

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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HISTORIC ANSONBOROUGH
NEIGHBORHOOD ASSOCIATION,
CHARLESTOWNE NEIGHBORHOOD
ASSOCIATION, COASTAL
CONSERVATION LEAGUE, AND
PRESERVATION SOCIETY OF
CHARLESTON,

Plaintiffs,

v.

CARNIVAL CORPORATION,
D/B/A CARNIVAL CRUISE LINES,

Defendant.

CASE NO. 11-CP-10-4139

COMPLAINT
(Declaratory and Injunctive Relief
Sought)

INTRODUCTION

1. In this Complaint, Plaintiffs allege that Defendant Carnival Cruise Lines ("Carnival") is violating numerous laws that protect Charleston's historic assets and environment from uncontrolled and incompatible cruise industry operations, and that Defendant's enterprise and its impacts are comprise an injurious nuisance. At base, Defendant Carnival is conducting an intensive cruise accommodations business in downtown historic Charleston as if the enterprise were beyond the reach of laws that other businesses and citizens must, and do, obey. Defendant is discharging pollutants from its vessel the Carnival *Fantasy* into Charleston Harbor without permits required by South Carolina pollution control law. Further, Defendant is conducting Charleston's single largest accommodations business in an area where accommodations and deepwater

transportation are not allowed. The crowds, pollution, and traffic associated with these unlawful operations create a nuisance for Charleston citizens. This lawsuit aims to protect Charleston's neighborhoods, families and the environment by having Defendant Carnival play by the longstanding rules and norms that have made – and make – Charleston a wonderful place to work, live, and visit. Relief sought includes a declaration that Defendant is not above local laws as well as injunctive relief to obtain compliance with those laws and to abate the nuisance caused by Defendant's operations.

BACKGROUND

New Charleston Cruise Ship Operations

2. Charleston has recently experienced an explosion of cruise ship activity that goes far beyond prior cruise operations in scale, kind and intensity. Prior to 2008, no cruise ships used Charleston as a home-port, *i.e.*, the land base at which passengers, crew and supplies load and unload. While ships making port-of-call visits release and retrieve passengers over the entire docking period, vessels that home-port require that passengers, supplies and crew come to and from Charleston by land or air for embarkations and debarkations on a single day in concentrated windows of time. In 2009, cruise ships docked at the South Carolina Ports Authority's ("SPA") Union Pier Cruise Terminal in Charleston some 33 times. In 2010, the number more than doubled, to 67. For 2011, the number is expected to be 90 – 68 of which will be home-port calls.

3. The SPA is an instrumentality of the State of South Carolina, created by S.C. Code Ann. § 54-3-10, *et. seq.* SPA owns and operates Union Pier Terminal and contracts with Defendant Carnival for the use of portions of that facility, which includes the Union Pier Cruise Terminal, for home-porting operations. Union Pier Terminal is located

within the corporate limits of the City of Charleston, in Charleston County, South Carolina and is within the Old and Historic District and the Old City Height District established by City of Charleston Ordinance.

4. The majority of the increase in cruise activity in Charleston can be attributed to the Carnival *Fantasy*, which Carnival has embarked and disembarked at Charleston since 2010. The *Fantasy* is 855 feet long and more than 60 feet tall from water line to the top of the *Fantasy's* distinctive “whale-tail” Carnival funnel. With its unique fluke-like shape and bright, red, white, and blue coloring, the funnel is a registered Carnival trademark used as a corporate logo in marketing materials. The funnel protrudes approximately 30 feet above the roofline of the *Fantasy* and towers above the historic downtown Charleston skyline. See Exhibit 1 (photograph of Carnival *Fantasy* funnel over Charleston).

