Before the Federal Maritime Commission, Washington, DC.

Docket No. 25-08

FormuKleen, Inc.
(Complainant)

vs.

Top Shipping Systems, Corp.
(Respondent)

VERIFIED COMPLAINT

1. Complainant

The Complainant FormuKleen, Inc. ("FormuKleen" or "Complainant") is a Shipper, with a principal place of business at 333 E. Palmetto Park Rd. Suite 320, Boca Raton FL 33432. The Complainant, pursuant to 46 U.S.C. Section 41301, by and through their Representative Sara Dandan of FourOneOne LLC, submits this Complaint 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.

2. Respondent

The Respondent Top Shipping Systems, Corp., ("TSS" or "Respondent") named above is a Corporation who acts as a Federal Maritime Commission-licensed "Non-Vessel Operating Common Carrier" ("NVOCC") and Ocean Freight Forwarder ("OFF") under Commission license number 022839, with a principal place of business located at 12480 NW 25th Street Suite 100, Miami FL 33182, and as a "Person" involved in the oceanborne foreign commerce of the United States under provisions of Title 46, subtitle IV of the United States Code.

3. Jursidiction

3.1. Complainant is a “shipper” as defined by 46 U.S.C. Section 40102(23).

3.2. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act and, in particular, 46 U.S.C. § Sections 41301 through 41309.

3.3. The FMC has personal jurisdiction over the Respondent as a “Non-Vessel Operating Common Carrier” (“NVOCC”) and “Ocean Freight Forwarder” (“OFF”) as defined in the Shipping Act of 1984, by 46 U.S.C. § 40102(17)(19) and as a “Person” involved in the oceanborne foreign commerce of the United States under provisions of Title 46, subtitle IV of the United States Code.

3.4. The Respondent has repeatedly violated 46 U.S.C. § 41104(a)(4)(E).

3.5. The Respondent failed to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of Complainant in violation of 46 U.S.C. § 41102(c), and these violations occurred on a normal, customary, and continuous basis.

3.6. Respondent is in violation of 46 CFR § 41102(d), specifically 46 CFR § 41102(d)(B) which states that:

(d) Retaliation and Other Discriminatory Actions. -A common carrier, marine terminal operator, or ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not-

(1) retaliate against a shipper, an agent of a shipper, an ocean transportation intermediary, or a motor carrier by refusing, or threatening to refuse, an otherwise-available cargo space accommodation; or

(2) resort to any other unfair or unjustly discriminatory action for-

(A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has-

(i) patronized another carrier; or

(ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or

(B) **any other reason**. (Our emphases)

3.7. Respondents are in violation of 46 CFR § 515.32. Particularly;

46 CFR § 515.32(c) which clearly states that **"No licensed freight forwarder shall withhold any information concerning a forwarding transaction from its principal."** (Our Emphases)

3.8. Respondents are in violation of 46 U.S.C. § 41104(a)(10).

4. Background & Statement of Case

FormuKleen is a U.S.-based importer in the hospitality industry that relies on regular international shipments. To facilitate those shipments, it engaged TSS to act as its Ocean Transportation Intermediary ("OTI"), primarily in the capacity of a freight forwarder and customs broker. Although the parties never executed a written contract, a consistent course of dealing developed in which TSS coordinated transportation and logistics services on FormuKleen's behalf, and FormuKleen paid invoices for charges such as international freight, customs clearance, inland delivery, and related charges; depending on the shipment.

For more than a year, FormuKleen instructed TSS to deliver containers to its own independent warehouse located at 6561 NW 82nd Avenue, Miami, FL 33166. These instructions were made in writing and repeatedly followed, and FormuKleen was named as consignee on the bills of lading. TSS was listed as the Notify Party; a role that provided it with port and customs release notifications, but no authority to direct delivery contrary to the consignee's instructions.

Over time, TSS began engaging in erratic and coercive behavior. Despite receiving ongoing payments from FormuKleen, TSS imposed ever-shifting, unilateral “terms” regarding account balances and aging. These included lowering credit thresholds without notice, modifying payment expectations arbitrarily, and threatening to withhold future releases unless vague and changing financial targets were met. These actions culminated in two major incidents in which TSS withheld containers, despite full payment on both.

In the first incident, occurring in January-February 2025, TSS diverted a container (container number CSHU4047424) it had been instructed to deliver to FormuKleen’s warehouse and withheld the cargo for weeks, never disclosing its location until pressed. Although no police report was filed, FormuKleen threatened legal escalation and involved the container line. On February 18, TSS Vice President Ricky Villena admitted in writing that the container was being held due to past-due invoices unrelated to that shipment. It was ultimately delivered on February 25, 2025.

