BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 24-17

SAMSUNG ELECTRONICS AMERICA, INC.,

COMPLAINANT,

v.

ORIENT OVERSEAS CONTAINER LINE, LIMITED AND OOCL (EUROPE) LTD.

RESPONDENTS.

VERIFIED COMPLAINT

Complainant Samsung Electronics America, Inc. ("Complainant" or "SEA"), by its undersigned attorneys, brings this Verified Complaint against Respondents Orient Overseas Container Line Limited and OOCL (Europe) Limited (collectively, "OOCL" or "Respondents") pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Complainant caused by Respondent's violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the "Shipping Act"), alleged herein as follows:

I. COMPLAINANT

1. Complainant SEA is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey, 07660-2118.

II. RESPONDENTS

2. Upon information and belief, Respondent Orient Overseas Container Line Limited is a company existing under the laws of Hong Kong with its principal place of business located at 25 Harbour Road, 31st Floor Harbour Centre, Wanchai, Hong Kong. Orient Overseas Container Line Limited is an ocean common carrier as defined under 46 U.S.C. § 40102 (7) and (18) and is a controlled carrier as defined under 46 U.S.C. § 40102 (9) with the organization number 011398. As a controlled carrier of the People's Republic of China since August 16, 2018, Respondent is subject to special or enhanced oversight by the Federal Maritime Commission.

3. Upon information and belief, Respondent OOCL (Europe) Limited is a company existing under the laws of the United Kingdom with its principal place of business located at OOCL House, Levington Park, Bridge Road, Levington Suffolk, IP10 0NE, United Kingdom. Respondent OOCL (Europe) Limited is an ocean common carrier as defined under 46 U.S.C. § 40102 (7) and (18) and is a controlled carrier as defined under 46 U.S.C. § 40102 (9) with the organization number 024786. As a controlled carrier of the People's Republic of China since August 16, 2018, Respondent is subject to special or enhanced oversight by the Federal Maritime Commission.

4. Upon information and belief, "Orient Overseas Container Line" and "OOCL" are trade names for transportation provided separately by Orient Overseas Container Line Limited and OOCL (Europe) Limited, with both entities being wholly-owned subsidiaries of Orient Overseas (International) Limited ("OOIL"), a public company listed on the Hong Kong Stock Exchange.

5. Upon information and belief, OOCL (USA) Inc. is a company existing under the laws of the State of New York with its principal place of business located at 10913 South River Front Parkway, Suite 200, South Jordan, UT 84095, and acts as the agent in the United States for both Respondents.

6. Upon information and belief, Respondents Orient Overseas Container Line Limited and OOCL (Europe) Limited acted jointly in the conduct alleged herein with respect to Complainant and therefore are referred to herein collectively as "OOCL" or "Respondents."

7. Upon information and belief, OOCL is one of the world's largest integrated international container transportation and logistics companies, with approximately 130 offices in more than 100 major cities and provides customers with logistics and containerized transportation services and is thus accordingly subject to regulation by the Federal Maritime Commission (the "FMC" or "Commission").

III. JURISDICTION

8. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act.

9. This Complaint is being filed pursuant to 46 U.S.C. § 41301. SEA is seeking reparations for injuries caused to it by Respondent due to its violations of the Shipping Act.

10. The FMC has personal jurisdiction over OOCL as a "common carrier" and a vessel-operating "ocean common carrier" as defined in 46 U.S.C. § 40102(7) and (18).

11. Respondents' actions alleged herein consist of failures to establish, observe, and enforce just and reasonable practices related to receiving, handling, storing, and delivering the property of SEA, in violation of 46 U.S.C. § 41102(c) (unreasonable practices); 46 U.S.C. § 41104(a)(15) (invoicing without required information); 46 U.S.C. § 41104(a)(14) (unreasonable charges); and 46 U.S.C. §41104(a)(10) (unreasonable refusal to deal or negotiate).

