

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-30

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,

RESPONDENT.

**COMPLAINANT'S RESPONSE TO
RESPONDENT'S PROPOSED FINDINGS OF FACT**

Complainant, Samsung Electronics America, Inc. (“SEA”), through its counsel, hereby submits the following Response to Respondent, ZIM Integrated Shipping Services, Ltd.’s (“ZIM”) Proposed Findings of Fact (“PFF”):

General Objection. In both ZIM’s original Proposed Findings of Fact and its Errata Proposed Findings of Fact, ZIM does not define “Samsung” when using the name although it is well aware that Complainant is Samsung Electronics America, Inc. (“SEA”), and there are other Samsung entities it references.¹ Indeed, a search of the name “Samsung” in the business entity databases for the State of Delaware² and the State of New Jersey³ generates forty five and fifty four entities, respectively. When ZIM is demanding payment for nearly 10,000 charges resulting in millions of dollars in D&D charge revenue, and now attempting to defend its actions on receipt of those payments in this reparations action, it cannot work in generalities. For the purposes of clarity, SEA denies each instance wherein ZIM uses Samsung without specific definition in a manner material to the PFF or SEA’s responses thereto. ZIM’s failure to distinguish and acknowledge that there are other separate Samsung entities in its PFF is a microcosm of the invoicing issues previously highlighted by SEA in its initial brief and proposed findings of fact (“SEA PFF”).⁴ However, each of SEA’s responses to a PFF with a “Samsung” reference incorporates this objection and denial for the record.

¹ See RX-1836, RX-1807-1808, RX-1836 , RX-1871-1872, RX-1900-1901, RX-1940-1941, identifying a number of Samsung entities: Samsung Electronics; Samsung Display; Samsung Electro-Mechanics; Samsung Electronics Logitech Co., Ltd.; SDS Global SCL(M) SDN BHD; Samsung SDS America, INC; Samsung Electronics Home Appliance America (SEHA)); Samsung SDS Global SCL Asia Pacific Pte Ltd; Samsung SDS Global SCL Asia Pacific; Samsung SDS Global Scl America Inc.; Samsung Sds Global Scl Beijing Co Ltd Suzhou Branch); and Samsung Electronics Co., Ltd.

² <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx>

³ <https://www.njportal.com/DOR/BusinessNameSearch/Search/BusinessName>

⁴ SEA Initial Brief at pp. 49-52; SEA PFF at ¶¶ 83-93.

A. The contracts under which Samsung shipped cargo using ZIM as an ocean carrier included a provision authorizing the establishment of a maritime lien on cargo when Samsung was delinquent in paying the charges due and owing to ZIM.

SEA Response to ZIM Header A: Denied as stated. SEA does not contract with ocean carriers like ZIM for the transportation of its products. Rather, the service contract for the transportation of goods destined for SEA is between ZIM, on one hand, and other Samsung entities such as Samsung SDS Co., Ltd. (“SDS”) or Samsung Electronics Logitech Co., Ltd (“Logitech”). The service contracts do not govern the issues between ZIM and SEA. CX_02205. SDS and Logitech are corporate entities distinct from SEA. Rapske Dep. Tr. 33:8-22. The manner and scope of ZIM’s maritime lien is a contested issue and fully addressed in detail in SEA’s Reply Brief, filed contemporaneously with this Response. Reply at 10-33.

1. **ZIM PFF 1:** ZIM established a cargo hold on Samsung containers from August 5, 2020, through August 11, 2020. CX_05325, Rosenberg Tr. 22:11-15.

SEA Response to ZIM PFF 1: Denied as stated. Ms. Rosenberg testified as stated, but contemporaneous evidence establishes the date the Finance Hold began was August 5, 2020 and lasted until “Mid-August.” CX_01570, ZIM0085708. The evidence shows that the held cargo had not been released by August 15, 2020 and was still on hold on August 20, 2020. _CX_07204-CX_07221.

2. **ZIM PFF 2:** At the time the cargo hold was imposed, the overdue balance from Samsung was \$143,000. CX_05341, Rosenberg Tr. 38:3-7.

SEA Response to ZIM PFF 2: Admit that the alleged balance claimed to be owed to ZIM by SEA and claimed to be overdue was approximately \$143,000. CX_05341; Rosenberg Dep. Tr. 38:3-39:3. However, other than a blanket, unsubstantiated claim that ZIM had sent invoices representing the alleged overdue demurrage amount, and SEA had received them “per [Zim’s] regular process,”

ZIM U.S. CFO Rosenberg could not “answer when those specific invoices were sent” or to whom at SEA they were sent. CX_05332, CX_05334; Rosenberg Dep. Tr. 29:22-30:5, 31:3-16. Contemporaneous evidence shows that the underlying invoices had properly been contested by SEA because of errors and overcharges by Zim. CX_07204-CX_07221.

3. **ZIM PFF 3:** To lift the hold, Samsung paid approximately \$37,000. CX_05341, Rosenberg Tr. 38:12-23.

SEA Response to ZIM PFF 3: Admit.

4. **ZIM PFF 4:** ZIM established a second cargo hold on Samsung containers from May 27, 2021, through June 15, 2021. CX_05324-25, Rosenberg Tr. 21:16-22:5; RX_0172, ZIM0028934.

SEA Response to ZIM PFF 4: Denied as stated. SEA was placed on a second Finance Hold from May 27, 2021 to June 30, 2021. CX_01570, ZIM0085708; CX_5809, BRG Report ¶ 49; CX_05945, Ex. 10 thereto.

5. **ZIM PFF 5:** At the time the second cargo hold was imposed, the overdue balance from Samsung was approximately \$858,000. CX_01570, ZIM0085708 (chart from Mr. Yaacoub showing an overdue balance of \$857,914.64); RX_0699, ZIM0085709; (Ms. Rosenberg’s deposition notes regarding the holds show \$857,915).

SEA Response to ZIM PFF 5: Admit that ZIM placed SEA on a second Finance Hold. Denied to the extent that ZIM has provided inconsistent amounts. Denied as to the assertion that the amount stated was “overdue,” as the cited evidence does not establish that the amounts were properly due and payable, or that they were overdue. Mr. Yaacoub’s note provides that at the time Finance Hold No. 2 was instituted, the alleged overdue balance owed to ZIM by SEA was \$857,914.64, and SEA paid \$510,975.00 to lift the hold (CX_01570, ZIM0085708); however,

ZIM's US CFO testified that the alleged overdue balance owed to ZIM by SEA at the time of the Finance Hold No. 2 was approximately \$158,000.00. CX_05344, Rosenberg Dep. Tr. 41:15-22.

6. **ZIM PFF 6:** To lift the second hold, Samsung paid approximately \$510,000. CX_05344, Rosenberg Tr. 41:21-22.

SEA Response to ZIM PFF 6: Admit to the extent that Mr. Yaacoub's note provides that at the time Finance Hold No. 2 was instituted, the alleged overdue balance owed to ZIM by SEA was \$857,914.64, and SEA paid \$510,975.00 to lift the hold. CX_01570, ZIM0085708. *See* SEA Response No. 5 noting the amount was approximately \$158,000, and that the cited evidence does not establish any amount actually due and owing, nor does the evidence cited establish that the cited amount that SEA paid to release the hold represented amounts due or owing, but rather only shows the amount that SEA agreed to pay under duress in order to release its held cargo.

7. **ZIM PFF 7:** ZIM established a third cargo hold on Samsung containers from September 27, 2021, until October 6, 2021. CX_05324, Rosenberg Tr. 21:16-22:5.

SEA Response to ZIM PFF 7: Denied as stated. Finance Hold No. 3 was instituted on September 27, 2021 and lasted until October 16, 2021. CX_01570, ZIM0085708.

8. **ZIM PFF 8:** At the time the third cargo hold was imposed, the overdue balance from Samsung was approximately \$944,000. CX_05349, Rosenberg Tr. 46:13-19.

SEA Response to ZIM PFF 8: Admit that the cited evidence shows the balance allegedly owed to ZIM by SEA, and allegedly overdue was \$943,708.14. CX_01570, ZIM0085708; CX_05349, Rosenberg Dep. Tr. 46:13-19. The cited evidence does not establish that any amount of the claimed overdue balance or the amount paid to release the hold was legitimately owing or overdue.

9. **ZIM PFF 9:** To lift the hold, Samsung paid approximately \$639,000. *Id.*

SEA Response to ZIM PFF 9: Admit.

10. **ZIM PFF 10:** A number of containers were released by ZIM prior to the full payment of the Samsung overdue balance at the request of Samsung. RX_0172, ZIM0028934.

SEA Response to ZIM PFF 10: Denied. Complainant denies the characterization of ZIM's PFF

10. There were not a "number of containers released." In fact, out of 353 containers, only 59 were released and this occurred after SEA was compelled to make partial payments as a result of ZIM's unlawful Finance Holds. *See* RX-0172.

11. **ZIM PFF 11:** ZIM established a fourth cargo hold on Samsung containers from January 11, 2022, through March 17, 2022. CX_05349, Rosenberg Tr. 46:20-47:1.

SEA Response to ZIM PFF 11: Admit.

12. **ZIM PFF 12:** At the time the fourth cargo hold was imposed, the overdue balance from Samsung was \$1,538,000. RX_0699, ZIM0085709 (Ms. Rosenberg's deposition notes regarding the holds show \$1,538,200), CX_01570, ZIM0085708 (affirming same).

SEA Response to ZIM PFF 12: Admit that the balance alleged to have been owed to ZIM by SEA and allegedly overdue was \$1,538,200.64. CX_01570, ZIM0085708. But denied as to the assertion that any of the amounts were legitimately due or overdue. The cited evidence does not establish that any amount of the claimed overdue balance or the amount paid to release the hold was legitimately owing or overdue.

13. **ZIM PFF 13:** A number of containers were released by ZIM prior to the full payment of the Samsung overdue balance at the request of Samsung. RX_0172, ZIM0028934.

SEA Response to ZIM PFF 13: Denied. Complainant denies the characterization of ZIM's PFF

13. There were not a "number of containers released." In fact, out of 353 containers, only 59 were released and this was after SEA was compelled to make partial payments as a result of ZIM's unlawful credit holds. RX-0172.

14. **ZIM PFF 14:** To lift the hold, Samsung paid approximately \$120,000. RX_0699, ZIM0085709 (showing \$119,615 was paid to release the hold); CX_01570, ZIM0085708 (affirming same).

SEA Response to ZIM PFF 14: Denied. Complainant denies information sufficient to form a belief as to this PFF. SEA admits there was a cargo hold and can confirm that ZIM held cargo on the basis of allegedly due and outstanding payments, but that the evidence shows that such allegedly due and outstanding amounts pertained to charges for which SEA was not responsible to pay ZIM CX_07395, SEA0118706 (email stating that approximately \$500,000 of the claimed \$635,000 were not amounts even invoiced to SEA).

B. Samsung approved various amounts of charges when confronted with overdue balances but now seeks to recover all of the charges that were contemporaneously approved by Samsung.

SEA Response to ZIM Header B: Denied as stated. SEA seeks to recover (1) the amounts in the Complaint (*see generally* CX_00017) it was forced to pay in connection with inland movement charges invoicing ZIM containers; and (2) the amounts it paid ZIM primarily as a direct result of new charges from ZIM pursuant to ZIM's Finance Holds; and asserts that (3) "all of the charges that were contemporaneously approved by SEA" is not supported by evidence in the record (and none is cited).

15. **ZIM PFF 15:** On May 22, 2020, Samsung emailed ZIM in response to overdue balances, broken down by specific invoice, with approvals of various charges and questions regarding others. RX_0174-77, ZIM0051110-13.

SEA Response to ZIM PFF 15: Admitted in part and denied in part. Complainant admits that SEA emailed ZIM in response to allegedly due and overdue invoices, identifying numerous instances whereby SEA had identified multiple invoices that were wrongly billed to SEA instead

of, for example, the proper SEA division of entity. CX_07407-CX_07412, SEA0128432-SEA0128437; CX_07468-CX_07470, ZIM0023358-ZIM0023360. SEA was not emailing that ZIM's invoices were proper or approved.

16. **ZIM PFF 16:** On August 10, 2020, Samsung emailed ZIM in response to overdue balances, broken down by specific invoice, with approvals of various charges and questions regarding others. RX_0182-83, ZIM0011412-13.

SEA Response ZIM PFF 16: Admitted in part and denied in part. SEA admits that cited emails were exchanged, but denies the characterization of this PFF, as there were numerous instances whereby SEA had identified multiple invoices that were wrongly billed to SEA instead of the proper Samsung division or entity. CX_07407-CX_07412, SEA0128432-SEA0128437; CX_07468-CX_07470, ZIM0023358-ZIM0023360. As such, SEA was emailing ZIM to discern whether the invoices were directed to the proper SEA entity associated with the actual box move.

