April 27, 2023

Before the

FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 23-02

BED BATH & BEYOND INC. v.

ORIENT OVERSEAS CONTAINER LINE LIMITED AND OOCL (EUROPE) LIMITED

VERIFIED COMPLAINT

I. INTRODUCTION

1. Complainant Bed Bath & Beyond Inc. ("BBBY" or "Complainant"), by its undersigned counsel, brings this Verified Complaint (the "Complaint") against respondents Orient Overseas Container Line Limited and OOCL (Europe) Limited (collectively, "OOCL" or "Respondent") pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Complainant caused by Respondent's violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq*. (the "Shipping Act"), alleged herein.

2. OOCL describes itself as "one of the world's largest integrated international container transportation and logistics companies, with about 130 offices in more than 100 major cities."

3. OOCL is a member of the OCEAN Alliance, a shipping alliance formed in 2017 between OOCL, CMA CGM S.A., COSCO SHIPPING Lines Co., Ltd., and the Evergreen Line Joint Service Agreement. The OCEAN Alliance operates on major global trade lanes, including Asia-Europe, Asia-North America, and Asia-Mediterranean, and is one of the largest shipping

alliances in the world. The Ocean Alliance reportedly has a total capacity of 4.3 million twenty-foot equivalent container units, which accounts for 16% of global fleet capacity.

4. As alleged herein, Respondent has exploited price inflation in container shipping during the COVID-19 pandemic and unjustly and unreasonably exploited customers. This has resulted in vastly increased profitability on the part of Respondent, at the expense of shippers and the U.S. public generally, which bears increased freight cost in the form of inflation. Specifically, Respondent adopted three strategies to take advantage of the crisis and impose unjust and unreasonable costs on Complainant.

5. *First*, Respondent has engaged in a practice of failing to meet its service commitments to Complainant. Complainant entered into service contracts with Respondent for the 2020 and 2021 shipping years that specified minimum quantity commitments ("MQC") of cargo to be shipped and corresponding service commitments by Respondent to provide vessel space sufficient to carry those MQCs. Upon information and belief, instead of abiding by its service commitments, Respondent engaged in a practice of systematically failing to meet its service commitments to Complainant and allocating Complainant's bargained-for space to other shippers to maximize Respondent's own profits. As a result, Complainant was forced to obtain space on the spot market at enormous expense during a period of unprecedented high spot prices.

6. Complainant is not the only shipper to have experienced such alleged conduct. In *MCS Industries, Inc. v. COSCO Shipping Lines Co., et al.,* FMC Docket No. 21-05, the Federal Maritime Commission's ("FMC") Chief Administrative Law Judge found that the Shipping Act violations alleged in that case, which parallel Respondent's practice of failing to meet its service commitments to Complainant alleged herein, "are of national significance, for example, that one of the largest container lines in the world 'sought to take advantage of unprecedented high pricing

by forcing shippers with service contracts, like Complainant, to resort to spot market purchases' by the 'practice of systematically failing to meet its quantity commitments.'" When one of the respondents in that matter chose to suffer a default judgment rather than comply with its discovery obligations, the Chief Judge found that "[r]esolution of these allegations would provide clarity and guidance in the marketplace and benefit not just these parties, but also the shipping public."

7. *Second*, upon information and belief, during 2021 and 2022, much of the demurrage and detention charges (the "Charges") assessed by Respondent and paid by Complainant were assessed for periods of time in which Complainant's ability to pick up containers at the ports, or return empty containers promptly, were constrained due to circumstances outside the control of Complainant, such as congestion at ports, policies implemented by Respondent and other ocean carriers that interfered with the ordinary handling of ocean freight, bad weather delays, labor disputes, and quarantine/social distancing orders in terminals, depots, yards, and for vessel crew.

8. *Third*, upon information and belief, Respondent sought to coerce premium pricing by inducing Complainant to enter into premium rate contracts as a precondition to carry just a fraction of the quantity commitment to which Respondent had already committed in its service contracts with Complainant.

9. Upon information and belief, Respondent's practices were knowing and deliberate, and were not due to an absence of available cargo space or necessitated by any other circumstance outside of Respondent's control.

10. Upon information and belief, Respondent has profited greatly from the conduct alleged herein. Respondent stated in its 2021 Annual Report that, "Our results for 2021, which include ***the highest ever revenue, liftings and profit figures for our core container shipping and logistics business***, surpassed even the outstanding outcome for 2020. . . . ***The financial results***

were achieved in a context that is entirely without precedent."[1] With respect to its Container Transport and Logistics business, Respondent recorded an operating profit of $7,369,807,000.00, an increase of ***642%*** from the previous year.

11. Respondent's conduct alleged herein with respect to the receipt, handling, storage, and/or delivery of the property of Complainant and, upon information and belief, of other shippers had occurred on a normal and customary basis.

12. Accordingly, pursuant to 46 U.S.C. Section 41301, Complainant brings this Complaint seeking reparations for injuries caused by Respondent's violations of the Shipping Act.

II. THE COMPLAINANT

13. Complainant Bed Bath & Beyond Inc. is a corporation existing under the laws of New York with its principal place of business located at 650 Liberty Avenue, Union, New Jersey 07083, telephone 908-688-0888, email care of Kenneth.Bradley@bedbath.com and via its undersigned counsel's telephone numbers and email addresses listed below. For purposes of the shipments that are the subject of this Complaint, Complainant was a "shipper" as that term is defined by 46 U.S.C. Section 40102(23).

III. THE RESPONDENTS

14. Upon information and belief, Respondent Orient Overseas Container Line Limited is a company existing under the laws of Hong Kong with its principal place of business located at 25 Harbour Road, 31st Floor Harbour Centre, Wanchai, Hong Kong, acting in the United States by and through its agent, OOCL (USA) Inc. ("OOCL (USA)"), a company existing under the laws of the State of New York with its principal place of business located at 10913 South River Front Parkway, Suite 200, South Jordan, UT 84095. Respondent Orient Overseas Container Line

[1] Except where otherwise noted, all bold and italicized text reflects added emphasis.

Limited is an "ocean common carrier" as that term is defined by 46 U.S.C. Section 40102(18) with FMC organization number 011398. Respondent Orient Overseas Container Line Limited also is a "controlled carrier" of the People's Republic of China as that term is defined by 46 U.S.C. Section 40102(9).

15. Upon information and belief, Respondent OOCL (Europe) Limited is a company existing under the laws of the United Kingdom with its principal place of business located at OOCL House, Levington Park, Bridge Road, Levington Suffolk, IP10 0NE, United Kingdom, acting in the United States by and through its agent, OOCL (USA). Respondent OOCL (Europe) Limited is an "ocean common carrier" as that term is defined by 46 U.S.C. Section 40102(18) with FMC organization number 024786. Respondent OOCL (Europe) Limited also is a "controlled carrier" of the People's Republic of China as that term is defined by 46 U.S.C. Section 40102(9).