5. The *Fantasy* is less than 190 feet tall from waterline to topmost structure.

6. The *Fantasy* has the capacity to carry 2,056 passengers and 920 crewmembers, for a total of 2,976 persons aboard. The number of staterooms for hire (1,026) is more than twice the number of rental rooms available in Charleston’s largest hotels: Charleston Place (444 rooms) and the Charleston Marriott (347 rooms). In addition to multiple restaurants, gambling casinos, bars, swimming pools, and theaters, the *Fantasy* is equipped with a “City Sports Park” with jogging track and a nine-hole mini-golf course, and a “Waterworks” park, whose bright yellow waterslide on the upper rear deck is clearly visible from the streets of historic downtown Charleston.

7. Rooms aboard the *Fantasy* are furnished to transients for consideration.

8. Charleston is world-renowned for its protected historic downtown and

neighborhoods, including the Ansonborough and Charlestowne neighborhoods near Union Pier Terminal. Ansonborough and Charlestowne are in the Charleston Historic District – also known as the Charleston Old and Historic District. The District is listed on the National Register of Historic Places, a register of nationally significant properties maintained by the Secretary of the U.S. Department of Interior. National Register designation and Charleston’s preservation laws enhance values for the community overall. National Register designation can be lost if the integrity, setting, and context of the Charleston Historic District are not maintained.

Historic District Impacts

9. New cruise ship operations at SPA’s Union Pier Terminal, including Defendant’s activities, impact the Old and Historic District and Plaintiffs in a number of ways, including but not limited to:

(A) As Exhibit 1 shows, the *Fantasy* visually disrupts the historic skyline with large, unhistorical, and impossible-to-ignore forms that detract from and diminish historic structures such as Charleston’s iconic church spires in the historic district. The sheer height, scale, and mass of the cruise ships, which act as hotels, dwarf everything around them and block the historic skyline and protected street views of the Cooper River and Charleston Harbor. When docked, Defendant’s ships are the broadest and tallest structures in Charleston, yet are completely unhistorical in design.

(B) The influx of thousands of passengers, crew, and support personnel (and associated traffic) along with the transportation of supplies and garbage are beyond the scale of pre-existing tourist operations, different in kind from prior maritime activity in the Old and Historic District and cause major traffic congestion downtown and the

closure of public roads.

(C) The vessels emit noise pollution, including broadcast announcements and music, and the burning of diesel fuel emits visible particulate soot from ship funnels – all adjacent to the Old and Historic District.

(D) Home-porting cruise operations at an industrial scale could jeopardize the integrity, setting, and context that led to National Register designation and place maintenance of National Register status at risk.

10. Customers sold accommodations aboard the *Fantasy* travel to and from SPA's Union Pier Cruise Terminal in the City of Charleston via car, van, and bus near and through the surrounding neighborhoods. The SPA has stated that cruise customers drive between 500 and 1,000 cars to and from each cruise embarkation and debarkation. These vehicles wind through the check-in, security, and baggage drop locations before finally parking in a separate location and discharging passengers to board the cruise ship itself. SPA officials have described the existing process as an "absolute convoluted mess" and have publicly stated that "none of us are proud of what we have here." Supplies, services, and personnel used by the *Fantasy* and other vessels are delivered to and from the Terminal in trucks, cars, buses, and vans as well. On *Fantasy* embarkation and debarkation days, portions of Concord and Washington Streets – which are public streets – are closed for cruise business. Because of those closures, displacement of traffic, and the concentration of cruise traffic in a limited area for a limited time, cruise embarkations and debarkations cause increased congestion along the east side of the downtown Peninsula.

Air and Water Pollution

11. Cruise ships such as the Carnival *Fantasy* discharge pollution into surrounding waters. The pollution includes ballast water, hull coatings, gray water, and black water. Gray water includes liquids drained from food processing, showers and sinks, and cleaning operations. Tests on gray water have shown fecal coliform levels – an indication of bacteriological activity – thousands of times higher than limits applicable to landside wastewater dischargers such as Charleston’s Plum Island Wastewater Treatment Plant. Black water includes sewage discharged from toilets and medical facilities. Although treatment is required within the navigable waters of the United States, which correspond to South Carolina’s territorial limits, the applicable requirements have not been revised since the 1970s, and weak monitoring and reporting requirements, coupled with time constraints, limit the Coast Guard’s ability to detect violations. Further, raw sewage may be legally discharged outside the three-mile reach of these waters. Ballast water is water that ships take on and discharge to compensate for changes in the amount and distribution of weight and thereby maintain their stability in the water. Ballast water discharges have historically represented a major cause of non-native aquatic species invasions. A number of studies and reports have discussed the extensive economic and ecological damage invasive species have visited on the United States. Regulatory authorities have increasingly recognized that invasive species represent one of the most serious, but least appreciated environmental threats.

