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Of Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

ROBERT PALEK,

Case No. 3:12-cv-2168

Plaintiff,

COMPLAINT

vs.

**Admiralty/Maritime (28 U.S.C. §1331)
Jones Act (46 U.S.C. §668(a))
Breach of Contract (28 U.S.C. §1367(a))**

**JUSTIN A. GIFFORD, individually and
doing business as F/V HEAVY METAL,**

Defendant.

JURISDICTION

1.

This is a matter brought partly in admiralty and under the Jones Act.

Pursuant to 28 U.S.C. §1331 and 46 U.S.C. §668(a), this Court has jurisdiction.

The Court has jurisdiction of the contract claim pursuant to 28 U.S.C. §1367(a).

VENUE

2.

Some of the actions and omissions complained of herein occurred in navigable waters off the coast of Oregon. Venue is appropriate per 28 U.S.C. 1391(b)(1) and (2).

PARTIES

3.

- a) Plaintiff Robert Palek is an American citizen and a resident of Oregon.
- b) Defendant Justin Gifford is a resident of Oregon. He operates, and does business as, the fishing vessel "Heavy Metal" ("F/V Heavy Metal").

FIRST CLAIM FOR RELIEF Maintenance and Cure

4.

Plaintiff was a seaman hired to work as a deckhand in commercial crab fishing on the F/V Heavy Metal in navigable U.S. waters off the coast of Oregon.

5.

On or about December 1, 2009, Plaintiff, while in the course and scope of his employment with Defendant, and while at sea, was injured when a crab pot landed on his hand. Plaintiff sustained a crush injury to his right hand.

6.

Due to this hand injury, Plaintiff sustained medical bills for treatment and imaging, which at this time is believed to be in the amount of \$1,035.00, all to Plaintiff's economic damages in an amount to be proved at trial.

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7.

Due to his hand injury, Plaintiff was unable to work from December 1, 2009 through the end of that crab-fishing season, by information and belief March 30, 2009.

8.

Plaintiff was entitled to maintenance, which Defendant has unreasonably failed to pay. The amount of this maintenance is unknown, entitling Plaintiff to payment of economic damages in an amount to be determined prior to trial.

9.

Defendant has not paid Plaintiff's medical bills, unreasonably denying Plaintiff of cure, which at this time is believed to be in the amount of \$1,035.00, all to Plaintiff's economic damages in an amount to be proved at trial.

**SECOND CLAIM FOR RELIEF
Jones Act**

10.

Plaintiff incorporates by reference and re-alleges paragraphs 1 through 7.

11.

Defendant was negligent in one or more of the following particulars:

- a) providing an unsafe place of work; and
- b) providing inadequate training.

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12.

Defendant's negligence was a contributing factor in causing Plaintiff's injury, which at this time is believed to be in the amount of \$1,035.00, all to Plaintiff's economic damages in an amount to be proved at trial.

13.

Defendant's negligence was a contributing factor in causing Plaintiff pain and disruption to his activities of daily living, entitling him to general damages which Plaintiff seeks in a fair amount to be determined according to proof at trial.

**THIRD CLAIM FOR RELIEF
Unseaworthiness**

14.

Plaintiff incorporates by reference and re-alleges paragraphs 1 through 7.

15.

Defendant's vessel was unseaworthy in one or more of the following particulars, by information and belief:

- a) appurtenances of the vessel rendered the vessel dangerous and unseaworthy in that the crab pot was not working properly; and
- b) appurtenances of the vessel rendered the vessel dangerous and unseaworthy in that the crab pot was improperly maintained.

16.

Defendant's unseaworthiness was a contributing factor in causing Plaintiff's injury causing him to sustain wage loss and lose wages, which at this time is believed to be in the amount of \$1,035.00 for medical bills, and \$6,985.00 lost wages, in an amount to be determined according to proof at trial, and pain

and disruption in his life for general damages in an amount to be determined according to proof at trial.

**FOURTH CLAIM FOR RELIEF
Breach of Contract**

17.

Plaintiff incorporates by reference and re-alleges paragraphs 1 through 3.

18.

Plaintiff made a demand upon Defendant for an amount of \$10,000.00 or less more than 20 days prior to the filing of this action.

19.

Defendant and Plaintiff entered into a contract for Plaintiff to work for Defendant in December of 2009 for that fishing season in exchange for payment of a crew share of 10%.

20.

Plaintiff gave consideration in the form of performing work.

21.

Plaintiff was paid a total of \$6,879.43 for this work, but was entitled to payment of at least \$19,500.00. Defendant therefore breached the contract in the amount of \$12,620.57, of which, Plaintiff limits his recovery to \$10,000.00 in special economic damages for this breach of contract.

WHEREFORE PLAINTIFF PRAYS FOR RELIEF

First Claim for Relief:

1. For money damages for maintenance and cure in an amount to be determined according to proof at trial;

2. For reasonable attorneys fees for unreasonable denial of maintenance and cure;
3. For special economic damages or medical costs in an amount to be determined according to proof at trial;
4. For general noneconomic damages in an amount to be determined according to proof at trial;
5. For special economic damages not to exceed \$10,000.00 for breach of contract;
6. For his costs and disbursements herein; and
7. For such other relief the Court orders.

Dated this 29th day of November, 2012.

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