



1 Zone designated as “Western Beach”). (Compl. ¶ 20.) Plaintiff contends that the sole  
2 reason the “Tyee” was anchored there rather than in the San Diego Bay’s designated free  
3 anchorages was the result of a last minute cancellation of his anchorage permit. (Compl. ¶  
4 21.) Plaintiff contends that any anchorage permit granted by the city of San Diego is  
5 conditioned on the understanding that such permit is not revocable. (Id.)

6 Later in the day, the local offshore marine area was in a small craft warning status due  
7 to adverse and inclement weather. (Compl. ¶ 26.) Due to the coming of nightfall, Plaintiff  
8 attempted to return to the safety of the “La Playa” anchorage. (Id.) Plaintiff is an  
9 experienced sailor. (Compl. ¶ 28.) However, Plaintiff encountered difficulty in raising the  
10 vessel’s main sail because of a fouled halyard. (Compl. ¶ 30.) Because Plaintiff was unable  
11 to clear the halyard, Plaintiff utilized the mizzen and jib sails to commence sailing back into  
12 the bay. (Id.)

13 Due to the reduced sails, Plaintiff had great difficulty navigating the “Tyee” and spent  
14 approximately three hours attempting to sail around the tip of the jetty. (Compl. ¶ 27.) At this  
15 time, Plaintiff was approached by a U.S. Coast Guard vessel. (Id.) The Coast Guard crew  
16 asked Plaintiff if he was in trouble. (Id.) Plaintiff responded that he was experiencing great  
17 difficulty going upwind past the jetty due to his equipment failure and requested a short tow  
18 to clear the jetty tip and sail safely back into the San Diego Bay. (Id.) Plaintiff explained that  
19 he was in danger of going ashore if the vessel’s anchor failed to hold. (Compl. ¶ 30.) On  
20 the orders of a superior officer, the Coast Guard crew refused to render any assistance to  
21 Plaintiff or the vessel. (Compl. ¶ 29.) The Coast Guard crew told Plaintiff that they would  
22 remain in the immediate area and that he could call them on VHF Channel 16 if the need  
23 arose. (Compl. ¶ 31.) Plaintiff anchored the Tyee.

24 At approximately 10:30 p.m. later that same night, Plaintiff awoke when he felt the  
25 bottom of his vessel grazing a hard surface, possibly the beach’s bottom. (Compl. ¶ 32.)  
26 Plaintiff called the Coast Guard on Channel 16 and told them he had a developing  
27 emergency situation and that it was possible that the “Tyee” was dragging its anchor and was  
28 going up on the beach. (Id.) The Coast Guard responded that help was on the way. (Id.)

1 Approximately 20 minutes later, a San Diego Harbor Police vessel arrived. (Id.)

2 The San Diego Harbor Police ordered Plaintiff and his passenger to put on life vests  
3 and get into the vessel's dinghy. (Compl. ¶ 33.) According to Plaintiff, he was ordered to  
4 turn over command of the vessel to the San Diego Harbor Police. (Id.) Plaintiff complied  
5 with the Harbor Police officers' instructions, assuming that they would take a line off the  
6 vessel's bow and rotate the vessel off the soft grounding into deeper water where it could be  
7 reanchored safely. (Compl. ¶ 34.)

8 Plaintiff and his passenger were delivered safely to the docks at Shelter Island.  
9 (Compl. ¶ 36.) However, the Harbor Police did not make any efforts to move the vessel to  
10 safety. (Compl. ¶ 34.) The Harbor Police did contact civilian private towing services,  
11 defendants Sea Tow and Vessel Assist, to inquire whether they would provide private  
12 assistance. (Compl. ¶ 37.) These private businesses did not provide any assistance  
13 because Plaintiff was unable to verify the availability of a minimum of \$5,000 in immediate  
14 cash funds to pay for their services. (Id.)

15 A U.S. Navy security boat was at the police dock and initially offered to render  
16 assistance by pulling the "Tyee" off the beach. (Compl. ¶ 38.) However, the crew's  
17 supervisor denied permission to render assistance. (Id.)

18 According to Plaintiff, there was a one-hour window of opportunity to safely pull the  
19 "Tyee" off the beach before the tide started to go out. (Compl. ¶ 39.) Because the vessel  
20 was not extracted during this window, unnecessary and costly damage was done to the  
21 vessel when it was ultimately extracted by Sea Tow under contract with the U.S. Coast  
22 Guard. (Compl. ¶ 40.)

