

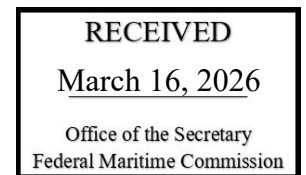


Before the
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 26-04

ORLEANS INTERNATIONAL, INC.



v.

HAPAG LLOYD AG

VERIFIED COMPLAINT

I. INTRODUCTION

1. Complainant Orleans International, Inc. (“Orleans” or “Complainant”), by its undersigned counsel, brings this Verified Complaint (the “Complaint”) against Respondent Hapag Lloyd AG (“Hapag” or “Respondent”) pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Complainant caused by Hapag’s violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the “Shipping Act”), alleged herein.

2. The COVID-19 pandemic caused unprecedented challenges to trade and the global economy. During these difficult times, as alleged herein, Hapag took advantage of congestion issues in the container shipping sector and unfairly exploited its customers. Consequently, Respondent’s profits surged considerably, while shippers and the broader public in the United States had to shoulder the increased freight costs in the form of cost surges and inflation.

3. Upon information and belief, during 2021 and 2022, at least a substantial majority of the demurrage and detention charges assessed by Respondent and paid by Complainant (the “Charges”) were assessed for periods of time during which Complainant’s ability to pick up

containers at the ports, or return empty containers promptly, was constrained due to circumstances outside the control of Complainant, such as port congestion and shortage of equipment.

4. Upon information and belief, Respondent's practices in connection with the assessment of the Charges and the conditions and circumstances leading to the delays for which the Charges were assessed were knowing and deliberate, and were not necessitated by circumstances outside of Respondent's control.

5. Upon information and belief, Respondent has profited greatly from the conduct alleged herein.

6. Hapag reported unprecedented profits during the COVID-19 pandemic. In the company's 2021 and 2022 financial results, Hapag noted that "the 2021 financial year was dominated by significantly increased freight rates as well as operational challenges," leading to a situation where "EBITDA, at EUR 10.9 billion, was significantly higher than the previous year's figure of EUR 2.7 billion." This more than *four-fold increase in EBITDA* continued as Hapag "recorded very strong business performance in 2022, primarily due to the exceptional market environment," which resulted in "an increase in Group profit to EUR 17.0 billion (prior year period: EUR 9.1 billion)."

7. Hapag's outsized financial outcomes were driven by a global crisis where, as described by Hapag, "the high global demand for consumer goods, combined with regional COVID-19 restrictions, led to a sustained disruption of global supply chains." This disruption meant that "the tight transport situation led to a significant increase in freight rates," and as a result, "Hapag[]'s average freight rate rose by 79.7% to USD 2,003/TEU in 2021 (previous year: USD 1,115/TEU)." Consequently, while "transport costs rose by 12.9% to EUR 10.3 billion," the

company “[r]evenue in the 2022 financial year increased by 55% to EUR 34.5 billion (prior year period: EUR 22.3 billion) due to higher freight rates and currency effects.”

8. Respondent’s profitability has come at the direct expense of businesses and consumers in the United States. During the COVID-19 pandemic, many companies, similar to Complainant, faced severe pressure from freight costs and “could potentially go bankrupt because of the current situation with extremely high freight rates,” as described by one maritime commentator and industry consultant. That same commentator further stated that “[i]f the situation ends up not lasting long, most will be able to hold their breath and weather the storm. But the longer it lasts, the more will end up in a situation they’re unable to manage.” The contemporary impacts of increased freight costs across the entire shipping industry were devastating to shippers’ businesses.

9. Profiteering by container lines injures not only shippers but the entire consumer public, in the form of inflation. In the aftermath of the pandemic, inflation rose to crisis levels and led to extreme fiscal tightening in the form of increased interest rates, while global ocean carriers reported windfall profits. Indeed, the International Monetary Fund released an Analytical Series report on January 24, 2023 indicating that “[t]he 2021 surge in global shipping costs was a canary in the coal mine for the persistent rise in inflation” and that “[g]iven the actual increase in global shipping costs during 2021, we estimate that the impact on inflation in 2022 was more than 2 percentage points—a huge effect that few central banks would dismiss.”

