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**BEFORE THE
FEDERAL MARITIME COMMISSION**

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

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 TIENSHAN, INC.)
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 Complainant,)
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 v.)
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 TIANJIN HUA FENG TRANSPORT AGENCY CO., LTD.)
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 Respondent.)
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DOCKET NO. 08-04

**MOTION FOR SUMMARY JUDGMENT AND REPLY TO
RESPONDENT'S MOTION TO COMPEL DISCOVERY RESPONSES**

Complainant Tienshan, Inc. ("Tienshan" or "Complainant"), pursuant to Fed. R. Civ. P. 56(c), as permitted by 46 C.F.R. §502.12, and hereby moves this Honorable Administrative Judge ("ALJ") for a summary judgment against Respondent Tianjin Hua Feng Transport Agency Co., Ltd. ("Tianjin Hua Feng" or "Respondent"). Tienshan requests a judgment based on Tienshan's Complaint, Respondent's Amended Answer, Respondent's Admissions to Complainant's Requests for Admissions, Ms. Du Ping's Affidavit and other documentary evidence. Ms. Du Ping is Complainant's Chairperson based in China.

At the center of Complainant's case is that Tianjin Hua Feng unlawfully withheld a bill of lading necessary for the release of Complainant's cargo in violation of Section 10(d)(1) of the Shipping Act of 1984, as amended, (the "Shipping Act"), 46

U.S.C. § 41102 (c). Tienshan requests judgment based on Respondent's Shipping Act violations and the damages which resulted from those violations.

As a result of Tianjin Hua Feng's Shipping Act violations, Tienshan was damaged in the amount of \$172,802.36 in demurrage, loss of sales, attorneys' fees and costs which are due by Tianjin Hua Feng to Tienshan pursuant to Rule 254 of the Federal Maritime Commission's Rules of Practice and Procedure (46 C.F.R. § 502.254). In addition, Tianjin Hua Feng has failed to establish that any material facts remain in dispute. Accordingly, judgment as a matter of law is warranted by the undisputed legal and factual record in favor of Tienshan as more fully set forth hereunder.

Further, Complainant respectfully requests that the Administrative Law Judge deny Respondent's Emergency Motion to Compel Discovery Responses (the "Motion") in that Respondent's discovery request is timely barred pursuant to 46 C.F.R. §502.201(b)(1).

MEMORANDUM OF LAW

Complainant Tienshan respectfully submits this Memorandum of Law in support of its Motion for Summary Judgment and Reply to Respondent's Emergency Motion to Compel Discovery Responses.

SUMMARY JUDGMENT STANDARD

Judgment in favor of Tienshan is proper at this juncture because (a) there are no genuine issues of material fact, and (b) Tienshan is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, (1986). Tienshan submits that it meets all requirements because all material facts are established by documentary evidence in the record, Du Ping's Affidavit, Respondent's admissions to Complainant's Requests

for Admissions, and other documentary evidence. Accordingly, this case is ripe for summary judgment.

As the moving party, Tienshan has the burden of showing that there are no genuine issues of material fact. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970). Courts have consistently held that “summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Catrett, 477 U.S. at 322 (quoting Fed. R. Civ. P. 56(c)); see also, Kitchen v. Upshaw, 286 F.3d 179, 182 (4th Cir. Va. 2002); Jamil v. White, 192 F. Supp. 2d 413, 417 (D. Md. 2002); Parker Hannifin Corp. v. Ceres Marine Terminals, Inc., 935 F. Supp. 632, 633-634 (D. Md. 1986). In addition, the Supreme Court has held that material facts should be construed in the light most favorable to the non-moving party in a motion for summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also, Parker, 935 F. Supp. at 634 (citations omitted). Notwithstanding a favorable view of the facts toward Respondent, Tienshan meets its summary judgment burden under Rule 56(c) of the Federal Rules of Civil Procedure because of Tienshan’s Complaint with the supporting evidence, Du Ping’s affidavit, Respondent’s admissions to Tienshan’s Requests’ for Admissions and other documentary evidence. Therefore, under Catrett, Tienshan is entitled to judgment as a matter of law based on the undisputed material facts in the instant case.

PROCEDURAL BACKGROUND AND STATEMENT OF FACTS

On or about August 18, 2008, Tienshan filed its action against Tianjin Hua Feng alleging that in April 2008 it signed a sales contract for the purchase of stoneware from Henan Huatai Ceramic Technology Trading Co., Ltd. ("Henan Hua Tai" or "Shipper"), located in Henan, China, and that the terms of sale were FOB Tianjin Port, China. Complainant averred that it purchased the stoneware in order to perform its contracts with Wal-Mart Stores, Inc. ("Wal-Mart") and other U.S. retailers. Complainant maintained that it paid the full contract price to Henan Huatai, and consequently title of the goods was transferred to Complainant. Complainant alleged that the goods were loaded on a Wan Hai Lines (Singapore) PTE Ltd. ("Wan Hai") vessel, under a Wan Hai bill of lading naming Henan Huatai as Shipper, and Complainant as Consignee; and that the cargo arrived at the port of discharge, Long Beach, CA, mid-June 2008. Complainant further alleged that it paid the full amount of the ocean freight and other charges to Wan Hai. Complainant claimed that Shipper, Henan Huatai, went out of business in June 2008, and Respondent, acting as a freight forwarder in China on behalf of the Shipper, unlawfully held the original bill of lading, alleging debts owed by the Shipper, not Complainant, to Respondent. Complainant alleged that Respondent's refusal to provide the original bill of lading to Complainant, unless Complainant paid to Respondent the amount owed by the Shipper to Respondent, constituted an unreasonable practice related to the delivery of property in violation of §10(d)(1) of the Shipping Act, 46 U.S.C. §41102(c). Complainant claimed injury in the form of demurrage charges in the amount of \$16,944.00; loss of its funds held in an escrow account required by Wan Hai in the

amount of \$47,801.42; and liquidated damages imposed by Wal-Mart for lost sales in the amount of \$106,115.00; for a total of \$170,860.42.

Complainant requested that the Federal Maritime Commission (the "FMC" or "Commission") issue as relief, an Order: (1) compelling Respondent to answer the charges in subject complaint, and scheduling a hearing in Washington, D.C.; (2) finding that Respondent's activities were unlawful and in violation of the Shipping Act; (3) compelling Respondent to pay reparations of \$170,860.42 plus interest, costs and attorney's fees; and (4) requiring Respondent to provide Complainant with the original bill of lading to allow Complainant to secure release of its escrow deposit from Wan Hai and stop other liquidated damages from accruing. Additionally, Complainant requested that the Commission issue further relief as it deemed just and proper.

On or about August 19, 2008, Complainant filed its discovery requests simultaneously with the Complaint as required by 46 C.F.R. §502.201(b)(1). On or about October 11, 2008, Respondent served its responses to Complainant's discovery requests to Tienshan.

On or about October 2, 2008 during discussions between the parties through their respective counsel, Tianjin Hua Feng through its counsel sent subject original bill of lading no. 0338005421 via courier to Tienshan's counsel. On or about October 3, 2008, Tienshan's counsel received subject original bill of lading, and on the same day, surrendered same to Norton Lily Agency, the agent of Wan Hai, and requested Wan Hai immediately release the escrow funds in the amount of \$47,801.42. On or about October 14, 2010, Tienshan received the escrow funds released by Wan Hai. While these facts are not in the official record of the proceeding, it is Complainant's belief that these facts are

not disputed by Respondent since they are favorable to Respondent. This fact is admitted by Complainant and thereby the original claim is reduced by \$47,801.42, the amount released by Wan Hai and originally claimed by Complainant as damages. It also marks the date of the termination of demurrage.

Notwithstanding that on or about October 11, 2008, Respondent served its responses to Complainant's discovery requests to Tienshan. Respondent, on or about October 15, 2008, also filed a Notice of Motion to Dismiss Pursuant to Fed. R. Civ. P. 12 (b) (1) and (6) for Lack of Subject Matter Jurisdiction and for Failure to State a Claim for Relief and Memorandum of Law. On or about October 20, 2008, Tienshan filed a Memorandum of Law in Opposition to Respondent's Motion to Dismiss. On April 23, 2010, the ALJ issued a Memorandum and Order On Respondent Tianjin Hua Feng Transport Agency Co., Ltd.'s Motion to Dismiss (the "Order").

On or about May 17, 2010 Respondent filed a Verified Answer in which Respondent denied facts which they had already admitted in the responses to discovery. This was pointed out to Respondent's counsel and counsel was provided copies of the discovery response from Respondents. Therefore, on May 20, 2010, Respondent filed its First Amended Answer with admissions of the facts previously denied. It is significant to note that Respondent did not submit any discovery requests at the time of either submissions of these Answers, including the Amended Answer, as required by 46 C.F.R. §502.201(b) (1), notwithstanding that the reason for submitting an Amended Answer dealt with discovery issues related to discovery propounded by Complainant upon initiation of this proceeding in 2008, as required by the Commission regulations.

On or about June 2, 2010, Complainant and Respondent submitted the Stipulations of Uncontested Facts to the Commission, which stipulates the following uncontested facts:

1. Tienshan. Inc. (Tienshan) is a corporation organized and existing pursuant to the laws of the state of Delaware with its principal place of business at 231 Wilson Avenue, South Norwalk, Connecticut 06852.

2. Tianjin Hua Feng Transport Agency Co., Ltd. (Tianjin Hua Feng) is a foreign corporation organized and existing pursuant to the laws of the People's Republic of China with its principal place of business in China.

3. Tianjin Hua Feng is a bonded and tariffed foreign-based non-vessel-operating common carrier (NVOCC) registered with the Federal Maritime Commission (Commission) as Organization Number 018117.

4. Tianjin Hua Feng is not licensed by the Commission as an NVOCC.

5. Hua Feng (USA) Logistics Inc. (Hua Feng (USA), Commission Organization Number 019033, is a bonded and tariffed non-vessel-operating common carrier licensed by the Commission as NVOCC No. 019033.

6. Hua Feng (USA) is an affiliate of Tianjin Hua Feng.

7. On June 3, 2008, China Ocean Shipping Agency, acting as agent for Wan Hai, issued Wan Hai bill of lading 0338005421 for the Tienshan shipment identifying Henan Huatai Ceramic Technology & Trading Co., Ltd., as the shipper, Tienshan as the consignee, Sonic Logistics (USA) Company Ltd., as the "notify" party, Xingang, China, as the place of receipt and port of loading, and Long Beach as the port of discharge and place of delivery, describing the shipment as "stoneware dinner set" packed in 3339

cartons in four containers, and stating that the freight is payable at destination.
(Complaint Exhibit A.)

8. Tianjin Hua Feng was not a party to Wan Hai bill of lading 0338005421.
9. Hua Feng (USA) was not a party to Wan Hai bill of lading 0338005421.
10. On June 19, 2008, Jenny Zhao, a representative of Hua Feng Transport

Agency Co., Ltd., Tianjin Branch, sent an email to Tienshan stating:

But you know, the debts is RMB243, 680.00 in total, it is not only this shpt but also many others. When we knew factory's funds was tight primitively. we tried our best to pay carrier first in order to get *b/l* in time and make cnee can pick up goods smoothly at destination. Day by day, we pay the local charge for one shpt and one again, During this period, we never make trouble for factory. We just pushed them repay the debts again and again, and they also promised to pay us many time, but it is a pith that they haven't paid us till now, We admit the original *b/l* is in our hand now. Pls note we hold the original *b/l* just aim at the factory (shipper) because of the outstanding payment. We book for them, we make docs for them, we pay carrier's local charge for them, but they owe us, How to protect our rights and interests? We sent shipper the formal letter today, which you can find in the attachment, but more regrettable is that shipper told WANHAI they lose the original bill We will send shipper the original bill when we get the payment.

(Complaint Exhibit B (spelling and punctuation in original)).

Tianjin Hua Feng's response to Tienshan's discovery request and/or Amended Answer also admit the above facts.

On or about August 2, 2010, more than two months after the Amended Answered was filed, Tianjin Hua Feng served the Interrogatory and Requests for Admission and Production of Documents. Pursuant to Commission Rule 201, 46 C.F.R. §502.201(b)(1), Tianjin Hua Feng's discovery requests are untimely served and barred in this proceeding. Commission Rule 201 provides the following:

(b) *Schedule of use* —(1) *Complaint proceedings*. Any party desiring to use the procedures provided in this subpart **shall commence doing so at the time it files its initial pleading**, e.g., complaint, **answer or** petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to §502.113. (Emphasis added).

On or about September 23, 2010, after Complainant's counsel noted to Respondent's counsel that discovery was time barred, Respondent served a copy of Notice of Motion and Emergency Motion to Compel Complainant to Respond to Respondent's Discovery Requests (the "Motion").

