

BEFORE THE FEDERAL MARITIME COMMISSION

MCS INDUSTRIES, INC.,

Complainant

v.

COSCO SHIPPING LINES CO., LTD. AND
MSC MEDITERRANEAN SHIPPING COMPANY S.A.,

Respondents.

DOCKET NO. 21-05

VERIFIED ANSWER OF RESPONDENT
MSC MEDITERRANEAN SHIPPING COMPANY S.A.

Respondent MSC Mediterranean Shipping Company S.A. (“MSC”), by and through undersigned counsel, answers the Verified Complaint by MCS Industries, Inc. (“MCS”) as follows:

ANSWER

Subject to and without waiving any defenses or affirmative defenses set forth in this Verified Answer, MSC answers the allegations in each numbered paragraph of the Verified Complaint:

1. The allegations of Paragraph 1 of the Verified Complaint consist of MCS’s description and characterization of the instant action, and do not require a response. To the extent a response is required, MSC denies the allegations of Paragraph 1 of the Verified Complaint and denies that MCS has stated any claim or is entitled to any reparations.

2. The allegations of Paragraph 2 of the Verified Complaint in part address the actions of “global ocean carriers” and a separate party Respondent, and do not require a response by MSC. To the extent the allegations of Paragraph 2 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 2 of the Verified

Complaint. MSC expressly denies that it has exploited customers; rather it has dealt reasonably with unprecedented dislocations in international ocean shipping caused by substantial increases in demand at the same time that unprecedented port congestion has effectively limited available vessel capacity and created substantial operational difficulties for carriers, and has endeavored to comply at all times, and believes it has complied, with its contractual obligations to its customers, including MCS. MSC further states that it was not made aware by MCS of any claim or suggestion of improper conduct before MCS filed its complaint and sought substantial press attention for its allegations, which include assertions of collusive activity that are not only implausible and unsupported by any allegations of the complaint, but also do not appear in any of the claims MCS has actually pled.

3. The allegations of Paragraph 3 of the Verified Complaint, many of which are based on “information and belief” and not knowledge, address the actions of “shippers” and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 3 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

4. The allegations of Paragraph 4 of the Verified Complaint address the actions of “global ocean carriers” and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 4 of the Verified Complaint. During the dislocation created by the COVID-19 pandemic, missed sailings have become more frequent because of heavy port congestion and ensuing delays. MSC expressly denies that it has used blank or missed sailings to deprive shippers of capacity, create artificial scarcity, or boost spot market rates.

5. The allegations of Paragraph 5 of the Verified Complaint address the actions of “global ocean carriers” and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 5 of the Verified Complaint, and expressly denies that it has manipulated prices or obtained windfall profits by forcing shippers into an artificially inflated spot market. MSC admits that current container rates are in some trades higher than 2019 rates because current increased demand for container shipping services exceeds available supply.

6. The allegations of Paragraph 6 of the Verified Complaint in part address the actions of “global ocean carriers” and a separate party Respondent, and make allegations as to what Complainant has “experienced,” and do not require a response by MSC. To the extent the allegations of Paragraph 6 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 6 of the Verified Complaint, and expressly denies that it has refused to deal with Complainant, that it has refused to abide by its contractual commitments to Complainant, or that it has engaged in “misconduct.”

7. The allegations of Paragraph 7 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 7 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 7 of the Verified Complaint. MSC has abided by its contractual commitments to the Complainant.

8. The allegations of Paragraph 8 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 8 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 8, except to admit that MSC has a written

service contract with MCS titled “Ocean Carrier Agreement,” which included a minimum quantity commitment (“MQC”), and to state that Ocean Carrier Agreement itself is the best evidence of its terms.

9. The allegations of Paragraph 9 of the Verified Complaint are legal assertions and do not require a response. To the extent a response is required, MSC states that the cited statutory provisions are, in their entirety and in context, themselves the best evidence of their contents, and otherwise denies the allegations of Paragraph 9 of the Verified Complaint.

10. The allegations of Paragraph 10 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 10 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 10 of the Verified Complaint. MSC has abided by its contractual commitments to the Complainant.

