

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

VS.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, IN THEIR OFFICIAL CAPACITY
AS OFFICERS OF THE UNITED STATES
COAST GUARD**

CIVIL ACTION NO. 2:20-CV-00011

PLAINTIFF DONJON-SMIT, LLC AFFIDAVIT OF SERVICE

1. On February 13, 2020, Plaintiff Donjon-SMIT, LLC (“Donjon-SMIT”) filed its Verified Application for Injunctive Relief and Brief in Support Thereof against Defendants Admiral Karl L. Schultz, Captain John W. Reed, Commander Norm C. Witt, and Commander Matthew J. Baer (collectively, the “Defendants”), in their official capacity as officers of the United States Coast Guard (“Coast Guard”),
2. Between 9:18 and 10:23 AM on February 14, 2020, Plaintiff received stamped file copies of Verified Application for Injunctive Relief and Brief in Support Thereof against Defendants via CM/ECF – Pacer. The clerk of Court sent or Plaintiff received notice and copies of the following in chronological order:
 - The Verified Application for Injunctive Relief;
 - Disclosure Statement;
 - Rule 26 Order;
 - Summons
 - Corporate Disclosure Statement; and

- The Motion and Brief for Injunctive Relief.

(Exhibit 1).

3. At 12:05 pm on February 14, 2020, DonJon's Paul Hankins sent (via email) stamp filed courtesy copies of the Exhibit 1 to Captain Reed, Commander Witt, and Commander Baer. (Exhibit 2).

4. On February 15, 2020, Plaintiff sent via certified mail copies of to each Defendant, as follows:

a. Admiral Karl L. Schultz ("Admiral Schultz")

i. National Command Center of the Coast Guard, US Coast Guard
Stop 7318, 2703 Martin Luther King Jr Ave SE, Washington, DC
20032.

ii. 8029 Mitchell Loop SW, Boling AFB, Washington, DC 20032

b. Defendant Captain John W. Reed ("Captain Reed")

i. 196 Tradd Street, Charleston, SC 29401

ii. 1892 Fleming Wood Road, Charleston, SC 29412

c. Commander Norm C. Witt ("Commander Witt")

i. 1297 N. Lightning Road, Savannah, GA 31408.

ii. 50 Litchfield Drive, Savannah, Georgia 31419-7513

d. Commander Matthew J. Baer ("Commander Baer")

i. 196 Tradd Street, Charleston, SC 29401

ii. 14 Loch Carrun Terrance, Charleston, SC 29414-7343

(Exhibits 3 and 4).

5. Exhibit 1 was also sent via certified mail to:

- a. Attorney General of the United States of America, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.
 - b. United States Attorney for the Southern District of Georgia, 22 Barnard Street, Suite 300, Savannah, Georgia 31401
(Exhibit 3 and 4).
 6. Additionally, service of Exhibit 1 was made as follows:
 - a. Admiral Karl L. Schultz (“Admiral Schultz”) via his Administrative Assistance & Authorized Agent on February 14, 2020 at 4:06 PM. (Exhibit 5).
 7. Other Service
 - a. Defendant Captain John W. Reed (“Captain Reed”) on February 20, 2020. (Exhibit 6)
 - b. Commander Norm C. Witt (“Commander Witt”) on February 22, 2020. (Exhibit 7)
 - c. Commander Matthew J. Baer (“Commander Baer”) on February 18, 2020. (Exhibit 8)
 8. On February 17, 2020, AUSA Martha C. Mann (a) entered an appearance on behalf of Defendants, and (2) filed an Opposition to Plaintiff’s Motion for Temporary Restraining Order, neither with reservation nor exception. (Dkt. 7 and 8).
 9. On February 20, 2020, having not received certified mail, return receipt cards, counsel’s office emailed AUSA regarding accepting service in necessary. (Exhibit 9)
 10. On February 20, 2020, AUSA respond stating inquiry would be made to confirm service. AUSA regarding accepting service in necessary. (Exhibit 9)
- This 25th day February, 2020.

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph R. Odachowski

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**ATTORNEYS FOR PLAINTIFF
DONJON-SMIT, LLC**

EXHIBIT “1”

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

VS.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
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BAER, IN THEIR OFFICIAL CAPACITY
AS OFFICERS OF THE UNITED STATES
COAST GUARD**

CIVIL ACTION NO. _____

**PLAINTIFF DONJON-SMIT, LLC'S
VERIFIED COMPLAINT, REQUEST FOR INJUNCTIVE RELIEF, AND
WRIT OF MANDAMUS**

Plaintiff Donjon-SMIT, LLC (“Donjon-SMIT”) files this Verified Complaint, Writ of Mandamus, and Request for Injunctive Relief (the “Complaint”) against Defendants Admiral Karl L. Schultz, Captain John W. Reed, Commander Norm C. Witt, and Commander Matthew J. Baer (collectively, the “Defendants”) in their official capacity as officers of the United States Coast Guard (“Coast Guard”), and in support thereof state as follows:

INTRODUCTION

1. Plaintiff Donjon-SMIT, LLC (“Donjon-SMIT”) files this Complaint along with an accompanying Motion for Injunctive Relief.¹ to both prevent an almost certain environmental disaster in Port of Brunswick, St. Simons Sound caused by capsizing of the GOLDEN RAY and to require the United States Coast Guard to follow the requirements of the Oil Pollution Act of 1990 (“OPA 90”). The Coast Guard and the Federal On-Scene Coordinator, in direct violation of the OPA 90 and the corresponding regulations, are permitting an extremely high-risk salvage plan

¹ Donjon-SMIT’s Motion for Injunctive Relief and Brief in Support Thereof is being filed simultaneously with this Complaint.

to move forward that has failed on two prior occasions involving similar shipwrecks. The vessel owner/responsible party and the Coast Guard are directly subverting the statutory and regulatory requirements of OPA 90. Donjon-SMIT has not only warned the Coast Guard about the imminent environmental risks but has also requested that the Coast Guard follow the requirements for OPA 90. Despite this and Donjon-SMIT's multiple requests for information from the Coast Guard regarding its decision, the Coast Guard has refused to respond instead unlawfully delegating its sole decision-making authority to the GOLDEN RAY'S owner/responsible party. This has left Donjon-SMIT with no other option but to seek court intervention in the best interest of the proper enforcement of OPA 90 and to avert an imminent environmental catastrophe.

PARTIES

2. Donjon-SMIT is a maritime salvage, firefighting, and lightering company that is registered as a limited liability company in the State of Delaware.

3. Defendant Admiral Karl L. Schultz ("Admiral Schultz") is the Commandant of the United States Coast Guard ("Coast Guard"). The Coast Guard is a military branch and federal agency within DHS. Admiral Schultz may be served with process at the National Command Center of the Coast Guard, US Coast Guard Stop 7318, 2703 Martin Luther King Jr Ave SE, Washington, DC 20032. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney's Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the Attorney General's Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

4. Defendant Captain John W. Reed ("Captain Reed") is a Coast Guard Captain and Commander of the Coast Guard Sector Charleston. Captain Reed may be served with process at

196 Tradd Street, Charleston, SC 29401. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney's Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the Attorney General's Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

5. Commander Norm C. Witt ("Commander Witt") is a Coast Guard Commander, the Commander of the Coast Guard Marine Safety Unit Savannah, and the Federal On-Scene Coordinator ("FOSC") in the State of Georgia. Commander Witt may be served with process at 1297 N. Lightning Road, Savannah, GA 31408. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney's Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the United States Attorney General's Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

6. Commander Matthew J. Baer ("Commander Baer") is a Coast Guard Commander who at certain relevant times acted as the FOSC. Commander Baer may be served with process at 196 Tradd Street, Charleston, SC 29401. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney's Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the Attorney General's Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to the following statutes:

- a. 28 U.S.C. § 1331, which provides district courts with original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States;
 - b. 28 U.S.C § 1346, which provides district courts with original jurisdiction over any civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department;
 - c. 33 U.S.C. § 1321(e)(2) of the Clean Water Act, which provides district courts with jurisdiction to grant any relief under § 1321(e) that the public interest and the equities of the case may require.
8. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1)(B).
9. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

BACKGROUND

A. The GOLDEN RAY Capsizes in St. Simons Sound.

10. On September 8, 2019, the GOLDEN RAY, a 200-metre-long car carrier vessel, capsized in the Port of Brunswick, St. Simons Sound. The capsizing of the GOLDEN RAY is the largest cargo shipwreck in U.S. coastal waters since the Exxon Valdez. At the time of the accident, the GOLDEN RAY was carrying approximately 4,200 automobiles and over twenty crew members. Though all crew members have been rescued, the automobiles remain trapped within the cargo hold of the GOLDEN RAY posing a “*substantial threat of a discharge*” in the navigable waters of St. Simons Sound if not properly removed.² In short, the cars need to be safely removed to avoid environmental disaster.

² A true and correct copy of Commander Witt’s November 8, 2019 USCG Administrative Order 01-19 Amendment 1 is attached hereto as **Exhibit 1**.



Photograph of the capsized GOLDEN RAY vessel in St. Simons Sound

B. Congress Requires Non-Tank Vessel Response Plans Under OPA 90.

11. In response to the devastating impacts of the Exxon Valdez disaster, Congress passed OPA 90 amending the Clean Water Act. OPA 90 was designed to address a wide-range of problems associated with preventing, responding to, and paying for oil pollution incidents in the navigable waters of the United States. Importantly, OPA 90 greatly increased federal oversight of maritime oil transportation and significantly reduced the amount of discretion that responsible parties had in determining how to best respond to environmental emergencies of their own making.

12. Before OPA 90, a vessel owner responsible for an oil spill ironically also wielded significant control over how the spill would be cleaned up. In order to shift decision-making authority regarding oil spill response efforts back into the hands of public officials, OPA 90 requires owners of non-tank vessels carrying oil to submit to the Coast Guard a Non-Tank Vessel Response Plan (“NTVRP”) detailing how they will respond to large discharges. 33 C.F.R. § 155.5010. Depending on the capacity of the vessel, the NTVRP must demonstrate that the vessel

owner has contracted with resource providers to provide certain services in case of an emergency, including salvage, emergency lightering, and marine firefighting. 33 C.F.R. § 155.5035. Once a plan is approved, a vessel owner **may not** deviate from the NTVRP without additional approval from the President or the FOSC. 33 U.S.C.A. § 1321(c)(3)(B) (emphasis added). Moreover, the FOSC may only approve a deviation from the NTVRP under “**exceptional circumstances.**” 33 C.F.R. § 155.4032 (emphasis added). Section 155.4032 provides:

Use of resource providers not listed in the VRP. If another resource provider, not listed in the approved plan for the specific service required, is to be contracted for a specific response, justification for the selection of that resource provider needs to be provided to, and approved by, the FOSC. Only under **exceptional circumstances** will the FOSC authorize deviation from the resource provider listed in the approved vessel response plan in instances where that would best affect a more successful response.”

