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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOSEPH ROBERT SPOONER) CASE NO.
13)
14 **Plaintiff,**) **IN ADMIRALTY**
vs.)
15) **SEAMAN'S FIRST AMENDED**
THE MULTI HULL FOILING AC45) **VERIFIED COMPLAINT IN REM**
16 VESSEL "4 ORACLE TEAM USA",) **AND/OR IN PERSONAM FOR WAGES**
her machinery, mechanical) **AND PENALTIES-ALL WITHOUT**
17 drive system, hydraulic) **PAYMENT OF COSTS, 28 U.S.C.**
operating system, electronics,) **Section 1916**
18 platform and appendages, hard)
and soft sails and)
19 appurtenances, *In Rem*)
ORACLE RACING, INC. A)
20 California Corporation d/b/a)
ORACLE TEAM USA, *In personam*;)
21 **Defendants**)
22 _____)

23 COMES NOW plaintiff and complains of the defendants alleging upon
24 information and belief as follows:
25

- 26 1. This District Court has original jurisdiction over this claim
27 based on its admiralty jurisdiction under 28 U.S.C. Section
28 1333.

1 2. Plaintiff, Joseph Robert Spooner, a 41 year old married
2 sailor (born October 31, 1973) brings and maintains this
3 admiralty suit under general maritime law as a suit for damages
4 for the loss of his future contractual wages and past expenses
5 and damages resulting from his wrongful discharge arising out of
6 defendants' breach of a maritime employment/services contract
7 with plaintiff; and further, for defendants' breach of its
8 implied contractual duty to act in good faith and to deal fairly
9 in performing and enforcing its maritime employment/services
10 contract with plaintiff.

11 3. Plaintiff also brings this action *in rem* under 46 U.S.C. §
12 31342 being a person providing "necessaries" to the defendant
13 vessel in the form of defendants' still unpaid debt to
14 Plaintiff, which it promised to pay, for the cost of obtaining
15 plaintiff's category O-1 work visa, required to provide services
16 to the defendant vessel, which services plaintiff did provide in
17 the form of repairs. Alternatively if this money owing is not
18 considered as a necessary, plaintiff asserts it to be past wages
19 owed also giving rise to a maritime lien.

20 4. Until the day of plaintiff's wrongful discharge by
21 defendants, plaintiff had longevity of service to defendant
22 having provided 11 years of service as a sailor in various and
23 continuing America's Cup campaigns for Oracle Team USA in the
24 United States and other countries where the America's Cup race
25 has been held, including Valencia, Spain and in San Francisco,
26 California. During the 12 years Oracle Team USA, with the same
27 ownership, has traded under different names including BMW Oracle
28 Racing, Oracle Racing SL, and Oracle Racing Inc.

1 5. In addition to his sought *in rem* remedies, plaintiff brings
2 this action seeking compensatory and punitive damages including
3 damages for loss of wages and contract value, loss of Oracle
4 Team USA win bonus, loss of career media exposure, loss of
5 fringe benefits, emotional and mental distress, disability,
6 damages to reputation, embarrassment, humiliation, fright,
7 shock, loss of reputation in international professional sailing
8 community, and denial of social pleasure and enjoyment, damage
9 to plaintiff's professional reputation resulting in negative
10 damage to plaintiff's career locally and internationally and
11 other damages.

12 6. *In personam* defendant Oracle Racing, Inc., doing business as
13 ORACLE TEAM USA, presently is and has been a California
14 Corporation since June 20, 2000, with its principal office
15 located at Pier 80, 999 Marin Street, San Francisco, California
16 94124, and at all material times herein is acting by and through
17 its officers, agents, servants, employees, representatives,
18 General Counsel Sam Hollis (not admitted as a member of the
19 California Bar), CEO Russell Coutts, General Manager Grant
20 Simmer and Master James Spithill, and has its principal place of
21 business in San Francisco and is doing business in the Northern
22 District of California..

23 7. Plaintiff is a seaman and a ward of this Admiralty Court,
24 and elects to take advantage of the provisions of 28 U.S.C.
25 Section 1916 to proceed without prepayment of costs or fees.

26 8. The defendant vessel is a 45 foot multi hull Foiling AC45
27 known as "4 Oracle Team USA" which defendant Oracle Racing, Inc.
28 owns for the purpose of ORACLE TEAM USA entering the America's

1 Cup World Series commencing in June 2015 and other purposes.
2 Said vessel is documented through the America's Cup Event
3 Authority.

4 9. Said vessel is presently located at Pier 80, 999 Marin
5 Street, San Francisco, CA 94124. The vessel is not a public
6 vessel.

7 10. Said vessel has her home port in the Northern District of
8 California but all indications are that on February 27th 2015 the
9 vessel was taken out of the water and that the owners are
10 presently planning on moving the vessel to Bermuda any day.

11 Attached as **Exhibit A** is a true and correct photograph of Pier
12 80 taken on February 28, 2015 which indicates that defendants
13 are in the process of packing up their camp and moving from Pier
14 80. Attached as **Exhibit B** is a true and correct copy of Pier 80
15 taken on March 3, 2015. Plaintiff asserts on information and
16 belief that defendant Oracle Racing, Inc. may move the said
17 vessel's home port to Port of Hamilton, Bermuda at any time.

18 11. During all times mentioned herein said defendant vessel
19 was owned by defendant Oracle Racing, Inc. and was engaged in
20 maritime commerce.

21 12. At all times herein, plaintiff was employed by defendants
22 as a member of the crew aboard said vessel, in the service of
23 the vessel, and in the course and scope of his duties as a
24 seaman in furtherance of the mission and commerce of the vessel
25 plaintiff crewed, maintained and repaired said vessel.

26 13. After Oracle Team USA succeeded in winning the 34th
27 America's Cup in October 2013, plaintiff engaged in a telephone
28 discussion on November 7th 2013 with defendant Oracle Racing,

1 Inc.'s CEO Russell Coutts ("Coutts") regarding plaintiff
2 entering in to a further contract with said defendant to be a
3 sailor for the next America's Cup campaign on the Oracle Racing,
4 Inc.'s racing team that it was starting to appoint. At that time
5 it was thought that the next America's Cup - which is the 35th
6 America's Cup - would be held in San Francisco.

