

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-0244-CIV-KING/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff

v.

NORWEGIAN CRUISE LINE LIMITED,

Defendant.

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MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR  
ORDER TO SHOW CAUSE AND TO ORDER SANCTIONS  
FOR CONTEMPT OF THE CONSENT ORDER

The United States submits this memorandum in support of its motion for an Order requiring Defendant Norwegian Cruise Line Limited (NCL) to show cause why it should not be held in contempt for failing to comply with the Consent Order entered by this Court on August 28, 2001. Under the Consent Order, the Court retained jurisdiction to enforce provisions of the Order for five years from the date of the Order. The United States requests that the Court enjoin NCL to comply with the Order and impose sanctions on NCL for its failure to comply. Specifically, the United States requests that the Court order Defendant to produce the information requested by the United States so that it may review NCL's compliance with the Consent Order, and stop discriminating against hearing impaired passengers by denying them closed-captioned television and access to other services. The United States has given NCL ample opportunity to provide information so that the alleged violations could be resolved without

recourse to this Court, but NCL has declined to do so.

### I. Factual Background

The United States filed this action against NCL on January 19, 2001 to enforce Title III of the Americans with Disabilities Act (“ADA”). The parties filed a Consent Order to resolve the action on August 22, 2001, which was entered by this Court on August 28, 2001. (Attached as Exh. 1.)

Under the terms of the Consent Order, Defendant agreed to monetary and injunctive relief. Among other things, the Order provides that “NCL agrees not to request or require any person with a visual impairment to travel with, or share a cabin with, another person unless such request or requirement is made for reasons unrelated to the person’s impairment and is made to all similarly situated persons regardless of disability.” (Exh. 1, Consent Order at ¶17.1.) This term was intended to eliminate a specific NCL policy that the United States alleged in its complaint violated the ADA; the policy required persons with disabilities, as a condition for traveling on NCL cruise ships, to travel with a companion who was not disabled. (Exh. 1, Consent Order at ¶6.) While this action was based on complaints from individuals who had vision impairments, and addressed some concerns specific to individuals with vision impairments, the Consent Order clearly addresses and prohibits discrimination on the basis of *any* disability: “NCL agrees that it shall not deny its goods or services to any person on the basis of disability.” (Exh. 1, Consent Order at ¶20.7.)

Despite these terms, NCL continued to post on its website, until on or about April 6, 2004, a policy that plainly violated these provisions and was almost identical in relevant respects

to the statement cited in the United States' Complaint.<sup>1</sup> NCL's website, until April 6, 2004, said: "All passengers with disabilities must be self-sufficient and should travel with a passenger who will provide any assistance needed during the cruise or in the event of an emergency." (<http://www.ncl.com/more/terms.htm#safety>, visited April 1, 2004, attached as Exh. 2 at p.2, emphasis added.) While NCL has recently removed the policy from its website in response to our demand, the United States is concerned that the policy, which appears to have been on the NCL website from the execution of the Consent Order until approximately April 6, 2004, may have prevented individuals with disabilities from taking NCL cruises or forced them to travel with a companion. The United States has asked NCL to identify any such individuals but it has simply stated there are "none of which NCL is aware." NCL does not even claim to have consulted its records, including records of passenger complaints relating to disability issues.

In addition, the United States has received complaints from two individuals who have hearing impairments and are substantially limited in hearing. They allege that, while on an NCL cruise, they were denied a closed-captioned television and/or did not have access to other services because of their hearing impairment. NCL has provided no information about the issues raised by the complaints, despite months of requests by the United States. If these allegations are true, NCL's actions violate Paragraph 20.7 of the Consent Order.

The first individual, Ms. Lori A. King, who has been diagnosed as having a profound hearing impairment, took a cruise from Miami, Florida to Cozumel, Mexico, on the Norwegian Majesty from January 6 through January 10, 2003. Ms. King alleges that NCL ignored her

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<sup>1</sup>NCL contends that this statement on its website was not a "policy." However, the statement uses mandatory language, and is almost identical to the policy identified as such in the Consent Order.

repeated advance requests for accessible services, such as a closed-captioned television set, which would allow her to access information on board the ship. Finally, just days before the start of her cruise, she was notified that there were no closed-captioned television sets on the Norwegian Majesty. Ms. King claims that, as a result of NCL's failure to provide accessible services, she was excluded from a mandatory emergency boat drill; she was not able to hear the ship's alarm system or announcements made over the public address system; and she had no access to the ship's television broadcasts; the ship's daily activities calendar or information on shore excursions.

