

BEFORE THE  
FEDERAL MARITIME COMMISSION



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DOCKET NO. 22- 30  
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SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

ZIM INTEGRATED SHIPPING SERVICES LTD.,

RESPONDENT.

**VERIFIED COMPLAINT**

Complainant Samsung Electronics America, Inc. (“Complainant” or “SEA”), by its undersigned attorneys, files this Verified Complaint against Respondent herein, alleging violation of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

**I. COMPLAINANT**

1. Complainant SEA is a corporation organized and existing under the law of the State of New York, with a principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey, 07660-2118.

**II. RESPONDENT**

2. Respondent ZIM Integrated Shipping Service Ltd. is a global ocean carrier with its corporate office at 9 Andrei Sakharov St., “Matam” - Scientific Industries Center, P.O.B. 1723,

Haifa 31016, Israel, conducting business in the U.S. through ZIM American Integrated Shipping Services Company Co. LLC, with its principal corporate office at 5801 Lake Wright Drive, Norfolk, VA 23502 (“ZIM”). ZIM is a vessel operating “ocean common carrier” as that term is defined by 46 U.S.C. § 40102(7) and (18) and is subject to regulation by the Federal Maritime Commission (the “FMC” or “Commission”).

### **III. JURISDICTION**

3. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act.

4. This Complaint is being filed pursuant to 46 U.S.C. § 41301. SEA is seeking a cease and desist order and reparations for injuries caused to it by Respondent due to its violations of the Shipping Act.

5. The FMC has personal jurisdiction over ZIM as a “common carrier” and a vessel-operating “ocean common carrier” as defined in 46 U.S.C. § 40102(7) and (18).

6. Respondent’s actions alleged herein constitute failures to establish, observe, and enforce just and reasonable practices related to receiving, handling, storing, and delivering the property of SEA, in violation of 46 U.S.C. § 41102(c) (unreasonable practices); 46 U.S.C. § 41104(a)(3) and 46 U.S.C. § 41102(d) (retaliation); 46 U.S.C. § 41104(a)(10) (refusal to deal); 46 U.S.C. § 41104(a)(15) (invoicing without required information); and 46 U.S.C. § 41104(a)(14) (unreasonable charges).

### **IV. PRELIMINARY STATEMENT**

7. SEA, a pioneering electronic products company incorporated in the United States in 1978, offers home appliances, phones, tablets, smartwatches, mobile accessories, mobile audio, televisions, monitors, and computer products to the American public.

8. The American public relies on SEA goods for its everyday personal and business needs.

9. SEA provides its consumer goods to the American public online through Samsung.com, through retailers like Best Buy, The Home Depot, and Lowe's, and through distributors.

10. In order to meet the needs of the American public, SEA has relied on transportation companies like ZIM to carry its goods to inland destinations throughout the United States.

11. Part of the appeal of working with an experienced transportation company like ZIM is its offering of a full range of services from arrangements overseas to the final destination at SEA distribution centers and customers inland, otherwise known as inland transportation or "store door" delivery. Under store door terms, the ocean carrier issues a bill of lading or sea waybill indicating the marine port at which a container is discharged and an inland "place of delivery" to which the ocean carrier undertakes to transport the container after the container is discharged from the vessel at the port.

12. ZIM markets its full range of services in the shipping industry to shippers like SEA in personal meetings, at conferences, and publicly on its website.

13. When addressing the scope of inland transportation services, ZIM boasts that its "transport capabilities reach far beyond ocean lanes and ports. We also provide extensive land transport and door-to-door services, offering customers a comprehensive solution with one point of contact, so you can rely on our trusted quality standards and advanced monitoring methods to take care of the entire shipping process."<sup>1</sup>

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<sup>1</sup> <https://www.zim.com/services/cargo-services/land-transportation>.

14. ZIM claims: “[W]e work hand-in-hand with the best providers to offer excellent full-service intermodal transport. By road, rail or barge, anyone transporting ZIM cargo has undergone a rigorous selection process and adheres to strict guidelines. As an independent carrier, ZIM is able to keep a close eye on each stage of transport, offering optimal support and meticulous care every step of the way.”<sup>2</sup>

15. ZIM claims that all in-freight rates charged by ZIM for store door transportation will maximize convenience and save costs for companies like SEA: “[T]his all-inclusive system offers you maximal convenience and impressive cost-efficiency. ZIM arranges all elements of your cargo’s journey, including transportation to and from harbors, dry ports, and container depots. Providing a range of short, middle, or long-distance haulage options, we make sure the entire trip offers all the high standards and personally-customized services you expect from ZIM.”<sup>3</sup>

16. As set forth in more detail below, SEA relied on ZIM for store door transportation of goods in ocean shipping containers but ZIM fell far short of its responsibilities and obligations.

