

**CIVIL DICTRICT COURT**

**PARISH OF ORLEANS**

**STATE OF LOUISIANA**

**LESTER ANSARDI,  
INDIVIDUALLY, AND ON BEHALF  
OF ALL OTHERS SIMILARLY SITUATED**

**SUIT NO.**\_\_\_\_\_

**PLAINTIFF**

**VERSUS**

**UNITED STATES  
MARITIME SERVICES, INC.,  
UNITED STATES  
MARITIME SERVICES, LLC, and  
UNITED STATES ENVIRONMENTAL  
SERVICES, LLC**

**DEFENDANTS**

**DIVISION:**\_\_\_\_\_

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**CLASS ACTION PETITION**

Plaintiff, Lester Ansardi (hereinafter "Plaintiff), brings this action individually, and on behalf of the Class of persons defined below, against Defendants, United States Maritime Services Inc., United States Maritime Services, LLC, and United States Environmental Services, LLC. Plaintiff alleges the following on information and belief, formed after a reasonable inquiry under the circumstances.

**PARTIES**

1. Plaintiff Lester Ansardi was at all times material hereto a resident of St. Bernard Parish, State of Louisiana. Plaintiff has suffered injury in fact as a result of Defendants' conduct.
2. Defendant United States Maritime Services, Inc., is a domestic business licensed to do business in the State of Louisiana. Its principle place of business is in New Orleans, Orleans Parish, Louisiana.
3. Defendant United States Maritime Services, LLC is a domestic business operating in the State of Louisiana. Its principle place of business is in New Orleans, Orleans Parish, Louisiana.
4. Defendant United States Environmental Services, LLC is a domestic business licensed to do business in the State of Louisiana. Its principle place of business is in New Orleans, Orleans Parish, Louisiana.
5. Upon information and belief, United States Maritime Services, Inc., and United States Maritime Services, LLC are one and the same business. No registration exists with the Louisiana

Secretary of State for United States Maritime Services, LLC. However, United States Maritime Services, LLC entered into agreements with the Plaintiff and putative Class members.

6. Upon information and belief, United States Environmental Services, LLC operates as the same business as United States Maritime Services, Inc. with identical ownership, but is registered as a separate entity.

7. Venue is proper within this district in that Defendants are Louisiana operated businesses, Defendants conducted business in Louisiana and in this district, the vessel at issue was located in Louisiana, the damages were incurred within Louisiana, and the Agreement at issue includes a choice of law provision indicating that any litigation arising out of or relating to the Agreement may be brought in a court of competent jurisdiction in New Orleans, Louisiana.

### **FACTUAL ALLEGATIONS**

8. Defendant companies are engaged to do business in the State of Louisiana.

9. Plaintiff and the putative Class members entered into contractual agreements with the Defendant companies for the purpose of providing use of Plaintiff's and the Class members' vessels during the aftermath of the BP oil spill.

10. Defendant companies breached the term of the agreements with Plaintiff and the putative Class by failing to adequately pay Plaintiff and the Class members the full amount due under the contractual agreements.

11. On June 10, 2010, Defendants entered into a Master Vessel Charter Agreement (the "Agreement") with Plaintiff Lester Ansardi. The Agreement is designated as Agreement B0367988.1.

12. Pursuant to the terms and conditions of Plaintiff's Agreement, the term of the Agreement (defined as the "Charter Term") commenced on the date of the departure of the Plaintiff's vessel from a mutually agreed location of delivery.

13. Pursuant to the terms and conditions of the Agreement, the termination of the Charter Term is determined by the time the Plaintiff's vessel is secure in its moorings at the original point of delivery after final decontamination after an oil spill response.

14. Pursuant to the terms and conditions of the Agreement, Plaintiff's vessel was to be available for Defendants' disposal twenty-four (24) hours per day within the Charter Term.

15. Pursuant to the terms and conditions of the Agreement, Plaintiff's vessel was not to be used for any purpose, during the Charter Term, other than performance of services defined in the Agreement.

16. Defendants were obligated to pay specified amounts, vessel pay and Captain's pay to Plaintiff for each "day" within the Charter Term, based on the provisions in the Agreement and its attached exhibits.

17. Over the course of several months following commencement of the Agreement, Plaintiff complied with the terms of the Agreement, and Defendants hired Plaintiff and Plaintiff's vessel for use in an oil spill response.

18. Plaintiff's vessel received a verification of final decontamination from the United States Coast Guard on November 2, 2010.

