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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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SEP 26 2003

at 11 o'clock and 25 min. 9 M.  
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Clerk, United States District  
Court, District of Hawaii  
By Walter A. Y. H. Chinn  
Deputy

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,  
ex rel. PACIFIC SHIPYARDS  
INTERNATIONAL, LLC,

CIVIL NO. 01-00758 HG LEK

Plaintiffs,

v.

TANADGUSIX CORPORATION and  
MARISCO, LTD.,

COMPLAINT OF THE UNITED STATES;  
SUMMONS IN A CIVIL ACTION

Defendants.

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Plaintiff, the United States of America, through its  
undersigned counsel, alleges as its complaint, as follows:

## INTRODUCTION

1. This is an action under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729 et seq., against Tanadgusix Corporation ("TDX") and Marisco, Ltd. ("Marisco"). This action arises from the transfer of federal surplus property from the United States to TDX pursuant to General Services Administration regulations. The particular property at issue is a large floating dry dock called the *Ex-Competent*. The complaint alleges violations of the False Claims Act, 31 U.S.C. §§ 3729-3733, and common law claims of misrepresentation, breach of contract, unjust enrichment, payment by mistake, fraud, conspiracy, replevin, conversion and trover, and detinue.

## JURISDICTION AND VENUE

2. Jurisdiction over this action is conferred on this Court by 28 U.S.C. § 1331, 28 U.S.C. § 1345, and by 31 U.S.C. § 3732(a).

3. Venue is proper in the State of Hawaii under 28 U.S.C. § 1391(b) and (c) and 31 U.S.C. § 3732 because all the defendants are either incorporated and/or are doing business in this district and because a substantial portion of the events or omissions giving rise to the claim occurred in this District. Additionally, venue is proper in the State of Hawaii because the property that is the subject of the action, namely the *Ex-Competent* dry dock, is situated in the State of Hawaii. This is

only venue in which all parties either reside or are doing business and in which the property is located

4. Personal jurisdiction over the defendants is present.

5. This action is proper under 31 U.S.C. § 3731(b)(2) and 28 U.S.C. §§ 2415 & 2416.

#### PARTIES

6. The United States of America ("United States" or "the government" files this Complaint on behalf of the General Services Administration "GSA"), an agency and instrumentality of the United States. GSA is the component of the United States charged with, among other things, the disposal of surplus federal property.

7 Defendant Tanadgusix Corporation is incorporated under the laws of the State of Alaska and is located at 4300 B St., Suite 402, Anchorage, AK, 99503 (Alaska Corporation No. 12329).

also conducts business in Hawaii. TDX is registered with the Department of Commerce and Consumer Affairs of the State of Hawaii as a foreign corporation doing business in the State of Hawaii (Hawaii File no. 22450 F1 TDX's registered agent in the State of Hawaii is Michael L. Freed located at 737 Bishop Street, Suite 2350, Honolulu, HI, 96813.

8. Defendant Marisco Ltd. ("Marisco" is a Hawaii corporation with its principal executive office in the District of Hawaii. Marisco, Ltd. is registered with the Secretary of

State of the State of Hawaii as a domestic corporation (File No. 26463 D1 Mr. Fred Anawati is the registered agent and sole officer of Marisco, Ltd. Marisco, Ltd. is located at 91-607 Makakole Rd., Kapolei, HI, 96707.

9. The relator, Pacific Shipyard International, LLC ("Pacific Shipyard" is a Limited Liability Company located in the State of Hawaii, which filed a complaint on behalf of the United States on November 13, 2001.

#### General Allegations

10. The United States incorporates by reference the allegations in paragraphs 1 through 9 above

11. These allegations arise out of a fraudulent scheme by TDX and Marisco to obtain the donation from the United States of a surplus dry dock. The conspiracy between TDX and Marisco involved a series of false claims and/or false statements made to the United States or its agents in order to (1 fraudulently obtain the donation of the dry dock, and (2) avoid the obligation to return the dry dock to the United States once successfully obtained. In essence, TDX and Marisco falsely represented to the United States that they planned to operate the dry dock in compliance with GSA rules and regulations, when in fact, TDX and Marisco had an agreement prior to donation, to violate those same rules and regulations.

12. The particular dry dock at issue in this case is

called the "AFDM-6 *Ex-Competent*" (hereinafter "the *Competent*") A floating dry dock is a piece of marine equipment that can be submerged under a marine vessel and then raised to lift the vessel out of the water for repairs or maintenance. In essence, a floating dry dock is like a garage and lift for marine vessels. Dry docks come in varying lengths and capacity in order to raise and lower differently sized vessels. The *Ex-Competent* was built in 1944 for the United States Navy. It was de commissioned by the Navy in mid-1997. The *Ex-Competent* measures approximately 554 feet long and 124 feet wide.

