

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
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4 State Bar No. 238484
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3550
6 Facsimile: (415) 703-5480
E-mail: Amber.Wipfler@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
BOARD OF PILOT COMMISSIONERS
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case No. 2021-01

13 **CAPTAIN ROGER CASSIUS KIRK**
14 **66 Vendola Drive**
San Rafael, CA 94903

ACCUSATION

15 Pilot License Number 2553

16 Respondent.

17
18 **PARTIES**

19 1. Allen Garfinkle (“Complainant”) brings this Accusation solely in his official capacity
20 as the Executive Director of the Board of Pilot Commissioners for the Bays of San Francisco, San
21 Pablo and Suisun (“Board”), State of California.

22 2. On or about March 31, 2007, the Board issued Pilot License Number 2553 to Captain
23 Roger Cassius Kirk (“Respondent”). The license was in full force and effect at all times
24 pertinent to the allegations in this matter and will expire on March 31, 2021, unless renewed.

25 **JURISDICTION AND AUTHORITY**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws:

28 ///

1 4. California Harbors and Navigation Code (“Code”) section 1181 states:

2 The license of a pilot or inland pilot may be revoked or suspended before its expiration only
3 for reasons of misconduct, which shall include, but not be limited to, the following:

4 ...

5 (g) Negligently, ignorantly, or willfully running a vessel on shore, or otherwise rendering
6 it liable to damage, or otherwise causing injury to persons or damage to property.

7 However, this subdivision does not apply to a vessel of less than 300 gross tons unless a
8 pilot or inland pilot is required by law.

8 ...

9 5. California Code of Regulations, Title 7, section 219 states:

10 ...

11 (n) A pilot and an inland pilot shall obey all regulations of the Board.

12 ...

13 (t) A pilot and an inland pilot shall not, through ignorance, willfulness or neglect, run a
14 vessel on shore, or otherwise render a vessel liable for damage to persons, property or the
15 marine environment during the performance of his or her duties as a pilot or inland pilot.

15 ...

16 (v) While engaged in any piloting activity, a pilot and an inland pilot shall obey all
17 applicable laws and conduct himself or herself so as not to cause injury or damage to
18 persons, property or the marine environment.

19 ...

20 **FACTUAL ALLEGATIONS**

21 6. On or about November 24, 2019, Respondent was responsible for docking the crude
22 oil tanker POLAR DISCOVERY at the Richmond Long Wharf in Richmond, California.

23 7. As a result of Respondent’s negligence, including but not limited to loss of situational
24 awareness, insufficient planning, excessive speed, misuse of the rudder, ineffective tug use, and
25 untimely and unclear orders to the bridge and tugs, the POLAR DISCOVERY allided with the
26 bow of the TORM RESILIENCE, an oil products tanker docked at the Richmond Long Wharf.
27 At the time of the allision, the TORM RESILIENCE was stationary and loading jet fuel from
28 loading arms on the dock.

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San Rafael, CA 94903

15 Pilot License Number 2553

16 Respondent.

Case No. 2021-01

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

17
18
19 **TO RESPONDENT:**

20 Enclosed is a copy of the Accusation that has been filed with the Board of Pilot
21 Commissioners (Board), and which is hereby served on you.

22 Unless a written request for a hearing signed by you or on your behalf is delivered or
23 mailed to the Board, represented by Deputy Attorney General Amber N. Wipfler, within fifteen
24 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
25 be deemed to have waived your right to a hearing in this matter and the Board may proceed upon
26 the Accusation without a hearing and may take action thereon as provided by law.

1 The request for hearing may be made by delivering or mailing one of the enclosed forms
2 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in
3 section 11506 of the Government Code, to

4
5 **Amber N. Wipfler**
6 **Deputy Attorney General**
7 **455 Golden Gate Avenue, Suite 11000**
8 **San Francisco, California 94102**

9 You may, but need not, be represented by counsel at any or all stages of these proceedings.

10 The enclosed Notice of Defense, if signed and filed with the Board, shall be deemed a
11 specific denial of all parts of the Accusation, but you will not be permitted to raise any objection
12 to the form of the Accusation unless you file a further Notice of Defense as provided in section
13 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

14 If you file any Notice of Defense within the time permitted, a hearing will be held on the
15 charges made in the Accusation.

16 The hearing may be postponed for good cause. If you have good cause, you are obliged to
17 notify the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, CA 94612,
18 within ten (10) working days after you discover the good cause. Failure to notify the Office of
19 Administrative Hearings within ten (10) days will deprive you of a postponement.

20 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

21 If you desire the names and addresses of witnesses or an opportunity to inspect and copy
22 the items mentioned in section 11507.6 of the Government Code in the possession, custody or
23 control of the Board you may send a Request for Discovery to the above designated Deputy
24 Attorney General.

25 **NOTICE REGARDING STIPULATED SETTLEMENTS**

26 It may be possible to avoid the time, expense and uncertainties involved in an
27 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
28 settlement is a binding written agreement between you and the government regarding the matters

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Board of Pilot Commissioners but, once approved, it would be incorporated into a final order.

3 Any stipulation must be consistent with the Board's established disciplinary guidelines;
4 however, all matters in mitigation or aggravation will be considered. A copy of the Board's
5 Disciplinary Guidelines will be provided to you on your written request to the state agency
6 bringing this action.

7 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
8 have any questions, you or your attorney should contact Deputy Attorney General Amber N.
9 Wipfler at the earliest opportunity.

