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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE INSTITUTE OF CETACEAN
RESEARCH, a Japanese research
foundation; KYODO SENPAKU
KAISHA, LTD., a Japanese corporation;
TOMOYUKI OGAWA, an individual; and
TOSHIYUKI MIURA, an individual,

Plaintiffs,

v.

SEA SHEPHERD CONSERVATION
SOCIETY, an Oregon nonprofit
corporation, and PAUL WATSON, an
individual,

Defendants.

No.

COMPLAINT
(Action for Preliminary and Permanent
Injunctive Relief and Declaratory Relief)

Plaintiffs allege as follows:

NATURE OF THE ACTION

1. The purpose of this action is to enjoin defendants from attacking and endangering the safety of vessels, Masters, crew, and researchers engaged in a research whaling operation in the Southern Ocean (the ocean encircling Antarctica). Defendants have a history of violently and dangerously attacking these Southern Ocean operations which occur seasonally during late December through March. Defendants have publicly announced their intention to do

1 so again commencing in December 2011 under their campaign styled "Divine Wind" (the
2 English translation of "kamikaze"). Defendants have vowed to "stop" plaintiffs even if death is a
3 consequence.

4 **PARTIES**

5 2. Plaintiff The Institute of Cetacean Research ("ICR") is now, and at all
6 relevant times has been, a juridical person organized under the laws of Japan as a scientific
7 research foundation. ICR charters fully manned vessels from Kyodo Senpaku Kaisha, Ltd.
8 ("Kyodo Senpaku") to engage in the operations described below.

9 3. Plaintiff Kyodo Senpaku is now, and at all relevant times has been, a
10 corporation duly organized under the laws of Japan. Kyodo Senpaku is the owner of the vessels
11 and employer of the Masters and crew that have been dispatched to the Southern Ocean to
12 engage in the operations described below.

13 4. Plaintiffs Tomoyuki Ogawa ("Ogawa") and Toshiyuki Miura ("Miura")
14 are citizens of Japan. Ogawa is the Master of the NISSHIN MARU in the 2011-2012 research
15 season, and Miura is the Master of the YUSHIN MARU NO. 2 in the 2011-2012 research
16 season. Both vessels are oceangoing vessels owned by Kyodo Senpaku and under charter to
17 ICR. They are underway to the Southern Ocean to engage in the research operations described
18 below. Captain Ogawa and Captain Miura, as Masters, are responsible for the safety and welfare
19 of the crews of their vessels while at sea.

20 5. Defendant Sea Shepherd Conservation Society ("SSCS") is now, and at all
21 relevant times has been, a nonprofit organization formed under the laws of Oregon. SSCS
22 maintains its principal place of business at Friday Harbor, Washington.

23 6. Defendant Paul Watson ("Watson") is the founder and president of SSCS.
24 Watson is also the registered agent of SSCS with an address at Friday Harbor, Washington.
25 Watson is believed to be admitted to the United States for permanent residence, residing at
26

1 Friday Harbor, Washington. In his actions alleged herein, Watson is an agent of SSCS and he
2 directs the affairs of SSCS.

3 **JURISDICTION AND VENUE**

4 7. The court has subject matter jurisdiction as follows:

5 7.1 This action arises under the laws or treaties of the United States as
6 alleged below, and thus jurisdiction exists under 28 U.S.C. § 1331.

7 7.2 Plaintiffs are citizens or subjects of Japan, defendant SSCS is a citizen
8 of Oregon and Washington, and defendant Watson is deemed a citizen of Washington; thus this
9 action is between citizens of a state and citizens or subjects of a foreign state under 28 U.S.C.
10 § 1332(a)(2). The amount in controversy exceeds the sum of \$75,000 exclusive of interest and
11 costs.

12 7.3 This action arises under the court's admiralty and maritime
13 jurisdiction under 28 U.S.C. § 1333 as defendants' activities occur on the high seas or occur in
14 Washington and Oregon but result in injury on the high seas.

15 7.4 This action is by aliens for torts in violation of the law of nations or
16 treaties of the United States, and thus jurisdiction exists under 28 U.S.C. § 1350.

