

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 21-11

OJ COMMERCE, LLC,

COMPLAINANT,

v.

HAMBURG SÜDAMERIKANISCHE
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S & CO KG

and

HAMBURG SUD NORTH AMERICA, INC.,

RESPONDENTS.

VERIFIED AMENDED COMPLAINT

Complainant OJ Commerce, LLC (“Complainant” or “OJC”), by its undersigned attorneys, files this Verified Amended Complaint against Respondents herein, alleging violation of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

I. COMPLAINANT

1. Complainant OJC is a limited liability company organized and existing under the law of the State of Delaware, with a principal place of business at 3076 N. Commerce Parkway, Miramar, Florida 33025.

II. RESPONDENTS

2. HAMBURG SÜDAMERIKANISCHE DAMPFSCIFFFAHRTS-GESELLSCHAFT A/S & CO KG (“Hamburg Germany”) is a corporation organized and existing under the laws of Germany, with a principal place of business at Willy-Brandt-Str. 59-65, 20457 Hamburg, Germany. Hamburg Germany is and was at all times relevant to this Complaint a common carrier within the meaning of the Shipping Act, 46 U.S.C. § 40102(7), subject to regulation by the Federal Maritime Commission (“FMC”).

3. HAMBURG SUD NORTH AMERICA, INC. (“Hamburg NA”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 465 South Street F 3 STE 300, Morristown, New Jersey 07960, having its registered agent as THE CORPORATION TRUST COMPANY, located at CORPORATION TRUST CENTER 1209 ORANGE ST, WILMINGTON, DE 19801. Hamburg NA is and was at all times relevant to this Complaint and an Agent of Hamburg Germany and an ocean transportation intermediary (“OTI”) within the meaning of the Shipping Act, 46 U.S.C. § 40102(20), subject to regulation by the FMC. Hamburg NA is also a person subject to regulation by the FMC based on its acts in conjunction with Hamburg Germany in violation of 46 U.S.C. §§ 41102(b)(2), 41104(a)(3), 41104(a)(5), 41104(a)(9), and 41104(a)(10).

III. JURISDICTION

4. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984.

5. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. Complainant is seeking reparations under 46 U.S.C. § 41305 for injuries caused to it by Respondents due to their violations of 46 U.S.C. §§ 41102(b)(2), 41102(c), 41104(a)(3),

41104(a)(5), 41104(a)(9), and 41104(a)(10). Complainant also seeks additional amounts of twice the amount of the actual injury under 46 U.S.C. § 41305(c) for Respondents' violations of 46 U.S.C. §§ 41102(b)(2) and 41104(a)(3).

6. The FMC has personal jurisdiction over Hamburg Germany as a "common carrier" as defined in 46 U.S.C. § 40102(7).

7. The FMC has personal jurisdiction over Hamburg NA as an Agent of Hamburg Germany and as an OTI as defined in 46 U.S.C. § 40102(20). The FMC also has personal jurisdiction over Hamburg NA as it is a person subject to regulation by the FMC based on its acts in conjunction with Hamburg Germany in violation of 46 U.S.C. §§ 41102(b)(2), 41104(a)(3), 41104(a)(5), 41104(a)(9), and 41104(a)(10).

8. Respondents violated 46 U.S.C. § 41102(b)(2) because their operation under the parties' agreement was not in accordance with that agreement.

9. Respondents' actions and omissions alleged herein constitute failures by each Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of OJC, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5.

10. Respondents' actions and omissions alleged herein also constitute their retaliating against Complainant, in violation of 46 U.S.C. § 41104(a)(3), by refusing, and threatening to refuse, cargo space accommodations when available because Complainant threatened to file a complaint with the FMC over Respondents violations of the Shipping Act.

11. Respondents' actions and omissions alleged herein also constitute, in violation of 46 U.S.C. § 41104(a)(3), their resorting to unfair and unjustly discriminatory methods against

Complainant because Complainant threatened to file a complaint with the FMC over Respondents' violations of the Shipping Act.

