**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LANDON PERRY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:23-cv-4441**
	§	
HALLIBURTON ENERGY SERVICES, INC.,	§	
	§	
	§	
Defendant.	§	

MEMORANDUM, RECOMMENDATION, AND ORDER

Pending before the Court[1] is Defendant Halliburton Energy Services, Inc.'s ("Defendant") Motion for Partial Summary Judgment (ECF No. 32), Defendant's Motion to Exclude (ECF No. 33), Plaintiff Landon Perry's ("Plaintiff") Motion to Strike (ECF No. 35), Plaintiff's Renewed Motion to Remand (ECF No. 37), and Plaintiff's two Opposed Motions to Continue (ECF Nos. 39–40). Based on a review of the motions, the submissions of the parties, and the applicable law, the Court **RECOMMENDS** Defendant's Motion for Partial Summary Judgment (ECF No. 32) be **GRANTED** and Plaintiff's Renewed Motion to Remand (ECF No. 37) be **DENIED**. Further, the Court **GRANTS** Defendant's Motion to Exclude (ECF No. 33) and **DENIES**

[1] On June 5, 2024, this case was referred to the Undersigned for all purposes pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Federal Rule of Civil Procedure 72. (ECF No. 14).

Plaintiff's Motion to Strike (ECF No. 35) and Opposed Motions to Continue (ECF Nos. 39–40).

I. Background

Plaintiff filed this action on October 20, 2023, in the 127th Judicial District Court of Harris County, Texas, asserting claims against Defendant for negligence and failure to pay maintenance and cure,[2] stemming from injuries Plaintiff sustained while working as a Jones Act seaman assigned to the *M/V Stim Star III*. (ECF No. 1-4 at ¶¶ 15–24). Plaintiff argues jurisdiction is proper under the Jones Act, general maritime law, and Texas law. (*Id.* at ¶ 5). According to the Petition, "[o]n or about April 22, 2023, Plaintiff was working as a Jones Act seaman, employed by Halliburton aboard the *M/V Stim Star III*." (*Id.* at ¶ 9). Plaintiff claims he was permanently assigned to work on this vessel, which was operated and managed by Defendant and engaged in maritime commerce by transporting chemicals to offshore rigs. (*Id.*). Plaintiff states he was injured after Defendant ordered him to mix chemicals needed for a maritime voyage, which resulted in an explosion causing burns, because Defendant failed to provide proper safety protection and warn him about the dangers associated with the two chemicals. (*Id.* at ¶¶ 11–12).

[2] A claim for maintenance and cure is one where the plaintiff is entitled to maintenance, a per diem allowance for food and lodging, and cure, a payment of medical expenses, from his employer for injuries sustained in service of the vessel. *Vaughn v. Am. Com. Barge Line, LLC*, 672 F. Supp. 3d 184, 189 (E.D. La. 2023).

On November 24, 2023, Defendant filed its notice of removal contending this Court has jurisdiction over this action under Title 43 U.S.C. § 1331, *et seq.*, because "it arises under the Outer Continental Shelf Lands Act ('OCSLA'), a law of the United States." (ECF No. 1 at ¶ 6). Defendant avers "this Court has original jurisdiction over matters, such as this one, that arise out of or in connection with operations conducted on the outer Continental Shelf involving exploration, development, or production of the minerals of the subsoil and seabed of the outer Continental Shelf" under 43 U.S.C. § 1349. (*Id.*). Defendant states that jurisdiction is appropriate pursuant to 28 U.S.C. § 1331 (federal jurisdiction) and 28 U.S.C. § 1333 (admiralty). (*Id.* at ¶ 7). Defendant denies Plaintiff is a Jones Act seaman and alleges that such claim was only brought to "frustrate federal jurisdiction." (*Id.* at ¶ 12). On December 26, 2023, Plaintiff filed a motion to remand asserting the Court lacks jurisdiction because this is a single Jones Act action for negligence and maintenance and cure and is not removable to federal court. (ECF No. 5 at 8).

On June 21, 2024, this Court issued a Memorandum and Recommendation, recommending Plaintiff's motion to remand be granted in part and denied in part. (ECF No. 19 at 1). This Court found that Plaintiff's Petition includes maritime claims for maintenance and cure, which are subject to removal where an independent basis for federal jurisdiction exists, such as the OCSLA. (*Id.* at 10–11). The Court reasoned Defendant met its burden of establishing that Plaintiff's maritime claims for maintenance and cure were governed by OCSLA and that this Court has jurisdiction under OCSLA. (*Id.* at 20). As such, the Court recommended Plaintiff's Jones Act claim be severed from this action and remanded to state court while the Court retained jurisdiction over Plaintiff's claim for maintenance and cure. (*Id.* at 23). United States District Court Judge Andrew Hanen adopted this Court's Memorandum and Recommendation. (ECF No. 24).

On March 20, 2025, Plaintiff filed a renewed motion to remand. (ECF No. 37).

II. Legal Standards

a. Motion to Remand

Federal courts are courts of limited jurisdiction "possessing 'only the power authorized by Constitution and statute.'" *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). A defendant may only remove a case over which the district court has original jurisdiction. 28 U.S.C. § 1441(a); *Halmekangas v. State Farm Fire & Cas. Co.*, 603 F.3d 290, 295 (5th Cir. 2010) ("Where . . . the plaintiff files an action in state court with no federal question or complete diversity, the original jurisdiction necessary for removal under § 1441 does not exist.").

