

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

20230930-DK-BUTTERFLY-1, INC.	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	
	)	
MSC MEDITERRANEAN SHIPPING	)	
COMPANY SA	)	
	)	<b>DOCKET NO. 23-12</b>
	)	
<i>Respondent.</i>	)	
	)	

**JOINT MOTION FOR AN EXTENSION OF TIME TO FILE A  
MOTION TO DISMISS THE COMPLAINT AND TO FILE AN ANSWER**

Pursuant to Rule 71 of the Federal Maritime Commission’s Rules of Practice and Procedure, 46 C.F.R. §502.71, Complainant and Respondent, by and through the undersigned counsel, respectfully move for an extension of time for Respondent to file a motion to dismiss, from December 26, 2023 to January 5, 2024 (or such other date after the holidays as the Presiding Officer may decide). If the extension is granted, Respondent will file a motion to dismiss a portion of the Complaint for failure to state a claim for which relief may be granted (“Partial Motion to Dismiss”).

As the FMC’s procedural regulations are not clear as to whether the filing of the Partial Motion to Dismiss would serve as a responsive pleading to the entirety of the complaint, Complainant and Respondent further move for an extension of time to file Respondent’s answer to the complaint until ten (10) days following a ruling on the Partial Motion to Dismiss.

Under Commission Rule 12 (46 C.F.R. §502.12), the Federal Rules of Civil Procedure will be followed in instances that are not covered by the Commission Rules, if consistent with sound administrative practice. Under Federal Rule of Civil Procedure 12(b)(6), initial pleadings may include a motion for dismissal based on failure to state a claim. Furthermore, 46 C.F.R. §502.62 provides for an extension of the time to file an answer until ten (10) days following service of any order denying such a motion. However, the Federal Rules and the FMC Rules are unclear whether the Partial Motion to Dismiss would extend the time for Respondent to file an answer to the complaint. The majority of federal courts have determined that a filing deadline for an answer to a complaint is stayed until the resolution of a partial motion to dismiss:

It is unclear from the language of Rule 12(a) whether service of a Rule 12(b) motion directed at only parts of a pleading enlarges the period of time for answering the remaining portions of the pleading. Although some federal courts considering this issue have refused to apply Rule 12(a)'s enlargement of time provision in this context, the weight of the limited authority on this point is to the effect that the filing of a motion that only addresses part of a complaint suspends the time to respond to the entire complaint, not just to the claims that are the subject of the motion. Courts following this majority rule have noted that the minority approach would require duplicative sets of pleadings in the event that the Rule 12(b) motion is denied and cause confusion over the proper scope of discovery during the motion's pendency. 5B Wright & Miller, § 1346 (3d. edition).

Out of an abundance of caution, Complainant and Respondent accordingly request an extension to file the answer until ten (10) days after a ruling on the Partial Motion to Dismiss.<sup>1</sup>

The Respondent's Partial Motion to Dismiss, if granted, will alleviate the necessity of discovery and other filings for a portion of the claims. Given that the filing of an answer also triggers other deadlines (initial disclosures, consultation regarding alternative dispute resolution, establishment of a discovery schedule), it would be inefficient to file an answer which

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<sup>1</sup> To the extent that the Presiding Officer would consider the Partial Motion to Dismiss as subject to a different standard under 46 C.F.R. §502.62(b)(1), an extension of the time to file an answer is within the discretion of the Presiding Officer.

implements those other deadlines if a substantial portion of the efforts may be unnecessary following the issuance of a ruling on the Partial Motion to Dismiss.

By extending the deadline for the filing of the motion to January 5, 2024, (or such other date as the Presiding Officer may decide) the parties would avoid motion practice during the holiday period between Christmas and New Years during which access to clients and resources are likely to be constrained. Furthermore, a delay of the deadline for filing the answer until ten (10) days following a ruling on the Partial Motion to Dismiss would give the parties the benefit of a ruling on the motion before an answer is due, potentially narrowing the issues addressed in the answer and subsequent filings. This would avoid the inefficiencies described above and allow the case to proceed in a more orderly fashion.

As required by 46 C.F.R. §502.71, counsel for the Respondent has conferred with counsel for Complainant, who joins this joint motion for an extension of time to file a the Partial Motion to Dismiss to January 5<sup>th</sup>, 2024, and corresponding extension to file the answer ten (10) days following a ruling on the motion.

WHEREFORE, Complainant and Respondent respectfully request that the deadline for filing Respondent's Partial Motion to Dismiss be extended to January 5, 2024, or such other date as the Presiding Officer may decide and that the deadline for filing Respondent's answer be extended until ten (10) days following the issuance of a ruling on the Partial Motion to Dismiss.

Respectfully submitted,

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Dated: December 20, 2023

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of December, 2023 the foregoing Joint Motion for an Extension of Time to File a Motion to Dismiss the Complaint and to File an Answer was served via electronic mail on:

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