

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>MAXIMILIANO GRAMAJO,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CASE NO. 3:23-cv-00006</b>
<b>v.</b>	)	
	)	
<b>MARCO MARINE, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	

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**REPORT AND RECOMMENDATION**

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Before the Court is Plaintiff Maximiliano Gramajo’s (“Gramajo”) motion [ECF 46] and memorandum of law [ECF 47] for partial summary judgment.<sup>1</sup> Accompanying the motion is a statement of undisputed material facts [ECF 48] in support thereof. Defendant Marco Marine, LLC (“Marco Marine”) opposes the motion [ECF 53] and provides a statement of disputed facts [ECF 54] of its own. In turn, Gramajo has replied to the opposition [ECF 55] and the statement of disputed facts [ECF 56]. For the reasons to follow, the undersigned recommends that the District Court deny the motion.<sup>2</sup>

**I. BACKGROUND<sup>3</sup>**

In this maritime lawsuit, Gramajo asserts three causes of action against Marco Marine. [ECF 1]. It is the third cause of action that is the subject of the present motion. *See* [ECF 47] at 1. Said claim, asserted in the alternative, seeks past and future maintenance and cure benefits under general maritime law.<sup>4</sup> [ECF 1] at 11–14. Marco Marine opposes the motion and challenges

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<sup>1</sup> Both the motion and the memorandum in support thereof [ECF 46 and 47] are referred to collectively by the Court as the “motion.”

<sup>2</sup> The District Court referred Gramajo’s motion to the undersigned for a Report and Recommendation. [ECF 59].

<sup>3</sup> As the parties are familiar with the factual and procedural background of this matter, the following summary includes only the information most pertinent to the instant motion.

<sup>4</sup> Count II of the complaint also asserts a claim for past and future maintenance and cure, but does so under the Jones Act, 46 U.S.C. § 30104. [ECF 1] at 8–10.

Gramajo’s status as a seaman under the Jones Act, as well as whether the alleged injuries even occurred aboard the vessel. [ECF 53] at 6-7. It further questions whether Gramajo “intentionally concealed” pre-existing medical conditions that would have prevented his being hired by Marco Marine in the first place. *Id.*

At all times pertinent, Gramajo was employed as a cook aboard the *M/V Lady Romney*. [ECF 48] ¶¶ 2–3, 9; [ECF 48–2]; [ECF 54] ¶¶ 1–2. Unclear from the record, however, is the exact identity of Gramajo’s employer, or that of the owner of the vessel. The complaint alleges Gramajo was employed by Marco Marine, who is the owner and operator of the *M/V Lady Romney*. [ECF 1] ¶¶ 2, 4. The motion, however, attaches a “seafarer employment agreement” entered between Gramajo and Shawn Baptiste (“Baptiste”), wherein Baptiste is identified as the owner of the vessel, which in turn, employs Gramajo. [ECF 48] ¶ 2; [ECF 48–2]. By way of an apparent explanation, Gramajo states that Baptiste is the principal of Marco Marine. [ECF 48] ¶ 2.<sup>5</sup> As for Marco Marine, it identifies the vessel as its own. [ECF 54] ¶ 1. Gramajo disputes that contention—again, contrary to the complaint allegation—and asserts that Marco Marine is not the owner of the vessel but is its “managing entity.” [ECF 56] ¶ 1. In support thereof, Gramajo attaches a “vessel finder” webpage that identifies “Marco St Croix Inc” as the vessel’s owner and Marco Marine as its manager. [ECF 56–1]. This vessel webpage, however, identifies the vessel as being the *Marco VI*, and not as the *M/V Lady Romney*. *Id.*

The parties do agree that Gramajo’s employment aboard the *M/V Lady Romney* commenced on July 2, 2021. [ECF 48] ¶ 3; [ECF 54] ¶ 1. During this employment, Gramajo contends he was injured on two separate occasions. [ECF 48] ¶¶ 6–7. The first of which occurred towards the end of September 2021, when Gramajo claims he injured his left knee while attempting to lift heavy

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<sup>5</sup> In its amended corporate disclosure statement [ECF 10], Marco Marine identifies Baptiste as its sole member.

ropes during a docking operation that took place at approximately 12:30 a.m. *Id.* ¶ 6; [ECF 48–3] at 2. According to Gramajo, he awoke later that morning with knee pain. [ECF 48–3] at 2. The second injury—this time to the lower back—occurred at some point during the month of December 2021. [ECF 48] ¶ 7. The complaint alleges this injury was a result of Gramajo performing the “very same maneuvers” with heavy ropes that he had performed in September 2021. [ECF 1] ¶ 8; *see also* [ECF 46] ¶ 4. Gramajo’s statement of undisputed material facts on this topic—which rely upon Gramajo’s interrogatory responses—states otherwise. In his discovery response, Gramajo now contends that the second injury occurred when he “went out grocery shopping.” [ECF 48–3] at 2. Similar to the first injury, when Gramajo awoke the following morning after the task, he awoke with back pain. *Id.*

The vessel’s logbook entry for October 4, 2021 includes a notation that the cook (unnamed) reported knee pain. [ECF 48] ¶ 22. Specifically, the logbook provides, in pertinent part, as follows:

0800 – cook report to the captain that he havent [sic] sleep well and wake up with a pain on his knee.

