

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 25-29

MAC Industries Inc. DBA Mac Container Line

v.

COSCO Shipping Lines Co., Ltd., and COSCO Shipping Lines (North America) Inc.

**RESPONDENTS' REPLY TO COMPLAINANT'S BELATED
OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

Respondent COSCO Shipping Lines Co., Ltd. ("COSCO") and putative Respondent COSCO Shipping Lines (North America) Inc. ("CSLNA") hereby reply to Complainant MAC Industries Inc.'s ("Complainant" or "MAC") much-belated Opposition ("Opposition") to COSCO and CSLNA's Motion to Dismiss ("MTD").

INTRODUCTION

COSCO and CSLNA filed their MTD on January 23, 2026. Under the Commission's Rules, MAC was required to respond to the MTD no later than February 9, 2026, including two extra days for the weekend before the filing. February 9 came and went without any response, any motion for extension of time or any other communication from Complainant to the Commission or to Respondents.

The days following February 9 continued without any filing or other communication until, on February 25, the Office of the Administrative Law Judges (OALJ) sent an email inquiring whether Complainant's response had been lost in the Commission's filing system. A few hours later, Complainant submitted a brief Opposition, *sixteen days after it was due*. Complainant did not therewith submit a motion to extend or a motion to consider its out-of-time Opposition or confer with Respondents about the delay. Nor did Complainant apologize for the substantial delay or even explain why the Opposition was not filed before the OALJ's email.

ARGUMENT

A. Complainant's Late and Unexcused Opposition Should be Rejected

We understand that MAC is proceeding *pro se* and so is entitled to a little bit of leeway regarding technicalities, such as liberal construction of pleadings. *Saeid B. Maralan – Possible Violations*, Dkt 98-19; 1999 WL 377911 at *3 (ALJ Order Granting Motion for Sanctions, as Modified, March 9, 1999) (“the courts are careful to protect *pro se* litigants from the consequences of their technical errors to avoid injustice”). Nevertheless, MAC is still required to follow the Commission's Rules.¹ See Initial Order (“Parties are strongly urged to familiarize themselves with the Commission's rules of practice and procedure. Filings may be rejected for failure to comply with the rules”). As stated in *Saeid Maralan*, for example:

“It has been held by many courts that *pro se* parties do not have a license to ignore rules of procedure or of substantive law or to engage in sloppy litigation. For example, see *Denlinger v. Brennan*, 87 F.3d 214, 217 (7th Cir. 1996) (*pro se* party has no right to engage in sloppy litigation); *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 140 (1st Cir. 1985) (*pro se* party does not have license to fail to comply with relevant procedural and substantive rules); *King v. Atiyeh*, 814 F.2d 565, 567

¹ Even apart from failure to make timely filings, MAC has routinely ignored the Commission's rules on form, including the requirement that all filings be double-spaced. 46 C.F.R. 502.2(j) (except for block quotes, text “must be double spaced”).

(9th Cir. 1987) (pro se litigants must follow same rules that govern other litigants); *Michelson v. Merrill Lynch Pierce, Fenner & Smith*, 619 F. Supp. 727, 741-742 (S.D. N.Y. 1985) (pro se litigant cannot rely on his pro se status as a shield from his mistakes); *Jarrell v. Tisch*, 656 F. Supp. 237, 239 (D.D.C. 1978) (pro se litigant has no license to ignore the rules or expect the court to decide what claims he may wish to assert); *Berridge v. Heiser*, 993 F. Supp. 1136, 1141 (S.D. Ohio 1997) (courts should not assume the role of advocate for pro se litigant).”

Timely filing is not a mere technicality, but rather a fundamental requirement of the Rules and of orderly litigation. Surely even a pro se litigant must keep track of when filings are due. MAC cannot simply file documents at its leisure, or only when graciously reminded by the Commission or its staff. Here, with the weekend extension, the Rules gave MAC seventeen days to file its Opposition. MAC took 33, almost double the time allowed. Nor did MAC seek leave to extend the deadline or to excuse its much-belated filing or confer with Respondents about a way forward. Accordingly, the Opposition should be rejected and returned to MAC pursuant to 46 C.F.R. 502.2(h) and the Initial Order. Alternatively, the Presiding Officer might dismiss the proceeding for failure to prosecute or comply with the Rules. 46 U.S.C. § 502.72(b).

B. The Opposition Fails on the Merits

Even if the late-filed Opposition were somehow accepted, it does nothing to overcome the showing COSCO and CSLNA made in the MTD. Each of the counts alleged in the Complaint fails to state a claim upon which relief may be granted. MTD at 4-13.