17. **ZIM PFF 17:** On August 20, 2020, Samsung emailed ZIM in response to the same overdue balances, broken down by specific invoice, with additional approvals of various charges and questions regarding others. RX_0765-78, SEA0014500-13.

SEA Response to ZIM PFF 17: Admitted in part and denied in part. SEA admits that cited emails were exchanged, but denies the characterization of this PFF, as there were numerous instances whereby SEA had identified multiple invoices that were wrongly billed to SEA instead of the proper Samsung division, such as SDS. CX_07407-CX_07412, SEA0128432-SEA0128437; CX_07468-CX_07470, ZIM0023358-ZIM0023360. As such, SEA was emailing ZIM to discern whether the invoices were directed to the proper SEA entity associated with the actual box move.

18. **ZIM PFF 18:** On March 16, 2021, JS Ryu from SDSHQ Ocean Logistics Operation Group wrote ZIM to identify invoices that were the subject of an overdue statement of accounts (SOA) which required review. RX_0623-24, ZIM0030241-42.

SEA Response to ZIM PFF 18: Admitted in part and denied in part. SEA⁵ admits that cited emails were exchanged, denies ZIM PFF 18 as stated, as the cited evidence does not establish that the statement of accounts was “overdue” and they were in fact contested as the email exchanges show. SEA was attempting to gain information concerning the invoices, as ZIM would frequently send invoices with insufficient information. CX_05435, Rosenberg Dep. Tr. at 132:1-6.

19. **ZIM PFF 19:** In the email from Mr. Ryu, he identified \$28,795 in invoices as “Claim case” and another \$9,983 as “Under Review” but noted that Samsung would pay the remainder of the balances “as soon as verification is completed.” *Id.*

SEA Response to ZIM PFF 19: Admitted that the cited email was exchanged and that a separate entity sought to pay legitimate invoices after adequate verification was completed.

20. **ZIM PFF 20:** The rest of the SOA from Samsung that was due to ZIM was not contested and totaled \$633,758. *Id.*

SEA Response to PFF 20: Denied. The cited evidence does not establish that the rest of the charges on the invoices listed on the SOA were not contested, nor that they were legitimately due. The cited evidence shows that the charges were highly contested, but that separate entity sought to desperately have containers and cargo held by ZIM released, as by that time in March 2022, ZIM had held SEA cargo for over two months—“YOUR IMMEDIATE RELEASE WILL BE

⁵ ZIM PFF’s 18-20 in particular show the issue with ZIM not defining “Samsung” in its PFF and merely considering separate entities all as one company. This is exactly the problem SEA’s D&D collections and invoicing personnel had and which caused so much of the confusion and D&D charges. SEA particularly incorporates its objections at fn.1 herein.

HIGHLY APPRECIATED.” Rx-0624. The evidence shows that SEA and separate entity made payments to release the Finance Hold, not that the underlying charges were legitimate.

21. **ZIM PFF 21:** On January 21, 2022, Samsung emailed ZIM to confirm that an approved invoice for \$291,610 had been paid and that an additional \$354,900 had been approved and was pending payment. RX_0919-20, SEA0015206-07.

SEA Response to ZIM PFF 21: Denied. SEA denies PFF 21 as stated, as the evidence cited does not confirm the accuracy of the related statement. The cited correspondence shows SEA asking ZIM for clarification regarding its invoice practices as ZIM would frequently send SEA invoices without sufficient information. CX_05435, Rosenberg Dep. Tr. at 132:1-6.

22. **ZIM PFF 22:** Samsung also approved individual charges over email during the period when Samsung alleges that it was not at fault for any charges. RX_0682, ZIM0031912 (Ms. Fernando told ZIM that Samsung was responsible for a portion of accrued demurrage, noting “[i]t is not ZIM’s responsibility after that since the appt was provided for 02.09”); RX_1736-40, SEA0006315-19 (SEA’s containers did not receive an appointment until after LFD, so ZIM requested approval for pre-pull and storage; Ms. Renteria of Samsung requested that ZIM clear on behalf of Samsung and approved the charges requesting that ZIM go ahead); RX_1729, SEA0007624 (SEA identified two containers with \$5,300 in demurrage and asked ZIM to clear on behalf of Samsung, noting that Samsung had “approved the amount below [of \$5,300 per container] for demurrage charges”); RX_1688, SEA0008017 (showing the approval of three demurrage invoices, storage, and costs associated with appointments set by customers 36, 26, and 24 days beyond the last free day on port); RX_1113, SEA0023224 (approving various charges totaling over \$40,000).

SEA Response to ZIM PFF 22: Admitted in part and denied in part. SEA admits that SEA “approved individual charges over email” during the relevant time period, but SEA denies that SEA’s acquiescence or offer to pay for inland charges to facilitate movement of its cargo by ZIM is evidence of “fault” by SEA. In the instances in the cited email, the charges at issue related to containers for which rail storage accrued as a result of ZIM’s failures and the assigned trucker was not able to make a pickup appointment until the storage charges were cleared, which ZIM requested to do, which caused further delays. SEA’s offer to cover a portion of the additional storage that was ZIM’s responsibility was done to get the containers picked up, not an acceptance of responsibility. The cited emails also speak for themselves.

C. **Samsung relied on evasive and inefficient tactics to avoid paying its overdue balances even after months, and sometimes years, had passed since Samsung was properly invoiced for charges.**

SEA Response to ZIM Header C: SEA denies Header C. ZIM’s assertion that SEA was relying on “evasive and inefficient tactics” is entirely unsupported and inaccurate. Rather, SEA was seeking to ensure ZIM’s invoices were proper, as ZIM would frequently issue improper invoices. CX_04638, Cleva Dep. Tr. 109:11-21.

23. **ZIM PFF 23:** On July 8, 2020, ZIM notified Samsung that it was “\$154,483.16 in arrears with invoices ranging between 2 and 1,743 days still open on the account and not settled.” CX_07228, ZIM0011383.

SEA Response to ZIM PFF 23: Admitted in part and denied in part. Admitted that the cited email was exchanged, denied because the email does not support the truth of the matter asserted. The evidence cited demonstrates an example of SEA asking for invoices and email threads to verify payments. CX_07226.

24. **ZIM PFF 24:** Samsung advised that the outstanding balance would be paid by Friday, July 21, 2020, in order to avoid a credit suspension or a cargo hold. CX_07227, ZIM0011382.

SEA Response to ZIM PFF 24: Denied. The email chain cited does not show that SEA advised that the outstanding balance would be paid by Friday, July 21, 2020, in order to avoid a credit suspension or a cargo hold, as stated by ZIM. Indeed, the evidence shows SEA inquired as to information concerning invoices, as ZIM's practice was to send insufficient and time-barred invoices. ZIM's U.S. CFO observed that during her tenure, the company always had issues or problems with timely billing. CX_05435, Rosenberg Dep. Tr. at 132:1-6 (ZIM's U.S. CFO observed that during her tenure, the company always had issues or problems with timely billing); CX_04761, Cleva Dep. Ex. 9; *see also* CX_04782-CX_04784, Cleva Dep. Ex. 11 at pp. 1-3.

25. **ZIM PFF 25:** On July 28, 2020, prior to paying the invoices as promised, Ms. Blair Ji of Samsung requested all of the outstanding invoices and corresponding "approvals of email threads for the invoices" be provided or that ZIM should obtain approval on the invoices from amongst two groups of eleven total email addresses. *Id.*

SEA Response to ZIM PFF 25: Admitted in part and denied in part. Admitted that the cited email was exchanged, but SEA denies ZIM PFF 25 insofar as it states that SEA "promised" to pay the invoices, as the language of the email speaks for itself. CX_07227, ZIM0011382. This early email in the email chain of the infamous "Hold their cargo!!! 😊 😊" declaration by ZIM, PFF at ¶ 207, is addressed in detail in the Reply at 67-69.

26. **ZIM PFF 26:** After the process in PFF 25 was completed by ZIM, Samsung instructed that the "email thread along with the corresponding invoice(s)" be sent once more so that Ms. Ji could "validate the process." CX_07226, ZIM0011381.

SEA Response to ZIM PFF 26: Admitted in part and denied in part. Admitted that the cited email was exchanged, but SEA denies PFF 26 insofar as it characterizes the process in PFF 25. *Id.* Further, SEA was seeking to ensure all invoices were proper due to ZIM’s improper invoicing practices. *Id.* This early email in the email chain of the infamous “Hold their cargo!!! 😊 😊 ” declaration by ZIM, PFF at ¶ 207, is addressed in detail in the Reply at 67-69.

27. **ZIM PFF 27:** ZIM responded by requesting clarification that the process described was not for ZIM’s action and that ZIM would extend the time period for Samsung to pay its overdue invoices until July 31, 2020. *Id.*

SEA Response ZIM PFF 27: Admitted in part and denied in part. Admitted that the cited email was exchanged, but SEA denies ZIM’s characterization in PFF 27 as the cited evidence does not support the assertion that the invoices were overdue, as the invoices were actively in dispute. This early email in the email chain of the infamous “Hold their cargo!!! 😊 😊 ” declaration by ZIM, PFF at ¶ 207, is addressed in detail in the Reply at 67-69.

28. **ZIM Response to PFF 28:** Samsung then responded that the multi-step approval process was, in fact, directed to ZIM. *Id.*

SEA Response to ZIM PFF 28: Admitted in part and denied in part. Admitted that the cited email was exchanged, but SEA denies PFF 28 insofar as it mischaracterizes the process described in PFF 25. SEA was seeking to ensure all invoices were proper and accurate due to ZIM’s improper invoicing practices. This middle email in the email chain of the infamous “Hold their cargo!!! 😊 😊 ” declaration by ZIM, PFF at ¶ 207, is addressed in detail in the Reply at 67-69.

29. **ZIM Response to ZIM PFF 29:** On August 5, 2020, ZIM advised Samsung that it was implementing a cargo hold, “effective today.” RX_0778, SEA0014513.

SEA Reply Response: Admitted in part and denied in part. Admitted that the cited email was exchanged, and admitted that ZIM followed through on its “CREDIT SUSPENSION” threats made in connection with the email chain containing the infamous “Hold their cargo!!! 😊😊” declaration by ZIM, PFF at ¶ 207, addressed in detail in the Reply at 67-69. Denied to the extent that the cited email refers to amounts allegedly “due on July 31, 2020.”

30. **ZIM PFF 30:** Again, on September 8, 2020, ZIM notified Samsung of an overdue balance of \$115,983.16. RX_0169, ZIM0025659.

SEA Response to ZIM PFF 30: Admitted in part and denied in part. Admitted that the cited email was exchanged, but SEA denies ZIM’s characterization of the invoicing process in PFF 30, as these invoices were not overdue and were actively in dispute due to ZIM’s improper invoicing practices. RX_0169, ZIM0025659.

31. **ZIM PFF 31:** In the same email chain, on March 10, 2021, ZIM notified Samsung of \$628,373 in overdue charges that required immediate payment to avoid credit suspension and a cargo hold. *Id.*

SEA Response to ZIM PFF 31: Admitted in part and denied in part. Admitted that the cited email was exchanged, but SEA denies ZIM’s characterization of the invoicing process in PFF 31, as these invoices were not overdue and were actively in dispute. Zim denies the purported relevance of the statement that the March 10, 2021 email was in “the same email chain,” as email was appended to a six-month-old email chain. While ZIM was again threatening a “credit suspension and cargo hold” over alleged overdue invoices “mostly for unpaid per diem/equipment detention” (over \$550,000 of detention, not demurrage), SEA was again seeking additional information in light of ZIM’s issuance of improper invoices, including old detention invoices. CX_04761, Cleva Dep. Ex. 9; *see also* CX_04782-CX_04784, Cleva Dep. Ex. 11 at pp. 1-3.

32. **ZIM PFF 32:** In response, Ms. Maria Kristina Fernando from Samsung inquired regarding freight charges totaling \$8,578 and advised that Samsung would review the invoices, requesting that ZIM wait until the following week to enact a cargo hold. RX_0167-68, ZIM0025657-58.