[ECF 48–14]. Gramajo’s interrogatory response further states that Gramajo reported the December 2021 incident to the captain, wherein he advised that he had no money and requested to see a doctor. [ECF 48] ¶ 3; [ECF 48–3] at 2; *see also* [ECF 56] ¶ 4. Despite this request, Gramajo contends he had to wait until the third day before crewmembers agreed to take him to a physician. *Id.* Marco Marine, in turn, disputes having ever been made aware of any complaints or injuries suffered by Gramajo during his employment other than a headache requiring medication off-vessel. [ECF 54] ¶ 4; [ECF 53–1] at 11; [ECF 53–4] ¶ 5. It further disputes whether Gramajo was ever even injured while in the service of the vessel, noting that no incidents were reported. [ECF 54] ¶¶ 6, 9; [ECF 53–1] at 11, 14–16; [ECF 53–4] ¶ 7. As for the logbook entry—which appears to contradict the assertions immediately above if one is to assume Gramajo is the unnamed cook

referenced therein—Marco Marine counters that the entry is devoid of the cause or event that led to the knee pain. [ECF 54] ¶ 10.

As for when Gramajo departed the *M/V Lady Romney*, he contends he disembarked the vessel on December 27, 2021, having traveled back to his home country of Guatemala soon thereafter—all at his own expense—in order to seek medical care for the injuries he sustained. [ECF 48] ¶ 10; [ECF 1] ¶¶ 11–12; [ECF 48–6]. Marco Marine disputes these contentions. It claims Gramajo was separated from his employment on December 21, 2021, due to Gramajo wanting to return home for Christmas—which Marco Marine states Gramajo was “entitled to do”—as well as due to the captain’s recommendation that Gramajo be terminated for his “refusal to follow orders and willingness to perform his job on the vessel.” [ECF 54] ¶ 2. The record in which Marco Marine relies, however, makes no mention of Christmas, merely that Gramajo stated that he was leaving the vessel as he “had to go home with his family.” [ECF 53–1] at 4, 11. Furthermore, it is unclear from the record presented to the Court by Marco Marine as to when or why Gramajo’s employment was terminated. According to Marco Marine, its post-lawsuit investigation revealed that the captain had recommended Gramajo be “instructed to leave the ship due to his lack of wanting to work” and that Gramajo was terminated—date unknown—because he failed to follow the captain’s orders and perform as expected. [ECF 53–4] ¶¶ 4, 6–7. Finally, the vessel’s own log entry shows that Gramajo disembarked on December 27, 2021, as opposed to December 21, 2021.<sup>6</sup> [ECF 48–6].

Regarding medical treatment, the complaint alleges Gramajo was seen at a clinic in Antigua—“All Things Medical”—in December 2021, prior to his returning to Guatemala. [ECF

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<sup>6</sup> While it is certainly possible that Gramajo was separated (i.e., terminated) from his employment on December 21, 2021—some six days prior to his leaving the vessel—the record before the Court is devoid of any such facts.

1] ¶11.<sup>7</sup> Once in Guatemala, Gramajo treated with Dr. Juan Pablo Ruiz Villatoro.<sup>8</sup> [ECF 1] ¶ 13; [ECF 48] ¶ 12; and [ECF 48–8]. The medical records reflect treatment for chronic lumbar spasm and meniscopathy and show that Gramajo was first seen by the doctor on January 3, 2022. [ECF 48–8]. No reference is made, however, to causation. *See* [ECF 48–8]. On March 10, 2022, Gramajo underwent a lumbar MRI, which revealed a herniated disc at L5/S1. [ECF 48] ¶ 13; [ECF 48–8] at 5. He subsequently underwent an MRI of the left knee on July 25, 2022, with Dr. Villatoro diagnosing Gramajo on August 1, 2022 with an internal and external meniscus tear. [ECF 48] ¶¶ 14–15; [ECF 48–8] at 8. Based on the MRI results, the doctor recommended Gramajo undergo arthroscopic surgery of the left knee. [ECF 48] ¶ 15; [ECF 48–8] at 8. Following the August 1, 2022 visit, nearly nineteen months elapsed before Gramajo returned to Dr. Villatoro on February 26, 2024. [ECF 48–8] at 15. At this visit—which represents the last such visit that is on record before the Court—Gramajo reported his knee symptoms had lessened and that the knee “feels much better,” while his lower back pain persists. *Id.*

On April 11, 2022, Gramajo—through counsel—made written demand upon Marco Marine for maintenance and cure benefits. [ECF 48] ¶¶ 17–18; [ECF 48–10]; and [ECF 48–11]. On April 14, 2022, Gramajo provided Marco Marine with receipts of all medical expenses he had incurred to date and reiterated his demand for maintenance and cure. [ECF 48] ¶ 19; [ECF 48–12]. Finally, on March 5, 2024, a follow-up written demand for maintenance and cure was made upon counsel for Marco Marine. [ECF 48] ¶ 21; [ECF 48–13]. Although no specific dollar figure is set forth in the motion for past cure, copies of medical invoices are attached.<sup>9</sup> [ECF 48] ¶ 15; [ECF 48–9]. No breakdown of purported maintenance expenses has been provided, however, with the motion

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<sup>7</sup>A receipt from “All Things Medical” dated “21<sup>st</sup>, 2021” is silent as to the month. *See* [ECF 48–9] at 1.

<sup>8</sup> Gramajo attaches—presumably *in globo*—the medical records of Dr. Villatoro. These records, which were originally written in Spanish, have been translated to English via a certified translator. *See* [ECF 48–8] at 10, 12, 14.