Pursuant to 28 U.S.C. § 1333(1), district courts have original jurisdiction over any civil case of admiralty or maritime jurisdiction, "saving to suitors in all cases all other remedies to which they are otherwise entitled." The Supreme Court has interpreted the "Saving to Suitors" Clause as preserving the concurrent jurisdiction of the state and federal courts over admiralty and maritime claims. *See Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 445 (2001). "Thus, courts have concluded that general maritime claims are not removable when filed in state court absent an independent basis of jurisdiction other than 28 U.S.C. § 1333." *Finney v. Bd. of Commissioners of Port of New Orleans*, 575 F. Supp. 3d 649, 658 (E.D. La. 2021) (collecting cases); *see Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 220 (5th Cir. 2013) (stating that "removal of maritime cases is permissible as long as there is an independent basis for federal jurisdiction").

On a motion to remand, the removing party bears the burden of establishing jurisdiction exists. *Shearer v. Sw. Serv. Life Ins. Co.*, 516 F.3d 276, 278 (5th Cir. 2008). In assessing whether removal is appropriate, courts are guided by the principle that "removal statute[s] should be strictly construed in favor of remand." *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). The Court considers the claims in the state court petition as they existed at the time of removal to determine whether jurisdiction is present. *Louisiana v. Am. Nat'l Prop. Cas. Co.*, 746 F.3d 633, 636–37 (5th Cir. 2014). When evaluating a motion to remand, all factual allegations are considered in the light most favorable to the plaintiff, and any contested fact issues are resolved in the plaintiff's favor. *See Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). Ultimately, remand is appropriate if the Court lacks jurisdiction and "doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction." *Acuna v. Brown & Root Inc.*, 200 F.3d 335, 339 (5th Cir. 2000) (citing *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir. 1988)).

b. Motion for Summary Judgment

Motions for summary judgment are governed by Federal Rule of Civil Procedure ("Rule") 56. Rule 56(a) instructs the Court to "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See Nall v. BNSF Ry. Co.*, 917 F.3d 335, 340 (5th Cir. 2019). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Talasek v. Nat'l Oilwell Varco, L.P.*, 16 F.4th 164, 168 (5th Cir. 2021) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). A material fact is one that "might affect the outcome of the suit under the governing law." *Bazan ex rel. v. Hidalgo Cty.*, 246 F.3d 481, 489 (5th Cir. 2001) (emphasis omitted); *see Aguirre v. City of San Antonio*, 995 F.3d 395, 406 (5th Cir. 2021). "An issue is 'genuine' if it is real and substantial, as opposed to merely formal, pretended, or a sham." *Bazan*, 246 F.3d at 489 (emphasis omitted). The Court must view the evidence in a light most favorable to the nonmovant. *Coleman v. Houston Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997).

The movant is tasked with the initial burden of informing the Court of the basis for the motion and pointing to relevant excerpts in evidence that demonstrate the absence of genuine issues of material fact. *See Coastal Agric. Supply, Inc. v. JP Morgan Chase Bank, N.A.*, 759 F.3d 498, 505 (5th Cir. 2014) (quoting *Celotex Corp.*, 477 U.S. at 323). The movant may also argue that the nonmovant failed to produce evidence in support of at least one element of a cause of action for which he bears the burden of proof. *See Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 335 (5th Cir. 2017).

If the movant satisfies the initial burden, it shifts to the nonmovant who must produce evidence of a genuine factual dispute; he may not merely rest on the allegations in his pleading. *See Coastal Agric. Supply, Inc.*, 759 F.3d at 505 (quoting *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005)). The Court should not accept "[u]nsubstantiated assertions, improbable inferences, [or] unsupported speculation" as sufficient to carry the nonmovant's burden. *Brown v. City of Houston, Tex.*, 337 F.3d 539, 541 (5th Cir. 2003). However, where there is evidence of a genuine factual dispute, such disputes are resolved in favor of the nonmoving party "when an actual controversy exists, that is, when both parties have submitted evidence of contradictory facts." *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 525 (5th Cir. 1999); *McCarty v. Hillstone Rest. Grp., Inc.*, 864 F.3d 354, 358 (5th Cir. 2017). Further, a genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Baker v. Coburn*, 68 F.4th 240, 244 (5th Cir. 2023), *as revised* (May 19, 2023).

III. Discussion

a. Plaintiff's Renewed Motion to Remand (ECF No. 37)

Plaintiff filed a renewed motion to remand following another district court's decision in *Clapp v. Halliburton Energy Servs., Inc.*, 769 F. Supp. 3d 555 (S.D. Tex. 2025). (ECF No. 37 at 1). Defendant argues the *Clapp* ruling is not binding on this Court, and the reasoning behind the *Clapp* decision simply does not provide any legal basis to challenge the correctness of this Court's prior holding. (ECF No. 43 at 8).

In Plaintiff's original motion to remand, Plaintiff contended the entire case should be remanded because this was a single Jones Act claim, was not removable, and OCSLA provided no basis for federal jurisdiction. (ECF No. 5 at 8–9). However, the Court found Plaintiff's Petition includes maritime claims for maintenance and cure, which are subject to removal where an independent basis for federal jurisdiction exists, such as OCSLA. (ECF No. 19 at 10–11).

