

PUBLIC VERSION - CONFIDENTIAL MATERIALS EXCLUDED

Before the
FEDERAL MARITIME COMMISSION

Docket No. 22-14

MSRF, Inc.,

v.

HMM Company, Limited. and Yang Ming Marine Transport Corporation

**YANG MING MARINE TRANSPORT CORPORATION
ORIGINAL VERIFIED ANSWER**

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

I. **INTRODUCTORY STATEMENT**

The Complaint in this proceeding is based on the unprecedented proposition that an ocean common carrier may be found to have violated the Shipping Act with respect to a service contract commitment even though it *exceeded* its obligations under the contract – carrying even more than the minimum quantity, even though not required to do so. Attached as Confidential Exhibits 1 and 2 are true copies of the final amendments to the Service Contract, which may be officially noticed by the Presiding Officer and the Commission as they are on file at the FMC. As amended, the total MQC under the Service Contract was a total of ■ twenty-foot equivalent units (TEUs) – ■ TEUs eastbound and ■ TEUs westbound. See Confidential Exhibits 1 and 2.

Yang Ming provided service above and beyond the MQC in each direction – it provided space to Complainant and transported for Complainant █ TEU Eastbound and █ TEU Westbound. See Confidential Exhibits 1 and 2. Although this alone puts paid the Complaint, we nevertheless go on, as usual, to answer the specific allegations of the Complaint (“Allegations”), to present Yang Ming’s defenses and affirmative defenses, and to set forth Yang Ming’s request for relief against Complainant.

II. RESPONSE TO ALLEGATIONS

1. Complainant MSRF, Inc. (“MSRF”), by its undersigned counsel, brings this Verified Complaint against Respondents HMM Company Limited (“HMM”) and Yang Ming Marine Transport Corporation (“Yang Ming”), pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to MSRF caused by Respondents' violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 et seq. (the “Shipping Act”), alleged herein.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 1, as applicable to Yang Ming, except that Yang Ming admits that Complainant has brought a complaint against it. Respondent Yang Ming is without knowledge or information as to Allegation 1, as it applies to Respondent Hyundai Merchant Marine Company, Limited (“HMM”).

2. Since the beginning of the COVID-19 pandemic, global ocean carriers, including Respondents named herein, have, as alleged herein, and upon information and belief, unjustly and unreasonably exploited customers, vastly increasing their profitability at the expense of shippers and the U.S. public generally, which bears increased freight cost in the form of inflation.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 2 as to Yang Ming and is without knowledge or information to respond as to other ocean common carriers.

3. Upon information and belief, the bulk of ocean carriage secured by shippers has traditionally been pursuant to written service contracts, negotiated in advance at reasonable rates. Although a "spot market" for ocean carriage also exists, historically it has been used, upon information and belief, primarily by smaller shippers making small and/or one-time shipments, or for unexpected needs, such as a one-time or seasonal increase in shipping needs for a larger shipper.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 3, except that it admits there is a "spot market" for ocean transportation.

4. With the onset of the COVID-19 pandemic, global ocean carriers began taking parallel and strikingly similar actions to prop up ocean carriage pricing and improve their profitability at the expense of shippers and the public. These actions included, among other things, "blank sailings" that deprived shippers of capacity, creating artificial scarcity and boosting prices on the spot market.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 4 as to Yang Ming and is without knowledge or information to respond as to other ocean common carriers.

5. Even with currently reviving demand, however, global ocean carriers have not returned to the just and reasonable pricing and contracting practices of pre-pandemic times. Instead, they have continued policies and practices that manipulate prices and deliver

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unprecedented windfall profits to them by forcing shippers into an artificially inflated spot market. A container that in 2019 might have cost approximately \$2,700 to ship from China to the West Coast of the United States now might cost \$25,000 or more on the spot market.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 5 as to Yang Ming and is without knowledge or information to respond as to other ocean common carriers.

6. MSRF has experienced this misconduct by global ocean carriers firsthand. Respondents agreed to service contracts with MSRF and then refused to provide more than a fraction of the cargo capacity that MSRF requested and needs, even though Respondents overall have continued to operate at or near pre-pandemic capacity.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 6 as to Yang Ming, except that it has entered into service contracts with Complainant. Yang Ming specifically denies that it refused to provide contractually required space to Complainant. Yang Ming is without knowledge or information to respond as to other ocean common carriers or as to what Complainant may or may not have experienced.

