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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESUS FLORES, a seaman,

Plaintiff,

v.

GLACIER FISH COMPANY, LLC, a
Washington corporation; and the F/T
PACIFIC GLACIER, Official No. 933627, a
vessel, her engine, equipment, tackle and
appurtenances, In Rem,

Defendants.

No. C08-1267Z

ORDER

THIS MATTER comes before the Court on defendant Glacier Fish Company, LLC's motion for partial summary judgment, docket no. 26. Having reviewed all papers filed in support of and in opposition to the motion, the Court GRANTS the motion for the reasons stated in this Order.

Background

On February 26, 2008, plaintiff Jesus Flores was working aboard the F/T PACIFIC GLACIER, when a fire damaged the vessel, destroyed the catch, and required evacuation of the crew. *See* Julienne Decl. at ¶ 3 (docket no. 33); Crew Member Agreement & Crew Member Extension, Exhs. J & K to Bratz Decl. (docket no. 34). A day or so after the fire was suppressed, the Coast Guard escorted crew members, including plaintiff, back aboard the F/T PACIFIC GLACIER to retrieve their identification. Flores Dep. at 115:3-12, Exh. B to

1 Bratz Decl. (docket no. 27). During this time, plaintiff slipped and injured his knee. *Id.* at
2 115:14-117:21. Plaintiff sought medical treatment, was diagnosed with a bruise on his left
3 knee, and was released to work without restriction. Exh. C to Bratz Decl. (docket no. 27).

4 On March 13, 2008, plaintiff executed a Receipt and Release, which was written in
5 Spanish. Exh. E to Bratz Decl. (docket no. 27); *see also* Exh. F to Bratz Decl. (containing an
6 English translation of the Receipt and Release). On the same day, plaintiff received a check
7 for \$4,975. Exh. E to Bratz Decl. Reneé Julienne, the Human Resources Director for
8 Glacier Fish Company, LLC, was the notary public who witnessed the release, and no one
9 else was present when plaintiff signed it. *Id.*; *see also* Flores Dep. at 177:24-178:5, Exh. B to
10 Bratz Decl. The Receipt and Release provided in relevant part:

11 That the undersigned, JESUS FLORES, for and in consideration of the agreed
12 amount . . . does hereby release, discharge, and forever acquit Glacier Fish
13 Company, L.L.C. . . . and the F/T PACIFIC GLACIER . . . from and of any and
14 all claims of whatsoever nature, at law, in equity, in admiralty or otherwise, for
15 any and all loss, damage, or injury, including, without limitation thereto, claims
16 for personal injury, pain and suffering, emotional distress, loss of employment,
17 past and future earnings loss, maintenance, cure, and loss of or damage to
18 personal property, arising out of or in any way connected with an incident or
19 incidents aboard or near the F/T PACIFIC GLACIER on or about February 26,
20 2008.

21 Exh. F to Bratz Decl. The release further indicated that “Glacier Fish Company, L.L.C. will
22 pay for reasonable and necessary medical or psychological treatment related to the incident
23 of February 26, 2008, providing treatment is sought within six months of the date of this
24 settlement.” *Id.*

25 In May 2008, plaintiff was diagnosed with post-traumatic stress disorder (“PTSD”),
26 prescribed trazodone, and referred to a counselor. Exh. 1 to Response (docket no. 29).
Plaintiff received counseling services through February 2009, for which defendant Glacier
Fish Company, LLC paid. *See* Exh. 2 to Response; Exh. I to Bratz Decl. (docket no. 27). On
August 25, 2008, plaintiff initiated this action, stating three causes of action: (i) alleging
negligence and unseaworthiness under the Jones Act, (ii) alleging unseaworthiness under
general maritime law, and (iii) seeking maintenance, cure, and unearned wages. Complaint

1 (docket no. 1). Defendant Glacier Fish Company, LLC now moves for partial summary
2 judgment, requesting dismissal of plaintiff's first two causes of action on the ground that
3 plaintiff executed a valid and binding release.

4 **Discussion**

5 **A. Summary Judgment Standard**

6 The Court should grant summary judgment if no genuine issue of material fact exists
7 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). When
8 a properly supported motion for summary judgment has been presented, the adverse party
9 "may not rely merely on allegations or denials in its own pleading," but rather must set forth
10 "specific facts" demonstrating the existence of a genuine issue for trial. Fed. R. Civ.
11 P. 56(e)(2). The nonmoving party is entitled to have all "justifiable inferences" favorably
12 drawn. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). When the record,
13 however, taken as a whole, could not lead a rational trier of fact to find for the opposing
14 party, summary judgment is warranted. *See Miller v. Glenn Miller Prod., Inc.*, 454 F.3d 975,
15 932 (9th Cir. 2006); *see also Beard v. Banks*, 548 U.S. 521, 536 (2006).