SEA Response to ZIM PFF 32: Admitted in part and denied in part. Admitted that SEA's Ms. Maria Kristina Fernando responded on multiple occasions to ZIM's email challenging the invoices, including among them (1) questioning the \$8,578 of alleged freight charges invoiced to other entities, and (2) charges from 2015 and from 2020 *before* the previous credit suspension that SEA disputed, including charges disputed in the prior suspension, yet that ZIM simply raised six months later as purportedly "overdue" again. *E.g.* compare \$1,435 charge on container ZIMUSEL200209468, RX-0162, which was among charges in both holds. SEA stated that it would review the invoices and asked for a week to review them "since there are old invoices." SEA did not request that Zim delay holding SEA containers for a week as ZIM asserts, SEA asked that ZIM confirm that it would not hold SEA containers, period. ZIM refused to do so, stating "Cargo hold cannot wait for next week." RX_0166-77, ZIM0025656-57.

33. **ZIM PFF 33:** ZIM resent all of the invoices to Ms. Fernando and requested that they be forwarded to the correct department for processing. RX_0163-64, ZIM0025653-54.

SEA Response to ZIM PFF 33: Admitted in part and denied in part. Admit that ZIM resent invoices to Ms. Fernando on March 21, 2021 and requested that the invoices be forwarded to the "correct parties within your organization." Denied that this action by ZIM was appropriate or in accordance with SEA's established billing process, which was known to ZIM and had a purported dedicated service team associated with SEA. Emails from Ms. Fernando in the thread cited by ZIM

demonstrate that ZIM was aware of the appropriate department to which it should send invoices, but failed to do so. RX-159-60, (Ms. Fernando's extensive response to ZIM March 23, 2021:

Holding the loads will not resolve the issue, because the main issue here is the way ZIM's AR team handling the SAMSUNG billing. We have a process and protocol to follow, and for your sure ZIM has its own process too. If ZIM's AR team will not going to follow the billing process that our subsidiary established, then we are going to face the same problem always. The only resolution for this issue is that SAMSUNG and ZIM, needs to follow it's respective process, to avoid any delay with the payment. We have mentioned this so many times with your AR team especially with Elizabeth that we don't review any invoices that doesn't belong to our team. There are invoices that you have sent belongs to different subsidiaries and we are not the correct department nor help you with those invoices. Any Freight charges, you need to reach out to the origin. Our loads are PREPAID by origin, any Freight issue, you need to reach out to them SEA logistics, will review any accessorial charges but not Freight. If you will check your summary, there are different subsidiaries invoices, please reach out to Sales team to assist you to find the correct department. We, SEA team, would like to clean and assist ZIM with aging but we need to follow each other's process and this will cover all the gray area of the process. Please provide the container # also on the summary. I put some charges that I did review from May 2020, these were disputed invoices due to incorrect computation Please review because until now, the amount is not changed. Below is my charge type inquiry. Please advise so that we can assist you and clean up all these aging Let us know what is the meaning for the 3 charge types
If you have questions, you may call me.

See also, RX_0163-164 (Ms. Fernando writing to Adrienne Martin of ZIM, "Again, we don't manage or pay the Freight invoices here[.] Please reach out to the origin. We have mentioned to [ZIM] where to send the Import Freight invoices before but I don't know why these invoices are still on our summary.").

34. **ZIM PFF 34:** On March 21, 2021, ZIM advised that a cargo hold would be implemented on March 22, 2021. *Id.*

SEA Response to ZIM PFF 34: Denied. The cited email simply reiterated ZIM's drum-beat threat that "payment is required immediately to avoid cargo hold on Monday, March 22nd" not that the hold would in fact be implemented the next day. Notably, this is the same March 21, 2021 email cited in PFF 33 above providing SEA the requested invoices that SEA sought to review.

35. **ZIM PFF 35:** Having received no reply on March 24, 2021, ZIM reached out again to Samsung, requested details regarding payment and advising that cargo hold would be effective on March 26, 2021, if payment was not received. *Id.*

SEA Response to ZIM PFF 35: Admitted in part and denied in part. Admit that ZIM sent the cited email on March 24, 2021, deny as the cited evidence does not establish that ZIM did not receive any reply, admit that SEA did not make payments on disputed detention invoices provided on March 21st by March 23rd. Further, SEA responded to ZIM on the same day. RX_0159, ZIM0025649. SEA's response demonstrates that the invoices submitted were in dispute or sent to the incorrect department. RX-0159 ("invoices that you have sent belongs to different subsidiaries and we are not the correct department." *See also* SEA Response to ZIM PFF 33.

36. **ZIM PFF 36:** Ms. Fernando finally replied on March 24, 2021, escalating the invoices to Ms. Ji and requesting that she review and provide additional details. RX_0159, ZIM0025649.

SEA Response to ZIM PFF 36: Admitted in part and denied in part. Admit that Ms. Fernando responded to ZIM's email on March 24, 2021. RX_0159, ZIM0025649. Deny the substance of PFF 36, which misstates Ms. Fernando's reply. *See* SEA Response to ZIM PFF 33.

D. **ZIM carried Samsung's cargo under contracts negotiated by its affiliated entities which included provisions related to CNTs and liability for a CNT's deficient performance and/or non-performance.**

SEA Response to ZIM Header D: SEA denies Header D as stated, as unidentified "service contracts" do not govern the issues between ZIM and SEA. CX_02205, Rapske Dep. Tr. 33:8-22; *see also* CX_05288, Shpitzer Dep. Ex. 6; CX_06583-6585, Zayas Dep. Tr. 61:20-63:13.

37. **ZIM PFF 37:** ZIM does not contract directly with Samsung but instead with Samsung Data Systems or “Samsung SDS” and Samsung Electronics Logitech (“Logitech”), separate entities of Samsung. CX_2205, Rapske Tr. 33:8-33:25.

SEA Response to ZIM PFF 37: Admitted in part and denied in part. Admit that ZIM does not contract with “Samsung” nor with SEA; admit that ZIM has contracted with the cited entities.

38. **ZIM PFF 38:** Samsung relies on contracts negotiated by Samsung SDS or Logitech and does not contract with ocean carriers itself. CX_05793, Smith Report ¶17 (citing Choi Tr. 43; Rapske Tr. 41); CX_2205, Rapske Tr. 33:8-33:25.

SEA Response to ZIM PFF 38: Denies as stated concerning assertion of “reliance” and “Samsung.” SEA, as consignee, receives cargo from ZIM pursuant to contracts entered into by separate entities, as noted in the supporting testimony ZIM references in PFF 38.

39. **ZIM PFF 39:** Samsung is the consignee of the cargo shipped under the contracts between Samsung SDS and ZIM. *Id.*

SEA Response to ZIM PFF 39: Denied. SEA is the consignee of at least some cargo shipped under contracts between Samsung SDS and ZIM.

40. **ZIM PFF 40:** Samsung ships only 2.6% of its volume with ZIM and relies on other ocean carriers to provide 97.4% of its shipping volume. CX_05812-13, Smith Report ¶58 (citing Rapske Interview, June 19, 2023).

SEA Response to ZIM PFF 40: Denied as stated. Admit that the cited paragraph of the expert report of Dr. Smith states that “ZIM handled 2.6% of the containers shipped to SEA.”

41. **ZIM PFF 41:** Service contracts negotiated between ZIM on the one hand and Samsung SDS or Logitech on the other hand included services on container yard and store door (or door to door) terms. *See* RX_1794-95, Service Contract 7100204807; RX_1822, Service

Contract Z18436KR; RX_1857-58, Service Contract 7100171730; RX_1885, Service Contract Z19179KR, and RX_1921-25, Service Contract 7100102863 (including Section 4 of each contract which covers the Geographic Scope of the Service Contract, Section 12b which contemplates Carrier Haulage shipments and Appendix A which lists port destinations for cargo).

SEA Response to ZIM PFF 41: Admit in part and denied in part. Admit that the Service Contracts cited purport to include service on container yard and store door terms. Denied to the extent that ZIM has failed to establish that the Service Contracts cited are applicable to the Shipments at issue, addressed in detail in Reply at 33-42.

42. **ZIM PFF 42:** The majority of Samsung’s cargo that ZIM carried moved on store door terms. CX_05793, CX_05795-96, Smith Report ¶¶17, 22; CX_2213, Rapske Dep. Tr. 41:11-24 (Samsung went from shipping on store door terms to container yard terms in 2022).

SEA Response to ZIM PFF 42: Admit that the majority of SEA cargo was moved on store door terms, as this was ZIM’s contractual obligation. CX_05793, CX_05795-96, Smith Report ¶¶17, 22. CY moves only occurred when ZIM could not fulfill its contractual obligations during 2022. CX_2213, Rapske Dep. Tr. 41:11-24.

43. **ZIM PFF 43:** Under standard store door terms, ZIM is generally responsible for arranging, paying for, and managing inland movement. CX_00006, Complaint ¶¶30.

SEA Response to ZIM PFF 43: Denied. Paragraph 30 of the Complaint states that, “The inland movement of containers under store door terms is commonly referred to as “carrier haulage” because the ocean carrier is responsible for the inland movement via rail and/or truck drayage to the named delivery place and the provision of chassis to move the SEA Containers.” CX_00006,

Complaint ¶30. As to ZIM’s responsibility of inland movement of SEA cargo, the Complaint alleges that ZIM is responsible: “32. In store door shipments, ZIM is responsible for arranging and paying for the inland movements, and for ensuring the removal of containers from U.S. marine and intermodal terminals and the delivery of containers to the designated inland locations.” CX_00006, Complaint ¶32; *see also* Choi Dep. Tr. 69:11-13. Under store door terms, the responsibility of inland movement of cargo remained with ZIM. Yet, in and around 2021, ZIM began to distinguish between CNTs and house truckers (even though a CNT could also be a house trucker). CX_03797, Michalski Dep. Tr. 46:13-16; *see also* CX_03057, Speight Dep. Ex. 7 (identifying instances the allocation of responsibility for store door moves).

44. **ZIM PFF 44:** Under standard store door terms, ZIM selects the motor carrier that provides the inland transportation to the ultimate destination.

SEA Response to ZIM PFF 44: Admitted in part and denied in part. Admit that ZIM selects the inland trucker under store door terms under both “standard” store door terms and other terms, by which ZIM is implying store door terms where a shipper also has rights to nominate truckers.

45. **ZIM PFF 45:** In some service contracts, a customer has the right or ability to designate the motor carrier to be used to provide the inland transportation. In these circumstances, the motor carrier is often referred to as a customer-nominated trucker or “CNT.” *See TCW, Inc. v. Evergreen Shipping Agency (Am.) Corp. & Evergreen Line Joint Service Agreement*, FMC Dkt. 1966(I), Order Affirming the Initial Decision at 2 (Dec. 29, 2022) (identifying a preferred trucker, or “CNT” here, as a designated trucker to be used for a shipper’s cargo under an agreement with the ocean carrier).

SEA Response to ZIM PFF 45: SEA denies the characterization of ZIM PFF 45 as the customer does not have “the right or ability to designate a motor carrier”; As the abbreviation “CNT” and

the term “preferred trucker” connotes, CNT or preferred trucker provisions permit shippers to *nominate* truckers that shippers *prefer* for carrier consideration—a shipper makes a recommendation and then it is ZIM who designates the motor carrier. As the Commission noted in *TCW*, the “Respondent agreed to the designation of Claimant as the preferred trucker for Yamaha’s import and export cargoes.” *TCW* at 2. CX_02173, Rapske Dep. Tr. 60:9-11; CX_02050, Choi Dep. Tr. 52:10-16; CX_02321, Fernando Dep. Tr. 24:13-22. While SEA could nominate a CNT, ZIM ultimately had to approve using the CNT and hire the CNT. CX_03797, Michalski Dep. Tr. 45:15-17; CX_02050, Choi Dep. Tr. 63:4-16.

46. **ZIM PFF 46:** ZIM’s service contracts with Samsung affiliates contemplate the designation of CNTs. RX_1794, Service Contract 7100204807; RX_1821-22, Service Contract Z18436KR; RX_1857, Service Contract 7100171730; RX_1885, Service Contract Z19179KR, and RX_1925, Service Contract 7100102863 (each showing Section 12a, titled “DESIGNATION OF TRUCKING VENDOR”).

