THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN WAYNE COTNER,

Plaintiff,

v.

DAVID OSTERBACK,

Defendant.

IN ADMIRALTY

Case No. 3:25-cv-00366-MMS

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT [13]

Before the Court is Plaintiff's Motion for Partial Summary Judgment.[1] He requests summary judgment on the issue of maintenance and cure. He argues that because there is no genuine dispute as to whether he was employed as a seaman, whether he was injured in the service of the ship, and whether he incurred expenses for medical treatment, board, and lodging, he is entitled to summary judgment at this preliminary stage of the litigation. Plaintiff filed two declarations and eight exhibits in support of his motion.[2] Defendant responded in opposition.[3] Defendant argued that there were five material facts in dispute, so summary judgment is unwarranted. Defendant supported his response with a declaration.[4] Plaintiff replied in support of his motion, arguing that Defendant had not rebutted his showing of entitlement to partial summary judgment.[5]

[1] Dkt. 13.
[2] Dkts. 14, 15–15-8.
[3] Dkt. 16.
[4] Dkt. 16-1.
[5] Dkt. 17.

Neither party requested a hearing, and the Court finds the filings sufficient to resolve the matter without one. For the reasons stated below, the Plaintiff's Motion for Partial Summary Judgment is **GRANTED**.

I. BACKGROUND

Mr. Osterback is the owner of the F/V PACIFIC MAID (the "Vessel").[6] In June of 2025, Mr. Cotner was looking for work in Sand Point, Alaska, where he met Mr. Osterback.[7] Mr. Osterback avers that he was hesitant to hire Mr. Cotner after interviewing him, so he refrained from giving him a long-term contract until he could observe him on the job.[8] However, in his declaration, Osterback also stated that he "told Mr. Cotner if he wanted the job[, he] would hire him[.]"[9] Mr. Cotner describes this as being hired by Mr. Osterback.[10] Mr. Osterback wrote about his apparent disapproval of Mr. Cotner's performance, describing him as "incompetent[,]" and wrote that he believed that "Mr. Cotner fished on the [Vessel] for three or four days."[11]

Mr. Cotner averred that on June 28, 2025, he was aboard the Vessel working as a deckhand and a skiffman, and after setting the seine net with the skiff, he slipped and collided with a tie-up ring, in doing so injuring his knees, wrists, and face.[12] Mr. Cotner attributes this to the condition of the bow step, but this is disputed by Mr. Osterback.[13] Mr.

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[6] Dkt. 5 at ¶ 10.
[7] Dkt. 16-1 at ¶ 4.
[8] *Id.* at ¶¶ 5–9.
[9] *Id.* at ¶ 10.
[10] Dkt. 14 at ¶ 3.
[11] Dkt. 16-1 at ¶¶ 12–24.
[12] Dkt. 14 at ¶ 4–8.
[13] *Id.* at ¶ 7.

Osterback's declaration does not appear to dispute that an incident occurred, but he disputes the severity of the injury by referring to instances of what he believed to be Mr. Cotner exaggerating his limp.[14]

The Vessel subsequently docked in Sand Point, where Mr. Cotner went to a clinic. On June 30, 2025, Mr. Cotner filled out a Fisherman's Report of Injury/Illness & Claim Form with the Alaska Department of Labor & Workforce Development.[15] In that form, Mr. Cotner reported that he was injured on June 28 in a way consistent with his declaration.[16] A Report of Vessel/Site Insurance was completed as well, reflecting that Mr. Cotner had a knee injury in June of 2025 on the Vessel, and this was signed by Mr. Osterback.[17] Mr. Osterback then paid for Mr. Cotner's plane ticket to Anchorage and gave him $200.[18] Mr. Cotner avers that Mr. Osterback informed him "that he would pay for all medical bills" stemming from the incident,[19] though Mr. Cotner averred that he only promised to pay for X-rays.[20]

