

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**Docket No. 22-08**  
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**ACHIM IMPORTING COMPANY, INC.**

**v.**

**YANG MING MARINE TRANSPORT CORPORATION**  
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**RESPONDENT’S ORIGINAL VERIFIED ANSWER**

Respondent Yang Ming Marine Transport Corporation (“Respondent” or “Yang Ming”), by and through its undersigned counsel, files this Original Verified Answer (“Answer”) to the Complaint in the above-captioned proceeding and responds as follows:

**I.**

Subject to and without waiving any defenses or affirmative defenses set forth subsequently in this Answer, Respondent answers the allegations in the Complaint in correspondingly numbered paragraphs as follows.

1. Complainant Achim Importing Company Inc. (“Achim” or “Complainant”), by its undersigned counsel, brings this Verified Complaint against Respondent Yang Ming Marine Transport Corporation (“Yang Ming Marine” or “Respondent”) pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Complainant caused by Respondent’s

violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 et seq. (the “Shipping Act”), alleged herein.

**Answer: Paragraph 1 of the Complaint is a description to which no answer is required. To the extent that an answer is required, Respondent denies that Respondent violated the Shipping Act, denies that Complainant was injured, denies that Complainant is entitled to reparations, and avers that the statute itself is the best evidence of what it says.**

2. Respondent Yang Ming Marine is one of the top ten largest shipping container companies in the world. Along with Hapag-Lloyd AG, HMM Co., Ltd., and Ocean Network Express Holdings, Ltd. (itself a joint venture among three ocean lines), Yang Ming Marine is a member of “THE Alliance”. Most of the top global container lines have organized themselves to form three major ocean “alliances”, which collectively control the vast majority of ocean container shipping. As a result, global carrier alliances wield enormous power over the global shipping industry.

**Answer: Respondent admits that it is a member of THE Alliance, FMC Agreement No. 012439-006, filed with the Federal Maritime Commission. Otherwise denied.**

3. As alleged herein, Respondent has, upon information and belief, taken advantage of price inflation in container shipping during the COVID-19 pandemic and unjustly and unreasonably exploited customers, vastly increasing its profitability at the expense of shippers and the U.S. public generally, which bears increased freight cost in the form of inflation.

**Answer: To the extent a response is required, Respondent denies the assertions of Paragraph 3 of the Complaint.**

4. As part of its business, Complainant secures ocean freight via service contracts with Respondent and other ocean carriers. Such contracts specify a minimum quantity commitment (“MQC”) for cargo to be shipped between certain groups of ports, and set forth pricing for port-to-port lanes subject to the service commitment. Entering into service contracts in advance enables shippers to ensure they will have sufficient freight service and to mitigate exposure to fluctuations in market price.

**Answer: Respondent admits that it does part of its business with its customers through service contracts, which are filed with the Federal Maritime Commission, and that those service contracts include a minimum quantity commitment, as required by the Shipping Act and FMC regulations. Otherwise denied.**

5. In 2020 and 2021, Respondent engaged in unjust and unreasonable practices with respect to Complainant’s cargo. Instead of honoring the pricing and MQC commitments in its service contract with Complainant, Respondent began a practice of systematically favoring other shippers, including spot market purchasers willing to pay high rates, over Complainant. As a result, Complainant had to obtain space on the spot market at enormous expense.

**Answer: To the extent a response is required, Respondent denies the allegations of Paragraph 5.**

6. Respondent’s unjust and unreasonable practices coincided with an unprecedented increase in spot market pricing for ocean freight. On information and belief, Respondent deliberately constrained capacity to manipulate pricing, sought to take advantage of unprecedented high pricing by forcing shippers with service contracts, like Complainant, to resort to spot market purchases to secure freight carriage, and benefited 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.

**Answer: Respondent denies the allegations of Paragraph 6.**

7. On information and belief, Respondent's unjust and unreasonable practices were knowing and deliberate.

**Answer: Respondent denies the allegation of Paragraph 7.**

8. On information and belief, Respondent has profited greatly from the conduct alleged herein.

**Answer: Respondent denies the allegation of Paragraph 8.**

9. Profiteering by container lines injures not only shippers, but also the entire consumer public in the form of inflation. Inflation in the United States has risen to crisis levels, while global ocean carriers, including Respondent, report windfall profits.

