BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 24-23

SAMSUNG ELECTRONICS

AMERICA, INC.,

COMPLAINANT,

v.

HMM CO., LTD. F/K/A HYUNDAI MERCHANT
MARINE CO., LTD. ,

RESPONDENT.

VERIFIED COMPLAINT

Complainant Samsung Electronics America, Inc. ("Complainant" or "SEA"), by its undersigned attorneys, files this Verified Complaint against Respondent herein, alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the "Shipping Act") 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. RESPONDENT

2. Respondent HMM Co., Ltd. f/k/a Hyundai Merchant Marine Co., Ltd. is a global ocean carrier with its corporate office at 194 Yulgok-ro, Jongro-gu, Seoul, Korea 03127, conducting business in the United States through HMM America Shipping Agency, Inc., with its principal corporate office at 65 Challenger Road, 1st Floor #140, Ridgefield Park, New Jersey 07660 ("HMM"). HMM is a vessel-operating "ocean common carrier" as that term is defined by 46 U.S.C. § 40102(7) and (18) and is subject to regulation by the Federal Maritime Commission (the "FMC" or "Commission").

III. JURISDICTION

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

4. This Complaint is being filed pursuant to 46 U.S.C. § 41301. SEA is seeking a cease and desist order and reparations for injuries caused to it by Respondent's violations of the Shipping Act.

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

6. Respondent's actions alleged herein constitute 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)(3) and 46 U.S.C. § 41102(d) (retaliation); 46 U.S.C. § 41104(a)(10) (refusal to deal); 46 U.S.C. § 41104(a)(15) (non-compliant invoicing); and 46 U.S.C. § 41104(a)(14) (unreasonable charges).

IV. PRELIMINARY STATEMENT

7. 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.

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

9. 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.

10. In order to meet the needs of the American public, SEA has relied on transportation companies like HMM to carry its goods to inland destinations throughout the United States.

11. Part of the appeal of working with an experienced transportation company like HMM is its offering of a full range of services, from arrangements overseas to the final destination at SEA distribution centers and customers inland, otherwise known as inland transportation or "store door" delivery. Under store door terms, the ocean carrier issues a through bill of lading or sea waybill indicating the marine port at which a container is discharged 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.

12. HMM markets its full range of services to companies like SEA in personal meetings, at conferences, and publicly on its website. HMM markets inland transportation intermodal services under store door terms as "the final component in ensuring single-carrier

control, door-to-door, under a single bill of lading."[1] HMM further highlights its seamless inland service capabilities:

> "[U]sing customized software running on a sophisticated mainframe computer with EDI links with all major railroads, we execute and closely monitor traffic for quick, on-time departure and on-time arrival in accordance with published schedules. Special operations personnel known as "Doublestack Rail Coordinators", located in Los Angeles, Seattle, Dallas, Chicago and New York, coordinate our rail operations on-site in these volume-intensive hubs. Also headquartered in Irving, TX, HASA Trucking Operations is responsible for dispatch and coordination of all linehaul, door-to-door, and landbridge truck traffic pertaining to HMM's international and HII domestic business. HASA's centralized Trucking Operations offers tight control and unparalleled service throughout North America."[2]

13. As set forth in greater detail below, SEA relied on HMM for store door transportation of goods to the United States in ocean shipping containers.

14. Beginning in approximately 2020, HMM began repeatedly failing to maintain just and reasonable practices in connection with its obligations for inland transportation to the inland destinations.

15. Aware of challenges with intermodal transportation logistics, HMM continued to transport SEA goods on store door terms under through bills of lading or sea waybills for inland delivery in the United States, and repeatedly and continuously failed to maintain just and reasonable practices in connection with its inland transportation obligations, exposing SEA to unreasonable costs, charges, delays, and other harms.

16. As a result of HMM's unreasonable practices, SEA was forced to pay excessive and unlawful charges assessed by HMM—known as "demurrage and detention" charges—and was forced to undertake and perform the ocean carrier's inland transportation responsibilities

[1] https://www.hmm21.com/company/intermodal.do
[2] https://www.hmm21.com/e-service/information/intermodalService/UsIntermodalService.do

(responsibilities that SEA had already paid HMM to perform) in order to continue to import its products sold to American consumers.

17. SEA is apparently not alone in facing this 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]

18. 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]

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

20. Last year, FMC chairman Dan Maffei is reported to have expressed significant concerns about unlawful practices, particularly in regards 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:

> "[M]any 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

[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/.

