

FILED

Doc. 1

1      **COX, WOOTTON, GRIFFIN,**  
 2      **HANSEN & POULOS, LLP**  
 3      Rupert P. Hansen (SBN 82302)  
 4      Max L. Kelley (SBN 205943)  
 5      190 The Embarcadero  
 6      San Francisco, CA 94105  
 7      Telephone No.: 415-438-4600  
 8      Facsimile No.: 415-438-4601

9      Attorneys for Plaintiff OCTAVIAN MARKA LLC

10     **UNITED STATES DISTRICT COURT**  
 11     **NORTHERN DISTRICT OF CALIFORNIA**

SC

12     OCTAVIAN MARKA LLC,

13     Plaintiff,

14     v.  
 15     )  
 16     )  
 17     )  
 18     )  
 19     )  
 20     )  
 21     )  
 22     )  
 23     )  
 24     )  
 25     )  
 26     )  
 27     )  
 28     )

Defendants.

CV Case No.:  
 13 2863  
 IN ADMIRALTY

RS  
 [PROPOSED] ORDER GRANTING  
 PLAINTIFF'S EX PARTE  
 APPLICATION FOR  
 APPOINTMENT OF SUBSTITUTE  
 CUSTODIAN

Plaintiff OCTAVIAN MARKA LLC ("OCTAVIAN" or "Plaintiff"), by and through its counsel of record, having appeared and made the following recitals:

On June 20, 2013, the Verified Complaint herein was filed seeking request for Process of Maritime Arrest of the vessel M/T MARKA, IMO number 9512482 (the "Vessel"), belonging to Plaintiff and lying within this District as described in the Verified Complaint on file herein, pursuant to Rule D of the Supplemental Rules for Admiralty or Maritime Claims and Assets Forfeiture Actions and held to satisfy Plaintiff's claims.

On June 20, 2013, the Clerk of this Court issued a Process of Maritime Arrest commanding the U.S. Marshal for the Northern District of California to arrest and take into custody the Vessel, her engines, tackle, gear, and appurtenances.

Plaintiffs have presented the Court with evidence that the Vessel is within the

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS, LLP  
 190 THE EMBARCADERO  
 SAN FRANCISCO,  
 CA 94105  
 TEL: 415-438-4600  
 FAX: 415-438-4601

HS.Varamo

1      District during the pendency of this action and that Plaintiff OCTAVIAN is the registered  
2      owner of the Vessel which is now within this District at the Port of San Francisco (Rodeo),  
3      California.

4           Plaintiffs have further verified that they have a maritime claim against the  
5      defendants in the approximate amount of \$41,000,000, together with interest and attorneys  
6      fees and all other appropriate costs and expenses.

7           It is contemplated that the U.S. Marshal will arrest and seize the Vessel forthwith.  
8      The U.S. Marshal does not provide the services for the safekeeping of the property he (or  
9      she) attaches.

10         National Maritime Services ("NMS"), a division of National Liquidators, a  
11      California corporation ("National Maritime"), has agreed to assume the responsibility for  
12      the safekeeping the Vessel, and has consented to act as its custodian until further Order of  
13      this Court, all for a sum, including storage and routine services required for safekeeping of  
14      the property, at its customary rates.

15         NMS, by declaration, avers that it has adequate abilities and supervision for the  
16      proper safekeeping of the Vessel and that it possesses adequate policies of insurance for  
17      commercial marine liability. Further, in accordance with the terms of this Order, NMS, as  
18      Substitute Custodian accepts possession of and responsibility for the Vessel.

19         In consideration of the U.S. Marshal's consent to this substitution of custody,  
20      Plaintiff agrees to release the United States and the U.S. Marshal from any and all liability  
21      and responsibility arising out of the care and custody of the Vessel and all other necessaries  
22      pertaining and belonging to the Vessel, from the time the U.S. Marshal transfers possession  
23      of the Vessel to NMS as Substitute Custodian, and Plaintiff further agrees to hold harmless  
24      and indemnify the United States and the U.S. Marshal from any and all claims whatsoever  
25      arising out of the Substitute Custodian's possession and safekeeping of the Vessel.

26         THEREFORE, IT IS HEREBY ORDERED that the U.S. Marshal for the Northern  
27      District of California be, and is hereby, authorized and directed, upon his (or her) seizure of  
28      the Vessel pursuant to the Process of Maritime Arrest, to surrender the possession thereof to

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP  
190 THE EMBARCADERO  
SAN FRANCISCO,  
CA 94105  
TEL: 415-438-4600  
FAX: 415-438-4601

HS.Varano

1      NMS as Substitute Custodian, and that, upon such surrender, the U.S. Marshal shall be  
2      discharged from further duties and responsibilities for the safekeeping of the Vessel and  
3      held harmless by Plaintiff from any and all claims arising whatsoever out of the substitute  
4      possession and safekeeping.

5      IT IS FURTHER ORDERED that NMS be, and hereby is, appointed the Substitute  
6      Custodian of the Vessel to retain it in its custody for possession and safekeeping, for the  
7      aforementioned compensation and until further Order of this Court.

8      IT IS FURTHER ORDERED that NMS may, in its sole professional opinion,  
9      operate machinery and/or move the Vessel should it be necessary to safeguard the Vessel  
10     and/or its crew, without further order of the Court.

11     IT IS FURTHER ORDERED that all reasonable expenses for the safekeeping of the  
12     Vessel shall be deemed administrative (*custodia legis*) expenses of the U.S. Marshal and  
13     any and all such sums paid to the U.S. Marshal and Substitute Custodian by Plaintiff shall  
14     be reimbursed to Plaintiff.

15     IT IS FURTHER ORDERED that the Plaintiff's counsel of record will serve a copy  
16     of this Order on the Defendants and all parties who may appear in this action.

17  
18  
19  
20  
21     DATED: June 20, 2013  
22  
23  
24  
25  
26  
27  
28

  
U. S. DISTRICT COURT JUDGE

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS, LLP  
190 THE EMBARCADERO  
SAN FRANCISCO,  
CA 94105  
TEL: 415-438-4600  
FAX: 415-438-4601

HS.Varamo