

Appendix A

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAR 24 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MADHU SAMEER,

Plaintiff-Appellant,

v.

THE RIGHT MOVE 4 U; et al.,

Defendants-Appellees.

No. 18-16046

D.C. No. 1:17-cv-00886-AWI-EPG  
Eastern District of California,  
Fresno

ORDER

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Sameer's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 81) are denied.

Sameer's motion to recall the mandate (Docket Entry No. 82) is denied.

No further filings will be entertained in this closed case.

## Appendix B

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MADHU SAMEER,

No. 18-16046

Plaintiff-Appellant,

D.C. No. 1:17-cv-00886-AWI-EPG

v.

MEMORANDUM\*

THE RIGHT MOVE 4 U; et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted December 11, 2019\*\*

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

Madhu Sameer appeals pro se from the district court's judgment dismissing her action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal under Fed. R. Civ. P. 41(b). *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). We affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court did not abuse its discretion by dismissing Sameer's action for failure to comply with its order to amend the complaint to comply with Federal Rule of Civil Procedure 8(a). Despite the district court's warning and instruction, Sameer's third amended complaint was vague, confusing, and failed to allege clearly the bases for her claims. *See id.* at 1179-80 (affirming dismissal of a complaint under Rule 8 because it was "argumentative, prolix, replete with redundancy, and largely irrelevant"); *see also* Fed. R. Civ. P. 8(a)(2) (requiring that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief").

The district court did not abuse its discretion by denying Sameer's motion to proceed in forma pauperis because the court's determination was based on its examination of her affidavit in support of her motion and her financial resources. *See O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (setting forth standard of review and explaining that a "reviewing court cannot reverse unless it has a definite and firm conviction that the court below committed a clear error of judgment").

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Sameer's motions requesting this court to take judicial notice of the documents she attaches (Docket Entry Nos. 24 and 68) are denied because the documents are irrelevant to the issues on appeal. The Clerk is directed to strike the documents. Her motions requesting to file those documents under seal (Docket Entry Nos. 23 and 68) are denied as moot.

**AFFIRMED.**

## Appendix C

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2  
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5  
6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
8

9 **MAHDU SAMEER,**

10 **Plaintiff**

11 **v.**

12 **RIGHT MOVES 4 U; MICHELLE**  
13 **FRANKLIN; DYLAN CORTINA;**  
14 **XO MOVING SYSTEMS; CONROY**  
15 **REMOVALS; FIONA CONROY;**  
16 **MONICA MCKINLEY; TALBOT**  
**UNDERWRITING RISK SERVICES;**  
**SHIPCO TRANSPORT; and DOES 1-43,**

**Defendants**

**CASE NO. 1:17-CV-886 AWI-EPG**

**ORDER DISMISSING PLAINTIFF'S**  
**THIRD AMENDED COMPLAINT**  
**FOR FAILURE TO FOLLOW**  
**A PREVIOUS COURT ORDER**

(Doc. No. 93)

17 This dispute arises from the Defendants' alleged failure to deliver Plaintiff's personal  
18 possessions from her former residence in Fresno, CA to her current residence in New Zealand.  
19 Plaintiff's 110-page Second Amended Complaint ("2AC") sought to allege multiple claims under  
20 the Racketeer Influenced and Corrupt Organizations Act ("RICO"), as well as multiple California  
21 state law claims. See Doc. No. 13. In the Court's Order on Plaintiff's Motions (the "Dismissal  
22 Order," Doc. No. 87), Plaintiff's 2AC was dismissed for failure to provide a "short and plain  
23 statement" under Rule 8 of the Federal Rules of Civil Procedure. Plaintiff, a *pro se* litigant, was  
24 granted leave to amend in order to cure the Rule 8 defects, address other violations of the Court's  
25 Local Rules, and fit her complaint into the Court-imposed page limit of 50 pages. *Id.*

26 Plaintiff has filed her Third Amended Complaint ("3AC"), which also substantially fails to  
27 proffer a "short and plain statement" of her claims. See Doc. No. 93. For the reasons that follow,  
28 Plaintiff's 3AC will be dismissed with prejudice.



1                   A. *Failure to Provide a Short and Plain Statement*

2   Legal Standard

3                   Under Rule 8(a), a complaint must contain a “short and plain statement of the claim  
4 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[T]he ‘short and plain  
5 statement’ must provide each defendant with ‘fair notice of what the plaintiff’s claim is and the  
6 grounds upon which it rests.” *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005). Rule  
7 8(a) “requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.” *Bell Atl. Corp.*  
8 *v. Twombly*, 550 U.S. 544 (2007). Plaintiff’s complaint must contain facts to “state a claim to  
9 relief that is plausible on its face,” allowing “the court to draw the reasonable inference that the  
10 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11                  Complaints that are “argumentative, prolix, replete with redundancy, and largely  
12 irrelevant” and that consist “largely of immaterial background information” are subject to  
13 dismissal under Rule 8. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059  
14 (9th Cir. 2011). A Rule 8 dismissal is allowed even if “a few possible claims” can be identified  
15 and even if the complaint is not “wholly without merit.” *Id.* at 1179 (stating Rule 8’s requirements  
16 apply “to good claims as well as bad”). Complaints that fail to comply with Rule 8 “impose unfair  
17 burdens on litigants and judges” who “cannot use [such] complaint[s]” and “must prepare outlines  
18 to determine who is being sued for what.” *Id.* at 1179–80. “Experience teaches that, unless cases  
19 are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court’s  
20 docket becomes unmanageable, the litigants suffer, and society loses confidence in the court’s  
21 ability to administer justice.” *Bautista v. L.A. Cty.*, 216 F.3d 837, 841 (9th Cir. 2000).

22   Analysis

23                  The core of the Court’s Dismissal Order concerned Plaintiff’s failure to proffer a short and  
24 plain statement of her RICO allegations in her 2AC. *See* Doc. No. 87. Therein, the Court  
25 informed Plaintiff that in a RICO action, a plaintiff must allege the following: “(1) conduct (2) of  
26 an enterprise (3) through a pattern (4) of racketeering activity (known as predicate acts) (5)  
27 causing injury to plaintiff’s business or property.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116  
28 (9th Cir. 2017); 18 U.S.C. § 1962. An “enterprise” includes “any individual, partnership,

1 corporation, association, or other legal entity, and any union or group of individuals associated in  
2 fact although not a legal entity.” 18 U.S.C. § 1961(4). A “pattern” requires the commission of at  
3 least two acts of “racketeering activity” within a ten-year period. 18 U.S.C. § 1961(5).  
4 Racketeering activities are also known as “predicate acts” under 18 U.S.C. § 1961. *Eller v.*  
5 *EquiTrust Life Ins. Co.*, 778 F.3d 1089, 1092 (9th Cir. 2015); *see also United States v. Turkette*,  
6 452 U.S. 576, 582 (1981) (“The enterprise is an entity[.] The pattern of racketeering activity is, on  
7 the other hand, a series of criminal acts as defined by the statute.”).

8 Applying Rule 8, the Court found Plaintiff’s 2AC to be neither short nor plain:

9 The 110-page 2AC contains 32 causes of action, as read from the section headers.  
10 24 of these main headings allege RICO violations, many of which are lodged  
11 against “all Defendants,” and most of which contain multiple subsections  
apparently alleging additional RICO claims.

12 Plaintiff does list nine predicate acts under federal law, in a section preceding her  
13 “causes of action,” but then fails to mention these in most of her 22 RICO causes  
14 of action, instead citing back to, *inter alia*, the general RICO statute, other federal  
15 laws (sometimes completely irrelevant to her cause of action), California state law  
16 and various Restatements of the Law. Many of Plaintiff’s claims appear  
duplicative, and though Plaintiff includes almost 300 paragraphs of factual  
allegations, it is near impossible to connect these facts to the elements of  
Plaintiff’s claims.

17 The remaining eight “causes of action” appear to be styled as alleged violations of  
18 California common law: breach of contract, breach of duty of care, breach of  
19 fiduciary duty/conspiracy, equitable/promissory estoppel, unjust enrichment,  
20 negligent misrepresentation, intentional misrepresentation, and “unfair  
21 competition.” Many of these sections, however, also have multiple sub-claims,  
22 each of which cites to various sources of law seemingly unrelated to the  
designated claim—some cite to the Restatements, some to wholly irrelevant  
statutes (i.e. 29 U.S.C. 1109, governing fiduciary duties for employee benefits).  
23 Many cite back to the RICO statute, leaving the Court with the impression that  
Plaintiff is attempting to use California common law as a predicate offenses for  
additional RICO claims.

24 *See* Doc. No. 87, pp. 5-6. The Court concluded that “the 2AC’s incomprehensibility prevents this  
25 Court (and Defendants) from deciphering the factual and legal basis for each Defendant’s alleged  
26 liability[;]” the Court granted Plaintiff leave to amend. *See Id.* p.6.

27 Plaintiff’s 3AC, while slightly reformed, still fails to comply with Rule 8 at its most basic  
28 level. The 3AC contains seven “counts”, where Plaintiff divides the Defendants into individual

1 entities or smaller sub-groups—the Court assumes this is Plaintiff’s attempt to individualize her  
2 allegations in the “counts” section to each Defendant, instead of alleging claims against “all  
3 Defendants” (as was the case in the 2AC). *See* Doc. No. 93, at pp. 42-48. However, each “count”  
4 then incorporates by reference and refers back to the body of the 3AC, where Plaintiff sets forth no  
5 less than twenty-four sub-sections of what appear to be attempts to detail predicate acts. *See Id.*  
6 These sections are so multifarious as to still remain incomprehensible; two such examples are  
7 styled as follows:

- 8
- 9 - Intentional – Breach of Contract/Breach of Third Party Contract/Breach of  
10 Fiduciary Duty/Tortious Interference-in aid of Racketeering enterprises (18  
11 USC 1962 (c); (d); 18 USC 1341; 18 USC 1343; 18 USC 1346; 18 USC  
12 1349); Restatements (Second) of Contracts (1981) Sec. 241 et. seq.;  
13 Restatement (Second) of Torts-Sec. 874, 875, 876, 766; Restatement (Third)  
14 of Agency (2006) sec. 6.05; 7.01, et. seq., 801, et. seq.
  - 15 - Deprivation of Civil Rights (18 USC 1962 (d); 18 USC 1341; 18 USC 1343;  
16 18 USC 1346; 18 USC 1349; Federal Constitutional law, Article 1 Section  
17 10; Bill of Rights – First, Fifth, and Fourteenth Amendment); 42 USC 1981;  
18 42 USC 1982; 42 USC 1985 (3); 42 USC 1986; 42 USC 1988 (a)-(c ).

19 *See Id.* Each of these sub-sections contains a few paragraphs of factual allegations (and some  
20 seemingly-conclusory statements) about “defendants” behavior, but do not appear to come close  
21 to matching up with the breadth of the multiple citations to law contained in each sub-section.  
22 Like the Court held in its Dismissal Order concerning the 2AC, “courts should not have to outline  
23 a plaintiff’s complaint in order to find comprehensibility.” *Cafasso*, 637 F.3d at 1079-80.

24 Additionally, Plaintiff many other paragraphs appear to be restyled versions of Plaintiff’s  
25 previous attempts to allege violations of California state law. *See* 3AC, at pp 23-27. The Court  
26 still cannot gauge how Plaintiff intends to incorporate by reference these sections, either as RICO  
27 or state law acts. For example, the following headers are denoted as “Non Predicate Acts”:

- 28
- 29 - Intentional Infliction of Emotional Distress (18 USC 1962 (d); 18 USC 1341;  
30 18 USC 1343; 18 USC 1346; 18 USC 1349; Restatement (Second) of Torts,  
31 Sec 46;
  - 32 - Unjust Enrichment 18 USC 1962(c ), (d); 18 USC 1341; 18 USC 1343; 18  
33 USC 1346; 18 USC 1349; Restatement (Third) of Restitution & Unjust  
34 Enrichment, Restatement (Third) of Agency, Sec 2.047, 4.08, 5.04.

1 *See Id.* These sections, scattered throughout the 3AC, are again followed by allegations that do  
2 not appear to conform to the legal citations in the headers, either under Federal or State law. Like  
3 the so-called “Predicate Acts”, these numerous paragraphs also fail provide any of the Defendants  
4 with fair notice of what Plaintiff’s claims are and the grounds upon which each claim rests. *Dura*  
5 *Pharms.*, 544 U.S. at 346; *Cafasso*, 637 F.3d at 1059 (“Complaints that are argumentative, prolix,  
6 replete with redundancy, and largely irrelevant” and that consist “largely of immaterial  
7 background information” are subject to dismissal under Rule 8.).

8 Finally, the Court cannot decipher the factual basis for Plaintiff’s damages estimation,  
9 alleged to be over the implausible figure of \$3 million, and questions her seemingly conclusory  
10 allegations of enterprise and that unnamed “others” have experienced the same harms from these  
11 Defendants. *See Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678, *Chaset v. Fleer/Skybox*, 300  
12 F.3d 1083, 1087 (9<sup>th</sup> Cir. 2002) (“Congress enacted RICO to combat organized crime, not to  
13 provide a federal cause of action and treble damages for personal injuries.”).

14 The Court’s conclusion regarding Plaintiff’s 3AC is the same as with 2AC: its prolixity  
15 and incomprehensibility prevents the Court (and Defendants) from deciphering the factual and  
16 legal basis for each Defendant’s alleged liability. *See Cafasso*, 637 F.3d at 1059 (“Rule 8(a) has  
17 ‘been held to be violated by a pleading that is needlessly long, or a complaint that was highly  
18 repetitious, or confused, or consisted of incomprehensible rambling.’”) (quoting 5 Federal Practice  
19 & Procedure § 1217 (3d ed. 2010)); *see also Clayburn v. Schirmer*, 2008 WL 564958, at \*4 (E.D.  
20 Cal. Feb. 28, 2008) (“The court and any defendant should be able to read and understand  
21 Plaintiff’s pleading within minutes.”); *Little v. Baca*, 2013 WL 436018, at \*3 (C.D. Cal. Feb. 1,  
22 2013) (finding that unclear pleadings “leav[e] it to the Court to figure out what the full array of  
23 [the plaintiff’s] claims are and upon what federal law, and upon what facts, each claim is based.”).  
24 Hence, the 3AC must be dismissed. *See Cafasso*, 637 F.3d at 1059 (dismissing the “overly  
25 burdensome” amended complaint per Rule 8); *Stone v. Baum*, 409 F.Supp.2d 1164, 1173 (D. Az.  
26 Dec. 20, 2005) (dismissing under Rule 8 where 64-page complaint made no attempt to link alleged  
27 violations of numerous predicate acts to defendants, and pleaded in conclusory and vague fashion  
28 so that court and defendants could not discern conduct in question).

1 *B. Dismissal with Prejudice is Appropriate under Rule 41*

2 Legal Standard

3 A complaint which fails to comply with a court order may be dismissed with prejudice as a  
4 sanction. See Rule 41(b). "Although that rule appears to contemplate that dismissal will be  
5 precipitated by a motion from the opposing party, a court may act *sua sponte* under Rule 41(b)."  
6 *Forte v. County of Merced*, 2014 U.S. Dist. LEXIS 133826, \*31, 2014 WL 4745923 (citing *Link v.*  
7 *Wabash R. Co.*, 370 U.S. 626, 630 (1962)). The Ninth Circuit has upheld such dismissals pursuant  
8 to a district court's order for a plaintiff to follow Rule 8(a). *McHenry v. Renne*, 84 F.3d 1172 (9th  
9 Cir. 1996); *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981); see also *Knapp v.*  
10 *Hogan*, 738 F.3d 1106, 1111 (9th Cir. 2013) ("Complaints that are filed in repeated and knowing  
11 violation of Federal Rule 8's pleading requirements are a great drain on the court system, and the  
12 reviewing court cannot be expected to fish a gold coin from a bucket of mud."); *Johnson v.*  
13 *KHS&S Contractor*, 2011 U.S. Dist. LEXIS 65215, at \*2 (E.D. Cal. Jun 20, 2011) ("[A] district  
14 court may impose sanctions, including involuntary dismissal of a plaintiff's case with prejudice  
15 pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her  
16 case or fails to comply with the court's orders.") (collecting cases)).

17 In considering whether to dismiss a case under Rule 41(b), courts consider: (1) the public's  
18 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the  
19 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
20 merits; and (5) the availability of less drastic alternatives. See *Yourish v. California Amplifier*, 191  
21 F.3d 983, 990 (9th Cir. 1999); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992).

22 Analysis

23 Considering the above factors, only the fourth counsels against dismissal of this case with  
24 prejudice, and this factor is drastically outweighed by the remaining factors. In the time since  
25 Plaintiff filed her first complaint, she has amended three times to date, and until the Courts  
26 admonition in the Dismissal Order, continued to inordinately expand her claims both in scope and  
27 litigants. Plaintiff twice served the wrong party, despite the apparent clear instructions for service  
28 listed on her insurance certificate, causing these former parties to file motions to dismiss. Plaintiff

1 has also filed numerous motions that border on frivolity—some of which were over 500 pages in  
2 length and one of which seemingly requested the Court enjoin the order of a New Zealand court.  
3 In short, Plaintiff’s acts in pursuing her case cut against the public’s interest in expeditious  
4 resolution of the case, the court’s ability to manage its docket, and the risk of prejudice to the  
5 defendants. *Ferdik*, 963 F.2d at 1260-61.

6 Despite these ongoing problems, however, the Court granted Plaintiff’s motion to amend  
7 her complaint. *See* Doc. No. 87. The Court expressly stated that upon filing her 3AC, Plaintiff  
8 “must comply with the Rules of Civil Procedure, most importantly Rule 8(a)’s requirement of a  
9 ‘short and plain’ statement of the claim and the facts showing that Plaintiff is entitled to relief.”  
10 *See Id.*, p. 8. The Court warned that “[u]nless Plaintiff is able to clarify her allegations in the  
11 [3AC], this would demonstrate to the Court the futility of additional future amendment, and go  
12 towards a showing of prejudice to defendants and interference with judicial process.” *Id.* The  
13 Court concluded by stating: “[f]ailure to comply with these commands may result in additional  
14 sanctions, including *sua sponte* dismissal of the action without further comment or, potentially,  
15 dismissal of the action *with prejudice*.” *Id.* Despite the Court admonishing Plaintiff on Rule 8  
16 admonition, as well as providing her with guidance on the pleading standards for a RICO claim,  
17 she has failed to proffer a “short and plain statement” in her 3AC. The current complaint is  
18 verbose and confusing, irrelevant in parts, argumentative, prolix, replete with redundancy. *See*  
19 Section A, *supra*. In the Dismissal Order, the Court also ordered Plaintiff to adhere to the Court’s  
20 Local Rules concerning formatting (L.R. 130), and imposed a page limit to further indicate the  
21 need for a “short and plain statement.” While Plaintiff did decrease her page count, she did so  
22 partially at the expense of the page margins and spacing (in part). *See* Local Rule 130(a), (b), and  
23 (c). By the Court’s estimate, Plaintiff’s 3AC significantly extends beyond the page limit imposed  
24 once forced to conform to the Court’s formatting rules. At best, this violation further highlights  
25 Plaintiff’s failure to proffer a “short and plain statement” of her claims. These findings lead the  
26 Court to conclude that Plaintiff will be unable to meet Rule 8’s pleading standards, and no less  
27 drastic alternative is available.

28 ///

1 Plaintiff has previously expressed her concern that, as a *pro se* litigant, she is unaware of  
2 how to properly plead a complaint. However, the Court notes Plaintiff originally filed this action  
3 in July of 2017, has amended three times, and has had numerous procedural issues throughout,  
4 including service of incorrect parties. In short, if Plaintiff intended to procure the services of an  
5 attorney to correct for her apparent inability to conform to the Federal Rules, she could have done  
6 so by now. Plaintiff's *pro se* status does not excuse her from conforming her pleadings and  
7 motions to the Rules of Civil Procedure and the Court's Local Rules. *See Briones v. Riviera Hotel*  
8 *& Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (Although the court must construe pleadings  
9 liberally, "[p]ro se litigants must follow the same rules of procedure that govern other litigants.");  
10 *see also* Local Rule 183(a) ("Any individual representing himself or herself without an attorney is  
11 bound by the Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable  
12 law. Failure to comply therewith may be ground for dismissal . . . or any other sanction  
13 appropriate under these Rules.").

14 Thus, it is clear that Plaintiff's inability to conform to the tenets of Rule 8 and the Court's  
15 order, as previously discussed, counsels dismissal of her case with prejudice. *Cf. McHenry v.*  
16 *Renne*, 84 F.3d 1172 (9th Cir. 1996) (affirming district court's dismissal with prejudice under Rule  
17 41(b) due to plaintiff's violation of general pleading rules and court's prior orders requiring short,  
18 clear statement of claims sufficient to allow defendants to prepare responsive pleading, where 53-  
19 page third amended complaint was written more as a press release and failed to obey court's prior  
20 orders to identify which defendants were liable on which claims); *Nevijel v. N. Coast Life Ins. Co.*,  
21 651 F.2d 671, 673 (9th Cir. 1981) (affirming a Rule 41(b) dismissal of a "verbose, confusing, and  
22 almost entirely conclusory" complaint, after previously allowing amendment, because there was  
23 little reason to think that an additional opportunity would yield different results); *with Hearn v.*  
24 *San Bernadino Police Department*, 530 F.3d 1124 (9th Cir. 2011) (reversing *sua sponte* dismissal  
25 under Rule 41(b) where complaint was not "replete with redundancy and largely irrelevant."  
26 (citing to *McHenry*, 84 F.3d at 1132)) *see also Bryant v. City of Tulare*, 2017 U.S. Dist. LEXIS  
27 23174, \*10 (E.D. Cal. Feb 7, 2017) (dismissing a multifarious RICO complaint with prejudice  
28 where the complaint referenced predicate acts such as "wire fraud" or "mail fraud", but failed to

1 clearly establish these predicates in her facts, failed to adequately allege an enterprise, and made  
2 conclusory allegations as to damages); *Wright v. United States*, 2015 WL 3902798, at \*1 (N.D.  
3 Cal. June 24, 2015) (dismissing *sua sponte* after the plaintiff failed to assuage the court's concerns  
4 regarding the complaint's failure to follow Rule 8); *KHS&S Contractor*, 2011 U.S. Dist. LEXIS  
5 65215, at \*2.

6 **ORDER**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's Third Amended Complaint (Doc. No. 93) is DISMISSED WITH  
9 PREJUDICE;
- 10 2. The Clerk of the Court is directed to CLOSE this case.

11 IT IS SO ORDERED.

12 Dated: May 22, 2018

13   
14 SENIOR DISTRICT JUDGE



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**JUDGMENT IN A CIVIL CASE**

**MADHU SAMEER,**

**CASE NO: 1:17-CV-00886-AWI-EPG**

v.

**THE RIGHT MOVE 4 U, ET AL.,**

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**XX** — **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE  
COURT'S ORDER FILED ON 5/22/2018**

**Marianne Matherly**  
Clerk of Court

ENTERED: **May 22, 2018**

by: /s/ A. Jessen  
Deputy Clerk

**0059**

## APPENDIX D : STATUTORY LAWS

## ANTITRUST LAWS

### 15 U.S. Code § 1.Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

### 15 U.S. Code § 2.Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

### 15 U.S. Code § 3.Trusts in Territories or District of Columbia illegal; combination a felony

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court

### 15 U.S. Code § 6a.Conduct involving trade or commerce with foreign nations

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1)such conduct has a direct, substantial, and reasonably foreseeable effect—

(A)

on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or  
(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and  
(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

15 U.S. Code § 7. "Person" or "persons" defined

The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

15 USC 12. Definitions; short title

(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the "Clayton Act".

## CLAYTON ACT

15 USC 13. Discrimination in price, services, or facilities

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in

such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

**(b) Burden of rebutting prima-facie case of discrimination**

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

**(c) Payment or acceptance of commission, brokerage, or other compensation**

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

**(d) Payment for services or facilities for processing or sale**

It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such

commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

15 USC 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods **in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.**

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

15 USC 15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only-

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if-

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions

For purposes of this section-

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28.

#### 15 USC 15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only-

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

#### 15 USC 15b. Limitation of actions

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

#### 15 USC 15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

#### 15 USC 15f. Actions by Attorney General

##### (a) Notification to State attorney general

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

##### (b) Availability of files and other materials

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

#### 15 USC 15g. Definitions

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on-

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or



(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

## HARTER ACT

### 46 USC 190. Stipulations relieving from liability for negligence

It shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

### 46 USC 191. Stipulations relieving from exercise of due diligence in equipping vessels

**It shall not be lawful** for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, **to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence 1 properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage,** or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, **shall in any wise be lessened, weakened, or avoided.**

### 46 USC 192. Limitation of liability for errors of navigation, dangers of sea and acts of God

If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

### 46 USC 193. Bills of lading to be issued; contents

**It shall be the duty of the owner or owners, masters, or agents of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property**

**delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.**

46 USC 194. Penalties; liens; recovery

**For a violation of any of the provisions of sections 190 to 196 of this Appendix the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding \$2,000. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.**

46 USC 196. Certain laws unaffected

Sections 190 to 196 of this Appendix shall not be held to modify or repeal sections 181 to 183 of this Appendix, or any other statute defining the liability of vessels, their owners, or representatives.

## CARRIAGE OF GOODS BY SEA ACT

46 USC 13701

In this chapter, the term “carrier” means the owner, manager, charterer, agent, or master of a vessel.

### Notes

This chapter codifies the Act of February 13, 1893 (ch. 105, 27 Stat. 445) (commonly known as the Harter Act). Changes are made to simplify, clarify, and modernize the language and style, but the intent is that these changes should not result in changes in substance.

A definition of “carrier” is added based on language appearing in various provisions of the Harter Act. The definition avoids the need to repeat in various sections of this chapter the list of persons to whom the requirements and restrictions of this chapter apply, and it ensures that the list of persons is consistent in the chapter.

### *Carriage of Goods by Sea Act*

Act Apr. 16, 1936, ch. 229, 49 Stat. 1207, as amended by Pub. L. 97-31, § 12(146), Aug. 6, 1981, 95 Stat. 166, provided:

“That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade, shall have effect subject to the provisions of this Act.

#### “TITLE I

“SECTION 1. When used in this Act—

“(a) The term ‘carrier’ includes the owner or the charterer who enters into a contract of carriage with a shipper.

“(b) The term ‘contract of carriage’ applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

“(c) The term ‘goods’ includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

“(d) The term ‘ship’ means any vessel used for the carriage of goods by sea.

“(e) The term ‘carriage of goods’ covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

#### “RISKS

“SEC. 2. Subject to the provisions of section 6, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

#### “RESPONSIBILITIES AND LIABILITIES

“SEC. 3. (1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

“(a) Make the ship seaworthy;

“(b) Properly man, equip, and supply the ship;

“(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

“(2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

“(3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

“(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

“(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

“(c) The apparent order and condition of the goods: Provided, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

“(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3)(a), (b), and (c), of this section: Provided, That nothing in this Act shall be construed as repealing or limiting the application of any part of the Act, as amended, entitled ‘An Act relating to bills of lading in interstate and foreign commerce’, approved August 29, 1916 (U.S.C., title 49, secs. 81–124),

commonly known as the 'Pomerene Bills of Lading Act' [now chapter 801 of Title 49, Transportation].

“(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

“(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

“Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

“The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

“In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

“In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

“(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a 'shipped' bill of lading: Provided, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a 'shipped' bill of lading.

“(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability.

#### *“RIGHTS AND IMMUNITIES*

“SEC. 4. (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all

other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

“(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

“(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

“(b) Fire, unless caused by the actual fault or privity of the carrier;

“(c) Perils, dangers, and accidents of the sea or other navigable waters;

“(d) Act of God;

“(e) Act of war;

“(f) Act of public enemies;

“(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;

“(h) Quarantine restrictions;

“(i) Act or omission of the shipper or owner of the goods, his agent or representative;

“(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general: Provided, That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;

“(k) Riots and civil commotions;

“(l) Saving or attempting to save life or property at sea;

“(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

“(n) Insufficiency of packing;

“(o) Insufficiency or inadequacy of marks;

“(p) Latent defects not discoverable by due diligence; and

“(q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

“(3) **The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.**

“(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom:

Provided, however, That if the deviation is for the purpose of loading or unloading cargo or passengers it shall, prima facie, be regarded as unreasonable.

**“(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.** This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

“By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: Provided, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

“Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.

“(6) Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

*“SURRENDER OF RIGHTS AND IMMUNITIES AND INCREASE OF RESPONSIBILITIES AND LIABILITIES*

“SEC. 5. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this Act, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

“The provisions of this Act shall not be applicable to charter parties; but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of this Act. Nothing in this Act shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

*“SPECIAL CONDITIONS*

“SEC. 6. Notwithstanding the provisions of the preceding sections, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents **in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried**

**by sea: Provided, That in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.**

“Any agreement so entered into shall have full legal effect: Provided, That this section shall not apply to ordinary commercial shipments made in the ordinary course of trade but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

*“[AGREEMENT AS TO RESPONSIBILITY AND LIABILITY BEFORE LOADING OR AFTER DISCHARGE]*

“SEC. 7. Nothing contained in this Act shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

*“[RIGHTS AND LIABILITIES UNDER OTHER OBLIGATIONS]*

“SEC. 8. The provisions of this Act shall not affect the rights and obligations of the carrier under the provisions of the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], or under the provisions of sections 4281 to 4289, inclusive, of the Revised Statutes of the United States [see chapter 305 of this title] or of any amendments thereto; or under the provisions of any other enactment for the time being in force relating to the limitation of the liability of the owners of seagoing vessels.

“TITLE II

“[DISCRIMINATION BETWEEN COMPETING SHIPPERS]

“SECTION. 9. **Nothing contained in this Act shall be construed as permitting a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances, either (a) with respect to their right to demand and receive bills of lading subject to the provisions of this Act; or (b) when issuing such bills of lading, either in the surrender of any of the carrier’s rights and immunities or in the increase of any of the carrier’s responsibilities and liabilities pursuant to section 5, title I, of this Act; or (c) in any other way prohibited by the Shipping Act, 1916, as amended** [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title].

*“[OMITTED]*

“SEC. 10. [Amended section 25 of the Interstate Commerce Act (former 49 U.S.C. 25).]

“[WEIGHT OF BULK CARGO]

“SEC. 11. Where under the customs of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in this Act, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

*"[RELATIONSHIP TO OTHER LAW]"*

"SEC. 12. Nothing in this Act shall be construed as superseding any part of the Act entitled 'An Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property', approved February 13, 1893 [now this chapter], or of any other law which would be applicable in the absence of this Act, **insofar as they relate to the duties, responsibilities, and liabilities of the ship or carrier prior to the time when the goods are loaded on or after the time they are discharged from the ship.**

*"[SCOPE OF ACT; "UNITED STATES"; "FOREIGN TRADE"]"*

"SEC. 13. This Act shall apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. As used in this Act the term 'United States' includes its districts, territories, and possessions: Provided, however, That the Philippine Legislature may by law exclude its application to transportation to or from ports of the Philippine Islands. The term 'foreign trade' means the transportation of goods between the ports of the United States and ports of foreign countries. Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possessions: Provided, however, That any bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea between such ports, containing an express statement that it shall be subject to the provisions of this Act, shall be subjected hereto as fully as if subject hereto by the express provisions of this Act: Provided further, That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea from ports of the United States, in foreign trade, shall contain a statement that it shall have effect subject to the provisions of this Act.

"[As to proviso in second sentence that Philippine Legislature may by law exclude its application to transportation to or from ports of the Philippine Islands, see Proc. No. 2695, set out under section 1394 of Title 22, Foreign Relations and Intercourse, which proclaimed the independence of the Philippines.]

*"[SUSPENSION OF PROVISIONS BY PRESIDENT]"*

"SEC. 14. Upon the certification of the Secretary of Transportation that the foreign commerce of the United States in its competition with that of foreign nations is prejudiced by the provisions, or any of them, of title I of this Act, or by the laws of any foreign country or countries relating to the carriage of goods by sea, the President of the United States may, from time to time, by proclamation, suspend any or all provisions of said sections for such periods of time or indefinitely as may be designated in the proclamation. The President may at any time rescind such suspension of said sections, and any provisions thereof which may have been suspended shall thereby be reinstated and again apply to contracts thereafter made for the carriage of goods by sea. Any proclamation of suspension or rescission of any such suspension shall take effect on a date named therein, which date shall be not less than ten days from the issue of the proclamation.

"Any contract for the carriage of goods by sea, subject to the provisions of this Act, effective during any period when title I hereof, or any part thereof, are suspended, shall be subject to all provisions of law now or hereafter applicable to that part of title I which may



have thus been suspended. [As amended Pub. L. 97-31, § 12(146), Aug. 6, 1981, 95 Stat. 166.]

“[EFFECTIVE DATE]

“SEC. 15. This Act shall take effect ninety days after the date of its approval [April 16, 1936]; but nothing in this Act shall apply during a period not to exceed one year following its approval to any contract for the carriage of goods by sea, made before the date on which this Act is approved, nor to any bill of lading or similar document of title issued, whether before or after such date of approval in pursuance of any such contract as aforesaid.

“[SHORT TITLE]

“SEC. 16. This Act may be cited as the ‘Carriage of Goods by Sea Act’.”

46 USC 30702

(a) IN GENERAL.—

Except as otherwise provided, **this chapter applies to a carrier engaged in the carriage of goods to or from any port in the United States.**

(b) LIVE ANIMALS.—

Sections 30703 and 30704 of this title do not apply to the carriage of live animals.

(Pub. L. 109-304, § 6(c), Oct. 6, 2006, 120 Stat. 1516.)

Notes

Subsection (a) is added based on language appearing in various source provisions restated in this chapter. The word “carriage” is substituted for “transporting”, and the word “goods” is substituted for “merchandise or property”, to use the same terminology as in the Carriage of Goods By Sea Act (Apr. 16, 1936, ch. 229, 49 Stat. 1207). The words “to or from any port in the United States” are substituted for “from or between ports of the United States and foreign ports” in 46 App. U.S.C. 190 and 193, “from or between ports of the United States of America and foreign ports” in 46 App. U.S.C. 191, and “to or from any port in the United States of America” in 46 App. U.S.C. 192, for clarity and consistency. See Knott v. Botany Mills, 179 U.S. 69 (1900).

46 USC 30703 - Bill Of Lading

(a) ISSUANCE.—

**On demand of a shipper, the carrier shall issue a bill of lading or shipping document.**

(b) CONTENTS.—The bill of lading or shipping document shall include a statement of—

(1) the marks necessary to identify the goods;

(2) the number of packages, or the quantity or weight, and whether it is carrier’s or shipper’s weight; and

(3) the apparent condition of the goods.

(c) PRIMA FACIE EVIDENCE OF RECEIPT.—

**A bill of lading or shipping document issued under this section is prima facie evidence of receipt of the goods described.**

Notes

In subsection (a), the words “On demand of a shipper” are added because of the reference to a demand in 46 App. U.S.C. 194. The words “transporting merchandise or property from or between ports of the United States and foreign ports” are omitted because of section

30702(a) of the revised title. The word “lawful” (which modifies “merchandise”) is omitted as unnecessary.

In subsection (b)(2), the words “or weight” are added for consistency with the requirement to state whether it is the carrier’s or shipper’s weight.

In subsection (b)(3), the word “order” is omitted as redundant to “condition”. The words “delivered to and received by . . . for transportation” are omitted as unnecessary.

#### 46 USC 30704 - Loading, stowage, custody, care, and delivery

**A carrier may not insert in a bill of lading or shipping document a provision avoiding its liability for loss or damage arising from negligence or fault in loading, stowage, custody, care, or proper delivery. Any such provision is void.**

#### Notes

The words “transporting merchandise or property from or between ports of the United States and foreign ports” are omitted because of section 30702(a) of the revised title. The words “may not” are substituted for “It shall not be lawful . . . to”, and the word “provision” is substituted for “clause, covenant, or agreement”, to eliminate unnecessary words. The words “any and all lawful” and “committed to its or their charge” are omitted as unnecessary. The words “Any such provision is void” are substituted for “Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect” to eliminate unnecessary words.

#### 46 USC 30705. Seaworthiness

(a) Prohibition.—A carrier may not insert in a bill of lading or shipping document a provision lessening or avoiding its obligation to exercise due diligence to—

- (1) make the vessel seaworthy; and
- (2) properly man, equip, and supply the vessel.

(b) Voidness.— A provision described in subsection (a) is void.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1516.)

#### 46 USC 30706 - Defenses

(a) Due Diligence.—

If a carrier has exercised due diligence to make the vessel in all respects seaworthy and to properly man, equip, and supply the vessel, the carrier and the vessel are not liable for loss or damage arising from an error in the navigation or management of the vessel.

(b) Other Defenses.—A carrier and the vessel are not liable for loss or damage arising from—

- (1) dangers of the sea or other navigable waters;
- (2) acts of God;
- (3) public enemies;

**(4) seizure under legal process;**

(5) inherent defect, quality, or vice of the goods;

**(6) insufficiency of package;**

**(7) act or omission of the shipper or owner of the goods or their agent; or**

(8) saving or attempting to save life or property at sea, including a deviation in rendering such a service.

#### Notes

This section is restated as two subsections to clarify that the exercise of due diligence in making the vessel seaworthy is a condition only to the defense of error in navigation or management restated in subsection (a). See *May v. Hamburg-Amerikanische Packetfahrt Aktiengesellschaft (The Isis)*, 290 U.S. 333, 353 (1933). The words “transporting merchandise or property to or from any port in the United States of America” are omitted because of section 30702(a) of the revised title.

46 USC 30707 - Criminal penalty

(a) In General.—

**A carrier that violates this chapter shall be fined under title 18.**

(b) Lien.—

The amount of the fine and costs for the violation constitute a lien on the vessel engaged in the carriage. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found.

(c) Disposition of Fine.—

Half of the fine shall go to the person injured by the violation and half to the United States Government.

In subsection (a), the words “and who refuses to issue on demand the bill of lading herein provided for” are omitted as unnecessary. The words “shall be fined under title 18” are substituted for “shall be liable to a fine not exceeding \$2,000” because of chapter 227 of title 18.

In subsection (b), the words “A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found” are substituted for “such vessel may be libeled therefor in any district court of the United States” for clarity and to modernize the language.

#### Notes

This section is restated as two subsections to clarify that the exercise of due diligence in making the vessel seaworthy is a condition only to the defense of error in navigation or management restated in subsection (a). See *May v. Hamburg-Amerikanische Packetfahrt Aktiengesellschaft (The Isis)*, 290 U.S. 333, 353 (1933). The words “transporting merchandise or property to or from any port in the United States of America” are omitted because of section 30702(a) of the revised title.

46 USC 40301 - U.S. Code - Unannotated Title 46. Shipping § 40301. Application

(a) Ocean common carrier agreements. --This part applies to an agreement between or among ocean common carriers to--

- (1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
- (2) pool or apportion traffic, revenues, earnings, or losses;
- (3) allot ports or regulate the number and character of voyages between ports;
- (4) regulate the volume or character of cargo or passenger traffic to be carried;
- (5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;

**(6) control, regulate, or prevent competition in international ocean transportation; or**

(7) discuss and agree on any matter related to a service contract.

(b) Marine terminal operator agreements. --This part applies to an agreement between or among marine terminal operators, or between or among one or more marine terminal operators and one or more ocean common carriers, to--

**(1) discuss, fix, or regulate rates or other conditions of service; or**

**(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent the agreement involves ocean transportation in the foreign commerce of the United States.**

(c) Acquisitions. --This part does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

(d) Maritime labor agreements. --This part does not apply to a maritime labor agreement. However, this subsection does not exempt from this part any rate, charge, regulation, or practice of a common carrier that is required to be set forth in a tariff or is an essential term of a service contract, whether or not the rate, charge, regulation, or practice arises out of, or is otherwise related to, a maritime labor agreement.

(e) Assessment agreements. --This part (except sections 40305 and 40307(a)) does not apply to an assessment agreement.

#### **Title 18 – Crime**

##### **18 USC 1341 – Frauds & Swindles – mail Fraud**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

##### **18 USC 1342 – Fictitious Name or Address**

Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or

other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined under this title or imprisoned not more than five years, or both.

### **18 USC 1343 - Fraud by wire, radio, or television**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

### **18 USC 1344 - Bank fraud**

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

1. to defraud a financial institution; or
2. to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

### **18 USC 1346 - Definition of "scheme or artifice to defraud"**

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

### **18 USC 1951 - Interference with commerce by threats or violence**

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section **shall be fined under this title or imprisoned not more than twenty years, or both.**

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) **The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.**

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof;

all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

### **18 USC 1952 - Interstate and foreign travel or transportation in aid of racketeering enterprises**

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) **otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform—**

(A) **an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or**

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) “unlawful activity” means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

(d) If the offense under this section involves an act described in paragraph (1) or (3) of subsection (a) and also involves a pre-retail medical product (as defined in section 670), the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under subsection (a) is greater.

### **18 USC 1957 - Engaging in monetary transactions in property derived from specified unlawful activity**

(a) **Whoever**, in any of the circumstances set forth in subsection (d), **knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).**

(b) (1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this subsection is greater.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term “monetary transaction” means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person’s right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the terms “specified unlawful activity” and “proceeds” shall have the meaning given those terms in section 1956 of this title.

#### 18 USC 659 - Interstate or foreign shipments by carrier; State prosecutions

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motortruck, trailer, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air cargo container, air terminal, airport, aircraft terminal or air navigation facility, or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility, with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express,

**or other property; or Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen;** or

Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or breaks into, steals, takes, carries away, or conceals any of the contents of such baggage, or buys, receives, or has in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes by any fraudulent device, scheme, or game, from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon any money, baggage, goods, or chattels, or whoever buys, **receives, or has in his possession any such money, baggage, goods, or chattels, knowing the same to have been embezzled or stolen—**Shall be fined under this title or imprisoned not more than 10 years, or both, but if the amount or value of such money, baggage, goods, or chattels is less than \$1,000, shall be fined under this title or imprisoned for not more than 3 years, or both. If the offense involves a pre-retail medical product (as defined in section 670), it shall be punished under section 670 unless the penalties provided for under this section are greater.

**The offense shall be deemed to have been committed not only in the district where the violation first occurred,** but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

The carrying or transporting of any such money, freight, express, baggage, goods, or chattels in interstate or foreign commerce, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties under this section for unlawful taking, and the offense shall be deemed to have been committed in any district into which such money, freight, express, baggage, goods, or chattels shall have been removed or into which the same shall have been brought by such offender.

To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transshipment or otherwise. The removal of property from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

**18 U.S. Code § 660. Carrier's funds derived from commerce; State prosecutions**



Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motortruck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be fined under this title or imprisoned not more than ten years, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred but also in any district in which the defendant may have taken or had possession of such moneys, funds, credits, securities, property or assets.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

### **18 USC 2314 - Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting**

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of \$5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof; or

Whoever transports, transmits, or transfers in interstate or foreign commerce any veterans' memorial object, knowing the same to have been stolen, converted or taken by fraud—

Shall be fined under this title or imprisoned not more than ten years, or both. If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this section is greater. If the offense involves the transportation, transmission, or transfer in interstate or foreign commerce of veterans' memorial objects with a value, in the aggregate, of less than \$1,000, the defendant shall be fined under this title or imprisoned not more than one year, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation,

bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.

For purposes of this section the term “veterans’ memorial object” means a grave marker, headstone, monument, or other object, intended to permanently honor a veteran or mark a veteran’s grave, or any monument that signifies an event of national military historical significance.

### **18 USC 2315 - Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps**

**Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken; or**

Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

Whoever receives in interstate or foreign commerce, or conceals, stores, barter, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof; or

‘Whoever [1] receives, possesses, conceals, stores, barter, sells, or disposes of any veterans’ memorial object which has crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken—’ [1]

**Shall be fined under this title or imprisoned not more than ten years, or both.** If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this section is greater. If the offense involves the receipt, possession, concealment, storage, barter, sale, or disposal of veterans’ memorial objects with a value, in the aggregate, of less than \$1,000, the defendant shall be fined under this title or imprisoned not more than one year, or both.

...

For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. For purposes of this section the term “veterans’ memorial object” means a grave marker,

headstone, monument, or other object, intended to permanently honor a veteran or mark a veteran's grave, or any monument that signifies an event of national military historical significance.

## **Racketeering Influenced Corrupt Organizations Act**

### **18 USC 1961 - Definitions**

As used in this chapter—

(1)“racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, **bribery, extortion**, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), **section 659 (relating to theft from interstate shipment)** if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), **section 1341 (relating to mail fraud)**, **section 1343 (relating to wire fraud)**, **section 1344 (relating to financial institution fraud)**, section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), **section 1503 (relating to obstruction of justice)**, section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons)., [1] sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), **section 1951 (relating to interference with commerce, robbery, or extortion)**, **section 1952 (relating to racketeering)**, section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), **section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)**, section 1958 (relating to use of interstate commerce facilities

in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), **sections 2314 and (relating to interstate transportation of stolen property)**, section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) **“State” means any State of the United States**, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) **“person” includes any individual or entity capable of holding a legal or beneficial interest in property**;

(4) **“enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity**;

(5) **“pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity**;

- (6) “unlawful debt” means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;
- (7) “racketeering investigator” means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;
- (8) “racketeering investigation” means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;
- (9) “documentary material” includes any book, paper, document, record, recording, or other material; and
- (10) “Attorney General” includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise **conferred by law**.

### **18 USC 1962 – Prohibited Activities**

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

### 18 USC 1963 – Criminal Penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section.

Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to

the United States, unless the transferee establishes in a hearing pursuant to subsection (1) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the

United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the

court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him.

Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs.

The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—



- (1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;
- (2) granting petitions for remission or mitigation of forfeiture;
- (3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;
- (4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;
- (5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and
- (6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may—

- (1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or
- (2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l) (1)

Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable,

provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

- (1) cannot be located upon the exercise of due diligence;
  - (2) has been transferred or sold to, or deposited with, a third party;
  - (3) has been placed beyond the jurisdiction of the court;
  - (4) has been substantially diminished in value; or
  - (5) has been commingled with other property which cannot be divided without difficulty;
- the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

### **18 USC 1964 – Civil Remedies**

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

### **18 USC 1965 - Venue**

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing

in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

### **18 U.S. Code § 1503. Influencing or injuring officer or juror generally**

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, **or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b).**

If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

- (1) in the case of a killing, the punishment provided in sections 1111 and 1112;
- (2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and
- (3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

### **Deprivation Of Civil Rights**

#### **42 U.S. Code § 1981. Equal rights under the law**

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and

property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b)“Make and enforce contracts” defined

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c)Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

**42 U.S. Code § 1982.Property rights of citizens**

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

**42 U.S. Code § 1983.Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**42 U.S. Code § 1985.Conspiracy to interfere with civil rights**

(1)Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2)Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such

juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

**(3) Depriving persons of rights or privileges**

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

**42 U.S. Code § 1985. Conspiracy to interfere with civil rights**

**(1) Preventing officer from performing duties**

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

**(2) Obstructing justice; intimidating party, witness, or juror**

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

### (3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

#### **42 U.S. Code § 1986. Action for neglect to prevent**

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

#### **Foreign State Immunity Law (FSIA)**

#### **28 USC 1602 - Findings and declaration of purpose**

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

#### **28 USC 1603 - Definitions**

For purposes of this chapter—

(a) A “foreign state”, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An “agency or instrumentality of a foreign state” means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The “United States” includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A “commercial activity” means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A “commercial activity carried on in the United States by a foreign state” means commercial activity carried on by such state and having substantial contact with the United States.

#### **28 USC 1605 - General exceptions to the jurisdictional immunity of a foreign state**

(a)(2) - **commercial activity carried on in the United States or an act performed in the United States in connection with a commercial activity elsewhere, or an act in connection with a commercial activity of a foreign state elsewhere that causes a direct effect in the United States;**

(a)(3) - **property taken in violation of international law is at issue;**

(a)(5) - **money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state;**

#### **28 USC 1606 - Extent of liability**

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.



## US Constitution

### US Constitution - First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### US Constitution - Seventh Amendment

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury **shall** be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

### US Constitution - Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### US Constitution - Fourteenth Amendment

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

### **Californian Constitution – Article I – Declaration of Rights – Sec 16.**

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

### **Cal Civ Procedure 631 (a) - Right To Jury Trial**

The right to a trial by jury as declared by Section 16 of Article I of the California Constitution shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (f).

## FEDERAL RULES OF CIVIL PROCEDURES

### Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) In General. In responding to a pleading, a party must:

- (A) state in short and plain terms its defenses to each claim asserted against it; and
- (B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials—Responding to the Substance. A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;

- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

**(e) Construing Pleadings. Pleadings must be construed so as to do justice.**

#### Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(h) Admiralty or Maritime Claim.

(1) How Designated. If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) Designation for Appeal. A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. §1292(a)(3).



APPENDIX E – OPINION FROM OTHER COURTS

## Opinions on Rights Of Pro Se Litigants

“A judge cannot allow the personal view that the allegations of a pro se complaint are implausible to temper his duty to appraise such pleadings liberally.” Citing, *Cruz v. Skelton*, the Court went on to say that, “a § 1983 complaint should not be dismissed unless it appears that the plaintiff can prove no set of facts which would entitle him to relief. [*Conley v. Gibson*, 1957, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed. 2d 80]

The allegations of the complaint, especially a pro se complaint, must be read in a liberal fashion. *Haines v. Kerner*, 1972, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2d 652; *Cruz v. Beto*, 1972, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed. 2d 263, and they must be accepted as true in testing their sufficiency, *Haines v. Kerner*, supra, *Cruz v. Beto*, supra. 543 F.2d 86, 88 (5th Cir. 1976), cert. denied, 433 U.S. 911, 97 S.Ct. 2980, 53 L.Ed. 2d 1096 (1977). See also *Taylor v. Gibson*, 529 F.2d 709, 714 (5th Cir. 1976); *Goff v. Jones*, 500 F.2d 395, 397 (5th Cir. 1974); *Reed v. Jones*, 483 F.2d 77, 78 (5th Cir. 1973)]. [*Slavin v. Curry*, 574 F.2d 1256 (5th Cir. 1978)] [*Petition*, p. 16, 17, 34]

A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor [*Bakhtiarnejad v. Cox Enterprises*, 247 Ga.App. 205, 207-208(1), 541 S.E. 2d 33 (2000), cited in *Nicholson v. Windham*, 571 S.E. 2d 466, 257 Ga.App. 429]

## Opinions On Crime Against United States

“To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest.” [*Hammerschmidt v. United States*, 265 U.S. 182 (1924)]. [*Petition*, p. 21] “collective criminal agreement—[a] partnership in crime—presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality.” [*Iannelli v. United States*, 420 U.S. 770, 778 (1975), quoting *Callanan v. United States*, 364 U.S. 587, 593-94 (1961)] ... “[g]roup association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked.” [Id] ... Finally, “[c]ombination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed.” In sum, “the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise [Id] Congress intended § 1346 to reach at least bribes and kickbacks [*Skilling v. United States*, 561 U.S. 358 (2010)]

## Opinions On Void Judgments

Federal Courts have addressed void state court judgments in [*Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L.Ed. 861]; there

*is no time limit to attack void Judgments.* [Eggl v. Fleetguard, Inc., 1998 ND 166, 583 N.W.2d 812].

"a void act cannot be ratified." In re Garcia, 105 B.R.335 (N.D.Ill.1989)

A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. [46 Am. Jur. 2d, Judgments Â§ 25, pp. 388-89].

A void judgment is to be distinguished from an erroneous one, in that the latter is subject only to direct attack. A void judgment is one which, from its inception, was a complete nullity and without legal effect. [Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir. 1972)]

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place.... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments " 44,45

"A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include Kalb v. Feuerstein (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; Ex parte Rowland (1882) 104 U.S. 604, 26 L. Ed. 861

"A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists." [People v. Greene, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448].

"If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120c.) An illegal order is forever void.

"The burden shifts to the court to prove jurisdiction." [Rosemond v. Lambert, 469 F.2d 416] "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." [Latana v. Hopper, 102 F.2d 188; Chicago v. New York 37 F Supp. 150] "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners 94 Ca 2d 751. 211 P2d 389. "Either a judgment is valid or it is void, and the court must act accordingly once the issue is resolved." In re Marriage of Hampshire, 261 Kan. 854, 862, 934 P.2d 58 (1997), "A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time." 261 Kan. at 862. There is no time limit for attacking a void judgment under N.D.R. Civ. P. 60(b)(iv). Eggl v. Fleetguard, Inc., 1998 ND 166, 583 N.W.2d 812

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. [Earle v. McVeigh, 91 US 503, 23 L Ed 398. See also Restatements, Judgments ' 4(b). Prather v. Loyd, 86 Idaho 45, 382 P2d 910.]



A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place.... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. [30A Am Jur Judgments " 44,45]

*An order made in clear absence of the Court, or that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608; Pennoyer v. Neff (1877) 95 US 714, 24 L ed 565; Thompson v. Whitman (1873) 18 Wall 457, 21 L ed 897; Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; McDonald v. Mabee (1917) 243 US 90, 37 Sct 343, 61 L ed 608.*

"It is well settled that a judgment or order which is void on its face, and which requires only an inspection of the judgment-roll or record to show its invalidity, may be set aside on motion, at any time after its entry, by the court which rendered the judgment or made the order." (In re Dahnke, 64 Cal. App. 555, 560 [222 P. 381]; Hayashi v. Lorz, 42 Cal. 2d 848, 851 [271 P. 2d 18]; Jonson v. Weinstein, 249 Cal. App. 2d 954, 957-958 [58 Cal. Rptr. 32]; Hendrix v. Hendrix, 130 Cal. App. 2d 379, 383 [279 P. 2d 58].)

Portion of judgment directing defendant not to import vehicles without first obtaining approval ... was not appropriately limited in duration and, thus, district court abused its discretion by not vacating it as being prospectively inequitable." Id at 722. [U.S. v. Holtzman, 762 F. 2d 720 (9th Cir. 1985)]

Opinions On Civil Rights Violation

Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. (Earle v McVeigh, 91 US 503, 23 L Ed 398)

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. [Renaud v. Abbott, 116 US 277, 29 L Ed 629, 6 S Ct 1194]

"Counsel and her clients have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win ... [A claim] that is simply without merit is not by definition frivolous and should not incur sanctions. Counsel should not be deterred from filing such [claims] out of a fear of reprisals." (California Teachers Assn. v. State of California (1999) 20 Cal. 4th 327, 340, 975 P. 2d 622, 84 Cal. Rptr. 2d 425, quoting In re Marriage of Flaherty (1982) 31 Cal. 3d 637, 650, 183 Cal. Rptr. 508, 646 P. 2d 179.)

it is inappropriate to deprive defendants of their substantive rights merely because those rights are inconvenient in light of the litigation posture plaintiffs have chosen. (See City of San Jose v. Superior Court (1974) 12 Cal. 3d 447, 462 [115 Cal. Rptr. 797, 525 P. 2d 701, 76 A.L.R. 3d 1223] cited in Granberry v. Islay Investments (1984) 161 C.A. 3d 382, 388 ; avoid absurd result];

"[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Carey v. Piphus, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases." [Mathews v. Eldridge, 424 U.S. 319, 344 (1976)]

The required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests.[*Fuentes v. Shevin*, 407 U.S. 67, 81 (1972)]. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel. The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. [**Hanson v Denckla**, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228]

Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law." [**Osborn et al. v. The Bank of the United State (1824, U.S.) 9 Wheat. 738, 866.**]

Protection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties. They can be used, e.g., to retaliate against or chill the speech. [**TIMBS v. INDIANA, No. 17-1091 (U.S. Feb. 20, 2019)**]

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. [*Earle v. McVeigh*, 91 US 503, 23 L Ed 398. See also Restatements, Judgments ' 4(b). *Prather v. Loyd*, 86 Idaho 45, 382 P2d 910.] The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. [*Hanson v Denckla*, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228]. A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place.... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. [*30A Am Jur Judgments " 44, 45*]. It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. [*Renaud v. Abbott*, 116 US 277, 29 L Ed 629, 6 S Ct 1194]. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. [*Earle v McVeigh*, 91 US 503, 23 L Ed 398].

### **No Opportunity to Be Heard**

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. [*Sabariego v Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461], and is not entitled to respect in any other tribunal. "A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include [*Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L. Ed. 861: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists." *People v. Greene*, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448]. "If a court grants relief, which under the

circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120c.) An illegal order is forever void.

An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. [See *Rose v. Himely* (1808) 4 Cranch 241, 2 L ed 608; *Pennoyer v. Neff* (1877) 95 US 714, 24 L ed 565; *Thompson v. Whitman* (1873) 18 Wall 457, 21 L ed 897; *Windsor v. McVeigh* (1876) 93 US 274, 23 L ed 914; *McDonald v. Mabee* (1917) 243 US 90, 37 Sct 343, 61 L ed 608]. "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120c.) "A void judgment is no judgment at all and is without legal effect." [*Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)] "a court must vacate any judgment entered in excess of its jurisdiction." [*Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972)].

A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include [*Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370]. Federal judges issued orders permanently barring Stich from filing any papers in federal courts. After Judges Robert Jones and Edward Jellen corruptly seized and started to liquidate Stich's assets, Judge Jones issued an unconstitutional order barring Stich from filing any objection to the seizure and liquidation.

#### Opinions On Fraud Upon The Court

When any Court violates the clean and unambiguous language of the constitution, a fraud is perpetuated and no one is bound to obey it [**State v Sutton, 63 Minn 147 65 NW 262, 30 ALR 660**]

Fraud upon the court embraces only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.... As we explained in *In re Levander*, the basis for an independent action to set aside a judgment for fraud on the court lies in misconduct that "harm[s] the integrity of the judicial process." *180 F.3d at 1119* (internal quotation marks omitted). We read the term "fraud on the court" narrowly, and apply the following definition: "Fraud upon the court" . embrace[s] only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Id. (internal quotation marks).... Fraud on the court requires a "grave miscarriage of justice," *Beggerly, 524 U.S. at 47, 118 S.Ct. 1862*, and a fraud that is aimed at the court. [**Appling v. State Farm Mut. Auto. Ins. Co., 340 F.3d 769, 781 (9th Cir. 2003)**]

An appeal from an order based on lack of jurisdiction and fraud upon the Court is a question of constitutional law, and questions the Court's lack of ability to perform its functions in an unbiased manner .... Cox clearly has been shown to have given many false or misleading answers in sworn discovery that either appear calculated to evade or stymie discovery on issues central to her case. The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way. Although Cox insists on her constitutional right to have her

case heard, she can, by her own conduct, forfeit that right.. [Cox v. Burke, 706 So.2d 43,47 (Fla. 5th DCA 1998)] One who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct has the burden of proving the assertion by clear and convincing evidence. Saenz v. Kenedy, 178 F.2d 417,419 (5th Cir. 1949); Gilmore v. Strescon Industries, Inc., 66 F.R.D. 146,153 (E.D. Pa. 1975), aff'd without opinion, Bucks County Const. Co. v. P. Agnes, Inc., 521 F.2d 1398 (3d Cir.). The conduct complained of must be such as prevented the losing party from fully and fairly presenting his case or defense. [Toledo Scales Co. v. Computing Scale Co., 261 U.S. 399,421,43 S.Ct. 458,464,67 L.Ed. 719 (1923); Atchison, Topeka & Santa Fe Ry. Co. v. Barrett, 246 F.2d 846,849 (9th Cir. 1957); Rubens v. Ellis, 202 F.2d 415,417 (5th Cir. 1953)]. ..... But, as said by the Supreme Court, a litigant who has engaged in misconduct is not entitled to "the benefit of calculation, which can be little better than speculation, as to the extent of the wrong inflicted upon his opponent". [**Minneapolis, St. Paul & S.S. Marie Ry. Co. v. Moquin, 1931, 283 U.S. 520, 521-22, 51 S.Ct. 501, 502, 75 L.Ed. 1243**][**Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978)**]

Fraud upon the court should embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetuated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication [7 Moore, *Federal Practice* ¶ 60.33 at 515 (1971)] ... relief based on fraud upon the court "is reserved for only the most egregious misconduct," a showing of "an unconscionable plan or scheme which is designed to improperly influence the court in its decision" is required. [*Wilson v. Johns-Manville Sales Corp., 873 F.2d 869, 872 (5th Cir. 1989)* (quoting *Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978)*)] ... While courts have uniformly held that perjury of a single witness is not sufficient to trigger relief for fraud upon the court, 4 in this case, every witness committed perjury while executing a deliberately planned "scheme" to improperly influence the court. See *Browning v. Navarro, 826 F.2d 335, 345 (5th Cir. 1987)* ... We decline to interpret our rules so as to render the defrauded court impotent to rectify this situation. We find Mr. Tirouda's actions to be an example of "egregious conduct" justifying relief under the savings clause of Rule 60(b). See *Wilson, 873 F.2d at 872* ... in addition to perpetrating fraud upon the courts of Mississippi, Mr. Tirouda attempted to use the courts of Mississippi as an instrument to assist in his fraud. Justice cannot be promoted and a just determination of the action cannot be accomplished in allowing Mr. Tirouda to retain a Mississippi birth certificate to which he is not entitled ... *In Moore v. Jacobs, 752 So.2d 1013 (Miss. 1999)*, the supreme court addressed the claim of perjury by a party and concluded that claims of perjury fall under Rule 60(b)(1). However, we distinguish Moore from the case at hand. The supreme court, in Moore, was confronted with allegations of perjury by a single witness, which were not proven by clear and convincing evidence. *Id. at 101617 (¶ 14-19)*. In the instant case, we are presented with the perjury of every witness who testified, and their perjury has been shown by clear and convincing evidence. In addition to the perjury committed, we are also confronted with the evidence of a deliberately planned scheme to defraud the court. [*Tirouda v State, No. 2004-CP-00379-COA, Mississippi, 2005*]

## Opinions On Conspiracy

*Conspiracy can be proved without such an averment, and, even if averred, need not be proved, because the gist of the action is the wrong done and not the conspiracy. (Loeb v. Kimmerle, 215 Cal. 143 [9 P. 2d 199].)*

In *Peterson v Cruickshank* the Court held:

*The real question is ... whether there is any substantial evidence to support the finding that appellant conspired with his two codefendants ... To support this theory of conspiracy there must be evidence of (1) a concert of action between appellant and the nonappealing defendants to unlawfully detain respondent without her consent; (2) that appellant acted in furtherance of the common scheme or design to falsely imprison respondent; and (3) that appellant had knowledge of the conspiracy and its unlawful purpose. (Neblett v. Elliott, 46 Cal. App. 2d 294 [115 P. 2d 872]; Alexander v. Hammarberg, 103 Cal. App. 2d 872 [230 P. 2d 399]; Wells v. Lloyd IV, 6 Cal. 2d 70 [56 P. 2d 517].) [2] Of course, the agreement between conspirators need not be proved by direct evidence, but may be shown by circumstantial evidence that tends to show a common intent. (People v. Yeager, 194 Cal. 452 [229 P. 40]; People v. Jordan, 24 Cal. App. 2d 39 [74 P. 2d 519]; People v. Montgomery, 47 Cal. App. 2d 1 [117 P. 2d 437].) In fact, in the absence of a confession by one of the conspirators, it is usually very difficult to secure direct evidence of a conspiracy, so that in the usual case the ultimate fact of a conspiracy must be determined from those inferences naturally and properly to be drawn from those matters directly proved. (Beeman v. Richardson, 185 Cal. 280 [196 P. 774]; Johnstone v. Morris, 210 Cal. 580 [292 P. 970]; see also Restatement of Torts, sections 876(b) and 876(c), cited with approval in Summers v. Tice, 33 Cal. 2d 80, 85 [199 P. 2d 1, 5 A.L.R. 2d 91].)*

*It is well settled that a conspirator is liable for all the acts done in furtherance of a common scheme or plan even though he is not a direct actor. (Leavitt v. Gibson, 3 Cal. 2d 90 [43 P. 2d 1091]; Mox, Inc. v. Woods, 202 Cal. 675 [262 P. 302].) [11] It is equally well settled that a party may be liable even if the intentional tort is commenced before he participates, if he, knowing the facts, then participates therein. (People v. Mechler, 75 Cal. App. 181 [242 P. 503]; People v. Kizer, 22 Cal. App. 10 [133 P. 516, 521, 134 P. 346]; People v. Henderson, 79 Cal. App. 2d 94 [179 P. 2d 406].) In such a case it is obvious that the conspirator entering [144 Cal. App. 2d 169] the conspiracy after it started did not "cause" the alleged wrong, because it had already commenced.*

*A conspirator who participates or cooperates unlawfully with other conspirators at any time during the conspiracy thereupon makes himself liable as a conspirator. (People v. Mechler, 75 Cal. App. 181 [242 P. 503]; People v. Kizer, 22 Cal. App. 10 [133 P. 516, 521, 134 P. 346]; People v. Henderson, 79 Cal. App. 2d 94 [179 P. 2d 406].)*

*the agreement between conspirators need not be proved by direct evidence, but may be shown by circumstantial evidence that tends to show a common intent. [People v. Yeager, 194 Cal. 452 [229 P. 40]; People v. Jordan, 24 Cal. App. 2d 39 [74 P. 2d 519]; People v. Montgomery, 47 Cal. App. 2d 1 [117 P. 2d 437].) In fact, in the absence of a confession by one of the conspirators, it is usually very difficult to secure direct evidence of a conspiracy, so that in the usual case the ultimate fact of a conspiracy must be determined from those inferences naturally and properly to be drawn from those matters directly proved. (Beeman v. Richardson, 185 Cal. 280 [196 P. 774]; Johnstone v. Morris, 210 Cal. 580 [292 P. 970]; see also Restatement of Torts, sections 876(b) and 876(c), cited with*

approval in Summers v. Tice, 33 Cal.2d 80, 85 [199 P.2d 1, 5 A.L.R.2d 91]. [Peterson v Cruickshank 144 Cal.App.2d 148]).