IV. PRELIMINARY STATEMENT

12. SEA, a pioneering electronic products company incorporated in the United States in 1978, offers home appliances, phones, tablets, smartwatches, mobile accessories, mobile audio, televisions, monitors, and computer products to the American public.

13. The American public relies on SEA goods for its everyday personal and business needs.

14. SEA provides its consumer goods to the American public online through Samsung.com, through retailers like Best Buy, The Home Depot, and Lowe's, and through distributors.

15. SEA obtains the consumer goods it sells from various suppliers and locations. As the consignee of the goods produced and shipped to it by its suppliers, SEA has relied on transportation companies like OOCL to transport its goods from the manufacturer-shippers to various inland destinations throughout the United States.

16. A material inducement to work with an experienced transportation company such as OOCL is its offering of a full range of services, including managing transportation arrangements from overseas to the final destination at SEA distribution centers and customers inland, such service otherwise known as inland transportation or "store door" delivery. Under store door terms, the ocean carrier issues a bill of lading or sea waybill indicating the marine port at which a container is discharged from a vessel and an inland "place of delivery" to which the ocean carrier undertakes to transport the container after the container is discharged from the vessel at the port.

17. OOCL markets its full range of services to companies like SEA and its suppliers in personal meetings, at conferences, and publicly on its website. Regarding its inland transportation services, OOCL states on its website that all "means of intermodal transport are carefully

integrated with trunk ocean services to offer seamless connections across continents using feeder services, barges, trucks and block trains."[1] OOCL further states that:

> In the USA and Canada, rail dominates inter-modal transport. OOCL works in close partnership with all major rail service providers (BNSF, Norfolk Southern, CSX, Canadian Pacific, Canadian National, Union Pacific) providing one of the fastest and most reliable services into the heart of North America. Regular double-stack trains connect ports of the East and West coasts to major inland destinations and distribution centers.[2]

18. As set forth in greater detail below, SEA relied on OOCL for store door transportation of goods to the U.S. in ocean shipping containers, but OOCL fell far short of its responsibilities and obligations.

19. Beginning in approximately 2021, OOCL began repeatedly failing to properly perform its obligations for inland transportation to the inland destinations exposing SEA to unreasonable costs, charges, delays, and other harms.

20. Also beginning in 2021, OOCL instituted various unreasonable demurrage and detention practices against SEA in connection with the delivery of SEA goods shipped on store door terms under through bills of lading or sea waybills for inland delivery in the U.S., thereby imposing on SEA various unreasonable costs, charges, delays, and other harms.

21. As a result of OOCL's unreasonable practices, SEA has been forced to pay excessive and unlawful OOCL demurrage and detention charges and has been forced to undertake

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[1] https://www.oocl.com/eng/ourservices/intermodal/Pages/default.aspx

[2] *Id*.

and perform the ocean carrier's inland transportation responsibilities to obtain delivery of the products shipped to SEA for sale to American consumers.

22. SEA is not the only victim of such exploitative behavior. Demurrage and detention charges and practices have risen so exponentially high that the Biden Administration highlighted the concern in a press release and fact sheet on February 28, 2022, titled "Lowering Prices and Leveling the Playing Field in Ocean Shipping."[3]

23. On March 1, 2022, President Biden highlighted escalating freight and demurrage and detention costs in his State of the Union address, noting that prices were raised "by as much as 1,000% …" and as such, the President announced "a crackdown" on practices that result in "overcharging American businesses and consumers."[4]

24. Separately, the Commission has long raised concerns with a host of unjust and unreasonable demurrage and detention practices, and the Commission is advancing efforts to promote complaints and adjudicate wrongdoing, as the full scope of the unlawful practices concerning demurrage and detention in the last two years becomes more fully known.

