

**BEFORE THE
FEDERAL MARITIME COMMISSION**



Bakerly, LLC

Complainant,

v.

Docket No. 22-17

Seafrigo USA, Inc.

Respondent.

VERIFIED COMPLAINT

INTRODUCTION

1. Complainant Bakerly, LLC (“Bakerly” or “Company”) by its attorneys at Husch Blackwell LLP brings this Verified Complaint against Seafrigo USA, Inc. (“Seafrigo” or “Respondent”) pursuant to violations by Seafrigo of 46 U.S.C. §41104 (a) (2) (A), 46 U.S.C. §41104 (a)(15)(A)(B) and Part 545 of title 46, Code of Federal Regulations, and applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled “Interpretive Rule on Demurrage and Detention Under the Shipping Act”, and pursuant to the Federal Maritime Commission’s (“FMC’s”) authority to permit the filing of complaints under Section 11(a) of the Shipping Act, 46 U.S.C. § 41301(a), in response to Respondent’s violations of the Shipping Act.

Complainant alleges upon information and belief the following:

Parties and Other Entities

2. Complainant Bakerly is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 4300 E Braden Boulevard., Easton, PA

18040, and is a food importer of refrigerated cargo to the United States from France and other European countries.

3. Respondent Seafrigo is a corporation organized and existing under the laws of New Jersey with its principal place of business at 735 Dowd Avenue, 2 Floor Office, Elizabeth, NJ.

4. Seafrigo is a non-vessel operating common carrier (“NVOCC”) licensed by the Federal Maritime Commission as that term is defined at 46 U.S. Code § 40102 (17).

6. The following Seafrigo companies in the United States provided motor carrier transportation services in the U.S. as Federal Motor Carrier Safety Administration (“FMCSA”) authorized motor carriers or as Property Brokers with authority to arrange motor carrier transportation with other FMCSA authorized motor carriers:

- a) Seafrigo Logistics USA Inc., Property Broker, U.S. DOT no. 2822764, MC-936320
- b) Seafrigo NA Coldstorage, Property Broker, U.S. DOT no. 2811603, MC- 928441
- c) Seafrigo Transport USA, Inc., Property Broker/Motor Carrier, U.S. DOT no. 2497846, MC- 871075.

7. These companies, upon which Bakerly relied, were intended to provide services on behalf of Seafrigo directly as motor carriers and/or to arrange for surface transportation as Property Brokers on behalf of Bakerly for door delivery undertaken for ocean shipments for which Seafrigo provided ocean transport. Door delivery was contracted pursuant to the ocean bills of lading issued to Bakerly for ultimate delivery to its various locations in the U.S. and for the return of empty containers to appropriate terminals.

JURISDICTION

8. The FMC has subject matter jurisdiction over this action pursuant to the Shipping Act of 1984, 46 U.S.C. § 40101 *et seq.*

9. The FMC has personal jurisdiction over Respondent Seafrigo as a licensed NVOCC ocean transportation intermediary as those terms are defined at 46 U.S. Code § 40102 (17).

MEMORANDUM OF THE FACTS

10. Bakerly's affiliated companies in France had for a lengthy period utilized the Seafrigo affiliates in France and Europe for distribution of their food products to most of its affiliates. Bakerly LLC, the U.S. company, started importing refrigerated containers with Seafrigo with Bakerly food products from its parent companies in France in September 2015. The terms of the U.S. imports with Seafrigo were originally on a DDP USA basis for delivery to two Bakerly locations in the United States. (See **Exhibit 1, Paragraph 2, Charles Lefort Affidavit, hereinafter "the Affidavit"**)).

11. Bakerly in February 2019 decided to start buying from its Bakerly parent companies in France pursuant to FOB terms and to have Seafrigo handle the transportation from the origin points and ports to various door deliveries at destination. At this time Seafrigo was chosen to handle 100% of all imported reefer containers for Bakerly for ultimate door delivery to the various warehouse facilities maintained by Bakerly in the United States. (See **Exhibit 1, Paragraph 3, Affidavit**).