In *Slavin v Curry*, the Court held:

*Read with the required liberality, Slavin's complaint relates, with sufficient specificity, facts that could entitle him to relief. Cf. Johnson v. Wells, 566 F.2d 1016, 1017 (5th Cir. 1978). Even though his complaint contains adequate factual content, Slavin is entitled to a favorable ruling on the pleadings only if his complaint suffices under other legal standards. Here the trial court ruled that part of Slavin's complaint was barred by the statute of limitations. The court held that a two-year limitation period barred any action against the defendants who arrested Slavin in May 1974. That conclusion depends upon reading the complaint as showing several, separate conspiracies. When the complaint is read with the required liberality, however, it asserts a single, continuing conspiracy. That is, it reveals a conspiracy that began with the intention of denying Slavin the equal protection of the laws and continued by obstructing justice and denying due process in an attempt to conceal the complicity in the first action. The complaint recounts a number of incidents. While they state separate causes of action against individual defendants, they also charge participation in a single conspiracy. The district court erred in treating the incidents as alleging only separate causes of action.*

*An action for conspiracy may be maintained under section 1983. As this court said in Nesmith v. Alford, 318 F.2d 110, 126 (5th Cir. 1963), cert. denied, 375 U.S. 975, 84 S.Ct. 489, 11 L.Ed.2d 420 (1964):*

*Of course, for a claim under § 1983, a conspiracy as such is not an indispensable element as it is under § 1985. But it may be charged as the legal mechanism through which to impose liability on each and all of the Defendants without regard to the person doing the particular act. Conspiracy is asserted in that situation on more or less traditional principles of agency, partnership, joint venture, and the like.*

*To maintain a conspiracy action under § 1983 here, however, it is necessary that there have been an actual denial of due process or of equal protection by someone acting under color of state law. Hanna v. Home Insurance Company, 281 F.2d 298, 303 (5th Cir. 1960), cert. denied, 365 U.S. 838, 81 S.Ct. 751, 5 L.Ed.2d 747 (1961). Here, taking the allegations as true, the conspirators framed Slavin, thereby denying him due process, and prevented him from obtaining a beer and wine license, thereby denying him equal protection of the laws. In particular, the court reporters acted under color of state law in preparing the trial transcript. Slavin's complaint is therefore legally sufficient to state a cause of action for conspiracy under section 1983.*

*We reach a different conclusion regarding his claims under section 1985. In his complaint, Slavin mentions only section 1985(3). Even so, the complaint states facts sufficient to support a claim of obstruction of justice. We therefore treat the complaint as though it had also pled a cause of action under section 1985(2). Cf. Baldwin v. Morgan, 251 F.2d 780, 791 (5th Cir. 1958). The Supreme Court has said that the language of section 1985(3), "requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some*

*racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action."* *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971) (emphasis in original). The language of section 1985(2) is similar to that of section 1985(3). The relevant portion of section 1985(2) establishes a cause of action against two or more persons who conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws,.... Although this circuit has not applied the conclusion of *Griffin* to actions brought under section 1985(2), those circuits which have considered the question have all held that racial or class-based discrimination is necessary under section 1985(2). *Dacey v. Dorsey*, 568 F.2d 275, 277 (2d Cir. 1978); *Phillips v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 118*, 556 F.2d 939, 940-41 (9th Cir. 1977); *Stern v. United States Gypsum, Inc.*, 547 F.2d 1329, 1341 (7th Cir.) (assuming conclusion arguendo), cert. denied, 434 U.S. 975, 98 S.Ct. 533, 54 L.Ed.2d 467 (1977); *Smith v. Yellow Freight System, Inc.*, 536 F.2d 1320, 1322-23 (10th Cir. 1976); *Jones v. United States*, 536 F.2d 269, 271 (8th Cir. 1976), cert. denied, 429 U.S. 1039, 97 S.Ct. 735, 50 L.Ed.2d 750 (1977); *Brawer v. Horowitz*, 535 F.2d 830, 837-41 (3d Cir. 1976); *Hahn v. Sargent*, 523 F.2d 461, 469 (1st Cir. 1975), cert. denied, 425 U.S. 904, 96 S.Ct. 1495, 47 L.Ed.2d 754 (1976). We are persuaded that those cases reach the correct result.

*On May 11, 1981, Dave Harrod owed a fiduciary duty to Barbara Liles to represent and protect her interests in the divorce action against Tommy Liles. 2. Harrod breached his fiduciary duty to Barbara Liles by entering into a conspiracy with Tommy Liles to defraud Barbara Liles of her marital assets.... 3. Because of the conduct of Tommy Liles and Harrod, Barbara Liles was not properly represented in the divorce action and did not receive nor have an opportunity to receive proper consultation as to her rights in the proceeding. 4. As a result of the conspiracy to defraud Barbara Liles of her marital assets, the property settlement agreement of May 11, 1981, shall be set aside and the marital property shall be returned to the marital corpus. [Liles v. Liles, 289 Ark. 159, 711 S.W.2d 447 (1986)4][Petition, p. 17, p. 18] "while we hold that a separate and independent tort action for actual fraud and accompanying exemplary damages against one's spouse do not exist in the context of a deprivation of community assets, if the wronged spouse can prove the heightened culpability of actual fraud, the trial court may consider it in the property division. [Vickery v. Vickery, 1996 WL 255755 (Tex. App. Dec. 5, 1996)5, affover dissent Vickery v. Vickery, 999 S.W.2d 342 (Tex. 1999).]*

Harrod's fraud and professional misconduct were the bases for setting the property settlement agreement aside. Whether Barbara was getting a good deal, in Harrod's opinion, under the law as it existed in 1981, is irrelevant to the setting aside of the agreement in 1985. The damages awarded to Barbara were to compensate her for the expense she incurred in having the agreement set aside. The reason for setting aside was the fraud perpetrated by Tommy Liles and Harrod upon her in the procurement

of the agreement. The causal relationship between the conduct of Harrod and the injury to Barbara is obvious. (Liles v Liles)

*Contracts that lead to prohibited acts or contracts between parties that were intended be used as preparation for an unlawful act of depriving me of my property and other rights violate public policy because even though the contract may be deemed lawful, the underlying intention makes the contract contrary to public policy*[Evert v. Williams .[1983]9 L.Q.R.197(Eng.)]. *No legal acts, including contracts, can restrain or prohibit it*[M.P.Furmston, The Analysis of Illegal Contracts, 16 U.TORONTO L.J.267,268(1965)],[Id.at 306].

*Wife must plead and prove extrinsic fraud in order to prevail, is based upon those cases in which a litigant seeks to set aside a decree of dissolution after it has become final and to relitigate all issues. See e.g., McCarty v. McCarty, 300 S.W.2d 394, 400-01 (Mo. 1957); Jones v. Jones, 254 S.W.2d 260, 261 (Mo. App. 1953). That relief requires pleading and proof of fraud in the procurement, that is to say, fraud extrinsic to the dissolution judgment. For such fraud to have existed, it must have related, not to the propriety of the judgment itself, but to the manner in which the judgment was obtained. In other words, the fraud must have been extrinsic or collateral to the matters which either were or could have been presented and adjudicated in the original proceeding, and not merely intrinsic in the sense of having pertained to the merits of the cause upon which the judgment of the court was rendered. [Jones, 254 S.W.2d at 261]... wife was awarded damages for husband's attorney's fraud and misrepresentation in wife's suit to set aside property settlement agreement. 5 wife was awarded \$9 million against husband for fraudulently procuring divorce and marital settlement agreement, and \$450,000 against husband's attorney the record discloses an issue of material fact with respect to Wife's right to rely upon Husband's representations. We agree. [Karney v. Wohl, 785 S.W.2d 630 (Mo. Ct. App. 1990)]*

*It is the function of the court to determine whether a property right has been acquired during marriage and whether equity warrants its inclusion into the marital estate. [Flynn v. Flynn, 341 Pa. Super. 76, 491 A.2d 156, 159 (1985)]. If the asset is deemed includable in the marital estate, the allocation of that interest must be consistent with the legislative intent to effectuate economic justice between the parties. 23 Pa. C.S. § 3102(a)(6). [Perlberger v. Perlberger, 1998 WL 76310, 1998 EPA. 1313 (E.D. Pa. Feb. 24, 1998)] 7 To support this theory of conspiracy there must be evidence of (1) a concert of action between appellant and the nonappealing defendants to unlawfully detain respondent without her consent; (2) that appellant acted in furtherance of the common scheme or design to falsely imprison respondent; and (3) that appellant had knowledge of the conspiracy and its unlawful purpose. (Neblett v. Elliott, 46 Cal. App. 2d 294 [115 P.2d 872]; Alexander v. Hammarberg, 103 Cal. App. 2d 872 [230 P.2d 399]; Wells v. Lloyd IV, 6 Cal. 2d 70 [56 P.2d 517].) [2] Of course, the agreement between conspirators need not be proved by direct evidence, but may be shown by circumstantial evidence that tends to show a common intent. (People v. Yeager, 194 Cal. 452 [229 P.2d 39]; People v. Jordan, 24 Cal. App. 2d 39 [74 P.2d 519]; People v. Montgomery, 47 Cal. App. 2d 1 [117 P.2d 437].) In fact, in the absence of a confession by one of the conspirators, it is usually very difficult to secure direct evidence of a conspiracy, so that in the usual case the ultimate fact of a conspiracy must*



*be determined from those inferences naturally and properly to be drawn from those matters directly proved.* (Beeman v. Richardson, 185 Cal.280[196 P.774]; Johnstone v. Morris, 210 Cal.580[292 P.970]; see also Restatement of Torts, sections 876(b) and 876(c), cited with approval in Summers v. Tice, 33 Cal.2d 80, 85[199 P.2d 1, 5 A.L.R.2d 91].) **PETERSON v. CRUICKSHANK | 144 Cal.App.2d 148]**

The court held that a two-year limitation period barred any action against the defendants who arrested Slavin in May 1974. That conclusion depends upon reading the complaint as showing several, separate conspiracies. When the complaint is read with the required liberality, however, it asserts a single, continuing conspiracy. That is, it reveals a conspiracy that began with the intention of denying Slavin the equal protection of the laws and continued by obstructing justice and denying due process in an attempt to conceal the complicity in the first action. The complaint recounts a number of incidents. While they state separate causes of action against individual defendants, they also charge participation in a single conspiracy. The district court erred in treating the incidents as alleging only separate causes of action.,,,... The contention that a conspiracy existed which deprived the petitioner of rights guaranteed by federal law makes each member of the conspiracy potentially liable for the effects of that deprivation. Liability arises from membership in the conspiracy and from traditional notions that a conspirator is vicariously liable for the acts of his co-conspirators. Liability does not arise solely because of the individual's own conduct. Some personal conduct may serve as evidence of membership in the conspiracy, but the individual's actions do not always serve as the exclusive basis for liability. It is therefore not sufficient justification to say that a claim against a particular defendant must be dismissed because that defendant would be immune from liability for his own conduct. Additional inquiry is required to determine whether the immunity extends also to participation in a conspiracy. For example, private individuals may not be held liable under section 1983 for their conduct. See, e.g., Greco v. Orange Memorial Hospital Corporation, 513 F.2d 873, 877-78 (5th Cir.), cert. denied, 423 U.S.1000, 96 S.Ct.433, 46 L.Ed.2d 376 (1975); Hill v. McClellan, 490 F.2d 859, 860 (5th Cir.1974). They may nevertheless be held liable if they conspired with a person who acted under color of state law. **Taylor v. Gibson, 529 F.2d 709 (5th Cir.1976) at 715.]**

Slavin has alleged facts which, if proven, would entitle him to some form of relief. The exact form of portions of any relief available may also depend upon the present situation of both Slavin and various of the remaining defendants, since Slavin could conceivably be entitled to equitable relief even against those defendants who are immune from actions for damages. **Slavin v Curry, 574 F.2d 1256 (5th Cir.1978)]**

#### Opinions About RICO Violations

In H J Inc, the Court of Appeal emphasized that each of the alleged scheme involved fraud against victims (just like in the instant case). In this case, the infiltration of legitimate business shows more than one racketeering activity, indicating the threat of continuity [See Banks v Wolk, 918 F2d, 418(3<sup>rd</sup> Cir, 1990)]. Here, multiple fraudulent schemes were conducted thru otherwise legitimate entities, the relatedness requirement should not insulate defendants who merely vary the methods by which they defraud their victims, 918, F2d at

425; 18USC 1961 et seq; also see Phenix Fed S&L Assn FA v Shearson Loed Rhodex Inc(1988, CA8 Iowa) 856 F2d 1125,12 FR Serv 3d 692,cert denied(1989)].

An individual who commits two or more predicate crimes defined in 1961(1) within a 10 year period can be prosecuted for violating RICO as well as for the substantial crimes themselves<sup>1</sup>. [United States v Turkette, 632 F2d 896,904(1st Cir, 1980) rev'd 452 US 576(1981)]. Justices in Turkette case shared that criminals should not be able to escape liability under RICO on the grounds that they were careful to limit themselves to wholly illegal activities. [Turkette, supra, 452, US at 587, 590, also see United States v Provenzano, 620, F2d 985, 993(3rd Cir); United States v Sutton, 605, F2d, 260, 264, (6th Cir).]

Only relationship necessary for predicate acts alleged...is that they be acts of the same enterprise; it is not necessary for activities to be related to each other [United States v De Palma (1978, SD NY) 461, FSupp 778].

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<sup>1</sup> If it were intended that no criminal act on which the statute of limitation had expired at the time of the RICO indictment could be part of the pattern, the 10 year provision in the subsection would be largely meaningless and contrary to the purpose of section 1961(5). Thus it must be meant that defendants could be prosecuted under RICO if they were chargeable with 2 or more pattern of offenses at the time they committed the other elements of RICO.

## Appendix F

0117

# EXHIBIT 1

6/8/2015

Gmail - The Right Move, Inc -International service agreement # 208140



Madhu Sameer <madhu.bambroo@gmail.com>

## The Right Move, Inc -International service agreement # 208140

Dylan Cortina <sales7@therightmove4u.com>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Mon, Jun 8, 2015 at 12:39 PM



**THE RIGHT MOVE .INC**  
**ALL AROUND THE WORLD**

International Moving Service Agreement		Reference No: S208140
<b>The Right Move ,Inc.</b>  150 Motor Parkway suite # 401  Hauppauge, NY 11788  Registration #: FMC# 023229N	<b>Customer Rep:</b> Dylan  <b>Phone:</b> 347-368-6520  <b>Fax:</b> 631-439-6801  <b>Email:</b> sales7@therightmove4u.com  <b>Web:</b> http://www.therightmove4u.com	
Moving From	Moving To	
<b>Madhu Sameer</b>  9976 North Recreation Ave  Fresno, CA 93720  Phone: 559-412-2988	<b>Madhu Sameer</b>  Christchurch , NEW ZEALAND  madhu.bambroo@gmail.com	

<b>Job No:</b> S208140	<b>Insurance:</b> Full Coverage Insurance For \$10,000 Free	<b>\$0.00</b>
<b>Representative:</b> DYLAN	<b>Others:</b> Line Haul Charges For 40 FT CNTR	<b>\$6500.00</b>
<b>Type of Service:</b> Door to Door	<b>Others:</b> Furniture Packing And Loading	<b>\$2100.00</b>
<b>Estimated Volume:</b> 40 FT CNTR - FLAT	<b>Others:</b> Doc's Fee	<b>\$0.00</b>
<b>Move Date:</b> 06/19/2015	<b>Total Estimate:</b>	<b>\$8600.00</b>

**Understanding Your Service**

**Line Haul Charges: Based on 40 FT container.**

The price Includes arriving at the pickup location, preparing professional inventory list, disassemble basic furniture, loading into a container, trucking the container from the port to your residence and back to the port both at origin and destination, fuel and mileage, custom clearance at origin, terminal handling at origin, ocean freight, basic custom clearance at destination, door delivery, setting the items at your new residence, unwrapping the furniture, reassembly of basic furniture, and removing the packing debris.

**Packing services – Furniture packing and loading .**

- Packing of furniture that are metal and wood – all included.
- Packing of boxes labor costs and material - Charge upon use.
- Custom made wooden crate – charge based on size.

**Insurance: FREE full coverage insurance \$10,000.00 FREE.**

The Insurance is subject to receiving the Insurance forms 3-4 days prior to the pickup, and it is subject to the Insurance company terms and conditions. (\$500 deductible).  
 Additional Insurance is available upon request, charge of 3% of declared value for full coverage, and 2% of declared value for total loss, and will require \$75 processing fee.

**Documentation fee:**

The price includes preparing all export documents for shipping house hold goods, AES filing and bill of lading.

(Vehicle requires additional fee).

**The price does not Includes:**

Long carry, storage at origin, local port fees and taxes at destination, THC (terminal Handling charges) custom examination and scanning, roll over fees, storage at destination, demurrage, fumigations, Piano Handling, and vehicle shipping.

**Payment Terms:**

- 15% deposit is required upon signing the service agreement by credit card (Visa or MasterCard Only).
- The remaining balance is due 7-10 days after receiving the final invoice before shipment will leave the USA, by personal check, certified check, wire transfer, cashier check.

\*By signing this page I agree that this contract is supplemental to BOL and tariff which are publicly available at Federal Maritime Commission by section 19 of the Shipping Act of 1984, Part 515 of Title 46 of the Code of the Federal Regulations.

**Articles List**

Qty	Items	Qty	Items	Qty	Items
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Madam Sameer  
Customer Name

[Signature]  
Customer Signature

6/8/2015  
Date

CC Authorization form..pdf  
104K



Madhu Sameer &lt;madhu.bambroo@gmail.com&gt;

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**Offer to send the shipment on the plane**

---

**Madhu Sameer** <madhu.bambroo@gmail.com>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Thu, Aug 6, 2015 at 6:54 AM

----- Forwarded message -----

From: **Michelle Franklin** <mfranklin@therightmove4u.com>  
Date: Fri, Jun 26, 2015 at 12:41 PM  
Subject: RE: MADHU  
To: Madhu Sameer <madhu.bambroo@gmail.com>

You keep misunderstanding everything.

Send the insurance papers tomorrow.

The container left that's it!

And I offer to give you to take the boxes on the plane not also to ship by ocean !

I am not a bank!!

Michelle

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: **Madhu Sameer** <madhu.bambroo@gmail.com>  
Date: 06/25/2015 8:14 PM (GMT-05:00)  
To: Michelle Franklin <mfranklin@therightmove4u.com>  
Subject: Re: MADHU

The box and the rug.

On Thu, Jun 25, 2015 at 5:13 PM, Madhu Sameer <madhu.bambroo@gmail.com> wrote:

UPS to your warehouse to send it with other items. You did offer topay for the oceanfreight - and you offered to pay\$100 for the box. It would be cheaper for you to send the shipment together...I can just UPS it to you.

Also,please confirm that I can send the insurance list tomorrow. I do not wish to send the shipment without insurance, especially due to these underlying issues.

M.

On Thu, Jun 25, 2015 at 4:14 PM, Michelle Franklin <mfranklin@therightmove4u.com> wrote:

Hi Madhu,

We have a contract for 40 ft container . We have a 40 ft container full with your items .

I have offered to help you and pay lots of money because I want to help.



Madhu Sameer &lt;madhu.bambroo@gmail.com&gt;

---

**Fwd: Email stating We will take care of the second part of the shipment up to the destination port for free**

---

**Madhu Sameer** <madhu.bambroo@gmail.com>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Thu, Aug 6, 2015 at 4:01 PM

----- Forwarded message -----

**From:** Michelle Franklin <mfranklin@therightmove4u.com>  
**Date:** Fri, Jun 26, 2015 at 3:26 AM  
**Subject:** RE: Re:  
**To:** Madhu Sameer <madhu.bambroo@gmail.com>

Not at all,

I am saying that we will take care of the shipment up to the destination port for free.

You will have to pay the additional ports fees as they are not part of my control and also arrange the pick up by yourself once the items are in New Zealand .

Michelle

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** Madhu Sameer <madhu.bambroo@gmail.com>  
**Date:** 06/25/2015 11:15 AM (GMT-05:00)  
**To:** Michelle Franklin <mfranklin@therightmove4u.com>  
**Subject:** Re: Re:

Are you saying that it will cost me additional 2,400 to get the additional shipment ?

On Thu, Jun 25, 2015 at 8:09 AM, Michelle Franklin &lt;mfranklin@therightmove4u.com&gt; wrote:

**I will be very happy cover the ocean cost !!**

I will ship it all the way to the port, and you can pay just the port fees, and maybe pick up from the port by yourself???

If we are to offer it to any other client it is \$12 pr CF, Min 200 For full door to door service, not includes the port fees.



So total of \$2400

But , pick up is already done, and I will cover the ocean costs ! that will be me showing you how much I care !!

Michelle

**From:** Madhu Sameer [mailto:madhu.bambroo@gmail.com]  
**Sent:** Thursday, June 25, 2015 10:57 AM  
**To:** Michelle Franklin  
**Subject:** Re:

Tell me - how much the extra shipment, if palleted, will cost.

On Thu, Jun 25, 2015 at 7:55 AM, Madhu Sameer <madhu.bambroo@gmail.com> wrote:

I can't allow anyone to touch my shipment in my absence Michelle. I was advised by the licensing board. For you to ask me to do this is unfair.

Trusting someone in business is not professional. It is unfair of you to ask me to work on trust. Would you trust me to pay you at delivery ? No. And I dont' ask of it either.

I trusted your word that day and released my shipment, allowed the container to leave my home - and look what happened.Had I just insisted on a proper packing list, I would not have suffered these losses (over \$3000 in goods given away), and would not have had these problems,

Business is not run on trust - it s run on rules, procedures, policies.

I trusted them to get it right the second time. They are incapable of doing it right.So I cannot trust them anymore.

M.

M.

On Thu, Jun 25, 2015 at 7:50 AM, Michelle Franklin <mfranklin@therightmove4u.com> wrote:

MADHU SAMEER  
9976 N RECREATION AVE.  
FRESNO, CA 93720-4653

1575  
11-35/1210

20

Pay to  
the order of

Right Move, Inc \$1290.00  
Twelve hundred & ninety <sup>00</sup>/<sub>100</sub> Dollars

BANK OF AMERICA

For Money deposited ~~of~~ John

⑆121000358⑆ 001197177181⑆ 1575

0124

EXHIBIT 3

EXHIBIT 23

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CONTRACTOR OR CARRIER: **VO Moving System** AGENT: **Ashton Senior** PAGE NO: **06** OF: **07**

OWNER'S GRADE OR RATING AND NAME: **Madhu Sameer** CARRIER'S REFERENCE NO.

ORIGIN & LOADING ADDRESS: **9976 N. Recreation Street** CITY: **Fresno** STATE: **CA. 93720** CONTRACT OR OBL. NO.

DESTINATION: **NZ** CARRIER SERVICE ORDER NO. MAP NUMBER

**DESCRIPTIVE SYMBOLS**      **EXCEPTION SYMBOLS**      **LOCATION SYMBOLS**

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
1		Armoire			6		Books		
2		Desk			7		Books		
3		Bookshelf			8		Books		
4		Metal Rack			9		Lounge Chair		
5		Dresser			8		Chair		
6		Nightstand			1		Chair		
7		Bookshelf			2	MD	Misc. Papers		
8		Bookshelf			3	MD	Misc. Papers		
9		Bookshelf			4		Chair		
0		Shelving			5		Game Chair		
1		Shelving			6		game chair		
2	LG	MISC. PAPERS			7		Game Chair		
3	LG	MISC. PAPERS			8		Candle Holder		
4	LG	MISC. PAPERS			9		Wooden Bench		
5		Shelving			0		Showers Poles		
6		Small Bookshelf			1		Mattress		
7		Book Case			2		Wooden Bench		
8	SM	Books			3	LG	Misc. Papers		
9	SM	Books			4	LG	Misc. Papers		
0	SM	Books			5	LG	Misc. Papers		
1		Shelving			6		Sunscreen Shade		
2		Small End Table			7		Shelves		
3		Metal Rack			8		Shelves		
4		Lizard Statue			9	LG	MISC. PAPERS		
5	SA	Books			80	LG	MISC. PAPERS		

ITEM NO. REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED TO BE A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED. BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

INCLUDE AND ACKNOWLEDGE BY THE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

WARNING

TAPE LOT NO. **251** TAPE COLOR **Orange**

NOS. FROM **251** THRU **300**

AT ORIGIN (SIGNATURE) OWNER OR AUTHORIZED AGENT DATE

AT DESTINATION (SIGNATURE) OWNER OR AUTHORIZED AGENT DATE

CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

CONTRACTOR OR CARRIER <b>XO Moving System</b>		AGENT <b>Ashton Senior</b>	PAGE NO. <b>05</b>	NO. OF PAGES <b>07</b>
OFFICE'S GRADE OR FIRM'S NAME <b>Madhu Sameer</b>		CARRIER'S REFERENCE NO.		
OFFICE/LOADING ADDRESS <b>9976 N. Recreation Street Fresno</b>		CONTRACT OR O.C. NO.		
DESTINATION <b>CA. 93720</b>		GOVT SERVICE ORDER NO.		
		VAN NUMBER <b>NZ</b>		

DESRIPTIVE SYMBOLS 1. UNPAKED 2. PACKED 3. PACKED BY CARRIER 4. PACKED BY CONTRACTOR 5. MECHANICAL CONDITION	10. DISASSEMBLED 11. FRACTURED 12. IMPROPERLY PACKED 13. MECHANICAL CONDITION	EXCEPTION SYMBOLS D. DAMAGED F. FADING G. GROUND H. HOLE I. INCOMPLETE J. JAMMED K. KINKED L. LIT M. MISSING N. NOTED O. OIL P. PEST Q. QUARTZ R. RUST S. STAINED T. TORN U. UNUSUAL V. VENT W. WORN X. X-RAY Y. YARN Z. ZIPPERS	LOCATION SYMBOLS 1. AREA 2. BOTTOM 3. CORNER 4. FRONT 5. LEFT 6. RIGHT 7. REAR 8. FRONT 9. SIDE 10. TOP 11. UPPER 12. EDGE 13. CENTER 14. POINT 15. SEAT 16. DRAWER 17. DOOR 18. SHELF 19. HOOK 20. HORIZONTAL
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NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
201		Office sofa chair			6		Shelving		
2		" "			7		Outdoor Arch		
3		Kids Toy shelf			8		Outdoor Arch		
4		" "			9		Outdoor Arch		
5		<del>Large Box</del> Bookshelf			0		Outdoor Arch		
6		Bookshelves			1		Outdoor Arch		
7		X-Large Box			2	SM	Books		
8		" "			3		Plastic Containers (Large)		
9		Whian Cabinet			4		Bathroom Accessory		
0		" "			5		Lin. Mattress		
1		" "			6		Bathroom Accessory		
2		" "			7		Wooden Shelves		
3		Small Box			8		Bookshelf		
4		Small Shelf			9		Bookshelf		
5		Small Shelf			0		Bookshelf		
6		Bookshelf			1		Love seat		
7		O-mash Fireplace (possible)			2		Armoire (small)		
8		Bookshelf			3		Nightstand		
9		Bookshelf			4		Ottoman		
0		Bookshelf			5		Ottoman		
1		Printer			6		Bookshelf		
2		Table Glass			7		Nightstand		
3		Camera Tripods			8		Instrument		
4		Shelving			9		Instrument		
5		Shelving			0		Large Container		

ITEM NO.	REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS RECEIVED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

TAPE LOT NO. **DX2415** TAPE COLOR **Orange**

NOS. FROM **201** THRU **250**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (OWNER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (OWNER)	DATE
(SIGNATURE)	(SIGNATURE)	(DATE)	(SIGNATURE)	(SIGNATURE)	(DATE)
(SIGNATURE)	(SIGNATURE)	(DATE)	(SIGNATURE)	(SIGNATURE)	(DATE)

CONTRACTOR OR CARRIER: **XO Moving System** ADDRESS: **Ashton Senior**

OWNER'S GRADE OPERATING NAME: **Madhu Sameel**

ORIGIN LOADING ADDRESS: **9976 N. Recreation Street** CITY: **Fresno** STATE: **CA** ZIP: **93720**

DESTINATION: **NZ**

PAGE NO. **A** NO. OF PAGES **of**

CARRIER'S NET LICENSE NO.

CONTRACT OR BIL. NO.

GOVT. SERVICE ORDER NO.

SHIPMENT NO.

DESCRIPTIVE SYMBOLS		EXCEPTION SYMBOLS				LOCATION SYMBOLS			
1. UN-PAKED	2. REASSEMBLED BY OWNER	11. DENTED	12. MOTTLED	13. SOILED	1. ARM	2. RIGHT	3. SEAT	4. BACK	
3. PACKED	4. REASSEMBLED BY CARRIER	14. BROKEN	15. FADING	16. STAINED	5. BOTTOM	6. SIDE	7. DRAWER	8. DOOR	
5. UN-PAKED BY OWNER	6. REASSEMBLED BY CARRIER	17. CRACKED	18. DISCOLORED	19. STRETCHED	9. CORNER	10. TOP	11. SILE	12. DOOR	
7. UN-PAKED BY CARRIER	8. REASSEMBLED BY CARRIER	20. CRACKED	21. DISCOLORED	22. STRETCHED	13. FRONT	14. VENEER	15. SILE	16. DRAWER	
9. UN-PAKED BY CARRIER	10. REASSEMBLED BY CARRIER	23. CRACKED	24. DISCOLORED	25. STRETCHED	15. LEFT	16. EDGE	17. SILE	18. DRAWER	
11. UN-PAKED BY CARRIER	12. REASSEMBLED BY CARRIER	26. CRACKED	27. DISCOLORED	28. STRETCHED	17. LEGS	18. CENTER	19. SILE	20. DRAWER	
13. UN-PAKED BY CARRIER	14. REASSEMBLED BY CARRIER	29. CRACKED	30. DISCOLORED	31. STRETCHED	19. REAR	20. BACK			

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	QTY.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	QTY.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
1	SM	Books			6		Table Parts (Patio)		
2	SM	Books			7		Table Parts (Patio)		
3	SM	Books			8		Table Parts (Patio)		
4	LG	Papers			9		Ladder (Green)		
5	LG	Papers			0		Kona Quick Shelter		
6	LG	Papers			1		Fountain Pot		
7	LG	Papers			2	LG	Papers		
8	DP	Dishpack / kitchen			3	LG	Papers		
9	LG	MISC.			4	LG	Papers		
0	SM	MISC.			5	LG	PAPERS		
1	LG	MISC. Garage			6		Small End Table		
2	LG	MISC. Garage			7	LG	Kobler's Kitchen		
3	LG	MISC. Garage			8		Speaker		
4	LG	MISC. Garage			9		Table		
5		Pots/Pans Cooking Set			0		Speaker		
6	LG	Plastic Container (Large) Misc Camp			1		Wooden Sculpture		
7		Plastic Container (Large)			2		Area Rug		
8		Chair			3		Area Rug		
9		Chair			4		Area Rug		
0		Chair			5		Cabinet Legs		
1		Chair			6		Cabinet Parts		
2	SM	Books/Misc. Docs.			7		Fire place Acc.		
3	SM	Books/Misc. Docs.			8		Air Fryer		
4		Table Parts (Patio)			9		Wood Rack		
5		Table Parts (Patio)			200		Office Side Chair		

ITEM NO. REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 200 INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT. COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

**WARNING** →

TAPE LOT NO. **DX 2415** TAPE COLOR **Orange**

NOS. FROM **151** THRU **200**

AT ORIGIN	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE	AT DESTINATION	(SIGNATURE) CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE
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CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

**XO Moving System**      **Ashton Senior**

OWNERS GRADE OR RATING AND NAME: **Madhu Sameer**

ORIGIN ADDRESS: **9976 N. Recreation Street**      CITY: **Folsom**      STATE: **CA. 93720**

DESTINATION: **NZ**

PAGE NO. **03 of**      NO. OF PAGES

CARRIER'S REFERENCE NO.

CONTRACT OR ODL NO.

CONF. SERVICE ORDER NO.

WAZ NUMBER

**DESCRIPTIVE SYMBOLS**

100 - DELIVERED BY OWNER  
 101 - PROFESSIONAL PACKING  
 102 - PROFESSIONAL UNPACKING  
 103 - PROFESSIONAL REPACKING  
 104 - PROFESSIONAL REPACKING  
 105 - MECHANICAL CONDITION UNKNOWN

**EXCEPTION SYMBOLS**

01 - DAMAGED  
 02 - MISSING  
 03 - MISSING  
 04 - MISSING  
 05 - MISSING  
 06 - MISSING  
 07 - MISSING  
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 99 - MISSING  
 100 - MISSING

**LOCATION SYMBOLS**

1. AMP      8. RIGHT  
 2. BOTTOM      9. SIDE  
 3. CORNER      10. TOP  
 4. FRONT      11. WHEEL  
 5. LEFT      12. BACK  
 6. LEGS      13. CENTER  
 7. HEAD      14. FEET  
 15. SEAT  
 16. DRAWER  
 17. DOOR  
 18. SHELF  
 19. HARDWARE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
1	MD	Linen			6	LG	MISC.		
2	LG	Linen			7		HP Printer		
3	SM	Fragile			8	DP	Disruptive/Lessoned \$30		
4	SM	Fragile			9		File Cabinet		
5	SM	Fragile			0		Chair		
6	SM	Fragile			1		Chair		
7	SM	Fragile			2		Vacuum		
8	SM	Fragile			3		Chair		
9	SM	Fragile			4		Chair		
0	SM	Fragile			5		Chair		
1	LG	Fragile			6		Arm Chair		
2	LG	Misc			7		Chair		
3		Chair			8	SM	Books		
4		Chair			9	SM	Books		
5		Armchair			0	SM	Books		
6		Chair			1	SM	Books		
7		2-Seat Sofa			2	SM	Books		
8		3-Seat Sofa			3	SM	Books		
9		Large Antique Armoire			4	SM	Books		
0		Chair			5	SM	Books		
1		Chair			6	SM	Books		
2		Table Top			7	SM	Books		
3		Shelves			8	SM	Books		
4	MD	Misc.			9	SM	Books		
5	MD	Misc.			0	SM	Books		

ITEM NO.      REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 100 INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT. COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE FRONT ABOVE.

**WARNING**      TAPE LOT NO. **DX 2415**      TAPE COLOR **Orange**

NOS. FROM **01**      THRU **150**

AT ORIGIN      DATE      AT DESTINATION      DATE

(SIGNATURE) OWNER OR AUTHORIZED AGENT      (SIGNATURE) OWNER OR AUTHORIZED AGENT

CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

**XO Moving System**      AGENT: **Ashton Senior**

OWNER'S GRADE OR RATING AND NAME: **Madhu Sameer**

ORIGIN/LOADING ADDRESS: **9976 N Recreation Street Fresno CA 93720**

DESTINATION: **NZ**

PAGE NO. **02** OF **09**

CARRIER'S REFERENCE NO.

CONTRACT OR ORG. NO.

GOVT SERVICE ORDER NO.

TAX NUMBER

DESCRIPTIVE SYMBOLS		EXCEPTION SYMBOLS		LOCATION SYMBOLS		
BLK - BLACK & WHITE TV	NO - NOT COVERED BY OWNER	DR - DENTED	D - DAMAGED	1 - DOWN	2 - FRONT	3 - LEFT
CO - COLORED TV	PR - PROFESSIONAL RECORDS	BR - BROKEN	F - FACED	4 - RIGHT	5 - SIDE	4 - RIGHT
CP - CARTON PACKED	PE - PROFESSIONAL EQUIPMENT	BU - BURNED	G - GUMMED	6 - CORNER	6 - TOP	5 - TOP
FD - PACKED BY OWNER	PP - PROFESSIONAL PAPERS	CH - CHIPPED	L - LOCKED	7 - FRONT	7 - CENTER	6 - CENTER
LD - LAMPED (LAMPED BOTTLES)	MC - MECHANICAL CONDITION UNKNOWN	CR - CRACKED	SH - SHIPPED	8 - LEFT	8 - EDGE	7 - EDGE
TR - TYPED IN BY OWNER		CS - CRUSHED	SP - SPOTTED	9 - LEGS	9 - LEGS	8 - LEGS
		CF - CONTAINED	ST - STAINED	10 - HEAD	10 - HEAD	9 - HEAD
		CG - CRUSHED (CONTAINER)	SC - SCALD	11 - SEAM	11 - SEAM	10 - SEAM
		CD - CRUSHED (DRESS)	SM - SMOKED	12 - DRAWER	12 - DRAWER	11 - DRAWER
		CE - CRUSHED (ELECTRONIC)	SR - SCRUBBED	13 - TOP	13 - TOP	12 - TOP
		CF - CRUSHED (FURNITURE)	ST - STAINED	14 - SHELF	14 - SHELF	13 - SHELF
		CG - CRUSHED (GLASS)	TC - TORN	15 - CENTER	15 - CENTER	14 - CENTER
		CH - CRUSHED (HARDWARE)	TR - TORN	16 - BACK	16 - BACK	15 - BACK
		CF - CRUSHED (FURNITURE)	TC - TORN	17 - CENTER	17 - CENTER	16 - CENTER
		CG - CRUSHED (GLASS)	TR - TORN	18 - BACK	18 - BACK	17 - BACK
		CH - CRUSHED (HARDWARE)	TC - TORN	19 - CENTER	19 - CENTER	18 - CENTER
		CF - CRUSHED (FURNITURE)	TR - TORN	20 - BACK	20 - BACK	19 - BACK

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	QTY	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS OF ARTS AT DESTINATION	ITEM NO.	QTY	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS AT DESTINATION
1		HP Printer			6	MD	Childrens Shoes		
2	SM	Books			7	MD	Linens		
3	SM	Books			8	SM	Linens		
4	SM	Books			9	SM	Linens		
5	SM	Books			0	SM	Linens		
6	MD	Linens			1		Decorative Snowman		
7	LG	Linens			2	SM	Books		
8	LG	Linens			3	SM	Books		
9	SM	Books			4	SM	Books		
0	SM	Books			5	MD	Linens		
1	SM	Books			6		Yakon Grill		
2	SM	Books			7	SM	Books		
3	SM	Books			8	SM	Books		
4	LG	Linens			9	SM	Books		
5	SM	Misc.			0	MD	Linens		
6	MD	Linens			1	LG	Kitchen Utensils		
7	LG	Linens			2	MD	Shoes		
8	LG	Linens			3	MD	Clothing		
9	LG	Linens			4	MD	Shoes		
0		Printer			5		Misc		
1	SM	Misc.			6		Clothing		
2	SM	Misc.			7		Linens		
3	MD	Bedroom			8		Misc.		
4	MD	Bedroom			9	MD	Linens		
5	MD	Bedroom			0	MD	Linens		

ITEM NO.	REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT. COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE FRONT ABOVE.

EXCLUSIVE AND ACKNOWLEDGE

TAPE LOT NO. **DX2415** TAPE COLOR **Orange**

WOS. FROM **51** THRU **100**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (OWNER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (OWNER)	DATE
(SIGNATURE)			(SIGNATURE)		
(SIGNATURE)			(SIGNATURE)		



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TOP OF CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

MOVERS: **XO Moving System** AGENT: **Ashton Senior**  
 OWNER'S GRADE OR RATING AND NAME: **Madhu Samra**  
 ORIGINAL ADDRESS: **3776 N Recreation Ave, CA 93720**  
 DESTINATION: **Christchurch City, NZ**

PAGE NO. **01** NO. OF PAGES **of**  
 CARRIER'S REFERENCE NO.  
 CONTRACT OR ORDER NO.  
 GOVT. SERVICE ORDER NO.  
 MAN NUMBER

**DESCRIPTIVE SYMBOLS:** 1. BURNED, 2. STAINED, 3. DISCOLORED, 4. CRACKED, 5. CHIPPED, 6. DENTED, 7. MARKED, 8. SCRATCHED, 9. UNUSUAL WEAR, 10. UNUSUAL DISCOLORATION, 11. UNUSUAL STAINING, 12. UNUSUAL CRACKING, 13. UNUSUAL CHIPPING, 14. UNUSUAL DENTING, 15. UNUSUAL MARKING, 16. UNUSUAL SCRATCHING, 17. UNUSUAL DISCOLORATION, 18. UNUSUAL STAINING, 19. UNUSUAL CRACKING, 20. UNUSUAL CHIPPING, 21. UNUSUAL DENTING, 22. UNUSUAL MARKING, 23. UNUSUAL SCRATCHING, 24. UNUSUAL DISCOLORATION, 25. UNUSUAL STAINING, 26. UNUSUAL CRACKING, 27. UNUSUAL CHIPPING, 28. UNUSUAL DENTING, 29. UNUSUAL MARKING, 30. UNUSUAL SCRATCHING.

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
1	DP	Dishpacle Kitchen Glassware			6	SM	Books		
2	MD	Fragile Kitchen			7	MD	Linens		
3	MD	Fragile Kitchen			8	MD	Linens		
4	MD	Fragile Kitchen			9	LG	Linens		
5	MD	Fragile Kitchen			0	LG	Linens		
6	MD	Camping Gear			1	MD	Linens		
7	MD	Clothing/Fabrics			2	MD	Linens		
8	MD	Clothing/Fabrics			3	MD	Linens		
9	MD	Clothing/Fabrics			4	MD	Fragile		
0	MD	Fragile			5	LG	Fragile		
1	MD	Fragile			6	LG	Camping Gear		
2	MD	Fragile			7	LG	Camping Gear		
3	MD	Fragile			8	MD	Childrens clothes		
4	MD	Tupperware/Dishware			9	MD	Linens		
5		Cooler			0	MD	Linens		
6		Clothing/Fabric			1	LG	Fragile		
7		Clothing/Fabric			2	LG	Linens		
8	SM	Misc.			3		Samsonite Suitcase		
9	SM	Fragile kitchen			4		Suspending Lamps		
0	SM	Fabrics			5		Samsonite Suitcase		
1	SM	Fabrics			6		Samsonite Suitcase		
2	SM	Fabrics			7	SM	Books		
3	SM	Books			8	SM	Books		
4	SM	Books			9	SM	Books		
5	SM	Books			0	SM	Books		

ITEM NO. REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 30 THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

TAPES LOT NO. **DX2415** TAPE COLOR **Orange**  
 NOS. FROM **001** THRU **50**

AT ORIGIN	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE	AT DESTINATION	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE
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Lot No.  
DX1780

220

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HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

STOR OR CARRIER

Moving System

AGENT  
Ashton Senior

FILE NO	NO. OF PAGES
07	8
CARRIER'S REFERENCE NO.	
CONTRACT OR BILL. NO.	
GOVT. SERVICE	
WARRANTY	

OWNER'S GRADE OR RATING AND NAME  
Madhu Sameer

ORIGIN LOADING ADDRESS  
9776 N. Recreation Street Fresno CA, 93720

DESTINATION  
N2

DESCRIPTIVE SYMBOLS	EXCEPTION SYMBOLS
100 - BREAKABLE WHITE GLASS 101 - BREAKABLE MIRROR 102 - BREAKABLE CERAMIC 103 - BREAKABLE PORCELAIN 104 - BREAKABLE CHINA 105 - BREAKABLE CRISTAL 106 - BREAKABLE GLASSWARE 107 - BREAKABLE MIRROR 108 - BREAKABLE CERAMIC 109 - BREAKABLE PORCELAIN 110 - BREAKABLE CHINA 111 - BREAKABLE CRISTAL 112 - BREAKABLE GLASSWARE	1 - DENTED 2 - CRACKED 3 - CHIPPED 4 - STAINED 5 - DISCOLORED 6 - SCRATCHED 7 - BURNED 8 - STRETCHED 9 - WARPED 10 - BENT 11 - BROKEN 12 - MISSING 13 - MISSING PARTS 14 - MISSING LEGS 15 - MISSING WHEELS 16 - MISSING TIRE 17 - MISSING DOOR 18 - MISSING SHELF 19 - MISSING HINGE 20 - MISSING HANDLE 21 - MISSING KNOB 22 - MISSING LOCK 23 - MISSING HANDLE 24 - MISSING HANDLE 25 - MISSING HANDLE 26 - MISSING HANDLE 27 - MISSING HANDLE 28 - MISSING HANDLE 29 - MISSING HANDLE 30 - MISSING HANDLE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
22	1	SM Books			6		Granite Table Footing		
	2	SM Books			7		Granite Table TOP		
	3	SM Books			8		Granite Table Footing		
	4	SM Books			9		Buddha Statue		
	5	patio chair		230	6		Granite Table TOP		
	6	patio chair			1		Picture		
	7	patio			2		pictures		
	8	patio			3		Rug		
	9	patio			4		Glass Table		
230	0	patio			5		Grill		
	1	patio			6		Grill Acc.		
	2	patio			7		Grill Acc.		
	3	patio			8		Grill Acc.		
	4	patio			9		Suitcase		
	5	patio		230	0		keyboard		
	6	patio			1		keyboard stand		
	7	patio			2		Chair Lounge		
	8	patio			3		candle stand		
	9	patio			4				
230	0	patio			5				
	1	patio			6				
	2	patio			7				
	3	patio			8				
	4	patio			9				
	5	patio			0				
		picture box							
		patio							
		Misc. papers							

ITEM NO. REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE FRONT ABOVE.

TAPE LOT NO. DX1780 TAPE COLOR yellow

NOS. FROM 221 THRU

AT ORIGIN	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE	AT DESTINATION	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE
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CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

OWNER'S GRADE OR RATED AND NAME <b>Madhus Sameer</b>	AGENT <b>Joaquin</b>	PRICE NO. <b>1</b>	NO. OF PAGES <b>1</b>
OWNER'S ADDRESS <b>9976 N Recreation FRESNO CA 93722</b>	CITY <b>FRESNO</b> STATE <b>CA</b>	CARRIER'S REFERENCE NO.	CONTRACT NUMBER NO. <b>45T373</b>
DESTINATION <b>Christchurch NZ</b>		COUNT. SERVICE ORDER NO.	DATE RECEIVED

DESCRIPTIVE SYMBOLS	EXCEPTION SYMBOLS	LOCATION SYMBOLS
1 - UNCLAS & UNCLAS P 2 - CARRIER PACKED 3 - PACKED BY OWNER 4 - UNPACKED 5 - UNPACKED	6 - DAMAGED 7 - MISSING 8 - SUPPLIED 9 - DAMAGED 10 - MISSING 11 - MISSING 12 - MISSING 13 - MISSING 14 - MISSING 15 - MISSING 16 - MISSING 17 - MISSING 18 - MISSING 19 - MISSING 20 - MISSING 21 - MISSING 22 - MISSING 23 - MISSING 24 - MISSING 25 - MISSING 26 - MISSING 27 - MISSING 28 - MISSING 29 - MISSING 30 - MISSING 31 - MISSING 32 - MISSING 33 - MISSING 34 - MISSING 35 - MISSING 36 - MISSING 37 - MISSING 38 - MISSING 39 - MISSING 40 - MISSING 41 - MISSING 42 - MISSING 43 - MISSING 44 - MISSING 45 - MISSING 46 - MISSING 47 - MISSING 48 - MISSING 49 - MISSING 50 - MISSING 51 - MISSING 52 - MISSING 53 - MISSING 54 - MISSING 55 - MISSING 56 - MISSING 57 - MISSING 58 - MISSING 59 - MISSING 60 - MISSING 61 - MISSING 62 - MISSING 63 - MISSING 64 - MISSING 65 - MISSING 66 - MISSING 67 - MISSING 68 - MISSING 69 - MISSING 70 - MISSING 71 - MISSING 72 - MISSING 73 - MISSING 74 - MISSING 75 - MISSING 76 - MISSING 77 - MISSING 78 - MISSING 79 - MISSING 80 - MISSING 81 - MISSING 82 - MISSING 83 - MISSING 84 - MISSING 85 - MISSING 86 - MISSING 87 - MISSING 88 - MISSING 89 - MISSING 90 - MISSING 91 - MISSING 92 - MISSING 93 - MISSING 94 - MISSING 95 - MISSING 96 - MISSING 97 - MISSING 98 - MISSING 99 - MISSING 100 - MISSING	1 - ROOM 2 - OFFICE 3 - GARAGE 4 - PORCH 5 - ATTIC 6 - BENT 7 - SIDE 8 - TOP 9 - FRONT 10 - LEFT 11 - RIGHT 12 - CENTER 13 - REAR 14 - FRONT 15 - SIDE 16 - REAR 17 - DOOR 18 - WINDOW 19 - WALL 20 - FLOOR 21 - CEILING 22 - STAIRS 23 - HALLWAY 24 - BATHROOM 25 - KITCHEN 26 - LIVING 27 - BEDROOM 28 - GARAGE 29 - PORCH 30 - ATTIC 31 - BENT 32 - SIDE 33 - TOP 34 - FRONT 35 - LEFT 36 - RIGHT 37 - CENTER 38 - REAR 39 - FRONT 40 - SIDE 41 - REAR 42 - FRONT 43 - SIDE 44 - REAR 45 - FRONT 46 - SIDE 47 - REAR 48 - FRONT 49 - SIDE 50 - REAR 51 - FRONT 52 - SIDE 53 - REAR 54 - FRONT 55 - SIDE 56 - REAR 57 - FRONT 58 - SIDE 59 - REAR 60 - FRONT 61 - SIDE 62 - REAR 63 - FRONT 64 - SIDE 65 - REAR 66 - FRONT 67 - SIDE 68 - REAR 69 - FRONT 70 - SIDE 71 - REAR 72 - FRONT 73 - SIDE 74 - REAR 75 - FRONT 76 - SIDE 77 - REAR 78 - FRONT 79 - SIDE 80 - REAR 81 - FRONT 82 - SIDE 83 - REAR 84 - FRONT 85 - SIDE 86 - REAR 87 - FRONT 88 - SIDE 89 - REAR 90 - FRONT 91 - SIDE 92 - REAR 93 - FRONT 94 - SIDE 95 - REAR 96 - FRONT 97 - SIDE 98 - REAR 99 - FRONT 100 - SIDE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
5		Box (cd's, misc)	PBO	✓	6				
6		medium box (electronic wires)	PBO	✓	7		Playstation, WFL, etc.		
7		small box (books)	PBO		8				
8		XL Box (papers, misc)	PBO	✓	9		Music - 4 Speakers		
9		XL Box (decorations)	PBO	✓	10		System + main syte.		
10		Carpet (Rugs) x 5	PBO	✓	1				
11		t.v. box	PBO	✓	2				
12		medium box (files, papers)	PBO	✓	3				
13		file cabinet	PBO	✓	4				
14		Mirror		✓	5				
15		Mirror Frame		✓	6				
16		Swing (outdoors)		✓	7				
17		Garden Umbrella		✓	8				
18		Hall Tree		✓	9				
19		Small book case		✓	10				
20		Garden		✓	1				
21		Mattress		✓	2				
22		Table X3 (small)	✓		3				
23		Dumb Water Top		✓	4				
24		Table Legs		✓	5				
25					6				
26					7				
27					8				
28					9				
29					10				
30					300				

ITEM NO.	REMARKS/EXCEPTIONS
	

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 30 INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSSES OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

WARNING →

TAPE LOT NO. **D036A** TAPE COLOR **Red**

NOS. FROM **251** THRU

AT ORIGIN	DATE	AT DESTINATION	DATE
(SIGNATURE) <b>Madhus Sameer</b>	<b>6/23/15</b>	(SIGNATURE) <b>Joaquin</b>	
(SIGNATURE) <b>Joaquin</b>	<b>6/23/15</b>	(SIGNATURE)	

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CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. 1 NO. OF PAGES 1  
 CARRIER'S REFERENCE NO.  
 DEPARTMENT USE ONLY  
 451325  
 GOVT. SERVICE CHECK NO.  
 UNIT NUMBER

OWNER'S GRADE OR RATING AND NAME: Madhu Sameer  
 FROM ADDRESS: 4176 North Recreation Ave. Fresno CA 93721  
 CITY: Fresno  
 STATE: CA  
 ZIP: 93721  
 DESTINATION:

AGENT: Joaquin

**DESCRIPTIVE SYMBOLS**

- 1 - BURNED WHITE TV
- 2 - CRT OR TV
- 3 - CARRIER PACKED
- 4 - PACKED BY OWNER
- 5 - LAMP/REPLASSEMBLED
- 6 - OTHER THAN ORIGINAL
- 7 - DISASSEMBLED BY OWNER
- 8 - PROFESSIONAL EQUIPMENT
- 9 - PROFESSIONAL EQUIPMENT
- 10 - PROFESSIONAL EQUIPMENT
- 11 - MECHANICAL CONDITION
- 12 - APPROXIMATE

**EXCEPTION SYMBOLS**

- 13 - BENT
- 14 - BROKEN
- 15 - DENTED
- 16 - CRACKED
- 17 - STAINED
- 18 - SCRATCHED
- 19 - MISSING PARTS
- 20 - MISSING PARTS
- 21 - MISSING PARTS
- 22 - MISSING PARTS
- 23 - MISSING PARTS
- 24 - MISSING PARTS
- 25 - MISSING PARTS
- 26 - MISSING PARTS
- 27 - MISSING PARTS
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- 96 - MISSING PARTS
- 97 - MISSING PARTS
- 98 - MISSING PARTS
- 99 - MISSING PARTS
- 100 - MISSING PARTS

**LOCATION SYMBOLS**

- 1. ARM
- 2. BOTTOM
- 3. CORNER
- 4. FRONT
- 5. LEFT
- 6. LOWER
- 7. REAR
- 8. RIGHT
- 9. SIDE
- 10. TOP
- 11. UPPER
- 12. UPPER
- 13. UPPER
- 14. UPPER
- 15. SEAT
- 16. SEAT
- 17. SEAT
- 18. SEAT
- 19. SEAT
- 20. SEAT

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
51		XL Box (cds, misc)	PBO		6				
2		medium box (w. cds, misc)	PBO		7				
3		small box (books)	PBO		8				
4		XL Box (papers, misc)	PBO		9				
5		XL Box (misc items)	PBO		20				
6		Carpet	PBC		1				
7		XL Box	PBC		2				
8		medium box (f. leg, misc)	PBO		3				
9		file cabinet	PBO		4				
10		mirror	PBC		5				
1		mirror frame	PBC		6				
2		Umbrella	PBC		7				
3		Umbrella base	PBC		8				
4		wood stand	PBC		9				
5		swing	PBC	20					
6		swing bench	PBC	1					
7		wood stand	PBC	2					
8		swing parts	PBC	3					
9		lounge chair	PBC	4					
10		folding book case	PBC	5					
1		cushions	PBC	6					
2		carpet	PBC	7					
3		carpet	PBC	8					
4		Hall tree	PBC	9					
5				20					

ITEM NO. REMARKS/EXCEPTIONS

**WARNING** → WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 100. INCLUDE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSSES OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

TAPE LOT NO. D20364 COLOR Red  
 NOS. FROM 257 THRU

AT ORIGIN	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE	AT DESTINATION	(SIGNATURE) OWNER OR AUTHORIZED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)

2

Melissa Martinez

**From:** Madhu Sameer <madhu.bambroo@gmail.com>  
**Sent:** Sunday, June 21, 2015 4:39 PM  
**To:** Dylan Cortina; Tam Eitor; Michelle Franklin  
**Subject:** Re:

Michell, I thought I did not have your email, but I just found out that I do have your email.

I had informed the crew that the large dresser from my bedroom had the least priority. It is a six ft long, horizontal dresser. There is also small bookcase from Kabir's room, and one from my study which was atop the bookracks. These three items are space intensive, and can safely be left behind. If the stuff outlined below does not fit in, then, two of the smaller bookcases from the study (a pair that are identical and different from all other bookcases) may be left behind also. I'm SURE that the stuff outlined below will fit into the space created by these, but if not, I will let you know of all other things that are lower priority - if you tell me that the stuff below still does not fit.

What I want to be picked up from my home are 2 extra large boxes (have music system), the flat screen TV, a hamper full of wires for X-BOX, Playstation wirings that was packed by the movers into a hamper, 4-5 rugs in various rooms, 2 small filing cabinets in the study with important documents (which I had informed were important and cannot be left behind), 5 very small tables that were in the kitchen area, a small foldable bookcase (there were a set of two, for one reasons, the packers took one, and left the other one sitting by the wall), There is also the large golden framed mirror (which has been dismantled) and a hall-tree. If possible, there is a small bookcase that was part of the dumb waiter. The dumb waiter was shipped, but the top was left behind. However, the last one is not absolutely necessary if there are space constraints, as the dumb waiter can function without it as well, but if possible it would be great if this can go.

There is also a garden umbrella that I had asked them to dismantle and pack. When dismantled, it becomes a flat 2' x 10' package, and doesn't take much space - it fit into my car trunk with a bit hanging out...!!!! thats how little space it takes up. I think they were getting late, and therefore did not wish to dismantle it. However, the reason I paid for a 40' container was so that I may not have to buy all this stuff again at the other end.

There is a garden chaise lounge, and a garden heater.

On Sun, Jun 21, 2015 at 3:24 PM, Madhu Sameer <madhu.bambroo@gmail.com> wrote:  
URGENT ATTENTION REQUIRED

----- Forwarded message -----

**From:** Madhu Sameer <madhu.bambroo@gmail.com>  
**Date:** Sun, Jun 21, 2015 at 3:24 PM  
**Subject:** Re:  
**To:** Tami Biton <customerservice@xomovingsystem.com>

Hi Tami,

1

Melissa Martinez

From: Madhu Sameer <madhu.bambroo@gmail.com>  
Sent: Sunday, June 21, 2015 7:03 PM  
To: Tami Biron; Michelle Franklin  
Subject: Stuff...

I just went to the garage, and saw that the packers had packed the top of one of my small side tables from Ethan Allan, but had left the legs behind under the garbage bags and trash. Those legs have to be shipped...

I also found a small box of all my CDs, all packed up, labelled but left behind in the living room near the door...they must have let it at the last minute...as it was near the door...under a table they had dismantled but not taken with them...

There may be some odd pieces like that lying around...as I sift thru the trash, I may come across a few more. Nothing is big enough to attract instant attention, and I will let you know about the small things...

16.17.18...

↳ No, No

Do NOT HONOR, SUCH  
Statements and/or Requests.

\* Affirmative Set in Stone Detailed  
Remaining Item list will solely  
be fulfilled upon pick-up of remaining  
above numbered/Referenced items, unless  
otherwise approved by "The Right Move  
4U"

-XO Moving System"

06.22.2015

6:40pm

0136

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CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO.	NO. OF PAGES
1	1
CURRENT REFERENCE NO.	
CONTAINER NUMBER	
GOVT. SERVICE ORDER NO.	
WAREHOUSE	

AGENT  
Joagubh

OWNER'S GRADE OR RATING AND NAME  
Madhu Sameer

OWNER'S ADDRESS  
44766 North Recreation Ave. Fresno CA 93721

DESTINATION

**DESCRIPTIVE SYMBOLS**

04 - BLACK & WHITE TV  
07 - CORDON TV  
08 - CARRIER RACKED  
09 - PICKUP BY DRIVER  
10 - CARRIER DAMAGE LISTED  
11 - STRIPPED WRAPPEE

050 - DISASSEMBLED BY OWNER  
05 - PROFESSIONAL GRADE  
06 - PROFESSIONAL RACKED  
07 - PROFESSIONAL RAMPED  
08 - MECHANICAL DAMAGE  
09 - MECHANICAL CONDITION (WEIGHT)

01 - BENT  
02 - BURNED  
03 - DAMAGED  
04 - CRACKED  
05 - DENTED  
06 - MISSING  
07 - MISSING PARTS  
08 - MISSING PARTS & CONDITION UNUSUAL

09 - BENT  
10 - BURNED  
11 - DAMAGED  
12 - CRACKED  
13 - DENTED  
14 - MISSING  
15 - MISSING PARTS  
16 - MISSING PARTS & CONDITION UNUSUAL

17 - BENT  
18 - BURNED  
19 - DAMAGED  
20 - CRACKED  
21 - DENTED  
22 - MISSING  
23 - MISSING PARTS  
24 - MISSING PARTS & CONDITION UNUSUAL

**LOCATION SYMBOLS**

1. AIR  
2. BOTTOM  
3. CORNER  
4. EDGE  
5. LEFT  
6. LIPS  
7. RIGHT  
8. RING  
9. SCAP  
10. TOP  
11. UNDER  
12. BACK  
13. CENTER  
14. HOLE  
15. JOINT  
16. JOINT  
17. LOCK  
18. HANDLE  
19. HOLE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
251		XL Box (105 misc)	P60		6				
2		medium box (w/ ps, shaver, etc)	P60		7				
3		Small box (Books)	P60		8				
4		XL Box (paper, etc)	P60		9				
5		XL Box (music system)	P60		20				
6		Carpet	P60		1				
7		TV Box	P60		2				
8		medium box (files, etc)	P60		3				
9		file cabinet	P60		4				
26		mirror	P60		5				
1		mirror frame	P60		6				
2		Umbrella	P60		7				
3		umbrella base	P60		8				
4		wood stand	P60		9				
5		swing	P60		270				
6		swing bench	P60		1				
7		wood stand	P60		2				
8		swing parts	P60		3				
9		swing chair	P60		4				
270		folding bookcase	P60		5				
1		cushion	P60		6				
2		carpet	P60		7				
3		carpet	P60		8				
4		hall tree	P60		9				
5					280				

ITEM NO. REMARKS/EXCEPTIONS

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 30. INCLUDE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED. BEFORE SIGNING CHECK, SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

**WARNING**

TAPE LOT NO. D0364  
TAPES COLOR Red  
NO. FROM 251 THRU

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORIZED AGENT	DATE		OWNER OR AUTHORIZED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

2310

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CONTRACTOR OR CARRIER

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. 1	NO. OF PAGES 1
CARRIER'S REFERENCE NO.	
CONTRACT OR INVOICE NO. 451373	
GOVT. SERVICE ORDER NO.	
VAN NUMBER	

AGENT  
Joaquin

OWNER'S GRADE OR RATING AND NAME: Madhus Sameer

ORIGIN LOADING ADDRESS: 9976 N Recreation Fresno CA 93722

DESTINATION: Christchurch NZ

DESCRIPTIVE SYMBOLS	EXCEPTION SYMBOLS	LOCATION SYMBOLS
BW - BLACK & WHITE TV C - COLOR TV CP - CARTON PACKED FO - PACKED BY OWNER CO - CARBON COATED TW - TENSILE WRAPPED DMO - DISASSEMBLED BY OWNER PR - PROFESSIONAL RECORDS PE - PROFESSIONAL EQUIPMENT PP - PROFESSIONAL PAPERS MCL - MECHANICAL CLOSURE (UNKNOWN)	DR - DENT SR - SCRATCH MU - MUTILATED CR - CRACKED CA - CORNERS & EDGES UNKNOVEN	1. ARM 2. BOTTOM 3. CORNER 4. FRONT 5. LEFT 6. LEGS 7. REAR 8. DENTED 9. FADING 10. GOUGED 11. LOOSE 12. MARKED 13. MILDLY 14. NOTICABLE 15. PEELING 16. RUBBED 17. RUPTURED 18. STAINED 19. STRETCHED 20. TORN 21. UNUSUALLY WEAK 22. CRACKED

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
5		XL Box (cd's misc)	PBO	✓	6				
6		medium box (electronic wires)	PBO	✓	7		Playstation, WII, etc.		
7		small box (books)	PBO		8				
8		XL Box (papers, games, misc)	PBO	✓	9		Music - 4 Speakers		
9		XL BOX (decorations)	PBO	✓	20		System + main system		
10		Carpet (Rugs) x 5	PBO	✓	1				
7		F.V. box	PBO	✓	2				
8		medium box (files papers)	PBO	✓	3				
9		file cabinet	PBO	✓	4				
10		Mirror		✓	5				
1		Mirror Frame		✓	6				
2		Swing (outdoors)		✓	7				
3		Garden Umbrella		✓	8				
4		Hall Tree		✓	9				
5		Small book case		✓	20				
6		Orange Garden		✓	1				
7		Orange Mattress		✓	2				
8		Tables X3 (small)	✓		3				
9		Dumb Water Top		✓	4				
10		Table legs		✓	5				
11					6				
12					7				
13					8				
14					9				
15					300				

ITEM NO. REMARKS/EXCEPTIONS

[REDACTED]

WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO 300 INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

TARE LOT NO. D0364 TARE COLOR Red

NOS. FROM 251 THRU

AT ORIGIN	DATE 6/23/15	AT DESTINATION	DATE 6/23/15
(SIGNATURE) Madhus Sameer	(SIGNATURE) Madhus Sameer	(SIGNATURE) Madhus Sameer	(SIGNATURE) Madhus Sameer

CONTRACTOR OR CARRIER:

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. <u>1</u>	NO. OF PAGES <u>1</u>
CARRIER'S REFERENCE NO.	
CONTRACT OR O.P. NO. <u>151373</u>	
GOVT. SERVICE ORDER NO.	
VAN NUMBER	

OWNER'S GRADE OR RATING AND NAME: Madhu Sameer

ORIGIN/LOADING ADDRESS: 9976 North Recreation Ave Fresno CA 93721

DESTINATION:

AGENT: Joaquin

- DESCRIPTIVE SYMBOLS**
- BW - BLACK & WHITE TV
  - C - CABLE TV
  - CP - CARRIER PACKED
  - PKO - PACKED BY OWNER
  - CO - CARRIER UNPACKED
  - SW - SWITCH WRAPPED
  - DBO - DISASSEMBLED BY OWNER
  - PE - PROFESSIONAL EQUIPMENT
  - PP - PROFESSIONAL TOOLING
  - MCU - MECHANICAL CONDITION UNKNOWN
- EXCEPTION SYMBOLS**
- RE - RENT
  - BR - BROKEN
  - BU - BURNED
  - CH - CHIPPED
  - CU - CRACKED
  - U - UNKNOWN
  - D - DENTED
  - F - FADED
  - G - GOUNDED
  - L - LOOSE
  - M - MARLED
  - ML - MELDED
  - MO - MOTH EATEN
  - P - PEBBLED
  - R - RUBBED
  - RU - RUSTED
  - SC - SCRATCHED
  - SB - BENT
  - SO - SOILED
  - ST - STAINED
  - S - STRETCHED
  - T - TORN
  - W - WEAR
  - Z - ZIPPED
- LOCATION SYMBOLS**
- 1. ARM
  - 2. BOTTOM
  - 3. CORNER
  - 4. FRONT
  - 5. LEFT
  - 6. LEGS
  - 7. REAR
  - 8. RIGHT
  - 9. SIDE
  - 10. TOP
  - 11. VENEER
  - 12. BACK
  - 13. CENTER
  - 14. INSIDE
  - 15. SEAT
  - 16. DRAWER
  - 17. DOOR
  - 18. SHELF
  - 19. HARDWARE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION	ITEM NO.	CR. REF.	ARTICLES	CONDITION AT ORIGIN	EXCEPTIONS (IF ANY) AT DESTINATION
25		XL Box (cds, misc)	PBO		6				
2		medium box (w/ cd's, plantar)	PBO		7				
3		small box (books)	PBO		8				
4		XL Box (papers, game)	PBO		9				
5		XL BOX (music system)	PBO		20				
6		Carpet	PBC		1				
7		Lg. Box	PBC		2				
8		medium box (f. Texas, misc)	PBO		3				
9		file cabinet	PBO		4				
26		mirror	PBC		5				
27		mirror frame	PBC		6				
28		Umbrella	PBC		7				
3		umbrella base	PBC		8				
4		wood stand	PBC		9				
5		swing	PBC		29				
6		swing bench	PBC		1				
7		wood stand	PBC		2				
8		swing parts	PBC		3				
9		lounge chair	PBC		4				
70		folding break case	PBC		5				
1		cushion	PBC		6				
2		carpet	PBC		7				
3		carpet	PBC		8				
4		Hall tree	PBC		9				
5					30				

ITEM NO. REMARKS/EXCEPTIONS

**WARNING** → WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.

TAPE LOT NO. DX0364 COLOR Red

NGS. FROM 251 THRU

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE
(SIGNATURE)	(SIGNATURE)	DATE	(SIGNATURE)	(SIGNATURE)	DATE
OWNER OR AUTHORIZED AGENT	OWNER OR AUTHORIZED AGENT		OWNER OR AUTHORIZED AGENT	OWNER OR AUTHORIZED AGENT	
(SIGNATURE)	(SIGNATURE)		(SIGNATURE)	(SIGNATURE)	





Madhu Sameer <madhu.bambroo@gmail.com>

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## Refusal to pay for second shipment

---

**Madhu Sameer** <madhu.bambroo@gmail.com>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Thu, Aug 6, 2015 at 6:34 AM

----- Forwarded message -----

From: **Michelle Franklin** <mfranklin@therightmove4u.com>  
Date: Tue, Aug 4, 2015 at 8:28 AM  
Subject: RE: Insurance  
To: Madhu Sameer <madhu.bambroo@gmail.com>

I will not pay anything , besides providing a service based on your agreement for the first 40 FT container !