7. To make matters worse, each Respondent then proceeded to engage in a practice of refusing to perform their full commitments even under those limited service contracts, instead forcing MSRF to buy space on the inflated spot market.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 7 as to Yang Ming and is without knowledge or information to respond as to HMM.

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8. MSRF's written service contracts with each of the Respondents (collectively, the "Service Contracts") included minimum quantity commitments ("MQC") by MSRF to each Respondent to tender cargo from various points in Asia for Respondents to transport via ocean vessels to the United States at agreed intervals and for agreed prices.

ANSWER: Respondent Yang Ming admits the statement in Allegation 8 that its service contract with MSRF included an MQC and agreed prices. Yang Ming is without knowledge or information as to HMM.

9. By definition, the Service Contracts required Respondents to "commit[] to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features."

ANSWER: Respondent Yang Ming states that Allegation 9 is a conclusion of law, to which no response is required. To the extent that a response is required, Yang Ming asserts that the Shipping Act and the FMC regulations are the best evidence of what they require.

10. Shortly after entering into the Service Contracts with MSRF, Respondents began breaching their contractual service commitments by providing MSRF with hardly any of the agreed allotments of space on their respective ocean vessels, and instead forcing MSRF to make alternate transportation arrangements at substantially--Often outrageously--higher spot market prices.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 10 as to Yang Ming and is without knowledge or information to respond as to HMM.

11. Upon information and belief, Respondents have changed their practices in parallel and seemingly coordinated fashion, depriving MSRF of its contractually agreed space allotments and instead selling their respective capacity, including space actually allotted to MSRF under its Service Contracts and then subsequently withdrawn, to the highest bidder on the very spot market to which their conduct has forced MSRF to turn.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 11 as to Yang Ming and is without knowledge or information to respond as to HMM.

12. Upon information and belief, Respondents have engaged, and are continuing to engage, in substantially similar conduct with respect to other shippers.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 12 as to Yang Ming and is without knowledge or information to respond as to HMM.

13. In so doing, Respondents have unjustly and unreasonably disrupted the previously stable and well-established structure of the global ocean freight industry. Now, instead of securing reliable service contracts in advance, MSRF is forced to (1) agree in advance to exorbitant rates for whatever portion of its needed capacity global ocean carriers are willing. 46 U.S.C. 40102(21) and 46 C.F.R. § 530.3(q). See also 46 U.S.C. § 40502(c)(7) and 46 C.F.R. 530.8(b)(5) which require service contracts to include service commitments as essential terms to cover with service contracts, (2) make up the difference on the spot market, and then (3) rush to the spot market again each time Respondents refuse to honor their limited service commitments in pursuit of even more profiteering.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 13 as to Yang Ming and is without knowledge or information to respond as to HMM.

14. Respondents' actions have contributed to, and greatly benefited from, exorbitant spot market prices. For example, on November 11, 2021, Yang Ming reported record profits of \$1.83 billion for the third quarter of the year (Taipei Times - November 12, 2021) and HMM reported record third-quarter results in November 2021 with a nearly ten-fold increase in net profit over 2020 (Journal of Commerce -- December 2, 2021). And a new review by Accountable.US reports that the world's top five container shipping companies saw profits soar by triple digit percentages in their 2021 fiscal years ([https://www.accountable.us/wp-content/uploads/2022/04/2022-04-01-Research-on-Shipping-Company-Profiteering-B -Market-Cap- IN L.pdf](https://www.accountable.us/wp-content/uploads/2022/04/2022-04-01-Research-on-Shipping-Company-Profiteering-B-Market-Cap-IN L.pdf)).

ANSWER: Respondent Yang Ming denies the allegations of Allegation 14 as to Yang Ming and is without knowledge or information to respond as to HMM. Yang Ming states that the best evidence of what is in the cited publications themselves but denies that they are necessarily accurate as to Yang Ming. Yang Ming 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.” Yang Ming Annual Report at 02.