17 7.5 The court has supplemental jurisdiction over state law claims pursuant
18 to 28 U.S.C. § 1367.

19 8. Venue in this court exists under 28 U.S.C. § 1391 as defendants reside in
20 this district, defendants are subject to personal jurisdiction in this district, or a substantial part of
21 the acts or omissions giving rise to the claims occur in this district.

22 **FACTS**

23 9. ICR is organized and functions for the purpose of engaging in scientific
24 research with respect to whales. ICR's research activities are conducted at various locations
25 around the world where whales are located, including the Southern Ocean.
26

1 10. The International Convention for the Regulation of Whaling, *signed at*
2 *Washington* Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72, 4 Bevens 248 (1968) (ratified by
3 United States on July 18, 1947, and entered into force Nov. 10, 1948) (hereinafter "Whaling
4 Convention") is a convention that counts as members Japan and the United States. Article VIII
5 of the Whaling Convention authorizes member countries to grant its nationals a "special permit
6 authorizing that national to kill, take and treat whales for purposes of scientific research subject
7 to such restrictions as to number and subject to such other conditions as the Contracting
8 Government thinks fit [i.e., Special Permit]" Whaling Convention, art. VIII, § 1. The
9 takings (which may be lethal) authorized by the Special Permit are exempt from any prohibitions
10 of the Whaling Convention on the taking of whales. Whaling Convention, art. VIII, § 1. Copies
11 of the Special Permits issued by Japan applicable to ICR's and Kyodo Senpaku's activities in the
12 Southern Ocean for the upcoming season are attached as [Exhibit 1](#).

13 11. ICR's activities in the Southern Ocean involve nonlethal research
14 techniques, such as sighting surveys, biopsy sampling, photo-id, acoustic surveys for prey
15 species, and the collection of oceanographic data. In addition, the activities involve lethal
16 sampling as collection of certain information of vital importance to the scientific research
17 requires examination of the internal organs of whales, such as ovaries, earplugs, and stomachs.
18 Earplugs are needed to determine age, ovaries are needed to establish reproduction rates, and
19 stomachs are needed to understand what whales are eating and how much. Lethal sample sizes
20 are calculated to be the smallest necessary to have a statistically valid study and are small to the
21 size of the population being sampled. ICR's activities have been authorized by Special Permits
22 issued by Japan.

23 12. To carry out the activities authorized by the Special Permits, ICR has
24 chartered from Kyodo Senpaku the vessels NISSHIN MARU, YUSHIN MARU, YUSHIN
25 MARU NO. 2, and YUSHIN MARU NO. 3. Those vessels are underway to the Southern Ocean
26 to engage in research whaling on the high seas, i.e., waters not under the jurisdiction of any

1 nation. The four vessels have a combined crew of 147 in addition to whale researchers and
2 government inspectors on board. The vessels' activities in the Southern Ocean will occur from
3 December 2011 to March 2012.

4 13. Watson and SSCS have engaged in numerous violent and dangerous
5 attacks against persons and vessels engaged in whaling, sealing, and fishing, including, in recent
6 years, those engaged in the operations of ICR and Kyodo Senpaku in the Southern Ocean.
7 Watson established a precursor to SSCS in or about 1977, after he reportedly was expelled from
8 Greenpeace for his physically violent actions directed toward sealers in Canada. The first vessel
9 Watson claims to have sunk is the SIERRA. In a July 28, 2003, interview reported in "Infoshop
10 News" on April 20, 2011, Watson claims that in July 1979, using a ship named the
11 SEA SHEPHERD, he "hunted down, rammed, and disabled the pirate whaling ship *Sierra*"
12 because "for 10 years [he] watched as the International Whaling Commission and world
13 governments did nothing to stop a ship that was blatantly flaunting international regulations
14 protecting whales."¹ He goes on to claim that to finish the campaign against the SIERRA that
15 was only disabled and not sunk, his "crew blew the bottom out of her [SIERRA] in Lisbon
16 harbor [Portugal] and permanently ended her career."²

17 14. Since then, Watson and SSCS claim to have sunk approximately
18 10 vessels in their anti-whaling campaigns. Indeed, the M/V STEVE IRWIN, one of the vessels
19 used by defendants in their past attacks against whaling, bears on its bridge the insignia of these
20 sunken vessels, represented by flags. This is depicted in attached [Exhibit 2](#). In addition, Watson
21 and SSCS claim to have rammed four Japanese vessels. This is also depicted on the
22 M/V STEVE IRWIN in the form of Japanese flags together with the words "Rammed." *See*
23 attached [Exhibit 3](#). Some of defendants' violent past conduct is listed in attached [Exhibit 4](#).