Anything else I absolutely refuse !

Good luck and Looking forward to hearing from your lawyer.

Michelle

**From:** Madhu Sameer [mailto:madhu.bambroo@gmail.com]  
**Sent:** Monday, August 3, 2015 4:22 PM

**To:** Michelle Franklin  
**Subject:** Re: Insurance

Your people filled up the container with things I did not want to carry, and then you refused to take it off.

But to cut the long story short. Let me know if you refuse to provide a contract for second shipment before I pay for the first shipment?

And you will not pay for the shipment which I carried with me ?

I wanted to know your plans before I call my attorney...so be very careful what you say....

M.,.

**From:** Madhu Sameer [mailto:madhu.bambroo@gmail.com]  
**Sent:** Monday, August 3, 2015 4:04 PM

**To:** Michelle Franklin  
**Subject:** Re: Insurance

Mp<ochelle, you ship the second shipment details before I make the payment. Otherwise I don't know what you are shipping and if at all.

It doesn't make sense to pay you and then leave myself at your mercy. The terms and conditions of the second shipment are already decided. So it should be no issue.

Please send me the contract.

The air shipment was due to your failure to pick up all the scheduled freight repeatedly. Therefore it is part of the consignment.

I will pay when you resolve the issues.

It is best that we find a resolution else I will be forced to file a complaint with the licensing authority along with all documentation showing how you have been manipulating me, making me sign documents without providing me a copy, circumventing procedures and policies, and therefore causing grievous financial and other harm to me.

On Tue, Aug 4, 2015 at 4:42 AM, Michelle Franklin <mfranklin@therightmove4u.com> wrote:

Hey Madhu,

Thank you for your e-mail,

I left the office early on Friday and didn't get a chance to see your e-mails,

There is no need to send 10 E-mails at a time, you need to give me a chance to reply .

The Insurance is a full coverage Insurance , and we already applied it, so if there will be damages to individual items you will be fully covered.



150 Motor parkway suite # 401, Hauppauge, NY 11788

Toll free # 1-855-344-5874 fax: 347-368-6536

[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)

**Invoice # 209160**

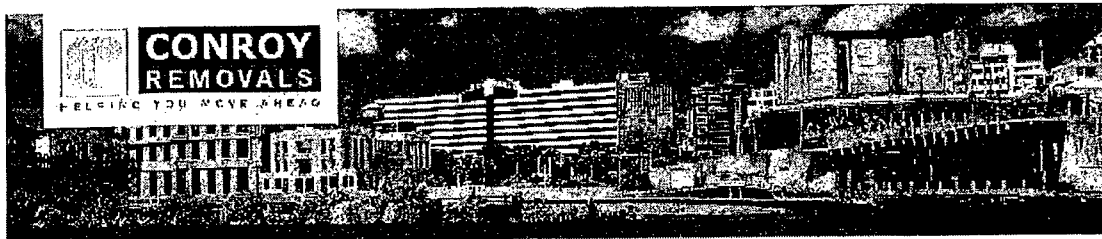
**Bill To:**

**Madhu Sameer  
9976 North Recreation Ave  
Fresno, CA 93720**

**Shipper information:**

Service	Amount
Line Haul Charges for 40 FT Container	\$6,500.00
Furniture packing and loading	\$2,100.00
Documentation fee	\$95.00
Full Coverage Insurance for \$115,250 ( first \$10,000 - Free ) + Processing fee	\$3,232.50
<b>Total</b>	<b>\$11,927.50</b>
<b>Paid so far</b>	<b>(-\$1,290.00)</b>
<b>Total balance to be paid</b>	<b>\$10,637.50</b>

**Payment is due upon receipt.**



## ARRIVAL NOTIFICATION

13/08/2015

Madhu Sameer  
Christchurch

Dear Madhu

Our Reference: 2114544

I am pleased to confirm that we have received notification from our partners, The Right Move, Inc, regarding the arrival of your personal and household effects from Oakland as per the details below.

Vessel:	Cap Campbell	Container No:	TTNU4240630 FEU
Voyage :	414S	No. of Packages:	248.00
Bill of Lading:	2114544	Weight:	6,313.00 kg
Date of Arrival:	17/08/2015	Port of Arrival	Christchurch

We have been instructed that your shipment is for delivery to Door to door.

As you may be aware, it is necessary for your shipment to be cleared by the New Zealand Customs and Quarantine (MPI) services before it can be delivered to you. Please kindly complete and return the following documents to enable us to initiate processing.

- NZ Quarantine (MPI) Supplementary Declaration ([click to download](#))
- NZ Customs & Quarantine (MPI) Declaration - NZCS218 ([click to download](#))
- Delivery Instruction Form ([click to download](#))

Upon processing your shipment with New Zealand Customs and Quarantine (MPI), it may be assessed that duties/taxes, physical inspections or treatments, such as fumigation or steam cleaning, be required. If so the charges associated with these are generally excluded from your removal contract and are payable prior to the delivery of your shipment. Should any of these be applicable we will advise you accordingly.

Once Customs and Quarantine clearances have been obtained we will contact you to make delivery arrangements. If you require storage, or are unable to take delivery, I am pleased to advise that we have secure storage services available at the following charges applicable from 28/08/15.

Storage Charge per Month:	\$129.49
Storage Handling:	\$563.00

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## Bill of Lading

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### Terms & Conditions

#### DEFINITIONS

Carriage:	Means the whole of the operations and services undertaken or performed by or on behalf of the Carrier in respect of the Goods.
Carrier:	Means the Company stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been signed.
CHARGES	Means freight and all expenses and money obligations incurred and payable by the Merchant.
COGSA:	Means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936.
COGWA:	Means the Hague-Visby Rules.
Combined Transport:	Arises where the carriage called for by this Bill of Lading is not a Port to Port shipment.
Container:	Means any container, trailer, transportable tank, lift van, flat, pallet, or any similar article of transport used to consolidate goods.
Defenses:	Means all rights, immunities, exclusions, exemptions, defenses, limitations, however described (no matter whether arising by law or by contract), which might abate, bar, defeat or diminish any recovery against the Carrier.
Freight:	Means all of the following relating to or in connection with the Goods: ocean freight and other charges provided by the Carrier's applicable tariff, including but not limited to ad valorem charges, advance charges and less than full container load service charges, currency adjustment factor, bunker adjustment factor, surcharges, war risk premiums, arbitrary and accessorial charges; all charges arising as a result of changing the port of loading or discharge, and expenses arising or incurred under this Bill of Lading; additional freight or other charges; deadfreight; special freight for the carriage of special containers; return freight if the Goods are returned.
Goods:	Means the cargo supplied by the Merchant and includes any Container not supplied by or on behalf of the Carrier.
Hague Rules:	Means the provisions of the International Convention for Unification of certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924.
Hague-Visby Rules:	Means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968.
Merchant:	"Merchant" includes the shipper, the consignee, the receiver or the Goods, the holder of this Bill of lading, any person owning or entitled to the possession of the Goods or this Bill of Lading, any person having a present or future interest in the Goods or any person acting on behalf of any of the above mentioned persons.
Package:	(1) the Container when the Goods are shipped in a Container (2) the skid or pallet when Goods are shipped on a skid or pallet and stuffed in a Container, and the Container is adjudged not to be the package for the purposes of the Carrier's limitation of liability (3) the skid or pallet when Goods are shipped on a skid or pallet but not in a Container (4) that shipping unit which contains the greatest quantity of the Goods and to which some packaging preparation for transportation has been made which facilitates handling even though it does not conceal or completely enclose the Goods. This clause does not apply to Goods shipped in bulk, and it supersedes any inconsistent provision which may be printed, stamped or written elsewhere in this Bill of Lading.
Participating Carrier:	Means the ocean carrier and any other water, land or air carrier involved in the Carriage of the Goods whether it be a Port to Port or a Combined Transport movement.
Person:	"Person" includes any individual, a partnership, a body corporate or other entity.
Port to Port Shipment:	Means when the port of loading and the port of discharge only are shown on the face hereof and neither the place of acceptance nor the final destination are stipulated on the face hereof.
Shipping Unit:	"Shipping Unit" includes freight unit and the term "unit" as used in the Hague Rules and Hague Visby Rules.
Stuffed:	"Stuffed" included filled, consolidated, packed, loaded or secured.

#### Carrier's Tariff

The provisions of the Carrier's applicable tariff, are incorporated herein. A copy of the applicable tariff is available for review in the Carrier's web-site upon payment of a reasonable charge, if any, set out in the Carrier's tariff and/or where applicable, upon request, obtainable from the Interstate Commerce Commission or other regulatory body with whom the tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

#### WARRANTY

0143

The Merchant warrants that in agreeing to the terms hereof he is or is the agent of and has the authority of the person owing or entitled to the possession of the Goods or any person who has a present or future interest in the Goods.

### Non-Negotiability of Bill of Lading

This Bill of Lading shall be non-negotiable unless made out "to order" in which event it shall be negotiable and shall constitute title to the Goods and the holder shall be entitled to receive or to transfer the Goods herein described.

### Certain Rights and Immunities for the Carrier and Other Persons

1. The carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage.
2. It is expressly agreed that any and all servants, agents and independent contractors (including the Master, officers, and crew of the vessel, participating carrier, all terminal operators, warehousemen, stevedores, watchman, husbanding agents, managing agents, general agents, ship's agents, and all other agents, subcontractors and independent contractors whatsoever as well as any officers, directors, agents or employees of any of the foregoing) used or employed by the Carrier in connection with the performance of any or all of Carrier's obligations under this Bill of Lading, in consideration of the agreement to be so used or employed, shall be express beneficiaries under this Bill of Lading and shall have the benefit of all defenses to which the Carrier is entitled so that in no circumstances shall any servant, agent or independent contractor of the Carrier be under any liability in contract, warrant, tort (including negligence) indemnity or contribution, greater than that of the Carrier to anyone other than the Carrier.
3. The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (and any expense arising therefrom) arising from the Carriage of the Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading.
4. The defenses and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier whether the action be found in Contract or in Tort.

### CLAUSE PARAMOUNT

1. To and From non-United States Ports. As far as this Bill of Lading covers the Carriage of Goods by sea to and from non-U.S. ports by the Carrier and any Participating Carrier, the Contract evidenced in this Bill of Lading shall have effect subject to the Hague-Visby Rules, if and as enacted in the country of shipment and any legislation making those Rules compulsorily applicable to this Bill of Lading shall be deemed incorporated herein and made part of this Bill of Lading contract. When no such enactment is in force in the country of shipment, the Hague-Visby Rules will apply. The Hague-Visby Rules shall also govern before the Goods are loaded on and after they are discharged from the vessel and throughout the entire time the Goods are in the actual custody of the Carrier or Participating Carrier. The Hague-Visby Rules shall also apply to the Carriage of Goods by inland waterways and reference to carriage by sea in such Rules or legislation shall be deemed to include reference to inland waterways.
2. To or From United States ports. If the Carriage called for in this Bill of Lading is a shipment to or from the United States, the liability of the Carrier shall be exclusively determined pursuant to COGSA; the Pomerene Act [49 U.S.C. 80101 et. seq.] for both export and import cargo moving to/from the United States; and Article 7-301 of the Uniform Commercial Code. The provisions cited in the Hague Rules and COGSA shall also govern before the Goods are loaded on and after they are discharged from the Vessel and throughout the entire time the Goods are in the actual custody of the Carrier or Participating Carrier.
3. The Carrier shall be entitled to (and nothing in this Bill of Lading shall operate to deprive or limit such entitlement) the full benefit of, and rights to, all limitation of and exclusions from liability and all rights conferred or authorized by any applicable law, statute or regulation of any country (including, but not limited to, where applicable any provisions or sections 4281 to 4287, inclusive, of the Revised Statutes of the United States of America and amendments thereto and where applicable any provisions of the laws of the United States of America) and without prejudice to the generality of the foregoing also any law, statute or regulation available to the Owner of the vessel on which the Goods are carried.

### Carrier's Responsibility

The Carrier shall not be responsible for any loss to the Goods however caused occurring while the Goods are not in the actual custody of the Carrier.

#### **1. PORT TO PORT SHIPMENT**

The responsibility of the Carrier is limited to that part of the Carriage from and during loading onto vessel up to and during discharge from the vessel and the Carrier shall not be liable for any loss or damage whatsoever in respect of the Goods or for any other matter arising during any other part of the Carriage even though Charges for the whole Carriage have been charged by the Carrier. The Merchant appoints and/or authorizes the Carrier as agent to enter into contracts on behalf of the Merchant with others for transport, storage, handling, or any other services in respect of the Goods prior to loading and subsequent to discharge of the Goods from the vessel without responsibility for any act or omission whatsoever on the part of the Carrier or others and the Carrier may as such agent enter into contracts with others on any terms whatsoever including terms less favorable than the terms in this Bill of Lading.

#### **2. COMBINED TRANSPORT**

- A. The carrier acts as agent for Merchant with regard to procuring inland and ocean transportation. If, for any reason, it is adjudged that the Carrier was not acting as the Merchant's agent, then in addition to the defenses and limitation of liability permitted to the Carrier by law and by this Bill of Lading, the Carrier shall also have the benefit of all defenses available to the participating carrier(s) by law and by the terms of its or their contracts of Carriage and tariffs, all of which shall be deemed incorporated in this Bill of Lading, as applicable and with respect to inland transportation of the Goods, Carrier will be afforded all of the defenses according to the provisions of any International Convention or national law which is compulsorily applicable in the country, where the inland transportation took place or, if no such law or convention is applicable, then according to the Participating Carrier's contracts of carriage and/or tariffs, if any.
- B. Save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss of or damage to the Goods occurring from the time that the Goods are taken into his charge until the time of delivery to the agent set out below.
  - i. If the place where the loss or damage occurred cannot be proven.
    - a. The Carrier shall be entitled to rely upon all Defenses under COGSA or the Hague-Visby Rules under 6(a) or (b) above had the loss or damage occurred at sea or where the loss or damage occurred cannot be proved, said loss or damage shall be presumed to have occurred at sea.

- b. Where under (i) above, the Carrier is not liable in respect of some of the factors causing the loss or damage, the Carrier shall only be liable to the extent that those factors for which he is liable have contributed to the loss or damage.
  - c. Subject to 8(c) below, where the Hague Rules (such as COGSA) or the Hague-Visby Rules (such as COGWA) or any legislation applying either Rules is not compulsorily applicable, the Carrier's liability shall not exceed US\$500 per package or shipping unit or US\$2.00 per kilo of the gross weight of the Goods lost, damaged in respect of which the claim arises or the value of such Goods, whichever is the less.
  - d. The value of the goods shall be determined according to the CIF value.
- ii. If the place where the loss or damage occurred can be proved:
    - a. The liability of the Carrier shall be determined by the provisions contained in any international convention or national law of the country which provisions:
      - A. cannot be departed from by private contract to the detriment of the Merchant; and
      - B. would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of Carriage where the loss or damage occurred and had received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable;
    - b. With respect to the transportation in the United States of America or in Canada to the Port of Loading or from the Port of Discharge the responsibility of the Carrier shall be to procure transportation by carriers (one or more) and such transportation shall be subject to the inland carriers contract of carriage and tariffs and any law compulsorily applicable. The Carrier guarantees the fulfillment of such inland carrier's obligations under their contracts and tariffs;
    - c. Where neither (i) or (ii) above apply any liability of the Carrier shall be determined by 7(b)(A) above.

## GENERAL PROVISIONS

1. Delay, Consequential Loss Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport.
2. Package or Shipping Unit Limitation where the Hague Rules (COGSA) or Hague-Visby Rules (COGWA) or any legislation making either Rules compulsorily applicable to this Bill of Lading, the Carrier shall not unless a declared value has been noted in accordance with (C) below, be or become liable for any loss or damage to or in connection with the Goods in an amount per package or shipping unit in excess of the package or shipping unit limitation as laid down by either of the Rules or legislation. Such limitation amount according to COGSA is US\$500 and according to COGWA is 666.67 units of account per package or units of account per kilogram of gross weight of the Goods lost or damaged, whichever is the higher. If no limitation amount is applicable under either of the Rules or legislation the limitation shall be US\$500.
3. Ad Valorem: Declared Value of Package or Shipping Unit The Carrier's liability may be increased to a higher value by a declaration in writing of the value of the Goods by the shipper upon delivery to the Carrier of the Goods for shipment, such higher value being inserted on the front of this Bill of Lading in the space provided and, if required by the Carrier, extra freight paid. In such case, if the actual value of the Goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
4. Rust, etc. It is agreed that superficial rust, oxidation or any like condition due to moisture is not a condition of damage but is inherent to the nature of the Goods and the acknowledgement of the receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on receipt.
5. Notice of Loss or Damage the Carrier shall be deemed prima facie to have delivered the Goods as described in this Bill of Lading unless notice of loss or of damage to the Goods indicating the general nature of such loss or damage shall have been given in writing to the Carrier or to his representative at the place of delivery before or at the time of removal of the Goods into the custody of the person entitled to delivery thereof under this Bill of Lading or, if the loss or damage is not apparent, within three consecutive days thereafter.
6. Time-bar
  - A. Unless notice of loss and the general nature of such loss be given in writing to the Carrier at the port of discharge or place of delivery before or at the time of delivery of the Goods or if the loss is not apparent, within three (3) consecutive days after that delivery, the Goods shall be presumed to have been delivered as described in this Bill of Lading.
  - B. Where the loss has occurred in the custody of a Participating Carrier, the Carrier shall be discharged from all liability in respect of loss unless notice of claim is filed and suit is brought within nine (9) months after delivery of the Goods or the date when the Goods should have been delivered or the time period prescribed by the Participating Carrier's contract of carriage, tariff or by law covering such Participating Carrier or overland carriage whichever is less (in the United States, pursuant to the Carmack Amendment, 49 U.S.C. 11-107(a), suit must be brought within nine months).
  - C. In any event, the Carrier shall be discharged from all liability in respect of loss unless suit is brought within one (1) year after delivery of the Goods or the date when the Goods should have been delivered.

## Merchant's Responsibility

1. The description and particulars of the Goods set out on the face hereof are furnished by the Merchant and the Merchant warrants to the Carrier that the description and particulars including, but not limited to, of weight, content, measure, quantity, quality, condition, marks, numbers and value are correct.
2. The Merchant shall comply with all applicable laws, regulations and requirements of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts expenses and losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
3. The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable.
4. No Goods which are or may become dangerous, inflammable or damaging or which are or may become liable to damage any property or person whatsoever shall be tendered to the Carrier for Carriage without the Carrier's express consent in writing and without the Container or other covering in which the Goods are to be transported and the Goods being distinctly marked on the outside so as to indicate the nature and character of any such articles and so as to comply with all applicable laws, regulations and requirements. If any such articles are delivered to the Carrier without such written consent and marking or if in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Charges.

5. The Merchant shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Carrier or any person or vessel (other than the Merchant) referred to in 5(2) above caused by the Merchant or any person acting on his behalf or for which the Merchant is otherwise responsible.
6. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause 9 or from any cause in connection with the Goods for which the Carrier is not responsible.

### CONTAINERS

1. Goods may be stuffed by the Carrier in or on Containers and Goods may be stuffed with other Goods.
2. The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant.
3. If a Container has been stuffed by or on behalf of the Merchant.
  - A. The Carrier shall not be liable for loss of or damage to the Goods
    - i. caused by the manner in which the Container has been stuffed
    - ii. caused by the unsuitability of the Goods for carriage in Containers
    - iii. caused by the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Carrier, this paragraph (iii) shall only apply if the unsuitability or defective condition arose
      - a. without any want of due diligence on the part of the Carrier or
      - b. would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was stuffed
    - iv. if the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the Container.
  - B. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from one or more of the matters covered by (A) above except for (A)(iii)(a) above.
4. Where the Carrier is instructed to provide a Container, in the absence of a written request to the contrary, the Carrier is not under an obligation to provide a Container of any particular type or quality.

### Temperature Controlled Cargo

1. The Merchant undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice (and filling in the box on the front of this Bill of Lading if this Bill of Lading has been prepared by the Merchant or a person acting on his behalf) of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Merchant further undertakes that the Container has been properly pre-cooled, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. If the above requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods caused by such non compliance.
2. The Carrier shall not be liable for any loss of or damage to the Goods arising from defects, derangement, breakdown stoppage of the temperature controlling machinery, plant, insulation or any apparatus of the Container, provided that the Carrier shall before or at the beginning of the Carriage exercise due diligence to maintain the refrigerated Container in an efficient state.

### Inspection of Goods

The Carrier or any person authorized by the Carrier shall be entitled, but under no obligation, to open any Container or Package at any time and to inspect the Goods.

### Matters Affecting Performance

1. If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Goods) whensoever and howsoever arising (whether or not the Carriage has commenced) the Carrier may:
  - A. without notice to the Merchant abandon the Carriage of the Goods and where reasonably possible place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease;
  - B. without prejudice to the Carrier's right subsequently to abandon the Carriage under A above, continue the Carriage.  
In any event the Carrier shall be entitled to full Charges on Goods received for Carriage and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.
2. The liability of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the orders or recommendations given by any government or authority or any person acting or purporting to act as or on behalf of such government or authority.

### Methods and Route of Transportation

1. The Carrier may at any time and without notice to the Merchant use
  - i. any means of transport or storage whatsoever,
  - ii. load or carry the Goods on any vessel whether named on the front hereof or not,
  - iii. transfer the Goods from one conveyance to another including transshipping or carrying the same on another vessel than that named on the front hereof or by any other means of transport whatsoever,
  - iv. at any place unpack and remove Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever including but not limited to unstuffing and stuffing of less than container loads into or on other containers at transshipment ports,
  - v. proceed at any speed and by any route in Carrier's discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place whatsoever once or more often and in any order,
  - vi. load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended Port of Loading or intended Port of Discharge),



- vii. comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions,
  - viii. permit the vessel to proceed with or without pilots, to tow or be towed or to be dry-docked,
  - ix. permit the vessel to carry Goods of all kinds, dangerous or otherwise.
2. If a less than a full container shipment is transhipped at any intermediate port, the Carrier may break the container seal to unstuff the shipment from the container and restuff that shipment into or on another container. In this respect, the Carrier is acting as the agent of the Merchant.
  3. The liberties set out in (1) and (2) above may be invoked by the Carrier for any purposes whatsoever whether or not connected with the Carriage of the Goods. Anything done in accordance with (1) above or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.

#### DECK CARGO (AND LIVESTOCK)

1. Goods of any description whether containerized or not may be stowed on or under deck without notice to the Merchant and such stowage shall not be a deviation of whatsoever nature or degree. Subject to (2) below, such Goods whether carried on deck or under deck shall participate in General Average and such Goods shall be deemed to be within the definition of Goods for the purposes of the Hague Rules or any legislation making such Rules or the Hague Visby Rules compulsorily applicable (such as COGSA) to this Bill of Lading.
2. Goods (not being Goods stuffed in or on Containers other than open flats or pallets) which are stated on the front of this Bill of Lading to be carried on deck and which are so carried are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during carriage by sea or inland waterway whether caused by unseaworthiness or negligence or any other cause whatsoever.

#### Notification And Delivery Clause

1. Any mention in this Bill of Lading of parties to be notified of the arrival of the Goods is solely for the information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability or remove the Merchant of any obligations hereunder.
2. The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable tariff.
3. If the Merchant fails to take delivery of the Goods or part of them in accordance with this Bill of Lading, the Carrier may without notice remove the Goods or that part thereof and/or store the Goods or that part thereof ashore, afloat, in the open or under cover. Such storage shall constitute due delivery hereunder and there upon all liability whatsoever of the Carrier in respect of the Goods or that part thereof shall cease.
4. The Merchant's attention is drawn to the stipulation concerning free storage time and demurrage contained in the Carrier's applicable Tariff, which is incorporated in this Bill of Lading.
5. Once free time has expired, the Goods will be stored at a warehouse or receiver's terminal at the sole risk and expense of the Merchant and the Goods. However, if the Carrier believes that the Goods are likely to deteriorate, decay, lose value or incur storage or other charges in excess of their value, the Carrier may, without notice to the Merchant, publicly or privately sell or dispose of the Goods and apply the proceeds of the disposition in reduction of the Freight, and any other charges associated with the warehousing and/or sale of the Goods.

#### Both-to-Blame Collision

The both blame clause published by the Baltic and International Maritime Counsel (BIMCO) is incorporated herein by this reference.

#### GENERAL AVERAGE

1. The Carrier may declare General Average which shall be adjustable according to the York/Antwerp Rules of 1974 at any place at the option of the Carrier and the Amended Jason Clause as approved by BIMCO is to be considered as incorporated herein and the Merchant shall provide such security as may be required by the Carrier in this connection.
2. Notwithstanding (1) above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expense arising therefrom) of a General Average nature which may be made on the Carrier and shall provide such security as may be required by the Carrier in this connection.
3. The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

#### CHARGES

1. Charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event, whether vessel, inland carrier and/or cargo lost or not lost.
2. The Charges have been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier shall be entitled to production of the commercial invoice for the Goods or true copy thereof and to inspect, reweigh, remeasure and revalue the Goods and if the particulars are found by the Carrier to be incorrect the Merchant shall pay the Carrier the correct Charges (credit being given for the Charges charged) and the costs incurred by the Carrier in establishing the correct particulars.
3. All Charges shall be paid without any set off, counterclaim, deduction or stay of execution.
4. Any person, firm or corporation engaged by any party to perform forwarding services with respect to the Goods shall be considered the exclusive agent of the Merchant for all purposes and any payment of Freight to such person, firm or corporation shall not be considered payment to the Carrier in any event. Failure of such person, firm, or corporation to pay any part of the Freight to the Carrier shall be considered a default by the Merchant in the payment of the Freight.
5. Should the Merchant fail to make timely payment of the applicable Freight, the Merchant shall be liable to Carrier for all costs and expenses including attorneys' fees associated with the collection of such Freight from the Merchant plus 6% of interest calculated from the date the Freight became due.

#### LIEN

The Carrier shall have a lien for General Average contribution and for Freight for the Carriage of the Goods and on any documents relating to the Goods as well as in respect to unpaid Freight from any previous Carriage on behalf of the Merchant who owes that Freight to the Carrier. The Carrier has the right to sell the Goods at public or private sale without notice to the Merchant to satisfy the lien in whole or in part. If the proceeds of this sale fail to cover the whole amount due, the Carrier is entitled to recover the deficit from the Merchant.

#### Variation of the Contract

No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by a director or officer of the Carrier who has the actual authority of the Carrier so to waive or vary.

#### Partial Invalidity

If any provision in this Bill of Lading is held to be invalid or unenforceable by any court or regulatory or self regulatory agency or body, such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby and this Bill of Lading contract shall be carried out as if such invalid or unenforceable provision were not contained herein.

#### Law and Jurisdiction

- a. To Or From United States Ports. The claims arising from or in connection with or relating to this Bill of Lading shall be exclusively governed by the law of the United States. Any and all action concerning custody or carriage under this Bill of Lading whether based on breach of contract, tort or otherwise shall be brought before the United States District Court for the Southern District of New York.
- b. To And From Non-U.S. Ports. The claims arising from or in connection with or relating to this Bill of Lading shall be exclusively governed by English law. Any and all actions concerning custody or carriage under this Bill of Lading whether based on breach of contract, tort or otherwise shall be brought before a London court of competent jurisdiction.

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**NON-NEGOTIABLE SEA WAYBILL FOR COMBINED TRANSPORT OR PORT TO PORT**

1. Shipper <small>Insert Name Address and Phone/Fax</small>		Booking No.	Sea Waybill No.
SHIPCO TRANSPORT INC 699 KAPKOWSKI ROAD TAX ID: 13-3468377 ELIZABETH NJ US 07201		8011637360	COSU8011637360
2. Consignee <small>Insert Name Address and Phone/Fax</small>		Export References	
CONROY REMOVALS PTY LTD 7 AIRPARK DRIVE MANGERE, AUCKLAND, NEW ZEALAND,		ECN15090 10179725 1506064190	
3. Notify Party <small>Insert Name Address and Phone/Fax</small> <small>(It is agreed that no responsibility shall attach to the Carrier or his agents for failure to notify)</small>		Forwarding Agent and References FMC/CHB No.	
SAME AS CONSIGNEE PHONE: +64-9-275-0010 FAX: +64-9-275-0020 E-MAIL : IMPORTS@CONROYREMOVALS.CO.NZ		Point and Country of Origin	
4. Combined Transport* <small>Pre-Carriage by</small>		5. Combined Transport* <small>Place of Receipt</small>	
6. Ocean Vessel Voy. No. HANJIN BOSAL 0003W		Service Contract No. ECN15090	Commodity Code
7. Port of Loading OAKLAND, CA	8. Port of Discharge LYTTELTON	9. Combined Transport* <small>Place of Delivery</small> LYTTELTON	Type of Movement FCL / FCL CY-CY

Marks & Nos. Container / Seal No.	No. of Container or Packages	Description of Goods (If Dangerous Goods. See Clause 20)	Gross Weight	Measurement
AES# X20150622343238 N/M	248 PIECES	1X40'GP CONTAINER SLAC: OF USED HOUSEHOLD GOODS AND PERSONAL EFFECT. NO COMMERCIAL VALUE. NOT FOR RESALE HS CODE # 9905 00 00	4535.924KGS 10000.000LBS	56.6340CBM 2000.000CFT
OCEAN FREIGHT PREPAID SHIPPER'S LOAD AND COUNT SEAWAY BILL AUTHORIZED NO ORIGINAL ISSUED. THESE COMMODITIES, TECHNOLOGIES OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW IS PROHIBITED.				
TTNU4240630 /4857782	/	248 PIECES /FCL / FCL	/40GP/4,535.924KG	

Declared Cargo Value US\$ Description of Contents for Shipper's Use Only (Not part of This Sea Waybill Contract)

10. Total Number of Containers and/or Packages (in words) **SAY ONE CONTAINER TOTAL**  
Subject to Clause 7 Limitation

11. Freight & Charges	Revenue Tons	Rate	Per	Amount	Prepaid	Collect	Freight & Charges Payable at / by

Received in external apparent good order and condition except as otherwise noted. The total number of the packages or units stuffed in the container, the description of the goods and the weights shown in this Sea Waybill are furnished by the merchants, and which the carrier has no reasonable means of checking and is not a part of this Sea Waybill contract. The carrier has issued 0 Sea Waybill. The merchants agree to be bound by the terms and conditions of this Sea Waybill as if each had personally signed this Sea Waybill.  
\* Applicable Only When Document Used as a Combined Transport Sea Waybill.  
Demurrage and Detention shall be charged according to the tariff published on the Home page of WWW.COSCON.COM. If any ambiguity or query, please search by "Demurrage & Detention Tariff Enquiry". Other services and more detailed information, pls visit WWW.COSCON.COM.

Date Laden on Board **5 JUL 2015**  
Signed by:  
**COSCO CONTAINER LINES  
AMERICAS, INC.**  
**, AS AGENT**

9805 Date of Issue 5 JUL 2015 Place of Issue HOUSTON Signed for the Carrier, COSCO CONTAINER LINES CO., LTD.

CUSTOMER'S NAME:

Sameer

REMOVAL PLAN NUMBER:

2114544

PAGE No.

1 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

BB - Bubble Wrap    CN - Carton    DP - Dishpack Carton    CC - Clothing Carton  
MW - Mattress Wrap    BDL - Bundle    BC - Book Carton    CT - Crate  
PC - Picture Carton    PR - Portarobe    BW - Blanket Wrap    PKG - Package

**TRANSPORT MODE**

SEA     AIR     ROAD

**CONDITION SYMBOLS**

BE - Bent    D - Dented    M - Marked    SC - Scratched    BR - Broken  
F - Faded    MI - Mildew    SH - Short    BU - Burned    G - Gouged  
MO - Moth Eaten    T - Torn    CH - Chipped    L - Loose    R - Rubbed  
W - Badly Worn    CU - Contents & Conditions Unknown    RU - Rusted    CR - Cracked

**LOCATION SYMBOLS**

1 Arm    2 Bottom    3 Corner  
4 Front    5 Left    6 Leg  
7 Rear    8 Right    9 Side  
10 Top    11 Veneer    12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload.	Reload	Unload	Reload	Dest	
1	PKG									
2		Butterfly ornament								
3		Rug								
4	PKG									
5	PKG									
6	PKG									
7	CN									Open slightly top pushed
8		Water fountain - indoor								
9		Table base								Scratched
10		Tripod								
1		Pack timber								Scratched
2		hat								
3		Sun - ornament								
4		" "								
5		Chair								
6		Rain stick								
7		Pillow - cushion								
8	CN									damaged
9		stand								
20		Suitcase								
1	PKG									
2		Outdoor table								
3		Outdoor chair								
4		Fountain - Outdoor								
5		Music stand								
6	CN									damaged
7	CN									Opened
8		Santa claus								
9		Music instrument								
30	CN									Not packed

Checker Initials:

Item No. Remarks/Exceptions:

**IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above**

By signing at origin I/We confirm that all items have been uplifted and by signing at destination I/We acknowledge receipt in good order of all items on this Inventory unless noted. Also by signing the document I/We agree to the terms and conditions of the contract.

**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0150



BRANCH:

## INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No. 2 OF

ORIGIN:

DESTINATION:

## PACKAGE ABBREVIATIONS

BB - Bubble Wrap      CN - Carton      DP - Dishpack Carton      CC - Clothing Carton  
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## TRANSPORT MODE

 SEA       AIR       ROAD

## CONDITION SYMBOLS

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 7 Rear      8 Right      9 Side  
 10 Top      11 Veneer      12 Edge

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
3	1	Table - side table								
	2	Glass table top								
	3	Art work								
	4	Art work								
	5	Steak picture								
	6	Mattress								No bag - Damage
	7	Keyboard								
	8	Roll of carpet								
	9	Keyboard stand								
4	0	Pack shelves								Scratched
	1	large Santa								
	2	cord								
	3	RIG Art								
	4	Mattress								Unpacked - damaged
	5	trampoline case								scratched
	6	Umbrella								
	7	Umbrella base								
	8	wooden <del>table</del> bench seat								Scratched
	9	Outdoor chair								
5	0	Outdoor chair								Scratched
	1	Outdoor chair								
	2	Outdoor chair								
	3	Outdoor table parts								scratched
	4	Outdoor table parts								Scratched
	5	Carpet								
	6	Glass table								Not Unpacked - damaged
	7	Outdoor cushion								
	8	Outdoor chair								
	9	Outdoor chair								
6	0	BBQ Parts								

Checker Initials:

Item No. Remarks/Exceptions:

IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above

By signing at origin I/We confirm that all items have been uplifted and by signing at destination I/We acknowledge receipt in good order of all items on this Inventory unless noted. Also by signing the document I/We agree to the terms and conditions of the contract.

## AUTHORISATION OF CORRECTNESS AT ORIGIN

## AUTHORISATION OF CORRECTNESS AT DESTINATION

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)		0151	(SIGNATURE)	



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

3 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

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**LOCATION SYMBOLS**

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10 Top	11 Veneer	12 Edge

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
6		Outdoor chair								Scratched
2		Outdoor chair								damaged
3		Outdoor chair								damaged
4		Plastic part - Keyboard								
5		Guitar stand								
6		Outdoor plant stand								
7	CN									damaged - Act
8	PKG									
9	CN									
7		Outdoor chair								Scratched
1		Outdoor chair								
2		Boxes - shrink wrapped								
3	CN	BC								
4	CN	BC								
5		Table top - outdoor								
6		Statue								
7		Chair - dining								Scratched - L
8		Chair								Scratched
9	CN	BC								
8	CN	BC								
1		Cane - dining chair								
2		Cane - dining chair								damaged
3	CN	PBO								"
4	CN	PBO								"
5	CN	PBO								
6	CN	PBO								damaged
7		Outdoor cushion								
8		Outdoor cushion								
9		Outdoor cushion								
9		Wooden coffee table								scratched

Checker Initials:

Item No. Remarks/Exceptions:

**IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above**

By signing at origin I/We confirm that all items have been uplifted and by signing at destination I/We acknowledge receipt in good order of all items on this inventory unless noted. Also by signing the document I/We agree to the terms and conditions of the contract.

**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)		0152	(SIGNATURE)	



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:	REMOVAL PLAN NUMBER:	PAGE No. <b>4</b> OF
ORIGIN:	DESTINATION:	

<b>PACKAGE ABBREVIATIONS</b>				<b>TRANSPORT MODE</b>			
BB - Bubble Wrap	CN - Carton	DP - Dishpack Carton	CC - Clothing Carton	<input type="checkbox"/> SEA	<input type="checkbox"/> AIR	<input type="checkbox"/> ROAD	
MW - Mattress Wrap	BDL - Bundle	BC - Book Carton	CT - Crate				
PC - Picture Carton	PR - Portarobe	BW - Blanket Wrap	PKG - Package				
<b>CONDITION SYMBOLS</b>				<b>LOCATION SYMBOLS</b>			
BE - Bent	D - Dented	M - Marked	SC - Scratched	BR - Broken	1 Arm	2 Bottom	3 Corner
F - Faded	MI - Mildew	SH - Short	BU - Burned	G - Gouged	4 Front	5 Left	6 Leg
MO - Moth Eaten	T - Torn	CH - Chipped	L - Loose	R - Rubbed	7 Rear	8 Right	9 Side
W - Badly Worn	CU - Contents & Conditions Unknown	RU - Rusted	CR - Cracked		10 Top	11 Veneer	12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
9	CN	PBO								damaged
2		Shelf part								
3		Shelf part								damaged
4		chest of drawers								scratched side
5		Shelf parts								scratched side
6		Shelf parts								
7		Shelf parts								
8		Shelf parts								
9		Shelf parts								
10		Shelf parts								
1		Shelf parts								
2		Shelf parts								
3		Shelf parts								
4		Shelf parts								
5		Shelf parts								
6		Shelf parts								
7		Shelf parts								
8		Shelf parts								
9	CN	PBO BC								
11		coffee table								damaged
1		table - side								damaged - SC
2		containers - Bundle								
3		Containers - Bundle								
4		ladder								
5		Pack - shelves								damaged - SC
6		bed Base - Single								
7		roll of fabric								
8	PKG									
9		bookcase - part								damaged - SC
12		Music stand - tripod								

Checker Initials:

Item No.	Remarks/Exceptions:

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<b>AUTHORISATION OF CORRECTNESS AT ORIGIN</b>		<b>AUTHORISATION OF CORRECTNESS AT DESTINATION</b>	
CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
(SIGNATURE)		(SIGNATURE)	
OWNER OR AUTHORISED AGENT	DATE	OWNER OR AUTHORISED AGENT	DATE
(SIGNATURE)		(SIGNATURE)	

**0153**



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

5 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

BB - Bubble Wrap      CN - Carton      DP - Dishpack Carton      CC - Clothing Carton  
 MW - Mattress Wrap      BDL - Bundle      BC - Book Carton      CT - Crate  
 PC - Picture Carton      PR - Portarobe      BW - Blanket Wrap      PKG - Package

**TRANSPORT MODE**

SEA       AIR       ROAD

**CONDITION SYMBOLS**

BE - Bent      D - Dented      M - Marked      SC - Scratched      BR - Broken  
 F - Faded      MI - Mildew      SH - Short      BU - Burned      G - Gouged  
 MO - Moth Eaten      T - Torn      CH - Chipped      L - Loose      R - Rubbed  
 W - Badly Worn      CU - Contents & Conditions Unknown      RU - Rusted      CR - Cracked

**LOCATION SYMBOLS**

1 Arm      2 Bottom      3 Corner  
 4 Front      5 Left      6 Leg  
 7 Rear      8 Right      9 Side  
 10 Top      11 Veneer      12 Edge

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
12		Ornamental table								SC - damaged
	CN	PBO								
	CN	PBO BC								
		Towel Rack								
		desk								
		candle stand								
		Bookcase								damaged - SC
		Bedside Cabinet								damaged - SC
	CN	BC - PBO								
13	CN	BC - PBO								damaged - SC
		coffee table								damaged - SC
		Violin - in case								damaged - SC
		curtain parts								
		Table top - dining								damaged - SC
		Table top - dining								
		Viola - wrapped								
		Curtain parts								
		Bed end								damaged - SC
		writing desk								damaged - SC
14		Rack								damaged - SC
		Book shelves								
	CN	PBO								
	CN	PBO								
	CN	PBO								
		Seat								damaged -
		Seat								
	CN	PBO								
		Chair								damaged - SC
		Fire place surround								
15		Xmas decorations								

Checker Initials:

Item No.	Remarks/Exceptions:

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**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0154





BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

6 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

**TRANSPORT MODE**

BB - Bubble Wrap    CN - Carton    DP - Dishpack Carton    CC - Clothing Carton  
 MW - Mattress Wrap    BDL - Bundle    BC - Book Carton    CT - Crate  
 PC - Picture Carton    PR - Portarobe    BW - Blanket Wrap    PKG - Package

SEA     AIR     ROAD

**CONDITION SYMBOLS**

**LOCATION SYMBOLS**

BE - Bent    D - Dented    M - Marked    SC - Scratched    BR - Broken  
 F - Faded    MI - Mildew    SH - Short    BU - Burned    G - Gouged  
 MO - Moth Eaten    T - Torn    CH - Chipped    L - Loose    R - Rubbed  
 W - Badly Worn    CU - Contents & Conditions Unknown    RU - Rusted    CR - Cracked

1 Arm    2 Bottom    3 Corner  
 4 Front    5 Left    6 Leg  
 7 Rear    8 Right    9 Side  
 10 Top    11 Veneer    12 Edge

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
15		Xmas decorations								
2		Chair								
3		Cabinet								damaged-SC
4	CN	BC - PBO								
5		Bookcase								
6		Pack Shelves								damaged-SC
7		Bookshelf								
8		Chair								
9		Chairs								damaged-SC
16		Chair - dining								damaged-SC
1		Chair - dining								damaged-SC
2	CN	PBO - Carton								
3		chest of drawers								damaged-SC
4	CN	PBO								
5		desk								
6	CN	PBO								
7	CN	PBO								
8		Bedside Cabinet								damaged-SC
9		Couch								damaged-SC
17		Fire Place								damaged-SC
1		rack of shelves								damaged-SC
2		rack of shelves								damaged-SC
3		rack of shelves								damaged-SC
4		rack of shelves								damaged-SC
5		rack of shelves								damaged-SC
6		Shelving								damaged-SC
7		Rack								damaged-SC
8		bookshelf								
9		bookshelf								damaged-SC
18		bookcase								damaged-SC

Checker Initials:

Item No. Remarks/Exceptions:

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**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)		0155	(SIGNATURE)	

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

7 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

**TRANSPORT MODE**

BB - Bubble Wrap      CN - Carton      DP - Dishpack Carton      CC - Clothing Carton  
MW - Mattress Wrap      BDL - Bundle      BC - Book Carton      CT - Crate  
PC - Picture Carton      PR - Portarobe      BW - Blanket Wrap      PKG - Package

SEA       AIR       ROAD

**CONDITION SYMBOLS**

**LOCATION SYMBOLS**

BE - Bent      D - Dented      M - Marked      SC - Scratched      BR - Broken  
F - Faded      MI - Mildew      SH - Short      BU - Burned      G - Gouged  
MO - Moth Eaten      T - Torn      CH - Chipped      L - Loose      R - Rubbed  
W - Badly Worn      CU - Contents & Conditions Unknown      RU - Rusted      CR - Cracked

1 Arm      2 Bottom      3 Corner  
4 Front      5 Left      6 Leg  
7 Rear      8 Right      9 Side  
10 Top      11 Veneer      12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
15	1 CN	PBO								
	2	Bookcase								
	3	Table Base								
	4	Table Base								damaged - SC
	5 BDL	Table parts -								
	6	Toy shelf								
	7 CN	PBO BC								
	8 CN	PBO BC								
	9 CN	PBO								
19	0	Bookcase								
	1	Small Bookcase								
	2	Bookcase								
	3	Roll of carpet								
	4 PKG									
	5 CN	PBO								
	6	Bookcase								damaged - SC
	7	bookcase								
	8	bookshelf - part								damaged - SC
	9	Garden arch								damaged -
20	0	Garden arch								damaged
	1	Garden arch								damaged
	2	Garden arch								damaged
	3	Bookcase								damaged
	4 CN	BC PBO								
	5	Roll of carpet								
	6 PKG									
	7	Tent								
	8 CN	PBO								Opened - damaged
	9 CN	PBO								Opened - damaged
21	0 CN	PBO BC								

Checker Initials:

Item No. Remarks/Exceptions:

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**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0156



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

8 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

**TRANSPORT MODE**

BB - Bubble Wrap      CN - Carton      DP - Dishpack Carton      CC - Clothing Carton  
 MW - Mattress Wrap      BDL - Bundle      BC - Book Carton      CT - Crate  
 PC - Picture Carton      PR - Portarobe      BW - Blanket Wrap      PKG - Package

SEA       AIR       ROAD

**CONDITION SYMBOLS**

**LOCATION SYMBOLS**

BE - Bent      D - Dented      M - Marked      SC - Scratched      BR - Broken  
 F - Faded      MI - Mildew      SH - Short      BU - Burned      G - Gouged  
 MO - Moth Eaten      T - Torn      CH - Chipped      L - Loose      R - Rubbed  
 W - Badly Worn      CU - Contents & Conditions Unknown      RU - Rusted      CR - Cracked

1 Arm      2 Bottom      3 Corner  
 4 Front      5 Left      6 Leg  
 7 Rear      8 Right      9 Side  
 10 Top      11 Veneer      12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
21 <sup>1</sup>	CN	PBO BC								
2	CN	PBO BC								
3	CN	PBO BC								
4		Chair								damaged
5		Roll of carpet								
6		tile board								
7		board								
8		Roll of carpet								
9		Chair								
22 <sup>0</sup>	CN	PBO								damaged
1		China Cabinet								damaged-SC
2		Chair								
3		China Cabinet								damaged-SC
4		Speaker								
5		Speaker								
6	CN	PBO-BC								
7	CN	PBO - Re taped								
8		Table legs								damaged-SC
9		Table top								
23 <sup>0</sup>		chair - dining								damaged
1	CN	PBO								
2	CN	PBO Pro pack wine glasses								
3	CN	PBO								
4	CN	PBO								
5		xmas decorations								
6	CN	PBO								
7	CN	PBO								damaged-crushed
8	CN	PBO								
9	CN	PBO								
24 <sup>0</sup>	CN	PBO								damaged crushed

Checker Initials:

damaged crushed

Item No. Remarks/Exceptions:

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**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0157



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

9 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS**

**TRANSPORT MODE**

BB - Bubble Wrap      CN - Carton      DP - Dishpack Carton      CC - Clothing Carton  
 MW - Mattress Wrap      BDL - Bundle      BC - Book Carton      CT - Crate  
 PC - Picture Carton      PR - Portarobe      BW - Blanket Wrap      PKG - Package

SEA       AIR       ROAD

**CONDITION SYMBOLS**

**LOCATION SYMBOLS**

BE - Bent      D - Dented      M - Marked      SC - Scratched      BR - Broken  
 F - Faded      MI - Mildew      SH - Short      BU - Burned      G - Gouged  
 MO - Moth Eaten      T - Torn      CH - Chipped      L - Loose      R - Rubbed  
 W - Badly Worn      CU - Contents & Conditions Unknown      RU - Rusted      CR - Cracked

1 Arm      2 Bottom      3 Corner  
 4 Front      5 Left      6 Leg  
 7 Rear      8 Right      9 Side  
 10 Top      11 Veneer      12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
24 <sup>1</sup>	CN	PBO								
2		Garden fountain								damaged carton
3		dining table parts								damaged - 3
4	CN	PBO								
5		xmas decorations								
6	CN	PBO								
7	CN	PBO								
8	CN	PBO								
9	CN	PBO								
25 <sup>0</sup>	CN	PBO								
1	CN	PBO								
2	CN	PBO								
3	CN	PBO								
4	CN	PBO								damaged
5	CN	PBO								
6	CN	PBO								
7	CN	PBO								
8	CN	PBO								
9	<del>CN</del>	Drawers								
26 <sup>0</sup>		Chair - Dining								damaged - SC
1		Chair - dining								damaged - SC
2		Chair - dining								damaged - SC
3	CN	PBO								
4		chair - dining								damaged - not in
5	CN	PBO								
6	CN	PBO								
7	CN	PBO								
8	CN	PBO								
9	CN	PBO								
27 <sup>0</sup>	CN	PBO								

Checker Initials:

Item No.	Remarks/Exceptions:

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**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0158



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

10 OF

ORIGIN:

DESTINATION:

### PACKAGE ABBREVIATIONS

BB - Bubble Wrap	CN - Carton	DP - Dishpack Carton	CC - Clothing Carton
MW - Mattress Wrap	BDL - Bundle	BC - Book Carton	CT - Crate
PC - Picture Carton	PR - Portarobe	BW - Blanket Wrap	PKG - Package

### TRANSPORT MODE

SEA     AIR     ROAD

### CONDITION SYMBOLS

BE - Bent	D - Dented	M - Marked	SC - Scratched	BR - Broken
F - Faded	MI - Mildew	SH - Short	BU - Burned	G - Gouged
MO - Moth Eaten	T - Torn	CH - Chipped	L - Loose	R - Rubbed
W - Badly Worn	CU - Contents & Conditions Unknown	RU - Rusted	CR - Cracked	

### LOCATION SYMBOLS

1 Arm	2 Bottom	3 Corner
4 Front	5 Left	6 Leg
7 Rear	8 Right	9 Side
10 Top	11 Veneer	12 Edge

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
27 <sup>1</sup>	CN	PBO								
2	CN	PBO								
3	CN	PBO								
4										
5	CN	PBO								Squashed
6	CN	PBO								Fragile
7	CN	PBO								"
8	CN	PBO								"
9	CN	PBO								"
0	CN	PBO								"
1	CN	PBO								"
2	CN	PBO Packed								"
3	CN	PBO								"
4	CN	PBO								"
5	CN	PBO								"
6	CN	PBO								"
7	CN	PBO								"
8	CN	PBO								"
9	CN	PBO								"
29 <sup>0</sup>	CN	PBO								
1	CN	PBO								
2	CN	PBO								
3	CN	PBO								
4	CN	PBO								
5	CN	PBO								
6	CN	PBO Fragile								damaged
7		chair								damaged
8		chair dining								damaged
9		chair dining								damaged
30 <sup>0</sup>		PBO								

Checker Initials:

Item No. Remarks/Exceptions:

IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above.

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### AUTHORISATION OF CORRECTNESS AT ORIGIN

### AUTHORISATION OF CORRECTNESS AT DESTINATION

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0159



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:	REMOVAL PLAN NUMBER:	PAGE No. <b>11</b> OF
ORIGIN:	DESTINATION:	

<b>PACKAGE ABBREVIATIONS</b>				<b>TRANSPORT MODE</b>			
BB - Bubble Wrap	CN - Carton	DP - Dishpack Carton	CC - Clothing Carton	<input type="checkbox"/> SEA <input type="checkbox"/> AIR <input type="checkbox"/> ROAD			
MW - Mattress Wrap	BDL - Bundle	BC - Book Carton	CT - Crate				
PC - Picture Carton	PR - Portarobe	BW - Blanket Wrap	PKG - Package				
<b>CONDITION SYMBOLS</b>				<b>LOCATION SYMBOLS</b>			
BE - Bent	D - Dented	M - Marked	SC - Scratched	BR - Broken	1 Arm	2 Bottom	3 Corner
F - Faded	MI - Mildew	SH - Short	BU - Burned	G - Gouged	4 Front	5 Left	6 Leg
MO - Moth Eaten	T - Torn	CH - Chipped	L - Loose	R - Rubbed	7 Rear	8 Right	9 Side
W - Badly Worn	CU - Contents & Conditions Unknown	RU - Rusted	CR - Cracked		10 Top	11 Veneer	12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
30 <sup>1</sup>		dumb waiter								
2	CN	PBO								
3	CN	PBO								
4	CN	PBO								
5		Chair - dining - not wrapped								damaged SC
6	CN	PBO								damaged B
7	CN	PBO								1 screw head
8	CN	PBO								" "
9	CN	PBO								" "
31 <sup>0</sup>	CN	PBO								" "
1	CN	PBO								" "
2	CN	PBO								" "
3	CN	PBO								" "
4	CN	PBO								" "
5	CN	PBO								" "
6	CN	PBO								" "
7	CN	PBO								" "
8	CN	PBO								" "
9	CN	PBO								damaged
32 <sup>0</sup>		chair - dining								damaged SC
1		chair - dining								damaged SC
2		TV Cabinet - large								
3	CN	PBO								
4	CN	PBO								damaged
5	CN	PBO								damaged
6		Grill								
7	CN	PBO								
8	CN	PBO								
9	CN	PBO								
33 <sup>0</sup>	CN	PBO								

Checker Initials:

Item No.	Remarks/Exceptions:

**IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above**

By signing at origin I/We confirm that all items have been uplifted and by signing at destination I/We acknowledge receipt in good order of all items on this inventory unless noted. Also by signing the document I/We agree to the terms and conditions of the contract.

<b>AUTHORISATION OF CORRECTNESS AT ORIGIN</b>		<b>AUTHORISATION OF CORRECTNESS AT DESTINATION</b>	
AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER) (SIGNATURE)	DATE	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER) (SIGNATURE)
	OWNER OR AUTHORISED AGENT (SIGNATURE)	DATE	OWNER OR AUTHORISED AGENT (SIGNATURE)
		<b>0160</b>	



BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:	REMOVAL PLAN NUMBER:	PAGE No. <b>12</b> OF
ORIGIN:	DESTINATION:	

PACKAGE ABBREVIATIONS				TRANSPORT MODE			
BB - Bubble Wrap	CN - Carton	DP - Dishpack Carton	CC - Clothing Carton	<input type="checkbox"/> SEA	<input type="checkbox"/> AIR	<input type="checkbox"/> ROAD	
MW - Mattress Wrap	BDL - Bundle	BC - Book Carton	CT - Crate				
PC - Picture Carton	PR - Portarobe	BW - Blanket Wrap	PKG - Package				
CONDITION SYMBOLS				LOCATION SYMBOLS			
BE - Bent	D - Dented	M - Marked	SC - Scratched	BR - Broken	1 Arm	2 Bottom	3 Corner
F - Faded	MI - Mildew	SH - Short	BU - Burned	G - Gouged	4 Front	5 Left	6 Leg
MO - Moth Eaten	T - Torn	CH - Chipped	L - Loose	R - Rubbed	7 Rear	8 Right	9 Side
W - Badly Worn	CU - Contents & Conditions Unknown	RU - Rusted	CR - Cracked		10 Top	11 Veneer	12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
33 <sup>1</sup>	CN	PBO								
2	CN	PBO								
3	CN	PBO								
4	CN	PBO								
5	CN	PBO								
6	CN	PBO								
7		chair dining								
8		chair dining								damaged-SC
9		chair dining								damaged-SC
34 <sup>0</sup>		Chair dining								damaged-SC
1	CN	PBO								
2		Couch								
3		Chilly Bin - Not wrapped								damaged-SC
4	CN	PBO								
5	CN	PBO								
6	CN	PBO								
7	CN	PBO								
8	CN	PBO								
9	CN	PBO								
35 <sup>0</sup>	CN	PBO								
1	CN	PBO								
2	CN	PBO								
3	CN	PBO								
4	CN	PBO								
5	CN	PBO								
6	CN	PBO								
7	CN	PBO								
8	CN	PBO								
9	CN	PBO								
36 <sup>0</sup>	CN	PBO								

Checker Initials:

Item No.	Remarks/Exceptions:

**IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above**

By signing at origin I/We confirm that all items have been uplifted and by signing at destination I/We acknowledge receipt in good order of all items on this inventory unless noted. Also by signing this document I/We agree to the terms and conditions of the contract.

AUTHORISATION OF CORRECTNESS AT ORIGIN		AUTHORISATION OF CORRECTNESS AT DESTINATION		
AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER) (SIGNATURE)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER) (SIGNATURE)
	OWNER OR AUTHORISED AGENT (SIGNATURE)	DATE	<b>0161</b>	OWNER OR AUTHORISED AGENT (SIGNATURE)
				DATE



BRANCH:

**INVENTORY AND CONDITION REPORT**

CUSTOMER'S NAME:

REMOVAL PLAN NUMBER:

PAGE No.

13 OF

ORIGIN:

DESTINATION:

**PACKAGE ABBREVIATIONS****TRANSPORT MODE**

BB - Bubble Wrap      CN - Carton      DP - Dishpack Carton      CC - Clothing Carton  
 MW - Mattress Wrap      BDL - Bundle      BC - Book Carton      CT - Crate  
 PC - Picture Carton      PR - Portarobe      BW - Blanket Wrap      PKG - Package

 SEA       AIR       ROAD
**CONDITION SYMBOLS****LOCATION SYMBOLS**

BE - Bent      D - Dented      M - Marked      SC - Scratched      BR - Broken  
 F - Faded      MI - Mildew      SH - Short      BU - Burned      G - Gouged  
 MO - Moth Eaten      T - Torn      CH - Chipped      L - Loose      R - Rubbed  
 W - Badly Worn      CU - Contents & Conditions Unknown      RU - Rusted      CR - Cracked

1 Arm      2 Bottom      3 Corner  
 4 Front      5 Left      6 Leg  
 7 Rear      8 Right      9 Side  
 10 Top      11 Veneer      12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
36 1	CN	PBO								clamped
2	CN	PBO								" "
3	CN	PBO								" "
4	CN	PBO								" "
5	CN	PBO								" "
6	CN	PBO								" "
7	CN	PBO								" "
8	CN	PBO								" "
9	CN	PBO								" "
37 0	CN	PBO								" "
1	CN	PBO								" "
2	CN	PBO								" "
3	CN	PBO								" "
4	CN	PBO								" "
5	CN	PBO								" "
6	CN	PBO								" "
7	CN	PBO								" "
8	CN	PBO								" "
9	CN	PBO								" "
38 0	CN	PBO								" "
1	CN	PBO								" "
2	CN	PBO								" "
3	CN	PBO								" "
4	CN	Couch								
5	CN	PBO								
6	CN	PBO								
7	PKG									
8	CN	PBO								
9	CN	PBO								
39 0	CN	PBO								

Checker Initials:

Item No. Remarks/Exceptions:

**IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above**

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**AUTHORISATION OF CORRECTNESS AT ORIGIN****AUTHORISATION OF CORRECTNESS AT DESTINATION**

<b>AT ORIGIN</b>	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE	<b>AT DESTINATION</b>	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER)	DATE
	(SIGNATURE)			(SIGNATURE)	
	OWNER OR AUTHORISED AGENT	DATE		OWNER OR AUTHORISED AGENT	DATE
	(SIGNATURE)			(SIGNATURE)	

0162





BRANCH:

# INVENTORY AND CONDITION REPORT

CUSTOMER'S NAME:	REMOVAL PLAN NUMBER:	PAGE No. <b>14</b> OF
ORIGIN:	DESTINATION:	

PACKAGE ABBREVIATIONS				TRANSPORT MODE		
BB - Bubble Wrap	CN - Carton	DP - Dishpack Carton	CC - Clothing Carton	<input type="checkbox"/> SEA	<input type="checkbox"/> AIR	<input type="checkbox"/> ROAD
MW - Mattress Wrap	BDL - Bundle	BC - Book Carton	CT - Crate			
PC - Picture Carton	PR - Portarobe	BW - Blanket Wrap	PKG - Package			
CONDITION SYMBOLS				LOCATION SYMBOLS		
BE - Bent	D - Dented	M - Marked	SC - Scratched	BR - Broken	1 Arm	2 Bottom
F - Faded	MI - Mildew	SH - Short	BU - Burned	G - Gouged	4 Front	5 Left
MO - Moth Eaten	T - Torn	CH - Chipped	L - Loose	R - Rubbed	7 Rear	8 Right
W - Badly Worn	CU - Contents & Conditions Unknown	RU - Rusted	CR - Cracked		10 Top	11 Veneer
					9 Side	12 Edge

**NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR**

Item No.	Package Type	Description or Item or Contents of Carton or Package	Condition at Origin	Storage Location	Quality Checks					Condition at Destination
					Unload	Reload	Unload	Reload	Dest	
39	1	CN PBO								
	2	CN PBO								
	3	CN PBO								
	4	CN PBO								
	5	CN PBO								
	6	CN PBO								
	7	CN PBO								
	8	CN PBO								
	9	CN PBO								
40	0	CN PBO								
	1	CN PBO								
	2	CN PBO								
	3	CN PBO								
	4									
	5									
	6									
	7									
	8									
	9									
	0									
	1									
	2									
	3									
	4									
	5									
	6									
	7									
	8									
	9									
	0									

Checker Initials:

Item No.	Remarks/Exceptions:

**IMPORTANT - Before signing, check shipment, count items and describe loss or damage in space on the right above**

By signing at origin I/We confirm that all items have been uplifted and by signing at destination I/We acknowledge receipt in good order of all items on this inventory unless noted. Also by signing the document I/We agree to the terms and conditions of the contract.