10. Hapag’s conduct alleged herein with respect the receipt, handling, storage, and/or delivery of the property of Complainant and, upon information and belief, of other shippers, occurred on a normal and customary basis.

11. Accordingly, pursuant to 46 U.S.C. Section 41301, Complainant brings this Complaint seeking reparations for injuries caused by Hapag's violations of the Shipping Act, as alleged herein.

II. THE COMPLAINANT

12. Complainant Orleans International, Inc. is a domestic profit corporation existing under the laws of Michigan with its principal place of business located at 30600 Northwestern Highway, Suite 300, Farmington Hills, MI 48334, telephone 248-855-5556, email care of reedtushman@orleansintl.com and via its undersigned counsel's telephone numbers and email addresses listed below. For purposes of the allegations and shipments that are the subject of this Complaint, Complainant was a "shipper" as that term is defined by 46 U.S.C. Section 40102(23).

III. THE RESPONDENT

13. Upon information and belief, Respondent Hapag Lloyd AG (sometimes written Hapag-Lloyd AG) is a company existing under the laws of the Federal Republic of Germany with its principal place of business located at Ballindamm 25, 20095 Hamburg, Germany, acting in the United States by and through its agent, Hapag-Lloyd (America) LLC, a limited liability company existing under the laws of Delaware with its principal place of business located at 3 Ravinia Drive, Suite 1600, Atlanta, Georgia, 30346, and is a vessel-operating "ocean common carrier" as that term is defined by 46 U.S.C. Section 40102(18) with FMC organization number 005980.

14. Upon information and belief, Respondent Hapag Lloyd AG and its agent Hapag-Lloyd (America) LLC acted jointly in the conduct alleged herein with respect to Complainant, and therefore are referred to herein collectively as "Hapag."

IV. JURISDICTION AND LEGAL AUTHORITY

15. The Federal Maritime Commission (the “FMC” or “Commission”) has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act and, in particular, 46 U.S.C. Sections 41301 *et seq.*

16. The FMC has personal jurisdiction over Hapag as a vessel-operating ocean common carrier (“VOCC”), as that term is defined by 46 U.S.C. Section 40102(18).

17. Hapag’s assessment of the Charges, or a substantial majority thereof, and the alleged acts or omissions of Hapag that led to the assessment of such Charges constitute failures by Hapag 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. Section 41102(c) and the FMC’s Interpretive Rule on Demurrage and Detention Under the Shipping Act, 85 Fed. Reg. 29638 (May 18, 2020) (partially codified at 46 C.F.R. Section 545.5) (the “Interpretive Rule”), and, in particular, the Incentive Principle articulated in the Interpretive Rule.

18. Hapag’s assessment of the Charges, or a substantial majority thereof, and the alleged acts or omissions of Hapag that led to the assessment of such Charges also constitute violations of 46 U.S.C. Section 41104, including in particular 46 U.S.C. Section 41104(a)(10)’s prohibition on unreasonable refusals to deal or negotiate and 46 U.S.C. Section 41104(a)(14)’s prohibition on assessing any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations.

V. THE MATTERS COMPLAINED OF (ALLEGED FACTS)

Extreme Port Congestion and Supply Chain Crunch Throughout the United States

19. By tonnage, about 70% of all U.S.-international trade moves by water through U.S. ports. During 2019 to 2022, there had been a sustained increase in containerized imports to most U.S. ports as compared to pre-pandemic levels. In late 2021 and early 2022 in particular, the

number of container ships waiting to dock at a U.S. port more than doubled, peaking at more than 150 container ships in early February 2022. Upon information and belief, across all major U.S. ports, the supply chain crunch was driven by a confluence of pandemic-related disruptions, including labor shortages, increased consumer demand, and infrastructure inadequacies, compounded by self-serving business practices by ocean carriers, marine terminals, and other supply chain participants. As widely reported, in the environment resulting from the COVID-19 pandemic, soaring freight rates became the norm. Upon information and belief, the consolidation of the shipping industry further aggravated the situation, as carriers and carrier alliances prioritized profits over service reliability, leaving shippers and exporters to bear the brunt of the crisis while the carriers, under the guise of limited supply and congestion, raked in historic, unprecedented profits.

