

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-62975-CIV-COHN/STRAUSS

VERSILIA SUPPLY SERVICE SRL,

Plaintiff,

v.

M/Y WAKU, a 2016 model 209-foot  
Azimut Benetti motor yacht, which is  
Registered in the Cayman Islands as  
Official Number 747107, her boiler,  
engines, tackle, furniture, furnishings,  
apparel, equipment, machinery,  
appurtenances, tenders, etc., *in rem*,

Defendant.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**THIS CAUSE** is before the Court following a nonjury trial that took place by videoconference on October 19-22, 2020 and October 26, 2020. The Court has considered the uncontested facts stipulated to by the parties in their Joint Pretrial Stipulation [DE 411], the evidence presented at trial and the parties' post-trial briefs [DE 459, DE 460, and DE 461], and is otherwise advised in the premises.

Intervening Plaintiffs Alastair Andrew, Gabriel Attenborough, Krzysztof Hanusiak, Kristina Mikulic, Chloe Nicolaou, Garrett Smith, Joseph Williams (collectively, the "Crewmembers"), Thrive Maritime LLC ("Thrive")<sup>1</sup>, and Intervening Plaintiff Eric Castillo bring this action against the Defendant, M/Y WAKU, a 2016 model 209-foot Azimut Benetti motor yacht, which is registered in the Cayman Islands under Official Number

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<sup>1</sup> The Crewmembers and Thrive are all represented by Moore & Company, P.A. and are sometimes referred to collectively as the "Moore Plaintiffs."

747107, her boiler, engines, tackle, furniture, furnishings, apparel, equipment, machinery, appurtenances, tenders, etc. (“M/Y WAKU” and “Vessel”) for enforcement of their claims for maritime liens for unpaid wages, severance, repatriation benefits, accrued vacation time, penalty wages, and/or necessities against the vessel pursuant to 46 U.S.C. § 31342. These claims ultimately stem from the U.S. Government freezing the assets of the Vessel’s then-beneficial owner, Samark Lopez Bello, in early 2017. This led to Intervening Plaintiffs going unpaid for work allegedly performed aboard the Vessel and/or necessities allegedly provided to the Vessel.

On October 23, 2019, the Vessel was sold to MOCA LLC (“MOCA”)<sup>2</sup> for \$20,575,000.00 at a judicial auction sale subject to all maritime liens. Defendants do not generally object to paying the Crewmembers the wages they are due for the month of February 2017. But they claim that other amounts sought by Intervening Plaintiffs are overstated or unsupported. Defendants also assert a counterclaim against Williams for conversion, seeking to recover damages for Williams’ alleged unlawful conversion of appurtenances, equipment, furnishings and/or supplies that were the property of the Vessel. Following a nonjury trial and pursuant to Federal Rule of Civil Procedure 52(a), the Court finds that the Vessel is liable for the Crewmembers’ unpaid wages for February 2017, but agrees with Defendants, as set forth below, that much of the other amounts sought are overstated or unsupported. The Court also finds that Defendants are entitled to judgment in their favor on their conversion claim against Williams.

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<sup>2</sup> MOCA and the Vessel are sometimes referred to collectively as “Defendants.”

**I. FINDINGS OF FACT<sup>3</sup>**

1. Nautical Corp. (“Nautical”), beneficially owned by Lopez Bello, purchased the Vessel from Benetti in Livorno, Italy and took delivery of the Vessel in October 2016. DE 411 at 22. Nautical owned the Vessel until its sale to MOCA on October 23, 2019. Since its delivery to Nautical, the Vessel has been registered in the Cayman Islands.

2. Joseph Williams is a United States citizen and Florida resident. He was the captain of the Vessel and is the beneficial owner of Thrive Maritime, LLC.

3. Williams was the captain of another vessel beneficially owned by Lopez Bello, the M/Y Trinity WAKU (the “Trinity”), prior to becoming captain of the Vessel.

4. Williams hired all crewmembers who served on board the Vessel and issued written Crew Agreements to them. The Crew Agreements consist primarily of uniform, typewritten terms but also contain blank spaces for the insertion of the unique terms of each crewmembers’ employment, such as their position, start and end dates, and salary.

5. The typewritten terms of the Crew Agreements that Williams issued to the Vessel’s crewmembers are substantially similar to the typewritten terms of the Crew Agreements that he issued to the Trinity’s crewmembers. DE 455 (Trial Tr. Day 2) at 135:11-20.

6. Garrett Smith is the only Crewmember who claims to have retained his original Crew Agreement but, for the reasons discussed below, the Court does not find his testimony regarding his Crew Agreement or his employment aboard the Vessel credible.

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<sup>3</sup> To the extent these Findings of Fact constitute Conclusions of Law, they are hereby adopted as both.

7. The Crewmembers filled out the handwritten portions of the Crew Agreements attached to their Verified Complaints after the fact in 2018 and 2019 to support their claims against the Vessel. Only Smith's Crew Agreement was admitted into evidence. DE 440-8 at 9 (Pl.'s Ex. 28). But for the reasons discussed below, the Court finds it more likely than not that the handwritten portions of Smith's Crew Agreement were also filled out after the fact to support his claim against the Vessel. Accordingly, the Court assigns minimal weight to the handwritten portions of Smith's Crew Agreement.

8. The Court finds, however, that the Crewmembers have established by a preponderance of the evidence that the uniform, typewritten terms of the Crew Agreements governed their employment on the Vessel. As noted above, these terms were substantially similar to those in the Crew Agreements that Williams issued to Trinity's crewmembers. And there is no evidence that Williams made any changes to the typewritten terms of the Crew Agreements issued to the Vessel's Crewmembers after the fact to support their claims in this case. In fact, more than a year before this case was filed, in a September 15, 2017 email, Williams emailed a blank Crew Agreement to a representative of the Vessel's insurance carrier in an effort to recover unpaid amounts through the Vessel's insurance. DE 440-25 (Pl.'s Ex. 154). Williams testified that this was "the form that [he] would print out for every crew member for their agreement with [the Vessel.]" DE 456 (Trial Tr. Day 3) at 19:23-24.

9. The Crew Agreements provide, in relevant part, as follows:

This Agreement shall be governed by applicable Flag State Laws, but not it's laws relating to employment, employment security, pensions or retirement schemes, and no such law shall be applied to enlarge the

amount to which you are entitled by reason of your employment by the vessel pursuant to this agreement.

DE 440-25 at 7.

Should the vessel be lost, sold or otherwise cease to be a Cayman Islands ship and your employment is terminated before a year from the start date indicated in this agreement. You will be paid the greater of either two month's salary or the rest of your year contract period.

DE 440-8 at 4.

10. The Crew Agreements also require 7 days written notice of intention to terminate the agreement, id. at 3, provide that crewmembers will earn 2.5 paid vacation days per month, id. at 2, and state, with respect to repatriation, that crewmembers are "entitled to a single economy flight paid by the company to the place where they were hired and upon the end of [their] service with the company." Id. at 4.

11. In August 2016, Williams and some other Trinity crewmembers began performing work that benefitted the Vessel in anticipation of transitioning to working aboard the Vessel later that year.

12. Williams decided that Trinity crewmembers who were moving to the Vessel would have contractual start dates of September 1, 2016 for their employment on the Vessel. Williams, however, received his Trinity salary for the month of September 2016. Williams first received his salary for work for the Vessel at the beginning of December 2016.

13. Williams was paid \$18,500 per month as captain of the Vessel.

14. Chloe Nicolaou is a citizen of South Africa. In June 2015, she was hired as the chief stewardess of the Trinity. Her monthly salary for working for the Trinity was \$7,500.

15. Beginning in August 2016, Nicolaou began performing work that benefitted the Vessel in anticipation of transitioning to working aboard the Vessel later that year. She then left the Trinity when it was in Palma de Mallorca, Spain to go to the Vessel in Livorno, Italy. DE 454 (Trial Tr. Day 1) at 138:5-15.

16. Nicolaou testified that she signed a Crew Agreement in Livorno, Italy sometime in October or early November 2016 that reflected a start date of September 1, 2016 for her employment on the Vessel. In a December 14, 2018 email to her attorneys,<sup>4</sup> however, Nicolaou stated that she was unable to remember when she signed a Crew Agreement for her employment on the Vessel but that “it might have been in Fort Lauderdale” as she did not recall Williams having the Crew Agreements ready in Europe. DE 450-2 (D.’s Ex. ZZ).

17. Nicolaou signed a Motor Yacht WAKU Familiarization Form in Fort Lauderdale on December 21, 2016 and answered “Yes” to the question: “Has the Seafarer signed the Seafarer’s Employment Agreement and been provided with a signed copy.” DE 440-7 (Pl.’s Ex. 24).