**Answer: Respondent denies the allegations of Paragraph 9.**

10. Respondent's conduct alleged herein with respect to the receipt, handling, storage, and/or delivery of the property of Complainant and, upon information and belief, of other shippers has occurred on a normal, customary, and continuous basis.

**Answer: Respondent denies that the conduct alleged in the Complaint relates to the receipt, handling, storage, and/or delivery of property and denies that any such conduct occurred on a normal, customary and continuous basis.**

11. Complainant Achim is a corporation existing under the laws of New York with its principal place of business located at 1600 Livingston Avenue, North Brunswick, New Jersey 08902, telephone (718) 369-2200, email care of MAG@achimonline.com and via its undersigned counsel's telephone numbers and email addresses listed below. For purposes of its

service contract with Respondent, Complainant Achim is a “shipper” as that term is defined by 46 U.S.C. Section 40102(23).

**Answer: Respondent is without information sufficient to admit or deny the allegations of Paragraph 11, except that Respondent admits that Complainant is a “shipper” as that term is defined by 46 U.S.C. Section 40102(23).**

12. Upon information and belief, Respondent Yang Ming Marine is a company existing under the laws of Taiwan with its principal place of business located at 271 Ming-Teh 1st Road, Chitu District, Keelung, Taiwan. Yang Ming Marine is a vessel-operating “ocean common carrier” as that term is defined by 46 U.S.C. Section 40102(18) with organization number 000138.

**Answer: Respondent admits the allegations of Paragraph 12.**

13. The Federal Maritime Commission (“FMC”) has subject-matter jurisdiction over this Verified Complaint pursuant to the Shipping Act and, in particular, 46 U.S.C. Sections 41301 through 41309.

**Answer: Respondent denies the allegations of Paragraph 13.**

14. The FMC has personal jurisdiction over Respondent as an “ocean common carrier,” as that term is defined by 46 U.S.C. 40102(18). Respondent has entered into a “service contract,” as that term is defined by 46 U.S.C. 40102(21), with Complainant.

**Answer: Respondent admits that it is an “ocean common carrier” and admits that it in the past entered into a “service contract” with Complainant.**

15. Respondent’s actions alleged herein constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and

delivering the property of Complainant and, upon information and belief, other shippers, in violation of 46 U.S.C. Section 41102(c).

**Answer: Respondent denies the allegations of Paragraph 15.**

16. Respondent's actions alleged herein constitute the provision of service in the liner trade that is not in accordance with the rules and practices contained in its service contract with Complainant, in violation of 46 U.S.C. Section 41104(a)(2).

**Answer: Respondent denies the allegations of Paragraph 16.**

17. Respondent's actions alleged herein, done in connection with its provision of service pursuant to its service contract with Complainant, individually and collectively constitute unfair and unduly discriminatory practices against Complainant in the matter of rates or charges with respect to the ports for which Complainant contracted with Respondent, in violation of 46 U.S.C. Section 41104(a)(5).

**Answer: Respondent denies the allegations of Paragraph 17.**

18. Respondent's actions alleged herein with respect to its service contract with Complainant individually and collectively also have given undue and unreasonable preference and advantage to shippers other than Complainant and imposed undue and unreasonable prejudice and disadvantage on Complainant with respect to the ports for which Complainant contracted with Respondent, in violation of 46 U.S.C. Section 41104(a)(9).

**Answer: Respondent denies the allegations of Paragraph 18.**

19. Respondent's actions alleged herein in the course of providing service to Complainant pursuant to its service contract with Complainant constitute unreasonable refusals to deal or negotiate with Complainant, in violation of 46 U.S.C. Section 41104(a)(10).