Mr. Cotner returned home to Wasilla, and he continued to experience pain, so on July 12, 2025, he went to the emergency room at Mat-Su Regional Medical Center, where he was informed that he had likely torn his ACL in his right knee.[21] Mr. Cotner had follow-up appointment with an orthopedic specialist, he received a CT scan reflecting the torn

[14] Dkt. 16-1 at ¶ 27–29.
[15] Dkt. 15-1; 16-1 at ¶ 29.
[16] Dkt. 15-1.
[17] *Id.* at 2.
[18] Dkt. 16-1 at ¶¶ 32, 34; Dkt. 14 at ¶ 11.
[19] Dkt. 14 at ¶ 11.
[20] Dkt. 16-1 at ¶ 34.
[21] Dkt. 14 at ¶ 15.

ACL, and he had an appointment with an orthopedic surgeon who recommended surgery.[22] Mr. Cotner received an estimate for the cost of surgery, $16,692.00, but he has not able to receive that procedure, as the facility would not perform the operation without payment or a guarantee of payment, and he could not afford it and does not have health insurance.[23]

Mr. Cotner avers that he paid for the initial medical imaging at the orthopedic specialist office, but he wanted to see the X-rays, medical records, and whether the Fisherman's Fund covered any of the expenses.[24] Mr. Cotner argues that Mr. Osterback has not paid. Mr. Cotner averred that he continues to experience pain from the injury, that he frequently uses a cane, and that he struggles with simple physical tasks.[25]

II. DISCUSSION

It is generally unusual for a court to grant a plaintiff's motion for summary judgment early in the proceedings, but in the context of admiralty's maintenance and cure, plaintiffs have a higher likelihood of success. Here, Plaintiff has shown that he is entitled to maintenance and cure from the Defendant, and the Defendant has not rebutted Plaintiff's showing. Accordingly, the Court awards Plaintiff maintenance, and most of his request for cure.

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[22] *Id.* at ¶¶ 16–20; Dkt. 15-4–15-5.
[23] Dkt. 14 at ¶¶ 21–24.
[24] Dkt. 16-1 at ¶ 35.
[25] Dkt. 14 at ¶ 25.

a. Legal Standards.

Federal admiralty law provides a cause of action for maintenance and cure for injuries and illnesses sustained by seamen.[26] "Maintenance" is compensation for living expenses while the seaman is recovering, and "Cure" is payment for medical expenses.[27] This cause of action also includes "Unearned Wages," which is what the seaman would have earned, but for the injury or illness, had he completed the voyage or contract.[28] To be entitled to maintenance and cure, a Plaintiff need only demonstrate "that he 'bec[ame] ill or ... injured while in the service of the ship.'"[29]

The obligation to pay maintenance and cure is "in no sense [ ] predicated on the fault or negligence of the shipowner."[30] Negligence on the seaman's part also does not absolve the vessel owner of liability, "and assumption of risk ha[s] no place in the liability or defense against it."[31] Further, the duty is "irrespective of whether the illness or injury is suffered in the course of the seaman's employment."[32] In other words, maintenance and cure is a strict liability cause of action, and there are few defenses against it.

The right to this compensation "dates back to the Middle Ages[,]" and serves "three purposes: (1) to protect the poor and improvident seaman while ill in foreign ports, (2) to encourage shipowners to protect the seaman's safety and health while in service, and (3)

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[26] *Berg v. Fourth Shipmor Assocs.*, 82 F.3d 307, 309 (9th Cir. 1996).
[27] *Id.* at 309.
[28] *Id.* at 309.
[29] *Barnes v. Sea Hawaii Rafting, LLC*, 889 F.3d 517, 538 (9th Cir. 2018) (quoting *Vella*, 421 U.S. at 3).
[30] *Aguilar v. Standard Oil Co. of N. J.*, 318 U.S. 724, 730 (1943).
[31] *Id.* at 731.
[32] *Vella v. Ford Motor Co.*, 421 U.S. 1, 4 (1975).