18. Nicolaou was paid \$8,500 per month as chief stewardess of the Vessel. She was first paid this salary for the month of October 2016.

19. Gabriel Attenborough was hired to work as a deckhand on the Trinity in March 2015. In early October 2016, he left the Trinity to go to the Vessel in Livorno.

20. Attenborough testified that he signed a Crew Agreement in Livorno that reflected a start date of September 1, 2016 for his employment on the Vessel.

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<sup>4</sup> In a May 7, 2020 Order, Magistrate Judge Jared Strauss granted in part a motion to compel filed by the Vessel, ordered certain responsive documents to be produced, and held the Moore Plaintiffs had waived all objections to the discovery requests, including attorney-client privilege, because the objection had not been asserted in response to the requests for production. DE 315.

21. Attenborough testified that the Crew Agreement he and Williams prepared after the fact and attached to his Verified Complaint “looks like . . . an exact copy of the contract that [he] signed in Livorno, Italy.” DE 454 at 151:12-14.

22. Attenborough was paid \$3,500 per month as a deckhand on the Vessel.

23. Krzysztof Hanusiak is a citizen of Poland. He was hired to work as a bosun on the Trinity in July 2013. In early October 2016, he left the Trinity to go to the Vessel in Livorno.

24. Hanusiak signed a Motor Yacht WAKU Familiarization Form in Fort Lauderdale on December 21, 2016 and answered “Yes” to the question: “Has the Seafarer signed the Seafarer’s Employment Agreement and been provided with a signed copy.” DE 440-6 (Pl.’s Ex. 23).

25. Hanusiak was paid \$6,000 per month as a bosun on the Vessel.

26. Garrett Smith is a Florida resident and United States citizen. He was hired to work on the Trinity beginning in 2014, first as relief captain then as first officer. He left the Trinity after approximately a year. Then, at the end of 2016, Smith was offered a position on the Vessel. He accepted and quit his job in Montana in December 2016.

27. The Court finds that Smith’s testimony regarding his employment on the Vessel lacks credibility. Smith testified that January 1, 2017 was his contractual start date for his employment on the Vessel and that he was “on standby” at this time. DE 455 at 68:13-14 (Trial Tr. Day 2). In a May 8, 2020 email to his attorneys, however, Smith stated that he had a “pending start date in 2017” and had “made arrangements to come [to the Vessel] at the beginning of February [2017]” but then “[t]hings happened quicker than expected and [he] was requested to get their ASAP in January.” DE 450-

43 (D.'s Ex. A2). Thus, given that Smith's original expected start date was early February 2017, the Court does not find his testimony credible that he was to be paid to be "on standby" for the entire month of January 2017.<sup>5</sup>

28. Smith testified that he started working aboard the Vessel as a bosun on January 26, 2017 and left the Vessel before February 18, 2017. DE 455 at 67:11-19. His testified that his starting salary was \$250 per day but that it was later negotiated to \$7,500 per month. Id. at 9:20-24, 15:2-7. Again, the Court finds that Smith's testimony on this point lacks credibility and that his salary during the duration of his employment on the Vessel was \$250 per day.<sup>6</sup>

29. Smith claims to have signed his Crew Agreement sometime after he arrived on the Vessel on January 26, 2017, but he dated the Crew Agreement January 1, 2017. DE 440-8 at 9 (Pl.'s Ex. 28). Smith denied that he dated the Crew Agreement January 1, 2017 to give the impression that this was date that he signed the agreement. DE 455 at 33:4-7. He claims that he did so to accurately reflect that January 1, 2017 was his start date. Id. at 31:18-22. The Court finds that Smith's explanation for back dating the Crew Agreement lacks credibility. The first page of the Crew Agreement clearly lists Smith's start date as January 1, 2017. DE 440-8 at 1. There was therefore

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<sup>5</sup> Additionally, payroll records created using information provided Williams state that Smith's start date was February 4, 2017 and that he only worked 12 days in February. DE 450-42 (D.'s Ex. TTTTTTTTTT). Williams did corroborate Smith's trial testimony and stated that he had "asked [Smith] to be ready starting the 1st of January" and that this was his contractual start date. DE 455 at 142:2-5. The Court finds, however, that Williams' testimony on this point also lacks credibility. Williams and Smith have a close relationship and have been friends since high school. Id. at 30:18-31:1. The Court finds that Williams offered false testimony regarding Smith's employment to assist Smith in inflating his claim against the Vessel.

<sup>6</sup> While this distinction may appear immaterial given that \$250 per day over the course of a 30-day month equates to a \$7,500 monthly salary, Smith seeks \$7,500 for each of January and February despite not having worked 30 days (or close to it) either month. Thus, whether he was to be paid a daily or monthly rate is highly relevant to his unpaid wages claim.



no reason for Smith to backdate the Crew Agreement (next to his signature on the last page of the agreement) other than to give the false impression that it was executed on January 1, 2017.

30. Smith testified that he retained his original Crew Agreement when he left the Vessel. DE 455 at 36:16-18. This testimony was contrary to his deposition testimony where he stated that he took a copy of the agreement. DE 455 at 36:25-37:4. Smith's original Crew Agreement was never produced and his Crew Agreement has the same characteristics as the agreements that the other Crewmembers admittedly prepared after the fact, including a handwritten end date filled in.<sup>7</sup>

31. Kristina Mikulic is a citizen of Canada. She was hired to work aboard the Vessel as a stewardess on January 9, 2017.

32. Mikulic testified that she signed a Crew Agreement when she joined the Vessel.

33. Mikulic was initially paid a daily rate of \$250 per day but on January 18, 2017 began receiving a monthly salary of \$5,000. DE 455 at 86:7-15; DE 450-42 (D.'s Ex. TTTTTTTTTT).

34. Alastair Andrew is a citizen of New Zealand. He was hired as the chief engineer for the Vessel by Williams in Fort Lauderdale. DE 455 at 126:7-16. He then flew from Fort Lauderdale to Livorno and joined the Vessel there on November 6, 2016.

35. Andrew testified that he signed a Crew Agreement after he joined the Vessel.

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<sup>7</sup> Smith claims that this is because he presented his Crew Agreement to Williams in early March 2017 to add an end date to it. DE 455 at 9:14-19. Again, the Court does not find this testimony credible.

36. During his employment aboard the Vessel, Andrew's salary was \$11,000 per month.

37. Eric Castillo is a United States Citizen and Florida resident. He was hired as yacht manager of the Vessel and also served as yacht manager of the Trinity as well as another, smaller vessel belonging to Lopez Bello.

38. Prior to the blocking and sanctioning of the Vessel and Lopez Bello by the U.S. Government, Lopez Bello paid Castillo \$25,000 per month for all his services, which included his work as yacht manager for three vessels and his work managing Lopez Bello's homes and cars. DE 457 (Trial Tr. Day 4) at 34:5-10, 120:10-15. Castillo testified that \$14,000 of his monthly salary was for his management of the Vessel. Id. at 34:11-13.

39. The agreement between Lopez Bello and Castillo was entered into verbally. Id. at 61:24-62:2. There are no documents that corroborate Castillo's testimony that \$14,000 of his monthly salary was for yacht management services for the Vessel.

40. Castillo's duties as yacht manager of the Vessel before it ceased operations in early 2017 included management of crew salaries, maintenance, dockage, insurance, voyages, and provisions. DE 457 at 32:8-13.

41. On February 13, 2017, Lopez Bello was listed as a Specially Designated Narcotic Trafficker and placed on the OFAC blocked list by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") under the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. §§ 1901–1908 ("Kingpin Act").

42. Following the February 13, 2017 blocking and sanctioning of the Vessel and Lopez Bello by the U.S. Government, the Crewmembers and Castillo stopped receiving their wages.

43. Williams held a meeting aboard the Vessel with his crew the morning of February 13, 2017 and informed them that Lopez Bello's assets had been frozen. DE 456 at 140:17-20. Williams testified that "right after" that meeting a crew member raised the issue of severance and Williams told his crew "that they would be getting four months' severance." DE 455 at 137:2-7; 138:15-18. Williams also testified that he agreed to accept four months' severance. Id. at 144:13-15.

44. Williams testified that he determined that four months' severance was appropriate because the Vessel had been granted a special dispensation by the Cayman Islands that required compliance with all of the Maritime Labour Convention's ("MLC") requirements for commercial vessels and because it was Williams' understanding that MLC complaint vessels were required to pay four months' severance. Id. at 137:8-138:18.

45. Williams also claims to have considered the provision of the Crew Agreement providing that if the Vessel is "lost, sold or otherwise cease[s] to be a Cayman Islands ship" during a crewmember's contract they will be paid the "greater of either two month's salary or the rest of [their] year contract period." He testified that for certain crewmembers who had started working aboard the Vessel more recently, it would have been excessive to pay them almost a full year's salary and four months' severance was more fair. Id. at 140:2-143:19.

