

BEFORE  
THE FEDERAL MARITIME COMMISSION

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DOCKET NO. 22-29

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MVM LOGISTICS

VS.

MSC MEDITERRANEAN SHIPPING COMPANY (USA)  
INC.

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**ANSWER TO COMPLAINT**

Respondent, MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC. (“MSC USA” or “Respondent”) through its undersigned counsel, answers Complainant MVM LOGISTICS’ (“MVM” or “Complainant”) Complaint, upon information and belief, as follows:

**INTRODUCTORY STATEMENT**

The Complaint in this proceeding is so vague and ambiguous as to make it impractical, if not impossible for MSC USA to submit a reasonable answer. MSC USA is not clear about both the claimed violations and the factual allegations said to support them. Despite having the burden of proof, the Complainant fails to make its claims in its Complaint. Therefore, for many of the Complaint’s allegations, MSC USA can only answer with general denials or lack of information sufficient to form a belief to the allegations raised in the Complaint.

**I. COMPLAINANT**

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of MVM’s Complaint.

**II. RESPONDENT**

2. Admits the allegations contained in paragraph 2 of MVM's Complaint.

Admits the allegations contained in the unnumbered paragraph between paragraph 2 and 3 of Complainant's Complaint. MSC USA has a principal place of business located at 420 5th Ave, New York, NY 10018. MSC USA is the agent in the United States for MSC MEDITERRANEAN SHIPPING COMPANY SA ("MSC SA" or "Principal").

### **III. JURISDICTION**

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3 of MVM's Complaint.

4. The statement in paragraph 4 of MVM's Complaint that the Complaint is filed pursuant to Section 11(a) of the Shipping act, 46 U.S.C. §41301 does not require an admission, denial, or denial of knowledge or information by Respondent since there is no Section 11(a) in 46 USC §41301. Respondent denies the remaining allegations contained in paragraph 4 of MVM's Complaint and defers all questions of law to the Commission for determination.

5. Denies the allegations contained in paragraph 5 of MVM's Complaint.

6. Paragraph 6 of the Complaint calls for a legal conclusion that does not require a response. To the extent a response is required, Respondent denies the allegations contained in paragraph 6 of MVM's Complaint and defers all questions of law to the Commission for determination.

### **IV. FACTUAL ALLEGATIONS**

Denies knowledge or information of Complainant's allegation in unnumbered paragraph between paragraph 6 and 7 of Complainant's Complaint that "*the cause of action is based on the facts that took place from about August 2020 till end of February 2022, when MVM became insolvent*". Respondent denies the remaining allegations contained in the unnumbered paragraph of MVM's Complaint and defers all questions of law to the Commission for determination.

7. Admits that MSC USA on behalf of its principal provides “exports bookings” but denies the remaining allegations contained in paragraph 7 of MVM’s Complaint and defers all questions of law to the Commission for determination.

8. Denies the allegations contained in paragraph 8 of MVM’s Complaint and defers all questions of law to the Commission for determination. MSC USA, on behalf of its principal, offered to reduce certain outstanding charges owed by Complainant, notwithstanding Complainant’s failure to ever disputing the charges through the appropriate channels. The Complainant agreed to, but in fact failed to, pay any portion of the agreed upon reduced amount.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of MVM’s Complaint and defers all questions of law to the Commission for determination. In any event, this action was brought by the Claimant and not by MSC USA. MSC USA, on behalf of its principal, offered a reduction of the charges owed by the Complainant. The Complainant agreed to pay the reduced amount but failed to do so. It is Complainant who owes money to MSC. Notwithstanding its agreement to pay the reduced amount Complainant stopped communicating with MSC USA until the filing of this Complaint.

10. Denies the allegations contained in paragraph 10 of MVM’s Complaint and defers all questions of law to the Commission for determination.

11. Denies the allegations contained in paragraph 11 of MVM’s Complaint and defers all questions of law to the Commission for determination.

12. Paragraph 12 contains no factual allegations with respect to Respondent and requires no response. To the extent a response is required, Respondent denies the allegations contained in paragraph 12 of MVM’s Complaint and defers all questions of law to the Commission for determination.

13. Paragraph 13 contains no factual allegations with respect to Respondent and requires no response. To the extent a response is required, Respondent Denies the allegations contained in paragraph 13 of MVM's Complaint and defers all questions of law to the Commission for determination.

14. Paragraph 14 contains no factual allegations with respect to Respondent and requires no response. To the extent a response is required, Respondent denies the allegations contained in paragraph 14 of MVM's Complaint and defers all questions of law to the Commission for determination.

15. Paragraph 15 contains no factual allegations with respect to Respondent and requires no response. To the extent a response is required, Respondent, denies the allegations contained in paragraph 15 of MVM's Complaint and defers all questions of law to the Commission for determination.

16. Denies the allegations contained in paragraph 16 of MVM's Complaint and defers all questions of law to the Commission for determination.