19. On November 29, 2010, Defendants entered into a Notice of Termination of Charter with Plaintiff Lester Ansardi.

20. Defendants failed to pay Plaintiff, as provided for in the Agreement, for each "day" within the Charter Term.

21. Pursuant to the terms and conditions of Plaintiff's Agreement, Defendants were required to pay Plaintiff for each day within the Charter Term, with such Charter Term not being terminated until the Plaintiff's vessel was secure in its moorings at the original point of delivery AND after final decontamination.

22. Despite its obligation, Defendants incorrectly paid Plaintiff based only on the actual number of days that Plaintiff's vessel was in physical use, and not for each day during the Charter Term.

23. In failing to pay Plaintiff and the putative Class members in accordance with the Agreement, to include the per diem pay per vessel and per diem pay for Captain's wages, Defendants breached their contract with the Plaintiff and the members of the Class in a common and uniform manner, and instituted a policy of not paying the full amounts due Plaintiff and the Class.

24. Upon information and belief, Defendants followed a standard and regular practice of paying Plaintiff and Class members based only on the actual number of days that Plaintiff's and Class members' vessels were in physical use, and not for each day during the time within which the Charter Term was in effect.

25. As a result of Defendants' actions, Plaintiff and the members of the Class received less amounts than they were entitled, and Defendants experienced higher profits at the expense of the Plaintiff and the members of the Class.

26. Defendants are estopped from arguing an interpretation of the Charter Term that is different from the language in the Agreement.

## CLASS REPRESENTATION ALLEGATIONS

27. Plaintiff is entitled to have this case maintained as a class action, pursuant to Louisiana Code of Civil Procedure, Article 591, *et seq.* The proposed class is defined at this time, but is subject to modification as additional facts are obtained in discovery, as follows:

All individuals and entities in Louisiana who contracted with United States Maritime Services, Inc., United States Maritime Services, LLC, or United States Environmental Services, LLC on or after April 2010 through a Master Vessel Charter Agreement allowing United States Maritime Services, Inc., United States Maritime Services, LLC, or United States Environmental Services, LLC, to hire their vessel for employment during an oil spill response.

28. Excluded from the Class are the Defendants, their owners, officers, directors, subsidiaries, and any person or other entity related to, affiliated with, or employed by Defendants.

29. Plaintiff is entitled to have this cause of action maintained as a class action, pursuant to Louisiana Code of Civil Procedure article 591, *et seq.*, for the following non-exclusive reasons:

- (a) The persons and entities constituting the Class are so numerous, in excess of 500, that individual joinder of all parties is impracticable;
- (b) The named plaintiff is representative of the plaintiff Class members and is so situated to provide adequate representation for the unnamed plaintiff Class members;
- (c) Plaintiff's claims are similar in nature and typical of the claims of each Class member. The claim of the named representative Plaintiff is typical of the claims of the Class members that he represents, in that they were not fully apprised of their rights and entitlements regarding the Defendants' obligation to provide Plaintiff and the Class members with amounts equal to the terms set forth in the Agreement;
- (d) The great majority of the unnamed plaintiff Class members have no substantial interest in individually controlling the prosecution of their separate actions;
- (e) There are common questions and issues of law and fact involved in this matter which predominate over questions affecting individual Class members;
- (f) Any defenses or theories of resistance to liability set forth by the Defendants would be applicable to all claims presented by members of the plaintiff Class; and,
- (g) The prosecution of separate actions by individual plaintiff Class members will create a serious risk of inconsistent or varying adjudication which may prejudicially affect the claims of the other Class members and subsequent litigation.

30. The class action is a superior procedural vehicle for this litigation because the primary objective of the class action, economies of time, effort and expense, will be achieved and the class action may be more easily managed than some other procedural vehicle considering the opportunity to afford reasonable notice of significant phases of the litigation.