7 14. During that telephone conversation Coutts told plaintiff
8 who had just turned 40 years of age, **that he thought that**
9 **plaintiff was too old** to join the racing team as a grinder, even
10 though said defendant had in its 34th America's Cup campaign
11 engaged the services of similarly aged sailors including John
12 Kostecki (grinder/tactician), Jonathan ("Jono") MacBeth
13 (grinder), and Matt Mason (grinder) which Coutts knew. Plaintiff
14 also emphasized to Coutts during that conversation that his level
15 of fitness had always been maintained, that he continued to
16 improve physically and that his fitness test results were one of
17 the best in the team for the 34th America's Cup. Coutts then
18 responded by asking plaintiff to send Coutts a letter with some
19 data putting forth plaintiff's arguments as to why plaintiff
20 believed he was qualified to be hired by defendant Oracle
21 Racing, Inc. for the 35th America's Cup racing team.

22 15. On November 9th 2013 plaintiff responded to Coutt's
23 invitation by sending him a letter setting forth the reasons why
24 plaintiff believed he was suitably qualified to be hired for the
25 Oracle Racing, Inc. team for the 35th America's Cup team as a
26 grinder. In that letter plaintiff pointed out that in the
27 previous campaign that none of the younger guys had come
28 anywhere near plaintiff's level of fitness. Attached as **Exhibit**

1 C is a true and correct a letter from Plaintiff to Coutts sent
2 by email on November 9th 2013.

3 16. The Oracle Racing, Inc. sailing team manager Tom
4 ("Slingers") Slingsby ("Slingsby") told plaintiff that he had
5 explained to Coutts that Plaintiff was suitably fit to be on the
6 racing team, and Slingsby had told plaintiff that Coutts did
7 have a thing about age. Attached as **Exhibit D** is a true and
8 correct copy of a series of communications exchanged between
9 plaintiff and Slingsby on November 28th 2013.

10 17. Coutts then followed up with plaintiff and communicated to
11 plaintiff that he would be giving plaintiff a contract to be a
12 sailor on the Oracle Racing, Inc. team for the 35th America's Cup
13 which at that time was expected to be held in San Francisco or
14 somewhere else in the United States. Then on or about November
15 28th 2013 Coutts sent an email to plaintiff stating that he had
16 the contract ready but that he just wanted to communicate a few
17 "major items" in the contract. Attached as **Exhibit E** is a true
18 and correct copy of an email received by plaintiff from Coutts
19 dated November 28th 2013. Plaintiff relied on Coutts'
20 representations in this email communication to understand that
21 outside the items mentioned in this email as "major items" that
22 there was nothing else in the contract being proposed that was
23 different than the previous contract with defendant Oracle
24 Racing, Inc. and he noted that the contract was for a definite
25 term.

26 18. However, Coutts failed to state in this email that unlike
27 plaintiff's previous contract which is attached as **Exhibit F**,
28 that Oracle Racing, Inc. was adding a clause to the contract in

1 which defendant Oracle Racing, Inc. was taking the position that
2 plaintiff could be fired without cause at any time on two weeks'
3 notice, even though that clause was inconsistent with other
4 clauses in the contract such as Clauses 1,2, 6 and 20 which
5 stated that the contract was for a fixed term but was interim in
6 nature and would be replaced by another contract called "the
7 long-form employment agreement" once relocation issues were
8 determined. All previous contracts that plaintiff had entered
9 into with this defendant provided for dismissal based on just
10 cause (being failure to perform/serious misconduct).

11 19. Plaintiff then received a copy of a contract entitled
12 "Heads of Terms for AC35-Sailing Team-Joseph Spooner" from
13 Coutts. At the same time plaintiff heard from Slingsby that
14 sailor Kyle Langford (and a couple of the other sailors Slingsby
15 had mentioned in his communications) also had contracts sent to
16 them, but that Coutts had heard that Langford was talking to
17 another team which got Coutts furious about this and Coutts was
18 threatening to withdraw unsigned contracts. The message to
19 plaintiff was that if he wanted to join the team he needed to
20 sign the contract quickly which he did under pressure due to
21 this situation. At no time in any of Slingsby's communications
22 with plaintiff pre-contract did Slingsby mention as the manager
23 of the sailing team that defendant Oracle Racing, Inc. was
24 taking the position that the said contract was one where
25 plaintiff could be fired for any reason at any time.

26 20. In these circumstances, on or about December 9, 2013
27 plaintiff entered into a maritime services employment contract
28 entitled "Heads of Terms for AC35-Sailing Team-Joseph Spooner"

1 ("The Contract") with defendant Oracle Racing, Inc. d/b/a Oracle
2 Team USA, which contract commenced on February 1, 2014 for the
3 fixed term of over three (3) and a half years with the expiry
4 date being "on the date that is seven (7) days immediately
5 following the date of the final race of the 35th America's Cup
6 Finals".

7 21. The Contract provides that plaintiff was from July 1, 2014
8 through the expiry date to receive **US\$25,000.00 per calendar**
9 **month**. The Contract further provides that plaintiff is to
10 "provide, perform and deliver such duties and services required
11 of him as a member of the sailing team of ORACLE TEAM USA,
12 reporting to Russell Coutts." Coutts, as defendant Oracle
13 Racing, Inc.'s CEO, directed the means and methods of
14 plaintiff's work as a seaman under The Contract as did the
15 defendant vessel's Master James Spithill also so direct.

16 22. Additionally, The Contract provides that plaintiff is to
17 receive a bonus of an undisclosed amount but not less than six
18 (6) months of his average undisclosed wages under The Contract,
19 if the sailing team of ORACLE TEAM USA successfully defends the
20 America's Cup in the 35th America's Cup Finals.

21 23. The Contract also provides that plaintiff shall be
22 reimbursed for "any other business expenses" that plaintiff
23 "properly and necessarily incurs" performing services.

