

**FEDERAL MARITIME COMMISSION**  
**Office of the Administrative Law Judges**

SAMEH ELAWAMRY, *Claimant*

v.

EMARAT SHIPPING INC. AND TAREQ ELBARQ, *Respondents.*

**DOCKET NO. 2005(I)**

Served: September 30, 2024

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**BEFORE:** Theresa DIKE, *Small Claims Officer.*

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**INITIAL DECISION<sup>1</sup>**

**I. INTRODUCTION AND SUMMARY OF DECISION**

Claimant Sameh Elawamry initiated this proceeding by filing an informal complaint at the Federal Maritime Commission (“FMC” or “Commission”) against Respondent Emarat Shipping Inc. (“Emarat”) and Respondent Tareq Elbarq, Emarat’s president. Claimant alleges that they held his cargo ransom to force him to pay disputed invoices and to sign their cargo release form, provided services not required or requested by him in order to increase their fees, engaged in inaccurate invoices, imposed unfair rates and charges, and retaliated against him in violation of 46 U.S.C. §§ 41102(c) and (d) and 41104(a) and (d) of the Shipping Act<sup>2</sup> in connection with an agreement to transport Claimant’s vehicles from the United States to Egypt. Claimant requests reparations in the amount of \$22,452.91.

**A. Background and Procedural History**

Claimant and Emarat, an ocean transportation intermediary (“OTI”), entered into an agreement to ship two vehicles belonging to Claimant— a 2023 Honda CRV and a 2023 Mercedes C300 - in a container from Long Beach, California to Egypt. Emarat then arranged with CMA CGM, a vessel-operating common carrier (“VOCC”), to transport the shipments from Long Beach to Port Said, Egypt. When the container arrived in Egypt, CMA CGM advised Emarat that the Egyptian customs authority had rejected the container because its Advance Cargo Information Document (“ACID”) identification number, which the Egyptian Customs

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<sup>1</sup> Pursuant to 46 C.F.R. § 502.304(g), this decision will become final unless the Commission elects to review it within 30 days of service.

<sup>2</sup> Pro se Claimant initially alleged that Respondents violated sections 41102 and 41104 of the Shipping Act but later specified the violated sections as 41102(c), 41102(d), 41104(a) and 41104(d).

Authority requires for all imports, had previously been used for a different shipment. Claimant tried to submit new ACID numbers to prevent the container from being returned to the United States, but the vehicles were ultimately returned.

Claimant subsequently filed this Claim against Respondents as well as CMA CGM<sup>3</sup>, alleging in the case of Respondents Emarat and Elbarq that they were at fault for the return of the vehicles because they had re-used the old ACID number without his authorization. Claimant also alleges other improper conduct by Respondents, discussed in greater detail below.

On April 17, 2024, the Secretary of the Commission issued a Notice of Filing of Small Claims Complaint and Assignment (“Notice”), notifying Respondents of the Claim and instructing them to file a response by May 13, 2024, and to indicate whether they consented to the use of the Commission’s informal procedures at Subpart S for adjudication of the Claim. The Secretary also assigned this proceeding to the Chief Administrative Law Judge (“Chief ALJ”) to designate a small claims officer (“SCO”) to adjudicate the proceeding. On May 13, 2024, Respondent Elbarq filed a joint response on behalf of himself and Emarat and consented to the use of the informal procedures. On May 13, 2024, the Chief ALJ assigned this proceeding to the undersigned for adjudication.

Pursuant to 46 C.F.R. § 502.304(a) and (e) of the Commission’s Rules of Practice and Procedure, which authorize the SCO in a Subpart S proceeding to request, if deemed necessary, additional documents or information from the parties, on June 10, 2024, a Request for Additional Documents and Information issued, directing the parties to provide certain information and documents by June 24, 2024, and permitting any party wishing to file a response to the opposing party’s submission to do so by July 1, 2024. On June 24, 2024, Claimant and Respondents submitted their responses to the request (“C. Supp. Info” and “R. Supp. Info”). The parties also submitted replies to each other’s responses. (“C Reply” and “R Reply”). The record is now ripe for a decision.

As discussed in greater detail below, it is found that Respondent Emarat violated sections 41102(c) and (d), 41104(a) and (d) of the Shipping Act. Although not alleged by Claimant, it is also found that Emarat violated section 40501(a)(1) of the Shipping Act as well as section 520.3(a) of the Commission’s regulations. Additionally, it is found that Respondent Tareq Elbarq, Emarat’s president, is not personally liable for Emarat’s violations, and the claim against him is dismissed. Respondent Emarat is ordered to pay reparations in the amount of \$13, 952.91.

## **B. Argument of the Parties**

### **1. Claimant’s Arguments**

Claimant alleges that Emarat never asked him to provide an ACID for the shipment at issue but instead, used an old ACID number, which Claimant had provided for a prior furniture shipment “[b]ased on [Emarat]’s very specific request from [him] to provide an ACID for [the]

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<sup>3</sup> Claimant filed the complaint against CMA CGM as a separate proceeding. That complaint is also being separately adjudicated under Docket No. 2007(I).

furniture previous shipment,” without Claimant’s authorization. C. Supp. Info. Pg. 5 at no. 5. See also, Complaint pg. 1; and C. Supp. Info. Pg. 6 at no. 8. According to Claimant:

At the end, after the container was returned back to Long beach on December 15, Emarat shipping represented by Victor Vega and Tareq Elbareq made every effort to deny their responsibility towards this mistake, lied about their fees, pulled up the container from Long beach port after being returned without my approval, transport it to their warehouse, broke the seal, opened up the container without my presence, kept my cargo to use it for ransom, added up fake and excessive overcharges, made up invoices, refused to release my cargo, tried to force me to sign unrequired forms to release them from any future liability, and threatened to move my cargo or consider it abandoned in case I don’t perform according to their demands. (all documented by emails).

Complaint pg. 2.

Regarding his Claim against Respondent Tareq Elbarq, Emarat’s president, Claimant alleges that Elbarq is also liable because:

Mr. Tareq Elbarq, in his individual capacity, chose to increase the services provided and fees charged, and personally refused to release the vehicles back into my custody. In addition, Mr. Elbarq took actions in a personal manner, made decisions that solely serves his own interest, and deviated from all professional and ethical ways of conducting business.

C. Supp. Info. Pg. 2 at no. 2.

Claimant asserts:

Emarat shipping advertise themselves as a full-service ocean freight service. I relied on their supposed expertise to ship my cargo. Although I was provided with forms, I provided all the information that was requested from me verbally. Victor from Emarat shipping is the one who filled out the forms himself. I was never asked for an ACID number either in writing or verbally, nor I was aware that one was needed for this shipment to be completed. Neither me nor my representative told Victor to reuse the same ACID.

C. Supp. Info. Pg. 5-6 at nos. 4, 5 and 6. Claimant maintains that he did not question the estimates he received from Emarat containing the invalid ACID number because he did not know the importance of the ACID number and what it was used for and assumed that since Emarat had filled in the number they knew what they were doing, being “the expert in shipping.” C. Supp. Info. Pg. 6 at no. 9. Claimant requests a refund of his payments for Emarat invoice numbers 52843 and 52963, plus ten percent of the depreciation value of his vehicles, totaling \$22,452.91, and that the Commission “further investigate Emarat and CMA [CGM]’s business practice, and take proper action against their business license.” Complaint at pg. 4.

## 2. Respondents' Arguments

Respondents state that Claimant provided the ACID number to them for a previous furniture shipment in July 2023 from Long Beach Port to Egypt pursuant to an Egyptian Customs Authority requirement that an ACID number be included in the bill of lading for each argo imported into Egypt. Answer pg. 1 at nos. 3-4. Respondents state that Claimant then arranged with them on July 26, 2023, to ship two vehicles to the same destination.

On the issue of whether Claimant authorized them to re-use the ACID number for the shipping of the vehicles, Respondents offer contradictory explanations - that Claimant verbally authorized them to re-use the ACID number (Answer pg. 1-2 at nos. 6-11), but also that Claimant did not provide them "with at least the basic information for his shipment" and thus "Emarat Shipping in lieu of the not filled up form and because we had to have something in writing, sent the estimate with pricing and added the shipper and consignee information and the ACID to be used on the shipment." R. Supp. Info pg. 1 at nos. 2a-2d. Respondents argue that they emailed the estimate and a bill of lading with the ACID number to Claimant who corrected the information as to one of the vehicles but not the ACID information. They contend that by not amending the ACID number Claimant gave tacit approval for their re-use of the old ACID number. Answer pg. 2 at nos. 12-14. Respondents state:

We asked for ACID for the first Shipment and the Second Shipment. We are aware of the regulation that ACID is required. We are not to obtain or ask the client where he obtained the ACID. We were told to use the same info as the first shipment and we did.

R Reply pg. 5 at no. 5. Respondents assert that the claim that they re-used the ACID number without Claimant's permission "is just impossible" reiterating that Claimant did not have any other ACID number at the time of shipping, admitted that he did not obtain new ACID numbers until the container was rejected in Egypt, and reviewed the estimate and draft bill of lading containing the ACID information without amending it. Answer pg. 7 at no. 42.

According to Respondents, when CMA CGM, the steam ship line, notified Claimant that the Egyptian Customs Authority had rejected the container and ordered that it to be returned to the original port of loading due to the invalid ACID number, Claimant sent an email to the steam ship line admitting fault, offering to pay a penalty to avoid the return of the container, and providing new ACID numbers for the vehicles. Respondents opine that due to "the intention to commit fraud the Egyptian Customs Authority ordered the container to be returned to the [port of loading]" and Claimant then requested Emarat's help with customs clearance of the container in Egypt and its re-exportation to Long Beach, California. Emarat states that in turn, it recommended a clearing customs agent whom Claimant engaged. Answer pg. 3 at nos. 18-22. Emarat explains: "because we have never experienced such a matter before we do not have any tariff rate for this charge . . . [w]hat we charge[d] was only to recover some of our loss because of Sameh's mistake. Emarat was dragged to be the importer for this shipment although we fulfilled our agreement and delivered the cargo to the port of destination." R. Supp. Info pg. 3 at no. 8.

As for Claimant's allegation that Respondents held his cargo hostage to force him to sign their forms releasing them from any future liability, Emarat states:

On the contrary Emarat Shipping and CMA tried their best to help and accommodate Sameh. His verbal abuse and accusations turned his case into a nightmare. In the first email to CMA when he admitted fault he threatened to sue them. The threats and accusation kept coming. We had to protect ourself from this complaint and potential claims.

R Reply Pg. 8 at no. 11.