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25 ¹ *See* <http://news.infoshop.org/article.php?story=03/07/28/8527562&query=paul+watson> (posted July 28, 2003 @
08:22 AM CDT).

26 ² *Id.*

1 15. Over the recent past, defendants have engaged in increasingly violent and
2 dangerous attacks against ICR's and Kyodo Senpaku's vessels, Masters, crew, and researchers in
3 the Southern Ocean:

4 15.1 In February 2007, the M/V ROBERT HUNTER, now the
5 M/V STEVE IRWIN, rammed a sighting vessel used by ICR for nonlethal research. In February
6 2007, butyric acid-filled³ bottles and smoke bombs were launched from the ROBERT HUNTER
7 to the NISSHIN MARU, and two crew members were injured in the attack. In March 2008, in
8 close-quarters harassment of the NISSHIN MARU, SSCS crew threw approximately a hundred
9 butyric acid-filled bottles at crew of the NISSHIN MARU. Three men were slightly injured in
10 the attack. In addition, two SSCS crew illegally boarded the YUSHIN MARU NO. 2 and had to
11 be transferred to the Australian Custom's vessel, the OCEANIC VIKING.

12 15.2 In February 2009, Watson steered the M/V STEVE IRWIN into the
13 YUSHIN MARU NO. 2 and the YUSHIN MARU NO. 3, causing extensive damage to the
14 YUSHIN MARU NO. 3. Film of the attack on the YUSHIN MARU NO. 3 may be viewed at
15 "[ramming_SSV_1.wmv](#)" and "[ramming_SSV_2.wmv](#)," Exhibits 5 and 6.⁴ In addition, acid-
16 filled bottles were launched from the M/V STEVE IRWIN toward the YUSHIN MARU NO. 3
17 and its crew. Watson was filmed shooting a rocket flare towards the YUSHIN MARU NO. 2
18 from the M/V STEVE IRWIN. Film of this may be viewed at "[090205SS2.wmv](#)," Exhibit 7.⁵

19 15.3 In December 2009 and January and February 2010, various attacks
20 on ICR's and Kyodo Senpaku's vessels occurred, resulting in collisions and injuries. Among
21 other attacks, the SSCS vessel M/V BOB BARKER launched a rubber boat that hurled smoke
22 bombs at the SHONAN MARU NO. 2 and repeatedly sought to disable it, that is, cause it to lose

23 _____
24 ³ The International Chemical Safety Card published by the National Institute for Occupational Safety and Health for
butyric acid states that the acid may cause skin burns, loss of vision, and shortness of breath.

25 ⁴ Pursuant to the clerk's instructions, video attachments in the form of .WMV files (Windows Media Video) are
being submitted to the court separately via CD/ROM.

26 ⁵ See separate CD/ROM.

1 propulsion or steerage by dragging ropes aimed at the rudder and propeller of the ship. The
2 SSCS vessel ADY GIL sought to disable the NISSHIN MARU with ropes dragged in the water,
3 and ADY GIL fired bottles filled with butyric acid at the NISSHIN MARU. Later, the
4 ADY GIL collided with the SHONAN MARU NO. 2, and its skipper subsequently illegally
5 boarded the SHONAN MARU NO. 2. The M/V BOB BARKER collided with the stern of the
6 YUSHIN MARU NO. 3 in the process of trying to launch butyric acid-containing projectiles.
7 Both the M/V BOB BARKER and the M/V STEVE IRWIN repeatedly deployed ropes with the
8 intent of disabling ICR's and Kyodo Senpaku's vessels. Three SHONAN MARU NO. 2 sailors
9 were injured by acid attacks.