33 C.F.R. § 155.4032(a) (emphasis added).

According to the Coast Guard’s own administrative guidance published in 2009, its NTVRP requirement was implemented “to ensure that an incident be responded to quickly and **without the need for contract negotiations during an actual emergency.**” Salvage and Marine Firefighting Requirements; *Vessel Response Plans for Oil*, 73 FR 80618-01. Clearly, the term “exceptional circumstances” was intended to rarely allow for deviations from an approved NTVRP.³

³ Though 33 C.F.R. § 155.4032 has not yet been interpreted by a court of law, courts have interpreted use of the term **exceptional circumstances** in other federal rules and regulations as setting a high threshold that should rarely be met. For example, under Supreme Court Rule 20, an “extraordinary writ” such as a writ of mandamus or habeas corpus may only be granted upon a showing of “exceptional circumstances [that] warrant the exercise of the Court’s discretionary powers[.]” U.S. Sup. Ct. R. 20. Tellingly, though thousands of such petitions have been filed, the Court has not granted an extraordinary writ of habeas corpus since 1925, *see Ex parte Grossman*, 267 U.S. 87 (1925), or a writ of mandamus since 1962. *See Fong Foo v. United States*, 369 U.S. 141 (1962). Similarly, under Section 1229a of the Immigration and Nationality Act, a judge’s removal order made in absentia may only be rescinded under “exceptional circumstances”. 8 U.S.C. § 1229a(e)(1). This language has been interpreted to “set[] a high bar that ‘will be met in only rare cases.’” *Jimenez-Castro v. Sessions*, 750 F. App’x 406, 408–09 (6th Cir. 2018) (quoting *Kaweesa v. Gonzales*, 450 F.3d 62, 68 (1st Cir. 2006)); *see also Herbert v. Ashcroft*, 325 F.3d 68, 72 (1st Cir. 2003). Likewise, pursuant to 18 U.S.C.A. § 3145(c), which governs the review of detention or release orders in criminal proceedings, a judicial officer may only order the release of a defendant held under a detention order if “it is clearly shown that there are exceptional reasons why such person’s detention would not be appropriate.” 18 U.S.C.A. § 3145. Here again,

C. The GOLDEN RAY’s NTVRP Under OPA 90.

13. GL NV24 Shipping Inc. (“Owner”) is the owner of the GOLDEN RAY. As the owner of a non-tank vessel carrying oil, Owner was required to prepare an NTVRP. Pursuant to an agreement signed on September 20, 2017, Donjon-SMIT was designated as the approved salvage and marine firefighter (“SMFF”) provider under the GOLDEN RAY NTVRP for nineteen different salvage and marine firefighting services. Donjon-SMIT is a highly-experienced marine salvage and casualty response provider which currently holds active response agreements with approximately 7,000 vessels worldwide. In fact, Donjon-SMIT is the largest OPA 90 provider in the world.

D. Donjon-SMIT Provides Life Saving Emergency Services on the GOLDEN RAY and Limits Environmental Harm.

14. Within hours of the GOLDEN RAY capsizing, Donjon-SMIT provided emergency salvage, firefighting, and damage stability services as the approved SMFF under the GOLDEN RAY NTVRP. Donjon-SMIT assisted in the successful rescue of four trapped crewmen. Donjon-SMIT further stabilized the worksite by laying down a blanket of rock surrounding the ship, and by late October, Donjon-SMIT successfully removed most of the approximately 300,000 gallons of bunker fuel from the GOLDEN RAY’s twenty-four fuel tanks. Donjon-SMIT performed everything it was asked to do. By all accounts, Donjon-SMIT’s emergency services not only saved lives, but significantly limited the environmental harm caused by the GOLDEN RAY’s capsizing. This is the exact type of response Congress envisioned under OPA 90 and its NTVRPs.

what qualifies as *exceptional* has been narrowly defined. See *United States v. McGillivray*, No. 2:11 CR 22-7, 2012 WL 137409, at *2 (quotations omitted) (W.D.N.C. Jan. 18, 2012) (“Courts generally have defined ‘exceptional reasons’ as circumstances which are clearly out of the ordinary, uncommon, or rare.”); *United States v. Lea*, 360 F.3d 401, 403 (2d Cir.2004) (quoting *United States v. DiSomma*, 951 F.2d 494, 497 *2d Cir.1991) (“Exceptional circumstances exist where there is ‘a unique combination of circumstances giving rise to situations that are out of the ordinary.’”).



Donjon-SMIT laying down rocks to stabilize the GOLDEN RAY

E. Donjon-SMIT Submits a Proven Salvage Plan Focused on Mitigating the Environmental Risks and Avoiding the Main Navigation Channel to the Port of Brunswick.

15. After securing the GOLDEN RAY, Donjon-SMIT was ready to move forward with removing the wreck under the GOLDEN RAY's NTVRP. On November 5, 2019, Donjon-SMIT submitted a salvage plan proposal to Owner and its representatives.⁴ Under Donjon-SMIT's plan, the GOLDEN RAY would be cut and removed in small sections weighing approximately 600 tons each, allowing for a controlled removal of the over 4,000 automobiles still inside the vessel while minimizing stress on the damaged hull and reducing the significant risk of inadvertent discharges into St. Simons Sound.

16. This approach had been successfully employed in a similar shipwreck salvage operation for the REIJIN that also involved the safe removal of automobiles that had posed a

⁴ A true and correct copy of Donjon-SMIT's November 5, 2020 salvage plan is attached hereto as **Exhibit 2**.

significant environmental risk. Additionally, Donjon-SMIT proposed establishing a small 4.6-acre protective perimeter around the GOLDEN RAY that not only mitigates environmental risks but also avoids the main navigation channel to the Port of Brunswick. Donjon-SMIT was prepared to move forward with its plan in November of 2019 and remains ready willing and able to implement its plan today.

F. The Owner subverts OPA 90 and Requests that Donjon-SMIT be replaced by Another Salvage Company.

17. Owner and its representatives rejected Donjon-SMIT's proposal out of hand, citing their unproven preference that the vessel be removed in much larger sections of approximately 4,000 tons. Rather than affording Donjon-SMIT an opportunity to advocate for its safer small section removal plan, Commander Witt instead allowed Owner to place the wreck removal project out for tender to third-party contractors who were not part of the NTVRP in violation of OPA 90 and its regulations. Further, Commander Witt permitted Owner to solicit proposals based on a "fixed-price" rate rather than on the "cost-plus" terms used in the GOLDEN RAY'S NTVRP. The change to a "fixed price" structure is alarming it that it appears that the Owner may be attempting to limit its exposure. Simply put, Commander Witt allowed Owner to conduct the very bidding process that OPA 90 was designed to prevent, wasting valuable time that Donjon-SMIT could have used to begin work on the GOLDEN RAY while at the same time allowing the Owner to potentially limit its exposure.

18. Soon thereafter, Donjon-SMIT learned that a third-party company named T&T Salvage ("T&T") had submitted its own proposal to Owner and was permitted to present its plan to the entire Unified Command, including Commander Witt and other Coast Guard officials. Donjon-SMIT, which again was the pre-contracted SMFF resource provider, was never afforded

a similar meeting with Unified Command to discuss its own proposal and its serious concerns with T&T's unproven, high risk plan.

G. T&T's High-Risk Plan Will Likely Result in an Environmental Disaster in the Waters of St. Simons Sound.

19. T&T proposed a high risk, "large section" removal whereby eight sections of the ship, weighing approximately 4,000 tons each, would be removed and transported by barge to the Gulf of Mexico. Similar large section removal processes have been used on capsized car carrier vessels twice before without success--once on the TRICOLOR in 2003, and again on the BALTIC ACE in 2014. In both instances, after removal of several large sections, the remaining sections collapsed, releasing additional pollutants into the surrounding waters. Additionally, T&T's proposed plan would require the construction of a thirty-one acre environmental protection barrier in St. Simons Sound that would interfere with the navigation channel, increasing the potential for another accident. Further, because each removed section would be even larger than the barge itself, there would be significant risk of the sections falling off the barge during transport to the Gulf. T&T's proposal is also significantly more expensive than Donjon-SMIT's.

H. The Coast Guard Permitted an Unlawful Deviation from GOLDEN RAY's NTVRP in Violation of OPA 90 and Its Regulations.

20. On December 19, 2019, Owner, without reference to any "exceptional circumstances," submitted a request to Commander Witt to deviate from the GOLDEN RAY's NTVRP and replace Donjon-SMIT with T&T as the salvage and marine fighting (SMFF) provider going forward. Again, and for undisclosed reasons, Donjon-SMIT was shut out of any discussions with Owner, Commander Witt, and the Coast Guard regarding the selection process. Two days later, on December 21, 2019 Commander Witt, in direct violation of OPA 90 and its corresponding regulation approved Owner's request to deviate from the GOLDEN RAY NTVRP without any

justification or reference to any “exceptional circumstances” as required by 33 C.F.R. § 155.4032. This is the exact conduct that OPA 90 was designed to prohibit.

21. Astonishingly, Donjon-SMIT was removed as the SMFF services provider on the GOLDEN RAY for *each of the nineteen different services* for which Donjon-SMIT was pre-contracted under the GOLDEN RAY NTVRP. Despite multiple inquiries from Donjon-SMIT, Commander Witt refused to articulate his reasoning for approving Owner’s deviation request and has never explained why Donjon-SMIT was removed for all nineteen services.

I. The Coast Guard Unlawfully Delegated Its Sole Decision-Making Authority to the GOLDEN RAY’S Owner.

22. On December 22nd, Paul Hankins, Donjon’s Vice President for Salvage Operations, emailed Commander Witt to explain Donjon-SMIT’s concerns with the T&T plan and to request a meeting to discuss the Commander’s unlawful deviation approval.⁵ In response, Commander Witt, who as the designated FOSC is supposed to be sole decision-maker regarding any deviations from the NTVRP, tellingly “defer[red] to the Owner’s representatives” regarding any meetings to discuss the deviation.⁶ This is an unlawful delegation of the decision-making authority that Congress sought to prevent under OPA 90.

23. By (1) permitting Owner to circumvent use of its pre-contracted NTVRP service provider in favor of an open bidding process, (2) not affording Donjon-SMIT any opportunity to explain its salvage removal plan or address any potential concerns, and (3) never providing any

⁵ As outlined in the detailed email, the T&T Plan is a high risk plan that costs substantially more than the Donjon-SMIT plan and employs a removal method that has previously failed on two other occasions resulting in more environmental harm. Moreover, T&T’s approach appears to be that if its plan does not work, there is plenty of money to then try the Donjon-SMIT’s approach. The Coast Guard’s rejection of the safer, proven, and less expensive approach outlined in the Donjon-SMIT plan is arbitrary, at best, and increases the likelihood of greater environmental harm.

⁶ A true and correct copy of the email exchange between Donjon-SMIT and the Coast Guard is attached hereto as **Exhibit 3**.

justification for their approval of Owner’s deviation request, much less a finding of “exceptional circumstances,” Defendants have subverted the very purpose of OPA 90 and effectively delegated their decision-making authority back to those responsible for the disaster at issue. Moreover, Defendants have deprived Donjon-SMIT of its contractual agreement with Owner to provide SMFF services in addition to causing damage to Donjon-SMIT’s reputation that will directly harm its ability to contract in the future.