<sup>9</sup> It appears most of the invoices reflect costs in Guatemalan currency.

merely asserting that maintenance be “reinstated” at an amount of \$1,300 per month. [ECF 47] at 8; *see also* [ECF 48]. This \$1,300 figure represents Gramajo’s monthly wage aboard the *M/V Lady Romney*. [ECF 48] ¶ 2; [ECF 48–2] at 1. To date, no maintenance and cure payments have been made by Marco Marine. [ECF 48] ¶ 20.

Marco Marine states it only learned of Gramajo’s alleged incidents after it was served with the lawsuit.<sup>10</sup> [ECF 53–1] at 7; [ECF 53–4] ¶ 2. After which, it conducted an investigation that consisted of speaking with the captain of the *M/V Lady Romney*. [ECF 54] ¶ 5; [ECF 53–4] ¶¶ 3–7. According to Marco Marine, the *M/V Lady Romney* was in “dry dock/shipyard” during the period Gramajo claimed to have been injured. [ECF 54] ¶ 7; [ECF 53–1] at 6. In its opposition, however, Marco Marine appears to qualify this statement as follows:

During one of the periods Plaintiff claimed to have been injured on the vessel, the vessel was not traveling. It was under repair.

[ECF 53] at 2. Marco Marine also states that the vessel did not operate in United States waters and was not licensed to do so. [ECF 54] ¶ 8; [ECF 53–1] at 6. Finally, Marco Marine states Gramajo had a prior shoulder injury from 2016. [ECF 54] ¶ 11; [ECF 53–2] at 7.

## II. LEGAL STANDARDS

### A. Summary Judgment

Summary judgment is appropriate where the “[m]ovant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A motion for partial summary judgment involves the same standards as a motion for full summary judgment. [It] is merely a pretrial adjudication that certain issues shall be deemed established for the trial of the case.” *United States f/u/b/o Tip Top Constr. Corp. v. CMGC Bldg.*

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<sup>10</sup> The written demands of April 2022 for maintenance and cure reflect otherwise. *See* [ECF 48–10]; [ECF 48–11]; and [ECF 48–12].

*Corp.*, 2022 WL 20766487, at \*7 (D.V.I. Dec. 12, 2022)<sup>11</sup> (citing *Right Way Nutrition, LLC v. Gen. Nutrition Corp.*, 421 F. Supp. 3d 78, 87 (W.D. Pa. 2019)); Fed. R. Civ. P. 56(a).

The movant for summary judgment bears the initial burden of demonstrating no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is “material” only if it impacts the outcome of litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–248 (1986). Moreover, a “genuine” factual dispute exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The movant is required to support its factual assertions with a record “including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]” Fed. R. Civ. P. 56(c); *See Favata v. Seidel*, 511 F. App'x 155, 158 (3d Cir. 2013) (citation omitted).

Once the movant meets the initial burden, the non-moving party “may not rely merely on allegations of denials in its own pleadings; rather, its response must ... set out specific facts showing a genuine issue for trial.” *De La Cruz v. Virgin Islands Water & Power Auth.*, 2011 WL 13291512, at \*1 (D.V.I. Feb. 25, 2011); Fed. R. Civ. P. 56(e)(2). In addition, the non-moving party shall provide a record demonstrating that genuine issues of material fact exist. *Jones v. United Parcel Serv.*, 214 F.3d 402, 407 (3d Cir. 2000) (“At summary judgment, a plaintiff cannot rely on unsupported allegations, but must go beyond pleadings and provide some evidence that would show that there exists a genuine issue for trial.”(citing *Celotex Corp.*, 477 U.S. at 324)). “Legal memoranda and oral argument are not evidence and cannot by themselves create a factual dispute sufficient to defeat a summary judgment motion.” *Jersey Cent. Power & Light Co. v. Twp. of Lacey*,

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<sup>11</sup> While the District Court Judge in *United States f/u/b/o Tip Top Constr. Corp. v. CMGC Bldg. Corp.*, 2023 WL 5969618 (D.V.I. Sept. 14, 2023) rejected in part the report and recommendation submitted by the Magistrate Judge in *United States f/u/b/o Tip Top Constr. Corp. v. CMGC Bldg. Corp.*, 2022 WL 20766487 (D.V.I. Dec. 12, 2022), this partial rejection had no bearing on the legal standards set forth in the report and recommendation by the Magistrate Judge that are recited herein.

772 F.2d 1103, 1109–10 (3d Cir. 1985). “Denials in the form of legal conclusions, unsupported by documentation of specific facts, are insufficient to create issues of material fact that would preclude summary judgment.” *Id.* at 1110 (citing *Securities and Exchange Commission v. Bonastia*, 614 F.2d 908, 914 (3d Cir.1980)). Thus, the “mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson*, 477 U.S. at 247-48.

The court must review the record as a whole, “‘draw[ing] all reasonable inferences in favor of the non-moving party’ but not weighing the evidence or making credibility determinations.” *Hill v. City of Scranton*, 411 F.3d 118, 124-25 (3d Cir. 2005) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)). Only if the court determines there to be no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law, will summary judgment be appropriate. *Hill*, 411 F.3d at 125.