12. Respondents' conduct during the course of providing service to Complainant pursuant to the parties' service contract, which was continuous and ongoing until expiration of the service contract, constituted an unfair and unjustly discriminatory practice against Complainant in the matter of rates or charges with respect to the ports identified in the service contracts, in violation of 46 U.S.C. Section 41104(a)(5).

13. Respondents' conduct the course of providing service to Complainant pursuant to the parties' service contract, which was continuous and ongoing until the contract expired on May 31, 2021, gave undue and unreasonable preference and advantage to shippers other than Complainant and imposed an undue and unreasonable prejudice and disadvantage to Complainant with respect to the ports identified in the parties' service contract, in violation of 46 U.S.C. Section 41104(a)(9).

14. Respondents' actions and omissions alleged herein also constitute, in violation of 46 U.S.C. § 41104(a)(10), their unreasonable refusal to deal or negotiate a renewal of their service contract with Complainant because Complainant had threatened to file a complaint with the FMC over Respondents' violations of the Shipping Act.

IV. FACTUAL ALLEGATIONS

15. Both Hamburg entities are owned by Maersk A/S, *see* Docket No. 21-11, Affidavit of Michael Gast, Jr., filed January 18, 2022, one of the two largest shipping container lines in the world. Maersk's profits for 2021 exceeded its profits for the **past nine years combined**. *See* <https://www.usfunds.com/resource/bad-news-is-good-news-for-container-shipping-investors/> (accessed February 2, 2022).

16. In years past, Complainant had secured the bulk of its ocean freight via service contracts with Respondents and other ocean carriers. Such contracts specify a minimum quantity commitment (“MQC”) for cargo to be shipped and set forth pricing for port-to-port lanes, and/or port-to-door, subject to the service commitment.

17. Once the COVID-19 pandemic began, however, global ocean carriers, including Respondents, began taking actions to exploit ocean carriage pricing and engage in unprecedented profiteering at the expense of shippers, including Complainant, and the public. This has led to record profits for the shipping companies, including Maersk, and has greatly contributed to rapid inflation and a global supply chain crisis in the past two years. The shipping industry’s, including Maersk’s, outrageous profits during that time and the negative effect on the United States’ (and the world’s) economy has been widely covered by the media: *See, e.g.,* <https://thehill.com/business-a-lobbying/592397-shipping-giants-under-fire-for-record-profits-fees-as-pandemic-continues>¹ (“Many highly-profitable industries are using the pandemic as an excuse to gouge consumers or tack on sky-high fees, and the shipping industry is no exception” ... “Despite shattering previous profit records last year, big shippers are trying to convince Congress that their abusively high fees are essential even as they fan the flames of inflation.” ... “Denmark-based carrier Maersk expects to report \$24 billion in 2021 earnings before taxes and depreciation, triple its 2020 haul.” ... “The Biden administration, meanwhile, has emboldened the FMC to go after anticompetitive shipping practices through executive action. The White House in November said that the agency can challenge antitrust agreements if they ‘produce an unreasonable reduction in transportation service or an unreasonable increase in transportation

¹ All weblinks in this document were accessed on February 2, 2022.

cost or ... substantially lessen competition.”);

[https://www.randomlengthsnews.com/archives/2022/01/12/profitteering-shipping-](https://www.randomlengthsnews.com/archives/2022/01/12/profitteering-shipping-companies/37537?v=7516fd43adaa)

[companies/37537?v=7516fd43adaa](https://www.randomlengthsnews.com/archives/2022/01/12/profitteering-shipping-companies/37537?v=7516fd43adaa) (“The multi-billion-dollar foreign container shipping industry has profited mightily during the pandemic and the ensuing supply chain crisis. Those of us who work in the U.S. supply chain have seen up close how they have secured a vice grip on the national economy — impacting businesses, consumers, and workers for the sake of overseas profits. ... Industry leader Maersk, for example, is set to make Danish history as it matches its combined earnings from the past nine years with earnings of \$16.2 billion for 2021 (up from a projected \$3 billion at the start of the year.”);

