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 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Plaintiff
 6 TODD B. THOLKE

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 C 12 5162

12 TODD THOLKE, an individual,
 13 Plaintiff,

Civil No. _____

COMPLAINT *IN REM*

RS

14 v.

(FOR A MARITIME SALVAGE AWARD)

15 THE SAILING VESSEL ENERGY TEAM
 16 AC45, her sails, tackle, equipment, and
 furnishings,
 17 Defendant.

18 **JURISDICTION**

19 1. This is a case of admiralty and maritime jurisdiction pursuant to 28 U.S.C.
 20 §1333(1), as will more fully appear, and is an admiralty or maritime claim within the meaning of
 21 Rule 9(h) of the Federal Rules of Civil Procedure.

22 **PARTIES**

23 2. At all material times, plaintiff Todd Tholke ("Tholke") resided at Treasure Island,
 24 part of the City and County of San Francisco, and was and is the owner of a 15-foot Boston
 25 Whaler runabout with a 70 horsepower outboard engine named the Litoma ("Litoma").

26 3. The sailing vessel Energy Team AC45 ("Energy Team AC45") is a wing-sailed
 27 twin-hulled catamaran with a mast height of over 70 feet and spanning approximately 45 feet in
 28

1 length. It is a high-tech, grand prix regatta yacht that is used for racing around the world. The
2 hulls and sail of the vessel are black in color and bear the sponsorship logo of Swiss watchmaker,
3 "Corum."

4 4. Energy Team AC45 is now within the City and County of San Francisco, moored
5 off Piers 30/32, and within the district, and, on information and belief, is competing in the
6 America's Cup World Series in San Francisco from Tuesday, October 2 through Sunday, October
7 7, 2012.

8 5. Tholke is informed and believes that the approximate value of the Energy Team
9 AC45 at the time the services referred to herein were rendered was more than \$1,000,000.

10 **BACKGROUND FACTS**

11 6. At the time of the salvage services hereinafter mentioned, the vessel was
12 unmanned by a crew.

13 7. In the early morning of September 30, 2012, at approximately 3:30 a.m., from his
14 car, Tholke sighted the Energy Team AC45 on the rocks off the west face of Treasure Island in
15 the San Francisco Bay. The main sail of the Energy Team AC45 was up, and the wind and tide
16 continuously pushed it further onto the rocks. The Energy Team AC45 has been moored just off
17 Pier 30/32 in San Francisco, but on information and belief, broke its mooring and drifted across
18 San Francisco Bay for approximately a mile before stranding itself on the rocks on the west side
19 of Treasure Island.

20 8. Tholke immediately informed the United States Coast Guard at Treasure Island by
21 telephone of the immediate peril of the Energy Team AC45. Upon learning that the United States
22 Coast Guard would not come to the aid of the perilously situated Energy Team AC45, Tholke
23 voluntarily initiated the salvage services described herein.

24 9. Tholke drove back to Treasure Island Marina where he kept the Litoma. Tholke
25 got the Litoma underway and proceeded to the west side of Treasure Island where the racing
26 yacht Energy Team AC45 was stranded, with one hull of the twin-hulled catamaran on the
27 shoreline rocks. Upon arrival at the scene of the stranding, a northwest wind blew upon the main
28 sail, which was sheeted in tight, continuously pushing the vessel higher onto the rocks. The wind

1 and wave action caused the Energy Team AC45 to bounce on the rocks, threatening additional
2 hull damage, and potential constructive total loss.

3 10. Due to the strength of the wind and currents, and the nighttime conditions, the
4 necessary maneuvering by Tholke in making a line fast to the Energy Team AC45 required a high
5 degree of skill, but, after many persistent and careful attempts, Tholke successfully lashed a line
6 onto a rudder post and pulled the Energy Team AC45 off of its perilous position on the rocks with
7 the Litoma. Subsequently, and again with great skill while in the open waters of San Francisco
8 Bay, Tholke untied the tow line from the rudder post and reattached it to the Energy Team
9 AC45's bowsprit, to ease its subsequent towing to a place of safety.