46. The Court finds that Williams' testimony regarding his alleged oral agreement for four months' severance lacks credibility. First, this testimony was contradicted by Williams' deposition testimony that, before his crew left the Vessel, he "did not have enough information for specifics" as to how much severance they would be paid. Id. at 120:1-19. Williams also testified at his deposition that it was not until approximately mid-2017, when he was looking into whether the Vessel's insurance carrier would provide severance, that he advised his crew about the possibility of getting four months' severance. Id. at 121:1-13.

47. Williams testimony regarding an agreement for four months' severance was also contradicted by the testimony of certain Crewmembers. For instance, Smith testified that he is seeking four months' severance pursuant to an oral agreement with Williams but admitted that Williams did not specify how much severance the crew would be paid. DE 455 at 63:15-64:8. And Mikulic testified that the only oral agreement that she had with Williams was the one she had with Williams when he first hired her. Id. at 100:12-17.

48. Upon leaving the Vessel, all Crewmembers except for Smith<sup>8</sup> received discharge letters reflecting that they were owed wages for the month of February 2017. DE 456 at 79:20-80:5. There was no reference in the discharge letters to any severance owed. Id. at 80:6-15.

49. The Vessel's systems were shut down on February 27, 2017. DE 455 at 129:20-22.

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<sup>8</sup> Smith was not on the Vessel from February 16, 2017 to March 4, 2017. DE 455 at 66:17-24.

50. Rahn Bahia Mar (“Bahia Mar”) was appointed substitute custodian of the Vessel on March 7, 2017, and an order directing the issuance of a warrant of arrest was entered on that same date. DE 411 at 24.

51. The warrant of arrest was entered on March 14, 2017. Id. All Crewmembers had left the Vessel before it was arrested.

52. Nicolaou returned to South Africa from Florida on a March 13, 2017 British Airways flight. DE 450-6 (D.’s Ex. HHH). She spent \$457.20 on that flight. DE 450-7 (D.’s Ex. III). Nicolaou, however, testified that she is entitled to \$1,000 for repatriation because in her experience that is the industry standard annual allowance for airfare. DE 454 at 113:12-114:7.

53. Nicolaou also testified that she is entitled to 35 accrued and unpaid vacation days. DE 454 at 64:4-13. Pursuant to her Crew Agreement, Nicolaou accrued 2.5 days paid vacation days per month. Therefore, from September 1, 2016 through the end of February 2017, she accrued 15 paid vacation days during her employment on the Vessel. Nicolaou claims that she accrued the remainder of her allegedly unpaid vacation days during her employment on the Trinity and that these days were “rolled over” by agreement to her employment aboard the Vessel. Id. at 84:1-21.

54. Nicolaou took a three-week vacation from January 31, 2017 to February 21, 2017. Id. at 27:15-20.

55. Williams similarly testified that he is entitled to 60 accrued and unpaid vacation days, including 20 days accrued during his employment on the Trinity and 40

days<sup>9</sup> accrued during his employment on the Vessel. Like Nicolaou, Williams testified that the vacation days he had accrued working on the Trinity were “rolled over” and that “since it was one program, it doesn’t matter” whether his vacation days were accrued during his employment on the Trinity or the Vessel. DE 455 at 172:15-21.

56. Williams initially falsely testified that he did not take any vacation in 2016. DE 455 at 172:2-3. When he was later presented with contradictory evidence, he conceded that he did take a one-week trip to Amsterdam with his family from September 11, 2016 to September 17, 2016. DE 456 at 116:3-14.

57. Smith does not seek repatriation expenses, but he attached to his Verified Complaint an invoice listing the following allegedly unreimbursed out-of-pocket expenses incurred in connection with approved travel to and from Montana: \$1,200 for airfare from Montana to Florida, \$1,200 for airfare from Florida to Montana, \$267.16 for a night in an Atlanta hotel, \$40 for a taxi from the airport in the Bahamas, and \$42.84 in miscellaneous charges. DE 53-2.<sup>10</sup>

58. At trial, Smith admitted that the Vessel paid for the first flight (Montana to Florida) listed on his invoice. DE 455 at 51:9-17. He also testified that the second flight (Florida to Montana) was one leg of a roundtrip flight that cost \$783.95 total, not \$1,200. Id. at 57:15-20; DE 450-10 at 98 (D.’s Ex. RRR). The only documentation Smith

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<sup>9</sup> As detailed below, Williams claims that he continued to provide services to the Vessel from March 1, 2017 through the end of 2017, continued to accrue vacation days during this period, and is entitled to his full salary for this period.

<sup>10</sup> At trial, Smith also presented evidence of a \$122.10 charge for a night at a hotel in North Dakota. DE 440-11 (Pl.’s Ex. 38). This charge was not listed in Smith’s invoice or elsewhere in his Verified Complaint. The Court’s Local Admiralty and Maritime Rules require that complaints include a statement of itemized damages. Local Admiralty Rule E(1). Accordingly, Smith’s claim regarding the \$122.10 hotel charge is not properly before the Court and will not be considered.

provided regarding his other travel related expenses was a \$267.16 bill for his stay at an Atlanta hotel on January 25, 2017 en route to the Vessel. DE 440-12 (Pl.'s Ex. 39).

59. Andrew is seeking to recover \$1,695 as repatriation expenses for a flight he took from Florida to New Zealand in early March 2017. Andrew paid only \$1,496 for the flight. DE 440-17 (Pl.'s Ex. 64).

60. The amounts owed to the Crewmembers for the month of February 2017 were set forth in the Carrick Marine Limited crew payroll list for February 2017. DE 456 at 59:16-60:13; DE 450-20 (D.'s Ex. AAAAA); DE 450-42 (D.'s Ex. TTTTTTTTTT). These amounts, which Williams provided to Carrick Marine Limited, are as follows:

Andrew: \$11,000  
Attenborough: \$3,500  
Hanusiak: \$6,000  
Mikulic: \$5,000  
Nicolaou: \$8,500  
Smith: \$3,000  
Williams: \$18,500

61. In addition to her February 2017 wages, Mikulic also claims unpaid wages for the period of January 9, 2017 (when she first joined the Vessel) through January 17, 2017 in the amount of \$2,250. During this period, Mikulic's rate of pay was \$250 per day. DE 455 at 86:9-13. Mikulic admitted that she was paid some amount at the end of January 2017 for work performed during the month of January 2017. Id. at 96:1-3. Payroll records indicate that Mikulic worked 10 days in January beginning January 18, 2017 and was paid \$2,301.32. DE 450-42 (D.'s Ex. TTTTTTTTTT).

62. In addition to his February 2017 wages, Andrew also testified that he was entitled to be compensated for nine days of unpaid work performed for the Vessel in early March 2017. Andrew, however, did not plead entitlement to these wages in his

Verified Complaint. DE 26-2. Accordingly, the Court will not consider these allegedly unpaid wages as part of Andrew's claim. See Local Admiralty Rule E(1).

63. Williams testified generally that he approved all amounts claimed by each Crewmember. DE 455 at 160:22-171:7. He did not specify when he approved these amounts.

64. In addition to his February 2017 wages, Williams also seeks wages for services allegedly rendered from March 1, 2017 through the end of 2017. Williams seeks his full \$18,500 monthly salary for this period, totaling \$185,000.

65. The \$18,500 monthly salary that Williams earned before the Vessel ceased operations was for working for the Vessel as a full-time captain with all of the attendant duties and responsibilities. DE 456 at 73:10-20.

66. Castillo seeks \$145,000—an average of \$5,800 per month—for services allegedly rendered from February 1, 2017 to February 28, 2019.

67. Williams was not allowed to board the Vessel during its approximately 30-day period of arrest in early 2017. DE 456 at 80:16-25.

68. Castillo continued to visit the Vessel during its period of arrest. DE 457 at 131:24-132:12.

69. An Order was entered releasing the Vessel from arrest on April 10, 2017. DE 411 at 24.

70. On April 3, 2017, Castillo obtained an OFAC license allowing him to engage in certain transactions relating to the Vessel and other blocked property, including to “pay expenses, including past due amounts, ordinarily incident to the maintenance and limited operation of [the Vessel.]” DE 448-3 (Castillo Trial Ex. 3) at 2;



DE 457 at 40:6-41:11. Castillo's OFAC license was amended and/or extended three times such that Castillo was licensed by OFAC from April 3, 2017 to July 31, 2020. DE 448-4; DE 448-5; DE 448-6 (Castillo Trial Ex. 4-6).

71. Although the OFAC license authorized Castillo to engage in certain transactions relating to the Vessel, his understanding was that it did not authorize him to use his own funds to maintain the Vessel. Castillo testified that he understood that fresh funds received from outside the United States were required to be used to pay for any OFAC blocked assets. DE 457 at 125:4-121:21. No such funds ever arrived. Id. at 121:22-23.

72. Until the Vessel was moved to Dania Cut Yachting Center ("Dania Cut") in September 2017, Bahia Mar remained the custodian of the Vessel and was responsible for maintaining the Vessel. DE 456 at 104:2-20. After the Vessel was moved to Dania Cut, Dania Cut became the custodian of the Vessel and took responsibility for maintaining the Vessel. Id. at 105:10-14.

73. Bahia Mar and Dania Cut hired and paid Darren Walker to maintain and monitor the Vessel's systems. DE 456 at 105:18-25, 106:5-10; DE 450-39 (D.'s Ex. KKKKKKKKK); DE 450-40 (D.'s Ex. LLLLLLLLLL). Castillo was aware that Bahia Mar and Dania Cut hired and paid Walker to perform such services. DE 450-47 (D.'s Ex. XXXXXXXXXX) at 27-28.

74. Castillo testified that, after the Vessel ceased operations in early 2017, he and Williams were "basically on standby" for the remainder of the year. DE 457 at 8:13-14. Castillo further testified that Williams "would come back periodically and we [would]

do certain things on the boat. If we had to move it, if we had to prepare certain things so periodically, he'd be coming in and out." Id. at 8:9-12.

75. Williams testified that after the Vessel ceased operations, he: (1) periodically spoke to Castillo and Lopez Bello's attorneys, DE 455 at 148:4-11, (2) communicated with crewmembers and vendors who were owed money, id. at 149:14-150:2, (3) assisted Lopez Bello's wife in retrieving a few items from the Vessel in early March 2017, id. at 152:9-15, (4) assisted in moving the Vessel from Bahia Mar to Dania Cut Marina in September 2017, id. at 157:1-15, (5) communicated with the Vessel's insurance carrier in an attempt to obtain payment for crewmembers, id. at 158:4-13, and (6) communicated with Walker regarding the status of the Vessel. DE 456 at 34:25-35:3.

76. By the end of 2017, Williams testified that he "was no longer committing [his] time to the betterment of the program." DE 455 at 150:22-23.

77. In May 2017, however, Williams advised others that he had not been working for the Vessel and had not been the captain of the Vessel since February 2017. DE 456 at 101:13-102:17; DE 450-35 (D.'s Ex. AAAAAAAAAA); DE 450-36 (D.'s Ex. BBBBBBBBBB); DE 450-37 (D.'s Ex. CCCCCCCCCC).

78. Beginning in February or March 2017 and continuing throughout 2017, Williams worked for several other vessels and was paid significant amounts for such work. DE 456 at 81:10-21, 82:1-3,82:15-88:2, 93:1-4; DE 450-26 (D.'s Ex. KKKKKK).

79. In September 2019, Williams sent an invoice to his attorneys setting forth amounts he claimed were owed to him. The invoice did not include unpaid wages or

accrued and unpaid vacation for periods after February 2017. DE 456 at 114:6-19; DE 450-18 (D.'s Ex. TTTT).

80. Williams had no direct contact with Lopez Bello in 2017. DE 455 at 159:10-12.

81. Castillo testified that, after the Vessel ceased operations in February 2017, his role became more "hands on" because there were no longer crewmembers on board. DE 457 at 49:3-9. He tended to the Vessel from two to four days per week, sometimes working full days and late hours. Id. at 50:16-21. He ventilated the Vessel to prevent mold growth, checked the bilges and all compartments below deck, inspected for water intrusion, addressed water intrusion, prepared the Vessel for hurricane, ran the Vessel's systems and machinery to keep them operational and prevent deterioration, procured fuel for the Vessel to continue to operate the Vessel's systems and machinery, procured alternate dockage, had the Vessel towed and relocated, and assisted in reporting to OFAC. DE 457 at 42:10-47:10; 49:3-50:12; 52:25-53:9.

82. Williams testified that Castillo "was responsible for getting the [Vessel] to the Dania Cut" in September 2017. DE 456 at 35:11-13. Castillo did so mainly because Hurricane Irma was approaching. Dania Cut offered better protection against a hurricane. Id. at 37:5-14. The dockage rate was also about half the rate that Bahia Mar was charging the Vessel. DE 457 at 44:24-45:3.

83. Castillo successfully negotiated for Steel Towing to tow the Vessel from Bahia Mar to Dania Cut and to have Dania Cut satisfy Steel Towing's bill despite lacking funds from Nautical to pay for the tow. DE 457 at 45:10-23.

84. Castillo prepared the Vessel for Hurricane Irma with the help of two people by securing the Vessel and her anchors, lines, fenders, and taking loose items from the deck and storing them indoors. DE 457 at 45:24-47:2. This took two full days of difficult physical labor. Id. at 47:3-10.

85. The Vessel did suffer what Castillo characterized as “minimal” damages as a result of Hurricane Irma, including a broken window and a few scratches along the hull. DE 457 at 46:6-15, 130:4-12.

86. The Vessel also was damaged during a July 2017 burglary. Items were stolen from the Vessel and areas were disheveled and vandalized. DE 456 at 106:13-108:4. Williams was out of town and working for other vessels at the time of the burglary and when the police investigated the crime. Id. Castillo was likewise out of town at the time of the burglary. DE 457 at 85:6-24. Williams did not clean up the areas of the Vessel that were disheveled as a result of the burglary, but Castillo cleaned a “[g]ood portion of it.” DE 456 at 113:19-24; DE 457 at 109:7-15.

87. At some point after the burglary, the food on board the Vessel rotted and spoiled. DE 457 at 109:16-19. Castillo testified that “the stench knocked you off your feet.” Id. at 110:1-2. Neither Castillo nor Williams made an effort to remove or clean up the rotted and spoiled food on the Vessel.

88. Castillo testified at his deposition that his current resume stated that he ceased acting as the Vessel’s yacht manager in February 2017. DE 457 at 79:4-22; DE 450-34 (D.’s Ex. JJJJJJJJ).

89. Nicolaou testified that when she visited the Vessel in mid-2018, it appeared to her that nobody had been maintaining the interior of the Vessel in any way.

DE 454 at 94:1-25. “[E]verything was moldy and stale” and there was a blanket of mold in the crew refrigerator. Id.

90. Brook O’Neill, the former first officer of the Vessel, became the new captain of the Vessel on November 1, 2019. DE 457 at 161:13-16. When he assumed command, the Vessel was in extremely poor condition. Id. at 161:21-24. The galley was full of decomposed food, insects, debris, and trash. The staterooms were untidy and unmade and smelled horrible. The remainder of the Vessel and living spaces were in similar condition and in disarray. Id. at 162:7-19. The decks were also in poor condition and the Vessel had broken doors and broken glass. Id. at 165:4-7, 166:11-23.

91. MOCA needed to hire a professional team of cleaners in hazmat suits and breathing apparatus to clean and disinfect the vessel and remove the trash, food waste, and debris. DE 457 at 164:2-8.

92. One of the Vessel’s tenders, a 35’ Everglades, was taken to a repair facility for service prior to February 13, 2017. DE 411 at 26. The repairs cost less than \$10,000 and the value of the tender at the time was at least \$150,000. DE 456 at 109:6-23. Neither Williams nor Castillo paid the repair invoice and, as a result, the repair vendor confiscated the tender. Id. at 109:24-110:1, 112:12-15.

93. Purchases for the Vessel were made through William’s company, Thrive, on credit cards issued to the Vessel’s department heads. DE 455 at 174:19-175:3.

94. In its Verified Complaint, Thrive alleged that it was owed \$131,319.36 for necessities provided to the Vessel and \$34,131.44 in accrued interest, for a total of \$165,450.80. DE 164. At trial, Williams conceded that this was not an accurate

accounting of what Thrive was owed for necessities allegedly provided to the Vessel. DE 455 at 177:4-16.

95. Thrive's credit card statement for the period February 28, 2017 through March 27, 2017 reflected a \$120,912.67 balance due at the start of this period. DE 440-27 (Pl.'s Ex. 189). In an updated invoice, Williams claims that Thrive is owed this amount plus \$44,001.71 in interest payments from March 2017 through June 2020, for a total of \$164,914.38. DE 440-14 (Pl.'s Ex. 43). Williams testified that he has agreed to reduce Thrive's total claim by \$65,926.07 to account "for a number of items that [he had] removed from the vessel and sold." DE 455 at 177:17-22.

96. Critically, no evidence was presented as to the purchases that comprised the \$120,912.67 balance on Thrive's credit card. During his deposition, Williams could not identify what was purchased, why it was purchased, or how the purchases were necessary for the operation of the Vessel. DE 450-47 (D.'s Ex. XXXXXXXXXX) at 6-24.