<https://www.cnn.com/2021/11/02/business/maersk-record-profit-supply-chain-chaos/index.html>

(“Maersk, the world's largest container shipping company, predicts that global supply chain chaos will continue into next year. That could benefit the company, which just reported its best quarter in 117 years.”); [https://www.bloomberg.com/news/features/2022-01-18/supply-chain-](https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021)

[crisis-helped-shipping-companies-reap-150-billion-in-2021](https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021) (“‘They exploit our desperation’:

Small businesses and consumers are paying for sky-high freight costs as cargo giants mint profits.”); [https://www.bloomberg.com/opinion/articles/2021-08-19/container-shipping-is-](https://www.bloomberg.com/opinion/articles/2021-08-19/container-shipping-is-making-a-killing-this-year-but-will-we-have-christmas)

[making-a-killing-this-year-but-will-we-have-christmas](https://www.bloomberg.com/opinion/articles/2021-08-19/container-shipping-is-making-a-killing-this-year-but-will-we-have-christmas) (“Container lines are making oodles of money from their customers’ misery. ... Cancelled or delayed voyages, high freight rates and congestion surcharges are angering customers and triggering complaints of profiteering.”); *see*

also <https://www.freightwaves.com/news/fmc-onboard-for-bidens-ocean-carrier-crackdown>

(“[T]hree global ocean carrier alliances now control more than 80% of the container market.

‘That concentration has contributed to a spike in shipping costs and fees during the pandemic.

The executive order calls on the Federal Maritime Commission to crack down on unjust and

unreasonable fees and work with the Justice Department to investigate and punish anticompetitive conduct.” .. “Excessive fees charged to U.S. importers and exporters for failing to expeditiously move containers off docks and container terminals – known as detention and demurrage – “is a huge issue we’re working on and it’s important to get to the bottom of it because it’s unfair to shippers,” [Federal Maritime Commission Chairman Daniel] Maffei said. “If those practices are abused it tends to decrease capacity, which makes things worse,” article citing to Executive Order on Promoting Competition in the American Economy, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>); <https://container-news.com/yang-ming-boss-claims-taiwanese-carriers-could-earn-more-than-banks-in-2021/> (“Taiwanese carriers could earn more than [Taiwanese] banks in 2021”); <https://theloadstar.com/market-distortions-make-mockery-of-free-market-container-shipping/>; <https://www.freightwaves.com.cdn.ampproject.org/c/s/www.freightwaves.com/news/container-shipping-has-greatest-quarter-ever-and-theres-more-to-come/amp>.

18. In 2020 and 2021, Respondents engaged in a variety of unjust and unreasonable practices with respect to Complainant’s cargo. Instead of honoring the commitments in its service contracts with Complainant, Respondent began a practice of systematically failing to meet its quantity and price commitments to Complainant. As a result, Complainant was forced to obtain space on the spot market at enormous expense or forgo making shipments of goods to the United States altogether.

19. Respondents’ unreasonable practices coincided with an unprecedented increase in spot market pricing for ocean freight. Respondents sought to take advantage of unprecedented high pricing by forcing shippers with service contracts, like Complainant, to resort to spot market

purchases to secure needed freight carriage. Respondents benefitted from being able to sell previously contracted capacity on the spot market, or to shippers willing to pay a premium, rather than honoring its service contract commitments with Complainant, and others.

20. Respondents have also engaged in a deliberate practice of seeking to condition their compliance with its contractual service commitments on extracting additional payments from Complainant, above and beyond the pricing set forth in the parties' service contract, despite the fact that the contract does not permit Respondents to assess such surcharges unilaterally.