16 **B. Enforceability of Seamen's Releases**

17 Because seamen are "wards of the admiralty," a seaman's release is analyzed under
18 principles analogous to those applicable to fiduciaries, and not solely under the doctrines of
19 contract law. *Orsini v. O/S Seabrooke O.N.*, 247 F.3d 953, 958-59 (9th Cir. 2001). In
20 assessing whether a seaman's release is enforceable, the Court must examine: (i) whether the
21 release was executed freely, without deception or coercion, and (ii) whether the release was
22 made by the seaman with a full understanding of his rights. *Id.* at 959. In applying the
23 second prong of this test, the Court must consider: (i) the adequacy of the consideration;
24 (ii) the nature of the medical advice available to the seaman at the time of signing the release;
25 and (iii) the nature of the legal advice available to the seaman at the time of signing the
26 release. *Id.*

1 **1. Freely Executed**

2 The Court concludes that plaintiff freely executed, and was not deceived or coerced
3 into signing, the release at issue. In his declaration in opposition to the current motion for
4 partial summary judgment, plaintiff asserts that he was pressured into executing the Receipt
5 and Release. Flores Decl. at ¶ 2 (“Part of the reason that I decided to sign the papers at the
6 time, and not take them with me, is because of what Reneé Julienne told me I had to do
7”). In contrast, in his earlier deposition, plaintiff testified that he had no discussion with
8 Ms. Julienne prior to executing the Receipt and Release. Flores Dep. at 178:6-11, Exh. B to
9 Bratz Decl. (docket no. 27). Plaintiff may not create an issue of fact by submitting a “sham”
10 declaration or affidavit that contradicts his prior deposition testimony. *See Kennedy v. Allied*
11 *Mut. Ins. Co.*, 952 F.2d 262, 266-67 (9th Cir. 1991). A declaration is a “sham” when, rather
12 than clarifying a matter on which the declarant was confused during his or her deposition,
13 correcting an honest discrepancy or mistake, or setting forth then inaccessible or newly
14 discovered evidence, the declaration flatly contradicts earlier testimony in an attempt to
15 “create” an issue of fact and avoid summary judgment. *Id.*

16 In this case, plaintiff’s declaration does not purport to clarify or supplement his
17 deposition testimony; rather, plaintiff’s declaration, which is written in English without the
18 aid of a translator, *see* Flores Decl. at ¶ 1, describes a conversation plaintiff previously
19 indicated under oath, using an interpreter, never occurred. Thus, the Court can disregard the
20 declaration as a sham. Even if, however, the Court considered plaintiff’s declaration, the
21 Court would still be persuaded that no evidence exists of the type of deception or coercion
22 that would undermine the validity of the Receipt and Release. At most, the declaration
23 establishes that Ms. Julienne told plaintiff he would not get a check unless he signed the
24 release and that he would not be paid for certain items. Neither of these statements are
25 coercive, and they did not present plaintiff with unviable options. *Cf. Orsini*, 247 F.3d at
26 959-60 (finding that the seaman was coerced when presented with the options of either

1 staying on the ship despite pressure from the crew to accept the release so he could be
2 replaced by a more able-bodied individual or remaining onshore in an isolated locale in
3 which he had no place to stay and which was two airplane trips away from home). Thus, as
4 to the release at issue, the first prong of the enforceability test is met.

5 **2. Full Understanding**

6 The Court is persuaded that the second part of the enforceability standard is likewise
7 satisfied because plaintiff received adequate consideration and sufficient medical and legal
8 advice. In the settlement, plaintiff received \$4,975, which the Court concludes was adequate
9 consideration in light of plaintiff's minimal physical injury, the fire's destruction of the catch
10 and product upon which plaintiff's wage was based, see Crew Member Agreement, Exh. J to
11 Bratz Decl. (docket no. 34), and the preservation of plaintiff's right to cure so long as
12 treatment was sought within six months, see Receipt and Release at *, Exh. F to Bratz Decl.
13 (docket no. 27), a condition that plaintiff satisfied, as a result of which Glacier Fish
14 Company, LLC paid for plaintiff's PTSD counseling, see Exh. I to Bratz Decl. (docket
15 no. 27).¹ Because the release at issue did not completely surrender plaintiff's right to cure,
16 only minimal medical advice was necessary in this case. At the time he executed the Receipt
17 and Release, plaintiff had already received treatment for his knee injury and he was aware
18 that the hazards to which he had been exposed might require additional medical attention.
19 Indeed, the Receipt and Release contained the following recital:

20 I understand . . . [t]hat I was exposed to the perils of smoke and fire and
21 abandonment of ship while employed aboard the F/T PACIFIC GLACIER, that
22 said exposure has required or may require medical or psychological evaluation
or treatment.