24. Implementation of T&T’s large section removal plan is now imminent. On February 5, 2020, the Unified Command announced that construction of the environmental protection barrier will begin approximately one week from the date of this motion.⁷ Soon thereafter, T&T will commence cutting and removing sections of the GOLDEN RAY. Time is of the essence if Defendants’ blatant violations of Donjon-SMIT’s statutory and constitutional rights are to be remedied.⁸

CAUSES OF ACTION

A. Count One: Request for Injunctive Relief.

25. Donjon-SMIT re-alleges and incorporates the above allegations as if fully set forth herein.

26. Pursuant to Federal Rule of Civil Procedure 65, Donjon-SMIT seeks entry of a temporary restraining order, preliminary injunction, and permanent injunction to avoid immediate and irreparable loss, injury, and damage. As set out in Donjon-SMIT’s Motion for Injunctive Relief and Brief in Support Thereof filed simultaneously with this Complaint, Donjon-SMIT has shown substantial likelihood of success on the merits, that irreparable injury will be suffered if the

⁷ A true and correct copy of the Unified Command Press Release is attached hereto as **Exhibit 4**.

⁸ See Donjon-SMIT’s Motion for Injunctive Relief and Brief in Support Thereof filed simultaneously with this Complaint.

relief is not granted, that the threatened injury outweighs the harm the relief would inflict on the Coast Guard, and that entry of the relief would serve the public interest.

27. The Coast Guard’s unlawful actions in violation of OPA 90 will not only cause immediate and irreparable injury to Donjon-SMIT’s constitutional rights, Donjon-SMIT’s contractual relationship with the Owner, and Donjon-SMIT’s reputation and ability to act as an OPA 90 salvage provider going forward, but poses a significant risk of another substantial discharge in the navigable waters of St. Simons Sound ending in a significantly great environmental disaster.

B. Count Two: Violation of OPA 90 and Request for Judicial Review Under the Administrative Procedure Act.

28. Donjon-SMIT re-alleges and incorporates the above allegations as if fully set forth herein.

29. In direct violation of OPA 90 and its corresponding regulations, Defendants approved the Owner’s request to deviate from the GOLDEN RAY NTVRP without any justification or reference to any “exceptional circumstances” as required by 33 C.F.R. § 155.4032.

30. Defendants have subverted the very purpose of OPA 90 and effectively delegated their decision-making authority back to those responsible for the disaster at issue.

31. Under 5 U.S.C.A. § 706, a district court may “hold unlawful and set aside agency action, findings, and conclusions found to be-- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . . (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . [or] (D) without observance of procedure required by law[.]” 5 U.S.C.A. § 706(2).

32. Defendants are willfully failing to abide by 33 C.F.R. § 155.4032, which states that a FOSC may only approve the use of a resource provider not listed in the NTVRP “under exceptional circumstances” where such approval “would best affect a more successful response.”

33. Additionally, Defendants are willfully failing to abide by 33 U.S.C.A. § 1321(c)(3)(B), which states that a FOSC may only deviate from the applicable NTVRP if he determines that the “deviation from the NTVRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.”

34. Instead, Defendants, acting arbitrarily and capriciously, in excess of their statutory authority, and without observance of procedure required by law, approved Owner’s deviation from the NTVRP.

35. Donjon-SMIT respectfully requests this Court, through its authority under 5 U.S.C.A. § 706, hold unlawful and set aside Defendants’ approval of Owner’s deviation from the NTVRP.

C. Count Three: Violation of Procedural and Substantive Due Process.

36. Donjon-SMIT re-alleges and incorporates the above allegations as if fully set forth herein.

37. 42 U.S.C. § 1983 provides a cause of action against any person “who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]”

38. Under the Fifth Amendment of the U.S. Constitution, no person shall “be deprived of life, liberty, or property, without due process of law[.]”

39. Defendants, acting in their official capacity, intentionally violated Donjon-SMIT's procedural and substantive due process rights under § 1983 and the Constitution.

40. Specifically, 33 C.F.R. § 155.4032 states that a FOSC may only approve the use of a resource provider not listed in the NTVRP "*under exceptional circumstances*" where such approval "would best affect a more successful response."

41. Instead, Defendants approved Owner's deviation from the NTVRP without any justification, much less a finding of "*exceptional circumstances*", and without providing Donjon-SMIT any opportunity to be heard.

42. Defendants thereby violated Donjon-SMIT's procedural and substantive due process rights and deprived Donjon-SMIT of its contractual agreement with Owner to provide SMFF services in addition to causing damage to Donjon-SMIT's reputation that will directly harm its ability to contract in the future.

D. Count Four: Declaratory Judgment.

43. Donjon-SMIT re-alleges and incorporates the above allegations as if fully set forth herein.

44. Donjon-SMIT seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and Fed R. Civ. P. 57, and as provided for by the Administrative Procedure Act under 5 U.S.C. § 704.

45. Donjon-SMIT seeks this Court's determination that:

- a. Defendants' actions with respect to their approval of the deviation from the NTVRP were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
- b. Defendants' actions with respect to their approval of the deviation from the NTVRP were contrary to Donjon-SMIT's constitutional rights and Defendants' constitutional powers or privileges;

- c. Defendants' actions with respect to their approval of the deviation from the NTVRP were in excess of their statutory jurisdiction, authority, and/or limitations; and
- d. Defendants' actions with respect to their approval of the deviation from the NTVRP were without observation or procedure as required by law.

46. This Court has the authority to grant declaratory relief under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 as an actual controversy exists between the parties as to Defendants' actions and Donjon-SMIT's rights with respect to Defendants' approval of Owner's NTVRP deviation request.

47. Donjon-SMIT respectfully requests this Court enter an Order determining Defendants' actions exceeded the scope of their authority, etc., as specifically outlined above.

WRIT OF MANDAMUS

48. Donjon-SMIT re-alleges and incorporates the above allegations as if fully set forth herein.

49. Under 28 U.S.C. § 1361, "[t]he district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency therefor to perform a duty owed to the plaintiff."

50. The purpose of 28 U.S.C. § 1361 is to prevent federal officials from acting outside the permissible scope of their discretion, and it seeks to prevent such abuse by giving federal courts the authority to compel federal officials to perform acts required of them or, conversely, to refrain from acts which they are not authorized to perform.

51. Here, Defendants failed to abide by 33 C.F.R. § 155.4032, which states that a FOOSC may only approve the use of a resource provider not listed in the NTVRP "under exceptional circumstances" where such approval "would best affect a more successful response."

52. Additionally, Defendants failed to abide by 33 U.S.C.A. § 1321(c)(3)(B), which states that a FOOSC may only deviate from the applicable NTVRP if he determines that the

“deviation from the NTVRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.”

53. Instead, Defendants, without justification, without evidence of “exceptional circumstances,” and acting arbitrarily, capriciously and in bad faith, approved Owner’s deviation from the NTVRP.

54. Donjon-SMIT has a clear right to relief that is sought in this Complaint, and there is no other adequate remedy available to Donjon-SMIT.

55. Donjon-SMIT respectfully requests this Court enter a writ of mandamus compelling Defendants to reverse its approval of Owner’s deviation from the NTVRP.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Donjon-SMIT, LLC respectfully requests that this Court:

- a. Enter a temporary restraining order, preliminary injunction, and permanent injunction against the Coast Guard as requested herein.
- b. Hold unlawful and set aside Defendants’ actions under the Administrative Procedure Act as requested herein;
- c. Enter judgment against Defendants for violating Donjon-SMIT’s procedural and substantive due process rights;
- d. Enter a declaratory judgment against Defendants as requested herein;
- e. Enter a writ of mandamus against Defendants as requested herein;
- f. All such other relief at law or in equity as this Court deems appropriate.

[Signatures on following page]

DATED: February 13, 2020

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph R. Odachowski

Georgia State Bar No. 549470

300 Oak Street, Suite 200

St. Simons Island, GA 31522

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jodachowski@tosclaw.com

**ATTORNEYS FOR PLAINTIFF
DONJON-SMIT, LLC**

**OF COUNSEL:
CLARK HILL PLC**

/s/ Garney Griggs

Garney Griggs

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**ATTORNEYS FOR PLAINTIFF
DONJON-SMIT, LLC**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

VS.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, IN THEIR OFFICIAL CAPACITY
AS OFFICERS OF THE UNITED STATES
COAST GUARD**

CIVIL ACTION NO. _____

**PLAINTIFF DONJON-SMIT, LLC'S
S.D. GA LR 7.1.1 DISCLOSURE STATEMENT**

Pursuant to the Southern District of Georgia Local Rules 7.1.1, the undersigned, counsel of record for Plaintiff Donjon-Smit, LLC. certifies that the following is a full and complete list of the parties in this action:

1. Donjon-Smit, LLC is the Plaintiff.
2. Admiral Karl L. Schultz in his official capacity as an Officer of the United States Coast Guard is a Defendant.
3. Captain John W. Reed in his official capacity as an Officer of the United States Coast Guard is a Defendant.
4. Commander Norm C. Witt in his official capacity as an Officer of the United States Coast Guard is a Defendant.
5. Commander Matthew J. Baer in his official capacity as an Officer of the United States Coast Guard is a Defendant.

The undersigned further certifies that the following is a full and complete list of officers, directors, or trustees of the above-identified parties:

Plaintiff Donjon-Smit, LLC is an OPA 90 alliance consisting of Smit Salvage Americas LLC, a Delaware limited liability company and Donjon Marine Co., Inc, a New Jersey corporation. Donjon-Smit, LLC, Smit Salvage Americas LLC and Donjon Marine Co.,

Inc. are not public companies. The managers and directors of Donjon-Smit, LLC are Douglas Martin, Stephen G. Newes, Robert Van Acker and John Witte. Timothy P. Williamson is the general manager of Donjon-Smit, LLC.

The undersigned further certifies that the following is a full and complete list of other persons, firms, partnerships, corporations, or organizations that have a financial interest in, or another interest which could be substantially affected by, the outcome of this case (including a relationship as parent or holding company or any publicly-held corporation that holds 10% or more of a party's stock):

1. Smit Salvage Americas LLC is a wholly owned indirect subsidiary of Royal Boskalis Westminster, N.V., a Dutch public corporation.
2. Defendants are all Officers of the United States Coast Guard.

Dated February 13, 2020.

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph Odachowski

Georgia State Bar No. 549470

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/s/ Garney Griggs

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Texas State Bar No. 08491000

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gflores@clarkhill.com

ATTORNEYS FOR PLAINTIFF

DONJON-SMIT, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC.,

Plaintiff,

v.

ADMIRAL KARL L. SCHULTZ, et al.,

Defendants.

CIVIL ACTION NO.: 2:20-cv-11

RULE 26 INSTRUCTION ORDER

The above-captioned case having recently been filed in this Court, the Court issues the following Order to provide instructions to the parties regarding their initial discovery obligations and to institute initial case management proceedings.

