BEFORE THE

FEDERAL MARITIME COMMISSION

DOCKET NO. 23-05

RAHAL INTERNATIONAL INC.,

Complainant,

v.

HAPAG-LLOYD AG and HAPAG-LLOYD (AMERICA) LLC,

Respondents and Third-Party Complainants,

v.

MAHER TERMINALS, LLC, GCT NEW YORK LP

and GCT BAYONNE LP,

Third-Party Respondents.

MEMORANDUM OF LAW IN SUPPORT OF THIRD-PARTY RESPONDENTS' MOTION TO DISMISS

Third-party respondents, GCT New York LP ("GCT NY") and GCT Bayonne LP ("GCT Bayonne") (collectively "GCT Third-Party Respondents")[1] submit this memorandum of law in support of its Motion to Dismiss ("Motion") the Third-Party Complaint filed in this proceeding against Third-Party Respondents by the Third-Party Complainants, Hapag-Lloyd AG and Hapag-Lloyd (America) LLC ("Hapag" or "Third-Party Complainants").

[1] Effective on or about August 31, 2023, GCT New York LP and GCT Bayonne LP underwent conversions to limited liability companies and ultimately changed their names to Port Liberty New York LLC and Port Liberty Bayonne LLC, respectively.

I. FACTS

The underlying Complaint in this proceeding was served on June 30, 2023. Following an extension of time to answer, Respondents answered the Complaint on August 1, 2023. On August 17, 2023, Respondents filed the first of two motions for leave to file third-party complaints. Respondents represented that "Complainant made payment for the costs regarding the Containers to the Third-Party Respondents directly. As such, the Third-Party Respondents, not Hapag, violated 46 U.S.C. § 41104(a)(2)" and argued that the "only one requirement for a third-party complaint was satisfied by the proposed allegation in the third-party complaint that:

> [t]he Third-Party Respondents violated 46 U.S.C. § 41102(c) by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.by charging Complainant for storage of these containers..[sic]

Motion for Leave, 23-05, Doc 13, Aug. 17, 2023.[2] The initial Scheduling Order was issued in the proceeding on August 21, 2023, pursuant to which discovery requests were due to be exchanged September 5, 2023 and discovery responses due by October 6, 2023.

On August 24, 2023, the Presiding Officer denied the motion for leave to file the third-party complaints, without prejudice to refile a different third party complaint. On August 25, 2023, Respondents filed a second motion for leave to file a third-party complaint, seeking to cure the issues raised in the denial. Respondents made a similar argument that the only requirement to file a third-party complaint is including an allegation of a violation of the Shipping Act. And, Respondents included an identical block quote of a paragraph in the second proposed third-party complaint alleging that the Third-Party Respondent violated section 41102(c). Motion for Leave,

[2] Hapag cites "Exhibits "1" and "2", ¶ ¶ 38, 38, respectively" in the motion for leave; however, as is customary, the proposed third-party complaint and any attachments were not filed in the docket at that time, nor since, because the first motion was denied.

23-05, Doc 22, Aug. 25, 2023.[3] The Presiding Officer granted the second motion for leave to file on September 6, 2023. The Third-Party Complaint was served by the Commission on September 8, 2023.[4]

On September 20, 2023, the Presiding Officer issued an Order Rejecting Respondents' Motion to Extend, apparently in response to Respondents' having submitted an unopposed motion seeking to extend the discovery schedule. As noted in the order, no such motion was served on Third-Party Respondents (nor does one appear in the docket). The Order noted that Third-Party Respondents had twenty-five days after service to respond, *e.g.,* by October 3, 2023. Accordingly, this Motion is filed in timely response.

II. LEGAL STANDARD

Although the Federal Maritime Commission ("FMC" or the "Commission") Rules do not expressly provide for motions to dismiss, it is well established that a respondent may bring motions pursuant to the Federal Rules of Civil Procedure ("FRCP"), which is made applicable to FMC proceedings pursuant to 46 C.F.R. § 502.12 when not inconsistent with FMC Rules and when consistent with sound administrative practice. Although the FMC Rules do not address motions to dismiss for failure to state a claim, FRCP 12(b)(6) applies. *See, e.g., The Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and Terminal District*, 2007 WL 2468431 *4 (F.M.C. Aug. 2, 2007).