The second incident however, has marked a significant escalation. In April 2025, FormuKleen shipped a 40’ container, number BSIU8431017, and again instructed that it be delivered to their Miami warehouse. After the arrival of the container, TSS once again diverted the shipment and failed to provide information on the whereabouts of the container, required documentation, release confirmations, or instructions for payment of storage or customs fees. FormuKleen sent repeated written requests between April 2 and April 14, all of which went unanswered. As a result, charges and fees mounted, and FormuKleen was unable to retrieve the container.

On April 22, 2025, after nearly three weeks of silence and obstruction, FormuKleen contacted law enforcement and filed a police report to attempt to locate the missing container (*Case #SW250422003802, Officer Ruiz, Unit #212*). That same day, TSS retaliated by revoking FormuKleen’s

credit terms and severing their business relationship with FormuKleen, and refused to release the container unless all outstanding balances, unrelated to this shipment, were paid in full.

Further compounding the issue, TSS, acting as the licensed customs broker, failed to notify FormuKleen that customs duties were due, and only informed them after the 10-day CBP payment window had already lapsed, leaving FormuKleen in technical default with U.S. Customs and Border Protection.

Most egregiously, in this second incident, TSS used its status again as the Notify Party and OTI to intercept the shipment and reroute the container to its own facility, despite:

1. FormuKleen being the named consignee on the bill of lading;
2. FormuKleen having issued clear written instructions for the container to be delivered to its warehouse at 6561 NW 82nd Avenue, Miami.

TSS' diversion of the container into its own custody, without notice or consent, was a deliberate abuse of control, carried out solely for the purpose of exerting financial leverage. This was not a clerical error, dispute over routing, or customs hold; it was a calculated act to take physical control of goods TSS did not own, and to unlawfully condition their release on unrelated payments. FormuKleen is deprived of access to its property, burdened with escalating fees, extra product acquisition costs, exposed to CBP penalties, and forced to respond through law enforcement.

TSS’ conduct reflects a pattern of bad-faith practices, unlawful self-help, and intentional disruption of lawful cargo release procedures.

4.1. Timeline of Events:

First Incident: January–February 2025 (Container #1, CSHU4047424)

- **January 30, 2025:** TSS invoices FormuKleen for pickup and clearance of Container #1.
- The container was to be delivered to FormuKleen's warehouse at 6561 NW 82nd Avenue, Miami, FL 33166.
- Instead, TSS picked up the container and diverted it to an undisclosed location.
- FormuKleen had no knowledge of the container's location and repeatedly requested updates.
- **February 18, 2025:** Ricky Villena sends an email stating:

  "Your account was placed on credit hold due to extremely past due aging over 30, 60, 70+ days as previously advised.

  Unless you want me to inform the factory, stop saying you think is missing,

  Trucker has it for delivery once you bring your account up to date."

From: Ricky Villena <ricky.villena@tsscorp.us>
Sent: Tuesday, February 18, 2025 13:33
To: Valerie Thodde <valerie@formukleen.com>; Alberto Acosta <alberto@formukleen.com>
Cc: Eddy Del Monte <eddy.delmonte@tsscorp.us>
Subject: Fwd: The production pictures, loading container pictures and documents of-24IHP354570

Good afternoon Val, Alberto,

Your account was placed on credit hold due to extremely past due aging over 30,60, 70 + days as previously advised.

Unless you want me to inform the factory, stop saying you think is missing,

Trucker has it for delivery once you bring your account up to date.

We have been helping you As much as we can, but you have to fulfill your part of the terms to avoids these holds, service interruptions or suspension of credit terms.

We have gone the extra mile, and is your turn to bring it up to speed. It is not a one way road.

Saludos,

image001.jpg
Ricky Villena

- This is a written admission that TSS withheld the container despite full payment of ocean freight and invoice payments[1], solely due to unrelated aged invoices.
- **February 25, 2025:** Container #1 is finally delivered, nearly a month after invoicing and only after threats of police involvement and escalation to the shipping line.

Second Incident: March–April 2025 (Container #2, BSIU8431017)

Timeline of Events:

- **March 31, 2025:** TSS's Eddy Del Monte acknowledges receipt of supplier updates regarding Container BSIU8431017.
- **April 1, 2025:** Eddy confirms it is the "last free day" at the port.
- **April 2–9, 2025:** Ongoing communication between FormuKleen and TSS regarding payment and container release.
- **April 9, 2025:**
    - Tina (at the factory) sends the telex release of the OBL.
    - FormuKleen requests guidance on how to pay customs and storage fees — TSS provides no response.
- **April 10–11, 2025:**
    - TSS continues focusing on FormuKleen's payment status.
    - FormuKleen presses TSS about prior payments and accuses them of withholding release documents.