10 15.4 In January and February 2011, the attacks continued under a SSCS
11 campaign entitled "No Compromise." Rubber boats from the M/V STEVE IRWIN and
12 M/V BOB BARKER deployed fouling ropes like before and launched butyric acid projectiles
13 and smoke bombs at the YUSHIN MARU NO. 3. Then the SSCS trimaran GOJIRA engaged in
14 the same activities directed at the YUSHIN MARU NO. 3. The M/V BOB BARKER and
15 GOJIRA coordinated an attack against the YUSHIN MARU NO. 3 with multiple fouling ropes,
16 two of which entangled in the vessel's propeller. A photograph of the entangled propeller is
17 attached as [Exhibit 8](#). Even after the YUSHIN MARU NO. 3 sent a distress signal, the attack
18 continued for a number of hours. More than 80 butyric acid-filled glass bottles and at least
19 5 smoke bombs were launched against the YUSHIN MARU NO. 3, many of which landed on the
20 vessel. In February 2011, the GOJIRA attacked the NISSHIN MARU. On February 9, 2011, the
21 GOJIRA more than 30 times engaged in close-range crossing of the bow of the NISSHIN
22 MARU while drawing ropes or hawsers in an effort to entangle the rudder or propeller of the
23 vessel. These attacks interfered with the navigation of the NISSHIN MARU and endangered the
24 safety of the vessel and its crew.

25 15.5 On February 9, 2011, smoke bombs and other incendiary devices
26 were launched from the GOJIRA against the NISSHIN MARU. Two smoke bombs and four

1 incendiary devices hit the vessel. The incendiary devices caused damage to the deck of the
2 vessel and burned a protective net around the vessel. Approximately 14 parachute-type
3 incendiary devices were also launched from the GOJIRA toward the NISSHIN MARU. These
4 did not cause serious damage, but they were extremely dangerous due to the risk of fire or
5 explosion and could have inflicted serious damage to the vessel. Shortly after these attacks,
6 ICR's and Kyodo Senpaku's vessels departed the Southern Ocean to return to Japan before
7 completing the planned operation in order to avoid any injury or threat to life of the crew
8 members and property of the research fleet.

9 16. Defendants claim that their 2011 operation "No Compromise" was a "great
10 success: We found the Japanese fleet early, we were able to block their operations and thus shut
11 down their whaling activities . . . a great victory indeed."⁶

12 17. Emboldened by their "victory," defendants have launched operation
13 "Divine Wind" for the 2012 season. Defendants intend to deploy three vessels to the Southern
14 Ocean, all of which are either now in Australia being fitted for the operation or en route to the
15 Southern Ocean. Those vessels are the BRIGITTE BARDOT (the renamed GOJIRA from
16 operation "No Compromise"), the M/V BOB BARKER, and the M/V STEVE IRWIN. As
17 posted on the SSCS website, "Sea Shepherd will return to the remote waters for their
18 8th Antarctic Whale Defense Campaign with a stronger anti-whaling fleet in early December
19 2011 to protect the great whales."⁷

20 18. Defendants liken their campaign "Divine Wind" to the typhoons that twice
21 destroyed the Mongolian fleets invading Japan in the late 13th century. Watson recently stated,
22 "'They will have to kill us to prevent us from intervening once again . . . , and we will undertake
23 whatever risks to our lives will be required to stop this invasion of arrogant greed into what is an

24 ⁶ See <<http://www.seashepherd.org/commentary-and-editorials/2011/11/18/operation-divine-wind-q-and-a-with-captain-paul-watson-493>> (Q:3) (posted Nov. 18, 2011).

25 ⁷ See <<http://www.seashepherd.org/news-and-media/2011/09/30/hoka-hey-all-systems-go-for-sea-shepherds-operation-divine-wind-1284>> (posted Sept. 30, 2011).