21. Respondents' actions are contrary to what they, and their representatives, have been telling Congress and other regulatory bodies. For example, during the June 15, 2021 House Subcommittee on Coast Guard and Maritime Transportation entitled "Impacts of Shipping Container Shortages, Delays, and Increased Demand on the North American Supply Chain," John Butler, President and CEO of the World Shipping Council, of which Maersk is a member, when asked about shipping companies renegeing on contracts with shippers in order to request more money to make shipments, testified that "ocean carriers are quite serious about fulfilling their end of the bargain with their service contracts. That's how they keep relationships with their customers." See <https://transportation.house.gov/hearings/watch?hearingid=A48307B6-BE35-1AC6-AABB-39963851E908> (01:58:55 - 02:01:50). But Mr. Butler's testimony on behalf of the World Shipping Council is belied by Respondents' habitual conduct of violating service contracts just like the example given by the House Subcommittee member on a normal, customary, and continuous basis, not only with respect to Complainant, but also with respect to other shippers, including but not limited to the complainant in FMC Docket No. 21-05.

22. Although the global ocean carriers, including Maersk, have publicly bemoaned the supply chain crisis brought on, according to the carriers, solely by COVID, the carriers have shown

no shame in exploiting the situation by preying on their affected customers in the quest for record profits, with no end in sight. As shown above, the strategies have worked exceedingly well for the carriers and have been devastating for shippers. Maersk has done this in part by gouging consumers such as Complainant and tacking on and demanding sky-high fees in addition to the contracted-for fees in the Agreement. Respondents have enormously profited from their wrongful actions, profiting more in 2021 than they did in the previous nine years combined and reporting their best quarter in 117 years. These profits have come at the expense not only of Complainant and numerous other shippers, but also the general public, which has been suffering with massive inflation since the beginning of 2021. Indeed, likely few entities have profited more in the past two years than Respondents' parent company, Maersk.

23. Respondents' violations of the Shipping Act have substantially harmed and damaged Complainant, and other shippers, in several ways.

24. Respondents' conduct alleged herein with respect to the receipt, handling, storage, and/or delivery of the property of Complainant has occurred on a normal, customary, and continuous basis over the course of 2020 - 2021.

25. On or about June 23, 2020, OJC entered into a service agreement with Respondents, for the shipment of goods by sea and delivery to warehouse facilities within the United States via truck, a copy of the agreement is hereby attached as Exhibit A. (the "Agreement").

26. The Agreement was required to be filed under section 40302(a), as it is an "ocean common carrier agreement," as defined by section 40301(a). The Agreement also contains a term that states "[t]his Contract shall be subject to the U.S. Shipping Act of 1984, as amended."

27. The Agreement governed the parties' relationship between June 23, 2020 to May 31, 2021 (the "Active Term").

28. During the Active Term of the Agreement, Respondents wrongfully billed 13 containers a total of \$40,680.32 in demurrage fees, as follows:

28.1 Container No. MRKU2875026. The container was discharged on February 1, 2021, the last free day on port was February 5, 2021, yet gate out was not until March 3, 2021. OJC was nevertheless wrongfully charged a total of \$7,540 in demurrage fees.

28.2 Container No. BEAU5182625. The container was discharged on February 2, 2021, the last free day on port was February 8, 2021, yet gate out was not until March 2, 2021. OJC was nevertheless wrongfully charged a total of \$6,280 in demurrage fees. 22.3

Container No. SEGU4327705. The container was discharged on January 27, 2021, the last free day on port was February 2, 2021, yet gate out was not until March 1, 2021. OJC was nonetheless wrongfully charged a total of \$7,855 in demurrage fees.

28.4 Container No. MSKU0595352. The container was discharged on May 22, 2021, yet OJC did not receive notice until May 25, 2021. Additionally, the container was subject to a VACIS exam, but OJC did not receive such notice until June 1, 2021. Gate out was on June 7, 2021. Despite that, OJC was wrongfully charged a total of \$3,765 in demurrage fees.

28.5 Container No. SUDU8646980. The container was discharged on June 16, 2021. Hamburg NA failed to schedule a delivery order for the trucking company altogether resulting in a gate out date of July 8, 2021. Nevertheless, OJC was wrongfully charged a total of \$4,075 in demurrage fees.