12. The period of this dispute as to demurrage and detention (hereinafter "D&D") charges imposed by Seafrigo against Bakerly was from January, 2021 through March, 2022, (hereinafter, "the Period"). During the Period Seafrigo invoiced Bakerly a total of \$2,973,475.29 for D&D in 2021 through March of 2022, (the Period). (See Annex Listing of demurrage and detention charges **in Exhibit 2**). The rate quotations during the Period were accomplished by Negotiated Rate Arrangements ("NRAs"), by which pricing was provided on a door delivery basis. (See **Exhibit 3**, Quarter 4, 2021 Quotation. The predecessor and successor NRA quotes for 2021 and 2022, were also all on a door delivery basis. Note additionally from the examples of Seafrigo house bills of lading wherein it is clear that the delivery obligations, consistent with the quotes in the pertinent NRAs, was to Bakerly's door. (See **Exhibit 4**, sample Seafrigo bills of lading).

13. For all the shipments identified in **Exhibit 2**, Seafrigo issued its bill of lading which included the Terms and Conditions noted herein in examples of Seafrigo bills of lading in **Exhibit 4**. The only "delivery" provision in Seafrigo's bill of lading, paragraph 15, covers

only the consequence when the Merchant has the obligation to pick up the container, which is not the case at hand. The Seafrigo bill of lading terms (paragraph 23.1 of bill of lading) are subject to Seafrigo's Rules Tariff. Seafrigo's Rules tariff at provision 15.3 makes it amply clear that ". . . [w]here service is port at destination and removal of containers from the VOCCs marine terminal is responsibility of Merchant, Merchant shall be liable to Carrier for any demurrage charges imposed on Carrier by VOCC as a result of Merchants failure to remove containers within applicable free time." Seafrigo's Rules tariff at provision 17.2, consistent with the bill of lading terms on "delivery", and Rules Tariff 15.3 states that **all risk and expenses** in connection with the delivery of goods to Bakerly's locations would be at Bakerly's expense, "**except to the extent the goods are door cargo.**" (Emphasis supplied). (See **Exhibit 5**, Seafrigo Rules Tariff at <http://rates.descartes.com>).

14. Bakerly for the first time received D&D charges from Seafrigo which related to December 2020 – January 2021 activity in the amount of \$361,178.54. A video meeting was scheduled between Seafrigo USA, Seafrigo France and Bakerly in February 2021 to discuss the above noted D&D charges. During the meeting Seafrigo rejected responsibility for the poor performances claiming that a New York snowstorm and the port closure made it impossible for them to perform timely pick up loaded containers and to return empties to the terminals. Bakerly reluctantly consented to pay those charges persuaded that Seafrigo was not responsible for weather related events causing demurrage. No mention at that time was made by Seafrigo that remedial steps could be sought with respect to the demurrage assessed against Seafrigo from the pertinent ocean common carriers and their respective terminals related to the impossibility of performance due principally to weather and other situations leading to closure of the Port of New York during that period. (See **Exhibit 1**, Paragraph 4, Affidavit. See also **Exhibit 6**, List of Snowstorm Demurrage and Detention Invoices/charges paid by Bakerly).

15. In July 2021, Bakerly received an alert from Al Raffa from Seafrigo USA to inform Bakerly that demurrage and detention fees had started to accrue again since April and that Bakerly needed to clear its open balances to help Seafrigo with their cashflow as they had paid these in advance. Before that date Bakerly never received any alert on demurrage and

detention from Seafrigo. This was the first time since the December-January D&D issues that Bakerly heard about these Seafrigo performance issues since January 2021. Angela Vieira, Director, Supply Chain for Bakerly and Charles Lefort had a telephone call with Al Raffa, a senior manager with Seafrigo USA, to discuss the matter and, in particular, Bakerly's concern with Seafrigo's lack of performance and communication that lead to those new charges. Seafrigo started bringing up the lack of drivers issue. It was suggested by Bakerly at the time that Seafrigo should start looking at motor carriers with a higher rate structure, but with reliable drivers, to make sure that they could secure them to service Bakerly and to avoid D&D charges. This idea was not given serious consideration and was brushed away during the conversation. In view of this, at this time, Bakerly started diversifying their import program by adding a new carrier for the first time since 2015, when Bakerly had allocated 100% of their business to Seafrigo. In view of the clear lack of due diligence by Seafrigo in meeting its door delivery services, even while Seafrigo companies operated their own motor carrier service, Bakerly signed with a CEVA logistics company to provide ocean, trucking and U.S. Customs clearance services with CEVA companies to give them a portion of Seafrigo's containers at this time. Note the immediate very clear comparison for a period in October 2021 when both Seafrigo and CEVA removed containers during the same period from the same terminal, Maher Terminal, where there were **zero charges for the CEVA activity** and \$60,292.24 in demurrage and per diem charges accrued because of Seafrigo's lack of due diligence in its door delivery efforts and return of empties efforts. (See **Exhibit 7**, Spreadsheet Comparison Between Seafrigo and CEVA, and **Exhibit 1**, Paragraph 5, Affidavit).