## **B. Maintenance and Cure**

Courts have long recognized the admiralty doctrine of maintenance, cure, and unearned wages.<sup>12</sup> The origins of this duty have been traced back to Justice Story in *Harden v. Gordon*, 11 F.Cas. 480, 482–83 (C.C.D.Me.1823), with the Supreme Court having first recognized and defined the rights in *The Osceola*, 189 U.S. 158, 175, (1903). *Deisler v. McCormack Aggregates, Co.*, 54 F.3d 1074, 1079 (3d Cir. 1995). In *The Osceola*, Justice Brown considered the law settled “[t]hat

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<sup>12</sup> The ancient maritime codes of Wisby, Hansa, and Oleron provided the origin of several widely recognized legal remedies in admiralty law, such as maintenance and cure. *See The Osceola*, 189 U.S. 158, 169 (1903): “By article 6 of the Rules of Oleron, sailors injured by their own misconduct could only be cured at their own expense, and might be discharged; ‘but if, by the master's order and commands, any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the cost and charges of the said ship.’ By article 18 of the Laws of Wisbury, ‘a mariner being ashore in the master's or the ship's service, if he should happen to be wounded, he shall be maintained and cured at the charge of the ship,’ with a further provision that, if he be injured by his own recklessness, he may be discharged and obliged to refund what he has received. Practically the same provision is found in article 39 of the Laws of the Hanse Towns; in the Marine Ordinances of Louis XIV. book III. title 4, article 11; and in a Treatise upon the Sea Laws, published in 2 Pet. Adm. Dec.”



the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.” *The Osceola*, 189 U.S. at 175. Thus, the doctrine provides three remedies—maintenance, cure, and wages. *Knieling v. Fook*, 2024 WL 2778247, at \*5 (D.V.I. May 30, 2024) (citing *Messier v. Bouchard Transp.*, 688 F.3d 78, 81 (2d Cir. 2012)). Maintenance is the living allowance provided to the seaman while he is ashore recovering from injury or illness. *Deisler*, 54 F.3d at 1079. Cure is the payment of the medical expenses incurred by the seaman in treating his injury or illness. *Id.*

Maintenance and cure concerns the vessel owner’s (and employer’s) obligation to provide food, lodging, and medical services to a seaman injured while serving the vessel. *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441 (2001); see *Baker v. Raymond Int’l, Inc.*, 656 F.2d 173, 185 (5th Cir. 1981) (“Maintenance, cure, and wages remain, however, the particular responsibility of the employer, unlike the liability for unseaworthiness, which arises directly from ownership of the vessel”); see also *Deisler*, 54 F.3d at 1079 (“[a]n employer’s obligation to furnish maintenance and cure continues ‘until the seaman has reached the point of maximum cure ...’”). “A seaman’s entitlement to maintenance and cure applies only to injuries ‘suffered [or] ... aggravated or [that] become manifest while he [is] ‘in the service of the vessel.’” *In re 4-K Marine, L.L.C.*, 914 F.3d 934, 938 (5th Cir. 2019) (citing 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 6:30 (6th ed. 2018)) (emphasis added). Such service “extends beyond injuries sustained on board ship or during working hours to any injuries incurred in any place while the seaman is subject to the call of duty.” *Deisler*, 54 F.3d at 1080. Moreover, maintenance and cure is warranted even when the seaman’s service to the vessel aggravates a condition, as opposed to being the cause of the condition. See *In re 4-K Marine*, 914 F.3d at 938.

The remedy of maintenance and cure is available to any seaman who becomes ill or injured while in the service of the vessel, and not even his own negligence will bar recovery. *Cox v. Dravo Corp.*, 517 F.2d 620, 623 (3d Cir. 1975). Only the seaman's willful misconduct or deliberate misbehavior will relieve the shipowner of its duty, with the shipowner bearing the burden of proof. *Deisler*, 54 F.3d at 1080; *see Catlett v. Atl. Capes Fisheries, Inc.*, 751 F.Supp.3d 479, 497 (D.N.J. 2024). Accordingly, "[a]side from gross misconduct or insubordination, what the seaman is doing and why [and] how he sustains injury does not affect his right to maintenance and cure ...." *Knieling*, 2024 WL 2778247, at \*5 (citing *Farrell v. United States*, 336 U.S. 511, 516 (1949)); *see also Jauch v. Nautical Services, Inc.*, 470 F.3d 207, 212 (5th Cir. 2006) ("The vessel owner's obligation to provide this compensation does not depend on any determination of fault, but rather is treated as an implied term of any contract for maritime employment.").

To recover maintenance and cure, the seaman must show:

- (a) his engagement as a seaman,
- (b) his illness or injury, that it occurred, was aggravated or manifested itself while in the ship's service,
- (c) the wages to which he may be entitled to the end of the voyage, and
- (d) the expenditures or liability incurred by him for medicines, nursing care, board and lodging, etc.

*Freeman v. Thunder Bay Transp. Co.*, 735 F.Supp. 680, 681 (M.D. La. 1990) (citing M. Norris, *The Law of Seaman* § 26.21, at 53 (4th ed. 1985)); *see also Knieling*, 2024 WL 2778247, at \*5. "Although the seaman's right of recovery for maintenance and cure is broad, ... he still bears the burden of alleging and proving facts that bring himself within its scope." *Knieling*, 2024 WL 2778247, at \*5 (citing 1 Robert Force and Martin J. Norris, *The Law of Seamen* § 26:76 (5th ed. Nov. 2023 update).