I. Rule 26(f) Conference

Federal Rule of Civil Procedure 26(f) requires the parties to confer, develop a proposed discovery plan, and submit a report to this Court. Subsequent to the filing of the report, a Scheduling Order must be entered pursuant to Federal Rule of Civil Procedure 16(b). Therefore, by the **earlier of: (1) sixty (60) days after any defendant has been served with the complaint; or (2) forty-five (45) days after any defendant has appeared**, the parties shall confer as provided in Rule 26(f). See Local R. 26.1(a).¹ For removed cases, the parties shall be guided by the deadlines in Local Rule 26.1(e).

¹ The Rule 26(f) Conference may be held telephonically and should be attended by any unrepresented parties and counsel for any represented parties.

During the Rule 26(f) Conference, the parties shall discuss the nature and bases of their claims and defenses, the possibilities for a prompt settlement or resolution of the case, and the scope, type, manner, and costs of discovery. **In addressing settlement or early resolution of the case, counsel shall not only explore the feasibility of alternative dispute resolution between themselves but shall also discuss the potential for settlement and alternative dispute resolution with their clients as well.** The parties shall also make or arrange for the disclosures required by Rule 26(a)(1) and develop their joint proposed scheduling/discovery plan. The parties shall use the updated Form Rule 26(f) Report for use in Judge Wood/Judge Cheesbro cases as a guide for their conference. These are only the **minimum** requirements for the meeting. The Court orders the parties to have a comprehensive discussion and to approach the meeting in good faith and with cooperation.

II. Rule 26(f) Report

Within **fourteen (14) days** after the required Rule 26(f) Conference, the parties shall submit to the Court a written Report outlining their discovery plan. See Local R. 26.1(b). The Report shall conform to the language and format of the Form Rule 26(f) Report for use in Judge Wood/Judge Cheesbro cases located on the Court's website www.gasd.uscourts.gov under "Forms."² The parties should use that Form, as well as this Instruction Order, to guide their discussion at their Rule 26(f) Conference.

The parties shall work together to prepare the Report, and the deadlines in the Report should be mutually agreeable, with a view to achieving resolution of the case with minimum expense and delay. To the extent the parties cannot agree on an item in the Report, they shall so

² The parties must use the current version of this Form located on the Court's website when preparing their Report. When using this fillable Word document, the parties are reminded to follow the Court's procedures for electronic filings, detailed below in Section VI. Specifically, counsel shall not print and then scan the Rule 26(f) Report before filing but should instead directly convert the completed report into a text-searchable PDF for filing.

indicate in the Report. A party who cannot gain the cooperation of any other party in preparing the Rule 26(f) Report should advise the Court of the other party's failure to cooperate prior to the Report filing deadline.

Should any party seek a stay of discovery or their obligation to file the Rule 26 Report or seek the extension of any other deadline in this case (including an extension of discovery or of a deadline to respond to a motion or to file any other pleading), the party should first contact all other parties and determine if the other parties join in, consent to, or oppose the request. When filing a motion seeking a stay or an extension, the moving party must state in its motion whether the other parties join in, consent to, or oppose the request.

III. Electronically Stored Information

During the Rule 26(f) Conference, the parties shall specifically discuss the preservation and production of electronically stored information. That discussion shall include, as to each party:

- A. The electronic sources and records the party maintains and how the party's electronic data and records are stored;
- B. The electronic sources and records each party will search and the method of search that will be used (including any search terms);
- C. The difficulty/ease of retrieving various data and information and who will bear the costs of retrieval and production;
- D. The format and media agreed to by the parties for the production of electronically stored information (including any production of meta-data), as well as agreed procedures for such production;
- E. The persons most familiar with the party's computer and electronic storage system and the persons who are responsible for preservation of electronically stored information, including any third parties who may have access to or control over any such information;
- F. Whether reasonable measures have been implemented to preserve data, including the party's document retention/destruction policy, whether the party has placed a "litigation hold" preventing destruction of potentially

relevant records, and whether the issuance of a preservation order is required; and

- G. The extent to which search and disclosure of electronic data should be limited to that which is available in the normal course of business or otherwise and the anticipated scope, cost, and time required for search and disclosure of such information beyond that which is available in the normal course of business.

IV. Privileged, Protected, or Confidential Information

During the Rule 26(f) Conference, the parties shall discuss specifically the discovery and production of privileged, protected, or confidential information. That discussion shall include:

- A. The methods the parties will employ to assert claims of privilege, protection, or confidentiality, including the form and substance of any privilege logs;
- B. Whether the parties anticipate discovery issues or challenges arising from non-disclosure of allegedly privileged, protected, or confidential information;
- C. Whether reasonable date ranges should be established for which privilege log entries for privileged, protected, or confidential information need not be made;
- D. Whether the parties will request a protective order to prevent the further release of information disclosed in discovery; and
- E. As contemplated by Rule 502(e) of the Federal Rules of Evidence, whether there is a need for the terms of any agreement regarding disclosure of privileged attorney-party communications or confidential work product to be incorporated into a court order and whether the parties will seek court approval of any such agreement.

V. Scheduling Conference

The Court may hold a Scheduling Conference after receipt of the parties' Rule 26(f) Report and before issuing a Scheduling Order. At that conference, the Court will discuss in detail the parties' proposed discovery plan and scheduling order, as well as any issues the parties raise in their Rule 26(f) Report. This Conference need only be attended by counsel and by any unrepresented parties. Ordinarily, the Court will allow appearance at the Scheduling Conference

via telephone. If a Scheduling Conference is necessary, it should be held no more than twenty (20) days after the submission of the parties' Rule 26(f) Report.

VI. Form of Electronic Filings

The parties are directed to read and follow the Court's revised Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means, available on the Court's website www.gasd.uscourts.gov under "For Attorneys" and "Administrative Procedures for Electronic Filing." Documents in their native format such as Word or WordPerfect must be converted into a text-searchable PDF before filing. Most word processing applications allow publishing or converting to PDF within the application. There are also commercial and free PDF converters available for use. **Participants should not print and scan electronic documents for submission into CM/ECF.** Documents should not be scanned prior to e-filing unless the original documents are unavailable in electronic format or require original signature. Attachments not available in electronic format shall be scanned by the filer into PDF format for electronic submission. The participant is responsible for the legibility of the uploaded image. For assistance with conversion or scanning, contact the CM/ECF Helpdesk at (912) 650-4010 or ecf_web@gasd.uscourts.gov.

VII. Resolution of Discovery Disputes

It is hereby **ORDERED** that the following steps be undertaken by all parties **prior** to the filing of any discovery motions. This includes **any** motions filed pursuant to Title V of the Federal Rules of Civil Procedure, including but not limited to motions to compel, motions to quash, motions for a protective order, disputed motions for extensions of time to conduct discovery, disputed motions for examination, or motions for discovery sanctions.

- A. The parties are strongly encouraged to informally resolve all discovery issues and disputes without the necessity of Court intervention. In that regard, the parties are first required to confer and fully comply with Rules 26 and 37 of the Federal Rules of Civil Procedure and Local Rule 26.5 by undertaking a sincere, good faith effort to resolve all differences without Court action or intervention.
- B. In the event that reasonable, good faith efforts have been made by all parties to confer and attempt to resolve any differences, without success, the parties are then required to schedule a telephonic conference with the Magistrate Judge in an effort to try to resolve the discovery dispute **prior to the filing of any motions.**³ **The parties shall exhaust the first two steps of the process before filing any motions, briefs, memoranda of law, exhibits, deposition transcripts, or any other discovery materials with the Court.**
- C. If the dispute still cannot be resolved following a telephonic conference with the Magistrate Judge, then the Court will entertain a discovery motion. In connection with the filing of any such motions, the moving party shall submit the appropriate certifications to the Court, as required by Federal Rules of Civil Procedure Rules 26 and 37.

The Court will refuse to hear any discovery motion unless the parties have made a sincere, good faith effort to resolve the dispute **and** there has been strict compliance with all of the above-identified steps. Failure to fully comply with all of the prerequisite steps may result in a denial of any motion, with prejudice, and may result in an award of costs and reasonable attorney's fees.

³ The parties may schedule such a conference by contacting the Magistrate Judge's Courtroom Deputy Clerk.

CONCLUSION

Plaintiff's counsel, or if applicable, the *pro se* plaintiff, shall ensure that a copy of this Order is served upon all parties without delay.

SO ORDERED, this 14th day of February, 2020.

A handwritten signature in blue ink, appearing to read 'B. Cheesbro', is written over a horizontal line.

BENJAMIN W. CHEESBRO
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Georgia

DONJON-SMIT, LLC

Plaintiff(s)

v.

ADMIRAL KARL L. SCHULTZ, CAPTAIN JOHN W.
REED, COMMANDER NORM C. WITT, and
COMMANDER MATTHEW J. BAER

Defendant(s)

Civil Action No. 2:20-cv-11

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Commander Matthew J. Baer
196 Tradd Street
Charleston, SC 29401

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

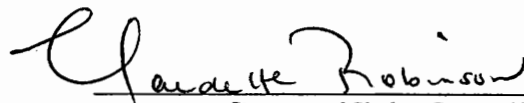
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SCOTT L. POFF, CLERK

CLERK OF COURT

Date: 02/14/2020





Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-11

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Georgia

DONJON-SMIT, LLC

Plaintiff(s)

v.

ADMIRAL KARL L. SCHULTZ, CAPTAIN JOHN W.
REED, COMMANDER NORM C. WITT, and
COMMANDER MATTHEW J. BAER

Defendant(s)

Civil Action No. 2:20-cv-11

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Admiral Karl L. Schultz
National Command Center of the Coast Guard
U.S. Coast Guard Stop 7318
2703 Martin Luther King Jr Ave SE
Washington, DC 20032

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SCOTT L. POFF, CLERK

CLERK OF COURT

Date: 02/14/2020




Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-11

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Georgia

DONJON-SMIT, LLC

Plaintiff(s)

v.

ADMIRAL KARL L. SCHULTZ, CAPTAIN JOHN W.
REED, COMMANDER NORM C. WITT, and
COMMANDER MATTHEW J. BAER

Defendant(s)

Civil Action No. 2:20-cv-11

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Captain John W. Reed
196 Tradd Street
Charleston, SC 29401

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

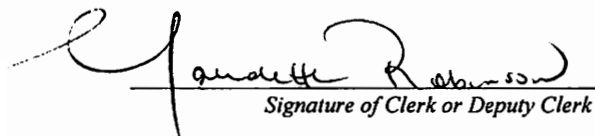
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SCOTT L. POFF, CLERK

CLERK OF COURT

Date: 02/14/2020




Signature of Clerk or Deputy Clerk

Civil Action No. 2:20-cv-11

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☐ Other *(specify)*:

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Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Georgia

DONJON-SMIT, LLC

Plaintiff(s)

v.