16. On August 2021, Charles Lefort had a call with Jérôme Lorrain, Seafrigo's USA CEO to discuss Bakerly's open balance on D&D charges and Seafrigo's potential inability to keep paying those charges on behalf of Bakerly if Bakerly didn't clear its balance. No threats were made at this point. It was more of a conversation to find solutions on how to clear the open balance. It was agreed that Bakerly was going to spend time researching those charges internally (since no backups were provided by Seafrigo) and assess who was at fault (Seafrigo or Bakerly) and to identify payment amounts which would be allocated to each. At this time Seafrigo agreed to issue another \$30,000 credit as a commercial gesture but it was

stated that it did not represent admission of fault. Jérôme Lorrain also agreed to start sending to Bakerly weekly D&D reports so Bakerly could start tracking its containers and attempt to avoid D&D charges. However, it was quickly determined that Seafrigo's efforts to provide weekly reports were deficient in that they contained erroneous information, or the information provided was incomplete or untimely. See **Exhibit 1**, Paragraph 6.

17. In December 2021, in preparation for another discussion with Seafrigo's management team, searches were made by Bakerly's Supply Chain and Accounting staff to confirm that it understood the numerous D&D invoices from Seafrigo. In that review it was determined that for over one hundred Purchase Orders, it appeared that more than one invoice had been charged by Seafrigo per Purchase Order, when, in effect the accounting system had been structured so that only one container would be covered per Purchase Order and that only one invoice would be related per Purchase Order. No information was received from Seafrigo with respect to this multiple invoice billings per Purchase Order, and Bakerly put a stop payment on these invoices for those that had not been paid, and now seeks reimbursement for those amounts which it did pay. This invoicing negligence prevented Bakerly from paying any of these invoices as Seafrigo has never offered any explanations for any reason that the charges were repetitious even when paid. See attached **Exhibit 8**, **List of Duplicated Purchase Orders**. Also see **Exhibit 9** Sample Seafrigo Invoices for Purchase Order 0001287 which illustrates the issue described above. See also below details of the POs/containers with multiple charges:

Demurrage on which payment was not paid:	\$884,242.87
Demurrage paid:	<u>\$138,420.33</u>
Demurrage total:	\$1,022,663.10

Per Diem on which payment was not paid:	\$10,242.55
Per Diem paid:	<u>\$ 7,349.00</u>
Per Diem total:	\$17,591.55

Total D&D disputed charges:	<u>\$1,040,254.65</u>
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(**Exhibit 1**, Paragraph 9, Affidavit).

18. Note the following which illustrates the confusion with these duplicative invoices about the randomly pulled example Seafrigo for six Invoices, **Exhibit 9**, for Purchase Order reference 0001287 which underscores the issue of the validity of these invoices for either demurrage or per diem. Please note the following anomalies with regard to these six invoices:

- a. Each of the six invoices contain the following identical information for these items on each of the invoices:

Reference no. 1287

Booking #--- IMP10-21-07836

House bill of lading no.---E97921300000

Container no.--- SEGU9388853

- b. Due Dates---are all different
- c. Demurrage Amounts----all vary, but they cumulatively total \$28,761.43
- d. However, the one invoice with an invoice date of 11/05/2021 with the above information but with an amount of \$3,790 shows a payment for \$3,790, and a pick-up date of 10/27/2021 for container SEGU9388853; it further shows five other containers paid which are unrelated to any of the six invoices on the same invoice.

(See **Exhibit 9**). The only thing certain about these invoices was that they were ambiguous and inaccurate.

(**Exhibit 1**, Paragraph 9, Affidavit).

