

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 23-05

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RAHAL INTERNATIONAL, INC.,  
Complainant,

v.

HAPAG-LLOYD AG,  
HAPAG-LLOYD (AMERICA) LLC,  
HAPAG-LLOYD USA, LLC  
Respondents.

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**VERIFIED COMPLAINT**

1. Complainant Rahal International, Inc. (“Rahal”), by its undersigned attorneys, respectfully files this Verified Complaint against Respondents Hapag-Lloyd AG, Hapag-Lloyd (America), LLC, and Hapag-Lloyd USA, LLC (collectively “Hapag”) based upon the Respondents’ violations of the Shipping Act of 1984, Pub. L. No. 98-237, 98 Stat. 67 (1984), as amended by the Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, 136 Stat. 1272, 46 U.S.C.S. §§ 40101 to 46108 (LexisNexis 2023) (collectively the “Shipping Act”), as alleged herein.

**I**  
**COMPLAINANT**

2. Complainant Rahal International, Inc., an independent importer and broker of high-quality fruit juices, concentrates, and purees in the United States, is a business corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located at 915 Harger Road, Oak Brook, Illinois 60523. Complainant Rahal maintains an email address of info@rahalintl.com.

## **II** **RESPONDENTS**

3. Respondent Hapag-Lloyd AG, a global ocean common carrier based in Germany, is a business corporation with its principal place of business located at Ballindamm 25, D-20095 Hamburg, Germany. Upon information and belief, Hapag-Lloyd AG maintains an email address of [presse@hlag.com](mailto:presse@hlag.com).

4. Respondent Hapag-Lloyd AG is and was at all times pertinent to this Complaint an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(18), subject to regulation by the Federal Maritime Commission.

5. Respondent Hapag-Lloyd AG is and was at all times pertinent to this Complaint a signatory to a Consolidated Chassis Management Pool Agreement.

6. Respondent Hapag-Lloyd AG is and was at all times pertinent to this Complaint a signatory to a Consolidated Chassis Management Pool Agreement applicable to the Port of New York and New Jersey.

7. At all times pertinent to this Complaint, Respondent Hapag-Lloyd AG agreed or contracted with, or otherwise engaged, one or more marine terminal operators to provide terminal facilities for property transported to the Port of New York and New Jersey. Such marine terminal operators are agents of Respondent Hapag-Lloyd AG.

8. Respondent Hapag-Lloyd (America), LLC is a United States limited liability company and subsidiary of Hapag-Lloyd AG, with its principal office located at 3 Ravinia Drive NE, Suite 1600, Atlanta, Georgia 30346. Upon information and belief, Respondent Hapag-Lloyd (America), LLC maintains an email address, but which is unknown to Complainant.

9. Respondent Hapag-Lloyd (America), LLC is and was at all times pertinent to this Complaint an agent of Hapag-Lloyd AG.

10. Respondent Hapag-Lloyd (America), LLC is and was at all times pertinent to this Complaint a designated agent of Hapag-Lloyd AG in the United States and subject to regulation by the Federal Maritime Commission.

11. At all times pertinent to this Complaint, Respondent Hapag-Lloyd (America), LLC agreed or contracted with, or otherwise engaged, one or more marine terminal operators to provide terminal facilities for property transported to the Port of New York and New Jersey. Such marine terminal operators are agents of Respondent Hapag-Lloyd (America), LLC.

12. At all times pertinent to this Complaint, Respondent Hapag-Lloyd (America), LLC agreed or contracted with, or otherwise engaged, on behalf of Hapag-Lloyd AG, one or more marine terminal operators to provide terminal facilities for property Hapag transported to the Port of New York and New Jersey. Such marine terminal operators are agents of Hapag-Lloyd AG.

13. Respondent Hapag-Lloyd USA, LLC is a United States limited liability company and subsidiary of Hapag-Lloyd AG, with its principal office located at 399 Hoes Lane #101, Piscataway, New Jersey 08854. Upon information and belief, Respondent Hapag-Lloyd USA, LLC maintains an email address, but which is unknown to Complainant.