> 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,' [FMC chairman Dan] 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]

21. With the benefit of additional considerations at the FMC since the comments reported in Lloyd's List, above, Chairman Maffei has continued to acknowledge the shortfalls of ocean carriers. In a recent supply chain podcast, regarding the FMC's responsibility to carefully consider the evidence proffered as to demurrage and detention charges during the pandemic, Chairman Maffei noted "[d]etention and demurrage, until we adjudicate it we don't [sic] whether it was fair or unfair, reasonable or unreasonable. ***Certainly during the pandemic I'm comfortable saying a lot of those charges were unreasonable and maybe more than normal because there were several reasons why the ocean shippers simply couldn't get it.*** We talk about the Incentive Principle -- a charge is reasonable if it can incentivize picking up that container or not…"[6]

22. When asked whether the ocean carriers used demurrage and detention charges as revenue centers during the pandemic, he stated, "[t]here were certainly complaints and ***I think there were sufficient evidence that there was abuse let me just sort of say that.*** I don't think it's my job to judge motive or any of that kind of stuff. ***Companies are under pressure to make money for their shareholders.*** And it's up to us to make sure that everybody you know follows the rules so that nobody can get away with something."[7]

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

[6] *See* Mike King, Host, September 27, 2023, Audio podcast episode, The Loadstar (Making Sense of the Supply Chain), FMC Chairman exclusive, container shipping forecast – and what next at Flexport?, Part 2 at minutes 30-34, https://theloadstar.com/news-podcast-sept-2023-fmc-chairman-exclusive-container-shipping-forecast-and-what-next-at-flexport/ (emphasis added).

[7] *See Id.* (emphasis added).

23. And as Chairman Maffei recently observed on the supply chain podcast, ocean carriers like HMM should have been very concerned about changing their behavior when on notice by the FMC of wrongdoing to avoid enforcement actions or those filed by private parties, as here. "This isn't a game of gotcha. It's a game of trying to make sure that everybody plays by the same rules ***and that if you're given a yellow card you change your behavior so you're not given a red card.*** We're not interested in putting people out of business if we do that then competition is less and that's worse for the shippers and consumers because prices go up so we want to send the right message but we want a healthy industry".[8]

24. As explained in further detail below, SEA dealt with manifestly unjust and unreasonable charges and practices in connection with inland transportation arrangements that are the responsibility of HMM under its store door shipments.

25. Notwithstanding that HMM was responsible for the inland transportation to the named place of delivery on the sea waybill under store door terms, HMM forced SEA to pay demurrage and detention charges that were not the responsibility of SEA by holding containers hostage and threatening to cut off further services.

26. HMM was legally responsible under store door terms as the common carrier for the cargo delivery to the inland destination by all multi-modal methods. HMM cannot claim that the charges were unexpected, that it was unaware, or that they were out of its control. The issues HMM faced with inland transportation, such as chassis shortages, terminal congestion and similar issues during the pandemic were not isolated events; they were systemic, ongoing, and well-known conditions. These issues were known at the time HMM made the vast majority of the bookings and arrangements with non-party rail interests and equipment providers.

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[8] *See Id.* (emphasis added).

27. SEA is entitled to seek reparations for charges even if HMM did not directly assess the charges or receive the payments. What matters is that SEA was forced to pay these charges assessed by HMM's subcontractors, agents, or otherwise on HMM's behalf when HMM was responsible for the inland transportation.

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

29. As a result of HMM's conduct, SEA has sustained serious and substantial injuries and monetary damages, including paying erroneous demurrage and detention charges. SEA paid over 96,000 demurrage, detention, and associated charges.

V. FACTUAL ALLEGATIONS

30. SEA was the consignee of cargoes of home goods shipped to the United States in ocean shipping containers ("SEA Containers") by HMM.

31. HMM 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).

32. Under through bills of lading and sea waybills, HMM was 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.

33. 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.

34. 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.

35. In store door shipments, HMM was 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.

36. In store door shipments, costs and charges relating to delays in the timely removal of containers from terminals (generally known as "demurrage" charges) should have been borne by HMM, not a consignee like SEA.

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

38. Since January 2020, HMM has transported SEA Containers under "store door" terms to the U.S. from various overseas locations, through numerous U.S. ports (including

Baltimore, Charleston, Jacksonville, New Orleans, New York/New Jersey, and Savannah), to numerous inland locations throughout the United States.