19. These multiple duplicated invoices are inconsistent with the Bakerly accounting system which it had been using with Seafrigo. These invoices cannot be paid with any certainty with these inconsistencies. These invoices noted in Exhibit 7 must be reviewed with the lens of 46 U.S.C. §41310, the Commission’s “Interpretive Rule on Demurrage and Detention Under the Shipping Act” (“the Interpretive Rule”), 46 CFR§545; and, lastly, pursuant to the requirements of the invoicing process as contained in 46 U.S. Code § 41104(d). The fact that these invoices pre-date the passage of OSRA 2022, it nevertheless stands to reason that the inaccurate and confusing invoices do not pass the standards of the Interpretive Rule, and, on their face, support a finding that these invoices are in violation of the terms of 46CFR§ 545 and are unreasonable pursuant to scrutiny under 46 U.S. Code § 41102 (c), and are not lawful invoices. Failure to include accurate information on D&D

invoices with any demurrage or detention charge eliminates any obligation of the charged party to pay the applicable charge based on the current provisions of 46CFR§ 545 and are unreasonable pursuant to scrutiny under 46 U.S. Code § 41102 (c) which has now been codified in 46 U.S. Code § 41104(d).

20. By January 2022, it was made amply clear that Seafrigo, in the context of a due diligence review of its practices in effecting door deliveries, had been running its business under capacity as to truckers, clerical staff, and that their internal software was unable to provide current solutions to the issues which Bakerly had been experiencing with Seafrigo. This was stated at a meeting in Miami at that time between Bakerly and Seafrigo's USA CEO at which the following persons participated:

- i. Jérôme Lorrain : CEO Seafrigo USA
- ii. Fabian Milon: COO Bakerly
- iii. Charles Lefort: VP, Supply Chain Bakerly
- iv. Angela Vieira: Director, Supply Chain Bakerly

The following was also learned by Bakerly from Seafrigo's CEO at that time which explained the history of fiascos experienced by Bakerly:

- a) That Seafrigo bought 30 trucks at the beginning of the year but could not find 30 drivers; at that time Seafrigo still had 10 trucks which were not running;
- b) That they required the capacity of pulling 60 containers per day but at that time they could only do 20;
- c) That they had just migrated from their old software system to a new Cargo Wise system, which allowed Seafrigo to now be able to monitor LFD (Last Free Day) factors, an important element for planning purposes to avoid not only demurrage, but an accumulation of demurrage once demurrage commences;
- d) That during the migration from the old system to the Cargo Wise system Seafrigo had lost track of some containers which created a backlog and containers were left at the port for an unnecessary amount of time. The clear conclusion from this was that Seafrigo was failing miserably in performing with a satisfactory level of due diligence.

(See **Exhibit 1**, paragraph 10, Affidavit).

21. In a parallel phone conversation between Angela Vieira (Director, Supply Chain bakerly) and Nathalie Pinçon-Daniel (International Export Sales Director Seafrigo France), Nathalie mentioned to Angela that Seafrigo USA needed to hire more people just like Seafrigo France did to be able to serve the Bakerly account to the expected service level. It became very clear to Bakerly from these conversations that the large demurrage and detention numbers were directly related to the deficiencies in the Seafrigo operations. CEVA's performance at the same time and place as Seafrigo, as indicated above, was the perfect metric by which to evaluate Seafrigo and to reach the conclusion that Seafrigo had not been operating with due diligence in the timely collection of loaded containers and the return of empty containers. (See **Exhibit 1**, paragraph 12, Affidavit).

22. At this point, as noted, the total sums invoiced to Bakerly by Seafrigo as noted in Exhibit 2 during the Period was \$2,973,475.29. Of this amount, \$2,357,244.53 is for demurrage, and \$616,230.76 is for detention. On the demurrage portion, Bakerly has already paid \$973,227.05 to Seafrigo, and would seek that this amount be refunded to Bakerly per the allegations in Count 1 below; for the amount of demurrage which has not been paid which is disputed by Bakerly in the amount of \$1,384,017.48 Bakerly would request that this amount be held as unlawfully charged per the averments in Count 1, and that Searigo be directed to cease and desist collection of this amount. On the detention side, Bakerly has paid \$278,172.37 to Seafrigo, and \$338,058.39 detention charged remains unpaid. (See **Exhibit 1**, paragraph 13, Affidavit).