1 "Invoice payments" and "invoices," as used throughout, refer to all invoiced charges related to a shipment, including but not limited to freight charges

- **April 11, 2025:**
    - 10:30 AM: Jessie (FormuKleen) asks for release documents and appointment details.
- **April 14, 2025:**
    - 9:57 AM: Jessie again asks for pickup time and appointment.
    - 12:14 PM: Jessie follows up urgently due to complete silence from TSS.

Throughout this period, TSS refuses to release the container, despite:

1. Freight and invoices being paid.
2. Multiple documented requests for pickup coordination and fee payment instructions.

TSS never confirmed a trucking appointment and provided no proof of pickup or release. Storage charges (at the time) increased from **$2,355** to **$4,120** due to TSS's failure to act.

Escalation & Retaliation: April 22, 2025

- FormuKleen, still unable to obtain cargo release or even locate the container, files a police report:
    - Case # SW250422003802
    - Unit #212
    - Officer: Ruiz
- On the same day, TSS retaliates by:
    1. Sending an email revoking all credit terms.

2. Stating FormuKleen will not receive its goods until the entire account is paid in full, despite this shipment being separately paid.

Additionally, TSS, acting as licensed customs broker, picked up the container and then:

1. Failed to pay customs duties, as was customary;
2. Failed to notify FormuKleen that customs fees were still due;
3. Waited until after the 10-day CBP payment period expired to alert FormuKleen, effectively pushing them into default with CBP.

FormuKleen lost access to two high-value shipments. It incurred:

1. Excessive demurrage and storage fees;
2. CBP penalties and clearance complications;
3. Reputational harm due to missed customer obligations;
4. Ongoing operational disruption from having inventory unlawfully withheld;
5. Increased product replacement and acquisition costs.

There is a clear pattern of abuse and retaliation by TSS, including the unlawful use of container control to extract unrelated payments and sabotage FormuKleen’s operations.

5. Shipping Act Violations

Count 1. Violation of 46 U.S.C. § 41104(a)(4)(E): Unjust or Unfair Practice in the Adjustment and Settlement of Claims

Respondent TSS has violated 46 U.S.C. § 41104(a)(4)(E) by engaging in an unjust and coercive practice in the adjustment and settlement of unrelated claims, specifically by withholding release of a paid-for container in an effort to extract payment for past-due amounts tied to other, unrelated shipments.

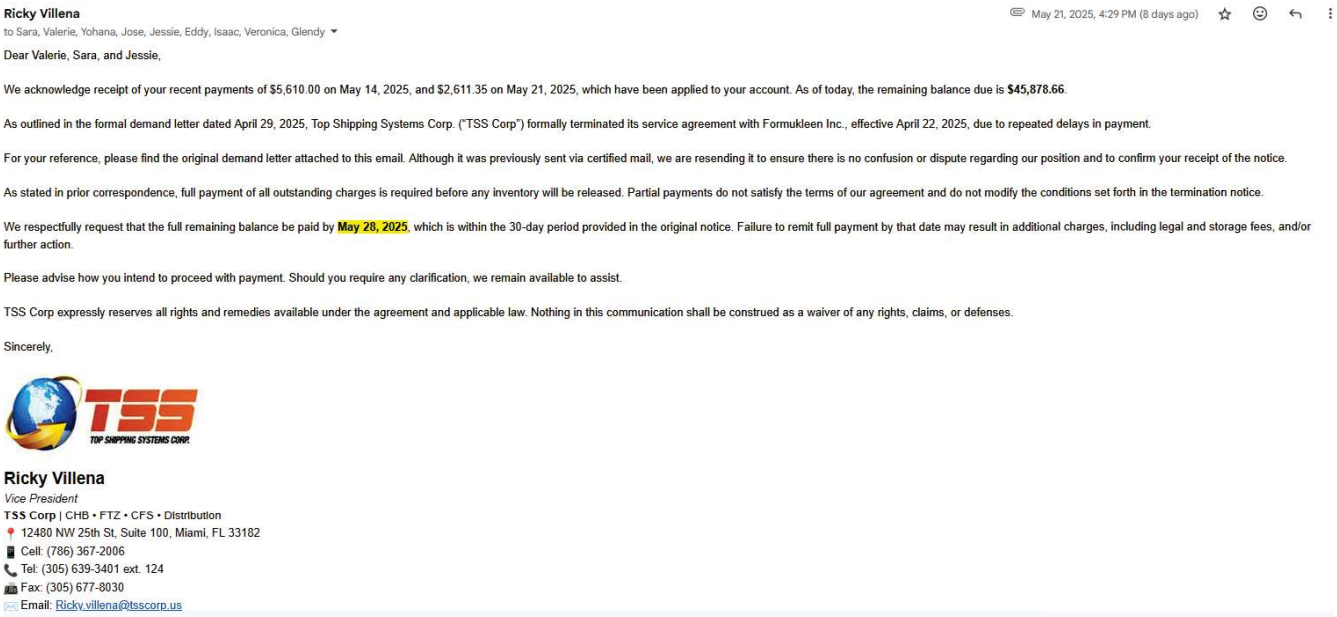
The statute prohibits OTIs from engaging in *"any unfair or unjustly discriminatory practice in the matter of... adjustment and settlement of claims."* TSS' conduct falls squarely within the heart of this prohibition.