17. Denies the allegations contained in paragraph 17 of MVM's Complaint and defers all questions of law to the Commission for determination.

## **V. VIOLATION OF THE SHIPPING ACT**

18. Denies the allegations contained in paragraph 18 of MVM's Complaint except as to the correctness of the language of the Shipping Act 46 U.S.C. 41102(c) quoted therein. The statute speaks for itself.

19. Denies the allegations contained in paragraph 19 of MVM's Complaint and defers all questions of law to the Commission for determination.

20. Denies the allegations contained in paragraph 20 of MVM's Complaint and defers all questions of law to the Commission for determination.

#### **VI. CAUSATION AND INJURY TO COMPLAINANT**

21. Denies the allegations contained in paragraph 21 of MVM's Complaint and defers all questions of law to the Commission for determination.

22. Denies the allegations contained in paragraph 22 of MVM's Complaint and defers all questions of law to the Commission for determination.

23. This paragraph makes no factual allegations against Respondent and requires no response. To the extent a response is required Respondent denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 of MVM's Complaint.

#### **VII. MISCELLANEOUS ALLEGATIONS**

24. Allegations contained in Exhibits do not require a response. However, some of the allegations contained in Exhibits A and B attached to the Complaint might be prejudicial to MSC USA. Therefore, Respondent denies all allegations contained in Exhibit A and B attached to MVM's Complaint and defers all questions of law to the Commission for determination.

#### **AS AND FOR AFFIRMATIVE DEFENSES TO THE CLAIMS SET FORTH IN THE COMPLAINT, RESPONDENT MSC ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS**

1. The Federal Maritime Commission lacks subject matter jurisdiction over the Complaint.
2. The Federal Maritime Commission lacks personal jurisdiction over Respondent MSC USA.
3. The Complaint fails to allege essential elements of a claim as provided under 46 CFR 502.62 (a)(3)(iii).
4. The Complaint fails to state a claim against MSC USA on which relief may be granted.

5. MSC USA is an agent for a disclosed principal and Claimant is and was aware of that agent/principal relation.

6. MSC USA is not an ocean common carrier, marine terminal operator, or ocean transportation intermediary subject to 46 U.S.C. § 41102.

7. Any inability to return empty containers by the Complainant within free time was due in whole or in part to the acts and/or omissions of the Complainant, its agents, the cargo interest(s) and/or in any event to circumstances or third parties outside the control of MSC.

8. The allegations in the Complaint lack a meritorious factual basis.

9. Complainant lacks standing to assert all or some of the claims alleged in the Complaint.

10. The claims alleged in the Complaint are barred by the doctrines of equitable estoppel and/or unclean hands. Upon information and belief, Complainant owed certain amounts in per diem charges to MSC SA. MSC USA, on behalf of MSC SA, agreed to reduce such amount considerably and Complainant agreed to pay the reduced amount, but Complainant failed to do so.

11. Respondent's conduct was reasonable considering the totality of the circumstances.

12. Any alleged damages sustained by the Complainant were proximately, directly, and solely caused by the acts of third persons over whom the Respondent had and has no direction or control.

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

**RESERVATION OF RIGHTS TO AMEND AND TO RAISE A COUNTERCLAIM**

Respondent reserves its right to amend this Answer and to plead any additional affirmative defenses.

Respondent, on behalf of its principal, non-party MSC SA, reserves all rights to bring a counterclaim against MVM for any of the outstanding charges owed by MVM to MSC S.A. before the Federal Maritime Commission or any Court of competent jurisdiction.

WHEREFORE, Respondent prays that after due oral hearing to be conducted in Washington, D.C., or by video conference, an order be made dismissing the Complaint.

Respectfully submitted,

/s/Wook Chung

/s/Kaspar Kielland \_\_\_\_\_

Wook Chung

Kaspar Kielland

**Montgomery McCracken Walker & Rhoads LLP**

427 Madison Avenue, 24<sup>th</sup> Floor

New York, New York 10022

(212) 201-1931 / (212) 867-9500

Dated: November 21, 2022

VERIFICATION OF RESPONDENT  
MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC.

Nicholas Hargreaves hereby verifies as follows:

1. I am Internal Counsel of MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC. (“MSC USA”)
2. I am authorized to make this verification on behalf of MSC USA.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify under penalty of perjury that the foregoing is true and correct.

Dated: November 21, 2022



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Name: Nicholas Hargreaves  
Title: Internal Counsel for MSC USA Inc.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of November 2022, the foregoing

Answer to Complaint was served via electronic mail on:

Federal Maritime Commission  
Office of the Secretary  
[secretary@fmc.gov](mailto:secretary@fmc.gov)

Federal Maritime Commission  
Presiding Administrative Law Judge Linda S. Harris Crovella  
[judges@fmc.gov](mailto:judges@fmc.gov)

Complainant  
MVM LOGISTICS  
[Aez1971@icloud.com](mailto:Aez1971@icloud.com)

/s/Kaspar Kielland\_\_\_\_\_