1. The Complaint Fails to State a Claim Under 46 U.S.C. § 41102(c)

The MTD demonstrated that MAC failed to plead a claim under 46 U.S.C. § 41102(c) because MAC did not even allege, much less factually support, that COSCO/CSLNA engaged in any acts or omissions that were “occurring on a normal, customary, and continuous basis,” as

required by 46 C.F.R. 545.4(b). Indeed, the Complaint did not even mention any of the words “normal,” “customary,” or “continuous.” The MTD further demonstrated that no such allegation would even have been possible within the bounds of honesty, given that the Complaint concerned only a single shipment. MTD at 5. Accordingly, the claim must be rejected under the Commission’s repeated insistence that allegations relating to one, two, four, or even six shipments are insufficient to constitute a normal, customary, and continuous practice. *See, e.g., Augst v. Transparent Logistics LLC*, Dkt No. 2028(I) (I.D. February 27, 2026) (“even if Claimant were able to prove its allegations against Respondent, the most that could be said is that on one occasion Respondent acted unreasonably”) (citation omitted).

The Opposition does not address the Complaint’s failure to allege a practice. Nor does it make any assertion that COSCO and CSLNA in fact engaged in acts and omissions on a normal, customary, and continuous basis – no such words are found in the Opposition. Accordingly, MAC’s 46 U.S.C. § 41102(c) claim must be dismissed for failure to state a claim pursuant to the unopposed MTD on this ground.

2. The Complaint Fails to State a Claim Under 46 U.S.C. § 41104(a)(10)

The MTD establishes that MAC has failed to state a claim under 46 U.S.C. § 41104(a)(10) (unreasonable refusal to deal or negotiate), because the Complaint does not adequately allege what the Commission’s Rules require. 46 C.F.R. § 542.1(c). In particular, the Complaint does not allege either that COSCO/CSLNA failed to negotiate with respect to vessel accommodations, or that COSCO/CSLNA acted unreasonably. Such failure is fatal under the Rules. Furthermore, as demonstrated in the MTD, ALJs have dismissed complaints similar to, but much more robust than, MAC’s Complaint. *Samsung Electronics America, Inc. v. Orient Overseas Container Line Limited*, FMC Dkt. No. 24-17, 2024 WL 5714589, at *12 (ALJ Order Partially Granting Motion to Dismiss,

November 18, 2024); *Samsung Electronics America, Inc., v. Cosco Shipping Lines Co., Ltd.*, FMC Dkt. No. 24-16, 2025 WL 1126006 at *13 (Order on Motion to Dismiss, April 11, 2025). As Judge Chintella explained in the first of these:

“Without any factual material describing OOCL’s vessel-space accommodation practices, or any specific attempts at negotiations or communications that occurred, any specific non-transportation factors that played a role in those discussions, or unreasonable rates that OOCL quoted, or any other non-conclusory allegations, ***there is not enough factual material to carry SEA’s claim into the realm of plausibility***, and so Count III must be dismissed.” 2024 WL 4893409, at *12 (Order Partially Granting Motion to Dismiss) (Nov. 18, 2024) (Emphasis added).

MAC’s Opposition fails entirely to address this showing. MAC does not assert that it alleged any of the facts required by the FMC Rules and precedent. Nor does MAC make any attempt to distinguish (indeed it never mentions) the cases cited in the MTD or mention any other cases that might support MAC’s argument. Accordingly, MAC’s claims under 46 U.S.C. § 41104(a)(10) must be dismissed for failure to state a claim.

3. The Complaint Fails to State a Claim Under 46 U.S.C. § 41104(a)(3)

The MTD established that Complainant’s claim under 46 U.S.C. § 41104(a)(3) (retaliation) must be dismissed for failure to state a claim, because MAC does not, and cannot, allege that the purported retaliation was in response to MAC engaging in a protected activity. This is consistent both with the two *SEA* cases, cited above, and with the Presiding Officer’s opinion in *Phillip Marciano LLC v. US Cargo Services Inc.*, Dkt. 25-11, 2025 WL 3732714 at *13 (ALJ Initial Decision Granting Motion to Dismiss, Admin. Final January 16, 2025), where she explained:

“There are no allegations in the complaint that the failure to deliver occurred because Phillip Marciano patronized other carriers, filed a complaint, or otherwise aired their grievance with the Commission. Moreover, there are no factual allegations identifying unfair or unjustly discriminatory action or mentioning

another entity that was treated differently. Rather, Phillip Marciano asserts that delivery was withheld by US Cargo because its customer, the shipper, had a dispute with Phillip Marciano over other allegedly unpaid cargo. See Complaint at 5. As discussed above, US Cargo was required to follow the instructions of the shipper. Just as it is not plausibly alleged that US Cargo acted unreasonably, it is also not plausibly alleged that it engaged in retaliation.

Therefore, the facts alleged in the complaint do not plausibly allege a violation of the retaliation prohibitions in the Shipping Act by US Cargo. Moreover, the parties have not provided any documents indicating that there was an unfair or unjustly discriminatory action taken for some other reason that would support a claim of retaliation. Accordingly, the retaliation claim is not plausibly alleged and is dismissed.”