20. In 2021 and 2022, services at the Port of Philadelphia were significantly cut back to accommodate pandemic-level congestion and staffing issues. At one point during this period, 100 containers were sitting idle at a warehouse that the port worked with because it simply did not have enough workers to unload them. The Executive Director of the port also stated, “[b]ecause we couldn’t get those containers and those chassis back to the Port, they couldn’t meet the ships, and so equipment flows – and thus supply chains – were adversely affected”. This clear admission from a port authority regarding the situation shows that the circumstances at the Port of Philadelphia could not have been remedied by Complainant or any similarly situated shipper. Trucking and maritime experts alike found that the conditions at the Port of Philadelphia prevented the movement of cargo in 2021. Lack of chassis, labor shortages, infrastructure issues, and backed-up cargo all impacted the port and prevented timely delivery of retail cargo during that time.

21. The Port of Miami also experienced significant impacts from pandemic conditions in 2021 and 2022. Severe delays at the port impacted drayage providers' ability to pick up cargo in a timely fashion, creating backups and further downstream issues with receipt of cargo. Upon information and belief, the ripple effects of diverted cargo flow often overwhelmed smaller ports, which lacked the same level of infrastructure and operational capacity as major hubs such as LA/Long Beach or Newark, which also experienced significant turmoil at this time.

22. For example, during the supply chain crisis, the Port of Houston, Texas became increasingly significant due to its central role in Gulf Coast logistics. While it initially avoided the extreme congestion seen on the coasts, "[w]hen by 2022, the East Coast's big ports became too busy, [the] port was experiencing its own backlogs as shippers began to send more redirected goods away from West Coast ports like LA/Long Beach. Houston's growing prominence as an alternative came with challenges in handling the influx of containers. In January 2022, Houston saw a 27 percent rise in containerized traffic year-on-year, leading to a shortage of space." There was no sign of slowdown throughout 2022. In October 2022, the "container volume at Port Houston once again grew by double digits, continuing the trend seen throughout 2022. A total of 371,994 TEUs were handled during the month, a 13% increase compared to October 2021". These difficulties strained the port's infrastructure, highlighting the cascading effects of the national supply chain disruptions.

The Demurrage and Detention Charges

23. As alleged herein, the Charges, or a substantial majority thereof, were unjustly and unreasonably assessed by Hapag, and were due to either the acts or omissions of Respondent or other circumstances over which Complainant and its agents and service providers had no control. Complainant is a meat importer, meaning that its cargo needs to be transported and held in temperature-controlled containers, refrigerated containers or freezers in order to remain useable

and safe for consumption, and is subject to government regulation and inspection. Due to the nature of Complainant's business, the delays Complainant encountered during the pandemic substantially impacted its goods for sale, with the Charges adding significant cost and burden due to no fault of Complainant, and to Hapag's gain.

24. Accordingly, Complainant seeks reparations with respect to the Charges assessed by Respondent and paid by Complainant in 2021 and 2022 herein under 46 U.S.C. Sections 41301 *et seq.*

25. Complainant requests that the FMC promptly investigate the Charges pursuant to 46 U.S.C. Section 41301(c), specifically regarding their compliance with 46 U.S.C. Sections 41102(c) and 41104(a) and their reasonableness pursuant to 46 C.F.R. Section 545.5 and the FMC's Interpretive Rule.

26. Complainant requests that the FMC promptly order Respondent pursuant to 46 U.S.C. Section 41305 to pay Complainant reparations for the unlawful conduct alleged herein for all Charges paid by Complainant that the FMC determines did not comply with 46 U.S.C. 41102(c) or 41104(a) or determines to be unreasonable under 46 C.F.R. Section 545.5 or the FMC's Interpretive Rule.

