

**BEFORE THE
FEDERAL MARITIME COMMISSION**

OJ COMMERCE, LLC,)	
)	
Complainant,)	
)	
v.)	
)	
HAMBURG SÜDAMERIKANISCHE)	DOCKET NO. 21-11
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S)	
& CO. KG)	
)	
and)	
)	
HAMBURG SUD NORTH AMERICA, INC.)	
)	
Respondents.)	
)	

RESPONDENTS’ MOTION TO COMPEL

Pursuant to 46 C.F.R. § 502.150, Respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co. KG (“HSDG”) and Hamburg Süd North America, Inc. (“HSNA”) (collectively, “Respondents”) move to compel Complainant OJ Commerce, LLC (“OJC”) to produce documents in response to eight requests for the production of documents (*see* Exhibits #1 and #2 hereto). Respondents repeatedly conferred with OJC’s counsel in good faith to obviate the necessity of this motion but, despite representations to the contrary by OJC’s counsel, OJC refuses to provide the requested discovery that is directly relevant to the parties’ claims and defenses. The discovery requested in this motion was specifically requested by Respondents’ damages expert in the report he served on August 5, 2022 and is necessary to allow the expert to assess OJC’s damages claim. OJC did not serve an expert report to support its damages claim and refuses to produce the discovery required to assess that claim.

BACKGROUND

OJC alleges that Respondents violated several provisions of the Shipping Act of 1984, as amended, by allegedly failing to provide vessel space to OJC as contemplated by the service contract between the parties and by not entering into a new service contract with OJC. OJC alleges it suffered substantial damages because of Respondents' purported conduct. Respondents have produced over 13,000 pages of documents in response to discovery requests issued by OJC, including over 700 emails between OJC and Respondents. In contrast, OJC's total document production consists of just 30 documents.

LEGAL STANDARD

The Commission's Rules entitle parties to discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter." 46 C.F.R. § 502.141(e)(1). The discovery requests Respondents seek to compel satisfy these criteria.

ARGUMENT

Pursuant to 46 C.F.R. § 502.150(a)(2) and Paragraph 11 of the Initial Order in this proceeding, the text of each discovery request at issue, OJC's response, and Respondents' arguments as to why compelling a response is appropriate are set forth below.

A. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. First Requests for Production #1 through #4

Respondents seek an order compelling OJC to produce documents in response to First Requests for Production of Documents #1, #2, #3 and #4.¹

1. All service contracts, including amendments, with ocean common carriers other than HSDG.

RESPONSE: OJC objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. OJC also objects to the term “service contract” as a vague, undefined term.

SUPPLEMENTAL RESPONSE: OJC further objects to this Request to the extent it seeks documents relating to service contracts from before May 31, 2021, as that information is not reasonably calculated to lead to the discovery of admissible evidence. As to after May 31, 2021, OJC states that there are no such responsive documents.

2. All NVOCC Service Arrangements and/or Negotiated Rate Agreements, including amendments, with any non-vessel operating common carrier.

RESPONSE: OJC objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. OJC also objects to the terms “NVOCC,” “Service Arrangements and/or Negotiated Rate Agreements, and “non-vessel operating common carrier” as vague, undefined terms.

SUPPLEMENTAL RESPONSE: OJC further objects to this Request to the extent it seeks documents relating to “NVOCC Service Arrangements and/or Negotiated Rate Agreements” from before May 31, 2021, as that information is not reasonably calculated to lead to the discovery of admissible evidence. As to after May 31, 2021, OJC states that there are no such responsive documents.

3. Documents relating to and sufficient to show the volumes shipped under each service contract with an ocean common carrier other than HSDG.

RESPONSE: OJC objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. OJC also objects to the term “service contract” as a vague, undefined term.

SUPPLEMENTAL RESPONSE: OJC further objects to this Request to the extent it seeks documents relating to service contracts from before May 31,

¹ Information similar to that sought in these requests for production was sought in an interrogatory. Respondents do not seek to compel a response to the interrogatory because production of the documents would be sufficient.

2021, as that information is not reasonably calculated to lead to the discovery of admissible evidence. As to after May 31, 2021, OJC states that there are no such responsive documents.

4. Documents relating to and sufficient to show the volumes shipped under each NVOCC Service Arrangement and each Negotiated Rate Agreement with any non-vessel operating common carrier.

RESPONSE: OJC objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. OJC also objects to the terms “NVOCC,” “Service Arrangements and/or Negotiated Rate Agreements, and “non-vessel operating common carrier” as vague, undefined terms.

SUPPLEMENTAL RESPONSE: OJC further objects to this Request to the extent it seeks documents relating to “NVOCC Service Arrangements and/or Negotiated Rate Agreements” from before May 31, 2021, as that information is not reasonably calculated to lead to the discovery of admissible evidence. As to after May 31, 2021, OJC states that there are no such responsive documents.