MAC’s Opposition makes no attempt to demonstrate, or even suggest, that MAC engaged in protected activity. Nor does it attempt to distinguish, or even mention, the *Marciano* or *SEA* cases that show the Complaint must be dismissed for failure to state a claim. MAC’s only suggestion – that COSCO/CSLNA retaliated against MAC due to MAC’s dispute of an invoice – is patently insufficient. As quoted above, the Presiding Officer has specifically said that 46 U.S.C. § 41104(a)(3) requires allegations that the alleged retaliation occurred because the complainant “patronized other carriers, filed a complaint, or otherwise aired their grievance with the Commission.” MAC does not allege or assert any of those things.

4. The Complaint Fails to State a Claim Under 46 U.S.C. § 41104(a)(2)

COSCO/CSLNA demonstrated in the MTD that the Complaint fails to state a claim under 46 U.S.C. § 41104(a)(2), explaining:

“46 U.S.C. § 41104(a)(2) states that a common carrier may not “provide service in the liner trade that is—(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title.”

As the Complaint admits, the relationship between COSCO and Complainant was governed by a Service Contract. Apart from a brief reference to “service contract

violations,” the Complaint nowhere alleges that COSCO assessed rates or charges, or imposed classifications, rules, or practices other than those specified in the Service Contract. Accordingly, the Complaint fails to state a claim under 46 U.S.C. § 41104(a)(2).”

The Opposition does not address the Complaint’s failures with respect to its 46 U.S.C. § 41104(a)(2) claim at all. Nor does it suggest any basis on which COSCO/CSLNA might be found to have deviated from the Service Contract.

C. Lack of Jurisdiction over the 46 U.S.C. § 41102(a)(2) Claim and CSLNA

1. No Jurisdiction over the 46 U.S.C. § 41102(a)(2) Claim

Although this may be gilding the lily in light of the indisputable, and undisputed, demonstration that MAC’s claim under 46 U.S.C. § 41102(a)(2) must be dismissed for failure to state a claim, we briefly reiterate that, as shown in the MTD, such claim must also be dismissed for lack of jurisdiction.

As established by the MTD, the Shipping Act reserves breach of service contract claims to the courts. 46 U.S.C. § 40502(f) (“the exclusive remedy for a breach of a service contract is an action in an appropriate court”). This means, as the Commission explained in *Cargo One, Inc. v. Cosco Container Lines Co. Ltd*, FMC Dkt. 99-24, 2000 WL 1648961, at *14 (FMC Oct. 31, 2000), that “claims premised on the obligation to meet one’s contract commitments” are “outside its jurisdiction,” even if they also might be phrased as Shipping Act claims.

“We find that as a general matter, allegations essentially comprising contract law claims should be dismissed unless the party alleging the violation successfully rebuts the presumption that the claim is no more than a simple contract breach claim.” *Id.* (footnote omitted).

As specifically pertinent here, the Commission in *Cargo One* expressly recognized that claims under 46 U.S.C. § 41104(a)(2) are essentially breach of contract claims and therefore may not be adjudicated by the Commission absent special circumstances “extraordinary” circumstances. *Id.* at *15.

The Complaint does not allege any such “extraordinary” circumstances. Nor does it address the FMC’s holding in *Cargo One* about 46 U.S.C. § 41104(a)(2). Neither does the Opposition suggest any such circumstances that might allow jurisdiction over the claim under 46 U.S.C. § 41104(a)(2). Indeed, all the Opposition says is:

“Respondents’ attempt to recast this matter as a simple contract dispute fails. MAC alleges retaliatory, discriminatory, and unreasonable practices squarely within [] 41102(c) and 41104(a). Such claims fall within the core of the Commission’s jurisdiction.”

Although this distinction may be applicable to MAC’s claims that deal with retaliation, discrimination, and unreasonable practices, as to which COSCO/CSLNA raise no jurisdictional defense, it is plainly irrelevant to MAC’s claim under 46 U.S.C. § 41104(a)(2), which is explicitly premised on failure to comply with the terms of the Service Contract.

2. No Jurisdiction Over CSLNA

The MTD demonstrates that the FMC is not a court of general jurisdiction, but rather, has jurisdiction only over so-called “regulated entities” – common carriers, OTIs, MTOs, and in specific instances shippers. The MTD also demonstrates that CSLNA is not any one of these regulated entities, but instead acts only as an agent for COSCO, which is a common carrier. Nor does the Complaint allege otherwise. Accordingly, the Commission lacks both personal and subject matter jurisdiction over disputes involving CSLNA.