Rule 12(b)(6) permits a party to raise by motion failure to state a claim. To survive motions to dismiss for failure to state a claim under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atlantic*

[3] In the second motion for leave, Hapag cites "Exhibit "1" at ¶ 39." As noted above, the second proposed third-party complaint was not filed in the docket as an exhibit to the motion.
[4] An Errata to the Third-Party Complaint was served on September 19, 2023.

Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim "has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). *See also Mitsui O.S.K. Lines, Ltd. v. Global Link Logistics, Inc*., 32 S.R.R. 126, 136, 2011 WL 7144008 *11-12 (FMC Aug. 1, 2011), and *reaffirmed in Cornell v. Princess Cruise Lines, Ltd*., 33 S.R.R. 614, 620, 2014 WL 5316340 *6 (FMC Aug. 28, 2014).

As the Commission explained in *Maher Terminals, LLC v. The Port Authority of New York and New Jersey ("Maher")*:

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The complaint's factual allegations must be enough to raise a right to relief above the speculative level and must nudge claims across the line from conceivable to plausible. Mere labels and conclusions or a formulaic recitation of the elements of a cause of action will not suffice, nor will naked assertions devoid of further factual enhancement. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

34 S.R.R. 35, 58, 2015 WL 9426189 at *12 (FMC Dec. 18, 2015) (internal citations and quotations omitted). Sufficient pleading "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation and that threadbare recitals of the elements of a cause of action supported by mere conclusory statements, do not suffice." *Id*. *citing Iqbal*, 556 U.S. at 678.

In applying the standard, the Commission must accept as true all factual allegations and construe them in the light most favorable to the complainant and draw all reasonable inferences from the allegations in the complainant's favor. *Id*. But the Commission need not accept as true legal conclusions or draw inferences that are not supported by the allegations. *Id*. The Commission generally applies a two-pronged approach to evaluating the sufficiency of a complaint. "The first step is typically to identify pleadings that are not entitled to the assumption of truth because they

are legal conclusions. These conclusions can provide a framework, but they must be supported by factual allegations. The next step is to assume the truth of the well-pleaded factual allegations and determine whether they plausibly give rise to an entitlement to relief." *Id*. (internal citations and quotations omitted).

III. ARGUMENT

a. Summary of Argument

Hapag's Third-Party Complaint against Third-Party Respondents is a textbook example of a complaint that fails to state a claim for which relief can be granted. Hapag alleges that Third-Party Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act. Hapag Compl. ¶¶ 11-12, 39. MTOs are subject to section 41102(c) of the Shipping Act, but alleging a violation of section 41102(c) requires more than merely alleging Third-Party Respondents acting as MTOs and alleging that they therefore violated section 41102(c). Yet, the Third-Party Complaint does nothing more.

Hapag alleges that "Third-Party Respondents violated 46 U.S.C. § 41102(c) . . . by charging Complainant for storage of the Containers" because "Third-Party Respondents maintained full control of the Containers and the assessment, billing, and collection of the charges at issue in the Initial Complaint." Hapag Compl. ¶¶ 38-39. But it is not a violation of the Shipping Act for an MTO to maintain control of its terminal facility, the containers at its terminal facility, or assess and collect fees and charges in connection with containers at its terminal. These are typical and permissible MTO activities.

Putting aside the bare legal conclusions that are not entitled to the assumption of truth for the purpose of a motion to dismiss, Hapag does not allege any single act, omission or practice, let alone a continuing practice thereof, supporting how or why control by an MTO of its terminal and

alleged control over billing for terminal services support the alleged violation. For example, Hapag does not allege why containers were allegedly "unremovable from the Port of New York and New Jersey," nor what if any allegedly unlawful act or omission by Third-Party Respondents caused the alleged unremovability, nor what pattern or practice of an MTO made demurrage or storage charges allegedly unreasonable. Alleging that MTOs engaged in activities of MTOs—without more—does not plausibly give rise to an entitlement of relief.