12. While cruise advocates in Charleston have said cruise ships do not discharge pollutants within 12 miles of shore, no information has been made public demonstrating that such discharges are not occurring, and it appears no state permits have been sought

or received that would allow for control and monitoring of such discharges. Moreover, reports and notices filed with the U.S. Environmental Protection Agency (“EPA”) and the Coast Guard contradict the claim of no discharge, as does Defendant Carnival’s own discharge policy governing certain cruise ships. Defendant has provided a notice to EPA indicating that the *Fantasy* may generate discharges of as many as a dozen pollutants within three miles of shore, a distance that corresponds to the reach of both federal navigable waters and state territorial limits. These pollutants include: ballast water; hull coatings, deck washdown and runoff; cathodic protection; controllable pitch propeller hydraulic fluid and other oil-to-sea interfaces; distillation or reverse osmosis brine; firemain systems; refrigerator and air condensate discharges; seawater cooling overboard discharge and seawater piping biofouling prevention; and small boat engine wet exhaust and underwater ship husbandry. See Exhibit 2. Other cruise lines under Carnival Corporation’s umbrella have submitted similar notices to EPA of anticipated discharge generation. Specifically, notices filed for the Holland America Line’s *MS Veendam* and Aida Cruises’ *Aida Luna*, both of which are slated to visit Charleston this year, provide that each ship may generate discharges of nearly twenty different pollutants within three miles of shore, including gray water, ballast water, and bilgewater. The *MS Veendam* anticipates discharges of gray water mixed with sewage. See Exhibit 3. Defendant Carnival’s voluntary Shipboard Wastewater Management Policy contemplates such discharges, as it exempts ships with certain types of treatment systems from its distance limits.

13. Coast Guard records show that the Defendant’s *Fantasy* and other cruise ships routinely discharge ballast water when calling on Charleston. The Coast Guard’s

National Ballast Information Clearinghouse records show that the Carnival *Fantasy* frequently discharges ballast water in Charleston, and other cruise ships likewise have reported Charleston as a discharge location on a number of occasions. *See* Exhibit 4. Ballast water contains marine species, which if allowed to invade a new environment pose a well-established threat to the environment and economy of the affected location. Invasive species may multiply rapidly, dramatically alter ecosystems supporting commercial and recreational uses, and lead to the extinction of native species. Because Charleston Harbor's characteristics make it one of the more probable sites for the introduction of aquatic invasive species, ballast water discharges at the port are of "particular concern." South Carolina Aquatic Invasive Species Management Plan at 35. Indeed, a 2002 risk assessment identified Charleston Harbor as suitable to support zebra mussels, which have wreaked havoc on the Great Lakes after being discharged through ballast water from European vessels.

14. EPA reports acknowledge that existing federal requirements have not been completely successful in addressing ballast water discharges. A number of states have therefore imposed more stringent requirements to protect their health, economy, and environment as national and international authorities work towards improved measures. Yet Defendant has not applied for any South Carolina permits providing for monitoring and control of its ballast water discharges.

15. Certain discharges accompany the ship wherever it sails, and thus necessarily occur in the harbor and surrounding waters when the *Fantasy* calls on Charleston. In particular, cruise ships such as the *Fantasy* slowly and constantly discharge toxic metals from "anti-fouling" coatings painted on their hulls. These coatings are purposely

designed to continuously leach biocides such as copper and zinc oxides into the water. They serve to minimize the build-up of barnacles, algae, and other marine organisms on the ships' hull. But, their impact necessarily spreads wide of these "target" organisms and can threaten serious and long-lasting harm to the marine environment. EPA has summarized the results of relevant scientific investigations as showing that anti-fouling hull coatings pose a substantial risk of acute and chronic toxicity, as well as other adverse impacts, to ecologically and economically important "non-target" aquatic life. Moreover, because copper, one of the principle components discharged, does not break down in the environment, it can bioaccumulate and work its way up the food chain, including into fish that people eat.