Further, the Court reasoned that Defendant met its burden of establishing that Plaintiff's maritime claims for maintenance and cure were governed by OCSLA and that this Court has jurisdiction under OCSLA. (*Id.* at 20). As a result, the Court severed Plaintiff's Jones Act claim from his maintenance and cure claim and solely remanded Plaintiff's Jones Act claim. (*Id.* at 23).

After this Court's previous Memorandum and Recommendation was adopted by District Court Judge Andrew Hanen (ECF No. 24), a conflicting decision was issued in *Clapp*. *See Clapp*, 769 F. Supp. 3d at 569. In *Clapp*, an employee brought a Jones Act action against his employer for negligence and maintenance and cure. *Id.* at 568. The employer argued that, if the court concluded the employee alleged a valid Jones Act claim, the court should sever the two claims and only remand the Jones Act claim. *Id.* The employer relied on 28 U.S.C. § 1441(c) for support. *Id.*

In that case, the court disagreed with the employer, finding the employee's "maintenance and cure claim does not arise under the Constitution, laws, or treaties of the United States; it is a general maritime claim." *Id.* The court stated that, even though the court had OCSLA jurisdiction over the employee's claims, § 1441(c) does not authorize the court to sever an action containing a Jones Act claim and a general maritime claim. *Id.* For support, the court relied on an unreported decision from the Northern District of New York. *Id.* (citing *Whittaker v. Vane Line Bunkering, Inc.*, No. 1:18-cv-539, 2018

WL 6179425, at *3 (N.D.N.Y. Nov. 27, 2018)). In *Whittaker*, the Northern District of New York stated "[g]eneral maritime claims, such as claims for maintenance and cure, do not present federal questions for purposes of Section 1331." *Whittaker*, 2018 WL 6179425, at *3.

As noted by Defendant, *Whittaker* analyzed whether a general maritime claim, without any separate basis for federal jurisdiction, could confer federal jurisdiction. *See id.*; (ECF No. 43 at 12–13). This is distinguishable from the instant case where the question before the Court is whether a general maritime claim arising under OCSLA confers federal jurisdiction. (*See* ECF No. 7 at 13).

Ultimately, the *Clapp* decision is not binding on this Court. *See Blakley v. Golabs, Inc.*, No. 3:21-cv-2422, 2024 WL 3843570, at *2 (N.D. Tex. July 8, 2024) (citing *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.")). Further, the *Clapp* decision conflicts with numerous cases within the Fifth Circuit addressing similar issues. *See, e.g.*, *Tauriac v. Staffing the Universe, LLC*, No. 4:24-cv-4290, 2025 WL 1886775, at *4 (S.D. Tex. June 18, 2025), *report and recommendation adopted*, No. 24-cv-4290, 2025 WL 1886005 (S.D. Tex. July 8, 2025) ("[T]his is a hybrid suit implicating both the Jones Act and OCSLA. In such a case, the non-removable Jones Act claims should be severed and remanded, but pursuant to OCSLA, this Court should retain jurisdiction over [the] general maritime claims."); *McDonald v. Enermech Mech. Servs., Inc.*, No. 4:23-cv-0126, 2023 WL 4109786, at *5 (S.D. Tex. May 30, 2023), *report and recommendation adopted*, No. 4:23-cv-0126, 2023 WL 4110090 (S.D. Tex. June 20, 2023) (retaining jurisdiction over plaintiff's maintenance and cure claim under OCSLA and severing and remanding Jones Act claim); *Ashcraft v. Cantium, LLC*, No. 22-cv-329, 2022 WL 4581053, at *7 (M.D. La. Sept. 7, 2022), *report and recommendation adopted*, No. 22-cv-329, 2022 WL 4543187 (M.D. La. Sept. 28, 2022) ("Based on the allegations in the Petition, this is a 'hybrid' case involving both OCSLA claims and Jones Act claims. Accordingly, the Court must sever and remand the non-removable Jones Act claims brought against Alliance.") (citing 28 U.S.C. § 1441(c)); *Peralta v. Supreme Offshore Servs., Inc.*, 767 F. Supp. 3d 348, 356 (E.D. La. 2025) ("[W]hen presented with cases that include a nonremovable Jones Act claim as well as claims that fall within the court's jurisdiction under OCSLA, courts have found that removal is proper pursuant to § 1441(c)(1), but that the mandatory language of § 1441(c)(2) requires the Jones Act claim to be severed from the action and remanded to the state court from which it was removed.") (collecting cases); *Landerman v. Tarpon Operating & Dev., L.L.C.*, 19 F. Supp. 3d 678, 682 (E.D. La. 2014) (retaining jurisdiction over case under OCSLA, but severing and remanding Jones Act claim); *Shultz v. Hercules Offshore, Inc.*, No.

1:14-cv-188, 2014 WL 2041282, at *2 (E.D. Tex. May 15, 2014) ("[E]ven if maritime law claims brought in state court do not 'arise under' a federal statute so as to permit removal under § 1441, they can be removed if they arise under OCSLA.").

Plaintiff also points the Court to *Santee v. Oceaneering Int'l, Inc.*, 110 F.4th 800 (5th Cir. 2024). (*See* ECF No. 37 at 7). In *Santee*, the Fifth Circuit identified an error in the district court's seaman status determination and concluded the case was improperly removed. *Santee*, 110 F.4th at 808 ("Where the removing defendants fail to demonstrate that a plaintiff has fraudulently pleaded his Jones Act claim, the matter must be remanded back to state court."). However, the *Santee* decision does not address whether courts facing "hybrid" cases may sever and remand a Jones Act claim, while retaining jurisdiction over OCSLA claims.