b. Hapag's Allegations Not Entitled to the Assumption of Truth

Hapag expressly alleges that Third-Party Respondents violated section 41102(c) in two paragraphs of the Third-Party Complaint, both of which are conclusory legal assertions not entitled to an assumption of truth. Hapag alleges jurisdiction in paragraph 11 "because the Third-Party Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act" and Hapag alleges causation and injury in paragraph 39 as follows: "Third-Party Respondents violated 46 U.S.C. § 41102(c), by failing to establish, observe, and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property by charging Complainant for storage of the Containers." Hapag Compl. ¶¶ 11, 39. These allegations are the kind of "conclusory legal statements" and bare recitation of legal standards that "provide no factual support for the allegations that Respondent's conduct violated the Shipping Act" and therefore they are not entitled to the assumption of truth. *See Maher*, 34 S.R.R. 35, 58, 2015 WL 9426189 *13.[5]

Hapag asserts in the introduction of its Third-Party Complaint that "[t]he Shipping Act finally required the Third-Party Respondents to ensure that their practices did not lead to the assessment of unjust or unreasonable demurrage charges under 46 CFR §545.5. The Third-Party

[5] Notably, the allegation in paragraph 39 is the same allegation that Hapag argued in its two motions for leave to file the Third-Party Complaint was "the only requirement for a third-party complaint." However, merely meeting the low bar for filing a third-party complaint is not a substitute for also meeting the otherwise applicable pleading standards.

Respondents violated these duties and are, thus, liable for these violations." Hapag Compl. at 1, Introduction. This is similarly nothing more than a generic reference and recitation of the interpretive rule with respect to demurrage and detention, and an accompanying conclusory allegation that Third-Party Respondents "violated these duties" in unspecified ways without any underlying factual support.

In addition, while Hapag cites the interpretive rule on demurrage and detention at § 545.5 in the introduction, Hapag does not cite anywhere in the Third-Party Complaint the interpretive rule at 46 C.F.R. § 545.4 on the elements required to establish the unjust and unreasonable practice cause of action it is alleging under 46 U.S.C. § 41102(c). Nor does Hapag specifically allege how those elements would be satisfied, including: § 545.4 (b), how "[t]he claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis"; § 545.4(d), how "[t]he practice or regulation is unjust or unreasonable"; or § 545.4 (e), how "[t]he practice or regulation is the proximate cause of the claimed loss."

Hapag alleges two "Specific Allegations" in paragraphs 1 and 2 of the Third-Party Complaint.[6] In Paragraph 1, Hapag alleges in relevant part that Hapag brought the Third-Party Complaint "based on the actions of Third-Party Respondents that led to Rahal International, Inc. ("Complainant" or "Rahal") filing [the Complaint]." Hapag Compl. ¶ 1. In paragraph 2, Hapag alleges that "[t]he Initial Complaint alleges that Hapag is liable to Complainant for storage and demurrage charges" and because MTOs allegedly controlled the terminals and billed and collected charges, "in the event Hapag is found liable to the Complainant, Third-Party Respondents is liable to Hapag." Hapag Compl. ¶ 2. However, these "specific allegations" do not allege anything specific at all. What are the allegedly unlawful actions of Third-Party Respondents that led

[6] It is not apparent why the "Specific Allegations" at paragraphs 1-2 are set forth separately from the "Factual Allegations" at paragraphs 25-37.

Complainants to file their Complaint? The Third-Party Complaint does not allege what they might be, and the underlying Complaint does not allege any unlawful actions by the Third-Party Complainants either.

Based on the foregoing, Hapag's allegations of the unreasonable practices cause of action against Third-Party Respondents fails on the first step of the inquiry. The referenced allegations of violations are for the most part legal conclusions, none allege underlying facts in support of the conclusory allegations, and they are therefore not entitled to the assumption of truth. *See Maher*, at *13 ("conclusions can provide a framework, but they must be supported by factual allegations").

c. Hapag's Allegations Fail to Allege Plausible Violations

The remaining substantively-relevant allegations in the Third-Party Complaint are the "Factual Allegations" in section VI of the Third-Party Complaint, at paragraphs 25-37.[7] While some of the allegations in paragraphs 25 to 37 would qualify as "factual allegations," the facts alleged therein are not sufficient to plausibly give raise to an entitlement to relief by Hapag against Third-Party Respondents. First, the bulk of the allegations do not describe conduct that in and of itself would even constitute a violation of the Shipping Act as alleged, *e.g.,* an MTO merely controlling its container terminal is not a violation of the Shipping Act. Second, none of the allegations articulate factual allegations that plausibly support how or why the otherwise permissible conduct alleged (*e.g.,* MTO controlling its terminal, controlling containers on its terminal, and billing published charges for terminal use) would constitute an unlawful act or omission, let alone a continuing practice of unlawful acts or omissions.