ADMIRAL KARL L. SCHULTZ, CAPTAIN JOHN W.
REED, COMMANDER NORM C. WITT, and
COMMANDER MATTHEW J. BAER

Defendant(s)

Civil Action No. 2:20-cv-11

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Commander Norm C. Witt
1297 N. Lightning Road
Savannah, Georgia 31408

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 02/14/2020



SCOTT L. POFF, CLERK

CLERK OF COURT

[Handwritten Signature]
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-11

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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

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Additional information regarding attempted service, etc:

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

VS.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, IN THEIR OFFICIAL CAPACITY
AS OFFICERS OF THE UNITED STATES
COAST GUARD**

CIVIL ACTION NO. _____

**PLAINTIFF DONJON-SMIT, LLC'S
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1, Plaintiff Donjon-Smit, LLC. provides the following disclosure:

Donjon-Smit, LLC is an OPA 90 alliance consisting of Smit Salvage Americas LLC, a Delaware limited liability company and Donjon Marine Co., Inc, a New Jersey corporation. Donjon-Smit, LLC, Smit Salvage Americas LLC and Donjon Marine Co., Inc. are not public companies. The managers and directors of Donjon-Smit, LLC are Douglas Martin, Stephen G. Newes, Robert Van Acker and John Witte. Timothy P. Williamson is the general manager of Donjon-Smit, LLC.

Smit Salvage Americas LLC is a wholly owned indirect subsidiary of Royal Boskalis Westminster, N.V., a Dutch public corporation.

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph Odachowski

Georgia State Bar No. 549470

300 Oak Street, Suite 200

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jodachowski@tosclaw.com

**ATTORNEYS FOR PLAINTIFF
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**OF COUNSEL:
CLARK HILL PLC**

/s/ Garney Griggs

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Texas State Bar No. 08491000

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**ATTORNEYS FOR PLAINTIFF
DONJON-SMIT, LLC**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

VS.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, IN THEIR OFFICIAL CAPACITY
AS OFFICERS OF THE UNITED STATES
COAST GUARD**

CIVIL ACTION NO. _____

**PLAINTIFF DONJON-SMIT, LLC'S
VERIFIED APPLICATION FOR INJUNCTIVE RELIEF AND
BRIEF IN SUPPORT THEREOF**

Plaintiff Donjon-SMIT, LLC (“Donjon-SMIT”) files this Verified Application for Injunctive Relief and Brief in Support Thereof against Defendants Admiral Karl L. Schultz, Captain John W. Reed, Commander Norm C. Witt, and Commander Matthew J. Baer (collectively, the “Defendants”), in their official capacity as officers of the United States Coast Guard (“Coast Guard”), and in support thereof state as follows:

INTRODUCTION

1. Plaintiff Donjon-SMIT, LLC (“Donjon-SMIT”) files this Verified Application for Injunctive Relief and Brief in Support thereof along with an accompanying Verified Complaint in an effort to prevent an almost certain environmental disaster in St. Simons Sound. The United States Coast Guard and the Federal On-Scene Coordinator, in direct violation of the Oil Pollution Act of 1990 (“OPA 90”) and corresponding regulations, are permitting an extremely high-risk salvage plan to move forward that has failed on two prior occasions involving similar ship wrecks. The vessel owner/responsible party and the Coast Guard are directly subverting the statutory and

regulatory requirements of OPA 90. Despite Donjon-SMIT's efforts to warn the Coast Guard and Donjon-SMIT's multiple requests for information from the Coast Guard regarding its decision, the Coast Guard has refused to respond, leaving Donjon-SMIT no other option but to seek court intervention in the best interest of the proper enforcement of OPA and to avert an imminent environmental catastrophe.

PARTIES

2. Donjon-SMIT is a maritime salvage, firefighting, and lightering company that is registered as a limited liability company in the State of Delaware.

3. Defendant Admiral Karl L. Schultz ("Admiral Schultz") is the Commandant of the United States Coast Guard ("Coast Guard"). The Coast Guard is a military branch and federal agency within DHS. Admiral Schultz may be served with process at the National Command Center of the Coast Guard, US Coast Guard Stop 7318, 2703 Martin Luther King Jr Ave SE, Washington, DC 20032. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney's Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the Attorney General's Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

4. Defendant Captain John W. Reed ("Captain Reed") is a Coast Guard Captain and Commander of the Coast Guard Sector Charleston. Captain Reed may be served with process at 196 Tradd Street, Charleston, SC 29401. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney's Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the Attorney General's Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

5. Commander Norm C. Witt (“Commander Witt”) is a Coast Guard Commander, the Commander of the Coast Guard Marine Safety Unit Savannah, and the Federal On-Scene Coordinator (“FOSC”) in the State of Georgia. Commander Witt may be served with process at 1297 N. Lightning Road, Savannah, GA 31408. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney’s Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the United States Attorney General’s Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

6. Commander Matthew J. Baer (“Commander Baer”) is a Coast Guard Commander who at certain relevant times acted as the FOSC. Commander Baer may be served with process at 196 Tradd Street, Charleston, SC 29401. Pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons and of this complaint will also be sent by registered or certified mail to the United States Attorney’s Office for the Southern District of Georgia at 22 Barnard Street, Suite 300 Savannah, Georgia 31401, and to the Attorney General’s Office at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to the following statutes:
- a. 28 U.S.C. § 1331, which gives district courts original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States;
 - b. 28 U.S.C. § 1346, which gives district courts original jurisdiction over any civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department;
 - c. 33 U.S.C. § 1321(e)(2) of the Clean Water Act, which gives district courts jurisdiction to grant any relief under § 1321(e) that the public interest and the equities of the case may require.

8. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1)(B).

BACKGROUND

A. The GOLDEN RAY Capsizes in St. Simons Sound.

9. On September 8, 2019, the GOLDEN RAY, a 200-metre-long car carrier vessel, capsized in the Port of Brunswick, St. Simons Sound. The capsizing of the GOLDEN RAY is the largest cargo shipwreck in U.S. coastal waters since the Exxon Valdez. At the time of the accident, the GOLDEN RAY was carrying approximately 4,200 automobiles and over twenty crew members. Though all crew members have been rescued, the automobiles remain trapped within the cargo hold of the GOLDEN RAY posing a “*substantial threat of a discharge*” in the navigable waters of St. Simons Sound if not properly removed.¹ In short, the cars need to be safely removed to avoid environmental disaster.



Photograph of the capsized GOLDEN RAY vessel in St. Simons Sound

¹ A true and correct copy of Commander Witt’s November 8, 2019 USCG Administrative Order 01-19 Amendment 1 is attached hereto as **Exhibit 1**.

B. Congress Requires Non-Tank Vessel Response Plans Under OPA 90.

10. In response to the devastating impacts of the Exxon Valdez disaster, Congress passed OPA 90 amending the Clean Water Act. OPA 90 was designed to address a wide-range of problems associated with preventing, responding to, and paying for oil pollution incidents in the navigable waters of the United States. Importantly, OPA 90 greatly increased federal oversight of maritime oil transportation and significantly reduced the amount of discretion that responsible parties had in determining how to best respond to environmental emergencies of their own making.

11. Before OPA 90, a vessel owner responsible for an oil spill ironically also wielded significant control over how the spill would be cleaned up. In order to shift decision-making authority regarding oil spill response efforts back into the hands of public officials, OPA 90 requires owners of non-tank vessels carrying oil to submit to the Coast Guard a Non-Tank Vessel Response Plan (“NTVRP”) detailing how they will respond to large discharges. 33 C.F.R. § 155.5010. Depending on the capacity of the vessel, the NTVRP must demonstrate that the vessel owner has contracted with resource providers to provide certain services in case of an emergency, including salvage, emergency lightering, and marine firefighting. 33 C.F.R. § 155.5035. Once a plan is approved, a vessel owner *may not* deviate from the NTVRP without additional approval from the President or the FOSC. 33 U.S.C.A. § 1321(c)(3)(B) (emphasis added). Moreover, the FOSC may only approve a deviation from the NTVRP under “*exceptional circumstances*.” 33 C.F.R. § 155.4032 (emphasis added). Section 155.4032 provides:

Use of resource providers not listed in the VRP. If another resource provider, not listed in the approved plan for the specific service required, is to be contracted for a specific response, justification for the selection of that resource provider needs to be provided to, and approved by, the FOSC. Only under *exceptional circumstances* will the FOSC authorize deviation from the resource provider listed in the approved vessel response plan in instances where that would best affect a more successful response.”

33 C.F.R. § 155.4032(a) (emphasis added).

According to the Coast Guard’s own administrative guidance published in 2009, its NTVRP requirement was implemented “to ensure that an incident be responded to quickly and *without the need for contract negotiations during an actual emergency.*” Salvage and Marine Firefighting Requirements; *Vessel Response Plans for Oil*, 73 FR 80618-01. Clearly, the term “exceptional circumstances” was intended to rarely allow for deviations from an approved NTVRP.²

C. The GOLDEN RAY’s NTVRP Under OPA 90.

12. GL NV24 Shipping Inc. (“Owner”) is the owner of the GOLDEN RAY. As the owner of a non-tank vessel carrying oil, Owner was required to prepare an NTVRP. Pursuant to an agreement signed on September 20, 2017, Donjon-SMIT was designated as the approved salvage and marine firefighter (“SMFF”) provider under the GOLDEN RAY NTVRP for nineteen different salvage and marine firefighting services. Donjon-SMIT is a highly-experienced marine salvage and casualty response provider which currently holds active response agreements with

² Though 33 C.F.R. § 155.4032 has not yet been interpreted by a court of law, courts have interpreted use of the term *exceptional circumstances* in other federal rules and regulations as setting a high threshold that should rarely be met. For example, under Supreme Court Rule 20, an “extraordinary writ” such as a writ of mandamus or habeas corpus may only be granted upon a showing of “exceptional circumstances [that] warrant the exercise of the Court’s discretionary powers[.]” U.S. Sup. Ct. R. 20. Tellingly, though thousands of such petitions have been filed, the Court has not granted an extraordinary writ of habeas corpus since 1925, *see Ex parte Grossman*, 267 U.S. 87 (1925), or a writ of mandamus since 1962. *See Fong Foo v. United States*, 369 U.S. 141 (1962). Similarly, under Section 1229a of the Immigration and Nationality Act, a judge’s removal order made in absentia may only be rescinded under “exceptional circumstances”. 8 U.S.C. § 1229a(e)(1). This language has been interpreted to “set[] a high bar that ‘will be met in only rare cases.’” *Jimenez-Castro v. Sessions*, 750 F. App’x 406, 408–09 (6th Cir. 2018) (quoting *Kaweesa v. Gonzales*, 450 F.3d 62, 68 (1st Cir. 2006)); *see also Herbert v. Ashcroft*, 325 F.3d 68, 72 (1st Cir. 2003). Likewise, pursuant to 18 U.S.C.A. § 3145(c), which governs the review of detention or release orders in criminal proceedings, a judicial officer may only order the release of a defendant held under a detention order if “it is clearly shown that there are exceptional reasons why such person’s detention would not be appropriate.” 18 U.S.C.A. § 3145. Here again, what qualifies as *exceptional* has been narrowly defined. *See United States v. McGillivray*, No. 2:11 CR 22-7, 2012 WL 137409, at *2 (quotations omitted) (W.D.N.C. Jan. 18, 2012) (“Courts generally have defined ‘exceptional reasons’ as circumstances which are clearly out of the ordinary, uncommon, or rare.”); *United States v. Lea*, 360 F.3d 401, 403 (2d Cir.2004) (quoting *United States v. DiSomma*, 951 F.2d 494, 497 *2d Cir.1991) (“Exceptional circumstances exist where there is ‘a unique combination of circumstances giving rise to situations that are out of the ordinary.’”).

approximately 7,000 vessels worldwide. In fact, Donjon-SMIT is the largest OPA 90 provider in the world.