As such, for these reasons, and the reasons provided in the Court's previous Memorandum and Recommendation (ECF No. 19), the Court recommends Plaintiff's Renewed Motion to Remand (ECF No. 37) be denied.

b. <u>Plaintiff's Motions to Continue (ECF Nos. 39–40)</u>

On February 28, 2025, Defendant filed a motion for partial summary judgment as to punitive damages on Plaintiff's maintenance and cure claim. (ECF No. 32). Plaintiff's response to the motion was due on March 21, 2025. (*See* ECF No. 40 at 4). At 6:22 p.m. on the day of the deadline, Plaintiff filed an opposed motion to continue his deadline to respond to Defendant's motion for summary judgment. (*Id.* at 1).

Similarly, on February 28, 2025, Defendant filed a motion to exclude or limit the testimony of Plaintiff's experts. (ECF No. 33). Plaintiff's response to the motion was due on March 21, 2025. (*See* ECF No. 39 at 4). At 6:17 p.m. on the day of the deadline, Plaintiff filed an opposed motion to continue his deadline to respond to Defendant's motion to exclude. (*Id.* at 1).

In his motions to continue, Plaintiff asked this Court to continue his deadline to respond to Defendant's motions until after the resolution of Plaintiff's renewed motion to remand, arguing the issue of subject-matter jurisdiction should be addressed first. (ECF No. 39 at 3; ECF No. 40 at 3). In his motion to continue the deadline for his summary judgment response, Plaintiff also relies on Rule 56(d) and contends he cannot present facts essential to oppose Defendant's motion while jurisdictional issues remain unresolved. (ECF No. 40 at 5).

In response, Defendant argues the Court already considered the issue of subject-matter jurisdiction by ruling on Plaintiff's prior motion to remand and Plaintiff rehashing an argument that has already been considered and rejected should not prevent this Court from ruling on other motions. (ECF No. 44 at 3–4; ECF No. 45 at 3–4). The Court agrees with Defendant. *See Carriere v. Sears, Roebuck & Co.*, 893 F.2d 98, 102 (5th Cir. 1990) ("The plaintiffs were not, however, entitled to have the trial judge rule on the motions in any particular order. Therefore, the fact that a motion for remand was pending does not excuse failing to pursue discovery diligently. Under these circumstances, the district court did not abuse its discretion in denying the plaintiffs a further continuance.").

Further, when seeking a continuance regarding a motion for summary judgment, the applicable rule is Rule 56(d). Pursuant to Rule 56(d), the opposing party must file a motion, along with an affidavit or declaration, setting forth why the opposing party cannot present by affidavit or declaration facts necessary to justify the party's opposition to the summary judgment motion. FED. R. CIV. P. 56(d); *see also Access Telecom, Inc. v. MCI Telecommunications Corp.*, 197 F.3d 694, 719 (5th Cir. 1999). The Rule 56(d) motion must "set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion." *Raby v. Livingston*, 600 F.3d 552, 561 (5th Cir. 2010) (internal quotations omitted).

Here, Plaintiff's motion attaches an affidavit by his counsel, John G. Grinnan, Jr., that simply states Plaintiff cannot present facts essential to justify his opposition to Defendant's motion for summary judgment while subject-matter jurisdiction remains unresolved. (*See* ECF No. 40-1 at ¶ 3).

Neither the motion nor affidavit meets the level of specificity required by the Rule 56(d) standard. *See Windsor v. Olson*, No. 3:16-cv-934, 2019 WL 2075584, at *6 (N.D. Tex. May 10, 2019). Plaintiff fails to identify specific documents that are necessary to oppose Defendant's motion, and Plaintiff's bare-bones and vague assertions are insufficient. *Id.* Further, Plaintiff does not explain the dilatory nature of his motion, filed on the day his response to the summary judgment motion was due. *See id.* As such, Plaintiff's Motions to Continue (ECF Nos. 39–40) are denied. *See id.*; *see also Krim v. BancTexas Grp., Inc.*, 989 F.2d 1435, 1442–43 (5th Cir. 1993) (citing *Carriere*, 893 F.2d at 102).

c. Defendant's Motion for Partial Summary Judgment (ECF No. 32)

Defendant moves for summary judgment as to punitive damages on Plaintiff's maintenance and cure claim, arguing there is no evidence Defendant disregarded its maintenance and cure obligation. (ECF No. 32 at 8). Plaintiff did not file a response. As such, the Court considers it as unopposed. *See* S.D. TEX. LOC. R. 7.4.

"Maintenance and cure is an old remedy under general maritime law that is implicit in the contractual relationship between the seaman and his employer and designed to assist in the recovery of a seaman upon injury or illness sustained while in the service of the ship." *Snyder v. L & M Botruc Rental, Inc.*, 924 F. Supp. 2d 728, 733 (E.D. La. 2013) (citing *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979)). "Maintenance is a per diem living allowance for food and lodging comparable to what the seaman is entitled to while at sea; cure is payment of medical expenses incurred in treating the seaman's injury or illness." *Vaughn v. Am. Com. Barge Line, LLC*, 672 F. Supp. 3d 184, 189 (E.D. La. 2023). The ship owner's duty to pay maintenance and cure continues until the seaman reaches the point of maximum medical recovery, also known as maximum medical improvement. *Id.*

