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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

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8  
9

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF CENTRAL CALIFORNIA**  
12

13 JOSEPH M. HEALEY, )  
14 )  
Plaintiff, )  
15 )  
vs. )  
16 )  
17 TONY P. SPENCER, aka ANTHONY P. )  
SPENCER; NAOMI SPENCER; )  
18 PRESTIGE AUTOMOTIVE & MARINE, an )  
Arizona LLC, dba PRESTIGE MARINE; )  
19 DOES 1-5; and ROE CORPORATIONS )  
1-5, )  
20 )  
21 Defendants. )  
22 )

**CV09-7596AHM (DTBx)**

CASE NO.: \_\_\_\_\_

**COMPLAINT FOR  
PERSONAL INJURIES**

23 Plaintiff JOSEPH M. HEALEY, by and through counsel,  
24 JONATHAN C. REED, ESQ., REED & MANSFIELD, allege the  
25 following causes of action against the above captioned  
26 Defendants:  
27

28 RECEIVED  
CLERK, U.S. DISTRICT COURT  
OCT 19 2009  
CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

**JURISDICTION AND VENUE**

1  
2 1. This is a case of Admiralty and Maritime  
3 Jurisdiction and is a claim within the meaning of  
4 F.R.C.P. 9(h). Admiralty and Maritime Jurisdiction is  
5 based upon 28 U.S.C. Section 1331 and 28 U.S.C.  
6 Section 1333. Supplemental jurisdiction for state  
7 based claims is based upon 28 U.S.C. Section 1333 and  
8 28 U.S.C. Section 1367(a). The location of the  
9 incident was navigable, interstate waters, Lake  
10 Havasu, and the incident occurred in connection with  
11 traditional maritime activity. Defendant TONY P.  
12 SPENCER was operating a boat on Lake Havasu.  
13 Defendant PRESTIGE AUTOMOTIVE & MARINE, an Arizona  
14 LLC, dba PRESTIGE MARINE, hereinafter "PRESTIGE  
15 MARINE", was a repair operation which epitomizes  
16 maritime commerce and was closely related thereto with  
17 a nexcus to traditional maritime activity.  
18  
19  
20

21 Venue is proper in the United States District Court  
22 for the Central District of California pursuant to 28  
23 U.S.C. section 1391. Defendants TONY P. SPENCER and  
24 NAOMI SPENCER are residents of Los Angeles County,  
25 California. Defendant PRESTIGE MARINE has minimum  
26 contacts with California and its repair business puts  
27  
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1 boats into interstate commerce. The incident occurred  
2 on Lake Havasu, an interstate lake bordered by San  
3 Bernardino County, California, on the west, and by the  
4 State of Arizona on the east.  
5

6  
7 **PARTIES**

8 2. Plaintiff JOSEPH M. HEALEY, resident in Arizona,  
9 had his right foot traumatically amputated by a boat  
10 propeller on July 17, 2009, near the Arizona shore of  
11 Lake Havasu, an interstate navigable waterway, and  
12 sues for damages resulting from this injury.  
13

14 3. Defendant TONY P. SPENCER, aka ANTHONY P.  
15 SPENCER, was the operator and co-owner of a 33.5 foot,  
16 850 horsepower 2007 Hallett, Hull Number BARTM153H607,  
17 registered in Arizona with Registration AZ6358BL whose  
18 propeller injured Plaintiff. TONY P. SPENCER is  
19 believed resident in California.  
20

21 4. Defendant NAOMI SPENCER is the other co-owner of  
22 the vessel. She is believed resident in California.  
23

24 5. Defendant PRESTIGE AUTOMOTIVE & MARINE, dba  
25 PRESTIGE MARINE, and/or DOES 1-5 and/or ROE  
26 CORPORATIONS 1-5 negligently performed repair work on  
27 the subject boat. Defendant PRESTIGE AUTOMOTIVE &  
28

1 MARINE is an Arizona corporation, located in Arizona,  
2 marketing its services, among others, to Arizona and  
3 California boat owners operating their boats in, among  
4 other places, the interstate navigable waterway of  
5 Lake Havasu bounded by both Arizona and California.  
6

7 Leave will be sought to amend the Complaint when  
8 the true identities of the Doe and Roe Defendants are  
9 known.  
10

11  
12 **ALLEGATIONS COMMON TO ALL CLAIMS AND MADE A**  
13 **PART OF ALL CLAIMS:**

14 6. On or about July 17, 2009, Defendant TONY P.  
15 SPENCER had beached the subject vessel on the Arizona  
16 shore of Lake Havasu at or near Nautical Inn Cove in  
17 Thompson Bay. The port engine of the vessel would not  
18 start and Defendant TONY P. SPENCER decided to use the  
19 starboard engine to jumpstart the port engine.  
20