24 24. The Contract was drafted by Sam Hollis, a British law
25 graduate, whom plaintiff believes is not a member of the
26 California Bar, even though The Contract calls for the
27 application of California law. Defendant Oracle Racing, Inc.
28 did not even hire a properly qualified California lawyer to

1 draft The Contract, and yet was getting its sailors- a protected
2 class as wards of the admiralty court - such as plaintiff and 24
3 year old Kyle Langford to sign! Defendant Oracle Racing, Inc.
4 did not and still does not have a human resources department and
5 did not recommend to plaintiff at any time that he should have a
6 California lawyer review The Contract before he signed it.

7 25. The Contract contains conflicting, unclear and uncertain
8 language. The Contract at Paragraphs 2 and 3 address the fixed
9 term of the contract being from February 1, 2014 until 7 days
10 immediately following the 35th America's Cup Finals. However the
11 expiry date under Paragraph 2 is qualified by stating "unless
12 terminated earlier in accord with the Heads of Terms" which
13 appears to refer to the contractually contemplated termination
14 under Paragraph 20 which states "This Heads of Terms is being
15 entered into as an interim arrangement pending its substitution
16 with a long form employment agreement". Clearly as an interim
17 contract to be replaced through the contemplated long form
18 employment contract, paragraph 2's termination reference is to
19 Paragraph 20's contemplated termination written into The
20 Contract.

21 26. In providing a start date and an expiry date under
22 Paragraphs 2 and 3, the contract is one for a fixed term. But
23 then the contract provides at Paragraph 12 under "Notice Period"
24 that "Either OTUSA or the Company may terminate this Heads of
25 Terms for any reason whatsoever at any time by giving no less
26 than two (2) weeks' prior written notice of termination."
27 Further, **Paragraph 12 makes no reference to Paragraph 3.** Given
28 the conflict between these contractual terms **Paragraph 12 is**

1 **equivocal.**

2 27. At the time that The Contract was executed plaintiff was
3 in New Zealand and then entered the United States on December
4 26th 2013 under the Class of Admission "WT" which is the Visa
5 Waiver program which entitled Plaintiff as a New Zealander to
6 enter into the United States until March 6th 2014 but not to
7 work. Attached as **Exhibit G** is a true and correct copy of my
8 admission record.

9 28. Once the contract was executed, in order for Plaintiff to
10 be able to perform work under the contract in the United States,
11 plaintiff needed to secure a work permit from the United States
12 Immigration Services. Plaintiff could not apply for a work
13 permit until he had a contract for work as a precondition to
14 even starting the process of obtaining a work permit also known
15 as a work visa. The management at Oracle Racing, Inc. were all
16 aware that the Australian, New Zealand and other foreign country
17 sailors hired by defendants needed to have work visas to be able
18 to legally work for Oracle in the United States. Coutts himself
19 was well aware of the visa requirements and as a New Zealander
20 himself would have had to had obtained a work visa for himself
21 to conduct his CEO business in the Oracle compound at Pier 80,
22 San Francisco. The person that was in charge of coordinating the
23 visas for the sailors was Oracle Racing, Inc.'s General Manager
24 Grant Simmer's personal assistant Luciana Corral.

25 29. In late December 2013 early January 2014 plaintiff started
26 taking the steps to obtain his work visa and applied for an O-1
27 visa under the Immigration Act 8 U.S.C. § 1101(a)(15)(O)(i)
28 which is a specialized visa for an athlete permitting an athlete

1 to obtain a working visa for three years that can be renewed for
2 one year. The Regulations for an O-1 visa are set forth at 8
3 C.F.R. § 214.2. Attached as **Exhibit H** is a true and correct copy
4 of 8 C.F.R. § 214.2.

5 30. The O-1 visa for an athlete is issued on the basis of an
6 **event or a series of events** that the athlete is hired to compete
7 in or participate in. The immigration regulations, specifically
8 **8 C.F.R. § 214.2 (O) (3) (ii)**, provides that "a group of related
9 activities may be considered an event" and "[I]n the case of an
10 O-1 athlete, **the event could be the alien's contract.**" To prove
11 the event plaintiff presented The Contract being "Heads of Terms
12 for AC35-Sailing Team-Joseph Spooner" with defendant Oracle
13 Racing, Inc. d/b/a Oracle Team USA.

14 31. In filing his petition with the US Immigration Services
15 for this O-1 visa, plaintiff was required to provide, and did
16 provide the US Immigration Services with evidence of the
17 following: (a.) **The Contract** (required under **8 C.F.R. 214.2**
18 **(O) (2) (ii) (B)**); (b.) an **explanation** of the nature of the
19 America's Cup and the events, training, challenger races and the
20 actual Cup event itself; (required under **8 C.F.R. § 214.2**
21 **(O) (2) (ii) (C)**); (c.) the "**beginning and ending dates for the**
22 **events** or activities" (required under **8 C.F.R. § 214.2**
23 **(O) (2) (ii) (C)**), and plaintiff used paragraphs 2 and 3 of The
24 Contract to satisfy this requirement being that The Contract
25 started on February 1, 2014 and ended 7 days immediately
26 following the date of the final race of the 35th America's Cup
27 finals, which plaintiff explained would be a date occurring in
28 late 2017 as the exact date of the ending of the Cup was not

1 known. (4.) an **itinerary for the events or activities** (required
2 under **8 C.F.R. § 214.2 (O) (2) (ii) (C)**), which plaintiff
3 satisfied by providing a schedule of known events relating to
4 The Contract from February 2014 through to the actual America's
5 Cup itself and including the training sessions that plaintiff
6 knew of at the time.

7 32. Plaintiff was also required to present a peer letter in
8 support of his O-1 visa petition under **8 C.F.R. § 214.2**
9 **(O) (5) (i) (B)**) which defendant Oracle Racing, Inc.'s skipper Jimmy
10 Spithill provided. Attached as **Exhibit I** is a true and correct
11 copy of a Peer Letter from the defendant's Skipper Jimmy
12 Spithill in support of plaintiff's visa petition dated December
13 27th 2013.

14 33. When this visa application was made plaintiff and
15 defendant Oracle Racing, Inc. understood that the America's Cup
16 was going to be held in the United States.

17 34. Plaintiff communicated with defendant's Luciana Corral
18 regarding his O-1 visa application and had a detailed telephone
19 conversation at the end of January 2014 on skype with Luciana
20 Corral regarding his petition for his O-1 work visa and what was
21 required. During this conversation Ms. Corral asked plaintiff to
22 tell her what was needed in order to get an O-1 visa and a P
23 visa which plaintiff had for the 34th America's Cup campaign. Ms.
24 Corral said she needed to know this as she had to get visa
25 applications under way for other members of the sailing team
26 that had contracts which included Kinley Fowler. During that
27 conversation plaintiff told Ms. Corral what was required for his
28 petition and what the other members of the sailing team would

1 need to present to the US Immigration Services to get an "event"
2 based "O" category visa and indicated that the contact is
3 evidence of the event under the immigration regulations and that
4 the contract must state the start and finish date of the
5 contract. During this conversation Ms. Corral told plaintiff
6 that defendant Oracle Racing, Inc. would reimburse plaintiff for
7 the legal fees and expenses that plaintiff incurred as the
8 immigration lawyer involved in his petition would not commence
9 the process until he was paid and plaintiff has paid him
10 \$2,995.00 for this work. However plaintiff still has not
11 received the money promised to him for the cost of his O-1 visa.
12 Attached as **Exhibit J** is a true and correct copy of the
13 invoice/receipt for legal fees and expenses paid by plaintiff
14 for his visa petition. Attached as **Exhibit K** is a true and
15 correct copy of emails that passed between Ms. Corral and
16 plaintiff at this time.

17 35. After plaintiff's visa application was submitted he had to
18 wait for the US Immigration Services to appoint a consular
19 officer to interview plaintiff before an O-1 visa could be
20 approved. Plaintiff was in Australia in April/May 2014 training
21 with the racing team on the AC45 #4 vessel when he was contacted
22 by the US Consulate in Martin Place, Sydney, Australia and was
23 given an interview date of May 7, 2014. On that date plaintiff
24 had an interview with a consular officer who asked plaintiff
25 about the information in his application including the terms and
26 length of his contract which was to run until after the end of
27 the America's Cup in 2017. The officer explained that they could
28 give the visa for three (3) years only, and that there could be

1 a one (1) year renewal to carry plaintiff over to the expiration
2 of The Contract under paragraph 3.

3 36. The consular officer was satisfied with the interview and
4 directed the issuance of Plaintiff's work visa the following day
5 being May 8 2014 to expire on April 13, 2017. Attached as
6 **Exhibit L** is a true and correct copy of plaintiff's O-1 visa
7 entitling him to work in the United States under The Contract.
8 Plaintiff reported to both Ms. Corral and Tom Slingsby that he
9 had his O-1 visa and Slingsby and Ms. Corral were very pleased.

10 37. Once plaintiff obtained his O-1 visa to work in the United
11 States under The Contract, that contract became supported by
12 independent consideration and could not be terminated at will by
13 defendant Oracle Racing, Inc.

14 38. Because plaintiff had his O-1 visa entitling him to work
15 in the US under The Contract, and because teammate Kinley
16 ("Kindog") Fowler also had a visa to work as well, defendants
17 had plaintiff and Fowler work on the defendant vessel being the
18 Multi Hull Foiling AC45 Vessel "4 Oracle Team USA. This work was
19 requested by the sailing Team manager Tom Slingsby in October
20 2014. Attached as **Exhibit M** is a true and correct copy of an
21 exchange of Facebook text messages between plaintiff and
22 Slingsby about this work on October 2, 2014. Defendants always
23 had Fowler and plaintiff do vessel work as Plaintiff believes
24 that they were probably the only two of the foreigners on the
25 racing team that had work visas.

26 39. Then in October, November and December 2014 plaintiff
27 completed repair work on defendant Oracle Racing, Inc.'s vessel
28 being the Multi Hull Foiling AC45 Vessel "4 Oracle Team USA at

1 Pier 80. Attached as **Exhibit N** are true and correct copies of
2 exchanges of emails between Plaintiff and Andrew ("Hendo")
3 Henderson regarding the work plaintiff did on the defendant
4 vessel and parts he may have needed. Attached as **Exhibit O** is a
5 true and correct copy of a photo of plaintiff working on the
6 defendant vessel at pier 80 in December 2014.

7 40. To have been able to do this repair work on the defendant
8 vessel, which was necessary to sail the vessel in the way
9 defendant Oracle Racing, Inc. wanted it sailed, plaintiff needed
10 to have a work visa. Accordingly, the visa and it's cost for
11 which plaintiff has still not been paid, is a vessel "necessary"
12 inseparable from the doing of the repair work. Since plaintiff
13 has not been reimbursed for the cost of the work visa he hereby
14 asserts his rights *in rem* under 46 U.S.C. § 31342 as a maritime
15 lien holder for the said vessel's arrest.

16 41. In December 2014 it was announced that the 35th America's
17 Cup would be held in Bermuda not the United States. At that time
18 or soon thereafter, plaintiff and the other members of the
19 Oracle racing team were informed that the team base would be
20 relocating with the sailors from San Francisco to Bermuda.
21 Simmer sent out an email announcement to plaintiff and the other
22 team members. Simmer then got in touch with plaintiff about his
23 relocation plans to Bermuda. Plaintiff was to relocate his wife
24 and two young children under the plan.

25 **42.** On December 15th 2014 defendant Oracle Racing, Inc. issued
26 its Relocation Policy for Bermuda. Attached as **Exhibit P** is a
27 true and correct copy of said defendant's relocation policy and
28 plaintiff was in the category for "**long term/Relocation**" defined

1 by defendant Oracle Racing, Inc. as relocation to Bermuda for "3
2 months plus". **All communications and discussions between**
3 **plaintiff and this defendant were based on the understanding**
4 **that plaintiff and his family of four (4) were in the "long**
5 **term" category that had a monthly housing allowance of**
6 **US\$4,000.00 came under discussion.**

7 43. From January 4th 2015 plaintiff engaged in communications
8 with Ms. Corral about relocating his family to Bermuda and these
9 exchanges took place on December 21, 2014 in which it is clear
10 from the word choice used by Ms. Corral in responding to
11 plaintiff's questions that plaintiff was in the "long term"
12 category as even Ms. Corral said she would try and locate a
13 house for plaintiff and his family which plaintiff would not
14 have required had defendant Oracle Racing, Inc. not classified
15 plaintiff as a "long term relocatee" under this defendant's own
16 relocation policy. As the relocation policy indicates, only
17 those in the "long term" category were to be renting houses and
18 since plaintiff was a family of 4 it was entitled to a
19 US\$4,000.00 a month relocation housing allowance. Both the
20 relocation policy itself and the category it put plaintiff into,
21 and what was said to plaintiff in discussions with Simmer and
22 Ms. Corral that followed are **actions and communications by**
23 **Oracle Racing, Inc. reflecting assurances of continued**
24 **employment to plaintiff as a "long term" employee.** Attached as
25 **Exhibit Q** is a true and correct copy of an exchange of emails on
26 or about December 21, 2014.

27 44. Plaintiff also had communications with Dede Cooper whom
28 defendant Oracle Racing, Inc. had recommended as the person in

1 Bermuda to help locate rental properties. Ms. Cooper indicated
2 that it would be "tough" finding a three bedroom property for
3 US\$4,000.00. Plaintiff and his wife searched for properties and
4 could not find anything in this range and it appeared that a
5 suitable modest property would cost around US\$7,500.00 a month
6 to rent. Attached as **Exhibit QQ** is a true and correct of an
7 email from Dede Cooper dated December 27, 2014.

8 45. Plaintiff then engaged in phone discussions with Simmer on
9 January 9th 2015 and with Simmer and Spithill on January 11th 2015
10 regarding the relocation policy not being monetarily adequate
11 with respect to the housing allowance for a family of four at
12 US\$4,000.00 per month with plaintiff saying that he needed to
13 have the housing allowance modified by defendant Oracle Racing,
14 Inc. for his family to have habitable accommodation which would
15 cost around US\$7,500.00 a month. Plaintiff also raised issues
16 about other costs that he and his family would incur in
17 relocating to Bermuda and asked if his monthly salary could be
18 increased to US\$38,000.00 per month which would be an additional
19 US\$9,000.00 a month after the US\$4,000.00 a month housing
20 allowance was applied. During that conversation Spithill, who
21 lead the discussion said he, Coutts, Simmer and Slingsby had
22 discussed the issue of a request by Spooner for an increased
23 relocation allowance and that it had been decided that it was
24 not negotiable.

25 46. Subsequently plaintiff had communications with Slingsby -
26 his immediate boss and the Sailing Team Manager - regarding
27 plaintiff's request to increase the housing allowance for
28 Bermuda, and Slingsby told plaintiff that he thought that Coutts

1 and Simmer would probably meet plaintiff's request somewhere in
2 the middle rather than the figure that plaintiff asked for.

3 47. Understanding that the negotiations were still ongoing,
4 and acting in reliance on what Slingsby had told plaintiff about
5 probably meeting a middle figure, on January 15th 2015, in an
6 attempt to get a fair resolution of the housing allowance and
7 associated issues, plaintiff sent an email to Simmer and
8 Spithill saying he was very committed to Oracle Team USA. He
9 said that in view of defendant Oracle Racing, Inc.'s policy of
10 not negotiating the relocation allowance would defendant be
11 amenable to having the issue mediated and perhaps by the Human
12 Resources Department at Oracle Corporation to work through the
13 issues he raised. This was a request presented for an answer.
14 Attached as **Exhibit R** is a true and correct copy of plaintiff's
15 email to Spithill and Simmer dated January 15th 2015.

16 48. While performing services under The Contract, with at
17 least 29 more months of seaman performance contracted for, on
18 January 16, 2015 defendant Oracle Racing, Inc. wrongfully and
19 without cause, breached its contractual obligations to plaintiff
20 by wrongfully discharging plaintiff from performing his
21 contractual services as a seaman under The Contract by sending
22 plaintiff a letter of termination dated January 16, 2015.

23 Attached as **Exhibit S** is a true and correct copy of defendant
24 Oracle Racing, Inc.'s termination letter to plaintiff.

25 49. Defendant wrongfully and in bad faith and in violation of
26 public policy and its own policy discharged plaintiff under The
27 Contract because the contract had a "start date" of February 1,
28 2014 and an "expiry date" of "7 days immediately following the

1 date of the final race of the 35th America's Cup Finals", which
2 made The Contract one of a **definite term**, and not one "at will"
3 as the contract had to be for an "event" with "beginning and
4 ending dates" for the purposes of plaintiff having a work permit
5 to perform services under The Contract.

6 50. Defendants' Ms. Corral knew what was legally and
7 truthfully required for plaintiff to get the O-1 work permit and
8 that it was an "event" based contract for a definite term that
9 was the legal basis for the O-1 work visa that plaintiff
10 performed services for defendants pursuant to. If defendant
11 Oracle Racing, Inc. knew that plaintiff did not have such an
12 event based contract for a definite start and finish date then
13 defendant and Ms. Corral had a legal duty to inform the US
14 Immigration Services (a federal agency) of this and it failed to
15 do so at any time while plaintiff performed services for this
16 defendant.

17 **51. It offends public policy (and has the distinct smell of**
18 **deceit) for defendant Oracle Racing, Inc.'s employees (such as**
19 **plaintiff) to be permitted to obtain an "event" based work visa**
20 **for a definite term if the true character of The Contract**
21 **provided to the US Immigration Services for the work visa was an**
22 **"at will" contract that could be terminated at any time without**
23 **cause, potentially rendering plaintiff and his family public**
24 **charges.**

25 52. Defendant Oracle Racing, Inc. had no cause to terminate
26 plaintiff. This defendant retaliated against plaintiff for
27 trying to negotiate defendant's workplace demand of requiring
28 plaintiff to relocate to Bermuda without being permitted to

1 negotiate a fair and adequate package for the cost of housing
2 and other expenses plaintiff would have to incur in Bermuda
3 while training for and possibly participating in the 2017, 35th
4 America's Cup, which is not cause for termination.

5 53. In wrongfully dismissing plaintiff, defendant Oracle
6 Racing, Inc. intentionally discriminated against plaintiff based
7 on his age and replaced defendant with a much younger sailor
8 when plaintiff had physical performance levels which exceeded
9 those of all other sailors on the race team. Attached as **Exhibit**
10 **T** are true and correct copies of plaintiff's physical
11 performance and grinding test records along with those of other
12 sailors and the master of the race team.

13 54. Despite demand, plaintiff has not received from defendant
14 Oracle Racing, Inc., the monies owed to plaintiff and demanded
15 by him for the remaining term of The Contract. Having not been
16 paid said wages due upon breach, plaintiff is entitled to his
17 contractual wages under The Contract, double wages penalties and
18 other penalties and interest, plus punitive damages under
19 general maritime law for the willful and wanton failure to pay
20 plaintiff's wages by defendants.

21 55. Plaintiff, being a seaman and person having provided
22 necessities to the defendants as set forth above, plaintiff
23 hereby asserts his maritime lien rights pursuant to 46 U.S.C.
24 Section 31342.

25
26 **FIRST CAUSE OF ACTION**

27 **WRONGFUL DISCHARGE -BREACH OF CONTRACT BASED ON**
28 **TERMINATION WITHOUT GOOD CAUSE**

1 56. Plaintiff incorporates by reference each and every
2 allegation in Paragraphs 1 through 55 as though fully set forth.

3 57. On or about December 9, 2013 plaintiff entered into The
4 Contract with defendant Oracle Racing, Inc. d/b/a Oracle Team
5 USA, which contract commenced on February 1, 2014 for the fixed
6 term of over three (3) and a half years with the expiry date
7 being "on the date that is seven (7) days immediately following
8 the date of the final race of the 35th America's Cup Finals".

9 58. Under The Contract defendant Oracle Racing, Inc. agreed
10 that from July 1, 2014 through the expiry date plaintiff was to
11 be paid US\$25,000.00 per calendar month for his services in
12 completing his contractual duties.

13 59. The Contract does not contain an unequivocal term
14 determining The Contract to be "at will" and therefore cannot be
15 terminated without cause. The Contract contains a term in
16 Paragraph 12 which purports to permit at will termination but
17 that term **is equivocal** as at Paragraphs 2 and 3 of The Contract
18 it is for a specific term, and therefore can only be terminated
19 by defendant Oracle Racing, Inc. based on good cause. After
20 defendant Oracle Racing, Inc. provided plaintiff with its
21 "Relocation Policy" (**Exhibit P**) and its verbal assurances
22 through both Ms. Corral and Simmer that plaintiff was in the
23 "Long Term/Relocation" category of employee with discussions
24 indicating that the US\$4,000.00 a month housing allowance and
25 the schooling provisions applied to plaintiff (**Exhibit Q**) this
26 adds a term that plaintiff was not an at will employee.

27 60. Defendant Oracle Racing, Inc. did not have good cause to
28 terminate plaintiff who had the longevity of 11 years of service

1 to defendants; plaintiff had never violated any of this
2 defendant's work place policies; plaintiff had presented himself
3 for work in the United States with a work visa entitling him to
4 legally perform his contract duties both at Pier 80 and on the
5 water; plaintiff had never been disciplined or given a warning
6 about his performance by this defendant; plaintiff had always
7 kept up his level of physical fitness to be able to perform his
8 physical duties as a sailor in the position of a grinder on this
9 defendant's various racing boats; defendant Oracle Racing,
10 Inc.'s Tom Slingsby stated in a video taken in Sydney, Australia
11 in 2014 that plaintiff had the best team physical performance on
12 testing, and at the time of his termination plaintiff was in the
13 lead position of his team of sailors in the aerobic grind test
14 (**Exhibit T**); plaintiff never engaged in any form of misconduct
15 while performing The Contract and was performing physically at
16 the top of the racing team. Plaintiff at all times fulfilled his
17 duties under The Contract and has always been ready, willing,
18 and able to continue performing these duties in a competent and
19 satisfactory way always way beyond the call of duty.

20 61. Notwithstanding defendant Oracle Racing Inc.'s express and
21 implied promise not to terminate plaintiff without good cause,
22 on January 16, 2015, while performing services under The
23 Contract, with at least 29 more months of seaman performance
24 contracted for, defendant Oracle Racing, Inc. wrongfully and
25 without cause, breached its contractual obligations to plaintiff
26 by wrongfully terminating plaintiff by sending him a termination
27 letter as set forth in **Exhibit S**. The letter states that the
28 termination was based on defendant Oracle Racing, decision not

1 to modify its relocation policy, nor increase plaintiff's salary
2 and that plaintiff had stated that he would not otherwise
3 relocate to Bermuda. Plaintiff had not said he would not
4 relocate to Bermuda he had said "**I have made a commitment to**
5 **Oracle Team USA and am therefore not prepared to resign**".
6 **(Exhibit R)**.

7 62. As a proximate result of defendants' breach of The Contract,
8 plaintiff has suffered and continues to suffer losses including
9 the loss of his wages under The Contract in an amount not less
10 than US\$725,000.00 plus double wage penalties, and other
11 compensatory damages in an amount to be established at the time
12 of trial.

13 **SECOND CAUSE OF ACTION**

14 **WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**

15 **63.** Plaintiff incorporates by reference each and every
16 allegation in Paragraphs 1 through 62 as though fully set forth.

17 64. At all material times herein, defendant Oracle Racing, Inc.
18 was under a duty under The Contract to carry out The Contract
19 without violating public policy and this duty of not violating
20 public policy carried over to this defendant's termination
21 duties.

22 65. In terminating plaintiff and taking the position that this
23 defendant could terminate plaintiff without just cause and at
24 this defendant's will in the circumstances of this termination
25 was a violation of public policy.