16. Upon information and belief, Respondents Orient Overseas Container Line Limited and OOCL (Europe) Limited are both wholly owned subsidiaries of Orient Overseas (International) Limited ("OOIL"), which itself is majority owned and controlled by fellow OCEAN Alliance member COSCO SHIPPING Lines Co., Ltd. ("COSCO"). COSCO is itself an "ocean common carrier" as that term is defined by 46 U.S.C. Section 40102(18) with FMC organization number 015614. COSCO also is a "controlled carrier" of the People's Republic of China as that term is defined by 46 U.S.C. Section 40102(9).

17. Upon information and belief, Respondents Orient Overseas Container Line Limited and OOCL (Europe) Limited acted jointly in the conduct alleged herein with respect to Complainant (and other shippers), and therefore are referred to herein collectively as "Respondent."

IV. JURISDICTION AND LEGAL AUTHORITY

18. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act and, in particular, 46 U.S.C. Sections 41301 through 41309.

19. The FMC has personal jurisdiction over Respondents Orient Overseas Container Line Limited and OOCL (Europe) Limited as "ocean common carriers", as that term is defined by 46 U.S.C. Section 40102(18), that have entered into a "service contract", as that term is defined by 46 U.S.C. Section 40102(21), with Complainant.

20. Respondent's practice alleged herein of systematically failing to meet its service commitments to Complainant and, upon information and belief, other shippers constitutes a failure by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant and, upon information and belief, other shippers, in violation of 46 U.S.C. Section 41102(c).

21. Respondent's practice of systematically failing to meet its service commitments to Complainant also constitutes the provision of service in the liner trade that was not in accordance with the rules and practices contained in its service contracts with Complainant, in violation of 46 U.S.C. Section 41104(a)(2).

22. Respondent's actions alleged herein further constitute unreasonable refusals to deal or negotiate with Complainant, in violation of 46 U.S.C. Section 41104(a)(10).

23. Respondent's assessment of the Charges or a substantial majority thereof and the alleged acts or omissions of Respondent that led to the assessment of such Charges constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant, in violation of 46 U.S.C. Section 41102(c) and the FMC's Interpretive Rule on Demurrage and Detention under the

Shipping Act, 85 Fed. Reg. 29,638 (May 18, 2020) (partially codified at 46 C.F.R. Section 545.5) (the "Interpretive Rule"), and in particular the Incentive Principle articulated in the Interpretive Rule.

24. Respondent's assessment of the Charges or a substantial majority thereof and the alleged acts or omissions of Respondent that led to the assessment of such Charges also constitute violations of 46 U.S.C. Section 41104, including in particular 46 U.S.C. Section 41104(a)(10)'s prohibition on unreasonable refusals to deal or negotiate.

25. Respondent's actions alleged herein coercing premium pricing from Complainant by inducing Complainant to enter into premium rate contracts while failing to meet its existing service commitments to Complainant constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant and, upon information and belief, other shippers, in violation of 46 U.S.C. Section 41102(c).

26. Respondent's actions alleged herein coercing premium pricing from Complainant by inducing Complainant to enter into premium rate contracts while failing to meet its existing service commitments to Complainant constitute the provision of service in the liner trade that was not in accordance with the rules and practices contained in its service contracts with Complainant, in violation of 46 U.S.C. Section 41104(a)(2).

27. Respondent's actions alleged herein coercing premium pricing from Complainant by inducing Complainant to enter into premium rate contracts while failing to meet its existing service commitments to Complainant constitute unreasonable refusals to deal or negotiate with Complainant, in violation of 46 U.S.C. Section 41104(a)(10).

V. THE MATTERS COMPLAINED OF (ALLEGED FACTS)

The Service Contracts

28. Complainant and Respondent entered into the following service contracts (collectively, the "Service Contracts"):

a. An Ocean Carrier Agreement, effective as of July 1, 2020 and covering the time period from July 1, 2020 through June 30, 2021 (the "2020 Service Contract"), which was amended on seventeen occasions (the "2020 Amendments").

b. An Ocean Carrier Agreement, effective as of May 1, 2021 and covering the time period from May 1, 2021 through April 30, 2022 (the "2021 Service Contract"), which was amended on sixteen occasions (the "2021 Amendments").

The July 2020-June 2021 Shipping Year

29. Complainant and Respondent agreed to the 2020 Service Contract, which governed the July 2020-June 2021 shipping year. The 2020 Service Contract sets its MQC and service commitment at 2,100 forty-foot equivalent container units ("FEUs"), corresponding to an average monthly allocation of 175 FEUs.

30. Instead of meeting its service commitment, Respondent undertook a systematic practice of failing to make space available under the 2020 Service Contract, resulting in mounting shortages.

31. All told, despite committing to provide 2,100 FEUs of space to Complainant during the 2020 Service Contract year, Respondent provided only approximately 1,475.85 FEUs of space to Complainant.

32. As a result of the 624.15-FEU shortfall, Complainant was forced to seek carriage from other sources at higher rates, or else forgo shipments entirely.

33. Moreover, much of the freight actually moved by Respondent was moved only after Complainant agreed to Respondent's demands for exorbitant premium pricing, far in excess of the rates Respondent committed to applying in the 2020 Service Contract.

34. Despite having made a service commitment to Complainant, Respondent immediately began flouting its service commitment and under-allocating space to Complainant. In an email dated August 11, 2020, OOCL employee Jim Mitchell wrote to a BBBY employee, stating: "Subsequent to our telecon earlier, we are providing BBB[Y] our just finalized space allocations for the month of September, which are in TEU terms, by origin and service loop. ***The allocations are short of the MQC/52***, but we will work to supplement these fixed allocations by way of the space swaps that can be done 3 weeks in advance."

35. OOCL admitted it was failing to meet its service commitment, and coerced Complainant to pay premium pricing and surcharges in order to secure contracted space. In an email dated August 19, 2020, OOCL employee Mitchell wrote to a BBBY employee, stating:

> "***We admit to being short against expectations***. . . . Our suggestions on how we can ensure that allocations are fully utilized are as follows: . . . . 3. ***Consider paying a PSS on all shipments to the West Coast.*** The demand for space is overwhelming and we have more than 40 BCOs in our region who are paying PSS. ***The PSS would put BBB[Y] in position to secure extra space on the high demand loops to the West Coast***. We cannot advise an exact number on a weekly basis, but BBB[Y] will be in a position to secure volume."