11. The allegations of Paragraph 11 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 11 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 11 of the Verified Complaint, and expressly denies the wholly unsupported allegation, made on “information and belief” and qualified with the word “seemingly,” that it has engaged in unlawful collusion with respect to its dealings with Complainant. MSC further explicitly denies MCS’s allegation that MSC has been “depriving MCS of its contractually agreed space allotments and instead selling their respective capacity... to the highest bidder”; MSC does not sell allotted space until after the prescribed cutoff date. The tenuousness of the allegations in Paragraph 11 are underscored by the lack of any evidence direct or otherwise of an agreement among Respondents, and there is none, and by the

failure of any count of the Complaint to even allege a violation of the concerted action prohibitions of 46 U.S.C. Section 41105.

12. The allegations of Paragraph 12 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 12 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 12 of the Verified Complaint.

13. The allegations of Paragraph 13 of the Verified Complaint address the actions of a separate Respondent in part, are too vague to admit of reasonable response in part, and address the actions of Complainant in part and thus do not require a response by MSC. To the extent the allegations of Paragraph 13 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 13 of the Verified Complaint.

14. The allegations of Paragraph 14 of the Verified Complaint address almost in their entirety the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 14 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 14 of the Verified Complaint.

15. The allegations of Paragraph 15 of the Verified Complaint in part address the actions of a separate party Respondent, consist of rhetoric rather than factual allegations, and do not require a response by MSC. To the extent the allegations of Paragraph 15 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 15 of the Verified Complaint. Ocean carriage costs on the spot market have risen due to factors such as port congestion, which reduces available vessel capacity and

imposes substantial operational challenges on carriers, and high demand connected with the COVID-19 pandemic, and not because of any “conduct” of MSC.

16. The allegations of Paragraph 16 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 16 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 16, except to admit that MSC is a member of the “2M Alliance.” MSC expressly denies MCS’s mischaracterization of ocean carrier alliances such as the “2M Alliance” as “collusive,” when in fact such alliances, pursuant to lawfully filed and effective agreements overseen by the Commission, authorize the parties to share vessels and engage in related cooperative operating activities in various trades that create efficiencies that benefit exporters, importers, and consumers.¹ Such alliances are authorized by the Commission and competition authorities around the world precisely because they create such benefits.² MSC also explicitly denies MCS’s allegation that the ocean liner market is concentrated due to these alliances, because each party to an ocean carrier alliance prices and markets its services separately, making meaningless and incorrect any suggestion that alliance shares should be aggregated for purposes of measuring market concentration, and because under the Herfindahl–

¹ See, e.g., Maersk/MSK Vessel Sharing Agreement (FMC Agreement No. 012293), available at <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/153> (last visited August 25, 2021); see also “2M Agreement Clears FMC Regulatory Review,” available at <https://www.fmc.gov/2m-agreement-clears-fmc-regulatory-review/> (last visited August 25, 2021).

² See, e.g., European Commission, Press Release, “Antitrust: Commission prolongs the validity of block exemption for liner shipping consortia” (Mar. 24, 2020), available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_518 (finding that liner alliances “result[] in efficiencies for carriers that can better use vessels' capacity and offer more connections,” and that “those efficiencies result in lower prices and better quality of service for consumers.”).

Hirschman Index,³ an often-used measure of market concentration, the liner shipping industry is unconcentrated.

17. The allegations of Paragraph 17 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent the allegations of Paragraph 17 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 17 of the Verified Complaint. MSC incorporates as if fully set forth herein its response in Paragraph 16 to Complainant's mischaracterization of ocean alliances as "collusive." MSC further responds that Complainant's entirely unsupported and incorrect allegations of "collusion" are undermined by its own allegations as to the disparity in carriage percentage between the two Respondents, in which MSC's alleged percentage is nearly 22 times higher than that of the other Respondent. MSC also responds that it is not in an alliance with COSCO in the United States trades or in those of any other country; nor is it party to any other FMC Agreement with COSCO, making nonsensical on its face Complainants' allegation that such arrangements give MSC and COSCO "venue and opportunity to coordinate discriminatory practices."

18. The allegations of Paragraph 18 of the Verified Complaint in part address the actions of a separate party Respondent, and consist of legal assertions, and do not require a response by MSC. To the extent the allegations of Paragraph 18 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 18 of the Verified Complaint.

³ See, e.g., The United States Department of Justice (Antitrust Division), "Herfindahl-Hirschman Index," available at <https://www.justice.gov/atr/herfindahl-hirschman-index> (last visited August 25, 2021).