**AUTHORISATION OF CORRECTNESS AT ORIGIN**

**AUTHORISATION OF CORRECTNESS AT DESTINATION**

<b>AT ORIGIN</b>	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER) (SIGNATURE)	DATE	<b>AT DESTINATION</b>	CONTRACTOR, CARRIER OR AUTHORISED AGENT (DRIVER) (SIGNATURE)	DATE
	OWNER OR AUTHORISED AGENT (SIGNATURE)	DATE	<b>0163</b>	OWNER OR AUTHORISED AGENT (SIGNATURE)	DATE



Madhu Sameer <madhu.bambroo@gmail.com>

Re survey

Wed, Jan 13, 2016 at 10:38 AM

Phil Hextall <PHextall@cl-nz.com>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Hi Madhu,

How about Thursday at 10.00am. Its at Conroys - do you need to give them some warning?

We also need your personal address so we can open a file. Please advise.

Kind regards

**Phil Hextall**  
Loss Adjuster

**Cunningham Lindsey**

DDI: +64 3 341 3613 | fax: +04 3 346 3474 | mob: +04 21 747 005  
postal: PO Box 9229, Christchurch 8149

email: phextall@cl-nz.com | web: www.cunninghamlindsey.com



**NEW ZEALAND  
INSURANCE  
INDUSTRY AWARDS  
WINNER 2012, 2013 & 2014**

Please consider the environment before printing this e-mail

*"This email contains confidential information. If you have received this email in error, please delete it immediately, and inform us of the mistake by return email. Cunningham Lindsey is one of the largest loss adjusting and claim management companies in the world with 7000 employees in over 60 countries"*



Madhu Sameer <madhu.bambroo@gmail.com>

(no subject)

Scott Galloway <scott.galloway@hazellton.co.nz>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Wed, Dec 23, 2015 at 2:11 PM

Dear Madhu

I understand that you have instructed Cunningham Lindsey and I do not see any reason why they cannot undertake the survey for you.

All I am doing is referring the matter to the Complaints team in London (which I have now done). I am not intending to contradict anything that Tom Langford of Talbot has told you.

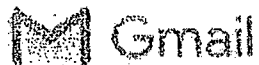
Kind regards

Scott Galloway

**From:** Madhu Sameer [mailto:madhu.bambroo@gmail.com]  
**Sent:** Wednesday, 23 December 2015 2:05 p.m.

[Quoted text hidden]

[Quoted text hidden]



Madhu Sameer <madhu.bambroo@gmail.com>

(no subject)

Madhu Sameer <madhu.bambroo@gmail.com>  
To: Scott Galloway <scott.galloway@hazellton.co.nz>

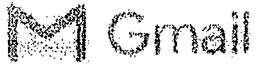
Wed, Dec 23, 2015 at 4:36 PM

Dear Scott,

I was merely inquiring if they would undertake the survey. Thanks for the clarification.

M.

[Quoted text hidden]



Madhu Sameer &lt;madhu.bambroo@gmail.com&gt;

---

**(no subject)**

---

**Madhu Sameer** <madhu.bambroo@gmail.com>  
To: Phil Hextall <PHextall@cl-nz.com>

Tue, Dec 29, 2015 at 10:49 AM

I was told that if I offered to pay for inspection, and assessment, I could have it done on my own.

I have paid 6000, the rest was held up due to dispute. What they used that 6000 for - I have no control over it.

So at this time I would be happy yo pay for services as my container and belongings are held up for 6 months...

M.

[Quoted text hidden]



Madhu Sameer <madhu.bambroo@gmail.com>

(no subject)

Phil Hextall <PHextall@cl-nz.com>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Thu, Dec 31, 2015 at 1:17 PM

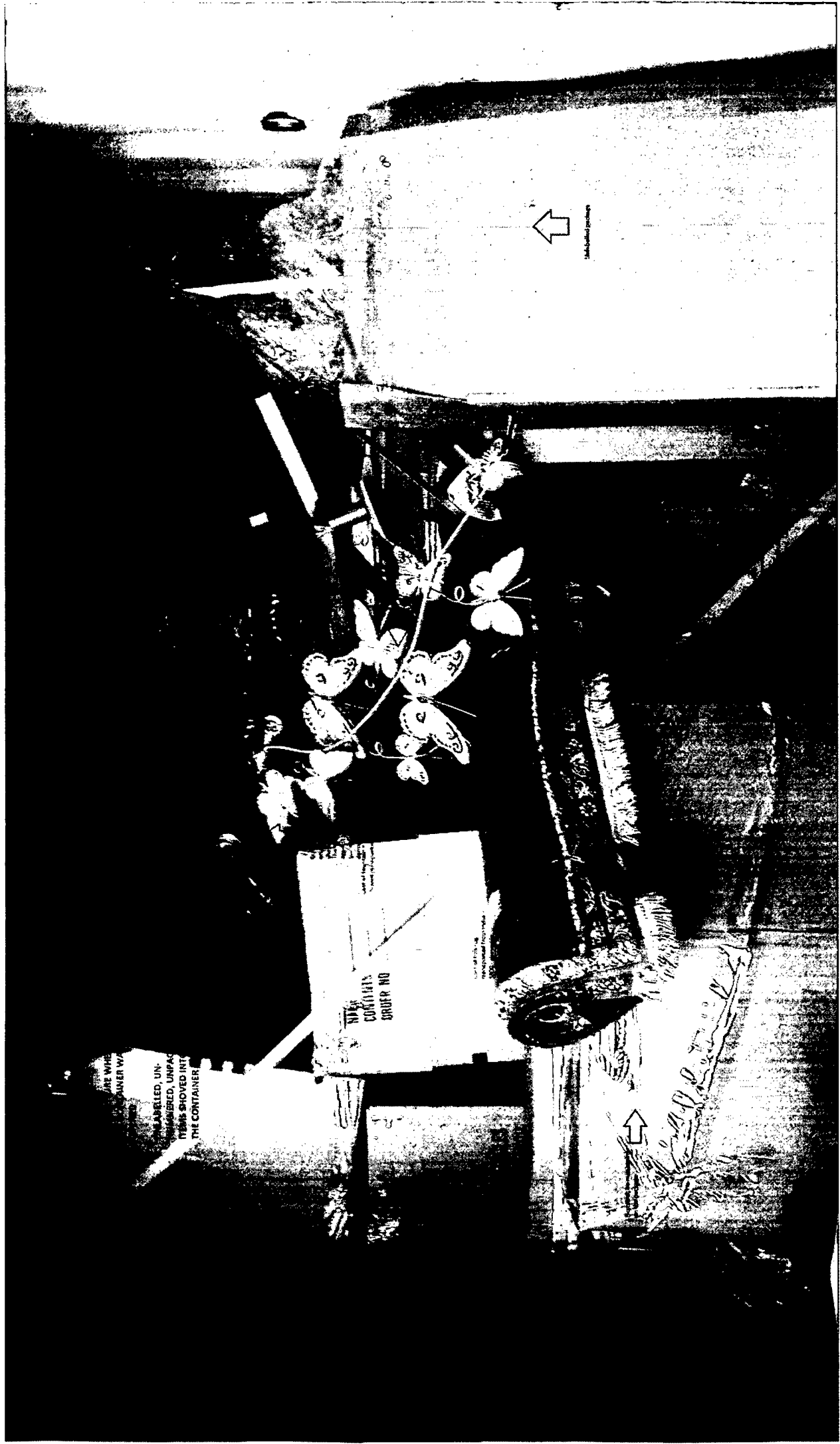
Hi Madhu,

I am away until January 12, I will schedule a survey that week so I will be in contact with you 12 January.

Kind regards and Happy New Year.

[Quoted text hidden]





UNLABELLED, UN-  
REGISTERED, UNPACKAGED  
ITEMS SHOVED INTO  
THE CONTAINER

WYOMING  
COUNTY  
ORDER NO





OPTICS  
H. D. H.  
Think Green.

210

PLEASE CHECK BOTTOM  
TROBE FOR LOOSE ARTICI  
THANK



ECO  
THINK OF

LOT 13



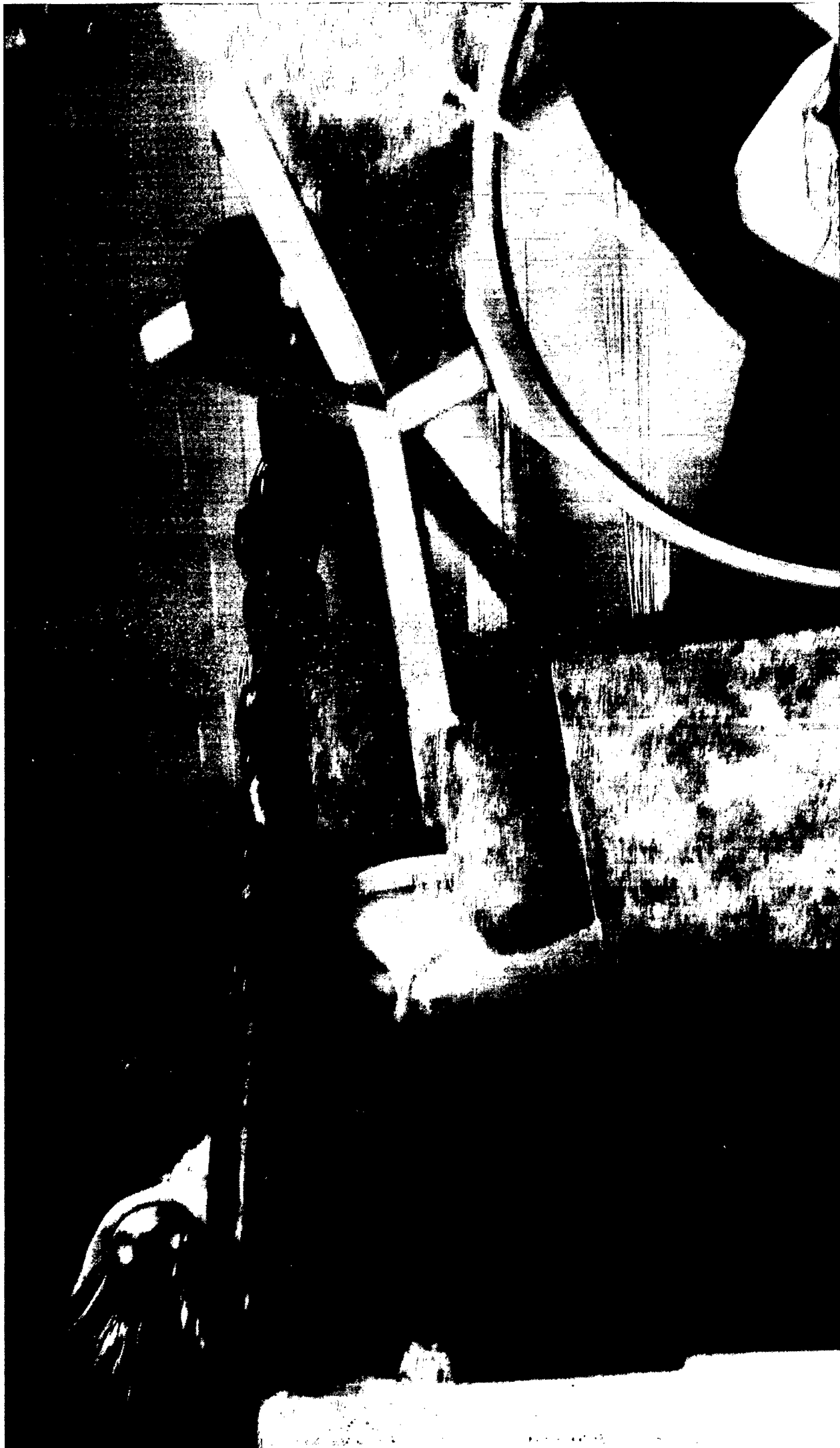
PLEASE CHECK BOTTOM  
OF WARDROBE FOR LOOSE ARTICLES  
THANK YOU

XL

3 YEAR  
WARRANTY

0173

NEW YORK, N.Y. (AP) - A man in a white shirt and dark tie, smiling as he holds a large, intricate butterfly sculpture. The butterfly is made of a dark, lattice-like material. The man is wearing a dark jacket with "XL" and "3 YEAR WARRANTY" printed on it. In the background, a sign reads "PLEASE CHECK BOTTOM OF WARDROBE FOR LOOSE ARTICLES THANK YOU". The image is heavily stylized with high contrast and grain.



0175

INTERNATIONAL  
CONTAINER



TTNU 424063 0  
4261

MAXGROSS  
TARE WT.  
PAYLOAD  
CU. CAP.

30.480	KGS
67.200	LBS
3.745	KGS
8.260	LBS
26.735	KGS
58.940	LBS
67.7	CUM
2.390	CUFT





Madhu Sameer &lt;madhu.bambroo@gmail.com&gt;

---

**RE: Insurance Claim. WKW Ref: 520/15/36381/C; Certificate No: 3268-3880-0132-6; Insurer: Underwriting Risks Services Limited**

---

Yen Li Chua <ylchua@wkwebster.com.sg>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Mon, Dec 7, 2015 at 3:06 PM

Without Prejudice

Dear Ms Sameer,

Thank you for your email.

We have been in communication with the Underwriters and have received instruction to hold off on the survey. It appears Certificate 3268-3880-0132-6 was voided due to non-payment of premium.

We are unable to assist further in this regard.

Best regards  
**Chua Yen Li (Ms)**  
Senior Executive Officer

For & On Behalf Of W K Webster (International) Pte Ltd  
As Agents Only

STCs available on request

**W K Webster (International) Pte Ltd**  
5 Tampines Central 1

#03-02 Tampines Plaza

Singapore 529541

Tel: +65 6222 6022 / Fax: +65 6225 0428  
www.wkwebster.com

W K Webster & Co Ltd, London  
Proud Recipients of the Queen's Award for Enterprise: International Trade 2012

0177



Madhu Sameer <madhu.bambroo@gmail.com>

**Conroy Removals Invoice | Our Reference - 2114544**

**Monica McKinley** <monicam@conroy.co.nz>  
To: Madhu Sameer <madhu.bambroo@gmail.com>  
Cc: "mfranklin@therightmove4u.com" <mfranklin@therightmove4u.com>

Thu, Aug 13, 2015 at 10:51 AM

Hi Madhu,

We have no interest in any legal negotiations. As I said, all we require is a copy of your visa and the completed customs and quarantine documents. I can then start clearing your goods through NZ Customs and Quarantine. The container is arriving on 17<sup>th</sup> August into the Port of Lyttelton.

Kind regards,



**Monica McKinley**  
CONROY REMOVALS | New Zealand  
t. +64 6 843 1782  
monicam@conroy.co.nz website



**From:** Madhu Sameer [mailto:madhu.bambroo@gmail.com]  
**Sent:** Thursday, 13 August 2015 10:05 a.m.

[Quoted text hidden]

[Quoted text hidden]





Madhu Sameer <madhu.bambroo@gmail.com>

**Conroy Removals Invoice | Our Reference - 2114544**

Madhu Sameer <madhu.bambroo@gmail.com>  
To: Monica McKinley <monicam@conroy.co.nz>

Thu, Aug 13, 2015 at 9:32 AM

Monica,

The shipment was broken into three parts by The Right Move. This is only the first part.

I am not sure if they have informed you of the dispute, but it is currently being handled by the fmc dispute office in US.

The second part of the shipment has been held hostage. The company is refusing to refund the money that they had agreed to pay for the third shipment that I carried with me as checked baggage.

If you like, I can provide the details. or you can get details from the Right Move.

Please let me know if you are willing to resolve this on the basis of the evidence in the form of contracts and emails.

[Quoted text hidden]



Madhu Sameer <madhu.bambroo@gmail.com>

**Conroy Removals Invoice | Our Reference - 2114544**

Monica McKinley <monicam@conroy.co.nz>  
To: Madhu Sameer <madhu.bambroo@gmail.com>

Thu, Aug 13, 2015 at 9:53 AM

Hi Madhu,

Many thanks for the update. Under our contractual agreement with The Right Move, our job is to clear the container at the Port, customs and quarantine clear your goods ready for delivery.

We would rather not become involved with any disputes.

When you have time, could you please complete and return the documents I sent earlier this morning. I can then make a start on the customs and quarantine clearances. We also require a copy of your visa.

Kind regards,



**CONROY  
REMOVALS**

HELPING YOU MOVE AHEAD

**Monica McKinley**

CONROY REMOVALS | New Zealand

t. +64 6 843 1782

monicam@conroy.co.nz website

Follow us on



for news and events

**From:** Madhu Sameer [mailto:madhu.bambroo@gmail.com]

**Sent:** Thursday, 13 August 2015 9:33 a.m.

[Quoted text hidden]

[Quoted text hidden]



Madhu Sameer &lt;madhu.bambroo@gmail.com&gt;

---

## Contact

---

Madhu Sameer <madhu.bambroo@gmail.com>  
To: Fiona Conroy <fionac@conroy.co.nz>

Thu, Aug 20, 2015 at 1:41 PM

Fiona,

Just to touch base on what we discussed - you asked me to pay for the entire shipment. I have refused. I have offered to pay for your costs, and the port costs in return for shipment to be delivered to me. I will pay the rest at the time the delivery of second shipment is made and matters are resolved.

You stated that I would have to incur demurrage charges. I informed you that you are free to have the shipment reeved from the port and taken to your storage unit in the best interest of all parties. That will minimize the costs. I even offered to pay the port charges and your fee. However, you informed me that The Right Move had refused to allow you to remove the shipment from the port, and that you could not remove it from the port without their approval - even if I offered to pay.

I informed you that the decision taken by the Right Move to refuse to allow you to remove the shipment from the port was your internal decision. It is obvious that the decision is made with the malicious intent of further harming me and increasing my costs. As such, since the decision is from them, I will not be responsible for any demurrage or any costs incurred due to their refusal to have the shipment moved. There is no reason that I can see why it cannot be moved, except an effort to blackmail me.

You stated that you were just an agent, and had no authority to move the container. I disputed that. If you are an agent, you have an inherent liability to minimize my costs. If you are deliberately going to increase my costs with the only intention to harm me, then you are responsible for those costs. If the costs are increased due to deliberate, malicious behavior of Right Move, then it is THEY who will owe you money for demurrage, not me. I have never asked you not to remove the container from the port.

You also stated in an earlier email that you were going to resign as their agent if no resolution was reached. I requested that you resign as you had stated. You informed me that you cannot resign, and will not resign. Whatever the reasons for your decision not to resign, they are yours to make. However, I believe by continuing to support an illegal transaction, blackmail and maliciously increasing my cost makes you responsible as a party to the action.

If you disagree with any of the above, please clarify and we can discuss. Also request you to provide alternate argument you may have, in case you disagree with the above. I prefer written discussions over telephone conversations.

[Quoted text hidden]



# CONROY REMOVALS

HELPING YOU MOVE AHEAD

Conroy Removals Ltd - Napier  
 HEAD OFFICE  
 9 Lipton Place,  
 PO Box 5079, Greenmeadows,  
 Napier 4145, New Zealand  
 Telephone: (06) 843-2376  
 conroy@removals.co.nz  
 www.conroy.co.nz

GST No. 13-997-950

## STATEMENT

Page: 1

Customer Code: 70048

Payment Terms: 30 Days

**Madhu Sameer**

89 Grahams Road  
 Burnside  
 Christchurch  
 Attention: Madhu

Period up to: 01/12/16

Date	Invoice	Reference	Description	Amount	Balance
21/09/15	1106685	2114544X	Sameer/Madhu	1,021.16	1,021.16
31/12/15	1119629	2114544X	Sameer/Madhu	954.50	954.50
01/03/16	1125899	1125899	Sameer/Madhu STG: 13/11/15-31/03/16	2,581.85	2,581.85
01/04/16	1129156	1129156	Sameer/Madhu STG: 01/04/16-30/04/16	561.00	561.00
01/05/16	1132556	1132556	Sameer/Madhu STG: 01/05/16-31/05/16	561.00	561.00
01/06/16	1136060	1136060	Sameer/Madhu STG: 01/06/16-30/06/16	561.00	561.00
01/07/16	1139728	1139728	Sameer/Madhu STG: 01/07/16-31/07/16	561.00	561.00
01/08/16	1142973	1142973	Sameer/Madhu STG: 01/08/16-31/08/16	561.00	561.00
01/09/16	1146830	1146830	Sameer/Madhu STG: 01/09/16-30/09/16	561.00	561.00
01/10/16	1150731	1150731	Sameer/Madhu STG: 01/10/16-31/10/16	561.00	561.00
01/11/16	1153313	1153313	Sameer/Madhu STG: 01/11/16 To 30/11/16	561.00	561.00
01/12/16	1158780	1158780	Sameer/Madhu STG: 01/12/16-31/12/16	561.00	561.00
01/12/16	1158926	2114544X	Sameer/Madhu	-15.60	-15.60
01/12/16	1158927	2114544X	Sameer/Madhu	-32.50	-32.50

3 Months +	2 Month	1 Month	Current		Balance
7,923.51	561.00	561.00	512.90	NZD	9,558.41

Remittance Advice - Please detach and return with payment

**Payment by EFT**

Bank of New Zealand, Taradale  
 BSB: : 02-0766  
 Account Number: 002111200  
 Swiftbic: BKNZNZ22

**Payment by cheque:**

Cheques should be made payable to: Conroy Removals Ltd - Napier.

All work is undertaken subject to our terms & conditions. Such terms and conditions can be inspected at any of our offices or supplied upon request.

**Post To:**

Conroy Removals Ltd - Napier  
 9 Lipton Place, PO Box 5079  
 Greenmeadows  
 Napier 4145

**Customer Name: Madhu Sameer**

**Customer Code: 70048**

**Amount Out: 9,558.41**

**Amount Paid:**

1 March 2016

**For: Ben Russell / Katie Kendrick**

Lane Neave  
Solicitors  
PO Box 13149  
CHRISTCHURCH

By email - [ben.russell@laneneave.co.nz](mailto:ben.russell@laneneave.co.nz)

**Without Prejudice**

**CIV-2015-009-2211 - Sameer v Conroy Removals Limited**

1. We refer to your letter dated 19 February 2016.
2. We are instructed that, while Ms Sameer's possessions were shipped in a single 40 foot container, after the contents had been fumigated they were transferred into two 20 foot containers since the 40 foot container needed to be returned to the shipping line.
3. Our client is prepared to accept your client's offer subject to the additional following terms:
  - (a) Upon delivery of the containers in question Miss Sameer's address, Conroy Removals Limited will unload the containers but, for the avoidance of doubt, there is no obligation on Conroy Removals Limited to un-box the contents of the containers, unwrap or reassemble furniture or remove packaging debris;
  - (b) Within two working days of acceptance of this offer, Miss Sameer will:
    - (i) delete the Facebook page entitled 'Conroy Removals Scam' at the url link, <https://www.facebook.com/search/top/?q=conroy%20removals%20scam> ; and
    - (ii) delete or take-down any other written messages or comments, whether online or otherwise, that disparage Conroy Removals Limited;
  - (c) Miss Sameer agrees that she will not make, at any time, any comment, written or oral that disparages Conroy Removals Limited or any of its directors, officers, employees or agents;
  - (d) It is agreed that Conroy Removals Limited has no liability whatsoever for any damage caused to the contents of the containers; and
  - (e) The terms of the settlement are confidential between the parties.
4. Our client also requires that the terms of settlement are recorded in a deed of settlement. While the costs of preparing the deed are to be borne equally by the parties, we are prepared to provide you with a draft.

5. We look forward to hearing from you.

Yours faithfully  
**Anderson Lloyd**



**Jonathan Nicolle**  
Solicitor  
P: 03 335 1222  
E: [jonathan.nicolle@andersonlloyd.co.nz](mailto:jonathan.nicolle@andersonlloyd.co.nz)

31 May 2016

**For: Madhu Sameer**

Madhu Sameer  
89 Grahams Road  
Burnside  
CHRISTCHURCH

By email - [madhu.bambroo@gmail.com](mailto:madhu.bambroo@gmail.com)

Dear Madhu

**Sameer v Conroy Removals Limited**

1. As you know, we act for Conroy Removals Limited ("**Conroy Removals**").
2. A substantial amount of correspondence has been generated over the course of this dispute. We have reviewed that correspondence and set out what we consider to be the legal position between you and our client in this letter. We wish to make it absolutely clear that we do not act for The Right Move Inc ("**The Right Move**") or your insurer so will not address your possible claims against those parties.

**Contract with The Right Move**

3. We understand that you engaged The Right Move to ship your household effects to New Zealand. You entered into a contract under which The Right Move was the consignor and you were the consignee.
4. Your contract with The Right Move estimated a total fee of \$8,600, and included the following services:

*"The price includes arriving at the pickup location, preparing professional inventory list, disassemble basis furniture, loading into a container, trucking the container from the port to your residence and back to the port both at origin and destination, fuel and mileage, custom clearance at origin, terminal handling at origin, ocean freight, basic custom clearance at destination, door delivery, settling the items at your new residence, unwrapping the furniture, reassembly of basic furniture and removing packing debris."*

5. The price did not include:

*"Long Carry, storage at origin, local port fees and taxes at destination, THC (terminal handling charges) custom examination and scanning, roll over fees, storage at destination, demurrage, fumigations, Piano Handling, and vehicle shipping."*

6. We understand that The Right Move elected to ship your household effects in two consignments unbeknownst to you. We consider that any dispute about splitting the consignment is solely a matter between you and The Right Move and does not concern our client. For the purposes of this letter and the District Court Proceedings, we consider that the goods in question are those contained in the Conroy Removals Inventory and Condition Report **attached** to this letter and your Disputes Tribunal claim at exhibit 26 ("**the Goods**").

7. When your goods were shipped, The Right Move had an arrangement with Conroy Removals under which it engaged Conroy Removals to act as a carrier from time to time. Under that arrangement, Conroy Removals sent The Right Move a Destination Rate Schedule setting out that its fee for destination services would be \$3,285. The destination services excluded:
- (a) customs and quarantine inspection fees;
  - (b) quarantine treatment fees;
  - (c) demurrage and detention; and
  - (d) storage and storage handling.
8. On 13 August 2015, Conroy Removals sent you an Arrival Notification stating:
- (a) arrival of the goods was expected on 17 August 2015;
  - (b) it would be necessary for the goods to clear customs and quarantine services before delivery could be completed;
  - (c) if duties/taxes, physical inspections or treatments such as fumigation or steam cleaning were required, the charges associated with those services were generally excluded from your contract with The Right Move and were payable prior to delivery;
  - (d) once customs and quarantine clearances had been obtained, Conroy Removals would contact you to make delivery arrangements and if you required storage or were unable to take delivery, Conroy Removals had storage services available at the following rates, current at 28 August 2015:
    - (i) storage charge per month: \$129.49; and
    - (ii) storage handling: \$563.00.
9. We have since been instructed that the rate provided for "storage charge per month" was in fact a weekly rate, exclusive of GST.
10. Ordinarily, you would have paid The Right Move the contract price. The Right Move would have then paid Conroy Removals' destination service fee, who would then deliver the Goods to you, subject to payment of any additional costs such as customs and inspection fees.
11. However, due to your dispute with The Right Move, we understand the contractual relationship between you and The Right Move completely broke down. In the meantime, the Goods had arrived in New Zealand and were in Conroy Removals' possession.

#### **Contract with Conroy Removals**

12. We understand that in good faith and in an effort to expedite the delivery of the Goods, Conroy Removals negotiated with you directly on or about 13 August 2015 in order to facilitate the delivery of the Goods. We consider those discussions formed the basis of a new contract directly between you and Conroy Removals on the following terms:
- (a) you would perform all obligations The Right Move owed to Conroy Removals including:
    - (i) the payment of Conroy Removals' destination service fee; and
    - (ii) the payment of the Cosco (New Zealand) Limited ("**Cosco**") destination delivery and port fees of \$677;



- (b) you would be liable for all additional costs not included in Conroy Removals' destination service fee, including:
    - (i) customs and quarantine inspection;
    - (ii) quarantine treatment;
    - (iii) demurrage and detention; and
    - (iv) storage and storage handling.
  - (c) once all outstanding amounts had been paid, Conroy Removals would arrange delivery of the Goods on the terms set out in its Destination Rate Schedule originally sent to The Right Move.
13. On 20 August 2015, you paid Conroy Removals a total of \$4,041.24 consisting of:
- (a) \$3,285 for Conroy Removals' destination service fees;
  - (b) \$677 for Cosco's destination delivery and port fees; and
  - (c) \$79.24 for a credit card surcharge fee.
14. Conroy Removals advised you to forward those details to The Right Move in order to have it credited against the amount you owed directly to that company.

**Customs and quarantine**

15. Delivery was originally scheduled for 31 August 2015. On 21 August 2015, Conroy Removals advised you that the Ministry of Primary Industries ("MPI") had determined it necessary to inspect the Goods.
16. The inspection took place on or about 24 August 2015. During that inspection MPI discovered snails and spiders. On 24 August 2015, Conroy Removals emailed you advising:
- (a) you needed to sign a disclaimer for the fumigation;
  - (b) since the Goods were still being held in a container belonging to Cosco, delays in returning the container after Thursday 27 August 2015 would incur a daily cost of \$128 (a demurrage charge) which Conroy Removals would make every effort to avoid;
  - (c) in order to proceed, Conroy Removals required payment of \$990.90 being fees associated with the MPI inspection and fumigation and made up as follows:
    - (i) inspection fees of \$570; and
    - (ii) fumigation fees of \$420.90.
17. You refused to sign the disclaimer or pay the MPI inspection and fumigation fees. MPI advised that it would not release the Goods for delivery until fumigation took place.
18. As a consequence, Conroy Removals advised you that:
- (a) You would be liable for \$128 per day in demurrage from Cosco; and

- (b) If delivery did not take place by 31 August 2015, storage charges with Conroy Removals would apply as follows:
- (i) \$560 in store handling fees; and
  - (ii) \$600 per month for storage.
19. The impasse was not resolved by the end of August and, as a consequence, Conroy Removals allocated the 31 August 2015 delivery slot to another customer. Storage costs began accruing from that date.
20. The fumigation eventually took place at the end of August 2015 and the Goods were unloaded from the 40 foot Cosco container into two 20 foot containers owned by Conroy Removals. That enabled Cosco to retrieve its 40 foot container meaning that demurrage charges would no longer accrue.
21. On 31 August 2015, Conroy Removals advised that, on 2 September 2015, MPI would reassess whether the Goods cleared customs and quarantine. We understand that on or about 4 September 2015, or at some point afterwards, the Goods cleared customs.
22. You subsequently paid the inspection and fumigation fees. On 22 September 2015, Conroy Removals advised you that Cosco had waived its demurrage charges.

**Further attempts at delivery**

23. We understand that you and Conroy Removals negotiated a delivery date for 26 September 2015. However, when Conroy Removals advised that it required payment of its storage costs before delivery would be completed, you refused to make payment. At that point, Conroy Removals' storage costs totalled \$1,021.16.
24. Since you refused to pay the storage costs delivery did not take place and the delivery slot was allocated to another customer. By that stage, we understand you had commenced the Disputes Tribunal Proceedings.
25. In good faith, Conroy Removals offered to extend the delivery date until 1 October 2015 and waive further storage fees between 23 September 2015 and 1 October 2015 if you discontinued your claim against Conroy Removals in the Disputes Tribunal. We understand that you refused to discontinue your claim or pay outstanding storage fees. Once again delivery did not take place.
26. As at 12 November 2015, the outstanding storage fees were \$1,975.66.
27. Conroy Removals again offered to make delivery on 18 November 2015. However, you refused to accept delivery and advised Conroy Removals that you wished to hire another moving company.
28. On 17 November 2015, Conroy Removals acknowledged your request that delivery would not take place on 18 November 2015 and urged you to reconsider by 5:00pm that evening. You did not accept Conroy Removal's offer so your booking was lost.
29. On 7 December 2015, you advised Conroy Removals that you would not accept delivery of the Goods until your insurance dispute, which solely concerns The Right Move and not Conroy Removals, was settled or Conroy Removals organised an "insurance agent to undertake an assessment". Since Conroy Removals was not involved in your insurance dispute, we do not consider Conroy Removals was or is responsible for organising an insurance assessor or agent to inspect the Goods.
30. Since no insurance agent was organised, delivery did not take place.

**Disputed transaction**

31. We understand that, on or about 14 December 2015, you asked your bank to reverse the payment of \$4,041.24 you made to Conroy Removals on 13 August 2015 on the basis that it was a disputed transaction.
32. Our client maintains that you have no grounds to dispute that payment.

**Outstanding amount and delivery**

33. As 31 May 2016, our client's outstanding storage and handling fees total **\$5,679.51** including GST ("**the Outstanding Amount**") as set out in the **attached** invoices and made up as follows:
  - (a) \$563 including GST in storage handling fees; and
  - (b) \$5,116.51 including GST in storage fees.
34. The Outstanding Amount continues to increase at a monthly storage rate of \$561.00 including GST for as long as the Goods remain at our client's depot.
35. Upon payment of the Outstanding Amount, and confirmation that the 31 August 2015 transaction is no longer disputed, our client is willing to arrange delivery at a time and date convenient for both parties.

**Lien**

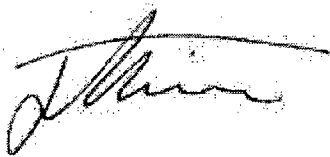
36. We consider that, at all material times Conroy Removals has acted as a carrier for the purposes of the Carriage of Goods Act 1979 ("**COGA**").
37. Under section 21 of the COGA, we consider that our client has a right to sue you for the recovery of unpaid storage costs. Pursuant to section 23, we consider that our client is also entitled to a lien over the Goods pending payment of the Outstanding Amount.
38. Pursuant to section 23 of the COGA, our client is entitled to a lien over the Goods currently stored at Conroy Removals' Christchurch depot. Accordingly, this letter constitutes formal notice that Conroy Removals claims a lien over the Goods pursuant to section 23 of the COGA due to non-payment of the Outstanding Amount.
39. If payment of the Outstanding Amount plus further storage costs and associated recovery fees is not made within two months, our client will be entitled to sell the Goods by public auction. From the proceeds of that auction, our client will be entitled to deduct:
  - (a) the Outstanding Amount plus further storage costs and associated recovery fees; and
  - (b) all other expenses reasonably incurred in removing, preserving and storing the Goods pending settlement of our client's lien, and in arranging and conducting the sale of the goods.
40. The balance of the proceeds from the auction (if any) will be paid to you.

**The District Court Proceedings**

41. Now that the proceedings have been transferred to the District Court, our client has instructed us to appear on its behalf and, as a consequence, has begun to incur legal costs in addition to the ongoing storage fees.

42. We have read the original Disputes Tribunal claim filed against our client on 15 August 2015 and the revised claim dated 2 November 2015. Both claims make numerous allegations against The Right Move. Our client is a separate legal entity from The Right Move and is not legally responsible for any losses caused by that company.
43. We consider the allegations made directly against our client are completely unjustified. Conroy Removals categorically denies the allegations made against it. We consider that several of the more serious allegations including criminal misrepresentation, fraud, deceit, or unconscionable conduct, blackmail and extortion, conspiracy and unjust enrichment are particularly spurious.
44. We expect to be instructed to address those allegations at the case management conference set down on 15 June 2016.
45. The longer it takes to resolve this matter, the more our client will incur in legal fees. Should you continue to pursue this matter through the Courts, our client will seek an order from the Court for payment of its costs.

Yours faithfully  
**Anderson Lloyd**



**Jonathan Nicolle**  
Senior Solicitor  
P: 03 335 1222  
E: [jonathan.nicolle@andersonlloyd.co.nz](mailto:jonathan.nicolle@andersonlloyd.co.nz)

16 June 2016

Anderson Lloyd  
70 Gloucester Street  
Christchurch 8013

Attn: Jonathan Nicolle

By email: [jonathan.nicolle@andersonlloyd.co.nz](mailto:jonathan.nicolle@andersonlloyd.co.nz)

Dear Jonathan,

**CIV-2015-009-2211 Sameer v Conroy Removals Limited**

I have now had the opportunity to review your letter dated 1 June 2016. I note that you extended the deadline for acceptance of the offer until Tuesday 21 June 2016 at 5pm.

I am not willing to accept the offer based on the terms outlined in your letter, but would be prepared to settle on a without prejudice, save as to costs, basis on the following terms:

- (a) Conroy Removals will waive:
  - (i) all remaining storage costs incurred since August 2015 and any further storage costs within 3 working days from the date of settlement
  - (ii) any claim to recover \$6,039.18 of its legal fees incurred to date.
  
- (b) At a time and date mutually agreeable to both parties but not more than 2 weeks from the date of settlement, Conroy Removals will deliver the Goods to my nominated address.
  
- (c) Conroy Removals will provide the following delivery services until the delivery services are completed:
  - (i) unwrapping and placement of all furniture;
  - (ii) unpacking all cartons to flat surface;
  - (iii) basic re-assembly of all beds and dining tables; and
  - (iv) removal of all waste packaging.
  
- (d) The delivery services above will be completed with an insurance agent present. I will organise the insurance agent.
  
- (e) Within two working days of delivery, I will:
  - (i) delete the Facebook page entitled 'Conroy Removals Scam' at the url link, <https://www.facebook.com/search/top/?q=conroy%20removals%20scam> ; and
  - (ii) delete or take-down any other written messages or comments, whether online or otherwise, that disparage Conroy Removals Limited;
  
- (f) I will not make, at any time following acceptance of this offer, any comment, written or oral that disparages Conroy Removals Limited or any of its directors, officers, employees or agents.
  
- (g) The terms of the settlement are confidential between the parties.
  
- (h) The District Court proceedings, CIV-2015-009-2211 will be discontinued within 10 working days from the date of delivery by consent on the basis that there is no issue as to costs and no admissions.

(i) The settlement does not affect my rights to make a claim for damages to the Goods should such a claim arise.

(j) Conroy Removals Limited will bear the costs of drafting and execution of a settlement deed.

Yours sincerely,  
Madhu Sameer

1 June 2016

Madhu Sameer  
89 Grahams Road  
Burnside  
CHRISTCHURCH

By email - [madhu.bambroo@gmail.com](mailto:madhu.bambroo@gmail.com)

Dear Madhu

**CIV-2015-009-2211 - Sameer v Conroy Removals Limited**

1. As you are aware, our client has incurred \$5,679.51 including GST in storage costs while your Goods have remained at Conroy Removals' depot since August 2015 and has also incurred legal fees totalling \$6,039.18 to date. Since these proceedings are wholly unjustified, we consider that our client has good grounds to claim its entire legal costs from you rather than just District Court scale costs.
2. Should these proceedings continue to a hearing, our client will seek to recover a substantially higher amount for storage costs and its legal fees from you. Before those further costs are incurred, Conroy Removals considers it would be commercially sensible to attempt to settle these proceedings.
3. We have been instructed to make the following settlement offer:
  - (a) You pay Conroy Removals \$4,000 including GST towards storage costs incurred since August 2015 within 3 working days from the date of settlement.
  - (b) Conroy Removals will waive:
    - (i) the remaining storage costs, totalling \$1,679.51 and any further storage costs incurred between the date of settlement and date of delivery; and
    - (ii) any claim to recover \$6,039.18 of its legal fees incurred to date.
  - (c) At a time and date mutually agreeable to both parties but not more than 2 weeks from the date of payment of the storage costs, Conroy Removals will deliver the Goods to your nominated address.
  - (d) For the avoidance of doubt, Conroy Removals attend to the following delivery services for a period not exceeding 8 hours:
    - (i) unwrapping and placement of furniture;
    - (ii) unpacking cartons to flat surface;
    - (iii) basic re-assembly of beds and dining tables; and

- (iv) removal of waste packaging.
  - (e) Within two working days of delivery, you will:
    - (i) delete the Facebook page entitled 'Conroy Removals Scam' at the url link, <https://www.facebook.com/search/top/?q=conroy%20removals%20scam> ; and
    - (ii) delete or take-down any other written messages or comments, whether online or otherwise, that disparage Conroy Removals Limited;
  - (f) You agree that you will not make, at any time following acceptance of this offer, any comment, written or oral that disparages Conroy Removals Limited or any of its directors, officers, employees or agents.
  - (g) The terms of the settlement are confidential between the parties.
  - (h) The District Court proceedings, CIV-2015-009-2211 are discontinued within five working days from the date of settlement with no issue as to costs.
4. Our client also requires that the terms of settlement are recorded in a deed of settlement. Should you accept our client's offer, we will record the terms in a deed and send it through to you for execution. The 'date of settlement' will be the date the deed is executed. Performance of the settlement deed will discharge our client's lien over the Goods.
5. This offer remains open for acceptance until **5:00pm, on Wednesday 8 June 2016**.
6. Should you not accept our client's offer and, at trial fail to obtain an outcome better than set out in this offer, a copy of this letter will be produced in support of an application for payment by you of indemnity costs for all legal fees incurred by Conroy Removals from the date of this letter.
7. We look forward to hearing from you.

Yours faithfully  
**Anderson Lloyd**



**Jonathan Nicolle**  
Senior Solicitor  
P: 03 335 1222  
E: [jonathan.nicolle@andersonlloyd.co.nz](mailto:jonathan.nicolle@andersonlloyd.co.nz)





**Odette Simone Smolicz bump!!! Just happened to me!**

Unlike - Reply Message 19 January at 15:10



**The Right Move 4 U scam They did this to you too?**

Like Reply 19 January at 17:53



**Odette Simone Smolicz YES! It's an ongoing nightmare!**

Like Reply Message 19 January at 18:47



**The Right Move 4 U scam I think we should do something. Probably find more people and file a class action suit. They are still holding ALL my belongings. Its been 20 months....**

I have to file a lawsuit soon, in US, to get them to release my stuff and pay my damages. I intend filing a RICO suit. ... See more

Like Reply 19 January at 19:00 Edited



**Odette Simone Smolicz NYC to Sydney. She helped herself to my bank account and is blackmailing me that she won't release my goods until I make that fraud legal.**

Like Reply Message 19 January at 20:10



**The Right Move 4 U scam pros...**

Like - Reply 19 January at 07:25



Write a reply...

**Odette Simone Smolicz**

Chat conversation start



You and Odette Simone Smolicz aren't connected on Facebook

FRI 01:00

**Do you want to do dutch on lawyer and file a RICO claim against her with me? RICO is criminal charge, with 3x of damages. Regardless of how it is resolved, we should expose her. Also write to FMC, they already have my complaint. If more people will complain about her, they will be forced to take action...take her license away or something...**

Odette Simone Smolicz accepted your request.



FMC are on my case... what is RICO?

**[https://en.wikipedia.org/wiki/Racketeer\\_Influenced\\_and\\_Corrupt\\_Organizations\\_Act](https://en.wikipedia.org/wiki/Racketeer_Influenced_and_Corrupt_Organizations_Act)  
This is a nice bunch. She uses insurance agents who act with her.... I am SURE she has invalidated your insurance....  
It is a pure scam...  
I can file the lawsuit on my own... we should file TOGETHER, in the same court...**



Haha yup. She did. Gave me \$15k free 😊

**Yes. Now she is going to cancel your insurance..**



I'm working to get my stuff. Then I'm prosecuting for fraud / theft.

**For lack of payment... so no free...**



Yup.....!

**She's not going to give you your stuff...  
Trust me. She gave me \$10K insurance free. However, she then cancelled it - saying I did not pay her as per the contract...**



Haha! Yup!!!!!!

She put my stuff on the ship without contract or authorisation and demands payment. I lieu she will apparently share my BOL is I agree to her fraud.

**Exactly the same. She puts the stuff on the ship - and now her agent locally will refuse to give you the stuff...**



Yes!!!!!!

Do not sign Customs release form...

The shipment will lie in the port, and she or her agent will be liable, They will tell you you are liable, but you're not. So she has to either return the shipment to US, or she has to release it to you.

Do not agree to use her agent as your delivery person. Just say you will get your own delivery agent.

Get your agent to make a delivery order from customs. Then the cargo will be in no man's land. She cannot take it back because it has passed customs. Nor can she bring it in because YOU hold the customs delivery order. Then you can blackmail her back...say " I have the delivery order...if you want it, you have to pay me \$50,000 for it."



Ok because I am at the stage that it's all in storage accumulating excessive charges

She will incur \$10,000 per month in demurrage....

who has the delivery order

?

Who did the delivery?



No one yet. In AU apparently OSS is engaged

what is OSS?



A handler here in Sydney

Is it his handler?

Don't use that handler. They're in cahoots ...its a mafia...

Get your own handler...



Aaaah ok.

How much did you pay for freight, if you don't mind sharing...



Haha.... she quoted \$3250 invoices me for \$6750. Which I have been disputing since October

Then she helped herself to my bank account

Then tried to blackmail me

Its the local agent who has been holding onto my cargo....I should have gotten a different one...



Oh man.....

The local agent will not release your cargo until you do as she says. If you get your own, he will give you right advice...



I have a team of lawyers and such on the case  
Who IS she?

I had problem with my import shipment, the samekind of problem...(I have a business)...but I had my own handler, who did things...in a different way - the shipper's handler could not do a THING. Tried to bully me. Threatenedme with a lawsuit. With demurrage charges of over 10,000. I did not yield. After holding onto my shipment for a month, that guy just caved in.

Released everything uncomditionally...just 2 months ago...

He incurred these losses. I just said "too bad"....

This was for another shipment...I wsh I was as smart at that time....

The Right Move shipment remains locked...because I used her handler...

Where is your shipment? At Customs, or with the handler?



With the handler at the moment

oh crap....

Handler will not release...its a regular mafia...

immediatly file a complaint with the disputes tribunal or whatever you have there in Australia...handler WILL NOT release it until you pay him....he will tag on more and more charges...you'll see. Some of them are just made up charges...

Tell him he has an illegal contract...I will be happy to come as a witness...

see the illegal contract law...tell the handler that if he continues detaining your cargo, he will be guilty of aiding and abetting in a criminal act...give him my details and even phone number...if you like...

Bank account ? Did she take anything without your permission? You can always dispute charges form the bank and they will reimburse you and take it out of her account.

Chat conversation end

Seen Fri 01:27

IN THE DISTRICT COURT  
HELD AT CHRISTCHURCH

CIV No: 2015-009-2211

BETWEEN Madhu Sameer

Plaintiff

AND Conroy Removals Limited

Defendant

**Plaintiff's Submission in Response to Opposing Counsel's Memorandum**

**Madhu Sameer Submissions In Response to Defendant's Memorandum**

I am the Plaintiff in this case. I have received and read the defendant's Memorandum, submitted on 2/7/2016. Following is my brief response to it.

I reject the so-called facts and chronology of facts presented by the opposing Counsel Johnathan Nicholls. Evidence to the contrary has been presented to him repeatedly.

I also wish to make this Court aware that a sincere effort was made by me to settle this matter, but the matter remains in dispute due to Defendant's unreasonable expectations and demands that are verbally conveyed to me either by her directly, or by her attorney. Since these demands are now not made in writing, but are conveyed verbally to me, and they are threatening and extortionist in nature, in March 2016, I had requested that the opposing Counsel not make phone calls to me, but rather, convey his demands in writing.

However, a few days ago, Mr Nicholls again called me up and made a few demands and threats again, and threatened me with attorney costs, and auction of my goods unless I was willing to agree to all his demands. However, when I asked him to put the same in writing, he refused to do so.

Firstly, the matter is in dispute, and therefore defendant's threats to have the goods auctioned by the end of 2 months if I do not pay them 10,000+, must be safely considered to be a blackmail threat, an effort to intimidate me, and extort more money out of me. There is no contract that the defendant can produce which shows I owe them 10,000+, whereas I have produced evidentiary documentation that shows I was forced to hand over my goods to them under false promises, and there was never an agreement which stated I had to pay them the amount they state I owe them. Hence this is not dispute – it is has been an effort to take control of my goods by "hoodwinking" me into signing documents that gave them control of my goods. The implicit intent based on which defendant entered into a contract with me locally, evidence will show, had always been to extort money unlawfully from me. Once the goods were in their control, the defendant held them unlawfully, making repeated attempts to extort money from me. When I refused to pay, I was threatened with loss of goods thru auction, theft, or pilferage. My insurance was cancelled due to defendant's wrongful behavior.

This is very much comparable to kidnapping of a person, and demands for ransom. The perpetrator lures its victim under false pretense, and details him or her unlawfully, while money is being demanded for victim's release. Under normal circumstances, the victim or his or her family does not owe any money to the perpetrator. However, the victim's family is told that if they tell anyone about the blackmail, the victim will be murdered. If and when no money is forthcoming, the victim is murdered.

In this instance, the victim happens to be my goods, which were taken from me under false pretense, kept for a year, while the perpetrator makes unreasonable demands for money that is not owed under any contract. I was repeatedly threatened with liquidation of goods, verbally and in writing. Now, a more nuanced Counsel for the defendant makes verbal threats about imputing attorney costs and liquidating my goods unless I agree to his demands and pay up the money being demanded. There is no justification, contract, or any evidentiary documentation or legal basis that he presents for the money that defendant is demanding. I am deliberately being forced to incur significant expenses in this attempt by the defendant, to extort money.

As the Court is aware, the matter could have settled in the disputes tribunal had the Defendant agreed to have it settled. The discussions in the Disputes Tribunal are recorded, and the recording will show that I offered to drop the criminal charges, and agree to the jurisdiction of the Disputes Tribunal. However, the defendant made false representations to the Referee of the Disputes Tribunal, stating that she had a contract with the

Right Moves, and the matter could not be handled by the Disputes Tribunal. This was done with an explicit intention of threatening me with legal costs. Since then, her actions forced me to replace some items that were contained in the container that is being detained by the defendant. The replacement costs are in excess of \$40,000.

The attorney costs incurred by me in this matter, and attorney costs incurred by Defendant in this matter are therefore a direct consequence of defendant's own nefarious acts, malicious behavior. However, I offered to waive the damages arising as a consequence of her actions, and made the offer attached herewith as EX A. The offer was valid till CMC. As the Court can see, this is a very very reasonable offer.

Johnathan Nicolls called me a few days ago, and claimed that I make further concessions, which I was unprepared to make. I was told that the defendant would only deliver, would not assemble my furniture. I was also told that I should withdraw allegations of criminal nature and sign a deed to not pursue these matters \*before\* the delivery is made. I have been billed and charged for complete delivery, which includes assembly and other actions. There is no reason for defendant to refuse performing those jobs, and yet keep my \$5050 as ransom money. The defendant is liable for damages arising from breakage while in their possession, and during assembly of furniture etc. . As to the allegations of fraud, conspiracy, blackmail and extortion, I informed the counsel that if the defendant delivered successfully, and did not leave a reason for me to pursue these charges, I would withdraw these charges – but given the history of this case, and given the dishonest character of the defendant as evidenced by her past behavior, I would not withdraw criminal charges before the delivery was completed. I was told that if I did not pay them, or accept their offer waiving my right to delivery despite the fact that I had paid them \$5050 for delivery, they would sell my goods, would also prevent the matter from going back to Disputes Tribunal and would seek sanctions against me from the court in the form of attorney fee. The fact that there is a contract to perform a set of services, the fact that the contract was entered into by means of fraud, and misrepresentation, the fact that defendant offered to perform a set of service in exchange for monies, which she now refuses to perform, the fact that defendant is unwilling to refund my monies, and instead, is openly keeping my goods hostage without any legally justified reason to do so, is openly threatening to liquidate my assets without any justifiable reason to do so, and the fact that the attempts at extortion and blackmail for the last 10 months are all documented in and thru emails exchanged between parties – the matter is of unlawful criminal nature. It is NOT a civil matter, it is not simple breach of contract, but willfully committed fraud, with premeditated intent to extort more money than I had contracted for. The intent, from before the contract was entered into, was to threaten and harass me. The fact that I have repeatedly offered to waive the criminality and request that the matter be returned to Disputes Tribunal does not make their behavior less criminal. It simply shows my willingness to put this matter behind me. The defendant STILL continues to harass, intimidate me, and now wants to seek Court's help to do so. She should not be rewarded for her behavior.

This uncompromising attitude is exactly the reason why we are in Court. The intention of the defendant and her counsel is not to resolve the matter. It seems that they do not intend to deliver, and therefore they find excuses to hold onto my goods. The attorney costs, and threats of liquidation of my goods are used as an effort to blackmail me into paying more money than I owe them, AND to hold onto my goods until the statute of time within which I can file a claim against the RIGHT MOVE runs out in US. This represents a pre-meditated action to take control of my goods with an explicit intent to defraud me and deny me of my rights to seek delivery of the goods, either in New Zealand, or in US.

If the opposing Counsel agrees that the matter could have been resolved in the disputes tribunal but was not resolved there due to defendants malicious actions, and misrepresentations, or even due to her "confusion" about her contractual obligations, then the defendant is either directly or indirectly responsible for the expenses incurred by me in this matter since then. If now the matter can be returned to disputes tribunal and can be resolved in the disputes tribunal without defendant having to incur attorney fee and costs, but the

defendant is refusing to stipulate to have it moved back, or is causing the matter to deliberately remain in the District Court and continues to threaten me with attorney fee, then the attorney costs that the defendant is threatening me with, in this matter, should not be awarded in the unlikely case the Court rules in defendant's favor. Defendant is provided with the option of reducing her costs by transfer to DISPUTES TRIBUNAL, but is willfully refusing to do so.

Two days ago, I again informed the defendant's attorney that I have recently moved to a new, unfurnished accommodation, and would like my goods to be returned pending Court's decision, as otherwise I would be forced to purchase home furniture and furnishings. The matter was conveyed to the defendant. The defendant was unconcerned, and only reiterated her threats about attorney fee, costs and liquidation of my goods thru auction if I do not pay her the \$10,000 extra that she has demanded.

Since the defendant is directly, deliberately contributing to increasing my expenses, and continues to willfully inflict harm on me, therefore I am withdrawing my good faith offer waiving over \$40,000 in expenses incurred till date as a consequence of defendant's misconduct.

**I now request that the matter be either returned to Disputes Tribunal, or, if the defendant or his counsel objects to moving this matter to Disputes Tribunal, the matter be set for trial in District Court.**

**Defendant claims to have taken a lien on my goods. I request that the Court order the lien my goods be removed and the goods delivered pending a decision by the Court. If the Court is unable to do so, I request that the Court at least order defendant not to auction my goods.**

I believe the offer of settlement conference made by the opposing counsel is being used as a weapon to prevent the matter being sent to Disputes Tribunal, to cause more delays, to further increase my expenses, and to increase their own legal expenses which they are then threatening to have imputed to me. I see absolutely no benefit in holding settlement conference in this matter. Such settlement conferences have been held by several neutral parties earlier, only to be sabotaged by the defendant.

An effort was made by the referee of the DISPUTES TRIBUNAL, an effort was made by an investigator called John Maio in October, an attorney from Lane Neaves that I had hired in January 2016 to negotiate the matter and settle (Ben Russel from Lane Neaves). At each settlement meeting, I was threatened, intimidated, blackmailed (for Court's information, these threats and blackmail efforts are available in the form of emails, etc). Since the efforts of all these intermediaries have failed and the defendant continues to refuse to deliver my goods, therefore the only inference that is to be drawn in this matter is that the defendant is buying time by asking for a settlement conference, has no intention of making the delivery, and is stealthily planning to auction my goods, acquire the goods cheaply in the auction. Given such misconduct, and nefarious intentions, I am unwilling to make any more concessions, and would like to proceed with a claim for damages – preferably in Disputes Tribunal, or, if the defendant does not agree to a transfer, in the District Court.

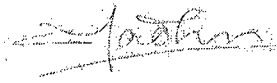
Defendant's threats, intimidations and blackmail attempts are extremely distressing for me and cause great mental anguish to me and my family. **I request the Court to prohibit Defendant, defendant's attorneys or anyone connected with Defendant from contacting me on the phone, or in person.** I request that all contact be thru email, so there is no emotional distress, and no threats, blackmail efforts and intimidation efforts can be made.

I wish to make the Court aware that the opposing Counsel has been provided with almost all the evidentiary documentation in this case. However the fact that I am self represented offers the defendant and the opposing counsel an opportunity to exploit the power differential that my limited knowledge of New Zealand law creates. Despite my repeated requests that he read the evidence provided to him, before he makes misleading statements to my previous attorneys, or to the Court or even to me, Mr Nicolls informs me that he does not have time to read all that documentation. Given the deliberate unwillingness to familiarize himself with the



facts, and a lack of any evidentiary documentation in support of the claims made by his client, the Court must construe **any mischaracterization or misrepresentation of facts as Counsel's deliberate attempt at misleading the Court by providing false information to the Court.** This is important when imposing exemplary sanctions against the defendant. In addition, I also reserve the right to seek sanctions against attorneys in this matter, should any misrepresentation of facts be made to the Court, or if the Court is misled in any way.

I make the above statements under penalty of perjury, under the laws of New Zealand.



Madhu Sameer

3/7/2016



A

(Disputes Tribunals Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court: Christchurch

Case number: CIV-2015-009-001566

**APPLICANT**        **Madhu Sameer**  
**And respondent**   **374 Memorial Ave**  
**for**                    **Burnside**  
**Counterclaim**      **Christchurch 8063**

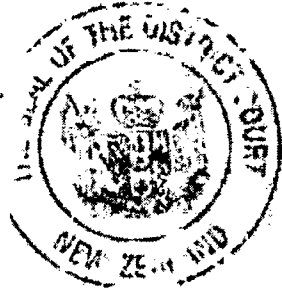
**RESPONDENT**      **Conroy Removals Limited**  
**And Applicant**     **Po Box 5079**  
**for**                    **Greenmeadows**  
**Counterclaim**      **Napier 4145**

**The Tribunal hereby orders:**

**Madhu Sameer is to pay \$9,045.51 to Conroy Removals Limited on or before Wednesday 4 January 2017.**

**Reasons:**

1. Ms Sameer engaged the services of The Right Move Inc. (hereafter Right Move) to transport her household goods door to door from California to Christchurch. Right Move obtained a quote from Conroy Removals Limited (hereafter CRL) to uplift the container from Lyttelton and provide destination services. When the goods were in transit CRL was informed from the shipper that it should prepare to receive the container. CRL proceeded to make the necessary arrangements and contacted Ms Sameer for payment of port charges. It was informed that Ms Sameer and Right Moves were in dispute over many aspects of the transportation of the goods. The dispute involved a variety of complaints including insurance, packing, payment and the provision of an inventory list. Ms Conroy, manager of CRL, said it was most unusual that a container has been shipped when the consignor has paid only 15 per cent of the service fee. As a result of the disagreement between Ms Sameer and Right Move, only one 40ft container was shipped and the other remained in California.
2. CRL was not aware of the disputes and informed Ms Sameer that Right Move had requested it collect the container from the port, clear it through customs and quarantine and deliver it to Ms Sameer. Ms Conroy said Right Moves incorrectly wrote CRL's name as the consignor of the container on the bill of lading. CRL had not requested the shipment and it ought to have been in the name of Ms Sameer. She said it is the consignee who is liable for the port charges and container costs. Ms Sameer disputed she was responsible for port charges and expected CRL to uplift the container and deliver it to her. Right Moves does not belong to the international shipping organisations that CRL does and so does not have an account with CRL. CRL therefore required Right Moves to pay the account before it undertook the destination services. Ms Conroy said CRL did not receive any payment from Right Moves because it was in dispute with Ms Sameer and Ms Sameer refused to pay port charges to release the container. Ms Conroy said if a container is left at the port, both the port and the shipping company impose penalties that accrue at a daily rate. In order to avoid penalties and for Ms Sameer to obtain her goods, an arrangement was entered into between the parties whereby Ms Sameer paid CRL directly and CRL would arrange for her goods to be delivered. CRL uplifted the container and arranged a time for Ms Sameer to be present when it opened it and devanned it into its own containers for delivery. CRL operate an MPI approved transitional facility, and upon opening the container found it contained spiders and goods that required an MPI inspection before it was emptied. The container was immediately sealed pending a MPI inspection. After



This is the ~~submittal~~ (or order) marked "A"  
referred to in the annexed certificate given under my  
hand and seal of the Court at Christchurch  
the 9 day of August 2017

~~By my Registrar:~~  
A. McDonald

445/10/17

fumigation the containers were devanned into two 20ft containers in Ms Sameer's presence. The parties dispute whether Ms Sameer subsequently refused delivery or whether CRL refused to deliver it. CRL stored the two containers at its Christchurch premises pending resolution of the dispute.

3. The matter was first heard in the Disputes Tribunal on 12 November 2015. After hearing from both parties it appeared that the primary dispute arose with an overseas party involving international shipping law that was outside of the jurisdiction of the Tribunal and the matter was transferred to the District Court. Ms Sameer agreed that if the tribunal did not have jurisdiction then it should be transferred. Ms Conroy said she hoped to have the matter resolved by way of settlement and offered several dates to deliver the container. The parties could not reach a settlement and Ms Conroy, although disappointed, was resigned to accept the matter would be transferred to the District Court.
4. After a case management conference in June 2016, Judge Keller concluded that the core of the dispute between the parties was a claim based in contract and transferred the hearing to the Disputes Tribunal. The matter was set down for an all day hearing on 8 December 2016. On 5 December 2016 Ms Sameer requested an extension of time to allow her to respond to the counterclaim that was served on her on 7 November by the Tribunal and 31 October by way of an email from CRL's solicitors. The counterclaim was limited to the storage costs Conway incurred. Ms Sameer said her computer was recently damaged and she had taken it in for repairs. She said it contained files of evidence although she could not remember what that evidence was. The counterclaim was served on Ms Sameer 5 weeks before the scheduled hearing and did not contain any new information or claims that may have taken Ms Sameer by surprise. The hearing proceeded and Ms Sameer was provided with a copy of everything she had filed in support of her claim and everything filed by CRL in support of the counterclaim.
5. After listening to the first Disputes Tribunal recording containing the background to the dispute, reading everything placed on the file by both parties and hearing from the parties in the continued hearing, the issues to be determined on the claim are:
  - a. What were the terms of the contract between Conroy Removals Limited and Ms Sameer?
  - b. Was the contract an illegal contract?
  - c. Did Conroy Removals Limited fulfil its contractual obligations?
  - d. If not, what reasonably foreseeable loss can Ms Sameer be compensated for and has she taken reasonable steps to mitigate the loss she incurred?
6. The issues to be determined on the counterclaim are:
  - e. If Conroy Removals Limited fulfilled its contractual obligations then has Ms Sameer fulfilled her obligations?
  - f. If not, then what reasonably foreseeable loss can Conroy Removals Limited be compensated for and has it mitigated that loss?
7. As parties in a Disputes Tribunal hearing are unable to be represented by a solicitor, the issues identified by the solicitors for CRL were altered to ensure the parties were responding in their individual capacities and neither was relying on a representative.

#### **What were the terms of the contract between Conroy Removals Limited and Ms Sameer?**

8. A contract is formed whenever two parties arrive at an agreement that they intend to be legally bound by. Each party to the contract agrees to perform the promise they make to the other. In usual circumstances a contract does not need to comply with any format in order to be enforceable, as long as the terms are reasonably certain or can be ascertained.
9. CRL sent an email to Ms Sameer titled 'arrival notification' on 13 August 2015 and it detailed its door to door delivery service in conjunction with Right Move. The letter stated that MPI charges and fumigation may be required and are usually additional to the removal contract and also advised that if Ms Sameer was unable to take delivery CRL was able to offer secure storage for a monthly charge of \$129.49 from 28 August 2015. After CRL became aware of the dispute,

the potential that fines may be imposed, and the possibility that Ms Sameer may not receive her goods, it offered to collect the container on Ms Sameer's behalf and for her to pay CRL directly. The offer was essentially to bypass its appointment as an agent and engage directly with Ms Sameer for the same service CRL had initially been appointed to provide. CRL wished to not become involved with a dispute it was not a party to and was unable to ascertain the full facts of what occurred. A direct contract would allow Ms Sameer to receive her goods and to recover any loss from Right Move if that was due to her. Ms Sameer requested that the contract be cancelled but was informed it was not possible to do that as the service was almost complete and a container must be booked onto a ship in advance and be assigned to a consignee. Ms Sameer sent an email to CRL on 19 August 2015 and stated that if she was provided with a breakdown of CRL's charges she would consider releasing payment to CRL directly provided it delivered the shipment to her immediately or as soon as all formalities were over. Ms Sameer reiterated in that email that "the bottom line is - you are delivering my goods - of which there is no doubt in your mind. And you are getting paid for delivering those goods". CRL responded that same day and provided a breakdown of its costs and stated "in addition, we should also mention that if the Ministry for Primary Industries decide to conduct a physical inspection on the shipment there will also be additional charges payable". Ms Sameer paid the total sum requested by CRL the following day.