In *Way Interglobal Network, LLC v. Shenzhen Unifelix SCM Ltd.*, FMC Docket No. 22-28, Initial Decision (Apr. 19, 2024), the Administrative Law Judge held that it is an unreasonable and unlawful practice for an NVOCC to condition release of cargo on the payment of charges associated with other, unrelated shipments.

In the *Way* decision, Shenzhen Unifelix withheld release of 20 containers despite full payment of ocean freight for those containers, demanding instead that the shipper pay demurrage and other charges on completely separate containers. The ALJ ruled this was an unreasonable practice and emphasized that "*Commission precedent is clear that holding a shipment for charges unrelated to that shipment is unreasonable*" (*Way*, FMC Docket No. 22-28, Initial Decision, ¶ 3, *2)

Here, TSS has done precisely the same, and more. Complainant fully paid the freight and invoice charges for both containers. TSS does not dispute that payment. Yet it has knowingly and

willfully refused still to release container BSIU8431017, explicitly stating in writing that it is being withheld as leverage for unrelated, past-due bills.



Ricky Villena May 21, 2025, 4:29 PM (8 days ago)

to Sara, Valerie, Yohana, Jose, Jessie, Eddy, Isaac, Veronica, Glendy

Dear Valerie, Sara, and Jessie,

We acknowledge receipt of your recent payments of $5,610.00 on May 14, 2025, and $2,611.35 on May 21, 2025, which have been applied to your account. As of today, the remaining balance due is **$45,878.66**.

As outlined in the formal demand letter dated April 29, 2025, Top Shipping Systems Corp. ("TSS Corp") formally terminated its service agreement with Formukleen Inc., effective April 22, 2025, due to repeated delays in payment.

For your reference, please find the original demand letter attached to this email. Although it was previously sent via certified mail, we are resending it to ensure there is no confusion or dispute regarding our position and to confirm your receipt of the notice.

As stated in prior correspondence, full payment of all outstanding charges is required before any inventory will be released. Partial payments do not satisfy the terms of our agreement and do not modify the conditions set forth in the termination notice.

We respectfully request that the full remaining balance be paid by **May 28, 2025**, which is within the 30-day period provided in the original notice. Failure to remit full payment by that date may result in additional charges, including legal and storage fees, and/or further action.

Please advise how you intend to proceed with payment. Should you require any clarification, we remain available to assist.

TSS Corp expressly reserves all rights and remedies available under the agreement and applicable law. Nothing in this communication shall be construed as a waiver of any rights, claims, or defenses.

Sincerely,

Ricky Villena
Vice President
TSS Corp | CHB • FTZ • CFS • Distribution
12480 NW 25th St, Suite 100, Miami, FL 33182
Cell: (786) 367-2006
Tel: (305) 639-3401 ext. 124
Fax: (305) 677-8030
Email: Ricky.villena@tsscorp.us

This is a coercive collection tactic masquerading as a logistics practice, and it is manifestly unjust and discriminatory in the settlement of claims. TSS has admitted its conduct in writing, and further escalated the situation by:

1. Repeatedly refusing to disclose the location of the container and its condition;
2. Failing to perform its obligations as OTI and customs broker for the release of that shipment;
3. And retaliating against the shipper for asserting its legal rights by revoking credit terms and altering long-standing operational practices mid-shipment.

This pattern of conduct, holding paid cargo hostage for unrelated balances, directly implicates the prohibition in 46 U.S.C. § 41104(a)(4)(E), which was designed to prevent exactly this kind of bad-faith settlement pressure that undermines confidence in maritime commerce.

Further, TSS abused its position as the OTI and diverted the paid-for shipments away from the delivery address specified by the shipper and transported them to their own facility instead, without notice or consent. This unauthorized rerouting and appropriation of the shipment represents a clear misuse of their position as the ocean transportation intermediary, and a calculated move to retain physical control of the cargo as leverage in their attempt to collect unrelated debt. This constitutes an unjust method of settling claims, carried out through seizure-like tactics in place of legal remedies, and violates the prohibitions of § 41104(a)(4)(E).

