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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GB CAPITAL HOLDINGS, LLC,

12 Plaintiff,

13 v.
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15 S/V GLORI B, a 1977 Sailing Vessel of
16 Approximately 27-Foot in Length,
17 U.S.C.G. Official No. 598405, and all of
18 her engines, tackle, accessories,
19 equipment, furnishings and appurtenances,
20 in rem,

21 Defendant.

Case No.: 18-cv-0312-WQH-AGS

**ORDER TO ISSUE VESSEL ARREST
WARRANT AND TO APPOINT
SUBSTITUTE CUSTODIAN**

22 San Diego Mooring Company supplied the defendant sailboat a berth in San Diego
23 Bay. Under the mooring contract, the vessel must undergo an annual safety inspection.
24 When the sailboat's owner purportedly declined such a safety check, the company ordered
25 him to remove his boat. The owner allegedly refused. San Diego Mooring Company's
26 agent, the plaintiff here, now seeks an arrest warrant for the sailboat and an order
27 appointing a substitute custodian to safeguard the vessel. The Court grants these requests.
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1 **BACKGROUND**

2 According to the verified complaint, Jeffrey Heston contracted with San Diego
3 Mooring Company to provide mooring and wharfage services for his sailboat, the
4 Defendant Vessel.¹ Under the contract, Heston’s sailboat was required to undergo an
5 annual physical inspection and safety check by certain approved methods, in the company’s
6 discretion. Heston allegedly refused the company’s preferred method of a U.S. Coast Guard
7 Auxiliary inspection, stating that the Coast Guard was not competent to make
8 seaworthiness determinations and that he was himself “competent to make such
9 determination.” (ECF No. 2-1, at 4-5.) As a result, San Diego Mooring Company ordered
10 Heston to remove his sailboat from its mooring, which he purportedly refused to do.
11 Finally, the company impounded the Defendant Vessel and moved it to Pier 32 Marina in
12 National City, California. The company then directed its agent, the plaintiff here, to
13 institute this admiralty action and to seek a Court order to issue a vessel arrest warrant and
14 to appoint a substitute custodian.

15 **DISCUSSION**

16 **A. Vessel Arrest Warrant**

17 Plaintiff is entitled to an arrest warrant if it has a valid maritime lien on the Defendant
18 Vessel and it meets the requirements for a civil action in rem to enforce that lien.

19 **1. Maritime Lien**

20 Under the Maritime Lien Act, 46 U.S.C. § 31342, “a person (1) providing
21 necessaries (2) to a vessel (3) on the order of the owner or a person authorized by the owner
22 has a [maritime] necessaries lien on the vessel and may bring a civil action in rem to enforce
23 that lien.” *Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 305 F.3d 913, 922 (9th Cir.
24 2002). By the moorage contract’s explicit terms, San Diego Mooring Company provided
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27 ¹ The term “Defendant Vessel” refers to S/V GLORI B, a 1977 sailing vessel of
28 approximately 27 feet in length, U.S.C.G. Official No. 598405, and all of her tackle,
accessories, equipment, furnishings, and appurtenances.

1 the Defendant Vessel wharfage services, which are “‘necessaries’ within the meaning of
2 maritime law.” *Cahuenga Assocs. II v. S/V Mako*, 256 F. Supp. 3d 1092, 1094 (S.D. Cal.
3 2017) (collecting cases); (see ECF No. 1-2, at 1-2). The contract further specifies that the
4 agreement is for “the benefit of the above [Defendant] Vessel” and that the contracting
5 parties are San Diego Mooring Company and Jeffrey Heston, who affirmed that he was the
6 vessel’s owner. (ECF No. 1-2, at 2.) So, San Diego Mooring Company provided
7 necessities to the Defendant Vessel at the owner’s request, and the company therefore has
8 the required maritime lien.²

9 **2. Civil Action in Rem**

10 “An action in rem may be brought . . . [t]o enforce any maritime lien.” Fed. R.
11 Civ. P., Supp. Admiralty Rule C(1)(a). The complaint for such an action must: (1) “be
12 verified,” (2) “describe with reasonable particularity the property that is the subject of the
13 action,” and (3) “state that the property is within the district or will be within the district
14 while the action is pending.” Fed. R. Civ. P., Supp. Admiralty Rule C(2). If after
15 “review[ing] the complaint and any supporting papers,” the Court finds that these
16 “conditions for an in rem action appear to exist, the court must issue an order directing the
17 clerk to issue a warrant for the arrest of the vessel or other property that is the subject of
18 the action.” Fed. R. Civ. P., Supp. Admiralty Rule C(3)(a)(i). The arrest warrant should
19 issue “upon a prima facie showing that the plaintiff has an action in rem against the
20 defendant . . . and that the property is within the district.” Fed. R. Civ. P., Supp. Admiralty
21 Rule C, Advisory Committee Notes to 1985 Amendment.