Respondents’ counsel held at least three “meet and confers” with OJC’s counsel, on June 23, 30, and July 13, 2022. During these “meet and confers,” Respondents’ counsel clarified the meaning of the term “service contract” as used in the Requests (a term OJC itself used throughout its Verified Amended Complaint). Respondents’ counsel understood, based on statements made by OJC’s counsel during the meet and confers, that OJC would be providing “pretty much” everything Respondents had requested. Respondents’ counsel also addressed the status of OJC’s response to its discovery requests (including these Requests for Production) in an email to OJC’s counsel dated July 21, 2022. OJC’s counsel responded to that inquiry as follows:

OJ Commerce will supplement its responses and produce its documents by July 29, 2022, with the exception of RFP 10 (audited financials) which is irrelevant and harassing. Respondents already possess the data related to OJC’s damage calculations and claims. If you have cases that require the production of audited financials in all instances when a party claims damages and in addition to all the detailed information already provided, please provide for our review.

While OJC did indeed supplement its discovery responses on July 29, 2022, the supplemental responses merely asserted additional, untimely objections. OJC did not produce any further documents or information as promised during the “meet and confers.”

The information requested in First Requests for Production #1 through #4 is reasonably calculated to lead to the discovery of admissible evidence with respect to OJC’s damages claims. Evidence of past performance with other ocean carriers is relevant to assess the reasonableness of OJC’s assumptions regarding future cargo volumes. In addition, OJC also appears to claim that it was unable to ship with other ocean carriers cargo for which it could not obtain space from Respondents. This allegedly resulted in OJC foregoing shipments, resulting in lost profits rather than merely higher shipping costs. OJC’s performance under past contracts is relevant to this claim, and the extent to which OJC did or did not seek to mitigate any damages OJC claims to have suffered as a result of HSDG’s alleged conduct. Thus, information about OJC’s performance under service contracts with other ocean carriers is relevant to two different aspects of OJC’s damages claims.

Additionally, Jacob Weiss, the founder, owner and CEO of OJC, testified at deposition that he was “fairly certain” that OJC’s service contracts with other ocean carriers followed a plan and that the contracts “definitely” had “a consistent system of some method...” with respect to the carrier’s obligation to provide space. Weiss Deposition, pp. 192-193. Respondents are highly skeptical as to the accuracy of Mr. Weiss’s testimony regarding the content of OJC’s service contracts with other ocean carriers and, in addition to the foregoing reasons, seek the service contracts to test the credibility of Mr. Weiss’s testimony.

2. First Request for Production #9

Respondents seek an order compelling a response to First Request for Production #9:

9. Documents relating to and sufficient to show total volumes imported and/or shipped by You by year since 2018.

RESPONSE: OJC objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

SUPPLEMENTAL RESPONSE: OJC further objects to this Request to the extent it seeks documents from before May 31, 2021, as that information is not reasonably calculated to lead to the discovery of admissible evidence. As to after May 31, 2021, OJC states that information has already been produced.

This document request addresses issues similar to First Requests for Production #1 through #4, and was covered by the written exchange between counsels described on page 4 above. In this regard, as noted above, OJC's damages calculations are based in large part on projected cargo volumes that it alleges would have been shipped under a 2021-22 service contract. Respondents are entitled to information about OJC's shipping history to evaluate the reliability of those projections and the damages claims the projections allegedly support.

This document request is slightly broader than Requests for Production #1 through #4, as it seeks total import volumes. Information about OJC's total import volumes would be compared with the information about OJC's ocean shipments to determine if OJC may have used alternative means of transport (e.g., air cargo) to move cargo, and whether the use of such alternative means of transport might have been a way for OJC to mitigate the damages it claims to have suffered.

3. First Request for Production #10; Second Requests for Production #20 and #21

Respondents seek an order compelling a response to RFP #10:

10. All of Your audited financial statements for the period January 1, 2018 to the present.

RESPONSE: OJC objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

SUPPLEMENTAL RESPONSE: OJC has already produced its documents and data relating to its claims for damages against Respondents, including a 40 MB spreadsheet of extensive sales and shipping data.

Respondents' counsel also raised a question regarding the status of OJC's response to its discovery requests (including RFP #10) in an email to OJC's counsel dated July 21, 2022. OJC's counsel responded to that question by writing:

OJ Commerce will supplement its responses and produce its documents by July 29, 2022, with the exception of RFP 10 (audited financials) which is irrelevant and harassing. Respondents already possess the data related to OJC's damage calculations and claims. If you have cases that require the production of audited financials in all instances when a party claims damages and in addition to all the detailed information already provided, please provide for our review.