17. Beginning in approximately late 2020, ZIM began repeatedly failing to properly perform its obligations for inland transportation to the inland destinations.

18. Throughout 2021 and to the present, aware of challenges with intermodal transportation logistics, ZIM continued to transport SEA goods on store door terms under through bills of lading or sea waybills for inland delivery in the U.S., and continued to repeatedly fail to properly perform its inland transportation obligations, exposing SEA to unreasonable costs, charges, delays, and other harms.

19. As a result of ZIM’s unreasonable practices, SEA has been forced to pay excessive and unlawful charges incurred by ZIM—known as “demurrage and detention” charges—and has

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

been forced to undertake and perform the ocean carrier's inland transportation responsibilities in order to continue to import its products sold to American consumers.

20. SEA is apparently not alone in facing this exploitative behavior. Demurrage and detention charges and practices have risen so exponentially high that the Biden Administration highlighted the concern in a press release and fact sheet on February 28, 2022, titled “Lowering Prices and Leveling the Playing Field in Ocean Shipping.”<sup>4</sup>

21. On March 1, 2022, President Biden highlighted escalating freight and demurrage and detention costs in his State of the Union address, noting that prices were raised “by as much as 1,000%...” and as such, the President announced “a crackdown” on practices that result in “overcharging American businesses and consumer.”<sup>5</sup>

22. Separately, the FMC has long raised concerns with a host of unjust and unreasonable demurrage and detention practices, and the FMC is advancing efforts to promote complaints and adjudicate wrongdoing, as the full scope of the unlawful practices concerning demurrage and detention in the last two years becomes known.

23. As explained in further detail below, SEA has dealt with and continues to face manifestly unjust and unreasonable charges and practices in connection with inland transportation arrangements that are the responsibility of ZIM under its “store door” shipments.

24. Notwithstanding that ZIM is responsible for the inland transportation to the named place of delivery on the sea waybill under store door terms, ZIM has forced SEA to pay demurrage and detention charges that were not the responsibility of SEA by holding containers hostage and threatening to cut off further services.

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<sup>4</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/>.

<sup>5</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/>.

25. While the threat to SEA's ability to import products was and remains a serious concern, the staggering costs of escalating demurrage and detention charges have become unsustainable. The current situation presents a material threat to SEA's ability to provide its products to American consumers, and has made it necessary to bring this Complaint.

26. As a result of ZIM's conduct, SEA has sustained serious and substantial injuries and monetary damages, including paying erroneous detention and demurrage charges. ZIM's unreasonable and unlawful conduct is continuing, and SEA continues to sustain injury and damages.

## **V. FACTUAL ALLEGATIONS**

27. SEA is the consignee of cargoes of home goods shipped to the U.S. in ocean shipping containers ("SEA Containers") by ZIM.

28. ZIM transported SEA Containers under through bills of lading, or sea waybills, from the overseas locations through U.S. ports and on to designated U.S. inland locations (commonly known as "store door" terms).

29. Under through bills of lading and sea waybills, ZIM is responsible as the common carrier for both (1) the ocean carriage of the SEA Containers to a U.S. port, and (2) the inland carriage of the SEA Containers to the U.S. inland locations, generally SEA warehouses or directly to SEA customer locations.

30. 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.

31. In contrast to carrier haulage, under “CY” (container yard) or “port-to-port” terms, the inland movement of containers is commonly referred to as “merchant haulage” because the shipper or consignee is responsible for the inland movement from the port to the final inland destination.

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.

33. In store door shipments, costs and charges relating to delays in the timely removal of containers from terminals (generally known as “demurrage” charges) should be borne by ZIM, not a consignee like SEA.

34. In store door shipments, costs and charges relating to delays in the timely delivery of containers (and chassis) to the designated inland locations and ultimately the return of empty containers and equipment to ZIM’s possession or control at ZIM’s designated location (generally known as “detention” or “per diem” charges) should be borne by ZIM, not the shipper or consignee, when the delays result from matters for which (1) ZIM is responsible (e.g., delays in equipment return caused by ocean carrier empty return restrictions or limitations), and/or (2) ZIM bears the responsibility for the underlying transportation delays (e.g., delays in equipment return caused by problems performing inland drayage services, such as subcontracting adequate trucking, and/or availability of chassis the ocean carrier is responsible to provide).