16. Defendant Carnival has reported that the *Fantasy* uses an anti-fouling hull coating manufactured by Jotun Paints, Inc. ("Jotun") with the trade name Antifouling Seaforce 200 AV. Jotun provides a Materials Safety Data Sheet describing the properties and disclosing hazards of this product. The data sheet expressly states that the coating is a water-polluting substance. It also discloses that this polluting substance is highly toxic to aquatic life and may have long-term adverse impacts on the aquatic environment. Defendant Carnival has not sought or received any South Carolina permit addressing these discharges.

17. In 2010, at least one cruise vessel embarking from SPA's Union Pier Terminal experienced outbreaks of norovirus, an infectious gastrointestinal sickness that causes vomiting, diarrhea, and nausea. More than 1,000 cruise passengers traveling in and out of Charleston became ill. The Center for Disease Control, the United States Coast Guard, South Carolina Department of Health and Environmental Control ("DHEC"), and

Charleston County resources were activated to respond to the outbreaks. Three days after the infected ship returned to Charleston for a 72-hour cleaning necessitated by the third in a series of norovirus outbreaks (March 18, 2010), the *Mercury* reportedly discharged ballast water in Charleston. On board the infected vessel, responses included enhanced custodial cleanings while the ship was moored in Charleston Harbor, with residuals of such cleaning presumably ending up as “gray water.” Discharged norovirus and other pathogens are capable of surviving in salt waters such as those in and around Charleston Harbor. Federal law allows gray water to be discharged from a moving vessel within one mile of shore – thus within the Charleston jetties – and no state permit has been sought nor obtained and no monitoring has been done on discharges from cruise ships in South Carolina waters.

18. Cruise ships such as the Defendant’s *Fantasy* also emit visible particulate soot and other pollutants, including nitrogen and sulfur oxides, which are harmful to human health when inhaled and are deposited into the surrounding waters and land. EPA has indicated that deposition of nitrogen and sulfur compounds can acidify the affected waters and alter the surface chemistry of seawater. Nitrogen deposition also harms bays and estuaries by fueling the growth of algae populations, which consume an inordinate amount of the oxygen that fish, plants, and other organisms need to survive. DHEC has identified dissolved oxygen as a “parameter of concern” in the Charleston Harbor water system. Because there are significant periods of time in which parts of the system do not meet the applicable water-quality standards for dissolved oxygen, the waters are considered “water quality limited.” Yet Defendant Carnival has not sought or received any South Carolina permit that would allow monitoring or control of pollutants that reach

the surrounding waters.

19. Guidelines purporting to limit cruise ship discharges, adopted by the Cruise Line International Association (“CLIA”), are not binding or enforceable as law. Moreover, because treatment systems can be costly to operate and waste storage is limited and costly, cruise vessel operators have an incentive to discharge untreated waste when and where they can. This can result in cruise lines “bypassing” treatment systems in violation of even minimal legal requirements. In 2002, Defendant Carnival pled guilty to knowingly discharging oil-contaminated bilge and false representation in federal pollution records and paid \$18 million in fines and mitigation to resolve federal criminal charges. *See Exhibit 5.*

Legal Framework

Zoning Protections

20. To protect the wellbeing and health of citizens and its historic assets -- including its skyline, viewsapes, and architectural scale -- Charleston adopted a series of ordinances beginning in 1931 to regulate the height, scale, and mass of structures and attachments as well as zoning laws to regulate uses and activities within and near Charleston. Charleston’s City Council has adopted two preservation plans – the first in 1974, the second in 2008 – to guide future development of the City, along with a comprehensive plan (the Downtown Plan) that requires preservation impacts be considered. As detailed in the counts below, cruise operations now being undertaken at Union Pier Terminal violate existing Charleston ordinances in multiple respects.