1 established sanctuary for the whales."⁸ A current crew member of the M/V BOB BARKER is
2 quoted as saying, "We intend to stop them and we will stop them—that's a promise."⁹

3 19. Unless enjoined as requested below, defendants will very soon engage in
4 attacks on plaintiffs that will seriously endanger the safety of the Masters, their crew and
5 researchers, and the vessels owned by Kyodo Senpaku and chartered by ICR. Navigating in the
6 Southern Ocean can be dangerous given the cold waters, the presence of icebergs, the possibility
7 of storms, and its isolated location far from ready third-party assistance. If a ship lost propulsion
8 or steerage due to a successful fouling rope attack, the ship, its Master, crew, and researchers
9 could be put in serious jeopardy, especially in the vicinity of floating ice or if a storm or heavy
10 seas occurred. The safety and health of the ship's crew are endangered by the launching of
11 projectiles against the ship, especially glass projectiles filled with butyric acid. A crew member
12 could be blinded in such an attack or receive a blow to the head or body or be cut by pieces of
13 glass. Such attacks also cause fear or distress in the crew, thus interfering with the normal
14 operations on board. Incendiary devices like those launched in the past could cause a fire or,
15 even worse, an explosion. Close-quarter attacks by SSCS vessels run the risk of a collision.
16 Ramming of ICR's and Kyodo Senpaku's ships could cause them (or SSCS vessels) to sink or
17 suffer other serious damage. The court should declare that defendants' violent tactics employed
18 in the past against ICR's and Kyodo Senpaku's activities in the Southern Ocean are unlawful, and
19 the court should issue the injunctive relief requested below so that plaintiffs' property and the
20 lives of the Masters, their crew, and researchers are not endangered.

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⁸ *Id.*

26 ⁹ *Id.*

CLAIMS

FIRST CLAIM

(Freedom of Safe Navigation on the High Seas—Declaratory and Injunctive Relief)

20. Plaintiffs reallege paragraphs 1 through 19 and incorporate them by reference.

21. Freedom of safe navigation on the high seas is an internationally recognized and accepted norm that is specific, universal, and obligatory. Among other things, it is recognized as follows:

21.1 Article 2 of the Convention on the High Seas, *done at Geneva* Apr. 29, 1958, 13.2 U.S.T. 2312 (1962), 450 U.N.T.S. 82 (ratified by United States on Apr. 12, 1961, and entered into force Sept. 30, 1962) (hereinafter "High Seas Convention") provides, in part, "Freedom of the high seas is exercised under the conditions laid down by these articles It comprises, *inter alia*, . . . (1) [f]reedom of navigation" A total of 63 nations are parties to the High Seas Convention.

21.2 Article 87 of the Convention on the Law of the Sea, *adopted by the Third United Nations Conference on the Law of the Sea and opened for signature at Montego Bay, Jamaica*, Dec. 10, 1982, 1833 U.N.T.S. 31363 (entered into force Nov. 16, 1994) (hereinafter "UNCLOS") also provides for "freedom of navigation" on the high seas. A total of 162 nations are parties to UNCLOS. Although the United States has not ratified UNCLOS because of concerns over provisions regarding deep seabed exploration and mining, presidents beginning with former President Ronald Reagan have regarded the other provisions of UNCLOS as reflecting customary international law binding on the United States.

21.3 The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, *concluded at Rome* Mar. 10, 1988, S. Treaty Doc. No. 101-1, 1678 U.N.T.S. 29004, 27 I.L.M. 668 (1988) (entered into force Mar. 1, 1992; ratified by the United States on Dec. 6, 1994, and entered into force by United States on Mar. 6, 1995)

1 (hereinafter "SUA Convention") recognized, among other things, that "unlawful acts against the
2 safety of maritime navigation jeopardize the safety of persons and property, seriously affect the
3 operation of maritime services, and undermine the confidence of the peoples of the world in the
4 safety of maritime navigation." SUA Convention, 4th preamble. The SUA Convention makes it
5 an offense if a "person unlawfully and intentionally: . . . (b) performs an act of violence against
6 a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
7 (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe
8 navigation of that ship" SUA Convention, art. 3, § 1(b)-(c). An offense is also committed
9 if a person attempts to commit any of the foregoing, abets the commission of any of the
10 foregoing, or threatens to commit any of the foregoing if "likely to endanger the safe navigation
11 of the ship." Art. 3, § 2. Each "State Party shall take such measures as may be necessary to
12 establish its jurisdiction over the offences . . . when the offence is committed . . . by a national of
13 that State." Art. 6, § 1(c). A total of 157 nations are parties to the SUA Convention.