21 7. During this operation the vessel drifted off the  
22 beach, but Defendant TONY P. SPENCER was not aware of  
23 this. It was foreseeable that the engine vibrations  
24 would cause the vessel to drift off the beach, but  
25 Defendant TONY P. SPENCER negligently did not prepare  
26 for or anticipate this possibility.  
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8. As a result the vessel was moving on Lake Havasu, but Defendant TONY P. SPENCER did not have a person capable of operating the vessel at the helm, nor had he posted a look-out, nor was Defendant TONY P. SPENCER available to control the vessel as he was working in the engine compartment from which position he was not able to operate the vessel or maintain a look out.

9. At about the same time Plaintiff JOSEPH M. HEALEY was on the shore, having arrived there as a guest of non-party Daron Kelley whose own vessel was beached close to where Defendants' vessel had been beached.

10. Also at this time two small children, non-party Ian Yzabel and non-party Allyson Yzabel, guests of non-party Daron Kelley, were on the swim platform of the Kelley boat.

11. Defendants' vessel began to drift toward the Kelley boat. Numerous people shouted warnings but Defendant TONY P. SPENCER could not hear the shouted warnings over the noise of his engine or engines and, because of the noise and lack of a look out, Defendant TONY P. SPENCER was unaware of the impending collision

1 with the Kelley boat, notwithstanding the many shouted  
2 warnings.

3 12. Ultimately Defendants' vessel drifted into and  
4 collided with the swim platform of the Kelley vessel  
5 knocking the two small children into the water.  
6

7 13. Plaintiff JOSEPH M. HEALEY, seeing two small  
8 children in the water right next to an out of control  
9 boat, fearing that the children would be killed or  
10 injured by the SPENCER boat, rushed into the water to  
11 pull the two children to safety and did so.  
12

13 14. At about this time Defendant TONY P. SPENCER  
14 became aware that his vessel was out of control,  
15 rushed to the cockpit, and put at least one engine  
16 into forward gear without first checking to see that  
17 no people were near the protruding outdrive propellers  
18 of his boat.  
19

20 15. Defendant TONY P. SPENCER'S negligent action  
21 caused a propeller of Defendants' vessel to amputate  
22 Plaintiff's foot.  
23

24 16. As a result Plaintiff JOSEPH M. HEALEY has  
25 already incurred past medical expenses in excess of  
26 \$100,000, will incur future medical expenses, has  
27 suffered pain, will suffer pain in the future, has  
28

1 suffered loss of enjoyment of life and will so suffer  
2 in the future, and has suffered loss of employment and  
3 will so suffer in the future.  
4

5  
6 **FIRST CLAIM, (IN NEGLIGENCE, FOR PERSONAL INJURY,**  
7 **AGAINST DEFENDANT TONY P. SPENCER ONLY**  
8 **UNDER FEDERAL MARITIME LAW):**

9 17. Defendant TONY P. SPENCER negligently caused the  
10 injury complained of. Defendant TONY P. SPENCER'S  
11 negligent acts under federal admiralty law include but  
12 are not limited to: causing but being unaware that  
13 his boat left a beach and began drifting on Lake  
14 Havasu, operating a vessel on interstate navigable  
15 waters of the United States without maintaining a  
16 look-out as required by 33 U.S.C. Section 2005;  
17 putting his vessel, which has protruding outdrive  
18 propellers, into gear when there was a person in the  
19 water directly behind his boat; losing control of his  
20 vessel; operating a dangerously noisy vessel and  
21 operating a vessel not in good working order. As a  
22 result he is liable to Plaintiff for the damages  
23 complained of. This is a claim under federal maritime  
24 law.  
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1                   **SECOND CLAIM (IN NEGLIGENCE, FOR PERSONAL INJURY,**  
2                   **AGAINST DEFENDANT TONY P. SPENCER**  
3                   **ONLY, UNDER ARIZONA STATE LAW) :**