13. After the *Ex-Competent* was de-commissioned by the Navy, it was transferred to GSA for disposition as surplus government property pursuant to the Federal Property and Administrative Services Act "Property Act"), 40 U.S.C. § 549

14. The Property Act authorizes GSA, in its discretion and pursuant to regulations promulgated by GSA, to transfer surplus federal property to any of the States or territories of the United States for donation within the State to an eligible donee. 40 U.S.C. § 549(c)(3). Each State or territory designates a responsible state agency to act as the agent for GSA for the distribution of all federal surplus property within that state. See 41 C.F.R. § 101-44.001-14. In Alaska, donation of surplus property is done through the Alaskan State Agency for Surplus Property "SASP"

15. As an Alaskan Native Village Corporation, TDX is considered an eligible donee in Alaska so long as it complies with all GSA donation rules. TDX is not an eligible donee in Hawaii

16. Marisco, Ltd. is not an eligible donee under the Property Act or under GSA regulations.

17. TDX requested that GSA, through the Alaskan SASP, donate the *Ex-Competent* to TDX

18. In the case of donation of large marine equipment like the *Ex-Competent*, there were several regulatory requirements that TDX had to comply with before transfer of the *Ex-Competent* could occur. For instance, TDX had to submit a "Letter of Intent, setting forth in detail the proposed use of the property. See 41 C.F.R. § 101-44.108-9. Also, TDX had to agree to a Vessel Conditional Transfer Document "VCTD") signed by both TDX and the SASP which contains the special terms, conditions, and restrictions prescribed by GSA See 41 C.F.R. § 101-44.108-9(b)(1 (iii)). Under applicable regulations, the *Ex-Competent* could be used solely in accordance with the VCTD and the plan of utilization set forth in the TDX's Letter of Intent. See 41 C.F.R. § 101-44.108-9(b)(2) (ii

19. If an applicant fails to submit a Letter of Intent or fails to sign a VCTD, the property cannot and will not be donated to the applicant. Moreover, the VCTD confers "conditional title"

of the property on the donee. In the event that any of the terms, conditions, and restrictions imposed by the VCTD are breached, title and right to the possession of the vessel shall, at the option of GSA, revert to and become property of the United States. See 41 C.F.R. § 101-44.108-9(b)(2)(iv).

20. In this case, the applicable VCTD signed by TDX required, among other things, that TDX (1) not "sell, trade, lease, lend, bail, cannibalize, encumber, or otherwise dispose of the Property" for a period of five years, and (2) not "permanently moor" the vessel outside of the State of Alaska.

21. TDX failed to comply with the terms and conditions of the donation contained in the applicable regulations and the VCTD. TDX never intended to comply with the terms of the VCTD, it never intended to permanently moor the *Ex-Competent* within the State of Alaska, and it never intended to retain full control of the operation and management of the *Ex-Competent*.

22. TDX and Marisco conspired to circumvent the donation rules in order to utilize TDX's status as an eligible donee in Alaska to acquire the *Ex-Competent* for use by Marisco, an ineligible donee in Hawaii. Knowing that the VCTD prohibited leasing (or otherwise encumbering) the *Ex-Competent* and required that the *Ex-Competent* be moored in Alaska, TDX and Marisco agreed prior to requesting or receiving the *Ex-Competent* from the Government to permanently moor the *Ex-Competent* at Marisco's

shipyard in Hawaii, rather than in Alaska, and to lease (or otherwise encumber) the *Ex-Competent* to Marisco.

23. Sometime on or before September 8, 2000, and prior to United State's transfer of the *Ex-Competent* to TDX, TDX employees Ron Philemonoff and Kevin Kennedy conferred with Fred Anawati, President of Marisco, about docking the *Ex-Competent* at Marisco's Shipyard in Hawaii

24. On September 8, 2000, Mr. Anawati and Messrs. Philemonoff and Kennedy agreed to pursue the donation of the *Ex-Competent* and bring the *Ex-Competent* to Marisco's shipyard in Hawaii. Mr. Anawati, Mr. Philemonoff, and Mr. Kennedy intended to permanently moor and operate the *Ex-Competent* at Marisco's shipyard in Hawaii.