19. The allegations of Paragraph 19 of the Verified Complaint concern the Complainant and include legal assertions and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 19 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

20. The allegations of Paragraph 20 of the Verified Complaint address the actions of a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 20 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

21. MSC admits that it is a company organized under the laws of Switzerland with its principal place of business located at 12-14 Chemin Rieu, 1208 Geneva, Switzerland. The allegations of the second sentence of Paragraph 21 of the Verified Complaint constitute a legal assertion as to which no response is required.

22. The allegations of Paragraph 22 of the Verified Complaint constitute a legal assertion as to which no response is required.

23. The allegations of Paragraph 23 of the Verified Complaint address the legal status of a separate party Respondent and constitute legal assertions, and do not require a response from MSC.

24. The allegations of Paragraph 24 of the Verified Complaint in part address the actions of a separate party Respondent and constitute legal assertions, and do not require a response from MSC. To the extent the allegations of Paragraph 24 of the Verified Complaint concern MSC and a response by MSC is required, the allegations likewise constitute legal assertions as to which no response is required, and to the extent a response is required, MSC denies the allegations of Paragraph 24 of the Verified Complaint.

25. The allegations of Paragraph 25 of the Verified Complaint in part address the actions of a separate party Respondent and constitute legal assertions, and do not require a response from MSC. To the extent the allegations of Paragraph 25 of the Verified Complaint concern MSC and a response by MSC is required, the allegations likewise constitute legal assertions as to which no response is required, and to the extent a response is required, MSC denies the allegations of Paragraph 25 of the Verified Complaint.

26. The allegations of Paragraph 26 of the Verified Complaint in part address the actions of a separate party Respondent and constitute legal assertions, and do not require a response from MSC. To the extent the allegations of Paragraph 26 of the Verified Complaint concern MSC and a response by MSC is required, the allegations likewise constitute legal assertions as to which no response is required, and to the extent a response is required, MSC denies the allegations of Paragraph 26 of the Verified Complaint.

27. The allegations of Paragraph 27 of the Verified Complaint in part address the actions of a separate party Respondent and constitute legal assertions, and do not require a response from MSC. To the extent the allegations of Paragraph 27 of the Verified Complaint concern MSC and a response by MSC is required, the allegations likewise constitute legal assertions as to which no response is required, and to the extent a response is required, MSC denies the allegations of Paragraph 27 of the Verified Complaint.

28. The allegations of Paragraph 28 of the Verified Complaint in part address the actions of separate party Respondent and constitute legal assertions, and do not require a response from MSC. To the extent the allegations of Paragraph 28 of the Verified Complaint concern MSC and a response by MSC is required, the allegations likewise constitute legal assertions as to which

no response is required, and to the extent a response is required, MSC denies the allegations of Paragraph 28 of the Verified Complaint.

29. The allegations of Paragraph 29 of the Verified Complaint concern the Complainant and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 29 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

30. The allegations of Paragraph 30 of the Verified Complaint in part address the actions of a separate party Respondent and “other global ocean carriers,” and do not require a response by MSC. To the extent the allegations of Paragraph 30 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 30 of the Verified Complaint, and expressly denies that it engaged in any refusal to deal.

31. The allegations of Paragraph 31 of the Verified Complaint in part address the actions of a separate party Respondent and of Complainant do not require a response by MSC. To the extent the allegations of Paragraph 31 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 31 of the Verified Complaint.

32. The allegations of Paragraph 32 of the Verified Complaint in part address the actions of a separate party Respondent and “fellow global ocean carriers,” and do not require a response by MSC. To the extent the allegations of Paragraph 32 of the Verified Complaint address the actions of MSC, are capable of response rather than being vague and confusing, and a response by MSC is required, MSC denies the allegations of Paragraph 32 of the Verified Complaint. Ocean carriage costs on the spot market have risen due to factors such as port congestion, which reduces available vessel capacity and imposes substantial operational challenges on carriers, and high

demand connected with the COVID-19 pandemic, and not because they have been “artificially inflated.”

33. The allegations of Paragraph 33 of the Verified Complaint in part address the actions of a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 33 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

34. The allegations of Paragraph 34 of the Verified Complaint concern a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 34 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

35. The allegations of Paragraph 35 of the Verified Complaint concern a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 35 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

36. The allegations of Paragraph 36 of the Verified Complaint concern a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 36 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

37. The allegations of Paragraph 37 of the Verified Complaint concern a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 37 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

38. The allegations of Paragraph 38 of the Verified Complaint concern a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 38 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

39. The allegations of Paragraph 39 of the Verified Complaint concern a separate party Respondent and do not require a response by MSC. To the extent a response by MSC is required, MSC denies the allegations of Paragraph 39 of the Verified Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the matter(s) asserted.