Complainant respectfully requests that the Administrative Law Judge take note that the mandate in the regulation is in the imperative. The key operative word in the regulation is "shall." Black's Law Dictionary states: "[a]s used in statutes, contracts, or the like, this word is generally imperative or mandatory." Black's Law Dictionary, 1375 (6th ed. 1990). This word generally has the significance of operating to impose a duty, and excludes discretion. In the instant case, it would hardly be reasonable to allow discovery to a party who itself has responded to discovery requests approximately two year prior, and now initially commences discovery two years after the commencement of the Complaint, and two months after filing an Amended Answer. It would be patently unfair to allow this discovery at this late date, when Complainant's employees and documents may not be readily attainable in view of the already lengthy period expended on dispositive Motions. It would be patently prejudicial to Complainant for the aforementioned rule to be interpreted as discretionary and not as mandatory. Public policy requires that proceedings based on alleged federal violations be dealt with in an efficient and prompt manner. Any request or Motion to open discovery to Respondent at

this late date should be denied. To rule to the contrary would allow Respondents in FMC proceedings to delay cases indefinitely which would be contrary to the public interest on cases based on violations of the Shipping Act. Where is the cut off point? Three months? Three years? Indefinitely? It is clear that the regulation is couched in imperative terms and not discretionary terms to remove any uncertainty with regard to commencement of discovery.

DISCUSSION

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Tienshan moves the Commission for summary judgment to be entered in favor of Tienshan and against Tianjin Hua Feng. Accordingly, Tienshan offers the points and authorities hereunder and the attached evidence in support of its Motion for Summary Judgment. Pursuant to well-established law, Tienshan is entitled to summary judgment because (a) there is no genuine issue of material fact and (b) Tienshan is entitled to judgment as a matter of law. See generally, Catrett at 322-23. Tienshan meets both of the above requirements for summary judgment.

I. **THE ABSENCE OF ANY GENUINE ISSUES OF MATERIAL FACT ENTITLES TIENSHAN TO SUMMARY JUDGMENT AS A MATTER OF LAW.**

Tienshan has already demonstrated the credibility of all material facts and provided irrefutable documentation that warrants findings as a matter of law based on the pleadings, Tianjin Hua Feng's admissions, Du Ping's affidavit, the proof of payments of demurrages, and other inferences that may be drawn therefrom by the ALJ. Since Tianjin Hua Feng has already admitted the material facts to Tienshan's Complaint and requests for admissions, and also failed to submit any evidence that could rebut the documentation

propounded by Tienshan to support its Complaint and Motion for Summary Judgment, no material facts remain at issue. Additionally, as Tienshan will demonstrate below, Tianjin Hua Feng violated Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102 (c), and is liable for the damages which Tienshan incurred due to Tianjin Hua Feng's violation; absent any valid defense to the contrary, Tienshan is entitled to reparations pursuant to Section 11 (g) of the Shipping Act, 46 U.S.C. § 41301.

Further, Tianjin Hua Feng cannot rely on mere conjectural or speculative defenses to establish the existence of genuine issues of fact rather than propounding affidavits or further documentary evidence to refute the assertions in Tienshan's Complaint, Du Ping's Affidavit, and other supporting documentation. As the Supreme Court stated in Matsushita Electric Industrial Co., Ltd. et. al. v. Zenith Radio Corp., et. al., Tianjin Hua Feng "must do more than simply show that there is some metaphysical doubt as to the material facts." 475 U.S. 574, 586, (1986) (citing DeLuca v. Atlantic Refining Co., 176 F.2d 421, 423 (2d Cir. 1949)). In addition, Tianjin Hua Feng "must come forward with 'specific facts that there is a genuine issue for trial.'" Id. at 587 (citations omitted). Given the requirement that Tianjin Hua Feng must present specific evidence as to a possible defense, Tianjin Hua Feng cannot base its defenses on loose assertions that Tienshan's claim is invalid.

Moreover, Tienshan is entitled to judgment as a matter of law. Since the Complaint alleged violations of the Shipping Act, the Commission may order reparations in favor of Tienshan.

a. The Pleadings and Pre-trial Discovery Establish That There Are No Genuine Issues of Material Fact.

Tianjin Hua Feng failed to raise any valid affirmative defenses or to produce any evidence in discovery concerning issues of material law or fact that could rebut Tienshan's pleaded facts and damages. Courts have consistently held that "summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that (a) there is no genuine issue as to any material fact and that (b) the moving party is entitled to a judgment as a matter of law." Catrett at 322, (quoting Fed. R. Civ. P., Rule 56(c)) (alterations added); see also Ratter v. Netburn, 930 F.2d 204, 209 (2d Cir. 1991); Dumont v. Administrative Officer, 915 F. Supp. 671, 673 (S.D.N.Y. 1996).

Tienshan's evidence and Tianjin's admissions establish that Tianjin Hua Feng violated Section 10 (d)(1) of the Shipping Act, 46 U.S.C. § 41102 (c), which is evidenced by the following uncontroverted facts and admissions:

Respondent Tianjin Hua Feng is a bonded and tariffed foreign-based NVOCC registered with the Commission as Organization Number 018117. See First Amended Answer ¶ 2, Stipulations of Uncontested Facts ¶ 2. Tianjin Hua Feng acted as a freight forwarder in China on behalf of the shipper for subject shipment. See First Amended Answer ¶ 15, Du Ping's Affidavit ¶ 14. On June 3, 2008, China Ocean Shipping Agency, acting as agent for Wan Hai, issued Wan Hai bill of lading 0338005421 for the Tienshan shipment identifying Henan Huatai Ceramic Technology & Trading Co., Ltd., as the shipper, Tienshan as the consignee, Sonic Logistics (USA) Company Ltd., as the "notify" party, Xingang, China, as the place of receipt and port of loading, and Long Beach as the port of discharge and place of delivery, describing the shipment as

"stoneware dinner set" packed in 3339 cartons in four containers, and stating that the freight is payable at destination. See First Amended Answer ¶¶11 and 12, Stipulations of Uncontested Facts ¶ 7, Du Ping's Affidavit ¶¶ 9-11. Tianjin Hua Feng was **not** a party to the Wan Hai bill of lading 0338005421. See First Amended Answer ¶ 17, Stipulations of Uncontested Facts ¶ 10, Du Ping's Affidavit ¶ 15. Tianjin Hua Feng refused to release the original bill of lading to Tienshan by alleging debts owed by the shipper, not related to Tienshan. Respondent's Response to Complainant's Requests for Admissions Nos. 4-6, First Amended Answer ¶ 16, Stipulations of Uncontested Facts ¶ 8, Du Ping's Affidavit ¶¶ 14 and 25. Since Tianjin Hua Feng unlawfully held the original bill of lading, Tienshan incurred demurrage on subject cargo, loss of sales and attorneys fees. Du Ping's Affidavit ¶ 26. See further detail below. Complainant submits that by these actions, "Tianjin Hua Feng prevented delivery of the goods and assumed the responsibility for their transportation." Order at 13.

The aforementioned admitted uncontested facts demonstrate that Tianjin Hua Feng, a foreign registered ocean transportation intermediary, initially acted as a freight forwarder in China for subject shipment and was not a party to the subject bill of lading. Further, Tianjin Hua Feng subsequently assumed responsibility for transportation of the goods by unlawfully holding the bill of lading and prevented its delivery to Complainant. See Order at 13. Respondent met the definition of a common carrier on subject shipment by unlawfully holding the original bill of lading which should have been released to Tienshan as Consignee of the subject straight bill of lading. See Order at 13. Respondent's Response to Complainant's Requests for Admissions Nos. 1-3). This unlawful withholding of the bill of lading prevented Complainant from having its cargo

delivered, which resulted in the claimed damages. This act by Respondent resulted in a violation of Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102 (c), See Order at 13.

That section provides:

(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

In the Order, assuming the facts alleged in the Complaint were true, the ALJ found that Tianjin Hua Feng violated 46 U.S.C. § 41102 (c) in that it failed to establish, observe, and enforced just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. The ALJ reasoned as follows:

“Accepting Tienshan’s factual allegations set forth in the Complaint as true, Tianjin Hua Feng, an entity that holds itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation, originally performed services comparable to those of an ocean freight forwarder when it arranged for the Tienshan shipment. That shipment used, for all or part of its transportation, a vessel operating on the high seas between port in the United States and a port in a foreign country. Tianjin Hua Feng did not have any right, title, or interest in the goods being transported. In an attempt to force Tienshan to pay debts owed to Tianjin Hua Feng by Henan Huatai, Tianjin Hua Feng did not refused to provide the bill of lading to Tienshan and through it s affiliate in the United States, instructed Wan Hai not to deliver the shipment to Tienshan. When it stopped delivery of the goods, Tianjin Hua Feng assumed responsibility for transportation of the goods and operated as an NVOCC on the shipment. Assuming the truth of the Complaint, Tianjin HUa Feng ‘fail[ed] to establish, observe, and enforced just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.’ 46 U.S.C. § 41102(c)...”

Order at 14. After Respondent admitted the above cited material facts which were assumed as true in the Order, it is patently clear that Respondent violated 46 U.S.C. § 41102 (c).

Further, the undisputable documentation shows that Tianshan incurred demurrage, loss of sales and attorneys' fees due to Tianjin Hua Feng's unlawful holding of subject original bill of lading. See Attachment A, Ms. Du Ping's Affidavit; Attachment B, Proof of Payment of Demurrage; Attachment C, Proof of Loss of Sales, and Attachment D, Zheng Xie's Affidavit, Itemized Statement and Invoices.

b. Irrelevant Facts Will Not Exclude Summary Judgments.

A fact is material only if it might affect the outcome of the suit under the governing law. Disputes over unnecessary or irrelevant facts will not preclude summary judgment. A factual issue is genuine only if the evidence is such that a reasonable fact finder, applying the appropriate evidentiary standard of proof, could return a verdict for the nonmoving party. Under Rule 56(e), it is the obligation of the nonmoving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986).

Tianjin Hua Feng alleges that Tianshan guarantees payment of any export fees and port charges, etc. owed by the shipper to Tianjin in the event that such fees were not paid by the shipper, and Tianjin further avers that the alleged "guarantee" amounts to equitable lien on the bill of lading and/or cargo. Amended Answer ¶ 16. Assuming *arguendo* that Tianjing Hua Feng's allegation were true, the alleged "guarantee" does not amount to an "equitable lien" on subject bill of lading and/or cargo. There is no legal basis for the alleged "equitable lien" under subject facts of this proceeding. It is clear

that an equitable lien, an equitable remedy is imposed on specific or particular property which is not possessed by a creditor. See Morrison Flying Service v. Deming Nat'l Bank, 404 F.2d 856, 860 (10th Cir. N.M. 1968)(Equitable lien is a right, not existing at law, to have specific property applied in whole or in part to payment of a particular debt or class of debts.) See also Owensboro Banking Co. v. Lewis, 269 Ky. 277, 106 S.W.2d1000, 1004 (An equitable lien arises either from a written contract which shows an intention to charge some particular property with a debt or obligation or implied and declared by a court of equity out of general considerations of right and justice as applied to relations of the parties and circumstances of their dealings.) In fact, contrary to the application of a principle of equitable lien, Tianjin Hua Feng unlawfully **held** subject bill of lading to prevent of delivery of the goods as a means of forcing payment by Tienshan of amounts it did not owe.

Further, the February 2006 e-mail, the sole basis for its alleged "equitable lien," provided by Tianjin Hua Feng neither constituted a guarantee nor did Tianjin Hua Feng treat it as a guarantee. Attachment E, Appendix II; Respondent's Response to Complainant's Discovery Requests. The e-mail provided by Respondent in support of its position that Tienshan guaranteed export fees and charges, etc. does not prove a guarantee, but rather it demonstrates a pattern by Respondent as a freight forwarder to hold cargo hostage for unrelated debts and claims against the shipper. In addition, the following must be noted:

The alleged "guarantee" is clearly contrary to the following admitted fact:

On June 19, 2008, Jenny Zhao, a representative of Hua Feng Transport Agency Co., Ltd., Tianjin Branch, sent an email to Tienshan stating:

But you know, the debts is RMB243, 680.00 in total, it is not only this shpt but also many others. When we knew factory's funds was tight primitively. we tried our best to pay carrier first in order to get *b/l* in time and make cnee can pick up goods smoothly at destination. Day by day, we pay the local charge for one shpt and one again, During this period, we never make trouble for factory. *We just pushed them repay the debts again and again, and they also promised to pay us many time, but it is a pit[fy] that they haven't paid us till now, We admit the original b/l is in our hand now. Pls note we hold the original b/l just aim at the factory (shipper) because of the outstanding payment. We book for them, we make docs for them, we pay carrier's local charge for them, but they owe us, How to protect our rights and interests?* We sent shipper the formal letter today, which you can find in the attachment, but more regrettable is that shipper told WANHAI they lose the original bill We will send shipper the original bill when we get the payment. (Emphasis added).

The above admitted fact demonstrates that Tianjin Hua Feng neither treated the February 2006 e-mail as a guarantee nor relied on it. This was short and simple a pure cudgel with which to intimidate.

In addition, summary judgment will be granted against a party if after reasonable discovery he continues to be unable to identify specific genuine issues of material fact but desires to keep trying. FMC Docket No. 97-02 Mckenna Trucking Company, Incorporated v. A.P. Moller-Maersk Line and Maersk Incorporated, Order Dismissing Complaint and Ruling on Motion for Summary Judgment. Served on May 19, 1997.

Respondent's response to Tienshan's discovery request and its Amended Answer admitted that Tianjin Hua Feng held subject bill of lading because of the debts which Tianjin Hua Feng alleged that the Shipper owed it and that Tianjin Hua Feng was not a party to subject bill of lading. Amended Answer¶ 16, Response to Interrogatories Nos. 2-

10. In support of this position, Respondent provided e-mails in its Response to Tienshan's discovery requests. See Attachment E, Appendix II, Respondent's Response to Complainant's Discovery Requests.