10. From the exchange between the parties it is clear that they entered into a contract. CRL offered to collect the container, comply with formalities and deliver the goods to Ms Sameer urgently and Ms Sameer accepted the offer when she paid \$4,041.24. She agreed to pay an additional sum for a MPI inspection if required and was aware that she could store her goods with CRL if she was unable to take delivery.

#### Was the contract an illegal contract?

11. Ms Sameer requested this issue be considered and said it was fundamental to her claim that the reason why and how the contract came about was determined as she considered the agreement was based on illegal grounds. Ms Sameer said CRL conspired with Right Moves to extort money from her and blackmail her to pay money on false promises of delivering her goods. She said CRL agreed with Right Moves to hold the goods until the insurance limitation period expired in an attempt to ensure Ms Sameer could not claim for the items damaged as a result of Right Move's careless packing. Ms Sameer said that CRL took photos of her goods in her presence when it devanned the shipping container without obtaining her permission and emailed the photos to Right Move. The fact that CRL sent the photos to Right Move was evidence she said, that CRL was colluding with Right Move.
12. Ms Conroy denied CRL sent any photos to Right Move and said the reason why the photos were taken was because Ms Sameer was unsure about the accuracy of the inventory list Right Move completed and the condition that the goods arrived in. She also denied CRL was holding the goods as ransom and said it made repeated attempts to deliver the goods to Ms Sameer.
13. An agreement is illegal and void if its direct or indirect object is the commission of a crime or a fraud. After reviewing all of the evidence I am unable to arrive at the conclusion that the contract was illegal as at its creation. The contract formed between Ms Sameer and CRL is a contract for the provision of services and there is nothing illegal about that agreement. It is clear Ms Sameer was under much stress and pressure at the time she contracted with CRL. The pressure however was not created by CRL, but rather because of the dispute between Ms Sameer and Right Move and the inevitable stress of an international relocation. CRL reiterated in several emails that Ms Sameer was free to engage the services of another mover if she desired. I am satisfied Ms Sameer's consent was not obtained by duress and was not in any way unconscionable. Both parties entered into the agreement based on commercially expedient reasons to achieve the best outcome for them both. Ms Sameer said the move was her fifth international move and I am persuaded she was fully competent to enter into the agreement that she did with CRL.

**Did Conroy Removals Limited fulfil its contractual obligations?**

14. Ms Sameer said CRL repeatedly breached its promise to deliver the containers and instead demanded payment of storage fees that did not form part of the agreement she entered into.
15. Ms Conroy said CRL completed everything the contract required it to do. After Ms Sameer's container arrived at CRL's transitional facility it was opened in her presence and CRL immediately identified it contained possible bio-security risks and so sealed the container. MPI inspected the container and ordered it to be fumigated. Ms Sameer refused to sign a disclaimer for the fumigation chemicals and accordingly the container was not fumigated on the arranged date. MPI then mandatorily fumigated the container. As a result of Ms Sameer's refusal to fumigate when it was first arranged, the container stayed on CRL premises longer than anticipated. CRL sent an email to Ms Sameer on 25 August outlining to her what she had paid so far and copied the term from the agreement between Right Move and Ms Sameer that provided that storage at destination was not covered by the agreement. The email stated that after the scheduled 31 August fumigation and MPI clearance, storage with CRL was \$600.00 per month.
16. Ms Sameer requested she and her two sons were present when the container was devanned. CRL agreed and on Saturday 29 August 2015 it was devanned. Mr White, CRL's Christchurch manager, agreed with Ms Sameer that her goods had been poorly packed and some items were damaged. The parties agreed that the containers would be delivered on the following business day being 31 August.
17. Ms Sameer's son, Mr Khera, attended the hearing to give evidence on behalf of his mother. He said that his mother requested he telephone the landlord and arrange to have the furniture removed so they could take delivery of their goods. Mr Khera was of the view that it was CRL who failed to deliver the goods and not his mother who refused delivery. Mr Khera however, acknowledged that the landlord's furniture was not removed, that his information was obtained from his mother and that he had no direct communication with CRL. Although I considered Mr Khera was genuine, his evidence contradicts the emails that provide a clear record that Ms Sameer refused delivery. As Mr Khera's evidence was obtained through his mother, and as he was not a party to the email correspondence, I am unable to accept his view as being independent and informed evidence that I can place weight on.
18. The email evidence is that on 31 August Ms Sameer advised she was not moving to the address she previously supplied to CRL and was unable to take delivery. CRL advised she would incur storage charges if the goods remained with CRL and requested an alternative delivery address if she did not want CRL to store her goods. Ms Sameer did not provide an alternative address and requested a Saturday delivery date. Ms Conroy said Saturdays are popular and tend to be booked in advance and therefore the earliest delivery was 19 September. Ms Sameer was requested to pay \$1,021.16 for storage and handling before her goods were delivered on 19 September. Ms Sameer refused to pay for storage and CRL refused to deliver unless its costs were met.
19. I am satisfied that it was a term of the agreement that Ms Sameer would pay for storage and handling if she chose to use CRL's services for that purpose beyond 31 August 2015. The option for storage was advised to Ms Sameer in the arrival notification dated 13 August 2015 and again in an email dated 25 August. Ms Sameer's agreement with Right Move excluded storage at destination. Ms Sameer therefore was obliged to pay CRL's storage fee. CRL initially advised its monthly storage fee was \$129.49 in the arrival notification. On 25 August it advised its storage fee for Ms Sameer's two containers was \$600.00 per month or it could deliver the containers to another storage facility of Ms Sameer's choosing. Ms Sameer did not question the storage fee and six days later she used CRL's storage facilities. I am therefore satisfied that Ms Sameer was obligated to pay CRL the sum of \$1,021.16 for storage.
20. CRL claimed that it had the right to take a lien over the goods as provided by section 23 of the Carriage of Goods Act 1979 and therefore said it had a right to maintain possession of the goods pending payment.

21. On 23 September CRL advised Ms Sameer it could deliver her goods on 1 October 2015 and would reduce the accumulated storage costs to the sum of \$1,260.41, but Ms Sameer again refused to pay the storage charge.
22. After the Disputes Tribunal hearing on 11 November 2015, CRL offered to limit its storage charge to \$1,000 if Ms Sameer accepted delivery on 18 or 24 November. I am satisfied that Ms Sameer was at least obliged to pay \$1,021.16. The emails provided clearly show Ms Sameer refused that offer and later refused to accept CRL's offer to deliver without paying any storage costs. Ms Sameer refused delivery (without the payment of storage charges) unless CRL paid her \$15,000.00. CRL has made several offers to deliver the goods and waive all storage charges.
23. Initially I had reservations about CRL maintaining possession of the goods and charging monthly storage fees without providing notice that it held a lien over the goods. I am satisfied however, that Ms Sameer owed a sum greater than \$1,000.00 and so when she refused to pay that sum, and also refused to accept delivery without paying storage costs on 12 November 2015, she was in breach of her contractual obligations to CRL. Ms Sameer knew that monthly storage costs were accumulating but nevertheless has persisted in refusing to accept delivery. In the circumstances I am satisfied that Ms Sameer was contractually obliged to accept delivery and her failure to do so constitutes a breach of the agreement she entered into with CRL. Ms Sameer bears the burden of proving that CRL has breached the contract it has with her and she had not discharged that burden.

**What reasonably foreseeable loss can Ms Sameer be compensated for and has she taken reasonable steps to mitigate the loss she incurred?**

24. As Ms Sameer has failed to prove that CRL breached the contract, she is not entitled to an order for the loss she incurred and therefore I do not need to consider whether the loss was foreseeable or whether she mitigated her loss.

#### The Counterclaim

**If Conroy Removals Limited fulfilled its contractual obligations then has Ms Sameer fulfilled her obligations?**

25. For the reasons provided above I am satisfied that Ms Sameer was contractually obliged to pay the storage costs incurred and accept delivery. The evidence shows that it was Ms Sameer who refused delivery, even after CRL offered to waive its storage fees.

**What reasonably foreseeable loss can Conroy Removals Limited be compensated for and has it mitigated that loss?**

26. Ms Sameer was aware of the monthly charges she was accumulating. On 31 May 2016 CRL claimed a lien over the goods pursuant to its right under the Carriage of Goods Act. CRL have claimed the total of \$9,045.51 for unpaid storage fees. I am satisfied that loss was known to Ms Sameer and is the reasonably foreseeable loss it suffered as a result of Ms Sameer's persistent breach of her agreement. An order is therefore made that the claim is dismissed and that Ms Sameer pay the counterclaim amount of \$9,045.51.
27. Ms Conroy came prepared in the hearing with dates CRL could deliver the containers before Christmas. Ms Sameer declined to enter into negotiations with CRL and left the hearing.

Referee: Krawczyk DTR  
Date: 14 December 2016





## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available or a mistake was made.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 28 days of the decision having been made. If you are outside of time, you must also fill out an Application for Rehearing Out of Time.

**PLEASE NOTE:** A rehearing will not be granted just because you disagree with the decision.

### Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, and serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.



Ai

**Duplicate**

In the District Court of New Zealand  
Christchurch Registry

CIV-2015-009-001566

In the matter of            an Appeal Against an Order of Disputes Tribunal

Between                      Madhu Sameer

   Appellant

And                              Conroy Removals Limited

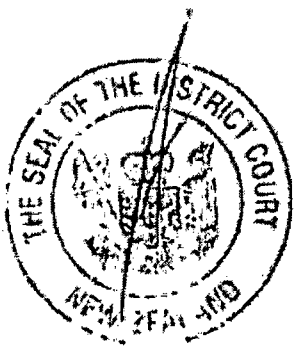
   Respondent

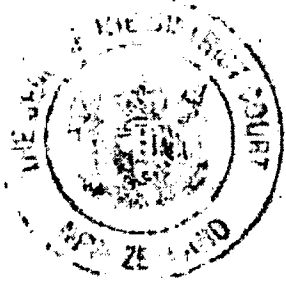
**Order of the Court for Costs**

Dated: August 2017

Respondent's solicitors:  
 Simon Munro | Anna Davidson  
 Anderson Lloyd  
 Level 3, 70 Gloucester Street, Christchurch 8013  
 PO Box 13831, Armagh, Christchurch 8141  
 DX Malt: WP20308  
 P +64 3 379 0037 | f +64 3 379 0039  
 simon.munro@al.nz | anna.davidson@al.nz

**anderson  
lloyd.**





This is the instrument (or order) marked "A"  
afforded to me by the Court at Christchurch  
on the 9th day of August 2017

*[Handwritten signature]*  
A.L. McDonald

IN THE MATTER OF      An application by MADHU SAMEER to  
bring a private prosecution

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JUDGE S J O'DRISCOLL

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**Introduction**

- [1] This is an attempt to bring private prosecutions by Madhu Sameer ("Ms Sameer") against Fiona Ann Conroy, Monica Elizabeth McKinley and Rodney Glenn White.
- [2] Ms Sameer submitted seven charging documents against Ms Conroy, one against Ms McKinley and one against Mr White. The defendants are alleged to have committed the following offences under the Crimes Act 1961: fabricating evidence,<sup>1</sup> obtaining by deception,<sup>2</sup> perjury,<sup>3</sup> false statements or declarations,<sup>4</sup> blackmail,<sup>5</sup> contravention of statute,<sup>6</sup> namely the Fair Trading Act 1986 and the New Zealand Bill of Rights Act 1990, offence committed other than offence intended<sup>7</sup> and parties to offences<sup>8</sup>.
- [3] On some of the charging documents Ms Sameer has also listed Michelle Franklin, Dylan Cortina and the companies Right Move 4U, Conroy Removals, Talbot Insurance and XO Movers as parties to those offences.

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<sup>1</sup> Crimes Act 1961, s 113.

<sup>2</sup> Section 240.

<sup>3</sup> Section 108.

<sup>4</sup> Section 111.

<sup>5</sup> Section 237.

<sup>6</sup> Section 107.

<sup>7</sup> Section 70.

<sup>8</sup> Section 66.

- [4] The facts that give rise to these charges occurred between the period when she engaged shippers and insurers to transport her goods from the United States to New Zealand and the time when Conroy Removals (“CRL”) declined to release those goods unless she paid storage. The facts are set out, with factual narrative, in Ms Sameer’s ‘Statement regarding charge’ and runs over some 48 pages.
- [5] Ms Sameer alleges that she never had a contract with CRL for their services and they have obtained her goods fraudulently and have refused to release them. The allegations are that CRL and its employees have engaged in blackmail and extortion tactics and have aided and abetted Right Move 4U and other United States partners including the insurance company to commit crimes against her.
- [6] To understand Ms Sameer’s present allegations I will set out a brief background to her dispute.

### **Background**

- [7] In mid-2015, Ms Sameer moved from the United States to Christchurch and arranged for her belongings to be transported by a United States-based company called Right Move 4U (a party to the offences alleged). Right Move 4U used the New Zealand-based landing services of CRL to take possession of the goods upon arrival, clear them through customs and arrange delivery. A dispute arose between Ms Sameer and Right Move 4U before her belongings arrived in New Zealand and later a dispute arose with CRL as to delivery of the goods.
- [8] Ms Sameer took her grievances to the Disputes Tribunal. She said that she had no contractual relationship with CRL and the expenses for which they were given judgment were incurred as a result of their own actions not hers.
- [9] Ms Sameer appealed to the District Court. The appeal was unsuccessful.<sup>9</sup> As a result costs were awarded to CRL. Ms Sameer was liable to pay CRL a sum of \$18,846.51 which comprised the sum owing under an order of the Disputes

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<sup>9</sup> *Sameer v Conroy Removals Ltd* [2017] NZDC 26138.

Tribunal and a sum under an order of the District Court for payments of costs on an unsuccessful appeal.

[10] Ms Sameer failed to pay that sum so CRL issued a bankruptcy notice to her claiming payment. Ms Sameer has not pay any part of the sum claimed and instead applied to the High Court to set the bankruptcy notice aside.

[11] In her application to the High Court, Ms Sameer also sought to include an order to join three parties to the proceeding, an order that the contract between her and CRL is invalid or cancelled or void, an order directing release of goods, damages, punitive damages and other relief as the Court thinks appropriate.<sup>10</sup>

[12] Associate Judge Matthews only dealt with the application to set aside CRL's bankruptcy notice. However, his Honour briefly discussed Ms Sameer's allegations of fraud which in my view, are relevant to the current application to bring a private prosecution in the District Court.

[13] As I read the documents and material filed in support of the private prosecution there are several reasons for Ms Sameer initiating the private prosecution:

- (a) Ms Sameer believes that the defendants and the companies listed in the charging documents and the 'statement regarding charge' have violated her rights and have attempted and continue to defraud her unless she complies with their demands;
- (b) The Disputes Tribunal lacked jurisdiction to deal with criminal matters and Ms Sameer believes the Tribunal and District Court have refused to look into her matter and chose to believe the defendants without supporting evidence;
- (c) Ms Sameer believes that CRL and its employees have made false declarations in the Disputes Tribunal and subsequently in the District Court and that is a reason why she was unsuccessful in both proceedings;
- (d) Ms Sameer is unhappy with the results in the civil jurisdiction and is now trying to relitigate the matter through a different forum.

#### **The law on private prosecutions**

[14] According to s 15 of the Criminal Procedure Act 2011 ("CPA") "any person may commence a proceeding." The charging document must include a

<sup>10</sup> *Conroy Removals Limited v Sameer* [2018] NZHC 698 at [4].

statement by the person commencing the proceeding that he or she has good cause to suspect that the defendant has committed the offence specified in the charge.<sup>11</sup>

[15] Private prosecutions are governed by a 26 of the CPA. It provides:

## **26 Private prosecutions**

- (1) If a person who is proposing to commence a private prosecution seeks to file a charging document, the Registrar may-
  - (a) accept the charging document for filing; or
  - (b) refer the matter to a District Court Judge for a direction that the person proposing to commence the proceeding file formal statements, and the exhibits referred to in those statements, that form the evidence that the person proposes to call at trial or such part of that evidence that the person considers is sufficient to justify a trial.
- (2) The Registrar must refer formal statements and exhibits that are filed in accordance with subsection (1)(b) to a District Court Judge, who must determine whether the charging document should be accepted for filing.
- (3) A Judge may issue a direction that a charging document must not be accepted for filing if he or she considers that -
  - (a) the evidence provided by the proposed private prosecutor in accordance with subsection (1)(b) is insufficient to justify a trial; or
  - (b) the proposed prosecution is otherwise an abuse of process.
- (4) If the Judge determines under subsection (2) that the charging document should not be accepted for filing, the Registrar must-
  - (a) notify the proposed private prosecutor that the charging document will not be accepted for filing; and
  - (b) retain a copy of the proposed charging document.
- (5) Nothing in this section limits the power of a Registrar to refuse to accept a charging document for want of form.

[16] The provision is new and has no counterpart in the previous statutory framework. It enables a District Court Judge to reject a charging document that a

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<sup>11</sup> Criminal Procedure Act 2011, s 16(2)(c).

private prosecutor seeks to file if the evidence the prosecutor relies on is insufficient to justify trial or if the prosecution is otherwise an abuse of process.

[17] The High Court decisions of *Wang v District Court at North Shore*<sup>12</sup> and *T v District Court at Auckland*<sup>13</sup> provide that where a charging document filed by a private prosecutor is referred to a District Court, the Judge must:

- (a) Order that the proposed prosecutor file formal statements as described in s 82, unless formal statements have already been filed;
- (b) Determine whether, in view of the formal statements and circumstances of the case, to hear from the proposed defendant/s prior to making a decision, with such an opportunity being particularly necessary where:
  - i There is doubt as to the merit of the prosecution; or
  - ii There is a possibility the proceedings are vexatious or otherwise an abuse of process; then
- (c) Direct that either:
  - i The charging document not be accepted for filing as, on the basis of the formal statements and exhibits referred to in those statements, the evidence is insufficient to justify trial or the proposed prosecution is otherwise an abuse of process; or
  - ii The charging document should be accepted for filling as on the basis of the formal statements and exhibits referred to in those statement, the evidence is sufficient to justify trial and the proposed prosecution is not otherwise an abuse of process.

[18] The two High Court cases illustrate that in private prosecution cases it is good practice to hear from the defendant/s on the allegations, however ultimately it comes down to the discretion of the Judge in the particular circumstances.

[19] I have received a huge volume of documents from Ms Sameer in support of her application that the charging documents be accepted for filing.

<sup>12</sup> *Wang v District Court at North Shore* [2014] NZHC 2756.

<sup>13</sup> *T v District Court at Auckland* [2015] NZHC 972

[20] The issues for determination in this case are whether the evidence is sufficient to justify a trial and whether the proposed evidence is an abuse of process.

[21] The authors of *Adams on Criminal Law* suggest that the grounds for exercising the discretion under s 26 are also applicable to a decision to dismiss a charge under s 147 and guidance may be taken from case law decided under that section.

### *Sufficiency of evidence*

[22] In *R v Kim* the Court discussed the meaning of “insufficient to justify a trial” in the context of the sufficiency of the evidence:<sup>14</sup>

The power to discharge on this ground must be exercised in accordance with the principles stated by this Court in *R v Flyger* as explained in *Parris v Attorney-General*.

It is for the jury to determine whether the evidence is, or is not, sufficient to establish guilt. It is not for the Judge to predict what the jury will find. The test is whether the evidence, if accepted by the jury, is sufficient in law to prove the essential elements of the charge to the required standard. If so, the Judge should leave the case to the jury and not withdraw it on evidentiary grounds.

[23] In this case, therefore, when considering whether to accept the charging documents for filing the issue is: is the evidence, if accepted by the jury, sufficient in law to prove the essential elements of the charge beyond reasonable doubt?

[24] On the evidence provided by Ms Sameer I.am of the view that there are significant credibility issues.

[25] Ms Sameer claims that defendants have lied to her and to the courts for the purpose of defrauding her. Further she says that in a charging document for Fiona Conroy that she or CRL had not offered to waive storage fees, but a letter attached (under Exhibit 35 tab, dated 1 June 2016) sets out a settlement offer from CRL. The offer included an offer to waive storage fees among other things.

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<sup>14</sup> *R v Kim* [2010] NZCA 106.



[26] The documents attached to the charging documents are the same narratives that Ms Sameer has provided to the Disputes Tribunal, District and High Courts.

[27] Furthermore, the exhibits Ms Sameer attached are not helpful in ascertaining the legal arguments she is trying to put across nor are they in my view sufficient in law to prove the elements of the charges. On the contrary, some of the exhibits go insofar as to contradict Ms Sameer's allegations and instead show that she did not understand the situation.

### *Abuse of process*

[28] In *R v Golding* the Court of Appeal noted that the primary concern when looking at what amounts to a finding of abuse of process, is whether public confidence in the administration of justice is undermined.<sup>15</sup> Situations could include where the processes of the Courts are being employed for ulterior purposes or so as to cause improper vexation and oppression, unfairness to a particular defendant may be a consideration but the primary focus is on the misuse of the process by those who enforce the law.<sup>16</sup>

### **Discussion**

[29] Ms Sameer having been unsuccessful in her claim for breach of contract and in her defences of CRL's claims for its charges, repeats and expands on the allegations of dishonest conduct by CRL, its employees and several other persons and companies based in the United States.

[30] Ms Sameer was told when she first initiated proceedings in the Disputes Tribunal that the Tribunal did not have jurisdiction to deal with the allegations of dishonest conduct nor join an overseas company as a party. The matter was referred to the District Court who referred it back to the Disputes Tribunal as Ms Sameer wanted the contractual aspects of her claim to be determined.

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<sup>15</sup> *R v Golding* (2000) 109 CRNZ 435 (CA).

<sup>16</sup> At [6] and [14].

[31] Ms Sameer now says that the Disputes Tribunal and the District and High Courts did not want to look into her allegations of perjury and fabrication of evidence and continues to allege that the decisions in the Tribunal and the subsequent appeal to the District Court are based on fraudulent documents and actions by the defendants.

[32] In my view Ms Sameer is unhappy with the decisions from the civil jurisdiction and is now trying to use a different forum to bring her proceedings forward. The charging documents she has presented for filing are difficult to follow and understand. The same applies to her legal arguments. They name several other persons and companies as parties to the offences she is alleging including some overseas parties to which the District Court does not have jurisdiction over. Further in relation to one defendant she is alleging a breach of the Bill of Rights Act 1990. The difficulty with accepting charges which refer to the contravention of the Bill of Rights Act 1990 is that the Act only applies to “acts done by the legislative, executive or judicial branches of the Government of New Zealand or by any person or body in the performance of any public function, power or duty conferred or imposed on that person or body by or pursuant to law.” The defendants listed in the charging document do not come within those conditions.

[33] Associate Judge Matthews, with reference to Ms Sameer’s criminal allegations said in his judgment:<sup>17</sup>

Now Ms Sameer, having been unsuccessful in both her claim for breach of contract and in her defence of CRL’s claim for its charges, repeats and expands on the allegations of dishonest conduct not only by CRL but by everyone else involved including numerous unnamed people, but there is an inherent improbability in the basic allegation that underpins all the claims Ms Sameer now makes. It is inherently improbable that there has at any point been any conspiracy between any parties in this matter. The nature of the arrangements made are, on their face, standard arrangements for insuring and shipping from one country to another, and handling goods within the destination country on arrival. CRL had defined responsibilities for which it had been prepaid in part by Right Move 4 U and for which it sought extra recompense when its duties expanded beyond those which were envisaged. I assess the prospect of Ms Sameer establishing any conspiracy, dishonest or otherwise, with any of the other parties as negligible. I make the same assessment in respect of the broad swathe of claims in the present application and the claim in California. Whilst there can be no doubt that Ms Sameer passionately believes in her position, and genuinely proposes to pursue claims if she is able to do so, I find

<sup>17</sup> *Conroy Removals Ltd v Sameer* [2018] NZHC 698.

that the claims made cannot be described as genuine or triable and they do not have a reasonable probability of success.

[34] Ms Sameer's allegations are based on the same facts that were presented in the Disputes Tribunal proceeding and subsequent appeal and in the High Court proceeding regarding a striking out of the bankruptcy notice issued by CRL. The allegations in the District Court are of significant gravity and in my view if there are any prospects of the charging documents being accepted for filing, given the significant effect of the charges and the number of defendants, the defendants would need to be heard. However, taking the same view as Matthews AJ, although Ms Sameer passionately believes in her position, the claims cannot be described as genuine and triable.

### **Conclusion**

[35] In my view, taking into account the matters I have referred to above, there is not sufficient evidence to bring a private prosecution against the defendants and Ms Sameer's use of the private prosecution forum is an abuse of process.

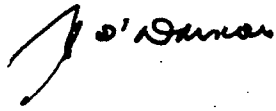
[36] A private prosecution involves allegations of criminal conduct on the part of a defendant and there is nothing before me to indicate any of the proposed defendants have acted with any intention to commit a criminal act.

[37] In my view, the matters which give rise to Ms Sameer's allegations are matters of contract, which have been adjudicated by the Disputes Tribunal and the District Court.

[38] Finally, I have not invited any comments or responses from the proposed defendants. I did not want to trouble them because I did not think this case reached a threshold where it was necessary to bring them to court and invite a response to the allegations made by Ms Sameer.

[39] I will however direct a copy of my decision be sent to the proposed defendants so that they are aware of my decision, in case they are not aware of the attempt to have a private prosecution brought against them.

[40] I direct the Registry NOT to accept the charging documents as sought by Ms Sameer.



S J O'Driscoll  
District Court Judge

4.5.18



**NEW ZEALAND  
INSOLVENCY AND  
TRUSTEE SERVICE**

Madhu Sameer  
5 Old Hospital Road  
RD 1  
Kaeo 0478

17 April 2019

### **Madhu Sameer (Bankrupt)**

**Estate Number: 891708**

We are writing to confirm that you were declared bankrupt on 16 April 2019 at Christchurch High Court on the application of Conroy Removals Limited Napier. This letter gives you information about your responsibilities and tells you what information you need to send us.

We have included with this letter:

- Notice to Bankrupt
- an envelope addressed to the Official Assignee (unless you received this letter by email)
- your Activation Code to get information from our website.

The Official Assignee administers your bankruptcy. It is important that you work with us and provide the information we need. Please tell the Official Assignee whenever you change your name, address or employment.

### **Information to help you during your bankruptcy**

Please read the Notice to Bankrupt carefully and keep it to refer to during your bankruptcy. This notice explains your obligations and duties now that you are bankrupt. It is an offence to do any of the following:

- take part in managing or controlling any business
- be employed by a relative or by a company, trust, or incorporated society that a relative manages or controls without the consent of the Official Assignee
- leave New Zealand without the consent of the Official Assignee
- raise more than \$1,000 credit, unless you tell the person giving you credit that you are an undischarged bankrupt person.

Inland Revenue will issue you with a new IRD number which you will need to use from now onwards. For further Inland Revenue information go to <http://www.ird.govt.nz/yoursituation-ind/debt/bankruptcy.html>.

**What you need to do now**

Case: 18-16046-04/28/2019 ID: 11270762 DktEntry: 48-2 Page 2 of 11  
**Complete a Statement of Affairs and send it to the Assignee within ten (10) working days of receiving this notice.**

Choose one of these ways to get the Statement of Affairs form:

- use our website [www.insolvency.govt.nz](http://www.insolvency.govt.nz) to complete your form electronically-follow the steps below to access, complete and send your Statement of Affairs
- print one from the website and send the completed form to us in the envelope
- phone our Business Service Centre on 0508 467 658, ask for a form to be sent to you and send the completed form to us in the envelope.

Your bankruptcy will be discharged three (3) years from the date the Official Assignee receives your completed, acceptable Statement of Affairs. Your bankruptcy will not be discharged, and the restrictions of bankruptcy will continue if you do not complete and return this form.

This means that the restrictions such as raising credit or not being able to travel overseas or go into business without the consent of the Official Assignee will continue to apply. Also, any assets that you accumulate or become entitled to before your discharge (like an inheritance or tax refund) will become the property of the Official Assignee and will be used to repay your creditors.

### **Sign the last page of this letter and send it to the Official Assignee**

Sign the last page of this letter to show us that you have received this Notice to Bankrupt Person. Return the signed last page to the Official Assignee at [applications@insolvency.govt.nz](mailto:applications@insolvency.govt.nz).

### **Keep your documents safe**

Please keep the following documents safe until we ask to see them:

- any business books and records
- any share certificates, life insurance or superannuation policies
- any trust deeds you have.

### **Follow these steps to view information about your bankruptcy and complete an electronic Statement of Affairs**

If you have access to the internet, you can see information about bankruptcy on our website. Follow the steps below. To complete an electronic Statement of Affairs - login, select 'Apply for Bankruptcy' or 'Apply for Personal Bankruptcy'.

1. select 'Online Services'
2. select 'Activate your Account'.
3. follow the instructions to enter your Activation Code to obtain your Login details - the code is on the document included with this letter.
4. search for your estate details using either your name or estate number - written at the top of this letter.
5. double click on your name
6. select the 'More Info' tab to give you access to your information- available only to you and the creditors who have a claim in your bankruptcy.

If we need any more information from you, an Insolvency Officer will contact you. If you need more information or guidance on how to use our website, please call our Business Service Centre on 0508 INSOLV (0508 467 658).

**Official Assignee**

Phone: 0508 467 658

Website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz)

#### 149 Prohibition of bankrupt entering business

1. An undischarged bankrupt must not, without the consent of the Assignee or the Court, either directly or indirectly,
  - a. enter into, carry on, or take part in the management or control of any business;
  - b. be employed by a relative of the bankrupt;
  - c. be employed by a company, trust, trustee, or incorporated society that is owned, managed, or controlled by a relative of the bankrupt.
2. Nothing in this section restricts section 151 of the Companies Act 1993

#### 299 Court may restrict bankrupt from engaging in business after discharge

1. The Court, when it makes an order of discharge or at any earlier time, may prohibit the bankrupt after discharge from doing any or all of the following things without the Court's permission:
  - a. entering into, carrying on, or taking part in the management or control of any business or class of business;
  - b. being a director of any company;
  - c. directly or indirectly being concerned, or taking part, in the management of any company;
  - d. being employed by a relative of the bankrupt;
  - e. being employed by a company, trust, trustee, or incorporated society that is managed or controlled by a relative of the bankrupt.
2. The Court may
  - a. prohibit the bankrupt for a specified period, or without a time limit;
  - b. at any time vary or cancel the prohibition.

#### 307 Discharged bankrupt must assist Assignee

A discharged bankrupt must assist the Assignee, as required by the Court or the Assignee, in the realisation and distribution of the bankrupt's property that is vested in the Assignee.

#### 422 Offence in relation to documents, etc

A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed, or within 2 years immediately before the application is filed, B-

- a. conceals, destroys, mutilates, or falsifies, or is a party to the concealment, destruction, mutilation, or falsification of, any document affecting, or relating to, B's property, conduct, or dealings; or
- b. makes, or is a party to the making of, any false entry in any document affecting, or relating to, B's property, conduct, or dealings; or
- c. fraudulently parts with, alters, or makes any omission in, or is a party to fraudulently parting with, altering, or making any omission in, any document affecting, or relating to, B's property, conduct, or dealings; or
- d. prevents the production of any document affecting, or relating to, B's property, conduct, or dealings to any person to whom B has an obligation under this Act to produce it.

#### 423 Offence in relation to fictitious losses or expenses

A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed, or within 12 months immediately before the application is filed, B attempts to account for any part of B's property by fictitious losses or expenses.



2. The steps referred to in subsection (1) include the execution by the bankrupt of powers of attorney, conveyances, transfers, deeds, assurances, and instruments.

#### **142 Bankrupt must give Assignee accounting records and other documents**

1. As soon as practicable after adjudication, the bankrupt must-
  - a. deliver to the Assignee, at the Assignee's office, relevant documents that are in the bankrupt's possession or control; and
  - b. notify the Assignee of relevant documents that are in the possession or control of any other person.
2. In subsection (1), relevant documents means all accounting records, papers, deeds, instruments, and other documents relating to the bankrupt's estate.

#### **143 Bankrupt must give Assignee information relating to property**

The bankrupt must,-

- a. as soon as practicable after adjudication, give the Assignee a complete and accurate list of the bankrupt's property and of the bankrupt's creditors and debtors, and update the lists as necessary; and
- b. give the Assignee any other information relating to the bankrupt's property that the Assignee requires; and
- c. attend before the Assignee when required by the Assignee; and
- d. verify any statement by statutory declaration when required by the Assignee.

#### **144 Bankrupt must give Assignee information relating to income and expenditure**

When the Assignee requires it, the bankrupt must provide the Assignee with details of his or her income and expenditure since adjudication.

#### **145 Bankrupt must notify Assignee of change in personal information**

The bankrupt must immediately notify the Assignee of any change in the bankrupt's-

- a. address; or
- b. employment; or
- c. name; or
- d. income.

#### **146 Bankrupt must give Assignee financial information**

1. The bankrupt must give the Assignee (or any person employed by the Assignee) the information and details that are necessary to prepare a statement of financial position of the bankrupt's estate.
2. If required by the Assignee, the bankrupt must, within a reasonable time of adjudication, prepare and deliver to the Assignee full, true, and detailed accounts and statements of financial position that show-
  - a. details of the bankrupt's trading and stocktaking; and
  - b. details of the bankrupt's profit and losses during any period in the 3 years before the adjudication.
3. For the bankrupt to prepare the accounts and statements of financial position referred to in subsection (2),-
  - a. the Assignee must give the bankrupt full access to the bankrupt's books and papers in the Assignee's possession; and

**424 Offences in relation to credit, etc**

1. A bankrupt (B) commits an offence if, within 3 years before an application for B's adjudication has been filed or at any time after the application is filed,-
  - a. B obtains property on credit and has not paid for the property; and
  - b. B obtains the property on credit-
    - i. by a false representation or other fraud; or
    - ii. by a false statement of financial position or other false statement of B's affairs; or
    - iii. under the false pretence of carrying on business and dealing in the ordinary course of trade.
2. A bankrupt (B) commits an offence if, within 3 years before an application for B's adjudication has been filed or at any time after the application is filed, B pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary course of trade, any property that B has obtained and has not paid for.

**425 Offences in relation to obtaining consent of creditors**

A bankrupt (B) commits an offence if B makes a false representation for, or is guilty of any other fraud for, the purpose of obtaining the consent of any 1 or more of B's creditors to any agreement with reference to B's affairs or B's bankruptcy.

**426 Offence in relation to leaving New Zealand**

A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed or within 12 months immediately before the application is filed, B-

- a. leaves New Zealand (either temporarily or permanently) and takes with him or her any part of any property to the value of \$1,000 or more that ought, by law, to be divided among B's creditors; or
- b. attempts to leave New Zealand (either temporarily or permanently), taking with him or her any part of that property; or
- c. prepares to leave New Zealand (either temporarily or permanently), taking with him or her any part of that property.

**427 Defence of absence of intent**

1. A bankrupt (B) does not commit an offence under section 420(1)(a) if B proves that at the material time he or she had no intent to defraud any of B's creditors.
2. A bankrupt (B) does not commit an offence under any of the following provisions if B proves that at the material time B had no intent to defraud:
  - a. section 420(2)(a) or (b):
  - b. section 424(1):
  - c. section 424(2):
  - d. section 426.
3. A bankrupt (B) does not commit an offence under section 421 if B proves that at the material time B had no intention to deceive.
4. A bankrupt (B) does not commit an offence under section 422(a), (b), or (d) if B proves that at the material time B had no intent to conceal the state of his or her affairs or to defeat the law.

**428 Penalties for indictable offences by bankrupt**

A bankrupt who commits an offence under any of sections 419 to 426 is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both.

**Offences in relation to record of transactions**

**NOTICE TO BANKRUPT PERSON**

**WARNING**

Your attention is especially directed to the following provisions of the Insolvency Act 2006 and the penalties for infringement:

**67 Bankrupt must file statement of affairs with Assignee**

After adjudication, the bankrupt must file with the Assignee a statement of the bankrupt's affairs in the prescribed form, unless the bankrupt has already filed a statement under section 46.

**87 Bankrupt may be required to attend and be questioned**

1. The bankrupt must, if required by the Assignee, attend all creditors' meetings by being physically present or present by an audio or audiovisual link.
2. The Assignee, the chairperson of a creditors' meeting, a creditor, or a representative of a creditor may question the bankrupt as to his or her property, conduct, or dealings. The chairperson of the meeting must allow only questions that relate to the bankrupt's property, conduct, or dealings.
3. The questioning may be on oath.
4. The bankrupt must sign a statement of the bankrupt's evidence given under the questioning, if required to do so by the Assignee or the chairperson of the meeting.

**138 General duty of bankrupt**

1. The bankrupt must, to the best of the bankrupt's ability, assist in the realisation of the bankrupt's property and the distribution of the proceeds among the creditors.
2. This duty is in addition to any other duty imposed on the bankrupt by this Act or by any other enactment or law.

**139 Bankrupt must disclose property acquired before discharge**

The bankrupt must as soon as practicable after acquisition notify the Assignee of any property that is-

- a. acquired by, or passes to, the bankrupt before discharge; and
- b. divisible among the creditors.

**140 Bankrupt must deliver property to Assignee on demand**

1. On demand by the Assignee, the bankrupt must deliver all or any of the bankrupt's property that is divisible among the creditors, and that is under the bankrupt's possession or control, to the Assignee or a person authorised by the Assignee to receive it.
2. On demand by the Assignee, the bankrupt must deliver to the Assignee, or a person authorised by the Assignee to receive it, any property that is acquired by, or passes to, the bankrupt before his or her discharge.

**141 Bankrupt must take all steps required in relation to property and distribution of proceeds to creditors**

1. The bankrupt must take all the steps (including the steps specified in subsection (2)) in relation to the bankrupt's property, and the distribution of the proceeds to the creditors, that are-
  - a. required by the Assignee; or
  - b. prescribed by rules or regulations made under this Act; or
  - c. directed to be done by the Court by an order made in reference to a particular bankruptcy; or

1. A bankrupt (B) commits an offence if, for any period during the 3 years immediately before B's adjudication,-
  - a. B might reasonably be expected, because of B's occupation or transactions for the period, to keep a record of those transactions; and
  - b. B failed to keep and preserve a proper record of the transactions.
2. Despite anything that the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid against a bankrupt at any time within 2 years after the date of his or her adjudication.

#### **430 Failure to keep proper records with intent to conceal**

A bankrupt (B) commits an offence if, with intent to conceal the true state of his or her affairs, B has failed to keep and preserve a proper record of B's transactions.

#### **431 Penalties for offences relating to records**

1. A person who commits an offence under section 429 is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.
2. A person who commits an offence under section 430 is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both.

#### **432 When bankrupt deemed not to have kept or preserved proper record**

1. For the purposes of sections 429 and 430, a bankrupt (B) is deemed not to have kept a proper record of his or her transactions if, being engaged in any trade or business, B has not kept the necessary books and accounts.
2. In subsection (1), necessary books and accounts means the books and accounts that are necessary to explain B's transactions and financial position in B's trade or business, and includes-
  - a. a book or books containing entries from day to day in sufficient detail of all cash received and cash paid; and
  - b. if B's trade or business has involved dealing in goods,-
    - i. a record of all goods sold and purchased; and
    - ii. detailed stock sheets of annual and other stock takings showing the quantity and the valuation made of each item of stock on hand; and
    - iii. if B's trade or business has involved B's services, details of those services.
3. For the purposes of sections 429 and 430, B is deemed not to have preserved a proper record of his or her transactions if B has not preserved-
  - a. the records listed in subsection (2), if applicable;
  - b. a record of all goods purchased in the course of B's business, with the original invoices;
  - c. a daily record of all goods sold on credit.

#### **433 Summary offences**

1. A bankrupt (B) commits an offence if B-
  - a. fails without reasonable excuse to do any of the things required of B by section 67 or 87 or subpart 2 of Part 3 or subpart 5 of part 3 or to comply with any of the provisions of section 299 or 307; or
  - b. refuses or neglects to answer fully and truthfully all proper questions put to B at any examination held under this Act; or
  - c. wilfully misleads the Assignee in any statement made to him or her in the course of the administration of B's affairs, whether orally or in writing or in answer to any question put to B; or

- Case 1:20-cv-01416-01/20/2019-11270762-01kt Entry 48-2 Page 9 of 11  
Case 1:20-cv-01416-01/20/2019-11270762-01kt Entry 48-2 Page 9 of 11
- d. after becoming aware that the bankrupt has disclosed that fact immediately to the Assignee; or
  - e. has within 2 years before B's adjudication, at a time when B was unable to pay B's debts as they became due, given, with intent to defraud B's creditors, any undue preference to any of B's creditors; or
  - f. while a bankrupt and without having first obtained the consent of the Assignee,-
    - i. leaves, or attempts to leave, New Zealand, temporarily or permanently; or
    - ii. makes preparations for leaving New Zealand, temporarily or permanently; or
  - g. before B obtains a final order or discharge, or before a suspended order of discharge takes effect under this Act, -
    - i. alone, or jointly with another person, obtains credit of \$1,000 or more; or
    - ii. incurs liability to any person of \$1,000 or more for the purpose of obtaining credit for another person.
2. Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information for any of the offences in subsection (1) may be laid against a bankrupt at any time within 2 years after the date of the offence.

#### **435 Penalty for summary offences by bankrupt**

A person who commits an offence under section 433(1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

#### **436 Offence by bankrupt in relation to management of companies**

1. A bankrupt commits an offence if he or she
  - a. acts as a director of a company; or
  - b. fails without reasonable excuse to comply with section 149.
2. Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information in respect of an offence under subsection (1) may be laid at any time within 2 years after the date of the offence.

#### **437 Penalties for offence in relation to management of companies**

A person who commits an offence under section 436 is liable,-

- a. on conviction on indictment, to imprisonment for a term not exceeding 2 years;
- b. on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

#### **440 False or misleading statements or refusal to answer questions**

1. A person commits an offence if he or she-
  - a. makes a statement to any Assignee or person concerned in the administration of this Act, knowing that the statement is false in a material particular; or
  - b. wilfully misleads, or attempts to mislead, any Assignee or person concerned in the administration of this Act; or
  - c. without reasonable excuse, fails or refuses to answer any question put to him or her by the Assignee.
2. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

- d. after becoming aware that any person has filed a false proof in the bankruptcy, fails to disclose that fact immediately to the Assignee; or
  - e. has within 2 years before B's adjudication, at a time when B was unable to pay B's debts as they became due, given, with intent to defraud B's creditors, any undue preference to any of B's creditors; or
  - f. while a bankrupt and without having first obtained the consent of the Assignee,-
  - i. leaves, or attempts to leave, New Zealand, temporarily or permanently; or
  - ii. makes preparations for leaving New Zealand, temporarily or permanently; or
  - g. before B obtains a final order or discharge, or before a suspended order of discharge takes effect under this Act, -
    - i. alone, or jointly with another person, obtains credit of \$1,000 or more; or
    - ii. incurs liability to any person of \$1,000 or more for the purpose of obtaining credit for another person.
2. Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information for any of the offences in subsection (1) may be laid against a bankrupt at any time within 2 years after the date of the offence.

**435 Penalty for summary offences by bankrupt**

A person who commits an offence under section 433(1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

**436 Offence by bankrupt in relation to management of companies**

- 1. A bankrupt commits an offence if he or she
  - a. acts as a director of a company; or
  - b. fails without reasonable excuse to comply with section 149.
- 2. Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information in respect of an offence under subsection (1) may be laid at any time within 2 years after the date of the offence.

**437 Penalties for offence in relation to management of companies**

A person who commits an offence under section 436 is liable,-

- a. on conviction on indictment, to imprisonment for a term not exceeding 2 years;
- b. on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

**440 False or misleading statements or refusal to answer questions**

- 1. A person commits an offence if he or she-
  - a. makes a statement to any Assignee or person concerned in the administration of this Act, knowing that the statement is false in a material particular; or
  - b. wilfully misleads, or attempts to mislead, any Assignee or person concerned in the administration of this Act; or
  - c. without reasonable excuse, fails or refuses to answer any question put to him or her by the Assignee.
- 2. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.



## Insolvency Summary Report

### Estate Details

Insolvency Type	Creditor Petition	Estate Number	891708
Name	SAMEER, Madhu	Administrative Status	Open
Prospect of Dividend	Unlikely	Adjudication Date/Time	16-Apr-2019
Court	Christchurch High Court	Court Number	CIV-2017-409-000535
Petition Type	Creditors Petition Type	Petitioning Creditor	Conroy Removals Limited Napier
Date Petition Filed	15-Jun-2018		
Address at Adjudication	5 Old Hospital Road, RD 1, Kaeo, New Zealand		
Current Address	5 Old Hospital Road, RD 1, Kaeo		

### Additional Information

None

### Current Financial Position

This financial information needs to be read in conjunction with the rest of the report. It should not be assumed that the final amount available will be the 'Funds on hand to date' figure stated below. Where applicable, these accounts have been prepared on a GST exclusive basis

Total Receipts	\$0.00
Total Payments:	\$0.00
Balance of Funds on Hand:	\$0.00

### Summary of Claims

No.	Claim Type	No.	Notified \$	No.	Received \$	No.	Admitted \$
1	Petitioning creditor's costs	1	\$0.00		\$0.00		\$0.00
1	Unsecured creditor with POD	1	\$372,246.01		\$0.00		\$0.00
<b>Total:</b>		<b>2</b>	<b>\$372,246.01</b>	<b>0</b>	<b>\$0.00</b>	<b>0</b>	<b>\$0.00</b>

**Total Estimated Claims: \$372,246.01**

### Summary of Assets

No.	Asset Type	OA Estimate	Realised to Date
-----	------------	-------------	------------------

The information contained in this extract has been compiled from a variety of sources including records assembled by the Official Assignee in the administration, and in some instances supplied by the bankrupt or former company director. While every effort has been made to ensure its accuracy the Insolvency and Trustee Service and the Ministry of Business, Innovation and Employment will not be liable for any direct or indirect loss occasioned by the reliance of any party on the information provided.

13 March 2020

Madhu Sameer

madhu.bambroo@gmail.com

Dear Ms Sameer,

**Madhu Sameer (Bankrupt)  
891708**

As you are aware, you were adjudicated bankrupt in the Christchurch High Court on 16 April 2019, on the petition of Conroy Removals Limited. The Official Assignee was appointed to administer your bankruptcy under the Insolvency Act 2006 (the Act).

I enclose for your information a copy of the Official Assignee's letter of 18 June 2019, this provided information on how the Official Assignee would deal with the bankruptcy administration.

Turners have completed the processing and auctioning of household goods. This has resulted in \$10,816.03 auction proceeds paid to the Official Assignee's trust account. In processing household goods Turners identified multiple items which could not be auctioned. On 3 January 2020 you collected items stored at the time by the Official Assignee. Remaining items which cannot be auctioned have been removed from Turners and are held at a storage facility in Hornby, Christchurch.

The Official Assignee has been advised there are 62 items with a cubic measurement of 5.20m<sup>3</sup>. The Official Assignee will request items remain in storage until **1<sup>st</sup> May 2020** should you wish to arrange collection. If items have not been collected and remain in storage on **1<sup>st</sup> May 2020** the Official Assignee will arrange secure destruction.

You are reminded that storage and destruction costs are costs incurred in the administration of your bankruptcy.

Moving forward

As you are aware the Official Assignee must continue to administer the bankruptcy. This will involve selling assets sufficient to pay the bankruptcy debts and the Official Assignee's administration costs.

Assignee's remuneration

In administering your bankruptcy the Assignee charges remuneration for carrying out his duties and exercising his powers. Prescribed hourly rates are fixed by the Governor-General.



To date the Official Assignee's time costs in dealing with the bankruptcy administration are \$20,570.05. Costs will continue to be incurred.

At present the Official Assignee is holding \$13,399.02 in the trust account, this is made up of:

- \$10,816.03 auction proceeds received from Turners
- \$ 3,326.64 Security for costs received from Court of Appeal
- \$ 39.74 interest
  
- \$ 783.39 Storage fees
  
- = \$13,399.02

Insufficient funds have been realised from the auction of household goods to repay bankruptcy debts and the Official Assignee's costs.

At this stage the notified claims in your bankruptcy total \$48,551.38 (with interest) and the administration costs are \$21,055.05 leaving a shortfall of **-\$56,207.41**.

If third party funds or financing of **\$56,207.41** are forwarded to the Official Assignee's bank account by **10 April 2020** the Official Assignee will cap the administration costs at the figure of \$21,055.05 (in the absence of any other matters that require attention) and no further call on assets would be required.

As all debts and costs in your bankruptcy would be paid, you would be entitled to apply to the High court for an annulment of the bankruptcy.

If this offer is not actioned, the next step is to proceed to realise further assets.

#### Property at 5 Old Hospital Road, RD 1, Kaeo

As you are aware the Official Assignee has a caveat lodged against the title of 5 Old Hospital Road to protect his interest. For the benefit of doubt, this property has vested in the Official Assignee pursuant to section 101 of the Act without the Assignee having to intervene or take any other step in relation to the property, and any rights of a bankrupt in the property are extinguished;

The Official Assignee understands the property has no mortgage and was purchased in February 2019 for \$650,000. There is significant equity in the property. You may wish to consider financing against this property, which the Official Assignee will allow.

If financing is not an option, to realise equity in the property the Official Assignee would, with your co-operation:

- Instruct three estate agents provide marketing appraisals to the Official Assignee
- Once reviewed the Official Assignee would instruct one agent to market for sale
- Once sold any surplus proceeds following repayment of bankruptcy debts and administration costs would be returned to you

Should you not be willing to co-operate in the marketing and sale process the Official Assignee would request that you vacate the property and/or apply to the High Court for an order of possession pursuant to section 152 of the Act. This legal action would significantly increase administration costs.

#### Property Insurance

Adams Trimmer have advised that you requested the insurance cover arranged with them be cancelled as you've arranged cover elsewhere. Please provide the Official Assignee with

details of insurance cover for the property by return email. Failure to provide details will result in the Official Assignee taking out insurance cover for the property and an additional cost in the bankruptcy administration.

**Should you have asset(s)/source(s) of funds not disclosed to the Official Assignee (either in or outside of New Zealand) sufficient to repay bankruptcy debt and the administration costs, it is strongly recommended that you advise the Official Assignee immediately.**

**In the absence of any other assets, or 3<sup>rd</sup> party funds that can be obtained, the Official Assignee is left with no option but to take action to realise the property at 5 Old Hospital Road.**

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Coles'.

*Deborah Coles*

for Official Assignee

Direct Dial: +64 3 9626222

Fax: +64 3 9626200

Email: [deborah.coles@insolvency.govt.nz](mailto:deborah.coles@insolvency.govt.nz)

Address: Private Bag 4714, Christchurch, 8140, NZ

18 June 2019

Madhu Sameer

madhu.bambroo@gmail.com

Dear Ms Sameer,

**Madhu Sameer (Bankrupt)  
891708**

As you are aware, you were adjudicated bankrupt in the Christchurch High Court on 16 April 2019, on the petition of Conroy Removals Limited. The Official Assignee was appointed to administer your bankruptcy under the Insolvency Act 2006 (the Act).

On adjudication all property (whether in or outside New Zealand) belonging to you or vested in you vested in the Assignee. The powers that you could have exercised in, over, or in respect of any property (whether in or outside New Zealand) for your benefit vested in the Assignee (see section 101 of the Act)

'Property' means: (see section 2 of the Act)

*property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and includes rights, interests, and claims of every kind in relation to property however they arise*

In addition to the judgement debt, the Court awarded \$9,247.00 petitioning creditor court costs to Conroy Removals Limited. The Official Assignee understands the judgement debt results from a dispute between yourself and Conroy Removals Limited.

Bankruptcy debts notified to the Official Assignee currently total **\$49,276.59** being:

- \$37,246.01 Conroy Removals Limited, bankruptcy petition debt;
- \$9,247.00 Conroy Removals Limited, petitioning creditor's court costs; and
- \$2,783.58 ANZ, credit card

Assignee's remuneration

In administering your bankruptcy the Assignee charges remuneration for carrying out his duties and exercising his powers. Prescribed hourly rates are fixed by the Governor-General. To date the Official Assignee's time costs in dealing with the bankruptcy administration are **\$8,247.80**. Costs will continue to be incurred.

Rights of action

On your adjudication, your right to take legal action against others (including, without

limitation, Conroy Removals Limited and your former partner (whether in New Zealand or abroad)) vested in the Official Assignee.

As a result, you cannot bring such actions while you are an undischarged bankrupt.

We have reviewed the documentation surrounding your claim against Conroy Removals Limited (and others). We see no reason to challenge the findings of the courts. Accordingly, the Official Assignee is not going to pursue legal action against Conroy Removals Limited or other parties involved in the transport of goods.

However, if your bankruptcy is annulled, then the right to bring such actions will re-vest in you. Given that (a) you appear to wish to pursue such actions, and (b) you appear to have sufficient assets to pay your debts in bankruptcy (together with the Official Assignee's administrative costs) you may consider that paying off your debts is an appropriate option.

#### Annulment – Section 309 of the Insolvency Act 2006

You have advised the Official Assignee you are considering making application to annul the bankruptcy under section 309(1)(a) of the Act. The Official Assignee cannot advise you on whether to seek an annulment on those grounds. The type of annulment referred to in the previous paragraph (i.e. payment of all debts) is a 309(1)(b) annulment.

Should you wish to make application to annul, you should seek independent legal advice. Unless and until your bankruptcy is annulled you are subject to the restrictions of bankruptcy and the Official Assignee must continue with the administration.

#### Moving forward

As advised the Official Assignee must continue to administer the bankruptcy. This will involve selling assets sufficient to pay the bankruptcy debts and our administration costs. Section 138 of the Insolvency Act 2006 deals with the general duty of a bankrupt to assist, specifically;

#### *138 General duty of bankrupt*

*(1) The bankrupt must, to the best of the bankrupt's ability, assist in the realisation of the bankrupt's property and the distribution of the proceeds among the creditors.*

*(2) This duty is in addition to any other duty imposed on the bankrupt by this Act or by any other enactment or law.*

Administration costs will be incurred in realising assets. Should the process become extended and involved, this could significantly increase costs and the amount of funds required to repay the bankruptcy debts and administration costs.

#### Statement of Affairs

The Insolvency Act 2006 requires that a bankrupt provide the Official Assignee with their Statement of Affairs within 10 working days. To date the Official Assignee has not received your completed Statement of Affairs. Unless annulled earlier, you cannot be discharged from bankruptcy until a minimum of three years after a completed Statement of Affairs is provided.

#### Known vested assets available to the Official Assignee

From information provided to date and searches carried out, the Official Assignee is aware of the following assets.

1. Household goods

Conroy Removals Limited have released their lien to the Official Assignee. The Official Assignee's next step in your bankruptcy administration will be to instruct an agent to auction the items for the benefit of bankruptcy creditors. Prior to auctioning it would be desirable to sort through the items and remove any personal papers and items and arrange for you to have access to these.

This action will be onerous and incur significant administration costs. Typically the auction price of items sold is much lower than their original value. Accordingly, it is unknown what auction proceeds would result and it is possible that they would not be sufficient to repay bankruptcy debt and administration costs.

2. Property at 5 Old Hospital Road, RD 1, Kaeo

As you are aware the Official Assignee has a caveat lodged against the title to protect his interest. The Official Assignee understands the property has no mortgage and was purchased in February 2019 for \$650,000. There is significant equity in the property. You may wish to consider refinancing against this property. If refinancing is not an option, to realise equity in the property the Official Assignee would, with your co-operation:

- Instruct three estate agents provide marketing appraisals to the Official Assignee
- Once reviewed the Official Assignee would instruct one agent to market for sale
- Once sold any surplus proceeds following repayment of bankruptcy debts and administration costs would be returned to you

Should you not be willing to co-operate in the marketing and sale process the Official Assignee would apply to Court for an order of possession. This legal action would significantly increase administration costs.

3. Property at 9976 N Recreation Ave, Fresco, CA 93720 USA

This property also vests in the Official Assignee. You are reminded that your ability to sell or transfer the property has passed to the Official Assignee and that you may not deal with the property in any way without our consent.

4. Matrimonial property proceedings in the USA

This right of action vests in the Official Assignee. The Official Assignee understands the funds used to purchase 5 Old Hospital Road resulted from these proceedings. In relation to this please provide:

- Details of any solicitor/attorney acting for you in these proceedings
- Details of any future funds/assets you believe are due to you

**Should you have asset(s)/source(s) of funds not disclosed to the Official Assignee (either in or outside of New Zealand) sufficient to repay bankruptcy debt and the administration costs, it is strongly recommended that you advise the Official Assignee immediately.**

**In the absence of any other assets, or funds that can be obtained, the Official Assignee is left with no option but to take the actions outlined at 1) and 2).**

The Official Assignee will defer taking action until **5pm 12 July 2019** to allow you time to consider your financial situation, including refinancing against the property at Kaeo. Once

this deadline has passed the Official Assignee will proceed to take steps to realise assets for the benefit of bankruptcy creditors.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by the name 'COLES' in capital letters.

*Deborah Coles*

for Official Assignee

Direct Dial: +64 3 9626222

Fax: +64 3 9626200

Email: [deborah.coles@insolvency.govt.nz](mailto:deborah.coles@insolvency.govt.nz)

Address: Private Bag 4714, Christchurch, 8140, NZ

## **Appendix G**



< [Cargo Information](#)



## Cargo Insurance Calculator

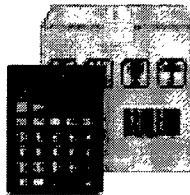
<b>Select Commodity</b>	<b>Select Product</b>
B	Ocean
<b>Enter Commercial Invoice Amount</b>	US \$ 350,000
<b>Enter Total Freight Amount</b>	US \$ 8,600
<b>Calculated Cargo Value, incl. 10%</b>	US \$ <b>394,460.00</b>
<b>Insurance Premium (\$35.00 min)</b>	US \$ <b>986.15</b>
<input type="button" value="Reset"/>	

- A General
- B Personal (prof. pac (glass/c-ttery & a breakab food/bev
- C Laptops/ / Noteba
- D Wine & B
- E Hazardo Items
- . All Othe

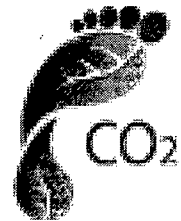
## Related Cargo Information Apps



[Container Specification](#)



[Freight Calculator](#)



[Emission Calculator](#)





< [Cargo Information](#)



## Cargo Insurance Calculator

<b>Select Commodity</b>	<b>Select Product</b>
B	Ocean
<b>Enter Commercial Invoice Amount</b>	US \$ 350,000
<b>Enter Total Freight Amount</b>	US \$ 8,600
<b>Calculated Cargo Value, incl. 10%</b>	US \$ 394,460.00
<b>Insurance Premium (\$35.00 min)</b>	US \$ 986.15
<input type="button" value="Reset"/>	

A General

B Personal (prof. pack) (glass/certery & o breakab food/bev

C Laptops/ Notebo

D Wine & B

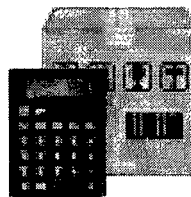
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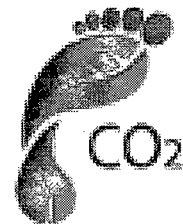
## Related Cargo Information Apps



[Container Specification](#)



[Freight Calculator](#)



[Emission Calculator](#)

## **Appendix G1**

ORIGINAL

FEDERAL MARITIME COMMISSION

CC:  
OS  
OGC  
ALS(2)  
CADRS

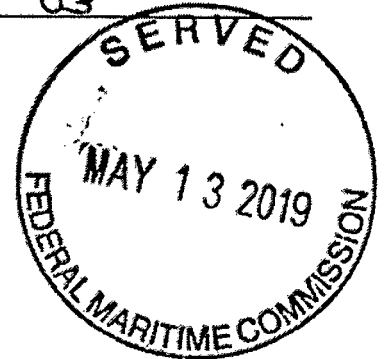
Muhammad Rana,  
Complainant

Docket No. 19-03

v.

Michelle Franklin,  
d.b.a "The Right Move Inc,"  
Respondent

May 2, 2019



FMC Registration # 023229N

COMPLAINT FOR FORMAL ADJUDICATION

The complainant hereby files a complaint for formal adjudication, declaratory relief and damages with the Federal Maritime Commission, alleging violation of 46 U.S. Code § 41102(c) [formerly §10(d)(1) of the Shipping Act] by the respondent for engaging in an unreasonable practice related to the delivery of property, breach of agreement, negligence and engaging in fraudulent / deceitful business practices.

Complainant's contact information is as follows:

Muhammad J.Rana  
House # 15, Street 143  
Sector G-13/4  
Islamabad 4400  
Pakistan  
E-mail: Muhammad.rana@rocketmail.com  
Tel: (011)-92-313-786-6778

According to complainant's records, based on correspondence between the respondent and the complainant as recently as May 1, 2019, the respondent's contact information is as follows:

Michelle Franklin  
The Right Move, Inc  
150 Motorway Parkway Suite # 401  
Hauppauge, NY 11788  
E-mail: mfranklin@therightmove4u.com  
Tel: 1-(347)-368-6520

## STATEMENT OF FACTS

The complainant is an individual consumer, a U.S citizen, who was temporarily relocating his residence from Alexandria, Virginia to Islamabad, Pakistan. The respondent is an individual ocean shipping / freight forwarder doing business as "The Right Move, Inc."

On February 6, 2019 the complainant and the respondent entered into an agreement through electronic mail where the complainant retained the services of the respondent. *See attached exhibits 1 and 2.* The agreement is simple and straightforward in that the complainant was to pay a flat rate of \$2500.00 plus \$95.00 documentation fee. In return, the respondent would arrange for the pick-up of complainant's household goods of personal effect in a 20-foot container and ship / deliver it to the Port Qasim, Karachi, Pakistan for pick up by the complainant. According to the terms of the agreement, the flat rate included shipping or ocean freight charges from Alexandria, Virginia to Port Qasim, Karachi, Pakistan. The flat rate also included terminal handling or port of loading charges at origin. *See attached exhibits 1 and 2.*

As part of the agreement, the respondent requested the complainant to wire transfer the payment money directly into the respondent's account. On February 11, 2019 the complainant wire transferred \$2595.00 into the respondent's account. However, the wire transfer was rejected by the complainant's bank because the account was not registered to the respondent's company, "The Right Move, Inc."

On February 13, 2019 there was a three-way telephonic conversation between the complainant, the respondent and the complainant's bank representative where the respondent advised the complainant that the bank account is a personal account and requested the complainant to wire the money under her personal name "Michelle Franklin." After the telephonic conversation, on February 14, 2019, the complainant wire transferred \$2595.00 into the respondent's personal account under the name Michelle Franklin. *See attached exhibit 3.* On February 15, 2019 the respondent acknowledged receipt of the wire in an email. *See attached exhibit 4.*

On February 15, 2019, the respondent arranged for a 20-foot container that arrived on a truck at complainant's residence in Alexandria, Virginia. After the complainant loaded the container, the truck driver gave the complainant a first bill of lading. *See attached exhibit 5.*

On or after February 15, 2019, the respondent acquired the services of Troy Container Line, Ltd, on a line of credit, to ship complainant's container cargo from Baltimore Port, Maryland to Port Qasim, Karachi, Pakistan; via MAERSK Shipping Line to be delivered to TROY's agent in Pakistan CP world, Co, Ltd. *See attached BL exhibit 6 and 7.* The respondent was required to pay TROY port of loading and ocean freight shipping charges, which the respondent failed to pay. *See attached exhibit 8.*

On April 2, 2019, the complainant traveled to Karachi Pakistan from Islamabad, Pakistan to receive his cargo from Port Qasim, Karachi. On April 2, 2019, the complainant went to MAERSK

shipping office in Karachi and found out that TROY's delivery agent in Pakistan, CP World had placed a hold on the complainant's cargo because ocean freight / shipping charges had not been not paid by the respondent. The complainant explained to the MAERSK office that ocean freight was prepaid, but MAERKS representative asked to see an endorsement from CP World. On April 3, 2019, the respondent after ignoring several of complainant's emails for numerous days notified the complainant that her company, "The Right Move, Inc" had shutdown. See *attached exhibit 16*.

On April 3, 2019, onwards the complainant was repeatedly informed verbally by the TROY's delivery agent, that the respondent did not pay ocean freight shipping dues for complainant's cargo, as a result the complainant's cargo cannot be released until full payment was received from the respondent. When the complainant reached out to the respondent, the respondent claimed that full payment had been paid via a third party and that the shipper would not have accepted the freight cargo if the charges were not paid.

From April 5, 2019 until April 10, 2019 the respondent continued to claim via email that she had paid the shipping dues albeit via a third party, and that the payment should clear soon. During this time, the complainant continued to explain the respondent's position to the CP world, Co daily to try and get the cargo released. In response, CP world verbally requested the complainant to get evidence of payment in the form of receipt or a surrender letter from the respondent; however, when requested by the complainant, the respondent did not provide any evidence of payment and stated in an email that, "I paid the fees you have to believe me." See *attached exhibit 15*.