97. Williams admitted that he took the following items from the Vessel: (1) a \$4,020.32 fuel credit from Tropical Oil, DE 456 at 121:23-126:3; (2) parts that he later sold to MOCA for \$23,905.94, id. at 126:4-127:6; (3) a carbon fiber boarding ladder that he sold for \$17,000, id. at 129:7-8, 133:5-11; and (4) three Sea Bobs purchased by the Vessel for \$45,000 that Williams sold for \$24,000. Id. at 132:4-133:21.

98. Williams also admitted that he provided false sworn interrogatory answers and false deposition testimony in which he denied having taken the above-listed items. DE 456 at 123:5-12, 127:13-133:21.

99. Williams maintains that, prior to taking the above-listed items, he "informed ownership through Eric Castillo" and "[t]here was no objection." DE 456 at

166:4-12. Castillo testified that he had told Williams that Williams could remove items that he had paid for from the Vessel without running afoul of OFAC regulations. DE 457 at 17:22-18:15. Castillo clarified that Williams “wasn’t really asking permission. He was just letting me know what he was doing.” Id.

100. Castillo testified that the charges in his invoices, which averaged \$5,800 per month for services allegedly rendered from February 1, 2017 to February 28, 2019, were “extremely low in comparison to what industry standards are” given that he was providing hands-on direct physical labor. DE 457 at 58:1-10.

101. Ben Donnelly of International Yacht Corporation (“IYC”), the Vessel’s current yacht management company, testified that IYC charges \$7,000 per month for their yacht management services for the Vessel. DE 458 (Trial Tr. Day 5) at 10:12-14. This fee is “discounted somewhat from industry average.” Id. at 12:25-13:1. It covers IYC providing “compliance support with regulations pertaining to the Maritime industry. Technical support which pertains to maintenance and repair and . . . accounting, administration, [and] payroll [services.]” Id. at 9:13-18. It does not cover the provision of actual maintenance, service, inspection, or repair services. Id. at 22:1-23:25.

102. Donnelly is unfamiliar with the rates IYC’s three largest competitors charge to manage a yacht the size of the Vessel. DE 458 at 19:5-20:25.

103. Donnelly testified that a reasonable fee for visiting a yacht like the Vessel for four to five hours a week, attending to it and checking that it is not sinking would be between \$1,000-\$2,000 per month. DE 458 at 14:10-17.

## II. CONCLUSIONS OF LAW<sup>11</sup>

### A. Crewmembers' Claims for Unpaid Wages

The Crewmembers' Crew Agreements provide that the agreements "shall be governed by applicable Flag State Laws." DE 440-8 at 7. Since its delivery, the Vessel has been registered in the Cayman Islands. While Defendants argue that the Crewmembers have not met their burden of proving the existence of valid crew agreements—an argument the Court rejects for the reasons set forth above—Defendants do not contest the application of Cayman Islands law.

"United States admiralty courts generally enforce maritime liens arising under foreign law for labor or materials furnished to a vessel in foreign ports if the foreign law provides for a maritime lien." Sunrise Shipping, Ltd. v. M/V AMERICAN CHEMIST, 1999 WL 718271, at \*8 (E.D. La. Aug. 31, 1999) (citing Banco de Credito Indus., S.A. v. Tesoria General, 990 F.2d 827, 832 (5th Cir.1992)). Cayman Islands law clearly provides that the Crewmembers' claims for unpaid wages, including Williams' claim as vessel master, give rise to maritime liens against the Vessel. See Cayman Islands Merchant Shipping Law (2016 revision) § 102(1) (discussing "a seafarer's lien, his remedies for the recovery of his wages . . ."); Merchant Shipping Law § 103 (stating that "[t]he master of a ship shall have the same lien for his remuneration . . . as a seafarer has for his wages."). Thus, the Court must simply calculate the quantum of the Crewmembers' maritime liens for unpaid wages.

It is uncontested that the Crewmembers were not paid their February 2017 wages. The amount of those wages is also uncontested except as to Smith's February

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<sup>11</sup> To the extent these Conclusions of Law constitute Findings of Fact, they are hereby adopted as both.



2017 wages. Smith claims that he is owed wages for the full month of February, but he admits that he left the Vessel before February 18, 2017. Thus, the Court finds that Smith has failed to establish that he is entitled to wages for the days in February 2017 that he was admittedly was not on board the Vessel. Rather, Smith is entitled to unpaid wages for the seventeen days in February 2017 (February 1<sup>st</sup>-February 17<sup>th</sup>) that he was aboard the Vessel at his salary of \$250 per day, for a total of \$4,250. The other Crewmembers are entitled to their unpaid wages for February 2017 as set forth in the Vessel's payroll records. DE 450-20 (D.'s Ex. AAAAAA); DE 450-42 (D.'s Ex. TTTTTTTTTT).

Smith and Mikulic also seek wages for all or part of January 2017. Smith claims that he is owed wages for the full month of January, however, he did not start working aboard the Vessel until January 26, 2017.<sup>12</sup> Accordingly, the Court finds that Smith is entitled to unpaid wages for only the six days in January 2017 (January 26<sup>th</sup>-31<sup>st</sup>) that he was aboard the Vessel. Mikulic claims that she is entitled to unpaid wages for the nine-day period of January 9, 2017 through January 17, 2017. Payroll records indicate that Mikulic was paid \$2,301.32 for ten days worked in January beginning January 18, 2017. DE 450-42 (D.'s Ex. TTTTTTTTTT) at 3. Accordingly, the Court finds that Mikulic has established that she is entitled to unpaid wages for her first nine days aboard the Vessel prior to January 18, 2017 at her salary during that period of \$250 per day.

That leaves only Williams' claim for unpaid wages from March 2017 through the end of that year. Williams seeks his full \$18,500 per month salary for this period, totaling \$185,000, despite the fact that: (1) the Vessel was not operational and did have

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<sup>12</sup> As discussed above, the Court does not credit Smith's testimony that he was to be paid to be "on standby" for the entire month of January.

a crew; (2) Williams was working on other Vessels; and (3) Williams had advised others that he had not been working for the Vessel and had not been the captain of the Vessel since February 2017. Frankly, the Court finds Williams’ claim for unpaid wages during this period patently absurd. In post-trial briefing, Williams’ counsel explains that Williams is “not seek[ing] compensation for being the Vessel’s Captain *per se*, but rather for services provided to preserve the Vessel after it stopped operation.” DE 459 at 34. But the record does not support Williams’ contention that he provided any significant services to preserve the Vessel after it ceased operations with the possible exception of the assistance he provided Castillo in moving the Vessel prior to Hurricane Irma.<sup>13</sup> Many of his other activities related to the Vessel during this period focused on obtaining payment for himself and his former crew. And while moving the Vessel prior to Hurricane Irma may have constituted the provision of necessaries to the Vessel, Williams does not seek to enforce a maritime lien for necessaries. He seeks unpaid wages under his Crew Agreement. Under that agreement, he was to be paid \$18,500 per month to serve as the captain of the Vessel. Plainly, ***and by his own admission***, he was not serving as captain of the Vessel after the Vessel ceased operations in February 2017. Accordingly, he is not entitled to recover wages for that period.

To summarize, the Court finds that the Crewmembers’ maritime liens for unpaid wages are as follows:

<u>Andrew:</u>	<b>\$11,000</b>
<u>Attenborough:</u>	<b>\$3,500</b>
<u>Hanusiak:</u>	<b>\$6,000</b>
<u>Mikulic:</u>	<b>\$7,250</b>
<u>Nicolaou:</u>	<b>\$8,500</b>
<u>Smith:</u>	<b>\$5,750</b>
<u>Williams:</u>	<b>\$18,500</b>

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<sup>13</sup> Even then, the exact nature of the assistance Williams provided Castillo is unclear.

**B. Andrew and Nicolaou's Claims for Repatriation Expenses**

Andrew and Nicolaou seek to recover repatriation expenses, but the basis for their recovery of these expenses remains unclear. As best as the Court can discern, they rely on their Crew Agreements, Cayman Island law, Williams' testimony that he approved these expenses, and the MLC. The Court will address these in turn.

First, the Crew Agreements provide that crewmembers are "entitled to a single economy flight paid by the company to the place where they were hired and upon the end of [their] service with the company." DE 440-8 at 6. Andrew was hired in Fort Lauderdale, Florida and Nicolaou was hired in Palma de Mallorca, Spain. Thus, under the plain terms of the Crew Agreement, Andrew is not entitled to expenses incurred in traveling to New Zealand nor is Nicolaou not entitled to expenses incurred in traveling to South Africa.