15. As a result of the collective conduct and profiteering by Respondents and, upon information and belief, by their fellow global ocean carriers, ocean carriage costs on the spot market have risen to crisis levels, threatening shippers' businesses and generating price inflation to support massive windfalls for the carriers at the expense of the public. This conduct is unjust, unreasonable, and unlawful.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 15 as to Yang Ming and is without knowledge or information to respond as to HMM or other carriers or as to the claims about the industry.

16. Respondents also have greatly benefited by organizing themselves, along with other major non-U.S. shipping lines, into collusive "alliances" at the expense of shippers. Upon information and belief, two global alliances-i. e., the "Ocean Alliance" and "The Alliance", which includes Respondents Yang Ming and HMM-collectively have a market share of 90% in the trans-Pacific trade.

ANSWER: Respondent Yang Ming denies the allegations of the first sentence of Allegation 16 as to Yang Ming and is without knowledge or information to respond as to HMM. Yang Ming denies the allegations of the second sentence of Allegation 16, except that Yang Ming admits that it and HMM are members of THE Alliance (FMC Agreement No. 012349).

17. These collusive ocean alliances give Respondents the incentive and opportunity to coordinate discriminatory practices such as those alleged herein, so as to violate contracts with shippers like MSRF in favor of exploiting profit opportunities on the spot market. In the May- December 2021 period, each Respondent has flouted its contractual service

commitment, providing MSRF only small fractions of the space required under the Service Contracts- specifically, just 9 of 25 containers by HMM, and 4 of 100 by Yang Ming.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 17 as to Yang Ming and is without knowledge or information to respond as to HMM. Yang Ming specifically denies that its service contract with Complainant required Yang Ming to provide Complainant with space for 100 containers. As shown in Confidential Exhibit 1, the actual requirement, as amended, was █ TEUs eastbound and █ TEUs westbound. Confidential Exhibits 1 and 2. Complainant tendered and Yang Ming carried more than those amounts. Confidential Exhibits 1 and 2.

18. Respondents' conduct alleged herein with respect to the receipt, handling, storage, and delivery of the property of MSRF and, upon information and belief, of other shippers is occurring on a normal, customary, and continuous basis, and, as alleged herein, shows no sign of abating.

ANSWER: Respondent Yang Ming denies the allegations of Allegation 18 as to Yang Ming and is without knowledge or information to respond as to HMM. Yang Ming specifically denies that the conduct as alleged involved the receipt, handling, storage, and delivery of the property of MSRF or that the conduct alleged occurred on a “normal, customary, and continuous basis.”

19. Complainant MSRF is a corporation organized under the laws of the State of Delaware with its principal place of business located at 9815 Leland Avenue, Schiller Park, Illinois 60176. MSRF is a "shipper" under its Service Contracts with Respondents pursuant to 46

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U.S.C. 40102(23). MSRF was founded in 1995 as a manufacturer and importer of gourmet foods and food gifts. The company's seasonal and holiday products are sold in big box retailers throughout the U.S. MSRF also sells products licensed by Starbucks, Jim Beam and other prominent brands.

ANSWER: Respondent Yang Ming is without knowledge or information to respond to Allegation 19, except that Yang Ming admits that Complainant was a shipper in relation to Yang Ming under its service contract with Yang Ming.

20. Upon information and belief, Respondent HMM is a company organized under the laws of the Republic of Korea. HMM is a vessel-operating ocean common carrier as that term is defined by 46 U.S.C. § 40102(18) with organization number 001452. HMM's North American headquarters office is located at 222 West Las Colinas Boulevard, Suite 700, Irving, TX 75039.

ANSWER: Respondent Yang Ming is without knowledge or information to respond to Allegation 20.

21. Upon information and belief, Respondent Yang Ming is a company organized under the laws of Taiwan. Yang Ming is a vessel-operating ocean common carrier as that term is defined by 46 U.S.C. § 40102(18) with organization number 000138. Yang Ming's North American headquarters office is located at 1085 Raymond Boulevard, 9th Floor, Newark, New Jersey 07102.

ANSWER: Respondent Yang Ming admits the first two sentences of Allegation 21. It denies the third sentence. The address there stated is the office of Yang Ming (America) Corp., which is not an ocean common carrier, but a general agent of Yang Ming.

22. The Federal Maritime Commission ("FMC") has jurisdiction over this Verified Complaint pursuant to 26 U.S.C. §§ 41301 through 41309.