On July 29, 2022, Respondents' counsel sent the following message to OJC's counsel:

In response to OJC's claim that the request for audited financial statements is "harassing," HSDG notes that production of financial statements is commonly compelled in cases where damages include or are based on lost profit. Cases in support of this proposition are legion, and include *Fin. Bus. Equip. Sols., Inc. v. Quality Data Sys., Inc.*, No. 08-60769-CIV, 2008 WL 4663277, at *1 (S.D. Fla. Oct. 21, 2008) (profit and loss statements, balance sheets, cash flow statements, and federal tax returns relevant to alleged damages, including claim for lost profits); *Linea Pelle, Inc. v. Omega Fashions Ltd.*, No. 95 CIV. 0138 (LMM), 1997 WL 13267, at *1 (S.D.N.Y. Jan. 15, 1997) (financial statements order produced in case involving lost profits damage theory); *Unverferth Mfg. Co. v. Meridian Mfg., Inc.*, No. 19-CV-4005-LTS-KEM, 2020 WL 13015558, at *1 (N.D. Iowa Nov. 12, 2020) (audited financial statements relevant to expert's calculation of damages). We urge OJC to reconsider its position with respect to the production of audited financial statements, the request for which is relevant and not burdensome or harassing.

To date, OJC has not provided any financial statements (audited or unaudited).

In their Second Request for Production of Documents, Respondents sought additional financial information from OJC:

20. Your quarterly and annual profit and loss statements from 2018 until present.

RESPONSE: OJC objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence, is overly broad as to time and scope, and unduly burdensome. OJC also objects because such statements do not break out Naomi Home in them and all Naomi Home sales and data have already been produced.

21. Your unaudited monthly internal financial reports for all months during calendar years 2019, 2020, 2021, and 2022.

RESPONSE: OJC objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

OJC has provided a single Excel spreadsheet that purportedly supports its alleged damages. However, the largest damages calculation is nearly nine times greater than smallest damages calculation. OJC has not provided any of the documentation upon which the spreadsheet is based, nor has it produced a report from a damages expert with respect to its calculations, which include lost profits. (Initial expert reports were due August 5, 2022.) If OJC did indeed lose sales and/or profits, that should be reflected in its financial statements. Such statements are discreet documents that are easily accessible and not burdensome to produce. Moreover, the financial statements are directly relevant to ascertaining the sales/profits of OJC over time. By refusing to provide these responsive and relevant documents, OJC is essentially taking the position that Respondents must accept their unsupported damages calculations as definitive. That is not the law, nor is it a reasonable position in light of the foregoing factors. The case law cited in the above-quoted message to OJC's counsel makes clear that Respondents are legally entitled to the requested financial statements from OJC.

If for some reason OJC does not have audited financial statements, it should at a minimum have some form of financial reports prepared in the ordinary course of business, whether those are unaudited financial statements/reports or periodic profit and loss statements. Respondents are entitled to financial records that OJC maintains in the ordinary course of business in order to test/verify the accuracy of OJC's damages claims.

MEET AND CONFER CERTIFICATION

As noted above, Respondents' counsel met and conferred with OJC's counsel on at least three occasions regarding discovery issues, and exchanged emails in addition to the telephonic meet and confers.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that an order be issued compelling OJC to respond to the discovery requests that are the subject of this motion.

/s/Wayne R. Rohde
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/s/ Rachelle Barstow
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Dated: September 1, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 2022, the foregoing was served via electronic mail on:

Shlomo Y. Hecht
sam@hechtlawpa.com

and

Aaron Davis, Esq.
davis@valhallalegal.com

A handwritten signature in black ink, appearing to read "Wayne R. Rohde", written in a cursive style.

Wayne R. Rohde

EXHIBIT 1

BEFORE THE
FEDERAL MARITIME COMMISSION

FMC DOCKET NO. 21-11

OJ COMMERCE, LLC.
Complainant,

v.

HAMBURG SÜDAMERIKANISCHE DAMPFSCHIFFFAHRTS-
GESELLSCHAFT A/S & Co. KG AND HAMBURG SUD NORTH
AMERICA, INC.
Respondents.

**RESPONDENTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Federal Maritime Commission (“FMC”) Rules of Practice and Procedure, 46 C.F.R. §§502.145 and 502.146, Respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co. KG And Hamburg Sud North America, Inc. (“Respondents”) hereby propound their First Set of Interrogatories and First Requests for Production of Documents to Complainant OJ Commerce, LLC (“OJC”). Respondent requests that OJC answer the First Set of Interrogatories, and produce for inspection and copying all Documents responsive to the following requests no later than April 24, 2022. Answers to Interrogatories and Documents produced in response to the attached requests shall be delivered to Cozen O’Connor, 1200 19th Street, N.W., Suite #300, Washington, D.C. 20036, in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

1. The terms “You” and “Your” means OJ Commerce, LLC, and all parent, subsidiary, or affiliated entities, and all directors, officers and employees thereof, including but not limited to Naomi Home.