SEA Response to ZIM PFF 46: Denied. The cited documents have never been authenticated by ZIM as purported service contracts in this proceeding, nor as contracts applicable to the cargo or charges at issue, let alone any specific service contract provisions upon which its counsel now seeks to rely. Further, the specific section that ZIM cites in the three service contract forms, Section 12a, is on its face a boilerplate provision outlining terms applicable only if the parties actually contract for the right to nominate a preferred trucker in the specific contracts. *See, e.g.*, RX_1794, Service Contract 7100204807 (general section 12a and 12b, outlining the terms applicable if the parties contract for preferred truckers, not that they have done so. Among other things, such contracts would include an “Appendix ‘G’ for “Preferred Truckers”)); *see, e.g.*, RX_1794, Service Contract 7100204807 does not contain an Appendix G. *See* RX-1813 (Appendix “G” is listed as

“RESERVED”). Neither of the other cited documents contains a populated Appendix G. ZIM cites no language whatsoever from the service contracts themselves, or in its opposition brief when addressing the service contracts, that mandates the designation as characterized. SEA also denies the characterization in ZIM PFF 46 as the practical effect of the CNT provision, which it would apply, is not a “designation” but a recommendation by the customer of which ZIM is not obliged to honor by contract. CX_02173, Rapske Dep. Tr. 60:9-11; CX_02050, Choi Dep. Tr. 52:10-16; CX_02321, Fernando Dep. Tr. 24:13-22; CX_03797, Michalski Dep. Tr. 45:15-17; CX_02050, Choi Dep. Tr. 63:4-16; CX_02173, Rapske Dep. Tr. 60:17-20; 82:8-13; CX_02050, Choi Dep. Tr. 70:8-13; 71:25-72:4.

47. **ZIM PFF 47:** Samsung designated CNTs to be used by ZIM in moving Samsung containers. CX_02112, Choi Tr. 63:4-11; CX_02232, Rapske Tr. 60:8-20; CX_02346, Fernando Tr. 26:2-8.

SEA Response to ZIM PFF 47: SEA denies the characterization of ZIM PFF 47 as SEA recommended the trucker and the decision to use the trucker was ultimately ZIM’s call. *Id.* as to the testimony cited by ZIM.

48. **ZIM PFF 48:** Samsung selected its customer-nominated truckers based on their capacity and ability to deliver cargo for SEA. CX_02345, Fernando Tr. 25:8-20.

SEA Response to ZIM PFF 48: Denied as stated, as SEA recommended customer-nominated truckers based on their capacity and ability to deliver cargo for SEA, per the testimony provided.

49. **ZIM PFF 49:** Samsung characterized customer-nominated truckers as truckers that Samsung would recommend for a particular lane for ZIM to consider, define rates, and determine whether or not to use the trucker. CX_02112, Choi Tr. 63:4-11; CX_02232, CX_02253, Rapske Tr. 60:8-20; 81:16-82:13; CX_02344, Fernando Tr. 24:17-22.

SEA Response to ZIM PFF 49: Admit the characterization as to what SEA would recommend and the remaining testimony speaks for itself.

50. **ZIM PFF 50:** ZIM was required to use CNTs under its contracts with Samsung SDS and its contracts with Logitech. RX_0945, SEA0111293. (Samsung SDS's request for quotation and negotiations were premised on the agreement that "Carriers are required to provide local delivery service with consignee's preferred trucker if any"; RX_0663, ZIM0032838 (the RFQ including the mandate to use preferred truckers was incorporated into contracts between Samsung and a separate entity); RX_1939, 7100102863, RX_1870, 7100171730 (these service contracts incorporate the RFQ in each Appendix B).

SEA Response ZIM PFF 50: Denied. ZIM conflates the reference to "contracts" with a "request for quotation." The request for quotation ("RFQ") to which ZIM cites is not a service contract, has not been authenticated in this proceeding, and is not on its face a binding agreement and does not establish that ZIM was "required" to use CNTs in its contracts with Samsung SDS or Logitech. The service contract cited to by ZIM was also not executed. To the extent that the RFQ was incorporated into the service contracts cited by ZIM, it was only with regard to the rates charged by CNTs. RX_0663; RX_1870 ("Notes – Rates herein are subject to the following notes: [...] Note 2: Additional requirement for Asia arrival"). The manner and scope of the RFQ, including its foundation and admissibility, is a contested issue and fully addressed in detail in SEA's Reply Brief, filed contemporaneously with this Response. Reply at 33-40.

51. **ZIM PFF 51:** If a CNT was rejected by ZIM, Samsung raised questions and pressured ZIM to use the CNT. RX_0914-17, SEA0017223-26 (advising PBI is the correct trucker and requesting reasons why another trucker was dispatched); RX_0957-62, SEA0023441-46 (Samsung instructed XPO to manage deliveries without requesting XPO as preferred

trucker and later requested delivery be transferred to XPO from the house trucker, incurring storage costs); RX_0967-71, SEA0025200-04 (Samsung stated to ZIM that the CNT is a different trucker than the house trucker and instructing that Samsung “need[s] these loads to be dispatched to [the CNT]” due to customer’s special delivery requirements); RX_069-70, SEA0000167-68 (Ms. Fernando noted that “We need to find a trucker with BBY portal access now. Setting up with BBY portal it takes days to be registered and the trucker must have enough patience to [enter] the appt request.” and “If we are going to use a house trucker, I need to make sure they have BBY portal access.”).

SEA Response to ZIM PFF 51: Admit that SEA “raised questions ... about the use of CNTs”; it is curious that as drafted it is inferred as problematic that a consignee would ask an ocean carrier questions about service issues on a store door move when motor carriers play a critical role in the inland transportation of goods. Denied as stated as to the remainder of the PFF. The evidence cited by ZIM does not support ZIM’s contention that SEA “pressured ZIM to use [its] CNT.” In RX_0914-17, SEA accepted the use of a house trucker after ZIM informed SEA that ZIM had assigned a house trucker instead of a CNT due to an oversight by ZIM. RX_0916 (Stacie Payton of ZIM writing “I wasn’t aware this lane has a nominated trucker”).

In RX_0957-62, ZIM voluntarily offered to switch from a house trucker to a CNT after SEA advised ZIM that it had an assigned CNT and sought additional information on why ZIM had assigned a different trucker. RX_0958 (ZIM writing to SEA “We can still assign to XPO [the CNT]. Urgent advise if you wish to reassign”). Notably, when SEA realized that its CNT would be unable to pick up the desired loads, SEA suggested ZIM use its house trucker. RX_0957. In RX_0967-71, SEA found the use of the CNT as the most viable option due to the specific nature and requirements of the delivery at issue. RX_0967. SEA also noted that ZIM had known of its

recommended trucker for that location since the previous year. RX_0966-67. Lastly, in RX_1069-70 (ZIM's citation appears to be a typo), after its CNT was rejected due to its rate, SEA requested ZIM to find a house trucker that had the necessary Best Buy portal setup in order to complete the deliveries to Best Buy. RX_1069-70. Thus, the "evidence" to which ZIM cites does not reflect that SEA "pressured" ZIM to use its CNTs. In fact, as the emails demonstrate, SEA was willing to accept ZIM's house truckers, even when they were assigned due to ZIM error.

52. **ZIM PFF 52:** ZIM's service contracts with Samsung's affiliates contain the following provision:

12 – LAND TRANSPORTATION

12a – DESIGNATION OF TRUCKING VENDOR

For shipments designated for pick up or delivery at any U.S. location or facility located outside the Port or Container Yard (i.e., "Door" pick up or delivery, also referred to as "Carrier Haulage"), Carrier shall normally nominate the Vendor to provide such services. If, upon Contract of the parties, the Merchant is to nominate the Vendor ("Preferred Trucker"), the following shall apply:

Compensation rates shall be as set forth at Appendix G, and shall be subject to review and / or change in accordance with subparagraph 12b (below).

Should Merchant's Preferred Trucker fail to accept a Transport Order within twenty-four (24) hours of issue, or fail to perform as ordered, Carrier shall nominate and provide instruction to an alternate Vendor; and

Any expense or charge in excess of the Compensation rate set forth at Appendix G, including demurrage, detention, or other storage fees, which accrue or are assessed as a result of the Merchant's nomination of a new or alternate Preferred Trucker, or as a result of the Preferred Trucker's failure to accept or perform a Transport Order, shall be to the account of the Merchant.

RX_1794, Service Contract 7100204807; RX_1821-22, Service Contract Z18436KR;

RX_1857, Service Contract 7100171730; RX_1885, Service Contract Z19179KR, and

RX_1925, Service Contract 7100102863.

SEA Response to ZIM PFF 52: Admit to the extent that the language quoted is accurately transcribed from the service contracts cited. Denied as to any characterization by ZIM as to what contractual obligations are established by the service contracts or broadly stated but unnamed “Samsung affiliates” or the provisions quoted by ZIM in this PFF. SEA further objects to the extent ZIM never authenticated any purported separate entity service contract in discovery, let alone any specific service contract provisions, upon which its counsel now seek to rely. *See also* SEA Response to ZIM PFF 46.

53. **ZIM PFF 53:** The effect of the foregoing service contract provision is to place the risk of CNT non-performance on the party designating the CNT, making a store door move with a CNT similar to a CY move in which the customer is responsible for the inland transportation. *Id*; CX_02687, Frigo Dep. Tr. 214:3-12 (noting that accepting nonpreferred door moves from customers under certain circumstances resulted in a risk that cost volatility would be experienced); CX_2790, Frigo Dep. Ex. 13 (discussing ongoing efforts to secure truck capacity in February of 2021 and noting risks associated with accepting store door moves with house truckers).

SEA Response to ZIM PFF 53: Denied. When addressing “effect” in the manner drafted it is a legal conclusion inappropriate for a PFF. The manner and scope of the service contracts provisions on CNTs is a contested issue and fully addressed in detail in SEA’s Reply Brief, filed contemporaneously with this Response. Reply at 33-50. *See also* SEA Response to ZIM PFF 46. In addition, the language quoted from the service contracts, if a CNT right was agreed in the contract, states that ZIM must first appoint another trucker, which is consistent with ZIM’s continuing obligation as common carrier for the inland movement, and not consistent with ZIM’s assertion in PFF 53 that the result was analogous to a CY move/merchant haulage move. Further,

the provision merely states that after ZIM designates another trucker, any expense or charge *in excess* of an agreed-upon compensation rate to be stated in Appendix G shall be to the account of the merchant if such charge results from the preferred trucker's failure to accept or perform a transport order. That too does not mean it transforms a store door move with a CNT into effectively a CY move where the customer is responsible for inland transportation. The referenced citations by ZIM do not support any agreement by SEA that store door terms were converted to CY terms. CX_02118, CX_02128, Choi Dep. Tr. 69:8-19, 79:6-19. And it is diametrically opposite of the obligations agreed to by Zim when it accepted its freight rate for door moves.

54. **ZIM PFF 54:** Samsung knew that its arrangements with its customers could be so limiting that a house trucker could not provide the service required by Samsung and its customer such as a drop and hook service. RX_0967, SEA0025200 (Lowe's required a drop and hook service); CX_02253-54, Rapske Tr. 81:16-82:13 ("If we use ZIM lines house trucker. . . You're not able to drop-and-hook.").

SEA Response to ZIM PFF 54: Denied. The evidence does not support the assertion. The purpose of preferred truckers was to improve overall service and cargo fluidity, not because SEA had unique or unusual requirements. Drop and hook service is exceptionally common, and preferred truckers were used for live load and drop and hook services. Some of SEA's customers, such as Lowe's, had specific delivery requirements, hence why SEA recommended the use of CNTs for those customers, but the cited testimony was not that a house trucker actually could not in fact perform a drop and hook move, but that a preferred trucker could perform better. CX_02253-CX_02254, Rapske Dep. Tr. 81:18-82:7. Furthermore, in the testimony cited by ZIM, Mr. Rapske explicitly stated that "in no way are we [SEA] mandating that these [CNTs] must be used." CX_02254, Rapske Dep. Tr. 82:8-9.

55. **ZIM PFF 55:** The contracts between Samsung SDS and ZIM did not obligate ZIM to perform additional work or conform to manual, specialized invoicing procedures determined by Samsung SDS or its affiliates, including Samsung. RX_1792, Service Contract 7100204807 (showing invoicing terms); RX_1815-50, Service Contract Z18436KR (no special invoicing requirements included); RX_1855, Service Contract 7100171730 (showing invoicing terms); RX_1883, Service Contract Z19179KR (showing invoicing terms); and RX_1922-23, Service Contract 7100102863 (to the extent invoicing is mentioned, rights in the contract relate to the Merchant and entitle the Merchant to a prompt invoice which shall be paid within thirty days. If the Merchant disputes an invoice, notice of any dispute must be made within ten days of the date of the invoice, including specific details regarding the dispute. Otherwise, the invoice will be presumed valid under the contracts).

