

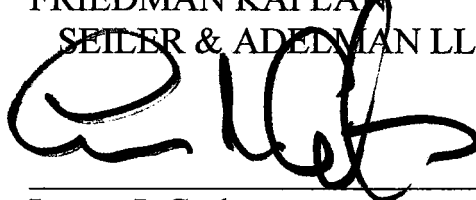
COURT OF APPEALS
STATE OF NEW YORK

-----X
: GOLDEN GATE YACHT CLUB, : New York County
: : Index No. 602446/07
: Plaintiff-Appellant, :
: :
: – against – : **NOTICE OF MOTION**
: : **FOR LEAVE TO FILE**
: SOCIÉTÉ NAUTIQUE DE GENÈVE, : **AMICI CURIAE BRIEF**
: :
: Defendant-Respondent, :
: :
: – and – :
: :
: CLUB NAUTICO ESPANOL DE VELA :
: :
: Intervenor-Defendant. :
: :
-----X

PLEASE TAKE NOTICE, that upon the annexed affirmation of Lance J. Gotko, Esq., dated October 15, 2008, the exhibit thereto, and upon all the proceedings heretofore had herein, the undersigned will move this Court at a term thereof to be held at Court of Appeals Hall in Albany, New York, on October 27, 2008, at 9:30 a.m., or as soon as counsel may be heard, for an order granting movants Reale Yacht Club Canottieri Savoia and Mascalzone Latino leave to file an *amici curiae* brief in the above-titled action which currently is before this Court on appeal, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
October 15, 2008

FRIEDMAN KAPLAN
SEILER & ADELMAN LLP



By: Lance J. Gotko
1633 Broadway
New York, New York 10019-6708
(212) 833-1100

*Counsel for Movants
Reale Yacht Club Canottieri Savoia
and Mascalzone Latino*

TO: Maureen E. Mahoney, Esq.
J. Scott Ballenger, Esq.
Derek D. Smith, Esq.
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004

James V. Kearney, Esq.
Aaron Siri, Esq.
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022

*Attorneys for Plaintiff-Appellant
Golden Gate Yacht Club*

Barry R. Ostrager, Esq.
Jonathan K. Youngwood, Esq.
George S. Wang, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954

*Attorneys for Defendant-Respondent
Société Nautique Genève*

David W. Rivkin, Esq.
Jeremy Feigelson, Esq.
Catherine M. Doll, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

*Attorneys for Intervenor-Defendant
Club Náutico Español de Vela*

Carolyn T. Ellis, Esq.
Assistant Attorney General
Section Chief
Charities Bureau
Office of the New York State Attorney General
New York, NY 10271

COURT OF APPEALS
STATE OF NEW YORK

-----X
: GOLDEN GATE YACHT CLUB, : New York County
: : Index No. 602446/07
: Plaintiff-Appellant, :
: :
: – against – : **AFFIRMATION IN**
: **SUPPORT OF MOTION**
: SOCIÉTÉ NAUTIQUE DE GENÈVE, :
: :
: Defendant-Respondent, :
: :
: – and – :
: :
: CLUB NAUTICO ESPANOL DE VELA :
: :
: Intervenor- :
: Defendant-Respondent. :
: :
-----X

LANCE J. GOTKO, an attorney admitted to practice before the
Courts of the State of New York, affirms the following under penalty of perjury:

1. I am a member of Friedman Kaplan Seiler & Adelman LLP,
attorneys for movants Reale Yacht Club Canottieri Savoia (“RYCCS”) and
Mascalzone Latino (collectively, the “Proposed *Amici*”). I submit this affirmation
in support of the instant motion of the Proposed *Amici* for leave to file the *amici*

curiae brief attached as Exhibit A, in the above-entitled action now before this Court on appeal.¹

2. This action is much more than just a dispute between appellant and respondent. This Court's decision will determine whether the America's Cup—yacht racing's most prestigious trophy—will maintain its historically high standards in international sport competition, or whether the Cup will lose its reputation and its essential competitive nature through the manipulations of sharp Defenders and compliant Challengers.

3. As such, the outcome of this case will affect the whole of the yacht racing world—including the Proposed *Amici*, who were granted *amici curiae* status by the motion court, and have a personal stake in the America's Cup and its continuing greatness.

4. Proposed *Amicus* RYCCS is a yacht club established in 1893, which currently has 860 members. In its 114 years of sports history, RYCCS has won prestigious victories in sailing: World Championships, European Championships, and the Olympics. In January 2003, the Italian National Olympic Committee conferred upon RYCCS the Golden Collar for Sports Merit—a first for any Italian yacht club. This award represents the highest medal in Italian sports,

¹ The facts herein and in the brief attached as Exhibit A are recited upon information and belief, the source of which is documents and information provided to me by the Proposed *Amici*, who are located in Italy, and a review of the record on appeal.

and only is given to exceptional athletes that have won races of particular international importance. RYCCS has an immediate and real interest in the America's Cup, having been a contestant through proposed *amicus* team Mascalzone Latino in the last two editions of the America's Cup (the 31st and 32nd), and is a prospective contestant for the 33rd Cup.