25. Earlier last year, FMC chairman Dan Maffei is reported to have addressed significant concerns about unlawful practices, particularly in regard to cargo holds and credit holds exacerbating charges against shippers. In a March 8, 2023, article by Tomer Raanan in *Lloyd's List*, addressing the issue at the *Journal of Commerce*'s recent TPM Conference, reporter Raanan observed:

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[3] https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/

[4] https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/

> Many shippers complained that carriers levied these charges on them without providing any information related to them and left them with little ability to dispute them. Some have also complained that ocean carriers refused to give them their cargo unless they paid the charges, essentially holding the cargo hostage. 'The whole detention and demurrage system is very complicated. I think it took a long time for it to get to a situation where in my view, it wasn't performing its central aspect of keeping cargo moving,' Mr. Maffei said. 'When it is used to pad the rates without looking like it's padding the rates, then it becomes a distortion of the market.'[5]

26. As explained in further detail below, SEA has dealt with and continues to face manifestly unjust and unreasonable charges and practices in connection with inland transportation arrangements that are the responsibility of OOCL under its store door shipments. Like the other complainants in the multiple similar FMC complaint actions filed against OOCL, SEA suffered from OOCL's unreasonable detention and demurrage practices. The consistency in the allegations across the complaints (See *Bed Bath & Beyond Inc. v. Orient Overseas Container Line Limited and OOCL (Europe) Limited* (Dkt No. 23-02); *Impact Products, LLC and Safety Zone, LLC v. Orient Overseas Container Line Limited and OOCL (Europe) Limited* (Dkt No. 24-08)) highlights that OOCL's conduct with respect to the unreasonable imposition of detention and demurrage charges was part of a broader unreasonable practice and policy.

27. Notwithstanding that OOCL is responsible for the inland transportation to the named place of delivery on the sea waybill under store door terms, OOCL has forced SEA to pay

[5] https://lloydslist.maritimeintelligence.informa.com/LL1144193/US-shipping-reform-changed-what-FMC-is-all-about

demurrage and detention charges that were not the responsibility of SEA by holding containers hostage and threatening to cut off further services.

28. OOCL is legally responsible under store door terms as the common carrier for the cargo deliveries to the inland destination by all multi-modal methods, including rail, yet charged SEA for demurrage when OOCL failed to take the necessary steps to move the cargo from its yard and deliver the containers.

29. Reported challenges with inland transportation (such as chassis shortages, terminal congestion, and similar issues reported during the period of the COVID-19 pandemic), were not unexpected events; they were well-known conditions. Those challenges were known at the time OOCL made the vast majority of the bookings and arrangements with non-party rail interests and equipment providers.

30. OOCL further abandoned its responsibility for inland transportation by obligating SEA to pay for rail storage charges when delays occurred; charges for which OOCL was responsible.

31. The staggering costs of demurrage and detention charges are unsustainable, present a material threat to SEA's ability to provide its products to American consumers, and have made it necessary to bring this Complaint.

32. As a result of OOCL's conduct, SEA has sustained serious and substantial injuries and monetary damages, including paying over 4,400 erroneous demurrage, detention and associated charges which continue to be tabulated and accrued as of the filing of this Complaint.

V. FACTUAL ALLEGATIONS

33. SEA is the consignee of cargoes of home goods shipped to the U.S. in ocean shipping containers ("SEA Containers") by OOCL.

34. OOCL transported SEA Containers under through bills of lading, or sea waybills, from the overseas locations through U.S. ports and on to designated U.S. inland locations (commonly known as "store door" terms).

35. Under through bills of lading and sea waybills, OOCL is responsible as the common carrier for both: (1) the ocean carriage of the SEA Containers to a U.S. port, and (2) the inland carriage of the SEA Containers to the U.S. inland locations, generally SEA warehouses or directly to SEA customer locations.

36. The inland movement of containers under "store door" terms is commonly referred to as "carrier haulage" because the ocean carrier is responsible for the inland movement via rail and/or truck drayage to the named place of delivery and the provision of chassis to move the SEA Containers.

37. In contrast to carrier haulage, under "CY" (container yard) or "port-to-port" terms, the inland movement of containers is commonly referred to as "merchant haulage" because the shipper or consignee is responsible for the inland movement from the port to the final inland destination.

