

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 24-21**

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**PKDC, LLC**

**Complainant,**

**v.**

**CMA CGM S.A.,**

**Respondent.**

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**VERIFIED ANSWER**

Respondent CMA CGM S.A., (“CMA CGM”), by and through its attorneys, hereby answers the complaint filed by PKDC, LLC (“PKDC”) to initiate this proceeding (the “Complaint”) follows:

**I. COMPLAINANT**

1. Admit.

**II. RESPONDENT**

2. Admit.

3. Admit the first sentence. The second sentence states a conclusion of law which requires no response.

4. Admit.

**III. JURISDICTION AND LEGAL AUTHORITY**

5. Deny.

6. Admit that CMA CGM is an ocean common carrier over which the FMC has personal jurisdiction. Admit that CMA CGM entered into a service contract with PKDC. Deny that personal jurisdiction exists because of the service contract.

7. Deny that the service contract between the parties contains the language quoted in Paragraph 7.

8. Deny.

9. Deny.

10. Deny.

11. PKDC's claim under 46 U.S.C. § 41104(a)(9) was dismissed by the Presiding Officer's December 20, 2024 Order. Accordingly, no response is required.

12. Deny.

13. Deny.

#### **IV. THE MATTERS COMPLAINED OF (ALLEGED FACTS)**

##### **a. SERVICE CONTRACT**

##### **Quantity**

14. Lack sufficient information to admit or deny whether PKDC currently imports furniture from various countries including China, Vietnam, and India or relies on ocean common carriers to ship goods to the United States.

15. Admit that PKDC entered into a service contract with CMA CGM, which contract speaks for itself. Lack sufficient information to admit or deny whether PKDC entered or enters into service contracts with one or more other ocean common carriers.

16. Admit.

17. The terms of the Service Contract speak for themselves.

18. The terms of the Service Contract speak for themselves.

19. The terms of the Service Contract speak for themselves.

20. Deny.

21. Deny.

22. Deny.

23. Admit only that CMA CGM transported 1514 TEUs under the Service Contract. The remaining allegations of Paragraph 23 are denied.

24. Admit that Paragraph 24 contains a portion of an email sent to PKDC by CMA CGM, which email and the chain of which it is part speak for themselves. The remaining allegations of Paragraph 24 are denied.

25. Admit that PKDC and CMA CGM agreed to amend the Service Contract by reducing the MQC to 1514, but deny the remainder of Paragraph 25.

26. Deny.

27. Deny that CMA CGM refused to honor its quantity commitment. Lack sufficient information to admit or deny allegations with respect to alternative shipping and accordingly deny said allegations.

28. Deny that CMA CGM refused to honor its quantity commitments. Lack sufficient information to admit or deny allegations with respect to alternate shipping and accordingly deny said allegations.

29. Deny.

30. Deny.

31. Admit that Paragraph 31 contains a portion of an email sent to PKDC by CMA CGM, which email speaks for itself. Deny with respect to the remaining allegations in Paragraph 31.

### **Rates**

32. Deny.

33. Deny.

34. Admit that the first two sentences of Paragraph 34 contain portions of a July 22, 2021 email, which speaks for itself, from CMA CGM to PKDC. Deny with respect to the remaining allegations in Paragraph 34.

35. Admit that Paragraph 35 contains a portion of a September 15, 2021 email, which speaks for itself, from CMA CGM to PKDC. Deny with respect to the remaining allegations in Paragraph 35.

36. Admit only that application of PSS and premium rates resulted in per container ocean freight rates in excess of those set forth in the Service Contract as originally signed. Deny

that PSS and premium rates were the result of “demands” by CMA CGM or that application of PSS and premium rates were in any way inconsistent with the Service Contract.

**b. Demurrage and Detention Charges**

37. Admit.

38. Lack sufficient information to admit or deny due to the vagueness of the term “charges” and the discrepancy between the text figure of “one million” and the numerical figure which might be either \$1 million or \$1 thousand. To the extent a further response is required, deny the allegations of Paragraph 38 including any implication that CMA CGM’s conduct was in any way inconsistent with the Service Contract.

39. Deny.

40. Paragraph 40 states a conclusion of law which requires no response.

41. Paragraph 41 states a conclusion of law which requires no response.

42. Deny.

43. Lack sufficient information to admit or deny due to the failure of the allegation to identify the “logistics providers” in question and/or to define what constitutes “routinely” informed. Accordingly, Paragraph 43 is denied.

44. Admit that Paragraph 44 contains portions of the emails cited, which speak for themselves. Deny with respect to the remaining allegations in Paragraph 44..