“The duty to pay maintenance and cure commences when the seaman falls ill or is injured and leaves the ship.” *Knieling*, 2024 WL 2778247, at \*5 (citing 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 6:28 (6th ed. 2018) (citing *Morales v. Garijak, Inc.*, 829 F.2d 1355 (5th Cir. 1987) (seaman was entitled to maintenance payments commencing on date he left ship, rather than date he was injured)). However, the obligation to pay maintenance and cure ceases once the seaman has reached the point of maximum medical cure. *See Farrell v. United States*, 336 U.S. 511, 517–18 (1949) (‘The shipowner is required to furnish medical care and maintenance, including board and lodging, until the disabled person has been cured or the disability has been declared permanent.’) (citations omitted); *see Vella v. Ford Motor Co.*, 421 U.S. 1, 5 (1975) (“[t]he shipowner shall be liable to defray the expense of medical care and maintenance until the sick or injured person has been cured, or until the sickness or incapacity has been declared of a permanent character.”).

### **C. Intentional Misrepresentation / Willful Concealment**

“A seaman may recover maintenance and cure even for injuries or illnesses pre-existing the seaman's employment unless that seaman knowingly or fraudulently concealed his condition from the vessel owner at the time he was employed.” *Jauch*, 470 F.3d at 212 (citing *McCorpen v. Cent. Gulf S.S. Corp.*, 396 F.2d 547, 548 (5th Cir.1968)). To prevail on the concealment defense, the shipowner must demonstrate “(1) the claimant intentionally misrepresented or concealed medical facts; (2) the non-disclosed facts were material to the employer's decision to hire the claimant; and (3) a connection exists between the withheld information and the injury complained of in the lawsuit.” *Jauch*, 470 F.3d at 212 (citing *Brown v. Parker Drilling Offshore Corp.*, 410 F.3d 166, 171 (5th Cir.2005)); *see Deisler*, 54 F.3d at 1080.

Where there are pre-existing conditions, courts are to distinguish between nondisclosure and concealment. *Jauch*, 470 F.3d at 212. Should a vessel owner not require a pre-employment

medical examination, the seaman need only disclose a pre-existing condition “when in [the seaman's] own opinion the shipowner would consider it a matter of importance.” *Id.* (citing *McCorpen*, 396 F.2d at 548-49). Conversely, if the vessel owner requires such an examination as part of its hiring process, “a seaman who misrepresents or conceals any material medical facts, disclosure of which is plainly desired, risks forfeiture of his maintenance and cure benefits.” *Id.* (citing *McCorpen*, 396 F.2d at 549). “Of course, the defense that a seaman knowingly concealed material medical information will not prevail unless there is a causal link between the pre-existing disability that was concealed and the disability incurred during the voyage.” *McCorpen*, 396 F.2d at 549. Again, it is the vessel owner who bears the burden of proving that the omission or concealment was material to its decision to hire the seaman. *Deisler*, 54 F.3d at 1081-82; *Catlett*, 751 F.Supp.3d at 497.

### III. DISCUSSION

#### A. Local Rule 56.1

Under the local rules of this Court, a movant shall file “a separate statement of material facts about which the movant contends there is no genuine issue.” LRCi 56.1(a). In response, the opposing party may file its own additional statement of material facts; however, the non-movant must address the movant’s statement of facts using the corresponding serial number and answering in one of the following ways:

- (i) agree that the fact is undisputed; (ii) agree that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or (iii) state that the fact is disputed.

LRCi 56.1(b). Should the non-movant fail to respond to a statement of material facts, it is within the court’s discretion to find that the asserted facts are not disputed for the purposes of summary judgment. LRCi 56.1(d).

In accordance with the above rule, Gramajo filed such a separate statement setting forth twenty-two enumerated material facts in which he contends there to be no genuine issue. *See* [ECF 48]. In its opposition, Marco Marine provides a blanket statement that it disputes the material facts set forth in Gramajo’s statement. [ECF 53] at 3. Additionally, Marco Marine filed its own statement of disputed facts in support of its opposition, which includes eleven serially numbered paragraphs. [ECF 54]. While several of the disputed facts in this statement—either directly or indirectly—address some of the facts asserted by Gramajo in his statement, they do not do so using corresponding serial numbers.<sup>13</sup> Neither the blanket statement provided in the opposition, nor the sporadic responses in the statement of disputed facts, comport with the requirements of LRCi 56.1(b). As such, it is within this Court’s discretion whether to deem admitted Gramajo’s statement of material facts on the sole basis that Marco Marine failed to answer as required pursuant to the local rule. *See Conn v. Bull*, 307 F. App’x 631, 631 (3d Cir. 2009).<sup>14</sup>

At the core of Gramajo’s statement of facts are the assertions that he sustained two separate injuries—one to the left knee, the other to his lower back—while in the service of the vessel. [ECF 48] ¶¶ 6–7. Marco Marine disputes that these injuries occurred. [ECF 54] ¶¶ 2–6, 9; *see* [53–1] at 11, 14–16; *see* [53–4].<sup>15</sup> Given this dispute, coupled with the record that has been cited to by Marco

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<sup>13</sup> Paragraph 3 of Marco Marine’s statement paraphrases the facts set forth in paragraphs 6 and 7 of Gramajo’s statement, with paragraph 4 of Marco Marine’s statement appearing to respond to these facts. Likewise, paragraph 10 of Marco Marine’s statement addresses paragraph 22 of Gramajo’s statement. *See also* paragraphs 1 and 9 of Marco Marine’s statement, which addresses—somewhat loosely—the facts asserted in paragraphs 2, 3, 6, 7, and 9 of Gramajo’s statement. *Compare* [ECF 54] with [ECF 48].