Obviously, Respondent alleged irrelevant facts which do not prevent the ALJ from entering a summary judgment.

To survive a motion for summary judgment, therefore, the dispute must involve a material fact. Furthermore, the dispute must be "genuine." This latter term has been defined by the courts to mean that there must be sufficient evidence to permit a reasonable trier of fact to resolve the issue in favor of the nonmoving party. One court has summarized these principles as follows:

By its very terms, this standard [Federal Rule 56(c)] provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there is no genuine issue of material fact. (Case citation omitted.) For a dispute to be "genuine," there must be sufficient evidence to permit a reasonable trier of fact to resolve the issue in favor of the nonmoving party. (Case citations omitted.) By like token, "material" means that the fact is one that might affect the outcome of the suit under the governing law. FMC Docket No. 97-02 Mckenna Trucking Company, Incorporated v. A.P. Moller-Maersk Line and Maersk Incorporated, Order Dismissing Complaint and Ruling on Motion for Summary Judgment, Served on May 19, 1997 (Citing Gonzalez v. Torres, 915 F.Supp. 511, 515 (D.P.R. 1996)).

The alleged "equitable lien," a patently invalid defense, may not affect the outcome of this proceeding under the Shipping Act.

c. Respondent is Timely Barred to Propound Any Discovery Requests Upon Complainant and the Motion Shall be Denied.

Respondent grounds its Motion to Compel on Rule 37(a)(3)(b) of Federal Rules of Civil Procedure. Motion at 5. Pursuant to 46 C.F.R. 502. 12, "for situations which

are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice.” However, clearly this rule does not apply since the Commission rule has specific provisions governing discovery, and Respondent failed to follow the Commission specific discovery rule.

It must be noted that Tianjin Hua Feng did not propound any discovery requests upon Tienshan when filing its Answer or Amended Answer. Therefore, Tianjin Hua Feng may not make any discovery requests in this proceeding pursuant to Commission Rule 201, 46 C.F.R. 502.201, which provides the following:

(b) Schedule of use —(1) Complaint proceedings. Any party desiring to use the procedures provided in this subpart shall commence doing so at the time it files its initial pleading, e.g., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to §502.113. (Emphasis added).

On or about September 23, 2010, Respondent served a copy of Notice of Motion and Emergency Motion to Compel Complainant to Respond to Respondent’s Discovery Requests. In the Motion, Respondent mistakenly paraphrased the above mandatory requirements as “any party desiring to use the procedures under Subpart L may do so at the time it files its initial pleading.” Motion at 3. (Emphasis added). Complainant request that the ALJ note that the mandate in the regulation is clearly in the imperative. The key operative word in the regulation is “shall”, not “may.” Black’s Law Dictionary states: “[a]s used in statutes, contracts, or the like, this word is generally imperative or mandatory.” Black’s Law Dictionary, 1375 (6th ed. 1990). This word generally has the

significance of operating to impose a duty, and excludes discretion. In the instant case, it would hardly be reasonable to allow discovery to a party who itself has responded to discovery requests approximately two year ago. It would be patently unfair to allow this discovery at this late date, two years after the commencement of the proceeding, when Complainant's employees and documents may not be readily attainable. It would be patently prejudicial to Complainant for the aforementioned rule to be interpreted as discretionary and not as mandatory. Public policy requires that proceedings based on alleged federal violations be dealt with in an efficient manner. Any request or Motion to open discovery to Respondent at this late date should be denied.

Further, Respondent disingenuously stated: "Complainant argues that Respondent's Motion to Dismiss amounts to a 'pleading' and therefore, Respondent should have conducted discovery from the time the Motion to Dismiss was filed in October 2008," and made further arguments based on this false statement. Motion at 5 and 6. The following e-mail of September 17, 2010 from Complainant's counsel to Respondent's counsel as parts of Exhibit B to the Motion makes patently clear that Respondent is not entitled to any discovery requests since the discovery requests were served more than two months after the Amended Answers was filed:

Ismael:

Tianshan's responses are not waived. Please note that Tianjin Hua Feng is not entitled to any discovery requests for the following reason:

On or about August, 2 2010, more than two months after the Amended Answered was filed, Tianjin Hua Feng served the Interrogatory and Requests for Admission and Production of Documents. Pursuant to Commission Rule 201, 46 C.F.R. §[502.]201, Tianjin Hua Feng's discovery requests are timely barred in this proceeding. Commission Rule 201 provides the following:

(b) *Schedule of use* —(1) *Complaint proceedings*. Any party desiring to use the procedures provided in this subpart **shall commence doing so at the time it files its initial pleading**, e.g., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to §502.113. (Emphasis added).

Regards,

Zheng

Complainant noticed Respondent that its discovery requests are timely barred because the requests were not served when its **amended answer** was filed.

In addition, Respondent erroneously relied on the discovery cut-off date provided in the Procedural Order and misinterpreted it as a reinstatement of Respondent's right for discovery. Motion at 6. In fact, that right had already been barred by Rule 46 C.F.R. §502. 201(b)(1). In the Procedural Order, the ALJ ordered that the parties should complete discovery by September 24, 2010 because Complainant served the discovery requests when filing its complaint in 2008, and the discovery was undertaken by the parties, and the discovery cut-off date meant that Complainant could not propound any further discovery requests to Respondent, and that Respondent did not have to provide responses to discovery propounded after that date by Complainant.

Based on its misinterpretation of the cut-off date provided in the Procedural Order, Respondent alleged: "Despite the Procedural Order, Complainant maintains the discovery cut-off imposed by the Commission is erroneous and ineffective." Motion at 6. However, Complainant has never maintained this.

As previously noted, the mandate in the regulation is in the imperative. The key operative word in the regulation is "shall." Black's Law Dictionary states: "[a]s used in

statutes, contracts, or the like, this word is generally imperative or mandatory.” Black’s Law Dictionary, 1375 (6th ed. 1990). This word generally has the significance of operating to impose a duty, and excludes discretion. Public policy requires that proceedings based on alleged federal violations be dealt with in an efficient manner. Pursuant to Rule 46 C.F.R. §502. 201(b)(1), Respondent’s Motion shall be denied.

The case is ripe for summary judgment because all parties to the litigation have exchanged all relevant documentation. The Celotex Court further explained the requirements for a Motion for Summary Judgment stating as follows:

[t]he plain language of Rule 56(c) mandates the entry of summary judgment, **after adequate time for discovery** and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is entitled to a judgment “as a matter of law” because the nonmoving party has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof.

Id. at 322, 2552 (emphasis added).

Given the time elapsed since the filing of the Complaint, the essential discovery that has taken place, Tianjin Hua Feng’s admission to the material facts and its failure to produce contradictory evidence to Tienshan’s allegations and evidence, the case is ripe for judgment.

Further, the parties’ stipulations state all material facts that are undisputed. The pleadings and discovery do not present any issues that must be resolved at trial. Tienshan provided all documentation in support of its Complaint.

In light of the above, all material facts are before the ALJ. The material facts are established and there are no genuine issues of fact for the ALJ to resolve. Therefore, pursuant to the principles established in Celotex, Tienshan has demonstrated that (a) there are no genuine issues of material fact and (b) Tienshan is entitled to judgment as a matter of law.

II. RESPONDENT VIOLATED SECTION 10(d)(1) OF THE SHIPPING ACT, 46 U.S.C. § 41102 (c) AND IS LIABLE TO TIENSHAN FOR ALL DAMAGES INCURRED DUE TO RESPONDENT'S VIOLATION.

Tienshan has successfully established the essential elements of its prima facie case, particularly that Respondent Tianjin Hua Feng violated Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102 (c).

By reason of the undisputed facts alleged in the Complaint and admitted in Tianjin Hua Feng's responses to Tienshan's discovery requests and First Amended Answer to Complaint, since neither Respondent is a party to subject bill of lading, nor does it otherwise, nor can it claim a legitimate cargo interest, Respondent has no legal basis for holding this cargo ransom, especially with regard to an innocent party---i.e., Complainant, the U.S. importer. Respondent's actions constitute violations of the Shipping Act and the corresponding shipping regulations. Respondent's actions of holding cargo ransom, by obstinately refusing to turn over the original bill of lading unless Complainant paid to them the amount owed by a third-party, assumed responsibility for this transportation, and therefore, acted as a carrier, thereby constituting a violation of Section 10(d) (1) of the Shipping Act, 46 U.S.C. § 41102 (c) which requires a common carrier or an ocean transportation intermediary to maintain reasonable

regulations and practices relating to or connected with receiving or delivering property.
See Order at 13 and 14.

The undisputable documentation shows that Tianshan incurred demurrage in the amount of \$16,944.00, loss of sales in the amount of \$106,115.00 and legal fees in the amount of \$49,743.36 as of August 31, 2010, which includes attorneys' fees of \$48,336.50 and expenses of \$1,406.86. See Attachment A, Ms. Du Ping's Affidavit; Attachment B, Proof of Payment of Demurrage; Attachment C, Proof of Loss of Sales; and Attachment D, Zheng Xie's Affidavit, Itemized Statement and Invoices.

With respect to Attorneys' fees, Tianshan submits an itemized statement of billable hours billed by Tianshan's counsel for subject matter. See Attachment D, Zheng Xie's Affidavit, Itemized Statement and Invoices. Attorneys' fees in the total amount of \$48,336.50 billed by Complainant counsel for subject matter are broken down as follows:

Timekeeper	Personal Type	Hours Billed	Rate	Total
Rul, Christopher A	Paralegals	7.10	\$95.00	\$674.50
Rodriguez, Carlos	Senior Partners	35.60	\$350.00	\$12,460.00
Lee, Daniel	Associates	10.40	\$195.00	\$2,028.00
Edwards, Eddie L.	Other Staff	6.80	\$190.00	\$1,292.00
Fineberg, Todd C.	Of Counsel	0.37	\$195.95	\$72.50
Fineberg, Todd C.	Of Counsel	0.60	\$200.00	\$120.00
Xie, Zheng	Associates	89.50	\$185.00	\$16,557.50
Xie, Zheng	Associates	77.60	\$195.00	\$15,132.00

Section 11(g) of the Shipping Act, 46 U.S.C. 41305, authorizes the Commission to award "reasonable attorney's fees." Complainant further submits that the attorneys' hourly rates hereby claimed are below the rates which are normally billed for similar proceedings. The Commission has repeatedly awarded reasonable attorneys' fees in FMC proceedings. See FMC Docket No. 98-07 CTM International Inc. v. Medtech Enterprises Inc., Mr. Xin Liu, and Mrs. Yonhong Liu, Order Awarding Attorneys Fees,

Served on September 22, 1999; FMC Docket No. 04-08 Qin's Incorporated v. Superior Link International Inc., Memorandum and Order and Attorney Fees, Served on January 2007. Complainant respectfully requests that legal fees in the amount of \$49,743.36, which includes attorneys' fees of \$ 48,336.50 and expenses of \$1,406.86, be awarded pursuant to Section 11(g) of the Shipping Act, 46 U.S.C. 41305, and 46 C.F.R. § 502.254.

In addition, given that Wan Hai released the escrow funds in the amount of \$47,801.42 to Tienshan after the original bill of lading was presented, Tienshan hereby withdraws its claim for same raised in the Complaint. These damages are actual injury caused directly by Respondent's violation of the section 10(d)(1) of the Shipping Act. Pursuant to 11(g) of the Shipping Act, 46 U.S.C. 41305, Tienshan is entitled to reparations in the amount of \$172,802.36.

CONCLUSION AND PRAYER

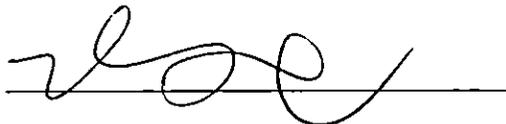
Based on the foregoing, there is no genuine issue as to any material fact which exists or remains to be resolved by the ALJ. Tienshan is also entitled to judgment as a matter of law under the Shipping Act.

WHEREFORE, Tienshan respectfully requests that this Honorable ALJ: (1) enter summary judgment in favor of Tienshan in the amount of \$172,802.36 plus interest and costs; and (2) award any further relief that the ALJ deems just and equitable.

Further, Complainant respectfully requests that this Honorable ALJ deny Respondent's Emergency Motion to Compel Discovery Responses in that Respondent's discovery request is timely barred pursuant to 46 C.F.R. §502.201(b)(1).

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to be 'CR', written over a horizontal line.

Carlos Rodriguez, Esq.

Zheng Xie, Esq.

RODRIGUEZ O'DONNELL

GONZALEZ & WILLIAMS, P.C.

1250 Connecticut Ave. N.W., Suite 200,
Washington, D.C. 20036

202-973-2999 (Telephone)

202-293-3307 (Facsimile)

Attorneys for Complainant

Dated in Washington, D.C. this twenty-eighth day of September, 2010.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following individuals (s) via e-mail and first class mail, postage prepaid:

Malcolm S. McNeil, Esq.
Ismael Bautista, Esq.
Fox Rothschild LLP
1800 Century Park East, Suite 300
Los Angeles, California 90067

Attorneys for Tianjin Hua Feng Agencies Transport Agencies Co. Ltd.