Respondent Elbarq denies that he was personally involved in the shipping agreement with Claimant, asserting that he never met or spoke to Claimant until the shipments were rejected by the Egyptians Customs Authority. R. Supp. Info. Pg.1 at no. 1.

Addressing Claimant's request for award of the vehicles' depreciation value, Respondents argue that while Claimant cited to articles that estimate that most vehicles lose about 20% of their value over the first year, Claimant's vehicles sailed on September 9, 2023, and returned to the United States on December 15, 2023, which is less than a year. R Reply pg. 5 at no. 5.

## **II. PERTINENT FACTS ESTABLISHED BY THE RECORD ("PF")**

1. Claimant Sameh Elawamry is an individual shipper residing in the State of California. Complaint pg. 1 at ¶ I.
2. Respondent Tareq Elbarq is the president, treasurer and secretary of Emarat Shipping. Answer pg. 1; <https://home-fmcgov.msapproxy.net/rpi/Organization.aspx>.
3. Tareq Elbarq is not a licensed entity. <https://www2.fmc.gov/oti/>.
4. Respondent Emarat is an ocean transportation intermediary (organization and license number 022530), licensed as both a non-vessel-operating common carrier ("NVOCC") and an Ocean Freight Forwarder. <https://www2.fmc.gov/oti/>.
5. Claimant entered into an agreement with Emarat to ship two vehicles from the Port of Long Beach to Port Said, Egypt. Answer pg. 1 at no. 5; Claim pg. 1.
6. Claimant had no personal business dealings or communication with Respondent Tareq Elbarq prior to the Egyptian Customs rejection of the shipments at issue. C. Supp. Info. pg. 2 at no. 2; C. Supp. Info. Ex. A; C. Supp. Info. Ex. B; Elbarq Response to Claimant Supplement Response. ("Elbarq Supp. Info") pg. 1 at no.1.
7. Emarat entered into an agreement with CMA CGM to ship Claimant's cargo - container number TLLU4452514 - from the Port of Long Beach to Port Said, Egypt. Complaint Ex. 1; Answer Ex. H.

8. Emarat was listed as shipper/exporter of the cargo on Waybills NAM6480440 and NAM6480441, CMA CGM's bills of lading, and CMA-CGM's Pre-Arrival Notice for the shipments. Complaint Ex. 1; Complaint Additional Exhibits ("C. Ex.") pgs. 1-6; Answer Ex. H; C. Supp. Info. Ex. N.
9. Claimant was listed as consignee and notify party on Waybill NAM6480440 and NAM6480441, CMA CGM's bills of lading. Complaint Ex. 1; C. Ex. pgs. 1-6; Answer Ex. H.
10. CMA CGM's Waybills NAM6480440 and NAM6480441 listed the container and seal under the waybill as TLLU4452514 and SN # UL8886850 and the goods being shipped as "1 x 40HC Container: Pieces 8703600045 (HS) 2023 Mercedes C30 VIN W1KAF4GB4PR0899911 8 Tire ACID Number 9992023070000005277 and 2023 Honda CRV VIN 7FARS3H45PE004099 ACID Number 9992023070000005277 Part Load Container(s) covered by BLs: NAM6440461, NAM6480440." Complaint Ex. 1; C. Ex. pgs. 1-6; Answer Ex. H.
11. Yousef Elawamry is an additional person copied on multiple correspondences between the parties but does not appear in any of the shipping documents for the container at issue. *See, e.g.*, Answer Exs. B-H; R. Supp. Info. Exs. 5 – 7; R. Supp. Info. Ex. 8 (Emarat Cargo Release Form where Yosef [sic] Elawamry is listed as the "Driver Name").
12. The arrangement to ship container number TLLU4452514 was the second time Claimant had hired Emarat to ship his goods, as in June or July 2023, Emarat had shipped Claimant's furniture by ocean from the port of Long Beach to Port Said, Egypt. Answer pg. 1 at no. 3; Answer Ex. A; C. Supp. Info. Ex. CC.
13. The Egyptian customs authority requires shippers importing cargo to Egypt to obtain an ACID number for each cargo shipped and provide them to the shipping agent for inclusion on the bills of lading for the cargo. R. Supp. Info pg. 1 at no. 2b; Answer pg. 1 at no. 4.
14. Claimant obtained ACID - number 9992023070000005277, issued on July 3, 2023, and expiring on January 3, 2024 based on a written request from Emarat and Claimant provided the number to Emarat by email on July 3, 2023, for inclusion in the bill of lading for his furniture shipment. Answer, pg. 1 at no. 4; Answer Ex. A (Email from Claimant to Victor Vega at Emarat stating in pertinent part: "Here is an image of the ACID number that should be included on my shipping paperwork."); C. Supp. Info. pg. 5 at no. 5 and pg. 6 at no. 8.
15. Claimant entered into the second arrangement with Emarat to ship container number TLLU4452514 in July or August 2023. Complaint, pg. 1 (Claimant indicating that he hired Emarat on August 13); Answer, pg. 1 at no. 6 (Emarat indicating that Claimant requested their services on July 26, 2023).
16. On August 23, 2023, Emarat sent Claimant an email stating:

Remember that we need all the cargo ready and available. Original titles and the information requested below (forms attached)

Please confirm if all is ready so I can request the booking and container. (FYI no Hybrid or electric vehicles accepted)

#### Shipping Requirements

1. Shipper Information (name, passport copy and/or EIN #, address and phone)
2. Consignee (name, address and phone)
3. Original Title
4. Value of each vehicle

Answer, Exhibit B.

17. On August 25, 2023, Claimant sent an email to Emarat stating: "I will be the sender and receiver of the vehicles. So should I sign my name on the back of the titles or Low mileage auto? Answer, Exhibit C.
18. On August 25, 2023, Emarat responded:

Well noted, thank you. Remember that I will need filled out.

#### Shipping Requirements

1. Shipper Information (name, passport copy and/or EIN #, address and phone)
2. Consignee (name, address and phone)
3. Original Title
4. Value of each vehicle

Answer, Exhibit D.

19. Additionally, on August 25, 2023, Emarat followed up with more information on the shipping requirements for the vehicles, stating:

For your information these are the vehicle import restrictions provided by the shipping line. Please make sure the vehicles you are trying to ship are ok based on the restrictions below.

#### **B) Destination Country Requirements:**

The below information is meant to serve as guidance of the restrictions and requirements known to CMA CGM at the time of booking to the named country. The shipper is expected to know the country requirements for the import of vehicles, if at any time in the process, the cargo is found to be in violation of a CMA CGM or country's restrictions or requirements, all

charges to return the cargo to the shipper from Port of Load or Port of Discharge, will be at shipper's expense.

**No salvaged cars/autos/vehicles are permitted to any PODs in North Africa, Mediterranean Sea, North Europe, Baltic, Scandinavia, Adriatic, or Black Sea.**

**No Used/Salvaged cars/autos/vehicles Permitted to Chile, Algeria, or Tunisia**

<b>Destination Country:</b>	Egypt
<b>Requirements/Restrictions</b>	<p>Damietta: Import of Vehicles not permitted (to include new, used, motorcycles, or used heavy duty vehicles) Alexandria, Ain Sukhna, Port Said:</p> <ul style="list-style-type: none"><li>• Motorcycles to Egypt are prohibited, except for personal use (one motorcycle per B/L).</li><li>• New Vehicles – No autos over 1 year old.</li><li>• Used Vehicles – for personal use only (1 car per b/l and consignee).</li><li>• USED HEAVY DUTY VEHICLES Less than 7 years allowed for personal use. For project use, no restriction on production year.</li></ul> <p>For Motors of all vehicles, auto spare parts, generators, or forklifts cargo, destined to Port Said WEST, must clearly mention in BL if USED or NEW as it differs for YARD. If not clearly mentioned, shipment will be discharged as per available information and shipper is responsible for in case of wrong selection</p>

Answer Ex. E (emphasis and red font in original).

20. The form Emarat sent Claimant to complete and return to them “is a general form and is not country specific,” and does not contain a section to fill in an ACID number. R. Supp. Info pg. 1 at no. 2; Answer, pg. 1 at no. 4; Answer Ex. A; C. Supp. Info. pgs. 5 at no. 5 and 6 at no. 8.
21. Emarat did not make a written request to Claimant to provide an ACID number for the shipments at issue. R. Supp. Info. pg. 1 at no. 2; C. Supp. Info. Exs. Z, AA, and BB; Answer Exs. B, D, E; R. Supp. Info pg. 1 at no. 2; R. Supp. Ex. 5.
22. Claimant did not provide an ACID number in writing to Emarat for the shipments at issue. C. Supp. Info. pg. 5 at no. 4; C. Supp. Info. pg. 6 at no. 8; R. Supp. Info pg. 1 at no. 2c - d; R. Supp. Info pg. 2 at no. 3d.



23. “Emarat Shipping in lieu of the not filled up form and because we had to have something in writing, sent the estimate with pricing and added the shipper and consignee information and the ACID to be used on the shipment.” R. Supp. Info pg. 1 at no. 2(d).
24. Emarat entered the previously used ACID number into the shipping records for the cargo at issue. C. Supp. Info. pg. 5 at no. 4; C. Supp. Info. pg. 6 at no. 8; R. Supp. Info. pg. 1 at No. 2; R. Supp. Info pg. 2 at no. 3d; R. Supp. Info pg. 1 at no. 2c - d.
25. Emarat re-used the same ACID number for both of Claimant’s vehicles even though the Egyptian Authorities require that an ACID number be provided for each cargo imported to Egypt. R. Supp. Info. pg. 1 at no. 2b; Answer pg.1 at no. 4; Complaint Ex. 1; C. Ex. pgs. 1-6; Answer Ex. H.
26. The evidence contains no written authorization from Claimant to Emarat to re-use ACID number 9992023070000005277 for container number TLLU4452514’s shipping documents. R. Supp. Info. pg. 1 at no. 2.
27. On August 28, 2023, Emarat sent Claimant an email with a shipping estimate and a receipt for a shipping deposit paid by Claimant. Among other information on the estimate, Emarat listed ACID number 9992023070000005277 as the ACID number for the vehicles shipped in container number TLLU4452514. Answer Ex. F.
28. On August 28, 2023, Yousef Elawamry responded to the mail stating: “There is an error in the papers work. Supposed [sic] to be 2023 MERCEDES C300 not C30.” Answer, Exhibit G.
29. Claimant did not correct the ACID information provided by Emarat. He states:

Emarat shipping is the expert in shipping, that’s why I used them. If they fill in an ACID number on their own, then they should know what they are doing. I don’t know what’s the importance of ACID number is, nor what it is used for. This is Emarat shipping responsibility to verify ACID with shipping line before sending the cargo overseas. I used a broker from Egypt to provide me with [the ACID number used for the previous furniture shipment] because Emarat shipping asked me for an ACID number during the furniture shipment. If Emarat shipping needed a new ACID number, then they should have asked me for one.