<sup>14</sup> The Third Circuit found no error in the magistrate judge’s analysis finding the defendants’ statement of facts deemed admitted because the responding party failed to answer in accordance with Local Rule 56.1 of the Middle District of Pennsylvania. *Conn*, 307 F. App’x at 633.

<sup>15</sup> Gramajo objects to paragraphs 5 and 9 of Marco Marine’s statement of disputed facts on the basis that no citation to the record is made in support of the statements as required by Fed.R.Civ.P. 56(c)(1)(A). Gramajo is correct in its position. The Court notes, however, that the record that was presented by Marco Marine—in this instance, Marco Marine’s interrogatory responses [ECF 53–1] and the affidavit of Shawn Baptiste [ECF 53–4]—are sufficient to show that Marco Marine disputes that Gramajo was injured aboard the vessel.

Marine in its statement,<sup>16</sup> the Court is not inclined to exercise its discretion and will not deem as admitted the statement of facts set forth in paragraphs 6 and 7 of Gramajo’s statement [ECF 48] for purposes of the present motion. As for the remaining facts set forth in the statement, these do not appear to be disputed by Marco Marine and will be treated accordingly.<sup>17</sup>

### **B. Count III – General Maritime Maintenance and Cure**

Count III of the complaint asserts a cause of action against Marco Marine under general maritime law for failure to provide Gramajo with “prompt, adequate and proper” maintenance and cure. [ECF 1] ¶¶ 33-39. In his motion, Gramajo contends that it is “undisputed” that he was injured while in the service of the vessel (*M/V Lady Romney*) and is entitled to maintenance and cure. [ECF 47] at 4. Despite this purported entitlement, Gramajo claims Marco Marine has failed to pay any maintenance to date, nor has it paid (or agreed to pay) for any of his past or prescribed medical treatment, which includes a recommended arthroscopic surgery to repair the left knee. Gramajo further contends that Marco Marine has ignored his repeated demands for such benefits. *Id.* at 4–5. He also maintains that his injuries have yet to achieve maximum medical improvement (“MMI”) and as a result, that his entitlement to maintenance and cure continues. *Id.* at 5–8. With respect to maintenance, Gramajo does not provide a breakdown of his daily living expenses but instead seeks past and future maintenance in an amount equal to his monthly pay rate (\$1,300) while aboard the vessel. [ECF 47] at 8; *see* [ECF 48] ¶ 3. As for his past and prescribed medical treatment, Gramajo attaches the medical records of his treating physician, Dr. Villatoro, as well as receipts for those medical expenses incurred to date. [ECF 48] ¶¶ 12–16; *see also* [ECF 48–8] and [ECF 48–9].

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<sup>16</sup> As it relates to this issue, Marco Marine cites to its interrogatory responses [ECF 53–1] and the affidavit of Shawn Baptiste [ECF 53–4]. *See* [ECF 54] ¶¶ 2, 4, 6.

<sup>17</sup> As an aside, the Court notes that the facts stated in paragraphs 4 and 5 of Gramajo’s statement reference language in Gramajo’s seafarer employment agreement, which raise questions of law.

In its opposition, Marco Marine argues that there are genuine issues of material fact as to whether (1) Gramajo was working as a seaman under the Jones Act at the time of the alleged injuries, (2) Gramajo was injured while in the service of the vessel, and (3) Gramajo intentionally failed to disclose a pre-existing medical condition that would have prevented his employment had it been disclosed. [ECF 53] at 6–7. Marco Marine also makes a passing comment that the vessel in question did not operate within the United States or its territories at the time of the alleged injuries but was restricted to foreign ports. *Id.* at 1. As such, Marco Marine states that jurisdiction “may be questioned” at a later stage of the litigation. *Id.* Such a gratuitous comment warrants no consideration as to the present motion and none is given.<sup>18</sup> Marco Marine does not challenge the medical records and receipts accompanying Gramajo’s motion, the surgical recommendation made by Gramajo’s treating physician, or Gramajo’s position that he has yet to achieve MMI status.

As noted earlier, to show an entitlement to maintenance and cure, a party must show (a) his engagement as a seaman, (b) his illness or injury, that it occurred, was aggravated or manifested itself while in the ship’s service, (c) the wages to which he may be entitled to the end of the voyage, and (d) the expenditures or liability incurred by him for medicines, nursing care, board and lodging, etc. *Freeman*, 735 F.Supp. at 681. Gramajo’s present motion does not seek wages and thus, the Court does not consider such potential damages herein.

i. Seaman status

Determining seaman status “is a mixed question of law and fact,” with the essential requirements being twofold. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368–69 (1995); see *Knieling v. Fook*, 2024 WL 3566796, at \*6 (D.V.I. July 9, 2024). First, the employee’s duties must contribute to the function of the vessel or to the accomplishment of its mission. *Chandris*, 515 U.S. at 368.

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<sup>18</sup> It is noted that a maintenance and cure action may be brought in the federal court if the requirements of diversity of citizenship and jurisdictional amount are satisfied. *Glynn v. Roy Al Boat Mgmt. Corp.*, 1992 WL 474578, at \*1 (D.Haw. Oct. 21, 1992), *rev’d in part*, 57 F.3d 1495 (9th Cir. 1995).