28.6 Container No. MRKU3142506. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the

proper equipment to its truckers to do a pre-pull resulting in a July 14, 2021 gate out date. Nonetheless, OJC was wrongfully charged a total of \$2,485 in demurrage fees.

28.7 Container No. GCXU5721300. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 14, 2021 gate out date. Nonetheless, OJC was wrongfully charged a total of \$2,750 in demurrage fees.

28.8 Container No. MSKU1597679. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 15, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$3,015 in demurrage fees.

28.9 Container No. TLLU6852525. The container was discharged on June 23, 2021. OJC did not receive the arrival notice until June 24, 2021. Such a delay in arrival notice prevented OJC from making the proper arrangements for a timely pickup or pre-pull resulting in a July 1, 2021 gate out date. OJC was thereafter wrongfully charged a total of \$645 in demurrage fees.

28.10 Container No. MRSU3300327. The container was discharged on June 25, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 13, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$742.22 in demurrage fees.

28.11 Container No. SUDU6976489. The container was discharged on June 24, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 13, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$742.22 in demurrage fees.

28.12 Container No. MSKU1228177. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to arrange for a proper trucking company. Instead, it arranged for a trucking company that could not handle more than 3 containers per day, and this container was not one of those, resulting in a July 8, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$392.94 in demurrage fees.

28.13 Container No. BMOU4268879. The container was discharged on July 1, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 14, 2021 gate out date. Again, OJC was wrongfully charged a total of \$392.94 in demurrage fees.

29. Additionally, pursuant to the Agreement, Respondents agreed to a minimum volume commitment of 400 TEU, which is equivalent to 200 containers.

30. Beginning in or around August 2020, Respondents regularly engaged in unjust and unreasonable practices toward Complainant. Instead of providing space at the contracted rates, Respondents began a systematic practice of failing to make space available under its service contract, resulting in increasing monthly shortages and a backup of Complainant's containers to be shipped.

31. During the Active Term, for its part, Complainant provided adequate booking notice to schedule shipment of containers, pursuant to the Agreement, but Respondents refused to schedule such shipments. Respondents made these refusals throughout August, September, October, November, and December 2020, including in or around August 20, September 30, October 12, and numerous other dates in 2020, and throughout January, February, March, April, and May 2021, including in or around April 13, May 5, May 11, and numerous other dates in 2021.

32. During the Active Term, Respondents provided a total of 185 containers, which is 30 TEUs below the 400 TEU MQC in the Agreement. But even those containers that were shipped by Respondents were not shipped in a timely manner. On multiple occasions, Complainant wanted more containers shipped on a certain week than in another week, but Respondents refused, stating that the containers would have to be equally distributed by week. However, Respondents then would skip shipping Complainant's containers for multiple weeks as they received more money for the space from other shippers, thereby pushing Complainant's shipments off for weeks at a time. Upon information and belief, this happened not only to Complainant but also to other shippers.

33. Respondents also stated, throughout the 10-month time period from August 2020 - May 2021 that they would ship Complainant's shipments in a timely manner, as mandated by the Agreement, if and only if paid higher rates than those included in the Agreement. When Complainant refused to submit to Respondents' extortion, Respondents pushed off Complainant's shipments for weeks, regularly refusing to operate under the terms of the Agreement and in violation of the Shipping Act.

34. By doing so, Respondents unfairly and unjustly discriminated against Complainant on a continuous and ongoing basis for 10 months in the matter of rates or changes with respect to ports identified in the Agreement, in violation of section 41104(a)(5).

35. Respondents also gave, on a continuous and ongoing basis over 10 months, undue and unreasonable preference and advantage to shippers other than Complainant with respect to the ports identified in the Agreement, as those other shippers were evidently willing to accept Respondents' exorbitant rates that were much higher than those in the Agreement. Respondents' actions constituted a violation of section 41104(a)(9).

