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6 Attorneys for Plaintiff
 TODD B. THOLKE
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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 TODD THOLKE, an individual,
 Plaintiff,
 12
 13 v.
 14 THE SAILING VESSEL ENERGY TEAM
 AC45, her sails, tackle, equipment, and
 15 furnishings,
 Defendant.

Civ. No. 12-5162 (RS)

**DECLARATION OF JOHN D.
 EDGCOMB IN SUPPORT OF
 RESPONSE TO COURT'S ORDER**

Judge: Hon. Richard Seeborg
 Complaint Filed: October 5, 2012

16 I, John D. Edgcomb, declare as follows:

17 1. I am an attorney in the law firm of Edgcomb Law Group, P.C., the attorneys of record
 18 herein for plaintiff Todd Tholke. The matters set forth herein are of my own personal
 19 knowledge, and, if called upon to do so, I could and would competently testify thereto.

20 2. Upon information and belief, Andy Hindley (Hindley) is the Chief Operating Officer
 21 of the America's Cup Race Management ("ACRM") organization, which is in charge of putting
 22 on the America's Cup World Series races currently underway in San Francisco Bay. Attached
 23 hereto as **Exhibit 1** is a true and correct copy of the September 17, 2010 press release
 24 announcing Hindley's appointment as Chief Operating Officer of ACRM. As such, he is in
 25 charge of logistics for the America's Cup World Series races now underway.

26 3. I was informed by my client, plaintiff Todd Tholke ("Tholke"), that Hindley called
 27 him earlier this week and advised him that if he was contemplating taking any legal action as a
 28

1 result of the events of September 30 (as now detailed in the Complaint In Rem), Tholke should
2 contact him (Hindley). Hindley gave Tholke his cell phone number.

3 4. On Thursday, October 4, 2012, after this Court issued orders authorizing the arrest of
4 the Energy Team AC45 after completion of the World Series races, and the Court Clerk
5 authorized the U.S. Marshal to arrest the Energy Team AC45, I called Hindley on his cell phone.
6 I advised Hindley of my representation of Tholke, of the filing of the Complaint In Rem, and of
7 the Court's issuance of the In Rem Arrest Warrant. I requested the provision of substitute
8 security in order to allow for release of the vessel to avoid the arrest, and asked that Hindley put
9 the Energy Team on notice, telling Hindley I had not spoken with them. I had no contact
10 information for the owners of the Energy Team AC45.

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

17 6. Hearing no response, I made further contact with Hindley this morning, first texting
18 him twice. Getting no response, I called Hindley on his cell phone at approximately noon. I
19 reiterated information regarding the filing of the Complaint In Rem and the pending In Rem
20 Arrest Warrant and urgently requested contact information regarding the owners of the Energy
21 Team AC45. Hindley declined to provide said contact information, but indicated that he would
22 notify the Energy Team AC45 owners that they should contact me immediately.

23 7. Upon not hearing from the French owners of the Energy Team AC45, Hindley and I
24 then exchanged further texts wherein Hindley refused to provide contact information for the
25 owners of the Energy Team AC45.

26 8. Attached hereto as **Exhibit 2** are true and correct copies of the series of texts
27 exchanged between me and Hindley regarding the aforementioned matters.

28 9. I then asked my associate, Adam Baas ("Baas"), to go to Pier 30/32 where the Energy

1 team is assembled to participate in the sailing races and the Energy Boat AR45 is moored to seek
2 direct contact with the Energy Team management and to deliver certain of the pleadings and
3 orders. I spoke with Baas via telephone after he went to Pier 30/32. Baas told me the following:

4 a. He spoke with a security guard at the gate, explained his presence, and asked
5 to speak with someone from the Energy Team. In response, Hindley emerged and had a
6 discussion with him (Baas), advising him that the Energy Team was advised of the
7 Complaint in Rem and the impending arrest of the Energy Team AC45 on Sunday
8 afternoon. Hindley advised that on Sunday, the sailboats would be removed from the
9 water as they returned from the final race in the afternoon, and over the course of time,
10 which could extend into Monday, each vessel would be disassembled and placed in
11 containers. Henley said it was his understanding that the French team did not want to
12 speak with us regarding this matter until they reached their French counsel as well as
13 obtained local counsel.

14 b. Another person from the ACRM team then appeared, Amish Ross ("Ross"),
15 who represented himself to be ACRM's General Counsel. Ross indicated that the Energy
16 Team was delayed in responding because of time and language differences, but that they
17 were pursuing the matter with French counsel and expected to be retaining local
18 American maritime counsel soon. He (Baas) provided Ross with copies of some of the
19 relevant legal documents, including the Complaint in Rem, the In Rem Arrest Warrant
20 and the Court's two orders to provide to the Energy Team representatives for their use in
21 responding. Ross said he would deliver the documents to the energy Team. No one from
22 the Energy Team ever appeared at the gate despite Baas's request and Baas was not
23 permitted inside the secured area.

24
25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct.