On April 9, 2019, CP World officially issued a letter explaining that because the respondent had not paid for shipping, complainant's cargo cannot be released. CP World also gave an alternative option for the complainant to pay the shipping dues out of pocket owed by the respondent in order to receive the cargo. See *attached exhibit 8*.

On April 10, 2019, the complainant paid CP World charges owed by the respondent in the amount of 157,000 Pakistani Rupees. See *attached exhibit 9*. On April 10, 2019, after payment to CP World, when the complainant went to get the delivery order from MAERSK Shipping company in Karachi, the complainant was informed that the 7-day free time had ended and was asked to pay an additional \$605.00 in container charges (demurrage and detention) beyond the regular 7-day free time at a standard rate of \$55.00 per day. See *attached exhibit 10*.

The complainant had brought dollars in cash with him for the truck and port charges, but had to use it to pay CP World, after which the complainant was out of cash. After this, because the complainant did not have a bank account in Pakistan; he was relying on wire transfers and remittances from his US bank account during this time, which can take from 2 to 3 business days. Plus, all banks and ocean freight shipping related offices are closed over the weekend in Pakistan. Furthermore, MAERSK Shipping Company and shipping agents in Pakistan do not accept credit cards.

On April 15, 2019, the complainant paid MAERSK shipping office in Karachi 85,000 rupees container charges through a shipping agent. *See attached exhibit 11 and 13.* After the payment was made Complainant's cargo was released for customs inspection at Port Qasim. On April 16, 2019 through April 19, 2019, the complainant's cargo underwent the procedural customs inspection, requirements and paperwork. On April 20, 2019, after receiving clearance from Pakistan's Customs Department, the cargo was not allowed to leave Port Qasim because the 'No Objection Certificate (NOC)' that was previously issued by TROY's agent CP World expired. The Port Qasim Authority required the renewal of the No Objection Certificate from CP World.

On Monday, April 22, 2019, when the CP World offices opened after the weekend, the NOC was renewed. During this time additional 6 days of container charges (demurrage and detention) for MAERSK container had accumulated. On April 22, 2019, the complainant paid an additional 47, 536 rupees to MAERSK for container charges through a shipping agent. *See attached exhibit 12 and 13.* On April 23, 2019, complainant's cargo finally left Port Qasim, Karachi.

### **BREACH OF AGREEMENT, NEGLIGENCE AND FRAUD**

The facts of this case make it quite clear that by not delivering complainant's cargo at Port Qasim for a flat rate of \$2500, plus \$95 booking fee the respondent breached the agreement between the respondent and the complainant. Additionally, there is fraud, deceit and negligence involved by the respondent.

In an email dated April 9, 2019, the respondent told the complainant:

The booking was done under another company license, because I knew we may get to the point we have to close. *See attached exhibit 18.*

Clearly the respondent knew or reasonably suspected that her company may close soon, but failed to disclose this material information to the complainant when they entered into an agreement. This information was material because had the complainant known that the respondent's company may "have to close," he would not have entered into an agreement with the respondent, nor would have sought respondent's services. This establishes fraud, deceit and negligence. Furthermore, the booking was done under another company's license, which was not relayed to the complainant until April 9, 2019, even though in all the correspondence and in the agreement with the complainant, the respondent used her company's credentials. This further establishes fraud, deceit and negligence.

Moreover, respondent claims in an email that she made the required payment to TROY Shipping Lines, Ltd through a third party. When the complainant requested evidence or proof in the form of a receipt, the respondent refused to offer any.

In the same email the respondent claims:

I paid it to the third party I used to book your shipment from the same bank account, because once again, I didn't want your shipment to get stuck if in case the Right Move Inc license is being revoked while in the process of shipping your goods. *See attached exhibit 18.*

The respondent's claim that she used a third party to pay for the shipping of complainant's cargo is unreasonable and is highly unlikely. Making a payment of about \$1000 to \$1100 to TROY Shipping Lines, Ltd would have required the respondent to send a simple wire transfer or write a simple check to TROY or use a credit card after receiving \$2595.00 from the complainant. The respondent's claim here is highly unlikely, unreasonable and is clear proof of deceit because there was absolutely no need to get a third party involved in paying TROY whom the respondent had directly contracted on a line of credit.

Had the respondent paid TROY without using a third party, the money would have reached TROY faster and TROY would not have placed a hold on the complainant's cargo in Karachi, Pakistan. Even, assuming arguendo, that there was no fraud or deceit involved, it is clear that the respondent was negligent in making the appropriate payment to TROY resulting in loss and damages to the complainant.

In an email dated April 3, 2019, the respondent informed the complainant that her company, The Right Move, Inc had "shut down." *See attached exhibit 16.* However, on April 5, 2019, respondent claimed that her company, "The Right Move is closing." In the same email she later states, "because the company is closed I am unable to pay it again." *See attached exhibit 17.* It is to be noted that there is a difference between "closing" and "closed," this is an inconsistency in respondent's statement that indicates deceit.

On April 5, 2019, the respondent stated in an email:

I talked to the company and they are sending the payment today, but it may take a few days. *See attached exhibit 15.*

On April 9, 2019 the respondent stated in emails:

I have been asking them to pay it for the last 4 days, they should be able to pay it today or tomorrow. *See attached exhibit 19.*

The company I paid the money to, needs to know if to refund me, so I can refund you. *See attached exhibit 20.*

I strongly suggest you pay directly and I will refund you, probably no late than Friday. *See attached exhibit 21.*

On April 10, 2019 in another email the respondent stated:

I am confirming that the money was sent back to me, and I should be able to pay by Friday. *See attached exhibit 22.*

On April 17, 2019 the respondent stated:

I will send you a refund shortly. *See attached exhibit 23.*

On April 19, 2019 the respondent stated:

The payment will be concluded in a day or 2, of course I will try to pay as much as I rsonible for.  
*See attached exhibit 24.*

Despite these email statements where the respondent is telling the complainant that she will pay him, the respondent has not reimbursed the complainant for any monetary damages / losses incurred as a result of respondent's breach of agreement. These emails further establish fraud and deceit.

The foregoing activities by the respondent constitute an unreasonable practice related to the delivery of property in violation of 46 U.S.C §41102(c) [formerly §10(d)(1) of the Shipping Act].

### DAMAGES

Respondent's failure to keep her contractual obligation along with fraud, deceit and negligence set in motion a series of events and circumstances that caused damages / losses to the complainant.

The complainant had to additionally pay, TROY's agent CP World, out of pocket \$1,107.97 (157,000 Rupees) owed by the respondent to get the cargo released. *See attached exhibit 9.*

The complainant had to pay an additional \$55.00 per day container demurrage / detention charge for 17 days (April 7<sup>th</sup> through April 23<sup>rd</sup>), a total of \$935.00 (132,536.00 rupees); *See <https://www.maersk.com/en/local-information/pakistan/import>* ; beyond the 7-day free time, because of the delay caused by the respondent's breach of agreement, fraud and negligence. *See attached exhibits 11, 12 & 13.*

Furthermore, the complainant had intended to stay in Karachi for only 3 nights. However, due respondent's breach, fraud and negligence, the complainant had to stay at a hotel in Karachi for additional 18 nights, and pay a total of 388,500 Rupees in hotel lodging at a rate of 18,500 rupees per night. For the additional 18 nights lodging the total comes out to 333,000 rupees or \$2,350.03. *See attached exhibit 14.*

In addition, the complainant had to pay taxi charges at the least in the amount of about \$7.76 (1100 Rupees) per day or \$116.40 for 15 days to get to and from MAERSK Office, CP World Office, Western Union and hotel etc.



In April 2019, the price of dollar in the open market against the rupee fluctuated between 141 to 142 rupees per dollar. Therefore, the exchange rate used in this calculation is 141.70 rupees per dollar, which was also the rate used by MAERSK shipping company.

<u>Respondent's shipping dues paid by the complainant</u>	<u>\$1,107.97</u>
<u>Container charges caused by respondent's delay</u>	<u>\$935.00</u>
<u>Complainant's taxi charges</u>	<u>\$116.40</u>
<u>Complainant's lodging for 18 nights in Karachi</u>	<u>\$2,350.00</u>
Total Compensatory Damages / Losses: \$4,509.40	

The complainant also suffered non-pecuniary damages as a direct result of the respondent's breach, fraud and negligence. The fact that the complainant is a U.S citizen who has lived in the U.S for most of his life, spending 21 days in Karachi, Pakistan trying to get his cargo released in a situation such as this, was extremely anguishing and emotionally distressing for the complainant. A reasonable amount of non-pecuniary damages suffered by the complainant should amount to \$25,000.00.

Moreover, punitive damages are applicable in this case because the respondent showed utter disregard for her business contractual obligations engaging in deceit, fraud and negligence. A cursory search of the internet appears to indicate that the respondent has a pattern or practice of engaging in fraud and deceit with consumers and customers. *See attached exhibit 25.* A reasonable amount of punitive damages in this case should amount to \$50,000.00.

#### RESPONDENT'S PERSONAL LIABILITY

The respondent does business as "The Right Move, Inc" and claims that her business has shut down. The respondent should be held personally liable in as much as is recoverable from respondent's personal assets, beyond the respondent's company insurance bond. The complainant contends that the respondent is personally liable for the following reasons:

- 1) The respondent accepted payment of \$2595.00 in her personal account under her name, not under her business name or her company account.
- 2) For much of the correspondence and transactions the respondent acted in a personal capacity.
- 3) The respondent engaged in fraud, deceit and negligence resulting in damages / losses to the complainant.
- 4) The respondent appears to have a pattern and practice of engaging in fraudulent and deceitful business practices. A cursory google search of the respondent revealed numerous allegations of fraud and deceit by individual consumers. *See attached exhibit 25.*

## RELIEF SOUGHT

The complainant requests the Commission to issue a summary judgement if possible or hold a hearing if required. The complainant prays that the Commission rules against the respondent as follows:

- A. Enter a judgement that the acts and practices of the respondent were in violation of 46 U.S. Code § 41102(c).
- B. Revoke and cancel respondent's FMC license.
- C. Award the complainant \$4,509.40 in compensatory damages.
- D. Award the complainant \$272.00 filing fee used to file this complaint.
- E. Award the complainant international mail and courier charges used in filing this complaint from Pakistan.
- F. Award the complainant \$2595.00 in restitution.
- G. Award the complainant \$25,000.00 in non-pecuniary damages resulting from anguish and deep emotional distress.
- H. Award the complainant \$50,000.00 in punitive damages.
- I. Issue further order(s) as the Commission determines to be proper.

Respectfully submitted by the complainant,



Muhammad J.Rana

MAY 2, 2019  
Date

Muhammad J.Rana

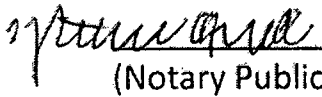


Complainant's signature

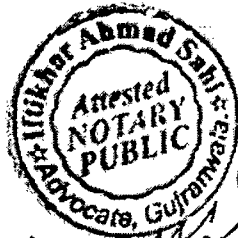
House # 15, Street 143  
Sector G-13/4  
Islamabad 4400  
Pakistan

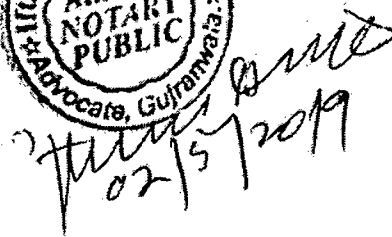
The complainant is the person who signed the foregoing claim, that he has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public

 this 2<sup>nd</sup> day of May, 2019  
(Notary Public)

My Commission expires December 20, 2019



  
02/5/2019

I hereby certify that, on MAY 2, 2019, a copy of the foregoing attached Complaint for Adjudication was sent to the following by the method indicated below:

Secretary Federal Maritime Commission  
500 N. Capital Street, NW  
Washington, DC 20573

VIA DHL International Courier Service

Michelle Franklin  
D.B.A The Right Move, Inc.  
150 Motor Parkway Suite # 401  
Hauppauge, NY 11788

VIA Airmail and Electronic Mail:  
mfranklin@therightmove4u.com



\_\_\_\_\_  
Muhammad J. Rana (Claimant)

MAY 2, 2019  
Date



International Moving Service Agreement		Reference No: S220847
<p>The Right Move Inc 150 Motor Parkway suite # 401 Hauppauge, NY 11788 Registration #: FMC# 023229N</p>	<p>Customer Rep: Michelle Phone: 855-344-5874 Fax: 631-439-6801 Email: <a href="mailto:mfranklin@therightmove4u.com">mfranklin@therightmove4u.com</a> Web: <a href="http://www.therightmove4u.com">http://www.therightmove4u.com</a></p>	
Moving From	Moving To	
<p>Muhammad Rana 110 Roberts Lane Apt. #: 301 Alexandria, VA 22314 Phone: 402 477 7583 <a href="mailto:muhammad_rana@rocketmail.com">muhammad_rana@rocketmail.com</a></p>	<p>Muhammad Rana Karachi Port Only, PAKISTAN</p>	
Service Information	Service Quote	
<p>Job No: S220847 Type of Service: Door to Port Estimated Volume: 20 FT - Flat. Move Day: Thursday Move Date: 02/14/2019</p>	<p>Insurance: Total Loss Coverage Insurance For \$5,000 - Free. \$0.00 Others: Lcl Service Charges For 200 Cubic Feet \$2500.00 Others: Documentation Fee \$95.00 Total Estimate: \$2595.00</p>	
Understanding Your Service		
<p><u>Line Haul Charges: Based on 20 FT Container.</u></p> <p>The price includes trucking the container from the port to your home at origin and back to the port (incl. fuel and change, custom clearance at origin for the households, terminal handling at origin, ocean freight)</p> <p>Please be advised that the container is reserved for 2 hours of loading, any additional hour will be \$120.00.</p>		

COMPLAINANT'S  
EXHIBIT 1  
PAGE 1 OF 2

**Insurance: FREE "Total loss" Insurance up to \$5,000,000.**

The Insurance is subject to receiving the Insurance forms 3-4 days prior to the pickup, and it is subject to the Insurance company terms and conditions. (\$300 deductible)

Additional Insurance is available upon request, charge of 3% of declared value for total coverage, and 2% of declared value for total loss, and will require \$75 processing fee

**Documentation fee:**

The price includes preparing all export documents for shipping house hold goods and, AES filing and bill of lading

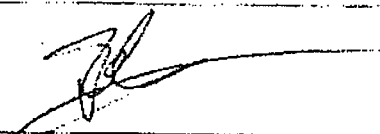
**The price does not Includes:**

Loading service, Delivery service, custom clearance at destination, storage at origin, Terminal Handling charges at destination, local port fees and taxes at destination, custom examination and scanning, roll over fees, storage at destination, demurrage, litigations, and vehicle shipping

**Payment Terms:**

- 15% deposit is required upon signing the service agreement by credit card ( Visa or MasterCard Only)
- The remaining balance is due 7-10 days after receiving the final Invoice before shipment will leave the USA, by personal check, certified check, wire transfer, cashier check.

By signing this page I agree that this contract is supplemental to BOE, and tariff which are publicly available at Federal Maritime Commission by section 19 of the Shipping Act of 1984, Part 515 of Title 46 of the Code of the Federal Regulations

<u>MUHAMMAD J. RANA</u>		<u>2/6/2019</u>
Customer Name	Customer Signature	Date

COMPLAINANT'S  
EXHIBIT !

0255

From: muhammad.rana <[muhammad.rana@rocketmail.com](mailto:muhammad.rana@rocketmail.com)>  
Sent: Wednesday, February 6, 2019 12:46 PM  
To: Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)>  
Subject: RE: The Right Move relocation estimate # 220847

Hi Michelle,

I accept the terms and conditions, full payment in the amount of \$2595.00 will be paid before February 14. 2019.

Thank you,

Muhammad Rana

Sent from my Sprint Samsung Galaxy S8.

----- Original message -----

From: Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)>  
Date: 2/6/19 11:30 AM (GMT-05:00)  
To: "muhammad.rana" <[muhammad.rana@rocketmail.com](mailto:muhammad.rana@rocketmail.com)>  
Subject: RE: The Right Move relocation estimate # 220847

Dear Muhammad,

Hope your morning goes well,

Please reply to my e-mail that you accept the terms and conditions , and also please

advise payment status, I need to book the ocean and trucker for Feb 14



COMPLAINANT'S  
COURT REPORT 2

0256

Thank you and best regards,

Michelle Franklin – Relocation consultant

The Right Move, Inc

150 Motor Parkway suite 401

Hauppauge, NY 11788

Direct # 347-368-6520

Fax# 631-439-6801

FMC Licensed #023229N

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\*THIS TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY CALLING 347-368-6520. THANK YOU.

COMPLAINANT'S  
EXHIBIT 2  
PAGE 2 OF 2

0257



**Your Wire Transfer is being processed**

You recently submitted the following wire transfer:  
**Transfer details**

<b>To account</b>	XXXXXX4017
<b>From account</b>	XXXXXX9173
<b>Amount</b>	\$2,595.00
<b>Send on</b>	02/14/2019
<b>Description</b>	Shipping to Pakistan
<b>Confirmation number</b>	OW00000385627500

Visit [Wire Transfers](#) for details regarding this transfer.

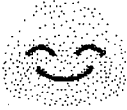
If you did not submit this transfer, or if you have questions, please call Wells Fargo Online Customer Service at 1-800-956-4442. We are available 24 hours a day, 7 days a week.  
6ed3c3e3-8a06-49b9-9d84-eb12e6647024

COMPLAINANT'S EXHIBIT 3  
PAGE 1 OF 1

On Friday, February 15, 2019, 4:14 AM, Michelle Franklin  
<[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Thanks, well received !

Also, received the wire



Finally !



Thank you and best regards,

Michelle Franklin – Relocation consultant

The Right Move, Inc

150 Motor Parkway suite 401

Hauppauge, NY 11788

Direct # 347-368-6520

Fax# 631-439-6801

FMC Licensed #023229N

COMPLAINANT'S  
EXHIBIT 4  
DATE 1/21/19 0259

<b>SHIPPER/EXPORTER</b> Muhammad Rana 110 Roberts Lane Alexandria, VA 22314 Tell : 402-477-7583 2/15 10 AM		<b>DOCUMENT NO./SSL Booking #</b> 967990270
<b>CONSIGNEE</b> Muhammad Rana Qasim Port Pakistan		<b>EXPORT REFERENCES</b> 220847
<b>NOTIFIED PARTY</b> Same as above		<b>FORWARDING AGENT</b> The Right Move, Inc 150 Motor Parkway suite 401 Hauppauge, NY 11788 Direct # 347-368-8520
<b>PIER OR AIRPORT</b>		<b>POINT AND COUNTRY OF ORIGIN</b> 110 Roberts Lane Alexandria, VA 22314
<b>EXPORT CARRIER (Vessel/Flight)</b>	<b>PORT OF LOADING</b>	<b>Pick up from :</b> Maersk Baltimore Seagrit Terminal
<b>AIR/SEA PORT OF DISCHARGE</b> Karachi / Qasim	<b>FOR TRANSHIPMENT TO</b>	<b>Return to :</b> Maersk Baltimore Seagrit Terminal

MARKS AND NUMBERS	NO. OF PACKAGES	DESCRIPTION OF PACKAGES AND CCODS	PARTICULARS FURNISHED BY S	
			GROSS WEIGHT	MEASUREMENT
20' MAERSK	1	TBA piece of used household goods and personal effects.  HS CODE: 9905.00.8000  Ocean Prepaid Express Release.	3000 Lb	Male

Start: 10:00  
 End: 12:30  
 Seal # 51455  
 X

SHIPPER/EXPORTER (COMPLETE NAME AND ADDRESS) Muhmmad Rana 110 Roberts Lane Alexandria, VA 22314 Tell: 402-477-7583		2107	BOOKING NO. 967990270	BILL OF LADING NO. 1239458
CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) Muhmmad Rana Qasim Port Pakistan		EXPORT REFERENCES 220847 376794		
FORWARDING AGENT, F.M.C. NO. The Right Move, Inc 150 Motor Parkway suite 401 Hauppauge, NY 11788, Direct # 347-368-6520		POINT AND COUNTRY OF ORIGIN OF GOODS Alexandria, VA		
NOTIFY PARTY (COMPLETE NAME AND ADDRESS) SAME AS ABOVE		FOR DELIVERY PLEASE APPLY TO CP World Co., Ltd (Karachi) 85-C, 11TH COMMERCIAL STREET PHASE II EXTN, Karachi, Pakistan HP 92 300 2901592 009202135315921		
PRE-CARRIAGE BY	PLACE OF RECEIPT BY PRE-CARRIER	(713086 NC) [A]		
EXPORT CARRIER (VESSEL/VOY/FLAG) GJERTRUD MAERSK V. 909W	PORT OF LOADING BALTIMORE	LOADING PIER TERMINAL		
PORT OF DISCHARGE PORT QASIM, PAKISTAN	PLACE OF DELIVERY BY ON CARRIER	NUMBER OF ORIGINALS THREE (3)		

PARTICULARS FURNISHED BY SHIPPER

MARKS & NOS/CONTAINER NOS	NO. OF PKGS	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
CONTAINER # MSKU277849-7 SEAL # 51455	1	20' CONTAINER STC: 72 PIECES OF USED HOUSEHOLD GOODS AND PERSONAL EFFECTS  HS CODE: 9905.00.0000  "SHIPPER'S LOAD, STOW AND COUNT" CSC/DTHC/DDC COLLECT FOR ACCOUNT OF CONSIGNEE IF NOT SHOWN PREPAID ON THIS HBL  NOEEI SECT 30.37(a) HS: 9905.00	3000 LB 1360.78 KG	
OCEAN FREIGHT PREPAID	Total: 1		Totals: 1360.78 Kg	

**\*\*NON-NEGOTIABLE\*\***

These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.

SHIPPER'S DECLARED VALUE \$  
SUBJECT TO EXTRA FREIGHT AS PER TARIFF AND CLAUSE (4)(B)-(C) OF THIS B/L

FREIGHT AND CHARGES	BASIS	RATE	PREPAID	COLLECT
			TOTAL	TOTAL

RECEIVED by the Carrier the Goods as specified above in apparent good order and condition unless otherwise stated, to be transported to such place as agraud, authorized or permitted herein and subject to all the terms and conditions appearing on the front and reverse of this Bill of Lading to which Merchant agrees by accepting this Bill of Lading, and local privileges and customs notwithstanding. The particulars given above as stated by the shipper and the weight, measure, quantity, condition, contents and value of the Goods are unknown to the Carrier. In WITNESS whereof three (3) original Bills of Lading have been signed if otherwise not stated above, the same being surrendered duly endorsed in exchange for the Goods or delivery order.  
Signed on Behalf of the Carrier.

DATED BALTIMORE ON 2/27/2019  
AT \_\_\_\_\_ BY \_\_\_\_\_

*COMPLAINANT'S  
EXHIBIT 6*

**0261**



FMC-OTI No. 023229N

FOR PORT-TO-PORT OR COMBINED TRANSPORT

**BILL OF LADING**

EXPORTER/SHIPPER Muhmmad Jahangir Rana 110 Roberts Lane Alexandria , VA 22314 Tell : 402-477-7583		BOOKING NUMBER 967990270	BILL OF LADING NUMBER 1239458	
CONSIGNEE TO Muhmmad Jahangir Rana House 22 , Begum Sarfraz iqbal road, G-6/4 Islamabad, Pakistan Tell : +92-313-7866778		FORWARDING AGENT The Right Move, Inc 150 Motor Parkway suite 401 Hauppauge, NY 11788 Direct # 347-368-6520		
NOTIFY PARTY/INTERMEDIATE CONSIGNEE Same as above		DESTINATION AGENT CP World Co., Ltd (Karachi)		
* PRE-CARRIAGE BY	* PLACE OF RECEIPT BY PRE-CARRIER			
VESSEL GJERTRUD MAERSK V. 909W	PORT OF LOADING/EXPORT BALTIMORE	LOADING PIER/TERMINAL		
FOREIGN PORT OF UNLOADING PORT QASIM, PAKISTAN	* PLACE OF DELIVERY BY ON-CARRIER	CO-LOADED WITH	CONTAINERIZED YES                      NO	
CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		

MARKS AND NUMBERS	NO. OF PKGS	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	ME ME
CNTR #: MSKU277849-7  Seal #: 51455	1	Said to contain 48 items of used household goods and used personal effect .  NOEEI CODE: 30.07 (A ) HS CODE: 9905.00.0000 AES : Les than \$2,500.0  Ocean Freight prepaid, Express release	3000 LB 1360.78 KG	

\* APPLICABLE ONLY WHEN DOCUMENT USED AS COMBINED TRANSPORT BILL OF LADING      DECLARED VALUE (FOR AD VALOREM PURPOSE ONLY).  
(REFER TO CLAUSE 26 ON REVERSE HEREOF) IN USS

In accepting this bill of lading, any local customs or privileges to the contrary notwithstanding, the shipper, consignee and owner of the goods and the holder of this bill of lading, agree to be bound by all the stipulations, exceptions and conditions stated herein whether written, printed, stamped or incorporated on the front or reverse side hereof, as fully as if they were all signed by such shipper, consignee, owner or holder.	FREIGHT AND CHARGES
	DESCRIPTION OF CHARGES  <b>0262</b>

In witness whereof three (3) bills of lading, all of the tenor and date have been signed, one of which being accomplished, the others to stand void.

BY: THE RIGHT MOVE,  
INC., As Carrier

TOTAL PREPAID

DATE 2/27/2019

TOTAL COLLECT

COMPLAINANT'S  
EXHIBIT 7  
PAGE 2 OF 3

0263





# CP World Co.

1st Floor, 85-C, 11th Commercial Street,  
Phase-II, Extn. DHA,  
Karachi-Pakistan.  
Tel: 92-21-35315929 / 32 Fax: 92-21-35315925

Dated: 09-04-2019.

## TO WHOM IT MAY CONCERN

SUB: Vessels GJERTRUD MAERSK -V- 909w E.T.A. 30-03-2019  
CNEE NAME MUHMMAD RANA MB/L # MAEU967990270 HB/L 1239458,

Dear Sir,

We hereby inform that we are the Active agent of M/S Troy Container Lines in Pakistan.

We have been instructed by Troy Container Lines to Hold said Shipment till our Further Instruction due to reason that Forwarding Agent, THE RIGHT MOVE INC (Michelle Franklin) of this Consignment has not paid Port of Loading and Shipping Dues.

Meantime they also instructed if Consignee willing to pay POL and Shipping Dues than we are free to Release the Delivery of Goods at here in Karachi.

I Hope this clarifies our Position & fully explains why your Cargo is not being released at PORT QASIM.

Yours faithfully

For: CP World Co.  
AS Handling Agents.



COMPLAINANT'S  
EXHIBIT 8  
PAGE 1 OF 1

0265



Pakistan International  
Freight Forwarders Association





DM44

CHARGE CALCULATION BREAKDOWN

19/04/10 10:42  
6MS2 MLKHIMA

Loc.:PKKHITM Ch.Type:DET Tariff Loc.:PKKHITM Dir.:IME  
: 967990270 Vsl/Voy/Line: 831/1906/M3  
er: PK00098947 CP WORLD CO LTD

nd Total (DET): USD 605.00

No...: 967990270 VSL/VOY/ROUTE: 831 SAFMARINE NYASS/1906/M3  
ipment Id....: MSKU2778497 (20DRY )  
etime Period.: 19/03/31-19/04/06 (FT) PKKHITM 12869,004  
ention Period: 19/04/07-19/04/17  
ceivable.....: USD 55.00 x 11 days PKKHITM 12869,006

b Total.....: 605.00

L Total.....: 605.00



cc

# Container Deposit Receipt

Receipt Number : 3420009102

Receipt Date : 15.Apr.2019  
Issued : 15.Apr.2019

Payer :  
ASHRAF ENTERPRISES

Payer Code :

Payment Method	Cheque Number/ Bank Reference	Amount	Cur
CHEQUE	15397259	85,000.00	PKR
Document	Reference Number	Amount	Cur
3420009102	967990270	85,000.00	PKR
TOTAL :		85,000.00	PKR



Notes: 111.75(A-R)UBL-15-04-2019, DS-170 29 ASHRAF ENTERP

Signature:  
Issued By: Q10C011

COMPLAINANT'S  
EXHIBIT II  
PAGE 1 OF 1

0268

# Container Deposit Receipt

Receipt Number : 3420009611

Receipt Date : 22.Apr.2019  
Issued : 22.Apr.2019

Payer :  
ASHRAF ENTERPRISES

Payer Code :

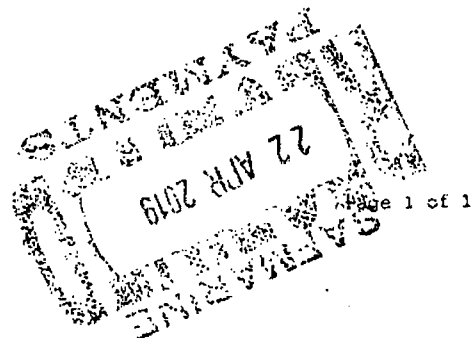
Payment Method	Cheque Number/ Bank Reference	Amount	Cur
CHEQUE	00079597	47,536.00	PKR
Document	Reference Number	Amount	Cur
3420009611	96790270	47,536.00	PKR
TOTAL :		47,536.00	PKR

Notes : A.R ROE 141.8 BAFL 22 04 2019 DS 8787 ASHRAF ENTER

Signature:  
Issued By: AZ00:

COMPLAINANT'S  
EXHIBIT 12

0269





# Ashraf Enterprises

## Clearing Forwarding & Custom Agent

Date: 21<sup>st</sup> APR 2019

To,  
 Maersk Line Pakistan (Pvt) Ltd.  
 Behria Complex M.T Khan  
 Mouvi Tamizuddin Khan Road  
 Lalazar, Karachi Pakistan

To Whom It May Concern

M/s. Ashraf Enterprises is an agent of Mr. Muhammad Jahangir Rana. In this capacity Ashraf Enterprises made payment(s) to MAERSK for container charges and deposit on behalf of Mr. Muhammad Jahangir Rana, shipment details are as under:

BL # 1239458  
 IGM # KPPI 125

You're truly,

M/s. Ashraf Enterprises

Encl:  
 DP Invoices Copies  
 BD Copies  
 BL Copy  
 Passport Copy

**ASHRAF ENTERPRISES**  
 Clearing Forwarding & Shipping Agent  
 C.H.A.L. No. 1381  
 29, Sind Market,  
 M.A. Jinnah Road, Karachi

COMPLAINANT'S  
 EXHIBIT IS PAGE 1 OF 1

0270

Room # 29, Sindh Market, Near Marry Weather Tower, Main M.A Jinnah Road, Karachi - Pakistan.  
 Ph: 492212-3954999 and Cell: 99231-025000 E-mail: ashrafenterprises1381@gmail.com



**Pearl-Continental**  
HOTELS & RESORTS

Club Road, Civil Lines  
Karachi, Sindh  
Pakistan  
Tel: 111-505-505

**INVOICE**

Guest Name: Muhammad Rana  
Confirmation: 628917

Folio No. 7864123  
Room No. 201  
Arrival 02-04-2019  
Departure 23-04-2019  
Page No. 1 of 1

Date	Description	Charges	Credits
23-04-2019	1 King Bed Guest Room X 21 Nights	18,500 Rupees Per Night X 21	
23-04-2019		Total: 388,500 Rupees	388,500 Rupees Cash Received

Taxes and service charges are included in the total. Balance: 0.00

Guest Signature: \_\_\_\_\_

Date: 23-04-2019

COMPLAINANT'S EXHIBIT 14

PAGE 1 OF 1 0271

On Friday, April 5, 2019, 9:36 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Dear Muhammad,

I paid the fees , you have to believe me,

I talked to the company and they are sending the payment today, but it may take few days,

I think it wil be released by Tuesday or Wednesday the latest ,

If you don't want to wait, pay the fees, and I will wire the money to you

I will need your bank detials to do so !

Thank you and best regards,

Michelle Franklin – Relocation consultant

The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S  
EXHIBIT 15  
0272  
1 of 1

On Wednesday, April 3, 2019, 7:20 AM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Hi Muhammad,

Sorry , I didn't mean to be silent, I didn't have proper access to the e-mail ,

I regret to inform you that our company was target to shipping fraud, and as result, we are forced to shut down as it put a huge financial burden on us .

Please see the old Bill of lading,

I am waiting for them to revise it, but it always takes few days, and because the shipment arrived, they may not be able to do so .

You may have to change it from your end,

Please send me your agent details, I would need to make sure he can help you !

I can issue a house bill of lading , if that helps with the proper info ,

Just let me know what your agent wants to do ?

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S  
EXHIBIT 16  
PAGE 1 OF 1



On Friday, April 5, 2019, 8:19 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Dear Muhammad,

The Right Move is closing, but we are far from engaged in Shipping fraud,

It's actually the opposite, maybe that's what they meant, but regardless,

We have paid the shipping costs to a third party to pay the SSL for this shipment,

I am checking into it, to see how we can help you release the shipment,

Because the company is closed, I am unable to pay it again, and if it comes down to the fact that you may have to pay it directly ,

We are fully licensed and insured, and you can file a claim against the company bond !

If you need to pay , I will send you the details of how to file a claim and retrieve your money !

But for now, give me an hour or 2 to see why this was not paid, even though we have sent the payment ....

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S  
EXHIBIT 17  
PAGE 02741 of 1

On Tuesday, April 9, 2019, 7:09 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Of course I am in touch with them , I have been following up on your shipment the whole time, just didn't know Troy didn't get paid.

The booking was done under another company license, because I knew we may get to the point we have to close,

We conducted business with a company who shipped donation goods to Lebanon, and it went well, 2 months later they shipped Donation to Africa, but this time , they didn't have the proper paper work, and turns out the receiver on the other side had every intention to sell these items.

The person who booked it disappeared and left us with 6 containers in the port or destination .

Needless to say that as you know , port charges accumulate every day , and we were trying to find a solution , eventually we ended up abandoning the shipments, and needed to pay high penalties, which forced us to close .

Since I didn't want your shipment to be effected in this process, I opened a bank account that was a business account, but had my name on it in order to be not associated it with the The Right Move, Inc financial burden,

Once I received your payment, I paid it to the third party I used to book your shipment from the same bank account , because once again, I didn't want your shipment to get stuck if in case the Right Move Inc license is being revoked while in the process of shipping your goods.

Needless to say that at the time I took your shipment, It was all in good faith that the company will continue to operate and move forward, and this will not effect you .

The third company I booked it with , paid for the trucker costs, and waited until the last minute to pay the ocean, we all do that , but it is after the fact your shipment arrived because according to the booking , the shipment should have been there in few days so they thought they had few more days.

I get that you upset and frustrated, I too, worked very hard for past 10 years, and one bad customer crushed it all down !

This is life, you learn from it and move on ...

I will help you finish this , but I still think you should pay directly and let me refund you ! it will be faster, easier and cheaper .

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S  
0275  
EXHIBIT 18

On Tuesday, April 9, 2019, 6:30 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

I have been asking them to pay it for the last 4 days, they should be able to pay it today or tomorrow.

I will send you the proof once it was paid.

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S  
EXHIBIT 19  
PAGE 1 OF 1  
0276

On Tuesday, April 9, 2019, 6:08 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Good Morning,

Please let me know if you have paid the ocean directly ?

The company I paid the money to, needs to know if to refund me, so I can refund you , or should thy pay the ocean directly ?

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # [347-368-6520](tel:347-368-6520)  
Fax# [631-439-6801](tel:631-439-6801)  
FMC Licensed #023229N

COMPLAINANT'S

EXHIBIT 20

PAGE 1 OF 1  
0277

On Tuesday, April 9, 2019, 6:12 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

They promised to pay it today or tomorrow, but since you are paying \$50 a day , I strongly suggest you pay directly and I will refund you , probably no late than Friday .

Thank you and best regards,

Michelle Franklin -- Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S  
EXHIBIT 21

0278

PAGE 1 OF 1

On Wednesday, April 10, 2019, 8:53 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Dear Muhammad,

Perfect, I am also confirming that the money was sent back to me, and I should be able to pay by Friday!

I will check how many free days we have , will get back to you shortly!

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # [347-368-6520](tel:347-368-6520)  
Fax# [631-439-6801](tel:631-439-6801)  
FMC Licensed #023229N

COMPLAINANT'S

EXHIBIT 22

PAGE 1 OF 1  
0279

On Wednesday, April 17, 2019, 11:19 PM; Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Hi Muhammad,

Thank you!

I will send you a refund shortly

I will also check that Tory agent only charged what he needed, but that's between them and our company.

Also, did you at least get the container ?

Thank you and best regards,

Michelle Franklin – Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N

COMPLAINANT'S

EXHIBIT 23

PAGE 1 of 1

0280

On Friday, April 19, 2019, 9:01 PM, Michelle Franklin <[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)> wrote:

Hi Muhammad,

The payment will be concluded in a day or 2, of course I will try to pay you as much as I am responsible for!

Just wanted to double check all the costs you had paid, and with the holiday in the middle it may take until Tuesday!

I promise we will finish this very very soon!

Thank you and best regards,

Michelle Franklin -- Relocation consultant  
The Right Move, Inc  
150 Motor Parkway suite 401  
Hauppauge, NY 11788  
Direct # 347-368-6520  
Fax# 631-439-6801  
FMC Licensed #023229N .

COMPLAINANT'S  
EXHIBIT 24  
PAGE 1 OF 1  
0281



<https://www.google.com/maps/place/The+Right+Move+Inc/@40.807298,-73.2615909,17z/data=!4m7!3m6!1s0x89e831ccae57ca21:0xcf98ea7e05682e97!8m2!3d40.807298!4d-73.2594022!9m1!1b1>

### Ben Grace

★ 2 years ago

We used these guys in Feb 2017 and what we paid for in services and what we got the other end in delivery is nothing short of terrible. Do not use them. I would go to the point of saying that they are disrespectful of others property. This ...

More

1 Share

### Subrina Chow

★ a year ago

The Right Move, Inc wanted me to sign a settlement for \$728. For that money, I would rather write a review to caution any potential customers from using this company for international relocation, particularly if they are looking for ...

More

Like Share

### Madhu Sameer

2 reviews

★ 3 years ago

This company is the biggest scam. From deceit, to lies, to insurance fraud - you name it. Quoted a total of \$8,600 for relocation, of which \$2,100 was for packaging, but shoved my belongings into the container without packaging them - ...

<https://www.yelp.com/biz/the-right-move-hauppauge>

- Madhu S.
- Fresno, CA
- 7 friends
- 8 reviews

11/7/2017

I have set up a whole webpage for these guys. They STOLE my goods - yes - converted - goods worth \$350,000. They are a nightmare. MICHELLE FRANKLIN in a con artist who will seduce you with the lowest quote. At the other end, you then have to pay the local agent because even though she says door to door delivery, she never pays them. Plus a lot of theft. And if you complain, she'll cancel your insurance. Blackmail, extortion galore.

COMPLAINANT'S 0282  
SECRET 25

I have filed a Racketeering lawsuit in the Eastern District Court of California against them.

If you value your goods - stay away.

[facebook.com/therightmov...](https://www.facebook.com/therightmov...)

- Pranab S.
- Tampa Bay, FL
- 11 friends
- 2 reviews
- Share review
- Embed review
- Compliment
- Send message
- Follow Pranab S.

8/1/2017

My experience with them was not so good. We agreed to pay by Amex card but just one week before the move they declined to accept the amex and later i had no option as my booking amount would have been forbidden. I am hoping that they deliver my stuff safely and provide me the receipts as promised . I am really worried now.

3 people voted for this review

<https://www.facebook.com/therightmove4u/>

**The Right Move 4 U scam**

August 25, 2015 ·

This webpage has been set up in the best interest of the public.

I have been scammed by "The Right Moves 4 U" moving company. Whatever you do, do not retain this company to transport your goods.

Complaints have been lodged with New Zealand Dispute Tribunal, Federal Maritime Commission, Californian Police, Christchurch Police, Better Business Bureau, and the cases of false advertisement, deceit, conspiracy to steal, theft, and insurance fraud are pending against :

the RIGHT MOVE 4U,  
their packers XO Packers from San Francisco area in CA,  
and CONROY REMOVALS from Christchurch.

The men and women in the photographs are the employees of CONROY REMOVALS - the agents of The RIGHT MOVE 4 U.

COMPLAINANT'S  
EXHIBIT 25  
0283

The all Now button on this website doesn't work somehow, so please shoot me a pm if you would like to talk, or email. Thanks.

11

9 Comments

---

The Right Move 4 U scam

November 2, 2017 -

26 SEPTEMBER 05:07

Behind the scenes

Nikil Mathur

Hello

I'm having major problems with this company

26 SEPTEMBER 07:21

The Right Move 4 U scam

Hi, Sorry to hear. Report to FMC. They have been reported twice in this year. What did they do to you?

19 OCTOBER 03:25

Nikil Mathur

It's just one fiasco after another. Coupled with all the lies they tell

Has anyway managed to get compensation out of them?

The Right Move 4 U scam

I will !!!!

The matter is in the Court. Where are you moving? From where?

She is a big liar.

But you must report to FMC....

Did you get your shipment?

Nikil Mathur

I moved from NYC to London

My stuff was collected from NY almost 3 months ago

Just lie after lie

The Right Move 4 U scam

Have you collected your shipment?

Nikil Mathur

Today was the final straw- my stuff was supposed to be delivered

But miraculously the truck with all my stuff broke down

And now they've pushed back another week

The Right Move 4 U scam

It was not?

Why?

Nikil Mathur

I don't believe it was ever going to arrive and they lied just to get me off their back

The Right Move 4 U scam

Was it packed properly ?

Nikil Mathur

They packed it

COMPLAINANT'S

EXHIBIT

0284

25

The Right Move 4 U scam  
Is your insurance still valid?

Nikil Mathur

Why wouldn't it be? It's still in their possession

The Right Move 4 U scam

Check. It is what they do. They don't pack it well...they shove it in the container unpacked. If it gets damaged, they cancel the insurance.....I have 3 other people they did the same thing to....so check your insurance..

How much was your contract for? Have you paid them in full?

And for insurance, contact the insurance agent directly as ask if you are still covered...and explain to them what is happening...

The Right Move 4 U scam

I will not post your name till you get your stuff...once you get it, you must post all your comments on my website.

23 OCTOBER 21:38

Nikil Mathur

Sorry for the delay. I'm not getting notified of new messages for some reason

She initially quoted me \$1700 for NY-London for 225 cubic feet. When my stuff was collected it came in at less than that

When it got to the dock, the cubic feet doubled as apparently they load pallets differently

Then she said it would take 4 weeks to arrive. 11 weeks later and still not arrived

I'll do whatever I can to bring this corrupt company down

The Right Move 4 U scam

Sorry to hear that..

It shouldn't take that long from US to England....

has it arrived in UK?

Nikil Mathur

It has. But only after i turned detective on her. She said my stuff had arrived in UK early sept. But I found the ships tracking number in one of the receipts and it showed the ship was still in NY

The Right Move 4 U scam

I have a lawsuit against her...in CA...2 days ago another californian who lost 25K, wanted to join....a class action is great..

Nikil Mathur

I sent it to her and she went quiet for 5 Days

Apparently my stuff arrives tomorrow. As soon as it arrives, I'll put anything you want on your FB page

The Right Move 4 U scam

There's one in Sydney who lost 19K to her a few months ago...

yes, of course...just put your experience there...

but only after your stuff arrives...

She just TOOK my 40,000, and another 300K worth of stuff is held hostage...matter is in High Court now...

40,000 worth of stuff, I mean...

Plus they took \$7000 for shipping....

I sent her a demand letter yesterday for \$350K in FRCP 68 claim...plus delivery asap...I have a lawsuit on racketeering filed in US.

24 OCTOBER 01:50

The Right Move 4 U scam

I saw the comment that you had posted. Are you sure you don't want to wait till you get your shipment?

COMPLAINANTS

0 T 0 <

Nikil Mathur

So my stuff arrived. 4 things damaged, 2 things missing (including a Sonos Soundbar) and the removal people said they weren't paid to reassemble furniture despite me paying for it. Have sent her 2 emails today and no response

How do I bring this company down?

25 OCTOBER 08:35

The Right Move 4 U scam

Did you have insurance? Check - she may have cancelled it..

Report her to FMC, and to Fair Trade Authority....if many people report the may cancel her license..

Nikil Mathur

Yes she has insurance and has asked me to claim directly through them

I'll report her also

I've left her bad reviews on yelp and google also

25 OCTOBER 15:05

The Right Move 4 U scam

Ok...great...hopefully others will look up before they jump into it..

---

COMPLAINANT'S

EXHIBIT 25

PAGE 5 of 5

## **Appendix G2**

## **Appendix G2**

## Appendix G3



**FEDERAL MARITIME COMMISSION, WASHINGTON DC**  
**Office of Administrative Law Judges**

	)	
	)	
Muhammad Rana,	)	Docket No. 19-03
Complainant	)	
	)	
V.	)	
	)	
Michelle Franklin,	)	Served: February 26, 2020
D.B.A "The Right Move Inc,"	)	
Respondent	)	

---

**BEFORE:** Honorable Erin M.WIRTH, *Administrative Law Judge.*

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**COMPLAINANT'S BRIEF**

**I. Introduction**

The Complainant hereby files his final brief along with his Proposed Finding of Facts and Appendix that are being submitted in separate documents attached / enclosed to this brief. The Complainant is also submitting a Motion to Amend the Complaint in a separate document where the Complainant is requesting to withdraw the allegation that the Respondent violated 46 USC § 41102(c). The Complaint continues to allege that the Respondent violated 46 U.S.C. § 41102(a).

**II. Violation of Section 46 USC 41102(a)**

46 U.S.C. § 41102(a), [formerly section 10(a)(l) of the Shipping Act] provides that "no person may knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable." The Complainant contends that the evidence of record as reflected in the Proposed Facts and Appendix submitted herewith establishes that Respondent knowingly and willfully by means of an unfair device obtained ocean transportation of property at less than the rates or charges that would otherwise be applicable.

**(a) Knowingly and Willfully**

Knowingly and willfully has been defined by the U.S. Supreme Court as meaning "purposely or obstinately" and is designed to describe the attitude of a person "who, having free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." *United States v. Illinois*

*Central Railroad Co.*, 303 U.S. 239, 242-243 (1938), citing *St. Louis & S.F.R. Co. v. United States*, 169 F. 69, 71 (8th Cir. 1909). Moreover, "a 'pattern of indifference' to the requirements of regulatory law, a 'persistent failure to inform' oneself, 'intentional disregard,' 'wanton disregard,' and, of course, purposeful and obstinate behavior or something akin to 'gross negligence' have all been held to constitute 'knowing and willful' behavior in violation of regulatory statutes." *Ever Freight Int'l Ltd., et al., - Possible Violations of Sections 10(a)(1) of the Shipping Act of 1984*, 28 S.R.R. 329, 333 (ALJ 1998). The Commission, in its analysis of the definition of "knowingly and willfully" within the context of the 1984 Act and its predecessors has rejected the concept that the phrase entails "actual or constructive knowledge that the requirements of the statute were being disregarded. Such a construction would make ignorance of the law a valid defense and substitute some subjective standard whereby actual knowledge of statutory language by a shipper would have to be established before a violation under this section could be found. Congress did not intend to impose such a novel evidentiary requirement." *Pacific Far East Lines - Alleged Rebates to Foremost Dairies, Inc., et al.*, 11 F.M.C. 357, 363-364 (1968). "[T]he term 'knowingly' imports merely perception of the facts necessary to bring the questioned activity within the prohibition of the statute. The term does not require as part of its meaning that there necessarily be knowledge or awareness that such activity is in fact prohibited." *Union Petroleum Corp. v. United States*, 376 F.2d 569, 573 (10th Cir.1967).

The Commission has determined that the "term 'willfully' means that respondent purposely or obstinately intended to perform the unlawful act not necessarily that it did so with the intent of maliciously breaking the law." *Shipman Int'l (Taiwan) Ltd.- Possible Violations of Sections 10(a)(1) of the Shipping Act of 1984*, 28 S.R.R. 100, 109 (ALJ 1998). Moreover, an NVOCC or an OTI is obligated to "educate itself through normal business resources, and repeated failure to do so may indicate that it is acting 'willfully and knowingly' within the meaning of the statute." *Stallion Cargo, Inc. - Possible Violations of Sections 10(a)(1) of the Shipping Act of 1984*, 29 S.R.R. 665,683-84 (FMC 2001).

The Respondent has in different pleadings and filings, over the course of this litigation, mentioned that she has been operating as an OTI since 2011. Surely, the Respondent suspected or reasonably should have known that accepting money from a client and then forwarding the client's cargo without paying for ocean freight is a violation of the law. Moreover, on April 5, 2019, the Complainant cautioned the Respondent that TROY's agent CP World is alleging that by not paying ocean and shipping, the Respondent is engaging in "shipping fraud." See *Complainant's exhibits 18 & 22*. In response to an email the Respondent inquired, "Troy said I am engaged in a shipping fraud?" Here the Respondent is acknowledging that her failure to pay ocean freight entails an inference of unlawful conduct such as fraud. Despite this the Respondent obstinately and recklessly continued to fail to pay ocean freight even after an inference of fraud was made against her. See *Complainant's exhibit 21*.

As used in the plain reading of the statute, the term "knowingly" requires only that the person acted with knowledge of the misconduct. See *United States v. Lange*, 528 F.2d 1280, 1287-89 (5th Cir. 1976). As in other situations, to commit an act "knowingly" is to do so with knowledge or awareness of the facts or situation, and not because of mistake, accident or some other innocent reason. See *Fifth Circuit Pattern Jury Instructions*, § 1.35 (1990). Knowledge of the actual statute governing the

misconduct is not required. The action need not be made with an intent to violate the law. Reckless disregard of whether a conduct is unlawful, or a conscious effort to avoid learning that the action is a violation of the law, can be construed as acting "knowingly." *United States v. Evans*, 559 F.2d 244, 246 (5th Cir. 1977), cert. denied, 434 U.S. 1015 (1978). Proof that the defendant acted with reckless disregard or reckless indifference may therefore satisfy the "knowingly" requirement. See *United States v. Schaffer*, 600 F.2d 1120, 1122 (5th Cir. 1979).

The term "willfully" means no more than that the forbidden act was done deliberately and with knowledge, and does not require proof of evil intent. *McClanahan v. United States*, 230 F.2d 919, 924 (5th Cir. 1955), cert. denied, 352 U.S. 824 (1956); *McBride v. United States*, 225 F.2d 249, 255 (5th Cir. 1955), cert. denied, 350 U.S. 934 (1956). An act is done "willfully" if done voluntarily and intentionally and with the specific intent to do something the law forbids. There is no requirement of showing evil intent in order to prove that the act was done "willfully." See *United States v. Gregg*, 612 F.2d 43, 50-51 (2d Cir. 1979); *American Surety Company v. Sullivan*, 7 F.2d 605, 606 (2d Cir. 1925)(Hand, J.); *United States v. Peltz*, 433 F.2d 48, 54-55 (2d Cir. 1970), cert. denied, 401 U.S. 955 (1971) (involving 15 U.S.C. § 32(a)). See also 1 E. Devitt, C. Blackmar, M. Wolff & K. O'Malley, *Federal Jury Practice and Instructions*, § 17.05 (1992).

The Respondent has been a defendant in a civil litigation involving matters that broadly cover the scope of the numerous Shipping Act violations. *Madhu Sameer v. The Right Move, Michelle Franklin, et al.*, No. 18-16046 (9<sup>th</sup> Cir. 2019). As such the Respondent must have known or reasonably should have known her obligations under law with regards to paying for ocean freight after accepting money from the Complainant.

Furthermore, the Respondent has refused to provide the Complainant with communication records between the Respondent and TROY Container Line, Ltd. See *Respondent's response to Complainant's discovery*. The Respondent was able to convince and induce TROY to transport Complainant's cargo without prepayment. This communication where the Respondent convinces and induces TROY to ship without prepayment would have revealed that the Respondent acted knowingly, willfully and deliberately. *This fact is supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 1 and 2.*

To justify why Respondent failed to pay ocean freight charges, the Respondent falsely claimed that she paid a third party to pay TROY for ocean and shipping. The Respondent made up this fictitious story to try and convince the Complainant to pay ocean and shipping dues in Karachi, so she could keep the ocean and shipping charges for herself. It is highly unlikely and would have been unreasonable for the Respondent to pay a third party when all she had to do was pay TROY directly. This demonstrates that the Respondent knowingly and willfully acted in bad faith and deceit showing utter disregard for the law. See *Complainant's exhibits 23 and 24. This fact is also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 6 through 9 and interrogatories 2 through 11.*

In this case, the Respondent knew the gravity of the situation involving non-payment of ocean freight by the Respondent, but simply chose to disregard the law and her actions readily meet the requisites for acting knowingly and willfully as those terms are understood by the courts and the Commission.

**(b) Unjust or Unfair Means**

The element of unjust and unfair means has been clarified by 46 CFR § 545.2 which states in pertinent part that "an essential element of the offense is use of an unjust or unfair device or means. In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an unjust or unfair device or means from the failure of a shipper to pay ocean freight. An unjust or unfair device or means could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges."

There is an abundance of evidence in the record that establishes fraud and deceit by the Respondent. In February 2019, the Respondent knew or reasonably suspected that her company may close soon, but failed to disclose this material information to the complainant when they entered into an agreement. In an email to the Complainant dated April 9, 2019, the Respondent stated that "the booking was done under another company license, because I knew we may get to the point we have to close." See *Complainant's exhibit 27*. This is evidence of bad faith, fraud and deceit. This was a deliberate act of omission by the Respondent who knowingly and recklessly misled the Complainant just to obtain Complainant's business. This information was material because had the complainant known that the respondent's company may "have to close," he would not have entered into an agreement with the respondent, nor would have sought respondent's services. Furthermore, the booking was done under another company's license, which was not relayed to the complainant prior to the agreement, even though in all the correspondence, the respondent used her company's credentials.

The Respondent was required to pay TROY port of loading and ocean freight shipping charges, and by failing to pay TROY; the Respondent in bad faith, breached the shipping agreement between the Complainant and the Respondent. All Respondent had to do was pay \$1040.00 to TROY via credit card, money order, cashier's check, money transfer or a regular check. The Respondent had already received \$2595.00, so she had the money to pay TROY, but failed to do so in bad faith. The Respondent knowingly, willingly, acting in bad faith and for monetary gain did not pay TROY Container Line, Ltd, the ocean freight charges despite being paid \$2595.00 by the Complainant. See *Complainant's exhibits 1 and 8*. This fact is also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 1 through 9 and interrogatories 2 through 11.

The Respondent in bad faith, using unfair means and unfair device encouraged TROY Container Line, Ltd, to collect ocean freight payment from the Complainant on the ground in Karachi, Pakistan, so she would not have to pay TROY in order to profit from this arrangement. This fact is supported by

*Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 1 and 2. See also Complainant's exhibit 8.*

Despite not paying Ocean Freight dues, from April 5, 2019 until April 10, 2019, the Respondent in bad faith continued to deceitfully claim via email that she had paid the shipping dues albeit via a third party and that the payment should clear soon. However, when requested by the Complainant, the Respondent in bad faith did not provide any evidence of payment and stated in an email that, "I paid the fees you have to believe me." *See Complainant's exhibits 23 and 24. This fact is also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 6 through 9 and interrogatories 2 through 11.*

The Respondent acting in bad faith falsely claimed that she paid a third party to pay TROY for ocean and shipping. The Respondent made up this fictitious story to try and convince the Complainant to pay ocean and shipping dues in Karachi, so she could keep the ocean and shipping charges for herself. It is highly unlikely and would have been unreasonable for the Respondent to pay a third party when all she had to do was pay TROY directly. This demonstrates that the Respondent knowingly and willfully acted in bad faith and deceit. *See Complainant's exhibits 23 and 24. This fact is also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 6 through 9 and interrogatories 2 through 11.*

The Complainant made non-credible, inconsistent and deceitful claims about ocean payment.

- i. In emails to the Complainant, the Respondent claimed that she paid the ocean to a "third party" who in turn was going to pay TROY; and that for some unknown reason the "third party" never paid TROY, but issued a refund to the Respondent. *See Complainant's exhibits 23, 24, 28 and 33.*
- ii. In her official Response to the Complaint, the Respondent told the Honorable Judge that "the payment that was submitted was applied towards an old shipment that was still pending." It is to be noted that in her official response to the complaint, the Respondent made no mention of a "third party" that was used to pay TROY. *See Respondent's response to the complaint dated 8/13/19.*
- iii. Finally in her response to Complainant's discovery, the Respondent admitted that "the Ocean was not paid. That is agreeable." *See Respondent's response to Complainant's discovery.*

The Respondent's contradictory statements here are clear evidence of deceit and bad faith. *This fact is also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 1 through 9 and interrogatories 2 through 11.*

During this time the Respondent in bad faith repeatedly made false and misleading statements about making payment to the Complainant.

- i. On April 5, 2019, the Respondent stated in an email that "I talked to the company and they are sending the payment today, but it may take a few days." *See Complainant's exhibit 24.*

- ii. On April 9, 2019 the respondent stated in emails:
  - a. "The company I paid the money to, needs to know if to refund me, so I can refund you." See *Complainant's exhibit 28*.
  - b. "I strongly suggest you pay directly and I will refund you, probably no late than Friday." See *Complainant's exhibit 30*.
  - c. "I have been asking them to pay it for the last 4 days, they should be able to pay it today or tomorrow." See *Complainant's exhibit 32*.
- iii. On April 10, 2019 in another email the respondent stated, "I am confirming that the money was sent back to me, and I should be able to pay by Friday." See *Complainant's exhibit 33*.
- iv. On April 17, 2019 the respondent stated, "I will send you a refund shortly." See *Complainant's exhibit 34*.
- v. On April 19, 2019 the respondent stated that "the payment will be concluded in a day or 2, of course I will try to pay as much as I am responsible for." See *Complainant's exhibit 35*.
- vi. On May 30, 2019, the Respondent stated, "a wire of \$1025 was initiated yesterday. You should have the payment tomorrow in the bank account you have provided. The amount is the ocean cost that we failed to pay in time." This was clearly a false statement made knowingly, willfully and in bad faith because a wire transfer was never initiated by the Respondent. See *Complainant's exhibit 36*.

The Respondent profited financially by not paying ocean and shipping charges to TROY Container Line. Ltd. The Complainant paid the Respondent \$2595.00, from that amount the Respondent was to pay TROY Container Line, Ltd. \$1040.00. Because the Respondent did not pay TROY, the Respondent was able to profit financially in the amount of \$1040.00. This fact is undisputed that the Respondent did not pay TROY for ocean and shipping nor did the Respondent pay Complainant. *This fact is also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 1 through 9 and interrogatories 2 through 11.*

On August 13, 2019, the Respondent – in bad faith – made false statements to the Honorable Judge. In the Respondent's, 8/13/2019, response to the Complaint, the Respondent claimed that "Mr. Rana was one of the last few customers we had to finish before we chose to close the company and surrender our FMC license." This was a false statement because the respondent did not voluntarily surrender her license. According to the Commission website, the respondent's license was revoked because of failure to maintain a valid bond. On the website page, in a long list of OTI's who voluntarily surrendered their license, the Respondent's license is listed as being revoked. Clearly the Respondent must have known about the revocation, but chose to willfully, knowingly and in bad faith lie about it to the Honorable Judge. See <https://www.fmc.gov/oti/revocations-july-12-2019/>. See also *Complainant's exhibit 37*.

On 8/13/2019, the Respondent also told the Honorable Judge that “finally Mr. Rana provided me a family member bank details to wire .the money.” This is clearly a false statement made deliberately by the Respondent to mislead the Honorable Judge. Complainant never provided a family member’s bank details to the Respondent. The Complainant provided the Respondent with his bank details at least twice. *See Complainant’s exhibits 25 and 26.* Furthermore, in an email dated May 30, 2019, the Respondent told the Complainant that “you should have the payment tomorrow in the bank account you have provided.” Clearly, here the Respondent is acknowledging that she had the Complainant’s bank details. *See Complainant’s exhibit 36.*

On 8/13/2019, the Respondent also told the Honorable Judge that “Shipment arrived on April 3, On April 5th customer agreed to pay the ocean at destination, but only paid it on April 10 resulting in additional delays.”

- 1) Here first the Complainant would like to point out that the Respondent on March 13, 2019 told the Complainant in an email that the “shipment is due in Karachi by April 3.” *See Complainant’s exhibit 38.* However, the shipment actually arrived in Karachi on March 31, 2019. *See Complainant’s exhibit 39.*
- 2) Second the Complainant never agreed to pay ocean on April 5, 2019 as falsely alleged by the Respondent. The Complainant only agreed to pay the ocean in Karachi on April 9, 2019, after being offered to do so by TROY’s agent C.P World. *See Complainant’s exhibit 8.* The Complainant did so under duress in order for C.P World to release Complainant’s belongings of sentimental value and important documents released, that were in the cargo being withheld by C.P World. *See Complainant’s exhibit 40.*

On 8/13/2019, the Respondent also told the Honorable Judge that “Mr. Rana kept asking me to pay his port fees, which are excluded and would have applied regardless.” The Complainant would like to point out that this is another false statement made by the Respondent in bad faith, because never has the Complainant ever asked the respondent to pay port fees. The Complainant paid the port fees out of pocket and is not asking for the port fees in this Complaint either. Also the Complainant never asked for demurrage before this complaint and never did the Respondent offer to pay some of the demurrage prior to settlement discussion in November 2019. *See Complainant’s exhibit 40.*

Complainant’s Proposed Facts 6, 8, 9, 12, 13, 14, 25, 26, & 27, all establish bad faith, deceit or fraud by the Respondent. This coupled with the fact that the Respondent was in default during the early stages of this Complaint and has failed to honor Complainant’s discovery all point to Respondent employing unjust and unfair means in order to get out of paying for Complainant’s ocean freight.

Even assuming arguendo there was no fraud of deceit present, the element of ‘unfair and unjust means’ is satisfied by the fact that TROY transported Complainant’s cargo without prepayment from the Respondent. For this to happen, the Respondent must have convinced and induced TROY to transport cargo without prepayment. Consistent with 46 CRF § 545.2 the act of inducing TROY to transport Complainant’s cargo without prepayment establishes unfair and unjust means. *This fact is supported by*

*Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 1 and 2.*

(c) Obtain Transportation for Property at Less than the Properly Applicable Rates

The Respondent has already admitted to this element and acknowledged that "ocean was not paid, that is agreeable." *See Respondent's response to Complainant's discovery.*

The evidence in the record is sufficient to establish that the Respondent knowingly and willfully obtained transportation for Complainant's property at less than the properly applicable rates, by unjust or unfair device or means. Considering the totality of the circumstances, including Respondent's failure to honor Complainant's discovery, the Complainant has established by a preponderance of the evidence that the Respondent violated 46 USC 41102(a) when it continued to failed to pay for Complainant's ocean freight.

**III. Complainant's Damages and Monetary Losses**

Respondent's failure to pay the ocean freight set in motion a series of events and circumstances that caused financial damages / losses to the complainant. *See Complainant's exhibit 41 page 3.*

The complainant had to additionally pay, TROY's agent CP World, out of pocket \$1,107.97 (157,000 Rupees) owed by the respondent to get the cargo released. *See Complainant's exhibit 8 and 9.*

The complainant had to pay an additional \$55.00 per day container demurrage / detention charge for 17 days (April 7th through April 23rd), a total of \$935.00 (132,536.00 rupees); this was beyond the 7-day free time, because of the delay caused by the respondent's failure to pay ocean freight. *See <https://www.maersk.com/en/local-information/pakistan/import>. See also Complainant's exhibits 10, 11, 12, 13 and 41 page 3.*

The complainant had intended to stay in Karachi for only 3 nights for the customs clearance process. However, due respondent's failure to pay the shipping, the complainant had to stay at a hotel in Karachi for additional 18 nights, and pay a total of 388,500 Rupees in hotel lodging at a rate of 18,500 rupees per night. For the additional 18 nights lodging the total comes out to 333,000 rupees or \$2,350.03. *See Complainant's exhibit 14 and 41 page 3.*

The complainant had to pay taxi charges at the least in the amount of about \$7.76 (1100 Rupees) per day or \$116.40 for 15 days to get to and from MAERSK Office, CP World Office, Western Union, Port Qasim and hotel etc.

The complainant had intended to stay in Karachi for only 3 days. However, due respondent's failure to pay shipping, the complainant had to stay at a hotel in Karachi for additional 18 days resulting in meals and incidental expenses (M&IE) incurred by the complainant. According to the U.S State Department the M&IE rate set for Karachi is \$82 per day. The total M&IE comes out to 18 X \$82 =



\$1,476.00. See

[https://aoprals.state.gov/web920/per\\_diem\\_action.asp?MenuHide=1&CountryCode=1166](https://aoprals.state.gov/web920/per_diem_action.asp?MenuHide=1&CountryCode=1166)

In April 2019, the price of dollar in the open market against the rupee fluctuated between 141 to 142 rupees per dollar. Therefore, the exchange rate used in this calculation is 141.70 rupees per dollar, which was also the rate used by MAERSK shipping company. See *Complainant's exhibit 41, page 3*.