45. Deny.

**V. CAUSATION**

46. Deny.

47. Deny.

48. Deny.

49. Deny.

**VI. DAMAGES**

50. Deny.

51. Deny.

52. Deny.

53. Deny.

## **VII. CAUSES OF ACTION**

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

54. CMA CGM repeats each answer set forth above as if fully set forth herein.

55. Deny.

### **COUNT II: VIOLATION OF 46 U.S.C. § 41102(c) & 46 C.F.R § 545.5**

56. CMA CGM repeats each answer set forth above as if fully set forth herein.

57. Deny.

### **COUNT III: VIOLATION OF 46 U.S.C. § 41104(a)(2)**

58. CMA CGM repeats each answer set forth above as if fully set forth herein.

59. Deny.

### **COUNT IV: VIOLATION OF 46 U.S.C. § 41104(a)(9)**

60. CMA CGM repeats each answer set forth above as if fully set forth herein.

61. This claim has been dismissed and thus no answer is required.

### **COUNT V: VIOLATION OF 46 U.S.C. § 41104(a)(10)**

62. CMA CGM repeats each answer set forth above as if fully set forth herein.

63. Deny.

## **VIII. AFFIRMATIVE DEFENSES**

1. PKDC fails to state a claim for which relief can be granted in that CMA CGM fulfilled its obligation to transport the MQC of the Service Contract by transporting 1514 TEUs of cargo.

2. The Federal Maritime Commission lacks subject matter jurisdiction in that the exclusive remedy for a breach of a service contract is an action in an appropriate court.

3. PKDC fails to state a claim for which relief can be granted in that 46 U.S.C. § 41102(c) does not apply to the transportation of cargo.

4. PKDC fails to state a claim for which relief can be granted in that C.F.R. §545.5 is an interpretative rule and thus imposes no legal obligations or duties.

5. PKDC fails to state a claim for which relief can be granted to the extent that demurrage and/or detention charges were incurred as a result of the failure of PKDC and/or its agents/contractors to fulfill their customary obligations with respect to shipments transported by CMA CGM.

6. PKDC fails to state a claim for which relief can be granted to the extent the demurrage/detention charges it seeks to recover were imposed by persons other than CMA CGM, which persons are not parties to this proceeding and/or are not subject to the jurisdiction of the Federal Maritime Commission.

7. PKDC fails to state a claim for relief under 46 U.S.C. § 41102(a)(2).

8. PKDC fails to state a claim for relief under 46 U.S.C. §41104(a)(10).

9. PKDC fails to state a claim for relief under 46 U.S.C. § 41102(c).

10. PKDC is estopped from challenging the reasonableness of charges which it did not dispute or otherwise challenge in a timely manner via CMA CGM's dispute process.

11. PKDC is estopped from challenging the reasonableness of charges which it freely negotiated and voluntarily agreed to pay (and, in some cases, specifically requested) in exchange for prioritization of PKDC's shipments at a time when space and equipment were limited.

12. PKDC fails to state a claim for relief may be granted to the extent that alleged harm and damages resulted in whole or in part from the acts and/or omission of PKDC, its agents and/or contractors.

## **IX. PRAYER FOR RELIEF**

WHEREFORE, CMA CGM respectfully requests that the complaint be dismissed with prejudice.

**VIII. REQUEST FOR ORAL HEARING**

Complainant requests an oral hearing in Washington, D.C.

Respectfully submitted,

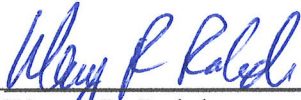
**COZEN O'CONNOR**

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By:   
Wayne R. Rohde  
Kathryn Sobotta

January 8, 2025

## VERIFICATION

I, B. Jason Barlow, am General Counsel of CMA CGM (America) LLC and I am authorized to make this verification on behalf of CMA CGM S.A. I have read the forgoing Verified Answer and declare under the penalty of perjury that the forgoing is true and correct.

A handwritten signature in black ink, appearing to read "B. Jason Barlow", is written over a horizontal line.

B. Jason Barlow

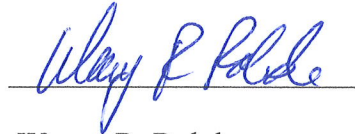


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of January, 2025, the foregoing Answer was served via electronic mail on:

Jason Kenner, Esq. ([jkenner@strtrade.com](mailto:jkenner@strtrade.com))

Andrew Margolis, Esq. ([amargolis@strtrade.com](mailto:amargolis@strtrade.com))



Wayne R. Rohde