C. Supp. Info pg. 1 at no.1.
30. On October 16, 2023, Emarat sent an email titled “Release and FedEx Tracking For -AIN SUKHNA 100 – NAM 6440461 – TLLU4452514” to Claimant, attaching CMA CGM bills of lading for both vehicles (2023 Mercedes C300 and 2023 Honda CRV), dated September 9, 2023, which listed the shipment’s ACID number as 9992023070000005277. Answer Ex. H.

31. Emarat's Invoice 52843 stamped "PAID" dated October 7, 2023, shows that Claimant made a payment in the amount of \$5,650 to Emarat for Container number TLLU4452514, comprising: \$5,100 for loading and shipping the 2023 Honda CRV and 2023 Mercedes C300; \$95 Pierpass charges; \$240.00 for 4 days of Chassis ; \$50 Doc Fee; \$65 Fedex fee for Fedex to Egypt; \$100 for Split bill of lading charges at \$50 each for vehicles' bills of lading. C. Ex. pg. 9;<sup>4</sup> C. Supp. Info. Ex. KK.

32. On October 25, 2023, CMA CGM sent an email to Emarat stating in pertinent part:

Please note that from local customs system regarding BLS # (NAM 6480440-NAM6440461) these showing ACID were used before. So as per the customs law & regulation, CNTR TLLU4452514 will ROB to be returned to origin POL & all related charges to be debited on POL account. Kindly check and confirm.

Answer Ex. I.

33. On October 25, 2023, Emarat forwarded the above CMA CGM email to Claimant, with Yousef Elawamry copied on the email, stating: "We got the following message from the shipping line today. They are saying the container will be returned to Long Beach, CA, because the ACID # was used before." C. Supp. Info. Ex. DD.

34. On October 28, 2023, Claimant responded to CMA CGM and Emarat stating in pertinent part:

I wasn't aware about the requirements and regulations till I received an email from Victor dated Oct 25, 2023 that the container will be returned to the USA because of a wrong ACID number being added.

According to Egypt customs, the shipper or consignee is able to correct the ACID number, pay penalty fees, and release the container at POD. It's absurd, and totally unreasonable to return a container back to POL (which is thousands of miles away) because of paperwork error. There must be a solution for this matter other than this outrageous return to POL method.

I was also able to obtain ACID number for each policy;

Mercedes C300 ACID number 9992023100000112292.

Honda CRV ACID number 9992023100000112581

**Time is the essence. Please fix this matter before shipment leaves Egypt.** [sic] Otherwise, I will seek legal rights in the USA

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<sup>4</sup> Claimant did not label the Complaint exhibits.

to get compensated for all financial and emotional damages from all parties involved. I also attached an image of the Vessel last tracking update.

Answer Ex. J (punctuation and emphasis in original).

35. On October 27, 2023, CMA CGM responded:

Dear Customer,

Please note that the POD team has already confirmed the below quotes and that it is not feasible to hold the container in Egypt

*Q / Pls note that according to customs law the date of loading from OPOL must be after the date of generating ACID number, therefore, first the container must be returned to the OPOL and then a new ACID number is generated. / UQ*

Answer Ex. J (emphasis in original).

36. On December 1, 2023, Victor Vega from Emarat sent an invoice numbered 52909 for charges in the amount of \$6,925.00 to Claimant for return of the rejected container. Emarat stated in the email containing the invoice:

Invoice for the return was emailed to you. CMA is already informed that we want to collect the container as soon as possible once it arrives.

Tareq, my boss, has been informed about all that [h]as been going on with your container, he recommended that you pay us the invoice so we can proceed to get the container out as soon as possible. CMA will ask for the fees to be paid before they release the container. The port could charge storage fees, those increase daily and they can be \$200/\$300 per day.

C. Supp. Info. Ex. A at pg. 1; C. Supp. Info. Ex. B.

37. This December 1, 2023, email from Emarat is the first time in the evidentiary record that Respondent Tareq Elbarq is documented in connection with the arrangement to ship Container number TLLU4452514. C. Supp. Info. Ex. A at pg. 1.

38. Invoice 52909 shows total charges in the amount of \$6,925.00 for the returned Container number TLLU4452514, comprising: \$350.00 for a “Change of Destination Documentation” fee; \$5,350 for freight charge; \$350 for “Change of Destination Fee Including Restow;” and, \$875.00 for “Container Drayage, De-Vanning, Cleaning” fees. C. Supp. Info. Exs. B and D.

39. On December 1, 2023, Claimant responded to Victor Vega's email, asking: "Does the attached \$6,925 invoice include any fees from your end or is it charges from the CMA company? Also, can you please send me a copy of the CMA container release invoice?" C. Supp. Info. Ex. A.

40. On December 4, 2023, Emarat responded to Claimant's question, stating:

The invoice does include some fees from us. Our fees are in the fourth line of the invoice, first three are CMA, our fees are basically what involves handling the cargo. We have to pay for the container trucking, pickup and return to the port, also for unloading/handling the cargo at our facility.

FYI \$95 pierpass, \$60/day for chassis rental fee have not been added to the invoice most likely they will need to be paid as well. Pierpass we have to check when the container arrives and for chassis it will depend how many days the container will be out.

C. Supp. Info. Ex. A.

41. The same day, Claimant responded: "1. Please send me CMA invoice directly without any of your agency charges. 2. How much CMA would charge to return the container back to Egypt? And what date?" C. Supp. Info. Ex. A

Claimant followed up with a second email the same day, stating: "I assume there is an invoice generated from CMA by now since the container is arriving in 10 days to the port. Please make sure to send this invoice today to decide what to do next with the container before its arrival." C. Supp. Info. Ex. A.

42. There then followed a series of back-and-forth email exchanges between Victor Vega from Emarat and Claimant the same day, December 4, 2023, with Mr. Vega stating that he had requested additional information from Emarat accounting department regarding the invoice and requesting payment from Claimant, while Claimant insisted that Emarat first provide the invoice received from CMA CGM for the container. Of note, Emarat states: "Accounting advised that the invoice sent to you has the charges from CMA and Emarat, nothing else to provide. The charges are listed with description and need to be paid as soon as possible." C. Supp. Info. Ex. A.

43. On December 5, 2023, Claimant emailed Victor Vega, stating:

You mentioned that first three lines of your invoice (attached) are CMA charges  $350 + 5350 + 350 = \mathbf{\$6050}$ .

I just received CMA container return invoice today total amount **\$4550** (attached).

There is a discrepancy between your invoice and CMA's invoice (that you didn't want to share with me).

Victor Vega responded the same day, stating: "I will let accounting know about this. Are you going to pay CMA directly? CMA indicated that their fees need to be paid in order to have the container release." C. Supp. Info. Ex. C.

44. On December 14, 2023, CMA CGM issued a pre-arrival notice for the returned container TLLU4452514, showing the waybill number as CMDU NAM6440461, Emarat as the shipper, Claimant as the notify party, December 15, 2023, as the estimated arrival date, and the destination as Long Beach, California. Unnumbered Complaint Ex. titled "Container Arrival Notice 17."

45. On December 14, 2024, Victor Vega emailed Claimant, stating:

How are you doing with the container? Keep in mind that storage will add up quickly if its not cleared and collected from the port soon after arrival.

CMA does not have very clear answers to my questions, so I feel safer that we pull the container, unload and return it empty to avoid as many additional charges as possible and be with CMA on this shipment. You can collect the cars from our warehouse once they are here. Of course you will need to pay for the trucking and any import fees that are paid.

C. Supp. Info. Ex. F.

46. He followed up with another email the same day, stating: "I did not hear back from you. I will start process going to get the container and bring to our yard." C. Supp. Info. Ex. F.

47. On December 15, 2023, Claimant emailed Victor Vega, stating: "I emailed you before that I think [I] will pick up the container on my own. You are not allowed to take any action without getting my approval first." Victor Vega responded the same day, stating: "The container is arriving tonight, not much time to think about it anymore, container needs to be pulled out as soon as possible and returned to the port ASAP. I have been in communication with CMA and they finally confirmed that only Emarat can collect the container." C. Supp. Info. Ex. F.

48. The container arrived at Long Beach on December 15, 2023. Complaint at pg. 2, C. Supp. Info. Ex. F.

49. On December 19, 2023, Claimant signed a form designating Hahn International Inc. as the customs broker and export forwarding agent for the returned container. R. Supp. Info. Ex. 9.

50. Between December 28, 2023 and January 2, 2024, Claimant and Victor Vega, exchanged a series of emails in which Claimant insisted that Emarat not pick up his container or break the seal on the container without his presence otherwise he would hold them liable in the event of loss or damage to his cargo, and with Emarat insisting that the container had already been delivered to its yard without a seal and demanding payment from

Claimant for accrued charges on the container, including demurrage and chassis fees. C. Supp. Info. Exs. G – M.

51. On January 2, 2024, Claimant received an email from APL Terminal, stating:

Please keep in mind, CMA did not hand over the unit. Emarat Shipping is well within their rights as shipper of the cargo to pick-up the unit. CMA guaranteed the storage and dwell ch[missing words] discussed to avoid any additional cost to all parties while investigating the faulty party.

The seal on our records show UL8886850. As per below, the terminal reflects the same seal number when discharging the vessel. Truckers in the U.S. are to inspect the container be[missing words] and if the seal is missing, to report the issue with the terminal and have one placed on the unit. The second screen shot below shows the date and time (U.S. Pacific time) of when the unit wa[missing words].

C. Supp. Info. Ex. N (email from John Spyker at APL Terminal to Sam Elawamry with other persons copied, including Emarat Customer Service Department, Yousef Elawamry and CMA CGM representatives).

52. APL records indicate that Container TLLU4452514 was picked up on December 29, 2023, with its seal intact and no damages. C. Supp. Info. Ex. N.

53. On January 2, 2023, Victor Vega emailed Claimant, stating:

Let us know if you want to be present when we unload the container tomorrow afternoon, we need to get confirmation from you by noon, January 3rd. The container needs to be unloaded and returned empty to the port asap to avoid the daily fees to add up even more, these fees that you will have to pay.

I informed you since Friday last week that we were able to unload today and you did not show up. If you are not able to come we will have to unload the container without your presence in order to return the container to the port asap.

The cargo will be stored in our warehouse and it will incur a \$10/day storage fee per vehicle and \$2.50/day storage fee per pallet.