27. Upon information and belief, the Charges assessed by Respondent and paid by Complainant were assessed during periods of time in which such Charges were not just or reasonable because of circumstances outside the control of Complainant and its agents and service providers, such as congestion at ports, lack of appointments to pick up or return containers, and shortage of equipment such as chassis.

28. Upon information and belief, scale of the demurrage Charges for idling containers were astronomical (charges that would in many instances run into multiple tens of thousands of

dollars). These exorbitant demurrage fees were imposed even though Complainant's drayage providers were working to secure appointments as soon as possible and despite market conditions outside of Complainant's control that created long dwell times.

29. In some instances, demurrage Charges were imposed on Complainant due to Respondent's own actions or inaction, such as Respondent's delay in alerting Complainant and/or Complainant's agents or service providers of container releases.

30. The demurrage Charges imposed by Respondent on Complainant's cargo also cannot be justified as any kind of incentive for Complainant to move its cargo expeditiously. Complainant made repeated and proactive efforts to work with its agents and service providers to pick up containers and return empty containers as quickly as possible.

31. In addition to the broad effects of port congestion cited above, Complainant's communications at the time also reflect that Respondent frequently imposed detention Charges despite diligent efforts by Complainant and its agents and service providers to move and return containers or when the causes for the detention and demurrage were outside of the control of Complainant. By mid-2021, logistics providers were already "saying 'no' to other importers literally begging for help" while "product sit at the port collecting 10s if not 100s of thousands in demurrage and per diems." Even when "demurrage and fees [were] fully paid," arbitrary terminal requirements rendered it "absolutely impossible" for Complainant to access the containers and avoid the accrual of detention and demurrage charges.

32. Complainant's records reflect that for the years 2021 and 2022, Complainant paid, in connection with cargo carried by Hapag, a total of approximately \$1.162 million in detention and demurrage Charges.

33. The issues leading to the Charges at issue began surfacing in mid-2021, as illustrated by an email dated July 16, 2021, from Jeff Sorbello, Owner and CEO of Atlantic Coast Freezers (“ACF”), who emphasized that logistical problems were already so widespread that he was:

“saying ‘no’ to other importers literally begging me for help due to various reasons but mainly because other warehouse/inspection houses having issues. I’ve turned away mountains of business to make sure you have space . . . while your competitors product sit at the port collecting 10s if not 100s of thousands in demurrage and per diems.”

Despite the efforts by ACF and other agents, vendors, and service providers to keep Complainant’s cargo moving, the situation was untenable and Respondent consistently assessed Charges on Complainant’s cargo for delays that were outside of Complainant’s control.

34. Further illustrating these mounting issues, on July 19, 2021, Sorbello addressed the additional problem of chassis shortages at the port. He explained: “[a]t no fault to the drayage companies, ACF has not been getting containers when scheduled. This creates an unbalanced schedule for drayage companies and for ACF. Drayage companies have to make special trips to ACF just to return empties on time.” Without available chassis, drayage companies were not able to move containers promptly, despite best efforts.

35. Compounding these issues were port-driven operational disruptions; on September 9, 2021, Sorbello communicated that the Port of Philadelphia was suspending offloading for the *Oluf Maersk*, a decision driven by a backlog of containers and labor shortages. This suspension was predicted to create a “bunching situation” that would make it “absolutely impossible” to handle the influx of containers efficiently, resulting in “increased demurrage and detention fees for our clients.” Despite these known failures, carriers refused to provide relief. While partners reached out to industry bodies for assistance, they reported that “Hapag Lloyd has ignored our request to this point. I don’t expect any help.”

36. On September 20, 2021, the backlog extended to Houston, where 52 containers sat at the pier and terminal operators admitted to Orleans International that “we are working through a backlog and have at least a week until we get through the current backlog of our regular containers... this is a very challenging time for us all.” With the backlog clearly acknowledged and communicated by the terminal, it is clear that Complainant had no ability to impact the situation despite its desire and efforts to move its cargo in a timely fashion.