2. “Communication” means the exchange of thoughts, messages, or information, such as by speech, statements, signals, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, writing or behavior, whether oral or whether in the form of a document as the word “Document” is defined below. “Communication” includes communications that are made in the physical presence of persons to persons or persons to entities or entities to persons; those that are transmitted by writing or by media such as intercoms, telephones, including cellular phones, computers, television or radio; and those that are transmitted electronically such as by the internet, email, voice mail, or other electronic means.

3. The terms “Document” or “Documents” as used herein shall have the broadest possible meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and every non-identical copy of any written, recorded or graphic matter or data however produced or reproduced, including by way of example, but not limited to, any agreements, contracts, applications, correspondence, letters, inter-office and/or intra-office memoranda, notes, messages, text messages, e-mail, voice mail, minutes of meetings, telegrams, calendars, personal organizers, rolodex entries, reports, records, orders, invoices, receipts, checks, statements, medical records, bills, books of account, bulletins, diaries, logs, journals, computer disks, computer data, computer programs, tapes, schedules, drawings, photographs, x-rays, graphs, charts, audio and/or video recordings, transcripts, spreadsheets, work papers, worksheets, and/or any other tangible things, writings, data compilations or documentary material of any nature whatsoever, together with all attachments thereto, in Your possession, custody or

control. Every draft or non-identical copy of a document is a separate document. A document containing highlighting or notations is not identical to a document without such markings.

4. “Identify” when used in reference to a Document, means and includes the name and address of the custodian of the Document, the location of the Document, and a general description of the Document, including (1) the type of Document (i.e., correspondence, memorandum, facsimile, complaint, answer to complaint, etc.); (2) the general subject matter of the Document; (3) the date of the Document; (4) the author of the Document; (5) the addressee of the Document; (6) the relationship of the author and addressee to each other; (7) if it is a pleading, the name of the parties, the name of the jurisdiction, and the case number.

5. “Identify” when used in reference to a person or entity, shall mean (1) with regard to an individual the person’s full name and present and last known physical address, home and work telephone numbers; (2) with regard to an entity such as a company or partnership or trust or other legal entity the entity’s full legal name, type (partnership, corporation, etc.) and present and last known address and telephone number, the full name and corporate address of the registered agent of that entity, and the full name and corporate address of the corporate officers of that entity.

6. Other uses of the word “Identify” are intended to mean the giving in writing of a detailed account of the subject matter of the interrogatory, including the information sought in the interrogatory and, where possible and pertinent a description of dates, times, persons, locations, adjectives, and adverbs that would further characterize or depict the subject matter of the interrogatory.

7. “Ocean shipping services” means the transportation of loaded cargo containers by containership in the oceanborne foreign commerce of the United States.

8. The term “relating to” means referring to, concerning, addressing, dealing with, having to do with, constituting, reflecting, representing, supporting, contradicting, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, compromising or relevant to. As indicated, the term necessarily includes information that is in opposition as well as in support of the positions and claims of the parties to this action.

INSTRUCTIONS

1. These instructions and definitions should be construed to require responses based upon the knowledge of and information available to You, as well as Your members, officers, directors, employees, agents, brokers, representatives, subsidiaries, attorneys, accountants, or any other person acting or purporting to act on Your behalf or under Your direction and control.

2. You are instructed to review the Definitions set forth above in formulating Your answers and responses.

3. If You object to fully identifying a Document or oral Communication because of a privilege, You must nevertheless provide the information, unless divulging the information would disclose the privileged information. As to any information withheld on the basis of a privilege or other claim of protection, set forth:

- (a) the nature of the privilege claimed (e.g., work product);
- (b) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (c) if what is claimed is not a privilege but another right of protection such as trade secrets or confidential information or other protection, the nature of the right of protection and the basis for claiming the protection applies here;
- (d) the date of the Document or oral Communication;
- (e) if a Document: its type (correspondence, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document, including where

appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;

(f) if an oral Communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and

(g) the general subject matter of the Document or oral Communication.

4. A request for a “Document” includes a request for electronically stored information. All responsive electronically stored information should be provided via Secure File Transfer Protocol, CD or DVD, in user readable format (.txt, .tif, .pdf or similar file types). Any electronic or magnetic data that is responsive to a request herein should be produced in its original native electronic format.

5. The following rules of construction shall apply:

(a) The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a request all information that might otherwise be construed to be outside of its scope.