Zheng Xie, Esq.
**RODRIGUEZ O'DONNELL
GONZALEZ & WILLIAMS, P.C.**
1250 Connecticut Ave. N.W., Suite 200,
Washington, D.C. 20036
202-973-2981 (Telephone)
202-293-3307 (Facsimile)
Attorneys for Complainant

Dated in Washington, D.C. this twenty-eighth day of September, 2010.

ATTACHMENT A

AFFIDAVIT OF MS. DU PING
TIENSHAN, INC.

I, Du Ping, state the following, based upon my own personal knowledge and belief:

1. I am employed with Tienshan, Inc. ("Tienshan") and have personal knowledge of the facts stated in this affidavit.
2. That I have 4 years of experience and that my current title at Tienshan is Chairman.
3. Tienshan is a corporation organized and existing pursuant to the laws of the state of Delaware with its principal place of business at 231 Wilson Avenue, South Norwalk, Connecticut 06852.
4. In April 2008, Tienshan signed a sales contract for the purchase of stoneware from Henan Huatai Ceramic Technology (the "Shipper"), a Chinese company with its principal business place in Henan, China. The price term of this purchase agreement was, among others, FOB Tianjin Port, China.
5. Tienshan and the Shipper are not related by common ownership, nor are they under common control.
6. Tienshan purchased the goods under the sales contract in order to perform its contracts with Wal-Mart Stores, Inc. ("Wal-Mart"), and other U.S. retailers in the United States.
7. Tienshan paid the full contract price to the Shipper under the sales contract, and the title of the goods was transferred to Tienshan.
8. On or about June 2008, the goods under the sales contract, subject of this proceeding, were loaded on the Vessel CMA CGM Africa Voyage E107 in four containers. The Port of Loading was Xingang, China.
9. On June 3, 2008, China Ocean Shipping Agency as an agent for the Carrier, Wan Hai Lines (Singapore) PTE Ltd. ("Wan Hai"), issued the straight bill of lading No. 0338005421 (the "B/L") for the aforementioned cargo with Henan Huatai Ceramic Technology Trading Co., Ltd. as Shipper, and Tienshan as Consignee.
10. The cargo arrived at the Port of Discharge, Long Beach, California, on or about the middle of June, 2008.
11. Tienshan paid the full amount of the ocean freight and other charges to Wan Hai.

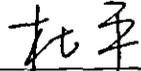
12. Upon information and belief the Shipper went out of business in the middle of June, 2008 because of a workers' strike, among other reasons.
13. Tianjin Hua Feng acting as a freight forwarder in China on behalf of the Shipper unlawfully held the original B/L, subject of this proceeding, by alleging debts in the amount of RMB243,680 owed by the Shipper to Tianjin Hua Feng.
14. In an e-mail dated June 19, 2008, Tianjin admitted that it was holding the cargo ransom for debts owed by the Shipper. It stated: "[w]e admit the original b/l is in our hand now. Pls note we hold the original b/l just aim at the factory (shipper) because of the outstanding payment. We book for them, we make docs for them, we pay carrier's local charge for them, but they owe us. How to protect our rights and interests? We sent shipper the formal letter today, which you can find in the attachment, but more regrettable is that shipper told (WAN HAI) they lose the original b/l.....We will send shipper the original b/l when we get the payment."
15. Neither Tianjin Hua Feng nor Hua Feng USA is a party to the pertinent B/L, subject of this proceeding, nor are they referenced in any way in that document.
16. Originally, Wan Hai had communicated to Tienshan that a Letter of Guarantee by the Shipper and the Consignee was necessary to release the cargo.
17. On June 18, 2008, the Shipper issued a Letter of Guarantee at Wan Hai's request declaring, "THE OWNERSHIP OF THE GOODS ARE TRANSFERRED TO THE CONSIGNEE ON THIS B/L TIENSHAN INC...WE AGREE TO ALLOW TIENSHAN INC. TO PICK UP THE GOODS WITHOUT ORIGINAL B/L...".
18. On June 20, 2008, Tienshan, pursuant to Wan Hai's direction, issued a Letter of Guarantee to Wan Hai requesting it to release the cargo.
19. Ms. Michelle Wang, an official of Hua Feng USA, on or about the middle of June, 2008, called Wan Hai's agent, Mr. Christian Peterson, Norton Lily Agency, demanding that Wan Hai not release the pertinent containers to Tienshan on the basis that Tianjin Hua Feng, its Chinese affiliate company, had an interest in the cargo.
20. After Ms. Wang's communication noted above, however, on or about June 24, 2008, Wan Hai's agent notified Tienshan that it would not release the cargo without an additional requirement of providing a cash bond in the amount of

110% of the value of the goods, among other requirements.

21. In order to mitigate damages, Tienshan sent various communications to Tianjin Hua Feng requesting that Tianjin Hua Feng release the original B/L immediately, including information that Tienshan was subject to liquidated damages from Wal-Mart and others.
22. On or about October 2, 2008 during a settlement negotiation between the parties through their respective counsel, Tianjin Hua Feng through its counsel sent subject original bill of lading no. 0338005421 via courier to Tienshan's counsel.
23. On or about October 3, 2008, Tienshan's counsel received subject original bill of lading, and on the same day, surrendered same to Norton Lily Agency, the agent of Wan Hai, and requested Wan Hai immediately release the escrow funds in the amount of \$47,801.42.
24. On or about October 14, 2008, Tienshan received the escrow funds released by Wan Hai.
25. However, Tianjin Hua Feng has repeatedly and obstinately insisted that Tienshan should pay the full amount of the alleged debts owed by the Shipper, and has refused to provide the relevant original bill of lading.
26. In view of the above, in order to have its cargo released, Tienshan has had to pay into escrow 110% of the value of the Cargo, i.e. \$47, 801.42 in Wan Hai's escrow account and also has paid demurrage in the amount of \$16,944.00, as a precondition to getting the cargo released without an original B/L.
27. In view of the fact that Tianjin Hua feng, by putting itself in a position to deliver Tienshan's property by being the custodian of the pertinent bill of lading, then acted unlawfully by withholding the relevant original B/L for delivery.
28. Tienshan, as a result of Respondent's action, breached its contracts with Wal-Mart, and other retailers and has thereby been subjected to substantial monetary penalties and suffered loss of profits because of the late or non-delivery of the goods caused solely by Tianjin Hua Feng's unlawful withholding of the original B/L and Hua Feng USA's conspiracy with Tianjin Hua Feng. Tienshan incurred loss of profits in the amount of \$106,115.00.
29. Attorneys' fees for this matter have been incurring.

30. Affiant verily believes that Tianjin Hua Feng has no defense to the action herein.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Ms. Du Ping
Tienshan, Inc.

Dated: August 25, 2010

ATTACHMENT B

**FAIRFIELD COUNTY BANK
DOMESTIC
OUTGOING WIRE TRANSFER REQUEST**

Scanned	Date & Time:
Wire Sequence #	Call Back Verification:

CUSTOMER INFORMATION SECTION	
Customer Name:	TIENSHAN, INC.
Address:	231 WILSON AVENUE
City/State/Zip:	SO, NORWALK, CT. 06854
Account Number:	528001263
Contact Info:	Name: GLORIA MOYA Phone: 203 642-0012

WIRE TRANSFER INFORMATION SECTION

Amount:	\$ 16,944.00
BENEFICIARY BANK INFORMATION	
ABA Number:	065103654
Name of Bank:	BANKTRUST
Bank Address:	Street: 100 ST. JOSEPH STREET City/State/Zip: MOBILE, ALABAMA
Branch Office (if applicable):	
Beneficiary Name:	NORTON LILLY INTERNATIONAL AS AGENTS FOR: WAN HAI LINE FREIGHT
Beneficiary Account Number:	
For Further Credit to a Third Party:	Name:
Third Party Account Number:	Account #: 0141333
Originator to Beneficiary Information:	Limit of 60 characters STORAGE CHARGES

CUSTOMER ACKNOWLEDGEMENT OF WIRE TRANSFER TRANSACTION:

I, the person or entity described above as ("Customer"), do request you, Fairfield County Bank ("Bank"), to make the wire transfer described above. I agree to security procedures that will be used to verify the wire transfer order.

- 1) Same Day Not Guaranteed. The Bank does not guarantee that the funds transfer will be completed on the same day even if I place the order before the 2:00 pm cut-off hour.
- 2) Finality. I understand that once the Bank executes the payment order, I cannot stop or cancel the payment order.
- 3) Fee. The Bank's wire transfer fee is \$ 20.00 per transfer.
- 4) Liability. Bank will exercise reasonable care in making the requested funds transfer. In no event, however, will Bank be liable for any consequential damages except where required by law. Customer further agrees that Bank shall not be liable for any error, delay or default on the part of Bank or any agent used by Bank in the execution of any transfer, or related act, except to the extent such liability is required by law and to the extent such liability cannot legally be varied or waived by agreement. Customer agrees that the liability of Bank is waived to the maximum extent by law.
- 5) I have carefully reviewed all information set forth on the face of the form as completed and agree that it accurately reflects the transaction I desire.

Customer's Signature: Gloria Moya Date: 8/13/08

Approvals and Verifications: \$25,000 and Over Require Branch Manager Approval			
Prepared by (Print):		Preparer Signature:	
Approved by (Print):		Approver Signature:	
Signature verified by branch	Y <input type="checkbox"/> N <input type="checkbox"/>	Branch#:	Date: 2/8/2008
ID Verification by Branch	Y <input type="checkbox"/> N <input type="checkbox"/>	Photo ID Type:	ID #:

ATTACHMENT C

Wmt Wk	Item Nbr	Item Desc 1	Last Wk Fcst	POS Sales	POS Qty	Last Sales \$ Last Wk	Last Sales Units Last Wk	% Cust Demand Met	Last Wk In Stock %	Last Wk Service Level City %	Last Wk Service Level \$ %	Last Wk Corp Inv @ Retail	Actual Inv Turns	On Hand Store Count	Avg Tralled Store/Item Comb.
WK24	1409234	12IN LOW BOWL	\$9,030	\$7,641	1,098	\$776	111.54	90.78%	96.52%	100.00%	100%	\$75,342	5.27	2,302	2,390
WK25	1409234	12IN LOW BOWL	\$8,841	\$8,440	1,212	\$710	102.02	92.24%	97.11%	100.00%	100%	\$75,620	5.80	2,316	2,391
WK26	1409234	12IN LOW BOWL	\$8,795	\$8,080	1,161	\$556	79.94	93.53%	97.44%	100.00%	100%	\$77,402	5.43	2,324	2,391
WK27	1409234	12IN LOW BOWL	\$8,666	\$7,830	1,127	\$582	83.57	93.09%	98.07%	100.00%	100%	\$79,434	5.13	2,339	2,392
WK28	1409234	12IN LOW BOWL	\$8,540	\$8,473	1,217	\$452	64.94	94.94%	98.11%	100.00%	100%	\$79,748	5.53	2,341	2,393
WK29	1409234	12IN LOW BOWL	\$8,522	\$8,430	1,211	\$361	51.82	95.90%	97.95%	100.00%	100%	\$79,866	5.49	2,338	2,394
WK30	1409234	12IN LOW BOWL	\$8,518	\$8,471	1,217	\$511	73.39	94.31%	98.16%	100.00%	100%	\$79,636	5.53	2,348	2,399
WK31	1409234	12IN LOW BOWL	\$8,525	\$8,247	1,185	\$432	62.07	95.02%	97.83%	100.00%	100%	\$79,372	5.40	2,348	2,407
WK32	1409234	12IN LOW BOWL	\$7,374	\$9,181	1,317	\$369	53.01	96.14%	97.83%	100.00%	100%	\$78,133	6.11	2,347	2,406
WK33	1409234	12IN LOW BOWL	\$7,542	\$8,551	1,231	\$404	58.03	95.49%	97.50%	100.00%	100%	\$76,428	5.82	2,340	2,407
						\$5,153	740.33								
WK24	1409259	14" OVAL PLATTER	\$4,679	\$5,244	1,084	\$375	77.24	93.32%	96.61%	100.00%	100%	\$50,471	5.40	1,966	2,037
WK25	1409259	14" OVAL PLATTER	\$4,707	\$5,309	1,095	\$420	86.45	92.67%	96.80%	100.00%	100%	\$49,995	5.52	1,968	2,035
WK26	1409259	14" OVAL PLATTER	\$4,739	\$5,089	1,050	\$484	99.58	91.32%	97.25%	100.00%	100%	\$50,330	5.26	1,977	2,035
WK27	1409259	14" OVAL PLATTER	\$4,726	\$4,864	1,003	\$442	90.98	91.67%	97.59%	100.00%	100%	\$51,258	4.93	1,983	2,035
WK28	1409259	14" OVAL PLATTER	\$4,747	\$4,925	1,013	\$317	65.22	93.95%	98.23%	100.00%	100%	\$51,288	4.99	1,996	2,035
WK29	1409259	14" OVAL PLATTER	\$4,766	\$5,152	1,063	\$333	68.53	93.93%	97.54%	100.00%	100%	\$51,001	5.25	1,981	2,034
WK30	1409259	14" OVAL PLATTER	\$4,748	\$5,387	1,112	\$338	69.47	94.10%	97.00%	100.00%	100%	\$51,142	5.48	1,971	2,035
WK31	1409259	14" OVAL PLATTER	\$4,792	\$4,609	949	\$479	98.61	90.58%	96.71%	100.00%	100%	\$51,161	4.68	1,969	2,039
WK32	1409259	14" OVAL PLATTER	\$4,113	\$5,670	1,188	\$460	94.59	92.50%	96.61%	100.00%	100%	\$49,985	5.90	1,966	2,038
WK33	1409259	14" OVAL PLATTER	\$4,209	\$4,913	1,021	\$388	79.75	92.69%	97.00%	100.00%	100%	\$49,412	5.17	1,974	2,039
						\$4,036	830.41								
WK24	1409243	4IN RAMEKIN	\$5,032	\$5,210	6,055	\$583	678.25	89.93%	93.49%	100.00%	100%	\$22,258	12.17	2,227	2,385
WK25	1409243	4IN RAMEKIN	\$5,097	\$5,351	6,222	\$549	638.83	90.69%	92.82%	100.00%	100%	\$22,071	12.61	2,211	2,386
WK26	1409243	4IN RAMEKIN	\$5,149	\$4,677	5,439	\$915	1,064.11	83.64%	87.91%	100.00%	100%	\$19,102	12.73	2,094	2,386
WK27	1409243	4IN RAMEKIN	\$5,150	\$4,232	4,921	\$1,735	2,017.48	70.92%	79.93%	100.00%	100%	\$14,990	14.68	1,904	2,387
WK28	1409243	4IN RAMEKIN	\$5,164	\$3,258	3,788	\$2,709	3,150.43	54.60%	71.52%	100.00%	100%	\$11,708	14.47	1,705	2,388
WK29	1409243	4IN RAMEKIN	\$5,162	\$2,491	2,898	\$3,848	4,474.17	39.30%	63.56%	100.00%	100%	\$9,220	14.05	1,516	2,389
WK30	1409243	4IN RAMEKIN	\$5,109	\$1,878	2,182	\$4,851	5,640.51	27.91%	56.03%	100.00%	100%	\$7,350	13.29	1,339	2,394
WK31	1409243	4IN RAMEKIN	\$5,017	\$1,441	1,675	\$5,699	6,626.37	20.3%	48.75%	100.00%	100%	\$5,903	12.69	1,169	2,402
WK32	1409243	4IN RAMEKIN	\$4,315	\$1,057	1,233	\$5,244	6,097.22	16.78%	50.15%	100.00%	100%	\$6,900	7.97	1,202	2,401
WK33	1409243	4IN RAMEKIN	\$4,238	\$2,431	2,827	\$3,247	3,776.16	42.81%	73.35%	100.00%	100%	\$13,338	9.48	1,759	2,402
						\$29,381	34,163.51								
WK24	1409414	BUTTER DISH	\$884	\$919	206	\$42	9.41	95.63%	97.25%	100.00%	100%	\$7,859	6.08	354	364
WK25	1409414	BUTTER DISH	\$919	\$785	176	\$62	14.00	92.63%	97.53%	100.00%	100%	\$7,885	5.18	355	364
WK26	1409414	BUTTER DISH	\$913	\$838	188	\$30	6.75	96.54%	97.53%	100.00%	100%	\$7,952	5.48	355	364
WK27	1409414	BUTTER DISH	\$912	\$861	193	\$57	12.82	93.77%	97.80%	100.00%	100%	\$8,059	5.55	356	364
WK28	1409414	BUTTER DISH	\$914	\$968	217	\$31	6.91	96.91%	98.35%	100.00%	100%	\$7,943	6.34	358	364
WK29	1409414	BUTTER DISH	\$945	\$861	193	\$26	5.93	97.02%	98.63%	100.00%	100%	\$7,957	5.63	359	364