Second, the seaman must have a connection to a vessel in navigation that is substantial in terms of both its duration and its nature. *Id.* The contribution to the vessel is not limited to just those who aid in the actual navigation, or “hand, reef and steer” of the vessel, but can also include those on board that do not direct the vessel, such as firemen, engineers, carpenters, and *cooks*. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 343 (1991) (emphasis added). “[W]hether a vessel is or is not ‘in navigation’ for Jones Act purposes is a fact-intensive question that is normally for the jury and not the court to decide.” *Chandris*, 515 U.S. at 373. With that caveat, it is generally accepted that “a vessel does not cease to be a vessel when she is not voyaging, but is at anchor, berthed, or at dockside . . . even when the vessel is undergoing repairs.” *Id.* at 373-74 (internal quotations and citations omitted). It is further the general rule among the circuits “that vessels undergoing repairs or spending a relatively short period of time in drydock are still considered to be ‘in navigation’ whereas ships being transformed through ‘major’ overhauls or renovations are not.” *Id.* at 374. In determining how significant the repairs are, one must focus on “the status of the ship, the pattern of the repairs, and the extensive nature of the work contracted to be done.” *Jarvis v. Hines Furlong Line, Inc.*, 2022 WL 1929364, at \*3 (6th Cir. June 6, 2022).

Turning to the case at hand, there is no dispute that Gramajo served as a cook aboard the *M/V Lady Romney* at all times pertinent. *See* [ECF 54] ¶ 1. Nor is there an argument that as a cook, Gramajo did not contribute to the accomplishment of the *M/V Lady Romney*’s mission. Instead, the only contested issue concerns that of “in navigation.” This is made in a single, sweeping comment—without the presentation of argument—wherein the opposition states that “[d]uring one of the periods [Gramajo] claimed to have been injured on the vessel, the vessel was not traveling. It was under repair.” [ECF 53] at 2. Even this statement, however, appears to conflict with the record that purportedly supports it. In Marco Marine’s statement of disputed facts, the *M/V Lady Romney* was at drydock / shipyard “during the period” Gramajo claims to have been injured on the vessel. [ECF



54] ¶ 7; [ECF 53–1] at 6. That “period” would necessarily have to include both occasions that Gramajo claims injury. The cursory record recited by Marco Marine fails to present any evidence as to the length of time the *M/V Lady Romney* was at drydock / shipyard, including the date it first arrived, nor does it provide the pattern of any repairs undertaken, and/or the extensive nature of the work conducted. Without such evidence, the bald assertion challenging the “in navigation” element of seaman status is insufficient, and the Court finds Gramajo is a seaman for maintenance and cure purposes.

ii. Injury while in service of the vessel

Gramajo contends there is no issue of material fact as to either of the injuries he purportedly sustained in the service of the *M/V Lady Romney*. [ECF 46] ¶¶ 3–4. The first injury to the left knee allegedly occurred towards the end of September 2021, when Gramajo was attempting to lift heavy ropes during a docking operation. [ECF 46] ¶ 3; [ECF 48] ¶ 6; and [ECF 48–3] at 2. The second injury to the lower back allegedly occurred at some point during the month of December 2021. [ECF 46] ¶ 4; [ECF 48] ¶ 7. Gramajo’s own record, however, contradicts itself as to how this second injury occurred. The motion—as well as the complaint—states that this injury occurred while Gramajo was performing the *same* maneuver with the ropes that had resulted in his knee injury in September 2021. [ECF 46] ¶ 4; [ECF 1] ¶ 8. The record that Gramajo cites in support of this statement, however, tells a different story. In his interrogatory response, Gramajo states in pertinent part as follows:

The incident in December 2021, I went out grocery shopping. I then went to bed. After I went to bed, I woke up with back pain. I informed the Captain of my injuries and that I have no money and requested to see the doctor. On the 3rd day, the crew members agreed to take him to the doctor. The crew had to help me off the boat to get me into the taxi.

[ECF 48–3] at 2. Gramajo also claims to have reported both injuries to the captain and the 1<sup>st</sup> officer of the *M/V Lady Romney* and notes the October 4, 2021 logbook entry as support of this

contention. [ECF 48–3] at 11, 16; [ECF 48] ¶ 22. Finally, Gramajo maintains that he ceased working aboard the *M/V Lady Romney* to seek medical treatment for the injuries he sustained aboard the vessel. [ECF 56] ¶ 2.

For its part, Marco Marine contends that Gramajo did not separate from the *M/V Lady Romney* due to any injury, but that he left the vessel to go home and be with his family. [ECF 53–1] at 4, 11. It further disputes that the injuries even occurred while Gramajo was employed aboard the vessel, stating that there is no evidence Gramajo was involved in an incident other than his own self-serving testimony. [ECF 53] at 4. To this end, Marco Marine contends that Gramajo never registered an injury complaint with the captain, the company, or any other crewmember aboard the vessel other than reporting a headache on one occasion, which led to Gramajo going ashore to obtain medication.<sup>19</sup> [ECF 53–4]; *see also* [ECF 54] ¶¶ 4, 6, 9; [ECF 53–1] at 11, 14–16. While the logbook entry of October 4, 2021 would seem to contradict this contention, even Gramajo does not state unequivocally that he is the unidentified cook referenced in the entry. Instead, Gramajo simply states that he was hired as a cook. [ECF 48] ¶ 22.