36. OOCL's failure to honor its service commitment continued as spot prices rose during the 2020 Service Contract year. In an email dated October 30, 2020, OOCL employee Pete Nash released OOCL's allocation to BBBY for the months of November and December 2020, in which OOCL was only willing to cover approximately two-thirds of BBBY's projection request for that period.

37. By the end of January 2021, Respondent was on track to fulfill only approximately 60 percent of its service commitment in the 2020 Service Contract. Despite being far short of its

service commitment, Respondent engaged in a practice of rejecting bookings from Complainant that exceeded the "short" allocations that Respondent unilaterally imposed on Complainant. For example, in an email dated February 23, 2021, OOCL employee Mitchell wrote to an employee of Yusen Logistics ("Yusen"), which provided logistics services to BBBY, stating: "The booking was declined for two reasons: 1. ***The allocation provided was 2 TEUs and the booking is for 5 TEUs***. Please downsize the booking to equal the allocation."

38. As a result of the exorbitant pricing Respondent imposed as a condition of meeting even a portion of its service commitment, Complainant was forced to pay Respondent at least $7,109,296.00 more than the freight rates specified in its 2020 Service Contract with Respondent.

39. In addition, as a result of the higher rates Complainant was forced to pay to purchase space on the open market to make up for Respondent's shortfalls in the 2020 Service Contract year, Complainant has been damaged by at least $2,193,438.07.

The May 2021-April 2022 Shipping Year

40. Complainant and Respondent entered into the 2021 Service Contract for the May 2021-April 2022 shipping year.

41. The 2021 Service Contract set its MQC and service commitment at 3,796 FEUs, corresponding to 316.33 FEUs per month.

42. For the months of October 2021 through March 2022, Respondent provided just 52.9 percent of contracted space to Complainant, if allocated monthly.

43. All told, despite agreeing to provide 3,796 FEUs of space to Complainant during the 2021 Service Contract year, Respondent provided only approximately 2,432.74 FEUs to Complainant.

44. Complainant repeatedly complained to Respondent regarding its failure to meet its service commitment and the fact that much of the cargo Respondent did agree to carry was carried at ultra-high premium rates, not the bargained-for rates in the Service Contracts. For example, in an email dated August 25, 2021, a BBBY employee wrote to OOCL employee Mitchell: "I am trying to figure out why you are trending below the weekly allocation knowing you have supported us recently although ***much of the support is coming from extra loaders and premium contract***."

45. Mitchell's response showed that OOCL's records reflected huge numbers of declined bookings for BBBY. In that period, it appears that OOCL confirmed only about 50% of BBBY's attempts to book freight under its service contract.

46. In an email dated August 20, 2021, OOCL employee Nash confirmed that OOCL itself determined the space allocations for its vessels, writing: "Just a short note to provide the OOCL space allocations for the September, WK # 35-39. These allocations are in TEU terms, by origin and service loop. Please note that ***it is the OOCL Corporate Sail Week that determines the space allocation for a vessel.***" Accordingly, OOCL has admitted that its own internal practices and procedures resulted in OOCL's failure to allocate sufficient space to Complainant to meet the service commitment.

47. As a result of the exorbitant pricing Respondent imposed as a condition of meeting even a portion of its service commitment, Complainant was forced to pay Respondent at least $6,623,453.00 more than the freight rates specified in its 2021 Service Contract with Respondent.

48. In addition, as a result of the higher rates Complainant was forced to pay to purchase space on the open market to make up for Respondent's shortfalls in the 2021 Service Contract year, Complainant has been damaged by at least $9,386,377.12.

Respondent's Breach of Its Service Commitments in Favor of Higher-Priced Freight

49. Respondent's failure to provide contracted space to Complainant was part of a practice by Respondent of preferring higher-priced freight and demanding extracontractual financial concessions before performing under its service contracts.

50. In both the 2020 and 2021 service contract years, OOCL imposed PSS and other surcharges, effectively conditioning its performance under the Service Contracts upon Complainant's agreement to pay rates well above the rate reflected in those Service Contracts.

51. "PSS" stands for "Peak Season Surcharge".

52. Pursuant to the 2020 Service Contract, PSS is already included in contract charges and rates. Section 9 "RATES AND CHARGES" of the 2020 Service Contract states: "As complete compensation for the services provided by carrier pursuant to this contract, carrier agrees to charge and shipper agrees to pay the rates and charges specified in Appendix A (attached hereto and made a part hereof). No modifications or adjustments to such rates and charges shall be valid unless contained in a written and duly executed amendment to this contract, which has been filed with the FMC."

53. In Appendix A of the 2020 Service Contract, Note S1 states: "***Rates are inclusive of*** the Carrier Security Charge (CSS), Destination Delivery Charge (DDC), Gulf of Aden Surcharge (GAS), High Security Seal Charge (HSS), Intermodal Door Delivery Surcharge (IDS), Panama Fresh Water Fee (PFW), Panama Canal Charge (PNC), ***Peak Season Surcharge (PSS)***, Security Surcharge at Destination (SED), Security Surcharge at Origin (SEO), Suez Canal Transit Charge (SUZ) and the Value Added Surcharge (VAS). Rates are not inclusive of all other surcharges, including those, if any, specified in the contract and those published in the Governing Tariff(s) at the time of shipment."

54. Accordingly, by demanding PSS surcharges in contravention of Respondent's commitment that such charges were already included in the negotiated rates, OOCL acted in violation of both its service commitment and the terms of its filed service contract.

55. Respondent brazenly demanded that Complainant pay PSS surcharges in order to have any reasonable chance of getting its freight carried by Respondent. For example, in an email dated December 22, 2020, OOCL employee Mitchell wrote to a BBBY employee: "***We suggest that Bed Bath & Beyond consider extending the PSS through February. This will not guarantee extra space***, but it will help to differentiate Bed Bath & Beyond for procurement of equipment for the space allocated."

56. Respondent's practice of holding Complainant's space hostage was clearly designed to, and did, coerce Complainant to agree to pay the surcharges Respondent demanded in order to obtain much-needed space under Respondent's service commitment. Indeed, in the December 22, 2020 exchange cited above, when Complainant agreed to the above-mentioned PSS extension, OOCL employee Mitchell replied ***within eight minutes***: "No worries! We are releasing the bookings."

57. Respondent's practice of denying space under its service commitment unless Complainant agreed to pay excessive PSS charges was part of a long-term, ongoing practice. For example, in an email dated January 5, 2021, OOCL employee Mitchell wrote to a BBBY employee to offer space at extremely high PSS rates. The email states: "We have a small regional allocation, so ***we are being selective on the customers we are approaching***. Should BBB[Y] have interest, we would file rates specific to this vessel sailing. . . . The requested PSS would be ***$3,000 per 40' GP / HQ over BBB[Y]'s current contract rates***, with other sizes per formula."