to induce employment in the merchant marine."[33] Accordingly, the duty to pay maintenance and cure is an affirmative one, as "adequate protection of an injured or ill seaman against suffering and want requires more than the assurance that he will receive payments at some time in the indefinite future."[34] As such, "[p]ayments must be promptly made, at a time contemporaneous to the illness or injury."[35]

Rule 56(a) of the Federal Rules of Civil Procedure provides that a "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[36] A fact is material if it might affect the ultimate disposition of a cause of action.[37] However, the mere existence of a disagreement on a factual matter is insufficient for it to be material.[38]

The moving party bears the initial burden of persuasion, but once it demonstrates the absence of a dispute on a fact that the nonmoving party would bear the burden of proving at trial, "the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial."[39] The Ninth Circuit has stressed that once this burden has shifted, it "is not a light one."[40] The nonmoving party must then

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[33] *Gardiner v. Sea-Land Serv., Inc.*, 786 F.2d 943, 945–46 (9th Cir. 1986).
[34] *Crooks v. United States*, 459 F.2d 631, 634–35 (9th Cir. 1972).
[35] *Id.* at 635.
[36] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
[37] *Id.* at 248.
[38] *Id.* at 248.
[39] *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010).
[40] *Id.* at 387.

"come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor."[41] When reviewing the nonmovant's offer of evidence, the court should give that party the benefit of the doubt, construing all inferences reasonably in its favor.[42]

There is "tension between Rule 56 and admiralty procedure, [but] the two standards are not incompatible."[43] It is typically difficult for a plaintiff to prevail on a motion for summary judgment early in the proceedings of a federal case, but "the seaman seeking maintenance has an easier task as a result of the breadth of the shipowner's duty."[44] As such, "the liberal admiralty policies and correspondingly rudimentary elements of a maintenance claim mean that, in practice, a seaman will have little difficulty demonstrating his entitlement to maintenance under a summary judgment standard."[45]

b. Plaintiff is Entitled to Partial Summary Judgment on Maintenance and Cure.

Plaintiff argues that: (1) he was employed as a seaman; (2) he was injured in the service of the Vessel; and (3) he incurred and continues to incur costs.[46] Based on the exhibits and declarations, the Court finds that Plaintiff met his initial burden. He avers, and has presented documentation, that he was on the Vessel, that he was laboring in service of it as a deckhand and a skiffman, and that he sustained an injury. As such, he has met the low bar to shift the burden to the Defendant.

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[41] *Id.* at 387.
[42] *Id.* at 387.
[43] *Barnes v. Sea Hawaii Rafting, LLC*, 889 F.3d 517, 538 (9th Cir. 2018).
[44] *Id.* at 538.
[45] *Id.* at 538–39.
[46] Dkt. 13 at 11–14.

Defendant argues that there are five areas of genuine and material dispute: (1) whether Plaintiff was "a tryout or [ ] an official hire[,]" as he was not given a contract at that point; (2) whether Plaintiff sustained injuries to his face, hand, and knee, because Defendant "did not observe" these injuries; (3) whether Plaintiff "quit or refused to continue the trial period aboard" the Vessel; (4) whether the knee injury was either preexisting or occurred subsequent to the voyage, without support; and (5) the conditions on the Vessel.[47]

As to the first point, the Court agrees with Plaintiff that whether his employment status was only temporary is of no import to this analysis.[48] The right to maintenance and cure is not created by a written contract, but rather, the relationship between the seaman and the Vessel.[49] The Court cannot find that this relationship only exists when a there is a written contract or an agreement to have one employed for a prolonged or indefinite amount of time. The right to maintenance and cure predates widespread literacy, and it is intended to protect a particularly vulnerable population. Requiring a written contract would open the door to especially abusive employment tactics by vessel owners, calculated to skirt the strict liability for maintenance and cure under admiralty law. Temporary employees, "tryouts" or probationary employees, are employees, nonetheless.

