

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 23-06

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COAST CITRUS DISTRIBUTORS D/B/A  
OLYMPIC FRUIT & VEGETABLE;  
AMAZON PRODUCE NETWORK, LLC;  
REFIN TROPICALS, S.A.; JW FRESH S.A.;  
SEMBRIOS DE EXPORTACION  
SEMBRIEXPORT, S.A.;  
AND BRESSON S.A.

COMPLAINANTS

v.

NETWORK SHIPPING LTD., INC.,

RESPONDENT.

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**UNOPPOSED MOTION FOR DISMISSAL WITH PREJUDICE AND  
APPROVAL AND CONFIDENTIAL TREATMENT OF SETTLEMENT AGREEMENT**

Complainants COAST CITRUS DISTRIBUTORS D/B/A OLYMPIC FRUIT & VEGETABLE; AMAZON PRODUCE NETWORK, LLC; REFIN TROPICALS, S.A.; JW FRESH, S.A.; SEMBRÍOS DE EXPORTACIÓN SEMBRIEXPORT, S.A.; and BRESSON S.A. (collectively, “**Complainants**”) submit this unopposed motion, seeking dismissal of this action with prejudice and approval of the Settlement Agreement filed under seal concurrently herewith. The Complainants believe that the Settlement Agreement meets the criteria set by the Federal Maritime Commission (the “**Commission**”) for the approval of settlement agreements and therefore should be approved. Complainants also move for the confidential treatment of

such settlement. Complainants have conferred with Respondent concerning this motion, and Respondent does not oppose the requests herein.

## **I. INTRODUCTION**

This proceeding was commenced when Complainants filed a complaint on August 3, 2023, alleging violations of sections 46 U.S.C. §§ 41102(c); 41104(a)(4)(C); 41104(a)(4)(D) and 41104(a)(8) of the Shipping Act of 1984 and seeking reparations for injuries allegedly caused by Respondent's conduct set forth therein. The parties exchanged pleadings, established a procedural schedule, and engaged in discovery. The parties have also engaged in settlement discussions and have reached agreement on a settlement embodied in the Settlement Agreement filed in connection with this Motion.

## **II. THE CONFIDENTIAL SETTLEMENT AGREEMENT SHOULD BE APPROVED**

“The Commission has a strong and consistent policy of”encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid.” *Aeneas Exporting LLC v. Carlo Shipping Intl, Inc.*, Docket No. 20-11, 2020 WL 5942148, at \*2 (FMC Sept. 29, 2020) (Wirth, C.J.) (quoting *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002)). “[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement.” *Delhi Petroleum Pty. Ltd. v. US. Atl. & Gulf/Australia - New Zealand Conf. and Columbus Line, Inc.*, Docket Nos. 88-2, 88-4, 1988 WL 340657 at \*7, 24 S.R.R. 1129, 1134 (Aug. 12, 1988)). “Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive

litigation.” *Mac Indus., Inc. d/b/a Mac Container Line v. COSCO Shipping Lines Co., Ltd.*, Docket No. 20-09, 2020 WL 4464298, at \*2 (FMC July 29, 2020) (Wirth, C.J.) (quoting *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009)). The Commission’s policies, its Rules of Practice, and the Administrative Procedures Act all encourage settlements. As the ALJ recognized in *Old Ben Coal Co. v. Sea-Land Services, Inc.*, 21 FMC 505, 512, 18 S.R.R. 1085, 1091 (ALJ 1978), quoting 15A Am Jur. 2d. 777-778:

The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the Parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Evaluating this motion to approve the Settlement Agreement entails examining whether it “reflects careful consideration by the parties of a variety of factors, including the relative strengths of their positions weighed against the risks and costs of continued litigation.” *APM Terminals N Am., Inc.*, 31 S.R.R. at 636 (quoting *Delhi Petroleum Pty. Ltd.*, supra, 1988 WL 340657 at \*7, 24 S.R.R. 1129, 1134 (Aug. 12, 1988)). The Commission reviews settlement agreements to ensure that they do not contravene any law or public policy, and are free of fraud, duress, undue influence, or mistake, or other defects which might make them not subject to approval. The primary factor to be considered, however, is the FMC's “strong and consistent policy of encouraging settlements . . .” *APM Terminals, supra*, 31 S.R.R. at 625 (quoting *Inlet Fish Producers, Inc.*, 29 S.R.R. at 978).