CAUSES OF ACTION

COUNT I: VIOLATION OF 46 U.S.C. §41104 (a) (2) (A)

23. Complainant Bakerly incorporates by reference each of the facts and allegations stated in paragraphs 1 through 20 as though set forth herein.

24. 46 U.S.C. §41104 (a)(2)(A) states that a “. . . [common carrier](#), either alone or in conjunction with any other person, directly or indirectly, shall not—(2) provide service in the liner trade that is—(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a [service contract](#) entered into under [chapter 405 of this title](#),

unless excepted or exempted under section [40103](#) or [40501\(a\)\(2\)](#) of this title. . . . “ The law and facts in this matter strongly support the conclusion that a “door delivery” commitment by Seafrigo, as stated in the NRAs and house bills of lading, allocates risk of demurrage charges to Seafrigo, except in some narrow circumstances where the culpability lies squarely with the shipper. Seafrigo’s bill of lading terms and conditions, which adopt Seafrigo’s Rules Tariff, clearly underscore Seafrigo’s responsibilities and risks for demurrage in the “door delivery” context. Seafrigo’s bill of lading terms and conditions provide the following pertinent provisions:

23.1 The goods carried under this Bill of Lading are also subject to all the terms and conditions of tariff(s) . . . with the Federal Maritime Commission . . . and the terms are incorporated herein as part of the terms and conditions of this Bill of Lading. (Emphasis supplied).

The pertinent provisions of the Rules tariff provide as follows:

15.3 The VOCC imposes demurrage charges if loaded containers are not removed from the marine terminal within a specified period of time (free time). **Where service is port at destination and removal of containers from the VOCCs marine terminal is the responsibility of Merchant**, Merchant shall be liable to Carrier for any demurrage charges imposed on Carrier by VOCC as a result of Merchants failure to remove containers within applicable free time. (Emphasis supplied).

25. This provision by its explicit terms is not applicable to Bakerly since the service is not “port” at destination, but rather “to door”. Merchant has no obligation to remove containers from the marine terminal. This point is further clarified by the below Seafrigo Rules Tariff provision.

17.2 Merchants Risk and Expense
Except as otherwise specifically provided in this Tariff Rule, and Carriers’ bill of lading terms and conditions, the following shall be at the Merchants risk **and all expenses in connection therewith** shall be for the Merchants account:
1. The pickup, transport, and delivery of the containers/goods moving between

the port of loading or port of discharge
on the one hand, and Merchant's facility
on the other hand, **except to the extent
the goods are door cargo; and**
. . . . (Emphasis supplied)

26. Seafrigo's bill of lading terms and conditions and Rules Tariff are unequivocally stating that the responsibility and risks of moving cargo and containers between the port of discharge and Bakerly's facilities on a "door delivery" is not allocated to the Merchant. Therefore, the Carrier (Seafrigo) is accepting these tasks and liabilities per its own contractual and Rules Tariff terms. The supporting facts noted herein further warrant support for findings of violations by the Federal Maritime Commission, and prescribed actions it should take with respect to those findings.

27. The cover letter of the NRA (Exhibit 3, Quarter 4, 2021 Quotation), which contains Seafrigo's generic notes state conditionally that "shipper and/or consignee **may be** liable" for demurrage and detention. Also, note that Seafrigo includes its "Seafrigo USA 2021 Standard Accessorials Tariff" in the NRA, presumably to provide applicable demurrage rates to the extent that demurrage or detention would be applicable to the shipments involving Bakerly. These are clearly generic terms which would apply in the circumstance where the transport obligations were to Port. However, as noted, the Seafrigo's bill of lading terms and conditions and Rules Tariff specifically provide that demurrage would not apply to Bakerly on door delivery moves. There is no other way to reasonably interpret this language.

28. Therefore, Bakerly is entitled to refunds for all demurrage amounts it has paid to Seafrigo in the amount of \$973,227.05, and for a cease-and-desist order from the Commission for all demurrage sums being claimed by Seafrigo owed to it by Bakerly for the sum of \$1,384,017.48.