"It is well-settled that a ship-owner who arbitrarily and capriciously denies maintenance and cure to an injured seaman is liable to him for punitive damages and attorney's fees." *Breese v. AWI, Inc.*, 823 F.2d 100, 103 (5th Cir. 1987) (internal quotations omitted). "No bright line separates the type of conduct that properly grounds an award of punitive damages—a ship-owner's willful and callous default in its duty of investigating claims and providing maintenance and cure—from the type of conduct that does not support a punitive damages award." *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 90 (5th Cir. 1984). However, examples of employer behavior that could merit punitive damages have included (1) laxness in investigating a claim; (2) termination of benefits in response to the seaman's retention of counsel or refusal of a settlement offer; and (3) failure to reinstate benefits after diagnosis of an ailment previously not determined medically. *See Tullos v. Res. Drilling, Inc.*, 750 F.2d 380, 388 (5th Cir. 1985). Further, "the willful, wanton and callous conduct required to ground an award of punitive damages requires an element of bad faith." *Harper*, 741 F.2d at 90.

Here, Defendant argues "[t]he record lacks any evidence that [Defendant] disregarded its maintenance and cure obligation, let alone that it acted willfully and wantonly." (ECF No. 32 at 8). In fact, Defendant contends it made ongoing efforts to provide Plaintiff with maintenance and cure benefits following his injury. (*Id.*). For support, Defendant relies on a declaration from a claims administrator for Defendant's workers' compensation benefits who states Defendant has paid Plaintiff "maintenance in the amount of $761.13 per week since the incident." (ECF No. 32-7 at ¶ 4). Defendant also cites to an Excel spreadsheet of all maintenance and cure payments made to Plaintiff beginning as early as May 8, 2023. (ECF No. 32-2).

Further, Defendant argues the evidence shows its payments and ongoing efforts to ensure its obligations are met. (ECF No. 32 at 8). Defendant provides evidence that it notified its workers' compensation claims administrator of Plaintiff's injury and provided Plaintiff with written instructions on how to access his benefits within days of the incident. (*See* ECF No. 32-1). After receiving a demand for medical expenses in February 2025, Defendant confirmed, in a letter to Plaintiff's counsel, that Defendant had paid certain medical bills at issue, was in the process of paying others, and noted certain invoices that indicated a zero balance. (*See* ECF No. 32-6). Defendant also requested Plaintiff provide documentation supporting any disputed outstanding amounts; however, Defendant states Plaintiff did not provide any such documents. (*See* ECF No. 32 at 9). As such, Defendant argues these "ongoing efforts demonstrate good faith, not the willful and wanton misconduct required for punitive damages." (*Id.*).

The Court agrees with Defendant. The evidence in the record does not demonstrate Defendant unreasonably, much less arbitrarily and capriciously, refused to pay maintenance and cure. *See Robinson v. Ergon, Inc.*, No. 17-cv-6906, 2018 WL 3368883, at *3 (E.D. La. July 10, 2018) (granting summary judgment where the plaintiff did not cite to evidence that he either requested the ship-owner reinstate maintenance and cure, or that the ship-owner refused to reinstate maintenance and cure despite being aware of a certain doctor's statement); *see also Bosarge v. Cheramie Marine LLC*, 121 F. Supp. 3d 599, 605–06 (E.D. La. 2015) (denying the defendant's motion for partial summary judgment on plaintiff's claim for punitive damages where the defendant refused to reinstate maintenance and cure despite a second doctor's opinion and where the plaintiff had made repeated demands for maintenance and cure). The bad faith required to justify an award of punitive damages is absent from this case. *See Smith v. Basic Marine Servs., Inc.*, 964 F. Supp. 2d 597, 608 (E.D. La. 2013), *aff'd*, 571 F. App'x 342 (5th Cir. 2014) ("Certainly, a seaman is entitled to seek punitive damages for his employer's alleged willful and wanton disregard of its maintenance and cure obligation. . . . The record, however, confirms that [the ship-owner] has honored its maintenance and cure obligation.").

As such, finding there is no genuine issue of material fact regarding the punitive damages on Plaintiff's maintenance and cure claim, the Court recommends Defendant's motion for summary judgment (ECF No. 32) be granted.

d. Defendant's Motion to Exclude (ECF No. 33)

Defendant filed a motion to exclude or limit the testimony of three of Plaintiff's designated experts, John Puskar ("Puskar"), Joe Thompson ("Thompson"), and Jeffrey Perlstein ("Perlstein"). (ECF No. 33 at 1). First, Defendant argues testimony by Puskar, Thompson, and Perlstein relating to negligence or fault should be excluded under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) because it does not relate to any issue in this case and is, thus, unhelpful to the trier of fact. (*Id.* at 6). Second, Defendant argues the remaining portion of Perlstein's opinion on "seaman" status should be excluded as unreliable and improper *ipse dixit* that is not supported by any objective or reliable methodology. (*Id.* at 7). Plaintiff did not file a response. As such, the Court considers it as unopposed. *See* S.D. TEX. LOC. R. 7.4.

Federal Rule of Evidence 702 governs the admissibility of expert testimony. *See Simpson v. James*, 903 F.2d 372, 378 n.20 (5th Cir. 1990). Federal Rule of Evidence Rule 702 states:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

"Under [Federal] Rule [of Evidence] 702, the court must determine whether the proposed expert witness has training or experience, and will offer opinions, sufficiently related to the issues and evidence before the court for the expert's testimony to assist the trier of fact." *Flores v. Harris*, No. 4:17-cv-3817, 2019 WL 1426313, at *11 (S.D. Tex. Mar. 29, 2019). The court must also make a "preliminary assessment of whether that reasoning or methodology underlying the testimony is scientifically valid and of whether the reasoning or methodology can be applied to the facts at issue." *Skidmore v. Precision Printing & Packaging, Inc.*, 188 F.3d 606, 617 (5th Cir. 1999) (quoting *Daubert*, 509 U.S. 592–93).