In order to collect the cargo from our warehouse you need to pay Emarat Shipping for all the import fees, including the terminal storage charges that CMA guaranteed. We can refund the guaranteed CMA charges within 90 days or earlier if CMA

confirms that the guaranteed charges will not be charged, again only if CMA confirms these are not to be paid.

Once more we are unable to release the cargo without payment. If there is any attempt to from your end to collect the cargo without payment we will have to call the police.

C. Supp. Info. Ex. O.

54. On January 4, 2024, Respondent Tareq Elbarq emailed Claimant indicating that Emarat had changed the payment terms, stating:

Due to your continuous aggressive behaviour [sic], disrespectful manners, constant threats, and generally acting in bad faith. We have decided to limit the method of payment accepted for your shipment to the following: wire transfer, cash, cashier check (five business days hold), and zelle. [sic]

C. Supp. Info. Ex. P.

55. On January 9, 2024, Tareq Elbarq sent another email to Claimant stating:

We got an email from your Attorney, I believe by mistake saying that you're going to meet with him in the office tomorrow. I'm not threatened in anyway, and I am not talking from a point of weakness. I tried to help you out to some avoid costly litigations [sic]. As U stated in a previous email, I am willing to waive some of the fees in order to reach some sort of agreement with you and help you out. At this point, it seems you don't get that everybody is trying to help you. Cma [sic] just shut the door and pretty much told you charges are valid. Although they had the ability to at least reduce them. I will contact my attorney to draft up an agreement, waiving the fees discussed before will be a final settlement agreement that you will have to sign to relieve us from any legal action in the future [sic]. In other words, hold harmless. I am not able to wave [sic] a substantial amount of fees with no agreement reached. It's pointless. I can use that money as retainer for the law suite. [sic]. We will add storage as well at the rate provided to you.  
Thanks

C. Supp. Info. Ex. Q. He followed up with another email on the same day: "I like your choice of words. Discounts = hold harmless agreement No discount = pay in full. The ball is in your court." C. Supp. Info. Ex. Q.

56. On January 9, 2024, Claimant rejected Emarat's offer of a discount in exchange for signing the waiver of liability, responding to Tareq Elawamry: "Discounts or not discounts. I don't agree with any fees you charged or will charge. I already said that

before, and you already know that. Send me your final invoice please and let's just call it a day." C. Supp. Info. Ex. Q.

57. On December 20, 2023, Emarat employee, Victor Vega, indicated to Claimant that the customs broker's charges would be a total of \$1,200, stating in pertinent part in an email to Claimant: "I want to make sure you know what his fees will be. I will ask for an estimate on his fees, I think he needs to get you a bond and importer number which is about \$800 plus his usual fees at about \$400." C. Supp. Info. pg. 3 at no. 2; C. Supp. Info. Ex. II.
58. On January 11, 2024, Emarat issued invoice 52963 to Claimant in the amount of \$8,302.91 for the returned Container number TLLU4452514, comprising:

\$3,055.41 for customs broker charges "collected on behalf of Hahn International Invoice;" \$1,150 for two days of container trucking; \$250 for chassis rental fees for five days; \$95 for Pierpass charges; \$800 container unloading fee; \$1,500 admin fee "for processing and handling. Countless hours for dealing with steamship line and client;" \$900 container Storage Fee of \$150 per day from 12/29/23 – 1/3/24; \$180.00 Vehicle Storage Fee at \$10 a day per vehicle from 1/3/24 – 1/11/24; \$22.50 for pallet storage at \$2.50 a day per pallet from 1/3/24 – 1/11/24; \$300 In/Out fee for the two vehicles; \$50 In/Out Fee for one pallet.

C. Ex. pg. 7; C. Supp. Info. Ex. EE; R. Supp. Info. pg. 2 at no. 5.
59. Emarat's Invoice 52963 reflects a markup of CMA CGM's charges. R. Supp. Info pg. 2-3 at no. 5. *See also* R. Supp. Ex.2 (CMA CGM Invoice for charges totaling \$4550, comprising: \$350.00 for "Change of Destination Documentation"; \$3,850.00 for "Freight Ch[arge] Additional NOS"; and \$350 for "Change of Destination (at sea) fee, incl restows").
60. Emarat does not have tariff rates or rules supporting any of the charges in its invoice. R. Supp. Info pg. 3 at no. 8.
61. Claimant disputed Emarat's charges, however, Emarat refused to release Claimant's container unless he paid all outstanding charges on the container. C. Supp. Info. pg. 3 at no. 2; C. Supp. Info. Ex. O; Elbarq Supp. Info pg. 7 at no. 14.
62. On January 11, 2024, Claimant paid Emarat's invoice in full; however, Emarat refused to release the shipments unless Claimant signed Emarat's cargo release form. C. Supp. Info. pg. 3 at no. 2 and C. Supp. Info Ex. GG.
63. Claimant then called the police for assistance in retrieving his shipments. C. Supp. Info. pg. 3 - 4, at no. 2 and C. Supp. Info Ex. GG.
64. Tareq Elbarq stated to the police officer who responded to Claimant's call that this was a civil matter and the shipments would not be released without a court order. C. Supp. Info. pg. 3 – 4; C. Supp. Info. Ex. GG; see also C. Supp. Info. Ex. S.



65. Emarat's Cargo Release Form, which it required Claimant to sign as a condition for securing release of his shipments, described the cargo as a 2023 Honda CRV Vin 7FARS3H45PE004099, 2023 Mercedes C30 VIN W1KAF4GB4PR089911; and 1 pallet containing 8 tires & 4 pieces/Boxes. A section titled "Comments" states: "The above cargo is released to Sameh Elawamry and/or his representative. The vehicles were fully inspected by Sameh Elawamry and/or representative and no damages were found on the vehicles. No missing items or parts are noted from the vehicles or loose cargo. All cargo in the same condition it was received prior to shipping to Egypt." C. Supp. Info. Ex. R.
66. On January 11, 2024, Claimant's attorney, Ahmed Kasem, Esq. emailed a letter to Victor Vega and Tareq Albareq titled "Re: Demand for Release of Automobiles in Your Possession Without Owner Consent." The letter stated:

Dear Messieurs Vega and Elbarq:

This letter follows up my initial demand letter dated November 2, 2024. This will be Mr. Elawamry's contract with Emarat Shipping, Inc. ("Emarat") for the delivery of a 2023 Mercedes C300 and a 2023 Honda CRV (cumulatively the "Vehicles") from Pasadena, CA to Giza, Egypt. Because of Emarat's ineptitude the Vehicles were returned to California undeliverable. In addition to your ineptitude, you demanded Mr. Elawamry pay invoices 52963 and 52946 for additional services (not requested by Mr. Elawamry) in the form of a cashier's check to release the vehicles.

Today, Mr. Elawamry presented the cashier's checks to you in person for FULL PAYMENT of your final invoices, which he disputed and continues to dispute, and came to your office to take possession of his Vehicles. Full payment of your invoices extinguishes any right you have to lien or possession of the Vehicles.

Although you accepted payment, you refused to release the Vehicles to Mr. Elawamry. You are now in possession of the Vehicles without Mr. Elawamry's consent. This constitutes conversion and/or theft of the Vehicles:

California Vehicle Code 10851 provides in part:

- (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

Mr. Elawamry demands that you contact him tomorrow, January 12, 2024, to arrange for the unconditional release of the Vehicles. If you fail to do so, we will assume that you do not intend to release the Vehicles and have attempted to take personal possession of the Vehicles and convert them to your own personal property. Mr. Elawamry will move forward with legal action against Emarat Shipping and Mr. Elbarq personally for fraud, conversion, breach of contract, breach of fiduciary duty, and unfair business practices as well as other violations of law related to shippers/common carriers.

As part of his damages, he will demand the full value of the vehicles (\$170,000), punitive damages, attorney fees, and all other costs incurred. This is not a demand for a “settlement of dispute” and no release will be executed. This is a demand for the return of the Vehicles taken by you without Mr. Elawamry’s consent. This will be my final communication with you short of service of a summons and complaint.

C. Supp. Info. Ex. S (email letter from Ahmed Kasem, Esq. to Victor Vega and Tareq Elbarq dated January 11, 2024).

67. On January 12, 2024, Tareq Elbarq responded: “We tried to give him his cars but he did not follow the regular procedure of signing a release form. Release for the vehicles in the same condition he gave us. Also he keeps talking about internal damage. Your client is a [missing words]” C. Supp. Info. Ex. T.

68. In another email on January 12, 2024, Tareq Elbarq continued:

Last email cut short I am driving

Your client, I believe, suffers from Litigious syndrome. The below is just what I looked up under his personal name.

We as well as the steamship line have exhausted every peaceful Avenue with this guy. He made a mistake, and he admitted it. I was hired to ship the vehicles and deliver them to Egypt which we have done and fulfilled. We are not an import company, and we do not do imports, we were simply dragged into this.

We will attach CMA CGM to any lawsuit

I gave your Client the deal of a lifetime. I swallow all the charges that belong to me plus Trucking and Port fees. You were copied in all the emails. He just needs to pay the steamship line and broker.

I am not going to allow him to take the vehicles out without signing a condition report. I’m not gonna put myself out there for huge exposure. He refused to sign. He’s going to sue anyways.

I am open for negotiations. Your client is confusing, kindness with weakness. But again, this is what he does sue people. File your lawsuit service us and we have 30 days to respond. I do not have space in my warehouse for his vehicles. I want them out as soon as possible. If we do not reach an agreement soon, I will be forced to take the car to a third-party storage and you can add another person in your lawsuit.

C. Supp. Info. Ex. U.

69. On January 15, 2024, Tareq Elbarq again emailed Claimant' attorney, stating: "As part of our procedure a release form has to be signed. If your client chooses not to sign the cargo release form we have, we will consider the cargo abandon [sic]." C. Supp. Info. Ex. Y.
70. On January 15, 2024, Claimant's attorney responded:

I thought this was resolved last week on our call on Friday. No one can force someone to sign a release of liability as a condition of completing their contractual obligation and returning the vehicles. Your continued possession of Mr. Elawamry's vehicle is illegal.

You asked me to prepare language that would be agreeable to evidence Mr. Elawamry's inspection of the car. I did so and presented it to you on Friday. You responded by email th[a] this language is not different than the language you proposed but "YOU STILL HAD TO THINK ABOUT IT." You have video and photos of the vehicles, so your written demands are unnecessary. Your threat to consider the cargo abandoned and take personal possession is disingenuous and constitutes further bad faith action on your part.