38. In store door shipments, OOCL is responsible for arranging and paying for the inland movements, and for ensuring the removal of containers from U.S. marine and intermodal terminals and the delivery of containers to the designated inland locations.

39. In store door shipments, costs and charges relating to delays in the timely removal of containers from terminals (generally known as "demurrage" charges) are the responsibility of the carrier, such as OOCL, and not the consignee, such as SEA.

40. In store door shipments, costs and charges relating to delays in the timely delivery of containers (and chassis) to the designated inland locations and ultimately the return of empty

containers and equipment to OOCL's possession or control at OOCL's designated location (generally known as "detention" or "per diem" charges) are the responsibility of the carrier, OOCL, not the shipper or consignee, when the delays result from matters for which (1) OOCL is responsible (e.g., delays in equipment return caused by ocean carrier empty return restrictions or limitations); and/or (2) OOCL bears the responsibility for the underlying transportation delays (e.g., delays in equipment return caused by problems performing inland drayage services, such as subcontracting adequate trucking, and/or lack of availability of chassis the ocean carrier is responsible to provide).

41. Since 2020, OOCL has transported SEA Containers under "store door" terms to the U.S. from various overseas locations, through numerous U.S. ports, to U.S inland locations. Yet OOCL has invoiced and forced SEA to pay substantial amounts of demurrage and detention charges and other drayage-related charges in connection with shipments of SEA Containers for which OOCL was responsible to provide store door transportation.

42. During the relevant period of 2020-2022, OOCL began repeatedly and chronically failing to properly perform its inland transportation obligations, including failing to timely remove SEA Containers from U.S. marine and intermodal terminals and failing to timely deliver SEA Containers to their designated inland locations.

43. During that same period, OOCL began charging SEA dramatically increasing amounts for alleged demurrage and detention charges resulting from OOCL's inland transportation failures.

44. When asked to explain the reason for asserting the charges on SEA, OOCL has asserted that the use of a customer nominated trucker ("CNT") somehow converts a "store door"

move into a "container yard" move. OOCL has not provided any documentation or support for that novel assertion to date.

45. When asked to mitigate, cancel, or waive charges for which SEA was not responsible on the basis that OOCL was responsible for such inland charges under store door terms, OOCL refused to mitigate, cancel, or waive the charges.

46. OOCL has repeatedly demanded payment of disputed demurrage and detention charges and invoices and threatened various punitive actions against SEA if payments were not made, including refusing to release subject SEA Containers and threatening to refuse release of unrelated SEA Containers.

47. OOCL has in fact refused release of SEA Containers moving under store door terms on the basis of allegedly outstanding demurrage and detention charges arising from the foregoing OOCL practices.

48. In addition to charging SEA for inland transportation costs and charges never actually earned as a result of OOCL's failures to perform under "store door" terms, OOCL's billing practices and policies caused further injuries to SEA:

a. OOCL's invoices and demurrage letters routinely lacked adequate information to determine the basis for the individual demurrage and detention charges;

b. Based on information and belief, OOCL assessed charges against SEA Containers without consideration of OOCL's responsibility (or SEA's absence of responsibility) for the circumstances resulting in such demurrage and detention charges;

c. OOCL repeatedly rebilled SEA for charges previously billed, and for charges previously paid, based on information and belief, on OOCL failing to properly

reconcile its invoices with payments received from SEA and others, including payment vendors;

d. OOCL improperly and systematically required that SEA undertake initial payment responsibility for demurrage and/or detention charges as a condition to release cargo from intermodal terminals and without taking adequate steps to address increasing delays, costing SEA not only the direct costs of paying such charges, but also causing SEA to incur significant and substantial costs for employees and systems to undertake responsibility for OOCL's inland transportation obligations; and

e. OOCL failed to have or engage in an adequate or meaningful dispute resolution process for demurrage and detention charges.