4           18.       TONY P. SPENCER negligently caused the injury  
5           complained of. Defendant TONY P. SPENCER'S negligent  
6           acts under Arizona state law include but are not  
7           limited to: causing but being unaware that his boat  
8           left a beach and began drifting on Lake Havasu,  
9           operating a vessel on interstate navigable waters of  
10          the United States without maintaining a look-out as  
11          required by 33 U.S.C. Section 2005; putting his  
12          vessel, which has protruding outdrive propellers, into  
13          gear when there was a person in the water directly  
14          behind his boat; losing control of his vessel;  
15          operating a dangerously noisy vessel and operating a  
16          vessel not in good working order. In addition,  
17          Defendant TONY P. SPENCER negligently violated Arizona  
18          statute ARS 5-341.A, as cited by the investigating  
19          police officer for careless operation of a boat. In  
20          addition, Defendant TONY P. SPENCER, upon information  
21          and belief, negligently violated Arizona statute  
22          A.R.Z. 5-336 and Arizona Administrative Code R12-4-516  
23          by operating a boat that was illegally loud.       As a  
24  
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1 result Defendant TONY P. SPENCER is liable to  
2 Plaintiff for the damages complained of.  
3

4  
5 **THIRD CLAIM (IN NEGLIGENCE FOR PERSONAL INJURY**  
6 **AGAINST DEFENDANTS TONY P. SPENCER AND**  
7 **NAOMI SPENCER UNDER FEDERAL MARITIME LAW) :**

8 19. Defendants TONY P. SPENCER and NAOMI SPENCER  
9 negligently maintained a vessel that was dangerous for  
10 the reason that the vessel made too much noise for it  
11 to be possible for the vessel to "maintain a proper  
12 look-out by...and hearing...so as to make a full  
13 appraisal of the situation and risk of collision," as  
14 required by 33 U.S.C. Section 2005. In addition, these  
15 Defendants negligently maintained a boat that was  
16 unsafe to operate because its engines were unreliable.  
17

18 20. The excessive noise of Defendants' vessel was a  
19 contributing cause of the injury complained of.

20 21. Upon information and belief, the excessive noise  
21 of Defendants' vessel upon Lake Havasu was also  
22 illegal under Arizona law, A.R.Z. 5-336 and Arizona  
23 Administrative Code R12-4-516. This Arizona law has as  
24 one of its purposes, safety.  
25

26 22. Upon information and belief, Defendants NAOMI  
27 SPENCER and TONY P. SPENCER were aware of the  
28

1 excessive noisiness of their vessel and of the  
2 unreliability of its engines.

3 23. Under federal maritime law, e.g., The  
4 Pennsylvania, 86 U.S. 125, 22 L.Ed 148, 19 Wall 125  
5 (1873), both Defendants NAOMI SPENCER and TONY P.  
6 SPENCER are liable to Plaintiff for his injuries  
7 because both had knowledge of the noisiness of their  
8 vessel and this noisiness violated both United States  
9 and Arizona laws concerned with safety.

10 24. As a result both Defendants are liable to  
11 Plaintiff for the injuries complained of. This is a  
12 claim under federal maritime law.

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17 **FOURTH CLAIM (IN NEGLIGENCE, FOR PERSONAL INJURY,**  
18 **AGAINST DEFENDANTS TONY P. SPENCER AND**  
19 **NAOMI SPENCER UNDER ARIZONA STATE LAW) :**

20 25. Paragraphs 19-22 of the Third Claim are re-  
21 alleged.

22 26. Under Arizona State law both Defendants TONY P.  
23 SPENCER and NAOMI SPENCER are liable to Plaintiff  
24 because of their negligence in maintaining a boat that  
25 was both dangerously noisy and defectively maintained  
26 because the engines were unreliable.

1                   **FIFTH CLAIM (IN NEGLIGENCE, FOR PERSONAL INJURY,**  
2                   **AGAINST ALL DEFENDANTS**  
3                   **UNDER FEDERAL MARITIME LAW) :**

4           27.       Paragraphs **19-22** are re-alleged.

5           28.       On or about May 7, 2009, Defendant PRESTIGE  
6           AUTOMOTIVE & MARINE, dba PRESTIGE MARINE, an Arizona  
7           Corporation, and or Defendants DOES 1-5 and/or  
8           Defendant ROE Corporations 1-5, did repair work on the  
9           exhaust system of the incident boat at the request of  
10          Defendant TONY P. SPENCER and/or NAOMI SPENCER.

11          29.       Under federal maritime law the defendants doing  
12          the repair work had a duty to do so in workman like  
13          fashion; these defendants breached that duty with the  
14          results that at the time of the injury complained of  
15          the subject boat was unreasonably dangerous by virtue  
16          of being excessively loud. The excessive loudness of  
17          the boat foreseeably contributed to causing the injury  
18          as set forth above.