14. Respondent Hapag-Lloyd USA, LLC is and was at all times pertinent to this Complaint an agent of Hapag-Lloyd AG.

15. Respondent Hapag-Lloyd USA, LLC is and was at all times pertinent to this Complaint a designated agent of Hapag-Lloyd AG in the United States and subject to regulation by the Federal Maritime Commission.

16. Respondent Hapag-Lloyd USA, LLC is and was at all times pertinent to this Complaint an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(18), subject to regulation by the Federal Maritime Commission.

17. Respondent Hapag-Lloyd USA, LLC is and was at all times pertinent to this Complaint a signatory to a Consolidated Chassis Management Pool Agreement.

18. Respondent Hapag-Lloyd USA, LLC is and was at all times pertinent to this Complaint a signatory to a Consolidated Chassis Management Pool Agreement applicable to the Port of New York and New Jersey.

19. At all times pertinent to this Complaint, Respondent Hapag-Lloyd USA, LLC agreed or contracted with, or otherwise engaged, one or more marine terminal operators to provide terminal facilities for property transported to the Port of New York and New Jersey. Such marine terminal operators are agents of Respondent Hapag-Lloyd USA, LLC.

20. At all times pertinent to this Complaint, Respondent Hapag-Lloyd USA, LLC agreed or contracted with, or otherwise engaged, on behalf of Hapag-Lloyd AG, one or more marine terminal operators to provide terminal facilities for property Hapag transported to the Port of New York and New Jersey. Such marine terminal operators are agents of Hapag-Lloyd AG.

**III**  
**JURISDICTION & LEGAL AUTHORITY**

21. Rahal commences this action and files this Complaint pursuant to the Shipping Act, including 46 U.S.C.S. §§ 41301(a).

22. The Federal Maritime Commission has subject-matter jurisdiction over this dispute pursuant to the Shipping Act, 46 U.S.C.S. § 40101, *et seq.*

23. The Federal Maritime Commission has jurisdiction over Hapag-Lloyd AG as a “common carrier” within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(7), and “ocean common carrier” within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(18).

24. The Federal Maritime Commission has jurisdiction over Hapag-Lloyd USA, LLC as a “common carrier” within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(7), and “ocean common carrier” within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(18).

25. The claims herein against Hapag-Lloyd (America), LLC and Hapag-Lloyd USA, LLC arise out of a common nucleus of operative facts with those against Hapag-Lloyd AG, over which the Federal Maritime Commission has jurisdiction as a common carrier and ocean common carrier.

26. Hapag’s actions alleged herein constitute failures by Hapag “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property” of Rahal, which proximately caused Rahal’s loss, in violation of the Shipping Act, including 46 U.S.C.S. § 41102(c).

27. As alleged herein and in violation of the Shipping Act, including 46 U.S.C.S. §§ 41102(c) and 41104(a)(14), Hapag failed to extend free time for Rahal’s

property transported by Hapag to the Port of New York and New Jersey for the duration of Hapag's disability and/or inability to tender Rahal's cargo for delivery.

28. As alleged herein and in violation of the Shipping Act, including 46 U.S.C.S. §§ 41102(c) and 41104(a)(14), Hapag assessed excessive charges against Rahal for Rahal's property transported by Hapag to the Port of New York and New Jersey during the period of time Rahal was unable to remove its cargo for delivery from the port due to factors beyond Rahal's control.

29. As alleged herein and in violation of the Shipping Act, including 46 U.S.C.S. § 41104(a)(14), Hapag assessed Rahal, for Rahal's property transported by Hapag to the Port of New York and New Jersey, for one or more charges that were inconsistent and/or that did not comply with all applicable provisions and regulations, including without limitation section 41102(c) of the Shipping Act and part 545 of title 46, Code of Federal Regulations (or successor regulations).

30. As alleged herein and in violation of the Shipping Act, including 46 U.S.C.S. § 41104(a)(15), Hapag invoiced Rahal (directly or indirectly through beneficial cargo interests or agents) for demurrage or detention charges that failed to comply with the Shipping Act, including 46 U.S.C.S. § 41104(d).