Mr. Elawamry will come tomorrow to pick up his vehicles and will only sign language that I already proposed to you on Friday, January 12. He will not sign any release of liability or any additional language. If you choose not to release his vehicles then it is considered conversion under civil law and theft under criminal law. It is not an abandonment and your attempt to classify it as abandonment may subject you to further liability under other causes of action or criminal statutes.

We look forward to your release of the Vehicles to Mr. Elawamry tomorrow and the conclusion of this transaction between the parties.

C. Supp. Info. Ex. Y.

71. On January 17, 2024, Claimant submitted a signed release containing the language proposed by his attorney to Emarat and Emarat released Claimant’s shipments. The release signed by Claimant states:

The above cargo is released to Sameh Elawamry and/or his representative. Sameh Elawamry and/or representative fully visually inspected the vehicles and no visual damages were found on the vehicles. No missing items or parts are noted from the vehicles or loose cargo. All cargo is in the same visual condition it was received prior to shipping to Egypt.

C. Supp. Info at no. 2; R. Supp. Info. Ex. 8.

72. Respondent Tarek Elbarq used insulting and inappropriate language in some of his emails to Claimant and emails discussing Claimant, for instance, telling Claimant’s attorney that Claimant “suffers from Litigious syndrome,” telling Claimant: “You a[r]e not just a loser but also a liar. I will deal with your crap tomorrow F[.]k off for now,” and asking Claimant: “Are you a professional retard or gifted amateur?” C. Supp. Info. Ex. U; C. Supp. Info. Ex. V; C. Supp. Info. Ex. W.

### III. DISCUSSION

#### A. Controlling Authority

Respondent Emarat is an ocean transportation intermediary, licensed as both a non-vessel-operating common carrier and an ocean freight forwarder. “The term ‘ocean transportation intermediary’ means an ocean freight forwarder or a non-vessel-operating common carrier.” 46 U.S.C. § 40102(20). An “ocean freight forwarder” is a person that –

- (A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and
- (B) processes the documentation or performs related activities incident to those shipments.

46 U.S.C. § 40102(19).

A “common carrier” is a person that –

- (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;
- (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

- (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country  
.....

46 U.S.C. § 40102(7).

A non-vessel-operating common carrier is “a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(17). A “common carrier” is a person that –

- (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;
- (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and
- (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country  
.....

46 U.S.C. § 40102(7). The term “shipper” means –

- (A) a cargo owner;
- (B) the person for whose account the ocean transportation of cargo is provided;
- (C) the person to whom delivery is to be made;
- (D) a shippers’ association; or
- (E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

46 U.S.C. § 40102(23).

Claimant alleges that Emarat held his cargo ransom to force him to pay disputed invoices and to sign their cargo release form, and that they provided additional services he never requested or required in order increase his charges, in violation of section 41102(c) which provides: “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c).

Pursuant to section 545.4 of the Commission’s regulations, in order to establish a successful claim for reparations” under section 41102(c), the claimant must demonstrate that:

- (a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
- (b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;

- (c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
- (d) The practice or regulation is unjust or unreasonable; and
- (e) The practice or regulation is the proximate cause of the claimed loss.

46 C.F.R. § 545.4.

Claimant alleges that Emarat retaliated against him, in violation of section 41102(d) but does not specify the actions by Emarat that constitute the alleged violation. Section 41102(d) provides:

Retaliation and Other Discriminatory Actions.-A common carrier, marine terminal operator, or ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not:

- (1) retaliate against a shipper, an agent of a shipper, an ocean transportation intermediary, or a motor carrier by refusing, or threatening to refuse, an otherwise-available cargo space accommodation; or
- (2) resort to any other unfair or unjustly discriminatory action for-
  - (A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has-(i) patronized another carrier; or (ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or
  - (B) any other reason.

46 U.S.C. § 41102(d) (2022).

Claimant also alleges that Emarat violated section 41104(a)(4)(A), (D) and (E), as well as 41104(a)(14) and (15) by imposing unfair rates and charges; loading Claimant's freight from the port against his instructions; and engaging in unfair adjustment of price and terms of release of freight; conducting unjust, unreasonable and retaliatory practices against Claimant, including assessing Claimant for a charge that is inconsistent or does not comply with all applicable provisions and regulations; and invoicing Claimant for demurrage or detention charges without including the required invoice in the invoice. The section 41104(a) provisions in question provide:

- (a) IN GENERAL – A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not ...
  - (4) for service pursuant to a tariff, engage in any unfair or discriminatory practice in the matter of-
    - (A) rates or charges;

\* \* \* \*

(D) loading and landing of freight; or

(E) adjustment and settlement of claims;

\* \* \* \*

(14) assess any party for a charge that is inconsistent with does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor rule); or

(15) invoice any party for demurrage or detention charges unless the invoice includes information as described in subsection (d) showing that such charges comply with-

(A) all provisions of part 545 of title 46, Code of Federal Regulation (or successor regulations); and

(B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled “Interpretive Rule on Demurrage and Detention under the Shipping Act” (or successor rule).

(d) DETENTION AND DEMMURAGE INVOICE INFORMATION. -

(1) INACCURATE INVOICE. -If the Commission determines, after an investigation in response to a submission under section 41301, that an invoice under subsection (a)(15) was inaccurate or false, penalties or refunds under section 41107 shall be applied.

(2) CONTENTS OF INVOICE.-An invoice under subsection ((a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

(A) Date that the container is made available.

(B) The port of discharge.

(C) The container number or numbers.

(D) For exported shipments, the earliest return date.

(E) The allowed free time in days.

(F) The start date of free time.

(G) The end date of free time.

(H) The applicable detention or demurrage rule on which the daily rate is based.

(I) The applicable rate or rates per the applicable rule.

(J) The total amount due.

(K) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.

(L) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.

(M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

46 U.S.C. § 41104(a) and (d) (2022).

Claimant is found to have violated section 40501 of the Shipping Act and section 520.3(a) of the Commission's Regulations. Section 40501(a) provides "Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established." 46 U.S.C. § 40501(a). *See also* section 520.3(a) stating: "Unless otherwise exempted or excepted by § 520.13, all common carriers and conferences must keep open for public inspection in automated tariff systems showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established. 46 C.F.R. § 520.3(a).

### **B. Evidence and Burden of Proof**

"In all cases governed by the requirements of the Administrative Procedure Act, 5 U.S.C. 556(d), the burden of proof is on the proponent of the motion or the order." 46 C.F.R. § 502.203. A person alleging a Shipping Act violation, therefore, bears the burden of proof to demonstrate its allegations by a preponderance of the evidence. 46 C.F.R. § 502.203; 5 U.S.C. 556(d); *Maher Terminals, LLC v. Port Auth. of N.Y. & N.J.*, Docket No. 08-03, 2014 WL 9966245, at \*14 (FMC Dec. 17, 2014). The term, "burden of proof" is understood to mean "the burden of persuasion." *Director v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). When the party with the burden of persuasion produces sufficient evidence (characterized as a prima facie case), the burden of production shifts to the other party to produce evidence rebutting that case. *In re South Carolina State Ports Auth. for Declaratory Order*, Docket No. 94-24, 27 S.R.R. 1137, 1161 (FMC Aug. 12, 1997). *Steadman v. SEC*, 450 U.S. 91, 101 (1981) ("Where a party having the burden of proceeding has come forward with a prima facie or substantial case, he will prevail unless his evidence is discredited or rebutted."). When direct evidence is unavailable, inferences may be drawn from certain facts and circumstantial evidence may be sufficient so long as the fact finder does not rely on mere speculation. *Waterman S.S. Corp v. General Foundries, Inc.*, Docket No. 93-15, 26 S.R.R. 1173, 1180 (ALJ Dec. 9, 1993) adopted in relevant part, 1994 WL 279898, 26 S.R.R. 1424, (FMC June 13, 1994). If the evidence produced by both parties is evenly balanced, the party with the burden of persuasion will not prevail. *Greenwich Collieries*, 512 U.S. at 281.

### **C. The Claim Against Respondent Tareq Elbarq is Dismissed**

As an initial matter the sections alleged to be violated apply to the conduct of regulated entities, not individual persons. *See* 46 U.S.C. § 41102(c) ("A common carrier, marine terminal operator, or ocean transportation intermediary may not . . ."); 46 U.S.C. § 41102(d) ("A common carrier, marine terminal operator, or ocean transportation intermediary. . ."); Section 41104(a) ("A common carrier . . . may not . . ."); and 41104(d) (addressing requirements for demurrage and detention invoices issued by a regulated entity). Claimant does not allege that Elbarq is an ocean common carrier, marine terminal operator, or an OTI, and no evidence indicates that he is one or conducted himself as one. The prohibitions under the alleged sections



do not thus apply to Elbarq.

Moreover, Claimant dealt with Elbarq as a representative of Emarat rather than in his personal capacity. Elbarq explains that he “had never met or spoken to Sameh or his representative until the second shipment was sent back by the Egyptian Customs Authority.” Elbarq Reply pg.1 at no. 1(b). Elbarq is the president, treasurer and secretary of Emarat (PF 1). In order to pierce the corporate veil and find that Elbarq is personally liable for the actions of Emarat, the evidence would have to demonstrate the necessity to do so, for example, proving among other factors that Tarek Elbarq exercised ownership and control of Emarat, failed to maintain corporate minutes or adequate corporate records or to follow corporate formalities, commingled his and Emarat’s funds and other assets, or diverted Emarat’s funds for his personal use. *See, e.g., Rose Int’l, Inc. v. Overseas Moving Network Int’l Ltd.*, 29 S.R.R. 119, 167-168, 2001 WL 865708, at \*51, 83 (FMC 2001). None of these factors are shown in this case. To the contrary, Claimant merely alleges:

Mr Tareq Elbarq, in his individual capacity, chose to increase the services provided and fees charged, and personally refused to release the vehicles back into my custody. In addition, Mr Elbarq took actions in a personal manner, made decisions that solely serves his own interest, and deviated from all professional and ethical ways of conducting business.

C. Supp. Info. pg. 2 at no. 2. The evidence shows that Elbarq displayed unprofessional and unbecoming behavior, refusing to release Claimant’s shipments even when he paid the contested charges and insulting Claimant with inappropriate language in his emails to Claimant, for instance, telling Claimant’s attorney that Claimant “suffers from Litigious syndrome” (C. Supp. Info. Ex. U), telling Claimant: “You a[r]e not just a loser but also a liar. I will deal with your crap tomorrow F[.]k off for now” (C. Supp. Info. Ex. V), and asking Claimant: “Are you a professional retard or gifted amateur?” (C. Supp. Info. Ex. W). Inappropriate as Respondent Elbarq’s conduct might have been, it does not constitute a basis to hold him personally liable for Emarat’s, violations. Accordingly, the Claim against Tareq Elbarq is dismissed.