SEA Response to ZIM PFF 55: Denied as stated; the service contract language referenced is clear and speaks for itself without ZIM's general characterizations. ZIM failed to observe reasonable invoicing procedures, such as making sure an invoice covering work for a specific unit of goods within SEA was actually sent to the correct division for consideration. This is evidenced by multiple emails notifying ZIM that it had invoiced the wrong party or provided insufficient information for SEA to confirm whether the invoices charges were correct. *See* CX_05723, Rosenberg Dep. Ex. 26; CX_05735-36, Rosenberg Dep. Ex. 27. SEA further objects to the extent ZIM never authenticated any purported separate entity service contract in discovery, let alone any specific service contract provisions, upon which its counsel now seeks to rely.

E. Samsung caused numerous inland transportation charges through its actions and inactions but blames ZIM for the problems of its own making.

SEA Response to ZIM Header E: Denied as stated. As the carrier assigned to handle store door moves for SEA, ZIM was responsible for handling the inland transportation of cargo through to the delivery of the cargo to the customer. CX_02118, CX_02128, Choi Dep. Tr. 69:8-19, 79:6-19; Rapske Dep. Tr. 66:7-19; CX_02050, Choi Dep. Tr. 75:2-14; CX_00002, Compl. ¶ 10. As to ZIM's purported examples or actions in this section generally, ZIM's practice and policy of charging the consignee for all inland changes, and requiring payment of inland charges before ZIM would even complete the inland movements, was applied across the board to all SEA cargo and charges regardless of these *post hoc* assertions of alleged consignee problems, and regardless of ample evidence that ZIM's conduct across the board caused and contributed to the charges at issue in this proceeding. ZIM's efforts to use one-off anecdotes out of context is a proverbial tail wagging the dog. ZIM's store door demurrage and detention practices were not reasonable and were not at the time based on the charge by charge rationalizations proffered now.

56. **ZIM PFF 56:** Facilities were often unavailable to receive cargo which resulted in demurrage and detention charges. CX_02249-50, Rapske Tr. 77:13-78:5; 78:12-23; RX_0814-15, SEA0132657-58 (Samsung instructed that thirteen containers be prepulled a full two weeks before the customer's RDD); RX_1023-25, SEA0046788-90 (Samsung instructed that a container be pulled and stored because the last free day was 26 days prior to the customer's available appointment); RX_1533-37, SEA0023244-48 (driver detention occurred at Samsung's warehouse, and Samsung ignored requests for payment for a month); RX_1688-89, SEA0008017-18 (showing containers with 36 days of storage, 26 days of storage, and 24 days of storage due to customer appointment scheduling).

SEA Response to ZIM PFF 56: Denied as stated. With over 9,900 D&D charges issued and paid by SEA to ZIM on store door move shipments, pointing to a handful of consignee unavailability exemplars does not come close to supporting the “often” qualifier added by ZIM. CX_05931. In the event facilities were unavailable to receive cargo at certain points, it was nevertheless ZIM’s responsibility to manage the transportation of the cargo under store door moves. Furthermore, the emails cited by ZIM in support of this PFF show that SEA acted in a reasonable business manner by authorizing pre-pull and storage of cargo in off-dock container yards, thereby avoiding the higher demurrage charges the containers would have accrued at the terminals.

57. **ZIM PFF 57:** Many Samsung warehouses and facilities required appointments for delivery that were not within the control of ZIM. RX_1033, SEA0046798; RX_1098, SEA0028101; RX_1576-82, SEA0003414-20 (Samsung’s warehouse double booked a slot which led to demurrage and detention); RX_0682, ZIM0031910 (Ms. Fernando told ZIM that Samsung was responsible for containers for a portion of accrued demurrage, noting “[i]t is not ZIM’s responsibility after that since the appt was provided for 02.09”).

SEA Response to ZIM PFF 57: Denied as stated. This is yet another example of ZIM adding a qualifier of “many” as to warehouses when it proffers a handful of examples. The emails cited by ZIM also do not support ZIM’s contentions in PFF 57. The email thread in RX_1033 establishes that ZIM, not SEA, was responsible for ensuring the scheduling of appointments for the containers (SEA instructing ZIM “[a]dvice the LFD and if appt is after the LFD always advise us for prepull approval. Once container has scheduled appt please advise time and date.”) (emphasis in original). In RX_1098, the warehouse offered the appointment date because that was the earliest appointment date that they had to offer. While it is the case that RX_1576-82 reflects an accidental double-booking by the warehouse, this was not, as ZIM alleges, a case of the warehouse requiring

certain appointments for ZIM containers. In fact, upon discovery of the error and that one of the containers would have to be rescheduled and would possibly incur demurrage charges, SEA worked with UPS to ensure that demurrage was paid. Lastly, with respect to RX_0682, earlier emails in that thread reveal that the delivery of the container was delayed due to miscommunications on ZIM's part. *See* RX-687-694.

58. **ZIM PFF 58:** When Samsung's customers could not accept cargo within the free time on a port, Samsung often instructed the CNT to prepull and store the cargo to avoid higher on-port demurrage charges. RX_1978, SEA0005779 (including in blanket instructions from Samsung to its CNTs that they must "prepull the loads before the port/rail LFD if needed, kindly advise the rates and detail information for approval"); RX_1688-1712, SEA0008017-41 (Samsung instructed that the trucker provide details for approval of accessorial fees but delayed providing approval for pre-pull and storage costs from containers with appointments 36 days, 26 days, and 24 days after the last free day due to customer appointment scheduling which resulted in demurrage).

SEA Response to ZIM PFF 58: Denied as stated. This is the third PFF in a row where ZIM provides an exaggerated qualifier of "often" when it proffers a handful of examples. Admit that SEA cargo would be at times be prepulled and stored at locations off-port to avoid higher on-port demurrage charges. SEA was facilitating prepulling containers to mitigate high terminal demurrage charges because ZIM was forcing SEA to pay to ZIM's inland charges before ZIM would continue the onward movement. Denied that SEA "instructed" CNTs to do so or that SEA's actions with respect to CNTs in this situation shifted responsibility for the inland transportation of these cargoes from ZIM to SEA.

59. **ZIM PFF 59:** Some customers such as Best Buy had rigorous appointment requirements which required “days to register” for their portal and “enough patience to [enter] the appt request” through the portal. RX_1069-70, SEA0000150 at 167-68.

SEA Response to ZIM PFF 59: Denied as stated. Admit that while certain customers such as Best Buy had specific appointment requirements, at the time of carriage, ZIM proffers no evidence that it ever refused to carry cargo destined to Best Buy when its personnel were well aware of the inland location based on the bills of lading. CX_02131; Choi Dep. Tr. 82:13-25. Denied further to the extent that ZIM tries to argue that specific customers’ requirements somehow were the fault of SEA if cargo was not delivered on time and/or absolved ZIM of responsibility in ensuring the timely delivery of cargo under store door moves. Additionally, in the email that ZIM cites, SEA is requesting that ZIM locate a house trucker that had Best Buy portal access set up. Therefore, the responsibility to find a house trucker to complete the necessary deliveries rested with ZIM, regardless of the customer’s appointment needs. RX_1069-70, SEA0000150.

60. **ZIM PFF 60:** Samsung customers such as Lowe’s dictated the required delivery date (RDD) for a shipment, sometimes occurring after free time had expired (emails) RX_0814, SEA0132657 (showing a last free day of March 18, 2020, for 13 containers and a RDD of April 1, 2020); RX_1963-68, SEA0005764-69 (showing containers in demurrage before CNT could pick them up due to a maximum delivery of five containers per day, slow devanning at Tobyhanna, accumulations of prepulls and storage, and no remaining storage capacity).

SEA Response to PFF 60: Denied as stated. Admit that certain customers, such as Lowe’s, had specific delivery date windows. At the time of carriage, ZIM proffers no evidence that it ever refused to carry cargo destined to Lowe’s when its personnel were well aware of the inland location

based on the bills of lading. CX_02131; Choi Dep. Tr. 82:13-25. Admit that, in the emails cited, the required delivery date occurred after the expiration of free time. However, evidence shows that this was a situation that SEA and ZIM routinely anticipated and tried to plan ahead for. *See, e.g.*, RX-1033-34 (SEA writing in instructions to ZIM “Advise the LFD and if appt after the LFD always advise us for prepull approval”).

61. **ZIM PFF 61:** Samsung was at all times responsible for its cargo clearing customs, including any demurrage that resulted from delayed customs clearance. CX_02239, Rapske Dep. Tr. 67:1-10 (admitting customs hold issues could drive demurrage through Samsung’s own act or omission); CX_02244-45, Rapske Tr. 72:13-73:21 (showing an example of delayed information from Samsung resulting in a customs issue and demurrage), RX_0100, Rapske Dep. Ex. 8.

SEA Response to ZIM PFF 61: Admit that SEA was generally responsible for ensuring that its cargo cleared customs. Denied that SEA was responsible for demurrage resulting from delayed customs clearance where such delays were not the fault of SEA. Further denied that an act or omission on SEA’s part caused delays in customs clearance except on rare occasions. *See* CX_02239, Rapske Dep. Tr. 67:1-10 (“Q: [] Are there ever situations where demurrage could be incurred through some act or omission of SEA itself? A. I would say it would be rare. I would say there could be a customs hold issue, but I don’t think that’s relevant. I think our situations there are **very, very low.**”) (emphasis added).

62. **ZIM PFF 62:** Samsung accrued demurrage on many occasions when its cargo did not clear Customs within free time. CX_02244-45, Rapske Tr. 72:13-73:21; RX_0144-46, Rapske Dep. Ex. 7; RX_0100, Rapske Dep. Ex. 8.

SEA Response to ZIM PFF 62: Denied as stated. This is yet another example of ZIM adding a qualifier of “many” as to customs concerns when it proffers a handful of examples. In regard to SEA customs practices, as testified, it paints a different picture. *See* CX_02239, Rapske Dep. Tr. 67:1-10 (“Q: [] Are there ever situations where demurrage could be incurred through some act or omission of SEA itself? A. I would say it would be rare. I would say there could be a customs hold issue, but I don’t think that’s relevant. I think our situations there are very, very low.”). The evidence cited in the PFF does not support ZIM’s contention. In fact, Mr. Rapske admitted that there was one incident involving a customs clearance error on eight containers, but disputed that such errors occurred frequently and testified that SEA’s customs filings were over 90% on time. CX_02245, Rapske Dep. Tr. 73:6-11.

63. **ZIM PFF 63:** Samsung incurred demurrage when it failed to provide delivery instructions for specific shipments. RX_1121-34, SEA0136166-79 (CMA boxes ignored for nearly a month); RX_1138-59, SEA0137517-38 (Samsung delayed a ONE shipment for weeks and failed to complete payment prior to appt, resulting in further delays); RX_1180-89, SEA0058313-22 (UPS failed to send timely delivery orders, resulting in delays and demurrage).

SEA Response to ZIM PFF 63: Denied as stated. RX_1121-34 and RX_1138-59 are emails concerning CMA and ONE shipments, respectively, and do not relate to ZIM shipments with no foundation in this dispute. It is telling that ZIM has to resort to other carriers to find examples to support its PFF. RX_1180-89 is an email that does not reflect that SEA failed to provide delivery instructions for the shipments. DSG wrote to Maria Kristina: “Due to late delivery orders, the below cntrs are in port demurrage. Please clear storage through 03/24,” to which UPS replied that “Delivery orders were sent on the 15th. If they are not taking delivery till the 24th, storage is not

due to late delivery orders.” In a later email in that same chain, UPS wrote to SEA: “Please advise. We sent the delivery order to ZIM on 3/15 and the trucker says they did not get the work order till 3/18.” This indicates that, if anything, it was ZIM’s failure to send the necessary work orders to the trucker. Further denied that ZIM PFF 63 is relevant to the extent that it does not concern ZIM.

64. **ZIM PFF 64:** Samsung accrued demurrage when it directed ZIM to terminate cargo at the port (container yard terms) because ZIM did not reach a rate agreement with Samsung’s CNT; rather than rely on ZIM’s house trucker, Samsung changed the terms of the move. RX_1162, SEA0011131; RX_1171-73, SEA0047462-64.

SEA Response to ZIM PFF 64: Denied that ZIM PFF 64 is relevant. Further denied that the evidence cited by ZIM supports ZIM PFF 64. For example, in RX_1162, ZIM advises that “Samsung will need to arrange for [a] trucker to pick up” loads that “were required to terminate at the terminal.” ZIM goes on to state “The remaining shipments are door moves and ZIM will arrange delivery to Auburndale.” This email does not show SEA “chang[ing] the terms of the move” rather than “rely[ing] on ZIM’s house trucker”; rather, it reflects cargo moving under separate terms, with certain loads moving under store door terms and other loads moving under CY terms. RX_1171-73 shows that SEA’s Ms. Fernando requested ZIM to terminate certain loads “as CY Port” after a CNT was rejected due to not reaching a rate agreement with ZIM. However, SEA did not accrue demurrage as a result of requesting that the loads be terminated at the port; rather, demurrage had already been accruing due to the fact that the CNT could not pull the loads and neither the CNT nor SEA could obtain information from ZIM as to why the CNT had been rejected. See RX-1172-74 (CNT writing to ZIM “I was trying to call you to see why the below [referring to earlier email from CNT inquiring why it was rejected by ZIM]” and Ms. Fernando writing to ZIM “Please advise the reason why [the CNT] has been rejected?”).