10 11. Tholke towed Energy Team AC45 towards the safety of the docks at Treasure
11 Island Marina. The services rendered by Tholke was hindered and impeded and rendered more
12 difficult by the facts that the Energy Team AC45's main sail was up and sheeted in tight and the
13 racing yacht's rudders were both locked at a 90-degree angle, and that it had to be towed under
14 the Oakland Bay Bridge twice, once while proceeding south along Treasure Island's western
15 shore, and again while proceeding north along Treasure Island's eastern shore. The wind and the
16 current, along with the fixed main sail and locked rudders caused the Energy Team AC45 racing
17 yacht to swing back and forth under tow. Also, the Energy Team AC45 had no mooring beacon
18 or any light visible onboard making Tholke's task of towing the difficult to see, black-framed
19 Energy Team AC45 more difficult. During the towage, the Litoma took on water, its motor cut
20 out intermittently and smoked from overheating, and was nearly capsized on repeated occasions.
21 The Litoma also suffered hull and hardware damage as a result of the strenuous salvage effort.
22 Nonetheless, Tholke successfully towed the Energy Team AC45 into Clipper Cove where he
23 made fast the Litoma to the dock at the Treasure Island Marina, all the while keeping its towline
24 on the Energy Team AC45. Tholke stayed at Treasure Island Marina maintaining custody, and
25 keeping the Energy Team AC45 safe and undamaged, until an America's Cup related boat arrived
26 to pick it up at approximately 6:00 a.m.

27 12. The aforesaid services were rendered by Tholke over a period of approximately
28 three hours on September 30, 2012 and the Energy Team AC45 was towed for a distance of

1 approximately five (5) miles.

2 **FIRST CAUSE OF ACTION: CLAIM FOR MARITIME SALVAGE AWARD**

3 13. The allegations made in paragraphs 1-9 above are incorporated by reference as
4 though fully set forth herein.

5 14. The services rendered by Tholke constitute maritime salvage services of a high
6 order of merit. They were furnished promptly, efficiently, and skillfully and under night-time
7 conditions which were rendered difficult especially because of the force of the wind upon the
8 Energy Team AC45's main sail, the locked rudders, the precarious passages under the Oakland
9 Bay Bridge and through a main shipping channel where, in fact, a large container ship was
10 departing the Oakland Estuary and sounded its horn in warning, requiring a course diversion by
11 Tholke, and the lack of mooring beacons and running lights on the Energy Team AC45. The
12 services were voluntarily rendered by Tholke. Those services resulted in the successful removal
13 of the high-tech, high value Energy Team AC45 from the perilous and damaging position in
14 which it was stranded, unmanned and unnoticed, on the rocks of the west side of Treasure Island,
15 to a place of safety without further damage. Without such prompt, high energy and skillful action
16 by Tholke, the racing yacht could have incurred substantially increased hull damage, placing it at
17 risk of becoming a constructive total loss, and rendering it unavailable for competitive racing at
18 the upcoming, high-profile Americas Cup World Series ("ACWS") event on San Francisco Bay
19 commencing on October 3, 2012. Instead, the Energy Team AC45 was able to be quickly
20 repaired and is participating in the ACWS and attempting to score points and improve its
21 standings in the season's competition, in which only a few events are held. There has not been
22 any payment to Tholke for these maritime salvage services.

23 15. By reason of these facts establishing a valid maritime salvage claim, Tholke is
24 entitled to a maritime lien against the Energy Team AC45 and a liberal maritime salvage award.
25 The amount of just compensation for these meritorious salvage services is to be determined by
26 this Court, but should be in excess of \$200,000, all relevant factors considered.

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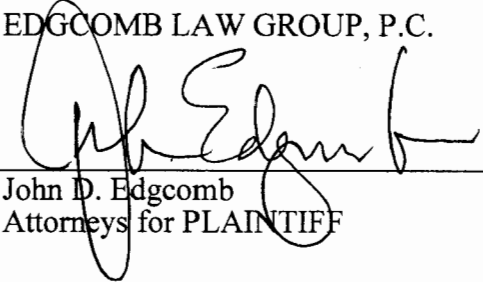
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1. Pursuant to Supplemental Rule C of the Federal Rules of Civil Procedure, that a summons and warrant for the arrest of the Energy Team AC45 may issue by the Court's clerk, and that all persons claiming any interest therein may be cited to appear and answer the matter aforesaid;
2. That a judgment may be entered in favor of Tholke for the amount of his salvage claim as determined by this Court, with interest and costs, and that the Energy Team AC45 be condemned and sold to pay the same;
3. An award of attorneys fees; and
4. That Plaintiff may have such other and further relief as the court and justice may deem just and appropriate under the circumstances of the cause.

Dated: October 4, 2012

EDGCOMB LAW GROUP, P.C.



John D. Edgcomb
Attorneys for PLAINTIFF