Next, Cayman Islands law provides that "[w]here a person employed as a seafarer in a Cayman Islands ship is left behind in any country outside the Islands . . . the persons who last employed him as a seafarer shall make such provisions for his return." Merchant Shipping Law § 136. This provision seems only to provide for repatriation back to the Cayman Islands. Counsel for Andrew and Nicolaou fail to articulate in their post-trial briefing how Cayman Islands law supports their entitlement to their claimed repatriation expenses given that they do not seek expenses incurred for travel to the Cayman Islands.

Andrew and Nicolaou also cite Williams' alleged approval of their repatriation expenses. DE 459 at 17, 25. Williams testified that he not only approved Andrew and Nicolaou's repatriation expenses, but also every dollar that the Crewmembers seek in

this case—including for claims that are provably meritless or overstated. As is likely clear by now, the Court simply does not find Williams credible. It has become apparent throughout this case that he will more or less say anything that he believes will maximize the value of his claims and his former crew’s claims against the Vessel. The Court does not doubt that Williams currently believes that he and the Crewmembers should be awarded the full amounts they seek against the Vessel. But the Court cannot find that the Crewmembers have established by a preponderance of the evidence that Williams approved these amounts while he was the master of the Vessel and had the authority to bind the Vessel.

Finally, it appears that Andrew and Nicolaou also claim entitlement to repatriation expenses pursuant to the MLC. In their post-trial brief, they cite to the MLC regulation stating that “Seafarers have a right to be repatriated at no cost to themselves under the conditions specified in the Code.” DE 459 at 57 (citing MLC 2006 Reg. 2.5). The conditions specified in the MLC include repatriation when a seafarer’s employment is terminated while they are abroad. By its terms, the MLC applies only to ships engaged in commercial activities. MLC 2006 Art. II Sect. 4. But Defendants do not dispute that pleasure vessels like the Vessel can choose to voluntarily comply with the MLC. And the unrebutted evidence elicited at trial is that the Vessel did just that. Accordingly, the Court finds that Andrew and Nicolaou’s right to repatriation arises under the MLC, which does not limit the destinations to which they may be repatriated. The Court will, however, limit Andrew and Nicolaou’s maritime lien for repatriation expenses to the amounts that they actually expended, which are as follows:

<u>Andrew:</u>	<b>\$1,496</b>
<u>Nicolaou:</u>	<b>\$457.20</b>

**C. Smith's Claim for Non-Repatriation Expenses**

Smith seeks allegedly unreimbursed out-of-pocket expenses incurred in connection with travel to and from Montana. The only identified basis for the recovery of these expenses is Williams' alleged approval of same. For the reasons set forth above, the Court finds Williams' testimony regarding his alleged approval of these expenses lacks credibility and that Smith has therefore failed to establish that he is entitled to recover these expenses.

**D. Nicolaou and Williams' Claims for Unpaid Vacation**

Nicolaou and Williams seek to recover for unpaid vacation days, including days allegedly accrued while working for the Trinity. They cite no legal basis, however, for their assertion of a breach of maritime contract claim against one vessel for amounts due and owed for work on another vessel. Accordingly, their claims for unpaid vacation days accrued while working for the Trinity fail. See Liverpool & London S.S. Prot. & Indem. Ass'n Ltd. v. M/V ABRA, 295 F. Supp. 2d 674, 682 (M.D. La. 2003) ("L & L has cited no case that supports the proposition that a vessel can be jointly and severally liable with other vessels under a breach of maritime contract claim. Indeed, no case or statute exists for the proposition. Therefore, since maritime liens are *stricti juris* and cannot be extended by construction, analogy, or inference, and because this claim has no support in law, the claim seeking a breach of maritime contract lien for all unpaid calls of other vessels in the Kappa Shipping fleet entry must fail.").

With respect to their vacation days accrued working for the Vessel, the Court finds that Nicolaou and Williams have established that the contractual start date for their employment on the Vessel was September 1, 2016. While Defendants argue that

Nicolaou and Williams' employment aboard the Vessel did not begin until October 2016, the Court finds that there naturally would have been a degree of overlap between their responsibilities to the Trinity and the Vessel during the transition, and that there is no basis for rejecting their testimony that September 1, 2016 was agreed upon as their start date on the Vessel. Accordingly, pursuant to their Crew Agreements, Williams and Nicolaou each accrued 2.5 paid vacation days per month during the six months they were employed on the Vessel, for a total of 15 vacation days. As Nicolaou admittedly took a three-week vacation in early 2017, however, the Court finds that she is not entitled recovery for any unpaid vacation days. Williams only took a one-week vacation during his employment on the Vessel, so he is entitled to recover eight accrued, unpaid vacation days, totaling **\$4,933.33**.

#### **E. Crewmembers' Claims for Severance**

All Crewmembers' seek four months' severance. As grounds, they cite Cayman Islands law, the MLC, and Williams' purported oral agreement that all Crewmembers would receive four months' severance.

As an initial matter, the Court notes that the Crew Agreements provide severance equal to "the greater of either two months' salary or the rest of [the crewmember's] year contract period" **only** if the Vessel is "lost, sold or otherwise cease[s] to be a Cayman Islands ship and [the crewmember's] employment is terminated" during the crewmember's contract period. DE 440-8 at 4. Otherwise, the Crew Agreement merely calls for 7 days written notice of intention to terminate the agreement. Id. at 3.

Similarly, Cayman Islands law provides that:

Where a Cayman Islands ship is sold while outside the Islands or ceases to be a Cayman Islands ship and a seafarer's employment in the ship is

thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall . . . be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date.

Merchant Shipping Law § 101(2). The Crewmembers argue, with no support or explanation, that this provision of Cayman Islands law gives them “a statutory right to two months of severance.” DE 459 at 51. The Court cannot fathom how. It is undisputed that the Vessel has been registered in the Cayman Islands since its delivery. DE 411 (Statement of Uncontested Facts) at 23. So it did not “cease to be a Cayman Islands ship” during the Crewmembers’ employment. Nor was it sold during their employment. And the Crewmembers have not argued that the OFAC blocking and sanctioning of the Vessel and its then-owner rendered the Vessel “lost.” Accordingly, the Court finds that neither Cayman Islands law nor the Crew Agreements provide any support for the Crewmembers’ claims for severance.

Next, the Court has already found that the Vessel voluntarily agreed to comply with the MLC, but the Crewmembers have failed to establish that the MLC supports their entitlement to severance. They cite a portion of the MLC regarding repatriation, which states that vessel’s “financial security system shall be sufficient to cover . . . outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement . . . or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements.” DE 459 at 53 (citing MLC 2006 Standard A2.5). The Crewmembers appear to argue that this provision supports their severance claims because severance qualifies as an “outstanding entitlement.” Id. at 54. But this provision plainly does not

mandate the payment of four months' severance, it requires vessel owners to maintain sufficient funds to pay any outstanding wages or entitlements that are due under the applicable employment agreement or national law. And as discussed above, neither the Crew Agreements nor Cayman Islands law provides that any severance is due based on the facts of this case.

The Crewmembers also rely upon an MLC regulation which provides that “[s]eafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship’s loss or foundering.” MLC 2006 Reg. 2.6. The guideline accompanying this regulation explains that “[t]he indemnity against unemployment resulting from a ship’s foundering or loss should be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement, but the total indemnity payable to any one seafarer may be limited to two months’ wages.” Id. The Crewmembers argue that here, there was no limitation to two months’ wages because the Crew Agreements provide for the greater of two months wages or the remainder of the term of the agreement. But again, that provision of the Agreement is only triggered if the Vessel is “sold while outside the Islands or ceases to be a Cayman Islands ship.” Regardless, there is no evidence that the Crewmembers became unemployed due to the Vessel’s “loss or foundering,” so whether or not the Vessel’s indemnity against unemployment resulting from a foundering or loss was ever limited to two months’ wages is completely irrelevant.

That leaves only Williams’ alleged oral agreement for four months’ severance. As set forth above, however, the Court finds that Williams’ testimony regarding this



alleged oral agreement lacks credibility. It is clear that Williams concocted the idea for four months' severance after the fact. Thus, any agreement that Williams made regarding severance on behalf of the Vessel while he was the master of the Vessel and had the authority to bind the Vessel is unenforceable because all essential terms were not agreed to. See, e.g., St. Joe Corp. v. McIver, 875 So. 2d 375, 381 (Fla. 2004) ("An oral contract . . . is subject to the basic requirements of contract law such as offer, acceptance, consideration and sufficient specification of essential terms.").

