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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) Case No.: 3:22-cv-06101
)
Plaintiff,)
)
vs.)
)
VIGOR INDUSTRIAL, LLC,) COMPLAINT
PUGET SOUND COMMERCE CENTER)
INCORPORATED,)
VIGOR MARINE, LLC, and)
AMAYA CURIEL CORPORATION,)
Defendants.)

The United States of America, by the authority of the Attorney General of the United
States and acting at the request of the National Oceanic and Atmospheric Administration

1 (“NOAA”) of the United States Department of Commerce, through the undersigned attorneys,
2 files this complaint and alleges as follows:

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4 **NATURE OF ACTION**

5 1. This is a civil action brought against Vigor Industrial, LLC (and two related
6 corporations) and Amaya Curiel Corporation (“Amaya Curiel”) (collectively, “Defendants”) for
7 recovery of damages pursuant to the National Marine Sanctuaries Act, 16 U.S.C. § 1443, arising
8 from the sinking (“Sinking”) of the YFD-70 Drydock (“Drydock”) on October 25-26, 2016
9 inside the Monterey Bay National Marine Sanctuary (“MBNMS”), approximately 40 miles
10 southwest of San Francisco, 35 miles off the coast of San Mateo County, in 900 meters of water
11 depth.

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13 **JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the subject matter of this action pursuant to 16
15 U.S.C. § 1443(c) and also pursuant to 28 U.S.C. §§ 1331, 1345. The Court also has personal
16 jurisdiction over the Defendants. Venue is proper in this U.S. District Court pursuant to 28
17 U.S.C. § 1391(b) and 16 U.S.C. § 1443(c).

18
19 **DEFENDANTS**

20 3. Vigor Defendants: Puget Sound Commerce Center Incorporated is a subsidiary of
21 Vigor Industrial, LLC, which is a corporation and is a subsidiary of Vigor Marine, LLC.
22 Collectively herein, these entities are called “Vigor.”

23
24 4. Amaya Curiel is a corporation.

25 **STATUTORY BACKGROUND**

26 5. The purposes of the National Marine Sanctuaries Act, 16 U.S.C. § 1431 *et seq.*,
27 include the comprehensive conservation and management of marine sanctuaries and the
28

1 maintenance, protection, restoration, and enhancement of marine biological communities. 16
 2 U.S.C. § 1431(b).

3 6. Under Section 312(a) of the National Marine Sanctuaries Act, “[a]ny person who
 4 destroys, causes the loss of, or injures any sanctuary resource” is liable to the United States for
 5 “damages resulting from the destruction, loss, or injury” plus interest. 16 U.S.C. § 1443(a)(1).
 6

7 7. Section 312(b)(2) of the National Marine Sanctuary Act directs the Secretary of
 8 Commerce to assess damages to sanctuary resources pursuant to the definition of “damages” in
 9 the statute. 16 U.S.C. § 1443(b)(2). “Damages” is defined to include:
 10

11 (A) compensation for—

12 (i)(I) the cost of replacing, restoring, or acquiring the equivalent of
 13 a sanctuary resource; and

14 (II) the value of the lost use of a sanctuary resource pending its
 15 restoration or replacement or the acquisition of an equivalent
 16 sanctuary resource; or

17 (ii) the value of a sanctuary resource if the sanctuary resource
 18 cannot be restored or replaced or if the equivalent of such resource
 19 cannot be acquired;

20 (B) the cost of damage assessments under section 1443(b)(2);

21 (C) the reasonable cost of monitoring appropriate to the injured, restored or
 22 replaced resources;

23 (D) the cost of curation and conservation of archeological, historical, and cultural
 24 sanctuary resources; and

25 (E) the cost of enforcement actions undertaken by the Secretary in response to the
 26 destruction or loss of, or injury to, a sanctuary resource.

27 16 U.S.C. § 1432(6).

28 8. A “sanctuary resource” is “any living or nonliving resource of a national marine
 sanctuary that contributes to the conservation, recreational, ecological, historical, educational,

1 cultural, archeological, scientific, or aesthetic value of the sanctuary.” 16 U.S.C. § 1432(8).