19          30.       As a result Defendant PRESTIGE AUTOMOTIVE &  
20          MARINE, dba PRESTIGE MARINE, an Arizona Corporation,  
21          and or Defendants DOES 1-5 and/or Defendant ROE  
22          Corporations 1-5, are liable to Plaintiff for the  
23          injuries complained of under federal maritime law.  
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1 31. Under federal maritime law the boat repair  
2 defendants and the boat owner defendants are jointly  
3 and severally liable to Plaintiff for his damages as  
4 each contributed to causing the injuries complained  
5 of.  
6

7  
8 **SIXTH CLAIM (IN NEGLIGENCE FOR PERSONAL INJURY,**  
9 **AGAINST ALL DEFENDANTS UNDER FEDERAL MARITIME LAW) :**

10 32. Paragraphs **19-22** are re-alleged.

11 33. On or about June 16, 2009, Defendant PRESTIGE  
12 AUTOMOTIVE & MARINE, dba PRESTIGE MARINE, an Arizona  
13 Corporation, and or Defendants DOES 1-5 and/or  
14 Defendant ROE Corporations 1-5, did repair work on the  
15 port engine of the incident boat at the request of  
16 Defendant TONY P. SPENCER and/or NAOMI SPENCER.  
17

18 34. Under federal maritime law the defendants doing  
19 the repair work had a duty to do so in workman like  
20 fashion; these defendants breached that duty with the  
21 results that at the time of the injury complained of  
22 the port engine of the subject boat was not properly  
23 working with the result that the boat was unsafe to  
24 operate. The failure of the port engine foreseeably  
25 contributed to the injury complained of.  
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1 35. As a result Defendant PRESTIGE AUTOMOTIVE &  
2 MARINE, dba PRESTIGE MARINE, an Arizona Corporation,  
3 and or Defendants DOES 1-5 and/or Defendant ROE  
4 Corporations 1-5, are liable to Plaintiff for the  
5 injuries complained of.  
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7 36. Under federal maritime law the boat repair  
8 defendants and the boat owner defendants are jointly  
9 and severally liable to Plaintiff for his damages as  
10 each contributed to the injuries complained of.  
11

12  
13 **SEVENTH CLAIM (IN NEGLIGENCE FOR PERSONAL INJURY**  
14 **AGAINST ALL DEFENDANTS UNDER ARIZONA STATE LAW) :**

15 37. Paragraphs **19-22, 28 and 33** are re-alleged.

16 38. These repair defendants negligently performed the  
17 repair work with the foreseeable result that the  
18 excessive noisiness of the boat and the failure of the  
19 port engine would make the boat more dangerous. In  
20 fact, the excessive noisiness of the boat and failure  
21 of the port engine did contribute to the cause of the  
22 accident and injury complained of.  
23

24 39. Accordingly, under Arizona law these repair  
25 defendants are liable to Plaintiff for his damages.  
26

27  
28 **WHEREFORE,** Plaintiff prays for damages against

1 Defendants in reasonable amounts consistent with the proof  
2 at trial as follows:

3       On the First and Second Claims, Plaintiff JOSEPH M.  
4 HEALEY, prays for damages against Defendant TONY P. SPENCER  
5 for past and future pain and suffering, past and future  
6 loss of earnings, past and future medical expenses, and to  
7 the extent allowed by law, for costs of suit and attorneys  
8 fees and such other relief at the Court deems appropriate.  
9

10       On the Third and Fourth Claims, Plaintiff JOSEPH M.  
11 HEALEY, prays for damages against Defendants TONY P.  
12 SPENCER and NAOMI SPENCER for past and future pain and  
13 suffering, past and future loss of earnings, past and  
14 future medical expenses, and to the extent allowed by law,  
15 for costs of suit and attorneys fees and such other relief  
16 at the Court deems appropriate.  
17

18       On the Fifth and Sixth Claims, Plaintiff JOSEPH M.  
19 HEALEY, prays for damages jointly and severally against all  
20 Defendants for past and future pain and suffering, past and  
21 future loss of earnings, past and future medical expenses,  
22 and to the extent allowed by law, for costs of suit and  
23 attorneys fees and such other relief at the Court deems  
24 appropriate.  
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1 On the Seventh Claim, Plaintiff JOSEPH M. HEALEY,  
2 prays for damages against Defendants PRESTIGE AUTOMOTIVE &  
3 MARINE, an Arizona LLC, dba PRESTIGE MARINE, and DOES 1-5  
4 and ROE CORPORATIONS 1-5, for past and future pain and  
5 suffering, past and future loss of earnings, past and  
6 future medical expenses, and to the extent allowed by law,  
7 for costs of suit and attorneys fees and such other relief  
8 as the Court deems appropriate.  
9

10 DATED this 15<sup>th</sup> day of October, 2009

11 REED & MANSFIELD

12 "/s/ Jonathan C. Reed"

13  
14 By   
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