31. As alleged herein and in violation of the Shipping Act, including 46 U.S.C.S. § 41104(a)(15), Hapag invoiced Rahal (directly or indirectly through beneficial cargo interests or agents) for demurrage or detention charges that failed to comply with all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations), and applicable provisions and regulations, including the principles of the Federal Maritime Commission's final rule published on May 18, 2020, entitled

“Interpretive Rule on Demurrage and Detention Under the Shipping Act” (or successor rule).

**IV (A)**  
**FACTUAL STATEMENT**

32. At all times pertinent to this Complaint, Hapag accepted Rahal’s property to be transported to the Port of New York and New Jersey by ocean common carriage.

33. At all times pertinent to this Complaint, Hapag engaged in receiving, handling, storing, and/or delivering Rahal’s property into the Port of New York and New Jersey.

**Hapag’s Recurring Failure To Provide Adequate Facilities  
For Empty Containers At The Port Of New York And New Jersey**

34. At least one year prior to the events complained of herein, Hapag had failed to provide adequate facilities at and about the Port of New York and New Jersey for its customers to return empty containers (whether such customers were direct customers or beneficial cargo interests of property Hapag had carried by ocean transport).

35. By March 2021, if not earlier, Hapag had failed to provide facilities at and about the Port of New York and New Jersey to meet the capacity of the empty containers Hapag’s customers sought to return to the port.

36. As a result of Hapag’s failure to establish reasonable practices regarding the return of empty containers, Hapag had a backlog of empty containers building up in and about the Port of New York and New Jersey.

37. By no later than April 2021, if not earlier, the inadequacy of Hapag’s practices and facilities (or the facilities Hapag had engaged) to handle Hapag’s empty containers at the Port of New York and New Jersey was known to Hapag.

38. Notwithstanding Hapag’s knowledge that it lacked sufficient practices and facilities to handle Hapag’s empty containers at the Port of New York and New Jersey, it continued to accept for receipt, handling, storage, and/or delivery inbound shipments of property into the port.

39. As a result of Hapag’s failure to provide adequate practices and facilities to handle and store Hapag’s empty containers at the Port of New York and New Jersey, it sent at least eight vessels between March and May, 2021 to the port to collect, remove, and “sweep up” empty containers.

40. As a result of Hapag’s failure to provide adequate practices and facilities to handle and store Hapag’s empty containers at the Port of New York and New Jersey, it acquired, leased, and/or otherwise obtained the use of additional facilities for handling and storing Hapag’s empty containers.

**Hapag Financial Reaped A Windfall From The Logistical Paralysis It Created By Its Recurring Failure To Establish Reasonable Practices For Empty Containers**

41. Prior to April 2022, Rahal purchased various property, mostly consisting of fruit products, from overseas suppliers for delivery into the United States.

42. Rahal and/or its overseas suppliers agreed with and for Hapag to carry the fruit products in containers to be received, handled, stored, and/or delivered into and/or through the Port of New York and New Jersey.



43. In due course, Rahal received the containers carrying the fruit products, unloaded the containers, and sought to return the empty containers to Hapag at the Port of New York and New Jersey.

44. By no later than April 2022, and as in the year prior, Hapag had again failed to establish reasonable practices for the return of empty containers, and to provide adequate facilities at and about the Port of New York and New Jersey for its customers, including Rahal, to return empty containers.

45. Despite Hapag's knowledge that it had failed to establish reasonable practices regarding the return of empty containers and again failed to provide adequate facilities at and about the Port of New York and New Jersey for its customers to return such empty containers, Hapag continued to accept Rahal's goods for ocean common carriage and for receipt, handling, storage, and/or delivery into and/or through the Port of New York and New Jersey.

46. Hapag accepted Rahal's containerized goods for receipt, handling, storage, and/or delivery into and/or through the Port of New York and New Jersey at excessive ocean freight fees, which generated unprecedented profits for Hapag notwithstanding Hapag's knowledge that it lacked reasonable practices and the capacity and/or facilities to handle and store the return of such containers once emptied.

47. Despite Hapag's knowledge that it had again failed to establish reasonable practices and provide adequate facilities at and about the Port of New York and New Jersey for its customers to return empty containers, Hapag failed to advise Rahal of the backlog of empty containers again building up in and about the Port of New York and New Jersey in and around April 2022.

