

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DANILO PERALTA

CIVIL ACTION

VERSUS

No. 10-4322

**EPIC DIVING & MARINE SERVICES,
LLC**

SECTION “T”

ORDER

Before the Court is a motion¹ for partial summary judgment filed by defendant, Epic Diving & Marine Services, LLC (“Epic Diving”). Plaintiff, Danilo Peralta (“Peralta”), opposes² Epic Diving’s motion.

Epic Diving argues that it is entitled to partial summary judgment with respect to maintenance and cure payments regarding Peralta’s alleged knee injury because Peralta’s claim is barred by the *McCorpen* defense.³ Epic Diving’s argument largely turns on the contents of Peralta’s medical records.⁴ However, none of the medical records from Peralta’s treating physicians submitted to this Court are authenticated.⁵ Accordingly, the Court lacks the competent summary judgment evidence necessary to resolve Epic Diving’s motion and there remain genuine issues of material fact. *See, e.g., Frazier v. Cinemark USA, Inc.*, 348 Fed. App’x 6, 8 (5th Cir. 2009); *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (“Unauthenticated documents are improper as summary judgment evidence.”).

¹ R. Doc. No. 17.

² R. Doc. No. 19.

³ R. Doc. No. 17, p. 1. *See McCorpen v. Central Gulf Steamship Corp.*, 396 F.2d 547 (5th Cir. 1968).

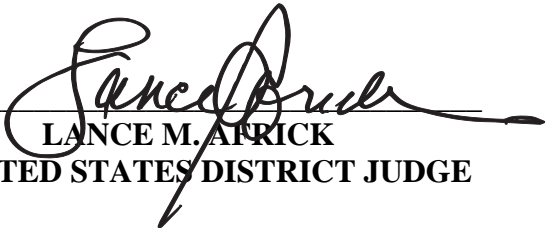
⁴ R. Doc. No. 26, pp. 6-8.

⁵ The affidavit provided by Sharon B. Estopinal only authenticates Peralta’s General Physical Form completed May 13, 2010, at West Jefferson Industrial Medicine, LLC. R. Doc. No. 17-5, p. 5.

Accordingly,

IT IS ORDERED that Epic Diving's partial motion for summary judgment is **DENIED**.

New Orleans, Louisiana, August 29th, 2011.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE