

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

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 GOLDEN GATE YACHT CLUB, )

Plaintiff, )

-against- )

SOCIÉTÉ NAUTIQUE DE GENÈVE, )

Defendant. )  
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Index No. \_\_\_\_\_

Date Purchased 10/26/2009

**SUMMONS**

TO THE ABOVE-NAMED DEFENDANT:

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiff's attorneys an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the date of the summons, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. Venue is based on N.Y. C.P.L.R. §503(a) in that neither party is deemed to be a resident of the State of New York. Defendant is an association organized under the laws of the Swiss Confederation ("Switzerland") and has its principal place of business in the Republic and Canton of Geneva, Switzerland. Plaintiff Golden Gate Yacht Club is a California corporation with its principal place of business in San Francisco, California.

Dated: New York, New York  
October 26, 2009

BOIES, SCHILLER & FLEXNER LLP

By:



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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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GOLDEN GATE YACHT CLUB,  
  
Plaintiff,  
  
-against-  
  
SOCIÉTÉ NAUTIQUE DE GENÈVE,  
  
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**COMPLAINT**

Plaintiff Golden Gate Yacht Club (“GGYC”), by and through its undersigned counsel,  
states for its Complaint, on information and belief, as follows:

**INTRODUCTION**

1. This action arises out of breaches of the fiduciary duties Defendant Société Nautique de Genève (“SNG”) owes as trustee of a New York trust established by a Deed of Gift pursuant to which Defendant holds in trust the America’s Cup, the premiere sailing trophy in the world, which “shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries.”
2. This action is related to another case brought by GGYC against SNG on July 20, 2007 bearing the index number 602446/07 in which the Court of Appeals held that SNG breached the express terms of the Deed of Gift by accepting the purported challenge of Club Náutico Español de Vela (“CNEV”).
3. This follow-on action alleges that SNG not only breached the express terms of the Deed of Gift, but also breached and is continuing to breach the fiduciary duties it owes, as trustee, to the plaintiffs, who are challengers and potential challengers for the America’s Cup and

thus the beneficiaries of the trust. Defendant's fiduciary duties include the obligation to act "in good faith and in the spirit of friendly competition by reasonably attempting to reach an accord on the terms of matches to be held" and "to compete on equal terms with the trust beneficiaries". See *Mercury Bay Boating Club, Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256 (1990).

4. Pursuant to the terms of the Deed of Gift, SNG became the trustee when it won the 31st America's Cup in 2003. SNG then used its position as trustee to select a venue for the next America's Cup on the basis of benefits granted to SNG and its affiliates even though other venues offered greater benefits to the beneficiaries. SNG also directed that funds that should have been distributed to the trust beneficiaries be used to provide benefits to SNG's affiliates.

5. SNG won the Cup again in July 2007, thus retaining its position as trustee. Prior to winning the 32<sup>nd</sup> America's Cup, SNG orchestrated a scheme in which SNG agreed to "accept" the challenge of a sham yacht club so that it could "negotiate" a set of one-sided rules that would virtually guarantee SNG's victory in the next America's Cup. After those rules were announced, GGYC sought relief from this Court, alleging that SNG's actions violated the terms of the Deed of Gift.<sup>1</sup> On April 2, 2009, the Court of Appeals ruled that the sham yacht club's challenge was indeed invalid and that GGYC is the Challenger of Record. The Court of Appeals concluded, "It falls now to SNG and GGYC to work together to maintain this noble sailing tradition as 'a perpetual Challenge Cup for friendly competition between foreign countries.'" *Golden Gate Yacht Club v. Société Nautique de Genève*, 12 N.Y.3d 248, 258 (2009) (citing the Deed of Gift).

6. However, SNG was still determined not to compete on equal terms with the trust beneficiaries, but rather to race under rules that will ensure an SNG win. In direct violation of its

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<sup>1</sup> GGYC also initially alleged that SNG's actions violated its fiduciary duties as trustee, but GGYC did not pursue that claim and it was later dismissed on the grounds that it had been abandoned.

fiduciary duties, SNG refused to act in good faith to reach an agreement on the terms for the next match. Instead, SNG told GGYC: “If you thought the Protocol was bad, wait until you see the Deed of Gift rules.” In fact, SNG sought, again, to orchestrate an SNG win by declaring the right to promulgate whatever rules it wants to for the 33<sup>rd</sup> America’s Cup, promulgating one-sided rules and rules that disqualify GGYC, and seizing control over the appointment of the umpires and sailing jury members who would officiate the match. As Brad Butterworth, the skipper of SNG’s team, Alinghi, said in an open letter on October 23, 2009: “For those who seek a level playing field, go and race in any of the numerous competitions that exist in the world.”

7. Among other things, SNG entered into a secret agreement with the International Sailing Federation (“ISAF”) that (i) requires ISAF to authorize in advance any changes SNG might want to make to the racing rules and regulations governing the 33<sup>rd</sup> America’s Cup (giving SNG the unchecked power to promulgate whatever rules it wants); (ii) secures for SNG a veto over the appointment of all racing officials; and (iii) eliminates any redress to a neutral authority for improper rules changes or decisions by SNG.

8. SNG also issued measurement rules that violate the Deed of Gift and that were designed to disqualify GGYC, the only challenger in the February 2010 match.

9. Finally, SNG designated a race course for the 33<sup>rd</sup> America’s Cup in the waters off the coast of Ras Al Khaimah in the United Arab Emirates. Not only does this violate the Deed of Gift’s prohibition against Northern Hemisphere races between November and May, but it subjects GGYC to unnecessary and disproportionate danger. In selecting this race course, SNG put its own business interests and the interests of its partners and affiliates above the interests of the trust beneficiaries. Upon information and belief, SNG selected Ras Al Khaimah

because it knew the venue would be objectionable to GGYC – an American team – hoping GGYC would forfeit.

10. These egregious breaches of SNG’s duties call for SNG to be replaced as trustee and for a new trustee to be appointed who will ensure that the purpose of the trust is fulfilled and the 33<sup>rd</sup> America’s Cup is raced “on equal terms.” See *Mercury Bay*, 76 N.Y.2d at 270.

### **THE PARTIES**

11. Plaintiff GGYC is an organized yacht club incorporated under the laws of the State of California. GGYC has issued a Notice of Challenge to sail a match for the America’s Cup in accordance with the terms and conditions of the Deed of Gift, dated October 24, 1887, as amended by Orders of this Court dated December 17, 1956 and April 5, 1985 (“Deed of Gift”). By order of the Supreme Court, affirmed by the Court of Appeals, GGYC is the Challenger of Record. GGYC will challenge SNG in a default match described under Paragraph 8 of the Deed of Gift. GGYC has standing as a beneficiary of the trust instrument, the Deed of Gift, a charitable trust, to bring this action to enforce the trust.

12. Defendant SNG is a yacht club organized under the laws of Switzerland. SNG currently holds the America’s Cup, in trust, in accordance with the terms and conditions of the Deed of Gift.

### **JURISDICTION AND VENUE**

13. This court may exercise jurisdiction over Defendant pursuant to C.P.L.R. §§ 301 and/or 302.

14. This court may exercise jurisdiction over the subject matter of this claim pursuant to N.Y. Bus. Corp. Law § 1314(b)(5).

## **FACTUAL BACKGROUND**

### **SNG's Fiduciary Duties**

15. The America's Cup sailing competition is governed by a trust instrument executed under the laws of New York on October 24, 1887, as amended by Orders of this Court dated December 17, 1956 and April 5, 1985 (the "Deed of Gift"). The corpus of the trust is a trophy known as the America's Cup. George L. Schuyler, as the sole surviving owner of the yacht America that won the Cup in a match on August 22, 1851, designated the Cup to be held "in trust, nevertheless, for the following uses and purposes," namely that "[t]his Cup is donated upon the conditions that it shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries."

16. The winner of the Cup holds it as trustee for the benefit of all potential challengers. As trustee, the defender is required to act in good faith and in the spirit of friendly competition and to compete on equal terms with the trust's beneficiaries.

### **SNG Abuses Its Position as Trustee to Take Benefits for Itself That Belonged to the Trust's Beneficiaries**

17. In preparation for the 32<sup>nd</sup> America's Cup, GGYC, as Challenger of Record, and SNG, as Defender, negotiated the terms of a protocol under the Deed of Gift's mutual consent provision. In exchange for other benefits conferred through mutual consent, SNG agreed to share a portion of the net surplus revenue with GGYC and the other competitors. Realizing that any proceeds it received directly from the city of Valencia in exchange for SNG's agreement to select that city as the venue for the 32<sup>nd</sup> America's Cup would be subject to that bargained-for agreement, SNG proceeded to enter into a series of side deals with Valencia. The benefits of those side deals flowed not to the beneficiaries (as SNG agreed) but directly to SNG's principals,

partners, and affiliates. Thus, SNG funneled funds to itself and its affiliates that should have been divided among the trust's beneficiaries.

18. Further, SNG chose Valencia over other venues that may have provided greater benefits to the beneficiaries because of additional benefits provided to SNG's affiliates. Among other things, days before SNG announced that the 32<sup>nd</sup> America's Cup would be held in Valencia, Spain, the central Spanish government enacted a statutory change to permit stem cell research. That enactment directly benefited a well-known private fertility clinic in Valencia, the Instituto Valenciano de Infertilidad ("IVI"), which has enjoyed a longstanding business relationship with Serono SA, a Swiss pharmaceutical company owned by the family of Ernesto Bertarelli, who controls the SNG team – Team Alinghi. Serono and IVI share reciprocal interests: Serono produces the majority of drugs that IVI uses in its fertility and research treatments, and the results of IVI's research provide Serono with an opportunity to market its drugs. In September 2006, three years after SNG selected Valencia for the 32<sup>nd</sup> America's Cup, the Bertarelli family sold Serono to Merck for 8.6 billion dollars.

19. SNG's decision to choose Valencia was also based upon the fact that Ernesto Bertarelli and his family held real estate in and around Valencia that they knew would increase in value if Valencia hosted the Cup.

**SNG Accepts the Purported "Challenge" of Sham Challenger CNEV**

20. Under the Deed of Gift, any organized Yacht Club "having for its annual regatta on ocean water course on the sea, or on an arm of the sea, or one which combines both, shall always be entitled to the right of sailing a match for this Cup." When the defender receives a challenge from a qualifying yacht club, it must accept that challenge.



21. The Deed of Gift further provides: “The Club challenging for the Cup and the Club holding the same may, by mutual consent, make any arrangement satisfactory to both as to the dates, courses, number of trials, rules and sailing regulations, and any and all other conditions of the match, in which case also the ten months’ notice may be waived.” The ability to set such rules, based on mutual consent, ensures that competition for the America’s Cup will be fair and that the Cup shall be preserved “for friendly competition between foreign countries.”

22. If the challenging club and the defending club cannot mutually agree on the terms of the match, the Deed of Gift prescribes match rules (the “Default Match Rules”): “In case the parties cannot mutually agree upon the terms of a match, then three races shall be sailed, and the winner of two of such races shall be entitled to the Cup . . . and these races shall be sailed subject to [the defending club’s] rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift, but without any times allowances whatever.”

23. In 2003, SNG won the 31<sup>st</sup> America’s Cup by defeating Team New Zealand and became the trustee.

24. SNG initially accepted a challenge for the 32<sup>nd</sup> America’s Cup from Real Federación Española de Vela (“RFEV”), the national governing body for the sport of sailing in Spain (not a yacht club at all) in direct violation of the Deed of Gift, despite protests from the New York Yacht Club and other beneficiaries.

25. On July 3, 2007, SNG, through its representative, Team Alinghi, S.A. (“Alinghi”) won the 32<sup>nd</sup> America’s Cup and thus continued to be the trustee. Because SNG wanted to dictate terms for the next America’s Cup that would favor SNG over other competitors, it sought to avoid negotiating mutually acceptable terms with a legitimate competitor. Therefore, before SNG had even won the 32<sup>nd</sup> America’s Cup, SNG again sought to arrange for a challenge from

RFEV. Knowing that RFEV was not a yacht club and thus not an appropriate challenger, RFEV quickly formed Club Náutico Español de Vela (“CNEV”) for the purpose of issuing a “challenge”.

26. At the time CNEV issued its challenge, it had no yachts, no legitimate members, no telephone number and no website. It had never held an annual regatta, which is one of the few qualifications required by the Deed of Gift. (CNEV attempted to hold two “regattas,” after the fact, one of which involved children sailing during a training session.)

#### **SNG and Sham Challenger CNEV Form Self-Dealing Protocol**

27. SNG drafted and issued a protocol for the 33<sup>rd</sup> America’s Cup that gave SNG unprecedented control over the terms of the race, thus breaching its fiduciary duty to act “in good faith and in the spirit of friendly competition by reasonably attempting to reach an accord on the terms of matches to be held.” *Mercury Bay*, 76 N.Y.2d at 271.

28. For example, the protocol that SNG issued gave SNG, through its agent AC Management, S.A. (“ACM”), the unilateral right to (i) accept or reject any entry for the race, (ii) fine competitors, (iii) appoint the Race Committee, Measurement Committee, and Umpires, (iv) issue new ACC Rules that will determine the class of yacht allowed to participate in the match; (v) determine the Challenger elimination series racing schedule 16 months before the first race while withholding the Notice of Race, Sailing Instructions and Racing Rules of that Challenger elimination series until “approximately 60 days” before the first race. Under that protocol, SNG even reserved the ability to compete in the challenger elimination matches without ever facing elimination, but where SNG’s results would ultimately affect the other competitor’s standings. Notably absent from the 33<sup>rd</sup> America’s Cup protocol was the “Fair Competition” clause from

the 32<sup>nd</sup> America's Cup protocol that required the competitors, officials, event organizers and arbitrators to adhere to recognized principles of sportsmanship and fair play.

**The Court of Appeals Rules that CNEV's Challenge Is Invalid and that GGYC is the Challenger of Record**

29. GGYC filed suit against SNG on July 20, 2007 in the Supreme Court of the State of New York. GGYC alleged that SNG breached the terms of the Deed of Gift and its fiduciary duties in accepting CNEV's invalid challenge and issuing a one-sided protocol in violation of the Deed's mutual consent clause.

30. On November 27, 2007, Justice Cahn held that CNEV's challenge was invalid, and that GGYC is Challenger of Record pursuant to the Deed. *Golden Gate Yacht Club v. Société Nautique de Genève*, No. 602446/07, 2007 WL 4624020 at \*10 (N.Y. Sup. Nov. 27, 2007).

31. During the weeks prior to that ruling, SNG rejected a proposal by a majority of the challenging yacht clubs that had filed challenges for the America's Cup, including GGYC, that would have allowed the America's Cup to proceed as a multi-challenger race in Valencia in 2009, and which would have been in the best interests of the beneficiaries, SNG, and the America's Cup. However, SNG, determined to race only under terms the terms of its one-sided protocol, rejected this proposal. After Justice Cahn's ruling, GGYC presented to SNG settlement terms substantially the same as those presented prior to the ruling. Again, SNG refused to consider a settlement, which would have been in the best interests of the beneficiaries.

32. Following Justice Cahn's ruling, SNG refused to recognize GGYC as the Challenger of Record.

33. The Court of Appeals affirmed. *Golden Gate Yacht Club v. Société Nautique de Genève*, 12 N.Y.3d 248, 257 (2009).

34. Following the decision of the Court of Appeals, GGYC sought to negotiate the terms of the next America's Cup with SNG. SNG, however, in clear breach of its fiduciary duties, refused to act in good faith to agree on terms.

35. On April 23, 2009, representatives of GGYC traveled to Geneva, Switzerland to negotiate terms of the 33<sup>rd</sup> America's Cup. SNG, however, refused to negotiate in good faith. Among other things, SNG insisted that all challenger yachts would be subject to certain design restrictions but SNG's yacht would be free of such restrictions.

36. As a result of SNG's refusal to negotiate in good faith, it became clear that the next America's Cup would be raced under the Default Match Rules.

**SNG Enters into a "Confidential" Agreement with ISAF**

37. Once it became clear that the next America's Cup would be raced according to the Default Match Rules, SNG began a renewed effort to seize control of the rule-making and officiating process in order to achieve what it had sought to achieve through its alliance with the sham yacht club CNEV – an America's Cup that is anything but on equal terms.

38. Under the Default Match Rules, the defending club's "rules and sailing regulations" apply to the match, "so far as the same do not conflict with the provisions" of the Deed of Gift. At the time of GGYC's challenge, SNG's "rules and sailing regulations" were those of ISAF (the international governing body for the sport of sailing), including the ISAF Racing Rules of Sailing ("RRS"). The RRS permit the organizing authority of a regatta (SNG for the 33<sup>rd</sup> America's Cup) to change certain rules under certain conditions, with the consent of ISAF.

39. ISAF also traditionally plays an important role in the America's Cup, including appointing the International Jury and the International Umpires for the America's Cup.

40. On June 5, 2009, SNG entered into an agreement with ISAF (the “ISAF Agreement”) concerning ISAF’s role in the 33<sup>rd</sup> America’s Cup but did not disclose the content of the agreement publicly, or even to GGYC.

**SNG Seizes Control Over Rule-Making and the Appointment of Officials for the America’s Cup**

41. On July 17, 2009, ISAF issued a press release stating that “the 33<sup>rd</sup> America’s Cup Match will be conducted under the Deed of Gift provisions, the SNG rules, the ISAF Racing Rules of Sailing and ISAF Regulations as required by the Gift. Any changes to the ISAF Rules and Regulations not already covered by provisions within the ISAF Rules and Regulations will require sanction from ISAF”.

42. On July 21, 2009, SNG counsel represented to this Court that “ISAF has said that if there are any further changes to the rules, they have to be approved by ISAF.”

43. In fact, however, SNG had already secured blanket approval *in advance* to whatever changes SNG decides to make to the RRS and their interpretation, thus securing for itself the right to promulgate whatever rules it wants to for the 33<sup>rd</sup> America’s Cup.

44. In addition, through its secret agreement with ISAF, SNG secured an effective veto over the nomination of all the Umpires and members of the Jury: “ISAF shall advise SNG of all its nominations of the Jury and Umpires and SNG shall confirm whether or not in its opinion such nominee meets the appointment criteria set out in this Agreement.” (ISAF Agreement ¶ 8.) If ISAF and SNG cannot agree whether a nominee meets the criteria, the dispute must be submitted to arbitration before the Court of Arbitration for Sport in Lausanne, Switzerland. This provision effectively ensures that only officials of whom SNG approves will be appointed, because it requires ISAF to go to arbitration if it disagrees with SNG.

45. Furthermore, the ISAF Agreement requires that all Umpires, Measurers, and members of the Jury must be bound by whatever rules SNG issues: “the Umpires, the Measurers, the Jury and all officials appointed for the 33<sup>rd</sup> America’s Cup shall be bound by the Notice of Race and the relevant documentation issued by SNG. The officials shall in no circumstance be entitled to modify the Notice of Race, the applicable sailing instructions or other relevant documents.” (ISAF Agreement ¶ 7.) This means that there is no recourse to any neutral body if SNG decides to issue rules or make race day decisions that unfairly disadvantage GGYC, and that the race officials must adhere to the rules no matter how unfair they may be. Such unconstrained authority for the organizing authority is unprecedented, even where the organizing authority is not, as here, also a competitor.

46. Thus, SNG has secretly set up a rules and officiating process that guarantees that no calls will be made against SNG, unless SNG wants to make a call against itself. SNG makes the rules. SNG selects the officials. And SNG forces the officials to apply the rules even if they are unfair.

**SNG Seeks to Disqualify the Challenger by Issuing Improper Measurement Procedures**

47. In order to prevent GGYC from competing at all, SNG issued measurement procedures that disqualify GGYC’s boat.

48. The Deed of Gift states that the Challenger of Record must provide, among other things, the proposed dimensions of the challenging vessel, which dimensions cannot be exceeded by the actual challenge vessel: “Accompanying the ten months’ notice of challenge there must be sent the . . . following dimensions of the challenging vessel, namely, the length on load water-line; beam at load water-line and extreme beam; and draught of water; **which dimensions shall**

**not be exceeded.**” (Emphasis added.) Consistent with these requirements, GGYC provided the dimensions of its challenging vessel in its Notice of Challenge.

49. The dimensions of GGYC’s challenging vessel do not exceed the dimensions that GGYC provided in its Notice of Challenge and thus satisfy the terms and conditions of the Deed of Gift.

50. Nevertheless, SNG counsel informed GGYC counsel on August 13, 2009 that GGYC’s challenging vessel must match exactly the dimensions listed on GGYC’s Notice of Challenge: “GGYC’s challenging vessel **must match** the dimensions on the Challenge Certificate. The vessel’s measurements may not be greater than **or less than those dimensions.** **The challenging vessel will, of course, not be permitted to race if it does not match the challenge dimensions.**” (Emphasis added.)

51. This rule has the intended effect of disqualifying GGYC’s vessel.

52. SNG has issued other measurement procedures that are intended to and will disadvantage GGYC, including but not limited to (i) the procedure for measuring the length on load waterline; and (ii) how moveable ballast is accounted for during measurement.

**SNG Designates Ras Al Khaimah as the Venue for the 33<sup>rd</sup> America’s Cup to Further its Own Business Interests at the Expense of the Trust Beneficiaries.**

53. In direct contravention of the Deed of Gift’s requirement that no match may be held in the Northern Hemisphere between November and May, SNG designated Ras Al Khaimah in the United Arab Emirates as the venue for the 33<sup>rd</sup> America’s Cup. Not only is this a violation of the express terms of the Deed of Gift (because Ras Al Khaimah is located in the Northern Hemisphere), but it is a breach of SNG’s fiduciary duties because it exposes GGYC, a beneficiary of the trust, to unnecessary and disproportionate danger.

54. Ras Al Khaimah, an emirate on the Strait of Hormuz between the Persian Gulf and the Indian Ocean, is located 32 nautical miles from Iran. Contiguous Iranian waters abut the length of the race area selected by SNG.

55. With regard to sailing in the area of SNG's designated race course, the Department of State warns that "[o]n several occasions in recent years, small groups of expatriate recreational boats were detained by the Iranian Cost Guard for alleged violation of Iranian territories waters . . . near the island of Abu Musa. Sailing in these waters may result in seizure of vessels and detention of passengers and crew in Iran." The island of Abu Musa, which is the subject of a long-standing jurisdictional dispute between Iran and the United Arab Emirates, is located only 17 nautical miles from SNG's designated race course.

56. Holding the America's Cup in the waters between Iran and Ras Al Khaimah creates a unique risk given current geo-political events. The first scheduled match is only 43 days after the December 10, 2009 deadline set by the United Nations for the inspection of Iran's newly discovered nuclear site. The United States is likely to take a lead role in mandating this deadline, and will likely head negotiations to seek sanctions if Iran fails to comply. This international tension creates a risk that the America's Cup will become a proxy for a conflict between Washington and Tehran.

57. There is also a risk that an al-Qaida cell may perceive the America's Cup as an opportunity for a highly visible strike on a Western target parading in its own backyard.

58. The greatest threat is that an Iranian naval commander stationed on one of the Iranian islands that surround the race course will unilaterally decide to stop and detain a competitor, media or spectator vessel and their passengers for questioning or detention. This risk exists because the race course abuts contiguous Iranian waters, and an Iranian naval commander



could readily argue that it is within his jurisdiction to detain boats outside – or even inside – the race course.

59. The Department of State advises that Americans traveling in Ras Al Khaimah “should maintain a low profile, vary routes and times for all required travel.” This is, of course, impossible for an American racing team (traveling with over two hundred people, including families) to train and sail in a world-wide publicized America’s Cup match in a vessel named USA, which is the size of a baseball diamond and flies an America flag on its two-hundred foot mast.

60. SNG, by contrast, has less cause for concern regarding the venue’s proximity to Iran. Switzerland has diplomatic relations with and an embassy in Iran. Switzerland is not leading the charge for sanction against Iran regarding its nuclear program. GGYC, however, has a justified concern that it may be seen as proxy for Washington and considered a highly visible Western target sailing in Iran’s backyard.