23 ¹ Plaintiff asserts an "absolute right" to \$10,200, which includes \$7,000 in potential earnings, \$2,000 for lost
24 personal effects, and \$1,200 for destroyed work clothes. Response at 10-11 (docket no. 29). Plaintiff
25 received \$1,200 for his personal effects, see Exh. E to Bratz Decl. (docket no. 27), and he provides no
26 documentation or legal authority supporting a higher amount. Moreover, plaintiff offers no basis, other than
speculation, for computing the wages he would have earned had the F/T PACIFIC GLACIER not been
engulfed in flames and unable to complete Trip T4/2008. See Julienne Decl. at ¶ 3 (docket no. 33) ("There
were no sales of product or catch from the F/T PACIFIC GLACIER from February 26, 2008, through what
would have been the remainder of Trip T4/2008.").

1 Exh. F to Bratz Decl. (docket no. 27).

2 The other provisions of the documents plaintiff signed make clear that plaintiff
3 understood his rights and the nature of the release. The paragraph immediately preceding
4 plaintiff's first signature reads:

5 The undersigned hereby declares that the terms of this Release have been
6 completely read, are fully understood and are voluntarily accepted for the
7 purposes of making a full and final compromise, adjustment and settlement of
8 any and all claims, disputed or otherwise, and is for the express purpose of
precluding forever any further claims arising out of or in anyway connected
with the aforesaid matters.

9 Id. Below plaintiff's signature, in all capital letters, the document states:

10 THIS IS A RELEASE

11 I AM GIVING UP EVERY RIGHT I HAVE

12 Id. Following these words, the release asks a series of five questions, four of which require a
13 hand-written "yes" or "no" response and the fifth of which calls for a narrative. Id. Plaintiff
14 answered "Si" to the questions inquiring whether he had read the papers, whether the papers
15 had been read to him, whether he knew what he was signing, and whether he knew that
16 signing the papers settled all claims. Exh. E to Bratz Decl. In response to the question
17 requesting a description of the papers being signed, plaintiff wrote, in English, "Release." Id.
18 Plaintiff then signed the Receipt and Release a second time. In his later deposition, plaintiff
19 testified that he read the Receipt and Release before signing it, he understood it when he
20 executed it, and he had an opportunity to ask questions before entering into the agreement,
21 but did not do so because he understood the documents. Flores Dep. at 175:22-179:4, Exh. B
22 to Bratz Decl. (docket no. 27).

23 In a separate section, the Receipt and Release explains the rights of seamen in three
24 segments, titled "Maintenance and Cure," "Unseaworthiness," and "The Jones Act." Exh. F
25 to Bratz Decl. Plaintiff signed a separate page indicating that he had read and understood the
26 description of his rights, which were provided to him in Spanish. Exh. E to Bratz Decl. The
Court has reviewed the English version of the primer and finds no inaccuracies or errors.

1 Plaintiff does not point to any particular discrepancy, but rather contends that Glacier Fish
2 Company, LLC has admitted liability, and that, as a result, the statement “it is necessary for
3 the seaman to prove negligence of the shipowner, or his agents, servants or employees,”
4 which appears in the segment titled “The Jones Act,” was “untrue in this case.” Response at
5 10 (docket no. 29). Plaintiff, however, provides no authority for the contention that Glacier
6 Fish Company, LLC admitted liability; his attorney’s bald assertion in a declaration does not
7 constitute evidence. *See* Evans Decl. at ¶ 2 (docket no. 30); *see also* Fed. R. Civ. P. 56(e)(1)
8 (“A supporting or opposing affidavit must be made on personal knowledge, set out facts that
9 would be admissible in evidence, and show that the affiant is competent to testify on the
10 matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified
11 copy must be attached to or served with the affidavit.”). Moreover, the Receipt and Release
12 itself indicates that “the parties released herein deny all liability for damages in connection
13 with this matter” and “this full and final settlement thereof shall never be treated as an
14 admission of liability at any time or in any manner whatsoever.” Exh. F to Bratz Decl. Thus,
15 the Court is satisfied that plaintiff was adequately advised of his rights as a seaman, and that
16 the Receipt and Release is enforceable.

17 **Conclusion**

18 For the foregoing reasons, the Court GRANTS defendant Glacier Fish Company,
19 LLC’s motion for partial summary judgment, docket no. 26, and DISMISSES plaintiff’s first
20 and second causes of action with prejudice because they are precluded by the Receipt and
21 Release executed by plaintiff on March 13, 2008. The parties are DIRECTED to file a Joint
22 Status Report by December 15, 2009, concerning the status of the remaining claim for
23 maintenance, cure, and unearned wages.

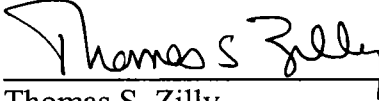
24 IT IS SO ORDERED.

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DATED this 7th day of December, 2009.


Thomas S. Zilly
United States District Judge