40. The allegations of Paragraph 40 of the Verified Complaint constitute a legal assertion and do not require a response by MSC. To the extent the allegations of Paragraph 40 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC admits that it had a written service contract with MCS effective May 1, 2021 titled "Ocean Carrier Agreement," Contract Number 21-104TPC, and states that the Ocean Carrier Agreement itself is the best evidence of its terms.

41. MSC admits that it had a written service contract with MCS effective May 1, 2021, titled "Ocean Carrier Agreement," Contract Number 21-104TPC, and states that the Ocean Carrier Agreement itself is the best evidence of its terms.

42. MSC denies the allegations of Paragraph 42 of the Verified Complaint. MSC fully complied with the Ocean Carrier Agreement between MSC and MCS. Any noncarriage of MCS cargo during the term of the Ocean Carrier Agreement was in line with the Ocean Carrier Agreement and attributable to MCS's failure to comply therewith or to other causes outside MSC's control. MSC is without knowledge or information sufficient to form a belief as to the allegations concerning any alternate transportation arrangements MCS may have made as a result of its

noncompliance with the terms of the Ocean Carrier Agreement or otherwise and thus must deny them.

43. MSC denies the allegations of Paragraph 43 of the Verified Complaint. MSC does not re-sell customers' allotted space until after the prescribed cutoff date.

44. MSC denies the allegations of Paragraph 44 of the Verified Complaint. MSC fully complied with the Ocean Carrier Agreement between MSC and MCS. Any noncarriage of MCS cargo during the term of the Ocean Carrier Agreement was in line with the Ocean Carrier Agreement and solely attributable to MCS's failure to comply therewith or to other causes outside MSC's control.

45. Paragraph 45 of the Verified Complaint, where MCS "repeats and realleges each and every allegation" of the preceding paragraphs, does not require a response by MSC. MSC has responded to each preceding paragraph of the Verified Complaint separately above, and incorporates those responses here as if repeated in full herein.

46. The allegations of Paragraph 46 of the Verified Complaint in part address the actions of a separate party Respondent and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 46 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 46 of the Verified Complaint. MSC further states that the allegations of the Complaint and this count state at best a claim for breach of contract, and not a violation of 46 U.S.C. § 41102(c).

47. Paragraph 47 of the Verified Complaint, where MCS "repeats and realleges each and every allegation" of the preceding paragraphs, does not require a response by MSC. MSC has responded to each preceding paragraph of the Verified Complaint separately above, and incorporates those responses here as if repeated in full herein.

48. The allegations of Paragraph 48 of the Verified Complaint in part address the actions of a separate party Respondent and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 48 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 48 of the Verified Complaint. MSC fully complied with the Ocean Carrier Agreement between MSC and MCS. Any noncarriage of MSC cargo during the term of the Ocean Carrier Agreement was in line with the Ocean Carrier Agreement and attributable to MCS's failure to comply therewith or to other causes outside of MSC's control. MSC further states that the allegations of the Complaint and this count state at best a claim for breach of contract, and not a violation of 46 U.S.C. § 41104(a)(2).

49. Paragraph 49 of the Verified Complaint, where MCS "repeats and realleges each and every allegation" of the preceding paragraphs, does not require a response by MSC. MSC has responded to each preceding paragraph of the Verified Complaint separately above, and incorporates those responses here as if repeated in full herein.

50. The allegations of Paragraph 50 of the Verified Complaint in part address the actions of a separate party Respondent and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 50 of the Verified Complaint concern MSC and a response by MSC is required, MSC denies the allegations of Paragraph 50 of the Verified Complaint. MSC further states that the allegations of the Complaint and this count do not state a violation of 46 U.S.C. § 41104(a)(5) because they allege discrimination against Complainant, who is not a port, and not any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port.

51. Paragraph 51 of the Verified Complaint, where MCS “repeats and realleges each and every allegation” of the preceding paragraphs, does not require a response by MSC. MSC has responded to each preceding paragraph of the Verified Complaint separately above, and incorporates those responses here as if repeated in full herein.