**Answer: Respondent denies the allegations of Paragraph 19.**

20. Respondent's actions alleged upon information and belief herein to engage in parallel, contemporaneous actions with others, such as other ocean carriers, to regulate the volume or character of cargo to be carried, or to control, regulate, or prevent competition, constitute operation pursuant to an unfiled ocean carrier agreement, in violation of 46 U.S.C. Section 41102(b).

**Answer: Respondent denies the allegations of Paragraph 20.**

21. Complainant and Respondent entered into an Ocean Service Contract effective as of May 1, 2020 (the "Service Contract") and covering the time period from May 1, 2020 through April 30, 2021 (the "Service Contract Term"). The Service Contract set Complainant's MQC at 200 twenty-foot equivalent container units ("TEUs").

**Answer: Respondent admits that Complainant and Respondent entered into a service contract that was effective from May 1, 2020 until April 30, 2021. Respondent admits that the Complainant's minimum quantity commitment under this service contract was 200 TEUs.**

22. However, during the course of the entire Service Contract Term, Respondent only carried a total of 31 TEUs of Complainant's cargo pursuant to the Service Contract.

**Answer: Respondent admits that Complainant tendered 31 TEUs to Respondent during the term of the Service Contract and Respondent carried 31 TEUs of Complainant's cargo during the term of the Service Contract.**

23. As a result of Respondent's 169-TEU shortfall, Complainant had to seek carriage from other sources at higher rates, or else forgo shipments entirely. Complainant had to spend at least \$1,325,962 more than the contracted prices to ship 169 TEUs on the spot market to make up for Respondent's 169-TEU shortfall.

**Answer: Respondent denies the allegations of Paragraph 23.**

24. Large ocean alliances collectively control the vast majority of ocean container freight. Respondent's 2020 Annual Report acknowledged that the three largest ocean carrier alliances—THE Alliance, the OCEAN Alliance and the 2M Alliance—“accounted for 97.8% of the main east-west routes” (emphasis added).

**Answer: To the extent a response is required, Respondent can neither admit nor deny as “vast majority of ocean container freight” as used in the first sentence of Paragraph 24 is not defined. With respect to the second sentence of Paragraph 24, Respondent admits that its 2020 Annual Report states, “According to Alphaliner’s latest statistics (January 4, 2021), the three major alliances have a total market share of 83%, of which the 2M+ZIM+SM Line accounted for 35.5%, OCEAN Alliance accounted for 30.9% and THE Alliance accounted for 16.6%. The three alliances accounted for 97.8% of the main east-west routes, with the OCEAN Alliance ranking first with 37.7%, followed by 2M+ZIM+SM Line with 33.6% and THE Alliance with 26.5%.” Annual Report at 97.**

25. Respondent's 2020 Annual Report also states that the fact that “[t]he container shipping market has been experiencing a series of mergers and acquisitions in recent years” is a “Favorable Factor” positively impacting Respondent's business. In 2020, for example, the addition of another top-10 container line (Hyundai Merchant Marine) to THE Alliance operated, in Respondent's assessment, “to strengthen cooperation within [the] alliance and stabilize the shipping market as well.”

**Answer: As for the first sentence of Paragraph 25, Respondent admits that its Annual Report states, “The container shipping market has been experiencing a series of mergers and acquisitions in recent years. The reorganization of the shipping alliances is divided**



**into three major alliances in 2018 including 2M, Ocean Alliance, and THE Alliance.**

**Hyundai Merchant Marine (HMM) joins THE Alliance in 2020 with 10 years agreement to strengthen cooperation within alliance and stabilize the shipping market as well.” Annual Report at 104. Respondent denies the second sentence of Paragraph 25, except to the extent the foregoing quoted language appeared in its Annual Report of 2020.**

26. At the beginning of the global COVID-19 pandemic, global container lines, including Respondent, deliberately adjusted their capacity to manage supply and demand. Respondent’s 2020 Annual Report admits that during “the COVID-19 pandemic, carriers proactively made capacity adjustment plans to cope with the drastic fluctuations in market demand” (emphasis added).