39. Since 2020 and through the time of this Complaint, SEA has been invoiced and paid substantial amounts of demurrage and detention charges and other drayage-related charges in connection with HMM's store door transportation of SEA Containers.

40. Beginning in approximately mid-2020, HMM began repeatedly and chronically failing to maintain just and reasonable practices in connection with 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.

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

42. When asked to explain the reason for assessing the charges to SEA, HMM proffered various excuses relating to alleged chassis shortages, trucker shortages, inclement weather, and port and terminal congestion matters, which were neither within the control of SEA nor the responsibility of SEA under the store door terms.

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

44. HMM 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 release of subject SEA Containers and threatening to refuse release of unrelated SEA Containers.

45. HMM 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 HMM practices.

46. In addition to charging SEA for inland transportation costs and charges never actually earned as a result of HMM's failure to maintain just and reasonable practices in connection with the movement of goods under "store door" terms, HMM's billing practices and policies caused further injuries to SEA:

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

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

c. HMM repeatedly rebilled SEA for charges previously billed, and for charges previously paid, based on information and belief, on HMM failing to properly reconcile its invoices with payments received from SEA and others, including payment vendors;

d. HMM 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 HMM's inland transportation obligations; and

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

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

48. HMM'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.

49. Based on information and belief, as a result of HMM'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 HMM 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.

50. On October 7, 2022, SEA sent a Notice of Demand for Action letter ("Demand Letter") to HMM regarding unreasonable and unlawful charges for demurrage, detention, handling, and/or storage, and other unreasonable and unlawful conduct. The Demand Letter invited HMM to respond in a substantive manner, and asked that HMM indicate its interest in discussing cooperative resolution.

51. On October 20, 2022, HMM sent a letter response ("Response") denying the allegations in the Demand Letter. However, HMM noted that it was open to discussing the matter and additional details related to the allegations.

52. On November 11, 2022, an initial meeting was held between SEA and HMM representatives, where the parties exchanged preliminary information on claims and defenses. As follow up to the meeting, HMM requested SEA provide illustrative examples of its allegedly unreasonable conduct to facilitate further discussion.

53. In response to HMM's request, during the next meeting between the parties on March 3, 2023 SEA made a detailed presentation addressing eleven (11) categories of

unreasonable HMM actions in violation of the Shipping Act, including evidentiary support. The eleven (11) categories addressed during the meeting included:

- Restrictions on receiving empty containers;
- Rejection of empty containers;
- Port congestion;
- Chassis shortages;
- Compounding delays and issues;
- HMM operations issues;
- Truck shortages;
- Rail chassis shortages;
- HMM failure to provide support;
- HMM failure to locate containers; and
- Unilateral rerouting by HMM of shipments.

54. During the meeting SEA offered mediation as a reasonable solution for further discussing and resolving its claims; HMM agreed to discuss the offer internally and respond to SEA in due course.

55. Ultimately, on March 17, 2023 HMM sent an email to SEA declining to discuss mediation since HMM had determined, despite the prior good-faith discussions, that "clear factual underpinnings" were lacking from SEA's claims. Rather than engaging in meaningful settlement negotiations, HMM proposed that the parties should instead embark on a charge-by-charge assessment of responsibility ***for all 96,000 demurrage, detention and associated charges paid by SEA on HMM moves.***

56. On May 31, 2023, SEA sent a letter in response to HMM's March 17, 2023 email, restating the clear factual circumstances and legal issues supporting its claims and proposal that the parties pursue mediation, and requesting that HMM reconsider its position.

57. In subsequent discussions, SEA and HMM continued to engage in discussions but the companies have reached an impasse.

58. In a last effort to address resolution before seeking relief before the FMC, on February 29, 2024 SEA sent a Renewed Notice of Demand for Action to HMM ("Renewed Demand"). In the Renewed Demand, SEA highlighted the substantial data and documentation supporting the claims that had already been provided to HMM, an enhanced analysis of the damages suffered as a result of HMM's actions, and made a final request that HMM agree to engage in meaningful settlement negotiations before a mediator. HMM once again declined to participate in mediation, necessitating this filing.

59. As a result of HMM'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

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

61. 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."

62. Respondent HMM is an ocean common carrier as defined by the Shipping Act.

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

64. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention occurred on a normal, customary, and continuous basis, in excess of 18,000 individual demurrage charges and over 78,000 individual detention-type charges.

