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14 Attorneys for Plaintiff
 United States of America

15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE DISTRICT OF ALASKA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 SEA HAWK SEAFOODS, INC., an Alaskan
 21 Corporation,

22 Defendant.

) Civil No. 3:06-CV-00281

) IN ADMIRALTY

) **FIRST AMENDED VERIFIED
 COMPLAINT**

23
 24 Plaintiff, the United States of America alleges, upon information and belief, as
 25 follows:

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GENERAL ALLEGATIONS

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2 1. This is a case within the admiralty and maritime jurisdiction of this Court
3 against defendant Sea Hawk Seafoods, Inc., *in personam*, and plaintiff's claim is an
4 admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil
5 Procedure.

6 2. Jurisdiction within this Court is proper pursuant to 28 U.S.C. § 1345. The
7 United States is authorized to bring this suit pursuant to 33 U.S.C. §§ 409 and 413, and
8 33 CFR 245.35.

9 3. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1395.

10 4. Defendant Sea Hawk Seafoods, Inc. ("Sea Hawk") is an Alaskan Corporation
11 doing business in Valdez, Alaska, and at all times material herein was, and is currently, the
12 owner of that certain barge commonly referred to as the SEA HAWK
13 SEAFOOD BARGE, official number AK7535AB.

14 5. At all times material herein the SEA HAWK SEAFOOD BARGE was moored
15 and/or sunk in the Valdez Small Boat Harbor, Valdez, Alaska.

16 6. The Valdez Small Boat Harbor was created upon the navigable waters of the
17 United States pursuant to the Rivers and Harbor Act of 1899, 33 U.S.C. 401, *et seq.*, and
18 provides moorage for up to 510 commercial fishing vessels and recreational craft.

19 7. The Valdez Small Boat Harbor also serves as the moorage for the Port Valdez
20 Oil Spill Response Fishing Vessel Fleet and United States Coast Guard multiple response
21 vessels.

22 8. On or about January 5, 2005, the SEA HAWK SEAFOOD BARGE sank within
23 the Valdez Small Boat Harbor. On January 6, 2005, in response to a discharge of oil from
24 the barge into the Prince William Sound, the Coast Guard issued a "Notice of Federal Interest
25 for an Oil Pollution Incident" to Sea Hawk pursuant to the Oil Pollution Act of 1990. On
26 January 11, 2005, the Coast Guard issued a Notice of Federal Assumption of Response
27 Activities, and thereafter removed 200 gallons of fuel from the barge and deployed a boom

1 around the barge to contain the pollutants emanating from the barge. The Coast Guard
2 expended a total of \$39,658.98 to remediate and contain the damage caused by the oil spill.

3 9. On or about March 10, 2005, Sea Hawk refloated its sunken barge and again
4 moored it within the Valdez Small Boat Harbor.

5 10. On or about February 28, 2006, the SEA HAWK SEAFOOD BARGE once
6 again sank within the Valdez Small Boat Harbor and within navigable waters of the United
7 States.

8 11. On March 2, 2006, the Coast Guard issued a Notice of Federal Interest For Oil
9 Pollution Incident to Sea Hawk after an oil sheen was observed emanating from the barge.

10 12. On March 8, 2006, the Coast Guard and the U.S. Army Corps of Engineers
11 determined that the SEA HAWK SEAFOOD BARGE was a hazard to navigation as defined
12 by 33 CFR 245.5, requiring expeditious, affirmative action on the part of its owner, such as
13 marking and/or removal, and so notified Sea Hawk.

14 13. On March 9, 2006, the Coast Guard issued a Captain of the Port Order
15 notifying Sea Hawk that its barge posed a hazard to navigation, vessels and structures within
16 the Valdez Small Boat Harbor. The Coast Guard ordered Sea Hawk to mark the barge in
17 accordance with 33 CFR 64 and submit a plan for the permanent removal of the barge. [The
18 foregoing Order is attached hereto as Exhibit A.]

19 14. On March 13, 2006, the Coast Guard issued a Notice of Violation to Sea Hawk
20 for failure to comply with the March 9, 2006 Captain of the Port Order. [The foregoing
21 Order is attached hereto as Exhibit B.]