The second individual, Mr. Alan L. Weiser, in June 2003, booked a passage for a cruise on the Norwegian Star to Hawaii, which was scheduled to begin on August 3. Mr. Weiser, who is deaf, requested a closed-captioned television set so he could access programs and information on the cruise. NCL's Special Needs Department advised him that all television sets on the ship had closed-captioning capabilities. On arrival he was notified that none of the television sets on the ship had closed-captioning capabilities. Mr. Weiser claims that no effort was made to obtain a closed-captioned set before the ship's departure and that no such sets were provided during the cruise.

## II. Procedural Background

The Consent Order sets out a procedure for reviewing compliance with and enforcing the Order. Paragraph 19.2 of the Order sets out the procedure for reviewing compliance:

The United States may review compliance with this Order at any time. If the United States believes that NCL is not in compliance with this Order or any requirement contained herein, the United States agrees to notify NCL in writing of the alleged noncompliance and attempt to seek a resolution of the matter with NCL. NCL shall have

sixty (60) days in which to correct the noncompliance. If the parties are unable to reach a resolution, the United States may seek appropriate relief from this Court. Failure by the United States to seek enforcement of or relief under this Order, or any of its provisions, shall not be construed as a waiver of the United States' rights under this Order. Any violation of this Order shall be considered a subsequent violation of the ADA.

The United States has followed all of these steps, but Defendant has not responded fully to the substance of the allegations nor agreed to remedy the alleged violations (with the exception of removing the policy from the website). The United States first notified NCL of its alleged noncompliance by letter on August 21, 2003, and addressed both the companion policy and Ms. King's complaint. When NCL told us that the letter had been sent to its former address, we resent it on October 8, 2003. The United States sent NCL an additional request for information on January 28, 2004, reiterating the issues in the August 21 letter and addressing Mr. Weiser's complaint. NCL has requested and been granted seven extensions to provide requested information (on October 8, November 21 and 26, December 2 and 9, and February 9 and 19).

On March 26, 2004, the United States sent NCL a letter notifying them that absent a response from them and a resolution of the allegations by April 6, 2004, it would seek appropriate relief from this Court. In its letter of March 26, the United States also requested a pre-filing conference under Local Rule 7.1.A. NCL responded on April 6 that it had removed the website policy, but refused to address the complaints regarding hearing impairments. The United States responded on April 8, and reiterated the questions to which we sought answers.

On April 16, Defendant finally responded to these questions with non-responsive answers or delayed responding. For example, the U.S. requested – first on January 28, 2004 and again on April 8 – that NCL identify all persons who identified themselves to NCL as guests with disabilities who, from August 28, 2001 through April 6, 2004, sought to take a cruise. On April

16, NCL responded that it could only answer this after NCL's Assistant General Counsel returned from out-of-town and after "all relevant considerations have been analyzed." Since the U.S. first sought this information two and a half months ago, it is unreasonable for NCL to claim, on April 16, that it cannot respond because an attorney is out of town and it has not yet analyzed the relevant considerations.

In its letter of April 16, NCL stated that it would respond to our inquiries regarding Ms. King and Mr. Weiser, but under separate cover. Since the United States has been requesting this information since August 21, 2003 for Ms. King, and since January 28, 2004 for Mr. Weiser, NCL's response on April 16, 2004 that they will respond to these inquiries at some unspecified time in the future is not adequate.<sup>2</sup>

### III. Discussion

Under the terms of the Consent Order, this Court retains jurisdiction of this action to enforce provisions of the Order for five years from the date of the Order. (See Exh. 1, Consent Order at ¶ 20.4.) A consent order is a legal obligation binding upon its signatories and enforceable like any other final judgment of a district court. See Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561, 590-91 (1984) (Stevens, J., concurring). Courts have inherent power to enforce compliance with their lawful orders through civil contempt sanctions. See Spallone v. United States, 493 U.S. 265, 276 (1990). In fact, "consent decrees, like all injunctions, are to be enforced through the trial court's civil contempt power." Reynolds v. McInnes, 338 F.3d 1201, 1208 (11<sup>th</sup> Cir. 2003).