26 66. This termination without cause and at will was a violation
27 of public policy for the following reasons. In order to be able
28 to legally work in the United States under The Contract, which

1 plaintiff was required to do by defendant, plaintiff needed a
2 work visa. As set forth in detail above there were legal
3 statutory and regulatory requirements for obtaining a work visa
4 for plaintiff.

5 67. Defendants' Ms. Corral knew what was legally and truthfully
6 required for plaintiff to get the O-1 work permit and that it
7 was an "event" based contract for a definite term that was the
8 legal basis for the O-1 work visa that plaintiff performed
9 services for defendants pursuant to. It is also very likely that
10 defendant's Simmer and possibly Coutts also had category O event
11 based visas as well given that Simmer was from Australian and
12 Coutts was from New Zealand.

13 68. In obtaining his O-1 visa plaintiff was required to have an
14 event based contract not one that could be terminated the next
15 day. If defendant Oracle Racing, Inc.'s management knew that
16 plaintiff did not have such an event based contract for a
17 definite start and finish date (the position it is taking with
18 respect to this termination) then defendant (including Ms.
19 Corral, Simmer and Coutts) **had a legal duty to inform the US**
20 **Immigration Services (a federal agency) of this and it failed to**
21 **do so at any time while plaintiff performed services for this**
22 **defendant under plaintiff's O-1 visa.**

23 69. It offends public policy (and has the distinct smell of
24 deceit) for defendant Oracle Racing, Inc.'s employees (such as
25 plaintiff) to be permitted to obtain an "event" based work visa
26 for a definite term if the true character of The Contract
27 provided to the US Immigration Services for the work visa was an
28 "at will" contract that could be terminated at any time without

1 cause, potentially rendering plaintiff and his family public
2 charges. The subject visa as this defendant knew, required a
3 "permanent job" based on an event or events". It offends public
4 policy and is wasteful of the federal immigration resources if
5 the effort and resources put into the visa's issuance and
6 consular interview process could be completely wasted where, the
7 day after issuance, The Contract could be terminated at the will
8 of the employer.

9 70. As a proximate result of defendant Oracle Racing, Inc's
10 termination of plaintiff in violation of public policy,
11 plaintiff has suffered and continues to suffer losses including
12 the loss of his wages under The Contract in an amount not less
13 than US\$725,000.00 plus double wage penalties, and other
14 compensatory damages and punitive damages in an amount to be
15 established at the time of trial.

16 **THIRD CAUSE OF ACTION**

17
18 **WRONGFUL DISCHARGE -BREACH OF IMPLIED COVENANT OF GOOD FAITH AND
19 FAIR DEALING IMPLIED INTO ALL MARITIME CONTRACTS**

20 71. Plaintiff incorporates by reference each and every
21 allegation in Paragraphs 1 through 70 as though fully set forth.

22 72. At all material times herein, defendants Oracle Racing,
23 Inc. as a vessel owner in a contract with a seaman, owed
24 plaintiff a duty to act in good faith and to deal fairly in
25 performing and enforcing The Contract under the recognition of
26 this contractual duty in *Flores v. American Seafoods Co.* 335 F.
27 3d 904, 913 (9th Cir. 2003). This duty extends to requiring each
28 party to The Contract not to do anything which would injure the

1 right of the other party to receive the benefits of The
2 Contract.

3 73. Defendant Oracle Racing, Inc. failed to act in good faith
4 and breached its duty to do so and denied plaintiff the benefit
5 of The Contract by retaliating against plaintiff with the
6 termination for trying to negotiate defendant's workplace demand
7 of requiring plaintiff and his family to relocate to Bermuda
8 without being permitted to negotiate a fair and adequate package
9 for the cost of housing and other expenses plaintiff would incur
10 in Bermuda while training for and possibly participating in the
11 2017, 35th America's Cup for this defendant. It was even more of
12 a breach of good faith and fair dealing given that plaintiff's
13 boss and Racing Team Manager Tom Slingsby had told plaintiff
14 that management would likely meet him in the middle with respect
15 to the increases plaintiff was requesting from management with
16 respect to his relocation package.

17 74. Defendant Oracle Racing, Inc. further failed to act in good
18 faith and breached its duty to do so and denied plaintiff the
19 benefit of The Contract by imposing on plaintiff the severe
20 penalty and punishment of termination upon plaintiff for
21 plaintiff's exercise of his constitutional rights of freedom of
22 expression and speech in the work place in trying to negotiate a
23 fair and adequate package for plaintiff and his family so he
24 could serve his employer. The exercise of such punishment in
25 this authoritarian and autocratic manner as exercised by Simmer
26 on behalf of said defendant falls below the minimum standard of
27 acceptable master- servant workplace conduct and offends
28 acceptable notions of business ethics. Such punishment shocks

1 social consciousness further to the extent that plaintiff had
2 given this defendant the longevity of 11 years of loyal,
3 dedicated service and was as he himself stated still committed
4 to Oracle Team USA. (**Exhibit R**) It is categorically an act of
5 bad faith for an employer to fire someone because they asked for
6 a raise!

7 75. Defendant Oracle Racing, Inc. failed to act in good faith,
8 as set forth above, and breached its duty to do so and denied
9 plaintiff the benefit of The Contract by taking the position
10 that The Contract was "at will" for the purpose of terminating
11 plaintiff when this defendant knew that the same contact had
12 been presented to the US Immigration Service to secure a work
13 visa for plaintiff on the basis The Contract was not "at will"
14 and that work permit had enabled this defendant to receive the
15 benefits of plaintiff's work efforts by repairing the defendant
16 vessel and participating in sailing with the team.

17 76. Defendant Oracle Racing, Inc. failed to act in good faith
18 and fairly deal with plaintiff, and breached its duty to do so
19 and denied plaintiff the benefit of The Contract by terminating
20 plaintiff based on his request for a better relocation package,
21 when the real reason for the determination was based on
22 plaintiff's age as this defendant already had another much
23 younger grinder for the race team lined up to hire immediately
24 after plaintiff was terminated. Since plaintiff's performance
25 levels were at the top of the race team at the time plaintiff
26 was terminated, to terminate Plaintiff on the basis that he was
27 41 years of age was an act of intentional age discrimination by
28 this defendant which is prohibited by law.