In *Landstar Express Am., Inc. v. FMC*, 569 F.3d 493, 494 (D.C. Cir. 2009), for example, the U.S. Court of Appeals for the D.C. Circuit held that the Shipping Act does not allow an agent of a common carrier to be regulated as a common carrier unless such entity holds out in its own name to perform as a common carrier. Then-Judge Kavanaugh's opinion started with “the basic rule-of-law maxim that statutory text binds federal agencies” and concluded that “the Commission does not possess statutory authority to require agents of Ocean Transportation Intermediaries who are not themselves Ocean Transportation Intermediaries to obtain licenses.” *Id.* He further explained that “an agent of an NVOCC by definition is not a “common carrier,” and thus not an “NVOCC” as described in the Act.”

As the Presiding Officer held in *Marciano, supra*:

As explained above, receiving goods, releasing goods at the shipper’s instructions, having a relationship, or even accepting payment do not necessarily mean that an entity was acting as an NVOCC or a regulated entity for a particular shipment. It is not the contractual relationship that is the key finding, it is whether or not US Cargo acted as an NVOCC and assumed responsibility for these shipments from receipt to destination. Because US Cargo was merely the consignee or delivery agent, it did not assume responsibility and does not meet the Shipping Act’s requirements. Accordingly, this element is not plausibly alleged. FMC Dkt. 25-11, 2025 WL 3732714 at *9.

Because CSLNA does not engage in the activities required to be a common carrier, and the Complaint does not even allege that CSLNA does so, CSLNA is outside the scope of the Commission’s personal/subject matter jurisdiction.

The Opposition does not address *Landstar* or *Marciano*. Nor does it suggest that CSLNA in fact operates as a common carrier, despite its failure to make such an allegation in the Complaint. Instead, the Opposition makes three specious claims about jurisdiction: (i) that CSLNA

participated in the activities involved in the alleged violations; (ii) that CSLNA may bear joint responsibility with COSCO and (iii) that CSLNA is needed to ensure effective relief.

None of the three arguments can survive *Landstar* and *Marciano*.

The claim that CSLNA participated in the challenged activities is wholly irrelevant. So too did the entities held to be non-jurisdictional in *Landstar* and *Marciano*. The agents in *Landstar* assisted the OTIs in performing OTI business. But critically, the agents did not hold out as OTIs in their own right. CSLNA likewise just performs task for COSCO, like the non-jurisdictional entity in *Marciano*.

The claim that CSLNA might bear joint liability is equally facetious, Because CSLNA is not a regulated entity, it cannot be held in violation of the Shipping Act or liable at all.²

The claim that CSLNA is needed for effective relief is false, as we show below. More fundamentally, however, it is irrelevant. As the D.C. Circuit expressly held in *Landstar*, regulatory need cannot be used to expand the Commission's jurisdiction beyond the express language of the Shipping Act. As the D.C. Circuit stated:

“The Commission also stated that agents must be subject to licensing so as to further the “remedial purposes” of § 19. *Id.* at 10. The purpose of § 19, the Commission explained, was to protect the public from unknown or unscrupulous Ocean Transportation Intermediary service providers. If § 19 were not “broadly construed” to encompass agents, this would “eviscerate” and “defeat the statute’s clear and evident purpose.” *Id.* at 10, 12. As the Supreme Court has repeatedly explained, however, ***neither courts nor federal agencies can rewrite a statute’s plain text to correspond to its supposed purposes.*** See *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 171, 127 S.Ct. 799, 166 L.Ed.2d 638 (2007) (“statute’s remedial purpose cannot compensate for the lack of a statutory basis [in text]”); *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 462, 122 S.Ct. 941, 151

² MAC argues that the Commission has repeatedly held to the contrary but fails to cite a single one of those purported cases.

L.Ed.2d 908 (2002) (“We will not alter the text in order to satisfy the policy preferences of the Commissioner.”).”

Moreover, CSLNA is absolutely not needed for complete or effective relief. COSCO is of course legally responsible for the actions of its subsidiaries and agents, such as CSLNA. Any order addressed to COSCO will necessarily affect the conduct not only of COSCO, but also all of its subsidiaries and agents through which it carries out its business. So, if reparations need to be paid, it is COSCO that will pay them and if a cease-and-desist order is issued, COSCO will be required to ensure that the actions of its subsidiaries/agents do not bring COSCO into noncompliance.

CONCLUSION

The Opposition fails to meaningfully oppose the MTD. Accordingly, the Complaint should be dismissed for the reasons stated in the MTD and above.

Dated: March 2, 2026

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2026, a true and correct copy of the foregoing document was served by email on all counsel of record in accordance with 46 CFR Part 502 and the Commission's Order of May 12, 2020 as follows:

Brad Heier, President
MAC Industries Inc. DBA MAC Container Line
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kaya C. Massey", with a stylized flourish at the end.

Kaya C. Massey