25. On October 24, 2000, Mr. Philemonoff and Mr. Anawati signed a "Letter of Understanding between TDX Corporation and Marisco, Ltd." that set out the basic understanding between the parties. Among other things, Marisco agreed to pay TDX \$250,000 "to facilitate its interest in using the [*Ex-Competent*]." In return, TDX guaranteed "that it [would] leave the vessel at Marisco shipyards for a minimum of five years" and that "Marisco operate and use the vessel for its intended purpose in the course [of] Marisco's normal business operations." The Letter of Understanding also states that "Agreement between the parties is evidenced by signature of the undersigned officers of the



respective corporations." (The October 24, 2000 Letter of Understanding is hereinafter referred to as "the October Agreement").

26. TDX and Marisco did not inform GSA or the SASP of the October Agreement because both Mr. Anawati and Mr. Philemonoff knew that, if the Government were aware of the October Agreement, TDX would not receive the *Ex-Competent* and Marisco would not receive the benefit of using and operating the *Ex-Competent* at its shipyard

27. On January 19, 2001, Mr. Philemonoff submitted, on behalf of TDX, a "Letter of Intent" to GSA to obtain the *Ex-Competent* through the GSA Program.

28. TDX's January 19, 2001 "Letter of Intent" failed to inform GSA and/or the SASP that the *Ex-Competent* would be put to use in Hawaii. Moreover, the "Letter of Intent" did not inform GSA and/or the SASP that Marisco had agreed to pay TDX \$250,000 to use the *Ex-Competent* for five years in the course of its normal business under the October Agreement. Instead, TDX promised that it would remain in "full compliance with the terms and conditions of the 'Vessel Conditional Transfer Document'" and that TDX "will retain full control of the operations and management of the vessel. Mr. Philemonoff made that false statement with full knowledge that on October 24, 2000 he had agreed with Mr. Anawati to allow Marisco to control and operate

*Ex-Competent* in Hawaii. The Letter of Intent and the statements made therein were made by TDX with the knowledge and intent that those statements would be forwarded to and relied upon by the United States in determining whether TDX qualified donation of the vessel under GSA regulations.

29. Also on January 19, 2001, Mr. Philemonoff signed and submitted the Vessel Conditional Transfer Document on behalf of

The VCTD required TDX (1) not to "sell, trade, lease, lend bail, cannibalize, encumber, or otherwise dispose of the Property" for a period of five years, and (2) not to "permanently moor" the vessel outside of the State of donation, in this case Alaska. At the time Mr. Philemonoff signed the VCTD, Mr Philemonoff had full knowledge that on October 24, 2000 he had agreed with Mr. Anawati to allow Marisco to control and operate

*Ex-Competent* in Hawaii.

30. Subsequent to the initial communications, TDX made additional representations to the SASP and to GSA to the effect

its plans were to move the *Ex-Competent* to Alaska for operational use. The representations made by TDX concerning its planned use for the *Ex-Competent* were false and were known by TDX to be false when made

31. Prior to the donation of the *Ex-Competent* to TDX, Ron Philemonoff and Kevin Kennedy were aware that if the *Ex-Competent* donated to TDX under the GSA program, the vessel would have

to be put into service in Alaska.

Prior to donation, Marisco was aware that TDX's "Letter of Intent" failed to inform the Alaskan SASP that the *Ex-Competent* would be used in Hawaii or that Marisco had agreed to pay TDX for the use of the dry dock for five years, and that the Vessel Conditional Transfer Document and applicable regulations prohibited the *Ex-Competent* from being permanently moored in Hawaii. Marisco conspired with TDX to violate the terms of the transfer for Marisco's own financial benefit in using the *Ex-Competent* in the course of its normal business in Hawaii.

33. From the outset, it was the intent of TDX and Marisco that the *Ex-Competent* would not be moved to Alaska, that the *Ex-Competent* would be placed into operational use by Marisco and would be under the management and control of Marisco in Hawaii.

Based on the statements made in TDX's "Letter of Intent" and "Vessel Conditional Transfer Agreement," GSA authorized the transfer of conditional title to the *Ex-Competent* to TDX. On March 23, 2001, TDX was authorized to pick up the *Ex-Competent* from the Naval Inactive Shipyard in Hawaii.

On March 30, 2001, Mr. Philemonoff authorized Marisco to take possession of the *Ex-Competent* from the Navy.

On May 2, 2001, the *Ex-Competent* was moved by Marisco to Campbell Industrial Park.