22 This Court has reviewed plaintiff’s verified complaint and supporting papers, which
23 describe the Defendant Vessel with particularity (see note 1, supra) and establish that it is
24 currently located within this District at Pier 32 Marina in National City, California. (See,
25 e.g., ECF No. 1, at 1-2, 4-5, 13; ECF No. 1-2, at 3; ECF No. 3-1, at 1.) Because plaintiff
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27 ² Because a maritime necessities lien clearly exists, the Court need not address
28 plaintiff’s argument that it has an additional maritime lien based on a trespass theory.

1 has made a prima facie showing that the conditions for an in rem action exist, the requested
2 vessel arrest warrant must issue.

3 **B. Substitute Custodian**

4 Plaintiff moves to appoint Pier 32 Marina as substitute custodian to safeguard the
5 sailboat. In conjunction with a vessel arrest warrant, “a judge may order that custody of the
6 vessel be given to the operator of a marina or similar facility . . . if a judge finds that such
7 firm or person can and will safely keep the vessel and has in effect adequate insurance to
8 cover any liability for failure to do so.” Civ. LR E.1(c)(2). Jimi Laughery, the Assistant
9 Marina Manager for Pier 32 Marina, has declared under penalty of perjury that he and his
10 staff are “fully qualified to preserve and protect [the Defendant Vessel] and safely keep her
11 in the place and stead of the United States Marshal, until further Order of the Court.” (ECF
12 No. 3-1, at 2.) During his eight-and-a-half years at Pier 32, Laughery has deployed
13 dewatering pumps to avoid boat sinkings and has responded to multiple pollution incidents.
14 (Id.) If Pier 32 is appointed as substitute custodian, he also promised to inventory and
15 photograph (or videotape) the Defendant Vessel and provide ongoing wharfage and
16 custodial services for the boat. (Id.) Finally, he averred that Pier 32 Marina maintains at
17 least three insurance policies to protect against negligence during its custodianship, which
18 are each detailed in his declaration. (Id. at 3.) Although the Defendant Vessel has an
19 estimated value of only \$3,500, each of Pier 32’s insurance policies has a limit of at least
20 \$1 million. (ECF No. 2-1, at 6; ECF No. 3-1, at 3.)

21 Based on these facts, the Court finds that Pier 32 Marina can and will safely keep
22 the Defendant Vessel and currently has adequate insurance to cover its custodian
23 responsibilities.

24 **CONCLUSION**

25 The Court grants plaintiff’s ex parte motions for a vessel arrest warrant (ECF No. 2)
26 and for appointment of a substitute custodian (ECF No. 3). The Court orders as follows:
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1 8. At rates not exceeding the usual and customary rates prevailing in the Port of
2 San Diego, Pier 32 Marina must provide:

3 a. Inventory: As soon as possible after assuming custody of the Defendant
4 Vessel, Pier 32 Marina must photograph and/or videotape the Defendant Vessel's interior
5 and exterior and prepare a written inventory of key equipment and property that is not
6 installed as part of the vessel.

7 b. Wharfage and Custodial Services: Pier 32 Marina must provide the
8 Defendant Vessel ongoing wharfage and custodial services. The custodial services will
9 include maintenance of the insurance specified in Jimi Laughery's declaration (see ECF
10 No. 3-1, at 3) and general custodial services, including: periodic inspection of mooring
11 lines/fenders to assure safe and secure mooring; daily specific visual inspection of the
12 exterior of the vessel for evidence of water intrusion, tampering, or any other problems;
13 interior inspections at least twice monthly; and "walk by" inspections by marina personnel.

14 c. Additional Services: Pier 32 Marina will provide the following
15 additional services: cleaning; minor maintenance; inspection of the vessel's bottom by a
16 diver for the purpose of cleaning and reporting findings regarding underwater hull, metal,
17 and zinc conditions; and other services as may be required from time to time by further
18 Court order. If Pier 32 Marina determines that further monitoring or services are necessary,
19 Pier 32 Marina or its counsel must so notify the Court or seek an appropriate Order.

20 9. Without a Court order, Pier 32 Marina shall not sell or transfer the Defendant
21 Vessel, nor run the Defendant Vessel's engines or generators.

22 10. Except as directed by this Court or in case of emergency, Pier 32 Marina will
23 not release the Defendant Vessel to anyone or let anyone aboard her.

24 Dated: April 10, 2018

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27 Hon. Andrew G. Schopler
28 United States Magistrate Judge