37. The Charges assessed on Complainant’s cargo coincide with this increased port congestion, and reached their peak between November 2021 and January 2022. By November 18, 2021, Complainant’s primary inspection facility had “reached capacity” and demonstrated “the environment the industry is in.” To manage the overflow, the facility was forced to suspend inbound container scheduling *indefinitely*. By December 6, 2021, facilities were “110% full,” and management stated, “We are full and there is 0 space to put incoming containers in the freezer or in the yard...I cannot fit another container in our freezer at the moment.” On the next day, ACF stated they would thereafter only schedule “as many inbound as there are outbound OR as many full containers are emptied – whichever is less – indefinitely.”

38. These disruptions at critical entry points led to widespread issues across the country, affecting inventory levels and contributing to delays and increased costs in the supply chain. These widespread delays outside of Complainant’s control led to significant Charges from Hapag during this period. Complainant also documented issues with its agents and service providers being unable to track and trace containers due to issues with Hapag’s container data, resulting in charges for delayed pickups beyond Complainant’s control.

39. On Christmas Eve in 2021, in an attempt to find a solution, Orleans sought assistance from other service providers. Heather Sorbello of Sorbello Refrigerated Services offered

to help mitigate the congestion at ACF by providing additional inspection and storage services. She wrote, “We have a small but productive facility with access to offsite locations and we are happy to deploy it for you to bridge a solution.”

40. Operational inefficiencies continued from January to March 2022, particularly regarding the disorganized handling of operations. On February 15, 2022, a driver was prevented from picking up container HLBU9250073 at the Packer Avenue Marine Terminal—despite all fees being fully paid—because terminal staff arbitrarily insisted he “cannot pick up until the other 3 containers get picked up.” This arbitrary requirement that other containers be picked up first caused unnecessary delays, as acknowledged in an email from Bill McGinnis of Greenwich Terminals: “Please service this driver as it is only 3 deep and demurrage and fees are fully paid.”

41. Despite efforts to manage the situation and “not to schedule any outbounds to try and get containers in to avoid some per diems that were climbing for customers” the congestion at the port continued to worsen.”

42. An invoice from Greenwich Terminals, dated February 18, 2022, requests a payment of \$74,675 to cover the accumulated demurrage charges from January 7 to February 15, 2022. For example, container HLBU9250073 incurred 40 days of demurrage from January 7 to February 15, 2022, resulting in charges totaling \$20,480. One invoice dated March 22, 2022, highlighted that container HLBU9693533 had incurred 64 days of demurrage, resulting in charges totaling \$32,768. This pattern has caused repeated delays and financial losses, and these exorbitant demurrage fees were imposed even though Complainant’s drayage providers were working to secure appointments as soon as possible and despite market conditions outside of Complainant’s control that created long dwell times.

43. In addition to the broad effects of port congestion cited above, Complainant's communications record also reflects that Hapag imposed detention Charges despite diligent efforts by Complainant and its agents and service providers to pick up and return containers, and when the causes for the detention and demurrage were outside of the control of Complainant. On numerous occasions, Hapag imposed Charges on Complainant's cargo despite the lack of pickup appointments being outside of Complainant's control.

44. For example, a series of March 22 emails between Gurrentz International Corporation and Complainant described the situation at the port of Philadelphia as "a f[***]ing nightmare" (expletive excluded) and questioned if there was any end in sight. Hapag containers were consistently buried under other cargo, with terminal operators stating, "this stack has to be picked up in order from top to bottom. They cannot give us any other container if the ones on top have not been picked up." For example, correspondence reveals that container TTNU8181140 was blocking access to several Orleans International containers. This stack order issue prevented timely access to containers, "costing [] \$3600 per day". Complainant's agent expressed frustration over the ongoing delays in an email: "We are trying to get PO 190878 out of the stack at the pier but you have one of your imports on top of our containers preventing it from us getting to the product we sold you!" Despite Complainant's efforts to remedy the situation, its agents could not retrieve the cargo at issue due to port and container yard conditions outside of its control.