ANSWER: Respondent Yang Ming denies Allegation 22 that the FMC has jurisdiction as to the Complaint as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 22 as it relates to HMM.

23. The FMC has personal jurisdiction over each of the Respondents as "ocean common carriers" as that term is defined by 46 U.S.C. Section 40102(18) that have entered into "service contracts" as that term is defined by 46 U.S.C. Section 40102(21) with MSRF.

ANSWER: Respondent Yang Ming admits Allegation 23 that the FMC has personal jurisdiction over Yang Ming but denies that personal jurisdiction is related to or because of Yang Ming having entered into a service contract with Complainant.

24. Respondents' actions 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 MSRF and other shippers, in violation of 46 U.S.C. Section 41102(c).

ANSWER: Respondent Yang Ming denies Allegation 24 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 24 as it relates to HMM.

25. Respondents' actions alleged herein constitute the provision of service in the liner trade that is not in accordance with the rules and practices contained in their Service Contracts with MSRF, in violation of 46 U.S.C. Section 41104(a)(2).

ANSWER: Respondent Yang Ming denies Allegation 25 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 25 as it relates to HMM.

26. Respondents' actions, done in connection with their provision of service pursuant to their Service Contracts with MSRF, individually and collectively constitute unfair and unduly discriminatory practices against MSRF in the matter of rates or charges with respect to the ports for which MSRF contracted with them, in violation of 46 U.S.C. Section 41104(a)(5).

ANSWER: Respondent Yang Ming denies Allegation 26 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 26 as it relates to HMM.

27. Respondents' actions with respect to their Service Contracts individually and collectively also have given undue and unreasonable preference and advantage to shippers other than MSRF and imposed undue and unreasonable prejudice and disadvantage on MSRF with respect to the ports for which MSRF contracted with them, in violation of 46 U.S.C. Section 41104(a)(9).

ANSWER: Respondent Yang Ming denies Allegation 27 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 27 as it relates to HMM.

28. Respondents' actions in the course of negotiating their Service Contracts with MSRF and providing service to MSRF pursuant to those Service Contracts constitute unreasonable refusals to deal or negotiate with MSRF, in violation of 46 U.S.C. Section 41104(a)(10).

ANSWER: Respondent Yang Ming denies Allegation 28 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 28 as it relates to HMM.

29. Prior to last year, MSRF, like most significant shippers, was able to secure advance service contracts to cover the bulk of its ocean carriage needs at reasonable, pre-negotiated prices.

ANSWER: Respondent Yang Ming lacks knowledge or information to respond to Allegation 29, except that it denies that Complainant is a “significant” shipper in Yang Ming’s understanding of the term.

30. In negotiations for the 2021-2022 shipping year, each Respondent and other global ocean carriers collectively refused to provide MSRF sufficient commitments in their advance service contracts, instead providing only a fraction of the space MSRF needed at substantially higher prices, which MSRF accepted in order to secure such space, believing that such higher prices would fully compensate Respondents for current market disruptions,

ANSWER: Respondent Yang Ming lacks knowledge or information to respond to Allegation 30, except that it denies that it had any obligation to provide space or any amount of space to Complainant at any particular price or that it provided insufficient space. Respondent Yang Ming lacks knowledge or information to respond to what Complainant believed or did not believe.

31. Respondents then proceeded to flout even the limited commitments they had provided by refusing to honor their Service Contracts, forcing MSRF to purchase services on the spot market for which it had already contracted with Respondents.

ANSWER: Respondent Yang Ming denies Allegation 31 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 31 as it relates to HMM and to what Complainant may have done or not done.

32. These parallel actions by Respondents and, upon information and belief, by their fellow global ocean carriers, artificially inflated spot market prices by forcing unexpected demand- demand that was supposed to have been covered by written service contracts- into the market.

ANSWER: Respondent Yang Ming denies Allegation 32 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 32 as it relates to HMM or any other ocean carrier.

33. MSRF and HMM entered into a written service contract (SC US2124083) as that term is defined by 46 U.S.C. Section 40102(21) effective as of May 1, 2021 (the "HMM Service Contract").

ANSWER: Respondent Yang Ming lacks knowledge or information to respond to Allegation 33.