37. After donation of the *Ex-Competent* to TDX, TDX and

Marisco continued to operate under the terms of the October Agreement. In fact, TDX requested payment of \$250,000 pursuant to the October Agreement and Marisco employees, including Oliver Ui, Chief Financial Officer at Marisco, wired \$250,000 as payment for use of the *Ex-Competent* on September 17, 2001 (\$50,000) and November 15, 2001 (\$200,000)

38. TDX and Marisco made a series of false statements to Government officials with the intention to mislead Government officials and conceal TDX'S and Marisco's true intentions to permanently moor the *Ex-Competent* in Hawaii under the operational control of Marisco. These false statements were made in order to avoid having to return the *Ex-Competent* to the Government

39. For instance, on January 2, 2002, after being informed that the United States was investigating the transfer of the *Ex-Competent*, TDX and Marisco entered into an "Interim Agreement" that purportedly set out a new relationship between Marisco and TDX. TDX and Marisco presented the Interim Agreement to the United States. The Interim Agreement failed to state that Marisco had paid TDX \$250,000 to use and operate the *Ex-Competent*. On February 7, 2002, with full knowledge that TDX had received \$250,000 from Marisco as payment for use of the *Ex-Competent*, TDX wrote to Mr. Jobkar at the SASP and stated that "[t]he exact relationship between Marisco and TDX is set forth in an Interim Agreement of January 2, 2002." (Emphasis added). TDX

made this statement in order to avoid having to return the *Competent* to the Government.

40. TDX and Marisco have repeatedly made untrue statements to the United States to obtain and to keep the *Ex-Competent*. TDX and Marisco continue to act in defiance of the VCTD and Letter of Intent, as well as GSA regulations

41. An Administrative Order was issued by GSA on August 2, 2002 that ordered TDX to return the *Ex-Competent* to the United States because of its noncompliance with the terms and conditions of the transfer documents. TDX filed suit against the United States in the United States District Court in the District of Alaska to avoid having to return the *Ex-Competent*. The District Court granted summary judgment for the United States and concluded that "TDX is in noncompliance with the federal donation program and in breach of the conditions of the conditional transfer document." The Court found that the Letter of Intent "failed to inform GSA and/or the SASP that the *Ex-Competent* would be put to use in Hawaii" and that "TDX failed to maintain full control of the operations and management of the vessel return of the *Ex-Competent* to the United States has been stayed pending TDX's appeal to the Ninth Circuit

42. TDX and Marisco knowingly, with deliberate indifference or with reckless disregard, submitted false claims and/or made false statements in order to receive the *Ex-Competent* from the

United States

TDX and Marisco knowingly, with deliberate indifference or with reckless disregard, made false statements or used false records to avoid the obligation to return the *Ex-Competent* to the United States

44. TDX and Marisco conspired to use false statements and claims to obtain the *Ex-Competent* from the United States

The United States would not have transferred the *Ex-Competent* to TDX had the United States been aware that TDX, in conspiracy with Marisco, had made false statements and submitted false claims in order to obtain the *Ex-Competent* as surplus property and intended to use the *Ex-Competent* in violation of the donation terms and conditions

The United States was damaged as a result of TDX's and Marisco's false claims, false statements, and conspiracy

#### COUNT I

(False Claims Act, 31 U.S.C. § 3729(a)(1 and (2)

Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 46, inclusive.

Defendants knowingly presented, or knowingly caused to be presented to an officer or employee of the government false or fraudulent claims for payment or approval

Defendants knowingly made, used, or caused to be made or used, false records or statements, to get false or fraudulent

claims paid or approved.

As a result, the United States has been damaged in an amount to be determined.

#### COUNT II

(False Claims Act, 31 U.S.C. § 3729(a)(3))

Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 46, inclusive

52. Defendants conspired to defraud the Government by getting false or fraudulent claims allowed or paid.

As a result, the United States has been damaged in an amount to be determined.

#### COUNT III

(False Claims Act, 31 U.S.C. § 3729(a)(7))

54. Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 46, inclusive

55. Defendants knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit property to the Government.

56. As a result, the United States has been damaged in an amount to be determined

#### COUNT IV

##### (Breach of Contract)

57. Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 56, inclusive

Defendant, TDX, breached a contract with the United States, or its agent

The United States was damaged as a result of the Defendant's breach of contract.

#### COUNT V

##### (Unjust Enrichment)

Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 59, inclusive.

The United States conditionally donated the property and later discovered that all requirements and specifications of the agreement had not been complied with.

Defendants obtained a benefit by the United States' performance of its obligations and thus were enriched at the United States expense. Defendants are not entitled to retain such benefits. In justice and equity, any benefits obtained as a result of the donation of the *Ex-Competent* should be returned to the United States



COUNT VI

(Fraud)

Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 62, inclusive.

Defendants made false representations to the United States and/or its agents with knowledge of their falsity.

Defendants contemplated that the United States would rely upon the false representations.

The United States did, in fact, rely upon those false representations.