14 21.4 The Convention on the International Regulations for Preventing
15 Collisions at Sea, *concluded at London on Oct. 20, 1972*, 28.3 U.S.T. 3459, 1050 U.N.T.S.
16 15824 (acceptance by United States on Nov. 23, 1976, and entered into force July 15, 1977)
17 (hereinafter "COLREGs") obligates vessels such as those utilized by defendants to employ
18 methods and means to avoid collisions on the high seas. Over 150 nations have signed
19 COLREGs. It became a treaty of the United States on or about July 15, 1977.

20 22. Defendants have flouted these internationally recognized norms by
21 intentionally and unlawfully interfering with plaintiffs' right to freedom of navigation. Among
22 other things, defendants have (1) directed vessels and their crew to drag ropes and other devices
23 in front of and around plaintiffs' vessels to disable or slow the vessels; (2) launched
24 acid-containing projectiles against plaintiffs' vessels and crew, causing injury and damage;
25 (3) launched incendiary devices against the vessels and crew; (4) rammed plaintiffs' vessels with
26

1 their vessels; and (5) navigated their vessels in a manner endangering plaintiffs' vessels and crew
2 and resulting in collisions between vessels.

3 23. Defendants have also attempted the foregoing, have abetted the foregoing,
4 and have threatened the foregoing. Through their Divine Wind operation, defendants have
5 vowed to "stop" plaintiffs' activities in the Southern Ocean even if death ensues. Defendants
6 intend to "stop" plaintiffs by engaging in the same unlawful practices they have utilized in the
7 past and which violate established international norms that provide for freedom of navigation.

8 24. Pursuant to 28 U.S.C. § 2201, the court should declare the respective
9 rights and obligations of the parties as respects freedom of navigation in the Southern Ocean and
10 should declare that defendants' campaign against plaintiffs' operations in the Southern Ocean
11 must abide these established international norms and that defendants may not and must not
12 engage in any conduct that is likely to endanger plaintiffs' vessels or crew or endanger the safe
13 navigation of plaintiffs' vessels.

14 25. Plaintiffs have no speedy or adequate remedy at law. Accordingly, the
15 court should grant preliminary and permanent injunctive relief enjoining defendants and each of
16 them and their respective officers, agents, servants, employees, attorneys, and other persons who
17 are in active concert or participation with any of them from the following:

18 25.1 Physically attacking any vessel engaged by plaintiffs in the Southern
19 Ocean.

20 25.2 Physically attacking any crew member or person on any vessel
21 engaged by plaintiffs in the Southern Ocean.

22 25.3 Navigating any vessel or other instrumentality in a manner that is
23 likely to endanger the safe navigation of plaintiffs' vessels. In this respect, absent exigent
24 circumstances, no vessel or other instrumentality under the control or direction of defendants
25 should be permitted to approach closer than a reasonable and safe distance of any vessel engaged
26 by plaintiffs in the Southern Ocean.

1 **SECOND CLAIM**

2 **(Freedom From Piracy—Declaratory and Injunctive Relief)**

3 26. Plaintiffs reallege paragraphs 1 through 25 and incorporate them by
4 reference.

5 27. The law of nations universally condemns acts of pirates as *hostes humani*
6 *generis*—enemies of all mankind. Under the law of nations, violent attacks on vessels on the
7 high seas are regarded as acts of piracy.

8 28. Treaties also condemn acts of piracy:

9 28.1 The High Seas Convention states that piracy includes (i) any "illegal
10 acts of violence, detention or any act of depredation, committed for private ends by the crew or
11 the passengers of a private ship . . . and directed . . . [o]n the high seas, against another ship . . .
12 or against persons or property on board such ship"; (ii) "[a]ny act of voluntary participation in
13 the operation of a ship . . . with knowledge of facts making it a pirate ship"; and (iii) "[a]ny act of
14 inciting or intentionally facilitating" any of the foregoing acts. Art. 15, §§ 1-3.