#### **D. Emarat Violated Section 41102(c)**

Section 41102(c) forbids a common carrier, marine terminal operator, or ocean transportation intermediary to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. 46 U.S.C § 41102(c). Claimant alleges that Respondents violated section 41102(c) “by conducting unjust, unreasonable, and retaliatory practices against Claimant, including [p]roviding additional services not requested or required in order to increase fees against Claimant [and] [r]efusing to release Claimant’s property.” C. Supp. Info. pg.5 at no. 3.

Pursuant to section 545.4, an award of the reparations requested is not automatic even when the alleged conduct is shown to be unjust and unreasonable in violation of 41102(c). To succeed in a claim for reparations under section 41102(c), the claimant must also show that:

- 1) the respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
- 2) the alleged illegal conduct is “occurring on a normal, customary, and continuous basis;”
- 3) the alleged practice or regulation relates to or is connected with receiving, handling, storing or delivering property;
- 4) the alleged practice or regulation is unjust or unreasonable; and,
- 5) the alleged practice or regulation in question is the proximate cause of the loss the claimant alleges it suffered.

46 C.F.R. § 545.4. To prevail, all five elements must be proven.

### 1. Emarat is an Ocean Transportation Intermediary

While the parties do not discuss whether Emarat acted as a regulated entity for the transportation at issue, the evidence shows that Emarat acted as an NVOCC for the transportation of the vehicles at issue. An NVOCC is a common carrier that does not operate the vessels by which it provides ocean transportation, and is a shipper in its relationship with the ocean common carrier it engages to transport the shipments, holding itself out to the general public to provide ocean transportation of cargo between the United States and a foreign country for compensation, and assuming responsibility for the transportation of the cargo from the place of receipt of the cargo to the place of delivery of the cargo. *See* 46 U.S.C. §§ 40102(7) and 40102(17). In *CMI*, a case in which the Commission analyzed whether the respondent had been acting as a common carrier, the Commission stated that “[c]harging ocean freight rate is indicative of carrier status.” *CMI Distribution, Inc. v. Service by Air*, FMC Docket No. 17-05, 2021 WL 9204113, at \*6, 3 F.M.C. 2d 83, 88 (FMC July 26, 2021) (citing *Worldwide Relocations – Possible Violations of the Shipping Act*, FMC Docket No. 06-01, 2012 WL 11914713 (FMC Mar. 15, 2012)).

Emarat is licensed by the Commission as an OTI, including as an NVOCC, a type of ocean transportation intermediary (PF4), and it was listed in CMA CGM’s shipping documents, including the bill of lading, as the shipper for the cargo at issue PF 7-8. Further, CMA CGM explicitly stated in an email to Claimant, when he insisted that he, not Emarat, should pick up and unseal his container: “Emarat Shipping is well within their rights **as shipper of the cargo** to pick-up the unit.” C. Supp. Info. Ex. N (emphasis added). Further, CMA CGM billed Emarat for the shipments, Emarat paid CMA CGM for the shipments, and then Emarat issued its own invoices to Claimant, adding its own additional charges for the shipments. Moreover, Emarat does not dispute that it acted as an NVOCC, explaining why it failed to publish a tariff supporting its charges for the shipments “[a]s we have never experienced such a matter before we do not have a tariff rate for this charge.” C. Supp. Info. pg. 3, at no. 8a. Thus, the first element required for a successful claim for reparations is satisfied – that Emarat acted as an OTI for the transportation at issue.

## **2. The Alleged Practice Relates to or is Connected with Receiving, Handling, Storing, or Delivering Property.**

The alleged conduct is related to Emarat's delivery of Claimant's cargo from the United States to Egypt and return of the cargo from Egypt to the United States. The element requiring that the practice at issue be related to or connected with receiving, handling, storing, or delivering property is, therefore, also satisfied.

## **3. Respondents' Conduct was Unjust and Unreasonable.**

The evidence shows that despite being aware of the requirement for an ACID number to be obtained and included for each imported vehicle, Emarat nevertheless copied an ACID number previously used for another shipment by Claimant and inserted it into the bills of lading for both of the vehicle at issue, causing them to be rejected as invalid by the Egyptian Customs Authority and ordered to be returned to the United States. Emarat then imposed its own charges in addition to the ocean common carrier's charges for the return of the container to the United States, and forced Claimant to pay those charges by refusing to release the shipments until Claimant paid them. Also, Emarat continued to refuse release of the shipments even when Claimant paid the contested charges in an attempt to force Claimant to sign a release absolving Emarat for liability for its handling of the shipments (PFs 12-15, 20-29, 32-43, 49-50, 52-71).

The evidence does not support Emarat's contention that it re-used the old ACID number at Claimant's behest and Claimant denies that Emarat requested that he or his representative provide ACID numbers for the shipments. Claimant explains that when he obtained and provided an ACID number to Emarat in the past it was because Emarat specifically requested the ACID number. He states that he was not aware that an ACID number was needed for every shipment or aware of its importance until his shipments were rejected by the Egyptian authorities. Claimant further explains that he tried to obtain ACID numbers for the vehicles when he learned they were needed but by then it was too late. Complaint, pg. 1; C. Supp. Info. pg. 5 at no. 4, pg. 5 at no. 5, pg. 6 at nos. 8-9; Answer, Ex. J.

There is no documentary evidence corroborating Emarat's claim that it requested an ACID for the shipments at issue here from Claimant. Although Emarat initially claimed it had sent a form to Claimant requesting the ACID numbers and Claimant failed to fill out the form (Answer pgs. 1-2 at 7-8), when asked to produce the form requesting the ACID number, Emarat then explained that the form did not actually request an ACID number and that it had merely sought to illustrate that it re-used the old ACID number because Claimant failed to provide one and Emarat "had to have something in writing." Answer pg. 1 at no. 2. Similarly, Emarat's claim that Claimant's "representative [Yousef Elawamry] delivered some items and verbally asked us to use the same info as the Furniture Shipment including ACID # 9992023070000005277" (Answer pg. 2 at no. 11) is not only unsubstantiated by any documentary evidence but also supports Claimant Sameh Elawamry's statement that he never himself authorized Emarat to re-use the old ACID number. In any case, Emarat does not explain why it would have accepted the verbal instructions of a party other than Claimant, the actual shipper, and produces no document evidencing authority from Claimant Sameh Elawamry for Yousef to act on his behalf. The only title provided regarding Yousef Elawamry's role in connection with the vehicle shipments is his signature under the "Driver name" section of the cargo release form Emarat forced Claimant to

sign.

Emarat's further argues that Claimant gave consent to re-use the invalid ACID number by default when Claimant corrected information regarding one of his vehicles but not the ACID number entered by Emarat and that he admitted guilt when he told CMA that he was not aware of the requirements and regulations regarding ACID numbers and tried to obtain new ACID numbers for the shipments. Answer pg. 6, no. 37; Answer, Ex. J; C. Supp. Info. pg. 2 at no. 2g, pg. 5 at no 16a and d-f; Elbarq Supp. Info. pg. 2 at no. 2c and e, pg. 3 at no. 3c. Emarat's arguments lack merit. In the first place, Yousef Elawamry, not Claimant, corrected the error in response to an email in which Emarat copied him, relaying the shipping information for the Mercedes C300 as a "Mercedes C30" (see PF28 and Answer Ex. G ("Yousef Elawamry stating: Supposed [sic] to be 2023 MERCEDES C300 not C30")). Moreover, as Claimant indicates, because he did not provide the number, was not aware of its importance, and relied upon Emarat's expertise, his failure to notice or correct the ACID does not support the contention that he authorized its use, as Emarat claims. In addition, the fact that Claimant obtained new ACID numbers when he learned they were needed suggests that he was proactively trying to mitigate the problem, not that he was admitting guilt. It is not the case that Emarat shipped the vehicles without an ACID number and the vehicles were refused on that basis. Here, rather, Emarat took the specific action of entering a number it knew to be invalid, knowing that ACID numbers were required to be obtained for the vehicle shipments, which makes Emarat directly responsible for the rejection of the vehicles (see Emarat Reply pg. 5 at no. 5, where Emarat states: We asked for ACID on the first Shipment and the Second shipment. We are aware of the regulation that ACID is required. We are not to obtain or ask the client where he obtained the ACID. We were told to use the same info as the first shipment and we did."). It is clear that a new ACID number was required for each vehicle, yet Emarat used the same old ACID number for the two vehicles. Therefore, relying on the evidence of record, due to its use of an invalid ACID number to ship the vehicles to Egypt, Emarat is responsible for the rejection of the shipments by the Egyptian authorities and their forced return to the United States.

Further, the evidence shows that even when Claimant paid all charges due on the returned container Emarat continued to hold the cargo to force Claimant to sign a document releasing Emarat from liability for its handling of the shipments (PFs 55-56, 62- 71). Elbarq stated to Claimant's attorney: "I am not going to allow him to take the vehicles out without signing a condition report. I'm not gonna put myself out there for huge exposure. He refused to sign. He's going to sue anyway" (PF 68, C. Supp. Info. Ex. U), and "[a]s part of our procedure a release form has to be signed. If your client chooses not to sign the cargo release form we have, we will consider the cargo abandon [sic]." C. Supp. Info. Ex. Y.

The Commission has found that a common carrier or OTI that forces a shipper to pay higher charges than contracted by holding the shipper's cargo hostage, or that unduly delays delivery of a shipment has acted unjustly and unreasonably, in violation of section 10(d)(1), the predecessor to section 41102(c). See, e.g., *Bernard & Welcraft Welding Equip. v. Supertrans Int'l, Inc.*, Docket No. 02-12, 29 S.R.R. 1348, 1354, 2003 WL 136313, at \*8 (ALJ Jan 8, 2003), admin. Final Feb. 12, 2003 (finding that an NVOCC that holds "cargo hostage to its demands for more money which the innocent cargo owner had no legal obligation to pay" has violated section 10(d)(1).); *Eastern Mediterranean Shipping Corp. d/b/a Atlantic Ocean Line and Anil K. Sharma – Possible Violations of Section 10(a)91, 10(b) and 10(d)(1) of the Shipping Act of 1984*,

Docket No. 98-16, 28 S.R.R. 791, 795, 1999 WL 125987 (ALJ Feb. 3, 1999), admin. final Mar. 9, 1999 (finding among other reasons that the respondent violated section 10(d)(1) because due to its “actions or inactions” it “made it necessary for the shippers to pay storage and demurrage charges in order to receive their cargo, or made them have to pay higher fees after the cargo had arrived at destination for the same purpose”); *Total Fitness Equip. v. Worldlink Logistics, Inc.*, Docket No. 1831(F), 28 S.R.R. 534, 1998 WL 940255 (FMC Dec. 10, 1998) (finding that an OTI violated section 10(d)(1) for knowingly overcharging the shipper).