23 Plaintiff asserts claims against the U.S. Navy, U.S. Coast Guard, the Harbor Police,  
24 Sea Tow Vessel Assistance ("Sea Tow"), and Vessel Assist based on their alleged failure to  
25 render maritime emergency distress assistance, resulting in the preventable beaching of the  
26 "Tyee."<sup>1</sup> Plaintiff also asserts a claim against the Port Authority based on its alleged failure

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27  
28 <sup>1</sup> Although Plaintiff asserts that this action is being brought *in rem* as well as *in personam*, the *in rem* procedure is inapplicable here. An *in rem* action may be brought against a vessel as a defendant only if the plaintiff possesses a maritime lien against it. See Madruga v. Superior Court, 346 U.S. 556, 560 (1954).

1 to properly train the Harbor Police to render maritime emergency distress assistance.

## 2 3 **II. STANDARD**

4 Under Fed. R. Civ. P. 8(a)(2), the plaintiff is required only to set forth a “short and plain  
5 statement” of the claim showing that plaintiff is entitled to relief and giving the defendant fair  
6 notice of what the claim is and the grounds upon which it rests. Conley v. Gibson, 355 U.S.  
7 41, 47 (1957). A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should  
8 be granted only where a plaintiff's complaint lacks a "cognizable legal theory" or sufficient  
9 facts to support a cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696,  
10 699 (9th Cir. 1988). When reviewing a motion to dismiss, the allegations of material fact in  
11 plaintiff's complaint are taken as true and construed in the light most favorable to the plaintiff.  
12 See Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Although  
13 detailed factual allegations are not required, factual allegations "must be enough to raise a  
14 right to relief above the speculative level." Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct.  
15 1955, 1965 (2007). "A plaintiff's obligation to prove the 'grounds' of his 'entitle[ment] to  
16 relief' requires more than labels and conclusions, and a formulaic recitation of the elements  
17 of a cause of action will not do." Id.

## 18 19 **III. DISCUSSION**

20 Vessel Assist moves to dismiss Plaintiff's Complaint on the ground that it had no duty  
21 to render assistance to Plaintiff. The Port Authority and Harbor Police similarly contend that  
22 they did not owe Plaintiff any duty to tow his vessel into deeper waters. As discussed below,  
23 the Court agrees that none of the defendants had a duty to assist Plaintiff either by towing  
24 the "Tyee" into the San Diego Bay or, once the "Tyee" had come up on the beach, by towing  
25 it into deeper water.

### 26 27 **A. Admiralty Jurisdiction**

28 It appears that Plaintiff has invoked the admiralty jurisdiction of this Court. The case

1 is not a diversity action, and Plaintiff makes reference to violations of admiralty and maritime  
2 law.

3 A party seeking to invoke federal maritime jurisdiction over a tort claim must satisfy  
4 both a location test and a connection test. Jerome B. Grubart, Inc. v. Great Lakes Dredge  
5 & Dock Co., 513 U.S. 527, 534 (1995). Under the location test, the court must determine  
6 whether the tort occurred on navigable water. Id. The connection test has two prongs, each  
7 of which must be satisfied: (1) “A court, first, must assess the general features of the type  
8 of incident involved to determine whether the incident has a potentially disruptive impact on  
9 maritime commerce[.]” Id. (internal citation and quotation marks omitted); (2) “Second, a  
10 court must determine whether the general character of the activity giving rise to the incident  
11 shows a substantial relationship to traditional maritime activity.” Id. (internal quotation marks  
12 omitted).

13 Here, the alleged tort occurred on navigable water. Contrary to Vessel Assist’s  
14 contention, the fact that the vessel was in shallow water when it struck the beach does not  
15 mean that the incident did not occur in “navigable water.” See Turner v. Bentley Indus., LLC,  
16 2007 WL 707396 (N.D. Fla. March 5, 2007) (explaining that incident occurred in navigable  
17 waters even though the pleasure craft was anchored in shallow water some distance from  
18 the navigation channel of the sound).

19 The activity giving rise to the incident in this case was the grounding of a vessel on  
20 navigable waters. This activity is substantially related to traditional maritime activity. See  
21 Sisson v. Ruby, 497 U.S. 358, 364-65 (1990) (holding that storage and maintenance of a  
22 vessel at a marina on navigable waters fell within the substantial relationship requirement).  
23 In addition, considering the general features of the incident (i.e., a 48 foot vessel in navigable  
24 waters that has been grounded on the beach at night), the incident had a potentially  
25 disruptive impact on maritime commerce. The grounded “Tyee” could have posed a danger  
26 to other vessels and could have obstructed navigation of the waters nearby.