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

66. Respondent's foregoing practices and procedures relating to the assessment of demurrage and detention were the proximate cause of SEA's claimed injury and damages.

67. 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 were 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 HMM was 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 meaningful practices or procedures 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 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 served no incentivizing principle and did not promote freight fluidity because SEA was not responsible for the inland portion of the transportation;

k. demanding/requiring that SEA undertake HMM's responsibilities as common carrier in order 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 HMM's responsibility and for delays arising because HMM 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

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

69. 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[ing] to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason."

70. 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[ing] 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."

71. 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.

72. 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.*

73. 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.*

74. In response to Complainant's efforts to address HMM's shipping and charging practices, resolve disputes, and dispute invoices, HMM 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.

75. Prior to and on numerous occasions to and through the date of this Complaint, HMM 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

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

77. 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."

78. 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."

79. In response to Complainant's efforts (a) to address HMM's shipping and charging practices with respect to inland services under through bills of lading and demurrage and detention

charges and practices, (b) to resolve disputes, and (c) dispute invoices, HMM refused to meaningfully engage or change its underlying practices, specifically including the practices and actions described in Section V above.

80. Prior to and on numerous occasions to and through the date of this Complaint, HMM refused to deal or negotiate with Complainant and with respect to SEA Containers in violation of 46 U.S.C. § 41104(10).

COUNT IV

VIOLATIONS OF 46 U.S.C. § 41104(a)(15) - OSRA – Non-compliant Invoices

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

82. 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)] showing that such charges comply with—(A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and (B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled 'Interpretive Rule on Demurrage and Detention Under the Shipping Act' (or successor rule)."

83. Based upon information and belief, on numerous occasions through and to the date of this Complaint, HMM, itself or in conjunction with sub-contractors or others on behalf of HMM, sought to invoice and/or charge for demurrage and detention on and after the effective date of OSRA without complying with 46 U.S.C. § 41104(a)(15)(A) or (B) or 46 U.S.C. § 41104(d).

84. Issuing such invoices, without properly complying with 46 U.S.C. § 41104(a)(15)(A) or (B), or information outlined in 46 U.S.C. § 41104(d), would be a violation of 46 U.S.C. § 41104(a)(15).

85. 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

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

87. 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)."

88. As alleged in each of the Counts above, on information and belief, HMM's practices and actions in connection with assessment of demurrage and detention charges in Q2 and Q3 2022 (after the effective date of OSRA) under through bills of lading would 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

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

90. 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."

91. 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.

92. Respondent's dispute resolution practices (or lack thereof), including, but not limited to, Respondent's failures to meaningfully engage in commitments to address disputed charges beyond those paid directly to it, and Respondent'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).

93. Respondent'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

94. As a result of Respondent's violations of the Shipping Act, Complainant has sustained serious and substantial injuries and monetary damages, including paying erroneous

detention and demurrage charges, and other damages. HMM's unreasonable and unlawful conduct is continuing, and SEA continues to sustain injury and damages.

VIII. ALTERNATIVE DISPUTE RESOLUTION

95. SEA has unsuccessfully attempted to resolve this matter with Respondent prior to filing this Verified Complaint. These multiple discussions and meetings, between October 2022 to date, as set forth in Section V above, provide detailed allegations as to SEA's efforts. Considering statements made by Respondent and consequent noncooperation in resolving this matter, including those outlined specifically in this Complaint, SEA did not seek to use the FMC's alternative dispute resolution process prior to filing this Verified Complaint.

96. 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).

IX. REQUEST FOR ORAL HEARING

97. 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 Respondent 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[9];

2. Requiring the payment of any other amounts that the FMC deems appropriate;

[9] The Parties entered into a Tolling Agreement, effective as of January 1, 2023.

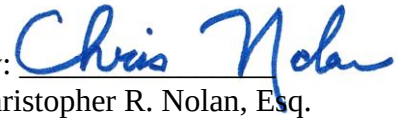
3. Ordering that Respondent cease and desist from the unlawful conduct, including collection by HMM of any pending charges arising from the unreasonable policies and practices complained of above; and

4. Providing Complainant such other and further relief that the FMC deems is just and proper.

Dated: May 30, 2024

Respectfully Submitted,

HOLLAND & KNIGHT LLP

By: 

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Counsel to Complainant 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 and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: May 24, 2024

Michael Rapske