65. **ZIM PFF 65:** Samsung accrued demurrage and detention when its CNTs were unable or unwilling to perform cargo movement for Samsung. RX__0832-34, SEA0135895 and SEA0135897; RX_1503-04, SEA0024223-24 (CNT could not handle all of eight assigned containers in a day and later that it could not return thirteen containers within free time); RX_1105-06, SEA0054103-04 (showing a CNT could only pick up containers over the course of five days while containers were already in demurrage).

SEA Response to ZIM PFF 65: Denied because the emails do not support the truth of the matter asserted. While the emails ZIM cites reflect instances where CNTs experienced performance issues, these facts do not change that it was ZIM's responsibility under store door moves to manage the CNTs to ensure their performance. CX_02173, Rapske Dep. Tr. 82:8-13; 83:11-84:15; CX_02050, Choi Dep. Tr. 72:12-18. In fact, ZIM does not cite any evidence demonstrating that, upon learning of performance issues by CNTs, it took action to mitigate those situations, even though ZIM was obligated to manage the inland carriage of SEA goods.

66. **ZIM PFF 66:** At times, Samsung and its agents were unable or unwilling to pay DEM. CX_02217, Rapske Tr. 45:6-20; RX_1180, SEA0058313 (UPS had insufficient credit card balances to pay demurrage); RX_1306-13, SEA0049720-27 (showing additional demurrage charges accrue due to high charge amounts and difficulty identifying which party (CNT, UPS, or Samsung) could provide payment); RX_1526-27, SEA0016828-29 (UPS could not clear demurrage for containers scheduled after LFD by warehouse without the approval of Samsung for the charges).

SEA Response to ZIM PFF 65: Denied as stated. The evidence ZIM cites does not support ZIM PFF 65. While Mr. Rapske testifies that “[t]here were times” when SEA “did not have the ability to pay [demurrage] directly” and therefore would request payment of the charges from third

parties, Mr. Rapske further testified that “ultimately, SEA did pay these charges.” CX_02217. Further, Mr. Rapske’s later testimony on the issue is informative in that “[SEA] did not have the ability other than by credit card to pay the terminals directly because [SEA] didn’t have any contracts with the terminals” and that “[i]n a situation where the drayage carrier is paying the demurrage on behalf of SEA, [] SEA then reimburses them at a later date.” CX_02231.

The emails ZIM cites also do not support ZIM’s proposition that SEA was unable or unwilling to pay demurrage charges. In the email string cited in RX_1180, in response to an email sent by ZIM on March 19, 2021, advising that storage would have to be cleared through March 24, UPS wrote to SEA that “UPS will be responsible for it,” which representation was relied upon by both SEA and ZIM (RX-1185-86). In fact, in the portion of the email string to which ZIM cites, ZIM directs UPS to the website where UPS could remit demurrage payment (RX-1180). ZIM likewise incorrectly states the facts in RX_1306-13; contrary to there being “difficulty identifying which party (CNT, UPS, or Samsung) could provide payment” on demurrage charges, UPS represents multiple times throughout the email thread that it was the party sending payment via check for the demurrage charges. *See, e.g.*, RX-1311 (CNT writing to UPS “Please confirm once the check [for payment] is sent & we will reschedule pick up & delivery, thank you,” to which the UPS contact replies “I will do so. Thank you.”).

In RX_1526-27, UPS requests SEA’s approval for UPS to clear demurrage on containers, which SEA seeks to obtain by contacting its inbound team (“Inbound Team, The below loads need to be cleared from rail storage[.] Please communicate with UPS and ZIM”). Finally, it is important to see this issue in context. The charges ZIM highlights are disputed inland movement charges that ZIM was requiring the consignee to pay directly, before ZIM would even continue or complete the

inland movements, instead of ZIM paying first and charging the shipper or consignee only if it determined that a consignee was in fact responsible for the charge.

67. **ZIM PFF 67:** These delays in paying demurrage led to additional charges. RX_1306-15, SEA0049720-29 (showing additional demurrage charges incurred as a result of confusion between CNT, AV Logistics; UPS, and Samsung); ZIM0043662, ZIM0043692 (CNT Southern Companies email Samsung a spreadsheet identifying “all the loads” that were “sitting in the port” waiting for “confirmation that the storage will be cleared” by Samsung and noting that some had been “re-scheduled numerous times” already).

SEA Response to ZIM PFF 67: Denied as stated. The evidence ZIM cites does not support PFF 67. The email thread cited in RX_1306-15 shows UPS, which represented in multiple emails that it was the party sending payment for demurrage, making a concerted effort to set up a vendor that would be enable UPS to remit payment for the demurrage. In ZIM0043662 (RX-0200-202), key context is not provided. In this email thread, SEA contacted ZIM’s Keisha Bennett to bring to ZIM’s attention that SEA “sent a letter via mail requesting additional information relating to demurrage and detention charges we [SEA] paid in connection with the containers carried by ZIM. Please find the attached soft copies of the letter and excel file for your reference.” *Id.* Not only does this email reflect that SEA had, in fact, paid the demurrage and detention charges, but SEA had even sought additional details from ZIM regarding the charges from ZIM U.S.’s then-president himself. *See also* SEA Response to ZIM PFF 66 (the assertion that alleged SEA delays in paying charges that ZIM should have paid first and only billed SEA if SEA was actually responsible to pay, is yet another foundational and pervasive unreasonable ZIM practice).

68. **ZIM PFF 68:** Samsung provided instructions and directions to its CNTs, including the RDDs, type of delivery (drop and hook or live unload), dating back well before the

pandemic in 2018 and 2019. RX_0832-34, SEA0135895-97; RX_1195-99, SEA0133985-89; RX_1202-05, SEA0027079-82; RX_0811-15, SEA0132654-58; RX_1490-1500, SEA0027022-32; RX_1684-85, SEA0000652-53, RX_1680-82, SEA0002095-97, RX_1755-59, SEA0002631-35, RX_1749-53, SEA0004709-13 (even instructing ZIM with regards to handling when the trucker was unknown), and RX_1744-46, SEA0004694-96.

SEA Response to ZIM PFF 68: Admitted in part and denied in part. Admit that in the years prior to the pandemic, SEA emailed its CNTs with guidance regarding various aspects of delivering containers, including required delivery dates and type of delivery. Denied that ZIM PFF 68 is relevant to the issues in this dispute, which concern events that occurred during 2020-2022, after the pandemic began. Further denied to the extent that this ZIM PFF implies or contends that SEA's instructions or guidance to its CNTs pre-pandemic show that SEA "directed" its CNTs or reduced ZIM's obligations on store door moves in any way.

69. **ZIM PFF 69:** Samsung also helped manage its CNTs, including providing oversight to make sure its containers were not at risk of non-delivery. RX_1385-87, SEA0124243-45 (showing Samsung intervene in emails where AV Logistics was at risk of being shut out by ZIM under the UIIA); RX_0832-35, SEA0135895-98 (addressing issues with AV Logistics to try to improve performance on behalf of Samsung).

SEA Response to ZIM PFF 69: Denied as stated. To the degree that SEA provided any oversight to "make sure its containers were not at risk of non-delivery," which oversight was reasonable for SEA, as the shipper of the cargo and the party with the ultimate interest in ensuring its timely delivery, to exercise, this oversight did not amount to SEA "manag[ing] its CNTs." Furthermore, the evidence cited by ZIM does not support ZIM PFF 69. In RX1385-87, SEA inquired about the

status of resolving demurrage invoices due to the repeated failure of a third party, Advanced International Freight, Inc. (“AIF”), working closely with and in direct discussions with ZIM, to communicate effectively with SEA’s CNT regarding the resolution of said invoices. RX_0832-35 represents a thread in which SEA responded to an email from one of its CNTs regarding demurrage on certain containers. In the thread, SEA stated that “there are no communication from AV [the CNT] regarding these loads” and that “AV should have manage[d] the loads by this time, since peak season is over.” Contrary to SEA “managing” its CNT, this thread shows that the CNT had not been communicating with SEA regarding the status of the loads and that SEA believed that the CNT should have already performed its duties with respect to the loads.

70. **ZIM PFF 70:** Samsung directed its CNT to prioritize cargo other than ZIM. RX_1208, SEA0139186 (Samsung instructed its CNT to prioritize 126 CMA containers over other ocean carriers, including 19 containers from ZIM).

SEA Response to PFF 70: Admitted in part and denied in part. SEA admits that cited emails were exchanged, but denies the characterization of the emails as stated. Making any declarative statement about prioritizing cargo off of one email example is improper. Admit that in this one email cited by ZIM (RX-1208), it reflects a request by SEA for its CNT to prioritize certain CMA containers over other containers, including ZIM containers that ZIM was at that time **refusing to release for inland movement**. In the cited email is dated February 8, 2022, which is during the fourth Finance Hold imposed by ZIM on SEA cargo (from January 11 to March 17, 2022). ZIM cannot fault SEA for wanting its CNT to prioritize delivery of non-ZIM containers because ZIM would not have allowed the CNT to attempt to deliver ZIM containers due to the cargo hold.

71. **ZIM PFF 71:** Delays in processing of paperwork and/or orders by customs brokers and/or Samsung personnel led to additional demurrage and detention. CX_02244-45, Rapske Tr.

72:13-73:21; RX_0100, Rapske Dep. Ex. 8.; RX_1210-19, SEA0109560-69; RX_1241-50, SEA0113960-69; RX_1112-17, SEA0023223-28; RX_1103-08, SEA0054101-06; RX_1306-13, SEA0049720-27 (AV Logistics notes that Samsung ignored its requests for clearing demurrage “everyday for the last 2+ weeks”).

SEA Response to ZIM PFF 71: Denied that an act or omission on SEA’s part caused delays in customs clearance except on rare occasions. *See* CX_02239, Rapske Dep. Tr. 67:1-10 (“Q: [] Are there ever situations where demurrage could be incurred through some act or omission of SEA itself? A. I would say it would be rare. I would say there could be a customs hold issue, but I don’t think that’s relevant. I think our situations there are very, very low.”) (emphasis added). *See* SEA’s Responses to ZIM PFFs 61 and 62.

72. **ZIM PFF 72:** Confusion and delays on the part of Samsung providing information to ZIM led to demurrage and detention. RX_0955-62, SEA0023439-46; RX_0965-71, SEA0025198-SEA0025204; RX_1252-60, SEA0026423-31; RX_0811-15, SEA0132654-58.

SEA Response to ZIM PFF 72: Denied. The evidence that ZIM cites does not support ZIM PFF 72. RX_0955-62 reflects a situation in which ZIM assigned a house trucker to a lane, despite the fact that SEA already had an assigned trucker for that lane. Upon being informed by SEA of this fact, ZIM voluntarily agreed to switch from its house trucker to SEA’s preferred trucker. RX_0965-71 reflects a similar situation in which ZIM assigned a house trucker despite the fact that a CNT had been requested for that particular location since the previous year. RX-0966-67 (Ms. Fernando writing to ZIM “I am not sure where the gray area about the CNT issue [is] because this was requested sin[c]e last year and I remember I did send an email to all the SSL when we received the confirmation for the new location”).

73. **ZIM PFF 73:** Confusion and delays on the part of Samsung providing information to CNTs led to demurrage and detention. RX_1195-99, SEA0133985-89; RX_1269-80, SEA0007716-27.

SEA Response to ZIM PFF 73: Denied. While SEA occasionally provided guidance to CNTs to ensure the timely delivery of cargo, SEA did not bear responsibility for ensuring inland transportation of cargo which was entrusted to ZIM under store door terms. CX_02050, Choi Dep. Tr. 69:11-13 For store door moves, the responsibility of communicating, managing, and providing correct information to CNTs, including work and delivery orders, rested with ZIM. CX_02050, Choi Dep. Tr. 74:16-24.