D. Donjon-SMIT Provides Life Saving Emergency Services on the GOLDEN RAY and Limits Environmental Harm.

13. Within hours of the GOLDEN RAY capsizing, Donjon-SMIT provided emergency salvage, firefighting, and damage stability services as the approved SMFF under the GOLDEN RAY NTVRP. Donjon-SMIT assisted in the successful rescue of four trapped crewmen. Donjon-SMIT further stabilized the worksite by laying down a blanket of rock surrounding the ship, and by late October, Donjon-SMIT successfully removed most of the approximately 300,000 gallons of bunker fuel from the GOLDEN RAY's twenty-four fuel tanks. Donjon-SMIT performed everything it was asked to do. By all accounts, Donjon-SMIT's emergency services not only saved lives, but significantly limited the environmental harm caused by the GOLDEN RAY's capsizing. This is the exact type of response that envisioned under OPA 90 and its NTVRPs.



Donjon-SMIT laying down rocks to stabilize the GOLDEN RAY

E. Donjon-SMIT Submits a Proven Salvage Plan Focused on Mitigating the Environmental Risks and Avoiding the Main Navigation Channel to the Port of Brunswick.

14. After securing the GOLDEN RAY, Donjon-SMIT was ready to move forward with removing the wreck under the GOLDEN RAY's NTVRP. On November 5, 2019, Donjon-SMIT submitted a salvage plan proposal to Owner and its representatives.³ Under Donjon-SMIT's plan, the GOLDEN RAY would be cut and removed in small sections weighing approximately 600 tons each, allowing for a controlled removal of the over 4,000 automobiles still inside the vessel while minimizing stress on the damaged hull and reducing the significant risk of inadvertent discharges into St. Simons Sound.

15. This approach had been successfully employed in a similar shipwreck salvage operation for the REIJIN that also involved the safe removal of automobiles that had posed a significant environmental risk. Additionally, Donjon-SMIT proposed establishing a small 4.6-acre protective perimeter around the GOLDEN RAY that not only mitigates environmental risks but also avoids the main navigation channel to the Port of Brunswick. Donjon-SMIT was prepared to move forward with its plan in November of 2019 and remains ready willing and able to implement its plan today.

F. The Owner subverts OPA 90 and Requests that Donjon-SMIT be replaced by Another Salvage Company.

16. Owner and its representatives rejected Donjon-SMIT's proposal out of hand, citing their unproven preference that the vessel be removed in much larger sections of approximately 4,000 tons. Rather than affording Donjon-SMIT an opportunity to advocate for its safer small section removal plan, Commander Witt instead allowed Owner to place the wreck removal project out for tender to third-party contractors who were not part of the NTVRP in violation of OPA 90

³ A true and correct copy of Donjon-SMIT's November 5, 2020 salvage plan is attached hereto as **Exhibit 2**.

and its regulations. Further, Commander Witt permitted Owner to solicit proposals based on a “fixed-price” rate rather than on the “cost-plus” terms used in the GOLDEN RAY’S NTVRP. The change to a “fixed price” structure is alarming it that it appears that the Owner may be attempting to limit its exposure. Simply put, Commander Witt allowed Owner to conduct the very bidding process that OPA 90 was designed to prevent, wasting valuable time that Donjon-SMIT could have used to begin work on the GOLDEN RAY while at the same time allowing the Owner to potentially limit its exposure.

17. Soon thereafter, Donjon-SMIT learned that a third-party company named T&T Salvage (“T&T”) had submitted its own proposal to Owner and was permitted to present its plan to the entire Unified Command, including Commander Witt and other Coast Guard officials. Donjon-SMIT, which again was the pre-contracted SMFF resource provider, was never afforded a similar meeting with Unified Command to discuss its own proposal and its serious concerns with T&T’s unproven, high risk plan.

G. T&T’s High-Risk Plan Will Likely Result in an Environmental Disaster in the Waters of St. Simons Sound.

18. T&T proposed a high risk, “large section” removal whereby eight sections of the ship, weighing approximately 4,000 tons each, would be removed and transported by barge to the Gulf of Mexico. Similar large section removal processes have been used on capsized car carrier vessels twice before without success--once on the TRICOLOR in 2003, and again on the BALTIC ACE in 2014. In both instances, after removal of several large sections, the remaining sections collapsed, releasing additional pollutants into the surrounding waters. Additionally, T&T’s proposed plan would require the construction of a thirty-one acre environmental protection barrier in St. Simons Sound that would interfere with the navigation channel, increasing the potential for another accident. Further, because each removed section would be even larger than the barge itself,

there would be significant risk of the sections falling off the barge during transport to the Gulf. T&T's proposal is also significantly more expensive than Donjon-SMIT's.

H. The Coast Guard Permitted an Unlawful Deviation from GOLDEN RAY's NTVRP in Violation of OPA 90 and Its Regulations.

19. On December 19, 2019, Owner, without reference to any "exceptional circumstances," submitted a request to Commander Witt to deviate from the GOLDEN RAY's NTVRP and replace Donjon-SMIT with T&T as the salvage and marine fighting (SMFF) provider going forward. Again, and for undisclosed reasons, Donjon-SMIT was shut out of any discussions with Owner, Commander Witt, and the Coast Guard regarding the selection process. Two days later, on December 21, 2019 Commander Witt, in direct violation of OPA 90 and its corresponding regulation approved Owner's request to deviate from the GOLDEN RAY NTVRP without any justification or reference to any "exceptional circumstances" as required by 33 C.F.R. § 155.4032. This is the exact conduct that OPA 90 was designed to prohibit.

20. Astonishingly, Donjon-SMIT was removed as the SMFF services provider on the GOLDEN RAY for *each of the nineteen different services* for which Donjon-SMIT was pre-contracted under the GOLDEN RAY NTVRP. Despite multiple inquiries from Donjon-SMIT, Commander Witt refused to articulate his reasoning for approving Owner's deviation request and has never explained why Donjon-SMIT was removed for all nineteen services.

I. The Coast Guard Unlawfully Delegated Its Sole Decision-Making Authority to the GOLDEN RAY'S Owner.

21. On December 22nd, Paul Hankins, Donjon's Vice President for Salvage Operations, emailed Commander Witt to explain Donjon-SMIT's concerns with the T&T plan and to request a meeting to discuss the Commander's unlawful deviation approval.⁴ In response,

⁴ As outlined in the detailed email, the T&T Plan is a high risk plan that costs substantially more than the Donjon-SMIT plan and employs a removal method that has previously failed on two other occasions resulting in more environmental harm. Moreover, T&T's approach appears to be that if its plan does not work, there is plenty of money

Commander Witt, who as the designated FOSC is supposed to be sole decision-maker regarding any deviations from the NTVRP, tellingly “defer[red] to the Owner’s representatives” regarding any meetings to discuss the deviation.⁵ This is an unlawful delegation of the decision-making authority that Congress sought to prevent under OPA 90.

22. By (1) permitting Owner to circumvent use of its pre-contracted NTVRP service provider in favor of an open bidding process, (2) not affording Donjon-SMIT any opportunity to explain its salvage removal plan or address any potential concerns, and (3) never providing any justification for their approval of Owner’s deviation request, much less a finding of “exceptional circumstances,” Defendants have subverted the very purpose of OPA 90 and effectively delegated their decision-making authority back to those responsible for the disaster at issue. Moreover, Defendants have deprived Donjon-SMIT of its contractual agreement with Owner to provide SMFF services in addition to causing damage to Donjon-SMIT’s reputation that will directly harm its ability to contract in the future.

23. Implementation of T&T’s large section removal plan is now imminent. On February 5, 2020, the Unified Command announced that construction of the environmental protection barrier will begin approximately one week from the date of this motion.⁶ Soon thereafter, T&T will commence cutting and removing sections of the GOLDEN RAY. Time is of

to then try the Donjon-SMIT’s approach. The Coast Guard’s rejection of the safer, proven, and less expensive approach outlined in the Donjon-SMIT plan is arbitrary, at best, and increases the likelihood of greater environmental harm.

⁵ A true and correct copy of the email exchange between Donjon-SMIT and the Coast Guard is attached hereto as **Exhibit 3**.

⁶ A true and correct copy of the Unified Command Press Release is attached hereto as **Exhibit 4**.

the essence if Defendants' blatant violations of Donjon-SMIT's statutory and constitutional rights are to be remedied.⁷

ARGUMENT AND AUTHORITIES

24. Donjon-SMIT re-alleges and incorporates the above allegations as if fully set forth herein.

25. Pursuant to Federal Rule of Civil Procedure 65, Donjon-SMIT seeks entry of a temporary restraining order, preliminary injunction, and permanent injunction, as set forth below, to avoid immediate and irreparably loss, injury, and damage.

26. The purpose of temporary injunctive relief is to preserve the status quo until the district court renders a decision on the merits. *United States v. DBB, Inc.*, 180 F.3d 1277, 1282 (11th Cir.1999). The Court must balance "the probabilities of ultimate success at final hearing with the consequences of immediate irreparable injury which could possibly flow from the denial of preliminary relief." *Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir.2000) (en banc).

A. Elements for Injunctive Relief.

27. A temporary restraining order or preliminary injunction may be granted upon a showing of the following:

- (1) A substantial likelihood of success on the merits;
- (2) That irreparable injury will be suffered if the relief is not granted;
- (3) That the threatened injury outweighs the harm the relief would inflict on the non-movant; and
- (4) That entry of the relief would serve the public interest.

⁷ See Donjon-SMIT's Motion for Injunctive Relief and Brief in Support Thereof filed simultaneously with this Complaint.

Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1225–26 (11th Cir.2005); *see also Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034 (11th Cir. 2001).

B. There is a Substantial Likelihood Donjon-SMIT Will Prevail on the Merits.

28. As set forth in Donjon-SMIT’s Verified Complaint filed with this Motion and as set out in facts above, Donjon-SMIT is substantially likely to prevail on the merits of its claims, and at the very least has a substantial case against Defendants. When the balance of the equities weighs so heavily in favor of granting injunctive relief, a movant need only show that it has a “substantial case on the merits.” *See Gonzalez ex rel. Gonzalez v. Reno*, No. 00-11424-D, 2000 WL 381901, at *1 (11th Cir. Apr. 19, 2000) (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981).