#### **F. Crewmembers' Claims for Penalty Wages**

The Crewmembers seek penalty wages under Cayman Islands law. Cayman Islands law provides that "[w]here a seafarer . . . leaves the ship on being discharged from it," the wages due to the seafarer must be paid in full either at the time he leaves the ship or, if paid monthly, no later than the date on which the next monthly salary payment would have been due. Merchant Shipping Law § 93(1), (4), and (5). If a seafarer is not timely paid the wages he is owed, Cayman Islands law provides that:

the seafarer shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid during the period of fifty-six days following the time of discharge; and if any such amount or any amount payable by virtue of this subsection remains unpaid after the end of that period it shall carry interest at the rate of twenty per cent per annum

Merchant Shipping Law § 93(3).

Confusingly, the Crewmembers take the position that all this provision entitles them to is 20% per annum interest on their unpaid wages beginning fifty-six days following their discharge. See DE 459 at 47. But the plain language of this law clearly entitles them to more than that. It entitles seafarers to their full day's wages every day they remain unpaid for up to fifty-six days. Then, if they remain unpaid after fifty-six

days, the amount owed (both for the days they actually worked without pay and the fifty-six days of penalty wages) begins carrying 20% interest. In any event, the Court will limit its analysis to the claims as they have been pled and will hold the Crewmembers to the amounts sought in the Joint Pretrial Stipulation and their post-trial brief.

Defendants argue that penalty wages should not be awarded for several reasons. First, they assert that the Crew Agreements foreclose the recovery of penalty wages because of the provision stating that Cayman Islands laws relating to “employment, employment security, pensions or retirement schemes” do not apply to the agreement or enlarge the amount the Crewmembers are entitled to by reason of their employment by the Vessel. DE 461 at 32. This argument is plainly meritless. It is Cayman Islands maritime law, not an employment or pension law, that entitles seafarers to penalty wages.

Defendants next argue that because Cayman Islands law only provides for penalty wages to seafarers—and not masters—Williams is not entitled to any penalty wages. The Court agrees. Williams has failed to identify any basis for his recovery, as the master of the Vessel, of penalty wages under Cayman Islands law. As set forth above, Cayman Islands law entitles “seafarers” to penalty wages. Seafarers are defined as including “every person (except masters and pilots) employed or engaged in any capacity on board a ship.” Merchant Shipping Law § 2.

Finally, Defendants essentially argue that it would be inequitable in this case for the Court to award penalty wages because MOCA was not the owner of the Vessel at the time the Crewmembers were discharged without payment of wages. Under Cayman Islands law, penalty wages are not imposed if the failure to pay was due to

either (1) a mistake, (2) a “reasonable dispute as to liability,” (3) “the act or default of the seafarer,” or (4) “any other cause, not being the wrongful act or default of the persons liable to pay his wages or of their servants or agents.” Merchant Shipping Law § 93(7). Defendants’ argument is misplaced. Clearly, the failure to timely pay the Crewmembers was not caused by a wrongful act of MOCA. And once MOCA purchased the Vessel over two years later, it had a reasonable dispute as to its liability for certain of the Crewmembers’ claims. But the Court, pursuant to Cayman Islands law, must focus its analysis on the acts and omissions of the person liable to pay the Crewmembers their wages at the time they were owed—Lopez Bello (through Nautical). In February 2017, Lopez Bello did not fail to pay the Crewmembers their wages because of a mistake, a reasonable dispute as to liability, or any misconduct on the part of the Crewmembers. Rather, he failed to pay the Crewmembers because he engaged in conduct that caused him to be listed as a Specially Designated Narcotic Trafficker and have his assets blocked. The Court easily finds that this qualifies as a “wrongful act or default” by Lopez Bello.

Accordingly, all Crewmembers except for Williams are entitled to penalty wages. The Court will award the relief requested by these Crewmembers except to the extent they seek to apply 20% interest to their repatriation, as well as wage, claims. Specifically, the Court finds that these Crewmembers possess valid maritime liens for penalty wages equaling 20% per annum interest on their unpaid wages beginning fifty-six days after they left the service of the Vessel (April 25, 2017) until the sale of the Vessel on October 23, 2019, for a total of 30 months. These amounts are:

<u>Andrew:</u>	<b>\$5,500</b>
<u>Attenborough:</u>	<b>\$1,750</b>

<u>Hanusiak:</u>	<b>\$3,000</b>
<u>Mikulic:</u>	<b>\$3,625</b>
<u>Nicolaou:</u>	<b>\$4,250</b>
<u>Smith:</u>	<b>\$2,875</b>

**G. Thrive's Claim for Necessaries**

Thrive seeks to enforce a maritime lien for necessaries pursuant to 46 U.S.C. § 31342. As noted above, Thrive claims that it is owed \$120,912.67 for necessaries provided to the Vessel plus \$44,001.71 in interest payments from March 2017 through June 2020, for a total of \$164,914.38. “To establish a maritime lien on a vessel pursuant to 46 U.S.C. § 31342 in an *in rem* action, a plaintiff must prove: (1) it provided ‘necessaries’ (2) at a reasonable price (3) to the vessel (4) at the direction of the vessel’s owner or agent.” Sweet Pea Marine, Ltd. v. APJ Marine, Inc., 411 F.3d 1242, 1249 (11th Cir. 2005) (citing S.E.L. Maduro (Florida), Inc. v. M/V Antonio De Gastaneta, 833 F.2d 1477, 1482 (11th Cir. 1987)).

Section 31301(4) provides that the term “‘necessaries’ includes repairs, supplies, towage, and the use of a dry dock or marine railway.” “The word ‘includes’ in this definition was not intended to be exhaustive.” Bradford Marine, Inc. v. M/V Sea Falcon, 64 F.3d 585, 589 (11th Cir. 1995). The term “necessaries” “has been liberally construed to include ‘what is reasonably needed in the ship’s business,’ such as ‘goods or services that are useful to the vessel, keep her out of danger, and enable her to perform her particular function.’” Id. (citations omitted).

Here, as explained above, it is impossible for the Court to determine whether any of the items purchased by Thrive constitute necessaries because no evidence was presented as to the purchases that comprised the \$120,912.67 balance on Thrive’s credit card. In its post-trial brief, Thrive relies upon an expense report prepared by

Nicolaou for charges on Thrive's credit card from December 28, 2016 to January 28, 2017 totaling \$32,558.21. DE 459 at 39-40 (citing DE 440-10 (Pl.'s Ex. 37)). But Williams admitted at trial that "all of the charges on that expense report had already been paid, and [he] had already been reimbursed by the owner for these charges." DE 456 at 139:6-15.

Further, even if Thrive had established that any portion of the balance on its credit card was attributable to necessities provided to the Vessel—which it clearly has not—Defendants correctly note that Thrive would not be entitled to interest on this balance as a matter of law because the accrued interest is not the cost of a necessary provided to the Vessel, but was assessed because of Williams' failure to timely pay the credit card balance. See Robbie's of Key W. v. M/V Komedly III, 470 F. Supp. 3d 1264, 1270 (S.D. Fla. 2020).

Based on the foregoing, the Court finds that Thrive has failed to establish that it possesses a maritime lien on the Vessel for necessities.

#### **H. Castillo's Claim for Necessaries**

Castillo also seeks to enforce a maritime lien for necessities pursuant to 46 U.S.C. § 31342. Defendants do not appear to dispute that at least some of the services that Castillo provided to the Vessel constitute necessities. Rather, they primarily challenge the reasonableness of the amounts charged by Castillo and the time period he was permitted to provide services to the Vessel.

First, Defendants argue that Castillo was not permitted to provide services to the Vessel after February 13, 2017 without an OFAC license, which he did not obtain until April 3, 2017. DE 461 at 35. Defendants cites Castillo's testimony that "OFAC had to

issue a license in order for you to maintain the asset.” DE 457 at 40:3-5. But Castillo was not testifying as an expert on the Kingpin Act or related regulations. It is true that, until he obtained an OFAC license, Castillo was barred from engaging in certain transactions related to the maintenance of the Vessel. Defendants, however, have presented no legal authority supporting the proposition that Castillo is unable to enforce a maritime lien for necessities he personally provided to the Vessel after it was blocked and before he obtained an OFAC license.

Next, Defendants argue that Castillo does not possess a maritime lien for any services allegedly provided while the Vessel was in *custodia legis*. DE 461 at 35 (citing Kingstate Oil v. M/V Green Star, 815 F.2d 918, 922 (3d Cir. 1987)) (“A person furnishing goods or services to a vessel after its arrest (*in custodia legis*) does not acquire a maritime lien against the vessel for the value of those goods or services.”). The Vessel was arrested for 27 days between March 14, 2017 and April 10, 2017. Based on the foregoing authority, the Court agrees that Castillo is not entitled to recover amounts he claims are due for services allegedly provided during this period. Castillo seeks \$9,000 for services allegedly provided in March 2017 and \$7,000 for services allegedly provided in April 2017, an average of \$262.30 per day during this two-month period. Thus, the Court will reduce Castillo’s claim by that daily average for each of the 27 days the Vessel was arrested, equaling a reduction of \$7,081.97.