58. OOCL doubled down on its practice of holding its service commitment ransom to coerce PSS, demanding even higher PSS rates as the year progressed. In an email dated January 12, 2021, OOCL employee Mitchell wrote to a BBBY employee and stated:

> "We are reaching out to BBB[Y] as we have an extra loader scheduled in late January. . . . We have a small regional allocation, so we are being selective on the customers we are approaching. Should BBB[Y] have interest, we would file rates specific to this vessel sailing. ***We are offering BBB[Y] an opportunity to secure space, but no set allocation at this time. It will be first come, first serve in terms of space allocation, so need your feedback ASAP***. The requested PSS would be $3,000 per 40' GP / HQ over BBB[Y]'s current contract rates, with other sizes per formula."

59. Only three hours later, Jim Mitchell followed with a higher PSS - $4,000 per 40' GP / HQ over contract rates. Even with such a high PSS charge, however, the space allocation would still be at the mercy of OOCL, which "will revert ASAP on ***what we can provide for space***", as OOCL followed a practice of seeking the highest-priced and most profitable rates it could obtain instead of fulfilling its service commitment.

60. OOCL did not attempt to conceal that it was actively auctioning space to the highest bidder rather than meeting its service commitment. For example, [i]n an email dated January 21, 2021, OOCL employee Mitchell wrote once again:

> "We have a small regional allocation, so we are being selective on the customers we are approaching. Should BBB[Y] have interest, we would file rates specific to this vessel sailing. We are offering BBB[Y] an opportunity to secure space, but no set allocation at this time. It will be first come, first serve in terms of space allocation, so please provide your volume requests by origin ASAP. The requested PSS would be $X,000 per 40' GP / HQ over BBB[Y]'s current contract rates, with other sizes per formula."

61. Respondent's use of nearly identical "form" language in its communications, and Respondent's error in demanding "$X,000" in incremental PSS rather than filling in the number it was demanding, demonstrates that Respondent's conduct was not an isolated incident. Rather, it appears from Respondent's communications that Respondent was holding a broad auction for

space on a "first come, first serve" basis while admittedly flouting its service commitments, and that Respondent's conduct represented an extensive pattern and practice affecting other shippers as well as Complainant.

62. In a profit-maximizing frenzy, Respondent continued to run mid-service contract year auctions for space, offering space to the highest bidder. In an email dated January 22, 2021, OOCL employee Mitchell wrote:

> "***We are hearing that customers in other regions are offering $7,000 per container for space*** on this extra loader. The ***competition is stiff for the slots*** that we have available to roll out on this extra loader. . . . ***We are not looking to gouge***, but stating the reality of the current market environment for any extra space. Please advise if BBB[Y] would accept a $5,800 per 40' GP / HQ PSS on top of their primary contract pricing. This would position BBB[Y] at just around the $7000 mark. Please advise. Thank you!"

63. While Respondent claimed it was "***not looking to gouge***", the facts tell a different story. Again and again, Respondent had availability on vessels that it could have used to fulfill its service commitment to Complainant. Instead, Respondent opted to gouge Complainant and other shippers for every penny they could pay, causing immense financial damage to Complainant.

64. Upon information and belief, Respondent's actions in deliberately failing to honor its service commitments and instead auctioning space to the highest bidder also contributed to the inflationary spiral in container rates by artificially increasing demand, including by forcing shippers who had already negotiated service contracts into the open market to make up for shortfalls caused by Respondent's unfair and unreasonable practices.

65. Upon information and belief, Respondent had the ability to perform its obligations under the Service Contracts. Respondent is one of the world's largest integrated international container transportation and logistics companies. Respondent is also a member of a global shipping alliance with major container shipping companies. Respondent's cargo capacity is plainly large enough to accommodate the MQCs set forth in the Service Contracts. Moreover, Respondent made

clear in its communications that it was allocating space on a "first come, first serve" basis to the highest bidder, rather than honoring its service commitments.

66. Respondent explicitly threatened Complainant that if Complainant did not agree to pay extra Respondent would sell Complainant's contracted space on the open market. In an email dated July 28, 2020, OOCL employee Mitchell wrote to a BBBY employee: "As we discussed on Monday, the available space for this vessel is in high demand and ***we expect to easily fill it with Open market cargo*** and other BCOs. . . . ***It is not our intention to gouge***, but to position BBB[Y] to secure space on the vessel listed below. Please advise if BBB[Y] will move forward. Thank you!" Again, it is notable that even Respondent's employees themselves could not avoid explicitly referring to "***gouging***" when describing Respondent's pricing practices.

67. An email dated October 15, 2021, further confirms that Respondent forced Complainant to compete with spot market demand for space on vessels, even when Respondent was far behind on its service commitment. In that email, OOCL employee Mitchell wrote to Yusen: "Thank you for providing the feedback as to what BBB[Y] would like in terms of additional space on the PCC3-OEP-039E Buffer Space Vessel. ***Unfortunately, what extra space was available has been released to the open market***."

68. Respondent's conduct suggests a deliberate practice by Respondent of entering into service contracts based on quoted rates while expecting not to fulfill the service commitments at the contracted rates, but instead either imposing extracontractual payments such as PSS or failing to provide carriage to contracting parties in favor of higher-paying shippers, such as spot market purchasers and shippers who agree to pay PSS.

Respondent's Practice of Coercing Extracontractual Surcharges from Complainant Was Unfair and Unreasonable

69. On August 4, 2021, the FMC launched an inquiry into the timing and legal sufficiency of ocean carrier practices with respect to surcharges. FMC Chairman Daniel B. Maffei noted that cargo rates were already at "record highs", and that "[n]ow, we hear increasing reports of ocean carriers assessing new additional fees, such as 'congestion surcharges', with little notice or explanation."

70. Chairman Maffei observed, "It seems to me that [congestion-related] factors would already have been included into the record high rates charged by the carriers. As Chairman, I want to know the carriers' justifications for additional fees and I strongly support close scrutiny by the FMC's Bureau of Enforcement aimed at stopping any instance where these add-on fees may not fully comply with the law or regulation."

71. The FMC's investigation into carrier surcharges such as PSS suggests that some of Respondent's unjust and unreasonable practices may have already been adopted by other large carriers. The FMC demanded a response from Respondent and seven other major carriers, noting that "[e]ach ocean carrier [including Respondent] was identified as having recently implemented or announced congestion or related surcharges". The FMC's press release stated that the investigation into Respondent and its peers followed the FMC's receipt of communications "from multiple parties reporting that ocean carriers are improperly implementing surcharges."

72. As alleged herein, Respondent engaged in unjust and unreasonable practices with respect to the charging of Peak Season Surcharges in connection with the receipt, handling, storing, and delivery of the property of Complainant and, upon information and belief, other shippers.