**Answer: As to the first sentence, to the extent a response is required, Respondent denies that it took any such action and lacks information sufficient to admit or deny the allegations as to other container lines. As to the second sentence of Paragraph 26, Respondent admits that its Annual Report 2020 states, “Under the influence of the COVID-19 pandemic, carriers proactively made capacity adjustment plans to cope with the drastic fluctuations in market demand. In the dry bulk market, the average BDI in 2020 was 1,067 points, down 21% from 2019. According to Clarksons’ latest report, the demand for bulk shipping grew by 0.2% in 2020 while the supply growth rate was 3.7%.” Annual Report at 1. Respondent otherwise denies the second sentence of Paragraph 26.**

27. In addition, as alleged herein, Respondent engaged in a practice of refusing to honor its service contracts, forcing shippers to seek space on the spot market and further artificially boosting spot market demand and prices.

**Answer: Respondent denies the allegations of Paragraph 27.**

28. On numerous occasions during the Service Contract Term Respondent declined to provide Complainant with its contracted space under the Service Contract on certain lanes, but third-party ocean transportation intermediaries were able to offer Complainant space on Respondent's own vessels on the very same lanes, at exorbitant prices.

**Answer: Respondent denies the allegations of Paragraph 28 as to Respondent and lacks information upon which it can base a response as to the allegations with respect to “third-party ocean transportation intermediaries.”**

29. Respondent's efforts to constrain supply and manipulate demand resulted in windfall profits to Respondent. Achim according to Respondent's 2020 Annual Report, “[t]he rebound in average freight rate” during the pandemic “offset the impact of reduced operating volume”. Respondent's publicly reported net profits exploded during this period, swinging from a net loss of NT\$4.31 billion in 2019 to a massive profit of NT\$11.977 billion in 2020, an enormous swing of NT\$16.287 billion.

**Answer: Respondent denies the first sentence of Paragraph 29. As to the second sentence of Paragraph 29, Respondent does not understand the meaning of the term “Achim according,” but admits that its 2020 Annual report states, “The overall operating volume in 2020 decreased year-on-year due to the impact of the COVID-19 pandemic. The repercussions of the COVID-19 gradually eased in the second half of the year and market demand began to show resilience. The rebound in average freight rate offset the impact of reducing operating volume. The consolidated operating income for 2020 was NT\$151.277 billion, an increase NT\$2.096 billion, or 1.40% from NT\$149.181 billion in 2019.” Annual Report at 02. Otherwise, Respondent denies the second sentence of Paragraph 29. As to**

**the third sentence of Paragraph 29, Respondent admits that it reported a net loss of in 2019 and a net profit in 2020, otherwise, denied.**

30. Respondent's constraint of supply and practice of pushing contracted shippers into the spot market were unjust and unreasonable, enabling Respondent to engage in profiteering.

**Answer: Respondent denies the allegations of Paragraph 30.**

31. In addition, Respondent's 2020 Annual Report refers to other unnamed "carriers" who also purportedly engaged in the same manipulation of supply as Respondent. To the extent any such manipulation occurred pursuant to an agreement between carriers, such activity would constitute an agreement that would have to be filed with the FMC pursuant to 46 U.S.C. Section 40302.

**Answer: Respondent denies the allegations of Paragraph 31, except that Respondent admits its 2020 Annual Report states, "According to Alphaliner, a professional shipping consultancy, container shipping demand in 2020 contracted by 1.4%, which was 4 percentage points lower than the 2.6% in 2019. In terms of capacity supply, the growth rate was 2.6%, declining 1.4 percentage points compared with 4.0% in 2019, showing a continued oversupply situation in the shipping market. Under the influence of the COVID-19 pandemic, carriers proactively made capacity adjustment plans to cope with the drastic fluctuations in market demand."**

32. During the Service Contract Term, Respondent refused to carry cargo for Complainant under the Service Contract.

**Answer: Respondent denies the allegations of Paragraph 32.**

33. Respondent refused to provide carriage to Complainant because Respondent engaged in a practice of deliberately favoring other shippers and reserving capacity for highly lucrative spot market sales instead of for its contractual obligations.

**Answer: Respondent denies the allegations of Paragraph 33.**

34. Complainant diligently sought to book space under its Service Contract with Respondent on numerous port pairs (or “lanes”), including Shanghai, China to New York.