(b) The terms “all,” “any,” and “each” shall mean “any and all” and/or “each and every,” to the extent needed to make a request inclusive rather than exclusive.

(c) Reference to the singular of any word shall include the plural, and vice versa.

(d) All verbs shall be construed to include all tenses.

6. You are to produce all Documents as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features or shall be organized and labeled to correspond to the appropriate request herein. If there are no Documents responsive to any particular category, the party responding hereto shall state so in writing.

7. Unless otherwise specified, the time period covered by each interrogatory and each request for production of documents is January 1, 2020 to present.

INTERROGATORIES

1. Identify OJC’s relationship with Naomi Home, and identify any Documents and/or

Communications relating to any agreements or understandings between OJC and Naomi Home with respect to the procurement and/or use of ocean shipping services.

2. For each service contract You had with an ocean common carrier other than Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co. KG (“HSDG”) during all or any portion of the period from January 1, 2020 to the present, identify: (a) the name of the ocean common carrier; (b) the service contract number assigned to the service contract; (c) the effective date and termination date of the service contract; (d) the minimum quantity or volume commitment of the service contract; and (e) the quantity of cargo You shipped under the service contract.

3. Identify all persons who provided any factual information contained in the Complaint.

4. Identify the owners, officers and directors of OJ Commerce, LLC.

5. Identify any demurrage charges assessed by and paid to any ocean common carrier other than HSDG by You.

6. Identify any demurrage charges assessed by any ocean common carrier other than HSDG and disputed by You.

7. Identify all additional costs allegedly incurred by You as a result of (a) HSDG’s alleged non-acceptance of shipments tendered by You between June 23, 2020 and May 31, 2021; and (b) the non-renewal of your service contract with HSDG.

REQUESTS FOR DOCUMENTS

1. All service contracts, including amendments, with ocean common carriers other than HSDG.

2. All NVOCC Service Arrangements and/or Negotiated Rate Agreements, including amendments, with any non-vessel operating common carrier.

3. Documents relating to and sufficient to show the volumes shipped under each service contract with an ocean common carrier other than HSDG.

4. Documents relating to and sufficient to show the volumes shipped under each NVOCC Service Arrangement and each Negotiated Rate Agreement with any non-vessel operating common carrier.

5. Documents relating to and sufficient to show the shipments allegedly refused by HSDG during the period from June 23, 2020 and May 31, 2021 and tendered to other carriers by You, including Communications with other ocean common carrier(s) relating to such shipments and rates paid by You to one or more other ocean common carrier(s) for the transport of such shipments.

6. All agreements with warehouses, consignees, distribution centers, or any other person relating to the receipt of goods shipped under Your service contract with HSDG.

7. All documents, including correspondence, relating to demurrage charges paid to ocean common carriers other than HSDG or assessed by an ocean common carrier other than HSDG and disputed by You.

8. Documents and Communications relating to any and all claims asserted against other ocean common carriers or any ocean transportation intermediary by You.

9. Documents relating to and sufficient to show total volumes imported and/or shipped by You by year since 2018.

10. All of Your audited financial statements for the period January 1, 2018 to the present.
11. All Documents relied upon by You in responding to the Interrogatories.
12. All Documents relied upon by You in calculating the damages alleged to have been suffered by You.

COZEN O'CONNOR



By: _____

Wayne R. Rohde
Kathryn A. Sobotta
1200 19th Street, N.W.
Suite 300
Washington, D.C. 20036

March 24, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2022, the foregoing First Set of Interrogatories and Request for Production of Documents was served via electronic mail on:

Aaron Davis, Esq. (davis@valhallalegal.com)

Shlomo Hecht, Esq. (sam@hechtlawpa.com)

A handwritten signature in black ink, appearing to read "Wayne R. Rohde". The signature is written in a cursive style with a horizontal line underneath it.

Wayne R. Rohde

EXHIBIT 2

BEFORE THE
FEDERAL MARITIME COMMISSION

FMC DOCKET NO. 21-11

OJ COMMERCE, LLC.
Complainant,

v.

HAMBURG SÜDAMERIKANISCHE DAMPFSCHIFFFAHRTS-
GESELLSCHAFT A/S & CO. KG AND HAMBURG SUD NORTH
AMERICA, INC.
Respondents.

**RESPONDENTS' SECOND SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Federal Maritime Commission (“FMC”) Rules of Practice and Procedure, 46 C.F.R. §§502.145 and 502.146, Respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co. KG and Hamburg Sud North America, Inc. (collectively, “Respondents”) hereby propound their Second Set of Interrogatories and Second Request for Production of Documents to Complainant OJ Commerce, LLC (“OJC”). Respondents request that OJC answer the Second Set of Interrogatories, and produce for inspection and copying all Documents responsive to the following requests within 30 days. Answers to interrogatories and documents produced in response to the attached requests shall be delivered to Cozen O’Connor, 1200 19th Street, N.W., Suite #300, Washington, D.C. 20036, in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

1. The terms “You” and “Your” means OJ Commerce, LLC, and all parent, subsidiary, or affiliated entities, and all directors, officers and employees thereof, including but not limited to Naomi Home, Inc.