27 ///

28 ///

1 This declaration was executed on October 5, 2012 in San Francisco, California.

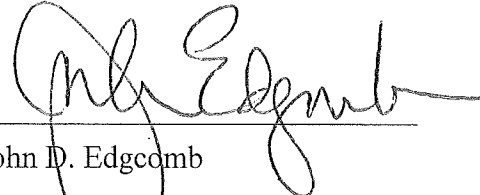
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EXHIBIT 1

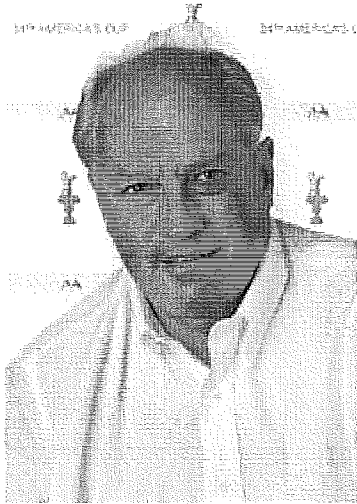
Golden Gate YC: Press Release

Murray and Hindley Named Regatta Director and COO

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Iain Murray Will be Regatta Director for 2013 America's Cup VOR Veteran Andy Hindley Named COO: Press Release

Valencia, September 17, 2010



Iain Murray

Photo: ©2010 Chuck Bradley

America's Cup experience and business acumen are the primary attributes of the new 34th America's Cup Regatta Director, Iain Murray.

As Regatta Director, Murray (52, Sydney, Australia) heads up the new America's Cup Race Management (ACRM), holding the dual role of CEO of the independent organization.

This is the first time in the event's 159-year history that the defender has divested management of the competition into the hands of a neutral body, a central part of its vision to move the America's Cup into the future.

ACRM will have responsibility over a wide range of topics including budget, management of the new AC72 and AC45 classes, the Youth America's Cup (slated for 2012), the International Jury, race committee, umpires and measurement committee.

ACRM also will oversee the operation of a meteorological and oceanographic data service, the establishment and management of the America's Cup Village, and infrastructure at all America's Cup World Series (ACWS) venues.

With the 34th Match slated for 2013, one of ACRM's immediate priorities is getting the ACWS up and running. Three regattas are planned for next year beginning in June or July, and ACRM is responsible for selecting the venues and managing the logistics from event to event.

Murray, a figurehead in America's Cup syndicates from 1983 to 1995, has held a vision of an independent management body for the past 20 years.

The sailor and designer in Murray make him excited about the new high-performance AC72 and AC45 catamarans introduced for the competition.

"I think the technology we saw in the 33rd America's Cup makes it hard to go backwards. The trick we'll have is to marry the commercial demands of modern sailing with the principles of the America's Cup," Murray said.

"It's hard not to be impressed by the commitment BMW ORACLE Racing, Russell Coutts and Larry Ellison have made to fix this thing," said Murray. "This is very dear to my heart. I'd move mountains to be involved."

Joining Murray in ACRM as the Chief Operating Officer is Andy Hindley, former Race Manager of the Volvo Ocean Race.

Hindley (43, Hampshire, UK) managed the 2001-02 and 05-06 editions of the Volvo Ocean Race before becoming in 2008 the Race and Technical Director of Powerboat P1 Management, the offshore monohull powerboat championship, for two years.



Andy Hindley
Photo: ©2010
Javier Laguna Salinas

Hindley's personal racing background is based largely in round-the-world races. Hindley, who holds a degree in physics, has a strong background in logistics from his days with the Volvo Ocean Race and P1 Powerboats.

Both events are travelling road shows that place heavy emphasis on public race villages in multiple venues.

"Getting the ACRM team arranged as quickly as possible is going to be one of the biggest goals," Hindley said. "Logistics, catering, entertainment, public events and sport are all under the remit of ACRM, and we can't let any of them slip. They're all inter-linked and what will create the unique experience of coming to a World Series regatta."

Biographies:

Iain Murray AM

Regatta Director and CEO,
America's Cup Race Management

Hometown: Sydney, Australia
Date of birth: April 14, 1958
Wife: Alex
Children: Eliza, Lucinda, Imogen

Iain Murray began sailing on Middle Harbor, Sydney, as a 9-year-old in the Flying Ant class.

His greatest success came in Sydney's iconic 18ft skiff class, in which he designed, built and sailed Color 7 to win a record six consecutive championships from 1977 to 1982. The association between Murray and Australia's Channel 7 carries on today, 33 years later.

The success in the 18' skiffs led Syd Fischer, Australia's most regular and least successful challenger for the America's Cup to select him as helmsman of his 1983 challenger Advance.

Murray joined with Kevin Parry's Kookaburra syndicate for Australia's defense of the Cup in 1987. Kookaburra earned the right to defend the Cup after a cantankerous defense series, but was vanquished in the 26th Cup Match by Dennis Conner's Stars & Stripes.

That series off Perth, Western Australia, is widely regarded as the one of the best America's Cup regattas due to its openness and fantastic sailing conditions.

Murray also led the Spirit of Australia Challenge for the 1992 Challenger Series, which failed to advance out of round robin racing.