67. As a result, the United States has been damaged in an amount to be determined.

COUNT VII

(Conspiracy)

68. Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 67, inclusive

The Defendants approved, cooperated, and agreed to acted in concert in order to obtain the *Ex-Competent* from the United States by fraud.

The Defendants committed overt acts to obtain the *Ex-Competent* from the United States by fraud

As a result, the United States has been damaged in an amount to be determined

COUNT XIII

(Replevin)

Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 71, inclusive

By the terms of the VCTD, title to the *Ex-Competent* is in the United States

The United States has right to possession of the *Ex-Competent* and has demanded that Defendants turn over possession of the *Ex-Competent*.

75. All entities claiming an interest in the *Ex-Competent* have been named as Defendants in this action

As a result, the United States has been damaged in an amount to be determined

COUNT IX

(Conversion and Trover)

Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 76, inclusive

78. The United States has right to title of the *Ex-Competent*.

The Defendants have illegally assumed ownership and possession.

The United States has right to possession of the *Ex-Competent* and has demanded that Defendants turn over possession of the *Ex-Competent*.

The Defendants have wrongly exerted dominion over the *Ex-Competent* in denial of and inconsistent with the rights of the United States

As a result, the United States has been damaged in an amount to be determined.

COUNT X

(Detinue)

83. Plaintiff incorporates by reference herein the allegations made above in paragraphs 1 to 82, inclusive

The United States has legal title and immediate right to possession of the *Ex-Competent*.

The Defendants are in possession of the *Ex-Competent* without title or right to possession

86. As a result, the United States has been damaged in an amount to be determined.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that judgment be entered in its favor against defendants, jointly and severally, as follows:

- a. On Count I, damages and penalties as allowed under the False Claims Act, 31 U.S.C. §§ 3729-3733, costs, post-judgment interest, and such other and further relief as the Court may deem appropriate;
- b. On Count II, damages and penalties as allowed under the

False Claims Act, 31 U.S.C. §§ 3729-3733, costs, post-judgment interest, and such other and further relief as the Court may deem appropriate;

- c. On Count III, damages and penalties as allowed under the False Claims Act, 31 U.S.C. §§ 3729-3733, costs, post-judgment interest, and such other and further relief as the Court may deem appropriate;
- d. On Count IV, damages, costs, pre- and post-judgment interest, and such other and further relief as the Court may deem appropriate;
- e. In the alternative, on Count V, in the amount of the benefits by which defendants were unjustly enriched, costs, pre- and post-judgment interest, and such other and further relief as the Court may deem appropriate  
or
- f. In the alternative, on Count VI, damages, costs, pre- and post-judgment interest, punitive damages, and such other and further relief as the Court may deem appropriate; or
- g. In the alternative, on Count VII, damages, costs, pre- and post-judgment interest, punitive damages, and such other and further relief as the Court may deem appropriate; or
- h. In the alternative, on Count XIII, full possession of

the property, damages for its detention, costs, pre- and post-judgment interest, creation of a constructive trust, and such other and further relief as the Court may deem appropriate; or

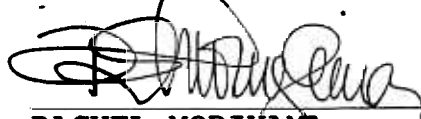
In the alternative, on Count IX, possession of the property, damages for its detention, costs, pre- and post-judgment interest, creation of a constructive trust, and such other and further relief as the Court may deem appropriate; or

In the alternative, on Count X, return of the *Ex-Competent*, a writ of detinue, damages, costs, pre- and post-judgment interest, fair market rental during detention, creation of a constructive trust, and such other and further relief, as the Court may deem appropriate.

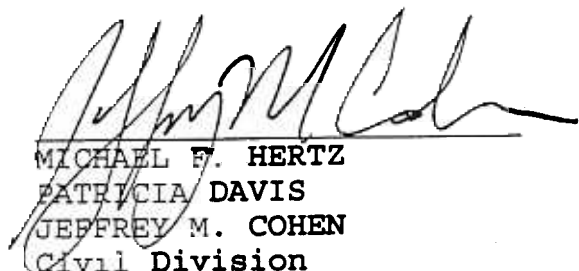
DATED: September 24, 2003, at Honolulu, HI.

PETER D. KEISLER  
Assistant Attorney General

EDWARD H. KUBO, JR.  
United States Attorney  
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RACHEL MORIYAMA  
Assistant United States Attorney

A handwritten signature in black ink, appearing to read "Jeffrey M. Cohen", is written over a horizontal line. The signature is fluid and cursive.

MICHAEL F. HERTZ

PATRICIA DAVIS

JEFFREY M. COHEN

Civil Division

Commercial Litigation Branch

U.S. Department of Justice