**Answer: Respondent denies the allegations of Paragraph 34.**

35. In an email dated October 23, 2020, in response to a request for carriage on the Shanghai-New York lane, Respondent’s employee Mr. Bill Ly explained Respondent’s practices as follows: “I have asked time and time again, but right now, our booking offices are really limiting bookings to shprs who have had consistent wkly bookings since April/May. Those shprs are getting priority and then they are giving some spare space for spot shprs to fill” (emphasis added).

**Answer: Respondent admits Respondent’s employee Mr. Bill Ly stated in an email dated October 23, 2020, “I have asked time and time again, but right now, our booking offices are really limiting bookings to shprs who have had consistent wkly bookings since April/May. Those shprs are getting priority and then they are giving some spare space for spot shprs to fill.” but otherwise denies the allegations of Paragraph 35.**

36. Respondent’s refusal to provide Complainant bookings on its contracted port pairs in favor of other shippers who purportedly had booked consistently since April 2020 constitutes an unreasonable refusal to deal or negotiate with Complainant, as well as undue and unreasonable preference or advantage to other shippers and undue and unreasonable prejudice and

disadvantage to Complainant with respect to those ports. Notably, April 2020 was before the start of the Service Contract Term.

**Answer: Respondent denies the allegations of Paragraph 36.**

37. Respondent's practice of denying service contract customers such as Complainant contracted space in order to reserve space to sell to other shippers at spot market prices constitutes an unjust, unreasonable, unfair, and unjustly discriminatory practice, including in the matter of rates or charges with respect to the port pairs contemplated by the Service Contract.

**Answer: Respondent denies the allegations of Paragraph 37.**

38. Mr. Ly's email suggests that Respondent's unlawful practices occurred on a normal, customary, and continuous basis with respect to Complainant and other similarly situated shippers.

**Answer: Respondent denies the allegations of Paragraph 38.**

39. On October 28, 2020, following up on Respondent's refused booking, Complainant's employee Mr. Moshe Grossman wrote an email to Respondent stating in relevant part: "We have been trying to book since April. Our bookings were not accepted. We signed for 200 TEUs and right now were given 28 since April. UNACCEPTABLE! We are willing to send a forecast for next 4-6 weeks. Please advise a supervisor's contact at YM so we may clear this up ASAP."

**Answer: Respondent admits that the language quoted in Paragraph 39 appeared in an email from Mr. Grossman. Otherwise, Respondent denies the allegations of Paragraph 39.**

40. Respondent's employee Mr. Ly responded that Respondent's "origin booking office" controlled the space and "they have been the ones who has [sic] been turning down our requests."

**Answer: Respondent admits that Mr. Ly stated in an email to Complainant, “Understand that MQC was signed at 200 TEU. However, right now, most of the space are provided to shprs who booked consistently since May. It’s difficult to scale those customers back when customers who haven’t been using a svc needs to add their shpmts onboard. As sales, our hands are tied, as space is controlled by each origin booking office and they have been the ones who has been turning down our requests.” Otherwise, Respondent denies the allegations of Paragraph 40.**

41. Respondent’s unlawful practices alleged herein continued unabated throughout the Service Contract Term.

**Answer: Respondent denies the allegations of Paragraph 41.**

42. On January 18, 2021, Complainant’s employee Mr. Moshe Grossman wrote an email to Respondent stating in relevant part: “We have been attempting to book with Yang Ming for 9 months now to no avail. We signed a contract for 200 TEU and as of now YM has only honored 31. This has been extremely detrimental to our business. We are completely OOS on many items in our warehouse. We reached out numerous times and the answer (if we received one) was always the same; ‘Due to current shipping shortages we are focusing on customers who ship consistently larger quantities’.”

**Answer: Respondent admits the quoted language was part of an email written by Mr. Grossman on January 18, 2021 but denies the truth of the statements set forth therein.**

43. On January 19, 2021, Respondent’s employee Mr. Ly replied, refusing to comply with Respondent’s obligations to Complainant and stating, “I am not sure if anything can be done and I do not believe the balance of the MQC will be achieved by the end of the S/C.”