Because Emarat was at fault for the failure to deliver the shipments to Egypt as contracted and their forced return to the United States, Emarat acted unjustly and unreasonably, in violation of section 41102(c), when it forced Claimant to absorb the costs to return the shipment and when it imposed its own additional charges, unsupported by a tariff, to increase the costs. Also, Emarat acted unjustly and unreasonably when it continued to hold Claimant’s cargo hostage even after Claimant had paid all outstanding charges on the cargo to force Claimant to sign a form absolving Emarat from liability for its handling of the shipments. Accordingly, the third element for a successful 41102(c) claim for reparations is also demonstrated.

#### **4. The Claimed Act Occurred on a Normal, Customary, and Continuous Basis.**

Regarding why it continued to refuse to release the container even after Claimant had paid all outstanding charges on it, Emarat stated: We tried to give him his cars but he did not follow the regular procedure of signing a release form.” PF 67, C. Supp. Info. Ex. T. In addition, Emarat stated: “As part of our procedure a release form has to be signed. If your client chooses not to sign the cargo release form we have, we will consider the cargo abandon [sic].” PF 69, C. Supp. Info. Ex. Y. Thus, according to Emarat, it was following its normal business procedure when it refused to release the cargo despite the fact that no charges were owed on it as of the pint in time that Claimant was being forced to sign Emarat’s release form to receive his cargo. The evidence thus establishes that Emarat’s refusal to release the container was part of Emarat’s normal business practices, and occurred on a normal, customary, and continuous basis. Accordingly, this required element for a successful claim is also satisfied.

#### **5. The Practice by Respondents is the Proximate Cause of the Loss Suffered by Claimant.**

Claimant’s damages, the costs he incurred and paid for the shipping of his cargo that Emarat failed to deliver to the agreed upon destination, and the charges he paid for the return of the container, were as a result of the above-discussed illegal conduct by Emarat. Accordingly, the remaining element for a successful section 41102(c) reparations claim is similarly satisfied.

Claimant thus demonstrates that Emarat violated section 41102(c) and that he is entitled to recover reparations against Emarat for the violation.

#### **E. The Evidence Supports a Finding that Emarat Violated Section 41102(d)**

Claimant alleges that Emarat violated section 41102(d). Section 41102(d) provides:

A common carrier, marine terminal operator, ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not-

- (1) retaliate against a shipper, an agent of a shipper, an ocean transportation intermediary, or a motor carrier by refusing, or threatening to refuse, an otherwise-available cargo space accommodation; or
- (2) resort to any other unfair or unjustly discriminatory action for-
  - (A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has-
    - (i) patronized another carrier; or
    - (ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or
  - (B) any other reason.

46 U.S.C. § 41102(d) (2022).

Section 41102(d) was promulgated as part of the Ocean Shipping Reform Act of 2022 (“OSRA 2022”) which revised portions of the Shipping Act. Its provisions are similar to pre-OSRA 2022 section 41104(a)(3), which provided: “A common carrier, either alone or in conjunction with any other person directly or indirectly, may not . . . retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason.” 46 U.S.C 41104(a)(3) (2021).

In an Order interpreting the provisions of section 41104(a)(3) the Commission noted that the section’s anti-retaliation provision prohibits a carrier from:

1. Retaliating against a shipper by refusing, or threatening to refuse, cargo space accommodations when available because
  - a. the shipper has patronized another carrier,
  - b. the shipper has filed a complaint, or
  - c. for any other reason;

or

2. Resorting to other unfair unjustly discriminatory methods because
  - a. the shipper has patronized another carrier,
  - b. the shipper has filed a complaint, or
  - c. for any other reason.

Statement of the Commission on Retaliation, Docket No. 21-15, 3 F.M.C.2d 201, 206, 2021 WL 9204128 (FMC Dec. 28, 2021) (“Statement on Retaliation”).

Because the provisions of OSRA 2022’s section 41102(d) and pre-OSRA 2022 section 41104(a)(3) are similar, the Commission’s Statement on Retaliation is useful to determine

whether the alleged conduct by Emarat violates the Shipping Act's prohibitions against anti-retaliation and unfair and unjust discriminatory method.

Specifically, Claimant alleges that Emarat violated section 41102(d) by conducting unjust, unreasonable, and retaliatory practices against Claimant, including . . . [p]roviding additional services not requested or required in order to increase fees against Claimant [and] [r]efusing to release Claimant's property." C. Supp. Info. Pg. 4-5 at no. 3. The prohibitions against "[r]esorting to other unfair unjustly discriminatory methods . . . for any other reason" apply to Claimant's allegations. *See* Statement on Retaliation 3 F.M.C. 2d at 206.

In *OJ Commerce*, the Chief Administrative Law Judge ("Chief ALJ") applied the Statement on Retaliation to find that "[t]he statutory language, by including the phrase 'or for any other reason' explicitly applies this section beyond cases where the shipper has patronized another carrier or has filed a complaint . . . [to include] . . . the threat to file a complaint with the Commission." *OJ Commerce, LLC v. Hamburg Südamerikanische Dampfschiffahrts—Gesellschaft A/S & C. Kg and Hamburg Sud North America, Inc.* ("*OJ Commerce*"), Docket No. 21-11, 6 F.M.C. 2d 165, 205 (ALJ June 7, 2023) (*affirmed, OJ Commerce*, Order Affirming Initial Decision (FMC Aug. 27, 2024) ("*OJ Commerce Commission Order*"). The Chief ALJ concluded: "It is reasonable to anticipate that threats of prohibited conduct would be encompassed under the "for any other reason" language, and so finding is consistent with the Commission's Policy Statement regarding interpreting the anti-retaliation provision broadly." *OJ Commerce*, 6 F.M.C. 26 at 206. The Commission subsequently affirmed "the ALJ's finding that [the Complainant]'s notice of intention to file a case with the Commission is protected by the Commission's prohibition on retaliation 'for any other reason.'" *OJ Commerce Commission Order* at 30.

The evidence shows that Claimant threatened to file a complaint against Emarat, a threat that he later carried out by filing the instant Claim. *See* Answer Ex. J (Claimant stating to Emarat and CMA CGM after he was advised that the Egyptian Customs Authority had rejected his shipments and ordered them to be returned to the origin port of loading: "Time is [of] the essence. Please fix this matter before shipment leaves Egypt. *Otherwise, I will seek legal rights in the USA to get compensated for all financial and emotional damages from all parties involved.*" (emphasis added)). Emarat's president, Respondent Elbarq, subsequently acknowledged and reacted to this threat by holding Claimant's cargo hostage until he signed a form releasing Emarat from liability, a prohibited conduct, stating to Claimant's attorney: "Your client, I believe, suffers from Litigious syndrome. . . . We will attach CMA CGM to any lawsuit . . . I am not going to allow him to take the vehicle out without signing a condition report. I'm not gonna put myself out there for a huge exposure. He refused to sign. He's going to sue anyways." R. Supp. Info Ex. 4; C. Supp. Info. Ex. U.

In addition to holding Claimant's cargo hostage there are other examples of unjust and unfair discriminatory and retaliatory actions by Emarat towards Claimant:

1. R. Supp. Info Ex. 4 - Emarat stating in an email to Claimant's attorney: "File your lawsuit service us [sic] and we have 30 days to respond. . . . If we do not reach an agreement soon, I will be forced to take the car to a third-party storage facility and you can add another person in your lawsuit."

2. C. Supp. Info. Ex. P - Emarat advising Claimant: “Due to your continuous aggressive behaviour, disrespectful manners, constant threats, and generally acting in bad faith. We have decided to limit the method of payment accepted for your shipment to the following: wire transfer, cash, cashier check (five business days hold), and zelle [sic]. Thanks for understanding.”
3. C. Supp. Info. Ex. Q-Emarat imposing storage fees against Claimant’s shipments for refusing to sign an agreement not to file a complaint, advising Claimant “We got an email from your Attorney . . . I am not able to wave [sic] a substantial amount of fees with no agreement reached. It’s pointless. I can use that money as a retainer for the law suite [sic]. We will add storage as well at the rate provided to you.”

The evidence thus demonstrates that Emarat resorted to unfair and unjustly discriminatory actions against Claimant because he indicated that he would pursue legal action against Emarat for their mishandling of the delivery of his cargo. This conduct gives rise to a violation of section 41102(d)(2)(B)’s provisions prohibiting common carriers from to “resort[ing] to any other unfair or unjustly discriminatory action for any other reason.”

**F. The Evidence Supports a Finding that Emarat Violated Sections 41104(a)(4)(A), (D), (E), and 41104(a)(14)**

Claimant alleges that Emarat violated sections 41104(a)(4)(A), (D), (E), and 41104(a)(14) and (15)<sup>5</sup> by imposing unfair rates and charges; loading freight from the port when told not to do so; unfair adjustment of price and terms of release of his freight; conducting unjust, unreasonable and retaliatory practices against Claimant, including assessing a charge that is inconsistent or does not comply with all applicable provisions and regulations; and invoicing for demurrage or detention charges without including the required information. C. Supp. Info. Pg. 5 at no. 3. The enumerated provisions forbid a common carrier, for service pursuant to a tariff, to engage in any unfair or unjustly discriminatory practice in the matter of (A) rates or charges; (D) loading and landing of freight; or (E) adjustment and settlement of claims; or to (14) assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including section 41102(c) and the Commission’s regulations at 46 C.F.R. § 545. 46 U.S.C. § 41104(a)(4)(A), (D), (E), (14) (2022).

As previously found, Emarat, a common carrier:

- 1) acted unjustly and unreasonably, in violation of section 41102(c), when it forced Claimant to absorb the charges to return Claimant’s container rejected by the Egyptian authorities due to wrongful action by Emarat and when it marked up the ocean carrier’s invoices with its own additional charges and initially misled Claimant that certain charges all originated from the ocean carrier when in actuality Emarat had marked up the ocean carrier’s charges (*see* PF 43, Emarat claiming that its charges of \$6050 were CMA CGM charges when CMA CGM’s charges were only \$4,550.);

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<sup>5</sup> Because the provisions of sections 41104(a)(15) and 41104(d), which Claimant also alleges Emarat violated, are similar. Both allegations are addressed together *infra*.