The Demurrage and Detention Charges

73. For the period August 2021 through June 2022, Complainant paid, in connection with OOCL voyages, $1,505,373.02 in demurrage Charges and $4,864,425.00 in detention Charges to Respondent, totaling $6,369,798.02.

74. Upon information and belief, these detention and demurrage Charges assessed by Respondent and paid by Complainant were assessed during periods of time in which such Charges were not reasonable or fair because circumstances outside the control of Complainant and its agents and service providers, such as congestion at ports, policies of carriers such as Respondent, bad weather delays, labor disputes, and quarantine/social distancing in terminals, depots, yards, and for vessel crews, interfered with the normal handling of freight and containers.

75. These difficult circumstances were recognized by Respondent. In its 2021 Annual Report, Respondent stated:

> ***Over the course of 2021, we have seen port congestion, bad weather delays, labour disputes, shortages of truckers, the Suez Canal incident, insufficient rail capacity, empty box shortages in key locations, COVID-19 rules affecting the availability of labour in terminals, depots, yards, quarantining requirements for vessel crew causing operational delays, and a range of other difficulties.***

76. In Respondent's 2022 Interim Report, Respondent provided an even more detailed analysis regarding port congestion issues. It stated:

> At the time of writing, congestion in US ports continued to pose considerable challenges to the smooth running of the supply chain. ***There were many causes of this congestion, some specific to the ports but many being broader supply chain issues.*** . . . ***Yard density remained elevated, and shortages of trucks, chassis and truckers, not to mention onward warehouse space, provided further obstacles.*** In addition, the US West Coast ports were also contending with some uncertainties surrounding any potential impact from ongoing labour negotiations regarding terminals and railways, as well as trucking legislation in California. It has been widely reported that, in this current context, in order to mitigate their supply chain concentration risk, many cargo owners have increased their cargo flow from Asia to the US East Coast over the cargo flow to the US West Coast. OOCL has observed this phenomenon in its own bookings during the reporting period, especially

> recently. We therefore see increased congestion around some of the key hub ports of the US East Coast.

77. Complainant advised Respondent repeatedly that circumstances beyond Complainant's control were responsible for the Charges. For example, in October 2021, a BBBY employee sent a letter to OOCL Vice President Sales - Eastern Region Thomas Schmiemann demanding a refund of the charges and explaining that outside forces, not BBBY's fault, were responsible for the charges.

78. Schmiemann replied, admitting that OOCL had policies on the books that purportedly required OOCL to "apply mitigation to incurred DD charges where these charges were incurred due to situations that were outside the customers control", and that "***Where situations that impact free time are known in advance*** – i.e. port closures, Weather impacts etc., OOCL proactively extends the free time for the affected periods."

79. Respondent's own affiliates openly admitted that, at the time the Charges were imposed, conditions existed that should have triggered Respondent's obligation to mitigate the Charges. For example, in a report issued in September 2021, OOCL Logistics reported that "U.S. Ports [were] Plagued by Inefficiencies Leading to Congestion" due to a wide variety of reasons outside the control of Complainant. OOCL Logistics identified the causes of congestion as, among other things: "Shortage of skilled equipment operators on the docks, Shortage of labor (gangs) to work vessels, Long truck queues at terminal gates (prior to port entry), Limited appointment availability. . . . Rail carriers are unable to pick up containers off terminals timely, Transload and distribution facilities filled to near capacity with warehouse labor shortages." None of these conditions were the fault of Complainant.

80. In an email dated September 26, 2021, accompanying the above-mentioned report, OOCL Logistics employee Zora Jamil-Oden emphasized that "extraordinary global circumstances

(COVID-19, weather, ocean vessel accidents, labor shortages) has [sic] pushed infrastructure to its limits" and noted that there was "substantial strain being put on infrastructure."

81. Rather than apply its professed policy of mitigation or recognize the external factors responsible for the accumulation of the Charges, Respondent obdurately refused to mitigate the Charges.

82. One incident illustrates the unreasonability of Respondent's position concerning mitigation of the Charges. In November 2021, over 100 BBBY containers dwelled in the Long Beach, Los Angeles port complex. BBBY explained to OOCL employee Mitchell that no chassis was available to move those containers and asked for Respondent's help in finding chassis. Respondent failed to identify any available chassis. Complainant then proposed to use rail service to route containers to Seattle, but Respondent again rejected Complainant's proposal. When pressed, Respondent acknowledged that, because of extrinsic conditions, other shippers had had to use extraordinary (and incredibly costly) methods to evacuate containers, such as "Procure additional warehouse space, Lease land to drop empties, Switch from CY to IPI mode via COD process".

83. Complainant did take extraordinary measures to move containers. BBBY informed Respondent in an email dated November 30, 2021: "We're now using two off site yards in the LA/LGB area to store containers and have come to an agreement w/ our primary LA/LGB drayage carrier to begin ***pulling containers off dock in an aggressive manner*** over the next several days which should start to dramatically reduce the # of containers we have on dock."

84. Despite knowing the difficult situation that Complainant was facing and the extraordinary efforts that Complainant undertook to move the containers, Respondent flatly denied Complainant's request to waive those Charges, stating that "***Trade will not waive unless there is***

justification which the customer must present." Incredulously, a BBBY employee responded, "The justification is ***there are not enough chassis to swap***. We have now devised a new plan to pay for additional space and drop full containers in another yard just to get these containers off the dock so we can finally gain access to the merchandise we desperately need."

85. Respondent refused to back down, and ultimately held its service commitment hostage to Complainant's agreement to move the containers at enormous incremental expense. In December 2021, Respondent threatened to suspend all of Complainant's bookings if Complainant did not clear all of the containers. At a cost of approximately $3,818 per container, Complainant agreed to move the dwelling containers to Dallas.

86. Respondent took positions that exacerbated port congestion, injuring all shippers, in order to enrich itself further. Even after Complainant arranged for rail service at its own expense to transport the dwelling containers to Dallas, ***Respondent expressly refused to start the process of shipping the containers by rail to Dallas*** "until all the outstanding demurrage charges are cleared." Respondent appears to have adopted a practice of actively exacerbating the congestion crisis by refusing to assist Complainant, and presumably similarly situated shippers, in moving containers off port until the shipper had paid Respondent's unfair and unreasonable Charges.

87. As illustrated in the FMC's Interpretive Rule, "the purpose of demurrage and detention are to incentivize cargo movement," and therefore the FMC "will consider in the reasonableness analysis under section 41102(c) the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity" (internal quotation marks omitted). As alleged below, Respondent's assessment of the Charges or a substantial majority thereof and the acts or omissions of Respondent that led to the assessment of such Charges were incapable of incentivizing cargo movement and therefore unreasonable.