52. The allegations of Paragraph 52 of the Verified Complaint in part address the actions of a separate party Respondent and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 52 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 52 of the Verified Complaint. MSC further states that the allegations of the Verified Complaint and this count do not state a violation of 46 U.S.C. § 41104(a)(9) because they allege a prejudice or disadvantage against Complainant, who is not a port, and not any undue or unreasonable prejudice or disadvantage in the matter of rates or charges with respect to any port.

53. Paragraph 53 of the Verified Complaint, where MCS “repeats and realleges each and every allegation” of the preceding paragraphs, does not require a response by MSC. MSC has responded to each preceding paragraph of the Verified Complaint separately above, and incorporates those responses here as if repeated in full herein.

54. The allegations of Paragraph 54 of the Verified Complaint in part address the actions of a separate party Respondent and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 54 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 54 of the Verified Complaint. MSC further states that the allegations of the Complaint and this count do not state a violation of 46 U.S.C. § 41104(a)(10) because they do not allege a refusal to deal or

negotiate, but to the contrary allege that MSC negotiated and entered into a service contract with Complainant and that MSC breached that contract.

55. The allegations of Paragraph 55 of the Verified Complaint in part address the actions of a separate party Respondent and of the Complainant and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 55 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 55 of the Verified Complaint.

56. The allegations of Paragraph 56 of the Verified Complaint in part address the actions of a separate party Respondent and of the Complainant and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 56 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 56 of the Verified Complaint.

57. The allegations of Paragraph 57 of the Verified Complaint in part address the actions of a separate party Respondent and of the Complainant and call for a legal conclusion, and do not require a response. To the extent the allegations of Paragraph 57 of the Verified Complaint address the actions of MSC and a response by MSC is required, MSC denies the allegations of Paragraph 57 of the Verified Complaint.

58. MSC denies all allegations of the paragraphs of the Verified Complaint styled "PRAYER FOR RELIEF," including subparagraphs (1) - (5), and denies that Complainant is entitled to any relief in this proceeding.

59. If an oral hearing proves necessary for any purpose in this proceeding, MSC agrees that it should be held in Washington, D.C.

60. MSC denies all allegations contained in any headings, introductions, unnumbered paragraphs or subparts of the Verified Complaint.

DEFENSES & AFFIRMATIVE DEFENSES

1. The Commission lacks jurisdiction over this matter because Complainant's claims arise out of the Ocean Carrier Agreement between MSC and the Complainant, and are subject to arbitration in New York.

2. Complainant fails to state a claim upon which relief can be granted.

3. Complainant's claims are barred in whole or in part because any damages Complainant allegedly incurred resulted from its own inaction, negligence or other fault.

4. Any alleged damages sustained by the Complainant were proximately, directly, and solely caused by the acts of third persons over whom MSC had and has no direction or control.

5. Complainant's claims are barred in whole or in part by the doctrines of waiver, estoppel, and/or laches.

6. Any alleged nonperformance of the contract or violations alleged herein were excused by force majeure and MSC is not responsible for damages resulting therefrom.

7. MSC's practices were neither unjust nor unreasonable.

8. MSC reserves any jurisdictional defenses or rights to arbitrate or proceed in another forum.

9. MSC reserves the right to amend this Verified Answer to raise any additional defenses or affirmative defenses that may arise in the course of this proceeding.

WHEREFORE, Respondent MSC Mediterranean Shipping Company SA respectfully requests that the Verified Complaint be dismissed, that Complainant take nothing, that MSC be awarded its costs and attorney's fees, and that it receive such other and further relief that may be necessary and appropriate.

Respectfully submitted,



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*Counsel for Respondent MSC Mediterranean
Shipping Company S.A.*

Date: August 26, 2021

CERTIFICATE OF SERVICE

I certify that on the 26th day of August 2021, a true and correct copy of the foregoing Answer was filed via electronic mail with the Secretary of the Federal Maritime Commission, and a copy was served via electronic mail on the following:

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Counsel for Complainant MCS Industries, Inc.


/s/ John Longstreth

VERIFICATION

I, Frank Sanford, declare as follows:

1. I am the General Counsel of the Corporate Legal Department of MSC Mediterranean Shipping Company SA.
2. I am duly authorized to make this verification on behalf of MSC Mediterranean Shipping Company S.A.
3. I have read the contents of MSC Mediterranean Shipping Company S.A.'s Answer and verify that the statements of fact contained therein are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Executed on August 26, 2021.

A handwritten signature in black ink, appearing to read 'Frank Sanford', is written over a horizontal line.

Frank Sanford
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