

1 JOHN D. EDGCOMB (SBN 112275)
ADAM P. BAAS (SBN 220464)
2 MICHAEL EINHORN (SBN 252462)
Edgcomb Law Group, P.C.
3 One Post Street, Suite 2100
San Francisco, California 94104
4 Telephone: (415) 399-1555
Facsimile: (415) 399-1885
5 jedgcomb@edgcomb-law.com

6 Attorneys for Plaintiff
TODD B. THOLKE

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 TODD THOLKE, an individual,
12 Plaintiff,

13 v.

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

Civ. No. 12-5162 (RS)

**PLAINTIFF'S RESPONSE TO
COURT'S 10/5/12 ORDER**

DATE: October 5, 2012
TIME: ASAP, per ADMIR. L.R. 9-1

16 PLAINTIFF, Todd Tholke, by and through his attorney, John D. Edgcomb, hereby
17 RESPONDS TO THE Court's Order issued earlier today and informs the Court that he has made
18 the following efforts to contact the owners of the subject vessel and/or their legal counsel with
19 respect to providing notice of the relief he has been seeking from the Court:

20 Andy Hindley (Hindley) is the Chief Operating Officer of the America's Cup Race
21 Management ("ACRM") organization, which is in charge of putting on the America's Cup
22 World Series races currently underway in San Francisco Bay. *See* Declaration of John D.
23 Edgcomb ("Edgcomb Decl."), paragraph 2, Ex. 1, filed herewith. As such, he is in charge of
24 logistics for the America's Cup World Series races now underway.

25 Hindley called plaintiff Todd Tholke ("Tholke") earlier this week and advised him that if
26 he was contemplating taking any legal action as a result of the events of September 30 (as now
27 detailed in the Complaint In Rem), that Tholke should contact him (Hindley), giving Tholke his
28

1 cell phone number. (Edgcomb Decl., ¶ 3).

2 Consequently, on Thursday, October 4, 2012, after this Court issued orders authorizing
3 the arrest of the Energy Team AC45 after completion of the World Series races, and the Court
4 Clerk authorized the U.S. Marshal to arrest the Energy Team AC45, Tholke's counsel John D.
5 Edgcomb (Edgcomb) called Hindley on his cell phone. Edgcomb advised Hindley of his
6 representation of Tholke, of the filing of the Complaint In Rem, and of the Court's issuance of
7 the In Rem Arrest Warrant. Edgcomb additionally requested the provision of substitute security
8 in order to allow for release of the vessel to avoid the arrest, and asked that Hindley put the
9 Energy Team and its attorneys and insurer on notice. Edgcomb had no contact information for
10 the owners of the Energy Team AC45.

11 Hindley informed Edgcomb that he understood the situation, that the ACRM had a
12 maritime attorney on staff, and that he would hear back from someone to address the issue. He
13 asked Edgcomb to text his contact information to his cell phone so that he (Hindley) could
14 forward that contact information to the appropriate persons. Edgcomb texted that information to
15 Hindley at 5:15 p.m. on October 4, 2012. *See* Edgcomb Decl., ¶ 5, Ex. 2. However, Edgcomb
16 received no response from Hindley or anyone else later that day, that night, or into this morning.

17 Hearing no response, Edgcomb made further contact with Hindley this morning, first
18 texting him twice. *See* Edgcomb Decl., ¶ 6, Ex. 2. Getting no response, Edgcomb again called
19 Hindley at approximately noon. Edgcomb reiterated information regarding the filing of the
20 Complaint In Rem and the pending In Rem Arrest Warrant and urgently requested contact
21 information regarding the owners of the Energy Team AC45. Hindley declined to provide said
22 contact information but indicated that he would notify the owners that they should contact
23 Edgcomb immediately. Upon not hearing from the French owners of the Energy Team AC45,
24 Edgcomb and Hindley then exchanged further texts wherein Hindley refused to provide contact
25 information for the owners of the Energy Team AC45. *See* Edgcomb Decl., ¶ 7, Ex. 2.

26 Frustrated, Edgcomb sent his associate, Adam Baas ("Baas") to Pier 30/32, where the
27 Energy Team AC45 is moored and its team is operating during World Series races in an effort to
28 make direct contact with representatives of the Energy Team. *See* Edgcomb Decl., ¶ 9. Baas

1 spoke with a security guard at the gate, explained his presence, and asked to speak with someone
2 from the Energy Team. *Id.* In response, Hindley emerged and had a discussion with Baas,
3 advising him that the Energy Team was advised of the Complaint in rem and the impending
4 arrest of the Energy Team AC45 on Sunday afternoon. *Id.* Hindley indicated the Energy Team
5 was reluctant to speak to us until they had consulted with their French counsel and had retained
6 local counsel. (*Id.*) Hindley further advised that on Sunday, the sailboats would be removed
7 from the water as they returned from the final race in the afternoon, and over the course of time,
8 which could extend into Monday, each vessel would be disassembled and placed in containers.
9 *Id.* Another person from the ACRM team then appeared, Amish Ross, who represented himself
10 to be ACRM's General Counsel. *Id.* He indicated that the Energy Team was delayed in
11 responding because of time and language differences, but that they were pursuing the matter with
12 French counsel and expected to be retaining local American maritime counsel soon. *Id.* Baas
13 provided Ross with copies of some of the relevant legal documents, including the Complaint in
14 Rem, the In Rem Arrest Warrant and the Court's two orders to provide to the Energy Team
15 representatives for their use in responding. *Id.* Ross said he would provide them to the Energy
16 Team. (*Id.*) No one from the Energy Team ever appeared at the gate despite Baas's request and
17 Baas was not permitted inside the secured area. *Id.*

18 Plaintiff, by and through his attorney, Edgcomb, has faithfully endeavored to make
19 contact with the owners of the subject vessel and/or their legal counsel, and continues to do so,
20 so as to coordinate the impending arrest of the Energy Team AC45 and minimize disruption and
21 cost. Plaintiff continues to await contact from authorized representatives from the Energy Team
22 so that appropriate security can be arranged. Hopefully, that will occur soon.

23 ///

24 ///

25 ///

26 ///

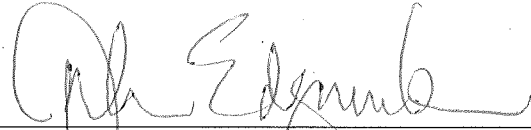
27 ///

28

1 Plaintiff appreciates the Court's issuance of the Order for Appointment of Substitute
2 Custodian.

3
4 Date: October 5, 2012

Respectfully Submitted,
EDGCOMB LAW GROUP, P.C.

5
6 

7
8 John D. Edgcomb
9 Attorneys for PLAINTIFF

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28