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<sup>2</sup>While NCL stated that it "remains willing to cooperate with the DOJ" in its letter of April 16, it has not, in fact, cooperated in providing the information we have requested, and thus we have been unable resolve this matter without the Court's intervention.

To enforce a consent decree, a plaintiff moves the court “to issue an order for the defendants to show cause why they should not be adjudged in civil contempt and sanctioned.” *Id.* Then, the judge orders a show cause hearing, and “the court must determine whether the defendants have complied with the provision at issue and, if not, decide what sanctions are necessary to ensure compliance.” *Id.*

The provisions of the Consent Order governing this matter, and the corresponding duties of the parties, are unambiguous. Further, NCL received immediate benefits from signing the Consent Order with the United States, including savings of litigation expenses and elimination of the risk of an unfavorable resolution of the litigation accompanying the agreement. The United States has relied upon NCL’s agreement to fulfill its commitments to modify its policies and practices so as not to discriminate against passengers with disabilities. To permit a party to benefit from a consent decree and then refuse to comply with the provisions of the decree subverts the process by which the decree was reached. Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503, 1513 (11<sup>th</sup> Cir. 1985); George Banta Co., Inc., v. NLRB, 604 F.2d 830, 838 (4<sup>th</sup> Cir. 1979). Further, NCL’s blatant disregard of its obligations under the Consent Order, as illustrated by the travel companion policy on its website, should be met with sanctions.

#### A. NCL’s Requirement of a Travel Companion

As recently as April 5, NCL publicly stated on its website that “[a]ll passengers with disabilities must be self-sufficient and should travel with a passenger who will provide any assistance needed during the cruise or in the event of an emergency.” This statement violated Paragraphs 17.1 and 20.7 of the Consent Order (as discussed above at 2-3). We request that the

Court order NCL to provide to the United States the information – which is within NCL’s control and possession – necessary to review whether individuals with disabilities were denied the opportunity to go on an NCL cruise or subjected to an unequal and unnecessary condition to take an NCL cruise since the effective date of the Consent Order.

B. Closed Captioned Television and Other Services for Passengers with Hearing Impairments

NCL agreed in Paragraph 20.7 of the Consent Order “that it shall not deny its goods or services to any person on the basis of disability.” Denying passengers with hearing impairments access to television and other information provided to passengers clearly violates this provision.<sup>3</sup> Televisions are provided in each passenger room and are a service of the cruise, as are announcements, emergency drills, and information about activities and excursions.

In accordance with the ADA, the denial of closed captioned televisions to individuals with hearing impairments by a place of lodging is clearly a “den[ial of] its goods or services to [a] person on the basis of disability,” and a violation of the Consent Order, Paragraph 20.7. The ADA specifically states that no individual with a disability shall be denied services because of the absence of auxiliary aids and services, unless the entity can demonstrate that providing the service would fundamentally alter the nature of the service or would result in an undue burden. 42 U.S.C. §12182(b)(2)(A)(iii). The regulation further specifies that this provision requires that places of lodging that provide televisions in five or more guest rooms shall provide, upon

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<sup>3</sup>When enforcing a consent decree, “the proper focus must be on the language contained within the consent decree itself,” according to the Court in United States v. City of Northlake, 942 F.2d 1164, 1167 (7<sup>th</sup> Cir. 1991), which upheld the United States’ motion to enforce the consent decree’s general non-discrimination provision.



request, closed captions for individuals with impaired hearing. 28 C.F.R. §36.303(e).

Based on Ms. King's and Mr. Weiser's allegations, we request that this Court order NCL to provide closed-captioned televisions for individuals with hearing impairments, upon request, and to ensure that its emergency drills, the alarm system, announcements made over the public address system, and the ship's television broadcasts, daily activities calendar, and information on shore excursions are available to individuals with hearing impairments in an accessible format.

For the above reasons, the United States moves this Court to enter an Order: (1) requiring NCL to show cause why it should not be held in contempt for failing to comply with the Consent Order; (2) enjoining NCL to provide the United States with the information it has requested and to provide its services, including closed-captioned televisions, in accessible formats for individuals with hearing impairments; (3) after evaluating NCL's response to the order to show cause, ordering, if appropriate, NCL to pay sanctions for its disregard of its obligations under the Consent Order; and, (4) ordering appropriate relief for Ms. King, Mr. Weiser, and any other individuals discriminated against in violation of the Consent Order.

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