Wmnt Wk	Item Nbr	Item Desc 1	Last Wk Fcst	POS Sales	POS Qty	Last Sales \$ Last Wk	Last Sales Units Last Wk	% Cust Demand Met	Last Wk In Stock %	Last Wk Service Level Qty %	Last Wk Service Level \$ %	Last Wk Corp Inv @ Retail	Actual Inv Turns	On Hand Store Count	Avg Traited Store/Item Comb.
WK24	1416368	GREEN DINNERPLATE	\$255	\$423	168	\$16	6.16	96.43%	96.96%	100.00%	100%	\$10,056	2.19	510	527
WK25	1416368	GREEN DINNERPLATE	\$260	\$478	191	\$31	12.08	93.96%	96.77%	100.00%	100%	\$10,185	2.44	510	528
WK26	1416368	GREEN DINNERPLATE	\$248	\$466	186	\$16	6.43	96.62%	96.97%	100.00%	100%	\$10,361	2.34	512	529
WK27	1416368	GREEN DINNERPLATE	\$249	\$350	149	\$14	5.70	96.03%	97.16%	100.00%	100%	\$10,457	1.74	514	530
WK28	1416368	GREEN DINNERPLATE	\$272	\$455	179	\$14	5.43	97.06%	98.48%	100.00%	100%	\$10,460	2.26	517	526
WK29	1416368	GREEN DINNERPLATE	\$305	\$549	217	\$20	7.88	96.48%	97.71%	100.00%	100%	\$10,246	2.79	513	526
WK30	1416368	GREEN DINNERPLATE	\$308	\$551	218	\$20	7.99	96.44%	97.90%	100.00%	100%	\$10,229	2.80	514	526
WK31	1416368	GREEN DINNERPLATE	\$312	\$578	235	\$13	5.17	97.78%	98.28%	100.00%	100%	\$9,893	3.04	515	525
WK32	1416368	GREEN DINNERPLATE	\$288	\$655	267	\$19	7.58	97.15%	98.33%	100.00%	100%	\$9,553	3.57	413	421
WK33	1416368	GREEN DINNERPLATE	\$260	\$737	321	\$20	8.05	97.30%	97.39%	100.00%	100%	\$9,149	4.19	410	421
						\$184	72.49								
WK24	1416444	GREEN MUG	\$481	\$396	202	\$249	126.97	61.40%	78.56%	100.00%	100%	\$4,688	4.39	414	527
WK25	1416444	GREEN MUG	\$481	\$416	212	\$286	145.73	59.26%	75.19%	100.00%	100%	\$4,241	5.09	397	528
WK26	1416444	GREEN MUG	\$488	\$336	177	\$340	173.38	49.73%	72.59%	100.00%	100%	\$3,918	4.46	384	529
WK27	1416444	GREEN MUG	\$483	\$336	173	\$385	196.65	46.59%	69.62%	100.00%	100%	\$3,567	4.90	369	530
WK28	1416444	GREEN MUG	\$534	\$361	184	\$486	248.06	42.59%	66.16%	100.00%	100%	\$3,173	5.91	348	526
WK29	1416444	GREEN MUG	\$598	\$466	238	\$629	321.04	42.57%	60.84%	100.00%	100%	\$2,701	8.98	320	526
WK30	1416444	GREEN MUG	\$618	\$357	182	\$732	373.37	32.77%	53.04%	100.00%	100%	\$2,330	7.96	279	526
WK31	1416444	GREEN MUG	\$607	\$291	151	\$815	415.87	26.29%	49.33%	100.00%	100%	\$2,072	7.30	259	525
WK32	1416444	GREEN MUG	\$556	\$274	143	\$786	401.18	25.82%	40.38%	90.00%	90%	\$1,780	8.00	170	421
WK33	1416444	GREEN MUG	\$508	\$245	138	\$747	381.09	24.67%	38.24%	80.00%	80%	\$1,535	8.29	161	421
						\$5,455	2,783.34								
WK24	1409281	LARGE CANISTER	\$253	\$131	21	\$13	2.23	90.52%	98.63%	100.00%	100%	\$9,124	0.75	359	364
WK25	1409281	LARGE CANISTER	\$252	\$105	18	\$12	1.98	90.09%	98.90%	100.00%	100%	\$9,095	0.60	360	364
WK26	1409281	LARGE CANISTER	\$249	\$100	17	\$9	1.57	91.55%	99.18%	100.00%	100%	\$9,188	0.56	361	364
WK27	1409281	LARGE CANISTER	\$245	\$170	29	\$10	1.71	94.43%	99.18%	100.00%	100%	\$9,136	0.97	361	364
WK28	1409281	LARGE CANISTER	\$244	\$217	37	\$2	0.37	99.01%	100.00%	100.00%	100%	\$9,036	1.25	364	364
WK29	1409281	LARGE CANISTER	\$252	\$176	30	\$7	1.23	96.07%	99.45%	100.00%	100%	\$8,890	1.03	362	364
WK30	1409281	LARGE CANISTER	\$258	\$158	27	\$23	3.86	87.48%	98.90%	100.00%	100%	\$8,808	0.93	360	364
WK31	1409281	LARGE CANISTER	\$262	\$158	27	\$35	5.92	82.02%	98.63%	100.00%	100%	\$8,696	0.95	360	365
WK32	1409281	LARGE CANISTER	\$227	\$158	27	\$12	2.07	92.87%	99.45%	100.00%	100%	\$8,661	0.95	362	364
WK33	1409281	LARGE CANISTER	\$227	\$88	15	\$2	0.30	98.02%	99.45%	100.00%	100%	\$8,714	0.52	363	365
						\$124	21.24								
WK24	1409426	MEDIUM CANISTER	\$230	\$88	19	\$17	3.57	83.62%	97.52%	100.00%	100%	\$7,650	0.60	354	364
WK25	1409426	MEDIUM CANISTER	\$225	\$122	25	\$16	3.32	88.27%	98.07%	100.00%	100%	\$7,596	0.83	356	364
WK26	1409426	MEDIUM CANISTER	\$227	\$126	26	\$13	2.76	90.40%	98.35%	100.00%	100%	\$7,504	0.88	357	364
WK27	1409426	MEDIUM CANISTER	\$219	\$112	23	\$10	2.14	91.50%	98.90%	100.00%	100%	\$7,509	0.77	359	364
WK28	1409426	MEDIUM CANISTER	\$216	\$122	25	\$6	1.14	95.65%	99.45%	100.00%	100%	\$7,514	0.84	361	364
WK29	1409426	MEDIUM CANISTER	\$215	\$58	12	\$8	1.67	87.76%	98.90%	100.00%	100%	\$7,465	0.41	359	364