When a *Daubert* challenge is made to the testimony of a proposed expert, "a district court must create a record of its *Daubert* inquiry and articulate its basis for admitting expert testimony." *Carlson v. Bioremedi Therapeutic Sys.*, Inc., 822 F.3d 194, 201 (5th Cir. 2016) (internal quotations omitted). The court's gatekeeping role, ensuring that testimony is relevant and reliable, extends to all expert testimony, whether scientific or not. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). Under Federal Rule of Evidence 702, the Court must consider three primary requirements in determining the admissibility of expert testimony: 1) qualifications of the expert witness; 2) relevance of the testimony; and 3) reliability of the principles and methodology upon which the testimony is based.

i. Liability and Fault

Defendant first argues any testimony by Puskar, Thompson, and Perlstein relating to negligence or fault should be excluded under Federal Rule of Evidence 702 and *Daubert* because it does not relate to any issue in this case and is, thus, unhelpful to the trier of fact. (ECF No. 33 at 6).

In this case, Plaintiff's sole claim against Defendant is for an alleged failure to pay maintenance and cure. "The obligation to pay maintenance and cure is independent of tort law, and the shipowner's duty to pay is not affected by the injured seaman's own negligence." *Boudreaux v. United States*, 280 F.3d 461, 468 (5th Cir. 2002) (citing *Bertram v. Freeport McMoran, Inc.*, 35 F.3d 1008, 1013 (5th Cir. 1994)). "Thus, the obligation to provide this compensation does not depend on any determination of fault, but rather, is treated as an implied term of the contract for maritime employment." *Semien v. Parker Drilling Offshore USA LLC*, 179 F. Supp. 3d 687, 697 (W.D. La. 2016).

As to Puskar's report, he describes his report as follows:

> This document identifies failures on Halliburton's part in its facilities, processes, corporate governance, and supervision related to the work instructions and circumstances surrounding the injury of its employee, Landon Perry. This investigation also provides evidence of Halliburton's failures to comply with its own internal workplace safety standards, nationally recognized safety codes and standards, and requirements Halliburton created and published related to its own chemicals to keep its workers like Mr. Perry safe.

(ECF No. 33-2 at 3). Puskar also summarizes his conclusions and opinions as (1) "Halliburton's consistent and systematic process safety management and corporate governance failures were a direct cause of this incident and Mr. Perry's injuries;" (2) "Halliburton failed to comply with nationally recognized codes and standards and its own internal standards related to chemical safety;" (3) "Halliburton failed to provide workers and supervisors with the required training in accordance with its published policies and program standards;" and (4) "Halliburton failed to provide for basic protections required in their own SDSs and technical bulletins." (*Id.* at 3–5).

As to Thompson's report, he states he was asked to "provide an opinion on the workplace health and safety aspects" of the incident. (ECF No. 33-3 at 3). Thompson summarizes a few of his findings as follows:

- Halliburton failed to ensure the daily work plan was risk assessed by means of revising the JSA to account for potential hazards related to mixing chemicals.

- Halliburton failed to ensure the employees assigned to the MV SSIII were properly trained to understand the recognized risks associated with the chemicals they would be mixing.

- Halliburton failed to ensure the employees engaged chemical mixing had the correct PPE in the unplanned event of exposure to chemicals.

- Halliburton failed to conduct an eye wash station assessment of all their chemical mixing areas at the HES Port Fourchon Yard 3.

- Halliburton failed to provide Service Supervisor with a loadout sheet that lists the order in which chemicals were to be mixed to avoid unplanned chemical reactivity of Fe-1A and Fe-10.

(*Id.* at 5).

As to Perlstein's report, he provides the following opinions and conclusions:

> Halliburton failed to ensure the 5,400-gallon tank delivered for the mixing of chemicals contained the required 4,271 Base Fluid Fresh Water.
>
> Halliburton Energy Services, Inc failed to ensure their supervisory personnel understood the requirement to utilize the Safety Data Sheet to recognize the hazards associated with the products they are to handle or mix.
>
> Halliburton Energy Services, Inc failed to have a policy in place for the Job Safety Analysis which do not address the specifics of the job to be performed, which fails to identify any risks or hazards associated with an upcoming handling of a chemical product.
>
> Halliburton Energy Services, Inc failed to ensure their supervisory personnel understand and practice, that when loading a product which has the potential to react violently with water as to become

> exothermic, that the tank should be first checked to ensure it has the required quantity of water for the chemical to be introduced. Had this tank been sounded to ensure it contained the proper quantity of water this entire incident which so profoundly injured Mr. Perry could have been entirely avoided.
>
> Halliburton Energy Services, Inc. failed to enact mandatory OSHA federal requirements for training of personnel in a written hazard communication program, forms of warning, Safety Data Sheets and employee information.

(ECF No. 33-1 at 9–10).