In this action, the parties, all sophisticated corporate entities, with the advice and assistance of their respective counsel, arrived at the Settlement Agreement through arm’s length negotiations and support this motion and the relief that it seeks. *See Confidential Exhibit A. The Settlement*

Agreement does not contravene any law or public policy and is neither unjust nor discriminatory. It does not contemplate any adverse effects on any third party or the shipping public. Instead, the Settlement Agreement is a fair and reasonable resolution of the disputes between the parties and reflects their desire to resolve their issues without the need for costly and uncertain litigation. For these reasons, Complainant respectfully requests that the Settlement Agreement be approved and, on that basis, the Complaint in this matter be dismissed with prejudice.

### **III. REQUEST FOR CONFIDENTIAL TREATMENT AND LEAVE TO FILE UNDER SEAL**

The Commission routinely affords confidential treatment to settlement agreements under 46 C.F.R. § 502.5, recognizing that they “often contain sensitive commercial information that should be protected from public disclosure.” *D.F. Young, Inc. v. NYK Line (North America) Inc.*, Docket No. 16-02, 2018 WL 2411779, at \*2, 1 F.M.C.2d 135, 136-37 (FMC May 22, 2018). “If parties wish to keep the terms of their settlement agreements confidential, the Commission, as well as the courts, have honored such requests.” *Marine Transp. Logistics, Inc. v. CMA-CGM (America) LLC*, Docket No. 18-07, 2020 WL 948582, at \*3 (FMC Feb. 18, 2020) (Wirth, C.J.) (quoting *Al Kogan v. World Express Shipping, Transp. and Forwarding Servs., Inc.*, Docket No. 00-04, 29 S.R.R. 68, 70 n.7 (ALJ Dec. 14, 2000)). Under the terms of the Settlement Agreement, the parties must keep the terms of the Settlement Agreement confidential. This confidentiality requirement is a material term of the Settlement Agreement. This Settlement Agreement is the result of confidential commercial negotiations between the parties, and Complainants therefore respectfully request leave to file the Settlement Agreement under seal for review and approval, and that the Settlement Agreement thereafter continue to be afforded confidential treatment by the FMC.

Additionally, because the entire Settlement Agreement is confidential, a public version has not been filed. The Commission precedent provides that settling parties need not file a public

version of a settlement in such circumstances. *Global Link Logistics, Inc. v. Hapag-Lloyd AG*, No. 13-07, 2015 WL 1928868, at \*6 (FMC Apr. 14, 2015). Where, as here, Complainants “want to maintain confidentiality of the Confidential Settlement Agreement as it contains terms setting out the settlement amount, as well as terms governing the release of all claims related to the controversy involved” and there is no “public interest in disclosure of the settlement amount or the terms of the release of the involved claims, that outweighs the [p]arties’ interest in maintaining the confidentiality of these terms,” the Settlement Agreement should be held confidentially. *Id.*

#### IV. CONCLUSION

The Settlement Agreement comprehensively addresses the issues relating to the above-referenced proceeding and meets the Commission’s well-established criteria for approval of agreements settling administrative litigation. Accordingly, the Complainants request, for the reasons set forth herein, that the Settlement Agreement be approved, and the Complaint in this Proceeding be dismissed with prejudice.

Respectfully submitted,

Dated: January 26, 2024

PIERSON FERDINAND LLP

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*Counsel for Complainants*

**CERTIFICATE OF SERVICE**

I certify that on January 26, 2024, a true and correct copy of the foregoing document was served by email on all counsel of record in accordance with 46 C.F.R. Part 502 as follows:

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*/s/ Gene M. Burd*

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