**Answer: Respondent admits that the language quoted in Paragraph 43 appears in the email; but denies that the quoted language means Respondent was “refusing to comply with Respondent’s obligations to Complainant.”**

44. Respondent failed to provide any additional TEUs for the remainder of the Service Contract. In total, Respondent carried only 31 of the 200 contracted TEUs of Complainant’s cargo.

**Answer: Respondent denies the allegations of Paragraph 44, except that it carried 31 TEUs of Complainant’s cargo**

45. Complainant repeatedly advised Respondent directly of its needs concerning cargo to be shipped to and from the ports identified in the Service Contract.

**Answer: Respondent denies the allegations of Paragraph 45.**

46. Respondent refused to address Complainant’s complaints and requests for the service that Complainant had contracted for, instead informing Complainant that it was reserving its space for other shippers and for lucrative spot market opportunities.

**Answer: Respondent denies the allegations of Paragraph 46.**

47. Respondent’s conduct with respect to Complainant as alleged herein constitutes an unreasonable refusal to deal or negotiate with Complainant.

**Answer: Respondent denies the allegations of Paragraph 47.**

48. Respondent’s preference for higher-priced cargo also constitutes an unfair and unjustly discriminatory practice in the matter of rates or charges with respect to the ports contemplated by the Service Contract.

**Answer: Respondent denies the allegations of Paragraph 48.**

49. During the first three months of the Service Contract Term, Respondent provided Complainant only limited space originating from the ports of Qingdao, Wuhan, and Zhangjiagang, China, while failing to provide space from other origins contemplated by the Service Contract. After July 2020, Respondent completely stopped accepting Complainant's cargo pursuant to the Service Contract, except for a single 2-TEU shipment from Shanghai in November 2020.

**Answer: Respondent denies the allegations of Paragraph 49.**

50. During the entire Service Contract Term, Respondent failed to provide any space whatsoever to Complainant originating from the ports of Ningbo, Nanjing, and Yantian, China and Cochin, India.

**Answer: Respondent denies the allegations of Paragraph 50.**

51. During the entire Service Contract Term, except for a single 2-TEU shipment in November 2020, Respondent failed to provide any space whatsoever to Complainant originating from the port of Shanghai.

**Answer: Respondent denies the allegations of Paragraph 51.**

52. Respondent's conduct in connection with Complainant's shipments originating from the ports of Shanghai, Ningbo, Nanjing, Yantian, and Cochin constitutes undue and unreasonable preference and advantage to shippers other than Complainant, as well as undue and unreasonable prejudice and disadvantage to Complainant, with respect to those ports.

**Answer: Respondent denies the allegations of Paragraph 52.**

53. Respondent has engaged in several unjust and unreasonable practices relating to receiving, handling, storing and/or delivering Complainant's cargo.

**Answer: Respondent denies the allegations of Paragraph 53.**



54. As alleged herein, Respondent engaged in a deliberate practice of constraining its capacity, boosting freight prices and enabling profiteering by using the artificially constrained supply environment to charge exorbitant prices for ocean freight.

**Answer: Respondent denies the allegations of Paragraph 54.**

55. As also alleged herein, throughout the Service Contract Term, Respondent followed a practice of systematically failing to perform under the Service Contract, forcing Respondent to obtain space on the spot market at exorbitant prices. On information and belief, Respondent has benefited from this practice by carrying cargo at higher rates, including as a result of increases in spot market prices.

**Answer: Respondent denies the allegations of Paragraph 55,**

56. On information and belief, Respondent's unjust and unreasonable practices, including manipulating the supply of ocean freight, thereby enabling price increases and profiteering, and refusing space to contracted shippers in favor of spot market and other shippers, occurred on a normal, customary, and continuous basis. The financial incentives for Respondent's conduct alleged herein apply to Respondent's conduct with respect to all shippers that are situated similarly to Complainant. Indeed, Respondent's 2020 Annual Report reflects that Respondent was extremely profitable in the 2020 contract year, suggesting that Respondent successfully employed the unlawful practices alleged herein in its dealings with many shippers other than Complainant.