Wmnt Wk	Item Nbr	Item Desc 1	Last Wk Fest	POS Sales	POS Qty	Last Sales \$ Last Wk	Last Sales Units Last Wk	% Cust Demand Met	Last Wk In Stock %	Last Wk Service Level Qty %	Last Wk Service Level \$ %	Last Wk Corp Inv @ Retail	Actual Inv Turns	On Hand Store Count	Avg Traited Store/Item Comb.
WK24	1416379	RED DINNERPLATE	\$428	\$758	300	\$36	14.22	95.45%	96.01%	100.00%	100%	\$9,136	4.31	505	527
WK25	1416379	RED DINNERPLATE	\$447	\$722	284	\$61	23.97	92.22%	94.88%	100.00%	100%	\$9,195	4.08	500	528
WK26	1416379	RED DINNERPLATE	\$464	\$642	252	\$66	26.02	90.66%	94.70%	100.00%	100%	\$9,180	3.63	500	529
WK27	1416379	RED DINNERPLATE	\$458	\$690	272	\$45	17.68	93.89%	96.22%	100.00%	100%	\$9,213	3.89	509	530
WK28	1416379	RED DINNERPLATE	\$528	\$580	231	\$79	31.05	88.04%	96.19%	100.00%	100%	\$9,246	3.26	505	526
WK29	1416379	RED DINNERPLATE	\$81	\$701	276	\$79	31.01	89.90%	96.38%	100.00%	100%	\$9,276	3.93	506	526
WK30	1416379	RED DINNERPLATE	\$88	\$743	294	\$89	34.85	89.36%	96.19%	100.00%	100%	\$9,368	4.13	505	526
WK31	1416379	RED DINNERPLATE	\$80	\$913	360	\$98	38.62	90.30%	94.27%	100.00%	100%	\$9,266	5.12	494	525
WK32	1416379	RED DINNERPLATE	\$529	\$1,045	425	\$113	44.58	90.22%	95.24%	100.00%	100%	\$8,748	6.21	400	421
WK33	1416379	RED DINNERPLATE	\$488	\$1,139	495	\$98	38.52	92.09%	95.01%	100.00%	100%	\$8,207	7.22	400	421
						\$763	300.52								
WK24	1416452	RED MUG	\$644	\$847	433	\$55	27.97	93.92%	97.53%	100.00%	100%	\$7,111	6.19	514	527
WK25	1416452	RED MUG	\$653	\$875	446	\$67	33.97	92.93%	95.83%	100.00%	100%	\$6,858	6.64	506	528
WK26	1416452	RED MUG	\$657	\$760	388	\$46	24.37	94.09%	97.16%	100.00%	100%	\$7,068	5.60	514	529
WK27	1416452	RED MUG	\$647	\$742	379	\$42	21.52	94.62%	95.66%	100.00%	100%	\$7,181	5.37	507	530
WK28	1416452	RED MUG	\$731	\$745	380	\$47	23.77	94.11%	97.91%	100.00%	100%	\$7,356	5.27	515	526
WK29	1416452	RED MUG	\$811	\$1,053	537	\$47	23.91	95.74%	98.10%	100.00%	100%	\$7,274	7.53	516	526
WK30	1416452	RED MUG	\$834	\$1,143	583	\$66	33.76	94.53%	95.82%	100.00%	100%	\$6,934	8.57	504	526
WK31	1416452	RED MUG	\$863	\$977	498	\$86	43.95	91.89%	96.57%	100.00%	100%	\$6,827	7.44	507	525
WK32	1416452	RED MUG	\$797	\$1,071	563	\$55	28.24	95.09%	96.20%	100.00%	100%	\$6,635	8.40	405	421
WK33	1416452	RED MUG	\$733	\$1,319	735	\$58	29.74	95.77%	96.67%	100.00%	100%	\$6,209	11.04	407	421
						\$571	291.20								
WK24	1409274	SMALL CANISTER	\$187	\$199	53	\$14	3.62	93.43%	98.08%	100.00%	100%	\$6,848	1.51	357	364
WK25	1409274	SMALL CANISTER	\$192	\$170	44	\$29	7.45	85.53%	98.35%	100.00%	100%	\$6,774	1.30	358	364
WK26	1409274	SMALL CANISTER	\$199	\$154	40	\$7	1.86	95.55%	98.35%	100.00%	100%	\$6,670	1.20	358	364
WK27	1409274	SMALL CANISTER	\$193	\$151	39	\$8	2.19	94.67%	98.90%	100.00%	100%	\$6,577	1.19	360	364
WK28	1409274	SMALL CANISTER	\$198	\$147	38	\$2	0.62	98.40%	99.73%	100.00%	100%	\$6,583	1.16	363	364
WK29	1409274	SMALL CANISTER	\$205	\$172	45	\$2	0.44	99.02%	99.73%	100.00%	100%	\$6,527	1.37	363	364
WK30	1409274	SMALL CANISTER	\$200	\$185	48	\$2	0.50	98.97%	99.45%	100.00%	100%	\$6,396	1.51	362	364
WK31	1409274	SMALL CANISTER	\$200	\$197	51	\$3	0.72	98.60%	98.90%	100.00%	100%	\$6,334	1.62	361	365
WK32	1409274	SMALL CANISTER	\$170	\$243	63	\$13	3.24	95.11%	98.35%	100.00%	100%	\$6,141	2.06	358	364
WK33	1409274	SMALL CANISTER	\$175	\$158	41	\$16	4.15	90.82%	98.36%	100.00%	100%	\$6,037	1.36	359	365
						\$96	24.79								
WK24	1409407	SOUP MUG	\$1,245	\$1,696	755	\$113	49.96	93.76%	97.35%	100.00%	100%	\$33,871	2.60	1,982	2,037
WK25	1409407	SOUP MUG	\$1,240	\$1,560	695	\$98	43.51	94.07%	97.10%	100.00%	100%	\$33,674	2.41	1,975	2,035
WK26	1409407	SOUP MUG	\$1,229	\$1,658	738	\$101	44.71	94.26%	97.49%	100.00%	100%	\$33,550	2.57	1,983	2,035
WK27	1409407	SOUP MUG	\$1,230	\$1,508	681	\$113	49.95	93.04%	97.49%	100.00%	100%	\$33,229	2.36	1,982	2,035
WK28	1409407	SOUP MUG	\$1,211	\$1,825	835	\$116	51.36	94.02%	97.49%	100.00%	100%	\$32,906	2.88	1,982	2,035
WK29	1409407	SOUP MUG	\$1,225	\$1,986	892	\$107	47.50	94.87%	97.59%	100.00%	100%	\$32,205	3.21	1,983	2,034

Wmt Wk	Item Nbr	Item Desc 1	Last Wk Fcst	POS Sales	POS Qty	Last Sales \$ Last Wk	Last Sales Units Last Wk	% Cust Demand Met	Last Wk In Stock %	Last Wk Service Level Qty %	Last Wk Service Level \$ %	Last Wk Corp Inv @ Retail	Actual Inv Turns	On Hand Store Count	Avg Traded Store/Item Comb.
WK30	1409407	SOUP MUG	\$1,270	\$2,486	1,103	\$91	40.48	96.45%	97.05%	100.00%	100%	\$30,964	4.18	1,973	2,035
WK31	1409407	SOUP MUG	\$1,396	\$2,098	931	\$139	61.42	93.79%	97.25%	100.00%	100%	\$30,151	3.62	1,981	2,039
WK32	1409407	SOUP MUG	\$1,269	\$2,246	1,008	\$129	57.09	94.57%	96.32%	100.00%	100%	\$29,197	4.00	1,961	2,038
WK33	1409407	SOUP MUG	\$1,122	\$2,480	1,148	\$104	52.88	95.99%	95.92%	100.00%	100%	\$24,584	5.24	1,953	2,039
						\$1,112	498.84								
WK24	1409266	SUGAR BOWL W/ LID	\$568	\$582	147	\$50	12.72	92.04%	97.80%	100.00%	100%	\$7,088	4.27	356	364
WK25	1409266	SUGAR BOWL W/ LID	\$576	\$638	161	\$30	7.47	95.57%	98.08%	100.00%	100%	\$7,073	4.69	357	364
WK26	1409266	SUGAR BOWL W/ LID	\$576	\$550	139	\$30	7.61	94.81%	98.08%	100.00%	100%	\$7,009	4.08	357	364
WK27	1409266	SUGAR BOWL W/ LID	\$586	\$594	150	\$33	8.41	94.69%	98.08%	100.00%	100%	\$6,875	4.49	357	364
WK28	1409266	SUGAR BOWL W/ LID	\$578	\$614	155	\$25	6.38	96.05%	98.63%	100.00%	100%	\$6,934	4.60	359	364
WK29	1409266	SUGAR BOWL W/ LID	\$603	\$590	149	\$23	5.71	96.31%	99.18%	100.00%	100%	\$6,918	4.44	361	364
WK30	1409266	SUGAR BOWL W/ LID	\$625	\$701	177	\$12	3.01	98.33%	99.73%	100.00%	100%	\$6,835	5.33	363	364
WK31	1409266	SUGAR BOWL W/ LID	\$649	\$566	143	\$27	6.71	95.52%	96.99%	100.00%	100%	\$6,261	4.70	354	365
WK32	1409266	SUGAR BOWL W/ LID	\$584	\$665	168	\$84	21.19	88.80%	93.96%	100.00%	100%	\$5,572	6.21	342	364
WK33	1409266	SUGAR BOWL W/ LID	\$609	\$451	114	\$186	46.87	70.86%	90.96%	100.00%	100%	\$5,112	4.59	332	365
						\$499	126.07								

All items lost sales wk 24 to wk 33
Only 4 items on container lost sales

\$64,776
\$38,798

**Avg Valid
Store/Item
Comb.**

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Comb.

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ATTACHMENT D

**BEFORE THE
FEDERAL MARITIME COMMISSION**

TIENSHAN, INC.)	
)	
Complainant,)	
)	
v.)	DOCKET NO. 08-04
)	Zheng Xie's Affidavit
TIANJIN HUA FENG TRANSPORT AGENCY CO., LTD.))	
)	
Respondent.)	
)	

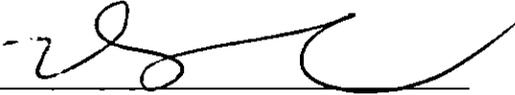
I, ZHENG XIE, declare under oath the following based on my own personal knowledge:

1. I am a member of the Bar of the State of New York and associated with the firm of Rodriguez O'Donnell Gonzalez & Williams, P.C., attorneys for Complainant in the above-entitled proceeding, and I am familiar with all the facts and circumstances in this proceeding.
2. The total amount of legal fees which Complainant incurred for subject matter of this proceeding as of August 31, 2010 is \$49,743.36, which includes attorneys' fees of \$ 48,336.50 and expenses of \$ 1,406.86. An itemized statement and invoices are hereto attached.
3. I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing statements are true and correct.

WHEREFORE, Complainant requests an Order compelling Respondents to make reparations to Complainant in the amount of \$ 49,743.36 for legal fees incurred for subject matter of this proceeding.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to be 'Zheng Xie', written over a horizontal line.

Zheng Xie, Esq.

**RODRIGUEZ O'DONNELL
GONZALEZ & WILLIAMS, P.C.**
1250 Connecticut Ave. N.W., Suite 200,
Washington, D.C. 20036
202-973-2999 (Telephone)
202-293-3307 (Facsimile)

Attorneys for Complainant

Dated in Washington, D.C. this twenty-eighth day of September, 2010.

Rodriguez O'Donnell Gonzales & Williams, PC

Cumulative Client/Matter Billed Summary

Report ID: OT2047 - 16111
 Tuesday, September 28, 2010

Printed By PCD
 Page 1

Client Code	Client Name						
Matter Code	Matter Name						
Timekeeper ID	Timekeeper Name	Personnel Type	Actual Hours	Hours Billed	Rate	Total	
TSIW	Tienshan Inc.						
00801	Wan Hai Shipment						
Fees	CAR	Rul, Christopher A.	Paralegals	8.10	7.10	\$95.00	\$674.50
	CR	Rodriguez, Carlos	Senior Partners	1.30	1.30	\$0.00	\$0.00
	CR	Rodriguez, Carlos	Senior Partners	43.10	35.60	\$350.00	\$12,460.00
	DSL	Lee, Daniel	Associates	12.50	10.40	\$195.00	\$2,028.00
	ELE	Edwards, Eddie L.	Other Staff	6.80	6.80	\$190.00	\$1,292.00
	TCF	Fineberg, Todd C.	Of Counsel	0.33	0.37	\$195.95	\$72.50
	TCF	Fineberg, Todd C.	Of Counsel	0.60	0.60	\$200.00	\$120.00
	ZX	Xie, Zheng	Associates	1.60	1.60	\$0.00	\$0.00
	ZX	Xie, Zheng	Associates	175.90	89.50	\$185.00	\$16,557.50
	ZX	Xie, Zheng	Associates	77.60	77.60	\$195.00	\$15,132.00
Total Fees Billed to Date				327.83	230.87		\$48,336.50
Expenses	Exp Code	Description	Total				
	054W	Travel - ground transportation	\$11.05				
	101W	Postage	\$0.78				
	104W	Delivery Services	\$219.37				
	116W	Computerized Research	\$1,130.25				
	161W	Lexis-Nexis	\$45.41				
Total Expenses Billed to Date							\$1,406.86

*** End Of Report ***

Inquiry: General - Ledger History
 Client: TSIW - Tienshan Inc.
 Matter: 801 - Wan Hai Shipment

User: PCD

	Type	Bill	Date	Cash / PPD	Fees	Expenses	Surchg/Tax/Int	A/R Balance
1	PPD		06/26/2008	1,500.00	0.00	0.00	0.00	0.00
2	Bill	37713	07/07/2008	0.00	2,124.00	0.00	0.00	2,124.00
3	PPD	37713	07/07/2008	1,500.00	1,500.00	0.00	0.00	624.00
4	Bill	37843	08/11/2008	0.00	6,628.50	0.00	0.00	7,252.50
5	Cash	37713	09/03/2008	624.00	624.00	0.00	0.00	6,628.50
6	Bill	38287	10/17/2008	0.00	8,416.00	158.02	0.00	15,202.52
7	Cash	37843	11/03/2008	6,628.50	6,628.50	0.00	0.00	8,574.02
8	Bill	38632	11/07/2008	0.00	4,042.50	0.00	0.00	12,616.52
9	Unpost	38632	11/07/2008	0.00	-4,042.50	0.00	0.00	8,574.02
10	Bill	38636	11/10/2008	0.00	3,323.44	0.00	0.00	11,897.46
11	Bill	39188	02/16/2009	0.00	11,000.00	1,129.65	0.00	24,027.11
12	Unpost	39188	02/16/2009	0.00	-11,000.00	-1,129.65	0.00	11,897.46
13	Bill	39274	02/20/2009	0.00	11,000.00	1,129.65	0.00	24,027.11
14	Adj	39274	04/30/2009	0.00	-11,000.00	0.00	0.00	13,027.11
15	Adj	38287	04/30/2009	0.00	-1,873.09	0.00	0.00	11,154.02
16	Bill	39892	04/30/2009	0.00	0.00	0.00	0.00	11,154.02
17	Bill	40099	05/05/2009	0.00	84.50	0.00	0.00	11,238.52
18	Bill	40950	09/03/2009	0.00	0.00	0.00	0.00	11,238.52
19	Cash	38287	10/30/2009	6,700.93	6,542.91	158.02	0.00	4,537.59
20	Cash	38636	10/30/2009	3,323.44	3,323.44	0.00	0.00	1,214.15
21	Cash	39274	10/30/2009	1,129.65	0.00	1,129.65	0.00	84.50
22	Cash	40099	10/30/2009	84.50	84.50	0.00	0.00	0.00
23	Bill	43432	09/23/2010	0.00	16,041.00	119.19	0.00	16,160.19

Inquiry: Bills - Recap
Client: TSIW - Tienshan Inc.
Matter: 801 - Wan Hai Shipment

User: PCD

	Month to Date	Year to Date	Inception to Date
	Amount	Amount	Amount
Fees	16,041.00	16,041.00	47,617.44
Expenses	119.19	119.19	1,403.86
Surcharge	0.00	0.00	0.00
Taxes	0.00	0.00	0.00
Interest	0.00	0.00	0.00
Total	16,160.19	16,160.19	49,024.30

Inquiry: Receipts - Recap
Client: TSW - Tienshan Inc.
Matter: 801 - Wan Hai Shipment

User: PCD

	Month to Date	Year to Date	Inception to Date
	Amount	Amount	Amount
Fees	0.00	0.00	18,703.35
Expenses	0.00	0.00	1,287.67
Surcharge	0.00	0.00	0.00
Taxes	0.00	0.00	0.00
Interest	0.00	0.00	0.00
Total	0.00	0.00	19,991.02

RODRIGUEZ O'DONNELL
8430 W. Bryn Mawr Avenue - Suite 525
Chicago, IL 60631
Phone: 773-314-5000 / Fax: 773-314-1719
Tax ID#: 52-2363141 WEB: www.rorlaw.com

July 7, 2008

Tienshan Inc.
231 Wilson Avenue
South Norwalk, CT 06854
Attn: Mr. Lee dos Santos
leedos@aol.com

Invoice # 37713 CR
Our File # TSIW
Billing Through 06/30/2008

Remittance Copy

Matter No. 801: Wan Hai Shipment

Total Professional Services For This Matter		\$2,124.00	
Total Fees	9.70 hrs	\$2,124.00	
Total Amount For This Bill		\$2,124.00	
Less Prepaid Cash Applied To This Bill		\$1,500.00	CR
Total Due		<u>\$624.00</u>	

Please return this copy with payment, thank you.