29. Bakerly further alleges that notwithstanding that it is entitled to the relief as described in this Count 1, it is further entitled to this relief by the following ample supporting information that Seafrigo was performing measurably below the due diligence standard as noted herein in Paragraph 20, and as measured by the performance of its competitor CEVA for the same time period at the same locations as noted in **Exhibit 7**:

- a. That Seafrigo bought 30 trucks at the beginning of the year but could not find 30 drivers; at that time Seafrigo still had 10 trucks which were not running;

- b. That they required the capacity of pulling 60 containers per day but at that time they could only do 20;
- c. That Seafrigo had just migrated from their old software system to a new Cargo Wise system, which allowed Seafrigo to now be able to monitor LFD (Last Free Day) factors, an important element for planning purposes to avoid not only demurrage, but an accumulation of demurrage once demurrage commences;
- d. That during the migration from the old system to the Cargo Wise system Seafrigo had lost track of some containers which created a backlog and containers were left at the port for an unnecessary amount of time.

The clear conclusion from this was that Seafrigo was failing miserably in performing with a satisfactory level of due diligence.

**COUNT 2: VIOLATION OF 46 U.S.C. §41104 (a)(14)(15)(A)(B); 46 USC§41102(c); and,
Part 545 of title 46, Code of Federal Regulations**

30. Complainant Bakerly incorporates by reference each of the facts and allegations stated in paragraphs 1 through 29 as though set forth herein.

31. 46 U.S. Code § 41104 (a) (14 and 15) provides that a common carrier, such as Seafrigo, shall not assess a demurrage and/or a detention charge that is inconsistent or a charge that is not reasonable pursuant to 46 USC§41102(c), or a charge that does not comply with the “Interpretive Rule on Demurrage and Detention Under the Shipping Act”, 46 C.F.R.§545. Further, this section requires that such demurrage and detention charges must include the information described in 46 U.S.C. §41104 (d); and, thereby showing that such charges comply with all provisions of part 545 of title 46, Code of Federal Regulations.

32. The below demonstrates the impact of these invoices and Bakerly hereby proposes that these invoices for demurrage to the extent that they are not already nullified by an award pursuant to Count 1, serve hereby to return the paid sums for demurrage to Bakerly of \$138,420.33 and that the amount of \$884,242.87 be nullified. Further Bakerly requests that the per diem paid in the amount of \$7,349.00 be returned to Bakerly and that the unpaid amount of \$10,242.55 be nullified.

Demurrage on which payment was not paid: \$884,242.87

Demurrage paid: \$138,420.33

Demurrage Total: \$1,022,663.10

Per Diem on which payment was not paid: \$10,242.55

Per Diem paid: \$ 7,349.00

Total Per Diem: \$17,591.55

33. The demurrage and detention charges included in Exhibit 8 as demonstrated in Exhibit 9 herein are patently inconsistent; are, therefore, not reasonable charges pursuant to 46 USC 4§41102(c), and with regard to 46 C.F.R. 545.5 (d) the reasonableness analysis would undermine any notion of clarity, reasonableness, and billing practices. On their face, these specific charges did not serve their intended primary purposes as financial incentives to promote freight fluidity.

COUNT 3: VIOLATION OF 46 U.S.C. §41104 (a)(14)(15)(A)(B); 46 USC§41102(c); and Part 545 of title 46, Code of Federal Regulations

34. Complainant Bakerly incorporates by reference each of the facts and allegations stated in paragraphs 1 through 33 as though set forth herein.

35. Bakerly for the first time received D&D charges from Seafrigo which related to December 2020 – January 2021 activity in the amount of \$361,178.54. A video meeting was scheduled between Seafrigo USA, Seafrigo France and Bakerly in February 2021 to discuss the above noted D&D charges. During the meeting Seafrigo rejected responsibility for the poor performances claiming that a New York snowstorm and the port closure made it impossible for them to perform timely pick up of loaded containers and to timely return empties to the terminals. Bakerly reluctantly consented to pay those charges persuaded that Seafrigo was not responsible for weather related events causing demurrage. No mention at that time was made by Seafrigo that remedial steps could be sought with respect to the demurrage assessed against Seafrigo from the pertinent ocean common carriers and their respective terminals related to the impossibility of performance due principally to weather and other situations leading to closure of the Port of New York during that period. (See **Exhibit 1**, Paragraph 4, Affidavit. See also **Exhibit 6**, List of Snowstorm Demurrage and Detention Invoices/charges paid by Bakerly.