48. Despite Hapag's knowledge that it had again failed to establish reasonable practices and provide adequate facilities at and about the Port of New York and New Jersey for its customers to return empty containers, Hapag failed to offer to deviate or otherwise change the destination of Rahal's goods that Hapag was carrying to the Port of New York and New Jersey.

49. Despite Hapag's knowledge that it had again failed to establish reasonable practices and provide adequate facilities at and about the Port of New York and New Jersey for its customers to return empty containers, Hapag failed to provide reasonable free time to Rahal for containers Hapag transported into the Port of New York and New Jersey during the period of time whilst Hapag had failed to clear its container backlog.

50. Hapag failed to provide or send adequate, frequent, and/or sufficient vessels between April and June, 2022 to the Port of New York and New Jersey to collect, remove, and "sweep up" empty containers.

51. Hapag failed to provide adequate facilities to handle and store its empty containers at the Port of New York and New Jersey, by acquiring, leasing, or otherwise obtaining the use of additional facilities between April and June 2022.

52. As a result of the foregoing, Hapag refused to accept empty containers that Rahal (through its drayage providers) attempted to return to Hapag's facilities.

53. As a further result of the foregoing, Rahal's drayage providers were unable to utilize their chassis while such chassis were burdened with empty Hapag containers and, therefore, the drayage providers were unable to retrieve newly arrived loaded containers with Rahal's goods that Hapag had carried.

54. Rahal's drayage providers were forced to utilize their yard and/or storage space for empty Hapag containers while Hapag lacked reasonable practices, and/or the capacity and/or facilities, or was unwilling to handle and store the return of its empty containers thereby precluding Rahal's drayage providers from retrieving newly arrived loaded containers that Hapag had carried.

55. Hapag made promises to Rahal's drayage providers for an appointment-based practice for returning empty Hapag containers to Hapag's facilities at the Port of New York and New Jersey that was impracticable, inaccurate, misleading, and/or unusable.

56. Hapag breached promises it made to Rahal's drayage providers for appointments to return empty Hapag containers to Hapag's facilities at the Port of New York and New Jersey.

57. Hapag's appointment-based practice for returning empty containers was unreasonable because, *inter alia*, on some days there were no return locations offered by Hapag, the locations offered by Hapag had no available appointments, the terminal operator was not accepting containers from Hapag, or the appointments were cancelled in the course of the drayage provider's attempt to return an empty container.

58. Hapag effectively and unilaterally impounded chassis and used them as *de facto* storage platforms for Hapag's empty containers at Rahal's expense and detriment as a direct consequence of Hapag's failure to provide reasonable practices and adequate facilities to handle and store Hapag's empty containers at the Port of New York and New Jersey.

59. Rahal incurred additional expenses from its drayage providers as a result of Hapag's inability and/or refusal to accept the return of empty containers.

60. Rahal incurred additional expenses from its drayage providers as a result of Hapag's inability and/or refusal to provide assurances to drayage providers that Hapag would accept returned empty containers.

61. Rahal incurred additional expenses from its drayage providers as a result of Hapag's inability and/or refusal to establish reasonable practices regarding the return of empty containers.

62. Various drayage providers were unwilling to retrieve newly arrived Hapag containers because they, too, risked having their chassis rendered unusable whilst Hapag remained unwilling and/or unable to accept empty containers.

63. As a result of the foregoing, Hapag created logistical paralysis at the Port of New York and New Jersey during the aforementioned periods.

64. As a result of the logistical paralysis Hapag created at the Port of New York and New Jersey by its failure to establish reasonable practices regarding the return of empty containers and its inability or unwillingness to accept empty containers upon return, Rahal incurred storage, lates fees, additional drayage, and other charges, as well as demurrage and detention charges. Annexed hereto as Exhibit "1" is a true and accurate summary of the containers and storage, lates fees, additional drayage, and other charges Rahal incurred for the newly arrived loaded containers.