Pollution Discharge Limits

21. The South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*,

applies to waters of the State, including freshwaters, wetlands, estuaries, and the Atlantic Ocean within South Carolina's territorial limits, and prohibits discharges of pollutants into the environment of the State of South Carolina without a permit or authorization from DHEC. *Id.* § 48-1-10(2), § 48-1-90.

22. "Pollutant" is broadly defined for purposes of the Pollution Control Act. Multiple substances added to adjacent waters by the *Fantasy* and other cruise ships meet the definition of pollutant.

23. The Act requires permits for all discharges of pollutants into the State's waters and ambient air. *Id.* §§ 48-1-10(20) & -48-1-90.

JURISDICTIONAL FACTS AND PARTIES

Jurisdiction

24. This Court, pursuant to S.C. Const. art. V, § 11, S.C. Code Ann. § 6-29-950, *et seq.*, City of Charleston Zoning Ordinance Section 54-905 of the City of Charleston Zoning Act, S.C. Code Ann. § 48-1-250, S.C. Code Ann. § 15-53-10 *et seq.*, and other law has jurisdiction over the Plaintiffs' claims and the Defendant. Venue for this action is proper in Charleston County because Plaintiffs are located here and the occurrences giving rise to this dispute have occurred within the City of Charleston, Charleston County, in the State of South Carolina.

Parties

Defendant

25. Defendant Carnival Corporation d/b/a Carnival Cruise Lines (collectively, "Carnival" or "Defendant") owns and operates the Carnival *Fantasy*, which routinely utilizes Union Pier Terminal and the surrounding area for regularly scheduled

embarkation and debarkation. Defendant Carnival's operations at Union Pier Terminal and the activities required for, caused by, and associated with those operations give rise to Plaintiffs' injuries and this dispute.

26. Defendant Carnival advertises and furnishes for consideration "accommodations" on its vessels including *Fantasy* sailings from Charleston. See Exhibit 6 (Carnival Corp. Form 10-K: Annual Report at 15, F-28 (January 31, 2011)).

27. Defendant Carnival regularly conducts business in South Carolina and has a registered agent on file with the S.C. Secretary of State for service of process.

Plaintiffs

28. The Historic Ansonborough Neighborhood Association ("Ansonborough Association") is a South Carolina non-profit corporation organized in 1984. Its approximately 240 members are residents, property owners and tenants in a section of Charleston just west of the Union Pier Terminal. The Ansonborough Association is organized with committees to study proposed projects in area to review compliance with zoning ordinances and regulations and identify any adverse effect on the environment or quality of life in the area.

29. The Charlestowne Neighborhood Association ("Charlestowne Association") is an non-profit organization established under the laws of South Carolina to promote orderly well-being in the historic neighborhood bordering the waterfront on the south side of the Charleston Peninsula. The Charlestowne Association has a committee to monitor the impacts of all forms of tourism on the residential neighborhood, including cruise ships.

30. The Coastal Conservation League ("League") is a not-for-profit corporation organized and existing under the laws of South Carolina with approximately four

thousand members. The League's mission is to conserve natural resources and quality of life in South Carolina, particularly Charleston and along the coast. The League's headquarters are on East Bay Street, almost adjacent to Union Pier Terminal.

31. The Preservation Society of Charleston ("Preservation Society") is a not-for-profit corporation organized and existing pursuant to the laws of the State of South Carolina and has its principal place of business in Charleston, South Carolina. The Preservation Society has more than 2,000 members concerned about the future of Charleston's historic district and the organization's by-laws establish a mission and purpose to preserve and protect the historical, architectural and cultural character of the Charleston, South Carolina, area and its environs; cultivate and encourage interest in the preservation of buildings, sites and structures of historical or aesthetic significance; and to take whatever steps may be necessary and feasible to prevent the destruction or defacement of any such building, site or structure. In 1931, the Preservation Society was instrumental in persuading the City of Charleston to pass the first zoning ordinance enacted to protect historic resources. The Preservation Society is currently the grantee of several conservation easements that are negatively affected by cruise operations, including an easement at 301 East Bay Street.