36. As a result of Respondent's wrongful conduct, on some occasions OJC was forced to retain alternate shipping carriers at significantly higher shipping rates per container.

37. Also as a result of Respondent's wrongful conduct, on some occasions OJC was unable to retain alternate shipping carriers at all, and incurred significant economic damages well over \$1.6 Million and upwards of over \$2.7 Million, for Respondents' failure to honor the minimum 400 TEU commitment on a normal, customary, and continuous basis over the span of many months.

38. Throughout the time period in which Respondents' systematically and unjustly charged Complainant demurrage fees and refused for over 10 months to meet the MQC mandated in the Agreement, Complainant was forced to patronize other carriers or forego shipments altogether.

39. Complainant also informed Respondents throughout August 2020 – May 2021 that Complainant would be forced to file a complaint with the FMC if Respondents did not meet its obligations in the parties' service contract and withdrawal the wrongful demurrage charges, as these were violations occurring on a normal, customary, and continuous basis.

40. As a result of Complainant's attempts to mitigate its damages by filing a complaint with the FMC against Respondents, Respondents' refusals to provide Complainant cargo space and their unfair and unjustly discriminatory methods became more common and frequent leading up to discussions on the renewal of the parties' service contract in April 2021.

41. During April 2021, the parties were engaged in discussions about renewing the parties' service contract. Throughout those discussions, there were conversations about the MQC of the renewal, but never about there being no renewal at all.

42. Out of the blue and with no prior notice, on May 4, 2021, Respondents unilaterally notified Complainant that there would be no service contract renewal under **any terms**, but instead that Respondents would “work case by case” with Complainant using spot market rates. Thereafter, Complainant attempted to negotiate a contract with an even more limited scope – such as a port-to-port only contract – but Respondents rejected Complainant’s proposal out of hand within hours, leaving Complainant entirely without a shipping service contract of any sort past May 31, 2021.

43. Respondents’ dumping of Complainant without warning and without a service contract, and their refusal to negotiate or deal with Complainant, has massively damaged Complainant’s ability to have its goods shipped to the United States. Indeed, Respondents’ refusal to renew the parties’ service contract has crippled Complainant’s business and its supply chain access since June 2021.

44. Complainant’s threats of filing a FMC complaint against Respondents for their normal, customary, and continuous refusals to meet the MQC of the parties’ service contract and their charging of unjust and unreasonable demurrage fees that were the fault of Respondents and not Complainant, caused Respondents to (a) refuse to deal or negotiate with Complainant for a renewal of the parties’ service contract, (b) retaliate against Complainant by refusing available cargo space to Complainant, and (c) unjustly or unfairly discriminating against Complainant in the allocation of cargo space, to Complainant’s great detriment. This is evidenced in part by Respondents’ ever-increasing failures to abide by the parties’ service agreement and violations of the Shipping Act in parallel with Complainant’s criticisms of Respondents’ unjust and unreasonable practices and its threats to file a complaint with the FMC against Respondents.

45. Respondents' aforementioned actions to refuse Complainant a service contract have forced Complainant into the spot market for nearly all its shipments – which are five to over 15 times the cost per container of a service contract price – and as a result, driven up Complainant's shipping costs exponentially. Respondents' refusals, failures, and retaliation have threatened the very existence of Complainant's business.

V. VIOLATIONS OF THE SHIPPING ACT

46. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

47. Section 41102(c) of the Shipping Act (46 U.S.C. § 41102(c)) prohibits a common carrier or marine terminal operator from failing to “establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”

48. Respondents' practices and regulations relating to the assessment of demurrage are directly related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

49. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges against Shipments Nos. 1-3 (B/L Nos. SSZ0849867, SSZ0845076, and SSZ0852138) that were subject to governmental holds for examination by Customs, and therefore, unavailable for pick-up.

50. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges against Shipment No. 4 (B/L No. SSZ0853173) that was unavailable for pickup due to congestion-related delays at the Port.

51. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges that serve no incentivizing principle and do not promote freight fluidity.

52. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by failing to provide Complainant with detailed billing information and/or invoices relating to the demurrage charges assessed that would allow Complainant to meaningfully understand and contest the charges.

53. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by refusing to extend free time and/or waive or reduce demurrage charges for the Shipments that were unavailable for pickup.

54. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by failing to have a clear dispute resolution policy with respect to demurrage charges.

55. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(b)(2) by failing to operate under the terms of the parties' service contract, by failing to honor the minimum 400 TEU minimum volume, which occurred on a normal, customary, and continuous basis, within the Active Term.

56. Respondents retaliated against Complainant in violation of § 411024(a)(3) by refusing and threatening to refuse cargo space when available and resorted to other unfair and unjustly discriminatory methods because Complainant had threatened to file a complaint with the FMC against Respondents for its violations of the Shipping Act.

57. Respondents' conduct that occurred continuously over the course of 10 months constituted an unfair and unjustly discriminatory practice against Complainant in the matter of rates or charges with respect to the ports identified in the Agreement, in violation of § 41104(a)(5).

58. Respondents' conduct that occurred continuously over the course of 10 months gave undue and unreasonable preference and advantage to shippers other than Complainant and imposed an undue and unreasonable prejudice and disadvantage to Complainant with respect to the ports identified in the Service Contracts, in violation of § 41104(a)(9).

59. Respondents refused to deal or negotiate with Complainant in violation of § 411024(a)(10) when they refused to renew Complainant's service contract and forced Complainant into the spot market for virtually all its shipments.

VI. CAUSATION AND INJURY TO COMPLAINANT

60. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

61. As a result of Respondents' violations of the Shipping Act, the Complainant has sustained injuries and damages in the amount of well over \$21.6 Million, including (a) over \$20 Million for Respondents' refusal to deal or negotiate with Complainant in the renewal of the parties' service contract and/or their retaliation against Complainant; (b) over \$1.6 Million for Respondents' continuous refusal to meet the MQC in the parties' service contract; and (c) \$40,680.32 in erroneous demurrage charges. Complainant also seeks additional amounts of twice the amount of the actual injury under 46 U.S.C. § 41305(c) for Respondents' violations of 46 U.S.C. §§ 41102(b)(2) and 41104(a)(3).

62. Respondents' misconduct has caused Complainant to incur other injuries as well, including delays, reduced inventory, unnecessary expenses, and lost profits, as well as attorneys' fees and costs relating to litigation.

VII. ALTERNATIVE DISPUTE RESOLUTION

63. Complainant made numerous unsuccessful attempts to resolve this matter with Respondents prior to filing this Verified Complaint. Considering statements made by Respondents and noncooperation from Respondents in resolving this matter, Complainant did not seek to use the FMC's alternative dispute resolution procedures prior to filing this Verified Amended Complaint. That said, the parties have now scheduled preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution (ADR) under the FMC's ADR program, 46 C.F.R. § 502.64.

VIII. PLACE OF HEARING

64. Complainant does not request a hearing on this matter.

IX. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that Respondents be required to answer the charges in this Complaint, and that after the Commission's investigation, the Commission issue an order:

- A. Requiring Respondents to pay Complainant reparations and additional amounts for the unlawful conduct described herein, along with interest and Complainant's attorneys' fees and costs pursuant to 46 U.S.C. § 41305;
- B. Requiring the payment of any other amounts that the Commission deems appropriate; and
- C. Providing such other and further relief that the Commission deems just and proper.

Dated: February 2, 2022

Respectfully Submitted,

By: /s/ Aaron W. Davis

Aaron W. Davis

Minnesota State Bar No.: 318255

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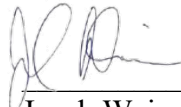
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Attorneys for OJ Commerce, LLC

VERIFICATION

I, Jacob Weiss, am the President of Complainant OJ Commerce, LLC and hereby declare and attest under penalty of perjury that I have read the foregoing Verified Amended Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: February 2, 2022



Jacob Weiss