**Hapag's Unreasonable Practice of Charging Detention/Demurrage  
For Containers Ensnarled By Hapag's Logistical Paralysis**

65. In April 2022 and through June 2022, while Hapag still lacked reasonable practices for the return of empty containers at the Port of New York and New Jersey, Hapag

continued to deliver into the port containers loaded with Rahal's fruit products for which Hapag charged detention and/or demurrage fees.

66. As a proximate result of the logistical paralysis Hapag created at the Port of New York and New Jersey, which precluded retrieval of loaded Hapag containers, Hapag charged unjust and unreasonable detention and/or demurrage charges for the newly arrived loaded containers. Annexed hereto as Exhibit "1" is a true and accurate summary of the containers and charges Hapag imposed upon Rahal for the newly arrived loaded containers.

67. Hapag failed to extend free time for Rahal's property transported by Hapag into the Port of New York and New Jersey for the duration of the logistical paralysis Hapag created at the port, which precluded retrieval of loaded Hapag containers.

68. Hapag assessed unreasonable and excessive charges against Rahal for Rahal's property transported by Hapag to the Port of New York and New Jersey for the duration of the logistical paralysis Hapag created at the port, which precluded retrieval of loaded Hapag containers.

69. The logistical paralysis Hapag created at the Port of New York and New Jersey was unique to Hapag because during the aforementioned time period, ocean common carriers other than Hapag also continued to deliver into the port containers loaded with Rahal's fruit products, which Rahal removed without delay or extra expense.

#### **Hapag's Unreasonable Practices Caused Damage To Rahal's Fruit Products**

70. Among Rahal's fruit products that Hapag continued to deliver into the Port of New York and New Jersey during the aforementioned logistical paralysis Hapag created at the port were seven full container loads of organic apple juice Hapag carried under its bill of lading numbered HLCUEUR2203EZGC0 and HLCUIZ12202BJZR5.

71. Although the containers were received at the Port of New York and New Jersey on May 15-16, 2022, pickup was unavailable until June 8, 9, 14 and 15, 2022, because of the logistical paralysis Hapag created at the port.

72. As a result of the inability to timely retrieve the containers, the apple juice underwent a fermentation process that resulted in the bins containing the apple juice swelling. The swelling resulted in added handling costs to Rahal.

73. Subsequent microbiological testing confirmed that the fermentation resulted in excessive aerobic plate, yeast, and mold counts.

74. As a result of the deterioration of the apple juice, the product could not be sold as intended or as of like kind of the apple juice when purchased. Rather than dispose of the product, Rahal undertook timely and costly efforts to sell the juice and mitigate its loss.

75. As a result of the foregoing, Rahal sustained damages in the amount no less than \$198,798.11 in connection with the damaged juice.

**IV (B)**  
**VIOLATIONS OF THE SHIPPING ACT**

76. Based upon the foregoing, Hapag failed “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property” of Rahal, which proximately caused Rahal’s loss, in violation of the Shipping Act, including 46 U.S.C.S. § 41102(c).

77. Based upon the foregoing, in violation of the Shipping Act, including 46 U.S.C.S. §§ 41104(a)(2)(A), Hapag failed to provide services to Rahal in accordance

with its published tariffs, rules, and practices and/or such tariffs, rules, and practices were unreasonable.

78. Based upon the foregoing, in violation of the Shipping Act, including 46 U.S.C.S. §§ 41102(c) and 41104(a)(14), Hapag failed to extend free time for Rahal's property transported to the Port of New York and New Jersey for the duration of Hapag's disability and/or inability to practically tender Rahal's cargo for delivery.

79. Based upon the foregoing, in violation of the Shipping Act, including 46 U.S.C.S. §§ 41102(c) and 41104(a)(14), Hapag assessed charges in excess of its terminal costs against Rahal for Rahal's property transported to the Port of New York and New Jersey that Rahal was unable to remove from the Port due to factors beyond Rahal's control.

80. Based upon the foregoing, in violation of the Shipping Act, including 46 U.S.C.S. § 41104(a)(14), Hapag assessed Rahal for one or more charges that were inconsistent and/or did not comply with all applicable provisions and regulations, including without limitation, section 41102(c) of the Shipping Act and part 545 of title 46, Code of Federal Regulations (or successor regulations).