**Answer: The Respondent denies the allegations of Paragraph 56.**

57. Abusive, unjust, and unreasonable practices such as those alleged herein employed by a large container line, which is also a member of one of the three alliances that collectively control the vast majority of global ocean freight, are likely to wield outsized influence over general

practices in the industry. If not corrected, Respondent's unlawful practices alleged herein may become industry standard, sending a message to all global container lines that it is acceptable to ignore service contracts in favor of spot market profiteering, engage in manipulation of supply to boost pricing and engage in profiteering, and refuse to honor carrier obligations under service contracts and the Shipping Act.

**Answer: Respondent denies the allegations of Paragraph 57.**

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

**Answer: Respondent repeats each answer as set forth above.**

59. The foregoing customary, continuous conduct by Respondent, in connection with its receipt, handling, storage, and delivery of the property of Complainant and, upon information and belief, of other shippers, constitutes failure by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant and other shippers, in violation of 46 U.S.C. Section 41102(c).

**Answer: Respondent denies the allegations of Paragraph 59.**

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

**Answer: Respondent repeats each answer as set forth above.**

61. The foregoing conduct by Respondent constitutes provision of service in the liner trade that is not in accordance with the rules and practices contained in Respondent's Service Contract with Complainant, for which no exception or exemption applies and that has not been suspended or prohibited by the FMC, in violation of 46 U.S.C. Section 41104(a)(2).

**Answer: Respondent denies the allegations of Paragraph 61.**

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

**Answer: Respondent repeats each answer as set forth above.**

63. The foregoing conduct by Respondent in the course of providing service to Complainant pursuant to Respondent's Service Contract with Complainant, which was continuous and ongoing throughout the Service Contract Term, 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 Contract, in violation of 46 U.S.C. Section 41104(a)(5).

**Answer: Respondent denies the allegations of Paragraph 63.**

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

**Answer: Respondent repeats each answer as set forth above.**

65. The foregoing conduct by Respondent in the course of providing service to Complainant pursuant to Respondent's Service Contract with Complainant, which was continuous and ongoing throughout the Service Contract Term, 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 Contract, in violation of 46 U.S.C. Section 41104(a)(9).

**Answer: Respondent denies the allegations of Paragraph 65.**

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

**Answer: Respondent repeats each answer as set forth above.**

67. The foregoing conduct by Respondent in the course of providing service pursuant to Respondent's Service Contract with Complainant constitutes unreasonable refusal to deal or negotiate with Complainant, in violation of 46 U.S.C. Section 41104(a)(10).

**Answer: Respondent denies the allegations of Paragraph 67.**

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

**Answer: Respondent repeats each answer as set forth above.**

69. On information and belief, to the extent Respondent engaged in parallel, contemporaneous actions with others, such as other ocean carriers, to regulate the volume or character of cargo to be carried, or to control, regulate, or prevent competition, such actions would constitute operating pursuant to an ocean carrier agreement that would have to be filed with the FMC under 46 U.S.C. Section 40302.

**Answer: Respondent denies the allegations of Paragraph 69.**

70. On information and belief, Respondent failed to file any such agreements with the FMC.

**Answer: Respondent denies the allegations of Paragraph 70.**

71. On information and belief, any operation by Respondent under an unfiled agreement would constitute a violation of 46 U.S.C. Section 41102(b).

**Answer: Respondent denies the allegations of Paragraph 71.**

72. The foregoing alleged illegal acts of Respondent have directly and proximately injured Complainant by forcing Complainant to make alternate transportation arrangements for cargo to be shipped between the port pairs contemplated by the Service Contract at substantially higher spot market prices, or else forgo shipping such cargo altogether.

**Answer: Respondent denies the allegations of Paragraph 72.**

73. Respondent's alleged misconduct has injured Complainant in several ways.

**Answer: Respondent denies the allegations of Paragraph 73.**

74. During the Service Contract Term, Respondent's misconduct alleged herein caused Respondent to carry only 31 of the 200 contracted TEUs. Consequently, Complainant had to spend at least \$1,325,962 more than the contracted prices to ship 169 TEUs not carried by Respondent between the port pairs contemplated by the Service Contract via the spot market or other carriers.