61. Despite these obvious risks to GGYC, SNG designated Ras Al Khaimah because it served its own business interests. As it had done with Valencia in connection with the 32<sup>nd</sup> America’s Cup, SNG abused its right to select the venue by extracting benefits for itself, its principals, and its partners.

62. Beginning in or around September 2008, SNG and Ras Al Khaimah initiated a series of complex negotiations designed to further SNG’s own interests to the exclusion of the interests of the trust beneficiaries. SNG’s commitment to hold the 33<sup>rd</sup> America’s Cup in Ras Al Khaimah was a powerful bargaining chip that SNG used during those negotiations, which spanned several months. SNG used its right to select the venue for the 33<sup>rd</sup> America’s Cup to

extract enormous benefits for itself, its principals, and its partners, through a series of secret and complex side deals with Ras Al Khaimah.

63. In exchange for selecting Ras Al Khaimah to host the 33<sup>rd</sup> America's Cup, SNG secured the following commitments, among others: the Ras Al Khaimah Investment Authority ("RAKIA") agreed to finance a shipyard to be built in Ras Al Khaimah by Décision SA, a Swiss yacht-building firm that has built all five of SNG's America's Cup racing yachts and which is owned in part by Ernesto Bertarelli, who controls SNG's racing team, Alinghi; RAKIA agreed to finance the building of a campus in Ras Al Khaimah for Ecol Poltechnique Federale de Lausanne ("EPFL"), a Swiss institution that has served as a scientific advisor and partner to Alinghi since 2003 and played an important role in the design of *Alinghi 5*, the catamaran SNG/Alinghi built to defend the 33<sup>rd</sup> America's Cup; and RAKIA agreed to provide funding for EPFL's Center for Neuroprostheses, which is overseen by five chairs, two of which are endowed by the Bertarelli Foundation, a foundation established by the Bertarelli Family, including Ernesto Bertarelli, to manage and fund the family's philanthropic interests.

64. SNG's multifaceted arrangement with Ras Al Khaimah was nearly finalized in May 2009, when Ernesto Bertarelli publicly stated that SNG was continuing to consider a number of possible venues, including Valencia, Spain.

65. The dangers associated with an American team challenging for the America's Cup on the waters between Iran and Ras Al Khaimah are known to SNG. In fact, on information and belief, SNG selected Ras Al Khaimah in part because it knew that GGYC would object to the venue. SNG hoped that GGYC, the only challenger in the February 2010 Deed of Gift match, would forfeit its challenge based on these concerns, leaving the Cup in SNG's hands.

**COUNT ONE – BREACH OF FIDUCIARY DUTY**

66. Plaintiffs incorporate by reference paragraphs 1 through 65 above, as if set forth herein.

67. SNG has violated the fiduciary duties that it owes as a holder and trustee of the America's Cup.

68. Plaintiffs have been damaged thereby.

**RELIEF REQUESTED**

WHEREFORE, GGYC requests that the Court

- a. Remove SNG as trustee of the trust established by the Deed of Gift and appoint a faithful trustee to administer the 33<sup>rd</sup> America's Cup while permitting SNG to participate in the 33<sup>rd</sup> America's Cup as Defender; or, in the alternative, allow SNG to remain as trustee and appoint a neutral party to oversee the administration of the 33<sup>rd</sup> America's Cup to ensure that the purpose of the Deed of Gift is given effect;

b. Enter judgment in favor of GGYC and against SNG (i) enjoining SNG from interfering with the rules and officiating process of the 33<sup>rd</sup> America's Cup and (ii) enjoining SNG from issuing measurement procedures to disqualify valid challenges under the Deed of Gift;

c. Declare that the ISAF Agreement is void; and

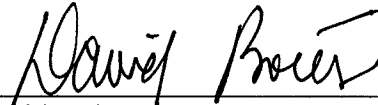
d. Grant GGYC such other relief as justice may require.

Dated: New York, New York

October 26, 2009

Respectfully submitted,

BOIES, SCHILLER & FLEXNER, LLP



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