYED** pending conclusion of the arbitration proceedings as to Defendant, CR Spaclub. *See, e.g.*, *Harvey v. Joyce*, 199 F.3d 790, 796 (5th Cir. 2000) ("If [non-signatory to the arbitration agreement] were forced to try the case, the arbitration proceedings would be both redundant and meaningless; in effect, thwarting the federal policy in favor of arbitration." (alteration added; citation omitted)).
5. The parties are directed to prepare and file a joint status report regarding the status of the arbitration proceedings **every sixty (60) days**, with the first report due **on or before January 21, 2022**.
6. The Clerk is directed to administratively **CLOSE** this case, and all pending motions are **DENIED as moot**.

DONE AND ORDERED in Miami, Florida, this 23rd day of November, 2021.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record