Formukleen is actively being denied access to cargo for which it has already paid, and is being pressured to satisfy other debts, despite no fault relating to this container which is still being held.

Count 2. Violation of 46 U.S.C. § 41102(c): Failure to Establish, Observe, and Enforce Just and Reasonable Practices

TSS has violated 46 U.S.C. § 41102(c) by engaging in a practice that is unjust and unreasonable in connection with the handling and release of property. The statute requires that a common carrier or ocean transportation intermediary "*shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.*"

In this case, TSS' actions are a direct breach of this statutory requirement. After receiving full payment for the invoices associated with these specific containers, TSS unilaterally and unlawfully withheld release of the containers (with one still being held); not due to any dispute over that shipment, but because of outstanding balances on unrelated invoices tied to previous shipments. TSS has openly admitted that it did withold and is withholding release solely as leverage to pressure the shipper into making additional payments on other debts.

In *Way*, the Commission held that holding a shipment for charges unrelated to that shipment is a per se unreasonable practice under § 41102(c). The ALJ concluded:

> "*Way established an unreasonable practice in violation of section 41102(c) as Commission precedent is clear that holding a shipment for charges unrelated to that shipment is unreasonable.*" (*Way*, FMC Docket No. 22-28, Initial Decision, ¶ 3, *2)

TSS' conduct mirrors and amplifies the wrongdoing described in *Way*. Despite receiving invoice payment on the containers in question, TSS has not only still refused to release Container BSIU8431017, but has gone further by:

1. Acknowledging in writing that release is being withheld to coerce payment of unrelated invoices;
2. Refusing to provide container location information, impeding the shipper's ability to arrange timely pickup;
3. Disrupting the release process despite being the OTI and licensed customs broker of record, contributing to penalties and clearance delays.

These actions are not isolated lapses; they reflect a calculated, retaliatory pattern of cargo leverage, implemented in disregard of both the specific payment status of the containers and of FMC standards governing ocean freight intermediaries.

In addition to withholding the containers, TSS unilaterally diverted the shipments from the delivery location designated by the shipper, instead routing them to a warehouse controlled by TSS itself. This was done without consent and in direct violation of their responsibility to deliver cargo as instructed. The use of their role as the trusted OTI and agent to reroute and physically seize custody of the container demonstrates an unreasonable and coercive practice, wholly disconnected from standard,

fair cargo handling. Such self-help conduct, where a forwarder exploits physical control over cargo to apply pressure in unrelated disputes, is exactly the kind of abuse § 41102(c) was enacted to prohibit.

Accordingly, TSS has violated § 41102(c) by implementing and executing a practice that is unjust, unreasonable, and inconsistent with lawful handling and delivery of cargo. The Federal Maritime Commission has consistently held that it is unreasonable under § 41102(c) for a regulated entity to withhold cargo to compel payment of unrelated debts. In *Bimsha Int'l v. Chief Cargo Servs.*, the Commission found an NVOCC violated § 41102(c) when it refused to release cargo at destination unless additional money was paid and instructed its agent to place the shipment on hold. 2013 WL 9808692, at *5 (FMC Sept. 4, 2013), aff'd, 586 Fed. Appx. 730 (2d Cir. 2014). Similarly, in *Petra Pet, Inc. v. Panda Logistics Ltd.*, the Commission affirmed that withholding and aborting a shipment to coerce payment of unrelated charges constituted an unreasonable practice. 2013 WL 9808694, at *6 (FMC Oct. 31, 2013).

In *Adenariwo v. BDP Int'l*, the Commission affirmed that a carrier violated § 41102(c) by refusing to release a container based on storage charges assessed for a separate shipment, citing long-standing precedent that claims must be considered "*in toto and independent of claims under any other bill of lading.*" 2014 WL 13110647, at *1 (FMC Feb. 20, 2014) (internal quotation omitted).

The Commission has also emphasized that disputes over earlier unrelated shipments cannot justify holding cargo, regardless of whether a lien exists. See *Bernard & Weldcraft Welding Equip. v. Supertrans Int'l*, Docket No. 02-12, 2003 WL 136313, at *14 n.14 (ALJ Jan. 8, 2003) ("*Disputes over earlier unrelated shipments cannot be used by either a carrier or a shipper as justification for refusing to release the cargo or to pay lawful freight money.*"), admin. final Feb. 12, 2003.

Respondent performed regulated OTI services on behalf of the shipper and exercised control over the delivery of the cargo. Respondent's actions, withholding release of a container for which

freight and invoices was paid, in order to compel payment of unrelated invoices, constitutes an unreasonable practice under § 41102(c).