22 15. On March 27, 2006, the Army Corps of Engineers issued a directive to Sea
23 Hawk reiterating the fact that both the Corps and the Coast Guard had determined that the
24 sunken barge constituted a hazard to navigation requiring immediate removal. The Corps
25 requested that Sea Hawk submit a plan for the removal of the barge within seven days of the
26 date of the correspondence. [The foregoing directive is attached hereto as Exhibit C.]

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1 16. In light of Sea Hawk's repeated failures to abide by Corps' directives to
2 remove the sunken barge, the Corps again wrote to Sea Hawk on August 23, 2006,
3 demanding that the barge be removed within 30 days of the date of the letter. [The foregoing
4 letter is attached hereto as Exhibit D.]

5 17. To date, Sea Hawk has not complied with the orders and directives issued by
6 the Coast Guard and the Army Corps of Engineers, and has not removed its barge.
7 Consequently, the SEA HAWK SEAFOOD BARGE continues to be a hazard to navigation
8 within the Valdez Small Boat Harbor, and indeed, since its sinking two recreational craft
9 have struck the submerged barge.

10 18. At all times material herein, Sea Hawk has been, and continues to be, in
11 violation of section 15 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 409.

12 19. The United States expressly reserves the right to amend this amended
13 complaint to add parties and/or causes of action, as may be necessary.

14 **FACTS PERTAINING TO SEA HAWK'S CONFESSION OF JUDGMENT**

15 20. Plaintiff, United States of America, refers to and incorporates by reference as
16 though fully set forth herein each and every foregoing paragraph of its amended complaint.

17 21. On February 21, 2006, Sea Hawk, by and through its president Terry Bertson,
18 executed a "Stipulation and Confess-Judgement Note" pursuant to which Sea Hawk
19 committed itself to repay the Coast Guard the entire \$39,658.98 expended in clean up
20 operations related to the foregoing January 6, 2005, oil pollution incident involving Sea
21 Hawk Seafoods' barge. (The foregoing "Stipulation and Confess-Judgement Note" is
22 attached hereto as Exhibit E.)

23 22. Sea Hawk made two payments under the "Stipulation and Confess-Judgement
24 Note" for a total amount of \$19,658.98. Thereafter, Sea Hawk ceased payment of the
25 remaining amount owed.

26 23. Sea Hawk is a plaintiff in the litigation arising from the oil spill of the T/V
27 EXXON VALDEZ, said litigation filed in this Court. *In re Exxon Valdez*, Case No. A89-

1 0095-CV (HRH), D. Alaska. As a result of said litigation and settlement of certain claims
2 therein, Sea Hawk has received approximately \$2,146,908 from Exxon. Despite said
3 payments from Exxon, Sea Hawk has failed to discharge its foregoing debt to the United
4 States. A demand by the United States to Sea Hawk for payment has gone unanswered.

5 **AS AND FOR A FIRST CAUSE OF ACTION**

6 24. Plaintiff, United States of America, refers to and incorporates by reference as
7 though fully set forth herein each and every foregoing paragraph of its amended complaint.

8 25. The defendant, in breach of law, has refused to comply with orders and
9 directives issued by the United States Coast Guard and the Army Corps of Engineers and has
10 not removed its barge.

11 26. Pursuant to applicable law, including, but not limited to, section 15 of the
12 Rivers and Harbors Act of 1899, 33 U.S.C. § 409 and 33 CFR 245.35, the United States is
13 entitled to relief, including, but not limited to, injunctive relief, to wit, an order of this Court
14 requiring that defendant Sea Hawk be ordered and enjoined, *inter alia*, immediately to
15 remove its sunken barge from the Valdez Small Boat Harbor.

16 **AS AND FOR A SECOND CAUSE OF ACTION**

17 27. Plaintiff, United States of America, refers to and incorporates by reference
18 as though fully set forth herein each and every foregoing paragraph of its amended
19 complaint.

20 28. Sea Hawk Seafoods, Inc., stopped making payments as required under the
21 "Stipulation and Confess-Judgment" it executed on February 21, 2006. A demand to Sea
22 Hawk for payment has gone unanswered. Accordingly, pursuant to the Stipulation the
23 United States is entitled to the immediate entry of judgment against Sea Hawk Seafoods,
24 Inc., in an amount of not less than \$20,000, the amount owing under the "Stipulation and
25 Confess-Judgment", plus interest, fees, disbursements, and such other relief allowed by
26 law and the "Stipulation and Confess-Judgment".