49. OOCL's conduct also resulted in container processing and handling delays at SEA's warehouses and client delivery locations, as well as delays in container and equipment returns, resulting in further detention charges and injuries.

50. Based on information and belief, as a result of OOCL's unjust and unreasonable practices and other unlawful conduct, SEA was repeatedly charged detention and/or per diem in connection with empty containers and chassis when OOCL failed to provide reasonable opportunity to return such equipment without incurring additional charges, including inadequate availability of return locations, and inadequate and/or inaccurate information concerning return locations.

51. On October 7, 2022, SEA sent a Notice of Demand for Action letter ("Demand Letter") to OOCL regarding unreasonable and unlawful charges for demurrage, detention, handling, and/or storage, and other unreasonable and unlawful conduct. The Demand Letter

invited OOCL to respond in a substantive manner, and asked that OOCL indicate its interest in discussing cooperative resolution.

52. SEA and OOCL discussed their respective positions on numerous occasions in the past year and a half, but no progress towards a resolution was made.

53. As a result of OOCL's wrongful conduct, SEA incurred serious and substantial injuries and monetary damages, including paying improper charges for demurrage and detention, with charges continuing to be tabulated and accrued as of the filing of this Complaint.

VI. VIOLATIONS OF THE SHIPPING ACT

COUNT I

VIOLATIONS OF 46 U.S.C. § 41102(c)

Unjust and Unreasonable Practices in Handling Property

54. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

55. Section 41102(c) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

56. Respondent OOCL is an ocean common carrier as defined by the Shipping Act.

57. OOCL's foregoing practices and procedures relating to the assessment of demurrage and detention are directly related to receiving, handling, storing, or delivering SEA's property.

58. OOCL's foregoing practices and procedures relating to the assessment of demurrage and detention have been occurring on a normal, customary, and continuous basis, involving since 2021 in excess of 4,400 individual demurrage, detention, and associated charges.

59. OOCL's foregoing practices and procedures relating to the assessment of demurrage and detention are unjust and unreasonable in violation of § 41102(c).

60. OOCL's foregoing practices and procedures relating to the assessment of demurrage and detention are the proximate cause of SEA's claimed injury and damages.

61. The following practices and procedures relating to the assessment of demurrage and detention are specifically unjust and unreasonable in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5:

a. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers moving under store door terms for reasons that are not within SEA's control;

b. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers when OOCL is responsible for the pickup from the port, movement to the inland place of delivery, and return of the SEA Containers;

c. continuing to book new SEA Containers under store door terms without taking adequate steps to address increasing delays and costs incurred in securing timely intermodal movement of SEA Containers;

d. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers without a meaningful practice

or procedure to first determine responsibility for such charges (under store door terms, or otherwise);

e. failing to provide SEA with adequately detailed billing information and/or invoices related to demurrage and detention charges that would permit SEA to meaningfully understand and/or contest the charges;

f. rebilling demurrage and detention charges already billed and/or already paid;

g. refusing to extend free time and/or mitigate, waive or reduce demurrage or detention charges that were not SEA's responsibility;

h. failing to have or employ an adequate dispute resolution policy or practice with regard to demurrage and detention charges;

i. threatening to withhold services and refusing to release of SEA Containers without payment of charges that were not SEA's responsibility;

j. assessing demurrage and detention charges on SEA as consignee for costs and charges of delays in the inland intermodal transportation of SEA Containers moving under store door terms that serve no incentivizing principle and do not promote freight fluidity because SEA is not responsible for the inland portion of the transportation;

k. demanding/requiring that SEA undertake OOCL's responsibilities to release and/or move SEA Containers, including, but not limited to, requiring that SEA arrange for and directly pay marine terminals and other service providers for release of SEA Containers from intermodal terminals and for inland transportation of SEA Containers moving under through bills of lading;

l. assessing detention charges for equipment return delays that were OOCL's responsibility and for delays arising because OOCL did not provide adequate opportunity to return containers; and

m. refusing release of SEA Containers without payment of charges that were not SEA's responsibility.