45. Due to Hapag's unjust and unreasonable assessment of the Charges and conduct in connection with the conditions and circumstances leading to the delays for which the Charges were assessed, Complainant incurred additional costs related to the Charges and the cargo for which the Charges were assessed in an amount to be proven at trial.

* * *

46. As Commissioner Rebecca F. Dye emphasized in her Final Report from the FMC's Fact Finding Investigation 29, "the Interpretive Rule on Detention and Demurrage promulgated by the Commission pursuant to Fact Finding 28 provides the shipping public with an *enforceable principle* that the Commission employs to assess the reasonableness of demurrage and detention practices and regulations under the Shipping Act of 1984, as amended."

47. As illustrated in the FMC's Interpretive Rule, "the purpose of demurrage and detention are to *incentivize cargo movement*," and therefore the FMC "will consider in the reasonableness analysis under section 41102(c) the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity" (internal quotation marks omitted).

48. As alleged herein, the Respondent's assessment of the Charges, or a substantial majority thereof, and the acts or omissions of the Respondent that led to the assessment of such Charges were incapable of incentivizing cargo movement and therefore unreasonable.

49. Upon information and belief, the Charges imposed on Complainant did not serve, and could not have served, as a financial incentive to promote freight fluidity, but instead operated only as a punitive—but profitable for Respondent—penalty on Complainant for circumstances over which Complainant and its agents and service providers had little to no control such as congestion at ports, lack of appointments, or shortages of equipment.

50. Moreover, the Charges imposed on Complainant were unreasonable based on the totality of the circumstances, including circumstances caused by factors out of Complainant's control and by Respondent's own policies, actions, or inaction.

51. Complainant previously notified Respondent of its Shipping Act claims alleged herein, and thereafter Complainant and Respondent entered into an agreement tolling any statutes

of limitations, statutes of repose, notice or other time-related defenses or limitations with respect to such claims from June 28, 2024 through and including April 3, 2026. In light of the tolling agreement, Complainant's claims alleged herein are timely brought.

VI. CAUSES OF ACTION

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

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

53. Respondent's assessment of the Charges, and the alleged acts or omissions of Respondent that led to the assessment of such Charges, constituted failures by Respondent 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. Section 41102(c), 46 C.F.R. Section 545.5, and the FMC's Interpretive Rule.

54. Furthermore, Respondent's practices and actions related to the assessment of demurrage and detention Charges on Complainant's cargo are inconsistent with or do not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or Part 545 of Title 46 of the Code of Federal Regulations (or successor regulations), in violation of 46 U.S.C. Section 41104(a)(14).

COUNT II: VIOLATION OF 46 U.S.C. § 41104(a)(10)

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

56. Respondent's practices and actions related to the assessment of the unjust and unreasonable Charges, and the alleged acts or omissions of Respondent that led to the assessment

of the unjust and unreasonable Charges, also constituted unreasonable refusals to deal or negotiate with Complainant in violation of 46 U.S.C. Section 41104(a)(10).

VII. CAUSATION

57. Respondent's assessment of the Charges has directly and proximately injured Complainant by forcing Complainant to pay unjust and unreasonable Charges.

58. Respondent's conduct has caused Complainant to incur other injuries, including delays, failures to receive time-sensitive merchandise, reduced inventory for sale, unnecessary expenses, lost profits, as well as attorneys' fees and expenses relating to litigation.

VIII. REPARATIONS SOUGHT

59. During 2021 and 2022, Complainant paid at least approximately \$1.162 million in detention and demurrage Charges assessed by Hapag in connection with Complainant's cargo. Complainant believes that all or a substantial majority of the Charges, in an amount to be determined by the FMC in this proceeding, were unjustly and unreasonably assessed, and requests reparations for all such Charges that the FMC determines did not comply with 46 U.S.C. Section 41102(c) or 41104(a) or determines to be unreasonable under 46 C.F.R. Section 545.5 and the FMC's Interpretive Rule.¹