2. “Communication” means the exchange of thoughts, messages, or information, such as by speech, statements, signals, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, writing or behavior, whether oral or whether in the form of a document as the word “Document” is defined below. “Communication” includes communications that are made in the physical presence of persons to persons or persons to entities or entities to persons; those that are transmitted by writing or by media such as intercoms, telephones, including cellular phones, computers, television or radio; and those that are transmitted electronically such as by the internet, email, voice mail, or other electronic means.

3. The terms “Document” or “Documents” as used herein shall have the broadest possible meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and every non-identical copy of any written, recorded or graphic matter or data however produced or reproduced, including by way of example, but not limited to, any agreements, contracts, applications, correspondence, letters, inter-office and/or intra-office memoranda, notes, messages, text messages, e-mail, voice mail, minutes of meetings, telegrams, calendars, personal organizers, rolodex entries, reports, records, orders, invoices, receipts, checks, statements, medical records, bills, books of account, bulletins, diaries, logs, journals, computer disks, computer data, computer programs, tapes, schedules, drawings, photographs, x-rays, graphs, charts, audio and/or video recordings, transcripts, spreadsheets, work papers, worksheets, and/or any other tangible things, writings, data compilations or documentary material

of any nature whatsoever, together with all attachments thereto, in Your possession, custody or control. Every draft or non-identical copy of a document is a separate document. A document containing highlighting or notations is not identical to a document without such markings.

4. “Identify” when used in reference to a Document, means and includes the name and address of the custodian of the Document, the location of the Document, and a general description of the Document, including (1) the type of Document (i.e., correspondence, memorandum, facsimile, complaint, answer to complaint, etc.); (2) the general subject matter of the Document; (3) the date of the Document; (4) the author of the Document; (5) the addressee of the Document; (6) the relationship of the author and addressee to each other; (7) if it is a pleading, the name of the parties, the name of the jurisdiction, and the case number.

5. “Identify” when used in reference to a person or entity, shall mean (1) with regard to an individual the person’s full name and present and last known physical address, home and work telephone numbers; (2) with regard to an entity such as a company or partnership or trust or other legal entity the entity’s full legal name, type (partnership, corporation, etc.) and present and last known address and telephone number, the full name and corporate address of the registered agent of that entity, and the full name and corporate address of the corporate officers of that entity.

6. Other uses of the word “Identify” are intended to mean the giving in writing of a detailed account of the subject matter of the interrogatory, including the information sought in the interrogatory and, where possible and pertinent a description of dates, times, persons, locations, adjectives, and adverbs that would further characterize or depict the subject matter of the interrogatory.

7. “Ocean common carrier” shall have the meaning set forth in 46 U.S.C. §40102(17).

8. “Non-vessel operating common carrier” shall have the meaning set forth in 46 U.S.C. §40102(16).

9. “NVOCC Negotiated Rate Agreement” or “NRA” shall have the meaning set forth in 46 C.F.R. §523.3(a).

10. “NVOCC Service Arrangement” or “NSA” shall have the meaning set forth in 46 C.F.R. §531.2(i).

11. “HSDG” means Hamburg-Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co. KG.

12. The term “Transportation Service Provider” means an ocean common carrier, non-vessel operating common carrier, motor carrier, freight forwarder, or logistics company.

13. The term “relating to” means referring to, concerning, addressing, dealing with, having to do with, constituting, reflecting, representing, supporting, contradicting, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, compromising or relevant to. As indicated, the term necessarily includes information that is in opposition as well as in support of the positions and claims of the parties to this action.

INSTRUCTIONS

1. These instructions and definitions should be construed to require responses based upon the knowledge of and information available to You, as well as Your members, officers, directors, employees, agents, brokers, representatives, subsidiaries, attorneys, accountants, or any other person acting or purporting to act on Your behalf or under Your direction and control.

2. You are instructed to review the Definitions set forth above in formulating Your answers and responses.

3. If You object to fully identifying a Document or oral Communication because of a privilege, You must nevertheless provide the information, unless divulging the information would disclose the privileged information. As to any information withheld on the basis of a privilege or other claim of protection, set forth:

- (a) the nature of the privilege claimed (e.g., work product);
- (b) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (c) if what is claimed is not a privilege but another right of protection such as trade secrets or confidential information or other protection, the nature of the right of protection and the basis for claiming the protection applies here;
- (d) the date of the Document or oral Communication;
- (e) if a Document: its type (correspondence, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
- (f) if an oral Communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- (g) the general subject matter of the Document or oral Communication.