**Answer: Respondent denies the allegations of Paragraph 74.**

75. In addition to the direct cost of making up for Respondent's shortfalls at higher rates, Respondent's misconduct has caused Complainant to incur other injuries, including delays, reduced inventory, unnecessary expenses, and lost profits, as well as attorneys' fees and expenses relating to litigation.

**Answer: Respondent lacks information upon which to base a response to Paragraph 75.**

**To the extent a response is required, denied.**

## **II. DEFENSES AND AFFIRMATIVE DEFENSES**

1. The Federal Maritime Commission lacks subject matter jurisdiction over the Complaint.
2. Complainant has not alleged essential elements of a claim under 46 U.S.C. § 41102(c).
3. Complainant has not alleged essential elements of a claim under 46 U.S.C. § 41104(a)(2).
4. Complainant has not alleged essential elements of a claim under 46 U.S.C. § 41104(a)(5).
5. Complainant has not alleged essential elements of a claim under 46 U.S.C. § 41104(a)(9).
6. Complainant has not alleged essential elements of a claim under 46 U.S.C. § 41104(a)(10).
7. Complainant has not alleged essential elements of a claim under 46 U.S.C. § 41102(b).

8. The Federal Maritime Commission lacks the authority to award damages for a breach of contract claim. Pursuant to 46 U.S.C. 40502(f), the exclusive remedy for a breach of a contract is an action in an appropriate court.
9. Pursuant to the Service Contract, the Parties have agreed that any and all disputes, claims and contest arising out or in connection with any provision of the Service Contract shall be resolved and adjudicated by arbitration proceedings pursuant to the rules applicable under the Society of Maritime Arbitrators for shortened arbitration. Further, the Parties have agreed that such arbitration shall take place in New York, USA, and have expressly agreed to the application of law of the State of New York.
10. The Shipping Act, 46 U.S.C. 40502(c)(8) provides that parties to service contracts may make provisions for liquidated damages in the event of breach.
11. Pursuant to the Service Contract, the Parties agreed upon a provision for liquidated damages.
12. Complainant has failed to state a claim against Respondent for which relief can be granted.
13. Complainant has not suffered any actual injury or damage as a result of Respondent's alleged violations of the Shipping Act, which, if any, are denied.
14. In the alternative, and without waiver of any other defenses or affirmative defenses, Complainant has failed to mitigate its damages.
15. In the alternative, and without waiver of any other defenses or affirmative defenses, Complainant's damages, if any, were caused in whole or in part by Complainant's own conduct.

16. Respondent retains the right to amend this answer to raise any additional defenses or affirmative defenses which may arise in the course of this proceeding.

17. Respondent's remedy, if any, is as provided in the Service Contract.

### III. PRAYER

Respondent Yang Ming prays that Complainant Achim take nothing by this proceeding, that all of Achim's claims against Yang Ming be dismissed with prejudice, and that Yang Ming be granted all relief to which it may be entitled.

DATED: May 9, 2022

Respectfully submitted,

/s/ Rebecca A. Fenneman

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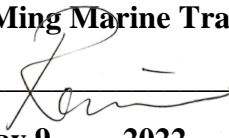
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CORP.**

## VERIFICATION

I declare under penalty of perjury that the foregoing Answer is true and correct.

**For Yang Ming Marine Transport Corporation:**

**By** :  \_\_\_\_\_

**Date** : May 9 \_\_, 2022

**Name** : Rolly Chien

**Title** : Vice President

**Address:** 271 Ming-Teh 1st Road, Chitu District, Keelung, Taiwan

**Email:** rollychien@yangming.com



**CERTIFICATE OF SERVICE**

I certify that on the 9th day of May, 2022, a true and correct copy of the foregoing document was served by email on all counsel of record in accordance with 46 CFR Part 502 and the Commission's Order of May 12, 2020 as follows:

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