74. **ZIM PFF 74:** Samsung ran up significant overdue balances with CNTs who would not accept delivery instructions prior to payment. CX_02365-70, Fernando Dep. Tr. 45:24-50:5 (testifying that truckers Gold Point, CPG, and AV Logistics either stopped moving cargo or threatened to stop moving cargo because Samsung failed to pay them); RX_, Fernando Ex. 2 (showing \$484,365 in charges had accrued for Samsung's account with AV Logistics and delays in payment such that AV threatened to suspend its service); RX_, Fernando Ex. 3 (showing that CNT AV Logistics demanded payment by Samsung or that invoices for ZIM canceled prior to a shutout); RX_, Fernando Ex. 4 (Samsung's CNT, Harvest Trans, was shut out by ZIM due to nonpayment by Samsung); RX_1414-19, SEA0125517-22 (showing that the payments from Ex. 3 were not received, and AV Logistics was shut out).

SEA Response to ZIM PFF 74: Denied as stated. The email's proffered language does not support the conclusion of "significant" balances accrued because of SEA. The testimony of Ms. Fernando that ZIM cites for the proposition that three CNTs either threatened to stop moving cargo or

“stopped moving cargo” altogether actually shows that the CNTs had warned SEA that they would not move cargo, but, as Ms. Fernando qualifies, “it doesn’t mean that they’re [the CNTs] just going to leave us there and then hanging.” CX_02366, Fernando Dep. Tr. 46:13-20. It is therefore not the case that the CNTs actually stopped or would have stopped moving SEA cargo. The same was the case in Fernando, Ex. 2. Other evidence ZIM cites actually demonstrates that SEA worked with the CNT, as one would expect when it is carrying its important cargoes, to try to resolve outstanding charges (RX_1029-42) or that SEA disputed a CNT’s practices, particularly with regard to communication about the movement of shipments (RX_0054, RX_0058).

Furthermore, ZIM’s supports as to Fernando, Ex. 3 requires additional scrutiny. ZIM asserts that this email thread shows that “CNT AV Logistics demanded payment by Samsung or that invoices for ZIM canceled prior to a shutout.” In actuality, throughout the email thread, AV Logistics was demanded payment for another entity, Advanced International Freight, Inc. (“AIF”). Nowhere in the email does AV Logistics suggest that SEA did anything to cause either delays in the movement of the cargo or non-payment. In fact, in one email, AV Logistics specified that it had disputed invoices it received from ZIM (RX-0126).

Finally, in the proper context, this is yet another circumstance created by ZIM’s unreasonable practice of shifting all direct inland charge payment responsibility to the consignee.

See also SEA Response to ZIM PFF 66.

75. **ZIM PFF 75:** Samsung caused demurrage by instructing CNTs that had either been rejected or had not yet been approved by ZIM rather than a house trucker. RX_1490-1500, SEA0027022-32 (instructing a CNT on delivery prior to its approval, requesting a redispach to the CNT, and then delaying responses to questions about delivery instructions and confirming redispach to CNT only as demurrage was imminent).

SEA Response to ZIM PFF 75: Admitted in part and denied in part. SEA admits that the email thread cited by ZIM reflects that ZIM informed SEA that it had approved a CNT sometime after SEA had sent an email to the CNT indicating that it was assigned to certain loads. SEA denies that SEA was responsible for causing demurrage to accrue by instructing use of a CNT rather than a house trucker. The full context of the email thread shows that SEA operated on the premise that it had requested use of the CNT the previous year. *See* RX-1496 (SEA’s Ms. Fernando writing to ZIM “I am not sure where the gray area about the CNT issue [is] because this was requested sin[c]e last year”). ZIM should have provided a trucker.

76. **ZIM PFF 76:** Samsung caused demurrage by scheduling appointments and deliveries after the last free day for a container. RX_1465-74, SEA0127765-74; RX_1478-83, SEA0133828-33; RX_1023-25, SEA0046788-90 (Last free day of 5/25/21 and delivery appointment on 6/23/21); RX_0811-15, SEA0132654-58.

SEA Response to ZIM PFF 76: Denied as to the characterization of the emails. While SEA admits that the emails cited by ZIM reflect instances in which the scheduled appointment and delivery date of a container occurred after the last free day, it is denied that the demurrage accrued under these circumstances was “caused” by SEA. To the contrary, the occurrence of an appointment or delivery date after the expiration of free time was a situation that was routinely anticipated by ZIM and SEA and for which SEA tried to proactively plan to mitigate costs incurred. *See* RX-1033-34 (SEA writing in instructions to ZIM “Advise the LFD and if appt after the LFD always advise us for prepull approval”).

77. **ZIM PFF 77:** Samsung has admitted responsibility for demurrage when its customers or warehouses could not receive cargo. CX_02250-51, Rapske Tr. 77:23-78:11 (admitting that Samsung was responsible for demurrage when it was incurred because a facility was

unable to receive the cargo); RX_0682, ZIM0031912 (Ms. Fernando told ZIM that Samsung was responsible for containers for a portion of accrued demurrage, noting “[i]t is not ZIM’s responsibility after that since the appt was provided for 02.09”).

SEA Response to ZIM PFF 77: Admitted in part and denied in part. SEA admits that in the cited email, SEA agreed to cover only the demurrage accrued from February 3 through February 8, 2022. SEA denies that it agreed to cover demurrage accrued prior to February 3, 2022. The demurrage accrued prior to February 3, 2022 was on account of a lack of adequate communication from ZIM regarding the expiration of free time. RX_0682-94.

F. Samsung alleges ZIM is liable for all inland transportation charges without clearly defining each and without explanation for how certain charges could accrue through the fault of ZIM.

SEA Response to ZIM Header F: Denied. SEA alleges damages against ZIM for inland transportation charges to the extent that they are attributable to ZIM’s conduct under store door moves. Furthermore, SEA’s two expert witnesses, Mr. Smith and Mr. McCown, outline in detail throughout their respective reports the ways in which said inland transportation charges were accrued due to ZIM’s unreasonable and unjust conduct. CX_05784-CX05815; CX_08532-CX_08592.

78. **ZIM PFF 78:** Demurrage accrues when cargo arrives at a port or terminal facility and remains beyond its allotted free time. CX_05981, Smith Tr. 35:2-11.

SEA Response to ZIM PFF 78: Admit.

79. **ZIM PFF 79:** Detention accrues when equipment is not returned within a specific period of free days following delivery. CX_05981, Smith Tr. 35:12-19.

SEA Response to ZIM PFF 79: Admit.

80. **ZIM PFF 80:** Neither Mr. Smith nor Mr. McCown attempted to explain how charges such as “Prepull and/or Storage,” “Yard Storage,” “Rehandling,” “Expedite,” “Prepull,” or “Diversion” could be caused by ZIM in their reports. CX_5931, Smith Rep. Ex. 2 (showing charges accrued for each of these descriptions).

SEA Response to ZIM PFF 80: Denied. This PFF leaves out key findings in both the expert reports of Mr. Smith and Mr. McCown. For example, in the Smith report, he calculated that SEA incurred a total of \$41.2 million in yard storage costs as a result of having to enter short-term leases with storage yards in order to avoid excessive demurrage charges “[w]hen ZIM was unable to move containers off the terminals.” CX_05813, Smith Rep. ¶ 59. Furthermore, rail storage (\$0.5 million) and prepull and storage charges (\$0.5 million) constituted two of the four largest categories of inland transportation charges incurred by SEA, which “were exacerbated by ZIM’s practices related to credit or cargo holds.” See CX_05806, CX_5808, ¶¶ 41, 45; CX_05931, Smith Rep. Ex. 2. Likewise, Mr. McCown’s expert report opines that the land storage and equipment costs levied by ZIM against SEA cargo were disproportionate and “ha[d] almost nothing to do with Z[IM]’s tariff per diem rates.” CX_08580-CX_08581, McCown Report ¶¶ 93-95.

81. **ZIM PFF 81:** Mr. Smith, in his report, alleges that ZIM is liable for damages under each of the categories identified in PFF 80. *Id.*; CX_05797-98, Smith Rep. ¶ 25.

SEA Response to ZIM PFF 81: Admit.

82. **ZIM PFF 82:** “Prepull and/or Storage,” results from an interim move in which a container is removed from the terminal facility in order to avoid or minimize demurrage charges and stored elsewhere until it is actually delivered to its final destination. CX_05798-05801, Smith Rep. ¶ 29.

SEA Response to ZIM PFF 82: Admit.

83. **ZIM PFF 83:** Similarly, “Yard Storage” would result from an interim move before a final delivery to a warehouse or customer location. *Id.*

SEA Response to ZIM PFF 83: Admit.

84. **ZIM PFF 84:** In his report, Mr. Smith offers no explanation of when these particular charges would be incurred other than a delayed appointment or impediment to delivery at a Samsung warehouse or customer location. CX_05798-05801, Smith Rep. ¶¶29, 40 (the only locations where “prepull” is used in the report). Similarly, Smith offers no explanation of why the inability of Samsung or its customer to accept delivery makes ZIM responsible for these charges. In fact, Samsung admits it would be responsible for charges when it or its customer is unable to take delivery. CX_02250-51, Rapske Tr. 77:23-78:11.

SEA Response to ZIM PFF 84: Denied. ZIM PFF 84 does not address how expert Smith performed extensive calculations of inland transportation charges invoiced by ZIM to SEA, which are summarized in Exhibit 2 to Mr. Smith’s report. *See* CX_05931, Smith Rep. Ex. 2. These inland transportation charges, which ZIM concedes include pre-pull and yard storage charges, according to Mr. Smith, “were exacerbated by ZIM’s practices related to credit or cargo holds.” CX_05805, Smith Rep. ¶ 45. As just one example, Mr. Smith calculates that SEA incurred a total of \$41.2 million in costs as a result of having to enter short-term leases for yard storage of containers to avoid excessive demurrage charges “[w]hen ZIM was unable to move containers off the terminals.” CX_05813, Smith Rep. ¶ 59.

85. **ZIM PFF 85:** Nevertheless, Mr. Smith assumes that \$497,543 and \$402,576 in charges are for the account of ZIM in his categorized review of charges. CX_05931, Smith Rep. Ex. 2.

SEA Response to ZIM PFF 85: Admit that Mr. Smith calculated that \$497,543 and \$405,576 in charges are for the account of ZIM. Denied that these calculations are “assumptions” by Mr. Smith, as nowhere is that language used by Mr. Smith and ZIM does not quote said language.

G. ZIM established reasonable demurrage and detention policies through its negotiated agreements with Samsung SDS, tariff, and rules governing the shipment of cargo.

SEA Response to ZIM Header G: Admit that ZIM negotiated agreements directly with Samsung SDS, which agreements did not apply to or identify SEA as a separate entity governed by the agreements. Denied that ZIM established which contracts allegedly applied to SEA cargo, or which specific terms of which contracts. Denied that ZIM established reasonable or clear demurrage and detention policies either through its negotiated agreements with Samsung SDS, tariff or rules governing the shipment of cargo.

86. **ZIM PFF 86:** ZIM has and had clear procedures for requesting waivers, refunds, or modifications to invoices – *see* Detention, Demurrage, and Freight Dispute Resolution Guidance, ZIM (available at <https://www.ZIM.com/tools/detention-demurrage-and-freight-disputes>, last visited Aug. 10, 2023); CX_05498, Cleva Tr. 69:3-17; CX_04602, Cleva Tr. 73:2-9; CX_04608-10, Cleva Tr. 79:16-81:1; CX_03883, Michalski Tr. 87:3-90:3; CX_02972, Speight Tr. 173:3-174:15; CX_08813, McCown Tr. 221:14-24.

SEA Response to ZIM PFF 86: Denied. *See* SEA PFF ¶¶ 119-128. The manner and scope of ZIM’s dispute resolution procedures is a contested issue and fully addressed in detail in SEA’s Reply Brief, filed contemporaneously with this Response. Reply at 50-52.

87. **ZIM PFF 87:** Prior to the pandemic, Samsung had a process for reconciling disputed charges and/or paying charges to ZIM for which it was responsible. CX_05793-94, Smith ¶ 18; CX_05986-88, Smith Tr. 39:24-41:5.

SEA Response to ZIM PFF 87: Admitted in part and denied in part. Admit that SEA did review additional charges for inland transportation charges by ZIM as described in Mr. Smith’s expert report. CX_05793-94, Smith Rep. ¶ 18. Denied to the extent that this ZIM PFF 87 implies or contends that SEA did not continue to have or follow such a process after the pandemic began. In fact, in the testimony of Mr. Smith cited by ZIM, when Mr. Smith was asked “whether or not SEA’s review practice changed” after the pandemic began, he responded “I don’t believe that the review process itself changed. The volume of charges that the review process had to go through changed dramatically.” CX_05986-CX_05987, Smith Dep. Tr. 39:24-40:11.