10 Dated: March 17, 2021

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General

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15 AMBER N. WIPFLER
16 Deputy Attorney General
17 *Attorneys for Complainant*

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12 In the Matter of the Accusation Against:

13 **CAPTAIN ROGER CASSIUS KIRK**
14 **66 Vendola Drive**
San Rafael, CA 94903

15 Pilot License Number 2553

16 Respondent.

Case No. 2021-01

REQUEST FOR DISCOVERY

17
18 TO RESPONDENT:

19 Under section 11507.6 of the Government Code of the State of California, parties to an
20 administrative hearing, including the Complainant, are entitled to certain information concerning
21 the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code
22 concerning such rights is included among the papers served.

23 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE
24 HEREBY REQUESTED TO:

- 25 1. Provide the names and addresses of witnesses to the extent known to the Respondent,
26 including, but not limited to, those intended to be called to testify at the hearing, and
27 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the
28 following in the possession or custody or under control of the Respondent:

1 a. A statement of a person, other than the Respondent, named in the
2 initial administrative pleading, or in any additional pleading, when it is claimed that
3 the act or omission of the Respondent as to this person is the basis for the
4 administrative proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made
6 by any party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the
8 Respondent and of other persons having personal knowledge of the acts, omissions or
9 events which are the basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical
11 and blood examinations and things which the Respondent now proposes to offer in
12 evidence;

13 e. Any other writing or thing which is relevant and which would be
14 admissible in evidence, including but not limited to, any patient or hospital records
15 pertaining to the persons named in the pleading;

16 f. Investigative reports made by or on behalf of the Respondent
17 pertaining to the subject matter of the proceeding, to the extent that these reports (1)
18 contain the names and addresses of witnesses or of persons having personal
19 knowledge of the acts, omissions or events which are the basis for the proceeding, or
20 (2) reflect matters perceived by the investigator in the course of his or her
21 investigation, or (3) contain or include by attachment any statement or writing
22 described in (a) to (e), inclusive, or summary thereof.

23 IN ADDITION, if cost recovery is requested in the pleading prayer, provide all writings
24 which will support any objection which may be made by the Respondent, to Respondent's
25 payment of investigation and enforcement costs to the Board.

26 For the purpose of this Request for Discovery, "statements" include written statements by
27 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
28

1 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
2 summaries of these oral statements.

3 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
4 should be deemed to authorize the inspection or copying of any writing or thing which is
5 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
6 product.

7 Your response to this Request for Discovery should be directed to the undersigned attorney
8 for the Complainant at the address on the first page of this Request for Discovery within 30 days
9 after service of the Accusation.

10 Failure without substantial justification to comply with this Request for Discovery may
11 subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the
12 Government Code.

13 Dated: March 17, 2021

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General

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18 AMBER N. WIPFLER
19 Deputy Attorney General
20 *Attorneys for Complainant*

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**BEFORE THE
BOARD OF PILOT COMMISSIONERS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CAPTAIN ROGER CASSIUS KIRK

Respondent.

Case No. 2021-01

NOTICE OF DEFENSE

(Gov. Code §§ 11505 and 11506)

I hereby acknowledge receipt of a copy of the Accusation in the above-entitled proceeding, as well as the Statement to Respondent, Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery, and two copies of a Notice of Defense.

I further acknowledge that by filing this Notice of Defense, the Respondent is entitled to a hearing on the merits of the Accusation, and that under Government Code section 11506, the Respondent has a right to file a further Notice of Defense within the time specified in that section.

This Notice of Defense is filed on my own behalf as the Respondent or in my capacity as an authorized representative of an entity named as the Respondent in the Accusation.

Date:

Print Your Name:

Your Signature:

Respondent's Mailing Address:

Phone:

E-mail

Check one box:

I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

Phone:

E-mail:

I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearings and a copy sent to the Deputy Attorney General who represents Complainant so that Respondent's counsel will be on record to receive legal

notices, pleadings and other papers.

Check box if applicable:

- I wish to avoid a hearing if possible and be considered for a stipulated settlement or stipulated surrender of license.

The agency taking the action described in the Accusation may have formulated disciplinary guidelines. You may obtain a copy of the guidelines by requesting them in writing from the agency. A link to the agency's website can be found on-line at https://www.dca.ca.gov/about_us/entities.shtml.

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This Notice of Defense is filed on my own behalf as the Respondent or in my capacity as an authorized representative of an entity named as the Respondent in the Accusation.

Date:

Print Your Name:

Your Signature:

Respondent's Mailing Address:

Phone:

E-mail

Check one box:

I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

Phone:

E-mail:

I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearings and a copy sent to the Deputy Attorney General who represents Complainant so that Respondent's counsel will be on record to receive legal

notices, pleadings and other papers.

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**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e) Any other writing or thing which is relevant and which would be admissible in evidence;
- (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against Roger Kirk**

Case No.: **2021-01**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 17, 2021, I served the attached **Accusation; Statement to Respondent; Request for Discovery; Notice of Defense (x2) Copy of Government Code Sections 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **Accusation; Statement to Respondent; Request for Discovery; Notice of Defense (x2) Copy of Government Code Sections 11507.5, 11507.6 and 11507.7** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Roger Kirk
Captain
66 Vendola Drive
San Rafael, CA 94903

Certified Article Number

9414 7266 9904 2175 1953 95

SENDER'S RECORD

Rex M. Clack
RMC Law
2213 Monticello Road
Napa, CA 94558

Certified Article Number

9414 7266 9904 2175 1954 01

SENDER'S RECORD

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 17, 2021, at San Francisco, California.

Michelle CoSeng

Declarant



Signature