Defendant argues "the testimony of Puskar and Thompson relates solely to issues of liability and fault, and the same is true for Perlstein, other than his brief references to 'seaman' status." (ECF No. 33 at 6). Having reviewed the three expert reports, the Court agrees. As discussed, a seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel applies regardless of whether the shipowner was at fault. *See Adriatic Marine, LLC v. Harrington*, 442 F. Supp. 3d 929, 935 (E.D. La. 2020), *aff'd sub nom. Adriatic Marine, L.L.C. v. Harrington*, 834 F. App'x 124 (5th Cir. 2021). As such, the Court agrees with Defendant that testimony by Puskar, Thompson, and Perlstein relating to negligence or fault is not relevant to Plaintiff's maintenance and cure claim and should be excluded.

ii. "Seaman" Status

Defendant also argues the remainder of Perlstein's report, regarding whether Plaintiff was a "seaman," should be excluded as unreliable and improper *ipse dixit* that is not supported by any objective or reliable methodology. (ECF No. 33 at 7).

First, Defendant argues the basis of Perlstein's opinion on seaman status is unclear. (*Id.* at 8). Citing to Perlstein's deposition testimony for support, Defendant explains Perlstein originally represented that he had a conversation with Plaintiff regarding this case. (*Id.* at 8–9 (citing ECF No. 33-4 at 27–28, 38–39)). However, later in the deposition, Perlstein admitted he never had a conversation with Plaintiff and claimed the information upon which he based his opinion that Plaintiff is a seaman came from Plaintiff's deposition testimony. (*Id.* at 9–10 (citing ECF No. 33-4 at 122–24)).

Defendant then points out that Perlstein's report was dated and signed on June 25, 2024; however, Plaintiff's deposition took place two months later on August 30, 2024. (*Id.* at 10–11 (citing ECF No. 33-1 at 10; ECF No. 33-5 at 1)). Given Perlstein's report was finalized approximately two months before Plaintiff's deposition took place, Defendant argues it is impossible for Perlstein to have relied upon Plaintiff's deposition testimony in creating his opinion. (*Id.* at 10). The Court agrees; however, "questions related to the bases and sources of an expert's opinion go to the weight to be assigned to it, rather than its admissibility." *Vallecillo v. McDermott, Inc.*, 576 F. Supp. 3d 420, 424 (W.D. La. 2021) (citing *Puga v. RCX Sols., Inc.*, 922 F.3d 285, 294 (5th Cir. 2019)). As such, Defendant's questions related to the bases of Perlstein's opinion should be left for the jury's consideration. *See United States v. Hodge*, 933 F.3d 468, 478 (5th Cir. 2019), *as revised* (Aug. 9, 2019).

Second, Defendant argues Perlstein's methodology is "similarly vague." (ECF No. 33 at 11). Perlstein's report states he "used the scientific method to form a hypothesis." (ECF No. 33-1 at 12). However, when questioned on the scientific method, Perlstein stated it was his own definition of "scientific." (*See* ECF No. 33-4 at 144).

In determining whether a proffered expert's testimony is reliable, the Court must assess whether the expert's reasoning and methodology underlying the testimony are valid. *Wade v. BP Expl. & Prod., Inc.*, 630 F. Supp. 3d 776, 782 (E.D. La. 2022). The Court may consider several nonexclusive factors in determining reliability, including: (1) whether the technique has been tested, (2) whether the technique has been subject to peer review and publication, (3) the technique's potential error rate, (4) the existence and maintenance of standards controlling the technique's operation, and (5) whether the technique is generally accepted in the relevant scientific community. *Burleson v. Tex. Dep't of Crim. Just.*, 393 F.3d 577, 584 (5th Cir. 2004). "The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." *Daubert*, 509 U.S. at 595.

Important here, "[t]he burden is on the proponent of the expert testimony to establish its admissibility by a preponderance of the evidence." *Robles v.*

Eminent Med. Ctr., 619 F. Supp. 3d 609, 647 (N.D. Tex. 2022) (citing *Daubert*, 509 U.S. at 592 n.10; *Johnson v. Arkema, Inc.*, 685 F.3d 452, 459 (5th Cir. 2012)); *see Sandifer v. Hoyt Archery, Inc.*, 907 F.3d 802, 809 (5th Cir. 2018) ("The proponent need not prove to the judge that the expert's testimony is correct, but she must prove by a preponderance of the evidence that the testimony is reliable."). Thus, by failing to file a response to Defendant's motion to exclude, Plaintiff has failed to meet its burden to show Perlstein's seaman status opinion is based on a sufficiently reliable methodology such that it should go before a jury. *See Gerukos v. Select Portfolio Servicing, Inc.*, No. 15-cv-0321, 2016 WL 9083354, at *1 (S.D. Tex. May 27, 2016) (granting motions to exclude expert reports due to the nonmovant's failure to respond and the movant's arguments); *Texokan Operating, Inc. v. Hess Corp.*, 89 F. Supp. 3d 903, 910 (S.D. Tex. 2015) ("Plaintiffs do not direct the Court to any evidence that Rothrock's methodology has been subjected to testing.").

As such, the Court grants Defendant's Motion to Exclude (ECF No. 33).

e. <u>Plaintiff's Motion to Strike (ECF No. 35)</u>

Plaintiff filed a motion to strike the supplemental expert report of Erik Oberlin produced on January 31, 2025 (the "Oberlin Supplemental Report"). (ECF No. 35 at 1).

First, Plaintiff argues the Oberlin Supplemental Report is untimely as an initial report. (*Id.* at 5). This is not disputed as Defendant agrees the

Oberlin Supplemental Report was, in fact, a supplemental report. (ECF No. 38 at 2).