27 Therefore, the Court finds that it has admiralty jurisdiction over this action.  
28

1 B. Negligence

2 Plaintiff's claims against Defendants are negligence claims. Plaintiff claims that  
3 defendant U.S. Coast Guard had a statutory and/or moral duty to tow his vessel to the safety  
4 of the La Playa anchorage and that the other defendants had a statutory and/or moral duty  
5 to tow his vessel into deeper water once his vessel ran aground. The Court finds that  
6 Defendants did not owe Plaintiff a duty to render the aforementioned assistance.

7 When jurisdiction is maritime, the general principles of maritime negligence rather than  
8 common law negligence apply. Pope and Talbot v. Hawk, 346 U.S. 406 (1953). However,  
9 like common law negligence, the elements of a maritime negligence cause of action include:  
10 (1) the existence of a duty; (2) breach of said duty; (3) proximate cause; and (4) actual loss  
11 or injury to the plaintiff due to the improper conduct. Prince v. Thomas, 25 F. Supp. 2d 1045,  
12 1047 (N.D. Cal. 1997).

13 Plaintiff points to 46 U.S.C. § 2304 as a statutory source of Defendants' duty to  
14 provide him assistance. This statute provides:

15 A master or individual in charge of a vessel shall render assistance to any  
16 individual found at sea *in danger of being lost*, so far as the master or  
17 individual in charge can do so without serious danger to the master's or  
18 individual's vessel or individuals on board.

19 (Emphasis added.) However, according to the facts pled in the Complaint, Plaintiff was not  
20 in any danger of being lost at sea. Moreover, to the extent Plaintiff and his passenger were  
21 in any bodily danger, the Harbor Police made sure that they got to land safely.

22 With respect to the Harbor Police, Plaintiff cites to San Diego Unified Port District  
23 Code § 8.25, which states that "the Executive Director or any harbor police officer is hereby  
24 authorized to remove and impound any vessel, watercraft or object found in violation of any  
25 Federal or State law or provision of this Code in accordance with the procedures set forth  
26 in this Section . . . ." Plaintiff misconstrues this regulation, which does not require the harbor  
27 police to provide general protection to vessels, but, rather, permits the harbor police to  
28 remove or impound vessels found in violation of the law.

Plaintiff also generally cites to the "Mariner's Code of Conduct" (it is unclear whether

1 this is an unwritten moral code or some sort of publication) and a maritime law treatise, “The  
2 Law of the Seaman,” authored by Robert Force and Martin J. Norris. These sources do not  
3 establish the existence of a duty on the part of Defendants to render assistance to Plaintiff  
4 under the circumstances of this case.

5 Under the principles of general maritime law, a private party has no affirmative duty  
6 to rescue a vessel or person in distress. Wright v. United States, 700 F. Supp. 490, 494  
7 (N.D. Cal. 1988). This same principle applies to the U.S. Coast Guard. Id. See also Frank  
8 v. United States, 250 F.2d 178, 180 (1957) (explaining that although the Coast Guard may  
9 render aid to persons and protect property, federal legislation falls short of creating a  
10 governmental duty of affirmative action). Similarly, absent statutes or regulations providing  
11 otherwise, the Harbor Police and San Diego Port Authority do not owe a duty of affirmative  
12 action to a person or vessel in distress.

13 Once a private salvor renders voluntary assistance, however, the salvor may be held  
14 liable if an attempted rescue affirmatively injures the person in distress or worsens his  
15 position. Frank, 250 F.2d at 180. Where the salvor takes affirmative actions that cause  
16 some physical change to the environment or some other material alteration of circumstances,  
17 the relevant test is “not whether the risk was increased over what it would have been if the  
18 defendant had not been negligent, but rather whether the risk was increased over what it  
19 would have been had the defendant not engaged in the undertaking at all.” Thames  
20 Shipyard and Repair Co. v. United States, 350 F.3d 247, 261 (1st Cir. 2004) (internal  
21 quotation marks omitted). Liability may also be established on a theory of induced justifiable  
22 detrimental reliance, such as when the Coast Guard’s actions cause potential rescuers to  
23 rest on their oars in reliance on the Coast Guard’s undertaking. Id.