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AS AND FOR A THIRD CAUSE OF ACTION

29. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its amended complaint.

30. Despite its liability to the United States pursuant to the "Stipulation and Confess-Judgment", all as alleged in this verified amended complaint, Sea Hawk, in breach of law, including, but not limited to, in violation of the provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, *et seq.*, has, *inter alia*, instead of discharging debts owed to the United States, transferred, sold, spun off, and assigned assets so as to prejudice the United States, including assets such as more than \$2 million settlement monies received from Exxon.

31. Despite its liability to the United States pursuant to the "Stipulation and Confess-Judgment", all as alleged in this verified amended complaint, Sea Hawk, in breach of law, including, but not limited to, in violation of the provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, *et seq.*, may hereafter transfer, sell, spin off, and assign, or attempt to transfer, sell, spin off, and assign assets, including Exxon settlement monies, including interest payments, so as to prejudice the United States.

32. All such prior and future actions as alleged in the foregoing paragraphs have caused damages, and will cause damages, to the United States in an amount to be established according to proof at trial.

AS AND FOR A FOURTH CAUSE OF ACTION

33. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its amended complaint.

34. Despite its liability to the United States pursuant to the "Stipulation and Confess-Judgment", all as alleged in this verified amended complaint, Sea Hawk, in breach of law, including, but not limited to, in violation of the provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, *et seq.*, has, *inter alia*, instead of discharging debts owed to the United States, transferred, sold, spun off, and assigned assets so as to

1 prejudice the United States, including assets such as more than \$2 million settlement monies
2 received from Exxon.

3 35. To the extent that Sea Hawk, and/or its officers, servants, employees,
4 representatives, agents, fiduciaries, or other individuals and entities acting on its behalf or
5 with its authorization, have discharged claims or debts to any other person or entity other
6 than the United States, or in the future discharge claims or debts to any person or entity other
7 than the United States in contravention of, *inter alia*, 31 U.S.C. § 3713, Sea Hawk and/or its
8 officers, servants, employees, representatives, agents, fiduciaries, or other individuals and
9 entities acting on its behalf or with its authorization, are liable to the United States for the
10 amount of any such payments.

11 36. With respect to any payments in contravention of 31 U.S.C. § 3713, and
12 pursuant to 31 U.S.C. § 3713(b), any and all officers, servants, employees, representatives,
13 agents, fiduciaries, or other individuals and entities making such payments are personally
14 liable to the United States for the amount of any such payments.

15 37. The United States shall amend this amended complaint to add as defendants,
16 in their individual capacity, any and all officers, servants, employees, representatives, agents,
17 fiduciaries, or other individuals and entities who, in contravention of 31 U.S.C. § 3713(a) and
18 (b), have already discharged, or in the future discharge, claims or debts to any person or
19 entity other than the United States.

20 WHEREFORE, the Unites States prays as follows:

21 1. That this Court set an expedited hearing date on a motion for an injunction
22 seeking an order from this Court requiring defendant Sea Hawk Seafoods, Inc., to remove
23 the SEA HAWK SEAFOOD BARGE from the Valdez Small Boat Harbor;

24 2. That the Court enter such other orders and judgment as may be applicable
25 pursuant to the provisions of the Rivers and Harbors Act of 1899 and applicable regulations;

26 3. That this Court enter judgment against the defendant and in favor of the United
27 States in accordance with the Stipulation and Confess-Judgment executed by the defendant

1 in an amount of not less than \$20,000;

2 4. That this Court enter judgment against the defendant and in favor of the United
3 States in accordance with Third and Fourth Causes of Action.

4 5. For cost of suit herein; and

5 6. For all other relief as may be allowed under law and statute and for such other
6 relief as the Court deems just and proper.

7 Dated: February 14, 2006.

PETER D. KEISLER
Assistant Attorney General
DANIEL COOPER
Assistant United States Attorney
R. MICHAEL UNDERHILL
Attorney in Charge, West Coast Office
Torts Branch, Civil Division

11 /s/ Eric Kaufman-Cohen
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22 Attorneys for Plaintiff
23 UNITED STATES OF AMERICA
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VERIFICATION

ERIC KAUFMAN-COHEN says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing first amended complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: February 14, 2007.

/s/ Eric Kaufman-Cohen

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