[7] Section V, paragraphs 13 to 24, under heading "Initial Complaint and Answer" is largely comprised of a recitation of Hapag denials of the allegations against it in the underlying Complaint. Section V does not contain any allegations of any acts, omissions, practices or procedures of Third-Party Respondents allegedly in violation of the Shipping Act, nor if there were any, why or how such allegations would constitute unreasonable practices.

Paragraphs 26-27 allege that Third-Party Respondents "assessed, billed, and collected the charges in dispute," but not how or why assessing, billing or collecting demurrage or storage is itself a violation of the Shipping Act, and no underlying factual support substantiating how the collection by MTOs of amounts now allegedly in dispute between Complainant and Hapag in underlying Complaint was an unreasonable practice of the Third-Party Respondents.

Paragraphs 29, 30 and 31 allege that MTOs control their terminal facilities, the containers on their terminal facilities, and the billing and collection of terminal charges, but allege no underlying factual support substantiating how controlling terminals, containers on terminals, or billing were unreasonable practices of the Third-Party Respondents.

Paragraphs 31 and 32 allege that the underlying charges were billed pursuant to published terminal tariffs against the cargo. Again, the allegations that MTOs charge published rates and fees and collect from cargo interests picking up cargo does not allege a violation, nor provide any factual support for how or why doing so (which is otherwise an expressly lawful actively pursuant to 46 U.S.C. § 40501(f)) constitutes unreasonable practices of the Third-Party Respondents.

Paragraphs 33 and 34 allege that Third-Party Respondents "exclusively handled the pricing and invoicing, and independently charged Complainant" the charges at issue in the underlying Complaint. The allegations do not, however, allege any facts supporting how or why engaging in pricing, invoicing, or charging constitute unreasonable practices of the Third-Party Respondents.

Finally, paragraph 37 alleges that "Third-Party Respondents independently caused the Complainant to incur $154,909.26 for additional, extra, and/or excessive haulage fees by drayage providers and $63,013.30 for extra expenses as alleged in the Initial Complaint." The Third-Party Complaint does not allege any supporting facts about how or why Third-Party Respondents allegedly caused the incurrence of those alleged costs, or why, how or what practice of Third-Party

Complainants allegedly would constitute a violation. The relevant allegations in the underlying Complaint are made against Hapag, not Third-Party Respondents, and they do not articulate allegations of fact in support of how, why or what practice of Third-Party Respondents' allegedly violated the Shipping Act. To the extent that the underlying Complaint refers to Hapag's handling of empty containers in the Port of New York and New Jersey, Compl. ¶ 87, Hapag's Third-Party Complaint contains no factual allegations of any act, omission, practice or procedure on the part of Third-Party Respondents pertaining to return of empty Hapag containers.

Quite frankly, Hapag does not offer any plausible explanation for why Hapag's allegations of common MTO activities would constitute unreasonable practices under the Shipping Act. *See, e.g., Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Bine Shield*, 552 F.3d 430, 437 (6th Cir. 2008) ("Plaintiffs only offer bare allegations without any reference to the 'who, what, where, when, how or why.' Similarly, the vague allegations in the instant case 'do not supply facts adequate to show illegality' as required by *Twombly*."). Moreover, Hapag's allegations are consistent with the lawful, if not lawfully-required, behavior of Third-Party Respondents as MTOs.

While the standard requires that the Presiding Officer draw all reasonable inferences from the factual allegations in Hapag's favor, "this does not mean that the Commission must infer that [Third-Party Respondent's] conduct is unreasonable or otherwise unlawful simply because [Hapag] alleges conclusorily that it is, especially when that conduct is equally consistent with lawful behavior." *Maher* at *15 *citing Iqbal*, 556 U.S. at 681. The conduct Hapag alleges does not on its face constitute unreasonable practices violations, and the Third-Party Complaint lacks factual support for any plausible basis for the alleged unreasonable practices violations.

d. Hapag's Allegations Further Undermine Plausibility

Although Hapag's Complaint fails to state a claim for which relief can be granted on the basis of the discussion above, and can and should be dismissed without further discussion, there are several additional defects that further demonstrate the absence of plausibility of Hapag's Complaint.