29. Donjon-SMIT has pled causes of action for violation of OPA 90 and judicial review under the Administrative Procedure Act, violation of both procedural and substantive due process under the Fifth Amendment, and request for declaratory judgment. Donjon-SMIT has also requested a writ of mandamus regarding the Defendants’ violations and abuses of OPA 90 and its regulations. Defendants, by not providing any justification for its approval of Owner’s deviation request removing Donjon-SMIT as the SMFF provider have violated OPA 90. Even more problematic for Defendants is their complete failure to show any “exceptional circumstances,” as required by 33 C.F.R. § 155.4032. Defendants likewise violated 33 U.S.C.A. § 1321(c)(3)(B) because they have never articulated why or how the T&T plan would “provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.” Finally, Defendants have never explained why Donjon-SMIT was removed as the SMFF services provider not only for wreck removal, but also for each of the nineteen different services for which Donjon-SMIT was pre-contracted under the GOLDEN RAY NTVRP. Donjon-SMIT has at the very least a substantial claim against Defendants for each of its causes of action.

C. Donjon-SMIT Will Suffer Irreparable Injury if the Relief is Not Granted.

30. As a direct and proximate cause of Defendants’ conduct as described above, Donjon-SMIT has and will continue to suffer significant and irreparable harm. Donjon-SMIT will lose its contract to provide SMFF services under Owner’s NTVRP, a contract that was supposed to be secured by statute absent exceptional circumstances. Several courts, including this Court, have found that loss of a contract award is sufficient to show irreparable injury. *See Georgia by & through Georgia Vocational Rehab. Agency v. United States by & through Shanahan*, 398 F. Supp. 3d 1330, 1344 (S.D. Ga. 2019) (finding that the plaintiffs would experience irreparable harm in the loss of a dining services contract that it was potentially entitled to); *Cardinal Maint. Serv., Inc. v. United States*, 63 Fed. Cl. 98, 110 (2004) (stating that a party suffers irreparable injury “when it loses the opportunity to compete on a level playing field with other bidders. Irreparable injury includes, but is not limited to, lost profits which would flow from the contract.”); *SAI Indus. Corp. v. United States*, 60 Fed. Cl. 731, 741 (2004) (stating that “[i]rreparable injury can be shown in the form of lost opportunity to fairly compete for and perform work under the contract, including but not limited to lost profits that would generate therefrom.”).

31. Donjon-SMIT will also lose the significant resources it expended both in negotiating to become the SMFF provider and in preparing its wreck removal proposal. Additionally, Donjon-SMIT’s reputation in the industry will be damaged by its highly-publicized removal as the SMFF provider, impacting all future negotiations with other vessel owners. Perhaps most importantly, Defendants’ actions have established the dangerous precedent that SMFF provider contracts can easily be terminated without justification. This not only undermines the very purpose of OPA 90, but also devastatingly impacts the hundreds of SMFF contracts that Donjon-SMIT currently has with other vessel owners.

32. Yet in a matter of days this Court will lose any opportunity it has to provide adequate relief to Donjon-SMIT for the above injuries. Unified Command recently stated that construction on the thirty-one-acre barrier around the GOLDEN RAY will begin next week. Once started, it will become nearly impossible to restore Donjon-SMIT as the SMFF provider. Plus, even if Donjon-SMIT's injury could somehow be readily reduced to dollar damages, the federal government is not answerable in monetary damages for Donjon-SMIT's constitutional harms.⁸

33. Because Donjon-SMIT continues to suffer considerable harm for which it cannot be monetarily compensated, and because construction on the GOLDEN RAY is imminent, a temporary restraining order is the only means of preserving any opportunity that this Court has to provide adequate relief in this matter.

D. The Threatened Injury Outweighs the Harm the Relief Would Inflict on the Non-Movant;

34. The threatened injury to Donjon-SMIT outweighs any harm Defendants may suffer if injunctive relief is granted. Temporarily delaying the approval of Owner's deviation request would not harm the Defendant government officials in any perceptible way. *See S. Wine & Spirits of Am., Inc. v. Heineman*, No. 4:07CV3244, 2007 WL 3051405, at *1 (D. Neb. Oct. 16, 2007) (granting a temporary restraining order halting the implementation of a new Nebraska liquor license law inter alia because the defendant government officials "would not be harmed in any way by [the TRO]" when compared to the potential violation of the plaintiffs' Equal Protection and Commerce Clause rights); *Husteel Co. v. United States*, 34 F. Supp. 3d 1355, 1363 (Ct. Int'l

⁸ It is well established that the United States and its agencies are immune from suit on constitutional claims for damages. *See, e.g., Pereira v. U.S. Postal Service*, 964 F.2d 873, 876-77 (9th Cir.1992) (emphasis added); *Daly-Murphy v. Winston*, 837 F.2d 348, 355-56 (9th Cir.1987); *see also FDIC v. Meyer*, 510 U.S. 471, 486-87, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994). In addition, a suit against a federal employee in his/her official capacity is a suit against the United States, and the doctrine of sovereign immunity bars claims for monetary damages against federal actors sued in their official capacities. *See, e.g., Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 688-89, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949); *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir.1985) (barring suit against federal officials sued in their official capacities).

Trade 2014) (granting a preliminary injunction stopping the Department of Commerce from liquidating certain merchandise in part because “the government will not be harmed in any meaningful way” if made to wait for judicial review of the agency’s determination).

35. In contrast, once T&T begins constructing its thirty-one-acre barrier around the GOLDEN RAY, Donjon-SMIT will have lost its status as SMFF provider that was secured by both contract and statute absent exceptional circumstances. Therefore, the balance of potential harms substantially favors enjoining Defendants until this Court can determine if Donjon-SMIT’s rights were violated and if the violations of OPA 90 pose greater risk to the environment.

E. That Entry of the Relief Would Serve the Public Interest.

36. Enjoining Defendants’ approval of Owner’s NTVRP deviation will best serve the public interest. If environmental harm is likely, the public interest favors the issuance of injunctive relief to protect the environment. *See Amoco Prod. Co. v. Vill. of Gambell*, AK, 480 U.S. 531, 545, 107 S. Ct. 1396, 1404, 94 L. Ed. 2d 542 (1987) (stating that environmental injury, if shown to be “sufficiently likely[,]” will usually favor the issuance of an injunction because “by its nature, [environmental injury] can seldom be adequately remedied by money damages[.]”). Indeed, citing public interest, courts have frequently granted injunctive relief halting behavior which could have caused irreparable damage to the environment. *See Wroncy v. Bureau of Land Mgmt.*, 777 F. Supp. 1546, 1549 (D. Or. 1991) (granting a temporary restraining order stopping the Bureau of Land Management from continuing to fertilize certain forest lands in part because of the potential environmental impact to public lands); *Sierra Club v. Lujan*, 716 F. Supp. 1289, 1293 (D. Ariz. 1989) (granting a preliminary injunction inter alia because it was “obvious” the public interest would be served by stopping construction which could irreparably damage a national park); *Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1197 (D. Or. 2012) (quotations omitted) (granting a preliminary injunction halting the construction of a water diversion project partly

because “preserving nature and avoiding irreparable environmental injury is in the public interest.”).

37. Here, Defendants’ current course of action will likely cause significant environmental harm. If T&T’s wreck removal plan fails, over 4,000 vehicles containing batteries, refrigerant, gasoline, antifreeze, engine oil, brake, transmission, and power steering fluid, mercury switches, and lead battery connectors may end up St. Simons Sound. When compared to Donjon-SMIT’s proposal, the T&T plan undeniably poses a much greater risk to the environment:

GOLDEN RAY Wreck Removal Plan Comparison	
T&T Plan	Donjon-SMIT plan
Establish large, thirty-one-acre perimeter which would interfere with the navigation channel	Establish small, 4.6-acre perimeter which avoids main navigation channel
Cut vessel into eight large, 4,000-ton sections, increasing risk of hull collapse/discharge of vehicles into surrounding waters	Cut vessel into small, 600-ton sections, minimizing risk of hull collapse/discharge of vehicles
Sections would be too large to completely fit onto transport barge, posing additional discharge risk	Smaller sections would fit securely on transport barge
More expensive	Less expensive
Approach led to further pollution when implemented on the TRICOLOR and BALTIC ACE wreck removals	Approach successfully employed during REIJIN wreck removal

38. Because of the potentially devastating environmental consequences at stake, the public interest would best be served by enjoining Defendants so that this Court can properly evaluate the plans at issue before T&T begins work on the GOLDEN RAY.

F. Bond Requirement.

39. Donjon-SMIT is willing to post a bond to secure temporary injunctive relief and asks the Court to determine a fair and reasonable amount of security given by Donjon-SMIT for

the protection of Defendants in the event such relief is wrongfully issued and results in harm to the Defendants. However, because the requested relief is the least restrictive means of providing appropriate relief and does not prevent Defendants from any behavior except refraining from improperly violating the applicable statutes and regulations for a brief period of time, Donjon-SMIT respectfully request that the bond sought be waived or set at a nominal amount.

G. Request for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction.

40. Donjon-SMIT respectfully requests this Court, pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, enter a Temporary Restraining Order revoking Defendants' approval of Owner's NTVRP deviation request until such time that a hearing can be held on Donjon-SMIT's application for temporary injunction.

41. Donjon-SMIT further requests this Court set for hearing Donjon-SMIT's application for preliminary injunction within the time provided for in Rule 65(b)(2) of the Federal Rules of Civil Procedure, and that, upon such hearing this Court, pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, enter a preliminary injunction revoking Defendants' approval of Owner's NTVRP deviation request until trial of this matter.

42. Donjon-SMIT further requests that, upon final trial hereof, this Court enter an order permanently enjoining and restraining Defendants from participating in the above conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Donjon-SMIT, LLC respectfully requests that this Court:

- a. Enter a temporary restraining order, preliminary injunction, and permanent injunction against the Coast Guard as requested herein.
- b. Hold unlawful and set aside Defendants' actions under the Administrative Procedure Act as requested herein;
- c. Enter judgment against Defendants for violating Donjon-SMIT's procedural and substantive due process rights;

- d. Enter a declaratory judgment against Defendants as requested herein;
- e. Enter a writ of mandamus against Defendants as requested herein;
- f. All such other relief at law or in equity as this Court deems appropriate.

Dated February 20, 2020.

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph R. Odachowski

Georgia State Bar No. 549470

300 Oak Street, Suite 200

St. Simons Island, GA 31522

(912) 634-0955 – Telephone

(912) 638-9739 – Facsimile

jodachowski@tosclaw.com

**ATTORNEYS FOR PLAINTIFF
DONJON-SMIT, LLC**

**OF COUNSEL:
CLARK HILL PLC**

/s/ Garney Griggs

Garney Griggs

Texas State Bar No. 08491000

Clifford Bowie Husted

Texas State Bar No. 00796803

Gregorio Flores

Texas State Bar No. 24116367

909 Fannin, Suite 2300

Houston, TX 77010

(713) 951-5600 – Telephone

(713) 951-5660 – Facsimile

ggriggs@clarkhill.com

hustedc@clarkhill.com

gflores@clarkhill.com

**ATTORNEYS FOR PLAINTIFF
DONJON-SMIT, LLC**

EXHIBIT “2”

----- Forwarded message -----

From: **Paul Hankins** <paul.hankins@donjon.com>
Date: Fri, Feb 14, 2020 at 12:05 PM
Subject: Courtesy Copy
To: <Norm.C.Witt@uscg.mil>, Reed, John W CAPT <John.W.Reed@uscg.mil>, Baer, Matthew J CDR <Matthew.J.Baer@uscg.mil>

Dear CAPT Reid, CDR Witt, and CDR Baer,

Good afternoon. The attached Motion for Injective Relief and Request for Temporary Restraining Order in regards to the GOLDEN RAY incident was filed in U.S. District Court Brunswick last evening.