88. As Commissioner Rebecca F. Dye emphasized in her Final Report from the FMC's Fact Finding Investigation 29, "the Interpretive Rule on Detention and Demurrage promulgated by the Commission pursuant to Fact Finding 28 provides the shipping public with an ***enforceable principle*** that the Commission employs to assess the reasonableness of demurrage and detention practices and regulations under the Shipping Act of 1984, as amended."

89. The Charges did not serve, and could not have served, as a financial incentive to promote freight fluidity, but instead operated only as a punitive penalty on Complainant for circumstances over which Complainant and its agents and service providers had no control.

Respondent's Coercion of Premium Pricing from Complainant

90. Upon information and belief, Respondent also engaged in a practice of coercing premium pricing by way of inducing Complainant entering into premium rate contracts as a precondition to carry a fraction of existing service commitments.

91. Given the strikingly high prices in the premium rate contracts, Complainant paid a premium of $12,648,285.00 to Respondent for cargo shipped during the periods of the Service Contracts, which could have been avoided had Respondent fulfilled its service commitments to Complainant in connection with the Service Contracts.

92. Starting in or around January 2021, Respondent coerced Complainant and, upon information and belief, other shippers to enter into premium rate contracts even though Respondent had already failed to meet its service commitments under the Service Contracts, and conditioned Complainant's receipt of the space for which it had already contracted in the Service Contracts on agreeing to huge premium price increases. Respondent expressly instructed Complainant that it would have to agree to premium rates in order to receive certain space allocations.

93. In an email dated January 6, 2021, OOCL employee Mitchell wrote to BBBY: "***Based on the continued strong demand from our BCO customers*** for space / equipment above their standard monthly allocation, we have developed an option to address the demand. ***Our idea is to offer select customers the option to sign a second contract.*** How it would work: 1. MQC = 1 TEU. 2. Set rates for WC/ EC = $6500 to EC ports and $5000 to WC ports. 3. Any demand over and above BBB[Y]'s standard monthly allocation, the space request would be reviewed. If confirmed/released, the premium contract rates would be assessed. 4. OOCL at origin would manually apply the premium contract pricing. . . . Please advise if Bed Bath & Beyond has any interest in ***this pilot program*** which is scheduled to begin in February. Thank you!"

94. Upon information and belief, Respondent followed a common practice—or, in Respondent's words, a "program"—that was imposed on other shippers, as well. Indeed, Respondent decided to extend its so-called "pilot" program extensively. Respondent pressed Complainant to extend premium rate contracts several times, covering the time periods of both Service Contracts.

95. When replying to BBBY's inquiry about the time period of the premium rate contract, OOCL employee Mitchell stated on January 8, 2021, "[I]f there is customer acceptance, we will continue the program beyond February."

96. The premium rate contracts were later extended to March 2021. In an email dated January 28, 2021, OOCL employee Mitchell wrote to BBBY: "In follow up to my VM message a few minutes ago, ***we will be extending space allocation under premium contracts for the month of March***. . . . [W]e understand that the WC is in very high demand, even under premium contract pricing. So it is our recommendation to elevate the WC rate . . . . ***We need to know if BBB[Y] wishes to renew the premium contract*** for March." On January 29, 2021, Mitchell made it clear

that space would be provided under the premium rate contract for March. His email to BBBY stated: "For the month of March, ***should BBB[Y] accept the proposed rates for extending the secondary contract, we will be able to provide additional space over the monthly CSAL allocation***."

97. Such premium rate contracts were also imposed on other shippers, as part of a broadly applicable unfair and unreasonable practice. In an email dated January 29, 2021, OOCL employee Mitchell wrote to BBBY: "Earlier this month, we were not sure if we would extend ***the program*** beyond the end of February. Just left you a VM message to confirm same. Meantime, we strongly encourage BBB[Y] to consider the WC rates jumping to $5300 on March 1st ***as there are BCOs who are paying $6000 - $7000 for WC slots on their premium contracts***."

98. Respondent left no room for doubt, overtly threatening that Complainant would be shut out of its contracted space if it failed to agree to Respondent's exorbitant premium pricing demands. On January 29, 2021, OOCL employee Mitchell stated: "With regards to the WC, at $5300, BBB[Y] would be right in line with ***the average being paid by BCOs under the premium contract***. ***We understand that there are limits that can be paid, even in this environment. However, without at least going to the average being paid, it will minimize the chances that BBB[Y] will secure a WC allocation.*** Wish we could be more exact on what we can provide, but ***this is a new program being rolled out to BCOs.***"

99. Complainant entered into the premium rate contract with Respondent.

100. The premium rate contract originally covered shipments for the time period of January 20 through April 30, 2021, a time period for which Respondent's space commitment to Complainant had already been contracted in 2020 Service Contract.

101. Respondent continued its program throughout the 2021 Service Contract year, again requiring premium rate contracts far exceeding the rates set forth in the 2021 Service Contract.

102. Immediately after the expiration of the 2020 Service Contract, Respondent was already demanding that Complainant agree to premium rates to book cargo during the 2021 Service Contract year.

103. It appears that the premium price demanded by Respondent was designed to allow Respondent to obtain open market-rate prices from Complainant instead of the price agreed to in connection with Respondent's service commitment.

104. For example, in an email dated June 29, 2021, OOCL employee Mitchell wrote to BBBY, stating: "We were just informed of a WK # 29 extra loader, the PCC3-OLU-088e. The sailing details are outlined below. Space is only available ex either Yantian or Shanghai to LALGB (YY). ***Cargo will need to be booked using BBB[Y]'s premiums contract***". Later, in an email dated July 1, 2021, Mitchell explained: "***As we are basing the premium contract rates on our open market guidelines***, ***we will be adjusting the premium contract pricing whenever the open market guideline levels are changed***."

105. On many occasions, Respondent required Complainant to book space under the premium rate contracts, instead of fulfilling its service commitment under the service contracts. In an email dated July 15, 2021, OOCL employee Nash wrote to a BBBY employee: "***Please be sure to place bkgs using BBB[Y] Premium SC . . . .*** No guarantee, but wanted to extend to BBB[Y]." In an email dated July 23, 2021, OOCL employee Mitchell replied to BBBY's inquiry regarding the rates of an extra loader that OOCL provided, and the email stated: "[I]f space were secured, ***the premium contract rates would have applied***."

106. Respondent's program of failing to honor its service commitments, and instead demanding that Complainant agree to premium pricing arrangements to move even a fraction of its contracted cargo, was unfair and unreasonable, and is the very definition of price gouging—the term that even Respondent's own employees could not avoid when discussing Respondent's policies.

Respondent's Unreasonable Practices of Failing To Accurately Track Booking Attempts and Awarding Complainant's Space to Other Shippers

107. Respondent's conduct alleged herein was exacerbated by Respondent's use of systems that failed to accurately track instances in which Respondent declined Complainant's attempts to book space, and awarded the space to other shippers.

