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January 22, 2008

VIA MESSENGER

Hon. Herman J. Cahn
New York County Courthouse
60 Centre Street, Room 615
New York, NY 10007

Re: *Golden Gate Yacht Club v. Societe Nautique de Geneve*

Dear Justice Cahn:

Defendant Societe Nautique de Geneve ("SNG") has changed course once again in its letter, submitted January 18, 2008, requesting SNG's third, different proposed counter-order. Plaintiff Golden Gate Yacht Club ("GGYC") is thus compelled to ask the Court's indulgence to consider this reply.

On December 6, 2007, SNG proposed a counter-order that correctly provided that "GGYC's challenge is valid, and GGYC is the Challenger of Record" and proposed dates for the match. (p. 4.) On December 12, 2007, SNG's current counsel proposed a counter-order that removed the ruling that GGYC is the Challenger of Record and selected *different* dates for the match. (p. 3). In its January 18th letter, SNG proposes to remove entirely the dates of the match, as well as the provision naming GGYC the valid challenger.¹

SNG's multiple, changing contentions begs the question: just how difficult is it for SNG's counsel to read the Court's Decision of November 27, 2007? The Decision is clear: it states that "GGYC is Challenger of Record pursuant to the Deed". (p. 18.) Thus, SNG proposes striking from the Order an express holding of this Court -- one that SNG's first proposed counter-order contained.

Each of SNG's prior proposed counter-orders recognized that the settled order should set out the dates for the match, but each selected dates chosen by SNG, not GGYC. The Deed of Gift provides that "the Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races." In full compliance, GGYC's written Notice of Challenge, dated

¹ SNG suggests that the Court enter the proposed counter-order of Intervenor-Defendant Club Nautico Espanol de Vela ("CNEV"), dated January 9, 2008. This proposal contains no provision that GGYC is the Challenger of Record and no dates for the match. Interestingly, CNEV's January 9th proposed counter-order contradicts its Notice of Joinder, dated December 7, 2007, in which it asked the Court to enter SNG's December 6th proposed counter-order.

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July 11, 2007, named dates in July 2008 for the races. The Court has the equitable authority to fashion a remedy for SNG's breach of the Deed's terms that provides the ten months' notice and upholds the challenger's right to name the race days: that is, to order the race dates, ten months after the November 27th Decision, selected by GGYC in its proposed order, submitted December 11th.²

The remainder of SNG's January 18th submission, asserting that the Court had no authority to adjudicate the validity of GGYC's challenge, is merely an attempt to reargue its pending motion for leave to reargue, with still another new argument, not raised on SNG's motion for summary judgment or in its response to GGYC's cross-motion for summary judgment. This begs the question: when is this going to stop?

The Court has the authority to enforce the Deed of Gift. The Deed of Gift identifies the information that the Challenger of Record must provide in its written notice of challenge, and accompanying certificate, to describe its challenging vessel. (¶ 6.) The Deed states:

Accompanying the ten months' notice of challenge there must be sent the name of the owner and a certificate of the name, rig and following dimensions of the challenging vessel, namely, length on load water-line; beam at load water-line and extreme beam; and draught of water.

In compliance with the Deed, GGYC's written Notice of Challenge was accompanied by a "Certificate of Name, Rig and Specified Dimensions of Challenging Vessel". In addition to identifying the name, owner and rig of GGYC's vessel, the Certificate identifies the "Length on Load Waterline," the "Beam at Load Waterline," the "Extreme Beam," the "Draught of water (hull draft)" and the "Draught of water (boards down)." That is all the information that the Deed requires.

On summary judgment, SNG did not argue that GGYC's Certificate was not in compliance with the Deed. It argued instead that CNEV's earlier challenge was valid and alternatively that GGYC had unclean hands. (*See* Decision at 9; 16-17.) It is now precluded from raising new arguments.

Finally, SNG's January 18th argument is demonstrably frivolous for entirely separate reasons. First, there is no evidence that the ISAF Racing Rules cited by SNG even apply to the races. There was no such evidence submitted on the summary judgment motion. And, even now, SNG's January 18th submission does not proffer any proof that the ISAF Racing Rules, or any other rules, govern the races. Indeed, GGYC had requested that SNG identify the applicable rules, in its motion for a preliminary injunction. (Aug. 22, 2007 GGYC Mem. at 23-24.) SNG

² On December 11, 2007, upon the request of the Court's office, GGYC submitted a proposed order that is identical to SNG's proffered order of December 6th, but for one essential change: the replacement of the race dates proposed by SNG with those proposed by GGYC.

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refused. (Sept. 5, 2007 Mem. at 22-23.) To this date, SNG has not disclosed its sailing rules for the races.

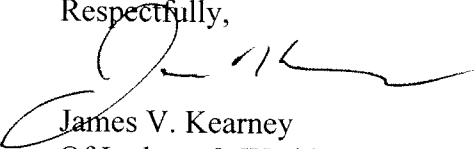
Second, even if there was evidence that the ISAF Racing Rules were to apply to the races, those rules could not limit GGYC's ability to bring this action or the Court's jurisdiction to enforce the Deed of Gift. A defender's rules and regulations cannot take precedence over the Deed of Gift. The Deed of Gift provides that races "shall be sailed subject to [the Defender's] rules and sailing regulations *so far as the same do not conflict with the provisions of this deed of gift.*" (¶ 6) (emphasis added.) Thus, to the extent that a defender's rules and regulations purported to deprive the Court of the authority to enforce the Deed, those rules would not apply.

Third, there is no evidence that the "boat certificates" referenced in Appendix N2.2(a) of the ISAF Racing Rules refer to the "certificate" that must accompany a challenger's written notice of challenge under the Deed ("Deed Certificate"). Nowhere do the ISAF Racing Rules provide that the "boat certificates" identify the same information contained in a Deed Certificate. Indeed, those rules, by their explicit terms, are in conflict with the Deed of Gift; while the Deed of Gift requires that a Deed Certificate accompany a notice of challenge, ISAF Racing Rule 78 provides that a boat certificate may be provided *after* the races are underway.³

Fourth, on its motion for summary judgment, SNG took an entirely different position. There, SNG asserted, with respect to the validity of CNEV's challenge, that its arbitration panel - not an ISAF international jury -- had the authority to determine whether CNEV or GGYC was the valid challenger. (Decision at 8.) The Court rejected this. (*Id.* at 15). This Decision is entirely consistent with *Mercury Bay*. See *Mercury Bay Boating Club, Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256, 266-67 (1990).

Accordingly, GGYC respectfully requests that the Court enter its proposed order, dated December 11, 2007.

Respectfully,



James V. Kearney
Of Latham & Watkins LLP

³ See, e.g., ISAF Racing Rule 78.2 ("When a *rule* requires a certificate to be produced before a boat *races*, and it is not produced, the boat may *race* provided that the race committee receives a statement signed by the person in charge that a valid certificate exists and that it will be given to the race committee before the end of the event.") (emphasis in original).

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