1. The Complaint alleges that Third-Party Respondents "stored the [C]ontainers at issue" and controlled the Containers. Hapag Compl.¶¶ 29-30. However, the Third-Party Complaint does not allege facts of any containers other than the seven containers under two bills of lading identified in paragraph 23 of Hapag's Complaint.[8] While it is conceivably possible for three MTOs to handle containers under two bills of lading, it is not a likely occurrence, and it is not plausible that all of the MTOs handled all of the containers. Despite this, the Third-Party Complaint does contain one allegation implicitly differentiating between some of the MTOs. In Paragraph 36, Hapag alleges that "[o]ut of the $298,911.16, GCT and Maher remitted $7,653.60 and $47,895.80, respectively, to Hapag." Hapag does not allege how much of the alleged $298,911.16 was collected by each the GCT Third-Party Respondents, or indeed if both of the GCT Third-Party Respondents in fact controlled the containers or collected charges. As a result, the face of the allegations in paragraphs 23 and 36 may be enough to infer that at least one GCT Third-Party Complainant handled at least one or more containers at issue in the underlying Complaint. Nevertheless, the basic facts of GCT Third-Party Respondents' alleged involvement (let alone any alleged violations) with the shipments and charges is scant at best.

[8] The Exhibit 1 referenced in Paragraph 66 of the underlying Complaint, purporting to contain a list of containers and charges, was not included in the Third-Party Compliant, nor was it available in the FMC docket with the underlying Complaint. However, undersigned counsel requested and obtained a copy from Hapag counsel. That exhibit document does not identify which MTO handled which containers.

2. Hagag's allegations concerning the allegedly "independent" basis of GCT Third-Party-Respondent's charges and collections, its alleged exclusive control over "pricing," and "collections on their own behalf" are internally inconsistent with other facts alleged in the Third-Party Complaint and therefore are not entitled to the assumption of truth. *See Response Oncology, Inc. v. MetraHealth Ins. Co*., 978 F.Supp. 1052, 1058 (S.D. Fla. 1997) *order clarified on reconsideration*, Case No. 96–1772–CIV, 1997 WL 33123678 (S.D. Fla. 2007) ("A court is ... not required to accept factual claims that are internally inconsistent; facts which run counter to facts of which the court can take judicial notice; conclusory allegations; [or] unwarranted deductions. . . asserted by a party.").

In paragraphs 31 and 32, Hapag alleges that "[t]he underlying charges were billed in accordance with Third-Party Respondents' terminal tariff (the 'Terminal Tariff')" citing a web page "*Tariffs, The Port Authority of New York and New Jersey,* https://www.panynj.gov/port/en/doing-business/tariffs.html." Hapag Compl. ¶ 31. Hapag argues that the Tariff(s) allegedly provide that "[e]xcept as otherwise provided, Demurrage and other charges specified herein, shall be for the account of the cargo." Hapag Compl. ¶ 32. Based on that allegation, Hapag then deduces the conclusory allegation that the Tariff therefore establishes that "Third-Party respondents were collecting on their own behalf and under their control." Hapag Compl. ¶ 32. That conclusory deduction conflicts with specific provisions of the quoted Tariff and other allegations in the Third-Party Complaint.[9]

With respect to the GCT Third-Party Respondents, Hapag appears to quote from the New York Terminal Conference Schedule, Marine Terminal Schedule No. 011408, Section IV, "Free

[9] The Presiding Officer is permitted to consider the Tariffs that are quoted, and incorporated by reference, as part of the Third-Party Compliant for the purposes of this Motion. And in all events, the Presiding Officer would be entitled to take judicial notice of referenced Tariffs that are published and publicly-available pursuant to the Shipping Act and FMC regulations. 46 C.F.R. § 525 *et seq*.

