Before the

FEDERAL MARITIME COMMISSION

DOCKET NO. 24-07

TZ SSE Buyer, LLC v. CMA CGM S.A.

RESPONDENT CMA CGM S.A.'S
ANSWER AND AFFIRMATIVE DEFENSES

Respondent CMA CGM S.A. ("Respondent" or "CMA"), by counsel, for its Answer to the Verified Amended Complaint of Complainant TZ SSE Buyer, LLC ("TZ SSE"), states as follows:

INTRODUCTION

1. Paragraph 1 of the Verified Amended Complaint states conclusions of law to which no response is required. To the extent a response is required, CMA is without sufficient information to admit or deny the allegations in Paragraph 1 and, therefore, denies the same.

2. CMA admits that Impact Products, LLC and Safety Zone, LLC originally filed the Verified Complaint on February 14, 2024 and also filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case No. 24-bk-11055 (the "Bankruptcy Proceeding"). CMA denies the remaining allegations in Paragraph 2 of the Verified Amended Complaint and expressly avers that Impact Products, LLC and Safety Zone, LLC did not sell any claims against CMA in the Bankruptcy Proceeding and, therefore, TZ SSE lacks standing and is estopped from further prosecuting these claims.

3. To the extent the allegations in Paragraph 3 of the Verified Amended Complaint relate to other vessel owing common carriers not named in this matter, CMA is without sufficient

information to either admit or deny the allegations and, therefore, denies the same. To the extent Paragraph 3 alleges any specific conduct by CMA, those allegations are denied.

4. CMA denies the allegations in Paragraph 4 of the Verified Amended Complaint.

5. CMA denies the allegations in Paragraph 5 of the Verified Amended Complaint.

THE COMPLAINANT & INJURED PARTIES

6. CMA is without sufficient information to admit or deny the allegations of Paragraph 6 of the Verified Amended Complaint and, therefore, denies the same.

7. CMA is without sufficient information to admit or deny the allegations of Paragraph 7 of the Verified Amended Complaint and, therefore, denies the same.

THE RESPONDENT

8. CMA admits only that it is a société anonyme existing under the laws of the Republic of France with a principal place of business at Boulevard, Jacques Saade 4, Quai d' Arenc, 13225 Marseilles, Cedex 02, France. CMA further admits that CMA CGM (America), LLC acts as CMA's agent for certain purposes within the United States, and that CMA CGM (America), LLC is a New Jersey limited liability company with a principal office at 1 CMA CGM Way, Norfolk, Virginia, 23502. CMA further admits that it offers container shipping services to customers both within and without the United States.

9. CMA denies the allegations in Paragraph 9 of the Verified Amended Complaint.

JURISDICTION AND LEGAL AUTHORITY

10. Paragraph 10 of the Verified Amended Complaint contains only conclusions of law to which no response is required. To the extent a response is required, CMA is without sufficient information to admit or deny the allegations and, therefore, denies the same.

11. To the extent Paragraph 11 of the Verified Amended Complaint contains conclusions of law, no response is required. To the extent a response is required, CMA admits that entered into a "service contract", as that term is defined by 46 U.S.C. Section 40102(21), with Laufer Group International.

12. Paragraph 12 of the Verified Amended Complaint contains only conclusions of law to which no response is required. To the extent a response is required, CMA denies the same.

13. Paragraph 13 of the Verified Amended Complaint contains only conclusions of law to which no response is required. To the extent a response is required, CMA denies the same.

ALLEGED FACTS

14. CMA admits that it entered into service contracts with Laufer Group International. CMA specifically denies any implication in Paragraph 14 that Impact Products, LLC and Safety Zone, LLC were involved in anyway whatsoever with the formation of the service contracts or that Laufer entered into a service contract with CMA as agent for or for the benefit of Impact Products, LLC and Safety Zone, LLC. CMA is without sufficient information to admit or deny the remaining allegations of Paragraph 14 of the Verified Amended Complaint and, therefore, denies the same.

15. CMA denies the allegations of Paragraph 15 of the Verified Amended Complaint.

16. CMA is without sufficient information to admit or deny the allegations of Paragraph 16 of the Verified Amended Complaint and, therefore, denies the same. CMA specifically denies that Impact Products, LLC and Safety Zone, LLC ever paid any portion of the Charges to CMA, and further denies that it assessed the Charges to Impact Products, LLC and Safety Zone, LLC, either directly or through a "conduit."

17. CMA denies the allegations in Paragraph 17 of the Verified Amended Complaint. Answering further, the Assignment of Claims Agreement, being a written document, is the best evidence of its contents; CMA denies any characterization of said document at variance therewith.

18. Paragraph 18 of the Verified Amended Complaint contains only conclusions of law to which no response is required. To the extent a response is required, Commissioner Dye's comments are a matter of public record and speak for themselves.

19. Paragraph 19 of the Verified Amended Complaint contains only conclusions of law to which no response is required. To the extent a response is required, the Commission's Interpretive Rule is a matter of public record and speaks for itself.

20. CMA denies the allegations of Paragraph 20 of the Verified Amended Complaint.

21. To the extent Paragraph 21 of the Verified Amended Complaint makes allegations concerning the practices of other carriers not named in this matter, CMA is without sufficient information to admit or deny the allegations and, therefore, denies the same.

22. CMA denies the allegations of Paragraph 22 of the Verified Amended Complaint.

23. CMA admits only that the volume of containers shipped to the United States increased in 2021 and 2022 as compared to 2020. CMA denies the remaining allegations of Paragraph 23 of the Verified Amended Complaint.