108. After Complainant identified inaccuracies in Respondent's tracking of Complainant's bookings, Respondent admitted it was at fault. In an email dated September 24, 2021, OOCL employee Mitchell wrote to BBBY:

> "In speaking with our SLC Space Management colleague, they shared that ***there are issues with bookings being ['Declined'] at origin and not having visibility in our system***. External e-bookings go into a que for review by customer service. ***Those bookings can be declined, for different reasons, and will not become completed bookings, even though there is a booking number. This incomplete booking will not show up in any data base, so a program like the one we showed will not tally the booking against the targeted vessel voyage. Not an ideal situation.*** However, we are working with our Traffic Control teams to change the process so that a true picture is provided."

109. When BBBY asked what happened when OOCL declined a booking, OOCL employee Mitchell admitted: "***Declined bookings could go to another shipper***." This shadow booking problem was escalated to OOCL's Vice President Sales - Eastern Region Thomas Schmiemann, who admitted in an email dated September 27, 2021 that "***bookings could have been declined without [ever] being registered in our system***. So, Yus[e]n could be trying to make the booking but we do not have transparency to their request. ***Therefore, the data Jim presented does***

not tell the entire story. ***Yus[e]n could be trying to make the bookings but since our system is not capturing the data it does not show up in our records***."

110. Respondent's failure to maintain accurate systems for tracking its denial of booking attempts by Complainant and its agents, and Respondent's practice of giving away space to other shippers when Respondent was already failing to meet its service commitment to Complainant, constitute unjust and unreasonable practices.

Respondent's Refusals to Deal or Negotiate

111. Respondent's conduct with respect to Complainant as alleged herein constitutes unlawful refusals to deal or negotiate.

112. To ensure space would be available, Complainant provided detailed forecasts breaking down its anticipated needs under the Service Contracts. However, when Complainant or its agents actually sought to book the space, Complainant was unable to secure all of the space Respondent had committed to provide.

113. Respondent itself admitted such shortfalls in an email discussed above dated August 11, 2020. In the email, OOCL employee Mitchell wrote to BBBY: "Subsequent to our telecon earlier, we are providing BBB[Y] our just finalized space allocations for the month of September, which are in TEU terms, by origin and service loop. ***The allocations are short of the MQC/52***, but we will work to supplement these fixed allocations by way of the space swaps that can be done 3 weeks in advance."

114. Complainant made repeated requests for the space to which Respondent had committed in the Service Contracts, but to no avail. For example, in an email dated August 27, 2020, BBBY wrote to OOCL employees Jim Mitchell and Thomas Schmiemann: "you guys know what a difficult situation we're currently in re space ***so pls do whatever you can to satisfy our***

below need for just 1 more container." In an email dated November 13, 2020, a BBBY employee emphasized: "pls do whatever you can to better support our account. ***We need desperately need this add'l space.*** Thanks".

115. Moreover, Respondent tied agreeing to pay PSS on the 2021 Service Contract not only to getting space on that contract year, but also to the contract for the next contract year, essentially signaling a refusal to deal if Complainant did not agree to PSS. In an email dated October 13, 2021, OOCL employee Mitchell wrote to BBBY: "***We are now asking Bed Bath & Beyond to consider paying a PSS through the end of January, 2022***." Mitchell further explained that: "***This is also about positioning for the 2022 contract***" and "The proposed PSS would be across all lanes as space is tight all around."

116. In addition, as detailed above, Respondent refused to deal with Complainant when Complainant asked Respondent to assist in transshipping containers from congested railyards until Complainant had paid the unjust and unreasonable Charges.

Complainant's Injuries

117. As alleged herein, Respondent's conduct injured Complainant in several ways, including by creating delays in moving freight, allocating scarce resources to ocean freight costs, creating uncertainty and scarcity within the business, and interfering with Complainant's ability to operate, and resulting in injuries, including lost profits, in an amount to be determined at trial.

118. Respondent's shortfalls in honoring its service commitments forced Complainant to secure space on the open market at high prices, resulting in damages of $2,193,438.07 under the 2020 Service Contract and $9,386,377.12 under the 2021 Service Contract.

119. Respondent's imposition of PSS, other surcharges and demand for premium prices caused Complainant to overpay for the space it did receive from Respondent, resulting in damages

of $7,109,296.00 under the 2020 Service Contract and $6,623,453.00 under the 2021 Service Contract.

120. Respondent's wrongful imposition of the Charges directly injured Complainant, in the amount of $1,505,373.02 in improper demurrage charges and $4,864,425.00 in improper detention charges.

121. As the FMC's Chief Judge has already found, abuses like those alleged herein are matters of "***national importance***." Abusive, unjust, and unreasonable practices by major international ocean carriers, such as the conduct alleged herein, are likely to wield outsized influence over general practices in the industry. If not corrected, Respondent's unlawful practices may become industry standard, sending a message to all global container lines that it is acceptable to ignore service contracts in favor of brazen price gouging and profiteering, coerce surcharges and premium pricing from customers as a precondition to carrying previously contracted cargo, and impose punitive detention and demurrage charges upon shippers because of delays and conditions outside of shippers' control.

VI. CAUSES OF ACTION

COUNT I: VIOLATION OF 46 U.S.C. § 41102(c)

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

123. Respondent's practices alleged herein of systematically failing to meet its service commitments to Complainant and, upon information and belief, other shippers, seeking to coerce Complainant and, upon information and belief, other shippers, to pay PSS and enter into premium contracts in order to obtain space, constituted failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the

property of Complainant and, upon information and belief, other shippers, in violation of 46 U.S.C. Section 41102(c).

COUNT II: VIOLATION OF 46 U.S.C. § 41102(c) & 46 C.F.R § 545.5

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

125. Respondent's assessment of the Charges, and the alleged acts or omissions of Respondent that led to the assessment of such Charges, constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant, in violation of 46 U.S.C. Section 41102(c), 46 C.F.R. Section 545.5, and the FMC's Interpretive Rule.

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

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

127. Respondent's practices alleged herein of systematically failing to meet its service commitments to Complainant and seeking to coerce Complainant to pay PSS and enter into premium rate contracts constituted provision of service in the liner trade that was not in accordance with the rules and practices contained in Respondent's Service Contracts with Complainant, for which no exception or exemption applies and that have not been suspended or prohibited by the FMC, in violation of 46 U.S.C. Section 41104(a)(2).

COUNT IV: VIOLATION OF 46 U.S.C. § 41104(a)(10)

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

129. Respondent's practices alleged herein of systematically failing to meet its service commitments to Complainant, failing to provide contracted space to Complainant without PSS or premium rates, and the acts or omissions of Respondent that led to the assessment of the Charges, constituted unreasonable refusals to deal or negotiate with Complainant in violation of 46 U.S.C. Section 41104(a)(10).