- 2) acted unjustly and unreasonably, in violation of section 41102(c), when it continued to hold Claimant's cargo hostage even after Claimant paid all charges owed on the container to force Claimant to sign a waiver absolving Emarat from liability for its mishandling of the vehicles' shipment;
- 3) resorted to unfair and unjustly discriminatory actions against Claimant, in violation of section 41102(d)(2)(B), because he threatened to file a complaint against Emarat for mishandling the vehicles' shipment and because he refused to sign their cargo release form.

These enumerated conducts also give rise to a violation of section 41104(a)(4)(A), (D), (E).

Further, some of the charges imposed by Emarat in its Invoice 52963 were arbitrary and unsupported by third party invoices or payment receipts. For example:

- a. Emarat's imposition of an "Admin fee" in the amount of \$1,500, described as "Admin Fee for processing and handling. Countless hours for dealing with steamship line and client," and further explained by Emarat as "a charge we imposed on the countless hours spent on this shipment" (C. Supp. Info. pg. 2 at no. 4);
- b. Fee titled "Customs Clearance," in the amount of \$3,055.41, said to be "collected on behalf of Hahn International Invoice" but Hahn failed to provide the invoice without explanation although specifically requested by the undersigned (*see* Request for Supplemental Information, pg. 2 at no. 5). This fee contradicts Emarat employee, Victor Vega's statements in an email on December 20, 2023, to Claimant indicating that customs clearance fees would be about \$1,200. PF 57; C. Supp. Info. pg. 3 at no. 2; C. Supp. Info. Ex. II.
- c. Multiple different storage charges assessed by Emarat for the vehicles at issue for the same period of time: i) Container storage fees for 6 days at \$150 per day from 12/29/23 to 1/3/24; ii) Vehicle storage fees for 18 days at \$10 per day for each vehicle from 1/3/24 to 1/11/24; iii) Pallet storage fees for 9 days at \$2.50 per day; iv) "In/Out Fee" at \$150 per vehicle for each vehicle; v) "In/Out Fee" at \$50 per 1 pallet for each vehicle.

These multiple storage charges also contradict Emarat employee, Victor Vega's email to Claimant on January 2, 2023, stating the storage charges on Claimant's cargo would be \$10 per day for each vehicle and \$2.50 storage fee per pallet. PF 53; C. Supp. Info. Ex. O. The container in which the two vehicles were shipped was picked up from the APL Terminal by Emarat on December 29, 2023 (PF 52; C. Supp. Info. Ex. N) and unloaded on January 3, 2024 (PF 53; C. Supp. Info. Ex. O). Shortly thereafter, Emarat insisted that Claimant must sign an agreement releasing it from liability for the vehicles or it would not release the shipment to Claimant, and stated

that absent an agreement releasing Emarat from liability it would begin imposing storage charges on Claimant's cargo. *See* PF 55; C. Supp. Info. Ex. Q.

Emarat thus imposed charges in its Invoice 52963 for impediments created by Emarat, its invoice contains charges inconsistent with Emarat's representations to Claimant regarding the charges for its services, and its Invoice 52963 reflects multiple charges assessed on the same services for no discernible reason. By assessing these questionable charges in Invoice 52963, which it then forced Claimant to pay, Emarat violated section 41104(a)(14).

Moreover, Emarat's charges are unsupported by a tariff. Emarat acted as an NVOCC for the shipment in dispute; the Shipping Act requires each common carrier "to keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established." 46 U.S.C. § 40501(a)(1); *see also* 46 C.F.R. § 520.3(a). Emarat states, regarding why it does not have a tariff for its charges: "[a]s we have never experienced such a matter before we do not have any tariff rate for this charge." C. Supp. Info. pg. 3, at no. 8a. Emarat's failure to publish a tariff supporting its charges constitutes a violation of section 40501(a)(1) of the Shipping Act and section 520.3 of the Commission's Regulations. By assessing charges that violate the provisions of section 40501(a)(1) and section 520.3 of the Regulations, Emarat also violated section 41104(a)(14), which forbids common carriers to assess any charge that is inconsistent or does not comply with all applicable provisions and regulations.

**F. The Evidence Does Not Support the Allegation that Emarat Violated Sections 41104(a)(15) and 41104(d)**

Claimant further alleges that Emarat violated section 41104(a)(15) by issuing an invoice for demurrage or detention charges that did not include required information, and that Emarat violated section 41104(d) by issuing an inaccurate invoice, including charging fees for services not requested, and imposing random penalties and charges for services not provided. C. Supp. Info. Pg. 5 at no. 3.

Section 41104(a)(15) forbids a common carrier to:

invoice any party for demurrage or detention charges unless the invoice includes information as described in subsection (d) showing that such charges comply with-

- (A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and
- (B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled "Interpretive Rule on Demurrage and Detention Under the Shipping Act" (or successor rule).

46 U.S.C. § 41104(a)(15) (2022). Section 41104(d) provides:

DETENTION AND DEMMURAGE INVOICE INFORMATION. -

- (1) INACCURATE INVOICE. -If the Commission determines, after an investigation in response to a submission under section 41301, that an invoice under subsection (a)(15) was inaccurate or false, penalties or refunds under section 41107 shall be applied.
- (2) CONTENTS OF INVOICE.-An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:
- (A) Date that the container is made available.
  - (B) The port of discharge.
  - (C) The container number or numbers.
  - (D) For exported shipments, the earliest return date.
  - (E) The allowed free time in days.
  - (F) The start date of free time.
  - (G) The end date of free time.
  - (H) The applicable detention or demurrage rule on which the daily rate is based.
  - (I) The applicable rate or rates per the applicable rule.
  - (J) The total amount due.
  - (K) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
  - (L) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
  - (M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

46 U.S.C. § 41104(d) (2022).

The provisions of sections 41104(a)(15) and 41104(d) specifically pertain to demurrage and detention charges. Claimant does not allege that Emarat imposed demurrage and detention charges against his cargo and the record contains no evidence of demurrage and detention charges imposed by Emarat against the cargo at issue. To the extent that pro se Claimant is referring to the storage charges imposed by Emarat in Invoice 52963, because those charges were not demurrage or detention charges, the provisions of sections 41104(a)(15) and 41104(d) do not apply to them. In any case, the remedy for improper invoices is that the invoiced party is absolved of any obligation to pay the charges. *See* 46 U.S.C. 41104(f). This decision finds that Claimant is entitled to a refund of all payments he made to Emarat under the invoices in question, therefore, Claimant will receive the remedies due. Accordingly, the sections 41104(a)(15) and 41104(d) claims are dismissed.

### **G. Reparations**

Claimant requests a refund of his payment in the amount of \$5,650 to Emarat under Invoice Number 52843, to ship his cargo to Egypt and his payment in the amount of \$8,302.91 to Emarat under Invoice 52963, for the return of his cargo to the United States plus ten percent of the depreciation value of his vehicles, totaling \$22,452.91. Complaint pg. 4. In addition, Claimant asks the Commission to “further investigate Emarat and CMA [CGM]’s business practice, and take proper action against their business license.” Complaint at pg. 4. In support of his request for the depreciation value of the vehicles, Claimant submitted a link to three websites

which, according to Claimant, “estimate most vehicles to lose about 20% of its [sic] value over the first year.” C. Supp. Info, pg. 8 at no. 13. Respondents note that while Claimant cited to articles that estimate that most vehicles lose about 20% of their value over the first year, Claimant’s vehicles sailed on September 9, 2023, and returned to the United States on December 15, 2023, which is less than a year. R Reply pg. 5 at no. 5.

Because it is found that Emarat was at fault for its failure to deliver Claimant’s cargo to the agreed upon destination and the return of the cargo to the United States, I conclude that Emarat is not entitled to keep the payments Claimant paid to ship his container to Egypt and the charges Emarat forced Claimant to pay for the return of the cargo to the United States. However, it is also found that Claimant is not entitled to an award of the claimed depreciation value of the vehicles in question. Even accepting Claimant’s contention that most vehicles lose about 20% of their value over the first year, as Emarat notes, Claimant’s vehicles sailed on September 9, 2023, and were returned to him on January 17, 2024; a period that is considerably less than a year. Accordingly, Claimant is granted a reparation award in the amount of \$13,952.91, reflecting the amounts he paid under invoices 52843 and 52963. Claimant’s request for an investigation of Emarat’s business practices is also denied. A private complaint proceeding such as a small claims proceeding is not the proper forum to request an investigation of a regulated entity and/or its business license.

#### **IV. CONCLUSION**

Claimant Sameh Elawamry has proven its claim that Respondent Emarat Shipping Inc. violated sections 41102(c) and (d), and 41104(a) and (d), 46 U.S.C. §§ 41102(c) and (d) and 41104(a) and (d) of the Shipping Act. It is also found that Emarat, a non-vessel-operating common carrier, failed to publish a tariff supporting the charges it imposed on the cargo at issue, in violation of 46 U.S.C. § 40501(a)(1) of the Shipping Act and the Commission’s regulations at 46 C.F.R. § 520.3(a). Because the cargo that Claimant paid Emarat to ship was never delivered to the agreed upon destination due to wrongful conduct by Emarat, a reparation award in the amount of \$13,952.91 is granted to Claimant, reflecting the amounts he paid Emarat to ship the cargo to Egypt and the charges Emarat forced him to absorb for the return of the cargo to the United States.

In addition, it is found that Claimant failed to demonstrate that Emarat violated 46 U.S.C. §§ 41104(a)(15) and 41104(d), or that Respondent Tareq Elbarq, Emarat’s president, is personally liable for Emarat’s wrongful conduct. Accordingly, the section 41104(a)(15) and 41104(d) claims and the claim against Respondent Elbarq are dismissed with prejudice.

#### **V. ORDER**

Upon consideration of the evidence of record, arguments of the parties, and the foregoing findings and conclusion that Emarat Shipping Inc. violated 46 U.S.C. §§ 41102(c) and (d), 41104(a) and (d), and 40501(a)(1) of the Shipping Act as well as 46 C.F.R. § 520.3(a) of the Commission’s Regulations, that Tareq Elbarq is not personally liable for the violations, and that Claimant Sameh Elawamry suffered injury in the amount of \$13,952.91 as a result of the violations, it is hereby

**ORDERED** that the complaint against Tareq Elbarq be **DISMISSED WITH PREJUDICE**. It is

**FURTHER ORDERED** that Sameh Elawamry's 46 U.S.C. §§ 41104(a)(15) and 41104(d) claim against Emarat Shipping Inc. be **DISMISSED WITH PREJUDICE**. It is

**FURTHER ORDERED** that Sameh Elawamry's claim for reparations against Emarat Shipping Inc. be **GRANTED**. It is

**FURTHER ORDERED** that Emarat Shipping Inc. pay reparations to Sameh Elawamry in the amount of \$13,952.91.

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Theresa Dike  
Small Claims Officer