32. Defendant's actions including noncompliance with zoning and environmental laws have injured the above Plaintiff organizations and their members by among other things reducing their use and enjoyment of the local environment and Charleston's historic assets, including their homes, neighborhoods, and protected structures. Plaintiff Organizations seek to vindicate the interests of their members by seeing cruise operations abide by law that manage scale, intensity and location of such operations to reduce

impacts to and disruptions of the historic district. Plaintiffs use Charleston Harbor and adjacent waters for recreation, including boating, kayaking, crabbing and fishing, and the use and enjoyment thereof will continue to be diminished by pollution of those waters by cruise operations and the uncontrolled presence of cruise ships.

FIRST CLAIM

(Unlawful Use Within Light Industrial Zone District)

33. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

34. The Charleston Zoning Ordinance (“CZO”) establishes base zoning districts and sets forth permitted principal uses for each base zoning district in a Table of Permitted Uses or as modified by special provisions, exception, and conditions. CZO § 54-203. The Table is based upon the 1987 Standard Industrial Classification Manual. *Id.* “Any use not permitted in a district is expressly prohibited.” *Id.* § 54-203(b).

35. The Union Pier Terminal is located in the “light industrial” (“LI”) district.

36. The LI district permits commercial uses and “low impact industrial uses which are compatible with surrounding commercial districts.” CZO § 54-201(q). The Table of Permitted Uses, Division E, Contains several permitted uses within category 44, “Water Transportation,” for the LI district including Water taxis (SIC 448), Marine cargo handling (SIC 4491), Towing and tugboat services (SIC 4492), and Marinas (SIC 4493). CZO Art. 2 – Land Use Regulations, Part 3 - Table of Permitted Uses, Division E. However, the table does not list SIC code 4481, “Deep Sea Transportation of Passengers, Except by Ferry,” which encompasses establishments “primarily engaged in operating vessels for the transportation of passengers on the deep seas.” *See*

http://www.osha.gov/pls/imis/sic_manual.display?id=916&tab=description (visited April 19, 2011). Nor does the table list SIC Code 449, “Services incidental to water transportation” as authorized in the LI zone.

37. Defendant’s cruise operations meet the definition of “Deep Sea Transportation of Passengers,” (SIC 4481), and include services incident thereto, (SIC 449).

38. Because “Deep Sea Transportation of Passengers” (SIC 4481) and services incidental to water transportation (SIC 449) are not uses permitted in the LI district, they are expressly prohibited and those uses at Union Pier Terminal violates the Charleston Zoning Ordinance. CZO § 54-203(b).

SECOND CLAIM

(Violation of the Accommodations Zoning Ordinance)

39. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

40. Pursuant to the Charleston Zoning Ordinance (“CZO”) § 54-220, accommodations uses are permitted only in accommodations overlay zones.

41. The portion of Union Pier Terminal where Defendant’s cruise operations occur does not have accommodations overlay zoning.

42. “Accommodations uses” are defined under the CZO as commercial uses “to provide living or sleeping units, for remuneration” to individuals for less than 29 consecutive days and “any and all similar uses” *Id.* at § 54-120.

43. Cruise operations and activities incident to those operations at Union Pier Terminal fit within the definition of “accommodations uses” under the CZO.

44. Carrying forth such uses in the absence of an accommodations overlay violates the CZO.

THIRD CLAIM

(Violation of the Old City Height District Ordinance)

45. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

46. The CZO defines the Old City Height District to include all of peninsular Charleston lying south of Mt. Pleasant Street.

47. Union Pier Terminal is located within the “WP” height district of the Old City Height District.

48. Cruise ships including the Carnival *Fantasy* are, while attached to the Union Pier Terminal, located within the “WP” height district.