COUNT II

VIOLATIONS OF 46 U.S.C. § 41104(a)(3) - 46 U.S.C. § 41102(d) – Retaliation

62. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

63. Prior to the enactment of the Ocean Shipping Reform Act of 2022 ("OSRA"), 46 U.S.C. § 41104(a)(3) prohibited a common carrier from "retaliat[ing] against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason."

64. On and after the enactment of OSRA, 46 U.S.C. § 41102(d) prohibits a common carrier (among others) whether acting alone or in conjunction with another person, directly or indirectly, from "retaliat[ing] against a shipper . . . by refusing, or threatening to refuse, an otherwise-available cargo space accommodations, or . . . resort to other unfair or unjustly discriminatory action for – the reason that a shipper . . . has . . . filed a complaint against the common carrier . . . or any other reason."

65. The Commission explained in its December 28, 2021 Statement On Retaliation that: "shipper" is defined broadly and includes "a cargo owner, the person for whose account the

ocean transportation of cargo is provided, [and] the person to whom delivery is to be made …" FMC Docket No. 21-15, Dec. 28, 2021, *Statement of the Commission On Retaliation*, at 7.

66. The Commission also explained that "to establish a violation of § 41104(a)(3), a complainant alleging retaliation or other unfair or unjustly discriminatory conduct based on the above grievance-related activity (filing complaints, etc.) does not need to prove that the carrier's conduct was designed to stifle competition of other carriers or that the shipper at issue sought the services of a carrier other than the respondent – cases suggesting otherwise are inapplicable." *Id.*

67. Grievance-related activity protected by the anti-retaliation prohibitions extends beyond filing complaints, and that the Commission "will interpret 46 U.S.C. § 41104(a)(3) – the anti-retaliation provision – broadly to effectuate Congress's intent that shippers feel free to air their grievances to the Commission, and to address new shipping practices and new forms of retaliation." *Id.*

68. In response to Complainant's efforts to address OOCL's shipping and charging practices, resolve disputes, and dispute invoices, OOCL threatened to retaliate, and in fact did retaliate, against Complainant and SEA Containers with respect to delivery of cargo and refusing available cargo space accommodation.

69. Prior to and on numerous occasions to and through the date of this Complaint, OOCL retaliated against Complainant and SEA Containers in violation of 46 U.S.C. §§ 41104(a)(3) and 41102(d).

COUNT III

VIOLATIONS OF 46 U.S.C. § 41104(a)(10) - Refusal to Deal

70. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

71. Prior to the enactment of the OSRA, pursuant to 46 U.S.C. § 41104(a)(10) it was unlawful for a common carrier to "unreasonably refuse to deal or negotiate."

72. On and after the enactment of OSRA, 46 U.S.C. § 41104(a)(10) makes it unlawful for a common carrier to "unreasonably refuse to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier."

73. In response to Complainant's efforts to: (a) address OOCL's shipping and charging practices with respect to inland services under through bills of lading and demurrage and detention charges and practices, (b) resolve disputes, and (c) dispute invoices, OOCL refused to meaningfully engage in good faith discussions or change its underlying practices, specifically including the practices and actions described in Section V above.

74. Prior to and on numerous occasions to and through the date of this Complaint, OOCL refused to deal or negotiate with Complainant in violation of 46 U.S.C. § 41104(a)(10).

COUNT IV

VIOLATIONS OF 46 U.S.C. § 41104(a)(15) – OSRA – Invoices without Information

75. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

76. As amended by OSRA, 46 U.S.C. § 41104(a)(15) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not--…invoice any party for demurrage and detention charges unless the invoice includes information as described in subsection (d) [referring to 46 U.S.C. § 41104(d)]."

77. Based upon information and belief, on numerous occasions through and to the date of this Complaint, OOCL sought to invoice and/or charge for demurrage and detention on and after

the effective date of OSRA without including the information necessary to comply with 46 U.S.C. § 41104(d).