This is provided as your courtesy copy of that motion.

An acknowledgment of receipt would be appreciated.

Best regards,

Paul Hankins
VP, Salvage Operations
+1-908-477-0930
www.donjon.com

EXHIBIT “3”

7014 0150 0001 9063 6931

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **Admiral Karl L. Schultz**
 8029 Mitchell Loop SW
 Boling AFB, Washington, DC 20032

PS Form 38

7014 0150 0001 9064 1461

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Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **Admiral Karl L. Schultz**
 National Command
 Center of the Coast Guard
 US Coast Guard Stop 7318
 2703 Martin Luther King Jr Ave SE
 Washington, DC 20032

PS Form 38

7014 0150 0001 9063 6948

U.S. Postal Service™
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Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **Commander Norm C. Witt**
 50 Litchfield Drive
 Savannah, GA 31419-7513

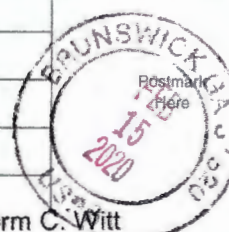
PS Form 38

7014 0150 0001 9063 6955

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Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **Commander Norm C. Witt**
 1297 N. Lighting Road
 Savannah, GA 31408

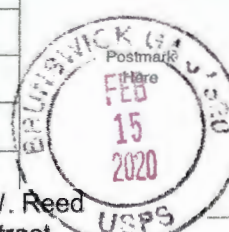
PS Form 38

7014 0150 0001 9063 6962

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Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **Captain John W. Reed**
 196 Tradd Street
 Charleston, SC 29401

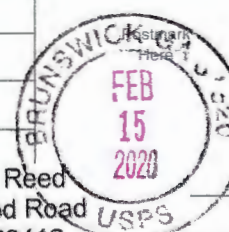
PS Form 38

7014 0150 0001 9063 6924

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Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **Captain John W. Reed**
 1892 Fleming Wood Road
 Charleston, SC 29412

PS Form 38

EXHIBIT “4”

7016 0340 0001 0235 6055

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
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Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage	\$
Sent To	Attorney General
Street or PO	950 Pennsylvania Avenue NW
City, State	Washington, DC 20530-0001

PS Form 3800, April 2016 Edition. For instructions, see reverse.

7016 0340 0001 0235 6116

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
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OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage	\$
Sent To	United State Attorney's Office for the
Street or PO	Southern District of Georgia
City, State	22 Barnard Street, Ste 300 Savannah, GA 31401

PS Form 3800, April 2016 Edition. For instructions, see reverse.

7011 0110 0001 7537 8516

**U.S. Postal Service™
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OFFICIAL USE

Postage	\$
Certified Fee	\$
Return Receipt Fee (Endorsement Required)	\$
Restricted Delivery Fee (Endorsement Required)	\$
Total Postage & Fees	\$
Sent To	Commander Matthew J. Baer
Street or PO	196 Tradd Street
City, State	Charleston, SC 29401

PS Form 3800, April 2016 Edition. For instructions, see reverse.

7011 0110 0001 7537 8523

**U.S. Postal Service™
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OFFICIAL USE

Postage	\$
Certified Fee	\$
Return Receipt Fee (Endorsement Required)	\$
Restricted Delivery Fee (Endorsement Required)	\$
Total Postage & Fees	\$
Sent To	Commander Matthew J. Baer
Street or PO	14 Loch Carrun Terrace
City, State	Charleston, SC 29414-7343

PS Form 3800, April 2016 Edition. For instructions, see reverse.

EXHIBIT “5”

AFFIDAVIT OF PROCESS SERVER

United States District Court for the Southern District of Georgia

Donjon-Smit, LLC

Plaintiff(s),

VS.

Admiral Karl L. Schultz, et al

Defendant(s).

Attorney: Joseph R. Odachowski

Taylor, Odachowski, Schmidt & Crossland, LLC
300 Oak St., #200
St. Simons Island GA 31522



252072

Case Number: 2:20-cv-00011-LGW-BWC

Legal documents received by Same Day Process Service, Inc. on 02/14/2020 at 4:06 PM to be served upon **Admiral Karl L. Schultz** at **U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Ave., SE, Washington, DC 20593**

I, **Harvey Jessup**, swear and affirm that on **February 20, 2020** at **11:39 AM**, I did the following:

Served **Admiral Karl L. Schultz** by delivering a conformed copy of the **Summons in a Civil Action; Civil Cover Sheet; Plaintiff Donjon-Smit, LLC's Verified Complaint, Request for Injunctive Relief, and Writ of Mandamus; Plaintiff Donjon-Smit, LLC's S.D. GA LR 7.1.1 Disclosure Statement; Plaintiff Donjon-Smit, LLC's Corporate Disclosure Statement; Exhibits; Declaration of Timothy P. Williamson; Plaintiff Donjon-Smit, LLC's Verified Application for Injunctive Relief and Brief in Support Thereof; Temporary Restraining Order and Order Setting Hearing on Application for Preliminary Injunction; Rule 26 Instruction Order; Notice of Alternative Dispute Resolution and Case Management Procedures** to **Valerie Willis** as **Administrative Assistant & Authorized Agent of Admiral Karl L. Schultz** at **U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Ave., SE, Washington, DC 20593**.

Description of Person Accepting Service:

Sex: Female Age: 50 Height: 5ft4in-5ft8in Weight: 131-160 lbs Skin Color: African-American Hair Color: Black

Supplemental Data Appropriate to this Service:

I declare under penalty of perjury that the foregoing information contained in this affidavit is true and correct and that I am a professional process server over the age of 18 and have no interest in the above legal matter.


Harvey Jessup
Process Server

Same Day Process Service, Inc.
1413 K St., NW, 7th Floor
Washington DC 20005
(202)-398-4200
info@samedayprocess.com

Internal Job ID: 252072



District of Columbia: SS
Subscribed and Sworn to before me
this 20 day of February 2020

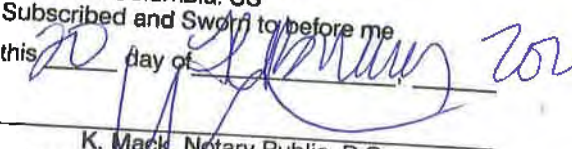

K. Mack, Notary Public, D.C.
My commission expires February 29, 2024

EXHIBIT “6”

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-11

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Captain John W. Reed
was received by me on (date) 2/14/2020

☒ I personally served the summons on the individual at (place) 1892 Fleming Wood Rd.
Charleston, SC on (date) 2/17/2020; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
_____ on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date:

2/17/2020

George W. Hawkins
Server's signature

1661 N. Main St.
Printed name and title

Summerville, SC 29486
Server's address

Additional information regarding attempted service, etc:

EXHIBIT “7”

Civil Action No. **2:20-cv-00011-LGW-BWC****PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* **Commander Norm C. Witt**
 was received by me on *(date)* **February 18, 2020** .

☒ I personally served the summons on the individual at *(place)* **50 Litchfield Drive, Savannah, GA 31419**
 on *(date)* **02-22-2020** ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ **0.00** .

I declare under penalty of perjury that this information is true.

Date: **02-22-2020**



Server's signature
Joseph Ortiz, US Civil Server, Southern District of GA
Printed name and title

P.O.195 Savannah, GA 31402

Server's address

Additional information regarding attempted service, etc:

The following documents were included in the service with the Summons: Civil Cover Sheet, Plaintiff's Disclouser Statement, Plaintiff's Verified Complaint, Request for Injective Relief and Writ of Mandamus with Exhibits, Declaration of Timothy P. Williamson, Plaintiff's Application for Injective Relief, proposed Temporary Restraining order and Order Setting Hearing, Rule 26 Instruction Order and Litigant's Bill of Rights.

EXHIBIT “8”

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-11

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) Commander MATTHEW J. BAER
was received by me on (date) 2/14/2020

☒ I personally served the summons on the individual at (place) 2000 BAINBRIDGE Ave,
N. CHARLESTON, SC on (date) 2/18/2020; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
_____ on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 2/18/2020

George W. Hawkins
Server's signature

1661 N. Main St.
Printed name and title

Summerville, SC 29486
Server's address

Additional information regarding attempted service, etc:

EXHIBIT “9”

From: Peter Schmidt
To: Mann, Martha (ENRD); Patrick, Bradford (USAGAS); Menees, Sydney (ENRD)
Cc: Joe Odachowski; Christy Dixon; Pam Mallard
Subject: Re: 2:20-CV-00011 DonJon-Smit v. Schultz et al - Service
Date: Thursday, February 20, 2020 12:19:48 PM
Attachments: [image002.png](#)
[image002.png](#)

Understood. Thanks

Get [Outlook for iOS](#)

From: Mann, Martha (ENRD) <martha.mann@usdoj.gov>
Sent: Thursday, February 20, 2020 12:13 PM
To: 'Peter Schmidt'; Patrick, Bradford (USAGAS); Menees, Sydney (ENRD)
Cc: Joe Odachowski; Christy Dixon; Pam Mallard
Subject: RE: 2:20-CV-00011 DonJon-Smit v. Schultz et al - Service

Hi Peter,

Are you asking about service of the Complaint? If so, Rule 4(d) does not address waivers of service in connection with service of the United States and its agencies under Rule 4(i).

We will check to confirm whether the USAO, the Coast Guard, and the Attorney General have been served and get back to you as soon as possible.

Thanks
Martha Mann

From: Peter Schmidt [mailto:PSchmidt@tosclaw.com]
Sent: Thursday, February 20, 2020 10:58 AM
To: Mann, Martha (ENRD) <MMann@ENRD.USDOJ.GOV>; Patrick, Bradford (USAGAS) <BPatrick@usa.doj.gov>; Menees, Sydney (ENRD) <SMenees@ENRD.USDOJ.GOV>
Cc: Joe Odachowski <JOdachowski@tosclaw.com>; Christy Dixon <CDixon@tosclaw.com>; Pam Mallard <PMallard@tosclaw.com>
Subject: RE: 2:20-CV-00011 DonJon-Smit v. Schultz et al - Service

All

We have yet to receive any green cards back from service. I suspect you know we have also attempted personal service.

To the extent service remains an issue, can you accept service?

Just want to narrow the issues, etc.

Many thanks

Peter

Peter H. Schmidt, II

(912) 634-0955 | (912) 638-9739 f | pschmidt@tosclaw.com
Atlanta • St. Simons • Savannah • Tifton



⚡ Please do not print this e-mail unless necessary