You may now pay your bill with either Visa or MasterCard. Please call our office for more details.

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July 7, 2008

Tienshan Inc.
231 Wilson Avenue
South Norwalk, CT 06854
Attn: Mr. Lee dos Santos
leedos@aol.com

Invoice# 37713 CR
Our file# TSIW
Billing Through 06/30/2008

Matter No. 801: Wan Hai Shipment

PROFESSIONAL SERVICES

06/26/2008	DSL	Received and reviewed client's corres re status of matter. Conferred with client re status of matter and further handling strategy. Discussed with CR re status of matter and drafting a demand ltr to vessel carrier. Reviewed all relevant shipping and other docs. Contacted and discussed with Hua Feng's US agent re status of matter. Discussed with client re status of matter, further facts, and further handling strategy. Drafted a ltr to Wan Hai demanding release of shipment. Researched and reviewed Shipping Act. Reviewed and revised the draft of ltr to Wan Hai. Corresponded with CR re the draft of ltr to Wan Hai. Discussed with CR re the ltr. Reviewed and finalized the ltr. Corresponded with Wan Hai and FMC re the ltr.	4.80	195.00	936.00
06/27/2008	DSL	Received and reviewed Wan Hai agent's corres re receipt of our ltr. Discussed with CR re status of matter and further handling strategy. Received client's telephone msg re status of matter. Discussed with client re status of matter. Contacted Wan Hai's representative to discuss status of matter. Discussed with Wan Hai's representative re status of matter and further discussion.	0.80	195.00	156.00
06/30/2008	DSL	Discussed with CR re status of matter. Received and reviewed client's corres re status of matter. Corresponded with client	2.60	195.00	507.00

re status of matter and further handling strategy. Discussed with CR re status of matter. Contacted Wan Hai's agent together with CR re Wan Hai's response. Conferred with Wan Hai's agent together with CR re status of matter. Conferred with Hua Feng USA together with CR re status of matter. Discussed with CR re the Shipping Act. Assisted CR re drafting a memo to FMC re the matter. Reviewed CR's memo to FMC re request for assistance. Corresponded with FMC, Wan Hai, Gua Feng, client, and other parties re the memo.

06/30/2008	CR	Telcon with Mr. Christian P., Norton Lilly. Telcn with Hua Feng (Michele, and FMC. Draft memo to FMC.	1.50	350.00	525.00
Total Professional Services For This Matter					<u>\$2,124.00</u>

Billing Summary

Total professional services	\$2,124.00	
Total of new charges for this invoice	<u>\$2,124.00</u>	
Less prepaid cash applied to this invoice *	\$1,500.00	CR
Total balance now due	<u>\$624.00</u>	

Summary of Account by Each Timekeeper

<u>Timekeeper Initials</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
DSL	8.20	195.00	\$1,599.00
CR	1.50	350.00	\$525.00

* Prepaid cash remaining balance is \$0.00

**RODRIGUEZ O'DONNELL
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August 11, 2008

Tienshan Inc.
231 Wilson Avenue
South Norwalk, CT 06854
Attn: Mr. Lee dos Santos
leedos@aol.com

Invoice # 37843 CR
Our File # TSIW
Billing Through 07/31/2008

Remittance Copy

Matter No. 801: Wan Hai Shipment

Balance Forward For This Matter		\$624.00	
Payments received since last invoice		\$624.00	CR
Total Professional Services For This Matter		\$6,628.50	
Total Fees	30.00	hrs	\$6,628.50
Total Amount For This Bill			\$6,628.50
Total Due			<u>\$6,628.50</u>

Please return this copy with payment, thank you.

You may now pay your bill with either Visa or MasterCard. Please call our office for more details.

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August 11, 2008

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leedos@aol.com

Invoice# 37843 CR
Our file# TSIW
Billing Through 07/31/2008

Matter No. 801: Wan Hai Shipment

PROFESSIONAL SERVICES

07/01/2008	CR	Telcon with FMC; telcon with client (Rob S.). Draft response to FMC inquiry on background of matter.	1.30	350.00	455.00
07/02/2008	CR	Draft notice to Hua Feng and Wan Hai of demurrage and late delivery penalties. Draft separate e-mail memo with actual amounts of demurrage and penalties. Telcon with Lee DS.	1.00	350.00	350.00
07/02/2008	DSL	Discussed with CR re status of matter and further handling strategy. Contacted client to discuss status of matter. Corresponded with client re demurrage and relevant penalty. Assisted CR re corresponding with Hua Feng and FMC re status of matter. Discussed with CR re client's damages and further handling strategy. Assisted CR re corresponding with Hua Feng and Wan Hai re the damages and demand for release of cntrs. Conferred with FMC together with CR re status of matter and further handling strategy. Received and reviewed Wan Hai agent's corres re status of matter. Received and reviewed client's corres re Wan Hai's response and conditions for release. Conferred with Wan Hai's agent together with CR re status of matter. Conferred with client together with CR re status of matter and further handling strategy. Conferred again with Wan Hai's agent together with	1.00	195.00	195.00

TSIW	Tienshan Inc.	Invoice#	37843	Page	2
		CR re requirements for release of cntrs. Received and reviewed relevant corres from A Sonic and Hua Feng China re original bills of lading and outstanding charges from factory. Discussed with CR re status of matter, Hua Fenf China's corres, and further handling strategy.			
07/03/2008	CR	Draft various docs to Hua Feng; MOT, and FMC. Telcon with client and FMC.	1.00	350.00	350.00
07/07/2008	DSL	Received and reviewed client's corres re status of matter. Corresponded with client re ltr to Hua Feng and status of matter.	0.20	195.00	39.00
07/08/2008	ZX	Conference regarding the possible procedure in China to resolve this matter	0.40	185.00	74.00
07/08/2008	ZX	Drafted a letter to Hua Feng for settlement purposes and sent the letter to Hua Feng	2.10	185.00	388.50
07/08/2008	ZX	Contacted Hua Feng Tianjin regarding the e- mail we sent today, and informed that they would consider our settlement offer and respond to us asap	0.20	185.00	37.00
07/08/2008	DSL	Conferred with CR and ZX re status of matter and further handling strategy. Contacted client to discuss further. Received and reviewed client's corres re status of matter. Corresponded with client re status of matter. Corresponded with ZX re Hua Feng USA's contact info. Discussed with ZX re status of matter and client's contact info.	0.60	195.00	117.00
07/09/2008	ZX	Sent the client an e-mail upadting the status of this matter.	0.10	185.00	18.50
07/09/2008	ZX	Discussed the matter with Huafeng Tianjin and Huafeng US	0.40	185.00	74.00
07/10/2008	ZX	Reviewed Hua Feng's Letter and Translated the letter for our client.	0.50	185.00	92.50
07/10/2008	ZX	Drafted a letter to Hua Feng US informing them we are going to file a claim with FMC	0.70	185.00	129.50
07/10/2008	ELE	Researched and retrieved from the FMC official files, tariff, bond, licensing and registration information on Hua Feng (USA) Logistics Inc. File review with attorney Xie, re: FMC fact-finding. Information data turned over to attorney Xie.	1.20	190.00	228.00
07/15/2008	DSL	Received and reviewed client's corres re status of matter. Discussed with ZX re response to client re status of matter. Received and reviewed ZX's corres to client re status of matter.	0.40	195.00	78.00
07/17/2008	ZX	Negotiated this matter with Mr. Wang	1.50	185.00	277.50

TSIW	Tianshan Inc.	Invoice#	37843	Page	3
		Dong of Hua Feng for the possible solution.			
07/17/2008	ZX	Discussed this matter with Chinese lawyer and our client.	0.40	185.00	74.00
07/17/2008	ZX	Telephone conference with our client, drafted two power of attorney, a memo to Hua Feng, sent out an e-mail to Hua Feng.	2.00	185.00	370.00
07/18/2008	ZX	Drafted a short memo regarding the telephone conferences with Hua Feng	1.60	185.00	296.00
		Tianjin and the possilbe settlement terms.			
07/18/2008	ZX	Drafted a bond claim to Hua Feng USA's surety and cc to FMC.	1.50	185.00	277.50
07/18/2008	ZX	Drafted a FMC claim against Hua Feng USA.	1.50	185.00	277.50
07/18/2008	CR	Memo to client relating to Tinjin communications.	0.50	350.00	175.00
07/21/2008	ZX	Reviewed the letter from surety, and two different bonds of Hua Feng USA.	0.30	185.00	55.50
07/21/2008	CR	Draft bond claim.	1.50	350.00	525.00
07/21/2008	ELE	Telephone conference with Marty Milson at the FMC, re: Hua Feng FMC bond numbers 08 BSB FC9126, and bond number JGINVOCC1072 issued by Hartford Insurance and Arch.	1.00	190.00	190.00
07/21/2008	ZX	Revised the bond claim letter and FMC informal claim letter, prepared all attached documents.	1.50	185.00	277.50
07/29/2008	ELE	Researched and retieved from the FMC official files, tariff, dond, and registration information on "Tianjin Hua Feng Transport Agency Co., Ltd". File review with attorney Xie, re: FMC fact-finding. Information data turned-over to attorney Xie.	1.20	190.00	228.00
07/30/2008	ZX	DISCUSSED THE CASE WITH ATTORNEY RODRIGUEZ, REVIEWED THE SURETY BOND OF TIANJIN HUA FENG.	0.50	185.00	92.50
07/30/2008	ZX	Drafted a bond claim against Tianjin Hua Feng.	1.10	185.00	203.50
07/30/2008	ZX	Prepared the attachements for the bond claim, and withdrew the claim against Hua Feng USA, contacted clients for demurrage.	1.50	185.00	277.50
07/30/2008	CR	Review Tianjen H.F. bond. E-mail to client related to same. Final draft of claim to surety.	1.00	350.00	350.00
07/31/2008	ZX	Discussed the matter with President Wang Dong of Hua Feng.	0.30	185.00	55.50
Total Professional Services For This Matter					<u>\$6,628.50</u>

Billing Summary

Total professional services	\$6,628.50
Total of new charges for this invoice	<u>\$6,628.50</u>
Total balance now due	<u><u>\$6,628.50</u></u>

Summary of Account by Each Timekeeper

<u>Timekeeper Initials</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
ELE	3.40	190.00	\$646.00
DSL	2.20	195.00	\$429.00
CR	6.30	350.00	\$2,205.00
ZX	18.10	185.00	\$3,348.50

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Chicago, IL 60631
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Tax ID#: 52-2363141 WEB: www.rorlaw.com

October 17, 2008

Tienshan Inc.
231 Wilson Avenue
South Norwalk, CT 06854
Attn: Mr. Lee dos Santos
leedos@aol.com

Invoice # 38287 CR
Our File # TSIW
Billing Through 08/31/2008

Remittance Copy

Matter No. 801: Wan Hai Shipment

Balance Forward For This Matter		\$6,628.50
Total Professional Services For This Matter		\$8,416.00
Total Expenses For This Matter		\$158.02
Total Fees	42.10 hrs	\$8,416.00
Total Expenses		\$158.02
Total Amount For This Bill		\$8,574.02
Past Due Balance		\$6,628.50
Total Due		\$15,202.52

Please return this copy with payment, thank you.

You may now pay your bill with either Visa or MasterCard. Please call our office for more details.