4. A request for a “Document” includes a request for electronically stored information. All responsive electronically stored information should be provided via Secure File Transfer Protocol, CD or DVD, in user readable format (.txt, .tif, .pdf or similar file types). Any electronic or magnetic data that is responsive to a request herein should be produced in its original native electronic format.

5. The following rules of construction shall apply:

- (a) The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a request all information that might otherwise be construed to be outside of its scope.
- (b) The terms “all,” “any,” and “each” shall mean “any and all” and/or “each and

every,” to the extent needed to make a request inclusive rather than exclusive.

(c) Reference to the singular of any word shall include the plural, and vice versa.

(d) All verbs shall be construed to include all tenses.

6. You are to produce all Documents as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features or shall be organized and labeled to correspond to the appropriate request herein. If there are no Documents responsive to any particular category, the party responding hereto shall state so in writing.

7. Unless otherwise specified, the time period covered by each interrogatory and each request for production of documents is January 1, 2020 to present.

INTERROGATORIES

1. Identify each person that prepared, assisted in preparing, or furnished information used in the preparation of the document contained in the Excel file styled “OJC Damages Data – Confidential AEO” that was provided to Respondents’ counsel on or about July 14, 2022.

2. Identify each person that prepared, assisted in preparing, or furnished information used in the preparation of the document styled “Preliminary Damages Calculation Statement – Confidential AEO” that was provided to Respondents’ counsel on or about July 14, 2022.

3. Identify each person responsible for soliciting, negotiating, managing, arranging, contracting for, procuring and/or terminating Your relationships with ocean common carriers, non-vessel operating common carriers, freight forwarders, and any other transportation service provider of any type. Include any employees who performed this role from 2018 until present.

4. Identify each person responsible for determining the products to be purchased by You, the quantities of products to be purchased, and the entities from whom such products are purchased. Include any employees who performed this role from 2018 until present.

5. Identify each person responsible for maintaining or producing Your financial records, including but not limited to annual reports and profit and loss statements. Include any employees who performed this role from 2018 until present.

6. Identify each person responsible for managing Your logistics and/or supply chain activities, including any author or manager of Your policies with regard to conducting due diligence with respect to transportation service providers. Include any employees who performed this role from 2018 until present.

7. Identify Your policies or plans for dealing with disruptions to your supply chain including, but not limited to, shortages in or unavailability of, transport capacity.

8. Identify each lawsuit, arbitration, or other legal action, including but not limited to any proceedings before the Federal Maritime Commission, that You have initiated against any Transportation Service Provider.

9. Identify each lawsuit, arbitration, or other legal action, including but not limited to any proceedings before the Federal Maritime Commission, that You have initiated against any entity or person alleging a refusal to deal or retaliation on the part of such entity or person.

10. Identify the factual bases for Your allegations in the Verified Amended Complaint that Respondents retaliated against You in violation of the Shipping Act.

11. Identify the total number of containers – in twenty-foot equivalent units (“TEUs”) – of goods belonging to or consigned to You that were transported from China and/or Vietnam to the United States in each of calendar years 2019, 2020, 2021 and 2022.

REQUESTS FOR DOCUMENTS

1. All Documents and Communications that either support or undermine the claims and allegations set forth in Your Verified Amended Complaint.

2. All Communications between You or Your counsel and any expert witness relating to compensation for the expert's study or testimony.

3. All Communications between You or Your counsel and any expert witness relating to facts or data that You or Your counsel provided and that the expert witness considered in forming the opinions to be expressed.

4. All Communications between You or Your counsel and any expert witness relating to any assumptions that You or Your counsel provided and that the expert witness relied on in forming the opinions to be expressed.

5. All Documents provided to any expert witness You retained in connection with this proceeding.

6. All Documents and Communications relating to the provision of ocean transportation services by HSDG (or the alleged failure of HSDG to provide same) during the period from June 23, 2020 to May 31, 2021.

7. Any service contract, NSA, or NRA (including any amendments thereto) between You and each of: (a) Orient Overseas Container Line Limited ("OOCL"); (b) Topocean Consolidation Service ("Topocean"); (c) Kuehne & Nagel Inc. ("K + N"); (d) Landstar Global Logistics; (e) Safe Logistics; (f) Mediterranean Shipping Company ("MSC"); (g) Cosco; (h) Evergreen; (i) Ocean Network Express ("ONE"); (j) FedEx Freight; (k) Hapag-Lloyd; or (l) any other Transportation Service Provider pursuant to which goods belonging to or consigned to You

were transported from China and/or Vietnam to the United States during the period January 1, 2019 to May 31, 2022.