81. Based upon the foregoing, in violation of the Shipping Act, including 46 U.S.C.S. § 41104(a)(15), Hapag invoiced Rahal (directly or indirectly through beneficial cargo interests or agents) for demurrage or detention charges that failed to comply with the Shipping Act, including 46 U.S.C.S. § 41104(d).

82. Based upon the foregoing, in violation of the Shipping Act, including 46 U.S.C.S. § 41104(a)(15), Hapag invoiced Rahal (directly or indirectly through beneficial cargo interests or agents) for demurrage or detention charges that failed to

comply with all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations), and applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled “Interpretive Rule on Demurrage and Detention Under the Shipping Act” (or successor rule).

83. Hapag’s storage and demurrage charges in this action do not serve the Federal Maritime Commission’s goal to ensure that detention and demurrage act as a financial incentive to promote the efficient movement of cargo.

## **V** **CAUSATION**

84. As set forth above, as a direct and proximate result of Hapag’s aforementioned violations of the Shipping Act, 46 U.S.C.S. § 40101, *et seq.*, Rahal has sustained actual injuries and damages.

## **VI** **DAMAGES**

85. Rahal has sustained actual injuries and damages of at least \$715,631.83 as a direct and proximate result of Hapag’s aforementioned violations of the Shipping Act, 46 U.S.C.S. § 40101, *et seq.*

86. As a direct and proximate result of Hapag’s aforementioned violations of the Shipping Act, Hapag wrongfully and unreasonably charged Rahal \$298,911.16 for detention and/or demurrage for containers unremovable from the port whilst Hapag was unwilling and/or able to handle the return of its empty containers.

87. As a direct and proximate result of Hapag’s aforementioned violations of the Shipping Act, and whilst Hapag was unwilling and/or able to handle the return of its



empty containers at the port, Rahal incurred \$154,909.26 in additional, extra, and/or excessive haulage fees by drayage providers and \$63,013.30 for extra expenses.

88. As a direct and proximate result of Hapag's aforementioned violations of the Shipping Act, and whilst Hapag was unwilling and/or able to handle the return of its empty containers at the port, Rahal sustained actual injuries for deteriorated, spoiled, and/or otherwise unfit fruit product in the amount of \$198,798.11 (after salvage and mitigation by Rahal).

89. Pursuant to the Shipping Act, 46 U.S.C.S. § 41305, Rahal is entitled to reparations for the injuries Hapag caused to Rahal due to Hapag's aforementioned violations of the Shipping Act.

## **VII** **PRAYER FOR RELIEF**

90. Complainant respectfully requests that Respondents be required to answer the charges made in this Complaint and that, after a hearing, the Federal Maritime Commission order Respondents:

- (i) to cease and desist from violation of the Shipping Act;
- (ii) to put in place lawful and reasonable practices;
- (iii) to pay Complainant reparations for the unlawful conduct in the sum no less than \$715,631.83, with interest and attorney's fees and any other sum the Federal Maritime Commission determines to be proper; and
- (iv) that the Federal Maritime Commission makes any further orders as it determines to be proper.

**VIII**  
**HEARING REQUESTED**

91. Complainant respectfully requests oral argument/hearing on this matter, and further requests that the hearing be held in the city and state of New York, else at the offices of the Federal Maritime Commission, located at 800 North Capitol Street, N.W., Washington, D.C. 20573.

Dated: June 22, 2023  
New York, NY

Respectfully submitted,

GIULIANO MCDONNELL & PERRONE, LLP

*s/William M. Fennell*

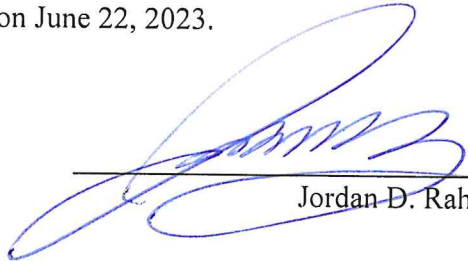
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*Attorneys for Rahal International, Inc.*

**VERIFICATION**

I, Jordan D. Rahal, am the Secretary of Rahal International, 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 herein are true and correct. Executed on June 22, 2023.



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Jordan D. Rahal