Count 3. Violation of 46 U.S.C. § 41102(d)(B): Retaliatory or Discriminatory Failure to Carry Out Obligations

Respondent has violated 46 U.S.C. § 41102(d)(B) by retaliating against the shipper through discriminatory treatment and by failing to carry out its obligations as a licensed ocean transportation intermediary and customs broker.

41102(d)(b) holds that:

"*A common carrier, marine terminal operator, or ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not—...*

(1) retaliate against a shipper, an agent of a shipper, an ocean transportation intermediary, or a motor carrier by refusing, or threatening to refuse, an otherwise-available cargo space accommodation; or

(2) resort to any other unfair or unjustly discriminatory action for—...

(B) any other reason."

In this case, TSS engaged in multiple retaliatory actions after the shipper:

- Asserted its legal rights;
- Questioned the lawfulness of TSS's conduct;
- Contacted law enforcement after being denied basic information about their container's whereabouts.

Specifically, TSS retaliated by:

1. Revoking long-standing credit and service terms following the police report;
2. Withholding container location information, in violation of 46 C.F.R. § 515.32;
3. Failing to advance or notify the shipper about customs duties, despite having consistently done so on prior shipments and despite acting as the licensed customs broker (CHB) for this shipment;
4. Permitting late customs fee payments, thereby exposing the shipper to penalties and delays that could have been avoided had TSS fulfilled its established operational role;
5. Refusing still to deliver the current container (Container BSIU8431017) or release its contents and only releasing the 1st container after police and steamship line involvement.

These retaliatory measures were not based on any new risk factors, nor were they tied to contract terms for the shipment at issue. Rather, they were triggered solely by FormuKleen's refusal to capitulate to TSS' coercive demand that it pay unrelated past-due invoices as a condition for container release. That makes them retaliatory by definition.

Here, TSS escalated that misconduct by weaponizing its CHB authority to impose harm on the shipper; withholding customs activity and allowing delays, despite full payment of invoices for the shipments in question, and the existence of no dispute as to the shipment itself. And while the Commission does not weigh in on CBP-related matters, these actions are notable in that they follow a pattern of Respondent's abuse of authority.

TSS' refusal to act on its longstanding obligations as an OTI and licensed customs broker, after the shipper called the police in response to container concealment, was not merely a lapse in service. It was a calculated move to punish the shipper and pressure them to comply. This constitutes a textbook

violation of § 41102(d)(B), which exists precisely to prevent ocean transportation intermediaries from engaging in such retaliatory behavior when disputes arise.

By responding to protected conduct with operational retaliation, TSS has clearly violated § 41102(d)(B) and caused concrete harm to the Complainant. These acts constitute unlawful retaliation under 46 U.S.C. § 41102(d)(B), which prohibits an ocean transportation intermediary from taking retaliatory action against a shipper for asserting its legal rights or engaging lawfully with regulatory authorities.

Count 4. Violation of 46 C.F.R. § 515.32: Failure to Furnish Shipment Information to Principal

TSS has also violated 46 C.F.R. § 515.32, which requires that licensed ocean transportation intermediaries (including freight forwarders and NVOCCs) promptly furnish shipment information to the shipper or its authorized agent upon request. The regulation provides that:

> "*Each freight forwarder shall promptly furnish to the principal or authorized agent such information as may be in the possession of the freight forwarder with respect to a shipment.*"

In this case, TSS refused to disclose the location of the containers for which freight and invoice charges had been fully paid. Multiple requests were made by the shipper for the container's whereabouts, and TSS deliberately withheld this information, compelling the shipper to escalate the matter to local law enforcement. This is not a delay or oversight, it was an intentional act of concealment, which TSS later admitted was tied to an effort to collect unrelated past-due charges.

The refusal to provide shipment information is a violation of the freight forwarder's core regulatory duty under § 515.32. That duty exists to ensure transparency, timely cargo retrieval, and trust in logistics intermediaries. The Commission has made clear that denying cargo location information constitutes an abusive practice, especially when it impairs the shipper's ability to mitigate charges or recover goods.

This violation is particularly egregious because:

1. TSS was not only the OTI but also acting as licensed customs broker for these shipments;
2. It knew the location of the containers and withheld this information intentionally as leverage in a broader dispute;
3. The shipper had no alternate means to retrieve or release the containers without that information;
4. The delay risked incurring detention, demurrage, and customs penalties, all of which could have been avoided with proper disclosure.

This conduct further underscores the broader pattern of retaliation, coercion, and bad-faith conduct described above. This violation substantiates and reinforces the broader claims under § 41102(c) and § 41102(d)(B), and reflects a willful abandonment of the forwarder's regulatory duties.