49. Structures and attachments located within the “WP” height district may not exceed the height of sixty (60) feet. CZO § 54-306(g)(1).

50. The CZO exempts from the height limitations “church spires, belfries, cupolas, [and] domes,” as well as “port cranes and movable passenger cruise boarding ramps not intended or used for human occupancy, monuments, masts and aerials.” CZO § 54-308.

51. The CZO does not exempt vessels – other than their masts and aerials – from the Old City Height District height limitation.

52. The height of the Carnival *Fantasy* exceeds sixty (60) feet from waterline to the top of the ship’s funnel, excluding masts and aerials.

53. Being more than 60 feet high, the Carnival *Fantasy* at Union Pier Terminal violates the Old City Height District height limitation.

FOURTH CLAIM

(Violations of View Corridor Provision)

54. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

55. The Old City Height Ordinance includes “view corridor protection” provisions applicable within that district. The view corridor protection provision requires that all “structures” be spaced so that “no street prolonged toward the Ashley or Cooper River would be blocked by a building, thereby preserving the vista from East Bay Street, East Battery, Lockwood Drive or Halsey Blvd.” CZO § 54-307. “Building” is defined as “any structure built for the support, shelter, housing or enclosure of persons, animals or property of any kind,” including “appurtenances” such as “chimneys. . . terraces and decks. . . .” CZO § 54-120. A cruise ship is a “structure” that is “built for the support, shelter, housing or enclosure of persons” and thus meets the CZO definition of “building.” A vessel may not be spaced such that it “block[s]” the vista of a street prolonged toward the Cooper River from East Bay Street.

56. While attached to Union Pier Terminal, cruise ships including Defendant Carnival’s *Fantasy* block the easterly view of the Cooper River from East Bay Street where it crosses Market Street and violate the view corridor protection requirement of the CZO. *See, e.g.* Exhibit 7.

FIFTH CLAIM

(Violation of Sign Ordinance)

57. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

58. The CZO defines a “sign” as “any device or representation for visual communication that is used for the purpose of bringing the subject thereof to the attention of others which is located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way.” CZO § 54-120. Defendant’s website states that its “Ship Funnel design” is a registered trademark and/or service mark of Carnival Corporation. The funnel has bright red, white, and blue patterned paint, and a distinctive whale tail, or fluke-like, shape. Defendant includes an image of the funnel next to its name in print and electronic media, and has patented the ship’s funnel as an “ornamental design.” The funnel meets the definition of “sign” as a “device or representation for visual communication” used for the purpose of bringing attention to the subject thereof: the Carnival Corporation and its cruise business.

59. The funnel is also “located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way.” The funnel is visible from multiple streets and ways, and it is attached to a “vehicle.” It is also a “roof sign” that is “erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way,” and an “on-premises sign” that “(a) identifies, advertises or directs the public to a use, occupancy, function, service or product which is sold or manufactured on the property where the sign is located or at the site of a commercial, industrial or office development where the sign is located. . . .” *Id.*

60. The Ordinance prohibits any sign that “projects above the peak of a roof” or that “emits a sound, odor or visible matter.” CZO § 54-404(f),(h), (n).

61. Defendant Carnival’s funnel sign emits visible matter, odors, and sounds, and

projects above the peak of a roof. *See* Exhibit 8. It therefore violates the sign ordinance.

SIXTH CLAIM

(Noise Ordinance)

62. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

63. It is unlawful within Charleston for any person, entity, or establishment to make, continue, or allow to be made or continued, any clamorous yelling, shouting, or other loud and unnecessary noises either in the day time or at night, which disturb the peace and quiet of the city. Charleston Ordinance § 21-16(a).

64. Cruise ships docking at Union Pier Terminal make announcements and other noises via amplified sound systems that can be heard over a large area, including within Ansonborough.

65. Because these noises are loud, unnecessary, and disturb the peace and quiet of those living in and around Ansonborough, the amplified noises made by cruise ships violate the City of Charleston's noise ordinance.