8. All Documents and Communications relating to any alleged breach or failure to perform by any Transportation Service Provider under any service contract, NSA, or NRA produced in response to Request No. 2 above.

9. All Documents and Communications relating to any formal or informal complaints and/or threats to litigate that You made to any Transportation Service Provider relating to any service contract, NSA, or NRA produced in response to Request No. 2 above.

10. Documents sufficient to show (a) the volume of cargo shipped under each service contract, NSA and NRA produced in response to Request No. 2 above; and (b) the rate paid for the transportation of such cargo.

11. All Documents and Communications relating to Your efforts to secure ocean transportation at any time from January 1, 2020 until present, including requests for quotations, proposals, and/or evidence of any negotiation, whether successful or not, with any Transportation Service Provider.

12. All Documents and Communications exchanged between You and Naomi Home, Inc. at any time from June 1, 2020 to the present relating to the procurement and/or use of ocean transportation services or relating to any Transportation Service Provider.

13. A complete copy of BTIG's valuation of You, a portion of which was provided to Respondents' counsel on or about July 14, 2022.

14. All Documents and Communications between You and BTIG relating to BTIG's valuation of You, including but not limited to, the engagement letter with BTIG, all information

and data provided to BTIG, and formula valuation narrative report.

15. A complete copy of Nomura's valuation of You, a portion of which was provided to Respondents' counsel on or about July 14, 2022.

16. All Documents and Communications between You and Nomura relating to Nomura's valuation of You, including but not limited to, the engagement letter with Nomura, all information and data provided to Nomura, and formula valuation narrative report.

17. All Documents and Communications relating to any possible sale of OJC at any time after June 1, 2020, including but not limited to, negotiations between OJC and any potential buyers, due diligence information and data made available to potential buyers, and any draft and/or executed letters of agreement, non-disclosure agreements, agreements of sale, and/or other agreements relating to any possible sale.

18. Copies of all of Your corporate valuations performed from 2018 until present.

19. All Documents and Communications between You and any entity or person that has provided a corporate valuation of You from 2018 until present.

20. Your quarterly and annual profit and loss statements from 2018 until present.

21. Your unaudited monthly internal financial reports for all months during calendar years 2019, 2020, 2021, and 2022.

22. Copies of all invoices received from any Ocean common carrier (excluding HSDG) after June 23, 2020.

23. Copies of all periodic forecasts, projections and/or budgets prepared for OJC whether monthly, quarterly, or annual.

24. All Documents and Communications relating to any potential or secured

financing, including but not limited to, loan applications and documentation for any outstanding debt.

25. All Documents and Communications supporting the data contained in the document styled “Preliminary Damages Calculation Statement – Confidential AEO” that was provided to Respondents’ counsel on or about July 14, 2022.

26. Documents sufficient to explain why 4,700 containers was used in Section “E” of the document styled “Preliminary Damages Calculation Statement – Confidential AEO” that was provided to Respondents’ counsel on or about July 14, 2022.

27. All Documents and Communications that support or undermine Your ability to fulfill a 4,700-container minimum volume commitment from June 1, 2021 to May 31, 2022.

28. All Documents and Communications supporting the data contained in the Excel file styled “OJC Damages Data – Confidential AEO” that was provided to Respondents’ counsel on or about July 14, 2022, including but not limited to, invoices, receiving documents and waybills.

29. Documents sufficient to explain the calculation of “unit cost” per item used on the “Container Content” tab of the Excel file styled “OJC Damages Data – Confidential AEO” that was provided to Respondents’ counsel on or about July 14, 2022.

30. Historical daily inventory records from June 1, 2020 to present for all products included in Your damages calculations.

31. Documents sufficient to show Your inventory policy (i.e., just-in-time, etc.) from June 1, 2020 to the present.

32. Documents sufficient to show the locations where Your goods are stored when

received from overseas manufacturers.

33. The minutes of meetings of the members of OJ Commerce, LLC from 2018 until present.

34. Documents evidencing any policies identified in response to either Interrogatory Nos. 6 or 7 set forth above.

35. All Documents and Communications relating to any motions or other types of requests for sanctions that have been threatened or filed against You or any counsel representing You in any lawsuit, arbitration, or other legal action, including but not limited to any proceedings before the Federal Maritime Commission.

COZEN O'CONNOR

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July 27, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2022, the foregoing Second Set of Interrogatories and Requests for Production of Documents was served via electronic mail on:

Aaron Davis, Esq. (davis@valhallalegal.com)

Shlomo Hecht, Esq. (sam@hechtlawpa.com)

/s/ Wayne R. Rohde

Wayne R. Rohde