88. **ZIM PFF 88:** Samsung failed to continue its process, which it described as effective, even though Samsung’s volume only went up approximately 10-15% after the pandemic began. CX_05793-94, Smith ¶ 18 (describing a pre-existing process that was satisfactory to Samsung); CX_02211, Rapske Tr. 39:7-18 (there was a “slight increase in the volume” of “about [] 10 to 15 percent” during that period).

SEA Response to ZIM PFF 88: Denied. When considering the evidence proffered for PFF 88, contrary to ZIM’s assertion that SEA “failed to continue its process” of disputing invoices after the pandemic began, when asked whether SEA’s review process had changed during the pandemic, Mr. Smith testified: “I don’t believe that the review process itself changed. The volume of charges that the review process had to go through changed dramatically.” CX_05987, Smith Dep. Tr. 40:1-11. Mr. Smith’s testimony reflects that SEA had to review significantly more charges by ZIM once the pandemic began in light of ZIM’s aggressive D&D charges and practices. This tracks with ZIM’s unreasonable and unjust invoicing practices during the pandemic. *See* PFF ¶¶ 83-118.

89. **ZIM PFF 89:** After the pandemic began, Samsung’s witnesses testified that Samsung never sought to dispute or resolve a charge with ZIM using Samsung’s own process.

CX_02235-37, Rapske Tr. 63:16-65:10 (saying that Samsung did not believe “there was a good way to protest those charges” so “that’s why we’re here today”); CX_02392-93, Fernando Tr. 72:22-73:2 (Samsung simply returned invoices to the email from which they came instead of disputing the invoice through the ZIM disputes inbox).

SEA Response to ZIM PFF 89: Denied. Mr. Rapske testifying that SEA did not believe there was a “good way to protest” charges from ZIM, CX_02237, Rapske Dep. Tr. 63:13-15, does not mean that SEA “never” sought to dispute a charge with ZIM, Mr. Rapske’s testimony supports SEA’s assertions that ZIM lacked a meaningful dispute resolution process through which SEA could effectively dispute charges by ZIM. See PFF ¶¶ 119-128.

Mr. Rapske testified that, to the extent he was made aware of a dispute resolution process by ZIM, it was via “an email that had a couple of email boxes that we could email any kind of disputes with.” CX_02237, Rapske Dep. Tr. 63:15-17. Not only is this form of dispute resolution process far from the meaningful process ZIM purports to have, submission of disputes via these “email boxes” would not have even been recognized by ZIM as formal disputes by SEA of ZIM charges. See CX_03199-CX_03200, Yaacoub Dep. Tr. 142:14-143:14 (“Q: [I]f a customer disputes, not formally, but makes it known repeatedly to your [ZIM’s] team via email or call that they dispute not formally as you define that process, you don’t consider that disputed, as long as it did not come through that formal [] website . . . ? A. Correct.”).

ZIM’s citation to Ms. Fernando’s testimony is odd because the testimony ZIM cites actually has Ms. Fernando stating that if she did not agree with the information on an invoice, she would “send it back to ZIM or the steamship line and provide the reason I am disputing it.” CX_02392, Fernando Dep. Tr. 72:12-16. This directly contradicts ZIM’s contention that SEA “never” sought to dispute or resolve a charge with ZIM after the pandemic began. Further, even if

Ms. Fernando had “disput[ed] the invoice through the ZIM disputes inbox,” this would not have been recognized as a formal dispute by ZIM.

Contrary to ZIM’s assertion in ZIM PFF 89 that “[a]fter the pandemic began, Samsung never sought to dispute or resolve a charge with ZIM,” SEA disputed multiple charges sent by ZIM on multiple occasions. *See, e.g.*, CX_07208-CX_7217, SEA0014504-SEA0014513 (emailing ZIM regarding issues with multiple invoices, including invoices rejected due to demurrage charges calculated during periods of free time); *see also* CX_02401, Fernando Dep. Tr. 81:16-82:7; CX_07407-CX_07412, SEA0128432-SEA0128437 (identifying multiple invoices wrongly billed to SEA instead of the proper Samsung division).

90. **ZIM PFF 90:** Samsung SDS disputed charges that were for the account of Samsung during 2020, 2021, and 2022. RX_0148-49, ZIM0028439-40 (showing that Samsung SDS disputed eleven transactions that were for the account of Samsung).

SEA Response to ZIM PFF 90: Admitted in part and denied in part. Admit that the email cited shows that ZIM recorded eleven (11) disputes submitted to SEA between March 23, 2020 and March 5, 2022. Denied that the email shows that Samsung SDS was the entity that disputed these charges. Moreover, the email ZIM cites here shows the myriad issues in ZIM’s invoicing and billing practices during this time period, as evidenced by entries describing the natures of the disputes, including “Duplicate Billing,” “Incorrect Free Time,” and “Incorrect Rate.”

91. **ZIM PFF 91:** Samsung also disputed five of its own invoices by emailing a ZIM point of contact and receiving a favorable resolution by providing the details and reasons why it disputed the invoices. RX_0838, SEA0014631 (ZIM responded “I have reviewed your dispute and agree with your findings. I have cancelled the below invoices... in the meantime, there should be no further collection efforts on them.”).

SEA Response to ZIM PFF 91: Admit that the email cited reflects one instance in which, upon reviewing five invoices disputed by SEA, ZIM “agree[d] with [SEA’s] findings” and “cancelled the [five] invoices.” This email underscores the systemic issues in ZIM’s invoicing practices with respect to SEA. *See* SEA’s Response to ZIM PFF 89.

92. **ZIM PFF 92:** ZIM’s policy was to waive or refund demurrage and/or detention when incurred due to act/omission of ZIM. Speight Tr. 106:10-23; 145:19-146:9; 171:11-172:24; RX_0914, SEA0017223 (ZIM covered storage for house trucker delays).

SEA Response to ZIM PFF 92: Denied. While ZIM’s policy, in principle or as stated, might have been to waive or refund demurrage or detention charges that were incurred due to an act or omission of ZIM on occasion, this was not what occurred in practice. *See* CX_04761, Cleva Dep. Ex. 9; CX_04782-CX_04784, Cleva Dep. Ex. 11 (then-ZIM U.S. president George Goldman making a strategic decision to collect on time-barred invoices despite an internal warning that there would be “heavy pushback” from ZIM customers); CX_04759-CX_04760, Cleva Dep. Ex. 8 (showing a strategic account customer confronting ZIM about time-barred invoices, including one issued 394 days after original event).

93. **ZIM PFF 93:** ZIM waived demurrage and/or detention charges in accordance with its policy. Speight Tr. 100:6-15; 106:10-23; 145:19-146:9; 171:11-172:24; RX_0838, SEA0014631.

SEA Response to ZIM PFF 93: Admitted in part and denied in part. Admit that the cited email reflects one instance in which, upon reviewing five invoices disputed by SEA, ZIM “agree[d] with [SEA’s] findings” and “cancelled the [five] invoices.” This email underscores the systemic issues in ZIM’s invoicing practices with respect to SEA. *See* SEA’s Response to ZIM PFF 89. Denied

that ZIM's practice was to waive demurrage and/or detention charges against SEA in accordance with its stated policy.

94. **ZIM PFF 94:** ZIM discounted demurrage and/or detention charges and/or balances, including with Samsung (emails including settlement of outstanding charges during cargo hold); RX_0005, Yaacoub Ex. 23 (waiving \$3MM in demurrage and detention for SEA); CX_03277, Yaacoub Tr. 220:22-20 (discussing same); CX_02918, Speight Tr. 119:3- ; CX_03044, Speight Ex. 5 – ZIM 0047002; RX_0838, SEA0014631.

SEA Response to ZIM PFF 94: Admitted in part and denied in part. Admit that RX_0838 reflects one instance in which, upon reviewing five invoices disputed by SEA, ZIM agree[d] with [SEA's] findings" and "cancelled the [five] invoices." Admit that Speight Ex. 5 (CX_03044-CX_03053) reflects that, in the context of one effort by ZIM to "clean up" its customer invoices, Ms. Speight expected the percentage of charges to be discounted "to rise significantly because [ZIM] chose to clean up Samsung & Pantos." Notably, Speight acknowledged that a discount was warranted because of "ZIM trucker availability." CX_03045. Denied that ZIM always or consistently discounted D&D charges and/or balances against SEA in accordance with its stated policy. Further denied that RX_0005 and CX_03277 are relevant to the extent that they do not concern SEA. In regard to the characterization of Yaacoub Ex. 23 and "waiving \$3MM in demurrage and detention for SEA", it is a staggering amount and should it not beg the question about ZIM's practices in collection of D&D charges that it needed to waive \$3 million in charges? It should.

H. Samsung never disputed any invoices from ZIM but instead allowed inland transportation charges to accrue and either failed to pay its bills or refused to pay its bills, resulting in significant overdue balances.

SEA Response to ZIM Header H: Denied. It is neither the case that SEA "never" disputed "any" invoices issued by ZIM nor that SEA "allowed" inland transportation charges to accrue on its cargo

to its detriment. Further denied that SEA “refused” to pay charges that ZIM correctly billed to SEA for charges that resulted from acts or omissions of SEA. This heading is not at all supported by record evidence.

95. **ZIM PFF 95:** Samsung accrued 9,984 separate demurrage and detention charges on 2,980 containers between July of 2019 and December of 2022. CX_06503, Zayas Rep. ¶ 9 (citing Smith Report, Ex. 1).

SEA Response to ZIM PFF 95: Admit ZIM charged SEA for the number of charges and containers mentioned.

96. **ZIM PFF 96:** The charges were characterized as inland transportation charges consisting of demurrage, detention, rail storage, prepull and/or storage, yard storage, driver detention, and others. CX_05931, Smith Rep. Ex. 2.

SEA Response to ZIM PFF 96: Admit. SEA notes that CX_05931 does not identify the types of inland transportation charges summarized by name, but agrees that these are the types of charges that were summarized by Mr. Smith in his Exhibit 2. See CX_05805-CX_05806, Smith Rep. ¶ 40.

97. **ZIM PFF 97:** In its alleged damages, Samsung included charges that were paid to parties such as its CNTs and other logistics providers. CX_2233-35, Rapske Dep. Tr. 61:13-63:7.

SEA Response to ZIM PFF 97: Admit these charges are included because they were ultimately associated with ZIM boxes as invoiced.

98. **ZIM PFF 98:** Samsung did not produce invoices or other details related to these charges for review by ZIM such as pricing agreements. CX_02234, Rapske Dep. Tr. 62:15-22 (noting that payments would be made pursuant to pricing agreements).

SEA Response to ZIM PFF 98: Denied. The testimony of SEA’s Mr. Rapske, cited by ZIM, establishes that SEA reimburses drayage carriers that pay demurrage on behalf of SEA pursuant

to pricing agreements. Mr. Rapske testified that he “believe[d] there’s a pricing agreement put in place, but, a lot of the times, it’s not the actual drayage car[rier] that’s making the move that’s made the [demurrage] payment.” CX_02234.ZIM also fails to address that with truckers, on store door moves, it was responsible for trucking and payment. CX_03797, Michalski Dep. Tr. 45:10-46:5; CX_03992, Michalski Dep. Ex. 3; CX_02050, Choi Dep. Tr. 74:16-24.

99. **ZIM PFF 99:** Post-pandemic, Samsung did not dispute any invoices through a formal process despite the only modest increase in shipping volume. CX_02232, Rapske Tr. 63:16-65:10; CX_02211, Rapske Tr. 39:7-18 (there was a “slight increase in the volume” of “about [] 10 to 15 percent” post-pandemic).

SEA Response to ZIM PFF 99: Denied as stated. “Post-pandemic is stated as a “fact” as if there is a defined term for the pandemic and “post-pandemic.” Admit that in the testimony cited by ZIM, Mr. Rapske stated that SEA “never sent any protest of any demurrage charges to ZIM via [] email boxes that were identified” in emails sent by ZIM.” CX_02237. Denied to the extent that this is evidence that SEA “did not dispute any invoices through a formal process” post-pandemic. As Mr. Yaacoub testified in his deposition, the sole formal process for disputing invoices that was recognized by ZIM was submission of a dispute via ZIM’s Dispute Resolution portal on its website. CX_03199-CX_03200, Yaacoub Dep. Tr. 142:14-143:14 (“Q: [I]f a customer disputes, not formally, but makes it known repeatedly to your [ZIM’s] team via email or call that they dispute not formally as you define that process, you don’t consider that disputed, as long as it did not come through that formal [] website . . . ? A. Correct.”).

Dated: October 10, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the execution date which appears below, the undersigned served the attached document on counsel at the following email addresses:

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