Accordingly, the Commission should find that TSS' refusal to inform the shipper of the container's location constitutes a violation of 46 C.F.R. § 515.32, and consider it as part of the cumulative pattern of misconduct in support of broader statutory violations.

Count 5. Violation of 46 U.S.C. § 41104(a)(10): Unreasonable Refusal to Deal or Negotiate

Respondent has violated 46 U.S.C. § 41104(a)(10) by unreasonably refusing to deal or negotiate with Complainant with respect to the delivery of a container for which freight and invoices had already been paid. The statute prohibits an ocean common carrier or transportation intermediary from:

> "*...unreasonably refus[ing] to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier.*"

In this case, Complainant FormuKleen paid the freight and invoice charges associated with specific shipments and provided clear, written delivery instructions for the containers to be delivered to its designated warehouse in Miami. TSS, acting in its role as OTI and Notify Party, not only failed to honor those instructions, but deliberately diverted the shipments to its own facility without notice or consent, for the express purpose of exerting financial pressure related to past-due invoices unrelated to those shipments.

TSS' refusal to release the current container or schedule its delivery, despite repeated requests, partial account payments (for the overdue invoices not governing the containers in this Complaint), and confirmation that freight and invoice charges had been paid in full, as well as do the same until pressured by police involvement and the steamship line involvement, constitutes a refusal to deal in connection with the delivery of property, falling squarely within the scope of § 41104(a)(10).

In *Way*, the Commission found that the respondent violated § 41104(a)(10) when it refused to release containers to the shipper despite having received freight and invoice payments. The ALJ concluded that "*Way established a refusal to deal in violation of section 41104(a)(10) for refusal to*

deliver the containers to Indiana," despite full payment (*Way*, FMC Docket No. 22-28, Initial Decision, ¶ 3, *2). The facts in the present case are materially indistinguishable.

Like in *Way*, TSS:

- Received full payment for the containers at issue;
- Possessed no legal or contractual right to withhold release based on unrelated debts;
- Explicitly conditioned release on unrelated financial performance; and
- Ignored or refused good faith attempts by the shipper to coordinate pickup or resolve the matter through normal channels.

This constitutes an unreasonable refusal to deal or negotiate under the Shipping Act and supports the imposition of both reparative and injunctive relief.

6. Injury and Financial Harm

Respondent's unlawful assessment and enforcement of charges and conditions, including the withholding fully paid-for containers and diversion of delivery, has directly and proximately injured Complainant in multiple ways.

Due to Respondent's actions unjust and unreasonable charges are being imposed, including escalating storage and demurrage fees that were incurred solely because of TSS's failure to release the container or provide timely communication and instructions. These charges were not the result of any failure or delay by Complainant, but rather of TSS's willful obstruction and coercive practices.

In addition, TSS's conduct has caused further significant harm, including:

1. Delays in access to time-sensitive inventory;

2. Inability to fulfill customer orders using Complainant's own branded products;
3. Forced substitution with third-party products at higher cost and lower margin;
4. Reduction in available inventory for sale;
5. Unnecessary operational and administrative expenses;
6. Lost profits resulting from disrupted sales and delivery schedules;
7. Legal and professional fees incurred in seeking release of Complainant's goods and enforcement of its rights.

These injuries are ongoing and compounding, as Container BSIU8431017 remains unreleased and Complainant is forced to continue mitigating TSS's misconduct at its own expense.

The container currently being held by TSS contains FormuKleen-branded inventory essential to fulfilling customer orders at an approximate paid cost to Formukleen of **$42,323.62,** including ocean freight, with additional paid invoiced costs for the container being held hostage totaling **$15,387.07**; and because Respondent refuses to release the shipment, despite full payment of invoices, FormuKleen has been forced to spend additional funds to fulfill those orders by purchasing third-party substitute products at an additional cost of **$147,086.74**. Additionally, due to Respondents actions, FormuKleen has been assessed a **$50,000** fine by CBP for the late payment of fees they were not informed of by Respondent until it was too late to mitigate the assessment of the fine.

This is not speculative loss. It is a concrete, documented expense that FormuKleen would not have incurred had it been given timely access to its own containerized goods. These third-party products are not equivalent to FormuKleen's proprietary items, either in brand recognition or margin. FormuKleen has been compelled to absorb higher costs, accept lower profitability, and risk customer dissatisfaction and brand dilution, all to mitigate the damage caused by Respondent's misconduct.

This diversion of financial resources directly undermines FormuKleen's operations and imposes a burden that would have been entirely avoidable had Respondent complied with its legal duties. Because FormuKleen's own goods remain inaccessible, the company has lost the ability to fulfill orders as intended, and is now incurring measurable out-of-pocket costs to avoid complete delivery failure.