31. The claims or defenses of the representative parties are typical of the claims or defenses applicable to the Class.

32. Plaintiff has retained counsel who are competent in the prosecution of this type of litigation.

33. There are common questions of law and fact that predominate over any questions affecting only individual Class members. Said common questions include, but are not limited to, the following:

- (a) Whether Defendants have systematically refused and/or failed to pay the proper amounts due under the agreements entered by Plaintiff and the putative Class members;
- (b) Whether the Agreement provides that Plaintiff was to be paid for each day within the Charter Term;
- (c) Whether the Agreement unambiguously provides that Plaintiff's vessel and Captain's pay shall be based on actual number of days between the date of departure of the vessel until the date of termination of the "Charter Term," rather than the actual number of days that Plaintiff's vessel was in physical use;
- (d) Whether the Agreement unambiguously provides that the Plaintiff's vessel shall be available at Defendants' disposal for operation twenty-four (24) hours per day throughout the Charter Term.
- (e) Whether the Agreement unambiguously provides that the Plaintiff's vessel shall not be used for any purpose other than performance of services defined under the Agreement during the Charter Term.
- (f) Whether Defendants' unilateral interpretation of the Agreement, upon which Plaintiff's pay was based, is contrary to Defendants' contractual obligations and implied duties of good faith and fair dealing;
- (g) Whether the Plaintiff and the Class are entitled to restitution and/or damages for amounts wrongfully denied to them;

(h) Whether Class members are entitled to a declaratory judgment, holding as a matter of law and contract, that Plaintiff's pay for use of his vessel and for performance as a Captain of the vessel shall be made for each day within the entire Charter Term, as opposed to the amounts paid to said Plaintiff and Class;

(i) Whether Plaintiff and the Class members are entitled to reasonable attorney fees, court costs and reasonable expenses associated with the filing of this litigation.

34. Because of the size of some of the individual Class member's claims, few Class members could afford to seek legal action for the wrongs complained of herein.

35. Notice may be given by a combination of mailed and published notice, and such notice is properly paid for by Defendants.

### **FIRST CAUSE OF ACTION**

#### **(Breach of Contract)**

36. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

37. Plaintiff's Agreement, as presented by Defendants, states within its terms and conditions that Defendants are required to pay certain amounts to Plaintiff, based on the number of days within the Charter Term.

38. Plaintiff satisfied his obligations under the Agreement by making his vessel available, twenty-four (24) hours per day, to Defendants, and by not using his vessel for any purpose other than performance of services for Defendants during the Charter Term.

39. By failing to pay Plaintiff and the putative Class members for each day within the Charter Term, Defendants breached their Agreement with the Plaintiff and breached the Agreements of the members of the Class.

40. As a result of Defendants' breach of its contracts, Plaintiff and the members of the Class have suffered damages, and continue to suffer substantial damages, entitling them to an award of damages, costs, interest and attorneys' fees as permitted by applicable law.

### **SECOND CAUSE OF ACTION**

#### **(Declaratory and Injunctive Relief)**

41. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

42. Plaintiff and the members of the Class aver that they are entitled to: (1) declaratory relief holding that the language in the Agreements requires Defendants to pay Plaintiff and the Class members for each day within the “Charter Term,” as compared to amounts paid by Defendants for only actual days the vessels were in physical use; (2) injunctive relief ordering that Defendants cease committing the wrongful acts complained of herein; and, (3) restitution to Plaintiff and the Class members who received less than the amount of pay to which they were properly entitled as a result of Defendants’ incorrect interpretation of their own Agreements.

**DEMAND FOR JURY TRIAL**

Plaintiff prays for a trial by jury on all issues.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Lester Ansardi, prays that Defendants, United States Maritime Services, Inc., United States Maritime Services, LLC, and United States Environmental Services, LLC, be served with a copy of this Class Action Petition and be cited to appear and answer same, and after all legal delays and due proceedings had, that there be judgment entered herein as follows:

1. That this case be certified as a class action with Plaintiff serving as the class representative and Plaintiff’s counsel being named as Class Counsel;
2. That Plaintiff and members of the Class be awarded restitution and/or monetary damages as afforded by law, and where applicable;
4. That Plaintiff and the members of the Class be awarded: (1) declaratory relief holding that the language in the Agreements requires Defendants to pay Plaintiff and the Class members for each day within the “Charter Term,” as compared to amounts paid by Defendants for only actual days the vessels were in physical use; (2) injunctive relief ordering that Defendants cease committing the wrongful acts complained of herein; and, (3) restitution to Plaintiff and the Class members who received less than the amount of actual pay to which they were properly entitled as a result of Defendants’ incorrect interpretation of their own Agreements;
5. That Plaintiff and the Class be awarded the costs incurred in bringing this action, together with reasonable attorneys’ fees and expenses, including expert fees and interest; and,
6. For all other legal and equitable relief as the case may permit, and a trial by jury on all issues.

Respectfully submitted,

**PENDLEY, BAUDIN & COFFIN, L.L.P.**

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