Time and Demurrage on Import Cargo" (available via the web page linked in the Third-Party Complaint). The quoted language appears in subsection IV(7)(A) (general default subrule on payment responsibility). In addition to the preface that subsection IV(7)(A) applies "[e]xcept as otherwise provided...," section IV contains other, more specific provisions on assessment and collection of demurrage on import containerized cargo that do not support the more general allegation in paragraph 32. *See e.g., id*. subsection IV(2)(B)(1) at 19.[10]

In addition, Hapag alleges in paragraph 14 that the Third-Party Respondents are parties to terminal service agreements with Hapag. Hapag Compl. ¶ 14. Hapag further alleges in paragraph 36 that GCT remitted to Hapag a portion of demurrage collected from the underlying Complainant. *Id*. ¶ 36. Although the terms of referenced terminal services agreements are outside the scope of this Motion, the existence of a terminal services agreement, and the fact that a portion of demurrage charges collected from the Complainant was remitted to Hapag, are facts alleged on the face of the complaint.

In light of the foregoing, Hapag's strident allegations that the GCT Third-Party Respondents' demurrage collections were categorically "on their own behalf," "independently charged," and "without involvement by or approval of Hapag" should not be entitled to the assumption of truth, and in all events, are not plausible. *See* Hapag Compl. ¶¶ 2, 31, 32, 33 and 34. *See Maher at* *15 *citing 16630 Southfield Ltd. P'ship v. Flagstar Bank, F.S.B.,* 727 F.3d 502, 504 (6th Cir. 2013) ("[t]he plausibility of an inference depends on a host of considerations,

[10] In a motion to dismiss, where a general allegation in the body of a complaint is contradicted by a more specific fact in an incorporated document, a court need not assume the truth of the more general allegation, and the specific facts of the referenced document prevail. *See Healthier Choices Mgmt. Corp. v. Philip Morris USA, Inc*., 65 F. 4th 667, 673 (Fed. Cir. 2023)(when "allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls."); *see also Associated Builders, Inc. v. Ala. Power Co*., 505 F.2d 97, 100 (5th Cir. 1974) ("[c]onclusory allegations and unwarranted deductions of fact are not admitted as true, especially when such conclusions are contradicted by facts disclosed by a document appended to the complaint.").

including common sense and the strength of competing explanations for the defendant's conduct.").

(3) The Third-Party Complaint alleges only one cause of action, 46 U.S.C. § 41102(c). However, to the extent Hapag were to argue that the Third-Party Complaint incorporates the causes of action in the underlying Complaint, *e.g*. via paragraph 40 alleging generally that "Third-Party Respondents, not Hapag, are liable for the alleged violations of the Shipping Act," the Third-Party Complaint fails to state claims for which relied can be granted thereunder. As to section 41102(c), the underlying Complaint does no more as to Third-Party Respondents than addressed above. All of the allegations are directed at Hapag, and the allegations substantively target Hapag in its capacity as a common carrier. With regard to the three additional causes of action alleged in the underlying Complaint: 46 U.S.C. §§ 41104(a)(14); 41104(a)(15); and 41104(d), those causes of action are applicable to conduct of common carriers, not MTOs.

IV. CONCLUSION

For the foregoing reasons, we respectfully request dismissal with prejudice of the Third-Party Complaint as to the GCT Third-Party Respondents for failure to state a claim for which relief can be granted.

Dated: October 3, 2023

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: *<u>/s/ Gerald A. Morrissey III</u>*
Gerald A. Morrissey III
Kristine O. Little
800 17th St NW
Washington, DC 20006
Telephone: (202)469-5497
gerald.morrissey@hklaw.com
kristine.little@hklaw.com

Counsel to Third-Party Respondents

CERTIFICATE OF SERVICE

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

Complainant:

William M. Fennell
GIULIANO MCDONNELL & PERRONE, LLP
170 Old Country Road, Suite 608
Mineola, New York 11501
Telephone: (646) 328-0120
WFennell@GMPlawfirm.com

Respondents :

Wayne Rohde
Kathryn Sobotta
Rachel Schwartz
COZEN O'CONNOR
1200 19th Street NW
Washington, DC 20036
Telephone: (202) 463-2507
wrohde@cozen.com
ksobotta@cozen.com
rschwartz@cozen.com

Third-Party Complainants:

Jake Evans
Timothy McLister
GREENBERG TRAURIG, LLP
Terminus 200
333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305
Telephone: (678) 553-2100
Jake.Evans@gtlaw.com
Timothy.McLister@gtlaw.com

Executed: October 3, 2023

By: */s/ Gerald A. Morrissey III*
Gerald A. Morrissey III