SEVENTH CLAIM

(Private Nuisance)

66. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

67. Charleston Ordinance § 21-51 defines a public nuisance as including any location, including smokestacks, which endangers the health, safety or property or causes "any hurt, harm, inconvenience, discomfort, damage or injury" to anyone in the city as well as "obstructions of streets," "unauthorized or unlawful use of property abutting on a public

street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather,” “the escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the city limits or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property,” or “the pollution of any public well or cistern, stream, lake, canal or body of water.”

68. Cruise operations downtown and ineffective management of them cause, among other things, traffic congestion, pollution emissions, road closures, large crowds, loud noises, and obstructed views that are incompatible with the area’s historic setting, scale, and residential character and impact health and the environment. These activities and impacts hurt, harm, inconvenience, discomfort, damage or injure Plaintiffs and unreasonably interfere with the free use and enjoyment of plaintiffs’ property so as to constitute a common law nuisance.

EIGHTH CLAIM

(Public Nuisance)

69. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

70. Cruise operations downtown and ineffective management of them cause, among other things, traffic congestion, pollution emissions, road closures, large crowds, loud noises, and obstructed views that are incompatible with the area’s historic setting, scale, and residential character and impact health and the environment. These activities and impacts hurt, harm, inconvenience, discomfort, damage or injure Plaintiffs and others, and, and by so doing unreasonably interfere with Charleston’s quality of life and

constitute a public nuisance. Plaintiffs are uniquely injured by the problems caused by and associated with Defendant's activities.

NINTH CLAIM

(S.C. Pollution Control Act Violation)

71. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

72. The South Carolina Pollution Control Act prohibits discharges of pollution into the environment of the State of South Carolina without a permit or authorization from DHEC. S.C. Code Ann. §§ 48-1-10, -90, & -100. The permit requirement applies to all pollution discharged directly or indirectly into the State's waters or ambient air. *Id.* "Pollution" is broadly defined to encompass, among other things, sewage, other waste, air contaminants, and any other substances which may contaminate the environment, injure human health, or damage animal or marine life. S.C. Code Ann. § 48-1-10(7).

73. DHEC has promulgated regulations implementing the Pollution Control Act's requirement of a state-issued water pollution control permit. *See* S.C. Code Ann. Regs. §§ 61-9.122.1(a)(1) & (g)(1)-(2). These regulations mandate state-issued National Pollution Discharge Elimination System ("NPDES") permits for the discharge of pollutants from any point source into waters of the state. *Id.* § 122.1(b)(1). Regulation 61-9 defines a "permit" as "an authorization, license or equivalent control document issued by [DHEC] to implement the requirements of this regulation."

74. Both the Pollution Control Act and Regulation 61-9 expressly include vessels in the definition of a "point source." S.C. Code Ann. § 48-1-10(23); S.C. Code Ann. Regs. § 61-9.122.2(b). Thus, any vessel wishing to discharge pollutants into state waters

directly or indirectly must first obtain a permit from DHEC.

75. Defendant Carnival's *Fantasy* discharges pollutants directly and indirectly into South Carolina waters.

76. Defendant Carnival has not obtained any permit from DHEC to discharge pollutants into South Carolina waters.

77. Defendant is violating state law by discharging pollutants from the *Fantasy* without required a state permit. S.C. Code Ann. §§ 48-1-90, 48-1-250.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

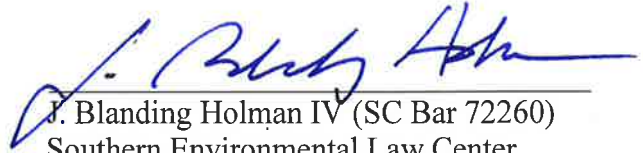
A. Issue a declaratory judgment in Plaintiffs' favor adjudicating the illegality and unreasonableness of Defendant's use of Union Pier Terminal and surrounding areas and attached structures for cruise operations as set forth above.

B. Enjoin further violations of the law by Defendant Carnival;

C. Abate cruise operations that constitute a nuisance;

D. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Charleston, South Carolina
June 13, 2011