35. Since January 2020, through and including the time of this Complaint, ZIM has acted as a transporter of SEA Containers under store door terms to the U.S. from various overseas locations, through numerous U.S. ports (including Baltimore, Charleston, Houston, Jacksonville,

New Orleans, New York/New Jersey, and Savannah), to numerous inland locations throughout the U.S.

36. Since 2020 through the first quarter of 2022, SEA has been invoiced and paid substantial amounts of demurrage and detention charges and other drayage-related charges in connection with ZIM's store door transportation of SEA Containers.

37. Beginning in approximately late 2020, ZIM began repeatedly and chronically failing to properly perform its inland transportation obligations, including failing to timely remove SEA Containers from U.S. marine and intermodal terminals and failing to timely deliver SEA Containers to their designated inland locations.

38. During that same period, ZIM began charging SEA dramatically increasing amounts for alleged demurrage and detention charges resulting from ZIM's inland transportation failures.

39. When asked to explain the reason for asserting the charges on SEA, ZIM proffered various excuses relating to alleged chassis shortages, trucker shortages, inclement weather, and port and terminal congestion matters, which were neither within the control of SEA nor the responsibility of SEA under the store door terms.

40. When asked to mitigate, cancel, or waive charges for which SEA was not responsible and on the basis that ZIM was responsible for such inland charges under store door terms, ZIM refused to mitigate, cancel, or waive the charges.

41. ZIM has repeatedly demanded payment of disputed demurrage and detention charges and invoices and threatened various punitive actions against SEA if payments were not made, including refusing release of subject Containers, threatening to refuse release of unrelated Containers, and threatening to cease bookings of new Containers.



42. ZIM has in fact refused release of SEA Containers moving under store door terms on the basis of allegedly outstanding demurrage and detention charges arising from the foregoing ZIM practices.

43. In addition to charging SEA for inland transportation costs and charges resulting from ZIM's failures to perform under store door terms, ZIM's billing practices and policies caused further injuries to SEA:

- a. ZIM's invoices routinely lacked adequate information to determine the basis for the individual demurrage and detention charges;
- b. Based on information and belief, ZIM assessed charges against SEA Containers without consideration of ZIM's responsibility (or SEA's absence of responsibility) for the circumstances resulting in such demurrage and detention charges;
- c. Based on information and belief, ZIM assessed charges against SEA for containers that were not SEA Containers, including containers with consignee names that simply appeared to be affiliated with SEA or the name "Samsung";
- d. ZIM repeatedly rebilled SEA for charges previously billed and for charges previously paid, and, based on information and belief, ZIM failed to properly reconcile its invoices with payments received from SEA and others, including payment vendors; and
- e. ZIM failed to have or engage in an adequate or meaningful dispute resolution process for demurrage and detention charges.

44. ZIM's conduct also resulted in container processing and handling delays at SEA's warehouses and client delivery locations, as well as delays in container and equipment returns, resulting in further detention charges and injuries.

45. Based on information and belief, as a result of ZIM's unjust and unreasonable and other unlawful conduct, SEA was repeatedly charged detention and/or per diem in connection with empty containers and chassis when ZIM failed to provide reasonable opportunity to return such equipment without incurring additional charges, including inadequate availability of return locations, and inadequate and/or inaccurate information concerning return locations.

46. As a result of Respondent's wrongful conduct, SEA incurred serious and substantial injuries and monetary damages, including paying improper charges for demurrage and detention, with charges continuing to be tabulated and accrued as of the filing of this Complaint.

## **VI. VIOLATIONS OF THE SHIPPING ACT**

### **COUNT I**

#### **VIOLATIONS OF 46 U.S.C. § 41102(c)**

##### **Unjust and Unreasonable Practices in Handling Property**

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

48. Section 41102(c) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

49. Respondent ZIM is an ocean common carrier as defined by the Shipping Act.

50. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention are directly related to receiving, handling, storing, or delivering SEA's property.

51. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention have been occurring on a normal, customary, and continuous basis,

involving since 2020 in excess of 2,000 individual demurrage charges and in excess of 7,000 detention type charges.

52. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention are unjust and unreasonable in violation of Section 41102(c).

53. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention are the proximate cause of SEA's claimed injury and damages.

54. The following practices and procedures relating to the assessment of demurrage and detention are specifically unjust and unreasonable in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5:

- a. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers moving under store door terms for reasons that are not within SEA's control;
- b. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers when ZIM is responsible for the pickup from the port, movement to the inland place of delivery, and return of the SEA Containers;
- c. continuing to book new SEA Containers under store door terms without taking adequate steps to address increasing delays and costs incurred in securing timely intermodal movement of SEA Containers;
- d. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers without a meaningful practice or procedure to first determine responsibility for such charges (under store door terms or otherwise);

- e. failing to provide SEA with adequately detailed billing information and/or invoices related to demurrage and detention charges to permit SEA to meaningfully understand and/or contest the charges;
- f. rebilling demurrage and detention charges already billed and/or already paid;
- g. assessing demurrage and detention charges on SEA for containers that are not SEA Containers;
- h. refusing to extend free time and/or mitigate, waive, or reduce demurrage or detention charges that were not SEA's responsibility;
- i. failing to have or employ an adequate dispute resolution policy or practice with regard to demurrage and detention charges;
- j. threatening to withhold services and refusing to release SEA Containers without payment of charges that were not SEA's responsibility;
- k. assessing demurrage and detention charges on SEA as consignee for costs and charges of delays in the inland intermodal transportation of SEA Containers moving under store door terms that serve no incentivizing principle and do not promote freight fluidity because SEA is not responsible for the inland portion of the transportation;
- l. demanding/requiring that SEA undertake ZIM's responsibilities as common carrier in order to release and/or move SEA Containers, including, but not limited to, requiring that SEA arrange for and directly pay marine terminals and other service providers for release of SEA Containers from intermodal terminals and for inland transportation of SEA Containers moving under through bills of lading; and

m. assessing detention charges for equipment return delays that were ZIM's responsibility and for delays arising because ZIM did not provide adequate opportunity to return containers.

## COUNT II

### **VIOLATIONS OF 46 U.S.C. § 41104(a)(3) - 46 U.S.C. § 41102(d) – Retaliation**

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

56. Prior to the enactment of the Ocean Shipping Reform Act of 2022 (“OSRA”), 46 U.S.C. § 41104(a)(3) prohibited a common carrier from “retaliat[ing] against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason.”

57. On and after the enactment of OSRA, 46 U.S.C. § 41102(d) prohibits a common carrier (among others), whether acting alone or in conjunction with another person, directly or indirectly, from “retaliat[ing] against a shipper . . . by refusing, or threatening to refuse, an otherwise-available cargo space accommodations, or . . . resort to other unfair or unjustly discriminatory action for – the reason that a shipper . . . has . . . filed a complaint against the common carrier . . . or any other reason.”

58. The Commission explained in its December 28, 2021, Statement On Retaliation that “shipper” is defined broadly and includes “a cargo owner, the person for whose account the ocean transportation of cargo is provided, [and] the person to whom delivery is to be made . . .” FMC Docket No. 21-15, Dec. 28, 2021, Statement of the Commission On Retaliation, at 7.

59. The Commission also explained that “to establish a violation of § 41104(a)(3), a complainant alleging retaliation or other unfair or unjustly discriminatory conduct based on the above grievance-related activity (filing complaints, etc.) does not need to prove that the carrier’s conduct was designed to stifle competition of other carriers or that the shipper at issue sought the services of a carrier other than the respondent – cases suggesting otherwise are inapplicable.” FMC Docket No. 21-15, Dec. 28, 2021, Statement of the Commission On Retaliation, at 1.

60. Grievance-related activity protected by the anti-retaliation prohibitions extends beyond filing complaints, and the Commission “will interpret 46 U.S.C. § 41104(a)(3) – the anti-retaliation provision – broadly to effectuate Congress’s intent that shippers feel free to air their grievances to the Commission, and to address new shipping practices and new forms of retaliation.” Id.

61. In response to Complainant’s efforts to address ZIM’s shipping and charging practices, resolve disputes, and dispute invoices, ZIM threatened to retaliate, and in fact retaliated, against Complainant and SEA Containers with respect to delivery of cargo and refusing available cargo space accommodation, and specifically including the practices and actions described in paragraphs 41, 42, and 54(j).