2 9. The Attorney General, at the request of the Secretary, is authorized to commence
3 a civil action to recover any damages. 16 U.S.C. § 1443(c).

4 10. Section 303 of the National Marine Sanctuaries Act, 16 U.S.C. § 1433, authorizes
5 the Secretary of Commerce (since delegated to NOAA) to designate national marine sanctuaries
6 and to promulgate regulations implementing the designation. 16 U.S.C. § 1433(a). NOAA
7 designated MBNMS as a sanctuary in 1992, for the purposes of protecting and managing the
8 conservation, ecological, recreational, research, educational, historical, and esthetic resources
9 and qualities of the area. The MBNMS is home to numerous mammals, seabirds, fishes,
10 invertebrates, sea turtles and plants in a remarkably productive coastal environment. 15 C.F.R. §
11 922.161; 73 Fed. Reg. 70535 (November 20, 2008).

14 **FACTUAL ALLEGATIONS**

15 11. Prior to April of 2016, Vigor owned the Drydock, a three-section steel structure
16 constructed in 1945. With both end sections attached, the total length of the vessel was 528 feet.

17 12. In 2016, Vigor sold the vessel to Amaya Curiel. As part of the sale, Vigor
18 arranged for the vessel to be transported to Amaya Curiel’s shipyard in Mexico.

19 13. Vigor hired Western Towboat Company (not a defendant in this case) to tow the
20 Drydock from Seattle, Washington to Mexico.

21 14. Between October 25 and 26, 2016, during the tow, the Drydock took on water,
22 sank, and came to rest on the sea floor inside the boundaries of the MBNMS (the “Sinking”).
23 The Drydock remains on the sea floor inside the MBNMS, about 40 miles southwest of San
24 Francisco, in water depth of about 900 meters.

25 15. The Sinking caused adverse impacts to the seafloor, including injury and
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destruction to coral, other biota, and soft benthic habitat.

16. After the Sinking, Vigor and Amaya Curiel procured a cruise equipped with a remotely operated vehicle. NOAA participated in this cruise effort in order to survey the site of the Sinking, characterize the condition of the habitat, and collect data regarding impacts to sanctuary resources. NOAA has developed preliminary estimates of the costs of restoring or replacing the injured sanctuary resources but has not completed an official damage assessment under 16 U.S.C. § 1432(6). NOAA has also incurred costs in assessing the injuries to sanctuary resources relating to the Sinking.

CLAIM FOR RELIEF
Damages for Destruction, Loss, and
Injury to Marine Sanctuary Resources

17. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.

18. On approximately October 25 and 26, 2016, Defendants destroyed, caused the loss of, and injured sanctuary resources by sinking the Drydock in the MBNMS, and the Drydock continues to sit on the seabed.

19. Corals and the seabed inside the MBNMS are “sanctuary resources.”

20. Each Defendant is a “person” who destroyed, caused the loss of, or injured sanctuary resources, by arranging for the Drydock to be shipped through the MBNMS.

21. The Defendants are jointly and severally liable for the “damages resulting from the destruction, loss, or injury” to the sanctuary resource under 16 U.S.C. § 1443(a)(1).

22. Pursuant to its authority under 16 U.S.C. § 1443(b)(2), the Secretary made a preliminary estimate of costs of restoring or replacing the injured sanctuary resources. Defendants are liable for the destroyed or injured sanctuary resources in accordance with 16 U.S.C. § 1432(6). The total damages under 16 U.S.C. § 1432(6), which includes restoration

activities, monitoring, oversight, and assessment costs, exceeds \$9.1 million.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully prays that this Court:

1. Enter a judgment against Defendants, jointly and severally, for all damages, including interest and assessment costs resulting from the Sinking;
2. award the United States its costs and fees incurred in this action; and
3. grant the United States such other relief as this Court may deem appropriate.

Respectfully submitted,

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