Murray has enjoyed a tremendous career as an offshore sailor, winning many of the world's

Andy Hindley

Chief Operating Officer
America's Cup

Hometown: California
Date of birth: 1958
Wife: Julie

Andy Hindley began sailing in the late teens and advanced to the 18' tonners during the 1970s.

He has twice sailed

In the 1992-93 season, he crewed aboard Pete Goss, playing a "race around the world" race around the world.

Four years later, in the 1996 Challenge, this time as skipper, he won the Children's overall.

Following that season, he navigated Goss as navigator on the Philips, the race broke apart in December 2000.

Hindley has also skippered with the Round Brit and completed the 60-foot trimaran.

His ties to the Fastnet Race, the Australian Johnnie Walker 50, Bertrand's historic triumph

classic events. He's logged 17 Sydney-Hobart Races, including two overall victories and four line honors wins. He also was on the winning Australian team at the last Champagne Mumm Admiral's Cup, and took down Paul Cayard to win the 1988 match racing world championship.

As a one-design sailor, Murray ranks his Etchells World Championship in 1984 as one of his most satisfying victories. He also placed third at the 2005 Etchells Worlds.

In 2008 Murray competed in the Olympic Regatta at the age of 50 when he represented Australia in the Star Class. Besides an illustrious racing career, Murray has achieved great success as a real estate developer and businessman. His company, Murlan, is a multi-disciplined property development firm that has undertaken a number of unique and diverse projects over the years.

In recognition for his achievements and meritorious service to sport and community, Murray was presented in 1992 the Order of Australia, AM, an order of chivalry established by Elizabeth II, Queen of Australia, in 1975.

Murray has contributed design input for the public sector on projects such as child care, retirement and marine rescue centers. His real estate development company manages several enterprises in Sydney.

He also consulted with noted Australian architect Wayne Barda on the design of the spectacular Hamilton Island Yacht Club.

Beyond the sailing accolades and business success, Murray says his greatest achievement is his close-knit family: "Watching my children laugh gives me the greatest pleasure in life."

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YouTube at: www.youtube.com/34thac

Additional Links and Info:

[Visit Golden Gate YC website](#)

[Visit Club Nautico di Roma website](#)

EXHIBIT 2

----- SMS Text -----

To: +14156019701

Sent: Oct 4, 2012 5:10 PM

Subject: Andy: Following up on Todd Tholke...

Andy: Following up on Todd Tholke salvage claim filed today re Energy Team AC45. John Edgcomb, Edgcomb Law Group, P.C., One Post St., Suite 2100, SF, CA. Jedgcomb@edgcomb-law.com. 415-399-1555. Need to work out substitute security arrangements ASAP. Thanks, John

----- SMS Text -----

To: +14156019701

Sent: Oct 5, 2012 10:57 AM

Subject: Andy: I am following up on my...

Andy: I am following up on my earlier email. I have not been contacted by anyone. Please confirm receipt of my 10/4 5:15 text to you and that you are authorized representative of defendant boat Energy Team AC45. Also, please note that once boat is arrested, court rules prohibit any movement absent court order and court is closed Sunday and Monday (holiday). Please respond ASAP or I will contact Energy Team representatives to obtain response. Thank you, John Edgcomb

----- SMS Text -----

To: +14156019701

Sent: Oct 5, 2012 11:46 AM

Subject: Andy: Please provide me with...

Andy: Please provide me with contact information for owner or local agent of Energy Team AC45 immediately. Thank you, John Edgcomb

----- SMS Text -----

From: +14156019701

Received: Oct 5, 2012 12:23 PM

Subject: I am not the representative of...

I am not the representative of Energy Team. I will pass them your messages. Your client has been contacted by Energy Team so I suggest you get those contact details from your client.

----- SMS Text -----

To: +14156019701

Sent: Oct 5, 2012 12:39 PM

Subject: My client has not been contacted...

My client has not been contacted by Energy Team and we have no contact information for them. Cannot understand why you will nopt provide. You told me last night you had a maritime attorney on staff and I would be contacted, yet now it is 12:35, I haven't heard from any counsel, and you refuse to even provide contact information. You are exacerbating an already difficult situation. Again, please provide Energy Team contact information ASAP.

----- SMS Text -----

From: +14156019701

Received: Oct 5, 2012 12:56 PM

Subject: I have passed your details to...

I have passed your details to Energy. I can confirm that your client has been contacted by Energy. I can confirm that they called him on Wednesday and Thursday this week as well as immediately after the incident. They have left a contact name and telephone number twice. An e-mail address has also been provided. If your client has not provided you with that information, that is not my issue to resolve.

----- SMS Text -----

To: +14156019701

Sent: Oct 5, 2012 1:06 PM

Subject: Andy-My client denies all contacts...

Andy-My client denies all contacts referenced above, but rather than concerning ourselves with that, since you obviously have that contact info now, and since you did talk with my client and advised him to call YOU if he was contemplating legal action, which we did yesterday, and since we have heard nothing from the Energy Team, we again implore you to provide contact information that you obviously have for Energy Team. Please work to resolve problem here constructively. Time is running out. Thank you, John