

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 23-07

TIR AUTO TRANSPORT LLC

Complainant,

vs.

Complainant's Response to Respondents'
Motion to Compel.

V&S BROTHERS INC
V&S CARGO INC

Respondents.

The following is respectfully being offered on behalf of the Complainant (TIR Auto Transport LLC) in response to the Respondents' motion to compel and extension of time.

It is being submitted that Respondents' motion is procedurally defective. On page 2 of their motion papers, Respondents say: "TIR also produced a small number of documents. TIR's response and production were insufficient." It is not clear what Respondents mean by a small number of documents as they did not say how many documents were produced and did not attach a single document to their motion. Since the Respondents did not attach to their moving papers a copy of any document that TIR produced in discovery that is being challenged, it is also not clear how the Court can judge its sufficiency. For example, in *Pettus v. Richards*, a case dealing with a motion to compel, it was noted: "The copy of the responses provided to the Court does not include copies of documents that were provided to the Plaintiff." 9:06-CV-0030(LEK)(DRH), at *1 (N.D.N.Y. Apr. 19, 2007).

TIR produced what it could find at this point in response to the specific requests. Since the Respondents included TIR's responses as part of their motions, and even quote from such, to avoid duplication, I will rely on those responses. I would like to, however, respond to a

statement that Respondents make on page 5 of their papers: “TIR cannot avoid discovery obligations by citing to a future deposition.” The only times when TIR cited to the fact that TIR is available to testify on any point, this citation was in response to the Respondents’ notice of deficiencies, and such citation was in addition to a specific response and production. The Respondents mislead the Court when they say that this was the sole response.

For example, on page 123 of the Respondents’ motion submission, TIR’s response to Request for Interrogatory #17 notes that TIR’s response stands, which included documents produced, where such documents make it clear that TIR instructed to transport the subject vehicle to the State of Georgia, yet the subject vehicle was loaded out of the Port in New York. These documents included an actual email between the parties with transport instructions to the State of Georgia and then a Hapag Lloyd Sea Waybill that lists New York as the Port of Loading. The response then says: “Additionally, Iurii Chirianov is available to testify on this point...” I again note that the way the Respondents present their arguments in their moving papers, for example, when they say on page 5, point II, that TIR avoids its discovery obligations by simply pointing to a future deposition, is just not true and creates a misleading impression, when the only time when TIR pointed to a future deposition was in their response to Respondents’ notice of deficiencies when after providing the requested documents, TIR wrote: “Additionally, Iurii Chirianov is available to testify on this point.”

Dated: January 2, 2024

Respectfully Submitted,

Garry Pogil
Garry Pogil (Attorney for the Complainant)