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October 17, 2008

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Attn: Mr. Lee dos Santos
leedos@aol.com

Invoice# 38287 CR
Our file# TSIW
Billing Through 08/31/2008

Matter No. 801: Wan Hai Shipment

PROFESSIONAL SERVICES

08/01/2008	TCF	Exchanged e-mails on status of Hua Feng matter with surety official.	0.20	200.00	40.00
08/01/2008	ZX	Talked with Jerry Chen of Tianshen updating client of the status of this case.	0.10	185.00	18.50
08/06/2008	ZX	telephone conference with Hua Feng's counsel in Carlifornia. sent the relevant document to this consel, updated our client of the status.	0.90	185.00	166.50
08/06/2008	ZX	Sent Hua Feng's attorney's information to FMC.	0.10	185.00	18.50
08/07/2008	CR	Review letter response from Alan Graf, attorney for TianjinHF. Respond to same. Review bond amendments from Avalon.	1.00	350.00	350.00
08/07/2008	ZX	Discussed with our client and called FMC regarding the updated information of this matter.	0.20	185.00	37.00
08/07/2008	ZX	Reviewed the letter from Hua Feng's attorney, drafted a responding letter to the attorney with Attorney Roriguez, sent a copy of the letter to our client and updated our client of the status.	1.00	0.00	0.00
08/08/2008	CR	Review file. Telcon with Christian P., Wan Hai agent; telcon with Rob S., client; telcon with Theresa Dike, FMC atty. relating to release of containers. Draft response to Atty. Graf, atty for Hua Feng.	1.30	0.00	0.00
08/08/2008	ZX	Reviewed the letter from Hua Feng's attorney and prepared contact information of Norton Lilly for further discussion with Norton.	0.60	185.00	111.00
08/08/2008	ZX	Telephone conference with our client and	0.50	185.00	92.50

		Norton Lilly, and sent Hua Feng's e-mail to Norton Lilly.			
08/11/2008	CR	Telcon with Chris P., Norton Lilly, agent for Wan Hai on terms of release of containers. Demurrage charges review. E-mail same to client.	1.00	350.00	350.00
08/11/2008	ZX	Conference with Wan Hai's agent, discussed with our client regarding deposit.	0.60	0.00	0.00
08/11/2008	ZX	Drafted an e-mail to our client with attorney Rodriguez.	0.50	185.00	92.50
08/12/2008	CR	Draft counter offer to Wan Hai. Telcon with client related to same.	1.00	350.00	350.00
08/12/2008	ZX	Continued to drafted the Complaint.	1.00	185.00	185.00
08/12/2008	ZX	Completed the Complaint and drafted the request for discovery.	4.00	185.00	740.00
08/12/2008	ZX	Reviewed the supporting documents, drafted the Complaint, communicated with client.	5.20	185.00	962.00
08/13/2008	TCF	Reviewed draft discovery for FMC proceeding and consulted FMC regulations.	0.40	200.00	80.00
08/13/2008	ZX	Drafted the verified complaint.	0.30	185.00	55.50
08/13/2008	ZX	Followed up with Wan Hai's agent regarding our counter-offer.	0.10	185.00	18.50
08/13/2008	ZX	Reivewed the reuquest for discovery wiht attorney Finebergg.	0.30	185.00	55.50
08/14/2008	CR	Final draft of Complaint. Final draft of Discovery document. Telcon wiht R. Sterner. Telxon with Chrisiians P. agent for Wan Hai. Draft e-mials to agent retated to escrow agreemetn. REview escrow agreemetn.	3.00	350.00	1,050.00
08/14/2008	ZX	Revised Reqeust for Discovery.	0.20	185.00	37.00
08/14/2008	ZX	Discussed with client and researched regarding transfer of title.	0.30	185.00	55.50
08/14/2008	ZX	Reviewed the Complaint, worked with Attorney Rodriguez on revising the Complaint, communicated with the Carrier's agent and our client, drafted an escrow agreement.	1.50	185.00	277.50
08/15/2008	ZX	Reviewed and revised the Complaint and prepared Exhibits.	1.20	185.00	222.00
08/15/2008	ZX	Communicated with client and the carrier's agent regarding the escrow agreement and release of the cargo.	1.30	185.00	240.50
08/17/2008	ZX	Prepared filing package with FMC.	1.50	185.00	277.50
08/18/2008	ZX	Discussed the matter with Attorney Rodriguez and requested for FMC filing fee check from client.	0.20	185.00	37.00
08/18/2008	ZX	Revised the request for discovery, drafted	4.00	185.00	740.00

		certificate of service, communicated with client regarding release of the cargo.			
08/18/2008	ZX	Prepared the package filed with FMC, and drafted two letters for process of service.	1.40	185.00	259.00
08/19/2008	CR	Final draft of FMC Complaint case.	1.00	350.00	350.00
08/19/2008	ZX	Added the escrow agreement in our electronic file and added verification and check in our package.	0.10	185.00	18.50
08/19/2008	ZX	Prepared all documents, discussed with attorney Rodriguez, and filed the Complaint with supporting documents with FMC.	3.00	185.00	555.00
08/19/2008	ZX	Drafted cover letters and served Complaint and discovery to Respondent's agent, and sent coutersey copies to its attorney and surety.	0.70	185.00	129.50
08/20/2008	ZX	As per the FMC's request, added notary language in the complaint, and sent to our client for re-execution and notarization.	1.00	185.00	185.00
08/21/2008	ZX	Obtained notarized Verification, drafted a cover letter to FMC, sent a copy to all parties.	0.90	185.00	166.50
08/26/2008	ZX	Reviewed our client's request for receipt, and request for receipt from Wan Hai.	0.40	185.00	74.00
08/28/2008	ZX	Reviewed Wanhai's Letter regarding receipt of Tienshan's payments of demurrage and escrow funds.	0.10	185.00	18.50

Total Professional Services For This Matter \$8,416.00

EXPENSES

08/31/2008	Travel - ground transportation	6.00
08/31/2008	Delivery Services	152.02

Total Expenses For This Matter \$158.02

Billing Summary

Total professional services	\$8,416.00
Total expenses incurred	\$158.02
Total of new charges for this invoice	\$8,574.02
Plus balance carried forward	\$6,628.50
Total balance now due	\$15,202.52

Summary of Account by Each Timekeeper

<u>Timekeeper Initials</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
TCF	0.60	200.00	\$120.00
CR	1.30	0.00	\$0.00
CR	7.00	350.00	\$2,450.00

TSIW Tienshan Inc.

Invoice# 38287 Page 4

ZX	1.60	0.00	\$0.00
ZX	31.60	185.00	\$5,846.00

**RODRIGUEZ O'DONNELL
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Tax ID#: 52-2363141 WEB: www.rorlaw.com

Unposted
re-billed
38632

November 7, 2008

Tienshan Inc.
231 Wilson Avenue
South Norwalk, CT 06854
Attn: Mr. Jerry Cheng
jcheng@tienshaninc.com

Invoice # 38632 CR
Our File # TSIW
Billing Through 09/30/2008

Remittance Copy

Matter No.	801: Wan Hai Shipment		
	Balance Forward For This Matter	\$15,202.52	
	Payments received since last invoice	\$6,628.50	CR
	Total Professional Services For This Matter	\$4,042.50	
Matter No.	2000: General Legal Services		
	Total Professional Services For This Matter	\$2,091.00	
	Total Fees	30.00 hrs	\$6,133.50
	Total Amount For This Bill		\$6,133.50
	Past Due Balance		\$8,574.02
	Total Due		\$14,707.52

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jcheng@tienshaninc.com

Invoice# 38632 CR
Our file# TSIW
Billing Through 09/30/2008

Matter No. 801: Wan Hai Shipment

PROFESSIONAL SERVICES

09/08/2008	ZX	Prepared documents for Mr. Rodriguez's conference with Defendant's counsel.	0.60	185.00	111.00
09/09/2008	CAR	Verification of service on opposing party by the FMC.	0.80	95.00	76.00
09/09/2008	ZX	Inquiring with FMC regarding service of process, discussed with client regarding the demand letter to shipper, and other containers in Tianjin, discussed with Attorney Rodriguez, and researched on Kerry EAS.	1.30	185.00	240.50
09/15/2008	CAR	Filing with FMC "Stipulation Extending Time to Respond to Complaint."	1.50	95.00	142.50
09/15/2008	CR	Telcon with Attys. Graf, and McNeil. Telcon with FMC Administrative Law Judge office. Telcon with Ron Murphy, FMC. E-mail to client with status of settlement discussions.	1.50	350.00	525.00
09/15/2008	ZX	CONFERENCE WITH HUA FENG'S ATTORNEY, FILED STIPULATION FOR EXTENSION TO ANSWER, SENT INFORMATION TO HUA FENG'S ATTORNEY AS PER THEIR REQUESTS.	2.80	185.00	518.00
09/17/2008	ZX	Worked with Attorney Rodriguez drafting a memo to Hua Feng's counsel for settlement purposes, and requested for invoice from Norton Lily, and obtained and reviewed the e-mail from Norton Lily	0.70	185.00	129.50
09/22/2008	ZX	Obtained and reviewed Order Extending Time, discussed with attorney Rodriguez, and sent a copy to Defendant's counsel.	0.50	185.00	92.50
09/23/2008	CAR	Document conversion.	0.30	95.00	28.50

09/23/2008	ZX	RESEARCHED ON RELEVANT CONTRACT LAW AND REVIEWED HUA FENG'S COUNSEL'S ARGUMENTS.	1.50	185.00	277.50
09/24/2008	ZX	Reviewed the Shipping Act and prepared to respond to Hua Feng's Counsel's arguments.	0.20	185.00	37.00
09/24/2008	ZX	PREPARED THE ARGUMENTS RESPONDING TO HUA FENG'S COUNSEL.	1.30	185.00	240.50
09/24/2008	ZX	DISCUSSED WITH CLIENT AND ATTORNEY RODRIGUEZ REGARDING	0.20	185.00	37.00
09/25/2008	CAR	Document conversion of Hua Feng settlement.	0.50	95.00	47.50
09/25/2008	CR	Review letter received from counsel. Draft responses for client review.	1.00	350.00	350.00
09/25/2008	ZX	WORKED WITH ATTORNEY RODRIGUEZ TO DRAFT A RESPONSE TO HUA FENG'S COUNSEL'S LETTER.	1.00	185.00	185.00
09/26/2008	CR	Draft response letter to Hua Feng attorneys.	2.50	350.00	875.00
09/26/2008	ZX	Revised and edited the Response Letter to Hua Feng's counsel, and sent out the letter.	0.70	185.00	129.50

Total Professional Services For This Matter \$4,042.50

Matter No. 2000: General Legal Services

PROFESSIONAL SERVICES

09/15/2008	ZX	DISCUSSED WITH CLIENT, REVIEWED THE DOCUMENTS, AND DRAFTED DEMAND LETTERS IN ENGLISH AND CHINESE.	4.50	185.00	832.50
09/16/2008	CR	Review claim letter to China shipper.	0.50	350.00	175.00
09/16/2008	ZX	REVISED THE DEMAND LETTERS, AND DISCUSSED WITH CLIENT.	2.00	185.00	370.00
09/16/2008	ZX	Discussed with client, revised the letter, discussed with attorney Rodriguez, and revised the letters again.	2.50	185.00	462.50
09/18/2008	CAR	Document conversion.	0.50	95.00	47.50
09/19/2008	ZX	Discussed with our client, revised the demand letters, and sent to Henan Huatai via fax and e-mail.	1.00	185.00	185.00
09/25/2008	ZX	Tried to call Mr. Huang of Hua Tai, but failed to reach him numerous times.	0.10	185.00	18.50

Total Professional Services For This Matter \$2,091.00

Billing Summary

Total professional services	\$6,133.50
Total of new charges for this invoice	\$6,133.50
Plus balance carried forward	\$8,574.02
Total balance now due	\$14,707.52

Summary of Account by Each Timekeeper

<u>Timekeeper Initials</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
CR	5.50	350.00	\$1,925.00
CAR	3.60	95.00	\$342.00
ZX	20.90	185.00	\$3,866.50

Your account is over 30 days past due. Please pay promptly to avoid interruption of services.

**RODRIGUEZ O'DONNELL
GONZALEZ & WILLIAMS, P.C.**

8430 W. Bryn Mawr Avenue - Suite 525
Chicago, IL 60631
Phone: 773-314-5000 / Fax: 773-314-1719
Tax ID#: 52-2363141 WEB: www.rorlaw.com

November 10, 2008

Tienshan Inc.
231 Wilson Avenue
South Norwalk, CT 06854
Attn: Mr. Jerry Cheng
jcheng@tienshaninc.com

Invoice # 38636 CR
Our File # TSIW
Billing Through 09/30/2008

Remittance Copy

Matter No. 801: Wan Hai Shipment

Balance Forward For This Matter	\$12,616.52
Adjustments since last invoice	-\$4,042.50
Total Professional Services For This Matter	\$4,042.50

Matter No. 2000: General Legal Services

Balance Forward For This Matter	\$2,091.00	
Adjustments since last invoice	-\$2,091.00	
Total Professional Services For This Matter	\$2,091.00	
Total Fees	30.00 hrs	\$6,133.50
Total Amount For This Bill	\$5,042.50	
Past Due Balance	\$8,574.02	
Total Due	\$13,616.52	

Please return this copy with payment, thank you.

You may now pay your bill with either Visa or MasterCard. Please call our office for more details.

Balance forward 14,707⁵²
adjustment (6,133⁵⁰)

Balance forward 8,574⁰²
New Amt for this bill 5,042⁵⁰

13,616⁵²

**RODRIGUEZ O'DONNELL
GONZALEZ & WILLIAMS, P.C.**

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South Norwalk, CT 06854
Attn: Mr. Jerry Cheng
jcheng@tienshaninc.com

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Our file# TSIW
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