24. CMA denies the allegations of Paragraph 24 of the Verified Amended Complaint.

25. CMA denies the allegations of Paragraph 25 of the Verified Amended Complaint.

26. CMA denies the allegations of Paragraph 26 of the Verified Amended Complaint.

27. CMA denies the allegations of Paragraph 27 of the Verified Amended Complaint.

28. CMA denies the allegations of Paragraph 28 of the Verified Amended Complaint.

29. CMA denies the allegations of Paragraph 29 of the Verified Amended Complaint.

30. CMA denies the allegations of Paragraph 30 of the Verified Amended Complaint.

CAUSES OF ACTION

COUNT I: VIOLATION OF 46 U.S.C. § 41102(c)

31. Paragraph 31 of the Verified Amended Complaint does not set forth any factual allegations to which a response is required.

32. CMA denies the allegations of Paragraph 32 of the Verified Amended Complaint.

COUNT II: VIOLATION OF 46 U.S.C. § 41104(a)(10)

33. Paragraph 33 of the Verified Amended Complaint does not set forth any factual allegations to which a response is required.

34. CMA denies the allegations of Paragraph 34 of the Verified Amended Complaint.

CAUSATION

35. CMA denies the allegations of Paragraph 35 of the Verified Amended Complaint.

COMPLAINANT'S DAMAGES

36. CMA denies the allegations of Paragraph 36 of the Verified Amended Complaint.

37. CMA denies that TZ SSE is entitled to any of the relief set forth in Paragraph 37 of the Verified Amended Complaint.

PRAYER FOR RELIEF

38. CMA denies that TZ SSE is entitled to any of the relief set forth in the numbered and unnumbered paragraphs following the heading "IX. Prayer for Relief."

39. Any factual allegations in the Verified Amended Complaint not specifically admitted herein are denied.

AFFIRMATIVE DEFENSES

1. The Verified Amended Complaint fails to state a claim for which relief can be granted.

2. Impact Products, LLC and Safety Zone, LLC lacked standing, *at the time of filing*, to assert the claims set forth in the Verified Complaint, which is a jurisdictional defect and not curable via amendment.

3. Impact Products, LLC and Safety Zone, LLC did not receive a valid assignment of the claims from Laufer Group International and, therefore, TZ SSE does not have standing to pursue them now.

4. The claims included in the alleged assignment from Laufer Group International to Impact Products, LLC and Safety Zone, LLC are not the claims Complainants now attempt to bring against CMA. In other words, assuming that *any* claims were validly assigned from Laufer Group International to Impact Products, LLC and Safety Zone, LLC (which CMA denies), such claims differ from, and do not include, the causes of action and claims asserted herein.

5. The alleged assignment from Laufer Group International to Impact Products, LLC and Safety Zone, LLC was expressly prohibited by the service contracts between CMA and Laufer International Group, precluding Laufer from transferring its status as shipper within the meaning of §40102 to Impact Products, LLC and Safety Zone, LLC for Shipping Act purposes.

6. Impact Products, LLC and Safety Zone, LLC failed to identify the claims at issue and the alleged assignment from Laufer Group International in the Bankruptcy Proceeding and, therefore, TZ SSE never acquired them and lacks standing to pursue them now.

7. Even if TZ SSE somehow acquired the claims, because they were not disclosed in the Bankruptcy Proceeding, TZ SSE never paid value for them for the benefit of the bankruptcy

creditors, nor did other bidders have an incentive to raise the bid price (since the claims were not identified), and, therefore, TZ SSE is estopped as a matter of law from prosecuting them now.

8. TZ SSE has failed to plead essential elements of a claim under 46 U.S.C. § 41102(c) or 46 U.S.C. § 41104(a)(10).

9. TZ SSE has failed to plead any facts which, if true, would entitle it to any relief of any kind against CMA.

10. CMA did not commit any Shipping Act violation and is not liable to TZ SSE on the causes of action alleged in the Verified Amended Complaint.

11. At all relevant times, CMA acted in accordance with the terms of its bills of lading, contracts of carriage, and applicable tariffs.

12. Under the FMC's first purchaser rule, TZ SSE is not entitled to pursue reparations against CMA as it is not a direct purchaser and did not pay the challenged charges to CMA.

13. TZ SSE's recourse under the Shipping Act, if any, for the claims alleged herein is solely against Laufer (or other party acting as a carrier with respect to Impact Products, LLC and Safety Zone, LLC) and not CMA.

14. Any damages sustained by TZ SSE were caused solely by the actions or fault of third parties (or TZ SSE itself) for whom CMA is not responsible.

15. Some or all of TZ SSE's claims are barred by the applicable statute of limitations.

16. TZ SSE has failed to take reasonable steps to mitigate its damages.

17. Any damages allegedly sustained by TZ SSE may have been caused by force majeure.

18. CMA specifically reserves the right to assert any other affirmative defenses of which it becomes aware as discovery in this matter proceeds.

WHEREFORE, Respondent, CMA CGM S.A., respectfully requests that the Presiding Officer and the Commission dismiss the Verified Amended Complaint with prejudice, award CMA reasonable attorneys' fees and costs, and grant CMA any further relief deemed just and proper.

REQUEST FOR ORAL HEARING

Pursuant to 46 CFR 502.62(b)(3), CMA requests an oral hearing to take place in Washington, D.C.

Dated: February 26, 2025

Respectfully submitted,

/s/ K. Barrett Luxhoj

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CERTIFICATE OF SERVICE

I certify that on the 26th day of February 2025, a true copy of the foregoing was served by electronic mail on all counsel of record as follows:

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/s/ K. Barrett Luxhoj