78. Issuing such invoices, without proper information, is a violation of 46 U.S.C. § 41104(a)(15).

79. In addition to other penalties and remedies, the issuance of such invoices that would trigger 46 U.S.C. § 41104(f), which provides that "[f]ailure to include the information required under subsection (d) of an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge."

COUNT V

VIOLATIONS OF 46 U.S.C. § 41104(a)(14) – OSRA Unreasonable Charges

80. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

81. As amended by OSRA, 46 U.S.C. § 41104(a)(14) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not--…assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations)."

82. As alleged in each of the Counts above, OOCL's practices and actions in connection with assessment of demurrage and detention charges after the effective date of OSRA under through bills of lading also violate 46 U.S.C. § 41104(a)(14).

COUNT VI

VIOLATIONS OF 46 U.S.C. § 41102(c) –

Unjust and Unreasonable Dispute Resolution Practices

83. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

84. Section 41102(c) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

85. In addition to the elements set forth in Count I, each of which is applicable here and incorporated herein, Section 41102(c) applies equally to dispute resolution practices, policies and procedures (or lack thereof) in connection with assessment, collection, and dispute resolution of charges relating to or connected with receiving, handling, storing, or delivering property.

86. OOCL's dispute resolution practices (or lack thereof), including, but not limited to, Respondent's failures to meaningfully engage in commitments to address disputed charges and OOCL's apparent lack of any workable practice, policy or procedure to meaningfully evaluate disputed charges, both throughout the relevant time period of this Complaint, and between October 2022 to date, as set forth in Section V above, constitute violations of Section 41102(c).

87. OOCL's foregoing lack of just and reasonable dispute resolution practices was and continues to be a proximate cause of injury and damages to SEA.

VII. CAUSATION AND INJURY TO COMPLAINANT

88. As a result of OOCL's violations of the Shipping Act, Complainant has sustained serious and substantial injuries and monetary damages, including being forced to pay detention and demurrage charges for which it was not responsible, and other damages. OOCL's unreasonable and unlawful conduct is continuing, and SEA continues to sustain injury and damages.

VIII. ALTERNATIVE DISPUTE RESOLUTION

89. SEA has unsuccessfully attempted to resolve this matter with Respondent prior to filing this Verified Complaint. Those efforts took place beginning October 2022 and running through March 2024. Considering statements made by OOCL and its counsel and consequent noncooperation in resolving this matter, SEA did not seek to use the FMC's alternative dispute resolution process prior to filing this Verified Complaint.

90. For the same reasons stated above, Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution under the FMC's ADR program (46 C.F.R. § 502.64) with respect to this matter.

91. Notwithstanding the foregoing, Complainant remains amenable to engaging in alternative dispute resolution in connection with this matter, should Respondents be willing to do so in good faith.

IX. REQUEST FOR ORAL HEARING

92. Complainant requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol Street, NW, Washington, D.C. 20573-0001.

X. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that Respondents be required to answer the charges in this Complaint, and that after thorough investigation that the FMC issue an Order:

1. Requiring Respondent to pay Complainant reparations for the unlawful conduct described above;
2. Requiring the payment of any other amounts that the FMC deems appropriate;

3. Ordering that Respondent cease and desist from the unlawful conduct including collection by OOCL of any pending charges arising from the unreasonable policies and practices complained of above; and
4. Providing Complainant such other and further relief that the FMC deems just and proper.

Dated: March 26, 2024

Respectfully Submitted,

MILLS BLACK LLP

By: _____

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Counsel to Samsung Electronics America, Inc.

VERIFICATION

I, Michael Rapske, am Vice President, Logistics of Complainant Samsung Electronics America, Inc. and hereby declare and attest under penalty of perjury that I have read the foregoing Verified Complaint for the lawsuit captioned *Samsung Electronics America, Inc. v. Orient Overseas Container Line, Limited and OOCL (Europe) Ltd.* and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: March 25, 2024

Michael Rapske