Second, Plaintiff argues the Oberlin Supplemental Report is not a supplement because the report contains entirely new conclusions and theories over six months after the deadline set by the Court's Scheduling Order. (ECF No. 35 at 5). Thus, Plaintiff contends the Oberlin Supplemental Report is "an entirely new report." (*Id.*).

Rule 26(a)(2)(B) requires a party's disclosure of its testifying expert be accompanied by an initial written report, prepared and signed by the expert. FED. R. CIV. P. 26(a)(2)(B). Among other things, this written report must contain "a complete statement of all opinions the witness will express and the basis and reasons for them." FED. R. CIV. P. 26(a)(2)(B)(i).

Supplemental expert reports are governed by Rule 26(e). FED. R. CIV. P. 26(a)(2)(E); *In re Complaint of C.F. Bean LLC*, 841 F.3d 365, 371 (5th Cir. 2016). A party "must supplement or correct" its expert's initial report "if the party learns that in some material respect the [previous] disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the parties." FED. R. CIV. P. 26(e)(1)(A); *Hernandez v. Results Staffing, Inc.*, 907 F.3d 354, 361 (5th Cir. 2018). Parties must make these supplemental disclosures at least thirty days before trial. *C.F. Bean*, 841 F.3d at 371; FED. R. CIV. P. 26(a)(3). A party that fails to provide required expert information within the time set by Rule 26(a) or (e) "is not allowed to use that information . . . at trial, unless the failure was substantially justified or is harmless." FED. R. CIV. P. 37(c)(1).

The Rules do not define what constitutes a supplemental expert report. Consequently, "the line between supplemental opinions and new opinions is not always clear, and the decision regarding how to make the distinction . . . depends on the facts of the case." *Charles v. Sanchez*, No. 13-cv-193, 2015 WL 808417, at *8 (W.D. Tex. Feb. 24, 2015) (internal quotations omitted). A supplemental report, however, "necessarily contains information . . . not expressed in the original report, or there would be no need to supplement." *Gilbane Bldg. Co. v. Downers Grove Cmty. High Sch. Dist. No. 99*, No. 02-cv-2260, 2005 WL 838679, at *8 (N.D. Ill. Apr. 5, 2005). "This is not to say that supplemental reports provide a back-door means for parties to extend their expert designation and report production deadline." *Charter Sch. Sols. v. GuideOne Mut. Ins. Co.*, No. 18-cv-61, 2019 WL 5258055, at *2 (W.D. Tex. June 28, 2019) (citing *Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 324 (5th Cir. 1998)). Instead, "[t]he purpose of supplementary disclosures is just that—to supplement." *Metro Ford*, 145 F.3d at 324.

Here, the Court finds the Oberlin Supplemental Report is merely a supplement, and not a new report with new opinions. *See Charles*, 2015 WL 808417, at *8. Plaintiff states "the Oberlin Supplemental Report broadly opines that 'Mr. Perry in no way should have been considered a member of the SS3 marine or engineering crew.'" (ECF No. 35 at 6 (citing ECF No. 35-3 at 3)). Plaintiff contends this opinion, and the reasons provided in support, were not in Oberlin's initial report. (*Id.*). Defendant disagrees, citing multiple occasions in Oberlin's initial report where Oberlin opined about the marine crew. (ECF No. 38 at 8 (citing ECF No. 35-3 at 9)). A comparison of Oberlin's initial report with the Oberlin Supplemental Report confirms the initial report is "detailed and complete," and that the additional comments simply "supplements" Oberlin's initial report. *See Metro Ford*, 145 F.3d at 324; *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 571 (5th Cir. 1996). The additional information did not cause Oberlin to change his opinion about the marine crew.

Because the Oberlin Supplemental Report is properly considered a "supplement" to Oberlin's initial report, its timeliness is judged under Rule 26(e). *See C.F. Bean*, 841 F.3d at 371; *Charles*, 2015 WL 808417, at *8; FED. R. CIV. P. 26(a)(2)(E). Supplements must be disclosed at least thirty days before trial. *C.F. Bean*, 841 F.3d at 371; FED. R. CIV. P. 26(a)(3), (e). Because the Oberlin Supplemental Report was produced on January 31, 2025 (ECF No. 35 at 1) and the trial date has been vacated (ECF No. 46), the report was timely under Rule 26(e).[3] *See C.F. Bean*, 841 F.3d at 371; *Charles*, 2015 WL 808417, at *8. As such, Plaintiff's Motion to Strike (ECF No. 35) is denied. *See C.F. Bean*, 841 F.3d at 371; *Charles*, 2015 WL 808417, at *8.

IV. Conclusion

Based on the foregoing, the Court **RECOMMENDS** Defendant's Motion for Partial Summary Judgment (ECF No. 32) be **GRANTED** and Plaintiff's Renewed Motion to Remand (ECF No. 37) be **DENIED**. Further, the Court **GRANTS** Defendant's Motion to Exclude (ECF No. 33) and **DENIES** Plaintiff's Motion to Strike (ECF No. 35) and Opposed Motions to Continue (ECF Nos. 39–40).

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

SIGNED in Houston, Texas on August 18, 2025.

Richard W. Bennett
United States Magistrate Judge

[3] The Court notes the Oberlin Supplemental Report would have also been timely under the original trial date of June 30, 2025. (*See* ECF No. 12).