These injuries are not just operational setbacks, they are economic damages that stem directly from:

1. Respondent's refusal to release the container;
2. Respondent's unauthorized diversion of the container to its own facility;
3. Respondent's retaliation against FormuKleen for asserting its rights.

These damages are continuing to accrue for every day that access to the container is denied, and they represent a valid basis for relief under the Shipping Act and Commission precedent.

7. Conclusion

TSS has engaged in a pattern of deliberate misconduct that violates multiple provisions of the Shipping Act and its implementing regulations. Their actions go beyond a mere billing dispute and represent a sustained abuse of their position as a licensed transportation intermediary and customs broker.

Specifically, TSS has:

1. Withheld release of fully paid-for containers in an effort to extract payment for unrelated past-due invoices;
2. Admitted in writing that they were holding the shipments hostage as leverage;
3. Retaliated against the shipper after they asserted their rights and contacted law enforcement;

4. Revoked credit terms and altered longstanding operational practices in response to that dispute;
5. Refused to disclose the location of the containers, requiring the shipper to involve the police at one point;
6. Failed to notify the shipper or advance customs fees, despite having acted as customs broker for the shipment;
7. Rerouted the shipments without consent, delivering it to a facility controlled by TSS instead of the shipper-designated warehouse.

These acts constitute clear violations of:

1. 46 U.S.C. § 41104(a)(4)(E); by engaging in unjust and coercive practices in the settlement of claims;
2. 46 U.S.C. § 41102(c); by implementing an unreasonable and unjust practice in connection with the delivery of cargo;
3. 46 U.S.C. § 41102(d)(B); by retaliating against the shipper through discriminatory treatment;
4. 46 C.F.R. § 515.32; by failing to provide required shipment information upon request.
5. 46 U.S.C. § 41104(a)(10), by refusing to deliver the container.

Collectively, this conduct represents a serious and ongoing threat to fair commercial practices in the international shipping sector. TSS's actions not only harmed FormuKleen financially and operationally, but also undermine public trust in the regulatory protections the Shipping Act is intended to uphold.

The Commission should find that TSS has violated the above statutes and regulations, impose appropriate penalties, and award relief as warranted to compensate for the damages incurred and deter similar violations in the future.

8. Prayer for Relief

WHEREFORE, based on the foregoing, Complainant FormuKleen, Inc. respectfully requests that the Federal Maritime Commission:

1. Find that Respondent Top Shipping Systems, Corp. has violated:
    a) 46 U.S.C. § 41104(a)(4)(E), by engaging in unjust and coercive settlement practices;
    b) 46 U.S.C. § 41102(c), by failing to establish, observe, and enforce just and reasonable practices in the handling and delivery of property;
    c) 46 U.S.C. § 41102(d)(B), by engaging in retaliatory conduct in response to Complainant's assertion of its rights;
    d) 46 C.F.R. § 515.32, by failing to provide shipment information to Complainant as required.
    e) 46 U.S.C. § 41104(a)(10), by refusing to deliver the container;
2. Award Complainant reparations;
3. Issue an order compelling Respondent to immediately release all cargo held in connection with this dispute and cease all coercive or retaliatory practices involving the handling of Complainant's shipments;
4. Impose any civil penalties as authorized by 46 U.S.C. § 41107;

5. Award Complainant reimbursement of Representative's fees and costs, pursuant to 46 U.S.C. § 41305(e);

6. Award such other and further relief as the Commission deems just, proper, and in the public interest.

9. Request for Oral Hearing

Complainant requests an oral hearing in Washington, D.C. at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.

10. Alternative Dispute Resolution

Formukleen has repeatedly attempted to resolve this matter with the Respondent, with no resolution. Complainant did not seek resolution through the Commission's Office of Consumer Affairs and Dispute Resolution Service ("CADRS") due to:

a) Respondent's unwillingness to acknowledge the actual matter at hand and resolve the issue, despite numerous attempts by the Complainant.

b) the CADRS Office repeatedly stating to Complainant's Representative in writing over the course of several years that they (CADRS) will not allow Complainant's Representative to seek dispute resolution with and on behalf of her clients via their office.

Respectfully submitted,

Sara Dandan

Licensed to practice before the Commission and in good standing

FourOneOne LLC

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Springfield, IL 62704

Email: sara@fouroneone.io

Phone: 630-286-9846

Signature: _____

Date: 06/07/2025

VERIFICATION

I, Valerie Thoddé, am authorized to make this verification on behalf of FormuKleen Inc. I verify under penalty of perjury that to the best of my knowledge, information, and belief, including any information received from others, that the foregoing is true and correct.

Valerie Thoddé

Signature: _____

Date: 06.07.2025