34. MSRF and HMM agreed in the HMM Service Contract that MSRF would tender a minimum quantity of twenty-five (25) forty-foot equivalent units (FEUs) of cargo for shipment by MSRF via ocean vessels from ports in Asia to the United States, and from ports in the United States to Asia at agreed price.

ANSWER: Respondent Yang Ming lacks knowledge or information to respond to Allegation 34.

35. Despite HMM's contractual commitment to ship the minimum quantity tendered by MSRF, HMM has continuously refused to provide MSRF more than approximately 9 of the promised 25 FEUs of that allotted space, forcing MSRF to make alternate transportation arrangements with other common carriers at substantially higher spot market prices or forgo shipping its cargo altogether.

ANSWER: Respondent Yang Ming lacks knowledge or information to respond to Allegation 35.

36. Upon information and belief, HMM is capitalizing on its violations of the Shipping Act alleged herein, by re-selling the capacity allotted to MSRF under the HMM Service Contract to other shippers on the same spot market at substantially higher rates than those to which it agreed in the HMM Service Contract.

ANSWER: Respondent Yang Ming lacks knowledge or information to respond to Allegation 36.

37. MSRF and Yang Ming entered into a written service contract (SC 494721) as that term is defined by 46 U.S.C. Section 40102(21) effective as of May 1, 2021 (the "Yang Ming Service Contract").

ANSWER: Respondent Yang Ming admits that it entered into the service contract 494721 with Complainant alleged in Allegation 37 and that the service contract was initially effective May 1, 2021 but asserts that the service contract includes amendment(s) as well, which constitute part and parcel of the contract.

38. MSRF and Yang Ming agreed in the Yang Ming Service Contract that MSRF would tender a minimum quantity of one hundred (100) containers of cargo for shipment by

MSRF via ocean vessels from ports in Asia to the United States, and from ports in the United States to Asia at agreed prices.

ANSWER: Respondent Yang Ming denies Allegation 38, except that service contract 494721 had an agreed geographic scope and agreed rates. Yang Ming also asserts that the minimum quantity commitment was a total of ■ TEUs – divided into ■ TEUs in the eastbound direction and ■ TEUs in the westbound direction. See Confidential Exhibits 1 and 2.

39. Despite Yang Ming's contractual commitment to ship the minimum quantity committed by MSRF, Yang Ming has continuously refused to provide MSRF more than approximately 4 percent of that allotted space, forcing MSRF to make alternate transportation arrangements with other common carriers at substantially higher spot market prices or forgo shipping its cargo altogether.

ANSWER: Respondent Yang Ming denies Allegation 39, except that it lacks knowledge or information to respond as to what Complainant did or may have done.

40. Upon information and belief, Yang Ming is capitalizing on its violations of the Shipping Act alleged herein, by re-selling the capacity allotted to MSRF under the HMM Service Contract to other shippers on the same spot market at substantially higher rates than those to which it agreed in the HMM Service Contract.

ANSWER: Respondent Yang Ming denies Allegation 40.¹

¹ Respondent Yang Ming assumes references to HMM in Allegation 40 are typographical errors and that Complainant intended to refer to Yang Ming.

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41. Complainant repeats and realleges the allegations above as if fully set forth herein.

ANSWER: In response to Allegation 41, Respondent Yang Ming repeats its responses to Allegations 1 through 40, as if set forth in full herein.

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

ANSWER: Respondent Yang Ming denies Allegation 42 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 42 as it relates to HMM.

43. **ANSWER: Respondent Yang Ming notes that there are no Allegations numbered 43 through 47.**

44. **ANSWER: See Response 43 above.**

45. **ANSWER: See Response 43 above.**

46. **ANSWER: See Response 43 above**

47. **ANSWER: See Response 43 above.**

48. Complainant repeats and realleges the allegations above as if fully set forth herein.

ANSWER: In response to Allegation 48, Respondent Yang Ming repeats its responses to Allegations 1 through 47, as if set forth in full herein.

49. The foregoing conduct by each Respondent constitutes provision of service in the liner trade that is not in accordance with the rules and practices contained in its respective

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service contract with MSRF, to which no exception or exemption applies and which has not been suspended or prohibited by the FMC, in violation of 46 U.S.C. Section 41104(a)(2).

ANSWER: Respondent Yang Ming denies Allegation 49 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 49 as it relates to HMM.