While a seaman’s entitlement to maintenance and cure can be resolved on summary judgment, such claims generally “present[ ] questions of fact [and] should not be disposed of by summary judgment nor should payment be decreed on motion.” *Knieling*, 2024 WL 2778247, at \*6 (citing *Bloom v. Weeks Marine, Inc.*, 225 F. Supp. 2d 1334, 1336 (M.D. Fla. 2002)); *see also Catlett*, 751 F.Supp.3d at 496. It is not lost on the Court that Gramajo’s own record contradicts itself with respect to the second injury. Moreover, the captain of the vessel directly disputes the

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<sup>19</sup> While Gramajo objects to Marco Marine’s interrogatory responses nos. 5–7, [ECF 53–1] at 7–9, on the basis of inadmissible hearsay, a party asserting a fact is permitted to cite to interrogatory responses. Fed.R.Civ.P. 56(c)(1)(A). Moreover, a shipowner is entitled to investigate and require corroboration before paying a claim for maintenance and cure. *Verret v. Daigle Towing Serv., LLC*, 2019 WL 77237, at \*2 (E.D. La. Jan. 2, 2019) (citing *Brown v. Parker Drilling Offshore Corp.*, 410 F.3d 166, 171 (5th Cir. 2025)). The reference to communications between the vessel captain and Baptiste (the principal of Marco Marine) sworn to in Baptiste’s affidavit constitutes an investigation that Marco Marine is permitted to undertake. *See* [ECF 53–4].

contentions that both injuries were reported to him. There is also dispute as to why Gramajo disembarked the *M/V Lady Romney* and ultimately ended his employment with Marco Marine. While the arguments posed by Marco Marine in its opposition could certainly have been better articulated and more thorough, the Court finds there to be genuine issues of material fact such that the question of maintenance and cure should be presented to the trier of fact and not decided as a matter of law on the record currently before the Court.<sup>20,21</sup>

iii. Expenditures or liability incurred

Notwithstanding the Court's recommended finding above, Gramajo's request for maintenance necessarily fails as a matter of law.<sup>22</sup> "A seaman is entitled to the reasonable cost of food and lodging, provided he has incurred the expense." *Hall v. Nobel Drilling (U.S.) Inc.*, 242 F.3d 582, 587 (5th Cir. 2001). To prove such entitlement, the seaman must present evidence to the court that is sufficient to provide an evidentiary basis for the court to estimate his actual costs. *Hall*, 242 F.3d at 588; *see also Ritchie v. Grimm*, 724 F.Supp. 59, 61 (E.D. NY 1989); *see also* 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 6:32 (6th ed. 2018). As the Fifth Circuit held in *Hall*,

Proving reasonable costs admits of many forms of proof. Courts allow proof of the seaman's actual expenditures and expert testimony about the cost of living in the area of the seaman's residence. Courts also allow evidence of maintenance rates negotiated by unions, per diem allowances for seamen in port when

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<sup>20</sup> Given the Court's recommended finding, the issue of maximum medical improvement has not been addressed herein.

<sup>21</sup> The Court places no weight on the willful concealment arguments of Marco Marine. [ECF 53] at 5–7. First and foremost, Marco Marine has not asserted such an affirmative defense in its answer to the complaint. *See* [ECF 5]; *see McCorpen*, 396 F.2d at 549; *see Ingram Barge Co. LLC v. Caillou Island Towing Co. Inc.*, 622 F.Supp.3d 240, 246 (E.D. La. 2022). Nor has Marco Marine presented any evidence that had it been advised of the prior shoulder injury, that it would not have hired Gramajo. Moreover, Marco Marine's contention that Gramajo has failed to produce in this litigation medical records related to the shoulder injury, [ECF 53] at 6, absent any motion to compel, rings hollow with the Court. Lastly, there is no evidence of any causal link between the pre-existing shoulder injury and that of the left knee and/or lower back injuries purportedly sustained by Gramajo during his employment aboard the *M/V Lady Romney*. *See McCorpen*, 396 F.2d at 549.

<sup>22</sup> This finding only involves the maintenance portion of the benefits sought by Gramajo and does not include the cure that is being sought.

the vessel's facilities are unavailable, and, of course, the cost of food and lodging equivalent to food and lodging on the vessel, if such exist on land. The use of evidence of actual expenses should not obscure the fact that this evidence is offered to prove not only actual, but also reasonable expenses. Thus, maintenance awards should depend on the reasonable cost of food and lodging for a seaman living alone in the seaman's locality.

*Hall*, 242 F.3d at 587–88 (internal quotations and citations omitted).

Gramajo has offered no evidence whatsoever that would enable the Court to estimate his actual food and lodging costs incurred in his locality of Guatemala. Nor does Gramajo's monthly wage rate while employed aboard the *M/V Lady Romney* provide such evidence. As such, Gramajo's maintenance request would fail irrespective of the Court's finding that genuine issues exist as to whether the injuries occurred while in the service of the vessel.

#### IV. CONCLUSION

Based on the preceding analysis, the Court finds that a determination as to Gramajo's general maritime maintenance and cure claim is not appropriate for summary judgment. Accordingly, the Court **RECOMMENDS** that Gramajo's motion [ECF 46] for partial summary judgment be **DENIED**.

Any objections to this Report and Recommendation must be filed in writing within 14 days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

ENTER:

Dated: September 18, 2025

/s/ G. Alan Teague

G. ALAN TEAGUE

U.S. MAGISTRATE JUDGE