¹ The Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, 136 Stat. 1272 (Jun. 16, 2022) ("OSRA 2022"), included a new procedure for complaints about charges assessed by common carriers, now codified at 46 U.S.C. Section 41310, which, *inter alia*, requires the common carrier to "bear the burden of establishing the reasonableness of any demurrage or detention charges pursuant to" 46 C.F.R. Section 545.5. 46 U.S.C. § 41310(b)(2). Complainant respectfully submits that nothing in the text of OSRA 2022 purports to limit the availability of this *procedure*, including the aforementioned burden allocation, as long as a complainant's *substantive* claims regarding the charges at issue are based entirely on pre-existing (i.e., pre-OSRA 2022) Shipping Act provisions and associated regulations, and do not invoke any of OSRA's new *substantive* provisions or protections with respect to such charges. For that reason, Complainant believes that the *procedure* set forth in 46 U.S.C. Section 41310 with respect to the Charges complained of herein should be available to Complainant notwithstanding the FMC's July 14, 2022 "Industry Advisory – Interim Procedures for Submitting 'Charge Complaints' Under 46 U.S.C. § 41310", which suggested that filing parties must "[c]onfirm[] that the disputed charge[s] [were] incurred on or after the enactment of P.L. 117-146" (i.e., June 16, 2022), and the FMC's additional Guidance that "Charge Complaint procedures do not apply to . . . Charges invoiced or assessed prior to the effective date of OSRA on June 16, 2022." Accordingly, Complainant respectfully requests that the Presiding Officer issue an Order that the procedure set forth in 46 U.S.C. Section 41310

60. In addition to the injuries stated in the preceding paragraph, Complainant also suffered other injuries, to be calculated at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the FMC require Respondent to answer this Complaint pursuant to 46 U.S.C. Section 41301(b), and prays for relief from the FMC as follows:

1. An investigation by the Commission pursuant to 46 U.S.C. Section 41301(c) of the allegations in this Complaint and the Charges' compliance with 46 U.S.C. Sections 41102(c) and 41104 and reasonableness pursuant to 46 C.F.R. Section 545.5 and the FMC Interpretive Rule;

2. An Order, after due investigation pursuant to 46 U.S.C. Section 41301(c), finding that Respondent has violated 46 U.S.C. Section 41102(c), 46 C.F.R. Section 545.5, and the FMC's Interpretive Rule by assessing unjust and unreasonable detention and demurrage charges in connection with its receipt, handling, storage, and delivery of the property of Complainant; that such Charges are inconsistent with or do 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), in violation of 46 U.S.C. Section 41104(a)(14); and that Respondent's assessment of such Charges, or a substantial majority thereof, constituted unreasonable refusals to deal or negotiate with Complainant and Complainant's agents and service providers, in violation of 46 U.S.C. Section 41104(a)(10);

3. An Order compelling Respondent to cease and desist from violation of the Shipping Act and to put in place lawful and reasonable practices to preclude Respondent from assessing

is available to Complainant with respect to all of the Charges challenged herein (including those assessed prior to the enactment of OSRA 2022) and afford Complainant an opportunity to proceed separately pursuant to 46 U.S.C. Section 41310 with respect to the Charges.

unfair and unreasonable detention and demurrage charges to Complainant and its agents and service providers;

4. An Order requiring Respondent to pay Complainant reparations for the unlawful conduct alleged herein in an amount to be proven pursuant to 46 U.S.C. Section 41305, with interest pursuant to 46 U.S.C. Section 41305(a), Complainant's reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. Section 41305(e), and any other sum the FMC determines to be proper; and

5. Such other and further orders or relief as the FMC deems just and proper.

X. REQUEST FOR ORAL HEARING

Complainant requests such hearing to be conducted in Washington, DC.

Dated: March 16, 2026

Respectfully submitted,

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VERIFICATION

I, Reed Tushman, am President and CEO of Complainant Orleans International, Inc., located at 30600 Northwestern Highway, Suite 300, Farmington Hills, MI 48334, telephone 248-855-5556, email reedtushman@orleansintl.com. I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, including information received from others, that the facts stated therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 16, 2026.

A handwritten signature in black ink, appearing to read "Reed Tushman", written over a horizontal line.

Reed Tushman