1 77. Defendant Oracle Racing, Inc. failed to act in good faith
2 and breached its duty to do so by untruthfully stating in the
3 termination letter to plaintiff (as a basis for plaintiff's
4 termination) that plaintiff's stated position was that plaintiff
5 "will not otherwise relocate to Bermuda" [if this defendant did
6 not modify its relocation package and raise plaintiff wages]
7 (**Exhibit S**) when plaintiff had stated the very opposite saying
8 "**I have made a commitment to Oracle Team USA and am therefore**
9 **not prepared to resign**" (**Exhibit R**). Simmer knew this is what
10 plaintiff had said about plaintiff's position as it was stated
11 in plaintiff's January 15th 2015 email to Simmer, and Simmer
12 himself acknowledges other content of that January 15th email in
13 his termination letter to Plaintiff (**Exhibit S**). Defendant
14 Oracle Racing, Inc. failed to terminate plaintiff for a fair and
15 honest cause or reason requiring by good faith on the part of
16 the contracting party having and exercising the power over
17 plaintiff.

18 78. Plaintiff has given defendant Oracle Racing, Inc. 11 years
19 of apparently satisfactory service and termination without cause
20 in the face of this longevity of service without legal cause
21 after such a long period of service offends the implied-in-law
22 covenant of good faith and fair dealing contained in all
23 contracts including employment contracts and The Contract.

24 79. As a proximate result of defendant Oracle Racing, Inc.'s
25 many breaches of its duty to act in good faith and to deal
26 fairly in performing and enforcing The Contract plaintiff has
27 suffered and continues to suffer losses including the loss of
28 his wages under The Contract in an amount not less than

1 US\$725,000.00 plus double wage penalties, and other compensatory
2 damages and in punitive damages in an amount to be established
3 at the time of trial.

4 **FOURTH CAUSE OF ACTION**

5 **PLAINTIFF'S TERMINATION WAS NOT FOR CAUSE WHICH IS CONTRARY TO THE**
6 **EXPRESS AND IMPLIED TERMS OF THE CONTRACT**

7
8 80. Plaintiff incorporates by reference each and every
9 allegation in Paragraphs 1 through 79 as though fully set forth.

10 81. At all material times herein and as set forth above,
11 plaintiff's discharge is contrary to both the express and the
12 implied terms of The Contract based on the following facts:
13 plaintiff's immigration privilege in his visa was based on him
14 not having an at will employment contract; management's own
15 relocation policy classified plaintiff as a "long term" employee
16 for the relocation to Bermuda; both Simmer and Ms. Corral had
17 communications and exchanges reflecting assurances of continued
18 employment in the relocation discussions right up until the time
19 of plaintiff's termination classifying plaintiff as "long term"
20 for the relocation; if plaintiff was an at will employee the
21 question arises as to why was he not told this in the context of
22 these relocation discussions with management; the phone
23 conference just prior to termination with Spithill and Simmer
24 were along the lines the plaintiff is "going to Bermuda until
25 the end of the 35th America's Cup" with his family, not that he
26 could be terminated at any time. Furthermore, plaintiff's
27 longevity of 11 years of service to defendant Oracle Racing,
28 Inc. is contrary to his contract being at will. All these facts

1 establish that plaintiff's termination was contrary to the
2 express and implied terms of The Contract, all terms of which
3 this defendant breached in terminating plaintiff without just
4 cause.

5 82. As a proximate result of defendant Oracle Racing, Inc.'s
6 conduct in breaching both the express and implied terms of The
7 Contract, plaintiff has suffered and continues to suffer losses
8 including the loss of his wages under The Contract in an amount
9 not less than US\$725,000.00 plus double wage penalties, and
10 other compensatory damages and in punitive damages in an amount
11 to be established at the time of trial.

12
13 **FIFTH CAUSE OF ACTION**
14 **IN REM UNDER 46 U.S.C. § 31342 PLAINTIFF BEING A PERSON PROVIDING**
15 **NECESSARIES TO THE DEFENDANT VESSEL**

16 83. Plaintiff also brings this action in rem under 46 U.S.C. §
17 31342 being a person providing "necessaries" to the defendant
18 vessel in the form of defendants' still unpaid debt to
19 Plaintiff, which it promised to pay, for the cost of obtaining
20 plaintiff's category O-1 work visa as set forth in **Exhibit J**,
21 required to provide services to the defendant vessel, which
22 services plaintiff did provide in the form of repairs.

23 Alternatively if this money owing is not considered as a
24 necessary, plaintiff asserts it to be past wages owed also
25 giving rise to a maritime lien.

26 WHEREFORE, plaintiff prays by its Local A & M Rule 2-2 Itemized
27 Demand for Judgment against the defendants as follows:

- 28 1. For a declaration that plaintiff holds claim to a preferred
maritime lien against defendant MULTI HULL FOILING AC45

1 VESSEL known as "4 ORACLE TEAM USA", and her machinery,
2 mechanical drive system, hydraulic operating system,
3 electronics, platform and appendages, hard and soft sails
4 and appurtenances;

- 5 2. For arrest, condemnation and sale of the defendant MULTI
6 HULL FOILING AC45 VESSEL known as "4 ORACLE TEAM USA", and
7 her machinery, mechanical drive system, hydraulic operating
8 system, electronics, platform and appendages, hard and soft
9 sails and appurtenances
- 10 3. For wages of **US\$725,000.00** and double wage penalties;
- 11 4. For punitive damages for the willful and wanton failure to
12 pay the wages due under The Contract;
- 13 5. For interest, costs of suit and reasonable attorney fees;
- 14 6. For such other and further relief as is fair and just in the
15 circumstances.

16 BARLOW LAW

17
18
19 DATED: March 4th, 2015

_____/P/Barlow_____
Patricia Barlow CSB# 135637
Attorney for Plaintiff

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