36. Bakerly, hereby asserts that pursuant to Seafrigo’s insistence that these sums of D&D were caused by weather and port closures, and that these charges by Seafrigo to Bakerly are not

reasonable pursuant to 46 USC§41102(c), and do not comply with the “Interpretive Rule on Demurrage and Detention Under the Shipping Act”, 46 C.F.R.§545.5. In particular, pursuant to Seafrigo’s insistence that this D&D was incurred due to snowstorms and port closure which impacted negatively on cargo availability and free time for timely retrieval, charging demurrage under these conditions was a clear violation of the Incentive Principle per 46 C.F.R. §545.5 (c)(2)(i). Further, charging for detention under these conditions of a snowstorm and port closure equally violated 46 C.F.R. §545.5 (c)(2)(ii) since empty containers could not be timely returned, and was, therefore, unreasonable to charge detention for this period.

37. Therefore, Bakerly is entitled to a full refund for this demurrage detention paid to Seafrigo in the total amount of \$361,178.54 as contained in Exhibit 6 to the extent that such amounts are not already subject to awards made pursuant to Count 1 and Count 2 of this Complaint.

INJURY and DAMAGES SUFFERED BY BAKERLY

38. Bakerly has been actually and materially injured by Respondent Seafrigo financial damages of at least \$2,973,475.29 as a direct result of Respondents' repeated violations of the issuance and collection of demurrage and detention charges from its lack of due diligence in meeting its “door delivery” duties pursuant to its own bill of lading and Rules Tariff terms and conditions in violation of Tariff terms and conditions, in violation of 46 U.S.C. §41104 (a) (2) (A). Bakerly has likewise, in the alternative suffered damages from inconsistent and inaccurate invoicing by Seafrigo of demurrage and detention in violation 46 U.S.C. §41104 (a)(14)(15)(A)(B); 46 USC§41102(c); and, Part 545 of title 46, Code of Federal Regulations in the amount of \$1,040,254.65 to the extent that such amounts may not be covered in an award pursuant to Count1 herein. Lastly, Bakerly suffered injury by the invoicing and partial collection of \$361,178.54 by Seafrigo for amounts admitted by Seafrigo were charged as a result of a snowstorm and port closure in violation of 46 U.S.C. §41104 (a)(14)(15)(A)(B); 46 USC§41102(c); and, Part 545 of title 46, Code of Federal Regulations.

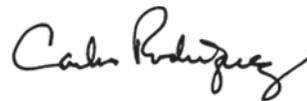
PRAYER FOR RELIEF

WHEREFORE, Bakerly respectfully prays for relief from the Commission as follows:

1. An Order compelling Respondent to answer the charges made herein and scheduling a hearing in Washington D.C. during which the Commission may receive evidence in this matter;
2. An Order, after due investigation and hearing, finding Respondent to have violated 46 U.S.C. §41104 (a)(2)(A); 46 U.S.C. §41104 (a)(14)(15)(A)(B); 46 USC§41102(c); and 46 C.F.R. §545.5;
3. An Order awarding Bakerly damages in an amount of \$2,973,475.29 by requiring that Seafrigo refund demurrage and detention sums paid by Bakerly to Seafrigo in the amount of \$973,227.05 for demurrage, and \$278,172.37 for detention; and, to nullify amounts in the amount of \$1,384,017.48 which Seafrigo is continuing to seek from Bakerly for demurrage, and \$338,058.39 for detention; or in the amounts to be proven under 46 U.S.C. § 41305, interest under 46 U.S.C. § 41305(a), and reasonable attorneys' fees under 46 U.S.C. § 41305(e);
4. An Order pursuant to 46 U.S.C. § 41305 (c) relating to violations of USC§41102(c) awarding Bakerly additional amounts not to exceed twice the amount of the actual injury.
5. Such other and further relief as the FMC determines to be just and proper.

Dated: 7/21/2022

Respectfully Submitted:



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Counsel for Complainant, Bakerly LLC

VERIFICATION

Mr. Charles Lefort, Vice-President, Supply Chain, of Bakerly LLC, pursuant to 28 USC §1746, the undersigned hereby declares under penalty of perjury that he has read the foregoing Verified Complaint, and that the facts stated therein to the best of his knowledge, information and belief further declares that the foregoing is true and correct on information, belief, and upon information received from others.

Dated: July 21, 2022



Charles Lefort, Vice-President, Supply Chain
Bakerly, LLC
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Easton, PA 18040
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