15 28.2 The SUA Convention also defines acts that are acts of piracy. It
16 recognizes that "unlawful acts against the safety of maritime navigation jeopardize the safety of
17 persons and property, seriously affect the operation of maritime services, and undermine the
18 confidence of the peoples of the world in the safety of maritime navigation." 4th preamble. The
19 SUA Convention makes it an offense if a "person unlawfully and intentionally: . . . (b) performs
20 an act of violence against a person on board a ship if that act is likely to endanger the safe
21 navigation of that ship; or (c) destroys a ship or causes damage to a ship or to its cargo which is
22 likely to endanger the safe navigation of that ship" Art. 3, § 1(b)-(c). An offense is also
23 committed if a person attempts to commit any of the foregoing, abets the commission of any of
24 the foregoing, or threatens to commit any of the foregoing if "likely to endanger the safe
25 navigation of the ship." Art. 3, § 2.

26

1 29. Piracy is also condemned in the form of internationally recognized and
2 accepted norms that are specific, universal, and obligatory. UNCLOS, although not a treaty,
3 "has been accepted by the overwhelming majority of the world as reflecting customary
4 international law." *U.S. v. Hasan*, 747 F. Supp. 2d 599, 640 (E.D. Va. 2010) (accepting
5 UNCLOS definition of piracy as "law of nations"). Article 101 of UNCLOS defines piracy in
6 the same manner as the High Seas Convention does.

7 30. As alleged above, defendants have engaged in acts of piracy in the past
8 against plaintiffs. Indeed, the vessel M/V STEVE IRWIN, which is commanded by Watson,
9 flies a pirate flag, and Watson deems himself a pirate albeit a "good pirate."¹⁰ The law does not
10 countenance "good pirates."

11 31. Defendants' Divine Wind campaign is predicated on committing acts of
12 piracy against plaintiffs. Defendants intend to cause or to direct acts of violence, depredation,
13 and detention against plaintiffs' vessels and crew for their private ends and to incite or facilitate
14 others to do so. These acts are likely to endanger the safe navigation of plaintiffs' ships.

15 32. Pursuant to 28 U.S.C. § 2201, the court should declare the respective
16 rights and obligations of the parties as respects freedom from acts of piracy and should declare
17 that defendants' campaign against plaintiffs' operations in the Southern Ocean must abide these
18 established international norms and that defendants may not and must not engage in any conduct
19 that violates those norms.

20 33. Plaintiffs have no speedy or adequate remedy at law. Accordingly, the
21 court should grant preliminary and permanent injunctive relief enjoining defendants and each of
22 them and their respective officers, agents, servants, employees, attorneys, and other persons who
23 are in active concert or participation with any of them from engaging in any acts of piracy.
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25 _____
26 ¹⁰ See <http://news.infoshop.org/article.php?story=03/07/28/8527562&query=paul+watson> (posted July 28, 2003 @
08:22 AM CDT).

1 **THIRD CLAIM**

2 **(Freedom From Terrorism—Declaratory and Injunctive Relief)**

3 34. Plaintiffs reallege paragraphs 1 through 33 and incorporate them by
4 reference.

5 35. The International Convention for the Suppression of the Financing of
6 Terrorism, *done at New York* Dec. 9, 1999, T.I.A.S. No. 13075, 2178 U.N.T.S. 38349 (entered
7 into force Apr. 10, 2002; ratified by United States on Dec. 5, 2011, and entered into force by
8 United States on July 26, 2002) (hereinafter "Financing Convention") is a treaty of the
9 United States and reflects the law of nations. *See Almog v. Arab Bank, PLC*, 471 F. Supp. 2d
10 257 (E.D.N.Y. 2007). The Financing Convention has been adopted by more than 130 nations,
11 including the United States.

12 35.1 The Financing Convention provides that it is an offense if a person
13 "by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the
14 intention that they should be used or in the knowledge that they are to be used, in full or in part,
15 in order to carry out: (a) [a]n act which constitutes an offence within the scope of" the
16 SUA Convention. Art. 2, § 1(a). A person also commits an offense if that person "[p]articipates
17 as an accomplice" in an offense or "[o]rganizes or directs others to commit an offence." Art. 2,
18 § 5(a)-(b).