62. Prior to and on numerous occasions to and through the date of this Complaint, ZIM retaliated against Complainant and SEA Containers in violation of 46 U.S.C. § 41104(a)(3) and 46 U.S.C. § 41102(d).

### **COUNT III**

#### **VIOLATIONS OF 46 U.S.C. § 41104(a)(10) – Refusal to Deal**

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

64. Prior to the enactment of the OSRA, pursuant to 46 U.S.C. § 41104(a)(10), it was unlawful for a common carrier to “unreasonably refuse to deal or negotiate.”

65. On and after the enactment of OSRA, 46 U.S.C. § 41104(a)(10) makes it unlawful for a common carrier to “unreasonably refuse to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier.”

66. In response to Complainant’s efforts to address ZIM’s shipping and charging practices with respect to inland services under through bills of lading and demurrage and detention charges and practices, efforts to resolve disputes, and dispute invoices, ZIM refused to meaningfully engage or change its underlying practices, specifically including the practices and actions described in paragraphs 39-43.

67. Prior to and on numerous occasions to and through the date of this Complaint, ZIM refused to deal or negotiate with Complainant and with respect to SEA Containers in violation of 46 U.S.C. § 41104(10).

#### **COUNT IV**

##### **VIOLATIONS OF 46 U.S.C. § 41104(a)(15) - OSRA – Invoices without Information**

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

69. As amended by OSRA, 46 U.S.C. § 41104(a)(15) provides that a “common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not . . . invoice any party for demurrage and detention charges unless the invoice includes information as described in subsection (d) [referring to 46 U.S.C. § 41104(d)].”

70. Based upon information and belief, ZIM itself or in conjunction with sub-contractors or others on behalf of ZIM, sought to invoice and/or charge for demurrage and

detention charges on and after the effective date of OSRA without including the information necessary to comply with 46 U.S.C. § 41104(d).

71. Issuing such invoices, without proper information, would be in violation of 46 U.S.C. § 41104(a)(15).

72. In addition to other penalties and remedies, the issuance of the such invoices would trigger 46 U.S.C. § 41104(f), which provides that “[f]ailure to include the information required under subsection (d) of an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.”

## **COUNT V**

### **VIOLATIONS OF 46 U.S.C. § 41104(a)(14) - OSRA – Unreasonable Charges**

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

74. As amended by OSRA, 46 U.S.C. § 41104(a)(14) provides that a “common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not . . . assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations).”

75. As alleged in each of the Counts above, on information and belief, ZIM’s practices and actions in connection with assessment of demurrage and detention charges in Q2 and Q3 2022 (after the effective date of OSRA) under through bills of lading would also violate 46 U.S.C. § 41104(a)(14).



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

76. As a result of Respondent's violations of the Shipping Act, Complainant has sustained serious and substantial injuries and monetary damages, including paying erroneous detention and demurrage charges, and other damages. ZIM's unreasonable and unlawful conduct is continuing, and SEA continues to sustain injury and damages.

## **VIII. ALTERNATIVE DISPUTE RESOLUTION**

77. SEA has unsuccessfully attempted to resolve this matter with Respondent prior to filing this Verified Complaint. Considering statements made by Respondent and consequent noncooperation in resolving this matter, SEA did not seek to use the FMC's alternative dispute resolution process prior to filing this Verified Complaint.

78. For the same reasons stated above, Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution under the FMC's ADR program (46 C.F.R. § 502.64).

## **IX. REQUEST FOR ORAL HEARING**

79. Complainant requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.

## **X. PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in this Complaint, and that after thorough investigation that the FMC issue an Order:

1. Requiring Respondent to pay Complainant reparations for the unlawful conduct described above, along with interest and Complainant's attorneys' fees and costs as described in 46 U.S.C. § 41305;

2. Requiring the payment of any other amounts that the FMC deems appropriate;
3. Ordering that Respondent cease and desist from the unlawful conduct;
4. Providing Complainant such other and further relief that the FMC deems is just and proper.

Dated: October 13, 2022

Respectfully Submitted,

**HOLLAND & KNIGHT LLP**

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*Counsel to Samsung Electronics America,  
Inc.*

## VERIFICATION

I, Michael Rapske, am Vice President, Logistics of Complainant Samsung Electronics America, Inc. and hereby declare and attest under penalty of perjury that I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: October 12, 2022



Michael Rapske

SAMSUNG