5. Proposed *Amicus* Mascalzone Latino is a sailing team owned by Vincenzo Onorato, a highly motivated, expert, and passionate sailor who possesses an impressive sailing record. In 2008 alone, Mr. Onorato and his team Mascalzone Latino won the Rolex Farr 40 World Championship for an unprecedented third consecutive year; they also won the Farr40 Copenhagen Regatta and the Circuit Nordic European Farr40, and placed second in the Acura Key West Race Week, the Acura Miami Race Week, and the Rolex Sardinia Cup ISAF Team Offshore World Championship. As a result of Mascalzone Latino's achievements this year, Mr. Onorato has been nominated as the ISAF Rolex World Sailor of the Year.

6. Mascalzone Latino has made several public statements about its position with respect to the current conflict.² In these statements, Mascalzone has deplored the attempt of defendant-respondent Société Nautique De Genève ("SNG") to hijack the oldest and most prestigious trophy in international competition through the simple expedient of colluding with a fake and compliant

² See, e.g., <http://www.mascalzonelatino.it/home.html?MainID=5>

“Challenger” and, in so doing, destroying the fundamental stipulation of the Deed of Gift that the America’s Cup be a “perpetual *Challenge* Cup for friendly *competition* between foreign countries.” Mascalzone Latino has pointed out that SNG’s actions, in addition to thwarting the intent of the Deed of Gift, have caused the America’s Cup to lose credibility, forcing its long-time sponsor, the French luxury goods company Louis Vuitton, to withdraw its important and long-standing sponsorship of the event.

7. Mascalzone Latino also was one of the six original signatory parties (a seventh, Victory Challenge, joined later) of the letter—quoted by the dissent in the Appellate Division, *see* ___ A.D.3d ___, 2008 WL 2885725, at *7—that was sent to intervenor-defendant Club Nautico Espanol de Vela (“CNEV”) when the Protocol governing the 33rd America’s Cup was published. The letter questioned the legitimacy of the “newly created and purely instrumental entity” CNEV to “advance a challenge under the provisions of the Deed of Gift.” The letter also condemned the Protocol as “the worst text in the history of the America’s Cup and more fundamentally [because] it lacks precisely the mutual consent items which are required,” and because it so heavily favors the Defender by shifting the balance of the competition in its favor, that it “jeopardi[z]es the survival . . . of the event.”

8. Mascalzone Latino also has actively attempted to resolve this dispute, proposing a revised Protocol for the 33rd America's Cup that would essentially mirror the one used for the 32nd Cup which was created through a real mutual consent process. SNG, however, showed no interest in this proposal.³

9. Although RYCCS, represented by Team Mascalzone Latino, would like to participate in the next America's Cup and have registered to do so, it cannot make adequate commercial and technical preparations until this action is resolved. The Proposed *Amici* hope that by being afforded an opportunity to express their views they will help the Court resolve this action in a way that will preserve this historic and illustrious sporting event.

10. As demonstrated by the proposed brief, the Proposed *Amici* do not seek simply to repeat arguments made by plaintiff. Rather, the Proposed *Amici* wish to stress that only this Court stands between the operation of the historic America's Cup pursuant to the terms of the Deed of Gift, on the one hand, and the unauthorized usurpations of SNG, on the other hand.

11. The Proposed *Amici* wish to stress that to ensure the continued greatness of the America's Cup, the Court should protect the terms of Deed, the intention of the settlor, the respective roles of the Defender and the Challenger, and the mutual consent procedure by which the rules of the race are determined. To

³ See <http://www.mascalzoneitalino.it/home.html?MainID=5&SubID=39&ArticleID=198> (detailing Mr. Onorato's efforts to resolve this matter).

this end, the Court should take into account the terms of the Deed of Gift in the full context of the Deed itself.

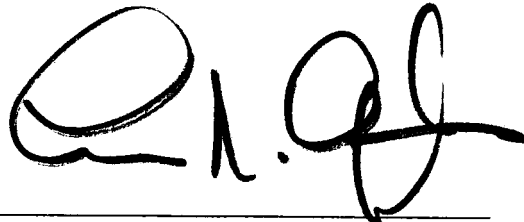
12. The Proposed *Amici* assert that the settlor's intent was to qualify as potential Challengers of Record only Yacht Clubs that are established and independent entities, experienced in the running and organizing of regattas; that will be real and effective counterparts to the Defender who, through real and effective negotiations, will establish appropriate rules for the race; and that are able to become, in the event they win the Cup, a respected and respectable Defenders.

13. The Proposed *Amici* are gravely concerned that the Appellate Division's decision, if not reversed, will be a very dangerous precedent. It would open the door for Defenders to manufacture challenges for the Cup in order to strengthen their hand. Under such a perversion of the challenge process, the Challenger would become an instrument to enhance the hegemony of the Defender, and the Defender-Challenger roles would be a charade, thus violating the settlor's intent which specified a "*Challenge Cup*."

14. The Appellate Division's decision has aggravated the concerns that the Proposed *Amici* expressed in their previous *Amici curiae* brief filed in the motion court, and has compelled Proposed *Amici* to seek leave to file the attached brief in order to bring before the Court a voice from the yachting community outside the immediate parties to this dispute.

WHEREFORE, your deponent believes that the *amici curiae* brief to be submitted (attached as Exhibit A) will be of special assistance to the Court in deciding the appeal in this action, and respectfully requests that the instant motion be granted in all respects.

Dated: New York, New York
October 15, 2008

A handwritten signature in black ink, appearing to read 'L.J. Gotko', written over a horizontal line.

LANCE J. GOTKO