As to the second point, the Court agrees that Defendant has not demonstrated a genuine dispute. This is premised on one paragraph in Defendant's declaration: "I do not

[47] Dkt. 16 at 3.
[48] Dkt. 17 at 4–5.
[49] *Crooks v. United States*, 459 F.2d 631, 632 (9th Cir. 1972).

believe that Mr. Cotner tore his ACL on his knee on the [Vessel] while landing on nets after disembarking from the skiff to the stern of the [Vessel]. I never heard from Mr. Cotner again."[50] This is insufficient to rebut Plaintiff's showing.[51] This same reasoning is applicable to the fourth point. As to the third point, the Court agrees that there is no support for the proposition that Plaintiff resigning post-injury would absolve Defendant of liability. Maintenance and cure is not limited by the duration of employment.[52] As to the final point, while Plaintiff did not reply, the Court does not agree that the conditions on the Vessel are material. Maintenance and cure is not predicated on negligence or unseaworthiness.

Defendant has not rebutted Plaintiff's showing. Accordingly, Plaintiff is entitled to summary judgment on the issue of maintenance and cure.

c. Computation of Maintenance and Cure.

Plaintiff provided a computation of his medical expenses, and he argues that his reasonable daily living costs are $30.40.[53] Defendant did not respond on this matter, so to the extent that Plaintiff has established his costs and expenses, it is unrebutted. Plaintiff argues that his prior medical expenses amount to $8,438, referring to an exhibit of his medical expenses for support.[54] This figure, however, appears to be calculated with pre-

[50] 16-1 at ¶ 37.
[51] *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), *as amended* (Apr. 11, 1997) ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.").
[52] *Crooks*, 459 F.2d at 632–33 (9th Cir. 1972) (explaining that while the duty to pay wages terminates with the end of employment, the duty to pay maintenance and cure continues "until maximal cure has been obtained, irrespective of the termination of his obligation to provide wages.").
[53] Dkt. 13 at 13–15.
[54] Dkt. 15-6.

adjusted charges, and the Court will not order cure that was not ultimately charged. His post-adjustment charges appear to be $875.00, $515.10, $1,180.00, $942.70, and $945.00, totaling $4,457.80.[55]

As to his daily living costs, Plaintiff argues that his reasonable living expenses are $924.81 per month, consisting of $400 in monthly rent and $524.81 for food.[56] The Court finds that $924.81 is a reasonable amount for living expenses, especially for Wasilla, Alaska. Plaintiff calculates a past maintenance of $7,812.80.[57] The Court agrees with this calculation, as there were 257 days between June 28 and March 13, the day that he filed his motion, and multiplying that number by 30.40 equals that total.

As to the cost of his ACL surgery, the Court agrees that Plaintiff has established that such procedure is part of his necessary cure. However, the precise cost is only an estimate at this time. Accordingly, the Court will not order a specific dollar amount, but it will order that Defendant pay for an ACL surgery.

III. CONCLUSION

For the reasons stated above, **IT IS HEREBY ORDERED** that

1) the Motion for Partial Summary Judgement at Docket No. 13 is **GRANTED**; and

2) Plaintiff is **AWARDED**:

   a. Maintenance: $30.40 per day,[58] payable on the last calendar day of each month;

[55] *Id.*
[56] Dkt. 13 at 14–15.
[57] *Id.* at 13.
[58] Mr. Cotner may move to modify the Maintenance Rate.

b. Past Maintenance: $7,812.80, plus $30.40 for every day from March 14, 2026, to the date of this order, to be paid by **June 12, 2026**, or later with the consent of the Plaintiff;
c. Past Cure: $4,457.80 to be paid by **June 12, 2026**, or later with the consent of the Plaintiff; and
d. Future Cure: reasonable medical expenses for Plaintiff to receive an ACL surgery.

DATED this 5th day of June 2026, at Anchorage, Alaska.

MATTHEW M. SCOBLE
U.S. MAGISTRATE JUDGE