VII. CAUSATION

130. Respondent's practice of systematically failing to meet its service commitments to Complainant has directly and proximately injured Complainant by forcing Complainant to make alternate transportation arrangements for cargo that was supposed to be shipped by Respondent pursuant to the terms of the Service Contracts at substantially higher prices or forgo shipping such cargo altogether.

131. Respondent's assessment of the Charges has directly and proximately injured Complainant by forcing Complainant to pay unjust and unreasonable Charges.

132. Respondent's actions in coercing Complainant to pay PSS and enter into premium rate contracts as a precondition to procure space for which Complainant had already contracted have directly and proximately injured Complainant by forcing Complainant to pay a premium for cargo that was supposed to be shipped by Respondent pursuant to the terms of the Service Contracts or forgo shipping such cargo altogether.

133. Respondent's conduct has caused Complainant to incur other injuries, including delays, reduced inventory, unnecessary expenses and lost profits, as well as attorneys' fees and expenses relating to litigation.

VIII. REPARATIONS SOUGHT/COMPLAINANT'S DAMAGES

134. Respondent's alleged misconduct has injured Complainant in several ways.

135. During the term of the 2020 Service Contract, Respondent's alleged misconduct caused Respondent to carry only 1,475.85 of the 2,100 contracted FEUs, forcing Complainant to secure 624.15 FEUs on the relevant lanes via alternative means. In total, Respondent paid at least $2,193,438.07 more for carriage of those FEUs than it would have pursuant to the 2020 Service Contract.

136. During the term of the 2020 Service Contract, as a result of PSS, premium pricing and other charges, Complainant was forced to pay Respondent an excess cost of approximately $7,109,296.00, over and above the rates that Complainant would have had to pay had Respondent charged the rates set forth in the 2020 Service Contract.

137. During the term of the 2021 Service Contract, Respondent's alleged misconduct caused Respondent to carry only 2,432.74 FEUs of the 3,796 contracted FEUs, forcing Complainant to secure at least 1,363.26 FEUs on the relevant lanes via alternative means. In total, Respondent paid at least $9,386,377.12 more for carriage of those FEUs than it would have pursuant to the 2021 Service Contract.

138. During the term of the 2021 Service Contract, as a result of PSS, premium pricing and other charges, Complainant was forced to pay Respondent an excess cost of approximately $6,623,453.00, over and above the rates that Complainant would have had to pay had Respondent charged the rates set forth in the 2021 Service Contract.

139. Respondent's assessment of the Charges has actually injured Complainant in the amount of $1,505,373.02 in demurrage Charges and $4,864,425.00 in detention Charges paid. Complainant believes that a substantial majority of the Charges, in an amount to be determined by the FMC in this proceeding, were unjustly and unreasonably assessed, and requests reparations for all such Charges that the FMC determines did not comply with 46 U.S.C. Section 41102(c) or

41104 or determines to be unreasonable under 46 C.F.R. Section 545.5 and the Incentive Principle of the Interpretive Rule.

140. The injuries alleged in this Complaint amount to at least $31,682,362.21, in addition to other injuries, including lost profits, to be calculated at trial.

141. In addition to the direct costs of replacing Respondent's service commitment shortfalls at higher rates, Respondent's misconduct has caused Complainant to incur other injuries, including delays, reduced inventory, unnecessary expenses and lost profits, as well as attorneys' fees and expenses relating to litigation, in an amount to be determined at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the FMC require Respondent to answer this Complaint pursuant to 46 U.S.C. Section 41301(b), and prays for relief from the FMC as follows:

1. An investigation by the FMC pursuant to 46 U.S.C. Section 41301(c) of the allegations in this Complaint and the Charges' compliance with 46 U.S.C. Sections 41102(c) and 41104 and reasonableness pursuant to 46 C.F.R. Section 545.5 and the Incentive Principle of the Interpretive Rule;

2. An Order, after due investigation pursuant to 46 U.S.C. Section 41301(c), finding that Respondent has violated 46 U.S.C. Section 41102(c) by systematically failing to meet its service commitments to Complainant under Service Contracts, by assessing unjust and unreasonable detention and demurrage Charges in connection with its receipt, handling, storage, and delivery of the property of Complainant, and by coercing Complainant to pay PSS and enter into premium rate contracts, that Respondent has violated 46 U.S.C. Section 41104(a)(2) by providing service not in accordance with the rules and practices contained in Respondent's Service

Contracts with Complainant, for which no exception or exemption applies and that have not been suspended or prohibited by the FMC, and that Respondent has violated 46 U.S.C. Section 41104(a)(10) by systematically failing to meet its service commitments to Complainant under Service Contracts, by assessing unjust and unreasonable detention and demurrage Charges in connection with its receipt, handling, storage, and delivery of the property of Complainant, and by coercing Complainant to pay PSS and enter into premium rate contracts;

3. An Order compelling Respondent to cease and desist from violation of the Shipping Act, and to put in place lawful and reasonable practices to preclude Respondent from systematically failing to meet its service commitments to Complainant and other shippers under its service contracts, assessing unjust and unreasonable detention and demurrage charges in connection with its receipt, handling, storage, and delivery of the property of Complainant and other shippers, or coercing Complainant or other shippers to pay PSS or enter into premium rate contracts to secure already contracted space;

4. An Order requiring Respondent to pay Complainant reparations for the unlawful conduct alleged herein in an amount to be proven pursuant to 46 U.S.C. Section 41305, with interest pursuant to 46 U.S.C. Section 41305(a), Complainant's reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. Section 41305(e), and any other sum the FMC determines to be proper; and

5. Such other and further orders or relief as the FMC deems just and proper.

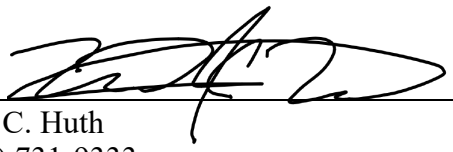
X. REQUEST FOR ORAL HEARING

Complainant requests an oral hearing in Washington, DC.

Dated: April 21, 2023

Respectfully submitted,

HUTH REYNOLDS LLP



Karl C. Huth
(212) 731-9333
huth@huthreynolds.com
Matthew J. Reynolds
(646) 872-9353
reynolds@huthreynolds.com

Counsel for Complainant Bed Bath & Beyond Inc.

VERIFICATION

I, Ian Pinchuk, am Senior Director, International Supply Chain, of Complainant Bed Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey, 07083, Tel. 908-613-5040, Email ian.pinchuk@bedbath.com. I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, including information received from others, that the facts stated therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 21, 2023.