<u>Respondent's shipping dues paid by the complainant</u>	<u>\$1,107.97</u>
<u>Container charges caused by respondent's delay</u>	<u>\$935.00</u>
<u>Complainant's taxi charges</u>	<u>\$116.40</u>
<u>Complainant's lodging for 18 nights in Karachi</u>	<u>\$2,350.00</u>
<u>Complainant's M&amp;IE for 18 days in Karachi</u>	<u>\$1,476.00</u>
<b>Total Compensatory Damages/ Losses:</b>	<b>\$5,985.40</b>

The Commission has the legal authority to grant the complainant the relief sought pursuant to Commission rules; based on authorities granted to the Commission under 46 U.S.C. § 41102(a)

The Complainant did not know about the eligibility filing a claim against the Respondent's surety bond until recently. In April 2019, the Complainant after thorough research of commission's website decided that the best option left for the Complainant is to file a Formal Complaint. Hence, the Complainant has not filed a claim against Respondent's surety bond, nor does the Complainant know how to file a claim against a surety bond.

#### **IV. Respondent's Personal Liability: Piercing the Corporate Veil**

The circumstances present here reflect the classic conditions when it comes to the application of Piercing the Corporate Veil doctrine. In this case Michelle Franklin was the sole owner of the The Right Move, Inc, she operated this company under her personal supervision and control and participated in all their activities. There is no evidence that The RightMove, Inc has a separate bank account. Based on the record the Respondent used her personal bank account, and commingled funds in company and personal accounts. Michelle Franklin's use of The Right Move, Inc, plainly shows that it was simply an extension of herself. See *Complainant's exhibit 3; these facts are also supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 10 through 15*. Imposition of personal liability on the person Michelle Franklin is applicable based on case law. See *Williamson v. Recovery Ltd. P 'ship*, 542F.3d 43, 53 (2nd Cir. 2008); *Ariel Mar. Group. Inc.*, 24 S.R.R. 517, 530 (1987).

The federal standard for when it is proper to pierce the corporate veil is notably imprecise and fact intensive. *Bd. of Locomotive Engineers v. Springfield Terminal Ry. Co.*, 210 F.3d 18, 26 (1st Cir. 2000); *Note, Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law*, 95 Harv. L. Rev. 853 (1982). Among the factors the Commission has considered in piercing the corporate veil are: "the nature of the corporate ownership and control, the failure to maintain adequate corporate

records and minutes and the failure to follow corporate formalities, including the approval of stock issues by an independent board of directors." *Rose International*, 29 S.R.R. at 166; *Ariel Mar. Group, Inc.*, 24 S.R.R. 517,530 (FMC 1987).

The respondent does business as "The Right Move, Inc" and based on the record, it is hard to distinguish between the company and the Respondent. The Respondent Michelle Franklin during the course of her transactions with the complainant acted at the owner, director, representative, sole spokesperson to the point that a distinction could not be drawn between the Right Move Inc and the Michelle Franklin. The Respondent in this case is "Michelle Franklin doing business as The Right Move Inc." Clearly based on the record there is no distinction here because of the complete control Michelle Franklin had over every single transaction, to the point no corporate formalities existed.

The most powerful evidence here that pierces the corporate veil beyond any doubt is the fact that the Respondent used her personal bank account to receive payment in the form of a wire transfer. On February 13, 2019, the respondent told the Complainant to wire transfer payment to her personal bank account which was under her name "Michelle Franklin." On February 14, 2019, the money was transferred to respondent Michelle Franklin's personal account. *See Complainant's exhibit 3.*

The record establishes that the Respondent Michelle Franklin is or was the sole owner of The Right Move, Inc. *See Respondent's response to Complainant's discovery, document request 12.* The record also establishes that from February 2019 to date, the person Michelle Franklin has been and still is the sole spokesperson, representative, owner, advocate and employee of The Right move, Inc.

The Right Move Inc has failed to observe corporate formalities in terms of documentation. *This fact is supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 10 through 15.*

The assets and finances of the person Respondent Michelle Franklin and The Right Move Inc, intermingled on a normal and routine basis. The assets and the finances of the Right Move Inc and the person Michelle Franklin are or were one and the same. *See Complainant's exhibit 3. This fact is supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 10 through 15.*

The Right Move Inc is not a separate entity from Michelle Franklin, and that The Right Move Inc, is or was taxed through Michelle Franklin's personal tax returns. *This fact is supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 13 through 15.* The person Michelle Franklin treated the funds and assets of the Right Move Inc as her own. *See Complainant's exhibit 3. This fact is supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 13 through 15.* The Right Move Inc, was being used by Michelle Franklin as a façade for her personal financial dealings and not as a separate corporate entity. *See Complainant's exhibit 3. This fact is supported by Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 10 through 15.*

This coupled with the fact that the Respondent engaged in fraud, deceit, omission and concealment establishes that the Respondent is personally liable for damages and monetary losses incurred by the Complainant. Therefore, the respondent should be held personally liable in as much as is recoverable from respondent's personal assets, beyond the respondent's surety bond.

**V. RELIEF SOUGHT**

The complainant requests the Commission to issue a summary judgement if possible or hold a hearing if required. The complainant prays that the Commission rules against the Respondent as follows:

- a. Enter a judgement that the acts and practices of the respondent were in violation of 46 U.S. Code § 41102(a).
- b. Award the complainant \$5,985.40 in compensatory damages / losses.
- c. Award the complainant \$73.00 international mail and courier charges used in filing this complaint from Pakistan.
- d. Award the complainant \$2595.00 in restitution.
- e. Issue further order(s) as the Commission determines to be proper.

Respectfully submitted by,



\_\_\_\_\_  
Muhammad J. Rana (Complainant)

I hereby certify that, on February 26, 2020, a copy of the foregoing attached Motion was sent to the following by the method indicated below:

FMC Administrative Judge  
Erin M. Wirth

VIA UPS: Federal Maritime Commission  
800 North Capitol Street, N.W  
Washington, D.C 20572  
Electronic Mail: [judges@fmc.gov](mailto:judges@fmc.gov)

Michelle Franklin  
D.B.A The Right Move, Inc.

VIA Electronic Mail:  
[mfranklin@therightmove4u.com](mailto:mfranklin@therightmove4u.com)



\_\_\_\_\_  
Muhammad J. Rana (Complainant)

**Federal Maritime Commission Washington DC**

**Office of Administrative Law Judges**

Mohammad Rana,	}	
Complainant	}	Docket No. 19-03
	}	
V.	}	
	}	
Michelle Franklin	}	Date : March 22, 2020
The Right Move, Inc	}	
Respondent	}	

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**BEFORE : Honorable Erin M. Wirth , Administrative Law Judge .**

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**Respondent’s Proposed Findings of facts.**

The respondent finding of facts is separated to 3 parts:

1. Facts by respondent.
2. Answering the finding of facts of the complainant.
3. Madhu Samee case.

**The below are the fact that the respondent find relevant to the case.**

02/04/2019 I have provided Mr. Rana a quote for door to port service with self-loading Total \$2,595.00

02/05/2019 Mr. Rana accepted the terms and conditions or agreement, for door to port only service.

02/06/2019 I have provided Mr. Rana self-loading instructions, including how to properly write an Inventory list so it can be declared on the BOL.

02/07/2019 I have provided Mr. Rana his Ocean vessel details and schedule.

02/14/2019 Mr. Rana paid his shipping costs.

02/15/2019 Mr. Rana Loaded the container.

03/12 /2019– I requested a proper inventory list, as it was not received yet. Advised the customer that the shipment is due to arrive on April 3<sup>rd</sup>, and In order for me to share the BOL with him, I need the proper Inventory list and consignee info.

03/25/2019 – Mr. Rana still didn't provide proper details for the BOL, so I sent a reminder.

03/27/2019 – we concluded the Inventory list as Mr. Rana kept adding items to it.

03/28/2019 – Mr. Rana advised that he hired an agent to assist with the custom clearance and the process in Pakistan, and Asked to change the Bill of lading again to reflect that. **–an agent should have been involved much earlier in the process as Custom clearance in Pakistan is no joke.**

03/31/2019 – Mr. Rana started his verbal abuse and threatening because he failed to understand that changing a BOL , especially last minute is out of my hands, and take the SSL few days to process. (Please see **respondent exhibit 5. )**

04/04/2019 Mr. Rana requested additional changes to the Bill of lading, and I have submitted the changes and sent him a house BOL as well to expedite the process. ( **please see respondent Exhibit 6 .)**

04/05/2019 – I was informed that the freight was on hold, and It seems as the payment that was submitted was applied towards an old shipment that was still pending.

04/05-09/2019 –I had advised the customer, that he should pay directly at destination , and he has two options, wait few days to be compensated by the company , or file a claim against the company bond ( I have provided him with the claim form , the FMC details etc to make sure he understand his options) . I wanted him to know we take full responsibility.

04/10/2019 Mr. Rana confirmed he paid the ocean directly.

04/15/2019 – Follow up E-mail form myself to Mr. Rana to make sure all is going well for him. Exhibit 7.

05/01/2019 – another Follow up E-mail form myself to Mr. Rana to make sure all is going well for him. Exhibit 8.

05/02/2020 – Learning by E-mail, that Mr. Rana submitted a claim with the FMC.

## The respondent answers to the complainant finding of facts:

The respondent also chooses to partially reply and ignore most of the complainant "findings" as they are not only ridiculous, but they are completely irrelevant to the case or its outcome, and most important are based on the complainant assumptions, rather than actual facts, or knowledge!

7. "The respondent somehow convinced and induce Troy to transport cargo without prepayment "- Complainant has no knowledge what so ever of how the shipping process works, and assume the respondent needed to do something out of the ordinary to get the container to depart, which is obviously nonsense.

10. " The respondent in bad faith , deliberately mislead and misinformed the complaint about the arrival date " the respondent provided the complainant with the name of the carrier , and vessel prior to loading ( see Exhibit 9 ) had the complainant or his agent were familiar with basic shipping knowledge they would have known they can track the shipment online, In fact , they should have tracked the shipment online from the beginning considering this was a door to port service only.

28. "The respondent Profited Financially by not paying ocean " the respondent knew all along her personal responsibility towards that payment , and offered the complaint to claim it against her bond prior to him duplicate paying it. (Complainant Exhibit 23 )

29. a . " The respondent in Bad faith – made false statements about her intentions to close the company " unless the complainant is a mind reader not sure how he will know or not know about my own personal and business intentions ? such statement is absolutely irresponsible and ridiculous! The alleged response was done on August 13, 2019, the respondent provided proof of her intentions (respondent Exhibits 1 & 2 . ) which are dated earlier.

31. -37 –The complainant try to build a case against the respondent for violating the FMC laws,

The FMC is the body who grant the respondent her license upon proper consideration and fulfilment of all that is needed, including prof of cooperation, bond and tariff. Had the respondent was trying to avoid paying the ocean costs, because her Company is closed and she is protected by her corporation's laws, she could understand such accusations and maybe willing to cooperate , But since the respondent again and again expresses her personal liability through her bond, it's irrelevant as the respondent will end up paying it from her personal account! So , not only these assumptions are not true ! they are irrelevant.

44. "The complainant had intended to stay in Karachi for Only 3 days " – in no country in the world you can finish custom clearance in 3 days, not even the super easy ones. How the complainant knew it will take only 3 days? while he doesn't even know what a Bill of lading is (Exhibit 4 bottom part) or that he could track the shipment online all along ?

**Madhu Sameer: ( Exhibits 10 - 16 )**

There is so much to say about this case, but in short, Ms. Sameer asked to ship a 40 FT container, and signed an agreement for it in June 2015. Her pick up took 19 hours instead of the normal 8-10 hours, which in the process she cooked lunch /dinner for her kids, went shopping for a printer leaving her 2 minor kids at home with strangers ( the movers) and even went to sleep for 5 hours. This resulted in the movers not receiving proper instructions of loading priority and the last few hours of the move, Ms. Sameer asking the movers to unload and load again and again different items that she wanted to take with her, in an attempt to make it all fit .

This Ended up with the movers leaving after 19 hours ( at 4 AM after none stop work ) and us sending another crew the next day to take the "left Overs" and try and switch with what is already in a super full container. The customer had 5 days window prior to us shipping the container and we asked her to come to our warehouse to be present at time of exchanged., but she never made it . that resulted in us having to return the full container to the port for shipping to avoid detention fees, and the fact that she now has a second shipment in our warehouse which she doesn't want to pay for , needless to say she wanted us to ship it for free, I offered to return it to her house for free, or ship to the port only for free As the costs to me were the same and I wanted to help !

To date I still don't understand her logic, and what exactly happened! Other than the fact Ms. Sameer had no money to pay , and never had any intentions of paying for her shipment .

All I know she refused to pay her contract amount. we asked for the agreed amount only there was nothing different! Regardless to how much we tried to explain to her with the FMC assistance, nothing , she refused to listen to anyone !

I kept offering her that I will pay for a lawyer consolation for her for free, cause she kept saying she has no money.

Time has passed, the container arrived, and the customer had no understanding of what about to happen in terms of storage and demurrage, regardless to how much we tried to warn her.

Since the shipment was consigned to an agent, Ms. Sameer decided to pay the agent directly in order for them to help her in New Zealand. The agent chose to accept her paying, despite my

request to not get involved, and released the shipment even though it was on hold by the steamship line .

At that point, I was letting it all go, I figured if she found a way, I will not stand in her way!

I lost money , a lot of money as I needed to pay the Movers, ocean and trucker , but the time spent was costing even more and I was just ready to put it all behind !

But the universe had different plans for Ms. Sameer ,

Upon collecting her shipment and placing the shipment in their warehouse, the agent occurred port charges, which the customer didn't have money to pay . I only found out all these later on, when on Dec 23, 2017 the agent from New Zealand advised us of Ms. Sameer intentions to sue everyone in the process, SSL , Movers, The Right Move, Insurance company etc.

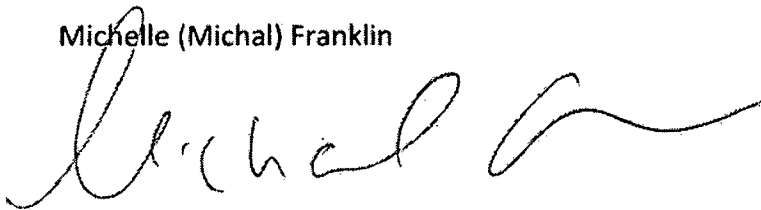
Since we were never properly summoned, we didn't get a chance to be involved, and the case was terminated in May 22, 2018.

Ever since Ms. Sameer who's entire " life" is still in storage in New Zealand somewhere, and can never have access to it unless she fully pay it, is trying all she can, including an insurance fraud.

Needless to say, this person is so hurt and has nothing to lose a this point, so she will go and try to hurt everyone along the way , whether its right or not , its irrelevant.

**I find it disturbing that the complainant base some of his accusations on "facts" he found online!**

Michelle (Michal) Franklin

A handwritten signature in black ink that reads "Michal" followed by a stylized flourish.



## **Appendix G4**

# FEDERAL MARITIME COMMISSION

Office of Administrative Law Judges

MUHAMMAD RANA, *Complainant*

v.

MICHELLE FRANKLIN, D.B.A. "THE RIGHT MOVE" INC.,  
*Respondent.*

DOCKET NO. 19-03

Served: May 12, 2020

BEFORE: Erin M. WIRTH, *Chief Administrative Law Judge.*

## INITIAL DECISION<sup>1</sup>

### I. INTRODUCTION

#### A. Overview and Summary of Decision

Complainant Muhammad Rana filed a complaint in this proceeding alleging violations of the Shipping Act of 1984 ("Shipping Act") for failure to pay shipping fees for a shipment of household goods from the United States to Pakistan. Respondent Michelle Franklin, doing business as The Right Move, Inc. ("The Right Move"), admits that she failed to pay the ocean shipping charges, blaming problems with prior shipments, but disputes that the failure was willful, that she violated the Shipping Act, and the request for damages. Both parties in this proceeding acted *pro se*, representing themselves.

Respondent refused to fully participate in discovery, participating enough to avoid a dismissal or default but not enough to provide meaningful information to Complainant. Because Respondent only selectively responded to discovery requests, Complainant was permitted to rely on her lack of response as factual support for his case. This unique procedural posture distinguishes it from other cases.

As discussed more fully below, the evidence supports a finding that Respondent violated section 41102(a) (formerly 10(a)(1)) of the Shipping Act by utilizing unjust or unfair means to obtain ocean transportation at less than the rates that otherwise would be applicable. Complainant withdrew an additional claim of a violation of section 41102(c) based in part on online complaints regarding Respondent, stating that the "new and revised rules surrounding the

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<sup>1</sup> This initial decision will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service. 46 C.F.R. § 502.227.

elements of 41102(c) make it overly burdensome to overcome, especially for a *pro se* Complainant with no legal background.” Motion to Amend at 1.

## **B. Procedural Background**

On May 13, 2019, the Commission’s Office of the Secretary served a notice of filing of complaint and assignment which required Respondent to respond to the complaint. A timely response was not received from Respondent.

On June 10, 2019, Complainant filed a motion seeking an entry of default and summary decision on default. On July 25, 2019, an order to show cause was issued. Respondent filed limited responses by email and Complainant filed multiple motions. On October 30, 2019, an order denying motions for default and summary decision, to strike, and to compel; discharging the show cause order; and a scheduling order (“Order Denying Default and Summary Decision”) was issued.

On January 6, 2020, an order was issued granting Complainant’s second motion to compel and requiring Respondent to answer discovery by January 15, 2020. On January 15, 2020, Respondent filed a response to discovery providing limited information and declining to provide further details for information she deemed “irrelevant.” On January 23, 2020, Complainant filed a motion seeking a finding of facts as a discovery sanction and moving for default decision and Respondent filed a response to the motion.

On February 6, 2020, an order was issued denying Complainant’s motion for finding of facts and default decision but permitting Respondent’s failure to provide documents and answer interrogatories to support an inference that those responses would have been adverse to her interests. On February 12, 2020, an order was issued denying a motion for clarification.

On February 26, 2020, Complainant filed his brief, proposed findings of fact (“CPFF”), appendix (“C. App.”), and a motion to amend the complaint. On March 6, 2020, Complainant filed a supplement to the motion to amend the complaint.

On March 17, 2020, Respondent filed her opposition brief and appendix with four exhibits. On March 23, 2020, Respondent filed proposed findings of facts (“RPFF”) and an expanded appendix with sixteen exhibits (“R. App.”).

On April 9, 2020, Complainant filed his reply brief. On April 9, 2020, Respondent sent an email responding to the reply brief. Although typically not permitted, as Respondent is unrepresented, the email will be treated as a sur-reply and will be admitted into the record. The Office of the Secretary is hereby requested to include this email in the record as a sur-reply.

## **C. Motion to Amend**

The Complainant initially alleged a violation of 46 U.S.C. § 41102(c). On September 10, 2019, Complainant also alleged a violation of 46 U.S.C. § 41102(a). Respondent raised no objections to the new allegation. The October 30, 2019, order granted the request to amend the complaint to add the section 41102(a) claim. Order Denying Default and Summary Decision at 3.

On February 26, 2020, Complainant filed a motion to amend the complaint, which states:

Complainant hereby requests the Honorable Judge to withdraw Complainant's allegation that the Respondent violated 46 USC 41102(c) from the Complaint. The new and revised rules surrounding the elements of 41102(c) make it overly burdensome to overcome, especially for a pro se Complainant with no legal background.

Furthermore, Respondent's failure to honor Complainant's discovery coupled with the fact that time for discovery is over, the Complainant has decided not to pursue the allegation that the Respondent violated 46 USC 41102(c). However, the Complainant will continue to pursue the claim and allegation in this complaint that the Respondent violated 46 USC 41102(a).

Motion to Amend at 1. Respondent did not object to the motion to amend.

Complainant initially argued that online complaints should be sufficient to establish that Respondent's conduct was a pattern or practice. Respondent's refusal to fully participate in discovery made establishing this claim more challenging for Complainant, particularly as one of the few discovery questions she answered was a denial that prior section 41102(c) claims had been filed against The Right Move. In addition, Complainant is aware that the Commission's standard for evaluating section 41102(c) complaints recently changed and that the question of what evidence would be sufficient is developing. Complainant's decision to withdraw his section 41102(c) complaint is reasonable and will be granted.

In the supplemental motion to amend the complaint, the Complainant requests a change to the Respondent's name in the Complaint.

The Respondent to date has not used her legal name in the Complaint proceedings. The Respondent's legal name is "Michal Franklin," whereas "Michelle Franklin" is a closely spelled alias. Therefore, the Complainant hereby requests that the Respondent's name be revised in the Complaint to reflect "Michal Franklin A.K.A Michelle Franklin D.B.A The Right Move, Inc."

Supplemental Motion to Amend at 1. Respondent did not object to the motion to amend.

According to the New York State Department of State, Division of Corporations, Entity Information, The Right Move, Inc's chief executive officer is "Michal Franklin" and the filing date is listed as Jan. 06, 2011, consistent with her FMC license, obtained in 2011. [https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_SEARCH\\_ENTRY](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_SEARCH_ENTRY). Michelle Franklin also uses the first name Micah in some of the documents in the file. Respondent's Answer to Complainant's Discovery Request (titled Motion to Compel) at 2. It appears that the different spellings all refer to the same individual and Respondent did not contest that she uses a different spelling of her name. Accordingly, this decision applies to Respondent, who also spells her first name as Michal and Micah.

- Complainant's motion to amend the complaint and supplemental motion to amend the complaint are hereby **GRANTED**.

#### **D. Evidence**

Under the Administrative Procedure Act ("APA"), an administrative law judge may not issue an order "except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." 5 U.S.C. § 556(d); *see also Steadman v. SEC*, 450 U.S. 91, 102 (1981). This initial decision is based on the pleadings, exhibits, briefs, proposed findings of fact and replies thereto, and appendices filed by the parties.

This initial decision addresses only material issues of fact and law. Proposed findings of fact not included in this decision were rejected, either because they were not supported by the evidence or because they were not dispositive or material to the determination of the allegations of the complaint or the defenses thereto. Administrative adjudicators are "not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are 'material.'" *Minneapolis & St. Louis R.R. Co. v. United States*, 361 U.S. 173, 193-194 (1959). To the extent individual findings of fact may be deemed conclusions of law, they shall also be considered conclusions of law. Similarly, to the extent individual conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.

The parties were advised that "OALJ issues decisions based only on the record in the proceeding. *See* 5 U.S.C. § 556(e). If there is information available in a different office at the Commission that a party wants considered, it is the party's obligation to provide that information." Order Denying Complainant's Motion for Finding of Facts and Default Decision at 3.

In addition, as previously explained to the parties:

Settlement discussions are not admissible under Federal Rule of Evidence 408. This is, in part, because often in a settlement neither side obtains or pays what they believe is the correct amount. Settlements are compromises and external factors such as the likelihood of recovery, risk of an adverse ruling, and costs of continued litigation impact settlement offers. These are not the factors that a judge considers in ruling on the merits of the claim. Therefore, settlement offers are not accurate measures of the value of a case and are generally not admissible. To the extent that settlement offers or actions have been mentioned in filings, those comments are stricken and not considered.

Order Denying Complainant's Motion for Finding of Facts and Default Decision at 2-3.

#### **E. Arguments of the Parties**

"Complainant contends that the evidence of record . . . establishes that Respondent knowingly and willfully by means of an unfair device obtained ocean transportation of property at less than the rates or charges that would otherwise [be] applicable." Complainant Brief at 1.

Respondent admits that she failed to pay the ocean transportation costs and states that she “took full responsibility” but claims that it was the Complainant’s “lack of knowledge that created unnecessary issues time after time.” Respondent Brief at 3-4.

Specific findings of fact are set out in part two, analysis and conclusions of law in part three, and the order in part four.

## II. FINDINGS OF FACT

1. Complainant, Muhammad Rana, is an individual shipper who was temporarily relocating his residence from Alexandria, Virginia, to Islamabad, Pakistan. CPFF 1.
2. Respondent Michelle Franklin is the sole owner of The Right Move, Inc. Respondent’s Response to Complainant’s Motion of January 23, 2020 (titled Motion for Finding of facts alleged by the complainant and default decision- Response) at 3 (“As a sole owner of a closed failed company , I also bare the debt of it .”) <sup>2</sup>
3. During this shipment, The Right Move had no other employees. Respondent’s Answer to Complainant’s Discovery Request (titled Motion to Compel) at 1.
4. The Right Move was licensed by the Commission as an NVOCC (License No. 023229N) in 2011. Respondent’s Answer to Complainant’s Discovery Request (titled Motion to Compel) at 1; C. App. Ex. 37.
5. Respondent’s NVOCC license was revoked by the Commission on July 4, 2019, for failure to maintain a valid bond. C. App. Ex. 37.
6. On February 4, 2019, Respondent provided Complainant a quote for door to port service with self-loading for a total price of \$2,595.00. CPFF 2; RPF 1.
7. On February 6, 2019, Complainant sent Respondent an email accepting the terms and conditions and promising full payment by February 14, 2019. C. App. Ex. 2.
8. Respondent provided Complainant a document titled “The Right Move Inc. ALL AROUND THE WORLD International Moving Service Agreement,” (“Shipping Agreement”) which Complainant signed and dated February 6, 2019. C. App. Ex. 1.
9. The Shipping Agreement listed the service to be provided as a door to port movement by 20 ft container from Complainant’s residence in Alexandria, VA, on February 14, 2019, to the port in Karachi, Pakistan, for \$2,500, with free total loss insurance coverage of \$5,000 plus \$95 documentation fee, totaling \$2,595.00. C. App. Ex. 1.

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<sup>2</sup> Irregular spacing, punctuation, and spelling are maintained in quotes where possible throughout the decision.

10. According to the Shipping Agreement, the flat rate included shipping or ocean freight charges from Alexandria, Virginia, to Port Qasim, Karachi, Pakistan. The flat rate also included terminal handling or port of loading charges at origin. C. App. Ex. 1.
11. The Shipping Agreement listed the transportation provider as: Right Move Inc., 150 Motor Parkway Suite # 401, Hauppauge, NY 11788; Registration: FMC # 023229N; and Customer Rep: Michelle. C. App. Ex. 1.
12. On February 7, 2019, Respondent sent Complainant an email stating that “your container is booked,” identifying the carrier (Maersk), vessel name, voyage number, and indicating that “We are all set for Feb 14 at 11 AM.” R. App. Ex. 9.
13. On February 14, 2019, Complainant wire transferred \$2595.00 into Respondent’s account under the name Michelle Franklin. C. App. Ex. 3.
14. On February 15, 2019, Respondent acknowledged receipt of the wire in an email. C. App. Ex. 4.
15. On February 15, 2019, Complainant loaded the container. RPF 6.
16. The Right Move Bill of Lading, dated February 27, 2019, listed Complainant as the exporter/shipper and consignee; Right Move as the forwarding agent; CP World Co. Ltd. (Karachi) as the destination agent; port of loading as Baltimore; port of unloading as Port Qasim, Pakistan; and the container number as MSKU277849-7 “Said to contain 48 items of used household goods and used personal effect. Ocean Freight prepaid, Express release” and was signed by “THE RIGHT MOVE, INC., As Carrier.” C. App. Ex. 7.
17. The Troy Container Line (“Troy”) bill of lading dated February 27, 2019, listed Complainant as the shipper/exporter, consignee, and notify party; Right Move as the forwarding agent; CP World Co. Ltd (Karachi) as the destination agent; port of loading as Baltimore; port of discharge as Port Qasim, Pakistan; the description of packages and goods as 20 ft container with 72 pieces of used household goods and personal effects and the container number as MSKU277849-7. C. App. Ex. 6.
18. Maersk was the vessel operating common carrier that transported Complainant’s container from Baltimore to Qasim Port in Karachi, Pakistan. C. App. Ex. 7, 18-20.
19. In an email dated March 13, 2019, the Respondent informed the Complainant that the “shipment is due in Karachi by April 3.” C. App. Ex. 38.
20. On March 25, 2019, Respondent sent Complainant an email requesting an inventory list, final address, and local phone number for the bill of lading and stating that “All these details must be on the bill of lading, or it will cause problems for you when the shipment arrives” and indicating that “changing the docs will cost a fee, I am not charging anything, it is the steamship line.” R. App. Ex. 4.

21. On March 25, 2019, Complainant responded by asking Respondent to “explain what you meant by ‘changing the bill of lading at this time will cost a fee.’” R. App. Ex. 4.
22. On March 30, 2019, Complainant sent an email to Respondent asking “Is the bill of lading ready?” and then sent another email asking how much free time he would have. C. App. Ex. 16; R. App. Ex. 5.
23. The shipment arrived in Karachi, Pakistan, on March 31, 2019. C. App. Ex. 39.
24. Complainant did not receive a copy of the bill of lading until after the shipment arrived. C. App. Ex. 5, 16, 17.
25. On March 31, 2019, Complainant emailed Respondent saying he needed the Bill of Lading “ASAP.” C. App. Ex. 15; R. App. Ex. 5.
26. On April 1, 2019, Complainant again emailed Respondent stating “I need the bill of lading today. I am leaving for Karachi tomorrow morning, the cargo is arriving day after tomorrow. Please send the bill of lading.” C. App. Ex. 15; R. App. Ex. 5.
27. Later on April 1, 2019, Complainant emailed Respondent again, stating: “It appears you are ignoring my requests. If I don’t receive my bill of lading timely, I will in a civil court seek damages and costs incurred by me as a consequence of your company’s failure to issue a timely bill of lading . . . . To avoid litigation please send me my bill of lading.” R. App. Ex. 5.
28. On April 2, 2019, Respondent sent an email to Complainant stating:

Sorry, I didn’t mean to be silent, I didn’t have proper access to the e-mail , I regret to inform you that our company was target to shipping fraud, and as result, we are forced to shut down as it put a huge financial burden on us . Please see the old Bill of lading, I am waiting for them to revise it, but it always takes few days, and because the shipment arrived, they may not be able to do so . You may have to change it from your end, Please send me your agent details, I would need to make sure he can help you ! I can issue a house bill of lading , if that helps with the proper info , Just let me know what your agent wants to do ?

C. App. Ex. 17.<sup>3</sup>

29. On April 2, 2019, Complainant emailed Respondent saying “Sorry to hear about your company troubles. I hope things work out for the best. My agent wants to know if I have any ‘free time’? How many days can they keep my cargo without charge?” Respondent’s email response filed October 1, 2019, Ex. 3.

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<sup>3</sup> Paragraph structure in quotes is not maintained throughout this decision.



30. On April 2, 2019, Complainant traveled to Karachi, Pakistan, from Islamabad, Pakistan, to receive his cargo from Port Qasim, Karachi. The same day, he went to Maersk's shipping office in Karachi to check the status of the shipment and found out that the shipment had arrived at port. He also found out that Troy's delivery agent in Pakistan, CP World, had placed a hold on the cargo because ocean freight/shipping charges had not been paid by Respondent. He explained to the Maersk office that ocean freight was prepaid, but Maersk's representative asked to see an endorsement from CP World. C. App. Ex. 41 (Affidavit).
31. From April 3, 2019, onwards Complainant was repeatedly informed verbally by Troy's delivery agent that Respondent did not pay ocean freight shipping dues for his cargo and as a result, the cargo could not be released until full payment was received from Respondent. At first, Complainant did not believe the CP World representative and thought that the representative was extorting money from Complainant because he was a United States citizen. C. App. Ex. 41 (Affidavit).
32. On April 4, 2019, Respondent emailed Complainant and stated "Changes to the bill of lading will take a few days, ask your agent if a house bill of lading will help ? I can send that right away at no cost." R. App. Ex. 6.
33. On April 5, 2019, Complainant sent Respondent a series of emails. The first one stated:
- TROY Container Line has placed a hold on my cargo stating that you have not paid them for the shipping and cargo service. They are also saying that you have engaged in "shipping fraud." Until you pay them, MAERSK will not [release] my cargo. Can you please send me a receipt or proof of payment by you to TROY or the third party so I can have MAERSK lift the hold on my cargo? After tomorrow they will start charging me \$55 per day for storage. Please assist.
- C. App. Ex. 18.
34. Also on April 5, 2019, Complainant sent an email to Respondent stating that "Maersk is asking for payment of delivery and shipping. I already paid you for that, can you please check with them" and an email stating "Please contact MAERSK and let them know that shipping and delivery expenses have been prepaid" and providing his agent's email address. C. App. Ex. 19.
35. On April 5, 2019, Respondent emailed Complainant stating "Troy said I am engaged in a shipping fraud ? Can you please send me that ? Also, as I have advised there was another company involved, I am checking to see why they didn't pay." C. App. Ex. 21.
36. On April 5, 2019, Complainant then sent an email stating:
- Yes, TROY's agent CP World who put a hold [] on the cargo on the direction / behalf of TROY stated that you have engaged in "shipping fraud." Tomorrow morning he will issue a letter in writing that I can

forward to you. Also one of the BL you gave me is from TROY. Can you please check or get a receipt or proof of payment to TROY and send it to me so I can receive my cargo?

C. App. Ex. 22.

37. On April 5, 2019, Respondent sent an email stating:

The Right Move is closing, but we are far from engaged in Shipping fraud. It's actually the opposite, maybe that's what they meant, but regardless, We have paid the shipping costs to a third party to pay the SSL for this shipment, I am checking into it, to see how we can help you release the shipment, Because the company is closed, I am unable to pay it again, and if it comes down to the fact that you may have to pay it directly, We are fully licensed and insured, and you can file a claim against the company bond ! If you need to pay , I will send you the details of how to file a claim and retrieve your money ! But for now, give me an hour or 2 to see why this was not paid, even though we have sent the payment.

C. App. Ex. 23.

38. On April 5, 2019, Complainant sent Respondent an email stating "If you sent the payment, can you please send me proof that you sent the payment, so I can get my cargo released." C. App. Ex. 23.

39. On April 5, 2019, Respondent sent an email to Complainant stating:

I paid the fees you have to believe me, I talked to the company and they are sending the payment today, but it may take a few days, I think it [will] be released by Tuesday or Wednesday the latest, If you don't want to wait, pay the fees, and I will wire the money to you I will need your bank details to do so !

C. App. Ex. 24.

40. On April 5, 2019, Complainant sent Respondent an email stating:

Despite everyone telling me that I have been defrauded, I believe you, I always try to see good in people.

Michelle, I do not want to wait, because after tomorrow I will be charged \$55 per day for storage. I just want what I paid for, which is my right. Please wire the money to my account today / ASAP otherwise I will be compelled to lodge a complaint with the Federal Trade Commission and FBI's online / email fraud division. TROY will issue a letter to me tomorrow implicating you in shipping fraud. In addition when I am back stateside in a couple of

months I will file a claim in a civil court where I will claim damages, expenses, travel / lodge expenses and mental anguish etc.

To avoid all of this please wire the total amount that was due for shipping to my account today, so I can pay it here.

C. App. Ex. 25. The email included Complainant's bank and account number.

41. On April 8, 2019, Respondent sent Complainant an email stating:

I had every intention of helping you , I really did ! But it seems that you get the wrong advice [from] the wrong people , and I am afraid that this leaves me no choice but to refuse to communicate with you directly ! From now on we either talk through the FMC , or your lawyer ! I will not respond to any of your e-mails if you keep coming up with your redicules accusations! Please e-mail the Federal Maritime commission and they will assist both of us !

R. App. Ex. 3 (also includes the personal email address of an FMC employee in the Commission's Office of Consumer Affairs and Dispute Resolution Service).

42. On April 8, 2019, Complainant sent Respondent an email stating:

I am the victim here. I did not deserve this, what you did to me is very wrong. I am stuck in a city where I don't know people, I am paying for lodging, my cargo is not being released because you did not pay TROY their dues from the money that I paid you. I kept my end of bargain, but you failed to keep yours. I have all emails and proof of what we agreed upon and what I paid you. You did not deliver the service you agreed to provide.

I am not the one saying you engaged in shipping fraud, it is TROY and CP World who are claiming this and giving me evidence. And yes I am the victim here.

I am not threatening, I am asking you to provide me with evidence that you paid TROY, so I can contest their claim here and receive my cargo. Alternatively you can wire me money to my account, so I dont have to go to court, FMC or FTC. So yes lets resolve this in a civil manner and in good faith. So please either call TROY or CP World and tell them to release my cargo, or give me proof of payment to TROY, so I can contest their claim here without paying. Or just simply wire the money to my bank account.

C. App. Ex. 26 (including Complainant's bank account information).

43. On April 9, 2019, Respondent sent Complainant an email stating:

Of course I am in touch with them , I have been following up on your shipment the whole time, just didn't know Troy didn't get paid. The booking was done under another company license, because I knew we may get to the point we have to close, We conducted business with a company who shipped donation goods . . . . The person who booked it disappeared and left us with six containers in the port or destination. Needless to say that as you know , port charges accumulate every day , and we were trying to find a solution, eventually we ended up abandoning the shipments, and needed to pay high penalties, which forced us to close.

Since I didn't want your shipment to be effected in this process, I opened a bank account that was a business account, but had my name on it in order to be not associated it with the The Right Move, Inc financial burden,

Once I received your payment, I paid it to the third party I used to book your shipment from the same bank account, because once again, I didn't want your shipment to get stuck if in case the Right Move Inc license is being revoked while in the process of shipping your goods.

Needless to say that at the time I took your shipment, It was all in good faith that the company will continue to operate and move forward, and this will not effect you.

The third company I booked it with , paid for the trucker costs, and waited until the last minute to pay the ocean, we all do that, but it is after the fact your shipment arrived because according to the booking , the shipment should have been there in few days so they thought they had few more days.

I get that you [are] upset and frustrated, I too, worked very hard for past 10 years, and one bad customer crashed it all down ! This is life, you learn from it and move on ... I will help you finish this , but I still think you should pay directly and let me refund you ! it will be faster, easier and cheaper.

C. App. Ex. 27.

44. On April 9, 2019, Respondent sent Complainant an email stating "Please let me know if you have paid the ocean directly ? The company I paid the money to, needs to know if to refund me, so I can refund you , or should they pay the ocean directly ?" C. App. Ex. 28.
45. On April 9, 2019, Complainant sent Respondent an email stating "I have not paid them yet. How soon can that company pay TROY? Please ask and let me know." C. App. Ex. 29.
46. On April 9, 2019, Respondent sent Complainant an email stating "They promised to pay it today or tomorrow, but since you are paying \$50 a day , I strongly suggest you pay directly and I will refund you , probably no [later] than Friday." C. App. Ex. 30.

47. On April 9, 2019, Complainant sent Respondent an email stating "Please tell them to pay today ASAP, it is evening here so it should clear by tomorrow. Please send me proof of payment (email or receipt etc) so I can show CP World." C. App. Ex. 31.
48. On April 9, 2019, Respondent sent Complainant an email stating "I have been asking them to pay it for the last 4 days, they should be able to pay it today or tomorrow. I will send you the proof once it was paid." C. App. Ex. 32.
49. In a letter to Complainant bearing a CP World Co. letterhead dated April 9, 2019, CP World stated:

We hereby inform that we are the active agent of M/S Troy Container Lines in Pakistan. We have been instructed by Troy Container Lines to Hold said Shipment till our Further Instruction due to reason that Forwarding Agent, THE RIGHT MOVE INC (Michelle Franklin) of this Consignment has not paid Port of Loading and Shipping Dues. Meantime they also instructed if Consignee willing to pay POL and Shipping Dues than we are free to Release the Delivery of Goods at here in Karachi. I hope this clarifies our position & fully explains why your cargo is not being released at PORT QASIM.

Yours faithfully

For: CP World CO.

AS Handling Agents

C. App. Ex.8.

50. On April 9, 2019, Complainant, for the first time, agreed to pay ocean and shipping that was owed by the Respondent, only after Troy's agent CP World officially and in writing gave him the option to pay in order to release his cargo. C. App. Ex. 40 (Affidavit).
51. On April 9, 2019, Complainant sent Respondent an email stating "Okay Michelle, I will pay directly tomorrow and you can send me the refund by Friday. CP world will charge me 156,750 rupees in unpaid dues, this comes out to 1,112.00 US dollars. This excludes port costs and other delivery costs. I will send you the receipt. You can mail a cashier's check in my name to my brother's address in Connecticut." Respondent's email response filed October 1, 2019, Ex. 6.
52. On April 9, 2019, Respondent sent Complainant an email stating "The Invoice and payment amount I made was \$1025[.] That's what they needs to pay to Troy[.] On Friday you said you will pay it directly, to avoid these additional costs. I will keep following up with them and make sure they pay , but it may take another day , and in the meantime you are paying additional fees. I paid these fees a day after you submitted your payment to me, just so you know !" Respondent's email response filed October 1, 2019, Ex. 5.

53. On April 9, 2019, Complainant paid CP World “with mental reservation and under duress just to get my important documents (birth certificate, citizenship documents, bank documents, tax returns, ownership documents, college degrees, employment documents, awards, etc.) and personal belongings of sentimental value (photos, letters, etc.) released.” C. App. Ex. 40 (Affidavit).
54. On April 10, 2019, the Complainant paid CP World 157,000 Pakistani Rupees for shipping charges. C. App. Ex. 9; C. App. Ex. 41 (Affidavit).
55. On April 10, 2019, after payment to CP World, Complainant received a charge calculation breakdown showing that the 7-day free time had ended and requiring an additional \$605.00 in container detention charges beyond the regular 7-day free time at a standard rate of \$55.00 per day. C. App. Ex. 10.
56. On April 10, 2019, Respondent sent Complainant an email stating, “Perfect, I am also confirming that the money was sent back to me, and I should be able to pay by Friday ! I [will] check how many free days we have , will get back to you shortly !” C. App. Ex. 33.
57. Complainant had brought dollars in cash with him for the customs duty, truck rental, and port charges, but had to use it to pay CP World, after which the Complainant was out of cash and didn’t have money for the container demurrage charges. After this, because the Complainant did not have a bank account in Pakistan; he depended on wire transfers and remittances from his US bank account, which can take from 2 to 3 business days. Plus, all banks and ocean freight shipping related offices were closed over the weekend in Pakistan. Furthermore, Maersk Shipping Company and shipping agents in Pakistan do not accept credit cards. C. App. Ex. 41 (Affidavit).
58. On April 15, 2019, after the weekend and after receiving additional cash, the Complainant paid Maersk’s shipping office in Karachi 85,000 rupees for the container demurrage charges through a shipping agent. C. App. Ex. 41 (Affidavit).
59. After the payment was made Complainant’s cargo was released for customs inspection at Port Qasim. Complaint at 3; C. App. Ex. 41 (Affidavit).
60. On April 15, 2019, Respondent sent Complainant an email stating “Hope you are well, Did you release the container ? Also can you please send me the agent invoice ?” R. App. Ex. 7.
61. On April 16, 2019, through April 19, 2019, the Complainant’s cargo underwent the routine procedural customs inspection, requirements, and paperwork. C. App. Ex. 41 (Affidavit).
62. On April 17, 2019, the Respondent stated, “I will send you a refund shortly I will also check that [Troy’s] agent only charges what he needed, but that’s between them and our company. Also, did you at least get the container ?” C. App. Ex. 34.

63. On April 19, 2019, the Respondent stated that "The payment will be concluded in a day or 2, of course I will try to pay you as much as I am responsible for ! Just wanted to double check all the costs you had paid, and with the holiday in the middle it may take until Tuesday ! I promise we will finish this very very soon !" C. App. Ex. 35.
64. On April 20, 2019, after receiving clearance from Pakistan's Customs Department, the cargo was not allowed to leave Port Qasim because the 'No Objection Certificate (NOC)' that was previously issued by Troy's agent CP World had expired. The Port Qasim Authority required the renewal of the No Objection Certificate from CP World. Complaint at 4; C. App. Ex. 41 (Affidavit).
65. On Monday, April 22, 2019, when the CP World offices opened after the weekend, the NOC was renewed. During this time, an additional 6 days of container charges (demurrage and detention) for the Maersk container had accumulated. Complaint at 4; C. App. Ex. 41 (Affidavit).
66. On April 22, 2019, Complainant paid an additional 47,536 rupees to Maersk for container demurrage charges through a shipping agent. C. App. Ex. 12, 13, 41 (Affidavit).
67. On April 23, 2019, Complainant's cargo left Port Qasim, Karachi, for Islamabad. C. App. Ex. 41 (Affidavit).
68. On April 23, 2019, Complainant had to pay 385,000 rupees (PKR) for lodging at a local hotel for 21 nights in Karachi. This was for the duration of time the Respondent had to spend in Karachi while his cargo was held at Port Qasim, Karachi. C. App. Ex. 14, 41 (Affidavit).
69. On May 1, 2019, Respondent sent an email to Complainant stating "Still fighting the Steamship line to get you more free days, as they usually don't grant it after the container arrives. Did you release the shipment ? I was waiting to see what is the total amount and to see if I can help you a little with the additional costs you had occurred." R. App. Ex. 8.
70. On May 30, 2019, after this proceeding was filed but before Respondent filed a response with the Commission, Respondent sent an email to Complainant stating:

A wire for \$1025 was initiated yesterday. You should have the payment by tomorrow in the bank account you have provided. The amount is the ocean cost that we failed to pay in time. You can take all the legal actions you want. The company is closed ! It was closing down and money was tight and therefore the delay ! I had intentions of paying you back all alone , but you were too busy making this something it was not ! I do apologize for the inconvenience and wish you all the best !

C. App. Ex. 36.

71. Respondent admitted that “the Ocean freight was not paid. That is agreeable” in her response to Complainant’s discovery. Respondent’s Response to Complainant’s Discovery.
72. Respondent acknowledged that her company’s financial problems stemmed from problems with prior shipments. C. App. Ex. 27 (describing an abandoned shipment); RPF at 2 (“I was informed that the freight was on hold, and It seems as the payment that was submitted was applied towards an old shipment that was still pending.”); Respondent’s email response (to order to show cause) at 3.
73. In Respondent’s response to the Complaint, the Respondent claimed that “Mr. Rana was one of the last few customers we had to finish before we chose to close the company and surrender our FMC license.” Answer at 3.
74. On June 10, 2019, and July 9, 2019, Respondent emailed the FMC stating that her business was in the process of closing. R. App. Ex. 1, 2. Respondent did not include the emails from the FMC about her license in the record.
75. According to the Commission website, in a list of OTI’s with licenses revoked or surrendered, the Respondent’s license is listed as revoked on July 4, 2019, while this case was pending, because of failure to maintain a valid bond. C. App. Ex. 37; <https://www.fmc.gov/oti/revocations-july-12-2019>.
76. Respondent stated that the “Complainant is entitle[d] to ocean costs refund + Demurrage of 5 days caused by the delay of releasing the ocean, nothing else if related what so ever to his additional expenses nor should affect the outcome of this case.” Respondent’s Response to Complainant’s Motion of January 23, 2020 (titled Motion for Finding of facts alleged by the complainant and default decision- Response) at 4.
77. Complainant paid the port fees out of pocket and is not asking for the port fees in this complaint. There is no evidence that the Complainant asked for demurrage before this complaint and the Respondent did not offer to pay some of the demurrage prior to settlement discussion in November 2019. C. App. Ex. 40 (Affidavit).
78. From February 2019 to date, Michelle Franklin has been and still is the sole spokesperson, representative, owner, advocate, and employee of The Right Move. Respondent’s failure to respond to Complainant’s discovery: Request for the Production of Documents 10 through 15.
79. The Right Move has failed to observe corporate formalities in terms of documentation. Respondent’s failure to respond to Complainant’s discovery: Request for the Production of Documents 10 through 15.
80. The Right Move is not a separate entity from Michelle Franklin, and The Right Move is or was taxed through Michelle Franklin’s personal tax returns. Respondent’s failure to respond to Complainant’s discovery: Request for the Production of Documents 13 through 15.



81. Michelle Franklin treated the funds and assets of the Right Move as her own. C. App. Ex. 3 (shipping charges for Complainant's container were paid into Michelle Franklin's personal account); Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 13 through 15.
82. The Right Move was being used by Michelle Franklin as a façade for her personal financial dealings and not as a separate corporate entity. C. App. Ex. 3. Respondent's failure to respond to Complainant's discovery: Request for the Production of Documents 10 through 15.
83. Complainant paid an additional \$55.00 per day container demurrage / detention charge for 17 days (April 7th through April 23rd), a total of \$935.00 (132,536.00 rupees); this was beyond the 7-day free time, because of the delay caused by Respondent's failure to pay ocean freight. C. App. Ex. 10, 11, 12, 13, 41 (Affidavit); <https://www.maersk.com/en/local-information/pakistan/import>.
84. Complainant had intended to stay in Karachi for only 3 nights for the customs clearance process. However, due to Respondent's failure to pay the shipping fees, Complainant had to stay at a hotel in Karachi for an additional 18 nights and pay a total of 388,500 rupees in hotel lodging at a rate of 18,500 rupees per night. For the additional 18 nights lodging the total comes out to 333,000 rupees or \$2,350.03. C. App. Ex. 14, 41 (Affidavit).
85. Complainant paid taxi charges in the amount of about \$7.76 (1100 rupees) per day or \$116.40 for 15 days to get to and from the Maersk Office, CP World Office, Western Union, Port Qasim, hotel, etc. C. App. Ex. 41 (Affidavit).
86. Complainant stayed at a hotel in Karachi for an additional 18 days resulting in meals and incidental expenses (M&IE) incurred by Complainant. C. App. Ex. 41(Affidavit). According to the U.S State Department the foreign per diem M&IE rate set for Karachi in April 2019 was \$82 per day. The total M&IE comes out to 18 x \$82 = \$1,476.00. [https://aoprals.state.gov/Web920/per\\_diem\\_action.asp?MenuHide=1&CountryCode=1166&PostCode=&PublicationDate=20190401](https://aoprals.state.gov/Web920/per_diem_action.asp?MenuHide=1&CountryCode=1166&PostCode=&PublicationDate=20190401).
87. In April 2019, the price of the dollar in the open market against the rupee fluctuated between 141 to 142 rupees per dollar. Therefore, the exchange rate used in this calculation is 141.70 rupees per dollar, which was also the rate used by Maersk shipping company. C. App. Ex. 41 (Affidavit).

### III. ANALYSIS AND CONCLUSIONS OF LAW

#### A. Burden of Proof

To prevail in a proceeding brought to enforce the Shipping Act, a complainant has the burden of proving by a preponderance of the evidence that the respondents violated the Act. 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); 46 C.F.R. § 502.203; *Exclusive Tug Franchises*, 29 S.R.R. 718, 718-719 (ALJ 2001). “[A]s of 1946 the ordinary meaning of burden of proof was burden of persuasion, and we understand the APA’s unadorned reference to ‘burden of proof’ to refer to the burden of persuasion.” *Director, Office of Workers’ Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party with the burden of persuasion must prove its case by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981). “[W]hen the evidence is evenly balanced, the [party with the burden of persuasion] must lose.” *Greenwich Collieries*, 512 U.S. at 281. It is appropriate to draw inferences from certain facts when direct evidence is not available, and circumstantial evidence alone may even be sufficient; however, such findings may not be drawn from mere speculation. *Waterman S.S. Corp. v. General Foundries Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993), adopted in relevant part, 26 S.R.R. 1424 (FMC 1994).

#### B. Discovery Sanctions

The order denying Complainant’s motion for finding of facts and default decision states:

Respondent refuses to answer questions that she believes are not relevant thereby denying Complainant discovery that is relevant and necessary to pursue his claim. Of Complainant’s 17 document requests, it does not appear that Respondent provided any documents. She did respond to two of the requests, indicating that no documents exist for document request 12 (“No partnership agreements available”) and document request 16 (“None exist” regarding whether there are any complaints, lawsuits, litigation or civil actions against Respondents where a violation of section 41102(c) was alleged.”). For the interrogatories, Complainant responded to only three of the thirteen questions, including interrogatories 1 (who answered), 12 (amount of bond), and 13 (a partial answer to why the OTI bond was revoked).

Order Denying Complainant’s Motion for Finding of Facts and Default Decision at 1. In addition, the order found that “[i]t is therefore appropriate to find that Respondent’s failure to provide documents and answer interrogatories leads to an inference that those responses would have been adverse to her interests. It is noted, in addition, that Respondent repeatedly admits her failure to pay the ocean freight although she denies that there are any other Shipping Act violations.” Order Denying Complainant’s Motion for Finding of Facts and Default Decision at 2.

The discovery requests submitted by Complainant to Respondent on September 18, 2019, included requests for information about this shipment such as communication with any third party involved, specifically any third party used to make a payment to Troy; proof of payment for the shipping, delivery, and transportation of this cargo; the amount of the OTI surety bond at

the time of the shipment and the reason the bond was revoked; business documents including article of incorporation, business license, recent tax returns, stock certificates, operating agreements; and all documents related to complaint, lawsuits, litigation, and civil actions against the Respondent personally or The Right Move business where a violation of 46 U.S. Code § 41102(c) was alleged. Motion for Finding of Facts Alleged by the Complainant and Default Decision, Ex. 2. This discovery request was reasonable and relevant to the issues in this proceeding. Respondent's refusal to provide the information despite repeated requests and an order from the undersigned prevented the discovery of relevant evidence and justified an inference that the responses would have been adverse to Respondent's interests.

Complainant's complaint was notarized and under oath. All of Complainant's pleadings have been signed and certified. Additionally, Complainant submitted a sworn notarized statement with his proposed findings of facts and brief. Complainant requested that Respondent answer the interrogatories under oath and under penalty of perjury; however, none of the Respondent's responses were under oath or under penalty of perjury. The Respondent has not signed her pleadings under oath or under penalty of perjury. This fails to comply with the Commission's requirement that pleadings, documents, or other papers filed with the Commission be signed and verified under oath and undermines the credibility of Respondent's statements and assertions. 46 C.F.R. §§ 502.6, 502.62(b).

## **C. Discussion**

### **1. Legal Standards**

The Shipping Act provides that a "person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part . . . . If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an actual injury to the complainant caused by the violation." 46 U.S.C. § 41301(a).

Complainant alleges that Respondent violated section 41102(a) of the Shipping Act, which states:

Obtaining Transportation at Less Than Applicable Rates.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a) (formerly section 10(a)(1)).

Section 41102(a) is also similar to section 16 of the Shipping Act, 1916, the predecessor to the 1984 Act. Section 16 stated:

That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false

weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

46 U.S.C. § 815 (1982).

In *Capitol Transportation, Inc.*, the First Circuit reviewed the Commission's imposition of a reparation award based on a violation of section 16. *Capitol Transportation, Inc. v. United States*, 612 F.2d 1312 (1st Cir. 1979). Maritime Service Corporation ("MSC"), a central collection agency for the billing and collection of container demurrage charges owed to ocean carriers, billed Capitol for demurrage charges under commercial bills of lading naming Capitol as consignee, but Capitol did not pay. MSC filed a complaint with the Commission seeking a reparation award for the amount owed. The Commission found that Capitol operated as an NVOCC and as consignee on the shipments and was liable for the demurrage charges. The Commission affirmed the administrative law judge's holding that "by knowingly and willfully refusing to pay demurrage owing under published tariffs, [Capitol] in effect obtained transportation by water at less than the applicable rates and thus violated section 16 of the Shipping Act." *Capitol Transportation*, 612 F.2d at 1317.

Capitol filed a petition with the Court of Appeals for the First Circuit for review of the Commission's decision. The court denied Capitol's petition for review. Regarding section 16, the court stated that "a carrier's mere stubborn but good faith refusal to pay a disputed rate or charge" does not constitute an "unjust or unfair device or means" within the meaning of section 16 but that a refusal to pay accompanied by an "element of fraud or concealment" would suffice to show an "unjust or unfair device or means." 612 F.2d at 1323. The court agreed with the Commission's finding that the "requisite element of fraud or concealment was established in this case by Capitol's 'unexplained and apparently unjustified avoidance of any payment of the amounts found due and owing.'" *Capitol Transportation*, 612 F.2d at 1323.

The Commission could properly find on this record that Capitol's refusal to pay had never been based upon a good faith legal defense, but simply reflected a calculated judgment to fight MSC to the end, forcing it to pay in blood, sweat and treasure for every penny eventually collected. On the merits of the demurrage claim, Capitol failed to present a legal defense of any substance, and belatedly raised a variety of ever-changing contentions after the time for discovery or hearing was over. Those facts, coupled with earlier correspondence indicating an adamant and legally unexplained resistance to the notion of MSC's centralized demurrage billing procedure entitled the Commission to conclude that Capitol was not only knowing and willful in its refusal to pay, but that its policies, conducted as they were in bad faith, were tantamount to an unjust or unfair means of obtaining transportation by water at lower than applicable rates. Although it would not be proper to extend this rationale to cases involving refusal to pay based on honest differences, we think the conduct reflected in the present record was sufficiently egregious to support the Commission's finding that the requisite element of fraud or concealment was here established. . . . A calculated effort in bad faith to avoid the payment of demurrage legitimately owing would, if

successful, allow shippers and consignees to accomplish what Section 16 was intended to prevent[,] the receipt of carrier service at less than applicable rates and at less than rates charged to competitors. Thus while this case undoubtedly nears the outer limits of Section 16, we uphold the Commission's finding of violation.

*Capitol Transportation*, 612 F.2d at 1323-1324.

In 1992, the Commission published a proposed interpretive rule intended to clarify jurisdiction in proceedings under section 10(a)(1) of the 1984 Act (the successor to section 16 of the 1916 Act). See *Unpaid Freight Charges*, FMC No. 92-46, 58 Fed. Reg. 7190 (Feb. 5, 1993), 26 S.R.R. 735 (FMC 1993). The Commission promulgated a final interpretive rule based in part on the *Capitol Transportation* decision expressing its conclusion that use of an unjust or unfair device or means is an essential element of a section 10(a)(1) violation.

Section 10(a)(1) of the Shipping Act . . . states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any "unjust or unfair device or means." An essential element of the offense is use of an "unjust or unfair device or means." In the absence of evidence of bad faith or deceit, the . . . Commission will not infer an "unjust or unfair device or means" from the failure of a shipper to pay ocean freight. An "unjust or unfair device or means" could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

46 C.F.R. § 545.2.

## **2. Respondent Acted as an NVOCC**

The Shipping Act defines and regulates a number of different types of entities that are involved in the international shipment of goods by water, including two types of ocean transportation intermediaries ("OTI"). "The term 'ocean transportation intermediary' means an ocean freight forwarder or a non-vessel-operating common carrier." 46 U.S.C. § 40102(20). "The term 'ocean freight forwarder' means a person that – (A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments." 46 U.S.C. § 40102(19).

"The term 'non-vessel-operating common carrier' means a common carrier that – (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier." 46 U.S.C. § 40102(17). To be an NVOCC, the entity must meet the Shipping Act's definition of "common carrier."

The term "common carrier" – (A) means a person that – (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; (ii) assumes responsibility for the transportation from the port or point of receipt to the port or

point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. § 40102(7).

The statutory definitions are echoed in the Commission's regulations:

*Ocean transportation intermediary* means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term

- (1) *Ocean freight forwarder (OFF)* means a person that – (i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and (ii) Processes the documentation or performs related activities incident to those shipments; and
- (2) *Non-vessel-operating common carrier (NVOCC)* means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

46 C.F.R. § 515.2(m).

*Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

- (1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and
- (2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country . . . .

46 C.F.R. § 515.2(e).

The Commission promulgated regulations providing examples of NVOCC services performed by OTIs.

*Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

- (1) Purchasing transportation services from a common carrier and offering such services for resale to other persons;

- (2) Payment of port-to-port or multimodal transportation charges;
- (3) Entering into affreightment agreements with underlying shippers;
- (4) Issuing bills of lading or other shipping documents;
- (5) Assisting with clearing shipments in accordance with U.S. government regulations;
- (6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;
- (7) Paying lawful compensation to ocean freight forwarders;
- (8) Coordinating the movement of shipments between origin or destination and vessel;
- (9) Leasing containers;
- (10) Entering into arrangements with origin or destination agents;
- (11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.

46 C.F.R. § 515.2(k).

A prior case summarized the Commission's work to ensure that shippers were protected from underfinanced NVOCCs.

Because the licensed ocean freight forwarder was in a position to harm its shipper-customers and because such forwarders were often underfinanced and negligent in their duties, Congress required that they be bonded so that shipper-customers of the forwarders who were injured by the forwarders' derelictions of duty would have recourse to a surety to ensure that their financial losses would be made good. After May 1, 1999, the effective date of OSRA, the other type of intermediary, the NVOCC located in the United States, was also required to be licensed and bonded. This act of Congress was welcome because even before the passage of OSRA, NVOCCs, like freight forwarders, had engaged in negligent conduct with respect to their handling of shippers' cargoes and like some forwarders, they were underfinanced and disdainful of their duties toward their shipper-customers. See, e.g., *Hugh Symington v. Euro Car Transport, Inc.*, 26 S.R.R. 871 (1993); *Adair v. Penn-Nordic Lines*, 26 S.R.R. 11 (I.D., finalized, 1991); *Total Fitness Equipment, Inc. v. Worldlink Logistics, Inc.*, 28 S.R.R. 534 (1998), affirmed as *Worldlink Logistics, Inc. v. F.M.C.*, 203 F.3d 54 (D.C. Cir. 1999), cases in which NVOCCs took shippers' moneys and failed to make sure

that the shipments were carried and delivered timely, causing shippers financial harm.

*Crowley Liner Services, Inc. and Trailer Bridge, Inc. v. Puerto Rico Ports Authority*, 29 S.R.R. 394, 2001 FMC LEXIS 7 at \*71-72 (ALJ 2001) (Respondent PRPA's Motion to Dismiss or for Partial Summary Judgment Denied; Complainants Crowley's and Trailer Bridges Motion to Dismiss Granted for the Most Part; Complaint Dismissed) (Settlement Approved, 29 S.R.R. 971 (ALJ 2002)).

The evidence shows that Respondent issued a house bill of lading for the door to port movement; listed its registration number as FMC # 023229N where N is used to denote an NVOCC; was solely licensed as an NVOCC; and was still licensed when the shipment took place. Further, the Shipping Agreement issued by Respondent contains the terms for movement of the shipment and directs payment to be made to Respondent, consistent with acting as an NVOCC. In addition, the terms of the movement was for door to port movement but Respondent only engaged Troy to ship the container from Port to Port, indicating that Respondent undertook responsibility for shipment and provided transportation from Complainant's door to the port in Karachi while Troy provided transportation from the port in the United States to the port in Karachi. Accordingly, the evidence demonstrates that Respondent acted as an NVOCC on this shipment.

### **3. Section 41102(a) Elements**

#### **a. Knowingly and Willfully**

Complainant contends that Respondent acted knowingly and willfully, for example by providing inaccurate information about the failure to pay.

To justify why Respondent failed to pay ocean freight charges, the Respondent falsely claimed that she paid a third party to pay TROY for ocean and shipping. The Respondent made up this fictitious story to try and convince the Complainant to pay ocean and shipping dues in Karachi, so she could keep the ocean and shipping charges for herself. It is highly unlikely and would have been unreasonable for the Respondent to pay a third party when all she had to do was pay TROY directly. This demonstrates that the Respondent knowingly and willfully acted in bad faith and deceit showing utter disregard for the law.

Complainant Brief at 3. Complainant also asserts that Respondent admitted "that she reasonably suspected that her company would close at the time the booking was done in February 2019" and that she "concealed this information." Reply Brief at 7.

Respondent claims that Complainant has a lack of knowledge of the shipping process, Respondent is a professional "very aware of the outcome of nonpayment of ocean shipment," and that she "never had any intentions of not paying the ocean as she is well aware of her personal liability." Respondent Brief at 1-2.



Section 41102(a) of the Shipping Act prohibits any person from “knowingly and willfully” obtaining or attempting to obtain ocean transportation of property by various false activities, including false billing or classification, or by “any unjust or unfair device or means.” A person is considered to have “knowingly and willfully” violated the Shipping Act if the person had knowledge of the facts of the violation and intentionally violated or acted with reckless disregard, plain indifference, or purposeful, obstinate behavior akin to gross negligence. *Rose International, Inc. v. Overseas Moving Network International, Ltd.*, 29 S.R.R 119, 164-165 (FMC 2001); *Portman Square Ltd.*, 28 S.R.R. 80, 84-85 (ALJ 1998) (Admin. final 1998); *Ever Freight Int’l*, 28 S.R.R. 329, 333 (ALJ 1998) (Admin. final 1998). “A calculated effort in bad faith to avoid the payment of demurrage legitimately owing would, if successful, allow shippers and consignees to accomplish what Section 16 was intended to prevent[,] the receipt of carrier service at less than applicable rates and at less than rates charged to competitors.” *Capitol Transportation*, 612 F.2d at 1324.