Finally, Defendants argue that the amounts charged by Castillo are unreasonable for several reasons. Defendants fault Castillo for not paying any expenses towards the Vessel’s maintenance, allowing the condition of the Vessel to deteriorate, and for charging for services duplicative of those provided by Walker. DE 461 at 35-36. As to

the reasonableness element of a claim to enforce a maritime lien, the Eleventh Circuit has stated that:

the “reasonableness” of charges, in the maritime context, is measured by whether they are “customary,” and “in accord with prevailing charges for the work done and the materials furnished.” Accordingly, to satisfy the evidentiary burden on this element, a plaintiff must present some modicum of evidence which compares the charges claimed with what other competitors would have charged for similar work or materials. This burden may be satisfied by witness testimony that the charges were reasonably in accord with industry standards.

Sweet Pea Marine, 411 F.3d at 1249 (citations omitted).

Here, Castillo testified that his charges in his invoices, which averaged \$5,800 per month for services allegedly rendered from February 1, 2017 to February 28, 2019, were “extremely low in comparison to what industry standards are” given that he was providing hands-on direct physical labor. DE 457 at 58:1-10. The only contrary evidence set forth by Defendants was the testimony of Donnelly. He testified that IYC currently charges the Vessel \$7,000 per month for their yacht administrative management services for the Vessel. But not only is this fee somewhat discounted from industry average, it does not include the direct provision of actual maintenance, service, or repairs. Those services are included in Castillo’s charges.

Donnelly also testified that a reasonable fee for visiting a yacht like the Vessel for four to five hours a week, attending to it and checking that it is not sinking would be between \$1,000-\$2,000 per month. But the Court finds that Castillo’s services were more expansive and hands-on than those in this hypothetical example, and provided a substantial benefit to the Vessel. Additionally, the Court is not inclined to reduce Castillo’s charges simply because he did not wish to spend his personal funds

maintaining the Vessel, especially given that he was already providing services without payment.

The Court's primary concern with the reasonableness of Castillo's charges is the overlap between the services he claims to have provided and those services provided by Walker. As set forth above, Bahia Mar and Dania Cut hired and paid Walker to maintain and monitor the Vessel's systems. And an examination of Walker's invoices reflects that he spent considerable time doing so, including checking bilges, starting engines, troubleshooting issues with engines, generators, computers and chillers, and repairing systems. DE 450-39 (D.'s Ex. KKKKKKKKK). Castillo did not provide any documentation showing the specific services he allegedly provided or when he provided them, so the Court is unable to find that all of the amounts charged by Castillo are reasonable in that they do not represent charges for services duplicative of those provided by Walker.

Additionally, in assessing the reasonableness of Castillo's charges, the Court does not place significant weight on Castillo's prior financial arrangement with Lopez Bello. As noted above, there are no documents corroborating Castillo's testimony that \$14,000 of his \$25,000 monthly salary was for managing the Vessel. Even if there were, Donnelly's testimony suggests that \$14,000 for managing the Vessel was in excess of industry standards.

Based on the foregoing, the Court finds that Castillo has met his burden of establishing that he provided necessities to the Vessel and that 85% of his charges (after the \$7,081.97 reduction for his services provided during the Vessel's arrest), or



**\$117,230.33**, represents a reasonable price for his services. Accordingly, Castillo possesses a maritime lien on the Vessel in that amount.

**I. Defendants' Counterclaim for Conversion**

Finally, Defendants have asserted a counterclaim against Williams seeking to recover damages for Williams' alleged unlawful conversion of appurtenances, equipment, furnishings and/or supplies that were the property of the Vessel. "It is well settled that a conversion is an unauthorized act which deprives another of his property permanently or for an indefinite time." Mayo v. Allen, 973 So. 2d 1257, 1258 (Fla. 1st DCA 2008).

This claim is effectively uncontested. Williams admits that he took a fuel credit, parts, a carbon fiber ladder, and three Sea Bobs from the Vessel. That is why he agreed to reduce Thrive's claim by \$65,926.07. Defendants, however, argue that the value of these items is \$68,926.26. The approximately \$3,000 difference appears to stem from a disagreement as to the valuation of the carbon fiber ladder. Williams admits that he sold the ladder for \$17,000, but testified that—for some unknown reason—he only received \$14,000. DE 456 at 133:5-11. This appears to be why Williams only agreed to reduce Thrive's claim by \$14,000 for his conversion of the ladder, not \$17,000.

"The correct measure of damages in conversion is the fair market value of the property on the date of the conversion." Haskell Co. v. Peoples Const. Co., Inc., 648 So. 2d 833, 834 (Fla. 1st DCA 1995). "Fair market value is generally defined as what a willing buyer would pay to a willing seller, neither party being obligated to act." Dep't of Agric. & Consumer Services v. Polk, 568 So. 2d 35, 41 (Fla. 1990). Here, the only

evidence before the Court regarding the market value of the carbon fiber ladder is Williams' testimony that he agreed to sell the ladder for \$17,000. Apparently, this was what a willing buyer was prepared to pay. As there was no explanation offered for why Williams did not receive this full amount, the Court cannot find that the fair market value of the ladder was any lower than \$17,000. Accordingly, Defendants are entitled to judgment in their favor on their conversion claim against Williams in the amount of **\$68,926.26**.

#### **J. Prejudgment Interest**

"As a general rule, pre-judgment interest should be awarded in admiralty cases." St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc., 561 F.3d 1181, 1191-92 (11th Cir. 2009) (internal quotation marks omitted). "Pre-judgment interest is not a penalty, but compensation to the plaintiff for the use of funds that were rightfully his." Id. "A district court has discretion to deny prejudgment interest when there are peculiar circumstances that make it inequitable for the losing party to pay prejudgment interest." Id. (internal quotation marks omitted).

Here, there are no "peculiar circumstances" that would render an award of prejudgment interest inappropriate. As discussed above in connection with the Crewmembers' claims for penalty wages, the Court understands that MOCA was not the owner of the Vessel at the time that the Intervening Plaintiffs went unpaid for their services. But pre-judgment interest is not designed to penalize MOCA, but compensate the Intervening Plaintiffs for the use of funds that were rightfully theirs. Accordingly, the Intervening Plaintiffs are entitled to an award of prejudgment interest. Defendants are also entitled to an award of prejudgment interest on their counterclaim against Williams.

Pre-judgment interest begins to accrue from the date a plaintiff sustained his injury.

See id. The rate of prejudgment interest is “the prime rate during the relevant period.”

Id. “In the absence of a controlling statute, the choice of a rate at which to set the amount of prejudgment interest is also within the discretion of a federal court.” Werner Enterprises, Inc. v. Westwind Mar. Int'l, Inc., 554 F.3d 1319, 1328 (11th Cir. 2009).

The Crewmembers were discharged without payment of their wages on February 28, 2017. Castillo was not compensated for services rendered through February 28, 2019. And MOCA purchased the Vessel on October 23, 2019, by which time Williams had unlawfully converted certain appurtenances, equipment, furnishings and/or supplies that were the property of the Vessel. To determine the prejudgment interest rate, the Court will compute the average weekly rate under 28 U.S.C. § 1961 from the date of these injuries to present, which comes out to **1.5% per annum** on the Crewmembers’ damages, **1.08% per annum** on Castillo’s damages, and **.55% per annum** on Defendants’ damages. Accordingly, the Court will award prejudgment interest at these rates, to run from the above listed dates to the date of final judgment.

\* \* \*


In light of the foregoing, the Court calculates the parties’ damages as follows:

	Damages	Prejudgment Interest	Total
Alastair Andrew	\$17,996	\$1,052.40	<b>\$19,048.40</b>
Gabriel Attenborough	\$5,250	\$307.02	<b>\$5,557.02</b>
Krzysztof Hanusiak	\$9,000	\$526.32	<b>\$9,526.32</b>
Kristina Mikulic	\$10,875	\$635.96	<b>\$11,510.96</b>
Chloe Nicolaou	\$13,207.20	\$772.35	<b>\$13,979.55</b>
Garrett Smith	\$8,625	\$504.39	<b>\$9,129.39</b>
Joseph Williams	\$23,433.33	\$1,370.37	<b>\$24,803.70</b>
Eric Castillo	\$117,230.33	\$2,403.83	<b>\$119,634.16</b>
M/Y WAKU and MOCA LLC	\$68,926.26	\$473.61	<b>\$69,399.87</b>

**III. CONCLUSION**

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that a separate Final Judgment will be entered consistent with the Court's Findings of Fact and Conclusions of Law.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida on this 22nd day of January, 2021.

  
JAMES I. COHN  
United States District Judge

Copies provided to counsel of record via CM/ECF