19 35.2 The Financing Convention also provides that it is an offense if a
20 person "by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds
21 with the intention that they should be used or in the knowledge that they are to be used, in full or
22 in part, in order to carry out: . . . (b) [a]ny other act intended to cause death or serious bodily
23 injury to a civilian . . . when the purpose of such act, by its nature or context, is . . . to compel a
24 government . . . to do or to abstain from doing any act." Art. 2, § 1(b).

25 36. Defendants are engaged in violations of the Financing Convention.
26 Among other things:

1 36.1 From their base in Friday Harbor, Washington, defendants
2 unlawfully and willfully provide or collect hundreds of thousands (if not millions) of dollars
3 intending that they be used to carry out acts in violation of the SUA Convention. Through these
4 funds, defendants are able to send their fleet of ships manned with crews to the Southern Ocean
5 to carry out Divine Wind. Through operation Divine Wind, defendants intend to engage in acts
6 to endanger the safe navigation of plaintiffs' fleet.

7 36.2 Defendants unlawfully and willfully provide or collect funds
8 intending that they be used, in part, to carry out acts intended to cause death or serious bodily
9 injury to a civilian when the purpose of such an act, by its nature or context, is to compel a
10 government to do or to abstain from doing any act. Endangering plaintiffs' ships by employing
11 the means defendants have used in the past can be intended only to risk death or serious bodily
12 injury to the individuals aboard those ships. Defendants' actions are being done in an effort to
13 compel the government of Japan to cease its authorization of research whaling.

14 36.3 Defendants will attempt offenses within the meaning of the
15 Financing Convention, and each defendant participates as an accomplice in offenses and
16 organizes or directs others to commit such offenses.

17 37. Pursuant to 28 U.S.C. § 2201, the court should declare the respective
18 rights and obligations of the parties and should declare that defendants' conduct violates the
19 Financing Convention.

20 38. Plaintiffs have no speedy or adequate remedy at law. Accordingly, the
21 court should grant preliminary and permanent injunctive relief enjoining defendants and each of
22 them and their respective officers, agents, servants, employees, attorneys, and other persons who
23 are in active concert or participation with any of them from (a) expending any money to fund any
24 physical attacks on any vessel engaged by plaintiffs in the Southern Ocean and (b) freezing the
25 accounts of defendants to prevent such expenditures.

26

1 **FOURTH CLAIM**

2 **(State Law Claims—Declaratory and Injunctive Relief)**

3 39. Plaintiffs reallege paragraphs 1 through 38 and incorporate them by
4 reference.

5 40. Defendants' operations are based in Friday Harbor, Washington. They use
6 their base to raise millions of dollars to fund their campaign against research whaling.
7 Defendants conspire with each another and aid and abet each another in planning, soliciting,
8 recruiting, funding, and directing actions to interfere with plaintiffs' activities through wrongful
9 and dangerous means, including assault, battery and trespass.

10 41. As a nonprofit organization, SSCS's funds may be used only for lawful
11 purposes. SSCS spends hundreds of thousands (if not millions) of dollars to engage in dangerous
12 and unlawful attacks on the vessels and crew engaged in research whaling.

13 42. Plaintiffs have no speedy or adequate remedy at law. Accordingly, the
14 court should grant preliminary and permanent injunctive relief enjoining defendants and each of
15 them and their respective officers, agents, servants, employees, attorneys, and other persons who
16 are in active concert or participation with any of them from (a) expending any money to fund any
17 physical attacks on any vessel engaged by plaintiffs in the Southern Ocean or (b) engaging,
18 directly or indirectly, in any such attacks.

19 WHEREFORE, plaintiffs pray for a judgment in their favor and against
20 defendants, jointly and severally, as follows:

21 (1) For declarations declaring the respective rights and obligations of the
22 parties as set forth above;

23 (2) For injunctions, preliminarily and permanently enjoining defendants and
24 each of them and their respective officers, agents, servants, employees, attorneys, and other
25 persons who are in active concert or participation with any of them from the acts set forth above;

26

- 1 (3) For plaintiffs' costs incurred herein; and
2 (4) For such further relief as the court deems just and proper.

3 DATED this 8th day of December, 2011.

4 MILLER NASH LLP

5
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