Respondent has not alleged a good faith legal defense for her failure to pay but rather a variety of ever-changing contentions. The evidence includes emails in which Respondent repeatedly blamed the failure to pay on an unnamed third party. For example, Respondent stated:

- “Also, as I have advised there was another company involved, I am checking to see why they didn’t pay.” C. App. Ex. 21.
- “We have paid the shipping costs to a third party . . . . give me an hour or 2 to see why this was not paid, even though we have sent the payment.” C. App. Ex. 23.
- “I paid the fees you have to believe me, I talked to the company and they are sending the payment today, but it may take a few days.” C. App. Ex. 24.
- “Once I received your payment, I paid it to the third party I used to book your shipment.” C. App. Ex. 27.
- “The company I paid the money to, needs to know if to refund me, so I can refund you , or should they pay the ocean directly ?” C. App. Ex. 28.
- “They promised to pay it today or tomorrow.” C. App. Ex. 30.
- “I have been asking them to pay it for the last 4 days, they should be able to pay it today or tomorrow. I will send you the proof once it was paid.” C. App. Ex. 32.
- “I will keep following up with them and make sure they pay , but it may take another day , and in the meantime you are paying additional fees. I paid these fees a day after you submitted your payment to me, just so you know !” Respondent’s email response filed October 1, 2019, Ex. 5.

However, Respondent no longer claims that a third party was responsible for the failure to pay and Respondent now admits that she failed to make the payment. The statements in the contemporaneous emails regarding a third party are not credible. This type of active

misinformation and deceit demonstrates knowledge and willfulness and caused a significant delay in obtaining the cargo.

Respondent knowingly and willfully continued to promise a refund but failed to refund Complainant for the shipping costs he paid to Troy. C. App. Ex. 33 (“I am also confirming that the money was sent back to me, and I should be able to pay by Friday !”); C. App. Ex. 34 (“I will send you a refund shortly”); C. App. Ex. 35 (“The payment will be concluded in a day or 2, of course I will try to pay you as much as I am responsible for !”); C. App. Ex. 36 (“A wire for \$1025 was initiated yesterday. You should have the payment by tomorrow in the bank account you have provided. The amount is the ocean cost that we failed to pay in time.”). This failure to refund despite repeated promises mirrors Respondent’s failure to initially pay the shipping charges, further undermines Respondent’s credibility, and demonstrates that her conduct was knowing and willful.

Respondent indicated that she did not know whether Troy had been paid and blamed Complainant for a lack of knowledge of the shipping process, for example, not knowing the shipment’s arrival date and for requesting changes to the bill of lading. Respondent Brief at 4; C. App. Ex. 27; RPF at 2-3. The evidence shows that Respondent did not provide Complainant with a copy of the bill of lading until after his shipment arrived and there is only one bill of lading in evidence. C. App. Ex. 5, 16, 17. The evidence does not support Respondent’s argument that changes to the bill of lading were made and even if a change was made, such a change does not excuse Respondent’s failure to pay the shipping charges. Moreover, Respondent, as a knowledgeable shipping professional, should have checked on the arrival date, ensured that the bill of lading was provided timely and accurately, and ensured that timely payment was made to Troy.

The evidence demonstrates that when Respondent accepted Complainant’s booking, Respondent knew The Right Move might be closing. Although Respondent claims in some emails that The Right Move did not close until March of 2019, the evidence shows that Respondent knew the business might be closing when she accepted this booking in February of 2019. C. App. Ex. 23, 36; R. App. Ex. 1, 2. Respondent acknowledges that her company’s financial problems stemmed from problems with prior shipments. C. App. Ex. 27 (describing an abandoned shipment); RPF at 2 (“I was informed that the freight was on hold, and It seems as the payment that was submitted was applied towards an old shipment that was still pending.”). Financial hardship does not justify the failure to pay shipping charges for subsequent shipments.

Respondent knowingly and willfully opened a personal bank account to accept Complainant’s payment for this shipment, with the intent of keeping these funds separate from company funds. In a contemporaneous email, Respondent stated that the “booking was done under another company license, because I knew we may get to the point we have to close.” C. App. Ex. 27. She then explains problems with another shipment and says that “[s]ince I didn’t want your shipment to be effected in this process, I opened a bank account that was a business account, but had my name on it in order to be not associated it with the The Right Move, Inc financial burden.” C. App. Ex. 27; *see also* Complainant Brief at 10; C. App. Ex. 3. Opening a separate bank account to avoid comingling this transaction with her company’s funds indicates that she was acting knowingly and willfully.

Respondent asserts that she was an experienced professional and the evidence shows that she was a licensed NVOCC. Respondent deflected Complainant's questions about payment for his shipment with misinformation about a third party and promises to pay, as well as opening a separate account for this transaction. This evidence is sufficient to demonstrate that she acted knowingly and willfully, as required for a violation of section 41102(a).

**b. Unjust or Unfair Device or Means**

Complainant asserts that Respondent used an unjust or unfair device or means, including fraud and deceit, arguing that:

There is an abundance of evidence in the record that establishes fraud and deceit by the Respondent. In February 2019, the Respondent knew or reasonably suspected that her company may close soon, but failed to disclose this material information to the complainant when they entered into an agreement. . . . This was a deliberate act of omission by the Respondent who knowingly and recklessly misled the Complainant just to obtain Complainant's business.

Complainant Brief at 4. Complainant also asserts that "Complainant made non-credible, inconsistent and deceitful claims about ocean payment" when she "in bad faith continued to deceitfully claim via email that she had paid the shipping dues albeit via a third party and that the payment should clear soon." Complainant Brief at 5.

Respondent asserts that she was an experienced professional aware of her responsibilities; that she continued to communicate with and try to help Complainant, even suggesting that he contact the FMC; and that she did not know when she accepted the booking that she would be unable to pay the shipping charges. Respondent Brief at 2.

To establish a violation of section 41102(a), "fraud or concealment is a necessary ingredient in the proof of an unjust or unfair device or means." *United States v. Open Bulk Containers*, 727 F.2d 1061, 1064 (11th Cir. 1984); *see also Rose Int'l*, 29 S.R.R. at 163; *Waterman S.S. Corp. v. General Foundries, Inc.*, 26 S.R.R. 1424, 1429 (FMC 1994). "In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an 'unjust or unfair device or means' from the failure of a shipper to pay ocean freight." 46 C.F.R. § 545.2. "It is such fraud or concealment that in fact makes the practice unjust or unfair." *Open Bulk Containers*, 727 F.2d at 1064.

The decision in *Nordana Lines* states:

Complainant acknowledges that the Commission now requires more than a showing that a respondent has failed to pay freight due because of a stubborn but good-faith refusal to pay a disputed rate or charge to support a claim that section 10(a)(1) has been violated. As complainant correctly contends, to support such a charge, complainant must show some element of falsification, deception, fraud or concealment or some evidence of bad faith or deceit. Complainant cites several Commission decisions establishing these principles. Complainant argues that

[Respondent] has demonstrated deceit and bad faith by obtaining Nordana's transportation services and thereafter making a series of false promises to Nordana regarding its intention to pay the freight owed.

*Nordana Line AS v. Jamar Shipping, Inc.*, 27 S.R.R. 233, 1995 FMC LEXIS 8 at \*7-8 (ALJ 1995) (Notice not to review, April 19, 1995) (footnote omitted).

The First Circuit, in *Capitol Transportation*, accepted the Commission's finding that "the requisite element of fraud or concealment was established in this case by Capitol's "unexplained and apparently unjustified avoidance of any payment of the amounts found due and owing." *Capitol Transportation*, 612 F.2d at 1323.

In this case, there is clear evidence that Respondent used unjust or unfair means. Respondent issued a house bill of lading from Alexandria, Virginia, to Karachi Port, Pakistan, and assumed responsibility for Complainant's shipment. Respondent in bad faith failed to pay Troy, forcing them to collect ocean freight payment from Complainant in Karachi, Pakistan, even though she knew that the freight was prepaid by Complainant. When asked about the shipment, Respondent stated that a third party was handling the payment. C. App. Ex. 21, 23. There is no evidence in the record that a third party was used and it appears that this statement to Complainant was a material misrepresentation. In addition, Respondent misrepresented the status of her business when the shipment was booked and failed to timely disclose to the other common carriers and to Complainant that her business was in the process of closing. C. App. Ex. 23, 36; R. App. Ex. 1, 2. If Complainant had known this information before booking, he would have selected a different ocean transportation intermediary for his shipment.

This case is unusual because none of the Respondent's communications with Troy and Maersk, who handled the shipment, are in the record. Respondent would have copies of these emails in her control and her failure to produce them leads to the inference that they are adverse to her interests. It is a reasonable inference that her communications with Troy were not entirely accurate. For example, Troy would only have shipped the cargo with the expectation of payment. Since CP World required proof from Complainant that he had prepaid the shipment, it is likely that Respondent failed to disclose to Troy that the shipment was prepaid, misleading them to assume that payment would be made either by Respondent or by Complainant after the shipment arrived in Karachi, Pakistan. C. App. Ex. 18. If, as Respondent states, she made a payment that was applied to a different shipment, that would be evidence that this was not a unique situation but rather that Respondent had failed to pay for prior shipments. RPF at 2 ("I was informed that the freight was on hold, and It seems as the payment that was submitted was applied towards an old shipment that was still pending."); C. App. Ex. 27 (describing a previous abandoned shipment).

Some of Respondent's arguments are hard to understand, for example, she states that the Complainant does not understand the challenges facing companies that ship household goods (seasonal business and lack of repeat customers) and states that "year after year after year, I have been through this same cycle" and that "it worked for 8 years prior and the business was successful." This implies that the challenges were foreseeable and manageable. However, she also says that "[a]sking the respondent to foresee difficulties is unreasonable" and that "[a]t time

of accepting the shipment, the respondent had no way of knowing she is facing harder times than usual." Complainant Brief at 2. In this proceeding, foreseeability is not at issue. Rather, the issue is whether or not Respondent utilized unjust or unfair means or devices.

Failing to pay the ocean shipping charges, hiding the financial state of the company to induce Complainant to book with her, making a series of false promises, and blaming the lack of payment on a fictitious third party while Complainant's goods were in limbo, support the finding that there was fraud or concealment. Accordingly, the evidence demonstrates unjust or unfair means, as required by the Shipping Act to establish a section 41102(a) violation.

**c. Obtaining Transportation at Less than Applicable Rates**

Complainant asserts that:

Respondent was required to pay TROY port of loading and ocean freight shipping charges, and by failing to pay TROY; the Respondent in bad faith, breached the shipping agreement between the Complainant and the Respondent. All Respondent had to do was pay \$1040.00 to TROY via credit card, money order, cashier's check, money transfer or a regular check. The Respondent had already received \$2595.00, so she had the money to pay TROY, but failed to do so in bad faith.

Complainant Brief at 4.

Respondent admits that she failed to make the payment for the ocean transportation. Respondent's Answer to Complainant's Discovery Request (titled Motion to Compel) at 1. Respondent does not contest this element, conceding that the transportation occurred and that she did not make a payment for it. She argues, instead, that she intended to pay for the ocean transportation. Respondent Brief at 5.

Actions speak louder than words. Although Respondent repeatedly said that she intended to pay the ocean shipping, she did not pay the shipping charge and did not refund Complainant after he paid. Her failure to pay and promises to pay delayed Complainant's ability to obtain his shipment. If her payment was applied to another shipment, RPF at 2, that just demonstrates that this violation was not an isolated occurrence, a finding supported by Respondent's acknowledgement of problems with other shipments. Financial problems do not justify the failure to pay for shipping. In addition, Respondent failed to pay the demurrage charges by Maersk that accrued on the container due to her failure to pay freight owed for the shipment. Respondent profited from obtaining transportation of this shipment without making any payment.

Pursuant to the Shipping Act, a shipper may not "obtain or attempt to obtain" transportation for less than applicable charges. As an NVOCC, Respondent was the shipper in relation to Troy. Respondent obtained transportation of the cargo without making any payment for the shipment, instead, keeping the payment for herself. The evidence shows that Complainant paid Respondent for the shipment and then had to pay Troy for the shipment. C. App. Ex. 3, 9,

41. Accordingly, Respondent obtained transportation at less than applicable rates as Respondent has not paid anything to Troy, Maersk, or Complainant for the shipment.

**d. Conclusion**

Respondent operated as an NVOCC when it issued a bill of lading assuming responsibility for transportation of cargo by water between the United States and a foreign port. For the shipment, Respondent was a shipper in relation to Troy within the meaning of the Act. 46 U.S.C. § 40102(22)(E). Complainant establishes by a preponderance of the evidence that Respondent engaged in fraud or deceit as required to establish use of an unjust or unfair device. In addition, the evidence establishes that Respondent obtained transportation without making any payment and that Respondent acted knowingly and willfully. Therefore, the evidence shows that Respondent knowingly and willfully, by means of an unjust or unfair device or means, obtained transportation by water for property at less than the rates or charges which would otherwise be applicable in violation of section 41102(a) of the Shipping Act. Accordingly, Complainant has established by a preponderance of the evidence that Respondent violated section 41102(a) of the Shipping Act when she shipped Complainant's household goods without making any payment.

**4. Reparations**

**a. Personal Liability**

Complainant sued Respondent in her individual name, doing business as The Right Move. Complaint at 1. Complainant argues that the corporate veil should be pierced to find Respondent personally liable for the damages, relying in significant part on Respondent's failure to respond to discovery.

Respondent argues that "the Right Move Inc is a closed company, and that the FMC license was terminated. The only way to compensate the complainant at this point will be through the company bond that was in place at the time of conducting business." Respondent Brief at 5.

The Commission has addressed when it is appropriate to pierce the corporate veil, stating that the "federal common law that has been developed generally recognizes a two-prong test to determine whether to disregard corporate form: the evidence must show (1) control and domination over the shell corporation, and (2) a federal violation." *Rose Int'l*, 29 S.R.R at 166.

The factual tests vary from circuit to circuit, but some of the major factors used to determine domination and control, and which we will consider, are as follows: (1) the nature of the ownership and control; (2) failure to maintain corporate minutes or adequate corporate records and failure to follow corporate formalities; (3) commingling of funds and other assets; (4) inadequate capitalization; (5) diversion of the corporation's funds or assets to non-corporate uses; (6) use of the same office or business location by the corporation and its shareholders; (7) overlapping ownership, officers, directors and personnel; (8) the amount of

business discretion displayed by the allegedly dominated corporation and  
(9) whether the corporations are treated as independent profit centers.

*Rose Int'l*, 29 S.R.R at 167-168. Among the factors the Commission has considered in piercing the corporate veil are: “the nature of the corporate ownership and control, the failure to maintain adequate corporate records and minutes, and the failure to follow corporate formalities, including the approval of stock issues by an independent board of directors.” *Ariel Mar. Group, Inc.*, 24 S.R.R. 517, 530 (FMC 1987).

Complainant contends that on “February 13, 2019, Respondent told Complainant to wire transfer payment to her personal bank account which was under her name ‘Michelle Franklin.’ On February 14, 2019, the money was transferred to Respondent Michelle Franklin’s personal account.” Complainant Brief at 10; C. App. Ex. 3. Respondent refused to answer Complainant’s discovery requests regarding business accounts, information exclusively under the control of Respondent.

Because Respondent failed to provide discovery, there is limited information in the record. Moreover, comments made by Respondent to Complainant lack credibility. However, given that Respondent’s contemporaneous statements are the most directly relevant evidence in the record, they are probative. On April 9, 2019, Respondent sent a long email which stated that the “booking was done under another company license, because I knew we may get to the point we have to close.” C. App. Ex. 27. She then explains problems with another shipment and says that “[s]ince I didn’t want your shipment to be effected in this process, I opened a bank account that was a business account, but had my name on it in order to be not associated it with the The Right Move, Inc financial burden.” C. App. Ex. 27. This statement that Respondent used a different, new account for this shipment is consistent with Complainant’s allegations. This evidence, coupled with her failure to produce discovery, establishes that this shipment involved Michelle Franklin’s personal bank account, separate from her regular company account, and is evidence of commingling of funds and inadequate capitalization.

Respondent’s refusal to provide discovery also supports findings proposed by Complainant that: Michelle Franklin is or was the sole owner of The Right Move, Inc.; from February 2019 to date, Michelle Franklin has been and still is the sole spokesperson, representative, owner, advocate, and employee of The Right Move; The Right Move has failed to observe corporate formalities in terms of documentation; The Right Move is not a separate entity from Michelle Franklin; The Right Move is or was taxed through Michelle Franklin’s personal tax returns; Michelle Franklin treated the funds and assets of the Right Move as her own; and, The Right Move was being used by Michelle Franklin as a façade for her personal financial dealings and not as a separate corporate entity. C. App. Ex. 3; Respondent’s failure to respond to Complainant’s discovery: Request for the Production of Documents and Interrogatories. These factors weigh in support of piercing the corporate veil and finding Michelle Franklin personally liable.

Respondent’s argument that the only way to compensate the Complainant is through the company bond addresses the issue of collecting any reparations awarded. The Commission does not assist with collections of reparations awards and the Complainant may seek any available

means to obtain compensation, including through the company bond (by contacting the bond company directly), from the Respondent, or other appropriate means. Moreover, Respondent's license was revoked for failure to maintain the bond. It is reasonable to conclude that the bond may not have been in force at the time of the shipment at issue and may not be available to pay the claim.

Although Michelle Franklin was sued in her own name, during the transactions at issue, she acted in the company's name. Therefore, it is necessary to pierce the corporate veil to find her personally responsible for any reparations. As discussed above, the evidence is sufficient to show that the corporate veil should be pierced. Accordingly, Michelle Franklin is liable in an individual capacity in addition to The Right Move for any reparations award.

#### **b. Calculation of Damages**

Complainant seeks a reparations award of \$5,985.40, including shipping charges, container demurrage charges, and costs incurred while in Karachi obtaining release of his cargo; \$73 in costs to file this complaint; and, \$2,595 in restitution of fees paid to Respondent. Complainant Brief at 8-9. Complainant has the burden of proving entitlement to reparations.

Respondent objects to the additional costs beyond the ocean freight, arguing that it was Complainant's inexperience which caused delays, and also argues, in contradiction, that the customs clearance process in Pakistan is difficult and 17 to 20 days is a reasonable amount of time to clear customs. Respondent's Response at 4-5.

Pursuant to section 11(g) of the Shipping Act, "[i]f the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part." 46 U.S.C. § 41305(b).

Commission case law states that: "(a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation." *Waterman v. Stockholms Rederiaktiebolag Svea*, 3 F.M.B. 248, 249 (FMB 1950); see also *James J. Flanagan Shipping Corp. v. Lake Charles Harbor & Terminal Dist.*, 30 S.R.R. 8, 13 (FMC 2003).

The statements of the Commission in [*California Shipping Line, Inc. v. Yangming Marine Transport Corp.*, 25 S.R.R. 1213 (FMC 1990)] and the other cited cases are in the mainstream of the law of damages as followed by the courts, for example, regarding the principles that the fact of injury must be shown with reasonable certainty, that the amount can be based on something less than precision but something based on a reasonable approximation supported by evidence and by reasonable inferences, the principle that the damages must be foreseeable or proximate or, in contract law, within the contemplation of the parties at the time they entered into the contract, the fact that speculative damages are not allowed, and that regarding claims for lost profits, there must be



reasonable certainty so that the court can be satisfied that the wrongful act caused the loss of profits.

*Tractors and Farm Equipment Ltd. v. Cosmos Shipping Co., Inc.*, 26 S.R.R. 788, 798-799 (ALJ 1992) (Admin. final 1992).

The evidence support's Complainant's argument that the delay in obtaining the cargo and additional costs from the delay were caused by Respondent's failure to pay the shipping charges, which led to a hold on the shipment, and promises to pay, which delayed Respondent from paying the shipping charges earlier. There is not sufficient evidence in the record to support Respondent's claims that the delay was caused by Complainant's inexperience, changes to the bill of lading, or that customs clearance could have started earlier.

Complainant seeks \$1,107.97 for the shipping charges that he paid and \$935 in container demurrage charges caused by the Respondent's delay. Complainant provides receipts supporting these amounts. C. App. Ex. 9, 10, 11, 12, 13, 41. The container in question was shipped to Pakistan and Complainant is not entitled to receive free shipping for his container. Complainant's request for the shipping charges he paid for his container is therefore denied. However, the evidence shows that the delay in obtaining the cargo was caused by Respondent's actions. Therefore, Complainant has provided sufficient evidence to support his claim for container demurrage charges, totaling \$935.

In addition, Complainant seeks costs incurred while in Karachi obtaining release of the cargo, including \$116.40 in taxi charges, \$2,350 for lodging, and \$1,476 for meals and incidentals. Complainant provides receipts for the taxi and lodging charges and refers to government regulations for the meals and incidental charges. C. App. Ex. 14, 41. Respondent's arguments regarding the time spent by Complainant are confusing, as she says both that 17-20 days is reasonable and that the delay was caused by Complainant's lack of knowledge. Her arguments are not convincing. On the other hand, Complainant attaches appropriate documentation and support for the time spent to retrieve his belongings clearly delayed by Respondent's failure to pay the shipping charges. Complainant has provided sufficient evidence to support his claim for costs obtaining release of his cargo, totaling \$3,942.40.

Complainant seeks compensation for the \$73 in costs to file this complaint. Although attorney fees may be awarded, costs for filing the complaint are generally not awarded as they are not part of the actual injury determination nor the attorney fees. Accordingly, the request for costs to file the complaint is denied.

Complainant also seeks restitution of the \$2,595 that he paid the Respondent on February 14, 2019, for this shipment. Complainant Ex. E. In addition to profit, a portion of this fee may have been for trucking from Alexandria, VA, to Baltimore's seagirt terminal or other charges, but because Respondent failed to provide evidence of these costs and refused to answer discovery related to transportation costs for the shipment, they cannot be deducted. C. App. Ex. 5. Complainant has provided sufficient evidence to support his claim for restitution, totaling \$2,595.

Complainant has established that his actual injury caused by Respondent's violation of the Shipping Act is in the amount of \$7,472.40 (\$935 container demurrage charges + \$3,942.40 taxi, meals, and lodging + \$2,595 shipping charges paid to Respondent). Respondent is ordered to pay reparations in the amount of \$7,472.40 to Complainant. The shipment arrived in Karachi, Pakistan, on March 31, 2019. C. App. Ex. 39. Therefore, interest on the reparation award runs from March 31, 2019, to be calculated by the Commission when this decision becomes administratively final. *See* 46 C.F.R. § 502.253.

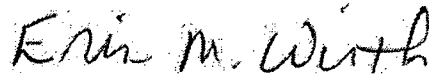
#### **IV. ORDER**

Upon consideration of the record herein, the arguments of the parties, the findings and conclusions set forth above, and the determination that Muhammad Rana established that Michelle Franklin, also known as Michal Franklin or Micah Franklin, doing business as The Right Move, Inc., violated the Shipping Act, 46 U.S.C § 41102(a), it is hereby

**ORDERED** that Muhammad Rana's complaint for reparations against Michelle Franklin, also known as Michal Franklin or Micah Franklin, doing business as The Right Move, Inc., be **GRANTED**. It is

**FURTHER ORDERED** that Michelle Franklin and The Right Move, Inc. are jointly and severally ordered to pay Muhammad Rana reparations in the amount of \$7,472.40 with interest on the reparations award running from March 31, 2019. It is

**FURTHER ORDERED** that any other pending motions or requests be **DISMISSED AS MOOT**.



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Erin M. Wirth  
Chief Administrative Law Judge

## Appendix H

Reprint  
as at 1 September 2017



## Carriage of Goods Act 1979

Public Act	1979 No 43
Date of assent	14 November 1979
Commencement	see section 1(2)

Carriage of Goods Act 1979: repealed, on 1 September 2017, by section 345(1)(a) of the Contract and Commercial Law Act 2017 (2017 No 5).

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**An Act to restate and reform the law relating to the carriage of goods within New Zealand**

**1 Short Title and commencement**

- (1) This Act may be cited as the Carriage of Goods Act 1979.
- (2) This Act shall come into force on 1 June 1980.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**actual carrier**, in relation to the carriage of any goods, means every carrier who, at any material time, is or was in possession of the goods, or of any container, package, pallet, item of baggage, or any other thing in or on which the goods are or were believed by him to be, for the purpose of performing the carriage or any stage of it or any incidental service; and includes the contracting carrier where he performs any part of the carriage.

**carriage** includes any incidental service; and **carry** has a corresponding meaning.

**carrier** means a person who, in the ordinary course of his business, carries or procures to be carried goods owned by any other person, whether or not as an incident of the carriage of passengers; and, except in sections 21 to 24, includes a person who, in the ordinary course of his business, performs or procures to be performed any incidental service in respect of any such goods.

**checked baggage** means baggage, personal effects, or other articles, checked or registered with the carrier, or put in any place at the carrier's direction, or in any other way handed over to and accepted by the carrier (whether or not a check or form of receipt is issued), as baggage intended to be carried incidental to a contract for carriage of a passenger.

**contract of carriage** means a contract for the carriage of goods.

**contracting carrier**, in relation to a contract of carriage, means the carrier who, whether as a principal or as the agent of any other carrier, enters or has entered into the contract with the contracting party.

**contracting party**, in relation to a contract of carriage, means the consignor or (as the case may require) the consignee of the goods who enters or has entered into the contract with the contracting carrier.

**court** means any court of competent jurisdiction.

**goods** means goods, baggage, and chattels of any description; and includes animals and plants; and also includes money, documents, and all other things of value.

**hand baggage** means baggage, personal effects, or other articles, not being checked baggage.

**incidental service**, in relation to any goods, means any service (such as that performed by consolidators, packers, stevedores, and warehousemen) the performance of which is to be or is undertaken to facilitate the carriage of the goods pursuant to a contract of carriage.

**international carriage**,—

- (a) in relation to the carriage of goods by air, means carriage in which, according to the contract of carriage, the place of departure and the place of destination (whether or not there is a break in the carriage or a transshipment) are within the territories of 2 countries, or within the territory

of a single country if there is an agreed stopping place within the territory of another country:

- (b) in relation to the carriage of goods by sea, means carriage from any port in New Zealand to any port outside New Zealand, or to any port in New Zealand from any port outside New Zealand, commencing when the goods are loaded onto a ship and ending when they are discharged from a ship

**loss**, in relation to any goods, includes the non-delivery or destruction of the goods

**passenger** means a person carried pursuant to a contract of carriage of that person

**ship** means any vessel used for the carriage of goods by sea.

Compare: 1948 No 66 s 2; 1967 No 151 s 18

### 3 Meaning of unit of goods

- (1) In this Act, unless the context otherwise requires, **unit of goods** or **unit**,—
- (a) in relation to bulk cargo, means the customary freight unit; that is, the unit of bulk, weight, or measurement upon which the freight for that type of cargo is customarily computed or adjusted:
- provided that, where the freight payable under a contract of carriage is computed or adjusted upon a specified unit of bulk, weight, or measurement, references in this Act to unit of goods or unit shall be deemed, for the purposes of the carriage of goods pursuant to that contract, to be references to that specified unit:
- (b) in relation to goods contained in a container, means the container load of goods; and includes, where the container is provided by the contracting party, the container:
- (c) in relation to goods loaded on a pallet, means the pallet load of goods; and includes, where the pallet is provided by the contracting party, the pallet:
- (d) in relation to goods contained in a package that is not contained in a larger package or in a container, nor loaded on a pallet, means the package of goods:
- (e) in relation to goods that are unitised for the purposes of carriage in any manner not referred to in any of the preceding paragraphs of this subsection, means the unit of goods as so unitised:
- (f) in relation to goods (other than baggage) not referred to in any of the preceding paragraphs of this subsection, means each item of the goods:
- (g) in relation to baggage, means each item of baggage.
- (2) For the purpose of determining the limit of the liability of any carrier, the limit of liability prescribed by section 15 in respect of each unit of goods relates to

the unit of goods as accepted for carriage by the actual carrier or, where the carriage is undertaken by more than 1 carrier, by the first actual carrier, whether or not that unit is subsequently packed, repacked, or unpacked, or otherwise aggregated with or segregated from any other goods, at any stage of the carriage.

#### **4 Act to bind Crown**

- (1) Subject to subsection (2), this Act binds the Crown.
- (2) Nothing in this Act applies to—
  - (a) the carriage of goods by the New Zealand Defence Force or the Ministry of Defence, except for the purpose of providing a public service in New Zealand or elsewhere for payment (other than payment by or on behalf of the military authorities of any other State).

(b) *[Repealed]*

Compare: 1948 No 66 s 9; 1967 No 151 ss 2, 19(3)

Section 4(2): substituted, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 4(2)(b): repealed, on 1 April 1998, by section 62(1) of the Postal Services Act 1998 (1998 No 2).

#### **5 Application of Act**

- (1) Subject to subsections (4) and (4A) and to section 4, this Act applies to every carriage of goods, not being international carriage, performed or to be performed by a carrier pursuant to a contract entered into after the commencement of this Act, whether the carriage is by land, water, or air, or by more than 1 of those modes.
- (2) Subject to subsection (1), this Act applies to every carriage of goods whether the carriage is or is not incidental to the carriage of passengers.
- (3) Subject to subsection (1), this Act applies to every carriage by air or by water whether or not the aircraft or ship by which the carriage takes place is at the same time also engaged in international carriage.
- (4) This Act does not apply to any carriage by air performed as part of an air transport service for the carriage of passengers operated by any club that is affiliated with the Royal New Zealand Aero Club (Incorporated), if the carriage is performed in an aircraft owned or hired by the club, and if all persons carried on the aircraft, whether as crew or passengers, are members of the club with full rights of membership:  
provided that the provisions of this subsection do not apply in any case where any such passenger is not carried by reason of the fact that he is a member of the club but for the purpose of carrying out a function not related to his membership.
- (4A) This Act does not apply to the carriage of letters by a postal operator, whether by the postal operator's agents or otherwise.



(4B) For the purposes of subsection (4A), the terms **postal operator** and **letter** have the same meaning as they have in the Postal Services Act 1998.

(5) *[Repealed]*

Compare: 1940 No 31 s 2; 1967 No 151 s 19(1), (2), (4)

Section 5(1): amended, on 1 April 1998, by section 62(1) of the Postal Services Act 1998 (1998 No 2).

Section 5(4A): inserted, on 1 April 1998, by section 62(1) of the Postal Services Act 1998 (1998 No 2).

Section 5(4B): inserted, on 1 April 1998, by section 62(1) of the Postal Services Act 1998 (1998 No 2).

Section 5(5): repealed, on 1 February 1995, by section 212(2) of the Maritime Transport Act 1994 (1994 No 104).

## 6 Other remedies affected

Notwithstanding any rule of law to the contrary, no carrier shall be liable as such, whether in tort or otherwise, and whether personally or vicariously, for the loss of or damage to any goods carried by him except—

- (a) in accordance with the terms of the contract of carriage and the provisions of this Act; or
- (b) where he intentionally causes the loss or damage.

## 7 Contracting out

The parties to a contract of carriage are free to make their own terms in respect of any matter to which any of sections 10, and 18 to 27 apply; and, where they do so, the relevant section or sections shall, in relation to that matter, have effect subject to those express terms.

Compare: 1940 No 31 s 4; 1948 No 66 ss 4, 5; 1967 No 151 s 30

## 8 Kinds of contract of carriage

(1) For the purpose of determining upon whom liability for the loss of or damage to any goods is to fall, every contract of carriage shall be one of the following kinds:

- (a) a contract for carriage **at owner's risk**, under which the carrier shall not be liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier:
- (b) a contract for carriage **at limited carrier's risk**, under which the carrier shall be liable for the loss of or damage to any goods in accordance with sections 9, 14, and 15:
- (c) a contract for carriage **at declared value risk**, under which the carrier shall be liable for the loss of or damage to any goods up to an amount specified in the contract and otherwise in accordance with sections 9, 14, and 15:

- (d) a contract for carriage **on declared terms**, under which the carrier shall be liable for the loss of or damage to any goods in accordance with the specific terms of the contract.
- (2) Subject to the succeeding provisions of this section, where in any contract of carriage the term “at owner’s risk” or the term “at limited carrier’s risk” or the term “at declared value risk” or the term “on declared terms” is used, the contract shall be deemed for the purposes of this Act to be one to which paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) (as the case may require) of subsection (1) applies.
- (3) Subject to the succeeding provisions of this section, the kind of contract of carriage to be entered into in a particular case is a matter for agreement between the parties.
- (4) Where the contract does not purport to be of a particular kind, it shall be deemed for the purposes of this Act to be a contract for carriage at limited carrier’s risk.
- (5) No contract of carriage purporting to be a contract for carriage at owner’s risk shall have effect as such (but instead shall have effect as a contract for carriage at limited carrier’s risk) unless—
- (a) the contract is—
- (i) in writing; and
- (ii) expressed to be at owner’s risk; and
- (iii) signed by the parties or their agents; or
- (b) before, or at the time when, the goods are accepted for carriage, the contracting party or his agent signs a statement in the following terms:
- “These goods are to be carried at owner’s risk. This means that the carrier will pay no compensation if the goods are lost or damaged, unless he intentionally loses or damages them.”
- For the purposes of this paragraph, that statement may be included in the consignment note or any other document relating to the carriage, but in that case the statement shall be conspicuous and shall be separately signed by the contracting party or his agent.
- (6) No contract of carriage purporting to be a contract at declared value risk shall have effect as such (but instead shall have effect as a contract for carriage at limited carrier’s risk) unless the contract is in writing.
- (7) No contract of carriage purporting to be a contract for carriage on declared terms shall have effect as such (but instead shall have effect as a contract for carriage at limited carrier’s risk) unless the contract is—
- (a) freely negotiated between the parties; and
- (b) in writing; and
- (c) signed by the parties or their agents.

- (8) Where, in any proceeding, the question of whether any contract of carriage was or was not freely negotiated is in issue, the court in determining that question shall have regard to the following matters:
- (a) the respective bargaining strengths of the parties;
  - (b) the course of dealing between the parties in respect of the particular transaction in question, and any other transactions between them;
  - (c) the value of the transaction;
  - (d) any extraordinary features of the goods to be carried or the route over which they are to be carried;
  - (e) any other matters that the court considers may properly be taken into account,—
- and either party may adduce evidence relating to any such matter.
- (9) No contract of carriage at owner's risk or at declared value risk shall have effect as such (but instead shall have effect as a contract for carriage at limited carrier's risk) unless the amount by which the freight charged by the contracting carrier under the contract differs from the amount that he would have charged for the same carriage at limited carrier's risk is fair and reasonable, having regard to the difference in the risk actually undertaken by the carrier and the risk that he would have undertaken if the carriage had been at limited carrier's risk.
- (10) For the purposes of subsection (9), any rate of freight prescribed by or under any enactment in respect of any mode of carriage pursuant to any kind of contract of carriage shall be deemed to be a fair and reasonable rate to charge for such carriage.
- (11) Any contract of carriage entered into by a contracting carrier with an actual carrier, or between actual carriers, may be of any kind, regardless of the kind of contract that subsists between the contracting carrier and the contracting party; but subsections (5) to (8) shall not apply in respect of any such contract.
- (12) The provisions of sections 9, 14, and 15 apply to contracts for carriage at limited carrier's risk and to contracts for carriage at declared value risk.
- (13) Sections 9(1), 14, and 15 do not apply to contracts for carriage at owner's risk or to contracts for carriage on declared terms.
- (14) Notwithstanding anything in section 7, the provisions of subsections (2) to (7) of section 9 apply to contracts for carriage at owner's risk and to contracts for carriage on declared terms, subject to any express term in the contract.

### *Liability of carriers*

#### **9 Liability of contracting carrier**

- (1) Subject to the other provisions of this Act, a contracting carrier is liable as such to the contracting party for the loss of or damage to any goods occurring while

- he is responsible for the goods in accordance with the succeeding provisions of this section, whether or not the loss or damage is caused wholly or partly by him or by any actual carrier.
- (2) The responsibility of the contracting carrier for goods begins when the goods are accepted for carriage in accordance with the contract.
  - (3) Subject to subsection (4), the responsibility of the contracting carrier for goods ends—
    - (a) in a case where the goods are to be delivered to the consignee,—
      - (i) when they are tendered to the consignee in the manner expressed or implied in the contract; or
      - (ii) where any amount by way of freight is due and payable to or on behalf of the contracting carrier at any time before, or at the time at which, the goods are to be tendered to the consignee under the contract and that amount has not been paid in full, when the contracting carrier or (as the case may require) the last actual carrier is capable of tendering the goods to the consignee in accordance with the contract and gives notice to any person liable to pay the amount or (as the case may require) the balance of the amount that he is so capable:
    - (b) in a case where the goods are to be collected by the consignee,—
      - (i) when the goods are collected by the consignee; or
      - (ii) on the expiry of the 5th day (excluding any day on which the carrier's premises are not open for the collection of goods) after the date on which the contracting carrier or (as the case may require) the last actual carrier notifies the consignee that the goods are available for collection.
  - (4) In any case where, at the time when the contracting carrier or (as the case may require) the last actual carrier is able to tender the goods to the consignee in accordance with the contract, the consignee's whereabouts are unknown to that carrier, the responsibility of the contracting carrier for the goods ends when he or (as the case may require) the last actual carrier has taken reasonable steps to find the consignee and notify him of the matters referred to in paragraph (a)(ii) or (as the case may require) paragraph (b)(ii) of subsection (3).
  - (5) No notice referred to in subsection (3)(a)(ii) shall take effect until it is received by the person liable to pay the freight.
  - (6) Notwithstanding any of the foregoing provisions of this section, the responsibility of a contracting carrier who contracts for the carriage of goods to a destination outside New Zealand ends for the purposes of this Act at the time when the international carriage of those goods begins.
  - (7) Notwithstanding any of the foregoing provisions of this section, the responsibility of a contracting carrier who contracts for the carriage of goods from a

destination outside New Zealand to a destination in New Zealand begins for the purposes of this Act at the time when the international carriage of those goods ends.

Compare: 1948 No 66 s 7

## **10 Liability of actual carrier**

- (1) The provisions of this section apply, subject to the other provisions of this Act, where a contract of carriage is to be or is performed wholly or partly by 1 or more actual carriers other than the contracting carrier (whether or not the contracting carrier himself performs part of the carriage).
- (2) In any case to which this section applies where 1 actual carrier is involved, that carrier is, subject to the terms of his contract with the contracting carrier, liable as such to the contracting carrier for the loss of or damage to any goods occurring while the actual carrier is separately responsible for the goods in accordance with subsection (6), whether or not the loss or damage is caused wholly or partly by the actual carrier.
- (3) In any case to which this section applies where more than 1 actual carrier is involved,—
  - (a) subject to subsection (4), the actual carriers are, subject to the terms of their respective contracts, jointly liable as such to the contracting carrier for the loss of or damage to any goods occurring while the actual carriers are jointly responsible for the goods in accordance with subsection (5), whether or not the loss or damage is caused wholly or partly by the actual carriers or any of them:
  - (b) each actual carrier is, subject to the terms of his contract, separately liable as such to the contracting carrier for the loss of or damage to any goods occurring while he is separately responsible for the goods in accordance with subsection (6), whether or not the loss or damage is caused wholly or partly by the actual carrier.
- (4) No actual carrier is liable under subsection (3)(a) if he proves that the loss or damage occurred otherwise than while he was separately responsible for the goods in accordance with subsection (6).
- (5) For the purposes of subsection (3)(a), the actual carriers are jointly responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted for carriage until the time when the contracting carrier's responsibility ends in accordance with subsection (3) or subsection (4) of section 9.
- (6) For the purposes of subsections (2) to (4), each actual carrier is separately responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted by him for carriage until the time—

- (a) when they are duly tendered by him to the next actual carrier in accordance with the contract of carriage; or
  - (b) in the case of the last actual carrier, when the contracting carrier's responsibility ends in accordance with subsection (3) or subsection (4) of section 9.
- (7) For the purposes of subsection (3)(a), the actual carriers shall be liable in proportion to the amount of freight or other consideration payable to each of the actual carriers for the carriage performed by him.
- (8) For the purposes of subsection (7), where the contracting carrier himself performs any part of the carriage, the amount of freight or other consideration payable to him shall be the difference between the total amount payable under the contract of carriage and the aggregate amount payable to the actual carriers.
- (9) For the purposes of subsections (7) and (8), where any actual carrier (in this subsection referred to as the **secondary actual carrier**) performs any part of the carriage pursuant to a contract with any other actual carrier (in this subsection referred to as the **primary actual carrier**) (and not pursuant to a contract with the contracting carrier), the amount of the freight or other consideration payable to the primary actual carrier shall be the difference between the amount actually payable to him and the amount payable by him to the secondary actual carrier.

**11 Rights of contracting party where contracting carrier insolvent or cannot be found**

- (1) Notwithstanding anything in section 10, where the contracting carrier is liable to the contracting party for the loss of or damage to any goods but the contracting carrier is insolvent or cannot with reasonable diligence be found, the contracting party shall be entitled to the same rights (if any) against the actual carrier as the contracting carrier has under section 10(3)(b).
- (2) Where the liquidator or assignee in bankruptcy of an insolvent contracting carrier brings any proceeding against an actual carrier in respect of any right referred to in subsection (1), the sum recovered from the actual carrier, less all costs and expenses reasonably incurred by the liquidator or assignee in bringing and prosecuting the proceeding and not recovered by him from the actual carrier, shall be held by the liquidator or assignee upon the following trusts:
- (a) for or towards the payment of the whole of the sum payable by the contracting carrier to the contracting party in respect of the loss of or damage to the goods:
  - (b) subject to that payment, as an asset in liquidation or bankruptcy.
- (3) Where the contracting party brings any proceeding against an actual carrier in respect of any right referred to in subsection (1),—
- (a) the actual carrier shall have the same rights (if any) against the contracting party (including the right of set-off) as he would have had under the

contract if the proceeding had been brought against him by the contracting carrier:

- (b) if judgment in the proceeding is awarded against the actual carrier, that judgment shall be an absolute bar to the bringing by the contracting carrier, or by any person claiming through the contracting carrier, of any proceeding to enforce the same right.
- (4) This section applies notwithstanding anything in the Companies Act 1993 or the Insolvency Act 2006 or any other enactment.

Section 11(4): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 11(4): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

## 12 Special rules relating to liability of carrier in respect of baggage

- (1) A carrier is not liable as such with respect to baggage that is left in his custody pending his acceptance of it for carriage, or pending its collection from him after the completion of the carriage.
- (2) Nothing in section 8, or in subsections (1) to (5) of section 9, or in sections 10, 11, and 13 shall apply to the carriage of hand baggage.
- (3) Subject to subsection (2), in respect of the carriage of hand baggage and checked baggage, the provisions of this Act shall apply, with the necessary modifications, as if that carriage were or were to be performed pursuant to a contract of carriage of goods.
- (4) A carrier is liable as such for the loss of or damage to any hand baggage occurring during the period in which the passenger is on board the mode of transport or in the course of any of the operations of embarking or disembarking, if the loss or damage is caused wholly or partly by the negligence or wilful default of the carrier.
- (5) Without limiting section 14, if, in respect of the loss of or damage to any hand baggage, the carrier proves that the loss or damage was contributed to by the negligence or wilful default of the passenger, the court may, in accordance with the provisions of the Contributory Negligence Act 1947, exonerate the carrier from any part of his liability.

Compare: 1967 No 151 ss 23, 24

## 13 Contracts of successive carriage by air

- (1) In this section the term **contract of successive carriage** means a contract or contracts for the carriage of any goods exclusively by air, where the carriage—
  - (a) is or is to be performed by 2 or more carriers in successive stages; and
  - (b) is regarded by the parties as a single operation;—
 and the term **successive carrier** has a corresponding meaning.

- (2) Nothing in sections 8 to 12 applies in respect of a contract of successive carriage.
- (3) Subject to subsection (4) and to the other provisions of this Act, the successive carriers under a contract of successive carriage are jointly and severally liable as such to the contracting party for the loss of or damage to any goods occurring while the carriers are jointly responsible for the goods in accordance with subsection (5), whether or not the loss or damage is caused wholly or partly by the carriers or any of them.
- (4) No successive carrier is liable under subsection (3) if he proves that the loss or damage occurred otherwise than while he was separately responsible for the goods in accordance with subsection (6).
- (5) The successive carriers are jointly responsible for the goods from the time when the goods are accepted by the first successive carrier for carriage in accordance with the contract until the time when, if the contract were not a contract of successive carriage, the contracting carrier's responsibility would have ended in accordance with subsection (3) or subsection (4) of section 9.
- (6) Each successive carrier is separately responsible for the goods from the time when the goods are tendered to him in accordance with the contract until the time—
  - (a) when they are duly tendered by him to the next successive carrier in accordance with the contract of carriage; or
  - (b) in the case of the last successive carrier, when, if the contract were not a contract of successive carriage and he were the contracting carrier, his responsibility would have ended in accordance with subsection (3) or subsection (4) of section 9.

Compare: 1940 No 31 s 3; 1967 No 151 ss 25–27

#### **14 Carrier not liable in certain circumstances**

Notwithstanding any of the other provisions of this Act, a carrier is not liable as such for the loss of or damage to goods occurring while he is responsible for them under a contract of carriage to the extent that he proves that the loss or damage resulted directly and without fault on his part from—

- (a) inherent vice; or
- (b) any breach of either of the terms implied in the contract by section 17; or
- (c) seizure under legal process; or
- (d) saving or attempting to save life or property in peril.

#### **15 Limitation of amount of carrier's liability**

- (1) For the purposes of this Act,—
  - (a) the liability of the contracting carrier to the contracting party; and
  - (b) the separate liability of any actual carrier to the contracting carrier; and



- (c) the joint liability of any actual carriers (where there are more than 1) to the contracting carrier; and
- (d) the joint and several liability of every successive carrier under a contract to which section 13 applies,—

is limited in amount in each case to the sum of \$2,000 for each unit of goods lost or damaged or, in the case of a contract at declared value risk, the amount specified in the contract.

- (2) The limitation of amount for the time being specified in subsection (1) does not apply to—
  - (a) any liability for the loss of or damage to any goods intentionally caused by the carrier; or
  - (b) any liability arising out of the terms of the contract for damages other than for the loss of or damage to the goods; or
  - (c) any liability arising out of the terms of the contract for damages consequential upon the loss of or damage to the goods.

Compare: 1940 No 31 s 6; 1948 No 66 s 6; 1967 No 151 s 28

Section 15(1): amended, on 17 June 2014, by section 4 of the Carriage of Goods Amendment Act 2013 (2013 No 147).

### *Liability of employees*

#### **16 Liability of carrier's employee**

- (1) Every employee of a carrier who, in the course of his employment, intentionally causes the loss of or damage to any goods being carried by the carrier shall be liable to the owner of the goods for that loss or damage.
- (2) Subject to subsection (1), no employee of a carrier shall be liable as such, whether under this Act or otherwise, to the owner of any goods being carried by the carrier for the loss of or damage to any of those goods.

### *Warranty by contracting parties*

#### **17 Contracting party to warrant condition of goods, etc**

- (1) In every contract of carriage there shall be implied on the part of the contracting party a term—
  - (a) that, except as disclosed in accordance with subsection (2), the goods are fit to be carried and stored in accordance with the contract in the condition and packed in the manner in which they are tendered for carriage:
  - (b) that, except as disclosed in accordance with subsection (2), the provisions of every other enactment (if any) that he is required to comply with relating to the consignment for carriage of the goods to be carried pursuant to the contract have been complied with.

- (2) If, before the goods are accepted for carriage, the contracting party notifies the contracting carrier or the first actual carrier of any material particular that would otherwise constitute a breach of either of the terms specified in subsection (1), the carrier may refuse to carry the goods, or undertake to carry them subject to such reasonable terms and conditions as he may require having regard to the circumstances of the case.
- (3) Notwithstanding anything in section 7, the provisions of this section apply, with the necessary modifications, to contracts of carriage between contracting carriers and actual carriers, and between actual carriers, subject to any express term in the contract.

*Actions against carriers*

**18 Notice of claim of damage or partial loss to be given within 30 days**

- (1) Subject to the succeeding provisions of this section, and except in the case of fraud by the carrier, no action may be brought against a contracting carrier for damage to or partial loss of goods occurring while he is responsible for them under this Act unless written notice giving reasonable particulars of the alleged damage or partial loss is given, in accordance with subsection (4), within 30 days after the date on which, in accordance with section 9, the carrier's responsibility for the goods ceased.
- (2) Subject to the succeeding provisions of this section, and except in the case of fraud by the actual carrier, no action may be brought by the contracting carrier against an actual carrier for damage to or partial loss of goods occurring while the actual carrier is responsible for them under this Act unless the contracting carrier, within 10 days after receiving notice of a claim under subsection (1), notifies the actual carrier of that claim.
- (3) No notice is required if it is apparent from all the circumstances of the case that the carrier is or ought to be aware of the damage or partial loss.
- (4) Notice for the purpose of subsection (1) shall be given—
  - (a) where the contract was performed entirely by the contracting carrier, to that carrier; or
  - (b) where the contract was not performed entirely by the contracting carrier, to—
    - (i) the actual carrier or, as the case may require, the last actual carrier; and
    - (ii) the contracting carrier, unless (where notice of the claim is to be given by the consignee) the identity of the contracting carrier is unknown to the consignee.
- (5) A carrier may consent to an action being brought against him notwithstanding that notice of the claim was not properly given.

- (6) Where the carrier does not consent, application may be made to the court, after notice to the carrier, for leave to bring the action at any time before the expiration of the period prescribed by subsection (1) or (as the case may require) subsection (2) of section 19.
- (7) On an application under subsection (6), the court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks just to impose, where it considers that the failure to give notice was occasioned by mistake of fact or by mistake of any matter of law (other than the provisions of this section) or by any other reasonable cause, and that the intended defendant was not materially prejudiced in his defence or otherwise by the failure to give proper notice.

Compare: 1950 No 34 s 262A; 1967 No 151 s 38

Section 18(1): amended, on 23 December 1980, by section 2 of the Carriage of Goods Amendment Act 1980 (1980 No 102).

## 19 Limitation of actions

- (1) Subject to subsections (2) to (5), and except in the case of fraud by the carrier, no action may be brought against a carrier for the loss of any goods occurring while he is responsible for them under this Act after the expiration of a period of 12 months from the date on which the carriage should have been completed in accordance with the contract.
- (2) Subject to subsections (3) to (5), and except in the case of fraud by the carrier, no action may be brought against a carrier for damage to or partial loss of any goods occurring while he is responsible for them under this Act after the expiration of a period of 12 months from—
  - (a) the date on which notice is served on the carrier under subsection (1) or (as the case may require) subsection (2) of section 18; or
  - (b) where no such notice is served in proper reliance on subsection (3) of that section, the date on which, in accordance with section 9, the contracting carrier's responsibility for the goods ceased.
- (3) A carrier may consent to an action being brought against him notwithstanding that the period specified in subsection (1) or subsection (2) has expired.
- (4) Where the carrier does not consent, application may be made to the court, after notice to the carrier, for leave to bring the action at any time within 6 years after the relevant date referred to in subsection (1) or subsection (2).
- (5) On an application under subsection (4), the court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or by mistake of any matter of law (other than the provisions of this section) or by any other reasonable cause, and that the inten-

ded defendant was not materially prejudiced in his defence or otherwise by the delay.

Compare: 1967 No 151 s 39

## **20 Actions by consignee if not contracting party**

- (1) Notwithstanding anything in this Act or any rule of law to the contrary, an action against a contracting carrier in respect of the loss of or damage to any goods occurring while he is responsible for the goods in accordance with section 9 may, if the property in the goods has passed to the consignee and he is not the contracting party, be brought by the consignee.
- (2) Where the consignee brings an action in accordance with subsection (1),—
  - (a) he shall be deemed to be the contracting party and be entitled to sue and recover under the contract accordingly;
  - (b) the contracting carrier shall be entitled to raise the same defences and to make the same counterclaims as he would have been entitled to raise or make if the action had been brought against him by the contracting party.

### *Rights of carriers*

## **21 Right to sue for freight**

- (1) The right to sue for the recovery of freight payable under a contract of carriage arises—
  - (a) in the case of a contracting carrier, when he ceases to be responsible for the goods in accordance with section 9;
  - (b) in the case of an actual carrier, when he ceases to be separately responsible for the goods in accordance with section 10.
- (2) Nothing in subsection (1) shall limit or affect the right of any carrier to refuse to accept any goods for carriage unless the freight is prepaid.

## **22 Actions for recovery of freight**

- (1) Notwithstanding anything in this Act or any rule of law to the contrary, an action for the recovery of freight may, if the property in the goods has passed to the consignee and he is not the contracting party, be brought against the consignee.
- (2) Where the action is brought against the consignee in accordance with subsection (1),—
  - (a) he shall be deemed to be the contracting party and be liable for the payment of freight under the contract accordingly;
  - (b) he shall be entitled to raise the same defences and to make the same counterclaims as the contracting party would have been entitled to raise or make if the action had been brought against him.

### 23 Carrier's liens

(1) In this section,—

**owner**, in relation to any goods, means the person whom, under any contract of carriage or in accordance with section 22, the carrier is entitled to sue for recovery of freight due in respect of the carriage of those goods

**recoverable expenses**, means all expenses and charges that the carrier, in accordance with subsection (6)(b), is entitled to recover from the owner of any goods in respect of which the carrier is exercising or has exercised a lien in accordance with this section.

- (2) As from the time when, in accordance with section 21(1), a carrier's right to sue for the recovery of freight arises, the carrier is entitled to an active and particular lien over the goods, which may be exercised in accordance with this section.
- (3) Every carrier claiming a lien over any goods under this section shall give notice of his claim to the owner of the goods, specifying the amount and particulars of his claim, and requiring the owner to pay or secure to the carrier the amount of the freight claimed and all recoverable expenses.
- (4) Pending settlement of the claim,—
- (a) the carrier may remove the goods to any suitable premises for storage (such premises being reasonably convenient to enable the owner of the goods, or any other person entitled to the goods, to collect them on payment of all freight owing and recoverable expenses so far incurred), and shall notify the owner of the goods of the address of the premises:
- (b) the carrier shall take all reasonable steps to preserve the goods.
- (5) If, within 2 months after the date on which the carrier serves notice of his claim on the owner of the goods in accordance with subsection (3), payment in full of all freight owing and recoverable expenses so far incurred has not been tendered to the carrier, he shall be entitled to sell the goods by public auction.
- (6) From the proceeds of such sale, the carrier shall be entitled to deduct—
- (a) the amount of freight owing to him in respect of the carriage of the goods; and
- (b) all expenses reasonably incurred by him in removing, preserving, and storing the goods pending settlement of his claim, and in arranging and conducting the sale of the goods,—
- and shall pay the balance (if any) to the owner of the goods.
- (7) Where the amount of the proceeds is less than the amount of freight owing to the carrier and all recoverable expenses, the deficiency constitutes a debt due to the carrier by the owner of the goods.

- (8) Nothing in this section shall limit or affect the right to have and enforce a general lien over any goods to which a carrier may be entitled by virtue of any provision expressed or implied in the contract of carriage.

#### **24 Storage and disposal of unclaimed or rejected goods**

- (1) Where, under any contract of carriage,—
- (a) any goods are to be collected by the consignee and they are not collected by him forthwith after the responsibility of the contracting carrier for the goods ends in accordance with section 9; or
  - (b) any goods are to be delivered to the consignee and he cannot be found or (otherwise than because of any default by the carrier) he refuses to accept the goods,—

the carrier is entitled to remove the goods, at the consignee's expense, to suitable premises for storage.

- (2) In respect of any goods held by the carrier under this section, the carrier is entitled to an active and particular lien over the goods, which may be exercised in the same manner and to the same extent as if it were a lien to which section 23 applies, and the provisions of that section, so far as they are applicable and with the necessary modifications, shall apply accordingly.
- (3) Notwithstanding any of the foregoing provisions of this section, before selling any goods to which this section applies, the carrier shall offer to carry the goods to, or to the order of, the consignor, at the cost in all things of the consignor.

Compare: 1967 No 151 s 41

#### **25 Disposal of perishable goods**

- (1) Notwithstanding any of the other provisions of this Act, if, at any time while any perishable goods are subject to a contract of carriage (including any time while they are held under section 23 or section 24), the goods appear to be deteriorating and likely to become offensive, the carrier may—
- (a) sell the goods to the best advantage; or
  - (b) if sale is not reasonably practicable, destroy or otherwise dispose of the goods.
- (2) If the goods are sold, the carrier may deduct from the proceeds of sale the amount of freight or other consideration owing to him in respect of the carriage of the goods and all reasonable expenses incurred by him in holding the goods and in conducting the sale, and shall tender the balance (if any) to the consignee.
- (3) If the goods are destroyed or otherwise disposed of, the reasonable expenses incurred by the carrier shall be recoverable by him from the contracting party.

Compare: 1967 No 151 s 42

**26 Disposal of dangerous goods**

- (1) Notwithstanding any of the other provisions of this Act, if, at any time while any goods are subject to a contract of carriage (including any time while they are held under section 23 or section 24), the carrier believes on reasonable grounds that the goods are in or are about to enter a dangerous state and that it is necessary, in order to avoid the threat of harm to any persons or property, to destroy or otherwise dispose of the goods forthwith, he may do so.
- (2) In any such case, the reasonable expenses incurred by the carrier in destroying or otherwise disposing of the goods shall be recoverable by him from the contracting party.

**27 Liability of carrier extinguished**

Notwithstanding any of the other provisions of this Act, where any goods are sold or destroyed or otherwise disposed of under and in accordance with any of sections 23 to 26, neither the contracting carrier nor any actual carrier shall be under any liability (whether under this Act or otherwise) in respect of that sale, destruction, or other disposition; but that sale, destruction, or other disposition shall not affect any liability for any loss or damage that had already occurred in respect of the goods before the sale, destruction, or other disposition.

*Miscellaneous provisions***28 Common carrier of goods abolished**

- (1) Notwithstanding any rule of law, but subject to the provisions of any enactment and of any contract entered into by the carrier, no carrier is under any duty or obligation to accept or carry goods that are offered to him for carriage.
- (2) Every reference in any other enactment to the liability of common carriers as such shall be deemed to be a reference to the liability of carriers under this Act.

**29 Proceedings against New Zealand agent of overseas carrier**

Subject, in the case of a contract for carriage by sea, to section 11 of the Sea Carriage of Goods Act 1940, proceedings arising out of a contract of carriage may be brought in accordance with the provisions of this Act against a New Zealand agent, whether acting under general or special authority, of an overseas contracting carrier if—

- (a) the contract is or is to be performed wholly or partly in New Zealand; and
- (b) the agent plays some part in relation to the contract.

**30 Certain other Acts not affected**

Nothing in this Act shall limit or affect any of the provisions of the Explosives Act 1957, the Restricted Drugs Act 1960, the Radiation Safety Act 2016, the Dangerous Goods Act 1974, or any other enactment relating to goods of a par-

particular nature or class; and in any case where any of the provisions of this Act are inconsistent with any of the provisions of any such other enactment, the provisions of that other enactment shall prevail.

Compare: 1967 No 151 s 44

Section 30: amended, on 7 March 2017, by section 99 of the Radiation Safety Act 2016 (2016 No 6).

### **31 Amendments and repeals**

- (1) The enactments specified in Schedule 1 are hereby amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 2 are hereby repealed.



**Schedule 1**  
**Enactments amended**

s 31(1)

**Carriage by Air Act 1967 (1967 No 151)***Amendment(s) incorporated in the Act(s).***Government Railways Act 1949 (1949 No 40) (Reprinted 1973, Vol 2, p 1403)***Amendment(s) incorporated in the Act(s).***Government Railways Amendment Act 1962 (1962 No 13) (Reprinted 1973, Vol 2, p 1516)***Amendment(s) incorporated in the Act(s).***Government Railways Amendment Act 1963 (1963 No 124) (Reprinted 1973, Vol 2, p 1517)***Amendment(s) incorporated in the Act(s).***Harbours Act 1950 (1950 No 34) (Reprinted 1966, Vol 3, p 2395)***Amendment(s) incorporated in the Act(s).***Shipping and Seamen Act 1952 (1952 No 49) (Reprinted 1965, Vol 3, p 1631)***Amendment(s) incorporated in the Act(s).*

**Schedule 2**  
**Enactments repealed**

s 31(2)

**Carriers Act 1948 (1948 No 66) (Reprinted 1979, RS Vol 1, p 423)**

**Carriers Amendment Act 1962 (1962 No 14) (Reprinted 1979, RS Vol 1, p 427)**

**Sea Carriage of Goods Act 1940 (1940 No 31) (1957 Reprint, Vol 13, p 709)**

*Amendment(s) incorporated in the Act(s).*

## Reprints notes

### 1 *General*

This is a reprint of the Carriage of Goods Act 1979 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 345(1)(a)

Radiation Safety Act 2016 (2016 No 6): section 99

Carriage of Goods Amendment Act 2013 (2013 No 147)

Companies Amendment Act 2013 (2013 No 111): section 14

Insolvency Act 2006 (2006 No 55): section 445

Postal Services Act 1998 (1998 No 2): section 62(1)

Maritime Transport Act 1994 (1994 No 104): section 212(2)

Defence Act 1990 (1990 No 28): section 105(1)

Carriage of Goods Amendment Act 1980 (1980 No 102)

New Zealand Legislation  
**Maritime Transport Act 1994**

Warning: Some amendments have not yet been incorporated

**Schedule 5**  
**The Amended Hague Rules**

s 209(1)

**Article 1**

In this convention the following words are employed with the meanings set out below:

- (a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) "Ship" means any vessel used for the carriage of goods by sea.
- (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

**Article 2**

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

**Article 3**

- 1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—
  - (a) Make the ship seaworthy.
  - (b) Properly man, equip and supply the ship.
  - (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
- 2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
- 3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—
  - (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the

goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

- 4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c). [However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.]

The words in square brackets were added by the Protocol of 23 February 1968.

- 5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
- 6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

[Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.]

The words in square brackets were substituted by the Protocol of 23 February 1968.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

- [6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.]

The words in square brackets were added by the Protocol of 23 February 1968.

- 7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.
- 8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

## Article 4

- 1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the

provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—
- (a) Act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
  - (b) Fire, unless caused by the actual fault or privity of the carrier.
  - (c) Perils, dangers and accidents of the sea or other navigable waters.
  - (d) Act of God.
  - (e) Act of war.
  - (f) Act of public enemies.
  - (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
  - (h) Quarantine restrictions.
  - (i) Act or omission of the shipper or owner of the goods, his agent or representative.
  - (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general.
  - (k) Riots and civil commotions.
  - (l) Saving or attempting to save life or property at sea.
  - (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
  - (n) Insufficiency of packing.
  - (o) Insufficiency or inadequacy of marks.
  - (p) Latent defects not discoverable by due diligence.
  - (q) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.
3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.
15. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.]
- [(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.
- The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.]
- [(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the

application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

- (i) in respect of the amount of 666.67 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 10,000 monetary units;
- (ii) in respect of the amount of 2 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900'. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in subparagraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depository the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.]

- [(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the Bill of Lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.
- (h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the Bill of Lading.]

Paragraph 5(a) was inserted by the Protocol of 21 December 1979.

Paragraphs 5(b) and 5(c) were inserted by the Protocol of 23 February 1968.

Paragraph 5(d) and the succeeding unlettered paragraphs were inserted by the Protocol of 21 December 1979.

Paragraphs 5(e) to 5(h) were inserted by the Protocol of 23 February 1968.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

## [Article 4bis

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.]

This article was inserted by the Protocol of 23 February 1968.

## Article 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the Bill of Lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading

are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a Bill of Lading of any lawful provision regarding general average.

## **Article 6**

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

## **Article 7**

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.

## **Article 8**

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

## **[Article 9**

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

## **Article 10**

The provisions of this Convention shall apply to every Bill of Lading relating to the carriage of goods between ports in two different States if:

- (a) The Bill of Lading is issued in a Contracting State, or
- (b) The carriage is from a port in a Contracting State, or
- (c) The contract contained in or evidenced by the Bill of Lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the Bills of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to Bills of Lading not included in the preceding paragraphs.]

Articles 9 and 10 were added by the Protocol of 23 February 1968.





Madhu Sameer <madhu.bambroo@gmail.com>

Unload

EXHIBIT 35

Fri, Aug 21, 2015 at 2:28 PM

Fiona Conroy <fionac@conroy.co.nz>  
To: Madhu Sameer <madhu.bambroo@gmail.com>  
Cc: Rodney White <rodneyw@conroy.co.nz>, Mark Carter <markc@conroy.co.nz>

Good Afternoon Madhu

Rodney and Mark have reported back to me following your visit.

To confirm, the container will be unloaded tomorrow morning, beginning at 0830 and re-stowed into 2 x 20ft containers at our yard. Until full clearance received all goods must remain on site.

We will undertake a new inventory. This is for both your benefit and ours, so that there is a thorough condition report available for all parties concerned. We have not charged for the new inventory but do believe necessary is critical for all parties concerned.

I trust the concern you had in regards to Quarantine has been resolved. This fee can either be paid by credit card or internet banking. There is no surcharge for internet banking. Inspection is booked for next Tuesday and the fee must be paid in full by then.

Any further queries please come to me directly.

Thanks & regards

Fiona

369

no!

no!

229