24 In this case, the Coast Guard crew did not render any assistance upon instructions  
25 of a superior officer.<sup>2</sup> They did not take any affirmative actions that injured Plaintiff or his

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27 <sup>2</sup> The U.S. Navy and U.S. Coast Guard have not filed a response to the Complaint.  
28 Upon review of the proofs of service filed by Plaintiff, it appears that these defendants were  
not served in compliance with Fed.R.Civ.P. 4(i), which governs service on the United States  
and its agencies. Nevertheless, the Court will address Plaintiff’s claims against these

1 vessel, nor did they induce detrimental reliance on the part of Plaintiff or other potential  
2 rescuers. Therefore, the U.S. Coast Guard cannot be held liable for negligence. See, e.g.,  
3 Oxman v. United States, 1993 WL 651904 (D. Or. June 21, 1993) (holding that the Coast  
4 Guard was not liable for negligence because the ship would have sunk regardless of the  
5 Coast Guard's rescue efforts, and Plaintiff did not forgo other possible sources of  
6 assistance); Albinder v. United States, 703 F. Supp. 246 (S.D.N.Y. 1987) (holding that the  
7 Coast Guard was not liable because the defective pumps did not increase the risk of harm,  
8 and Plaintiff did not allege that the vessel's crew decided to forgo other avenues of rescue  
9 in reliance on the Coast Guard's efforts).

10 After Plaintiff's vessel went aground, Plaintiff claims that the Harbor Police ordered  
11 him and his passenger off the vessel and took command of the vessel. Even if this is true,  
12 Plaintiff does not allege that the Harbor Police took any affirmative action that harmed him.  
13 Rather, Plaintiff complains that the Harbor Police did not tow his vessel into deeper water  
14 before the tide went out. Plaintiff does not allege, however, that the Harbor Police *prevented*  
15 him from getting someone else to tow his vessel, nor does Plaintiff allege that he chose to  
16 forgo other means of getting his vessel towed due to reliance on the Harbor Police's rescue  
17 efforts. Nor does Plaintiff allege that had he stayed on the vessel he could have prevented  
18 the damage. Indeed, Plaintiff alleges that the Harbor Police contacted private contractors  
19 Vessel Assist and Sea Tow to determine whether they could provide assistance. These  
20 companies did not provide assistance because Plaintiff could not verify that he had \$5,000  
21 to pay for the services. It appears that Plaintiff would have been faced with the obstacle of  
22 verifying cash availability whether or not the Harbor Police got involved in the situation.  
23 Because the Harbor Police did not put Plaintiff in a worse position than he would have been  
24 in had the Harbor Police not engaged in rescue efforts, the Harbor Police are not liable for

25 \_\_\_\_\_  
26 defendants because the same law governs all of Plaintiffs' claims and the simultaneous  
27 consideration of all of Plaintiff's claims will promote judicial economy. The Court notes that  
28 although Plaintiff cites to the Federal Tort Claims Act as the statutory basis for his claims  
against the United States, the Suits in Admiralty Act, 46 U.S.C. § 741, et seq., is the  
exclusive remedy against the United States for maritime torts. Williams v. United States, 711  
F.2d 893 (9th Cir. 1983).



1 any damage to Plaintiff's vessel. Plaintiff's negligent training claim against the Port Authority  
2 is also dismissed because it is predicated on Plaintiff's negligence claim against the Harbor  
3 Police.<sup>3</sup>

4 Finally, based on the allegations of the Complaint, Vessel Assist, Sea Tow,<sup>4</sup> and the  
5 U.S. Navy did not render any assistance to Plaintiff and did not induce any justifiable  
6 reliance. Therefore, Plaintiff's claims against these defendants fail as well.

7

8

**IV. CONCLUSION**

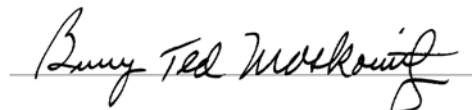
9 For the reasons discussed above, Defendants' motions to dismiss are **GRANTED**.  
10 Plaintiff's Complaint is dismissed in its entirety for failure to state a claim. However, the  
11 Court grants Plaintiff leave to file a First Amended Complaint within 20 days of the filing of  
12 this order. If Plaintiff fails to file an amended complaint within the prescribed time, the Court  
13 shall order the Clerk to close this case.

14 **IT IS SO ORDERED.**

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16 DATED: August 25, 2009

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Honorable Barry Ted Moskowitz  
United States District Judge

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26 <sup>3</sup> It is unclear whether Plaintiff seeks to hold the Port Authority responsible for the  
27 damage to his vessel based on the cancellation of his anchorage permit. To the extent that  
28 he does, Plaintiff's claim fails because, among other things, the beaching of his vessel was  
not a reasonably probable consequence of the cancellation of his permit.

28

<sup>4</sup> Sea Tow has not responded to the Complaint.