50. Complainant repeats and realleges the allegations above as if fully set forth herein.

ANSWER: In response to Allegation 50, Respondent Yang Ming repeats its responses to Allegations 1 through 49, as if set forth in full herein.

51. The foregoing conduct by each Respondent in the course of providing service to MSRF pursuant to its respective service contract with MSRF, which is continuous and ongoing, constitutes an unfair and unjustly discriminatory practice against MSRF in the matter of rates or charges with respect to the ports identified in each respective service contract, in violation of 46 U.S.C. Section 41104(a)(5).

ANSWER: Respondent Yang Ming denies Allegation 51 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 51 as it relates to HMM.

52. Complainant repeats and realleges the allegations above as if fully set forth herein.

ANSWER: In response to Allegation 52, Respondent Yang Ming repeats its responses to Allegations 1 through 51, as if set forth in full herein.

53. The foregoing conduct by each Respondent in the course of providing service to MSRF pursuant to its respective service contract with MSRF, which is continuous and ongoing, gives undue and unreasonable preference and advantage to shippers other than MSRF and imposes an undue and unreasonable prejudice and disadvantage to MSRF with respect to

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the ports identified in each respective service contract, in violation of 46 U.S.C. Section 41104(a)(9).

ANSWER: Respondent Yang Ming denies Allegation 53 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 53 as it relates to HMM.

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

ANSWER: In response to Allegation 54, Respondent Yang Ming repeats its responses to Allegations 1 through 53, as if set forth in full herein.

55. The foregoing conduct by each Respondent in the course of negotiating its service contract with MSRF and providing service to MSRF pursuant to that service contract, which is continuous and ongoing, constitutes unreasonable refusal to deal or negotiate with MSRF, in violation of 46 U.S.C. Section 41104(a)(10).

ANSWER: Respondent Yang Ming denies Allegation 55 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 55 as it relates to HMM.

56. The foregoing alleged illegal acts of Respondents have directly and proximately injured MSRF by forcing MSRF to make alternate transportation arrangements for cargo that was supposed to be shipped by Respondents pursuant to the terms of their respective Service Contracts at substantially higher spot market prices or forgo shipping such cargo altogether.

ANSWER: Respondent Yang Ming denies Allegation 56 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 56 as it relates to HMM.

57. MSRF has been, and continues to be, actually and materially injured by each Respondent's continuous conduct in violation of the Shipping Act alleged herein.

ANSWER: Respondent Yang Ming denies Allegation 57 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 57 as it relates to HMM.

58. Respondents' violations alleged herein are causing direct, proximate, and ongoing financial damages to MSRF in an amount already believed to exceed \$2,200,000, currently accruing, and to be further demonstrated in this proceeding

ANSWER: Respondent Yang Ming denies Allegation 58 as it relates to Yang Ming and lacks knowledge or information to respond to Allegation 58 as it relates to HMM.

III. 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. Yang Ming fulfilled (indeed exceeded) its obligation to provide space to Complainant.
8. The Federal Maritime Commission lacks the authority to award damages for a breach of

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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. Respondent Yang Ming fulfilled its obligation to carry cargo for Complainant under the service contract.

10. 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.

11. 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 by either the carrier or the shipper.

12. Pursuant to the Service Contract, the Parties agreed upon a provision for liquidated Damages, which is the exclusive remedy available to Complainant.

13. Complainant has failed to state a claim against Respondent Yang Ming for which relief can be granted.

14. 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.

15. In the alternative, and without waiver of any other defenses or affirmative defenses, Complainant has failed to mitigate its damages.

16. 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.

17. Complainant's claims against Respondent Yang Ming are barred by prior settlement of the claims.

18. 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.

19. Respondent's remedy, if any, is as provided as agreed by Respondent in the Service Contract including any amendments thereto.

20. No oral hearing is requested.

III. PRAYER

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

Dated: July 5, 2022

Respectfully submitted,
By: /s/ Rebecca A. Fenneman

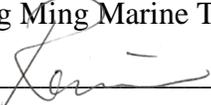
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VERIFICATION

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

For Yang Ming Marine Transport Corporation:

By :  _____

Date : July 1st, 2022

Name : Rolly Chien _____

Title : Vice President _____

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

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CERTIFICATE OF SERVICE

I certify that on the 5th day of July, 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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